



Clause 4.6 Variation Request

Novus on Victoria, Chatswood - Build-to-Rent (SSD-63324208)

410-416 Victoria Avenue, Chatswood

Submitted to Department of Planning, Housing and Infrastructure
on behalf of Novus Investco Pty Ltd

Prepared by Colliers Urban Planning

9 October 2025 | 2230512



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Colliers Urban Planning acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past and present.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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1.0 Introduction

1.1 Overview

This Clause 4.6 Variation Request has been prepared by Colliers Urban Planning (formerly Ethos Urban) on behalf of Novus Investco Pty Ltd (Novus) (the Applicant). It is submitted to the Department of Planning, Housing and Infrastructure (DPHI) in support of a State Significant Development Application (SSDA) for the proposed Novus on Victoria Build-to-Rent (BTR) project (SSD-63324208) located at 410-416 Victoria Avenue, Chatswood (the Site).

Clause 4.6 of the *Willoughby Local Environmental Plan 2012* (Willoughby LEP) enables the consent authority to grant consent for development even though the development contravenes a development standard. This Clause 4.6 Variation Request relates to the development standard for car parking relating to non-discretionary development standards under Section 74(2)(d)(i) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) and should be read in conjunction with the Environmental Impact Statement (EIS) dated 16/04/2025 and Submissions and Amendments Report dated 08/08/2025.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied that:

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

This document demonstrates that compliance with Section 74(2)(d)(i) development standards for non-discretionary development standards is unreasonable and unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of Clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulations).

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the car parking non-discretionary development standard:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard.
- There are sufficient environmental planning grounds to justify the variation as the proposed car parking is consistent with the planning intent of the Housing SEPP.
- The development Site is in a highly accessible location, within close proximity to a variety of public transport connections and infrastructure, including heavy rail, metro, bus and cycleways, and therefore does not require additional parking.
- As no private car parking is provided on Site, traffic generation by residents is negligible.
- The accessible car share space provided will not result in adverse environmental impacts.

Therefore, the SSDA may be approved with the variation to Section 74(2)(d)(i) of the Housing SEPP in accordance with the flexibility allowed under Clause 4.6 of the Willoughby LEP.

1.2 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in several decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;

- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this clause 4.6 variation request:

- Identifies the Site and proposed development (**Section 2.0**);
- Identifies the development standard to be varied (**Section 3.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**).

2.0 Site and Proposed Development

2.1 Site Description

The Site is located at 410-416 Victoria Avenue, Chatswood, within the Willoughby City Council LGA. The Site is located within the Chatswood CBD and is approximately 50m East of the Chatswood Transport Interchange, located 5.6km Northwest of the North Sydney CBD, and 7.8km Northwest of the Sydney CBD.

The Site is generally rectangular in shape and is Site bounded by Victoria Avenue to the north, Victor Street to the east, and Post Office Lane to the south. It is located within the Willoughby City Council Local Government Area (LGA). The Site has an area of approximately 1,050sqm and is legally described as and comprises of:

- Lot A and B in DP406105 (410-414 Victoria Avenue, Chatswood); and
- Lot 4 in DP82303 (416 Victoria Avenue, Chatswood).

A Site aerial image is provided in **Figure 1** below.

