



Clause 4.6 Variation Request

Clause 4.3 - Height of
Buildings - Auburn Local
Environmental Plan 2010

4 - 12 Railway Street, Lidcombe

Submitted to Cumberland Council
On Behalf of Pheonix Builders

August 2021

REPORT REVISION HISTORY

Revision	Date Issued	Revision Description	
01	05/02/2021	Draft for internal review	
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02	09/02/2021	Draft for client review	
		Prepared by	Verified by
		Theo Wilkinson <i>Project Planner</i>	Stephen Kerr <i>Executive Director</i>
03	12/02/2021	Final	
		Prepared by	Verified by
		Theo Wilkinson <i>Project Planner</i>	Stephen Kerr <i>Executive Director</i>
04	06/08/2021	Amended Final	
		Prepared by	Verified by
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1. EXECUTIVE SUMMARY

This Clause 4.6 Variation Request has been prepared in relation to Clause 4.3 (Height of Buildings) of *Auburn Local Environmental Plan 2010* (ALEP) for a development application at 4-12 Railway Street, Lidcombe.

The development application seeks consent for a mixed-use development comprised of four (4) buildings ranging between 2 and 17 storeys in height, with four (4) levels of basement car parking.

The site is zoned B4 Mixed Use and RE1 Public Recreation pursuant to the ALEP. Shop top housing is permissible with consent within the B4 Mixed Use zone.

Clause 4.3 prescribes that the maximum height for a building on any land is not to exceed the height shown for the land on the Height of Buildings map. The Height of Building map specifies a maximum building height of 55m to the north east part of the site, decreasing to 48m to the south and 45m to the west of the site.

The height of building (HoB) controls for the site were established as part of a site-specific planning proposal which facilitated the dedication to Council, at no cost, of approximately 889m² public open space in return for additional development rights that were equal to the land being dedicated.

The development application is within the floor space ratio (FSR), however, as is discussed in this request, there has been a rearrangement of building massing at the suggestion of Council's Design Review Panel (DRP) which has resulted in an improved urban design outcome but necessitates variation of the Height of Building (HoB) development standard.

The building form of the proposed mixed-use development has undergone extensive urban design analysis to minimise overshadowing of Friends Park, while maximising solar access to the proposed communal open space and improving the relationship of the development to Railway Street.

The height and massing of the four (4) buildings has been arranged to maximise solar access to Friends Park, by situating the majority of the building mass in the north east corner of the site. This has resulted in reduced building heights for Building A and D which are well below the height of building (HoB) control, and increased building heights for Building B and C which propose a variation to the height control. Importantly, the proposed height variations do not comprise any gross floor area (GFA) above the height of building control.

While the majority of the building mass remains below or in line with the maximum height standard identified in Clause 4.3, the maximum overall height of the proposed development is 57.80m (measured at RL 24.85 - RL 82.65), which equates to a variation of 2.4m at the top of the lift overrun on Building B. The variations proposed at the lift overrun of Building B and C are minor in scope and are located centrally within the building envelope, minimising their visibility from the surrounding area, and do not contribute to distinguishable bulk, scale or density of the building. The lift overrun also facilitates access to communal open space which we understand is generally supported by Council.

Variations to the height of building development standard also occur on the western parts of Building B and Building C, which protrude into that part of the site where the 45m height control applies. The design has been amended as recommended by Council to ensure that no gross floor area (GFA) is located above the height of building control. The amended design provides greater setbacks which reduce the extent of the non-compliance, and only portions of balconies facilitating access to private open space are located within the area where the 45m height control applies. These variations are justified as the proposed built form has no adverse environmental impacts and maximises solar access to both Friends Park and the communal open space on Level 1, while relieving the building mass on Railway Parade, resulting in a better urban design outcome.

This request demonstrates that there are no environmental impacts as a consequence of this contravention of the maximum building height standard and that there are sufficient environmental planning grounds to justify the variation. The development as a whole satisfies the objectives of the B4 Mixed Use zone and is in the public interest. Strict adherence to the height standard in this instance is therefore unreasonable and unnecessary.

2. INTRODUCTION

This is a formal request that has been prepared in accordance with clause 4.6 of the *Auburn Local Environmental Plan 2010* to justify a variation to the height of buildings development standard proposed in a development application submitted to Cumberland Council for the mixed use development at 4-12 Railway Street, Lidcombe (site).

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from the development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)];
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)]

This request also addresses the requirement for the concurrence of the Secretary as required by clause 4.6(4)(b).

3. STANDARD TO BE VARIED

The standard that is proposed to be varied is the height of buildings development standard which is set out in clause 4.3 of the *Auburn Local Environmental Plan 2010* (ALEP) as follows:

4.3 Height of buildings

(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.

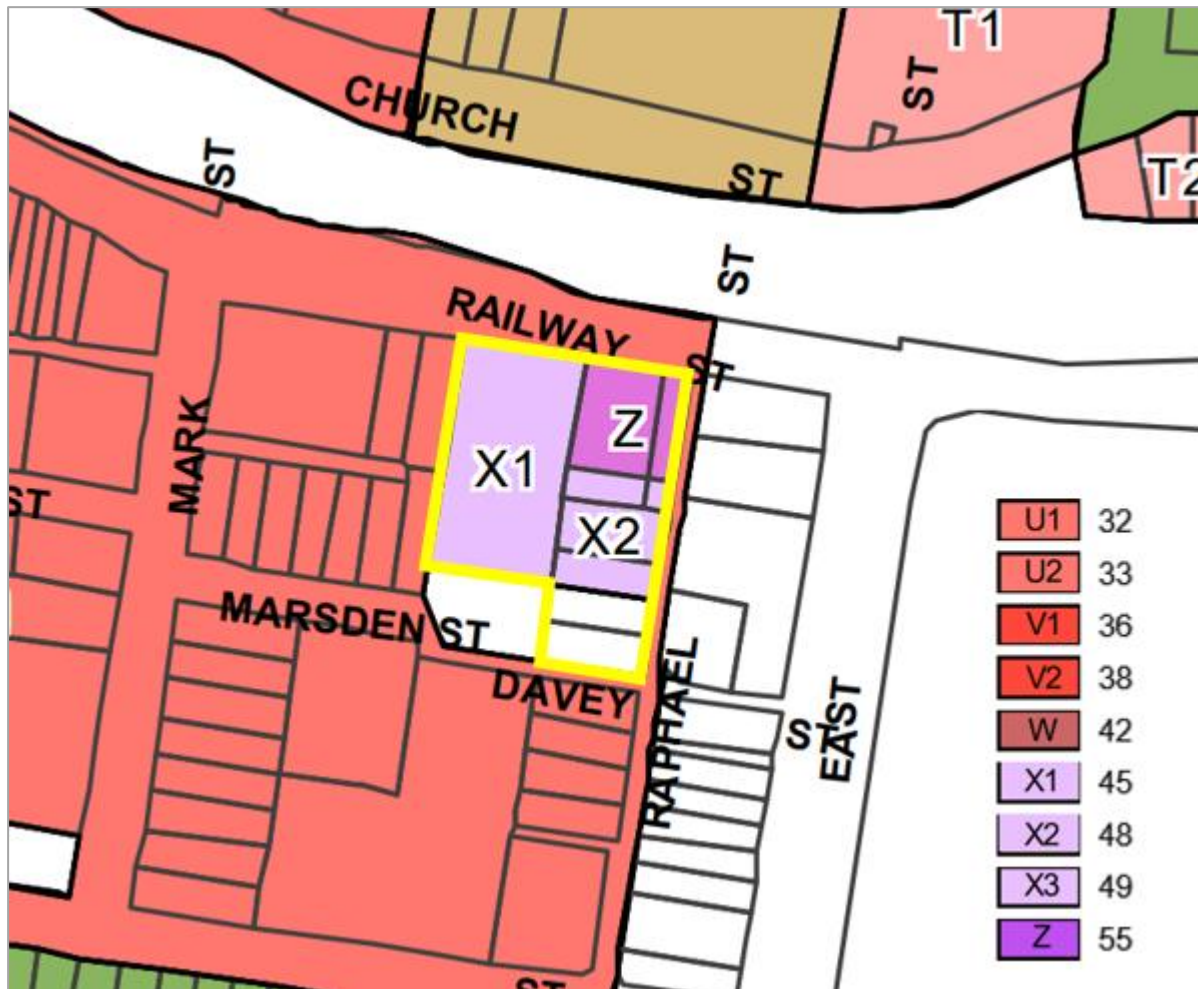


Figure 1: Extract of Height of Buildings Map with the site outlined in yellow (Source: Auburn Local Environmental Plan 2010)

The numerical value of the development standard applicable in this instance is 45 metres, 48 metres and 55 metres.

The development standard to be varied is not excluded from the operation of clause 4.6 of the LEP.

4. EXTENT OF VARIATION

Pursuant to Clause 4.3(2) of the ALEP, the site has varying height controls, as detailed in Figure 2.

