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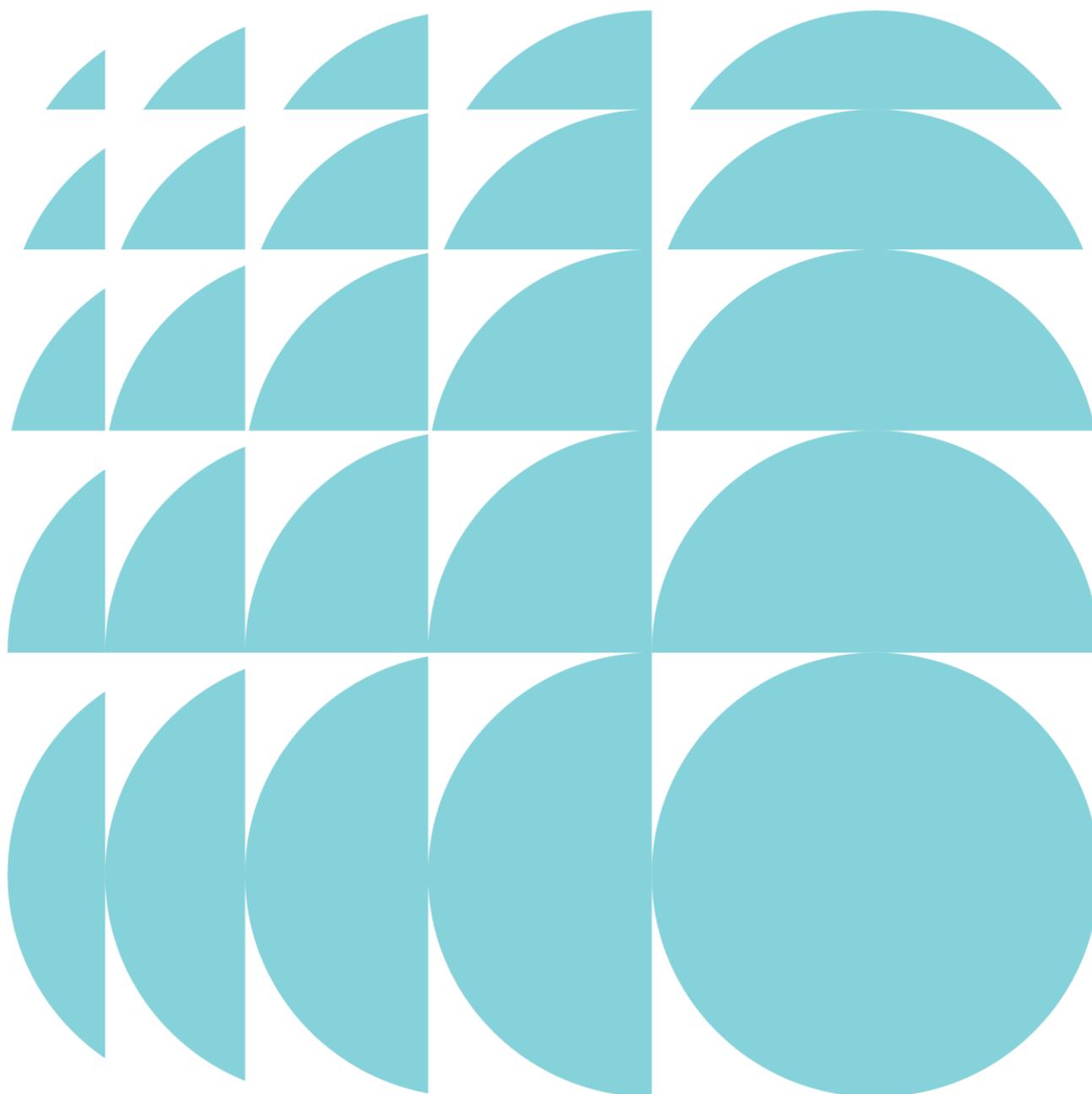
<p>Clause 4.6 Variation Request – Height of Buildings</p>

Clause 4.6 Variation Request

77- 93 Portman Street, Zetland
Site 15 Green Square Town Centre

Submitted to City of Sydney
On behalf of Mirvac Green Square Pty Ltd and
Landcom

30 August 2019 | 15798



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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Mirvac Green Square Pty Ltd. It is submitted to the City of Sydney (Council) in support of an amendment to development application (DA) D/2018/517, for a mixed-use residential development at 77-93 Portman Street, Zetland, also known as Site 15 Green Square Town Centre. This clause 4.6 variation request relates to minor variations to the maximum building heights prescribed in clause 4.3 of the *Sydney Local Environmental Plan (Green Square Town Centre) 2013* (the Green Square LEP) to account for minor redistributions of massing within Site 15. This report should be read in conjunction with the original SEE prepared by Ethos Urban dated May 2018 and the Response to Request for Additional Information (treated as an amendment to the DA) prepared by Ethos Urban dated August 2019.

Clause 4.6 of the Green Square LEP enables Council to grant consent for development even though the development 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.

This clause 4.6 variation request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify the minor contravention of the standard.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the height of buildings development standard, the proposed development for Site 15 will:

- Provide a beneficial built form outcome for the site due to the alternative massing of Building B, Building C and Building D consistent with the winning submission of the competitive design process conducted for the site;
- Provide a beneficial public domain outcome through the straightening of the through-site link adjacent to Building A;
- Respond to the site-specific flooding constraints of the site;
- Have a perceived height in storeys that accords with the applicable maximum storey height nominated by the Green Square DCP 2012;
- Have an imperceptible visual impact in the context of the surrounding development;
- Continue to remain consistent with the site's context and the scale of existing, approved and future development in the locality; and
- Continue to satisfy the objectives of the development standard, as well as those of the B4 Mixed Use zone.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Green Square LEP.

2.0 Background

2.1 Competitive Design Alternatives Process

A Competitive Design Alternatives Process was conducted for Site 15 in accordance with clause 6.9 of the Green Square LEP 2013, the Green Square Town Centre Development Control Plan 2012 (Green Square DCP 2012) and the *City of Sydney Competitive Design Policy 2013*. A detailed overview of the competitive process is provided at Section 1.1 of the originally submitted SEE for D/2018/517.

The Selection Panel considered four detailed and comprehensive design alternatives provided by the Competitors listed above. The competition brief included a 'planning opportunity' to realign the through-site link adjacent to Building A and Buildings B/D (see **Figure 1**). This was implemented in all design alternatives considered by the Selection Panel. The Selection Panel nominated two preferred schemes and required the submission of additional information pertaining to amendments that would deliver an improved design outcome for the site.

