



CLAUSE 4.6 VARIATION STATEMENT

Demolition of existing structures and construction of a part six, part fifteen storey mixed use building comprising a childcare centre, commercial units and shop top housing with four levels of basement parking, landscaping, Torrens title subdivision and land dedication for public laneways

86-96 Station Street
Wentworthville

Prepared for: Beaini Projects

REF: M220598

DATE: 14 August 2025



DEVELOPMENT

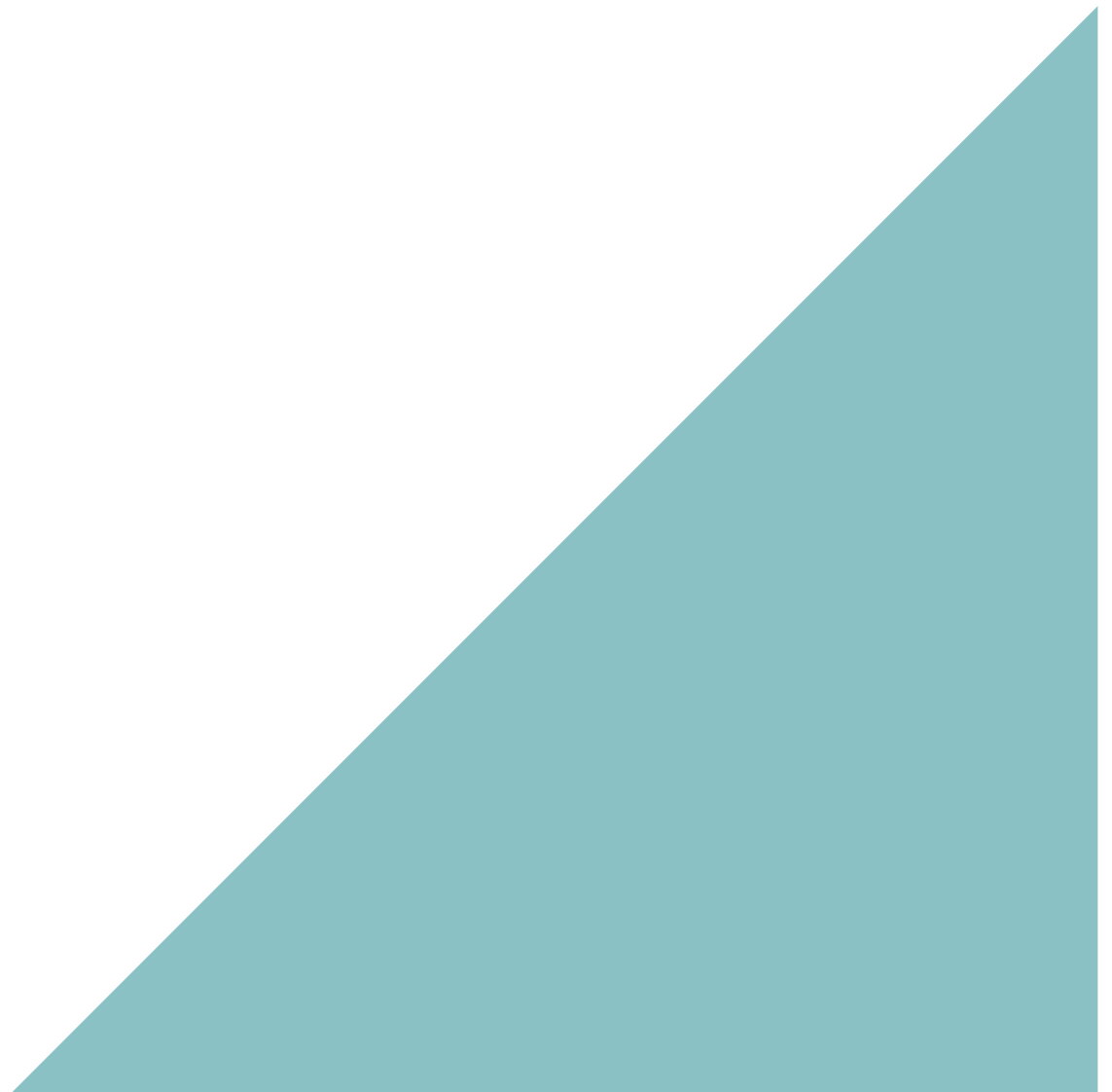


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CLAUSE 4.6 VARIATION STATEMENT – LANDSCAPED AREA (CLAUSE 19(2)(B)(C) OF THE HOUSING SEPP)

