

# **Attachment C**

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

# Clause 4.6 Variation Request – Height of Buildings

960A Bourke Street, Zetland  
Green Square Town Centre - Sites 7, 17 and 18

Submitted to: City of Sydney Council

Submitted on behalf of: Mirvac Green Square Pty Ltd



### 'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.


By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

<b>Contact:</b>		Daniel Howard Associate Director	DHoward@ethosurban.com
<b>This document has been prepared by:</b>		<b>This document has been reviewed by:</b>	
			
Renee Stavroulakis / Mercedes Janecek		Daniel Howard	30 January 2024
<b>Version No.</b>	<b>Date of issue</b>	<b>Prepared by</b>	<b>Approved by</b>
1.1 (Final)	08/09/2023	MJ	DH
1.2 (Final 2.0)	30/01/2024	MJ	DH
Reproduction of this document or any part thereof is not permitted without written permission of Ethos Urban Pty Ltd. Ethos Urban operates under a Quality Management System. This report has been prepared and reviewed in accordance with that system. If the report is not signed, it is a preliminary draft.			
 Ethos Urban Pty Ltd   ABN 13 615 087 931   Level 4, 180 George Street, Sydney NSW 2000, (Gadigal Land)   ethosurban.com			

# Contents

- 1.0 Introduction ..... 5**
- 2.0 Development Standard to be Varied ..... 7**
  - 2.1 Is the Planning Control in question a Development Standard..... 7
  - 2.2 Development Standard – Height of Buildings ..... 7
- 3.0 Justification for Contravention of the Development Standard .....10**
  - 3.1 Role of the Consent Authority ..... 10
  - 3.2 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ..... 11
  - 3.3 Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard ..... 14
  - 3.4 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard ..... 15
  - 3.5 Other Matters for Consideration ..... 16
- 4.0 Conclusion .....17**

## Figures

- Figure 1 Height of buildings map ..... 8
- Figure 2 Section of Site 7 ..... 8
- Figure 3 Section of Site 17..... 9
- Figure 4 Section of Site 18..... 9
- Figure 5 Location of Conservation Areas..... 12
- Figure 6 Building Envelopes Showing Sightlines Across the site..... 13

# 1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Mirvac Green Square Pty Ltd. It is submitted to City of Sydney (the Council) in support of a development application (DA) for three mixed-use buildings at 960A Bourke Street, Zetland, otherwise known as Sites 7, 17 and 18 of the Green Square Town Centres (GSTC).

The proposed development seeks consent for:

- Site preparation and remediation.
- Bulk excavation (including de-watering) to create part-two and part-four integrated basement levels which accommodate:
  - 262 car parking spaces
  - 8 service vehicle spaces (3 spaces in the loading dock)
  - 33 bicycle spaces
  - 22 motorcycle spaces
  - 260 residential storage cages
  - Various waste, service and plant rooms
- Vehicular access to the basement levels from Tweed Place.
- Construction and use of three (3) new mixed-use buildings as follows:
  - **Site 7:** 13 storey tower fronting Green Square Plaza (plus plant and plus podium void, equivalent to 19 storeys), with a 5-storey podium comprising ground floor retail, ground floor loading dock, commercial uses within the podium, 124 apartments, landscaped communal open space and a landscaped podium roof terrace.
  - **Site 17:** 13 storey tower (plus plant, equivalent to 14 storeys) with a 4-storey podium fronting Green Square Plaza comprising ground floor retail, commercial uses within the podium, 59 apartments and a landscaped podium roof terrace.
  - **Site 18:** 20 storey tower (plus plant, equivalent to 21 storeys) comprising ground floor retail, 77 apartments and a landscaped roof terrace.
- Extension and augmentation of services and utilities to the development, as required.
- Public domain works including paving and footpaths around each building.

Approval for the three buildings has been previously granted by Council across two development applications. D/2017/564 was granted deferred commencement on 20 June 2019 by the Central Sydney Planning Committee for two (2) mixed-use residential buildings at Sites 7 and 17. D/2017/503 was granted deferred commencement by the Central Sydney Planning Committee on 20 June 2019 for the construction of one (1) mixed use residential building at Site 18 and combined basement. A modification application was submitted to Council on 24 December 2021 to amend D/2017/546 with minor design and condition amendments as well as seeking to satisfy the deferred commencement conditions imposed by the conditions of consent. The modification application has since been withdrawn. The subject application has consolidated the proposed development of the three sites into one single application, which has been resubmitted for Council approval together with minor design development amendments.

Clause 4.6 of the *Sydney Local Environmental Plan (Green Square Town Centre) 2013* (Green Square LEP 2013) enables the consent authority to grant consent for development even though the development contravenes a development standard. This clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request relates to the height of buildings development standard under clause 4.3 of the Green Square LEP 2013, and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 8 September 2023 including supporting documentation.

