URBIS

CLAUSE 4.6 VARIATION STATEMENT – HEIGHT OF BUILDINGS

Eastwood Centre

Prepared for
EASTWOOD CENTRE PTY LTD
3 February 2025

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

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Project Code	P33777
Report Number	Final issue – February 2025 amendments

Acknowledgement of Country

Urbis acknowledges the Traditional Custodians of the lands we operate on.

We recognise that First Nations sovereignty was never ceded and respect First Nations peoples continuing connection to these lands, waterways and ecosystems for over 60,000 years.

We pay our respects to First Nations Elders, past and present.

The river is the symbol of the Dreaming and the journey of life. The circles and lines represent people meeting and connections across time and space. When we are working in different places, we can still be connected and work towards the same goal.

Title: Sacred River Dreaming
Artist Hayley Pigram
Darug Nation
Sydney, NSW

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1. EXECUTIVE SUMMARY

This Clause 4.6 Variation Request (**the Request**) has been prepared on behalf of Eastwood Centre Pty Ltd (**the applicant**) and accompanies a Development Application (**DA**) for a mixed-use development at 152–190 Rowe Street and 3–5 Rutledge Street, Eastwood NSW 2122.

The Request seeks an exception from the maximum height of buildings prescribed for the site under clause 4.3 of the *Ryde Local Environmental Plan 2014* (**LEP**). The Ryde LEP 2014 prescribes the maximum heights across the site as:

- 33.5m fronting Rutledge Street
- 21.5m fronting Rowe Street

The DA seeks consent to vary the height standard across a number of building elements of the site as is outlined in detail in this submission. The methodology to calculate building height has been carefully analysed and two methods of measurement are provided, with the 'Bettar case' (*Bettar v Council of the City of Sydney*, [2014] NSWLEC 1070) being the adopted approach for the purposes of the assessment and variation request.

This variation is justified on the following key basis:

Consideration #1: Compliance with the control in the circumstances of the proposed development is unreasonable and unnecessary on the basis that the development otherwise achieves the objectives of the development standard.

The proposed development can be demonstrated to meet the objectives of the development standard as summarised below:

- The development is in proportion with and in keeping with the character of the area including the desired future character of Eastwood Town Centre.
- The proposed development minimises overshadowing and other amenity impacts through increasing building separation.
- The site is the most significant consolidated land parcel in Eastwood Town Centre and therefore optimising the site potential given its transport orientated location is completely aligned with the planning objectives.
- The proposed built form emphasises its frontage to an established road corridor.

Consideration #2: There are sufficient environmental planning grounds to justify the proposed variation to the height of buildings development standard.

There are fundamentally 3 environmental planning grounds to justify the development standard contravention as follows:

1. The proposed development while exceeding the building height standard in certain locations will achieve a **better urban design outcome** for the Eastwood precinct compared to a design that prioritises building height compliance above improved urban design and public realm outcomes.
2. There are **no adverse environmental impacts** arising from the non-compliance in terms of overshadowing, visual privacy, visual amenity or view loss.
3. The proposed development would **better leverage the established transport infrastructure** to deliver much needed housing compared to a proposal that was otherwise strictly compliant with the building height control.

Consideration #3: There is a valid development consent applying to the land that permitted a range of building height variations, demonstrating that the case for a variation to the development standard is justifiable in the circumstances of this land.

The rationale applied to previously approve a variation to the development standard in relation to the 2019DA is equally applicable to the current proposal. The salient points in support of the previous Clause 4.6 variation include:

- The proposed variation is a deliberate strategy to bring about a superior urban design outcome for the Eastwood Town Centre.
- 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 as envisaged by the LEP controls.
- The proposal represents a better urban design outcome than a compliant scheme.
- The public interest is better served through support of alternate distribution of building heights across the site.
- There are sufficient environmental planning grounds to support the variation due to the measurable benefits in the redistribution of building mass as proposed.
- The variations do not result in unreasonable adverse amenity impacts.

It is also noted that, on a building-by-building basis, the proposed building heights of the current scheme vary from the approved 2019 scheme by a range of -4% to +7%.

Indeed, it is submitted that the proposed development is a superior urban response to that approved in 2019. As such the rationale that applied in 2019 building height variation forming part of this approved DA remains applicable with the current DA.

In summary, the objectives of Clause 4.6 are to:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development; and

(b) to achieve better outcomes <u>for and from</u> development by allowing flexibility in particular circumstances.

It is submitted that it is entirely reasonable to exercise the discretion to vary the building height standard as it will deliver better outcomes for the development as well as for the receiving environment. This is thoroughly demonstrated in this statement and through the supporting documentation including:

- The AJC Urban Design Report
- The AJC Architectural Report
- ADG and overshadowing analysis by AJC
- The Visual Impact Assessment prepared by Urbis

2. INTRODUCTION

2.1. PURPOSE

This Clause 4.6 Variation Request (**the Request**) has been prepared on behalf of Eastwood Centre Pty Ltd (**the applicant**) and accompanies a Development Application (**DA**) for a mixed-use development at 152–190 Rowe Street and 3–5 Rutledge Street, Eastwood NSW 2122.

The proposed development has been subject to significant design development throughout the preparation phase with City of Ryde's (**Council**) City Architect and the Urban Design Review Panel (**UDRP**) and is now subject to the DA process following lodgement on 7 May 2024. It is identified as LDA/2024/0092.

2.2. REQUEST TO VARY CLAUSE 4.3 IN RYDE LEP 2014

Address: 152–190 Rowe Street and 3–5 Rutledge Street, Eastwood NSW 2122; Wallumetta Country (Darug land)

Date: 3 February 2025

This Request seeks an exception from the maximum height of buildings prescribed for the site under clause 4.3 of the *Ryde Local Environmental Plan 2014* (**LEP**). The Ryde LEP 2014 prescribes the maximum heights across the site as:

- 33.5m fronting Rutledge Street
- 21.5m fronting Rowe Street

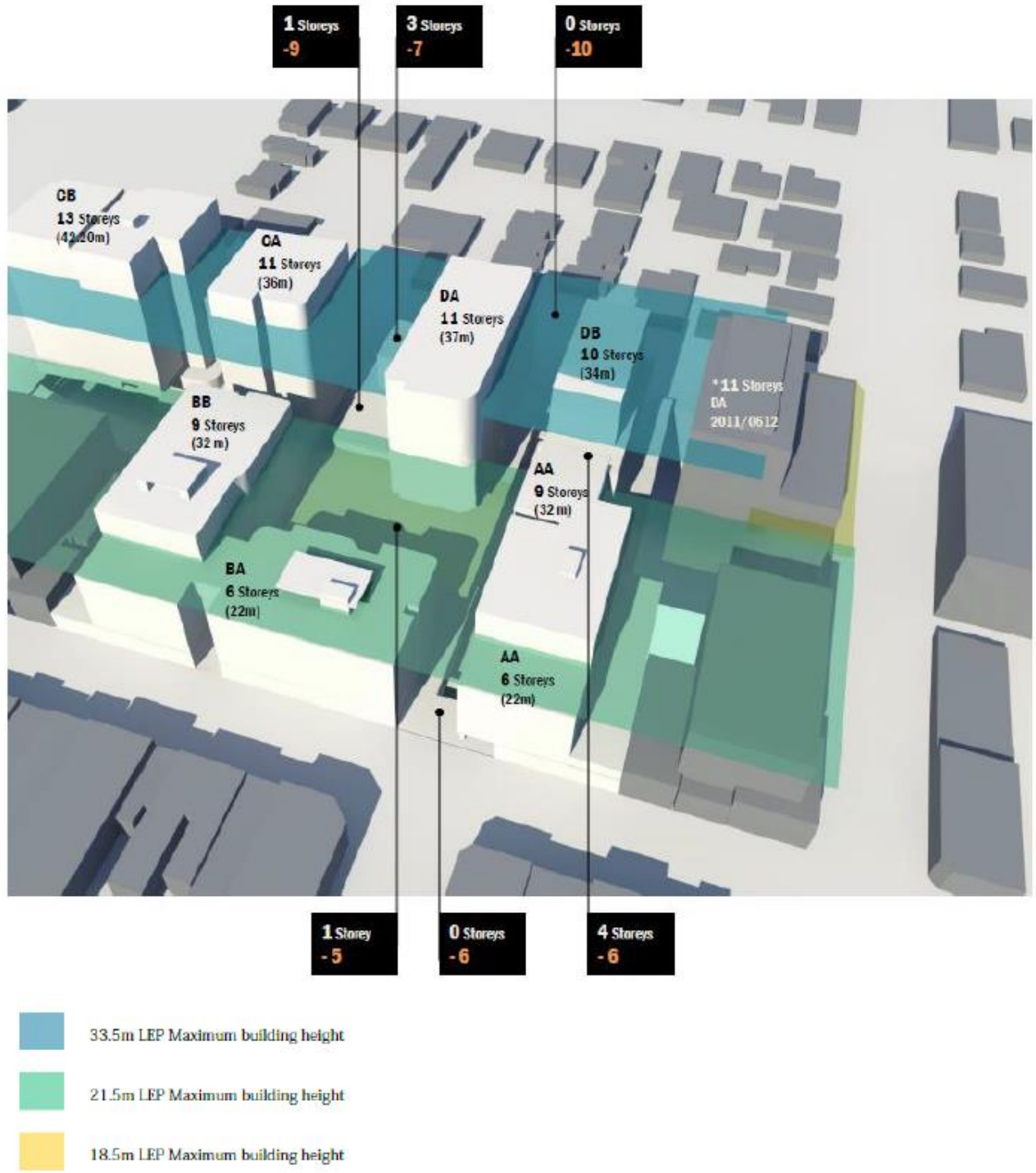
2.3. APPROVALS BACKGROUND

On 7 August 2019, the Sydney North Planning Panel granted approval to LDA 2016/0378 (**the 2019 approval**) for the redevelopment of the site. LDA 2016/0378 approved the '*Demolition and construction of a mixed-use development comprising 7 buildings accommodating retail, commercial and residential uses*.'

A Clause 4.6 Variation Request to vary Clause 4.3 of the Ryde LEP 2014 was also supported by Council and the Sydney North Planning Panel as part of the 2019 approval. The approved building heights which exceeded the LEP maximum building height development standards were:

- Between 33.85m and 44.4m fronting Rutledge Street. Resulting in a variation to the height of buildings standard between 0.35m (+1.04% variation) and 10.90m (+32.54% variation).
- Between 21.95m and 31.9m fronting Rowe Street; resulting in a variation to the height of buildings standard between 0.45m (+2.09% variation) and 10.4m (+48.37% variation).

Figure 1 – Height variations approved as part of 2019 DA consent



Source: Rice Daubney, 2018

It is acknowledged that this Request forms part of a new DA, however the previous DA (which remains valid and operational) and the reasons for its approval remain relevant to be considered in the assessment of this new DA. The key reasons for supporting the previous Request are outlined below:

- *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 Town Centre;*
- *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 as envisaged by the LEP controls and introduction of open spaces and through site linkages, which are accessible to the public creating public benefits;*

- *The proposal represents a better urban design outcome than a compliant scheme as it provides greater areas of public space in the form of site links and plaza spaces and space between buildings to allow views into the site;*
- *The proposed built form and height is consistent with the desired future character of the Eastwood Town Centre;*
- *It is accepted that the public interest is better served through support of alternate distribution of building heights across the site and that the proposed scheme results in a development appropriate to the town centre that no longer turns its back on Rutledge Street and connects the south to the north (Rowe Street Mall) in a meaningful and integrated way. The 13 storey building (CB) at the corner of Rutledge Street and West Parade provides a marker to the town centre in light of its gateway location through a hierarchy of building heights. As such some flexibility is considered suitable in this particular instance;*
- *There are sufficient environmental planning grounds to support the variation due to the measurable benefits in the redistribution of building mass as proposed. The proposed scheme delivers a hierarchy of taller and shorter building forms across the 7 buildings and linkages between Rowe and Rutledge Street resulting in a superior planning outcome in terms of a better streetscape, better internal and external amenity, and significant public domain contributions;*
- *Variations do not result in unreasonable adverse amenity impacts; and*
- *The non-compliance does not hinder the development's ability to satisfy the objectives of the B4 Mixed Use zone.*

Council's previous Planning Assessment Report confirmed that the approved development was in the public interest because the objectives of the control were met, and the variation did not result in any significant adverse impacts and therefore strict compliance with the Height of Buildings standard was unreasonable and unnecessary.

It is submitted that all of the reasoning adopted in the previous DA is equally or even more applicable to the current DA and associated variation request to the building height standard. Indeed, it is demonstrated in the amended Urban Design Report prepared by AJC Architects dated January 2025, that the proposed development is a further advancement on the key urban design moves and spatial arrangement of built form massing reflected in the 2019 DA.

This Request considers the previous reasons for support and provides a design reason that is appropriate for the context and delivers housing in a well-connected transport node.

2.4. CONTENT OF THIS REPORT

This report has been prepared in accordance with the *Guide to Varying Development Standards*, published by the NSW Department of Planning and Environment (now the NSW Department of Planning, Housing and Infrastructure) in November 2023.

This report will:

- Describe the site to which the Request applies, including its zoning
- Provide an overview of the proposed development
- Identify the relevant environmental planning instrument (**EPI**) and development standard to which a variation is sought
- Identify the extent of variation which is sought in numeric values
- Provide visual representations of the development standard to which the variation is sought
- Justify the proposed variation

3. SITE AND PROPOSED DEVELOPMENT

3.1. SITE DESCRIPTION

The site is situated on Wallumetta Country (Darug land).

