

GYDE

Clause 4.6

Variation Request

Height of Buildings (Cl 4.3)

62, 64-66 Pacific Highway, Roseville

submitted to Ku-ring-gai Council
on behalf of Hycorp

This report was prepared by:

Director: Tina Christy
Associate Director: Richard Kinninmont
Project: P-22006 Clause 4.6 Variation Request
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1. EXECUTIVE SUMMARY

This Clause 4.6 request has been prepared to justify a variation to Clause 4.3 Height of Buildings of the Ku-ring-gai Local Environmental Plan 2015 (KLEP) that is proposed in a Development Application (DA) for a mixed-use development at 62, 64-66 Pacific Highway, Roseville (the site).

The request supports an amended proposal which responds to numerous concerns raised by Council staff contained within correspondence to the applicant dated 22 June 2023. These concerns are addressed within a detailed letter prepared by the applicant and accompanies the amendment package requested by Council. The amendments do not change the overall height of the proposed development or the extent of variation. This written submission has been revised to consider the amended development as it now relates to the site and surrounding development.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

Clause 4.3 of the KLEP prescribes a maximum building height of 26.5m. When measured from existing ground level, the amended proposal has a maximum building height of 27.935m (RL 139.480) to the top of the lift overrun. This equates to a maximum 1.435m (5.4%) variation of the development standard. Most of the bulk and scale of the development is located under the 26.5m height of building development standard and the extent of the variations proposed are minor. Specifically, the roof top structure that exceeds the height limit is located centrally on the site and only represents approximately 5% of the roof area.

Some key points of this Clause 4.6 request are as follows:

- The proposed variation is limited to a roof structure which primarily contains a lift and stairs therefore does not result in any habitable floor space above the maximum building height standard.
- The proposed variation to the standard relates to the provision of communal open space (CoS) located on the roof of the building and providing for equitable access (including disabled persons) to this area of the building. The communal area is located above ground level, which is considered suitable in the context of the B2 Local Centre zoning, the Apartment Design Guidelines and the requirement under clause 87(2) of schedule 1 of the KLEP) that the ground level be used for the purposes of a registered club only. The provision of communal open space that achieves high levels of amenity, and that is accessible to all residents of the building, is a better planning outcome than if compliance were to be achieved and this area to be removed/deleted.
- Much of the area that exceeds the development standard is not discernible as viewed from the public domain as it has been located centrally on the roof. The proposed elements that vary the height standard do not contribute to distinguishable bulk, scale or density of the building. The upper level of the development maintains substantial compliance with the height control in terms of the overall composition of the built form.
- In this respect, the proposal responds to the site and its context, providing a thoughtful transition in height between existing adjoining buildings to the north, whilst addressing Councils desire to ensure a Landmark building presentation as a gateway to the Roseville centre.
- The proposal provides a built form and massing which is considered to positively contribute to the quality and transitioning identity of the locality and is compatible with adjoining development. Accordingly, the proposal achieves the objective in section 1.3(c) of the Environmental Planning and Assessment Act 1979 (EP&A Act), "to promote the orderly and economic use and development of the land".

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- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development because the development is consistent with the objectives of the development standard and the objectives of the B2 zone, notwithstanding the variation.
- The proposed development is compatible with adjoining development, is highly articulated and features a mix of materials, colours and landscaping which make it visually sympathetic to neighbouring buildings. The building is carefully massed, to break up the buildings bulk and scale and the location of the elements exceed the height standard are strategically positioned. The contravening roof elements do not affect adjoining development or the transition in scale between the different centres in the local area.
- The variation to the height of building development standard does not result in any unreasonable impacts to residential amenity, solar access, views, privacy or any unreasonable impacts on the adjoining public park.
- Accordingly, the objective achieves objective 1.3 (g) of the EP&A Act, “to promote good design and amenity in the built environment”.
- The proposed development achieves the aims, design quality principles and design objectives contained within State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide. As indicated in the SEPP 65 Design Verification Statement, the proposal provides adequate building separation, solar access, communal open space, apartment and private open space size, visual and acoustic privacy as required by the ADG.

This request has been prepared under clause 4.6 of the KLEP and demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify the variations. Further, the proposal is consistent with the objectives of the zone for the site and the development standard, and is therefore, in the public interest. This request also addresses the requirement for the concurrence of the Secretary.

2. INTRODUCTION

This is a formal request that has been prepared in accordance with Clause 4.6 of the KLEP to justify a variation to the Height of Building development standard proposed in a DA submitted to Ku-ring-gai Council for a mixed-use development at 62, 64-66 Pacific Highway, Roseville. This request should be read in conjunction with the documents submitted in support of the Amended DA including the Statement of Environmental Effects prepared by Gyde (December 2022), and revised architectural drawings prepared by PBD Architects dated September 2023 that accompanies the amended package requested by Council.

The DA application seeks consent from Ku-ring-gai Council for the demolition of existing structures, subdivision of the site and construction of a seven (7) storey shop-top housing development with four (4) levels of basement car parking. The mixed-use shop-top housing development comprises a club on the ground floor and thirty-seven (37) residential dwellings located above on Levels 1-6. Vehicular ingress and egress are provided via Larkin Lane and includes the provision of an on-site loading bay for services and waste management located entirely in the basement.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application and contravening the development standard.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (NSWLEC / Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]):

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)];
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)(a)(ii)].