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

It demonstrates that, notwithstanding the non-compliance with the maximum height standard, the proposed development:

- Achieves each of the applicable objectives of the height of buildings development standard and the objectives of the applicable MU1 Mixed Use zone.
- Does not give rise to any adverse environmental impacts.
- With regards to Site 18 specifically, is in direct response to the design excellence recommendations of the Selection Panel associated with the Competitive Design Alternatives Process.
- Will facilitate an urban form which delivers a superior public outcome in respect of Neilson Square and public view corridors within the GSTC.
- Will have an appropriate impact, in terms of its scale, form and massing.
- Will promote the orderly and efficient use of land, in accordance with the objects of the *Environmental Planning and Assessment Act 1979* (the Act).
- Will ensure a development that is suitable for the site and is in the public interest.

In light of the above, the consent authority can be satisfied that there is sufficient justification for the variation to the development standard, as proposed in accordance with the flexibility allowed under clause 4.6 of the Green Square LEP.

## 2.0 Development Standard to be Varied

### 2.1 Is the Planning Control in question a Development Standard

Development Standard is defined under Section 4(1) of the EP&A Act as follows:

*“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

*...*

*(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...”*

The maximum height of buildings standard prescribed under clause 4.3 of the Green Square LEP is clearly and unambiguously a development standard and has continually been applied in this manner by the consent authority.

### 2.2 Development Standard – Height of Buildings

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

*(1) The objectives of this clause are as follows—*

- (a) to ensure acceptable height transitions between new development and heritage items and buildings in heritage conservation areas,*
- (b) to ensure sharing of views,*
- (c) to ensure acceptable height transitions from the Green Square Town Centre to adjoining areas,*
- (d) to ensure the amenity of the public domain by restricting taller buildings to only part of a site,*
- (e) to ensure the built form contributes to the physical definition of the street network and public spaces.*

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

Heights are expressed in RL (m). An extract of the Height of Buildings Map, in relation to Sites 7, 17 and 18 is shown in **Figure 1** below. The maximum building height for Site 7 is stepped from 50 RL fronting the Green Square Plaza, to 64 RL within the middle portion of the site, up to 75 RL fronting Ebsworth Street. Site 17 is stepped from 50 RL fronting the Green Square Plaza to 62.5 RL fronting Ebsworth Street. Site 18 has a single maximum building height of 83 RL.





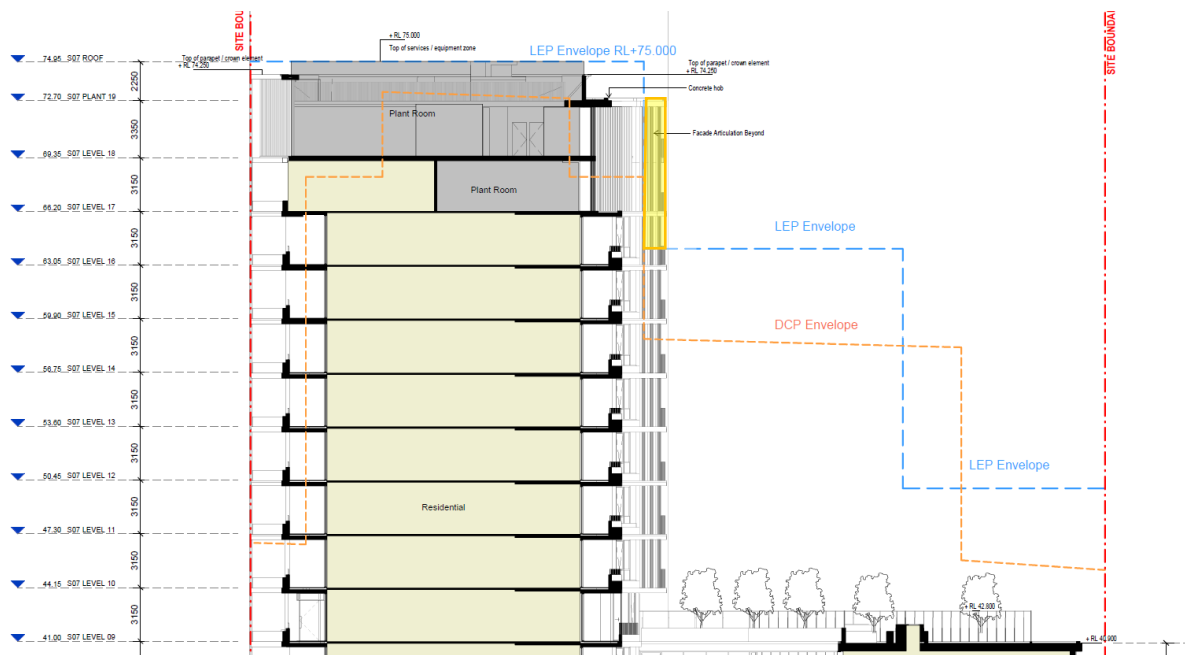
**Figure 1** Height of buildings map

Source: City of Sydney

This variation request seeks development consent for contravention of the maximum height of buildings development standard in relation to Sites 7, 17 and 18. The extent of the variations sought are detailed below.

