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# **CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARD: MINIMUM SITE AREA REQUIREMENT**

Area 23 St Leonards South

Prepared for  
**BERRY ROAD DEVELOPMENT PTY LTD**  
December 2022

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# 1. INTRODUCTION

This Clause 4.6 Variation Request (**this Request**) has been prepared on behalf of Berry Road Development Pty Ltd (**the applicant**) and accompanies a Development Application (**DA**) for construction of a residential development comprising of four (4) residential flat buildings providing for 314 apartments, with car parking for 542 vehicles across four car parking levels at Area 22 and 23 within the St Leonards South Precinct (**the site**).

This Request only relates to Area 23 and seeks to vary the minimum site area prescribed for the site under clause 7.2 of *Lane Cove Local Environmental Plan 2009 (LCLEP 2009)*. LCLEP 2009 prescribes a minimum site area of 6,800sqm for Area 23.

Area 23 has an area of 6,755sqm, constituting a variation of 45sqm. The variation is request is made pursuant to clause 4.6 of LCLEP 2009.

For a request to meet the requirements of clause 4.6(3) of the LCLEP 2009, it must adequately demonstrate:

*(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.*

This request contains justified reasoning for the proposed variation to the minimum site area development standard and demonstrates that:

- The proposed development incorporates all available land within Area 23 and thereby it is not possible to achieve the prescribed 6,800sqm as a detailed survey plan has revealed the site area of Area 23 only equates to 6,755sqm.
- The objectives of the development standard (as specified for the St Leonards South Area in clause 7.1) will be achieved, notwithstanding that the development standard cannot be achieved, and in doing so, establishes that compliance with the standard is unreasonable or unnecessary – Refer to **Section 6.2** of this Request.

This request should be read in conjunction with the Statement of Environmental Effects prepared by Urbis, dated 1 December 2022 and accompanying design and technical documentation.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

## 2. SITE CONTEXT

### 2.1. SITE DESCRIPTION

The site is known as 'Areas 22 & 23' within the St Leonards South precinct in the Lane Cove government area (LGA). The consolidated site address is 26-50 Park Road, 27-47 Berry Road and 48-54 River Road, St Leonards NSW 2065.

The extent of the site is illustrated in **Figure 1**. The legal addresses and deposited plans of the site are summarised in the following tables.

Table 1 Area 22 Site Address and Legal Description

Address	Lot and Deposited Plan
26 Park Road	Lot 44 Section 3 in DP 3044
28 Park Road	Lot 43 Section 3 in DP 3044
30 Park Road	Lot 5 in DP 305449
32 Park Road	Lot 4 in DP 305449
34 Park Road	Lot 3 in DP 305449
27 Berry Road	Lot 19 in DP 82696
29 Berry Road	Lot 1 in DP 533847
31 Berry Road	Lot 2 in DP 533847
33 Berry Road	Lot 21 Section 3 in DP3044
35 Berry Road	Lot 22 Section 3 in DP 111237
37 Berry Road	Lot 23 in DP 79978
39 Berry Road	Lot 24 Section 3 in DP 3044
Part of Berry Lane	NA – lot and DP number is not available

Table 2 Area 23 Site Address and Legal Description

Address	Lot and Deposited Plan
36 Park Road	Lot 2 in DP 305449
38 Park Road	Lot 1 in DP 305449
40A Park Road	Lot 37 in DP 666528
40B Park Road	Lot 36 in DP 3044
42 & 42A Park Road	Lot 351 & 352 in DP 848236
44 – 50 Park Road	Lot 1 – Lot 4 in DP 225445

<b>Address</b>	<b>Lot and Deposited Plan</b>
48 River Road	Lot 29 in DP 72918
50 River Road	Lot 30 Section 3 in DP 111237
52 River Road	Lot 31 Section 3 in DP 3044
1/54 River Road and 2/54 River Road	Lot 1 & Lot 2 in SP 16063
41 Berry Road	Lot 25 in DP 3044
43A & 43B Berry Road	Lot 1 & 2 in DP 734702
45 & 47 Berry Road	Lot 27 & 28 Section 3 in DP 3044

In terms of ownership of the site, allotments within Area 22 and 23 are owned by JQZ Twelve Pty Ltd. Berry Lane is owned by the Lane Cove Council. Consents are attached to this DA.

The site has an area of 11,557sqm and has a frontage of approximately 161m, 77m and 161m to Berry Road, River Road and Park Road respectively.

