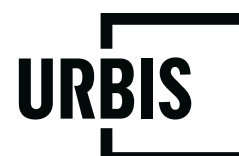




# CLAUSE 4.6 VARIATION REQUEST

State Significant Development  
SSD-14378717: Telopea  
Concept Plan Height 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 concept 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**). A separate Clause 4.6 Variation Request has been submitted in support of the first stage of development, known as '**Stage 1A**'.

The Request seeks an exception from the maximum Height of Buildings development standard prescribed for the site under Clause 4.3 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 prepared by Urbis Pty Ltd and dated March 2021.

This report is structured as follows:

- **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 EIS 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 PLEP 2011.
- **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.

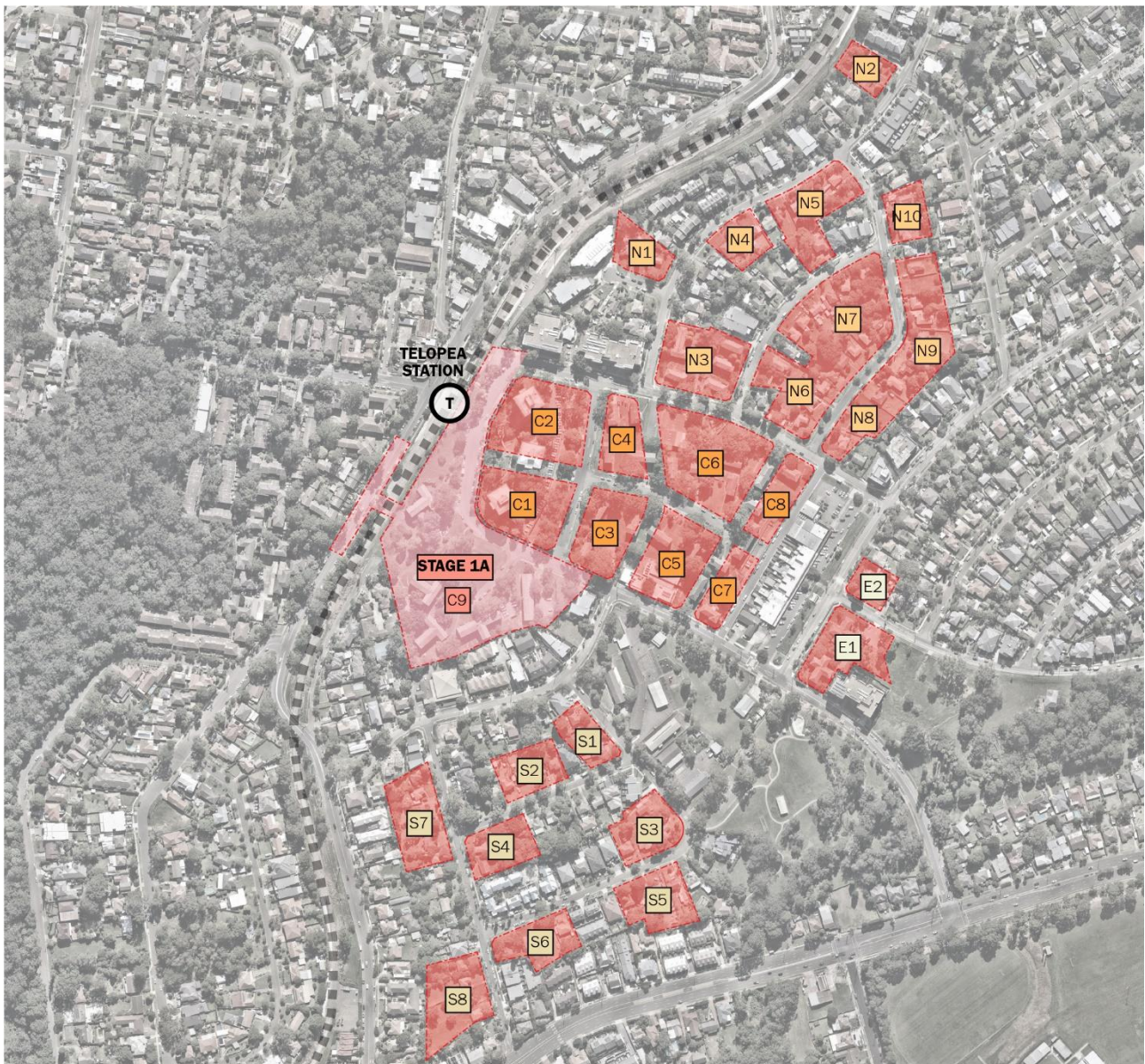
## 2. SITE CONTEXT

### 2.1. 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

## 2.2. 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.

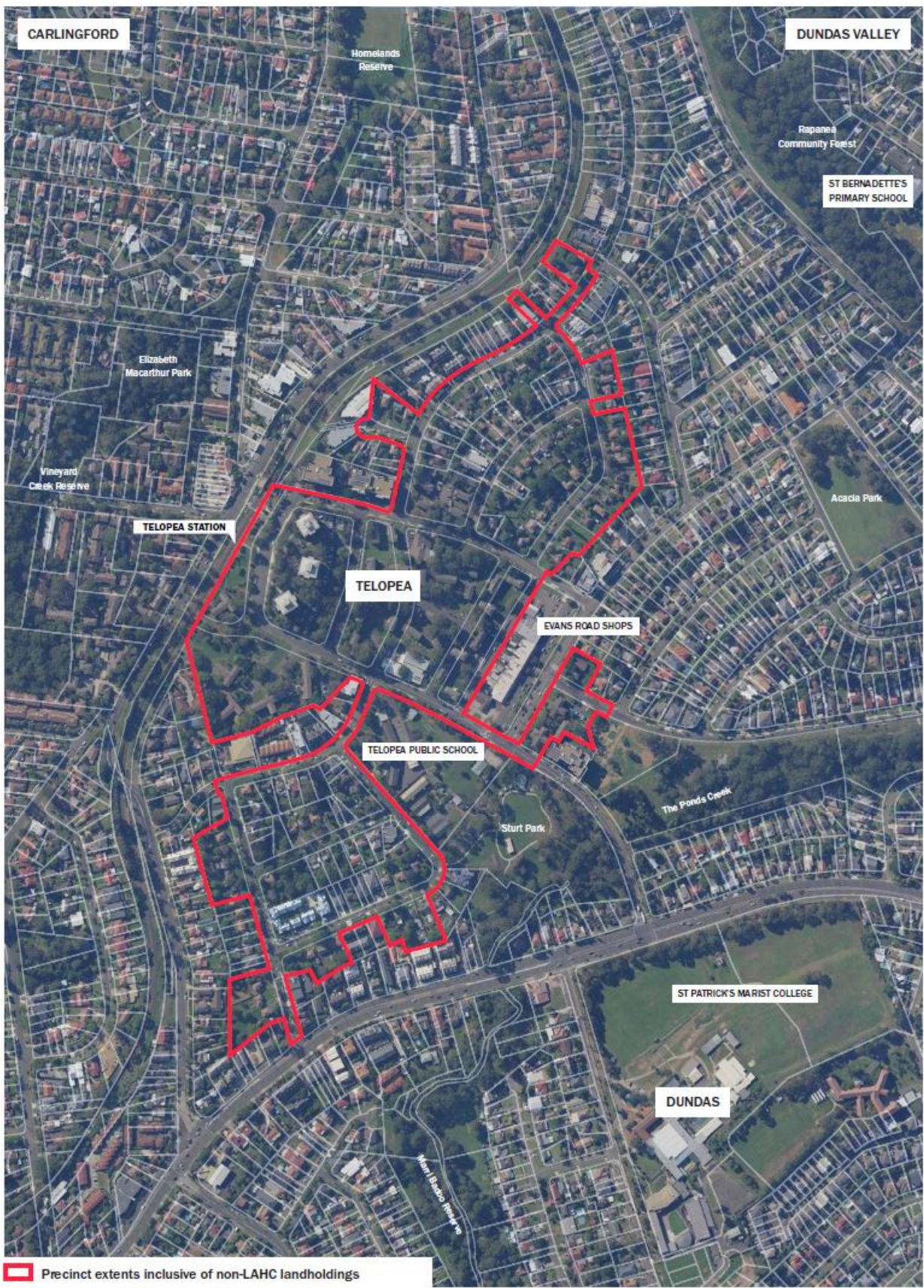
## 2.3. EXISTING DEVELOPMENT

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

## 2.4. 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

## 2.5. 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.

## 2.6. 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.

## 2.7. 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.

## 2.8. 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.

## 2.9. TELOPEA CPA CORE AREA

This Clause 4.6 Request relates to the Core precinct with 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 20<sup>th</sup> 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





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.