### Site 7

The proposed exceedance relates to a portion of the southwestern façade of the residential tower which faces the Green Square Plaza, where on Levels 16-18 a portion of the residential tower protrudes laterally 1.315m above into the RL 64 height limit zone. This portion of the building has a maximum height of RL 72.7, which presents an 8.7m height variation of 14%. It is noted approval was previously granted for comparable variation under D/2017/564 on 20 June 2019. The area of variation is shown in yellow at **Figure 2**.

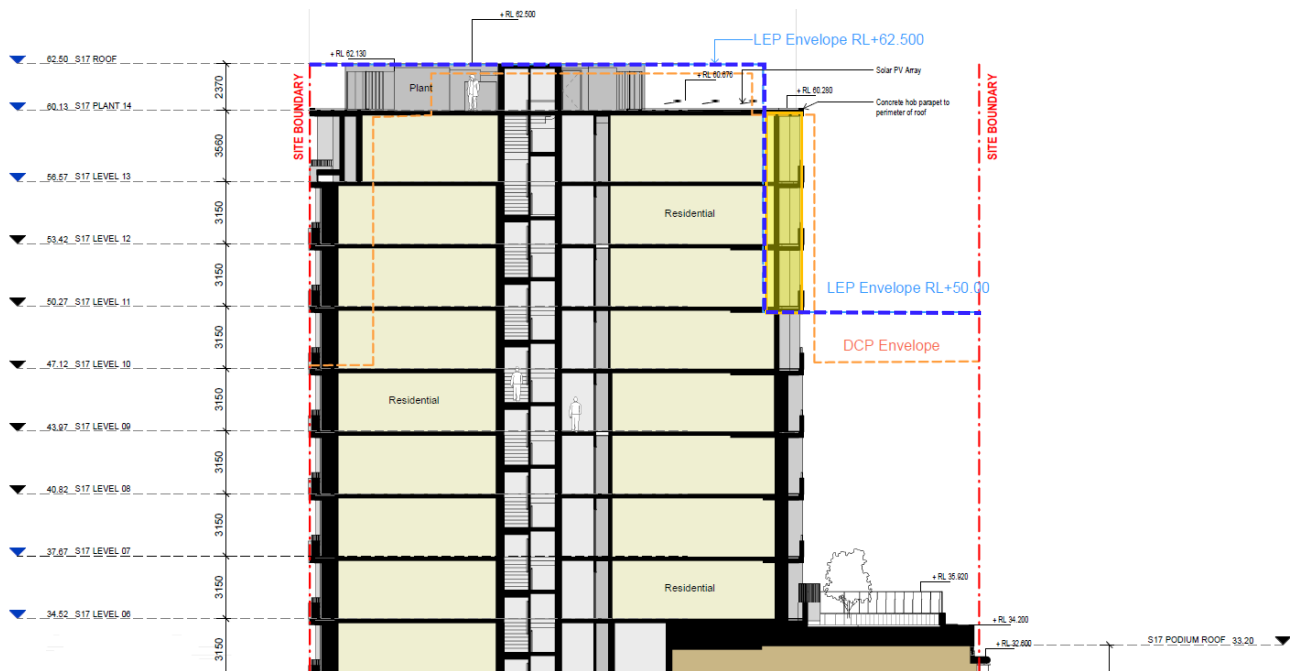


**Figure 2** Section of Site 7

Source: Tzannes and Mirvac Design

## Site 17

The proposed exceedance relates to a portion of the southwestern façade of the residential tower which faces the Green Square Plaza where on Levels 11-13, a portion of the residential tower protrudes laterally by 2.05m above into the RL 50 height limit zone. This portion of the building has a maximum height of RL 60.28, which presents a 10.28m (20%) height variation. It is noted approval was previously granted for comparable variation under D/2017/564 on 20 June 2019. The area of variation is shown in yellow at **Figure 3**.

