

Variation Request for Condition B1(1)(a) of Concept Approval MP07_0166

Stage 3, Wahroonga Estate

Residential Development

Submitted to Ku-ring-gai Council
on behalf of Capital Corporation Wahroonga Pty Ltd



Prepared by Ethos Urban, a Colliers Company.
8 May 2025 | 2230467



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

In March 2025, Ethos Urban took a major step toward future growth by partnering with leading professional services firm, Colliers. While our name evolves, our commitment to delivering high-quality solutions remains unchanged—now strengthened by broader access to property and advisory services and expertise.

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1.0 Introduction

This Variation Request has been prepared by Ethos Urban on behalf of Capital Corporation Wahroonga 3 Pty Ltd as the Trustee for Capital Corporation Wahroonga 3 Unit Trust (The Applicant) in support of a development application for two (2) residential flat buildings at 136-144 Fox Valley Road, Wahroonga, within the Fox Valley Road East (Precinct D) of the Wahroonga Estate site.

This report demonstrates the consistency with the Concept Plan Building Envelopes but also highlights four (4) minor portions of the proposed development that seeks to contravene the building envelopes. Notwithstanding this, it is also demonstrated that the alternative layout remains generally consistent with the relevant approved envelope plans and documents, and the proposal delivers a superior built form and urban design.

This Variation Request should be read in conjunction with the Statement of Environmental Effects and Response to Initial Assessment Letter prepared by Ethos Urban.

It is noted that the requirement under Section 3B(2)(d) of Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (the Transitional Regulation) is that a development application made in respect of the site, to which a Concept Plan relates, must only be 'generally consistent with the terms of the approval of the concept plan' and therefore a consent authority is not required to be strictly compliant with every aspect of every terms.

We note that Condition A8 Building Height of the Concept Plan (MP07_0166) enables development consents to be granted even though the development may contravene the prescribed heights in the Concept Plans and in light of this provision, and Section 3B(2)(d) of the Transitional Regulation, this Variation Request adopts a similar approach to demonstrate that the alternative layout delivers a superior built form and urban design outcome.

In addition, Condition B1 Urban Design of the Concept Plan (MP07_0166) also enables variations to be approved building footprints contained within the approved Concept Plan when it can be satisfactorily demonstrated that a superior built form and/ or urban design outcome can be achieved with an alternative layout, whilst proposed detailed designs remain consistent with the terms of approval and intent of the Concept Plan.

Accordingly, this Variation Request demonstrates that the compliance with the building envelope condition is unreasonable and unnecessary in the circumstances of the case, the proposed design provides a superior built form, that there are sufficient environmental planning grounds to support the minor encroachments, and that the proposed development will be in the public interest because it is consistent with objectives for development within the zone.

This Variation Request demonstrates that, notwithstanding the minor contraventions with the building envelope, the proposed development:

- Does not increase the maximum approved height of the building above the highest point of the approved building envelope, nor does it include any habitable floorspace beyond the approved building envelope, thus ensuring that the proposed built form is compatible with its surrounds;
- Will retain privacy between residents and result in greater residential amenity with improved outcome and strong access to solar. The variation will not contribute to any perceived increase in building height or mass and will have negligible impacts in relation to building bulk and scale, overshadowing and visual impact; and
- Is consistent with the objectives of the building height condition and the objectives of the R4 High Density Residential zone and is in the public interest.

As the alternative outcome remains generally consistent and demonstrates a superior built form and urban design outcome, it is our view that the consent authority has the power to grant consent in accordance with the flexibility allowed under Condition A2(1) and B1(1) of the Concept Plan (as modified).

2.0 Consistency with Approved Concept Plan Envelopes

In addition to Section 3B(2)(d) of the Transitional Regulation (as referenced above), it is noted that Condition A2 of the Wahroonga Estate Concept Plan MP07_0166 (as modified) states that future development applications are to be **generally consistent** with the following plans and documentation:

Section 75W Modification Application (MP 07_0166 MOD 9) Environmental Assessment Report dated 8 October 2021 and Response to Submissions dated 27 April 2022 prepared by Ethos Urban, as amended by additional information dated 9 June 2022, 28 June 2022 and 15 August 2022 prepared by Ethos Urban.

