

COUNCIL ASSESSMENT REPORT

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	Panel Ref Number – PPSSEC-287 DA2023/0158
PROPOSAL	The project comprises removal of existing vegetation, excavation and construction of a mixed-use development, including residential accommodation, a medical centre, a childcare centre and commercial and retail tenancies, with associated landscaping and basement car parking.
ADDRESS	Nos. 33-41 Blaxland Road, 1-5 Llewellyn Street and 444-446 Concord Road, Rhodes
APPLICANT	Town Planning, Meriton
OWNER	KARIMBLA PROPERTIES (NO.43) PTY LIMITED
DA LODGEMENT DATE	7 August 2023 and amended on 19 April 2024
APPLICATION TYPE	(DA, INTEGRATED under Water Management Act)
REGIONALLY SIGNIFICANT CRITERIA	The development's estimated cost is more than \$30 million. As outlined in Section 2 of Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021 (PSSEPP), the DA has declared a regionally significant development under Section 2.19 of the PSSEPP.
CIV	\$132,976,916 (excluding GST)
CLAUSE 4.6 REQUESTS	<ul style="list-style-type: none"> • Clause 4.3 of CBLEP relates to the maximum height requirements • Clause 7.4 of the CBLEP for minimum non-residential floor space in Rhodes Precinct • Clause 7.5(1) of CBLEP for minimum building separation • Clause 7.5(2) of CBLEP for maximum floor areas above building podiums in Rhodes Precinct • Clause 7.6 of CBLEP for maximum height of building podiums in Rhodes Precinct
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Planning Systems) 2021

	<ul style="list-style-type: none"> • State Environmental Planning Policy (Transport and Infrastructure) 2021 • Canada Bay Local Environmental Plan 2013
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	20
SPECIAL INFRASTRUCTURE CONTRIBUTION	Clause 6.9 CBLEP- Arrangements for designated State public infrastructure
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Attachment A
SCHEDULED MEETING DATE	25 June 2024
PLAN VERSION	5 April 2024 – Revision E
PREPARED BY	City of Canada Bay Council
DATE OF REPORT	17 June 2024
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> • Amended Statement of Environmental Effects (SEE), prepared by Planning Ingenuity, not dated • 5 Clause 4.6 variation requests, prepared by Planning Ingenuity, dated 18 April 2024 • Architectural plans and calculation sheets, prepared by Plus architect, revision F and E, dated 5/04/2024 and 27/05/2024 • Landscape plans, prepared by Greenaway Architects – Oculus, dated April 2024 • Civil drawings, prepared by D.T Civil Engineering, dated 23/04/2024 • Accessibility Review Report – 24015_ADR_DA_v1.2, prepared by ABE consulting, dated 19/04/2024 • Building Code of Australia Compliance Assessment Report, prepared by AED Group, dated 5/04/2024 • Noise Impact Assessment, prepared by Acoustic Logic, dated 5/04/2024 • Operational Waste Management Plan (Rev G), prepared by Elephants Foot Consulting, dated 16/04/2024 • BASIX Certificate No. 1388917M_02, prepared by Efficient Living Pty Ltd, dated 4/05/2024 • Environmental Wind Tunnel Study, prepared by SLR, dated April 2024 • Traffic and Parking Assessment, prepared by Arup, dated 27 May 2024

EXECUTIVE SUMMARY

This report provides an in-depth assessment of Development Application (DA 2023/0158) submitted for the construction of a mixed-use shop-top housing development located at 34-41 Blaxland Road, 444-446 Concord Road, and 1-5 Llewellyn Street, Rhodes. The application, notable for its capital investment value exceeding \$30 million, is being referred to the Sydney Eastern City Planning Panel (SECPP) for approval.

The proposed development site is situated within the Station Gateway East in the Canada Bay Local Government Area (LGA). The site encompasses multiple properties with a total area of 5,517 square meters, featuring three street frontages along Blaxland Road, Llewellyn Street, and Concord Road. Previously, the site contained nine residential dwellings, which were demolished under Complying Development Certificates to make way for the new development.

The project entails constructing a podium and two towers ranging from 12 to 28 storeys, comprising 277 residential apartments with various unit mixes, a medical centre (1,131 sqm), a childcare centre (1,125 sqm), 5 retail tenancies, and a 1,221 sqm commercial area. It also includes associated landscaping and five levels of basement car parking, providing 343 car spaces, 584 bicycle parking spots, and 10 motorcycle parking spots. The gross floor area (GFA) of the development is 33,008 square meters, with a non-residential GFA of 4,213 square meters. The design incorporates several communal open spaces distributed across multiple levels, aiming to enhance the living experience and environmental sustainability.

The design development progressed through a design competition and was subsequently refined with input from an independent design expert appointed to advise the applicant, ensuring the achievement of design excellence. The proposal adheres to various State Environmental Planning Policies (SEPP), including those related to biodiversity, building sustainability, housing, resilience, planning systems, and transport infrastructure. The development was evaluated against local planning controls (CB LEP and CB DCPs), and despite some deviations from strict planning controls, it demonstrates compliance with the broader objectives and principles of the relevant zoning and environmental planning instruments.

The likely impacts of the development, including environmental, social, and economic effects, have been thoroughly assessed. Design solutions and conditions of consent are recommended to mitigate potential negative impacts. The site's suitability is further supported by its excellent access to transport infrastructure and adherence to Ecologically Sustainable Development (ESD) principles.

The application received 20 public submissions. All submissions and feedback from government agencies have been considered in the assessment process. The proposed development is deemed to be in the public interest, offering significant commercial and residential benefits without substantial adverse environmental impacts.

In conclusion, the proposed development aligns with strategic planning objectives, supports high-density mixed-use development, and contributes positively to the local community and economy. The report recommends approval subject to the stipulated conditions to ensure compliance with all relevant planning and environmental standards.

1. THE SITE AND LOCALITY

This report provides an assessment of a Development Application (DA 2023/0158) for the construction of a shop-top housing development at 34-41 Blaxland Road, 444-446 Concord Road and 1-5 Llewellyn Street, Rhodes.

The application is referred to the Sydney Eastern City Planning Panel (SECPP) as the proposed development has a capital investment value (CIV) over \$30 million.

1.1 The Site

The Site is located within the Station Gateway East in the Canada Bay Local Government Area (LGA). **Figure 1** shows the site's regional context.

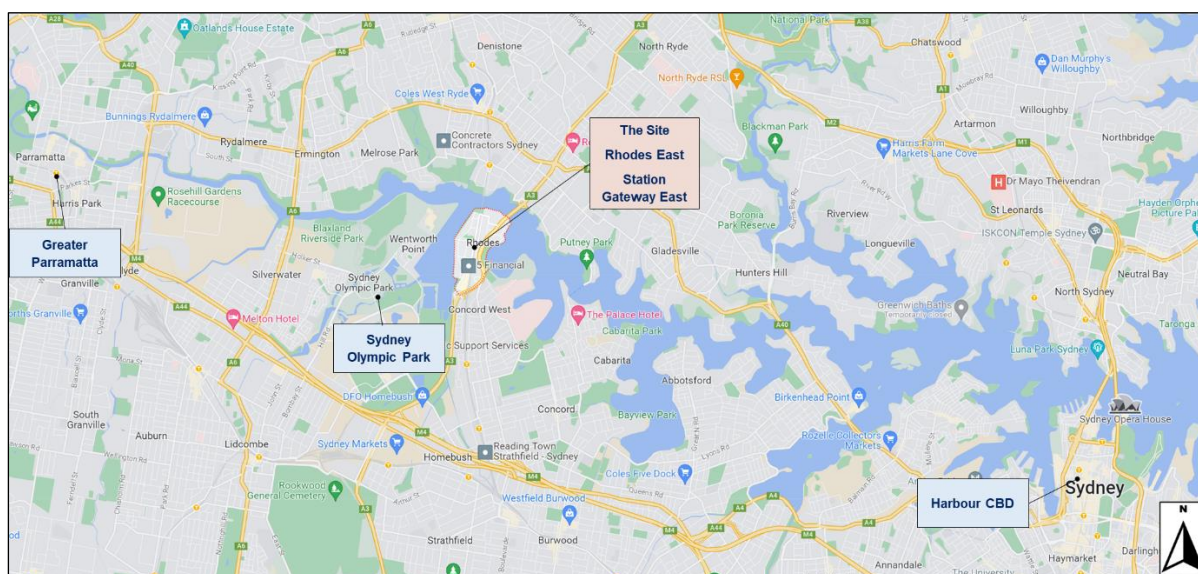


Figure 1 | Regional context map (Source: Nearmap 2023)

The Site is known as Nos. 33-41 Blaxland Road, 1-5 Llewellyn Street and 444-446 Concord Road, Rhodes and legally described as set out below:

- | | |
|------------------------------|---------------------------------------|
| – 33 Blaxland Road, Rhodes | Lot A DP 432340 |
| – 35 Blaxland Road, Rhodes | Lot 1, DP 177550 |
| – 37 Blaxland Road, Rhodes | Lot 1, DP 102893 |
| – 39 Blaxland Road, Rhodes | Lot B, DP 379139 |
| – 41 Blaxland Road, Rhodes | Lot A, DP 379139 |
| – 1 Llewellyn Street, Rhodes | Lot C, DP 379139 |
| – 3 Llewellyn Street, Rhodes | Lot 1, DP 334253 |
| – 5 Llewellyn Street, Rhodes | Lot 2, DP 334253 and Lot B, DP 187152 |
| – 444 Concord Road, Rhodes | Lot B, DP 432340 |
| – 446 Concord Road, Rhodes | Lot 3, DP 334 |

The Site has a total area of 5,517 square meters. It features three street frontages: a western boundary along Blaxland Road, a northern boundary along Llewellyn Street, and an eastern boundary along Concord Road.

