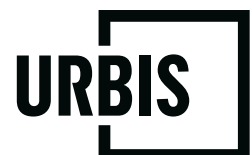




CLAUSE 4.6 VARIATION REQUEST

State Significant Development
SSD-14378717: Telopea
Concept Plan Height Variation

Prepared for
FRASERS PROPERTY TELOPEA DEVELOPER PTY LTD
December 2022



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CONTENTS

1.	Introduction	1
1.1.	Crown Development Application.....	2
2.	Site Context	3
2.1.	Site Description	3
2.2.	Locality Context	4
2.3.	Existing Development	4
2.4.	Topography	6
2.5.	Vegetation	6
2.6.	Open Space	7
2.7.	Heritage	7
2.8.	Public Transport.....	7
2.9.	Telopea CPA and Core Area precinct	7
3.	Proposed Core Precinct Development.....	11
3.1.	Future Core Precinct Urban Structure	11
3.2.	Land Uses	14
3.3.	Building Massing.....	16
3.4.	Building Height.....	16
4.	Variation of Building Height Standard	21
4.1.	Urban structure drivers for varying the Development Standard	21
4.2.	Currently Applicable Development Standard.....	22
4.3.	Proposed Variation to Clause 4.3.....	26
5.	Relevant Assessment Framework.....	31
6.	Assessment of Clause 4.6 Variation	32
6.1.	Is the planning control a development standard that can be varied? – Clause 4.6(2)	32
6.2.	Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? – Clause 4.6(3)(A).....	32
6.2.1.	Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard	33
6.2.2.	Test 3: The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable	47
6.3.	Are there sufficient environmental planning grounds to justify contravening the development standard? – Clause 4.6(3)(B).....	52
6.4.	Has the written request adequately addressed the matters in sub-clause (3)? – Clause 4.6(4)(A)(I)	53
6.5.	Is the proposed development in the public interest? – Clause 4.6(4)(B)(II)	53
6.6.	Has the concurrence of the planning secretary been obtained? – Clause 4.6(4)(B) and Clause 4.6(5)	55
7.	Conclusion.....	57
	Disclaimer.....	58

FIGURES

Figure 1 Telopea Concept Plan Area	3
Figure 2 Telopea CPA Existing Development	5
Figure 3 Telopea CPA Topography	6
Figure 4 Telopea Core Precinct	8
Figure 5 Existing Core area	9
Figure 6 Urban Structure for the Concept DA and Core Precinct	12
Figure 7 Core Precinct Open Space Network	13
Figure 8 Proposed Land Uses in the Core area – Ground Level (EIS)	15
Figure 9 PLEP 2011 Maximum Building Heights	17
Figure 10 Core Area Proposed Maximum Building Heights	20
Figure 11 PLEP 2011 Height of Buildings Map – Core Precinct	22
Figure 12 PLEP 2011 Maximum Height of Buildings – Core area	25
Figure 13 Core area proposed height of buildings overlayed with LEP height controls (RtS Scheme)	28
Figure 14 Proposed Core Buildings Heights Compared to PLEP 2011 Height Controls (EIS Scheme)	30
Figure 15 Apartments per Core – Comparison of compliant and proposed typical level	41
Figure 16 Shadow diagrams for the Concept Proposal on 21 st June from 1pm-3pm	42
Figure 17 Overshadowing Telopea Public School, 21 st June from 9am-3pm	43
Figure 18 Overshadowing Sturt Park, 21 st June from 9am-3pm	44
Figure 19 Solar access to public domain areas, Core precinct – reference design, 21 st June from 9am-3pm	45
Figure 20 Residential amenity – Solar access to apartments, Core reference design, 21 st June from 9am-3pm	46
Figure 21 Upper Core Sections showing PLEP 2011 maximum building heights and proposed building envelopes	49
Figure 22 Mid Core Sections showing PLEP 2011 maximum building heights and proposed building envelopes	50
Figure 23 Lower Core Sections showing PLEP 2011 maximum building heights and proposed building envelopes	50
Figure 24 PLEP 2011 Compliant Visualisation	51

TABLES

Table 1 Land Uses by Development Block	14
Table 2 Proposed Height by Development Block	17
Table 3 Compliance with Clause 6.16	23
Table 4 PLEP 2011 Height of Buildings – Core area	24
Table 5 Proposed Height of Buildings Variation	26
Table 6 Assessment of consistency with Clause 4.3 objectives	33
Table 7 Assessment of compliance with land use zone objectives	54

1. INTRODUCTION

Frasers Property Telopea Developer Pty Ltd (**Frasers**) has submitted a Concept Development Application (**Concept DA**) for the staged redevelopment of the **Telopea Concept Plan Area (CPA)**, registered as SSDA-14378717.

The Concept DA and concurrent Project Application (**Stage 1A Project Application**) has been prepared on behalf of Land and Housing Corporation (**LAHC**), in accordance with a Project Delivery Agreement (**PDA**) executed by the parties. Under the PDA, Frasers is responsible for preparing and submitting planning approval documentation however, more importantly, LAHC is the applicant.

The Concept DA seeks approval for:

- A mixed-use development comprising:
 - 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
 - Elyse Street 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.

The Concept DA proposes a redistribution of height that exceeds the Maximum Building Height development standards across parts of the Telopea CPA. This Clause 4.6 Variation Request (**Request**) has been prepared to support the Concept DA.

Following public exhibition of the Concept DA, the Department of Planning and Environment (**DPE**) wrote to LAHC on 28 July 2022 requesting:

- *Provide an updated Clause 4.6 variation request that focuses on the aspect or element of the development that contravenes the development standard and outline the extent to which the additional height is attributed to the bonus FSR available under the PLEP 2011, SEPP (Affordable Rental Housing) 2009, and SEPP (Housing for Seniors or People with a Disability) 2004.*

This Request has accordingly been prepared to directly respond to the DPE letter dated 28 July 2022 and supersedes the previously exhibited Clause 4.6 request. In doing so, this Request is founded on recent relevant case law and:

- Has been prepared with reference to Clause 4.3 of the Parramatta Local Environmental Plan (PLEP) 2011; and
- Further examines aspects of the development that contravenes the development standard and in particular, the extent to which the additional height is attributed to bonus FSR available under State Environmental Planning Policy (Affordable Rental Housing) 2009 and State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, which are now consolidated under State Environmental Planning Policy (Housing) 2021.

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

This Request is structured as follows:

- **Section 2:** site description, including local and regional context, key features relevant to the proposed variation
- **Section 3:** brief overview of the proposed development as outlined in further detail within the EIS, RtS, Addendum RtS and accompanying drawings and technical reports
- **Section 4:** identification of the development standards, which are proposed to be varied, including the extent of the contravention having regard to Clause 4.3
- **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 for 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.

1.1. CROWN DEVELOPMENT APPLICATION

The Concept DA is a Crown development application subject to the provisions of section 4.33 of the *Environmental Planning and Assessment Act, 1979 (EP&A Act)*. Specifically, under section 4.33(1), a consent authority must not refuse its consent to a Crown development application, except with the approval of the Minister, nor impose a condition on its consent to a Crown development application, except with the approval of the applicant or the Minister. In this particular circumstance, the applicant is LAHC, and the Minister would be the Minister for Housing, to which LAHC reports, and who is responsible for administering the *Housing Act, 2001*.

The extents to any conditions proposed to be imposed on the Concept DA that might operate to restrict the development, including development standards such as Height of Building controls. To that end, such provisions are not enforceable (without the agreement of LAHC or the Housing Minister).

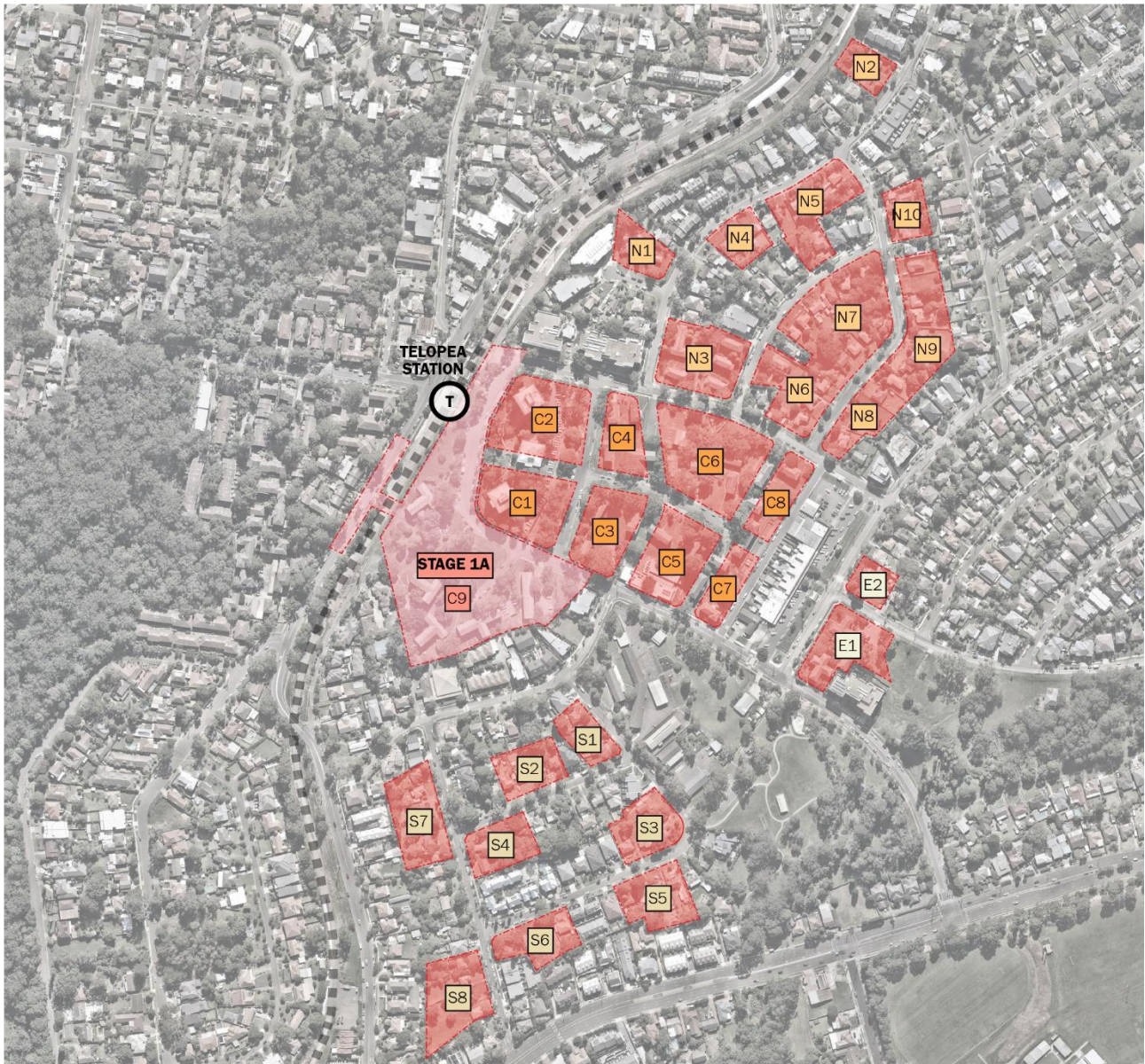
Notwithstanding, this Request has been prepared to demonstrate that strict adherence to the Height of Buildings development standards in this instance is both unreasonable and unnecessary in the circumstances. Applying a degree of flexibility will contribute to an appropriate, and arguably enhanced form of development. It seeks to support the DEP's decision-making in this matter.

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.

Figure 1 Telopea Concept Plan Area



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 Telopea CPA 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; and
- West: Telopea Light Rail Station and light rail easement. Further west, land uses comprise of low density residential.