Furthermore, condition B1(l) of the Wahroonga Estate Concept Plan MP07_0166 (as modified) states that future development applications are to be **generally consistent** with indicative elements of the approved Concept Plan (as modified), including building footprints, “unless it can be satisfactorily demonstrated to the consent authority that a superior built form and /or urban design outcome can be achieved with an alternative layout, while remaining [remaining] consistent with the terms of approval and intent of the approved Concept Plan”.

The approved Concept Plans for the site (plans pursuant to MOD 9 of MP07_0166) include building envelopes/ footprints which are established through setback controls and building dimensions. The Ground Floor footprint is illustrated in **Figure 1** below, and include:

- Front setback: 9m from the lot boundary
- Side setback: 6m from the lot boundary
- Rear setback: 36m from the APZs
- Internal building separation: 12m
- Maximum widths of Building A: 25m and 24m
- Maximum width of Building B: 24m.



Figure 1 Approved Concept Plan footprint

Source: Turner Architects

During the development of the design for the proposed development application, further information came to light, which resulted in a slight alteration to the positioning of the building footprints. This included:

- The position of the new slip lane on the northern boundary of the site; and
- Correction of the 36m APZ line, to ensure that the 36m is provided from the C2 zone boundary at any point, where on the approved Concept Plan, this line was not illustrated correctly.

Accordingly, the building envelopes have been realigned as illustrated in **Figure 2**, however we note that the intent and key setback, separation and building width controls within the building envelop realignment are consistent with the approved plans and therefore it is considered that the positioning of the future development is 'generally consistent' with the approved Concept Plan building envelopes.