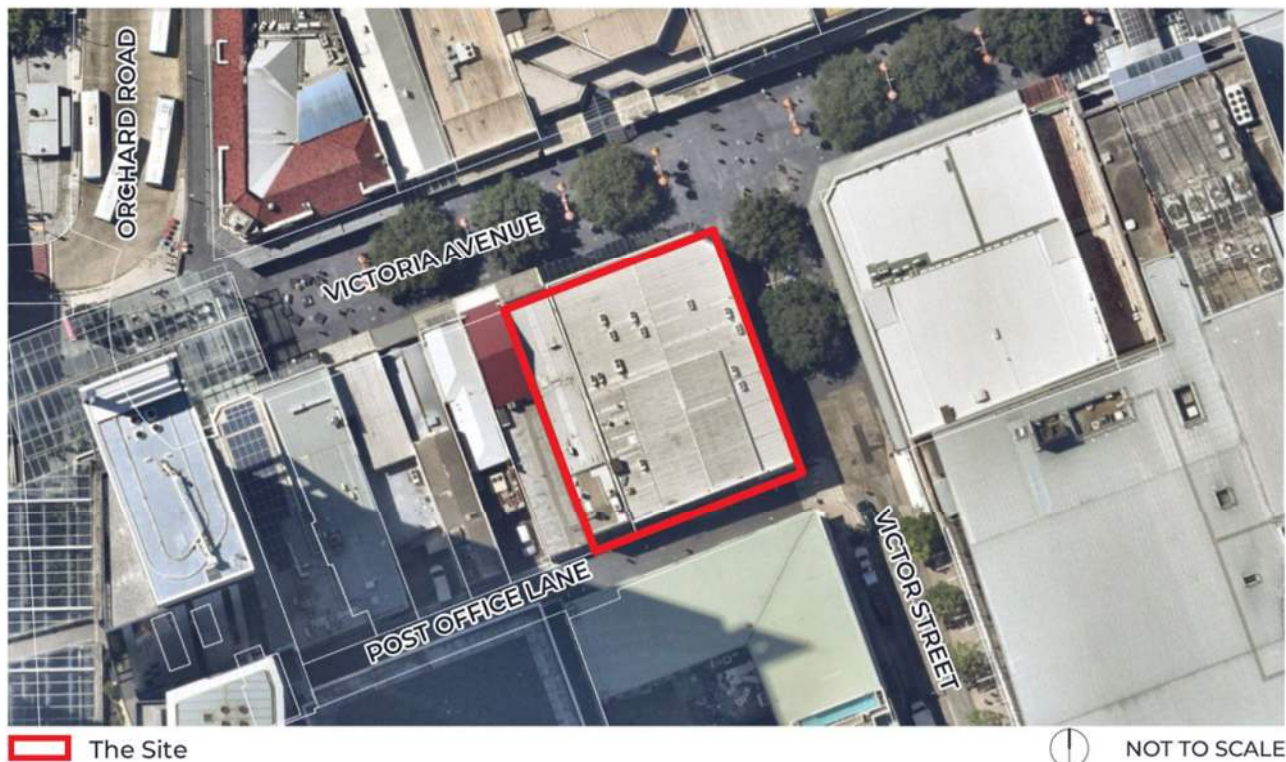


Figure 1 Site aerial image

Source: Nearmap, Ethos Urban markup

The Site currently comprises adjoining small-scale retail / commercial buildings, primarily containing retail shopfronts at ground floor and commercial uses at Level 1, which generally present as a two-storey built form to Victoria Avenue. The existing retail uses have frontages to both Victoria Avenue and Victor Street, with Post Office Lane providing rear lane vehicular access to the Site and neighbouring properties, with direct service and emergency vehicle access.

The existing development on the Site is shown in **Figure 2** and **Figure 3** below.



Figure 2 Existing development at the site from Victoria Avenue Mall

Source: Ethos Urban



Figure 3 Existing development at the site from Victor Street

Source: Ethos Urban

2.2 Description of the Proposed Development

The proposed development (as amended in the Submissions and Amendments Report dated 08/08/2025) seeks consent for:

- Site preparation works including demolition of the existing buildings, excavation and earthworks;
- Construction and use of a 46-storey BTR shop-top housing development comprising:
 - Ground and Level One retail premises and residential lobby areas;
 - Residential amenities throughout the building including a pool, gym, coworking facilities, outdoor terrace, resident lounge and dining areas, and multi-purpose spaces; and
 - 260 BTR dwellings.
- Landscaping located on Levels 2, 6 and 23.
- Construction of two (2) basement Levels, comprising loading facilities, plant and associated basement uses.
- Extension and augmentation of services and infrastructure and services as required.

The proposed development is discussed further in the following subsections and detailed on the Architectural Drawings prepared by Fender Katsalidis and included at **Appendix A** of the Submissions and Amendments Report. A photomontage of the proposed development is provided at **Figure 4**.



Figure 4 Photomontage of the proposed development

Source: Fender Katsalidis

3.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in section 74(2)(d)(i) of the Housing SEPP. The Housing SEPP provides car parking rates for build-to-rent development which are non-discretionary standards. As the Proposal is located within an accessible area, the rate provided is 0.2 spaces per dwelling. Section 74 of the Housing SEPP is reproduced below in its entirety.

74 Non-discretionary development standards—the Act, s 4.15

(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of build-to-rent housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Note—

See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.

