

Attachment C

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

Sites 2, 3 and 4 in the Green Square Town Centre

Clause 4.6 Variation Request to Height of Buildings Development Standard

On behalf of
Toga Project Services Pty Ltd
July 2021



1 Introduction

This Clause 4.6 Variation Request relates to a Development Application (DA) for the site located at 6 – 12 O’Riordan Street, 320 – 322 Botany Road and 324 Botany Road, Alexandria (the site) defined by the *Green Square Town Centre DCP 2012* (GSTC DCP 2012) as Sites 2, 3 and 4, respectively.

The proposed development relates to the delivery of a commercial building containing ground level retail. The proposal contravenes the maximum Height of Buildings Development Standard nominated under Clause 4.3 of the *Sydney Local Environmental Plan (Green Square Town Centre) 2013 – Stage 2 (SLEP GSTC– Stage 2 2013)*.

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 case, and that the justification is well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate considering the site’s context within the Green Square Town Centre Urban Renewal Area. Accordingly, the proposal is justified on environmental planning grounds.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance, the proposed development:

- Is consistent with the objectives of the *Environmental Planning and Assessment Act 1979* (EP&A Act);
- Is consistent with, and achieves the objectives of the Height of Buildings Development Standard set out under Clause 4.3 of *SLEP GSTC– Stage 2 2013* (Wehbe Test 1);
- Is consistent with the objectives of the B3 Commercial Core zone under *SLEP GSTC– Stage 2 2013*;
- Is consistent with the applicable and relevant state and regional planning policies;
- Will deliver a development that is appropriate for its context, despite the numerical breach to the development standard, with sufficient environmental planning grounds to justify the variation; and
- Is therefore in the public interest.

As a result, the DA may be approved notwithstanding the breach of the building height development standard in accordance with the flexibility afforded under Clause 4.6 of the *SLEP GSTC– Stage 2 2013*.

2 Background

The site is located within the Green Square Town Centre which forms part of the broader Green Square Urban Renewal Area. The Green Square Town Centre comprises 15 sites which are set out in the figure below. The majority of these sites which are under the control of Urban Growth NSW are subject to the provisions of the *Sydney Local Environmental Plan (Green Square Town Centre) 2013*. The remaining sites are subject to the *SLEP GSTC– Stage 2 2013*.

The site relates to Sites 2, 3 and 4 which are illustrated in **Figure 1**. The site is currently a 'deferred' matter from the *SLEP GSTC– Stage 2 2013* in accordance with Section 3.36(3) of the EP&A Act.

The proponent has offered to enter into a Voluntary Planning Agreement (VPA) (VPA/2019/10) which proposes a range of public benefits in connection with the site. Once executed, the VPA will un-defer the site and the *SLEP GSTC– Stage 2 2013* provisions and associated GSTC DCP 2012 will apply.

In March 2021, Council confirmed their support to finalise the terms of the VPA. The VPA was then exhibited from 31 April 2021 to 31 May 2021. The stakeholders are in the process of executing the VPA. In anticipation of the VPA's execution, this Clause 4.6 Variation Request and associated Development Application have been prepared in accordance with the *SLEP GSTC– Stage 2 2013* provisions and the associated GSTC DCP 2012 development standards.



Figure 1 – GSTC Development Sites
Source: GSTCDP 2012 (amended by Mecone)

3 The Development Standard to be varied

This Clause 4.6 Variation is a written request seeking to justify the contravention of the maximum Height of Building Development Standard as set out in Clause 4.3 of the *SLEP GSTC– Stage 2 2013*.

Clause 4.3(2) specifies that 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 specifies two separate building height limits for the site:

- 'Site 2' is subject to a building height limit of RL 75.
- 'Sites 3 and 4' are subject to a building height limit of RL 63.4.

The maximum building height limit as per *SLEP GSTC– Stage 2 2013* is shown in **Figure 1**.

