

Clause 4.6 Variation Request

Maximum Floor Area Above Podium

15-17, 25-27 Blaxland Road and 440-442 Concord Road, Rhodes

Submitted to Department of Planning, Housing and Infrastructure
on behalf of Ecove Group Pty Limited



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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1.0 Introduction

This Clause 4.6 Variation Request has been prepared by Ethos Urban on behalf of Ecove Group Pty Limited ('Ecove' or 'the Applicant'). It is submitted to the Department of Planning, Housing and Infrastructure (DPHI) in support of a State Significant Development Application (SSDA) for a proposed mixed use development (the Proposal) on land identified as 15-17, 25-27 Blaxland Road and 440-442 Concord Road, Rhodes (the Site).

Clause 4.6 of the *Canada Bay Local Environmental Plan 2013* (CB LEP 2013) enables the consent authority to grant consent for development even though it contravenes a development standard.

This Clause 4.6 variation request relates to the development standard for the maximum floor area (above podium) under Clause 7.5(2) of the CB LEP 2013. It should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Ethos Urban.

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. Clause 4.6(3) 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* (Clause 4.6(3)(a)); and
- *There are sufficient environmental planning grounds to justify the contravention of the development standard* (Clause 4.6(3)(b)).

This document demonstrates that compliance with the maximum floor area (above podium) is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation).

1.1 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a).

Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
- *Moskovich v Waverley Council* [2016] NSWLEC 1015;
- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46; and
- *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065.

In accordance with the above requirements, this Clause 4.6 variation request:

- Identifies the site and proposed development (**Section 2.0**);
- Identifies the development standard to be varied (**Section 3.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**).

2.0 Site and Proposal

2.1 Site Description

The Site is identified as 15-17, 25-27 Blaxland Road and 440-442 Concord Road, Rhodes. It comprises a total area of 5,608m² and seven (7) lots described in **Table 1** and illustrated in **Figure 1**. It includes an approximate 130m frontage to Concord Road (State Road) to the east, 113m frontage to Blaxland Road (Local Road) to the west, 40m frontage to an adjoining property to the south, and 60m frontage to an adjoining property to the north. A detailed Site Survey has been prepared by LTS Lockley and is included at **Appendix E** of the EIS.

Table 1 Site description

Ref.	Legal description	Address
1	Lot C DP 432340	442 Concord Road
2	Lot C DP 411859	440 Concord Road
3	Lot D DP 411859	
4	Lot E DP 411859	
5	Lot F DP 411859	27 Blaxland Road
6	SP 71065	25 Blaxland Road
7	Lot 1 DP 833959	15-17 Blaxland Road



Figure 1 Site aerial

Source: Nearmap, edits by Ethos Urban

2.2 Existing Development

The existing development on the Site currently includes a total of five (5) existing buildings, including Rhodes Fire Station operated by Fire and Rescue NSW, a two-storey shared hall (and below ground parking) with mixed commercial and retail uses, a 4-storey commercial building, three (3) separate 1-storey residential dwellings, and a 3-storey apartment complex. It includes mature vegetation located across the Site, both within the lots and along the street frontages, contributing to its existing character. Site photographs are provided in **Figure 2** below, depicting the existing development.



View of 440, 442 Concord Road looking south-west



View of the existing Fire Station along Concord Road looking west



View of 25 Blaxland Road from Concord Road looking west



View of 15-17 Blaxland Road from Concord Road looking west



View of 15-17 Blaxland Road from Blaxland Road looking north-east



View of the site looking down Blaxland Road to the south

Figure 2 Site photographs

Source: Ecove

2.3 Site Characteristics and Environmental Features

The key characteristics and environmental features of the Site are identified and described in **Table 2** below.

Table 2 Site characteristics and environmental features

Matter	Description
Topography	The existing topography of the Site is illustrated on the detailed Site Survey (Appendix E of the EIS). Along the Blaxland Road frontage, the Site falls approximately 2.8m from south to north (RL 8.8m to RL 6m). Along the Concord Road frontage, the Site falls approximately 2.2m from south to north (RL5.5m to RL3.3m). The cross fall (west to east) is approximately 3.3m at the southern end and 2.7m at the northern end. The diagonal fall across the Site from southwest to northeast is approximately 5.5m.
Vegetation	The Site contains multiple mature trees distributed throughout, including along the street frontages of both Blaxland Road and Concord Road. Additionally, the houses and apartment complex feature landscaped green spaces in both the front and rear of the properties.
Heritage	The Site does not contain any local or state significant heritage items nor is it located within a heritage conservation area. A number of heritage items are located in close proximity to the Site.