(2) The following are non-discretionary development standards in relation to the carrying out of the development to which this Part applies—

(a) the building height of all proposed buildings is not more than the maximum building height permitted under Chapter 5, Chapter 6 or another environmental planning instrument for a building on the land,

(b) for development on land in a zone in which no residential accommodation is permitted under another environmental planning instrument—a floor space ratio that is not more than the maximum permissible floor space ratio for other development on the land under another environmental planning instrument,

(c) if paragraph (b) does not apply—a floor space ratio that is not more than the maximum permissible floor space ratio for residential accommodation on the land under Chapter 5, Chapter 6 or another environmental planning instrument,

(d) for development carried out wholly or partly on land in the Eastern Harbour City, Central River City or Western Parkland City—

(i) for land within an accessible area—at least 0.2 parking spaces for each dwelling, or

(ii) otherwise—at least 0.5 parking spaces for each dwelling, or

(iii) if a relevant planning instrument specifies a requirement for a lower number of parking spaces—the lower number specified in the relevant planning instrument,

(e) if paragraph (d) does not apply—at least the number of parking spaces required under the relevant development control plan or local environmental plan for a residential flat building.

(our emphasis bold)

A total of 260 dwellings is proposed and therefore, 52 residential car parking spaces are required. The proposed development provides 1 accessible, car share space for shared use by the residents. This does not comply with the minimum car parking rate, equating to a 100% variation to this standard.

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Willoughby LEP provides that:

4.6 Exceptions to development standards

(3) Development consent must not be granted to 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 the contravention of the development standard.

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 in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827* (Wehbe);
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (Four2Five);
3. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (Initial Action);
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245* (Al Maha);
5. *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* (Micaul);
6. *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46* (Winten); and
7. *WZSydney Pty Ltd v Ku-ring-gai Municipal Council [2023] NSWLEC 1065* (WZSydney).

The relevant matters contained in clause 4.6 of the Willoughby LEP, with respect to the car parking rate non-discretionary Housing SEPP development standard, are each addressed below, including with regard to these decisions.

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

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses similar language to clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Willoughby LEP is essentially the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard

would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This Clause 4.6 Variation Request establishes that the objectives of the standard are achieved notwithstanding non-compliance with the standard because the outcomes of the development are considered acceptable and accordingly justified pursuant to the First Method.

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

The objectives of the development standard are contained in Clause 74 of the Housing SEPP as follows:

(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of build-to-rent housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Although the Proposal does not provide the required non-discretionary standard parking provision, the provided car share space provides satisfactory car parking to meet the needs of the future residents within the development, which has been considered and assessed within the Transport and Accessibility Impact Assessment (TAIA), prepared by Stantec, and provided at **Appendix K** of the Submissions and Amendments Report.

Despite the recent amendment to the Housing SEPP to state that the non-discretionary standard for parking is a minimum (by the inclusion of the words “at least”), the Proposal delivers an appropriate amount of car parking required for a development that is in a highly, accessible location and encourages the use of public transport, active transportation and the use of car sharing services.

The objectives of the standard are to ensure that adequate car parking can be provided for a development. This is demonstrated in the TAIA, whereby the proposed car parking is acceptable and has no overall impact on the local traffic conditions, the performance of nearby intersections or places adverse demand for on-street car parking. Additionally, the proposed traffic generation from the development is considered negligible Refer to **Section 4.2.1** of this Report for further justification. Overall, this proposal, and variation to the non-discretionary standard can be supported.

4.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Willoughby LEP requires the consent authority to be satisfied that the Applicant’s written request has adequately addressed Clause 4.6(3)(b), by demonstrating that *‘there are sufficient environmental planning grounds to justify contravening the development standard’*. The environmental planning grounds relied on in the written request under clause 4.6 must be sufficient to justify contravening the development standard.

The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the Applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. The applicable circumstances that relate to the site are discussed below.

4.2.1 Traffic Impacts

The TAIA, prepared by Stantec, and provided at **Appendix K** of the Submissions and Amendments Report, evaluated the proposed developments traffic generation impact as well as the impact of the limited parking provided.

The TAIA identifies that the Proposal will provide one accessible, car share bay which will be located adjacent to the loading dock and accessed from Victor Street. An assessment of the traffic generation confirms that one trip in the AM and one trip in the PM is anticipated. Additionally, the development is in an accessible location that is located in close walking distance to Chatswood Interchange which comprises of Chatswood Train Station, Chatswood Metro and a variety of bus stops. The development is also located within close proximity to Westfield Chatswood and Chatswood Chase,

schools, Chatswood Library and other facilities and open spaces, it is not anticipated that residents will require a car to make daily trips. Due to the location of the development, it is expected that most trips will be made via public transport, and the need to deliver parking in line with the non-discretionary standards in the Housing SEPP is not considered appropriate for this development. Notwithstanding, there are several car sharing services, beyond the one space provided as part of the Proposal, available within walking distance of the Site, which enables residents to book a car if necessary.

