

**Item 6.****Development Application: 3 Joynton Avenue, 14A Defries Avenue and 355 Botany Road, Zetland - D/2022/336**

File No.: D/2022/336

**Summary****Date of Submission:** 14 April 2022**Applicant/ Owner:** City of Sydney Council**Cost of Works:** \$721,227.00**Zoning:** The development sites and their zoning are outlined below:

- 355 Botany Road, Zetland (Green Square Library and Plaza) is located within the B4 Mixed Use zone under the Sydney Local Environmental Plan (Green Square Town Centre) 2013.
- 3 Joynton Avenue, Zetland is located within the 5(a) Special Uses zone under the South Sydney Local Environmental Plan No. 114 (Southern Industrial and Rosebery/ Zetland Planning Districts).
- 14A Defries Avenue, Zetland is located within the B4 Mixed Use zone under the Sydney Local Environmental Plan 2012.

Public art is permitted with consent in the abovementioned zones.

**Proposal Summary:**

The application proposes the installation of public artwork comprising three sculptural objects over three sites in Green Square. The artwork will function as seating with planting and a light pole incorporating an illuminated fibreglass sphere light. In accordance with the artist concept, the illuminated spheres emulate the sun and will be programmed to match the daylight hours in different geographical locations throughout the world, turning on and off at their respective sunrise and sunset times.

The application is referred to the Local Planning Panel for determination as the applicant and landowner is the City of Sydney Council.

The application was notified for a period of 14 days between 4 May 2022 and 19 May 2022. No submissions were received.

A written request has been submitted to vary the height of buildings development standard at Site 1 (Green Square Library and Plaza) pursuant to Clause 4.6 of the Sydney Local Environmental Plan (Green Square Town Centre) 2013. The proposal seeks to vary the height of buildings development standard on Site 1 by 4.5m.

A second written request has been submitted to vary the height of buildings development standard on Site 4 (14A Defries Avenue Zetland) pursuant to Clause 4.6 of the Sydney Local Environmental Plan 2012. The proposal seeks to vary the height of buildings development standard on Site 4 by 7.9m.

The applicant's written requests to vary the height of buildings development standard are supported in this instance. The proposed development meets the objectives of the B4 Mixed Use zone and the height of buildings development standard and there are sufficient environmental planning grounds to justify the proposed variation.

**Summary Recommendation:** The development application is recommended for approval, subject to conditions.

**Development Controls:**

- (i) Environmental Planning and Assessment Act 1979
- (ii) Sydney Local Environmental Plan 2012
- (iii) Sydney Local Environmental Plan (Green Square Town Centre) 2013
- (iv) South Sydney Local Environmental Plan No. 114 (Southern Industrial and Rosebery/ Zetland Planning Districts)
- (v) Sydney Development Control Plan 2012
- (vi) Green Square Town Centre Development Control Plan 2012

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Requests - Height of Buildings

## Recommendation

It is resolved that consent be granted to Development Application No. D/2022/336 subject to the conditions set out in Attachment A to the subject report.

## Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979 in that, subject to conditions of consent, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.
- (B) The development is permissible with consent in the B4 Mixed Use zone under the Sydney Local Environmental Plan (Green Square Town Centre) 2013, the 5(a) Special Uses zone within the South Sydney Local Environmental Plan No. 114 (Southern Industrial and Rosebery/ Zetland Planning Districts) and the B4 Mixed Use zone under the Sydney Local Environmental Plan 2012.
- (C) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
  - (i) the applicant's written request relating to Site 1 (355 Botany Road, Zetland) has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney Local Environmental Plan (Green Square Town Centre) 2013, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP (GSTC) 2013;
  - (ii) the applicant's written request relating to Site 4 (14A Defries Avenue, Zetland) has adequately addressed the matters required to be demonstrated by clause 4.6(3) of the Sydney LEP 2012, that compliance with the height of buildings development standard is unreasonable or unnecessary and that there are sufficient planning grounds to justify contravening clause 4.3 of the Sydney LEP 2012; and
  - (iii) the proposal is in the public interest because it is consistent with the objectives of the B4 - Mixed Use zone of the LEP (GSTC) 2013 and the Sydney LEP 2012 and the height of buildings development standard.
- (D) The proposal demonstrates design excellence in accordance with the relevant provisions and matters for consideration in Clause 6.9 of the Sydney LEP (Green Square Town Centre) 2013 and Clause 6.21C of the Sydney LEP 2012.
- (E) The proposed development is appropriate to the setting of the Green Square Town Centre and will provide a positive contribution to the public domain.
- (F) The development, subject to conditions, will not result in unacceptable amenity impacts to surrounding properties and is considered to be in the public interest.

## Background

### The Site and Surrounding Development

1. The development involves three sites, being 355 Botany Road, Zetland (Green Square Library and Plaza), 3 Joynton Avenue and 14A Defries Avenue.
2. These sites are located within the Green Square urban renewal area, which is currently undergoing significant transformation from predominantly industrial uses to high density residential uses and commercial uses.
3. 3 Joynton Avenue and the Green Square Library Plaza are located within the Green Square Town Centre (GSTC), whereas 14A Defries is located outside of the town centre to the east.
4. The submitted documentation labels the three sites as outlined below, noting that Site 3 (Woolwash Park) will be subject to a separate development application once owner's consent has been obtained:
  - (a) site 1 - 355 Botany Road, Zetland (Green Square Library and Plaza)
  - (b) site 2 - 3 Joynton Avenue, Zetland (future school site)
  - (c) site 4 - 14A Defries Avenue, Zetland
5. A site plan showing the location of each site is provided below.



**Figure 1:** Site plan

**Site 1**

6. Site 1 comprises Green Square Library and Plaza at 355 Botany Road, Zetland.
7. The proposed public art is to be installed within Neilson Square, which is located east of the Green Square Library and immediately west of Paul Street. The site currently contains paving, light poles, benches and trees.
8. Photos of Site 1 and surrounds are provided below.



**Figure 2:** Aerial view of Site 1, with location of public art within the plaza outlined in yellow



**Figure 3:** Site 1 viewed from Paul Street, looking west towards Green Square Library



Figure 4: Site 1 looking west towards Green Square Library



Figure 5: Site 1 looking east towards Paul Street

**Site 2**

9. Site 2 is located at 3 Joynton Avenue, which recently received approval for the Green Square Integrated Community Facility and School (SSD-10381). The northern part of the site is currently under construction for the future school. The public art is proposed on the north-eastern corner of the site.
10. Photos of Site 2 and surrounds are provided below:



**Figure 6:** Aerial view of Site 2, with the location of public art outlined in yellow



**Figure 7:** Site 2 viewed from Joynton Avenue, looking west



**Figure 8:** Site 2 viewed from the intersection of Joynton Avenue and Zetland Avenue, looking southwest



**Figure 9:** Site 2 viewed from Zetland Avenue, looking east towards the Gunyama Park Aquatic and Recreation Centre



**Site 4**

11. Site 4 is located at 14A Defries Avenue, Zetland and comprises the open space adjacent to a residential apartment building known as Vertex Meriton. This area is currently flat and contains a grass lawn and light poles.
12. Photos of Site 4 and surrounds are provided below.



