



Clause 4.6 Variation Request

Kogarah Golf Club Redevelopment – Concept & Early Works SSDA

13-19A Marsh Street, Arncliffe

Submitted to the NSW Department of Planning, Housing and Infrastructure
on behalf of Stockland Development Pty Limited

SSD-84467726

Prepared by Colliers Urban Planning

14 May 2026 | 2250078



'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.

Colliers Urban Planning 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 and present.

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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10/12/2025

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09/01/2026

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14/05/2026

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1.0 Introduction

1.1 Overview

This Clause 4.6 Variation Request has been prepared on behalf of Stockland Development Pty Limited ('Stockland' or 'the Applicant') to accompany a State Significant Development Application (SSDA) (SSD-84467726) for a Concept Masterplan and Early Works associated with the Kogarah Golf Club Redevelopment located on land identified as 13-19A Marsh Street, Arncliffe (the Site).

The vision for the Kogarah Golf Club Redevelopment is to create a world-class precinct that leverages the site's strategic location adjacent to Sydney Airport and strong transport connections by delivering multi-level logistics development, trade-related enterprise and supporting uses with publicly accessible open space. It seeks to deliver state-of-the-art facilities that will redefine the logistics landscape in Australia, setting new benchmarks for scale, efficiency, sustainability and innovation.

Clause 4.6 of the *Bayside Local Environmental Plan 2021* (Bayside LEP 2021) enables the consent authority to grant consent for development even though the development contravenes a development standard. This Clause 4.6 Variation Request relates to the Height of Buildings development standard under Clause 4.3 of the Bayside LEP 2021.

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:

- (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.*

This document demonstrates that compliance with the Height of Buildings development standard 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).

1.2 Legal Guidance

The NSW Land and Environment Court (the 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 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; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 Variation Request:

- Identifies the Site and Proposal (**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 The Site and Proposal

2.1 Site Description

The Site is identified as 13-19A Marsh Street, Arncliffe within the Bayside Local Government Area (LGA). It is situated to the immediate west of the Cooks River and Sydney Airport, located approximately 6km west of Port Botany and 10km south of the Sydney Central Business District (CBD). It includes frontages to Marsh Street, providing direct access to the M5 Motorway, Sydney Airport and St Peters Interchange (via the Sydney Gateway).

The site comprises land associated with nine (9) allotments and a total area of approximately 32 hectares. The existing uses include the previous Kogarah Golf Club (vacated in March 2025) accessed via Levey Street and the temporary M6 Stage 1 construction compound accessed directly from Marsh Street.

The development area represents Lot 31 DP1231486 and Lot 100 DP1231954, excluding land subject to future dedication to Bayside Council. It comprises an area of approximately 16.7 hectares and is zoned SP4 Enterprise and C2 Environmental Conservation under the Bayside LEP 2021.

The extent of the site and development area is depicted in **Figure 2** below.



Figure 1 Site Aerial Map

Source: Nearmap, edited by Colliers Urban Planning

2.2 The Proposal

2.2.1 Overview

The Concept & Early Works SSDA seeks consent for an overarching Concept Masterplan that establishes maximum building envelopes, Gross Floor Area (GFA), land uses, and other parameters through Urban Design Guidelines and technical reporting. It also seeks consent for the carrying out of Early Works to facilitate the initial site preparation and infrastructure works required to support future development and publicly accessible open space.

Specifically, the Concept & Early Works SSDA seeks consent for the following:

- Concept Masterplan to support the staged delivery of the Kogarah Golf Club Redevelopment, including:
 - Maximum building envelopes, including maximum building heights and minimum building setbacks;
 - Maximum GFA up to 343,250m², comprising:
 - 3,250m² of GFA (FSR of 1.25:1) on Lot 31 DP1231486; and
 - 340,000m² of GFA on Lot 100 DP1231954.
 - Conceptual primary land uses, including:
 - Block 1 – Mixed-use and advertising structures;
 - Block 2 – Logistics and mixed-use;
 - Block 3A – Logistics;
 - Block 3B – Logistics; and
 - Block 3C – Logistics and data centre.
 - Urban Design Guidelines to guide future development of the built form and public domain; and
 - Strategies and mitigation measures to manage potential environmental impacts.
- Early Works to support the future delivery of built form and publicly accessible open space, including:
 - Site preparation works, comprising:
 - Demolition of existing structures;
 - Clearing of existing vegetation;
 - Remediation works; and
 - Bulk earthworks, including ground improvement and flood mitigation works.
 - Site servicing and infrastructure works, including:
 - Construction of the Flora Street East extension consistent with Item 3 of the executed Voluntary Planning Agreement with Bayside Council;
 - Construction of stormwater infrastructure; and
 - Construction and augmentation of service and utility infrastructure as necessary.

The proposed variation to the Height of Buildings development standard relates to the Concept Masterplan, which is described in further detail in the following section.

2.2.2 Concept Masterplan

The Concept & Early Works SSDA seeks consent for an overarching Concept Masterplan that establishes maximum building envelopes, GFA, land uses, and other parameters through Urban Design Guidelines and technical reporting.

The proposed building envelopes identify the locations of future built form, including maximum building heights and minimum buildings setbacks. The future built form, subject to separate future Development Applications, must be located within the prescribed envelopes. The proposed building envelopes are presented in **Figure 2** below.

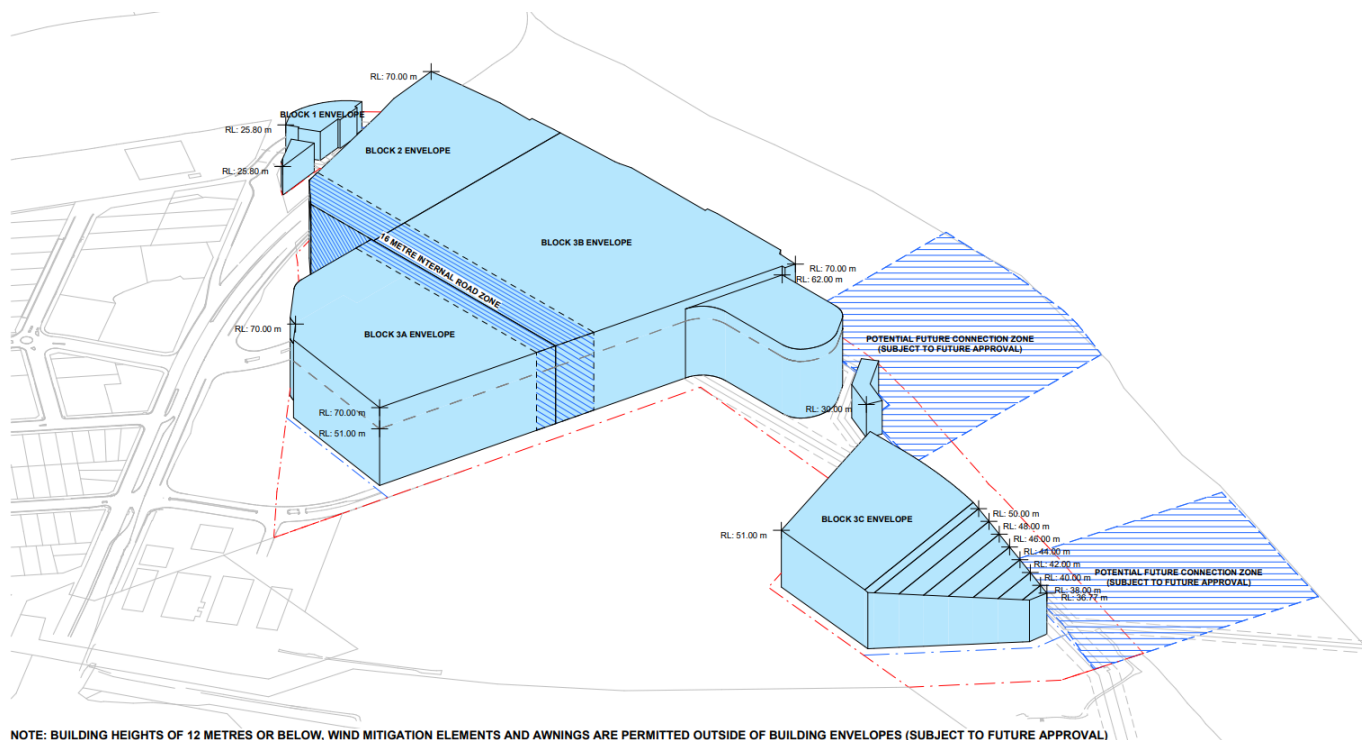


Figure 2 *Proposed Building Envelopes – Axonometric view from the south-west*

Source: Grimshaw

Indicative Reference Schemes

The Concept Masterplan is supported by Indicative Reference Schemes that present as ‘proof of concepts’ within the proposed planning framework. The schemes demonstrate suitable primary land use, built form and public domain outcomes that align with the vision for a world-class precinct that leverages the site’s strategic location adjacent to Sydney Airport and strong transport connections.

The Indicative Reference Schemes consider different potential development outcomes enabled by the Concept Masterplan to support the delivery of the highest and best use at the time of redevelopment. This includes a Logistics scheme and Alternative Uses scheme, which facilitate the potential for four (4) different primary land use outcomes across the Site. The alternative land use outcomes enabled by the Concept Masterplan include an alternative mixed-use outcome on Block 2 and alternative data centre outcome on Block 3C.

The Indicative Reference Schemes are established in **Figure 3**, with the Logistics scheme and Alternative Uses scheme prepared by Grimshaw depicted in **Figure 4** and **Figure 5**. The development yield associated with each land use outcome under the Indicative Reference Schemes is presented in **Table 1**.

It is noted that the Indicative Reference Schemes are indicative only and the development of future built form and publicly accessible open space will be subject to future Detailed Development Applications (DAs). The Indicative Reference Schemes demonstrate the ability to support different potential outcomes, consistent with the proposed framework under the Concept Masterplan including Urban Design Guidelines.

Table 1 Land Use Matrix – Indicative Reference Schemes

Primary Land Use	Reference Scheme 1 Logistics	Reference Scheme 2 Logistics + Mixed-use	Reference Scheme 3 Logistics + Data Centre	Reference Scheme 4 Logistics + Mixed-use + Data Centre
Lot 31 DP1231486 (Block 1)				
Hotel		1,670m ² (64 keys)		
Commercial		1,260m ²		
F&B / Shops / Artisan F&B		320m ²		
TOTAL		3,250m ²		
Lot 100 DP1231954 (Block 2, 3A, 3B, 3C)				
Warehouse	336,200m ²	293,000m ²	276,200m ²	231,600m ²
F&B / Shops	1,950m ²	10,000m ²	1,850m ²	10,000m ²
Hotel	-	20,000m ² (300 keys)	-	20,000m ² (300 keys)
Commercial	1,850m ²	17,000m ²	1,850m ²	17,000m ²
Data Centre	-	-	25,400m ² (80 MW)	25,400m ² (80 MW)
TOTAL	340,000m ²	340,000m ²	305,300m ²	304,000m ²



Figure 3 Indicative Reference Schemes

Source: Grimshaw



Figure 4 *Logistics Scheme – Aerial View from the South-West*

Source: Grimshaw



Figure 5 *Alternative Uses Scheme – Aerial View from the South-West*

Source: Grimshaw

3.0 Development Standard to be Varied

This Clause 4.6 Variation Request seeks to justify contravention of the Height of Buildings development standard set out in Clause 4.3 of the Bayside LEP 2021, which states:

Clause 4.3 – Height of buildings

(1) *The objectives of this clause are as follows—*

- (a) *to ensure that building height is consistent with the desired future character of an area,*
- (b) *to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,*
- (c) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

(2) *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 permissible height is depicted on the Height of Buildings Map presented in **Figure 6**. It stipulates a maximum permissible height of RL 51m Australian Height Datum (AHD) across the majority of the development area. This is with exception of the southern portion of the development area where it falls to RL 40m AHD. Lot 31 DP1231486 in the northern portion of the development area which comprises a maximum permissible height of 24m.

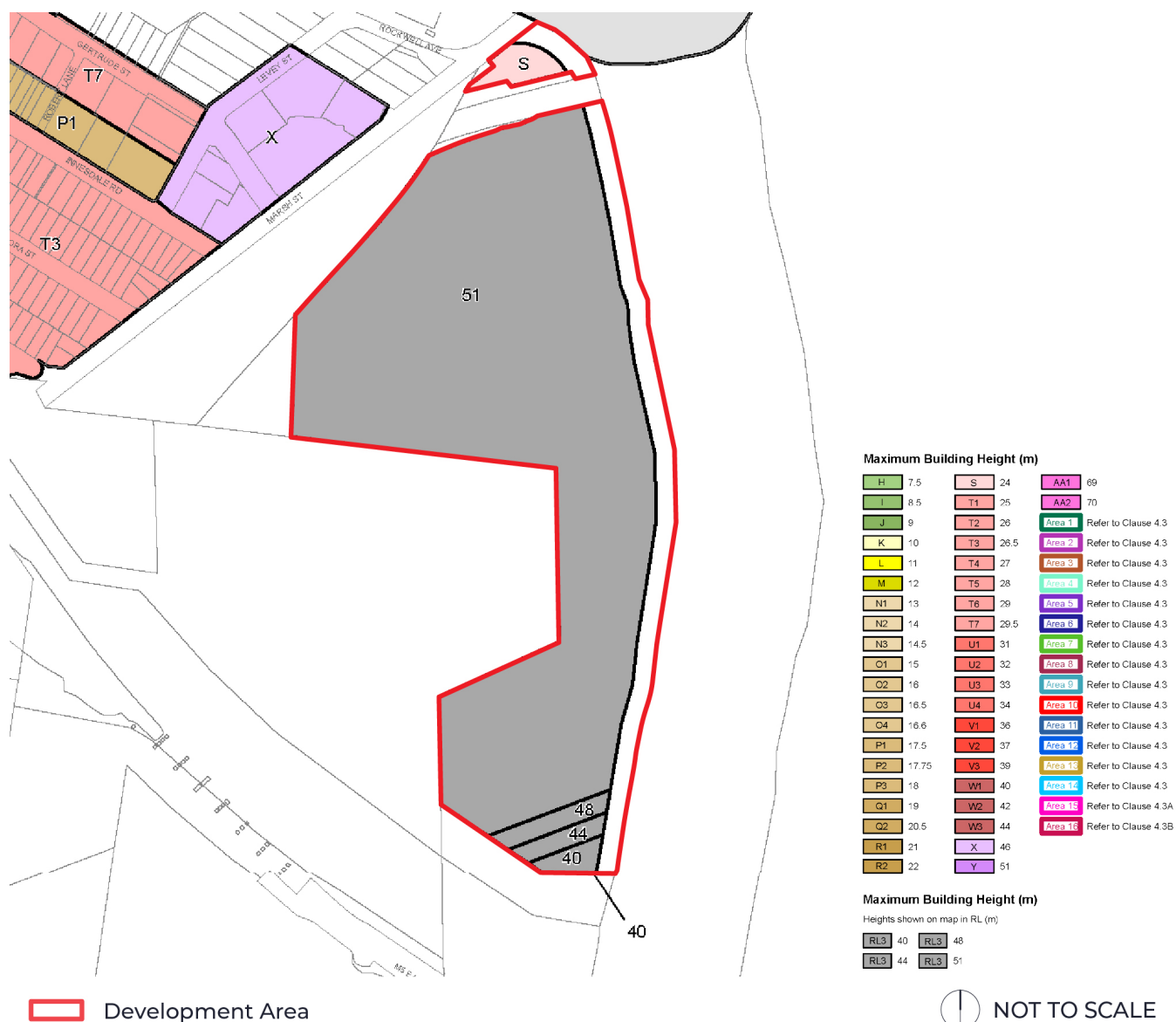


Figure 6 Height of Buildings Map

Source: Bayside Local Environmental Plan 2021, edited by Colliers Urban Planning

4.0 Nature of the Variation Sought

The Concept Masterplan seeks to vary the Height of Buildings development standard for Block 2, 3A and 3B from RL 51m AHD (approx. 47.4m above future ground level) to RL 70m AHD (approx. 66.4m above future ground level) as part of the proposed building envelopes. It represents a 19m (37.25%) variation to the development standard and is driven by the following key aspects:

1. Achievement of the maximum permissible GFA of 340,000m² on Lot 100 DP1231954, only feasible through 6-storey logistics buildings once necessary loading and service areas are incorporated;
2. Provision of appropriate flexibility in warehouse floor-to-floor heights to accommodate all potential warehouse racking heights and the ability to integrate three (3) levels of car parking on Ground Floor; and
3. Ability to achieve improved built form outcomes, while also achieving the maximum permissible GFA, on Block 2 under the Alternative Uses scheme by enabling more linear tower forms.