This request finds against all three (3) criteria that the proposed height of building development standard variation sought should be granted.

This request also addresses the requirement for the concurrence of the Secretary as required by clause 4.6(4)(b).

3. STANDARD TO BE VARIED

The standard that is proposed to be varied is the Height of Building development standard which is set out in Clause 4.3 of the KLEP.

4.3 Height of Buildings

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

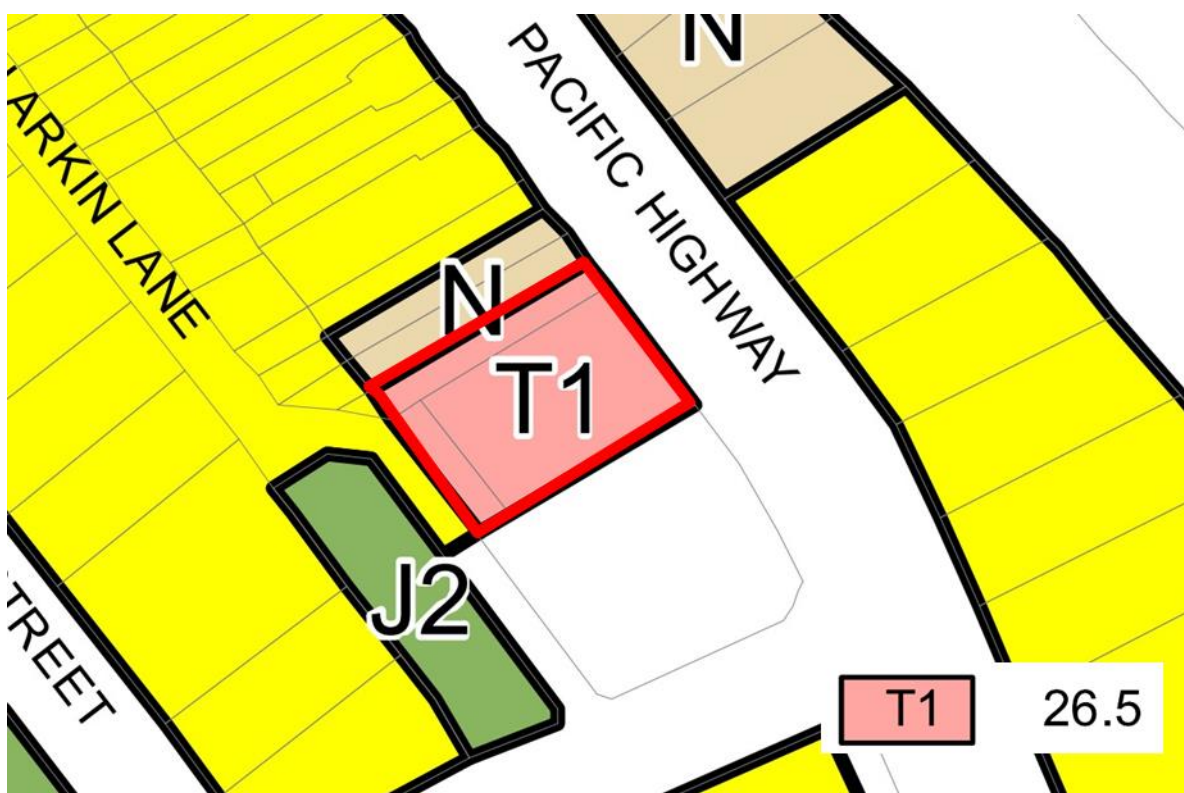


Figure 1: Height of Building Map, Sheet HOB_015, site outlined red (Source: NSW Legislation)

The numerical value of the development standard applicable in this instance is 26.5 metres.

The development standard to be varied is capable of being varied (clause 4.6(2) of the KLEP) and is not excluded from the operation of clause 4.6 of the KLEP as it does not compromise any of the matters under clause 4.6(8) of the KLEP.

4. EXTENT OF VARIATION

Clause 4.3 of the KLEP prescribes a maximum building height standard of 26.5m for the site. When measured from existing ground level, the proposed development has a maximum building height of 27.935m (RL 139.480) to the top of the lift overrun. This equates to a maximum 1.435m (5.4%) variation of the development standard.

The existing ground level has been interpreted by the extrapolation method, as the submitted survey prepared by Pro-Position Surveyors, provides spot levels around the existing club, on the portion of the site that is not developed and on the surrounding land beyond the site boundaries. (It is unclear as to the width of the existing ground floor slab and as such, the spot levels on the survey have provided the clearest interpretation of existing ground level, especially since there is no basement existing onsite). The survey provides a clear understanding of the natural topography of the site and beyond the site boundaries, so provides a clear context of the site and its surrounds.

Most of the bulk and scale of the development is located under the 26.5m height plane and the extent of the variation proposed are summarised below:

- 1.435m variation of the development standard to the top of the lift overrun.
- 0.335m variation of the development standard to the top of the enclosed roof structure containing the stairs, exhausts and waste storage.

