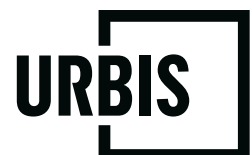




CLAUSE 4.6 VARIATION REQUEST

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

Prepared for
FRASERS PROPERTY TELOPEA DEVELOPER PTY LTD
December 2022



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Report Number	Final Draft for Frasers / LAHC Review

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1. INTRODUCTION

Frasers Property Telopea Developer Pty Ltd (**Frasers**) has submitted a Concept Application (**Concept DA**) for the staged redevelopment of the **Telopea Concept Plan Area (CPA)**, registered as SSD-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 importantly, LAHC is the applicant.

The Concept DA seeks approval for:

- A mixed-use development including:
 - Approximately 4,700 dwellings, including a mix of social, affordable and market dwellings
 - Inclusion of a new retail precinct with a new supermarket, food and beverage, and speciality retail
 - Proposed childcare facility
 - Proposed combined library and community centre
 - Proposed combined Church, Residential Aged Care Facility, and independent living units facility
- Delivery of new public open space, including:
 - A new light rail plaza
 - Hill top park
 - Elyes 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 distribution of gross floor area (**GFA**) that exceeds the Floor Space Ratio development standards across parts of the Telopea CPA. This clause 4.6 Variation Request (**Request**) has been prepared to support the Concept DA.

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

- *Amendment of the exhibited clause 4.6 variation request to identify the FSR variation being sought with reference to clause 4.5 of PLEP 2011, including in the scenario where land transfer/swap arrangements do not proceed.*
- *Amendment of the Clause 4.6 variation request to focus on the aspect or element of the development that contravenes the development standard.*

This Request has accordingly been prepared to directly respond to the DPE letter dated 28 July 2022 and superseded 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 4.5 of the Parramatta Local Environmental Plan 2011 (PLEP 2011);
- provides further details on the land transfer/swap arrangements, noting that discussions between LAHC and City of Parramatta Council (**Council**) are progressing positively and accordingly a scenario where the land swap does not occur has not been contemplated; and
- has been prepared in support of the Telopea CPA for completeness, while more clearly articulating and focussing on the extent of non-compliance which is limited to **four (4)** development blocks within the Core Precinct.

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 Report prepared by Urbis Pty Ltd and dated March 2022 and the Addendum Response to Submissions 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, and key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the Environmental Impact Statement, Response to Submissions, Addendum Response to Submissions 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 4.5 of the PLEP 2011.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification 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*.

This extends to any conditions proposed to be imposed on the Concept DA that might operate to restrict the development, including development standards such as FSR 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 FSR 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 will result. It seeks to support the DPE's decision-making in this matter.

1.2. LAND TRANSFER ARRANGEMENTS

The Concept DA is predicated on a land transfer arrangement, whereby existing LAHC owned land is proposed to be developed for new open space, roads and pedestrian connections and existing Council owned pathways and roads are proposed to be converted into development blocks (refer to Figure 21 of the exhibited EIS and Plan DA01.MP.110 at **Appendix C** of the Addendum Response to Submissions Report).

The land transfer required to facilitate the Concept DA is proposed to be formalised via the proposed Voluntary Planning Agreement. Frasers (on behalf of LAHC) issued a Revised Letter of Offer to Council on 27 September 2022, setting out the proposed arrangements. Council's assessment of the Revised Letter of Offer remains ongoing. However, during the negotiations Council has noted in principle agreement with the proposed mechanism for the land transfer arrangements which is via the provisions of Section 30 of the Land Acquisition (Just Terms Compensation) Act, 1991.

This Request has been prepared on the basis of this preliminary support, and more notably no indication to date from Council that it outright objects to the proposed land transfer arrangements. Consideration of a speculative scenario where the land transfer does not occur is accordingly considered futile under the circumstances.

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: LAHC

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.
- 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.

2.4. TOPOGRAPHY

The sloping topography of Telopea is amongst its most distinctive features, lending significantly to the sense of place (refer Figure 2). The most western part of the site peaks at circa RL 61.50 (AHD), i.e., circa 61.5 metres above the Australian Height Datum. From this point, the site generally falls east towards Evans Road at RL32.0 (AHD). This circa 30 metre fall across a distance of 350 metres culminates in The Ponds Creek, which traverses through the bottom of Sturt Park.

A ridge line runs through Telopea CPA in the vicinity of the light rail easement, where land slopes to the east down to the Ponds Creek.

Figure 2 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 CPA – 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.

The existing trees on site establish a primary framework for the distribution of the proposed GFA into building envelopes to ensure that more significant trees are retained in the current proposal than in the masterplan that informed the rezoning of the site.

2.6. OPEN SPACE

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

- 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 1.5ha 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.

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

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.

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

As outlined in Section 1, this Request considers the Telopea CPA in its entirety. However, the geographical extent of proposed FSR exceedances is localised to the Core Precinct. The Telopea Core Precinct is illustrated in Figure 3.

Source: Bates Smart

The Core Precinct to which this Request primarily relates, is 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.

