



SYDNEY CENTRAL CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-187
DA Number	DA/596/2020
LGA	City of Parramatta Council
Proposed Development	Concept development application for future mixed-used development, incorporating centre-based child care facility and residential flat building. The concept development application seeks approval for a maximum floor space ratio of 2.2:1, maximum height of up to 7 storeys, 3 levels of basement car parking, ground floor centre-based child care facility (for 95 children), 37 residential apartments, setbacks, and car parking rates. 50% of residential floor space would be affordable housing pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009. The application is to be determined by the Sydney Central City Planning Panel.
Street Address	9 – 11 Fig Tree Avenue, TELOPEA (Lots 271 & 272 DP 36743)
Applicant	Mr A Nakhoul
Owner	Figtree Avenue 888 Pty Ltd
Date of DA lodgement	13 October 2020
Number of Submissions	Nine
Recommendation	Approval subject to conditions
Regional Development Criteria	Clause 5 'Private Infrastructure and Community Facilities over \$5 million' of Schedule 7, State Environmental Planning Policy (State and Regional Development) 2011
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none">• Environmental Planning and Assessment (EP&A) Act 1979• EP&A Regulations 2000• SEPP (Affordable Rental Housing) 2009• SEPP (Building Sustainability Index: BASIX) 2004• SEPP (Educational Establishments and Child Care Facilities) 2017• SEPP (Sydney Harbour Catchment) 2005• SEPP No. 55 (Remediation)• SEPP No. 65 (Design Quality of Residential Apartment Development) & Apartment Design Guide• Draft Housing SEPP 2021• Draft Design & Place SEPP 2021• Parramatta Local Environmental Plan 2011• Draft Consolidated Parramatta Local Environmental Plan 2020• Parramatta Development Control Plan 2011• Draft Telopea Development Control Plan 2021
Documents submitted with report for Panel's consideration	<ul style="list-style-type: none">• Attachment 1 – Architectural Drawings• Attachment 2 – Landscape Drawings (Draft)• Attachment 3 – Arborist Report• Attachment 4 – Draft Telopea DCP

Clause 4.6 requests	<ul style="list-style-type: none"> • Parramatta Local Environmental Plan 2011 • Clause 4.3 – Height of Buildings • R4 – High Density Residential
Summary of key submissions	<ul style="list-style-type: none"> • Amenity Impacts • Building Envelope Size / Character • Tree Loss • Traffic and Car Parking • Social Unrest • Construction Impacts
Report prepared by	Alex McDougall Executive Planner, City Significant Development
Report date	13 October 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (Clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (s7.24)? **No**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

1. Executive Summary

The proposal seeks consent for a concept building envelope and uses. The building envelope is a 7-storey building with 6 primary storeys and 1 recessed level above plus roof top communal open spaces. The uses include a ground floor child care centre for up to 95 children with 37 residential apartments above. 50% of the residential floorspace would be in-fill affordable rental housing as defined by State Environmental Planning Policy (Affordable Rental Housing) 2009.

The proposed building envelope and uses generally follow the form for the site envisaged by the Parramatta LEP 2011 and the draft Telopea DCP 2021.

The proposal includes a request for minor breach of the height development standard which is supported as it arises as a result of the site constraints and compliance with the desired future character.

The development has been subject to review by Council's Design Excellence Advisory Panel (DEAP) and is considered to be consistent with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG), providing appropriate envelopes for a future detailed development application.

The child care centre is considered to be sufficiently consistent with the requirements of SEPP (Educational Establishments and Child Care Facilities) 2017 subject to further assessment at future detailed development application stage.

The amenity impacts on adjoining and nearby properties are considered to be reasonable based on the desired future character envisaged for the area. It is considered that the proposed increase in traffic would not compromise the efficient function of the local road network.

The application has been assessed relative to sections 4.15 and 4.22 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant State and local planning controls. On balance, the proposal has demonstrated a satisfactory response to the objectives and controls of the applicable planning framework. Accordingly, consent is recommended subject to conditions.

A future 'detailed' development application consent, that is not inconsistent with this concept plan approval, will be required prior to any construction on the site.

2. Key Issues

Affordable Rental Housing SEPP

• **Character of Local Area (cl. 16A)**

- Control: Design compatible with character of local area
- Assessment: The area is undergoing a change from low to high density residential. The proposal is considered to be consistent with the desired future character as the built form is consistent with the LEP and draft Telopea DCP.

Educational Establishments and Child Care Facilities SEPP

- **Play Space (cl. 22)** – Insufficient certainty regarding quantum of indoor and outdoor play space. A condition is included clarifying that no consent is given for the capacity of the child care centre; to be determined at future detailed development application stage.

Apartment Design Guide

- **Privacy (3F)** – Approximately 6 units would not comply with privacy separation requirements. Alternative privacy protection, such as louvers, would be required.
- **Daylight/Solar Access (4A)**
 - **Proposed Units** – ~65% solar access compliance anticipated vs. 70% required. Acceptable given constraints in orientation of building.
 - **Adjoining Units** – Significantly affected but retain 2 hours solar access per day at mid-winter.

Parramatta Local Environmental Plan 2011

- **Height Breach (cl. 4.3)** – <444mm breach (See Figure 1 below). Considered to be acceptable based on site constraints.
- **Height of Buildings in Telopea (cl. 6.16(3))**
 - Control: Height can be breached for open roof-top structure if there is no additional overshadowing.
 - Proposed: Roof-top structure
 - Assessment: The proposal does not result in additional overshadowing during the solar access window but will outside of this time. Considered acceptable as impractical to avoid.
- **State Public Infrastructure (cl. 8.1)** – Proposal does not include 'satisfactory arrangements' with the Department of Planning with regard to State infrastructure contributions. Notwithstanding, the proposal itself does not result in approval to build dwellings and as such this requirement can be considered at future detailed DA stage.

Parramatta Development Control Plan 2011

- **Tree Loss** – Concept footprint would require removal of most planting from the site. Condition included requiring retention of 1 significant tree, relocation of 4 other trees and 6 replacement canopy trees.
- **Dwelling Mix** – 5% 3-bedroom units vs. 10% required. Further consideration can be undertaken at future detailed DA stage.

Draft Telopea Development Control Plan 2021

- **Pedestrian Entrance (2.2-C1e)** – Not sufficiently separated from driveway. Condition included requiring separation at detailed DA stage.
- **Basement Rear Setback (3.2-C5)** – 6m provided vs. 10m required. A 10m setback is provided at first basement level to allow for planting/drainage objectives.

3. Site Description, Location and Context

3.1 Site

The site is comprised of two lots with a combined area of 1,570m². The site falls 4.5m from a high of 53.23m AHD in the northern corner to a low of 48.72m AHD in the southern corner.

3.2 Site Improvements & Constraints

The site is currently occupied by two single storey dwellings.

The site is not flood affected, not bush fire prone, and unlikely to be contaminated. The site is not in the vicinity of any heritage items and is not in a heritage conservation area.

The primary site constraint is the significant cross fall outlined above.

3.3 Site History

Reference	Description
DA/687/2016	Demolition, tree removal and construction of a 3 storey Residential Flat Building containing 17 units over 1 level of basement car parking for 22 vehicles, landscaping works and associated Strata subdivision. Approved 17 January 2017
DA/636/2020	Demolition of the existing dwellings and ancillary structures and construction of a seven (7) storey mixed use development, incorporating centre-based child care facility (capacity for 95 children) and residential flat building with three (3) basement car parking levels, and associated works. Application Withdrawn

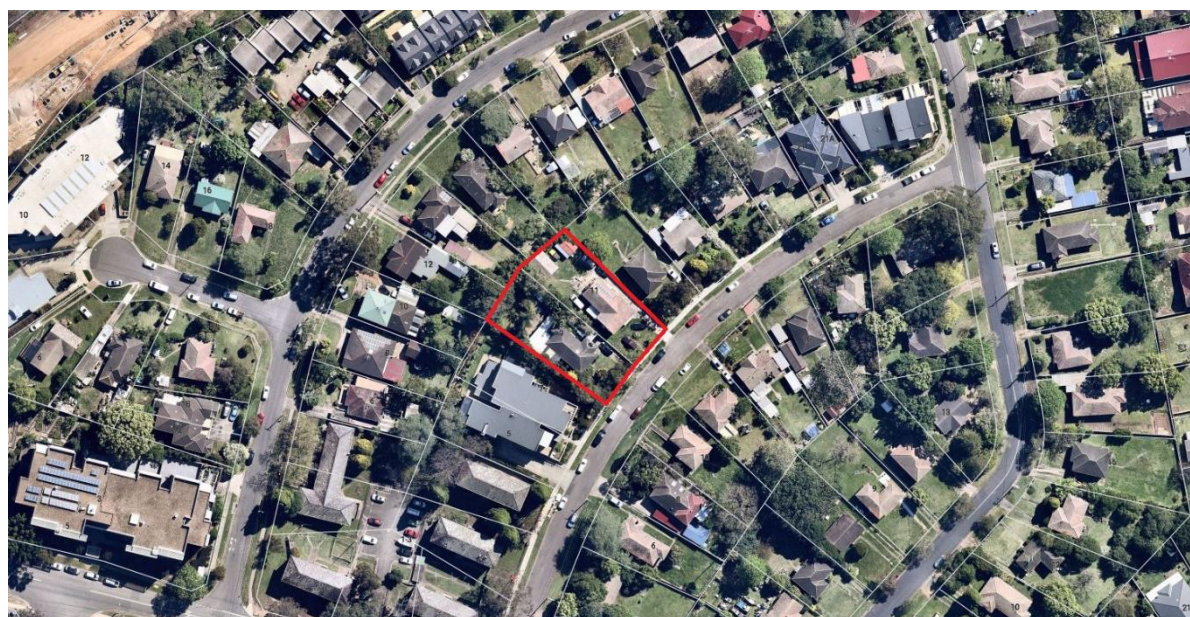


Figure 1. Locality Map (subject site in red)

3.4 Statutory Context

On 19 December 2018 an amendment to the Parramatta LEP 2011 was gazetted which allowed increased density and heights on the site in keeping with the Telopea Master Plan Process.

Clause 6.18 of the Parramatta LEP requires that a site-specific development control plan be developed for sites in the Telopea precinct if submitted prior to Council adopting a new general DCP for the area. Clause 4.23 of the Environmental Planning and Assessment Act 1979 allows for concept development applications to take the place of site-specific DCPs. As such, the subject concept application seeks to take the place of a site-specific DCP.

As the concept envelope includes a residential flat building, it triggers the requirement for consideration against SEPP 65, the ADG and consultation with DEAP. As the concept includes a child care centre, it triggers the requirement for consideration against SEPP (Educational Establishments and Child Care Facilities) 2017. As the concept includes affordable housing, it triggers the requirement for consideration against SEPP (Affordable Rental Housing) 2009.

This application is one of the first applications in Telopea seeking to benefit from the new controls. As such it will set a precedent for future applications.

The following adjoining/nearby development applications are relevant to the proposal:

Reference	Address	Description
DA/517/2013	5-7 Fig Tree Avenue	Demolition, tree removal and construction of a three storey residential flat building containing 16 apartments over basement parking. Approved 10/03/2014 - Completed
DA/315/2016	2 Fig Tree Avenue	Demolition, tree removal and construction of a 4 storey residential flat building containing 12 units over 1 level of basement carparking for 15 vehicles, landscaping works and associated strata subdivision. Approved 20/02/2017 – Not Yet Commenced

4. The Proposal

The application is a concept development application pursuant to clause 4.22 of the Environmental Planning and Assessment Act 1979 which seeks envelope approval for a 7 storey mixed use building, comprised of a 6 storey primary form with 1 recessed levels above, containing:

- 3 storey basement;
- Ground level child care centre (95 children, 18 staff)
- 37 x residential units above (50% affordable rental housing pursuant to the Affordable Rental SEPP)
- Roof-top communal open spaces
- Vehicular access on south side of site

Consent for the envelopes would not authorise the carrying out of any works. A future detailed development application will be necessary to ascertain approval to build.

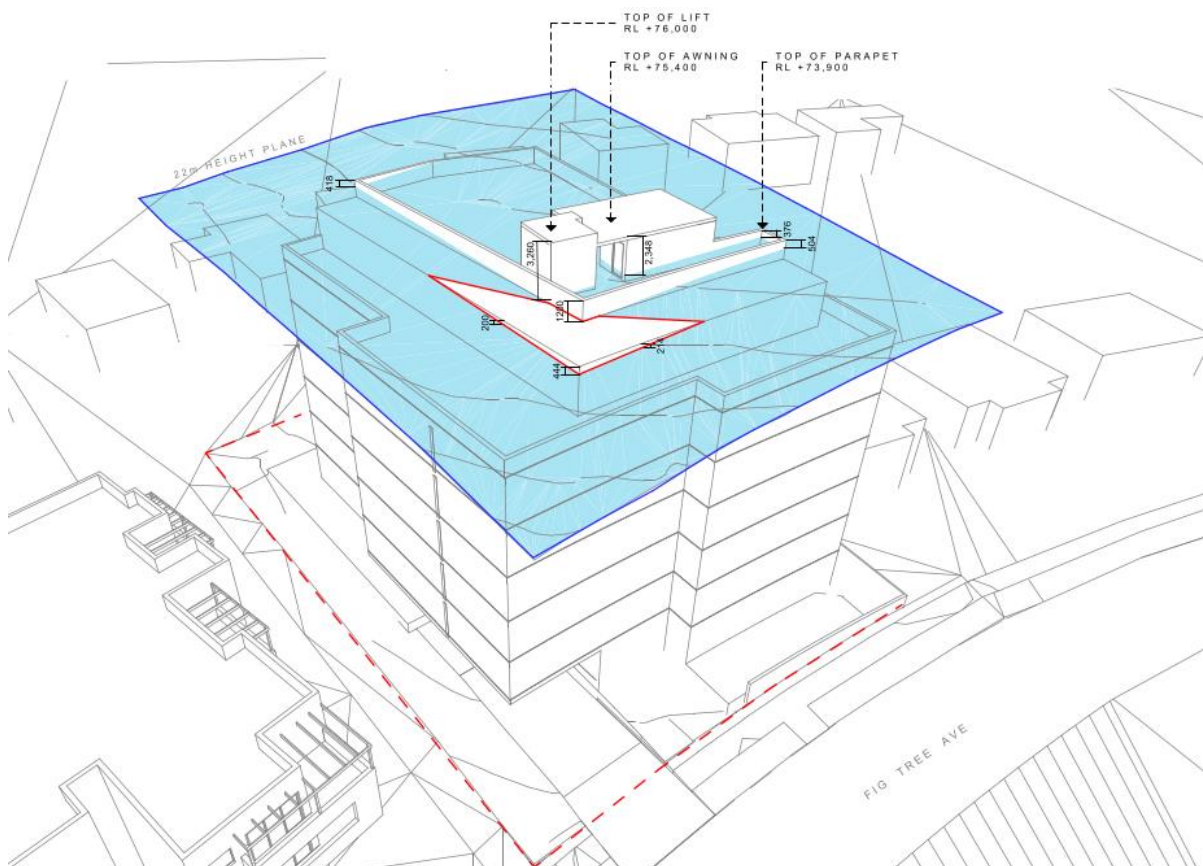


Figure 2. Axiomatic view of proposed envelope (height limit plane in blue, non-complying envelope which does not meet exemption guidelines under PLEP cl. 6.16 in red).

The applicant has also provided a draft 'reference' scheme and landscape plan to demonstrate that the envelopes can be developed in keeping with the relevant controls. The reference scheme has the following key characteristics:

- ~550sqm child care centre (20 x 0-2 year olds, 35 x 2-3 year olds and 40 x 3-5 year olds)
- ~37 residential units (5 x 1-bed, 30 x 2-bed, 2 x 3-bed)
- ~72 car parking spaces
- Basement storage & waste services

4.1 Summary of Amended Proposal

During assessment, the applicant submitted revised documentation, in response to concerns raised by Council officers and the Design Excellence Advisory Panel (DEAP), including, but not limited to, the following changes:

- Change to the primary form of the building from a 4-storey podium with 3 recessed storeys above, to a 6-storey primary form with 1 recessed level above.
- Revised setbacks consistent with the draft Telopea DCP over the generic ADG controls.
- Submitted acoustic and arborist reports.
- Revised landscape plan.

5. Referrals

The following referrals were undertaken during the assessment process:

5.1 Sydney Central City Planning Panel

The Sydney Central City Planning Panel (SCCPP) were brief on the application 3 March 2021. The Panel provided the following comments:

Issue Raised	Comment
The application is for Concept Consent. Clause 6.18 of the PLEP allows for a site specific DCP (for which a concept consent may be substituted), in lieu of a precinct wide DCP. <i>Draft Telopea Development Control Plan 2011</i> is yet to be exhibited.	Noted. The draft Telopea DCP was subsequently exhibited and adopted by Council (but is not yet published on Council's website).
Clause 6.18 nonetheless requires the Concept DA to address the site and its context .	Noted. The revised drawings are considered to adequately address the context as outlined in this report.
The application seeks a floor space bonus under the <i>Affordable Rental Housing SEPP</i> , which necessitates consideration (under cl. 16A) of whether the design is compatible with the character of the local area.	Noted. It is considered that the proposal is compatible with the character of the area as outlined in this report.
Issue such as orientation, slope of the land and street alignment require particular attention in relation to the site's context	Noted.
The Panel notes that this is the first development in this precinct and will establish a precedent for subsequent progressive redevelopment within the precinct.	Noted.
In the circumstances of a precinct that is in the earliest stage of transition from its existing character to a very different planned future character, the Panel will require assessment of the development (to address the above mentioned LEP and SEPP requirements), in the context of the desired future character of the precinct/local area.	Noted.

To address these issues, the Panel considers that the application would benefit from the applicant engaging with Council in an urban design analysis that examines site planning and design in the context of its desired future character.	Noted. The applicant subsequently undertook such engagement.
The Panel noted that the proposed mix of uses, particularly the ground floor child care centre, creates a range of challenges in terms of design interrelationships and internal and external operational and amenity issues.	Noted. It is considered that the applicant has demonstrated that the various uses can be accommodated on site.
The Panel will look for reasonable assurance at this conceptual stage, that issues including compliance with childcare planning guidelines, drop-off arrangements, setbacks, landscape buffers, privacy, acoustics, residential amenity, ADG consistency, garbage collection, overshadowing, extent of basement area and general building design quality, are capable of being satisfactorily addressed at the subsequent detailed application stage.	Noted. It is considered that the applicant has provided reasonable demonstration that these matters can be addressed at future detailed DA stage.
In this regard, the Panel notes that the 'detailed DA' has already been submitted (separately) and that its assessment will necessarily be heavily influenced by the outcome of the above matters relating to the concept DA.	The associated detailed DA, DA/636/2020, was subsequently withdrawn by the applicant.

5.2 Design Excellence Advisory Panel

The proposal was reviewed by Council's Design Excellence Advisory Panel on two occasions.

DEAP first considered the application at a meeting 25 February 2021 raising significant concerns about the lack of contextual urban design justification for the proposed built form and recommended that the applicant meet with Council's Urban Design team to develop an informed concept. The applicant has since undertaken a series of meetings with Council's Urban Design team. The meetings were held concurrently with Council's Urban Design team developing the draft Telopea DCP. The revised proposal helped inform, and is thus generally consistent with, the draft Telopea DCP controls.