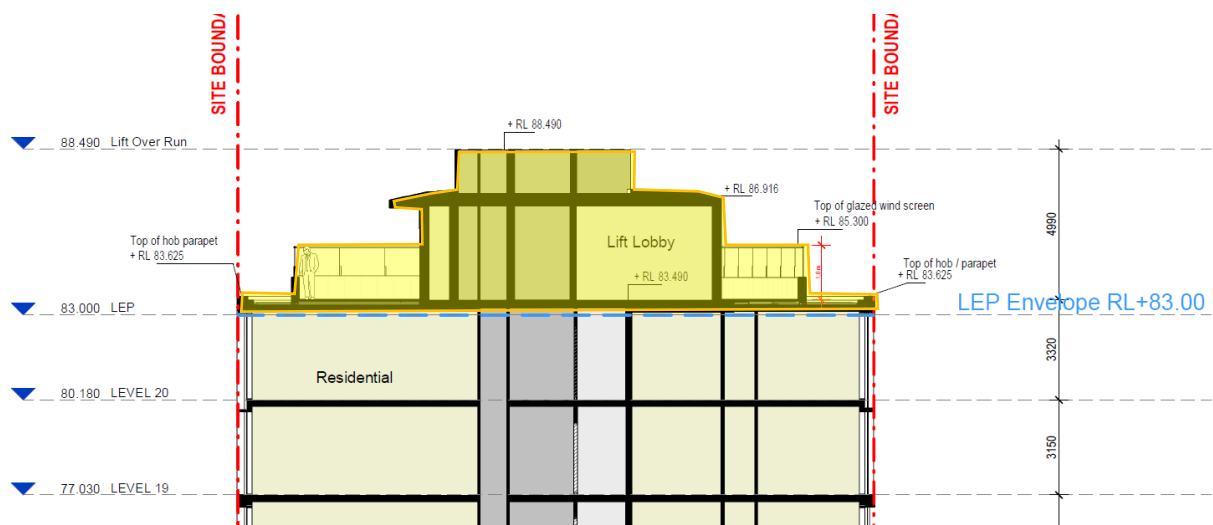


**Figure 3** Section of Site 17

Source: Tzannes and Mirvac Design

## Site 18

The Site 18 development proposes exceedances to the maximum height permitted on the site under the Green Square LEP 2013, of RL 83. The exceedance relates to the lift shaft and lift overrun which provides access to a rooftop terrace. The building has a maximum height of RL 88.49, which presents a 5.49m (6.7%) exceedance. It is noted approval was previously granted for comparable variation under D/2017/503 on 20 June 2019. The area of variation is shown in yellow at **Figure 4**.



**Figure 4** Section of Site 18

Source: Bates Smart and Mirvac Design

## 3.0 Justification for Contravention of the Development Standard

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

### 4.6 Exceptions to development standards

...

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

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

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827.
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action).
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (Al Maha).
5. *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511.
6. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386.
7. *Moskovich v Waverley Council* [2016] NSWLEC 1015.
8. *Baron Corporation Pty Ltd v The Council of the City of Sydney* [2018] NSWLEC 1552 (Baron Corporation).

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

### 3.1 Role of the Consent Authority

The role of the consent authority in considering this written request for a clause 4.6 variation has been explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- That the applicant's request has adequately addressed the matters in clause 4.6(4)(a)(i).
- That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

The consent authority is required to form these two opinions first before it considers the merits of the DA, and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters. In particular, the consent authority needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified. This report provides the basis for the consent authority to reach the required level of satisfaction.

This clause 4.6 variation request is proposed in context of clause 4.3 of the Green Square LEP 2013. Relevant matters contained in clause 4.6 of the Green Square LEP 2013, with respect to the height development standard, are each addressed below.

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

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

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

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

The five methods outlined in *Wehbe* include:

- The objective 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**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances because the objectives of the height development standard are achieved notwithstanding the non-compliance with the standard (First Method).

#### 3.2.1 The underlying objectives or purposes of the development standard

The objective of the development standard contained in clause 4.3 of the Green Square LEP are:

- (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.

