

APPENDIX A

CLAUSE 4.6 REQUEST FOR EXCEPTION TO HEIGHT OF BUILDING DEVELOPMENT STANDARDS

CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD

HEIGHT OF BUILDINGS

LDA2016/378

AMENDED PLANS

**152-190 ROWE STREET &
3-5 RUTLEDGE STREET,
EASTWOOD**

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Murray Donaldson
Project Code	Eastwood Centre Redevelopment DA – Clause 4.6 June 2018
Report Number	SA6107

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1 INTRODUCTION

1.1 PRELIMINARY

This variation request has been prepared on behalf of *Yuhu Property (Australia) Pty Ltd (Yuhu)* (the applicant) in support of a Development Application (DA) to City of Ryde City Council (**Council**). The request seeks to vary the maximum height of buildings development standard prescribed for the subject site under Clause 4.3 of the *Ryde Local Environmental Plan (LEP) 2014 (Ryde LEP 2014)*. The variation request is made pursuant to Clause 4.6 of the Ryde LEP 2014.

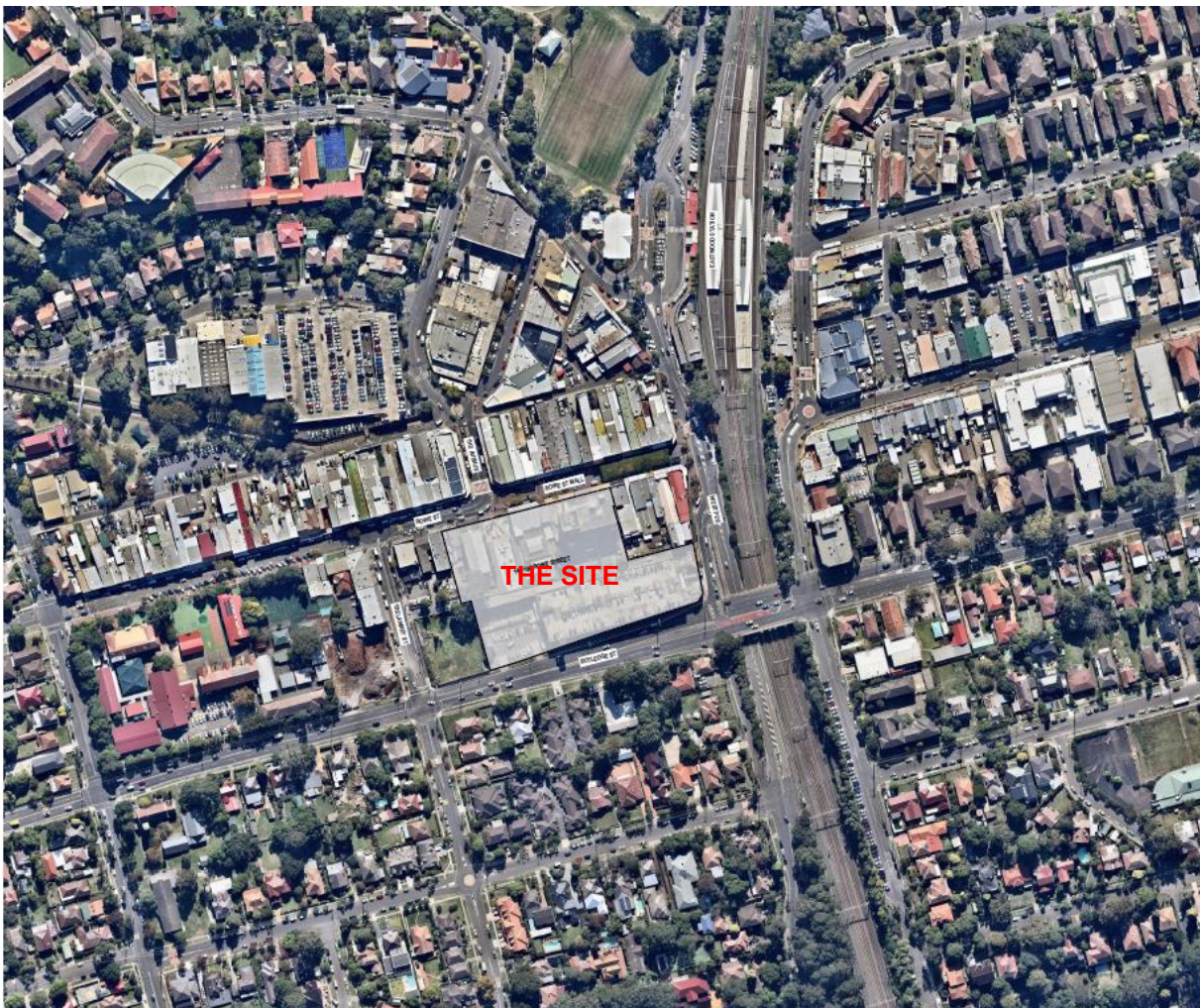
1.2 THE SUBJECT SITE

The Eastwood Shopping Centre site is located at 144-186 Rowe Street, Eastwood (**subject site**).

The subject site is strategically situated in the heart of Eastwood Town Centre, 200 metres from Eastwood Railway Station. The site has an area of 12,755m² and represents the largest private landholding in the Town Centre under single ownership.

The site currently accommodates a retail shopping centre providing some 12,500m² of retail space anchored by a Woolworths supermarket as well as 2,400m² of commercial space and parking for 426 cars, of which 289 are available to the public. Existing buildings on the site range in height from two to eight storeys with the taller building forms fronting Rowe Street Mall. A detailed description of the site is provided in the Statement of Environmental Effects accompanying the development application.

Figure 1 – Site location



1.3 THE PROPOSED DEVELOPMENT

This Clause 4.6 Request is for an exception to the Height of Building standards is prepared in support of a development application submitted to the City of Ryde Council (Council) for the substantial redevelopment of the subject site to a mixed retail, commercial and residential development. Development consent is sought for:

- Demolition of all buildings and associated structures across the site;
- Construction of new retail tenancies over lower levels;
- Construction of seven (7) residential buildings with 408 apartments;
- Construction of a commercial office building;
- Basement car parking and loading to service all activities on the site;
- New open air through site pedestrian links between Rowe Street and Rutledge Street and a publicly accessible plaza, supported by active frontages, outdoor seating and pedestrian amenities;
- New vehicle access arrangements for residents, visitors, retail patrons and service vehicles; and.
- Landscape works within and adjacent to the site.

Figure 2, Figure 3 and Figure 4 illustrate the key urban design and site principles for the site, which include:

- Extending the public domain into the site;
- Extending activation through the site; and
- Provide logical pedestrian circulation through the site.

Figure 2 – Urban design and site planning principles



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Figure 3– Extension of public access into the site



Figure 4 – Pedestrian Street, market plaza and gardens



Figure 5– View through ‘The Street’ looking south towards Rutledge Street



Key built form principles adopted in the design for the DA are summarised as follows:

- Building heights across the site, along Rowe Street have a consistent street frontage height with taller elements setback (**Figure 6**);
- Heights of buildings increase from Rowe Street to the tallest building in the south eastern corner adjacent to the railway line (**Figure 7**);
- Height located to reduce overshadowing impacts when compared to LEP compliant height envelope (refer to shadow analysis in this report);
- Framing public spaces of Rowe Street pedestrian street and new through site links and plaza space; and
- Buildings separated for good internal amenity, to break long street frontages and improve visual permeability and reduce building bulk.

Figure 6 – Rowe Street elevation



Figure 7 - Rutledge Street elevation



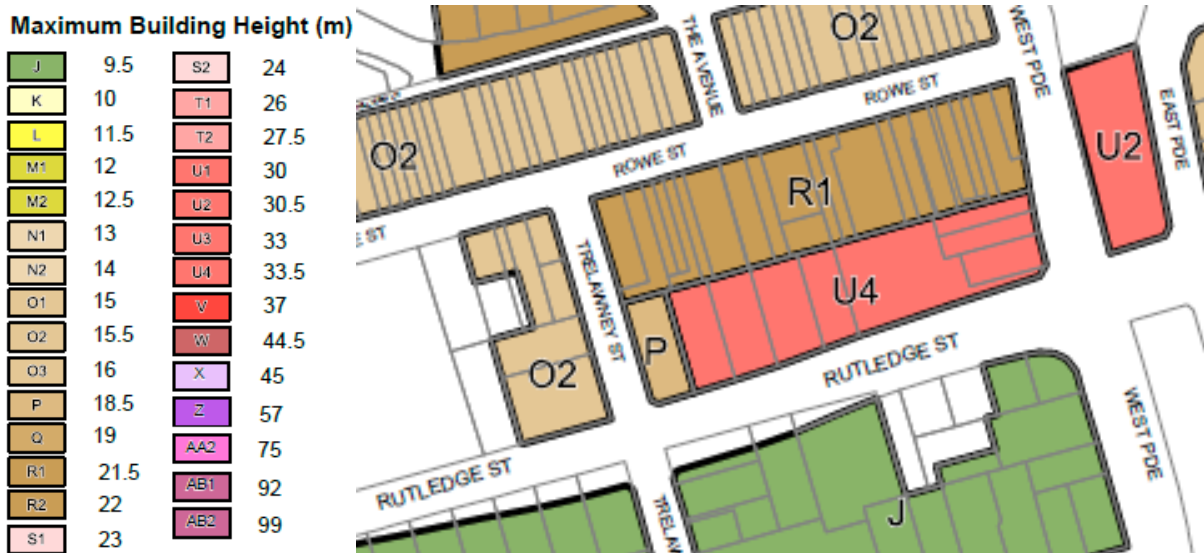
1.4 CLAUSE 4.3: HEIGHT OF BUILDINGS

Clause 4.3 of the Ryde LEP 2014 states that the height of a building on any land is not to exceed the maximum shown in the Height of Buildings Map. The maximum height of buildings permitted on the site provides for 21.5m (R1) on the northern section and 33.5m (U4) on the southern section, as shown in **Figure 8**.