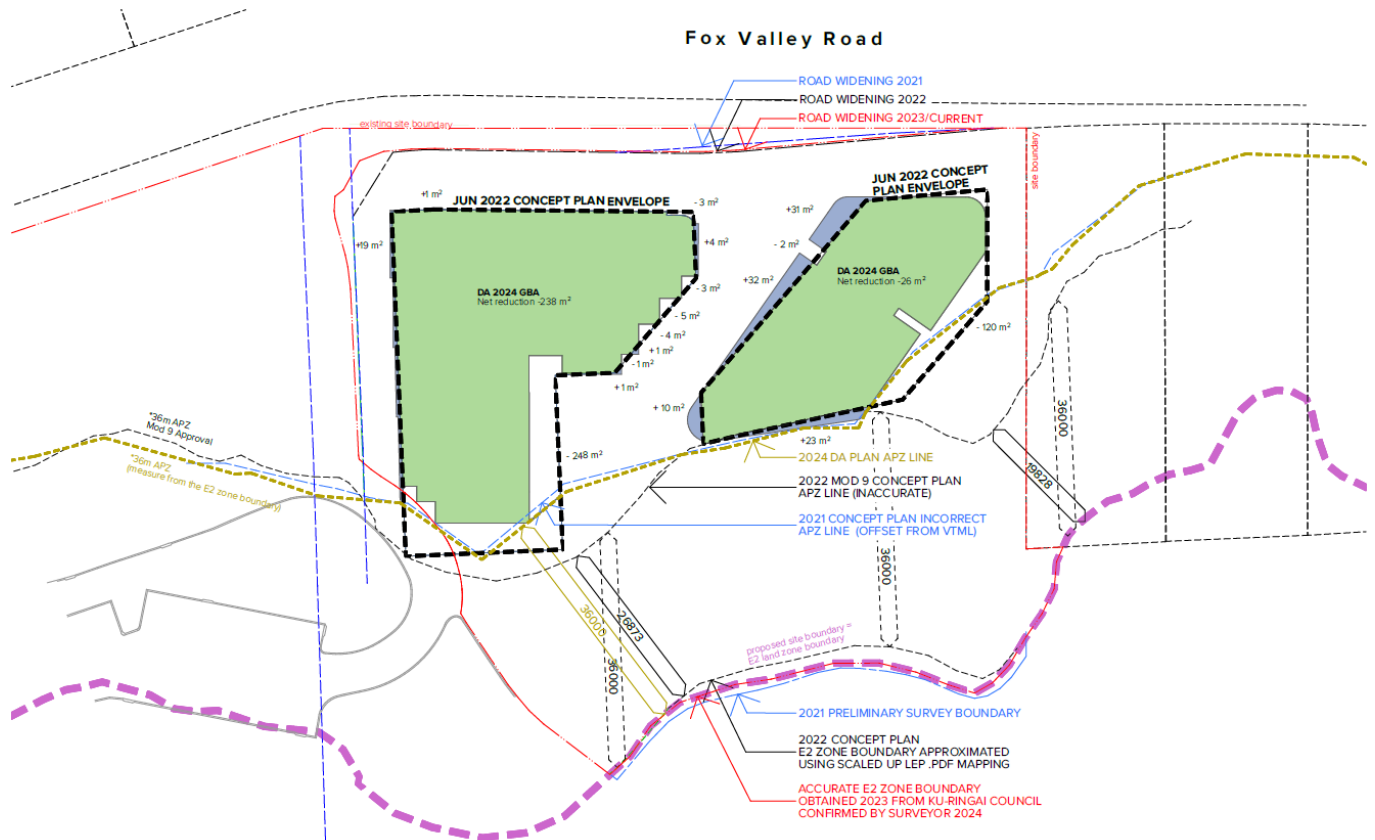


Figure 2 Building Envelope Realignment

Source: Turner Architects

3.0 Proposed minor elements that contravene the building envelope

Four (4) minor elements that seek to contravene the Concept Plan envelope (as modified), are outlined in **Table 1**. **Figure 3** provides a plan view of the proposed variations.

Table 1 Overview of the alternative design

Aspect of the alternative design	Figure
Internal building separation The eastern façade of Building A is stepped in plan, proposing an encroachment of up to 1.7m into the approved 12m internal building separation requirement under the Concept Approval. Driver: To achieve a modulated eastern façade, and permit strong orientate views away from Building B and towards bushland.	
Building B south-west facing balcony Part of the south-west facing balcony of unit B3.04 seeks to extend further than the approved BEA by a maximum of 2.4m. Driver: To achieve compliance with the minimum balcony area required under the ADG and provide stronger visual interest through a curved façade.	
Building A Level 4 The approved Building A envelope at Level 4 is setback back from the southern and eastern edges. Minor encroachments for habitable area (37m on eastern side and and 14m on southern side) are proposed into the Level 4 setback. Driver: To provide better proportioned unit layouts. Additionally, portions of the Level 4 roof and eaves extend beyond the approved envelopes of the Concept Plan, being an overhead projection of 2-2.4m from the glass vertical wall. Driver: To achieve improved residential amenity to units by providing weather protection whilst maintaining solar access to internal areas.	<i>Southern encroachment in blue</i>



