

Attachment D

Clause 4.6 - Ceiling Heights

CLAUSE 4.6 VARIATION REQUEST: CEILING HEIGHTS

SITE 18, GREEN SQUARE TOWN CENTRE

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1. INTRODUCTION

This clause 4.6 variation request has been prepared by Urbis on behalf of Mirvac Green Square Pty Ltd and Landcom, the applicants for a Development Application (DA) at 960A Bourke Street, Zetland, also referred to as Site 18, Green Square Town Centre (GSTC).

The DA seeks approval for:

- Construction and use of a 20 storey mixed use building comprising:
 - Ground (Level 1) and Level 2 retail uses;
 - 103 residential apartments over Levels 2-20;
 - Communal rooftop open space, and communal residential facilities on Level 2; and
- Construction of a three level common basement over Sites 7, 17 and 18, providing vehicular access, storage, building services and 62 car spaces associated with residential apartments in Site 18;
- Landscaping works within the site boundary adjacent to Neilson Plaza including tree planting and the provision of street furniture; and
- Associated site remediation works.

This request seeks to vary the **recommended minimum ceiling heights** specified in Part 4C of the Apartment Design Guide – deemed a development standard by Clause 30 of *State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development* (SEPP 65).

The variation request is made pursuant to clause 4.6 of the *Sydney Local Environmental Plan (Green Square Town Centre) 2013* (SLEP GSTC).

2. ASSESSMENT FRAMEWORK

2.1. CLAUSE 4.6 OF SYDNEY LEP (GSTC) 2013

Clause 4.6 of SLEP GSTC 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 are:

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

- a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the consent authority must be satisfied that 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, and the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- b) The public benefit of maintaining the development standard, and*
- c) Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

[Note: Concurrence is assumed pursuant to *Planning Circular No. PS 18-003 Variations to Development Standards* dated 21 February 2018].

This document forms a clause 4.6 written request to justify the contravention of the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide. The assessment of the proposed variation has been undertaken in accordance with the requirements of the SLEP GSTC, Clause 4.6 Exceptions to Development Standards.

2.2. 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.

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:

- [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]*.*

3. SITE AND LOCALITY

3.1. SITE DETAILS

The site is located at 960A Bourke Street, Zetland. The specific development parcel to which the DA relates is identified as Site 18 in the Green Square DCP. The DA also relates to below ground works on areas identified as Site 7 and Site 17, being adjacent to the north west (refer Figure 1). The site is legally described as Lot 6 DP1199427 and each development block has an area as follows:

- Site 18: 645m²
- Site 7(below ground only): 2,509m²
- Site 17 (below ground only): 1,179m²

The site is located to the north of the Neilson Square and east of the Civic Plaza; it is bounded by the Ebsworth Street, Barker Street, Paul Street and Neilson Square. Whilst the site is noted as having a small footprint, it will feature as a prominent building within the Town Centre, especially given its position adjoining the plaza and its visibility from the Drying Green and western view corridor from Joynton Avenue.

The site is located in a highly accessible area, within 200 metres of Green Square railway station. The Green Square Plaza will provide direct pedestrian and cycle connection between the site and the station. The Green Square Plaza has also been identified as a future light rail corridor providing additional future transport services to the GSTC. The site is also located in close proximity to the existing bus corridor of Botany Road providing a high number of services to the Sydney CBD and other surrounding locations.