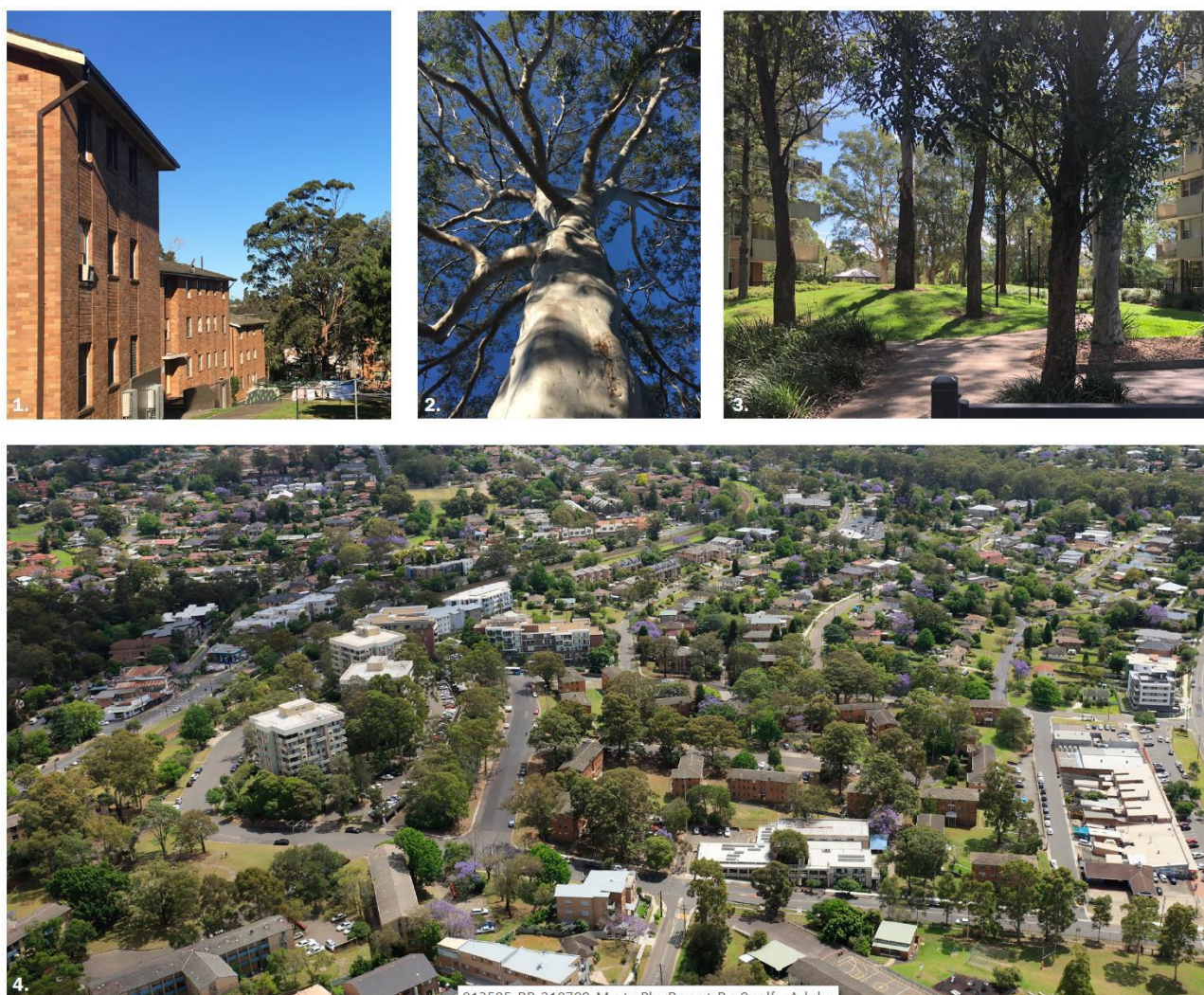
Existing built form throughout the Core Precinct is characterised by mid-late 20th century three and four storey flat buildings arranged freely in an open lawn setting. At the top of the hill, the built form culminates in the 'Three Sisters', the group of nine storey apartment buildings set amongst stands of established Eucalypts. The bushland character is defined by the high quality and established trees on the site.

For the purposes of the 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;
- 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 4.

Figure 4 Existing Core area



(Photos continue over page).



Images:

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

Source: Bates Smart

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

3. PROPOSED CORE PRECINCT DEVELOPMENT

As outlined at Section 1, this Request has been prepared to accompany a Concept DA for the staged redevelopment of the Telopea CPA. The Concept DA sets out the maximum building envelopes and 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 applications will be assessed against.

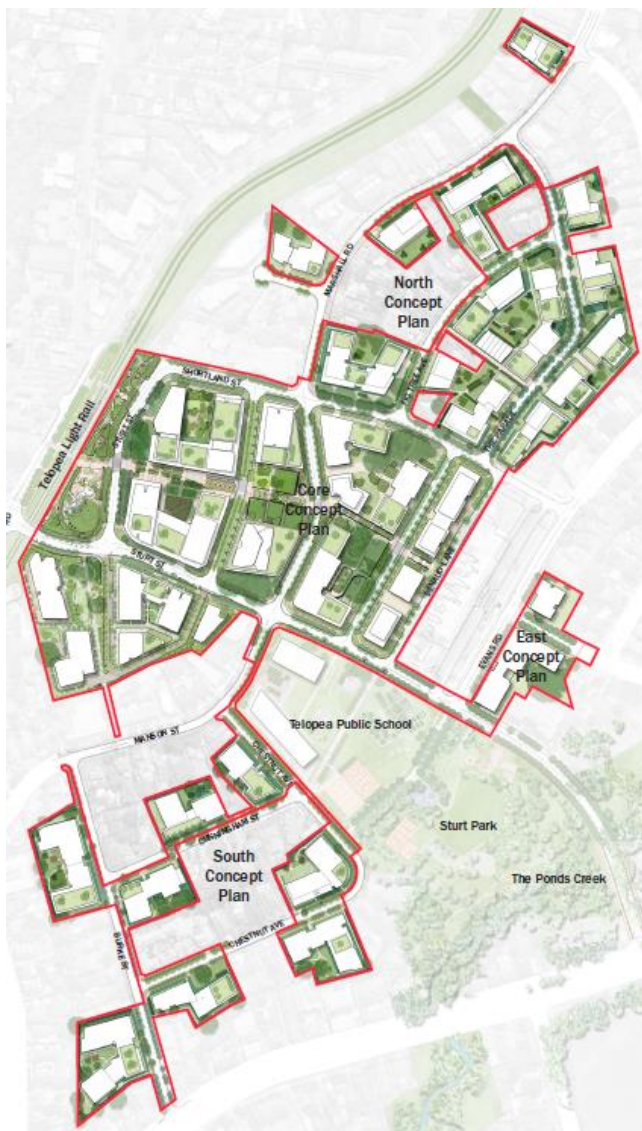
While Section 1 of this Request summarises the scope of the Concept DA, a detailed description of the proposed Concept DA is provided in the EIS prepared by Urbis Pty Ltd, as updated in the Addendum Response to Submissions Report prepared by Urbis Pty Ltd (December 2022). The Concept DA is also detailed 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 FSR 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 5 and is shown in the context of the urban structure for the Concept DA over the entire Telopea CPA.

Figure 5 Urban Structure for the Concept DA and Core Precinct



Source: Hassell & Bates Smart

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.
- Fig Tree Lane – which provides residential streetscape and address and contributes to the creation of suitably sized (and commercially viable) development parcels.

In addition, the Sturt Street extension, Light Rail crossing will link Adderton Road and Sturt Street providing additional east-west connections across the rail line.

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.

Blocks C1 and C2, west of Wade Street form the 'Upper Core' and Blocks C3 and C4, between existing Wade Street and the new Manson Street, comprise the 'Middle Core'. Blocks C5, C6, C7 and C8 form the 'Lower Core'.

The Core Precinct accommodates a range of types of open space, all of which are arranged around retention of significant trees (refer Figure 6). 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. Overall, the Core Precinct provides 8,783m² of publicly accessible open space, 8,583m² of communal open space, and 9,744m² of deep soil including 5,282m² of unencumbered land to be dedicated to Council.