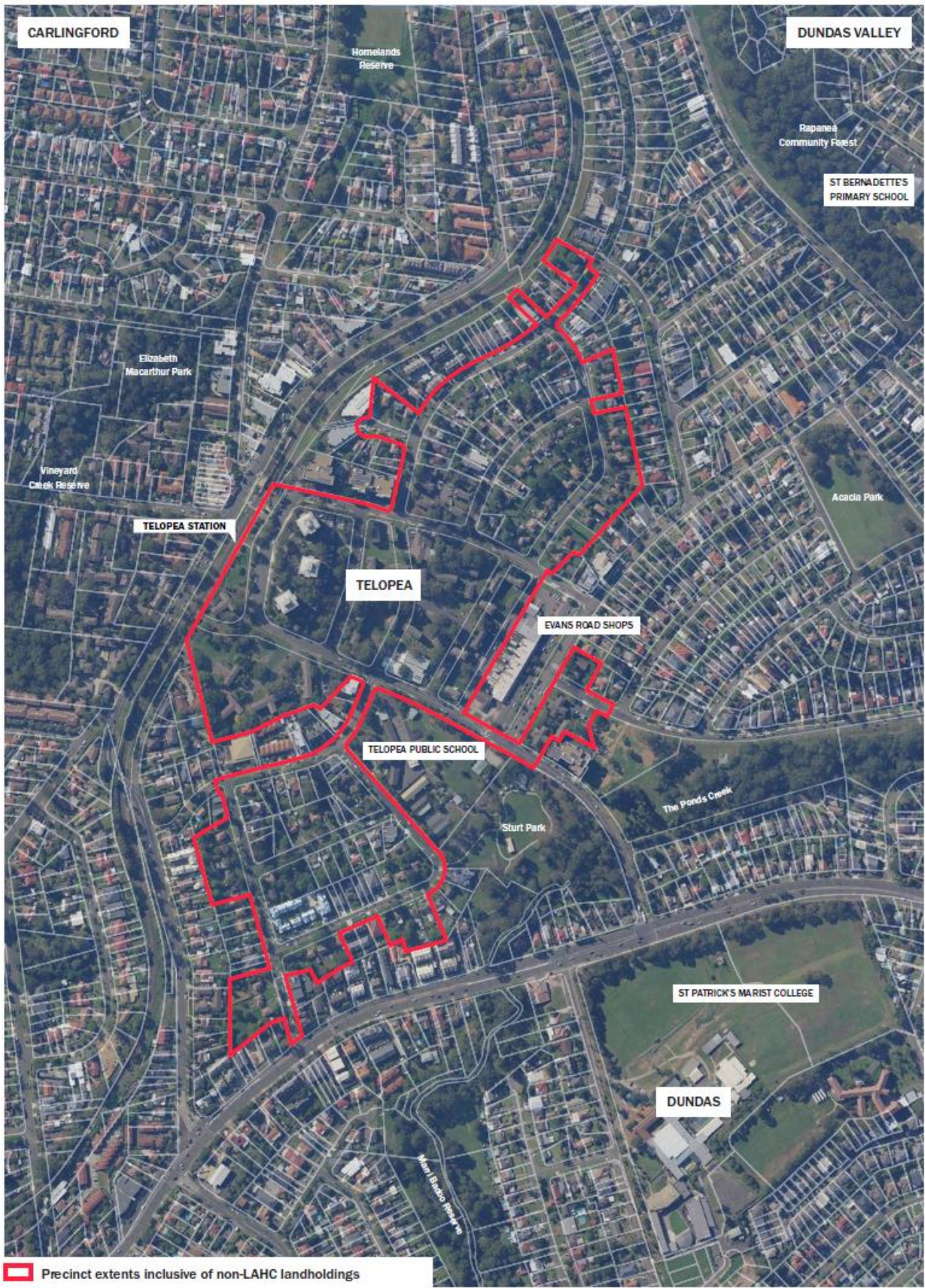
2.3. EXISTING DEVELOPMENT

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. Several three storey walk up apartment buildings are located further east and south of the three towers. Collectively the buildings dating from the mid- to late 20th century form part of ageing housing stock that require redevelopment.

New apartment buildings have been 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 (**Figure 3**). The most western part of the site peaks at circa RL 61.50 (AHD), i.e., circa 61.5 metres (m) above the Australian Height Datum. From this point, the site generally falls east towards Evans Road at RL 32 (AHD). This circa 30 m across a distance of 350 m 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, the Telopea CPA is characterised by substantial existing trees which are a key feature and contribute to a 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 C, including urban native/exotic vegetation 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

Open space is provided within and in the vicinity of the Telopea CPA with diversity in size, function and purpose, including:

- Sturt Park is located adjacent to Sturt Road, south of the Telopea Public School. It is approximately 3 ha, and its facilities include paths, sport courts, children's play equipment and a skate park;
- The 1.5 ha Acacia Park is located approximately 700m east of Telopea. 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, connecting Carlingford to Rydalmere; and
- The following 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

The State Listed heritage item known as Redstone at 34 Adderton Road, to the south of the Stage 1A Project Site. Redstone is a Walter Burley Griffin dwelling from circa 1935.

2.8. PUBLIC TRANSPORT

The Paramatta Light Rail (PLR) is an NSW Government major infrastructure project. Stage 1 of the PLR connecting Westmead to Carlingford via Parramatta CBD and Camellia is currently under construction with Transport for NSW converting the former T9 Carlingford Railway Line from heavy rail to light rail. Once completed, Stage 1 will cover 16 light rail stops including a stop at Telopea. The PLR is anticipated to open in 2023.

The PLR 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; and
- 545 route from Macquarie Park to Parramatta.

2.9. TELOPEA CPA AND CORE AREA PRECINCT

As outlined in Section 1, this Request considers the Telopea CPA in its entirety. However, the geographical extent of proposed Height of Buildings exceedances is localised to the Core Precinct. The Telopea Core Precinct is illustrated in **Figure 4**.

Figure 4 Telopea Core Precinct



Source: Bates Smart

The Core Precinct to which this Request primarily relates is generally bounded by Shortland Street to the north, Benaud Lane to the east, Sturt Street, and the Stage 1A Project Application Area to the south and Telopea Station to the west. The east-west oriented Eyles Street, north-south oriented Wade Place and Ritchie Benaud Place and Polding Place (a cul-de-sac) form the remainder of the existing circulation network and contribute to the existing urban structure of the Core Precinct.

The Core Precinct falls approximately 25m from the proposed PLR 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.

Existing built form throughout the Core Precinct is characterised by mid-late 20th century three and 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', the group of nine storey apartment buildings set amongst stands of established Eucalypts. The bushland character is defined by the high quality and established trees on the site.

For the purposes of this Concept DA and this Request, individual lots have been consolidated into the following development blocks which are referred to from here on in:

- 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; and
- C5 and C6, on which the Library and Church are currently situated form the Lower Core, combined with C7 and C8 which front Benaud Lane.

Site photos of the Core Precinct are provided in **Figure 5**.

Figure 5 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 CORE PRECINCT DEVELOPMENT

As outlined in Section 1, this Request has been prepared to support a Concept DA for the staged redevelopment of the Telopea CPA. The Concept DA 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. Once approved, the Concept DA will establish the planning and development framework against which any future development application will be assessed against.

Detailed description of the Concept DA is provided in the EIS prepared by Urbis Pty Ltd, as updated in the Addendum RtS Report prepared by Urbis Pty Ltd (December 2022). The Concept DA is also detailed within the Urban Design Concept Plan Report prepared by Bates Smart and Hassell (November 2022). Reference should be made to those documents if required.

Noting that the proposed Height of Building exceedances are located wholly within the Core Precinct, the following sections describe the development proposed within the Core Precinct, as the focus of this Request.

3.1. FUTURE CORE PRECINCT URBAN STRUCTURE

The Core Precinct's urban structure is instrumental in the spatial distribution of future built form and consequentially GFA that is the subject of this Request. The urban structure is illustrated in **Figure 6** and is shown in the context of the urban structure for the Concept DA over the entire Telopea CPA.

The east-west oriented Core Precinct is bound by Shortland Street to the north and Sturt Street and the Stage 1A Project Application to the south.

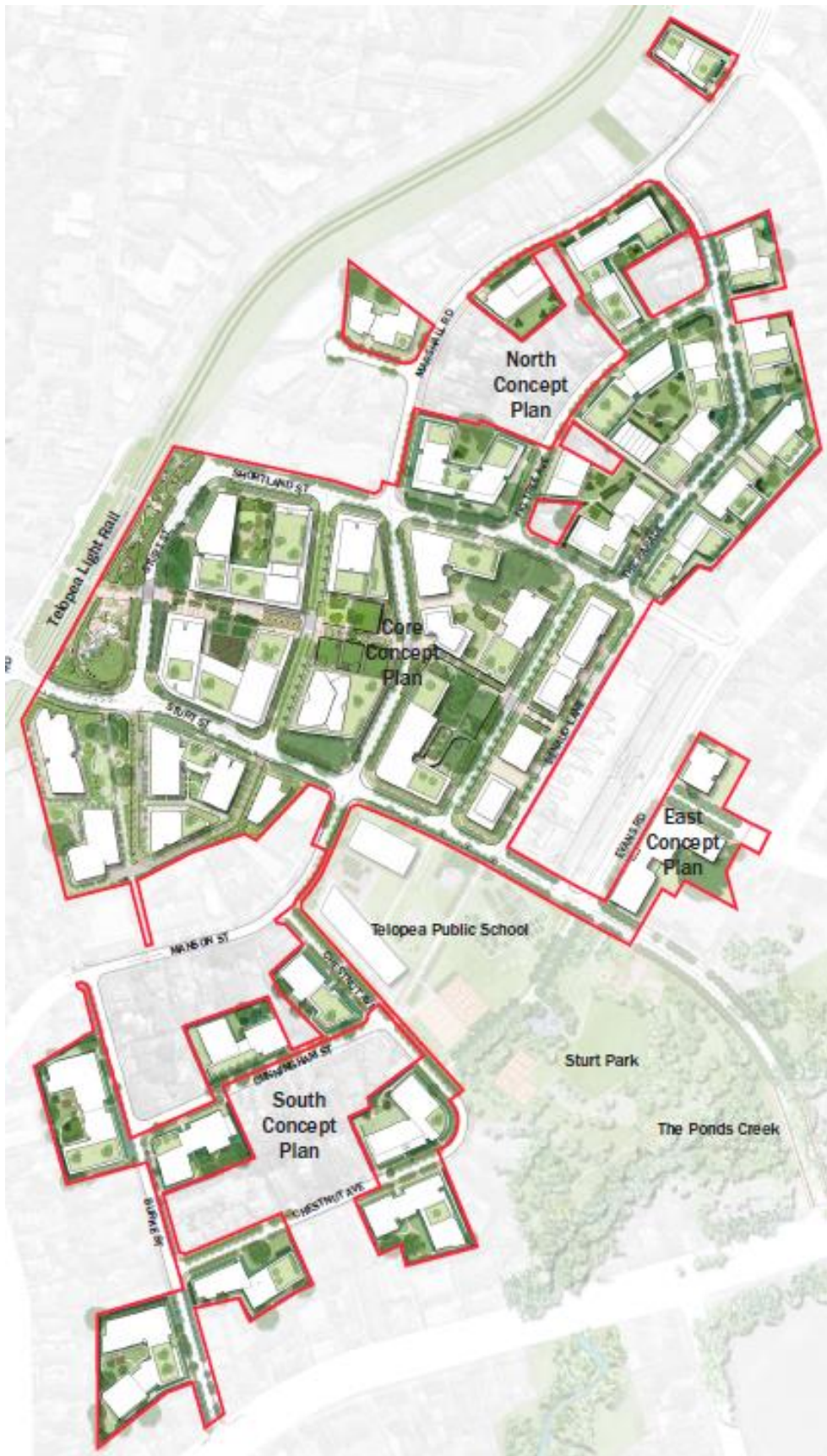
The Core Precinct is proposed to be developed as eight (8) development blocks framed by north-south cross streets which follow the Telopea CPA's contours and connect into the existing street network to the north (Shortland Street) and south (Sturt Street).

New streets and laneways, running across the contours, propose to collectively stitch the Telopea centre into surrounding residential areas – improving connectivity to the north and south and defining individual development lots. Three (3) new north-south oriented cross streets are proposed:

- Wade Lane – a new street with mixed use frontages providing activation;
- Manson Street – a tree lined sweeping curve following the natural contours of the site which facilitates enhanced pedestrian and vehicular connectivity to the Telopea Public School from the north and retention of significant trees between Manson Street and Marshall Road; and
- Fig Tree Lane – which provides residential streetscape and address and contributes to the creation of suitably sized (and commercially viable) development parcels.

The Concept DA also proposes the introduction of the Eyles Street Pedestrian Link, a pedestrian oriented public domain designed to complement Sturt Street and Shortland Streets, which partially runs through the Core Precinct. The new embellished pedestrian link, which proposes to extend the existing Eyles Street, has been aligned to retain the majority of significant trees. Once completed, the Eyles Street Pedestrian Link will function as 24 hour embellished and accessible route connecting the Station Plaza at the top of the hill in the west through to Benaud Lane in the east via a diversity of level transitions including steps, ramps, and lifts and high quality public domain areas for respite and recreation.

Figure 6 Urban Structure for the Concept DA and Core Precinct



Source: Hassell & Bates Smart

The Core Precinct accommodates a range of types of open space, all of which are arranged around retention of significant trees (refer **Figure 7**). 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 the Eyles Street Pedestrian Link to accommodate existing established 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. The proposed mix of public spaces, communal gardens, and generous setbacks each contribute to retaining the bushland hillside character of the Telopea CPA.

Figure 7 Core Precinct Open Space Network



Publicly Accessible Open Space

Area summary (excluding streets)

Lot		Public Open Space (m ²)	Privately Owned	To be dedicated to City of Parramatta Council
A	Telopea Station Plaza	4621		✓
B	Telopea Square	3346	✓	
C	Community Courtyard	2753		✓
D	Pocket Park	764		✓
E	The Gardens	1206		✓
F	The Gardens	211	✓	
G	The Gardens	503		✓
H	Mews	2250	✓	
I	Neighbourhood Park	2057		✓

Source: Hassell & Bates Smart

3.2. LAND USES

In addition to high density residential development, the Concept DA proposes a range of non-residential uses focused around the new local centre in the Core Precinct. **Table 1** identifies proposed land uses by development block. **Figure 8** visually illustrates the spatial distribution of future land uses within the Core Precinct.

