

GYDE

Clause 4.6 Variation Request

Crows Nest OSD (Site A) – Detailed SSDA
| SSD-75660711

**Submitted to the Department of Planning, Housing and
Infrastructure
on behalf of Thirdi Crows Nest Commercial Developments Pty Ltd**

7 November 2025

Acknowledgment of Country

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.



Towards Harmony by Aboriginal Artist Adam Laws

This report was prepared by:

Approver: Susan E Francis – Executive Director
Authors: Olivia Page – Associate Director
Oscar Davie – Senior Project Planner
Project: 23-340
Report Version: Final for RtS/Amendment Report

Disclaimer

This report has been prepared by Gyde Consulting with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. Gyde Consulting accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

Copyright © Gyde Consulting
ABN 58 133 501 774

All Rights Reserved. No material may be reproduced without prior permission.

Contents

1.	Introduction.....	1
2.	The Site.....	3
3.	Standard to be Varied	4
4.	Extent of Variation.....	5
5.	Unreasonable or Unnecessary.....	8
5.1	The objectives of the development standard are achieved notwithstanding non-compliance with the standard.....	8
5.2	The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	15
5.3	The underlying object or purpose of the standard would be defeated or thwarted (undermined) if compliance was required and therefore compliance is unreasonable.....	15
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.	15
5.5	The zoning of the land is unreasonable or inappropriate.....	15
6.	Sufficient Environmental Planning Grounds.....	16
7.	Conclusion	18

1. Introduction

This Clause 4.6 Variation Request has been prepared by Gyde Consulting (Gyde) on behalf of Thirdi Crows Nest Commercial Developments Pty Ltd (Third i) to support a State Significant Development Application (SSDA) (SSD-75660711) in relation to 32 Hume Street, Crows Nest (the site).

The SSDA seeks consent for the construction and operation of a mixed-use, residential-led Over Station Development (OSD) above the operational Crows Nest Metro Station in the North Sydney Local Government Area (LGA).

This Clause 4.6 Variation Request has been prepared to support a variation to the maximum permitted building height standard that applies to the site (RL 180m) under Clause 4.3 of the *North Sydney Local Environmental Plan 2013* (NSLEP). It accompanies the Response to Submission and Amendment Report package for this detailed SSDA.

As outlined by the submitted post-exhibition detailed SSDA documentation, there are proposed amendments to the detailed design scheme. Design amendments that relate to the proposed height variation include:

- Thickened structural transfer beams at the lower levels to structurally accommodate the residential tower loads (compared to the originally contemplated commercial tower load) on top of the existing metro box. These structural transfer beams are essential in order to build the project.

Towers 1 and 2:

- Provision of a 2.675 metre transfer slab above the roof of level 3.
- Provision of a 3.225 metre transfer slab above the roof of level 2.

Tower 3:

- Provision of a 1.7 metre transfer slab above the roof of the mezzanine level
- Provision of a 1.5 metre transfer slab above the roof of the ground level
- Increased floor to floor heights from a minimum of 3.05 metres to a minimum 3.2 metres, which we have been advised is required from a buildability perspective having regard to the *Design and Building Practitioners Act 2020*.
 - Levels 4- 23 (inclusive) Towers 1 and 2 - + 0.15m per floor, being a total of 3 metres across the entire 2 towers
 - Level 21 – increased floor-to-floor by 0.25m for services transfer between the lower and upper-level floorplates
 - Level 24 (previous level 25) – new internal communal open space level (rather than the originally proposed commercial) increasing by 0.2m (3.3m to 3.5m)
 - Noting – removal of one residential level with a typical floor-floor of 3.05m hence, equates to a reduction of 3.05m
 - Rooftop level – increase in the height of the lift overrun by 2m as a result of technical lift feedback to service the rooftop (3.7m to 5.7m)
- Deletion of level 25 Built to Rent (BTR) apartments and conversion of the original BTR apartment on level 24 to internal community open space.

The maximum height of the proposed detailed design scheme, being RL 188.3m, exceeds the maximum permitted building height (RL 180m) by 8.3m and has been driven directly by the above listed amendments to the proposal which was essential for the project's delivery. This height exceedance equates to 4.6% of the

standard to be varied. As set out within Section 6 of this report, the proposed height variation is supportable on the following environmental planning grounds:

- The proposed height variation is driven by buildability and structural requirements established with the Metro Box design and form together with matters that are essential to project delivery and buildability.
- Any floor space above the height limit does not comprise residential floor space, instead comprises internal communal open space for in Towers 1 and 2, rooftop communal open space (COS) atop Tower 2 and a commercial rooftop bar atop of Tower 1.
- The shadow footprint that will be cast from the proposed development (as amended) is 'fast moving' and will not result in unacceptable overshadowing to surrounding residential buildings.
- No unreasonable private view loss will occur as a result of the height increase (driven by structural and buildability design changes) that are now sought for in the concurrent detailed SSDA for Crows Nest OSD. (
- The proposed height variation will not contribute towards any perceptible change to the visual appearance of the proposed development, including to/from key public domain vantage points.
- The proposed height variation is supportable from an aviation safety perspective, and the relevant air space approvals will be sought in due course.

The amended detailed SSDA proposal responds to the urgent need for additional housing in line with the *National Housing Accord 2022* (Housing Accord). A proposal which complied with the height standard would mean the Crows Nest OSD would not be structurally viable to deliver and reduce the overall quantum of COS for future residents.

Referenced Material

This report should be reviewed in conjunction with the documents that have been prepared to support the revised scope for this detailed SSDA, including:

- The Amended Detailed Architectural Plans that have been prepared by Woods Bagot dated October 2025.
- The Detailed Amendment Report that has been prepared by Gyde dated October 2025.
- The Detailed Response to Submissions (RTS) Report that has been prepared by Gyde dated November 2025.
- Other supporting technical documentation that has been updated for alignment with the amended scope of this detailed SSDA.

It is noted that there is a concurrent amending concept SSDA which revises the approved concept envelope for Crows Nest OSD Site A (the subject site). A separate clause 4.6 variation request has been prepared to justify the amending concept proposal's exceedance of the height standard.

