URBIS

REQUEST TO VARY A DEVELOPMENT STANDARD – SITE NO.1 - BUILDING HEIGHT AND FLOOR SPACE RATIO

Clause 22, Part 23 of Schedule 3 of the *SEPP (State Significant Precincts) 2005*, allows the consent authority to grant consent for a development even if the development contravenes a development standard imposed by the environmental planning instrument. The Clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for the development.

Clause 22 states:

(2) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(3) 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.

(4) 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.

(5) 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 (4), 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 Director-General has been obtained.

(6) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.

Several key New South Wales Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached. These tests and considerations can also be applied to give guidance to the preparation of a variation request under Clause 22 of the SEPP and is addressed in the paragraphs below.

The correct approach to preparing and dealing with a request under clause 4.6 as outlined by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Counci*l [2018] NSWLEC 118. These principles have been summarised below:

- [13] - The permissive power in cl 4.6(2) to grant development consent is subject to conditions in Clause 4.6(4).\
- [14] - the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii).
- [15] - The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
- [16] - As to the first matter required by cl 4.6(3)(a), the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary has been summarised in Wehbe v Pittwater Council.
- [17] - The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- [18] - A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
- [19] - A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
- [20] - A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.
- [21] - A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.
- [22] - These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways.
- [23] - As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature.
- [24] - The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of

the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter.

- [25] - The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority to form the requisite opinion of satisfaction.
- [26] - The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.
- [27] - It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.
- [28] - The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b).
- [29] - On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act.

Accordingly, this written variation request addresses the local provisions of Clause 22 of the SEPP with respect to the Building Height and FSR controls, together with the relevant principles established by the Land and Environment Court, as they apply to No.1 Murray Rose Avenue.

DEVELOPMENT STANDARDS TO BE VARIED

Height

Clause 18 of Part 23 in Schedule 3 of SEPP State Significant Precincts stipulates the maximum height for a building on any land within the Sydney Olympic Park site is not to exceed the maximum height shown for the land on the (draft) Height of Buildings Map, which shows a maximum of:

- 26m fronting Bennelong Parkway; and
- 33m on the western portion of the site.

Building Height is defined in Clause 2 of Part 23, which states:

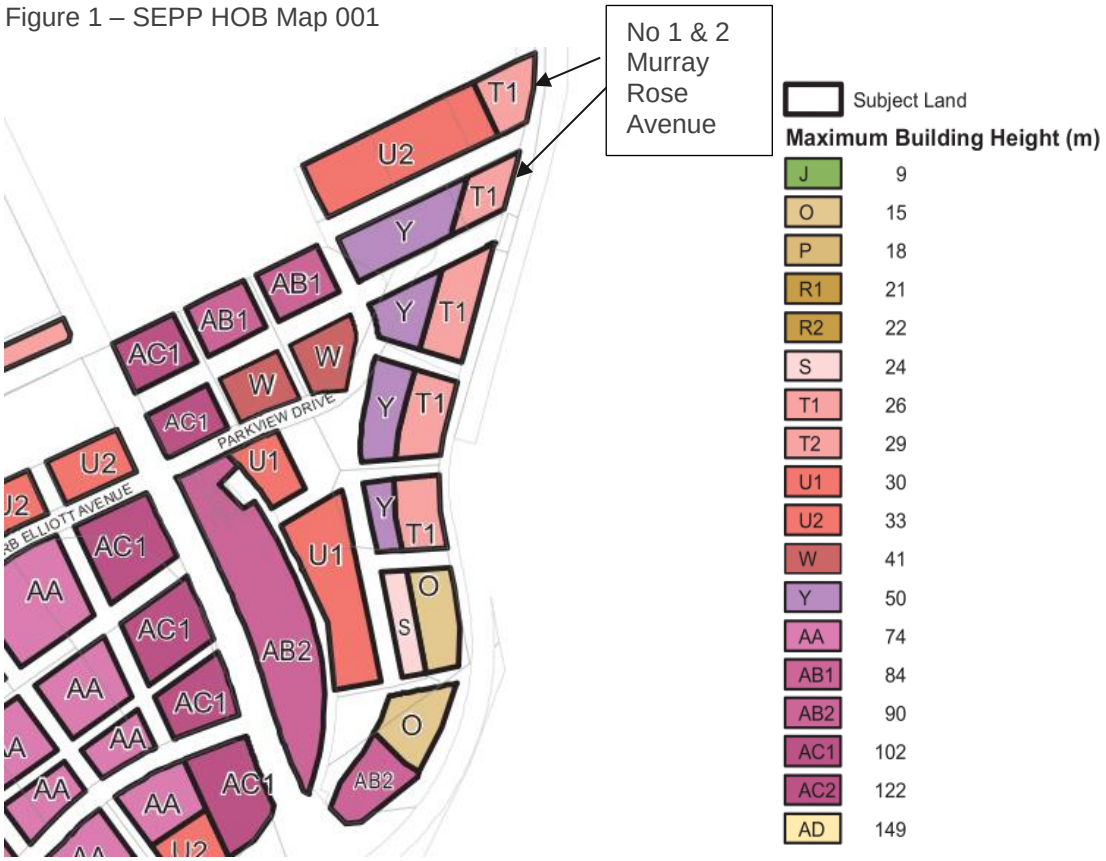
> *building height (or height of building) means the vertical distance, measured in metres, between ground level (existing) at any point to the highest point of the highest habitable floor (including above ground car parking) of the building,* ***excluding*** *plant and lift overruns, communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

As a result of the above, building height therefore excludes the following areas relevant to the development:

- Plant Room and lift overruns; and

- Solar Panels.

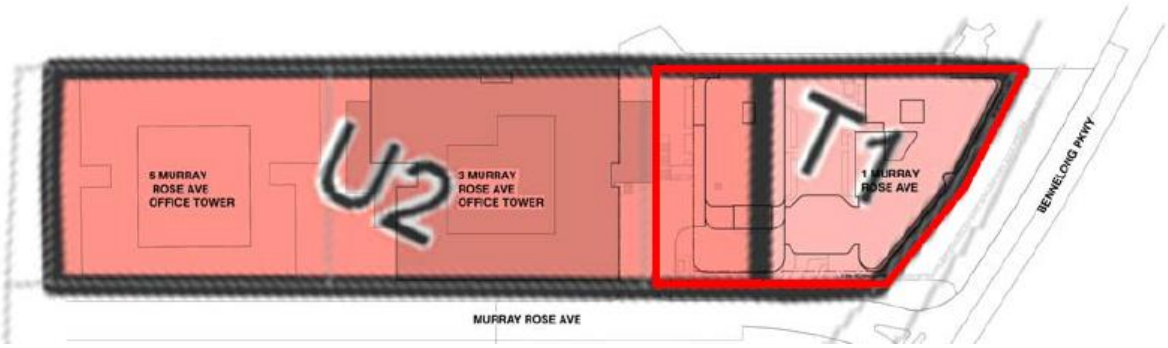
Figure 1 – SEPP HOB Map 001



Source: Department of Planning and Environment

No 1 Murray Rose Avenue has a proposed total height of 37.5m which is a minor breach of this height control and results from the overlap of the height control when viewed alongside the site boundary (refer Figure 2).