Table 1 Land Uses by Development Block

Development Block	Proposed land uses
C1	Medical centre / health services, pharmacy, residential, retail & specialty retail, supermarkets (plus retail loading and public parking under the block c1/c2 podium at lower ground (wade lane) level)
C2	Childcare, indoor recreation facility, office premises (for future community housing provider), residential (including social housing & affordable housing), retail & speciality retail, (plus retail loading and public parking under the block c1/c2 podium at lower ground (wade lane) level)
C3	Community centre, library, residential
C4	Place of public worship (church), residential (including affordable housing), seniors housing (aged care premises, independent living units and assisted living units), conference venue and function facilities, commercial premises for offices and co-working spaces, indoor recreation and entertainment facilities, community facility, retail premises, tourist and visitor accommodation, allied health
C5	Residential (including Affordable Housing)
C6	Residential (including Social Housing)
C7	Residential (including Social Housing)
C8	Residential
C9	Residential
E1	Residential
E2	Residential
N1	Social Housing
N2	Residential
N3	Residential
N4	Residential
N5	Residential
N6	Residential
N7	Residential (including Social Housing)

Development Block	Proposed land uses
N8	Social Housing
N9	Residential
N10	Residential
S1	Social Housing
S2	Residential
S3	Residential
S4	Residential
S5	Affordable Housing
S6	Residential
S7	Residential
S8	Residential

Figure 8 Proposed Land Uses in the Core area – Ground Level (EIS)



Source: Bates Smart

3.3. BUILDING MASSING

As detailed in the Design Excellence Strategy (Urbis, October 2022) accompanying the Addendum Response to Submissions Reports, the placement, orientation, and massing of proposed building envelopes has been the subject of a comprehensive and iterative design process comprising multiple design teams during the bid phase, engagement with the State Design Review Panel (SDRP) and the Council.

Building envelopes have been sized and oriented to:

- Accommodate an appropriate quantum of non-residential floor space to replace existing facilities and meet the needs of the future Telopea community;
 - Optimise the available floor space entitlements (including bonuses);
 - Achieve appropriate setbacks to accommodate deep soli zones and support tree retention/planting;
 - Provide significant, useable, and functional open space and public domain elements within each development block which activates surrounding streets and public spaces;
 - Maximise sunlight access to existing and proposed public open spaces, and provide internal amenity to apartments;
 - Accommodate additional depth to allow some flexibility for future detailed designs; and
 - Exceed the building separation recommendations identified in the SEPP 65 Apartment Design Guide.
- Where building forms are proposed to be oriented north/south with solar access to both sides, building envelopes have adopted a 25m depth to accommodate a central core floorplate. Where building forms are proposed to be oriented so that only one elevation receives 2 hours of sun, a 22.5m building depth has been adopted to accommodate a side-core floorplate.

3.4. BUILDING HEIGHT

Under clause 4.3 of the PLEP 2011, the development blocks across the Telopea CPA and Core Precinct vary. Maximum building heights range from 21 – 70m, including bonuses (refer **Figure 9**). The PLEP 2011 height tiles straddle development blocks and accordingly some development blocks will be subject to multiple maximum height limits.

Development Blocks C1 – C4 are proposed to accommodate the tallest buildings. In these locations, buildings are proposed to be constructed as towers on podia. Building heights across the remainder of the Telopea CPA are proposed to be constructed as slab and/or courtyard blocks.

Table 2 identifies the maximum permitted and proposed building heights by development block. **Figure 10** graphically illustrates the spatial distribution of proposed building height.

Figure 9 PLEP 2011 Maximum Building Heights

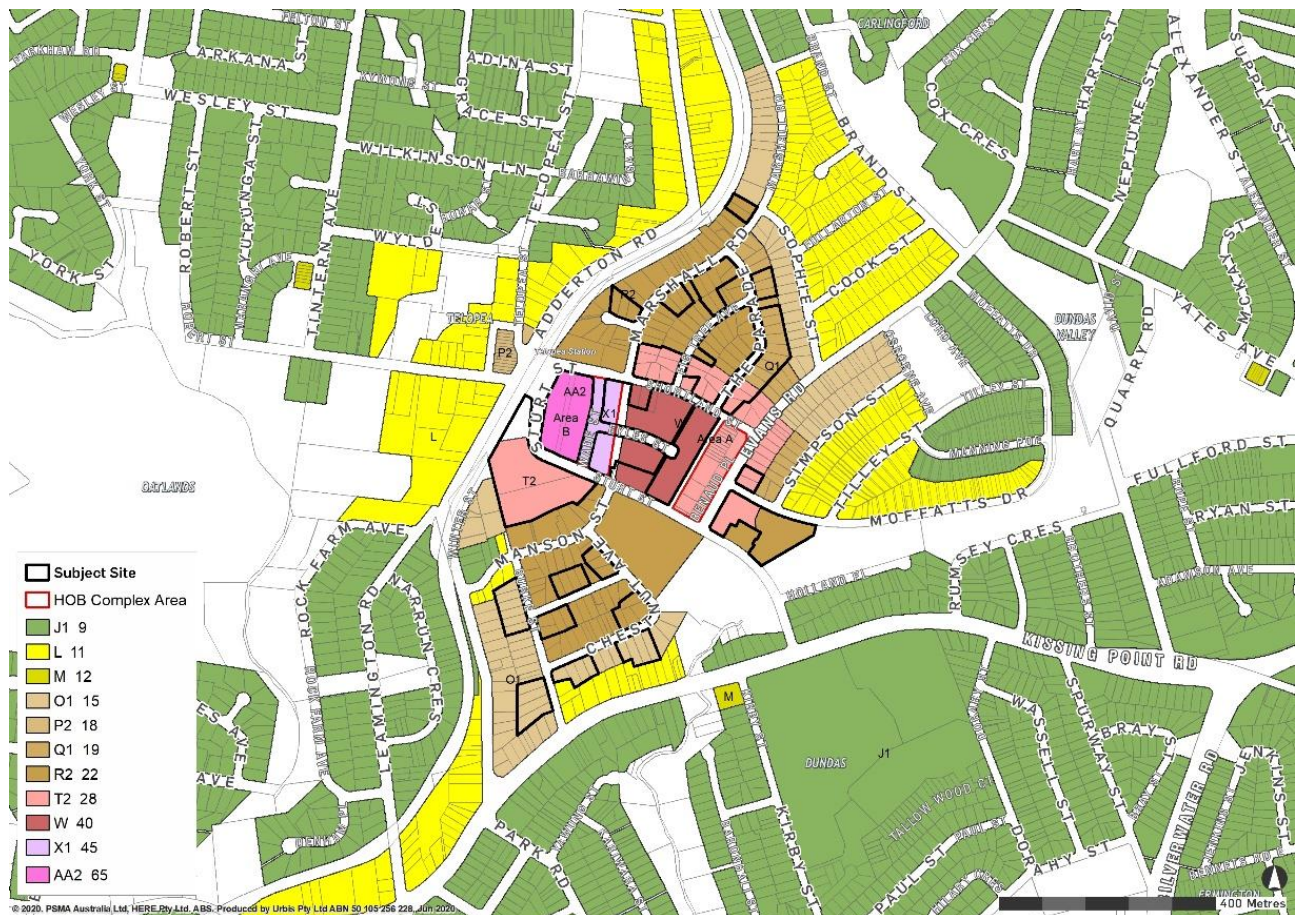


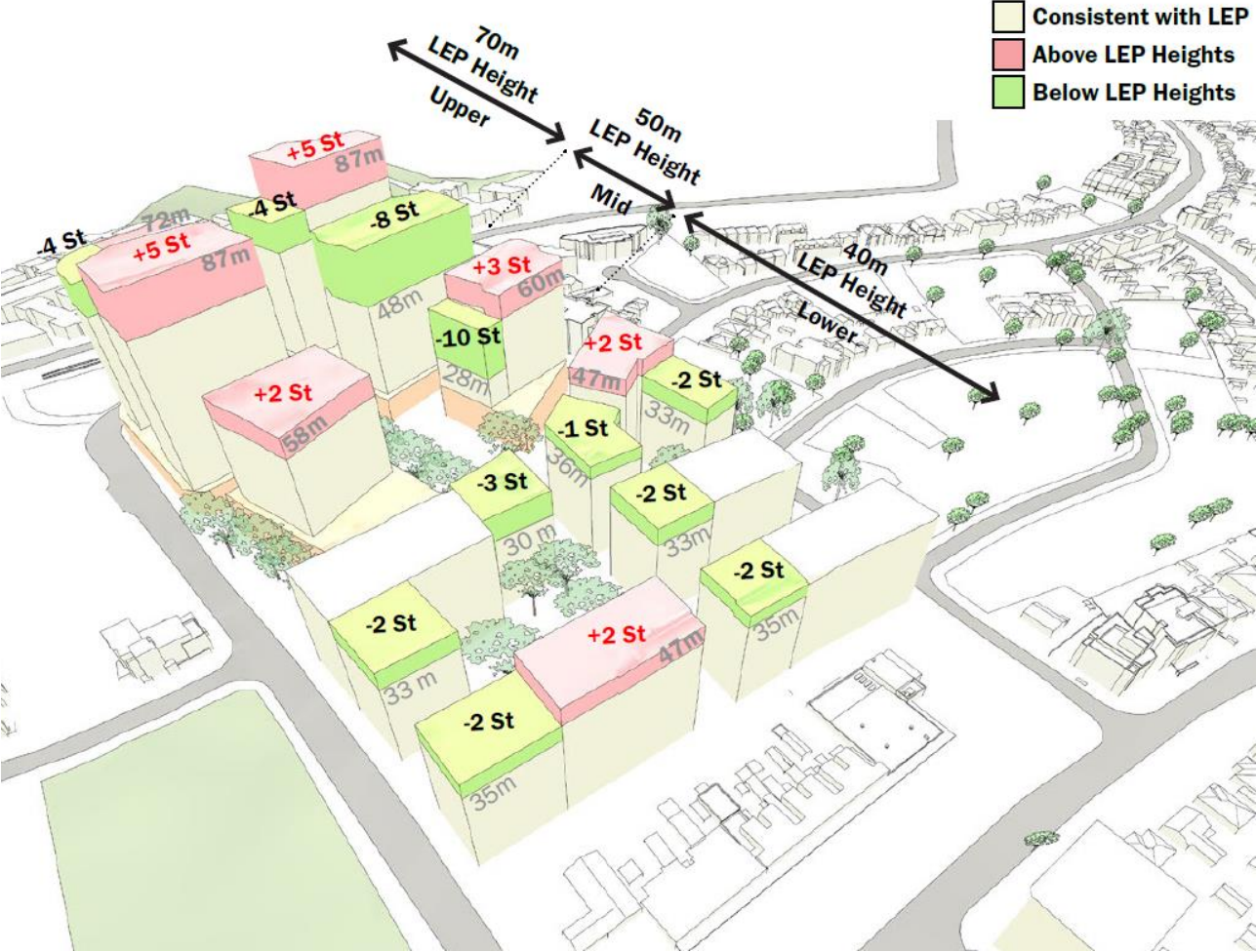
Table 2 Proposed Height by Development Block

Lot	Building	PLEP 2011 Maximum Height (m)	Telopea CPA Maximum Height (m)	Compliance (m)
C1	C1.1	70	72	2
	C1.2	70	87	17
C2	C2.1	70	87	17
	C2.2	70	48	-22
C3	C3	50	58	8
C4	C4.1	50	25	-25
	C4.2	50	60	10
C5	C5.1a	40	33	-7
	C5.1b	40	40	0
	C5.1c	40	30	-10

Lot	Building	PLEP 2011 Maximum Height (m)	Telopea CPA Maximum Height (m)	Compliance (m)
C6	C6.1a	40	36	-4
	C6.1b	40	47	7
	C6.1c	40	33	-7
	C6.2a	40	33	-7
	C6.2b	40	40	0
C7	C7.1	40	35	-5
	C7.2	40	47	7
C8	C8.1a	40	35	-5
	C8.1b	40	40	0
	C8.1c	40	40	0
C9 (Stage 1A)	Bld A	28	22	-6
	Bld B (west)	28	50	22
	Bld B (east)	28	34	6
	Bld C	28	33	5
	Bld D	28	33	5
	Bld E	28	31	3
E1	E1.1	28	28	0
	E1.2	28	15	-13
E2	E2	28	28	0
N1	N1	22	22	0
N2	N2	22	22	0
N3	N3	28	28	0
N4	N4	22	22	0
N5	N5	22	22	0
N6	N6.1	28	28	0
	N6.2	28	28	0
N7	N7.1	22	22	0

Lot	Building	PLEP 2011 Maximum Height (m)	Telopea CPA Maximum Height (m)	Compliance (m)
	N7.2	22	22	0
	N7.3	22	10.5	-11.5
N8	N8	28	28	0
N9	N9.1	19	19	0
	N9.2	19	19	0
N10	N10	19	19	0
S1	S1	22	22	0
S2	S2	22	22	0
S3	S3	22	22	0
S4	S4	22	22	0
S5	S5	15	15	0
S6	S6	15	15	0
S7	S7	15	15	0
S8	S8	15	15	0

Figure 10 Core Area Proposed Maximum Building Heights



Source: Bates Smart

4. VARIATION OF BUILDING HEIGHT STANDARD

This section of the Request identifies the development standards which are proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6**.

4.1. URBAN STRUCTURE DRIVERS FOR VARYING THE DEVELOPMENT STANDARD

A review of the former Master Plan which informs the gazetted PLEP 2011 Height of Buildings tiles highlights the following issues:

- Apartment towers are predominately orientated to the east and west, presenting a major impediment to achieving good solar amenity for residents;
- There is no connection between Manson Street and Marshall Road which would provide improved connectivity to the Telopea Public School, along the natural contours of the site
- Eyles Street provides poor pedestrian access due to the site's steep topography that does not meet relevant standards for pedestrian pathways due to crossfall and is largely free of buildings, resulting in a street that is avoided by the community and remains inactivated.