Table 1 Land Use Development Block

Development Block	Uses
<b><u>Core Precinct</u></b>	
C1	Mixed Use (Retail & Medical Centre), Market Rate Housing, Social Housing, Affordable Housing
C2	Mixed Use (Retail & Childcare Centre), Market Rate Housing
C3	Library, Community Centre, Market Rate Housing
C4	Church, Residential Aged Care Facility, Market Rate Housing
C5	Market Rate Housing
C6	Market Rate Housing, Social Housing
C7	Market Rate Housing, Social Housing
C8	Market Rate Housing

Figure 5 Proposed Land Uses in the Core area



Source: Bates Smart

### 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.

Table 2 Concept Building Heights for Core Area

Development Block	Building Number	Proposed Maximum Building Height
<b>Core Precinct</b>		
C1	C1.1	70m
	C1.2	86m
C2	C2.1	86m
	C2.2	48m
C3	C3	58m
C4	C4.1	25m
	C4.2	60m
C5	C5.1a	33m

Development Block	Building Number	Proposed Maximum Building Height
<b>Core Precinct</b>		
C6	C5.2b	40m
	C5.3b	24m
	C6.1a	35m
	C6.1b	47m
	C6.1c	33m
	C6.2a	33m
C7	C7.1	35m
	C7.2	47m
C8	C8.1a	35m
	C8.1b	40m
	C8.1c	40m

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 comply with the requirements set out in the SEPP65 Apartment Design Guide.

Figure 8 Core Precinct Concept Masterplan



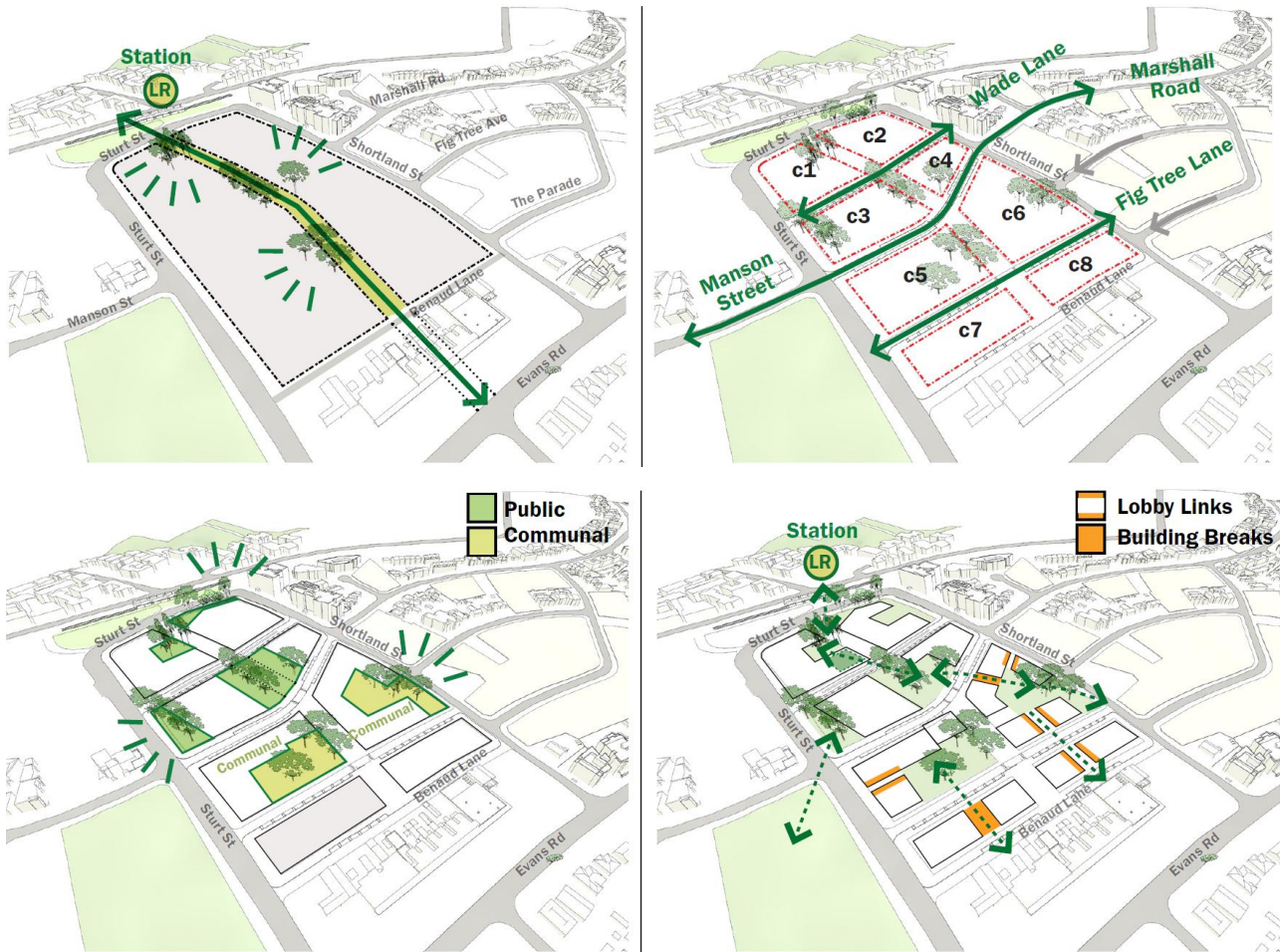
Source: Bates Smart

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

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. 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

