



GYDE

Clause 4.6 Variation Request

Clause 16 of State Environmental Planning Policy
(Housing) 2021

4 & 8 Cherry Street, Warrawee

Submitted to Celesteem Turramurra Development Pty Ltd
on behalf of Gyde Consulting

21 August 2025

gyde.com.au

Acknowledgment of Country



Towards Harmony by Aboriginal Artist Adam Laws

Gyde Consulting acknowledges and pays respect to Aboriginal and Torres Strait Islander peoples past, present, Traditional Custodians and Elders of this nation and the cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander people. We recognise the deep and ongoing connections to Country – the land, water and sky – and the memories, knowledge and diverse values of past and contemporary Aboriginal and Torres Strait communities.

Gyde is committed to learning from Aboriginal and Torres Strait Islander people in the work we do across the country.

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Glossary and Abbreviations

Term/Acronym	Description
Council	Ku-ring-gai Council
DA	Development Application
DCP	Development Control Plan
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
The Regulations	Environmental Planning and Assessment Regulations 2021
FSR	Floor Space Ratio
GFA	Gross Floor Area
LEP	Local Environmental Plan
LGA	Local Government Area
SEPP	State Environmental Planning Policy

1. Introduction

This is a formal request that has been prepared in accordance with Clause 4.6 of the *Ku-ring-gai Local Environmental Plan 2015* (KLEP) to justify a variation to Clause 16 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) which provides additional floor space ratio and building height for developments that incorporate affordable housing. The development application (DA) is submitted to Ku-ring-gai Council seeking consent for a residential flat building development comprising 55 apartments, together with site landscaping, car and bicycle parking, site services and all associated development works at 4 and 8 Cherry Street, Warrawee (the subject site). This request seeks to vary the maximum building height permitted under clause 16 of the Housing SEPP.

The DA is made subject to the provisions of Chapter 2 Affordable Housing and Chapter 6 Low and Mid Rise Housing of the Housing SEPP. Chapter 6 of the Housing SEPP provides the development standards that allow for higher density development in key locations that are located within walking distance of specified town centres or public entrances to railway, metro or light rail stations. Therefore, whilst the KLEP is the primary environmental planning instrument (EPI) applying to the site, the proposed development is made pursuant to the provisions of the Housing SEPP which prevail to the extent of an inconsistency with the KLEP. In addition, the in-fill affordable housing provisions permit up to 30% additional building height and floor space for development that incorporates the minimum required floor space for affordable housing.

Clause 4.3 of the KLEP requires that the height of buildings for the site does not exceed 17.5m when measured from existing ground level. As noted above, the proposal seeks consent for a development that relies on the provisions in Chapter 6 of the Housing SEPP, which permit greater density than envisaged under the KLEP. The provisions in Chapter 6 allow for a building height of up to 22m and a floor space ratio (FSR) of 2.2:1. With an additional 30% building height and FSR permitted under Chapter 2 of the Housing SEPP, the maximum permissible building height and FSR are 28.6m and 2.86:1 respectively. The proposed development seeks consent for a building up to 30.215m in height at its maximum and an FSR of 2.68:1. Therefore, the proposal exceeds the maximum permissible building height by 1.615m or 5.6% when measured from existing ground level. The departure from the standard is set out further in Section 3 (Extent of variation) of this request. No variation is proposed to the maximum permissible FSR.

This request should be read in conjunction with the documents prepared in support of the DA lodged for the site, including the Statement of Environmental Effects (SEE) prepared by Gyde and the accompanying architectural drawings prepared by Giles Tribe.

This request has been prepared having regard to the NSW Department of Planning and Environment's Guidelines to Varying Development Standards (November 2023) and various recent decision in the New South Wales (NSW) Land and Environmental Court (LEC) and the NSW Court of Appeals (Appeals Court).

The objectives of Clause 4.6 are to provide an appropriate level of flexibility in applying a certain development standard to development, in particular circumstances, and to achieve better outcomes for and from development.

For this reason, there is no constraint on the degree to which a consent authority may depart from a numerical standard under Clause 4.6: *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85]. As Commissioner Clay explained in his decision in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, that the application of Clause 4.6 should not be constrained by a perceived maximum number by which a standard may be varied (this decision was upheld by the Chief Judge of the Land and Environment Court on appeal in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115).

In very brief terms, the requirement to comply with the development standard is unreasonable and unnecessary in the circumstances because:

- The proposed variation enables the orderly and economic use and development of land through the redevelopment of an underutilised site for much needed housing in accordance with the low and mid rise housing development program established by the NSW Government.