- West part = 45m
- North east part = 55m
- South east part = 48m

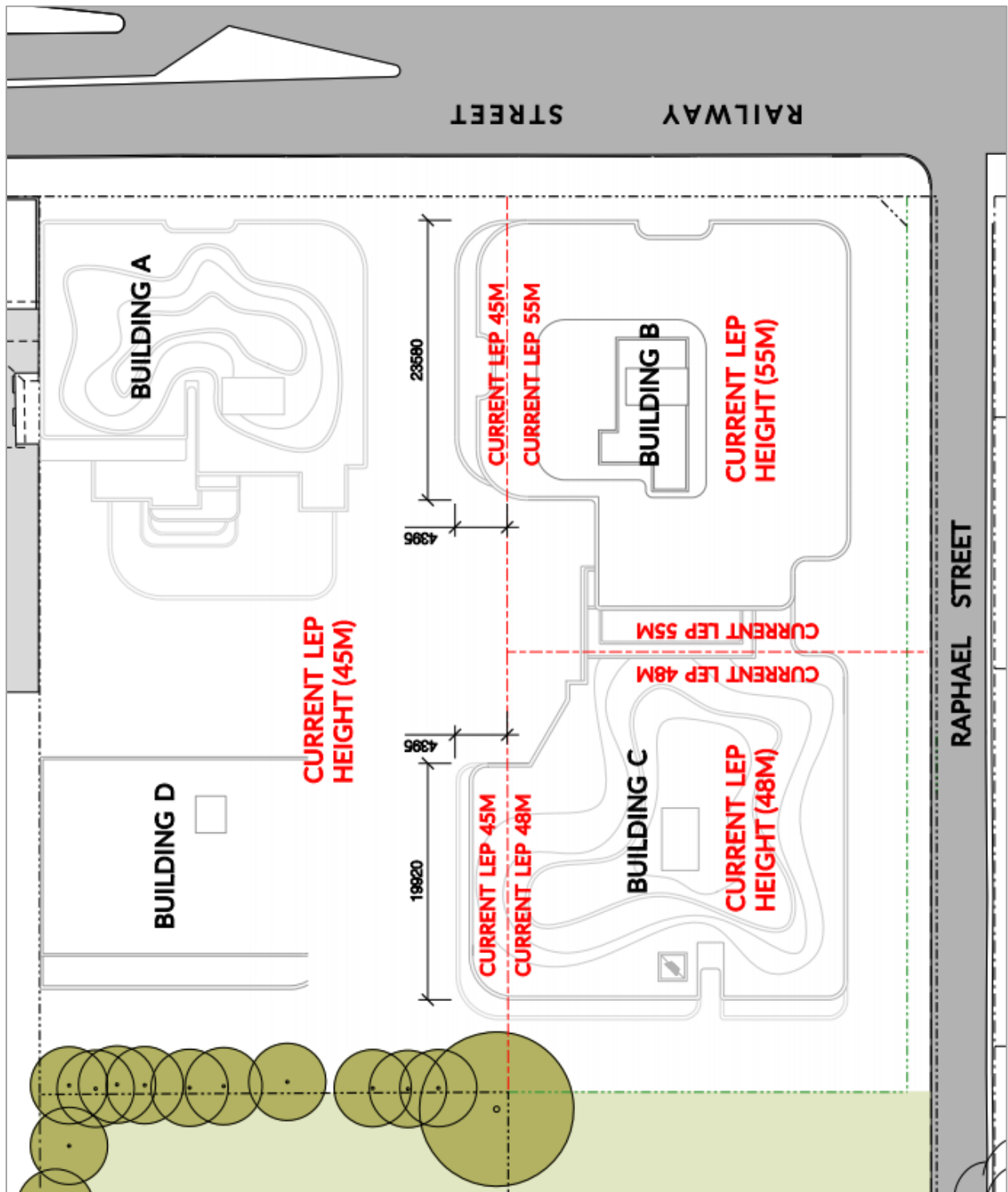


Figure 2: Extract of Key Plan - LEP Height Limit

The height of building (HoB) has been measured using the ALEP definition:

building height (or **height of building**) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The proposed height of building (HoB) controls for the site were established as part of a planning proposal (PP - 4/2017) for the site, with a primary aim to achieve the nominated floor space ratio (FSR) in a building form which minimised overshadowing to Friends Park.

Since the planning proposal was finalised and gazetted, the building form of the proposed mixed-use development has undergone extensive urban design analysis to minimise overshadowing of Friends Park, maximise apartment amenity and improve the relationship of the development with Railway Street.

The proposed mixed-use development comprises four (4) buildings, Building A, Building B, Building C and Building D. The height and massing of the four (4) buildings has been arranged to maximise solar access to Friends Park, by situating the majority of the building mass in the northeast corner of the site. This has resulted in reduced building heights for Building A and D which are well below the height of building (HoB) control, and increased building heights for Building B and C which propose a variation to the height control.

Building B and Building C have the following maximum heights as summarised below and detailed in the Height Plane Diagram at Figure 3 and Streetscape Elevation at Figure 4:

Building B

- The western portion of Building B, comprising unenclosed balconies has a maximum height of 54.09m (measured at RL 24.96 - RL 79.05), where the 45m height of building (HoB) control applies. This is a variation of 9.09m (20%) and affects an area of approximately 85m² on level 14, 38m² on Level 15-16 and 19m² on Level 17. The height variation does not comprise any habitable floorspace
- The top of the rooftop pavilion on Building B has a maximum height of 56.9m (measured at RL 24.85 - RL 81.75), where the 55m height of building (HoB) control applies. This is a variation of 1.9m (3.45%) and affects an area of approximately 195m². The height variation does not comprise any habitable floorspace.
- The top of the lift overrun of Building B has a maximum height of 57.8m (measured at RL 24.85 - RL 82.65), where the 55m height of building (HoB) control applies. This is a variation of 2.8m (5%) and affects an area of approximately 16m². The height variation does not comprise any habitable floorspace.

Building C

- The western portion of Building C, comprising unenclosed balconies has a maximum height of 47.78m - 48.00m (measured at RL 24.67 - RL 72.45 and RL 24.45 - 72.45m), where the 45m height of building control applies. This is a variation of 2.78m - 3.0m (6%) and affects an area of approximately 54m² on Level 14 and 50m² on the roof level. The height variation does not comprise any habitable floorspace.
- The top of the lift overrun of Building C has a maximum height of 48.35m (measured at RL 25.00 to RL 73.35), where the 48m height of building control applies. This is a variation of 0.35m (0.7%) and affects an area of approximately 16m². This height variation does not comprise any habitable floorspace.

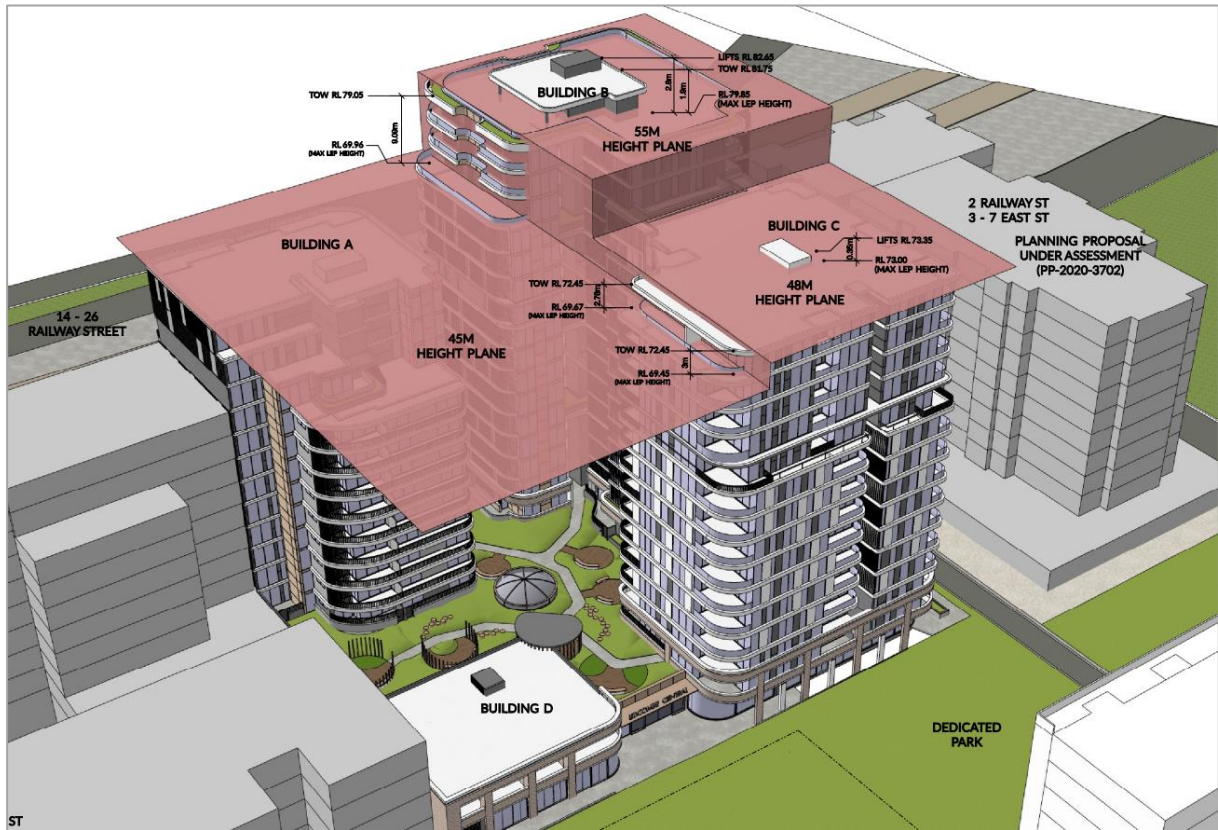


Figure 3: Height Plane Diagram (Source: Loucas Architects)