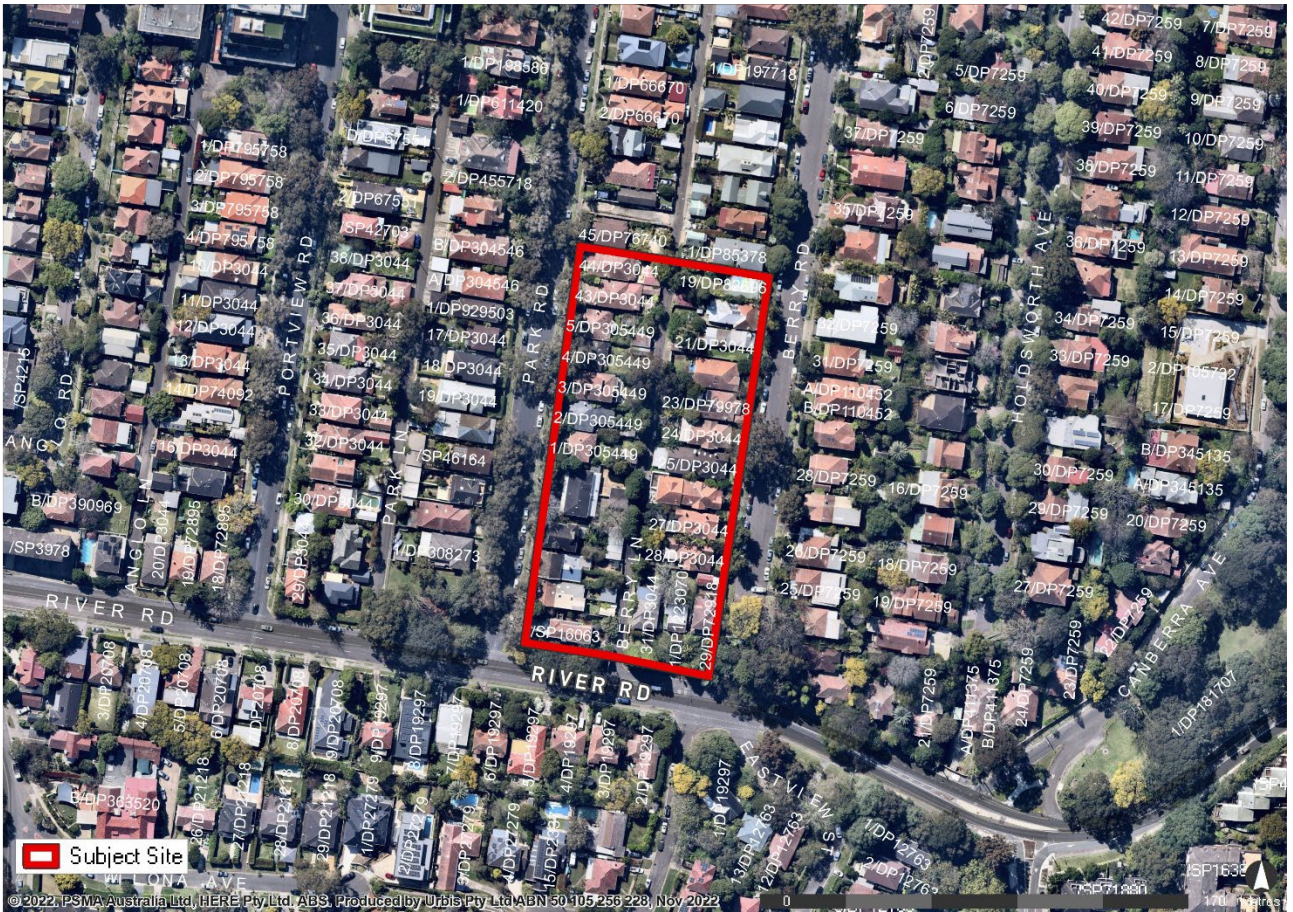
The site has a significant slope from north to south, with the lowest point of the site adjoining River Road (refer to Site Survey prepared by Land Surveyor at Appendix A). There is typical vegetation pattern within the site, suitable for a residential area of the Lower North Shore. The vegetation includes trees of moderate canopy and plantings. In terms of closest water course, namely Berrys Creek, is located in Newland Park over 40m from the site.

In terms of easements, the site includes the following:

- Easement for support variable width between Lots 36 in DP3044 and 37 in DP666528.
- A 0.23m wide part wall easement between Lots 351 and 352 in DP848236.
- A 0.229m wide part wall easement between Lot 1 and 2 as well as between Lot 3 and 4 in DP225445.
- Right of way along the northern and southern side of Lot 3 in DP225445 and Lot 2 in DP225445 respectively.
- A variable width party wall easement between Lot 1 and 2 in DP734702.