**Figure 10:** Aerial view of Site 4, with location of public art outlined in yellow



**Figure 11:** Site 4 viewed from Defries Avenue, looking south



Figure 12: Site 4 viewed from Defries Avenue, looking south-east



Figure 13: Site 4 viewed from Defries Avenue, looking south

## Proposed Development

13. The application seeks consent for installation of public artwork by the City of Sydney Council at each of the 3 sites.
14. The selected artwork concept has been created by Tobias Rehberger and comprises a total of 4 sculptural objects, 3 of which are the subject of this DA.
15. The sculptures will function as seating, with planting and a light pole incorporating an illuminated fibreglass sphere, strategically positioned along the central spine of Green Square.
16. The proposed public art is titled 'Here is Here. And Everywhere'. The sculptural elements refer to different places around the world as well as to their actual sites in Green Square. The places the sculptures are related to have been chosen according to different countries of origin where the current residents of Green Square or their ancestors stem from.
17. In accordance with the artist concept, the illuminated spheres emulate the sun and will be programmed to match the daylight hours in different geographical locations throughout the world, turning on and off at their respective sunrise and sunset times. The geographical locations are Grasmere Lake District, England (site 1), Yaviza, Tapon del Darien, Panama (site 2) and Heard Island Australia (site 4).
18. The proposed artwork was selected from an open Expression of Interest conducted by the City which occurred between 19 May and 28 July 2015. A total of 64 local, national and international submissions were received. On 2 September 2015, the Evaluation Panel comprising the Green Square Curatorial Advisor, three members of the City's Public Art Advisory Panel and City staff shortlisted five artists to further develop their proposals for public art. Following this further development, Tobias Rehberger's concept was selected. Reasons for the selection of this artwork are outlined in the 'Discussion' section below.
19. Plans and elevations of the proposed development are provided below.

### Site 1 (Green Square Library and Plaza)

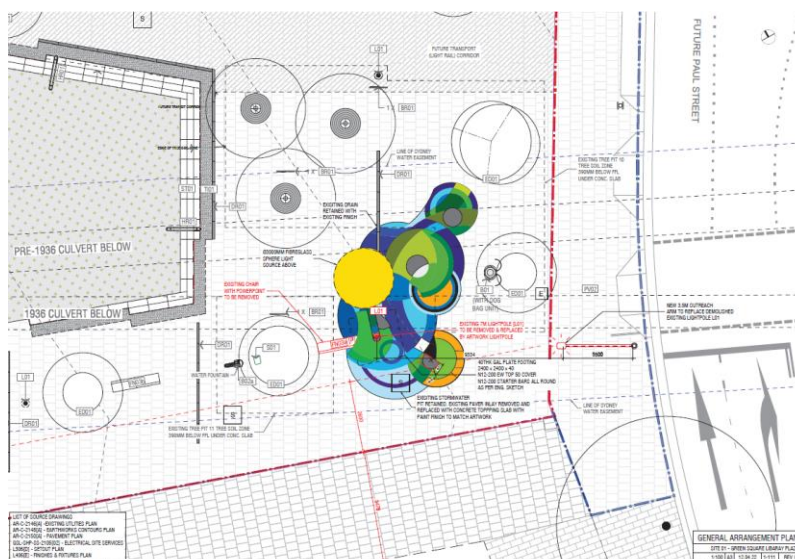


Figure 14: Site 1 - General Arrangement Plan



Site 2 (3 Joynton Avenue Zetland)