1. Introduction

This Variation Statement has been prepared in accordance with Clause 4.6 of the Cumberland Local Environmental Plan 2021 (CLEP 2021). The subject application seeks consent for *'Demolition of existing structures and construction of a part six, part fifteen storey mixed use building comprising a childcare centre, commercial units and shop top housing with four levels of basement parking, landscaping, Torrens title subdivision and land dedication for public laneways'* at No. 86-96 Station Street, Wentworthville ('the site').

2. Landscaped Area and Deep Soil Standard

Clause 18 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) provides non-discretionary development standards, which if complied with, prevent the consent authority from requiring a more onerous standard. This Clause 4.6 Variation Request has been prepared in relation to Clause 18(2)(b)(c) of the Housing SEPP relating to landscaped area and deep soil planting for in-fill affordable housing which states:

(b) a minimum landscaped area that is the lesser of—

(i) 35m² per dwelling, or

(ii) 30% of the site area.

(c) a deep soil zone on at least 15% of the site area, where—

(i) each deep soil zone has minimum dimensions of 3m, and

(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,

The subject application must provide a landscaped area of 30% (486.6sqm) and deep soil area of 15% (243.3sqm) of the site. It is noted that landscaped area is defined as follows:

landscaped area means the part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area.

Cumberland Council provided the following commentary in a RFI letter dated 30 June 2023, with regard to the calculation of landscaped area:

The level 2 plan (DA1002 Issue B) and landscape plan indicate part of this area as a 'non-trafficable' space with small strips of planters. The level 2 'landscaped area' does not meet the definition above, additionally it is also occupied by a building under. Similarly, the area included as 'landscaped area' on level 6 is also located over a building and does not meet the definitions above. This matter remains outstanding.

3. Proposed variation to the landscaped area and deep soil development standards

It is contended that the proposed development complies with the landscaped area, given the proposal will provide a total landscaped area of 487.5m² spread across ground level, Level 2 and Level 6 (refer to **Figure 1**). Council have stated they disagree with the inclusion of the landscaped areas on Level 2 and 6, given these landscaped areas are located over a building.

Contrary to Council's interpretation of landscaped area is a judgement in *Lexington Homes Pty Ltd v Parramatta City Council [2015] NSWLEC 1503* which states:

[25] On this matter, I agree with Mr Harding that the difference between himself and Ms Hang as to whether the individual terraces should be included as landscaped area should be answered in the affirmative. Given the definition of landscaped area in cl 3 of SEPP Seniors, it seems that if things such as rainwater tanks and swimming pools are included as landscaped area, then it would be difficult to exclude private terraces given that these clearly provide, "Open-air recreational facilities for each unit." On this basis, the landscaped area satisfies the deemed to comply provisions in cl 50(e)

The definition of the (now repealed) SEPP Seniors had similar inclusions to landscaped area as the definition in the Housing SEPP (above). That is, if a rainwater tank or a swimming pool is included in the landscaped area calculation, the soft landscaping above structures should also be considered landscaped area.

If Council is not satisfied that Levels 2 and 6 depicted in **Figure 1** should be included in the landscaped area calculation, then the landscaped area is 1.9% (31.5sqm), resulting in a maximum variation of 93.5% (455.1sqm).