The site address is 152–190 Rowe Street and 3–5 Rutledge Street, Eastwood. It comprises the following individual properties, with the following legal descriptions:

Table 1 - Site property description

Address	Legal Description
152–160 Rowe Street	Lots 1, 2 and 3 / DP 1082714 Lots 1 and 2 / DP 15579 Lot 1 / DP 315919 Lot 1 / DP 583398 Lot A / DP 342118
168 Rowe Street	Lot 2 / DP 583398
170 Rowe Street	Lot 1 / DP 105344
174 Rowe Street	Lot 1 / DP 211809
176A Rowe Street	Lot 2 / DP 211809
178–180 Rowe Street	Lot 7 / DP 656027 Lot 1 / DP 173607 Lot A / DP317789
186 Rowe Street	Lot 8 / DP 1098697
188 Rowe Street	Lot 1 / DP331280
190 Rowe Street	Lot 201 / DP 1134152
3 Rutledge Street	Lot A / DP 374497 Lot 25 / DP 4231

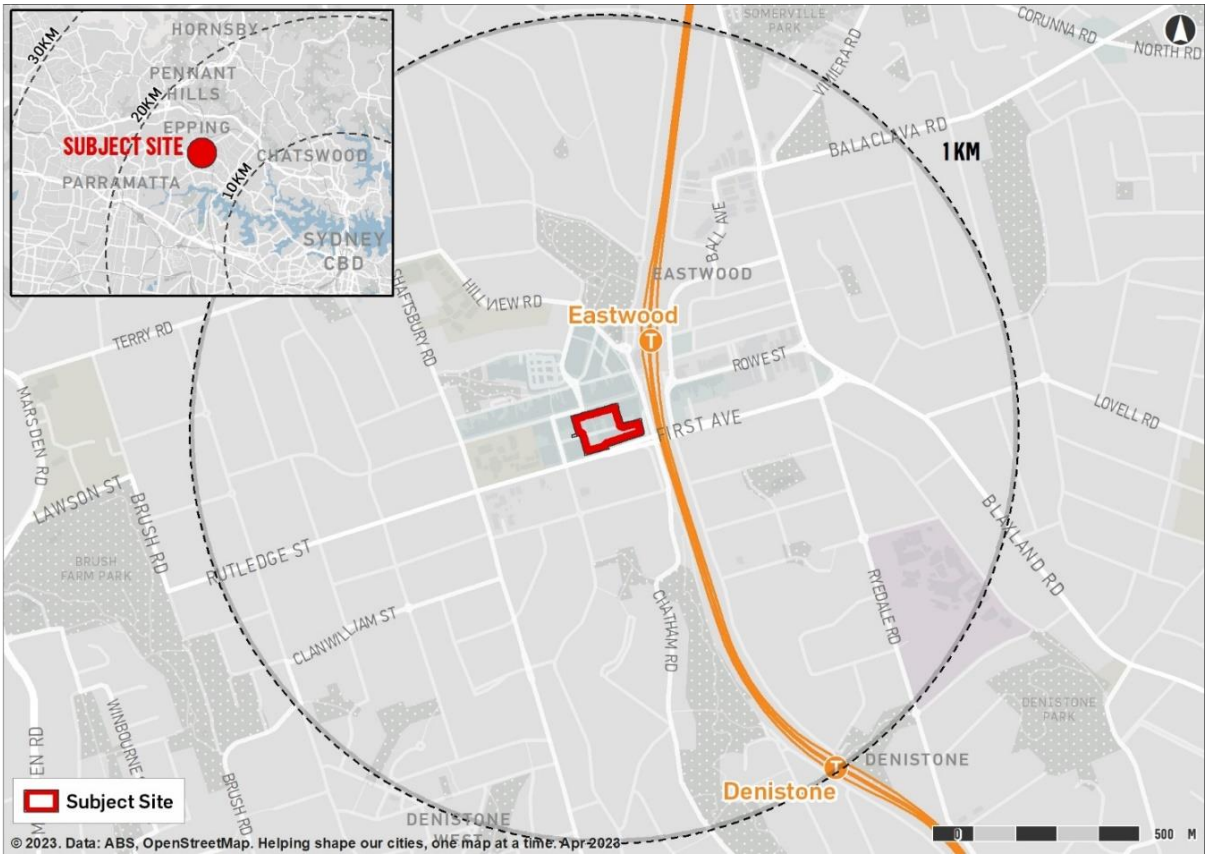
The key features of the site are summarised in the following table.

Table 2 – Site description

Feature	Description
Site Area	Approx. 1.26 ha
Site Dimensions	Rowe Street pedestrian mall: 117m Rutledge Street: 148m West Parade: 35m No direct street frontage to the west (abuts existing development, including a 10-storey contemporary mixed-use building at the north-east intersection of Trelawney and Rutledge Streets, and 1- and 2-storey commercial buildings at Rowe Street). An easement also extends over the properties adjoining the site to the west, providing vehicle access to the Centre from Trelawney Street via a ramp.

Feature	Description
Site Topography	Generally flat topography (with variances), fall to the north
Existing Development	The site contains the Eastwood Centre, a part 2, part 7-storey commercial building constructed in 1976. On-site car parking, a total of 426 spaces (289 publicly available), is currently provided for the shopping centre within a multi-level car park building on Rutledge Street and ad-hoc at-grade sealed parking areas, both centrally on the site and on the Rutledge Street frontage. The balance of the site is comprised of other small scale retail premises.
Local Context	Located approximately 20km north-west of the Sydney CBD and 9km north-east of the Parramatta CBD, Eastwood is the third-largest centre in the City of Ryde LGA (by commercial floorspace) and an established multicultural centre, particularly relied on by the Chinese and Korean communities. Despite its established commercial functions, Eastwood (as of 2016) also has the lowest number of residential dwellings of any of the LGA's centres, although recent residential developments have increased this number. As a key local centre within the LGA, Eastwood serves an important role in providing civic services (including a library, parks, and access to public transport) and commercial activities for a diverse community. The centre benefits from a walkable and generally permeable street network and is the focus for a number of community events that draw visitors from outside the LGA (including Lunar New Year celebrations, and the annual Granny Smith Festival).
Adjacent Development North	Rowe Street pedestrian mall – 1- to 2-storey commercial (shop) buildings, dating throughout the 20th century.
Adjacent Development East	West Parade – rail corridor
Adjacent Development South	Low-density residential; single-storey preschool but subject to future change under Eastwood Town Centre Master Plan.
Adjacent Development West	Trelawney Street (eastern side) – part 7, part 10-storey contemporary mixed-use building, including retail tenancies at ground-level and residential flats above. Trelawney Street (western side) – mixed in character, including 5-storey contemporary mixed-use (commercial and residential) building, and 1- to 3-storey mid–late 20th century commercial buildings.
Access Network	Eastwood is serviced by heavy rail (the T9 Northern Line), with regular services north to Hornsby and south to the Sydney CBD, as well as a number of bus routes providing regular access to nearby local centres (including Parramatta, Ryde, and Macquarie Park).

Figure 2 – Local context



Source: Urbis, 2023

Figure 3 – The site

Source: Urbis, 2023

Photographs of the existing development and surrounding context are provided below.

Figure 4 – Site photos

Picture 1 – Rowe Street Mall looking west

Source: AJC

Picture 2 – Rutledge Street looking north

Source: AJC

Picture 3 – Trelawney Street looking south (7 Trelawney Street building shown)

Source: AJC

Picture 4 – Rutledge Street looking south

Source: AJC

3.2. PROPOSED DEVELOPMENT

The broad scope of the proposal entails:

- Demolition of existing structures on the site, bulk excavation, and construction of new mixed-use development comprising 3 levels of commercial floor space (including use for food and drink premises, retail premises, and office or business premises) and 411 residential apartments and associated communal amenities above the podium as shop top housing.
- Basement parking to comprise 1,135 car spaces across 4 levels, with associated bicycle and motorcycle bike spaces, loading areas and service areas.
- A new signalised right-hand turning bay at Rutledge Street, to provide non-service vehicle access to basement parking.
- New through-site pedestrian link between Rowe Street Mall and Rutledge Street.
- Stratum subdivision for 6 Lots.

It is also intended to enter into a new Voluntary Planning Agreement, to be further confirmed with Council, as part of this application.

Figure 5 – Perspective view, Rowe Street

Source: AJC, 2025

Figure 6 – Perspective view, Rutledge Street

Source: AJC, 2025

4. PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

This section of the report identifies the development standard, which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 4** of the report.

4.1. WHAT IS THE PLANNING INSTRUMENT YOU ARE SEEKING TO VARY?

This Request seeks to vary the ***Ryde Local Environmental Plan 2014***.

4.2. WHAT IS THE SITE'S ZONING?

The site is zoned **MU1 Mixed Use**.

4.3. WHAT IS THE DEVELOPMENT STANDARD TO BE VARIED?

This Request seeks to vary **Clause 4.3 of the Ryde LEP 2014 – Height of buildings**.

The objectives of Clause 4.3 Height of buildings are reproduced below:

(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.

4.4. TYPE OF DEVELOPMENT STANDARD

Clause 4.3 Height of buildings is a **numerical development standard**, considering the development standard uses numbers to specify the requirement.

4.5. WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

The Ryde LEP 2014 prescribes the maximum heights across the site as:

- 33.5m fronting Rutledge Street
- 21.5m fronting Rowe Street

The figure below illustrates the maximum heights permitted across the site.

Figure 7 – Ryde LEP 2014 Height of buildings map

Source: Urbis, 2023

4.6. WHAT IS THE DIFFERENCE BETWEEN THE EXISTING AND PROPOSED NUMERIC VALUES? WHAT IS THE PERCENTAGE VARIATION (BETWEEN THE PROPOSAL AND THE ENVIRONMENTAL PLANNING INSTRUMENT)?

The proposed variation to the height controls varies considerably across the site, owing to the site's underlying topography.

The existing ground level and overall height of buildings has been generated based on the Case Law definition for and that has been Completely Built Out, Excavated and/or is Sloping Land (*Bettar v Council of the City of Sydney* [2014] NSWLEC 1070) (**Bettar method**):

> *The Commissioner preferred the approach of the Applicant on this issue which was for the existing ground level of the site to be determined by extrapolating the ground levels found on the footpath (i.e. – outside the site) across the entire site to measure the vertical distance to the highest point of the building.*

Ground lines extrapolated across the site between existing footpath levels have been added to cross sections in accordance with the Bettar method.

Following a meeting with Council in December 2024, the building height metrics have also been generated using the Case Law definition for Excavated land (*Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582) (**Merman method**):

> *The prior excavation of the site within the footprint of the existing building, which distorts the height of buildings development standard plane overlaid above the site when compared to the topography of the hill, can properly be described as an environmental planning ground within the meaning of cl 4.6(3)(b) of LEP 2014.*

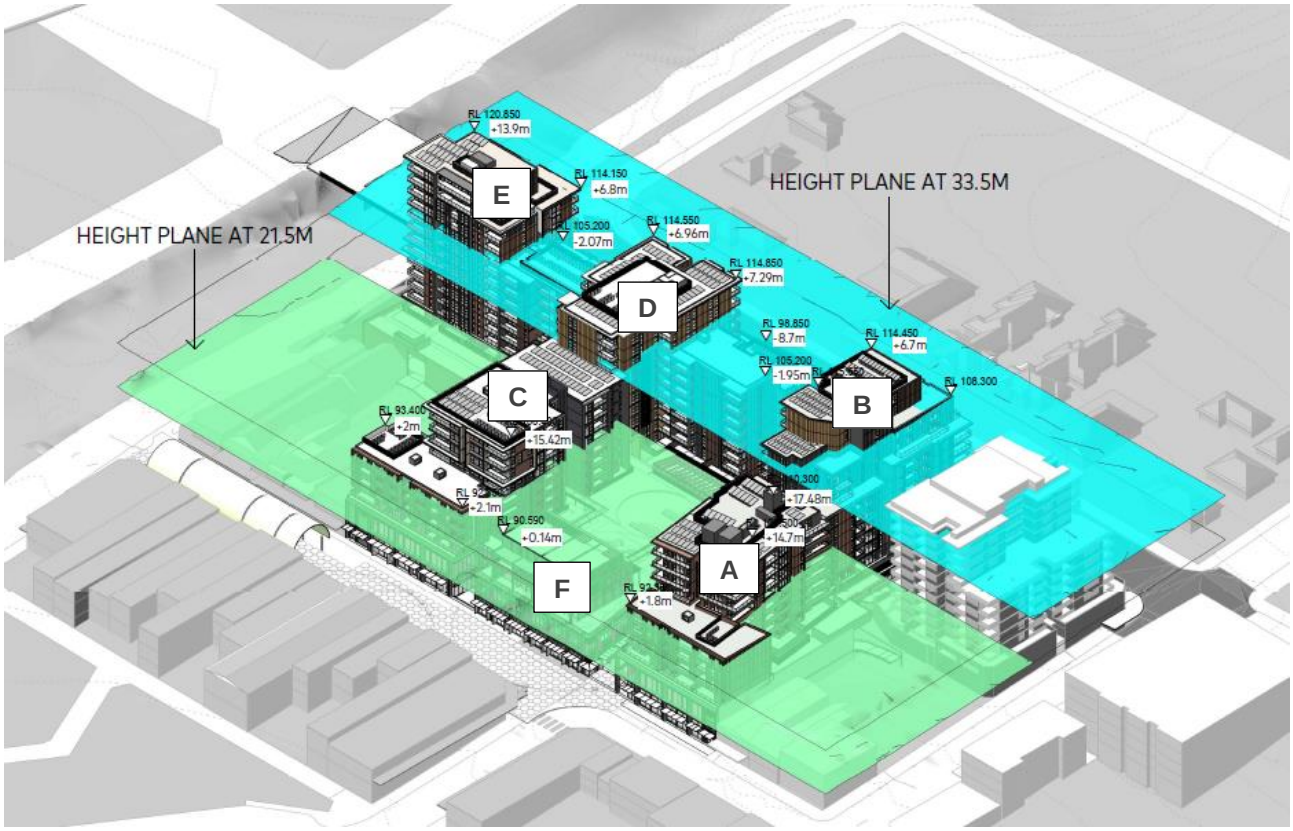
For completeness, excavated ground levels have been added to separate cross sections in accordance with the Merman method.