The proposed variation will ensure that the capacity of the strategically significant site is maximised and provides necessary flexibility to meet the operational requirements of future tenants, as well as the ability for improved built form outcomes on Block 2 under the Alternative Uses scheme.

The extent of the proposed height variation in the building envelopes is depicted in **Figure 7** and **Figure 8** below.

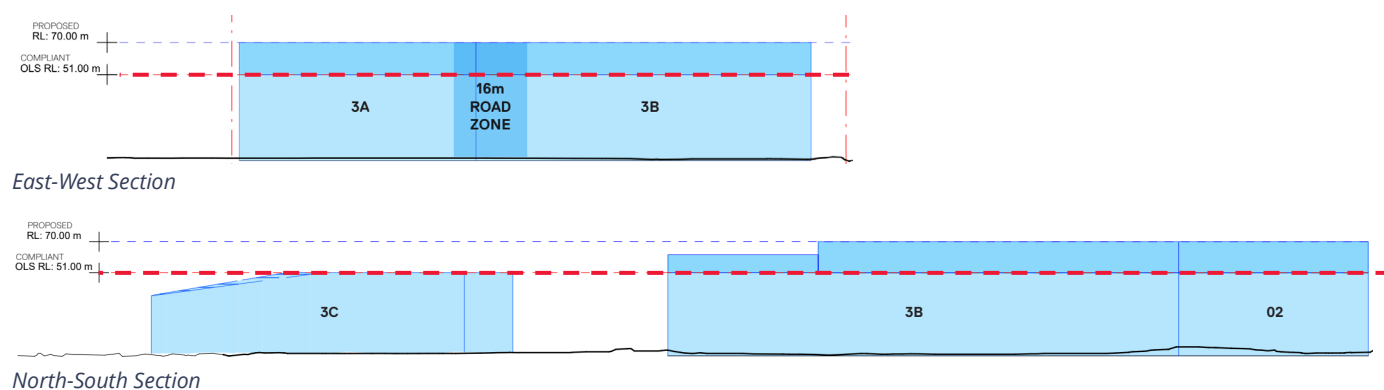


Figure 7 Proposed Height Variation Sections

Source: Grimshaw

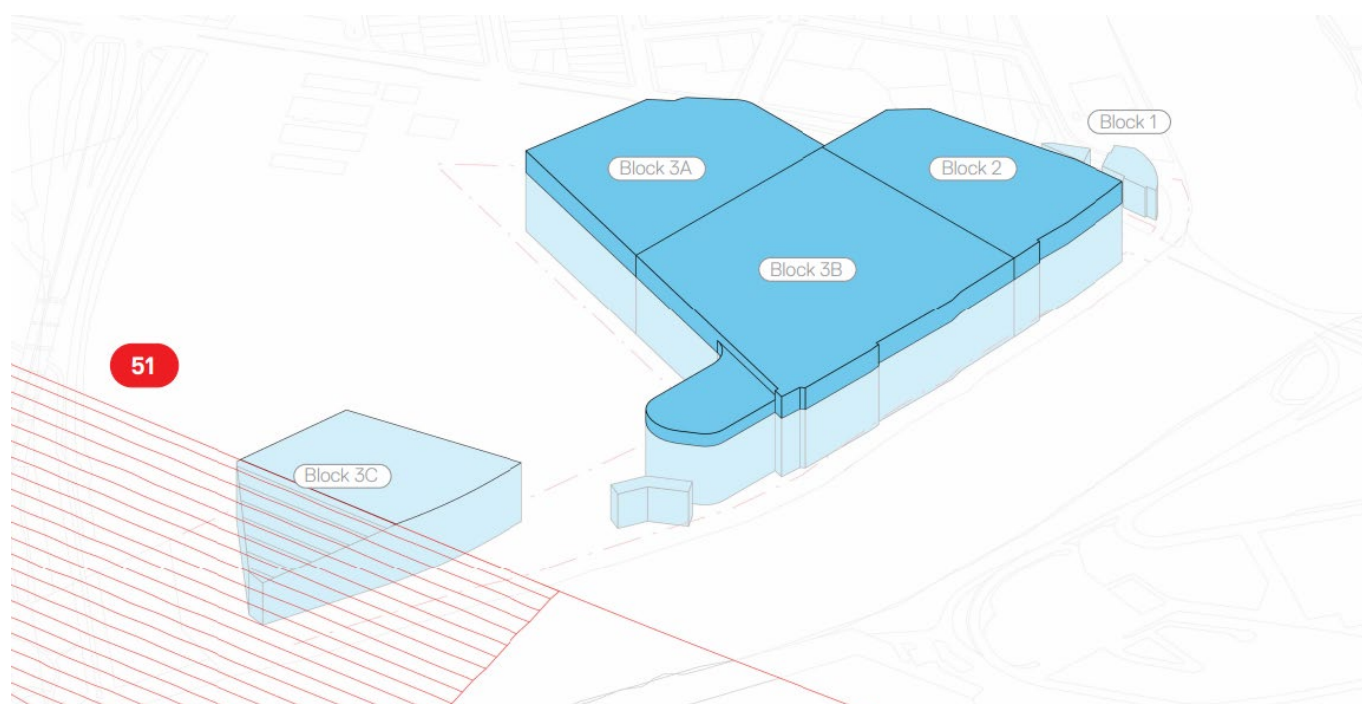


Figure 8 Proposed Height Variation Diagram

Source: Grimshaw

4.1 Achievement of Maximum Permissible GFA

Clause 6.20 of the Bayside LEP 2021 establishes a maximum permissible GFA on Lot 100 DP1231954 of 340,000m². The GFA limit is consistent with the impacts assessed under the Planning Proposal (PP-2022-1748) that supported amendments to the Bayside LEP 2021 gazetted on 9 May 2025.

Taking into consideration the various constraints of the Site, it has been determined through detailed options analysis that the maximum permissible GFA cannot be realistically or feasibly achieved within the Height of Buildings development standard. The detailed options analysis considered all necessary loading and service requirements necessary to support the functional operation of the development.

To ensure the capacity of the strategically significant site is maximised and not unnecessarily restricted under the Concept Masterplan, the proposed height variation supports 6-storey logistics buildings on Block 2, 3A and 3B of the Indicative Reference Schemes. The provision of 6-storey logistics buildings results in a maximum roof ridge height of RL 70m AHD and enables the achievement of 340,000m² for Reference Scheme 1 and 2 (refer to **Table 1**).

For context, Reference Scheme 1 would be restricted to approximately 295,000m² of GFA on Lot 100 DP1231954 if compliance was maintained with the RL 51m AHD height control. This would represent a shortfall of 45,000m² of GFA that has previously been assessed and determined suitable for the Site through the Planning Proposal process. This shortfall represents a significant loss in economic value through decreased employment output and generation of economic activity on a highly strategic site adjacent to Sydney Airport and key freight transport corridors.

The 6-storey logistics buildings on Block 2, 3A and 3B of the Indicative Reference Schemes, in context of the Height of Buildings development standard (RL 51m AHD), are presented in **Figure 9** below.



Figure 9 *Indicative Reference Schemes – Logistics Sections*

Source: Grimshaw, edited by Colliers Urban Planning

4.2 Warehouse Floor-to-Floor Heights

4.2.1 Racking Heights

The height of logistics buildings is largely driven by racking requirements of tenants based on their operations. It is noted that the Indicative Reference Schemes have considered other drivers of logistics building height, including fire sprinkler clearances, required mechanical ventilation, floor structural allowance, and a single direction roof pitch of 3 degrees for efficient rainwater drainage down and along a single elevation.

Given the Proposal incorporates 6-storey logistics buildings, racking heights are a significant driver of the overall building heights. The Kogarah Golf Club Redevelopment is currently in the conceptual planning phase and will be delivered over a series of stages. Subsequently, the future tenants are currently unknown, and the Concept Masterplan must assume the realistic worst-case racking heights to ensure the operations of future tenants are not unnecessarily compromised.

An analysis of warehouse racking heights has been undertaken, with the potential racking heights for 6-storey logistics buildings presented in **Figure 10**. To ensure the Concept Masterplan provides sufficient flexibility to meet the operational needs of future tenants, the realistic worst-case racking height has been selected (refer to **Figure 11**). It includes five (5) rows of racking on Levels 1-4, with six (6) rows of racking provided on the Ground Floor and Level 5. This results in a total height of RL 64m AHD, with an additional 6m required to facilitate a roof pitch of 3 degrees and services.



Figure 10 Typical Warehouse Racking Comparison (6-storeys)

Source: Grimshaw, edited by Colliers Urban Planning

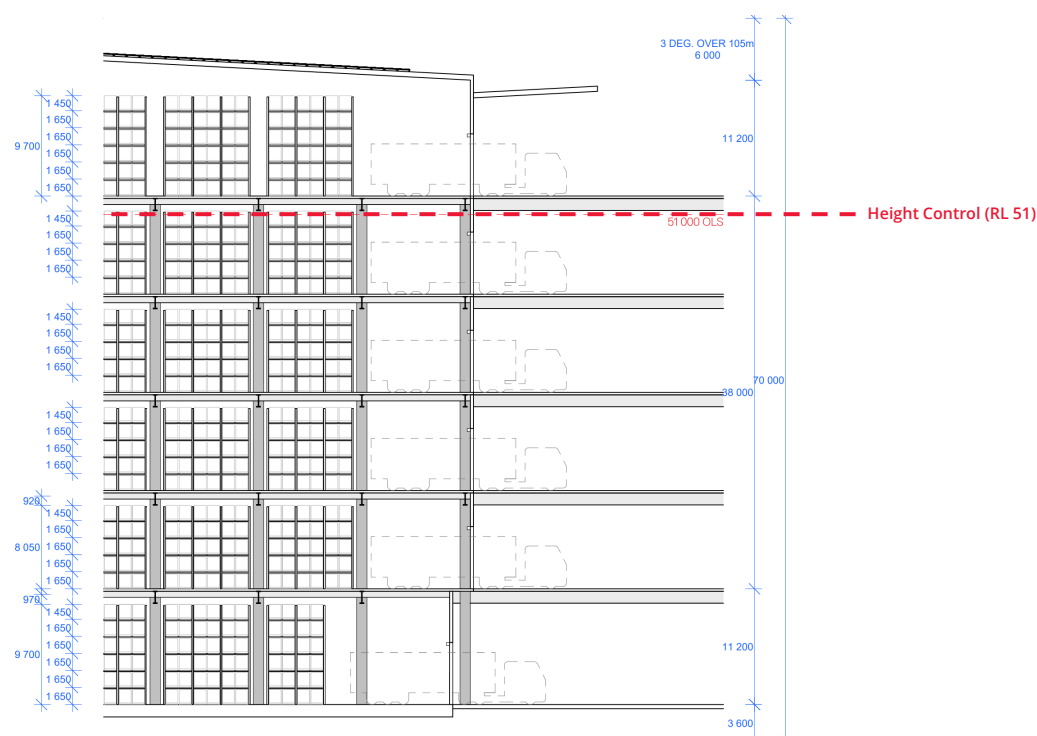


Figure 11 Indicative Reference Schemes - Adopted 6-Storey Floor-to-Floor Heights

Source: Grimshaw, edited by Colliers Urban Planning

4.2.2 Integrated Car Parking

The Site is identified as being flood constrained where parking for the logistics buildings is required to be integrated into the building structure. As illustrated in **Figure 12**, car parking for Building 3A and 3B has been 'sleeved' into the Ground Floor of the building structure adjacent to ancillary office space.

The 'sleeved' car parking arrangement includes three (3) levels of car parking resulting in a floor-to-floor height of approximately 11.6m, greater than that otherwise provided for warehouse racking in the worst-case scenario. It is noted that the provision of two (2) levels of car parking would be inefficient and is not viable to enable compliance with the minimum car parking rates due to the associated loss of warehouse GFA.

As such, the ability to integrate car parking within the building structure results in the need for an increased floor-to-floor height on the Ground Floor of the logistics buildings. This results in an overall increase in necessary building height to support the efficient design and operation of the logistics use.