Matter	Description
Easements	As identified on the Survey Plan (Appendix E of the EIS), the Site includes a drainage easement that traverses the northern boundary of Lots C and D in DP 411859 and benefits Council. It includes a Council stormwater line which forms part of the surrounding network with details such as existing pipe routes, levels, lengths, and sizes illustrated on the Survey Plan.
Adjacent Infrastructure	The Site is located directly adjacent to Rhodes train station, which services the T9 Northern Line. The train line acts as a distinct boundary, separating the Site from developments on the western side of the immediate area. To the east, the Site is bordered by Concord Road (A3), a key arterial road within the wider A-road network. Concord Road directly adjoins McIlwaine Park and the broader Brays Bay Reserve. The remaining surrounding infrastructure primarily consists of low-density residential housing.
Public Transport and Access	<p>Public transport</p> <p>The Site is well-served by various forms of public transport, offering significant connectivity advantages. Notably, it is situated directly east of Rhodes train station, providing convenient access to the T9 Northern Line which runs through the north shore and CBD. Additionally, the Site is supported by existing bus routes, with primary pick-up and drop-off points located along Concord Road, Blaxland Road, and Walker Street.</p> <p>Vehicular Access</p> <p>Vehicular access to the Site is provided through multiple driveways. For 9, 15-23, and 25 Blaxland Road, access is via private hardstand driveways leading to below-ground basements. At 424 Concord Road, access is provided by an at-grade driveway with direct frontage to Concord Road. Meanwhile, 440 Concord Road benefits from dual frontage, offering vehicular access via a singular driveway connecting to both Blaxland Road and Concord Road.</p> <p>Pedestrian and Cycle Access</p> <p>Pedestrian access to the Site is facilitated via existing footpaths along Blaxland and Concord Road. To access McIlwaine park and Brays Bay Reserve from Rhodes railway station, pedestrians must cross the lights along Concord Road. There are no designated cycle routes connecting to either Blaxland Road or Concord Road.</p>

2.4 Description of the Proposal

The Applicant will seek development consent under 'Division 4.7 – Stage Significant Development' of the EP&A Act for the construction and occupation of a proposed mixed use development comprising retail uses, a new Fire Station and landscaped public open space at the ground plane, seniors housing within the podium, and two (2) residential towers comprising a height of 22 storeys and 26 storeys from Blaxland Road, respectively.

Specifically, this SSDA seeks approval for:

- Site preparation works, including demolition of existing structures, tree removal, remediation and bulk excavation;
- Site servicing and infrastructure works, including the extension and augmentation of services and infrastructure as required;
- Construction and occupation of a mixed use development comprising a total GFA of 46,264m², including:
 - Basement comprising four (4) levels, 431 car parking, 15 motorcycle, and 840 bicycle spaces;
 - Lower Ground Floor (Concord Road) comprising a new Fire Station, retail tenancy (subject to a future detailed operation and fit out), loading dock including retail, seniors housing and residential services and back of house areas;
 - Upper Ground Floor (Blaxland Road) comprising retail tenancies (subject to a future detailed operation and fit out), residential and seniors housing lobbies, and basement entry;
 - Podium comprising three (3) levels with 30 independent living units and a residential aged care facility with 93 beds; and
 - Two (2) residential towers comprising a total of 348 dwellings with communal open space on the podium roof.
- Landscaping and public domain works including a garden courtyard and public plaza on the Upper Ground Floor elevation along Blaxland Road.

The Proposal is detailed on the Architectural Drawings prepared by Bates Smart included at **Appendix B**. It is supported by a Design Report prepared by Bates Smart & Turf Design Studio included at **Appendix F**.

The following sections detail the Proposal, with perspective renders visualising the development provided in **Figure 3** and **4**.



Figure 3 View of the Concord Road frontage looking north-west

Source: Bates Smart



Figure 4 View of the Blaxland Road frontage looking north-east

Source: Bates Smart

3.0 Development Standard to be Varied

This Clause 4.6 Variation Request seeks to justify contravention of the development standard set out in Clause 7.5(2) of the CB LEP 2013 'Minimum building separation and maximum floor areas above building podiums in Rhodes Precinct', which states:

(2) Development consent must not be granted to development that results in the gross floor area of a floor of a building in the Rhodes Precinct exceeding 750 square metres.

(3) This clause does not apply in relation to the podium of a building in the Rhodes Precinct.