- The proposal will maximise the number of residential dwellings on the site in response to the current housing crisis with little to no unacceptable, or adverse environmental impacts. Specifically, the areas above the height plane do not cause adverse amenity impacts.
- The proposal will retain and expand the current residential land use through providing a total of 55 apartments within walking distance to Turramurra Railway Station.
- The proposal responds to the NSW Governments strategic and statutory planning initiatives to encourage private developers to provide additional housing, particularly through the provision of 1,155.4 sqm of gross floor area as affordable housing.
- The proposal will continue to achieve the objectives of Clause 4.3 including using the existing topography of the site to provide a development with an appropriate density, scale and intensity, and ensuring the buildings are compatible with the bulk and scale of the locality.

This Clause 4.6 Variation Request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify the contravention. Further, the proposal is consistent with the objectives of the zone for the site and the development standard itself and is, therefore, in the public interest.

2. Site Context

The site is located at 4 and 8 Cherry Street, Warrawee, within the Ku-ring-gai Local Government Area (LGA). It is approximately 17 kilometres northwest of the Sydney Central Business District (CBD) and approximately 550 metres northwest of the Turramurra Railway Station.

The site is located between the Pacific Highway to the south and west, and Turramurra Railway Station and town centre to the east. Refer to Figures 1 and 2 the site's location in relation to nearby local centres.

