

beam

Clause 4.6 Variation

Clause 4.3 Height of Building
46-50 Cowan Road, St Ives

Prepared for Traders in Purple

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1.0 Introduction

Clause 4.6 enables consent to be granted to a development where the contravention of a development standard imposed by either the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) or any other environmental planning instrument is proposed.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

This Clause 4.6 Request for Variation is provided in support of a Development Application (DA) for a residential development seeking to utilise the mid-rise housing provisions of Chapter 6 of the Housing SEPP at 46-50 Cowan Road, St Ives.

Clause 4.6(3) of the KLEP 2015 requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

The following table provides a summary of the key matters required in a Clause 4.6 Variation set out in the Department of Planning and Environments *Guide to Varying Development Standards November 2023*.

Where is the development site?

What is proposed development?

What is the variation?

46-50 Cowan Road, St Ives

This development application seeks approval for the construction of a residential development that will utilise the provisions afforded under Chapter 6 – Low and Mid-Rise Housing of the Housing SEPP to deliver two (2) x six (6) storey residential flat buildings.

The variation applies to both the Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) and the State Environmental Planning Policy (Housing) 2021 (Housing SEPP). Under the KLEP, the site has a maximum building height of 11.5m, while the Housing SEPP under Chapter 6 (Low- and Mid-Rise Housing) provides for up to 22m in a non-discretionary development standard.

As a result of the site's topography and the irregular ground level as a result of site preparation works undertaken under a previous DA, the proposed development has a maximum height of 23.73m in a small part of the site, exceeding the Housing SEPP non-discretionary standard by up to 1.73m and the LEP standard by 12.23m.



Why is compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case?

Compliance is considered unreasonable and unnecessary given the proposal achieves the objectives of the LMR and Height of Buildings development standards, notwithstanding the non-compliance, for the following reasons:

- If the minor height variation is not supported, it will ultimately lead to less housing being provided undermining the objective 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 buildings follow the topography of the land, stepping in the middle of the site, and presents 6 storeys to its frontages. Therefore the buildings present at a scale that has been determined as appropriate for the St Ives Centre.
- The variation is largely limited to the lift overrun and does not result in a perceptible increase in the bulk, scale or visual impact of the development, and aligns with the transitioning urban character of the locality.
- Solar access, privacy, and streetscape amenity are preserved ensuring minimal impact on neighbouring properties.

What are the sufficient environmental planning grounds to justify contravention of the development standard?

The environmental planning grounds to justify contravention of the KLEP and Housing SEPP standard are:

- The height variation is a direct result of the sloping topography of the site and irregular existing ground levels as an outcome of the previous earthworks that had been undertaken but otherwise presents a 6 storey form consistent with the LMR Controls.
- Strict compliance would contradict the broader intent of the Housing SEPP, which is to facilitate housing in well-served areas.
- The minor exceedance (less than 10%) has no adverse environmental impacts.

In light of the above, the consent authority can be satisfied that compliance with the height of building control is unnecessary and there are sufficient grounds to support the proposed variation.

2.0 The Development Site

The site is located at 46–50 Cowan Road, St Ives, within the Ku-ring-gai Local Government Area (LGA), approximately 18 kilometres north of the Sydney Central Business District. The site is legally described as Lot 234 in Deposited Plan 1289200 and comprises an area of approximately 5,900 square metres.

The site falls within the *St Ives Low and Mid-Rise Housing Area* as identified under Chapter 6 of the Housing SEPP. It is positioned within an existing residential area, in a unique setting, adjoining Pymble Golf Course to the west and fronting Cowan Road to the east. William Cowan Reserve is located further to the east which separates the site from the St Ives Village Green and St Ives Shopping centre to the south east. The Shopping Centre functions as a key retail and commercial hub, consistent with its designation as a *Town Centre* under the LMRH framework.

The site benefits from high accessibility, being within walking distance of regular bus services that connect to major destinations including Gordon Station, Mona Vale, Macquarie University, Hornsby, and the Sydney CBD (QVB).

The site was cleared and remediated as part of DA0270/22. These works have resulted in an irregular existing ground level for the purposes of measuring height (see **Figure 3-4**).