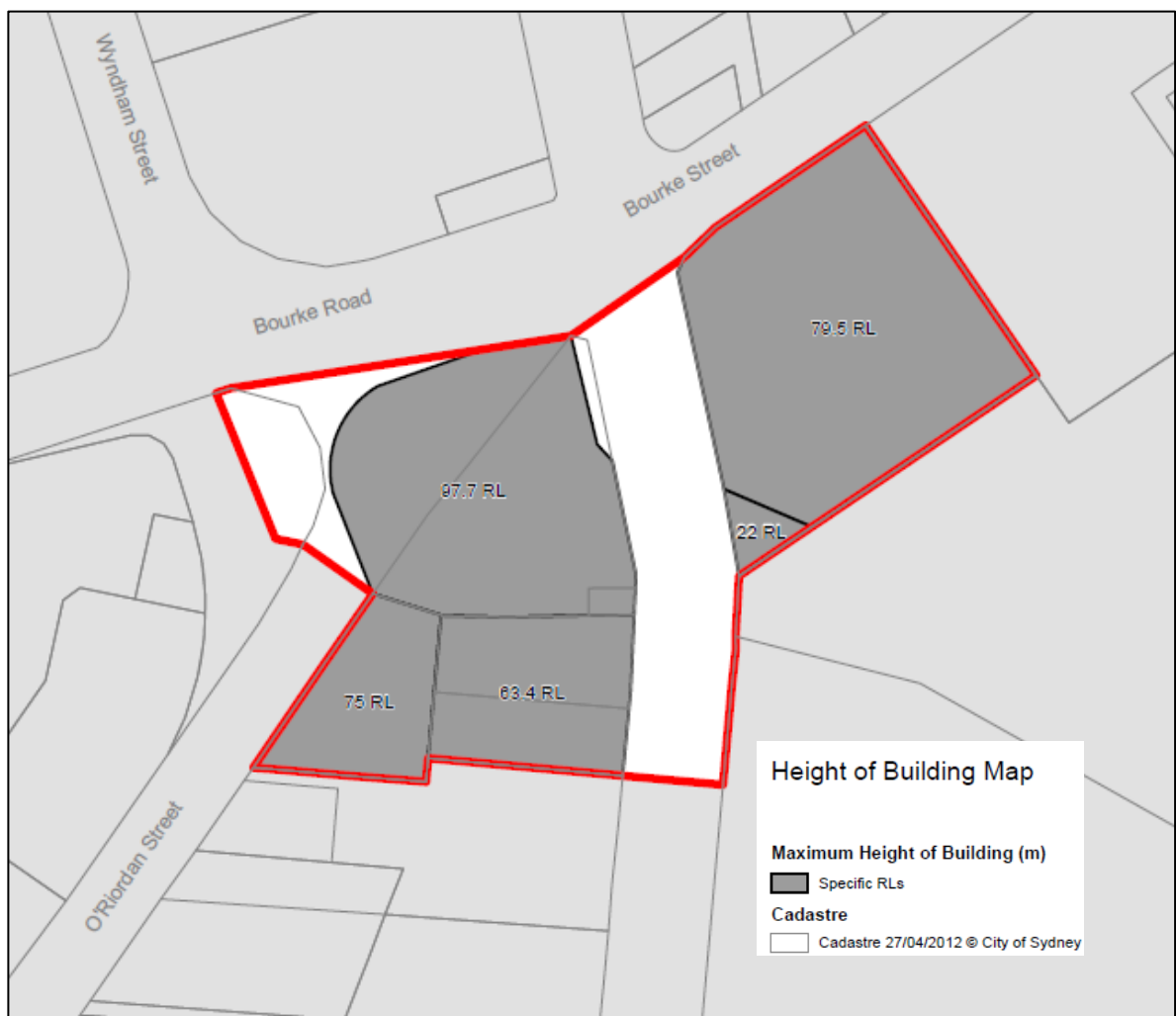


Figure 2 – Maximum Height Limits Applied by the SLEP GSTC– Stage 2 2013

Source: *GSTC LEP 2013 – Stage 2 (amended by Mecone)*

As shown in the figures below:

- A maximum building height of RL 83.5 is proposed within Site 2 where a height limit of RL 75m applies, representing a variation of 8.5m or 11.3%.
- A maximum building height of RL 72.3m is proposed for Site 2 and Site 3 where a height limit of RL 63.4m applies, representing a variation of 8.9m or 14%.

The proposed height exceedances are attributed to the sculptural roof element which contains building plant. Therefore, the variation does not seek to increase the provision of habitable floor space and thus the intensity of land use. The extent of the height variations are illustrated in the figures below.

Case law precedents have established that the extent of the numerical variation does not form part of the test established by Clause 4.6. This is demonstrated in *Micaul Holdings P/L v Randwick City Council [2015] NSWLEC 1386* which granted consent to a development with a 14.5m maximum height, representing a 53% exceedance to the 9.5m height limit. Similarly, *Moskovick v Waverley Council [2015] NSWLEC 1015* which granted approval to a 0.6:1 FSR exceedance to the maximum FSR development standard of 0.9:1, representing a 67% variation.

