

Attachment D

<p>Clause 4.6 Variation Request – Floor Space Ratio</p>
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Sites 2, 3 and 4 in the Green Square Town Centre

Clause 4.6 Variation Request to Floor Space Ratio
Development Standard



1 Introduction

This Clause 4.6 Variation Request relates to Development Application (DA) for Site 2, 3 and 4 within the Green Square Town Centre (GSTC) (6-12 O'Riordan St, 320-322 and 324 Botany Road Alexandria – elsewhere referred to as 'the site'), which proposes a commercial/retail development. The development proposes to vary the development standard for Floor Space Ratio under Clause 4.6 of the *Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013 (SLEP GSTC– Stage 2 2013)*.

This Clause 4.6 Variation Request demonstrates that compliance with the Floor Space Ratio 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 promotes sustainable transport modes and is of an intensity that is commensurate with infrastructure capacity while minimising adverse impacts on the amenity of the locality. 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, and achieves the objectives of the development standard in Clause 4.4 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*;
- 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 Floor Space Ratio 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 GSTC which forms part of the broader Green Square Urban Renewal Area. The GSTC 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 May 2020, Council confirmed their support to finalise the terms of the VPA, which was then exhibited from 31 April 2021 to 31 May 2021. Council is in the process of reviewing the submissions and finalising the VPA. In anticipation of the VPA's execution, this Clause 4.6 Variation Request and associated Development Application have been prepared under the guise of 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 Development Standard to be Varied (FSR)

The development standard sought to be varied under this written request is floor space ratio as specified in Clause 4.4 of the *SLEP GSTC– Stage 2 2013*.

Clause 4.4 Floor Space Ratio

Clause 4.4(2) of *SLEP GSTC– Stage 2 2013* specifies that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The Floor Space Ratio Map specifies three separate floor space ratios for the site:

- 'Site 2' (AF) contains a maximum FSR of 11.54:1.
- 'Site 3' (Z) contains a maximum FSR of 5.56:1.
- 'Site 4' (AA1) contains a maximum FSR of 6.35:1.

The maximum Floor Space Ratio as per *SLEP GSTC– Stage 2 2013* is shown in **Figure 1**.