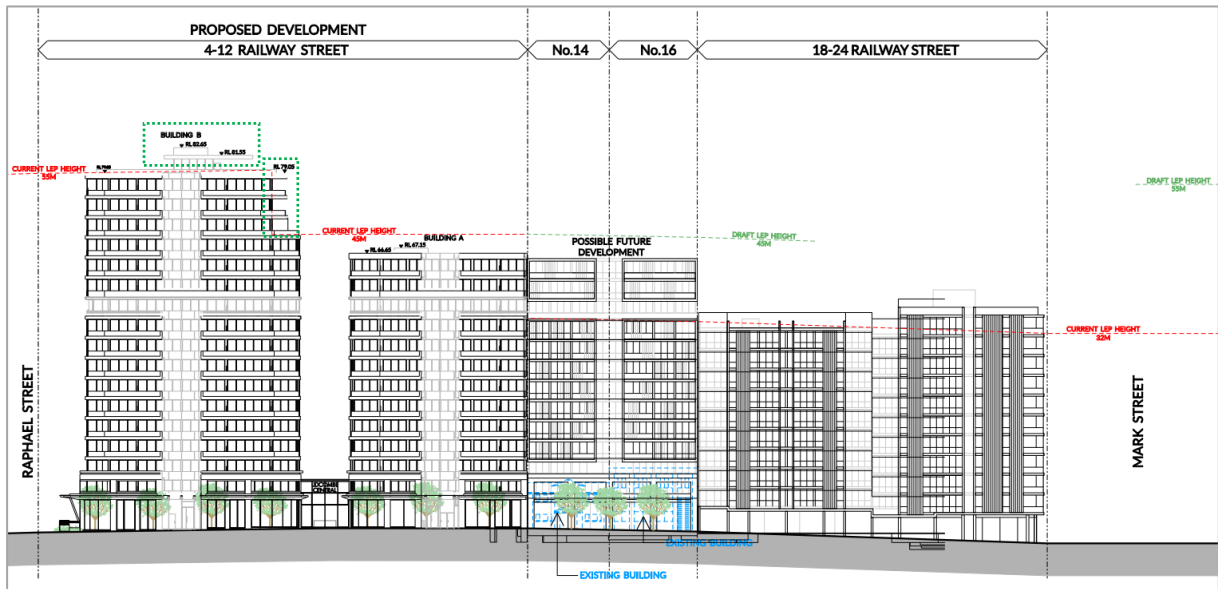


Figure 4: Streetscape Elevation - Railway St. Maximum height limit highlighted with red dashed line, and proposed height variation highlighted with green dotted line (Source: Loucas Architects)

5. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

We have considered each of the ways as follows.

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

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (Test 1 under *Wehbe*).

Table 1: Achievement of Objectives of Clause 4.3 of LEP.

Objective	Discussion
(a) to establish a maximum height of buildings to enable appropriate development density to be achieved, and	<p>The proposed variations to the development standard do not prevent the objectives of the development standard being achieved.</p> <p>The proposed height variations achieve the objectives of the standard as an appropriate development density is achieved. The proposed height of the modified development is compatible with its existing and future context and will not result in any adverse impacts to surrounding properties as is demonstrated further in Section 6.</p> <p>It should be noted that the development application was preceded by a planning proposal and voluntary planning agreement. The planning proposal facilitated the dedication to Council, at no cost, of approximately 889m² public open space in return for additional development rights equal to the land being dedicated.</p>

Objective	Discussion
	<p>The proposal is consistent with the floor space ratio (FSR) control which now applies to the site and which indicates the appropriate development density for the site.</p> <p>The maximum floor space ratio (FSR) for the site is 5.3:1. The site area of the site is 5,707m². Accordingly, the maximum permissible GFA on the site is 30,247m².</p> <p>The originally lodged proposal has been amended in accordance with Council recommendations to ensure that no habitable floorspace is located above the height of building controls for the site. The overall total GFA has been reduced from 30,185m² (as lodged) to 29,744m² (as amended). The proposed total GFA is 503m² less than permitted and equates to an FSR of 5.2:1.</p> <p>The built form is also compliant with the site-specific setbacks of the <i>Auburn Development Control Plan</i> (ADCP).</p>
(b) to ensure that the height of buildings is compatible with the character of the locality.	<p>The proposed variations to the development standard do not prevent the objectives of the development standard being achieved.</p> <p>The proposed height of building is compatible with the character of the locality, as detailed in the Streetscape Elevation (refer to Figure 4).</p> <p>The locality is likely to undergo substantial transformation to provide high-density housing with mixed-use opportunities.</p> <p>The proposed development locates taller building form along Railway Street and Raphael Street to the north eastern part of the site, addressing the corner of Railway Street and Raphael Street and marking the eastern gateway to Lidcombe Town Centre.</p>

As demonstrated in Table 1 above, the objectives of the height of buildings development standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the height of buildings development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, the other recognised ways are considered as follows.

5.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

5.3. The objective would be defeated or thwarted (undermined) if compliance was required with the consequence that compliance is unreasonable.

Strict adherence to the HoB control would undermine the first and second objective of the control in so much as it would prevent an appropriate development density from being achieved on the site. Strict adherence would prevent the recently created FSR development standard from being achieved, noting that the FSR standard reflects "appropriate development density" according to the first objective of the FSR development standard in clause 4.4 of the LEP. Strict adherence would also require additional building mass to be located in the southwestern corner of the site which, while it would comply with the HoB and FSR development standards, would increase overshadowing of Friends Park contrary to the desired character of the locality and the second objective of the HoB control.

For this reason, strict compliance with the numerical height of building control is unreasonable.

5.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon.

5.5. The zoning of the land is unreasonable or inappropriate.

The zoning of the land is reasonable and appropriate and therefore is not relied upon.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

This section demonstrates that there are sufficient environmental planning grounds to justify contravening the Height of Building (HoB) development standard as required by clause 4.6(3)(b) of the ALEP.

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

As discussed in Section 4, the elements of the development which contravene the applicable height limit in Clause 4.3 of the ALEP are as follows:

- The unenclosed balconies located on the western portion of Building B (Level 14 - 17)
- The top of rooftop pavilion of Building B
- The top of the lift overrun of Building B
- The unenclosed balconies located on the western portion of Building C (Level 14)
- The top of the lift overrun of Building C

The environmental planning grounds to justify each of the elements which contravene the applicable height limit in Clause 4.3 of the ALEP are provided below.

The unenclosed balconies located on the western portion of Building B (Level 14 - Level 17) and western portion of Building C (Level 14)

The environmental planning grounds to justify the contravention of the standard at the western portion of Building B and Building C are as follows:

- The proposed HoB controls for the site were established as part of a site-specific planning proposal, with a primary aim to achieve the nominated FSR in a building form which minimised overshadowing to Friends Park.
- Since the planning proposal was finalised and gazetted, the building form of the proposed mixed-use development has undergone extensive urban design analysis to minimise overshadowing of Friends Park, maximise apartment amenity and improve the relationship of the development with Railway Street.
- The key requirements from the LEP and DCP controls for the site are for:
 - The tallest development in the north east corner of the site, with a small reduction to the south and west.
 - A lower building height of 2-3 storeys in south and west corner of site.
 - Ground level setbacks of 2.5m (road widening) plus 4m along Raphael Street and 6m deep soil setback adjoining Friends Park.
- Figure 5 shows the building massing which informed the current HoB and FSR controls. It should be noted that this building massing included a long continuous street wall on Railway Street. The effect of this street wall was to prevent sunlight access to the podium level communal open space and create a long, unrelieved façade on Railway Street.
- As such, alternative massing options were reviewed to maximise solar access to the communal open space and Friends Park and relieve the Railway Street façade. The preferred option is demonstrated in Figure 6, which is arranged in three tower elements in the northwest, northeast and southeast corners of the site with the tallest development in the northeast. This arrangement complies with the site-specific setback controls, while also maximising solar access to the communal open space and Friends Park.