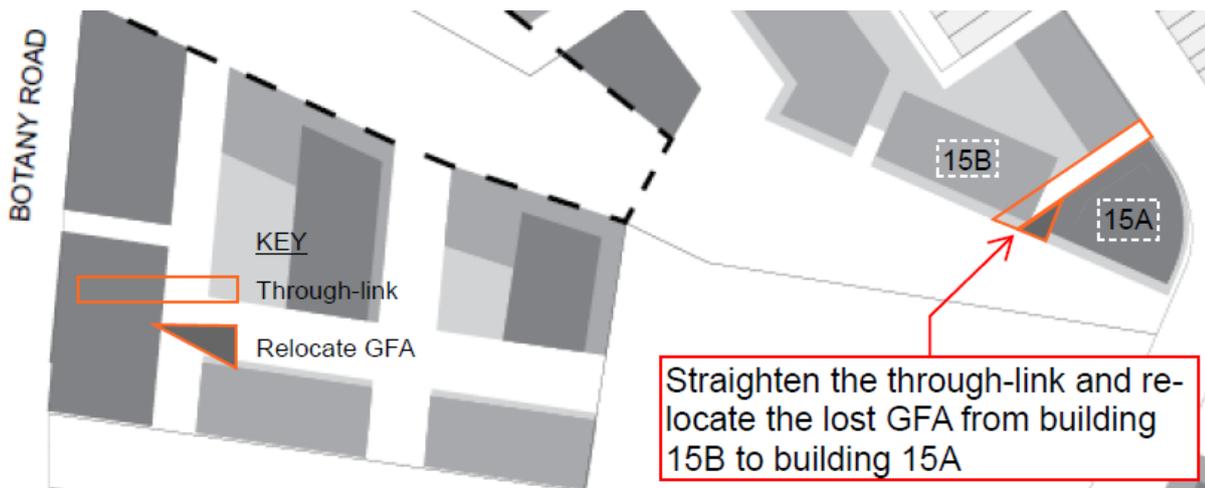
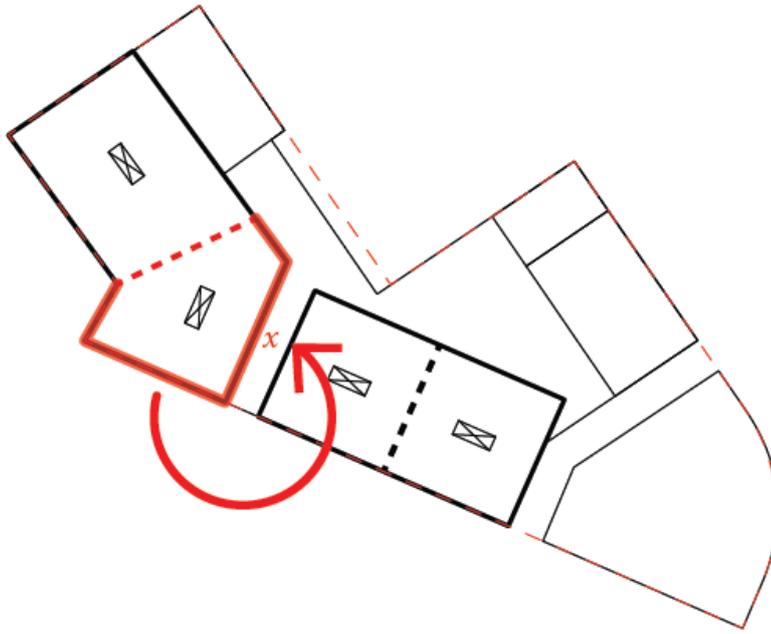


Figure 1 Planning opportunity identified within the competition brief for Site 15

Following the submission of the additional information and presentations of both short-listed schemes, the Selection Panel determined Smart Design Studio and CO-AP as the preferred scheme on the basis that the scheme exhibited design excellence and provided a superior response to the immediate and wider context of the site. The fundamental principal of the Smart Design Studio and CO-AP submission was an alternative built form massing for Building B and Building C. The competition-winning scheme relocated mass from Building C to Building B, in order to deliver a more regular built form to Building C and provide a consistent street wall to the Drying Green through Building B, as shown in **Figure 2**.

The Selection Panel’s decision was also predicated on the following reasons:

- The scheme will enhance the public domain and provides a distinct visual identity for each building whilst achieving a consistent visual language for the site.
- The alternative massing and envelope configurations to that prescribed under the DCP / LEP provide for an improved site planning outcome and will facilitate a higher standard of residential amenity.
- The design solution for the site provides a superior typological response to the Drying Green frontage, reinforcing the structure of the public domain.
- The redistribution of built form throughout the site has reformed the communal open space in a better proportion and more practical location.
- Building A will result in a distinctive and elegant form, and the treatment of the roofline of Building A has the potential to achieve a landmark silhouette on the skyline.
- Building D achieves a superior integration with the site and the scale of the adjoining residential neighbourhood.
- The centralised located of the plant/services on Building A provide for uncluttered roofscapes across the remainder of the site.



RE-ORIENTATION

We rotate the 'second building' so the longest facade faces north in order to maximize solar access.

Figure 2 Competition submission approach to Building B and Building C massing

Source: Smart Design Studio and CO-AP

2.2 Flood Impact Study

An assessment of the potential flood impacts associated with the redevelopment of the site has been undertaken by Wood and Grieve Engineers and is included with this amended submission. This study has reviewed the Flood Planning Levels (FPL) associated with site consistent with the criteria established in the Green Square DCP and with reference to the City of Sydney's *Interim Floodplain Management Policy* (2014). The FPLs identified in the Flood Impact Study are reproduced at **Figure 3**.

3.0 Development Standard to be Varied

3.1 Height of Buildings Development Standard

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.3 of the Green Square LEP 2013. Clause 4.3 provides that:

- (1) *The objectives of this clause 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.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Buildings Map, in relation to Site 15 is reproduced in **Figure 4** below. Varying building heights apply to the site ranging from 24 RL to 98 RL.

