



CLAUSE 4.6 VARIATION REQUEST

State Significant Development
SSD-14378717 – Telopea
Stage 1A

Prepared for
FRASERS PROPERTY TELOPEA DEVELOPER PTY LTD
September 2023



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1. INTRODUCTION

Frasers Property Telopea Developer Pty Ltd (**Frasers**) has submitted a Stage 1A Development Application (**Stage 1A DA**) for the first staged redevelopment of the **Telopea Concept Plan Area (CPA)**, registered as SSDA-14378717.

The Stage 1A and concurrent Concept Application (**Concept Plan Project Application**) have 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 Stage 1A DA seeks approval for:

- Site establishment works including demolition of all existing buildings and structures, tree removal, site preparation, excavation, and services augmentation;
- Construction of a new arrival plaza for the Parramatta Light Rail (**PLR**) known as 'Telopea Station Plaza' incorporating a hilltop park surrounding existing significant trees;
- Construction of the Sturt Street West extension over the PLR including Adderton Road intersection works and cycleway connection;
- Upgrade of Sturt and Shortland Streets including kerb realignment, new footpaths and verge landscaping, new indented parking bays, bus zones and pedestrian crossing;
- Construction of five residential buildings between 4 and 16 storeys in height with a shared basement, comprising a total of 449 apartments;
- Construction of two basement levels with ingress/egress via Sturt Street and the internal loop road comprising a total of 426 car parking spaces and 479 bicycle storage spaces, waste and loading facilities;
- Associated open space and landscaping works, including construction of a new public park and through site link, retention of existing significant trees, and ground and rooftop communal open space;
- Construction of a new publicly accessible mews street, providing access to the five residential buildings and new public park; and
- Torrens Title Subdivision.

The Stage 1A DA proposes a redistribution of height across the Stage 1 DA site that exceeds the maximum Height of Building development standard identified within the *Paramatta Local Environmental Plan 2011 (PLEP 2011)* across parts of the Telopea CPA. This Clause 4.6 Variation Request (**Request**) has been prepared to support the Stage 1A DA.

For clarity, the additional height proposed by the Stage 1A DA is not the result of additional GFA attributed to the take up of 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*. The additional height is the result of:

- A design led approach that responds to the site's characteristics and design advice received from the Design Review Panel (1 April 2021) and Council during the application's preparation; and
- The obligations placed on Frasers under the PDA to achieve a certain number of affordable and social housing dwellings, which are funded by market rate dwellings (i.e.: a critical scale is required).

This Request should be read in conjunction with the Environmental Impact Statement (**EIS**) prepared by Urbis Pty Ltd dated July 2021, the Response to Submissions (**RtS**) Report prepared by Urbis Pty Ltd (**Urbis**) dated March 2022, Addendum RtS Report prepared by Urbis dated December 2022 and Request for Further Information (**RFI**) Package prepared by Urbis dated September 2023.

This Request is structured as follows:

- **Section 2:** site description, including its 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 Stage 1A 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 Stage 1A DA that might operate to restrict the development, include development standards such as Height of Buildings 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 standard 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 DPE's decision-making in this matter.

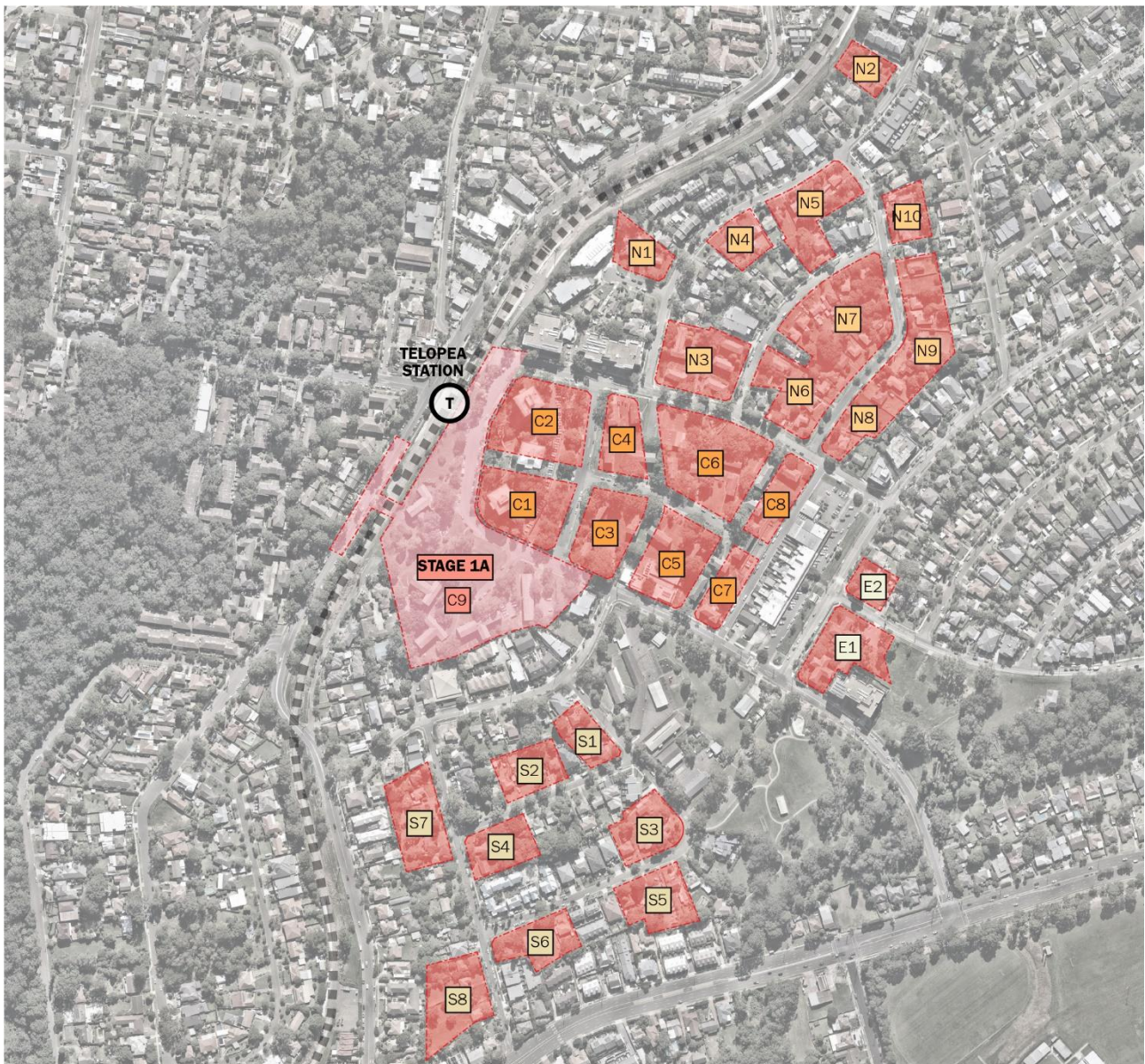
2. SITE CONTEXT

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.

The Stage 1A DA site is located at the southern extremity of the Telopea CPA. It is bound by Adderton Road to the north and west, Sturt Street to the north and east, and existing residential development to the south beyond which is Manson Street. The Stage 1A site is shown in the context of the Telopea CPA in Figure 1.

Figure 1 Telopea Concept Plan Area Lot Boundaries



Source: Bates Smart and Hassell

2.2. LOCALITY CONTEXT

The Telopea CPA (and consequently the Stage 1A DA site) 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 form part of ageing housing stock that require redevelopment.

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

The land that is the subject of the Stage 1A Project Application is located south of the proposed Telopea PLR Station and is bound by Sturt Street to the north, Manson Street to the east and south and existing development to the west. The Stage 1 Project Application Area is currently occupied by existing apartment buildings.

Within the Stage 1A DA site, a four storey residential building is located at the corner of Sturt Street and Manson Street, which defines the immediate context of the site along the south-eastern boundary.

The Manson Street frontage is characterised by a range of two and three storey buildings and Sydney Young Nak Presbyterian Church.

Development on the opposite side of Manson Street to the south includes Telopea Public School and single storey detached residential dwellings. It is noted that land on both sides of the Manson Street frontage allows buildings up to 22m in height (approximately seven storeys). There is a public link which connects Manson Street to the site, with existing trees on the site providing route markers.

Figure 2 Telopea CPA Existing Development



Source: LAHC

2.4. TOPOGRAPHY

The sloping topography of the Telopea CPA is amongst its most distinctive features, lending significantly to the sense of place (**Figure 3**). The most western part of the CPA peaks at circa RL 61.50 (AHD), i.e. circa 61.5 metres above the Australian Height Datum. From this point the Telopea CPA generally falls east towards Evans Road at RL 32 (AHD). This circa 30m across 350m culminates in The Ponds Creek, which traverses through the bottom of Sturt Park. A ridge line runs through the Telopea CPA in the vicinity of the light rail easement, where land slopes to the east down to the Ponds Creek.

