

Attachment C

<p>Clause 4.6 Variation Request – Height of Buildings</p>
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**CLAUSE 4.6 VARIATION
REQUEST
SYDNEY LEP (GREEN
SQUARE TOWN CENTRE)
2013
CLAUSE 4.3 HEIGHT OF
BUILDINGS**

**SITES 7 & 17
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, the applicants for a development application comprising two new mixed use buildings linked by a shared basement (subject to a separate application) at Sites 7 and 17 Green Square Town Centre (960A Bourke Street, Zetland).

The request seeks to vary the maximum height of buildings development standard prescribed for the subject site under clause 4.3 of the *Sydney Local Environmental Plan (Green Square Town Centre) 2013* (SLEP GSTC 2013).

The variation request is made pursuant to clause 4.6 of the SLEP GSTC 2013.

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 height development standard in clause 4.3. 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 ANALYSIS

The subject site is known as 960A Bourke Street, Zetland and is legally described as Lot 6 DP 1199427. The subject site is an irregular shaped allotment with an area of 5127m². An aerial photograph of the site is included at **Figure 1**.

The Green Square Town Centre DCP (DCP) identifies that the subject site is to consist of three development sites (Site 7, Site 17 and Site 18) divided by internal roads (to be provided via a DA). The site is bound by Tweed Place to the north, Ebsworth Street to the east, Barker Street to the south, and the Green Square Plaza to the west. Fellmonger Place will divide Site 7 and Site 17, and a continuation of Barker Street will divide Site 17 and Site 18.

The site contains a slight slope which descends approximately 3 metres from south to north and is devoid of any trees or vegetation.

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 Urbis, accompanying the development application for the development of Site 7 and Site 17.

The subject site is zoned B4 Mixed Use (**Figure 4**), is subject to a base FSR of 5.47:1 and has multiple height limits (**Figure 5**).

Site 7 is subject to three height limit controls:

- The portion of the site closest to Green Square Civic Plaza (the plaza) is subject to a 50m limit;
- the middle portion is subject to a 64m limit; and
- the portion of the site adjoining Ebsworth Street is subject to a 75m limit.

Site 17 is subject to two height limit controls:

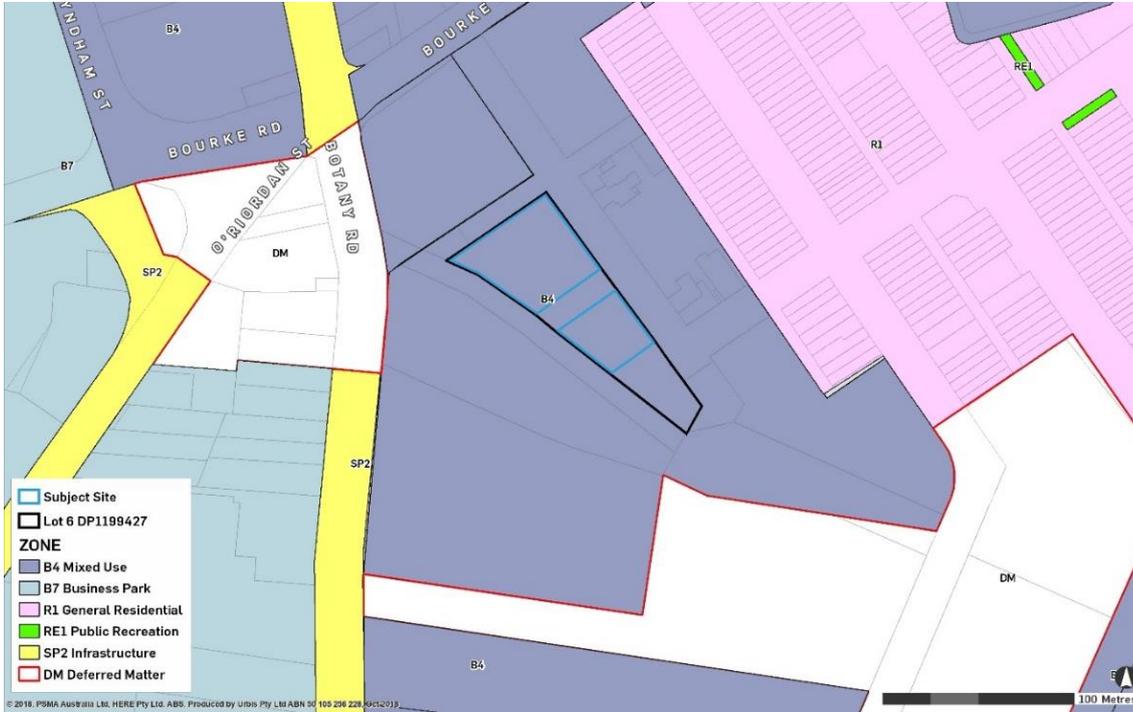
- the portion of the site closest to the plaza is subject to a 50m limit; and
- the portion of the site adjoining Ebsworth Street is subject to a 62.5m limit.