Figure 5: Extract of proposed massing in Planning Proposal (Source: Loucas Architects)

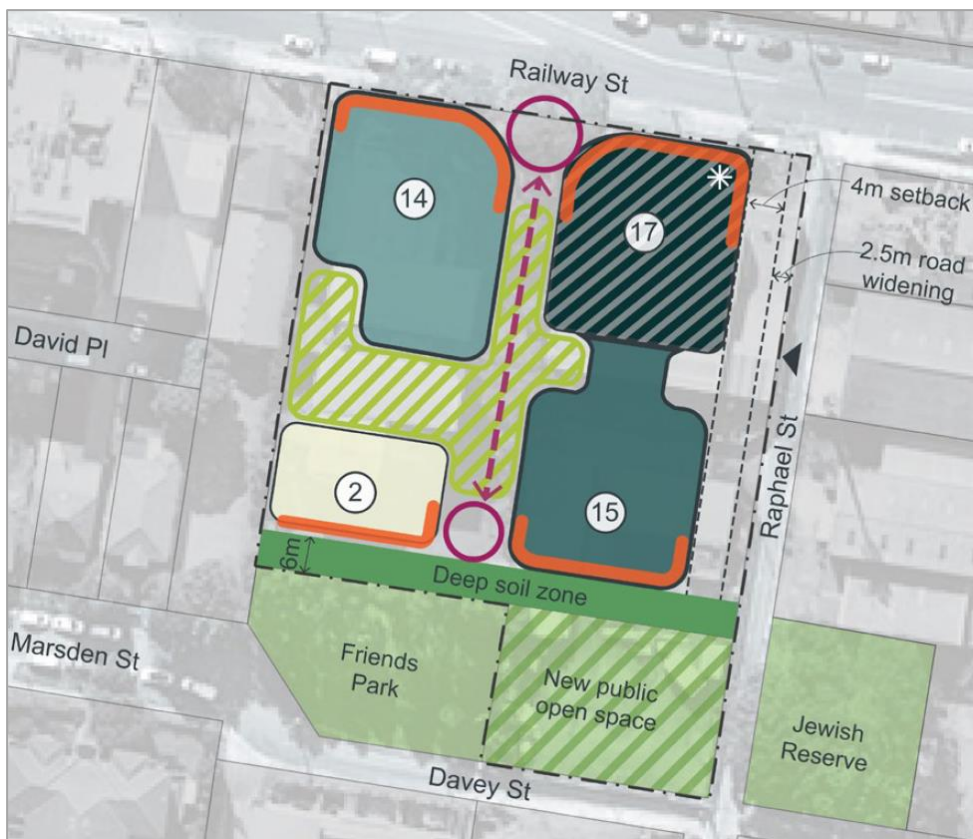


Figure 6: Preferred Massing Option reflected in this development application (Source: Studio GL)

- The preferred massing, however, results in Building B and Building C encroaching marginally within the adjacent height control.
- Two (2) height controls apply to Building B. Most of Building B is subject to 55m height limit, while a small part of Building B is subject to a 45m height limit. As a result, the western portions of Level 14 to Level 17 of Building B do not comply with the 45m height limit.
- Two (2) height controls also apply to Building C. Most of Building C is subject to a 48m height limit, while a small part of Building C is subject to a 45m height limit. As such, the western portion of Level 14 does not comply with the 45m height control.
- The massing of Building B and Building C has been widened and now encroaches into the 45m height control. This is justified for the following reasons:
 - It would result in a better urban design outcome as observed by the Cumberland Design Review Panel when reviewing a strictly compliant arrangement. The DRP minutes record: *"concerns that the COS as configured will be overshadowed throughout the day at Winter Solstice and throughout the year. This brings into question the usefulness of the green space for residents in the winter months given the significant overshadowing from the built form. The Applicant should investigate the reconfiguring of the building mass within the set height limits, to two parallel north-south blocks along the west and east boundaries. This arrangement would allow a COS green space to be located between the two tower blocks which would have access to northern sunlight throughout the year. Skylights could be introduced to the internal pedestrian street. The overshadowing impact upon the expanded Friends Park/Dedicated Park/Jewish Reserve and the COS should both be considered in developing the optimum building massing."*
 - Pursuant to the ADCP and draft CDCP, a minimum of 50% of direct sunlight is required to be provided to Friends Park between 12.00pm till 2.00pm. As shown in Figure 7, the architects investigated a parallel north - south building configuration as recommended by the DRP which would comply with the height control, but this causes increased overshadowing to Friends Park.
 - Instead, to maximise solar access to Friends Park, the originally lodged application reduced the length of Building A, which meant building mass needed to be redistributed to Building B and Building C as shown in Figure 8, which resulted in the height variations.
 - As recommended by Council, the design (as lodged) has been amended to ensure that no GFA is located above the height of building controls (refer to Figure 9 and Figure 10). Increased building separation is provided between Building A and B and only unenclosed balconies which do not comprise GFA are located in the area where the 45m height control applies.
 - The amended massing arrangement allows for the bulk of the building mass to be focused on the corner of Railway Street and Raphael Street, which minimises overshadowing to Friends Park while also creating a focal point. As detailed in the Shadow Diagrams at **Appendix 1**, the proposed development ensures that a minimum of 50% of Friend Park achieves direct sunlight between 12.00pm and 2.00pm. It should be noted that it is not possible to provide 50% of direct sunlight at 3.00pm as it is overshadowed by existing buildings.



Figure 7: Sunlight access to Friends Park and Jewish Reserve with the option recommended by the DRP - 21st June 21pm (Source: Loucas Architects)



Figure 8: Sunlight access to Friends Park and Jewish Reserve with the preferred proposed option (as originally lodged) - 21st June 12 pm (Source: Loucas Architects)

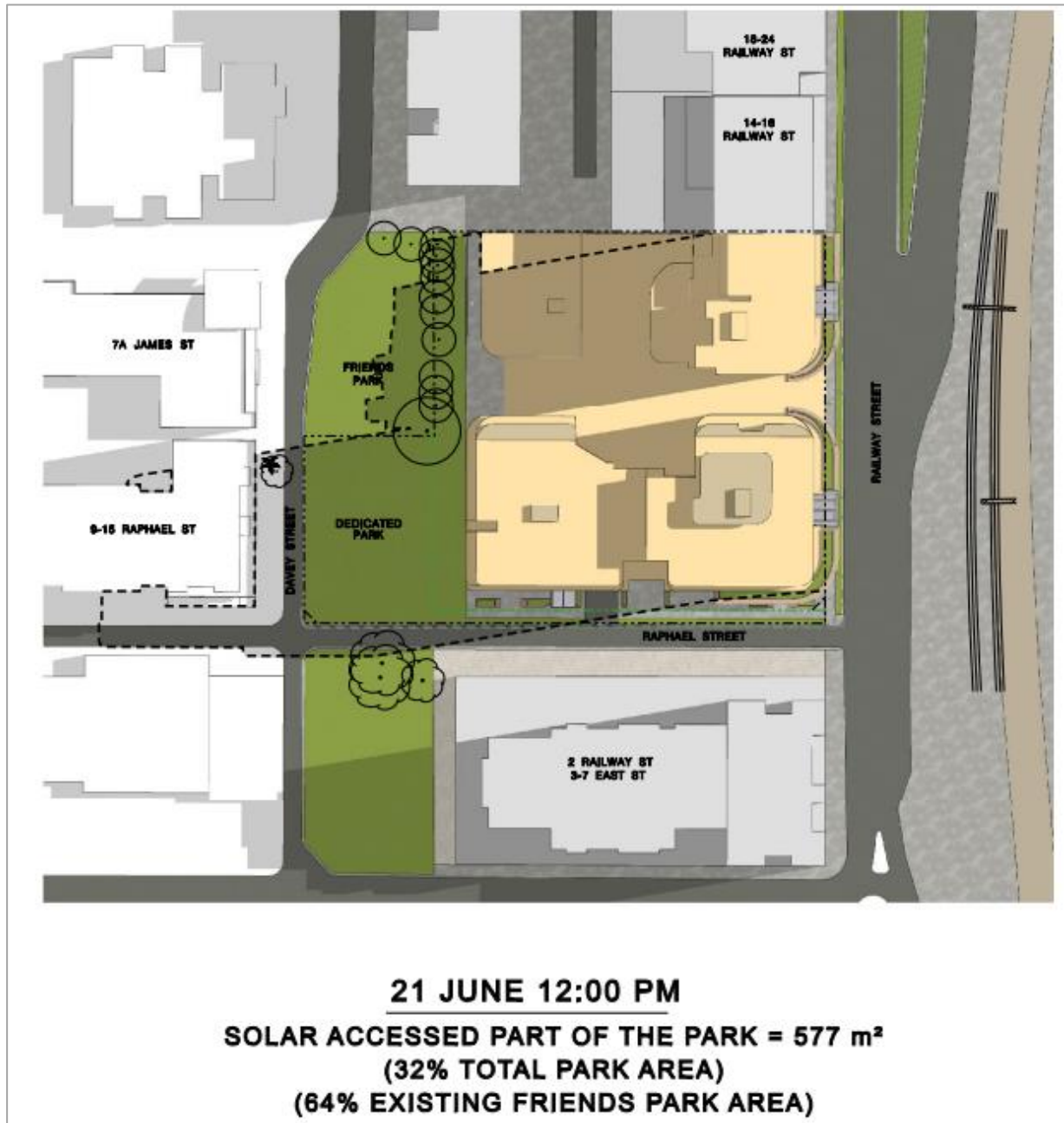


Figure 9: Sunlight access to Friends Park and Jewish Reserve with the proposed amended option - 21st June 12 pm (Source: Loucas Architects)