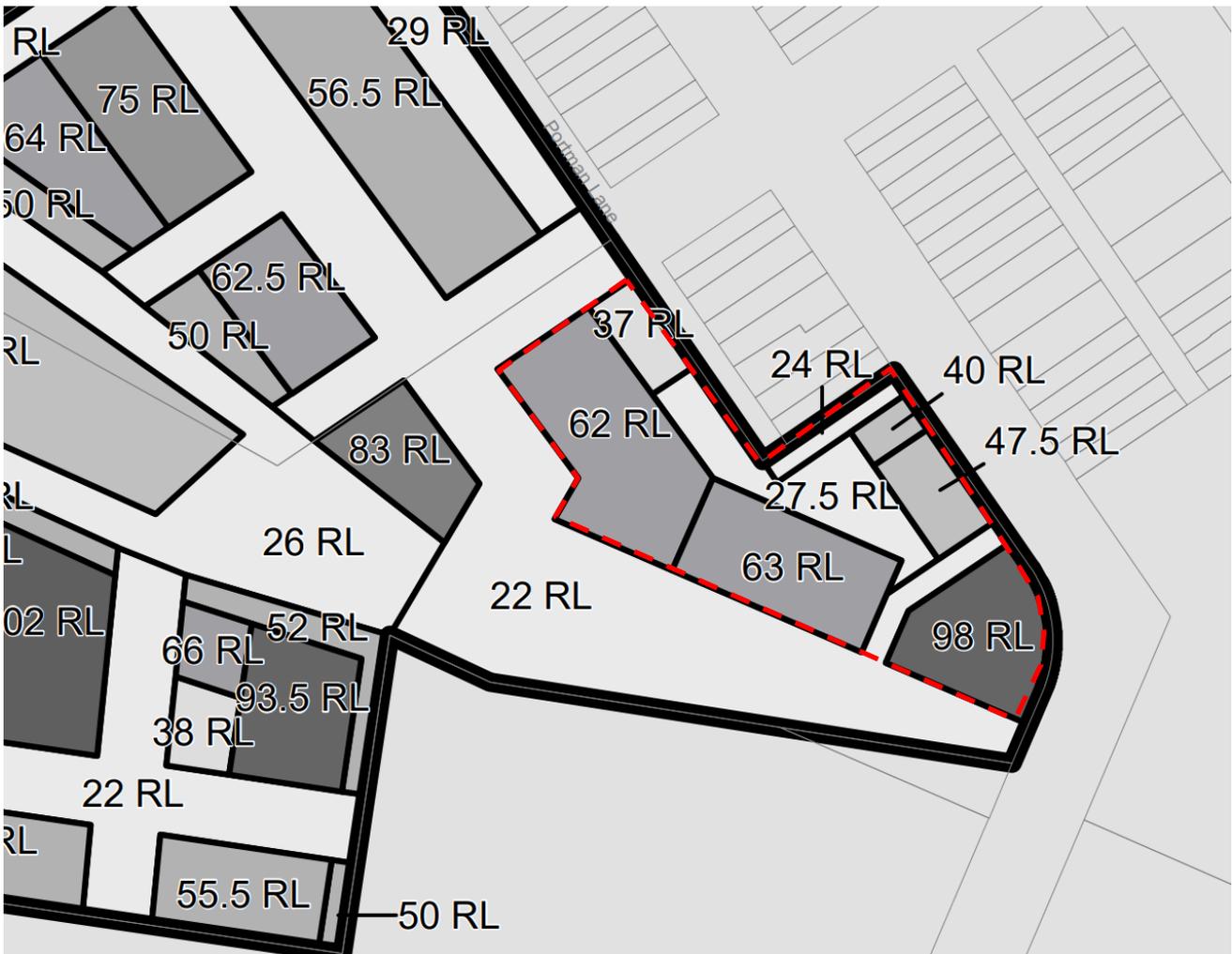


Figure 4 Height of Buildings Map

Source: Sydney Local Environmental Plan (Green Square Town Centre) 2013

3.2 Extent of the Variation Proposed

As previously shown in **Figure 4**, the Green Square LEP incorporates prescribed Height of Building RL’s for each sub-site contained within Site 15 that ultimately determine the building envelopes for each sub-site. The amended DA, consistent with the original DA and the competition-winning scheme, presents built form which departs slightly from the LEP building envelopes. Generally, the nature of the variation of each building relates to the siting and minor redistribution of built form within Site 15. The height in storeys, specified in the Green Square DCP, is achieved across all buildings, demonstrating that the variation does not relate to a blanket increase in height across the site. The variations are a consequence, as often the case, where detailed design has led to a more refined approach to built form.

The maximum building height proposed for each building is set out in **Table 1**. As demonstrated in **Table 1**, all parapet heights accord with the maximum building heights established under clause 4.3 of the Green Square LEP 2013. For greater detail, refer to the relevant proposed building elevations and sections within the Architectural Plans at Appendix A of the Response to Request for Additional Information. The nature of the proposed variation to the maximum building height is described below.

Table 1 Proposed maximum building height

Building	Parapet Height (no variation)	Maximum Height (variation)	Exceedance
Building A	N/A	97.90RL (-0.1)	+75.88 for the GSLEP RL22 control portion of the through-site link envelope
Building B	59.46RL	62.52RL (+0.52) ¹	+0.52 for GSLEP RL62 control portion for Building B envelope
Building C	59.50RL	62.63RL (+0.625)	+0.625 for GSLEP RL62 control for Building C envelope
Building D	38.85RL	38.67RL (varied)	-1.323 for GSLEP RL40 control for the northern portion of the Building D envelope -9.128 for GSLEP RL47.5 control for the central portion of the Building D envelope +8.355 for GSLEP RL27.5 control for the south-western portion of the Building D envelope

¹This exceedance is limited to the northern portion of Building B with alternative massing to Green Square DCP.

Building A

The proposed development (inclusive of proposed amendments) includes the redistribution of GFA from Building B to Building A to provide a straightened through-site link. This results in part of Building A encroaching into parts of the site where a height limit of RL22 applies, rather than the RL98 which applies to Building A. As shown in **Figure 5**, the portion of Building A that is located on land with a height limit of RL22 is minor. It is noted that the remainder of Building A is compliant with the maximum building height of RL98.