2. The Site

The site, located at 32 Hume Street, Crows Nest, comprises the entire block bounded by Pacific Highway, Oxley Street, Hume Street, and Clarke Lane. It is legally described as Lot 1, DP1296669 and sits directly above and adjacent to the operational Crows Nest Metro Station (Lot 2, DP1296669).

The current address and title were only recently created following completion of the Crows Nest Metro development. Site A, formerly known as 497–521 Pacific Highway, Crows Nest, was more formally described as Lot A and B of DP 374468, Lots 1–2 of DP 575046, Lot 3 of DP 655677, Lot 4 of DP 1096359, and Lot 10 of DP 1060663.

Site A is rectangular in form, with a total area of approximately 3,879m². It is bounded by Pacific Highway to the west, Hume Street to the south, Clarke Lane to the east, and Oxley Street to the north. The site is generally flat, with the construction of Sydney Metro infrastructure resulting in the complete alteration of its natural ground level. The proposed development will integrate with this infrastructure and deliver active frontages to both Pacific Highway and Hume Street, with Hume Street serving as a key connector between Sites A, B, and C. An aerial of the site (Site A) is provided below.

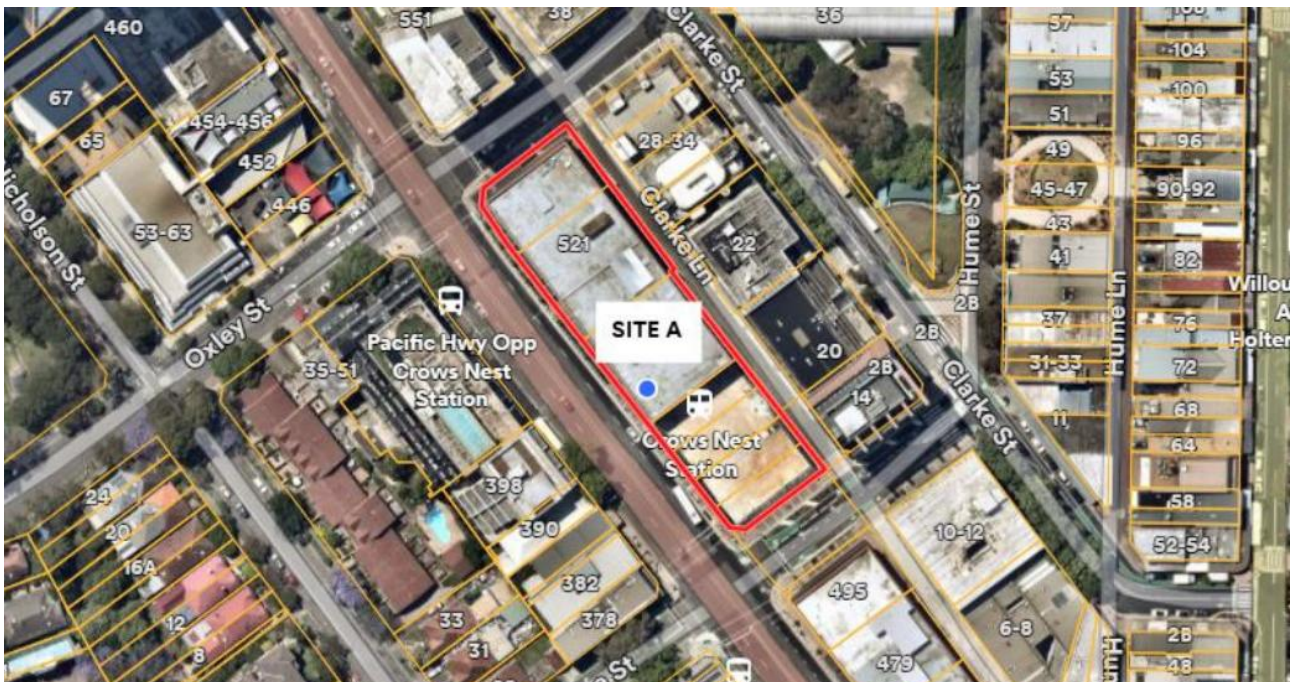


Figure 1 Site Aerial (Source: Nearmap)

For clarity:

- **Lot 1, DP1296669 (Lot 1):**
Relates to Crows Nest Metro Station.
- **Lot 2, DP1296669 (Lot 2):**
Located over and adjacent to Lot 1. Relates to Crows Nest OSD – Site A (subject to this SSDA).
- **Lots 3 and 4, DP1296669:**
Crows Nest OSD Sites B and C (not subject to this SSDA).
- **No Change to 'Site Area':**
The site area for this SSDA (SSD-75660711) remains unchanged since it was initially lodged.

3. Standard to be Varied

Clause 4.3(2) of the NSLEP stipulates that “the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map”.

The maximum permitted building height control that applies to the site, as notated on *Height of Buildings Map – Sheet HOB_001* (extract below) is RL 180m. This numerical Development Standard is the ‘standard to be varied’ by this Clause 4.6 Variation Request.

The maximum permitted building height control that applies to the site under Clause 4.3 is not excluded from the operation of Clause 4.6.