Figure 10: Reduction of GFA in the western portion of Building B and Building C (Source: Loucas Architects)

- The proposed massing arrangement and amendments to reduce the GFA on the western portion of Building B enables an 8-9.5m gap to Building A to allow for solar access to the communal open space at the podium level. In addition, the rooftop communal open space provided on Building B receives unimpeded solar access. As demonstrated in the Solar Access to COS Diagrams (**Appendix 1**), the 715-923m² of the communal open space receives direct sunlight in mid-winter between the hours of 11am-1pm which is greater than the 50% ADG requirement (713.5m²).
- The increased 8-9.5m gap also creates a break in the street wall creating a more interested and varied streetscape.
- The western portion of Building B and Building C that exceeds the development standard results in minimal increased overshadowing as demonstrated in the Shadow Diagrams (**Appendix 1**).
- Compliance with the development standard will result in a poorer outcome for residents of the development, as it would reduce sunlight to the communal open space on the roof level and eliminates the break in the street wall.

The top of rooftop pavilion and the top of the lift overrun of Building B

The environmental planning grounds to justify the contravention of the standard at the top of the rooftop pavilion and top of the lift overrun of Building B are as follows:

- The top of the rooftop pavilion of Building B has a maximum height of 56.9m which is a variation of 1.9m (3.45%) and affects an area of 195m². The top of the lift overrun of Building B has a maximum height of 57.8m which is a variation of 2.8m (5%) and affects an area of 16m².
- The proposed variation at the top of the rooftop pavilion and lift overrun on Building B is minor in scope and causes no additional amenity impacts. These areas are located centrally within the envelope of Building B, minimising their visibility from the surrounding area, and do not contribute to distinguishable bulk, scale or density of the building. There will also be no loss to any 'significant' views from a result of the variation of the standard.
- The lift overrun facilitates equitable access to the rooftop communal open space which receives excellent solar access and is essential to achieving the objectives of the ADG and in this regard promotes good design and amenity of the built environment. Owing to the high-density town centre location of the site, the rooftop is the most appropriate place to provide communal space that will not be overshadowed by surrounding development.

The top of the lift overrun of Building C

The environmental planning grounds to justify the contravention of the standard at the top of the lift overrun of Building C are as follows:

- The top of the lift overrun of Building C has a maximum height of 48.35m which is a variation of 0.35m (0.7%) and affects an area of 16m².
- The proposed variation is minor in scope and causes no additional amenity impacts. The lift overrun is located within the centre of the envelope of Building C, minimising their visibility to the surrounding area, and do not contribute to distinguishable bulk, scale or density of the building. There will also be no loss to any 'significant' views from a result of the variation to the standard.
- The lift overrun facilitates access to Level 14 of Building C which is predominantly below the height of buildings development standard.

As demonstrated above, the variation of the height of building development standard achieves a better urban design outcome. In this regard the proposed variation is consistent with the third and the seventh objects of the *Environmental Planning and Assessment Act 1979* in so much as the variation promotes the orderly and economic use of land, and good design and amenity of the built environment.

As requested by Council, both at pre-lodgement and post-lodgement, multiple design options have been considered to ensure that adverse impacts to adjoining developments are minimised. The proposed development (as amended) does not comprise any habitable floor space above the height of building control. The proposed height variations facilitate access to high quality communal open space and private open space.

We submit that for all of the above reasons there are sufficient environmental planning grounds to justify the variation.

7. PUBLIC INTEREST

In this section it is explained how the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. This is required by clause 4.6(4)(a)(ii) of the LEP.

In Section 5 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard (see comments under "public interest" in Table 1).

The table below considers whether the proposal is also consistent with the objectives of the B4 Mixed Use zone.

Table 2: Consistency with B4 Mixed Zone Objectives.

Objectives of B4 Mixed Zone	Discussion
To provide a mixture of compatible land uses.	The development includes a range of compatible uses including commercial / retail units and residential apartments.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	The proposed mix of land uses is located within walking distance to the Lidcombe train and bus interchange, which will encourage alternative modes of transportation.
To encourage high density residential development.	The proposal achieves the planned density for the site in a high density residential development which makes a positive contribution to the locality.
To encourage appropriate businesses that contribute to economic growth.	The development includes a range of non-residential land uses, which will not only activate the streetscape, but will also provide services and local job opportunities for the local community.
To achieve an accessible, attractive and safe public domain.	The development includes public domain and streetscape improvements, including the widening of Raphael Street and the expansion of Friends Park.

As demonstrated in Table 2, the proposal is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

9. CONCLUSION

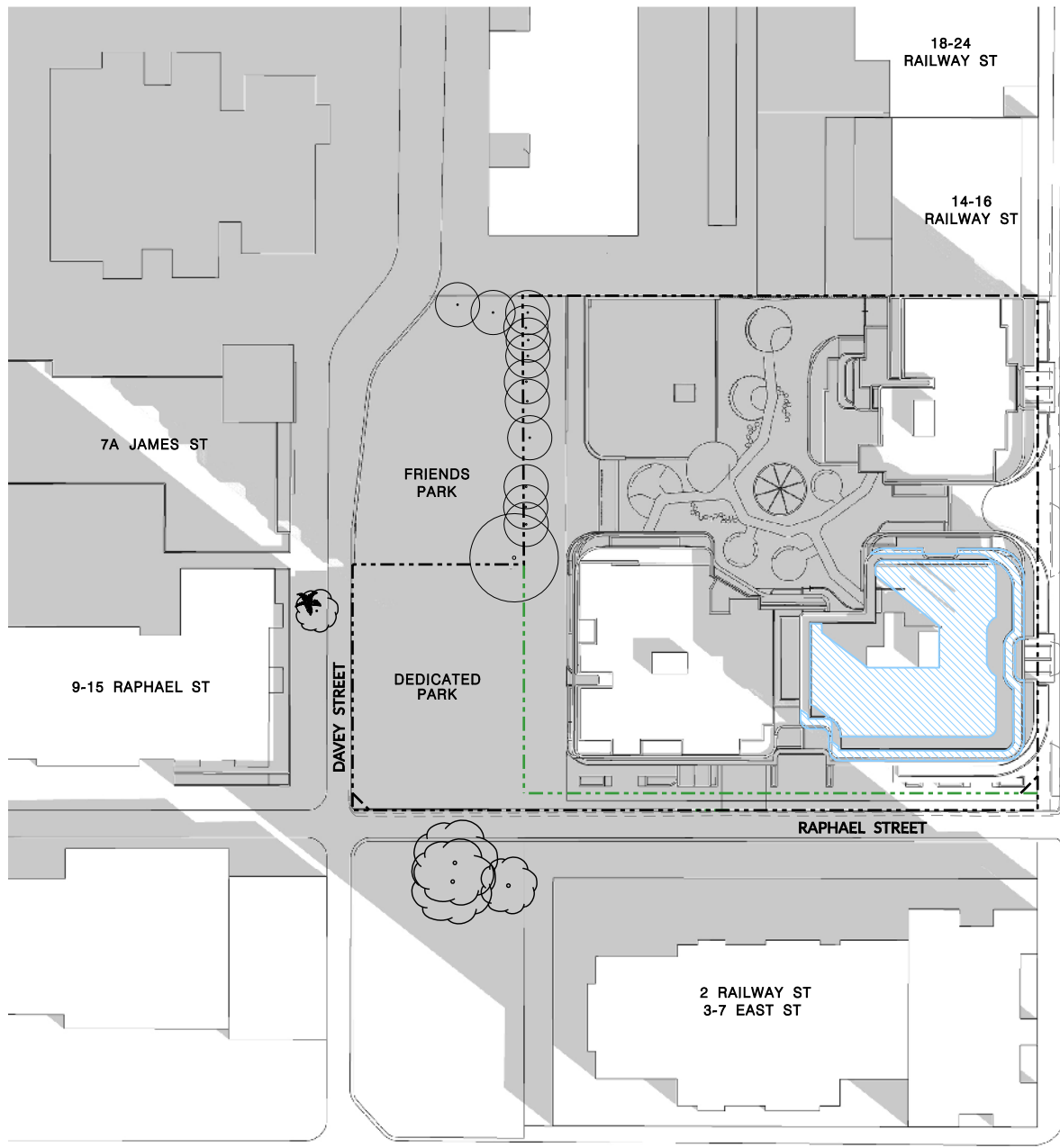
This submission requests a variation, under clause 4.6 of the *Auburn Local Environmental Plan 2010*, to the height of building development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances because the proposal achieves the objectives of the development standard;
- The proposal, notwithstanding the variation, is in the public interest because it achieves the objectives of the development standard and is consistent with the objectives of the B4 Mixed Use zone and there is no public benefit in maintaining the standard;
- The variation does not raise any matter of State or Regional Significance; and
- By rearranging the building massing, the development achieves better urban design outcomes overall and therefore there are sufficient environmental planning grounds to justify the contravention.