DEAP further considered the revised application at a meeting 15 July 2021. Their comments are provided in full at Appendix 2. As outlined in the commentary in Appendix 2, the panel's remaining concerns are addressed via draft conditions of consent and advisory notes.

5.3 External

Authority	Comment
Endeavour Energy	No objection. Noted presence of infrastructure in vicinity that may require setbacks or relocation. An advisory note is included to this effect.
Sydney Water	Acceptable subject to conditions. Noted service amplifications may be required. An advisory note is included to this effect. Recommended consideration of dual piping. Such a requirement is included in the draft DCP and will be considered at future detailed DA stage.
Department of Planning	Clause 8.1 of the Parramatta LEP 2011 does not apply to DA/596/2020 but will to any further DA to carry out development on the site. An advisory note is included to this effect.

5.4 Internal

Authority	Comment ¹
Environmental Health (Acoustic)	Acceptable.
Environmental Health (Contamination)	Acceptable.
Environmental Health (General)	Acceptable.
Environmental Health (Waste)	Acceptable.
Waste Operational	Recommended ground level waste storage. Accounted for in revised drawings.
Landscaping	Acceptable.
Open Space & Natural Resources	Acceptable. No threatened ecological community is mapped on the site.
Traffic	Acceptable.
Urban Design	Acceptable, subject to conditions.
ESD	Acceptable subject to conditions. The proposed conditions are primarily in line with the requirements of the draft Telopea DCP.
Social Outcomes	Concern raised with dwelling mix. Subject to future application.
Development Engineer	Acceptable.
Land Use Planning	Provided detail of draft Telopea DCP.

6. Environmental Planning and Assessment Act 1979

The sections of the Environmental Planning and Assessment Act 1979 (the Act) which require consideration are addressed below:

6.1 Section 1.7: Application of Part 7 of Biodiversity Conservation Act 2016

The site is not known to be inhabited by any threatened species, populations or ecological communities, or their habitats.

6.2 Section 4.15: Evaluation

This section specifies the matters that a consent authority must consider when determining a development application, and these are addressed in the Table below:

Provision	Comment
Section 4.15(1)(a)(i) - Environmental planning instruments	Refer to section 7
Section 4.15(1)(a)(ii) - Draft environmental planning instruments	Refer to section 8
Section 4.15(1)(a)(iii) - Development control plans	Refer to section 9
Section 4.15(1)(a)(iiia) - Planning Agreement	Refer to section 10
Section 4.15(1)(a)(iv) - The Regulations	Refer to section 11
Section 4.15(1)(a)(v) - Coastal zone management plan	Not applicable.
Section 4.15(1)(b) - Likely impacts	Refer to section 12
Section 4.15(1)(c) - Site suitability	Refer to section 13
Section 4.15(1)(d) - Submissions	Refer to section 14
Section 4.15(1)(e) - The public interest	Refer to section 15

6.3 Section 4.22: Concept Development Applications

This section sets out the requirements for concept development applications.

¹ Several referral bodies recommended conditions. However, conditions would mostly be relevant to a future detailed DA and as such are not include in the draft concept consent.

Section 4.22(5) of the Act states that,

The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.

The application seeks approval only for uses in principle and building envelopes. This report provides only an assessment of the impacts that will be inextricably approved as a result of determining this application.

The NSW Land & Environment Court set out a planning principle for the amount of information that must be provided at Stage 1 of a concept application in *Anglican Church Property Trust v Sydney City Council* [2003] NSWLEC 353 at paragraphs 58-59 which state:

58 We accept that multi-stage applications are useful for large or controversial projects as they provide the applicant with certainty about the major parameters of a proposal before it embarks on the expensive exercise of preparing detailed drawings and specifications for a development application. The critical issue is: how much detail should be provided in the Stage 1 application as against the Stage 2 application?

59 The principle we have adopted is that in multi-stage applications the information provided in Stage 1 should respond to all those matters that are critical to the assessment of the proposal. Where traffic generation is the critical issue, Stage 1 should include information on the precise number of cars accommodated on a site. Where the floor space is critical, Stage 1 should include the precise FSR. Where the major issue is the protection of vegetation, the footprints of the proposed buildings may be sufficient. In the proposal before us, however, the two major issues are the impact on the heritage-listed Church and the heritage streetscape. In our opinion, two building envelopes, within which buildings of any shape or design might emerge, are not sufficient to make a proper assessment.

The critical issues for this DA include, but are not limit to, the following topics: - building envelope, interrelationship between uses, impacts on trees, waste storage and contamination.

It is considered that the applicant has provided sufficient information to make an assessment on the critical issues.

7. Environmental Planning Instruments

7.1 Overview

The instruments applicable to this application comprise:

- SEPP (Affordable Rental Housing) 2009
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Educational Establishments and Child Care Facilities) 2017
- SEPP (Sydney Harbour Catchment) 2005
- SEPP No. 55 (Remediation)
- SEPP No. 65 (Design Quality of Residential Apartment Development)
- Parramatta Local Environmental Plan 2011

Compliance with these instruments is addressed below.

7.2 State Environmental Planning Policy (Affordable Rental Housing) 2009

Statement Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP) provides incentives for developers to provide affordable rental housing.

7.2.1 Applicability

Division 1 of the ARHSEPP provides for development of in-fill affordable housing subject to the following qualifications:

Control	Proposal	Compliance
<i>10 Development to which Division Applies</i>		
Permitted in Zone (R4)	Residential Flat Building	Yes. RFBs are permissible in the zone
Not a heritage item	Not a heritage item	Yes.
Accessible Area	The site is within 400m of a bus stop	Yes. A stop on the Sydney Buses route number 545 is located within 200m of the site.

In order to benefit from the incentives in the ARHSEPP a residential flat building must provide at least 20% of the floor area as affordable rental housing for a minimum of 10 years.

The applicant seeks to benefit from the ARHSEPP by designating 50% of the units as affordable rental housing. These units would represent 50% of the total floor area of the proposal and as such the proposal qualifies for a floor space ratio bonus of 0.5:1.

7.2.2 Standard That Cannot Be Used to Refuse Development

The ARHSEPP sets out, at Clause 14, standards that cannot be used to refuse development consent for qualifying housing. Notwithstanding, a consent authority may consent to such development whether or not the development complies with these standards. An assessment of the proposal against these criteria is provided in the table below.

Control	Proposal	Compliance
Site Area: >450sqm	1,570sqm	Yes
Landscape Area: >30% site area (>471sqm)	~685sqm	Yes
Deep Soil Zones: >15%, min dim: 3m, (>235.5sqm) 2/3 to rear (>156.8sqm)	~445sqm ~226sqm	Yes
Solar Access: 70% dwellings >3hrs sunlight mid-winter (>26)	Unknown	Subject to future detail DA stage.
Parking: >0.5 spaces per 1 bed dwelling (2.5) >1 space per 2 bed dwelling (30) >1.5 spaces per 3 bed dwelling (3) Total: >35.5	Unknown	Subject to future detail DA stage.
Dwelling Size: 1 bed: >50sqm 2 bed: >70sqm 3 bed: >95sqm	>63sqm >77sqm >103sqm	Yes

7.2.3 Character of Local Area

Clause 16A of the ARHSEPP requires that consideration be given to whether the design of the development is compatible with the character of the area.

The ARHSEPP does not provide any guidance on assessing the compatibility of affordable housing with the local area.

For the purposes of this assessment the compatibility of the proposal with the character of the local area will be determined with the following 3 steps:

- Step 1 – Identify the local area.
- Step 2 – Determine the character (present and future) of the local area.
- Step 3 – Determine if the development is compatible with the character of the local area.

As assessment against each step is provided below:

Part A – Identify the local area

The local area is primarily considered to be the visual catchment of the site (as viewed from within the site and directly adjacent to the site on the street). *NSW LEC Case Succar vs Bankstown City Council [2012]* provides guidance on determining visual catchment. The visual catchment is considered to be those buildings that can be seen from within the site and while standing to the front of the site in the public domain.

Part B – Determine the character of the local area.

The visual catchment of the site includes single storey dwellings and 3-storey residential flat buildings of varying ages. The LEP envisages high-density residential development up to 40m in height within the visual catchment of the site (see Figure 3 below).

Part C – Determine if development is compatible with character of the local area.

Compatibility within the urban environment is an issue that has been given detailed consideration by the Land and Environment Court. In the decision of *Project Ventures Development Pty Limited and Pittwater Council*, the Senior Commissioner of the Court was asked to consider the process of deciding whether a building is compatible with its surroundings. This led to the development of a Planning Principle as a guide on this issue. The planning principle states there are two important aspects of compatibility that need to be satisfied:

- ***Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.***

As outlined in this report, the proposal is considered to have an acceptable impact on the amenity of adjoining and nearby properties. The proposal is not considered to constrain the development potential of adjoining sites; the proposal is well set back from the undeveloped sites to the north and west.

- ***Is the proposal's appearance in harmony with the buildings around it and the character of the street?***

There are several 3 storey buildings in the vicinity of the site, including on the immediately adjoining site to the south. The proposal includes a 6-storey primary form, with a recessed

level above. As outlined below, the area allows for a high density of development. As such the proposal is considered to be an appropriate transition between the existing and desired future character of the area.

7.2.4 Affordable Housing Tenure

Clause 17 of the SEPP requires that the affordable housing must be provided for at least 10 years. As the proposed envelope accounts for the affordable housing bonus, a condition of consent is included requiring that the affordable units be used for that purpose, and managed by a registered community housing provider, for at least 10 years from the date of the occupation certificate.

The proposal therefore achieves an acceptable standard of compliance with the Affordable Rental Housing SEPP. Further assessment will be required at future detailed DA stage.

7.3 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

SEPP BASIX seeks to encourage sustainable residential development. A BASIX assessment uses a modelling program to determine if a proposal meets the applicable energy efficiency, water efficiency and thermal comfort targets for residential development. The program requires the input of detailed development details, which are not provided at concept plan stage. Notwithstanding, the applicant has submitted a BASIX certificate for the reference scheme which demonstrates that the resultant building can achieve, and in fact exceed, BASIX compliance. A complying BASIX certificate will be necessary for the subsequent detailed development application.

7.4 SEPP (Educational Establishments and Child Care Facilities) 2017

SEPP (Educational Establishments and Child Care Facilities) 2017 seeks to facilitate delivery of educational and child care facilities by establishing a clear regulatory framework. An assessment of the proposed child care centre against the relevant provisions of the SEPP is outlined below:

Control	Proposal
Part 3 Early Education and Care Facilities – Specific Development Controls	
22 Centre-based child care facility – concurrence of Regulatory Authority required for certain development Concurrence required if less than mandated indoor or outdoor space provided.	Concurrence requested. Department of Education response indicated that concurrence was not necessary.
23 Centre-based child care facility—matters for consideration by consent authorities Consideration any applicable provisions of the Child Care Planning Guideline	See table below.
25 Centre-based child care facility—non-discretionary development standards Cannot be refused for the following reasons: <ul style="list-style-type: none"> • Non-compliance with local controls requiring minimum separation distances to other such centres. • Indoor/outdoor play space provided as per Regulations 	Noted. Subject to future detailed design of play space. A condition is included clarifying that the subject proposal does not endorse a specific occupancy for the child care centre.

<ul style="list-style-type: none"> Non-compliance with local site area and site dimension requirements 	Noted
<ul style="list-style-type: none"> Non-compliance with local building material controls 	Noted
<p>26 Centre-based child care facility—development control plans</p> <p>The following local DCPs controls do not apply:</p> <ul style="list-style-type: none"> Operational/Management Plans Demand or need for child care centres Proximity to other child care centre Any matters set out in Child Care Planning Guidelines except height, setbacks and car parking 	<p>Noted</p> <p>Noted</p> <p>Noted</p> <p>Noted (see assessment in table below)</p>

Child Care Planning Guideline August 2017

The SEPP requires consideration of the provisions contained within the Child Care Planning Guideline. An assessment is provided below.

Part 2 – Design Quality Principles	
Context	The centre would form part of a larger mixed-use building consistent with the desired future character of the area. The building envelope is assessed elsewhere in this report. Detailed design will be subject to a future application.
Built Form	
Adaptive Learning Spaces	The proposal provides indoor and outdoor spaces to allow for a variety of settings. Building design and learning space fit out will be subject to a future application.
Sustainability	A majority of the open space will receive some sunlight throughout the day. The centre will enjoy the benefits of cross ventilation owing to openings on all elevations. A condition is included requiring consideration of sustainability objectives at future detailed DA stage.
Landscape	The proposal provides deep soil planting zones to the side and rear of the building capable of accommodating significant tree planting. A planter box of a size capable of accommodating a tree will be included to the front setback.
Amenity	The reference scheme demonstrates that the child care centre entrance, indoor areas and outdoor play spaces would all be accessible step-free and as such would be efficient and accessible. The reference scheme demonstrates that sufficient space can be provided for storage and service areas subject to the capacity of the centre.
Safety	The reference scheme demonstrates that the child care use can be safely accommodated with off-street drop-off, a private and well separated outdoor play space. Detailed material and plant selection will be subject to the future detailed application.

Part 3 – Matters for Consideration	
3.1 Site Selection and Location	
C1 Objective: To ensure that appropriate zone considerations are assessed when selecting a site.	Acoustic and privacy impacts, setbacks and traffic/parking impacts are considered elsewhere in this report.
C2 Objective: To ensure that the site selected for a proposed child care facility is suitable for the use.	The site is considered to be appropriate for the reasons outlined elsewhere in this report. The site is not in close proximity to any restricted premises, injecting rooms, drug clinics or the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door

	premises or sex services premises.
C3 Objective: To ensure that sites for child care facilities are appropriately located.	<p>The site is in close proximity of the following compatible uses:</p> <ul style="list-style-type: none"> • Telopea Public School (650m) • Evans Road Shops (300m) • Dundas Library and Neighborhood Centre (350m) • Church of Christ Telopea (170m)
C4 Objective: To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.	<p>The site is not located near industry, waste transfer depots, landfill sites, service stations, water cooling or warming systems, air pollutant generating uses or any other land use that would create environmental hazards. The site is not likely to be contaminated in its own right.</p>
3.2 Local Character, Streetscape and Public Domain Interface	
C5 Objective: To ensure that the child care facility is compatible with the local character and surrounding streetscape.	<p>While the proposal will not be consistent with the <i>existing</i> streetscape, it is consistent with the desired future character of the area. Car parking is integrated into the building. Detailed design will be subject to a future application.</p>
C6-8 Objective: To ensure clear delineation between the child care facility and public spaces.	<p>The reference scheme demonstrates that an appropriate distinction and relationship with the public domain can be achieved. The child care center has a dedicated access.</p>
C9-10 Objective: To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.	<p>Fencing will be subject to assessment at future detailed DA stage.</p>
3.3 Building Orientation, Envelope and Design	
<p>C11 Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> • Ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> ○ Facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties; ○ Placing play equipment away from common boundaries with residential properties; ○ Locating outdoor play areas away from residential dwellings and other sensitive uses; • Optimise solar access to internal and external play areas; • Avoid overshadowing of adjoining residential properties; • Minimise cut and fill; • Ensure buildings along the street frontage define the street by facing it; and • Ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions. 	<p>While the reference scheme anticipates opening on both sides and the rear elevation, the acoustic report outlines that acceptable noise levels can be achieved subject to treatment. Detailed assessment will be undertaken at future detail DA stage.</p> <p>The child care use is limited to ground level and as such will minimise overlooking.</p> <p>The site's side and rear boundaries adjoin residential uses and as such it is not possible to position play equipment away from such boundaries.</p>

	<p>The majority of the outdoor play space would be located in the north-eastern and north-western setback areas and as such would maximise solar access.</p> <p>The child care use does not overshadow adjoining properties. See ADG assessment for remainder of building.</p> <p>Cut and fill is minimised.</p> <p>The building faces the street.</p> <p>The child care centre is not above ground level.</p>
<p>C12 The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> • Building height should be consistent with other buildings in the locality; • Building height should respond to the scale and character of the street; • Setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility; • Setbacks should provide adequate access for building maintenance; and • Setbacks to the street should be consistent with the existing character. 	<p>The child care centre component is limited to ground level. The height of the building relative to the locality is discussed elsewhere in this report.</p> <p>The ground level side setbacks are sufficient to allow for privacy. The setbacks are sufficient to allow for screen planting to protect the privacy of children.</p> <p>The setbacks allow access for maintenance.</p> <p>The front setback, while slightly less than the two adjoining buildings, is consistent with the draft DCP.</p>
<p>C13 Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</p>	<p>The site does not adjoin a classified road.</p> <p>As outlined in Section 9.2 of this reports, the proposal is consistent with the draft DCP.</p>
<p>C14 On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p>The proposal exceeds the required setbacks for dwelling houses.</p>
<p>C15 The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> • Respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage; • Retains and reinforces existing built form and vegetation where significant; • Considers heritage within the local neighbourhood including identified heritage items and conservation areas; 	<p>Built form is assessed elsewhere in this report.</p>

<ul style="list-style-type: none"> • Responds to its natural environment including local landscape setting and climate; and • Contributes to the identity of place. 	
<p>C16 Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> • Located to allow ease of access, particularly for pedestrians; • Directly accessible from the street where possible; • Directly visible from the street frontage; • Easily monitored through natural or camera surveillance; • Not accessed through an outdoor play area; and • In a mixed-use development, clearly defined and separate from entrances to other uses in the building. 	<p>The entry is considered to be consistent with the Guideline for the following reasons:</p> <ul style="list-style-type: none"> • There is a single entry point • It provides level access from the street • Can be monitored through camera surveillance • Not accessed through a play area • Directly visible from the street <p>The pedestrian entrance is not separated from vehicular entrance. A condition is included noting that separation is required.</p>
<p>C17 Accessible design can be achieved by:</p> <ul style="list-style-type: none"> • Providing accessibility to and within the building in accordance with all relevant legislation; • Linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry; • Providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible; and • Minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. <p>NOTE: The <i>National Construction Code</i>, the <i>Discrimination Disability Act 1992</i> and the <i>Disability (Access to Premises – Buildings) Standards 2010</i> set out the requirements for access to buildings for people with disabilities.</p>	<p>The proposal is considered to provide adequate accessibility as it provides step-free access from the street to all internal areas and a dedicated lift from basement level.</p>
<h3>3.4 Landscaping</h3>	
<p>C18 Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> • Reflecting and reinforcing the local context; and • Incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. 	<p>The proposal includes a reference landscaping scheme which demonstrates an acceptable amount of planting. There are no significant natural features on site.</p> <p>The draft landscape plan shows screen planting which is included in the outdoor play area. This may limit the capacity of the centre. Capacity is to be confirmed at future detailed DA stage.</p>
<p>C19 Incorporate car parking into the landscape design of the site by:</p>	<p>Car parking is provided underground.</p>

