

Our ref CJT:JSL:5419964

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Electronic

Dear Jeremy

## Advice re: apportionment of floor space ratio for Development Application No. DA 154/2022

### 1 Instructions and request for advice

We confirm our instructions as follows:

- (a) Berry Road Development Pty Ltd have lodged development application No. DA 154/2022 seeking consent for the *demolition of existing buildings on site, construction of four residential flat buildings, associated excavation, tree removal and landscaping and construction of a new road* at land described as 26 – 50 Park Road, 27 – 47 Berry Road and 50 – 54 Berry Road, St Leonards (**Site**) (**Development Application**);
- (b) The Site comprises land identified as 'Area 22' and 'Area 23' on the Incentive Floor Space Ratio Map (**Map**) in the *Lane Cove Local Environmental Plan 2009* (**Lane Cove LEP**);
- (c) Area 22 and Area 23 are each subject to a maximum floor space ratio (**FSR**) of 2.75:1;
- (d) The site area across Areas 22 and 23 and the proposed gross floor area (**GFA**) are set out in the following table:

	Site Area	Permissible GFA applying Maximum Incentive FSR of 2.75:1	Proposed GFA	Proposed FSR
<b>Area 22</b>	4,802 m <sup>2</sup>	13,205.5 m <sup>2</sup>	12,009 m <sup>2</sup>	2.5:1
<b>Area 23</b>	6,755 m <sup>2</sup>	18,576.25 m <sup>2</sup>	19,771 m <sup>2</sup>	2.92:1
<b>Total Site</b>	11,577 m <sup>2</sup>	31,781.75 m <sup>2</sup>	31,780 m <sup>2</sup>	2.745:1

- (e) For the purposes of the FSR calculation, it is proposed to apportion the proposed GFA calculation across the whole of the Site (rather than calculate FSR separately for Area 22 and Area 23).

If any of your instructions change, please let us know as this may alter our advice.

You have requested advice as to whether the GFA can be apportioned or distributed across the whole of the Site for the purposes of the FSR calculation pursuant to Lane Cove LEP.

## 2 Summary of advice

In summary, we are of the view that the proposed GFA should be apportioned across the whole of the site area for the purposes of the FSR calculation pursuant to cl.4.5 of the Lane Cove LEP. This results in a proposed, compliant FSR of 2.745:1.

## 3 Reasons for advice

cl.4.5 of the Lane Cove LEP sets out how floor space ratio and site area are calculated and relevantly provides:

### 4.5 Calculation of floor space ratio and site area

...

(2) **Definition of “floor space ratio”** The **floor space ratio** of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

(3) **Site area** In determining the site area of proposed development for the purpose of applying a floor space ratio, the **site area** is taken to be—

(a) if the proposed development is to be carried out on only one lot, the area of that lot, or

(b) if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.

The Development Application proposes development across Area 22 and Area 23 which forms one contiguous parcel of land (i.e. each lot shares a common boundary with another lot on which the development is being carried out) - see **Figure 1**.



Figure 1: Extract from Drawing No. DA100 – Existing Site Context & Analysis

Therefore, for the purposes of calculating floor space ratio, the site area is properly taken to be the area of the entire development site comprising both Area 22 and Area 23 (11,577m<sup>2</sup>).

There is nothing in the Lane Cove LEP which suggests that the FSR should be calculated separately for Area 22 and Area 23. The fact that the Map labels the Site as two separate 'areas' does not limit the FSR calculation being confined to each area and prevent the sharing of GFA or FSR across the Site. The application of cl.4.5(3)(b) of the Lane Cove LEP is plain.

For completeness we note that Area 22 and Area 23 are subject to the identical FSR control of 2.75:1, and *Mulpha Norwest Pty Ltd v The Hills Shire Council (No. 2)* [2020] NSWLEC 74 (in which Pain J found that GFA could not be apportioned across sites with different FSR controls) does not apply to this Development Application.

Yours sincerely



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