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CLAUSE 4.6 VARIATION REQUEST TO CLAUSE 4.3 HEIGHT OF BUILDINGS

29-57 Christie Street, St Leonards

Prepared for
ARROW CAPITAL PARTNERS
27 April 2021

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1. INTRODUCTION

This Clause 4.6 Variation Request (**Request**) has been prepared by Urbis Pty Ltd on behalf of Arrow Capital Partners (**the Applicant**) to accompany a concept and detailed development application (**DA**) for redevelopment at 29-57 Christie Street, St Leonards.

This Request seeks a variation to the height of buildings development standard prescribed for the site under clause 4.3 of *Lane Cove Local Environment Plan 2009* (**LCLEP 2009**) and is made under clause 4.6 of LCLEP 2009.

This Request should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated 16th November 2020.

The Department of Planning, Industry and Environment (**DPIE**) has prepared a comprehensive land use and infrastructure package for St Leonards and Crows Nest to guide future development and infrastructure decisions in the area to 2036.

The St Leonards and Crows Nest 2036 Plan (**2036 Plan**) was finalised on 29 August 2020 and provides for increased height and density controls for the subject site.

The proposed development is generally consistent with the height and density controls under the 2036 Plan.

The extent of height variation sought through this Request will deliver the strategic intent of the 2036 Plan and will enable development to proceed in the short term prior to Lane Cove Council (**Council**) amending the LCLEP 2009 to reflect the 2036 Plan.

2. PROPOSED DEVELOPMENT

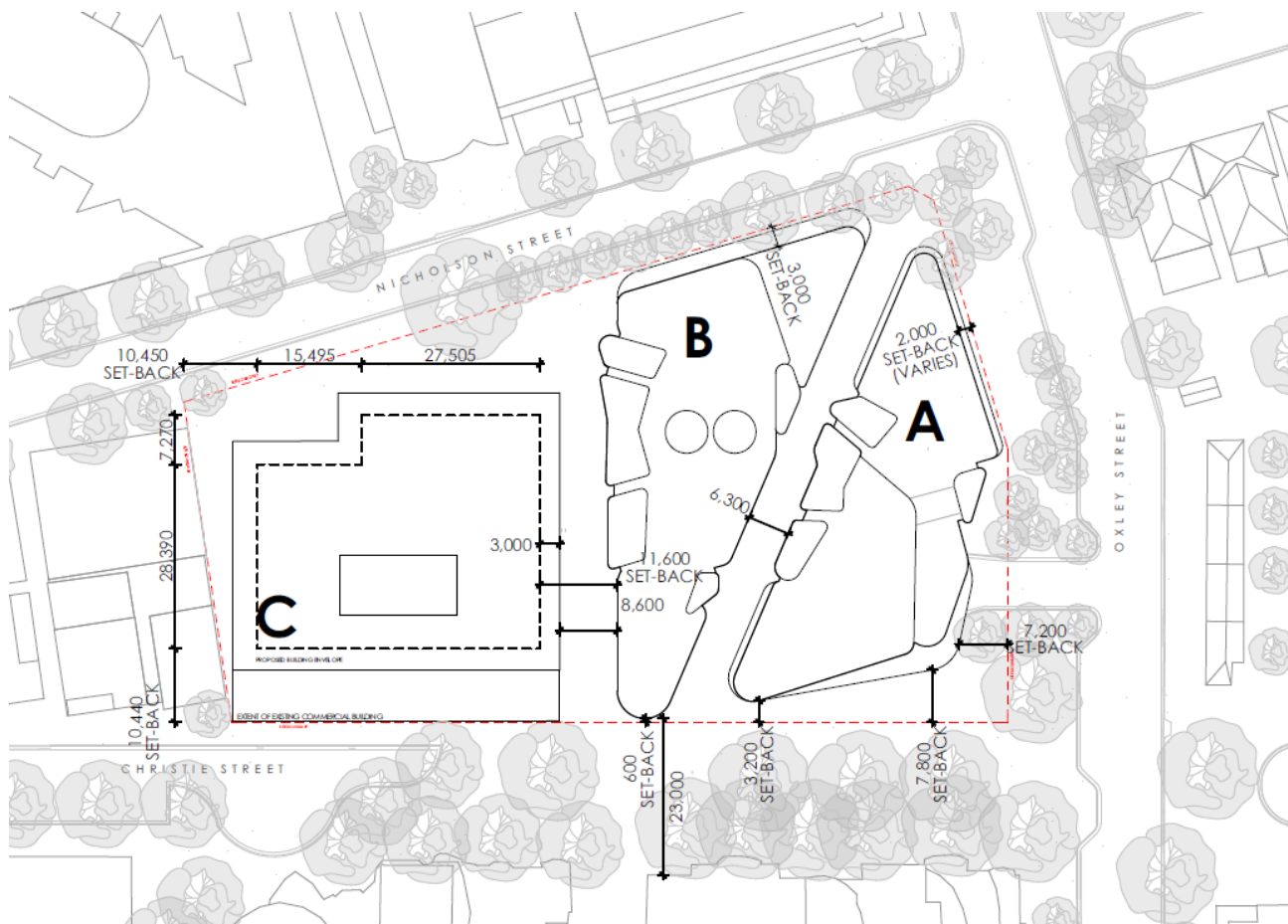
This Request has been prepared to accompany a DA for the redevelopment of the site at 29-57 Christie Street, St Leonards.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated 16th November 2020. The proposal is also detailed within the architectural, engineering, landscape and public domain plans that accompany the DA.