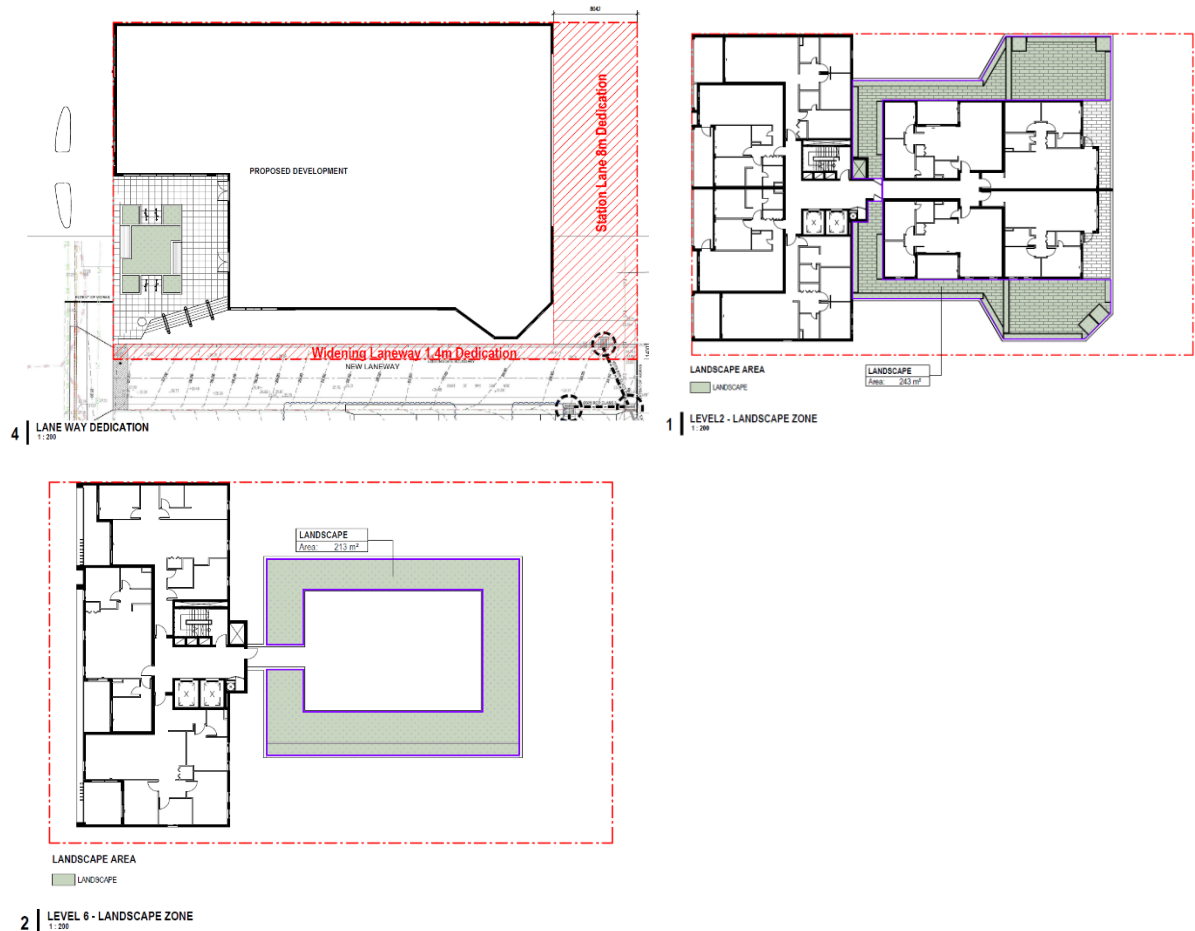


Figure 1 Landscaped area breakdown at GF, L2 and L6 (Source: IDA Design Group)

The proposed development does not provide any deep soil planting given the site is located in a commercial centre with buildings largely built to the boundary. This represents a numerical deficit in deep soil planting of 15% (243.3sqm).

The landscaped area and deep soil controls are a "development standard" to which exceptions can be granted pursuant to clause 4.6 of the LEP.

4. Clause 4.6 to CLEP 2021

The objectives and provisions of clause 4.6 under the *Cumberland Local Environment Plan 2021* are as follows:

4.6 Exceptions to development standards

(1) *The objectives of this clause are as follows—*

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Note—*The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) (Repealed)

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) (Repealed)

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning

Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(caa) clause 5.5.”

In accordance with Clause 4.6(2), the landscaped area standards in Clause 18(2)(b)(c) of the Housing SEPP can be varied under Clause 4.6 of the CLEP. Clause 18(2)(b) is not expressly excluded from the operation of clause 4.6.

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (Initial Action), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

Of relevance to Clause 4.6(3)(a), in *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

It is noted that there are no specific objectives related to Clause 18(2)(b)(c) of the Housing SEPP. However, Clause 20 of the Housing SEPP states:

“Nothing in this Policy affects the application of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) to residential development to which this Division applies.”