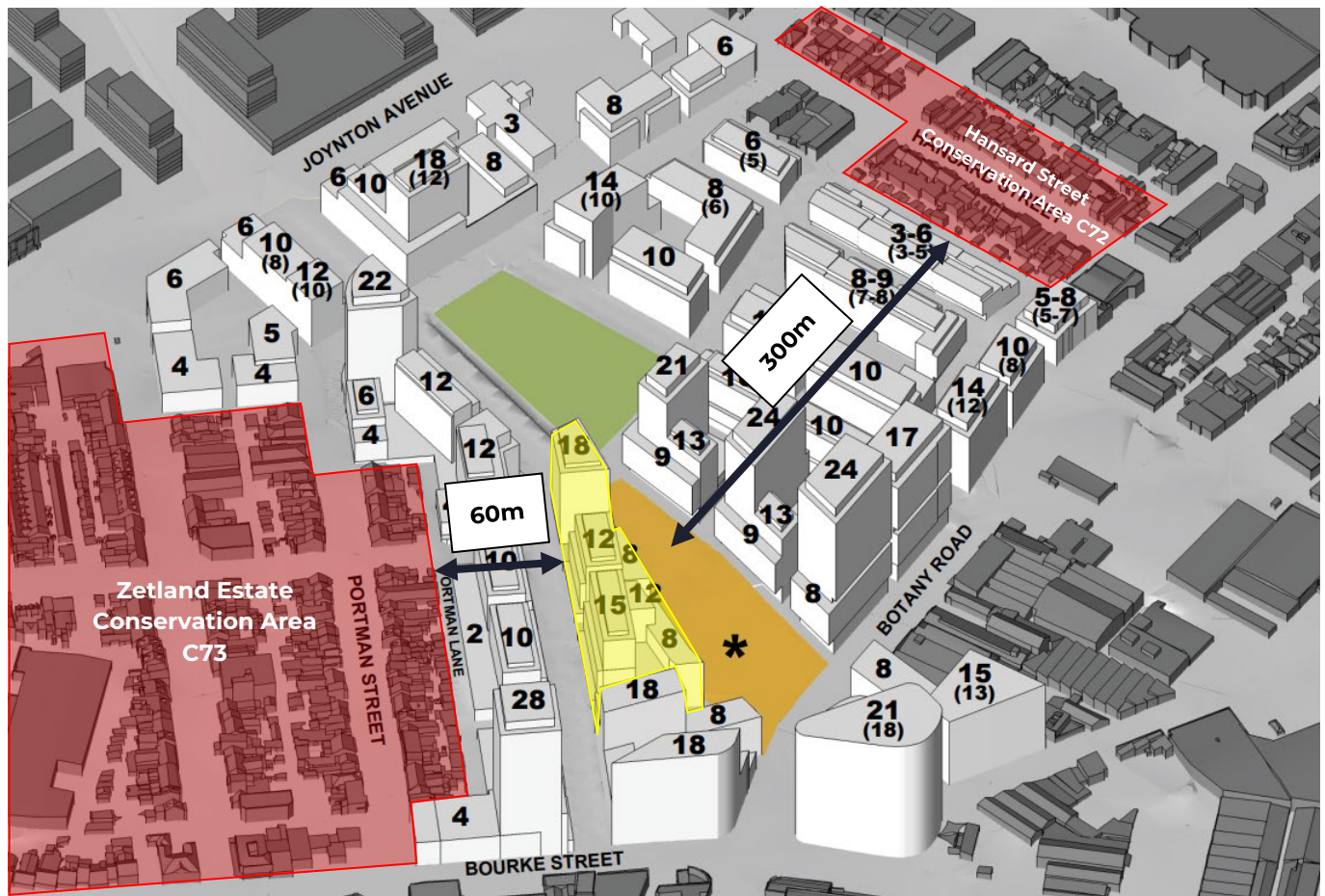
The proposal is assessed against the objectives for the height of buildings development standard below for completeness.

#### 3.2.2 The objectives of the standard are achieved notwithstanding the non-compliance

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

The site is located approximately 60m to the south west of the Zetland Estate Conservation Area (C73). However, the site is situated within the centre of the GSTC, and is separated from the conservation area and the heritage items within it by a 10 storey residential flat building at Site 16 and a 4-24 storey residential flat buildings at Site 15. The site is also approximately 300m from the Hansard Street Conservation Area (C72) and is separated from the conservation area by a several existing and future development within the Green Square Town Centre. The distance from both heritage conservation areas is shown in **Figure 5** below.