Figure 2 – Relationship of Height Control to Lot Boundary



Source: PTW

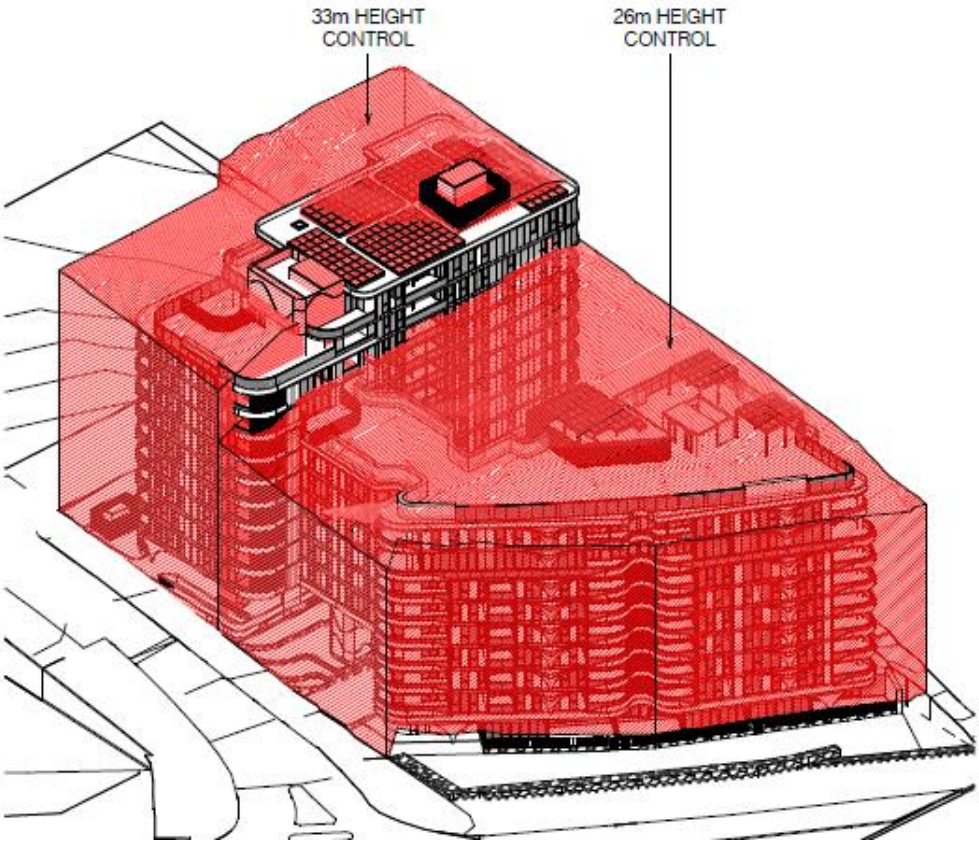
Figure 3 below illustrates a view of the western portion of No.1 Murray Rose Avenue. This illustrates how a small portion of the east facing apartments on levels 8, 9,10,11 and 12 exceed the 26m height control. This development standard is discussed further below.

Figure 3 - Height Exceedance No 1 (Northern Elevation)

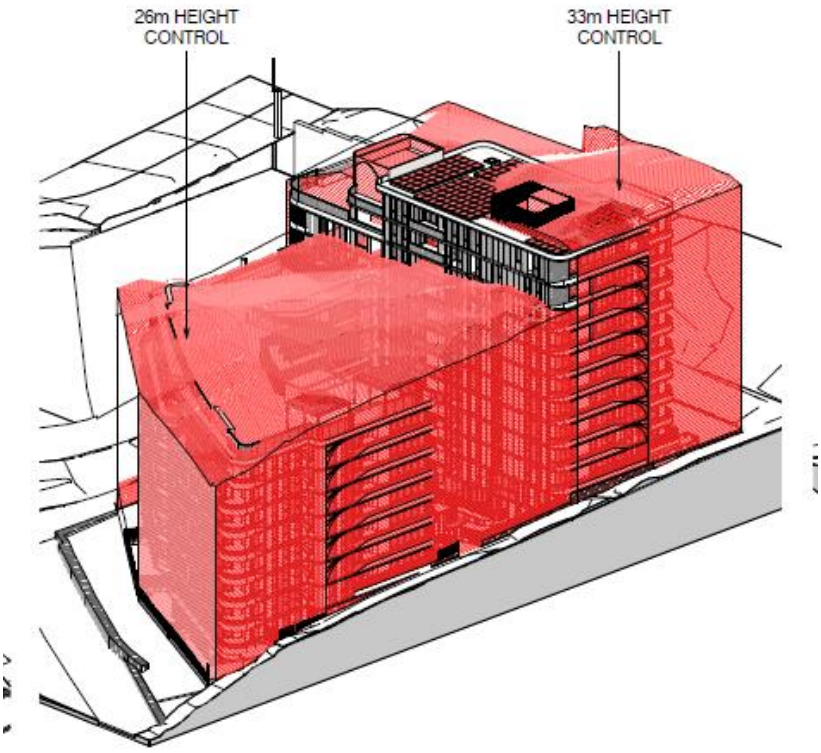
Source: PTW Architects

The proposed built form on the western section of the site is within or slightly above the 33m height plane in the SEPP. However, given the unusual correlation between the height of building control and the lot boundaries (refer Figure 2), only 204m^2 of the site falls outside this height plane.

Figure 4 – Height Control Analysis



Source: PTW Architects



Source: PTW Architects

Figure 5 below highlights the areas of the development that exceed the height controls (totalling 204m^2 of GFA), these being small portions of the east facing apartments on levels 8,9,10,11 and 12.

Also, important to note in this regard is the definition of building height in the SEPP (Part 23 Division 1 Clause 2) which specifically excludes 'plant and lift overruns, communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like'.

This exemption also extends to 'rooftop service areas' under section 4.6.5 of the SOPA Masterplan. These are permitted up to a height of 5m above the maximum building height. As a result, there are certain elements on the rooftop services areas of No.1 Murray Rose Avenue that are exempt from the height exceedance as a result of this policy. These include the lift overrun, lift enclosure and solar panels.