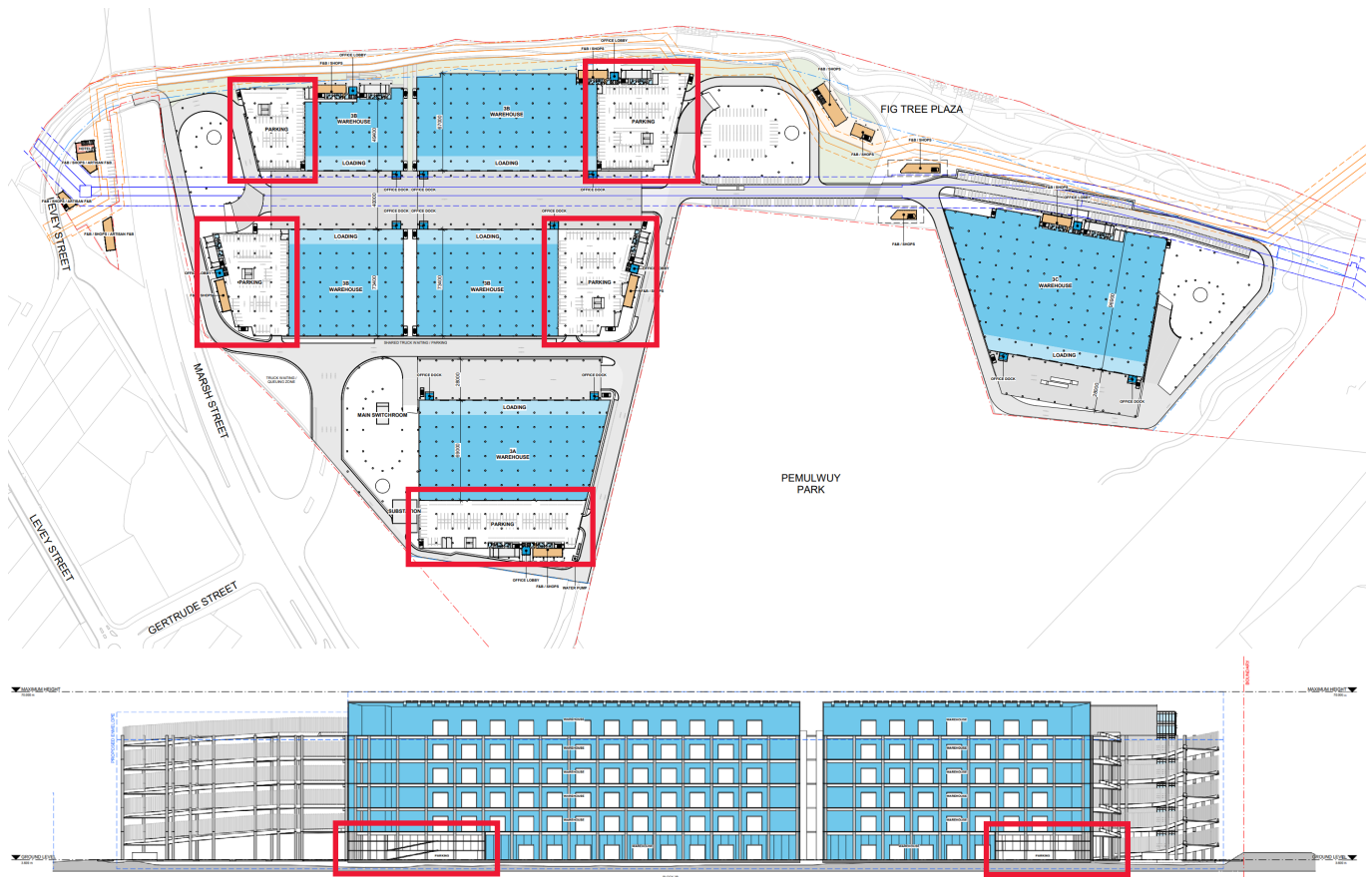


Figure 12 *Sleeved Car Parking Diagram*

Source: Grimshaw, edited by Colliers Urban Planning

4.3 Linear Tower Forms

To support the creation of improved built form outcomes, while also achieving the maximum permissible GFA on Block 2 under the Alternatives Uses scheme, a height variation is sought to enable more linear tower forms.

Clause 6.20 of the Bayside LEP 2021 establishes maximum permissible GFA limits on Lot 100 DP1231954 for specific land uses, including office premises and hotel/serviced apartments. The ability for Block 2 to support the maximum GFA limits, consistent with the Planning Proposal (PP-2022-1748), is restricted by the need to provide car parking in the podium in response to flooding constraints.

To enable flexibility for the alternative land uses to be delivered in accordance with the permissible GFA limits, whilst also achieving suitable built form outcomes, a height variation from RL 51m AHD to RL 70m AHD is proposed as part of the building envelopes in accordance with the Alternatives Uses scheme.

The built form outcome on Block 2 under the Alternatives Uses scheme, in context of the Height of Buildings development standard (RL 51m AHD), is illustrated in **Figure 13** and **Figure 14** below.



Figure 13 *Alternative Uses Scheme – North-South Section*

Source: Grimshaw, edited by Colliers Urban Planning



Figure 14 *Perspective Render of the Mixed-Use Development (Block 2) – Alternative Use Scheme*

Source: Grimshaw

5.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Bayside LEP 2021 provides the following:

Clause 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.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*);
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*);
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*)

The relevant matters contained in Clause 4.6 of the Bayside LEP 2021, with respect to the Height of Buildings development standard and the above decisions are each addressed in the following subsections.

It is important to note that the quantum of the proposed variation (37.25%) is not, in isolation, a material consideration as to whether the variation request should be supported. There is no constraint on the degree to which a consent authority may depart from a numerical standard under Clause 4.6, as established in *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85].

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 Court provided relevant assistance by identifying five (5) 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 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 the Bayside LEP 2021 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 (5) 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 Height of Buildings development standard is unreasonable or unnecessary in the circumstances of the Proposal because the objectives of the standard are achieved and accordingly justifies the variation to the height development standard pursuant to the **First Method**.

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

The objectives of the Height of Buildings development standard contained in Clause 4.3(1) of the Bayside LEP 2021 are:

- (a) to ensure that building height is consistent with the desired future character of an area,*
- (b) to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,*
- (c) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

A detailed assessment against each objective is provided in the following subsections.

Objective (a) – To ensure that building height is consistent with the desired future character of an area

The desired future character of the Site is considered to be a precinct that includes multi-level logistics development, trade-related enterprise and supporting uses that leverage and support the functions of Sydney Airport and Port Botany. It includes the associated delivery of publicly accessible open space, including the future Pemulwuy Park (to be delivered by Bayside Council) and Cooks River foreshore link.

The Proposal aligns with this desired future character for the Site, seeking to create a world-class precinct with uses that leverage and support the functions of Sydney Airport and Port Botany. Its vision includes state-of-the-art facilities that will redefine the logistics landscape in Australia, setting new benchmarks for scale, efficiency, sustainability and innovation.

This desired future character was established as part of the Cooks Cove Planning Proposal (PP-2022-1748), which was gazetted on 9 May 2025 and sought to deliver refreshed planning controls that prioritise land uses which support the adjacent Sydney Airport, as one of Australia's most important trade gateways. The Planning Proposal established the current Height of Buildings development standard under the Bayside LEP 2021 which was selected with regard to airport safeguarding, aligning with protected airspace controls for Sydney Airport.

As discussed in **Section 4.0**, the Height of Buildings development standard is proposed to be varied for Block 2, 3A and 3B for key reasons, including the inability to realistically or feasibly achieve the maximum permissible GFA within the height control (RL 51m AHD). The Applicant has had thorough consideration towards airport safeguarding, including consultation with key relevant stakeholders.

The assessment of airport safeguarding has given particular consideration towards the impact of the proposed height variation on protected airspace. A summary of impacts is provided in **Section 5.2.3** which demonstrates that the proposed height variation is supportable from an airport safeguarding perspective, subject to controlled activity approval.

On this basis, the proposed height variation does not alter and is in keeping with the desired future character of the area.

Objective (b) – To minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development

The visual and view impact, loss of privacy and loss of solar access of the proposed height variation to the existing development is considered in the following subsections.

Visual and View Impact

A Visual and View Impact Assessment (VVIA) has been undertaken to determine the impact of the proposed height variation on the surrounding public domain. It comprises an assessment of ten (10) public views from key locations surrounding the Site, as identified in **Figure 15**. It also comprises an assessment of six (6) private views from immediate adjacent apartment buildings, including 26 Levey Street (Southbank Building C), 26-32 Marsh Street, and 36-42 Levey Street.



- Viewpoint 01. Cahill Park
- Viewpoint 02A. Marsh Street/Airport Drive bridge
- Viewpoint 02B. Marsh Street/Airport Drive bridge
- Viewpoint 03. Kogarah sporting complex
- Viewpoint 04. Valda Ave
- Viewpoint 05. Kyeemagh Reserve
- Viewpoint 06. Tempe Rec Reserve / Billy's Bridge
- Viewpoint 07. Forest Road
- Viewpoint 08. Princes Highway (bridge)
- Viewpoint 09. Airport Drive

Figure 15 Visual Impact Assessment Viewpoints

Source: Virtual Ideas

To determine the extent of additional impact as a result of the proposed height variation, the additional massing above the Height of Buildings development standard has been identified as part of the proposed buildings envelopes in the public and private views. It is noted that the proposed building envelopes only define the maximum building heights and minimum building setbacks, purposefully not incorporating building articulation to enable future flexibility for functional and quality design outcomes in accordance with the Urban Design Guidelines.

The VVIA considers the impacts of the Indicative Reference Schemes to determine if the 'proof-of-concepts' within the proposed building envelopes can achieve a suitable built form and urban design outcome. It is reiterated that the Indicative Reference Schemes are indicative only and the development of future built form and publicly accessible open space will be subject to future DAs.

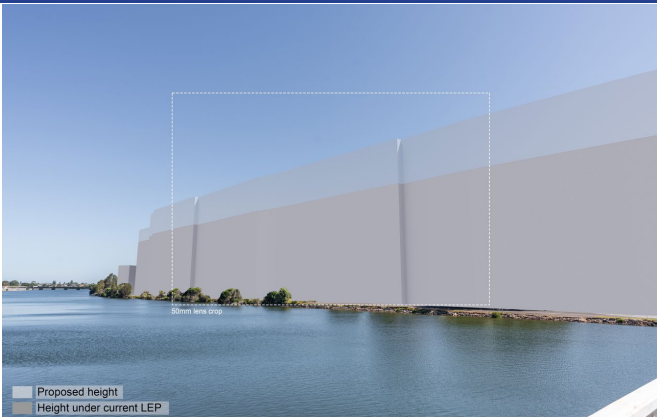
Key views depicting visual and view impact of the proposed height variation and supporting Indicative Reference Schemes are presented in **Table 2** and **Table 3** respectively on the following pages.

Table 2 Key Public Views – Visual Impact Assessment

Viewpoint 2A – Marsh Street / Airport Drive (Giovanni Brunetti Bridge)



Existing



Proposed Envelope



Logistics Scheme



Alternative Uses Scheme

Viewpoint 4 – Valda Avenue



Existing



Proposed Envelope



Height Compliant Massing – Bayside LEP 2021

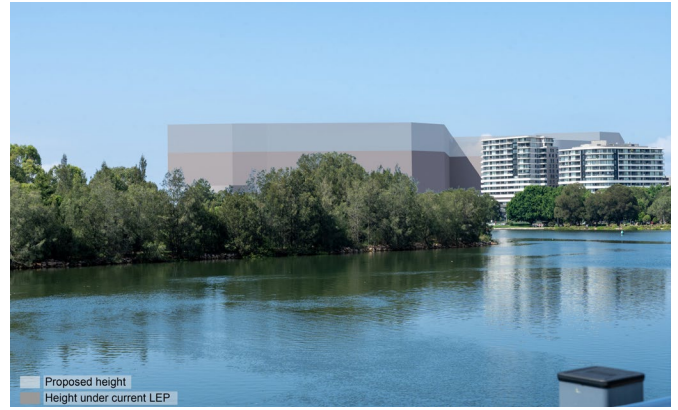


Logistics Scheme

Viewpoint 8 – Princess Highway (Bridge)



Existing



Proposed Envelope



Logistics Scheme



Alternative Uses Scheme

Viewpoint 9 – Airport Drive



Existing



Proposed Envelope



Logistics Scheme



Alternative Uses Scheme

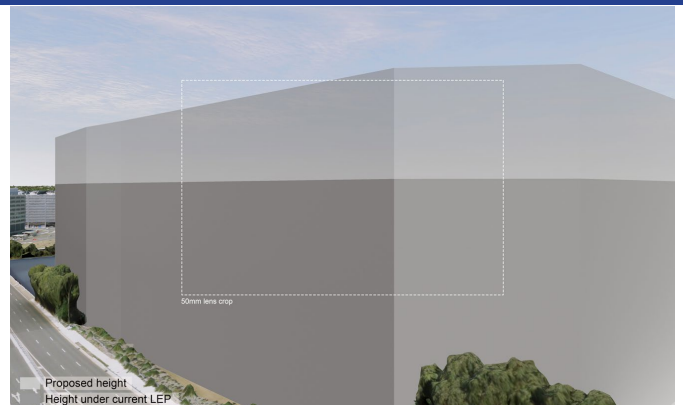
Source: Virtual Ideas

Table 3 Key Private Views – View Impact Assessment

Viewpoint 2 – 26 Levey Street (Southbank Building C), top floor, balcony edge, looking south-east



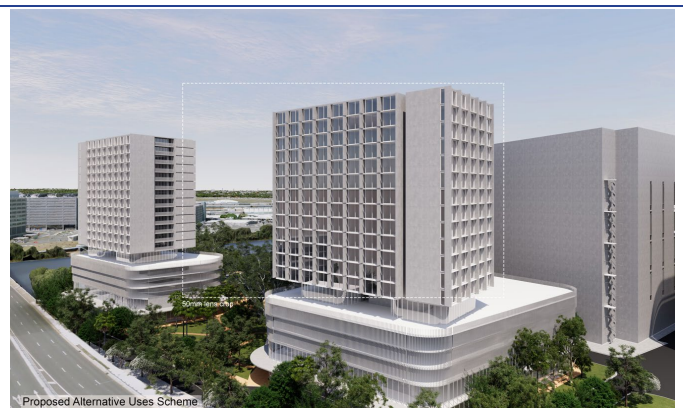
Existing



Proposed Envelope



Logistics Scheme

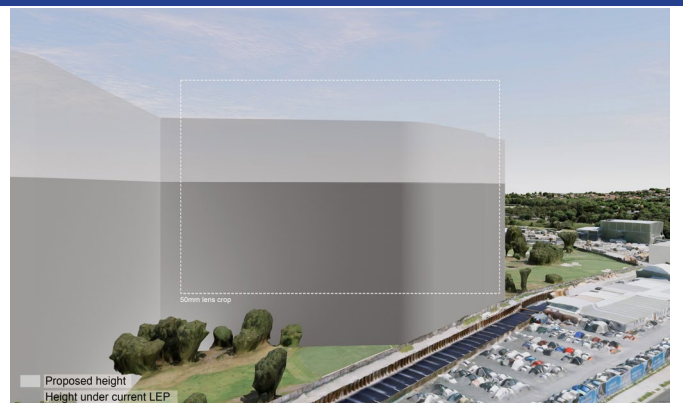


Alternative Uses Scheme

Viewpoint 3 – 26 Levey Street (Southbank Building C), top floor, balcony edge, looking south