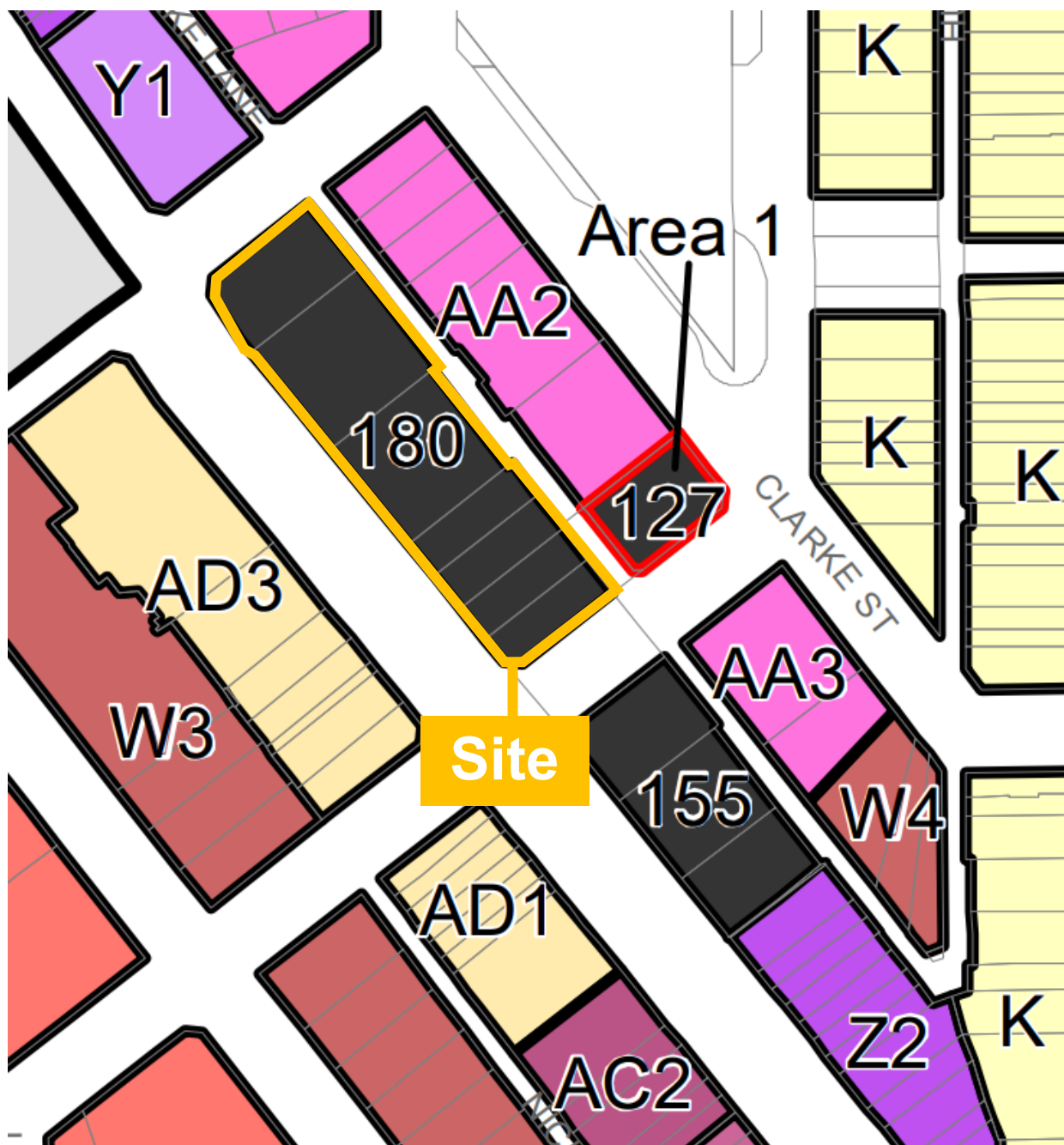


Figure 2 Extract: Maximum Permitted Building Height (Source: Height of Buildings Map – Sheet HOB_001)

4. Extent of Variation

The maximum height of the proposal (RL 188.3m) projects above the maximum permitted building height (RL 180m) under Clause 4.3 of the NSLEP by 8.3m.

A numerical breakdown of the proposed height variation is provided in Table 1. This breakdown considers several aspects of the detailed proposal that project above the maximum permitted building height (RL 180m), the highest of which (RL 188.3m) equates to 4.6% of the standard to be varied.

Table 1: Numerical Breakdown of Proposed Height Variation

Measurement Point	Proposed Height	Extent of Variation
A PV panels	RL 188.3m 8.3m above standard to be varied.	4.6% $8.3 / 180 = 0.046$
B Building core	RL 188.3m 8.3m above standard to be varied.	4.6% $8.3 / 180 = 0.046$
C FFL of COS	RL 182.8 2.8m above standard to be varied.	1.6% $2.8 / 180 = 0.016$
D Planter	RL 183.8 3.8m above standard to be varied.	2.1% $3.8 / 180 = 0.021$
E Canopy	RL 186.3m 6.3m above standard to be varied.	3.5% $6.3 / 180 = 0.035$
F Façade	RL 186.3m 6.3m above standard to be varied.	3.5% $6.3 / 180 = 0.035$
G Building core	RL 188.3m 8.3m above standard to be varied.	4.6% $8.3 / 180 = 0.046$
H Canopy	RL 186.3m 6.3m above standard to be varied.	4.6% $8.3 / 180 = 0.046$
I FFL of COS	RL 182.8 2.8m above standard to be varied.	1.6% $2.8 / 180 = 0.016$
J PV panels	RL 188.3m 8.3m above standard to be varied.	4.6% $8.3 / 180 = 0.046$
K Facade	RL 186.3m 6.3m above standard to be varied.	3.5% $6.3 / 180 = 0.035$

An extract of the isometric height plane diagram that has been prepared to support the proposed height variation is provided at