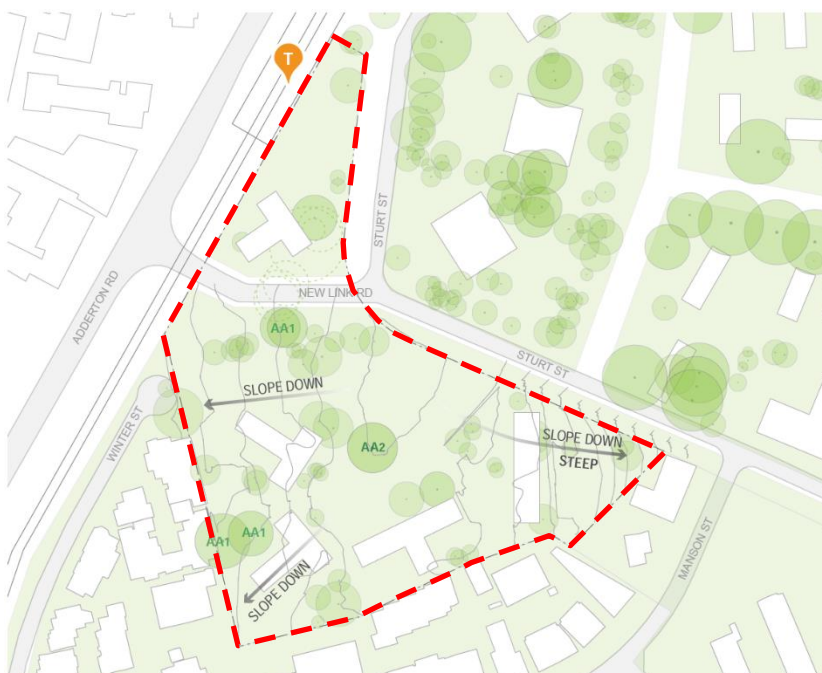
In relation to the Stage 1A DA site, the centre is relatively flat at circa RL 58 (AHD) with a significant fall to the eastern boundary at circa RL 50 (AHD) and western boundary at circa 54 (AHD) (**Figure 4**).

Figure 3 Telopea CPA Topography



Source: Bates Smart

Figure 4 Stage 1A Site Topography



Source: Plus Architecture

2.5. VEGETATION

The Stage 1A DA site has a range of well-established tree clusters, which contribute to a strong sense of place and character. The clusters include a range of Eucalyptus trees in the centre of the site and along the northern boundary. The clusters function as a natural guide and marker towards the public link within the site.

Figure 5 Current cluster of trees at northern part of site



Source: Plus Architecture

Figure 6 Cluster of trees at centre of site



Source: Plus Architecture

2.6. OPEN SPACE

There is no formal public open space within the Stage 1A DA site. Open space provided within and in the vicinity of the Telopea CPA is diverse in size, function, and purpose:

- Sturt Park 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;
- 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 facility;
 - 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 is located south of the Stage 1A DA site. Redstone is a Walter Burley Griffin dwelling from circa 1935.

2.8. PUBLIC TRANSPORT

The 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.

The Stage 1A DA site provides an opportunity to improve pedestrian permeability throughout the broader Telopea CPA and establish a through-site connection from the southern end at Manson Street to the PLR Station. This north-south connection will provide a strong desire line, which is naturally reinforced by the existing tree clusters that will function as markers along the journey.

Figure 7 Potential pedestrian connections through the site to the light rail station



Source: Plus Architecture

2.9. STAGE 1A SITE PHOTOGRAPHS

Figures 8 – 11 provide photographs of the Stage 1A DA site. All photos provided by Plus Architecture.

Figure 8 Photograph of corner of Sturt Street & 27 Manson Street



Figure 9 Photograph of 27 Manson Street



Figure 10 Manson Street existing street character



Source: *Plus Architecture*

Figure 11 Manson Street through site link to site



3. PROPOSED STAGE 1A DEVELOPMENT

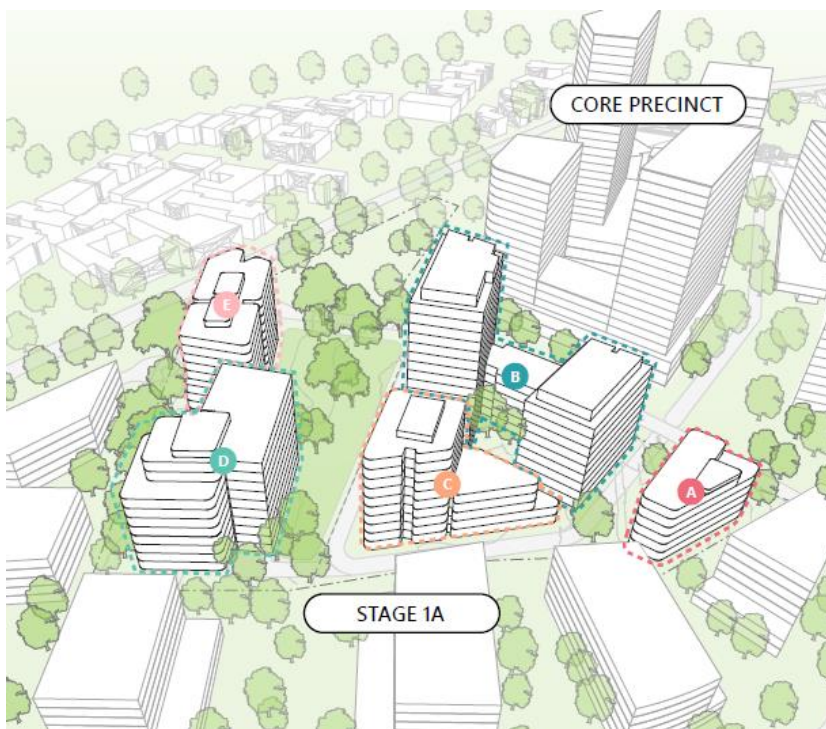
As outlined in **Section 1**, this Request has been prepared to support a Stage 1A DA for first redevelopment stage of the Telopea CPA.

While this section of this Request summarises the scope of the Stage 1A DA, a detailed description of the Stage 1A DA is provided in the EIS and the RTS Package prepared by Urbis in September 2023. The proposal is also detailed within the Telopea Design Report prepared by Plus Architecture (September 2023).

The Stage 1A DA seeks approval for:

- Site establishment works including demolition of all existing buildings and structures, tree removal, site preparation, excavation, and services augmentation;
- Construction of a new arrival plaza for the Parramatta Light Rail (**PLR**) known as 'Telopea Station Plaza' incorporating a hilltop park surrounding existing significant trees;
- Construction of the Sturt Street West extension over the PLR including Adderton Road intersection works and cycleway connection;
- Upgrade of Sturt and Shortland Streets including kerb realignment, new footpaths and verge landscaping, new indented parking bays, bus zones and pedestrian crossing;
- Construction of five residential buildings between 4 and 16 storeys in height with a shared basement, comprising a total of 449 apartments;
- Construction of two basement levels with ingress/egress via Sturt Street and the internal loop road comprising a total of 426 car parking spaces and 479 bicycle storage spaces, waste and loading facilities;
- Associated open space and landscaping works, including construction of a new public park and through site link, retention of existing significant trees, and ground and rooftop communal open space;
- Construction of a new publicly accessible mews street, providing access to the five residential buildings and new public park; and
- Torrens Title Subdivision.

Figure 12 Proposed Stage 1A Development



Source: Plus Architecture

3.1. STAGE 1A DEVELOPMENT

The Stage 1A site is immediately adjacent to the future PLR Station and the Telopea Core Precinct. The development includes the delivery of the new 'Telopea Station Plaza' and hilltop park, as well as a new 3,500m² public park, internal loop road, and supporting road and intersection upgrades.

The site is currently developed with three storey buildings set within the existing natural landscape defined by the identified tree clusters and steep topography. The built form proposed by the Stage 1A DA comprises five buildings (labelled A-E), which transition in height across the site to respond to the future desired character of the broader precinct. The future context will allow for buildings approximately 14 - 18 storeys to the north of the Stage 1A DA site and 4 - 8 storey buildings to the south of the Stage 1A DA site.