<ul style="list-style-type: none"> • Planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings; • Taking into account streetscape, local character and context when siting car parking areas within the front setback; and • Using low level landscaping to soften and screen parking areas. 	
3.5 Visual and Acoustic Privacy	
C20 Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	The proposal includes balconies which overlook the outdoor play space. The use of screening will reduce overlooking. A condition is included requiring such screening be provided and tested at future detailed DA stage.
C21 Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through: <ul style="list-style-type: none"> • Appropriate site and building layout; • Suitably locating pathways, windows and doors; and • Permanent screening and landscape design. 	The reference landscape plan demonstrates that appropriate screening can be provided in the front setback to protect the privacy of the north-eastern setback outdoor play spaces.
C22 Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through: <ul style="list-style-type: none"> • Appropriate site and building layout; • Suitable location of pathways, windows and doors; and • Landscape design and screening. 	The child care centre is at ground level only and as such will not unacceptably overlook adjoining properties.
C23 A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should: <ul style="list-style-type: none"> • Provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence); and • Ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure. 	The acoustic report outlines acoustic screening to adjoining properties. Full details, including of mechanical plant, will be assessed at future detailed DA stage.
C24 A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters: <ul style="list-style-type: none"> • Identify an appropriate noise level for a child care facility located in residential and other zones; • Determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use; and • Determine the appropriate height of any acoustic fence to enable the noise criteria to be met. 	The acoustic report identifies appropriate noise levels and sets heights for acoustic screening (2.2m).
3.6 Noise and Air Pollution	
C25 Adopt design solutions to minimise the impacts of noise, such as: <ul style="list-style-type: none"> • Creating physical separation between buildings and the noise source; • Orienting the facility perpendicular to the noise source and where possible buffered by other uses; • Using landscaping to reduce the perception of noise; • Limiting the number and size of openings facing noise sources; • Using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens); 	<p>The acoustic report identifies mitigation measures.</p> <p>The reference landscape plan demonstrates that hard and soft landscaping can be used to reduce noise transmission.</p>

<ul style="list-style-type: none"> • Using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits; and • Locating cot rooms, sleeping areas and play areas away from external noise sources. 	
<p>C26 An acoustic report should identify appropriate noise levels for sleeping areas and other non-play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"> • On industrial zoned land; • Where the ANEF contour is between 20 and 25, consistent with AS 2021 – 2000; • Along a railway or mass transit corridor, as defined by <i>State Environmental Planning Policy (Infrastructure) 2007</i>; • On a major or busy road; and • Other land that is impacted by substantial external noise. 	The site is not exposed to any such external noise sources.
<p>C27 Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.</p>	The site is not located on a major road or in proximity to an industrial area.
<p>C28 A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines. The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> • Creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution; • Using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway; and • Incorporating ventilation design into the design of the facility. 	The site is not located on a major road or in proximity to an industrial area.
3.7 Hours of Operation	
<p>C29 Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.</p>	Not specified. Can be conditioned at future detailed DA stage.
<p>C30 Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.</p>	N/A
3.8 Traffic, Parking and Pedestrian Circulation	
<p>C31 Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.</p>	Compliance achievable (see DCP assessment at Section 9.1 below)
<p>C32 In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.</p>	The proposal does not rely on on-street parking.
<p>C33 A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that:</p>	A Traffic and Parking report has been provided which concludes that the proposal will have an acceptable impact on traffic and provides sufficient parking.

<ul style="list-style-type: none"> • The amenity of the surrounding area will not be affected; and • There will be no impacts on the safe operation of the surrounding road network. 	<p>Council's traffic engineers concur with the findings of the report.</p>
<p>C34 Alternate vehicular access should be provided where child care facilities are on sites fronting:</p> <ul style="list-style-type: none"> • A classified road; and • Roads which carry freight traffic or transport dangerous goods or hazardous materials. <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> • The prevailing traffic conditions; • Pedestrian and vehicle safety including bicycle movements; and • The likely impact of the development on traffic. 	<p>The site is not on a classified road or a road carrying freight.</p>
<p>C35 Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.</p>	<p>The site is not within a cul-de-sac.</p>
<p>C36 The following design solutions may be incorporated into a development to help provide a safe pedestrian environment:</p> <ul style="list-style-type: none"> • Separate pedestrian access from the car park to the facility; • Defined pedestrian crossings included within large car parking areas; • Separate pedestrian and vehicle entries from the street for parents, children and visitors; • Pedestrian paths that enable two prams to pass each other; • Delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities; • In commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas; and • Vehicles can enter and leave the site in a forward direction. 	<p>The proposal is considered capable of accommodating a safe pedestrian environment for the following reasons:</p> <ul style="list-style-type: none"> • Separate vehicular and pedestrian entrances achievable (a condition is included requiring they be sufficiently separated) • Path widths subject to future detailed DA. • Delivery and loading is separate to the primary pedestrian entrance. • Path of travel from car parking bays to centre entrance to be assessed at detailed DA stage. • Vehicles can enter and exit the site in a forward direction.
<p>C37 Mixed use developments should include:</p> <ul style="list-style-type: none"> • Driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks; • Drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or manoeuvring areas used by vehicles accessing other parts of the site; and • Parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility. 	<p>It is not anticipated that the basement will be capable of accommodating large trucks.</p> <p>The drop off requires crossing the path of travel for resident vehicles. Line marking and signage will be necessary at future detailed DA stage to address this issue.</p> <p>The child care centre car parking is location in close proximity to the child care centre lift lobby.</p>
<p>C38 Car parking design should:</p>	<p>The car parking area is in the basement.</p>

<ul style="list-style-type: none"> • Include a child safe fence to separate car parking areas from the building entrance and play areas; • Provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards; and • Include wheelchair and pram accessible parking. 	Detailed design of car parking bays will be subject to future detailed DA.
Part 4 – Applying the National Regulations to Development Proposals	
4.1 Indoor Space Requirements	
<p>Regulation 107 Education and Care Services National Regulations</p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> • Passageway or thoroughfare (including door swings) used for circulation; • Toilet and hygiene facilities; • Nappy changing area or area for preparing bottles; • Area permanently set aside for the use or storage of cots; • Area permanently set aside for storage; • Area or room for staff or administration; • Kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen; • On-site laundry; and • Other space that is not suitable for children. 	<p>Required: 95 children x 3.25m²/child = 308.75m² Provided: ~315m²</p> <p>Confirmation subject to future detailed DA.</p>
<p>Verandahs as indoor space</p> <p>For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.</p> <p>Storage</p> <p>Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide:</p> <ul style="list-style-type: none"> • A minimum of 0.3m³ per child of external storage space; and • A minimum of 0.2m³ per child of internal storage space. 	<p>Verandahs not relied upon to achieve compliance.</p> <p>The reference scheme demonstrates there is sufficient space for storage.</p>
4.2 Laundry and Hygiene Facilities	
<p>Regulation 106 Education and Care Services National Regulations</p> <p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p>	The reference scheme demonstrates there is sufficient space to provide laundry facilities.
4.3 Toilet and Hygiene Facilities	
<p>Regulation 109 Education and Care Services National Regulations</p> <p>A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are</p>	The reference scheme demonstrates there is sufficient space to provide sanitary facilities.

provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children. Child care facilities must comply with the requirements for sanitary facilities that are contained in the <i>National Construction Code</i> .	
4.4 Ventilation and Natural Light	
Regulation 110 <i>Education and Care Services National Regulations</i> Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children. Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i> . Ceiling height requirements may be affected by the capacity of the facility.	The reference scheme demonstrates there is sufficient ceiling height for the use, and that there can be sufficient cross ventilation and light.
4.5 Administrative Space	
Regulation 111 <i>Education and Care Services National Regulations</i> A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.	The reference scheme demonstrates there is sufficient space to provide administrative facilities.
4.6 Nappy Change Facilities	
Regulation 112 <i>Education and Care Services National Regulations</i> Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children. Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the <i>National Construction Code</i> .	The reference scheme demonstrates there is sufficient space to provide nappy changing facilities.
4.7 Premises designed to facilitate supervision	
Regulation 115 <i>Education and Care Services National Regulations</i> A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity. Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the <i>National Construction Code</i> .	The reference scheme demonstrates there is sufficient space to provide supervision.
4.8 Emergency and Evacuation Procedures	
Regulations 97 and 168 <i>Education and Care Services National Regulations</i> Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation. Regulation 97 sets out the detail for what those procedures must cover including: <ul style="list-style-type: none"> • Instructions for what must be done in the event of an emergency; • An emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit; and • A risk assessment to identify potential emergencies that are relevant to the service. 	Emergency Planning would be subject to assessment at future detailed DA stage.

4.9 Outdoor Space Requirements	
<p>Regulation 108 <i>Education and Care Services National Regulations</i></p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m² of unencumbered outdoor space.</p> <p>Unencumbered outdoor space excludes any of the following:</p> <ul style="list-style-type: none"> • Pathway or thoroughfare, except where used by children as part of the education and care program; • Car parking area; • Storage shed or other storage area; • Laundry; and • Other space that is not suitable for children. <p>Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play (refer to Figures 9 and 10).</p>	<p>Required: 95 children x 7m²/child = 665m² Provided: ~618m²</p> <p>Applicant calculation appears to include areas dedicated to screen planting, paths and retaining walls which is not appropriate.</p> <p>Confirmation subject to future detailed DA. May require reduction in total occupancy. Condition included confirming that capacity is not approved.</p>
4.10 Natural Environment	
<p>Regulation 113 <i>Education and Care Services National Regulations</i></p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.</p>	<p>The reference landscape plan demonstrates sufficient environmental engagement can be provided.</p>
4.11 Shade	
<p>Regulation 114 <i>Education and Care Services National Regulations</i></p> <p>The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.</p>	<p>The reference scheme demonstrates sufficient shading can be provided.</p>
4.12 Fencing	
<p>Regulation 104 <i>Education and Care Services National Regulations</i></p> <p>Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it. This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the <i>National Construction Code</i>.</p>	<p>The reference scheme demonstrates sufficient fencing can be provided.</p>
4.13 Soil Assessment	
<p>Regulation 25 <i>Education and Care Services National Regulations</i></p> <p>Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required:</p> <ul style="list-style-type: none"> • A soil assessment for the site of the proposed education and care service premises; 	<p>The application includes a preliminary site investigation which concludes that the potential for significant contamination of soil and groundwater on the site to be low and that the site is suitable for the proposed use subject to recommendations. Council's Environmental Health team concur with the report's findings.</p>

<ul style="list-style-type: none"> • If a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken; and • A statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children. 	
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7.5 State Environmental Planning Policy (Sydney Harbour Catchment) 2005

This Policy, which applies to the whole of the Parramatta local government area, aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole. The nature of this project and the location of the site are such that there are no specific controls which directly apply, with the exception of the objective of improved water quality. That outcome would be achieved through the imposition of suitable conditions at future detailed DA stage to address the collection and discharge of water during construction and operational phases.

7.6 State Environmental Planning Policy No. 55 – Remediation of Land

The application includes a preliminary site investigation which concludes that the potential for significant contamination of soil and groundwater within the site is low and as such the site is suitable for the proposed development and land use.

Council's Environmental Health team have reviewed the proposal and consider there to be no unacceptable contamination risk subject to conditions. As such, the site is considered to be suitable for the proposed use. As the concept plan does not include any works, the conditions can be imposed on the future detailed application.

7.7 State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)

SEPP 65 applies to the development as the proposal is for a new building, is more than 3 storeys in height and would have more than 4 units. SEPP 65 requires that residential flat buildings satisfactorily address 9 design quality principles, be reviewed by a Design Review Panel, and consider the recommendations in the Apartment Design Guide.

7.7.1 Design Quality Principles

A design statement addressing the quality principles prescribed by SEPP 65 was prepared by the project architect and submitted with the application. The proposal is considered to be consistent with the design principles for the reasons outlined below:

Requirement	Council Officer Comments
Principle 1: Context and Neighbourhood Character	<p>The area is currently characterised by single storey dwellings and 3-storey residential flat buildings. The recently adopted planning controls for the site and immediate surrounds anticipates up to 7-storey, high density residential development. A 6-storey podium with recessed level above is adopted to provide an appropriate street wall.</p> <p>The podium height slightly exceeds the adjoining and nearby residential flat buildings which is considered to be an appropriate transition from the existing to the future desired character of the area.</p>

Requirement	Council Officer Comments
	<p>The building envelope has been reviewed by Council's Design Excellence Advisory Panel, a trio of architectural and landscaping experts, and has generally been found to be generally acceptable. As such, the proposal is considered to establish a good precedent for the future neighbourhood character.</p> <p>The proposal provides for high quality landscape setbacks that would provide for an up-grade to the neighbourhood character.</p>
Principle 2: Built Form and Scale	<p>The proposed setbacks are considered to be consistent with adjoining development, the character of the area, and allow for an appropriate building form to be accommodated.</p> <p>Detailed design will be subject to the future detailed development application.</p>
Principle 3: Density	The applicant has demonstrated that the building envelope can provide for provision of the allowable floor space.
Principle 4: Sustainability	The applicant has submitted a draft BASIX certificate which demonstrates that the envelope can accommodate a complying development. A condition is included requiring consideration of sustainability objectives at future detailed DA stage.
Principle 5: Landscape	The proposed setbacks and basement envelope allow sufficient area for deep soil planting and landscaping. The podium top and roof top spaces will also be capable of accommodating landscaping, subject to detailed design as part of the future application.
Principle 6: Amenity	<p>The applicant has demonstrated an acceptable impact on the amenity of adjoining and nearby properties as follows:</p> <ul style="list-style-type: none"> For the most part sufficient setbacks are provided to ensure privacy. A few units will require careful design and potentially screening to ensure privacy. This can be explored at future detailed DA stage. An acoustic report has been provided demonstrating acoustic amenity can be preserved. Sufficient space is provided in the basement to provide parking. <p>Demonstration of the amenity of future occupants will be subject to the future detailed design application.</p>
Principal 7: Safety	<p>The vehicular access way is not separated from the child care entryway. A condition is included requiring they be separated by at least 2m in the future detailed design.</p> <p>Generally, the proposal will result in additional passive surveillance of the public domain.</p>
Principal 8: Housing Diversity and Social Interaction	<p>The proposal provides additional housing choice in a variety of sizes, including affordable housing, in close proximity to public transport.</p> <p>Varied communal open spaces would provide for social interaction.</p>
Principle 9: Aesthetics	The detailed building elements, textures, materials and colours will be subject to a future detailed application.

7.7.2 Apartment Design Guide

The relevant provisions of the ADG are considered within the following assessment table:

Guidance	Requirement	Proposal	Compliance
Part 3			
3B: Orientation	The building is oriented to the middle of the site to provide appropriate setbacks. A 6-storey podium with recessed level above is adopted to provide an appropriate street wall.		

Guidance	Requirement	Proposal	Compliance
3C: Public Domain Interface	<p>The proposal provides sufficient front setbacks to allow an appropriate public domain interface to be achieved subject to detailed design.</p> <p>The proposal includes a waste holding area in the front setback. Ideally the waste room would be integrated with the building. However, this may not be possible owing to the limited pedestrian frontage at grade with the footway. A condition is included requiring further consideration at future detailed DA stage.</p>		
3D: Communal & Public Open Space	Min. 25% of site area (392.5m ²)	492m ² of communal open space inclusive of podium top (~206m ²) and rooftop open space (~286m ²).	Yes
	Min. 50% direct sunlight to main communal open space for min. 2hrs 9am & 3pm, June 21 st (196.25m ²)	The rooftop open space (~286m ²) would achieve full sun.	Yes
	The envelope provides for a podium top and roof top open space. Final design would be provided at future detailed application stage.		
3E: Deep Soil	Min. 7% with min. dimensions of 6m (110m ²)	226m ²	Yes
3F: Visual Privacy	To Sides: Floor 2-3: 6m Floor 4-7: 9m	Floors 2-3: 3-6m Floors 4-6: 3-6m Floor 7: 9m	Yes No (See below) Yes
	To Rear (Rear): Floor 2-3: 6m Floor 4-7: 9m	10m	Yes
	Approximately 6 total units will have their outlook facing the side boundaries at distances less than the ADG recommendation. As the ADG is a guide, and the built form has positive urban design outcomes, this is likely to be considered acceptable in this instance subject to privacy protection measures at future detailed DA stage.		
3G: Pedestrian Access and Entries	Separate, step-free entries are proposed for the residential and child care uses.		
3H: Vehicle Access	<p>One pedestrian entrance not adequately separated from the vehicular entrance. A condition is included to require separation.</p> <p>The width of the vehicular entrance is minimised.</p> <p>Waste storage room at ground level and as such waste vehicle access to the basement is not provided for this purpose.</p>		
3J: Bicycle and car parking	0.4 / 1 bed unit (2) 0.7 / 2 bed unit (14) 1.2 / 3 bed unit (2.4) Occupant: >19 Visitor: 1 / 7 units (>6) Total: >25 The site is located within 800m of a light rail stop under construction. As such the RMS Guide to traffic generating development rates apply.	~72 (inc. child care spaces)	Yes (subject to assessment at future detailed DA stage)
	It is not considered appropriate to condition parking rates in the concept approval as the applicable control may change as a result of refining the draft DCP. The future detailed DA will be subject to the requirements applicable at the time.		