Figure 1 – Aerial Photograph of the Subject Site



Source: Nearmap, Urbis

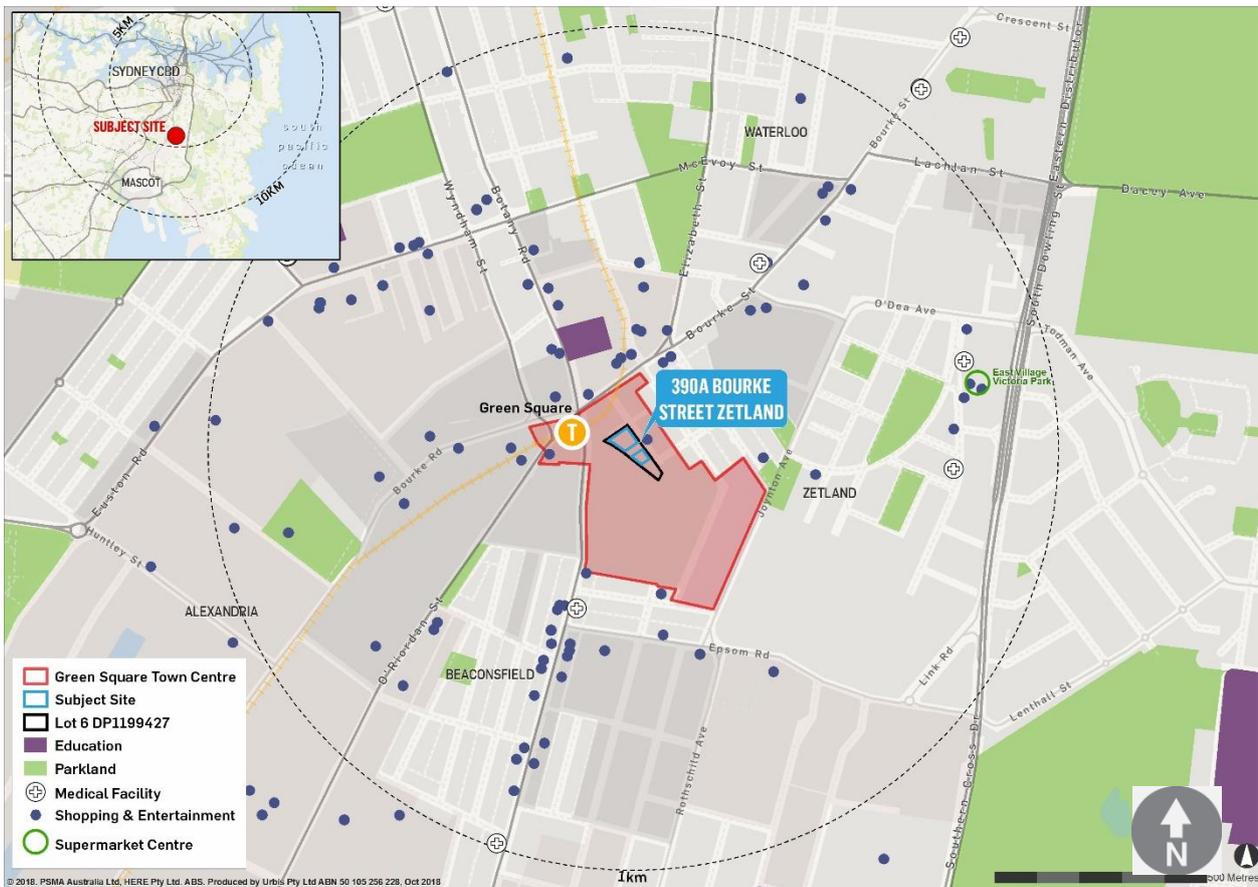
3.2. SURROUNDING CONTEXT

The Green Square Town Centre (GSTC) covers an area of 13.74ha and is located within the Green Square Urban Renewal Area, approximately 4.5km south of Central Sydney and north of Sydney Airport. The GSTC is one of the largest urban redevelopment projects in Australia and will be the residential, commercial, retail and cultural centre of the Green Square Urban Renewal Area. When it is complete, it will have the potential to accommodate approximately 5,850 residents and 9,300 workers, creating a new village hub including a range of open spaces including parks, plaza areas and community buildings.

GSTC will be a highly accessible place, providing good access to and from the centre, through the integration of built form and open space. Additionally, Green Square is well connected to the Greater Metropolitan Area of Sydney due to close proximity to Green Square Railway Station and Green Square Bus Interchange

The location of the site is indicated at Figure 2.

Figure 2 – Site Location Plan



Source: Urbis

3.3. PLANNING CONTEXT

A detailed description of the site planning context is provided in the Statement of Environmental Effects prepared by JBA (now Ethos Urban), accompanying the development application for the development of Site 18.