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/2017/564.

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 7 and Site 17 of GSTC comprised of:

- Site 7: An 18 storey building (plus additional plant room on uppermost level) with an 8 equivalent storey podium, comprising ground floor retail, an entertainment facility (cinema) and commercial tenancy within the podium facing the plaza, along with residential apartments both within the upper podium and tower.
- Site 17: A 13 storey building (plus additional plant room on uppermost level) with a 4 equivalent storey podium, comprising ground floor retail, commercial offices within the podium facing the plaza and residential apartments both within the podium facing Ebsworth Street and tower.
- The provision of 194 apartments consisting of 61 one-bedroom, 103 two-bedroom, 29 three-bedroom and 1 four-bedroom dwelling/s.
- Podium level landscaped communal open space on both sites (level 7 and 9 on Site 7 and level 6 on Site 17).
- A loading dock, back of house and end of trip facilities on Ground Level; and
- Shared use of a three level basement associated with the adjoining mixed-use development at Site 18. Construction of the basement is subject to a separate development application for Site 18, which also utilises the basement for car parking and access from Tweed Place.

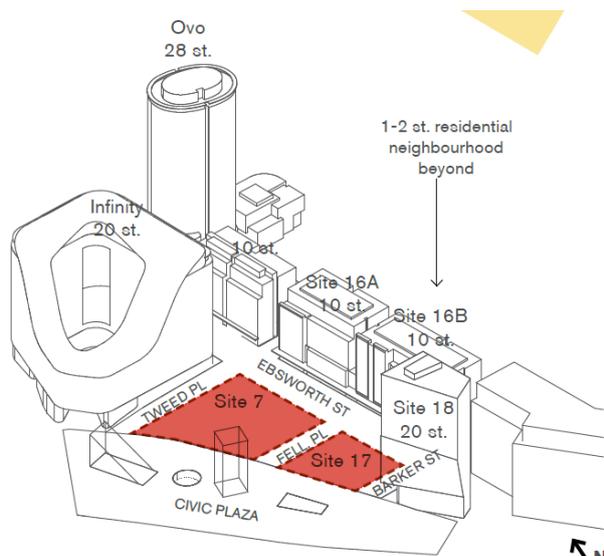
The proposed development is detailed in the Architectural drawings prepared by Tzannes and accompanying reports.

4.2. MASSING AND BUILT FORM

The site's immediate surrounds consist of mixed-use developments with ground level retail located to the north-west, north-east and south-west of the site.

An established hierarchy of scale in the context can be seen whereby the developments on the south side of Ebsworth Street (adjoining Sites 7 and 17) are 20 storeys high (21 storeys including roof plant), and the developments on the north side are predominantly 10 storeys high (11 storeys including plant). Beyond Ebsworth Street to the north-east is a neighbourhood containing predominantly 1-2 storey single dwellings (as shown in **Figure 5**)

Figure 5 – Surrounding Built-form Context



Source: Tzannes

Ground Floor

The built form on the ground plane is defined by retail tenancies setback under a podium creating an expansive pedestrian orientated public domain on all frontages of the proposal. Along the plaza there is a sense of a civic colonnade as retail glazing is set back behind concrete columns (**Figure 6**). Chamfered corners encourage pedestrian movement from Ebsworth Street down into the plaza and cinema via the pedestrian oriented thoroughfares of Fellmonger Place and Barker Street.

