

Attachment D

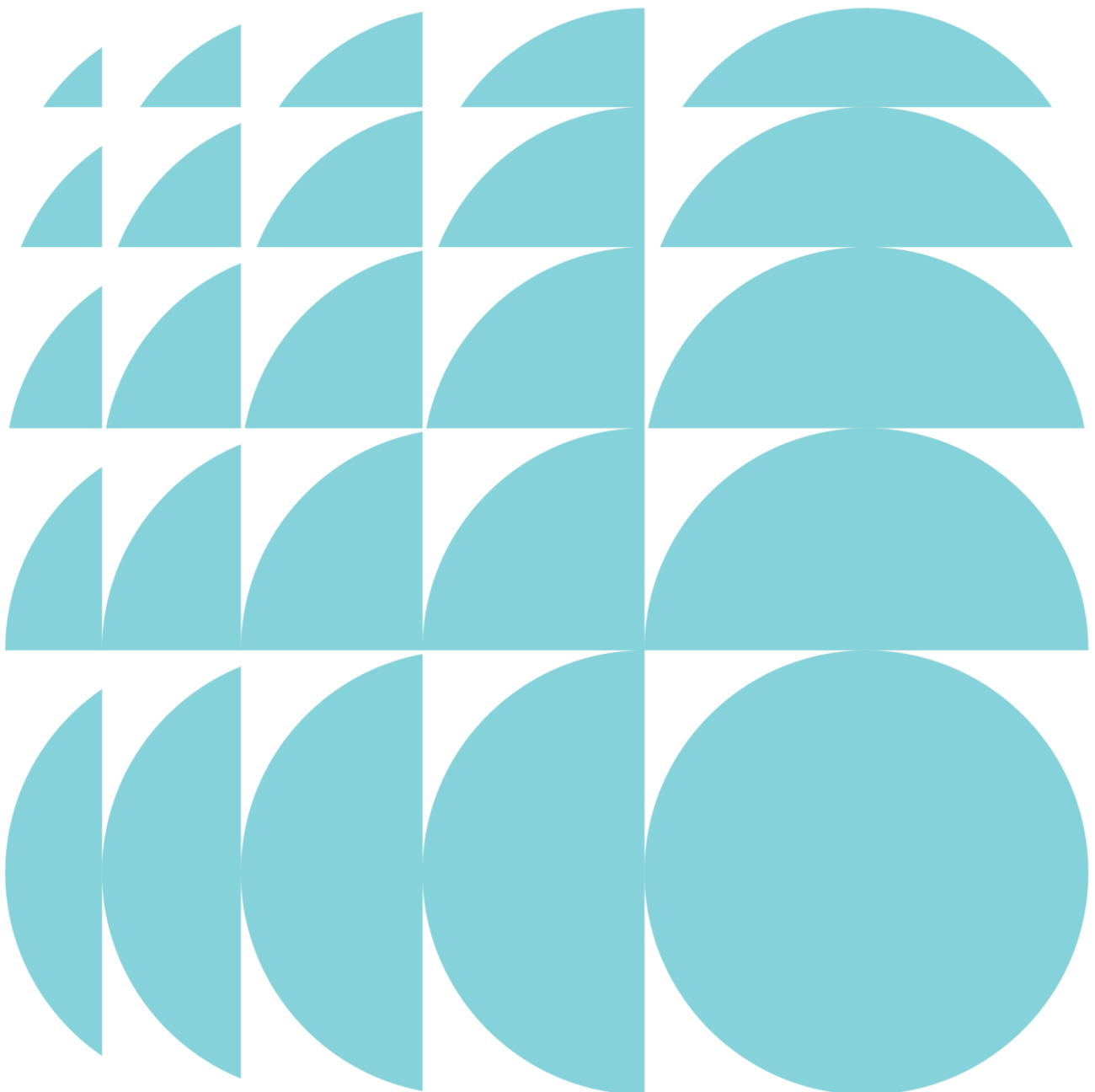
<p>Clause 4.6 Variation Request – Ceiling Heights</p>
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Clause 4.6 Variation Request