The existing development on-site comprises approximately 31 individual residential dwellings, ranging from one to two storeys in height. Vehicular access is provided in numerous points along Park Road, Berry Road and River Road, and is typical of the existing low-density residential nature of the area.

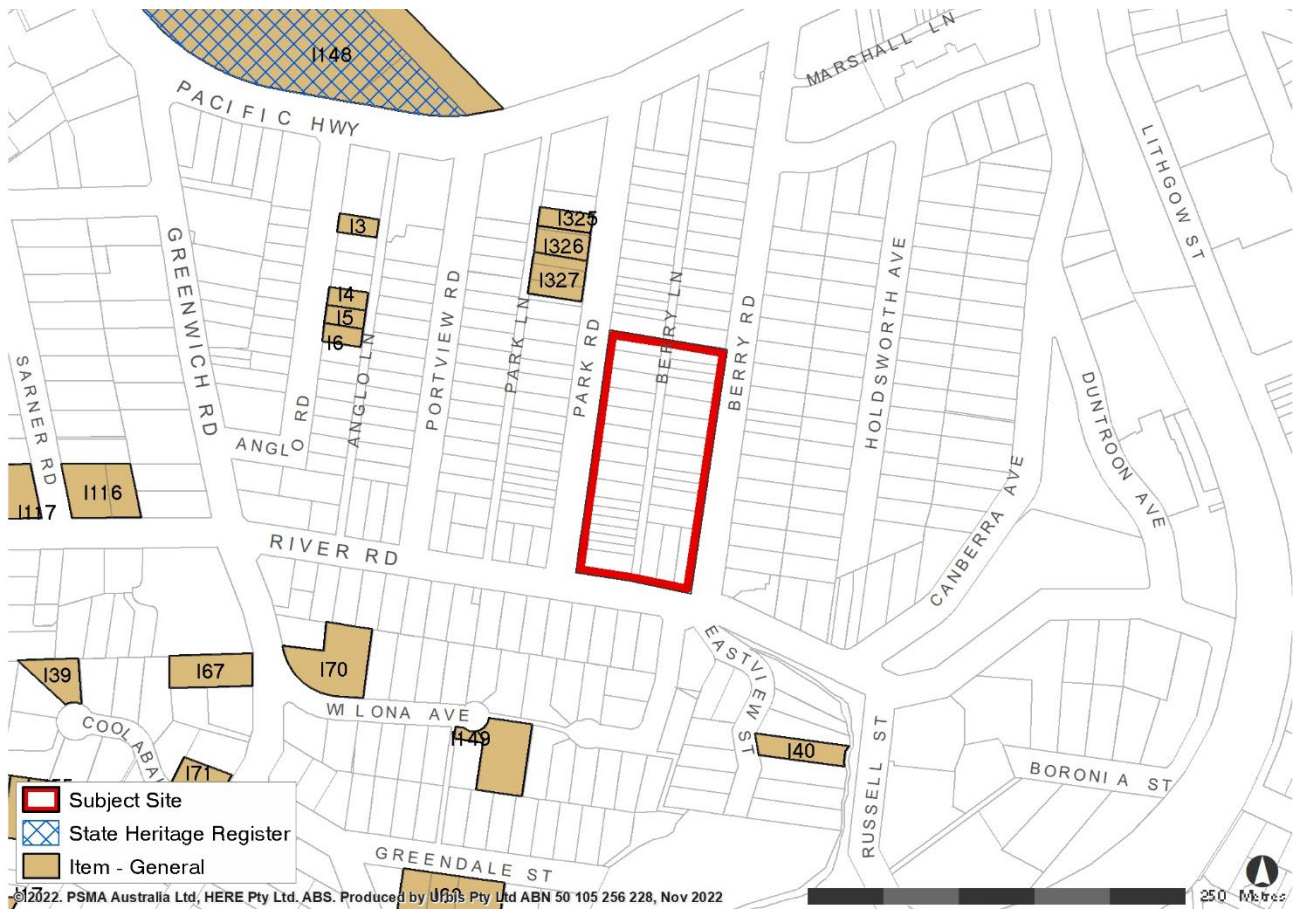
Figure 1 Aerial image of the site



Source: Urbis



Figure 2 Heritage Map



Source: LCLEP 2009

### 3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for the construction of a residential development comprising of four (4) residential flat buildings providing for 314 apartments, with car parking for 542 vehicles across four car parking levels.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated December 2022. The proposal is also detailed within the architectural, engineering and landscape drawings that form part of the DA.