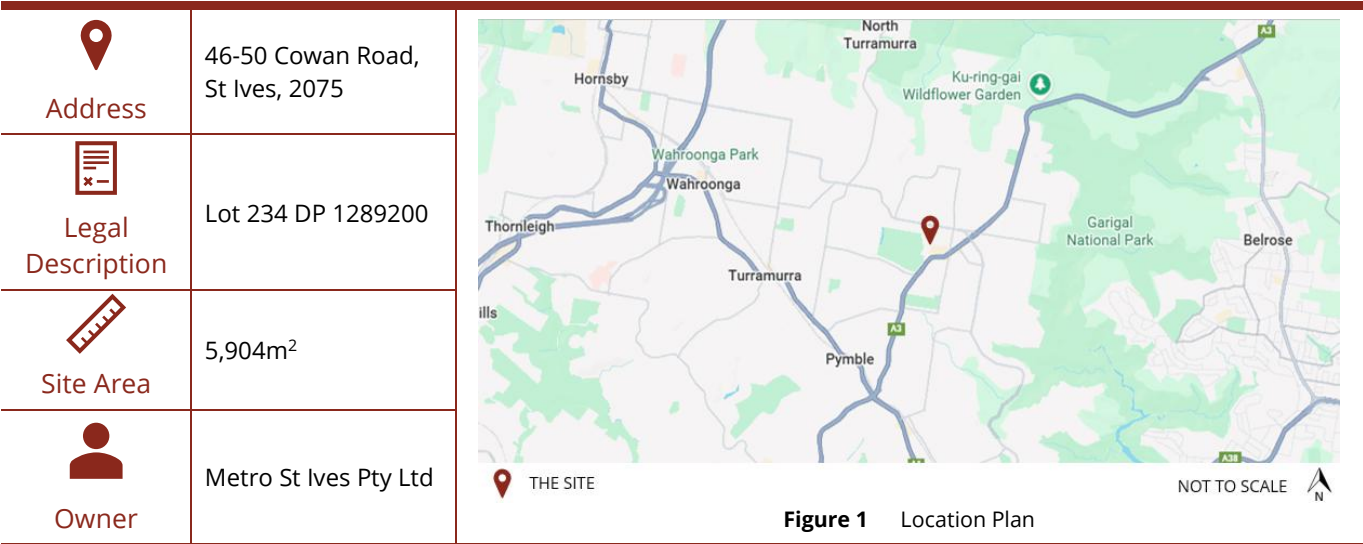




Figure 3 View of the north-western portion of the site showing the irregularity of the ground level, as observed 20 May 2025, facing west



Figure 4 View of the central and northern portion of the site showing the irregularity of the ground level, as observed 20 May 2025, facing south-east

3.0 The Proposed Development

The development application seeks approval for the construction of a residential development that will utilise the provisions afforded under Chapter 6 – Low and Mid-Rise Housing of the Housing SEPP. Specifically, consent is sought for:

- Site preparation works including the removal of 1 tree.
- Bulk excavation to accommodate the three (3) storey basement structure.
- Construction of two (2) x six (6) storey residential flat buildings.
- On-site car parking and loading within three (3) basement levels comprising 178 car spaces, accessed from Cowan Road.
- Landscaping.
- Extension and augmentation of infrastructure and utilities as required.

Architectural drawings and a design report prepared by Plus Architecture illustrating the proposed development are included with the DA. An artist Impression of the proposed development is shown at **Figure 5**.



Figure 5 Photomontage of the development (as initially lodged), viewed from Pymble Golf Course

Source: Plus Studio

4.0 The Proposed Variation

This section outlines the relevant environmental planning instrument (EPI), the development standard to be varied and proposed variation.

Table 1 Planning instrument, development standard and proposed variation

Matter	Comment
Environmental planning instrument (EPI) sought to be varied	<i>Ku-ring-gai Local Environmental Plan 2015 (KLEP 2015) & State Environmental Planning Policy (Housing) 2021 (Housing SEPP 2021)</i>
The site's zoning	R3 Medium Density Residential The objectives of this land use zone are: <i>To provide for the housing needs of the community within a medium density residential environment.</i> <i>To provide a variety of housing types within a medium density residential environment.</i> <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <i>To provide a transition between low density residential housing and higher density forms of development.</i>
LEP development standard sought to be varied	Clause 4.3 Height of Buildings The objectives of this clause are: (a) <i>to ensure that the height of buildings is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres,</i> (b) <i>to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,</i> (c) <i>to enable development with a built form that is compatible with the size of the land to be developed.</i> The maximum permissible height of buildings for the site under the Ku-ring-gai LEP is 11.5m (refer to Figure 6). 
SEPP development standard sought to be varied	Chapter 6 Clause 180 provides non-discretionary development standards for residential flat buildings in the R3 Medium Density Zone, including a maximum height of 22m. The clause does not have a specific objective, however the objective of the 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.” 180 Non-discretionary development standards—residential flat buildings and shop top housing in Zone R3 or R4 (1) <i>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.</i>