Existing



Proposed Envelope



Logistics Scheme

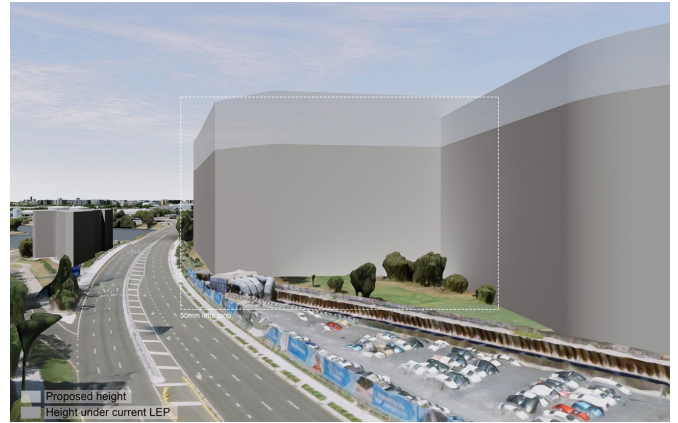


Alternative Uses Scheme

Viewpoint 4 – 26-32 Marsh Street, top floor, balcony edge, looking east



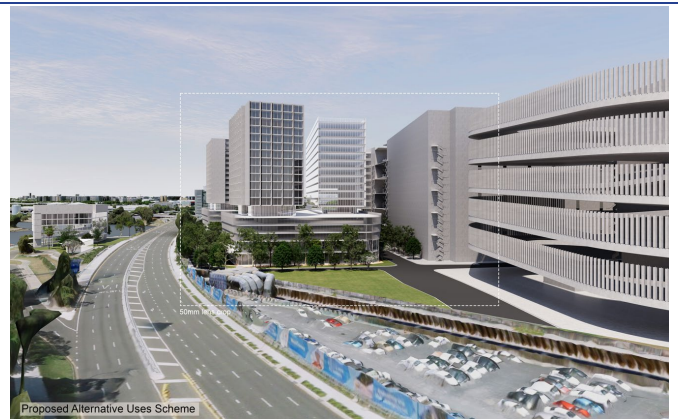
Existing



Proposed Envelope

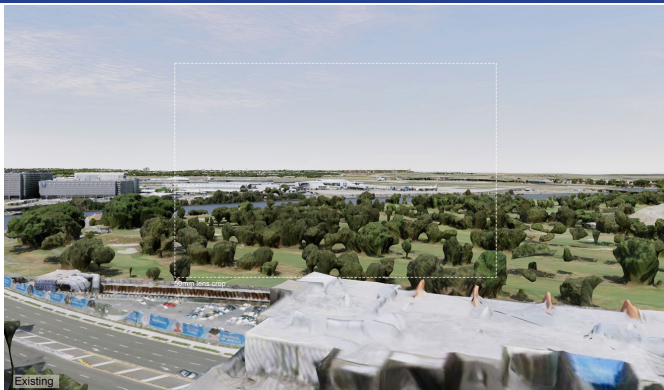


Logistics Scheme

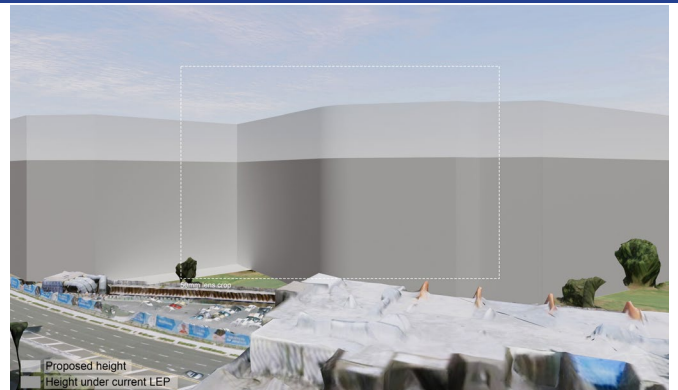


Alternative Uses Scheme

Viewpoint 6 – 36-42 Levey Street, top floor, balcony edge, looking east south-east



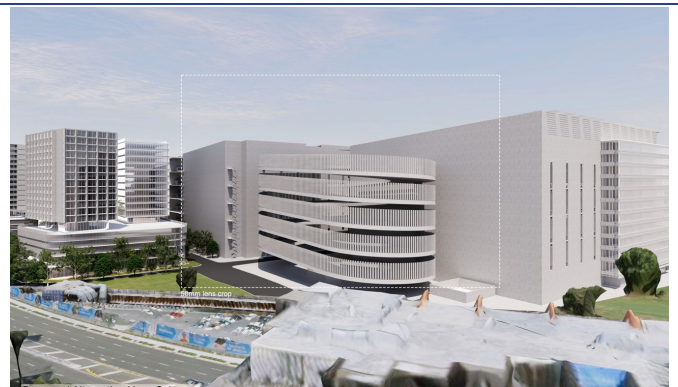
Existing



Proposed Envelope



Logistics Scheme



Alternative Uses Scheme

Source: Virtual Ideas

In relation to visual impact, the sensitivity of the public domain in the Proposal's visual catchment to the nature of change proposed ranges from low to medium. This is due largely to the presence of existing, larger scale, residential and non-residential built elements in the landscape.

The magnitude of visual impact on the public domain in the Proposal's visual catchment ranges from considerable to dominant. This is due largely to its scale and this finding applies equally to the approved Planning Proposal (PP-2022-1748), and the Concept & Early Works SSDA. As such, there is no difference in the magnitude of impact due to the proposed height variation.

Combining these assessments determined that the significance of Proposal's visual impact ranges from low to high, as identified in **Table 4** below.

Table 4 *Visual Impact Assessment*

Viewpoint	Description	Significant of Visual Impact
Viewpoint 1	Cahill Park (Cooks River Cycleway) (Cooks River Cycleway)	Moderate
Viewpoint 2A	Marsh Street / Airport Drive (Giovanni Brunetti Bridge) – looking west south-west	High/Moderate
Viewpoint 2B	Marsh Street / Airport Drive (Giovanni Brunetti Bridge) – looking south-west	Moderate
Viewpoint 3	Barton Park (Field 4)	Moderate
Viewpoint 4	Valda Avenue	Moderate
Viewpoint 5	Kyeemagh Boat Ramp Reserve	Moderate
Viewpoint 6	Tempe Reserve (Tempe Reserve Shared Path)	Moderate
Viewpoint 7	Forest Road	Low
Viewpoint 8	Princess Highway (Bridge)	High
Viewpoint 9	Airport Drive	Moderate

In relation to view impact, the value of the assessed views ranges from moderate to high. The value of assessed view impact associated with the proposed height variation, in comparison the Height of Buildings development standard established from the previous Planning Proposal (PP-2022-1748) is low. The assessed views are obtained across front boundaries and may be obtained from both sitting and standing positions. The assessed views are primarily obtained when looking south-east from a range of rooms, including living rooms.

The extent of the Proposal's potential view impact is outlined in **Table 5** below.

Table 5 *View Impact Assessment*

Viewpoint	Description	Planning Proposal	Concept SSDA	Greater height	Change
1	26 Levey Street (Southbank Building C), top floor, looking north-east	Severe	Severe	Minor	No
2	26 Levey Street (Southbank Building C), top floor, looking east south-east	Severe	Severe	Minor	No
3	26 Levey Street (Southbank Building C), top floor, looking east south-east	Severe	Severe	Minor	No
4	26-32 Marsh Street, top floor, looking east	Severe	Severe	Minor	No
5	26-32 Marsh Street, top floor, looking south-east	Severe	Severe	Minor	No
6	36-42 Levey Street, top floor, looking east south-east	Severe	Severe	Minor	No

The Proposal achieves skilful design as understood by *Tenacity Consulting v Waringah [2004] NSWLEC 140* through the incorporation of a range of sitting, scale, and form and massing measures. These include retention of the approved

distribution of developable and open space areas including creation of Pemulwuy Park and Cooks River foreshore, setbacks from Marsh Street, and variation in building height and massing. As such, and while acknowledging the extent of view impact enabled by the approved Planning Proposal (PP-2022-1748), the view impact of the proposal is considered acceptable, and view sharing reasonable.

The VVIA determines that the proposed height variation will result in minor additional impacts to surrounding public and private views. It acknowledges that the Proposal will have a visual and view impact, on the balance of relevant considerations this impact is considered acceptable and can be supported on visual and view impact grounds.

Loss of Privacy

The closest distance between the Proposal and residential development to the north-west is approximately 87 metres. The presentation of future development will provide adequate privacy to surrounding development. In particular, the proposed height variation will not give rise to any additional loss of privacy.

Solar Access

The Site adjoins residential development to the north-west on the adjacent side of Marsh Street. The Proposal, including the proposed height variation, is located to the south-east and does not impact solar access to existing development.

As illustrated in the overshadowing analysis presented in **Section 5.2.2**, no overshadowing of the existing residential development occurs between 9am-3pm in either the summer or winter solstice. For further discussion on solar access and overshadowing to surrounding areas, refer to **Section 5.2.2**.

Objective (c) – To nominate heights that will provide an appropriate transition in built form and land use intensity

The proposed height variation will support an appropriate transition in built form and land use intensity to surrounding development. The Indicative Reference Scheme supporting the Concept Masterplan demonstrates suitable built form and land use outcomes with consideration of the surrounding context.

To the immediate north-west on the adjacent side of Marsh Street is a mixture of low, medium and high-density residential development. The Bayside LEP 2021 stipulates a 46m building height control to the immediate north-west of Block 2 and 3A, with a 26.5m building height control further west along Marsh Street.

The closest residential tower to the Proposal is 26 Levey Street (Southbank Building C), comprising a roof height of RL 52.1m AHD and lift over-run of RL 53.35 AHD (refer to **Figure 16**). The proposed height variation will result in a maximum height transition up to 17.9m between the maximum roof heights, with a separate distance of approximately 87-88 metres across Marsh Street.

The future built form will incorporate measures to achieve appropriate height transitions. These outcomes are demonstrated by the Indicative Reference Schemes, which also depict the creation of additional visual interest through a mixture of suitable building heights in the surrounding context.

The Logistics scheme in the context of the residential area to the north is depicted in **Figure 17**. It comprises a roof ridge height of approximately RL 70m AHD, sloping down approximately 6m to RL 64m AHD. It also comprises key built form elements including protruded ancillary offices below the roofline, central hardstand providing two (2) massing's, and circular vehicle ramp below the roofline to create a suitable interface.

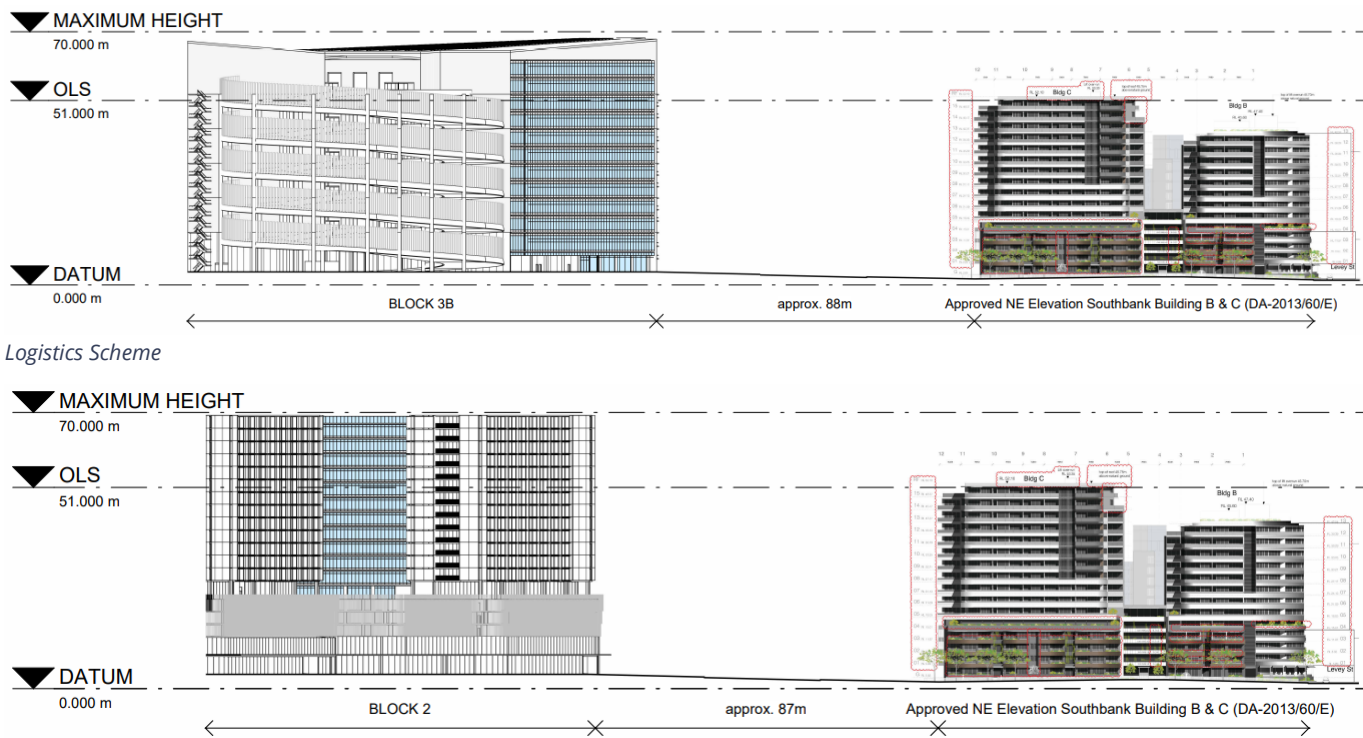


Figure 16 Height Comparison – Southbank Apartments Building B-C (24-26 Levey Street)

Source: Grimshaw



Figure 17 Aerial Perspective Render of the Logistics Scheme from the north-east

Source: Grimshaw

The Alternative Uses scheme is depicted in **Figure 18** and demonstrates an improved built form outcome through reduced massing compared to the Logistics scheme. The proposed height variation enables the creation of linear tower forms, while also supporting the provision of maximum permissible GFA under Clause 6.20 of the Bayside LEP 2021. The compliance with the Height of Buildings development standard in this instance would result in larger tower massing's that do not support high-quality built form outcomes, visual interest or design excellence.



Figure 18 *Perspective Render of the Logistics Scheme from the Giovanni Brunetti Bridge looking west*

Source: Grimshaw

Further to the west along Marsh Street, the proposed height variation is also considered suitable with the surrounding context. As depicted in **Figure 19**, the Logistics scheme is comparable with the Arncliffe MOC directly fronting Marsh Street and presents compatible heights with the adjacent high-density residential development along Marsh Street.



Figure 19 *Public Viewpoint 5 – Valda Avenue (Logistics Scheme)*

Source: Virtual Ideas

In addition, the presentation of the built form to the future Pemulwuy Park and Cooks River Foreshore will remain compatible and unimpacted by the proposed height variation. The presentation is depicted in the perspective renders provided in **Figure 20** and **Figure 21**.

It demonstrates that the proposed height variation will not impact the amenity of along the Cooks River Foreshore, noting the height increase from RL 51 AHD to RL 70 AHD will be largely unperceivable from ground level beneath the buildings. It also confirms that the proposed height variation will support a high-quality presentation to the future Pemulwuy Park.



Figure 20 *Perspective Render of the Logistics Scheme along the Cooks River Foreshore looking north*

Source: Grimshaw



Figure 21 *Aerial Perspective Render of the Logistics Scheme from Pemulwuy Park looking east*

Source: Grimshaw

The proposed distribution of land uses across the Site, with consideration of the proposed height variation, will support appropriate transitions between land use intensities demonstrated through technical studies.

In particular, the predicted noise impacts from the Indicative Reference Schemes have been conservatively modelled and demonstrate compliance with the relevant noise criteria to all surrounding sensitive receivers through implementation of

mitigation measures. It confirms that the proposed height variation will not result in unacceptable noise impacts based on the proposed distribution of land uses across the Site.

