

Clause 4.6 Variation Request

*20-22 Atchison Street, St
Leonards*

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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 non-residential floor space ratio (**FSR**) control prescribed for the site under clause 4.4A 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 non-residential FSR 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 non-residential FSR standard 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**) and dated 14 October 2025.

This report should be read in conjunction with the Environmental Impact Statement (**EIS**) prepared by Urbis Ltd and the Architectural Plans prepared by Cox and dated 14 October 2025. 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 1 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	MU1 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 residential gross floor area, paid to North Sydney Council, to fund/provide affordable housing in the LGA in partnership with their nominated Community Housing Provider.

3 Variation of Non-Residential 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 non-residential FSR standard under clause 4.4A of the NSLEP 2013.

Clause 4.4A of the NSLEP 2013 states:

(2) The non-residential floor space ratio for all buildings within a site on any land must not be less than the ratio shown for the land on the Non-Residential Floor Space Ratio Map.

The ratio shown for the land on the non-residential FSR map is 3:1.

Figure 2 Non-residential FSR map



Source: Urbis

The non-residential 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:

- (1) *The objectives of this clause are as follows—*
- (a) *to provide for development with continuous and active street frontages on certain land in Zone E1 Local Centre, Zone MUI Mixed Use and Zone SP2 Infrastructure,*
 - (b) *to encourage an appropriate mix of residential and non-residential uses,*
 - (c) *to provide a level of flexibility in the mix of land uses to cater for market demands,*
 - (d) *to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

3.4 Type of development standard?

The request is seeking to vary the numeric non-residential FSR control.

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

The non-residential FSR control is 3:1.

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 development proposes 1.4:1 non-residential FSR (1,938sqm GFA).

The proposal seeks to reduce the minimum non-residential FSR control by 53.3%.

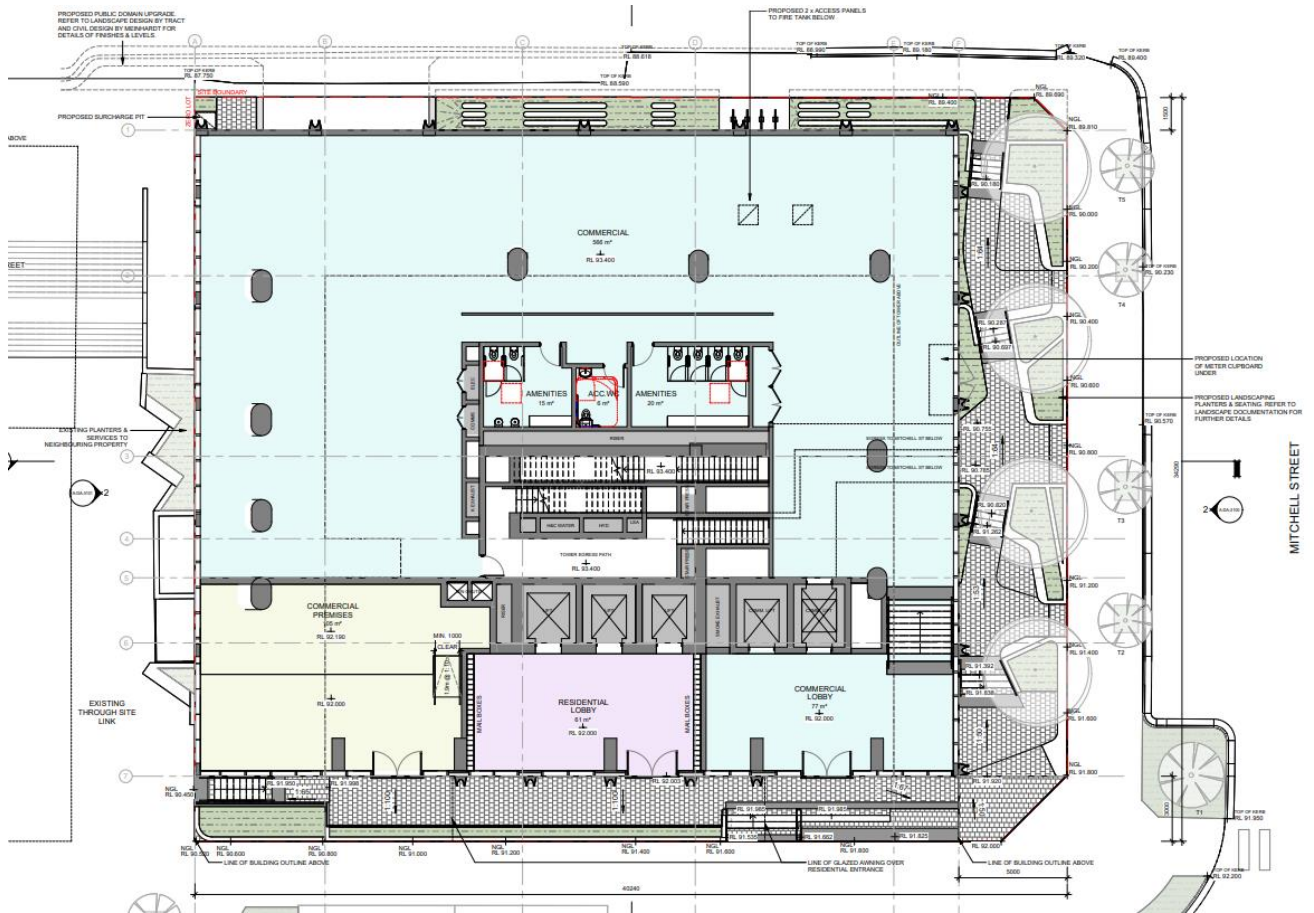
This is summarised in the following table.

