

# **Attachment E**

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| <p><b>Clause 4.6 Variation Request – Floor Space<br/>Ratio</b></p> |
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# **Clause 4.6**

## **Request to vary a Development Standard**

Mixed Use Affordable Housing Development  
338 Botany Road, Alexandria  
D/2024/273



Submitted to City of Sydney  
on behalf of SGCH

**September 2024**

This report has been prepared by:



Sammy Hamilton BPlan  
Senior Planner  
E: [sammy@keylan.com.au](mailto:sammy@keylan.com.au)

*Padraig Scollard*

Padraig Scollard BA MRUP  
Associate  
E: [padraig@keylan.com.au](mailto:padraig@keylan.com.au)

This report has been reviewed by:

*Michael Woodland*

Michael Woodland BTP MPIA  
Director  
E: [michael@keylan.com.au](mailto:michael@keylan.com.au)

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## 1. Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Sydney Local Environmental Plan 2012* (SLEP 2012).

This Request relates to Clause 4.4 *Floor space ratio* of the SLEP 2012.

This Request has considered the detailed guidance within the NSW Department of Planning and Environment (DPE) guideline *Varying Development Standards: A Guide, August 2011* (DPE Guide) and planning system circular PS 20-002 *Varying Development Standards, May 2020*, and addresses the findings and established principles (as relevant) in the following judgements of the NSW Land and Environment Court (the Court):

- *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070
- *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112
- *Big Property Pty Ltd v Randwick City Council* [2021] NSWLEC 1161
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] NSWLEC 1243

The following sections of this Request critically analyse the proposed floor space ratio (FSR) variation to facilitate the mixed use affordable housing development, its impact and reasonableness.

This analysis demonstrates that an exception to the FSR development standard is warranted in this instance.

## 2. Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument) includes various development standards as a means of achieving environmental planning objectives.

Clause 4.6 of the Standard Instrument allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard.

The DPE Guide recommends that any request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment. Table 1 below provides a summary of the relevant planning context and provides an overview of the proposed variation.

| Information Requirement                 | Comment   |
|---|---|
| Relevant Applicable Planning Instrument | <i>Sydney Local Environmental Plan 2012</i> (SLEP 2012)   |
| Zoning of the Land                      | E3 Productivity Support   |
| Objectives of the Zone                  | <p>The objectives of the E3 Productivity Support zone are:</p> <ul style="list-style-type: none"> <li>• <i>To provide a range of facilities and services, light industries, warehouses and offices.</i></li> <li>• <i>To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.</i></li> <li>• <i>To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.</i></li> <li>• <i>To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.</i></li> <li>• <i>To provide opportunities for new and emerging light industries.</i></li> <li>• <i>To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.</i></li> <li>• <i>To encourage employment opportunities.</i></li> <li>• <i>To promote land uses with active street frontages.</i></li> <li>• <i>To provide for land uses that support the viability of adjoining industrial land uses.</i></li> </ul> |
| Development Standard to be Varied       | Clause 4.4 Floor space ratio  |
| Nature of the Development Standard      | A numerical floor space ratio control.  |
| Objectives of the Development standard  | <p>The objectives of Clause 4.4 Floor space ratio development standard are:</p> <ul style="list-style-type: none"> <li>• to provide sufficient floor space to meet anticipated development needs for the foreseeable future,</li> </ul>   |

| Information Requirement   | Comment  |
|---|--|
|   | <ul style="list-style-type: none"> <li>to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,</li> <li>to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,</li> <li>to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.</li> </ul> |
| Development Standard Numeric Control for the Site                     | Base: 3:1<br>Incentive: 1.1 (Clause 6.14)<br>Total: 4:1<br><br>Approved under Concept DA – 4:1 (see Appendix 1)  |
| Proposed Numeric Control  | 4.09:1   |
| Percentage Variation Between the Proposal and the Planning Instrument | The exceedance of the 0.09:1 represents a 2.25% variation.   |