Matter	Comment
	<i>(2) The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing inner area—</i> <i>(a) a maximum floor space ratio of 2.2:1,</i> <i>(b) for residential flat buildings—a maximum building height of 22m,</i> The clause applies to the site as the development is for the purpose of a residential flat building within a low and mid rise housing inner area in zone R3 medium density residential. The non-discretionary development standard is a building with a maximum height permitted under Chapter 6 of the Housing SEPP of 22m. As a non-discretionary standard – if there was full compliance then the consent authority has limited discretion and must not refuse the application on the ground it complies with that standard (s. 4.15(2) EP&A Act). Where there is not compliance with a non-discretionary development standard, the consent authority has discretion and the provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied (s. 41.5(3) EP&A Act). It should be noted that Chapter 6 of the Housing SEPP also contains a development standard under Section 175, where the consent authority cannot grant consent to a residential flat building development with a height of up to 22m, unless the building will have 6 storeys or fewer. As the development will not be seeking consent for a less than 22m building, this development standard does not technically apply. Whilst a clause 4.6 variation may not be required for this development standard, for abundant caution, this provision has also been addressed within this clause 4.6. 175 Development standards—low and mid rise housing inner area <i>(1) This section applies to land in a low and mid rise housing inner area in Zone R3 Medium Density Residential or R4 High Density Residential.</i> <i>(2) Development consent must not be granted for development for the purposes of residential flat buildings with a building height of up to 22m unless the consent authority is satisfied the building will have 6 storeys or fewer.</i>
The proposed Variation	The proposed development has a maximum height of 23.73m, which is a 1.73m variation to the Chapter 6 non-discretionary standard and a 12.23m variation to the LEP standard. The minor variation over the 22m limit is largely due to the topography of the site and is limited to a small portion of the penthouse level and the associated rooftop mechanical plant and lift overrun at Building A. Building B will exceed the 22m height limit by only 0.09m or (0.41%), with the exceedance resulting from the lift overrun and mechanical plant and not usable floorspace. Whilst the proposal is a stepped 6 storey form, due sloping topography of the site, there is a minor central portion of each of the buildings which technically forms a 7th storey. Figure 7 illustrates the proposed variation to the height of building development standard.