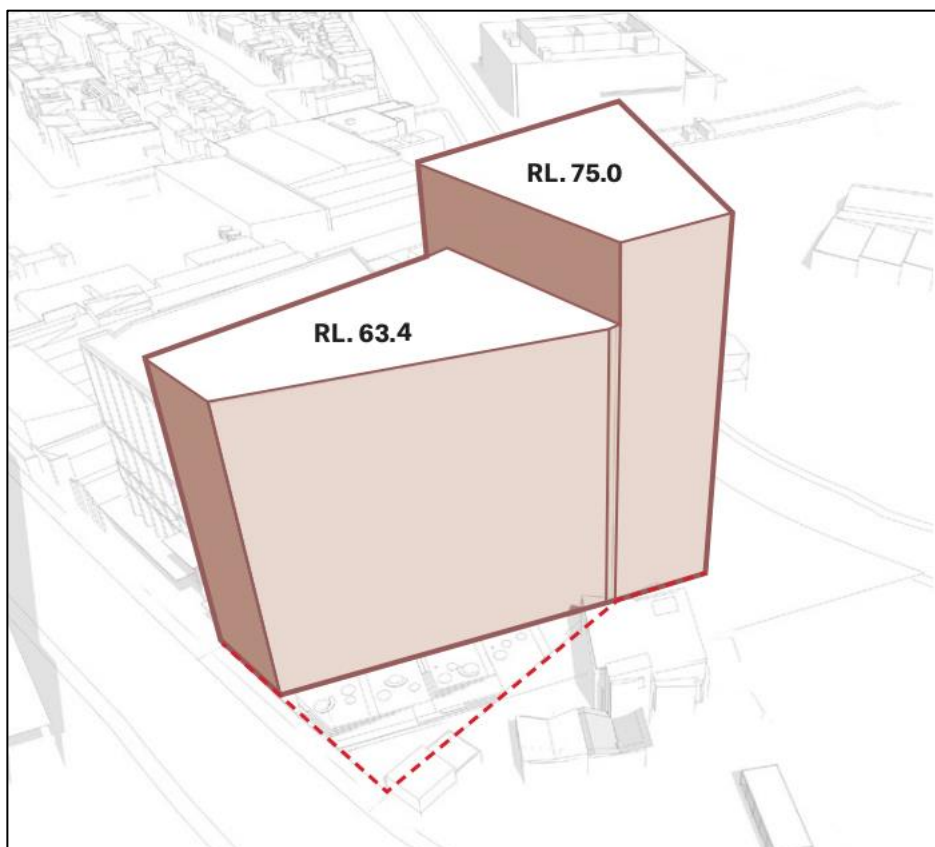


Figure 3 – Maximum Height Limits Applied by the [SLEP GSTC– Stage 2 2013](#)
Source: *SLEP GSTC– Stage 2 2013 (amended by Mecone)*

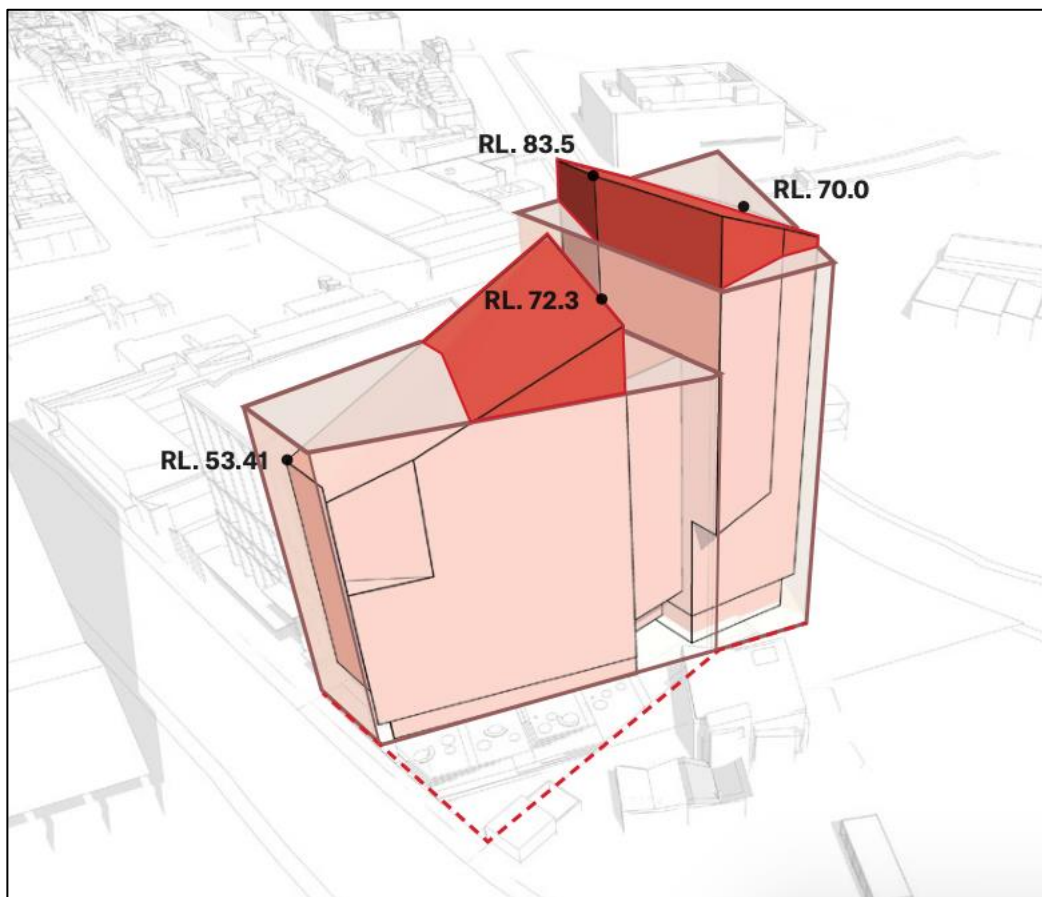


Figure 4 – Proposed Variations
 Source: SLEP GSTC– Stage 2 2013(amended by Mecone)

4 CI4.6(3) Justification for Contravention of the Development Standard

Clause 4.6(3) of *SLEP GSTC– Stage 2 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.