Table 2 Summary of breaches to non-residential FSR standard

Non-residential FSR Control	Non-residential FSR Proposed	Proposed Variation (FSR)	Proposed Variation (GFA)
3:1	1.4:1	1.6:1 (53.3%)	2,185.2sqm

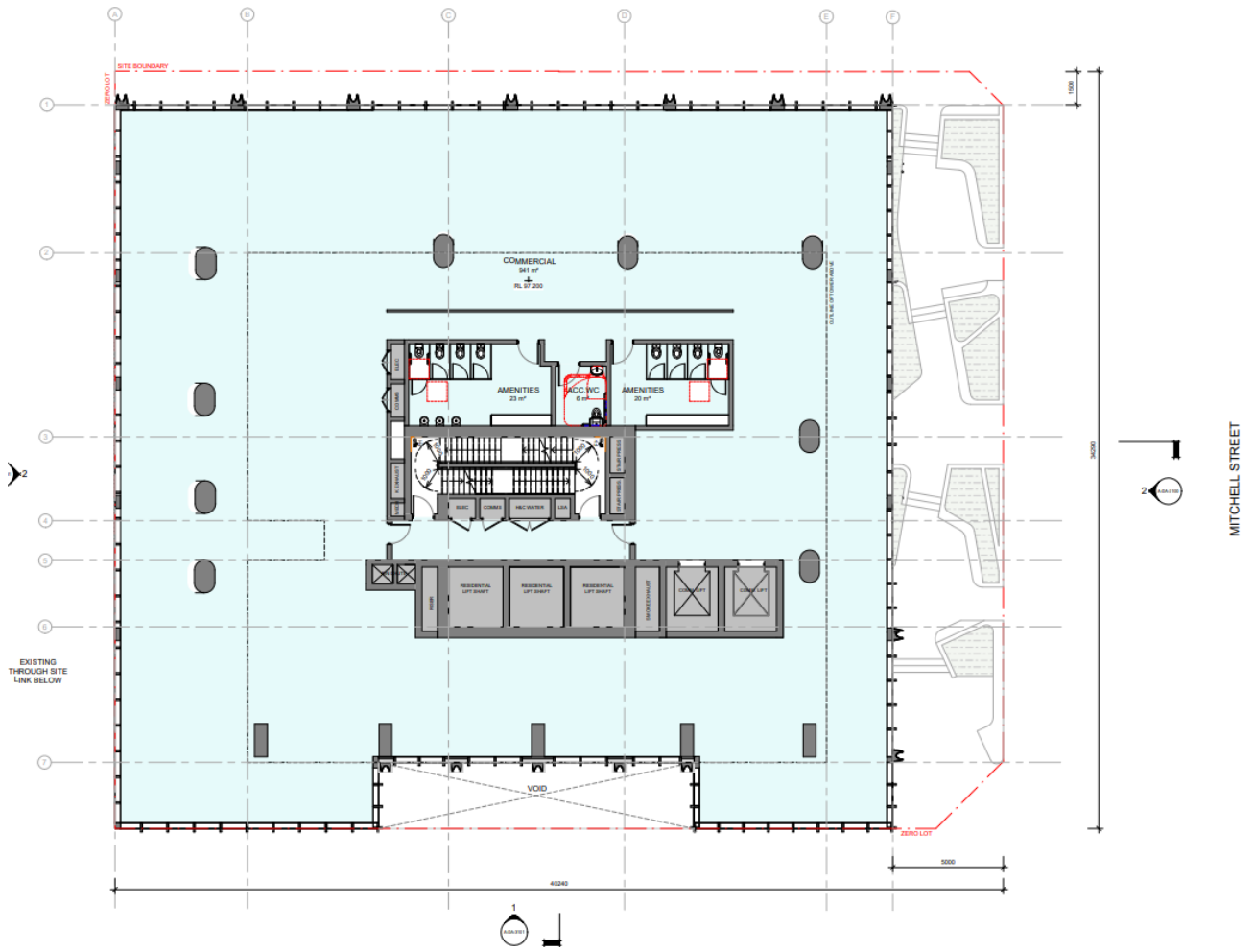
The figures below provide a visual representation of the proposed non-residential FSR within the building on ground level and level 1.