Along Ebsworth Street continuous glazed awnings provide weather protection to retail tenancies either side of the well-defined and set back residential entries. Embellishment of the public domains of Fellmonger Place and Barker Street will be subject to separate future approval.

Figure 6 - Artist impression of proposed development viewed from within Green Square Civic Plaza



Source: Tzannes

Podium

Site 7 has an eight storey equivalent podium containing the cinema and a commercial tenancy. The candy bar, cinema lobby and commercial tenancies are each located within a double-height void overlooking the plaza below. Site 17 has a four storey equivalent podium which contains three commercial floors, with outlook primarily oriented towards the plaza. The active uses within the podium facing the plaza provide upper floor activation to the plaza edge and passive surveillance of the public domain.

The Ebsworth Street frontage of the Site 7 lower podium (levels one to five) is articulated by a full-height glazed window which disguises the solid façade of the cinemas and highlights a dramatic double height entrance to the residential tower.

The upper podium of Site 7 contains three levels (levels six to eight) of residential dwellings and above ground storage set back from the plaza edge, with the exception of the north-western corner which extends out to the boundary to align with the cinema podium below. This is an urban design response to the curved built form of the adjoining Infinity development.

Communal open space areas have been incorporated into the podium roof tops (level 7 and 9 on Site 7 and level 6 on Site 17).

Tower

The residential towers on both sites are aligned to Ebsworth St and well set back from the podium. The tower and podium facades facing the plaza transition around the corners to Barker Street, Fellmonger Place and Tweed Place before assuming a modified expression on Ebsworth Street. Along Ebsworth Street full-length perimeter balconies feature predominantly on the upper floors to reduce bulk and scale. Curved corners help to soften the bulk and scale of the tower.

The uppermost floor of both towers contains screened mechanical plant.

4.3. URBAN DESIGN AND AMENITY

The built form has been designed within the parameters of the planning controls that apply to the site and therefore accords with the built form vision for the site. The built form outcomes for Site 7 and Site 17 are designed to:

- protect the amenity of the adjacent public domain;
- achieve maximum solar compliance for apartments within the development; and
- address the surrounding street frontages consistent with the emerging development.

The podium massing steps down between Site 7 and Site 17 in response to the plaza context which slopes to the south. The provision of significant secondary setbacks and a lower podium frontage height fronting Green Square Plaza has allowed for a reduction in shadowing impacts on this important public open space.

The proposal has been designed and sited with due consideration to the privacy of adjoining and future incoming residents. The proposed buildings are bound by roads to the north, east and west, and Green Square Plaza to the south. The proposed built form is compliant with SLEP GSTC 2013 setbacks along the affected streets indicating appropriate separation to surrounding buildings has been provided.

Where apartment across slots do not meet the separation distance of the Apartment Design Guidelines (ADG) smaller, narrower window openings have been incorporated into the design to minimise privacy impacts. The provision of these windows allows additional light and ventilation into apartments that initially would have a single aspect.

Along Ebsworth Street, bedroom spaces have been recessed behind balconies to provide an increased privacy buffer between surrounding development and these more private spaces to mediate overlooking from the street below and the opposite residential building due to a minor noncompliance with the ADG separation distances.

There will be no significant privacy impacts due to these minor non-compliances and overall the proposal provides a superior outcome when compared to a complaint DCP envelope with particular regard to overshadowing of the public plaza, solar access to apartments and the urban design response to adjacent development. The built form maximises the amenity achieved for both the public domain and the apartments within the building.