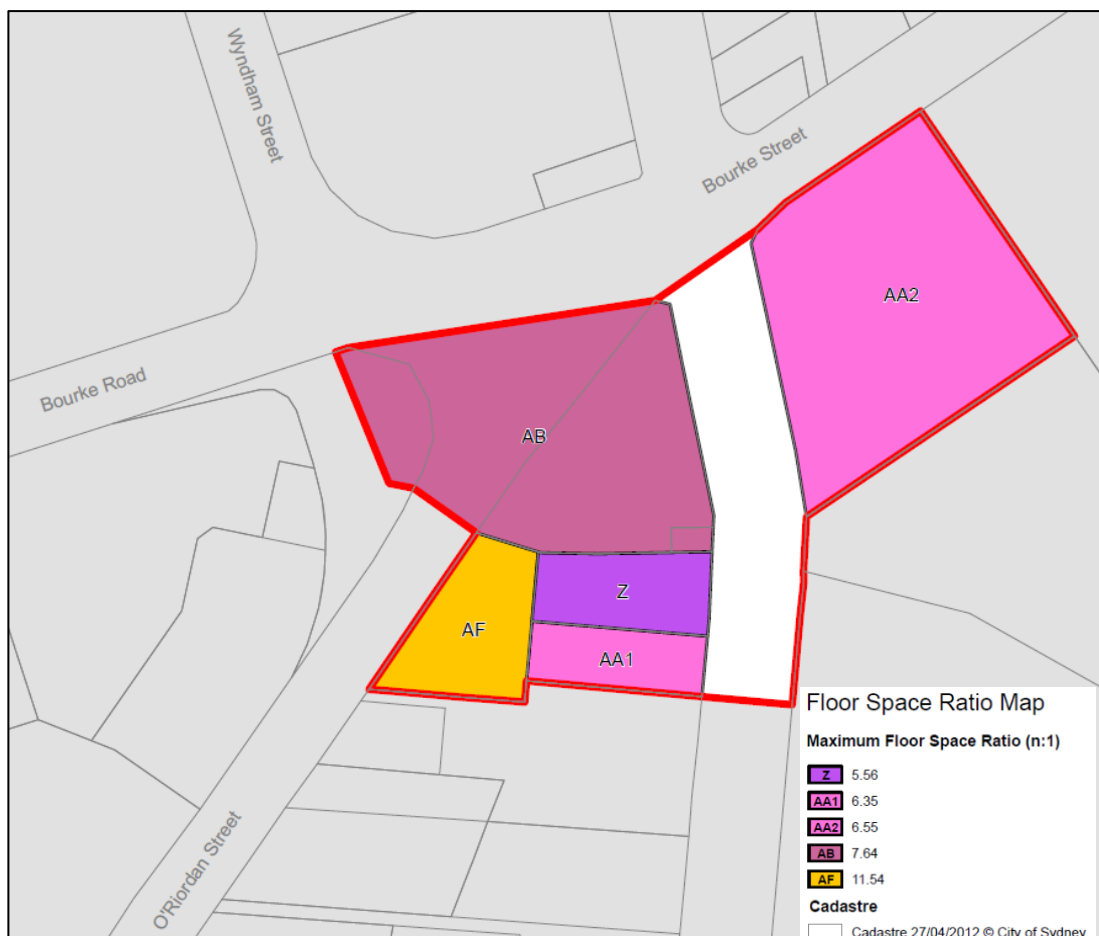


Figure 2 - Maximum Floor Space Ratio Map

Source: *SLEP GSTC– Stage 2 2013*

Clause 6.9 Design Excellence

Clause 6.9(7) of the *SLEP GSTC– Stage 2 2013* contains an additional provision that specifies if the design of a new building is the winner of a competitive design process and the consent authority is satisfied that the building exhibits design excellence, it may grant development consent to the new building with an FSR that exceeds the maximum FSR shown on the Floor Space Ratio Map by up to 10%.

Clause 6.9(7) provides the following:

If the design of a new building, or an external alteration to an existing building, on land is the winner of a competitive design process and the consent authority is satisfied that the building or alteration exhibits design excellence, it may grant development consent to the erection of the new building, or the alteration to the existing building, with a floor space ratio that exceeds the maximum floor space ratio shown for the land on the Floor Space Ratio Map by up to 10%.

The building's design was the winner of a competitive design process and therefore this clause and the additional maximum 10% FSR applies.

Accordingly, the maximum permitted FSR and gross floor areas (GFA) for the site under the *SLEP GSTC– Stage 2 2013* (without an application under Clause 4.6) are set out in **Table 1**.

Table 1 – Maximum Permissible FSR / GFA Inclusive of Design Excellence

Site Location	Lot Area (sqm)	Base FSR (cl. 4.4)	Base GFA (sqm)	Max FSR with Design Excellence	Total GFA (sqm)
6-12 O'Riordan Street (Site 2)	1378	11.54:1	15,902	11.90:1	16,402
320 - 322 Botany Road (Site 3)	1062	5.56:1	5,904	5.94:1	6,308
324 Botany Road (Site 4)	835	6.35:1	5,320	6.61:1	5,524
Total (Permissible under SLEP GSTC– Stage 2 2013)	3,275		27,108sqm		28,234 (FSR - 8.62:1)
Total Design Excellence Bonus			1,126sqm		

*Source: City of Sydney, Planning Proposal – Sydney Local Environmental Plan 2021 (Green Square Town Centre), March 2012, Table 1, pg 13.

4 Nature of the Variation Sought

The maximum FSR for the site under the *SLEP GSTC– Stage 2 2013* is 8.62:1, equating to a GFA of 28,234m² (refer to **Table 1**). The proposal has an FSR of 8.77:1 (28,732m² GFA), representing a 0.15:1 FSR (498m² of GFA) increase above the FSR Development Standard. This equates to an exceedance of 1.7%.

It is important to highlight that the *Competitive Design Alternatives Process Brief* made an allowance for EoT bonus of 0.3:1 equating to 982.5m² of GFA. When accounting for the EoT bonus, the total allowable GFA for the site amounted to 29,216.5m².

Whilst provision was made for this bonus during the design competition phase in accordance with the *Competitive Design Alternatives Process Brief*, the EoT bonus is not reflected in the development standards established by the *SLEP GSTC– Stage 2 2013*. The omission of this clause is an anomaly, with surrounding sites able to benefit from the EoT bonus of 0.3:1 permitted by Clause 6.6 of the Sydney LEP 2012.

In light of the above, the proposed contravention of the FSR development standard is attributed to the EoT GFA. Of the proposed 28,732m² of GFA, 498m² relates to the provision of EoT facilities which are located on the ground floor in a single consolidated location.