The Site contained 9 residential dwellings that were demolished under Complying Development Certificates. **Figure 2** provides the local context of the site.



Figure 2 | Site location – local context (Source: Nearmap 2023)

1.2 The Locality

The Site is bounded by three roads: Blaxland Road to the west, Llewellyn Street to the north, and Concord Road to the east. Two existing single-storey dwellings are to the south of the property.

The surrounding area is zoned MU1 and planned to accommodate high-density mixed-use developments incorporating commercial, retail, and residential spaces.

The Site sits about 200 meters northeast of Rhodes railway station and is conveniently close to Parramatta River and Mcllwaine Park in the east, and Rhodes Central Shopping Mall in the southwest.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The key components and features of the proposal set out in the Amended Statement of Environmental Effects (SEE) are provided in [Table 1](#).

Table 1 | Main components of the proposal

Aspect	Description
Project summary	<p>Construction of a mixed-use development comprising a podium, and two towers of 12 to 28 storeys orientated to Concord Road and Blaxland Road, respectively.</p> <p>Encompassing 277 residential apartments, a medical centre (1131 sqm), a childcare centre (1125 sqm), and commercial</p>

		(1189 sqm) and retail tenancies (593sqm), with associated landscaping and 5 levels of basement car parking.
Site area		5517 sqm
Proposed GFA		33008 sqm
Proposed Residential GFA	Non-	4213 sqm
No of apartments		277 residential apartments Unit Mix: <ul style="list-style-type: none"> – 5 x one-bedroom apartments & 51 x one-bedroom + study apartments 20% – 146 x two-bedroom apartments 52.7% – 59 x three-bedroom apartments 21.2% – 15 x four-bedroom apartments 5.4%
Proposed Height		Podium height 16.9m Tower height of 92.9m
Proposed area	Landscaped	3034.8 sqm <ul style="list-style-type: none"> – Ground floor: 1072.9sqm – Level 1: 882.6sqm – Level 5: 741.7 – Level11: 337.6sqm
Communal Open Space		Deep soil area: ~270sqm (~5%)
Parking spaces		<ul style="list-style-type: none"> – 343 Car Parking from each 46 car parking spaces are reserved for people with disabilities <ul style="list-style-type: none"> 268 for residential use 20 for visitors 35 spaces for childcare 7 spaces for medical 8 spaces for commercial 5 spaces for 5 retails – 584 Bicycle Parking + 85 visitor BP – End of Trip (EoT) facilities (51 lockers + 6 Showers) – 10 Motorcycle Parking
Setbacks		<ul style="list-style-type: none"> • North boundary: minimum 3m • West boundary: minimum 3m • South boundary: minimum 3m • East boundary to the Concord Road: <ul style="list-style-type: none"> – minimum 3m to the basements and up to the upper ground floor level from each boundary. – minimum 1m to the podium level 1-4. – minimum 3m level 5 and above.
CIV		\$132,976,916 (excluding GST)

The proposed works are also shown in [Figure 3-Figure 9](#).



Figure 3 | Proposed Floor Plans (Source: Applicant's Architectural Plans, Rev F dated 27/05/2024)



Figure 4 | Proposed Floor Plans (Source: Applicant's Architectural Plans, Rev F dated 27/05/2024)



Figure 5 | Proposed Floor Plans (Source: Applicant's Architectural Plans, Rev F dated 27/05/2024)

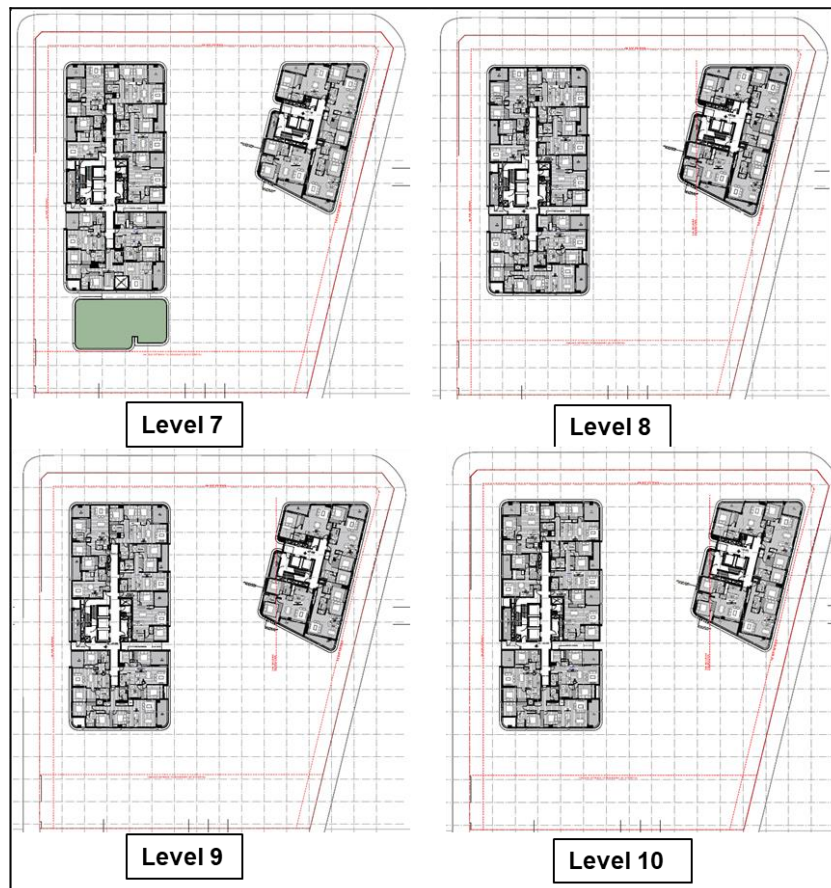


Figure 6 | Proposed Floor Plans (Source: Applicant's Architectural Plans, Rev F dated 27/05/2024)

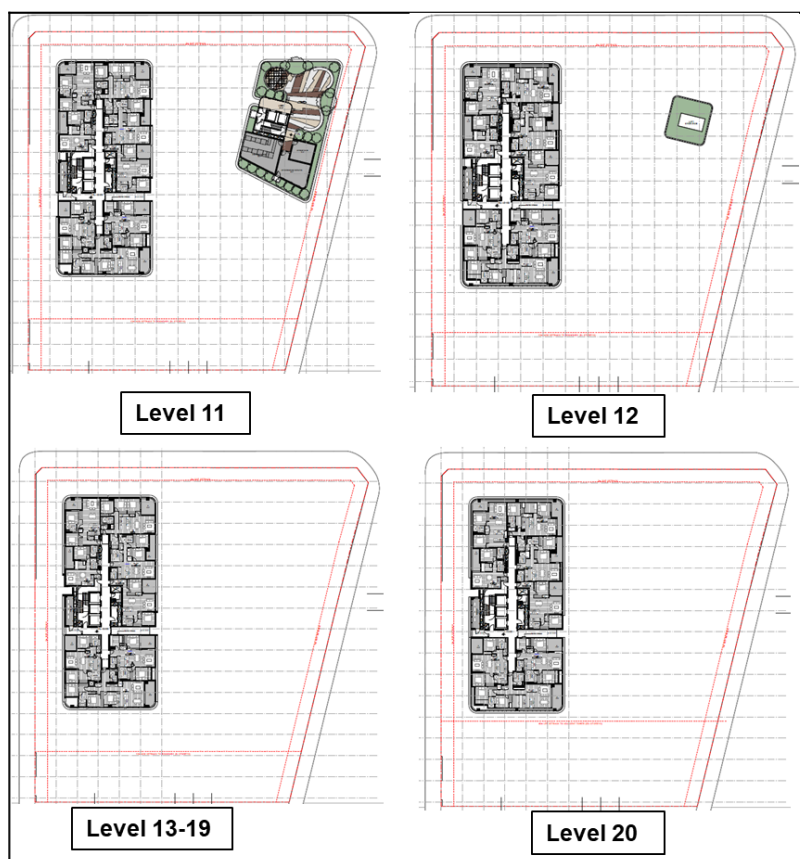


Figure 7 | Proposed Floor Plans (Source: Applicant's Architectural Plans, Rev F dated 27/05/2024)

