



# CLAUSE 4.6 VARIATION REQUEST

State Significant Development  
SSD-14378717 – Telopea  
Concept Plan FSR Variation

Prepared for  
**FRASERS PROPERTY TELOPEA DEVELOPER PTY LTD**  
20 April 2022



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# 1. INTRODUCTION

This Clause 4.6 Variation Request (**the Request**) has been prepared on behalf of Frasers Property Telopea Developer Pty Ltd (**Frasers, the Proponent**) on behalf of Land and Housing Corporation (**LAHC**) in support of a State Significant Development Application (**SSDA**) for approval, in accordance with Division 4.4 of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*, for the staged redevelopment of the '**Telopea Concept Plan Area**' (**CPA**). This Clause 4.6 Variation Request relates to the Floor Space Ratio (**FSR**) for the Core Precinct.

The Request seeks an exception from the Floor space ratio development standard prescribed for the site under clause 4.4 of the *Parramatta Local Environmental Plan 2011 (PLEP 2011)*. The variation is request is made pursuant to clause 4.6 of the PLEP 2011.

This report should be read in conjunction with the Environmental Impact Statement (**EIS**) prepared by Urbis Pty Ltd and dated July 2021 and the Response to Submissions Report prepared by Urbis Pty Ltd and dated March 2022.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

## 2. SITE CONTEXT

### 1.1. SITE DESCRIPTION

The Telopea CPA is approximately 13.4 hectares (**ha**) and comprises of 99 individual allotments as shown in **Figure 1**. It currently accommodates 486 social housing dwellings across a mix of single dwellings, townhouses, and three to nine storey residential flat buildings. The CPA also currently accommodates a range of existing community facilities including Dundas Community Centre, Dundas Branch Library, Community Health Centre, Hope Connect Church and Telopea Christian Centre. The entire CPA is owned and managed by LAHC.

The Telopea CPA is divided into four precincts known as Core, North, South and East incorporating a total of 29 lots.

Figure 1 Telopea Concept Plan Area Lot Boundaries



Source: Bates Smart and Hassell

## 1.2. LOCALITY CONTEXT

The Telopea CPA is located in the Parramatta Local Government Area (LGA) around 4 kilometres (km) north-east of the Parramatta Central Business District (CBD), 6km south-west of Macquarie Park Strategic Centre and 17km from Sydney CBD. The site is located within the Telopea Precinct which forms part of the Greater Parramatta to Olympic Park (GPOP) Growth Area.

The site is predominately within a residential area and includes a neighbourhood centre. Surrounding development includes the following:

- North: mixture of residential land uses comprising of single-family dwellings to 5-6 storeys residential flat buildings.
- South: low density residential and Telopea Public School.
- East: Waratah Shops including an IGA Supermarket and Australia Post.
- West: Telopea Light Rail Station and light rail easement. Further west, land uses comprise of low density residential.

## 1.3. EXISTING DEVELOPMENT

The Telopea CPA is primarily residential in character and includes existing social housing owned by LAHC. A neighbourhood shopping centre known as the Waratah Shops is located in Benaud Place around 400m east of the Telopea Station. This shopping centre includes 17 local shops and an IGA supermarket.

The tallest buildings in the CPA are a group of three buildings in Sturt Street adjacent to the station, which are nine storeys in height. These form part of the ageing housing stock in the precinct along with several three storey walk up apartment buildings further east and south of the three towers.

There have been new apartment buildings constructed since 2012 including two apartment buildings adjacent to the rail line north of the three towers which are five to six storeys. In addition, there is a six storey apartment building on Sturt Street opposite of Sturt Park, and a four storey apartment building in Evans Road adjoining the Waratah Shops.

Figure 2 Telopea CPA Existing Development



Source: LAHC

## 1.4. TOPOGRAPHY

The sloping topography of Telopea is amongst its most distinctive features, lending significantly to the sense of place. From the top of the hill, with an RL of circa 61 metres (m), the site falls generally down to Evans Road at RL35m. This fall of 26 metres across 350 metres culminates in The Ponds Creek, which traverses through the bottom of Sturt Park. A ridge line runs through Telopea CPA in the vicinity of the light rail easement, where land slopes to the east down to the Ponds Creek.

Figure 3 Telopea CPA Topography



Source: Bates Smart

## 2.1. VEGETATION

Combined with topography, substantial existing trees provide the other key factor in Telopea's local sense of place. Planted eucalypts, Queensland Box trees and other introduced species are prolific throughout the Telopea CPA. Three types of vegetation have been identified within the Telopea Precinct area, including urban native/exotic on private land and areas of public domain; Alluvial Woodland within some part of Sturt Park; and areas of Blue Gum High Forest in private residential sites. There is also significant vegetation within close vicinity to the Telopea CPA including the heritage listed Rapanea Community Forest.

## 2.2. OPEN SPACE

There is a range of open space provided in the vicinity of the Telopea CPA including:

- Sturt Park is located adjacent to Sturt Road to the south of the Telopea Public School. It is approximately 3 ha and its facilities include paths, sport courts, children's play equipment and skate park;
- Acacia Park is located approximately 700m east of Telopea Station and is around 1.5 ha. It contains children's play equipment;
- Homelands Reserve is located north-west of Telopea Station and contains sporting fields and children's play equipment. It is approximately 2 ha;

- The Ponds Walk is a 6.6km track which runs alongside the Ponds Creek, which connects Carlingford to Rydalmere;
- There are three active outdoor sports and recreation facilities within 1km of the Telopea CPA including:
  - Dundas Park, which is 6.5 ha and is a major district-level sporting facilities;
  - Sir Thomas Mitchell Reserve, which is 3.9 ha and is a major district level sporting facility; and
  - Upjohn Park, which is 14 ha and provides a large multi-purpose sporting and recreational space.

## 2.3. HERITAGE

Within the vicinity of the CPA is the State Listed heritage item known as Redstone at 34 Adderton Road, to the south of the Stage 1A subject site. Redstone is a Walter Burley Griffin dwelling from c.1935.

## 2.4. PUBLIC TRANSPORT

The Paramatta Light Rail (PLR) is a NSW Government major infrastructure project. Stage 1 from Westmead to Carlingford via Parramatta CBD and Camellia is currently underway with Transport for NSW converting the former T9 Carlingford Railway Line from heavy rail to light rail. Stage 1 covers 16 light rail stops which includes a stop at Telopea. The PLR is anticipated to open in 2023.