The objectives of Clause 4.3 are as follows:

- (a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,
- (b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,
- (c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,
- (d) to minimise the impact of development on the amenity of surrounding properties,
- (e) to emphasise road frontages along road corridors

Figure 8 – Ryde LEP 2014 Height of Building Map Extract



1.5 CLAUSE 4.6: EXCEPTIONS TO DEVELOPMENT STANDARDS

Clause 4.6 of the Ryde LEP 2014 provides flexibility in the application of planning provisions by allowing the Consent Authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard Clause 4.6 requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the Consent Authority must be satisfied 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, and the concurrence of the Secretary has been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

1. *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
2. *The public benefit of maintaining the development standard, and*
3. *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

This document forms a Clause 4.6 written request to justify the contravention of the Building Height development standard in Clause 4.3.

Each issue is addressed in the following sections. The assessment of the proposed variation has been undertaken in accordance with the requirements of the Ryde LEP 2014, Clause 4.6 Exceptions to Development Standards.

2 PROPOSED 'ALTERNATIVE SOLUTION' AND EXTENT OF CONTRAVENTION

The proposed development concept presents an alternative solution to that envisaged in the Ryde LEP 2014. The proposal has been designed to achieve the desired future character of the Eastwood Town Centre (as set out in the Ryde Development Control Plan, Part 4.1 Eastwood Town Centre, 2014) to deliver the key elements through the proposed site layout, built form massing and open space provision. The increases in building height have been specifically located to ensure an appropriate response to the surrounding residential interface and the provision of exemplary on-site amenity for future residents.

The alternative solution achieves the overall vision, objectives, and development principles sought through the LEP controls, whilst providing an appropriate transition in building bulk and scale, exemplary levels of internal living amenity, high quality areas of publicly accessible open space in a well-considered arrangement, as well as reduced impacts on adjoining properties.

The proposed built form has been designed to be in generally in accordance with the LEP controls. In particular, the proposal complies with the FSR controls across the site and the majority of the maximum building heights. With regard to building height, the proposal includes buildings at a height below the maximum building height permitted to provide for views into the site, areas of open space, thru site links and breaks in building form. This is balanced with higher maximum heights in the parts of the site where greater building bulk can be accommodated, without significant additional detrimental impacts.

The key variances from the building height control standards are described as follows:

- **Rowe Street:** A consistent and compliant 6 storeys height is proposed along street frontage but with 9 storey building forms which is setback and which will not be readily visible from the level of Rowe Street.
- **Building on the south eastern corner of the site:** The development proposes 13 storeys (45 metres) on the corner of the site, adjacent to the Northern Railway Line. But with reduced height in the centre of the site, fronting Rowe Street and at various locations on Rutledge Street. The development proposes lower building heights than those envisaged by the LEP in order to provide high levels of amenity to the residential areas of living.

Figure 6 and **Figure 7** illustrate the external street elevations to Rowe Street and Rutledge Street. The elevations demonstrate the high degree of differentiation in the height of buildings along Rutledge Street.

2.1 PROPOSED VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

The development proposes to exceed the maximum HOB development standard in locations of the site as set out in Table 1.

Table 1 – Building height controls comparison with proposed development

LOCATION	BUILDING	HOB STANDARD (MAX)	PROPOSED HEIGHT (STOREYS)	PROPOSED HEIGHT (RANGE) (METRES)	DIFFERENCE TO HOB STANDARD (RANGE) (METRES)
Rutledge Street	CA	33.5m	11 storeys	35.9m to 38.3m	+2.4m to +4.8m
	CB	33.5m	13 storeys	42.4m to 44.4m	+8.90m to +10.90m
	DA	21.5m 33.5m	11 storeys	36.85m to 39.65m	+15.35m to +18.15m +3.35m to +6.15m
	DB	33.5m	10 storeys	33.85m to 35.8m	+0.35m to +2.30m
Rowe Street	AA	21.5m	Part 6 and Part 9 storeys	21.2m to 31.9m	-0.3m to +10.4m
	BA	21.5m	6 storeys	20.35m to 21.95m	- 1.15m to +0.45m
	BB	21.5m	Part 6 and Part 9 storeys	21.4m to 32.31m	-0.10m - + 10.81m

Figure 9 identifies those buildings which exceed the maximum height of building development standard, as well as those buildings that are lower than the heights permitted under Clause 4.3 of the Ryde LEP 2014.

Figure 10 illustrates the additional height of the buildings that exceed the maximum HOB development standards.

Figures 12 to 16 illustrate sections through proposed buildings to illustrate the degree of consistency of the development with the 21.5m and 33.5m HOB standards.

Figure 9 – Proposed building massing Comparison to HOB Standards

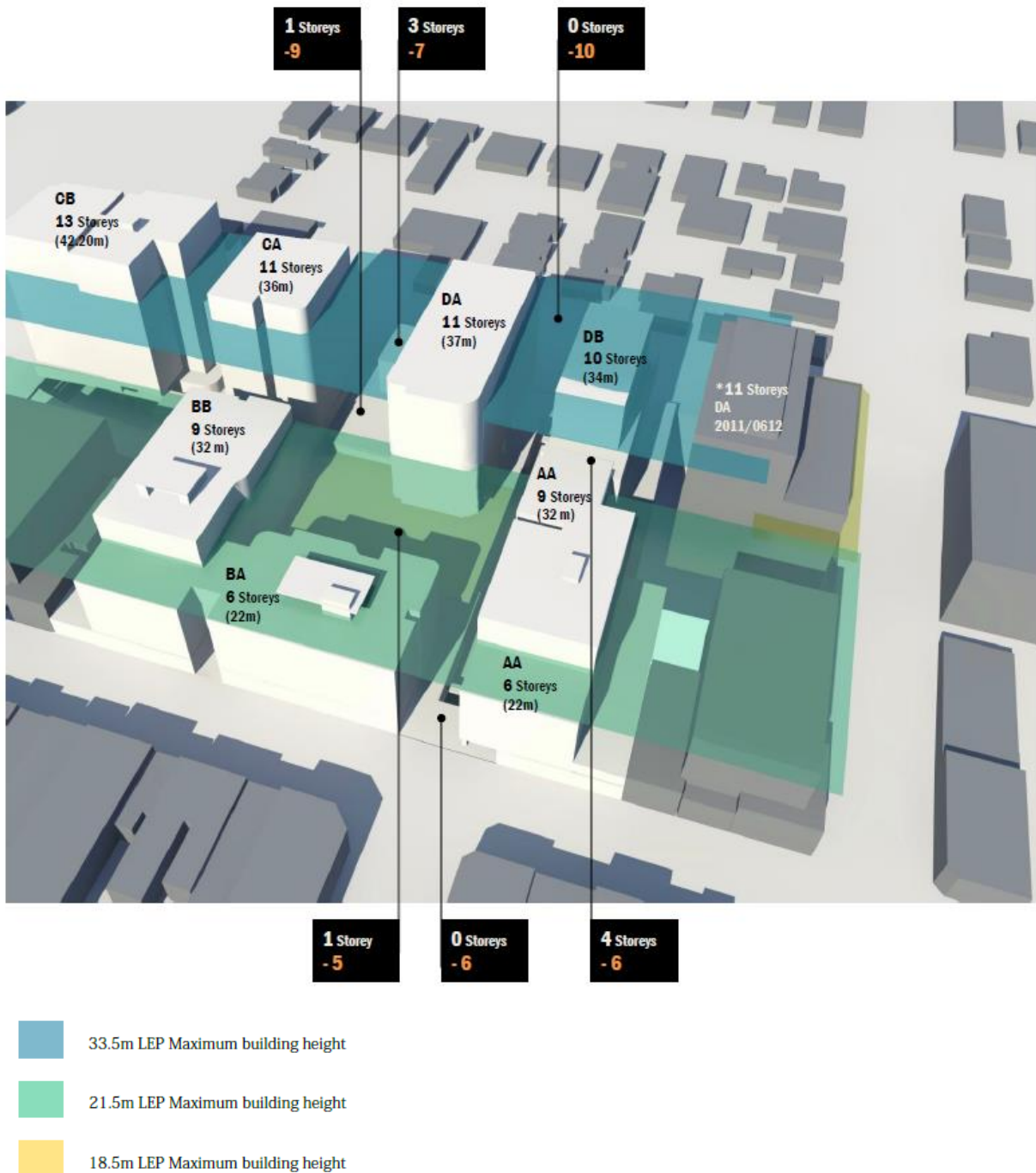
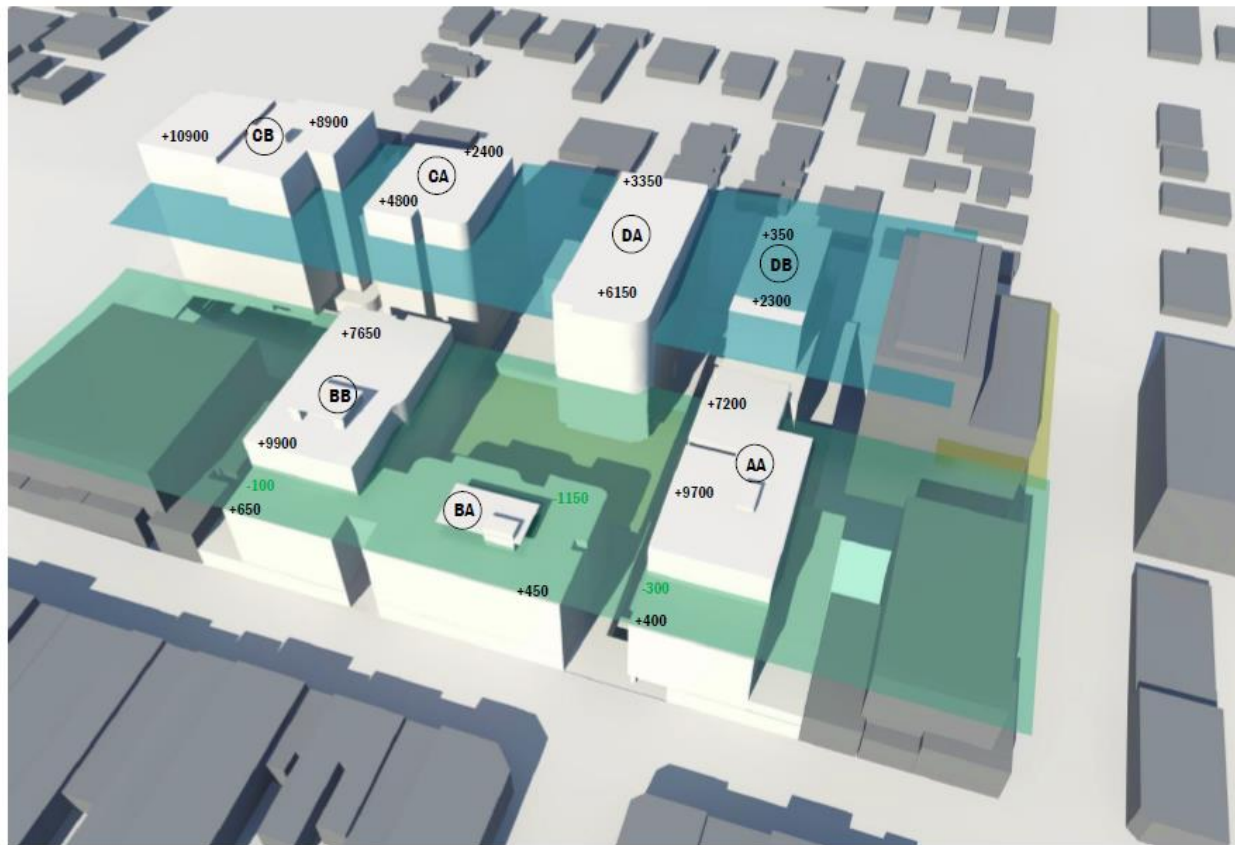


