

CLAUSE 4.6 – REQUIREMENTS FOR MULTI DWELLING HOUSING AND RESIDENTIAL FLAT BUILDINGS

(CLAUSE 6.6 KLEP 2015)

(Prepared May 2025)

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF
KU-RING-GAI LOCAL ENVIRONMENTAL PLAN 2015**

**3 & 3A BEACONSFIELD PARADE, LINDFIELD
FOR THE DEMOLITION OF THE EXISTING STRUCTURES AND CONSTRUCTION OF A 8-9 STOREY
RESIDENTIAL FLAT DEVELOPMENT OVER BASEMENT CARPARKING AND
WITH ROOF TOP PRIVATE OPEN SPACE FACILITIES**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE REQUIREMENTS FOR MULTI DWELLING
HOUSING AND RESIDENTIAL FLAT BUILDINGS AS DETAILED IN CLAUSE 6.6(2)(b) OF
THE KU-RING-GAI LOCAL ENVIRONMENTAL PLAN 2015**

For: Demolition of the existing structures and construction of a residential flat development
At: 3 & 3A Beaconsfield Parade, Lindfield
Owner: Turramurra 88 Pty Ltd
Applicant: Turramurra 88 Pty Ltd
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Ku-ring-gai Local Environmental Plan 2015. In this regard it is requested Council support a variation with respect to compliance with the requirements for multi dwelling housing and residential flat buildings as described in Clause 6.6(2)(b) of the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015).

This submission has been prepared to address the provisions within Section 35B of the *Environmental Planning and Assessment Regulation 2021*, and as discussed within this Written Request, will demonstrate the grounds on which the proposal considers the matters set out in Clause 4.6(3)(a) and (b) of the KLEP 2015.

2.0 Development Standard to be Varied

Clause 6.6 of KLEP 2015 prescribes a range of site related requirements to be considered for development for the purposes of multi dwelling housing or a residential flat building, as follows:

(1) The objectives of this clause are—

- (a) to provide site requirements for development for the purposes of multi dwelling housing and residential flat buildings so as to provide for the orderly and economic development of residential land while maintaining the local character, and*
- (b) to ensure that lot sizes and dimensions of medium and high density residential sites allow for generous landscaped areas and setbacks to ensure the amenity of adjoining properties and to support the desired future character of these areas.*

(2) Despite any other provision of this Plan, development consent must not be granted for the erection of multi dwelling housing or a residential flat building on a lot in a residential zone unless the lot has an area of at least 1,200 square metres and minimum dimensions (width and depth) of at least—

(a) if the area of the land is less than 1,800 square metres—24 metres, or

(b) if the area of the land is 1,800 square metres or more—30 metres.

(3) Despite subclause (2), development consent must not be granted for the erection of multi dwelling housing or a residential flat building on a lot on land identified as “Area 1” on the Lot Size Map unless the lot has an area of at least 5,000 square metres.

(3A) Development consent must not be granted for the erection of multi dwelling housing or residential flat buildings on land identified as “Area 2” on the Lot Size Map unless the lot is at least 4,300m².

(4) For the purposes of this clause, if a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.

The subject site is located within R4 High Density Residential Zone and is not listed on the Lot Size Map as being either “Area 1” or “Area 2”.

The provisions of clause 6.6(2)(b) apply to the site in that with a site area of 3066.3m², the clause notes that consent must not be granted for the erection of a residential flat building unless lot has an area of at least 1200m² and minimum dimensions (width and depth) for land in excess of 1800m² of 30m.

The subject consolidated allotment has a depth of up to 89.160m and at 3066.3m², exceeds the minimum area of 1200m².

The site however tapers towards the street frontage towards Beaconsfield Parade with a minimum width of 22.710m.

The site does increase in width significantly from the street frontage towards the rear northern boundary, which achieves a width of 38.080m. The significant majority of the site is comfortably in excess of 30m in minimum width.