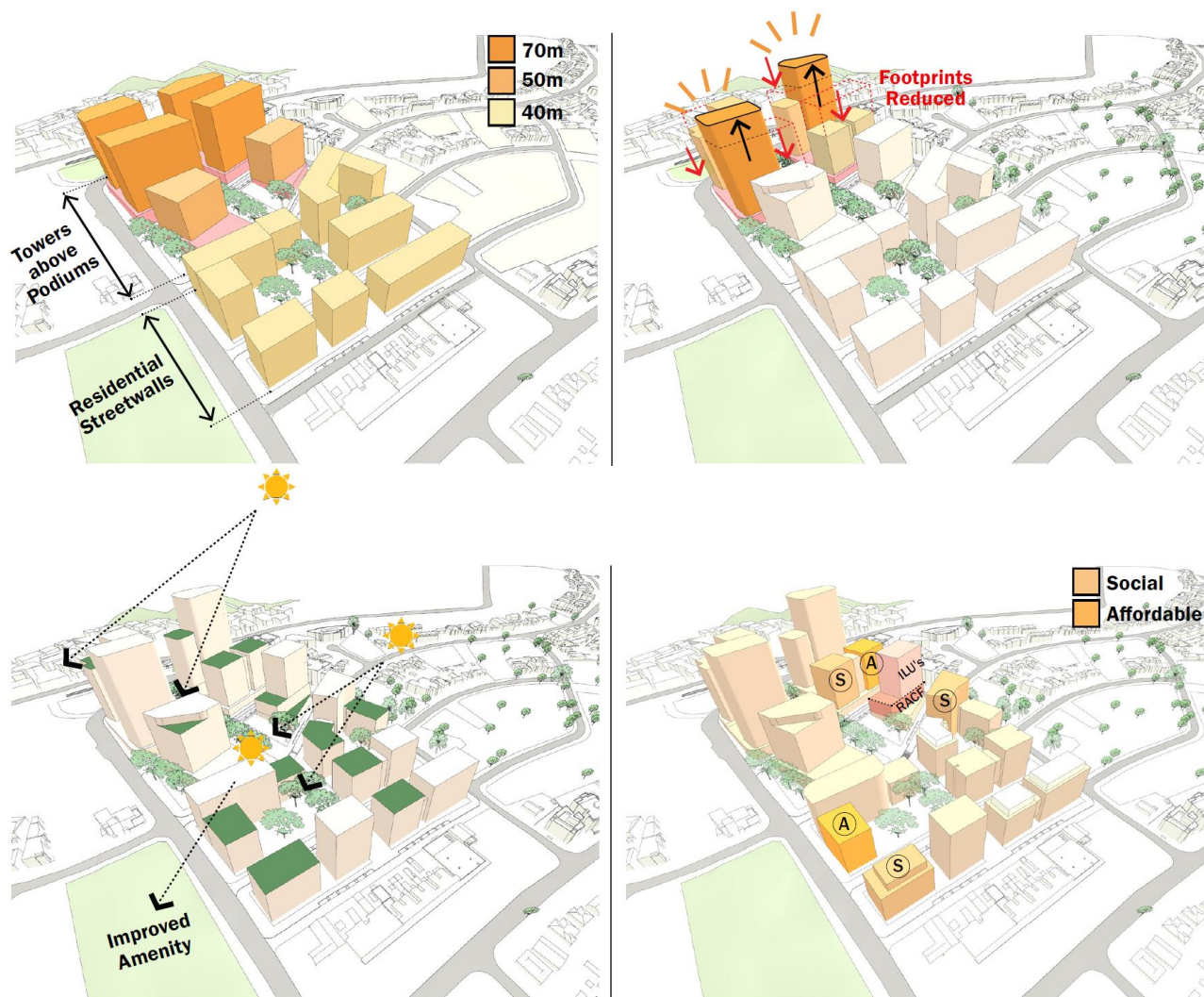


Source: Bates Smart

Building heights set out in the PLEP 2011 generally increase towards the top of the hill. The upper Core proposes towers on podiums, while courtyard and slab blocks are proposed in the lower Core. The Concept Proposal includes building heights for the two marked residential buildings above the PLEP 2011 height plane, mitigating the need for a third tall building and reduced floorplates in the two tallest buildings. Upper Core towers are staggered to improve the silhouette on the skyline. Throughout the Core area, buildings heights have been locally reduced to improve amenity, with lowered heights improving solar access to existing and proposed open spaces. The Concept Proposal breaks down the building forms through upper floor setbacks, expressed street walls, tenure mix and varied architectural expression to create a precinct of genuine diversity.

The upper Core proposes human scaled podiums of two – three 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.

Figure 10 Core area proposed building height principles

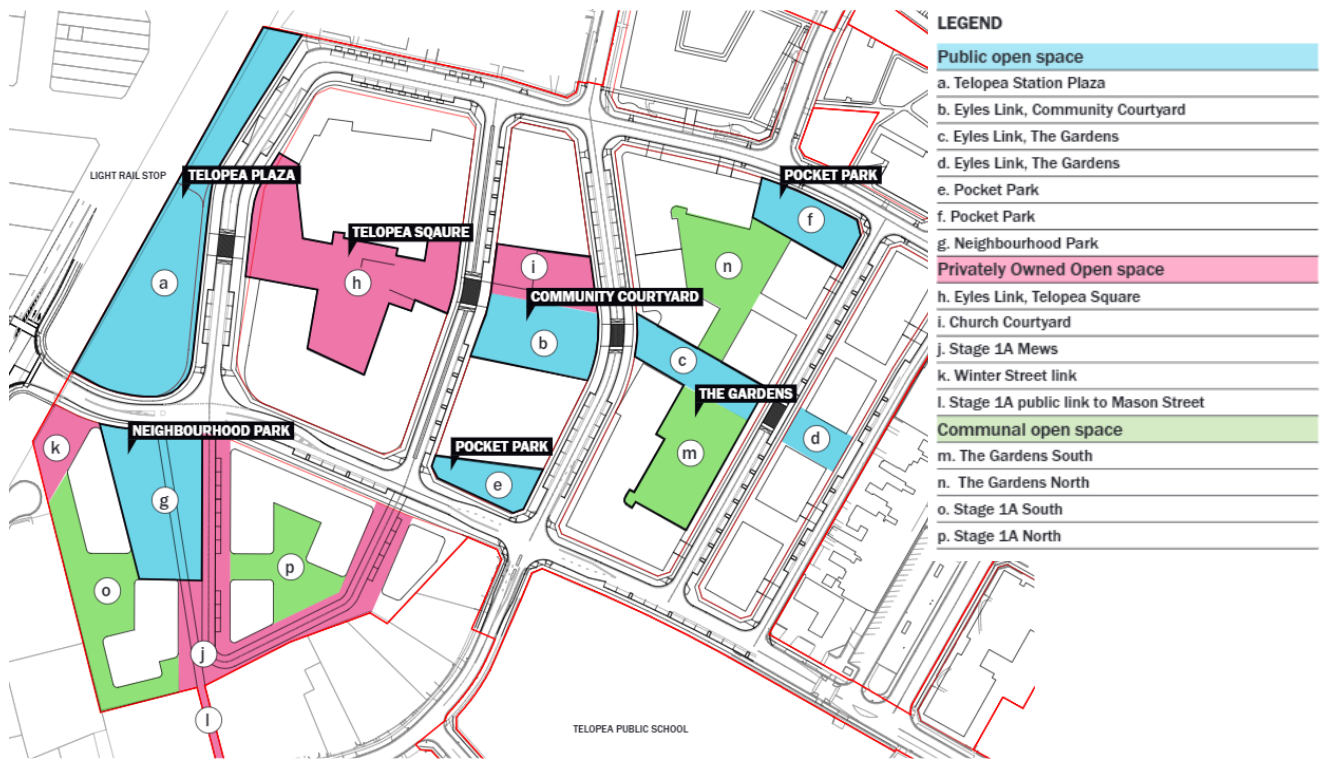


Source: Bates Smart

### 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 11 Core Precinct Open Space Network



Source: Bates Smart and Hassell

## 4. VARIATION OF BUILDING HEIGHT 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 4.3 Height of Buildings sets out the following objectives:

- (a) to nominate heights that will provide a transition in built form and land use intensity within the Parramatta Local Government Area,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- (c) to require the height of future buildings to have regard to heritage sites and their settings,
- (d) to ensure the preservation of historic views,
- (e) to reinforce and respect the existing character and scale of low density residential areas,
- (f) to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.

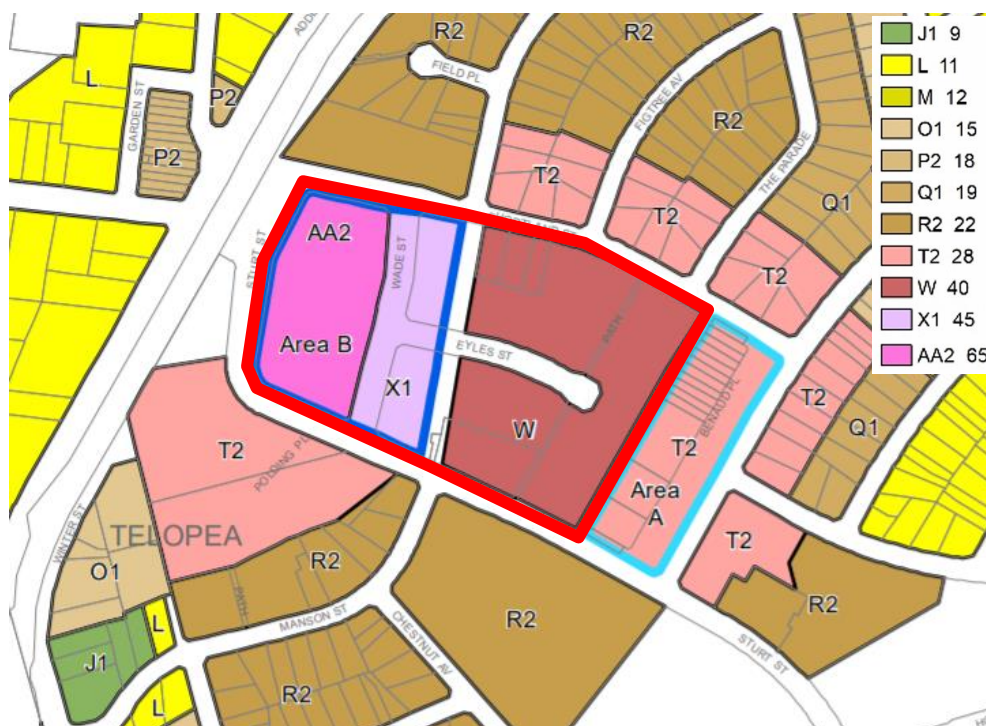
The PLEP sets maximum heights for buildings in the Telopea CPA Core area as shown in **Figure 12** and **Table 3**.