Figure 10 – Proposed building massing Comparison to HOB Standards



- 33.5m LEP Maximum building height
- 21.5m LEP Maximum building height
- 18.5m LEP Maximum building height

Figure 11 illustrates the principle of setting back the upper levels of the buildings fronting Rowe Street in the DCP which is to be achieved by the proposal. This will minimise the visibility of the upper levels when viewed from Rowe Street.

Figure 11 – Buildings AA, BA and BB incorporate setbacks for upper levels

Figure 13 - Section through Buildings BA and DA
Dashed red lines indicate 21.5m and 33.5m HOB standards

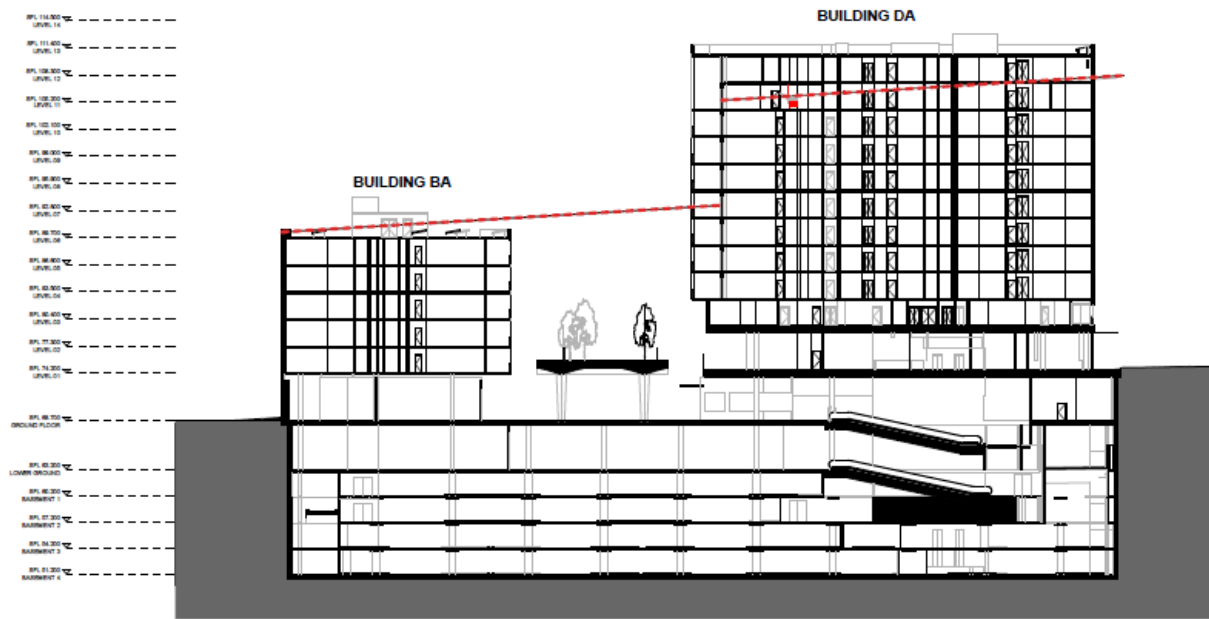


Figure 14 – Section through Buildings BA and DA
Dashed red lines indicate 21.5m and 33.5m HOB standards

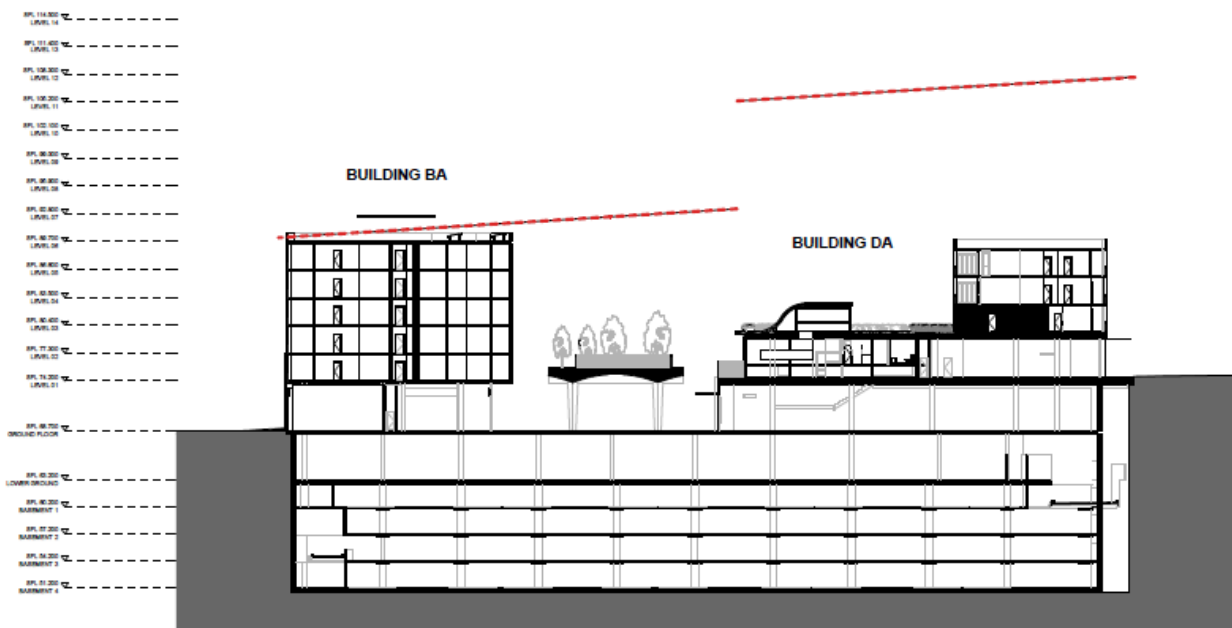
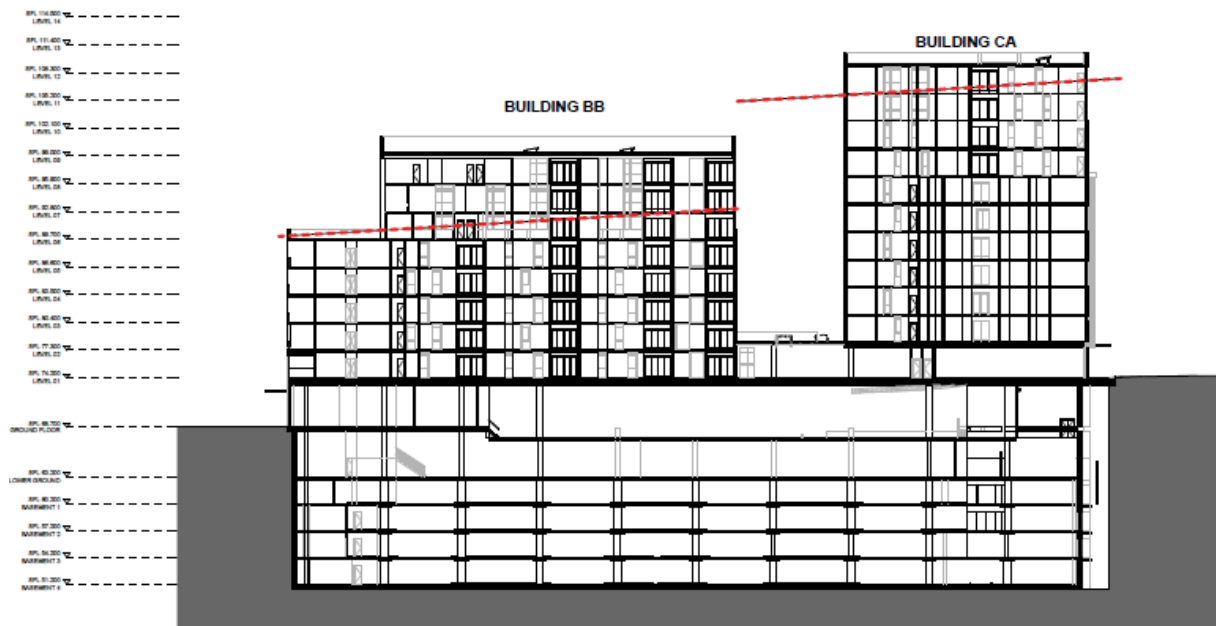
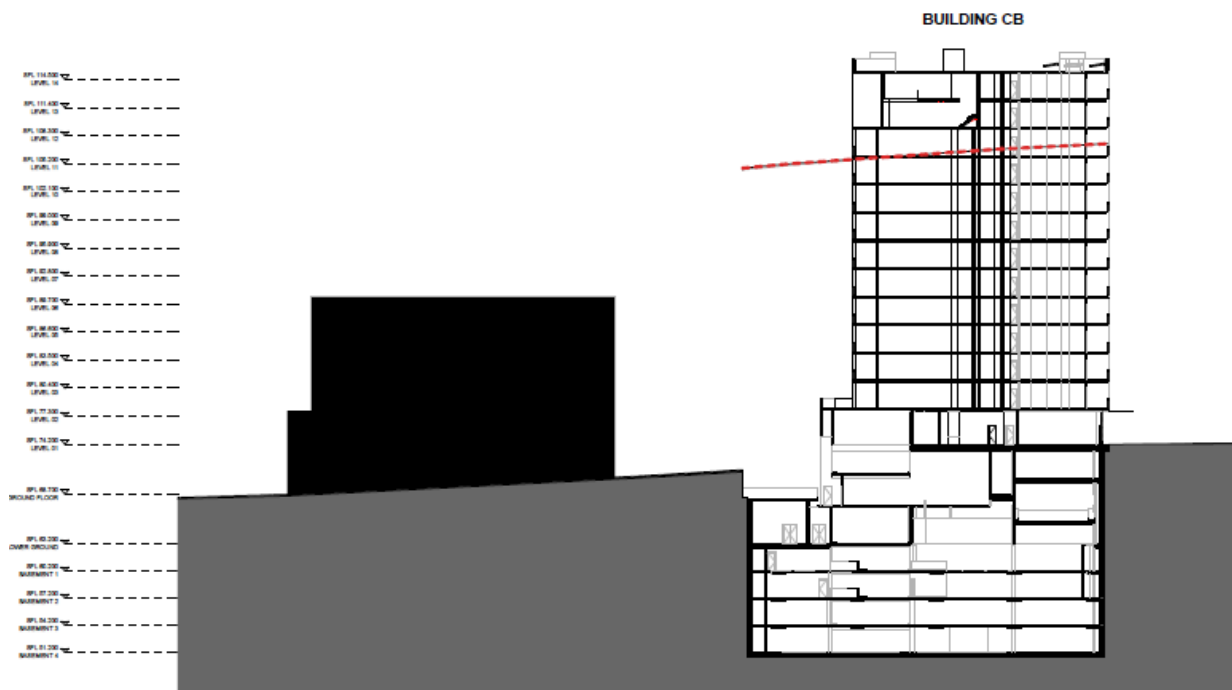