The lift is necessary to provide equitable access to the roof area. The alternative to terminate the lift shaft at the top level of the building and provide access to the rooftop Communal Open Space (CoS) via the stairs only. Equitable access would have to be provided by way of stairlift. However, this would still result in the 0.335m variation of the development standard that is necessary to accommodate the staircase to the roof.

The roof top structure that exceeds the height limit is located centrally and only represents approximately 5% of the floor plate of the roof area. The variations are illustrated in the height plane diagram in Figure 2 and section in Figure 3.

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Figure 2: Height Plane Diagram (Source: PBD)

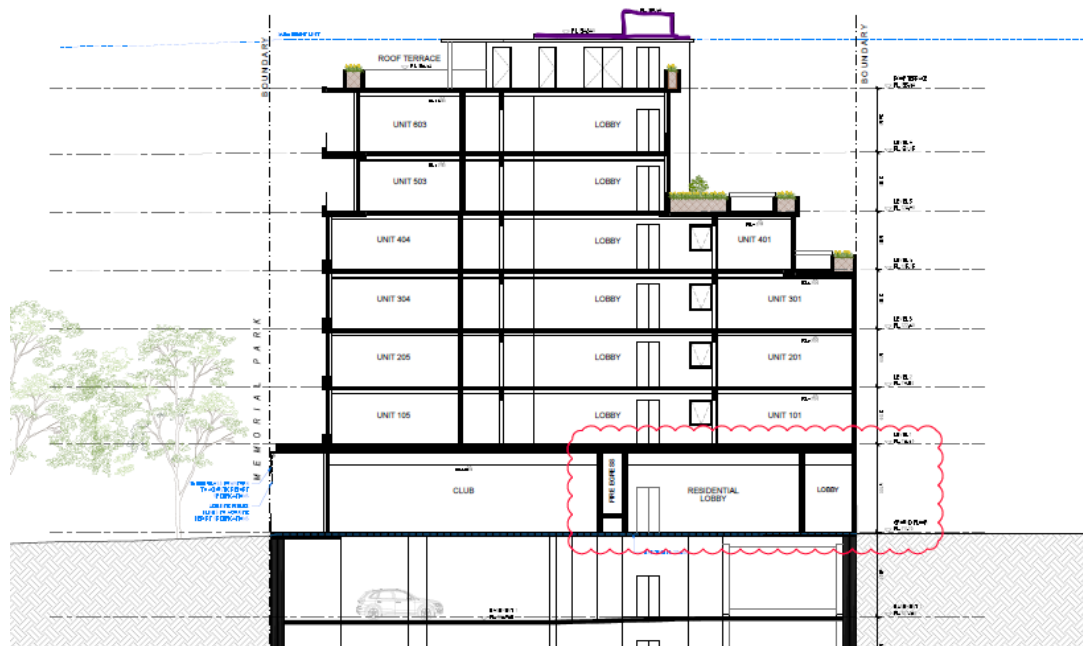


Figure 3: Section, maximum building height limit shown by blue dotted line and structures above height limit shaded purple (Source: PBD).

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The variation originates from the provision of communal open space on the roof and providing equitable access to this space to all residents of the building. The variation only relates to a minor part of the building, noting that other parts of the building are well below the maximum height permitted.

5. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the KLEP.

The Court held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

The five (5) tests of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary.
3. The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granted consents departing from the standard hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate.

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]).

This request relies on compliance with Test 1 of Wehbe, however for completeness the other ways have been considered.

5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives of the height of buildings development standard in Clause 4.3(1) of the KLEP are as follows:

(a) to ensure that the height of buildings is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres,

(b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,

(c) to enable development with a built form that is compatible with the size of the land to be developed.

In Table 1 we consider whether the objectives of the development standard in Clause 4.3(1) of the KLEP are achieved notwithstanding the proposed variation (Test 1 under Wehbe).