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 in:

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

The relevant matters contained in clause 4.6 of *SLEP GSTC– Stage 2 2013*, with respect to the Height of Buildings development standard, are each addressed below, including with regard to these decisions.

4.1 CI 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 *SLEP 2012* 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**).

The First Method, in establishing that compliance with a development standard is unreasonable or unnecessary, is relevant to this matter.

4.1.1 The underlying objectives or purposes of the development standard

The objectives of the height of building development standard are specified in Clause 4.3 of SLEP GSTC– Stage 2 2013 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.

4.1.2 The underlying objectives of the standard are achieved notwithstanding non-compliance with the standard (Webhe – First method)

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

The intent of the objective is to ensure an appropriate transition in height between new development and surrounding heritage items and heritage conservation areas. As demonstrated by the figure below, the site is not located within the vicinity of a heritage item or Heritage Conservation Area (HCA), with the closest located some 200m to the south and north east of the site.

Whilst not located in proximity to a Heritage Conservation Area (HCA) or heritage item, the height variation is instrumental to delivering a development that respects the historic industrial aesthetic of the area. The Green Square Town Centre represents Sydney's oldest industrial heartland where industrial warehouse building typologies were once the dominant building typology. The proposal has sought to respect this

industrial aesthetic by incorporating a sculptured roof element that provides a contemporary reinterpretation of the sawtooth roofs that once typified the area.