Table 2 – Allowable and Proposed Distribution of FSR / GFA (based on site of 3,275m²)

Floor Space Type	FSR	GFAm ²	Total FSR / GFA
Base Floor Space (cl 4.4)	8.77:1	28,751	8.62:1 / 28,234m ²
Design Excellence (cl 6.9) (10%)		1,126*	
Total (Permissible under SLEP GSTC– Stage 2 2013)	8.62:1	28,234	
Allowable Design Competition EoT Bonus	0.3:1	982.5	8.92:1 / 29,216.5m ²
Total (Design Comp + SLEP GSTC– Stage 2 2013)			
Proposed			8.77:1 / 28,732m ²
<i>Proposed EoT Floor Space</i>			0.15:1 / 498m ²

*Calculated in accordance with Table 1 when accounting for individual site areas.

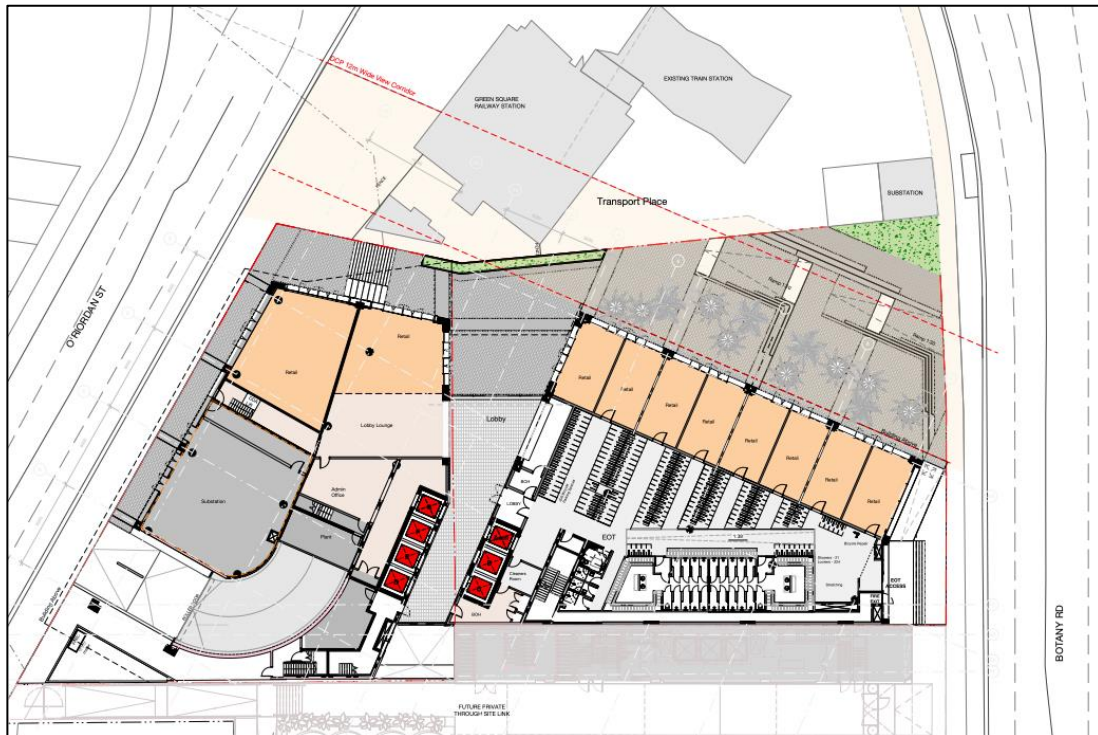


Figure 3 – End of Trip Facilities on Ground Floor Level

5 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 FSE Development Standard, are each addressed below, including with regard to these decisions.

5.1 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 GSTC– Stage 2 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**).

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

5.1.1 The underlying objectives or purposes of the development standard

The objectives of the floor space ratio development standard are specified in Clause 4.4 of SLEP GSTC– Stage 2 2013 as follows:

- (a) To provide sufficient floor space to meet the anticipated development needs for the foreseeable future,
- (b) To regulate the density of development, built form and land use intensity and to control the generation of vehicular and pedestrian traffic,
- (c) To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,
- (d) To ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

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

Objective (a) to provide sufficient floor space to meet the anticipated development needs for the foreseeable future.

The proposed FSR exceedance directly facilitates the provision of EoT facilities for the development, consisting of showers, change rooms, lockers, and bicycle storage areas in a single consolidated location which will support sustainable modes of transport for the foreseeable future. The Competitive Design Process Brief for the site included commercial objectives to provide EoT facilities at a level of quality expected of a PCA A-Grade building, and made an allowance for a 0.3:1 FSR bonus above the maximum permissible FSR.