Table 1: Achievement of Objectives of Clause 4.3 of the KLEP

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP
(a) to ensure that the height of buildings is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres,
<p>The subject site is located within the Roseville Local Centre.</p> <p>The variation of the height standard is related to the provision of CoS on the roof of the building and providing equitable access to this space to all residents (including disabled persons).</p> <p>Schedule 1 of the KLEP provides site specific requirements that are to be complied with. Relevantly, clause 87(2) of schedule 1 of the KLEP pertains to 'Use of certain land at 62, 64 and 66 Pacific Highway, Roseville', the subject site and is as follows:</p> <p style="text-align: center;"><i>Development for the purposes of residential flat buildings is permitted with development consent if the consent authority is satisfied that the ground floor of the building will be used for the purposes of a registered club only.</i></p> <p>The proposed development is for a mixed-use development that includes both residential flat dwellings and a ground floor registered club. Accordingly, if there is to be CoS, the only appropriate location for the CoS is on the roof.</p> <p>If the development was to be height-compliant, but retain a rooftop CoS, the building would be one storey lower. That is, it would be a 6-level building (with a parapet height of 20.45m), rather than the proposed 7-level building (with a parapet height of approximately 23.88m). If a storey were to be removed in this way, the floor space ratio would only be 2.71:1, instead of the proposed 3:1. The planned level of floor space ratio for the site is 3:1.</p> <p>This means that complying with height control would result in one of two suboptimal scenarios.</p> <p>On the first scenario, it would result in the maintenance of the current number of storeys and floor space ratio, but with no CoS. This is a viable option, as the design guidance for Objective 3D-1 of the Apartment Design Guide (ADG) anticipates that developments may not achieve design criteria for the provision of communal open space if:</p> <ul style="list-style-type: none">• the site is in a business zone; or• a 'dense urban area' (defined in the ADG glossary as being an area of where the permitted floor space ratio is 2.5:1), <p>and can demonstrate proximity to public open space.</p> <p>This design guidance is directly applicable to this site, given that:</p> <ul style="list-style-type: none">• it is zoned B2.• is subject to a maximum floor space ratio of 3:1; and• is next to Roseville Memorial Park. <p>Nonetheless, despite the viability of this alternative approach, it is nonetheless a suboptimal outcome. It would be preferable to provide a communal open space within the development if it is practicable to do so.</p> <p>On the second scenario, it would result in a building form that falls short of the height and density anticipated for the site under the planning controls (noting that the planning controls are specifically tailored for this site). The reduced height of the building would not be 'appropriate for the scale' of the Roseville Centre (given the key</p>

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location of the site, as reflected in the KLEP).

Thus, the provision of the CoS on the roof, without any reduction in storeys, results in a better planning outcome than if compliance were to be achieved. The principal building form (including the parapet visible from the street and the adjacent park) is itself within the permissible maximum height and is appropriate for the scale of the Roseville Local Centre.

The part of the roof structure that exceeds the height standard is located centrally in the site and is well setback from the closest site boundary.

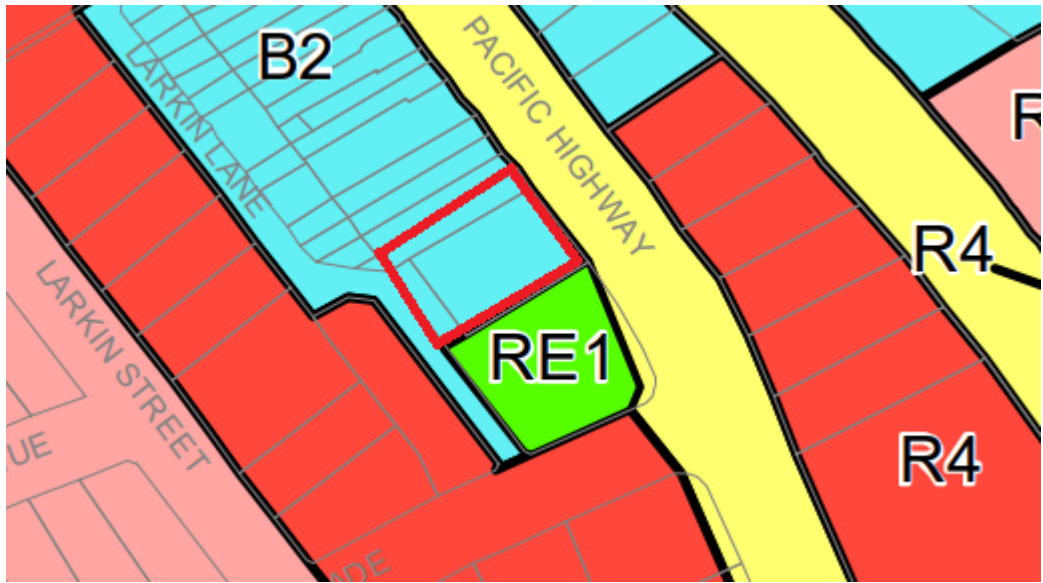
Therefore, these elements do not contribute to perceivable bulk as viewed from the surrounding area and public domain, and the proposal maintains a scale as anticipated for the Local Centre, despite the minor variation to height.

Objective (a) is achieved, despite the contravention of the building height standard.

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,

The site is outlined in red in the below extract from the *Land Zoning Map, Sheet LZN_015, site outlined red* (Source: NSW Legislation):



An extract from the height map appears in figure 1 earlier. As this map shows, there is a highly tailored set of height controls applying to the site and its immediate vicinity. These set out the type of ‘transition in scale’ that is anticipated for the site. The controls anticipate a strong landmark building of 26.5 metres on the corner site, acting as gateway to the Roseville centre. This height graduates to 14.5 metres on the immediately adjacent site

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,

and 11.5 metres more generally in the Roseville centre. The proposed development responds to this transition in zone.

In this context, the proposal has been designed to provide an appropriate transition to the buildings to the north-west fronting Pacific Highway, which are also zoned B2 Local Centre. Similarly, the proposal has also stepped the building in height from the western boundary (i.e., Larkin Lane) to provide a transition in scale to both the R4 high density zone to the west, and to the adjoining Memorial Park to the south. The stepping of the building has been undertaken to ensure that both the park and the residential property of 1 Maclaurin Parade receive adequate amenity and sunlight throughout the day.