Fraser and LAHC accordingly took the opportunity to redistribute density particularly across the Core Precinct to secure improved urban design and planning outcomes while retaining the underlying strategic planning objectives established during the rezoning stage for the Telopea CPA. More specifically, the reappraisal was undertaken to respond to the significant urban consolidation opportunity presented by the proximity of the Telopea Public School, Telopea Light Rail Station, and associated bus routes, access to employment opportunities in Greater Parramatta and the potential to provide 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.

The resulting urban design principles established for the Telopea CPA (refer to Urban Design Report prepared by Bates Smart dated July 2021 and as modified by the Addendum RtS Report, December 2022) particularly deliver improved amenity outcomes for the Core Precinct through a distribution of overall permitted GFA and subsequently height. The benefits of the revised urban structure and resulting redistribution of built form and GFA can be summarised as follows:

- **Pedestrian Connections** – Stepping down the steep hillside, Eyles Street Pedestrian Link becomes a pedestrian oriented street which complements Sturt Street and Shortland Street. Its revised alignment is designed around tree retention whereby significant existing trees define the journey up or down the hill.
- **Cross Streets** – The introduction of new streets and laneways, running across the site's contours, assist the 'stitching' of the Core Precinct 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 site.
- **Building Breaks** – The introduction of reconfigured and additional building separations and breaks retain existing views and create new physical and visual connections to the established landscape and retained trees.
- **Human Scaled Streets** – The placement of building envelopes defines a stronger two storey ground level interface. In the Upper Core and Middle Core, human scaled podiums accommodate retail and community uses. Lower Core apartment buildings are also expressed as two-storey scale with townhouse typologies fronting the streets.
- **Building Heights Reduce** – Building heights vary in accordance with the PLEP 2011 height plane, generally increasing towards the top of the hill. Consistent with the Parramatta Development Control Plan 2011 (**PDGP 2011**), the Upper Core and Middle Core are characterised by towers on podiums, while the Lower Core is proposed to accommodate courtyard and slab blocks.

- **Heights Adjusted for Amenity** – Building heights are further varied within development blocks as demonstrated through the Reference Scheme to improve amenity. Heights have been reduced to improve solar access to existing and proposed open spaces and adjoining properties. In the Upper Core and Middle Core specifically, towers are proposed to be constructed as staggered split forms to improve the silhouette on the skyline.
- **Diversity** – Tenure diversity adds to the mixed-use nature of the Core 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

4.2. CURRENTLY APPLICABLE DEVELOPMENT STANDARD

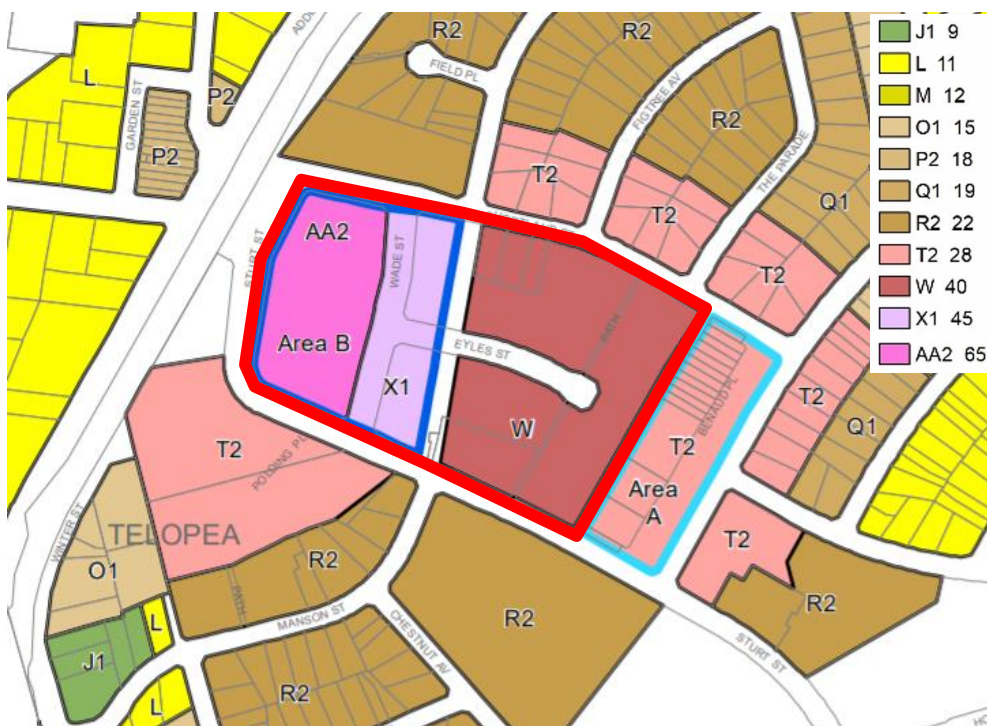
Clause 4.3 of the PLEP 2011 provides that the height of a building on any land is not to exceed the maximum height shown for the land of the Height of Buildings Map.

The objectives of Clause 4.3 are set out as follows:

- to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*
- to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- to require the height of future buildings to have regard to heritage sites and their settings,*
- to ensure the preservation of historic views,*
- to reinforce and respect the existing character and scale of low-density residential areas,*
- 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.*

As shown in **Figure 16** and on the Height of Buildings Map (Map Tile 014), the Core Precinct is subject to a maximum building height of 40m (marked “W”), 45m (marked “X1”) and 65m (marked “AA2”) respectively. The Core Precinct, subject of this Request, is also identified as “Area B” on the Height of Buildings Map.

Figure 11 PLEP 2011 Height of Buildings Map – Core Precinct



Source: PLEP 2011

Clause 6.16 of PLEP 2011 provides additional provisions for certain building heights within the Telopea Precinct. Specifically, Clause 6.16(2) allows for an exceedance to the maximum building height (established in Clause 4.3) for land in “Area B” by 5m but only if the building provides a retail premises, business premises or community facilities at ground. It states:

- *(2) Despite clause 4.3, the maximum height for a building on land shown edged heavy blue and identified as “Area B” on the Height of Buildings Map may exceed the maximum height identified for that land on the Height of Buildings Map 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.*

Table 3 demonstrates compliance with the requirements for the relevant development blocks within the Core Precinct with respect to the provision of retail premises, business premises or community facilities at ground level. In this regard Clause 6.16 has been satisfied.

Table 3 Compliance with Clause 6.16

Development Block	PLEP 2011 Permissible Building Height	Proposed Use at Ground Level
<u>Core Precinct</u>		
C1	70m	Retail & medical centre
C2	70m	Retail, childcare centre, commercial, social housing & Affordable Housing
C3	50m	Library & community centre
C4	50m	Church & aged care facility
C5	40m	Market housing
C6	40m	Social housing, Affordable Housing & Market Housing
C7	40m	Market housing
C8	40m	Market housing
C9	28m	Market housing
E1	28m	Market housing
E2	28m	Market housing
N1	22m	Social housing
N2	22m	Market housing
N3	28m	Market housing
N4	22m	Market housing
N5	22m	Market housing
N6	28m	Market housing

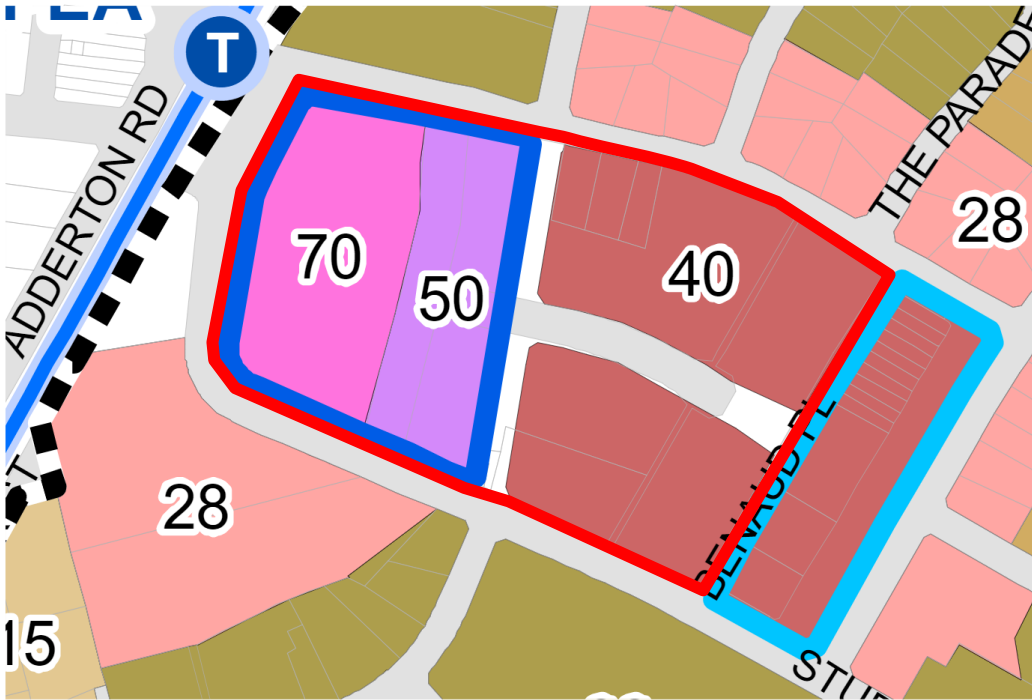
Development Block	PLEP 2011 Permissible Building Height	Proposed Use at Ground Level
N7	22m	Social housing & Market housing
N8	28m	Social housing
N9	19m	Market housing
N10	19m	Market housing
S1	22m	Social housing
S2	22m	Market housing
S3	22m	Market housing
S4	22m	Market housing
S5	15m	Social housing
S6	15m	Market housing
S7	15m	Market housing
S8	15m	Market housing

Having regard to the provisions set out in Clause 4.3 and Clause 6.16(2) of PLEP 2011, the maximum permissible building heights for the Core Precinct range from 40m to 70m and are shown in **Table 4** below.

Table 4 PLEP 2011 Height of Buildings – Core area

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

Figure 12 PLEP 2011 Maximum Height of Buildings – Core area



Source: Bates Smart

4.3. 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 Core Precinct ranging from 40m to 70m. The proposed variation to the building heights standard is set out in **Table 5** below and illustrated in **Figure 13**. The proposed variation to the building heights standard relates only to the development blocks within the Core area identified below, all other development blocks across the CPA are compliant with the building height standard.

Table 5 Proposed Height of Buildings Variation

Lot	Building	PLEP 2011 Maximum Height (m)	Telopea CPA Maximum Height (m)	Compliance (m)	Proposed Variation
C1	C1.1	70	72	2	3%
	C1.2	70	87	17	24%
C2	C2.1	70	87	17	24%
	C2.2	70	48	-22	-31%
C3	C3	50	58	8	16%
C4	C4.1	50	25	-25	-50%
	C4.2	50	60	10	20%
C5	C5.1a	40	33	-7	-18%
	C5.1b	40	40	0	0%
	C5.1c	40	30	-10	-25%
C6	C6.1a	40	36	-4	-10%
	C6.1b	40	47	7	18%
	C6.1c	40	33	-7	-18%
	C6.2a	40	33	-7	-18%
	C6.2b	40	40	0	0%
C7	C7.1	40	35	-5	-13%
	C7.2	40	47	7	18%
C8	C8.1a	40	35	-5	-13%
	C8.1b	40	40	0	0%
	C8.1c	40	40	0	0%

Lot	Building	PLEP 2011 Maximum Height (m)	Telopea CPA Maximum Height (m)	Compliance (m)	Proposed Variation
C9 (Stage 1A)	<i>Bld A</i>	28	22	-6	-21%
	Bld B (west)	28	50	22	79%
	Bld B (east)	28	34	6	21%
	Bld C	28	33	5	18%
	Bld D	28	33	5	18%
	Bld E	28	31	3	11%
E1	E1.1	28	28	0	0%
	<i>E1.2</i>	28	15	-13	-46%
E2	E2	28	28	0	0%
N1	N1	22	22	0	0%
N2	N2	22	22	0	0%
N3	N3	28	28	0	0%
N4	N4	22	22	0	0%
N5	N5	22	22	0	0%
N6	N6.1	28	28	0	0%
	N6.2	28	28	0	0%
N7	N7.1	22	22	0	0%
	N7.2	22	22	0	0%
	<i>N7.3</i>	22	10.5	-11.5	-52%
N8	N8	28	28	0	0%
N9	N9.1	19	19	0	0%
	N9.2	19	19	0	0%
N10	N10	19	19	0	0%
S1	S1	22	22	0	0%
S2	S2	22	22	0	0%
S3	S3	22	22	0	0%
S4	S4	22	22	0	0%

Lot	Building	PLEP 2011 Maximum Height (m)	Telopea CPA Maximum Height (m)	Compliance (m)	Proposed Variation
S5	S5	15	15	0	0%
S6	S6	15	15	0	0%
S7	S7	15	15	0	0%
S8	S8	15	15	0	0%

Figure 13 Core area proposed height of buildings overlayed with LEP height controls (RtS Scheme)



Source: Bates Smart

The Concept DA exceeds the maximum height of buildings across development blocks C1, C2, C3, C4, C6 and C7, with the greatest exceedance being 17m (24%). This is attributed to development blocks C1 and C2, which are located within the Upper Core in immediate proximity to PLR and where the tallest buildings are located.