Figure 3 Ground Level Plan



Source: Cox Architecture

Figure 4 Level 1 Plan



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
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a) Are the objectives of the development standard achieved notwithstanding the non-compliance?

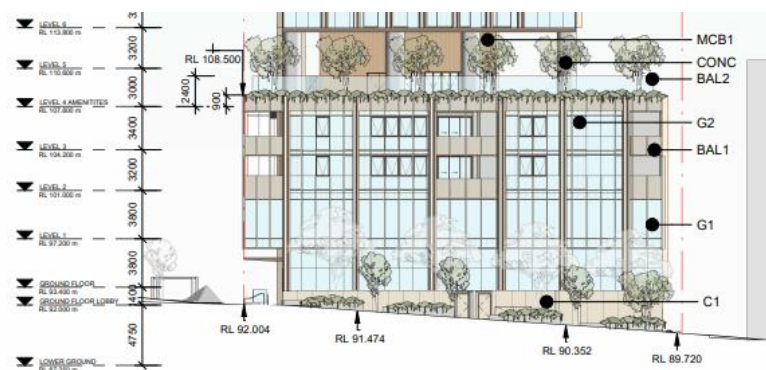
The objectives of the minimum non-residential FSR development standard are achieved, notwithstanding the minor non-compliance, as demonstrated below.

(a) to provide for development with continuous and active street frontages on certain land in Zone E1 Local Centre, Zone MUI Mixed Use and Zone SP2 Infrastructure,

The proposed minimum non-residential FSR variation does not hinder the development’s ability to provide a continuous and active street frontage to Atchison Street and Mitchell Street. As illustrated in the plan extract at **Figure 3**, the development proposes a commercial lobby and a commercial tenancy along Atchison Street. A residential lobby is also proposed in the centre of the frontage which will be highly activated by residents throughout the day. Entrances and lobbies as per of mixed-use development are permitted under clause 4.4A (6).

Along Mitchell Street, a public open space area within the ground level setback is proposed as per the Council urban domain objectives for this area and the Crows Nest TOD design guidelines. The façade of the eastern elevation of the podium is highly activated, with glazing along the façade to provide sightlines into and from the ground level commercial tenancy.

Figure 5 Eastern elevation plan



Source: COX Architecture

Along Atchison Lane, the proposed landscaping and public domain features including visitor bicycle parking is proposed to activate the eastern end of the laneway. This frontage accommodates vehicular access, fire services (fire pump, fire tank and fire control) and a substation which can be excluded from the active street frontage provision as per clause 4.4A (6).

(b) to encourage an appropriate mix of residential and non-residential uses,

The proposal will provide a mixed-use development containing residential and commercial uses, which are permissible in the MUI (Mixed Use) zone and appropriate for the site's highly accessible location. The proposed commercial tenancy at ground level will be subject to a future application to confirm the use, either a retail premises or a business premises depending upon market feedback. This will provide further diversity in the land use outcome delivered on the site.

As the centre transforms to primarily a residential precinct, in walking distance to existing retail and services in St Leonards and Crows Nest centre, the proposed non-residential scale and location is considered appropriate for this site.

As discussed in the Economic Impact Statement prepared by Urbis, there is insufficient demand for 3:1 non-residential FSR and as such the reduced proportion of non-residential FSR in the land use mix is considered acceptable for the site.