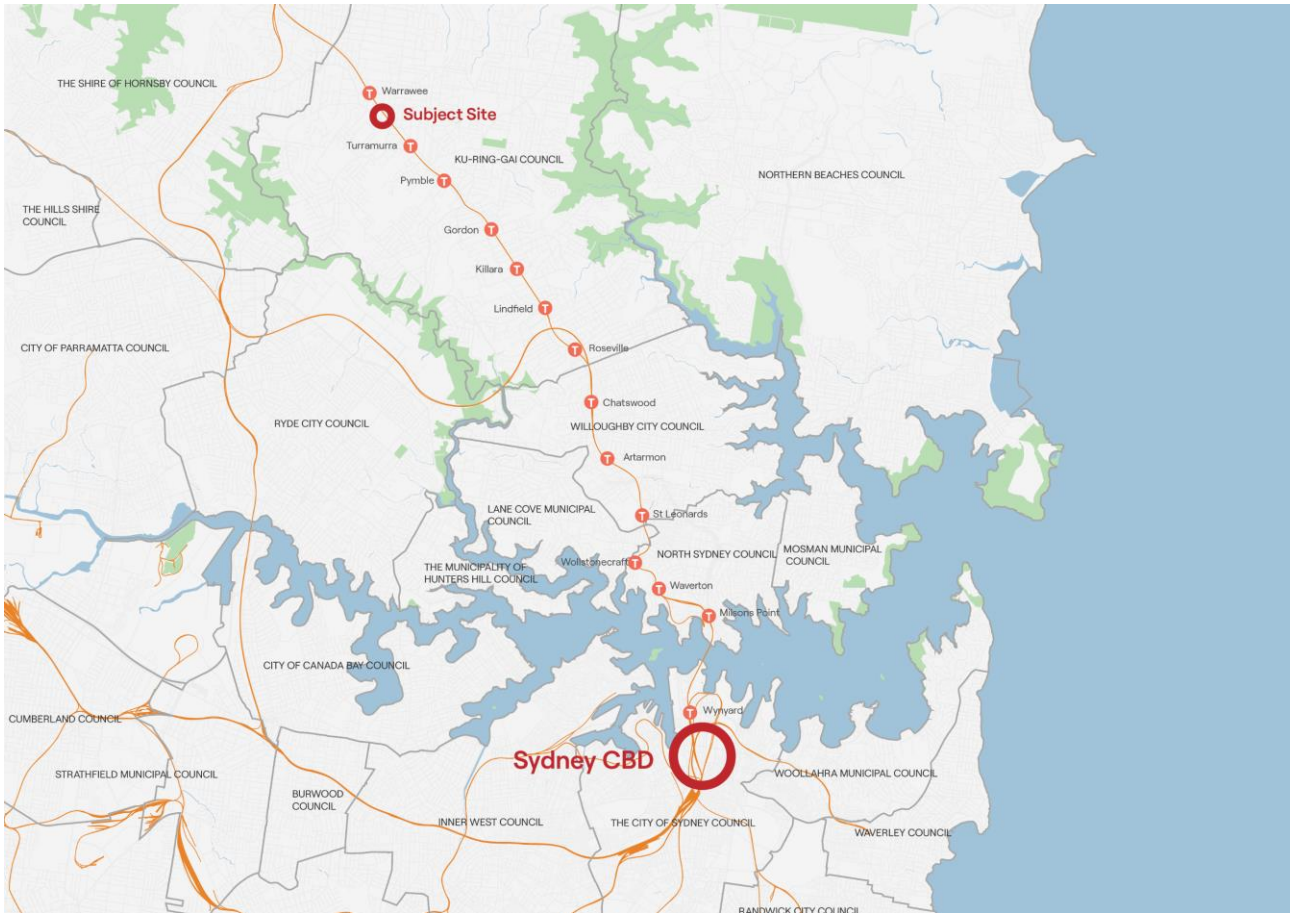


Figure 1 Site context (Source: Gyde Consulting)



Figure 2 Aerial view, locational context plan (Source: Nearmap, markups by Gyde)

3. Standard to be Varied

The environmental planning instrument (EPI) to be varied is the Housing SEPP.

In April 2024, the NSW Government announced the introduction of Chapter 6 of the Housing SEPP, which commenced on 28 February 2025. Clause 180 in Chapter 6 of the Housing SEPP establishes a maximum building height of 22m and FSR of 2.2:1 for the subject site, which is located within the *low and mid rise housing inner area*, as follows:

180 Non-discretionary development standards—residential flat buildings and shop top housing in Zone R3 or R4

This section applies to development for the purposes of residential flat buildings or shop top housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.

The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing inner area—

- a) a maximum floor space ratio of 2.2:1,*
- b) for residential flat buildings—a maximum building height of 22m,*
- c) for a building containing shop top housing—a maximum building height of 24m.*

The proposed development seeks to also utilise the in-fill affordable housing provisions in Chapter 2, Part 2, Division 1 of the Housing SEPP which provide opportunity for up to 30% additional building height and FSR for developments that incorporate at least 10% affordable housing. Clause 16 in Chapter 2 of the Housing SEPP provides the following:

16 Affordable housing requirements for additional floor space ratio

- 1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).*
- 2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—*

$$\text{affordable housing component} = \frac{\text{additional floor space ratio}}{\text{(as a percentage)}} \div 2$$

- 3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).*

Example—

Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.

- 4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.*

Based on the above, the maximum permissible FSR for the development is 30% additional FSR on top of the maximum permissible FSR where a proposal includes residential development. The maximum permissible FSR for a building on the subject site is 2.2:1 and with an additional 30% FSR, the maximum permissible FSR on the site is 2.86:1. The proposal seeks consent for a development with an FSR of 2.86:1 and therefore relies on the additional floor space provided by clause 16.

In accordance with clause 16(3) the maximum building height for a building that is a residential flat building is the maximum permissible building height for the development on the land plus an additional building height of up to 30%. Therefore, an additional 30% on top of the maximum permissible building height of 22m results in an overall maximum permissible building height of 28.6m. The proposal seeks consent for a building with a height of up to 30.215m measured from existing ground level, resulting in an exceedance of up to 1.615m or 5.6% of the development standard. Therefore, the standard that is proposed to be varied is the maximum height of building standard under clause 16(3) of the Housing SEPP.

The development standard to be varied is not excluded from the operation of Clause 4.6 of the KLEP and therefore, can be varied under Clause 4.6.

4. Extent of Variation

As noted earlier, the standard that is proposed to be varied is the maximum height of buildings under clause 16(3) of the Housing SEPP. Clause 16(3) of Housing SEPP states the following:

(3) *If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).*

In accordance with clause 16(3) of the Housing SEPP and as discussed in section 3, a maximum building height of 28.6m is prescribed for the site. While the majority of the proposal sits below the 28.6m height plane, this variation request seeks consent for minor exceedance to the maximum building height development standard. The variation ranges from 50mm to a maximum of 1615mm at its highest point, as illustrated in **Figure 3** below.