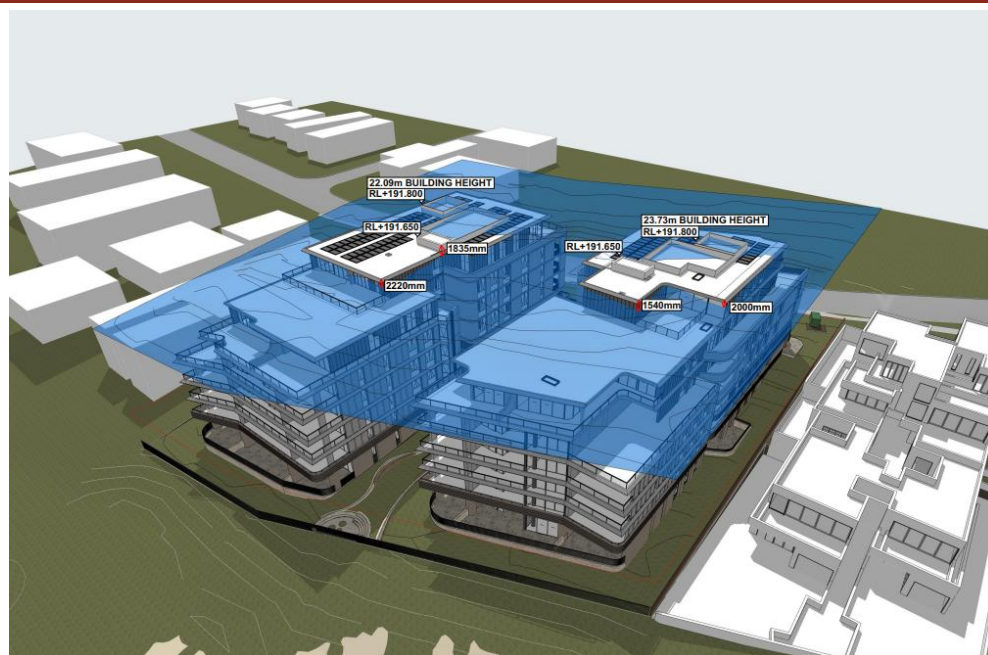


Figure 7 Proposed Variation to the 22m Height of Building development standard

Source: Plus Architecture

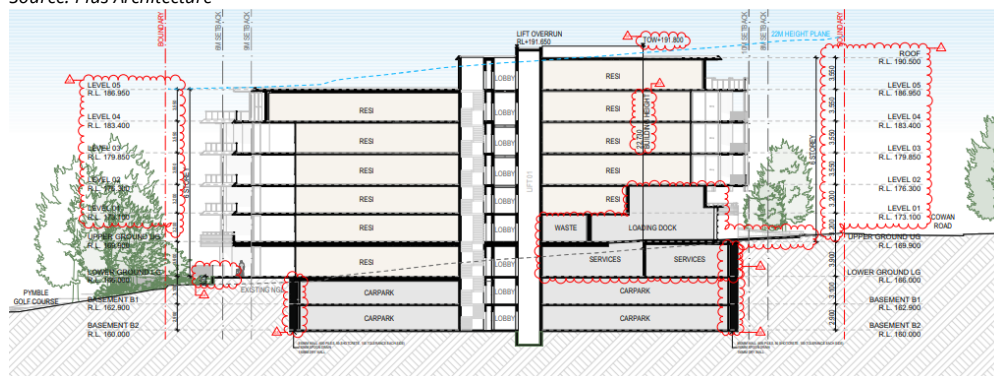


Figure 8 Section Plan Building A

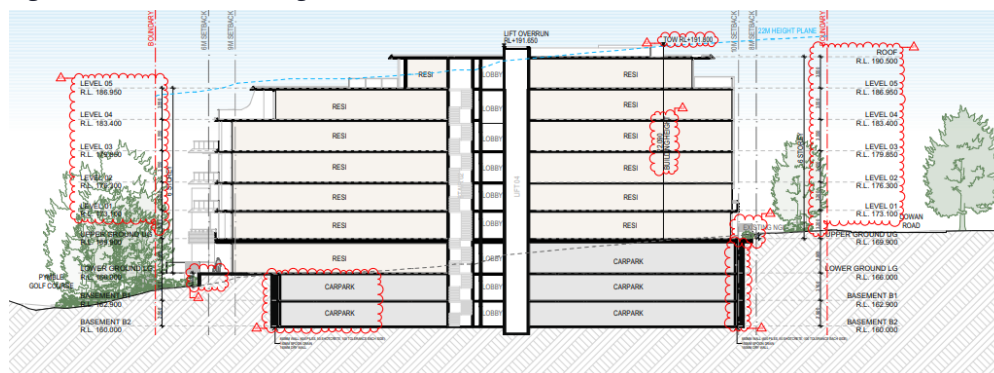


Figure 9 Section Plan Building B

5.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Ku-ring-gai LEP 2015 provides that:

- 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 of the case, and*
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard.*

These key considerations are considered in their respective sections below.

5.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary

The section below addresses the matters in clause 4.6(3)(a), and in particular how the objectives of the development standard are achieved notwithstanding the non-compliance with the numerical control. This request addresses both the objective of Chapter 6 of the Housing SEPP and the objectives within clause 4.3 of the LEP which relate to height of buildings.

The following subheadings demonstrate how the proposed height variation achieves the above-listed objectives notwithstanding the non-compliance.

Clause 162 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 aligns with the aim for Chapter 6 of the Housing SEPP by delivering mid-rise housing in a well-connected location, within 350m walking distance of St Ives Town Centre. The proposal supports much-needed housing supply by offering a mix of dwelling types that cater to the specific demographic of the area while promoting sustainable urban growth through efficient land use and reduced reliance on private vehicles.

By integrating high-quality design, façade articulation, and setbacks, the development ensures compatibility with the evolving character of the area while enhancing the streetscape. The proposal is consistent with this chapter and aim, encouraging well-designed, higher density living in well-serviced locations. The elements that breach the 22m height include mechanical plant and lift overrun which supports accessibility by removing steps in the floor plate and providing lift access to all levels. A minor portion of the penthouse of Building B also intrudes above the 22m height plane, where the topography of the site steps. The seventh storey of the development is a result of the stepping of the site and does not provide a perceptible variation to the 6 storey requirement.

If this minor height variation is not supported, it will ultimately lead to either less housing being provided in an area well-suited for residential intensification, or redistribution of the density elsewhere on the site where it will have greater impacts, directly undermining the objective of the chapter and the LEP height objectives discussed below.

Objective 4.3(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

The St Ives Centre is an identified Low and Mid Rise (LMR) centre under the Housing SEPP. The LMR area applies to the north and south of the site, with the reforms to catalyse a shift in the physical context and built form of residential developments in proximity to St Ives Shopping Centre.

As part of the LMR controls there is a development standard for residential development within the Inner Area to have a maximum of 6 storeys and a non-discretionary standard for a building height up to 22m. As such, the revised controls will enable a transition from predominantly low-rise detached housing to mid-rise apartment and townhouse developments.

This will introduce a more urban built form along Cowan Road with greater building heights, higher yields, and increased population density within walking distance of retail, services, and public transport.

The building follows the topography of the land which slopes approximately 5m from east to west and is uneven as a result of the demolition of the existing development and remediation works undertaken under the previous approval (DA0270/22). The buildings, step in the middle of the site and present as 6 storeys to both frontages. The seventh storey occurs for a small portion in the middle of the site where the buildings step down in response to the sloping and irregular existing ground level and is not perceptible from when viewed from the public domain along Cowan Road or from the Golf Course .