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

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

November 2019 | 15798



CONTACT

Alexis Cella Director acella@ethosurban.com +61 2 9956 6962

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This document has been prepared by:



Brendan Hoskins

01/11/2019

This document has been reviewed by:



Alexis Cella

07/11/2019



Daniel Howard

07/11/2019

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Ethos Urban Pty Ltd
ABN 13 615 087 931.
www.ethosurban.com
173 Sussex Street, Sydney
NSW 2000 t 61 2 9956 6952

1.0	Introduction	3
2.0	Development Standard to be Varied	4
2.1	Is the Planning Control in Question a Development Standard	4
2.2	Development Standard – Ceiling Height	4
2.3	Extent of the Variation Proposed	5
3.0	Justification for Contravention of the Development Standard	7
3.1	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	7
3.2	Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard	9
3.3	Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard	10
3.4	Secretary Concurrence	11
4.0	Conclusion	12

Figures

Figure 1	Typical kitchen ceiling height explanatory drawing	6
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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 City of Sydney (the Council) in support of a development application (DA) for a mixed-use residential development at 77-93 Portman Street, Zetland, also known as Site 15 Green Square Town Centre (D/2018/517). This report should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated May 2017 and subsequent additional information and clarifications.

This request relates to minor variations to the recommended minimum design criteria for ceiling heights as set out in the Apartment Design Guide (ADG). The ADG establishes consistent planning and design standards for residential apartments across NSW. The guideline is provided as a supplement to the design principles contained within *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development* (SEPP 65). The ceiling height design criteria recommended in the ADG has been interpreted by Council staff as a development standard.

Clause 4.6 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013 (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.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.
- 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 in which the development is proposed to be carried out.

It is demonstrated in this clause 4.6 variation request that compliance with the ceiling height 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 variation request demonstrates that, notwithstanding the non-compliance with the ceiling height development standard, the proposed development for Site 15 will:

- Provide a high standard of amenity for future residents and well-proportioned space perception in the apartments.
- Achieve sufficient natural ventilation and daylight access to all habitable rooms within the apartments.
- Provide well designed and appropriately defined ceilings that create spatial interest and hierarchy in apartments and provides sufficient amenity and services provision within retail spaces.
- Continue to remain consistent with the wider approach to apartment and retail design for mixed-use areas, and importantly the approved and constructed developments within Green Square.
- Continue to satisfy the objectives of the development standard, namely to provide a ceiling height which achieves sufficient natural ventilation and daylight access.

Given the above, the consent authority can be satisfied that compliance with the recommended ceiling height development standard is unreasonable and unnecessary and 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 Development Standard to be Varied

2.1 Is the Planning Control in Question a Development Standard

Council staff have provided an interpretation that the ceiling height design criteria of the ADG is a development standard due to clause 30 of SEPP 65. This clause states the following:

30 Standards that cannot be used as grounds to refuse development consent or modification of development consent

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

While the design criteria of the ADG are not generally interpreted as 'development standards', Council staff interpret the recommended minimum ceiling height design criteria to be a development standard, as the ceiling height design criteria are referenced in clause 30 of SEPP 65 (refer above **bold**) as a standard that cannot be used for refusal if the criteria are satisfied.

As Council staff interpret the word 'standard' to mean 'development standard', a clause 4.6 variation request is required if the minimum recommended design criteria for ceiling heights, amongst other criteria, are not achieved. While we do not share this interpretation, this clause 4.6 variation request is made in abundant caution to facilitate the determination of the proposed DA.