The light rail will improve access for residents of Telopea with better connections to jobs, hospitals, universities, entertainment hubs, and sport and leisure areas. The light rail service is planned to run from early morning through to late at night with services every eight and a half minutes throughout the day.

In addition to the future light rail, Telopea is serviced by three public bus routes:

- 513 route from Carlingford to Meadowbank Wharf
- 535 route from Carlingford to Parramatta
- 545 route from Macquarie Park to Parramatta.

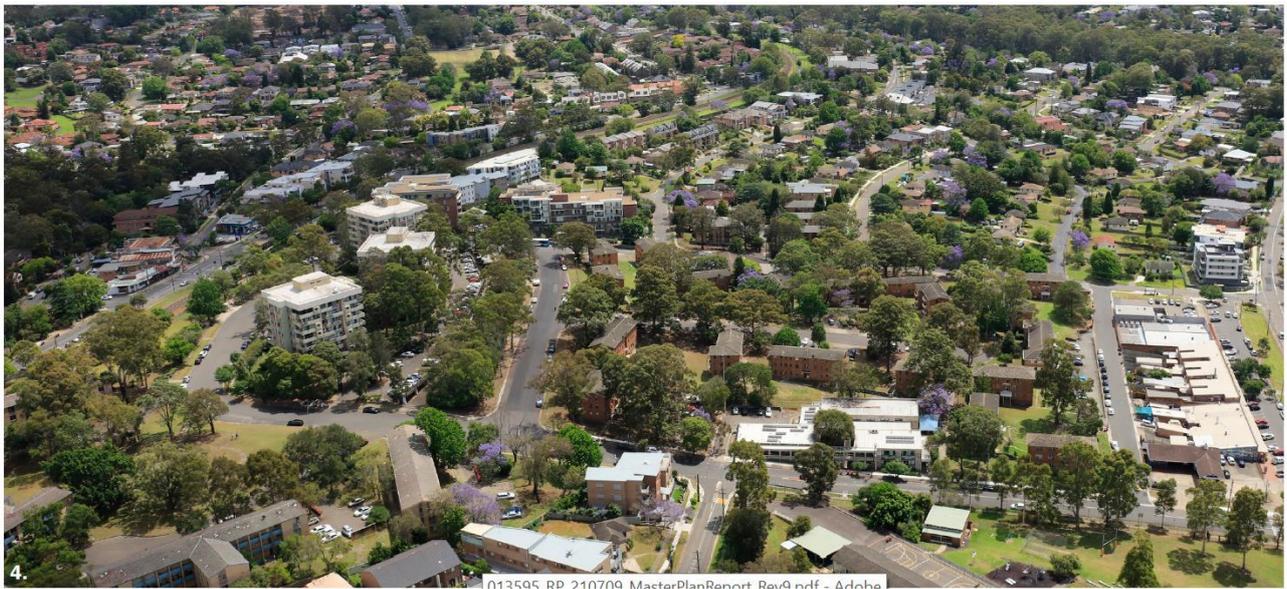
## 2.5. TELOPEA CPA CORE AREA

This Clause 4.6 Request relates to the Core precinct within the Telopea CPA as per lots C1 to C8 in Figure 1 above. The Core area is generally bounded by Sturt Street to the south and west, Shortland Street to the north and Benaud Lane to the east. The individual lots have been consolidated into development parcels as follows:

- C1 and C2, west of existing Wade Street, comprise the upper Core
- C3 and C4, between existing Wade Street and New Manson Street, comprise the middle Core
- C5 and C6 include the Library and Church sites, and combine with C7 and C8 fronting Benaud Lane to form the lower Core.

The Core area falls approximately 25m from the light rail stop on the ridge line down to the Ponds Creek in the valley. North/south streets are relatively flat while east/west streets fall noticeably to the east. Built form throughout the Core is characterised by mid-late 20th century three – four storey flat buildings arranged freely in an open lawn setting. At the top of the hill, the built form culminates in the ‘Three Sisters’, a group of nine storey apartment buildings set amongst stands of established Eucalypts. The bushland character of the area is defined by the high quality and established trees on the site.

Figure 4 Existing Core area



*(Photos continue over page).*



Images:

- 1. Three storey brick dwellings stepping down the hill
- 2. Eyles Street Lemon Scented Gum
- 3. 'Three Sisters' Eucalyptus gardens
- 4. Telopea Aerial View

Source: Bates Smart

- 5. Eyles Street from wade lane
- 6. Eyles Street looking towards the existing library link
- 7. Manson Street and Sturt Street intersection

### 3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany SSD-14378717 which seeks concept approval for the staged redevelopment of the Telopea CPA. The Concept Proposal sets out the maximum building envelopes and gross floor area (**GFA**) that can be accommodated across the Telopea CPA, and identifies the land uses and public infrastructure upgrades to be provided. The Concept Proposal will establish the planning and development framework from which any future development application will be assessed against.

A detailed description of the proposed development is provided in the Environmental Impact Statement prepared by Urbis Pty Ltd. The proposal is also detailed within the Urban Design Concept Plan Report prepared by Bates Smart and Hassell.

A summary of the key features of the proposed development is provided below:

The Telopea CPA proposal comprises:

- A mixed-use development including:
  - Approximately 4,700 dwellings, including a mix of social, affordable and market dwellings
  - Inclusion of a new retail precinct with a new supermarket, food and beverage, and speciality retail
  - Proposed childcare facility
  - Proposed combined library and community centre
  - Proposed combined Church, Residential Aged Care Facility and Independent living units facility
- Delivery of new public open space, including:
  - A new light rail plaza
  - Hill top park
  - Eyles pedestrian link
  - Open space associated with the proposed library
- Retention of existing significant trees
- Road and intersection upgrades
- Cycle way upgrades
- Upgrade of utility services.

#### 3.1. CORE PRECINCT

The proposed Telopea Concept Proposal Core area is bound by Sturt Street to the south, Telopea station plaza to the west, Shortland Street to the east and Benaud Lane to the east. The Core is divided north south by Eyles Street link, a pedestrian street which includes steps, ramps, and lifts to provide 24-hour accessible routes to the top of the hill. Its alignment has been selected to ensure retention of the majority of significant trees. In the east/west direction, the Core is broken into four blocks by cross streets which follow the contours and connect into the existing street network to the north and south. From west to east, Wade Lane creates a retail street in the upper Core, the Manson Street extension connects Manson Street to Marshall Road in a sweeping curve which ensures all important trees are retained, and Fig Tree Lane splits the lower Core into suitably sized development parcels.

