



# Updated Clause 4.6 Variation – Height

Teloepa Stage1A State Significant Development

SSD-14378717

Prepared on behalf of Homes NSW

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**FPD**planning



## Document control

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### Project summary

<b>Applicant</b>	Homes NSW
<b>Land to be developed</b>	Telopea Estate
<b>Legal description</b>	Various
<b>Project description</b>	Updated Clause 4.6 variation request for variation to height



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# 1 Introduction

This amended Clause 4.6 Variation Request has been prepared to support an amended proposal for Stage 1A of the Telopea State Significant Development (SSD-14378717).

This amended Clause 4.6 Variation Request is an update to the previous Clause 4.6 Variation Request prepared by Urbis and dated December 2023.

The amended proposal seeks a minor increase to height to accommodate current requirements in the National Construction Code (NCC) for floor heights. Since the previous Clause 4.6 Variation Request was submitted, the minimum floor requirements have increased from 3.15m to 3.2m, necessitating a minor increase to the overall height of all buildings.

As outlined in the previous Clause 4.6 Variation Request, Stage 1A proposes a redistribution of height across the Stage 1A area which exceeds the maximum building height in the *Paramatta Local Environmental Plan 2011* (Paramatta LEP).

As confirmed in the previous Clause 4.6 Variation Request, the proposed variation to the height control was not required to accommodate the additional floorspace for affordable housing in accordance with the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP), this remains the case.

The amended proposal for Stage 1A remains consistent with the previously proposed height in storeys and proposes a further reduction in GFA across the Stage 1A area. The minor increase to the height of buildings is the result of current NCC standards requiring increased floor levels. There is no change to the overall design intent or height strategy previously proposed and assessed for the site.

The site is zoned R4 High Density Residential under the Parramatta LEP, and the following controls apply:

- FSR of 1.7:1 (plus 0.5:1 in accordance with the ARH SEPP)
- Maximum height of 28m.

Clause 4.6 of the Parramatta LEP includes provisions that allow the consent authority to vary development standards in certain circumstances. The objectives of clause 4.6 are:

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

Clause 4.6 requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify contravening the development standard.

The Department of Planning, Industry and Environment has issued the *Guide to Varying Development Standards November 2023* to assist applicants in applying to vary development standards. The guide sets out five common ways which has been established by the NSW Land and Environment Court which may be considered in applying Clause 4.6 to determine whether the



objection to the development standard is well founded. The matters have been considered and addressed by this report.



## 2 Extent of Proposed Variation

In accordance with Clause 4.3 'Height of buildings' in the Parramatta LEP, the Site has a maximum building height of 28m (refer to Figure 1).

It is noted that no maximum building height applies to the portion of land zoned RE1 Public Recreation.



**Figure 1: Maximum height of buildings (Source: Plus Studio)**

The amended proposal will result in a minor increase to the proposed building height to accommodate higher floor levels of 3.2m in accordance with the NCC, to accommodate screening of communal areas and increased height for lift overruns. The proposed heights in the amended proposal are provided in Table 1.

The amended proposal will not result in any change to the current building height in storeys and maintains a height in storeys of 5 to 15 storeys across Stage 1A.

Further, it is acknowledged that since the original EIS was submitted in July 2021, the bonus provisions for infill affordable housing under the Housing SEPP now allow a 30% bonus on height as well as floor space. Although, this application is subject to the in-fill affordable housing provisions in the ARH SEPP (which included only an FSR bonus), if the current bonus provisions in the Housing SEPP were applied, the maximum permitted height of buildings would be 36.4m.



Therefore, if the application were assessed under the current controls, all buildings within Stage 1A, except for Building B1 (which is reducing in height), would be within the allowable maximum height of 36.4m under the Housing SEPP bonus provisions.

An overview of the proposed height variation in the current proposal and amended proposal is provided below.

**Table 1 Current and amended building height variation**

Building	Current proposal	Extent of variation	Amended proposal	Extent of variation	Difference
Building A	21.745m to top of plant (RL 75.440)	Compliant	22.740m RL 75.640	Compliant	No change
Building B1	49.290m to top of parapet (RL 107.750)	+21.29mm	48.480m RL 107.580	+20.48m	-0.81m
Building B2	31.600m to top of parapet (RL 88.700)	+3.6m	34.780m RL 91.680	+6.68m	+3.18m
Building C	32.39m to top of plant (RL 90.550)	+3.9m	33.073m RL 91.350	+5.073m	+0.683m
Building D	32.82m to top of plant (RL 89.550)	+4.38m	33.350m RL 90.250	+5.35m	+0.97m
Building E	30.4m to top of plant (RL 85.900)	+2.4m	30.786m RL 86.300	+2.786m	+0.386m

The amended proposal exceeds the maximum height control for Buildings B, C, D and E, with the greatest exceedance to the height control being 20.48m. It is noted that the amended proposal results in a reduction to the extent of the maximum exceedance from 21.29m in the current proposal to 20.48m in the amended proposal.