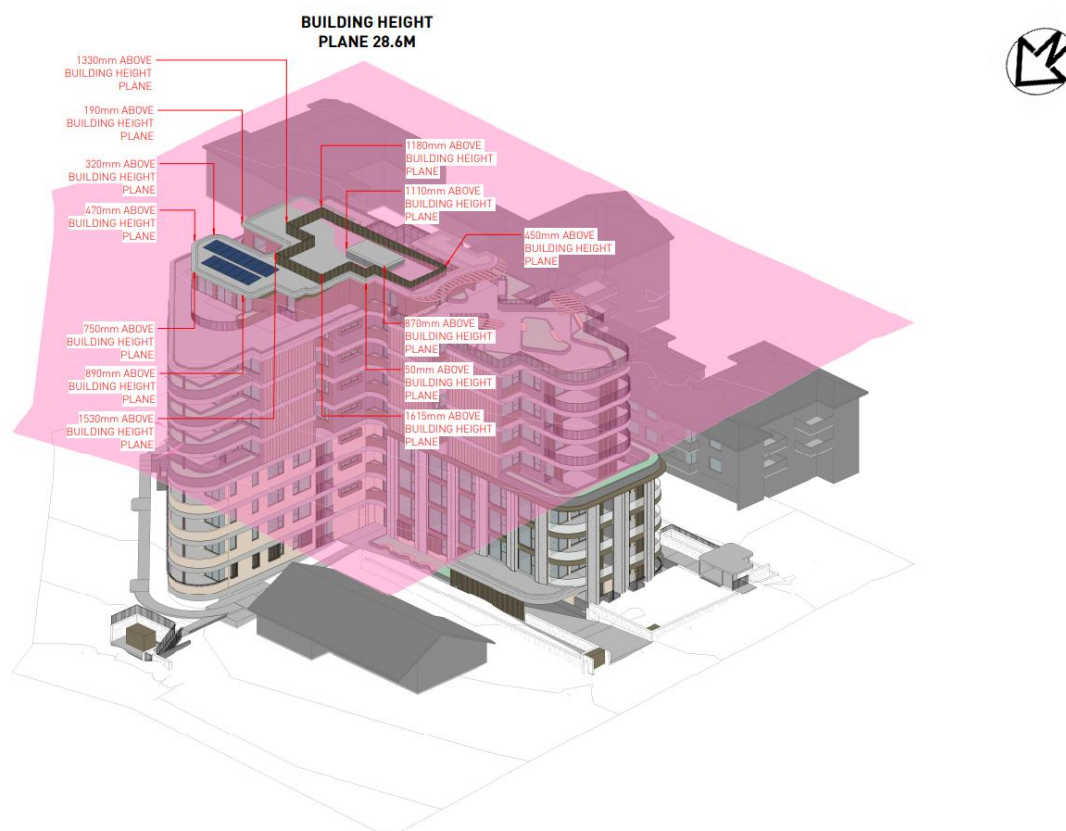


Figure 3 Proposed height variation (Source: Giles Tribe)

This extent of variation is as a result of essential plant infrastructure including solar panels, battens/fencing to screen the plant equipment, elements of the roof structure, and the lift overrun. The location of the elements that breach the maximum building height have been strategically located to minimise visual impact or overshadowing. No habitable areas are located above the 28.6m height plane, and the variation only relates to essential plant infrastructure, roof structure, visual screening/fencing and lift overrun at roof level. As such, all components of the building that are above the maximum building height are appropriately screened and do not result in any adverse environmental impact.

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 LEP.

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) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)
2. The underlying objectives or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objectives would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
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; (Fourth Test) and
5. The zoning of the land is unreasonable or inappropriate. (Fifth Test)

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]*).

Nonetheless, we have considered each of the ways as follows.

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

The following considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First Test under *Wehbe*).

To help determine whether compliance with the development standard is unreasonable or unnecessary, an assessment of the objectives and aims of the relevant chapters of the Housing SEPP, and the overarching principles of the Housing SEPP, are undertaken below.

5.1.1 Chapter 6 'Low and mid rise housing' of the Housing SEPP

The proposed building height has been established in accordance with the LMR provisions in Chapter 6 of the Housing SEPP. Clause 162 of the Housing SEPP relates to the aim of the LMR provisions:

162 *The aim of this chapter is to encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport.*

The proposed development involves the construction of a mid-rise residential flat building located approximately 400m walking distance from the Turramurra Town Centre as identified on the Town Centres Map in the Housing SEPP, provided in **Figure 4** below. The site is located within the **inner area** which applies to land located in an R4 High Density Residential zone and allows for additional height in these accessible areas. As such, the proposal complies with the aim of Chapter 6 of the Housing SEPP which relates to LMR provisions.