2.2 Development Standard – Ceiling Height

This clause 4.6 variation request seeks to justify contravention of the ceiling height development standard set out in the ADG. Objective 4C-1 of the ADG states:

Objective 4C-1

Ceiling height achieves sufficient natural ventilation and daylight access

Design criteria

1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

Minimum ceiling height for apartment and mixed use buildings	
Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use

These minimums do not preclude higher ceilings if desired

Design guidance

Ceiling height can accommodate use of ceiling fans for cooling and heat distribution

Objective 4C-2

Ceiling height increases the sense of space in apartments and provides for well proportioned rooms

Design guidance

A number of the following design solutions can be used:

- *the hierarchy of rooms in an apartment is defined using changes in ceiling heights and alternatives such as raked or curved ceilings, or double height spaces*
- *well proportioned rooms are provided, for example, smaller rooms feel larger and more spacious with higher ceilings*
- *ceiling heights are maximised in habitable rooms by ensuring that bulkheads do not intrude. The stacking of service rooms from floor to floor and coordination of bulkhead location above non-habitable areas, such as robes or storage, can assist*

Objective 4C-3

Ceiling heights contribute to the flexibility of building use over the life of the building

Design guidance

Ceiling heights of lower level apartments in centres should be greater than the minimum required by the design criteria allowing flexibility and conversion to non-residential uses (see figure 4C.1)

2.3 Extent of the Variation Proposed

Ground floor

The ADG recommends that developments located in mixed-use areas provide a minimum floor to ceiling height of 3.3 metres for the ground floor level to promote future flexibility of use and to optimise natural ventilation and sunlight access.

As outlined in the SEE and illustrated on the Architectural Plans at Appendix A of the SEE, the proposed development includes ground level retail tenancies which are generally provided with a ground level minimum ceiling/soffit internal clearance of 3.3 metres above finished floor level (FFL). Specifically, the proposed design offers the following internal floor to ceiling/soffit heights:

- Up to 5.08 metres fronting Barker Street;
- Between 3.64 metres and 4.57 metres fronting Zetland Avenue; and
- Between 3.32 metres up to 4.11 metres fronting the through-site link between Zetland Avenue and Portman Street, however one tenancy achieves between 2.63 metres and 2.73 metres.

As demonstrated above, the majority of retail spaces at the ground floor achieve the minimum design criteria of 3.3 metres. Several tenancies are provided with well in excess of 4.0 metre FFL to ceiling/soffit level height, which offers flexibility and are able to accommodate the future needs of food and beverage tenancy uses.

For the tenancy which achieves between 2.63 metres and 2.73 metres height above FFL, this minor technical non-compliance is required to accommodate building services, plant and structural requirements above. This tenancy is also located internally within the site and in a location which is required to deal with the change in site levels from Portman Street in a southerly direction to Zetland Avenue.

Mirvac has identified a potential future use for this retail tenancy for health and wellbeing purposes, to support greater diversity of non-residential offerings within the development. Notwithstanding, other specialty retailers such as a retail and a coffee shop are considered suitable despite the lower than typical soffit height. The final use of the tenancy will be resolved by Mirvac following construction.

Overall, the development's proposed ceiling heights in general do not inhibit future flexibility of use throughout the site. Natural ventilation and solar access to these retail spaces has been considered on a whole of site basis, and accordingly, performance has been optimised.

First floor and above

The ADG recommends a minimum floor to ceiling height of 2.7 metres for habitable rooms within residential apartments. Further, the ADG recommends that developments located in mixed-use areas provide a minimum floor to ceiling height of 3.3 metres for first floor levels to promote future flexibility of use.

As outlined in the SEE and illustrated on the Architectural Plans at Appendix A of the SEE, the proposed development includes apartments which are generally provided with ceiling heights of 2.7 metres in all habitable rooms. Within the apartments above the ground floor, all living and sleeping areas are provided with ceiling heights of 2.7 metres. A 2.4 metre ceiling height is provided above the kitchen area of all apartments, minor internal circulation areas, and above a limited number of bedroom doorways in order to accommodate building servicing infrastructure (namely vents, conduits, plumbing and the like), thereby negating any need for additional bulkheads in living spaces. The percentage of the area of individual apartments that do not achieve the required floor to ceiling heights is in the order of 5-15%.