On this basis, the proposed height variation will support an appropriate transition in built form and land use intensity to surrounding development.

5.1.2 Conclusion on Clause 4.6(3)(a)

In conclusion, compliance with the Height of Buildings development standard is considered unreasonable and unnecessary on the basis it achieves the objectives of the development standard under Clause 4.3(1) of the Bayside LEP 2021. The proposed height variation's compliance with the objectives is summarised as follows:

- It is consistent with the desired future character of the area, where the variation demonstrates airport safeguarding is maintained, which was the basis of the development standard under the previous Planning Proposal (PP-2022-1748);
- It only results in minor additional visual and view impacts compared to those under a compliant height, with additional impacts to be mitigated through the implementation of built form and urban design measures;
- It does not result in any additional impacts to loss of privacy or solar access to existing surrounding development; and
- It demonstrates appropriate transitions in built form and land use intensity is maintained to the surrounding context.

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

Clause 4.6(3)(b) of the Bayside LEP 2021 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 Proposal on that Site at [60]. There are sufficient environmental planning grounds to justify contravention of the Height of Buildings development standard in this specific instance, as outlined in the following subsections.

5.2.1 Compliance with Gross Floor Area Development Standard

As discussed in **Section 4.0**, Clause 6.20 of the Bayside LEP 2021 establishes a maximum permissible GFA on Lot 100 DP1231954 of 340,000m². The GFA limit is consistent with the impacts (in particular traffic generation) and the economic benefits assessed under the previous Planning Proposal (PP-2022-1748) that supported amendments to the Bayside LEP 2021 gazetted on 9 May 2025.

Taking into consideration the various constraints of the Site, it has been determined through detailed options analysis that the maximum permissible GFA cannot be realistically or feasibly achieved within the Height of Buildings development standard. The detailed options analysis considered all loading and service requirements necessary to support the functional operation of the development.

To ensure the capacity of the strategically significant site is maximised and not unnecessarily restricted under the Concept Masterplan, the proposed height variation supports 6-storey logistics buildings on Block 2, 3A and 3B of the Indicative Reference Schemes. The provision of 6-storey logistics buildings results in a maximum roof ridge height of RL 70m AHD and enables the achievement of 340,000m² for Reference Scheme 1 and 2 (refer to **Table 1**).

Most significantly, the GFA development standard was primarily informed by the traffic impact assessment associated with the Indicative Reference Scheme for the Planning Proposal (PP-2022-1748). An assessment of the Indicative Reference Schemes associated with the Concept Masterplan has been completed based on the GFA identified in **Table 1**. The results are presented in **Figure 22** below and demonstrate that the Indicative Reference Schemes associated with the Concept Masterplan are consistent or below the predicted traffic generation under the Planning Proposal.

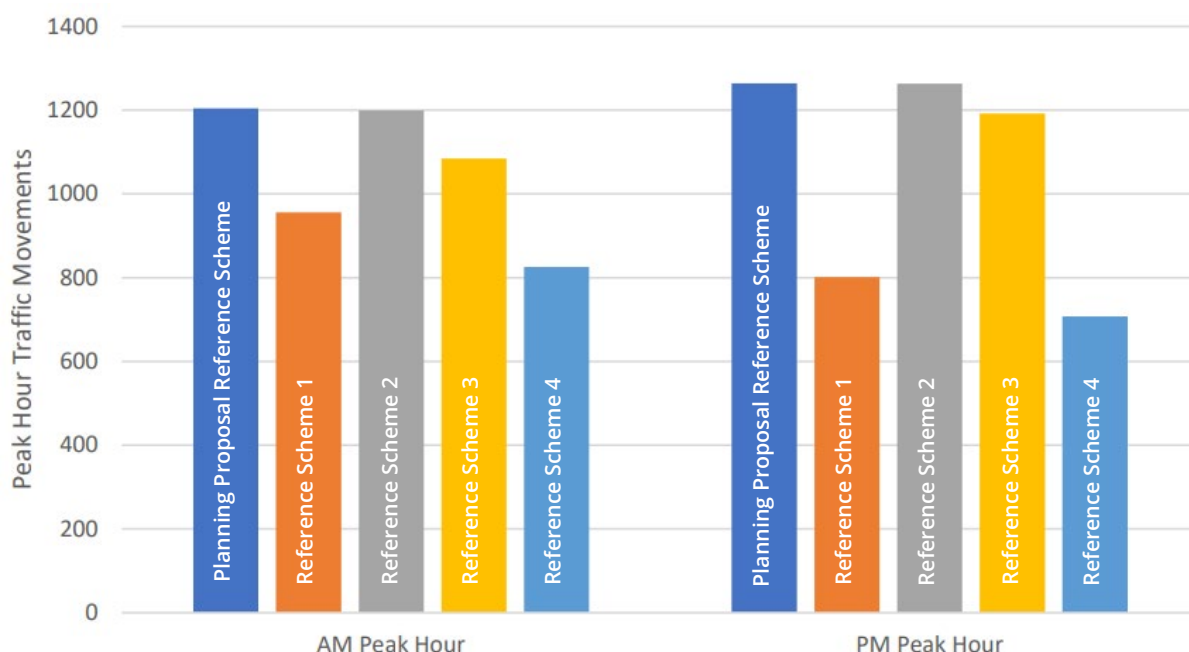


Figure 22 Traffic Generation Comparison

Source: JMT Consulting

Therefore, the Proposal remains consistent with the GFA development standard established under Clause 6.20 of the Bayside LEP 2021 and within the assessed environmental capacity of the Site considered under the previous Planning Proposal (PP-2022-1748).

The realisation of the maximum permitted GFA under the Bayside LEP 2021 is critical to maximising the key benefits associated with the Proposal. This includes reduced vehicle trips on the regional road network and reduced travel distances by realising the maximum permitted GFA, subsequently reducing the reliance on distribution centres in Western Sydney to process freight ultimately bound for Eastern Sydney where homes and jobs are most concentrated.

5.2.2 Overshadowing

To determine the additional overshadowing impact of the proposed height variation, overshadowing analysis from 9am to 3pm on 21 June (winter solstice) and 21 December (summer solstice) has been completed and is presented in **Figure 23** and **Figure 24**. The analysis is based on the proposed planning envelopes, providing comparison with a compliant height under the Bayside LEP 2021 (RL 51m AHD), Logistics scheme and Alternative Uses scheme.

This enables an assessment of the proposed height variation and provides important context of the overshadowing impact between the proposed building envelopes which purposefully do not incorporate building articulation, versus the Indicative Reference Scheme which demonstrate suitable building articulation.

The future Pemulwuy Park is located to the south-west of the proposed height variation on Block 2, 3A and 3B and will subsequently experience minor/moderate additional overshadowing in mid-winter. The future Cooks River foreshore link will also experience additional overshadowing, judged to be minor during mid-winter.

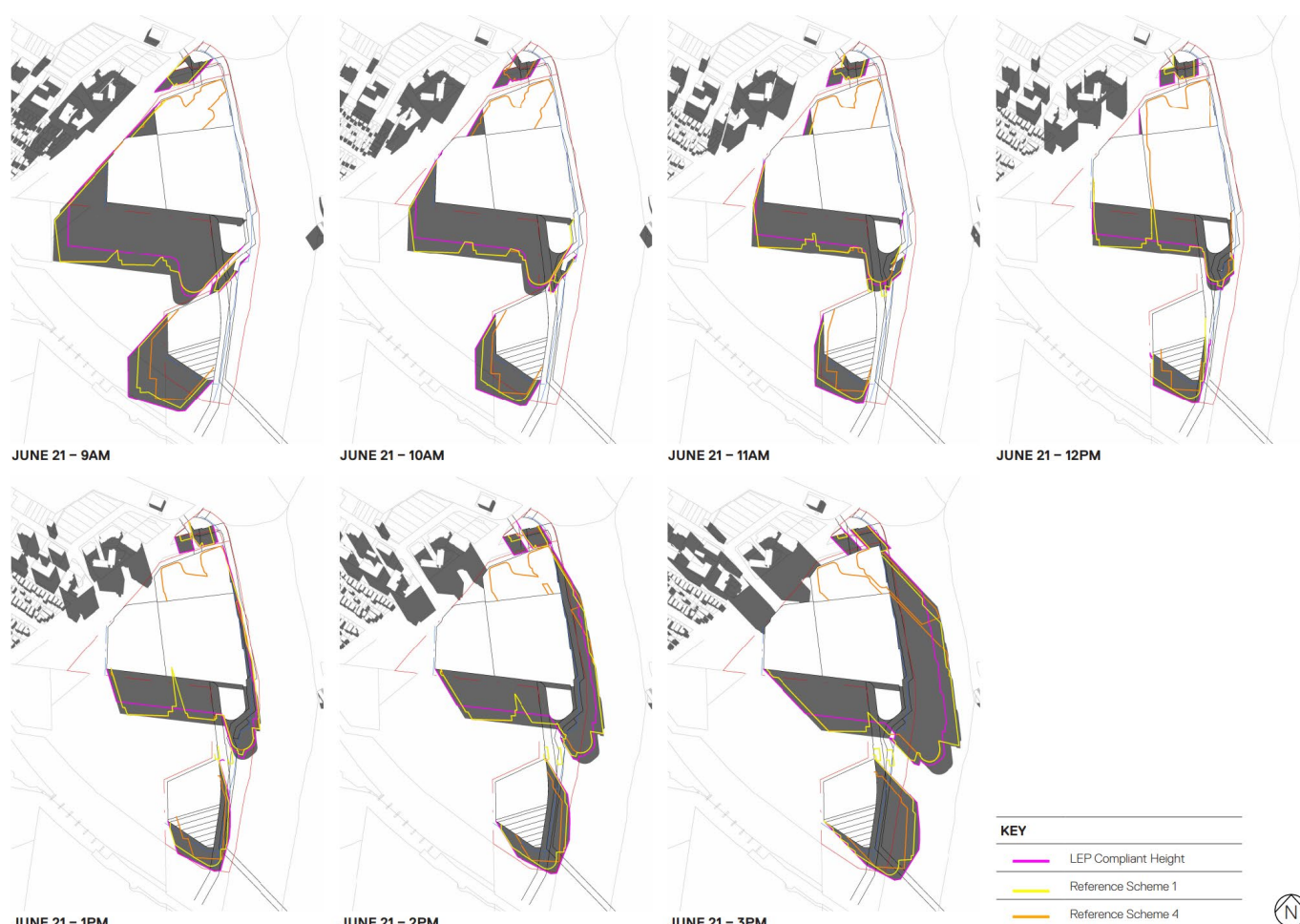


Figure 23 *Overshadowing Analysis – Winter Solstice (21 June)*

Source: Grimshaw



Figure 24 *Overshadowing Analysis – Summer Solstice (21 December)*

Source: Grimshaw

A quantitative assessment of the additional overshadowing to the future Pemulwuy Park as a result of the proposed height variation is presented in **Table 6** on the following page. It compares the proposed building envelopes between a height compliant with the Bayside LEP 2021 (RL 51m AHD) and proposed height variation (RL 70m AHD).

In summary, the proposed height variation is expected to result in 7.2% of additional overshadowing from 9am to 3pm on average in mid-winter. This figure is skewed by greater additional impact between 9am to 10am (9.6% to 14.3% of additional overshadowing), compared to 11am to 3pm (3.7% to 7.1% of additional overshadowing).

Therefore, the additional overshadowing of the future Pemulwuy Park between 9am to 10am in mid-winter is considered moderate, quickly transitioning to minor as a result of the fast-moving winter sun. The additional overshadowing during mid-winter is considered acceptable on the basis that it's the worst-case scenario and measures are implemented during the future detailed design of Block 2, 3A and 3B (subject to future Detailed DAs).

The proposed building envelopes do not incorporate building articulation to enable future flexibility for functional and quality design outcomes. As identified in **Figure 23** and **Figure 24**, the Indicative Reference Scheme results in notable decreases compared to the proposed building envelope. It is expected that the extent of additional overshadowing is reduced compared to the proposed building envelopes as part of the future Detailed DAs in accordance with the Urban Design Guidelines.

Table 6 *Pemulwuy Park Overshadowing Analysis – Proposed Building Envelopes*

Time	Winter Solstice		Summer Solstice	
	LEP Compliant Height	Additional Overshadowing	LEP Compliant Height	Additional Overshadowing
9am	32.3%	14.4%	2.3%	0.8%
10am	20.4%	9.6%	1.2%	0.5%
11am	14.3%	7.1%	0.2%	0.3%
12am	12.3%	6.0%	0%	0%
1pm	11.4%	5.2%	0%	0%
2pm	11.6%	4.6%	0%	0%
3pm	12.5%	3.7%	0%	0%
Average	16.4%	7.2%	0.5%	0.2%

Source: Grimshaw

5.2.3 Airport Safeguarding

The Site is located adjacent to Sydney Airport, including relative proximity to Runway 07/25 and Runway 16R/34L, with a minimum distance of 436m to Runway 07 and 1,154m to Runway 16R. An Aeronautical Impact Assessment and Wind Shear & Turbulence Assessment have been prepared to consider the potential impacts of the proposed height variation.

In summary, the assessments demonstrate that there is no technical impediment to approval of the proposed height variation from an airport safeguarding perspective. The key airport safeguarding matters relevant to the proposed height variation, having regard to the National Airports Safeguarding Framework (NASF) (DITRDCA), include wind shear and turbulence (Guideline B) and protected airspace (Guideline F), which is summarised in the following subsection.

The assessments demonstrate that airport safeguarding is protected, in accordance with Clause 6.7 of the Bayside LEP 2021 and broader airport safeguarding framework.

Wind Shear & Turbulence

Guideline B of the NASF seeks to manage the risk of building generated windshear (i.e. changes in wind speed and/or direction between two points) and building generated turbulence (i.e. rapid irregular changes in wind speed and/or direction at a fixed point) at airports.

A Wind Shear & Turbulence Assessment has been prepared to quantify impact of the Proposal on aircraft operations on Runway 16R at Sydney Airport as a result of wind shear and turbulence. The wind conditions along the approach glideslopes during typical wind conditions were evaluated through wind tunnel testing of a 1:750 length-scale model. The test and surrounds model installed in the wind tunnel are illustrated in **Figure 25** below.