A summary of the key features of the proposed development is provided below:

- Demolition of all existing buildings on site and lot consolidation;
- Removal of identified existing trees and site preparation works;
- Construction of a new road at the centre of the site connecting Park Road and Berry Road; and
- Construction of four residential flat buildings ranging from 4-10 storeys (excluding part storeys) and fronting River Road, Park Road, Berry Road and New DCP Road.
- Basement levels comprising car parking spaces, and associated loading and wash bays.
- Landscaping throughout the site with a focus on the central green spine, podium landscape at Level 7 of Building B and Level 12 of Building C, and private terraces.
- Strata subdivision of 314 apartments.

The overall built form and design is illustrated in **Figure 3** and **Figure 4** below, and key numeric aspects of the proposal are summarised below in **Table 3**.

Figure 3 Proposed Development – viewed from Green Spine (view from northeast – Area 23)



Source: DKO

Figure 4 Proposed Development – View from River Road



Source: DKO

Table 3 Numeric Overview of Proposal

Parameter	Proposed
Site Area	Area 23: 6,755m <sup>2</sup> Area 22: 4,802m <sup>2</sup> Total: 11,557m <sup>2</sup>
Land Use	Residential flat building
Height of Building	Park Road: 6 storeys (excluding part storeys)

<b>Parameter</b>	<b>Proposed</b>
	River Road: 4 storeys (excluding part storeys) Berry Road: 4-10 storeys (excluding part storeys)
<b>Gross Floor Area (GFA)</b>	31,780m <sup>2</sup>
<b>Floor Space Ratio (FSR)</b>	2.75:1
<b>Total Number of Apartments</b>	314
<b>Apartment Mix</b>	Studio/1 bed: 73 apartments (23%) 2 bed: 150 apartments (48%) 3 + 4 bed: 91 apartments (29%) (20% apartments (63) are DDA units) (80% apartments (251) are liveable units)
<b>Parking and Loading</b>	Vehicular car spaces: 542 spaces (includes 78 visitor spaces) Accessible car spaces: 63 spaces Car wash bays: 6 Motorcycle parking: 36 spaces Loading - 1 x MRV space and 1 x HRV space at Basement 3 loading dock
<b>Bicycle Parking</b>	Resident: 80 spaces Visitors: 32 spaces
<b>Landscape Area/Communal open space</b>	Area 23: 790m <sup>2</sup> (6.8%) Area 22: 1,998m <sup>2</sup> (17.2%) Total: 2,788m <sup>2</sup> (24%)
<b>Deep Soil</b>	3,574m <sup>2</sup> (30.9% of the site area)
<b>Communal open space</b>	3,574m <sup>2</sup> (30.9% of the site area)
<b>Landscape Area</b>	1964m <sup>2</sup> (55%)

## 4. VARIATION TO MINIMUM SITE AREA STANDARD

This section of the report identifies the development standard, which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

### 4.1. DEVELOPMENT STANDARD

As per clause 7.2, the site is subject to a minimum site area of 6,800sqm. In accordance with LCLEP 2009, site area is defined as:

*site area means the area of any land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other, but does not include the area of any land on which development is not permitted to be carried out under this Plan*

Clause 7.2 is extracted below for ease of reference:

#### **7.2 Minimum site area requirements**

*For the purposes of clause 7.1(4)(e), the minimum site area for development on land to which clause 7.1 applies is the area specified in the table to this clause.*

<i>Column 1</i>	<i>Column 2</i>
<i>Area 1</i>	<i>3,000 square metres</i>
<i>Area 2</i>	<i>2,000 square metres</i>
<i>Area 3</i>	<i>1,600 square metres</i>
<i>Area 4</i>	<i>1,500 square metres</i>
<i>Area 5</i>	<i>2,200 square metres</i>
<i>Area 6</i>	<i>2,200 square metres</i>
<i>Area 7</i>	<i>1,900 square metres</i>
<i>Area 8</i>	<i>2,000 square metres</i>
<i>Area 9</i>	<i>2,500 square metres</i>
<i>Area 10</i>	<i>1,500 square metres</i>
<i>Area 11</i>	<i>4,000 square metres</i>
<i>Area 12</i>	<i>2,500 square metres</i>
<i>Area 13</i>	<i>1,600 square metres</i>
<i>Area 14</i>	<i>1,600 square metres</i>
<i>Area 15</i>	<i>2,000 square metres</i>
<i>Area 16</i>	<i>2,500 square metres</i>
<i>Area 17</i>	<i>2,200 square metres</i>
<i>Area 18</i>	<i>1,500 square metres</i>
<i>Area 19</i>	<i>1,500 square metres</i>
<i>Area 20</i>	<i>5,200 square metres</i>
<i>Area 21</i>	<i>4,500 square metres</i>
<i>Area 22</i>	<i>4,600 square metres</i>
<b>Area 23</b>	<b>6,800 square metres</b>