Further, the roof top CoS has been setback from the building edge and planting proposed to minimise the opportunity for overlooking. This ensures the design of the building protects the local amenity. The part of the building that contravenes the height standard does not have any impact on the transitions in scale achieved by the overall development. Indeed, if a storey were to be removed from the development to retain a rooftop CoS, but to comply with the height limit, the transition in scale anticipated by the LEP would be undermined.

The areas that vary the standard have been located centrally on the roof. In terms of amenity, the part of the building that exceeds the height standard is not habitable and as such there will be no material acoustic or visual privacy impacts as a result. Shadow diagrams have been prepared which illustrate that due to the positioning of the roof structure away from the southern boundary, any overshadowing from the height variation falls predominately on to the proposed roof area in mid- winter. Refer to extracts of the 9am and 3pm shadow diagrams below.



ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,



ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,



Figure 5: 3pm Shadow Diagram (Source: PBD)

Shadow diagrams have been prepared (see Figure 5 above) that illustrate the shadow cast by the proposed development. The shadow diagrams also depict the extent of overshadowing that results from the non-compliant height elements of the development (lift overrun) which is depicted in red. As a result of the north-south orientation of the site, the overshadowing from the development in midwinter (21 June) will be primarily cast upon the adjoining southwestern property at No 1 Maclaurin Parade.

However, the extent of additional overshadowing that results from the height non-compliance is minor and does not extend beyond the roof plate of the proposed building. Consequently, the shadow diagrams demonstrate that between 9.00am and 3.00pm the shadows from the non-compliant part of the lift overrun fall across the roof of the proposed development and has no adverse impact upon the private open space or living areas of No 1 Maclaurin

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,

Parade, Roseville. The non-compliant element also does not result in any loss of light to areas across the Memorial Park to the south.

Overall, the additional noncompliance does not result in any unreasonable loss of sunlight to window openings or private open spaces of adjoining development.

The views of neighbouring properties will not be impacted by the height variation as the height of building development standard for the neighbouring properties varies from 9.5 to 14.5 metres. Considerably lower than the height of the contravening roof elements.

Objective (b) is achieved, despite the contravention of the building height standard.

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(c) to enable development with a built form that is compatible with the size of the land to be developed.

The proposal has been designed to be compatible with the current planning controls and the size of the land to be developed, noting that the existing properties to the north-west fronting the highway have yet to be developed to the current planning controls.

As discussed under objective (b), the proposal has provided a stepped built form to the western and northern boundaries. The DCP requires a 2m upper-level setback along Pacific Highway above the three-storey street wall.

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(c) to enable development with a built form that is compatible with the size of the land to be developed.

The below building compliance envelopes clearly demonstrate that any departure from the controls do not manifest in any material way in terms of resulting in adverse amenity or built form compatibility impacts.



VIEW OF PROPOSED DEVELOPMENT WITH COMPLIANT ENVELOPE

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(c) to enable development with a built form that is compatible with the size of the land to be developed.

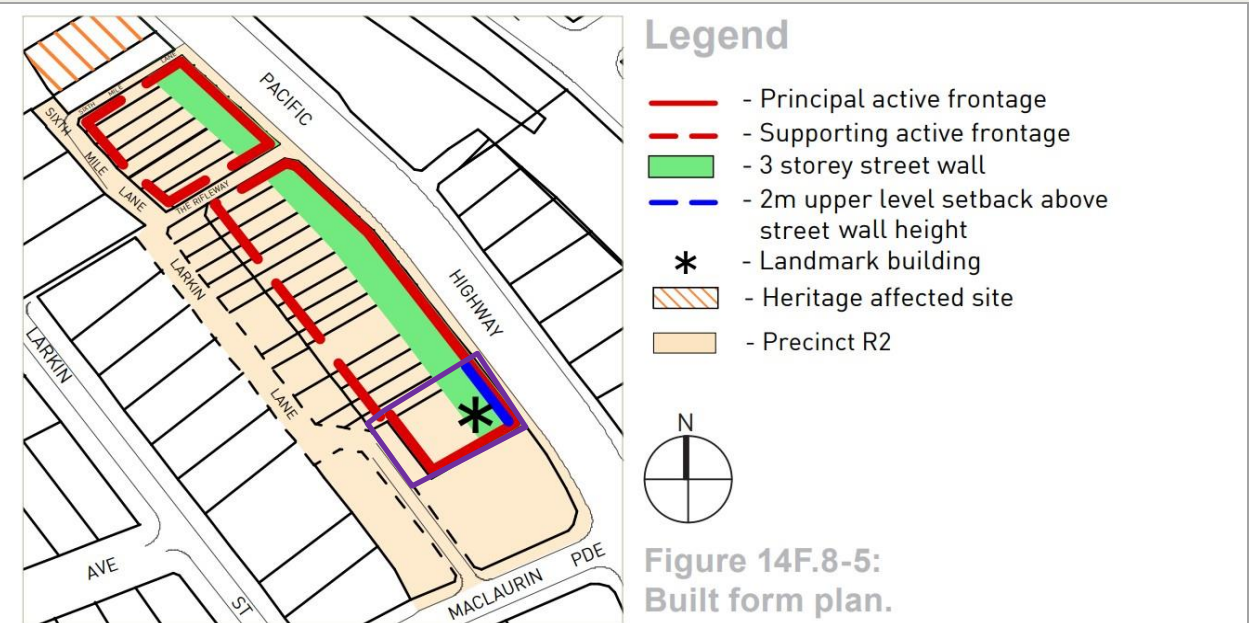


Figure 6: Compliant Building Diagrams (Source: PBD)