Figure 15 – Section through Buildings BB and CA
Dashed red lines indicate 21.5m and 33.5m HOB standards



Dashed red lines indicate 21.5m and 33.5m HOB standards

Figure 16 – Section through Building CB
Dashed red lines indicate 21.5m and 33.5m HOB standards



3 NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

Several key Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached. The key findings and directions of each of these matters are outlined in the following discussion.

Winten v North Sydney Council

The decision of Justice Lloyd in *Winten v North Sydney Council* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated. Initially this applied to State Environmental Planning Policy – Development Standards (SEPP 1) and was subsequently updated to address clause 4.6 of the *Standard Instrument templates*.

These principles for assessment and determination of applications to vary development standards are relevant and include:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?
- Is the objection well founded?

Wehbe v Pittwater [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827* expanded on the findings in *Winten v North Sydney Council* and established the five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;
- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- Is the “*zoning of particular land*” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.

Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

More recently in the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

- Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs; and
- All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

In *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* Preston CJ noted at paragraph 7 that development consent cannot be granted for development that contravenes a development standard unless the consent authority:

- considers the cl 4.6 objections (the requirement in cl 4.6(3)); and
- was satisfied that, first, the cl 4.6 objections adequately addressed the matters required to be demonstrated by cl 4.6(3) (the requirement in cl 4.6(4)(a)(i)) and, second, the development will be in the public interest because it is consistent with the objectives of the height standard and the FSR standard and the objectives for development within the R3 zone in which the development is proposed to be carried out (the requirement in cl 4.6(4)(a)(ii)).

The consent authority does not have to be directly satisfied that compliance with each development standard is unreasonable or unnecessary in the circumstances of case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matters in 4.6(3)(a) and (b). In this respect he also noted that in assessing whether compliance with the development standards was unreasonable or unnecessary an established test is consistency with the objectives of the standard and the absence of environmental harm.

Moskovich v Waverley Council [2016] NSWLEC 1015

Commissioner Tour reflected on the recent *Four2Five* decisions and said:

- Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the *Wehbe* ways of establishing compliance are equally appropriate [at 50]. One of the most common ways is because the objectives of the development standard are achieved – as per Preston CJ in *Wehbe* at 42-43.
- Whereas clause 4.6(4)(a)(ii) has different wording and is focused on consistency with objectives of a standard. One is achieving, the other is consistency. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii) to determine whether non-compliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3). The latter being more onerous requires additional considerations such as the matters outlined in *Wehbe* at 70-76. Such as consideration of whether the proposed development would achieve the objectives of the standard to an equal or better degree than a development that complied with the standard.
- Establishing compliance with the standard is unnecessary or unreasonable in 4.6(3)(a) may also be based on “tests” 2-5 in *Wehbe* either instead of achieving the objectives of the standard (*Wehbe* test 1) or in addition to that test. The list in *Wehbe* is not exhaustive but is a summary of the case law as to how “unreasonable or unnecessary” has been addressed to the meet the requirements of SEPP 1.

- It is best if the written request also addresses the considerations in the granting of concurrence under clause 4.6(5).

The following section addresses the local provisions of Clause 4.6 of the Ryde LEP 2014 together with principles of *Winten v North Sydney Council* as expanded by the five (5) part test established by *Wehbe V Pittwater [2007] NSW LEC 827* and refined by the judgement of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*.

3.1 CONSIDERATION

The following section addresses the local provisions of clause 4.6 of WLEP 2012 together with principles of *Winten v North Sydney Council* as expanded by the five (5) part test established by *Wehbe V Pittwater [2007] NSW LEC 827* and refined by the judgement of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*.

As per the *Winten* decision, we consider that Clause 4.3 of the Ryde LEP 2014 is a numerical control being a development standard capable of being varied under the provisions of Clause 4.6 of the LEP.

CLAUSE 4.6(3)(A) – COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance of the application based on the following:

- The proposal achieves the objectives of the development standard as provided in clause 4.3 of the LEP as the proposal does not result in unreasonable impacts on adjacent land in terms of view loss, overshadowing, building bulk impacts, and loss of privacy.
- The proposed variation to the maximum height of buildings development standard does not hinder the proposals ability to achieve the objectives of either the B4 Mixed Use zone or those objectives set out in the Eastwood Town Centre DCP at Section 1.2. In particular, the proposal will contribute to the revitalisation of the Town Centre through provision of a mix of land uses to service the needs of the catchment within a high quality redevelopment of well-considered build form and open space areas that respond to the surrounding character of the area.
- The proposal directly aligns with the Future Character Statement for Eastwood Town Centre set out at Section 2.2.2 of the DCP. Specifically, the proposal provides a high level of aesthetic amenity at street level through key pedestrian links and active frontages, provides safe, attractive and convenient public spaces, a vibrant and viable contribution to the retail and commercial offering of the centre, provides robust and attractive passive recreation spaces, and will result in a well-balanced mix of complementary land uses that can serve the surrounding residential population.
- The proposal closely follows the preferred built form in the draft Eastwood Town Centre Master Plan (draft Master Plan), in terms height of buildings. The City of Ryde website explains:

“The draft Eastwood Town Centre Master Plan was placed on public exhibition from 5 March to 14 May 2014. The master plan provides a framework for the future character of the Centre and informs possible changes to the planning controls. The master plan sets a direction for the future built form and the public domain of the town centre. The built form includes the height of buildings and the character of the streetscape. The public domain improvements relate to the open spaces, footpaths and roadways. The master plan also includes proposed improvements to pedestrian and vehicular access within the Centre”.

- In terms of the arrangement of height on the site, the draft Master Plan proposed the following for the subject site:
 - Rutledge Street frontage: 8 to 12 storeys, with the tallest building on the south east corner of the site adjacent to the railway line; and
 - Rowe Street frontage: 2-7 storeys.

- **Figure 17** and **Figure 18** illustrates the preferred built form from the draft Eastwood Town Centre Master Plan with an indication of number of storeys.