## 4.2. PROPOSED VARIATION: CLAUSE 7.2 MINIMUM SITE AREA STANDARD

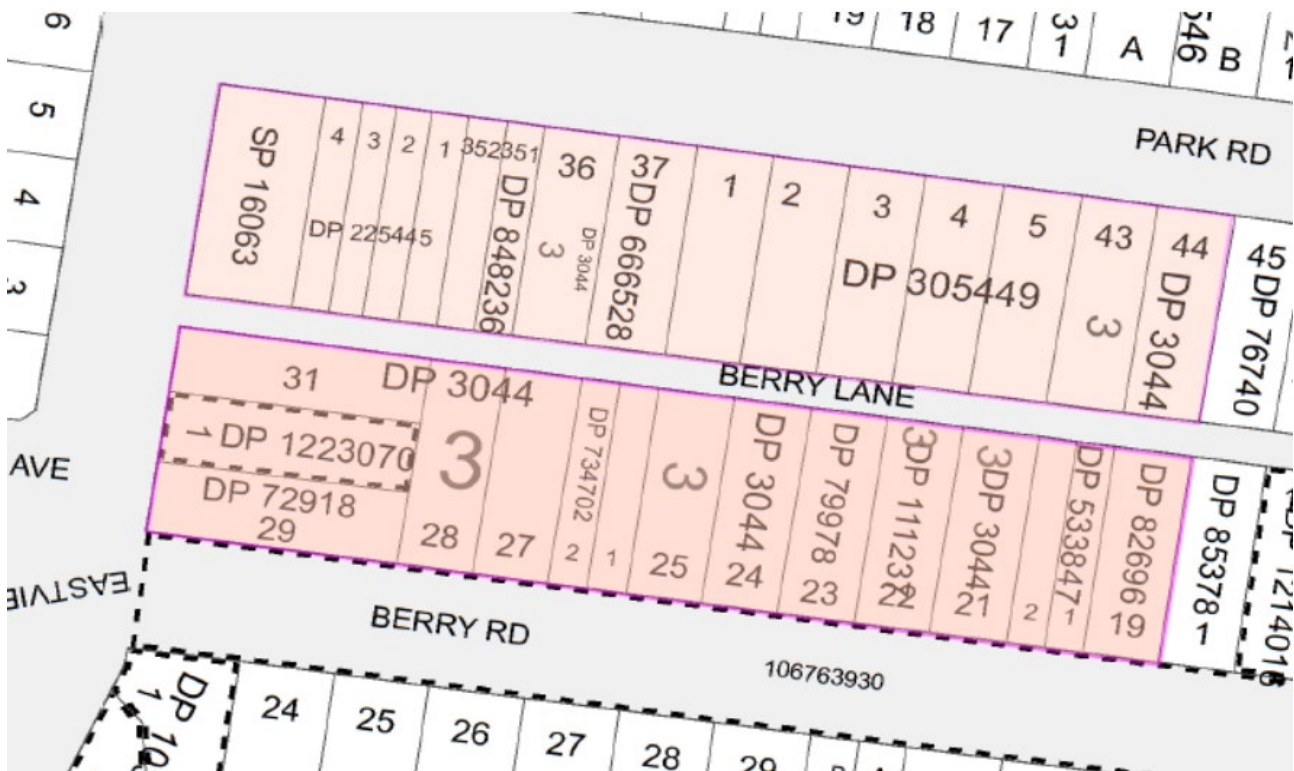
This clause 4.6 variation request seeks to gain approval for a variation to the minimum site area as prescribed by clause 7.2 of the LCLEP 2009. A detailed Site Survey and area calculation for Area 22 and 23 has been completed by Land Partners (as illustrated in **Figure 5** and appended to the SEE) and demonstrates that the site area for Area 23 is 6,755sqm.

A site area of 6,800sqm is not feasible or possible as all land within Area 23 has been accounted for in the Site Survey which calculates the site area less than the prescribed minimum. A summary of the numerical details of the variation are outlined in **Table 4**.