Figure 5 –GFA Exceedance on No. 1 Murray Rose

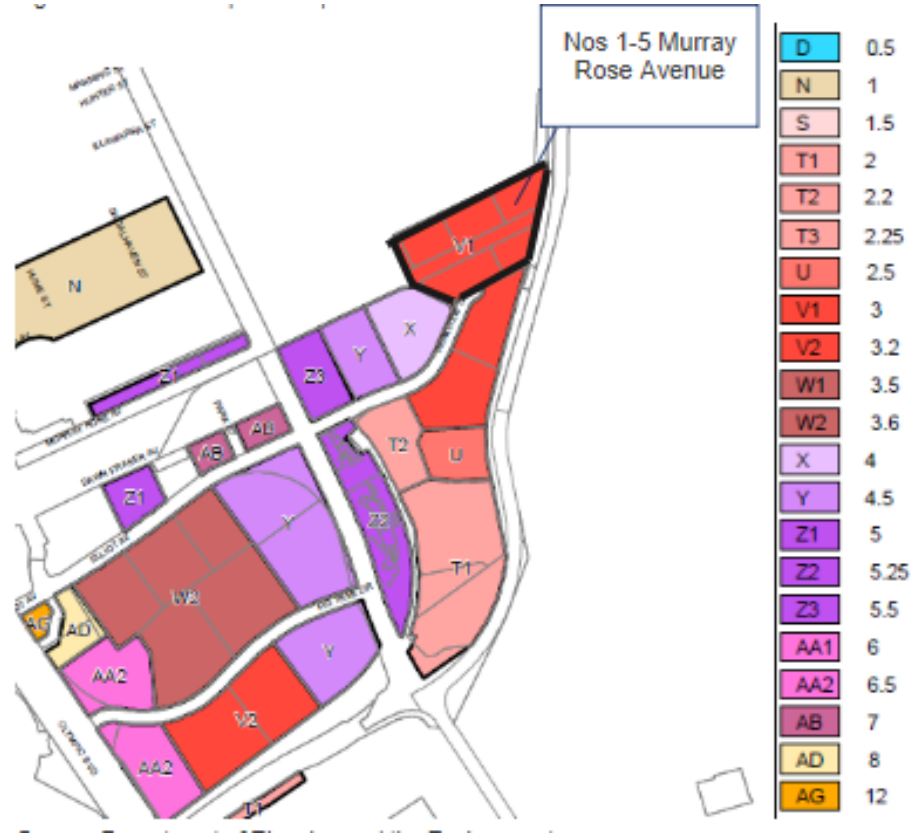
Floor Space Ratio

In addition, Clause 19 of Part 23 in Schedule 3 of SEPP State Significant Precincts stipulates that the maximum FSR for a building on any land within the Sydney Olympic Park site is not to exceed the FSR shown for the land on the Floor Space Ratio Map, which shows a maximum FSR of 3:1 for Nos. 1-5 Murray Rose Avenue.

As detailed in Section 6.3.3 of the EIS, the proposal has been awarded design excellence and is therefore subject to the 10% FSR bonus under section 4.6.10 of the SOPA Master Plan. This equates to a total maximum FSR of 3.3:1.

The proposed scheme exceeds this FSR control and will be discussed further in the subsequent paragraphs.

Figure 6 - SEPP Map Floor Space Ratio Control



Source: PTW Architects

URBIS

IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD?

Section 1.4 of the EP&A Act defines a Development Standard as:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: …

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work…".

The numerical controls are contained within Clause 18 and 19 of Part 23 in Schedule 3 of SEPP State Significant Precincts and therefore considered development standards capable of being varied under the provisions of Clause 22 of the SEPP.

WHAT IS THE UNDERLYING OBJECT OR PURPOSE OF THE STANDARD?

There are no stated objectives for the maximum height of building or floor space ratio development standards in SEPP State Significant Precincts.

Notwithstanding this, having regard to the above and the precinct guidelines relating to the Height and Floor Space Ratio development standards within the SOPA Masterplan, the following consistent themes emerge which have guided the assessment:

- Ensure the height of the building is compatible with the desired character of the locality.
- Ensure the intensity reflects its locality.
- Mitigate undesirable amenity impacts on the surrounding environment
- Minor increases to the height plane may be considered if:
    - special site conditions make strict compliance with the controls unworkable;
    - there are demonstrable improvements to urban form and height transition;
    - resident amenity in terms of privacy and solar access is not adversely affected; and
    - there is no impact on public open space and parklands.
- The assessment has also had regard to the Zone objectives outlined in Part 23, Division 2 of Schedule 3 of SEPP State Significant Precincts, which are as follows:

    (a) to protect and promote the major events capability of the Sydney Olympic Park site and to ensure that it becomes a premium destination for major events,
    (b) to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling,
    (c) to ensure that the Sydney Olympic Park site becomes an active and vibrant town centre within metropolitan Sydney,
    (d) to provide for a mixture of compatible land uses,
    (e) to encourage diverse employment opportunities,
    (f) to promote ecologically sustainable development and minimise any adverse effect of land uses on the environment,

(g) to encourage the provision and maintenance of affordable housing.

As described above, this application has been prepared with regard to the revised controls proposed in the Sydney Olympic Park Master Plan 2030 (2018 Review) (Master Plan) and the accompanying amendment to *State Environmental Planning Policy (State Significant Precincts) 2005,* which detail the desired future character of the locality.

COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

Clause 22(4)(a) of Part 23 of the SEPP requires the departure from the development standard to be justified by demonstrating: that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

It is considered that the strict compliance with the height and floor space ratio development standards is unreasonable and unnecessary, and this is demonstrated further below.

1. The General Objectives of the Standard are Met

The proposal responds to the objectives outlined above as:

- The proposal is consistent with the mixed-use character encouraged within the B4 zone under the SEPP and envisaged as part of the Parkview Precinct under the Masterplan. In addition to the B4 zone objectives addressed below, the height profile of the proposal is generally compatible with the existing height transition across the precinct; which consists of high-rise buildings along Australia Avenue to lower buildings along Bennelong Parkway.
- This is demonstrated in the view impact analysis prepared by PTW Architects (refer Appendix J), which confirms that the proposal comprises two buildings which clearly step down in height towards Bennelong Parkway (refer Figure 7 below), which is compatible with the desired future character of the precinct as set out in the Master Plan.
- As outlined below and within the accompanying Key Response Table, the proposal displays a high level of compliance with built form controls within the SOPA Masterplan and the Apartment Design Guide (ADG). The proposal provides a high-quality urban development, with a significant level of residential amenity including solar access, natural ventilation, visual and acoustic privacy, and access to communal open space. The total design achieves compliance with the ADG as per below:
    - Communal Open Space- 52.93%
    - Deep Soil - 10%
    - Cross Ventilation - 60.5%
    - Solar Access – 70.3%
- Further, it is noted that the Design Competition Jury preferred the current design to a design that was compliant with the maximum height controls in the SEPP, partly due to the improved amenity that this design would afford future residents.
- As detailed in Section 6.3.1 of the EIS, the proposed development is entirely consistent with objectives of the B4 Mixed Use zone, these being:
    - The proposed development has been designed to ensure it does not significantly impact upon the capability of Sydney Olympic Park to host major events.