The proposed development is presented in the form of a concept and detailed DA for the redevelopment of the entire site and the construction of two commercial towers, landscaping and public domain works.

The concept DA seeks to establish three building envelopes to be developed in two stages. The detailed DA seeks approval for the construction of two commercial buildings, identified as Building A and Building B on the concept site plan in **Figure 1** below. Building A and B are located in the southern portion of the site.

Figure 1 Concept site plan



Source: Fitzpatrick + Partners

3. VARIATION TO HEIGHT STANDARD

This section identifies the development standard, which is proposed to be varied, including the extent of variation proposed. A detailed justification for the proposed variation is provided in **Section 5**.

3.1. DEVELOPMENT STANDARD

This request seeks a variation to the development standard contained within clause 4.3 of LCLEP 2009, which identifies the site as having a maximum building height control of 25m as demonstrated on the LCLEP 2009 Height of Buildings map in **Figure 2** below.

Figure 2 Height of Buildings Map



Source: Urbis

3.2. EXTENT OF VARIATION

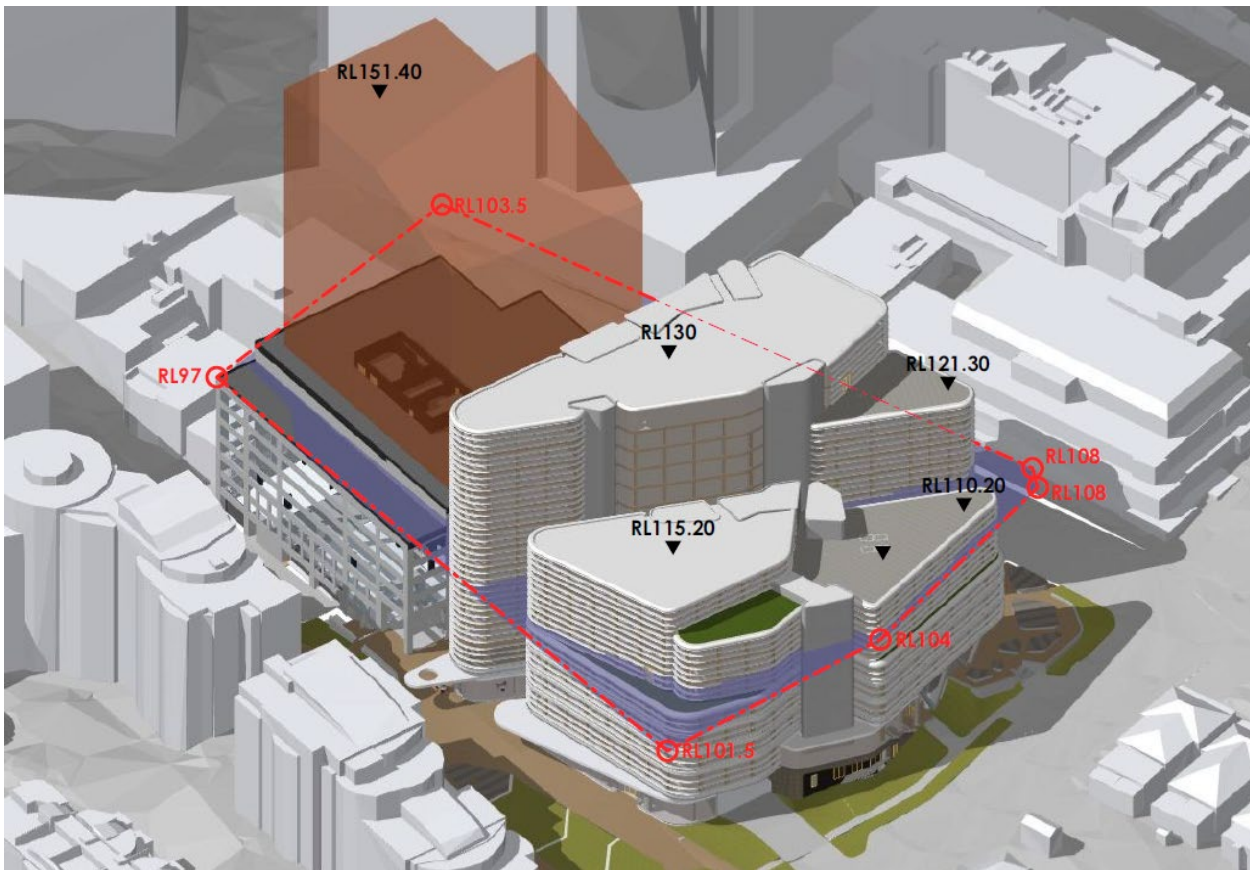
The proposed development incorporates the following building heights:

- Building A – RL115.20 (8 storeys)
- Building B – RL130 (12 storeys)
- Building C – RL151.40 (18 storeys)

The maximum variation sought is 47.9m which is located at the Building C concept envelope. Building A and Building B exceed the 25m height limit by approximately 13.7m and 28.5m respectively.

The extent of height variation from the LCLEP 2009 building height control is demonstrated in the height blanket diagram at **Figure 3**.

