

57-61 Archer Street and 34 Albert Avenue, Chatswood

Clause 4.6 Variation Request

Clause 6.25 - Non-residential floor space

Willoughby Local Environmental Plan 2012

PREPARED FOR

Chatswood Property Pty Ltd

September 2025

MECONE.COM.AU

Table of Contents

1	Introduction	3
2	Development Standard to be Varied	4
2.1	Clause 6.25 Shop top housing in Zone MU1.....	4
2.2	Is the Planning Control in Question a Development Standard?	4
2.3	Background to the Development Standard	4
3	Clause 4.6(3)(b) Sufficient environmental planning grounds to justify contravention of the development standard.....	6
3.1	Adherence to Development Standard doesn't result in improved outcomes ..	8
3.2	Exchanging residential housing for non-residential development.....	8
3.3	Economic Impacts of non-compliance are not detrimental	9
3.4	Consistency with Mixed Use Zone Objectives	10
3.5	Future Vision for Chatswood CBD	10
4	Clause 4.6(3) Justification for Contravention of the Development Standard	12
4.1	Clause 4.6(3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances.....	12
4.1.1	First way: The objectives of the standard are achieved notwithstanding non-compliance with the standard	12
5	Conclusion	15



1 Introduction

This updated Clause 4.6 Variation Request accompanies the Request for Further Information (**RFI**) for the State Significant Development Application (**SSDA**) for a shop-top housing development at 57-61 Archer Street and 34 Albert Avenue, Chatswood (**SSD-72891212**). The development proposes to vary the development standard for non-residential floor space provision pursuant to Clause 4.6 of the *Willoughby Local Environmental Plan 2012 (LEP 2012)*.

The objectives of Clause 4.6 are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

This Clause 4.6 Variation Request demonstrates that strict compliance with the non-residential floor space development standard is unreasonable and unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify the contravention.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance, the proposed development will:

- Provide much-needed affordable housing within a highly accessible location, whilst utilising additional height and floor space ratio (**FSR**) made available via Chapter 2 of the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*;
- Provide a suitable amount of non-residential floor space within the building podium to promote commercial and retail activity in the Chatswood CBD;
- Enable high-quality retail tenancies on the ground level to activate street frontages to both Albert Avenue and Archer Street;
- Attract pedestrian traffic and contribute to the vibrancy of the public realm on Albert Avenue and Archer Street;
- Provide a three-level podium that is comprised entirely of non-residential uses;
- Encourage a mix of retail and commercial uses across three floors, that will generate employment opportunities;
- Contribute to the provision of employment floor space within in the Chatswood CBD;
- Optimise the provision of non-residential floor space within the site's building envelope;
- Create residential opportunities on the edge of the Chatswood CBD whilst supporting the economic growth of the MUI Mixed Use zone; and
- Respond to the desired future character of the locality.

Therefore, the development application can be supported notwithstanding the breach of the Clause 6.25 minimum non-residential floor space development standard in accordance with the flexibility afforded under Clause 4.6 of the LEP 2012.



2 Development Standard to be Varied

The development standard sought to be varied under this written request is Clause 6.25 Shop top housing in Zone MU1 under the LEP 2012.

2.1 Clause 6.25 Shop top housing in Zone MU1

Clause 6.25 of Willoughby LEP 2012 states:

*“Development consent for the purposes of shop top housing on land in Zone MU1 Mixed Use must not be granted unless the consent authority is satisfied **at least 17% of the gross floor area of the building will be used for non-residential purposes.**”*

The proposed development has a total gross floor area (GFA) of 17,187m², which equates to an FSR of 6.5:1. Based on the 17% requirement in Clause 6.25, the minimum non-residential GFA required is 2,921.62m².

The proposal includes 2,094.43m² of non-residential floor space, which represents 12% of the total GFA – resulting in a shortfall of 827.19m².

Non-residential uses are distributed across three levels: Ground Floor, Level 1, and Level 2, and include both retail and commercial spaces – see **Figures 1 and 2** below.