The building heights referred to in this Request rely on the Bettar method on the basis that this best reflects the assessment and impact of building height as viewed from the public realm. The Merman method is provided for the avoidance of doubt in terms of the appropriate methodology to be adopted and is included as an Appendix to this submission.

4.6.1. Maximum Building-by-Building Height Standard Variations

Figure 6 below visualises the proposed variations to the height controls reflecting the two different height controls that apply to the subject land. The green (lower) height plane control applying to the Rowe Street frontage versus the blue higher control to the Rutledge Street frontage.

Figure 8 – Annotated building names



Source: AJC, 2025

The table below provides a summary of the maximum variations to building heights on a building-by-building basis.

Table 3 – Summary of maximum exceedances to relevant height of building development standards (per building) – Bettar method

Location	Proposed height (m)	Variation (m)	Variation (%)
Building A **LEP Maximum height of building – 21.5m**			
Podium – Building envelope	23.33m	+1.83m	+8.51%
Podium – Mechanical plant screening	23.71m	+2.21m	+10.28%
Mid-block – Building envelope	35.13m	+13.63m	+63.39%

Location	Proposed height (m)	Variation (m)	Variation (%)
Lift overrun	38.98m	+17.48m	+81.3%
Mid-block – Mechanical plant screening	38.98m	+17.48m	+81.3%
Building B **LEP Maximum height of building – 33.5m**			
Podium – Building envelope	33.52m	+0.02m	+0.06%
Mid-block – Building envelope	41.55m	+8.05m	+24.03%
Lift overrun	43.33m	+9.83m	+29.34%
Mid-block – Mechanical plant screening	43.11m	+9.61m	+28.69%
Building C **LEP Maximum height of building – 21.5m**			
Podium – Building envelope	23.2m	+1.7m	+7.9%
Podium – Mechanical plant screening	23.31m	+1.81m	+8.41%
Mid-block – Building envelope	35.77m	+14.27m	+66.37%
Lift overrun	35.82m	+14.32m	+66.6%
Mechanical plant screening	36.92m	+15.42m	+71.72%
Building D **LEP Maximum height of building – 33.5m**			
Mid-block – Building envelope	42.45m	+8.95m	+26.72%
Lift overrun	43.32m	+9.82m	+29.31%
Mechanical plant screening	43.96m	+10.46m	+31.22%
Building E **LEP Maximum height of building – 33.5m**			
Podium – Building envelope	40.46m	+6.96m	+20.78%
Mid-block – Building envelope	48.91m	+15.41m	+46%
Lift overrun	49.46m	+15.96m	+47.64%
Mechanical plant screening	49.95m	+16.45m	+49.10%
Building F (Pavilion) **LEP Maximum height of building – 21.5m**			
Area above LEP height plane	21.64m	+0.14m	+0.65%

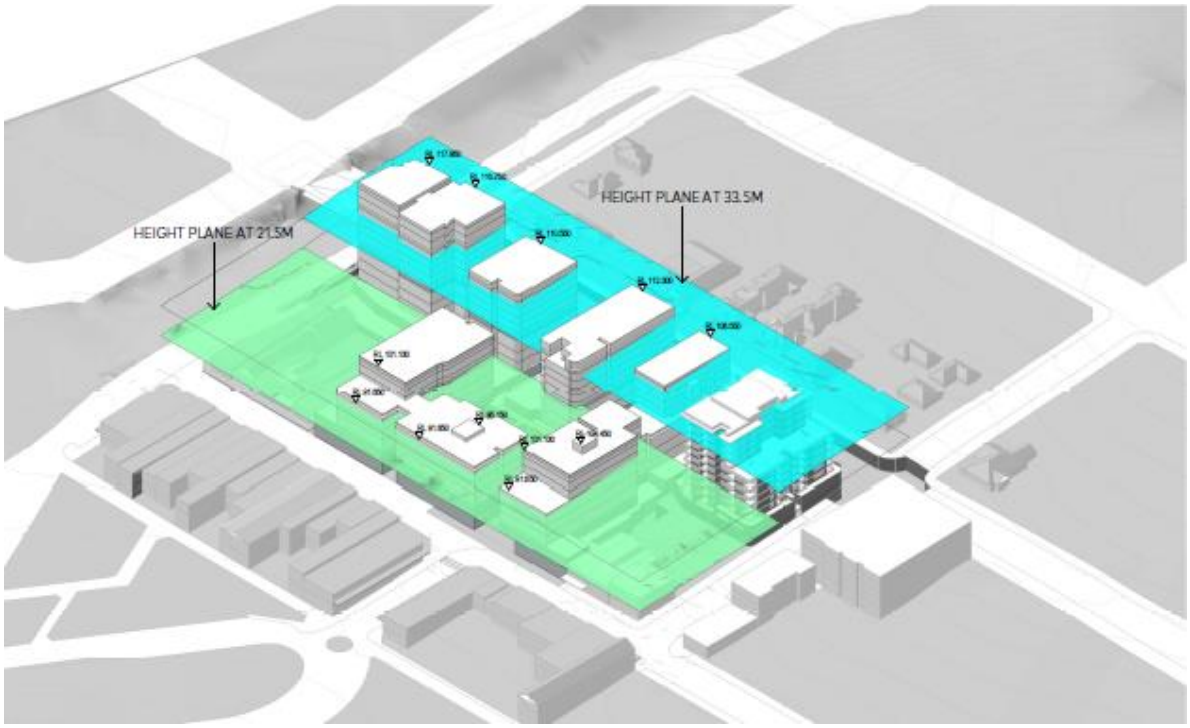
Note that all lift overruns and mechanical plant screenings are set back from the building parapet lines and, as such, will not be visible from the public domain in the immediate surrounds of the site.

4.6.2. Building-by-Building Analysis and Comparison with Approved DA

This section provides a building-by-building analysis as well as a comparison with the approved 2019 DA.

In summary, the proposed building heights of the current scheme vary from the approved 2019 scheme by a range of -4% to +7%.

2019 DA Approval Height Variation – Axonometric View



Proposed DA Height Variation – Axonometric View

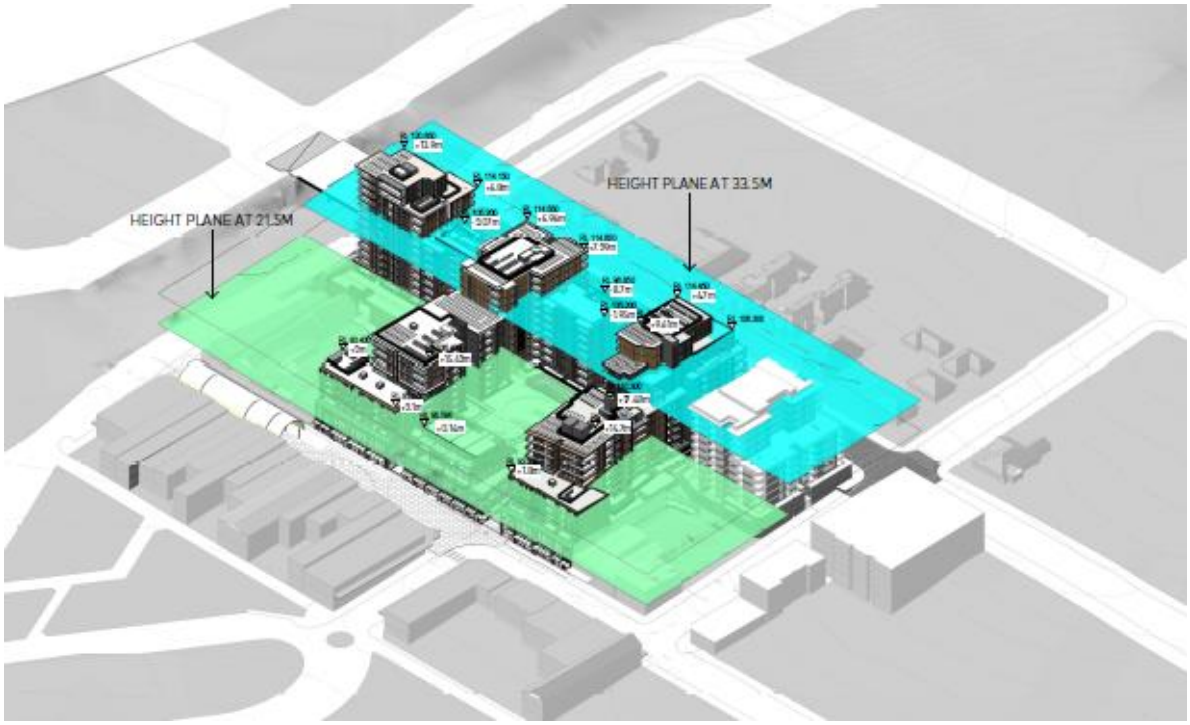
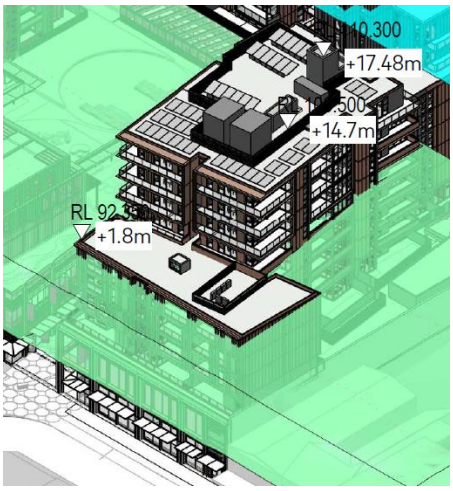
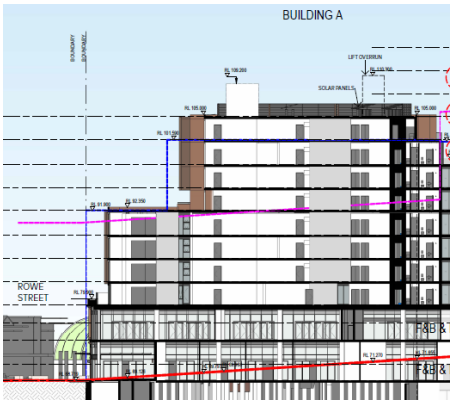


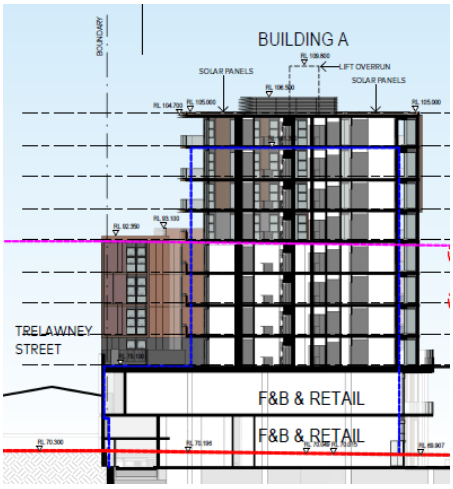
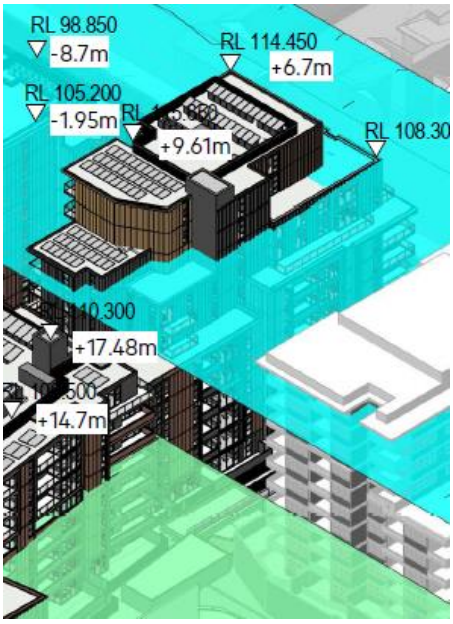
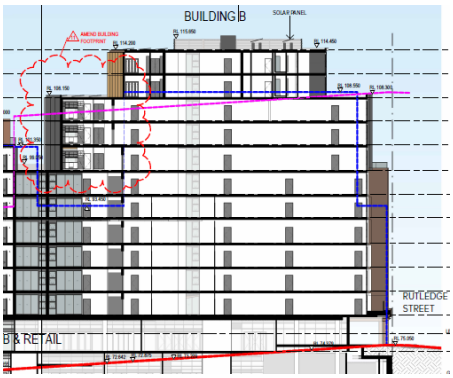
Table 4, below, provides excerpts from the architectural drawings showing the height variations (per building), and brief discussion. Lift overrun and mechanical plant screening are **not** addressed in the table below, noting per the above that these elements will be deeply set back from the building parapet and will not be readily visible from the public realm surrounding the site.