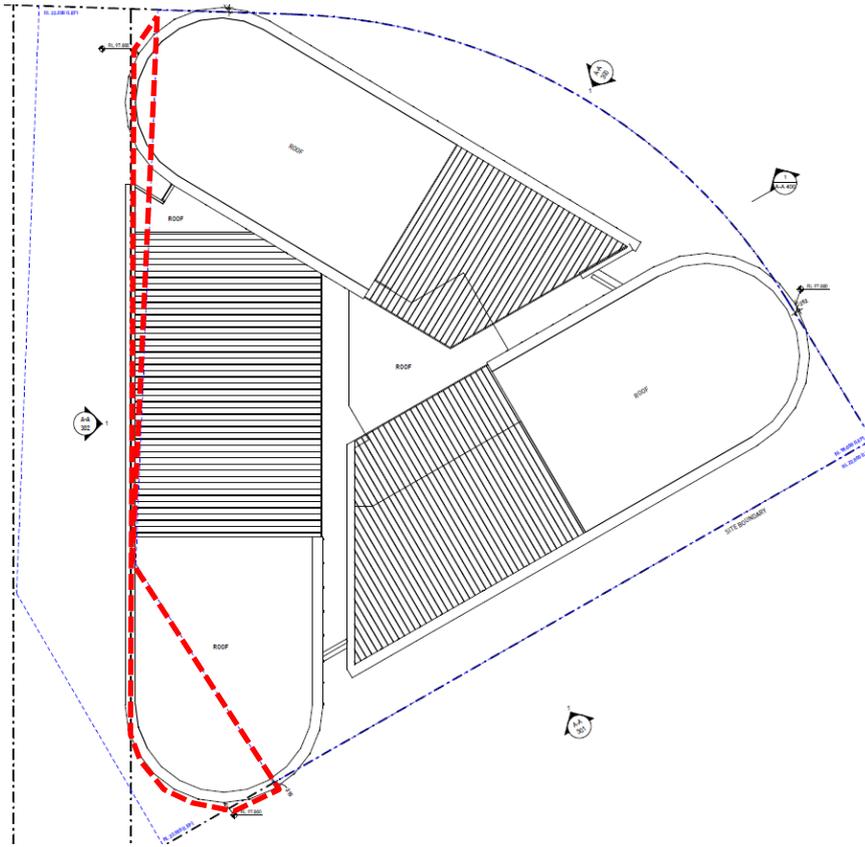


Figure 5 Extent of variation proposed for Building A shown in red

Source: Smart Design Studio and CO-AP

Building B

As a result of reducing the Building C envelope and expanding the Building B envelope, a small portion of Building B is sited on land with a height limit of RL62, whereas Building B has a height limit of RL63. The extent of the variation proposed in relation to Building B is less than one metre to the maximum building height prescribed in the LEP and is limited to building services and lift overruns, as identified in **Figure 6** and **Figure 7**.



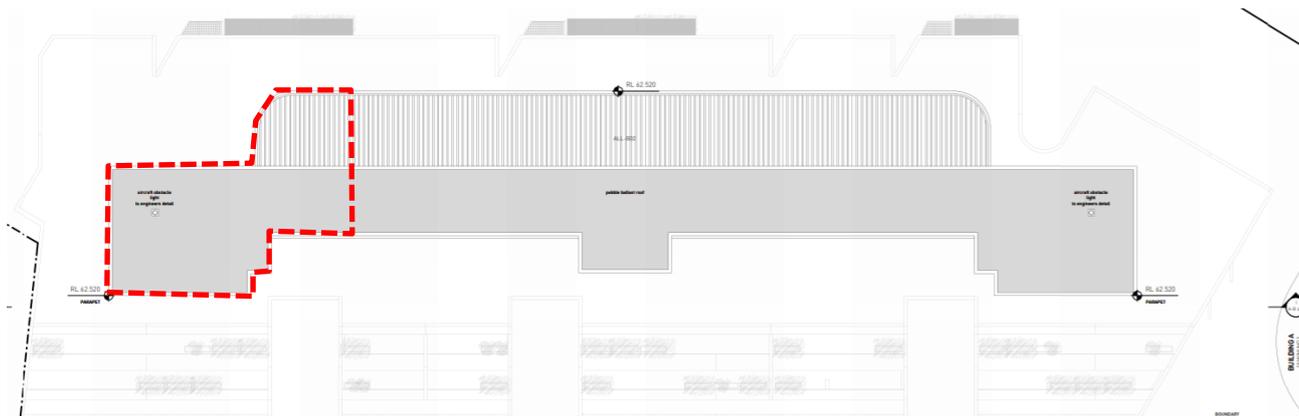


Figure 7 Extent of variation to maximum building height – Building B (shown on roof plan)

Source: Smart Design Studio and CO-AP (Green Square LEP height limit approximated)

Building C

A small portion of the upper level of Building C has a height of RL62.625 and exceeds the maximum height of RL62. The extent of the variation is less than one metre and is limited to screening for rooftop plant (see **Figure 8**). The portion of Building C that exceeds the building height is significantly separated from Portman Lane and is setback from both Barker Street and Ebsworth Street (see **Figure 9**).

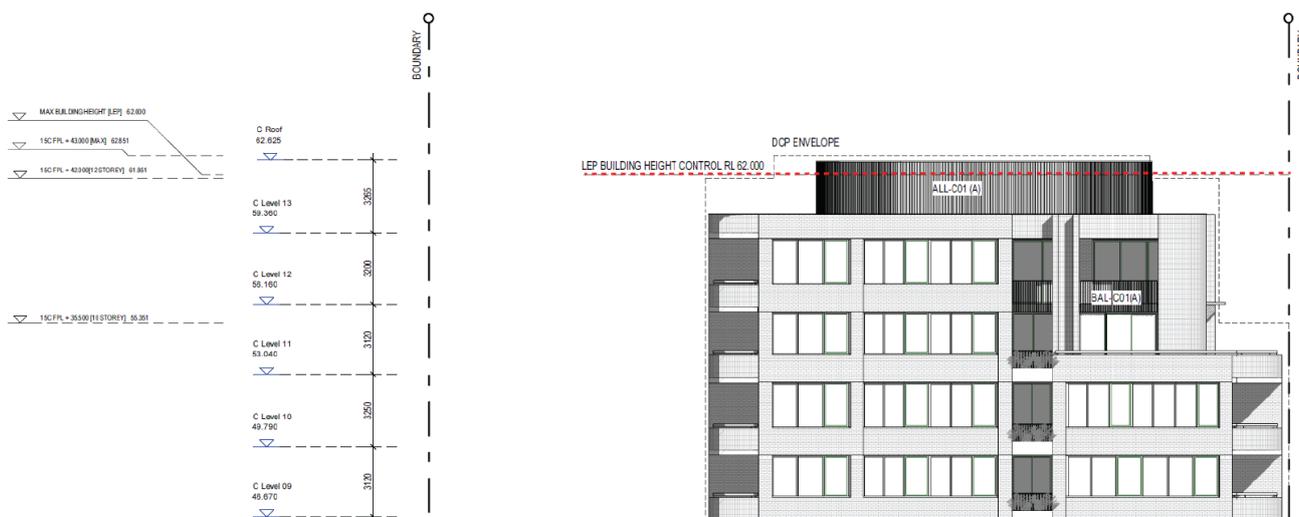


Figure 8 Extent of variation to building height– Building C (shown on Barker Street elevation)