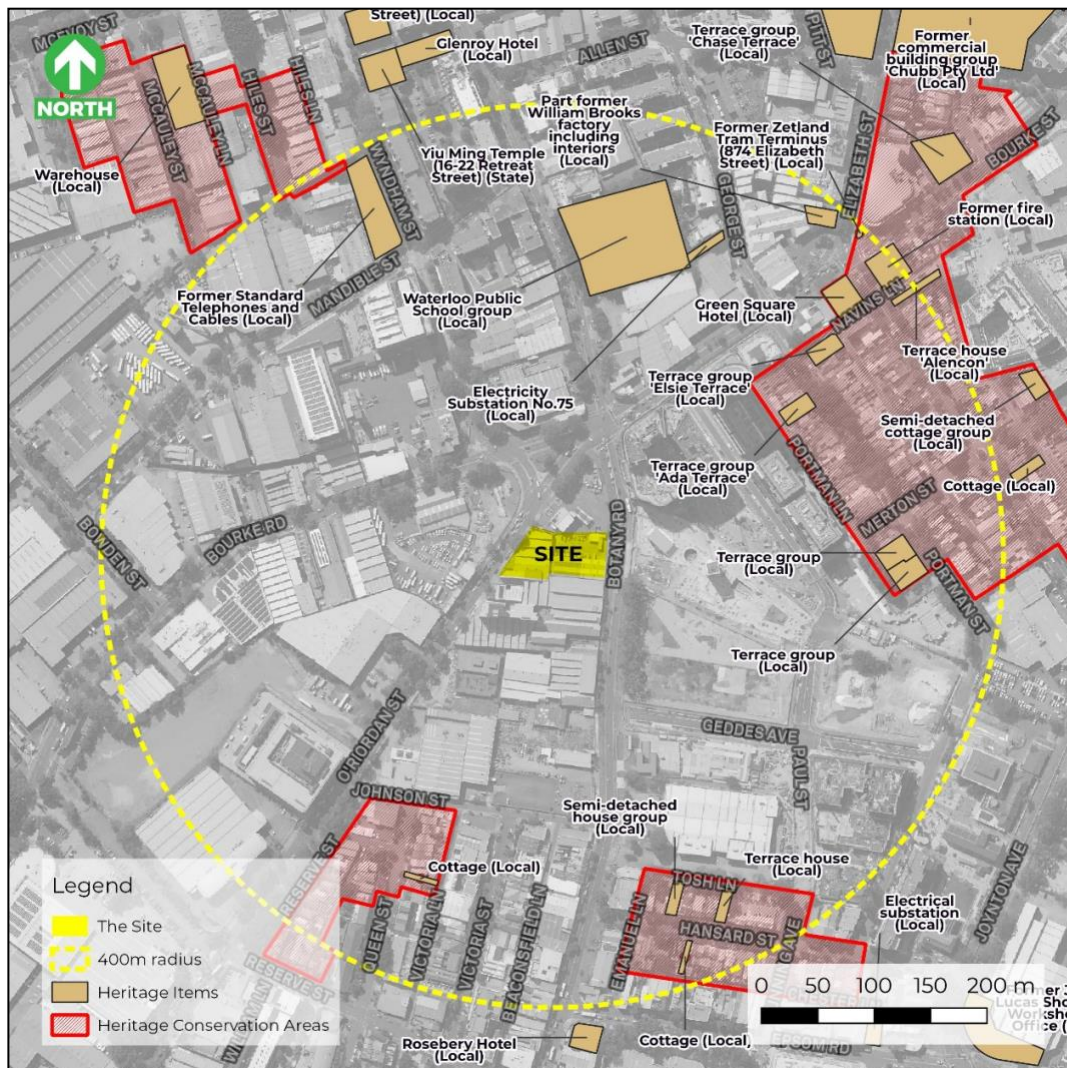


Figure 5 – The Site and Surrounding Heritage Items
Source: Mecone

Objective (b) To ensure sharing of views.

The GSDCP 2012 identifies a 12m wide view corridor extending from Green Square Plaza to Transport Place which is located directly adjoining the site to the north and contains Green Square Railway Station.

The building's architectural roof feature height exceedances are focused in the centre of the development and pertain to the sculptural form of the building. The building height then angles down towards the east and west, falling below the LEP height limit. The envelope will not obstruct the identified east-west view corridor extending to/from Transport Place but also ensures view corridors are maintained along O'Riordan Street and Botany Road.

In addition to the above, the proposal is not located in proximity to nearby residential flat buildings or dwellings. In consequence, the proposal will not obstruct private view corridors.

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

The proposal is located in the north eastern portion of the Green Square Town Centre. In the context of the surrounding built form the proposal provides an approximate transition in height and scale to adjoining areas.

The site to the immediate south is subject to a development application for a 10 storey building with a maximum height of RL 54.30. The proposal adopts a reduced height of RL 53.5m where it interfaces with this development and sits well below the height limit of RL 63.4m which applies to Sites 3 and 4. The reduced height provides an appropriate transition to the future 10 storey development to the south. The proposed height also provides a visually interesting and appropriate transition to Site 1 to the north, which is subject to a maximum height limit of RL 97.70m.

The proposal's greatest mass is concentrated in the northern portion of the site where it interfaces with Green Square Railway Station. The roof element to which the height non-compliance relates is integral to providing a sculpture built form that contributes visual interest to area. When viewed from multiple vantage points, the sculptural element associated with the height non-compliance will assist in defining the site's landmark location.

In addition to the above, the Selection Panel in their assessment of the scheme considered that the proposed Design Competition facilitates an appropriate transition in scale due to the following reasons:

- The overall built form, including the sculptural approach to the massing and the interrelationship to surrounding developments, provides a superior design response;
- The roof form on Sites 3 and 4 is aligned with the approved Concept DA envelope for the site at 326 Botany Road;
- The scheme is sympathetic to the surrounding built form, including the approved development to the north;
- That notwithstanding the LEP height breach on Site 2, the proposal is generally consistent with the envisaged built form for the site established by the *SLEP GSTC– Stage 2 2013*.

For the reasons outlined above, the proposal is considered to be consistent with the objective in that it ensures an acceptable transition in height 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.

The proposed massing strategy for the site accords with the intent of the *SLEP GSTC– Stage 2 2013* notwithstanding the proposed variations. The proposal's greatest mass

is concentrated on Site 2 where it is subject to an increased height limit of RL 75m (refer to **Figure 6**). A reduced massing is proposed for the eastern portion of the site which is subject to a reduced height limit of RL 63.4m. The greatest bulk relates to the sculptural roof elements which are concentrated in the centre of the site away from Botany Road and O'Riordan Street, thereby lessening potential amenity impacts on the public domain.



Figure 6 – View of the Scheme looking South West Across Transport Place.
Source: Bates Smart

In light of the above, the proposal has been designed to provide a transition in scale with the tower tapering down towards the east to align with adjoining property heights adjacent to Botany Road and the envelope tapering down towards the west to transition to the lower heights along O'Riordan Street (refer to **Figure 7**). The height of the proposal adjacent to the road frontages sits well below the LEP height limits.

The concentration of the building's height away from road frontages and to the south of the public domain associated with Transport Place ensures any amenity impacts such as overshadowing and visual impacts are minimised to the greatest extent possible.