The proposal is for shop top housing containing affordable in-fill housing and as such SEPP 65 (Chapter 4 of the Housing SEPP) applies to this development. Chapter 4 of the Housing SEPP does contain some specific objectives regarding landscaping as well as a Principle 5 which states:

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.



Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

The Apartment Design Guide (ADG) also provides objectives and design guidance to achieve the Design Quality Principles outlined in Chapter 4 of the Housing SEPP. While this document is not an environmental planning instrument, it is read in conjunction with Chapter 4 of the Housing SEPP and contains objectives that relate to landscaping. Part 3 and 4 of the ADG includes deep soil and landscaping objectives as follows:

Part 3E-1

Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

Whilst its acknowledged deep soil zones play a vital role in supporting healthy vegetation, this can remain to be supported through the provision of soft landscaping. Deep soil planting is not feasible on the site given the mixed use nature of the development within a commercial zone. The proposed soft landscaping contains a variety of native vegetation including shrubs, groundcovers and small to medium sized trees. This vegetation will promote amenity and contribute to the management of water and air quality.

The proposed development features a suitable stormwater management infrastructure that will ensure where water runoff cannot be captured within permeable vegetation it remains to be managed effectively.

Part 40-1:

Landscape design is viable and sustainable.

The proposed landscaping includes native species that are suitable within their respective environment. Landscaped areas will be maintained by an external contractor.

Part 40-2:

Landscape design contributes to the streetscape and amenity.

The proposed landscaping at ground level will be visible from the streetscape and directly contribute to the amenity of the public domain. This landscaped area will feature outdoor and outdoor bicycle racks to further engage with the public domain.

In the absence of any specific objectives for deep soil zones and landscaped area in the Housing SEPP and acknowledging the applicability of Chapter 4 of the Housing SEPP to the development, we contend that the above objectives can be considered 'assumed objectives' for Clause 18(2)(b)(c) of the Housing SEPP. As detailed above, the proposal is compatible with these assumed objectives. On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

Notably, under Clause 4.6(3)(b) a consent authority must now be satisfied that there are sufficient planning grounds for the contravention of a development standard. Clause 4.6(3)(b) is addressed in Section 6 below.

6. Sufficient environmental planning grounds (Clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:



*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson.

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6. The case also demonstrates that the requirement in Clause 4.6(3)(b) of LEP 2012 to justify there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development and not simply grounds that apply to any similar development on the site or in the vicinity. In the *Four2Five* case, the Court found that the environmental planning grounds presented by the applicant in a Clause 4.6 written request must be specific to the circumstances of the proposed development on that site.

Furthermore, it is noted that whilst *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [24] indicated that the focus of consideration of environmental planning grounds should be on the aspect or element of the development that contravenes the development standard and not on the development as a whole, in this case, it is the design of the building as a whole that results in the contravention of the development standard and not necessarily the non-compliant units only. In this context the proposed development must be considered holistically.

In this instance, there are sufficient environmental planning and design grounds to justify the proposed contravention of the landscaped area development standard in the Housing SEPP as follows:

1) The non-compliance is reasonably anticipated in a commercial centre

- a. The breach of the deep soil and landscaped area requirement is a direct result of the subject sites location in the Wentworthville Town centre. The subject site is zoned E1 – Local Centre, with the proposed development incorporating a variety of land uses including a childcare centre, commercial units and shop top housing. The relevant planning controls in CDGP permit nil setbacks to the northern side boundary and front boundary (Station Street) and a 2m rear setback and 3m setback to the south. In light of the setbacks prescribed under CDGP, this does not provide sufficient allowance for ground floor landscaping and deep soil planting.
- b. A considerable portion of the site (318sqm) is to be dedicated to Council for the purpose of public laneways. This comprises a 1.4m wide strip along the southern boundary and 8m wide strip along the western boundary as well as a splay corners between these two (2) strips. The portion of the site to be dedicated to Council is outlined in **Figure 2**. It is not uncommon for basement envelopes to extend to the site boundaries to maximise on site parking and storage. However, in this instance it is vital the basement envelope extend to these boundaries given the land dedication burden.

Resultingly, there is no ability to provide deep soil planting and limited ability to provide landscaping at ground level on the site.