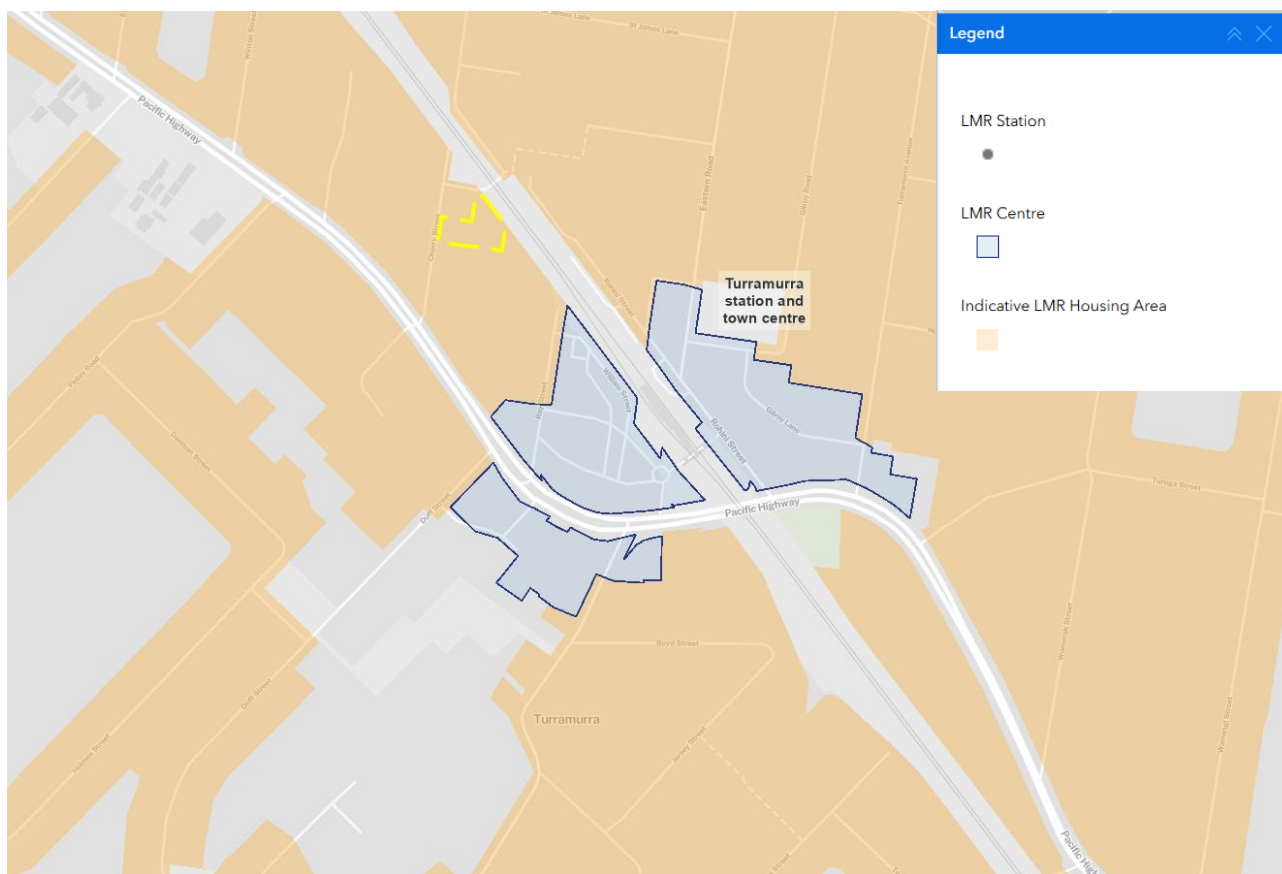


Figure 4 Sites location in LMR area in relation to Turramurra Town Centre (Source: NSW Planning Portal Spatial Viewer)

5.1.2 Chapter 2 ‘In-fill affordable housing’ of the Housing SEPP

Clause 15A of the Housing SEPP establishes the objective for Division 1 In-fill affordable housing of the Housing SEPP. The objective is:

15A *The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.*

The proposal responds to this objective by providing 13 affordable housing units to meet the needs of very low, low and moderate income households. These affordable housing units provide a range of housing types and sizes (3 x studios, 4 x 1 bedroom unit and 6 x 2 bedroom units) within the proposed residential flat building that will directly address the demand for affordable housing. The larger apartments will also cater to demand for family-sized apartments in close proximity to local services and facilities and public transport options.

The elements of the proposal that extend above the height plane are critical to the delivery of the affordable housing component of the development, comprising structural elements such as the roof, and necessary building services including servicing equipment, solar panels, and the lift overrun. These elements are non-habitable and only accessible by authorised personnel for maintenance purposes.