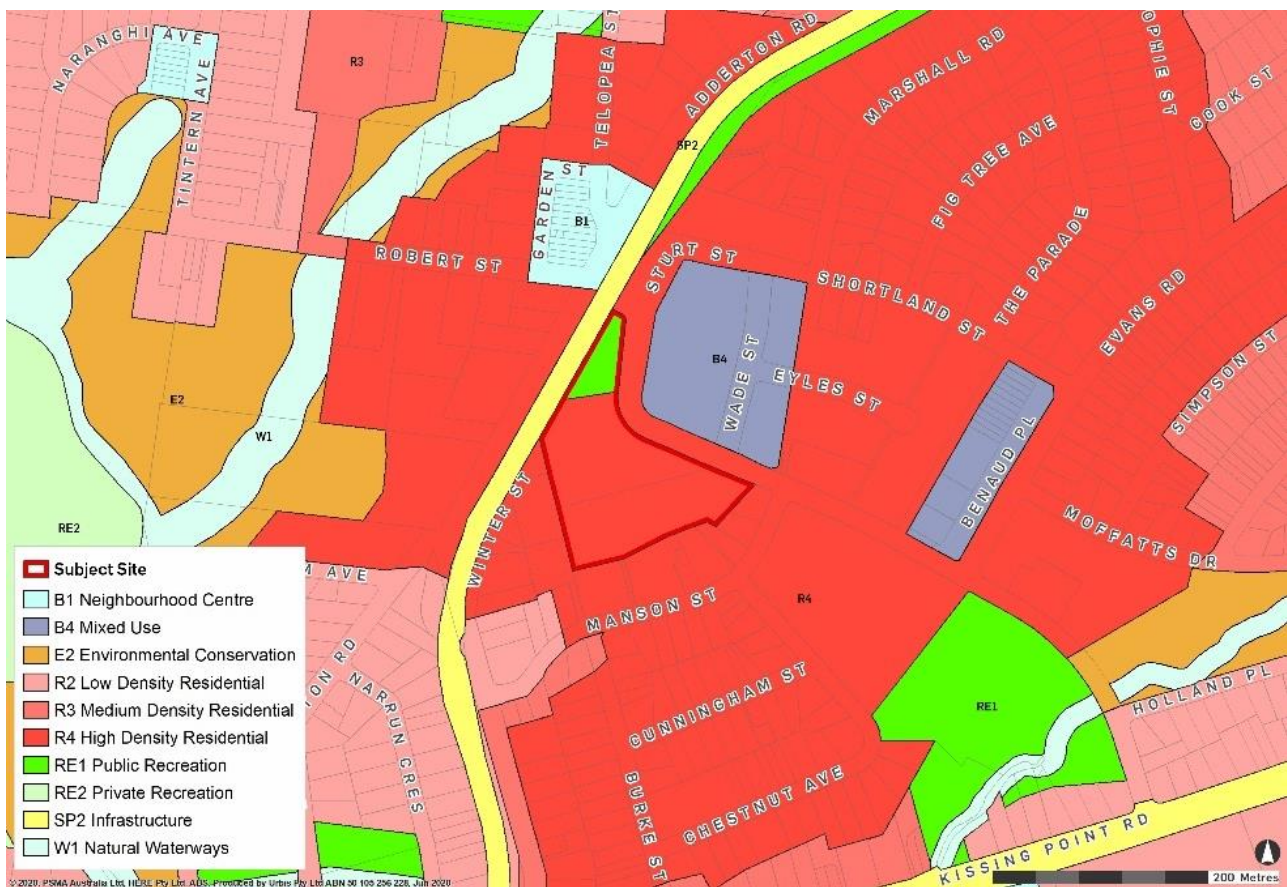
Through a carefully considered urban design response, the five individual buildings collectively establish a height transition from the smaller scale built form to the south that interfaces with low density development along Manson Road to larger scale built form towards the future Core Precinct of Telopea and PLR. The Stage 1A DA establishes this transition whilst offering a generous public park at the heart of the site and developing below the permissible GFA under the PLEP 2011. The design proposition proposes increased density in areas that provide closer proximity to the PLR.

The Stage 1A DA also ensures that the planning framework is aligned with anticipated growth and meets the needs of the local community. The Stage 1A DA is consistent with the intent of the overall Concept Masterplan and public domain strategy.

3.1.1. Land Uses

The Stage 1A DA proposes high density residential development and public recreation space in accordance with the PLEP 2011 land use zoning (**Figure 13**). The proposed new 3,500sqm public park and through site link is located within the R4 High Density Residential zoned land.

Figure 13 PLEP 2011 Land Zoning Map



Source: NSW Legislation

3.1.2. Design Principles

As described within the Telopea Design Report prepared by Plus Architecture (September 2023), the following design principles have informed the design development of Stage 1A:

- Establish a well-connected public domain and permeable urban fabric which breaks down the perceived building mass to create a strong sense of openness and connection to the existing natural landscape;
- Create a range of built form which respects the local character of Telopea by maintaining most of the significant tree groupings;
- Establish building expression which responds to the human scale and topographical changes throughout the Telopea Precinct;
- Create a dynamic sequence of spaces defined by both the existing tree clusters, varied building typologies and level changes to create a place which is connected and promotes interaction within the community;
- Create an architectural expression based on material and textures reflecting the character of Telopea and its unique Blue Gum Forest; and
- Create an environment and public amenity which can sustain increased density of living with well-crafted buildings that create a variety of architectural expression and experience within the Telopea Masterplan.

By adopting these principles, the Stage 1A DA represents a well-considered design proposition in which both built form and the natural setting of the place are in harmony.

3.1.3. Built Form

In accordance with PLEP 2011, a **storey** is defined as:

a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include—

- (a) a space that contains only a lift shaft, stairway or meter room, or*
- (b) a mezzanine, or*
- (c) an attic.*

The Stage 1A DA proposes five building forms across the site ranging from 4 – 16 storeys. The tallest building (B) is located centrally within the site, while the remaining buildings (A, C, D and E) range from 4 – 10 storeys and are located at the interface of adjoining development. Given the topography of the site, an upper and lower ground level has been introduced across Stage 1A. While ‘ground floor’ is not defined in PLEP 2011, a **basement** is defined as:

the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

In accordance with this definition, where the ground floor level is generally more than 1 metre above the existing ground level, it has been counted towards the total number of storeys proposed. The building form and its siting have been informed by a range of key design drivers that form part of the broader Telopea Masterplan. The alignment of the building form also responds to the increased building heights towards the Telopea Core Precinct, whilst also orienting towers north to maximise solar access and to deliver a contiguous public open space area. This strategy of placing the scale towards the north of the site aims to minimise adverse overshadowing to surrounding development.

The building footprint carefully considers retention of the existing trees, as well as clusters of significant tree groupings, which reinforce local character both within the site and to the edges of the site. The proposed building footprints are separated across five tower forms to allow for the retention and expansion of the existing public pedestrian link that runs through the centre of the site and connects the southern precinct to the plaza and PLR Station to the north. The proposed buildings are varied and have a clearly defined base with the middle and top in varying expression which will assist in establishing a proportional response to both current and future conditions. The two – four storey expressed base podiums respond to pedestrian movement and human scale. This scale is sympathetic to the existing development context as well as the desired future character of Telopea.

Figure 14 Built form alignment, orientation, solar access, and open space



Source: Plus Architecture

3.1.4. Building Height

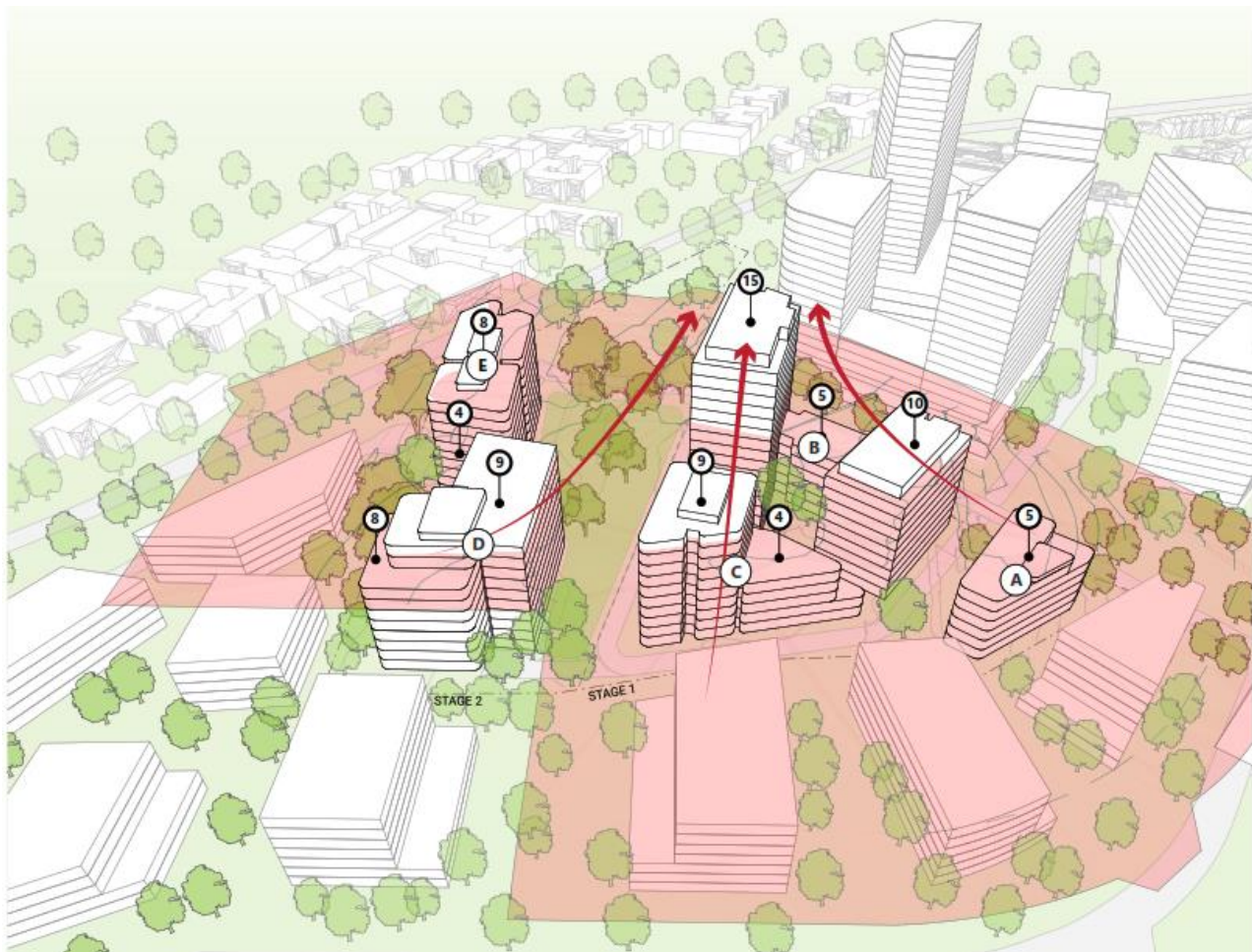
Under the PLEP 2011, the Stage 1A DA site is prescribed a uniform maximum building height of 28m. The Stage 1A DA seeks approval for building heights that sit above and below the maximum height limit prescribed in the PLEP 2011 as identified in Table 1 and visually depicted in **Figure 15**.