The proposal generally complies with the required 2m upper-level setback at the Pacific Highway frontage (as illustrated in the figure above). The bulk of the building has been oriented to the south-western corner with architectural features that “wrap around” the corner to emphasize this corner and provide a landmark building for the site, as envisaged in the DCP (refer to extract of DCP map below). The minor part of the upper levels that do not strictly comply with the 2m upper-level setback forms part of the façade and balcony elements which contribute to the high-quality architectural presentation of this landmark building design. These elements are integrated into the overall architectural design of the upper levels and are considered to result in a harmonious, contemporary, and compatible streetscape presentation.

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(c) to enable development with a built form that is compatible with the size of the land to be developed.



**Figure 14F.8-5:
Built form plan.**

Figure 7: DCP built form plan, site outlined purple (Source: Ku-ring-gai Council)

The proposal’s three-storey street wall is consistent with that envisaged under the DCP. As demonstrated in the following figures, the proposed street wall is consistent with the permissible massing on sites located to the north.



Figure 8: View of the proposed development along Pacific Hwy with indicative permissible massing lines on sites to the north (Source: PBD).

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(c) to enable development with a built form that is compatible with the size of the land to be developed.

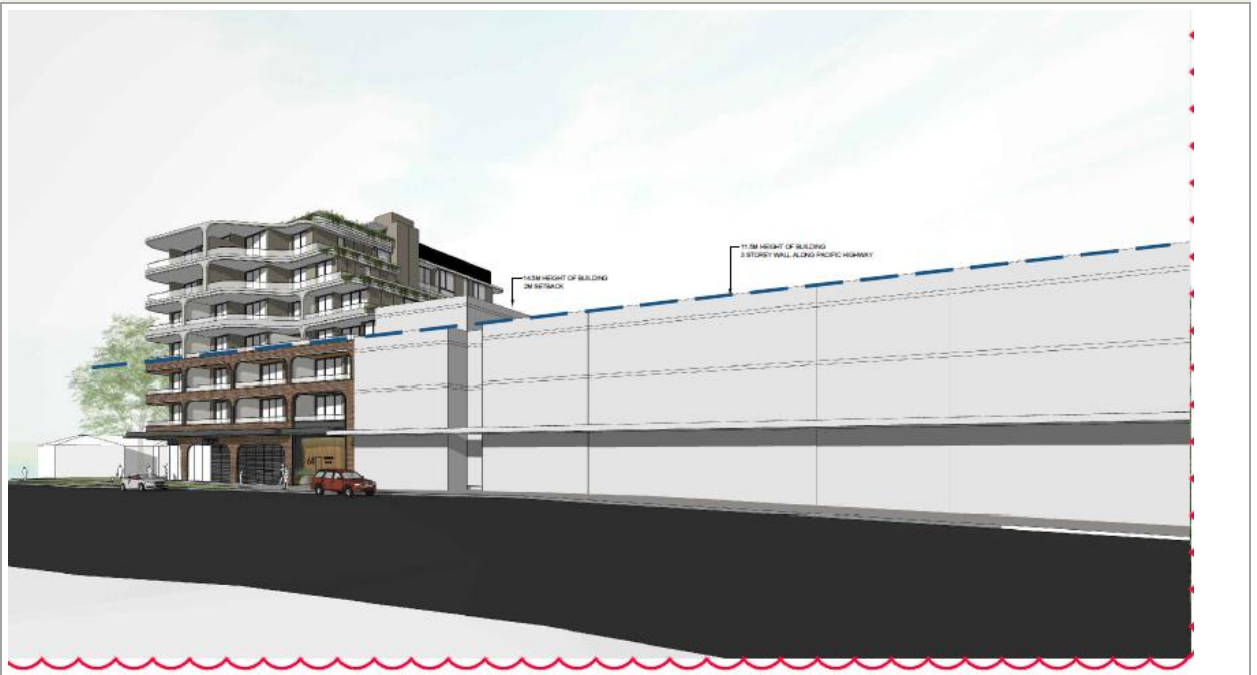


① VIEW OF PROPOSED DEVELOPMENT ALONG PACIFIC HIGHWAY WITH PERMISSIBLE MASSING ON SITES TO THE NORTH

Figure 8(a): View of the proposed development along Pacific Hwy with permissible massing on sites to the north (Source: PBD).

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(c) to enable development with a built form that is compatible with the size of the land to be developed.



2 VIEW OF PROPOSED DEVELOPMENT ALONG PACIFIC HIGHWAY WITH PERMISSIBLE MASSING ON SITES TO THE NORTH

Figure 8(b): View of the proposed development along Pacific Hwy looking south toward site. (Source: PBD).

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(c) to enable development with a built form that is compatible with the size of the land to be developed.



Figure 8(c): View of the proposed development and Memorial Park along Pacific Hwy looking north toward site. (Source: PBD).