2.2 Is the Planning Control in Question a Development Standard?

The non-residential floor space requirement under Clause 6.25 of the LEP 2012 is a development standard involving a measurable quantum that can be varied.

It is noted that Clause 6.25 has no objectives, as such reference is made to **Section 4.1 and 4.3** of this report, which discusses the intent of Clause 6.25 as set out in the Department of Planning, Housing and Infrastructure (DPHI) endorsed *Chatswood CBD Planning and Design Strategy 2036* (Chatswood CBD Strategy).

2.3 Background to the Development Standard

Under Willoughby Council's [Chatswood CBD Planning and Urban Design Strategy 2036](#) (Sept 2020) it is Council's key intention is to drive additional employment growth in the CBD of Chatswood.

This meant significantly boosting employment growth in the Chatswood CBD core and to allow for balance of some commercial development with residential development in the Mixed Use zoned areas on the peripheral areas of the CBD core – which is where the subject site is located. The other objective for commercial development in the peripheral areas of the CBD was to activate the ground floor levels of new development in these areas.

The Strategy also states:

“A satisfactory level of commercial in the B4 Mixed Use zone is to be within the podium levels of a development, typically resulting in two levels of commercial uses which in a development achieving 6:1 would be a commercial FSR of 1:1. This will be moderated depending on the overall FSR.”

The proposal fully achieves the aims of the strategy by activating the site's street frontages and includes three levels of commercial development; being one more level than intended by the Strategy.

The strategic intent for a minimum 1:1 FSR for commercial uses has not been accurately reflected in Clause 6.25 of the LEP, which instead requires 17% of the total Gross Floor Area (GFA) to be allocated to commercial floor space. This shift from a ratio-based approach to a percentage of total GFA has introduced a misalignment with the original policy objective.



Added to this a 1:1 FSR does not equate to two floors of development in practical terms. Applying a strict 1:1 commercial FSR would instead result in a significant over-provision of commercial space, which may not be viable or contextually appropriate—particularly in areas with limited demand for commercial uses. This could lead to underutilised spaces and compromise the feasibility of these spaces – contrary to the objectives for employment outcomes under the Council's Strategy.