CB LEP 2013 defines 'gross floor area' as:

the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes—*
- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.*

4.0 Nature of the Variation Sought

The Proposal includes two towers above a common podium. The 'northern tower' comprises 22 storeys above the podium and the 'southern tower' is 18 storeys above the podium. The non-compliance to the development standard applies to both towers and is outlined in **Table 3** below.

For the northern tower, the lower 15 storeys are in excess of the maximum 750m² GFA. The extent of non-compliance ranges from approximately 10% for the upper most non-complying storey and approximately 44% for the lowest non-complying storey. Across all above podium storeys, the average of the non-compliance is approximately 12%.

For the southern tower, all but the upper most storey are in excess of the maximum 750m² GFA. The extent of non-compliance ranges from approximately 3% for the upper most non-complying storeys and approximately 12.5% for the lowest non-complying storeys. Across all above podium storeys, the average of the non-compliance is approximately 1.6%.

Across both towers, on average, the non-compliance is approximately 7%. Excluding the plant levels, the additional GFA across both towers (over and above the maximum of 750m² by level) is 3,665m².

Table 3 Gross floor areas (above podium) for each floor

Level	Northern Tower	Southern Tower
Level 25	0m ²	-
Level 24	282m ²	-
Level 23	346m ²	-
Level 22	430m ²	-
Level 21	546m ²	0m ²
Level 20	634m ²	620m ²
Level 19	744m ²	770m ²
Level 18	828m ²	770m ²
Level 17	878m ²	770m ²
Level 16	906m ²	770m ²
Level 15	992m ²	770m ²
Level 14	1,078m ²	844m ²
Level 13	1,078m ²	844m ²
Level 12	1,078m ²	844m ²
Level 11	1,078m ²	844m ²
Level 10	1,078m ²	844m ²
Level 9	1,078m ²	844m ²
Level 8	1,078m ²	844m ²
Level 7	1,078m ²	844m ²
Level 6	1,078m ²	844m ²
Level 5	1,078m ²	844m ²
Level 4	1,083m ²	806m ²

5.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of CB LEP 2013 provides that:

4.6 Exceptions to development standards

(3) Development consent must not be granted for 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.

The relevant matters contained in clause 4.6 of CB Bay LEP 2013, with respect to the maximum floor area (above podium) development standard, are each addressed below, including with regard to the relevant case law.

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

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under Clause 4.6 where subclause 4.6(3)(a) uses similar language to Clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of CB LEP 2013 is essentially the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

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

This Clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the maximum floor area (above podium) development standard pursuant to the First Method and the Third Method.

5.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard

There are no specific objectives for the maximum floor area (above podium) development standard at Clause 7.5(2) of CB LEP 2013. There are however objectives included at Clause 7.1 of CB LEP 2013 for the various development standards applicable to the entire Rhodes Precinct:

- (a) to achieve the highest standard of architectural and urban design in the Rhodes Precinct by ensuring that new development exhibits design excellence, including excellence in sustainably managing the environmental impact of the development on existing and future populations,*
- (b) to allow for a mix of land uses that will—*
 - (i) provide an appropriate balance between residential, retail, commercial and other land uses within the Rhodes Precinct, and*
 - (ii) encourage the provision of a range of services and facilities to help meet the needs of the population and users of the Rhodes Precinct, and*
 - (iii) generate employment in the Rhodes Precinct, and*
 - (iv) establish a significant new people-oriented public domain and foreshore area and other vibrant public plazas and public spaces,*
- (c) to support growth in the Rhodes Precinct by ensuring the provision of appropriate infrastructure that is sensitive to environmental impacts.*

These objectives are addressed below, far as they are relevant to this specific development standard.

Objective (a): to achieve the highest standard of architectural and urban design in the Rhodes Precinct by ensuring that new development exhibits design excellence, including excellence in sustainably managing the environmental impact of the development on existing and future populations

The Proposal displays a high standard of architectural and urban design and has undergone a design excellence process in accordance with Clause 7.2 of CB LEP 2013. In relation to the Proposal, the Design Competition Jury noted specifically: “The exclusion of the infill building element breaks down the podium mass, providing two separate towers that maximise the light and opportunity for views from buildings in the west and from key areas of the public domain including Rhodes railway station and McIlwaine Park.” Refer to Section 5.2.1 below for more discussion.

Objective (b): to allow for a mix of land uses that will—

- (i) provide an appropriate balance between residential, retail, commercial and other land uses within the Rhodes Precinct, and***
- (ii) encourage the provision of a range of services and facilities to help meet the needs of the population and users of the Rhodes Precinct, and***
- (iii) generate employment in the Rhodes Precinct, and***
- (iv) establish a significant new people-oriented public domain and foreshore area and other vibrant public plazas and public spaces.***

Refer to Section 5.2.1 below. Redistributing floor space from the podium and infill building allows for a better pedestrian experience and public domain along Blaxland Road.