Figure 17 – Preferred Built Form, Draft Eastwood Town Centre Master Plan

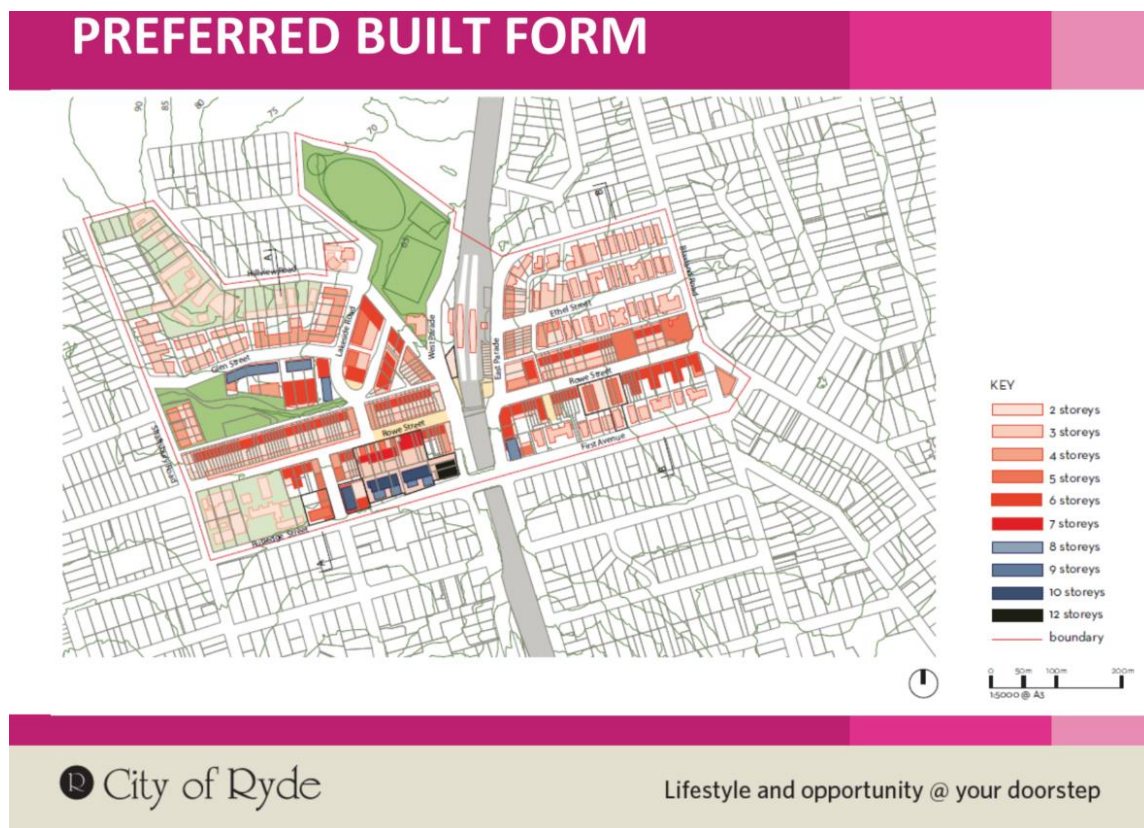


Figure 18 – Extract from Preferred Built Form, Draft Eastwood Town Centre Master Plan

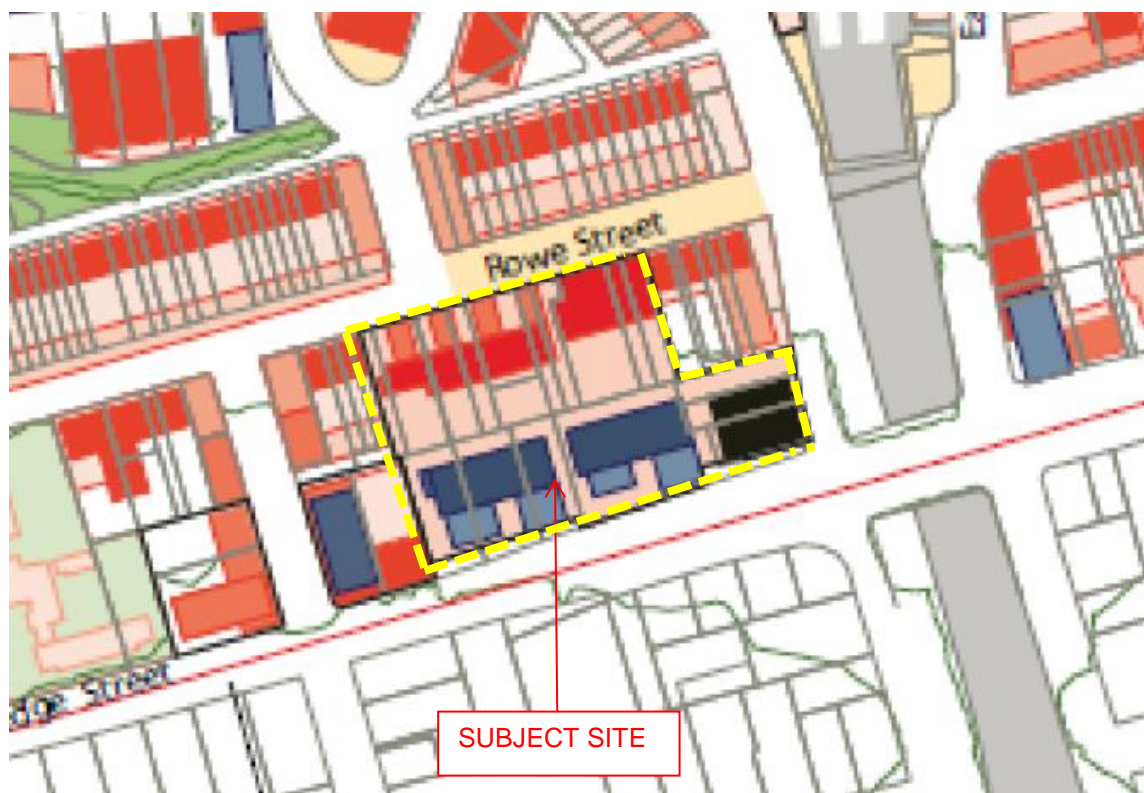


Figure 19 – 3D Perspective Preferred Built Form, Eastwood Town Centre Master Plan, looking North West



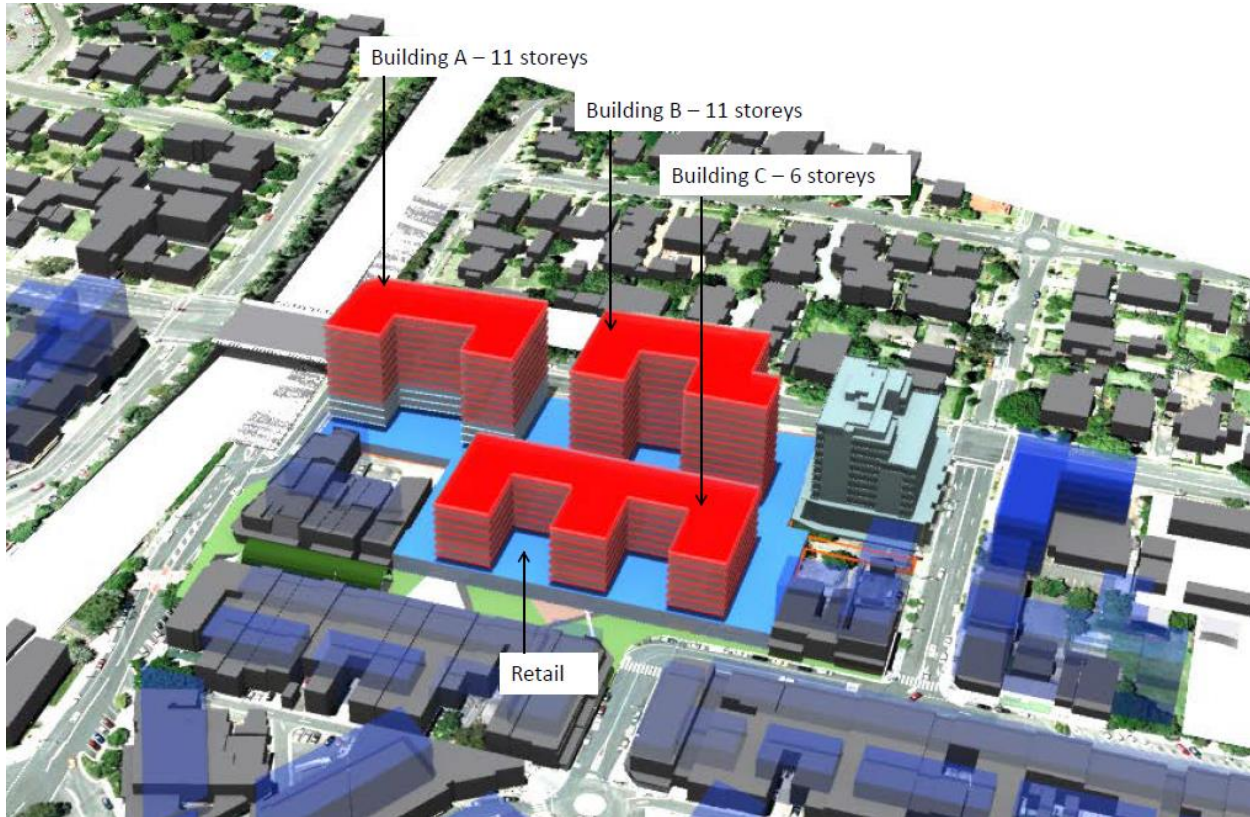
Figure 20 – 3D Perspective Preferred Built Form, Eastwood Town Centre Master Plan, looking South East



- As illustrated in **Figure 9** and **Figure 10** the proposed development is consistent with the principles for building height in the draft Master Plan by providing lower scaled buildings fronting the Rowe Street that provide an appropriate scale relationship to future buildings to the north. Taller buildings front Rutledge Street, with the tallest building located in the south eastern corner adjacent to the railway line.

- An alternative design that complies with the height of building standards has been prepared, which has regard to the relevant planning controls in terms of compliance with the HOB standards and SEPP 65 separation distances and amenity guidelines and is illustrated in **Figure 21**.