Eastern encroachment in blue



Encroaching eaves to the east



Encroaching eaves to the south

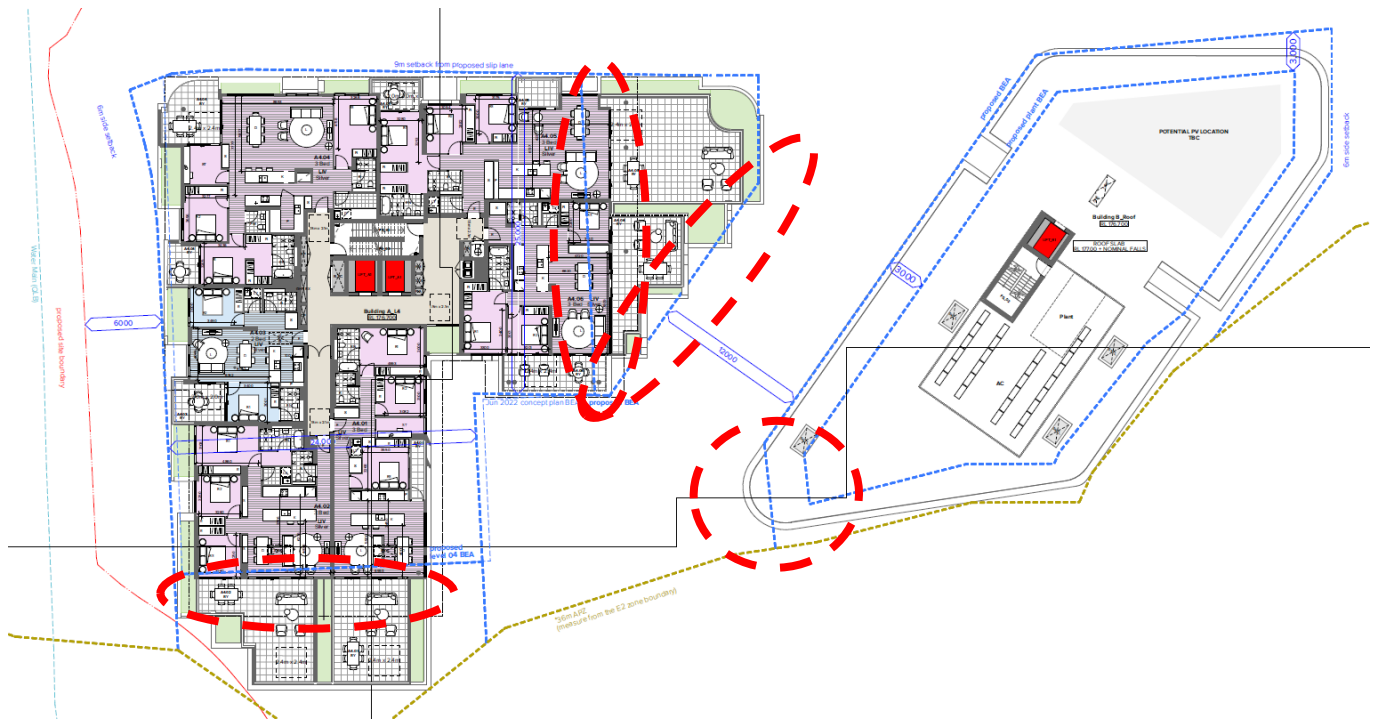


Figure 3 Proposed building envelope encroachment

Source: Turner

3.1 Justification for contravention of the building envelope approved under Conditions A2(1)9 and B1(1)

It is noted that the requirement under Section 3B(2)(d) of Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (the Transitional Regulation) is that a development application made in respect of a site must only be “**generally consistent** with the terms of the approval of the concept plan” and is not required to be satisfied that the development is strictly compliant with every aspect of every term. Therefore, it is not required to be satisfied that the development is strictly compliant with every aspect of every term.

Additionally, Conditions A2(1) and B1(1) relates that future DAs are to be ‘**generally consistent**’ with the ‘indicative’ elements, further accentuating the flexibility allowed for within the Concept Plan approval (as modified).

The wording of these conditions is replicated below.

Condition A2(1)

The development shall generally be in accordance with the following plans and documentation (including any appendices therein):

(f) Section 75W Modification Application (MP 07_0166 MOD 9) Environmental Assessment Report dated 8 October 2021 and Response to Submissions dated 27 April 2022 prepared by Ethos Urban, as amended by additional information dated 9 June 2022, 28 June 2022 and 15 August 2022 prepared by Ethos Urban.

Except as otherwise provided for in the Department’s administrative terms of approval and further assessment requirements as set out in this Schedule.

Condition B1(1)

(1) Future development applications are to be generally consistent with the following indicative elements of the approved Concept Plan unless it can be satisfactorily demonstrated to the consent authority that a superior built form and / or urban design outcome can be achieved with an alternative layout, while remaining consistent with the terms of approval and intent of the approved Concept Plan:

(a) Building footprints

(b) Asset Protection Zone widths

(c) Internal road location

(d) Detention basin location

...

Additionally, the vehicle access point and basement locations shown on plans associated with MP 07_0166 MOD 9, including Drawing DA-760-001 'BEA Diagram DEA Diagrams L G-Gr' Revision 01 dated 14.04.2022, are indicative only and the final design and location of vehicle access point and basements are to be determined at DA stage having regard to Council's controls and the potential environmental impacts of the proposal.

In addition, a variation to the requirements of Conditions A2(1) and B1(1) should not be treated with the same weight that the variation from a development standard contained in an environmental planning instrument would be. This is particularly the case where the variation is minute in scale in the context of a concept approval that deals with a master plan developed at a much broader scale ahead of detailed building design.

It is noted that Condition A8 Building Height of the Concept Plan (MP07_0166) enables development consents to be granted even though the development may contravene the prescribed heights in the Concept Plans and uses similar wording to Clause 4.6 of the Standard Instrument Local Environmental Plan. However, given that Conditions A2(1) and B1(1) are not development standards, and are not a statutory precondition to the granting of consent, assistance on the approach to justifying a contravention to the building envelope expressed in similar terms has been taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe);*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action); and*
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 (Al Maha).*

To inform the below discussion, we note that this variation request does not strictly constitute a formal Clause 4.6 variation request, however the general principles of Clause 4.6 have been adopted to guide this report.