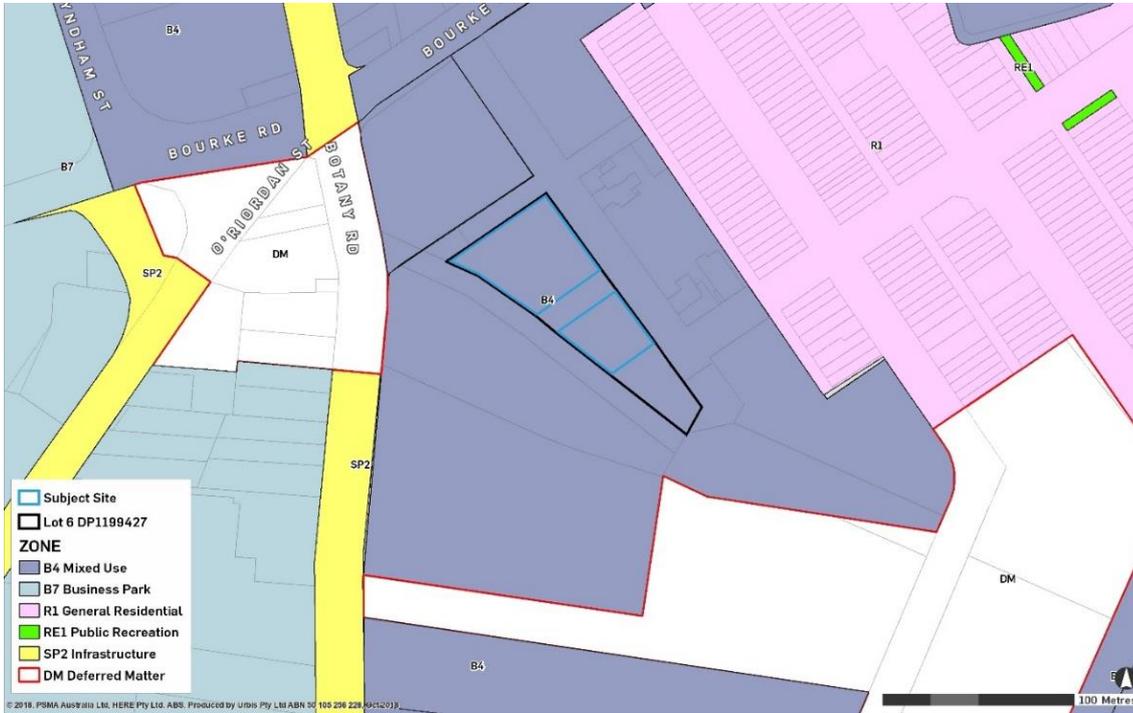
The subject site is zoned B4 Mixed Use (refer Figure 3), is subject to a maximum building height of RL83 (refer Figure 4).

Two development applications are currently under assessment by the City of Sydney over the subject lot:

- D/2017/503 proposes one mixed use tower on Site 18, remediation, bulk earthworks and provision of an integrated basement to service Site 7, Site 17 and Site 18; and
- D/2017/564 proposes two mixed use towers one on Site 7 and one on Site 17.

This clause 4.6 variation request accompanies a resubmission of the application D/2017/503.

Figure 3 – Extract from SLEP GSTC 2013 Zoning Map



Source: SLEP GSTC 2013

Figure 4 – Extract from SLEP GSTC Height of Buildings Map



Source: SLEP GSTC 2013

4. THE PROPOSED DEVELOPMENT

4.1. DEVELOPMENT OVERVIEW

This clause 4.6 variation request accompanies a DA seeking consent for a mixed use development on Site 18 GSTC comprised of:

- Construction and use of a 20 storey mixed use building comprising:
 - Ground (Level 1) and Level 2 retail uses;
 - 103 residential apartments over Levels 2-20; and
 - Communal rooftop open space, and communal residential facilities on Level 2;
- Construction of a three level common basement within Sites 7, 17 and 18, providing vehicular access, storage, building services and 62 car spaces in association with the residential development of Site 18;
- Landscaping works within the site boundary adjacent to Neilson Plaza including tree planting and the provision of street furniture; and
- Associated site remediation works.

The proposed development is detailed in the Architectural drawings prepared by Bates Smart and accompanying technical reports. A photomontage of the proposed development is shown at Figure 5.