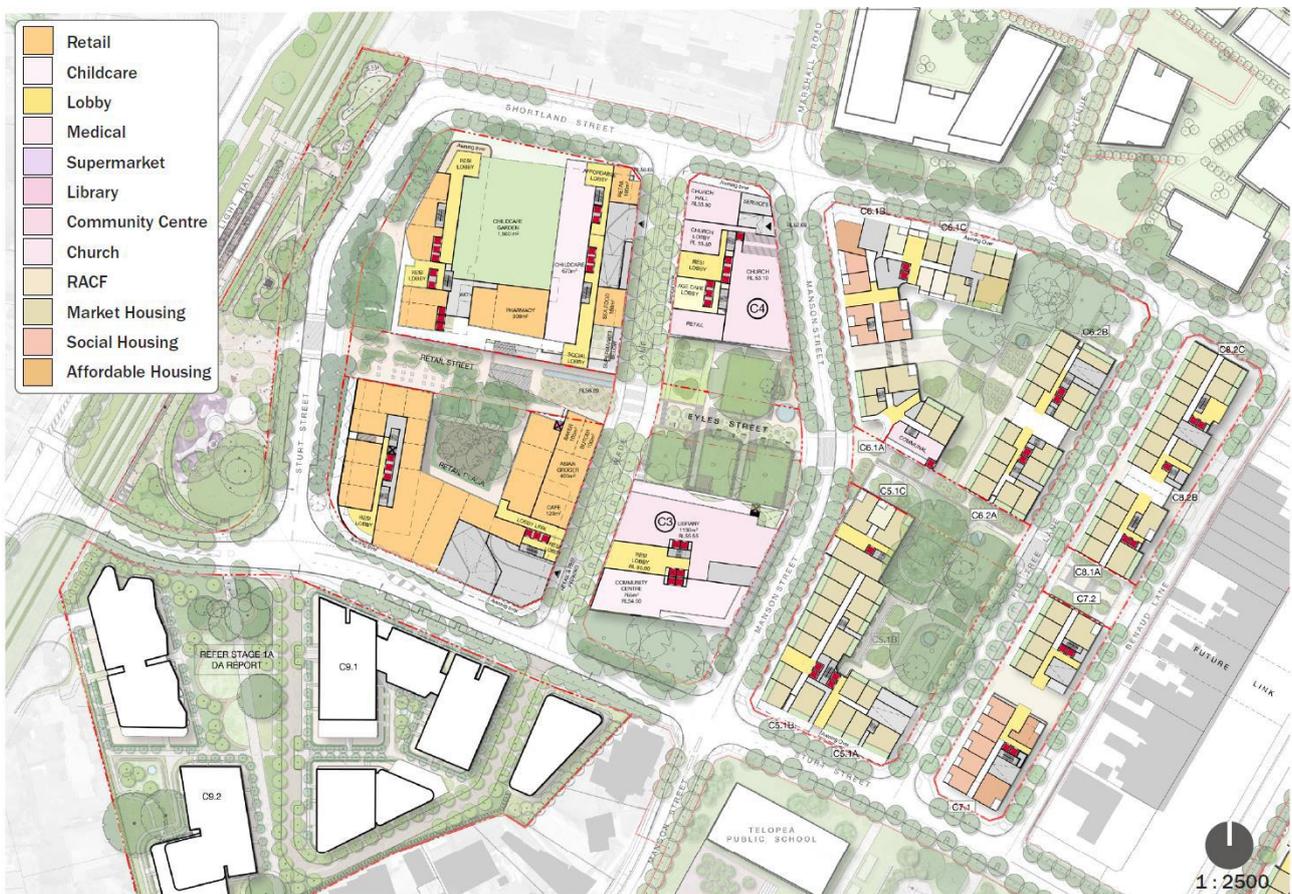
The Core accommodates a range of types of open space, all of which are arranged around retention of significant trees. Block C1 includes a retail courtyard focused on a stand of Eucalypts. Block C2's western edge is lined with existing trees in a generous street setback. Block C3 includes several important trees retained in a large southern setback opposite the school, while both blocks C3 and C4 propose large setbacks to Eyles Link based on retained trees. Blocks C5 and C6 both propose residential courtyards arranged around existing trees and, in the case of block C6, the stand of trees steps out to meet Shortland Street to the north.

## 3.2. LAND USES

In addition to high density residential development, the Concept Proposal proposes a range of non-residential uses focused around the new local centre in the upper Core. Proposed uses include:

- Specialty retail in blocks C1 and C2
- Childcare centre in block C2
- Medical Centre and Pharmacy in block C1
- Gym and Offices for the community housing provider at Level 1 of block C2
- Supermarkets, retail loading and public parking under the block C1/C2 podium at lower ground (Wade Lane) level.
- Library & Community Centre in block C3
- Church and Aged Care facility in block C4.

Figure 5 Proposed Land Uses in the Core area



## 3.3. BUILDING HEIGHT

The Concept Proposal seeks approval for maximum heights for each development block broadly consistent with the maximum height limits prescribed in the PLEP 2011. Some development blocks have multiple maximum height limits where the PLEP 2011 height control varies across the block. As shown in Figure 6 below, proposed maximum building heights range between 24m and 86m.

Figure 6 Core Area Proposed Maximum Building Heights



Source: Bates Smart

Figure 7 Visualisation of Core area proposed building heights (EIS scheme)



Source: Bates Smart

### 3.4. CORE PRECINCT CONCEPT DESIGN

The Concept Masterplan proposes towers on podia in the upper Core where buildings are taller than twelve storeys. In the lower Core where buildings are twelve storeys or lower, buildings are arranged as slab and/or courtyard blocks.

Building envelope heights have been designed to providing amenity improvements to apartments and public domain. Building heights and footprints have been arranged to maximise sunlight access to both existing and proposed public open spaces.

Building envelopes have been designed to 'wrap' the indicative scheme design with additional depth to allow some flexibility for future detailed designs. Where building forms are oriented north/south with solar access to both sides, envelopes are 25m deep to accommodate a central core floorplate. Where forms are oriented so only one elevation receives 2 hours sun, this dimension is reduced to 22.5m which will accommodate a side-core floorplate.