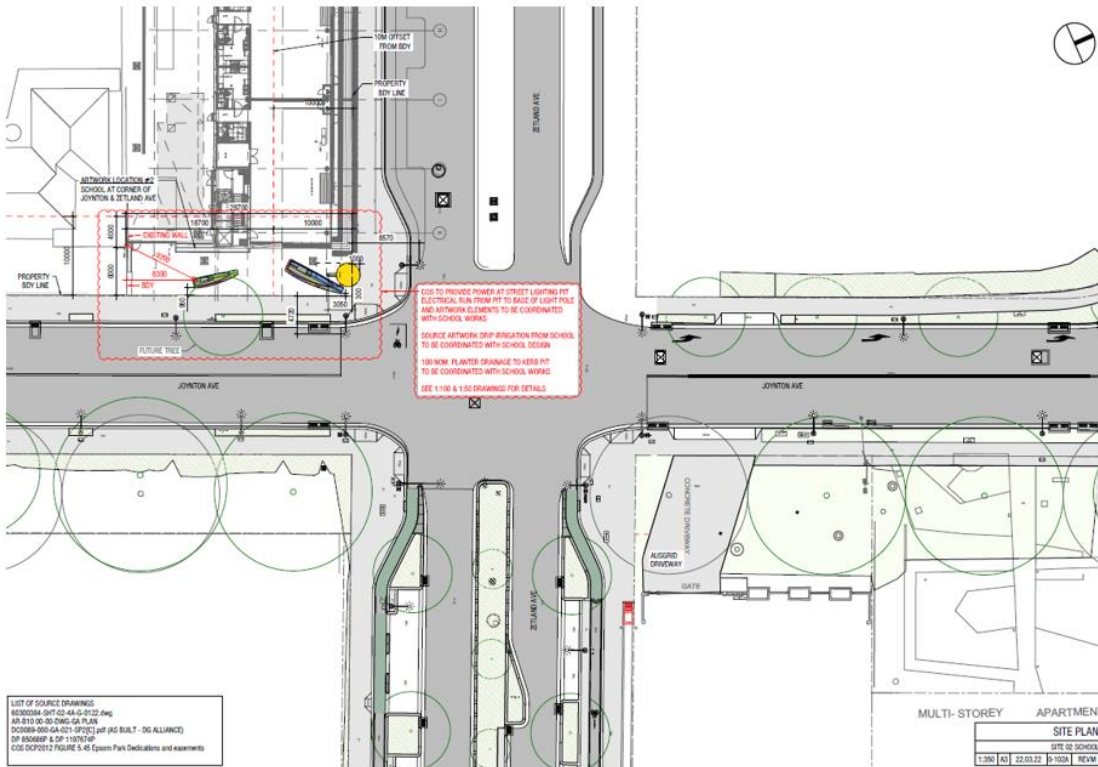


Figure 17: Site 2 - Site Plan

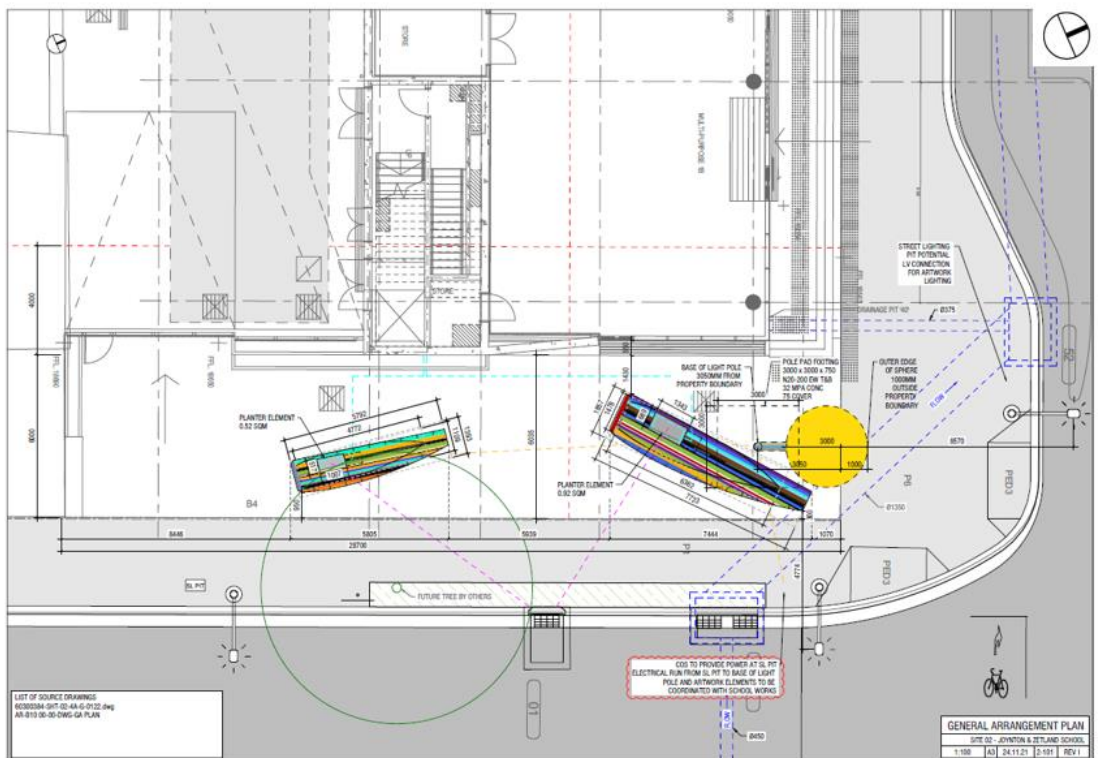


Figure 18: Site 2 - General Arrangement Plan

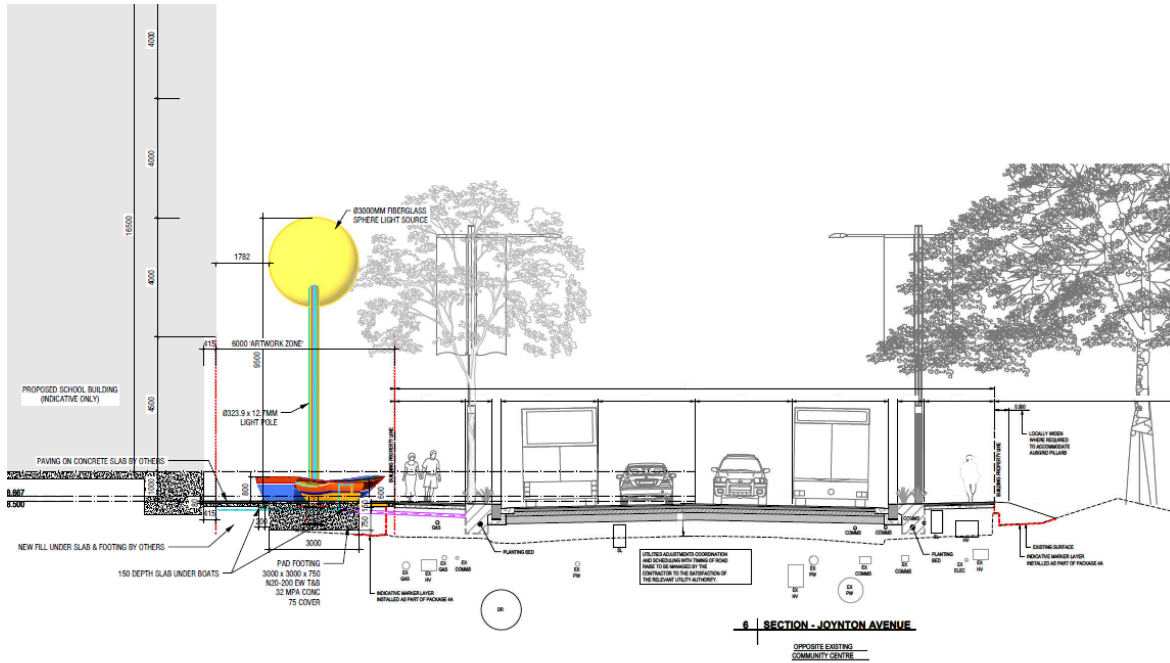


Figure 19: Site 2 - Section through Joynton Avenue



Figure 20: Site 2 - Artist's Render looking north along Joynton Avenue

Site 4 (14A Defries Avenue Zetland)