5. EXTENT OF CONTRAVENTION

5.1. VARIATION TO HEIGHT

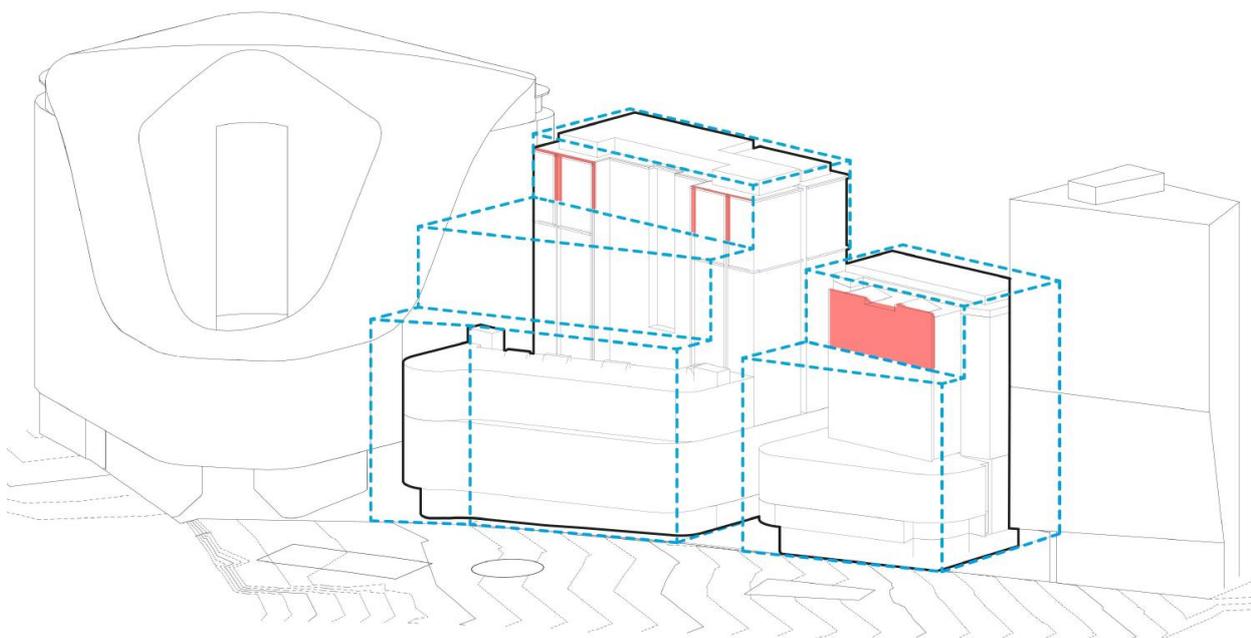
This clause 4.6 variation request accompanies a DA seeking consent for the development of Site 7 and Site 17 of GSTC comprising two mixed use buildings serviced by a three level basement shared between Site 7, Site 17 and Site 18 and subject to a separate development application.

The proposal seeks a variation to the SLEP GSTC 2013 height limit, with a portion of the Site 7 tower (levels 17-19) protruding laterally 0.45m into the 64m height limit and the Site 17 tower (levels 11-13) protruding laterally 1.45m into the 50m podium height limit.

The minor protrusion on Site 7 is attributed to façade articulation only, as illustrated in Figure 7 and Figure 8 below. The proposed podium on Site 7 has a height of 41.6m which is well within the SLEP GSTC 2013 64m height limit. The proposed variation applies to a 0.45m portion of the tower which protrudes into the 64m height limit. For this 0.45m portion the building has a height of 72.4m, a 8.4m variation to the 64m SLEP GSTC 2013 height limit or a 13% variation.