Objective (b) to regulate the density of development, built form and land use intensity and to control the generation of vehicular and pedestrian traffic.

The proposed building sits within the envelope nominated by the Green Square Town Centre DCP 2012 (GSTC DCP 2012). The findings of the Traffic Impact

Assessment accompanying the development application include that the traffic generation of the development is acceptable, notwithstanding the FSR variation, and will not impact the surrounding road network. Specifically, the proposal will generate up to 10 vehicle trips in any weekday peak hour period. The anticipated traffic generation will have a negligible impact on the surrounding road network.

Objective (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

The subject site is located adjacent to Green Square Railway Station and within the GSTC which is currently undergoing transformation into a residential, commercial, and retail centre for the wider Green Square Urban Renewal Area. The site and the broader GSTC are well serviced by public transport, including the GSTC Railway Station and multiple bus services along O'Riordan Street and Botany Road connecting to the Sydney CBD, Leichhardt, Central Station.

The additional GFA of 517m² represents a minor non-compliance of 1.7%. It does not preclude the proposal from complying with the envelope footprints envisaged by the GSTC DCP 2012 which are illustrated in the figure below. As shown in the Architectural Plans at **Appendix 3**, the proposal adheres to the envelope footprints.



Figure 3 – Required Building Envelopes with the Site Outlined in Red

Source: GSTC DCP 2013 – Stage 2 (Section 6.3 Building Layout)

Whilst the proposal contravenes the maximum Height of Buildings Development Standard, the additional height relates to non-habitable floorspace / plant that does not contribute to the GFA calculation. Accordingly, the additional FSR sought by this

variation request does not facilitate the proposed height contravention or an intensity of development greater than what is envisaged by the controls.

The proposed quantity of GFA is governed by the *Competitive Design Alternatives Process Brief* which nominates a maximum GFA of 29,216.5m² for the site. The proposed 28,732m² of GFA is within the allowable GFA when accounting for the EoT bonus permitted by the brief. It will facilitate the provision of high quality EoT facilities. These facilities will promote sustainable modes of transport, which in turn will reduce the reliance on private vehicles and minimise the pressure placed on the surrounding road network.

Objective (d) to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.

The proposed FSR non-compliance will not contribute to a built form outcome that is at odds with the desired future character of the area. The applicable LEP and DCP controls establish the desired future character for the area. The height controls for the site envisage a tower that transitions down in scale from west to east.

The proposal has been designed to adhere to this required transition in height by 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 **Appendix 3**).

The desired character for the locality is established by the built form objectives set out in the GSTC DCP 2012. Notwithstanding the variation, the proposal is entirely consistent with the objectives. A compliance assessment is included in the table below.

Table 3 – GSTC DCP 2012 Building Layout, Form and Design Objectives

Objective	
<p>Ensure new development is designed to minimise negative impacts on development surrounding the Town Centre in terms of privacy and solar access.</p>	<p>The additional FSR relates to EoT facilities which will not result in privacy and solar impacts. Additionally, the development as a whole, inclusive of the variation, provides minimal overshadowing impacts.</p> <p>As shown in the Architectural Drawings at Appendix 3, overshadowing during the Winter Solstice (worst case scenario) largely impacts non-sensitive light industrial uses. Minor impacts are proposed to the future development to the east at 8A and 8B; however, this occurs for a limited duration in time from 4pm onwards. Furthermore, under the <i>SLEP GSTC– Stage 2 2013</i>, these sites are earmarked for non-sensitive commercial uses. Accordingly, the overshadowing will not impact sensitive residential uses.</p>