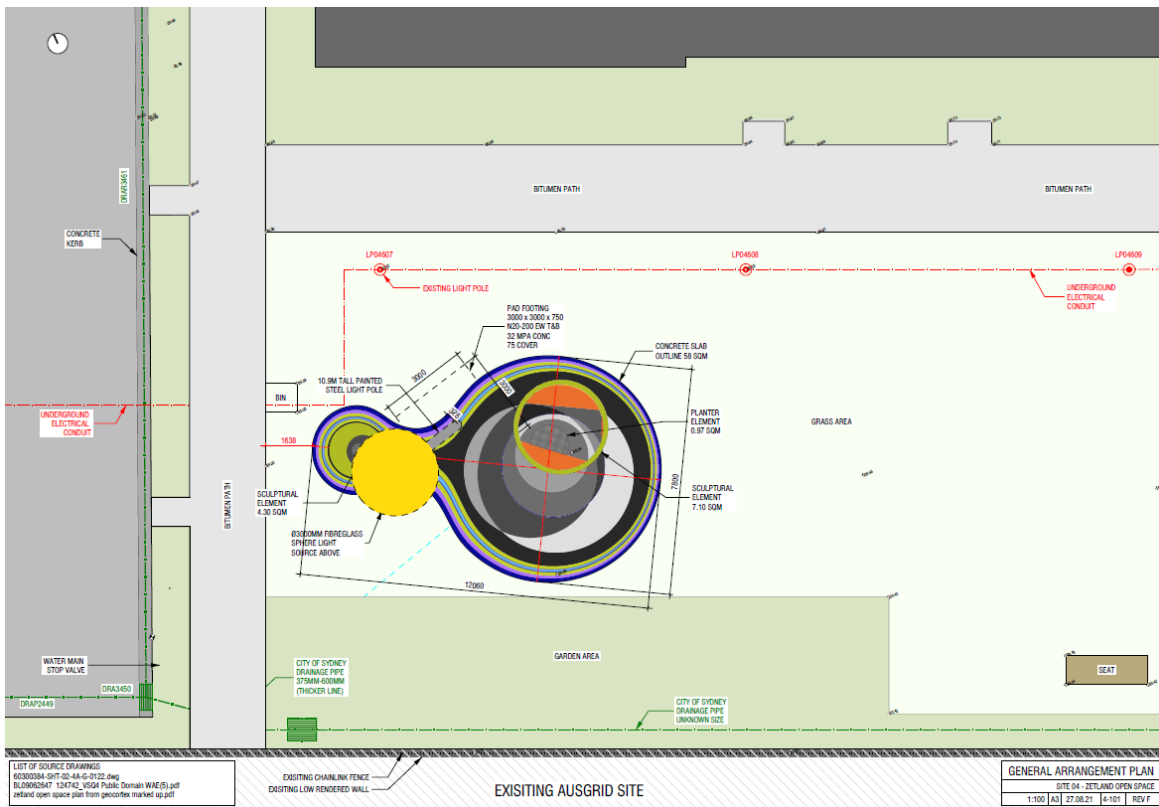


Figure 21: Site 4 - General Arrangement Plan

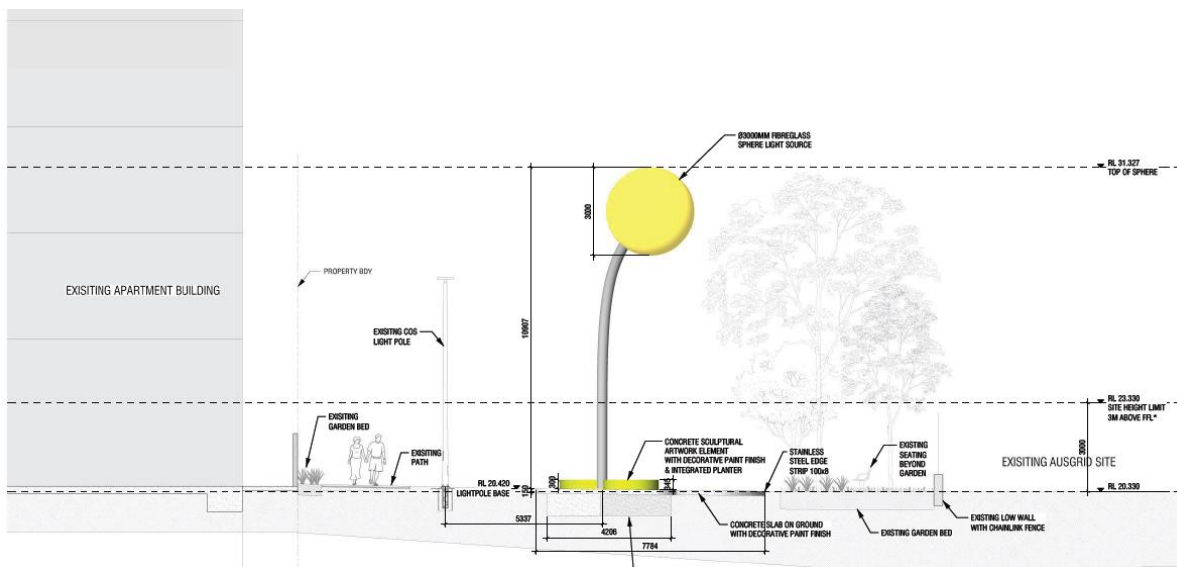


Figure 22: Site 4 - Proposed Section



**Figure 23:** Site 4 - Artist's Render

## Assessment

20. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## Local Environmental Plans

21. The public art is proposed across 3 different sites, each of which are subject to different Local Environmental Plans. An assessment for each site is outlined below.

### Site 1 (355 Botany Road, Zetland - Green Square Library and Plaza)

#### Sydney Local Environmental Plan (Green Square Town Centre) 2013

22. Site 1 is subject to the Sydney Local Environmental Plan (Green Square Town Centre) 2013 (SLEP (GSTC) 2013).
23. An assessment of the proposed public art against the relevant provisions of the SLEP (GSTC) 2013 is provided below.



**Part 2 Permitted or prohibited development**

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B4 - Mixed Use zone. The proposed development is defined as public art and is permitted with consent in the zone. The proposal generally meets the objectives of the zone.

**Part 4 Principal development standards**

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 26 RL is permitted.</p> <p>The proposed sculpture has a maximum height of 30.5 RL. This equates to an exceedance of 4.5m or 17.3% variation.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3. A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

**Part 6 Additional local provisions**

Provision	Compliance	Comment
6.9 Design excellence	Yes	<p>The proposed artwork demonstrates a high level of design and includes materials and detailing that are appropriate for the location.</p> <p>The development will improve the quality and amenity of the public domain throughout the Town Centre and will not impact on view corridors.</p>

Provision	Compliance	Comment
		<p>Subject to conditions, the artwork adequately addresses matters such as environmental impacts, circulation requirements, impacts on the public domain and integration of landscape design.</p> <p>Therefore, the development is considered to demonstrate design excellence. See further details in the 'Discussion' section below.</p>

### Site 2 (3 Joynton Avenue, Zetland)

#### South Sydney Local Environmental Plan No. 114

24. Site 2 is subject to the South Sydney Local Environmental Plan No. 114 (Southern Industrial and Rosebery / Zetland Planning Districts) (SSLEP 114).
25. An assessment of the proposed public art against the relevant provisions of the SSLEP 114 is provided below.

