

Clause 4.6 Variation Request

*20-22 Atchison Street, St
Leonards*

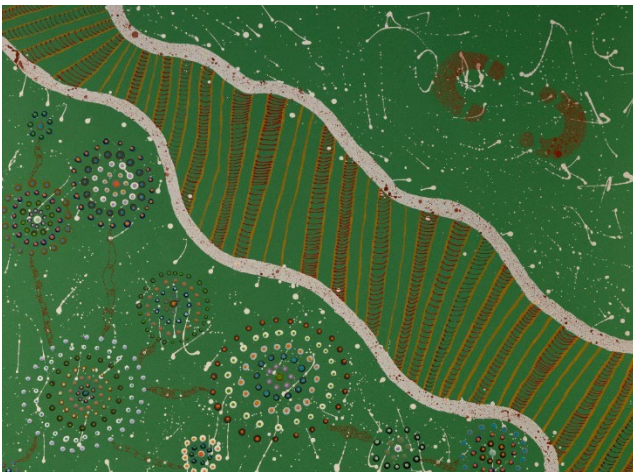
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Project Code P0060848
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The river is the symbol of the Dreaming and the journey of life. The circles and lines represent people meeting and connections across time and space. When we are working in different places, we can still be connected and work towards the same goal.

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1 Introduction

This Clause 4.6 Variation Request (**the Request**) has been prepared on behalf of Setia Sydney (**the applicant**) and accompanies a State Significant Development Application (**SSDA**) for the development of a shop top housing building at 20–22 Atchison Street, St Leonards (**the site**).

The Request seeks an exception from the floor space ratio (**FSR**) control prescribed for the site under clause 4.4 of the *North Sydney Local Environmental Plan 2013* (**NSLEP 2013**).

The variation is request is made pursuant to clause 4.6 of the NSLEP 2013. For a request to meet the requirements of clause 4.6(3) of the NSLEP 2013, it must:

1. adequately demonstrate “that compliance with the FSR standard is unreasonable or unnecessary in the circumstances” of the project on the site; and
2. adequately demonstrate “that there are sufficient environmental planning grounds” to justify contravening the height of building standard.

This request contains justified reasoning supporting conclusions in respect of the above two matters, specifically that:

- Objectives of the development standard will be achieved, notwithstanding that the numerical limit of the building height will be exceeded, and in doing so establishes that compliance with the standard is unreasonable or unnecessary (Initial Action at [17]) – Refer to **Section 4.1** of this Request.
- There are sufficient environmental planning grounds to support the proposed development, in that there is an absence of environmental harm arising from the contravention and positive planning benefits arise from the proposed development – Refer to **Section 4.2** of this Request.

This Revised Request relates to the Architectural Plans prepared by Cox Architecture (**Cox**). A full architectural set is provided at Appendix C, with the revised plans identified in Table 1.

Table 1 Revised Architectural Plans

Reference	Description	Date
A-DA-2110	Lower Ground	12/03/2026
A-DA-2112	Ground Floor	12/03/2026
A-DA-3100	Building Elevations – North & East	12/03/2026
A-DA-3101	Building Elevations – South & West	12/03/2026
A-DA-9100	Development Calculations GFA Sheet 1	12/03/2026
A-DA-9101	Development Calculations GFA Sheet 2	12/03/2026

This report should be read in conjunction with the Submissions Report prepared by Urbis Ltd and the revised Architectural Plans prepared by Cox and dated 12 March 2026. Those documents form part of this request.

2 Background

2.1 Site Description

The land to which this Request relates is known as 20-22 Atchison Street, St Leonards.

The location of the site is illustrated in **Figure 1**. The key features of the site are described in **Table 1** below.