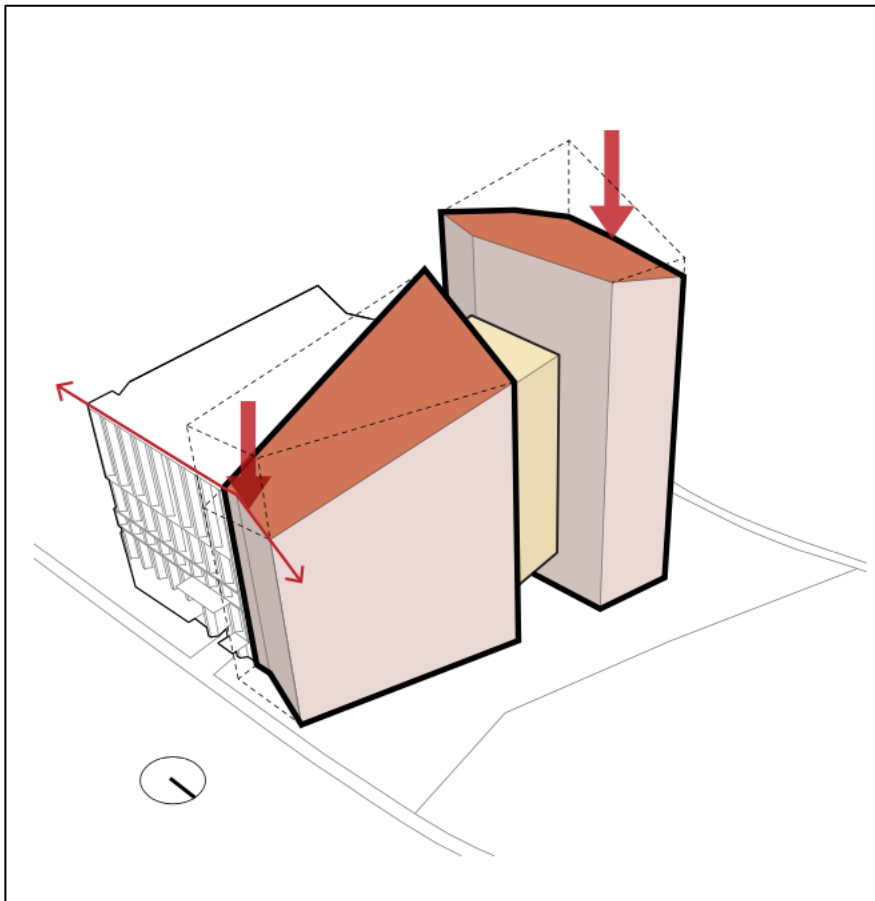


Figure 7 – View of the Scheme looking South West Across Transport Place.
Source: Bates Smart

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

The proposed height variation will not prevent the proposal from positively contributing to the physical definition of the street network and surrounding public spaces. As noted above, the height variations are concentrated in the centre of the site away from the street frontages and the public domain area associated with Transport Place which lies to the immediate north.

The additional height is proposed for the purpose of achieving a sculptured built form. It does not prevent the proposal from adhering to the desired envelope footprints established by Section 6.3 - Building Layout of the GSTC DCP 2012. The proposal contributes to the physical definition of the street network and public places.

4.1.3 Summary

In summary, the proposed development is consistent with the objectives of the height of building development standard in that it:

- Ensures acceptable height transitions to heritage items and conservation areas and surrounding developments outside of Green Square Town Centre;

- Ensures the sharing of views by maintaining identified view corridors and providing no impacts on private view corridors;
- Ensures the amenity of the public domain by restricting the tallest building elements to the centre of the site; and
- Ensures the built form contributes to the physical definition of the street network and public spaces by adhering to the required envelope footprints.

It is demonstrated that compliance with the Height of Building Development Standard is unreasonable or unnecessary in the circumstances of the case in accordance with Clause 4.6(3)(a) of *SLEP GSTC– Stage 2 2013* and that the proposed non-compliance does not prevent the proposal from achieving consistency with the objectives of the development standard.

4.2 Cl 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The environmental planning grounds justifying contravention of the development standard are outlined below.

4.2.1 To promote good design and amenity of the built environment

As summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] at [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.

Objective (g) in Section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) ‘To promote good design and amenity of the built environment’. In accordance with Clause 6.9 Design Excellence of the *SLEP GSTC– Stage 2 2013*, a Competitive Design Alternatives Process (Competitive Process) was undertaken for the redevelopment of the site to promote good design and amenity of the built environment as per the Objective (g) of the EP&A Act.

The purpose for the Competitive Design Alternatives Process is to select the highest quality architectural, landscape and urban design solution that exhibits design excellence for the redevelopment of the site. The subject proposal was selected as the preferred design due to its design excellence merits.

The height exceedances were acknowledged by the Selection Panel in their reasonings which concluded that notwithstanding the LEP height breach, the proposal is generally consistent with the envisaged built form for the site established by the *SLEP GSTC– Stage 2 2013* and the overall built form, including the sculptural approach to the massing and the interrelationship to surrounding developments, provides a superior design response. The roof features promote the objects of the Act, to promote good design and amenity of the built environment.