(c) to provide a level of flexibility in the mix of land uses to cater for market demands,

Consent is sought for commercial tenancy on ground level (which will either be a retail premises or business premises under a future DA) and commercial premises on ground and level 1 (office premises).

The floor plans offer a sufficient level of flexibility for the office premises on ground level and level 1 by providing a large open plan space that is able to be fully leased, or alternatively be partitioned to create smaller spaces depending on market and tenant requirements.

(d) to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.

Despite the non-compliance with clause 4.4A, the development still offers an abundance of high-quality, flexible commercial floor space to service future residents of the building and the broader community. This commercial floor space will also generate new employment opportunities.

The provision of 1,938sqm non-residential GFA in two podium levels is considered suitable for the site, particularly with regard to land use shift towards a more dominant residential centre character reflected in the recent TOD control settings that reduced the non-residential floor space control for a number of sites along Pacific Highway. The proposed quantum of non residential floorspace is appropriately scaled for the development and its contribution to creating active uses and space for a range of service offerings that will positively add to the existing retail/commercial floorspace in St Leonards and Crows Nest to support the evolving needs of a higher resident population.

b) Are the underlying objectives or purpose of the development standard not relevant to the development?

Not applicable

c) Would the underlying objective or purpose be

Not applicable

defeated or thwarted if compliance was required?

(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard? *Not applicable*

e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary? *Not applicable*

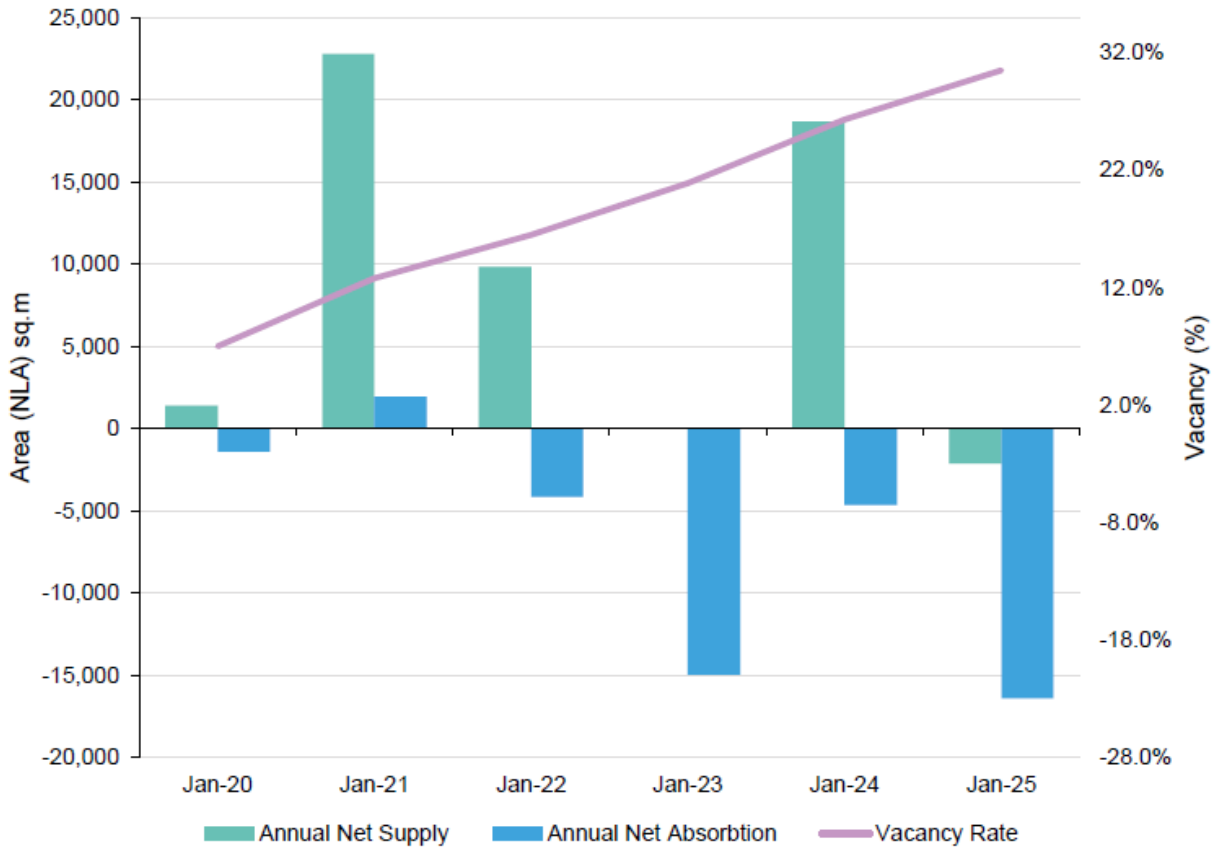
As demonstrated above, the objectives of the minimum non-residential FSR development in the NSLEP 2013 are achieved notwithstanding the proposed contravention.