Therefore the building presents at the 6 storey scale that has been determined as appropriate for the St Ives Centre, despite the minor variation to the 22m non-discretionary standard that occurs due to the sloping topography of the site.



Figure 10 Cowan Road Elevation

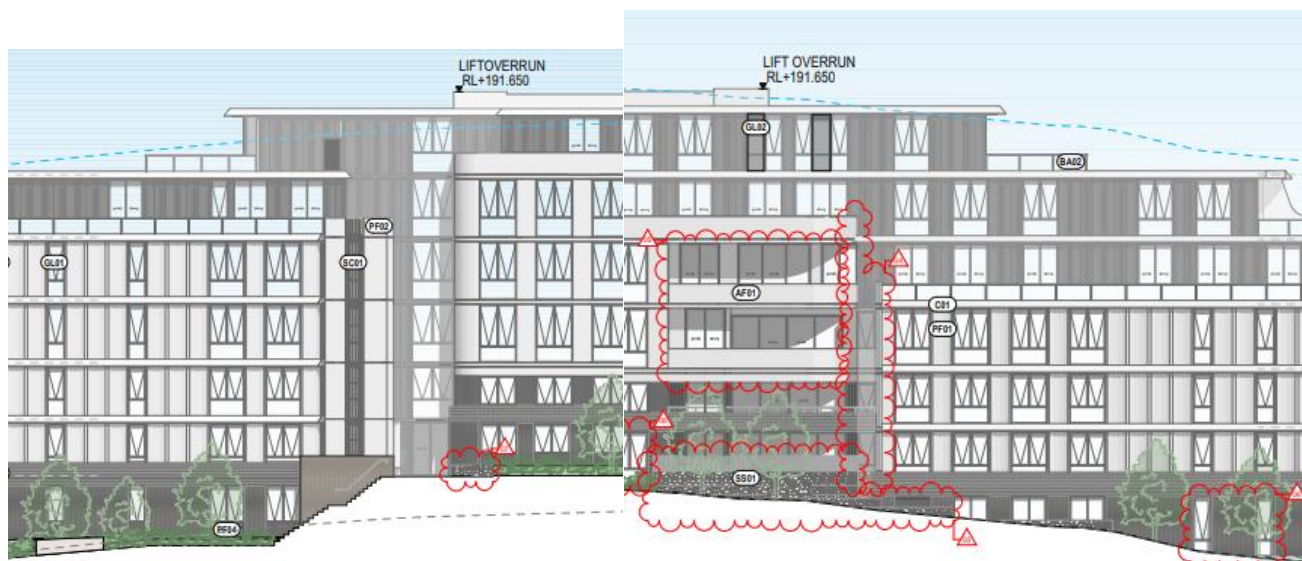


Figure 11 Extract of Building A Elevation (left) and Building B elevation (right) demonstrating partial 7th storey

Objective 4.3(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 located within the St Ives Town Centre LMR housing area. The designation of the site as being within this area is reflective of the capacity of the site to support additional height and density. It is noted the project represents the first 6 storey development on Cowan Road but is consistent with the desired future character of the centre and the adjacent sites could develop to a similar scale in the future.

The proposed variation is a result of the sloping topography of the site and does not discernibly increase the scale of the buildings or their impacts and is therefore not relevant in the consideration of whether the development achieves a transition in scale to lower density residential or open space. Solar modelling undertaken by Plus Architecture has confirmed that six out of seven units (86%) at 30-32 Cowan Road achieve 3-hour solar access to living areas during the winter solstice and balcony/ terraces during the winter solstice, thereby exceeding the minimum 70% units achieving 3

hour solar access required by the Ku-ring-gai DCP and exceeding the minimum 2 hours solar access of direct solar access to their primary living areas and private open spaces between 9am and 3pm on the Winter Solstice (21 June) required by the ADG. Therefore the variation does not result in unacceptable impacts to the neighbouring site to the south.

The amenity of the neighbouring Pymble Golf Course has been protected, with only minor overshadowing of the fairway occurring at 9:00am during midwinter. However, by approximately 10:00am, the shadows largely recede from the fairway. Any overshadowing that persists beyond 10:00am primarily affects the bunkers and vegetated areas. As a result, the proposal is not anticipated to have any adverse impact on the health of the fairway grass or player amenity which receive uninterrupted solar access for the remainder of the day.

As identified in the figure below, the areas of the development that extend above the height plane are not visible from the public domain.