Table 4 Numeric Overview of Proposal

Required Site Area Control	Proposed	Proposed Variation in sqm	Proposed Variation in Percentage
6,800sqm	6,755sqm	45sqm	0.66%

Figure 5 Survey Plan annotation



Source: Land Partners

## 5. RELEVANT ASSESSMENT FRAMEWORK

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

- to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- 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.*

For the purposes of clause 4.6(3)(a), the ways in which compliance with a development standard can be shown to be unnecessary (in that it is achieved anyway) or unreasonable (in that no purpose would be served) are as follows:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
2. Under this approach development standards are viewed not as the planning objectives, but as a means to achieve those objectives. If there is an alternative means to achieve the objective, then the objective would be achieved anyway (and hence compliance with the standard is unnecessary) and there is no purpose served by requiring compliance with the standard (and hence compliance would be unreasonable). This tends to be the most common way of establishing that compliance is unreasonable or unnecessary.
3. To establish that the underlying objective or purpose of the standard is not relevant to the development, and hence compliance with the standard is unnecessary.
4. To establish that the underlying objective or purpose of the standard would be defeated if compliance was required, and hence compliance with the standard is unreasonable.
5. To establish that the development standard has been virtually abandoned or destroyed by Council's own decisions departing from the standard, and hence compliance with the standard is unnecessary or unreasonable.
6. To establish that the zoning of the particular land was an anomaly or inappropriate, and as a result the development standard applying to zoning are also an anomaly or inappropriate, and hence compliance with the standard is unnecessary or unreasonable. (*Wehbe v Pittwater Council* (2007) 156 LGERA 446)

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.

This request focuses on the first method of showing that compliance is *unreasonable or unnecessary*, outlined below.

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 variation 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.

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.



## 6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the minimum site area in accordance with clause 7.2 of LDLEP 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.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

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

The minimum site area prescribed by clause 7.2 of LCLEP 2009 is a development standard capable of being varied under clause 4.6(2) of LCLEP 2009.

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 LCLEP 2009.

### 6.2. DEVELOPMENT STANDARD IS 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])

Clause 7.2 of the LCLEP 2009 does not have any specified objectives therefore an assessment against the St Leonards South Area objectives prescribed in clause 7.1 of the LCLEP 2009 are detailed in **Table 5** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 5 Assessment of consistency with clause 7.1 objectives

Objectives	Assessment
(1) The objective of this clause is to promote, by providing building height and floor space incentives, residential development within the St Leonards South Area that provides for—	The communal area of the proposed development is extensively landscaped. The general landscaping strategy for the site and the selection of planting palette are appropriate for the site and designed to play an important role by integrating with the built form, which greatly increases the amenity for neighbours and future residents.

Objectives	Assessment
<p>(a) community facilities, open space, including communal open space, and high quality landscaped areas, and</p>	<p>In terms of communal open space, the proposed design includes a green spine located at the centre of the site. The proposal provides a total soft landscaped area of 55% of the total site area (Area 22 and 23).</p> <p>The site area variation for Area 23 will not impede the developments' ability to provide high quality open space including communal open space and landscape areas. The proposal achieves the required landscaping and communal open space requirements prescribed under the Apartment Design Guide.</p>
<p>(b) efficient pedestrian and traffic circulation, and</p>	<p>The proposed site layout is consistent with the structure plan as outlined in the Lane Cove Development Control Plan 2009 (the DCP).</p> <p>The new road proposed along the north of Area 23 connecting Park Road and Berry Road, in addition to the pedestrian pathways from River Road and green spine will provide efficient pedestrian and traffic circulation.</p> <p>The site area variation for Area 23 will not impact the developments' ability to ensure efficient pedestrian and traffic circulation.</p>
<p>(c) a mix of dwelling types in residential flat buildings, providing housing choice for different demographics, living needs and household budgets, including by providing affordable housing, and</p>	<p>The site area variation will not impact the developments' ability to deliver a mix of dwelling types to cater for different demographics, living needs and household budget.</p> <p>The proposed compliant dwelling mix is outlined below:</p> <p>1 bed: 73 (23% of total dwellings)</p> <p>2 bed: 150 (48% of total dwellings)</p> <p>3 and 4 bed: 91 (29% of total dwellings)</p>
<p>(d) the amalgamation of lots to prevent the fragmentation or isolation of land.</p>	<p>A detailed Site Survey and area calculation for Area 22 and 23 has been completed by Land Partners (as illustrated in <b>Figure 5</b> and appended to the SEE) and demonstrates that the site area for Area 23 is 6,755sqm.</p> <p>A site area of 6,800sqm is not feasible or possible as all land within Area 23 has been accounted for in the Site Survey which calculates the site area less than the prescribed minimum.</p>

Objectives	Assessment
	<p>The proposed variation will not result in fragmentation or isolation of land as the development site includes all available land in Area 23.</p> <p>Strict compliance would be ‘unreasonable and unnecessary’ because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in <i>Botany Bay City Council v Saab Corp</i> [2011] NSWCA 308 at [15]).</p>

As set out within the table above, the objectives of the building height development standard are achieved, notwithstanding the non-compliance with the standard in the particular circumstances described in this Clause 4.6 Variation Request.