Table 1: DPE Guide recommended planning information and numeric overview

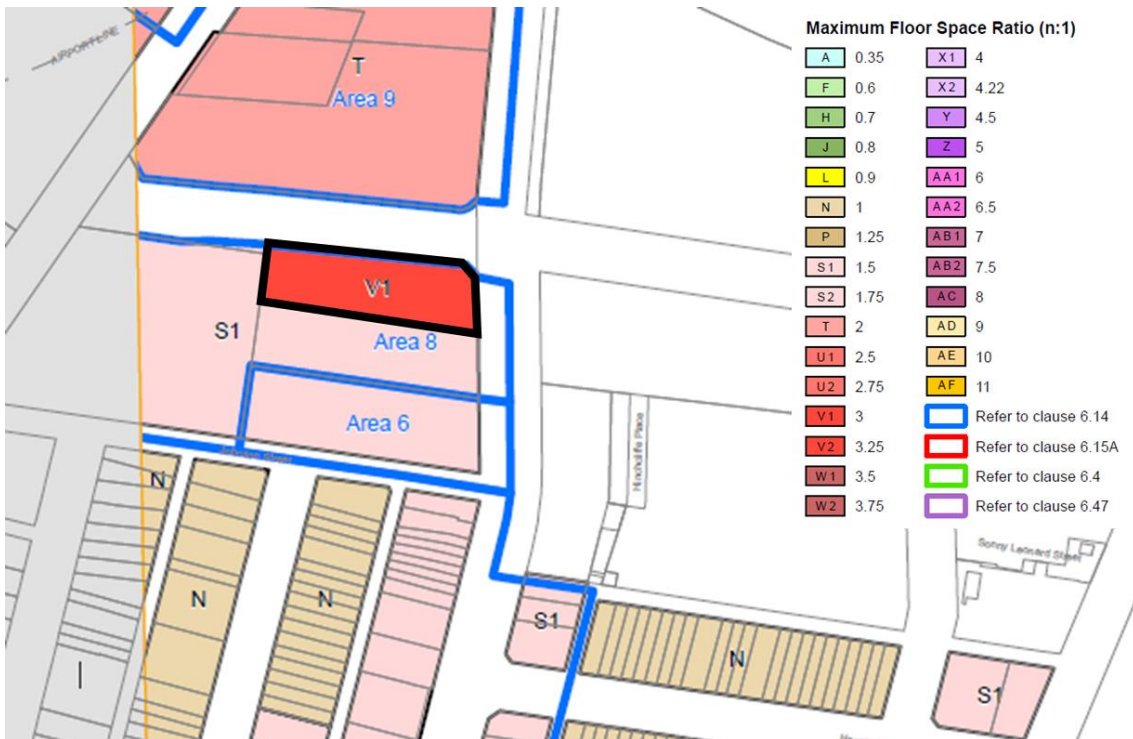


Figure 1: Applicable FSR map with site outlined black (Base source: SLEP 2012)

### 3. Proposed Development

This Request supports a Stage 2 Development Application for the construction of a 10-storey mixed use building including affordable rental housing at 338 Botany Road, Alexandria. The subject site has an area of 2,250m<sup>2</sup>. The site location is shown at the figure below.



Figure 2: Site locality plan (Base source: Nearmap)

The proposed development comprises the following:

- 10 storey built form
- 111 apartments;
  - 13 studios
  - 30 x 1 bed apartments
  - 58 x 2 bed apartments
  - 10 x 3 bed apartments
- 1 ground floor commercial/retail tenancy providing a total of 294m<sup>2</sup> commercial floorspace;
- communal areas including open space and a resident community hub;
- 4 on-site accessible parking spaces;
- signage zones for the future ground floor tenant;
- landscaping;
- civil works;
- earthworks; and
- remediation.



### 3.1. Proposed variation

The proposed FSR is 4.09:1, exceeding the applicable FSR for the site under the SLEP 2012 by 0.09:1 or 2.25%.

Clause 4.4 of the SLEP 2012 refers to the floor space ration map. This map establishes a base FSR of 3:1 for the site, but also refers to Clause 6.14 of the SLEP 2012, which provides a incentive FSR of 1:1 subject to development including community infrastructure for Green Square. Specifically, Clause 6.14(2) states

*(2) The consent authority may consent to development that results in additional floor space in accordance with subclause (4) if the development includes Green Square community infrastructure.*

Under the Concept DA approval for the site (DA/2019/87), it was determined that the development would facilitate the dedication of land for the Ashmore Connector Road and widening of Botany Road.

On this basis, the applicable FSR for the site under the SLEP 2012 is 4:1.

It is noted that Condition 13 of the Concept DA (DA/2019/87) also establishes an FSR of 4:1 for the site.

## 4. Legislative Context

### 4.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the SLEP 2012 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Subclauses (3) and (4) of Clause 4.6 are relevant and development consent can only be granted subject to their consideration.

#### 4.1.1. Clause 4.6(3)

Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

#### 4.1.2. Clause 4.6(4)

Clause 4.6(4) requires that the consent authority to keep a record of its assessment carried out under subclause (3).