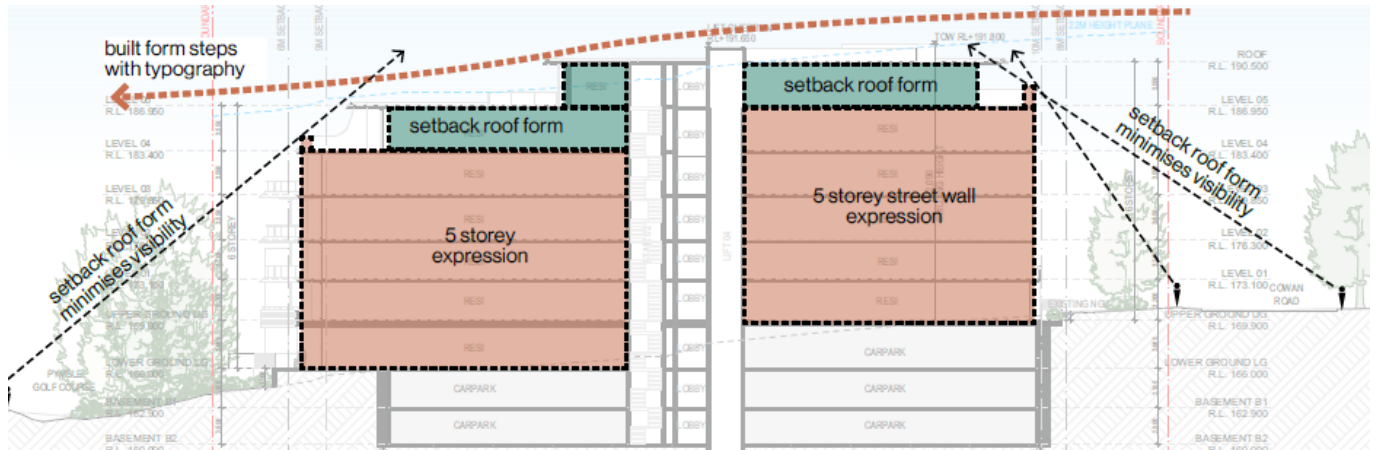


Figure 12 Photomontage of the development viewed from Cowan Road

Source: Plus Studio

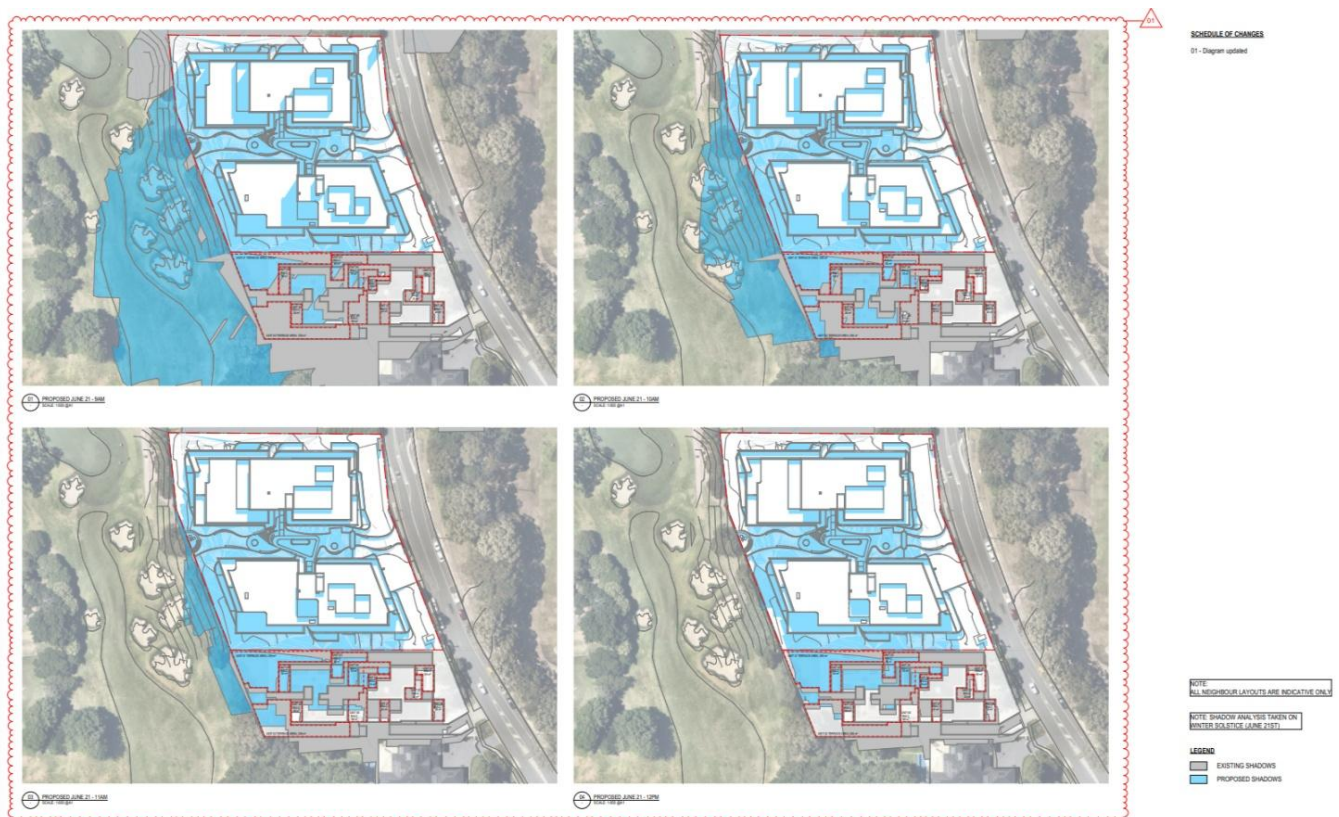


Figure 13 Shadow Diagrams

Source: Plus Studio

Notwithstanding this, effort has been made to reduce the perceived bulk and scale of the building and ensure appropriate transition to the adjoining residences and open space by implementing the following architectural strategies:

- **Topography and Site Integration:** The site exhibits a natural fall of approximately 5 metres from Cowan Road toward the Pymble Golf Course. The built form has been sensitively modulated to follow the topography, with a split-building arrangement and stepped massing that minimises visual bulk and integrates the development into the landscape.
- **Neighbourhood Character and Built Form Compatibility:** Efforts have been made to reduce the perceived bulk and scale of the building by providing an appropriate street setback and landscaped frontage to suit the streetscape, maintaining appropriate setbacks to adjoining neighbours and stepping the built form to maintain a maximum height of six storeys. The built form steps to the east and west to provide a sympathetic interface with adjoining residences and a combination of horizontal and vertical articulation and material variation ensures visual interest and reinforces a contemporary, high-quality built form outcome.
- **Scale Transition and Built Form Articulation:** The proposal comprises two buildings of up to six storeys, carefully articulated to reduce perceived bulk and scale. Upper storeys are set back to create a recessive form. Lower podium elements (4–5 storeys) address Cowan Road, providing a human-scale interface and a respectful transition to neighbouring 1–3 storey development.
- **View Sharing and Visual Connectivity:** The design enhances east/ west visual corridors, providing eastward views towards William Cowan Oval and westward views towards Pymble Golf Course. A visually permeable security line has been included between buildings A and B, and the doors have been removed to the entry pavilion allowing greater sky views between Cowan Road and the Golf Course. These sky view lines are further reinforced through the separation of built forms and strategic siting, enhancing visual permeability across the site.
- **Solar Access and Amenity:** Building orientation and separation have been optimised to maximise solar access to both the development and adjoining properties. Recesses between the buildings allow for daylight penetration, cross ventilation, and enhance residential amenity. The configuration ensures compliance with ADG solar access objectives and minimises overshadowing impacts. Solar analysis has confirmed that the height variation does not result in adverse overshadowing impacts to neighbouring residences.