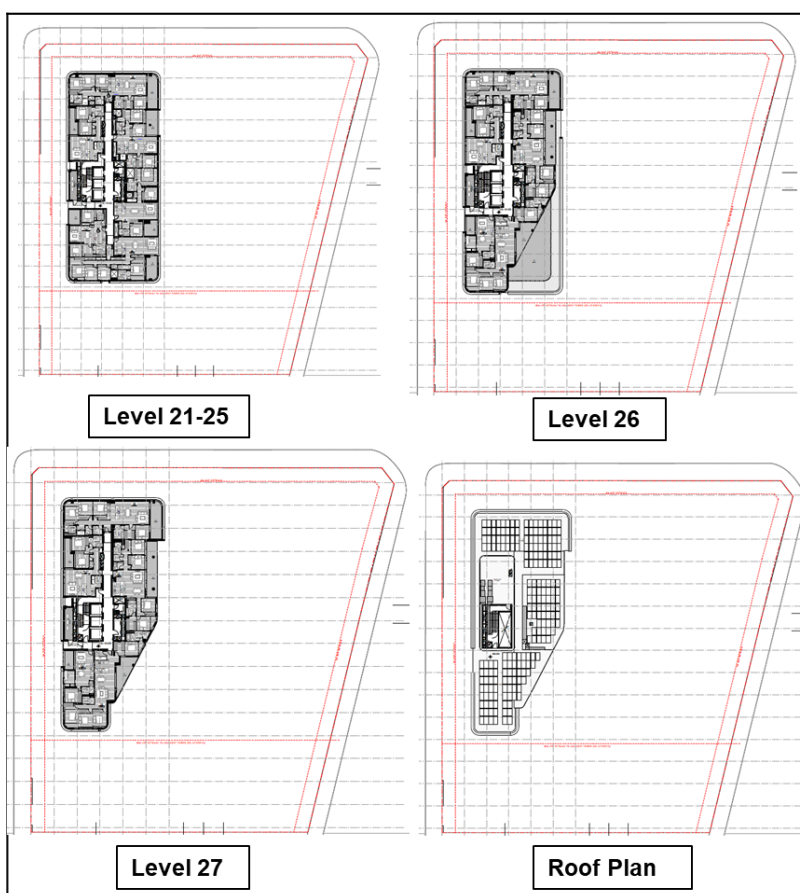


Figure 8 | Proposed Floor Plans (Source: Applicant's Architectural Plans, Rev F dated 27/05/2024)

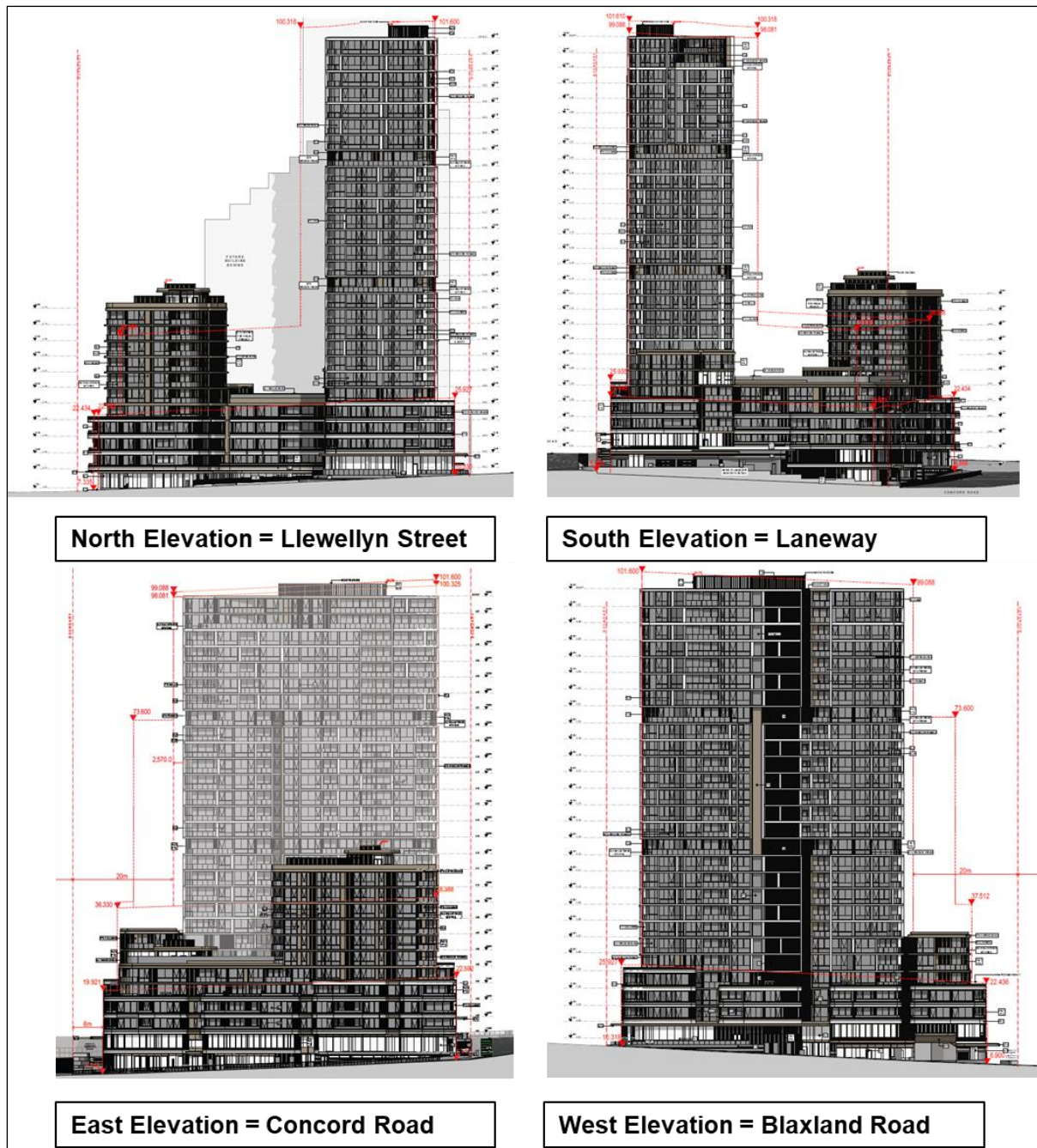


Figure 9 | Proposed Elevations (Source: Applicant's Architectural Plans, Rev E, dated 5/04/2024)

2.2 Background

The proposal has been the subject of a competitive design competition in accordance with Clause 7.2 of the Canada Bay Local Environmental Plan 2013 (CBLEP 2013).

The competition was undertaken in the form of an invited single-stage design competition with participation from three architectural firms listed below:

- Plus Architecture (Plus)
- DBI Architecture (DBI)
- Fender Katsalidis (FK)

The jury selected the Plus scheme as the competition winner as the design scheme most able to achieve design excellence (reference: Design Integrity Panel (DIP) Report Pre-Lodgement Assessment, prepared by Meriton, dated 13 February 2023).

The DA with the refined design was lodged on 7 August 2023.

A chronology of events for the development application since lodgement is outlined below in **Table 2**, including the Panel's involvement (briefings, referrals etc) with the application:

Table 2 | Chronology of the DA

Date	Event
7 August 2023	DA lodged
10 August 2023	DA referred to external agencies (CNR-58744)
10 August 2023	DIP confirmed that the proposal had significantly deviated from design elements that were key to the competition-winning scheme being deemed capable of achieving design excellence and refrained from providing further advice.
15 August – 5 September 2023	First Notification period
31 August 2023	First Sydney Eastern City Planning Panel (Panel) briefing
5 October 2023	Second Panel briefing
8 October 2023	The Applicant amended the Development Application in accordance with Clause 37 of the EP&A Regulations and added a basement
20 October 2023	Council engaged Paul Walter as an independent expert to peer review the design quality of the application.
16 November 2023	Council wrote to the applicant requesting withdrawal due to the exceedance with development controls and lack of clarity around the merits of architectural design
28 November 2023	Third Panel briefing
1 December 2023	Request for Information from Council to Applicant (RFI)
29 February 2024	Forth Panel briefing
19 April 2024	The Applicant submitted the amended design and supporting documents
23 April 2024	Fifth Panel briefing
23 April -14 May 2024	Second Notification period
27 May 2024	The Applicant provided further information
10 June 2024	Paul Walter, the independent expert, confirmed that the proposal exhibits design excellence, subject to complying with the conditions of consent (Attachment B).

All the structures on the site were demolished and disposed offsite via the previously approved Complying Development Certificates.

A separate Development Application DA2023/0226 was approved on the Site on 1 March 2024 for site preparation and excavation works (in relation to the basement).

3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include **Table 3**.