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:

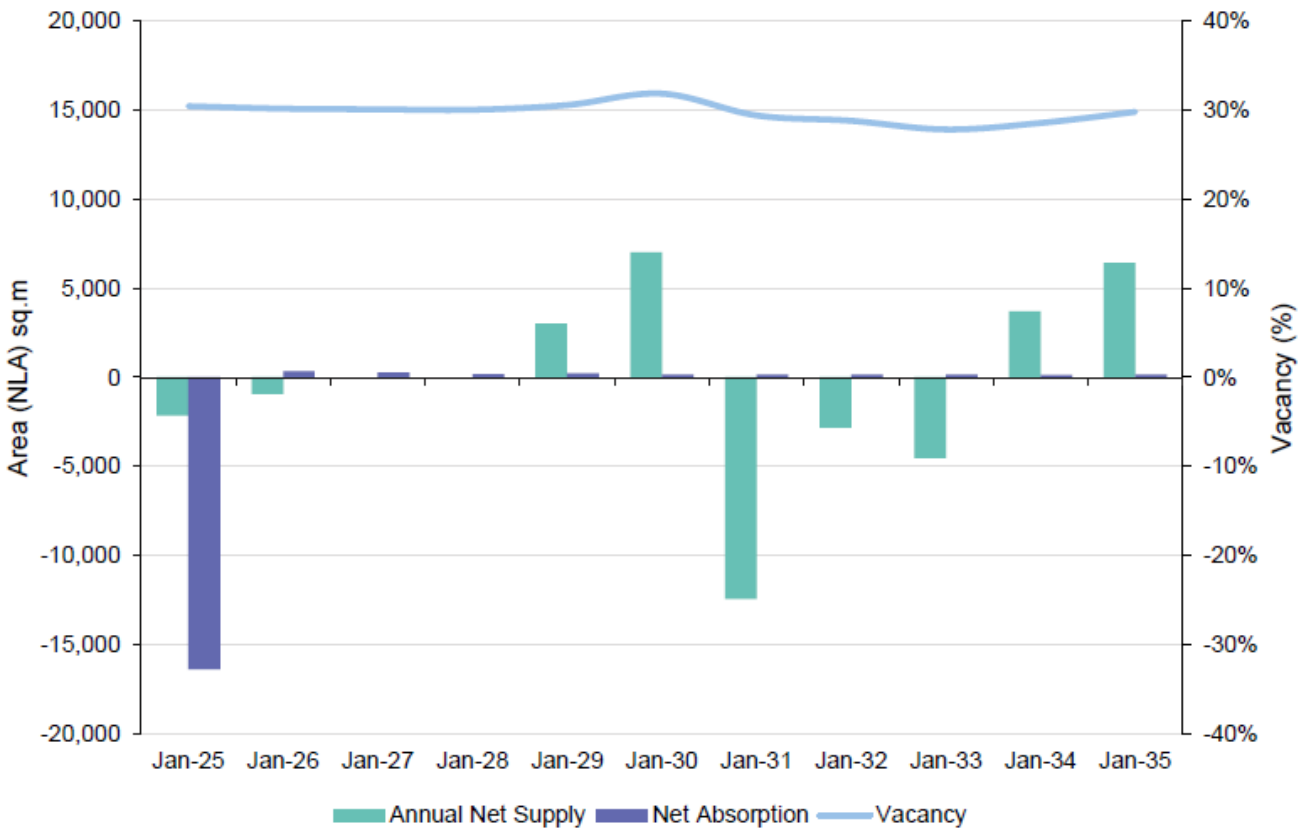
- The ability to deliver a compliant level of non-residential FSR is highly constrained by the St Leonards office market. The supporting Economic Impact Statement prepared by Urbis and appended to the EIS outlines the following:
 - In January 2025, stock of commercial office space in the Study Area was 357,418 sqm, having grown at about 3% per annum in the preceding five years. In the five years to January 2030, the growth in commercial office stock is expected to be minimal (just over 600 sqm), largely as lesser components of mixed-use developments. Notwithstanding the growth in stock observed in the past five years, an average 78 sqm per annum in net absorption have been lost since July 1990.
 - Vacancy rates in St Leonards/Crows Nest are the highest for any commercial office market in Sydney, reaching 30.5% (108,927 sqm) in January 2025, having increased significantly from 7% in January 2020. **Forecasts indicate the vacancy will remain high (above 25%) over the next ten years** as illustrated in the chart at **Figure 6** and **Figure 7**. It is therefore anticipated that delivery of a fully compliant 2,185.2sqm of non-residential GFA would remain vacant and would not deliver a successful outcome for the site. The fact that vacant supply space is not being taken up provides clear evidence and a true reflection of the long term lack of demand. **Overarching fringe office markets such as St Leonards are no longer competitive to core CBD locations.**