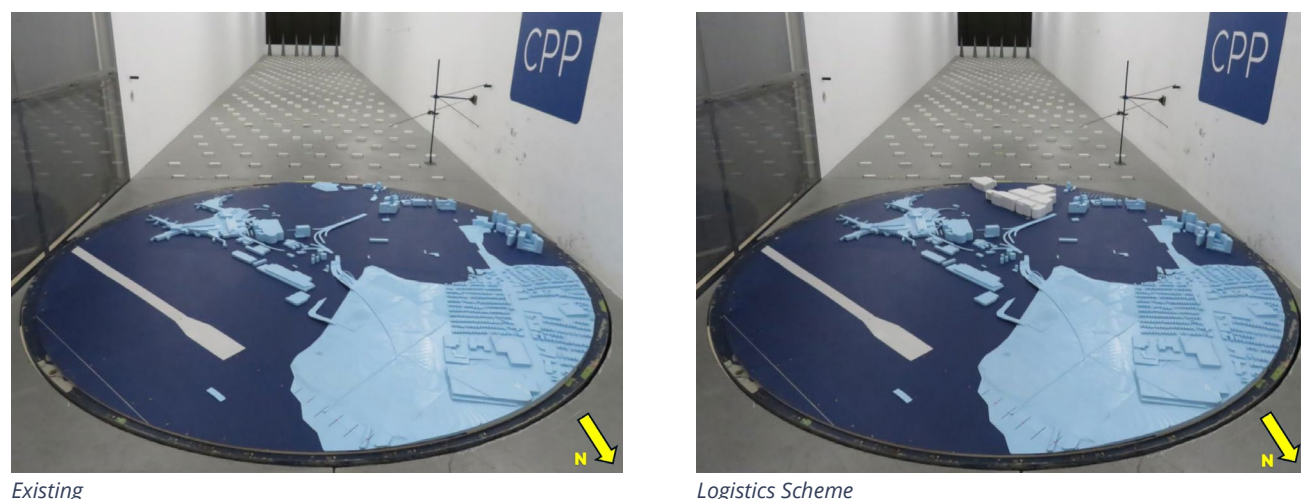


Figure 25 *Wind Tunnel Test and Surrounds Model – Runway 16R*

Source: CPP Wind Engineering Consultants

A Wind Shear & Turbulence Assessment determines that the Logistics Scheme, representing the proposed height variation, does not exceed the established criteria in published guidelines and therefore does not pose a significant risk on airport operational safety and regulations.

Furthermore, the existing wind conditions with no development were tested and no significant deviations were observed when comparing pre- and post-development configurations. On that basis, the proposed height variation will not have an unacceptable effect on the safety of existing or future air transport operations into or out of Sydney Airport.

Protected Airspace

Guideline F of the NASF seeks to manage intrusions into the operational airspace of airports by tall structures and minimise risk of activities that could cause air turbulence or the emission of steam, other gas, smoke, dust or other particulate matter. It is noted that the proposed height variation will not have an unacceptable air turbulence impact (as outlined above) and will comprise land uses that will not emit unacceptable particulate matter.

The Height of Buildings development standard is consistent with the Obstacle Limitation Surface (OLS) for Sydney Airport in relation to Block 2, 3A and 3B. Subsequently, the proposed height variation results in the penetration of 'prescribed airspace' by 19m for Block 2, 3A and 3B (refer to **Figure 26**). The proposed height variation is therefore considered a 'controlled activity' under Section 182 of the *Airports Act 1996* (Airports Act), requiring an approval in accordance with Section 183 of the Airports Act. The Applicant seeks approval in accordance with the *Airports (Protection of Airspace) Regulations 2026* from the Commonwealth Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (DITRDCA).

The penetration of the OLS is considered supportable on the basis it is below the most constraining of the Procedures for Air Navigation Services – Operations (PANS-OPS) surface overhead and it can be demonstrated that construction equipment (e.g. cranes) and activities will not adversely affect the safety, regularity and efficiency.

A recent redesign of the airspace around the Sydney Basin for the introduction of the Western Sydney International Airport (YSWS) prompted many changes to the procedures for Sydney Kingsford Smith Airport (YSSY). An initial assessment of the revised procedures indicates that the protection surface for the RNP VNAV PANS-OPS approach procedure to Runway 16R will be the most restrictive Terminal Instrument Flight Procedure Obstacle Protection (TIFPOP) surface affecting the site.

The lowest TIFPOP comprises a height of RL 70.59m AHD over the south-eastern part of the Site, this surface is marginally above the proposed height variation and may necessitate a temporary height approval for cranes to be used for construction of the upper levels of the Block 3C buildings. It is noted that detailed modelling and verification are currently in progress to confirm full compliance with aviation safety requirements.

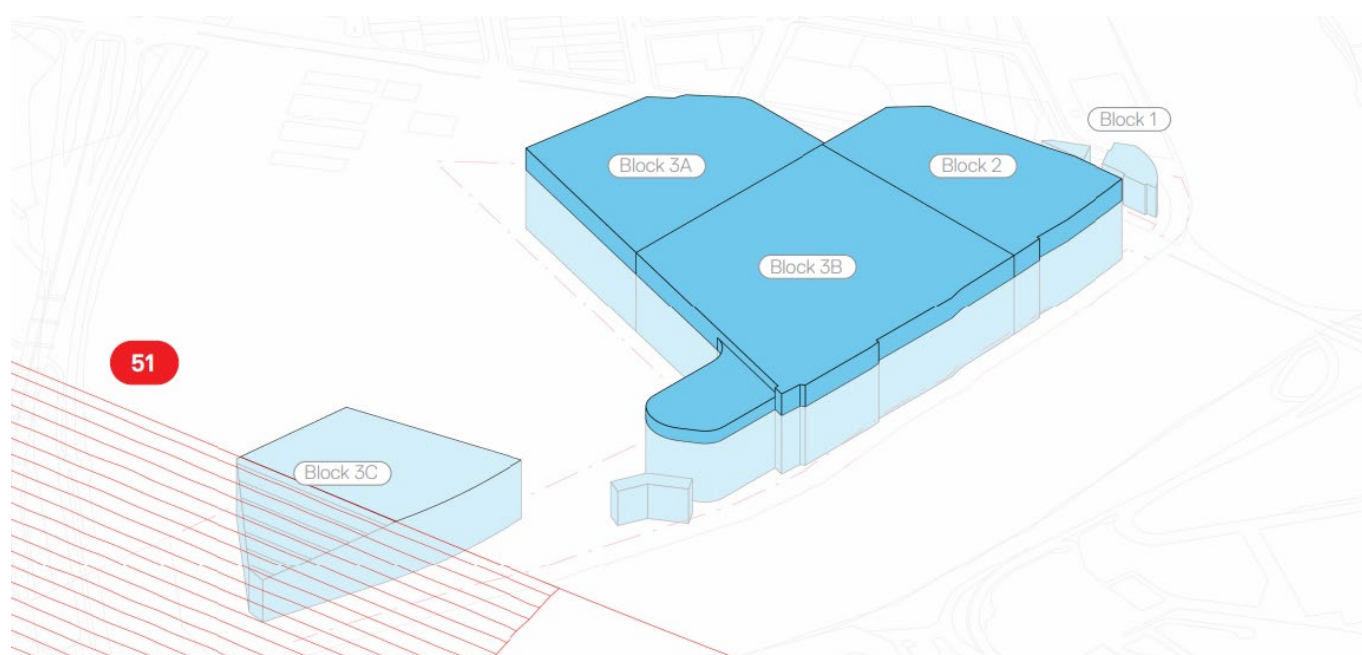


Figure 26 Proposed Height Variation Diagram

Source: Grimshaw

5.2.4 Economic Impact

Economic Opportunity

As outlined in the *Draft NSW Statewide Policy for Industrial Lands* (DPHI, 2025) and *Draft Sydney Plan* (DPHI, 2025), industrial lands are critical to the functioning of cities and regions, generating a significant amount of economic output and providing trade, employment and services for the population.

There is a well-documented shortage of employment lands within the Greater Sydney Region, which is particularly pronounced within Eastern Sydney (refer **Figure 27**). There is no new industrial zoned land being created within Eastern Sydney, while the population of Eastern Sydney and freight processed at the key trade gateways of Sydney Airport and Port Botany is expected to grow significantly.

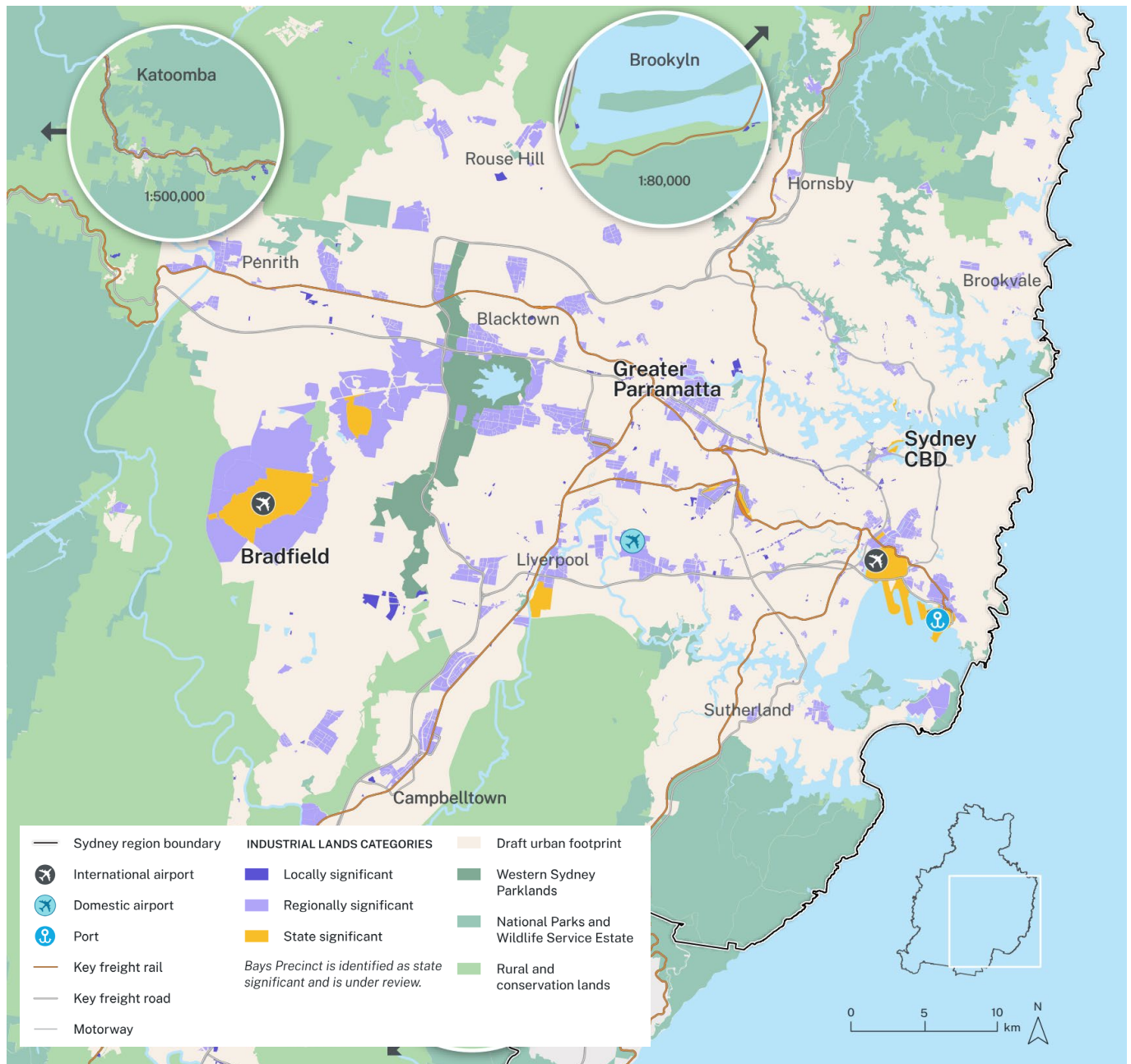


Figure 27 Industrial Lands Map – Greater Sydney Region

Source: Figure 40 – Industrial Lands, Draft Sydney Plan (DPHI, 2025)

The *Draft Sydney Airport Master Plan 2045* (Sydney Airport Corporation, 2025) identifies that air freight processed by Sydney Airport is forecasted to increase from 0.6 million tonnes per annum (2024) to 1.4 million tonnes per annum (2045). Meanwhile, the *NSW Ports 2063 Masterplan* (NSW Ports, 2023) identifies that shipping container volumes at Port Botany and Port Kembla could increase from 2.8 million per annum (2023) to over 9 million per annum (2063).

For context, there is currently a significant mismatch between investment and growth in Eastern Sydney. It is projected that Eastern Sydney will accommodate 24.1% of Greater Sydney's resident population growth, while only 10.7% of investment value for employment lands is currently being directed towards Eastern Sydney.

Land availability in Western Sydney can only supplement industrial land in Eastern Sydney, as outlined in the *NSW Ports 2063 Masterplan* (NSW Ports, 2023):

"Customer expectations of direct and on-demand deliveries cannot be serviced from industrial lands in Western Sydney alone due to travel distances and road congestion. Industrial lands in the Port Botany precinct and the Inner West are required to service this need for Sydney's eastern suburbs and the central business district".

The supply of industrial land supporting the Eastern Sydney population and nationally significant trade gateways is limited and cannot grow. Therefore, industrial land within Eastern Sydney, particularly land directly adjacent to these trade gateways, must be used more intensively and efficiently.

The failure to increase the intensity and efficiency of this land will have significant impacts on the cost to lease industrial floorspace and move freight within the Greater Sydney Region, while also increasing road congestion through increased vehicle trips and travel distances. If the planning framework fails to respond, businesses and consumers will face increased costs resulting in significantly detrimental economic impacts, decreasing Sydney's competitiveness.

Although there is a clear demonstrated need for increased intensity and efficiency of industrial land within Eastern Sydney, there are a limited number of sites that can support multi-level warehouse development due to the typology's requirement for large unconstrained sites. Industrial land within Eastern Sydney is heavily fragmented and largely restricted by environmental constraints, such as road network capacity.

Unlocking key sites and ensuring flexibility of design and height is critical to delivering more intensive and efficient industrial development across Eastern Sydney. In turn, this will help to rebalance investment back to Eastern Sydney and support population growth, business growth, and growth in freight volumes at Sydney Airport and Port Botany.

In summary, the Proposal is positioned on a highly strategic site and provides a generational opportunity to significantly increase the supply of industrial floorspace for the following reasons:

- It has a demonstrated capacity to accommodate up to 340,000m² of GFA, supported by executed Voluntary Planning Agreements for associated road upgrades;
- It has a planning framework that has been informed by the provision of multi-level logistics development with the objective of leveraging and supporting the adjacent Sydney Airport;
- It is located immediately adjacent to Sydney Airport, a nationally significant trade gateway that processed 0.6 million tonnes of air freight in 2024, forecasted to increase to 1.4 million tonnes in 2045;
- It is located adjacent to Marsh Street, subsequently leveraging State government investment to surrounding road infrastructure and providing direct connectivity to the following:
 - M5 Motorway, connecting the Site to Port Botany in under 10 minutes, as well as other broader connections to the eastern suburbs and south-west Sydney and wider motorway network;
 - St Peters Interchange, via the Sydney Gateway, connecting the Site to WestConnex (M4 and M8); and
 - Sydney Airport Freight Terminal, via the Sydney Gateway.
- It will enable a significant contribution of new industrial floorspace in land constrained Eastern Sydney, where homes and jobs are most concentrated and continued projected population growth is to occur.

The proposed height variation responds to these key elements by seeking to maximising the provision of new industrial on the Site. This subsequently supports reduced transport distances and costs, reduced heavy vehicle trips on the regional road network, increased efficiency of the logistical supply chain, and decreased costs to consumers.