Guidance	Requirement	Proposal	Compliance
Part 4			
4A: Daylight / Solar Access	Min. 2hr for 70% of apartments living & POS 9am & 3pm mid-winter (≥ 26);	~24 out of 37 (65%)	No (See below)
	Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (≤ 5)	Not specified	?
	<p>The reference scheme demonstrates that the building envelope may not allow for the future detailed application to achieve compliance. As the ADG is a guide, and the built form has positive urban design outcomes, this is likely to be considered acceptable in this instance.</p> <p>The applicant has provided shadow plans that demonstrate that shadows will mostly be off the north-eastern façade of the adjoining building to the south-west by 1pm in mid-winter, which demonstrates that the adjoining dwellings are all likely to retain at least the 2 hours of required solar access at mid-winter.</p>		
4B: Natural Ventilation	Min. 60% of apartments below 9 storeys naturally ventilated (≥ 22)	22 out of 37 apartments (60%)	Yes
	The reference scheme demonstrates that the building envelope allows for the future detailed application to achieve compliance.		
4C: Ceiling heights	Min. 2.7m habitable Min 2.4m non-habitable Min 3.3m commercial	2.8m 2.8m 2.8m	Yes Yes No (see below)
	While the proposal does not provide the minimum 3.3m recommended for ground floor commercial uses in mixed use development, the standard 2.8m height is considered to be acceptable given the child care use is unlikely to require additional headroom for ventilation servicing and the unit is unlikely to be converted to a use that would require such servicing.		
4D: Apartment size & layout	1B – Min 50m ² 2B – Min 75m ² (2 baths) 3B+ – Min 95m ² (2 baths) All rooms to have a window in an external wall with a total minimum glass area not less than 10% of the floor area of the room. Habitable room depths max. 2.5 x ceiling height Max. habitable room depth from window for open plan layouts: 8m. Min. internal areas: Master Bed - 10m ² Other Bed - 9m ² Min. 3m dimension for bedrooms (excl. wardrobe space). Min. width living/dining: 1B – 3.6m 2B – 4m 3B – 4m	The draft reference scheme demonstrates that the envelopes are capable of accommodating a building which could comply with these detailed requirements. Notwithstanding, the future detailed development application must demonstrate compliance.	Yes
4E: Private open space & balconies	Min. area/depth: 1B - 8m ² /2m 2B - 10m ² /2m 3B - 12m ² /2.4m	As above.	Yes

Guidance	Requirement	Proposal	Compliance
4F: Common circulation & spaces	Max. apartments off circulation core on single level: 8 - 12 Corridors >12m length from lift core to be articulated.	As above.	Yes
4G: Storage	1B – Min 6m ³ 2B – Min 8m ³ 3B+ – Min 10m ³ Min. 50% required in Basement	As above.	Yes
4H: Acoustic Privacy	The primary acoustic conflict on site would be the impact of the child care centre on the amenity of residential occupants and adjoining/nearby properties. The acoustic report considers that compliant noise conditions can be achieved. Detailed assessment of treatments measures will be subject to the future detailed application. Assessment of plant and driveway noise will also be considered at this time.		
4J: Noise and pollution	The site is not located in proximity to any sources of excessive noise or pollution.		
4K: Apartment Mix	The reference scheme outlines units of varying sizes and includes 50% affordable rental housing which is considered to be commendable.		
4M: Facades	Facades will be subject to the future detailed development application.		
4N: Roof design	The concept anticipates a flat roof to accommodate the required communal open space. The reference scheme demonstrate that the lift overrun to access the roof space can be sufficiently central to the roof to avoid visibility from the public domain. Details will be subject to future detailed DA.		
4O: Landscape Design	The application includes a reference landscape scheme which outlines a variety of planting. The basement envelope allows deep soil planting areas capable of accommodating trees in the front and rear setbacks. Detailed design will be subject to the future detailed DA.		
4P: Planting on structures	The reference scheme anticipates planting on structure, including rooftop open spaces. Details will be subject to future detailed DA.		
4Q: Universal Design	The site is considered to be appropriately barrier free with level and lift access from street level and lift access from the basement to the upper residential floors of the development. Details of universal design will be required at the future detailed development application stage.		
4T: Awnings and Signage	No street awnings are proposed which is considered to be appropriate given the primarily residential nature and ground levels setbacks of the proposed buildings. No signage is proposed as part of the application. Signage for the child care centre use can be included in the future detailed development application or a separate stand-alone application.		
4U: Energy Efficiency	The applicant has submitted a BASIX certificate for the reference scheme which demonstrates that the resultant building can achieve, and in fact exceed, BASIX compliance.		
4V: Water management			

Guidance	Requirement	Proposal	Compliance
4W: Waste management	<p>Details of in-unit storage will be subject to assessment at future detailed DA stage.</p> <p>The reference scheme demonstrates there is space in the basement envelope for the provision of a separate waste storage room for the child-care uses on site.</p> <p>A residential waste collection room is provided at ground level which allows access for Council waste collection staff. This is considered to be preferable to a waste storage room at basement level as this would require all bins to be transported to, and stored, in the public domain on collection days which is unsightly and potentially hazardous. The room may not be large enough to accommodate the required bins. Further consideration will be given at detailed DA stage. A condition is included to explore provision of the waste room within the envelope of the building.</p> <p>A construction waste management plan would be required as a condition of the future detailed DA.</p>		
4X: Building maintenance	Building maintenance assessment will be subject to the choice of materials at the future detail development application stage.		

7.8 Parramatta Local Environmental Plan 2011

The relevant objectives and requirements of the Parramatta Local Environmental Plan 2011 have been considered in the assessment of the development application and are contained within the following table.

Development standard	Proposal	Compliance
2.3 Zoning R4 – High Density Residential	<p>The proposed uses, outlined below, are permissible with development consent in the zone.</p> <ul style="list-style-type: none"> Residential Flat Building Centre-based child care centre 	Yes
Zone Objectives	<p>The proposal is considered to be in keeping with the objectives of the B4 Mixed Use zone for the following reasons:</p> <ul style="list-style-type: none"> The proposal provides for the needs of the community in a high density residential environment. The proposal provides a mix of residential sizes and tenure types (free market and affordable). The proposal provides a child care centre which will meet the needs of residents. The proposal is in close proximity to existing and planned public transportation, services and employment opportunities. 	Yes
4.1 Minimum Subdivision Lot Size Standard: >550sqm	1,570m ²	Yes
4.3 Height of Buildings Standard: 22m	<p>~23.5m (roof top open space elements)</p> <p>~22.4m (primary building form)</p>	<p>No (See Clause 6.16 below)</p> <p>No (See Clause 4.6 below)</p>

Development standard	Proposal	Compliance
4.4 Floor Space Ratio Standard: 1.7:1 + 0.5:1 bonus = 2.2:1 (3,454m ²)	~3,450sqm To be confirmed at future detailed DA stage.	Yes
4.6 Exceptions to Development Standards	Elements of the proposal exceeds the mapped height limit (See Figure 2 above) and do not meet the requirements of the height limit exemption allowed under Clause 6.16.	Yes (see discussion at end of table)
5.10 Heritage conservation	The site is not heritage listed and is not in the vicinity of any heritage listings.	N/A
6.1 Acid Sulfate Soils Class 5	The proposal is above 5m AHD and is not likely to lower the water table.	Yes
6.2 Earthworks	The building has been located specifically so as to limit the height of retaining walls (<1.8m) and maximise their separation from boundaries (>3m).	Yes
6.3 Flood Planning	The site is not directly affected by fluvial flooding or overland flow flooding.	N/A
6.12 Design Excellence	The proposal is considered to exhibit design excellence. See further discussion at the end of this table below.	Yes
6.16 Height of buildings for certain land in Telopea Precinct In R4 zone, height breaches allowed for open roof top structures if they cause no additional overshadowing	For the purposes of this clause ' <i>open roof-top</i> ' means an area used for the purpose of recreation by building tenants, including communal amenities and gardens. The reference scheme includes roof-top and podium-top communal open spaces. The open space includes a lift overrun and awnings which exceed the mapped height limit. The lift overrun is enclosed and the awning is open on all sides except for the lift overrun. The structure is considered to be sufficiently open to benefit from the clause. The applicant has provided shadow diagrams demonstrating that the shadows created by the open roof top elements are contained to the roof form of the building from 9am to 3pm at midwinter and as such do not result in additional overshadowing. While the shadows would likely result in additional overshadowing before 9am and after 3pm, it would be negligible. Additional height will necessarily create shadows when the sun is very low in the sky. The only practical operation of the clause is that 'overshadowing' refer to the commonly used solar access window of 9am – 3pm midwinter. Which the proposal would comply with.	Yes
6.17(3) Floor Space Ratio for certain land in Telopea Precinct FSR <2:1 if Site Area > 2,000sqm	The site area is less than 2,000sqm and as such the FSR is not impacted by this clause.	N/A

Development standard	Proposal	Compliance
6.18 Development Requiring the Preparation of a Development Control Plan Site-specific development control plan required.	No site-specific development control plan has been developed for the site. However, clause 4.23 of the Environmental Planning and Assessment Act 1979 allows for concept development applications to take the place of such DCPs. An assessment of the subject concept plan against the site-specific DCP criteria is provided at the end of this table.	Yes
8.1 Arrangements for designated State public infrastructure	The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the development of land wholly or partly for residential purposes, to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes. The subject concept does not itself, result in development consent for the construction of any dwellings. As such it is considered that this clause can be satisfied at the future detailed DA stage. An advisory note is included to this effect.	N/A

7.8.1 Height Variation Request

Clause 4.6 of PLEP 2011 allows the consent authority to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

Clause 4.6(1) – Objectives of clause 4.6

The objectives of this clause are:

- “(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”*

Clause 4.6(2) – Operation of clause 4.6

The operation of clause 4.6 is not limited by the terms of Clause 4.6(8) of this LEP, or otherwise by any other instrument.

The proposal does not comply with the Clause 4.3 ‘Height of Buildings’ development standard, as outlined in the table above and Figure 2 above, and as such the applicant has submitted a request to vary the height standard under Clause 4.6 of the PLEP 2011.

Clause 4.6(3) - The Applicant’s written request

Clause 4.6(3) requires that the applicant provide a written request seeking to justify contravention of the development standard. The request must demonstrate:

- “(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.”*

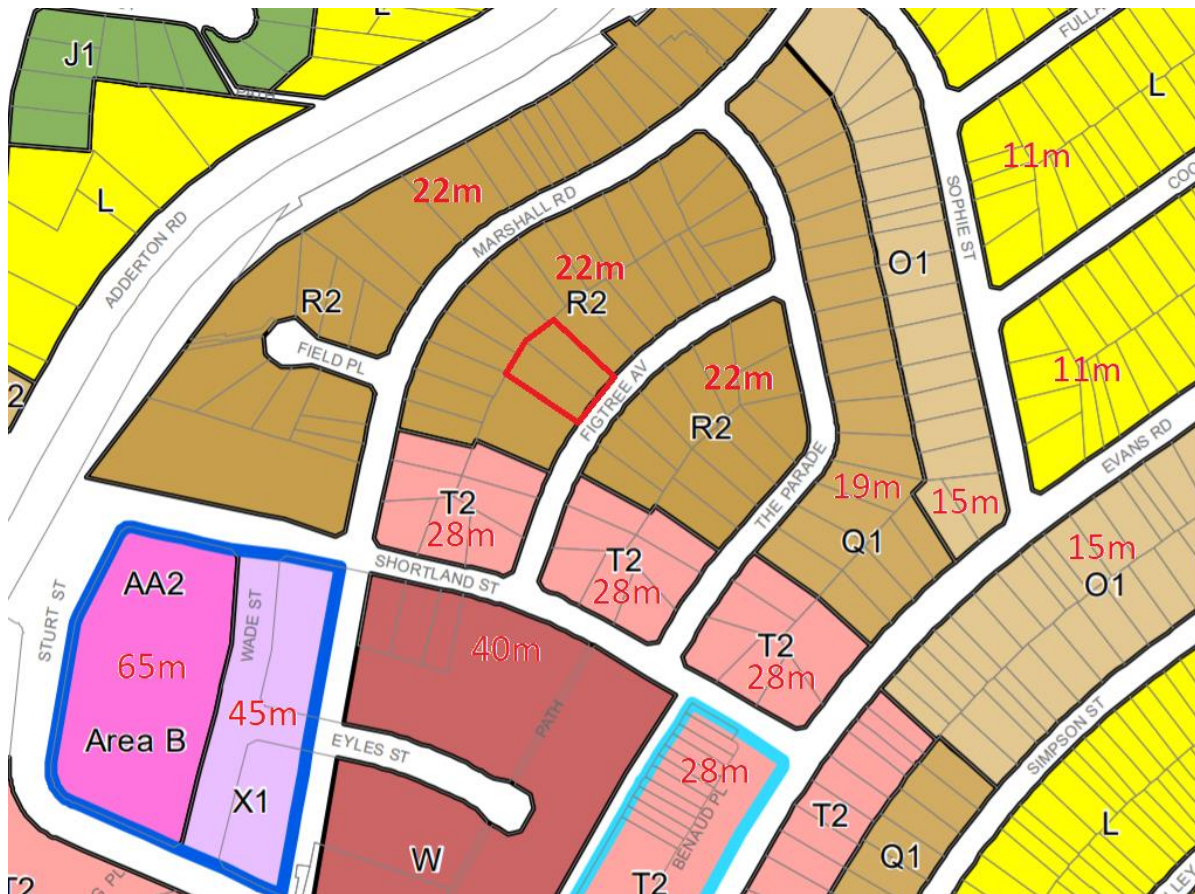


Figure 3. Height of Buildings Map (subject site in red)

The applicant has provided the following environmental planning grounds to justify the non-compliance with the development standard (relevant extracts provided). The full request is included at Appendix 1.

The proposed development is supportable on environmental planning grounds for the following reasons:

- *The proposal (notwithstanding the LEP contravention) is consistent with the objectives of the development standard as provided in clause 4.3 of the PLEP 2011.*
- *The proposal is compliant with the maximum FSR that applies to the land. Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA).*
- *The shadow diagrams that form part of this variation request demonstrate that the area of height variation will not result in an unreasonable increase to the extent of overshadowing impact on either neighbouring properties or public domain.*
- *The building form has been designed in response to Parramatta Council's Draft DCP controls applicable to the precinct in terms of building form, siting and setbacks.*
- *The slope of the site being a maximum of 4.2m (approx) from the northern corner of the site down towards the southern corner along the Fig Tree Avenue street edge has been a determinative factor with regards to the extent of height variation observed across the building.*
- *The perception of building height, most notably where it breaches the standard, has been formed in a manner that continues to enable the visual identification of a built form that remains appropriate for the site and commensurate with both existing and envisaged development likely to occur on neighbouring undeveloped sites. At high level, the proposed building successfully mitigates environmental impacts such as overshadowing, privacy and visual impact.*

An assessment to determine whether compliance with the standard is 'unreasonable and unnecessary' has been undertaken. It is considered that there are 'sufficient planning

grounds' to support the variation and recommend the variation be approved for the following reasons:

Unreasonable and Unnecessary

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below. These cases establish tests that determine whether a variation under Clause 4.6 of an LEP is acceptable and whether compliance with the standard is unreasonable or unnecessary.

Wehbe v Pittwater Council

Case law in the NSW Land & Environment Court has considered circumstances in which an exception to a development standard may be well founded. In the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 the presiding Chief Judge outlined the following five (5) circumstances:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

Clause 4.3 Objective	Proposal
1. <i>to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,</i>	<p>As evident in Figure 3, the height for the site has been nominated as part of a series of heights decreasing from the Telopea Town Centre, down to the surrounding R2 low-density areas.</p> <p>The non-compliance in the south-east corner of the site, is in proximity to the sites with a 28m height limit. As such the minor non-compliance will not have a significant impact on the appearance of development stepping down to the north-east.</p>
2. <i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i>	<p><u>Visual Impact</u></p> <p>The applicant has provided renders demonstrating that the additional visual impact of the non-complying element is negligible.</p> <p><u>Views</u></p> <p>See Objective 4 below.</p> <p><u>Privacy</u></p> <p>The roof area which results in the breach is not trafficable and as such would not contribute to loss of privacy.</p> <p><u>Solar Access</u></p> <p>The applicant has provided shadow diagrams demonstrating that the overshadowing resulting from the non-compliance is negligible. Specifically, it would create no additional overshadowing until after 1pm at the winter solstice and the area affected would be very small.</p>

Clause 4.3 Objective	Proposal
3. <i>to require the height of future buildings to have regard to heritage sites and their settings,</i>	The site does not contain a heritage item, is not within the vicinity of any heritage items and is not located in a heritage conservation area.
4. <i>to ensure the preservation of historic views,</i>	As outlined in Section 9.1 below, the non-complying element is not considered likely to result in loss of any additional views not anticipated by the height control.
5. <i>to reinforce and respect the existing character and scale of low density residential areas,</i>	The site is not located in a low-density residential area.
6. <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>	The site is not in a commercial centre and is not a tower form. The proposal would result in negligible additional loss of sky exposure from the street compared to a complying form. As such the proposal would maintain satisfactory sky exposure.

2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

The applicant contends that objectives 4-6 are not relevant in that the site is not in an area affected by historic views, a low scale residential area, or a commercial centres. As outlined above, while the area is considered to be affected by historic views, and the objective of maintaining sky exposure is relevant, the impacts are considered to be acceptable.

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*

The applicant does not contend that the underlying objectives would be thwarted if compliance was required.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*

The height development standards were recently updated for the Telopea Masterplan area. As the subject application is one of the first applications, the development standard has not been abandoned or destroyed.

5. *The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant does not challenge that the zoning is inappropriate or that the standard is unreasonable or unnecessary.

Four2Five Pty Ltd v Ashfield Council

The decision in the Land & Environment Court case of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, suggests that 'sufficient environmental planning grounds' for a Clause 4.6 variation is more onerous than compliance with zone and standard objectives. The

Commissioner in the case also established that the additional grounds had to be particular to the circumstances of the proposed development, and not merely grounds that would apply to any similar development.

In this case, the following site-specific planning grounds are considered to be sufficient to justify contravening the standards. The applicant demonstrated, through a series of workshops with Council's Urban Design team, that a height compliant design was possible, but would not be compatible with the draft Telopea DCP and would have resulted in retaining walls up to 3m in height to the rear of the site, and thus loss of trees to the rear of the site, and potentially on adjoining sites.

Initial Action Pty Ltd v Woollahra Municipal Council

Chief Judge Preston, in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 clarified, at paragraph 87, that, "*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development*". While it is considered that the proposal does have several benefits over a compliant scheme, the Panel does not have to be satisfied with regard to such a test.

Clause 4.6(4) - Consent Authority Assessment of Proposed Variation

Clause 4.6(4) outlines that 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 Secretary has been obtained.*"

The matters of clause 4.6(4)a)i) have been dealt with in the preceding section. Clause 4.6(4)a)ii) and Clause 4.6(4)b) have been assessed as follows:

Public Interest

The proposal is consistent with the objective of the height standard as set out in table above. The proposal is consistent with the objectives of the zone as set out in the table below:

R4 Zone Objective	Proposal
<i>To provide for the housing needs of the community within a high density residential environment.</i>	The proposal will provide for the housing needs of the community, including much needed affordable housing.
<i>To provide a variety of housing types within a high density residential environment.</i>	
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposal includes a child care centre which will provide for the day to day needs of the community.
<i>To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.</i>	The proposal is in proximity to the new Telopea Light Rail station and proposed Telopea town centre.

R4 Zone Objective	Proposal
<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>	Not applicable.

Concurrence

‘The concurrence of the Secretary has been obtained’

Assumed concurrence is provided to regional planning panels (such as the SCCPP) as per NSW Department of Planning Circular ‘*Variations to development standards*’ Ref: PS 18-003 dated 21/02/2018. There is no limit to the level of non-compliance for which concurrence can be assumed.

Conclusion

In summary, it is considered that breaching the building height standard is appropriate and achieves a preferable outcome for the following reasons:

- The proposal would result in a built form consistent with the draft Telopea DCP.
- The proposal would result in retention of trees and deep soil area to the rear of the site.
- The proposal would not require the use of excessive retaining walls.
- The breach is minor and has a negligible impact on the amenity of adjoining properties and the public domain.

It is considered that the applicant’s written request has adequately addressed the matters required to be demonstrated and that the request to vary the height development standard within Parramatta LEP 2011 can be supported as the proposal continues to achieve the objectives of the height development standard and the zoning and is in the public interest. In reaching this conclusion, regard has been given to the relevant Judgements of the LEC.

7.8.2 Design Excellence

An assessment of the subject concept plan against the design excellence requirements is provided below:

- a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*

The architectural design, materials and detailing will be subject to a future detailed application. Notwithstanding, the application has been reviewed by Council’s Design Excellence Advisory Panel who are of the view that the building envelope proposed does not limit the ability of the future detailed application to achieve design excellence, subject to conditions.