4.0 Compliance with the building envelope approved under Condition B1(1) is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class. It is also noted that Conditions A2(1) and B1(1) are not development standards, but the approach adopted in the wording of Condition A8(2) is similar to the traditional wording used in consideration of a variation to a development standard.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

The first method is of particular assistance in this matter, in establishing that compliance with the building envelope approved under Condition B1(1) is unreasonable or unnecessary.

4.1 First method: The underlying objectives or purposes of condition A8

As there are no objectives of the B1(1) urban design / building envelope condition in the Concept Plan (as modified), the objectives are to be inferred. Reference has been taken from the Preferred Project Report dated January 2010 which informed the original Concept Plan for the Wahroonga Estate.

The inferred objectives of the building envelope condition in Condition B1(1) of the Concept Plan (as modified) are:

- a) The building envelopes are to provide an appropriate scale when viewed from the streetscape, with a series of forms creating spaces and connectivity through legibility (*Reference: Page 52 of Preferred Project Report*);
- b) Envelopes are to be well setback from the front and rear boundaries, providing benefits of the strong vegetation setting. The separation allows for good solar access for envelopes, and cross ventilation to habitable rooms in the development. Built form should seek to create an appropriate sense of scale and should where possible retain higher quality mature trees. (*Reference: Pages 52, 96 of Preferred Project Report*); and
- c) The building envelopes designated for residential development are typically orientated to the north, east and west to ensure excellent light and solar access and consequently provide a high level of internal residential amenity. Where this cannot be practicably achieved, dwellings are compensated where possible by an outlook to the surrounding bushland (*Reference: Page 90 of Preferred Project Report*).

4.2 The objectives of the Conditions A2(1) and B1(1) are achieved notwithstanding non-compliance with the standard

Objective (a): Provide an appropriate scale when viewed from the streetscape, with a series of forms creating spaces and connectivity through legibility

Internal building separation

Minor portions of the built form that protrude into the internal building separation requirement are not visibly dominant from the streetscape. These elements have been designed to integrate with the remaining built form and will not create an adverse impact on views from the streetscape. These minor intrusions help define the view corridor between the buildings, towards the bushland and will improve views from the streetscape.

Building B south-west facing balcony

The proposed variation to the south-west facing balcony has limited visibility from the streetscape as it is located at the rear of Building B and is set back approximately 38m from Fox Valley Road. This too, will have a negligible impact upon the scale of the development when viewed from the streetscape.

Building A Level 4

This southern portion of the building is negligibly visible from the streetscape and will not impact on the above-mentioned objective. The views of the southern portion of the building is shown in Drawing DA-1004-003 within the Architectural Drawings.

The eastern portion of the building will have limited visibility from the streetscape. In devising the massing and built form strategy, Turner's design response places a horizontal emphasis on the 'base', 'middle' and 'top' of the proposed buildings, as illustrated in **Figure 4**. An emphasis on horizontal datum lines and a differentiating base, middle and upper storeys has strong precedents in the local and historical context of Wahroonga. The Architectural Design Report further explains the design response. This is reproduced below:

- The **base** component is linked to quality outdoor private open space and highly articulated fences, walls, gates and landscaping. The sloping topography has been integrated carefully into this stepped landscaping.
- The **middle** component is expressed as a series of bays defined by indentation and strong architectural elements such as the repeating arch motif.
- The **top** floor is recessed, and reads as a defined penthouse level with a strong oversailing roof form that caps the building.

The eastern extent variation on Level 4 of Building A (~2.2m) and the extension of the eaves (~4-4.4m) are sited within the 'top' of the proposed building. This component is strongly delineated from the 'middle' of the building, as demonstrated in the perspective in **Figure 5**. This has been achieved by:

- Difference in materials and finishes, noting that a dark cladding is applied to the 'top', which allows the upper level to be recessive in comparison to the 'base' and 'middle' components.
- Difference in architectural expression, reading as a defined penthouse level whereas the 'middle' is read as bays with strong architectural elements including arches.
- Level 4 is further set back from the building line, further recessing this element of the building.
- On-structure landscaping is proposed on Level 4, softening the appearance of the built form.