The degree of variation is either reduced and/or offset by lower building heights the further the development transitions eastward from the Middle Core to the Lower Core. Most notably, seven buildings within development blocks C5, C6, C7 and C8 (east of Manson Street in the Middle and Lower Core), propose a scale of development 4-7m below the maximum allowable height limit. The only exception is one building (C6.1b), which exceeds the maximum height by 7m (18%).

Overall, seven of the twenty buildings within the Core Precinct exceed the maximum height standard ranging from 16% to 24%. A compensatory reduction in built form has been applied to eight buildings of between -13% and -50%. This strategy has resulted in improved solar access to the public domain (Eyles Street Pedestrian Link), reduction in overshadowing to Telopea Public School compared to a compliant scheme (whilst balanced with minor increases in overshadowing to Sturt Park), improved ADG performance and reduced visual impact as a result of taller but fewer towers across the skyline.

The core accommodates 20% additional floorspace than that envisaged by the LEP height controls as a result of FSR bonus provisions allowed under PLEP 2011, Seniors SEPP and ARH SEPP. **Figure 19** illustrates how the proposed additional height sought for buildings C1.2, C2.1, C3, C4, C6.1 and C7.2 can be attributed directly to the bonus floorspace associated with social housing, affordable housing, and community facilities in C3 and C4.

It is important to note that 21,000 sqm of the GFA sits below the PLEP 2011 height and 16,000 sqm of GFA above across six buildings. Approximately 20% of the GFA across the Core Precinct is attributed to bonus FSR provisions available under PLEP 2011, the ARH SEPP and the Seniors Housing SEPP (noting the General savings provisions introduced with the gazettal of the Housing SEPP enable reliance on the ARH and Seniors Housing SEPP bonuses). Part of the exceedances to the height standard are a direct result of the bonus provisions available under the abovementioned planning instruments.

It is also acknowledged that since public exhibition of the SSDA, the National Construction Code (NCC) has been amended (2022). The NCC amendments have necessitated a re-evaluation of floor-to-floor heights for the residential floors and accordingly a 3,150 mm floor to floor has been adopted as part of the refined design. The NCC amendments have necessitated an adjustment to all floor levels across the site and accordingly this assesses the impacts of the revised building heights.

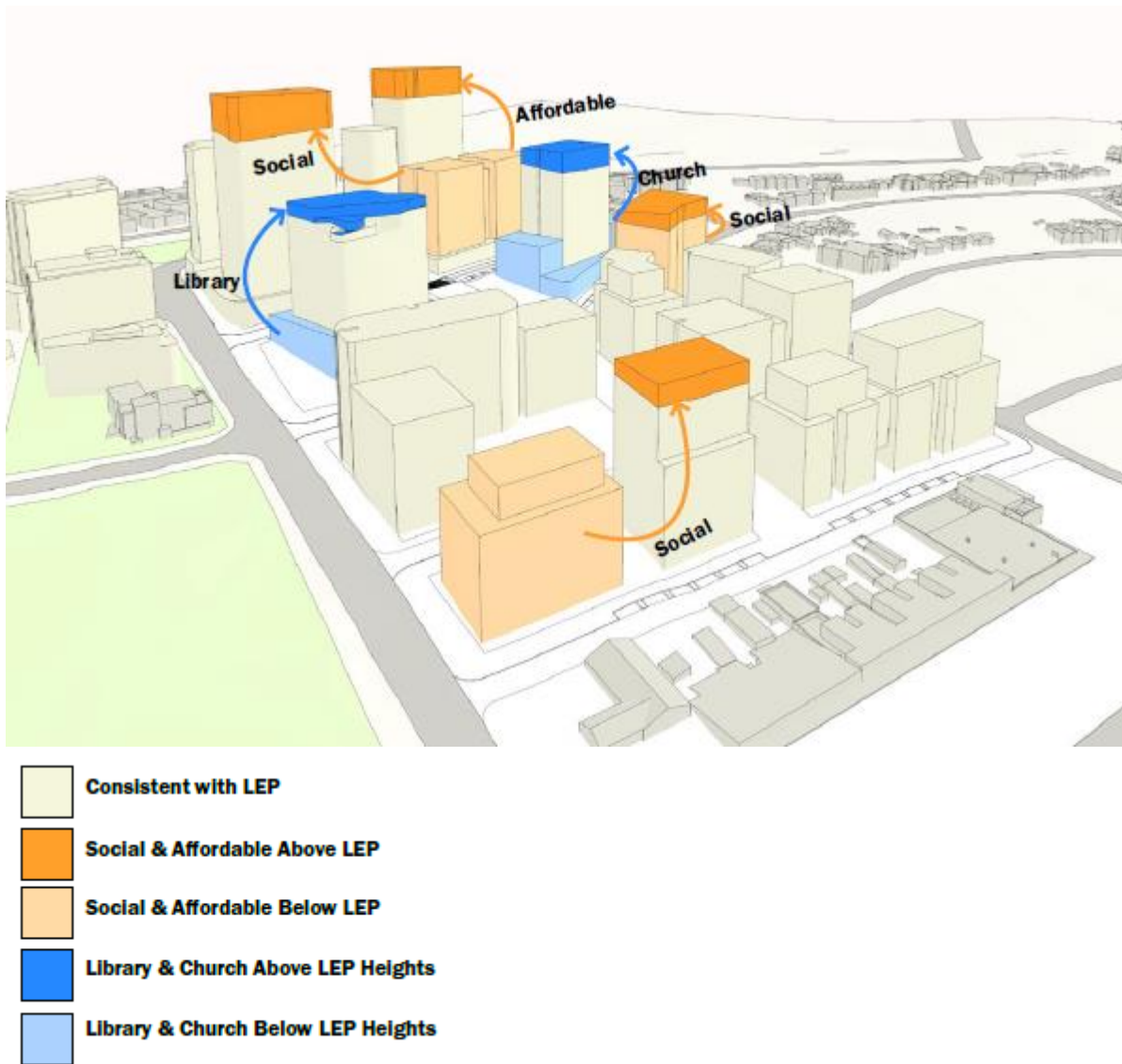
Furthermore, 1,000sqm of the height projection is to accommodate an increase in the library from 3,000 sqm to 4,150 sqm in response to Council's request for a full-size library to be delivered. Overall, the application of bonus FSR provisions requires floor area to be physically accommodated within taller building forms.

The decision to push and pull the building heights across the Core Precinct is the result of an iterative and extensive master planning exercise in tandem with feedback from the State Design Review Panel (SDRP) and Council to maximise the quality and amenity of the public domain, diversity in building typologies and a reduction in building footprints where appropriate.

By applying a greater degree of flexibility to the building heights based on a first principles approach, the Core Precinct can provide a higher standard of residential and public amenity with respect to improved green space and improved solar access than previously realised through the initial structure planning and rezoning stages.

It is noted that some areas of the proposed Concept DA 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 adopts a reduced building height appropriate to addressing the scale and proportion of the adjoining street.

Figure 14 Proposed Core Buildings Heights Compared to PLEP 2011 Height Controls (EIS Scheme)



Source: Bates Smart

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 is set out below (noting subsections (6)-(8) have been excluded as they are not relevant considerations for the Concept DA nor at this point in the planning process):

4.6 Exceptions to development standards

- 1) *The objectives of this clause are as follows—*
 - a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- 2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- 3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard 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.*
- 4) *Development consent must not be granted for development that contravenes a development standard unless—*
 - a) *the consent authority is satisfied that—*
 - i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii) *the proposed development will be in the public interest because 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, and*
 - b) *the concurrence of the Planning Secretary has been obtained.*
- 5) *In deciding whether to grant concurrence, the Planning Secretary must 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 Planning Secretary before granting concurrence.*

By its very nature, Clause 4.6 provides an appropriate degree of flexibility in applying certain development standards to particular development, particularly where that flexibility achieves better outcomes for and from development.

Section 6 of this Request demonstrates that the Concept DA is consistent with the objectives of the Height of Buildings development standard and the underlying R4 High Density Residential and B4 Mixed Uses zones notwithstanding the variation sought to the maximum Height of Buildings. This Request seeks flexibility in applying the standard because of the limited environmental impacts, and the Concept DA as a whole will improve the development outcomes for built form in the Telopea Precinct with sufficient environmental planning grounds to justify the variance to the standard.

Approval of this Clause 4.6 Request will also allow for flexibility to relax the development standard in this circumstance, given the public benefit of achieving the improved environmental, development and design outcomes.

The flexibility envisaged by Clause 4.6 in relation to exceedance of the Height of Buildings development standard facilitates the Concept DA in a manner whereby future development will demonstrably have minimal environmental impact and which will achieve a better planning outcome than if strict compliance with the development standard was required.

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

This section provides a comprehensive assessment of the Concept DA's proposal to vary the Height of Buildings development standards as they apply to the Telopea CPA, and specifically the Core Precinct, pursuant to Clause 4.3 of PLEP 2011.

Detailed consideration has been given to:

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

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

The Height of Buildings is a development standard prescribed by Clause 4.3 of the PLEP 2011 capable of being varied under Clause 4.6(2) of PLEP 2011.

The proposed variation to the Height of Buildings development standards, and basis upon which this Request is sought, is required as the nature and extent of the proposal variation does not comprise any of the matters listed within Clause 4.6(6) or Clause 4.6(8) of PLEP 2011 that would negate the need for this Request.

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

Traditionally, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the test set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 by showing that the objectives of the standard are achieved notwithstanding the non-compliance with the standard. This test was established to meet the requirements of a (now repealed) SEPP 1 Development Standards Objection.

The *Wehbe v Pittwater* judgement indicates that it is not the only way of establishing that compliance with the development standard is unreasonable or unnecessary and presents another four (4) methods of establishing unreasonableness or unnecessary. The other four tests set out in that case are:

- the underlying objective or purpose of the standard is not relevant to the development;
- the underlying objective or purpose would be defeated or thwarted if compliance was required;
- the standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or;
- the zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.

Assessment of clause 4.6(3) using the *Wehbe v Pittwater Council* tests has been affirmed by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16-22]. 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"*.

Importantly, not all tests need to be applied or relied on. This Request addresses the first and third test to respectively demonstrate:

- the objectives of the Height of Buildings development standard are achieved notwithstanding non-compliance with the standard (test 1); and
- the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required (test 3).

Each of these matters is addressed below.

6.2.1. Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the Height of Buildings development standard in clause 4.3 are:

- (a) *to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*
- (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.*

An assessment of the Concept DA's consistency with each of the objectives of the Height of Buildings development standard as specified in clause 4.3 of the PLEP 2011 are provided in **Table 6** below. The assessment demonstrates the objectives are achieved, notwithstanding the non-compliance with the numerical Height of Buildings standards.

Table 6 Assessment of consistency with Clause 4.3 objectives

Objectives	Assessment
a) <i>To nominate heights that will provide a transition in built form and land use intensity within the Parramatta Local Government Area</i>	<p>The PLEP 2011 identifies the Core Precinct to the east of the future Telopea PLR Station as a mixed use and high-density residential zone, with the tallest building heights permitted for the Telopea Precinct.</p> <p>The PLEP 2011 also identifies height of building transition zones to the north, east and south of the Core Precinct from high-rise to mid-rise. The Concept DA 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>It is important to reflect on some of the underlying built form principles that informed the 2017 masterplan. These included:</p> <ul style="list-style-type: none"> • optimising density where best accessed by public transport; and • transitioning down in scale as distance increases from the Core and locate taller buildings on the ridge line to act as a visual marker. <p>The Concept DA strengthens the original master planning principles.</p>

Objectives	Assessment
	<p>Development Blocks C1 and C2, which are located within the Upper Core, represent the greatest variation in height being 17m (24%). However, this exceedance is also ideally placed in immediate proximity to the Telopea PLR Station where density is best optimised to support access to high frequency public transport.</p> <p>To support an appropriate level of urban transition away from the Upper Core, the degree of building height variation in the Concept DA is reduced and offset by reduced building forms the further the development transitions eastward from Wade Lane towards Benaud Lane.</p> <p>Most notably, seven buildings within development Blocks C5, C6, C7 and C8 (east of Manson Street in the Middle and Lower Core), propose a scale of development that sits 4-7m below the maximum allowable height limit. The only exception is one building (C6.1b), which exceeds the maximum height by 7m (18%). It is considered the general reduction in bulk and scale of development towards Benaud Lane improves building transition.</p> <p>It is important to acknowledge PLEP 2011 expresses height in the Core Precinct across three bands, being 70m, 50m and 40m (including bonuses). Whilst this provides some degree of height transition, it equally has the potential to produce homogenous building forms. Analysis undertaken by Bates Smart and Hassell (November 2022) notes the following building typologies would be produced through a complaint LEP height:</p> <ul style="list-style-type: none"> • 65m = 4 buildings (21%); • 40m – 65m = 2 buildings (11%); • 35m – 40m = 12 buildings (63%); and • <35m = 1 building (5%). <p>The LEP would arguably produce four towers at the top of the ridgeline that had similar proportions to one another and a harder urban transition to the Lower Precinct. The Concept DA applies a more nuanced approach to support building transition from a first principles approach that upholds the design strategy of the 2017 masterplan and results in the following stepping of building form:</p>

Objectives	Assessment
	<ul style="list-style-type: none"> • 65m = 3 buildings (21%); • 40m – 65m = 5 buildings (11%); • 35m – 40m = 4 buildings (63%); and • <35m = 7 buildings (5%). <p>As shown above, the Concept DA produces more buildings in the 35-40m band, with fewer but taller towers. It is considered this approach produces a softer transition at the interface of lower density development outside the Core Precinct and a balanced transition within the Core Precinct itself.</p> <p>In this regard, objective (a) is satisfied.</p>
<p>b) <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 topography of the land, proposing a variety of complimentary building heights across the Core Precinct to create visual interest, adopting taller but fewer slender tower forms, and maximising building separation distances and public domain spaces.</p> <p>The supporting technical analysis prepared by Bates Smart and Hassell (November 2022) quantifies the improved outcome of the Concept DA when compared to a complaint LEP form. These are relevantly discussed below.</p> <p><u>Visual Impact</u></p> <p>The visual impact of the proposed building envelopes and reference designs have been assessed from identified key views. The View Impact Assessment confirms the additional height for tower forms of individual buildings C1.2, C2.1, C3 and C4.2 as well as lower built forms located more on the periphery for example development Blocks 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>Furthermore, the Concept DA has produced improved building separation and relief from adjoining buildings within the Core Precinct by providing taller but fewer towers. This is particularly notable from views along Kissing Point Road and Dundas Park, which demonstrates that a compliant LEP envelope would result in a denser cluster of towers.</p>

Disruption of Views

As a result of increasing building heights, the proportion of facades in the Upper Core and Middle Core, which have a view greater than 40m and within a 30-degree view cone, increases from 59% to 76%. In this regard, the Concept DA produces improved visual amenity for future residents.