All proposed building separation distances exceed the recommendations set out in the *SEPP65 Apartment Design Guide*.

Figure 8 Core Precinct Concept Masterplan



Source: Bates Smart

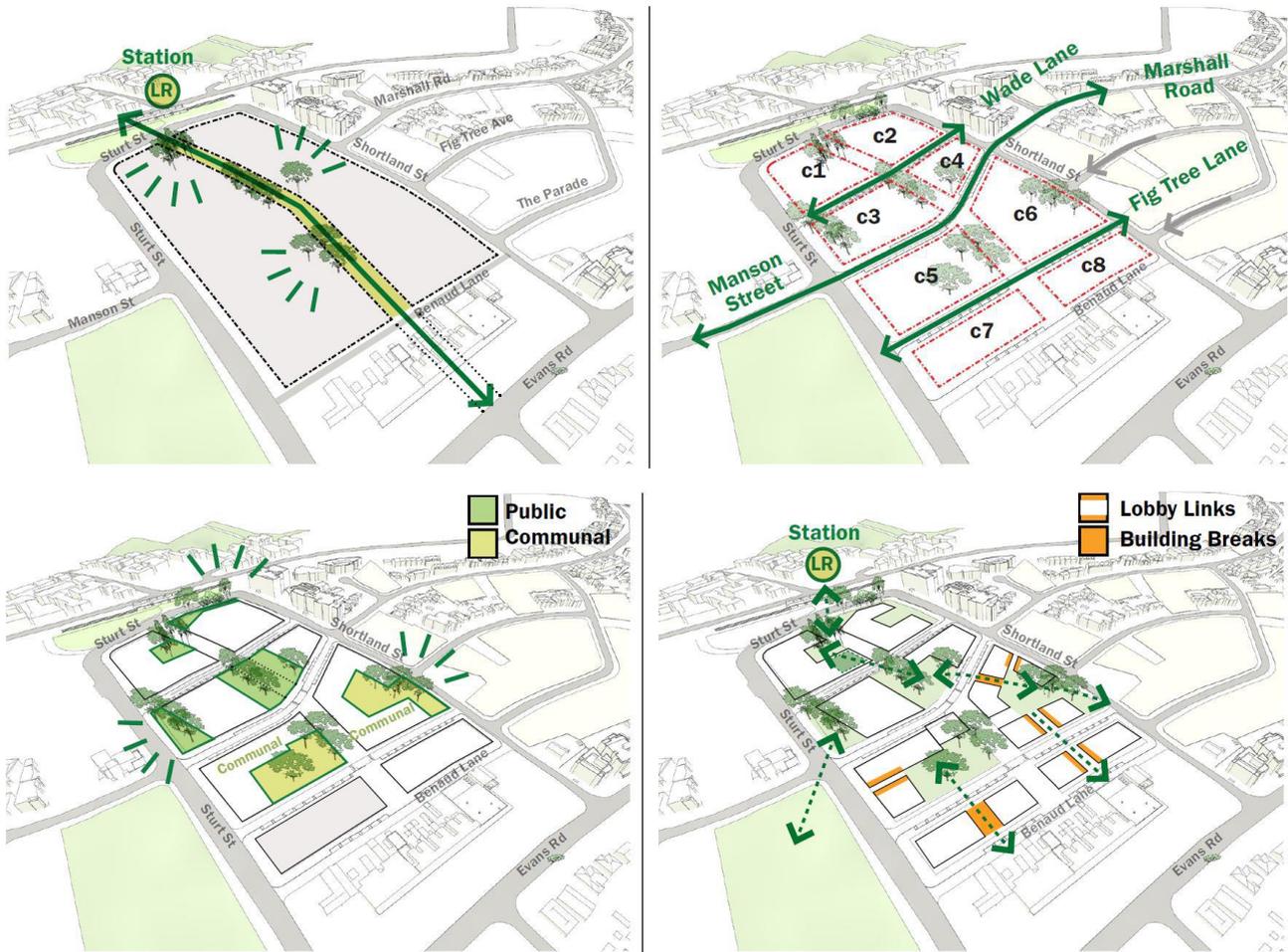
The precinct provides significant public domain elements and is the key retail centre and landmark from Telopea station. Open space creates clusters of three to four residential buildings located around these green spaces, activating surrounding streets and public spaces.

#### 3.4.1. Built Form

Eyles Link is a pedestrian oriented street designed to complement the existing roads of Sturt and Shortland Streets. Its alignment is designed around tree retention, with significant existing trees defining the journey up or down the hill. New streets and laneways, running across the contours, stitch the Telopea centre into

surrounding residential areas – improving connectivity to the north and south and defining individual development lots. Open spaces are created around stands of existing trees. A mix of public spaces, communal gardens and generous setbacks each contribute to retaining the bushland hillside character of the Telopea CPA.

Figure 9 Core area-built form principles



Source: Bates Smart

### 3.4.2. Public Domain

The Core accommodates a range of types of open space, all of which are arranged around retention of significant trees. Block C1 includes a retail courtyard focused on a stand of Eucalypts. Block C2's western edge is lined with existing trees in a generous street setback. Block C3 includes several important trees retained in a large southern setback opposite the school, while both blocks C3 and C4 propose large setbacks to Eyles Link based on retained trees. Blocks C5 and C6 both propose residential courtyards arranged around existing trees and, in the case of block C6, the stand of trees steps out to meet Shortland Street to the north. A mix of public spaces, communal gardens and generous setbacks each contribute to retaining the bushland hillside character of the Telopea CPA.

Figure 10 Core Precinct Open Space Network (EIS Scheme)



Source: Bates Smart and Hassell

### 3.5. FLOOR SPACE RATIO

Clause 4.4 of PLEP sets maximum floor space ratios for development in the Telopea CPA (see **Figure 11**). In addition, Clause 6.17 allows:

- Development within the area identified as within “Area B” on the Floor Space Ratio Map (which encompasses the upper Core area of the CPA – Blocks C1-C4) to exceed the maximum floor space ratio shown for the land, but only if the consent authority is satisfied that the additional floor space will be used for community facilities.
- A floor space ratio of 2:1 for sites with an area of at least 2,000 squares and identified as within “Area C” on the Floor Space Ratio Map (which encompasses the North and South Precincts of the CPA).