The provision of a 2.7 metre floor to ceiling height at the first floor level does not unreasonably preclude the adaptive re-use of these residential for commercial purposes in future should it be considered desirable.

With regard to the air conditioning infrastructure, the specification comprises a water-cooled package unit with an overall height of 415mm, generally larger than a split system, and the resultant lowered ceiling heights in these locations. The proposed air conditioning system allows for improved distribution of conditioned air into the habitable space and improves efficiency and thermal comfort. The 2.4 metre ceiling zone also allows mechanical equipment to be positioned in a location that is safely accessible for maintenance.

While this design solution does not strictly achieve the recommended 2.7 metre ceiling height for all habitable rooms, it provides a solution which allows the majority of each habitable room in an apartment to achieve a 2.7 metre ceiling height, and ensures that the kitchen area is still provided with a ceiling exceeding the 2.1 metre minimum height prescribed for kitchens by the National Construction Code.

A cross section of a typical apartment ceiling height is illustrated in **Figure 1** and as provided separately to Council as part of the amended architectural drawings package.

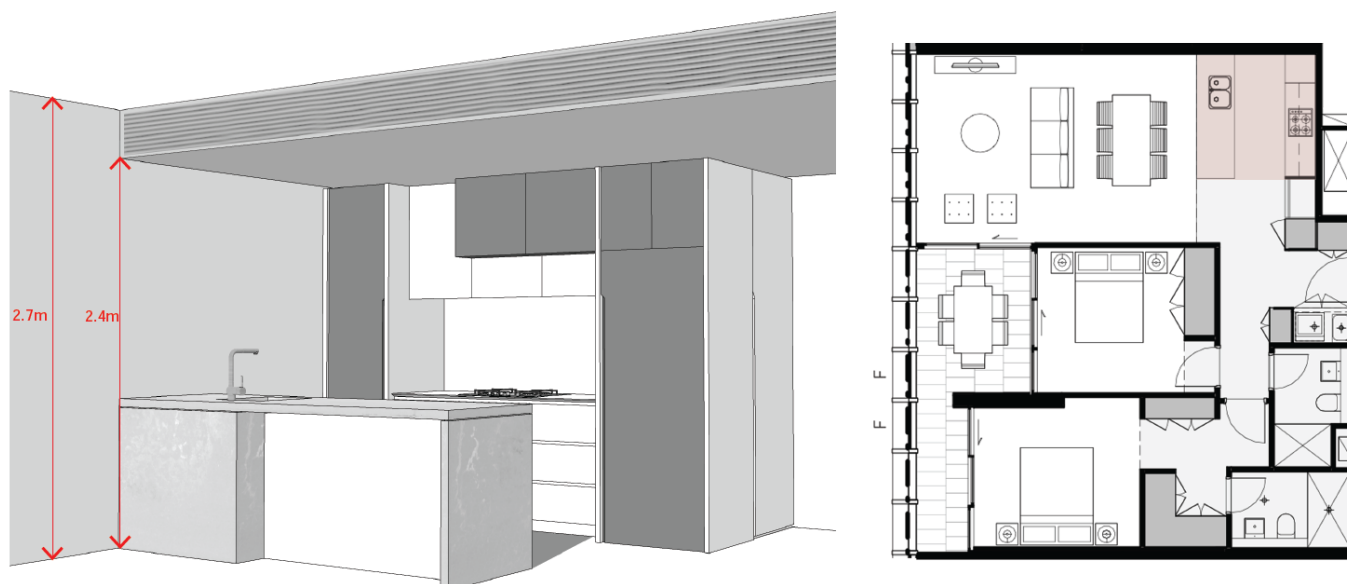


Figure 1 Typical apartment height explanatory drawing

Source: CO-AP and Smart Design Studio

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Green Square LEP 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 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] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 100;
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
4. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511; and
5. *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552.

The relevant matters contained in clause 4.6 of the SLEP 2012, with respect to the maximum building height development standard, are each addressed below, including with regard to these decisions.