Source: Smart Design Studio and CO-AP

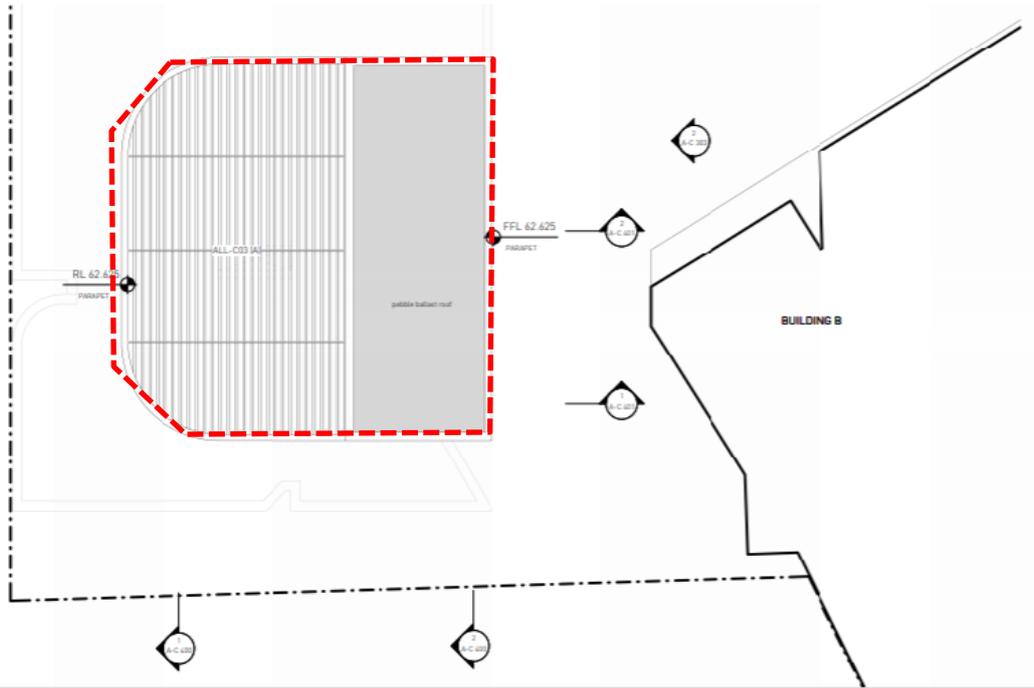


Figure 9 Extent of variation to building height– Building C (shown on roof plan)

Source: Smart Design Studio and CO-AP

Building D

The proposed Building D envelope has a minor south-western encroachment onto a portion of the site with a maximum height control of RL27.5. The maximum height of Building D in this location is RL38.5. The extent of the variation is limited to the rear portion of the built form as shown in **Figure 10**.



Figure 10 Extent of variation to Building D height, shown in red

Source: Smart Design Studio and CO-AP

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Green Square LEP 2013 provides that:

4.6 Exceptions to development standards

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, clause 4.6(4)(a) of the Green Square LEP 2013 provides that:

- (4) *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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSWLEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

The relevant matters contained in clause 4.6 of the Green Square LEP 2013, with respect to the Height of Buildings development standard, are each addressed below, including with regard to these decisions.

4.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Green Square LEP 2013 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).

- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- 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**).
- 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.

4.1.1 The underlying objectives or purposes of the development standard

The objectives of the development standard are contained in clause 4.3(1) of the Green Square LEP 2013:

- (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.*

4.1.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

Objective (a): to ensure acceptable height transitions between new development and heritage items and buildings in heritage conservation areas

The site is located within the Green Square Town Centre (GSTC) and adjoins the Heritage Conservation Area identified as the 'Zetland Estate' under the Sydney LEP 2012 located to the immediate north. The conservation area is characterised by low density dwellings generally consisting of Victorian style terrace houses, many of which are listed as heritage items (refer to **Figure 3**). Two heritage listed items comprising a total of six terraces reaching a maximum of two storeys are sited to the north of the site (I2218 and I2219). These terraces are oriented away from the subject site towards the north and separated from the site by Portman Lane.

Building B is located a considerable distance from the site's sensitive interface to the heritage buildings located further northward and is considered to provide an acceptable height transition between the proposed development and heritage items further north of the boundary, along Portman Street. Accordingly, the minor variation to the height limit will not be perceptible when viewed from the north.

Whilst Building C is located adjacent to the Zetland Estate HCA, the portions of the proposed building that exceed the maximum building height are located at the opposite end of the roof of Building C, being the south-western portion on the roof. Given the change in topography between ground level of the Zetland Estate and ground level of Building C, the variation of less than one metre will not be perceivable and will not result in any adverse visual impact when viewed from the conservation area. The eastern portion of Building C bordering the Zetland Estate is proposed consistent with the maximum building height and therefore provides an acceptable transition in height. Further, the minor exceedance in height of Building C does not generate any perceivable impacts on recently completed development at Site 16 at a height of RL56.5 and continues to provide sufficient transition between the taller form of Building A to the south, through to Site 16 to the north.

The nature of the variations of Building D and Building A do not alter the way these buildings interface with the HCA. Building D acts as a transition building and for the majority of the building, is below the maximum building height and is therefore considered to provide a suitable interface with the HCA. The portions of Building D that exceed the

maximum building height are located away from the HCA and are provided at the same height as the Portman Street orientation of the building. Similarly, the majority of Building A is compliant with the height limit that has been established under the LEP, demonstrating that this height provides a suitable transition. Parts of Building A that exceed the maximum building height are the same height as those parts of the building that are compliant.

Objective (b): to ensure sharing of views

The context of the surrounding development along with its transitional character are relevant to the assessment of the acceptability of the height variations and to understanding of the types of views enjoyed by surrounding properties. The site forms part of the highly urbanised context of the GSTC which is characterised by high rise mixed use buildings, with additional sites to be developed in accordance with the envisaged built form for the area.

Accordingly, the views obtained from surrounding properties typically consist of dense built forms, or alternatively, when viewed looking north beyond the GSTC, low scale development within the residential suburb of Zetland. Given this, the view corridors obtained from the surrounding properties and within the public domain are considered to be non-significant as they do not relate to iconic views.

The alternative massing of Building A, which results in a non-compliance with the maximum height limit on portions of the site, provides a superior public view sharing outcome. This non-compliance allows for a clear line of sight between Portman Street and the Drying Green.

The alternative massing provided for Building B, and Building C, which results in the non-compliance of the northern portion of Building B plant/services, affords additional view sharing opportunities both at a pedestrian level within the public domain on Ebsworth Street/Zetland Avenue as well as from the eastern portions of the site, including proposed terraces within Building D, through the site towards the Drying Green and new plaza at Ebsworth Street/Zetland Avenue.

The internal site planning within Site 15 will also assist in minimising the visibility of the plant above the height limit. Whilst the plant is massed towards the eastern portion of the envelope opposite Building B, the footprint of Building B is sited on an angle to align with Zetland Avenue, which orientates its elevations towards the north west and south west away from the plant. Consequently, the additional height of Building C will not encroach on view corridors obtained from the upper levels of the apartments within Building B.

The additional height is expected to have a negligible impact on the view corridors obtained from the low scale residential dwellings sited along Portman Lane. These dwellings reach a maximum of two storeys in height and are oriented towards the north, with rear yards abutting Portman Lane. The existing views from these properties are impeded by canopy tree planting that lines Portman Lane. In light of this, it is anticipated the height variation will have little visibility and an imperceptible impact on the views enjoyed by these properties.