Objective (c): to support growth in the Rhodes Precinct by ensuring the provision of appropriate infrastructure that is sensitive to environmental impacts.

N/a

5.1.2 The underlying objectives and principles of the Rhodes Place Strategy 2021 is achieved notwithstanding non-compliance with the standard

The development standards, including minimum building separation (above podium), within Part 7 of the CB LEP 2013 are informed by the urban design analysis undertaken as part of the Rhodes Place Strategy 2021. Consistency with the relevant objectives, urban design principles, and specific planning and infrastructure requirements for the Station Gateway East Character Area are set out in **Table 3** below.

Table 4 Consistency with the Rhodes Place Strategy 2021

Requirement	Assessment
Relevant objectives	
1. Plan for a sustainable future: Build sustainability and longevity into planning, design and commercial capability from the start.	N/a
2. Prioritise active transport: Design integrated transport services and experiences that prioritise walking, cycling and the use of public transport.	N/a
4. Plan for affordable housing: Provide affordable housing options for lower income residents, including those working in teaching, child care, policing or nursing.	N/a
5. Create opportunities for new jobs: Encourage commercial floor space near the station for future employment.	N/a
6. Improve east-to-west connections: Improve accessibility around the rail station and between east and west Rhodes so that people can easily move between homes, jobs, shopping, recreation and entertainment areas.	N/a
7. Integrate infrastructure and land use: Plan to have the necessary infrastructure (including social facilities) in place as the number of residents and workers increase.	N/a
8. Plan for a mix of building densities and street-level activity: Design a range of buildings, from terraces to apartment buildings, that bring activity and interest to lower levels of buildings, helping to create more open space, more sunlight and a closer connection to the street, other people and amenities.	Achieved – refer to Section 5.2.1 below.
Urban Design Principles	
1. Design open space for amenity - Existing and proposed open space should be designed for amenity rather than relying on interventions, improvements and/or retrofits that compromise the intent or quality of the space.	Achieved – refer to Section 5.2.1 below.
2. Prioritise pedestrians - The pedestrian experience must be prioritised to improve transport outcomes.	N/a
3. Minimise overshadowing of open space - An overall height strategy must minimise overshadowing of existing and future open space, as well as existing and future residential.	Achieved –refer to Section 5.2.5 below.
4. Plan for density near public transport - The highest concentration of new residents and development will be nearest to public transport.	N/a
5. Balance of density and public benefit - Deliver neighbourhoods where the public realm is greatly improved and density it matched with amenity.	N/a
6. Celebrate new open space on Parramatta River - New open space should celebrate the peninsula location and amenity of Parramatta River by emphasising view lines and proximity to the waterfront.	N/a
7. Create a varied and permeable skyline - People will see a varied skyline and blue sky between buildings when looking from McIlwaine Park, Rhodes West Park, Brays Bay, Bennelong Bridge, Concord Road south and Parramatta River.	Achieved – refer to Section 5.2.1 below.
8. Share views across the precinct - Planning and design will prioritise views of the water, destinations and wayfinding while acknowledging the historic and holistic redevelopment intent and protecting privacy.	Achieved – refer to Section 5.2.4 below.
9. Design streets and public areas for human comfort - People walking in or using public areas should feel a sense of openness and activity with taller buildings set back from active building podiums.	Achieved – refer to Section 5.2.1 below.

10. Create a sense of variety and uniqueness in character areas -
Each of the character areas will be designed to have their own sense of charm and personality, while being developed in a way that is consistent with the overall vision for Rhodes.

Achieved – refer to Section 5.2.1 below.

5.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of CB LEP 2013 requires the consent authority to be satisfied the applicant has demonstrated 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].

There are sufficient environmental planning grounds to justify contravention of maximum floor area (above podium) development standard in this specific instance, as described below.

5.2.1 A better urban design outcome is achieved by the Proposal notwithstanding non-compliance with the standard

The Rhodes Place Strategy informed the planning controls for the Site set out in Part 7 of CB LEP 2013 and CB DCP 2023. The later includes an indicative envelope to illustrate the potential development of the Site This envelope includes a low rise 'infill' built form sitting between the two larger towers (see **Figure 5**).