- b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*

As above, the final form and external appearance of the building will be subject to a future detailed application.

c) *whether the development detrimentally impacts on view corridors,*

The proposal is considered to have an acceptable impact on view corridors as outlined in Section 9.1 below.

d) *whether the development detrimentally impacts on any land protected by solar access controls established in the Parramatta Development Control Plan,*

The site is not in the vicinity of any land protected by solar access controls.

e) *the requirements of the Parramatta Development Control Plan,*

As outlined under Section 9.1 below, the proposal is considered to be consistent with the requirements of the Parramatta DCP.

f) *how the development addresses the following matters—*

i. *the suitability of the land for development,*

The site is considered to be suitable for the proposed development as no site constraints exist which would imperil future occupants or property.

ii. *existing and proposed uses and use mix,*

The proposed use mix is considered to be appropriate for a high density residential area.

iii. *heritage issues and streetscape constraints,*

The site is not a heritage item, is not in the vicinity of any heritage items and is not in a conservation area.

The street to the front of the site is approximately 7m in width and accommodates parking on both sides. This results in localised restrictions to a single trafficable lane. As such Council's Traffic and Transport team recommended that 'no stopping' signs be provided for the frontage of the site. Such a condition can be included at future detailed DA stage.

The applicant has submitted a traffic report which concludes that the proposal would have an acceptable impact on traffic. This report has been reviewed by Council's Traffic and Transport team and was found to be acceptable.

If in the future the traffic impacts become untenable, there exists the possibility of extending the no stopping zone to the intersection with Shepard Street, to ensure traffic can pass efficiently. Such a change would be subject to approval by the Parramatta Traffic Committee.

iv. *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,*

The proposed setbacks are considered to be acceptable as they are consistent with the draft Telopea DCP (see Section 9.2 below).

v. *bulk, massing and modulation of buildings,*

The building envelope is modulated in plan to provide visual interest. The proposed envelope has been reviewed by Council's Design Excellence Advisory Panel and found to be of an acceptable level of articulation, setbacks and visual interest to minimise bulk.

vi. *street frontage heights,*

The proposed building envelope includes a 6-storey street frontage height with an upper level set back above. The proposed form is consistent with the draft Telopea DCP (See Section 9.2 below).

vii. *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*

The applicant has submitted shadow diagrams demonstrating that the proposal would have an acceptable impact on adjoining/nearby properties. A wind report is not considered to be necessary as the height of the building is not likely to generate significant changes to wind conditions. Reflectivity will be considered at future detailed DA stage.

viii. *the achievement of the principles of ecologically sustainable development,*

The applicant has demonstrated that the reference scheme can comply, and exceed, BASIX energy, water and thermal comfort targets.

The child care centre will be subject to BCA sustainability requirements.

Council's Ecologically Sustainable Design consultant recommended conditions which are largely consistent with the ESD requirements of the draft Telopea DCP. However, it is not considered appropriate to issue prescriptive requirements based on a draft DCP. As such, the draft objectives likely to be applicable to the proposed development are included in a condition requiring further consideration at future detailed DA stage. If the draft DCP is adopted prior to determination of the future detailed DA, the ESD controls will apply and be consistent with the condition.

ix. *pedestrian, cycle, vehicular and service access, circulation and requirements,*

The child care centre entry and driveway are not sufficiently separated. A condition is included requiring they be separated by at least 2m at the future detailed DA stage.

The reference scheme demonstrates that the basement can accommodate the required vehicle and cycle parking for both uses.

x. *the impact on, and any proposed improvements to, the public domain.*

It is recommended that a condition be imposed requiring that the public domain to the front of the site be upgraded, including a new kerb, guttering, footpath nature strip and street tree planting, in keeping with the requirements of the Parramatta Public Domain Guidelines.

7.8.3 Site-Specific Development Control Plan Requirements

An assessment of the subject concept plan against the relevant requirements of a site-specific development control plan is provided below:

a) design principles drawn from an analysis of the site and its context,

The applicant undertook a detailed site analysis to inform the proposed built form. This process included consultation with Council's Urban Design team. The proposal is also consistent with the draft Telopea DCP (See Section 9.2 below).

b) heritage conservation, including both Aboriginal and European heritage,

The site is not a heritage item, is not in the vicinity of any heritage items and is not in a conservation area. The site is identified as being of low Aboriginal archaeological sensitivity. Council does not have any European Archaeological data for the site. However, given the site history suggests the site has been used only for agricultural and residential uses, it is not likely that significant European archeology exists on the site. The existing controls relating to Aboriginal and European heritage in the PDCP 2011 are considered to be sufficient for this site.

c) encouragement of sustainable transport, including increased use of public transport, walking and cycling, road access and the circulation network and car parking provision, including integrated options to reduce car use,

It is recommended that an advisory note be included outlining that the future detailed development application must include a Green Travel Plan to encourage sustainable transport and reduce car use.

d) impact on, and improvements to, the public domain,

The proposal will be required to update the public domain to the front of the site, including a new footpath. A condition is included to this effect. Detailed requirements will be outlined at the future detailed DA stage.

e) identification and conservation of native flora and fauna habitat and habitat corridors on the site, including any threatened species, populations or ecological communities,

The site is not identified on the 'Natural Resources – Biodiversity' map. As outlined in Section 9.1 below, the proposed envelope requires the removal of trees. Conditions are included requiring the retention/relocation of some trees. A condition is included requiring the future detailed DA landscape plan include at least 6 replacement trees consistent with the draft Telopea DCP.

f) application of the principles of ecologically sustainable development,

See ESD assessment in above section.

g) identification, extent and management of watercourses, wetlands and riparian lands and any buffer areas,

The site is not in the vicinity of any watercourses, wetlands or riparian lands.

h) environmental constraints, including climate change, acid sulfate soils, flooding, contamination and remediation,

The proposal is not likely to be affected by acid sulfate soils or flooding. The site is sufficiently removed from watercourses such that any rise in sea levels or rainfall would not result in flooding impacts. The draft ESD controls are considered to accommodate sufficiently for climate change. As outlined under Section 7.5 above, the site is considered to be suitable for the proposed uses from a contamination perspective, subject to conditions of consent which can be included in any future detailed development application consent.

- i) *opportunities to apply integrated natural water-cycle design and integrated renewable energy design.*

The applicant has submitted a draft Stormwater Management Report which demonstrates appropriate WSUD measures. Council's Development Engineer has reviewed the report and found it to be acceptable. Detailed assessment of WSUD will be considered at future detailed DA.

Photovoltaics are unlikely to be achievable due to the extensive use of roof top space for recreation. The draft Telopea DCP includes requirements for electric vehicle charging. Assessment subject to future detailed DA.

8. Draft Environmental Planning Instruments

8.1 DRAFT HOUSING SEPP 2021

The NSW Government has developed a new Housing State Environmental Planning Policy (Housing SEPP) which aims to facilitate the delivery of more diverse and affordable housing types. The SEPP largely seeks to consolidate existing SEPPs relating to affordable, build-to-rent, short-term, co-living, and seniors housing. The Housing SEPP is considered to be imminent - as it has been on public exhibition and the Department of Planning has indicated finalisation is likely to occur in October 2021 - and certain - as a draft instrument has been on exhibition. As such, it is a relevant consideration and has determinative weight.

The provisions relating to a bonus for affordable rental housing are largely consistent with those in the existing SEPP Affordable Rental Housing.

The draft includes additional 'non-discretionary development standards'. As the draft consent does not seek to impose more onerous conditions relating to any of these matters, they are not considered to be relevant.

The clause includes a requirement that affordable rental housing be retained as such for 15 years, as opposed to the 10 years outlined under the current SEPP. However, the draft also includes a savings provision for undetermined applications already submitted. As such the 15 year requirement is not considered to be applicable to the concept. Were the SEPP to be adopted prior to submission of the future detailed DA, the 15-year requirement would apply.

No other provisions are considered to be relevant to the application.

8.2 DRAFT CONSOLIDATED CITY OF PARRAMATTA LEP 2020

The site is subject to a Planning Proposal to create a consolidated City of Parramatta Local Environmental Plan. It is noted that the Planning Proposal has received a Gateway determination and has been publicly exhibited, and therefore is a formal matter for consideration for the purposes of section 4.15 of the Act. The primary focus of the Planning Proposal is harmonisation (or consolidation) of the existing planning controls that apply across the City of Parramatta. It does not propose major changes to zoning or increases to density controls. However, in order to create a single LEP, some changes are proposed to

the planning controls applying to certain parts of the LGA. This draft LEP does not propose any changes to the controls for this site and as such, further consideration of this document is not necessary.

8.3 DRAFT DESIGN & PLACE SEPP 2021

The NSW Government has developed a new Design & Place State Environmental Planning Policy (Design & Place SEPP) which aims to improve the design of buildings and spaces. The Design and Place SEPP will be a principle-based SEPP, integrating and aligning good design and place considerations into planning policy, and giving effect to a number of objects of the Act including good design and amenity of the built environment, sustainable management of built and cultural heritage, and the proper construction and maintenance of buildings. It will also promote the NSW Premier's Priorities for a Better Environment (Greener Public Spaces and Greening our City). The SEPP No 65 – Design Quality of Residential Apartment Development and SEPP (Building Sustainability Index: BASIX) 2004 will be repealed and replaced into Design and Place, with relevant provisions transferred across. The Design & Place SEPP is not considered to be imminent – as the Department has flagged that it will be subject to future public consultation – and not certain – as a draft instrument has not been on exhibition. As such, it is a consideration but has minimal determinative weight. The provisions of the Design & Place SEPP are not considered to affect the concept assessment. If the SEPP gains imminence and certainty it will be further considered at future detailed DA stage.

9. Development Control Plans

9.1 Parramatta Development Control Plan 2011

An assessment of the proposal against the relevant controls in the Parramatta Development Control Plan 2011 is provided below. Several of the controls are superseded by SEPP 65 and as such are not included in the table.

Development Control	Proposal	Comply
2.4 Site Considerations		
2.4.1 Views and Vistas	The DCP identifies significant district views across the site from Pennant Hills Road. Up-slope properties also experience existing views across the site. These views are generally from the north-west to the south-east. The allowable height limit will generally result in moderate view loss. The proposed height non-compliance is on the south-east corner of the site, and would be subsumed by compliant elements of the roof top open space. As such the non-compliance itself does not contribute to loss of views. As such the view loss is considered to be consistent with the principles of view sharing and thus acceptable.	Yes
2.4.2.3 Protection of Groundwater	Protection of groundwater would be secured via conditions at future detail DA stage.	Yes
2.4.3.1 Sedimentation	Erosion and sediment control plans will be required as part of the future detailed development application.	Yes
2.4.3.3 Salinity	The site is identified as being of low-moderate salinity potential. As such no special measures are required.	N/A
2.4.5 Air Quality	The proposed buildings are adequately setback, and screened, from a local road and as such are not considered likely to be subject to raised levels of air pollution.	Yes
2.4.6 Development on Sloping Land	The ground floor level has been set so as to minimize the extent and height of retaining walls.	Yes

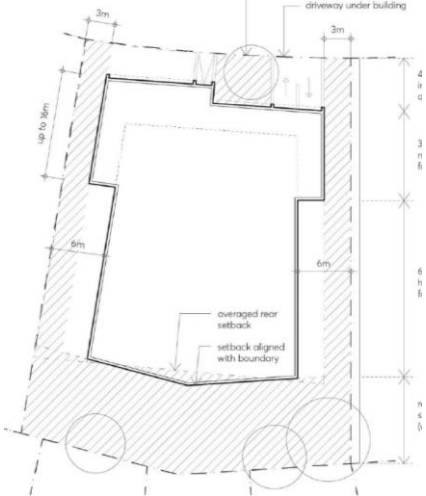

Development Control	Proposal	Comply
	<p>The upper level is setback to reduce apparent bulk from downslope.</p> <p>Details of privacy protection to adjoining properties will be provided at future detailed DA stage.</p>	
2.4.7 Biodiversity	<p>There are 21 trees located on the subject site, one of which is significant (Tree #21), four of which are healthy native palms, with the remainder small/weeds/unhealthy.</p> <p>The applicant has submitted an Arborist Report which recommends removal of 17 trees including Tree #21 and relocation of the remaining 4 healthy palm trees.</p> <p>It is considered that the significant tree should be retained despite its poor condition, a condition is included to this effect. Council's landscape officer concurs that the remaining vegetation is of low retention value.</p> <p>To clarify, consent for removal of the trees is not included in the draft consent.</p> <p>The basement envelope allows deep soil planting areas capable of accommodating trees in the front and rear setbacks. As per the draft Telopea DCP a condition is included requiring planting of at least 6 replacement canopy trees. Detailed design will be subject to the future detailed DA.</p> <p>The proposal demonstrates that the 2 trees adjoining the site can be safely retained.</p>	Yes
2.4.8 Public Domain	<p>It is recommended that a condition be imposed requiring that the public domain to the front of the site be upgraded, including a new kerb, guttering, footpath nature strip and street tree planting, in keeping with the requirements of the Parramatta Public Domain Guidelines.</p>	Yes
3.1 Preliminary Building Envelope (Table 3.1.3.7)		
Minimum Site Frontage: >24m	~30.5m	Yes
Front Setback: 5-9m	<p>4m-6m (400mm projection)</p> <p>Adjoining properties (5-7 Fig Tree): 5.7m – 6.5m</p>	No (Acceptable as per draft DCP)
Rear Setback: 15% (~6.7m)	<p>Basement: 6m</p> <p>Above: 10m</p>	No (see Section 9.2) Yes
3.3 Environmental Amenity		
3.3.6 Water Sensitive Urban Design	WSUD requirements will be considered at future detailed DA stage.	Yes
3.3.7 Waste Management	At the recommendation of Council officers, the proposal was revised to include a waste storage room at ground level. Detailed design will be subject to the future Stage 2 application.	Yes
3.4 Social Amenity		
3.4.2 Access for People with Disabilities	The reference design indicated that step-free access can be made available to the child care centre.	Yes

Development Control	Proposal	Comply
3.4.4 Safety and Security	The proposal does not contribute to the provision of any increased opportunity for criminal or anti-social behaviour. Natural surveillance of the public domain would be provided.	Yes
3.4.5 Housing Diversity and Choice <ul style="list-style-type: none"> • 3 bed 10% - 20% • 2 bed 60% - 75% • 1 bed 10% - 20% • 10% adaptable units 	<ul style="list-style-type: none"> • 2 x 3 bedroom apartments (5%) • 30 x 2 bedroom apartments (81%) • 5 x 1 apartments (14%) • 10% (claimed) <p>The reference scheme would result in non-compliances with the recommended housing mix. Notwithstanding, consolidation of 1 and 2 bed units could increase compliance. Unit mix will be assessed in detail at future detailed DA stage with a view to achieving compliance.</p>	No No Yes
3.5 Heritage		
3.5.1 General	The site is not heritage listed and is not in the vicinity of any heritage listings.	N/A
3.5.2 Archaeology	The site is considered to be of low archaeological significance.	N/A
3.5.3 Aboriginal Cultural Heritage	The site is identified as having low Aboriginal sensitivity.	N/A
3.6 Movement and Circulation		
3.6.1 Sustainable Transport		
Car Share		N/A
1 car share if over 50 units	<50 units	
3.6.2 Parking and Vehicular Access		
Car Parking Control		
Occupant and Visitor Rates	Refer to ADG assessment in Section 7.7.2 above.	N/A
Car Wash Bay (>1)	Subject to future detailed DA.	N/A
Child Care Centre	N/A (See below)	N/A
Bicycle Parking		
1 space per 2 dwellings (>19)	Subject to future detailed DA.	N/A
1 space per 200m ² commercial (3)	Subject to future detailed DA.	N/A
4.1.11 Telopea Precinct		
To ensure that new development responds well to the topography of land.	As outlined elsewhere in this report, the building has been appropriately sited and designed to minimize disturbance of the natural land form.	Yes
5.2.3 Planning Controls for Child Care Centres		
Access and Parking		
1 space per 4 children (~24)	~72 (inc. resident spaces)	Yes (subject to assessment at future detailed DA stage)
1 accessible space per 10 spaces (~3)	Subject to further assessment at future detailed DA stage.	

Development Control	Proposal	Comply
1 bicycle space per 25 children (~4)	Subject to further assessment at future detailed DA stage.	

9.2 Draft Telopea Development Control Plan 2021

The draft Telopea DCP 2021 was publicly exhibited in May/June 2021 and adopted by Council 11 October 2021. However, it has not yet been published on Council's website. Further, PLEP 2011 requires preparation of a DCP for the site, and the subject concept plan seeks to act in its place. As such, the draft DCP is considered to have some weight, particularly with regard to assessment of the desired future character of the area.

Section	Control	Quantum	Proposal	Comply?
2.2-C1e	Driveway separated from pedestrian	>2m	One entrance is directly adjacent the driveway. Notwithstanding, it is considered that separation from the driveway could be provided subject to detailed design. As such a condition is included requiring this minimum separation.	Yes, subject to condition.
2.3-C1	Minimum Car Parking (See Table 2)	~72	See ADG assessment above.	Likely
3.2-C2	Site frontage	>24m	30.5m	Yes
3.2	Building Setback Plan 			Yes
3.2-C3/C7	Front setback	4m-6m (400mm projection)	4m-6m (400mm projection)	Yes
3.2-C4	Side setback	3m (Front) 6m (Rear)	3m (Front) 6m (Rear)	Yes
3.2-C5	Rear setback	10m or 15% (greater)	Basement: 6m Above: 10m	No (see discussion below) Yes
3.2-C8	Deep Soil	30% (>4m dim) (471sqm) 7% (>6m dim) (110sqm) 50% at rear (236sqm)	219sqm (min 3m dim) + 226sqm = 445sqm 226sqm 226sqm	No (minor) Yes No (minor)

3.2-C11	Basement predominantly under building	-	Basement footprint = 1120sqm Building footprint = 790sqm (70%)	Yes
3.2-C13	Basement above ground	<1.5m	1.5m	Yes
3.2-C14	Soil front setback above basement	>1m deep >6m wide	Not specified 6m	Conditioned Yes
3.2-C17	Storeys Upper Levels	6+1 >3m setback	6+1 2m-4m	Yes No (minor)
3.2-C19	Building to occupy frontage	>75%	~80%	Yes
3.2-C21	Retaining walls	<1.5m	~1.80m	No (minor)
4.1-C4	Replacement trees	1/80sqm deep soil (6)	>6 on draft landscape plan	Yes, conditioned

Rear Setback

The application seeks a variation to the 6m rear setback control in the draft Telopea DCP to allow the required parking to be provided in 3 levels as opposed to the fourth level that would be required with a compliant setback (See Figure 4 below).