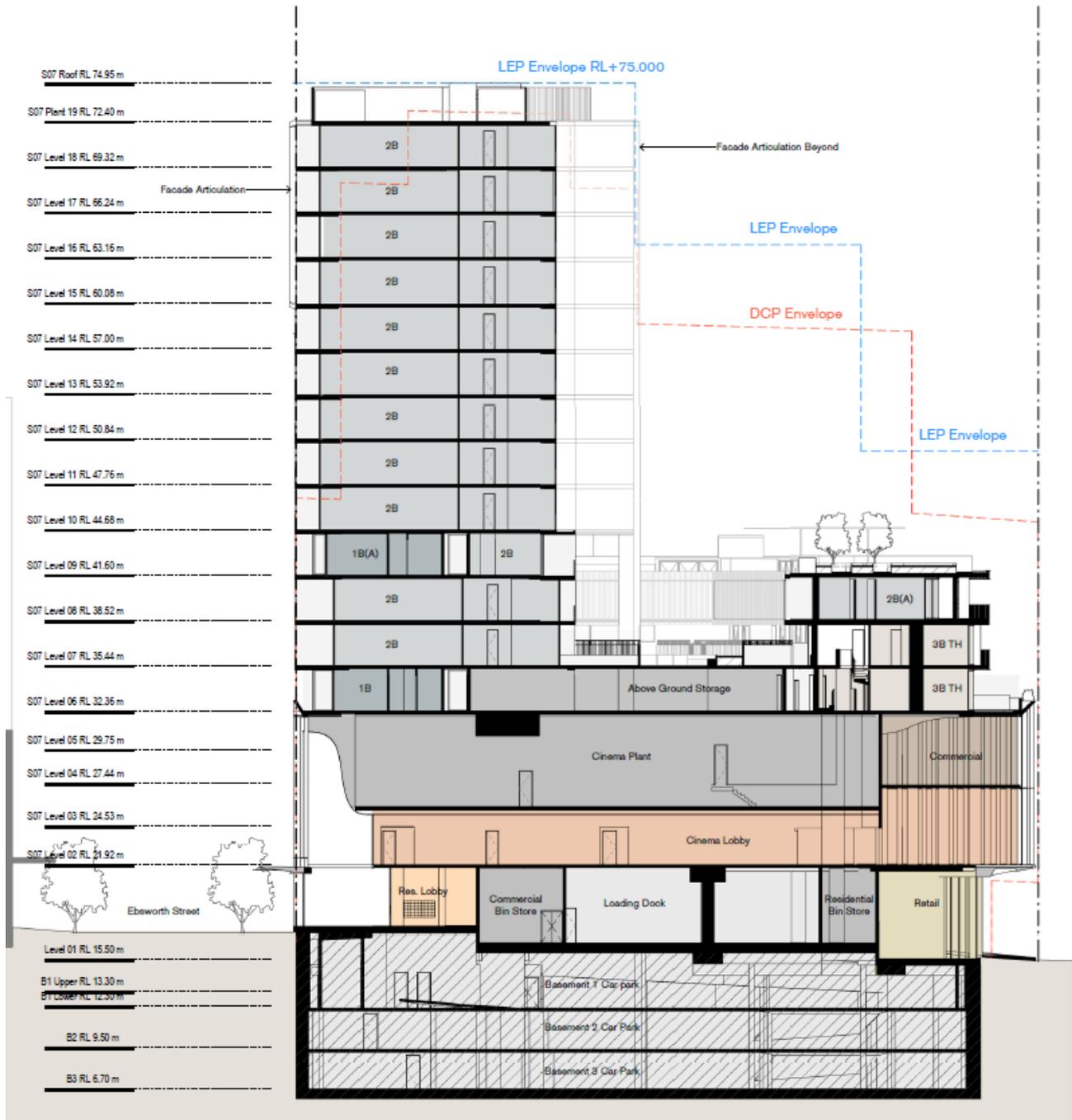
On Site 17, the proposed podium has a height of 33.2m which is well within the SLEP GSTC 2013 50m height limit. The proposed variation applies to a 1.45m portion of the tower which protrudes in to the 50m height limit. For this 1.45m portion the building has a height of 60.46, a 10.46m variation to the 50m SLEP GSTC 2013 height limit or a 20.92% variation as illustrated in Figure 7 and Figure 9.