- The proposed residential development is accessible to existing and planned future public transport options. The site also well connected to roadways, pedestrian walkways and cycle ways.
- The proposed development will encourage the growth of Sydney Olympic Park by providing a high-quality residential development set within an attractive and accessible environment.
- The orientation and massing of both buildings frames the significant views and maximises the aspect to the immediate natural surroundings and the availability of significant views towards Bicentennial Park; Brickpit Park and the Northern waters.
- The proposed residential land use is compliable with the broader range of residential, commercial, retail and sporting uses within the Precinct.
- Employment opportunities will be created during the construction phase of the development. New residents in the area will also support businesses in the surrounding precincts, potentially creating opportunities for new jobs.
- The proposal has been designed to have minimal environmental impact, as discussed below, and will employ a range of ESD measures.
- The proposed development incorporates a variety of apartment types and sizes to ensure it is attractive to a wide range of prospective residents.

HEIGHT

2. The Height Transition is Achieved

The applicant notes that the SOPA Master Plan outlines a height transition for the Parkview Precinct which will be characterised by a transition in scale from high rise buildings along Australia Avenue to lower buildings along Bennelong Parkway.

The height objectives for the Parkview Precinct also seek to result in 'minimal or no impact in terms of overshadowing over Badu Mangroves'. The shadow diagrams at Figure 10 demonstrate that the main overshadowing created by the proposed development will fall within the compliant SEPP envelope, along with some portions falling across the road surface of the Bennelong Parkway. These shadow impacts are discussed in further detail at pages 19-20 of this report.

In reality, this height transition is not consistent across the precinct. Some developments surrounding the site have not been built to their total permitted height under the SOPA Master Plan/SEPP and some have been approved with non-compliant envelopes (refer Figure 7 below):

- No.3 - Murray Rose Avenue: This building has a maximum height allowance of 33m under the SEPP. This has only been built to 4 storeys with a total height of 25.5m.
- No.4 Murray Rose Avenue: This building has a maximum height allowance of 50m under the SEPP. This has only been built to a total height of 22.8m.
- No.5 Murray Rose Avenue: This building has a maximum height allowance of 33m under the SEPP. This has been built to a total height of 22.7m.

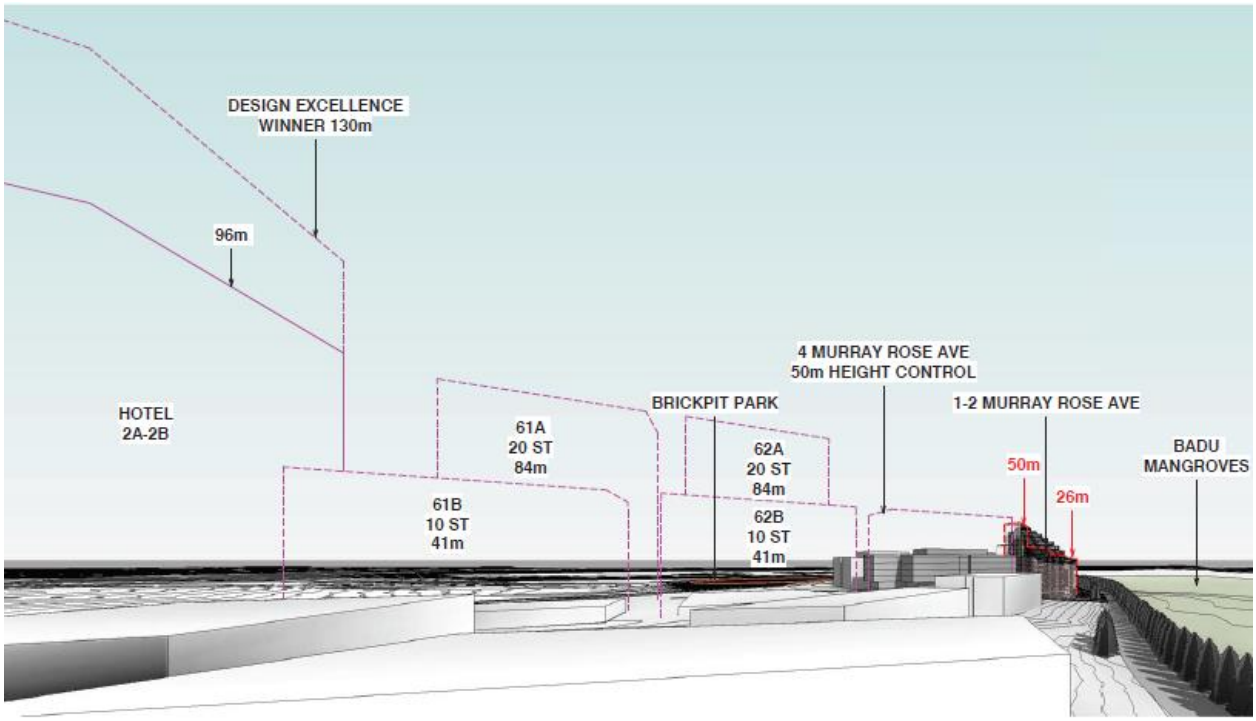
Other sites in close proximity to the site enjoy the following maximum heights under the SEPP:

- 62A Murray Rose Avenue: SEPP height limit of 50-84m.
- 61A Murray Rose Avenue: SEPP height Limit of 84m.
- 61B Parkview Drive: SEPP height limit of 41m.
- 62B Parkview Drive: SEPP height Limit of 41m.

SOPA has also confirmed that the hotel site located at 2A-2B Murray Rose Avenue was recently awarded design excellence at 130m; 28m above the 102m height control outlined in the SEPP.

Note: Addresses for these sites are per SOPA Master Plan Figure 5.38.