The proposed height variations will not result in adverse amenity impacts to the built environment, including the surrounding public domain and private properties in the surrounds. Shadow Diagrams have been prepared by Bates Smart and are included at Appendix 2 of the Statement of Environmental Effects (SEE). The Shadow Diagrams confirm that the height variation will contribute minimal additional overshadowing during the Winter Solstice, which represents the worst-case scenario. This overshadowing largely impacts nearby non-sensitive land uses pertaining to commercial and light industrial buildings. Specifically, the shadows cast by the proposal largely fall to the south and will impact the future development at 326 – 328 Botany Road, Alexandria which subject to approval D/2019/657 for a concept envelope reaching 10 storeys in height.

A minor amount of overshadowing will be cast to the east in the late afternoon period from 4pm onwards. This overshadowing will impact Site 8A and Site 8B of the GSTC which is designated by the GSTC DCP 2012 to support commercial uses. The overshadowing is considered reasonable given that a compliant scheme would also overshadow this property. Furthermore, the overshadowing impacts occur for a limited duration of time and will not preclude the development from achieving 2 hours of solar access between 9am and 3pm.

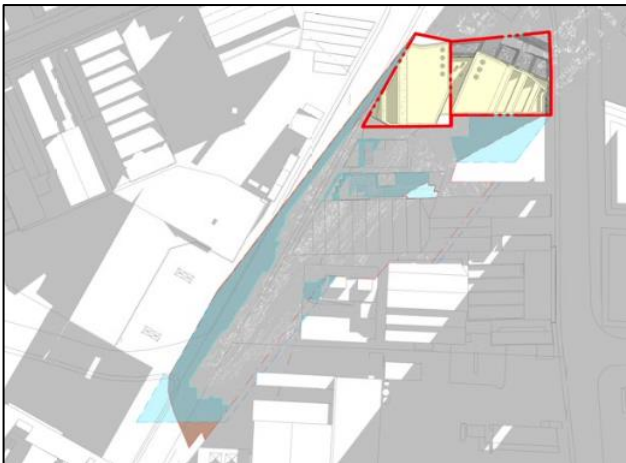


Figure 8 – Shadow Cast at 9am
Source: Bates Smart

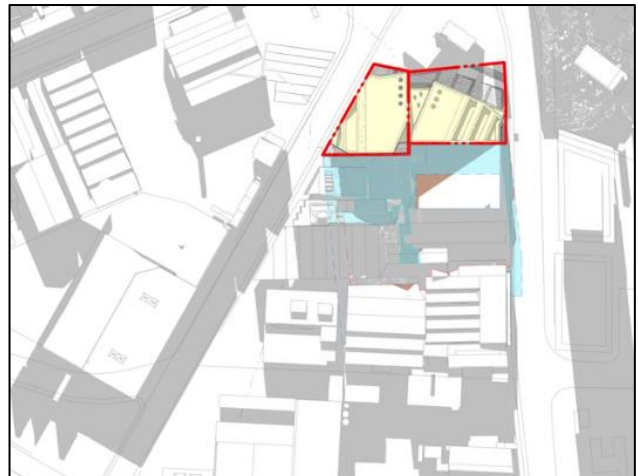


Figure 9 – Shadow Cast at 12pm
Source: Bates Smart



Figure 10 – Shadow Cast at 3pm
Source: Bates Smart

4.2.2 Absence of Adverse Environmental Impacts

As confirmed by supporting subconsultant reports and addressed throughout this variation request, the non-compliance with the development standard does not result in any adverse environmental planning impacts.

Specifically, the proposal:

- Will provide minimal traffic generation and will not impact the surrounding street network;
- Provides minimal overshadowing impacts that do not affect sensitive residential uses;
- Does not adversely impact the visual amenity of the area and instead will contribute visual interest to the streetscape;
- Provides an appropriate built form and massing outcome; and
- Will not provide acoustic impacts to surrounding developments.

For the reasons discussed above, it is contended that there are sufficient environmental planning grounds to justify the contravention to the development standard in the circumstances of the case, particularly given that the design provides a tailored and well considered response to the site's historic character and has been determined as being the most optimal design response under a competitive design alternatives process.

4.3 Clause 4.6(4)(a)(i) – 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

4.3.1 Consistency with the 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 the B – Commercial Core Zoning

The site falls within the B3 Commercial Core zone. As outlined below, the proposed development is in the public interest because it is consistent with the following objectives of the B3 Commercial Core zone:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

The proposed development provides for active ground floor retail uses with commercial uses at the first floor level and above as envisaged in the GSDCP 2012. The development will target a variety of industries and sectors who are looking to position themselves in a well-connected city fringe location with convenient access to the CBD and public transport.

To encourage appropriate employment opportunities in accessible locations.