A key urban design move of the Proposal (and element of winning design competition scheme), has been to remove this element as well as part of the podium fronting Blaxland Road. This in turn provides a clearer distinction between the two tower forms, allowing them to come to the ground, creates the publicly accessible garden courtyard on Blaxland Road, and opens up the space between the towers proving an improved pedestrian experience (**Figure 6**). The floor area 'removed' from the podium and infill building equates to approximately 3,660m². This floor space is in turn redistributed within the floors of the two towers in a sensitive manner that minimises impacts on the surrounding public domain and adjacent developments and maintains a permeable and varied skyline (**Figure 7**).

Overall, this represents a better urban design outcome, when compared to the applicable planning controls.

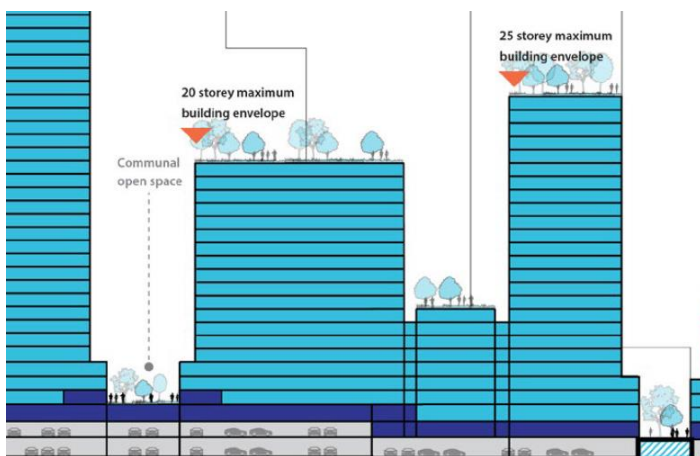


Figure K16-40 from CB DCP 2023 showing a north-south section through the site envelope



Page K151 - 'Examples of the desired built form outcome incorporating tower design controls'

Figure 5 Extract from CB DCP 2023

Source: Canada Bay DCP 2023



Figure 6 Removing the infill building and podium opens up the space between the towers and improves the Blaxland Road pedestrian experience

Source: CB DCP 2023



Figure 7 The Proposal with its future urban context

Source: Bates Smart

5.2.2 A high level of residential amenity is achieved notwithstanding non-compliance with the standard

Notwithstanding the non-compliance with the maximum floor area (above podium) development standard, the residential apartments from Level 4 upwards benefit from a wide range of factors that combined, ensure a very high level of amenity is provided (**Figure 8**). These factors include:

- The floor plates of each tower have been planned to allow the most apartments to take advantage of the water views to Brays Bay, Parramatta River and the parklands to the east. All apartments include generous sized windows to take advantage of these views and to provide ample natural day light;
- Due to the orientation of the site and the desire to capture the water views, only 43% of the apartments achieve the required 2 hours of solar access at mid-winter (between 9am and 3pm). When taken between 8am - 4pm increases this percentage to 72%. No more than 15% of apartments receiving no direct sunlight

between 9am-3pm at mid-winter. Overall, a superior amenity outcome is achieved with this approach over strict compliance with the ADG which would mean facing the apartments away from the water views;

- 63% of the proposed apartments will be naturally cross ventilated;
- Floor to floor heights of 3.15m and 3.25m for the residential apartments can deliver habitable room ceilings of 2.7m and non-habitable room ceilings of 2.4m throughout;
- All apartments are in excess of the minimum size requirements under the ADG;
- Private open space in the form of balconies and courts all exceed the minimum requirements under the ADG;
- Storage facilities for the apartments are provided in accordance with the ADG; and
- All apartments have access to generous communal open space on site as well as the public accessible plaza and garden courtyard at street level. In addition, the adjacent Mcllwaine Park and Brays Bay foreshore offers outstanding open space amenity.