Figure 21 – Design alternative compliant with HOB Standards and SEPP 65/ADG



- The design alternative illustrated above has a total GFA of 62,853.25m², with an FSR of 4.93:1, comprising:
 - Retail GFA: 13,812.50m²
 - Commercial GFA: 4,564.50m²
 - Residential GFA: 44,476.25m²
- The proposed development has a GFA of 54,016.1 m², which equates to an FSR of 4.23:1 comprising:
 - Commercial GFA: 3,283.6m²
 - Retail GFA: 11,448.4m²
 - Residential: 38,979m²
- The above analysis demonstrated that more floor space could be achieved on the site and comply with the HOB development standards, although it will not deliver the better environmental planning outcomes that are to be achieved with the approval of the proposed development, being the publicly accessible through site pedestrian linkages and plaza.
- The proposal includes additional building height above that permitted in carefully considered appropriate locations across the site. The proposed variation is a deliberate strategy to bring about a superior urban design outcome for the Eastwood Shopping Centre. In particular, this includes the introduction of a variation in built form across the site, clear demarcation of the shopping centre site through unique and specifically designed built form for this location, a high level of amenity for future occupants to enjoy and

a well-designed public realm contribution. Essentially the floor space and height has been redistributed to ensure a more responsive planning outcome.

- This request seeks to support a better environmental planning outcome than a proposal that strictly complies with the height of building standards. This proposal seeks to distribute buildings with good separation and introduce new publicly accessible ways through the site that are generally open to the sky. The diagrams and sections illustrate how the proposed build footprints do not utilise the full site or entire height envelopes.

In this instance, numerical compliance would not contribute to an improved outcome. As such it is considered that a complying development is neither, reasonable or necessary in circumstances of the case.

Tests 2-5 in *Wehbe* are addressed below:

2. Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary?

The underlying objectives of the HOB standards do relate to the development of the subject site. It is demonstrated in this report that the objectives of the HOB standards are achieved. As has been explained below, strict compliance with the numerical standards will not deliver the better environmental planning outcomes being the open air through site links and plaza space, and overall reduction in overshadowing impacts to residential properties to the south of Rutledge Street.

3. Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?

Strictly applying the HOB standards applying to this site will thwart the achievement of the underlying objectives of the HOB standards. Strict compliance with the HOB standards does not promote the introduction of a greater variety in building height across the site or the significant improvements to connectivity by introducing ground level and open air through site pedestrian links and a plaza space.

4. Has Council by its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable.

Council granted consent to a staged development on the adjoining site to the south west at 7-9 Rutledge Street Eastwood (adjoining site), comprising two allotments for a mixed use development comprising 613m² of retail space and 100 residential apartments (LDA 2011/0612). The adjoining site straddled two HOB standard bands, 33.5m and 18.5m. Council unanimously supported the proposed development that included variations to both HOB standards applying to the site, as follows:

Allotment	HOB Standard	proposed height	Approved variations to HOB Standards
Western Lot	18.5m	41.30m	22.8m over (123% variation)
Eastern Lot	30.5m (RLEP 2010) 33.5m (RLEP 2014)	38.06m	7.5m over the maximum under LEP2010 (24.6% variation) 4.56m over the maximum under LEP2014 (13.6% variation)

In approving the development of the adjoining site at 7-9 Rutledge Street, Ryde Council abandoned the HOB standards applying to an immediately adjoining site in the Eastwood Town Centre. It is unreasonable to expect strict compliance with the standard, as Council have through their own actions abandoned the HOB standards in the Eastwood Town Centre for a recent development that shared boundaries with the subject site.

It is noted the approved development on the adjoining site did not include enhanced urban design and planning outcomes that the proposed development includes in the form of pedestrian through site linkages and a plaza and a better arrangement of building forms and scale across.

To require strict compliance with the HOB standards for the subject site, having regard to Council's application of these standards on an adjoining site is unreasonable and unnecessary.

Figure 22 and **Figure 23** illustrate elevations of the approved development on the adjoining site and indicate the HOB Standards with blue lines, and clearly shows the degree of variation approved by Council.

Figure 22 - 7-9 Rutledge Street, Eastwood Approved Variations to HOB Standards South Elevation

SOUTH ELEVATION - RUTLEDGE ST (Showing Level 10 Units deleted)

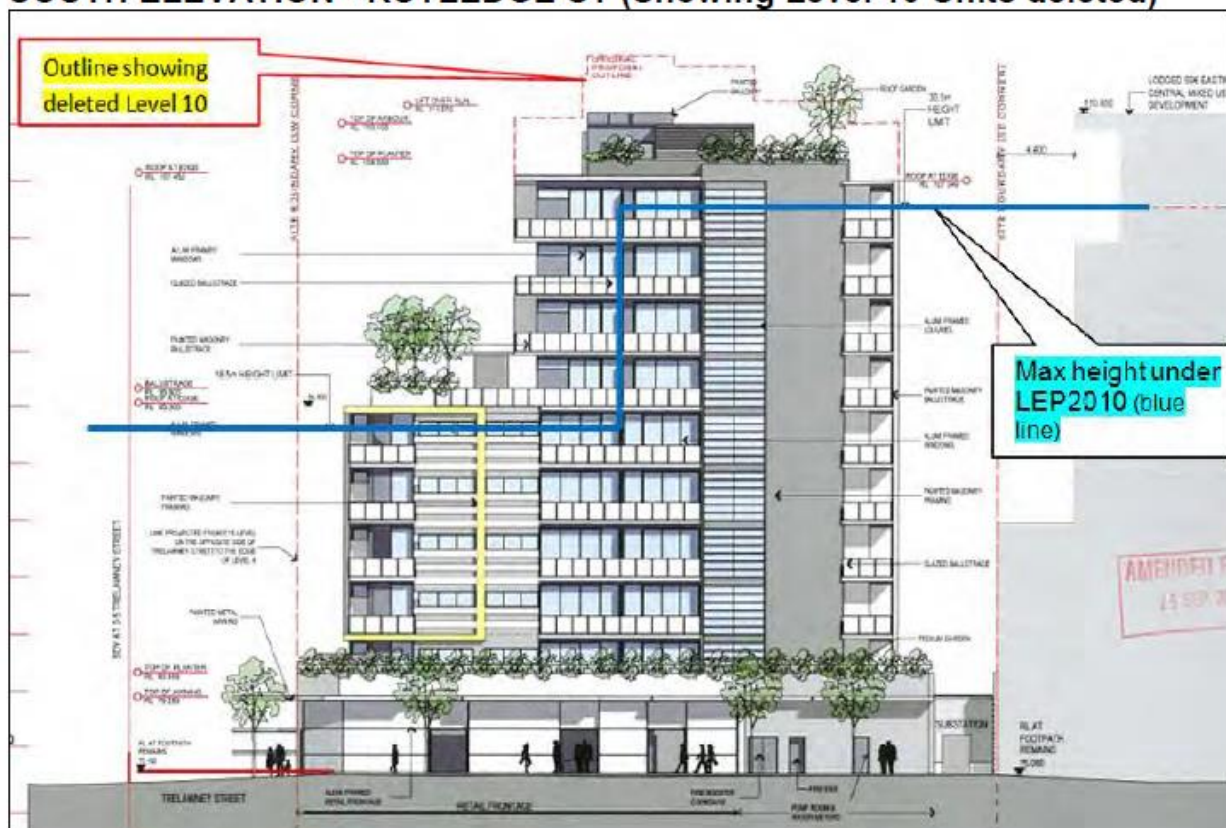


Figure 23 - 7-9 Rutledge Street, Eastwood Approved Variations to HOB Standards South Elevation

WEST ELEVATION (TRELAWNEY STREET)



Furthermore, it is noted that in approving LDA2007/0936, Council approved buildings up to 12 storeys on the subject site, which exceed the current 33.5m HOB standard. Refer to 3D perspectives of the approved built form, which formed the basis of the draft Eastwood Town Centre Master Plan at

Figure 19 and Figure 20.

5. Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.

The B4 Mixed Use Zone in which the site is located is appropriate for the Eastwood Town Centre.

Taking into account the above, the particular circumstances of this application warrant variations of the development standards to facilitate a superior urban design outcome of the site. As outlined above, an alternative design which complies with the HOB standards would not improve the development impacts but rather would result in a diminished outcome for the Eastwood community.

CLAUSE 4.6(3)(B) - ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

There are sufficient environmental planning grounds to justify the contravening development. These include:

- A superior outcome for the community with a preferred built form arrangement that aligns with the vision for the strategic importance of the Eastwood Shopping Centre site. This is achieved by introducing new pedestrian linkages, which will enhance pedestrian connectivity between Rowe Street and Rutledge Street.
- This report and the accompanying shadow analysis demonstrates that any impacts associated with the proposed development are acceptable, particularly since there are no significant solar access impacts on neighbouring properties or the public domain as a result of the height variation.
- The additional building height at specific locations across the site is offset by the lower buildings and in some cases, absence of built form that was envisaged in the LEP controls and introduction of open space and through site linkages, which are accessible to the public creating public benefits.
- The variation does not result in unreasonable adverse amenity impacts on adjacent land.
- The variation does not diminish the development potential of adjacent land.
- Despite the additional building height, the scale of development is considered appropriate given the significance of the site as supporting the continued growth of the Eastwood Town Centre.
- The proposed development has been designed to contribute to local housing needs, availability and affordability.
- The proposal replaces the existing commercial office building, with a new commercial office building, that is better integrated with the overall mix of uses. The location of the new office space fronting Rutledge Street, allows for improved activation of Rowe Street with high quality retail tenancies.

CLAUSE 4.6(4)(A)(II) – WILL THE PROPOSED DEVELOPMENT BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE PARTICULAR STANDARD AND OBJECTIVES FOR DEVELOPMEN WITHIN THE ZONE IN WHICH THE DEVELOPMENT IS PROPOSED TO BE CARRIED OUT?

The objectives for the development standard provided at subclause 4.3(1) of the LEP are set out in the following table and an assessment of the proposal's consistency is provided:

Table 2 – Consistency of the Proposed Development with the Height of Building Control Objectives

Objective	Assessment
<i>(a) to ensure that street frontages of development are in proportion with and in keeping with the</i>	The proposed development achieves objective (a) and (e) of the HOB standard.