Objective (c): to ensure acceptable height transitions from the Green Square Town Centre to adjoining areas

The proposed development is generally consistent with the prescribed building heights under clause 4.3 of the Green Square LEP 2013 and directly respond to the surrounding development within the GSTC. The development achieves the height profile established by the Green Square LEP 2013 and the Green Square DCP 2013 by continuing to present Building A as a bookend to Zetland Avenue, with Ovo being the bookend in the north west.

The extent of the proposed variation to Buildings B and C is limited to plant and building services and is less than one metre above the maximum height limit. The extent of the proposed variation to Building D is considered negligible as it relates to building siting and positioning to respond to the DCP setback controls and additional Council RFI comments. Buildings A, B and C continue to respond to the established street wall height of Ebsworth Street and present a coherent built form contribution to the streetscape as demonstrated in **Figure 11**. The redistribution of massing between all buildings presents as a superior urban design response to the GSTC context as supported by the Selection Panel recommendations and reasons for awarding Smart Design Studio and CO-AP as the winning architect of the competitive design process.

As stated above, notwithstanding the exceedance of the maximum building height for a small proportion of the site, the development continues to achieve an acceptable transition in height to adjoining areas including the low-density character of the Zetland Estate.

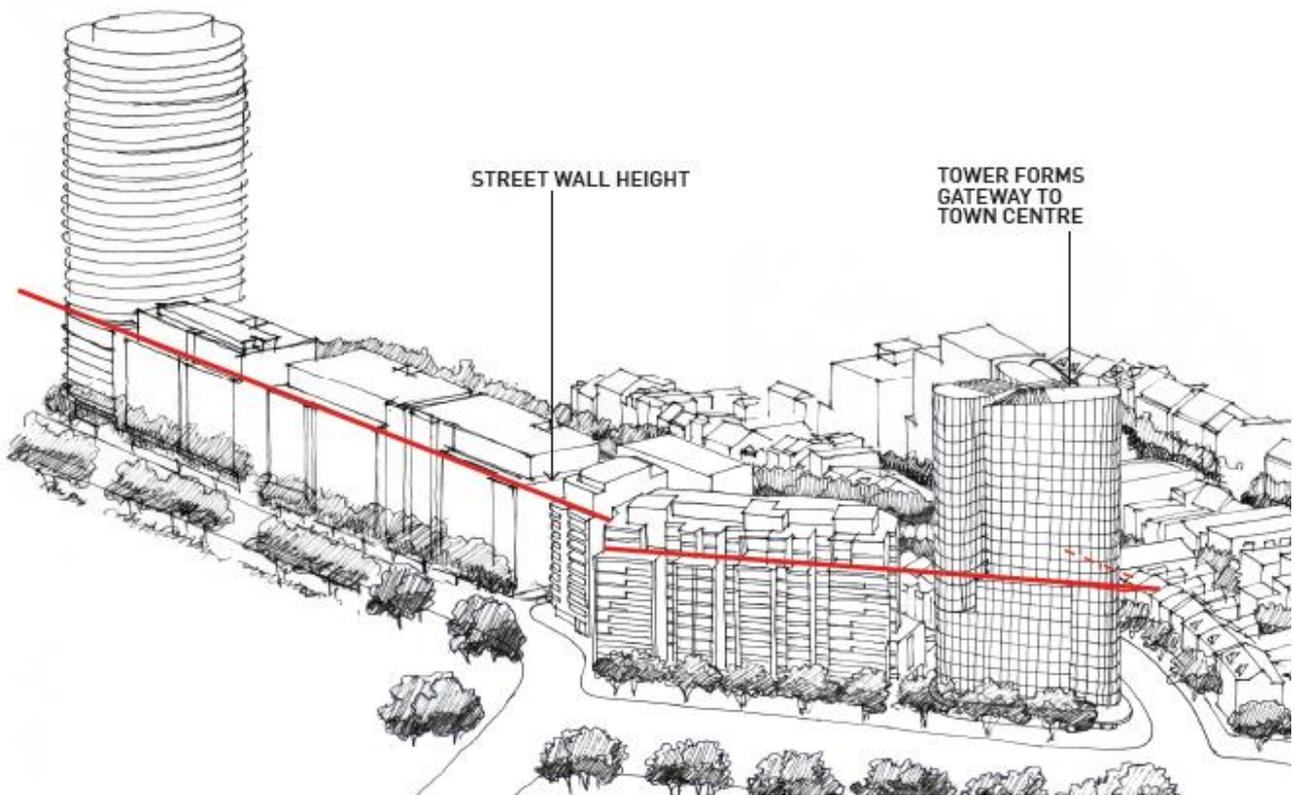


Figure 11 Proposed street wall height when viewed from the northern approach to the site

Source: Smart Design Studio and CO-AP

Objective (d): to ensure the amenity of the public domain by restricting taller buildings to only part of a site

Consistent with this objective, taller buildings are limited to Building A, stepping down through Building B and Building C. Building D continues to maintain a transition to the Zetland Estate and provide a consistent terrace interface between the heritage conservation area and new development within the GSTC as it is fully compliant with the majority of LEP controls for the original intended building envelope and is considered to achieve an improved planning outcome, with height and floorspace redistributed across the site.

Although portions of Building A extend onto area originally identified as through-site link, the proposed alternative massing maintains a pedestrian through-site link at an at least equal or greater width than that prescribed by the LEP height limit. The straightening of the through-site link provides a superior public domain outcome by providing a clear line of site from Portman Street to the Drying Green, consistent with the principles of CPTED.

The alternative massing of Building B and Building C, resulting in a minor height exceedance on the northern portion of Building B, provides a superior public domain outcome for Site 15. This enables the provision of an informal plaza at the corner of Ebsworth Street and Zetland Avenue that offers a gathering space for the local community (see **Figure 12**). This approach to site planning was identified as a key aspect of the winning design during the competitive design process and the Selection Panel confirmed that this aspect of the proposal must be retained in the detailed design of the development.

The minor exceedance (less than one metre) of the building height on the central portion of Building C does not impede the achievement of this objective. The amenity of all public domain is preserved throughout and the proposed minor exceedance of the building height does not result in any additional wind or overshadowing impacts that may affect the surrounding public domain.



Figure 12 Ebsworth Street Plaza resulting from re-massing of Building B and Building C

Source: Smart Design Studio and CO-AP

Objective (e): to ensure the built form contributes to the physical definition of the street network and public spaces.

The alternative massing of Building B and Building C results in a superior public domain outcome for Site 15 with the provision of the plaza space at the corner of Ebsworth Street and Zetland Avenue (refer to **Figure 11** above). This distribution of built form on the site also provides for a coherent street address for Building C as opposed to the dog-leg form of the Green Square DCP massing.