Figure 5 – Photomontage – looking north-west from the Drying Green



Source: Bates Smart Design Report

4.2. DESIGN PRINCIPLES

Through the Competitive Design Alternatives Process (refer description in Statement of Environmental Effects) and the detailed design development, a number of specific design principles have informed the proposed development:

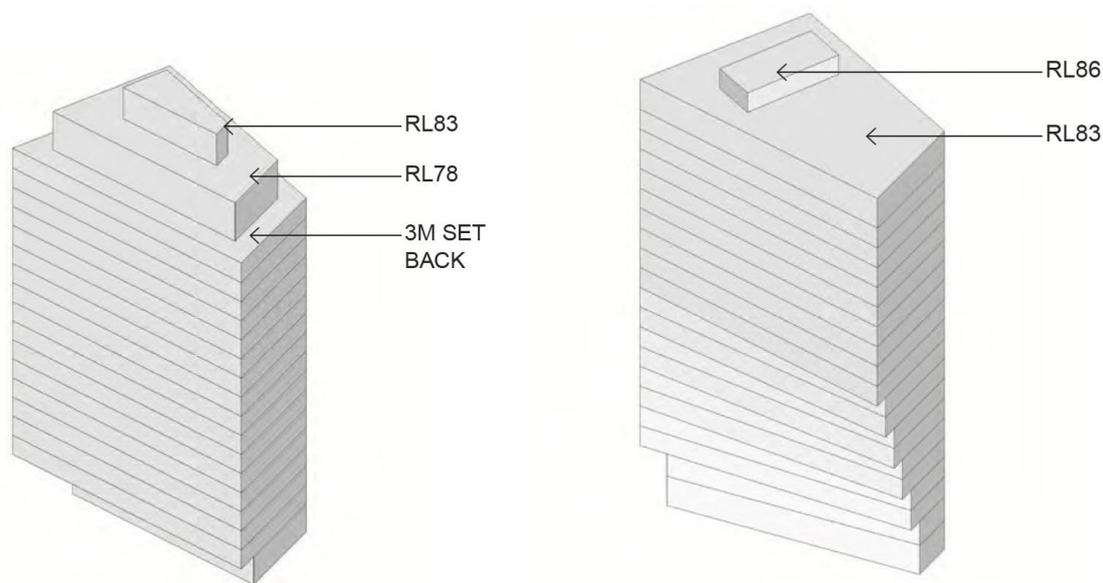
- Provide a distinctive sculptural form that reinforces the site's central location within the GSTC and positively contributes to the definition of the street edge
- Provide a design that creatively re-interprets the cantilevered building envelope into an integrated expression of structural and building form as encouraged through the Competitive Design Alternatives Process;
- Enhance the public domain by providing a tapered built form that opens the Neilson Square setback and reinforces the ground plan as an extension of the Square;
- Reinforce the open view corridor toward Civic Plaza through landscaping; and
- Provide residential accommodation that maximises amenity; balancing views and outlook, cross ventilation, sun shading and solar access.

4.3. BUILT FORM

The proposed built form is achieved through a transfer of building area from the lower portion of the building to the upper levels as shown in Figure 6. The ground floor plate proposes a revised setback zone to Neilson Square varying between a zero setback in the west and a 10m in the east. Above this, the building floor plate increases slightly every two storeys (from Level 3 to Level 11) creating the building's unique stepped form. At the Barker Street orientation, the proposal provides a double height colonnade with residential uses above.

The proposed development is 20 storeys (plus two basement levels) with the roofline achieving a height of 83RL. The highest point of the building structure is the lift overrun at 86RL. The total building height is 66.9 metres.

Figure 6 – Massing comparison



DCP MASSING

Source: Bates Smart Design Report

PROPOSED MASSING

5. EXTENT OF CONTRVENTION

5.1. VARIATION TO CEILING HEIGHT

This clause 4.6 variation request accompanies a DA seeking consent for the development of Site 18 of GSTC comprising a single 20-storey mixed use building serviced by a three level basement.

The proposal seeks a variation to the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide – deemed a development standard by Clause 30 of SEPP 65.

5.1.1. Residential – Levels 3 – 20

The Apartment Design Guide recommends that habitable rooms are provided with a 2.7m high ceiling to achieve sufficient natural ventilation and daylight access. A minimum floor to ceiling height of 2.7m is provided to all living and sleeping areas.