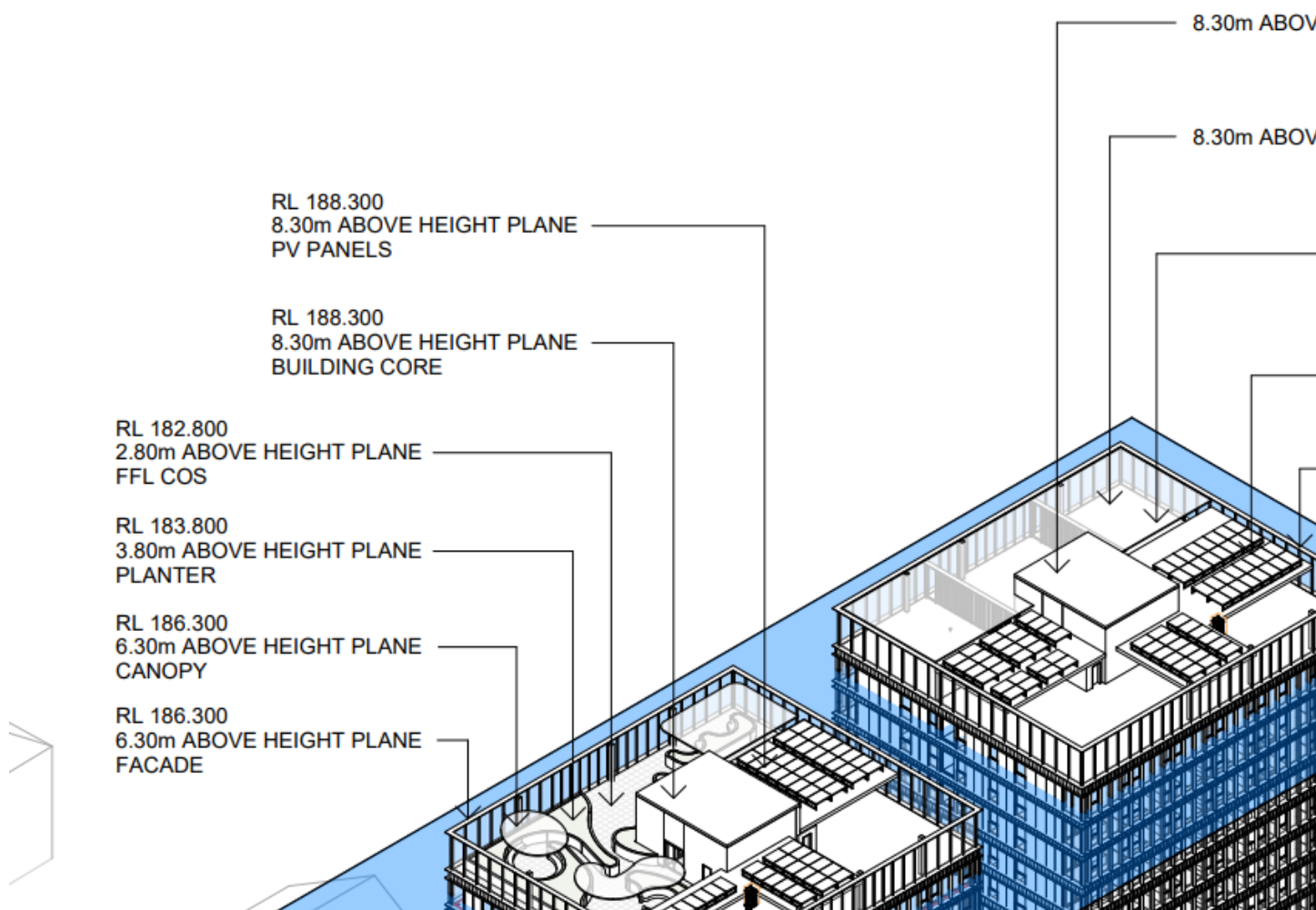


Figure 3. An annotated extract of the Pacific Highway elevation is provided at Figure 4. Further reference should be made to the Architectural Plans that have been prepared in relation to the amended detailed design scheme.

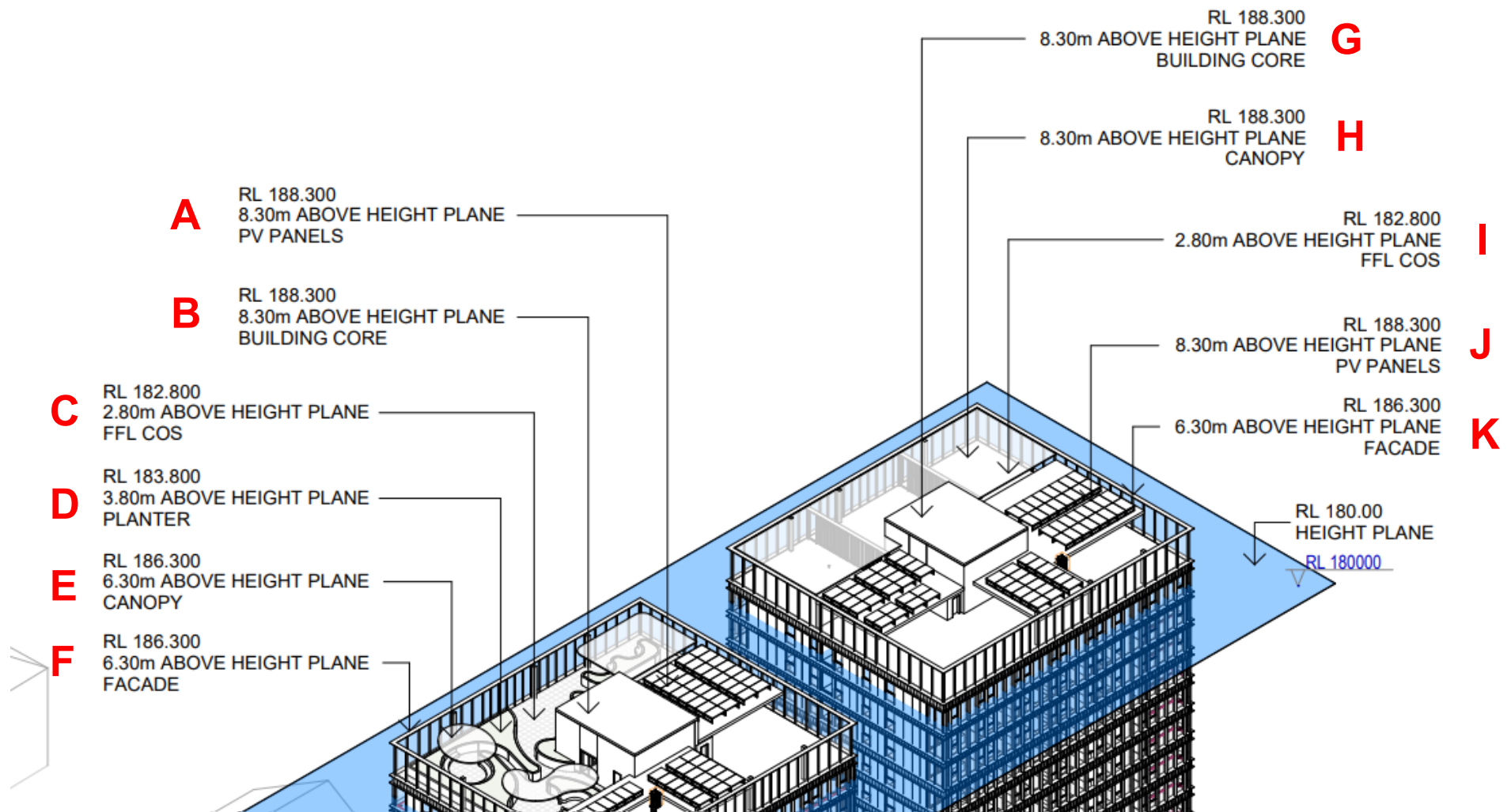


Figure 3 Extract: Isometric Height Plane Diagram

Source: Woods Bagot (annotated by Gyde)