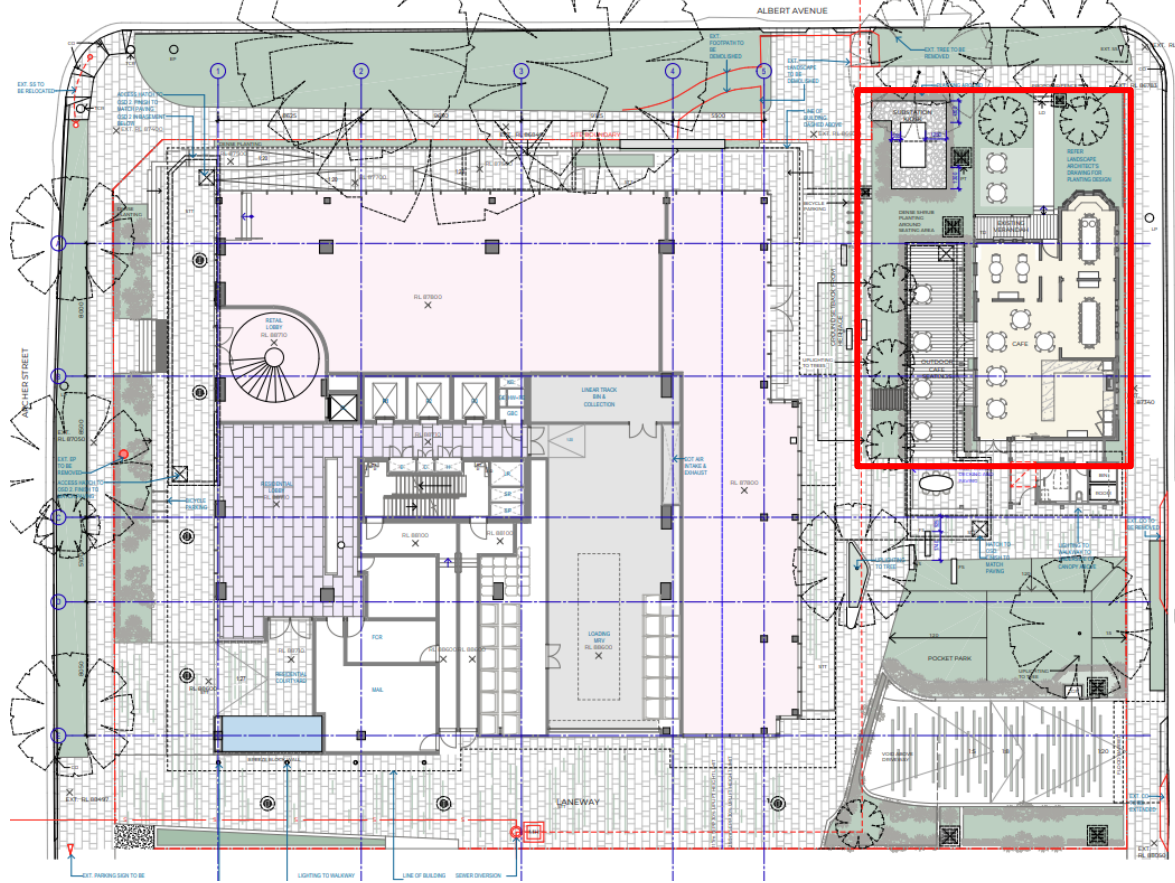
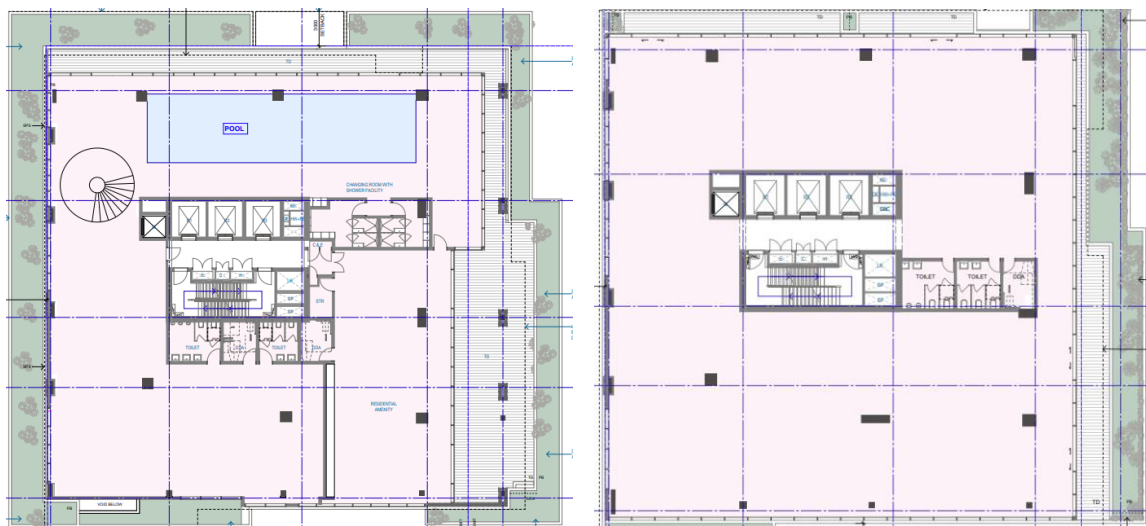


Figure 1: Ground level plan showing location of heritage item on the site in red outline

Source: Woods Bagot 2025





Level 1 commercial floor space

Level 2 commercial floor space

Figure 2: Proposed commercial floor space within Level 1 and Level 2

Source: Woods Bagot 2025

3 Clause 4.6(3)(b) Sufficient environmental planning grounds to justify contravention of the development standard

There are sufficient environmental planning grounds to justify the proposed variation to the minimum 17% non-residential floor space development standard under Clause 6.25 on the basis that:

- The proposed quantum of non-residential floor space in the proposal results from the provision of an appropriate building envelope that is compliant with infill affordable housing requirements and the building height and FSR standards under Section 16 of the Housing SEPP.
- The proposed non-residential floor space provision is wholly consistent with the underlying objective of the standard as demonstrated in **Section 4.1.1** of this report.
- To provide the additional 827.19m² of commercial space to ensure full compliance with the 17% of commercial floor space would mean that additional podium storey would be required. This would be a significant design change, which does not align with the design expectations of the Chatswood CBD Strategy (being 2-3 storeys and not 4 storeys) and the principles of the Housing SEPP.

Any further increase in podium form would also result in greater overshadowing impacts and likely result in a bulkier building mass, which may not have resulted in obtaining endorsement through the design excellence review process.

- It is noted that surrounding buildings, such as the Quest Building does not have a podium and is 10 storeys in height. Notwithstanding this, the Quest Building only has frontages to Albert Avenue and Archer Street and does not front the low density residential properties in the South Chatswood Heritage Conservation Area (HCA), which a sensible height transition is required to minimise the amenity impacts to the low density dwellings across Bertram Street.
- The proposed non-residential floor space provision is consistent with the intent of the Chatswood CBD Strategy as it contributes to a moderated supply of employment floor space

in the Chatswood CBD that will not detract or conflict with the high level expected employment growth in the CBD core. The site is not within the nucleus of the CBD, where there is a greater expectation that employment is delivered. Despite this, the site maintains an active ground plane and podium of commercial that satisfies the intent of the control and is suitable for the site's location.

- The proposed non-residential floor space includes active ground level uses that enhances street engagement and improves visual surveillance of and amenity of the adjoining public domain. Additional commercial floor space would not further activate street levels of the development.
- Together with the commercial tenancies on Levels 1 and 2, the development contributes to the supply of employment-generating floor space in the Chatswood CBD. This supports local job creation and aligns with the "30-minute city" objective outlined in the North District Plan and the Greater Sydney Region Plan – A Metropolis of Three Cities.
- Replacing 827.19m² of residential floor space with additional non-residential uses would result in the loss of approximately 11 apartments. This significantly undermines the core objective of the Housing SEPP, which is to maximise the delivery of infill affordable housing.

Such a reduction directly compromises the policy's intent to increase housing supply and affordability, particularly in well-connected urban centres like Chatswood. Preserving these residential units is essential to achieving broader strategic housing targets and ensuring equitable access to housing opportunities. Furthermore, this would necessitate changes to the overall building design and balance of podium and tower elements, which has been supported via a rigorous competitive design process and integrity review.

- The ability to expand the building footprint is significantly constrained by the need to retain and integrate the heritage-listed item within the development while also providing an at grade pedestrian plaza and ground-level open space. These design elements are essential to preserving local character and enhancing public amenity, but they inherently restrict opportunities for a larger built form that could accommodate further commercial development.
- The proposed development been designed to optimise the provision of non-residential uses whilst also accommodating the spatial requirements of ground level loading and waste collection by a MRV truck and building services requirements and vertical circulation. This design outcome has resulted in a reduction in available ground level non-residential floor space while improving functionality of the development.
- The proposed variation to the non-residential floor space standard, does not affect the proposed development's ability to provide a shop top housing development that is of appropriate bulk and scale. Notably, the proposal is compliant with the maximum 117m building height and maximum overall FSR of 6.5:1 allowable under the 30% uplift provided by Part 2, Division 1 of the Housing SEPP. Compliance with these other key controls will deliver a high density shop top development that is reflective of the desired future character of the Chatswood CBD while also contributing much needed housing supply.