5.1.3 Clause 3 ‘Principles of Policy’ of the Housing SEPP

Notwithstanding compliance with the aim of Chapter 2 and the objective of Chapter 6, for completeness although not required, an assessment of the proposal against the principles (Clause 3) of the Housing SEPP has been undertaken as part of this Clause 4.6 statement.

Table 1 below indicates how the proposal is consistent with the principles of the overall Housing SEPP.

Table 1 Consistency with the Principles of the Housing SEPP (Clause 3 of the Housing SEPP)

Principle	Consistency
(a) <i>Enabling the development of diverse housing types, including purpose-built rental housing.</i>	<p>Consistent.</p> <p>Although the project does not facilitate the provision of purpose-built rental housing, it provides 37 x 3 bedroom units and 1 x 4 bedroom unit which will directly cater for family accommodation. There is also 3 studio units, 4 x 1 bedroom units and 10 x 2 bedroom unit, which are suitable for smaller households.</p> <p>The provision of family-sized units in such an accessible location meets the principles of diverse housing in catering for this part of the housing market, in both a market and affordable housing capacity.</p>
(b) <i>Encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability.</i>	<p>Consistent.</p> <p>This proposal includes the provision of 13 affordable housing units which will respond to the needs of the more vulnerable members of the community in providing more affordable housing. The provision of affordable housing within the proposed development aims to provide additional and much needed housing for very low, low and moderate income households. Market trends have seen the larger floorplate apartments being highly sought after with local residents downsizing from large homes on large lots, to large apartments in the same area without the maintenance. The proposal directly achieves this principle.</p>
(c) <i>Ensuring new housing development provides residents with a reasonable level of amenity.</i>	<p>Consistent.</p> <p>The additional elements above the height plane do not unreasonably impact on the resultant amenity for future residents on site or surrounding land.</p> <p>The new apartments have been designed in accordance with <i>Chapter 4 - Design of residential apartment development</i> and <i>Schedule 9 - Design principles for residential apartment development</i> of the Housing SEPP.</p> <p>This design approach ensures that the maximum number of apartments in the development meet minimum amenity requirements. 39 dwellings (70%) within the proposed development receive 2 hours of mid-winter solar access and 48 dwellings (87%) are cross ventilated. Furthermore, all apartments are provided with access to high quality private and communal open spaces within the development.</p>
(d) <i>Promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services.</i>	<p>Consistent.</p> <p>The proposal is located approximately 550m walking distance of Turrumurra Railway Station. The future residents of the site will be able to take advantage of being close to services, facilities and public transport opportunities.</p>
(e) <i>Minimising adverse climate and environmental impacts of new housing development.</i>	<p>Consistent.</p> <p><i>Bulk and scale</i></p> <p>The proposal complies with the maximum FSR permitted under Clause 16 of Chapter 2 of the Housing SEPP. To deliver this bonus FSR, the proposal is seeking a variation to the bonus building height resulting from the provision of 15% affordable housing floor area.</p>

Principle	Consistency
	<p>The bulk and scale of the proposed development is considered appropriate as:</p> <ul style="list-style-type: none"> • The site is zoned R4 High Density Residential which facilitates and encourages high density residential flat buildings, as is proposed in this application. • The site is located in an area currently undergoing significant growth and uplift in density by being located close to Turramurra Railway Station and being identified as an area of growth under Chapter 6 of the Housing SEPP. • The proposed residential flat buildings are consistent with the existing land use and built form in the neighbourhood. • The majority of the building form that exceeds the maximum building height permitted under Chapter 2 of the Housing SEPP will not be discernible from the public domain as it results in a consistent and regular building. <p>Amenity and liveability</p> <p>The height variation is largely attributable to the accommodation of essential rooftop plant and equipment. These elements have been sensitively located and are set back from the edge of the building to ensure they do not compromise the amenity or accessibility of the communal open space.</p> <p>The design prioritises internal amenity, ensuring apartments receive optimal natural light and ventilation through considered orientation, separation distances, and apartment layouts. This results in a high standard of liveability for future residents in accordance with the design objectives of the Apartment Design Guide.</p> <p>Visual privacy</p> <p>Noting the components of the proposed development that exceed the maximum building height are non-habitable, the proposed variation will not result in any adverse impacts on visual privacy. Essential rooftop infrastructure, including solar panels and mechanical plant, will be set back significantly from all boundaries. In terms of the broader building, the habitable components are setback to reduce the potential for direct lines of sight into neighbouring dwellings at 2 and 6 Cherry Street and 18 Ray Street. In addition, the services and plant will be visually screened through the use of integrated privacy elements, which will further reduce any perceived overlooking and ensure that adjoining properties maintain a high degree of privacy.</p> <p>Views</p> <p>The proposal is not expected to result in any significant view loss to adjacent properties or the public domain. The site does not enjoy or obstruct any district, water, or iconic views, and the built form is not situated in a location where view sharing principles under planning guidance would typically apply. As such, the proposed variation will not generate any adverse impacts on existing view corridors.</p> <p>Overshadowing and solar access</p> <p>The proposed height variation will not result in additional or unreasonable overshadowing of neighbouring properties.</p> <p>Given the high-density residential zoning of the site and the strategic policy direction to facilitate growth and increased density within LMR areas, it is anticipated that the Warrawee/Turramurra locality will experience significant development activity and urban transition. This is expected to be further accelerated by the strategic emphasis on</p>