PLEP 2011 Clause 6.16 relates to areas identified as Area A and Area B in the Telopea CPA Core precinct as well as the Telopea CPA as a PLEP 2011 Key Site.

Clause 6.16 includes provisions for certain building heights within the Telopea precinct as follows:

- Despite Clause 4.3, the maximum height for a building on land shown edged heavy blue and identified as “Area B” may exceed the maximum height identified for that land by 5 metres, but only if the consent authority is satisfied that the building will have retail premises, business premises or community facilities on any ground level.

Figure 12 PLEP 2011 Height of Buildings Map – Core Area



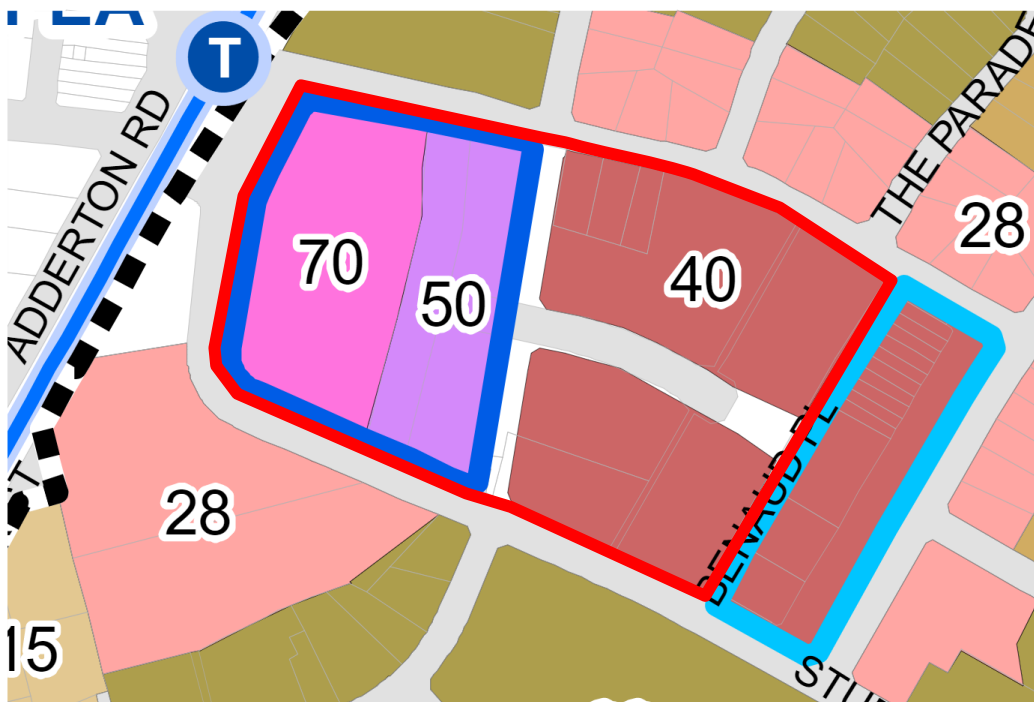
Source: PLEP 2011

Considering PLEP 2011 Clauses 4.3 and 6.16, the maximum permissible building heights for the Core precinct are shown in **Table 3** below.

Table 3 PLEP 2011 Height of Buildings – Core area

Development Block	PLEP 2011 Permissible Building Height
<b><u>Core Precinct</u></b>	
C1	70m
C2	70m
C3	50m
C4	50m
C5	40m
C6	40m
C7	40m
C8	40m

Figure 13 PLEP 2011 Maximum Height of Buildings – Core area



Source: Bates Smart

## 4.2. PROPOSED VARIATION TO CLAUSE 4.3

As set out in section 4.1 above, Clauses 4.3 and 6.16(2) of the PLEP 2011 permit building heights for the Telopea CPA Core area ranging from 40m to 70m. The proposed variation to the building heights standard is set out in **Table 4** below and illustrated in **Figure 14**.

Table 4 Proposed Height of Buildings Variation

Development Block	Building Number	PLEP 2011 Permissible Height	Proposed Height of Building Envelope	Proposed Variation
C1	C1.1	70m	70m	0.0%
	C1.2	70m	<b>86m</b>	<b>22.9%</b>
C2	C2.1	70m	<b>86m</b>	<b>22.9%</b>
	C2.2	70m	48m	-31.4%
C3	C3	50m	<b>58m</b>	<b>16.0%</b>
C4	C4.1	50m	25m	-50.0%
	C4.2	50m	<b>60m</b>	<b>20.0%</b>
C5	C5.1a	40m	33m	-17.5%
	C5.2b	40m	40m	0.0%
	C5.3b	40m	24m	-40.0%
C6	C6.1a	40m	35m	-12.5%
	C6.1b	40m	<b>47m</b>	<b>17.5%</b>
	C6.1c	40m	33m	-17.5%
	C6.2a	40m	33m	-17.5%
	C6.2b	40m	40m	0.0%
C7	C7.1	40m	35m	-12.5%
	C7.2	40m	<b>47m</b>	<b>17.5%</b>
C8	C8.1a	40m	35m	-12.5%
	C8.1b	40m	40m	0.0%
	C8.1c	40m	40m	0.0%

Figure 14 Core area proposed height of buildings overlayed with LEP height controls (EIS Scheme)



Source: Bates Smart

In relation to Clause 6.16, **Table 5** demonstrates compliance with the requirements for the relevant blocks within the Core area in terms of retail premises, business premises or community facilities at ground level.

Table 5 Compliance with Clause 6.16

Development Block	PLEP 2011 Permissible Building Height	Proposed Use at Ground Level
<b><u>Core Precinct</u></b>		
C1	70m	Retail & medical centre
C2	70m	Retail & childcare centre
C3	50m	Library & community centre
C4	50m	Church & aged care facility

It is noted that some areas of the proposed Concept Masterplan fall outside of the boundaries on the PLEP 2011 Height of Building Map, predominantly due to the proposed road alignment to retain existing trees. In these areas the proposed building podium have a reduced building height appropriate to addressing the street.

Following feedback from the SDRP and Parramatta City Council, the proposed Concept Masterplan has been designed to maximise residential amenity and public open space, reduce building footprints, and provide a diversity of form across the Core area. Although six of the proposed twenty buildings within the Core area breach the PLEP 2011 height standard by between 16% and 22.9%, this building form allows greater spacing between buildings to provide greater public open space, improved solar access, building separation, visual connections, and other public benefits.

The proposed increase in building height on six of the twenty buildings allows for a significant reduction in height on nine buildings of between -12.5% and -44.0%, well below the PLEP 20211 height standard. This allows a greater variation of form across the site and improves residential amenity (outlook, visual privacy, solar access) and solar access to the ground plane.

It is noted that approximately 22,000 sqm of GFA permissible under the PLEP 2011 height control is not proposed to be utilised, with approximately 16,000 sqm of GFA proposed above the PLEP 2011 on the six buildings. It is noted that 1,000 sqm of the height increase is to accommodate an increase in the library from 3,000 sqm to 4,150 sqm, as requested by council.

Figure 15 Proposed Core Buildings Heights Compared to PLEP 2011 Height Controls (EIS Scheme)



Source: Bates Smart

## 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*
- (b) 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*
- (b) the public benefit of maintaining the development standard, and*
- (c) 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 Height of Buildings standard prescribed for the site in Clause 4.3 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 Height of Buildings 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 Height of Buildings in accordance with Clause 4.3 of 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 Height of Buildings prescribed by Clause 4.3 of the PLEP 2011 is a development standard capable of being varied under Clause 4.6(2) of PLEP 2011.