The architectural design prepared by Architecture Urbaneia P/L clearly demonstrates that the site is capable of achieving a development which meets Council’s desired outcomes for high density residential living within the land and which generally complies with Council’s built form controls and amenity standards.

This written request to vary the development standard within clause 6.6 (2)(b) will demonstrate that the development is acceptable in that the objectives of the standard are achieved and the development is appropriate for the locality, notwithstanding the minor non-compliance with the minimum site width requirement.

In this regard, it is requested Council support a variation with respect to compliance with the minimum site width as described in clause 6.6(2)(b) of KLEP 2015.

Is clause 6.6 of KLEP 2015 a development standard?

The definition of “development standard” in clause 1.4 of the EP&A Act means standards fixed in respect of an aspect of a development and includes:

(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,,

Clause 6.6(2)(b) relates to the minimum width or shape and size of the lot. Accordingly, clause 6.6 is a development standard.

The proposal is considered acceptable and as discussed further within this request, there are sufficient environmental planning grounds to justify contravening the development standard.

The controls of Clause 6.6 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3.0 Authority to vary a Development Standard

In September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which change the operation of the clause across all local environmental plans, including the Ku-ring-gai LEP. The changes came into force on 1 November 2023.

The principal change is the omission of subclauses 4.6(3)-(5) and (7) in the Standard Instrument Principal Local Environmental Plan.

The following changes have been made as a result of this:

- Clause 4.6(3) was amended such that the requirement to ‘consider’ a written request has been changed with an express requirement that the consent authority ‘be satisfied that the applicant has demonstrated’ that compliance with the development standard is unreasonable or unnecessary.
- Clause 4.6(4)(a)(ii) was amended such that the requirement that the consent authority must be satisfied that the proposed development in the public interest has been removed.
- Clause 4.6(4)(b) & 5 amended such that the requirement for concurrence from the Planning Secretary has been removed.

The objectives of clause 4.6 of the LEP, as amended, seek to recognise that in the particular circumstances of this case strict application of development standards may be unreasonable or unnecessary.

The clause provides objectives and a means by which a variation to the development standard can be achieved as outlined below:

Clause 4.6 Exception to development standard

(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.*

Note—

When this Plan was made it did not include all of these zones.

- (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,

4.0 Purpose of Clause 4.6

KLEP 2015 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been considered in this request for a variation to the development standard.

5.0 Objectives of Clause 4.6

Clause 4.6(1) of KLEP 2015 provides:

(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.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development

standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

- (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.*

Clause 6.6 (Requirements for multi dwelling housing and residential flat buildings) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of KLEP 2015 provides:

- (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.**

The subject allotment does not comply with the minimum site width standard pursuant to clause 6.6 of KLEP which specifies a minimum site width of 30m for the provision of a residential flat building in this area, and for a site with an area of 3066.3m².

The site comfortably achieves the minimum 1200m² site area (3066.3m²) and exceeds the minimum 30m depth (89.160m) depth, however the minimum site width at the street frontage is less than 30m (22.170m).

Whilst the site substantially increases in width towards the north with the northern boundary being up to 38.080m in width, the proposal does not achieve the minimum 30m width measured at all points in the site.

As a consequence of the site’s shape, the lot’s minimum width is up to 7.29m or 26.6% less than the standard.

It is notable however that the site width at the face of the proposed building is in excess of 25m and the site quickly increases in width towards the north, with the majority of the site achieving the minimum 30m site width.

As discussed, the architectural design prepared by Architecture Urbaneia P/L clearly demonstrates that the site is capable of achieving a development which meets Council's desired outcomes for high density residential living within the land and which generally complies with Council's built form controls and amenity standards.

Clause 4.6(4) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 155 of the SEPP Housing from the operation of clause 4.6.