**Figure 5** Location of Conservation Areas

Source: City of Sydney

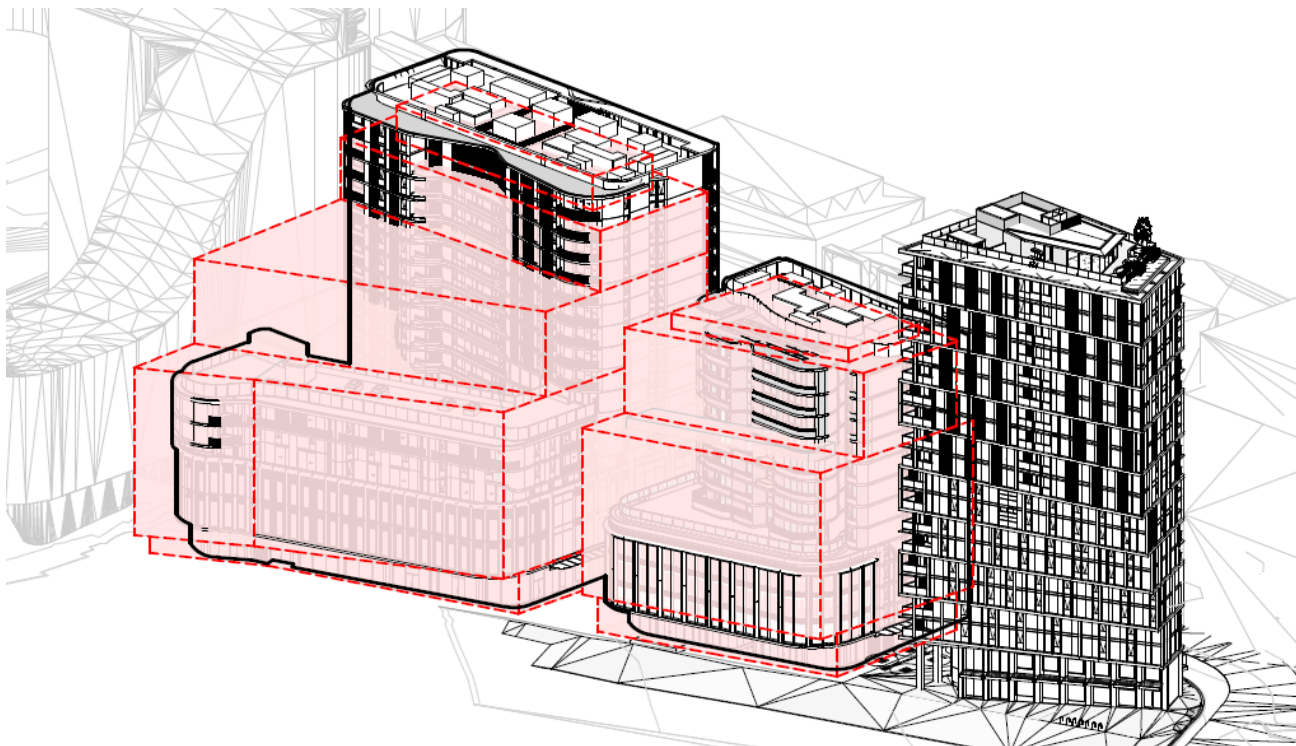
The built form controls which prescribe building height and form within the GSTC provide larger and taller development within the middle of the town centre around Green Square Plaza, which then transitions to shorter development towards the conservation areas. The proposed additional heights achieve the objectives of the height control through providing a transitional built form. Despite the additional height proposed, the building continues to be separated by 10 and 12 storey buildings along Ebsworth Street

A Heritage Impact Statement has been previously prepared for previous DA on Site 18, which confirms that due to the large separation distance between the site and the aforementioned heritage conservation areas and scale of development at Sites 15 and 16, there are very limited opportunities to view the proposal above and beyond the role of the existing residential properties within the conservation area. As such, it is concluded the proposed development will have a negligible impact to the surrounding heritage conservation areas. As the separation distance has not changed, and the proposed heights and their exceedance above the height limit are generally similar as previously approved, it is considered that this assessment is still valid and applicable to the Sites 7, 17 and 18 in context to the distance of surrounding heritage conservation area away from the site.

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

With regard to the height exceedance at Site 7 and 17, these exceedances both relate to the lateral protrusion of built form, which will not be a significant visual impact due to it being located on the side façade of the building and not protrude above the building.

The built form has been designed to provide floor space within the residential tower fronting Ebsworth Street, compared to being located in front of the tower closer to Green Square Plaza. Accordingly, the distribution of floor space to the front façade of the residential tower, while extending into the height zone creating the non-compliance, results in additional sight lines afforded across the site from the adjacent development at Site 6. This is shown visually in **Figure 6** below.



**Figure 6 Building Envelopes Showing Sightlines Across the site**

Source: Tzannes, Bates Smart and Mirvac Design

In terms of Site 18, the proposed built form was subject to a Competitive Design Alternatives process which resulted in the relocation of floor space at lower levels to the upper levels of the building to achieve improved ground plane views through Zetland Avenue and higher solar access performance, thereby delivering an improved built form outcome. Through the tapered form of the building and the design of the Neilson Square setback, view corridors at ground level and within the public domain have been improved. This redistribution of floor area from the lower levels, which enables improved public domain views, generated an additional two storeys to the top of the building, and therefore the exceedance of the height limit. Council have previously noted that as this opportunity for floor space reallocation was anticipated from a very early planning stage and that non-compliance with the height was therefore a likely design outcome on this site.

The proposed exceedance in height at Site 18 is generally limited to the central portion of the roof area and will therefore not be readily visible from the surrounding public domain and will not impact views.