Provision	Compliance	Comment
Clause 9 Zone objectives and development control table	Yes	<p>The site is located in the 5(a) Special Uses zone. Permitted uses within the zone include "any purpose which by virtue of its type, function, scale and services provided is, in the opinion of Council, consistent with the objectives of the zone."</p> <p>The objective of this zone is to identify land which is currently used by public authorities, institutions, organisations or the Council to provide certain community facilities, services or utilities.</p> <p>Given the proposed public art is intended as a community benefit, the proposed public art is consistent with the objective of the zone.</p>
Clause 11 Height of buildings	N/A	There is no maximum height specified for the site.

Provision	Compliance	Comment
Clause 13 Community use of school facilities	Yes	The larger site is approved for use as an integrated community facility and school. The proposed public art will complement this use.
Clause 15 Acquisition of land reserved for arterial roads	Yes	The land immediately to the north of the site has been reserved for the purpose of a road (Zetland Avenue). The proposed development will not impact this reservation.
Clause 22 Development on all land to which this plan applies	Yes	The public art will be supported by required services.
Clause 23 Flood viable lands	Yes	Given the minor scope of works involved, there will be no adverse impacts on flood management on the site.

#### Site 4 (14A Defries Avenue, Zetland)

#### Sydney Local Environmental Plan 2012

26. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

#### Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The site is located in the B4 Mixed Use zone. The proposed development is defined as public art and is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	No	A maximum building height of 3m is permitted. A height of 10.9m is proposed.

Provision	Compliance	Comment
		<p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the 'Discussion' section below.</p>
4.6 Exceptions to development standards	Yes	<p>The proposed development seeks to vary the development standard prescribed under Clause 4.3. A Clause 4.6 variation request has been submitted with the application.</p> <p>See further details in the 'Discussion' section below.</p>

#### Division 4 Design Excellence

Provision	Compliance	Comment
6.21C Design excellence	Yes	<p>The proposed artwork is considered to demonstrate design excellence as it features a high level of design, includes materials and detailing that are appropriate for the location and will improve the amenity and quality of the public domain.</p> <p>See further details in the 'Discussion' section below.</p>

#### Part 7 Local provisions – general

Provision	Compliance	Comment
7.26 Public art	Yes	<p>Provision (2) states that development consent must not be granted to development for the purpose of public art in any zone in which public art is permitted with development consent unless the consent authority is satisfied that the development—</p> <p>(a) will not involve the display of an advertisement, and</p>

Provision	Compliance	Comment
		<p>(b) will not increase the gross floor area of any building, and</p> <p>(c) will not have a significant adverse impact on any heritage conservation area, heritage item or other object or place of heritage significance, and</p> <p>(d) will not have a significant adverse impact on the amenity of the public domain, including by overshadowing, wind or noise impacts, and</p> <p>(e) if it is to be carried out on land to which a plan of management (within the meaning of the Local Government Act 1993) applies, will be in accordance with the plan of management.</p> <p>The proposed public art is consistent with the above as it:</p> <ul style="list-style-type: none"> <li>• does not involve the display of any advertisements</li> <li>• does not result in any additional GFA</li> <li>• is not located in close proximity to any heritage conservation areas or heritage items</li> <li>• will not result in any adverse impacts to the public domain in terms of wind, overshadowing or acoustic impacts.</li> </ul>

### Development Control Plans

27. Site 1 (Green Square Library and Plaza) and Site 2 (3 Joynton Avenue) are subject to the Green Square Town Centre Development Control Plan 2012 (GSTC DCP 2012).
28. Site 4 (14A Defries Avenue) is subject to the Sydney Development Control Plan 2012.
29. An assessment against each of these DCPs is outlined below.

**Site 1 (Green Square Library and Plaza) and Site 2 (3 Joynton Avenue)**

30. An assessment of the proposed development at Site 1 and 2 against the relevant provisions of the Green Square Town Centre Development Control Plan 2012 is provided in the following sections.

**Green Square Town Centre Development Control Plan 2012**

Provision	Compliance	Comment
3.1 Public open space	Yes	<p>The installation at Site 1 is located within Nielson Square and is near Green Square Plaza and The Drying Green.</p> <p>The proposal is consistent with the objectives for these public open spaces as it will assist with improving the public space by providing public art, lighting and seating areas for the local community.</p>
3.2 Development within the public domain	Yes	The public art in Sites 1 and 2 will not have any adverse impacts on solar amenity and will not disrupt the function of the public domain or create obstacles for pedestrian movements.
3.4 Flooding and stormwater management	Yes	Given the minor nature of the public art, a flood impact assessment was not required to be submitted. Council's Public Domain unit have reviewed the proposal and advised that it is acceptable subject to conditions of consent.
5.1 Heritage impact statements	Yes	Site 2 is located within the former Royal South Sydney Hospital Site. The proposed public art will not result in adverse impacts to surrounding heritage items on the former hospital site.
5.2 Development affecting a heritage item	Yes	This section of the DCP outlines setback requirements to protect heritage items. The proposed public art exceeds the setback distances specified.

**Site 4 (14A Defries Avenue)****Sydney Development Control Plan 2012**

31. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

**Section 2 – Locality Statements**

32. The site is located within the Epsom Park locality. The proposed development is in keeping with the unique character and the design principles of the Epsom Park locality, which is identified as being a new neighbourhood with a strong sense of place and public life. The public art will provide a positive contribution to the locality by improving the quality of the street and existing public space.

**Section 3 – General Provisions**

Provision	Compliance	Comment
3.1 Public Domain Elements 3.1.5 Public art	Yes	The DCP states that well-integrated, ecologically sustainable public art is encouraged.  The objectives of this section are to increase the number and improve the quality of public artworks, promote sustainability through public art, ensure that public art is integrated and cohesive and to deliver essential infrastructure in creative and innovative ways.  The proposed public art at Site 4 meets the objectives and provisions of Section 3.1.5.
3.7 Water and Flood Management	Yes	Council's Public Domain unit have reviewed the proposal and advised that it is acceptable having regard to flood impacts, subject to conditions of consent.

**Section 5 Specific areas**

Provision	Compliance	Comment
5.2 Green Square 5.2.6 Public open space	Yes	The installation at Site 4 will improve the open space by providing seating, decorative lighting and landscaped planters which will improve the function of the public open space.