Objective	
Minimise overshadowing of the plaza and parks, and inter-building overshadowing within the Town Centre and surrounding sites.	The additional FSR pertaining to EoT floor space will not increase the bulk of the development and therefore will not result in overshadowing to surrounding parks and plazas.
Create a Town Centre that demonstrates design excellence in terms of built form and public domain design.	The EoT floor space and overall FSR are allowed for under the Competitive Design Alternatives Brief. Further, the EoT floor space is integral to delivering on the sustainability objectives of the brief.
Ensure development provides a diversity of building and architectural characters within each street block to create visual variety.	<p>The additional FSR will not preclude the proposal from providing a unique sculptured built form that contributes visual interest to the locality.</p> <p>Any reduction to the development's floor space to achieve compliance with the <i>SLEP GSTC– Stage 2 2013</i> could potentially compromise the development's massing strategy and overall sculptured form.</p>
Ensure the grain, rhythm and palette of materials used in the design of new buildings respond to the 'fine grain' character of the surrounding area.	The additional FSR has no impact on the proposal's materiality which remains largely consistent with that supported by the Selection Panel at the Competitive Design Alternatives Phase.
Ensure the use of high quality façade design and finishes in particular around the plaza and parks and where built form is viewed at the termination of a vista.	
Ensure that proposed buildings do not obstruct public views along streets.	The FSR variation does not result in an envelope larger than that envisaged by the Competitive Design Alternatives Brief which makes an allowance for a 0.3:1 EoT bonus. Accordingly, the bulk will not obstruct view corridors. In particular, the view corridor to the north extending from Transport Place to Green Square Plaza remains unobstructed by the proposal.
Minimise the perceived height of development when viewed from Portman Street, Portman Lane, Tosh Lane, Hansard Street and the former Royal South Sydney Hospital Site.	<p>The proposal is located in the far western portion of the GSTC away from the nominated streets and the former Royal South Sydney Hospital Site.</p> <p>The proposed bulk and scale of the development, inclusive of the FSR variation, will not be visible from these locations.</p>

Objective	
	In addition, the variation represents a minor 1.7% non-compliance with the development standard and in turn will have an imperceptible visual impact when viewed from the surrounding public domain.

In addition to the above, the Selection Panel at the conclusion of the Competitive Design Alternatives Process phase determined that the architectural expression and built form provided an appropriate design response for the site and surrounding locality and exhibited design excellence subject to minor refinements. The proposal retains the same architectural expression and articulation and has addressed the feedback provided by the Selection Panel. In this regard it reflects the desired character for the locality as established by the outcomes of the Competitive Design Alternatives Process.

5.1.3 Summary

In summary, the proposed development complies with the objectives of the FSR Development Standard notwithstanding the non-compliance in that it:

- Provides sufficient floor space to meet the anticipated development needs for the foreseeable future, including the need for EoT facilities that promote sustainable modes of transport;
- Provides an appropriate density of development for the site with acceptable levels of traffic generation;
- Relates to non-habitable floor space and therefore does not contribute to a density and intensity of land use greater than that envisaged by the applicable planning controls and design competition brief requirements which govern the development's bulk;
- Provides an intensity of development that is commensurate with the capacity of existing and planned infrastructure; and
- Provides a development that reflects the desired character of the locality and minimises adverse amenity impacts.

It is demonstrated that compliance with the floor space ratio 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*.

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

The contravention of the FSR Development Standard is attributed to the provision of EoT floor space which is integral to meeting the objectives of the Competitive Design Alternatives Process Brief.

The Competitive Design Alternatives Process Brief specified the following objective which requires the provision of EoT facilities:

13. The end of trip facilities (EOTF) are to be a level of quality expected of a PCA A-Grade building. Competitors should consider how the EOTF will be used and the journey to the EOTF (and subsequently into the building/lobby).

The Competitive Design Alternatives Process Brief made provision for 982.5m² of EoT GFA (refer to Appendix 8 of the Competitive Design Alternatives Process Brief), which the proposed FSR exceedance is directly attributable to. The EoT facilities have a GFA of 537.4m², well within the maximum 982.5m² allowance. The EoT facilities will promote sustainable modes of transport such as cycling and are designed to achieve consistency with the requirements set out above. Specifically, the EoT facilities are sufficient size and are of a quality expected of a PCA A-Grade building and are directly accessible via the building lobby.

The proposed EoT facilities also meet the aims of the *Green Square Transport Management and Accessibility Plan* (TMAP) which was developed by Transport for NSW in conjunction with the Roads and Maritime Services, Landcom and the City of Sydney, and was adopted by Council in March 2009.

The purpose of the TMAP is to identify measures to improve the accessibility of Green Square by sustainable modes such as walking, cycling and public transport. It also identifies measures to reduce the demand for private vehicle travel as the foundation for achieving mode share targets adopted in *Sustainable Sydney 2030*.

Some of the key findings of the TMAP included:

- (a) a "business as usual" scenario for growth in the area would be incompatible with the vision for Green Square, described in Sustainable Sydney 2030, as a sustainable and liveable activity hub;*
- (b) that the vision for Green Square is best achieved by adopting a scenario of "no net increase in car traffic" for the renewal area, supported by a comprehensive transport strategy that includes:*
 - (i) managing car parking supply to constrain traffic growth;*
 - (ii) developing key transit corridors that are to adapt to demand growth;*
 - (iii) prioritising cycle and walking trips; and*
 - (iv) implementing travel demand management measures to new residents and businesses;*

The provision of EOTF in the development actively supports and encourages the use of sustainable modes of transport such as cycling and walking and makes them as seamless an experience as arriving to work by other means. This supports the key findings of the TMAP by promoting sustainable alternatives to driving to work and limited car parking instead of adopting a 'business as usual' approach to development.