Disruption of views will be minimised through the network of cross streets and pedestrian connections through the Core Precinct, with the mix of compact building forms allowing views to be maintained.

In particular, the increased building heights has resulted in reduced floor plates and a series of improved streetscape outcomes including:

- Provision of a new sky link in the Lower Core connecting Manson Street to the development Block C6 building courtyard and Shortland Street;
- Additional open space in the retail courtyard (16% increase) in the Upper Core and to the Community Courtyard (11% increase); and
- Reduction of building C1.2 and increased the northern setback from the Eyles Street Pedestrian Link, opening up visual connectivity between two key open spaces.

Overall, the consolidation of building footprints through taller but fewer tower forms will deliver greater visual relief and minimise the disruption of views within the Core Precinct.

Loss of Privacy

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.

As shown in **Figure 16**, the Concept DA provides for an average of 8.4 apartments per core in the Middle and Lower Core (down from an average of 10.3 apartments per core under an LEP compliant layout), which is a direct result of reducing floor plates with fewer apartments per core and increasing heights.

Loss of Solar Access

Solar access shadow diagrams have been prepared by Bates Smart and are included in the Urban Design Concept Plan Report and Addendum RtS Report.

In relation to solar access from the proposed Core Precinct, shadow diagrams have been prepared for hourly intervals from 9am to 3pm for 21st June, representing the greatest overshadowing impact through the year.

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 Approval building envelopes, and shadow cast by the reference scheme.

The overshadowing impact of the proposed envelopes when compared to compliant LEP envelopes for key public open areas is discussed below.

Telopea Public School

Between 1pm and 3pm on 21st 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 **Figure 16** below). It is noted that in both cases, the additional overshadowing is only to a small portion of the school and park sites. 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, which is limited to about an hour, does not occur to the main areas of the school grounds during recess or lunchtime break periods.

As shown in **Figure 18**, the proposed building envelope produces 1,645sqm less shadow across Telopea Public School, with the reference scheme producing 7,635sqm less shadow. Utilising the reference design, the Concept DA shadows 12.3% of Telopea Public School at its worst case being 3pm, with 8.8% directly related to non-compliant height.

Sturt Park

In relation to Sturt Park, the additional overshadowing occurs at 3pm towards the northern boundary of the park to an area which is already partially shaded by mature trees. A majority of the grassed area of the park will continue to receive full solar access.

As shown in **Figure 19**, the proposed building envelope produces 1,993sqm more shadow across Sturt Park, with the reference scheme producing 573sqm more shadow. Utilising the reference design, the Concept DA shadows 14.2% of Sturt

<p>Objectives</p>	<p>Assessment</p> <p>Park at its worst case being between 2.30 and 3pm with no impacts from non-compliant height prior to 2.00pm.</p> <p>While representing a minor increase based on the reference scheme, the impacts are considered acceptable on balance considering that the shadow is cast at 3pm onwards and not continuously throughout 9am – 3pm.</p> <p><i>Core Precinct</i></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 Precinct which will be accessible to the general public 24 hours a day and receive improved solar access</p> <p>Hassell and Bates Smart have undertaken a detailed analysis of the quantity of sunlight achieved to key open spaces within the Eyles Street Pedestrian Link during the Winter Solstice and the Spring/Autumn Equinox. The analysis concludes:</p> <ul style="list-style-type: none"> • Winter sun is performing equally or has moderate improvements to key areas; and • Solar access has increased significantly during the Equinox. <p>The key area of improvement to the Eyles Street Pedestrian Link relates to the community courtyard along the central spine, where additional open space has been delivered. Reference should be made to the Addendum RtS Design Report (November 2022), which provides a detailed solar insolation analysis of key open spaces within the Core Precinct.</p> <p>Overall, the additional overshadowing as a result of the proposed building heights has a relatively minor impact on the use of Telopea Public School and Sturt Park, with the overshadowing reducing in the Spring and Autumn months and being at its minimum in Summer. Given that the vast majority of these 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 Approval. In addition, the redistribution of taller and slender tower forms has improved solar access within the Core Precinct.</p> <p>In this regard, objective (b) is satisfied.</p>
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Objectives	Assessment
<p>c) <i>To require the height of future buildings to have regard to heritage sites and their settings</i></p>	<p>There are no heritage listed items within the Telopea CPA.</p> <p>As set out in the supporting Heritage Impact Statement (HIS) prepared by Urbis (July 2021), the Concept DA has been prepared with consideration for the appropriate management of the heritage values of the area.</p> <p>The HIS concludes the Concept DA will have no adverse heritage impacts on the significance of heritage items and future development in accordance with the Concept DA will not detract from the existing setting and streetscape of any heritage item.</p> <p>In this regard, objective (c) is satisfied.</p>
<p>d) <i>To ensure the preservation of historic views</i></p>	<p>The supporting HIS does not identify any historic views in relation to the proposal. The closest heritage item to the Telopea CPA is Redstone House, listed on the NSW State Heritage Register (34 Adderton Road). 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 Concept DA results in a level of visual impact and potential visual impacts that are contemplated in the statutory and non-statutory controls for the Telopea Precinct and can be supported on visual impacts grounds.</p> <p>It is further acknowledged that during DPE's assessment of the rezoning proposal for Telopea, no concern was raised with respect to the bulk and form within the Core Precinct where the height exceedances are proposed.</p> <p>In this regard, objective (d) is satisfied.</p>
<p>e) <i>To reinforce and respect the existing character and scale of low-density residential areas</i></p>	<p>The Concept DA 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>

Objectives	Assessment
	<p>It is worth noting the adjustments in building height across the Core Precinct have resulted in reduced building forms particularly at the edges, where built form interfaces with lower density residential areas. This is prominent in seven buildings within development Blocks C5, C6, C7 and C8 (east of Manson Street in the Middle and Lower Core), which introduce a scale of development that is 4-7m below the maximum allowable height limit. In this regard, the Core Precinct largely maintains the applicable height controls at the edges to respect and reinforce the scale of low-density residential areas.</p> <p>The Concept DA 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 housing diversity within a high-density residential development context, including the provision of low and mid-rise apartment forms, with slender towers towards the Upper Core.</p> <p>The Concept DA 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 future quality and character of development in the Telopea CPA to come.</p> <p>In this regard, objective (e) is satisfied.</p>
<p>f) <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 the public domain, including parks, streets and lanes</i></p>	<p>As identified in the Bates Smart and Hassell Addendum RtS Urban Design Report (November 2022), the Concept DA satisfactorily addresses sky exposure and solar access to both residential apartments and areas of public domain.</p> <p>Buildings have been arranged to maximise opportunities for solar access to comply with the requirements set out in the ADG. Compliance has been assessed on a building by building and lot by lot basis. As depicted in Figure 21, the reference scheme achieves above the ADG requirements with 76% of apartments receiving at least 2 hours of sunlight per day to their living rooms and private open spaces. This is a direct result of reducing building footprints towards the Upper Core, allowing for increased building separation and solar access to penetrate into the Core Precinct itself.</p> <p>Several improvements have been made within the Core Precinct to improve sky exposure and daylight including:</p> <ul style="list-style-type: none"> • A new sky link in the Lower Core connecting Manson Street to the development Block C6 building courtyard and Shortland Street,

Objectives

Assessment

- Additional open space in the Retail Courtyard in the Upper Core (16% increase) and to the Community Courtyard (11% increase) and a reduction of individual building c1.2; and
- Increasing the northern setback from the Eyles Street Pedestrian Link, opening up visual connectivity between two key open spaces.

As shown in **Figure 17** 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 21st of June. As demonstrated in the technical analysis, the Concept DA achieves a level of solar access to the public domain either equal to or greater than an LEP compliant scheme.

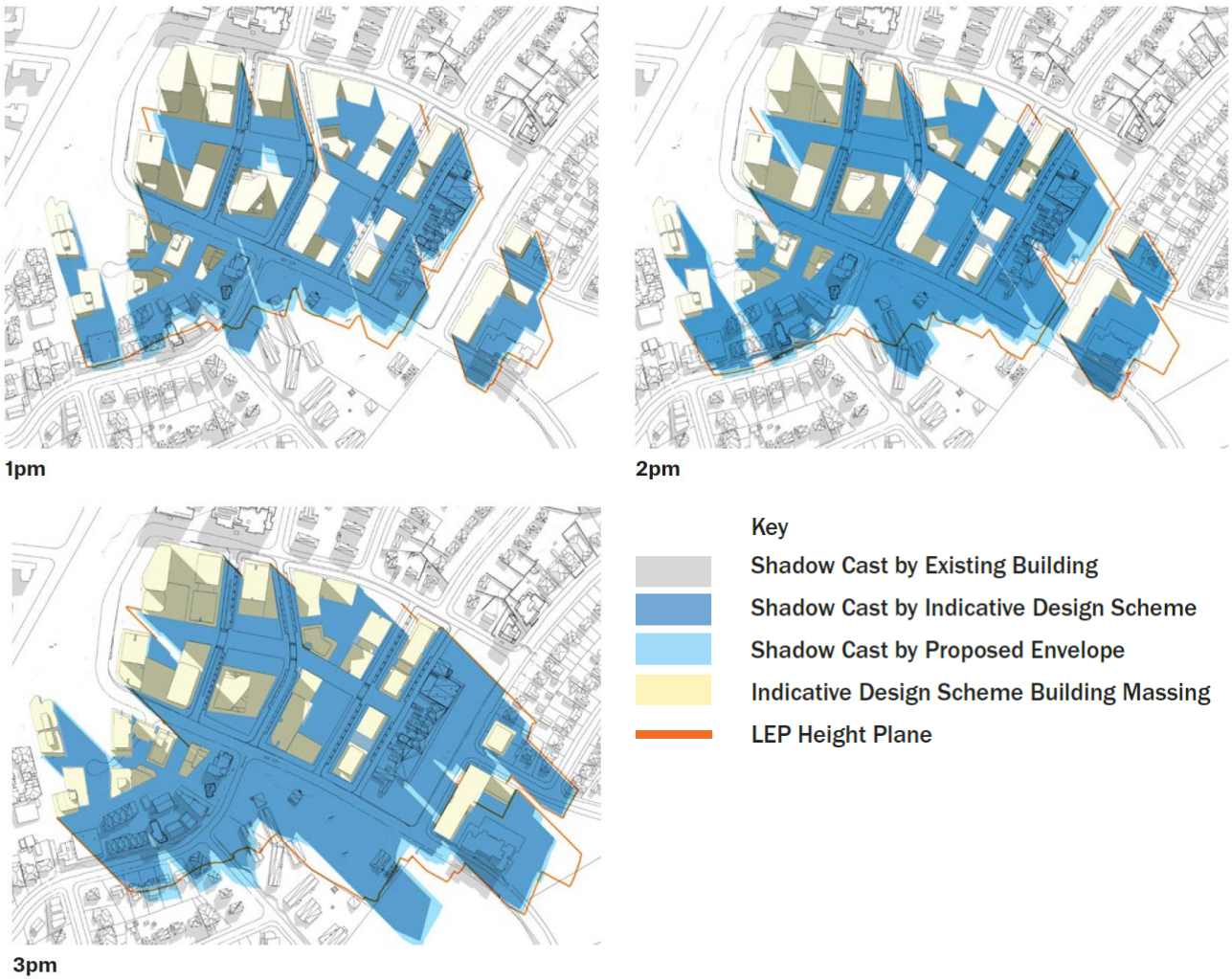
In this regard, objective (f) is satisfied.