3.1 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 identified five ways in which it could be demonstrated that compliance with a development standard is unreasonable or unnecessary in the circumstance of the case. His Honour in that case (and subsequently in *Initial Action*) confirmed that the types of ways that it could be shown that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case, was not limited to the five ways identified in *Wehbe*.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis is applicable 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 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.

3.1.1 The underlying objectives or purposes of the development standard

The objective of the recommended minimum ceiling height development standard is contained in Objective 4C-1 of the ADG. This objective states:

Objective 4C-1

Ceiling height achieves sufficient natural ventilation and daylight access

Objective 4C-2

Ceiling height increases the sense of space in apartments and provides for well proportioned rooms

Objective 4C-3

Ceiling heights contribute to the flexibility of building use over the life of the building

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

Objective 4C-1 of the ADG seeks to ensure sufficient natural ventilation and daylight access is achieved in apartments. While the ceiling height design criteria of the ADG is not numerically achieved in all habitable rooms of the proposal, the vast majority of habitable rooms in the apartments are provided with ceiling heights of 2.7 metres. The variation proposed is minor in nature (300 mm), and only relates to a small proportion of the apartment, being the kitchen, minor circulation areas and small extends of some bedroom doorway areas. Furthermore, the kitchen areas where a 2.4 metre ceiling height is provided are located adjacent to the open plan living room areas, ensuring that a generous perception of space is achieved, and natural light and ventilation are achieved in the contiguous living room and kitchen area. Overall, the proposed development also achieves the key design criteria of the ADG in relation to solar access and ventilation, with 72% of apartments receiving at least two (2) hours of direct sunlight in mid-winter, and 62% of apartments within the first nine (9) stories achieving natural cross ventilation.

Likewise, the ground level retail floor to ceiling/soffit height variation is minor (670mm) and relates to only one internal tenancy, with the vast majority of other tenancies through the development in line with or exceeding the 3.3 metre standard. Retail areas have been optimised to allow daylight access and appropriate natural ventilation on a whole-of-site basis.

The ADG also seeks to ensure that the proposed ceiling heights increase the sense of space in apartments and provides for well-proportioned rooms under Objective 4C-2. Accordingly, the proposed development is consistent with the design guidance of this objective, in that the open plan flow of habitable living spaces optimises sense of space and outlook, with bulkheads limited as far as possible so as to not intrude into visual sight lines. Further, the bulkhead design and appearance has been applied consistently, as far as practical, throughout the development and is common in contemporary apartment designs, meeting with the market's design expectations and tastes.

Objective 4C-3 of the ADG seeks to provide an outcome whereby ceiling heights contribute to the flexibility of building use over the life of the building. The provision of 2.7m primary habitable floor to ceiling spaces at the first floor offers a reasonable degree of flexibility in the future circumstance that this space is to be converted to a commercial use, such as office floorspace should it be desired. The minor ground level retail ceiling/soffit height departure still allows for alternative commercial uses, such as office, retail and other non-food and beverage uses which will contribute to vibrance and diversity within the development.

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

Clause 4.6(3)(b) of the SLEP 2012 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]). Further, compliance with other planning instruments, such as SEPP65 and the Apartment Design Guide, does not justify non-compliance with the development standard and is not sufficient environmental planning grounds to justify contravening the development standard (*Baron Corporation Pty Ltd v The Council of the City of Sydney* [58]).

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. In this instance the relevant aspect of the development is the additional building height that exceeds the development standard.

Clause 4.6(3)(b) of the Green Square LEP 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 ceiling height development standard in this specific instance. The requested variation is appropriate and justified as it will result in a suitable amenity throughout the apartments and is ultimately minor in nature and extent (300 mm variation proposed). The proposed design solution will enable 2.7 metre ceiling heights in the majority of habitable rooms in the apartment, in turn allowing for well-proportioned, ventilated and naturally lit spaces throughout the apartment where residents will spend the majority of their time. As outlined above, 72% of apartments will receive at least two (2) hours of solar access in mid-winter, and 62% of apartments in the first nine (9) stories achieve natural cross ventilation, consistent with the design criteria of the ADG.

