

Attachment D

<p>Clause 4.6 Variation Request – Ceiling Heights</p>
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Clause 4.6 Variation Request – Recommended Minimum Floor to Ceiling Heights

960A Bourke Street, Zetland
Site 7, 17 and 18 of the Green Square Town Centre

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.

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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Mirvac Green Square Pty Ltd. It is submitted to City of Sydney (the Council) in support of a development application (DA) for 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.

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 request relates to minor variations to the recommended minimum design criteria for ceiling heights as set out in the Apartment Design Guide (ADG) and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 8 September 2023 including supporting documentation.

The ADG establishes consistent planning and design standards for residential apartments across NSW. The guideline is provided as a supplement to the design principles contained within *State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development* (SEPP 65). Specifically, this clause 4.6 variation request relates to the recommended minimum ceiling heights specified in Part 4C of the ADG – deemed a development standard by Clause 30 of *State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development* (SEPP 65).

This clause 4.6 variation request demonstrates that compliance with the recommended minimum ceiling heights 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 recommended minimum ceiling heights standard, the proposed development will:

- Provide a high standard of amenity for future residents and well-proportioned space perception in the apartments.
- Achieve sufficient natural ventilation and daylight access to all habitable rooms within the apartments.

- Provide well designed and appropriately defined ceilings that create spatial interest and hierarchy in apartments and provides sufficient amenity and services provision within retail spaces.
- Continue to remain consistent with the wider approach to apartment and retail design for mixed-use areas, and importantly the approved and constructed developments within Green Square.
- Continue to satisfy the objectives of the development standard, namely to provide a ceiling height which achieves sufficient natural ventilation and daylight access.
- 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.
- The extent of the variation has been previously approved by Council in D/2017/503 and D/2017/564 and accepted in principle within modification applications submitted to amend these DAs which were lodged to Council on 23 December 2021 and 24 December 2021, respectively.

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.

1.1 Background

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.

The ceiling height design criteria recommended in the ADG has been previously interpreted by Council staff as a development standard. A Clause 4.6 Variation Request relating to floor to ceiling height was therefore prepared to accompany D/2017/564 at the request of Council.

Both DAs were granted deferred development consent. Subsequently, this application seeks to resubmit the proposed development for approval for all three buildings on Sites 7, 17 and 18.

This DA 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. Accordingly, this Clause 4.6 Variation Request has been prepared again to accompany the application for abundant caution to facilitate the determination of the proposed DA in line with previously held views of Council.

2.0 Development Standard to be Varied

2.1 Is the Planning Control in question a Development Standard

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

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

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

(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,

(b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,

(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.

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

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

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

2.2 Development Standard – Ceiling Height

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

Objective 4C-1

Ceiling height achieves sufficient natural ventilation and daylight access

Design criteria

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

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

These minimums do not preclude higher ceilings if desired

Design guidance

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

Objective 4C-2

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

Design guidance

A number of the following design solutions can be used:

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

Objective 4C-3

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

Design guidance

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

2.3 Extent of the Variation Proposed

The proposal seeks a variation to the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide – deemed a development standard by Clause 30 of SEPP 65. The extent of the variation is discussed below.

2.3.1 Residential – Levels 3-20

The ADG recommends that habitable rooms are provided with a 2.7m high ceiling to achieve sufficient natural ventilation and daylight access. A minimum floor to ceiling height of 2.7m is provided to all living and sleeping areas.

Where required, units are served by a water-cooled package AC units which have an overall height of 415mm and are generally larger than a split system. A 2.4m high ceiling is therefore proposed above the kitchen and bathroom area to accommodate the AC unit, thereby negating the need for additional bulkheads in living spaces.

Whilst this does not comply with the 2.7m high ceiling as set out in the ADG, it exceeds the minimum height required for kitchens by the NCC under Part 10.3 Room heights (2.1m high).

The ceiling heights in all living areas and bedrooms are maintained at 2.7 metres in accordance with the design criteria of Objective 4C-1 of the ADG.

The typical layout and ceiling heights are illustrated at **Figure 1** below.