Building B presents as a consistent backdrop to the Drying Green with the bulk of the western elevation broken with building articulation and architectural features. If strict compliance with the height of buildings development standard was required in this case, the proposed development would not achieve the quality of built form and consistency of the street wall to Zetland Avenue. The Drying Green continues to receive direct sunlight to a cumulative 50% of the area of the public space between 10am and 2pm on 21 June. The proposed massing results in an increased area of the Drying Green receiving direct sunlight, in comparison to the DCP envelope (refer to discussion at Section 4.2 of the Response to Request for Additional Information report).

Building A ensures that a direct through-site link is provided from Portman Street to the Drying Green, with consistent sight lines and activated ground floor uses. If strict compliance with the LEP massing options and associated height controls were required, the originally intended curved through-site link would not achieve the same high quality CPTED standards than what is proposed.

The evolution of the Building D terrace house typology from the originally proposed apartment typology along Portman Street ensures built form consistency, sympathetic to the existing character of the Zetland Estate HCA.

4.1.3 Conclusion on clause 4.6(3)(a)

As set out above, notwithstanding the variation to the maximum building height prescribed in clause 4.3 of Green Square LEP 2013, the proposed development will achieve the objectives of the development standard,

notwithstanding the minor exceedance of the height control. As per the First Method in *Wehbe*, compliance with the standard is therefore considered unnecessary given the site-specific circumstances of the proposal.

Furthermore, the height variations are considered to be minor and will not substantially increase the perceived bulk and scale of the overall development beyond that of a complying scheme. This variation is primarily a result of an alternative built form massing on the site which results in a superior outcome for all buildings on site. .

4.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Green Square LEP 2013 requires the departure from the development standard to be justified by demonstrating:

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

There are considered to be sufficient environmental planning grounds to justify contravention of the height of buildings development standard in this specific instance.

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. There are particular elements that contribute to the development's variation to the Height of Buildings development standard and these are detailed below.

4.2.1 Ground 1: Improved residential amenity

The height variation proposed at Building B is attributed to the revised massing for Building B and Building C, consistent with the winning submission of the competitive design process. Whilst this alternative massing results in a minor exceedance of the maximum building height for the northern portion of the proposed Building B, this is offset by the improved solar access that is achieved for residential dwellings within the proposed development. This results in a greater number of apartments with a north-eastern aspect, capturing direct sunlight on 21 June. This results in a more regular built form for Building C, allowing for a greater number of apartments within this building to achieve natural cross ventilation.

Similarly, the height variation proposed at the rear of the Building D is attributed to the cunning design solution to provide terrace housing typologies rather than an RFB which would disturb the consistent built form and fine grain pattern of Portman Street. This alternative massing results in a minor exceedance of the maximum building height for the rear portion of the building in order to comply with DCP setback controls and be sympathetic to the existing front setback pattern exemplified along the existing streetscape of Portman Street. The variation is offset by the improved built form outcome to provide a diversified form of housing within the development proposal and provides a smoother transition from the Zetland Estate HCA to the Green Square Town Centre.

Given the minor nature and extent of the proposed variation to the maximum building height, there are no impacts on the amenity of neighbouring residential properties.

4.2.2 Ground 2: Flooding planning levels

Section 6.4 of the Green Square DCP prescribes the maximum building height as a height in metres above the FPL on a site-by-site basis. As described in **Section 2.2** above, the FPLs for the site have been established in the Flood Impact Study prepared by Wood & Grieve. To achieve Council's flooding requirements and mitigate the potential impacts of peak flood levels, the finished floor levels have been slightly raised, consequently increasing the height of the plant and lift overruns above the height limit. The basement access, via Building C, must also be provided in accordance with the FPL. The basement access FPL, combined with the required vehicle clearance height contributes to the overall raising of floor levels within Building C.

As such, the minor height variation is necessary in order to prevent inundation of the site, particularly along Barker Street in the location of the vehicle entrance point of Building C. This change to the FPL was not originally considered in the formulation of the built form controls for Building C under the Green Square LEP 2013.

4.2.3 Ground 3: Improved public domain outcome

As discussed above, the alternative massing of Building A to straighten the through-site link provides a superior public domain outcome. The through-site link as proposed, despite resulting in a variation to the building height control, allows for a clear line of sight between Portman Street and the Drying Green, implementing the principles of CPTED.

The alternative massing of Building B and Building C, resulting in a minor height exceedance on the northern portion of Building B, provides a superior public domain outcome for Site 15. This enables the provision of an informal plaza at the corner of Ebsworth Street and Zetland Avenue that offers as a gateway to the landscaped Level 2 public domain space and serves as a gathering space for the local community (see **Figure 9**). This approach to site planning was identified as a key aspect of the winning design during the competitive design process and the Selection Panel confirmed that this aspect of the proposal must be retained in the detailed design of the development.

4.2.4 Ground 4: Improved built form outcome

The objectives and controls contained within the Green Square DCP always considered a future built form for Site 15 of the proposed nature, with the proposed level of development foreseen within the Green Square LEP. Whilst the revised building envelopes involve minor height variations as they depart from the LEP controls prescribed to those building footprints, the proposed massing and building siting provides a superior outcome in accommodating improved through-site links and diversified building typologies as well as high quality built form outcomes that incorporate human scale benefits with deep consideration to neighbouring buildings and open spaces. The proposed development for Site 15 achieves the majority of desired outcomes stated in the DCP to ensure:

- (b) development of a fine grain, diverse, attractive and inviting precinct that is a place to live, work and recreate;*
- (d) the Green Square Town Centre will provide an exemplar of sustainable development through the integration of Green Infrastructure uses in the development of the public and private domain;*
- (f) new buildings respond in an appropriate manner to their context in order to minimise their impact on the amenity of neighbouring dwellings and urban character of the surrounding area;*
- (g) new buildings achieve design excellence and maximise the amenity of occupants and the overall environmental performance of the Town Centre; and*
- (i) new development responds appropriately to alleviate the impact of stormwater and flooding risk through the design and location of streets and open space and the design of buildings.*

4.2.5 Ground 4: The variation is minor in nature and extent

As set out in Section 3.2, the nature of the proposed variations is minor, namely:

- Approximately 89% of Building A is located on land where the height limit is RL98. The 11% of the building (in plan) that extends onto land with a height limit of RL22 does not result in any adverse environmental impacts and facilitates the straightening of the through-site link which results in a superior built form and pedestrian amenity outcome;
- The portions of Building B that exceed the height limit, exceed that limit by 1m and are setback from the street frontage and relate only to building plant. The remainder of Building B is at the same height of RL63 and is compliant with the height control. This height exceedance is due to the re-massing of Building B and Building C to provide a superior site planning outcome;
- The portions of Building C that exceed the height limit, exceed that limit by 0.625m. The area of the exceedance is limited to the south western portion of the building and is set back from both Barker Street and Ebsworth Street.
- The roof level of Building D is provided at a consistent height limit. The north eastern portions of the building are compliant with the height limit, and eastern portions of the building are significantly below the height limit. The portions of Building D that exceed the height limit are located at the rear of the building and do not compromise the separation distance to Building B.