Figure 6 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

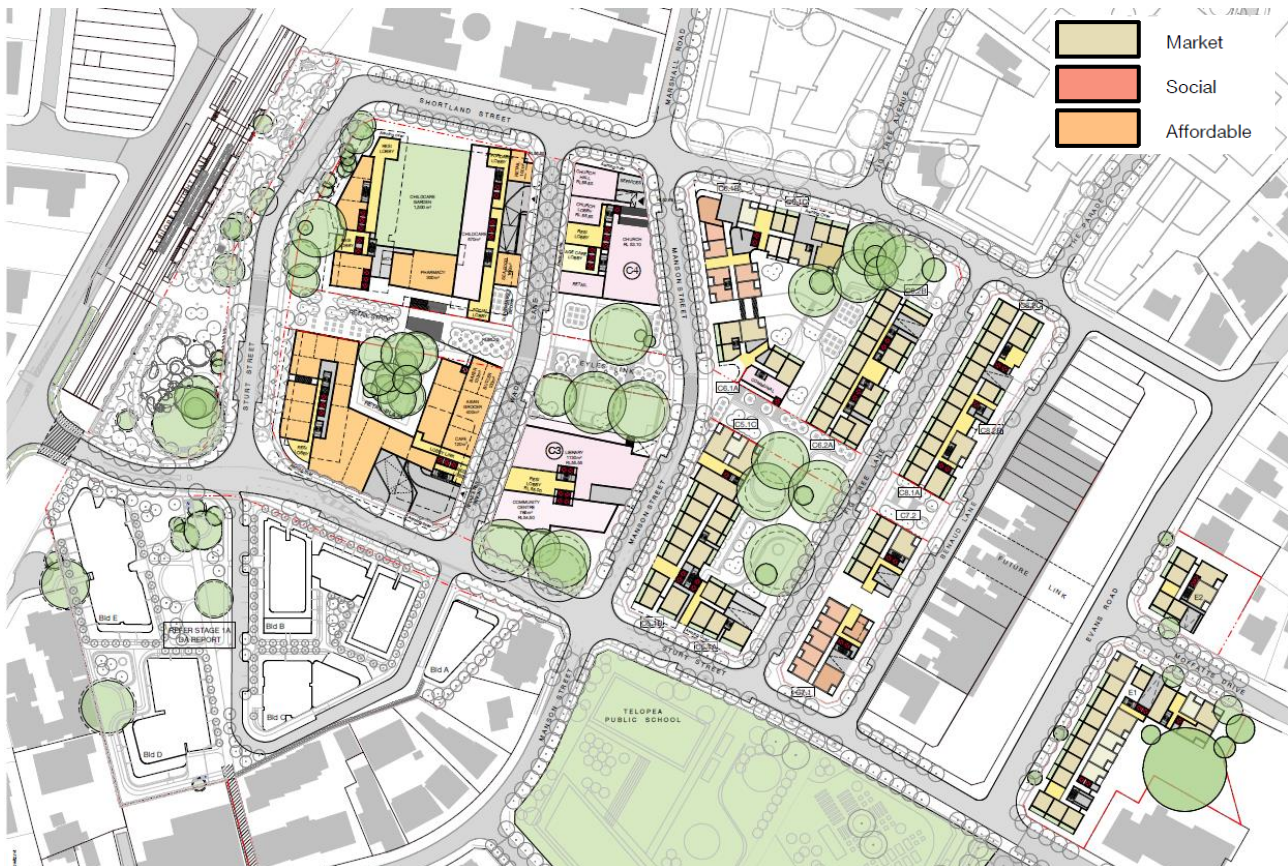
In addition to high density residential development, the Concept DA proposes a range of non-residential uses focused on the new local centre in the Core Precinct. Table 1 identifies proposed land uses by development block. **Figure 7** visually illustrates the spatial distribution of future land uses 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 Seniors 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 7 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 Report, 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 8**). 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 9 graphically illustrates the spatial distribution of proposed building height.

Figure 8 PLEP 2011 Maximum Building Heights

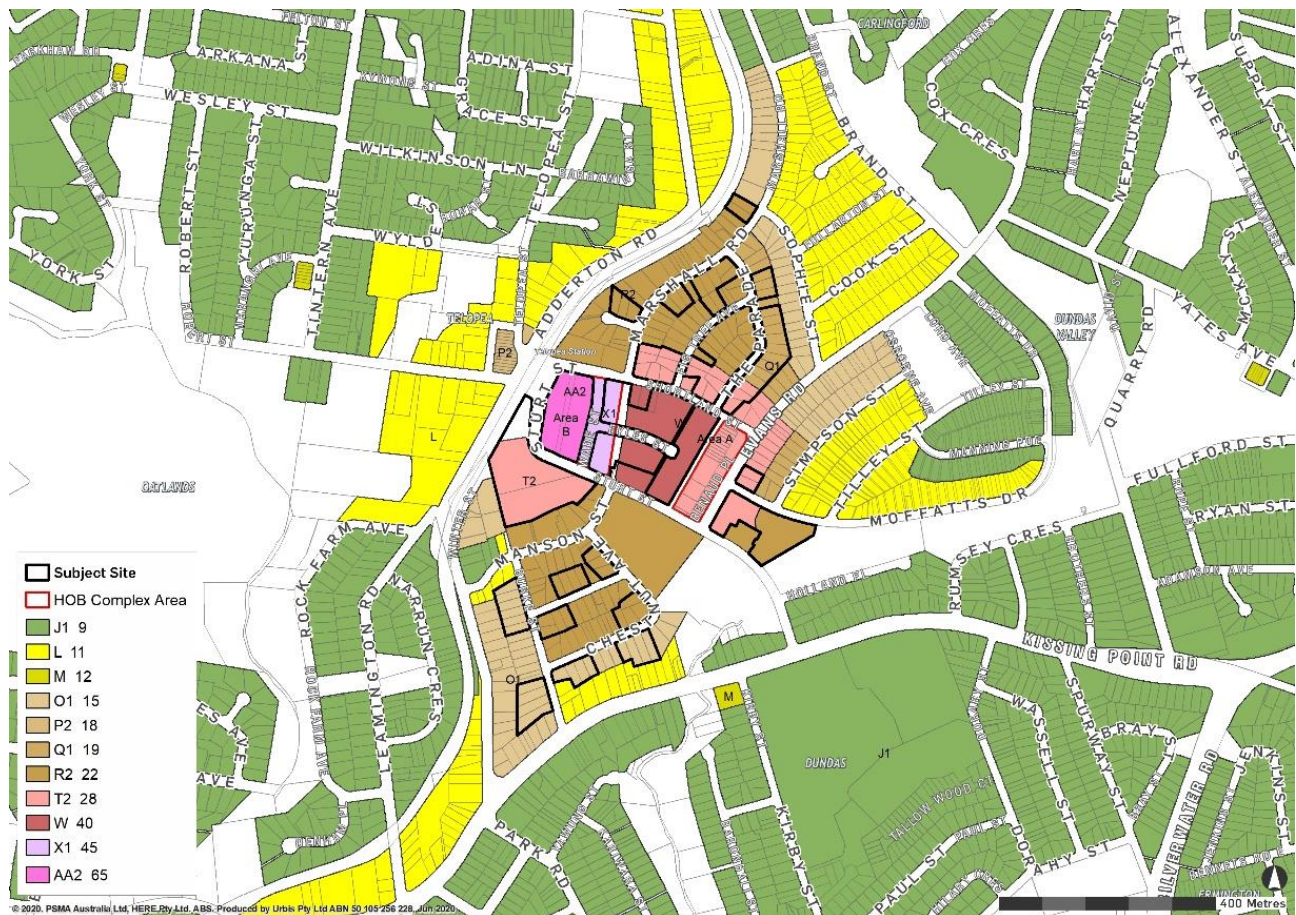


Table 2 Proposed Height by Development Block

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 9 Visualisation of proposed building heights (RTS scheme)