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 PLEP 2011.

### 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])

The specific objectives of the Height of Buildings development standard as specified in Clause 4.3 of the PLEP 2011 are detailed in **Table 6** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 6 Assessment of consistency with Clause 4.3 objectives

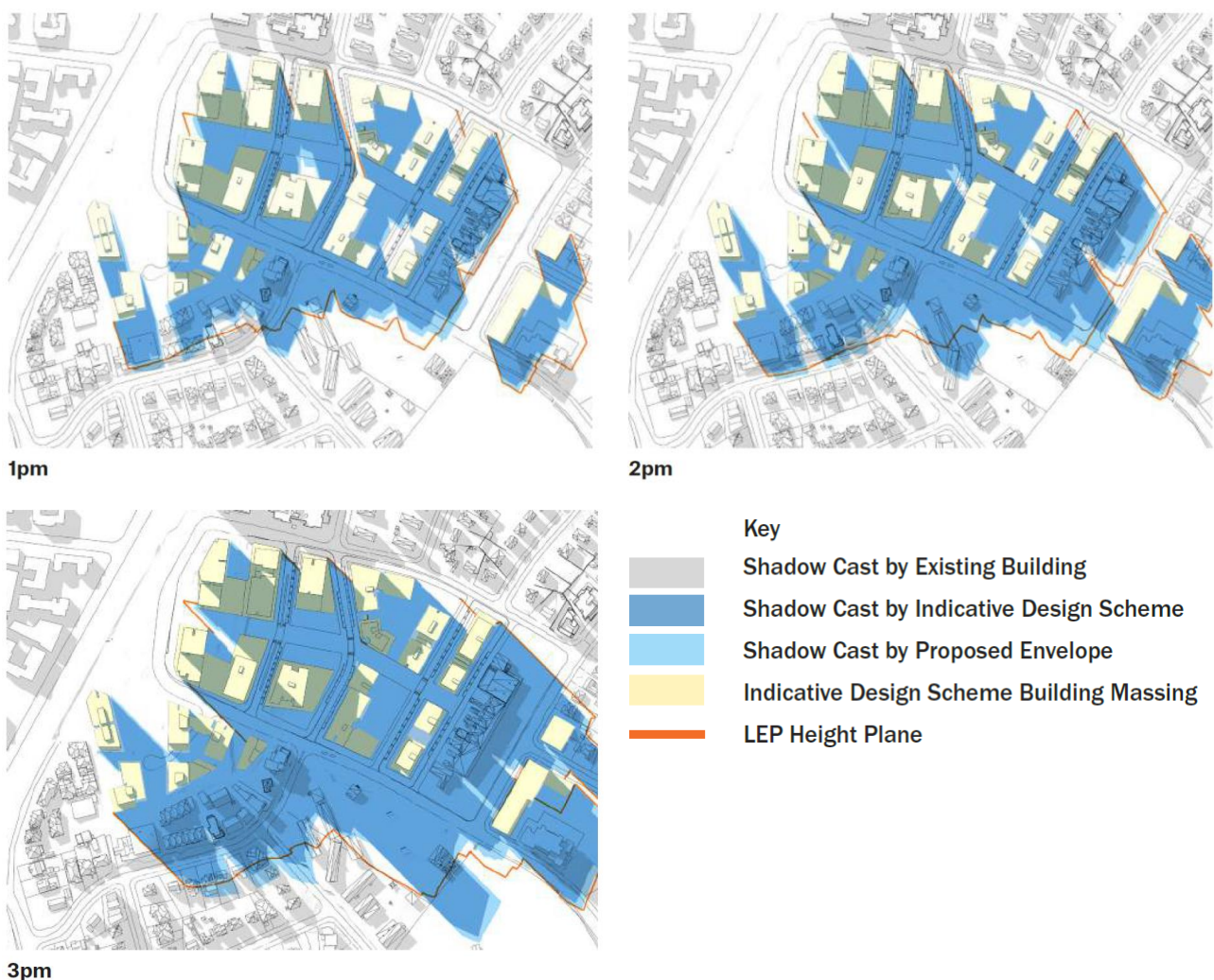
Objectives	Assessment
<p><i>To nominate heights that will provide a transition in built form and land use intensity within the Parramatta Local Government Area</i></p>	<p>The PLEP 2011 identifies the Core precinct to the east of the future Telopea light rail station as a mixed use and high-density residential zone, with the tallest building heights permitted for the Telopea precinct. The PLEP 2011 also identifies height of building transition zones to the north, east and south of the Core area from high-rise to mid-rise. The Concept Proposal is in accordance with this built form and land use strategy, with taller mixed use marker buildings in the Core on the east side of Adderton Road, transitioning to mid-rise buildings with community uses to the north, east and south. This in turn transitions to low-rise residential dwellings in the broader Telopea CPA.</p>
<p><i>To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development</i></p>	<p>A number of design principles have been utilised to minimise the visual impact of the proposal including reducing building heights in alignment with the topographic slope of the site, proposing a variety of complimentary building heights across the Core area to create visual interest, and maximising building separation distances and public domain spaces.</p> <p>The visual impact of the proposed building envelopes has been assessed from identified key views. The View Impact Assessment confirms the additional height for tower forms C1.2, C2.1, C3 and C4.2 as well as lower built forms located more on the periphery for example C6 and C7, will not generate any significant visual impacts in all cases. This is because in the majority of views modelled the additional built form sought does not block views to scenic features and predominantly blocks views of open sky.</p> <p>Disruption of views will be minimised through the network of cross streets and pedestrian connections through the Core area, with the mix of compact building forms allowing views to be maintained across the precinct.</p> <p>To maintain privacy, the indicative design scheme orientates dwellings to maximise existing and proposed residential amenity including privacy. Consistent with the ADG, building floorplates are proposed with no more than 12 apartments on a single level, reducing to a maximum of 9 per floor for high rise towers.</p> <p>Solar access shadow diagrams have been prepared by Bates Smart and are included in the Urban Design Concept Plan Report and Response to Submissions Report. In relation to solar access from the proposed Core area, shadow diagrams have been prepared for hourly intervals from 9am to 3pm for 21<sup>st</sup> June, representing the greatest overshadowing impact through the year.</p>