The minor increase to the height variation results in negligible increase to the overall building heights with the amended proposal resulting in an increase of 0.386m to 3.18m. As noted previously, the extent of the increase to the proposed variation is only for the purpose of accommodating additional floor height in accordance with current NCC requirements.

The amended proposal proposes 32,990sqm of GFA which is 6,940sqm less than the maximum permissible GFA and results in a FSR compliant scheme.

The ARH SEPP provides for an additional 0.5:1 FSR for providing more than 20% affordable housing as part of a development. This allows the development to exceed the mapped FSR control of 1.7:1 for the site in the LEP. The proposal has an allowable FSR of 2.2:1 under the Parramatta LEP and ARH SEPP, with the amended proposal has a compliant FSR of 1.82:1, which is a reduction in proposed GFA to the current proposal.

As outlined in the previous Clause 4.6 Variation Request, the proposed distribution of building height across the site is not the result of accommodating additional GFA but several design factors, including design advice from the State Design Review Panel and maximising access, public open space, and residential amenity through increased height.



As demonstrated in the current and proposed height planes diagrams prepared by Plus Studio at Figure 2 and Figure 3, the height increase is negligible.



**Figure 2 Current Height Plane Diagram (Source: Plus Studio)**



**Figure 3 Amended Height Plane Diagram (Source: Plus Studio)**



### 3 Justification for the Proposed Variation

This section of the report provides consideration of the requirements of Clause 4.6 and the five common ways to demonstrate compliance is unreasonable or unnecessary as set out in *Guide to Varying Development Standards November 2023*.

#### 3.1 How is compliance with the development standard is unreasonable or unnecessary in the circumstances of this particular case?

Compliance with the development standard is considered unreasonable and unnecessary in this instance as it is consistent with the objectives Clause 4.3. Height of buildings and the objectives of the R4 High Density Residential zone.

As demonstrated in Table 3 and Table 4 the objectives are achieved notwithstanding non-compliance. This is consistent with the five-part test established in *Wehbe vs Pittwater* and one of the five ways that compliance can be demonstrated to be unreasonable or unnecessary in the *Guide to Varying Development Standards* (refer to Table 2).

The Department of Planning, Housing and Infrastructure has issued the *Guide to Varying Development Standards November 2023* to assist applicants applying to vary development standards. The guide sets out five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary as established by the NSW Land and Environment Court in determining whether the objection to the development standard is well founded. A Clause 4.6 application is not required to meet all of the tests.

**Table 2: Five ways to demonstrate compliance is unreasonable or unnecessary**

Objective	Consideration
The objectives of the standard are achieved notwithstanding non-compliance with the standard	The objectives of Clause 4.3 Height of Buildings can be achieved, as outlined in Table 3, notwithstanding the non-compliance.
The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary	This test is not applicable in this instance.
The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable	<p>The minor exceedance to the height control is required to accommodate minimum floor levels in accordance with the NCC and will deliver a substantial proportion of social and affordable housing on the Site.</p> <p>Strict compliance with the height control is unreasonable in this circumstance as the minor height increase is required to meet regulatory requirements in accordance with the NCC and does not change the proposed height in storeys proposed for Stage 1A.</p> <p>The minor exceedance to the height control is required to accommodate an increase in the floor height from 3.15m to 3.2m under the NCC. This results in a minor height increase for Building B2, C, D and E.</p> <p>Compliance with the height control is considered unreasonable as the amended proposal results in a reduction in GFA by more than 6,000sqm, ensuring</p>



	there is no increase to the bulk and scale of the development.
The development standard has been virtually abandoned or destroyed by council's own actions in granting consents departing from the standard.	This test is not applicable in this instance.
The compliance with the development standard is unreasonable or inappropriate due to the existing use of the land and current character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.	This test is not applicable in this instance.

The proposed development is consistent with the objectives of Clause 4.3 Height of Buildings as shown in Table 3 and the objectives for the R4 High Density Residential zone which applies to the Site as shown in Table 4.

The consistency of the amended proposal with the objectives of the Parramatta LEP remains unchanged from the previous Clause 4.6 Variation Request and assessment provided in the EIS.