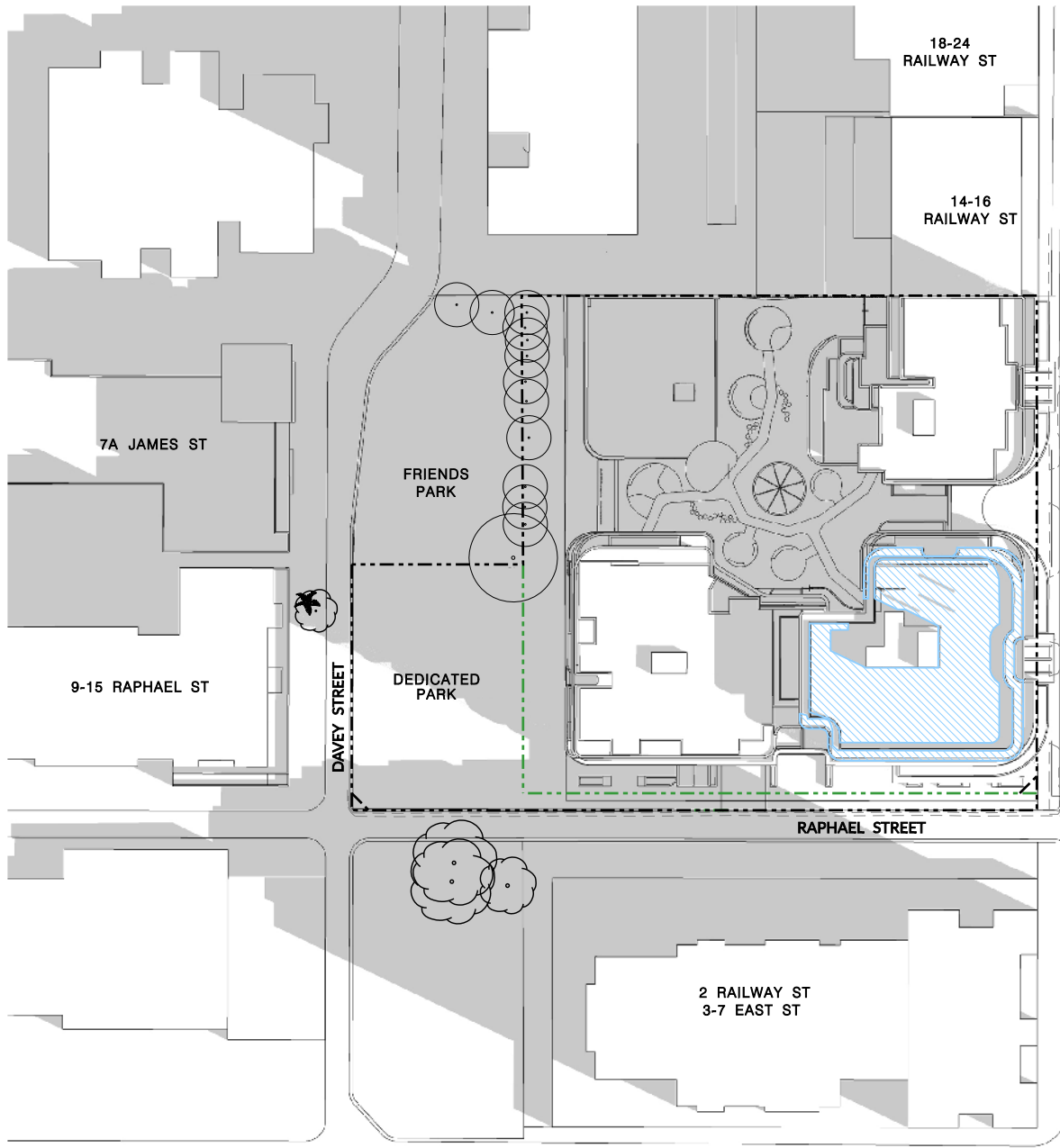
The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.

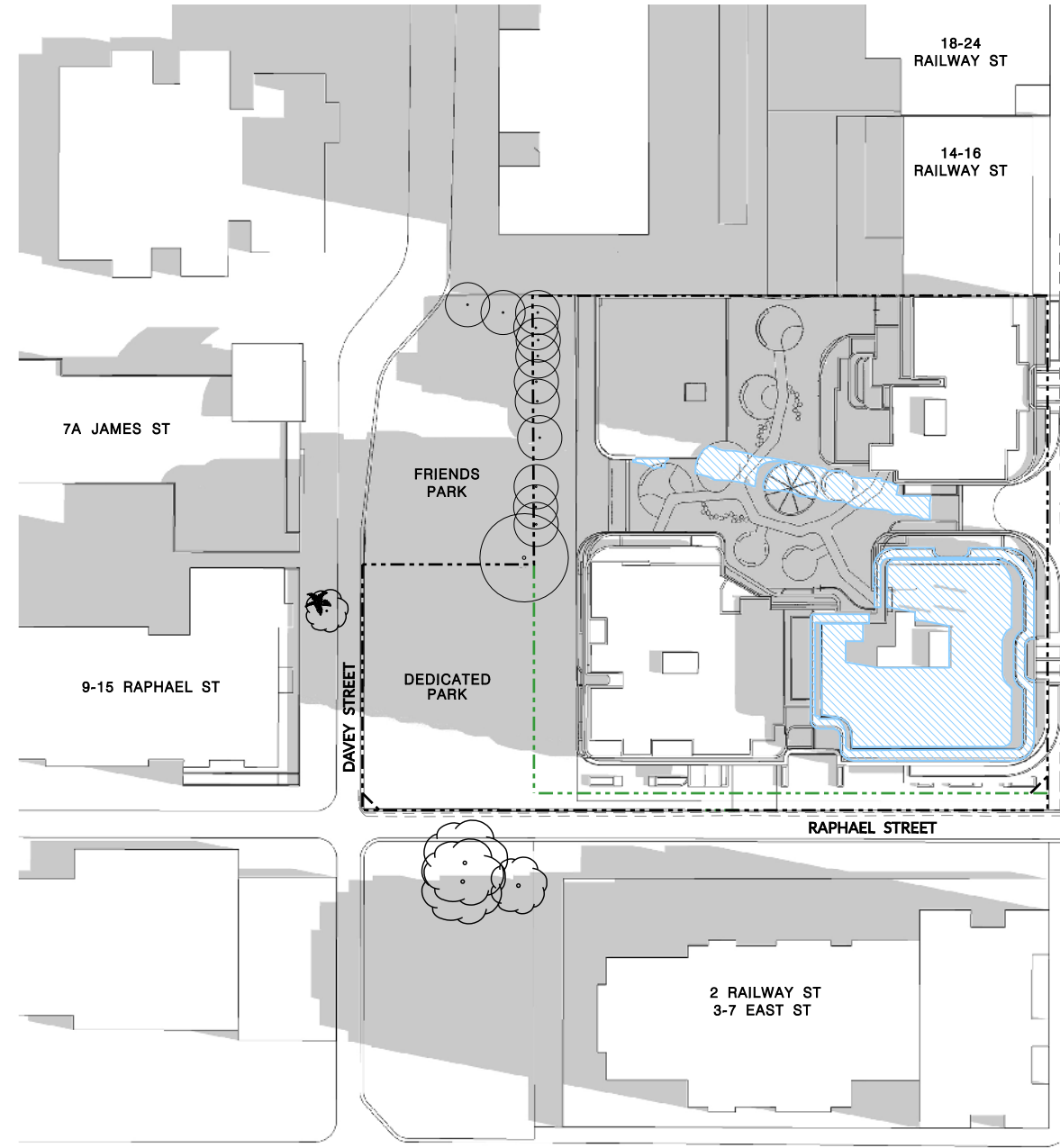
Appendix 1 - Shadow Diagrams and Solar Access to C.O.S (Loucas Architects)