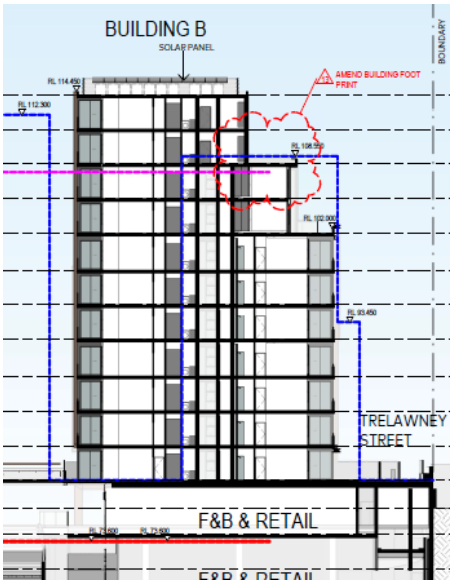
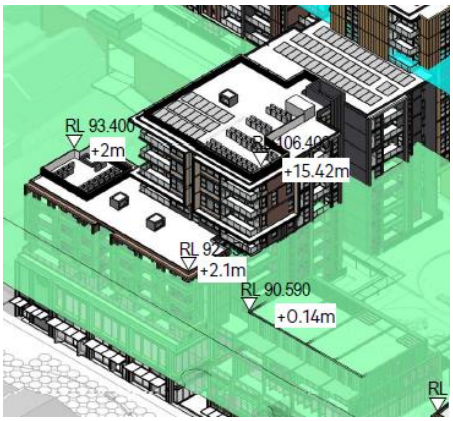
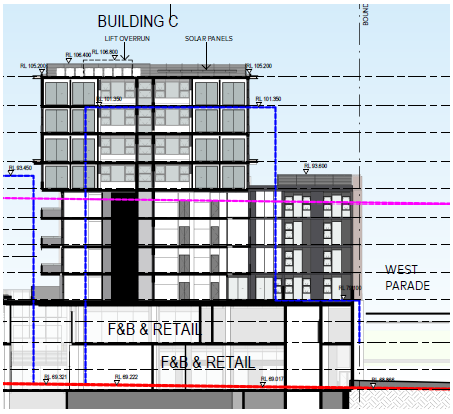
In the table below:

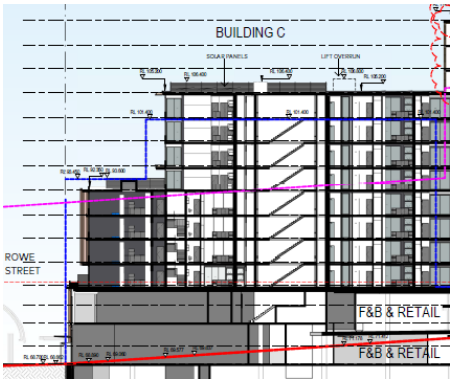
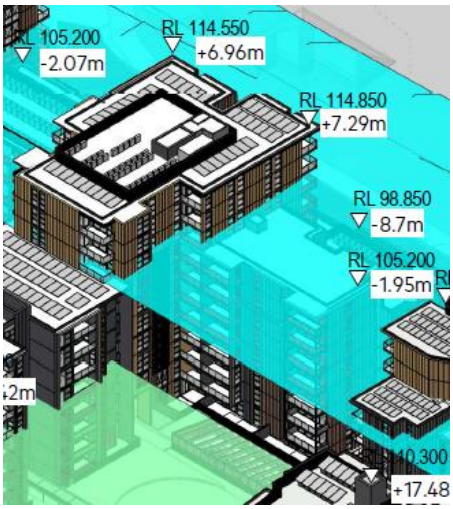
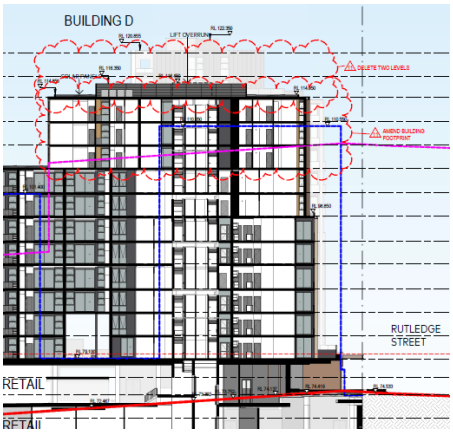
- Green highlight represents the 21.5m LEP height plane
- Blue highlight represents the 33.5m LEP height plane
- Red line represents the ground-level RL (based on the Bettar method)
- Pink line represents the LEP height plane
- Blue line represents the relevant building height from the 2019 approval

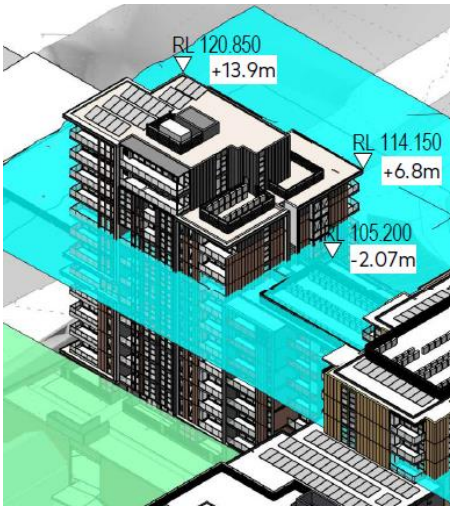
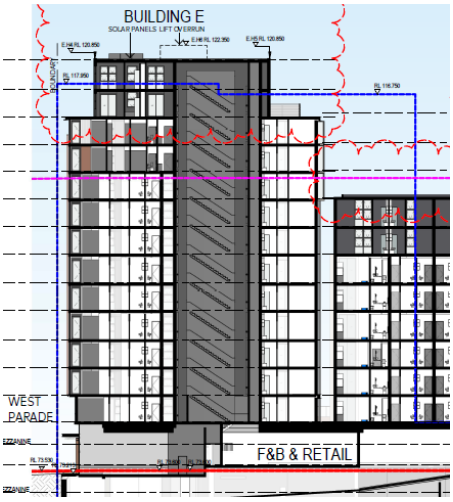
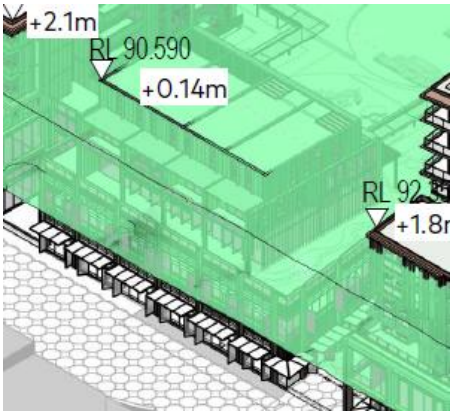
Table 4 – Illustrated building height exceedances (per building)

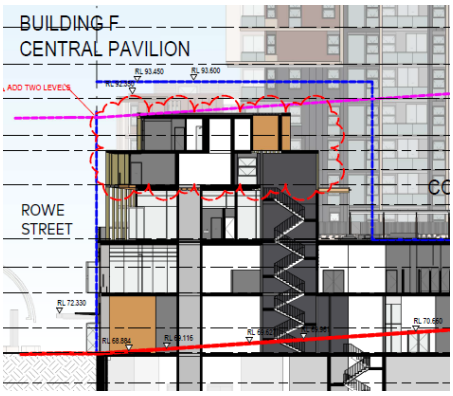
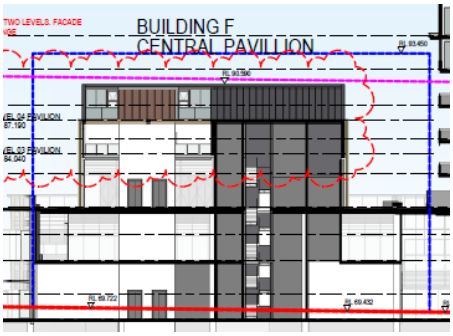
Building	Proposed height	Comments
Building A **LEP Maximum height of building – 21.5m**		
Axonometric  North south cross-section 	Street wall (maximum) – 10.88m Podium (maximum) – 23.33m Mid-block (maximum) – 35.13m	Building A comprises 3 component parts: a street wall to Rowe Street, a mid-scale podium, and a taller, mid-block form. The street wall is 2 storeys and reaches a maximum height of 10.88m, which is less than half of the LEP permitted height plane. The podium is 6 storeys and reaches a maximum height of 23.33m, which is slightly above the LEP permitted height plane. This is a minor non-compliance arising from high floor-to-ceiling levels with 2 levels of retail and 4 levels of residential apartments. The podium will be set back 2.7m from the street wall height to reduce perceived bulk and scale, and provides an appropriate transitional height for the taller-scale buildings within the site (including the rear mid-block component of Building A). As shown in the east west cross-section, the podium form to the proposed scheme exhibits a greater setback from the street frontage than the 2019 approved scheme (which provided nil-setback from Rowe Street). The maximum height of the mid-block component to the rear of Building A reaches a maximum height of 35.13m, however this building form is set back a minimum of 11.5m from the street frontage to reduce visibility and mitigate impacts on the pedestrian experience at Rowe Street. This design approach is largely consistent with the approved 2019 DA albeit one level higher than the approved DA and with greater built form

Building	Proposed height	Comments
North south cross-section 		setbacks to further minimise visual impacts.
Building B **LEP Maximum height of building – 33.5m**		
Axonometric  North south cross-section 	Street wall (maximum) – 4.4m Podium – 23.55m Mid-block (maximum) – 30.10m High-rise – 41.55m	Building B can be broken into 4 component parts: a street wall fronting Rutledge Street; a mid-rise podium above the street wall; a mid-block form above the podium; and a higher-rise portion at the top. The street wall is single-storey and provides an appropriately pedestrian scale built form outcome to this frontage. The podium and mid-block forms remain under the maximum LEP height plane, providing an appropriate transition between the lower-scale residential properties to the south of Rutledge Street and the Eastwood town centre. The high-rise component reaches a maximum height of 41.55m. This is largely consistent with the 2019 approval for this block, albeit with 1 additional building storey. This component of the building is set back 7.8m from the street frontage, thereby reducing perceived bulk and scale as viewed from Rutledge Street.

Building	Proposed height	Comments
East west cross-section 		
Building C **LEP Maximum height of building – 21.5m**		
Axonometric  East west cross-section 	Street wall (maximum) – 10.88 Podium (maximum) – 22.70m Mid-block (maximum) – 36.12m	Building C comprises 3 component parts: a street wall to Rowe Street, a mid-scale podium, and a taller, mid-block form. The street wall is 2 storeys and reaches a maximum height of 10.88m, which is under the LEP permitted height plane. The maximum height of the podium, at 22.70m, is a minor exceedance of the height plane. This minor non-compliance arises from high floor-to-ceiling levels within the envelope, comprising 2 levels of retail and 4 levels of residential apartments. Notwithstanding the minor non-compliance, the podium will be set back 3m from the street wall height to provide an appropriate transitional height for the taller-scale buildings within the site (including the rear mid-block component of Building C). It is noted that the height of the podium remains generally consistent with the height variation for this block which was approved in the 2019 DA. The visual impacts of the exceedance will, however, be minimised by providing an increased setback to the podium form, thereby reducing perceived bulk and scale as viewed from Rowe Street (as compared to the 2019 approval which provided nil-setback). The taller, mid-block form reaches a maximum height of 36.12m, with a

Building	Proposed height	Comments
North south cross-section 		setback of 13.2m from the street frontage. This remains largely consistent with the approved 2019 scheme albeit with one additional level of residential apartments. However, in this current proposal the mid-block form will exhibit increased setbacks (as compared to 2019), which will reduce perceived visual bulk and scale as appreciable from Rowe Street and West Parade.
Building D **LEP Maximum height of building – 33.5m**		
Axonometric  North south cross-section 	Street wall (maximum) – 4.4m Podium (maximum) – 23.98m Mid-block (maximum) – 31.55m High-rise (maximum) – 42.45m	Building D comprises 4 component parts: a street wall fronting Rutledge Street; a mid-scale podium above; a mid-block 3 storeys above the podium towards the west of the block; and a higher-rise portion at the top. The street wall is single-storey and provides an appropriately pedestrian scale built form outcome to this frontage. The podium and mid-block forms remain under the maximum LEP height plane, providing an appropriate transition between the lower-scale residential properties to the south of Rutledge Street and the Eastwood town centre. The taller, high-rise component will reach a maximum height of 42.45m. This is an increase of approximately one storey above the previously approved height exceedance. Importantly, the high-rise form will be set back from the boundary between 6.5m and 7.1m, whereas the 2019 approval provided nil-setback from Rutledge Street. This significantly increased setback will reduce the perceived bulk and scale of this building as appreciable from the public domain and provide an appropriate transitional height towards the centre of the site.