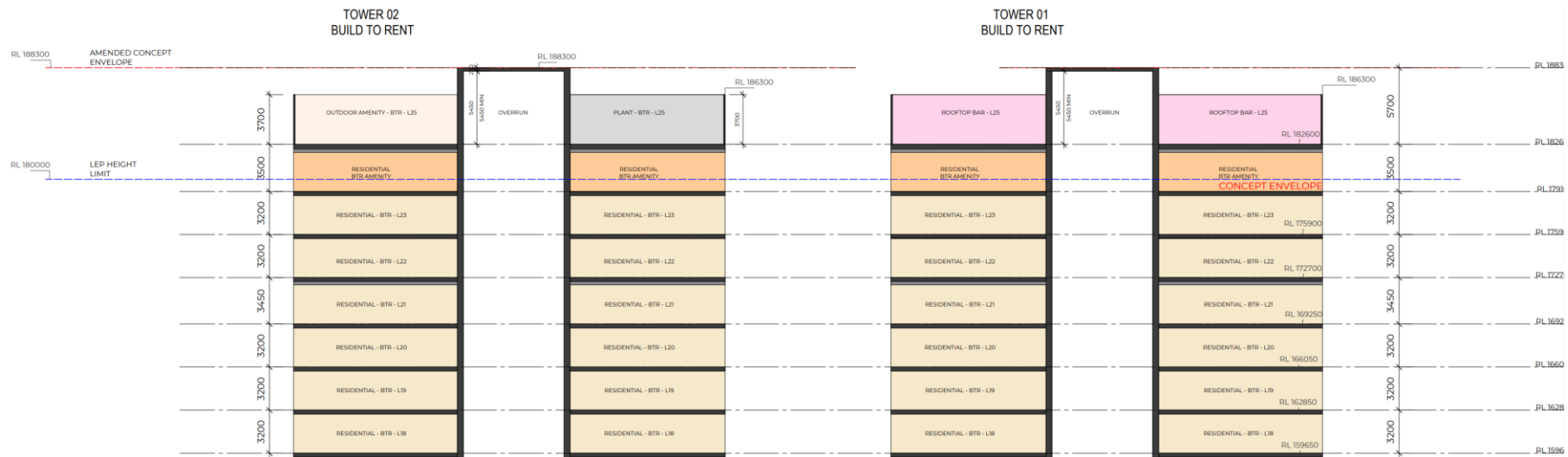


Figure 4 **Extract: Long section**

Source: Woods Bagot (annotated by Gyde)

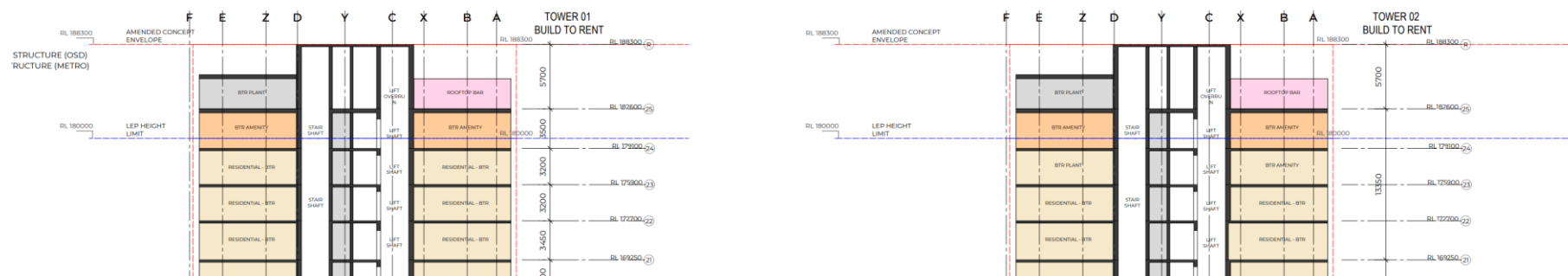


Figure 5 **Extract: short sections**

Source: Woods Bagot (annotated by Gyde)

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 4.3(2) of the NSLEP. The Court held that there are at least five 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 ways 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).
5. The zoning of the land is unreasonable or inappropriate (fifth Test).

It is sufficient to demonstrate one of these ways to satisfy Clause 4.6(3)(a). Notwithstanding, each way has been considered for completeness to establish exhaustive grounds for the height variation.

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

Applying the 'first test' in the context of the proposed height variation requires each objective for Clause 4.3(1) of the NSLEP to be satisfied. This was reaffirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17].

(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

Objective (a) is satisfied.

The site is situated on a ridgeline (close to a saddle) at elevation that varies between RL 85m and RL 91m. The topography of the site is characterised by a shallow slope towards the north and north-east.

The massing strategy for the residential led detailed development of Site A remains unchanged from the originally proposed strategy whereby Towers 1 and 2 (which exceed the height standard) will form the taller of the 2 towers on Site A. This massing arrangement:

- Reinforces the ridgeline as a primary landform element by holding the lowest form (Tower 3 – compliant) at the highest elevation.
- Demonstrates a clear and intentional relationship between topography and built form.
- Supports a transitional reduction in building height towards Site B, which does not form part of this SSDA.
- Is accommodated by the revised concurrent scope of the amending Concept SSDA (SSD-75662958).
- Does not present a significant departure from the standard to be varied, noting the numerical extent of the proposed height variation (4.6%) and the sound environmental planning grounds that are established herein.