Discussion

Clause 4.6 Request to Vary a Development Standard - Height of buildings

Site 1 - Green Square Library and Plaza

- 33. Site 1 is subject to a maximum height of buildings control of 26 RL under the Sydney Local Environmental Plan (Green Square Town Centre) 2013 (SLEP (GSTC) 2013).
- 34. The proposed public art has a maximum height of 30.5 RL. This equates to a variation of 17.3 per cent or 4.5m. The extent of variation occurs at the light pole and fibreglass sphere, as shown below.

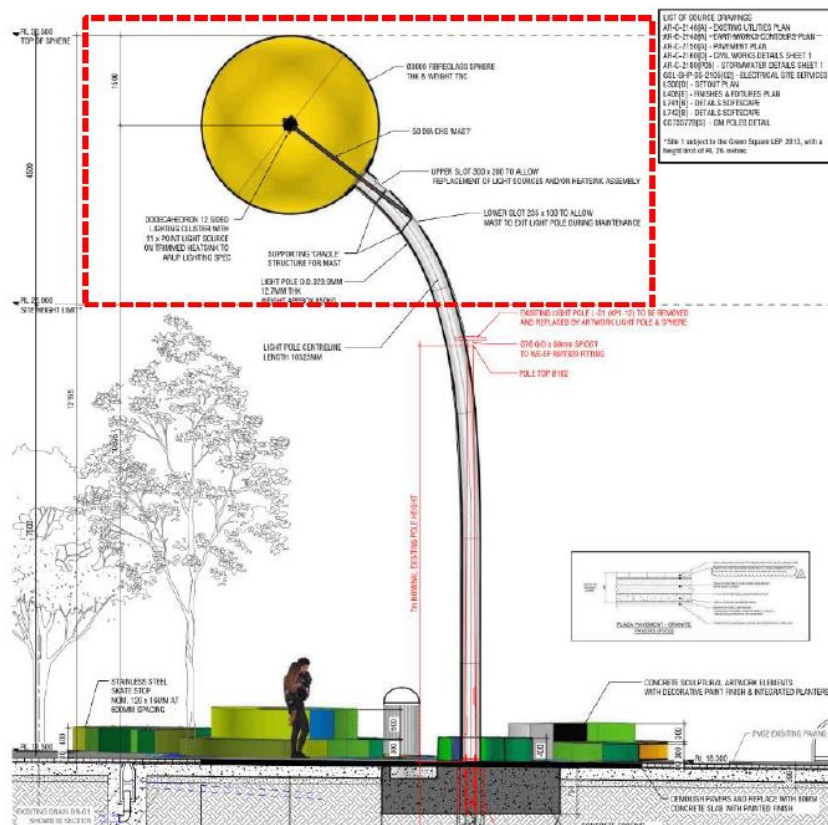


Figure 24: Proposed section with element exceeding the height control outlined in red

- 35. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the SLEP (GSTC) 2013 seeking 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;
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard;
  - (c) The proposed development will be consistent with the objectives of the zone; and
  - (d) The proposed development will be consistent with the objectives of the standard.



Applicant's Written Request - Clause 4.6(3)(a) and (b)

36. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
  - (i) The applicant refers to the first method of the five-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary. This method seeks to demonstrate that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.
  - (ii) A summary of the applicant's assessment against the objectives of the height of buildings development standard contained in Clause 4.3(1) of the SLEP (GSTC) 2013 is provided below:

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

The site is not a heritage item, is not located in a heritage conservation area and is not located in close proximity to any items of heritage significance. The public art will not be visible from any heritage items or conservation areas.

***Objective (b): to ensure sharing of views***

The height variation will not affect the sharing of views as the portion of the artwork that is above the height control is limited to a slender light pole and fibreglass sphere. Further, the proposed public art is located centrally within the Green Square Library Plaza and will assist in wayfinding and ensures that views are maintained between Paul Street and Green Square train station.

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

The maximum allowable height of building for developments surrounding the site and within Green Square Town Centre are much greater than at the subject site. Due to the minor extent to which the light pole and fibreglass sphere exceeds the height of building development standard, and that the site's central location within Green Square Town Centre, with future adjoining development within Green Square Town Centre to be of a greater height and scale, acceptable height transitions will be provided to areas adjoining Green Square Town Centre.

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

No buildings are proposed. The variation of the Height of Building development standard will improve the amenity of the public domain by providing high quality public artwork and a light source which will improve wayfinding within the Green Square Library Plaza.

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

The variation will contribute to the physical definition of Green Square Library Plaza. This is because the height variation allows the proposed light sphere to be viewed from further away, which will assist in the physical definition of the street network and public spaces.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
- (i) The proposed variation to the height of building development standard assists in promoting object (g) of the Environmental Planning and Assessment Act 1979, as the provision of high-quality public art and improved lighting within the public domain will assist in promoting "good design and amenity of the built environment" and does not cause environmental harm.
  - (ii) The proposed variation to the height of building development standard assists in promoting object (a) of the Environmental Planning and Assessment Act 1979, as the provision of decorative well designed lighting will improve the decorative sculptural seating elements of the public artwork in a public space which will be used by local community, therefore promoting "the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources".
- (c) The proposed development will be consistent with the objectives of the zone;
- (i) The site is located within the B4 - Mixed Use zone. The proposed development is in the public interest because it is consistent with the objectives of the zone, as follows:

***Objective (a): to provide a mixture of compatible land uses***

The proposed public art is compatible with adjoining land uses as it is located in a public space and will improve the amenity of the public domain.

***Objective (b): to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport and encourage walking and cycling.***

The proposed public art will integrate well with adjoining uses and will provide seating and lighting which will encourage walking and cycling throughout the locality. It will also act as a wayfinding point, encouraging walking and cycling by making it easier to navigate the area.

**Objective (c): to ensure uses support the viability of centres**

The proposed public art will support the increased use of the public domain by providing a point of interest inclusive of decorative lighting, outdoor seating and landscaping, therefore supporting the viability of the centre.

- (d) The proposed development will be consistent with the objectives of the standard
  - (i) The applicant's consideration of the objectives of the height development standard is outlined under part (a) above.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

37. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
  - (b) 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.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

38. The applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, by demonstrating that the development is consistent with the objectives of the objectives of the height development standard. The assessment put forward is considered to be well founded.

Does the written request adequately address those issues at clause 4.6(3)(b)?

39. The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the height of buildings standard. The artwork will promote good design and amenity of the built environment, will not cause adverse environmental impacts and provides benefits for the local community.

Is the development in the public interest?

40. The proposed development will be in the public interest because it is consistent with both the objectives of the height development standard and the objectives for development within the B4 Mixed Use zone. The applicant's justification under parts (a) and (c) above are considered to be well founded.