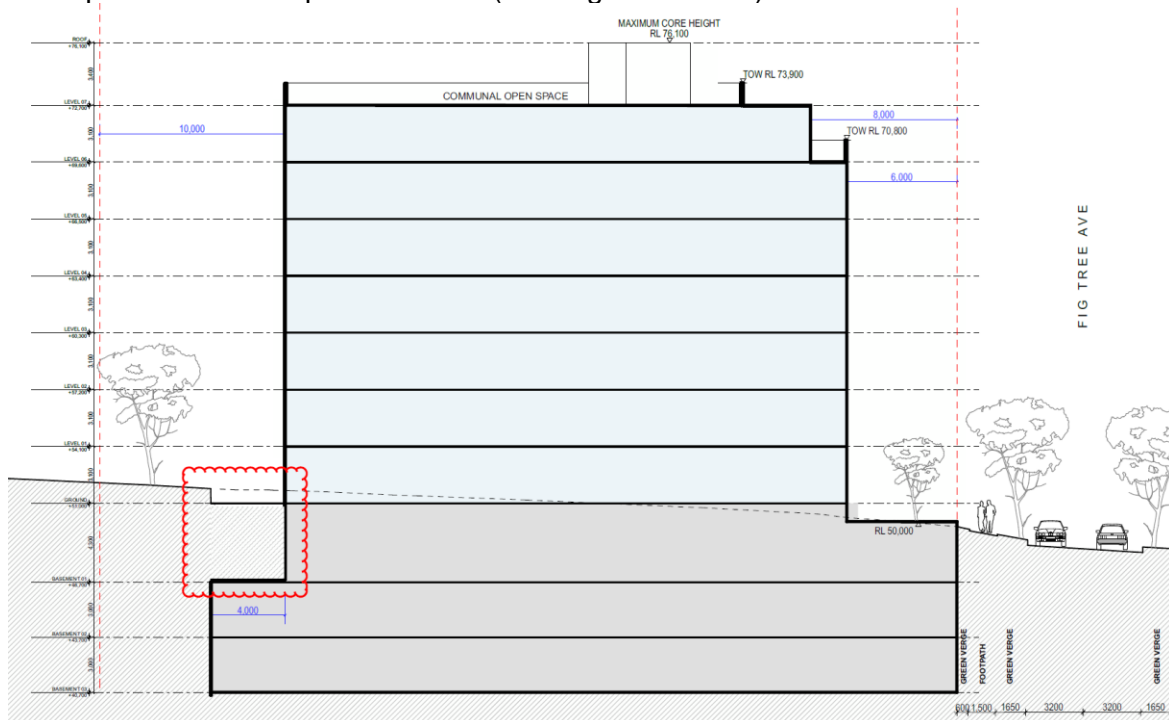


Figure 4. Section (front to rear) demonstrating first floor basement set-in.

The variation to the control is considered to be appropriate for the following reasons:

- It is to some extent necessitated by the provision of a child care centre (high parking requirements) and affordable housing floor space bonus. As such, it is unlikely to be required for all development in the area and as such is not considered to set an undesirable precedent.
- An additional basement level would have additional impacts on construction timing/amenity, would require additional concrete (environmental cost) and potentially limit ground water flow.
- The setdown at first floor level allows for deep soil planting in the rear open space.
- The reduced setback does not result in the requirement to remove any significant trees.

10. Planning Agreements

The future detailed development application will be subject to satisfactory arrangements as outlined in Section 7.8 above.

11. The Regulations

The Regulations are not considered to be specifically relevant to the draft determination.

12. The Likely Impacts of the Development

The likely impacts of the development have been considered in this report.

13. Site Suitability

Suitable contamination investigations and planning has been provided to demonstrate that the site can be made suitable for the proposed uses subject to conditions.

The proposal is considered to have an acceptable impact on biodiversity.

No other natural hazards or site constraints are likely to have a significant adverse impact on the proposed development. Accordingly, the site is considered to be suitable for the proposed development subject to the conditions provided within the recommendation to this report.

14. Submissions

The application was notified and advertised in accordance with Appendix 5 of DCP 2011.

The initial advertisement ran for a 21-day period between 22 October and 12 November 2020. A subsequent advertisement ran for a 21-day period between 18 December 2020 and 11 January 2021 to account for an administrative error omitting reference to the proposed affordable housing in the description of development. A further advertisement ran for a 21-day period between 11 January and 2 February 2021 to account for an administrative error omitting reference to the applicable consent authority. The revised drawings were advertised for a 21-day period between 21 July and 11 August 2021.

A total of 9 submissions were received, 4 unique and 5 x 1 pro-forma letter.

The public submission issues are summarised and commented on as follows:

Issues Raised	Comment
Excessive Density	The proposed density complies with the relevant planning instruments. A bonus is allowable per the Affordable Rental Housing SEPP.
Excessive Height	The proposal is largely consistent with the height controls. A small breaching area to the front of the site is deemed to be acceptable for the reasons outlined in this report.
Out of Character with Area	The proposal is considered to be in keeping with the desired future character of the area for the reasons outlined in this report.
Inefficient Subdivision Pattern	The development site complies with the draft site frontage requirements.
Traffic Impact	The proposal includes a traffic report which outlines that the proposal is considered likely to have an acceptable impact on traffic. The report has been reviewed and is supported by Council's Traffic and Transport team.

Increase in Air Pollution	Demolition and construction management will be considered and addressed in detail at the future detailed DA stage. The uses are not considered likely to result in excess pollution.
Pedestrian Safety	A condition is included requiring separation of pedestrian and vehicle entrances. Pedestrian safety will be further considered at future detailed DA stage.
Loss of Views	For the reasons outlined in this report, the proposal is not considered to result in an unacceptable loss of views.
Loss of Outlook	The proposal is considered to be adequately set back from boundaries so as to limit loss of outlook to an acceptable degree.
Loss of Privacy	The proposed setbacks will, for the most part, provide for privacy. Privacy control devices will be considered at the future detailed DA stage.
Insufficient Setbacks	The proposed setbacks are consistent with the draft DCP.
Overshadowing	For the reasons outlined in this report, the proposal is not considered to result in unacceptable overshadowing.
Excessive Noise (Child Care Centre)	The proposal includes an acoustic report which outlines measures which will ensure acceptable protection of acoustic amenity for adjoining properties. Details will be provided at future detailed DA stage.
Construction impacts (noise, traffic/parking, dust/pollution, vibration and building damage, length of build)	The subject application includes no works. Construction impacts will be considered at future detailed DA stage.
Loss of vegetation, wildlife habitat	The footprint requires the removal of vegetation. A condition is included requiring that some vegetation be retained or relocated. A condition is included requiring replacement planting. Details will be provided at future detailed DA stage.
Loss of on-street parking	The applicant has demonstrated that the proposal can achieve the minimum parking requirements. Details will be provided at future detailed DA stage.
Requires road widening	Council's Traffic and Transport team do not consider road widening to be necessary at this time but acknowledge a no stopping requirement will be required to the front of the site.
Increase in crime associated with affordable housing	This is not a valid planning consideration.
Risk to children from affordable housing.	The applicant has demonstrated that the child care and residential uses can be adequately separated. A condition is included requiring privacy screening between the residential and child care uses. Details will be provided at future detailed DA stage.
Loss of air flow.	The proposal is sufficiently separated from adjoining properties so as to maintain air flow.

15. Public interest

Subject to implementation of conditions of consent outlined in the recommendation below, no circumstances have been identified to indicate this proposal would be contrary to the public interest.

16. Disclosure of Political Donations and Gifts

No disclosures of any political donations or gifts have been declared by the applicant or any organisation / persons that have made submissions in respect to the proposed development.

17. Developer Contributions

Section 7.12 'Fixed Development Consent Levies' of the Environmental Planning and Assessment Act 1979 allows Council to collect monetary contributions from developers towards the provision, extension or augmentation of public amenities or public services in accordance with a contributions plan. The Parramatta Development Contributions Plan (Amendment No. 5) requires the payment of a levy equal to 1% of the cost of a development. A detailed Cost Estimate was provided outlining the development cost to be \$9,553,015.00. As such, a monetary contribution of \$1,666,500 is anticipated. However, the subject concept plan application includes approval for no works and as such the contribution will only be levied at the future detailed development application stage.

As outlined in Section 7.8 above, Part 8 'Intensive Urban Development Areas' of the PLEP also requires provision of contributions for state infrastructure. The applicant will be required to demonstrate satisfactory arrangements are in place with the Department of Planning, Industry and Environment prior to determination of the future detailed DA.

18. Summary and Conclusion

The application has been assessed against sections 4.15 and 4.22 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

Having regard to the assessment of the proposal from a merit perspective, Council officers are satisfied that the concept is appropriately refined to ensure acceptable outcomes can be accommodated at future detailed DA stage.

It is considered that the concept successfully minimises adverse impacts on the amenity of neighbouring properties and does not compromise the redevelopment of adjoining sites.

The height non-compliance is considered to be acceptable as it is necessary to address site-specific constraints and results in a preferable urban design outcome in comparison to a height compliant scheme. Council's Urban Design team and Design Excellence Advisory Panel support the design of the building.

Hence the development, irrespective of the departures noted above, is consistent with the objectives of the relevant planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land.

The proposed development is located within a locality earmarked for high density residential redevelopment. The proposal would provide additional affordable housing and child care.

The proposal is considered to adequately respond to the site constraints subject to conditions of consent.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 4.15 and 4.22 of the Environmental Planning and Assessment Act 1979 and approval is recommended subject to conditions.

19. Recommendation

- A. **That** the Sydney Central City Planning Panel approve the variation to the building height standard in Clause 4.3 of PLEP 2011, being satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development will be in the public interest

as it is consistent with the objectives of the particular standards and the objectives for development within the zone and the site-specific reasons discussed;

- B. **That** the Sydney Central City Planning Panel as the consent authority grant Consent to Development Application No. DA/596/2020 for a mixed-use concept development, incorporating centre-based child care facility and residential flat building at 9 – 11 Fig Tree Avenue, TELOPEA NSW 2117 (Lots 271 & 272 DP 36743) for a period of five (5) years from the date on the Notice of Determination subject to the conditions under Schedule 1 of Appendix 3.
- C. **That** submitters be notified of the decision.



Clause 4.6 Variation Request
Height of Buildings (CL 4.3 PLEP 2011)

9-11 Fig Tree Avenue, Telopea

June 2021

1. INTRODUCTION

This Clause 4.6 Exceptions to Development Standards request has been prepared by Bernard Moroz of BMA Urban on behalf of Fuse Architects. It is submitted in support of a Development Application (DA) for the redevelopment of the site at 9-11 Fig Street Avenue, Telopea. Specifically, the proposed development seeks consent for the redevelopment of the site for the purposes of “**residential flat building**” atop a “**childcare centre**”.

This request seeks approval to vary the height of buildings development standard in clause 4.3 of the PLEP 2011. For the avoidance of doubt, the development standard is not specifically excluded from the operation of Clause 4.6 of PLEP 2011. Importantly, this exception to a development standard request only takes into consideration the extent of building height breach not captured by way of Clause 6.16 (3) of PLEP 2011 which itself offers a height dispensation for Key Sites within the Telopea Precinct with regards to the provision of an open roof top. The information relied upon in the preparation of this request demonstrates that the development adheres to the 6.16 (3) (a)-(c) requirements and therefore, is not specifically considered in terms of the drafting of this variation request. This request solely considers the height breach of the development that falls outside of that captured by 6.16 (3) of PLEP 2011. In this regard, any reference to the resulting breach generated by the open rooftop is omitted from this request.

Clause 4.3 prescribes a numerical building height limit of 22m over the subject site. The proposed building height departs from this standard as demonstrated in **Part 2** of this variation request.

Clause 4.6 of the *Parramatta Local Environmental Plan 2011* (PLEP 2011) enables consent for development to be granted even though it contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

As the following request demonstrates, flexibility may be afforded by Clause 4.6 because compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard. This request also demonstrates that the proposal will be in the public interest, as the proposed development will be consistent with the objectives of the development standard and the zoning of the site.

The following sections of the report provide an assessment of the request to vary the development standards relating to “**height of buildings**” in accordance with Clause 4.6 of the *Parramatta Local Environmental Plan 2011* ('PLEP 2011').

Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgments issued by the Land and Environment Court. The *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 court judgment is the most relevant of recent case law.

Chief Justice Preston of the Land and Environment Court confirmed (in the above judgment):

The consent authority must, primarily, be satisfied the applicant's written request adequately addresses the 'unreasonable or unnecessary' and 'sufficient environmental planning grounds' tests:

“that the applicant's written request ... 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 ... and, secondly, that

there are sufficient environmental planning grounds to justify contravening the development standard ...” [15]

On the ‘Five Part Test’ established under *Wehbe v Pittwater Council* [2007] NSWLEC 827:

“The 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. It may be sufficient to establish only one way...” [22]

That, in establishing ‘sufficient environmental planning grounds’, the focus must be on the contravention and not the development as a whole:

“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” [26]

That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

“Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard will have a better environmental planning outcome than a development that complies with the development standard.” [88]

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

In accordance with the PLEP 2011 requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Part 2**);
- identifies the variation sought (**Part 2**);
- Summarises relevant case law (**Part 3**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Part 4**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Part 4**);
- demonstrates that the proposed variation is 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 (**Part 4**);
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Part 4**); and
- Provides a conclusion summarising the preceding parts (**Part 5**).

This Clause 4.6 Exception to a Development Standard should be read in conjunction with the architectural plan concept detail prepared by Fuse Architects.

2. VARIAION OF HEIGHT OF BUILDING'S STANDARD

As identified in **Table 1**, PLEP 2011 prescribes a maximum building height for the subject site of 22m.

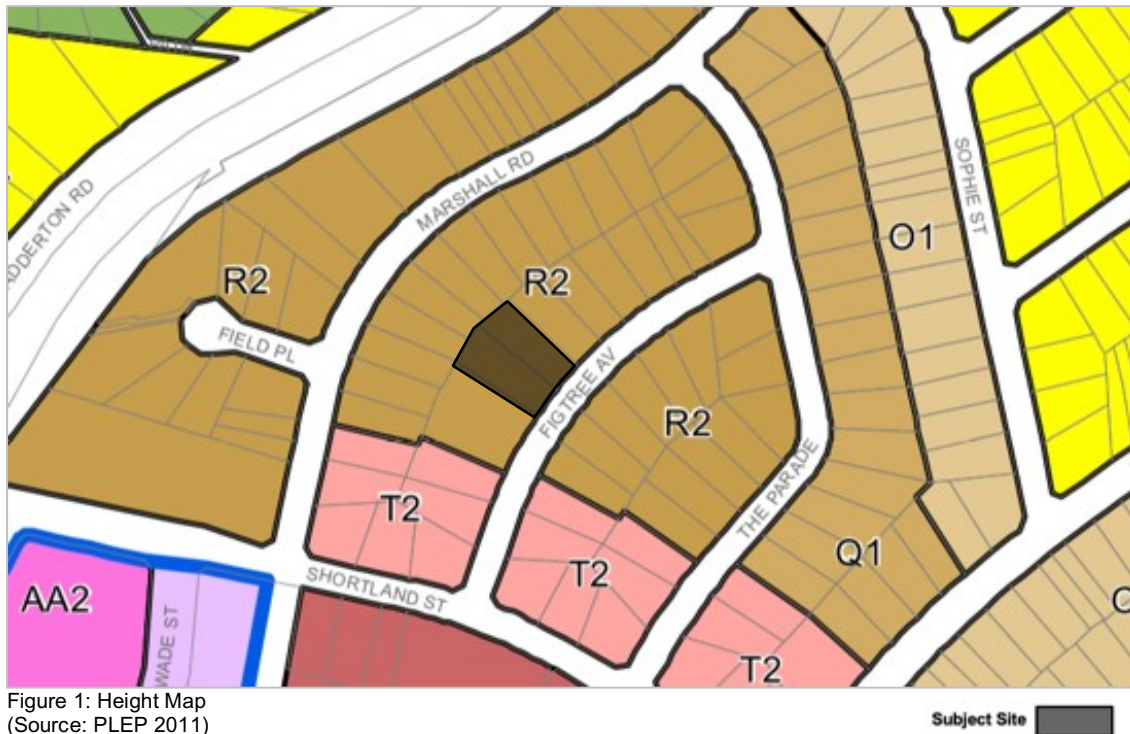


Figure 1: Height Map
(Source: PLEP 2011)

The proposed height breach ranges from 200mm to 444mm. The extent of contravention from the prescribed height standard is best represented on the below reproduced height overlay (**Figure 2**). For ease of clarity, the extent of breach is annotated in **red** and directed to with a **blue** arrow.

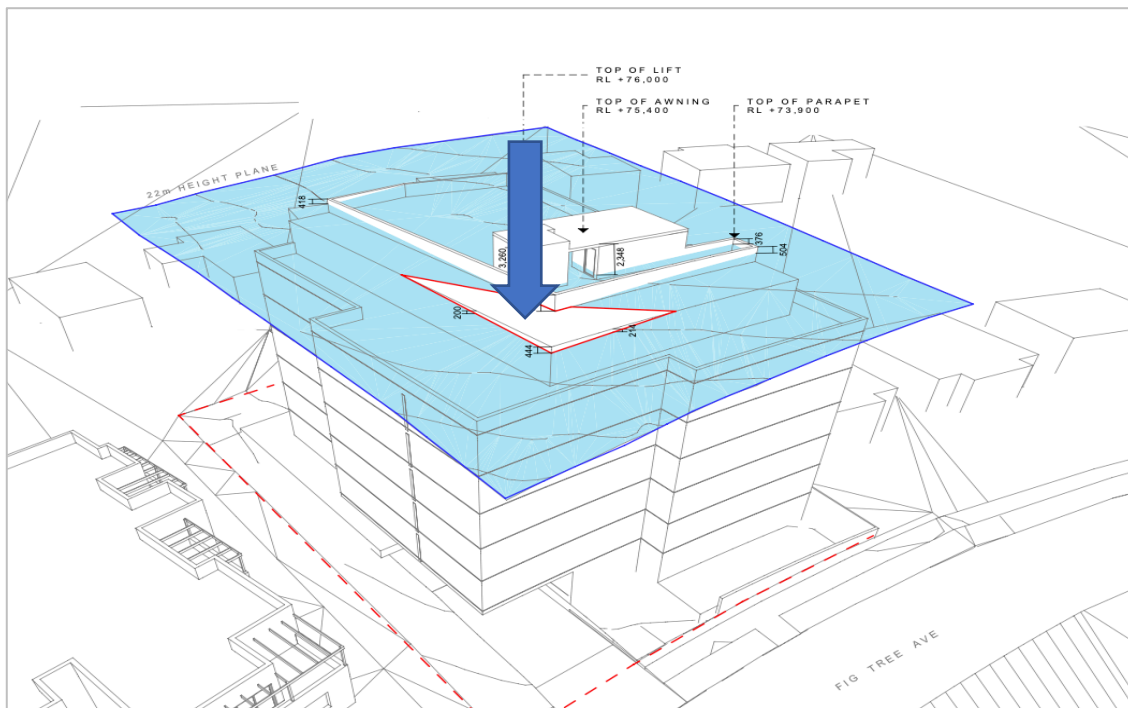


Figure 2: Height Breach Envelope
Source: Fuse Architects

3. NSW LAND AND ENVIRONMENT COURT: CASE LAW

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.

As briefly summarised in Part 1 of this Objection, the correct approach to preparing and dealing with a request under Clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, duplicated for ease of consent authority reference as follows:

[13] *The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*

[14] *The first precondition, in cl 4.6(4)(a), is that the consent authority, or 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). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].*

[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), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.*

[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: *Wehbe v Pittwater Council* at [42] and [43].*

[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: *Wehbe v Pittwater Council* at [45].*

[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: *Wehbe v Pittwater Council* at [46].*

[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: *Wehbe v Pittwater Council* at [47].

[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: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

[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. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

[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: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

[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: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. 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: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

[25] The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), 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). 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, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].

[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. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).

[27] The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. 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. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

[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)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

[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. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41].