- **Landscape and Setback Strategy:** Generous setbacks to all boundaries have been provided to enable deep soil planting, reinforce the landscape character of the locality, and provide a vegetated buffer to neighbouring dwellings. These setbacks also support the integration of communal open space at ground level, contributing to residential amenity.

Objective 4.3(c) to enable development with a built form that is compatible with the size of the land to be developed.

The proposed development has been informed by the LMR controls whilst having regard to Council's DCP and the relevant objectives. The proposed variation has no discernible impact on the proposal's compatibility with the size of the land it has been developed on, noting it presents the required 6 storeys to the street, achieves full compliance with the applicable Floor Space Ratio (FSR) control of 2.2:1, and satisfies the objectives of the DCP, especially in relation to preserving the landscaped character of the area.

The LMR controls were based on the presumption the 2.2:1 would be accommodated in 6 storey buildings. If the proposal is required to comply with the height control, it would force the floor area on the 6th level to be accommodated at the lower levels of the development, which would undermine the achievement of this objective as it would result in a form that is less compatible with the size of the land through putting pressure on compliance with the setbacks and have associated effects on the achievement of internal and external residential amenity.

Furthermore, the proposed development (inclusive of the proposed height exceedance) is consistent with the objectives of the R3 Medium Density Residential land use zone, as presented in **Table 2**.

Table 2 Consistency with R3 Medium Density Residential Use Objectives

Objective	Alignment
<i>To provide for the housing needs of the community within a medium density residential environment.</i>	The proposal contributes 76 units, in a mid-rise form, directly addressing the community's housing needs.
<i>To provide a variety of housing types within a medium density residential environment.</i>	A mix of 2-bedroom, 3-bedroom and 4-bedroom units are proposed, however the majority of the dwellings are proposed to be 3-bedroom units which suits the demographic of the area which largely comprises of families and down sizers.