The units are served by a water-cooled package AC units which have an overall height of 415mm and are generally larger than a split system. A 2.4m high ceiling is provided above the kitchen area in order to accommodate the AC unit, thereby negating the need for additional bulkheads in living spaces.

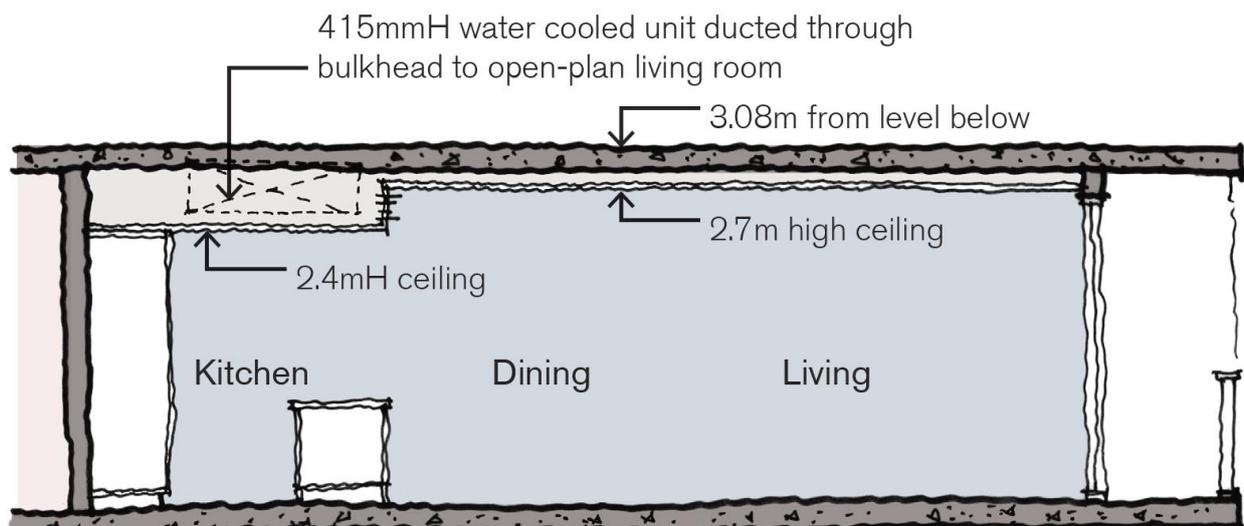
Whilst this does not comply with the 2.7m high ceiling as set out in the ADG, it exceeds the minimum height required for kitchens by the NCC (2.1m high). Further, all kitchens are located directly adjacent to an open plan living and dining layouts, thus benefiting from daylight and ventilation access.

The percentage of the area of apartments that do not achieve the required floor to ceiling heights is 5-15%. These spaces are primarily functional spaces where residents spend a reduced amount of time in comparison to living areas and bedrooms. These areas are generally located at the rear of apartments in order to not restrict natural light and air penetrating the apartment.

The apartment planning and layout provides a focus and attention to ensure that those spaces within the apartment where ceiling heights do influence amenity and enjoyment, and where overwhelming where residents spend most of their time are not impacted by reduced ceilings heights. The ceiling heights in all living areas and bedrooms are maintained at 2.7 metres in accordance with the design criteria of Objective 4C-1 of the ADG.

The typical layout and ceiling heights are illustrated in Figure 7 below.

Figure 7 – Typical kitchen section



Typical Kitchen Section

Source: Tzannes (Architect for Site 7 & 17 GSTC)

5.1.2. Retail – Levels 1 and 2

The Apartment Design Guide recommends that developments located in a mixed use area provide a minimum ceiling of 3.3m for ground and first floor levels to promote future flexibility of use.

The proposed development provides three retail tenancies at ground level. Retail 1 and Retail 2 have floor to floor heights of 4.2m and 4.8m respectively, which will allow for the minimum 3.3m floor to ceiling height. Retail 3 is a two-storey tenancy with internal stair and lift access.

Retail 3 has a floor to floor height of 3.8m – 4.3m at ground level, which will allow for the minimum 3.3m floor to ceiling height. However, at the upper level (Level 2) the floor to ceiling height is reduced to 3.01m, which permits at floor to ceiling height of 2.7m and 2.4m within the back of house areas.