Figure 7 – Height Envelope Plan (from Botania building C L07_RL +32800)

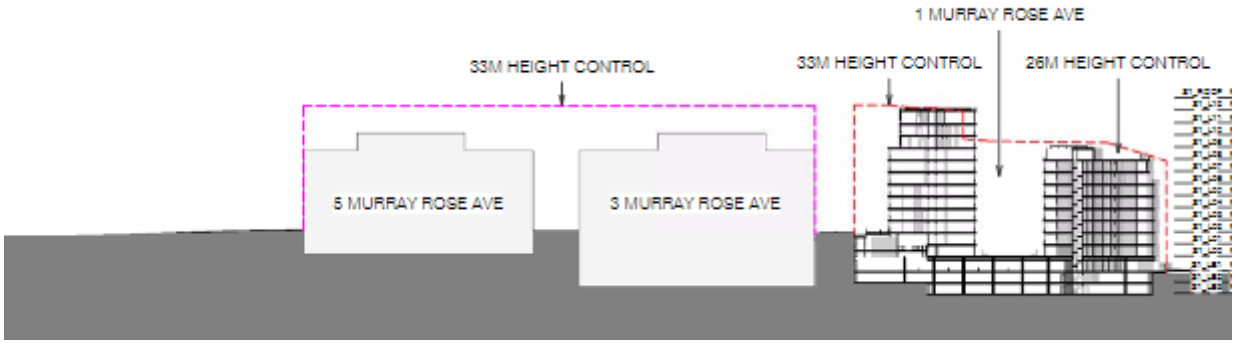


Source: PTW Architects

Given these circumstances, this height transition from Australia Avenue to Bennelong Parkway as proposed in the SOPA Master Plan has not directly been followed in the built form which has been developed.

Nevertheless, the built form of the proposed development on No.1 Murray Rose Avenue comprises two buildings which transition in height towards Bennelong Parkway (refer Figure 8 below), which is compatible with the desired future character of the precinct as set out in the SOPA Master Plan.

Figure 8 – Height Progression from Australia Avenue



Source: PTW Architects

3. Height Exceedance Stemming from Placement of SEPP Map control line:

Whilst the SOPA Master Plan review was being exhibited in 2017, the applicant made both SOPA and the Department of Planning and Environment aware of the positioning of the boundary between the height zones in the SEPP height maps, and how this is inconsistent with the lot boundaries.

The applicant made a submission to SOPA, particularly identifying the 270sqm triangle on No.2 Murray Rose Avenue and recommended that this should be updated to reflect lot boundaries. Despite this, the height of building control was not updated, meaning that this anomaly was sought to be addressed through the SOPA Design Excellence process. The areas which exceed the height control as a result of this oversight and outlined at Figure 2 above.

4. Design Excellence is Achieved:

As noted above, the scheme was subject to the SOPA Design Excellence Competition Process, with the resulting design on No.1 Murray Rose Avenue a direct result of the challenge presented in managing the transition between the divergent heights permitted on the site.

As outlined within the Design Excellence Brief and Report, all the architects who participated were requested to present two schemes (compliant and alternative scheme), both identical in materiality and similar in design, but with the alternative scheme seeking to incorporate an innovative design to manage the transition between the two height controls which affect the site within the SEPP at No. 2 Murray Rose Avenue. PTW were the selected architect and their alternative scheme was awarded design excellence by the Design Competition Panel, along with the commensurate full FSR bonus is recommended.

The selected PTW scheme was designed to meet the desired apartment yield and was entirely accommodated within the shadow envelope for the site identified in the Master Plan (further information on this is contained in the following section). As a result, the scheme sought to satisfy the objectives of the Parkview Precinct height control in the Master Plan, which is relevant given the absence of objectives for this control in the SEPP.

During the design competition, an assessment of the scheme in the context of the Seven ‘Better Places’ Policy objectives for NSW led to the alternative scheme being supported by the Competition Jury as the preferred design (subject to various design revisions) which ultimately led to this scheme being award design excellence in a reconvened meeting on the 11th May 2019.

In determining the winning design, the Jury accepted the following design principles:

- Different building heights across the site enrich the scale and character of the precinct;
- The differing heights at the site are able to create a transition across the precinct, including the western edge and eastern elevation of Murray Rose Avenue as approached from Bennelong Parkway and Australia Avenue, while minimising the over shadowing impacts on the Badu mangroves.

It is evident from the above that the scheme has been through a rigorous design excellence process, which has resulted in an improved design outcome, which accommodates a limited breach in the height controls.

As a result of the process, portions of the east-facing apartments on levels 8-12 exceed to 26-33m height control line (refer Figure 4).

The design utilises an integrated building form to visually assimilate the two height controls and present the two buildings as one element. This has been accepted by the Design Excellence Panel as an appropriate design outcome given the constraints discussed above.

In light of the above, the height exceedance discussed will not result in overshadowing, overlooking, loss or privacy or negative visual impacts, nor will it undermine the objectives of the Master Plan vision for the precinct.

Furthermore, the design has been accepted by the SOPA Design Excellence Competition Jury and Design Review Panel as being an acceptable form of development and providing a gateway character for this part of Olympic Park.

As such, it is considered unreasonable and unnecessary to require strict compliance with the maximum building height development standard in the SEPP in this case.

FLOOR SPACE RATIO

5. Consistency with the Future Character of the Locality

SOPA has undertaken a long-term assessment of the site's capacity, and it has identified it as a potential location to contribute to addressing Sydney's population pressures. The provision of increased residential density within the site will serve the dual goals of providing housing supply and generate consistent and organic activation of the Town Centre. In order to enable the increase in residential population, flexibility is required in the application of controls across the precinct. This will deliver suitable residential capacity as well as encourage built form setting as a major centre and events location.