## 4.2. Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request. These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112
- *Big Property Pty Ltd v Randwick City Council* [2021] NSWLEC 1161
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] NSWLEC 1243

The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below.

#### 4.2.1. **Wehbe v Pittwater Council (2007)**

This case establishes five potential grounds ‘Wehbe tests’ to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. 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; or
5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

#### 4.2.2. **Initial Action Pty Ltd v Woollahra Municipal Council (2018)**

*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] (Initial Action) further clarifies the correct approach for the consideration of clause 4.6 requests. Clause 4.6 does not require that a development that contravenes a development standard to have a *neutral or better* environmental planning outcome than a fully compliant development.

A legal consequence of the decision in *Initial Action* is that Clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

In *Initial Action*, the Court also confirmed that the five common ways of establishing that compliance with a development standard is unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007)* continue to apply.

#### 4.2.3. **Linfield Developments Pty Ltd v Cumberland Council (2019)**

The ‘third’ Wehbe test is concerned with the underlying object or purpose of the development standard and that it would be defeated, thwarted or undermined if strict compliance was required. The reference to ‘undermined’ is an extension of Wehbe which was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]) (Linfield). In Linfield, the court found that:

*“...requiring compliance would thwart or undermine at least one of the objectives of the height control development standard...”*

#### **4.2.4. SJD DB2 Pty Ltd v Woollahra Council (2020)**

The *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112* (SJD) established greater flexibility in applying clause 4.6 to vary development standards where a better outcome would be achieved in the context of the site.

This case concluded that the numerical controls and objectives associated with development standards should not be used to strictly define desired future character. One relevant outcome of the case was that other provisions of the local environmental plan as well as development in the area that contravenes the development standard can indicate the desired future character of an area.

#### **4.2.5. Big Property Pty Ltd v Randwick City Council (2021)**

*Big Property Pty Ltd v Randwick City Council [2021] NSWLEC 1161* (Big Property) is also a relevant case associated with a clause 4.6 request in the context of the desired future character of an area.

This judgement followed *SJD DB2* and affirmed that the desired future character should not solely be determined by the development standards that control building envelopes, stating:

*“...As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that incentivise particular development with GFA bonuses or other mechanisms that intensify development...”*

#### **4.2.6. HPG Mosman Projects Pty Ltd v Mosman Municipal Council (2021)**

Similar to the *Big Property* case, in *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243* (HPG) a clause 4.6 request was considered in the context of desired future character.

This case determined that desired future character of an area can be evaluated by reference to matters other than the controls and objectives of the development standard.

*“...The desired future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site”.*

## 5. Assessment of the Variation to FSR development standard

The SLEP 2012 sets a standard FSR development control of 4:1 for the entire site.

The proposal seeks to increase the maximum FSR development control by 0.09:1 or 2.25% (4.09:1 vs approved FSR of 4:1) to accommodate an appropriate built form for the site. This results in a future building that also responds to the local context as envisaged under the SLEP 2012 and the Employment Lands Affordable Housing Program.

The proposed FSR variation, directly relates to balconies provided with increased balustrade heights to ameliorate acoustic impacts, that are necessary to ensure residents are provided with adequate and usable private open space.

The following assessment comprehensively considers the provisions of Clause 4.6 with regard to the relevant case law.

### 5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

*Wehbe* establishes at least five potential alternative grounds to ascertain whether strict compliance with a development standard is unreasonable or unnecessary. An assessment against the relevant tests is provided below to outline how compliance with the FSR development standard is unreasonable and unnecessary.

#### 5.1.1. Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the FSR development standard will be achieved notwithstanding the non-compliance with the standard as outlined at Table 2.

| Clause 4.4 Floor space ratio Development Standard   |  |
|---|--|
| Objectives  | Achievement of Objectives  |
| <i>to provide sufficient floor space to meet anticipated development needs for the foreseeable future,</i>  | <p>The variation to the FSR standard correlates to the inclusion of certain balconies within the GFA calculations. This is due to the increased balustrade heights provided to balconies to ameliorate acoustic impacts which result in balconies being defined as GFA under the definitions of the SLEP 2012.</p> <p>The balconies are required to provide future residents with suitable private outdoor space, which are also appropriately treated to reduce potential acoustic amenity impacts.</p> |
| <i>to regulate the density of development, built form and land use intensity and to control the generation of vehicle and pedestrian traffic,</i> | <p>Given the FSR variation directly relates to the inclusion of balconies as GFA, it is considered that the proposed density at the site is appropriate and results in negligible impacts on vehicle or pedestrian traffic.</p>  |