Table 3 | Section 4.15(1) Evaluation

Section 4.15(1) Evaluation	Consideration
(a)(i) any environmental planning instrument	Satisfactorily complies. The Council's consideration of the relevant EPIs is provided in Section 3.1 of this report.
(a)(ii) any proposed instrument	Nil
(a)(iii) any development control plan	Satisfactorily complies. The Council's consideration of the DCP is provided in Section 3.2 of this report.
(a)(iiia) any planning agreement that has been entered into or any draft planning agreement that a developer has offered to enter into	There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.
(a)(iv) the regulations	The relevant provisions of the EP&A Regulation have been thoroughly reviewed, and any necessary actions are addressed in the recommended conditions.
(a)(v) (Repealed)	Not applicable.
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	The likely impacts of the development have been appropriately mitigated or conditioned.
(c) the suitability of the site for the development	The site is zoned MU1, where the proposed shop-top housing is permissible. Although the development does not strictly comply with all planning controls, it has been demonstrated that the objectives of the zone and controls are satisfied, making strict compliance in this case unnecessary and unreasonable. The potential amenity and environmental impacts are minimised through design solutions and conditions of consent. Any potential contamination on the site will be addressed during excavation through suitable conditions. The site is well-located with excellent access to transport infrastructure, and the proposal satisfies Ecologically Sustainable Development principles. These factors collectively

	demonstrate the suitability of the site for the proposed development.
(d) any submissions	20 public submissions were received. Consideration has been given to all submissions and to the advice from Government agencies (Sections 3.4 and 4.1).
(e) the public interest	The proposed development is considered to be in the public interest as it will provide commercial and residential accommodation without significant adverse environmental impacts.

It is noted that the proposal is considered to be:

- Integrated Development (s4.46)
- Requiring concurrence/referral (s4.13)

which are considered further in this report.

3.1 Section 4.15(1)(a) (i) the provisions of any environmental planning instrument

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- Canada Bay Local Environmental Plan 2013

A summary of the key matters for consideration arising from these State Environmental Planning Policies (SEPP) are outlined in [Table 4](#).

Table 4 | Summary of applicable SEPP

SEPP	Matters for Consideration	Comply (Y/N)
SEPP (Biodiversity and Conservation) 2021 (BCSEPP)	<ul style="list-style-type: none"> – Chapter 2 Vegetation in non-rural areas The removal of all trees on the site was approved under a separate Development Application (DA2023/0226) for the excavation of the basements. The application was supported by the Arboricultural Assessment Report, which was reviewed by Council's tree management team. They had no objections to the removal of the trees, provided that appropriate replacements were proposed within the landscape plan. This DA approved landscape plans that proposed adequate replacement planting. – Chapter 6 Water catchments 	Yes

	In accordance with Part 6.3 of the BCSEPP, the site falls within the foreshore or waterways area. The proposal is considered to be in line with the general considerations outlined in Section 6.28(1) and (2) of the BCSEPP.	
SEPP (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)	<p>BASIX SEPP applies to the residential portion of the development (levels 1 to 27). The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.</p> <p>The application is accompanied by BASIX Certificate No. 1388917M_02 prepared by Efficient Living dated 3 May 2024 committing to environmentally sustainable measures.</p> <p>The certificate demonstrates that the proposed development meets the thermal comfort target required by the BASIX SEPP, exceeds the water target by 20 points, and surpasses the energy target by 15 points.</p>	Yes
SEPP (Housing) 2021 (Housing SEPP)	<p>This DA is subject to the design regulations outlined in Chapter 4 of the Housing SEPP governing residential apartment development.</p> <p>As part of the assessment process, the application was peer-reviewed by an independent design expert, who undertook a detailed assessment of ADG and confirmed that the application was consistent with the objectives of the ADG controls.</p>	Yes
SEPP (Resilience and Hazards) 2021 (RHSEPP)	<p>In accordance with Clause 4.6 (1) Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.</p> <p>The proposal involves early work and excavation for five basements. Suitable conditions are imposed to manage potential contamination issues that may arise during excavation.</p>	Yes
SEPP (Planning Systems) 2021 (PSSEPP)	The proposal is deemed regionally significant development under Section 2.19 of the PSSEPP due to its CIV exceeding \$30 million, and the Sydney Eastern Planning Panel is the determining authority for the DA.	Yes
SEPP (Transport and Infrastructure) 2021 (TISEPP)	<p>This DA is subject to Section 2.48 of the TISEPP for Developments likely to affect an electricity transmission or distribution network. The DA was referred to the local electricity service provider, Ausgrid, who raised no objections and provided comments and conditions.</p> <p>Section 2.119 applies as the site is located on a classified road (Concord Road). TfNSW has reviewed</p>	Yes

the application and provided concurrence to DA, subject to compliance with its conditions.

The relevant local environmental plan applying to the site is the Canada Bay Local Environmental Plan 2013 (CB LEP). The CB LEP aims to achieve high-quality urban form by ensuring that new development reflects the existing or desired future character of particular localities. The proposal is consistent with these aims. The LEP contains several development standards which apply to the proposed development. An assessment of the application against the relevant planning controls within BLEP 2012 is shown in [Table 5](#).

Table 5 | Consideration of the LEP controls

Control	Proposal	Comply
2.2 and 2.3 Zoning and Objectives MU1-Mixed Use Objectives of zone <ul style="list-style-type: none"> • To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities. • To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces. • To minimise conflict between land uses within this zone and land uses within adjoining zones. • To encourage business, retail, community and other non-residential land uses on the ground floor of buildings. 	<p>The proposed Shop-top housing is a permissible use with consent in MU1 Zone.</p> <p>The proposal is considered consistent with the zone objectives. It features the 1131 sqm Medical Centre, the 1125 sqm Childcare Centre, the 1159 sqm Commercial space, and 5 Retail units on the lower and upper ground floors, generating employment near public transport options.</p> <p>It encourages a diversity of business, retail, and community uses, providing active street frontages on Blaxland Road, Llewellyn Street, and Concord Road.</p> <p>Additionally, a new southern connection laneway enhances pedestrian connectivity between the station to the west and McIlwaine Park to the east, contributing to vibrant and functional public spaces.</p>	Yes
4.3 Height of Buildings Maximum 32m from Concord Road And 92m from Blaxland Road	The proposed building height reaches 40.5m to Concord Road and 92.9m to Blaxland Road	Cl4.6 variation request, refer to section 3.1.1 of the report
4.4 Floor Space Ratio (FSR) Maximum 5.7:1	The maximum permissible FSR of the site is 5.7:1 under the CBLEP. Given the site area of 5517 sqm, this allows for a GFA of 31,446.9 sqm. Clause 7.11 of the CBLEP provides a 5% bonus to the maximum FSR where certain BASIX commitments are exceeded. The BASIX assessment	Yes

for the proposed development indicates that it will exceed the BASIX SEPP requirements, thereby qualifying for the 5% FSR bonus. This results in a GFA of 33,019.24 sqm.

The architectural plans and GFA area calculation diagrams show that the proposed development has a maximum GFA of 33,008 sqm, which is compliant.

A condition of consent is required to ensure that the as-built plans comply with the maximum GFA prior to the issue of the Occupation Certificate.

4.6 Exceptions to development standards

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- (b) there are sufficient environmental planning grounds

An exception to the following development standards is proposed and discussed further in **Section 3.1.1**. Yes

1. Clause 4.3 Height of buildings
2. Clause 7.4 Minimum non-residential floor space in Rhodes Precinct
3. Clause 7.5 Minimum building separation and maximum floor areas above building podiums in Rhodes Precinct
4. Clause 7.6 Maximum height of building podiums in Rhodes Precinct

Clause 4.6(8) identifies the standards that cannot be varied, and these clauses are not specified under 4.6(8).

to justify the contravention of the development standard.

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (caa) clause 5.5,
- (ca) clauses 6.4 and 6.5,
- (cb) clause 6.10,
- (cc) clauses 7.3 and 7.8(2)(a)–(c).

6.2 Earthworks

(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

The proposal includes excavation to accommodate five basements, with stringent conditions imposed to ensure that the earthworks do not negatively impact environmental functions, neighbouring land uses, or surrounding area features. These conditions address drainage patterns, soil stability, fill material quality, and the exportation of excavated soil, ensuring compliance with relevant EPA guidelines. Measures are also in place to safeguard the amenity of adjoining properties during construction.

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- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
 - (b) the effect of the development on the likely future use or redevelopment of the land,
 - (c) the quality of the fill or the soil to be excavated, or both,
 - (d) the effect of the development on the existing and likely amenity of adjoining properties,
 - (e) the source of any fill material and the destination of any excavated material,
 - (f) the likelihood of disturbing relics,
 - (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
 - (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.
-

6.5 Active street frontages

- (1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages.
- (2) This clause applies to land identified as “Active street frontage” on the Active Street Frontages Map.
- (3) Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.
- (4) Despite subclause (3), an active street frontage is not required for any part of a building that is used for any of the following—

The corner of Blaxland Road and Llewellyn Street is identified as requiring an active street frontage, as outlined in the CBLEP Active Street Frontages Map. The proposal includes retail tenancies and a centre-based childcare facility along the Blaxland Road and Llewellyn Street frontages, aligning with the requirements stated in clause 6.5(5). This clause specifies that premises such as commercial facilities, childcare centres, and other community-oriented services contribute to an active street frontage.

The only parts of the building that do not provide active frontages are the lobbies and areas necessary for fire services, including booster assemblies and fire stairs, which are exceptions allowed under clause 6.5(4).