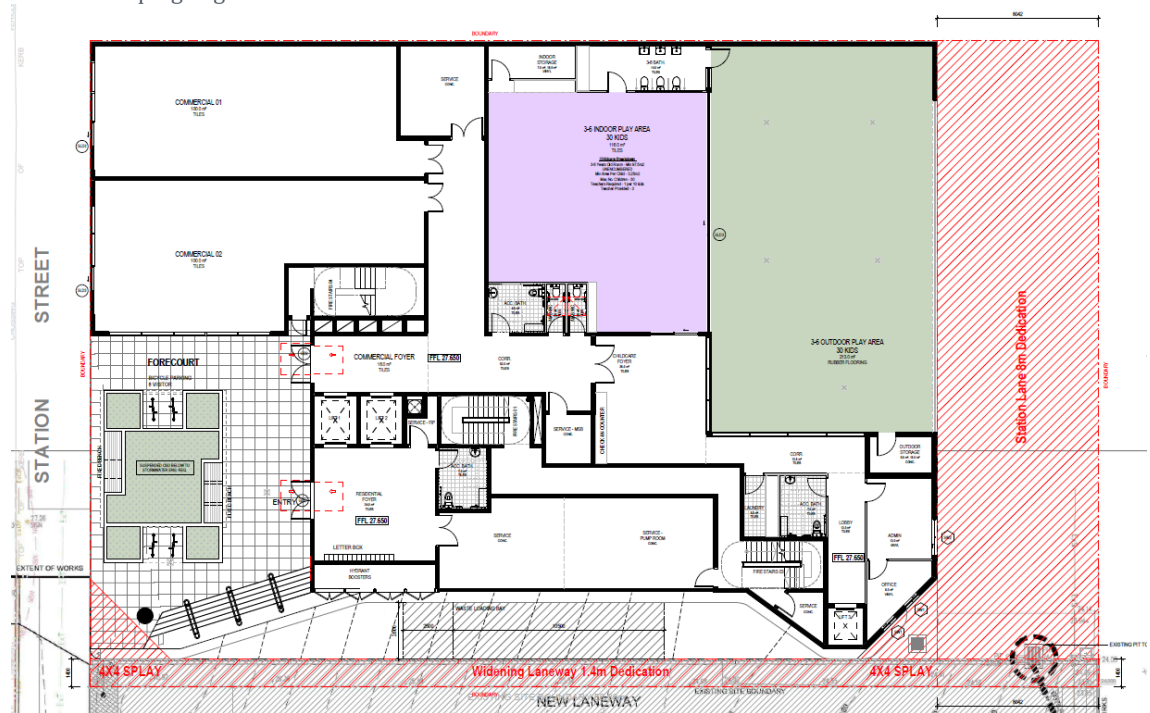


Figure 2 Area of laneway dedication (Source: IDA Design Group)

2) The ADG acknowledges deep soil planting and ground level landscaping cannot be achieved on all sites

- a. Part 3E – Deep Soil Zones of the ADG provides design guidance that acknowledges deep soil planting and ground floor landscaping cannot always be achieved in non-residential uses are proposed at ground level.

Achieving the design criteria may not be possible on some sites including where:

- the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)
- there is 100% site coverage or non-residential uses at ground floor level Where a proposal does not achieve deep soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure

- b. The proposed development is within a town centre and consists entirely of non-residential uses at ground level, preventing the provision of ground floor landscaping and deep soil planting. Adequate stormwater management is proposed that includes an OSD tank to regulate stormwater flows within the road reserve, in the absence of permeable surfaces.

3) The non-compliance is supported by case law confirming above ground landscaping can be considered an open-air recreation facility

- a. Council confirmed in their RFI letter dated 30 June 2025 that the landscaping on Levels 2 and 6 should not be considered within the Housing SEPP definition of landscaped area. The key argument

being these areas are occupied by a building underneath. In addition, Council raised concern regarding the inclusion of the small strips of planters as landscaped area on Level 2. The definition of landscaped area in accordance with the Housing SEPP is provided below:

***landscaped area** means the part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area.*

- b. The proposed landscaping on Levels 2 and 6 can arguably be considered in association with an open-air recreation facility. These areas of landscaping are not obstructed by areas of built form above and are entirely open to the sun, gaining sufficient solar access. This is broadly consistent with a judgment in *Lexington Homes Pty Ltd v Parramatta City Council* [2015] NSWLEC 1503 which supports landscaping in private open space areas as open-air recreational facilities. By this measure, the landscaping on ground floor, Level 2 and Level 6 aligns with the definition of landscaped area.