In summary, proposed minor FSR exceedance is directly attributable to the provision of EoT facilities for the development which formed part of the Design Competition Brief objectives. The provision of the EoT facilities supports and encourages sustainable

modes of transport and is consistent with the TMAP which seeks to prioritise cycle and walking trips as part of its comprehensive transport strategy.

It should also be noted that these EOTF are proposed despite there being no provision of End of Journey floor space bonus in the *SLEP GSTC– Stage 2 2013*. This bonus benefits adjoining sites to the south which fall under *Sydney Local Environmental Plan 2012*.

5.2.1 Absence of Adverse Environmental Impacts

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

Specifically, the additional FSR will not:

- Contribute additional office or commercial floor space which would increase the intensity of land use and give rise to environmental impacts such as traffic generation;
- Does not increase the bulk and scale of the development and therefore will not give rise to additional amenity impacts such as overshadowing, loss of solar, visual privacy impacts and the like; and
- Result in a building envelope that deviates from the design endorsed by the Selection Panel and the building envelope requirements established by the GSTC DCP 2012.

5.3 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

5.3.1 Consistency with the Objectives of the Development Standard

The proposed development is consistent with the objectives of the FSR Development Standard for the reasons discussed in **Section 4.1.2** of this report.

5.3.2 Consistency with the B2 – 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. The proposed EoT floor space will support the proposed uses by providing facilities for employees and visitors.

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.

The proposed EoT floor space will provide needed facilities for employees and visitors and will encourage them to commute to the development using sustainable modes of transport.

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 EoT floor space will encourage visitors and employees to access the site using sustainable modes of transport via the surrounding cycle network.

6 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 does not exceed 10% and accordingly the Secretary's concurrence can be assumed.

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

The contravention of the FSR Development 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.

6.2 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 EoT facilities as required by the Competitive Design Alternatives Brief that governed the development of the scheme during the design competition phase.

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

- A built form outcome sympathetic to the locality's historic aesthetic in the instance the site's massing was required to be reduced to comply with the FSR development standard;
- EoT facilities conducive to promoting sustainable modes of transport in accordance with the aspirations established by the GSTC DCP 2012 and the Competitive Design Alternatives Process;

- A development that makes adequate provision for alternative modes of transport to reduce to the reliance on private motor vehicles; and
- A development that encourages the use of the Green Square Town Centre's green infrastructure, including cycle connections.

6.3 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.

This written request is for a variation to the floor space ratio development standard under Clause 4.6 of the *SLEP GSTC– Stage 2 2013*. The request justifies the contravention to the FSR standard in the terms required under Clause 4.6 of the *SLEP GSTC– Stage 2 2013*. It demonstrates that the proposal provides a development intensity that is commensurate with surrounding infrastructure capacity whilst providing for facilities to promote and encourage sustainable modes of transport.

In the circumstances of the case compliance with the FSR Development Standard is unreasonable and unnecessary as the contravention facilitates the achievement of a range of public benefits, including a development that encourages sustainable modes of transport and capitalises on the green infrastructure, such as cycle connections, in the surrounding town centre.

The contravention is also a result of the scheme's compliance with the development parameters established by the *Competitive Design Alternatives Process Brief* which made an allowance for EoT bonus of 0.3:1 equating to 982.5m² of GFA. As outlined above, whilst the proposal exceeds the maximum FSR Development Standard, the floor space associated with the EoT facilities does not exceed the 982.5m² EoT bonus nor does it result in a development that exceeds the overall allowable GFA / FSR of 29,216.5m / 8.92:1 (in the instance EoT facilities are proposed) permitted by the *Competitive Design Alternatives Brief*.

This written request to vary the development standard demonstrates that the proposed development:

- Is consistent with and achieves the objectives of the development standard in Clause 4.3 of *SLEP GSTC– Stage 2 2013* (Wehbe Test 1);
- There are sufficient environmental planning grounds to justify the contravention;
- It is in the public interest as it is consistent with the objectives of the FSR Development Standard and the B3 Commercial Core zone; and
- There are no matters of State or regional planning significance and no public benefits in maintaining the FSR standard in this case.