3.1 Adherence to Development Standard doesn't result in improved outcomes

Conversely strict adherence to the 17% non-residential floor space requirement under Clause 6.25 would likely lead to suboptimal planning and design outcomes, including:

- **Reduced Housing Supply:** Increasing non-residential floor space within the development would directly reduce the number of residential units by 11 apartments, undermining the Housing SEPP's objective to maximise housing delivery in an area with good access to public transport and existing high levels of employment in the key centre of Chatswood.
- **Increased Podium Height:** Expanding commercial space within the podium would necessitate additional storeys, resulting in greater overshadowing impacts – particularly on the South Chatswood HCA.
- **Loss of Deep Soil and Landscaping:** Accommodating more commercial space while maintain the existing number of floor levels would compromise landscaped areas, especially along the northern and eastern site boundaries, thereby diminishing environmental and amenity outcomes. This would be contrary to the overall form of the development as endorsed via the competitive design process.
- **Higher Parking Demand:** Additional commercial floor space would increase parking requirements, placing further pressure on site capacity and potentially reducing space available for other uses.
- **Expanded Service Infrastructure:** More commercial tenancies would require larger waste collection and loading facilities, complicating site logistics and reducing usable floor area for residential or public domain purposes.

All of these options would either diminish the public benefits, amenity and design of the development, and generated unnecessary additional environmental impacts. Furthermore, they would undermine the design excellence of the scheme and be inconsistent with the merits of the design competition scheme which were identified by the design competition jury in the Design Competition Report dated 21 September 2023 (**Appendix AM**).

Given the site's location at the periphery of the CBD, a sensible building height transition is required to minimise the amenity impacts to the low density dwellings across Betram Street. Therefore any increases in the proposal's podium height to accommodate additional non-residential floor space would undermine the transition in height and scale between the proposed built form and the single to double storey dwellings to the east.

3.2 Exchanging residential housing for non-residential development

Removing market housing to provide for compliant non-residential floor space is inconsistent with the objectives of the Housing SEPP relating to the encouraging the development and delivery of housing and contradicts NSW Government's commitment to boosting housing supply under the National Housing Accord. Further, if the market housing is reduced, the quantum of affordable housing would be consequentially reduced in accordance with the provisions in Section 16 of the Housing SEPP and Clause 6.8 of WLEP 2012. This would defeat the objectives of the project to provide new housing on the site.

Importantly, adjusting the proposal to achieve strict numerical compliance with the standard by reducing the quantum of affordable housing is unreasonable as it contradicts the objective in Section 15A of the Housing SEPP relating to facilitating the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

Reducing the provision of housing is also inconsistent with the NSW Government's commitment to delivering 377,000 new homes across the state by 2029 and the 5-year housing target of 3,400 new homes for the Willoughby LGA under the National Housing Accord.



3.3 Economic Impacts of non-compliance are not detrimental

The departure from the Clause 6.25 development standard also has minimal economic consequences for the bigger economic picture that Willoughby Council is seeking to achieve under its Strategy for Chatswood CBD.

The proposed 2,247m² of non-residential floor space still represents significant contribution to employment floor space in the mixed-use zone, which will support the economic growth and reinforce the commercial role of the Chatswood CBD core. Despite the numerical departure, the extent of variation is numerically small in the context of the wider CBD which seeks to significantly boost jobs growth. The Strategy aims to boost employment opportunities on all sites in the edge of the CBD but also in its core areas, but it's real focus is driving high employment outcomes for its core part, not the peripheral areas of the CBD, which is where the site is situated.

The proposed deficit of 827.19m² of non-residential development in is both insignificant and imperceptible in a CBD location that already has significant non-residential floor space built form outcomes and is also expected to experience high level growth throughout the CBD with other similar mixed use and new commercial developments.

The proposed non-residential floor space provision is consistent with the underlying objectives and aims of the Chatswood CBD Strategy as demonstrated in **Section 3.1** of this report.

Further commercial development at the upper floors of developments in the peripheral areas of a CBD, like where the site is situated, are not considered favourable as they often face greater viability changes given that:

- Commercial tenants often prefer more central CBD locations with better access to transport and amenities, for which there are numerous opportunities in the CBD Core that can offer this type of space;
- Upper level commercial spaces often require more extensive fit-outs (eg. HVAC, fire safety, vertical access) and these costs can outweigh the potential rental income; and
- Tenants prioritise more visible spaces at ground or first level commercial premises as they are more notable to passing pedestrians, especially if those businesses rely on foot traffic and visibility.