[25] On this matter, I agree with Mr Harding that the difference between himself and Ms Hang as to whether the individual terraces should be included as landscaped area should be answered in the affirmative. Given the definition of landscaped area in cl 3 of SEPP Seniors, it seems that if things such as rainwater tanks and swimming pools are included as landscaped area, then it would be difficult to exclude private terraces given that these clearly provide, "Open-air recreational facilities for each unit." On this basis, the landscaped area satisfies the deemed to comply provisions in cl 50(e).

4) The proposed arrangement leads to a better planning outcome

- a. The applicant could choose to replace the areas on Level 2 and 6 with any combination of shallow swimming pools and shallow rainwater tanks (which could include terraces) as detailed in in *Lexington Homes Pty Ltd v Parramatta City Council* [2015] NSWLEC 1503 (discussed above) in order to technically comply with the numerical landscaped area requirement. This is considered a suboptimal outcome to achieve numerical compliance and would involve the replacement of soft landscaping with hardstand surfaces. Instead, the proposal provides vegetation above structures which will contribute to the landscaped character and amenity of the site and is considered a superior outcome to strict compliance with the numerical requirement.
- b. The above alternative options to achieve numerical compliance would result in increased runoff of stormwater and a reduction in natural permeation which is considered a suboptimal outcome when compared to the soft landscaping provided by the proposal.

5) The proposal is consistent with key planning aims and objectives

- a. The proposed development achieves the Objects in Section 1.3 of the EP&A Act. Specifically:
 - i. that the proposed development promotes the orderly and economic use and development of land (1.3(c));
 - ii. that the proposed development promotes the delivery and maintenance of affordable housing (1.3(d)); and
 - iii. that the proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

- b. The proposed development is consistent with the aims of CLEP listed in Clause 1.2. Specifically:
 - i. the proposal is compatible with aim (b) to encourage a range of land uses, including affordable and adaptable housing, that meets the needs of the community.
 - ii. the proposal is compatible with aim (f) promote development that is environmentally sustainable.
- c. The proposal will facilitate the replacement of a low-rise commercial development with a shop top housing which is permissible in the E1 Local Centre zone. It will also provide an additional affordable apartment in the locality.
- d. The proposed development will promote the orderly and economic use and development of the land through the provision of high-quality housing, childcare facilities and commercial units in a highly accessible location. There is a clear need for additional affordable housing in the locality, and the proposed development will be surrounded by similar appropriate uses.
- e. The proposed development will otherwise not prejudice any land uses that provide facilities and services to meet the day to day needs of residents in the zone or wider locality. The development will give rise to positive social, economic and community outcomes by providing high-quality housing, including affordable housing, in a desirable location.
- f. It should also be noted that the proposal improves the amenity and landscaped character of the subject site while maintaining the amenity of neighbouring development, achieves the objectives for landscaped area provisions and results in an improved streetscape outcome for the site. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the landscaped area variation.
- g. The proposal is consistent with the objectives of the landscaped area in Chapter 4 of the Housing SEPP and the ADG as well as those for the E1 zone in the CLEP as identified below, the proposed development:
 - a. provides a range of commercial and business-related uses to serve the needs of the community that live work and visit the area;
 - b. incorporates a childcare centre and two commercial units to contribute to the center's economic growth;
 - c. Features residential development that will provide passive surveillance and contribute to the local centre;
 - d. Features ground floor childcare and residential uses; and
 - e. Provides an active street frontage to Station Street.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, most notably, the improved landscaped character of the locality despite the variation.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in

cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

Regardless, as outlined above, it is considered that the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

7. Conclusion

This Clause 4.6 written request to vary the landscaped area development standard in clause 18(2)(b)(c) of the Housing SEPP has adequately addressed the matters required to be demonstrated under clause 4.6(3) in order for any consent authority to be satisfied that compliance with the landscaped area provisions of the Housing SEPP is unreasonable or unnecessary in the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development standard.

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it achieves the assumed objectives of the standard and the development objectives of the E1 Zone pursuant to the LEP. On that basis, the request to vary Clause 18(2)(b)(c) should be upheld.