These design moves allow the proposed variation to be integrated into the upper level, which will continue to provide an appropriate scale when viewed from the Fox Valley Road. The horizontal datums adopted by the design allows the built form outcome to be legible, further contributing to the quality of the streetscape. Therefore, the proposed variation is considered to have negligible impacts in relation to building bulk and scale, visual impact.

Furthermore, **Figure 5** highlights the portion of the building exceeding the concept envelopes. This demonstrates how the additional massing has been carefully integrated into the overall design, is not visibly noticeable from the street scape and does not result in an additional visual impacts.

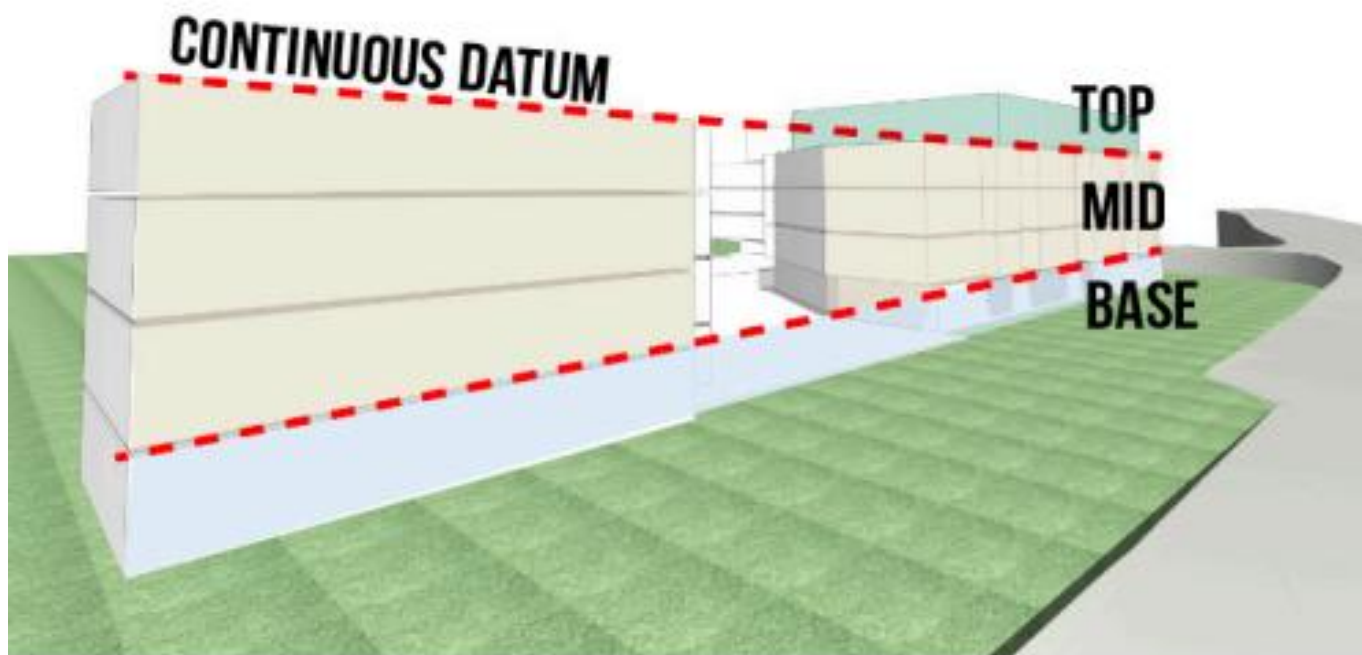


Figure 4 Massing and built form: Horizontal emphasis – North east corner along Fox Valley Road

Source: Turner



Figure 5 Perspective of Building A from Fox Valley Road

Source: Turner

Objective (b): Envelopes are to be well setback from the front and rear boundaries, providing benefits of the strong vegetation setting. The separation allows for good solar access for envelopes, and cross ventilation to habitable rooms in the development. Built form should seek to create an appropriate sense of scale and should where possible retain higher quality mature trees.

The proposed variations to the envelopes do not protrude into the front setback. Further, the variation to the southern portion of Level 4, Building A does not protrude any further than the lower levels into the setback zone. The proposed development remains capable of complying with Council's landscaping requirements, including the need for planting tall trees, as well as Council's site coverage control.