Figure 1 Local Context Aerial Photograph



Source: Urbis

Table 2 Site and Locality Description

Characteristic	Description
Key Site Features	
Country	The site is located on the Cammeraygal people, of the Eora Nation.
Address	20-22 Atchison Street, St Leonards
Legal Description (Title Particulars)	Lot 1 in DP740017 and Lot 120 DP564606
Zoning	MUI Mixed Use
Number of existing lots	2 lots

Existing Use / Structures	22 Atchison Street accommodates a six-storey commercial office building and 18-20 Atchison Street contains a three-storey commercial building, which is currently vacant.
Site Area	Total site area of 1374.4 sqm, comprising: <ul style="list-style-type: none"> ▪ 20 Atchison Street, St Leonards: 690.4 sqm ▪ 22 Atchison Street, St Leonards: 684 sqm
Number of pre-existing dwellings on site	Nil.
Site Frontage	<ul style="list-style-type: none"> ▪ Atchison Street – 42 metres ▪ Mitchell Street – 32 metres ▪ Atchison Lane – 35 metres
Site Width	34.29 metres
Vehicular/Site Access	Both sites are provided with rear vehicular access from Atchison Lane. 22 Atchison Street is also provided with vehicular access from Mitchell Street. Primary pedestrian entry to both sites is via Atchison Street.
Adjacent land uses North	To the north, the site abuts Atchinson Lane, a 5.6 metre wide service lane. Further north, the site interfaces with the 39-41 Chandos Street, comprising a seven-storey commercial building. Vehicular and service access to the site is provided via Atchison Lane.
Adjacent land uses East	Immediately east, the site abuts Mitchell Street, providing a single lane of traffic in each direction and on-street car parking. Further east is 30 Atchinson Street, accommodating a five-storey commercial building.
Adjacent land uses South	Immediately south, the site abuts Atchinson Street. Public realm works have recently been undertaken to pedestrianise this one-way section of Atchinson Street, including a linear park adjacent to the site frontage. Further south, is 601 Pacific Highway accommodating a 14-storey mixed use building comprising residential apartments and commercial use. The site is subject to a current application (SSD-85848713) for a 52-storey shop top housing development.
Adjacent land uses West	The western site boundary abuts 14-16 Atchison Street, comprising a 28-storey serviced apartment building, with ground-floor retail tenancies.
Topography	The site is located near the crest of a high ridgeline point. The land falls approximately 2m from east to west along the Atchison Street frontage and 2.6-3m south to north along the Mitchell Street frontage.
Vegetation	Three trees are located within the rear site setback adjacent to Atchinson Lane. Eight street trees and low level planting is present along the Atchison Street and Mitchell Street frontages.

Heritage	The site is not mapped as a heritage item, nor is it within a heritage conservation area.
Aboriginal Archaeology	The site is not identified as containing any items of Aboriginal heritage significance.
Bushfire	The site is not mapped as Bushfire Prone Land.
Biodiversity	The site does not contain any significant vegetation as it has already been fully developed.
Surrounding Locality	
Public Transport	<p>The site is within walking distance of existing public transport connections including:</p> <ul style="list-style-type: none"> St Leonards Train Station (300 metres): providing direct access to the Sydney CBD and other key destinations along the North Shore Line (T1) and Northern Line (T9). Crows Nest Metro Station (800 metres): providing direct access to the Sydney Metro network on the Tallawong to Bankstown Line. Bus Services (200 metres): multiple bus routes operate along the Pacific Highway, offering connections to various parts of Sydney.
Major Roads	<p>The surrounding road network consists of a variety of local and State roads:</p> <ul style="list-style-type: none"> Atchinson Street: Local road providing direct primary frontage to the site. Running in an east-west alignment, the road provides connection through St Leonards and Crows Nest, with a portion of one way only access from Christie Street to Mitchell Street. Mitchell Street: Local road providing direct secondary frontage to the site and north-south connection through St Leonards and Crows Nest. Willoughby Road: Main road providing north-south between connection between the Pacific Highway and the M1. Pacific Highway: Major arterial road providing connectivity to key centres, including Chatswood, North Sydney, and the Sydney CBD to the south, and Hornsby and the Central Coast to the north. Warringah Freeway / Gore Hill Freeway (M1): Major freeway connecting North Sydney to the CBD and Sydney Airport.
Open Space	<p>The site is located close to the following areas of open space:</p> <ul style="list-style-type: none"> Gore Hill Oval (600 m) Mitchell Street Plaza (100 m) Wadanggari Park (230 m) Naremburn Park (900 m)
Social Infrastructure	<p>The site is located close to the following key social infrastructure:</p> <ul style="list-style-type: none"> Royal North Shore Hospital (650 m)