### 6.3. 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”*

Furthermore, In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act.

While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 6** we consider how the proposed development is consistent with each object.

Table 6 Objects of the EP&A Act

Object	Comment
<p>(a) <i>to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,</i></p>	<p>The proposal promotes the social and economic welfare of the community and a better environment through the delivery of a mixed-use residential and retail development.</p> <p>The development will support new jobs during the construction and operational phases of the project in close proximity to existing transport facilities.</p>

Object	Comment
<p>(b) <i>to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i></p>	<p>The proposal will satisfy the required standards of ecologically sustainable development including various initiatives being explored such as; minimising waste from demolition, construction and operations, water conservation and quality of stormwater, passive design and natural ventilation and energy efficiency, and the health and wellbeing of the building's occupants.</p> <p>Further, the proposed minor variation in minimum site area has no material effect on any impacts.</p>
<p>(c) <i>to promote the orderly and economic use and development of land,</i></p>	<p>The proposed development promotes the orderly and economic use and development of the site by demolishing the existing buildings and delivering a new mixed-use development which provides a significant increase in housing and local ongoing employment in proximity to the existing Macquarie University Metro Station and Macquarie Shopping Centre.</p> <p>Strict compliance with the control would undermine the orderly and economic use and development of the land as it intended outcomes clearly established for the site would not be achievable, rendering the site in perpetual under-development.</p>
<p>(d) <i>to promote the delivery and maintenance of affordable housing,</i></p>	<p>Whilst Council has identified sites within the precinct to deliver affordable housing, this site is not required to deliver affordable housing.</p>
<p>(e) <i>to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i></p>	<p>The proposed development will have no demonstrable adverse impact on threatened species or ecological communities and their habitats.</p>
<p>(f) <i>to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i></p>	<p>The site is not listed as a local or State heritage item nor is it located within a heritage conservation area under the Lane Cove Local Environment Plan 2009 (LCLEP).</p> <p>It is located in proximity to a number of local heritage items listed by Schedule 5 Part 1 of the LEP (refer Error! Reference source not found.). These heritage items include:</p> <ul style="list-style-type: none"> <li>▪ 'House' at 7 Park Road, St Leonards (Item No. I327) – located approximately 35m north-west of the site.</li> <li>▪ 'House' at 5 Park Road, St Leonards (Item No. I326) – located approximately 60m north-west of the site.</li> <li>▪ 'House' at 8 Eastview Street, Greenwich (Item No. I40) – located approximately 100m south-east of the site.</li> <li>▪ 'House' at 18 Wilona Avenue, Greenwich (Item No. I148) – located approximately 170m south of the site.</li> <li>▪ 'Glenwood Nursing Home' at 34-40 Greenwich Road, Greenwich (Item No. I70) – located approximately 290m south-west of the site.</li> </ul> <p>The assessment concludes the proposal will not affect the heritage significance or cultural value of land in the immediate locality.</p>
<p>(g) <i>to promote good design and amenity of the built environment.</i></p>	<p>The proposed development has been designed by award-winning architects DKO Architects that has created elegant building forms and high quality communal spaces and active street edge uses.</p>

Object	Comment
	Furthermore, this scheme has been subject to multiple a rigorous pre-lodgement planning and design excellence panel reviews on two separate occasions which has informed the massing and architecture on the site.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed development is capable of complying with relevant BCA requirements. The minor variation in site area does not prevent the development from complying with the BCA. Potential construction related impacts will be able to be managed.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	This Object is not relevant to the proposed development.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The proposal has yet to be publicly exhibited, we expect Council will determine the necessary level of community engagement in the project once it has been formally submitted.

In addition to considering the variation against the objects of the Act, we provide additional assessment as guided by *Initial Action* above.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- There is no adverse consequence as a result of the non-compliance. The proposed variation will not result in fragmentation or isolation of land as the development site includes all available land in Area 23.
- The proposal facilitates urban renewal within the St Leonards South Area and achieves the desired future vision established in the DCP. The proposal reinforces the desired neighbourhood character of St Leonards, whilst respecting the existing amenity of residences in the neighbourhood.
- The proposal presents a modern architectural expression with building articulations presenting a visually appealing development along the River Road, Park Road and Berry Road; and achieves design excellence.
- The reduced site area for Area 23 will not result in any significant detrimental amenity impacts (overshadowing, views or privacy) to surrounding development.
- The non-compliance will not hinder the development's ability to satisfy the objectives of the minimum site area clause, nor the objectives of clause 7.1.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed minimum site area non-compliance in this instance.