Objective	Assessment
<p><i>character of nearby development.</i></p> <p><i>(e) to emphasise road frontages along road corridors</i></p>	<p>The subject site has two primary street frontages, Rowe and Rutledge Streets, each of these are addressed in turn below, in terms of how objectives (a) and (e) are satisfied.</p> <p>Rowe Street – Rowe Street is characterised by low scale 1-2 storey traditional shop fronts, and the 8-10 storey existing shopping centre and commercial office tower on the subject site. In response to this built form context the proposal seeks to integrate with the streetscape through a transition in building heights. As shown in the streetscape elevation on Rowe Street at Figure 6, this involves providing matching low scale buildings at either end of the site's Rowe Street frontage to transition between the existing streetscape and the proposed new built form. The higher development within the centre of the site denotes the presence of the shopping centre and clearly identifies the town centre as the gathering and activity space, as appropriate for a town centre location.</p> <p>Although new buildings toward the centre of the Rowe Street frontage will be higher than the traditional shopfronts, reference to the existing street wall will be demonstrated within the development through upper level setbacks, the use of matching and complementary materials and building articulation and modulation. A vertical modulation is reinforced to provide a finer grain to the north elevation. It is noted that the building heights on Rowe Street are generally in keeping with the maximum building heights prescribed by the LEP on this section of the site (21.5m). These proposed built form responses will ensure integration with the new buildings and the existing building heights on Rowe Street.</p> <p>Rutledge Street – The Rutledge Street frontage is currently utilised for car parking, back of house activities and vehicle access. The street façade on the northern side of Rutledge Street is dominated by the presence of blank walls, open car parking structures and vehicle access. In this respect, the character of this street frontage is undefined and the redevelopment of the site presents an opportunity to create a new proportion and character for development on Rutledge Street.</p> <p>The more recently approved 11 storey development on the south western corner of the block, at the intersection of Rutledge Street and Shaftsbury Road also provides context for the integration of any new built form proposed on the subject site.</p> <p>Important in the definition of any new character for Rutledge Street has been the low scale residential nature of the properties found on the southern side of Rutledge Street. However, these properties are well separated from the site across the road reserve, with additional generous front setbacks for dwellings from the street. The proposed additional building height above that specified in the LEP, in this case 2.5 storeys, would be indiscernible given the scale of buildings permitted by the LEP on the northern side of Rutledge Street. Further, the large separation distances afforded to the residential properties on the southern side will ensure the built form does not dominate the streetscape and a sense of spaciousness and openness to the sky above would be achieved.</p> <p>The proposed façade response on Rutledge Street has benefited from the generous separation across Rutledge Street, the highly</p>

Objective	Assessment
<p><i>(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,</i></p>	<p>trafficked nature of Rutledge Street and the currently neglected treatment of this streetscape on the northern side of Rutledge Street. To this end, the proposal has sought to define this frontage and create a streetscape representative of a key site within the town centre which identifies the scale and importance of the function of the site and its contribution to Eastwood through the built form and will deliver the key elements through the proposed site layout, built form massing and open space provision. The increases in building height have been specifically located to ensure the precinct specific objectives will continue to be met through the response to the surrounding residential interface and the heritage significance of the site and surrounds. To this end, the proposal includes a range of building heights 10 – 13 storeys in height which have been designed to respond to the width of Rutledge Street and ensure a robust built form presence at this interface. The buildings on this frontage are broken up horizontally across the length of Rutledge Street to create modulation in the streetscape and provide views into the site.</p> <p>Vertically, the building expression is proposed to include upper level setbacks and materials and finishes that reference the surrounding character of Eastwood. Further, a comprehensive landscape plan has been prepared for the site. The plan includes the implementation of street tree planting on the Rutledge Street frontage. The proposed street trees will provide a connection to the well landscaped front yards of the residential properties on the southern side of Rutledge Street.</p> <p>This objective is twofold, in terms of overshadowing the proposed built form placement within the site has been largely driven by the mitigation of overshadowing impacts on neighbouring sites. As demonstrated by the shadow diagrams provided below, the proposal results in a reduction of shadow impacts when compared with the maximum allowable height envelope for the site under Clause 4.3.</p> <p>As shown by the green areas on the shadow diagrams, the sun access gains achieved by the proposal (above those resulting from the LEP heights) are particularly noteworthy for a number of residential properties on the southern side of Rutledge Street and for the rear yards of residential properties on Clanalpine Street. In particular, the rear yard of the dwelling at 2 West Parade which would be entirely in shadow at the Equinox under the LEP heights is afforded sun access through the proposed scheme.</p> <p>In terms of visual appearance, overall the proposal includes a variety of building heights which is generally compatible with the desired character of the Eastwood Centre. Good separation is provided between buildings, with the introduction of through site pedestrian linkages and a plaza space, which are suitable for the subject site, being a large site that contributes an enhanced retail experience for the Eastwood Town Centre. These connections enhance the Eastwood own Centre by improving pedestrian connectivity. Further, the SEPP 65 building separation standards are exceeded across this open plaza space to provide high levels of amenity to future residents.</p> <p>As set out earlier the rear interface of the existing development on the site with Rutledge Street has for a large part been neglected</p>

Objective	Assessment
<p>(c) <i>to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure</i></p> <p>(d) <i>to minimise the impact of development on the amenity of surrounding properties.</i></p>	<p>and represents service and vehicle access functions. The proposed Rutledge Street development will present a significant improvement to this boundary and provide a high quality architectural response to the surrounding area. Overall, the development proposal has been through a rigorous design process, including review by Council's Urban Design Review Panel, to ensure the contribution of the development to the Eastwood Centre will provide significant improvements to the site.</p> <p>Along Rutledge Street, the purposed heights of Buildings DB, DA, CA are compatible with the 11 storey height of the approved building at 7-9 Rutledge Street (DA/2011/0612). At 13 storeys (42.2m) Building CB, located adjacent to the railway line, adds to the variety of building heights which is considered to enhance the appearance of the Eastwood Town Centre.</p> <p>When viewed from Rowe Street the non-compliant forms on buildings AA, BA and BB will not be readily visible from the street level. incorporate substantial secondary setbacks above the street frontage heights to the experience for pedestrians (Figure 11).</p> <p>The development of the subject site over multiple lots is in keeping with the current lot pattern within this block. The full redevelopment of the subject site encourages an integrated approach to development and avoids ad hoc development proposals.</p> <p>The redevelopment densities, including building heights, included in the proposal are proposed to take advantage of the existing public transport infrastructure which includes the Eastwood Train Station, 200m to the east, and various bus services which serve the existing centre in close proximity to the site. In addition, the proposed land use is consistent with the surrounding commercial and retail core of Eastwood and the proposed residential component will benefit from co-location with a vast amount of community infrastructure and services which are available both on the subject site and in close proximity to the site. The land use is integrated with the key transport infrastructure by activating the frontages to Rowe Street and Rutledge Street and providing through site links and a publicly accessible plazas activated by quality retail uses.</p> <p>The development proposal has been informed by a detailed site context analysis and design impact assessment. The proposal represents a site design that has identified, on balance, the most appropriate development response across the site.</p> <ul style="list-style-type: none"> ▪ The following site attributes have influenced the proposed built form arrangement across the site: <ul style="list-style-type: none"> – The site's strategically significant location in the Eastwood Centre, including the contribution of the existing Shopping Centre and the expectation that this will continue to be provided into the future to service the growing community. – More broadly the lack of a 'marker' for the Town Centre, both in terms of an identifiable building form that denotes the centre of Eastwood and as a way finding tool for people arriving in Eastwood, by car and foot, to lead them to the

Objective	Assessment
	<p>centre for shopping, services and leisure. It is particularly important that this is easily identifiable from the nearby train station.</p> <ul style="list-style-type: none"> – The need to contribute positively to the existing Rowe Street mall and respect the character of this shopping strip. – The lack of residential neighbours directly adjoining the northern, western, and eastern site boundaries. – The opportunities to provide exemplary levels of living amenity to future occupants by taking advantage of the solar access and natural ventilation gains achieved through additional height appropriately located on the site. – The opportunity to vastly improve the entire Rutledge Street frontage which has largely been neglected by current operations. – The opportunity to provide legible and direct pedestrian connections through the site to activate the site internally and open the site up for access from the south. – The potential to improve the amenity of the adjacent residential properties to the south when compared with the shadowing resulting from the existing LEP height controls. – The ability to contribute to an improved and revitalised public realm surrounding the site and created within the site for public benefit. <ul style="list-style-type: none"> ▪ With regard to the tallest building proposed on the site, 13 storeys on the south eastern corner, Building CB has been specifically designed as a marker for the site given its prominent location. This proposed taller building is at a significant corner that is well separated from residential land uses and, as demonstrated by the shadow analysis. The additional 9.9m to 10.9m height above the 33.5m HOB standard will not have significant additional impacts on solar access for properties on the southern side of Routledge Street. The location of the additional building height benefits from the non-sensitive train line to the east and will allow for the realisation of a marker building to identify the Eastwood Shopping centre site. This location also provides an opportunity to maximise living amenity features for future occupants. ▪ Additional upper level setbacks and building modulation ensure the visual bulk, privacy, overshadowing and view impacts are further mitigated. ▪ No significant views from surrounding properties are expected to be adversely impacted due to the separation of the site from adjacent residential properties and the relatively level topography of surrounding areas.

Figure 24 – Shadow diagram at 21 June 9.00am



Figure 25 – Shadow diagram at 21 June 12.00noon



Figure 26 – Shadow diagram at 21 June 3.00pm



Accordingly, despite the non-compliance with the numerical development standard, the proposal achieves all of the LEP objectives of the maximum height of buildings development standard.

The site is zoned, B4 Mixed Use zone and the objectives are:

To provide a mixture of compatible land uses.

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.

To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.

To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.