- North Shore Private Hospital (900 m)
- Northern Sydney Institute of TAFE (1.1 km)
- St Leonards Library (140 m)
- Anzac Park Primary School (1.7 km)

2.2 Proposed Development

This Request has been prepared to accompany a SSDA for the demolition of existing structures, early works and construction of a 40 storey shop top housing building and five basement levels. Works comprise:

- Demolition of the existing structures on the site.
- Bulk excavation up to 21m and basement dewatering.
- Removal of four trees.
- Construction of a 40-storey mixed use development comprising:
 - A four storey mixed use podium, featuring commercial floorspace at Lower Ground to Level 1, two levels of residential apartments at Level 2 and Level 3 and a level of associated residential amenities at Level 4.
 - Tower comprising an additional 34 levels of residential apartments from Level 6 to Level 39.
 - Five basement levels accommodating car, bicycle and motorcycle parking, storage, waste, loading, plant and end of trip.
- Landscaping and public amenities within a 5-metre-wide setback, creating a stepped linear park along Mitchell Street, at Ground and Lower Ground Level.
- Consolidated vehicular and loading access from Atchison Lane.
- Amalgamation of Lot 1 in DP740017 and Lot 120 DP564606.
- Provision of a monetary contribution equating to 10% of the gross floor area of the residential component of the development, paid to North Sydney Council, to fund/provide affordable housing in the LGA in partnership with their nominated Community Housing Provider.

3 Variation of FSR Standard

3.1 What is the planning instrument you are seeking to vary?

The application seeks to vary the NSLEP 2013.

3.2 What is the site's zoning?

The site is zoned MUI Mixed Use under the NSLEP 2013.