Building	Proposed height	Comments
Building E **LEP Maximum height of building – 33.5m**		
Axonometric  East west cross-section 	Podium (maximum) – 24.97m Mid-block (maximum) – 30.50m High-rise (maximum) – 46.45m	Building E comprises 3 component parts: a mid-scale podium, a two-storey mid-block above, and a taller-scale high-rise form. Both the podium and the mid-block will remain under the maximum LEP height plane, providing an appropriate transition between the lower-scale residential properties to the south of Rutledge Street and the Eastwood town centre. The tall-scale, high-rise form has now been amended to be shorter in height as compared to the approved 2019 scheme, although it is acknowledged that it remains in exceedance of the LEP height plane. This form is also provided increased setbacks as compared to the approved 2019 scheme (refer to east west cross-section drawing at left). Considered holistically, this is an improved outcome on the 2019 approval, having regard to the decreased building height and the increased built form setbacks from the frontage.
Building F (Pavilion) **LEP Maximum height of building – 21.5m**		
Axonometric 	Maximum height – 21.64m	The central pavilion remains mostly under the 21.5m LEP maximum height plane. However, amendments to the scheme – which now include residential floor space at the uppermost levels of this building – have resulted in a minor non-compliance of 0.14m. This is owing to the natural fall of the site towards the east and, in this regard, is not considered an unreasonable outcome noting its general consistency with the intent of the development standard.

Building	Proposed height	Comments
North south cross-section  East west cross-section 		Additionally, it is noted that this building remains under the height of this block as approved in the 2019 scheme, resulting in improved visual and urban design impacts in comparison.

In overall terms, the extent of height variations is broadly consistent with that previously approved.

5. JUSTIFICATION FOR THE PROPOSED VARIATION

5.1. HOW IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE PARTICULAR CASE?

The *Guide to Varying Development Standards* identifies 5 common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary. An applicant must satisfy at least one of these matters.

The key questions used to demonstrate that compliance with a development standard is "unreasonable or unnecessary" are addressed below.

a) Are the objectives of the development standard achieved notwithstanding the non-compliance?

Yes.

The objectives of Clause 4.3 Height of buildings are addressed below in relation to the proposed variation.

Table 5 – Objectives of the development standard

Objective	Comment
(a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,	The site has three street frontages: Rowe Street (north), West Parade (east), and Rutledge Street (south). These frontages are addressed in turn below, with respect to objective (a) of Clause 4.3 Height of buildings. In assessing this objective, it should be recognised that the objective is focussed on the street frontages of the site as opposed to overall building height. The design of the proposed development has deliberately considered these street edge conditions and this was a matter of particular focus of the UDRP advice. **Rowe Street** Rowe Street exhibits a pedestrian-scale environment and is characterised by low-scale, 1-2 storey traditional shop fronts. The existing 6-7 storey existing shopping centre and commercial office tower on the subject site has, since its construction several decades ago, provided a landmark element to Rowe Street (and, more broadly, to the Eastwood town centre) without adversely affecting its historically pedestrian-friendly character. From a built form perspective, the pedestrian character of Rowe Street can be generally attributed to: ▪ The fine-grain building / shopfront arrangement, ▪ Varied yet modest building heights which create a consistent street wall condition, ▪ Continuous street awnings, and ▪ A high amount of visual permeability between the street and building interiors at the ground plane. In response to this existing urban context (but recognising that Eastwood Centre is evolving from its historical scale), the proposal seeks to integrate the redeveloped Eastwood Centre with the streetscape through a logical transition in building heights while also responding to the key character elements of Rowe Street as listed above. As shown in the streetscape elevation on Rowe Street, this involves aligning the street wall with the established 2-storey scale of the existing buildings to the east and west, with a transition to a higher built form behind this street wall with setbacks of between 2.7m (at the closest point) and 13.2m (at the furthest).

Objective	Comment
	Importantly, the street walls are under the 21.5m maximum building height control as prescribed by Clause 4.3 of the Ryde LEP 2014. Areas that exceed this height set back behind this street wall by a minimum of 2.7m, which ensures that the objective of the development standard is still met notwithstanding this non-compliance. The higher built form within the central areas of the site (including those elements that exceed the height control) does not detract from the established character of the Eastwood Centre. Moreover it clearly identifies the town centre as the gathering and activity space, as appropriate for a town centre location. **West Parade** West Parade serves as a secondary pedestrian street which provides a transition between residential development to the south of the town centre and the rail corridor to the east of the town centre, to the town centre core itself. This transitionary character is most evident within the block of West Parade bound to the north by Rowe Street and to the south by Rutledge Street – the same block which contains the subject site. Built forms, which are present only on the western side of West Parade along this block, are 2-storeys in height and commercial in use. Frontages are not well activated, owing to reduced visual permeability in their ground-plane expression and the absence of continuous awnings along individual buildings. The lack of activation and pedestrian character at this section of West Parade is reinforced by the subject site which presents loading and carparking entrances which are inactive and cause significant conflict with pedestrian movement. The proposed scheme will maintain the transitionary character of this section of West Parade The taller-scale form at this frontage, which will reach a maximum of 46.45m has been massed in response to previous comments made by the City of Ryde UDRP, in which it was suggested to bring the verticality of the building directly down to ground plane in order to reinforce this location as the gateway to the Eastwood town centre. This gateway element is highly appropriate given the location of this form at the south-eastern edge of the Eastwood town centre, and aligns with the intent for building heights along this frontage which are higher than those provided for further north under Clause 4.3 of the LEP. **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 visual character of the site curtilage to Rutledge Street is poor and the redevelopment of the site presents an opportunity to create a new proportion and character for development on Rutledge Street. The more recently constructed 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 and reflects the future intended character for the northern Rutledge Street frontage. The proposed variations to the height controls do not derogate from the objective of the development standard. The Rutledge Street character is changing and will consist of a street wall punctuated by higher vertical elements. To the extent that these vertical elements exceed the height control, they do not undermine the planning objective and will be consistent with the emerging character (as set by 7 Rutledge Street). This is further evidenced by the visual impact assessment and indeed the support received in terms of advice from the UDRP. **On the above basis, the proposed variation to building heights is consistent with the objective of Clause 4.3(a) of Clause 4.3 of the Ryde LEP 2014.**

Objective	Comment
(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,	**Overshadowing** A detailed shadow analysis is provided in this assessment (refer to Section 5.2.3, below) which demonstrates that notwithstanding the increase in building height above the development standard, the design massing will minimise overshadowing by increasing spacing between the high tower forms and therefore maintain good solar access to adjacent properties. This is achieved as a result of protecting solar access (via lower heights than the LEP control) where it matters most (such as to the open space of the day care centre and other open space of residential properties), while longer shadows resulting from the buildings that exceed the development standard tend to fall across buildings and/or driveways and therefore do not impact adjacent amenity. In addition to the above, the current proposal is considered to result in a more favourable solar access outcome to the adjacent properties to the south compared to the existing DA approval. This is a result of increasing the separation of the higher tower forms, beyond that of the previous DA and further demonstrating that the objective is being achieved through a considered and contextually responsive design. **Appearance of the area** The height variation will be compatible with, or improve, the appearance of the area in accordance with this objective. The existing Eastwood Centre serves as a landmark built form within the context of the Eastwood town centre. However, in its current form it suffers from: ▪ Relatively poor activation (in particular, at the West Parade and Rutledge Street frontages), ▪ An incongruous appearance within the surrounding built environment (noting its singular central commercial tower in the centre of the site), and ▪ A lack of permeability which, essentially, results in an abrupt termination of the Eastwood town centre. Considered holistically, the conditions of the existing development on the site significantly compromise the landmark qualities of the Eastwood Centre and do not positively contribute to the character of the Eastwood town centre. The proposal, notwithstanding the proposed height variations, will improve the appearance of the area by: ▪ Providing more, and better activated commercial frontages across the site, ▪ Delivering a cohesive and inviting built form outcome across the whole of the site (as compared to the existing conditions of a single, central tower and a hostile frontage to Rutledge Street and West Parade), and ▪ Opening up the interface between the Eastwood town centre and residential uses to the south, via a well-resolved, high-amenity, and visually apparent through-site link, commensurate with the pedestrian-friendly and walkable Eastwood town centre. To this end, the existing landmark qualities of the Eastwood Centre will be maintained and vastly improved as a result of the proposal. **On the above basis, the proposed variation to building heights is consistent with the objective of Clause 4.3(b) of the Ryde LEP 2014.**
(c) to encourage a consolidation pattern and sustainable integrated land use and transport development	The site is the largest single-owned site in Eastwood, providing a significant opportunity for consolidated development in a catalytic manner. The full redevelopment of the subject site encourages an integrated approach to development and avoids ad hoc development proposals. The proposal embodies the TOD principals, as discussed in further detail below.

Objective	Comment
around key public transport infrastructure,	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 north-east, and various bus services which serve the existing centre. The site is the most logical location to optimise development density in all of Eastwood and as such the proposed variations in building height are totally aligned with this planning objective. 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 proximity to the site. The land use is integrated with the key transport infrastructure by activating the frontages to Rowe Street and Routledge Street, and providing through site links and publicly accessible plazas activated by quality retail uses. **On the above basis, the proposed variation to building heights is consistent with the objective of Clause 4.3(c) of the Ryde LEP 2014.**
(d) to minimise the impact of development on the amenity of surrounding properties,	Consistent with objective (b), the increase in building height can be achieved without adverse impacts to adjacent properties. As demonstrated in the overshadowing analysis, the proposed development does not adversely impact adjacent properties in terms of overshadowing. This includes the properties to the south side of Rutledge Street and the apartment development to the west at 7 Rutledge Street. Furthermore, the height variations do not create other off-site impacts in terms of visual bulk, view loss or privacy loss. This is achieved by ensuring that the higher forms are setback and in many cases more 'centralised' in what is a large landholding. This assists to ameliorate the potential for off-site impacts. The visual impact analysis which assesses more distant views of the site confirms that the visual impact of the proposed development is low to moderate and not impacted by the variations to the height control. **On the above basis, the proposed variation to building heights is found to be consistent with the objective of Clause 4.3(d) of the Ryde LEP 2014.**
(e) to emphasise road frontages along road corridors.	As discussed at length above (refer in particular to responses at objectives (a), (b) and (c)), the site has for decades served as a landmark built form within the Eastwood town centre. However, it equally suffers from at times poor, and at times hostile, road frontages, in particular at the Rutledge Street interface. The proposal, notwithstanding the height variations, will maintain and vastly improve the site's status as the landmark development within Eastwood town centre, while making significant enhancements to the manner in which it interfaces with its adjoining street frontages. This includes: ▪ Improved activation to Rowe Street, and the introduction of activated frontages at West Parade and Rutledge Street (including fine grain tenancies and continuous awnings), ▪ A high-quality, contemporary architectural design which is commensurate with the site's landmark status, and ▪ A new through-site link which provides much-needed permeability and high amenity walking conditions between the Eastwood town centre and residential uses to the south. In this way, the site's road frontages will be emphasised and vastly improved when considered against existing conditions. **On the above basis, the proposed variation to building heights is found to be consistent with the objective of Clause 4.3(e) of the Ryde LEP 2014.**

b) Are the underlying objectives or purpose of the development standard not relevant to the development?

No.

The underlying objectives and purpose of the development standard remain relevant to the development and have been considered above.

c) Would the underlying objective or purpose be defeated or thwarted if compliance was required?

Yes.

Objective (c) would be thwarted if compliance were required.

Objective (c) of Clause 4.3 is intended *"to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure"*.

The City of Ryde and is supportive of additional housing in well-located areas that can leverage existing growth plans. The NSW Government, for its part, has clearly articulated aspirations for Transport Orientated Development to facilitate new housing in established, accessible areas. This variation allows for additional housing in a well-located area, with acceptable environmental impacts and vastly improved public domain outcomes. This proposal will contribute to meeting the new aspirational dwelling target of 38,026 new dwellings with the Ryde LGA, including a target for 13,900 new dwellings in Eastwood.

The additional height optimises the opportunities of a consolidated site – the largest single owner landholding within the Eastwood town centre – that is well-located and can accommodate more density due to the limited environmental impacts. This development therefore presents a unique opportunity to realise objective (c) of Clause 4.3 within the context of a key local centre within the LGA.

d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?

No, although recent precedents for varying the building height development standard exist.

The development standard has not been abandoned or destroyed by City of Ryde's own actions.

However, the City of Ryde have previously accepted a variation to the height standard on this site in the approval for LDA2016/0378, illustrating the appropriateness – and Council's support of – greater density in this location. This is further supported by recent actions of Council to accelerate master planning for Eastwood town centre with a view to substantially increasing housing supply in and around the town centre which has good access to transport, jobs, education, and key public services.

In addition, Council granted consent to a staged development on the adjoining site to the west at 7-9 Rutledge Street Eastwood, comprising two allotments for a mixed-use development comprising 613m^2 of retail space and 100 residential apartments (LDA2011/0612) (refer to **Figure 7**, below). 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:

- 123% variation to the 18.5m height of building standard. 22.8 metres over the standard.
- 13.6% variation to the 33.5m height of building standard. 4.56m over the standard.

It is noted that the approved development at 7-9 Rutledge Street did not include enhanced urban design and planning outcomes that the proposed development includes in the form of pedestrian through-site linkages, and appropriate building separation to provide a better arrangement of built forms and minimise potential impacts.