Moreover, commercial office vacancy rates in the Chatswood CBD have been historically high. This reflects broader market trends across metropolitan Sydney, driven by:

- The rise of hybrid work models
- Reduced demand for large, long-term leases
- A shift toward smaller, more flexible workspaces

Therefore, additional commercial space within the development and beyond that currently proposed could well lead to more vacant and less desirable commercial space in the CBD.



3.4 Consistency with Mixed Use Zone Objectives

The proposal is also consistent with the following objectives of the MU1 zone:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To allow for city living on the edges of the city centre of Chatswood, which encourages public transport use, shopping and the use of businesses and recreational services that contribute to the vitality of the city, without undermining its commercial role.*

The reasons for the proposed development's consistency with the MU1 zone objectives are that it:

- Enables the provision of residential, retail and commercial uses within the building;
- Encourages a range of potential non-residential uses, making the space versatile to a range of employment uses; and
- Provides active street frontages, a pedestrian plaza and through site links that will attract pedestrian traffic, thus contributing to the provision of vibrant, diverse and functional streets.

The proposed non-residential uses will be located within the podium of the building in a highly accessible location within the Chatswood CBD. The site is within close proximity to the Chatswood Transport Interchange, which will promote public transport patronage.

The proposal will facilitate city living on the edge of the Chatswood CBD and contribute to the vitality of the city centre. The provision of non-residential floor space within the development will support the economic growth of the Chatswood CBD without undermining the commercial role of the CBD core.

Based on the above appraisal the proposed development has numerous environmental grounds to justify the variation sought to Clause 6.25 of LEP 2012.

3.5 Future Vision for Chatswood CBD

As previously noted, the Chatswood CBD Strategy has been in effect since 2018. It was fully endorsed by the Department of Planning, Housing and Infrastructure (DPHI) and formally implemented through LEP Amendment No. 34 in June 2023. The current proposal aligns with the Strategy's objectives, particularly regarding the provision of non-residential floor space, as outlined below.

The key and relevant aims of the Chatswood CBD Strategy include:

- **Achieve a sustainable balance between commercial, retail, residential, education, cultural and other uses to ensure on-going vibrancy (p. 6).**

Response: The proposed development supports this objective by offering a balanced mix of residential, commercial, and retail spaces. It creates a high-density living environment with easy access to local services, shops, and employment. Ground-level retail and public domain improvements along Albert Avenue and Archer Street will activate the street frontages and enhance pedestrian amenity.

The combination of residential and non-residential floor space is well-suited to the area, contributing to the vibrancy of both the development and the broader Chatswood CBD. The residential component will reinforce the commercial core by placing a high-density population close to key cultural, community, and business facilities.



- **Ensure Chatswood's future as an employment centre is protected whilst allowing capacity for strong residential growth at the edge of the CBD (p. 11).**

Response: The proposed development supports the continued role of the Chatswood commercial core as a key employment centre, while encouraging residential growth on the periphery of the CBD. All non-residential floor space is located within the building podium, helping to activate the street frontage and enhance the vitality of this mixed-use development. This location serves as an extension of the CBD, distinct from the commercial core.

Chatswood's commercial core will retain its status as a major employment hub, offering a diverse range of office spaces and retail facilities, and continuing to play a vital role in the Eastern Economic Corridor.

The development aligns with the Chatswood CBD Strategy by promoting high-density residential growth at the CBD's edge. It will increase the supply of housing and contribute to a more diverse and vibrant residential population. In line with LEP 2012, affordable housing contributions will also be made to support housing diversity and accessibility.

Overall, the proposed shop top housing will complement, and not compete with, the commercial function of the city centre. It will deliver a well-designed, mixed-use development that enhances the vitality of the CBD fringe, consistent with the vision of the Chatswood CBD Strategy.