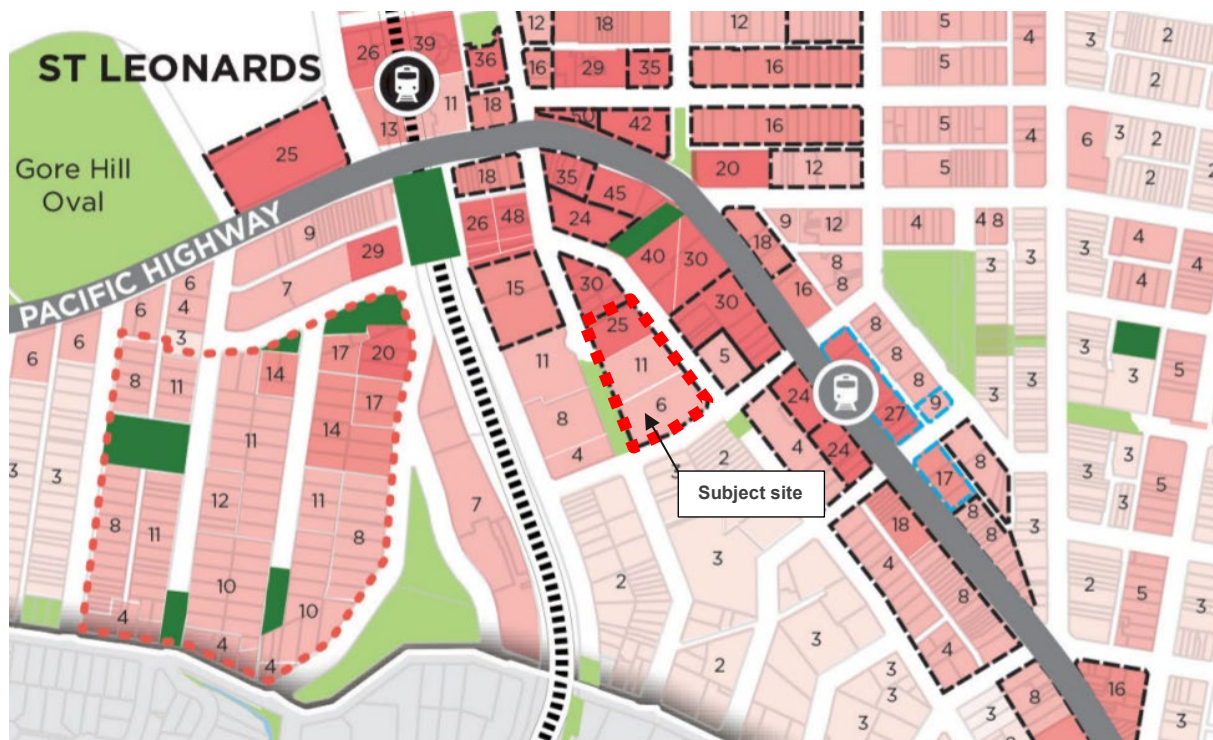
Figure 3 Height blanket diagram showing extent of height variation



Source: Fitzpatrick + Partners

The 2036 Plan nominates increased height controls for the site, being 6 storeys, 11 storeys and 25 storeys as demonstrated in **Figure 4** below:

Figure 4 Height in storey controls under the St Leonards and Crows Nest 2036 Plan

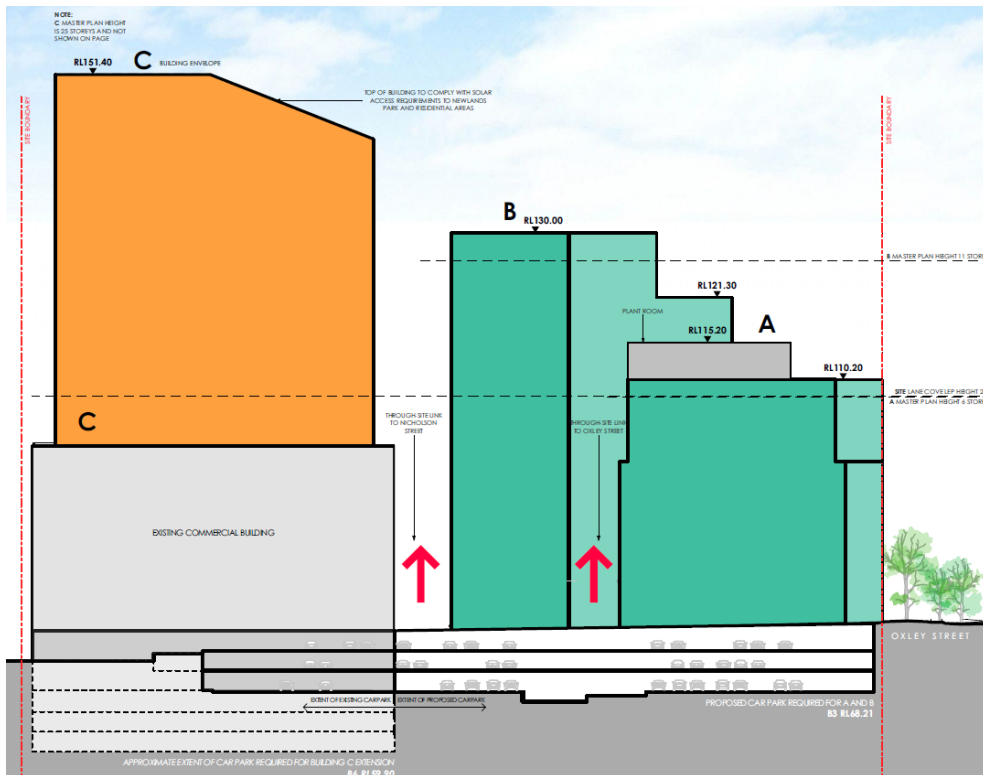


Source: St Leonards and Crows Nest 2036 Plan

The following diagram shows the proposed development against the height controls set out in the St Leonards and Crows Nest 2036 Plan.