Figure 7 – SLEP GSTC 2013 height departure – envelope view from Plaza



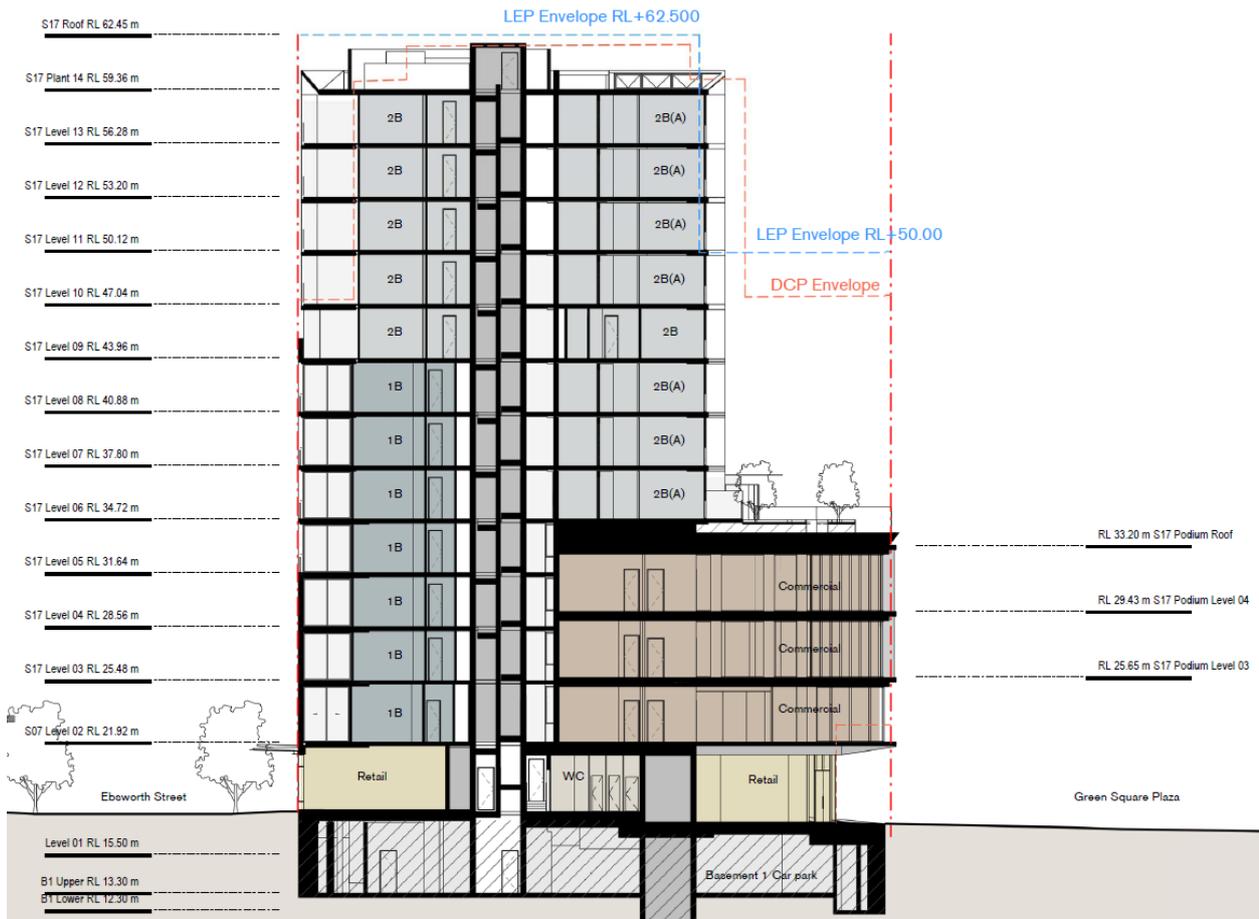
Source: Tzannes

Figure 8 - SLEP GSTC 2013 height departure - section view Site 7



Source: Tzannes

Figure 9 - SLEP GSTC 2013 height departure - section view Site 17



Source: Tzannes

6. CLAUSE 4.6 VARIATION REQUEST: HEIGHT

The following sections of the report provide an assessment of the request to vary the development standard relating to the maximum height of buildings in accordance with clause 4.6 of SLEP GSTC 2013.