Table 1 Proposed Stage 1A Building Heights

Building	PLEP 2011 Permissible Height (m)	Proposed Maximum Building Height (m)	Variation to PLEP 2011 (m)
Stage 1A			
A	28	18.58	-9.42
B	28	46.88	+20.88
C	28	31.90	+3.9
D	28	32.12	+4.12
E	28	30.13	+2.13

The PLEP 2011 building height control is expressed in metres not storeys. References to storeys throughout this documentation are for explanatory purposes only.

Figure 15 Proposed height strategy



Source: Plus Architecture

4. VARIATION OF BUILDING HEIGHT STANDARD

This 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. 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.

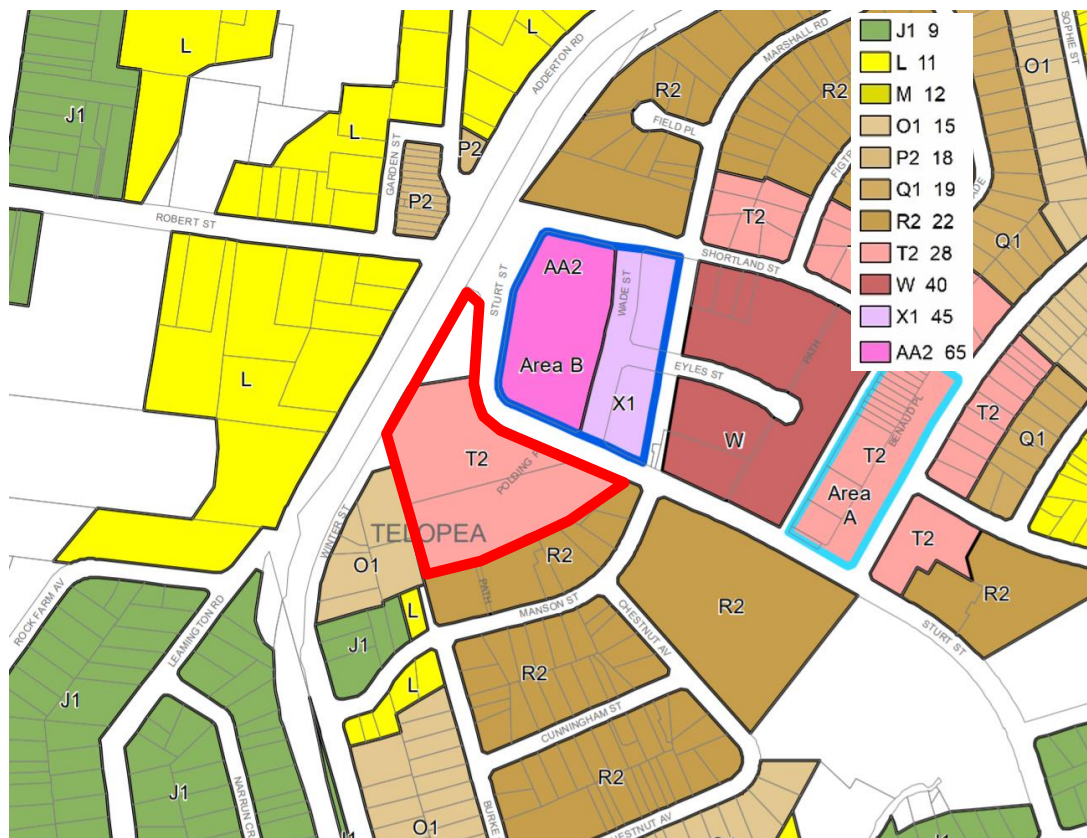
The objectives of Clause 4.3 are set out as follows:

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

As shown in **Figure 16** and on the Height of Buildings Map (Map Tile 014), the Stage 1A site is subject to a maximum building height of 28m (marked “T2”). Part of the site zoned RE1 Public Recreation is not prescribed a height limit, and no buildings are proposed at this location.

The Stage 1A DA site does not benefit from any height bonuses.

Figure 16 PLEP 2011 Height of Buildings Map – Stage 1A DA



Source: PLEP 2011

4.2. PROPOSED VARIATION TO CLAUSE 4.3

The proposed variation to the building heights standard is set out in **Table 2** below and illustrated in **Figure 17**.

Table 2 Proposed Height of Buildings Variation – Stage 1A

Building	PLEP 2011 Permissible Height (m)	Proposed Height of Building (m)	Variation to PLEP 2011 (m)	Proposed Variation
A	28	18.58	-9.42	-34%
B Tower 1	28	48.88	+20.88	75%
B Tower 2	28	34.18	+6.18	22%
C	28	31.90	+3.9	13%
D	28	32.12	+4.12	15%
E	28	30.13	+2.13	8%

The Stage 1A DA exceeds the maximum height of buildings across Buildings B, C, D and E, with the greatest exceedance being 20.88m (75%). Building A is 9.42m (34%) below the height limit and is located along the southern boundary at the interface of adjoining residential development.

The area of the Stage 1A site is 18,150sqm excluding the RE1 Public Recreation zoned land. The Stage 1A site is subject to a base Floor Space Ratio (**FSR**) of 1.7:1 (equating to 30,855sqm of floor space).

An additional 0.5:1 bonus FSR (equating to 9,075sqm of floor space) is available pursuant to Clause 6 (2) and Clause 13 (2) of the Affordable Rental Housing SEPP as the development is on land owned by LAHC and qualifies as affordable housing. The total maximum permitted floor space is accordingly **39,930sqm**.

The internal road is not intended to be a public road and therefore does not need to be excluded from site area calculations for Stage 1A.

The Stage 1A DA proposes 37,130sqm of GFA which is 1,700sqm less than the maximum permissible GFA and accordingly results in a FSR compliant scheme. The proposed redistribution of building height is accordingly not the result of additional GFA being sought but rather several design related factors, including feedback from the SDRP and Council, which advocated for Stage 1A to be reviewed to maximise access, public open space, and residential amenity. The factors driving the height variations for each individual building are provided below.

Building A:

- Oriented towards Wade Street to the west and Sturt Street to the north.
- Remains below the height limit to provide a height transition to lower density residential development the east.
- Responds to the topography and considers adjoining context, scale and built form relationships.
- Proposes a smaller footprint to transition the scale and relation to the existing context.

Building B:

- Tower 1 to the west exceeds the height limit by approximately 20m.
- Tower 2 to the east exceeds the height limit by approximately 6m.
- Responds to the transition of scale and permitted height controls to the north.

- Ensures the built form and scale of the building maximises solar access, cross ventilation, and views in relationship to the proposed scale to the north.
- Ensures the proposed public park is maintained rather than reduced in size; complying with the PLEP 2011 height control would necessitate increasing building footprints or creating an additional building in the park to achieve the GFA FPA is contractually required to deliver in accordance with the PDA.
- Creates a variety of scale and form within the overall masterplan rather than creating one height plane across the site without responding to the scale of existing and future context.

Building C

- Western part of the building exceeds the height limit by approximately 4m.
- Eastern part of the building is reduced in height and is significantly below the height limit to ensure sufficient solar access is provided to residential dwellings to the south.
- Considers the scale transition of the Core Precinct and Building B to the existing and future context to the south.
- Maintains variance in height and scale to provide character and balance from an urban design perspective.

Building D

- Eastern part of the building exceeds the height limit by approximately 4m.
- Western leading edge of the building has been reduced to create transition of scale.
- Considers the scale transition towards the existing and future context to the south and west.
- Maintains the existing trees toward the south and west to ensure the buffering to context.
- Provides an increased setback from an ADG compliant 9m to 10m to provide further setback to context.