It is worthwhile observing that the height exceedance has been driven purely by the placement of the OSD proposal on top of the existing Metro Box whereby at the time of constructing the box it did not originally contemplate a residential-led land use on top which carries greater structural load than a commercial development due to the structural transfer necessary to convert the existing Metro Box columns into an optimised and practical residential apartment layouts free from column obstructions. The height variation has been derived from accommodating deepened structural transfer beams that are taking the residential-led load and accommodate greater floor to floor heights to conceal essential residential services. While the land is not sloped, per say, the height variation steps down from the tallest point at the lift overrun in the centre of the rooftop of Towers 1 and 2 to the edges of the rooftop level.

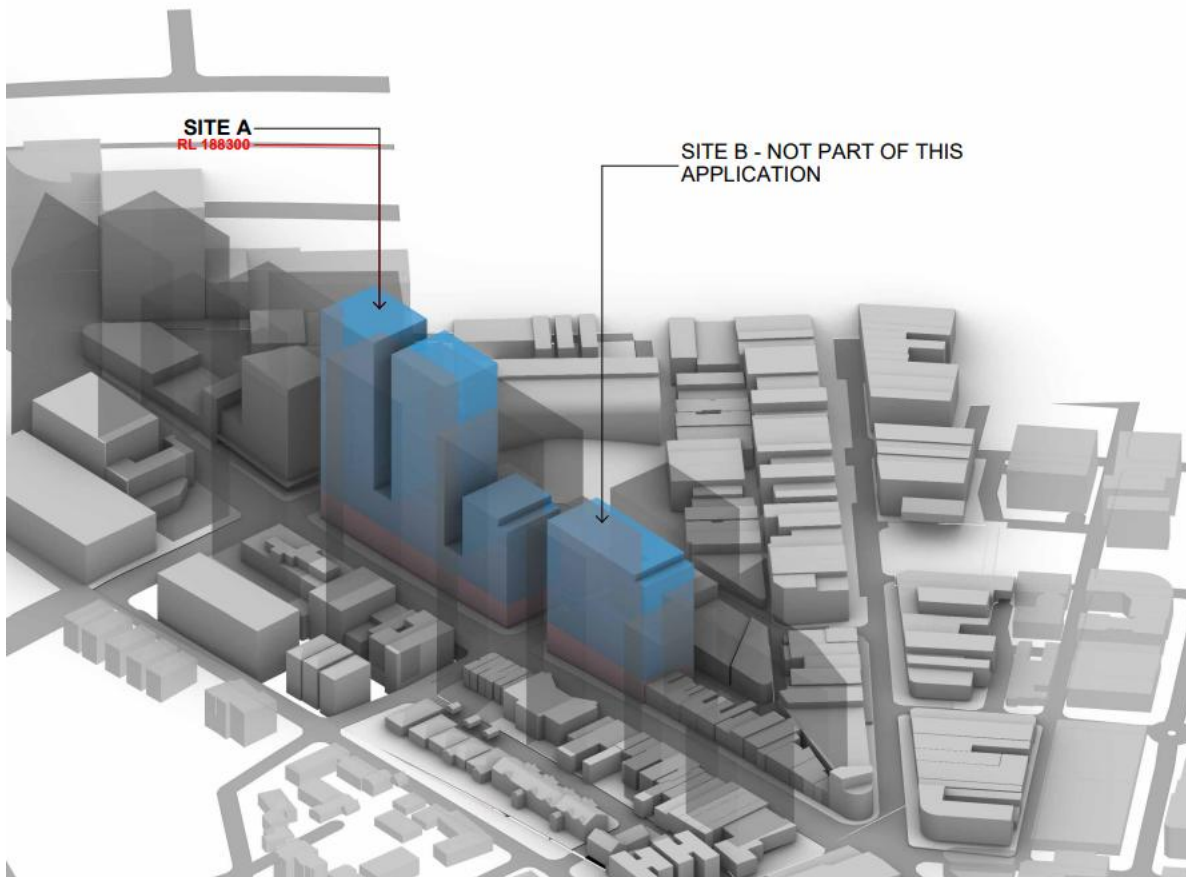


Figure 6 Massing diagram (Source: Woods Bagot)

The proposal (as amended) is consistent with Objective (a), notwithstanding the proposed height variation.

(b) to promote the retention and, if appropriate, sharing of existing views,

Objective (b) is satisfied.

The Detailed View Loss and View Sharing Report that has been prepared by Virtual Ideas (dated October 2025) in relation to the amended detailed proposal for this SSDA demonstrates that:

- The proposed volume of building mass above the maximum permitted building height will not compromise sight lines from the following buildings, which are lower than the height of Towers 1-2:
 - 400 Pacific Highway.
 - 420 Pacific Highway.
 - 545 Pacific Highway.

– 26 Clarke Street.

- **Error! Reference source not found.** shows the above-listed buildings in relation to Site A and the location of private domain views that were assessed.

Further reference should be made to discussion within the accompanying Amendment Report prepared by Gyde, which considers visual impact assessment matters beyond the scope of the proposed height variation.



Figure 7 Location of Private Domain Views (Virtual Ideas)

The amended Public Domain Visual Impact Report (Appendix U) that has been prepared by Virtual Ideas provides assessment material that captures the revised height of the proposed development. This material demonstrates that:

- The proposed volume of building mass above the maximum permitted building height will not compromise public sight lines towards:
 - Darling Harbour.
 - The Sydney Opera House.
 - Any items that are of State or local heritage significance.
 - Scenic landscapes.
- In each of the public domain viewpoints that were assessed, the proposed height variation will only result in a negligible reduction to the observable open sky vista. This change is insignificant with respect to the principles of *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

The proposed height variation, which will deliver a proportionately minor volume of building mass above the maximum permitted building height, will not result in any public domain visual impacts that are not reasonable to anticipate under the applicable built form controls.

Table 2: Example Viewpoint: Viewpoint 02

Scenario	Example View (Viewpoint -02 – Pacific Highway and Falcon St)
Existing The existing profile of Viewpoint 02 provides a view looking west bound on Pacific Highway at the intersection of Falcon St.	
Initially Proposed (No Height Variation) The initial height of the proposed development was compliant with the height standard.	
Amended Scheme (Height Variation) The proposed height variation will deliver a proportionately minor volume of building mass above the maximum permitted building height. This will not result in any change to the visibility of key visual elements.	

The proposed development (as amended) is supported by revised private domain view loss and public domain visual impact diagrams (see Appendices K, S, T and U of the RTS).