4. ASSESSMENT OF THE CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to building height in accordance with clause 4.3 of PLEP 2011. Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court. The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the PLEP 2011.

4.1 CONSIDERATION

4.1.1 Clause 4.6 (3)(a) – Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

The common way in which an Applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary is detailed in the ‘five-part test’ outlined in the *Wehbe v Pittwater* [2007] NSWLEC 827. These tests and case law are outlined in **Section 3** of this request.

Preston CJ identifies 5 options in *Wehbe v Pittwater* [2007] NSW LEC 827 which can be used to analyse whether the application of the standard to a particular building is unreasonable or unnecessary in the circumstances of the case.

Preston CJ at [16] states as follows:

“As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

In *Wehbe*, Preston CJ identified five ways in which it could be shown that application of a development standard was unreasonable or unnecessary. However, His Honour said that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

The five methods outlined in *Wehbe* are:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and

compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the **First Method**. **Methods 2 through to and including 5** are not relied upon in the preparation of this variation request.

The objectives of the development standard are achieved notwithstanding the noncompliance (First Method).

The objectives of height of building standard are as follows:

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

The underlying purpose of this objective is to ensure that any future development is designed in a manner whereby any resulting building height will appropriately respond to both the existing and future context in a controlled manner. The subject proposal demonstrates that the building will visually adapt with that of neighbouring building's both current and future and that the resulting height breach has been appropriately integrated into the built form envelope reducing its visual prominence from both neighbouring properties and the public domain. Importantly, the subject site is located within a pronounced high density setting and therefore, is not located amidst any transitional and or varying land uses.

Due to the minor non-compliance being limited to the southern section of the upper most residential floor level, the development is not definably inconsistent with that anticipated to result by way of a compliant scheme. Furthermore, the recessive nature of the height breach, site slope and aspect of the site enable the proposed building to visually integrate with that of setting both current and future serving as an affirmation of the objective and not that of a building that abandons height controls.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

Visual Impact

The visual bulk of the non-compliant height elements are not significant because:

- The development presents as a six storey base with recessed uppermost level whereby the breaching height element is integrated into the overall design of the building and is of a form and materiality that does not create any unwarranted visual impact;
- **Figures 3 through to 9 below** make reference to the view line interpretation points, while demonstrating the extent of additional built form volume as perceived from the ground level adjacent to 5-7 Fig Tree Avenue to the south-west of the site and from across Fig Tree Avenue to the southeast of the site. For ease of clarity, the additional perceptible volume is annotated in **red** and directed to with a **blue** arrow; and
- This analysis demonstrates that the breach will '**not**' be identifiable at ground level adjacent to 5-7 Fig Tree Avenue. The breaching element will be marginally perceptible from along Fig Tree Avenue across from the site; however, this degree of perception given the extent of breach and its visually recessive nature, will not be interpreted as an unreasonable contribution to built form scale and or volume.

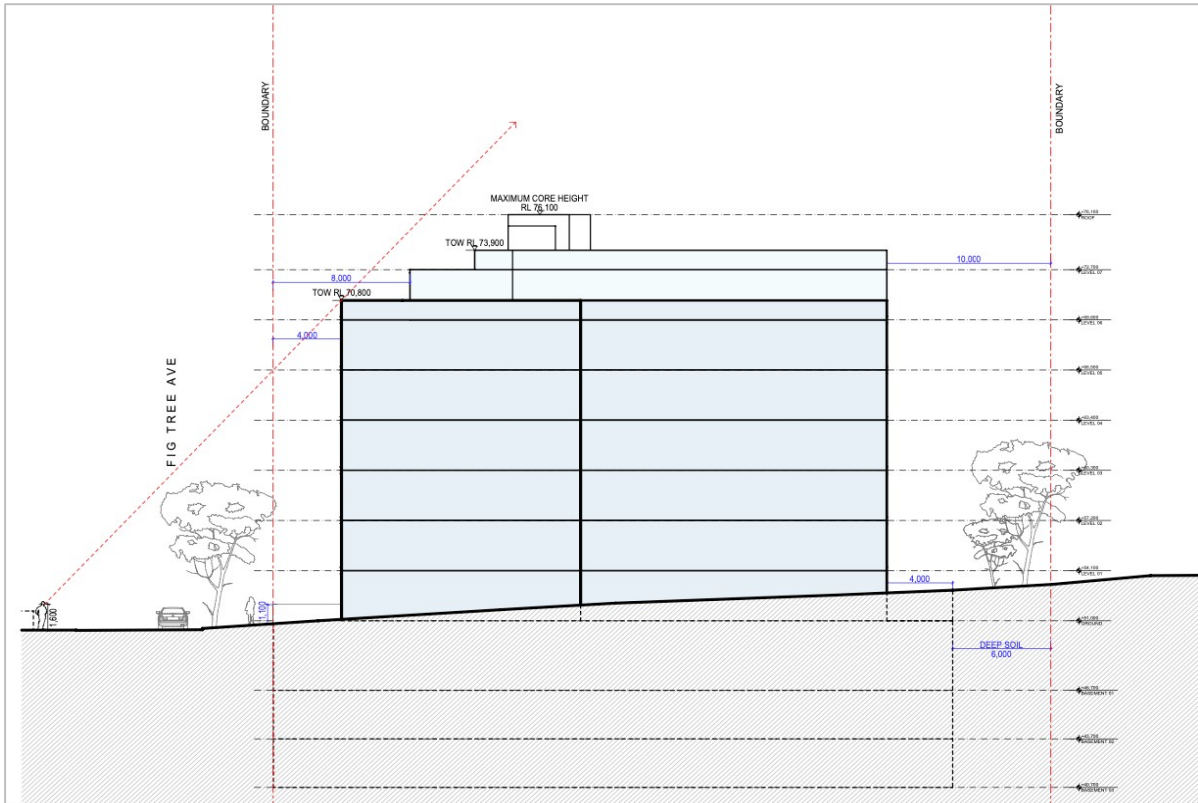


Figure 3: View Line Interpretation Point (Across Fig Tree Avenue)
Source: Fuse Architects

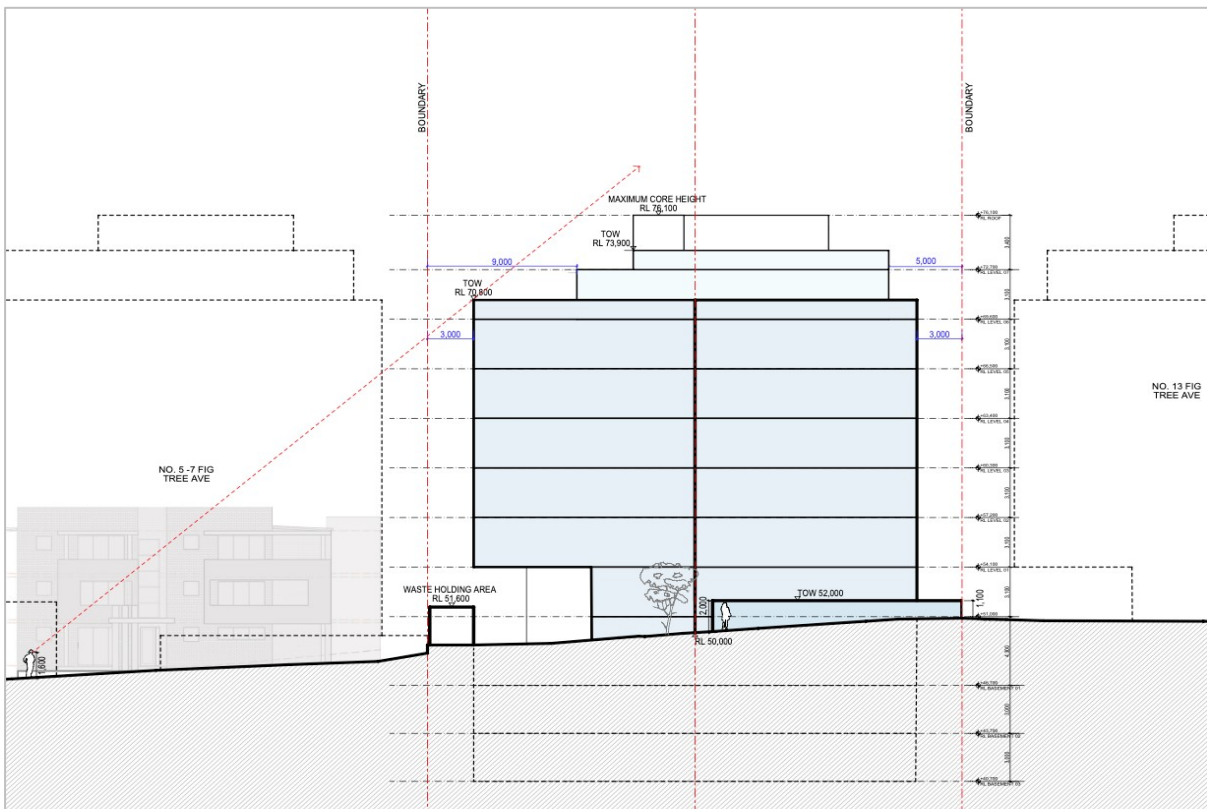


Figure 4: View Line Interpretation Point (5-7 Fig Tree Avenue)
Source: Fuse Architects

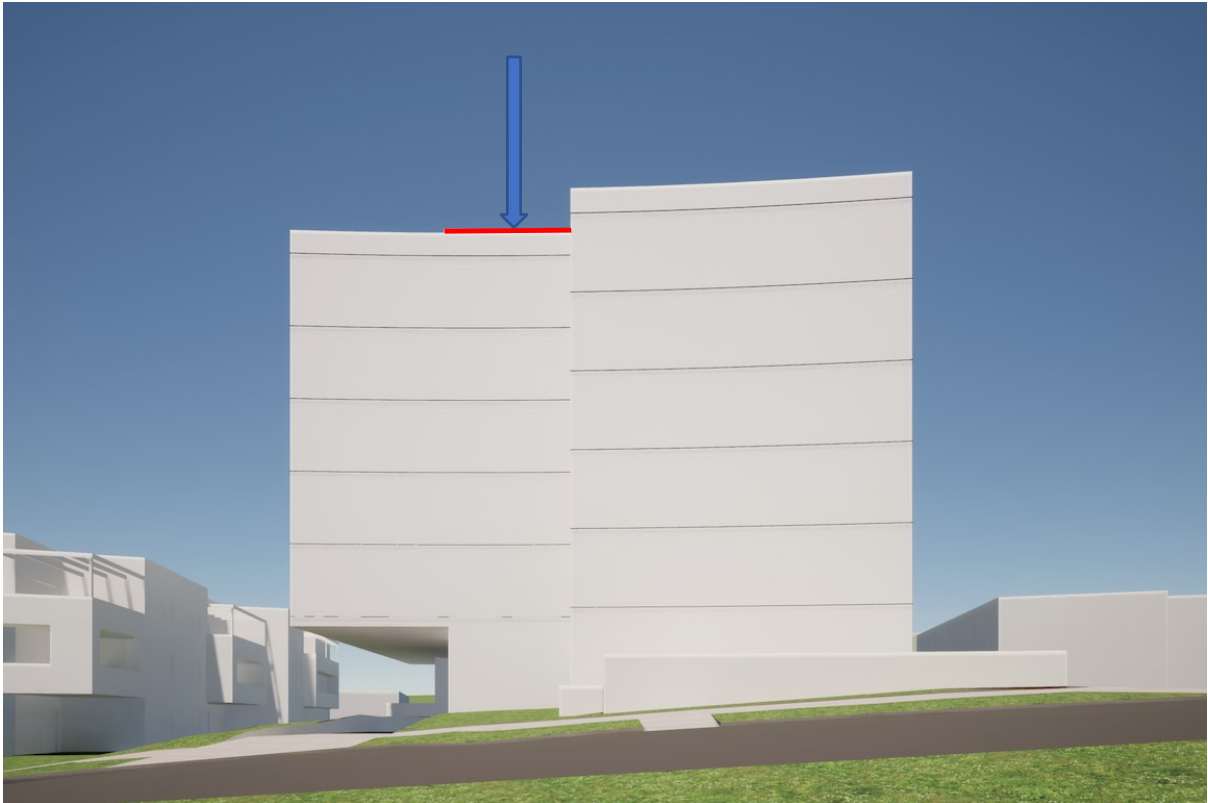


Figure 5: Extent of additional increase in building bulk from across the site along Fig Tree Avenue (View 1) Source: Fuse Architects

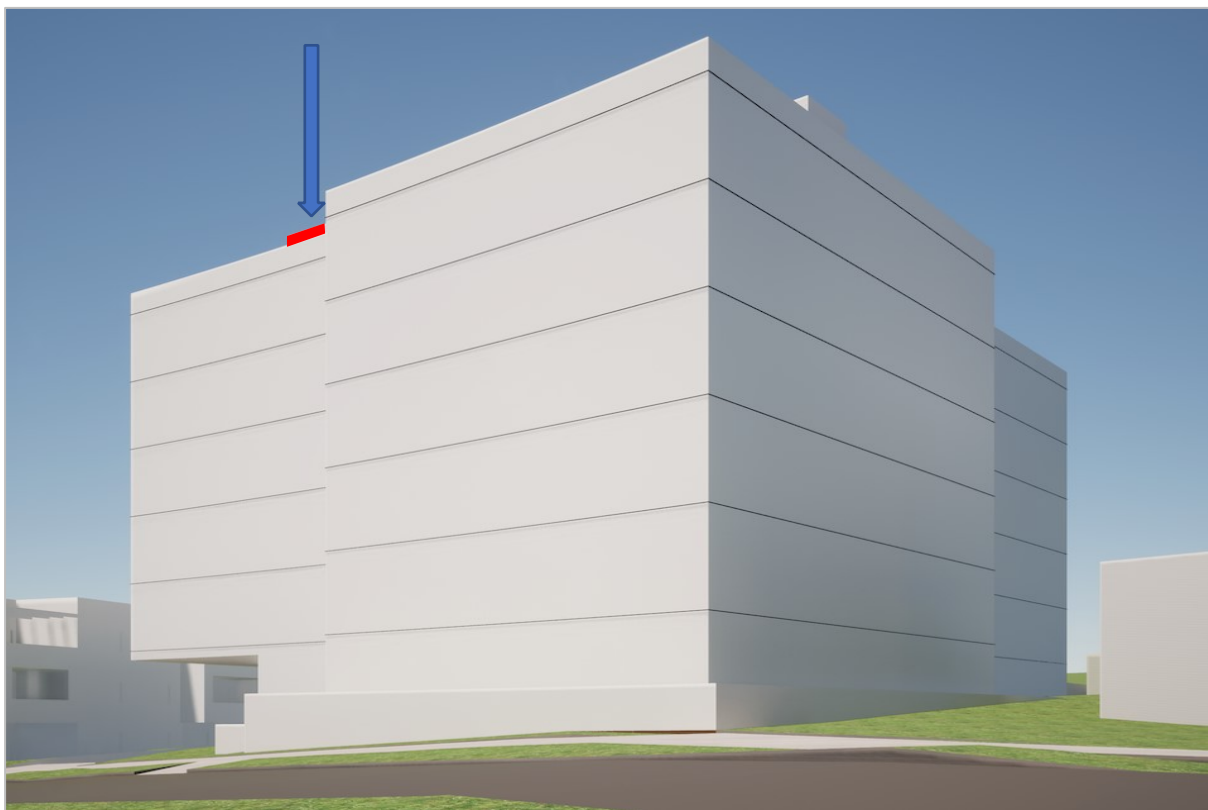


Figure 6: Extent of additional increase in building bulk from across the site along Fig Tree Avenue (View 2) Source: Fuse Architects

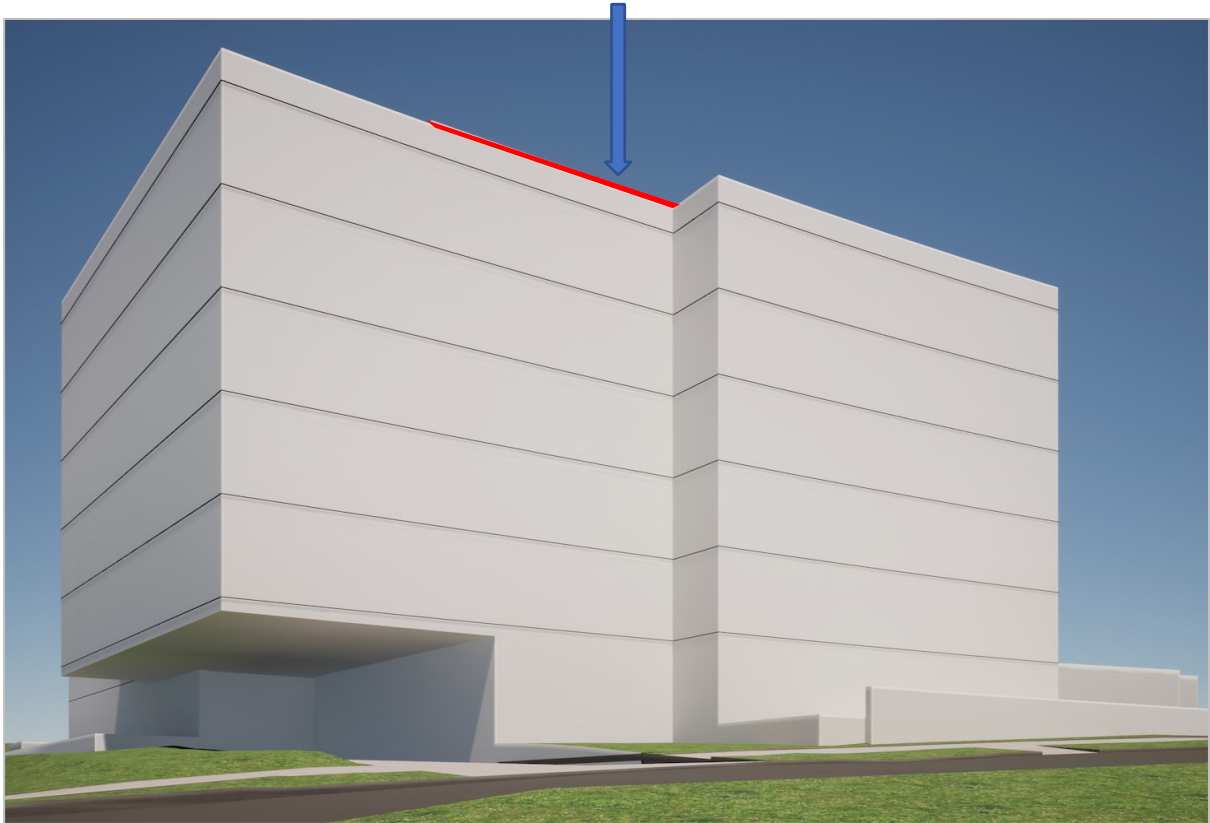


Figure 7: Extent of additional increase in building bulk from across the site along Fig Tree Avenue (View 3) Source: Fuse Architects



Figure 8: Extent of additional increase in building bulk from ground level adjacent to 5-7 Fig Tree Avenue (View 1) Source: Fuse Architects



Figure 9: Extent of additional increase in building bulk from ground level adjacent to 5-7 Fig Tree Avenue (View 2)

Source: Fuse Architects

Disruption of Views

The siting, scale and relationship the breaching element will have with neighbouring properties both current and likely to emerge upon redevelopment of older housing stock, will have no definable bearing on the extent or quality of views capable of being both retained and or attained.