Building E

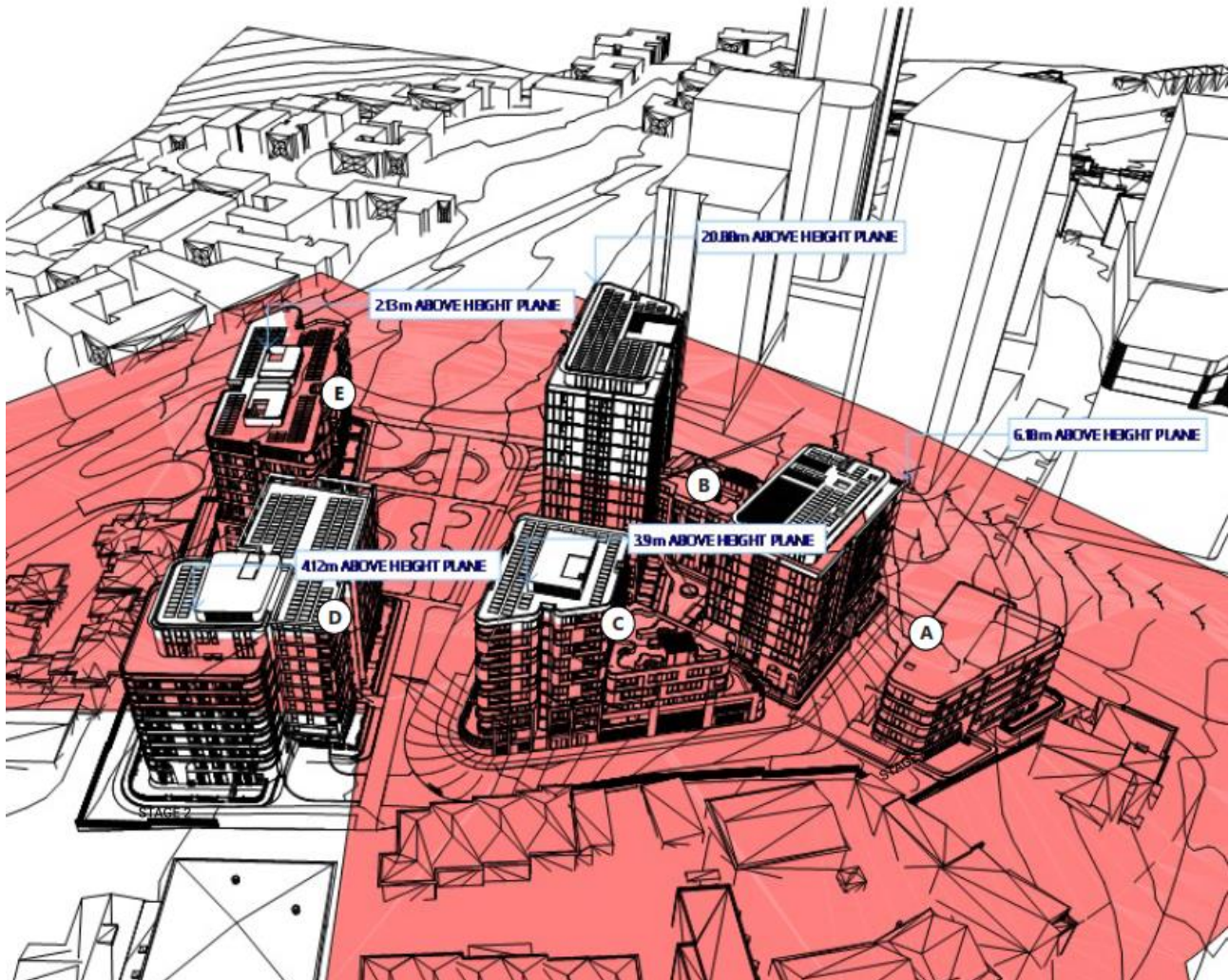
- Exceeds the height limit by approximately 2 in response to existing topography and to provide basement access below.
- Ensures sufficient solar access while using ADG setback requirements through the building's orientation.
- Considers existing trees both along the western boundary as well as within the park to ensure the generous public giveback is maintained.
- Rather than pushing the building east into the park to comply with the height limit, the proposed minor non-compliance which results in limited impacts provides an optimal public outcome for the site.

The creation of taller compact tower forms has facilitated several improvements across the Stage 1A DA site. The proposal incorporates an internal loop road to provide each building with a street address and to improve access and legibility of the new public park. Buildings are separated into five distinct forms, varying in height across the site to respond to the future desired character of the Telopea Precinct. Buildings achieve a greater level of residential amenity, particularly with regard to visual and acoustic privacy, number of apartments per core, and solar access. In order to deliver the new 3,500m² public park, internal loop road, and through site link connections, the compliant GFA is required to be redistributed into taller tower forms. The redistribution has resulted in minor variations to the maximum building height on Building C, D and E (ranging from 2 to 4m where the land begins to fall steeply towards the site boundaries) and a more significant variation to the maximum building height of Building B (20.88m above the maximum height limit). Building A sits well below the maximum permissible building height under PLEP 2011 (9m below the maximum height limit). The redistribution of underutilised GFA within the height plane from Building A (2,963sqm) has contributed to the exceedance of Building B by an equivalent amount which equates to five storeys (or Levels 9-13 of Building B), representing an appropriate trade-off in density across to best respond to the surrounding context.

Of the five buildings that are a variation to the PLEP 2011 height limit, four of those propose a variation of one storey or less, with the majority of the exceedance being caused by either part of a storey due to the site's topography, roof features or lift overruns. This provides for variation and visual interest in the built form.

As can be seen from **Figure 17**, the tallest building (Building B) sits in the context of the adjoining Core Precinct adjacent and provides a transition in height from the marker buildings adjacent to Telopea PLR Station to the remainder of the site. This height variation allows for the loop access road and public open space adjacent to be delivered within the site. Overall, the redistribution of GFA into taller tower forms remains consistent with commentary from the SDRP and improves the overall public amenity through the incorporation of the internal loop road and 3,500sqm public park.

Figure 17 Proposed Height of Buildings – Stage 1A



Source: Plus Architecture

As demonstrated by the photomontage at **Figure 18**, Buildings A and B are stepped to provide a natural transition in height along Sturt Street, with the tallest form providing a marker at the highest point of the site adjacent to the new public park, light rail plaza and Telopea Core Precinct. Building A has deliberately been reduced in scale (below the PLEP 2011 height plane) to respond to the existing and future desired character of buildings to the south-east and provide a more sensitive urban transition having regard to the steep fall at this location.

Figure 18 Photomontage of Sturt Street (Buildings A and B)



As demonstrated by the photomontage at **Figure 19**, Buildings C, D, and E are designed to frame the new public park and loop road. Despite the minor increases in height on these buildings, they provide a neighbourhood character and comfortable pedestrian scale to these new significant public spaces.

Figure 19 Photomontage of new public park and loop road facing south (left to right: Building C, D and E)



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 Stage 1A DA is consistent with the objectives of the Height of Buildings development standard and the underlying R4 High Density Residential zone 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 because the Stage 1A 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 Height of Buildings development standard facilitates the Stage 1A 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 Stage 1A DA's proposal to vary the Height of Buildings development standards that apply to the Telopea CPA 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 the Height of Buildings development standards, and basis upon which this Request is sought, is required as the nature and extent of the proposed 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 4.3(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 Stage 1A DA's consistency with each of the objectives of the Height of Buildings development standard as specified in Clause 4.3 of PLEP 2011 are provided in **Table 3** below. The assessment demonstrates the objectives are achieved, notwithstanding the non-compliance with the numerical Height of Buildings standards.

Table 3 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>	The PLEP 2011 identifies the Stage 1A DA site as a high-density residential zone, with a public recreation zoning for the northern portion of the site. The PLEP 2011 also identifies height of building transition zones to the east, west and south of the Stage 1A area from high-rise to mid-rise. The Stage 1A DA area must be considered in context of the Telopea Core Precinct, where there is an intentional urban strategy to optimise taller buildings towards the PLR Station and ridgeline. The Stage 1A DA complements this urban transition by providing taller building elements closest to the Core Precinct, where height controls are substantially higher (ranging from 50 to 70m) and gradually reducing in scale towards the boundaries. The transition of development is respected at the edges, with Building A sitting well below the allowable height limit and responding to the natural steep slope of the land and adjoining development. The non-compliances represented in Buildings C, D and E are reasonably minor and do not fundamentally alter how built form interfaces with potential future seven storey development along the Manson Road frontage. Notwithstanding the numerical non-compliance they continue to provide an appropriate and improved transition in scale to adjacent development. The Stage 1A DA site is prescribed a maximum 28m height limit across its entirety. Maintaining this height control across the five buildings within Stage 1A is likely to result in highly homogenous building forms that does not consider the

Objectives	Assessment
	topography of the site or provide sufficient transition from the Telopea Core Precinct to the surrounding residential areas. Furthermore, it is noted that the proposed new 3,500m² public park and through site link is located within the R4 High Density Residential zoned land. The provision of a generous public domain offering within the site also provides distinct change in building heights towards the west. In this regard, objective (a) is satisfied.
(b) <i>To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development</i>	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 site, proposing a variety of complimentary building heights across the Stage 1A DA site to create visual interest, and maximising building separation distances and public domain spaces. When considering the below, it is important to note that land along Manson Street is capable of being developed into seven storey residential flat buildings. <u>Visual Impact</u> While the Stage 1A DA introduces mid-high density residential development across the site, careful attention has been paid to the retention of existing trees. Existing tree formations are proposed to be retained to create a natural buffer along the southern and western boundaries of the site as well as landscape pockets to provide natural relief and amenity. It is considered the retention of these trees along the boundaries and within the site will preserve the visual amenity currently enjoyed. In addition to boundary setbacks, the building forms are articulated to create a sense of scale by breaking down the overall form with a combination of contrasting materials and texture. The scale of Building A in tandem with the podium/ tower elements in Buildings C and D will assist with minimising the degree of visual impact for adjoining developments. The visual impact of the proposed buildings has been assessed from identified key views. The Visual Impact Assessment prepared by Urbis (November 2022) concludes that with regard to the potential visual impacts, the proposal is acceptable and does not result in any significant negative visual effects or impacts on the immediate 'effective' visual catchment. Refinements to the scheme made since November 2022, do not impact the findings of the Visual Impact Assessment.