This material, which was prepared in accordance with the relevant NSW Land and Environment Court (LEC) guidelines, demonstrates that the proposed height variation will not contribute towards any unacceptable visual impacts.

The proposed height variation relates to a minor proportion of the overall Crows Nest OSD built form. The volume of building mass that is proposed above the maximum permitted building height will not:

- Result in any private domain view loss that has not already been assessed and deemed to be acceptable by the material that was supplied at lodgement.
- Result in any perceptible change to the visual profile of the proposed development when it is viewed from public domain vantage points.
- Change the conclusion that the proposed detailed proposal is supportable in accordance with established case law principles that regulate the assessment of visual impact.

(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

Objective (c) is satisfied.

Amended shadow diagrams have been prepared to support the assessment of the proposed height variation. These shadow diagrams demonstrate that:

- The shadow footprint that will be cast by the proposed development is long and fast moving.
Due to the orientation and rectangular shape of the site, the proposed development will cast a shadow footprint that is long and fast moving. Due to this, shadowing that is cast by the non-compliant portion of the development onto surrounding buildings during Winter Solstice will be isolated to short periods that are not unreasonable to anticipate in the context of high-rise development within a dense urban area.
- The shadowing of surrounding buildings in association with the height variation is limited to several isolated hours during Winter Solstice, which represents the 'worst case' scenario in terms of solar equinox dates. Specifically, the non-compliant portion of building mass will only:
 - Result in minor shadowing to buildings on the opposite side of the Pacific Highway at 12:00 PM and 1:00 PM during Winter Solstice.
 - Result in minor shadowing to buildings within the street block to the south of Site B that is bound by Falcon Street, Willoughby Lane and Willoughby Road at 3:00 PM during Winter Solstice.
- The proposed height variation does not result in any overshadowing that is unreasonable in the context of high-rise development within a dense urban area.
The proposed extent of overshadowing that is attributed to the height variation will only result in a minor change to the extent of the shadow footprint that would otherwise be cast in relation to a height-compliant scenario.
- The proposed height variation will not result in any overshadowing to land within Zone RE1 – Public Recreation, including Hume Street Park.
The proposed height variation will not compromise the level of solar amenity that is afforded to public open spaces.

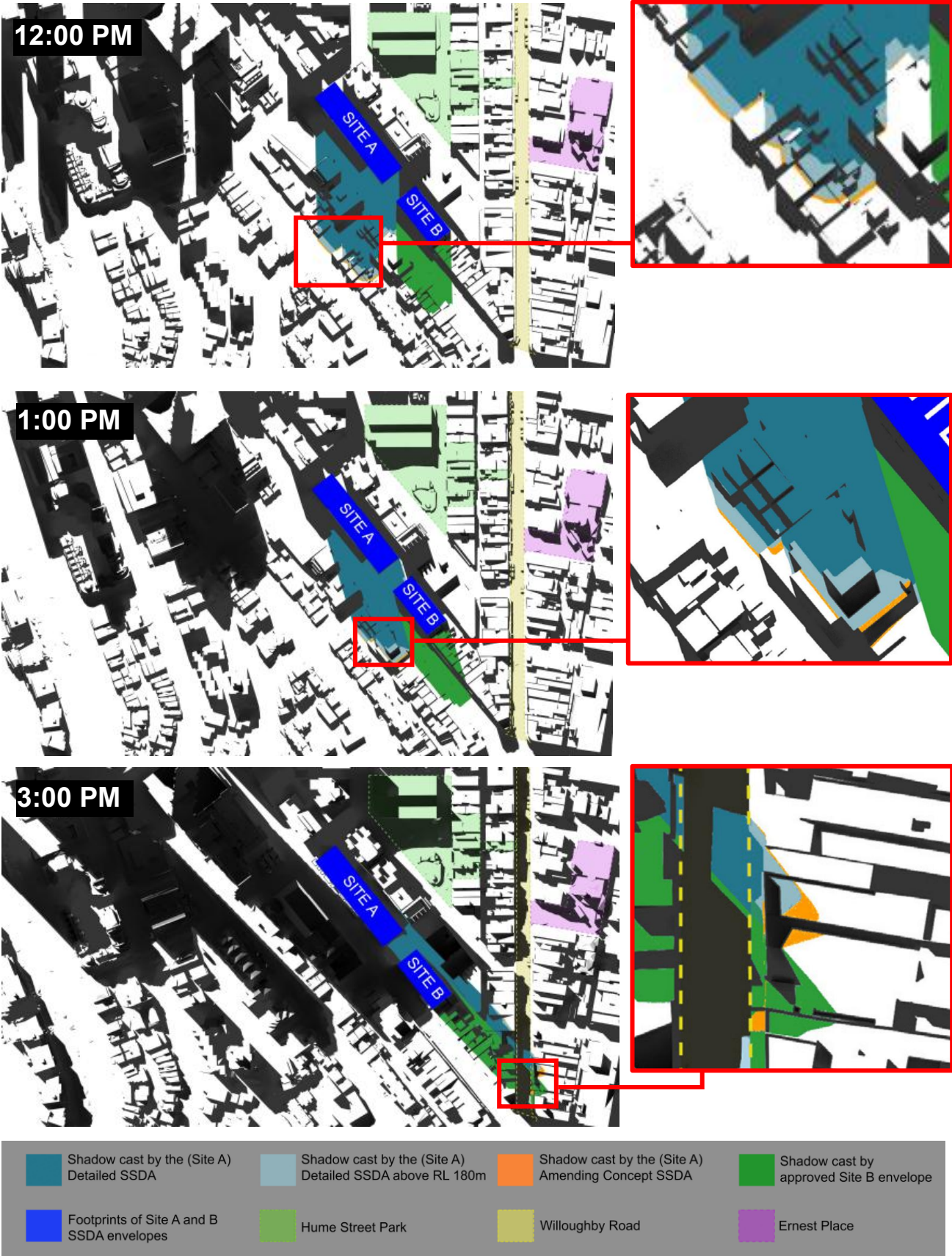


Figure 8 Extracts: Shadow Diagrams – Winter Solstice (Source: Woods Bagot)

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

Objective (d) is satisfied.