The proposal lies to the immediate south of Green Square Railway Station which provides connections to the CBD and Sydney Airport. It is also serviced by a range of bus services, including routes 370, 309, and the N20, which provide connections to Leichhardt, the Sydney CBD, and Central Station. Therefore, the proposed mix of retail and commercial uses will encourage employment opportunities in a highly accessible location.

To maximise public transport patronage and encourage walking and cycling

The proposed development provides commercial and retail floor space in a highly accessible location adjacent to the Green Square Railway Station and along the major thoroughfares of Botany Road and O'Riordan Street which contain regular bus services. The site is easily accessible for pedestrians and cyclists with connections to the City of Sydney's cycling network.

The proposal accommodates bicycle parking and End-of-Trip facilities which will encourage sustainable modes of public transport. It proposes a through-site link which will provide a connection between O'Riordan Street and Botany Road, and will improve connectivity to the broader street network and Green Square Railway Station.

5 Secretary's Concurrence

Under Clause 4.6(5) of the *SLEP GSTC– Stage 2 2013*, the Secretary's concurrence is required prior to granting consent to a variation. Under Clause 64 of the *Environmental Planning and Assessment Regulation (2000)*, the Secretary has given written notice dated 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 clause 4.6, subject to the conditions in the table in the notice.

The Planning Circular PS 20-002, issued on 5 May 2020 (the Planning Circular), outlines the conditions for assuming concurrence. The Planning Circular establishes that all consent authorities may assume the Secretary's concurrence under Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (with some exceptions). The *SLEP GSTC– Stage 2 2013* is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to Clause 4.6(5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

Under the Planning Circular this assumed concurrence is subject to conditions. Where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council unless the Council has requested it. The variation to the clause exceeds 10% and accordingly the Secretary's concurrence cannot be assumed.

5.1 Clause 4.6(5)(a): Any Matters of Significance for State or Regional Environmental Planning

The contravention of the height standard does not raise any matter of State or regional planning significance. The proposed variation will not contravene any overarching State or regional objectives or standards.

5.2 Clause 4.6(5)(b): Any Public Benefit of Maintaining the Development Standard

There is no public benefit in maintaining the development standard. As addressed in this variation request, the height and bulk respond to the surrounding urban context as well as the desired future character for the area as prescribed by the GSTC DCP 2012. A complying development would preclude the opportunity to deliver the sculptured built form supported by the Selection Panel during the design competition phase.

It is considered that strict compliance with the Height of Buildings Development Standard would encumber the community benefits capable of being provided by the proposal, including:

- A built form outcome that is sympathetic to the locality's historic aesthetic, including the sawtooth industrial typology;
- A scale of development that positively responds to the scale of the future developments to the south and east which are earmarked to support high density commercial and residential towers;
- A significantly improvement to the visual amenity of the streetscape by way of introducing a sculptured built form; and
- The scale is appropriate for the site's B3 Commercial Core zoning.

5.3 Clause 4.6(5)(b): Other Matters Required to be Taken into Consideration Before Granting Concurrence

Other than those identified above, there are no further matters that the Secretary (or Consent Authority under delegation) must consider before granting concurrence.

6 Conclusion

The assessment above confirms that compliance with the maximum Height of Buildings Development Standard contained in Clause 4.3 of GSTC 2013 – Stage 2 is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention to the development standard.

This Clause 4.6 variation request demonstrates that notwithstanding the non-compliance with the Height of Buildings Development Standard, the proposal:

- Achieves the objectives of the development standard in Clause 4.3 of the *SLEP GSTC– Stage 2 2013*;
- Is in the public interest as it is consistent with the objectives of the development standards nominated under Clause 4.3 as well as the B3 Commercial Core zone under the *SLEP GSTC– Stage 2 2013*;
- There are no matters of State or regional planning significance and no public benefit associated with maintaining the development standard in this case;
- Delivers a development that is appropriate for its context and the surrounding development despite the breaches to the development standard and therefore has sufficient environmental planning grounds to permit the variation;
- The height non-compliance is not proposed for the purpose of accommodating habitable floorspace and increasing the intensity of the proposal's land use;
- The height non-compliance has been supported by the Selection Panel at the Design Competition phase and is recognised as being instrumental to the scheme's achievement of design excellence;
- Notwithstanding the height variation, the proposal will not give rise to adverse environmental effects such as traffic generation, visual impacts, private view loss impacts, overshadowing and the like; and
- Provides additional density commensurate with the site's positioning within the GSTC.

Given the proposal does not result in adverse environmental impacts, it is evident that the site has the environmental capacity to support the proposed height non-compliance without providing adverse environmental impacts.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcome for and from development, the contravention of the development standard is considered appropriate under the circumstances.

In affording the proposal this flexibility, the proposal will facilitate a range of public benefits, including the delivery of a high quality residential aged care facility, an enhanced public domain and an improved landscaping outcome.