Objectives	Assessment <u>Disruption of Views</u> The Stage 1A DA will cause a notable but positive visual change to the existing character of the site and the surroundings. Such changes are highly compatible with the emerging and desired future character of the Telopea Precinct, which will undergo significant transformation to higher density and will include taller built forms, particularly within the Core Precinct. The Visual Impact Assessment prepared by Urbis (November 2022) notes the Stage 1A DA buildings collectively respond to the visual opportunities and constraints of the site. It concludes that despite exceedances to the maximum building height, the proposal does not impact areas of scenic importance or highly valued features. Importantly, it contends the additional height sought does not block access to scenic or important views or generate any significant visual impact. The arrangement of the buildings proposed includes appropriate visual and physical linkages to existing or approved developments and open spaces. This combination has the potential to create a high-quality suburban, residential environment. The layout and built form of the buildings has been considered within the context of density and heights within the Core Precinct. Disruption of views will be minimised and offset through the provision of generous public open spaces and pedestrian connections through the site, with the mix of compact and bespoke building forms allowing views to be maintained across the site. <u>Privacy</u> To maintain privacy, the proposal orientates dwellings to maximise visual outlook whilst maintaining appropriate levels of privacy, with architectural screening proposed where appropriate within the building fabric. Buildings are set back largely in line with the ADG design criteria and guidance, ensuring privacy outcomes are achieved. An assessment of ADG compliance including Objectives 2F – Building separation and 3F – Visual privacy has been provided as part of the RRTS 3 Response. In summary, Stage 1A and the individual buildings meet the aims of Objectives 2F and 3F of the ADG by providing high quality residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and improved views.
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In the limited number of instances where the proposal is not strictly consistent with the numerical design criteria for building separation above the height plane, redesign of buildings and/or reduction in floor space have demonstrably been discounted as a viable solution, as documented in the Architectural Plans and ADG Compliance Table prepared by Plus Architecture (refer to **Appendix B** of the RFI Package). Appropriate visual privacy outcomes, which are identified by the ADG as entirely suitable solutions, are achieved through the siting and orientation of buildings, configuration of apartments layouts and the positioning of privacy screens and angled louvres to habitable room windows where necessary.

Overshadowing

Shadow diagrams have been prepared by Plus Architecture and are included in the Design Report (September 2023). The shadow diagrams compare the shadow cast by existing buildings, shadow cast by a building height compliant with the PLEP 2011, and shadow cast by the proposed built form to establish a quantitative and qualitative assessment of the impacts.

In relation to solar access from the proposed Stage 1A development, shadow diagrams have been prepared for hourly intervals from 9am to 3pm for mid-winter, representing the greatest overshadowing impact through the year.

The shadow diagrams show that for the majority of time, the shadows cast by the proposed buildings are generally resulting in the same impacts on neighbouring properties as shadows that would be cast by PLEP 2011 compliant building heights.

Between 9am and 12pm there is some minor additional overshadowing to small areas of private or public open space to the west and south of the Telopea Precinct beyond the compliant height shadows, however these spaces will continue to receive solar access for the remainder of the day. From a quantitative analysis, the worst-case additional overshadowing at this period is at 11am, which provides approximately 17% more overshadowing than an LEP compliant height (**Figure 20**).

Between 1pm and 3pm, the greatest amount of shadowing occurs at 3pm when the afternoon sun is setting. At 2pm there is additional overshadowing of development to the south along Manson Road and along the Manson Road footpath. From a quantitative analysis, the overshadowing at this period produces approximately 17% more overshadowing than an LEP compliant height for 2pm (**Figure 21**).

Land to the south of the Stage 1A DA Site fronting Manson Street is capable of being developed up to seven storeys and

Objectives	Assessment as a consequence, any shadows produced by the Stage 1A DA will likely fall within the shadow cast by future development. At 3pm a portion of additional shadow is cast on the western corner of the Telopea Public School site (Figure 22). The western corner of the school is already shaded by mature trees (see Figure 23 below) and the overshadowing does not occur to the main areas of the school grounds during recess or lunchtime break periods. From a quantitative analysis, the Stage 1A DA produces 24% additional overshadowing at this period, however, only overshadows the corner of the site and existing classrooms. The variation to building height allows for a greater area of additional high quality public space to be delivered on site which will be accessible to the general public. Overall, 82% of the public open space receives a minimum of two hours solar access at mid-winter. The Stage 1A DA delivers a variety of landscaped public and communal open spaces for the enjoyment of residents and the public. Telopea Station Plaza, the Neighbourhood Park, communal open space gardens and green rooftops are distributed across the Stage 1A site, with pedestrian linkages creating an integrated and connected network. Of note, the new public space and through site link will receive a minimum of two hours of solar in mid-winter. The shadowing analysis illustrates that the Stage 1A DA results in only very minor additional shadowing of the new public space above and beyond a PLEP 2011 compliant scheme from 2pm onwards. Similarly, the public domain is expected to be shadowed marginally more that it would be under a PLEP 2011 compliant scheme however no single area remains in shadow for more than an hour on 21 June. Overall, the additional overshadowing as a result of the proposed building heights represents an acceptable impact on existing development, having regard to the future character and context of Telopea Precinct. As there is no identified adverse additional overshadowing caused beyond a compliant height limit during mid-winter and only for two hours over the day, overshadowing is considered acceptable. In this regard, objective (b) is satisfied.
(c) <i>To require the height of future buildings to have regard to heritage sites and their settings</i>	As set out in the supporting Heritage Impact Statement (HIS) prepared by Urbis (July 2021), the Stage 1A DA has considered the appropriate management of the heritage values of the area. The HIS concludes the Stage 1A DA will have no adverse heritage impacts on the significance of heritage items

Objectives	Assessment
	and will not detract from the existing setting and streetscape of any heritage item. In this regard, objective (c) is satisfied.
(d) <i>To ensure the preservation of historic views</i>	The supporting HIS does not identify any historic views in relation to the Stage 1A DA. The closest heritage item to the Stage 1A site is Redstone House, listed on the NSW State Heritage Register (R3 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 Stage 1A DA generates potential visual impacts that are contemplated in the statutory and non-statutory controls for the site and can be supported on visual impact grounds. In this regard, objective (d) is satisfied.
(e) <i>To reinforce and respect the existing character and scale of low-density residential areas</i>	The Stage 1A DA has been designed to maintain the site's sloping landscape hillside character through building forms and pedestrian connections consistent with the site's topography and the retention of existing tree clusters (Figure 24). The architectural expression proposed is based on materials and textures reflecting the character of Telopea and its unique Blue Gum Forest, as well as brick bases to proposed buildings to reflect the existing character of the area. In accordance with the Design Guidelines, the proposed development has also been carefully considered in relation to setting the desired future character for the Telopea Precinct. The Telopea Precinct has recently been rezoned through the PLEP 2011 to deliver high density residential development. The Stage 1A DA seeks to deliver a mix of high-quality dwellings, landscaping, and public open space in accordance with the Design Guidelines, which will act as a statement of intent for the future quality and character of development in the Telopea CPA to come. In this regard, objective (e) is satisfied.
(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>	As set out in the Design Report (September 2023), solar access to both residential apartments and areas of public domain has been assessed. Buildings have been arranged to maximise opportunities for solar access with 314 out of 449 apartments (70%) receiving at least 2 hours sunlight between 9am – 3pm at mid-winter and 337 out of 449 apartments (or 75%) receiving at least 2 hours sunlight between 8am – 4pm at mid-winter. In accordance with

Objectives	Assessment the ADG, less than 15% of apartments receive no direct sunlight between 9am – 3pm at mid-winter. In summary, the additional shadow results in the following: ▪ 9:00am: A majority of the additional shadow caused by built form above the height plane falls within the site impacting Building A and Building D. Some additional shadow falls onto properties along Winter Street and Manson Street which are already impacted by existing shadows. These properties retain solar access between 11.00am to 3.00pm. ▪ 10:00am: Additional shadows caused by built form above the height plane generally falls onto the roofs of neighbouring properties along Winter Street and Manson Street. The impacted properties generally retain solar access between 11.00am to 3.00pm. ▪ 11:00am: Shadows caused by built form above the height plane generally fall within the site boundary, with the majority of shadow falling onto the public walkway between Buildings C and D. The communal open space to the rear of 7-9 Manson Street and within the middle of 11-15 Manson Street are both marginally impacted by additional shadows but the majority of shadow impacts are caused by compliant built form. 7-9 Manson Street retains some solar access to communal space at 11.00am which increases at 12.00pm. 11-15 Manson Street maintains solar access between 9:00am to 10:00am with partial solar access at 1.00pm. ▪ 12:00pm: Shadows caused by built form above the height plane generally fall within the site boundary affecting Buildings A, C and D with minor impacts of the roofs of neighbouring properties along Manson Street to the south. ▪ 1:00pm: Shadows caused by built form above the height plane results in minor impacts to the roofs and at-grade car parking areas of neighbouring properties along Manson Street. ▪ 2:00pm: Shadows caused by built form above the height plane results in minor impacts to the roofs and a portion of the communal open space associated with 19-21 Manson Street, Telopea. This space maintains solar access between 9.00am to 11.00am with partial solar access maintained between 11.00am to 1.00pm. ▪ 3:00pm: Shadows caused by built form above the height plane results minor additional shadowing of the Telopea Public School. The impacted part of the school is already
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Objectives