Ultimately, no private car parking is proposed as part of the development, with the one accessible, car share parking bay proposed for use by the residents. This is well-suited to residents who seek to rent in high-amenity, well-located CBD locations and generally have little or no intention of private car ownership; noting that their daily needs can met within walking distance of the Site (e.g. retail, services, education, entertainment etc). It also ensures the Proposal results in negligible traffic generation, by encouraging the use of public transport located nearby, as well as active travel including walking and cycling. Overall, both the Housing SEPP and the Willoughby Development Control Plan 2023 (Willoughby DCP) support minimal parking provision within in accessible areas, to reduce the reliance on private car ownership, lessen traffic generation and encourage public and active transport options. The provision of the one accessible, car share parking bay is considered acceptable and aligns with these aims.

4.2.2 Benefits of the development as proposed

The reason for submitting this Clause 4.6 request is on the basis of the provisions of Clause 74(2)(d)(i) of the Housing SEPP which identifies that at least 0.2 car parking spaces are required per dwelling in the proposed development. However, it is noted that the objectives of this Clause state they are in place to ensure and prevent the application of a more onerous control.

The proposed development results in a BTR development that is supported by a variety of public transportation options and is located in a highly accessible area. The proposal does not generate any unacceptable impacts on the surrounding road network or on-street parking networks. The proposed development will provide an appropriate amount of parking that aligns with the objectives of BTR and supports the BTR model.

Due to the close proximity to the Chatswood Interchange, residents will be supported with the choice of access for residents of and visitors to the development via public transport and active transport. In addition to being able to access several car share services within the surrounds of the Site and one car share space at the Site. This will support the reduction in car ownership and usage amongst residents and supports the proposal in providing one accessible, car share parking bay.

4.2.3 Consistency with Objects of the EP&A Act

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer to 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, as set out in **Table 1** we consider the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the car parking non-discretionary development standard.

Table 1 Assessment of consistency of the proposed development with the Objects of the EP&A Act

Object	Comment
(a) 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	The proposed development promotes the economic and social welfare of the community through the appropriate redevelopment of a currently underutilised site within the Chatswood CBD.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposed variation from the car parking standard will not preclude the development from achieving ecologically sustainable development by ensuring compliance with the performance standards for the energy efficiency of buildings and directly reducing car use and dependence. Further, the Proposal will result in positive ESD outcomes by reducing the reliance on private car usage and encouraging residents and visitors to use public and active transport.

Object	Comment
<i>(c) to promote the orderly and economic use and development of land</i>	The Site is strategically located within the Chatswood CBD and has excellent amenity and access to public transport. The proposed development including its total car parking provision is a balanced and orderly design outcome that responds to the unique characteristics of the Site and surrounding development, and which aligns with the strategic intent for the Site.
<i>(d) to promote the delivery and maintenance of affordable housing</i>	This object is not relevant to the proposed development and the car parking standard.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats</i>	This object is not relevant to the proposed development and the car parking standard.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)</i>	The proposed car parking will not impact the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).
<i>(g) to promote good design and amenity of the built environment</i>	The proposed level of car parking meets the demands of the future residents and provides a good level of amenity through the promotion of public transportation usage and methods of active travel.
<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 will comply with all relevant NCC requirements and will promote the health and safety of occupants.
<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 this proposed development.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment</i>	The proposed development will have no impact on community participation in environmental planning and assessment.

5.0 Conclusion

The assessment above demonstrates that compliance with the car parking non-discretionary development standard contained in section 74 (2)(d)(i) of the Housing SEPP is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the car parking non-discretionary development standard:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard.
- The proposal provides a suitable parking solution that balances social, environmental, and economic objectives that underpin the planning for new development.
- The Site is located within close proximity to the Chatswood Interchange, in addition to several car share services, and the proposed parking is considered acceptable.
- The proposed development provides substantial public benefit through providing an increase in housing that responds to modern day standards and requirements, as well as the changing demographics and population growth. It also assists to ease the acute shortage of housing within the Willoughby LGA and throughout metropolitan Sydney.
- As no private car parking is provided on Site, traffic generation by residents is negligible.
- The accessible car share space provided will not result in adverse environmental impacts.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in clause 4.6(3) of the Willoughby LEP and may grant development consent notwithstanding the contravention of the car parking development standard in Clause 74 (2)(d)(i).



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