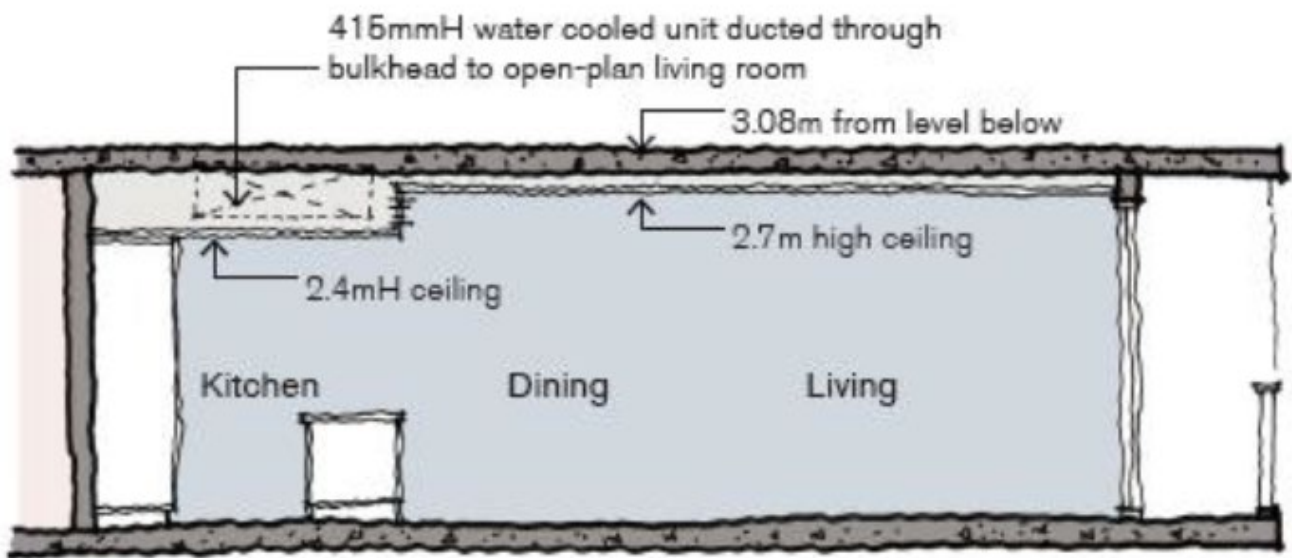


Figure 1 Section Demonstrating Ceiling Heights

Source: City of Sydney

2.3.2 Retail – Levels 1-2

The Apartment Design Guide recommends that developments located in a mixed use area provide a minimum ceiling of 3.3m for ground and first floor levels to promote future flexibility of use. The proposed development generally achieves the recommended floor to ceiling heights, with the following exceptions.

At Site 17, residential apartments fronting Ebsworth Street on Level 2 provide a floor to ceiling height of 3.15m which presents a minor 0.15m variation to the recommendation.

At Site 18, the residential amenities provided on Level 2 have a floor to ceiling height of 3.23m which presents a minor 0.07m variation to the recommendation.

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, with respect to the recommended minimum ceiling heights 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 recently 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 Part 4C of the ADG. Relevant matters contained in clause 4.6 of the Green Square LEP, with respect to the recommended minimum floor to ceiling height 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 Part 4C-1 of the ADG 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 Part 4C of the ADG is as follows:

- 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access.
- 4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.
- 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building.

An assessment of the areas of non-compliance against the objectives of the ceiling heights provisions is provided in **Table 1** below.

Table 1 Consistency with the Part 4C-1 objective of the ADG

Objective	Development response
Ceiling height achieves sufficient natural ventilation and daylight access	<p>Objective 4C-1 of the ADG seeks to ensure sufficient natural ventilation and daylight access is achieved in apartments. While the ceiling height design criteria of the ADG is not numerically achieved in all habitable rooms, the vast majority of habitable rooms in the apartments are provided with ceiling heights of 2.7 metres. These areas which do not achieve the minimum floor to ceiling heights are generally located at the rear of apartments in order to not restrict natural light and air penetrating the apartment and therefore the proposed ceiling heights continue to achieve Objective 4C-1 of the ADG. In addition, apartment depths are limited to maximise ventilation and airflow with kitchens located no more than 8.1m from a window.</p> <p>The apartment planning and layout also provides a focus and attention to ensure that those spaces within the apartment where ceiling heights do influence amenity and enjoyment, and where overwhelming where residents spend most of their time are not impacted by reduced ceilings heights. The ceiling heights in all living areas and bedrooms are maintained at 2.7 metres in accordance with the design criteria of Objective 4C-1 of the ADG.</p>