<p><b>Objectives</b></p>	<p><b>Assessment</b></p> <p>The shadow diagrams compare the shadow cast by existing development at the site, shadow cast by a building height compliant with the PLEP 2011, shadow cast by the proposed Concept Masterplan building envelopes, and shadow cast by the indicative design scheme.</p> <p>The shadow diagrams show that for the majority of time, the shadows cast by the proposed building envelopes are equal to or less than the shadows that would be cast by PLEP 2011 compliant building heights. These shadows are cast within the Telopea precinct redevelopment area.</p> <p>Between 1pm and 3pm on 21<sup>st</sup> June, the proposed building envelopes cast shadow beyond that cast by a PLEP 2011 compliant building height. At 1pm and 2pm additional shadow is cast over a portion of the Telopea Public School site and at 3pm additional shadow is cast over a northern portion of Sturt Park (see <b>Figure 16</b> below). It is noted that in both cases, the additional overshadowing is only to a small portion of the school and park sites.</p> <p>In relation to Telopea Public School, the additional overshadowing at 1pm occurs at the western corner on the school site in an area which is already shaded by mature trees and at 2pm the additional overshadowing mainly occurs to existing school buildings and an area of car parking. The additional overshadowing does not occur to the main areas of the school grounds during recess or lunchtime break periods.</p> <p>In relation to Sturt Park, the additional overshadowing occurs towards the northern boundary of the park to an area which is already partially shaded by mature trees. The main grassed area of the park will continue to receive full solar access.</p> <p>The variation to building height proposed allows for a greater area of additional high quality public space to be delivered in the Core area which will be accessible to the general public 24 hours a day. A total of over 12,860sqm of public open space is proposed, including Telopea Station Plaza, a Neighbourhood Park, Library Courtyard and pocket parks and gardens. An additional 6,160sqm of privately owned publicly accessible space is also proposed including Telopea Square, Church Courtyard and pockets parks. The revised proposal provides additional open space through the further setback of buildings. This maximises the opportunity for tree retention, improves the quality of public open spaces and maximises light to buildings.</p> <p>The additional overshadowing as a result of this building height variance has a relatively minor impact on the use of the school and park, with the overshadowing reducing in the Spring and Autumn months and being at its minimum in Summer. Given</p>
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Objectives	Assessment
	<p>that the vast majority of the school and park areas will not be affected by additional overshadowing and that the additional overshadowing only occurs for a couple of hours over the day, it is considered that this is acceptable, particularly given the resultant new additional public spaces that will be delivered as part of the Concept Proposal.</p>
<p><i>To require the height of future buildings to have regard to heritage sites and their settings</i></p>	<p>As set out in the supporting Heritage Impact Statement (<b>HIS</b>), the Concept Proposal has been prepared with consideration for the appropriate management of the heritage values of the area. The Concept Proposal will have no adverse heritage impacts on the significance of heritage items and future development in accordance with the Concept Proposal will not detract from the existing setting and streetscape of any heritage item.</p>
<p><i>To ensure the preservation of historic views</i></p>	<p>The HIS does not identify any historic views in relation to the proposal. The closest heritage item to the Concept Masterplan area is Redstone House, listed on the NSW State Heritage Register. The HIS finds that the spatial separation of the proposal in relation to Redstone House is such that the proposal will not dominate views to or from the heritage item or significantly impact on its visual setting. The proposal generates a level of visual effects and potential visual impacts that are contemplated in the statutory and non-statutory controls for the site, and can be supported on visual impacts grounds.</p>
<p><i>To reinforce and respect the existing character and scale of low density residential areas</i></p>	<p>The Concept Proposal has been designed to promote the site's sloping bushland hillside character through streets and building forms built along the site contours and arranged to retain the site's most significant trees. Open spaces are proposed around existing trees with a mix of public spaces and communal gardens contributing to retaining the bushland hillside character of the Telopea CPA.</p> <p>The Concept Masterplan has also been carefully considered in relation to setting the desired future character for the Telopea precinct. The Telopea precinct has recently been rezoned through the PLEP 2011 to deliver high density residential development. The Concept Proposal seeks to deliver a mix of high-quality dwellings, community facilities and public open space in accordance with the Design Guidelines which will also guide the character of development in the Telopea CPA to come.</p>
<p><i>To maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of</i></p>	<p>As set out in the Urban Design Concept Plan Report and Response to Submissions Report, solar access to both residential apartments and areas of public domain have been assessed. Buildings have been arranged to maximise</p>

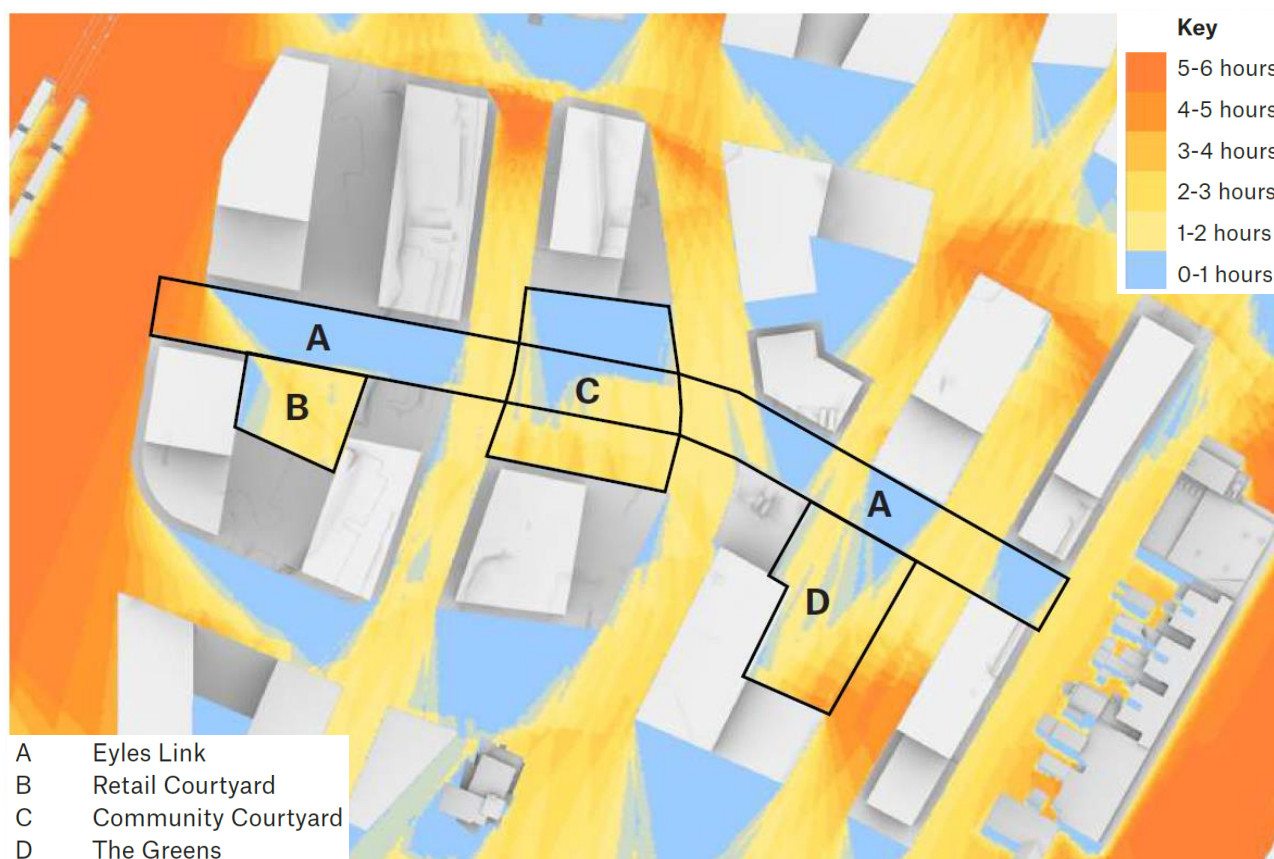
<p><b>Objectives</b></p> <p><i>the public domain, including parks, streets and lanes</i></p>	<p><b>Assessment</b></p> <p>opportunities for solar access to comply with the requirements set out in the Apartment Design Guide (ADG). Compliance has been assessed on a building by building and lot by lot basis. The indicative scheme achieves above the ADG requirements with 75% of apartments receiving at least 2 hours of sunlight per day to their living rooms and private open spaces.</p> <p>As shown in <b>Figure 17</b> below, the majority of new open space to be created in the Core area receives a minimum of 2 hours and up to 6 hours of sunlight between 9 and 3pm on the 21<sup>st</sup> June. The Concept Plan achieves a level of solar access to the public domain either equal to or greater than an LEP compliant scheme.</p>
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Figure 16 Shadow diagrams for the Concept Proposal on 21<sup>st</sup> June from 1pm-3pm



Source: Bates Smart

Figure 17 Solar access to public domain areas, Core precinct, 21<sup>st</sup> June 9am-3pm