Figure 6 Office Study Area Annual Office Net Absorption, Net Supply and Vacancy Rate



Source: Urbis

Figure 7 Office Study Area Annual Office Market Net Absorption and Vacancy

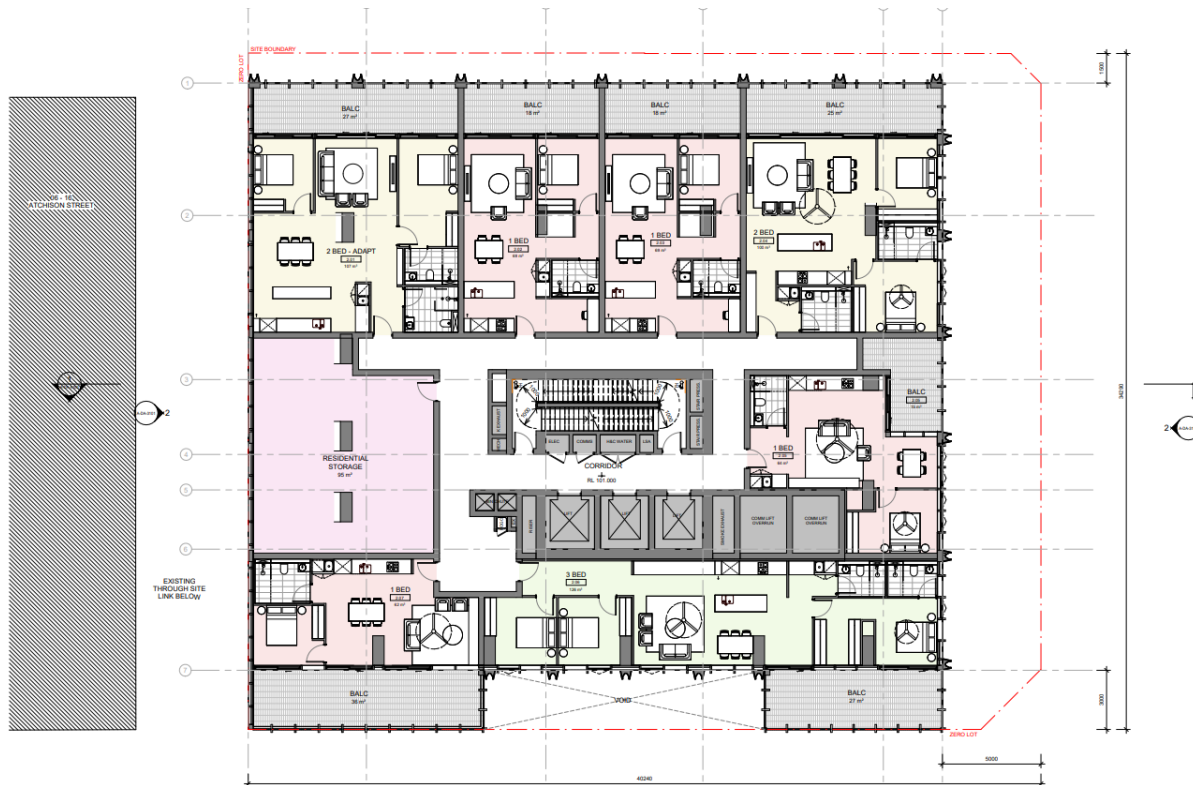


Source: Urbis

- A decline in demand for commercial office space also appears to be driven by structural changes in the commercial office market, following the widespread adoption of work-from-home (**WFH**) practices during the COVID-19 pandemic which has impacted all Sydney office markets, reducing demand for office floorspace. Notwithstanding recent return to office mandates, many places of employment have permanently adapted to hybrid working arrangements in order to attract and retain workforce.
 - Starting pre-commitment net face rents for the North Shore commercial offices market ranged from \$850 to \$1,075/sqm from 2022-2024. These rent levels enabled building construction to commence. This compares to Prime net face rents of \$665 to \$670/sqm in the Crows Nest/St Leonards office market, suggesting that **commercial developments will not be economically feasible over the next five years.**
 - The provision of commercial premises at the lower ground level on the corner of Atchison Lane and Mitchell Street is deemed unsuitable given the limited foot-traffic and relative isolation from other retail premises. A commercial tenancy in this location would similarly not be supported by the market and would face trade challenges.
 - In comparison to the above, there is ongoing demand for residential in this area. The median apartment price in the Residential Study Area commanded a premium of 52.6% above the Sydney benchmark in December 2024, reflecting the attractiveness and relatively high-demand of the Lower North Shore as a location.
 - In summary, considering the existing stock, planned additions and withdrawals of office floorstock in the area, the market would support a limited amount of commercial floorspace in the podium of the proposed development, of approximately 1,500 sqm in 2028, when the development is due for completion. The proposed non-residential FSR of 1.4:1 will be supported by the market and deliver a successful economic outcome on the site. Any additional FSR above this would not be supported by the market.
- 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 proposal, incorporates an appropriately scale non residential component that balances flexibility to support the expended market demand whilst avoiding oversupplying the entre with non-residential space with little prospect of being tenanted which will have an adverse impact.
 - The reduction in non-residential FSR enables the delivery of two additional levels of residential dwellings on level 2 and level 3. As illustrated in **Figure 8**, these two levels can accommodate a total of 14 x 1, 2 and 3-bedroom dwellings which will positively contribute to the significant demand for housing in this area. This is consistent with the objectives of the TOD SEPP and the EP&A Act and is a positive outcome for the site that mitigates the loss of commercial floor space. The dwellings achieve positive amenity, noting:
 - All dwellings are oversized and exceed the minimum internal area of the NSW ADG. Specifically, the 1-bedroom dwellings are 62sqm – 69sqm (greater than 50sqm minimum), 2-bedroom dwellings are 100sqm – 107sqm (greater than 70sqm minimum) and 3-bedroom dwellings are 126sqm (greater than 90sqm minimum). This ensures a high standard of amenity and flexibility for future residents.
 - All dwellings have access to private open space (balcony).
 - All dwellings have access to large internal storage area of 95sqm on each level.
 - The four corner units achieve cross-ventilation.
 - On level 3, five dwellings achieve a minimum of 2 hour direct solar access on 21 June between 9am – 3pm. This is reduced to one unit on level 2, however two units on this level achieve solar access

between 0 – 2 hours. Residents will also have access to the communal open space on level 4 which achieves high level of solar access.

Figure 8 Level 2 and Level 3 Plan



Source: Cox Architecture

- Notwithstanding the non-compliance, the proposed development achieves the objectives of clause 4.4A 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.
- There are no environmental impacts resulting from this non-compliance in terms of noise, overshadowing, view loss or privacy.
- The provision of 1,938sqm of non-residential floor space is deemed adequate to balance the intended outcomes of the development and the needs of the population. Given the existing and planned quantum of non-residential uses in Crows Nest and St Leonards, the minor non-compliance will not have any adverse negative impacts to the provision of services and facilities to help 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 was adhered to, then the building could not be delivered as proposed. Specifically, this would result in the loss of 14 dwellings on the site and also a loss of 10% of the monetary value of these units to be provided to Council via a contribution. Overall, this results in the loss of monetary value for affordable housing in the LGA.
- The intensity of the use of the site remains compliant notwithstanding the non-residential FSR non-compliance, as the overall FSR of the proposal is compliant. These protrusions will not lead to 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 residential floor space create an opportunity for increased residential dwellings and a higher monetary contribution for affordable housing. The provision of non-residential FSR that will not be supported by the market and likely to remain vacant is not an efficient use of the land.

- 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 reduced non-residential 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 use of the level 2 and level 3 podium for residential uses achieves high amenity for these units that is in accordance with the objectives of the NSW ADG.

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

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