Yes

-
- (a) entrances and lobbies (including as part of mixed use development),
 - (b) access for fire services,
 - (c) vehicular access.
- (5) In this clause, a building has an active street frontage if all premises on the ground floor of the building facing the street are used for the purposes of amusement centres, centre-based child care facilities, commercial premises, community facilities, educational establishments, entertainment facilities, function centres, industrial retail outlets, information and education facilities, light industries, medical centres, mortuaries, public administration buildings, recreation facilities (indoor), registered clubs or veterinary hospitals.
-

6.9 Arrangements for designated State public infrastructure

(Clause has since been repealed but remains relevant to this DA)

(2) Despite all other provisions of this Plan, development consent must not be granted for development for the purposes of residential accommodation (whether as part of a mixed use development or otherwise) in an intensive urban development area that results in an increase in the number of dwellings in that area, unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the land on which the development is to be carried out.

(3) This clause does not apply to development on—

(a) land in an intensive urban development area if all or part of the land is in a special contributions area, or

(b) land identified as “Burwood-Concord Precinct”, “Homebush

Clause 6.9 of the CB LEP was repealed on 1 October 2023, but it remains applicable to this application since it was lodged before this date.

The site has been identified as an Intensive Urban Development Area under CB LEP.

Satisfactory arrangements need to be made for the provision of designated State public infrastructure.

The DA was referred to the Department of Planning, Housing and Infrastructure (DPHI), who certified that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure (SVPA2023-57 dated 13 May 2024).

Yes

North Precinct” or “Kings Bay Precinct” on the Key Sites Map.

(4) In this clause and clause 6.10—

intensive urban development area means the area of land identified as “Intensive Urban Development Area” on the Intensive Urban Development Area Map.

6.10 Public Utility Infrastructure

(1) Development consent must not be granted for development on land in an intensive urban development area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.

public utility infrastructure, in relation to an intensive urban development area, includes infrastructure for any of the following—

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage.

The site is identified within an Intensive Urban Development Area according to CB LEP. The Application was referred to Ausgrid and Sydney Water, with Ausgrid providing arrangements for electricity supply and Sydney Water confirming water and wastewater servicing potential, subject to minor adjustments, with detailed requirements to be provided during the S73 application stage.

Yes

6.11 Mix of dwelling sizes in residential flat buildings and mixed use development

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

(a) to ensure the provision of a mix of dwelling types in residential flat buildings and provide housing choice for different demographics, living needs and household budgets,

(b) to promote development that accommodates a range of household sizes.

(2) This clause applies to development for the following purposes that results in at least 10 dwellings—

- (a) residential flat buildings,

The following mix is provided:

- 5 x one-bedroom apartments & 51 x one-bedroom + study apartments 20% in total
- 146 x two-bedroom apartments 52.7%
- 59 x three-bedroom apartments & 15 x four-bedroom apartments 26.6% in total

Yes

- (b) mixed use development that includes shop top housing.
- (3) Development consent must not be granted to development to which this clause applies unless—
- (a) at least 20% of the dwellings, to the nearest whole number of dwellings, in the development will be studio or 1 bedroom dwellings, and
- (b) at least 20% of the dwellings, to the nearest whole number of dwellings, in the development will have at least 3 bedrooms.

6.12 Affordable housing

(2) The consent authority may, when granting development consent to development to which this clause applies, impose a condition requiring a contribution equivalent to the applicable affordable housing levy contribution for the development specified in subclauses (2A)–(6A).

(2A) The affordable housing levy contribution for development in Area 4 is 3.5% of the relevant floor area that exceeds the floor space achieved by applying a floor space ratio of 1.76:1.

The site is located within the Rhodes East affordable housing contribution area, and therefore, 5% of the relevant floor area is to be provided as an affordable housing contribution.

The Applicant has opted to fulfil Clause 6.12 through a monetary contribution made to the Council.

Yes

Part 7 Rhodes Precinct

7.1 Objectives of Part

The objectives of this Part are as follows—

- (a) to achieve the highest standard of architectural and urban design in the Rhodes Precinct by ensuring that new development exhibits design excellence, including excellence in sustainably managing the environmental impact of the development on existing and future populations,
- (b) to allow for a mix of land uses that will—
- (i) provide an appropriate balance between residential, retail, commercial and other land uses within the Rhodes Precinct, and

The development is generally in line with the objectives of Part 7 of the LEP, as it attains design excellence through compliance with conditions of consent.

Upon completion, it will offer a diverse mix of land uses, including a residential, medical centre, child care facilities, retail, and commercial spaces, meeting the diverse needs of the community and fostering employment opportunities.

Additionally, the proposal includes plans for vibrant public spaces and communal open areas, enhancing the appeal of the Rhodes precinct. Overall, the proposed development is considered suitable for the area.

Yes

-
- (ii) encourage the provision of a range of services and facilities to help meet the needs of the population and users of the Rhodes Precinct, and
 - (iii) generate employment in the Rhodes Precinct, and
 - (iv) establish a significant new people-oriented public domain and foreshore area and other vibrant public plazas and public spaces,
 - (c) to support growth in the Rhodes Precinct by ensuring the provision of appropriate infrastructure that is sensitive to environmental impacts.
-

7.2 Design Excellence in Rhodes Precinct

- (3) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—
- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
 - (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,
 - (c) whether the development detrimentally impacts on view corridors,
 - (d) how the development addresses the following matters—
 - (i) the requirements of a development control plan made by the Council and applying to the land on the commencement of this clause,
 - (ii) the suitability of the land for development,
 - (iii) existing and proposed uses and use mix,
 - (iv) heritage issues and streetscape constraints,
 - (v) the relationship of the development with other development, existing or proposed, on the same site or on

Council independent urban design expert has provided an assessment indicating that the proposed development demonstrates a high standard of architectural design, which is appropriate for its building type and location. Key aspects of this assessment are summarised as follows:

1. Architectural Design and Façade Systems:

- The proposal represents a high architectural design standard.
- The façade systems have been well-considered, distinguishing major building elements.
- The form and external appearance of the development responds well to the setting.

2. Views and Urban Integration:

- The design has effectively considered distant and close views of the site.
- The development is designed to be a memorable part of the Rhodes cityscape without negatively impacting view corridors.
- It maintains a coherent relationship with existing and likely future developments in terms of separation, setbacks, amenity, and urban form.

3. Street Frontage and Building Composition:

Yes

neighbouring sites in terms of separation, setbacks, amenity and urban form,

- (vi) bulk, massing and modulation of buildings,
- (vii) street frontage heights,
- (viii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
- (ix) the achievement of the principles of ecologically sustainable development,
- (x) pedestrian, cycle, vehicular and service access, circulation and requirements,
- (xi) the impact on, and any proposed improvements to, the public domain,
- (xii) achieving appropriate interfaces at ground level between the building and the public domain,
- (xiii) excellence and integration of landscape design.

- Street frontage heights are defined by a 4 to 5-storey podium, presenting a horizontal element behind which towers rise as discreet elements to the full height.
 - The broad and tall faces of the main tower are broken down with a series of changes in plane and materials.
4. Access and Circulation:
- Pedestrian, cycle, vehicular, and service access and circulation appear sensible.
 - The scheme generally enhances street-front activation and improves the quality and amenity of the public domain.
 - The development is capable of achieving appropriate interfaces at ground level between the building and the public domain.
5. Sustainable Development:
- While the building services, power, and water initiatives were not thoroughly investigated, the scheme appears capable of achieving ecologically sustainable development principles.

It is recommended that specific conditions of consent be satisfied before a Construction Certificate is issued to ensure the development meets the design excellence provisions of Clause 7.2 of the Canada Bay LEP.

Refer to **Attachment B**.

7.3 Overshadowing of public places in Rhodes Precinct

(1) Development consent must not be granted to development that results in a building causing additional overshadowing of a public place identified on the Sun Access Protection Map on 21 June in any year, during the time specified for the public place in the following table—

Public place

Brays Bay Reserve

The subject site opposes Mcllwaine Park and is within proximity to Brays Bay Reserve; therefore, this clause applies.

The shadow analysis drawings, numbered PLA-DA-3200, Revision E, prepared by Plus Architect on 5 April 2024, demonstrate compliance with Clause 7.3.

Yes

8:30am–12:30pm

McIlwaine Park Primary Zone

8:30am–2pm

McIlwaine Park Secondary Zone

8:30am–12:30pm

7.4 Minimum non-residential floor space in Rhodes Precinct

The site is subject to a minimum non-residential floor area of 13.4%. The proposed development is permitted a GFA of 33,019.24 sqm.

Therefore, a non-residential floor space of 4,424.58sqm is required.

The development schedule, prepared by Plus Architect, dated 16 April 2024, shows that the proposal provides 4213sqm non-residential GFA.

CI4.6 variation request, refer to section 3.1.1 of the report.

7.5 Minimum building separation and maximum floor areas above building podiums in Rhodes Precinct

(1) Development consent must not be granted to development that results in a building in the Rhodes Precinct being separated from another building by less than—

(a) for a building higher than 14 storeys but not higher than 20 storeys—24 metres, or

(b) for a building higher than 20 storeys—40 metres.