- **Deliver sufficient floorspace appropriate to the projected growth requirements for Chatswood CBD (p. 11).**

Response: *The Greater Sydney Region Plan* identifies Chatswood as one of nine key commercial office precincts across the city. According to the North District Plan, Chatswood must grow its employment base to meet a baseline target of 31,000 jobs, with a stretch target of 33,000 jobs by 2036—an increase of 6,300 to 8,300 jobs.

The Chatswood CBD Strategy emphasizes the need to meet these targets and maintain Chatswood's competitive share of office employment among Greater Sydney's strategic centres. However, it also acknowledges a challenge: residential development currently offers higher financial returns, placing pressure on existing office space and limiting future commercial growth. Without provisions for shop top development, most new projects would likely prioritize residential use over commercial.

The proposed shop top development directly addresses this issue by integrating both residential and commercial uses. It responds to rising demand for housing and employment opportunities while contributing 2,247m² of non-residential floor space – which is a meaningful addition to Chatswood's employment capacity. Although it involves a variation to the minimum non-residential floor space standard, the proposal balances market realities with strategic planning goals. It also supports the vitality of the Chatswood CBD by delivering high-quality housing alongside commercial space, helping sustain the area's role as a dynamic and diverse urban centre.



4 Clause 4.6(3) Justification for Contravention of the Development Standard

Clause 4.6(3) of LEP 2012 provides that:

4.6 Exceptions to Development Standards

(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that -*

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify contravention of the development standard.*

Furthermore, Clause 4.6(1) of LEP 2012 allows for exceptions to development standards where it meets the following objectives:

- (a) to provide an **appropriate degree of flexibility** in applying certain development standards to particular development,*
- (b) to achieve **better outcomes** for and from development by allowing flexibility in particular circumstances.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court (LEC) in:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
- *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [39]
- *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065

The relevant matters contained in Clause 4.6 of LEP 2012, with respect to the minimum non-residential floor space development standard, are each addressed below, having regard to these decisions.

4.1 Clause 4.6(3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances

The LEC judgement in *Wehbe v Pittwater Council* [2007] NSW LEC 827 sets out five possible ways for strict application of a standard to be unnecessary or unreasonable. In applying the tests of *Wehbe* to the proposal, the 'first way' is relevant to establishing that compliance with the minimum non-residential floor space development standard pursuant to Clause 6.25 of LEP 2012 is unreasonable or unnecessary:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.

4.1.1 First way: The objectives of the standard are achieved notwithstanding non-compliance with the standard

Clause 6.25 does not specify objectives for the non-residential floor space development standard. However, its intent is clearly outlined in the Chatswood CBD Strategy, which has been endorsed by both Council and the Department of Planning, Housing and Infrastructure (DPHI).

The Strategy aims to increase non-residential floor space within the Chatswood CBD to drive employment growth and strengthen its role as a Strategic Centre. To support this, the CBD boundary was expanded to the north and south, incorporating areas zoned MU1 Mixed Use. These fringe areas are intended to deliver key housing opportunities while accommodating smaller-scale commercial uses that complement and support the E2 Commercial Core zone at the heart of the CBD.



To support job growth in the Chatswood CBD, the Chatswood CBD Strategy initially proposed a minimum non-residential FSR of 1:1 for peripheral sites like the subject site. This non-residential space was intended to be delivered within the podium levels of developments with a maximum total FSR of 6:1.

However, during the planning proposal process, this standard was revised. The requirement was moderated to 17% of the total GFA to account for sites with lower achievable FSRs due to constraints such as site-specific conditions, surrounding context, and built form controls. One key constraint is the Sun Access control in Clause 6.15 of LEP 2012, which affects large parts of the CBD and limits development potential on certain sites.