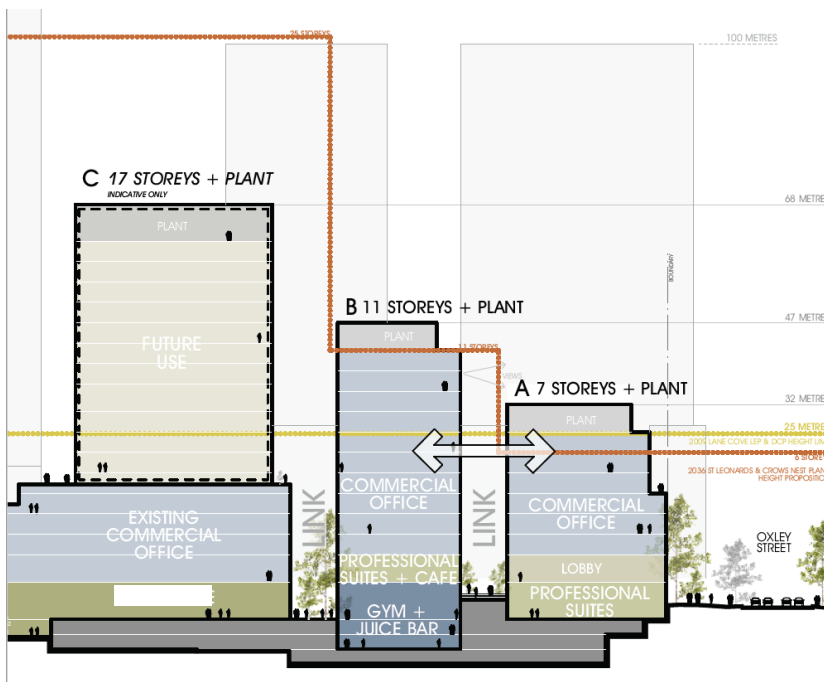
Building A and B are approximately 1 storey over the 6 and 11 storey height control respectively whilst Building C is well below the 25-storey height limit under the 2036 Plan, having 18 storeys.

Figure 5 Proposed building heights against the 2036 Plan height in storey controls



Source: Fitzpatrick + Partners

Figure 6 Proposed building heights against the 2036 Plan height in storey controls



Source: Fitzpatrick + Partners

4. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of LC LEP 2009 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of LCLEP 2009 are:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development 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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this Request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the *Environmental Planning and Assessment Regulation 2000* and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given by the Secretary.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This Request demonstrates that compliance with the height control prescribed for the site in clause 4.3 of LCLEP 2009 would be unreasonable and unnecessary in the current and future planning context for the site, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives and the strategic objectives for the revitalisation of the St Leonard and Crows Nest precinct.

In accordance with clause 4.6(3), the applicant requests that the height of buildings development standard be varied.

5. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of this Request provide a comprehensive assessment of the request to vary the development standard relating to height of buildings in accordance under clause 4.3 of LC LEP 2009.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court of NSW.

5.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The height control prescribed by clause 4.3 of LCLEP 2009 is a development standard capable of being varied under clause 4.6(2) of Lane Cove LEP 2014.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of Lane LCLEP 2009.

5.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held 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*”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height control as specified under clause 4.3 of LCLEP 2009 are detailed in **Table 1** below. An assessment of the consistency of the proposed development with each of the objectives is provided.