6.1. CLAUSE 4.3 HEIGHT OF BUILDINGS

The objectives of the height of buildings development standard as per subclause 4.3(1) of SLEP GSTC 2013 are as follows:

- (a) to ensure acceptable height transitions between new development and heritage items and buildings in heritage conservation areas,
- (b) to ensure sharing of views,
- (c) to ensure acceptable height transitions from the Green Square Town Centre to adjoining areas,
- (d) to ensure the amenity of the public domain by restricting taller buildings to only part of a site,
- (e) to ensure the built form contributes to the physical definition of the street network and public spaces.

6.2. KEY QUESTIONS

Is the Planning Control a Development Standard?

The height of buildings prescribed under clause 4.3 of the SLEP GSTC 2013 is a development standard 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 the height of buildings standard as per SLEP GSTC 2013 are set out in **Section 6.1** of this letter.

The underlying object or purpose of the height of buildings development standard is to provide a built form that is compatible with the site, the scale and character of surrounding development and minimising detrimental impacts on the amenity of the locality.

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 the height of buildings standard as outlined in clause 4.3(1) of the SLEP GSTC 2013 as detailed in **Table 1** below.

Table 1 – Demonstrated achievement of the objectives of clause 4.3 height of buildings standard.

Objective	Development Response
(a) To ensure acceptable height transitions between new development and heritage items and buildings in heritage conservation areas.	There are no heritage items or conservation areas in close proximity to the site. The proposed development provides appropriate height transitions to surrounding development as illustrated in Figure 5 .
(b) To ensure sharing of views.	<p>There will be no additional impact on the sharing of views as a result of the additional height when compared to a compliant proposal, as the vertical protrusion is on the south western side of the development adjoining the Green Square Plaza.</p> <p>The proposal is compliant with the DCP envelope in the area it is inconsistent with the SLEP GSTC 2013 envelope indicating the non-compliance will not result in any unforeseen impacts.</p>
(c) To ensure acceptable height transitions from the Green Square Town Centre to adjoining areas.	The proposed building massing demonstrates an acceptable height transition to the Green Square Plaza to the south west as well as to the surrounding mixed-use developments. The proposed minor non-compliance will not impact on the height transition of the built form from the GSTC to adjoining areas as the site is located within the centre of the GSTC.
(d) To ensure the amenity of the public domain by restricting taller buildings to only part of a site,	<p>The building envelope as proposed has been developed to minimise overshadowing of the adjacent public domain through the proposed envelope. The significant setbacks and lower podium heights along the plaza edge in comparison to the DCP and SLEP GSTC 2013 envelopes result in a reduced impact on this important public space.</p> <p>The proposed development will contribute to the residential, commercial, retail and cultural objectives of the GSTC. The development provides access to the newly completed Green Square Plaza and activates the street frontages of the public domain via the inclusion of ground floor retail.</p> <p>Amenity impacts including solar, wind, façade reflectivity and CPTED have been considered within the SEE accompanying the development application.</p>
(e) To ensure the built form contributes to the physical definition of the street network and public spaces	<p>The proposed buildings are bound by roads to the north, east and west and the Green Square Plaza to the south. The proposed built-form defines the boundaries of the site, in particular the built form defines the high street of Ebsworth street with a 0m setback to this boundary.</p> <p>Active uses (retail, cinema, residential and commercial lobbies) are proposed at ground level with a generous setback providing wide pedestrian footpaths around the site contributing to pedestrian movement along the street network and within the adjoining Green Square Plaza.</p>

Objective	Development Response
	The minor non-compliance to the building height on the south western side of the Site 7 and Site 17 tower forms will not impact on the physical definition of the street network or public places.