**Table 3: Consideration of Clause 4.3 Height of buildings objectives**

Height of building objectives	Consistency
To nominate heights that will provide a transition in built form and land use intensity within the Parramatta Local Government Area	<p>Addressed in previous Clause 4.6 Variation Request and Design Report for Stage 1A. The minor height increase is to accommodate a minor increase in floor height requirements in the NCC. It does not alter the design outcomes or previously assessed height strategy for the site.</p> <p>The amended proposal maintains an appropriate transition in height and does not result in any change to the proposed height in storeys of any building in Stage1A.</p> <p>The consistency of the amended proposal with the objectives of the Parramatta LEP remains unchanged.</p>
To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development	<p>Addressed in previous Clause 4.6 Variation Request and Visual Impact Assessment submitted with EIS. The amended proposal and minor increase to the height will not result in any additional significant visual impacts.</p>
To require the height of future buildings to have regard to heritage sites and their settings	<p>Addressed in Heritage Impact Statement submitted with EIS. The amended proposal and minor increase to the proposed height variation will not result in any heritage impacts.</p>
To ensure the preservation of historic views	<p>Addressed in Heritage Impact Statement submitted with EIS. There are no historical views identified within or surrounding the site. The amended proposal and minor increase to the proposed height variation will not result in any heritage impacts.</p>



To reinforce and respect the existing character and scale of low-density residential areas	The amended proposal and minor height increase remains consistent with the previously assessed height strategy for Stage 1A.
To maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets, and lanes	The amended proposal and minor height increase for Building B2, C and D is not expected to result in any significant increase overshadowing to the public domain than previously considered.

**Table 4: Consideration of objectives of the R4 High Density Residential zone**

R4 zone objectives	Consistency
(a) To provide for the housing needs of the community within a high-density residential environment.	<p>The amend proposal's consistency with the objectives of the R4 High Density zone remains unchanged from the previous Clause 4.6 Variation Request and assessment in the EIS.</p> <p>The proposal will provide the housing needs of the community through the delivery of 423 new dwellings, including 245 new social and affordable dwellings.</p>
(b) To provide a variety of housing types within a high-density residential environment.	
(c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.	
(d) To provide opportunity for high density residential development close to major transport nodes, services, and employment opportunities.	
(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.	

The standard is unreasonable and unnecessary in the circumstances on the following basis:

- The amended proposal results in a minor increase to the height exceedance for Building B2, Building C, Building D and Building E. Building A remains complaint, and the proposed height exceedance for Building B1 is reduced in the amended proposal.
- The height exceedance is minor and is required only to accommodate increased floor heights in accordance with the NCC.
- The amended proposal is consistent with the proposed heights in storeys, building envelopes and previously assessed height strategy for Stage 1A.
- The amended proposal results in a reduction in GFA of 32,990sqm and has a maximum proposed FSR of 1.82:1 is well below the permitted FSR of 2.2:1.
- The minor variation will not result in any significant visual impacts and results reduced overshadowing impacts when compared to the current proposal.
- The proposal accommodates a substantial proportion of social and affordable housing on the Site and strict compliance with the height control is unreasonable in this circumstance as it would result in the loss of affordable housing on the site.



- The proposal does not result in any significant additional impacts beyond those already considered in the EIS.

The minor increase to the height variation will have negligible impact on the amenity of the surrounding area and will not impact on the ability of the proposal to achieve the relevant objectives of the Parramatta LEP as set out in Clause 4.3 – Height of Buildings or to satisfy the objectives of the R4 High Density Residential zone.

### **3.2 Are there are sufficient environmental planning grounds to justify contravening the development standard?**

As outlined in this section, there remain sufficient environmental planning grounds to justify the variation to the height control.

The amended proposal complies with the maximum permitted FSR and remains consistent with the previously considered height strategy and height in storeys for all buildings within Stage 1A.

The amend proposal requires a minor increase to the height exceedance to accommodate increased floor heights which have increased since the previous Clause 4.6 Variation Request was prepared in December 2023. The amended proposal does not seek any other changes to the proposed height variation.

The minor building height non-compliance is not expected to result in any adverse amenity impacts beyond those already considered. From an overshadowing, visual and streetscape point of view, the impacts would be negligible.

In summary the minor increase to the proposed variation will result in negligible environmental impacts, while ensuring the proposed buildings with Stage 1A can be delivered in accordance with regulatory requirements in the NCC.



## 4 Conclusion

The proposed minor variation to the maximum height of buildings control for the amended proposal is justified on the basis that the extent of the increase to the height variation is minor and is not expected to result in any significant impacts beyond those already considered and assessed as part of the original EIS and previous Class 4.6 Variation Request.

The amended proposal complies with the permitted FSR for the site, will result in a reduction in the proposed GFA when compared to the current proposal, and remains consistent with the height strategy.

The minor height increase for the amended proposal is unlikely to result in any significant environmental impacts and on this basis is justified.