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

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

(1) This clause does not apply to the shorter tower component of the proposal as it is less than 14 storeys. The minimum required setback is provided to the south for the taller tower. However, there is a 3m shortfall in building separation toward the northern boundary from Level 20 to 27 of the tower to the future development on the opposite side of Llewellyn Street.

(2) The proposed development complies with the maximum 750m² gross floor area for floors of a building, excluding the following levels:

Level 4: 1923sqm

Level 5: 1309sqm

Level 6: 1259sqm

Level 7 to 10: 1133sqm

Level 11: 769sqm

CI4.6 variation request, refer to section 3.1.1 of the report

7.6 Maximum height of building podiums in Rhodes Precinct

Development consent must not be granted to development that results in the podium of a building in the Rhodes Precinct being higher than 16 metres.

The maximum height of the podium is 16.85m, as measured to the top edge of Level 4.

CI4.6 variation request, refer to section 3.1.1 of the report

7.7 Maximum number of dwellings in Rhodes Precinct

277 dwellings are provided and will be recorded by Council

Noted

(1) Development consent must not be granted to development that results in more than 3,000 dwellings in the Rhodes Precinct.

7.8 Maximum number of car parking spaces for uses of land in Rhodes Precinct

(1) Development consent must not be granted to development that results in the number of car parking spaces provided in connection with a use of land in the Rhodes Precinct exceeding the maximum specified in this clause.

(2) The maximum number of car parking spaces is as follows—

(a) for commercial premises other than retail premises—1 space per 150 square metres of gross floor area used for that purpose,

(b) for retail premises other than restaurants or cafes—1 space per 100 square metres of gross floor area used for that purpose,

(c) for restaurants or cafes—1 space per 150 square metres of gross floor area used for that purpose,

(d) for dual occupancies, multi dwelling housing, residential flat buildings and shop top housing—

(i) 0.6 spaces per studio dwelling, and

(ii) 0.6 spaces per dwelling with 1 bedroom, and

(iii) 0.9 spaces per dwelling with 2 bedrooms, and

(iv) 1.4 spaces per dwelling with 3 or more bedrooms, and

(v) 1 visitor car parking space per 7 dwellings.

S & 1B (56 X 0.6) = 33.6

2B (146 X 0.9) = 131.4

3B (74 X 1.4) = 103.6

Visitor (277/7) = 39.6

Retail 593sqm/100-150=5

Commercial 1221sqm/150=8

Medical Centre 1131sqm/150=7

Total=328.2

The application includes a Traffic and Parking Assessment, prepared by Arup, dated 27 May 2024 and reviewed by the Council Traffic team.

Yes

A total of 343 car spaces are provided, allocated as follows:

- 268 for residential use
- 20 for visitors
- 35 spaces for childcare
- 7 spaces for medical
- 8 spaces for commercial
- 5 spaces for 5 retails
- 46 car parking spaces reserved for people with disabilities.

Child care 1 per 4 children

7.9 Water reticulation systems for buildings in Rhodes Precinct	This requirement will be conditioned upon approval.	Compliance will be achieved upon fulfilment of the conditions of consent.
Development consent must not be granted to the erection of a building in the Rhodes Precinct unless the building utilises a dual water reticulation system containing pipes for potable water and recycled water for all internal and external water uses.		
7.10 Site area of proposed development in Rhodes Precinct includes dedicated land	No portion of this area was required to be dedicated to the Council. The maximum Floor Space Ratio applies to the entire site area.	Noted
The site area of proposed development on land in the Rhodes Precinct is, for the purpose of applying a floor space ratio under clause 4.5, taken to include land that— (a) is dedicated to the Council for a public purpose or otherwise set aside as publicly accessible open space or as a pedestrian link, and (b) would have been part of the site area if it had not been dedicated or set aside.		
7.11 Additional floor space for certain BASIX affected buildings in Rhodes Precinct	The subject site is located within the Station Gateway East Character Area. The BASIX certificate demonstrates a commitment to exceeding energy requirements by at least 15 points and water requirements by at least 20 points above the BASIX SEPP standards, qualifying the development for a 5% FSR bonus.	Yes
(1) A BASIX affected building on land in the Cavell Avenue Character Area, Leeds Street Character Area or Station Gateway East Character Area may exceed the maximum floor space ratio shown for the land on the Floor Space Ratio Map by 5% if the building— (a) exceeds the BASIX commitment for energy for the building by at least 15 points and (b) exceeds the BASIX commitment for water for the building by at least 20 points.		
7.20 Minimum lot size for shop top housing in Station Gateway East Character Area	The Site area is 5517 sqm	Yes
Development consent must not be granted to development for the purposes of shop top housing on a lot in the Station Gateway East		

Character Area unless the area of the lot is equal to or greater than 1,500 square metres.

3.1.1 Clause 4.6 Variation requests

3.1.1.1 To Clause 4.3 Height of buildings

Figure 10 and **Table 6** Indicate the extent of the proposal's non-compliance with the planning control for the height of buildings.

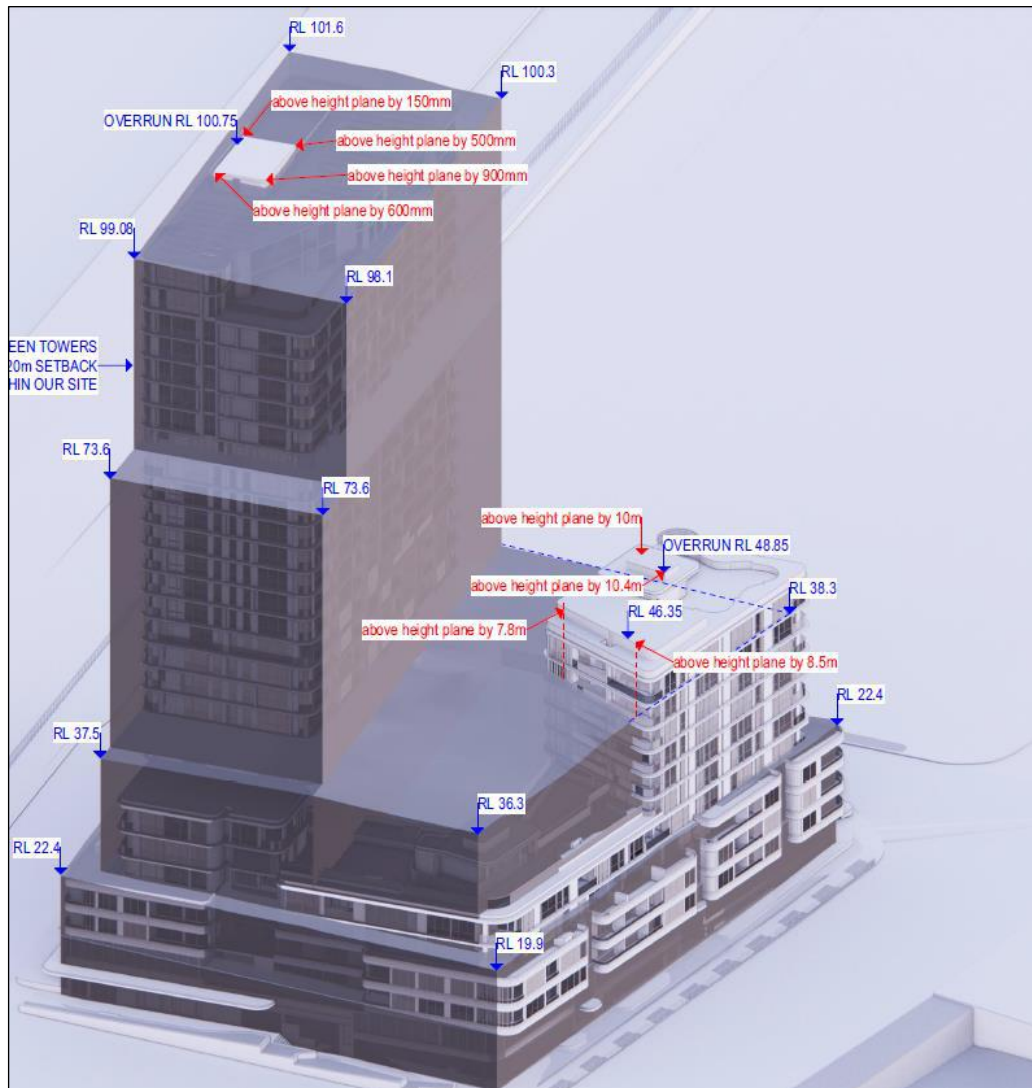


Figure 10 | Height analysis in comparison with maximum standard height plane (Source: Applicant's Clause 4.6 variation request)

Table 6 | Clause 4.6 variation request to Clause 4.3 Height of buildings standard

4.3 Height of buildings (1) The objectives of this clause are as follows— (a) to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the	Development standard	Proposed Building height	Proposed variation
	Maximum Building Height 32m from	40.5m to Concord Road 92.9m to Blaxland	8.5m (26.6%) 0.9m (1%)

locality and positively contribute to the streetscape and public spaces, (b) to protect the amenity of residential accommodation, neighbouring properties and public spaces in terms of— (i) visual and acoustic privacy, and (ii) solar access and view sharing, (c) to establish a transition in scale between medium and high density centres and adjoining lower density and open space zones to protect local amenity, (d) to ensure that buildings respond to the natural topography of the area. (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.	Concord Road 92m from Blaxland Road	Road	
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The Applicant Clause 4.6 variation request to the maximum height of the building under clause 4.3 of the CB LEP (**Attachment E**), prepared by Planning Ingenuity, dated 18 April 2024, states that the proposal satisfies the requirements of Clause 4.6, demonstrating that strict compliance with the maximum building height is unnecessary and unreasonable.