To provide an appropriate level of flexibility in the detailed design of the future buildings, a minimum and maximum GFA has been nominated for each development block. The proposed maximum GFA of 391,940m², comprising a maximum total residential of 376,940m² and a minimum non-residential GFA of 15,000m² is not to be exceeded.

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

Tables 3 and 4 summarises the maximum permitted FSR and GFA (including available bonuses) for the current and proposed urban structure, described further in **Section 4**. Table 5 provides proposed GFA by land use for each development block within the Core Precinct. For completeness the GFA by land use is also shown for all precincts across the Telopea CPA. It is noted that Blocks C1 and C2 have been combined for this purpose due to the linked basements, which contain GFA. Red figures denote development blocks that are proposed to exceed the FSR, and green figures denotes development blocks that comply with the FSR development standard.

Greater variations with the maximum permitted FSRs including bonuses occur under the proposed urban structure scenario compared to the existing urban structure scenario.

Table 3 Maximum permissible and proposed GFA (based on mapped FSR)

Area	Area (m²)	Base FSR (PLEP 2011, clause 4.4)	Maximum Permissible Base GFA (PLEP 2011, clause 4.4)	Bonus GFA (PLEP 2011, clause 6.17(2) Area B)	Bonus GFA (PLEP 2011, clause 6.17(c) Area C)	Bonus FSR (ARHSEPP, clause 13)	SEPP Bonus GFA (m²)	Bonus FSR (Seniors Housing clause 45)	Bonus FSR (Seniors Housing clause 45)	Maximum Permissible GFA (m²)	Proposed Indicative Scheme Total GFA (m²)	Compliance (m²)
Core Precinct												
Upper Core	21,243	3.7	78,599	9,000	N/A	0.74	15,720	N/A	N/A	103,319	113,019	9,700
Lower Core	24,115	3.0	72,345	N/A	N/A	0.6	14,469	N/A	N/A	86,814	77,629	-9,185
Core Sub Total	45,358		150,944	9,000	N/A		30,189	N/A	N/A	190,133	190,648	515

Table 4 Maximum permissible and proposed GFA (based on proposed road layout)

No.	Area (m²)	Base FSR (PLEP 2011, clause 4.4)	Maximum Permissible Base GFA (PLEP 2011, clause 4.4)	Bonus GFA (PLEP 2011, clause 6.17(2) Area B)	Bonus GFA (PLEP 2011, clause 6.17(c) Area C)	Bonus FSR (ARHSEPP, clause 13)	Bonus GFA (ARHSEPP, clause 13)	Bonus FSR (Seniors Housing clause 45)	Bonus FSR (Seniors Housing clause 45)	Maximum Permissible GFA (m²)	Proposed Indicative Scheme Total GFA (m²)	Non- Compliance (m²)
Core Precinct												
C1 C2	13,381	3.7	49,510			0.74	9,902			59,412	81,091	21,679
C3	4,174	3.7	15,444	4,150		0.74	3,089			22,683	15,650	-7,033
C4	2,898	3.7	10,723			0.74	2,145	0.5 (for 85% of C4)	1,232	14,100	16,278	2,178
C5	4,855	3.0	14,565			0.6	2,913			17,478	19,069	1,591
C6	8,043	3.0	24,129			0.6	4,826	0.5 (for 25% of C6)	1,327	30,282	34,310	4,028
C7	2,211	3.0	6,633			0.6	1,327			7,960	11,454	3,494
C8	2,535	3.0	7,605			0.6	1,521			9,126	12,796	3,670
Subtotal	38,097		128,608				25,722			161,038	190,648	29,931

Table 5 Proposed GFA by land use

Development Block	Site Area (m²)	Proposed Total GFA	Market Housing	Affordable Housing	Social Housing	Commercial premises/Offices	Retail	Health and Medical Services	Child Care	Indoor Recreation Facility	Church	Residential Aged Care Facility	Independent Living Units	Library	Community Centre
Core Precinct															
C1	6,979	36,469	33,489				2,080	900							
C2	6,402	44,622	24,279	4,950	9,838	500	3,605	300	750	400					
C3	4,174	15,650	11,500											2,075	2,075
C4	2,898	16,278	0								2,500	5,660	8,118		
C5	4,855	19,069	14,428	4,641											
C6	8,043	34,310	23,167		11,143										
C7	2,211	11,454	6,318		5,136										
C8	2,535	12,796	12,796												
Subtotal	38,097	190,648	125,978	9,591	26,116	500	5,685	1,200	750	400	2,500	5,660	8,118	2,075	2,075
Stage 1A		36,967	36,967	0	0	0	0	0	0	0	0	0	0	0	0
East Precinct															
E1		11,864	11,864												
E2		4,220	4,220												
Subtotal		16,083	16,083	0	0	0	0	0	0	0	0	0	0	0	0
North Precinct															
N1		5,282	0		5,282										
N2		3,828	3,828												
N3		14,679	14,679												
N4		4,322	4,322												
N5		11,173	11,173												
N6		14,256	14,256												
N7		18,630	11,169		7,462										
N8		7,377	0		7,377										
N9		12,466	12,466												
N10		3,884	3,884												
Subtotal		95,897	75,776	0	20,121	0	0	0	0	0	0	0	0	0	0
South Precinct															
S1		5,407	0		5,407										
S2		6,903	6,903												
S3		7,928	7,928												
S4		6,813	6,813												
S5		5,753	0		5,753										
S6		4,713	4,713												
S7		7,192	7,192												
S8		7,635	7,635												
Subtotal		52,345	41,185	0	11,160	0	0	0	0	0	0	0	0	0	0
Telopea CPA Total		391,940	295,990	9,591	57,397	500	5,685	1,200	750	400	2,500	5,660	8,118	2,075	2,075

4. VARIATION OF FLOOR SPACE RATIO 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 FSR 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 Response to Submissions Report, October 2022) particularly deliver improved amenity outcomes for the Core Precinct through a distribution of overall permitted GFA. The benefits of the revised urban structure and resulting redistribution of built form and GFA can be summarised as follows:

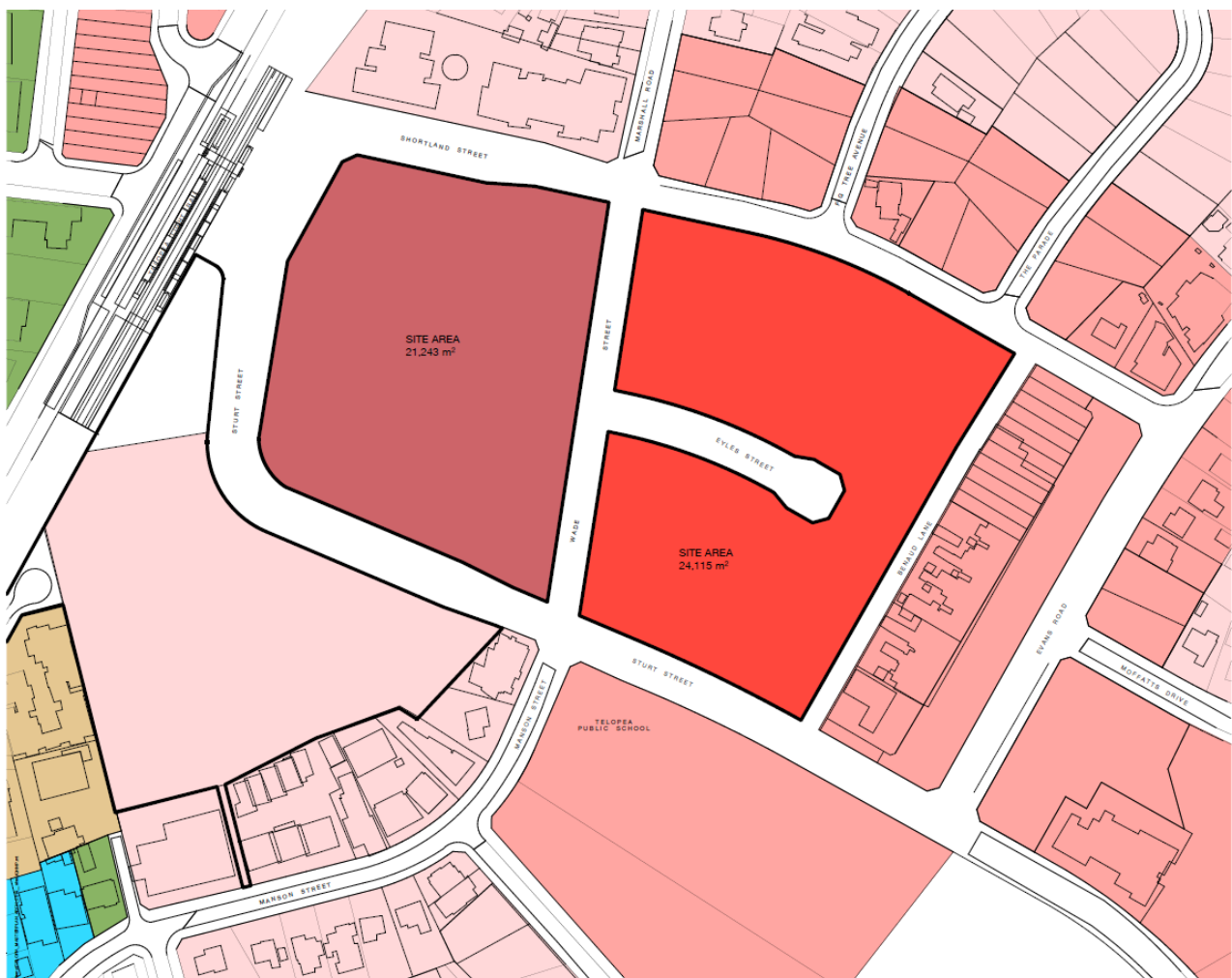
- **Pedestrian Connections** – Stepping down the steep hillside, Eyles Street Pedestrian Link becomes a pedestrian oriented street which complements Sturt Street and Shortland Street. Its revised alignment is designed around tree retention whereby significant existing trees define the journey up or down 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 (PDCP 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. CURRENT APPLICABLE DEVELOPMENT STANDARD

Clause 4.4(2) of the PLEP 2011 provides that the maximum FSR for a building on any land is not to exceed the FSR shown for the land on the Floor Space Ratio Map. The maximum FSR shown on the relevant map is 1:1 to 3.7:1 (Figure 11), noting however that bonus GFA / FSR is available pursuant to clause 6.17 of the PLEP 2011 through the provision of community facilities, and a further bonus GFA / FSR is available pursuant to clauses 17 and 87 of the Housing SEPP 2021 through the provision of affordable housing and seniors housing.

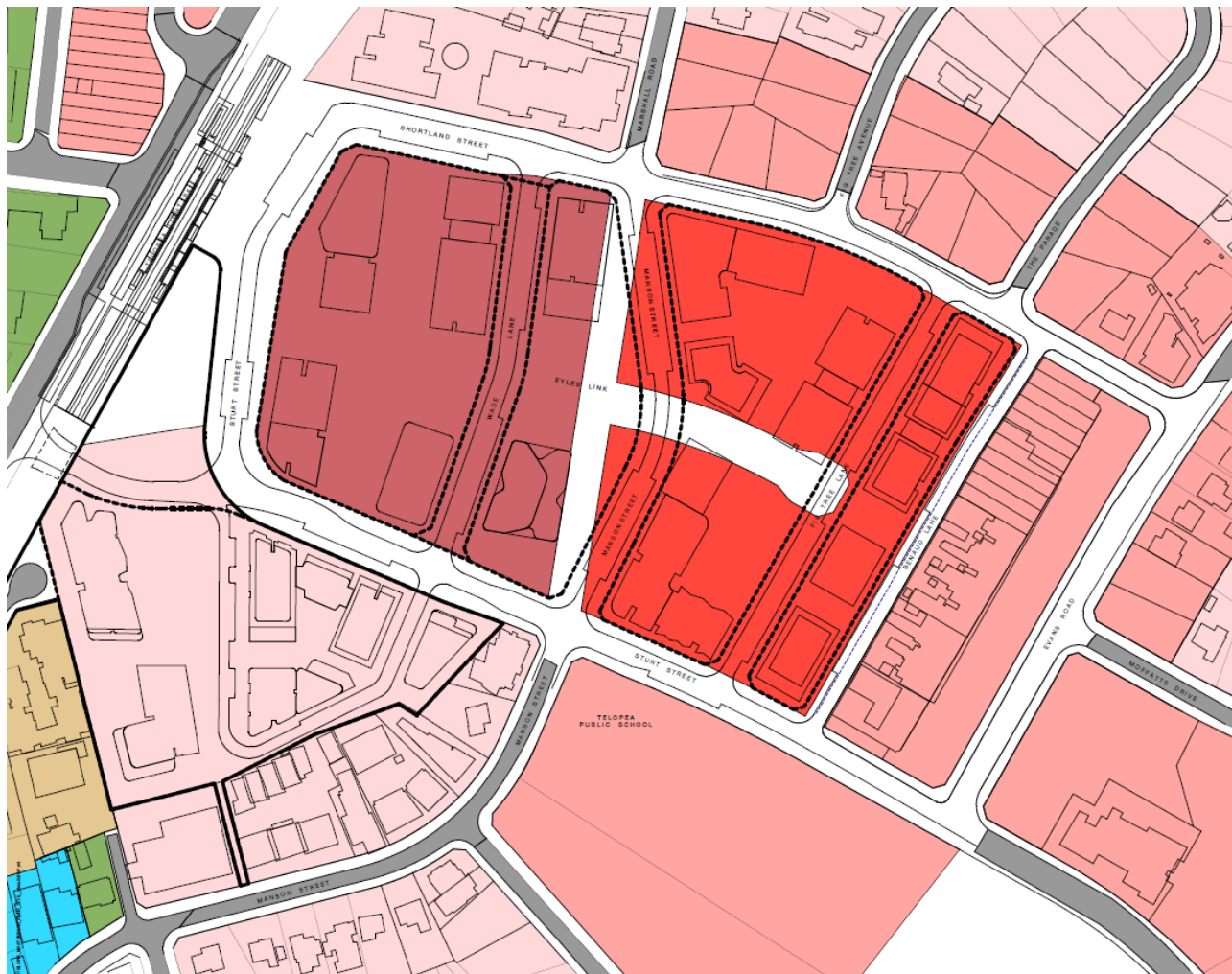
Figure 11 Core Precinct Development PLEP 2011 FSR Tiles