The proposed building envelopes remains to comply with the relevant Apartment Design Guide objective relating to visual separation, solar access and cross ventilation.

As outlined above, the development presents an appropriate scale through the creation of 'top', 'mid' and 'base' elements through vertical and horizontal elements. The extrusion outside the indicative envelopes do not contravene this design feature.

Objective (c): The building envelopes designated for residential development are typically orientated to the north, east and west to ensure excellent light and solar access and consequently provide a high level of internal residential amenity. Where this cannot be practicably achieved, dwellings are compensated where possible by an outlook to the surrounding bushland.

The extrusion outside the indicative building envelopes promotes internal planning and allow for communal rooms and bedrooms with generous views to the east (for excellent solar access) or to the south (for strong outlook into the surrounding bushland). The extrusion of the eaves additionally improves residential amenity by providing weather protection whilst maintaining solar access to internal areas. Such design also furthers a differentiated roof form for penthouses which is integrated into the roof line.

Despite the proposed extrusion, the proposed design continues to deliver a high level of internal residential amenity by:

- 70.4% (50/71) of apartments achieve at least 2 hours of direct sunlight between 9am and 3pm at midwinter, complying with Objective 4A-1 of the ADG.
- 14% (10/71) of apartments receive no direct sunlight, complying with Objective 4A-1 of the ADG.
- 60.5% (43/71) of apartments are naturally cross ventilated, complying with Objective 4B-1 of the ADG.
- Articulating the eastern façade, reducing the length of the wall which minimises the bulk and scale of the building as viewed within the development.

It is noted that the above summary demonstrates that the overshadowing created by any variation to the approved envelope will not impact upon the proposal's ability to comply with the requirements of the ADG.

Internal building separation

Due to the stepped east façade, the development proposes an internal building separation of 10.3m-14m between Buildings A and B. As discussed, an encroachment of up to 1.7m is proposed on the east façade of Building A. Importantly, this façade generally complies with the 12m internal building separation requirement under the Concept Plan (as modified), with only minimal localised encroachments into the approved BEA.

The buildings have been organised, orientated and arranged to maximise the potential amenity of the internal spaces by maximising access to light and where possible, to views. The site layout has been designed to maximise northern orientation while providing the enjoyment of significant views to Wahroonga Bushland. This is a notable amenity outcome achieved by the proposed variation allows for 9 bedrooms across 6 apartments to have an outlook towards the bushland. This has been a key driver for the proposed variation to the internal building separation under the Concept Plan (as modified).

Part 3F of the ADG sets minimum separation distances to be shared equally between neighbouring sites, in order to achieve reasonable levels of external and internal visual privacy. These requirements are reproduced in **Table 2**. The proposed internal building separation distances are assessed with proposed visual privacy mitigation strategies below.

Table 2 *Internal building separation requirements under the ADG*

Building height – up to 4 storeys	Internal building separation required on the same site
Habitable rooms/balconies to habitable rooms/balconies	12m
Habitable rooms/balconies to non-habitable rooms	9m
Non-habitable room to non-habitable room	6m

Notwithstanding the variation, the proposal continues to achieve a high level of visual privacy, through the following:

- **Ground level:** While bedroom windows are partially proposed within the 12m internal building separation zone, 1.8m high fences are proposed on the perimeter of the courtyards. This ensures that visual privacy of future residents is protected from communal spaces.
- **Levels 1-3:** Any part of the façade encroachment into the approved BEA will be fully screened or solid walls, and therefore is equal to a condition of habitable rooms/balconies to non-habitable rooms. Accordingly, only a minimum 9m separation would be required under the ADG, which the proposal complies with.
- The stepped form of **Building A** allows for windows to be placed on the southern portion of the sawtooth façade, which focuses views and outlook away from Building B.