The technical non-compliance with the recommended floor to ceiling height is required to accommodate additional building services between Level 19 and 20 that will require an additional 300mm.

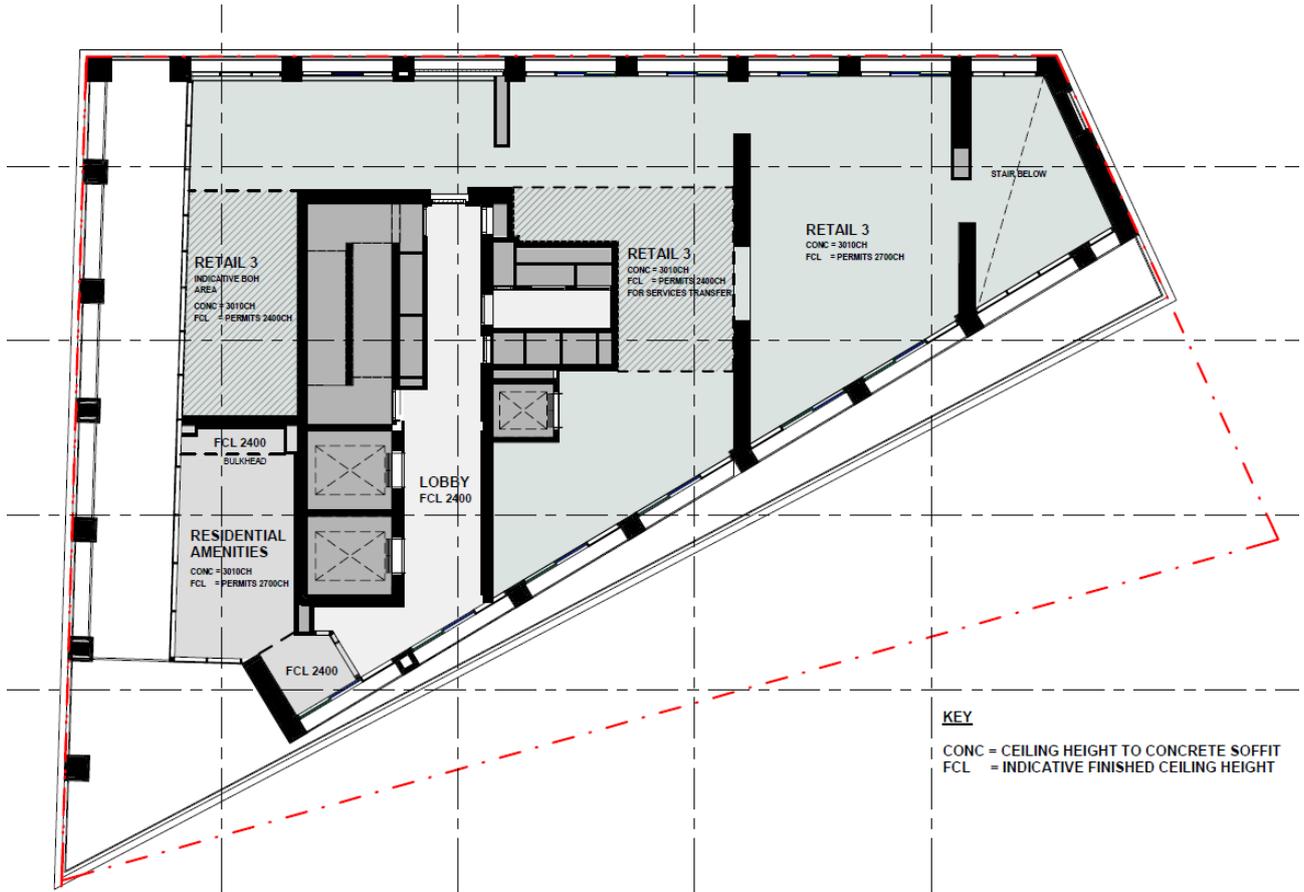
Further, the intention of this design criteria is to promote flexibility to allow potential conversion from residential to retail at lower levels of buildings within mixed use areas. In this case, retail uses are proposed at Level 1 and Level 2 and the non-compliance with the floor to ceiling height control does not inhibit retail development within Level 2. The reduced floor to ceiling height at Level 2 does not compromise the natural ventilation or solar access of either the retail tenancy or communal residential facilities.