Figure 15 Apartments per Core – Comparison of compliant and proposed typical level



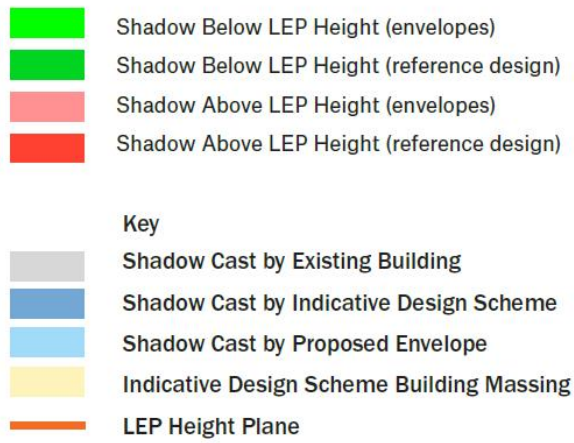
Source: Bates Smart

Figure 16 Shadow diagrams for the Concept Proposal on 21st June from 1pm-3pm



Source: Bates Smart

Figure 17 Overshadowing Telopea Public School, 21st June from 9am-3pm



Source: Bates Smart

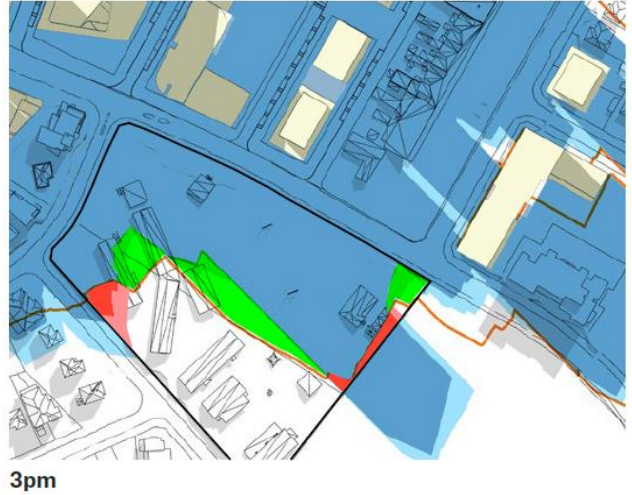
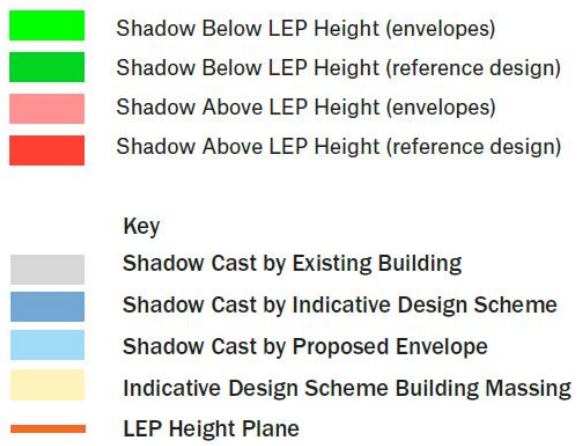


Figure 18 Overshadowing Sturt Park, 21st June from 9am-3pm

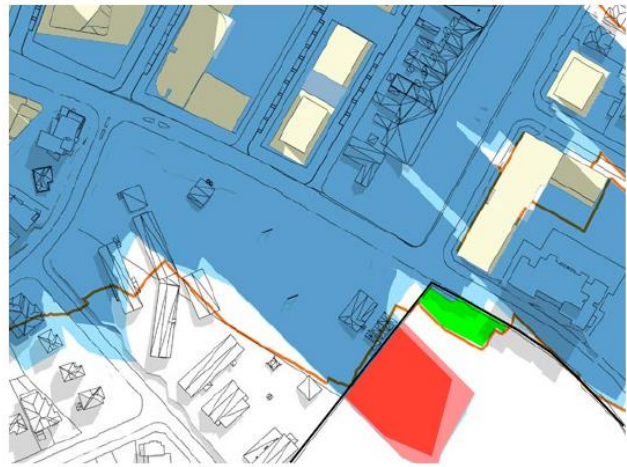


9am



12pm

Source: Bates Smart



3pm

Figure 19 Solar access to public domain areas, Core precinct – reference design, 21st June from 9am-3pm



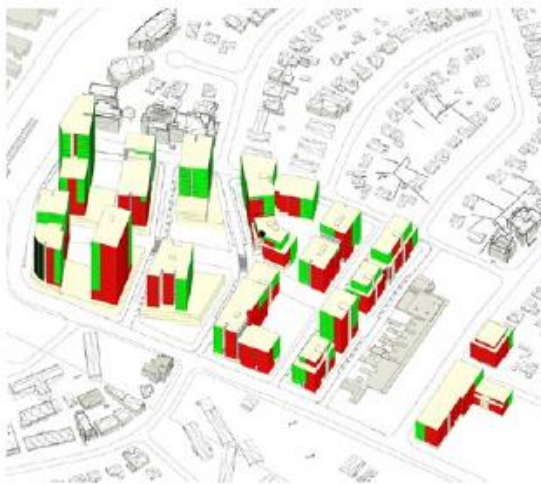
Source: Bates Smart

Figure 20 Residential amenity – Solar access to apartments, Core reference design, 21st June from 9am-3pm

Lot	Units	2 hours Sun	
		%	Lot Totals
C1.0		80.0%	75.9%
C1.1	194	55.6%	
C1.2	216		
C2.0		82.4%	93.0%
C2.1a	84	62.5%	
C2.1b	189	51.8%	
C2.2a	145	82.6%	83.2%
C2.2b	81		
C3.0		60.0%	
C3.1	125		
C4.0			
C4.1	97	62.5%	72.1%
C4.2	96	62.0%	
C5.1a	71	61.7%	
C5.1b	110	61.0%	71.2%
C5.1c	41	95.8%	
C6.1a	61	61.8%	
C6.1b	161	49.3%	72.5%
C6.1c	73	72.9%	
C6.2a	65	72.9%	
C6.2b	77		71.5%
C7.1	73	57.4%	
C7.2	71	65.2%	
C8.1a	45	81.0%	71.5%
C8.1b	30	74.1%	
C8.1c	76	51.8%	



2 hours sun
mid winter



South



West

Source: Bates Smart

6.2.2. Test 3: The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable

The exceedance to the Height of Buildings development standard is a result of several aspects that have culminated in a superior built form proposition than what could be realised through strict compliance with the controls.

The Concept DA seeks to reduce the footprint of several towers and in doing so, facilitates several significant improvements to the Telopea CPA and Core Precinct. These include:

- Improved distribution of building typologies and scales across the Core Precinct with taller but fewer towers;
- Improved interface of building forms at the edges, with several buildings sitting well below the PLEP 2011 height controls in response to adjoining low density development;
- Improved quantity of open spaces within the Core Precinct including near the Retail Courtyard and Community Library;
- Improved or maintained overshadowing impacts to Sturt Park and Telopea Public School;
- Improved visual amenity within the Core Precinct including taller towers with enhanced apartment outlook;
- Improved ADG performance against the design criteria including solar access, building separation and apartments per core;
- Improved solar access to key public domain areas within the Core Precinct including Eyles Link, the Retail Courtyard, and the Communal Courtyard;
- Improved retention of mature trees, which reinforce the quality and character of Telopea; and
- Improved or maintained visual impacts when viewed from the surrounding locality, namely as a result of improved tower separation and slender typologies that provide relief between buildings.

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 21** below, the proposed height variations create greater differentiation in building silhouette across the Core Precinct, as well as providing improved amenity for both residents and public open space. The key elements proposed to maximise built form diversity and character include:

- 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.

Strict adherence to the Height of Buildings development standards would deliver a built form that would be more in keeping with the existing scale of development of buildings across the Telopea CPA and specifically within the Core Precinct. To strictly adhere to the applicable Height of Buildings development standards would unreasonably and unnecessarily limit the development of Telopea CPA preventing a coherent and functional built form. As demonstrated, the proposed non-compliances also do not generate adverse or unacceptable amenity impacts nor an outcome that is inconsistent with the desired future quality and character intended through application of the PLEP 2011 zoning and density controls.

It is important to note that 21,000 sqm of GFA is located below the PLEP 2011 height and 16,000 sqm of GFA above across six buildings within the Core Precinct. Of the 16,000 sqm that is located above the height limit, a portion is attributed to utilising bonus FSR provisions available under PLEP 2011, the Affordable Rental Housing SEPP and the Seniors Housing SEPP (now Housing SEPP).

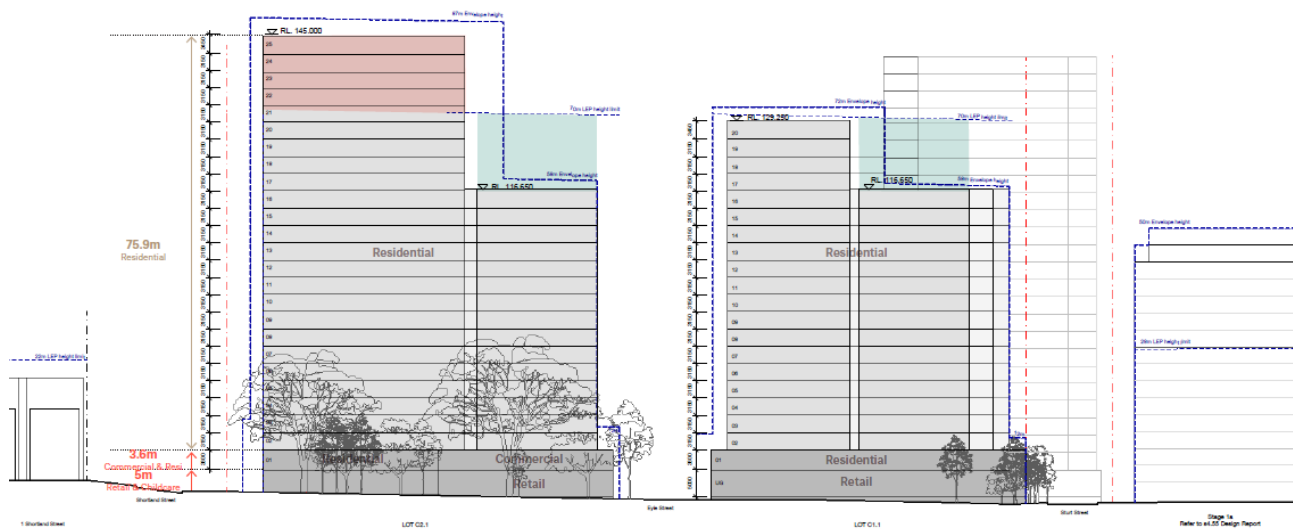
The preceding information and justification demonstrate that it would be unreasonable, unnecessary and inappropriate in the circumstances to rigidly apply the Height of Buildings development standard.

As demonstrated both qualitatively and quantitatively, the Concept DA satisfies the objectives of the Height of Buildings development standards prescribed in clause 4.3 of PLEP 2011. The objectives will be achieved notwithstanding the partial non-compliance with the Height of Buildings standards.

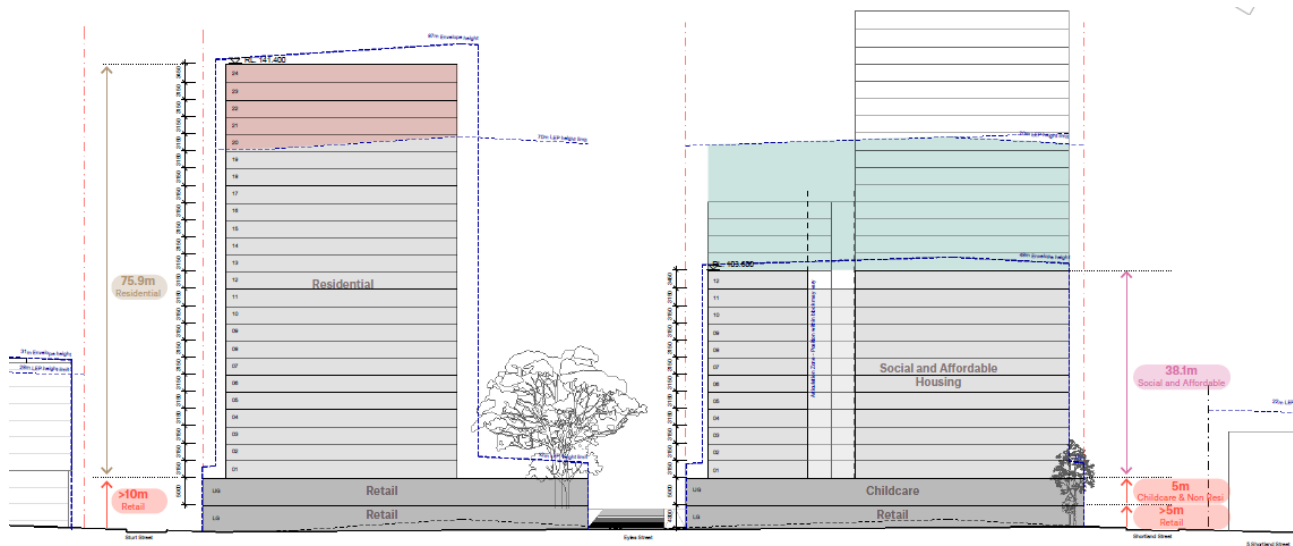
Accordingly, compliance with the Height of Buildings development standards would directly undermine the objectives of the R4 High Density Residential and B4 Mixed Use zones and strategic vision established by the NSW Government for the Telopea Precinct.