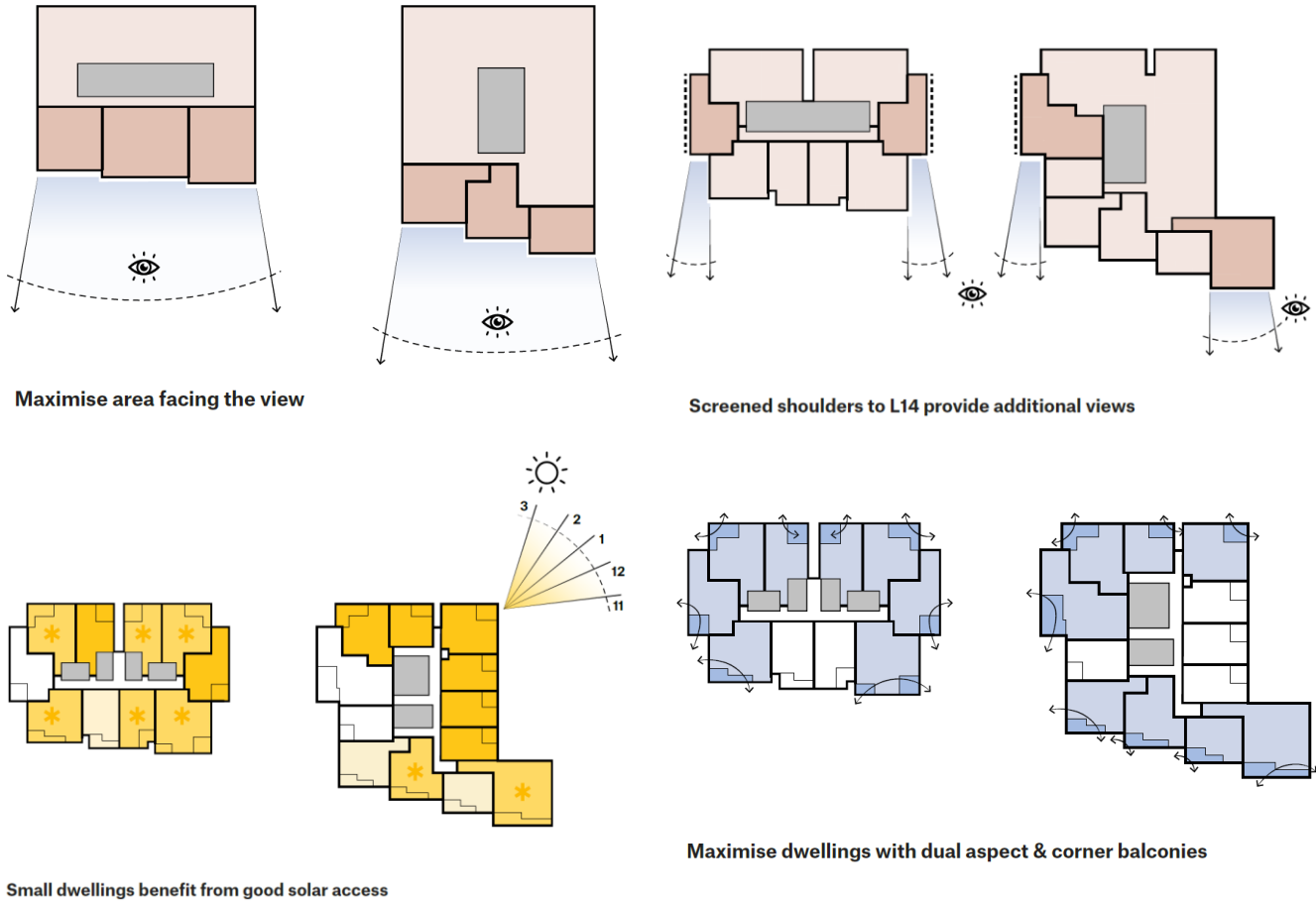


Figure 8 Residential amenity principles

Source: Bates Smart

5.2.3 Visual impacts from the public domain are acceptable notwithstanding non-compliance with the standard

A visual impact analysis is included at Appendix 7 of the Design Report (**Appendix F**) includes key viewing points from the public domain (**Figure 9**). The primary public domain viewing point towards the Proposal are from Mcllwaine Park to the east. Secondary viewing points include the northern and southern approaches of Concord Road.

Figure 10 illustrates views towards the proposed development from selected positions along the Mcllwaine Park foreshore. The extensive mature tree canopy along the western edge of the park obscures the lower, larger floor plates within each tower. The upper portions of the towers sit comfortably within the silhouettes the adjacent existing and proposed towers, many of which is substantially taller and bulkier than the Proposal. Within this context, the non-compliance with the maximum, above podium floor areas is negligible.

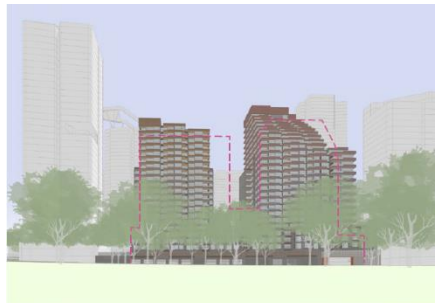


Figure 9 Visual analysis viewing points

Source: Bates Smart



View 2 – from McIllwaine Park (south)



View 4 – from McIllwaine Park (central)



View 5 – from McIllwaine Park (north)

Figure 10 Viewing points from within McIllwaine Park

Source: Bates Smart

5.2.4 There are no significant view impacts notwithstanding non-compliance with the standard

The impact of the non-compliances on views of surrounding existing and proposed residential development is outlined in **Table 4** below.