Pursuant to Clause 13 of the ARH SEPP and Clause 45 of the *Seniors Housing SEPP*, a floor space ratio (FSR) bonus is permitted as the land owned by the Land and Housing Corporation and includes provision for affordable and seniors housing. This ‘bonus’ FSR has been dispersed across the site with the total FSR and GFA remaining compliant with the relevant floor space requirements under PLEP, ARH SEPP and Seniors Housing SEPP.

To provide an appropriate level of flexibility in the detailed design of the future buildings, a minimum and maximum GFA has been nominated for each development block. The proposed maximum GFA of 391,940m<sup>2</sup>, comprising a maximum total residential of 376,940m<sup>2</sup> and a minimum non-residential GFA of 15,000m<sup>2</sup> is not to be exceeded.

The proposed floor space for the Core area is set out in the table below.

Table 1 Core area FSR

Site area (m <sup>2</sup> )	Base GFA (m <sup>2</sup> )	Bonus GFA (SEPP) (m <sup>2</sup> )	Allowable GFA (m <sup>2</sup> )	Indicative scheme (m <sup>2</sup> )	MIN per lot ~ -10% (m <sup>2</sup> )	MAX per lot ~ +5% (m <sup>2</sup> )
<b>Core C1 – C2</b>						
11,898	59,366.50	17,249.60	76,616	C1 36,951 C2 45,435	69,000	82,700
<b>Core C3 – C8</b>						
31,210	90,156.14	19,638.17	109,794	C3 16,150 C4 16,266 C5 18,637 C6 34,495 C7 11,360 C8 12,742	98,800	115,300

Figure 11 Core Precinct – FSR Bands



## 4. VARIATION OF FLOOR SPACE RATIO STANDARD

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 6** of the report.

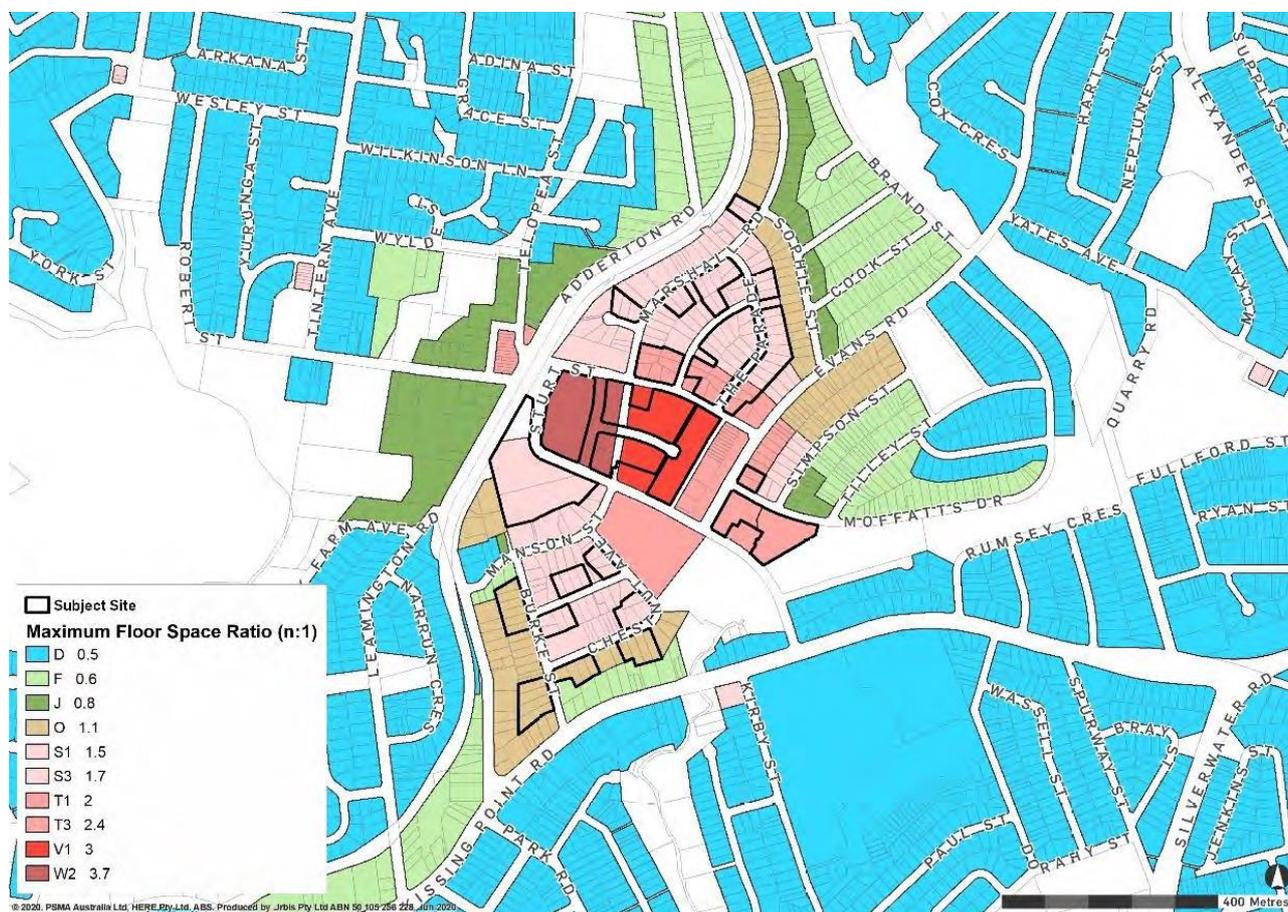
### 4.1. DEVELOPMENT STANDARD

PLEP 2011 Clause 4.4 Floor space ratio sets out the following objectives:

- (a) to regulate density of development and generation of vehicular and pedestrian traffic,
- (b) to provide a transition in built form and land use intensity within the area covered by this Plan,
- (c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings,
- (d) to reinforce and respect the existing character and scale of low density residential areas.

The PLEP sets maximum heights for buildings in the Telopea CPA Core area as shown in **Figure 12**.

Figure 12 PLEP 2011 Floor Space Ratio Map – Core Area



The maximum FSR bands in the Core Precinct are:

- V1 – 3:1
- W2 – 3.7:1

*State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP)* sets out the standard for development and maintenance of affordable rental housing in NSW. The Telopea CPA will deliver 740 social housing units on the site, which have been designed to be consistent with the design criteria set out in Division 1 and Division 5 of the ARH SEPP.