It is agreed that the height of buildings control under s4.3 of the CB LEP is a development standard and is not excluded from the application of s4.6 of the CB LEP.

It is assessed that, in satisfaction of s4.6(3)(a), compliance with the standard is unreasonable and unnecessary in the circumstances of this case as the proposal, notwithstanding the non-compliance, is consistent with the relevant objectives of the development standard as described in the applicant's written request.

It is assessed that, in satisfaction of s4.6(3)(b), there are sufficient environmental planning grounds to justify the non-compliance as the development achieves better outcomes through:

- Enhanced architectural and urban design.
- Improved residential amenity and public spaces.
- Compatibility with the surrounding locality.

Thus, compliance with the maximum building height is not required, as the proposed variation aligns with the objectives and provisions of Clause 4.6, contributing to the overall public interest and urban design quality.

3.1.1.2 To Clause 7.4 Minimum non-residential floor space in Rhodes Precinct

Table 7 This indicates the extent to which the proposal does not comply with the planning control for the minimum non-residential floor space in Rhodes Precinct.

Table 7 | Clause 4.6 variation request to Clause 7.4 Minimum non-residential floor space in Rhodes Precinct

7.4 Minimum non-residential floor space in Rhodes Precinct	Development standard	Proposed non-residential floor space	Proposed variation
(1) The minimum percentage of the gross floor area of a building on land in the Rhodes Precinct that must be used for non-residential purposes for development consent to be granted to development in relation to the building is specified on the Non-residential Floor Space Map. (2) In this clause—	13.4% 4424.58sqm	12.7% 4213sqm	211.6sqm(4.8%)

non-residential purposes means purposes other than the following— (a) residential accommodation, excluding seniors housing, (b) serviced apartments, but only if there are, or as a result of the development will be, fewer than 50 serviced apartments on the land, (c) car parks, (d) telecommunications facilities.			
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The Applicant Clause 4.6 variation request to the minimum non-residential floor space under clause 7.4 of the CB LEP (**Attachment E**), prepared by Planning Ingenuity, dated 18 April 2024.

It is agreed that the non-residential floor space control under s7.4 of the LEP is a development standard and is not excluded from the application of s4.6 of the LEP.

It is assessed that, in satisfaction of s4.6(3)(a), compliance with the standard is unreasonable and unnecessary in the circumstances of this case as the proposal, notwithstanding the non-compliance, is consistent with the overarching objectives of the development standard, noting that there are no specific objectives stated in the CB LEP for this development standard.

It is assessed that, in satisfaction of s4.6(3)(b), there are sufficient environmental planning grounds to justify the minor non-compliance as the development achieves better outcomes through the provision of active street frontages, sensitive design integration of varying land-uses with adjacent zones, and avoids any significant adverse impacts with surrounding developments.

Accordingly, it is considered that the consent authority can be satisfied with the applicant's 4.6 written request to vary the non-residential floor space development standard under section 7.4 of the CB LEP.

To Clause 7.5(1) Minimum building separation

Table 8 Indicates the extent to which the proposal is in non-compliance with the planning control, which sets the minimum building separation in Rhodes Precinct.

Table 8 | Clause 4.6 variation request to Clause 7.5(1) minimum building separation

7.5 Minimum building separation in Rhodes Precinct	Development standard	Proposed building separation	Proposed variation
(1) Development consent must not be granted to development that results in a building in the Rhodes Precinct being separated from another building by less than— (a) for a building higher than 14 storeys but not higher than 20 storeys—24 metres, or (b) for a building higher than 20 storeys—40 metres.	40m	37m	3m (7.5%)

The Applicant's Clause 4.6 variation request to the minimum building separation under Clause 7.5(1) of the CB LEP (Attachment E), prepared by Planning Ingenuity and dated 18 April 2024, justifies the proposal.

It is agreed that the non-residential floor space control under s7.5(1) of the LEP is a development standard and is not excluded from the application of s4.6 of the LEP.

It is assessed that, in satisfaction of s4.6(3)(a), compliance with the standard is unreasonable and unnecessary in the circumstances of this case as there is no stated objective for this development standard yet the proposed separation does not preclude appropriate environmental planning outcomes with regard to matters such as solar access, view sharing, visual and acoustic privacy and cross ventilation.

It is assessed that, in satisfaction of s4.6(3)(b), there are sufficient environmental planning grounds to justify the minor non-compliance as the development achieves better outcomes through the following:

- i. The development aims to create a high-quality urban streetscape and skyline while maintaining public domain and neighbouring property amenity. The shortfall is offset by greater separation distances elsewhere in the development, ensuring the variation will not be visually or physically obtrusive.
- ii. The design balances reduced separation on the upper northern levels with increased setbacks on the lower northern levels and the entirety of the southern façade. This strategic distribution of floor space ensures appropriate spatial separation and maintains the desired character of the Rhodes Precinct.
- iii. The variation does not result in adverse solar, privacy, or view impacts. Shadow diagrams indicate non-compliance will not affect solar access to neighbouring properties or public domains such as Mcllwaine Park during mid-winter.

Accordingly, it is considered that the consent authority can be satisfied with the applicant's 4.6 written request to vary the building separation development standard under section 7.5(1) of the CB LEP.

3.1.1.3 To Clause 7.5(2) Maximum floor areas above building podiums in Rhodes Precinct

Table 9 Indicates the extent to which the proposal does not comply with the planning control, which sets the maximum floor areas above building podiums in Rhodes Precinct.

Table 9 | Clause 4.6 variation request to Clause 7.5(2) minimum building separation

7.5 Maximum floor areas above building podiums in Rhodes Precinct (2) Development consent must not be granted to development that results in the gross floor area of a floor of a building in the Rhodes Precinct exceeding 750 square metres. (3) This clause does not apply in relation to the podium of a building in the Rhodes Precinct.	Development standard	Proposed floor areas above building podiums	Proposed variation
	750sqm	Level 4: 1923sqm Level 5: 1309sqm Level 6: 1259sqm Level 7 to 10: 1133sqm	1173sqm (156.4%)

The Applicant's Clause 4.6 variation request to the maximum floor areas above podiums under Clause 7.5(2) of the CB LEP (Attachment E), prepared by Planning Ingenuity and dated 18 April 2024, justifies the proposal.

It is agreed that the non-residential floor space control under s7.5(2) of the LEP is a development standard and is not excluded from the application of s4.6 of the LEP.

It is assessed that, in satisfaction of s4.6(3)(a), compliance with the standard is unreasonable and unnecessary in the circumstances of this case as there is no stated objective for this development standard, yet the proposed design incorporates a two-tower configuration, breaking down the floor levels above the podium into distinct sections. Additionally, the taller tower features an extension to the south, visually separated by recessed areas in the façade. These architectural indents help differentiate the building's segments and contribute to a dynamic and articulated appearance.

It is assessed that, in satisfaction of s4.6(3)(b), there are sufficient environmental planning grounds to justify the non-compliance as the development visual and acoustic privacy, solar access, view sharing are provided for with the tower development, and avoids any significant adverse impacts with surrounding developments.

Accordingly, it is considered that the consent authority can be satisfied with the applicant's 4.6 written request to vary the building separation development standard under section 7.5(2) of the CB LEP.

3.1.1.4 To Clause 7.6 Maximum height of building podiums in Rhodes Precinct

Table 10 Indicates the extent to which the proposal does not comply with the planning control that sets the maximum height of building podiums in Rhodes Precinct.

Table 10 | Clause 4.6 variation request to Clause 7.6 6 maximum height of building podiums in Rhodes Precinct

7.6 Maximum height of building podiums in Rhodes Precinct	Development standard	Proposed Podium height	Proposed variation
Development consent must not be granted to development, which results in the podium of a building in the Rhodes Precinct being higher than 16 metres.	Maximum 16m	16.85m	0.85m (5.3%)

The Applicant's Clause 4.6 variation request to the maximum height of building podiums under Clause 7.6 of the CB LEP (Attachment E), prepared by Planning Ingenuity and dated 18 April 2024, justifies that the minor breach to the podium height is related to non-habitable parapet edges and will ensure the design excellence.

It is agreed that the non-residential floor space control under s7.6 of the LEP is a development standard and is not excluded from the application of s4.6 of the LEP.

It is assessed that, in satisfaction of s4.6(3)(a), compliance with the standard is unreasonable and unnecessary in the circumstances of this case as there is no stated objective for this development standard, and that the minor breach relates to architectural parapet edges of the development.