On this basis, the failure to facilitate the proposed height variation under the Concept Masterplan would not support the delivery of critical additional industrial floorspace in Eastern Sydney. Specifically, it would result in significantly detrimental economic impacts decreasing Sydney's competitiveness and place additional pressure on other sites within Eastern Sydney to support population growth and freight volume growth.

Economic Value

As discussed in **Section 4.0**, it has been determined through detailed options analysis that the maximum permissible GFA on Lot 100 DP1231954 (340,000m²) cannot be realistically or feasibly achieved within the Height of Buildings development standard. The variation of the Height of Buildings development standard as part of the proposed buildings enables the provision of 6-storey logistics buildings and achievement of 340,000m² for Reference Scheme 1 and 2 (refer to **Table 1**).

For context, Reference Scheme 1 would be restricted to approximately 295,000m² of GFA on Lot 100 DP1231954 if compliance was maintained with the RL 51m AHD height control on Block 2, 3A and 3B. This would represent a shortfall of 45,000m² of GFA that has previously been assessed and determined suitable for the Site. This shortfall represents a significant loss in potential economic value through decreased employment output and generation of economic activity on a highly strategic site adjacent to Sydney Airport and key freight transport corridors.

The economic benefits associated with the proposed height variation can be highlighted using the following direct comparison for Reference Scheme 1 (Logistics scheme):

- **LEP Compliant Height (RL 51m AHD)** – 291,200m² of Logistics GFA; and
- **Proposed Height Variation (RL 70m AHD)** – 336,200m² of Logistics GFA.

A comparison of the economic benefits is presented in **Table 7**, which quantifies the value of the proposed height variation to the NSW economy during operation of the logistics buildings in Reference Scheme 1 (Logistics scheme).

Table 7 Operational Phase Annual Net Uplift (LEP Compliant Height vs Proposed Height Variation)

Phase	Direct	Indirect	Total
LEP Compliant Height – 291,200m² of Logistics GFA			
FTE Employment	1,460	2,190	3,650
Value Added (\$m)	\$440.0	\$400.0	\$840.0
Proposed Height Variation – 336,200m² of Logistics GFA			
FTE Employment	1,680	2,530	4,210
Value Added (\$m)	\$510.0	\$460.0	\$970.0
Net Uplift (Difference)			
FTE Employment	+220	+340	+560 (15.3% Increase)
Value Added (\$m)	+\$70.0	+\$60.0	+\$130.0 (15.4% Increase)

Source: Colliers Urban Planning analysis utilising data from ABS, National Accounts 2020/21 // Note: Figures rounded

The Proposal represents an economic catalyst for the NSW Economy through the potential creation of 4,210 new jobs and a value-add of \$970 million. As such, the economic impact associated with the proposed height variation is significant and would have a meaningful impact on the NSW economy. The failure to facilitate the proposed height variation under the Concept Masterplan would result in a potential operational job and economic value loss of over 15%.

Specifically, compliance with the Height of Buildings development standard would fail to:

- **Support the creation of an additional 560 new jobs**, comprising 220 direct and a further 340 indirect FTE jobs; and
- **Generate an additional \$130 million in value per annum**, comprising \$70.0 million in direct and a further \$60.0 billion in indirect value added.

On this basis, it is demonstrated that the additional environmental impacts associated with the non-compliance are disproportionate to the adverse economic consequences attributable to compliance with the Height of Buildings development standard.

5.2.5 Consistency with Draft Statewide Policy for Industrial Lands

The *Draft Statewide Policy for Industrial Lands* (draft policy), released in December 2025, was developed to create a more equitable and coordinated approach to planning, managing and protecting industrial lands in NSW.

It identifies that industrial lands generate a significant portion of NSW's economic output, but a current shortage of industrial land is increasing operational costs associated with rising rents causing businesses to relocate. These costs are often passed on to the consumer, affecting the price of goods and cost of construction and driving economic inflation.

The draft policy introduces a framework for categorisation of industrial lands based on their contribution to economic activity and provides protections for the development and preservation of those lands for industrial purposes. The developable area of the Site is classified as regionally significant industrial land, which is defined as, “*areas of scale that contribute significantly to regional economies and the broader city function or provide infrastructure that supports the region through employment and economic contribution*”.

Section 4.2 of the draft policy relates to the intensification of existing industrial lands and identifies how intensification can help accommodate changing economic needs and support job creation. The proposed height variation, in addition to the previous Planning Proposal (PP-2022-1748), aligns with the strategic conditions associated with the intensification of industrial lands for the following reasons:

- It supports significant investment in new large-scale and high-density industrial precinct directly adjacent to Sydney Airport and in close proximity to Port Botany, representing nationally significant trade gateways;
- It responds to planned population growth in Eastern Sydney as a result of the NSW Government’s objective to increase housing density within in-fill areas to combat the housing supply crisis;
- It supports increased employment density, as well as increased efficiency and decreased costs of the logistics supply chain;
- It directly responds to the limited supply of industrial lands within Eastern Sydney, in close proximity to Sydney’s key trade gateways and large residential population;
- It enables the realisation of the maximum permitted industrial floorspace to support the project growth of air freight processed at Sydney Airport, from 0.6 million tonnes in 2024 to 1.4 million tonnes in 2045; and
- It further reduces heavy vehicle trips on the regional road network by mitigating the need to transport inbound freight to distribution centres in Western Sydney, before being transported to end-users in Eastern Sydney.

The draft policy outlines key matters for consideration in the intensification of industrial land, with an assessment against each matter provided in **Table 8**. It demonstrates that the proposed height variation, in addition to the previous Planning Proposal (PP-2022-1748), aligns with the draft policy and represents a logical opportunity to realise the maximum permitted floorspace on a strategically significant site.

Table 8 Consistency with Matters for Consideration in the Intensification of Industrial Land

Matter	Analysis
<i>Alignment with strategic plans and policies</i> <i>Make sure proposals are consistent with relevant planning frameworks</i>	The Proposal is consistent with the strategic planning framework, seeking to deliver a world-class precinct that leverages the site’s strategic location adjacent to Sydney Airport and strong transport connections by delivering multi-level logistics development, trade-related enterprise and supporting uses with publicly accessible open space. The proposed height variation does not impact consistency with the strategic planning framework. Instead, it supports compliance with key relevant objectives, including the objective to secure an ongoing pipeline of productive industrial land under Draft Region Plan. Specifically, it responds to the limited industrial land supply in Eastern Sydney, whereby no or minimal new industrial land is being created, to address the need for additional industrial floorspace to service projected population growth and freight volume growth at Sydney Airport and Port Botany.
<i>Emerging market trends</i> <i>Promote responsiveness to changing industrial needs and sectoral dynamics</i>	The Proposal responds to the limited industrial land supply in Eastern Sydney by delivering more intensive and efficient development on a site with demonstrated

<i>Demand and supply of industrial lands</i> Support long-term industrial land viability and strategic land use	capacity, subsequently supporting projected population growth in Eastern Sydney and freight volume growth at Sydney Airport and Port Botany. The provision of multi-level logistics buildings is a direct market response to fundamentally constrained industrial land supply in Eastern Sydney. It responds to this constraint by adopting a development typology typically limited to primary Asian freight hubs, such as Singapore, Hong Kong and Tokyo. The provision of additional industrial floorspace in Eastern Sydney will support reduced operational costs for businesses by mitigating rising rents and minimising transportation costs, increasing the overall cost and efficiency of the logistics supply chain. The proposed height variation responds to the fundamental need for additional industrial land supply in Eastern Sydney by ensuring the maximum demonstrated capacity of the site can be feasibility achieved, while also achieving design requirements for future occupiers.
<i>Environmental impacts</i> Minimise adverse effects on communities and the environment	The Proposal is supported by detailed technical assessments that consider the potential associated environmental impacts. The proposed height variation does not result in adverse effects on the community or environment, with effective measures implemented to mitigate any impact. The proposed height variation seeks to support the maximum accessed capacity of the Site, representing 343,250m² of GFA. Therefore, the estimated traffic generation is consistent with that assessed under previous Planning Proposal (PP-2022-1748) and aligns with the proposed external public road upgrades associated with the project.
<i>Enabling infrastructure</i> Ensure infrastructure can support proposed intensification	The Proposal is accompanied by sufficient infrastructure to support the future development, aligning the maximum accessed capacity of the Site, representing 343,250m² of GFA. The infrastructure includes significant external public road upgrades, flood mitigation works, and publicly accessible open space. The proposed height variation does not result in the need or requirement for additional enabling infrastructure.
<i>Proximity to sensitive receivers</i> Manage land use conflicts and protect amenity of surrounding uses	The Proposal includes residential apartments to the north-west along Marsh Street and future public open space to the west and south-west. It demonstrates that the amenity to surrounding uses is maintained, generally consistent with the outcomes of the previous Planning Proposal (PP-2022-1748). The proposed height variation is limited to minor additional overshadowing of future public open space and does not result in conflicts or impacts to the amenity of surrounding uses.

5.2.6 Consistency with Aims of the Bayside LEP 2021

The proposed variation to the Height of Buildings development standard will give better effect to the aims of Bayside LEP 2021, with an assessment provided in **Table 9** below.

Table 9 *Consistency with the Aims of the Bayside LEP 2021*

Object	Assessment	Compliance
(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts	The proposed height variation will not restrict or limit the ability for development of land for arts and cultural activity.	Yes
(a) to protect, conserve and enhance Aboriginal cultural heritage and the environmental, cultural, scenic, built and landscape heritage of Bayside	The proposed height variation does not result in any adverse heritage impacts. The Site does not comprise any listed local or State heritage items. Specifically, the proposed variation does not give rise to any impacts to surrounding local and State heritage items.	Yes

Object	Assessment	Compliance
<i>(b) to provide high quality open space areas and recreational facilities</i>	The proposed height variation will not alter the delivery of new high quality open space and recreational facilities as part of the Proposal and future Pemulwuy Park.	Yes
<i>(c) to reduce community risk and improve resilience to, and from, urban and natural hazards</i>	The proposed height variation does not impact on the risk from urban or natural hazards.	Yes
<i>(d) to encourage sustainable economic growth and development in Bayside</i>	The Proposal represents an economic catalyst for the NSW Economy through the potential creation of 4,210 new jobs and a value-add of \$970 million. The economic impact associated with the proposed height variation is therefore significant and would have a meaningful impact on the NSW economy. The failure to facilitate the proposed height variation under the Concept Masterplan would result in a potential operational job and economic value loss of over 15%, failing to: • Support the creation of an additional 560 new jobs, comprising 220 direct and a further 340 indirect FTE jobs; and • Generate an additional \$130 million in value per annum, comprising \$70.0 million in direct and a further \$60.0 billion in indirect value added. Therefore, the proposed height variation encourages sustainable growth and development within Bayside.	Yes
<i>(e) to create a liveable urban place through the application of design excellence in all elements of the built environment and public domain</i>	As discussed in Section 5.2.7 , the proposed height variation does not impact the ability for the Proposal to achieve design excellence in accordance with Clause 6.10 of the Bayside LEP 2021.	Yes
<i>(f) to encourage diversity in housing to meet the needs of, and enhance amenity for, Bayside residents</i>	The proposed height variation will result in a minor additional view impact to surrounding residences along Marsh Street. This is considered only to be minor and will not affect the amenity of surrounding residents.	Yes
<i>(g) to encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes,</i>	The Proposal will enrich the existing active transport corridors within the surrounding area and is located within proximity to public transport. The proposed height variation will support the facilitation of permissible GFA under the Bayside LEP 2021 to further leverage these transport connections.	Yes
<i>(h) to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles,</i>	The proposed height variation will not preclude the achievement of ecologically sustainable development. The Proposal seeks to enable the delivery of state-of-the-art facilities that will redefine the logistics landscape in Australia, setting new benchmarks for scale, efficiency, sustainability and innovation. It will comprise innovative sustainability measures and high sustainability credentials, including a minimum 5 Star Green Star rating.	Yes
<i>(i) to enhance and protect the functions and roles of the international trade gateways of Sydney Airport and Port Botany,</i>	The Site is located immediately adjacent to Sydney Airport and in close proximity to Port Botany. The proposed variation to the Height of Buildings development standard seeks to ensure that the capacity of the strategically significant site is maximised against the Bayside LEP 2021 and it provides necessary flexibility to meet the operational requirements of future tenants. As outlined in Section 5.2.4, the failure to facilitate the proposed height variation under the Concept Masterplan would result in a loss of 45,000m² of Logistics GFA.	Yes

Object	Assessment	Compliance
	Therefore, compliance with the Height of Buildings development standard would fail to: • Support the creation of an additional 560 new jobs, comprising 220 direct and a further 340 indirect FTE jobs; and • Generate an additional \$130 million in value per annum, comprising \$70.0 million in direct and a further \$60.0 billion in indirect value added. Given the strategic significance of the Site in relation to Sydney Airport and Port Botany, a loss of 45,000m² of Logistics GFA would not support the enhancement of these key trade gateways. Therefore, the proposed height variation will enhance and protect the functions and roles of Sydney Airport and Port Botany as nationally significant trade gateways.	
(j) <i>to increase urban tree canopy cover and enable the protection and enhancement of green corridor connections,</i>	The proposed height variation will not alter the delivery of increased urban tree canopy coverage across the Site, including future Pemulwuy Park.	Yes
(k) <i>to promote and enhance the amenity of Botany Bay's foreshores and Bayside's waterways.</i>	As discussed in Section 5.1 , the proposed height variation will not detract from the amenity of the Cooks River Foreshore.	Yes

5.2.7 Consistency with Design Excellence Requirement of the Bayside LEP 2021

In accordance with Clause 6.10 of the Bayside LEP 2021, future development on the Site must demonstrate design excellence as part of future Detailed DAs. An assessment of the proposed height variation against the matters for consideration in determining Design Excellence under Clause 4.6 of the Bayside LEP 2021 is provided in **Table 10** below.