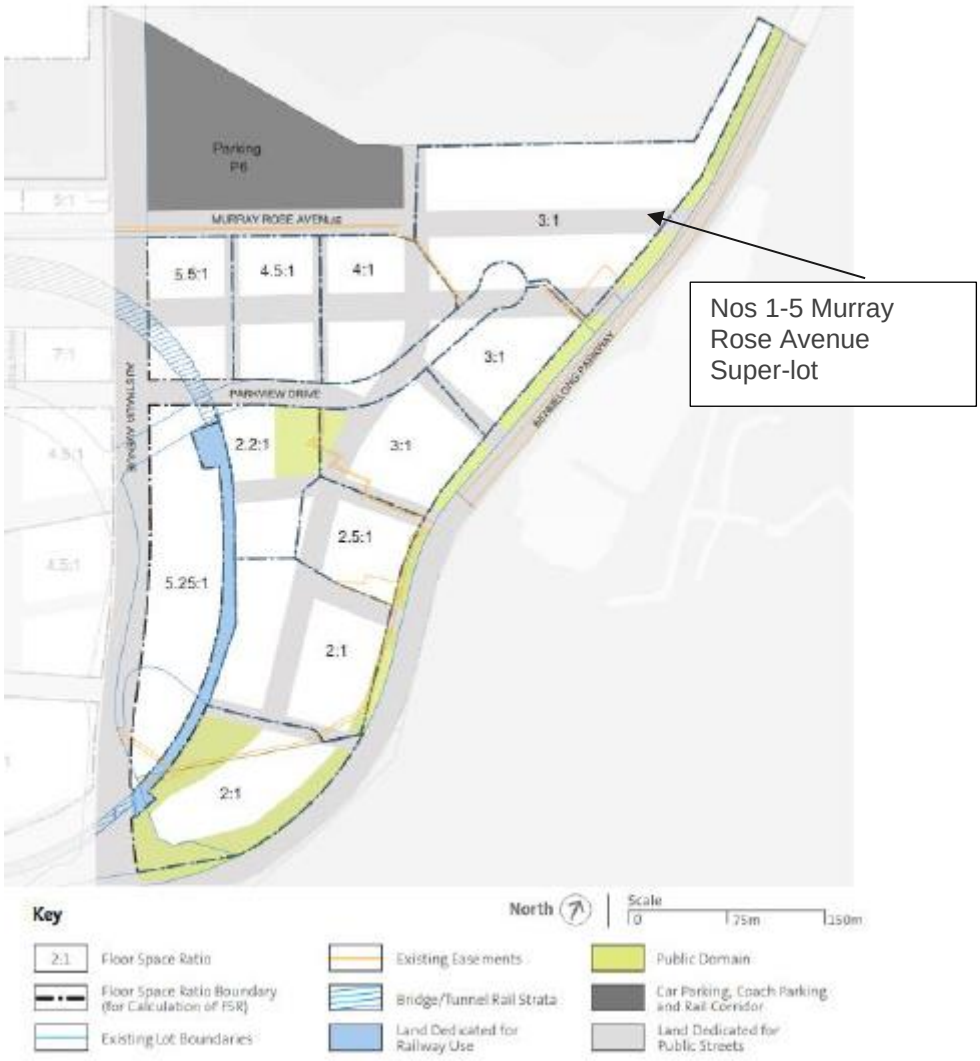
6. Overall Density Complies with the Site Boundaries and Super Lot

The FSR for the development site (No's 1 & 2 Murray Rose Avenue) are identified in Parkview Precinct Site Floor Space Ratio Plan (Figure 5.39) as contained in the SOPA Master Plan as well as Clause 19 of Part 23, Schedule 3 of the SEPP State Significant Precincts.

Figure 5.39 of the Master Plan displays the site as a 'super-lot' in that it has assigned a bulk FSR of 3:1 to Numbers 1, 2, 3, 4 and 5 Murray Rose Avenue (See Figure 9). The historic SEPP FSR control map also identified the site as being part of a super-lot, however when this was updated in 2018, the FSR map (SEPP Map FSR_001) incorporated lot and road boundaries.

It is for this reason that this request to vary the FSR development standard is required, given this now stipulates that each of the lots have a 3:1 FSR control, rather than aggregating the super-lot.

Figure 9 – Figure 5.39 SOPA Master Plan



Source: SOPA Master Plan

Nevertheless, the intention of the previous Master Plans to date, including the current 2018 update, have envisaged five buildings, three commercial and two residential arranged around extensions to Murray Rose Avenue and Dawn Fraser Avenue.

Sites No's 3,4 and 5 have been completed along with the both road extensions. None of the five individual building sites have been allocated an FSR of 3:1, rather, under the Masterplan it is the total site, including road infrastructure.

Currently, No's 3, 4 and 5 Murray Rose Avenue have been constructed to accommodate a total Gross Floor Area (GFA) of 43,337sqm.

Given that the wider site area of No's 1-5 Murray Rose Avenue for FSR purposes is 24,515sqm, this equates to a total allowable GFA across the site of 73,545sqm. Consequently, this leaves a remaining GFA across the wider site area (being No's 1 and 2 Murray Rose Avenue) of 30,208sqm.

The proposed scheme has a GFA of 27,396sqm, thereby leaving some 2,812sqm of available floorspace across the wider No. 1-5 Murray Rose Avenue site precinct to be developed in the future.

The area of the five building sites within the 'super-lot' is 18,760sqm with the remainder of the total site area of 24,515sqm (so 5,755sqm) being used to extend Murray Rose Avenue and Dawn Fraser Avenue within this part of the precinct.

This is relevant given the considerations for FSR controls which are set out within the ADG which states at Section 2D that:

'On precinct plan sites with new streets and/or open spaces, both the gross FSR for the whole site and the net FSR for the individual development parcels need to be defined. The net FSR may be significantly higher than the gross FSR'

In this instance, given the addition of the new road within the precinct, to achieve an overall FSR of 3.0:1 for the total site, the building sites need to achieve an FSR of 3.93:1.

In addition to this the sites at No's 1 and 2 Murray Rose Avenue, have been awarded a bonus FSR of 10% through the design competition process, which would increase the FSR to 4.32:1 for both sites. This compares to the proposed FSR for No's 1 and 2 Murray Rose Avenue of 4.24:1. The FSR for No.2 Murray Rose Avenue is 4.12.5.

The maximum FSR for the individual sites at No's 1-5 Murray Rose Avenue is 3:1 under the SEPP and with the design excellence bonus included it equates to an FSR of 3.3:1. However, whilst the proposed floor space exceeds the FSR control of the SEPP it falls within the overall permitted amount for the 5-lot subdivision for No's 1-5 Murray Rose Avenue.

Overall the proposal results in a total FSR of 4.24:1, which is within the 4.32:1 control of the subdivided super-lot site.

The letter of advice provided by SOPA (refer Appendix T) also makes the following comments regarding the development potential of the adjacent lots:

> *"The three commercial buildings at 3, 4 and 5 Murray Rose Avenue are extremely unlikely to be redeveloped within the life of Master Plan 2030. As the proposed residential developments at 1 and 2 Murray Rose Avenue would complete the development of Sites 60A and 60B under Master Plan 2030 (2018 Review), it is reasonable for the proposed development to deliver any residual gross floor area not developed in earlier stages".*

Furthermore, the proposal does not utilise the full unapproved amount of floor space for the No's 1-5 Murray Rose Avenue precinct and thus from a site precinct perspective, the proposal will generate a density consistent with what is desired and expected from development in this

7. Previous Consent Background

As identified above, SOPA have confirmed that they view No's 1-5 Murray Rose Avenue as a super-lot (refer Appendix T), as identified in Figure 5.39 of the Master Plan (represented in Figure 10 above).

Furthermore, the previous assessment of the applications for No's 3, 4, and 5 Murray Rose Avenue by DPE have been based on the calculations of FSR against the available FSR for the total super-lot site. As set out below, the total FSR used/proposed to used by the 5 sites is 2.78:1 (ex 10% bonus) or 2.88:1 (with bonus) both of which do not exceed the FSR of 3.0:1 for the total site.