While the development standard has not been abandoned or destroyed, it is evident that Council has in recent years accepted increased densities, and resultant variations to development standards, within the Eastwood town centre to accommodate a growing population.

Figure 9 – Elevations of neighbouring, existing development at 7-9 Rutledge Street. LEP height plane represented with the blue line.

Picture 5 – South elevation (Rutledge Street) of 7-9 Rutledge Street.

Picture 6 – West elevation (Trelawney Street) of 7-9 Rutledge Street.

e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?

No.

The proposed variation to the maximum height of buildings development standard does not hinder the proposal's ability to achieve the objectives of either the MU1 Mixed Use zone or those objectives set out in the Eastwood Town Centre DCP at Section 1.2.

Refer to discussion at **Section 4.3.5** of this report, below.

5.2. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

Yes.

It is considered that there are sufficient environmental planning grounds to justify the proposed variation to the height of buildings development standard which applies to the site under the Ryde LEP 2014. It is also considered that the impacts of the increased building height would, in general, result in positive or at least neutral outcomes as compared to a development which complied with the development standard.

There are fundamentally 3 environmental planning grounds to justify the development standard contravention as follows:

1. The proposed development while exceeding the building height standard in certain locations will achieve a better urban design outcome for the Eastwood precinct compared to a design that prioritises building height compliance above other urban design and public realm outcomes.

2. The proposed development would better leverage the established transport infrastructure to deliver much needed housing compared to a proposal that was otherwise strictly compliant with the building height control.

3. There are no adverse environmental impacts arising from the non-compliance in terms of overshadowing, visual privacy, visual amenity or view loss.

Each of these matters are analysed in further detail below.

5.2.1. Environmental Planning Ground #1 – The proposed development will result in enhanced urban design outcomes

The spatial massing strategy proposed as part of this scheme is based on three key propositions:

1. The design concept of **creating greater space between buildings** (in some cases, exceeding ADG minimums), particularly for the taller-scale forms, minimises impacts on amenity to adjacent properties and improves amenity within the residential components of the site itself.
2. The introduction of **key pedestrian connections through the site,** supported by these generous upper-level setbacks, to enhance visual permeability and the pedestrian experience through and within the site.
3. **Establishing generous and useable common open space** (central courtyard) for future residents with good access to northern light, thereby enhancing the amenity and outlook of apartments.

In the alternative, where compliance with the LEP building height controls is prioritised and required to be strictly adhered to, the key urban gestures that underpin the design strategy would be undermined and generally non-realisable.

While a strict application of the development standard would result in a reduction in building heights, it would also result in more horizontal forms which would have the effect of diminishing the key design strategies and, subsequently, resulting in compromised or sub-optimal environmental planning outcomes. It is fundamentally on this basis that the variation is sought. Were compliance strictly sought, for example, ADG minimum building separation distances could be achieved but likely not exceeded. Similarly, an LEP-compliant development may not be able to feasibly achieve the quantum or quality of common open space as compared to the current proposal.

To illustrate this proposition, a notional building height compliant massing has been prepared to demonstrate the type of building form that prioritises height compliance over other urban design outcomes. Such a massing exercise is not suggesting it is a viable alternative scheme in its own right, but it is based on envelopes that would meet ADG building separation requirements and indicates that a design delivering stronger horizontal forms would not achieve the urban design outcomes of the current proposal in terms of building spacing, strong visual and permeable pedestrian connections and good communal open space. The envelope massing is also used a proxy in the shadow studies comparing the likely shadow impact of a complying envelope versus the proposed DA.

Figure 10 – LEP height compliant envelope massing

Source: AJC, 2024

1. Greater Spacing Between Buildings

A key design move of the current development proposal compared to what might otherwise be achieved under a compliant LEP height plane is the enhanced separation of the tower forms. This is particularly critical along the Rutledge Street frontage where the higher building forms are permitted.

As opposed to a monotonous row of buildings along this southern frontage, the AJC design concept delivers significant separation between the three higher tower forms of Building B, Building D and Building E. The proposed development includes a separation of almost 40 metres between Buildings B and D and 24.7m between Building D and E. Both exceed the maximum ADG requirement for building separation, the former by a considerable amount.

When taking this comparative analysis further, when compared to the previous approved DA, the building separations are far superior. This is illustrated in the comparison study below:

2019 Approved DA

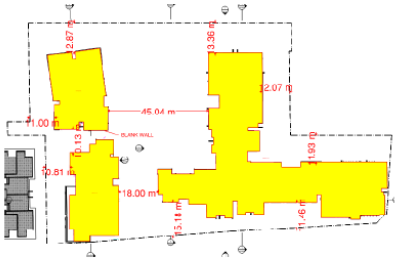
TYPICAL LOW RISE
LEVEL3

TYPICAL MID RISE
LEVEL 8

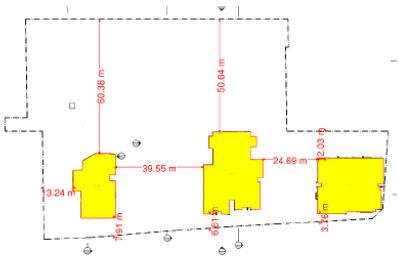
TYPICAL HIGH RISE
LEVEL 11

2025 January Amended Scheme

TYPICAL LOW RISE
LEVEL3



TYPICAL MID RISE
LEVEL 8



TYPICAL HIGH RISE
LEVEL 11

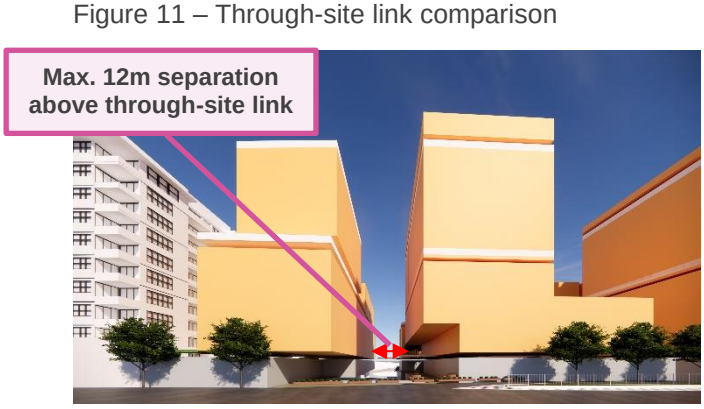
For the high-rise levels, the building footprints are well separated compared to the approved DA. This manifests itself in terms of the enhanced visual amenity and improved solar access to the south.

Flexibility in the application of the LEP height standard provides greater opportunity to enhance building separation. From an environmental planning perspective, this results in a better urban design and visual appearance (i.e., less bulky), improved solar access for properties to the south and improved internal amenity for future residents of the project.

2. Enhancing Pedestrian Connections

The additional building heights, which support increased building separation, also provide positive public domain benefits and improve the pedestrian experience. This is particularly salient when considering the through-site link. The increased building separation will create an enhanced pedestrian experience (especially as compared to the through-site link contained in the 2019 approval) which enables clear and easy north–south sight lines between Rutledge and Rowe Streets and provides views to the sky. In contrast, the 2019 approval provided a through-site link which was largely overshadowed by tall-scale built forms and did not deliver clear through views.

Figure 11 – Through-site link comparison



Picture 7 – Perspective showing approved massing of 2019 approval and resultant through-site link, facing north from Rutledge Street

Source: AJC

Picture 8 – Perspective showing proposed development and resultant through-site link, facing north from Rutledge Street

Source: AJC

3. Enhancing Communal Open Space

A key move integral to the AJC Design concept is to establish well orientated and proportioned communal open space that has good access to sunlight throughout the year. This is achieved through the increased building separation and ensuring that the height of the central pavilion building (Building F) still enables good solar access at the winter solstice. This is able to be achieved owing to the increased height which allows improved building separation and improved amenity both internal and external to the site.

The ground plane experience will be enhanced by this new development compared to the previous approved DA. The 'hanging gardens' concept was never perceived to be an ideal urban outcome by the urban design panel and as a result AJC Architects have developed an improved alternative response.

5.2.2. Environmental Planning Ground #2 – The proposal will deliver more housing in an appropriate location

The DA seeks approval for a development of a strategic site, which will deliver 411 new dwellings in a key local centre. Given the site's size and location within the Eastwood town centre, the proposal represents an efficient and orderly use of the land, in particular when considered in the context of Council's Draft Concept Plan for Eastwood which identifies the opportunity for an additional 13,900 new dwellings in the suburb.

This development represents a unique opportunity to unlock Eastwood town centre's most significant individual landholding to help achieve this aim, and as a result will serve to mitigate development pressure on lower-density residential areas which remain characteristic of Eastwood. The site is well serviced by public transport and other infrastructure and is in proximity to education and employment opportunities as well as community infrastructure including libraries and open space. This site is, therefore, a highly suitable location in which to provide higher density housing stock, an outcome which could only be feasibly achieved through a variation to the building height development standard.

5.2.3. Environmental Planning Ground #3 – There are no adverse environmental impacts arising from the additional height

Overall, 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. These key matters are explored in further detail below.

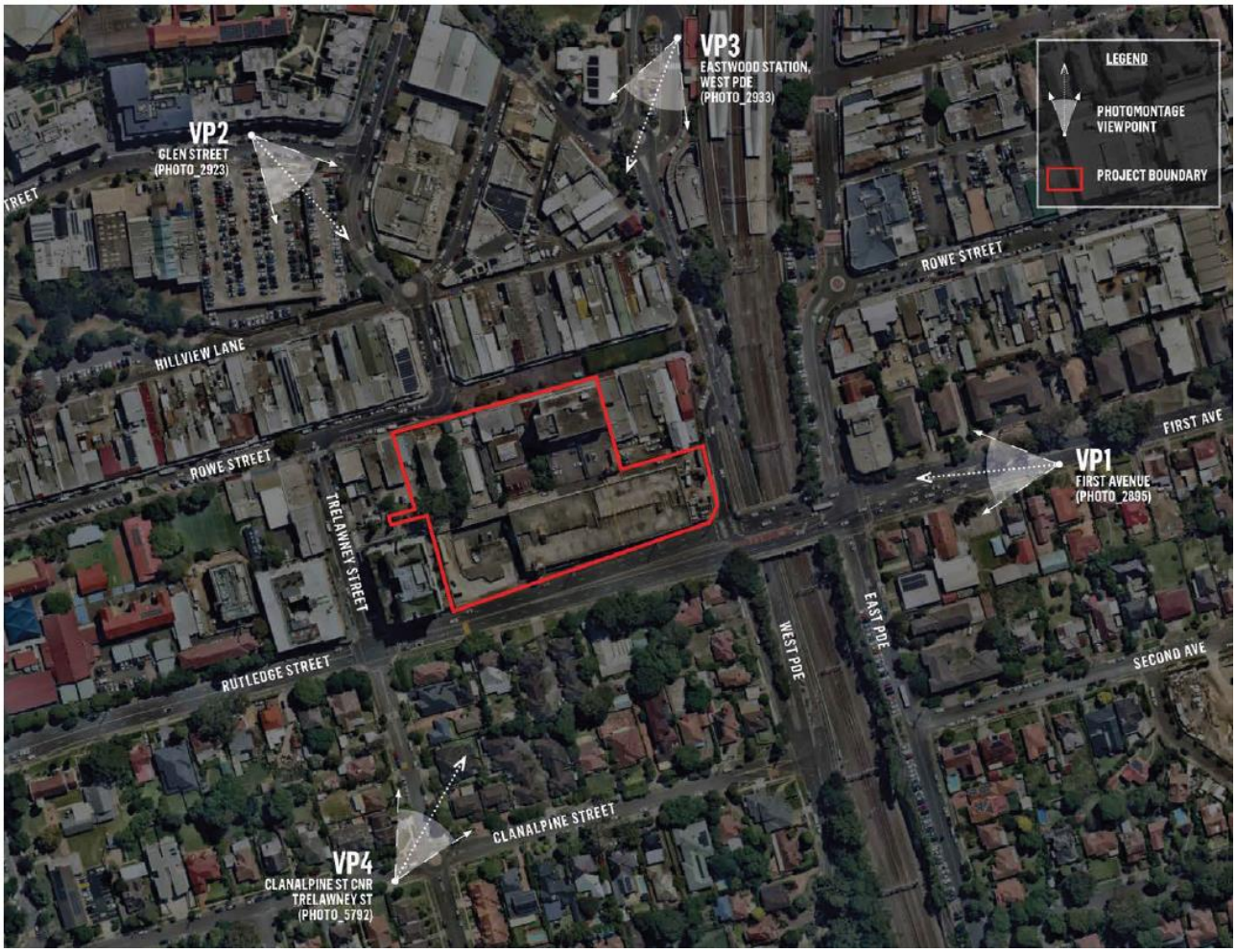
1. Visual impacts and Building Massing

A VIA has been prepared by Urbis and is included in the accompanying documentation for this DA. This provides an assessment of potential impacts on public domain views and provides views because of the development.