6.0 The Nature and Extent of the Variation

- 5.1 This request seeks a variation to the minimum site width standard contained in Clause 6.6 of KLEP.
- 5.2 Clause 6.6 of KLEP specifies a minimum site width of 30m for an allotment with an area of more than 1800m² in this area of Lindfield.
- 5.3 The site has a minimum width of 22.710m, which extends in with to the rear boundary where the site achieves a minimum width of 38.080m. The significant majority of the site achieves a minimum 30m site width and notwithstanding the non-compliance, the site can be developed for the intended purpose.
- 5.4 The minimum frontage of the site is up to 7.29m or 24.3% below the standard however site can comfortably accommodate the proposed residential flat building.

7.0 Relevant Caselaw

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

The first and 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: Wehbe v Pittwater Council at [42] and [43].

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 6.6 of KLEP 2015 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
1. Is the consent authority satisfied that the proposed development will be consistent with the objectives of clause 6.6 and the objectives for development for in the R4 zone?
2. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 6.6 of KLEP 2015?

8.0. Request for Variation

8.1 Is clause 6.6 of KLEP 2015 a development standard?

The definition of “development standard” in clause 1.4 of the EP&A Act includes:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Clause 6.6 relates to the minimum width of the site, which relates to the shape and size of the land. Accordingly, clause 6.6 is a development standard.

8.2 Is compliance with clause 6.6 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the minimum site width standard and reasoning why compliance is unreasonable or unnecessary is set out below:

(a) to provide site requirements for development for the purposes of multi dwelling housing and residential flat buildings so as to provide for the orderly and economic development of residential land while maintaining the local character, and

The architectural design prepared by Architecture Urbaneia P/L clearly demonstrates that the site is capable of achieving a development which meets Council’s desired outcomes for

high density residential living within the land and which generally complies with Council's built form controls and amenity standards.

Council's land use zoning and planning framework has identified the site as being suitable for higher density development, as indicated in the R4 High Density Residential zoning.

The site is located at the interface with the Lindfield Village Hub Masterplan and the anticipated high-density development and its varying building heights and the transition to the medium density development to the west of the site.

Notwithstanding the minimum site width to 22.710m does not comply with minimum 30m site width standard, the generous depth (89.160m) and maximum width of 38.080m combined to provide appropriate building area to accommodate the proposed development. The proposal seeks to accommodate the new development within a compatible building form, with suitable setbacks to property boundaries.

(b) to ensure that lot sizes and dimensions of medium and high density residential sites allow for generous a landscaped area and setbacks to ensure the amenity of adjoining properties and to support the desired future character of these areas.

As demonstrated in the architectural design prepared by Architecture Urbaneia P/L, the site width are sufficient to provide a high quality design for the new residential flat building and which meets Council's desired outcomes for high density residential living within the land and which generally complies with Council's built form controls and amenity standards.

The development intends to meet the objectives of Council's built form controls, including floor space ratio, boundary setbacks, and deep soil area.

The bulk and scale of the proposed development is in keeping with the desired future character of the locality.

The siting and bulk and scale of the proposal is considered acceptable given the site constraints, and the proposal is not considered to result in any unreasonable adverse impacts for neighbouring properties or adjoining public land.

Accordingly, the proposed development to provide for a high quality residential flat building is intended to support the desired future character of the immediate area.

8.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *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].*

There are sufficient environmental planning grounds to justify contravening the development standard. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed development will maintain the general bulk and scale of the existing surrounding development and the nature and form of the development anticipated under the R4 High Density zoning and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).
- Similarly, the proposed development will provide for a high level of residential amenity within a built form which is compatible with the streetscape of Beaconsfield Parade which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new development is considered to promote good design and enhance the residential amenity of the buildings’ occupants and the immediate area, which is consistent with the Objective 1.3 (g).
- The proposed development will not result in the loss of any substantial views for neighbouring properties (1.3(g)).
- The existing width of the site at the street boundary which whilst less than the minimum 30m does not otherwise constrain the opportunity to provide for a development that will provide a compatible design outcome for the site.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and appropriately manages the sites shape and size to achieve a development which will add positively to the range of housing in the locality.