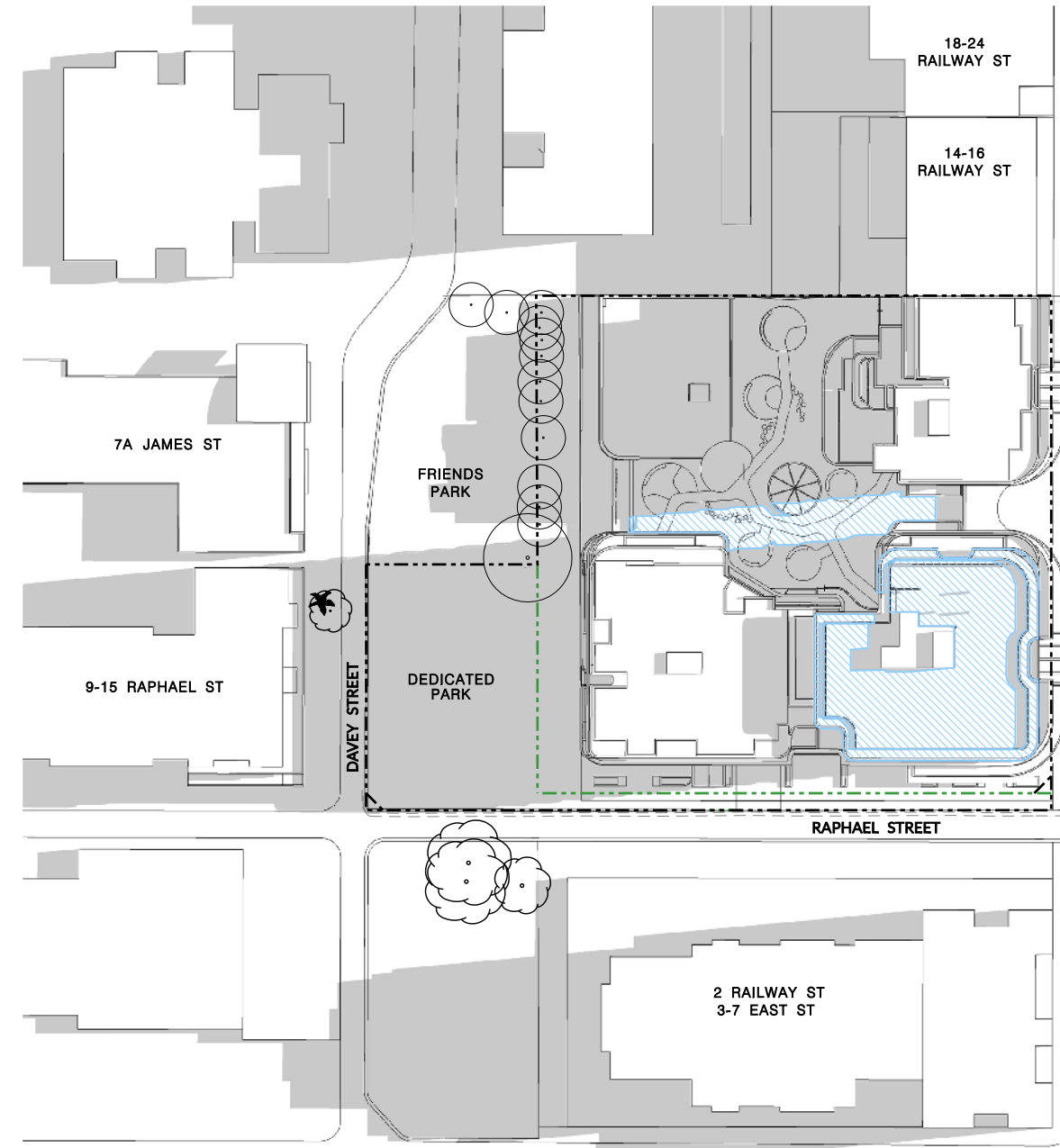
21 JUNE 9:00 AM
SOLAR ACCESSED AREA OF THE C.O.S = 582 m²



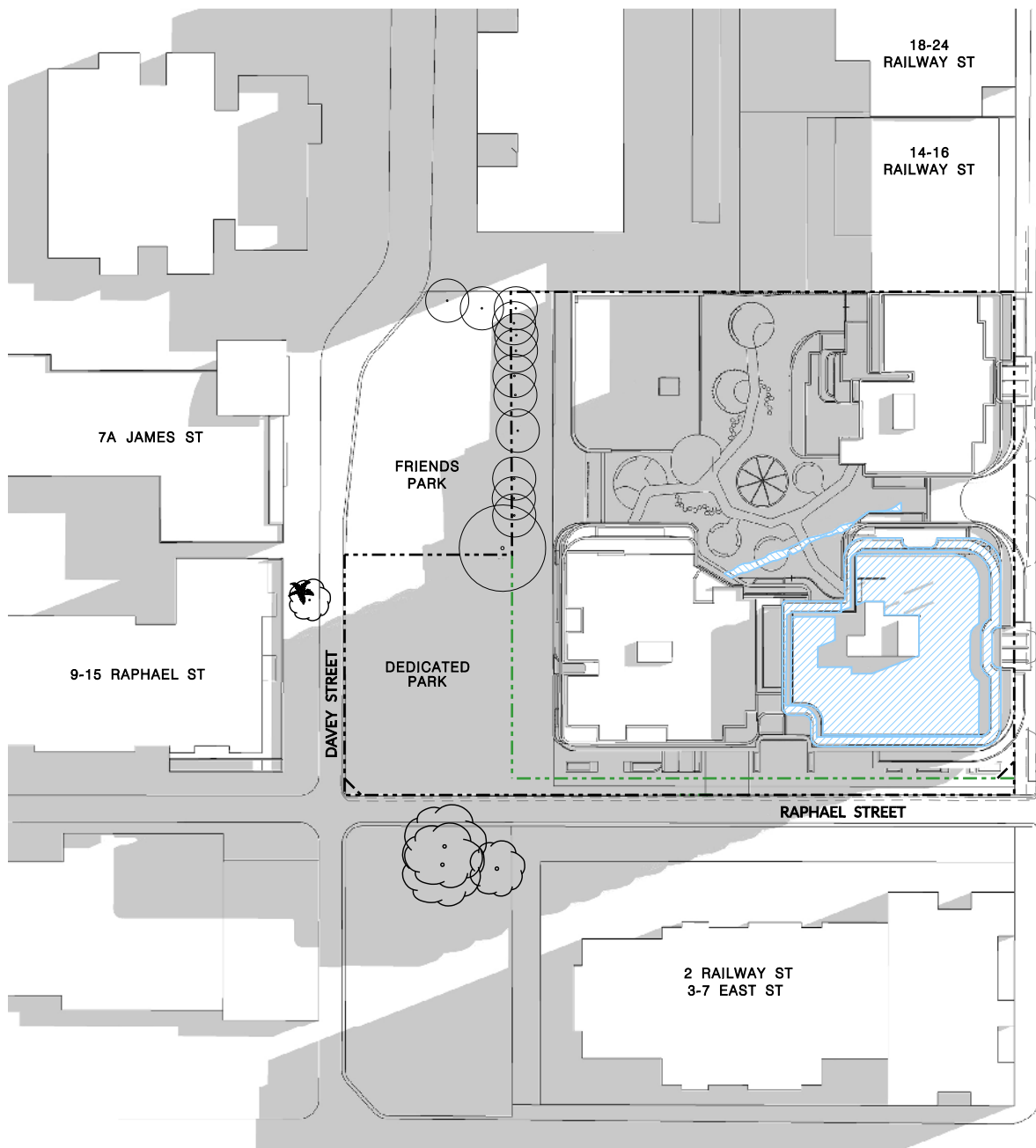
21 JUNE 10:00 AM
SOLAR ACCESSED AREA OF THE C.O.S = 647 m²