Objective	Alignment
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The development is purely residential, maintaining the intended zoning characteristics. A range of services are located within the St Ives Town Centre which is within walking distance of the site.
<i>To provide a transition between low density residential housing and higher density forms of development.</i>	The proposed development provides a considered and sensitive transition between the adjoining low-density residential dwellings (comprising 1–3 storeys) and the proposed higher-density built form. The development comprises two buildings of up to six storeys, designed with a strong emphasis on articulation and modulation to reduce visual bulk and scale. A four-storey podium has been incorporated along Cowan Road, establishing a human-scaled interface that responds sympathetically to the existing residential character of the area. The upper levels are progressively set back, creating a recessive built form that minimises visual impact when viewed from the street and adjoining properties. These setbacks reduce the perceived height of the buildings and contribute to a well-considered transition in scale. The design ensures that the built form steps down appropriately towards lower-density dwellings and maintains amenity, privacy, and solar access for neighbouring properties. In doing so, the development achieves a graduated and respectful transition between low-density housing and higher-density residential development, consistent with the planning intent for this locality.

In light of the above, it is clear that the proposed height variation achieves the objective of the Height of Building development standard as well as the R3 zone objectives notwithstanding the non-compliance.

5.2 Clause 4.6(3)(b): Sufficient environmental planning grounds to justify the contravention of the development standard

Clause 4.6(3)(b) of the LEP requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole.

Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action at [24]*). In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 Variation Request must be particular to the circumstances of the proposed development on that site at [60].

In this instance, the relevant aspect of the development is the proposed exceedance of the 11.5m height limit under the LEP, and the 22m non-discretionary height and the exceedance of the 6 storey development standard under Chapter 6 of the Housing SEPP. There are sufficient environmental planning grounds to justify this contravention, as described below.

Sloping Topography and Irregular Existing Ground Level

The site was cleared and remediated as part of DA0270/22 (refer to **Figure 14**). As shown in **Figures 3-4** and reproduced again in **Figures 10** and **Figure 11**, these works have resulted in a partially benched and highly irregular existing ground level, which is then used for the purposes of measuring the maximum height. Therefore, whilst the proposal presents a 6 storey form, from both Cowan Road and the Golf Course consistent with the LMR controls, the sloping topography combined with the irregular existing ground level results in unavoidable numerical variations to the controls if a 6 storey building consistent with the LMR's intent is located on the site.



Figure 14 View of the central and northern portion of the site showing the irregularity of the ground level, as observed 20 May 2025, facing south-east



Figure 15 Northern Elevation Plan – Building B

Contribution to Housing Supply in a Well-Located Location

The development directly responds to the need to provide more housing in the Ku-ring-gai LGA in close proximity to the St Ives Town Centre, which contains numerous community facilities, services, green spaces, and public transport options, all within walking distance. The proposal aligns with the Department's vision for well-connected urban areas, taking advantage of the Low- and Mid-Rise Housing Reforms to increase the provision of well-located homes, noting that this site in particular experience exceptional amenity and outlook due to its position between the golf course and public open space. The proposed variation is also consistent with sustainable urban development principles, reducing car dependence and supporting a transit-orientated community.

The proposal will contribute 76 new dwellings to the market, where the NSW Government has set a target of 7,500 new dwellings in the Ku-ring-gai LGA by 2029. Removal of the 6th storey to achieve technical compliance would reduce the

number of dwellings by 5 (noting the upper level apartments are all large in nature). Shifting the core to the Cowan Road frontage in order to fall below the height plane was considered but would then result in an excessive distance from the lifts to the majority of apartments and present a larger form at the street frontage rather than the centre of the site.

The loss of dwellings is contrary to the objectives of the Ku-ring-gai Local Strategic Planning Policy, to:

- Provide housing close to transport, services and facilities to meet the existing and future requirements of a growing and changing community
- Provide a range of diverse housing to accommodate the changing structure of families and households and enable ageing in place.

The height variation enables the development to maximise the potential of this well-connected and highly accessible site, aligning with the principles of sustainable urban development, and contributing to a transit-orientated area.

No Perceptible Environmental Impacts

The proposed height and storey variation does not result in any material environmental impacts, as the built form has been carefully designed to integrate seamlessly with the surrounding context while maintaining solar access, privacy, and streetscape character.

- No excessive bulk or scale – The development includes upper-level setbacks, façade articulation, and varied materials to reduce visual dominance and ensure a human-scaled streetscape.
- Solar access maintained – The variation has a negligible impact on the solar access of the adjacent residential building, with compliant ADG solar access is achievable at the neighbouring properties.
- Landscaping and streetscape integration – The podium aligns with the existing built form, while generous landscaping and street setbacks soften the building's presence.

In light of the above, it is clear that the planning framework for Ku-ring-gai provides sufficient environmental planning grounds to justify the contravention to the height of building standard.