The ceiling heights in the kitchen areas, while slightly lower, are still in excess of the National Construction Code (inclusive of Building Code of Australia) minimum standards, and still allow for sufficient ventilation and light in these apartments which achieve suitable levels of direct sunlight and ventilation. Furthermore, the kitchen areas are located adjacent to the open plan living areas, a targeted design solution for these apartments to ensure a larger, contiguous space is achieved to maximise light and ventilation. The proposed design also offers a high degree of internal amenity and a strong sense of space, whilst still offering an acceptable degree of flexibility in catering for future non-residential uses of the space, should it be desired.

At the ground floor, the minor departure from the prescribed floor to ceiling height standard for one retail tenancy is considered acceptable in that it facilitates a well-considered, whole-of-site design outcome. The development, notwithstanding the departure, appropriately integrates with the surrounding finished street levels of the GSTC, whilst balancing good design outcomes with technical requirement such as circulation/back-of-house, building services and structural engineering aspects of the development.

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.

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

In *Initial Action v Woollahra Municipal Council* [27], it was held that 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. The proposal is in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone.

Consistency Caselaw

Consistency has been defined throughout caselaw including the following Land and Environment Court cases:

- *Addenbrooke v Woollahra Municipal Council* [2008] NSWLEC 190
- *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21
- *Raassis v Randwick City Council* [2019] NSWLEC 1040
- *Abrams v Council of City of Sydney* [2018] NSWLEC 1648
- *Kingsland Developments v Parramatta Council* [2018] NSWLEC 1241
- *Dem Gillespies v Warringah Council* (2002) 124 LGERA 147

In these cases, consistency is considered to be different to that of 'achievement'. The term 'consistent' has been considered in a judgements of the Court in relation to zone objectives and has been interpreted to mean "compatible" or "capable of existing together in harmony" (*Dem Gillespies v Warringah Council* (2002) 124 LGERA 147; *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC 190) or "not being antipathetic" (*Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21). Whichever interpretation is adopted the test of "consistency" is less onerous than that of "achievement".

3.3.1 Consistency with objectives of the development standard

As outlined above, the proposed development is consistent with the objective of the ceiling height development standard and achieves the intent of the design criteria for ceiling height.

3.3.2 Consistency with objectives of the zone

The proposed development is also consistent with the objectives of the B4 Mixed Use zone, as demonstrated in the following subsections.

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, effectively integrating these uses in an accessible location, consistent with the objective.

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.

3.4 Secretary Concurrence

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

- (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.

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

The variation of the recommended ceiling height development standard does not raise any matter of significance for State or regional planning. The proposal is consistent with the most recent metropolitan plan for Greater Sydney Region Plan in that it:

- Provides accommodation to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages.
- Is well located for public transport connections, open space and services.
- Is designed to a high standard and offers a unique architectural design within the GSTC, which is a key urban renewal precinct in Sydney.
- Achieves well designed residential units and a mixed-use precinct that meet the design objectives under Part 3 and Part 4 of the Apartment Design Guide.

Further, the minor variation to the ceiling height design criteria proposed does not result in any significant adverse impact on the surrounding area and enables an appropriate design response for a broader high quality amenity within apartments and retail spaces.

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

There is no public benefit in maintaining the recommended ceiling height development standard in this instance. As outlined in Section 4.2 above, there are sufficient environmental planning grounds to warrant contravention of the development standard and it is therefore considered to be in the public interest for the variation to be supported in this case.

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

None.

4.0 Conclusion

The assessment above demonstrates that compliance with the recommended ceiling height development standard contained in the ADG 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 minor variation of the ceiling height design criteria in a portion of the apartments, the proposed development:

- Achieves the applicable objectives of the ceiling height design criteria and design guidance measures;
- Achieves the objectives of the B4 Mixed Use Zone;
- Has significant planning grounds to justify the variation;
- Does not give rise to any adverse environmental impacts; 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.