Source: Bates Smart

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

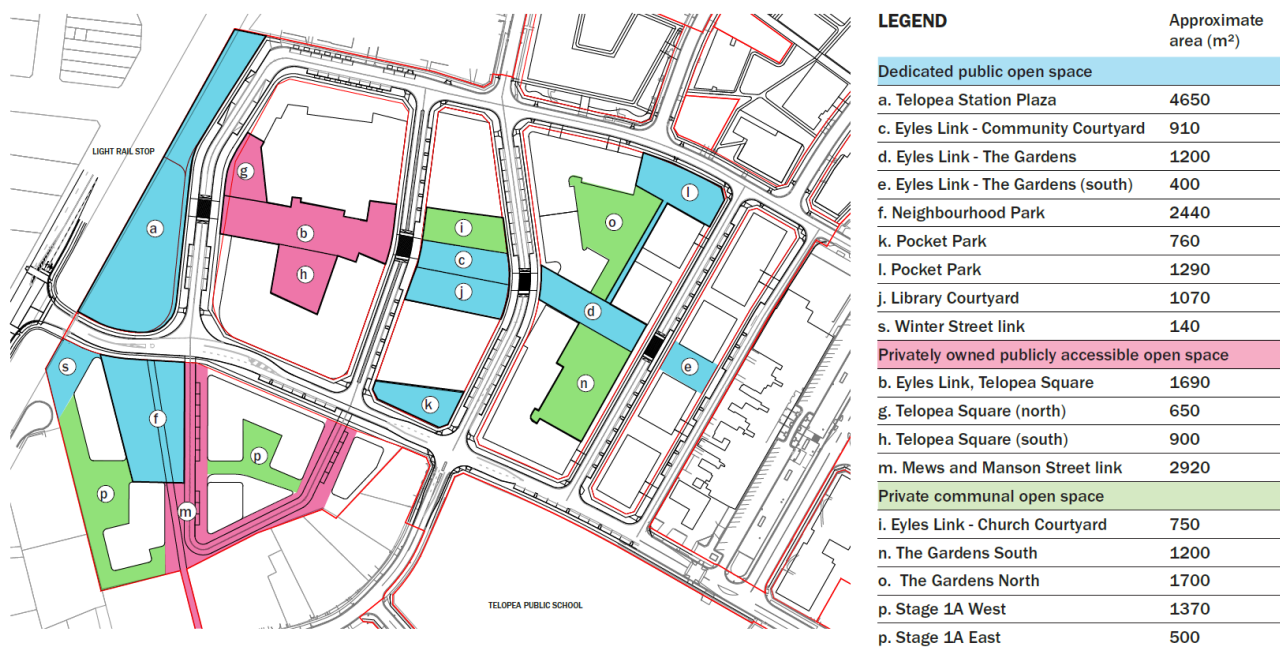
- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131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

In accordance with the land use zoning for the site, the Concept Masterplan proposes high-density residential development with a mix of uses at ground and podium levels. The proposed variation to the building height control allows for greater public benefits to be delivered in comparison to a scheme with building heights compliant with the PLEP 2011. Primarily, the variances to the building height limit allow for a building layout and form to be delivered which increases the amount and quality of public space within the Core area. The size and quality of pedestrian routes, public open space, communal gardens, and the public domain is improved through the proposed building envelopes.

The proposed built form and layout also allows for a greater retention of existing mature trees across the Core area, contributing to ongoing sustainability, the quality of the public domain and promoting the character of the Telopea precinct.

As demonstrated in **Figure 18** the Concept Masterplan provides a diversity of open space for a range of uses. The proposed increase in building heights on six of the twenty buildings within the Core has allowed for a significant reduction in building footprints and thus a greater amount of open space can be delivered.

Figure 18 Open space provision, Core precinct

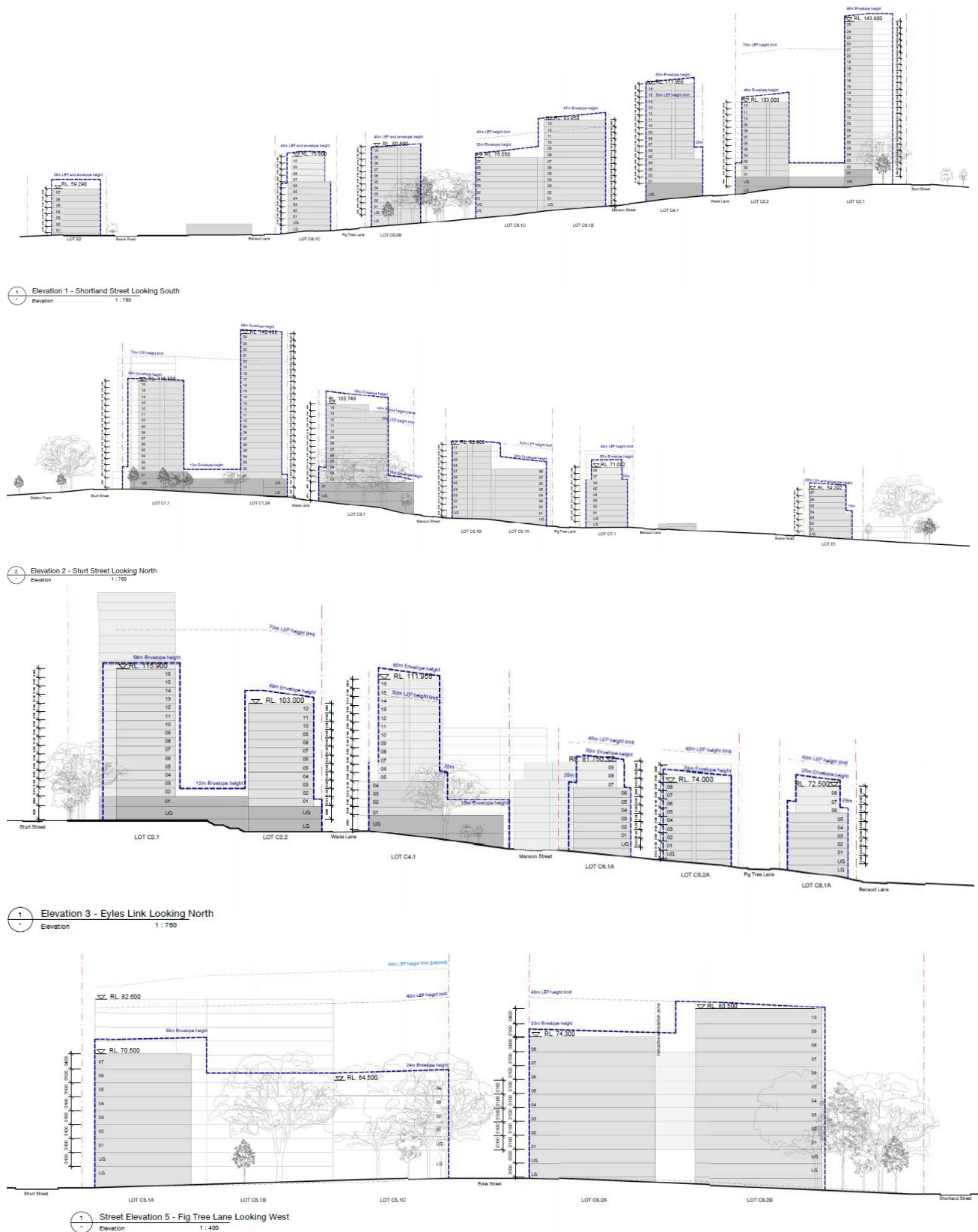


In relation to built form, a PLEP 2011 compliant building height profile results in limited variation in height, plan form or typology. In response to SDRP feedback, the proposal has been designed to maximise diversity of built form and character across the precinct, including greater building height variation than currently prescribed by the PLEP 2011.

As shown in **Figure 19** below, the proposed height variations create greater differentiation in building silhouette across the Core area, as well as providing improved amenity for both residents and public open space. The key variances proposed to maximise built form diversity and character are as follows:

- Buildings C1.2 and C2.1 are increased by 5 storeys but reduced in footprint to approximately 700 sqm GFA.
- Building C2.2 is reduced to 12 storeys above podium, increased in size but amended to be dual core, to reduce the number of dwellings per floor.
- Building C3 is increased in height to include a 10% height increase to provide greater flexibility for the proposed design excellence competition.
- Building C4 podium is set back at ground level to improve spacing around the Eyles Street link.
- Building C5 southern wing is reduced by four storeys to reduce overshadowing to the Telopea Public School site.
- Building C6 southern and northern wings are reduced in height, and a new building break is offset by two additional storeys in the north west corner.
- Buildings C7 and C8 both have their southern wings reduced by two storeys which is offset by two extra floors on the northern part of building C7.

Figure 19 Core area sections showing PLEP 2011 maximum building heights and proposed building envelopes



Source: Bates Smart

The visualisations in **Figure 19** and **Figure 20** below illustrate the proposed indicative scheme in comparison to a scheme with PLEP 2011 compliant building heights.