Table 1 Assessment of consistency with clause 4.3 objectives

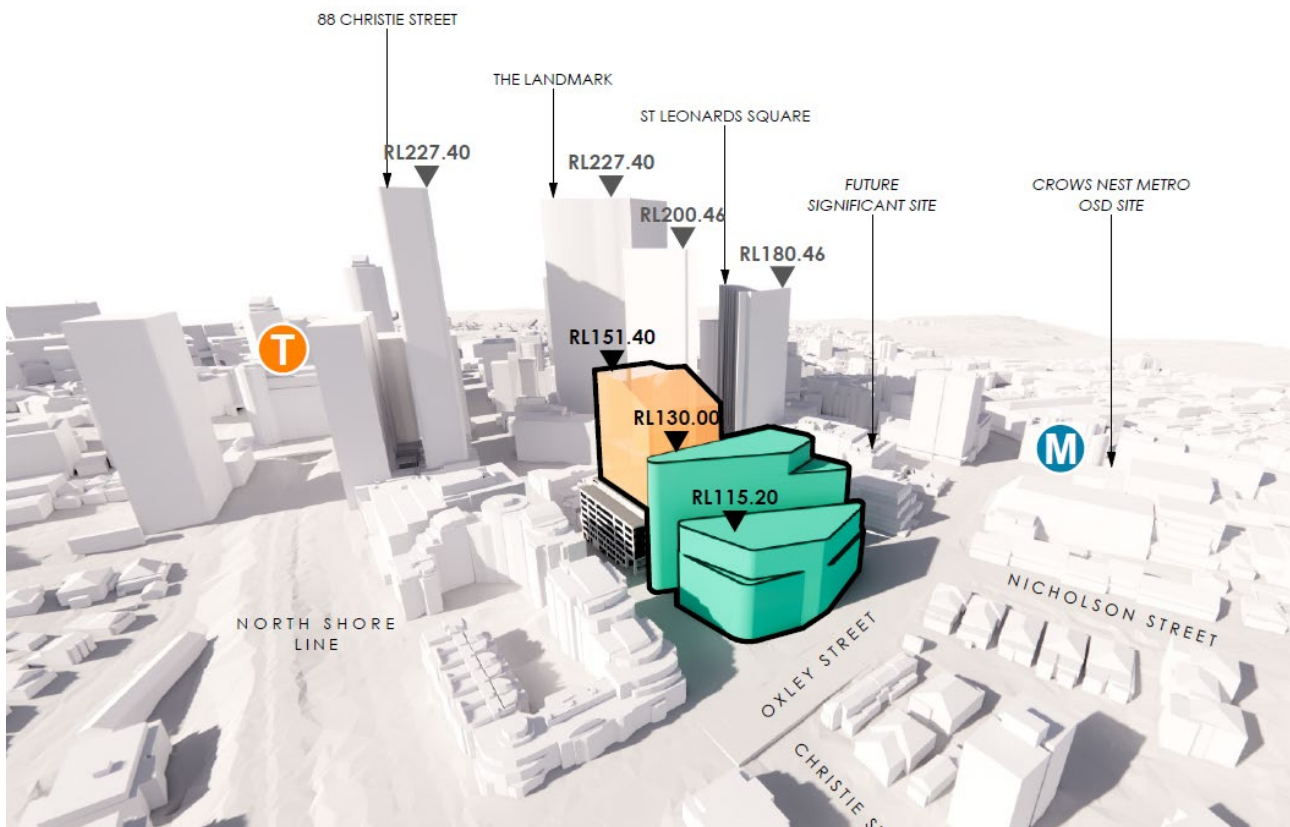
Objectives	Assessment
(a) <i>to ensure development allows for reasonable solar access to existing buildings and public areas,</i>	<p>The proposed development has been specifically designed to retain a compliant level of solar access to the low-density residential dwellings to the south of the site and to Newlands Park to the south-west of the site, as required by the 2036 Plan.</p> <p>The overshadowing analysis prepared by Fitzpatrick + Partners (Appendix C of the SEE dated 18 November 2020) sets out the detailed methodology followed. The analysis demonstrates that the proposed building envelopes will enable continued solar access to surrounding properties and public</p>

Objectives	Assessment
	<p>open space and solar access will not be unreasonably reduced to those properties. The analysis examines the solar access controls and built form controls for the site under the 2036 Plan and Lane Cove DCP 2010.</p> <p>Buildings A and B and the envelope for Building C will not result in an unreasonable shadow impact when considered against the planning controls.</p> <p>The proposed built form of Buildings A and B and the envelope for Building C does not reduce the existing extent of solar access to Newlands Park.</p> <p>The overall development envelope was designed to not reduce solar access to the dwellings to the south to less than 3 hours (applying to dwellings that receive more than 3 hours). For dwellings that currently receive less than 3 hours, this building envelope would not reduce the current level of solar access. Whilst the majority of the proposed development fits within this development envelope, attempts to fit wholly within the envelope generated an awkward and undesirable tiered built form, therefore a minor extent of the proposed built form sits outside.</p> <p>The solar study analysed the extent of built form (Building A and B) sitting outside the envelope and found that the maximum reduction in solar access is 15 minutes on 21 June and is limited to the dwellings at 23-25 Christie Street.</p> <p>The area of study has high levels of tree coverage, which were not accounted for in the overshadowing analysis, and the results of the study are considered to be more conservative than real life conditions.</p> <p>The solar access requirements set out in the 2036 Plan require that the dwellings to the south receive a minimum of 2 hours solar access. The proposed development (Building A and B and the envelope for Building C) complies with this requirement.</p> <p>The proposed design response protects the solar access to surrounding properties and public open space. The variation of the LCLEP 2009 height of building control for Building A and B and the Concept Envelope for Building C will provide more than reasonable solar access to public open space and adjacent dwellings.</p>
(b) <i>to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable,</i>	<p>Privacy and visual impacts between the proposed development and surrounding residential properties is managed through separation distances, building location and orientation.</p>