The Concept DA's proposed urban structure differs from the urban structure that forms the basis of the PLEP 2011 FSR maps. The introduction of Wade Street, Manson Street and the Eyles Street Pedestrian Link collectively result in building envelopes encroaching beyond the PLEP 2011's FSR tiles and being located on existing roads (which are not subject to FSR controls under the PLEP 2011). Most notably, the PLEP 2011 does not apply a FSR to the existing Manson Street and Eyles Street as illustrated in Figure 12. Conversely, the Concept DA proposes the introduction of new streets on land currently subject to a FSR control.

LAHC (as landowner) is in negotiations with Council to undertake a land transfer to facilitate the revised road layout. Whilst the exact quantum of land being transferred is still under negotiation it is anticipated this will be close to being equal in terms of area.

Figure 12 Core Precinct Development Blocks Overlayed on Current PLEP 2011 FSR Tiles



Source: Bates Smart

Clause 4.5 of the PLEP 2011 requires (among other things) exclusion of land in site area calculations which:

- has no significant development being carried out on it;
- has already been included as part of a site area to maximise floor space area in another building; and
- is proposed to be used for community land and public places, within the definition of the *Local Government Act, 1993*¹.

In order to determine the maximum permissible FSR applicable to the proposed development blocks, the FSR tiles have been redistributed to reflect the requirements of clause 4.5. The DPE's approach in other LGA's of zoning road reserves has also been considered, whereby the land which is currently not allocated a maximum FSR under the PLEP 2011 due to being an existing road reserve would almost certainly have the equivalent FSR mapping as the adjacent land. When these principles are applied Blocks C1, C2, C3 and C4

¹ Public land means any land (including a public reserve) vested in or under the control of the council, but does not include—

- (a) a public road, or
- (b) land to which the Crown Land Management Act 2016 applies, or
- (c) a common, or
- (d) a regional park under the National Parks and Wildlife Act 1974.

would be subject to a maximum Base FSR of 3.7:1 and Blocks C5, C6, C7 and C8 would be subject to a maximum Base FSR of 3:1. **Figure 13** illustrates this arrangement.

Figure 13 Core Precinct Development Blocks Overlayed on Adjusted PLEP 2011 FSR Tiles



Source: Bates Smart

The method for calculating the maximum permissible GFA for the Telopea CPA otherwise remains relevant. As a result, the maximum allowable FSR for each development block across the Telopea CPA is as identified in **Figure 13** also identifies the degree of variance proposed within each development block which forms the basis of Sections 5 and 6 of this Request.

As a development standard for the purposes of the EP&A Act and the PLEP 2011 the base FSR and bonuses are a development standard in respect of an aspect of development (section 1.4(c) of the EP&A Act). It is noted that a new internal loop road is proposed to be introduced in Block C9, which is required to be excluded from FSR calculations under the Stage 1A Project Application. The Stage 1A Project Application and accompanying clause 4.6 variation request submitted under separate deals with this matter.

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 FSR development standard and the underlying R4 High Density Residential and B4 Mixed Uses zones notwithstanding the variation sought to the maximum FSR. This Request seeks flexibility in applying the standard because of the limited environmental impacts, and because the Concept DA as a whole will improve the development outcomes for, and built form of, 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 FSR 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 FSR development standards that apply to the Telopea CPA, and specifically the Core Precinct, pursuant to clause 4.4 of the PLEP 2011. Detailed consideration has been given to:

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

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

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

The proposed variation to the FSR development standards, and basis upon which this Request is sought, is required as the nature and extent of the proposed variation does not satisfy any of the matters listed within clause 4.6(6) or clause 4.6(8) of the 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 first test set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 by showing that the objectives of the standard are achieved notwithstanding the noncompliance 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)(a) 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 tests to respectively demonstrate:

- the objectives of the FSR 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.

The objectives of the FSR development standard in clause 4.4 are:

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

An assessment of the Concept DA's consistency with each of the objectives of the FSR development standard as specified in clause 4.4 of the PLEP 2011 is provided in **Table 4**. The assessment demonstrates the objectives are achieved, notwithstanding the non-compliance with the numerical FSR standards.