Figure 20 PLEP 2011 Compliant Visualisation



Source: *Bates Smart*

Figure 21 Concept Proposal Visualisation (EIS Scheme)



Source: *Bates Smart*

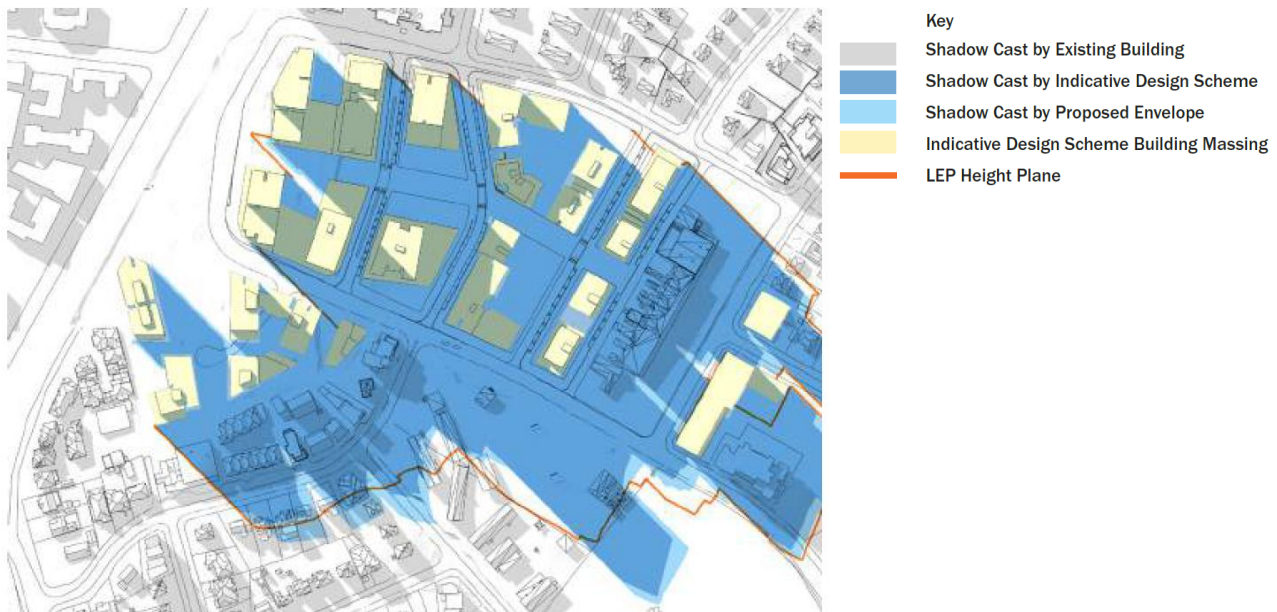
- **The burden placed on the community (by requiring strict compliance with the FSR standard) would be disproportionate to the** (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development (cf Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]).

The proposed development is in accordance with the land use zoning for the site and will deliver a mix of high-quality market rate, affordable and social housing as well as community services and facilities. The proposed building height variation allows a number of benefits to be delivered through the built form and layout of the site including:

- A greater area and higher quality public domain and public open space in a mixture of parks and gardens.
- Retention of existing mature trees, contributing to the character of the Telopea precinct.
- A greater variation in building form and typologies in response to SDRP and PCC feedback.
- Fewer apartments per floor in high rise buildings.
- Greater building spacing providing improved views and greater differentiation in silhouettes.
- Increased open space alongside Eyles Street link.

It is also noted that the 1,000sqm proposed height increase for building C3 is to accommodate an increase in the library GFA as requested by PCC.

Although the Concept Proposal creates some overshadowing to the Telopea Public School and Sturt Park sites, this is limited and in the worst case on 21<sup>st</sup> June creates shadow to small areas either towards the boundary of the sites on land already shaded by trees, or on existing buildings or car park areas. Due to the proposed building envelope forms, PLEP 2011 compliant envelopes would cast greater shadow over the school and the park. The taller, slimer building envelopes proposed cast less shadow than a broader, shorter PLEP 2011 compliant building envelope.



**3pm**

Source: Bates Smart

A proposal that complied with the PLEP 2011 would result in inferior quality housing and public realm being delivered for the community as well as greater amenity impacts for the local area.

### **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:

- Allowing high quality market rate, affordable and social housing, community facilities and public domain to be delivered in a designated, sustainable urban renewal area with access to the future light rail service.
- Enabling an urban and architectural design with greater public benefits to be delivered including high quality public domain and public open space, amenity for existing and future residents and visually diverse and interesting high-density housing.
- A development which priorities high quality public open space for the local community including maximising existing mature tree retention, promoting local character.
- Minimal impacts on the amenity of existing residents whilst providing new, high quality public open spaces for the broader community.
- Provision of new, high quality community facilities including a library, community centre, church and residential aged care facility.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed Height of Buildings 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 6** 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 Mixed Use and High Density Residential zones. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 7** below.

Table 7 Assessment of compliance with land use zone objectives

Objective	Assessment
<b>B4 Mixed Use</b>	
(a) To provide a mixture of compatible land uses.	(a) An appropriate mix of land uses is provided including retail, residential and community facilities.
(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.	(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.
(c) To encourage development that contributes to an active, vibrant and sustainable neighbourhoods.	(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.
(d) To create opportunities to improve the public domain and pedestrian links.	(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.
(e) To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.	(e) The proposed retail uses, library, community centre, and residential aged care facility will provide for the daily commercial needs of the locality.
(f) To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.	(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.
<b>R4 High Density Residential</b>	
(a) To provide for the housing needs of the community within a high density residential environment.	(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.
(b) To provide a variety of housing types within a high density residential environment.	(b) High density market rate, affordable and social housing is proposed to be provided.
(c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.	(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.
(d) To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.	(d) High density residential development is proposed close to the future Telopea light rail station, existing bus network and access to employment opportunities.
(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.	(e) The Concept Masterplan proposes a wide variety of public open spaces, facilities and services for use by residents and the general public.

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the Height of Buildings development standard as it is consistent with the objectives of

the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

## **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 Height of Buildings development standard 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 Height of Buildings development standard and the land use zone objectives despite the technical non-compliance.

The planning benefits of the proposed scheme include the delivery of high quality, high density residential dwellings and community facilities with greater, high quality public realm and open space. The proposed residential uses will have a high level of amenity and impacts on the amenity of existing residents are minimised. The proposal will deliver new, high quality community facilities and services and public open space for the broader community. The proposals seek to support the existing landscape character of Telopea including through maximising tree retention. A proposal which complied with the Height of Buildings development standard would result in lower quality housing, reduced public benefits for the community and greater impacts on the amenity of existing residents.

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 Height of Buildings development standard contained within Clause 4.3 of the 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.

It is reasonable and appropriate to vary the Height of Buildings development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposed building heights provide for a transition in built form and land use intensity from the western Core area adjacent to the future light rail station to the eastern Core and the wider Telopea precinct beyond.
- The proposed Concept building envelopes have been carefully designed to minimise visual impact, disruption of views and loss of privacy, delivery a high standard of amenity for existing and future residents.
- The proposed built form provides a high level of solar access to the public domain and public open space and any overshadowing impacts have sought to be minimised.
- The Concept Proposal will not have any adverse impacts on heritage items or historic views.
- The Concept Masterplan has the existing landscape character of Telopea as its key design principle with the built form and layout respecting and reinforcing the topography of the site and new public spaces being designed around the retention of existing mature trees.
- In response to SDRP and PCC feedback, the proposed building heights allow high quality, high density residential development to be delivered in a varied and interesting building typology and form which provides greater amenity for the Telopea community.
- The Concept Masterplan includes a variety of high quality public open spaces including parks, gardens, landscaped pedestrian links with a varied planting palette for the benefit of existing and future residents.
- The Proposal will deliver new, high quality retail uses, a childcare centre, medical centre, library, church and residential aged care facility to serve the Telopea community.
- Of the twenty buildings proposed as part of the Core area, only six represent a variation to the Height of Buildings control, with the remaining fourteen buildings within or below the height limit. Of the six buildings that breach the PLEP 2011 height limit, this variance is by a maximum of 23%, with four of the six buildings having a height variance of 20% or less.
- A proposal which complied with the Height of Buildings development standard would result in lower quality housing, reduced public benefits for the community and greater impacts on the amenity of existing residents.

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 Height of Buildings development standard should be applied.

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