It is assessed that, in satisfaction of s4.6(3)(b), there are sufficient environmental planning grounds to justify the non-compliance as the developments visual and acoustic privacy, solar access, view sharing are provided for with the podium element, and avoids any significant adverse impacts with surrounding developments.

Accordingly, it is considered that the consent authority can be satisfied with the applicant's 4.6 written request to vary the building separation development standard under section 7.6 of the CB LEP.

3.2 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- the City of Canada Bay Development Control Plan ('the DCP')
 - Part A – Introduction
 - Part B - General Controls
 - Part K - K16 Rhodes East
 - Part L – Definitions
 - Appendix 2 - Engineering Specifications

Below is a summary assessment of the proposed development against the relevant provisions of the DCP.

- The CB DCP Part K16 for Rhodes East, specifically K16.3 Key Development Parameters, requires all new developments to adhere to the maximum building height specified in [Figure 11](#).



Figure 11 | Maximum building heights plan (Source: CB DCP Part K Figure K16-6)

The proposal outlines 28 storeys facing Blaxland Road and a maximum of 12 storeys facing Concord Road. Details regarding the non-compliance with height regulations are provided in the LEP assessment and the Clause 4.6 variation request for maximum building height, which has been deemed acceptable. Additionally, the CB DCP permits increased permissible height if a Bonus Floor Space Ratio (FSR) is obtained by exceeding the BASIX commitments. The proposal seeks a 5% bonus FSR, and the BASIX certificate linked with the DA illustrates the development's dedication to surpassing BASIX requirements to secure the bonus.

- The CB DCP Part K16.4 for the Public Domain underscores the significance of Blaxland Road as a crucial link for both residents and commuters, connecting vital destinations like Leeds Street Foreshore Park, the Ferry Wharf, and the train station. It is advisable to include appropriate conditions of consent to ensure that the public domain in front of the site adheres to local planning controls, fostering a cohesive, accessible, and lively public domain that meets the community's requirements and enriches the urban environment as a whole.
- The CB DCP Part K16.9 outlines the guidelines and objectives for special projects within the Rhodes East Precinct, with a particular focus on establishing the Station Gateway East as a key transit-oriented, convenience retail, and mixed-use centre. This area is intended to serve as a gateway landmark and promote a safe, active, and vibrant environment.

These controls and objectives are thoroughly considered during the assessment of projects within the Station Gateway East and are deemed to be well-addressed in proposed developments. This ensures the creation of a landmark gateway that supports a vibrant, active, and integrated community in Rhodes East.

The proposal is considered to be generally consistent with the relevant provisions of the DCP.

The following contribution plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- City of Canada Bay Local Infrastructure Contributions Plan, Adopted 15 February 2022

This Contributions Plan has been considered and included the recommended draft consent conditions.

3.3 Section 4.15(1)(d) - Public Submissions

The proposal was notified twice: first from 15 August to 5 September 2023, and then for the amended application from 23 April to 14 May 2024. In total, the Council received 20 unique submissions. The issues raised in these submissions are addressed in [Table 11](#).

Table 11 | Summary of public submissions

Issue	Response
Height of the Podiums The proposed podium height exceeds the maximum height limit, leading to a development that appears much taller.	The variation in the podium height is not significant. The tower elements extending to the south reach a height of 25 meters. This section is clearly set back and differentiated from the podium. The design peer review

	confirms that the response to the bulk created is acceptable and demonstrates design excellence.
Potential impacts on views and solar access	The towers aim to deliver high-density, transit-oriented development. The incidental view and solar impacts are anticipated due to the planned density increase in the area and are considered reasonable. The tower's height and location are generally in line with development standards. Any view loss is a natural consequence of urban development in a designated high-density area.
Property Value Impact	The impact of this development on property values is outside the scope of this environmental assessment. The area is intended for high-density, transit-oriented growth as outlined in the Rhodes Place Strategy.
Non-compliance with the planning controls	Despite the variation from some of the numerical planning controls, an independent design expert reviewed the design and confirmed that the proposal achieves the objectives of those planning controls and that the impacts of non-compliance are negligible.
Excessive building height and density	Although there are variations to the maximum building height controls, the proposal complies with the maximum Floor Space Ratio (FSR) applicable to the site.
Overshadowing of Mcllwaine Park	The shadow analysis drawings, numbered PLA-DA-3200, Revision E, prepared by Plus Architect on April 5, 2024, demonstrate compliance with relevant planning controls for overshadowing of public places. There is no overshadowing of Mcllwaine Park Primary Zone between 8:30 am and 2:00 pm, and no overshadowing of Mcllwaine Park Secondary Zone between 8:30 am and 12:30 pm.
Quality of life reduces due to high-density	The development aligns with the Floor Space Ratio (FSR) controls for the high-density MU1 zone, supporting transit-oriented growth aimed at addressing the housing crisis.
Excavation and construction impact	Conditions of consent are recommended to be implemented to ensure proper management of these impacts during construction.
Construction impacts	To address the probable impacts of the proposed development during construction,

	appropriate conditions of consent would be imposed to ensure comprehensive monitoring, control and mitigation of all construction-related concerns, including but not limited to traffic, noise, vibration, and dust. Prior to commencement, a dilapidation survey would be conducted to assess existing conditions, and any subsequent damages would be the liability of the developer, thus ensuring responsible management of construction impacts.
Traffic Congestion and Impacts	The Traffic and Parking Assessment, prepared by Arup and dated May 27, 2024, indicates that the proposed development's impact on traffic generation falls within acceptable thresholds. The proposed development, which includes 343 on-site car spaces, is considered adequate to accommodate the development's needs without exerting additional pressure on on-street parking. Additionally, the development is conveniently close to public transport.
Amalgamation with No. 31 Blaxland Road	The site area is 5517 square meters and meets the minimum site area requirements under Clause 7.20 of BC LEP. There are no other requirements or planning controls dictating the amalgamation pattern in the Station Gateway East Character Area.
Impacts on privacy, solar access, and ventilation for No. 31 Blaxland Road	The proposal has attempted to mitigate potential adverse amenity impacts by providing ample setbacks to the south where feasible, although some impacts are unavoidable due to the substantial density increase. Conditions of consent are recommended to enhance the proper management of construction impacts.

4. REFERRALS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in [Table 12](#).

Table 12 | Concurrence and Referrals to agencies (CNR-58744)

Date	Comments/Conditions
Ausgrid	no objections subject to conditions.

Sydney Trains	Provided concurrence and recommended deferred commencement conditions. As the agency has already provided endorsement of the rock anchors and monitoring of excavation works through email correspondence from the agency 24 May 2024, and by the activation of the development application for excavation and basement construction it is considered appropriate that the conditions are placed on any consent but are to be resolved prior to the construction certificate, not through deferred commencement conditions.
Air Services Australia	no objection.
Transport for NSW	Provided concurrence subject to conditions.
Sydney Water Corporation	no objections subject to conditions.
WaterNSW	WaterNSW provided the General Terms of Approval (GTA) on 17 November 2023, and it has been incorporated into the recommended conditions.
Department of Planning, Housing and Infrastructure (DPHI)	certify that satisfactory arrangements have been made.

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review, as outlined in [Table 13](#).

Table 13 | Consideration of Council Referrals

Date	Comments/Conditions
Traffic	no objections subject to conditions.
Engineering	no objections subject to conditions.
Building	no objections subject to conditions.
Environmental Health Unit	no objections subject to conditions.
Waste	no objections subject to conditions.
Landscape	no objections subject to conditions.

5. CONCLUSION

This development application has been thoroughly reviewed in accordance with the requirements of the EP&A Act and Regulations, as detailed in this report. After careful consideration of relevant planning controls and submissions, the application is deemed supportable.

Situated in an area with excellent access to public transport, the inclusion of non-residential

floor space in the podium levels and the provision of a pedestrian thoroughfare on-site will enhance the vibrancy of the Rhodes precinct.

Furthermore, the proposed design ensures high-quality development, prioritising internal amenity for future occupants while minimising adverse impacts on neighbouring properties. Any potential impacts during construction and operation will be appropriately addressed through the recommended conditions of consent outlined in **Attachment A**.

Accordingly, it is recommended:

1. THAT the Sydney Eastern City Planning Panel determine that the section 4.6 variations relating to the height of buildings, non-residential floor space, building separation, floors above building podiums and podium height satisfactorily demonstrate that compliance is unreasonable and unnecessary in the circumstances of this case, that there are sufficient environmental planning grounds to justify each non-compliance and that, notwithstanding the non-compliances, the proposed development will be in the public interest.
2. THAT the Sydney Eastern City Planning Panel grants Consent pursuant to section 4.16(1)(a) of the Environmental Planning and Assessment Act, 1979 to Development Application DA2023/0158 for the excavation of 5 basements, and construction of a 28-storey mixed-use building with open spaces and landscaping at 34-41 Blaxland Road, 444-446 Concord Road and 1-5 Llewellyn Street, Rhodes subject to the recommended conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Recommended Conditions of Consent
- Attachment B: Independent Urban Design Peer Review
- Attachment C: Architectural Plans
- Attachment D: Public Submissions
- Attachment E: Clause 4.6 Requests