Table 10 *Consistency with Design Excellence Matters under Clause 6.10(4) of the Bayside LEP 2021*

Requirement	Assessment	Compliance
(a) <i>whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved</i>	The proposed height variation does not restrict the ability to deliver a high standard of architectural design, materials and detailing appropriate to the building type and location. The Indicative Reference Schemes demonstrate that a suitable outcome can be achieved in this regard.	Yes
(b) <i>whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain</i>	The proposed variation to the Height of Buildings development standard will not impact on the ability to deliver a high-quality public domain. The Proposal seeks to transform private land into a world-class precinct including high-quality landscaping and amenity outcomes for members of the public and future workers. Therefore, the proposed height variation does not preclude the development from achieving design excellence.	Yes
(c) <i>whether the development detrimentally impacts on view corridors</i>	The additional massing as a result of the proposed height variation will result in minor impacts for existing public and private views. It will not have any detrimental impact on key view corridors. Therefore, the proposed height variation does not preclude the development from achieving design excellence.	Yes
(d) <i>the requirements of any development control plan made by the Council and as in force at the commencement of this clause</i>	The Proposal has considered the <i>Bayside Development Control Plan 2022</i> (Bayside DCP) where appropriate, noting the DCPs do not apply to State Significant Development in accordance with Section 2.10 of <i>State Environmental Planning Policy (Planning Systems) 2021</i>. The Proposal is informed by Urban Design Guidelines prepared with regard to Clause 6.18 of the Bayside LEP 2021. The proposed height	Yes

	variation has been considered in preparation of the Urban Design Guidelines, which must be considered as part of the future Details DAs.	
(e) <i>how the development addresses the following matters—</i>	The proposed height variation has been demonstrated as suitable for the Site and will not impact on the ability of the Proposal to achieve design excellence as part of future DAs.	Yes
(i) <i>the suitability of the land for development</i>		
(ii) <i>existing and proposed uses and use mix</i>	Not applicable to the proposed height variation.	N/A
(iii) <i>heritage issues and streetscape constraints</i>	Not applicable to the proposed height variation.	N/A
(iv) <i>the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form</i>	As discussed in Section 5.1 , the proposed height variation is considered suitable and compatible with the surrounding development. It is also considered consistent with the desired future character of the Site. The proposed increased height will have no impact on required building separation or setbacks.	Yes
(v) <i>bulk, massing and modulation of buildings</i>	The proposed height variation results in a minor increase in the total extent of bulk and massing for Block 2, 3A and 3B under the Logistics scheme. Noting the functional and operational requirements of the logistics form factor, the Indicative Reference Schemes demonstrate suitable strategies in order to mitigate bulk and scale of the massing. Notably, the proposed height variation will enable more linear tower forms on Block 2 as part of the Alternative Uses scheme.	Yes
(vi) <i>street frontage heights</i>	The proposed height variation will not have a perceivable impact on street frontage heights, noting the proposed increase from RL 51m AHD to RL 70m AHD.	Yes
(vii) <i>environmental impacts such as sustainable design, overshadowing, wind and reflectivity</i>	The proposed height variation will not impact the ability to achieve sustainable design, result in acceptable overshadowing impacts (refer to Section 5.2.2) and not result in unacceptable reflectivity impacts to surrounding uses.	Yes
(viii) <i>the achievement of the principles of ecologically sustainable development</i>	The proposed height variation will not preclude the achievement of ecologically sustainable development. The Proposal seeks to enable the delivery of state-of-the-art facilities that will redefine the logistics landscape in Australia, setting new benchmarks for scale, efficiency, sustainability and innovation. It will comprise innovative sustainability measures and high sustainability credentials, including a minimum 5 Star Green Star rating.	Yes
(ix) <i>pedestrian, cycle, vehicular and service access, circulation and requirements</i>	Not applicable to the proposed height variation.	N/A
(x) <i>the impact on, and any proposed improvements to, the public domain</i>	The proposed height variation will have minimal impact on the public domain. It is expected to result in minor additional visual impact from the public domain and minor/moderate additional overshadowing. The Indicative Reference Scheme demonstrates that these minimal impacts can be mitigated through good design and building articulation. Therefore, the impact on the public domain as a result of the proposed height variation does not preclude the development from achieving design excellence.	Yes
(xi) <i>achieving appropriate interfaces at ground level between the building and the public domain</i>	Not applicable to the proposed height variation.	N/A
(xii) <i>excellence and integration of landscape design.</i>	Not applicable to the proposed height variation.	N/A

5.2.8 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 identified in Section 1.3 of the EP&A Act.

While this does not necessarily require that the Proposal should be consistent with the objects of the Act, it is considered that the Proposal is broadly consistent with each object as outlined in **Table 11**, notwithstanding the proposed variation of the Height of Buildings development standard.

Table 11 *Consistency with the Objects of the EP&A Act*

Object	Assessment	Compliance
<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 height variation will promote the social and economic welfare of the community by supporting an additional 560 new jobs, additional \$130 million in value per annum, and improved efficiency of the logistics supply chain by maximizing the permissible GFA for the Site under the Bayside LEP 2021. The strict compliance with the Height of Buildings development standard would result in the reduced economic potential of the Site, compared to that supported under the Bayside LEP 2021.	Yes
<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 height variation will not result in any serious or irreversible environmental damage. It will not impact the health and diversity of the environment, while improving the productivity of the Site to support the improved efficiency of the logistics supply chain for future generations. The biological diversity and ecological integrity will not be impacted by the proposed height variation. The Proposal seeks to enable the delivery of state-of-the-art facilities that will redefine the logistics landscape in Australia, setting new benchmarks for scale, efficiency, sustainability and innovation. It will comprise innovative sustainability measures and high sustainability credentials, including a minimum 5 Star Green Star rating. Therefore, the proposed height variation will have a positive ecologically sustainable development outcome.	Yes
<i>(c) to promote the orderly and economic use and development of land</i>	The proposed variation to the Height of Buildings development standard seeks to ensure that the capacity of the strategically significant site is maximised and provides necessary flexibility to meet the operational requirements of future tenants. As discussed in Section 4.0, it has been determined through detailed options analysis that the maximum permissible GFA cannot be realistically or feasibly achieved within the development standard. Further, the Concept Masterplan seeks to adopt the realistic worst-case warehouse floor-to-floor heights to ensure the efficiency of the warehouse is optimised and the operations of future tenants are not unnecessarily compromised. The Proposal represents an economic catalyst for the NSW Economy through the potential creation of 4,210 new jobs and a value-add of \$970 million. As such, the economic impact associated with the proposed height variation is significant and would have a meaningful impact on the NSW economy. The failure to facilitate the proposed height variation under the Concept Masterplan would result in a potential operational job and economic value loss of over 15%. Specifically, compliance with the Height of Buildings development standard would fail to: • Support the creation of an additional 560 new jobs, comprising 220 direct and a further 340 indirect FTE jobs; and	Yes

Object	Assessment	Compliance
	Generate an additional \$130 million in value per annum, comprising \$70.0 million in direct and a further \$60.0 billion in indirect value added. Therefore, the proposed height variation promotes the orderly and economic development of a highly strategic Site. For further discussion, refer to Section 5.2.4.	
<i>(d) to promote the delivery and maintenance of affordable housing</i>	Not applicable to the proposed height variation.	N/A
<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 height variation will not impact on the protection of the natural environment.	Yes
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)</i>	The proposed height variation does not result in any adverse heritage impacts. The Site does not comprise any listed local or State heritage items. Specifically, the proposed variation does not give rise to any impacts to surrounding local and State heritage items.	Yes
<i>(g) to promote good design and amenity of the built environment</i>	The proposed variation to the height of buildings development standard will promote good design and amenity of the built environment. The proposed height is compatible with the surrounding context and will be supported by the overall design approach. Specifically, the proposed height variation will support the creation of improved built form outcomes on Block 2 under the Alternatives Uses scheme, by enabling more linear tower forms. For further discussion, refer to Section 5.1 .	Yes
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</i>	Not applicable to the proposed height variation.	N/A
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State</i>	Not applicable to the proposed height variation.	N/A
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment</i>	Not applicable to the proposed height variation.	N/A

5.2.9 No Significance in the Extent of the Variation

The quantum of the proposed variation (37.25%) is not, in isolation, a material consideration as to whether the variation request should be supported. There is no constraint on the degree to which a consent authority may depart from a numerical standard under Clause 4.6, as established in *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 (*GM Architects*) at [85]. In *GM Architects*, the Court approved a height exceedance of 103%, along with a Floor Space Ratio (FSR) exceedance of 44.7%.

There are a wide range of commonplace numerical variation to development standards under Clause 4.6 (as it appears in the Standard Instrument), with some examples as follows:

- In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003, the Court granted consent for a three-storey shop top housing development in Woolloomooloo. In this decision, the Court approved a FSR variation of 187%.

- In *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the Court granted consent for a residential flat building. In this decision, the Court approved a FSR variation of 85% (1.21:1 compared to permitted 0.65:1).
- In *Abrams v Council of the City of Sydney* [2019] NSWLEC 1583, the Court granted development consent for a 4-storey mixed use development containing eleven (11) residential apartments and a ground floor commercial tenancy. In this decision, the Court approved a FSR variation of 75% (2.63:1 compared to the permitted 1.5:1).
- In *Moskovich v Waverley Council* [2016] NSWLEC 1015, the Court approved a residential flat building in Bondi. In this decision, the Court approved a FSR variation of 65% (1.5:1 compared with the permitted 0.9:1).
- In *Edmondson Grange Pty Ltd v Liverpool City Council* [2020] NSWLEC 1594, the Court granted a development consent for three (3) residential flat buildings. In this decision, the Court approved a FSR variation of 59% (1.19:1 compared with the permitted 0.75:1).
- In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386, the Court approved a residential flat building. In this decision, the Court approved a height exceedance of 55% and FSR variation of 20%.
- In *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, the Court granted consent to a 6-storey shop top housing development. In this decision, the Court approved a FSR variation of 42% (3.54:1 compared with the permitted 2.5:1).
- In *Symond Family Investments Pty Ltd v Woollahra Municipal Council* [2023] NSWLEC 1789 the Court granted consent to alterations to commercial premises. In this decision, the Court approved a height variation of 36.6% (20.075m compared with the permitted 14.7m) and a FSR variation of 18.7% (3.01:1 compared to the permitted 2.5:1).
- In *Artazan Property Group Pty Ltd v Inner West Council* [2019] NSWLEC 1555, the Court granted development consent for a 3-storey building containing a hardware and building supplies use. In this decision, the Court approved a FSR variation of 27% (1.27:1 compared to the permitted 1.0:1).
- In *Leda Holdings Pty Ltd v Northern Beaches Council* [2022] NSWLEC 1179, the Court granted consent for a mixed-use building containing nine (9) self-storage units and twenty-seven (27) industrial units. In this decision, the Court approved a height variation of 28% (14.1m compared with the permitted 11m).

5.2.10 Conclusion on Clause 4.6(3)(b)

In accordance with Clause 4.6(3)(b) of the Bayside LEP 2021, there are sufficient environmental planning grounds to justify contravening the Height of Buildings development standard. Specifically, the sufficient environmental planning grounds supporting the proposed height variation are summarised as follows:

- It maintains compliance with the maximum permissible GFA on Lot 100 DP1231954 (340,000m²) under Clause 6.20 of the Bayside LEP 2021, including estimated traffic generation that is consistent or less than that assessed under the previous Planning Proposal (PP-2022-1748);
- It supports reduced vehicle trips on the regional road network and reduced travel distances by realising the maximum permitted GFA, subsequently reducing the reliance on distribution centres in Western Sydney to process freight ultimately bound for Eastern Sydney where homes and jobs are most concentrated;
- It results in minor/moderate additional overshadowing to the future Pemulwuy Park in mid-winter that will be minimised through the detailed design of future buildings, subject to future Detailed DAs;
- It demonstrates that airport safeguarding can be suitably achieved and DITRDCA may issue a controlled activity approval;
- It includes significant economic benefits to the NSW economy through enabling achievement of the maximum permissible GFA, specifically:
 - Delivering critical industrial floorspace in Eastern Sydney on a site with demonstrated capacity for increased intensity and efficiency in close proximity to nationally significant trade gateways;
 - Supporting the creation of an additional 560 new jobs, comprising 220 direct and a 340 indirect FTE jobs; and
 - Generating an additional \$130 million in value per annum, comprising \$70.0 million in direct and a further \$60.0 million in indirect value added.
- It is consistent with the aims of the Bayside LEP 2021, particularly enhancing the function and roles of Sydney Airport and Port Botany;
- It does not restrict achievement of design excellence in accordance with Clause 6.10 of the Bayside LEP 2021; and

- It complies with the objects of the EP&A Act.

Further, it is noted that the Site is highly unique, both in terms of the constraints that require the proposed height exceedance (outlined in **Section 4.0**), and the opportunity that the strategically significant site presents. Specifically, it represents a generational opportunity to maximise the capacity and efficiency of a site directly adjacent to Sydney Airport to ultimately support the growth of Sydney Airport and broader projected population growth of Eastern Sydney over the operational lifespan of the development.

Considering these factors, the proposed variation does not give precedent to other development which do not comprise these unique elements.

6.0 Conclusion

This Clause 4.6 Variation Request has been prepared on behalf of Stockland to accompany a SSDA (SSD-84467726) for a Concept Masterplan and Early Works associated with the Kogarah Golf Club Redevelopment located on land identified as 13-19A Marsh Street, Arncliffe (the Site).

The assessment demonstrates that compliance with the Height of Buildings development standard contained in Clause 4.3 of the Bayside LEP 2021 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 Request demonstrates that the following notwithstanding the non-compliance with the Height of Buildings development standard:

- Compliance with the development standard would be unreasonable and unnecessary, because:
 - It is consistent with the desired future character of the area, where the variation demonstrates airport safeguarding is maintained, which was the basis of the development standard under the previous Planning Proposal (PP-2022-1748);
 - It only results in minor additional visual and view impacts compared to those under a compliant height, with additional impacts to be mitigated through the implementation of built form and urban design measures;
 - It does not result in any additional impacts to loss of privacy or solar access to the existing surrounding development; and
 - It demonstrates appropriate transitions in built form and land use intensity is maintained to the surrounding context.
- There are sufficient environmental planning grounds to justify the contravention, including:
 - It maintains compliance with the maximum permissible GFA on Lot 100 DP1231954 (340,000m²) under Clause 6.20 of the Bayside LEP 2021, including estimated traffic generation that is consistent or less than that assessed under the previous Planning Proposal (PP-2022-1748);
 - It supports reduced vehicle trips on the regional road network and reduced travel distances by realising the maximum permitted GFA, subsequently reducing the reliance on distribution centres in Western Sydney to process freight ultimately bound for Eastern Sydney where homes and jobs are most concentrated;
 - It results in minor/moderate additional overshadowing to the future Pemulwuy Park in mid-winter that will be minimised through the detailed design of future buildings, subject to future Detailed DAs;
 - It demonstrates that airport safeguarding can be suitably achieved and DITRDCA may issue a controlled activity approval;
 - It includes significant economic benefits to the NSW economy through enabling achievement of the maximum permissible GFA, specifically:
 - Delivering critical industrial floorspace in Eastern Sydney on a site with demonstrated capacity for increased intensity and efficiency in close proximity to nationally significant trade gateways;
 - Supporting the creation of an additional 560 new jobs, comprising 220 direct and a 340 indirect FTE jobs; and
 - Generating an additional \$130 million in value per annum, comprising \$70.0 million in direct and a further \$60.0 million in indirect value added.
 - It is consistent with the aims of the Bayside LEP 2021, particularly enhancing the function and roles of Sydney Airport and Port Botany;
 - It does not restrict achievement of design excellence in accordance with Clause 6.10 of the Bayside LEP 2021; and
 - It complies with the objects of the EP&A Act.

Further, it is noted that the Site is highly unique, both in terms of the constraints that require the proposed height exceedance (outlined in **Section 4.0**), and the opportunity that the strategically significant site presents. Specifically, it represents a generational opportunity to maximise the capacity and efficiency of a site directly adjacent to Sydney Airport to ultimately support the growth of Sydney Airport and broader projected population growth of Eastern Sydney over the

operational lifespan of the development. Considering these factors, the proposed variation does not give precedent to other development which do not comprise these unique elements.

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 Bayside LEP 2021 and may grant development consent notwithstanding the contravention of the Height of Buildings development standard.



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