Table 5 Summary for view impacts from the non-compliances from surrounding developments

Property	Commentary
9-13 Blaxland Road	Existing views extend of the Site to the north across the Rhodes Peninsula. The areas of non-compliance sit within the complying building silhouette therefore there is loss of views. As noted above, the living areas and balconies of the apartments within this building are oriented toward the north-east and north-west.
Rhodes Central	Existing views over the top of the rail corridor and the existing buildings on the Site are towards Mcllwaine Park, Brays Bay and beyond. The Proposal will obscure the majority of this view. The areas of non-compliance do not generate any significant view loss.
18-22 Walker Street	Existing views over the top of the rail corridor and the existing buildings on the Site are towards Mcllwaine Park, Brays Bay and beyond. The Proposal will obscure the majority of this view. The areas of non-compliance do not generate any additional view loss.
24 Walker Street	Existing views over the top of the rail corridor and the existing buildings on the Site are towards Mcllwaine Park, Brays Bay and beyond. The Proposal will obscure the majority of this view. The areas of non-compliance do not generate any additional view loss.
34 Walker Street	Existing views over the top of the rail corridor and the existing buildings on the Site are towards Mcllwaine Park, Brays Bay and beyond. The Proposal will obscure the majority of this view. The areas of non-compliance do not generate any significant view loss.
34-41 Blaxland Road	Existing views extend across the site towards the Rhodes Corporate Park and beyond. The areas of non-compliance do not generate any additional view loss.

5.2.5 Shadow impacts are acceptable notwithstanding non-compliance with the standard

The non-compliance with Clause 7.5(2) does not give rise to any adverse shadow impacts. The areas of non-compliance are all within the maximum envelope applicable to the site established by the sun access protection provisions at Clauses 7.3 and 7.16 of CB LEP 2013 (**Figure 11**). This relates to Brays Bay Reserve, Mcllwaine Park (Primary and Secondary Zones) and Union Square. Within the Site, the areas of non-compliance do not cast shadow onto the public domain within and immediately around the site.

No additional overshadowing is generated on any surrounding residential development as a result of the non-compliance.