It is noted that in *Initial Action*, the Court 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:

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.*

As outlined above, it is considered that in many respects, 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.

8.4 Is the proposed development consistent with the objectives of clause 6.6 and the objectives of the R4 High Density Residential Zone?

Section 7.2 of this written request suggests the first test in *Wehbe* is made good by the development.

Each of the objectives of the R4 High Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the minimum site width at the street frontage not achieving the minimum 30m width standard, the proposed new residential flat development will be consistent with the individual Objectives of the R4 High Density Residential Zone, as follows:

- *To provide for the housing needs of the committee within a high density residential environment .*

As found in Nessdee, this objective is considered to establish the principal values to be considered in the zone.

Residential flat development is a permissible form of development within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The R4 High Density Residential contemplates high density residential uses on the land.

The housing needs of the community are appropriately provided for in this instance through the proposed construction of a new residential flat development which will provide for an appropriate level of amenity and in a form which will respect the predominant bulk and scale of the surrounding residential development.

The residential flat development will respect and complement the anticipated future development within the R4 High Density Residential Zone and the Lindfield Village Hub Masterplan.

The compatible form and scale of the new development will meet the housing needs of the community within a residential flat development which is a permissible use in this residential zone.

- *To provide a variety of housing types within a high density residential environment*

The proposal provides for housing diversity the within the Lindfield locality through the provision of the proposed residential flat development.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

This control is not relevant to the subject residential development.

- *To provide for high density residential housing close to public transport, services and employment opportunities.*

The subject development is within close proximity of the Lindfield commercial area and train station in accordance with this provision.

Accordingly, it is considered that the site may be further developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

8.5 Has the Council considered the matters in clause 4.6(5) of KLEP 2015?

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed residential flat development for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

As the proposed development complies with the objectives of the development standard and the objectives of the zone, there is no significant public benefit in maintaining the development standard.

There are no other matters required to be taken into account by the Secretary before granting concurrence.

9.0 Conclusion

This development presents an appropriate development which manages the existing site width at the street frontage, which does not achieve the minimum site width requirement of 30m as noted in clause 6.6(2)(b) of KLEP 2015.

The site has a minimum width of 22.710 m at the street frontage, which increases to a maximum with the 38.080 m at the northern boundary.

As demonstrated in the architectural design prepared by Architecture Urbaneia P/L, the existing site width, depth and configuration is capable of achieving a development which meets Council's desired outcomes for high density residential living within the land and which generally complies with Council's built form controls and amenity standards.

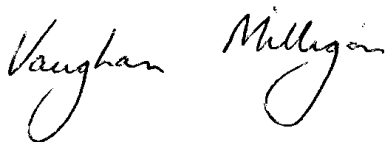
This request for variation of the minimum site width requirements specified in Clause 6.6 of the KLEP 2015 adequately demonstrates that the objectives of the standard will be met. The bulk and scale of the proposed development is appropriate for the site and locality.

In addition, the variation to the site width requirement will not result in a development that introduces unreasonable amenity impacts to the surrounding properties in terms of adverse overshadowing or contribute to any unreasonable amenity impacts to the surrounding properties.

The supporting biodiversity and arboricultural reports together with the comprehensive Landscape Plan for the site show that the site's configuration is more than suitable for an appropriate area of landscaping to be preserved and enhanced, contributing to the amenity of both the occupants of the site and the surrounding community.

Restricting the opportunity for the development of the site in the manner suggested in the architectural submission prepared by Architecture Urbaneia P/L on the basis that the site does not achieve a minimum 30m site width at all points would be unreasonable or unnecessary in the circumstances of this case.

In summary, the proposal satisfies all of the requirements of clause 4.6 of KLEP 2015 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



VAUGHAN MILLIGAN
Town Planner