Objective	Development response
	<p>Further, the intention of this design criteria is to promote flexibility to allow potential conversion from residential to retail at lower levels of buildings within mixed use areas. In this case, the non-compliance at Level 2 of Site 18 is proposed to be a residential gym, and therefore does not require the solar access or ventilation standards of a residential apartments.</p> <p>The non-compliance within the apartments at Level 2 of Site 17 provide heights well above the required 2.7m and therefore, solar and ventilation is not impacted.</p> <p>Therefore, it is considered that the proposal is consistent with the objective of 4C-1.</p>
<p>Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.</p>	<p>The ADG also seeks to ensure that the proposed ceiling heights increase the sense of space in apartments and provides for well-proportioned rooms under Objective 4C-2. The proposed are of non-compliance are still consistent with the design guidance of this objective, in that the open plan flow of habitable living spaces optimises sense of space and outlook, with bulkheads limited as far as possible so as to not intrude into visual sight lines. Further, the bulkhead design and appearance has been applied consistently, as far as practical, throughout the development and is common in contemporary apartment designs, meeting with the market's design expectations.</p> <p>The non-compliance within the apartments at Level 2 of Site 17 provide heights well above the required 2.7m and therefore, provide generous and well-proportioned rooms.</p> <p>At Site 18, the non-compliance relates to Level 2 where the residential gym is required. Accordingly, this objective does not directly apply to the area of non-compliance at Site 18.</p>
<p>Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building.</p>	<p>Objective 4C-3 of the ADG seeks to provide an outcome whereby ceiling heights contribute to the flexibility of building use over the life of the building within mixed-use areas. This objectives relates to the non-compliances at Level of both Site 17 and 18. Both areas of non-compliance are minor, providing variations between 0.07m-0.15m. Therefore, there is still opportunity to provide varying uses at these levels while not compromising amenity and spatial requirements.</p>

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 several environmental planning grounds that justify the proposed variations to the development standard, including:

- The ceiling height provided in the kitchen area exceeds the NCC minimum height requirement of 2.1m for kitchens.
- All kitchens are located adjacent to an open-plan living and dining layout, benefiting from adjacent daylight, ventilation, and outlook.
- Apartment depths are limited to maximize ventilation and airflow, with kitchens located no more than 8.1m from a window.
- All apartments meet the ADG's recommended minimum internal areas, with minimum room dimensions generally achieved and furniture placements demonstrating functional use of spaces.
- The non-compliances at Levels 2 of Sites 17 and 18 are minor, only being 0.07m-0.15m and therefore do not significantly inhibit flexibility in the uses at these levels.

Noting the points above, there are sufficient environmental planning grounds to justify a variation to the development standard. It is also noted that comparable variations were previously approved on this site in relation to D/2017/503 and D/2017/564.

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 variation to the recommended minimum floor to ceiling height, the proposed development is consistent with these objectives on the following grounds:

- The project encompasses retail and commercial spaces, a cinema, and residential dwellings. These elements will enhance the sustainability of the Green Square Town Centre and align with the envisioned future land use goals for the area.
- The site is located near Green Square Railway Station and Green Square Bus Interchange, providing excellent connectivity to the greater Sydney metropolitan area. The multiple uses will increase employment and housing opportunities in a highly accessible location, with bicycle parking encouraging cycling and limited vehicular parking promoting public transport use.
- The development will also contribute to a diverse mix of commercial uses, with retail and commercial units will support the Green Square Town Centre viability and the cinema ensuring the centre's success for residents and visitors.

The proposal is considered to be in the public interest as it is consistent with both the objective of the development standard and the land use objectives of the zone.

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 to the suggested minimum ceiling heights outlined in Part 4C of the ADG will not give rise to any concerns in relation to State or Regional environmental planning. It has been established that the proposed variation is suitable considering the specific circumstances of the situation and it is unlikely that an undesirable precedent for other proposals would be established.

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

The proposal satisfies the objectives of the development standard and aligns with the objectives of MUI Mixed Use zone, despite the minor variation. The proposed minor non-compliance is also of minimal consequence, fulfills the intent of Part 4C of the ADG, and emerges directly from the intention to enhance the living conditions for upcoming inhabitants of the development. As a result, there are sufficient environmental planning grounds to warrant contravention of the development standard and it is therefore considered to be in the public interest for the variation to be supported in this case.

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

Concurrence can be assumed. Should concurrence be required, there are no other matters that necessitate consideration in relation to this clause 4.6 variation request.

4.0 Conclusion

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

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.

This clause 4.6 variation demonstrates that, notwithstanding the minor variation of the ceiling height design criteria in a portion of the apartments, the proposed development:

- Achieves the applicable objectives of the ceiling height design criteria and design guidance measures.
- Achieves the objectives of the MUI Mixed Use Zone.
- Has significant planning grounds to justify the variation.
- Does not give rise to any adverse environmental impacts.
- 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.
- The extent of the variation has been previously approved by Council in D/2017/503 and D/2017/564 and accepted in principle within modification applications submitted to amend these DAs which were lodged to Council on 23 December 2021 and 24 December 2021, respectively.

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.