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

As previously stated, Sites 7, 17 and 18 are situated within the centre of the GSTC. The built form controls within the Green Square LEP 2013 and DCP 2012 have been designed to create transitional built form from the centre of the GSTC being Green Square Plaza to the surrounding low-density areas. The buildings at Site 15 and 16 are 10 storeys in height which provides a transition from the site to the low density residential area to the north east.

At Sites 7 and 17 the exceedance relates to a lateral protrusion, and otherwise, the heights of these two buildings are entirely within the maximum height limit. Therefore, the exceedance maintains the height transitions intended across the GSTC.

At Site 18, despite the additional height, the proposed built form retains the intended transition between Sites 8C and 19A (being 24 and 21 storeys) on the other side of Green Square Plaza and the 12 storey development at Site 15 on the opposite side of Ebsworth Street. This allows a gradual slope in buildings from the middle of the town centre to the low density residential to the north east. Accordingly, despite the additional height proposed at Site 18, transitions in height are still provided, especially when considering the recessive nature of the excess height, set inboard of the primary external facades.

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

Sites 7, 17 and 18 directly adjoin Neilson Square and the Green Square Plaza to the south and the Drying Green to the south west. The proposed buildings have been specifically designed both in orientation and form to respond to these public areas.

At Sites 7 and 17, the taller portion of the building, as per the intention of the built form controls, is provided along the Ebsworth Street frontage, to ensure solar access is maximised and also to limit the sense of enclosure to the public domain. The additional height at Sites 7 and 17 relate to a lateral protrusion, which ensures solar access to the surrounding public areas is not reduced by the areas of exceedance.

As per the built form controls, Site 18 is intended as a single height tower across the whole site. As mentioned, the winning scheme of the design competition at Site 18 was commended for the careful transition and transfer of building scale from the lower to upper levels, in particular regard to the natural light benefits provided to the surrounding public domain and the view framing to the new library which is achieved through the stepped form at the lower levels. This reallocation of floor space from the lower levels has resulted in the height exceedance, however also results in improved amenity at the public domain.

A shadow analysis has been undertaken, and accompanies the SEE at **Appendix A** which provides the cumulative shadow areas of the proposed development and all surrounding development on the Drying Green for each hour between 11:00am and 2:00pm is as follows:

- 11:00am – 51.5%
- 12:00 noon – 30.1%
- 1:00pm – 37.9%
- 2:00pm – 52.8%

This provides an average of 43.1% of the Drying Green in shadow across these hours. This complies with Section 3.1.1(1) of the Green Square DCP 2012 which prescribes that surrounding development must achieve direct sunlight each hour between 11am and 2pm for at least 50% of the park on 21 June (winter solstice).

It is noted that the additional area of overshadowing which arises from the proposed LEP height non-compliance is to an area on the southern eastern edge of the Drying Green which is not considered to be a principal usable area. This is consistent with past assessment of this matter under the previous DA, which arrived at an average of 43.6% of the Drying Green in shadow across these hours.

Accordingly, any additional overshadowing cause by the exceedance in building height continues to comply with the provisions relating to overshadowing the nearby Drying Green in the Green Square DCP 2012, and has been considered acceptable in the previous assessment by Council on the site.

Accordingly, despite the proposed exceedance in building heights, the design achieves a superior outcome in relation to the public space adjoining the sites and therefore, the proposed development remains consistent with this objective.

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

Sites 7, 17 and 18 are a function of the street network of the GSTC, bound by Tweed Place, Ebsworth Street, Barker Street, Neilson Square and Paul Street/Zetland Avenue.

At Sites 7 and 17, the areas of non-compliance are limited to the front façade of the residential towers as a lateral position of built form, and therefore will not impact the street network or public spaces.

At Site 18, the proposed exceedance facilitates the definition of public space as floor area has been relocated to higher levels of the building. The tapering built form also allows for light penetration at ground level and presents a superior outcome for both Neilson Square and ground floor retail tenancies oriented to Barker Street and Ebsworth Street.

### **3.3 Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard**

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

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

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

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

### **3.3.1 Ground 1: Improved residential amenity**

At Sites 7 and 17, the allocation of floor space within the area of exceedance has allowed a greater number of apartments within higher levels of the buildings. This has increased the overall number of apartments compliant with solar access, and has improved the outlook and view lines from these apartments, which would otherwise be on lower levels. The additional lateral projection also allows for more workable apartment layouts.

At Site 18, the relocation of floor space from lower levels to upper levels of the proposed development will result in larger apartments at higher levels of the building. These apartments will also enjoy district views and increased solar access that may not have been achievable in the lower levels of the building. In addition, the area of additional height comprises the lift shaft and overrun providing access to the and communal open space which provides required residential amenity, as per the communal open space controls of the ADG.