4 VIEW OF PROPOSED DEVELOPMENT ALONG LARKIN LANE WITH PERMISSIBLE MASSING ON SITES TO THE NORTH

Figure 8(d): View of the proposed development along Pacific Hwy looking from Larkin Lane. (Source: PBD).

ACHIEVEMENT OF OBJECTIVES OF CLAUSE 4.3 OF THE KLEP

(c) to enable development with a built form that is compatible with the size of the land to be developed.

As noted above, the areas of the building that exceed the height standard are located centrally on the roof. These elements above the standard do not contribute to the bulk or scale to the building, as these are predominantly hidden from view from the surrounding area. The proposed height variation does not detract from the proposed built form which is compatible with the size of land to be developed. Adjoining properties in this commercial strip will also be revitalized and this building will fit uniformly into the anticipated height and massing controls for this area. The building has been skillfully designed so that it steps back to the upper levels, which reduces the overall bulk and scale as viewed from Memorial Park, surrounding residential and the adjoining lower residential/commercial properties.

Objective (c) is achieved, despite the contravention of the building height standard.

- 5.2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary.

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

- 5.3. The objective would be defeated or thwarted (or undermined: as per *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]) if compliance was required with the consequent that compliance is unreasonable.

Objectives (a) and (b) would be undermined if compliance was required and a CoS was to be retained on the rooftop. This is because the elimination of a storey of the building would result in a building that falls short of the built form that it is anticipated by those objectives of the LEP. The reasons for this are explained in the table above.

- 5.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary.

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon.

- 5.5. The zoning of the land is unreasonable or inappropriate.

The zoning of the land is reasonable and appropriate and therefore is not relied upon.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the variation of the HoB development standard are set out in the preceding sections in detail. As discussed in Section 5, the non-compliant portions of the development do not result in any unreasonable impacts and instead provide a built form that is compatible with the desired future character of the area and consistent with the objectives of clause 4.3.

Importantly, as explained in relation to objective (a) of the height control, above, complying with height control would result in one of two suboptimal scenarios.

On the first scenario, it would result in the maintenance of the current number of storeys and floor space ratio, but with no CoS.

On the second scenario, it would result in a building form that falls short of the height and density anticipated for the site under the planning controls (noting that the planning controls are specifically tailored for this site). The reduced height of the building would not be 'appropriate for the scale' of, or achieve appropriate 'transitions', for the Roseville Centre (given the key location of the site, as reflected in the KLEP).

Additionally, the proposed development, notwithstanding the non-compliance with the HoB development standard, better achieves important statutory goals (when compared with a compliant development and the existing development). The superior outcome, in terms of statutory planning goals, combined with the absence of meaningful additional adverse environmental impacts are environmental planning grounds that justify the variation.

Further relevant environmental planning grounds are as follows:

- The proposed variation is limited to a roof structure which predominantly contains a lift and stairs therefore does not result in any habitable floor space above the maximum building height standard.
- The proposed variation to the standard relates to the provision of CoS that is located on the roof of the development. The communal area is located above ground level, which is considered necessary in the context of the B2 Local Centre zoning, the ADG and clause 87(2) of schedule 1 of the KLEP) (which says that the ground level be used for the purposes of a registered club only). The provision of communal open space achieves high levels of amenity, and that is accessible to all residents of the building, is a better planning outcome (rather than relying on the Roseville Memorial Park, as is permitted by ADG design guidance)
- The proposed roof structure (which contravenes the height standard) better achieves important statutory planning objectives identified for residential apartments in the following respects:
 - The proposal will to 'better satisfy increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with

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- disabilities' (as per the aim set out in clause 2(3)(c) of State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65)).
- - The proposal will 'maximise amenity, safety ... for the benefit of its occupants and the wider community' (as per the aim set out in clause 2(3)(c) of SEPP 65). For example, the lift access to the communal open space would assist residents with mobility issues to be able to access and use the communal open space.
 - - The proposal will better achieve 'good design positively influences internal and external amenity for residents and neighbours' and 'good amenity contributes to positive living environments and resident well being' (as per design quality principle 6 in Schedule 1 of SEPP 65).
- The proposal will better 'respond to social context by providing housing and facilities to suit the existing and future social mix' and 'involve practical and flexible features including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents' (as per design quality principle 8 in Schedule 1 of SEPP 65). Further the following key objectives in the EP&A Act and KLEP are achieved by improving the amenity and functionality of the communal open space on the roof level by providing lift access (and by avoiding the reduction of the building by one storey):
 - - in the EP&A Act – the objective in section 1.3(c) 'promote the orderly and economic use and development of land';
 - - in the EP&A Act - objective 1.3 (g) of the EP&A Act, "to promote good design and amenity in the built environment";
 - - in the KLEP – the aim in clause 1.2(2)(a) to 'guide the future development of land and the management of environmental, social, economic, heritage and cultural resources within Ku-ring-gai'; and
 - - in the KLEP - the aim in clause 1.2(1) 'to facilitate development that complements and enhances amenity for residential uses and public spaces'.
 - Much of the area that exceeds the development standard is not discernible as viewed from the public domain as it has been located centrally on the roof. The proposed elements that vary the height standard do not contribute to distinguishable bulk, scale, or density of the building.
 - The roof structure (which contravenes the height standard) is appropriately positioned so as not impact the perception of bulk and scale of the development.
 - Strict compliance with the development standard would not deliver any meaningful benefits to the surrounding properties or the general public in the particular circumstance of this site and this proposal and would lead to a suboptimal outcome in accessibility and amenity.
 - The variation to the height of building development standard does not result in any unreasonable impacts to residential amenity, solar access, views, privacy, or any unreasonable impacts on the adjoining public park.