## **6.4. 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 sub-clause (3) 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. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

## 6.5. 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 **Table 5** above. The proposal is also consistent with the land use objectives that apply to the site under LCLEP 2009. The site is located within the R4 High Density Residential zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 7** below.

Table 7 Assessment of compliance with land use zone objectives

Objective	Assessment
To provide for the housing needs of the community within a high density residential environment.	<p>The proposed development retains the residential use of the site and seeks to construct a high density residential development comprising of 314 new dwellings, which provides for the housing needs of the community.</p> <p>The proposed minor variation to the minimum site area will not impact the developments' ability to provide housing needs for the community within a high density residential environment.</p>
To provide a variety of housing types within a high density residential environment.	<p>As outlined above in <b>Table 4</b>, the site area variation will not impact the developments' ability to deliver a mix of dwelling types to cater for different demographics, living needs and household budget. The proposed development is compliant with the required apartment mix.</p>
To enable other land uses that provide facilities or services to meet the day to day needs of residents	<p>The proposed residential development provides a combination of variety of apartment units with communal facilities, ensuring the precinct will continue to fulfil its key economic, social and cultural role within the locality.</p> <p>The proposed minor variation to the minimum site area will not impact the developments' ability to provide facilities or services to meeting the day to day needs of residents.</p>
To provide for a high concentration of housing with good access to transport, services and facilities.	<p>The proposed development provides high concentrated of housing strategically located in the well-connected suburb of St Leonards.</p> <p>The site is highly accessible to both existing and future public transport infrastructure. The site is located approximately 1km from St Leonards Railway Station. St Leonards Station is located on the T1 North Shore, Northern, and West Line and is directly connected to major destinations such as North Sydney, Parramatta and Sydney CBD. The site is also located approximately 1km west of the planned new Crows Nest Metro Station to be delivered as part of the new Sydney Metro City and</p>

<b>Objective</b>	<b>Assessment</b>
<p>To ensure that the existing amenity of residences in the neighbourhood is respected.</p>	<p>Southwest transit railway line (Metro), with a planned opening of 2024.</p> <p>The site is located 200m south of the Pacific Highway which is a State Road, and a major traffic corridor.</p> <p>Overall, the site has good access to transport, services and facilities. The variation to the minimum site area will not impact connectivity or access to transport, services and facilities.</p> <p>The proposed site layout is consistent with the structure plan as outlined in the Lane Cove Development Control Plan 2009 (the DCP).</p> <p>In addition, the proposed development is consistent with the established future vision in the DCP. The proposal reinforces the desired neighbourhood character of St Leonards, whilst respecting the existing amenity of residences in the neighbourhood.</p> <p>The proposal presents a modern architectural expression with building articulations presenting a visually appealing development along the River Road, Park Road and Berry Road.</p>
<p>To avoid the isolation of sites resulting from site amalgamation.</p>	<p>A detailed Site Survey and area calculation has been completed by Land Partners and demonstrates that the site area for Area 23 is 6,755sqm.</p> <p>A site area of 6,800sqm is not feasible or possible as all land within Area 23 has been accounted for in the Site Survey which calculates the site area less than the prescribed minimum.</p> <p>The proposed variation will not result in fragmentation or isolation of land as the development site includes all available land in Area 23.</p>
<p>To ensure that landscaping is maintained and enhanced as a major element in the residential environment.</p>	<p>The communal area of the proposed development is extensively landscaped. The general landscaping strategy for the site and the selection of planting palette are appropriate for the site and designed to play an important role by integrating with the built form, which greatly increases the amenity for neighbours and future residents.</p> <p>In terms of communal open space, the proposed design includes a green spine located at the centre of the Area 23 and Area 22. The proposal provides a total soft landscaped area of 55% of the total site area.</p> <p>The site area variation will not impede the developments' ability to provide high quality open space including</p>

Objective	Assessment
	communal open space and landscape areas. The proposal achieves the required landscaping and communal open space requirements prescribed under the Apartment Design Guide.

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the minimum site area 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.

## **6.6. 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.

## **6.7. 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 to the minimum site area development 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 and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

## **6.8. CLAUSE 4.6(5)(B) - IS THERE A PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROL STANDARD?**

The proposed development achieves the objectives of the minimum site area and the land use zone objectives despite the technical non-compliance.

A site area of 6,800sqm is not feasible or practically possible as all land within Area 23 has been accounted for in the Site Survey which calculates the site area less than the prescribed minimum in LCLEP. Notwithstanding, the proposed variation will not result in fragmentation or isolation of land as the development site includes all available land in Area 23.

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.

In addition, this development standard is not possible to achieve and therefore strict adherence is not reasonable.



**6.9. 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, however, 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.

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