Objectives	Assessment
	<p>Building A is separated from the dwellings to the south and the residential development to the west by a distance of approximately 25m.</p> <p>The visual impacts of the proposed development, particularly on the low-density residential zone to the south, have been addressed through building design with stepping of the built form, with the lowest building fronting Oxley Street.</p> <p>The proposed development will be viewed from the residential dwellings to the south against much taller buildings recently approved or currently under construction in St Leonards, including 88 Christie Street (RL227.4), 500 Pacific Highway (RL227.4), St Leonards Square (RL180.46) and the potential development adjoining the site to the north at 46 Nicholson Street where a Planning Proposal has been lodged to increase the height of building control to RL175.2m.</p> <p>The proposed concept development has a modest height and built form in this context, particularly in relation to Building C.</p> <p>The proposed concept development has been designed with an FSR of 7.5:1 consistent with the provisions of 2036 Plan. The proposed bulk and scale is suitable for the site and is compatible with surrounding existing and future character of the commercial centre without adverse visual impact on the adjacent residential area.</p>
(c) <i>to seek alternative design solutions in order to maximise the potential sunlight for the public domain,</i>	<p>The proposed height variation allows the development to deliver a variety of publicly accessible open space at ground level and provide open air through site links between Buildings A, B and C by relocating floor space from ground and lower levels to higher in the tower forms.</p> <p>These design solutions increase the extent of solar access through the site and maximise the sunlight to the public domain.</p>
(d) <i>to relate development to topography.</i>	<p>The proposal has been deliberately designed to relate to the site's topography as well as the topography of the broader locality.</p> <p>In this regard, the sites fronting the Pacific Highway to the north and east are at a higher level, while the sites to the south and south west are lower than the site. The design places the greater height to the north with buildings stepping down to the south, with the lowest building (Building A) being closest to the low density residential zone to the south. The highest building (Building C) will be located closest to the taller buildings on Christie Street and Pacific Highway.</p>

<p>Objectives</p>	<p>Assessment</p> <p>The proposed development responds to the varying levels of the site and adjoining and adjacent land. The main lobby entrance to Building A and Building B will be located on the higher side of the site on Nicholson Street, whilst a lower ground floor level will allow access to both buildings from Christie Street.</p> <p>The proposed development and associated height variation provide a well-considered design response which is appropriate for the scale and emerging character of St Leonards. The context of building heights within St Leonards is demonstrated in Figure 6.</p>
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Figure 7 Height variation within the context of taller buildings in St Leonards CBD.



Source: Fitzpatrick + Partners

Figure 6 and the above discussion demonstrate that the objectives of the development standard are achieved, notwithstanding the non-compliance with the standard proposed.

5.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the proposed built form and associated variation and the height of building control and positive planning benefits arising from the proposed development.

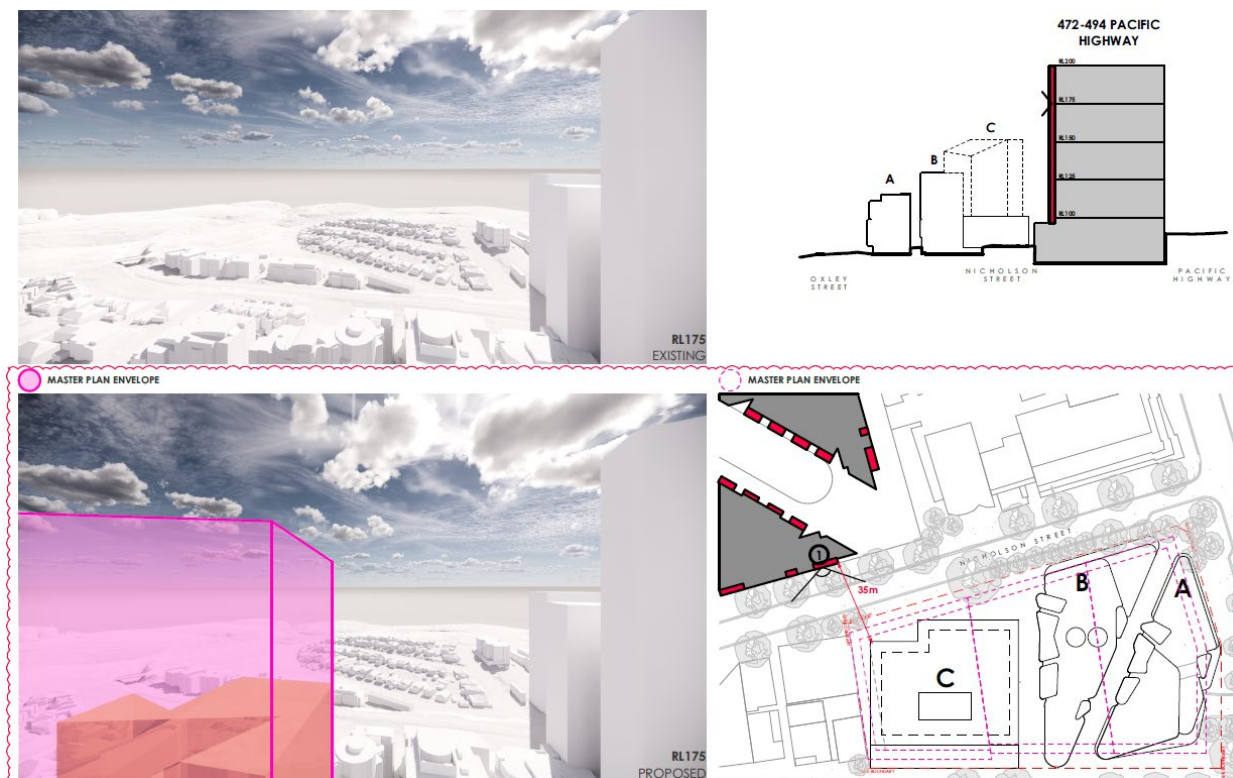
The proposed height variation facilitates the delivery of high-quality employment floor space in Building A and B consistent with the strategic objectives for St Leonards under the Greater Sydney Regional Plan, North District Plan and the 2036 Plan as well as Council’s objectives for employment growth in Strategic Centres close to public transport.