- (d) The proposed development will be consistent with the objectives of the standard.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

45. The applicant seeks to justify the contravention of the height of buildings development standard on the following basis:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
- (i) The applicant refers to the first method of the five-part test established in *Wehbe v Pittwater Council* [2007] NSW LEC 827 to demonstrate that compliance with the standard is unreasonable or unnecessary. This method seeks to demonstrate that the objectives of the development standard are achieved notwithstanding the non-compliance with the standard.
- (ii) A summary of the applicant's assessment against the objectives of the height of buildings development standard contained in Clause 4.3(1) of the SLEP 2012 is provided below:

***Objective (a): to ensure the height of development is appropriate to the condition of the site and its context***

The variation of the Height of Building development standard does not cause the proposed public art to be inappropriate to the condition of the site and its context.

The extent of the variation is minor as the portion of the proposed public art which is located above the maximum Height of Building is limited to the upper portion of the slender light pole and fibreglass sphere.

Further, the public art is located within open space and is setback 10m (approx.) from the closest adjoining residential development at No. 14 Defries Avenue, Zetland. The public art inclusive of the proposed height variation is minor in scale in comparison to the development at No. 14 Defries Avenue which comprises of a thirteen (13) storey residential flat building. This ensures that the proposed height of the public art is appropriate to the condition of the site and its context.

***Objective (b): to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas***

The site is not a heritage item and is not located in close proximity to any heritage items of conservation areas. The closest item of heritage significance is the West Kensington Local Heritage Conservation Area which is located 180m to the east of the site.

Due to the minor extent to which the light pole and fibreglass sphere exceeds the Height of Building development standard, and the distance of the proposed public art from the West Kensington Conservation Area, there will be no unacceptable impacts to height transitions between new development and buildings in heritage conservation areas.

***Objective (c): to promote the sharing of views***

The variation of the Height of Building development standard does not affect the sharing of views. Future development surrounding the site will retain a vista north-south on Defries Avenue and east-west along the existing open space towards the Eastern Distributor. The existing thirteen (13) storey residential flat building at No.14 Defries Avenue will retain its vista.

***Objective (d): to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas***

The existing residential flat building to the north of the site at No. 14 Defries Avenue has a 13-storey built form and is of a much greater scale than the proposed public art. Due to the minor extent to which the light pole and fibreglass sphere exceeds the height of building development standard, and the height and scale of adjoining development within Green Square Town Centre, acceptable height transitions will be provided to areas adjoining the town centre.

***Objective (e): in respect of Green square - (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.***

The variation of the Height of Building development standard will improve the amenity of the public domain, by providing high quality public artwork and a light source which will improve pedestrian wayfinding within Green Square, particularly on Defries Avenue.

- (b) That there are sufficient environmental planning grounds to justify contravening the standard:
  - (i) The proposed variation to the height of building development standard assists in promoting object (g) of the Environmental Planning and Assessment Act 1979, as the provision of high-quality public art and improved lighting within the public domain will assist in promoting "good design and amenity of the built environment" and does not cause environmental harm.
  - (ii) The proposed variation to the height of building development standard assists in promoting object (a) of the Environmental Planning and Assessment Act 1979, as the provision of decorative well designed lighting will improve the decorative sculptural seating elements of the public artwork in a public space which will be used by local community, therefore promoting "the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources".
- (c) The proposed development will be consistent with the objectives of the zone;
  - (i) The site is located within the B4 - Mixed Use zone. The proposed development is in the public interest because it is consistent with the objectives of the zone, as follows:

**Objective (a): to provide a mixture of compatible land uses**

The proposed public art is compatible with adjoining land uses as it is located in a public space and will improve the amenity of the public domain.

**Objective (b): to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport and encourage walking and cycling.**

The proposed public art will integrate well with adjoining uses and will provide seating and lighting which will encourage walking and cycling throughout the locality. It will also act as a wayfinding point, encouraging walking and cycling by making it easier to navigate the area.

**Objective (c): to ensure uses support the viability of centres**

The proposed public art will support the increased use of the public domain by providing a point of interest inclusive of decorative lighting, outdoor seating and landscaping, therefore supporting the viability of the centre.

- (d) The proposed development will be consistent with the objectives of the standard
  - (i) The applicant's consideration of the objectives of the height development standard is outlined under part (a) above.

## Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

46. Development consent must not be granted unless the consent authority is satisfied that:
- (a) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
  - (b) 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.

## Does the written request adequately address those issues at Clause 4.6(3)(a)?

47. The applicant has adequately addressed that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, by demonstrating that the development is consistent with the objectives of the objectives of the height development standard. The assessment put forward is well founded.

## Does the written request adequately address those issues at clause 4.6(3)(b)?

48. The applicant has adequately addressed that there are sufficient environmental planning grounds to justify contravening the height of buildings standard. The artwork will promote good design and amenity of the built environment, does not cause adverse environmental impacts and provides benefits for the local community.

Is the development in the public interest?

49. The proposed development will be in the public interest because it is consistent with both the objectives of the height development standard and the objectives for development within the B4 Mixed Use zone. The applicant's justification under parts (a) and (c) above are considered to be well founded.

Conclusion

50. For the reasons provided above the requested variation to the height of buildings development standard on Site 4 (14A Defries Avenue, Zetland) is supported as the applicant's written request has adequately addressed the matters required to be addressed by cl 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of height of buildings development standard and the B4 Mixed Use zone.

### **Design Excellence and Selection Process**

51. The proposed artwork was selected from an open Expression of Interest conducted by the City, which was openly advertised locally, nationally and internationally between 19 May 2015 to 28 July 2015. A total of 64 submissions were received.
52. On 2 September 2015, the Evaluation Panel comprising the Green Square Curatorial Advisor, three members of the City's Public Art Advisory Panel and City staff shortlisted five artists to further develop their proposals for public art. Following this further development, Tobias Rehberger's concept was selected.
53. The Selection Panel commented that "the high level of experience and artistic excellence of the artist's oeuvre was recognised by the Panel, as was the conceptual strength and originality of this proposal in response to the brief."
54. The locations of the artwork installations were selected by the artist in response to the artwork brief, which was to conceptually connect Green Square throughout the town centre. The selected locations are adjacent to and along the new (and future) civic spine of Zetland Avenue and provide a visual link between artworks along the new 'main street' of the town centre. This will assist with wayfinding and creating a visual connection throughout Green Square.
55. The Panel considered the proposal to be conceptually ambitious and balances wit with gravitas, allowing the artwork to unfold over time. The conceptual notion of connectivity has depth and will provide for multiple readings for various communities. The series of sculptures uniquely provide intimate, individual experiences as well as social gathering places. The Panel also acknowledged the ability of the artwork to improve the visual and physical connectivity between the suite of artworks through the use of bright colours and patterning.
56. On 23 June 2020, the Panel was presented an update on the developments of the artwork and indicated strong support of the proposal.
57. Given the above, the proposed artwork is considered to exhibit design excellence as it will provide a positive contribution to the public domain and the community through the provision of new social gathering places with interesting scale and colour that will provide distinction amongst the surrounding taller buildings within the Town Centre.