Loss of Privacy

The extent, nature and siting of the breaching element's is such that no adverse privacy outcomes will result. The breaching element which has been generously recessed into the built form, in no way affords the ability for any additional adverse level of overlooking to occur into neighbouring properties and vice versa.

Solar access to existing development

Comparative shadow diagrams which form part of the architectural plan detail set prepared by Fuse Architects **Figures 10 through to and including 13** have been provided illustrating the extent of additional overshadowing impact on June 21 (annotated in red) resulting from the height variation. This analysis demonstrates that the height non-compliance will only be discernible at 1pm-3pm on June 21. At 1pm the additional shadow cast by the non-compliant building element falls over the existing driveway ancillary to the dwelling located at No. 8 Fig Tree Avenue. At 2pm, this additional diminutive shadow is cast over both the roof area and rear yard area of No. 8 Fig Tree Avenue. Of note, the rear yard area of No. 8 Fig Tree Avenue is currently heavily vegetated and therefore, notwithstanding the already very minor nature of the breach, will ensure the extent of additional shadowing impact will not be to any notable degree discernible. At 3pm, the additional shadow cast by the breach will fall over the heavily vegetated interface between No's 5 and 7 The Parade. Of importance, the resulting increase in shadowing cast by the breach will have no bearing on the neighbouring building's/dwelling/s fenestrated components continuing to received unimpeded solar access.



Figure 10: 9am and 10am plan view shadows
Source: Fuse Architects

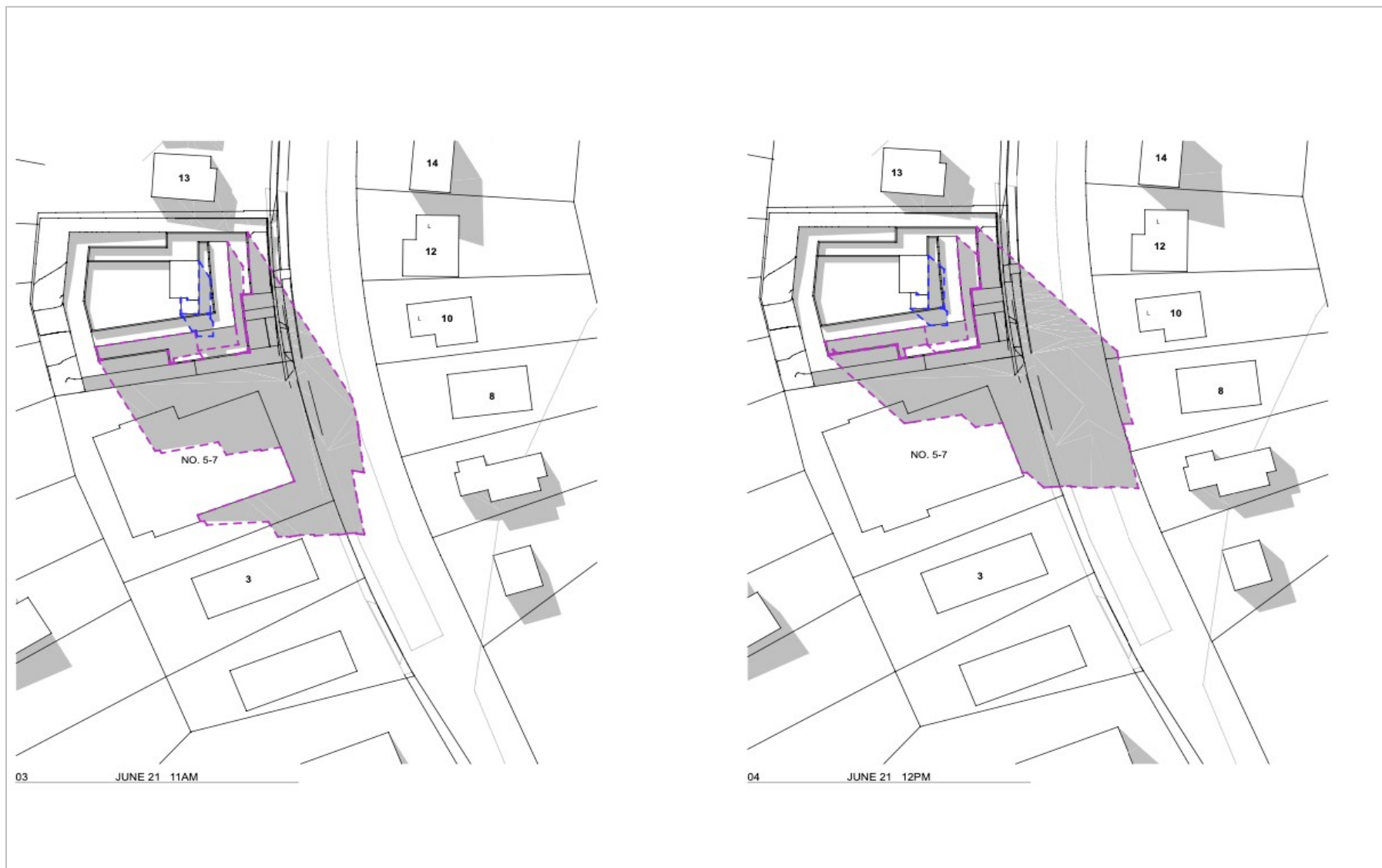


Figure 11: 11am and 12pm plan view shadows
Source: Fuse Architects



Figure 12: 1pm and 2pm plan view shadows
Source: Fuse Architects

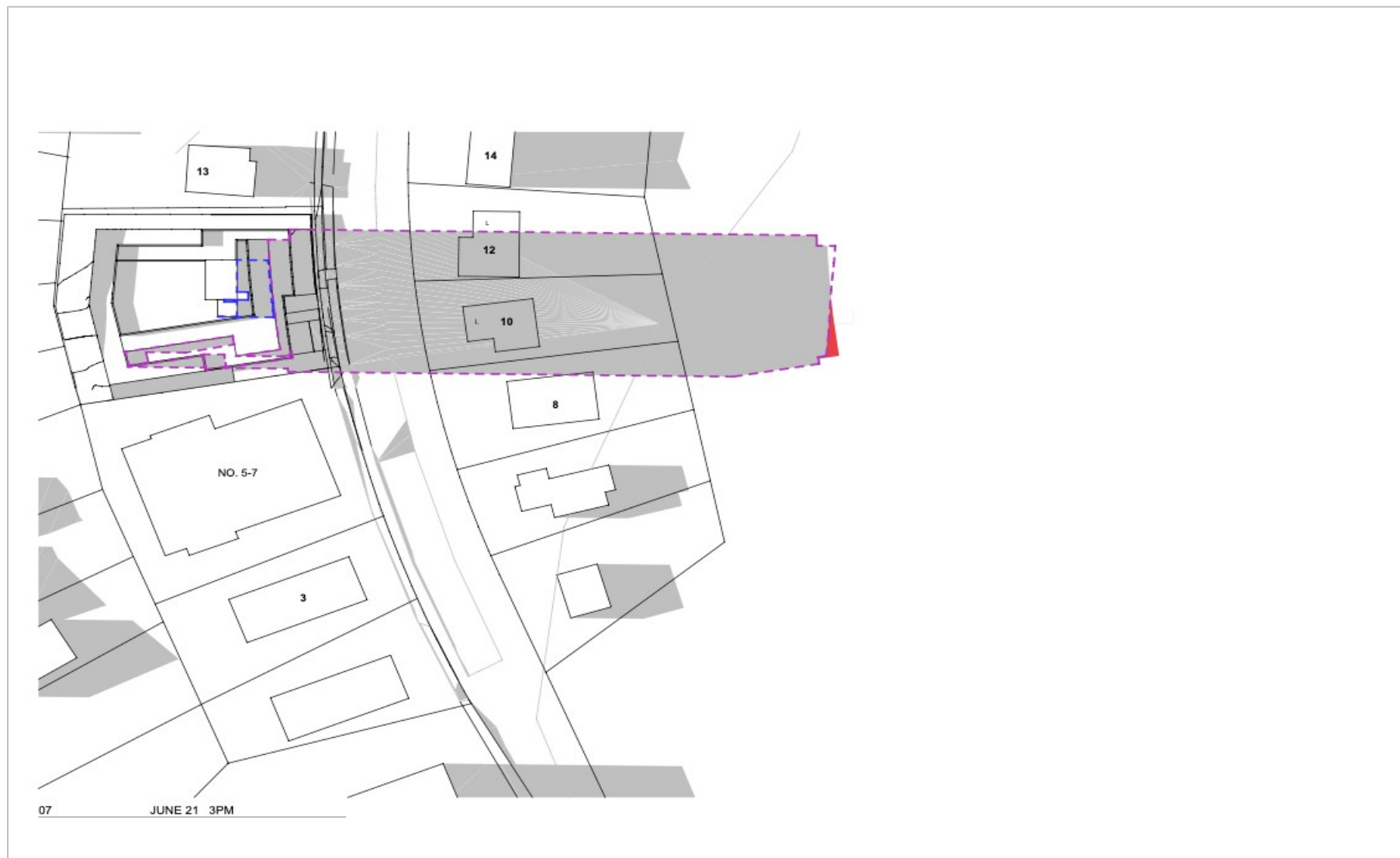


Figure 13: 3pm plan view shadow
Source: Fuse Architects

(c) to require the height of future buildings to have regard to heritage sites and their settings,

The proposed development, more specifically the breach, has no direct relationship with an item of heritage significance or its setting.

(d) to ensure the preservation of historic views,

Given the development's setting, this objective is not relevant to the proposed development.

(e) to reinforce and respect the existing character and scale of low density residential areas,

The subject site is located in an R4 High Density Residential setting and bears no direct relationship with low density residential lands. In this regard, this objective is not relevant to the proposed development.

(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.

The subject site is not located in a commercial setting. In this regard, this objective is not relevant to the proposed development.

4.1.2 Clause 4.6 (3)(b) – Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

Clause 4.6(3)(b) of the PLEP 2011, requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

"That there are sufficient environmental planning grounds to justify contravening the development standard".

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as summarised in (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118).

The proposed development is supportable on environmental planning grounds for the following reasons:

- The proposal (notwithstanding the LEP contravention) is consistent with the objectives of the development standard as provided in clause 4.3 of the PLEP 2011.
- The proposal is compliant with the maximum FSR that applies to the land. Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA).
- The shadow diagrams that form part of this variation request demonstrate that the area of height variation will not result in an unreasonable increase to the extent of overshadowing impact on either neighbouring properties or public domain.
- The building form has been designed in response to Parramatta Council's Draft DCP controls applicable to the precinct in terms of building form, siting and setbacks.

- The slope of the site being a maximum of 4.2m (approx) from the northern corner of the site down towards the southern corner along the Fig Tree Avenue street edge has been a determinative factor with regards to the extent of height variation observed across the building.
- The perception of building height, most notably where it breaches the standard, has been formed in a manner that continues to enable the visual identification of a built form that remains appropriate for the site and commensurate with both existing and envisaged development likely to occur on neighbouring undeveloped sites. At high level, the proposed building successfully mitigates environmental impacts such as overshadowing, privacy and visual impact.

The Objects of the Act under S1.3 are also relevant to whether grounds exist to warrant a variation. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **the table below** we consider whether the proposed development is consistent with each object.

The objects of this Act and how this proposal responds to the object are as follows:

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	This object is not relevant to this application.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal will facilitate an ecologically sustainable development given that no negative impact on environmental and social considerations will arise. This in turn will serve to offer the ongoing sustainment of the economic health of the area.
(c) to promote the orderly and economic use and development of land,	The proposed development will promote the orderly and economic use of the land by way of providing a land use intensity consistent with that envisaged by Council.
(d) to promote the delivery and maintenance of affordable housing,	This proposed development seeks to introduce a number of affordable dwelling's to the development.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Given the nature and character of the urban setting the proposed development is located within, no impact on threatened species or ecological communities is likely to result.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	This object is not relevant to this development
(g) to promote good design and amenity of the built environment,	The proposed development promotes good design in that it serves to provide a built form and massing arrangement that serves as a positive influence on the built form environment both existing and likely to emerge upon the redevelopment of building stock.

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	Nothing will preclude the proposed development from having the ability to comply with all relevant BCA codes and standards.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to this development
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development will be publicly notified in accordance with Council's DCP requirements.

Based on the above, the consent authority can be satisfied that there the proposed development remains consistent with the Objects of the Act despite the height non-compliance.

4.1.3. Clause 4.6 (4)(a)(i) - Has the Written Request adequately Addressed the Matters in Sub-Clause (3)?

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

4.1.4. Clause 4.6 (4)(a)(ii) - Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

Clause 4.6(4)(a)(ii) provides that development consent must not be granted for development that contravenes a development standard unless 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.

In Part 4.1.1 of this request, it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal, inclusive of the non-compliance, is also consistent with the objectives of the R4 High Density Zone as detailed overpage:

Zone R4 – High Density Zone

Objective	Comment
<ul style="list-style-type: none">• To provide for the housing needs of the community within a high density residential environment.	The proposal seeks to provide a development typology that will facilitate the provision of housing in a high density residential setting.
<ul style="list-style-type: none">• To provide a variety of housing types within a high density residential environment.	This proposal seeks to provide a number of apartment layouts and configurations capable of catering to a broad population base.
<ul style="list-style-type: none">• To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal seeks the provision of a childcare centre which will form part of the development. This centre may be utilised by future building occupants.
<ul style="list-style-type: none">• To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.	The subject site is located in a reasonably serviced area in terms of transport nodes and services; however, is located in proximity to the Parramatta Centre which provides for excellent levels of employment opportunity.
<ul style="list-style-type: none">• To provide opportunities for people to carry out a reasonable range of activities from their homes if such activities will not adversely affect the amenity of the neighbourhood.	The indicative apartment layouts indicate that there is ample opportunity for future residents to carry out a range of activities from their respective dwelling's.

The objectives of the zones as demonstrated above, as well as the objectives for the standard, have been adequately satisfied. Therefore, the proposal is considered to be in the public interest.

4.1.5. Clause 4.6(5)(a) – Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the height of building's development standard will not raise any matter of significance for State or regional environmental planning.

4.1.6. Clause 4.6(5)(b) – Is There a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the building height development standard and the land use zoning objectives. As such, there is no public benefit in maintaining the development standard given the substantial activation throughout the development.

4.1.7. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There are no known additional matters that need to be considered within the assessment of the clause 4.6 Request and prior to granting concurrence, should it be required.

5. CONCLUSION

This written request has been prepared in relation to the proposed variation to a development standard contained in Clause 4.3 of PLEP 2011. The request explains that, despite the proposed variation, the development satisfies the objectives of the standard and the objectives of the *High Density R4 Zoning (Wehbe-way 1)*.

The request also explains that it is unreasonable or unnecessary to require strict compliance with development standard in circumstances where there are no significant/unreasonable adverse impacts from the variation and important planning goals are better achieved by allowing the variation. In addition, the request demonstrates that there are sufficient site specific environmental planning grounds to justify the variation, and therefore the proposal is considered to be in the public interest.

APPENDIX 2 – Design Excellence Advisory Panel Comments 15/07/2021

DEAP Comment	Officer Response
1. The panel notes the application has progressed considerably as the applicant has worked with the Council Urban design team.	Noted.
2. The panel expressed concern that the application may be an overdevelopment of the site as to the mix of uses proposed for the site being: affordable housing, child care and residential apartments along with ARH bonus.	The mix of uses proposed are all permissible, and for the reasons outlined in the report, the proposal satisfactorily complies with all relevant planning objectives and controls. While there are some minor breaches of development standards and controls, they are considered to be acceptable in the circumstances of the site constraints and the provision of affordable housing and child care facilities.
3. The panel seeks further clarification as to how this will potentially impact the amenity of people living above. i. Noise generation management and acoustic control advice being sought by applicants as part of design development.	The applicant has provided a draft acoustic report which demonstrates that the future detailed design will be able to comply with relevant acoustic privacy requirements. Detailed acoustic privacy design will be assessed at future detailed DA stage.
4. The panel noted that a rear setback of 10m with deep soil is being sought by a council initiative for contiguous canopy tree planting at the centre of the block as indicated in the DCP. Establishing council's desired future character for the local area and the visual catchment is key - especially as this is the first application on the block.	For the reasons outlined in the report, the non-compliance with the rear setback control at the two lower basement levels is considered to be acceptable in this instance.
5. The panel seeks further justification for the proposed 6m rear basement setback. The panel is concerned as to establishing a precedent and erosion of a key DCP initiative. The DCP gives concessions towards the front of the site for basements, and reduced side setbacks for a portion of the building to achieve the contiguous deep soil zones desired at the rear setback.	
6. The panel request that the applicant reconsider the amount of tree removal. There is an opportunity to identifying which trees as important site assets.	The applicant has demonstrated that the envelope would result in removal of trees that have a low retention value and relocation of those that have a high retention value. The applicant has agreed to retention of the only significant tree on site (Tree #21). A condition is included to this effect.
7. Rear retaining wall queried from an operational point of view to managing child care supervision.	The Child Care Planning Guideline does not provide guidance specifically in relation to retaining walls. Control C17 requires all areas to be level or ramped, which the reference scheme demonstrates can be achieved. Regulation 115 of the Education and Care Services Regulations requires centres be designed in such a way as to facilitate supervision. The applicant will be required to obtain separate approval under such legislation.
8. The concept for the split roof communal open space is supported by the panel. Further consideration will need to be given to its utility and its amenity.	Noted. Further consideration can be given at future detailed DA stage.

9. The panel questioned the length of the driveway and requested the applicant develop further circulation options for the basement. These options should also achieve a 10-metre setback of the basements rear from the rear boundary.	The applicant submitted studies demonstrating that regardless of the driveway length, it would be necessary to build a fourth basement level to comply with the minimum parking requirements. As outlined in this report, it is not considered appropriate to require such a solution.
10. The panel requested that the undercroft and cantilevered building elements need to be incorporated into the overall built form of the building.	A condition of consent is included to this effect.
11. The panel noted that the child care entry, pram parking spaces and/or pedestrian movement next to vehicle driveway is a concern.	A condition of consent is included requiring a minimum separation between the driveway and the pedestrian entry.
12. The panel also noted the proposal probably does optimise solar access to the residential units given the prescribed envelope and orientation of the site. i. The applicant will need to demonstrate that solar access is optimised.	Noted. Further optimisation of solar access will occur at future detailed DA stage.
13. The panel also noted that the proposed concept has reduced side setbacks resulting in a development that will be in part reliant on its amenity from the adjoining sites along its side boundaries, particularly on the northern side. i. Consequently, privacy impacts will need to be considered and managed as per part 3F of the ADG.	The proposal complies with the draft side setback controls. In this instance the Panel is referring to the privacy separation requirements in the ADG. Further optimisation of privacy will occur at future detailed DA stage.
14. The panel requested further consideration is given to street frontage design, waste management and storage strategy.	Noted. Further optimisation of street frontage design, waste management and storage will occur at future detailed DA stage.