| Clause 4.4 Floor space ratio Development Standard   |  |
|---|--|
| <p><i>to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,</i></p>   | <p>The proposed density of the development is completely suited to this highly accessible area where:</p> <ul style="list-style-type: none"> <li>• Green Square Station is located 190m to the north;</li> <li>• Green Square Bus Interchange is located 190m to the north;</li> <li>• A bus stop is located to the south-eastern corner of the site which provides services to Redfern, Glebe Point, and Prince of Wales Hospital; and</li> <li>• The new Ashmore Connector Road adjoins the northern boundary of the site which is a dedicated public transport corridor (bus lanes). The road also features an on-road 2-way cycle path connecting to other existing cycle paths to the east and west.</li> </ul> |
| <p><i>to ensure that new development reflects the desired character of the locality in which it is located and minimises adverse impacts on the amenity of that locality.</i></p> | <p>As detailed in Section 5.1.3, a number of developments have been approved with FSR variations located within the vicinity of site.</p> <p>Notwithstanding, the bulk and scale of the development remains suitable for the site, noting the exceedance in FSR is due to the increase balustrade heights required for certain balconies.</p> <p>On this basis, the proposed development reflects the desired character of the area for higher density buildings with consideration to the areas highly accessible nature.</p>   |

Table 2: Consistency with Clause 4.3 height of buildings development standards objectives

In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, the Chief Judge said (at [34]) that:

*establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary.*

In this matter it has been demonstrated that the contravention does not cause any material environmental harm (of a kind that the objectives seek to avoid).

**5.1.2. Wehbe Test 3: The underlying object or purpose would be defeated, thwarted or undermined if compliance was required and therefore compliance is unreasonable**

Strict compliance with the FSR development standard would defeat, thwart and undermine the underlying object or purpose of the FSR development standard. This was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]).

The objects that would be defeated, thwarted or undermined if strict compliance was required in this case are clause 4.4(1)(a), clause 4.4(1)(c) and clause 4.4(1)(d) of the SLEP 2012, as detailed below.

**Clause 4.4(1)(a)** states:

*to provide sufficient floor space to meet anticipated development needs for the foreseeable future,*

Objective (1)(a) would be undermined if strict compliance was required.

The variation to the FSR standard has been a result of increased balcony balustrades to mitigate effects of noise from Botany Road. This has resulted in the gross floor area of some balconies now being included in FSR calculations given the balustrades are higher than 1.4m.

If strict compliance with the FSR control was required, it results in:

- development which is unable to appropriately mitigate acoustic impacts due to the site's frontage to Botany Road
- overall loss in resultant residential yield for affordable housing

**Clause 4.4(1)(c)** states:

*to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure,*

The proposed FSR ensures the proposal aligns with objective (c) — and is superior, in this respect, to a strictly FSR-compliant proposal.

As outlined in Table 2, the site is considered to be highly accessible noting its connections to transport options including:

- Green Square Station located 190m to the north;
- Green Square Bus Interchange located 190m to the north;
- A bus stop located to the south-eastern corner of the site which provides services to Redfern, Glebe Point, and Prince of Wales Hospital; and
- The new Ashmore Connector Road which adjoins the northern boundary of the site is a dedicated public transport corridor (bus lanes). The road also features an on-road 2-way cycle path connecting to other existing cycle paths to the east and west.

The highly accessible nature of the site aligns with the proposed density of development and ensures residents will not be reliant on private vehicle travel having access to a number of public transport services.

**Clause 4.4(1)(d)** states:

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

The GFA attributable to the minor FSR exceedance is the result of the inclusion of balcony areas, due to higher balustrades required for noise attenuation purposes.

These glass balustrades will be largely indiscernible when viewed from the street and therefore ensure the bulk and scale of the development is suitable and aligns Concept DA approval and emerging character of the area.