At Page 33, the Chatswood CBD Strategy states that the objective of the recommended 1:1 minimum non-residential floor space standard (later converted to 17%) is as follows:

- *The objective of this Key Element is to achieve a **satisfactory level of commercial** in the B4 Mixed Use* zone to deliver a reasonable amount of **employment floor space**, typically to be **within the podium** levels of a development. This will be moderated depending on the overall FSR.
(our emphasis)*

*Note: the B4 Mixed Use zone is now referred to as the MU1 Mixed Use under the LEP 2012.

Further to the above, Section 3.1 of the Chatswood CBD Strategy provided key elements to guide future LEP and DCP controls*, including street frontage wall heights, which essentially constrains the podium levels and availability of non-residential floor space, noting that the site is subject to a maximum street wall height of 24m (to Albert Avenue) and 7m to Bertram Street,

*Street wall heights applicable to the subject site have since been adopted into the Willoughby Development Control Plan.

Response: The proposed development responds to a number of site-specific constraints which compete for, or constrain space within the podium:

- LEP - Clause 6.7 (Active Frontages), which are required to Archer Street and Albert Avenue.
- DCP - Control 4.3.4 (Setbacks and street frontage heights):
 - Southern precinct:
 - maximum 6m setback at ground level from front boundary
 - no setback from podium to tower
 - Bertram Street interface:
 - minimum 6m setback at ground level from front boundary
 - maximum 7m street wall height
 - minimum 3m setback above street wall to tower
 - Albert Avenue south:
 - minimum 3m setback at ground level from front boundary, with intermitted wider open space
 - maximum 24m street wall height
 - 3m setback above street wall to tower
- DCP - Clause 4.3.1 (Built Form)
 - Requirements relating to substations, fire egress and building services



The proposed 2,247m² of non-residential floor space within the podium of the development directly supports the objectives of the Chatswood CBD Strategy in the following ways:

- No residential floor space is located within the podium, ensuring the space is fully dedicated to non-residential uses.
- The podium includes two retail floor plates at ground level and a commercial floor plate across Levels 1 and 2, delivering three levels of non-residential activity (refer to **Figures 1 and 2**).
- Retail tenancies are strategically positioned to activate the street frontages along Albert Avenue and Archer Street, as well as the proposed pedestrian plaza. This layout enhances street-level engagement and provides passive surveillance of public domain areas.
- A substantial portion of Level 1 is allocated to commercial use, offering flexible space that can adapt to future commercial needs. The floor plate is designed to accommodate multiple tenancies, supporting businesses of varying sizes.
- The commercial space contributes to local employment opportunities in a highly accessible location, supporting the concept of a 30-minute city and helping to generate new jobs within the Chatswood CBD.

Although the proposal involves a variation to the minimum non-residential floor space standard, it makes optimal use of the site's constraints and complies with other relevant LEP and DCP controls that underpin Clause 6.25. In the absence of specific LEP objectives for Clause 6.25, the scale and design of the non-residential component are considered appropriate and consistent with the intent of the Chatswood CBD Strategy.



5 Conclusion

This Clause 4.6 Variation Request is for a variation to the minimum non-residential floor space development standard under Clause 6.25 of LEP 2012. The request justifies the contravention of the development standard in the terms required under Clause 4.6 of LEP 2012.

As demonstrated throughout this Variation Request, the variation sought to Clause 6.25 is well-founded in this instance and the granting of a Clause 4.6 variation to this development standard is appropriate because:

- The proposed non-residential floor space provision results from the provision of affordable housing by utilising building height and FSR uplifts under Chapter 2 of the Housing SEPP.
- Compliance with the development standard is unreasonable and unnecessary;
- There are sufficient environmental planning grounds to justify the contravention of the development standard;
- The presumed objectives of the standard are achieved notwithstanding the non-compliance with the standard;
- The proposed development is consistent with the future vision of Chatswood CBD as discussed in this report;
- The extent of variation is considered minor and is imperceptible in the context of the wider Chatswood CBD; and
- The proposal represents an optimal development outcome when compared to scenarios for achieving strict compliance.

Accordingly, the proposed variation to the minimum non-residential floor space development standard is well-justified and warrants approval.