The proposed height of Building A and B is generally consistent with the height controls set out in the 2036 Plan and the variation to the control will deliver a built form appropriate for the site and within the broader context of the St Leonards CBD. The proposed height of Building C is below the 25 storey height limit nominated by the 2036 Plan and positively contributes to the height transition desired by the 2036 Plan.

The proposed height of buildings is able to be accommodated on the site without creating any significant overshadowing impacts beyond that of a compliant built form, under LCLEP 2009 and the 2036 Plan controls.

The proposed height variation also retains a greater degree of view sharing in relation to Building C in comparison to compliant building height of 25-storeys from the residential units to the north-west. This is demonstrated in the updated view analysis prepared by Fitzpatrick + Partners. In this regard, residential units in the upper levels of 472-494 Pacific Highway (above RL175) will retain views to the south as a result of the proposed height of Building C. A compliant 25-storey building on the Building C site would obstruct some district and broader views from these units, as demonstrated in **Figure 8** below.

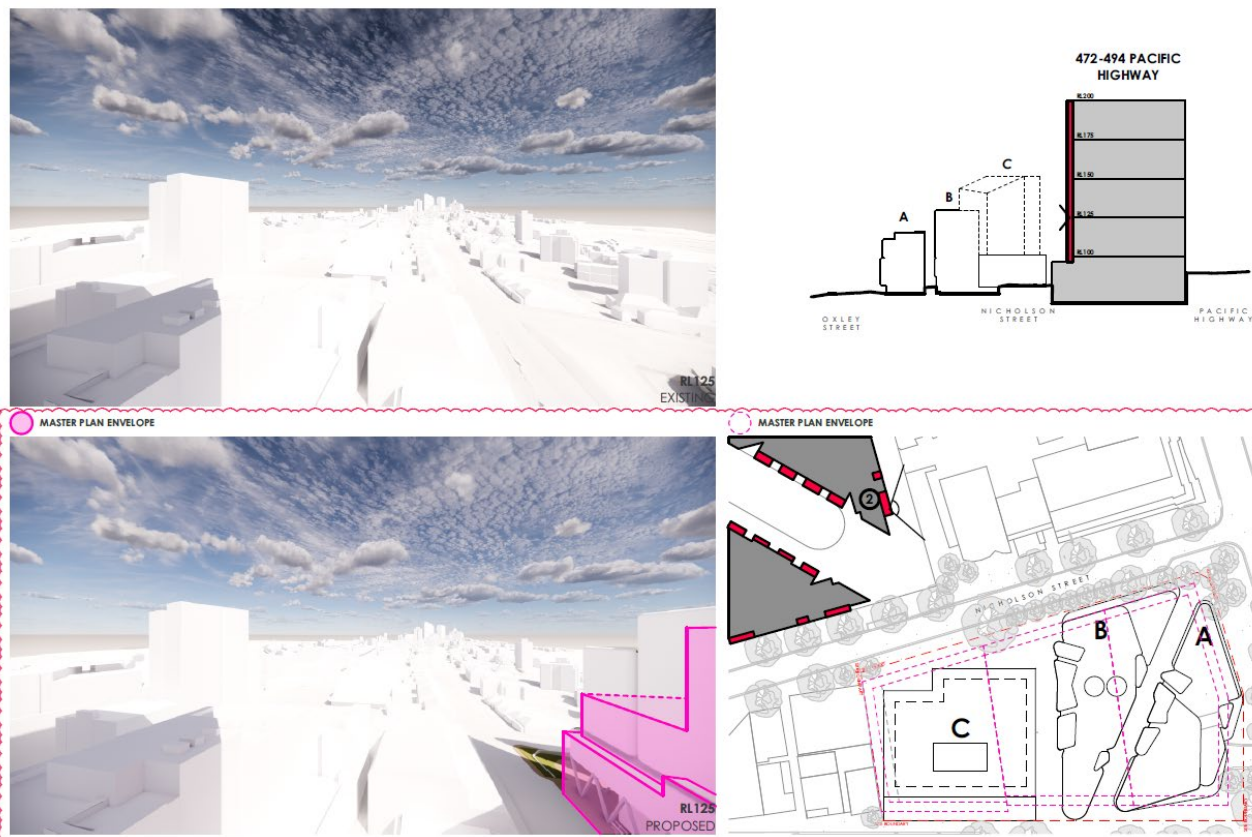
Figure 8 View analysis demonstrating extent of views retained by proposed height of Building C



Source: Fitzpatrick + Partners - The orange form represents the proposed 18-storey Building C envelope. The pink outline represents the 25-storey height nominated by the 2036 plan.

The minor exceedance of the 2036 Plan heights for Building A and Building B result in some minor obstruction of immediate district views, however views to North Sydney CBD are retained from all levels of the residential units at 472-494 Pacific Highway, as demonstrated in **Figure 9** below.

Figure 9 Views to North Sydney CBD will be retained



Source: Fitzpatrick + Partners – The pink outline represents the 6 and 11-storey height nominated by the 2036 Plan.

The proposed height variation of Building A and B allows for reduced building footprints, smaller floor plates and provision of through site links at ground level which allows for the integration of onsite landscaping and public open space. This is considered to be a better planning outcome for the site and is in the public interest. Smaller building footprints also promote greater access to light and ventilation through the development.