In summary, there are sufficient environmental planning grounds to justify contravening the development standard.

7. PUBLIC INTEREST

In this section it is explained how the proposed development will be in the public interest because it is consistent with the objectives of the height of buildings development standard and the zone in which the development is proposed to be carried out. This is required by Clause 4.6(4)(a)(ii) of the KLEP.

In Section 5 it was demonstrated that the proposed development overall achieves the objectives of the development standard, notwithstanding the contravention of the development standard.

Table 2 considers whether the proposal is also consistent with the objectives of the B2 Local Centre zone.

Table 2: Consistency with objectives of the B2 Local Centre Zone

OBJECTIVES OF THE B2 LOCAL CENTRE ZONE	DISCUSSION
To provide a range of retail, business, entertainment, and community uses that serve the needs of people who live in, work in and visit the local area.	The proposal includes the re-development of the existing club that is currently operating on the site. Thus, the proposal will provide ground floor retail premises and a registered club that will provide for the needs of people who live and work in the area. The variation to the standard does not affect consistency with this objective.
To encourage employment opportunities in accessible locations	The proposed development includes ground floor retail premises, that will create/maintain ongoing employment for the area. The variation to the standard does not affect consistency with this objective.
To maximise public transport patronage and encourage walking and cycling.	The proposed building is located 150m from Roseville train station and provides bicycle parking on site. As such, the proposal will encourage public and active transport. The variation to the standard does not affect consistency with this objective.
To provide for residential housing close to public transport, services and employment opportunities	The proposal provides for additional housing, in close proximity (i.e. 150m) of the Roseville train station. A total of 37 apartments are proposed including 11 x 1 beds, 15 x 2 beds, 10 x 3 beds, and 1 x 4 bed. The variation to the standard does not affect consistency with this objective. The variation has a net positive impact on achieving this objective. It allows for the provision of accessible CoS on the roof level providing improved amenity for residents (without reducing housing opportunities by deleting a storey).

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OBJECTIVES OF THE B2 LOCAL CENTRE ZONE	DISCUSSION
To encourage mixed use buildings that effectively integrate suitable business, office, residential, retail and other development	<p>The variation is a result of providing CoS on the roof of the building. The provision of CoS is desirable in residential developments, as recommended in the ADG. Given the site is located in the Roseville Local Centre, and Council's desire the ground floor to achieve activation through the provision of ground floor commercial/retail uses, locating CoS at the ground level is not as desirable for this site. This achieves compliance with clause 87(2) of schedule 1 of the KLEP (extracted above).</p> <p>Thus, the variation directly achieves this objective by integrating a desirable residential amenity element into the building, whilst maintaining the ground level retail activity.</p> <p>The proposal is consistent with and achieves this objective.</p>

As demonstrated in Table 2, the proposed contravention is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposed contravention is consistent with the objectives of the development standard. According to clause 4.6(a)(ii), therefore, the proposal is in the public interest.

8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravening of the development standard raises any matter of significant for state or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of contravening the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard, and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

The Secretary (of Department of Planning and Environment) can be assumed to have concurred to the variation. This is because of Department of Planning Circular PS20-002 'Variations to development standards', dated 5 May 2020. This circular is a notice under section 55 of the Environmental Planning and Assessment Regulation 2021.

9. CONCLUSION

This submission requests a variation, under Clause 4.6 of the KLEP, to the Height of Building development standard and adequately addresses and demonstrates that:

1. Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development,
2. The development achieves the objectives of the development standard and is consistent with the objectives of B2 Local Centre zone,
3. There are sufficient environmental planning grounds to justify the contravention.

The consent authority can be satisfied of the above and that the development is in the public interest because it achieves the objectives of the development standard and is consistent with the objectives of B2 Local Centre zone. The sufficient environmental planning grounds are extensively detailed in this submission but are largely based in careful and high-quality architectural design which has minimised the perception of bulk and scale, consistency with the building massing controls envisaged by the strategic planning framework for the Roseville local centre, lack of adverse environmental impacts, consistency with the relevant objects of the Environmental Planning and Assessment Act 1979, and consistency with the relevant aims of the KLEP 2015.

This proposal is of an appropriate scale and form for the site and achieves the desired future character envisaged by the planning controls. The development will provide a catalyst for future development in the Roseville centre.

The proposed development achieves the aims, design quality principles and design objectives contained within State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide. As indicated in the SEPP 65 Design Verification Statement, the proposal provides adequate building separation, solar access, communal open space, apartment and private open space size, visual and acoustic privacy as required by the ADG.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 20-002. On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application and support the proposed contravention.