Division 1 of the ARH SEPP applies to the development that is permitted with consent under an environmental planning instrument, is located on a site that does not contain a heritage item, and where all or part of the development is within an accessible area. The proposed development is permissible with consent under the LEP in the B4 Mixed Use and R4 High Density Residential zones. It is not affected by a heritage item and is located within 500m of the Telopea Light Rail Station.

Clause 13 of the ARH SEPP permits a FSR bonus if at least 20% of the GFA of the development is to be used for affordable housing. Under the ARH SEPP, the term 'affordable housing' includes social housing. The key provisions of the ARH SEPP have been considered in the preparation of this SSD DA and are addressed in Table 13 of the EIS.

The *State Environmental Planning Policy (Housing for Seniors or People with Disability) 2004* (Seniors Housing SEPP) aims to encourage the provision of housing (including residential care facilities) that will –

*(h) Increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*

*(i) Make efficient use of existing infrastructure and services, and*

*(j) Be of good design.*

Block C3 and C4 of the Concept Plan are intended to provide seniors housing including independent living units (ILUs). The fit out and operation of the residential care facility will be subject to a separate future development application and will incorporate an assessment of the relevant provisions of the Seniors Housing SEPP including Clause 45 for vertical villages. As such an FSR bonus has been applied to Blocks C3 and C4.

Pursuant to Clause 13 of the ARH SEPP and Clause 45 of the Seniors Housing SEPP, a floor space ratio (FSR) bonus is permitted as the land owned by the Land and Housing Corporation (LAHC) and includes provision for affordable and seniors housing. This 'bonus' FSR has been dispersed across the site with the total FSR and GFA remaining compliant with the relevant floor space requirements under the LEP, ARH SEPP and Seniors Housing SEPP.

## 4.2. PROPOSED VARIATION TO FLOOR SPACE RATIO DEVELOPMENT STANDARD

The steps taken to determine the permissible GFA over the CPA were as follows:

1. Establish the land area (via a surveyor) with an overlay of the LEP zoning.
2. Work out the base GFA available to the site by using the mapped FSR by the site area.
3. Apply the LEP Cl 6.17 bouses where relevant.
4. Apply the ARH SEPP bonus available to LAHC.
5. Apply the SEPP Seniors bonus for applicable land housing ILUS and RACFs.

The sum of the abve calculations equaled a permissible GFA of 391,940m<sup>2</sup>. The indicative scheme was developed based on the permissible GFA and Urban Design Guidelines.

Table 2 Summary of Proposed GFA

Summary of Gross Floor Area (GFA)	(m <sup>2</sup> )
Base GFA	311,379
Affordable Bonus (ARH SEPP)	73,577.72
Seniors Bonus (Seniors Housing SEPP)	2,533.24
Community use GFA (LEP Clause 6.17)	4,450

Summary of Gross Floor Area (GFA)	(m <sup>2</sup> )
<b>Total</b>	<b>391,940</b>

To provide an appropriate level of flexibility in the detail design of the future buildings, a minimum and maximum GFA has been nominated for each development block. The proposed maximum GFA of 391,940m<sup>2</sup>, comprising a maximum total residential of 376,940m<sup>2</sup> and a minimum non-residential GFA of 15,000m<sup>2</sup> is not to be exceeded.

The approach to FSR/GFA calculation across the CPA as described means that a detailed break down of FSR and GFA calculations for each block is unable to be provided. The GFA has been calculated across the CPA and then distributed across the development to maximise public benefit, residential amenity and in accordance with the design principles outlined within the Telopea Design Guidelines.

Buildings C3 and C4 are located in areas that include existing roads which are not allocated an FSR under the LEP as illustrated in **Figure 13**. Frasers and LAHC are in negotiations with Council on a landswap arrangement to facilitate the revised road layout. The land which is currently not allocated a maximum FSR under the LEP due to being an existing road reserve would almost certainly have had the equivalent FSR mapping as the land adjacent. Whilst the exact quantum of land being exchanged is still under negotiation it is anticipated this will be close to an equal swap. Therefore the method for calculating the maximum permissible GFA for the CPA remains relevant.

Figure 13 Core Building Areas overlayed on LEP FSR Map



Source: PLEP 2011/ Urbis

As illustrated in **Figure 13**, portions of proposed buildings are shown on the existing Eyles Street. As noted above, Eyles Street is proposed to be transferred to Frasers for incorporation into the development.

Frasers and its consultant team undertook a review of the earlier Master Planning work that informed the gazetted FSR bands at the rezoning stage, and raised a number of issues, including:

- Apartment towers were predominately orientated to east and west, which will be a major deterrent to achieving good solar amenity for residents;

- Marshall Road does not follow the contours;
- Eyles Street has poor pedestrian access due to steep topography, has largely been retained free of buildings; and
- A new street Wades Lane is introduced to provide a finer grain in the Upper Core precinct to serve the mix of uses.

The Parramatta LEP 2011 does not have an FSR over Eyles Street shown in the FSR Map.

The distribution of density across the Core Precinct that is the subject of this Clause 4.6 variation request is the result of a reappraisal of the better urban design and planning opportunities on the site, without being inconsistent with the underlying strategic planning objectives for the site at the rezoning stage. Accordingly the better outcomes for the Core Precinct site arising from the proposed FSRs are summarised as follows:

- **Pedestrian Connection** - Stepping down the steep hillside, Eyles Link is a pedestrian oriented street designed to complement the existing roads of Sturt and Shortland Streets. Its alignment is designed around tree retention, with significant existing trees defining the journey up or down the hill.
- **Cross Streets** - Along the Contours New streets and laneways, running across the contours, stitch the Telopea Centre into surrounding residential areas - improving connectivity to the north and south and defining individual development lots.
- **Open Spaces** - Defined by Tree Retention Open spaces are created around stands of existing trees. A mix of public spaces, communal gardens and generous setbacks each contribute to retaining the bushland hillside character of the Telopea Centre
- **Building Breaks** - Open views to Landscape Building footprints are further broken up to improve physical and visual connection to the established landscape and retained trees.
- **Human Scaled Streets** - The ground level interface is defined by a two storey scale. In the upper core, a human scaled podium accommodates retail and community uses. The lower core apartment buildings also express a two-storey scale with townhouse typologies fronting the streets.
- **Building Heights Reduce** - Down the Hill Building heights vary in accordance with the LEP height plane, generally increasing in height towards the top of the hill. Consistent with the DCP, the upper core proposes towers on podiums, while the lower core proposed courtyard and slab blocks.
- **Heights Adjusted for Amenity** - Reference design building heights have been locally reduced to improve amenity, with lowered heights improving solar access to existing and proposed open spaces. Upper core towers are proposed in split forms which are staggered to improve the silhouette on the skyline
- **Diversity** - Tenure diversity adds to the mixed use nature of the precinct. The reference design further breaks down the forms through upper floor setbacks, expressed street walls, tenure mix and varied architectural expression to create a precinct of genuine diversity

The urban design principles will result in a better outcomes that will significantly improve the amenity of the Core Precinct through a distribution of overall permitted GFA.