5.0 Environmental planning grounds to justify contravening the building envelope approved under Conditions A2(1)9 and B1(1)

The following environmental grounds justify the contravention of the building envelope:

- **Improved built form:** The minor portion of the building which protrudes into the internal building setback assists in forming a stepped built form. Without this intrusion, the building could not display such a strong form of articulation, with the stepped form being less recognisable.
- **Privacy retention:** The extrusion into the internal building separation has been adequately managed and designed for to ensure privacy has been retained. Any parts of the façade which encroach into this setback zone will be fully screened or solid walls.
- **Improved outlook:** The areas which protrude outside the indicative envelope allow for greater internal planning and permits bedrooms and living rooms to have a strong outlook into the adjoining bushland to the south or the landscape area to the north. Residents in these units will be subject to improved amenity as a result of this minor variation.
- **Design flexibility:** At the time of approving MP 07_0166 MOD 9, it was recognised that the submitted plans were indicative and subject to further design development. This is demonstrated through Conditions A2(1) and B1(1) which permit the future development to be **generally consistent** with the approved plans. Strict compliance is not required. Turners have undertaken additional internal replanning and spatial rearrangement with the scheme following approved and the development remains to be substantially located within the approved envelope and remains to be **generally consistent** with the approved plans.
- **Residential amenity:** The extrusion of the eaves on Level 4 enables the proposed development to improve residential amenity in accordance with the objectives of the ADG, particularly concerning privacy and solar access. The recessed nature of the top floor and westward orientation of the eaves minimises the visual impact of the eaves, which contribute to defining the strong oversailing roof form of the penthouse level. The eaves additionally provide shelter whilst allowing daylight to penetrate interior spaces, balancing privacy and environmental performance.
- **Improved streetscape:** The proposed roof protrusion on Level 4 positively contributes towards the streetscape. The cantilevered roof form creates a dynamic and varied streetscape, contributing towards the urban fabric. This thoughtful design strategy enhances the aesthetic appeal of the development and offers a more engaging experience for both pedestrians and residents.
- **Public domain amenity is retained:** The building elements that exceeding the prescribed envelope have been designed to minimise impacts on the public domain. These encroachments do not overshadow public spaces or nearby properties, preserving public amenity. It further does not add unnecessary bulk or scale to the street.
- **Solar access:** Overhead elements like balconies and slab projections are limited to 2–2.4 metres from the glazing line, providing shelter while allowing daylight to penetrate interior spaces, balancing privacy and environmental performance.

6.0 In the public interest because it is consistent with the objectives of the zone and building envelope condition

6.1 Consistency with objectives of the building envelope condition

The proposed development is consistent with the objectives of the building height condition to the Concept Plan (as modified), for the reasons discussed in **Section** Error! Reference source not found..

6.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the R4 High Density Residential Zone, as demonstrated below.

Objective (a): To provide for the housing needs of the community within a high density residential environment.

The proposed development provides for the housing needs of the community in a manner consistent with and contemplated by the Concept Plan (as modified). The minor extrusion outside the indicative concept envelope will not impact on the development's ability to provide a wide of units to accommodate for the community's housing needs.

Objective (b): To provide a variety of housing types within a high density residential environment.

The proposed development seeks to provide a mix of apartment dwelling sizes to accommodate the various needs of future residents. This includes 10 x 1 bedroom units, 19 x 2 bedroom units and 42 x 3 bedroom units. The development provides a variety of housing types and is consistent with this objective.

Objective (c): To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Not applicable. The development seeks to deliver residential land uses as envisioned under the Concept Plan (as amended). The development will not impact on other land uses which adjoin the site such as the Sydney Adventist Hospital and Wahroonga Adventist School.

Objective (d): To provide for high density residential housing close to public transport, services and employment opportunities.

The proposed development is proportionally located within close proximity to public transport, services and employment. The minor protrusion outside the indicative envelopes will not contravene the development's consistency with this objective.

7.0 Conclusion

The assessment above demonstrates that strict compliance with the building envelope condition contained in Conditions A2(1) and B1(2) of the Concept Plan (as modified) is unreasonable and unnecessary in the circumstances of the case, the proposed design provides a superior built form and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better design and amenity outcomes in planning terms.

This variation request demonstrates that, notwithstanding the non-compliance with the building envelope, the proposed development:

- Remains generally consistent with Condition A2(1) and B1(2) which permits a degree of flexibility to allow for better outcomes.
- Is supported on the basis of sufficient environmental grounds which demonstrate that the minor protrusion results in improved amenity, outlook and urban design whilst retaining privacy standards.
- Is consistent with the objectives of the building envelope condition and the objectives of the R4 High Density Residential zone and is in the public interest.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under the Concept Plan Approval (as modified) and Section 3B(2)(d) of the Transitional Regulation.