Strict compliance with the Height of Buildings standards would place an unreasonable burden on the community and be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. In particular, it would result in less-optimal public domain amenity, a reduction in the provision of public open space, reduced ADG compliance and unacceptable increases in overshadowing.

Figure 21 Upper Core Sections showing PLEP 2011 maximum building heights and proposed building envelopes



Sturt Street Looking East

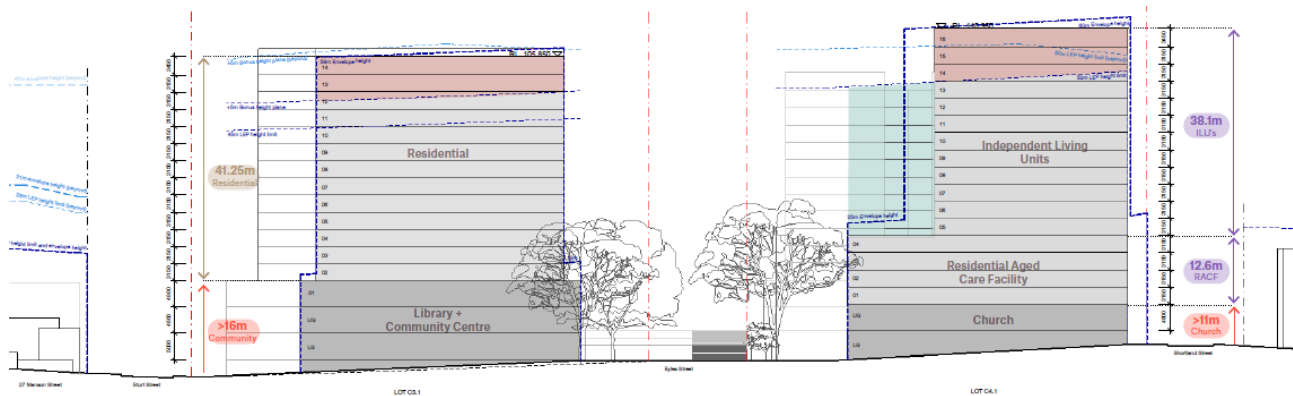


Wade Lane Looking West

Key

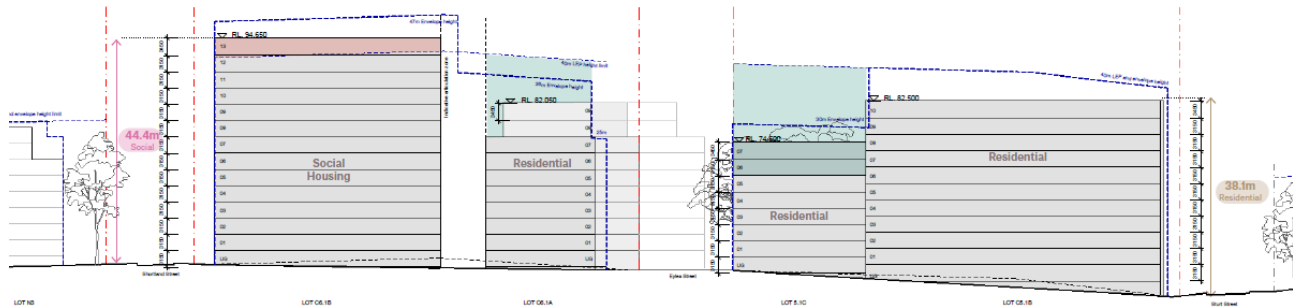
 	LEP Height Limit
 	Proposed Envelope
	Proposed Reference Design
	Floorspace above LEP Height
	Floorspace below LEP height (unused)
↔	Height - Non Residential Use
↔	Height - Residential Use (Market)
↔	Height - Social or Affordable Housing

Figure 22 Mid Core Sections showing PLEP 2011 maximum building heights and proposed building envelopes

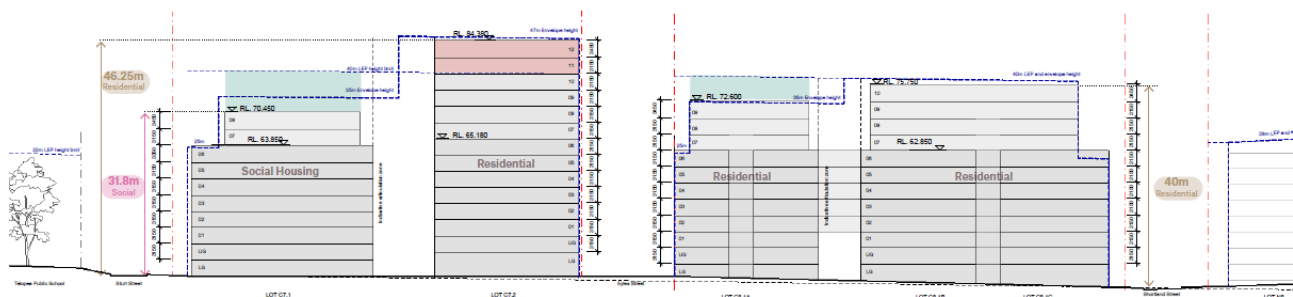


Manson Street Looking West

Figure 23 Lower Core Sections showing PLEP 2011 maximum building heights and proposed building envelopes



Manson Street Looking East



Benaud Lane Looking West

Key

	LEP Height Limit
	Proposed Envelope
	Proposed Reference Design
	Floorspace above LEP Height
	Floorspace below LEP height (unused)
↔	Height - Non Residential Use
↔	Height - Residential Use (Market)
↔	Height - Social or Affordable Housing

Figure 24 PLEP 2011 Compliant Visualisation



Source: *Bates Smart*

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”

The Concept DA and proposed non-compliances with the Height of Buildings development standards will not adversely, detrimentally, or significantly impact upon or disrupt consistency with the envisaged built form, building heights, desired future streetscape character in the locality and the bulk and scale of buildings.

The consolidation of taller and slender tower forms, improved distribution and diversity of buildings, improved building articulation elements, embellished open spaces, retention of mature trees and enhanced ADG amenity demonstrates an appropriate and well considered massing proposition.

The Addendum RtS Urban Design Study (November 2022) provides a rigorous and quantifiable analysis of the impacts resulting from the additional height exceedances across the Core Precinct and demonstrates the outcome is not notably worse than what a complying envelope would achieve.

It is considered there are sufficient environmental planning grounds to justify contravention to the Height of Buildings standard. These include:

- The Concept DA is eligible for FSR bonuses under the ARH SEPP and Seniors Housing SEPP (now Housing SEPP). The variation to the height limit is needed in some buildings to accommodate this additional density;
- Accommodating the FSR bonuses within the existing height limit would produce poorer outcomes with respect to environmental and built form amenity, and result in larger, inefficient floor plates;
- There is no net increase in GFA as a consequence of breaching the height than what would otherwise be achieved through a compliant scheme;
- Additional height proposed as a result of a redistribution of building mass more broadly across the Core Precinct does not result in any notable impacts to surrounding areas with respect to view loss, overshadowing or visual impact;
- Exceedances to the height limit produces more slender tower forms in the Core Precinct, which in turn deliver visual interest and improved open space amenity;
- The Concept DA will facilitate 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;
- The variation to height will enable an urban and architectural design response with greater public benefits to be delivered including high quality public domain and public open space; and
- The increased height in buildings allows the ground plane to be opened up along the street frontage and in turn, prioritise high quality public open space for the local community including maximising existing mature tree retention, promoting local character.

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) requires the consent authority to be satisfied that the applicant's written request has 'adequately addressed' the matters required to be demonstrated by clause 4.6(3). In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 Preston CJ at [25] confirmed his statement in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [39], stating that the consent authority "does not have to directly form the opinion of satisfaction ...but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b)".

This matter has been the subject of considerable recent judicial review, most recently in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 where Preston CJ of the Land and Environment Court sat on the bench of the Court of Appeal and affirmed the interpretation provided by Basten JA in *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 at [21]-[24] and himself in *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [74]-[81]. The conclusion reached is that only if the request does demonstrate the achievement of these outcomes will the request have adequately addressed the matters required to be demonstrated by clause 4.6(3)(a) and (b). "The consent authority needs to be satisfied that those matters have in fact been demonstrated" (per Preston CJ of LEC in *RebelMH Neutral Bay Pty Limited v North Sydney Council*) at [51]).

Each of the 4.6(3) matters are comprehensively addressed by this Request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The Request also provides sufficient environmental planning grounds, including matters specific to the Concept DA and the Telopea CPA, to justify the proposed variation to the development standard.

More specifically:

- This Request has considered in detail the objectives of the development standard in section 6.2 above and found that the objectives are achieved;
- The Concept DA's increase in Height of Buildings is compatible with the existing built form and fabric and other prevailing characteristics of the locality and consistent with the NSW Government's and Council's strategic vision and future desired character for the Telopea CPA;
- Environmental and amenity impacts are minimal, where they arise. The Request has detailed many factors which are specific to this Telopea CPA and the circumstances of the case which lead to the conclusion that it is unreasonable and unnecessary in the circumstances of the case for rigid compliance with the development standard to be required; and
- This Request has detailed several environmental planning grounds to justify contravening the development standard and the consent authority should consequently be satisfied that the Request has adequately addressed the matters set out in clause 4.6(3).

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 Height of Buildings development standard is demonstrated in **Table 6** above. The Concept DA is also consistent with the land use objectives of the R4 High Density Residential and B4 Mixed Use Zones that apply to the Telopea CPA and Core Precinct specifically under the PLEP 2011. The Concept DA 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
B4 Mixed Use	
<ul style="list-style-type: none"> To provide a mixture of compatible land uses. 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. To encourage development that contributes to an active, vibrant and sustainable neighbourhoods. To create opportunities to improve the public domain and pedestrian links. To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality. To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre. 	<ul style="list-style-type: none"> An appropriate mix of land uses is provided including retail, residential and community facilities. Commercial and residential uses are integrated within the Core Precinct with the highest level of public transport accessibility and with access to the cycling network. 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. The proposed Concept DA has a focus on creating high quality landscaped public spaces and creating improved pedestrian links in both east-west and north-south directions. The proposed retail uses, library, community centre, and residential aged care facility will provide for the daily commercial needs of the locality. The Concept DA 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.
R4 High Density Residential	
<ul style="list-style-type: none"> To provide for the housing needs of the community within a high-density residential environment. To provide a variety of housing types within a high-density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities. 	<ul style="list-style-type: none"> The Concept DA provides a diversity of housing within a high-density residential environment that will cater for the needs of a broad range of users. High density market rate, affordable and social housing is proposed to be provided. 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. High density residential development is proposed close to the future Telopea light rail station, existing bus network and access to employment opportunities.

Objective	Assessment
<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> The Concept DA 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. The minimal environmental impacts are very localised and will not adversely impact upon adjacent land, its land uses, or impinge upon the achievement of strategic planning objectives. It has consequently 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.

Contravention of the Height of Buildings standard rather contributes to the realisation of State environmental planning objectives to deliver affordable and social housing in accordance with the NSW Government’s Communities Plus program.

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

There are sufficient circumstances particular to the Telopea CPA and the Concept DA as detailed above that satisfy the matters set out in clause 4.6(4). There is a public benefit in maintaining the development standard, however given the objectives of clause 4.6 to provide flexibility and achieve better outcomes, the standard should not be dogmatically followed when there are no significant adverse environmental planning grounds arising from the exceedance.

In this case, the Concept DA achieves the objectives of the Height of Buildings development standard and the land use zone objectives despite the numerical non-compliance. There are public benefits which result from the Concept DA’s exceedance of the Height of Buildings development standard because the development is consistent with the objectives of the particular development standard and the zone and will deliver a significant quantum of affordable and social housing. The impacts upon neighbouring land and uses, as well as the environment, are negligible or minimal where impacts arise. Strict compliance will not equate to a superior planning outcome in this instance and still demonstrably achieves an orderly and economic development of land.

Furthermore, and more importantly, the Concept DA 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. The Concept DA facilitates 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 Concept DA 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 Concept DA will:

- Deliver social housing to support the welfare of the existing community and those in need within Sydney;
- Has been designed to respond to the future desired character of the site and surrounding area;
- Construct the road network of which portions will be dedicated to Council to create land for public purposes; and
- Provide buildings that achieve a range of sustainability targets and measures.

Overall, 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 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. This Request demonstrates 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 an improved transition in built form and land use intensity from the Upper Core area adjacent to the future Telopea PLR to the Lower 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. This is largely attributed to the creation of taller and slender tower forms that exceed the height limit;
- 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 DA will not have any adverse impacts on heritage items or historic views;
- The Concept DA utilises the landscape character of Telopea as a key design principle with the built form and layout respecting and reinforcing the topography of the Core Precinct and new public spaces being designed around the retention of existing mature trees;
- In response to SDRP and Council 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 DA 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 Concept DA 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 seven represent a variation to the Height of Buildings control, with the remaining thirteen buildings within or below the height limit. Of the seven buildings that breach the PLEP 2011 height limit, the greatest exceedance is 24%, with four of the six buildings having a variation of 16%-20%; and
- A proposal which complied with the Height of Buildings development standard would result in lower quality housing, homogenous building forms, reduced public benefits for the community and greater impacts on the amenity of existing residents.

For the reasons outlined above, this 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 support 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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