The proposed variation to the maximum height of buildings development standard does not hinder the proposal's ability to satisfy the objectives of both the B4 Mixed Use zone because:

- The proposal incorporates residential, retail and commercial land uses integrated across the site, to provide vibrancy and activity within the site while allowing for the successful operation of each. The proposal will serve the workforce, visitors and the wider community. This report has demonstrated that

the proposed building heights are generally compatible with the desired character of the Eastwood Town Centre, demonstrated by the approval of an 11 storey building adjoining the site on Routledge Street. The distribution of various building forms and scales separated by new through site linkages and a plaza space on the site will enhance the appearance of this significant site in the Eastwood Town Centre.

- The proposal clearly delineates public and private domain and encourages a high amenity outcome for future residents, whilst not impacting on the current amenity enjoyed by neighbouring residents.
- The subject site is located within 200m of the Eastwood Railway Station and various bus routes servicing the centre, and encourages walking and cycling through complementary works to the public domain and the provision of end of trip facilities to provide for cycling initiatives.
- The proposal introduces significant direct and easily accessible through site links, pedestrian plazas and results in a reduction of vehicular crossings; providing a significant opportunity to activate the street and retail frontages at the ground plane.
- The proposal is not inconsistent or incompatible with the ability to achieve the objectives relating to the promotion of links between the Macquarie University campus, which is 4 kilometres from the site, and the research institutions and businesses located within the Macquarie Park corridor.

CLAUSE 4.6(5)(A) - WOULD NON-COMPLIANCE RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING?

The non-compliance will not raise any matter of State or Regional Significance.

CLAUSE 4.6(5)(B) - IS THERE A PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROL STANDARD?

The proposed development achieves the objectives of the HOB development standards and B4 Mixed Use Zone objectives despite the numerical non-compliances. This report has established there is a lack of significant adverse environmental impacts and the environmental benefits that arise from the proposed arrangement of buildings on the site, and introduction of new publicly accessible pedestrian linkages and a plaza that arise from not complying with the standard.

As articulated in the description of the urban design principles employed for the proposed development, overall, the distribution of built form on the site will enhance the Eastwood Town centre, when compared to options considered to maintain an enclosed shopping centre in a podium with residential towers above.

Accordingly, there can be no quantifiable or perceived public benefit in maintaining the standard.

IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL?

No. The development standard is not a performance based control.

IS COMPLIANCE WITH THE DEVELOPMENT STANDARD CONSISTENT WITH THE AIMS OF THE POLICY, AND IN PARTICULAR DOES COMPLIANCE WITH THE DEVELOPMENT STANDARD TEND TO HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE EP&A ACT?

Ryde Local Environmental Plan 2014 and Ryde Development Control Plan 2014

The proposal achieves a high level of consistency with the relevant controls of the Ryde LEP 2014 and the Eastwood Town Centre DCP. Specifically, the proposal is consistent with the floor space ratio, heritage conservation, and special provision Clauses of the LEP and the vision, and objectives of the DCP. In particular, the proposal is consistent with the relevant objectives of these documents:

Eastwood Town Centre DCP 2014 (Part 4.1)

To establish diverse land uses, services and facilities within the Centre;

To encourage the development of well used safe and attractive public places; and

To increase the number of persons living close to public transport.

- The proposal incorporates residential, retail and commercial land uses are integrated across the site, to provide vibrancy and activity within the site while allowing for the successful operation of each. The proposal will serve the workforce, visitors and the wider community.
- The proposal clearly delineates public and private domain and encourages a high amenity outcome for future residents, whilst not impacting on the current amenity enjoyed by neighbouring residents.
- The subject site is located within 200m of the Eastwood Railway Station and various bus routes servicing the centre, and encourages walking and cycling through complementary works to the public domain and the provision of end of trip facilities to provide for cycling initiatives.
- The proposal introduces significant direct and easily accessible through site links, pedestrian plazas and results in a reduction of vehicular crossings; providing a significant opportunity to activate the street and retail frontages at the ground plane.

The proposed variation to the maximum height of buildings development standard does not hinder the proposals ability to satisfy the objectives of both the B4 Mixed Use zone (see above) and the Eastwood Town Centre objectives.

It is noted that the Eastwood Town Centre DCP provides a number of architecturally specific objectives that will be addressed as the design detail is available and included in any future Development Application submission.

Overall, it is considered that the development proposal delivers Council's vision for the site as expressed in the LEP and DCP controls to enable the following:

- The revitalisation of the Shopping Centre site.
- Appropriate sunlight access to neighbouring properties.
- Provision of a high level of residential amenity for future occupants.
- The consolidation of and overall reduction in vehicle crossings to the site.
- An integrated network of through site links, activated plazas and open space areas.
- A number of public benefits including sustainability initiatives and a commitment to public domain works.

Environmental Planning and Assessment Act 1979

The objectives set down in section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* are as follows:

- “(a) to encourage
- (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land...*”

The development is consistent with the objectives of the Act, in respect to the following:

- The proposal is consistent with the significance of development envisaged for the site. The variation to the building height is proposed to achieve a better urban design outcome for the built form on the site than a compliant scheme. In this respect, the proposal involves greater areas of public space in for the form of through site links and plaza spaces and the provision of space between buildings to allow views into the site. This in turn has resulted in increased building height where it can be accommodated to avoid adverse impacts and realise the public realm benefits. Further, reductions in height are proposed across the site to provide a variation in building form and avoid monotonous building heights across the site.

- The variation in building height is also proposed to achieve an exemplary form of high quality amenity for future occupants by providing greater access to light, outlook and ventilation opportunities.
- The site is located within an established urban environment and is zoned for the intended use. The redevelopment of the site for higher density uses contributes to urban consolidation and may contribute to reducing demand to develop more environmentally sensitive lands.
- The overshadowing effects of the proposed development have been modelled against a compliant scheme. The resulting shadows of the proposed development will not result in unreasonable impacts on adjoining land.
- The delivery of new housing and jobs within an established urban environment located near public transport options without significant or unreasonable environmental impact is considered to be both orderly and economic use of urban land.

4 CONCLUSION

This request is made pursuant to Clause 4.6 of the Ryde LEP 2014 and seeks to vary the maximum height of building development standards prescribed for the subject site under Clause 4.3. Specifically, this request seeks to vary the maximum height of building development standard in locations described in the following table:

Table 3 – Building height controls comparison with proposed development

LOCATION	BUILDING	HOB STANDARD (MAX)	PROPOSED HEIGHT (STOREYS)	PROPOSED HEIGHT (RANGE) (METRES)	DIFFERENCE TO HOB STANDARD (RANGE) (METRES)
Rutledge Street	CA	33.5m	11 storeys	35.9m to 38.3m	+2.4m to +4.8m
	CB	33.5m	13 storeys	42.4m to 44.4m	+8.90m to +10.90m
	DA	21.5m 33.5m	11 storeys	36.85m to 39.65m	+15.35m to +18.15m +3.35m to +6.15m
	DB	33.5m	10 storeys	33.85m to 35.8m	+0.35m to +2.30m
Rowe Street	AA	21.5m	Part 6 and Part 9 storeys	21.2m to 31.9m	-0.3m to +10.4m
	BA	21.5m	6 storeys	20.35m to 21.95m	-1.15m to +0.45m
	BB	21.5m	Part 6 and Part 9 storeys	21.4m to 32.31m	-0.10m - +10.81m

As described in the preceding sections, taking into account the significance of the site, its context, and the vision for the locality, strict compliance with the numerical standard in this instance is both unreasonable and unnecessary for the following reasons:

- As demonstrated in the proposal, the built form has been developed in response to site constraints and the design development for the built form and massing across the site. The proposal envisages a development scheme which achieves design excellence through built form and place making. This has been achieved through use of building scale and arrangement of a significant central plaza space as a key feature of the site.
- Analysis of a design alternative that complies with the HOB standards demonstrates that additional floor space on the site is able to be achieved, without realising the better environmental planning outcomes that will be achieved for the proposed development in terms of a publicly accessible open air plaza space and accessible through site links and reduced overshadowing impacts.
- The podium height, building massing and level of articulation responds well to existing adjoining properties and provides a high level of active frontage. The desired character of a 'market town' concept is achieved through provision of specialty retail at ground level, well-articulated shop entries, well defined lobby spaces, and well positioned vertical transport configurations.
- The additional height will not result in any detrimental amenity impacts (overshadowing, views or privacy) to surrounding development when compared to a complying design. Nor will the extent of the non-compliance result in any adverse visual impact on the locality.

- The proposed built form and height is consistent with the desired future character of the Eastwood Town Centre, as envisaged by the Ryde DCP 2014 at Clause 2.2.2 and will provide for a vibrant and viable commercial centre well integrated with a mix of appropriate land uses and open space areas.
- The non-compliance will not hinder the development's ability to satisfy the objectives of the B4 Mixed Use zone.

Based on the reasons outlined, it is concluded the request is well founded and the particular circumstances of the case warrant flexibility in the application of the maximum height of building development standard.

IS THE OBJECTION WELL FOUNDED?

The objection is considered to be well founded given the motivation of the variation is to create a preferable urban design outcome for the Eastwood Centre site, a prominent and significant site within the Eastwood Town Centre.

The proposed development does not result in any unreasonable or significant adverse environmental (social, economic or biophysical) impacts. In particular, the variation does not diminish the redevelopment potential or amenity of any adjoining land.

Compliance in this circumstance would result in an inferior outcome, with a less responsive built form that lacks identity for the Eastwood Centre site. Further, compliance has the potential to diminish the significance of the site through homogenous building heights and the lack of availability for dedicated quality avenues for public thoroughfare, thereby impacting on the amenity provided for future occupants and visitors to the Eastwood Shopping Centre.

It is our view that to force compliance in the circumstance would be antipathetic to the inherent flexibility provided by clause 4.6, thereby hindering the attainment of its objectives.

DISCLAIMER

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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.



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