Figure 8 – Section AA – Extract showing retail levels



Source: Mirvac Design

Figure 9 – Level 2 Floor Plan



Source: Mirvac Design

6. CLAUSE 4.6 VARIATION REQUEST: CEILING HEIGHT

The following sections of the report provide an assessment of the request to vary the development standard relating to the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide – in accordance with clause 4.6 of SLEP GSTC 2013.

6.1. PART 4C CEILING HEIGHTS

The recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide are shown at Figure 10. The objectives of Part 4C of the Apartment Design Guide are as follows:

- *Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access.*
- *Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.*
- *Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building.*

Figure 10 – Part 4C recommended minimum ceiling heights

Design criteria	
1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:	
Minimum ceiling height for apartment and mixed use buildings	
Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use
These minimums do not preclude higher ceilings if desired	

Source: Apartment Design Guide

6.2. KEY QUESTIONS

Is the Planning Control a Development Standard?

Clause 30 of SEPP 65 identifies “Standards that cannot be used as grounds to refuse development consent or modification of development consent” relating to the recommended minimum amount of car parking, internal area for the relevant apartment type, and ceiling heights specified in various sections of the Apartment Design Guide. The City of Sydney have advised the applicant that:

“The use of ‘standards’ here is inferred to mean development standards. Hence, the three matters outlined under parts (a)-(c) of that clause are development standards that if complied with, Council cannot refuse an application on those grounds. However, if they are breached, subclause 30(3) (b) of SEPP 65 indicates that Clause 4.15 (3) of the Act is triggered and consequently, a Clause 4.6 variation under SLEP 2012 is required”.

It is therefore understood that the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide are development standards capable of being varied under clause 4.6 of SLEP GSTC 2013.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it does not listed within clause 4.6(6) or clause 4.6(8) of SLEP GSTC 2013.

What is the Underlying Object or Purpose of the Standard?

The objectives of Part 4C of the Apartment Design Guide are set out in Section 6.1 of this report.

The underlying object or purpose of the recommended minimum ceiling heights is to ensure apartments achieve sufficient natural ventilation and daylight access.

6.3. CONSIDERATION

6.3.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are listed within the ‘five-part test’ outlined in *Wehbe v Pittwater [2007] NSWLEC 827*. These tests are outlined in Section 2.2 of this letter (paragraphs [17]-[21]).

An applicant does not need to establish all of the tests or ‘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

The development is justified against the first of the Wehbe tests as set out below.

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The proposed development achieves the objectives of Part 4C of the Apartment Design Guide as detailed in **Table 1** below.

Table 1 – Demonstrated achievement of the objective of Part 4C-1 of the Apartment Design Guide

Objective	Development Response
Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access.	Despite the minor non-compliance (30cm) with the recommended ceiling heights within the kitchen area, each apartment achieves sufficient natural ventilation and daylight access. Specifically: <ul style="list-style-type: none"> As detailed in the Solar Access Report prepared by Windtech, between 9am and 3pm on the Winter Solstice 64 apartments (61.5%) achieve at least two hours of direct solar access to the windows of living areas and 54 apartments (57.6%) achieve at least two hours of direct solar access to the floor of the balcony.
Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.	<ul style="list-style-type: none"> As noted in the Design Statement prepared by Bates Smart, a total of 70% of the apartments within the first nine storeys meet the deemed to satisfy requirements of SEPP65 for natural cross ventilation with openings on orthogonal or opposite aspects. The ceiling height provided in the kitchen area exceeds the minimum height required for kitchens by the National Construction Code (2.1m). All kitchens are located directly adjacent to an open plan living and dining layout, thus benefiting from borrowed daylight, ventilation and outlook. Apartment depths are limited to maximise ventilation and airflow. Kitchens are located no more than 8m from a window.