The proposed height exceedance does not impact privacy afforded to existing dwellings or give rise to privacy concerns with new dwellings on the site.

(e) to ensure compatibility between development, particularly at zone boundaries,

Objective (e) is satisfied.

The proposed mix of land uses (as amended) is permitted with consent in Zone MU1 – Mixed Use. The site is not located alongside any zone boundaries apart from the SP2 – Infrastructure zoning that applies to the Pacific Highway.

The proposal as it exceeds the height standard is compatible with the as amended concept proposal for Crows Nest OSD and is compatible with the wider mixed use transit-oriented precinct.

The proposed development (as amended) is consistent with Objective (e), notwithstanding the minor height variation that is now sought.

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

Objective (f) is satisfied.

The extent of the proposed height variation (4.6%) is proportionately minor with respect to the overall scale of development that is envisaged for Site A and the standard to be varied.

The proposal is consistent with the *Crows Nest Over Station Development Design Quality Guidelines* (Design Quality Guidelines), which provide a direction for future development to “*explore varied heights and a stepped form to create transition between the taller towers of St. Leonards and village scale of Crows Nest*”. These Guidelines have been revised, as captured in the accompanying Addendum Memo (see Appendix BB), to reflect the land use being residential led for Site A and associated envelope changes.

The amended mix of land uses that is proposed for Site A is entirely permissible within Zone MU1 – Mixed Use. The proposed development (as amended) will deliver active uses at ground level, including retail floorspace and residential lobbies. This is consistent with the intended effect of the Design Quality Guidelines, which envisage “*strong activation of street frontages, station entries and lobbies*”.

The proposal (as amended) is consistent with the intended effect of Objective (f), notwithstanding the proposed height variation, because:

- The proposed height exceedance aids in the delivery of the Crows Nest OSD project and it consistent with the density/scale envisaged for the TOD precinct which plays a key role in delivering housing including affordable housing in accordance with the National Housing Accord.
- The proposed mix of land uses, including active ground level uses, is consistent with the envisaged character of the area in accordance with the Design Quality Guidelines.

As outlined throughout this report, the proposed height variation will not result in any environmental impacts that are not reasonable to anticipate under the applicable built form controls, including the standard to be varied.

5.2 The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The underlying objective or purpose of the project is to provide additional building height to enable the project to be structurally feasible and buildable. The underlying objective or purpose of the standard is relevant and therefore is not relied upon in the context of this reason.

5.3 The underlying object or purpose of the standard would be defeated or thwarted (undermined) if compliance was required and therefore compliance is unreasonable.

This reason is not relied on.

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.

This reason is not relied on.

5.5 The zoning of the land is unreasonable or inappropriate.

This reason is not relied on.

6. Sufficient Environmental Planning Grounds

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ held that, to demonstrate sufficient environmental planning grounds under Clause 4.6, the focus must be directed to the specific aspect of the development that contravenes the development standard, rather than the proposal as a whole.

Similarly, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J affirmed that it lies within the consent authority's discretion to determine whether the environmental planning grounds relied upon are particular to the circumstances of the proposed development on the subject site. The following sections demonstrate that there are sufficient environmental planning grounds for the proposed height variation.

The environmental planning ground to justify the departure of the height of buildings development standard are as follows:

- The proposed height variation is driven by buildability and structural requirements established with the metro Box design and form together with matters that are essential to project delivery and buildability.
 - Thicker structural transfer beams at the lower levels to structurally accommodate the residential tower loads (compared to the originally contemplated commercial tower load) on top of the existing metro box. These structural transfer beams are essential in order to build the project.

Towers 1 and 2:

- Provision of a 2.5 metre transfer slab above the roof of level 3.
- Provision of a 1.0 metre transfer slab above the roof of level 2.

Tower 3:

- Provision of a 1.7 metre transfer slab above the roof of the mezzanine level
- Provision of a 1.5 metre transfer slab above the roof of the ground level

- Increased floor to floor heights from a minimum of 3.05 metres to a minimum 3.2 metres, which we have been advised is required from a buildability perspective having regard to the *Design and Building Practitioners Act 2020*.
 - Levels 4- 23 (inclusive) Towers 1 and 2 - + 0.15m per floor, being a total of 3 metres across the 2 towers
 - Level 24 – new internal communal open space level (rather than the originally proposed commercial) increasing by 0.2m (3.3m to 3.5m)
 - Noting – level 25 has been deleted, see the below point.
 - Rooftop level – increase in the height of the lift overrun by 2m as a result of technical lift feedback to service the rooftop (3.7m to 5.7m)
- Deletion of level 25 Built to Rent (BTR) apartments and conversion of the original BTR apartment on level 24 to internal community open space.
- Any floor space above the height limit does not comprise residential floor space, instead comprises internal communal open space for in Towers 1 and 2, rooftop communal open space (COS) atop Tower 2 and a commercial rooftop bar atop of Tower 1.
- The shadow footprint that will be cast from the proposed development (as amended) is 'fast moving' and will not result in unacceptable overshadowing to surrounding residential buildings.
- No unreasonable private view loss will occur as a result of the height increase (driven by structural and buildability design changes) that are now sought for in the concurrent detailed SSDA for Crows Nest OSD. (

- The proposed height variation will not contribute towards any perceptible change to the visual appearance of the proposed development, including to/from key public domain vantage points.
- The proposed height variation is supportable from an aviation safety perspective, and the relevant air space approvals will be sought in due course.

7. Conclusion

This Clause 4.6 Variation Request seeks to vary the maximum permitted building height control (RL 180m) that applies to the site under Clause 4.3 of the NSLEP. The following is noted in summary of this report:

- It has been demonstrated that compliance with the maximum permitted building height control would, in this case, be unreasonable and unnecessary.
- There are sufficient environmental planning grounds to justify the contravention of the development standard to be varied.

The proposal, which seeks approval for a height variation, will support a well-considered response to the urgent need for additional housing in line with the *National Housing Accord 2022* (Housing Accord). A height-compliant proposal would inhibit the delivery of the project whereby it would not be structurally possible to deliver Towers 1 and 2 and would inhibit the delivery of high-quality COS for residents and a commercial rooftop bar space.

For the reasons set out in this request, it is appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this SSDA.