## Landscape

58. Each of the proposed sculptures incorporate different types of planters within the artwork. The proposed planters have been assessed by Council's Landscape Officer who noted that the plant species have been selected based on country of origin rather than local site conditions and do not adequately consider aspect, wind and suitability of the species to thrive in exposed public squares, within seating or at street corners.
59. The proposed planters will also require a high level of maintenance to ensure that the plants survive and flower and that any failed, damaged or stolen planters are replaced on a regular basis.
60. The planter details vary per site, however, there is an absence of clarity for soil media and mulch specifications. The planters do not make adequate allowance for soil depth, drainage and irrigation required in the public spaces at this stage.
61. A condition of consent is recommended that requires a detailed landscape design to be submitted to and approved by Council prior to the issue of a Construction Certificate. The condition also requires a Landscape Maintenance Plan to be prepared and submitted.

## Illumination

62. The globes within each of the artworks are proposed to be illuminated, with dimmable white light LED modules.
63. The illuminated spheres will be programmed to match the daylight hours in different geographical locations around the world, turning on at sunrise and off at sunset.
64. An Obtrusive Lighting Report prepared by Arup was submitted with the application. The report considers sensitive receivers to be nearby residential uses as well as road users. An assessment of the proposed illumination at each site is outlined below.

### Site 1

65. The lighting is based on sunrise/ sunset times in Grasmere, Lake District, England. This equates in the following hours of illumination on the site:
  - 21 June - Turn on at 5.32pm and turn off at 12.48am
  - 22 December - Turn on at 1.36pm and turn off at 6.51am.
66. Sensitive receivers at Site 1 will include future residential apartments located directly north and south of the plaza.
67. Council's Lighting Engineer advised that:
  - (a) Illuminance levels to the future residential development north of the plaza (Site 18) is non-compliant during curfew hours (11.00pm and 6.00am).
  - (b) Illuminance levels to the future development south of the plaza (Site 19a) is non-compliant during both curfew and non-curfew hours.

**Site 2**

68. The lighting is based on sunrise/ sunset times in Yaviza, Tapon del Darien, Panama. This equates to the following hours of illumination on the site:
- 21 June - Turn on at 9.19pm and turn off at 8.58am.
  - 22 December - Turn on at 8.54pm and turn off at 9.30am.
69. Sensitive receivers at Site 2 includes residential uses located on the northern side of Zetland Avenue and the future school.
70. Council's Lighting Engineer advised that:
- (a) Illuminance levels at the school building are non-compliant during curfew and non-curfew hours.

**Site 4**

71. The lighting is based on sunrise/ sunset times at Heard Island, Australia. This equates to the following hours of illumination on the site:
- 21 June - Turn on at 8.35am and turn off at 1.32am
  - 22 December - Turn on at 1.21pm and turn off at 8.54pm.
72. Sensitive receivers at Site 4 includes residential uses to the north of the park and potential future residential uses south of the site.
73. Council's Lighting Engineer advised that:
- (a) Illuminance levels to the nearby residential buildings (14 Defries Avenue) and development to the south is non-compliant during curfew hours.
74. In response to the abovementioned non-compliances, Council's Lighting Engineer advised that revised Luminous Intensity calculations are required to confirm compliance during curfew and non-curfew hours. Therefore, a condition of consent is recommended that requires the following information to be submitted prior to the issue of a construction certificate:
- (a) The average luminance of the spheres is to be reduced by using lower wattage luminaires or fewer number of luminaires, to reduce luminance to approximately 200cd/sqm.
- (b) A dimming level around 20-25 per cent is permitted for operation during non-curfew hours to allow for luminaires depreciation during operation
- (c) Luminous Intensity calculations are required to confirm compliance during curfew hours.
75. In addition to the above recommended condition, a general condition is recommended which will ensure that the lighting levels, once approved by the above condition, continue to comply with the requirements of AS4282-2019. This condition states that should the artwork lighting result in residual impacts on sensitive receivers, the applicant must submit mitigation measures to Council to reduce the impacts.

76. Therefore, subject to conditions of consent the proposal will have acceptable impacts having regard to illumination.

## **Consultation**

### **Internal Referrals**

77. The application was discussed with the following internal referral units:
- (a) Public Domain unit;
  - (b) Lighting Engineer;
  - (c) Public art; and
  - (d) Landscape Officer.
78. The above units advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.

## **Advertising and Notification**

79. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 4 May 2022 and 19 May 2022. A total of 1,204 properties were notified and no submissions were received.

## **Financial Contributions**

### **Contribution under Section 7.11 of the EP&A Act 1979**

80. The development is not subject to a Section 7.11 development contribution as it is a type of development listed in Table 2 of the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution.

### **Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012**

81. As the development is development for purposes other than residential accommodation that will result in the creation of less than 60 square metres of gross floor area, the development is excluded and is not subject to a Section 7.13 affordable housing contribution.

## **Relevant Legislation**

82. Environmental Planning and Assessment Act 1979.

## Conclusion

83. The proposal seeks consent for public artwork comprising three sculptural objects over three sites in Green Square. The artwork will function as seating with planting and a light pole incorporating an illuminated fibreglass sphere light.
84. Written requests seeking to vary Clause 4.3 - Height of Buildings development standard on Site 1 (355 Botany Road, Zetland) and Site 4 (14A Defries Avenue, Zetland) have been submitted. The requests are supported in this instance. The proposed development meets the objectives of the B4 - Mixed Use zone and the height of buildings development standard and there are sufficient environmental planning grounds to justify the proposed variation.
85. The proposed public art will provide social benefits to the community in the form of place making and wayfinding and will create new gathering points for the local community across Green Square.
86. The public art will not have adverse impacts on the environment, public amenity, pedestrian access, stormwater drainage or heritage. Overall, the development demonstrates design excellence in accordance with Clause 6.9 of the SLEP (GSTC) 2013 and Clause 6.21C of the SLEP 2012.
87. As a result of public notification, no submissions were received.
88. All matters raised by internal referrals have been adequately addressed, as discussed within this report.
89. Subject to conditions, the development is in the public interest and is recommended for approval.

## ANDREW THOMAS

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