An assessment of visual impacts from the surrounding public domain visual catchment, contained in the Visual Impact Assessment submitted with the DA, concluded that:

- The visual catchment of the proposal is limited by topography and intervening elements including vegetation and built form.
- Views from the public domain are predominantly from surrounding roads and transport corridors and as such, visibility is typically from moving situations.
- Strategic planning policy aims to deliver housing in well located areas. As the City of Ryde aims to deliver new housing in Eastwood, it is likely that the visual change generated by the proposal has been contemplated in the future desired character of the area.
- Views of the proposal from significant public recreation space is limited and restricted to visibility of mid and upper sections of the proposal from Eastwood Oval to the north and limited, filtered views from parts of Glen Reserve to the north-east.
- The proposal has a medium-high level of visual compatibility from the assessed public domain locations.
- Analysis of 4 public domain photomontages found that (refer to **Figure 12** for the view points):
  - The visual impact for the assessed viewpoints ranges from medium-low to low.
  - The proposal does not block views to any heritage items or areas of unique scenic quality.
  - The additional height sought by the Clause 4.6 variation blocks areas of open sky and does not block any unique or scenic features.
- The additional height sought above the Approved DA blocks small sections of open sky and does not block any unique or highly valued features.

Figure 12 – Location of assessed view points



Source: Urbis

An overview of visual impact has been summarised below**.** Taking into consideration the existing visual context and baseline factors against which to measure change, the level of visual effects of the proposed development and in the context of additional 'weighting factors', the visual impacts of the proposed development were found to be acceptable.

Table 6 – Summary of Visual Impact Assessment

Weighting factor	Rating
1. Sensitivity	Low
2. Physical Absorption Capacity	Low–Medium
3. Visual Compatibility	Medium–High
4. Viewing Period	Low
5. Viewing Distance	Wide – but viewed in conjunction with other built form elements in the broader locality
6. Significance of Residual Visual Impacts	Low

Accordingly, the proposal can be supported on visual impact grounds. The additional height sought above the approved DA blocks small sections of open sky but does not block any unique or highly valued features. The increased building separation, as proposed, assists with mitigating visual effects as it will result in increased views to the sky and minimise the development's perceived bulk and scale.

2. Overshadowing to properties on the South of Rutledge Street

A detailed shadow impact assessment has been undertaken by AJC Architects and which is included in the architectural design pack forming part of the development application.

This analysis has assessed the solar impacts on the properties to the south of the site at the winter solstice using two methodologies being:

1. **Assessment Against a LEP Envelope**
   This is an assessment using a LEP height envelope massing to reflect shadows cast from a massing that would meet the LEP height control compared to the shadow cast by the proposed development.

2. **Cumulative Assessment including the Impacts of the approved 2019 DA**
   This includes the existing approved DA for the land and the shadows cast as a basis for comparison with the proposed DA.

In both cases, the shadow studies are undertaken at the winter solstice and at hourly intervals between 9am and 3pm.

The two shadow studies form part of the amended AJC Architectural package dated January 2025.

Summary of Findings

The detailed site by site analysis (as summarised further below) demonstrates the proposed development is generally consistent with the shadow impacts resulting from a LEP compliant envelope. Where the impacts are greater than a compliant envelope, when then compared to the impacts resulting from the approved DA, the proposal achieves a better solar impact outcome for these properties compared to the approved DA.

While taller buildings have the potential to create longer shadows in certain places, on detailed examination on a site-by-site basis, this increased shadow length is not in itself resulting in any major impact to adjacent properties. Indeed, the enhanced separation between taller towers as proposed in the DA (which are greater than what might be achieved with an otherwise compliant LEP envelope) results in the overall impacts being mostly neutral to positive.

In some cases where there is an increased shadow impact compared to an LEP height compliant envelope such as 3 West Parade 8 Trelawny Street, however, when then compared to the current approved DA, the

proposed development results in an improved outcome and actually results in an improved overall outcome for these properties.

In summary, this net improvement on a comparative basis largely stems from:

- The revised built form comprising 3 taller buildings addressing Rutledge Street compared to 4 buildings in the approved DA.
- As a consequence, improved separation between buildings provides improved solar access to key properties such as the pre-school outdoor learning area.

The analysis below show be read in conjunction with the shadow diagrams prepared by AJC Architects.

Figure 13 – Aerial view of properties south of the subject site which are subject to detailed shadowing analysis

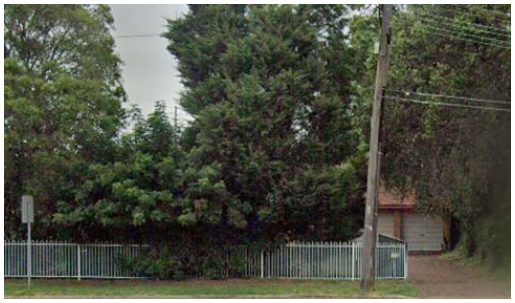
Source: NearMaps

Table 7 – Summary of overshadowing impacts

Property	Description	Impact Assessment
8 Trelawney Street	 Existing single storey dwelling. Solar access already impacted from apartment development immediately north at 7 Rutledge Street.	Property is substantially impacted by the existing development at 7 Rutledge Street. **Assessment Against LEP Envelope** When assessed against a compliant LEP envelope, the proposed development would increase shadow impacts at 11am but improve on a comparative basis at 10am and midday at the winter solstice. **Cumulative Assessment with Approved DA** The property maintains existing solar to rear open space at 12 midday at the winter solstice. Some impact compared to the existing DA approval at 9:00am, but with improved sunlight access at 10am.

Property	Description	Impact Assessment
		**Overall: Net Positive Impact compared to existing approval. 2% reduction in shadow from the approval, a positive result.**
6 Rutledge Street	  Existing single storey dwelling with north orientation to Rutledge Street.	**Assessment Against LEP Compliant Envelope** No impact **Cumulative Assessment with Approved DA** Property maintains excellent solar access to rear open space over the period of 10am to 3pm at the winter solstice. Any increase in shadow caused by development falls over the roof of the building. The north-facing windows of the development already impacted by the approved DA, but with some improvement in solar access from 10:00am compared to this approval. **Overall: Net Positive Impact compared to existing approval. Solar access not impacted to private open space.**

Property	Description	Impact Assessment
4 Rutledge Street	  .	Existing villa units located east-west of a central driveway. Large front grassed verge reflective of the SP2 zoning for future widening. The units facing Rutledge Street have open space to the north. **Assessment Against LEP Compliant Envelope** Compared to a compliant LEP envelope, the proposed development will achieve a better outcome in terms of solar access to this property at the winter solstice. This improvement is evident between 11am and 2pm. **Cumulative Impact Assessment with Approved DA** Overall, solar access to the open space of these units is improved particularly during the midday hours at the winter solstice. For the units with an east/west orientated open space there is generally no major change compared to existing. **Overall: Net Positive Impact largely due to the significant building separation between proposed Buildings B and D. An 23.2% reduction in overshadowing is modelled in the revised scheme.**
2B Rutledge Street	 	**Assessment Against LEP Compliant Envelope** Compared to a compliant LEP envelope, the proposed development will achieve a better outcome in terms of solar access to this property at the winter solstice. This improvement is evident at midday. **Cumulative Impact Assessment with Approved DA** The outdoor learning area of the pre-school will receive improved solar access at mid winter compared to the approved DA. This is particularly the case at 11-12pm during the winter solstice. The pre-school is overshadowed at 2-3pm however this is a prevailing condition under the approved DA. **Overall: A positive impact for the pre-school at the critical midday hours compared to the approved DA. A 9.2% reduction in overshadowing is modelled in the revised scheme.**

Property	Description	Impact Assessment
	Existing pre-school with the principal outdoor learning area located to the frontage of Rutledge Street, east of the building.	
2A Rutledge Street	  Existing dwelling fronting Rutledge Street including open space.	**Assessment Against LEP Compliant Envelope** Compared to a compliant LEP envelope, the proposed development will achieve a better outcome in terms of solar access to this property at the winter solstice. This improvement is evident at 1pm. **Cumulative Impact Assessment with Approved DA** The existing dwelling retains solar access in mid winter between the hours of 9-10am, with the approved DA shadow impacting after 11am. There is an improvement to sunlight access compared to the approved DA at 1pm. There is no increase in impact beyond that cast by the approved DA nor what a complying building height shadow would cast. **Overall: Net Positive Impact with no increase in impact compared to the existing approved shadow and with some additional improvement on this at 1pm mid winter. A 3.7% reduction in overshadowing is modelled in the revised scheme.**
2 Rutledge Street		This property retains solar access during the morning hours 9am to 12 midday at mid-winter. Property is otherwise impacted by approved development in the afternoon period and there is no change as a result of the proposed development. **Overall: no impact compared to LEP compliant building or approved DA.**

Property	Description	Impact Assessment
	 Single storey dwelling fronting Rutledge Street with rear open space fronting West Parade, fully concreted and visible to the street.	
3 West Parade	  A large allotment occupied by a single storey residence.	**Assessment Against LEP Compliant Envelope** Compared to a compliant LEP envelope, the proposed development will have a greater impact in the 1-3pm period of the winter solstice. The proposal will however still provide good solar access during the morning period (9am-12pm). **Cumulative Impact Assessment with Approved DA** This property will retain good solar access during the morning period with no impact between 9am and 11am mid winter. The approved DA has a greater impact than the proposed development at 1pm, thereby resulting in an improvement in solar access to the rear open space compared to the approved DA. **Overall: Net Positive Impact with good solar access to open space retained.**

3. Solar access to existing residential flat building at 7-9 Rutledge Street

A solar access study has been undertaken on the existing apartment building located to the immediate west on the corner of Trelawney Street, known as 7-9 Rutledge Street.

This apartment building enjoys good solar amenity due its orientation and built form context, with significant sunlight access to the north and west. This includes a roof top communal garden for residents of this complex. The apartment building also draws amenity and sunlight from its eastern orientation which faces the subject land.

It is unfortunate as noted below that this apartment building does not provide an ADG compliant setback to its east boundary and therefore makes it more vulnerable to solar impacts than would otherwise be the case if a complying situation. Lower-level units in this complex already have limited sunlight access due to the sunken nature of the development relative to the subject site.

Figure 14 – East elevation of existing residential flat building at 7 Rutledge Street

Source: Google Maps

City of Ryde raised concerns regarding the interface of Building B with the neighbouring residential flat building at 7 Rutledge Street, specifically as related to building separation and resultant solar access to the existing apartments. These concerns have resulted in the design team preparing an alternative design approach to amend Building B which, as a result, either **matches or improves solar access to the east-facing apartments of 7-9 Rutledge Street as compared to the previous 2019 DA approval** for the redevelopment of the Eastwood Centre. The proposed amendments to Building B entail:

- Alterations to the north-west corner of Building B at levels 9-12 (inclusive) to enhance solar access from the north-east in the mid-winter at the winter solstice, and
- Resultant internal floorplan changes, including amendments to apartment layouts and overall numbers

The resulting solar access metrics for the 30 east-facing apartments at 7-9 Rutledge Street are noted below, showing a comparison between a built form which would comply with the LEP building heights on the site (discussed at Section 5.3.1 of this report), the previously approved 2019 DA, and the now-amended scheme which is being proposed. This analysis is illustrated in accompanying architectural drawings by AJC (refer to drawing sheets DA2840 and DA2841).

Table 8 – Comparison of solar impacts to 7 Rutledge Street (2019 approval vs current proposal)

Hour/s of sun	Indicative LEP scheme	2019 DA (approved)	Current proposal
2+ hours	8	12	13
0–2 hours	16	14	13

Hour/s of sun	Indicative LEP scheme	2019 DA (approved)	Current proposal
0 hours	6	4	4

Significantly, the solar access analysis finds that:

- The current proposal increases the number of east-facing apartments at 7-9 Rutledge Street achieving 2+ hours of sun,
- The current proposal does not change the number of east-facing apartments receiving 0 hours of mid-winter sun as compared to the 2019 approval, and
- Improves on / reduces the number of apartments which would receive 0 hours mid-winter sun as compared to an indicative scheme which complies with the LEP building height control.

4. Other amenity impacts to surrounding development (including privacy)

The proposed development will provide building separation distances that meet or exceed the Apartment Design Guide design criteria. As such, an increase in building height will not in itself result in any increase in amenity impacts (privacy / cross-viewing) compared to that of a complying proposal. None of the adjacent properties (except the apartments of 7-9 Rutledge Street) have a direct interface with the development site and hence for the potential for amenity loss is low.

With respect to the interface with 7-9 Rutledge Street at the site's west, we note that the scheme has been previously amended in response to earlier Council comments to provide increased building separation at the western elevation of Building B. Building B provides the following range of setbacks to 7-9 Rutledge Street (which, itself, is set back 6m from its eastern boundary where it adjoins the subject site):

- Between 8.9m–9.0m at levels 2–5. Total building separation between 14.9m–15m.
- Between 10.5m–12.2m at levels 6–10. Total building separation between 16.5m–18.2m.
- 13.4m at levels 11–12. Total building separation 19.4m. (Noting that the existing building at 7-9 Rutledge Street does not exceed 10 storeys in height.)

In addition to the increased building separation, the scheme includes additional screening louvers along the west facade of Building B to further enhance visual privacy. The proposal manages off-site impacts appropriately in respect to cross viewing and acoustic privacy.

5.3. IS THERE ANY OTHER RELEVANT INFORMATION RELATING TO JUSTIFYING A VARIATION OF THE DEVELOPMENT STANDARD?

5.3.1. Previously agreed rationale to support a building height variation

It is informative to reflect on the decisions given in support of the Clause 4.6 request for the previously approved development and how this rationale may apply to the subject development. This is summarised below.