Super Lot (1-5 Murray Rose Avenue)	Area 24,515sqm	GFA 73,545	FSR FSR based on Total area	FSR FSR based on site area
Development Land				
- Site 5	3,400sqm	13,253	0.54	3.90
- Site 4	5,015sqm	16,235	0.66	3.24
- Site 3	3,893sqm	13,849	0.56	3.56
- Proposed sites 1&2	6,453sqm	24,906 (ex 10% bonus)	1.01	3.86
		27,396 (with bonus)	1.12	4.24
Total Development land	18,760sqm	68,243 (ex 10% bonus)	**2.78**	3.64
		70,744 (with bonus)	**2.88**	3.77
Non-Development land (roads)	5,755 sqm	nil	nil	nil

Ultimately, because of the background in which the Murray Rose Avenue precinct has been developed, it is considered unreasonable and unnecessary to require strict adherence to the FSR controls within the SEPP.

THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

Clause 22(4)(b) of Part 23, Schedule 3, requires the departure from the development standard to be justified by demonstrating: that there are sufficient environmental planning grounds to justify contravening the development standard.

There are considered to be sufficient environmental planning grounds to justify contravention of the height of building and floor space ratio development standards in this instance. In summary:

- The scheme will result in a high amenity outcome for residents, benefitting from the availability of significant views towards Bicentennial Park; Brickpit Park and the Northern waters.
- There will be minimal environmental impacts stemming from the contravention of the development standards, especially in regard to the site's relationship to the adjoining Badu Mangrove Wetlands. The Shadow diagrams prepared by PTW at Appendix B demonstrate that the majority of the shadowing caused by the proposed development will fall within the shadow location which is derived from the compliant SEPP envelope.
- The scheme has also been assessed further by the SOPA Design Review Panel who have provided support for the development, including the height and FSR achieved by the proposal.

Additional environmental planning grounds are outlined below:

Design Excellence

The proposed development is the direct result of a Design Excellence Competition, where the Competition Jury were presented with 'compliant' and 'alternative' options for the site. The application scheme is the 'alternative' option which was the unanimous choice of for the Competition Jury as the winning scheme, noting Jury comments:

- “the scheme proposes an innovative design which integrates the elements of the larger Olympic Park Precinct. The design addresses the surrounding area in a more sophisticated way than other competitors” and
- “The alternative scheme successfully integrates additional height with a professional apartment layout”

The scheme was awarded Design Excellence and has been assessed by the Competition Jury against the Seven ‘Better Places’ Policy objectives for NSW outlined by the Government Architects Office. These policies require consideration of planning matters including environmental sustainability, liveability and efficiency.

Overshadowing

Shadow diagrams have been prepared by PTW and were included at Appendix B of the original application package. Given the site is on the edge of the Olympic Park and the neighbouring properties are commercial buildings, there is no applicable control relating to overshadowing of those buildings from this development. However, one of the principle objectives contained in Section 5.6.5 of the Master Plan for this part of the precinct is that:

> *“Proposals must demonstrate minimal or no impact in terms of overshadowing over Badu Mangroves.”*

Through discussions with SOPA in advance of the Design Competition, it became clear that the overshadowing of the adjacent mangroves was one of the factors which drove the limitation of the height on the eastern part of this site, as there is a desire to protect the daylight that is afforded to the biodiversity accommodated in the mangroves to the east of the site.

The shadow diagrams demonstrate that the main overshadowing created by the proposed development will fall within the shadow location which is derived from the compliant SEPP envelope (refer Figure 10 below) along with overshadowing falling upon the road surface of Bennelong Parkway.

Only minor exceedances of eastern portion of the envelope occur at the following times:

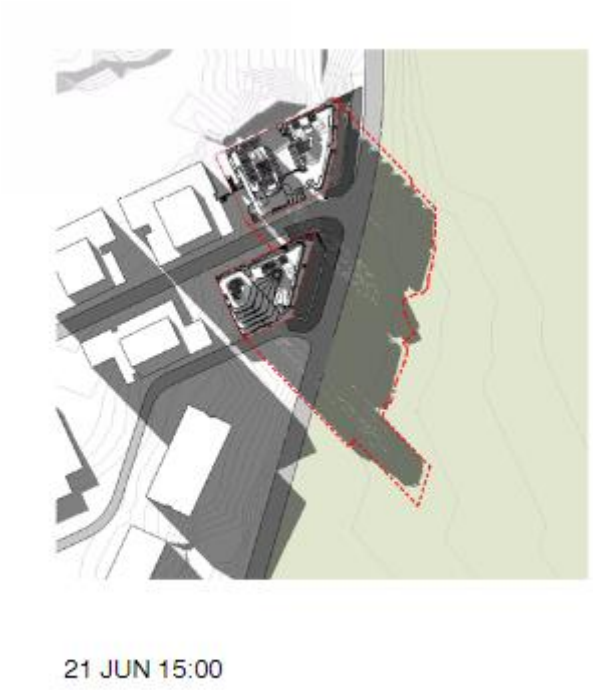
Figure 2 – Shadow Diagrams

21 JUN 13:00

21st June 1pm: Minor exceedance onto Bennelong Parkway.

21 JUN 14:00

21st June 2pm: Shadow within SEPP envelope.



21st June 3pm: Minor exceedance of SEPP envelope by the western tower element of No 1.

In addition, the letter of support provided by SOPA (refer Appendix T) outlines that the development complies with the main objective of the height controls within Figure 5.41:

> *"SOPA's primary concern with regard to building heights in excess of the maximum height controls under the SEPP SSP is its potential to increase overshadowing of the Badu Mangroves and wetlands on the eastern side of Bennelong Parkway. In this instance, the overshadowing impacts of the proposed development are no worse than the expected impacts from a fully compliant building envelope*.
>
> *SOPA's Ecology team reviewed the shadow studies and ecological assessment provided as appendices to the Environmental Impact Statement and raised no issues with the proposed height of either building or their potential overshadowing impacts".*

Given this, the proposal is considered to achieve an acceptable outcome in terms of overshadowing and fulfils the objectives of Section 5.6.5 of the Master Plan (2018 Review), which seeks a minimal or no impact in term so overshadowing on the Badu Mangroves.

Environmental Performance

The design achieves a high level of environmental performance; In addition to achieving the minimum BASIX energy efficient requirements, the proposed development incorporates the following ESD initiatives:

- High-performance façade will limit the heat entering the buildings, reducing air conditioning system sizes and the energy use over the year;

- Having high efficiency lighting and air conditioning equipment will reduce the energy consumption of the buildings;
- A mixed mode approach allowing the buildings to be naturally ventilated when outdoor conditions are suitable allowing significant energy reduction by not requiring the air conditioning system to operate at all times.
- The proposal is also seeking to be awarded a 6-Star Green Star Rating.