There will be an enhanced definition of Eyles Link as a pedestrian only environment through an improved configuration of public domain and built form, relative to the urban design outcomes envisaged in Telopea Master Plan.

The reappraisal of the better urban design and planning opportunities on the site has bene in response to significant urban consolidation opportunity presented by the proximity of the Telopea Light Rail Station, and bus routes, access to employment opportunities in Greater Parramatta and a network of public open space and other recreational opportunities, without creating any greater adverse impacts upon surrounding properties in terms of overshadowing, view loss, visual impact or privacy.

## 5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of the PLEP 2011 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of the PLEP 2011 are:

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

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

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (d) the public benefit of maintaining the development standard, and
- (e) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

Consent authorities for State significant development (SSD) may assume the Secretary's concurrence where development standards will be contravened. Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

This clause 4.6 request demonstrates that compliance with the Floor space ratio development standard prescribed for the site in clause 4.4 of PLEP 2011 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the Floor space ratio development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

## 6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the Floor space ratio development standard in accordance with clause 4.4 of the PLEP 2011.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

### 6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The Floor space ratio development standard prescribed by clause 4.4 of the PLEP 2011 is a development standard capable of being varied under clause 4.6(2) of the PLEP.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of the PLEP.

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

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])
- to regulate density of development and generation of vehicular and pedestrian traffic,
- to provide a transition in built form and land use intensity within the area covered by this Plan,

- to require the bulk and scale of future buildings to have regard to heritage sites and their settings,
- to reinforce and respect the existing character and scale of low density residential areas.

The specific objectives of the Floor space ratio development standard as specified in clause 4.4 of the PLEP 2011 are detailed in **Table 2** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 3 Assessment of Consistency with Clause 4.4 Objectives

<b>Objectives</b>	<b>Assessment</b>
<i>To regulate density of development and generation of vehicular and pedestrian traffic</i>	The proposed Core Area includes R4 High Density Residential and B4 Mixed Use Zone land use zonings under the PLEP 2011. The proposed development accords with the PLEP 2011 provisions in relation to density of development providing high density residential and mixed uses. A Transport Assessment has been prepared by Ason Group which finds that the expected vehicular and pedestrian traffic generated by the development is acceptable.
<i>To provide a transition in built form and land use intensity within the area covered by this Plan</i>	The Core Precinct has been developed to maximise ground level activation with retail, public and community uses activating the precinct. New streets and laneways, stitch the Core Precinct into surrounding residential areas improving connectivity and defining individual development lots. Building heights generally increase towards the top of the hill. The upper core generally proposes human scaled podium of 2-3 storeys, accommodating retail and community uses which provide active frontages to streets and open spaces. The lower core apartment buildings also express a two-storey scale with townhouse typologies fronting the streets and maximised passive surveillance. The CPA further breaks down the forms through upper floor setbacks, expressed street walls, tenure mix and varied architectural expression to create a precinct of genuine diversity.
<i>To require the bulk and scale of future buildings to have regard to heritage sites and their settings</i>	A Heritage Impact Statement has been prepared by Urbis which finds that the proposed development will have no adverse impacts on the significance of the 'Redstone at 34 Adderton Road' heritage item within the vicinity of the site. The Concept Proposal is considered to provide a compatible response to the character and significance of the area. The proposal is physically and visually separated from the heritage item, and the proposed development will not detract from the existing setting and streetscape of the heritage item.

Objectives	Assessment
<p><i>To reinforce and respect the existing character and scale of low density residential areas</i></p>	<p>The site is located within the Telopea Precinct which forms part of the Greater Parramatta to Olympic Park (<b>GPOP</b>) Growth Area as allocated by the <i>Greater Sydney Region Plan</i>. The GPOP is identified as key to support the delivery of new homes. The proposal seeks to deliver high density residential and mixed uses in accordance with the PLEP 2011 land use zoning for the site.</p>

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

The Core Precinct has been developed to maximise ground level activation with retail, public and community uses activating the precinct. New streets and laneways stitch the Core Precinct into surrounding residential areas improving connectivity with the north-south Eyles Street Link providing a 24 hour accessible route and four cross streets in the east-west direction connecting into the existing street network. The Core Precinct provides a network of logical and legible street connections with a focus on active and accessible movement. The streets have been designed to allow easy access through and around the neighbourhood while providing generous tree and understorey planting. A clear road hierarchy each with its own unique character has been established across the site to strengthen wayfinding and sense of place.

The proposed variation allows for a built form to be delivered that better responds to the characteristics of the site including topography and views and allow for building envelopes that deliver high quality and high amenity residential dwellings. The variation allows for the urban design principles to be delivered across the Core area to ensure a high level of amenity for all residential dwellings as well as public open spaces and pedestrian connections.

- **The burden placed on the community (by requiring strict compliance with the FSR standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

The design of the proposal has been carefully considered to minimise any impacts, with the primary design objective centred on the health and wellbeing of the community; creating a place which is open, inclusive and highly connected with a focus on green spaces and healthy living. The built form framework responds to the existing topography and character of Telopea, with proposed buildings designed to maximise pedestrian connections and the amenity of new and existing residents and the public domain. The design strategy promotes the retention of existing trees, with built form diversity through a mix of setbacks, human scaled podiums and street walls and architectural expression, to create a high quality mixed use and high density residential development. The minor variation of the FSR across the existing Eyles Street allows for a successful urban design outcome. Strict compliance with the FSR mapping in this part of the site would undermine the delivery of the core urban design and masterplanning principles which have been designed to maximise the quality of the development and residential amenity. The benefits of the quality of the proposed residential development, public open spaces and pedestrian links are considered of greater public benefit than strict compliance with the FSR mapping control would result.