Table 9 – Commentary against previous reasons for granting the Clause 4.6 variation in the approved DA

Rationale provided in previous Clause 4.6 variation (approved DA)	Comments relating to proposed DA
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 Town Centre;	This rationale is very much at the centre of this submission. AJC Architects have developed a concept that delivers superior urban outcomes in terms of: ▪ The interface with the public realm and specifically the Rowe Street Mall. ▪ The quality of apartment orientation, outlook and communal open space.

Rationale provided in previous Clause 4.6 variation (approved DA)	Comments relating to proposed DA
	▪ The separation of the taller building elements to enhance residential amenity and the pedestrian experience. ▪ An enhanced retail and dining precinct for the wider community and improved retail 'eat street'.
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 as envisaged by the LEP controls and introduction of open spaces and through site linkages, which are accessible to the public creating public benefits;	This approach is clearly demonstrated in the submission. While there are higher building elements, these are offset by lower building forms and increased building separation east–west. The redistribution of massing also results in a vastly improved common open space offering for the new residential development, with the podium-level open space totalling 26% of the overall site area, 60% of which will receive a minimum of 2 hours of direct mid-winter sun.
The proposal represents a better urban design outcome than a compliant scheme as it provides greater areas of public space in the form of site links and plaza spaces and space between buildings to allow views into the site;	We submit that the ground plane experience will be enhanced by this new development compared to the previous DA. The 'hanging gardens' concept was never perceived to be an ideal urban outcome by the design panel and as a result AJC Architects have developed an improved alternative response. The improvements to pedestrian experience in the current scheme result from the massing redistribution and the more 'street-like' form of the through-site link, which provides direct views to the sky while minimising overshadowing and visual interruption from taller-scale built forms.
The proposed built form and height is consistent with the desired future character of the Eastwood Town Centre;	This site can carry built form scale while maintaining overall urban character, reflecting its status as an opportunity site. It is anticipated that as part of Eastwood town centre accommodating a greater share of future housing in the LGA that the historical built form character will evolve over time, at the very least consistent with that proposed in this development.
It is accepted that the public interest is better served through support of alternate distribution of building heights across the site and that the proposed scheme results in a development appropriate to the town centre that no longer turns its back on Rutledge Street and connects the south to the north (Rowe Street Mall) in a meaningful and integrated way. The 13 storey building (CB) at the corner of Rutledge Street and West Parade provides a marker to the town centre in light of its gateway location through a hierarchy of building heights. As such some flexibility is considered suitable in this particular instance;	In the same way as the previous DA, the proposal will greatly enhance and activate Rutledge Street. The urban marker principle established in the previous DA for the south-east corner of the site remains, and is strengthened in this current DA. Importantly, while the proposed building is higher than the previous development approval, it is more vertical in its expression and less bulky than the approved DA scheme. This is an improved urban response to define this entry point into the Eastwood Centre and, more broadly, as a gateway to the Eastwood town centre.
There are sufficient environmental planning grounds to support the variation due to the measurable benefits in the redistribution of building mass as proposed. The proposed scheme delivers a	We submit that the same logic applies to the current development in terms of a variegated built form approach, improved built form scale as the buildings

Rationale provided in previous Clause 4.6 variation (approved DA)	Comments relating to proposed DA
hierarchy of taller and shorter building forms across the 7 buildings and linkages between Rowe and Rutledge Street resulting in a superior planning outcome in terms of a better streetscape, better internal and external amenity, and significant public domain contributions;	address the public domain and internal and external amenity. Public domain benefits will be delivered through a new VPA for the site.
Variations do not result in unreasonable adverse amenity impacts; and	This is demonstrated in this report.
The non-compliance does not hinder the development's ability to satisfy the objectives of the B4 Mixed Use zone.	This is addressed in this report.

On the above basis, we submit that the development as currently proposed remains consistent with, or improves on, the previous DA approved in 2019.

From a numerical perspective, it is also noted that the current proposal is largely consistent with, or improves on, the 2019 approval while also further minimising environmental impacts as addressed previously in this report. A comparison of the key metrics is provided below:

Table 10 – Numerical comparison of 2019 approved DA v current proposal

Element	2019 approval	2025 proposed scheme
GFA	Total of 54,016.1m^2 of GFA, comprising: ▪ 15,037.1m^2 of retail & commercial floor space ▪ 38,979m^2 of residential floor space	Total of 63,008m^2 of GFA, comprising: ▪ 21,587m^2 of retail / commercial floor space ▪ 41,421m^2 of residential floor space
Residential units	408	411
Carparking (total)	1,037	1,135
Common open space	25.04% of total site area	26% of total site area

5.3.2. Planning Policy Direction

National Cabinet announced the National Housing Accord with the aim of delivering 1.2 million new dwellings over 2024-2029.

NSW Government is committed to producing 377,000 new dwellings by 2029 (around 75,000 annually over five years). Based on current supply forecasts, there is an expected shortfall of around 170,000 homes to meet the target.

- Target for Ryde is 11,600 dwellings = 2,320 dwellings per annum
- Ryde was averaging 2,500 dwellings per annum in 2017-2020
- This fell to just 700 per annum in the years 2020-01 to 2022-23
- Hence there is a need to increase dwelling production more than three-fold to meet the NSW and Federal Government targets.

The NSW Department of Planning, Housing, and Infrastructure (DPHI) has finalised the "Transport Oriented Development (**TOD**) SEPP." As housing is one of the NSW Government's top priorities, this policy aims to create more homes close to transport, jobs, and services. Whilst Eastwood was not identified as part of the

TOD program, it has a unique opportunity to support housing growth given the transport network connectivity, and proximity to work, services and education.

In summary, City of Ryde is supportive of additional housing in well-located areas that can leverage existing growth plans as well as the NSW Government's aspirations for TOD. This variation allows for additional housing in a well-located area, with acceptable environmental impacts.

Conversely, to require strict adherence to the building height development standard would reduce the potential to deliver this targeted housing outcome and not optimise one of the most significant sites in Eastwood.

5.3.3. Alignment with desired Eastwood vision

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 though 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 vision of Eastwood town centre is described in the City of Ryde Local Strategic Planning Statement (**LSPS**) as:

> *(a) a centre with a 'sense of place' drawn from its cultural diversity and traditional built form and character.*
>
> *(b) a vibrant centre for cultural events and nighttime activity, building on its reputation as a centre for dining and locally owned shops and services.*
>
> *(c) a compact, mixed-use centre with easy and convenient access to bus and train services.*
>
> *(d) an important local shopping centre with a high level of expenditure and employment and a range of community services and amenities.*
>
> *(e) an exemplar for water management within a town centre.*
>
> *(f) a centre with diverse housing opportunities.*

The LSPS includes an Eastwood Town Centre Structure Plan. The Eastwood Centre is identified in the Structure Plan as site "A1", which is referred to an opportunity for improvement and to encourage urban renewal for older building stock and opportunity sites. External to the site, the LSPS identifies several key changes that are envisaged by Council, namely:

- Whole or part pedestrianisation of The Avenue and a further section Rowe Street.
- Multiple through-site links through the blocks between Hillview Lane, Rowe Street and Rutledge Street.
- The relocation of Council's car park on Hillview Lane to Shaftsbury Road.
- The redevelopment of the site of Council's car park on Hillview Lane into a community area.
- The introduction of several 'pocket parks' along Hillview Lane north of the site.

The proposed development is consistent with the strategic direction for Eastwood Town Centre. The proposal capitalises on the opportunity to renew the town centre and improves the permeability of the site via the introduction of a through site link.

City of Ryde are revisiting the Eastwood Town Centre Master Plan, which is urgently needed to bring contemporary planning controls to the precinct aligned to the strategic planning framework. It is envisaged that based upon the desire to increase housing in the town centre, the Master Plan will encourage greater density. At a design principle level, the proposed development is consistent with the principles for lower scaled buildings fronting Rowe Street. This provides an appropriate scale relationship to future buildings to the north. Taller buildings have been positioned to front Rutledge Street, with the taller building located in the south eastern corner adjacent to the railway line.

The proposed variation will not hinder the ability to achieve City of Ryde's vision for Eastwood, in fact it will further these strategic objectives and facilitate the redevelopment of a defined opportunity site and delivering "*a compact, mixed-use centre with easy and convenient access to bus and train services.*"

Eastwood Centre can deliver significantly more public benefit should additional density be considered as part of the master planning process for Eastwood. Eastwood Centre should be the epicentre for this density, which is reflective by this request for additional height, as it demonstrates additional height can be accommodated on site with limited amenity and environmental impacts.

5.3.4. Delivering Public Benefits Outside of the Site

In addition to the significant role of Eastwood Centre as part of the overall Town Centre, the proposed development offers additional opportunities to enhance the Town Centre via a public benefit offer that is included with the development application. Most pertinently, the public benefit offer seeks to support the delivery of a new public domain to Rowe Street Mall, which is the epicentre of pedestrian activity in the town centre.

The current Rowe Street Mall is currently tired and in need of significant revitalisation. The public benefit offer provides the ability for Council to realise this in addition to the revitalisation of the site itself.

5.3.5. Alignment with zone objectives

The site is on land zoned MU1 Mixed Use. The objectives of the MU1 Mixed Use zone are reproduced below:

- *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.*
- *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 in 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 MU1 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 Request 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 Rutledge Street which varied the building height development standard and has now provided a strong precedent for the future renewal of the Eastwood town centre. The distribution of various building forms and scales separated by new through site linkages, including a direct pedestrian link to Rutledge Street, will enhance the appearance of this significant site in the Eastwood Town Centre.
- The proposal will provide diverse and active street frontages with a new built form landmark, to signal the renewal of 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. Land use conflicts have been minimised as a result of the increased building separation afforded by the massing redistribution of the proposal.

- 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 a significant direct and easily accessible through site link, pedestrian plazas, providing a significant opportunity to activate the street and retail frontages at the ground plane.
- The proposal is not inconsistent nor 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.

5.3.6. Extent of variation request

Finally, it is appropriate the emphasise that there is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6.

It is not necessary to consider case studies in order to address the above issue, as each case ultimately turns on its own facts. However, decisions of the Land and Environment Court are informative, as they demonstrate how the flexibility offered by

- In *Moskovich v Waverley Council* [2016] NSWLEC 1015, the Land and Environment Court approved a residential flat building in Bondi with a floor space ratio of 1.5:1. The development standard was 0.9:1. The exceedance was around 65 per cent.
- In *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216, a height exceedance of 103 per cent was approved, along with a floor space ratio exceedance of 44.7 per cent.
- In *Season Group Pty Ltd v Council of the City of Sydney* [2016] NSWLEC 1354, the Land and Environment Court granted development consent for a mixed use development on the basis of a clause 4.6 request that sought a 21 per cent height exceedance over a 18-metre building height standard.
- In *Edmondson Grange Pty Ltd v Liverpool City Council* [2020] NSWLEC 1594, the Court granted a development consent for three residential flat buildings. I n this decision, the Court approved a floor space ratio variation of 59 per cent (from 0.75:1 to 1.19:1).
- In *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386, the Land and Environment Court approved a residential flat building in Randwick with a 55 per cent exceedance of the height limit (at its highest point) and a 20 per cent exceedance of the floor space ratio control.

APPENDIX A MAXIMUM HEIGHT EXCEEDANCES – MERMAN METHOD

Table 11 – Summary of maximum exceedances to relevant height of building development standards (per building) – Merman method

Location	Proposed height (m)	Variation (m)	Variation (%)
Building A **LEP Maximum height of building – 21.5m**			
Podium – Building envelope	23.153m	+1.653m	+7.69%
Podium – Mechanical plant screening	23.67m	+2.17m	+10.09%
Mid-block – Building envelope	35.35m	+13.85m	+64.41%
Lift overrun	39.19m	+17.69m	+82.28%
Mid-block – Mechanical plant screening	38.67m	+17.17m	+82.84%
Building B **LEP Maximum height of building – 33.5m**			
Podium – Building envelope	33.55m	+0.05m	+0.15%
Mid-block – Building envelope	43.01m	+9.51m	+28.39%
Lift overrun	43.33m	+9.83m	+29.34%
Mid-block – Mechanical plant screening	42.3m	+8.8m	+26.27%
Building C **LEP Maximum height of building – 21.5m**			
Podium – Building envelope	23.4m	+1.9m	+8.84%
Podium – Mechanical plant screening	23.6m	+2.1m	+9.77%
Mid-block – Building envelope	36.755m	+15.255m	+70.95%
Lift overrun	38.3m	+16.8m	+78.14%
Mechanical plant screening	37.955m	+16.455m	+76.53%
Building D **LEP Maximum height of building – 33.5m**			
Mid-block – Building envelope	46.05m	+12.55m	+37.46%
Lift overrun	47.95m	+14.45m	+43.13%
Mechanical plant screening	47.86m	+14.35m	+42.87%
Building E **LEP Maximum height of building – 33.5m**			
Podium – Building envelope	49m	+15.5m	+46.27%
Mid-block – Building envelope	49.07m	+15.57m	+46.48%

Location	Proposed height (m)	Variation (m)	Variation (%)
Lift overrun	57.02m	+23.52m	+70.21%
Mechanical plant screening	57.12m	+23.62m	+70.51%
Building F (Pavilion) **LEP Maximum height of building – 21.5m**			
Area above LEP height plane	22.09m	+0.59m	+2.74%

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