Assessment

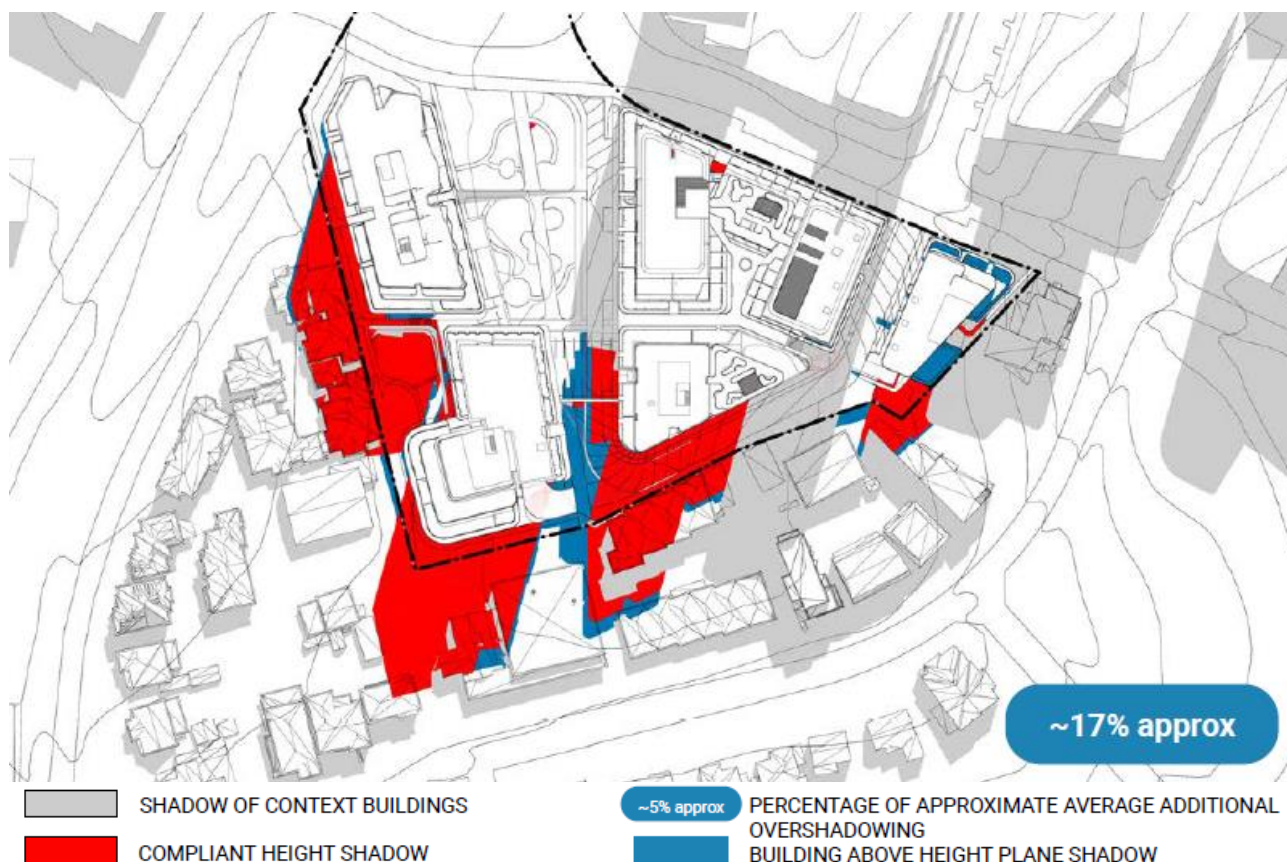
shaded by mature trees and the overshadowing does not occur to the main areas of the school grounds during recess or lunchtime break periods. Overall, no single area remains in shadow for more than an hour on 21 June.

In summary, while there is additional shadow caused by non-compliant built form, the additional shadows do not result in adverse impacts on surrounding properties with surrounding properties retaining at least three hours of solar access at mid-winter.

The public open space is positioned towards the north of the site, benefiting from the open space to the north. As shown in **Figure 25** below, 82% of the proposed open space area receives solar access for 2 hours between 9am and 3pm in at mid-winter. The provision of a generous open space area within the heart of the site contributes to improved spatial relief between buildings and improved sky exposure from the public realm.

In this regard, objective (f) is satisfied.

Figure 20 Shadow diagram for Stage 1A on 21st June at 11am



Source: Plus Architecture

Figure 21 Shadow diagram for Stage 1A on 21st June at 2pm



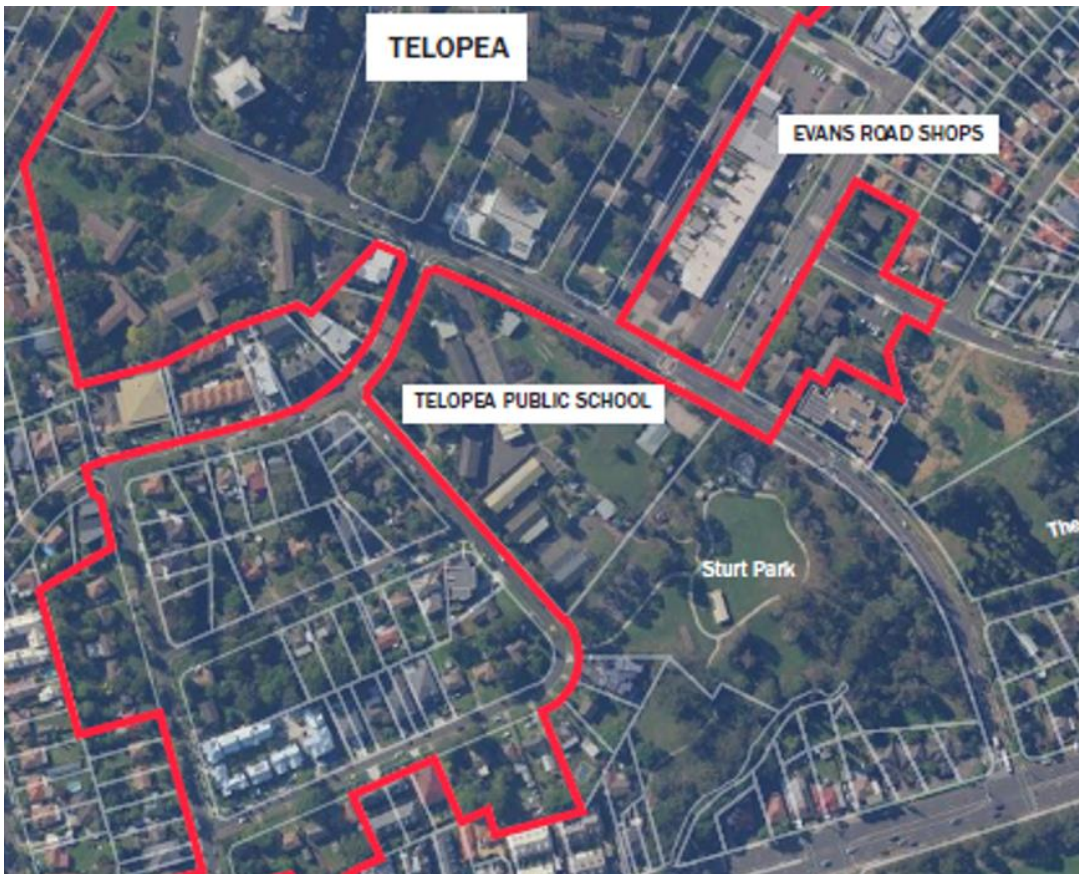
Source: Plus Architecture

Figure 22 Shadow diagram for Stage 1A on 21st June at 3pm



Source: Plus Architecture

Figure 23 Telopea Public School site



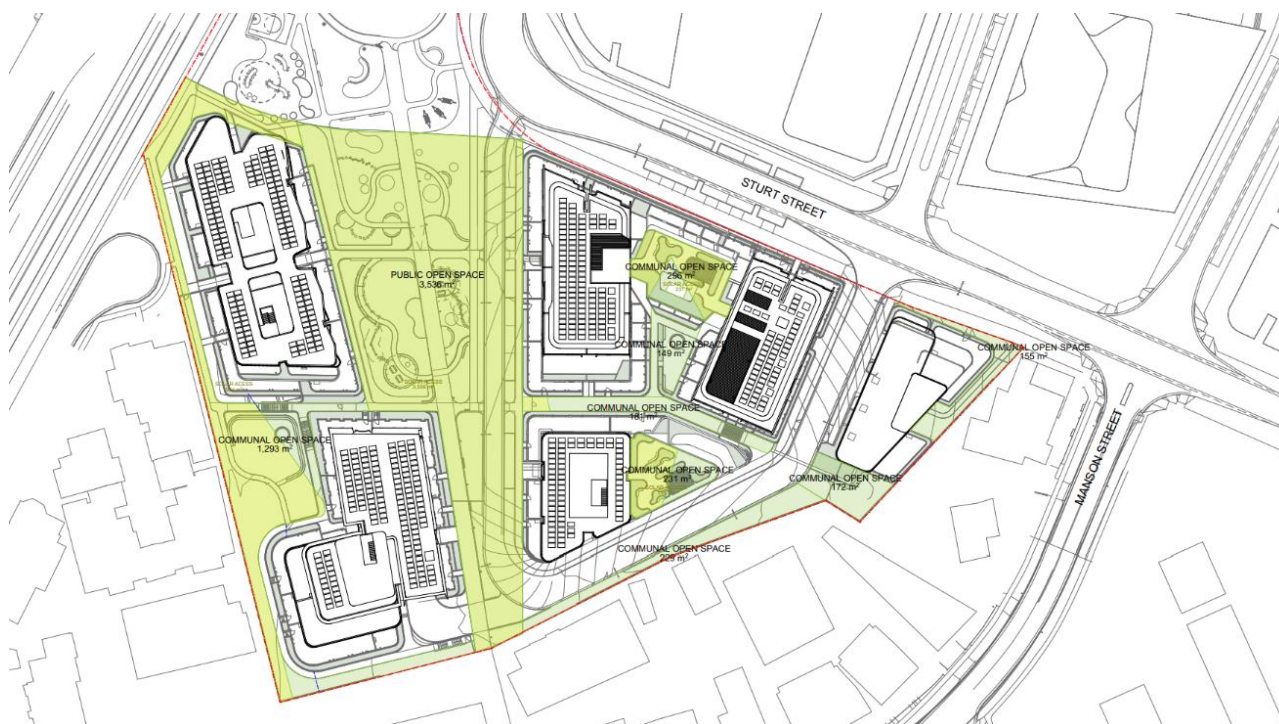
Source: LAHC

Figure 24 Sturt Street elevation



Source: Plus Architecture

Figure 25 Solar access to public domain areas 21st June 9am-3pm



Source: Hassell

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 variation to the Height of Buildings development standard has been the result of an iterative master planning process involving feedback received from the SDRP and Council, as well as investigating optimal outcomes based on a first principles approach for the site and its relationship to the Telopea CPA.