It is evident that there are sufficient environmental planning grounds to justify the proposed height variation in this instance.

5.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. This written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the height of building control.

5.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in the table above. The proposed development is also consistent with the land use objectives as outlined in **Table 3** below that apply to the site under LCLEP 2009. The site is located within the B3 Commercial Core zone.

Table 2 Assessment of compliance with land use zone objectives

Objective	Assessment
<ul style="list-style-type: none"> To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community. 	<p>The proposed height variation for Building A and B will facilitate the delivery of a commercial development that includes office, retail and community-serving uses including a gym and public bathrooms.</p> <p>The proposed use of Building C will be subject to a future detailed DA.</p> <p>The proposed development also seeks to enhance the existing Christie Street Reserve adjacent to site to create a greater degree of useable public open space that will be integrated with the publicly accessible spaces within the proposed development.</p>
<ul style="list-style-type: none"> To encourage appropriate employment opportunities in accessible locations. 	<p>The proposed height variation for Building A and B will accommodate new employment opportunities without seeking to exceed the FSR provided for under the 2036 Plan in a highly accessible location between St Leonards Railway Station and the future Crows Nest Metro Station.</p> <p>The proposed commercial floorspace will achieve PCA Office Grade A classification which will attract a variety of commercial tenants.</p>
<ul style="list-style-type: none"> To maximise public transport patronage and encourage walking and cycling. 	<p>The site is located within 300m of both the existing St Leonards Railway Station and the Crows Nest Metro Station currently under construction which facilitates public transport patronage.</p> <p>The proposed development will enhance pedestrian connections to these Stations through the provision of through site links and an enhanced public domain, offering an enjoyable alternative to the busy Pacific Highway route.</p> <p>Such improvements will encourage walking and cycling in proximity to the site.</p>

Objective	Assessment
<ul style="list-style-type: none"> To integrate business, retail and other development in accessible locations. 	<p>The detailed proposal for Building A and B provides for a mix of retail and commercial tenancies within a highly accessible location in the B3 Commercial Core zone that will service the needs of the local and visitor population of St Leonards.</p> <p>The mix of uses will be integrated within a high-quality architectural development that will provide an enhanced public domain, public open spaces and landscaped areas.</p>
<ul style="list-style-type: none"> To maximise sunlight for surrounding properties and the public domain. 	<p>The proposed building massing across the site has been informed by the height controls and solar access requirements set out in the 2036 Plan. In this regard, the proposed development achieves a compliant level of solar access to the residential dwellings to the south and Newlands Park to the south-west, notwithstanding the height non-compliance.</p> <p>Therefore, the proposed height variation is not responsible for any unreasonable additional overshadowing beyond that anticipated for a compliant building height.</p> <p>In addition, the proposed site plan is considered to promote sunlight through the site and to public places adjacent to the site by splitting the massing in to three built forms and reducing the site coverage from what could be achieved if a single lower built form was proposed.</p>
<ul style="list-style-type: none"> To encourage urban design maximising attractive public domain and adequate circulation space throughout the St Leonards commercial centre for current and future users. 	<p>The proposed development will provide attractive built forms within an enhanced public domain and landscaped setting.</p> <p>The proposed site layout will improve circulation space through St Leonards CBD by enhancing pedestrian connections between the site and nearby transport nodes including St Leonards Train Station and Crows Nest Metro Station and providing a greater degree of public open space.</p>

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the height control as it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

5.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height standard and the B3 Commercial Core zone objectives notwithstanding the height variation.

The proposed height variation results in a better planning outcome for the site as it allows for building heights that better respond to the context of the site, as it proposes a built form that fits contextually better with the emerging character of St Leonards.

The proposed height variation allows for reduced building footprints and provision of two through site links by relocating floor space from lower levels to higher within the tower forms. The proposed development will improve the pedestrian environment of the Strategic Centre and enable better connectivity and increase permeability throughout the precinct to both the future Crows Nest Metro Station and St Leonards station.

The proposed height variation therefore allows for a greater degree of public open space to be provided on the site. In this regard, it is noted that the proposal seeks to enhance and expand the existing Christie Street public open space which will integrate with the public domain within the proposed development.

As there are indiscernible amenity impacts associated with the proposed height variation, there is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, and there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

6. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of buildings development standard contained within clause 4.3 of the LCLEP 2009 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height control to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposed building heights are generally consistent with the height controls set out in the St Leonards and Crows Nest 2036 Plan and therefore the extent of variation sought is considered to be a technical non-compliance only.
- The bulk and scale of the proposed development is compliant with that anticipated for the site under the 2036 Plan as demonstrated by compliance with the FSR nominated for the site by the 2036 Plan.
- The proposed height variation facilitates the delivery of high-quality employment floor space in Building A and B consistent with the strategic objectives for St Leonards under the Greater Sydney Regional Plan, North District Plan and the 2036 Plan as well as Council's objectives for employment growth in Strategic Centres close to public transport.
- The proposed building height is compatible with the emerging context of St Leonards CBD, particularly in relation to the much taller buildings to the north on Christie Street and Pacific Highway.
- The proposed height variation will not result in any unreasonable amenity impacts to neighbouring properties open spaces.
- The proposed height variation allows for a superior public domain outcome and is therefore in the public interest.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant a variation of the standard. In the circumstances of this case, flexibility in the application of the height of buildings development standard should be applied.

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