**5.1.3. Wehbe Test 4: 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**

Council has granted a number of consents within the Green Square locality in recent years, which demonstrate that Council is open to supporting well found variations to the FSR development standard. These consents include:

- D/2021/894 at 6-12 O’Riordan St, 320-322 Botany Road, Alexandria – Demolition, excavation, remediation and construction of a mixed-use building up to 16 storeys containing office and retail with basement level car parking. – approved an FSR of 8.77:1 whereby approved FSR pursuant to design excellence clause was 8.62:1 (representing a 1.7% variation).
- D/2015/688/H at 499 Botany Road, Zetland – original DA approved for construction of a 16 storey mixed use development containing 130 dwellings and five retail tenancies. Excavation of the site for two levels of basement car parking connected with the approved basement of Site 9B. Relevant modification related to enclosure of corridors – approved an FSR of 9.165:1 whereby approved FSR pursuant to design excellence clause was 8.788:1 (representing a 4.29% variation).
- D/2019/976 at 94 Epsom Road, Zetland – Tree removal, excavation, remediation, and construction of a mixed use development of three buildings up to 14 storeys in height, comprising 271 residential apartments, retail and commercial tenancies, public domain and staged subdivision works, 184 car parking spaces and landscaping. – approved an FSR of 2.48:1 whereby the base FSR was 2.25:1 (representing a 10.2% variation).

Noting the above approvals in the immediate locality, strict compliance with the FSR standard is considered unnecessary and unreasonable.



## 5.2. Clause 4.6(3)(b) – Environmental Planning Grounds to Justify Contravening the Development Standard

The development, including the FSR non-compliances, will provide for a high quality mixed use affordable housing development in a highly accessible location.

The proposed variation is the result of the provision of increased balustrade heights to balconies of certain apartments to mitigate noise impacts. This has resulted in balconies being included as gross floor area, as per the gross floor area definition under the SLEP 2012, and subsequently included in FSR calculations.

There are sound planning grounds and significant benefits to justify contravening the FSR development standard of which are outlined in the following sections.

### 5.2.1. The proposed development is consistent with the objectives of the zone

The site is within the *E3 Productivity Support* zone in which affordable housing is explicitly permitted with consent under clause 7.13A of SLEP 2012. The Concept DA approval also establishes that the provision of affordable housing is suitable at the site.

The proposal seeks approval for shop top housing, with the residential component wholly provided as affordable housing. The site is located within the Green Square Urban Renewal Area, within close proximity of the Green Square Town Centre, the Green Square railway station and bus routes along Botany Road and O’Riordan Street. The proposal will contribute to the vitality of the nearby centre and the broader Green Square redevelopment area.

The proposed development is consistent with the objectives of the E3 zone as outlined in the below table.

The proposal is also in accordance with the objectives of the SLEP 2012 as it will support businesses within the zone and locality and will provide employment generating uses at ground floor.

| E3 Productivity Support  |  |
|--|--|
| Objective  | Achievement of objective   |
| To provide a range of facilities and services, light industries, warehouses and offices  | The proposed commercial tenancy will contribute to the variety of facilities and services within the area.   |
| To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres. | Given the scale of the proposed mixed use development, it is considered that it will not compete with land uses in the surrounding local and commercial centres. |
| To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.             | The proposal will contribute to the vitality of the nearby Green Square Town Centre and the broader Green Square redevelopment area.                             |
| To provide for land uses that meet the needs of the community, businesses and industries   | The proposed development will provide 111 apartments that will solely be for the purposes of affordable housing in perpetuity,                                   |

| E3 Productivity Support  |   |
|--|---|
| but that are not suited to locations in other employment zones   | <p>providing for the needs of the community. Future residents will also support local businesses.</p> <p>It is noted that the subject site has been deemed as a suitable location for the proposed mixed use development through the approval of the Concept DA.</p>  |
| To provide opportunities for new and emerging light industries   | The proposal will not preclude opportunities for new and emerging light industries.   |
| To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site. | The proposed commercial tenancy will be capable of providing services that meet the day to day needs of both workers and residents in the area.   |
| To encourage employment opportunities.   | The proposed commercial tenancy will provide employment generating floor space while the residential units will support the delivery of employment opportunities in the local area.   |
| To promote land uses with active street frontages.   | The ground floor commercial tenancy has been designed to provide access from both frontages it presents to, ensuring an active frontage. A colonnade built form, in lieu of an awning, has been provided above the main entry point fronting Botany Road as required under the Sydney DCP and relevant active frontages requirements. |
| To provide for land uses that support the viability of adjoining industrial land uses.   | The proposal will not preclude the delivery of viability of industrial uses within the wider area.  |

Table 3: Consistency with E3 zone objectives

### 5.2.2. Improved Urban Design outcomes

Section 1.3(g) of the EP&A Act provides that it is an objective of the Act to:

*to promote good design and amenity of the built environment ...*

The proposed development has been designed in accordance with the planned capacity for the site, which is essential in providing affordable housing to assist in meeting housing targets under the Employment Lands Affordable Housing Strategy.