Table 6 Assessment of Consistency with Clause 4.4 Objectives

Objectives	Assessment
<p>a) <i>To regulate density of development and generation of vehicular and pedestrian traffic</i></p>	<p>The Concept DA is proposed to be undertaken on land zoned R4 High Density Residential and B4 Mixed Use Zone under the PLEP 2011. The Concept DA accords with the PLEP 2011 provisions in relation to density of development proposing high density residential and mixed uses, including retail, seniors housing, and community uses. The underlying land use zones and applicable FSR (i.e.: density) controls were introduced by the DPE to enable higher density urban development within 800m of the existing Telopea Railway Station and planned PLR stop to provide homes and jobs in easily accessible locations.</p> <p>In doing so, the land use and density controls seek to provide residents with alternative options for travelling to school, work, shops and services by means other than driving to contain traffic generation. The Transport Assessment prepared by Ason Group concludes the expected vehicular and pedestrian traffic generated by the Concept DA is acceptable and can be accommodated within the local road network, as proposed to be developed under the Concept DA (refer to Telopea Transport and Accessibility Impact Assessment prepared by Ason Group, 30 July 2021). Most notably, the Transport and Accessibility Impact Assessment concluded the Concept DA (as exhibited and comprising more GFA than now proposed under the Addendum Response to Submissions Report) would generate circa 30% fewer vehicle trips in the peak periods than assigned to the Telopea Precinct under the rezoning proposal. Compliance with the FSR development standards accordingly comprises rather than contributes to achievement of objective 4.4(a).</p>

Objectives	Assessment
<p><i>b) To provide a transition in built form and land use intensity within the area covered by this Plan</i></p>	<p>In respect of objective 4.4(b), it is important to note that the additional GFA being sought above and beyond the maximum permitted under the PLEP 2011, ARH SEPP and Seniors Housing SEPP (when bonuses are applied) physically translates into additional height. The additional GFA does not affect proposed building depths and floor plates.</p> <p>Bates Smart has undertaken a detailed analysis of built form transition in the Response to Submissions Urban Design Report (Bates Smart, October 2022). The analysis demonstrates that land uses intensity is greatest within 800m of the PLR stop, resulting in the tallest buildings also being located in the same catchment. Building heights transition to the lower density areas further from the PLR, town centre and away from the Core Precinct. The Study (and previously exhibited documentation supporting the Concept DA) also identifies where the full GFA entitlement has not been sought from a numerical perspective:</p> <ul style="list-style-type: none"> • development block C1 seeks 5,482 m² of additional GFA which translates into a maximum 2m of additional height above the PLEP 2011; • development block C2 seeks 16,197m² of additional GFA which translates into a maximum of 12m of additional height above the PLEP 2011; • development block C3 seeks 15,650m² of total GFA which is 7,033m² below the maximum permissible GFA; and • development block C4 seeks 2,406m² of additional GFA which translates into a maximum 9.45m of additional height above the PLEP 2011.

Objectives	Assessment
	<p>The sections provided within the Response to Submissions Urban Design Report demonstrate that the relationship of built form to adjoining properties is reasonable. Transition as a perception of human scale equates to what is happening at eye-level and within the available field of view, including how people interact with each other and the activities being undertaken on a day-to-day basis. In this context, the additional GFA on development blocks C1 – C4 does not alter the perception and experience at the human scale which is typically defined as the first 25m of a building's height. To ensure an appropriate human scale is experienced, buildings within the Upper Core and Middle Core generally propose podiums of 2-3 storeys, which will accommodate retail and community uses and activate street frontages and adjoining open spaces. Within the Lower Core, apartment buildings are proposed to be expressed as a two-storey scale with townhouse typologies fronting streets, and maximising passive surveillance.</p> <p>Built form is further broken down through upper floor setbacks, expressed street walls, tenure mix and varied architectural expression to create a precinct of genuine diversity.</p> <p>The built form across the Telopea CPA, and specifically within the Core Precinct, has also been developed to maximise ground level activation with retail, public and community uses.</p> <p>On balance the transition between built form and land use is appropriate and is further supported on the basis that the additional GFA does not result in any significant impacts as demonstrated throughout this Request.</p>
<p>c) <i>To require the bulk and scale of future buildings to have regard to heritage sites and their settings</i></p>	<p>There are no listed heritage items within the Telopea CPA.</p> <p>Redstone at 34 Adderton Road is the closest heritage item to the Telopea CPA. A Heritage Impact Statement has been prepared by Urbis (July 2021) which concludes that the Concept DA will have no adverse impacts on the significance of Redstone. The Concept DA is considered to provide a compatible response to the character and significance of the area.</p>

Objectives	Assessment
	<p>The Concept DA is physically and visually separated from Redstone and will not detract from its existing setting and streetscape.</p> <p>It is further noted that during the DPE's assessment of the rezoning proposal for Telopea, no concern was raised in relation to the bulk and scale of built form within the Core Precinct where the GFA exceedances are proposed.</p>
<p>d) <i>To reinforce and respect the existing character and scale of low-density residential areas</i></p>	<p>The Telopea CPA is located within the Telopea Precinct which forms part of the Greater Parramatta to Olympic Park (GPOP) Growth Area identified in the <i>Greater Sydney Region Plan</i>. The GPOP is identified as key to support the delivery of new homes and the DPE's rezoning of Telopea was specifically implemented to introduce a range of built forms and building types to provide housing diversity and improved housing choice, improve housing affordability and the integration of non-residential uses such as community facilities and retail. The Concept DA seeks to deliver high density residential and mixed uses in accordance with the underlying PLEP 2011 land use zoning. While the Telopea CPA has been earmarked as a high density and mixed-use precinct, however built form has been designed to comply with the height and density controls at the Precinct's edges specifically to reinforce and respect the existing character and scale of low-density residential areas.</p>

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

The Concept DA is proposed to be delivered under LAHC's Communities Plus program, which facilitates the engagement of private sector developers (in this case Frasers) to design, fund and build social, affordable, and private housing. As each development is completed, new social housing properties are handed over to LAHC as payment for the land making the program entirely self-funding. The delivery of 740 new social housing dwellings and 256 affordable housing dwellings are cornerstones of the Concept DA.

Delivering this quantum of social and affordable housing, combined with the significant quantum of open space, public domain, and community infrastructure (proposed to be delivered as works in kind) relies on the concurrent construction of commercially viable market rate housing. Market rate housing is unequivocally the revenue source that provides the opportunity to fund the rest of the development.

Within the areas of non-compliance with the FSR development standards, affordable and social housing equates to 62% of the GFA being provided. A further 7% of GFA is allocated towards seniors housing. Under a fully compliant scheme, the remaining 31% would be allocated to market rate housing. This quantum of market rate housing is not commercially viable to fund the quantum of affordable and social housing required to be delivered under the PDA. If the GFA was reduced to achieve a complying scheme, market rate

dwelling would be reduced by 15.5% dwellings. To maintain a commercially viable development, the affordable and social dwellings would need to also be commensurately reduced which would be entirely in contravention of the Communities Plus Program, Future Directions for Social Housing in NSW policy and the Central District Plan which promotes the provision of affordable and social housing. Frasers would also be forced to reconsider the quantum and embellishment of proposed open space, public domain, and community infrastructure.

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

In addition, the additional GFA is a direct result of the Core Precinct in particular having been developed to maximise ground level activation through the introduction of retail, public and community uses, as well as new streets and laneways which stitch the Core Precinct into surrounding residential areas in order to improve connectivity. The proposed variation also facilitates which better responds to the characteristics of the site including topography and views and allows for building envelopes that deliver high quality and high amenity residential dwellings. The variation allows for the established urban design principles to be delivered across the Core Precinct to ensure a high level of amenity for all residential dwellings as well as public open spaces and pedestrian connections.