3.3 What is the development standard to be varied?

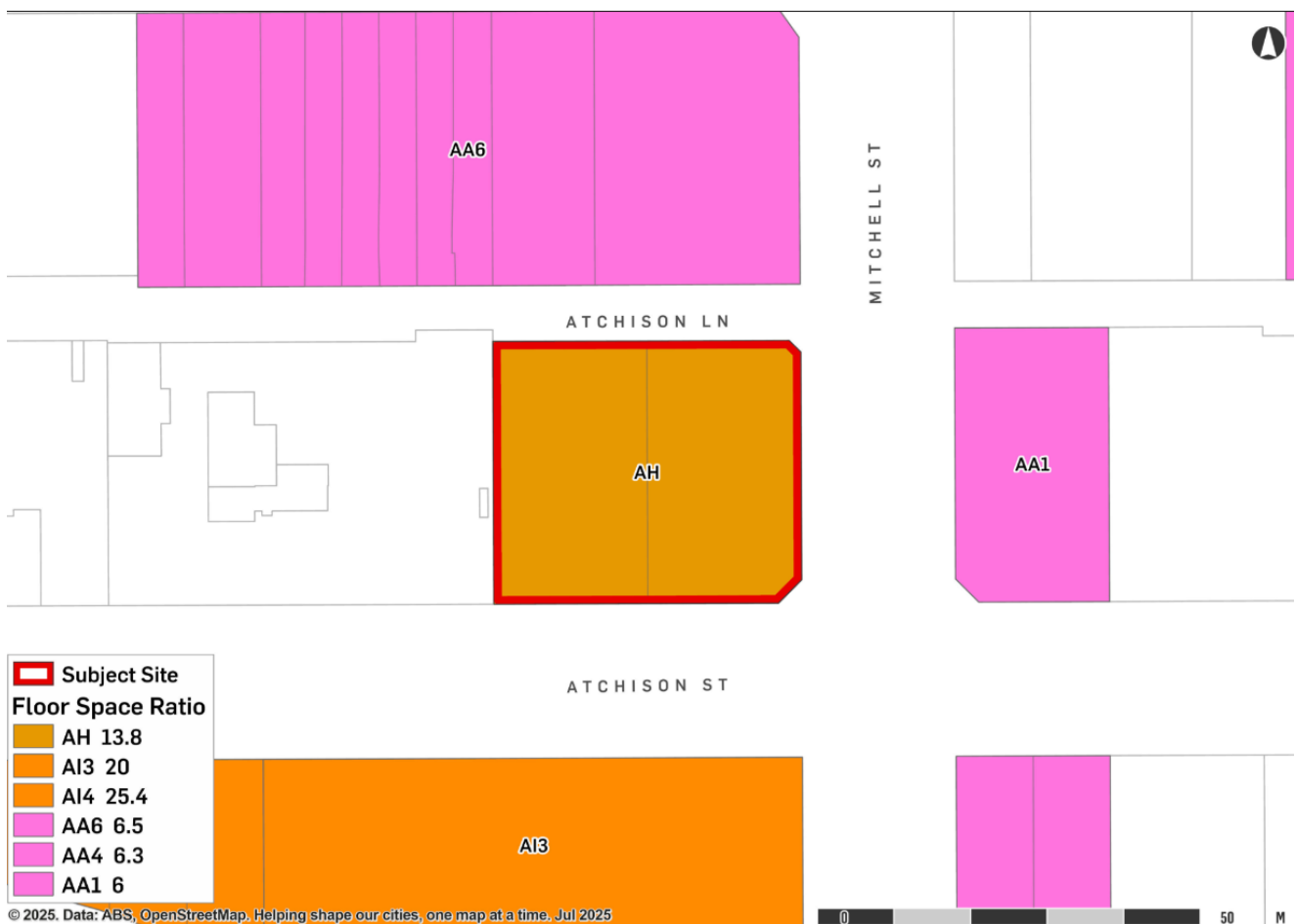
The standard proposed to be varied is the FSR standard under clause 4.4 of the NSLEP 2013.

Clause 4.4 of the NSLEP 2013 states:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The ratio shown for the land on the FSR map is 13.8:1.

Figure 2 FSR map



Source: Urbis

The FSR provision is not excluded from the operation of Clause 4.6 of the LEP.

The objectives of the development standard in the **NSLP 2013** are as follows:

- (i) *The objectives of this clause are as follows—*
 - (a) *to ensure the intensity of development is compatible with the desired future character and zone objectives for the land,*
 - (b) *to limit the bulk and scale of development.*

3.4 Type of development standard?

The request is seeking to vary the numeric FSR control.

3.5 What is the numeric value of the development standard in the environmental planning instrument?

The FSR control is 13.8:1.

3.6 What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

The variation is summarised in the following table.

Table 3 Summary of breaches to height plane

FSR Control	FSR Proposed	Proposed Variation (FSR)	Proposed Variation (GFA)
13.8:1	13.82:1	0.2:1	18,961sqm (non-compliance of 29m ²)

The figures below provide a visual representation of the proposed FSR within the building on level 30–39.