4.2.6 Conclusion on clause 4.6(3)(b)

This section has demonstrated that notwithstanding the proposed variation to the development standard:

- The proposal provides for an increased level of residential amenity resulting from the alternative massing of Buildings A, B, C and D;
- The proposed variation to the maximum building height does not impede on the residential amenity of surrounding properties (both proposed and existing);
- The site is impacted by the flooding constraints and the height variation associated with Building C is necessary in order to mitigate flooding impacts;
- The proposed variation results from the re-massing of all buildings which creates a superior public domain outcome in comparison to a compliant massing; and
- The variation is minor in nature and extent and therefore will have negligible impact.

In light of the above, Council can be satisfied that there are sufficient environmental planning grounds to justify contravening the development standard. Additionally, there is no benefit in maintaining the development standard and the minor variation will result in an improved outcome for the site.

4.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

4.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the Height of Buildings development standard, for the reasons discussed in Section 4.1.2 of this report.

4.3.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the B4 Mixed Use Zone, as demonstrated below.

Objective 1: To provide a mixture of compatible land uses

The proposal is entirely consistent with this objective in that it co-locates retail uses and residential uses in a singular location. The proposed uses are consistent with the distribution of land uses nominated by the Green Square DCP (GSTC 4.1 Location of desired activities) with retail uses provided along Zetland Avenue, Ebsworth Street and Barker Street, and residential provided along Portman Street. Residential uses are located above the ground floor within the tower components of each building. In light of this, the proposal will contribute to the achievement of a diversity of land uses, providing employment generating uses at ground level and a mix of housing types at varying price points above. Effectively it will increase the provision of housing in an area well serviced by public transport and employment opportunities.

Objective 2: 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.

The proposed development provides for retail and residential uses. The additional height for each building is required given site constraints related to flooding and the adoption of an alternative massing / building layout that achieves an improved urban design outcome.

The site is located within walking distance of Green Square Railway Station and is in proximity to a future cycleway situated along Portman Street. The site is also well serviced by multiple bus services located in proximity to the site along Botany Road and Elizabeth Street. To encourage the utilisation of these non-vehicular modes of transport, the redevelopment of the site will incorporate the provision of cycling facilities and a through-site link, which will encourage the uptake of non-vehicular modes of public transport.

Objective 3: To ensure uses support the viability of centres

The site is located within the GSTC which is identified as a higher-order centre with a focus for major retail and commercial activity. In accordance with the *Green Square and Southern Areas Retail Study*, the town centre is required to accommodate a wide range of retail functions.

In accordance with the vision for the area, the proposal incorporates retail and commercial uses at ground level that will complement the higher-order role of the GSTC and cater to the needs of existing and new residents. The retail

tenancies are of a scale and configuration to permit a wide range of uses that will assist in achieving an active and vibrant neighbourhood.

4.3.3 Overall public interest

Notwithstanding the proposed variation to the height of buildings development standard, it is considered that the proposed development is in the public interest. The development as a whole will deliver a number of public benefits to the area, including:

- Facilitating the delivery of the GSTC, a planned new town centre, as a cohesive development providing retail activation, communal residential facilities and residential accommodation with high amenity;
- Encouraging greater street level activation along Zetland Avenue, Ebsworth Street and Barker Street, including the provision of a plaza at the corner of Ebsworth Street and Zetland Avenue;
- The delivery of an exemplary architectural form on the site which exhibits design excellence and is the result of a competitive design process held for the project;
- Providing bicycle facilities consistent with the provisions of the Green Square DCP that will encourage the uptake of non-vehicular modes of public transport;
- Providing a through-site pedestrian connection from Portman Street to Zetland Avenue and the Drying Green that will improve connectivity as well as a vibrant ground floor environment within the precinct.

4.3.4 Conclusion on clause 4.5(4)(a)(ii)

The proposed development, notwithstanding the minor variation to the maximum building height, is consistent with the objectives of the B4 Mixed Use zone of the Green Square LEP 2013. Accordingly, the consent authority can reasonably be satisfied that this written request has adequately addressed the matters in clause 4.6(3) and that the proposed development would be in the public interest because it is consistent with the objectives of the height of buildings development standard and the objectives for the development within the zone in which the proposed works are to be carried out.

4.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

4.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

This variation request does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, A Metropolis of Three Cities in that it:

- Provides accommodation and services to meet the needs of the local population, both at the present time and in the near future as Sydney's population grows and ages;
- Is located in an area identified as a Strategic Centre that has been designed for growth in both homes and jobs;
- Is well located in proximity to public transport; and
- Does not adversely impact any of the adjacent heritage items or conservation area to the north.

4.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

The site is unique in the manner in which the maximum building height is applied across the total area of Site 15 (refer to **Figure 2**). This restricts flexibility within the site and limits the opportunities for applying alternative built form solutions that achieve a superior public domain outcome and a greater level of internal residential amenity.

There is no public benefit in maintaining the numerical building height development standard in this instance. In fact strictly adhering to the maximum height of buildings development standard would result in a reduced public outcome for the site in that it would:

- Require the development to provide an inferior public domain outcome with a through-site link that does not maintain a clear line of sight;
- Restrict the ability to achieve the desired built form outcome for Building B and Building C that was supported by the Selection Panel through the competitive design process;
- Result in a taller form for Building D that provides an apartment typology instead of a terrace typology which enhances the transition to the adjoining HCA;
- Limit to the number of residential apartments within the proposed development that achieve solar access and natural cross ventilation, reducing residential amenity; and
- Limit the capacity to address the flooding issues impacting Building C.

Accordingly, it is considered that maintaining and enforcing the development standard in this case would unreasonably prevent the orderly and economic development of the site and would not result in a better planning outcome.

4.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

The variations sought are a direct result of the unique site constraints and surrounding built form. As demonstrated above, there is an existing precedent established by recent approvals for developments in the locality that exceed the height standard. The proposed height is commensurate with the heights established in the surrounding context, which occur largely in response to flooding issues affecting the GSTC and the need to accommodate roof top plant that has an imperceptible impact on the public domain.

5.0 Conclusion

The assessment above demonstrates that compliance with the height of buildings development standard contained in clause 4.3 of the Green Square LEP 2013 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the exceedance of the maximum building height development standard prescribed in clause 4.3 of the Green Square LEP 2013, the proposed development:

- achieves each of the applicable objectives of the height of buildings development standard in the B4 Mixed Use Zone;
- has significant planning grounds to justify the variation;
- does not give rise to any adverse environmental impacts, particularly with regard to the relationship with the public domain, including the Dying Green; and
- is in the public interest.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Green Square LEP 2013.