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:

- The non-compliance is very minor with only a 0.45m wide vertical protrusion of the Site 7 tower and a 1.45m wide vertical protrusion of the Site 17 tower into the lower height limits on the site.
- The non-compliance is numerical in nature only, and does not result in any adverse impact on the surrounding public or private domain.
- The proposed variation does not impact on the perceived bulk or scale of the development. The buildings have been designed to address the unique character of the site and the future surrounding land uses.
- There are no amenity impacts associated with the non-compliance. The proposed building has been carefully designed to reach a built form that is contextually sensitive and architecturally prominent to GSTC. It has been demonstrated that the non-compliance does not result in additional overshadowing, view loss or an unacceptable scale of development.
- The non-compliance is offset by a reduced podium height on both Site 7 and 17 and is the result of numerous massing studies which determined the proposed built provides a superior outcome when compared to a complaint SLEP GSTC 2013 envelope with particular regard to overshadowing of the public plaza, solar access to apartments and the urban design response to adjacent development. The proposed built form results in high amenity for residents and the public.

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 objectives of the FSR development standard as outlined within 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 tenancies, a cinema and residential units. These uses will contribute to the viability of the GSTC and are compatible with the desired 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>	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. The multiple 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.
<i>To ensure the uses support the viability of centres.</i>	The development contributes to a diverse mix of commercial uses. The cinema will ensure that the Green Square Town Centre is successful with residents and visitors, while retail and commercial units are proposed which will support the viability of the centre.

The proposal is considered to be in the public interest as the development is consistent with the objectives 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 height of buildings development standard 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 objectives of the height of buildings development standard and the land use zoning objectives despite the non-compliance. The strict application of the height control would prevent effective redevelopment of the site to the standard of design excellence which has been achieved through the current proposal.

The tower element of the proposal on Site 7 incorporates façade articulation that encroaches 0.45m into the lower height limit of 64m for a vertical distance of 8.4m. The tower element of the proposal on Site 17, encroaches 1.45m into the lower height limit of 50m for a vertical distance of 10.46m.

The SLEP GSTC 2013 provides for a very restricted built form onsite with multiple height limits across the site. The proposed envelope has been rationalised and specifically designed to address overshadowing and amenity impacts across the sites, protecting Green Square Plaza in accordance with the DCP.

The encroachment outside of the SLEP GSTC 2013 envelope is a technical variation only and does not result in additional amenity impacts, rather lessening the shadow cast on the plaza.

Given the nature of the proposed variation and the justification of the impacts provided within this statement and accompanying SEE. The proposal is consistent with the public interest as it promotes the orderly and efficient use of land. Maintaining the development standard would not result in a public benefit.

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.

7. SUMMARY

In summary, the proposal is considered appropriate and consistent with the objectives and intent of clause 4.3 of SLEP GSTC 2013. Strict compliance with the SLEP GSTC 2013 in this case is unreasonable and unnecessary because:

- The proposed increase in height is negligible when assessed in the context of the desired future character of Green Square Town Centre and that of the surrounding built form.
- The SLEP GSTC 2013 height standard is stepped across the site. The height non-compliance relates to a small portion of the tower form on Site 7 and 17 while the remainder of the built form is significantly below the height limit for the relevant section of the site.
- The proposed variation allows for the development of a constrained site in keeping with the scale and context of surrounding development and of that envisaged by the DCP.
- The non-compliance with the height standard does not result in any loss of view, over-shadowing or privacy impacts on any surrounding or adjoining development or from the public domain as demonstrated through the accompanying shadow analysis.
- The proposed variation will not result in the development compromising the achievement of the desired future character for the Green Square Town centre envisaged by the SLEP GSTC 2013 and the DCP.
- The proposal will provide 194 new dwellings in the Green Square Major Centre, contributing to the housing targets of the Subregion. The units are located close to public transport and amenities.

We are therefore of the opinion that, strict compliance with the development standard is considered to be unnecessary and unreasonable in this case.

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