Objective	Development Response
	<ul style="list-style-type: none"> All apartments meet the minimum internal areas recommended by the ADG. Further, minimum room dimensions are generally achieved and furniture placements demonstrate the functional use of spaces.
Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building.	The intention of the design criteria is to promote flexibility to allow potential conversion from residential to retail at lower levels of buildings within mixed use areas. In this case, retail uses are proposed at Level 1 and Level 2 and the minor non-compliance with the floor to ceiling height at Level 2 does not inhibit retail development. The reduced floor to ceiling height at Level 2 does not compromise the natural ventilation or daylight access of the retail tenancy.

In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not relied upon.

Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

Not relied upon.

Test 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

Not relied upon.

Test 5: 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

Not relied upon.

6.3.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

There are sufficient environmental planning grounds to justify the proposed variations to the development standard, including the following:

- Despite the minor non-compliance (30cm) with the recommended ceiling heights within the kitchen area, each apartment achieves sufficient natural ventilation and daylight access. Specifically:
 - As detailed in the Solar Access Report prepared by Windtech, between 9am and 3pm on the Winter Solstice 64 apartments (61.5%) achieve at least two hours of direct solar access to the windows of living areas and 54 apartments (57.6%) achieve at least two hours of direct solar access to the floor of the balcony.
 - As noted in the Design Statement prepared by Bates Smart, a total of 70% of the apartments within the first nine storeys meet the deemed to satisfy requirements of SEPP65 for natural cross ventilation with openings on orthogonal or opposite aspects.
- The ceiling height provided in the kitchen area exceeds the minimum height required for kitchens by the NCC (2.1m).
- All kitchens are located directly adjacent to an open plan living and dining layout, thus benefiting from borrowed daylight, ventilation and outlook.

- Apartment depths are limited to maximise ventilation and airflow. Kitchens are located no more than 8.1m from a window.
- All apartments meet the minimum internal areas recommended by the ADG. Further, minimum room dimensions are generally achieved and furniture placements demonstrate the functional use of spaces.
- Despite the minor non-compliance with the floor to ceiling height within the Level 2 retail space, the future use of this space for retail / commercial purposes is not inhibited. The reduced floor to ceiling height does not compromise the natural ventilation or daylight access of the tenancy.

In conclusion, there are sufficient environmental planning grounds to justify convening the development standard.

6.3.3. 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?

The proposed development is consistent with the objective of Part 4C-1 of the Apartment Design Guide as detailed in Table 1 above.

The proposal is also consistent with the land use objectives that apply to the site under SLEP GSTC 2013. The site is located within B4 Mixed Use Zone as outlined within Table 2.

Table 2 – Assessment of Compliance with Land Use Zone Objectives

Objective	Compliance Assessment
<i>To provide a mixture of compatible land uses</i>	The proposed development comprises retail and commercial uses at the ground and first floor, and residential units above. These uses will contribute to the viability of the GSTC and are compatible with the desire future land use outcomes for the precinct.
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	<p>The site is located in close proximity to Green Square Railway Station and Green Square Bus Interchange. It is well connected to the greater Sydney metropolitan area.</p> <p>The mixture of uses will result in an increase in employment and housing opportunities in a highly accessible location. The provision of bicycle parking will encourage cycling and the limited vehicular parking will encourage public transport patronage.</p>
<i>To ensure the uses support the viability of centres.</i>	The development contributes to the diverse mix of uses within the GSTC. The retail and commercial space will activate the ground plane and support the viability of the centre into the future.

The proposal is considered to be in the public interest as the development is consistent with the objective of the development standard, and the land use objectives of the zone.

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

The proposed non-compliance with the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide will not raise any matter of significance for State or Regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

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

The proposed development achieves the objective of the development standard, as well as the land use zoning objectives despite the minor non-compliance. The strict application of the recommended minimum ceiling heights would result in reduced amenity for the future residents of the development, as the non-compliance directly relates to the inclusion of an AC unit and negates the need for additional bulkheads in the living space.

It is noted that the 'development standard' in question relates to "recommended" ceiling heights provided in the Apartment Design Guide. The proposed non-compliance is extremely minor in nature, achieves the objectives of Part 4C of the ADG, and is a direct result of trying to improve the amenity elsewhere in the development for future occupants of the development. Therefore, there is no public benefit of maintaining the planning control standard in the circumstances.

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

Concurrence can be assumed. Nevertheless, 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.

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