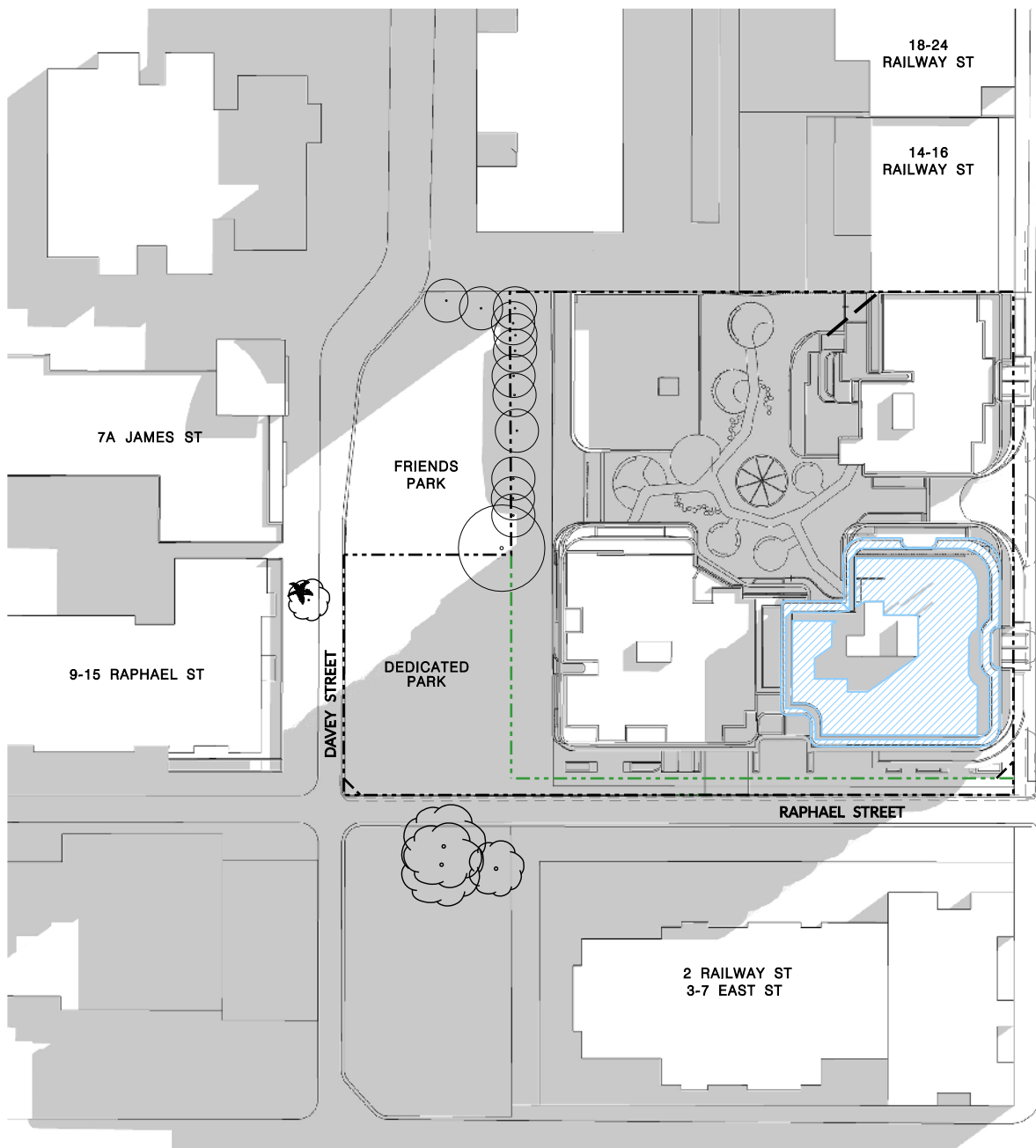
21 JUNE 11:00 AM
SOLAR ACCESSED AREA OF THE C.O.S = 850 m²



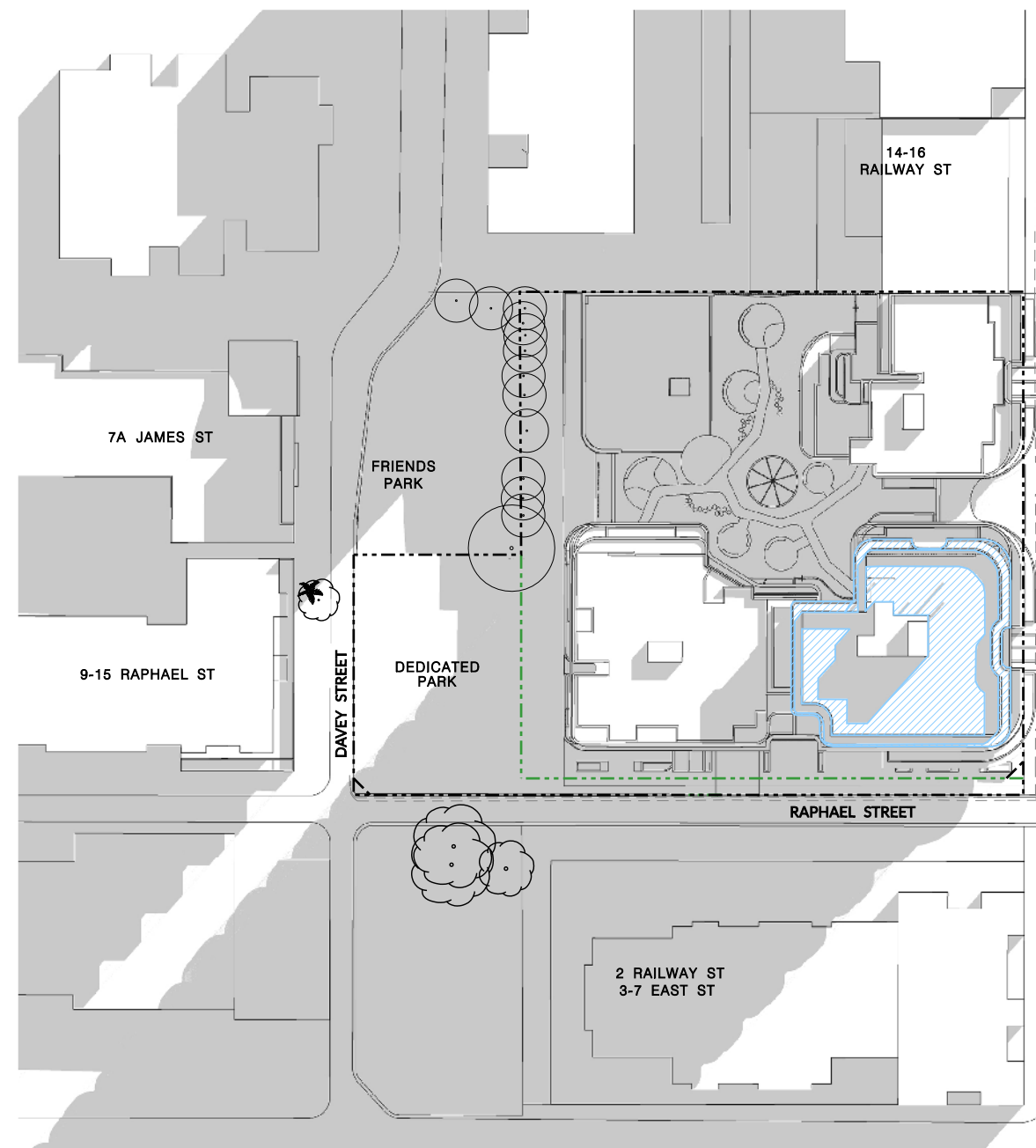
21 JUNE 12:00 PM
SOLAR ACCESSED AREA OF THE C.O.S = 923 m²



21 JUNE 01:00 PM
SOLAR ACCESSED AREA OF THE C.O.S = 715 m²



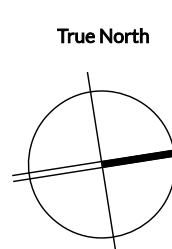
21 JUNE 02:00 PM
SOLAR ACCESSED AREA OF THE C.O.S = 626 m²



21 JUNE 03:00 PM
SOLAR ACCESSED AREA OF THE C.O.S = 524 m²

EXTENT OF C.O.S SOLAR ACCESSED AREA
TOTAL SITE AREA = 5707 m²
AREA OF C.O.S REQUIRED = 1427 m² (25%)
50% of C.O.S REQUIRED = 713.5 m² (12.5%)

THE PROPOSED DEVELOPMENT ACHIEVE DIRECT SUNLIGHT
TO 50% OF THE MINIMUM REQUIRED C.O.S WHICH IS EQUIVALENT
TO 12.5% OF THE SITE AREA (713.5m²) FOR 2 HOURS BETWEEN
11:00 AM TO 1:00 PM.



SCALE: 1:2000 @A3

Date Printed:
30-Jul-21

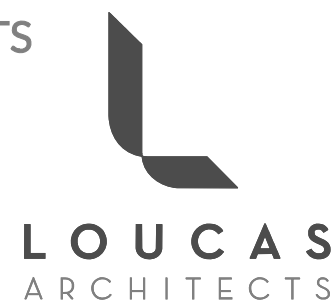
D AMENDMENTS ISSUED TO COUNCIL
C ISSUE TO CONSULTANTS
B ISSUE FOR DA SUBMISSION
A ISSUE FOR CLIENT APPROVAL
ISSUE REVISION DESCRIPTION

HE 30.07.2021
HE 16.07.2021
HE 29.01.2021
HE 20.03.2020
APPD DATE

Client:
PHEONIX BUILDERS



Architect:
LOUCAS ARCHITECTS
ABN 92 626 290 122
Level 3, Suite 309, 7-9 Gibbons St,
Redfern NSW, Australia
Tel: (02) 8052 9600
Email: admin@loucasarc.com.au
Nominated Architect:
Jim Apostolou 7490



Project Details:
MIXED-USE
DEVELOPMENT
Address:
4-12 Railway Street, Lidcombe



Drawing Title:
SHADOW DIAGRAMS 02 -
SOLAR ACCESS TO C.O.S

Project Number:
Pn-17005

Drawing Status:
AUTHORITY APPROVAL

Drawing Number:
A-4200

Issue:
D

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