It is important to reiterate that the departure from the FSR development standard is directly related to the inclusion of some balconies within GFA calculations given increased balustrade heights to ameliorate acoustic impacts. On this basis, the additional FSR does not contribute to any perceivable bulk or scale of the building.

In summary, the proposed FSR variation is considered acceptable in regard to its urban design and responsiveness to the local context for the following reasons:

- The non-compliant component of the FSR is limited to areas of private open space and consequently does not contribute to any perceivable bulk or scale of the building, as balconies are recessed behind higher glass balustrades.
- The exceedance in FSR does not give rise to any additional amenity impacts.
- The exceedance is minor in nature and comparable to those approved in the locality as detailed in Section 5.1.3.
- The proposed FSR will allow for a building with landmark qualities - an instantly recognisable development, which is desirable for a site of this location and importance.



Figure 3: Montage of northern elevation (Source: DHO)

### 5.2.3. The proposed development is consistent with the relevant strategic state and regional plans

The proposal is consistent with the relevant strategic state and regional plans as outlined at in the below table.

| Document  | Comment   |
|---|---|
| Greater Sydney Region Plan & Eastern City District Plan   | <ul style="list-style-type: none"> <li>The proposed development will ensure additional housing within an area identified for growth given its' proximity to transport infrastructure.</li> <li>The site presents an urban renewal opportunity close to a transport centre where links for walking and cycling are constantly being upgraded aligning with the objective. It will also aid in contributing to the housing supply targets for the <i>Eastern City District</i>.</li> <li>The proposal includes the provision of affordable housing to meet the challenges of delivering a diversity of housing types. This will allow for a range of income levels to afford housing within close proximity to central Sydney.</li> <li>The proposal nurtures quality lifestyles through well-designed housing in neighbourhoods close to transport and other infrastructure</li> <li>The development aligns growth with infrastructure, including transport, social and green infrastructure, and delivering sustainable, smart and adaptable solutions</li> </ul> |
| City Plan 2036: Local Strategic Planning Statement (LSPS) | <p>The proposal directly aligns with the following priorities under the LSPS:</p> <ul style="list-style-type: none"> <li>Priority 2: Align development and growth with supporting infrastructure</li> <li>Priority 6: New homes for a diverse community</li> <li>Priority 12: Open, accountable and collaborative planning</li> </ul>   |
| Employment Lands Affordable Housing Program               | <ul style="list-style-type: none"> <li>The objectives of this program recognise affordable housing as critical social infrastructure necessary to support sustainable employment growth and efficient business in the City of Sydney LGA.</li> <li>The proposal will delivery 111 affordable housing units in accordance with the objectives of this program</li> </ul>   |

Table 4: Consistency with strategic plans

## 6. Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has been shown to satisfy the provisions of 4.6(3) and 4.6(4) of the SLEP 2012.

The proposed FSR variation is justified for the following reasons:

- The departure from the FSR development standard is only due to the increased balustrade height provided to balconies for acoustic amelioration of apartments adjacent the Botany Road frontage. As per the definition of GFA under the SLEP 2012, these balconies are therefore required to be included in FSR calculations.
- The balconies utilise a glass screen for noise attenuation purposes which are largely indiscernible when viewed from the street. This ensures the bulk and scale of the development remains suitable and is consistent with both the Concept DA approval and emerging character of the area.
- The proposed development remains consistent with the applicable strategic planning framework as it aligns within the planning capacity envisioned for the site under the *Employment Lands Affordable Housing Program and City Plan 2036*.
- The technical FSR increase allows for additional floor space to facilitate affordable housing to align with the strategic planning for the locality.
- The proposal is consistent with the future character of the area, noting recent approved developments in proximity to the site.
- The proposed development achieves the objectives of the E3 zone and the Floor space ratio development standard despite the non-compliance.
- The FSR increase does not restrict the ability for the proposed development from providing a high quality urban design outcome that is considerate of adjoining land uses and built form as:
  - It incorporates substantial articulation and a stepped built form that responds to the noise impacts experienced at the Botany Road frontage.
  - It provides a curved built form at the Ashmore Connector Road frontage that reduces perceived bulk and scale at the pedestrian scale.
  - The proposed FSR variation does not give rise to any additional amenity impacts for surrounding development.

Overall, and for the reasons set out above, the proposed development represents a superior outcome for the site that is justified. Therefore, it is appropriate that the development standard be varied as proposed in this application.