This design solution will also improve the amenity of residential uses at lower levels of neighbouring developments by opening up the public domain, increasing light penetration and promoting view sharing at lower levels of surrounding development providing view lines to key public open space within the GSTC.

The proposed additional height at all buildings will not create any additional overshadowing that would impact the solar amenity of surrounding buildings.

### **3.3.2 Ground 2: Improved public domain outcome**

At Sites 7 and 17, the additional areas of height are located on the façade of the residential towers and therefore do not create any additional overshadowing that would impact the Green Square Plaza to the south. On balance, the allocation of floor space to the upper levels of the buildings at Sites 7 and 17 compared to within the prescribed height envelopes allows for a more refined built form which has less bulk to the Green Square Plaza. This has improved the site as a backdrop to the public domain.

As mentioned, at Site 18, the proposed exceedance in building height is the direct result of the relocation of floor space from lower levels on the building to upper levels to facilitate superior public domain outcome by increasing light penetration in Neilson Square and enhancing view corridors within the public domain.

Overall, surrounding public open space will not be compromised by the non-compliance with the building height development standard and in fact it will result in a superior outcome.

### **3.3.3 Ground 3: Potential impact on airspace operations**

The exceedance at Sites 7 and 17 are lateral protrusions only and do not penetrate the highest building height prescribed on site. All maximum building heights across the three sites remain below the OLS. Aviation approval has been granted for a building height up to RL88.49.

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

The Land Use Table within the Green Square LEP provides the following objectives for the MUI Mixed Use Zone:

- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To enable land uses that support the viability of centres.
- To integrate suitable business, office, residential, retail and other development in accessible locations to maximise public transport patronage and encourage walking and cycling.



Notwithstanding the proposed exceedance of the maximum building height, the proposed development is consistent with these objectives on the following grounds:

- The proposed development provides high quality residential development integrated with retail uses.
- The proposed retail uses will provide activation of the public domain including Neilson Square and Barker Street which will contribute to the viability of the locality as a centre.
- The proposed development is situated within close proximity to existing and planned public transport services including Green Square railway station.
- The proposed development will encourage walking and cycling by providing retail uses that are oriented to the public domain including key pedestrian links of Zetland Road and Green Square Plaza.

As demonstrated at **Section 3.2** of this report, the proposal is consistent with the objectives of the height of buildings development standard.

### 3.5 Other Matters for Consideration

Clause 4.6(5) of the Green Square LEP requires the following additional matters to be considered.

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

The variation of the height of buildings development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, *A Plan for Growing Sydney* in that it:

- Provides accommodation and services to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;
- Is located in an area identified as a Strategic Centre that has been designated for growth in both homes and jobs;
- Is well located to public transport connections; and
- Does not adversely affect any heritage assets.

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

As stated above, maintaining the development standard would result in a lowered public benefit as the proposed development would not be able to achieve the desired access to the communal rooftop open space at Site 18, or would result in a loss of housing or housing with lower amenity in an area where housing supply is currently not meeting demand.

#### 3.5.3 Clause 4.6(5)(c): Any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

There are no other matters relevant to the proposed variation that are required to be taken into consideration by the Secretary before granting concurrence.

## 4.0 Conclusion

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

Approval for the three buildings has been previously granted by Council across two development applications. D/2017/564 was granted deferred commencement on 20 June 2019 by the Central Sydney Planning Committee for two (2) mixed-use residential buildings at Sites 7 and 17. D/2017/503 was granted deferred commencement by the Central Sydney Planning Committee on 20 June 2019 for the construction of one (1) mixed use residential building at Site 18 and combined basement. A modification application was submitted to Council on 24 December 2021 to amend D/2017/546 with minor design and condition amendments as well as seeking to satisfy the deferred commencement conditions imposed by the conditions of consent. The modification application has since been withdrawn.

The subject application has consolidated the proposed development of the three sites into one single application, which has been resubmitted for Council approval together with minor design development amendments.

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

- Achieves each of the applicable objectives of the height of buildings development standard and the objectives of the applicable MUI Mixed Use zone.
- Does not give rise to any adverse environmental impacts.
- With regards to Site 18 specifically, is in direct response to the design excellence recommendations of the Selection Panel associated with the Competitive Design Alternatives Process.
- Will facilitate an urban form which delivers a superior public outcome in respect of Neilson Square and public view corridors within the GSTC.
- Will have an appropriate impact, in terms of its scale, form and massing.
- Will promote the orderly and efficient use of land, in accordance with the objects of the *Environmental Planning and Assessment Act 1979* (the Act).
- Will ensure a development that is suitable for the site and is in the public interest.

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