Figure 3 Tower Typical Plan Level 30-38

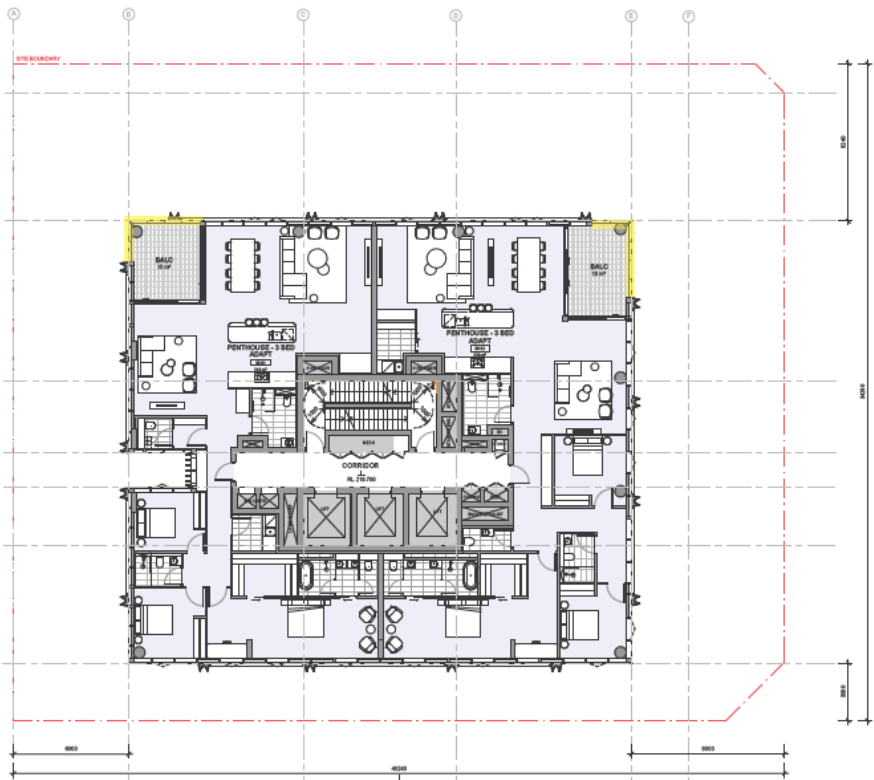
- 1400mm Glass Balustrade with Fixed Louvres Above
- 1400mm Glass Balustrade
- 1400mm Glass Balustrade with Operable Louvres Above



Source: Cox Architecture

Figure 4 Tower Plan Level 39

- 1400mm Glass Balustrade with Fixed Louvres Above



Source: Cox Architecture

4 Justification for the Proposed Variation

4.1 How is compliance with the development standard unreasonable or unnecessary in the circumstances of the particular case?

Key Questions	Response
<p>a) Are the objectives of the development standard achieved notwithstanding the non-compliance?</p>	<p>The objectives of the minimum FSR development standard are achieved, notwithstanding the minor non-compliance, as demonstrated below.</p> <p>to ensure the intensity of development is compatible with the desired future character and zone objectives for the land,</p> <p>The proposed FSR variation does not compromise the development’s compatibility with the desired future character or the applicable zone objectives for the land. On Levels 6 to 39, balcony louvres are proposed within the site’s permissible building footprint and are consistent with the intended built form and character of the area.</p> <p>The louvres support the following objective of the MUI Mixed Use zone:</p> <p><i>To create interesting and vibrant mixed-use centres with safe, high-quality urban environments with residential amenity.</i></p> <p>The louvres are proposed on the mid- to upper-level balconies (Levels 6 to 39) to mitigate wind impacts and improve balcony usability and residential amenity. Refer to Section 4.2 for further information on the wind impact of the development.</p> <p>to limit the bulk and scale of development.</p> <p>The proposed FSR variation results in no material increase to the bulk or scale of the development. The louvres are contained within the approved building envelope and do not alter the overall form of the building. Levels 6 to 29 include glass balustrades to reduce perceived bulk, while fixed louvres are confined to Levels 30 to 39 where required to address wind impacts, ensuring balcony amenity is maintained.</p>
<p>b) Are the underlying objectives or purpose of the development standard not relevant to the development?</p>	<p><i>Not applicable</i></p>
<p>c) Would the underlying objective or purpose be defeated or thwarted if compliance was required?</p>	<p><i>Not applicable</i></p>
<p>(d) Has the development standard been virtually abandoned or destroyed by the council’s own</p>	<p><i>Not applicable</i></p>

**actions in granting
consents departing
from the standard?**

**e) Is the zoning of the
land unreasonable or
inappropriate so that
the development
standard is also
unreasonable or
unnecessary?**

Not applicable

As demonstrated above, the objectives of the FSR control in the NSLEP 2013 are achieved notwithstanding the proposed contravention.