ADG Compliance

Having regard to the additional density sought on the site itself, strict compliance is unreasonable and unnecessary given the proposals high level of compliance with other key built form parameters listed under the SOPA Master Plan (2018 Review) and Apartment Design Guide (ADG). A breakdown of the ADG standards for the site have been provided in Table 1 below:

Control	Proposal	Compliance
Communal Open Space	52.42%	YES
Deep Soil	6.8%	Minor Non-compliance
Cross Ventilation	59.2%	Minor Non-Compliance
Solar Access	72.6%	YES
Visual Privacy	18m	YES
Building Depth	Cross-through apartment depth is 11m glass-line to glass-line to maximise natural ventilation.	YES
Building Separation	18m	YES

Note: Where units have not been counted towards the solar access or cross ventilation equations, these have been fitted with additional amenity measures to ensure resident comfort for example, additional windows to ensure natural ventilation.

Economic Feasibility

The economic study detailing the quantity of affordable housing was undertaken by JLL (Appendix M). This report concluded that under the current market conditions the proposed development would need to achieve a gross realisation uplift of 7% in order to provide 5% Affordable housing.

The study further concluded that in the current market conditions no affordable housing is feasible.

Acoustic Compliance

The supplementary acoustic assessment undertaken by Renzo Tonin and Associates (Appendix T) and has provided recommendations to ensure that apartments located in proximity to service areas will have acceptable amenity.

The impacts presented by these exceedances are negligible, with the elements responding to the topography of the site as well as presenting a consistent urban form.

Furthermore, the proposed development has been specifically designed to achieve a high-quality built form and is consistent with the desired future character of the Parkview Precinct as identified in the SOPA Master Plan.

Clause 22(5)(a), Part 23 of Schedule 3 requires that development consent must not be granted for a development that contravenes a development standard unless the consent authority is satisfied that the written request has adequately addressed the matters required to be demonstrated by Clause 22(4). This concerns the matters considered above that the development standard is unreasonable or unnecessary in the circumstances, and there are sufficient environmental planning grounds to contravene the development standard. This has been demonstrated in the above section of this report.

THE PROPOSED DEVELOPMENT WILL BE IN THE PUBLIC INTEREST

The proposal provides many and varied public benefits to the local Sydney Olympic Park community, future residents of the development, as well as broader stakeholders, including:

- Increased housing supply in an area accessible to existing and planned future public transport infrastructure, community facilities, open space, healthcare services, and education and employment opportunities.
- A mix of housing types, with varying layouts and sizes, which will accommodate a variety of households and meet a range of needs.
- A high quality urban development, with a significant level of residential amenity including solar access, natural ventilation, visual and acoustic privacy, and access to communal open space.
- An enhanced public domain, through the provision of improved streetscapes and footpaths, creation of a public through-site link, deep soil tree planting and landscaped setbacks, and retention and protection of mature vegetation.
- Increased patronage of existing and planned future public transport infrastructure and use of existing pedestrian and cycle routes, by locating residents and workers in an accessible area and encouraging the use of sustainable transport options.
- Best practice sustainability measures including high-performance façades, high efficiency appliances and use of use of low volatile organic compound materials with the aim of achieving a 6-star Green Star Target.

SECRETARY'S CONCURRENCE

Clause 22(5)(b) of Part 23 requires that development consent for the contravention of a development standard not be granted until the concurrence of the Secretary has been obtained. Clause 22(6) outlines the relevant matters for consideration, which are discussed below.

(a) Whether contravention of the development standard raises any matter of significance for the State or Regional environmental planning.

(b) The public benefit of maintaining the development standard, and

The proposed variation to the height of building and floor space ratio has arisen from the design excellence process, where the detailed analysis for the site and its controls were undertaken and opportunities identified. The proposed development provides the following public benefits:

- Provides increased housing supply and diversity in an area accessible to existing and planned future public transport infrastructure, community facilities, open space, healthcare services, and education and employment opportunities.
- A mix of housing types, with varying layouts and sizes, which will accommodate a variety of households and meet a range of needs for a wide cross section of the community.

- It delivers on the master plan objective to create a public through site link through No.1 Murray Rose to the Brickpit, to improve the pedestrian connectivity through the area.
- A high-quality urban development, with a significant level of residential amenity including solar access, natural ventilation, visual and acoustic privacy, and access to communal open space. The design achieves compliance with the ADG.
- An enhanced public domain, through the provision of improved streetscapes and footpaths, deep soil tree planting and landscaped setbacks, and retention and protection of mature vegetation.
- Increased patronage of existing and planned future public transport infrastructure and use of existing pedestrian and cycle routes, by locating residents and workers in an accessible area and encouraging the use of sustainable transport options.

As a result, the proposed scheme will increase the public benefits available on the site, in addition to providing a high-quality residential development.

(c) Any other matters required to be taken into consideration by the Secretary before granting concurrence

No other matters require consideration by the Secretary. The proposed variation will allow the redevelopment of the site and provide a high-quality residential development.

For the reasons outlined above, strict compliance with the maximum height of building control and floor space ratio control is considered unreasonable and unnecessary. And therefore, the request to seek a variation is well-founded and justifiable.

CONCLUSION

The applicant recommends that compliance with the development standard is not required for this development for the following reasons:

- The variation of the development standards will not raise any matter of significance for State or Regional environment planning as it would be unlikely to set a precedent given the site-specific nature of the height controls in the Sydney Olympic Park site.
- The Government Architect NSW in chairing the Design Excellence Competition has advised the proposal achieves design excellence and supports the FSR and heights for the winning design. As such, strict compliance with the height and floor space ratio development standards is unreasonable and unnecessary
- The proposal is considered appropriate for the site and is supported by SOPA and will provide a public benefit through supporting the growth of the Sydney Olympic Park Town Centre.
- There are sufficient environmental planning grounds to justify contravening the development standard for maximum height of building, as the proposed building height is consistent with the vision to establish wall and tower elements in the Master Plan 2030 (2018 Review).
- The proposed heights will not result in detrimental amenity impacts such as overshadowing or privacy, on any surrounding development compared to a complying development.
- The floor space ratio of the proposed development is consistent with SOPA's vision for the precinct, in terms of developing the super-lot in the north eastern corner of Olympic Park.

  The proposal is consistent with the strategic directions for the area as outlined in the Master Plan 2030 (2018 Review). This seeks to encourage development in Sydney Olympic Park to create an active and vibrant place to live, work and visit.