In summary, the preceding information and justification demonstrates it would be unreasonable, unnecessary, and inappropriate in the circumstances to rigidly apply the FSR standards.

The Concept DA satisfies the objectives of the FSR development standards prescribed in clause 4.4 of PLEP 2011. The objectives will be achieved notwithstanding the partial non-compliance with the FSR standards.

Strict adherence to the FSR development standards would result in 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 FSR 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 amenity impacts nor a development outcome that is inconsistent with the future desired character intended through application of the PLEP 2011 zoning and density controls.

Most significantly, requiring strict compliance with the FSR development 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. It would also run the very realistic risk of rendering the development unfeasible, thereby denying some of the most vulnerable individuals in the community access to housing. When comparing the requirement for strict compliance with the FSR development standards with the potential outcome of denying a significant quantum of much needed housing to the community and vulnerable residents, this disproportion establishes unreasonableness in the imposition of the FSR development standard. The non-existent or inconsequential adverse impacts as a result of non-compliance with the standard are incomparable with the impacts on the community of the development not being delivered.

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 FSR development standards will not adversely, detrimentally, or significantly impact upon or disrupt consistency with the prevailing built form, building heights and desired future streetscape character in the locality and the bulk and scale of buildings. The concentration of increased massing, introduction of additional roads and the Eyles Street Pedestrian Link, and the general open space and public domain spatial arrangement with lower scale of development in the North, South and East Precincts is an appropriately scaled and transitioned massing response.

The proposed Concept Plan provides a balance of building heights which are both above and below the LEP height limits, with the intention of improving diversity within the core, introducing more slender tower forms than the original concept and improving solar access, particularly to public open space than the compliant envelopes. The Concept Response to Submissions Report (Bates Smart, November 2022) demonstrates that the shadowing impacts arising from the additional GFA is not significantly worse than a complying building envelope.

The Telopea Public School is a large area and will benefit from reduced overshadowing for parts of the day and increased overshadowing at other times. There will be less shadow at 9am, 10am, 11am, 12pm and 3pm, and additional shadow at 1pm and 2pm. A net reduction in shadow occurs when comparing the LEP height plane to the Concept Plan Envelopes (1,645m² improvement) and the Reference Scheme Massing (7,635m² improvement)

Sturt Park is a large park and will benefit from reduced overshadowing for parts of the day and increased overshadowing at other times. There will be less shadow from 9am until 2pm and additional shadow at 3pm. A net increase in shadow when comparing the LEP height plane to the Concept Plan Envelopes (1,993m² increase) and the Reference Scheme Massing (573m² increase).

Solar access to the public domain has increased when compared to an LEP compliant scheme. Significant improvement occurs during the Equinox and yearly average. Winter sun is either equally performing or has moderate improvements to certain areas of public domain.

An analysis of existing versus proposed views from nominated vantage points comparing a compliant building envelope and the proposed building envelopes, demonstrates that the visual impacts are acceptable and will not result in a discernible visual difference (refer Addendum Visual Impact Assessment (Urbis, November 2022). Additional height for tower forms C1.2, C2.1, C3 and C4.2 as well as lower built forms located more on the periphery for example C6 and C7, will not generate any significant visual impacts in all cases. This is because in the majority of views modelled the additional built form sought does not block views to scenic features and predominantly blocks views of open sky.

The absence of environmental harm arising from the contravention of the FSR development standards and conversely positive planning benefits arising from the Concept DA can be further summarised as follows:

- The proposed variation does not result in any unacceptable pedestrian or vehicular traffic impacts.
- The proposed variation allows for a form of development to be delivered that accords with the urban design and masterplan principles to ensure future built form is of a high quality and that the amenity of residential dwellings and public open spaces is maximised.
- The Concept DA has been designed to respond to the Telopea CPA's natural features, established trees, topography, and other unique features.

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

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

Clause 4.6(4)(a)(i) 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 Mical 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 *AI*

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 FSR is compatible with the existing built form and fabric and other prevailing characteristics of the locality.
- 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 led 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.
- 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 FSR development standard is demonstrated in **Table 2** 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 5** below.

Table 7 Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
R4 High Density Residential	
(a) To provide for the housing needs of the community within a high-density residential environment.	(a) 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.
(b) To provide a variety of housing types within a high-density residential environment.	(b) High density market rate, affordable and social housing is proposed to be provided.
(c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.	(c) The Concept DA includes the provision of retail uses, medical centre, library, community centre and residential aged care facility to meet the day to day needs of residents.
(d) To provide opportunity for high density residential development close to major	

Objective	Assessment
<p>transport nodes, services and employment opportunities.</p> <p>(e) To provide opportunities for people to carry out a reasonable range of activities from their homes if such activities will not adversely affect the amenity of the neighbourhood.</p>	<p>(d) High density residential development is proposed close to the future Telopea light rail station, existing bus network and access to employment opportunities.</p> <p>(e) The Concept DA proposes a wide variety of public open spaces, facilities and services for use by residents and the general public.</p>
B4 Mixed Use	
<p>(a) To provide a mixture of compatible land uses.</p> <p>(b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</p> <p>(c) To encourage development that contributes to an active, vibrant and sustainable neighbourhoods.</p> <p>(d) To create opportunities to improve the public domain and pedestrian links.</p> <p>(e) To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.</p> <p>(f) To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</p>	<p>(a) An appropriate mix of land uses is provided including retail, residential and community facilities.</p> <p>(b) 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.</p> <p>(c) The layout, public open space and mix of uses proposed will create an active and vibrant neighbourhood with the provision of community uses and focus on pedestrian experience making the neighbourhood highly sustainable.</p> <p>(d) 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.</p> <p>(e) The proposed retail uses, library, community centre, and residential aged care facility will provide for the daily commercial needs of the locality.</p> <p>(f) The Concept DA is designed to celebrate the Telopea CPA's bushland hillside character through streets and building forms built along the contours and arranged to retain the sites most significant trees.</p>

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 FSR 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 FSR standards 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 FSR 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 FSR 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.

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 FSR development standards contained within clause 4.4 of 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.

The proposed variation to the FSR development standard will deliver better outcomes as required by the objectives of clause 4.6. These are summarised as follows:

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

For the reasons outlined above, this clause 4.6 Request is well-founded. Strict compliance with the development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that support contravention of the standard. The objectives of the development standard including providing a transition in built form and land use intensity; minimising visual impact, disruption of views, loss of privacy and loss of solar access; reinforcing and respecting the character of the area; and maintaining satisfactory sky exposure and daylight to buildings and the public domain are achieved by the proposed development. The proposal does not result in any unacceptable impacts on amenity, or any heritage impacts and the proposed variation allows for the delivery of higher quality residential development, greater public open space and improved residential amenity. In the circumstances of this case, flexibility in the application of the FSR standard should be applied.

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