4.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify contravening the development standard:

- As a TOD accelerated precinct, St Leonards / Crows Nest is recognised for its strategic potential to deliver significant residential accommodation. The vision for the St Leonards / Crows Nest precinct is underpinned by mixed commercial and residential uses, supported by access to community uses, open spaces, and public transport. The precinct prioritises high density mixed uses within proximity of transport hubs.
- The proposed variation to the FSR control is proposed solely to ensure there is adequate amenity to the open space delivered for the residential dwellings. This aligns with the precinct's vision through its delivery of high-density, quality residential accommodation.
- Notwithstanding the non-compliance, the proposed development achieves the objectives of clause 4.4 of the North Sydney LEP as demonstrated in **Section 4.1** above.
- The proposed development is consistent with the objectives of the MUI (Mixed Use) zone in that:
 - It will continue to provide a mix of residential and non-residential uses that will meet the anticipated needs of the community.
 - It will deliver usable, high-quality balconies enhancing the sites residential amenity.
- There are no environmental impacts resulting from this non-compliance in terms of noise, overshadowing, view loss or privacy.
- The provision of an additional 1,742.5 sqm of floor space is considered appropriate to balance the intended outcomes of the development with the needs of the population. In the context of the current and projected growth within St Leonards, the proposed louvres address wind tunnelling effects typical of a dense, CBD-like environment by improving balconies year-round usability. The minor non-compliance will not result in adverse impacts on the provision of services and facilities required to meet the needs of the population.
- The proposed development continues to align with the strategic objectives of the Crows Nest TOD Precinct which seeks to boost housing supply near transport, amenities and jobs.
- If strict compliance with the planning controls were required, the building could not be delivered as proposed. Balconies on the mid- to upper-levels of the development would be unusable due to wind impacts, which would compromise the functionality and safety of the residential dwellings.
- The Wind Report at Appendix D concludes that

- To address exceedance of the 'SX' or SA-2 Safety Criterion SLR recommends implanting wintergardens on the southwestern corner balconies from levels 31 to 38.

- Permitting additional floor space or the exclusion of enclosed balconies (wintergardens) from total gross floor area is a long-accepted principle for sites within high density centres. The exclusion will enable the provision of usable outdoor space without impacting the overall total of usable floor space. This is consistent with the approach adopted within the City of Sydney LGA, and specifically the long-accepted wording of clause 4.5A of the Sydney Local Environmental Plan 2012 which states:

The consent authority may exclude the gross floor area of any existing or proposed wind-affected balcony from the calculation of the total floor space.

The proposal aligns with the intent of the clause to permit additional floor space to achieve usable open spaces for the residents.

- The intensity of use of the site remains unchanged, with no increase in building bulk proposed. The only change is the inclusion of louvres to protect mid- to upper-level balconies from wind impacts. These louvres will not result in any incompatibility with the desired future character of the locality.
- The proposed development better achieves the following objects of the EP&A Act than a compliant development:

- Section 1.3(a):

"to promote the social and economic welfare of the community and a better environment by the proper management ...[and] development ... of the State's ... resources"

The development will more efficiently use the land (part of the State's resources) in a way that creates no material adverse impacts for neighbours or the wider community. The more efficient use of the land through provision of increased floor space creates high-quality, functional and safe balconies. Without the proposed louvres, residential amenity on the mid to upper levels will be impacted, as the wind will impact balconies safety.

- Section 1.3(b):

"to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment"

The proposed increase in FSR will have no additional adverse impact on ecologically sustainable development outcomes compared to a compliant scheme. Upholding the clause 4.6 request involves a better integration of integrating relevant economic, environmental and social considerations in decision-making.

- Section 1.3(c):

"to promote the orderly and economic use and development of land"

As per the commentary for section 1.3(a) above.

- Section 1.3(g):

"to promote good design and amenity of the built environment"

The proposed contravention supports good design in several ways. As discussed above, the louvres ensure amenity is maintained on balconies that will be impacted by wind.

For these reasons it is deemed there are sufficient environmental planning grounds to justify the contravention of the development standard.

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