### **6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)**

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

*“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*

*...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”*

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The proposed variation does not result in any unacceptable pedestrian or vehicular traffic impacts.
- The proposed variation allows for a form of development to be delivered that accords with the urban design and masterplan principles to ensure the development is of a high quality and that the amenity of residential dwellings and public open spaces is maximised.
- The proposed development has been designed to respond to the site characteristics and site topography to deliver an appropriate built form and maximising pedestrian connections and public open space. Strict compliance with the PLEP 2012 mapping would result in negative impacts to the quality of the development including residential amenity.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed Floor space ratio development standard non-compliance in this instance.

### **6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)**

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

### **6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)**

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Table 2** above. The proposal is also consistent with the land use objectives that apply to the site under the PLEP 2011. The site is located within the R4 High Density Residential and B4 Mixed Use zones. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 3** below.

Table 4 Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
<b>R4 High Density Residential</b>	
<ul style="list-style-type: none"> <li>(a) To provide for the housing needs of the community within a high density residential environment.</li> <li>(b) To provide a variety of housing types within a high density residential environment.</li> <li>(c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>(d) To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.</li> <li>(e) To provide opportunities for people to carry out a reasonable range of activities from their homes if such activities will not adversely affect the amenity of the neighbourhood.</li> </ul>	<ul style="list-style-type: none"> <li>(a) The Concept Proposal provides a diversity of housing within a high-density residential environment that will cater for the needs of a broad range of users.</li> <li>(b) High density market rate, affordable and social housing is proposed to be provided.</li> <li>(c) The proposal includes the provision of retail uses, medical centre, library, community centre and residential aged care facility to meet the day to day needs of residents.</li> <li>(d) High density residential development is proposed close to the future Telopea light rail station, existing bus network and access to employment opportunities.</li> <li>(e) The Concept Masterplan proposes a wide variety of public open spaces, facilities and services for use by residents and the general public.</li> </ul>
<b>B4 Mixed Use</b>	
<ul style="list-style-type: none"> <li>(a) To provide a mixture of compatible land uses.</li> <li>(b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</li> <li>(c) To encourage development that contributes to an active, vibrant and sustainable neighbourhoods.</li> <li>(d) To create opportunities to improve the public domain and pedestrian links.</li> <li>(e) To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.</li> <li>(f) To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</li> </ul>	<ul style="list-style-type: none"> <li>(a) An appropriate mix of land uses is provided including retail, residential and community facilities.</li> <li>(b) Commercial and residential uses are integrated within the Core area with the highest level of public transport accessibility and with access to the cycling network.</li> <li>(c) The layout, public open space and mix of uses proposed will create an active and vibrant neighbourhood with the provision of community uses and focus on pedestrian experience making the neighbourhood highly sustainable.</li> <li>(d) The proposed Concept Masterplan has a focus on creating high quality landscaped public spaces and creating improved pedestrian links in both east-west and north-south directions.</li> <li>(e) The proposed retail uses, library, community centre, and residential aged care facility will provide for the daily commercial needs of the locality.</li> </ul>

Objective	Assessment
	(f) The Concept Proposal is designed to celebrate the site's bushland hillside character through streets and building forms built along the contours and arranged to retain the sites most significant trees.

## 6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

Consent authorities for State significant development (SSD) may assume the Secretary's concurrence where development standards will be contravened. Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the Floor space ratio will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the Floor space ratio and the land use zone objectives despite the technical non-compliance.

The proposal is consistent with the strategic policy framework delivering a range of housing types and sizes to meet the needs of different households. The provision of social housing creates opportunities to directly combat homelessness and relieve housing stress for low income households. As part of the Growth Precinct, the proposal provides housing supply, choice and affordability, with access to jobs, services, retail offerings, community infrastructure and public transport in an identified urban renewal area. The strategic proposal for homes adjacent to the PLR will facilitate the delivery of a city shaping corridor and the 30-minute city vision, through locating residents close to major employment and education centres within the broader region.

The design of the proposal has been carefully considered to minimise any impacts, with the primary design objective centred on the health and wellbeing of the community; creating a place which is open, inclusive and highly connected with a focus on green spaces and healthy living. The built form framework responds to the existing topography and character of Telopea, with proposed buildings designed to maximise pedestrian connections and the amenity of new and existing residents and the public domain. The design strategy promotes the retention of existing trees, with built form diversity through a mix of setbacks, human scaled podiums and street walls and architectural expression, to create a high quality mixed use and high density residential development.

The proposed development will:

- deliver social housing to support the welfare of the community;
- has been designed to ensure it responds to the term of the Masterplan and the character of the site and surrounding area;
- represents the first stage in the delivery of the Concept Pan, and as such supports the economic and orderly development of land;

- construct the road network of which portions will be dedicated to Council to create land for public purposes;
- incorporate biodiversity offset measures, tree protection, and replacement planting to conserve the natural environment;
- provide buildings that achieve a range of sustainability targets and measures established under the Concept Plan; and
- provide revitalised social housing to support those in need within Sydney.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

## 7. CONCLUSION

For the reasons set out in this written request, strict compliance with the Floor space ratio development standard contained within clause 4.4 of PLEP 2011 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

The proposed variation to the FSR development standard will as a consequence lead to a better outcome as required by the objectives of cl.4.6. These are summarised again as follows:

- Facilitates the development density envisaged in the Finalisation Report for the rezoning of the Telopea Urban Renewal Precinct and afforded under the Parramatta LEP 211 and the ARH SEPP.
- Consistency with the Vision for the Telopea Precinct, without adverse external impacts.
- Significantly improved amenity for all development in comparison to the Telopea Master Plan in terms of pedestrian amenity, and residential amenity.
- Enhanced definition of the Core Precinct reflective of proposed subdivision and road layout.
- GFA distributed within appropriate locations on the site in recognition of the improved urban design outcomes that can be achieved on the site, without creating any greater adverse impacts upon surrounding properties, in terms of:
  - Overshadowing,
  - View loss,
  - Visual impact, or
  - Privacy.
- Consistency with the R4 High Density Zone and B4 Mixed Use Zone objectives.
- Consistency with residential amenity principles under SEPP 65: Design Quality of Residential Flat Development and the accompanying Apartment Design Guide.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the Floor space ratio development standard should be applied.

## 8. DISCLAIMER

This report is dated 20 April 2022 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Frasers Property Telopea Developer Pty Ltd (**Instructing Party**) for the purpose of Clause 4.6 Variation Request (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

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