Principle	Consistency
	<p>the delivery of affordable housing, including the height and FSR bonuses granted under the Housing SEPP.</p> <p>Due to its location immediately south of the subject site, 2 Cherry Street does experience some overshadowing, particularly over its communal open space between 9:00am and 12:00pm. However, a substantial portion of this overshadowing is attributable to the existing built form of No. 2 itself. Similarly, 18 Ray Street to the south-east is overshadowed during the afternoon; however, the extent of this overshadowing is generally consistent with existing conditions, which are also influenced by the form of No. 2 Cherry Street.</p> <p>While the proposed development does result in some additional overshadowing, it complies with the design criteria and objectives of the ADG. As demonstrated in the solar access diagrams prepared by Giles Tribe (Appendix E), the extent of overshadowing marginally exceeds the shadow cast by an ADG compliant building envelope. This additional overshadowing is negligible and does not result in any significant adverse impact beyond that which would occur under a fully ADG compliant scheme. Any minor additional overshadowing proposed as part of this application when compared with the existing approval is attributed to the overall scale permitted by the LMR and infill affordable housing provisions, not the height variation itself.</p> <div data-bbox="651 992 1380 1630" data-label="Figure"> </div> <p>Conclusion</p> <p>The proposed development demonstrates a thoughtful and balanced approach to site planning, built form, and amenity. The minor variation to the height control is justified on design merit grounds, being driven by the rooftop service areas.</p> <p>The design outcome achieves a built form that is responsive to its context, aligned with the strategic planning intent for the locality, and capable of delivering high-quality housing outcomes, including a meaningful contribution to affordable housing supply.</p>
(f) Reinforcing the importance of designing housing in a way	Consistent.

Principle	Consistency
<i>that reflects and enhances its locality.</i>	<p>The proposed building is designed to be compatible with the existing and future character for this part of Warrawee, being within 400m of the Turrumurra town centre.</p> <p>The design of the built form clearly reflects its role in providing housing close to services and facilities near the Turrumurra Town Centre and public transport opportunities, such as Turrumurra Railway Station.</p> <p>Further, the design of the development highlights the desire of the State Government to provide housing in accessible areas, such as the subject site. The design of the building does not differentiate between the location of the market and the affordable housing units, which will aid social cohesion within the building.</p>
<i>(g) Supporting the short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use.</i>	<p>N/A</p> <p>The proposal does not directly seek to create opportunities for the establishment of short-term rental accommodation. However, future owners and occupants of the apartments may establish these home-sharing activities if they wish to derive secondary income from the residential apartments. However, this is beyond the scope of this proposal.</p>
<i>(h) Mitigating the loss of existing affordable rental housing.</i>	<p>N/A</p> <p>The subject site is currently vacant. The proposal will only contribute to the provision of additional affordable rental housing.</p>

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 if compliance was required with the consequent that compliance is unreasonable.

As noted above, there is no objective of the development standard in clause 16 of the Housing SEPP. This clause 4.6 request has therefore been prepared with consideration of the underlying object or purpose of the standard, and if compliance was required with the standard, then the object or purpose would be defeated or thwarted.

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.

Given the recent commencement of Chapter 6 of the Housing SEPP and in-fill affordable housing provisions, there are no examples where consent has been granted to a variation to the building height development standard.

5.5 The zoning of the land is unreasonable or inappropriate.

The zoning of the land is not relevant in this case as the proposal relies on the provisions in Chapter 6 of the Housing SEPP, which prevail over the land zoning and relevant development standards established in KLEP.