The Stage 1A DA's design proposition seeks to make several improvements to the site including:

- Improved distribution of building typologies and scales across the Stage 1A DA site, including height concentrated towards the Telopea Core Precinct and reduced forms that respond to topography;
- Improved interface of building forms at the edges, including the podium base and tower compositional elements identified in Buildings C and D to break up bulk and scale;
- Improved quantity of usable public open space within the centre of the site, which will receive suitable levels of sunlight and become a focal point for the area;
- Improved retention of native vegetation and important tree groupings, which will reinforce the existing quality and character of Telopea; and
- Improved or maintained levels of visual impact when viewed from the surrounding locality.

The proposed variation to the building height control allows for greater public benefits to be achieved in comparison to a scheme with building heights compliant with the PLEP 2011. A scheme with LEP compliant building heights would result in larger building footprints which would reduce the quantum and quality of open space and amenity to be provided.

In relation to built form, a PLEP 2011 compliant building height profile has the potential to produce limited variation in height, plan form or typology and as a result, would deliver homogenous building forms. The proposal has been designed to maximise diversity of built form and facilitate higher standards of architectural design and amenity, which involves exceeding the heights prescribed within PLEP 2011. As shown in **Figure 26** below, the proposed height variations create a greater differentiation in building form across the site area and transition from the building heights in the Core Precinct.

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 Stage 1A site 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 Stage 1A site 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.

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 Stage 1A 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 zone 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 and a reduction in the provision of public open space.

Figure 26 Stage 1A Development Visualisation



Source: Plus Architecture

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 Stage 1A 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 built forms, improved distribution and diversity of buildings, improved building articulation elements, embellished open spaces and retention of mature trees demonstrates an appropriate and well considered massing proposition.

The submitted Design Report (September 2023) provides a quantifiable analysis of the impacts resulting from the additional height exceedances across the Stage 1A DA and demonstrates the outcomes are 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 Stage 1A DA is eligible for FSR bonuses under the ARH SEPP (now Housing SEPP). The variation to the height limit is needed in some buildings to accommodate this additional density in strategically placed locations;
- To the point above, accommodating the FSR bonuses within the existing height limit would produce poorer outcomes with respect to environmental and built form amenity;
- The additional height is partially the result of redistributing building mass from Building A into other buildings;
- To the point above, the redistribution of underutilised GFA within the height plane from Building A (2,963sqm) has contributed to the exceedance of Building B by an equivalent amount which equates to five storeys (or Levels 9-13 of Building B), representing an appropriate trade-off in density across to best respond to the surrounding context;
- The exceedances to the height limit are largely minor at the edges of the Stage 1A DA site (Buildings C, D and E), with the greatest exceedance located centrally and towards the maximum permissible heights within the Telopea Core Precinct;
- The variation will enable an appropriate master planning response that delivers a higher level of public amenity in the form of larger open space (3,500sqm) than what could be achieved if compliant heights were pursued with larger building footprints and potentially compromising this space;
- The variation allows high quality housing, public open space, and public domain to be delivered in a designated, sustainable urban renewal area with access to the future PLR service;
- The exceedances will enable an urban and architectural outcome with greater public benefits to be delivered including high quality public domain and public open space, amenity for existing and future residents and visually diverse and interesting high-density housing;
- The exceedances represent minimal impacts on the amenity of existing residents whilst providing new, high quality public open spaces for the broader community; and

- The majority of the exceedances sit within or close to the PLEP 2011 height limit and has been designed to minimise overshadowing impacts. The tallest building proposed is adjacent to the taller marker buildings in the Upper Core and enables a transition in the scale of development across the Precinct.

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 Stage 1A 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 Stage 1A DA's increase in Height of Buildings 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 the Stage 1A DA 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; 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 3** above. The Stage 1A DA is also consistent with the land use objectives of the R4 High Density Residential zone and RE1 Public Recreation zone that apply to the site under the PLEP 2011. The Stage 1A DA is consistent with the relevant land use zone objectives as outlined in **Table 4** below.

Table 4 Assessment of compliance with land use zone objectives

Objective	Assessment
R4 High Density Residential	
(a) <i>To provide for the housing needs of the community within a high-density residential environment.</i> (b) <i>To provide a variety of housing types within a high-density residential environment.</i> (c) <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> (d) <i>To provide opportunity for high density residential development close to major transport nodes, services, and employment opportunities.</i> (e) <i>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.</i>	(a) A diversity of housing is provided within a high-density residential environment that will cater for the needs of a broad range of users. (b) High density housing is proposed, with a variety of apartments in a mix of studio, one, two and three-bedroom units. (c) As part of the Stage 1A development Telopea Station Plaza will be delivered providing a civic space and arrival plaza, as well as a new hilltop park and neighbourhood park. (d) High density residential development is proposed close to the future Telopea Light Rail station, existing bus network, neighbourhood centre and access to employment opportunities. (e) The Stage 1A development proposes a variety of public open spaces for use by residents. A range of other facilities and services are located in close proximity (including Schools, parks, and retail) and additional uses will be delivered throughout the Telopea Core Precinct.
RE1 Public Recreation	
(a) <i>To enable land to be used for public open space or recreational purposes.</i> (b) <i>To provide a range of recreational settings and activities and compatible land uses.</i> (c) <i>To protect and enhance the natural environment for recreational purposes.</i> (d) <i>To conserve, enhance and promote the natural assets and cultural heritage significance of Parramatta Park.</i> (e) <i>To create a riverfront recreational opportunity that enables a high-quality relationship between the built and natural environment.</i>	The RE1 zoned portion of the Stage 1A site is proposed to be delivered as public open space as part of the Telopea Station Plaza and hilltop park and is considered to be consistent with all the relevant objectives of the RE1 zone. GFA calculations have not relied on RE1 land to calculate FSR for Stage 1A. Telopea Station Plaza is proposed to be a civic place and arrival plaza for the use of the residents and the public adjacent to the Telopea Light Rail station. It will provide a community hub at the heart of the plaza as a destination for the whole neighbourhood.

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.

- **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 Stage 1A 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 Stage 1A 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 Stage 1A 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 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 Stage 1A DA is consistent with the strategic policy framework delivering a range of housing types and sizes to meet the needs of different households. The Stage 1A 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 Stage 1A 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 the site, 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 tree clusters, 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.

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 a transition in built form and land use intensity from the highest building forms of the Core Precinct to medium-rise buildings in the Stage 1A area and the wider Telopea Precinct beyond;
- The proposed development has been carefully designed and sited to minimise visual impact, disruption of views and loss of privacy, deliver a high standard of amenity for existing and future residents;
- The proposed built form provides a high level of solar access to the public domain and public open space and any overshadowing impacts have sought to be minimised and are considered acceptable;
- The proposed development will not have any impacts on heritage items or historic views;
- The proposal prioritises maintaining the existing landscape character of Telopea with the built form and layout respecting and reinforcing the topography of the site, and new public spaces and building layout being designed around the retention of existing mature trees and groupings;
- In response to SDRP and PCC feedback, the proposed building heights allow high quality, high density residential development to be delivered in a varied and interesting building typology and form which provides greater amenity for the Telopea community;
- The proposal includes high quality public open spaces including parks, gardens, and landscaped pedestrian links with a varied planting palette for the benefit of existing and future residents;
- The proposed built form allows for a high-quality pedestrian link from the new Telopea Station Plaza to the site and the precinct beyond to be delivered, as well as a loop access road within the site to provide an improved sense of address and access for the new residences;
- Three of the four buildings that propose a variation to the PLEP 2011 height control have a height variation of approximately one storey or less and mainly result from roof features and lift overruns;
- Additional height has been strategically located on Building B immediately adjacent to the Upper Core Area of Telopea to provide a transition in height from the marker buildings adjacent to Telopea Station to the remainder of the site and Precinct;
- The proposed development is in accordance with the Telopea CPA Design Guidelines;
- The proposal will deliver high quality public space as part of the new Telopea Station Plaza; and
- A proposal which complied with the Height of Buildings development standard would result in lower quality housing, reduced public benefits for the community and greater impacts on the amenity of existing residents.

For the reasons outlined above, 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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