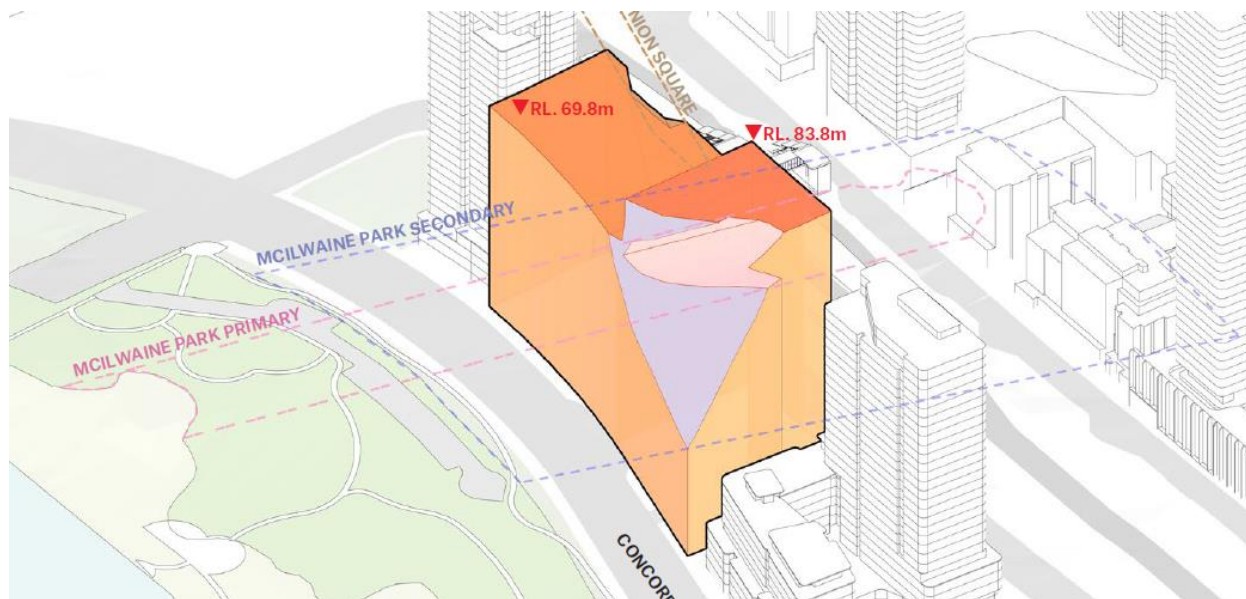


Figure 11 Combined solar protection and height envelope

Source: Bates Smart

5.2.6 Consistency with Objects of the EP&A Act

In *Initial Action*, the Court stated that the phrase ‘environmental planning grounds’ is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the contravention should be consistent with each of the relevant objects of the Act, as set out in **Table 6**, we consider the proposed contravention is broadly consistent with each relevant object of the Act, notwithstanding the proposed variation to the maximum floor area above podium development standard.

Table 6 *Assessment of consistency of the proposed development with the objects of the EP&A Act*

Object	Comment
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i>	The proposed variation to the maximum floor area above podium development standard provides an improved outcome to the development envisaged on the site by the Rhodes Place Strategy, by removing the ‘infill’ component, as detailed in Section 5.2.1 . This infill building equates to approximately 3,660m ² . This floor space is in turn redistributed within the floors of the two towers in a sensitive manner that minimises impacts on the surrounding public domain and adjacent developments and maintains a permeable and varied skyline. Overall, this represents a better urban design outcome, when compared to the applicable planning controls and therefore promotes the social and economic welfare of the community and a better environment.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The proposed variation to the maximum floor area above podium development standard will not preclude the development from achieving ecologically sustainable development by ensuring compliance with the performance standards for the energy efficiency of buildings. Further, the proposed variation will have no negative impact on environmental and social considerations and will support the economic health of Rhodes.
<i>(c) to promote the orderly and economic use and development of land,</i>	The site is significantly underutilised and is occupied by a mixture of low to medium scale buildings, all of which are in need of urban regeneration to reflect the intended development set out for the site in the Rhodes Place Strategy. The site is strategically located within the Rhodes CBD and has excellent amenity and access to public transport, being adjacent to the Rhodes railway station. The proposed development with varied above podium floor area is considered to be a balanced and orderly design outcome that responds to the unique characteristics of the site, does not represent the over intensification of land, and which achieves an improved outcome to the planning controls and vision for an infill component to be included (refer to Section 5.2.1 for further detail).
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	This object is not relevant to the proposed development and the exceedance to the maximum floor area above podium development standard.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The proposed exceedance to the maximum floor area above podium development standard will have no impact on threatened species or ecological communities.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The proposal and the exceedance to the maximum floor area above podium development standard will not impact the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).
<i>(g) to promote good design and amenity of the built environment,</i>	<p>The proposal has been subject to an Invited Architectural Design Competition to select the highest quality architectural, landscape and urban design solution. Following design competition deliberations, the design competition Jury selected Bates Smart (Architect) and Turf Design Studio (Landscape Architect) as the winner.</p> <p>The Jury considered the scheme, by Bates Smart and Turf Design Studio demonstrated a superior response to functional design and planning, and the general objectives of the Brief. In comparison to the other schemes, the Jury believed that the Bates Smart and Turf Design Studio scheme represented the most workable outcome with robust foundational principles and was therefore most capable of achieving design excellence.</p>

Object	Comment
	The proposed variation to the maximum floor area above podium development standard will result in an appropriate outcome that aligns with the intention of the provision as detailed in Section 5.1.1 and will not result in an additional adverse environmental impact on the surrounding area.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed development will comply with all relevant construction codes and standards and will promote the health and safety of occupants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	This object is not relevant to this proposed development.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The proposed development will have no impact on community participation in environmental planning and assessment.

6.0 Conclusion

The assessment above demonstrates that compliance with the maximum floor area (above podium) development standard contained in clause 7.5(2) of the CB LEP 2013 is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the maximum floor area (above podium) standard:

- The extent of non-compliance is relatively minor,
- Compliance with the development standard would be unreasonable and unnecessary, because:
 - it meets the relevant stated Part 7 CB LEP 2013 objectives; and
 - it meets the underlying objectives and principles outlined in the Rhodes Place Strategy 2021; and
- There are sufficient environmental planning grounds to justify the contravention, including:
 - a better urban design outcome is achieved by the Proposal,
 - a high level of residential amenity is achieved,
 - visual impacts from the public domain are acceptable,
 - there are no significant view impacts, and
 - shadow impacts are acceptable.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in clause 4.6(3) of the CB LEP 2013 and may grant development consent notwithstanding the contravention of the maximum floor area (above podium) development standard.