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*, Plain 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 ground to justify the departure of the height of buildings development standard are as follows:

- Despite the numerical non-compliance with the height development standard, the proposal provides a scale and form of development that is compatible with the surrounding context and one that is envisioned under the Housing SEPP in the context of the infill affordable housing and low and mid rise housing incentive provisions. The overall development will be compatible with the emerging higher-density character of Warrawee and the wider area.
- The proposed height variation maximises the number of residential dwellings possible in response to the current housing crisis with no unacceptable, additional, adverse environmental impacts. In this regard, the height variation is directly consistent with the objectives of the development standards provided in the Housing SEPP and the R4 zone.
- The elements of the proposal that extend above the height plane are critical to the delivery of the affordable housing component of the development, comprising structural elements such as the roof, and necessary building services including servicing equipment, solar panels, and the lift overrun. These elements are non-habitable and only accessible by authorised personnel for maintenance purposes.
- The additional height enables the provisions of a high-quality residential development that also provides for additional affordable housing units. There is an inherent public benefit in providing additional residential dwellings including affordable housing on the site, particularly given the proximity of the site to Turramurra Railway Station.
- The proposed development responds to the NSW Government's strategic and statutory planning initiatives to encourage the private sector to boost diversity of housing choice and deliver more market housing. Namely, the breach reflects the objectives and development standards provided in the Housing SEPP for infill affordable housing and low and mid rise housing.
- The proposed development will contribute to the viability and attractiveness of Warrawee and the nearby Turramurra town centre.

The proposed development achieves the objectives in Section 1.3 of the EP&A Act, specifically

- The development will deliver affordable housing, with more than 1,155.4 sqm of gross floor area of the development being provided as affordable housing for the wider Warrawee community. The development is well placed to maximise the benefits of this type of housing, being near Turramurra Railway Station, providing access to the wider Sydney region.
- The elements of the proposal that extend above the height plane are critical to the delivery of the affordable housing component of the development, comprising structural elements such as the roof, and necessary building services including servicing equipment, solar panels, and the lift overrun. These elements are non-habitable and only accessible by authorised personnel for maintenance purposes
- Strict compliance with the height control would unnecessarily compromise the overall density and amenity of the building. A reduction in building height would result in a corresponding loss of

residential yield, including a reduction in the amount of affordable housing. Given that the majority of the proposal complies with the height limit, the minor projections above the height plane facilitates the orderly and economic use of the land by enabling the redevelopment of underutilised site to deliver a high-quality residential development.

- The proposed development has been designed by Giles Tribe with careful consideration of the sites context, resulting in a high-quality architectural outcome. The non-compliant elements have been discreetly integrated into the roof form and are largely indiscernible from the streetscape and surrounding areas, minimising visual impact whilst delivering a high-quality design outcome.
- The elements of the proposal that extend above the height plane are critical to the delivery of the affordable housing component of the development, comprising structural elements such as the roof, and necessary building services including servicing equipment, solar panels, and the lift overrun. These elements are non-habitable and only accessible by authorised personnel for maintenance purposes.

For completeness, we note that the size of the variation is not in itself, a material consideration as whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6: *GM Architects Pty Ltd v Strathfield Council [2016] NSWLEC 1216 at [85]*.

In short, Clause 4.6 is a performance-based control, so it is possible (and not uncommon) for variations to be approved in the right circumstances.

7. Conclusion

This request for variation to the height of buildings development standard is made pursuant to Clause 4.6 of KLEP and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of the proposed development; and
- There are sufficient environmental planning grounds to justify the contravention of the development standard.

The proposal satisfies the relevant requirements of Clause 4.6 of the KLEP, demonstrating that the proposal remains consistent with the objectives of Chapter 6 of the Housing SEPP despite the numerical non-compliance. The design has carefully considered the placement of non-compliant elements, ensuring they are appropriately set back and adequately screened to minimise any unreasonable visual impacts. The resulting built form delivers a cohesive yet unique scheme that is compatible with the existing and desired future character of the area.

The proposal promotes the objectives of the in-fill affordable housing provisions through providing much needed affordable housing in the area, whilst expanding on the need for greater diversity in housing typologies in Ku-ring-gai LGA more broadly. This also provides local employment opportunities in an area that has been gentrified and subject to significant growth.

The intensity of the proposed development would not result in detrimental impacts on the amenity of the locality. On the above basis, it is appropriate for Ku-ring-gai Council, as the consent authority, to exercise the flexibility conferred by Clause 4.6 of the KLEP to support the proposed variation.