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URBIS

CLAUSE 4.6 VARIATION REQUEST | NON- RESIDENTIAL FLOOR SPACE

Prepared for
HYECORP
26 May 2025

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Acknowledgement of Country

Urbis acknowledges the Traditional Custodians of the lands we operate on.

We recognise that First Nations sovereignty was never ceded and respect First Nations peoples continuing connection to these lands, waterways and ecosystems for over 60,000 years.

We pay our respects to First Nations Elders, past and present.

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.

Title: Sacred River Dreaming
Artist Hayley Pigram
Darug Nation
Sydney, NSW

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INTRODUCTION

This Clause 4.6 Variation Request (**Variation Request**) has been prepared to justify the proposed exceedance of the minimum non-residential floor space control under clause 6.25 of the Willoughby Local Environmental Plan 2012 (**WLEP 2012**).

The Variation Request seeks to vary to the minimum non-residential floor space control for sites within the MU1 Mixed Use zone under the WLEP 2012. This request is made pursuant to clause 4.6 of the WLEP 2012. This request should be read in conjunction with the Environmental Impact Statement (**EIS**) prepared by Urbis Ltd and dated 9 May 2025.

For the reasons detailed in this request, the variation is well-founded and justified and confirms that there are sufficient environmental planning grounds to warrant a variation to the relevant non-residential floor space development standard.

SITE AND PROPOSED DEVELOPMENT

1. Site Description

The key features of the site are summarised in the following table.

Table 1 Site and Locality Description

Feature	Description
Street Address	37 Archer Street, Chatswood NSW 2067
Legal Description (Title Particulars)	SP 38065
Local Government Area	Willoughby
Site Area	2,201sqm
Zoning	MU1 Mixed Use
Number of existing lots	One
Existing Use / Structures	Fourteen (14) residential town houses built around a communal courtyard with basement parking.
Site Frontage Distances	<ul style="list-style-type: none">West: 37.78m to Archer StreetEast: 37.78m to Bertram Street
Site Width	<ul style="list-style-type: none">East-west: 58.26mNorth-south: 37.78m
Easements and Restrictions	<ol style="list-style-type: none">Easement for drainage 0.915m created by Dealings C951343, C984758 and D476511. 1/19199-Benefited (C984758) SP7331-benefited (C951343)Easement for support 1.83m wide (Created by Dealing F201809) located along the frontage to Bertram Street within the Road Widening dedicated as a Public Road on DP787514. The easement is in favour of the Council of the Municipality of Willoughby to support the soil from Bertram Street by the batter or embankments at present or to be constructed.
Adjacent land uses North	The site is bound to the north by low scale residential development including townhouses and single dwelling properties. This land is zoned to support high-rise mixed use development including buildings with heights up to RL246.8m Along Archer Street proposals for mixed use towers have been lodged for properties at 51-55 Archer Street and 57-61 Archer Street.

Feature	Description
Adjacent land uses East	The site directly opposes a locally listed heritage item (34 Neridah Street, Item # I103), and the South Chatswood Heritage Conservation Area (South Chatswood HCA) is located directly east of the site. There are also other locally listed heritage items along Bertram Street/Neridah Street.
Adjacent land uses South	A development application for a 14-storey mixed use development has been lodged for 31-44 Archer Street which is situated immediately to the south of the site. This area provides a transition to low scale residential uses contained within the South Willoughby Conservation Area located on the southern side of Johnson Street. There is a locally significant heritage item at 27 Archer Street.
Adjacent land uses West	To the west the site is bound by Archer Street which comprises a four-lane classified road. Existing development on Archer Street comprises medium density residential towers of 7 storeys and higher. The area has been zoned for taller buildings of up to 90m. Further to the west is the Chatswood transport interchange and Pacific Highway, linking to the CBD and wider regions.
Topography	The site slopes gently from south to north – 1.1 metre fall from a high point of RL91.2m (south east corner) to a low point of RL90.1m (north east corner).
Vegetation	Vegetation within the site includes planter boxes through the central circulation spaces and established trees around the site's perimeter. Street trees, comprising native species, along the site's western frontage form part of an attractive and distinctive avenue of trees.
Heritage	The site does not contain any items of local or stage heritage significance. The site is immediately adjacent to the South Chatswood HCA which is to the east of the site across Bertram Street. The site is also in the vicinity of several heritage items listed under Schedule 5 of the <i>Willoughby Local Environmental Plan 2012</i> .
Access Network	<p><u>Public Transport</u></p> <p>The site is in proximity to bus stops on Archer Street providing services to Chatswood and Crows Nest train stations. The site is located approximately a 750m walk from Chatswood rail station</p> <p><u>Road Network</u></p> <p>The site is immediately adjacent to Archer Street, a classified road. This provides connections to Victoria Avenue, Mowbray Road, and Boundary Street, all significant thoroughfares in the local area. The site is in proximity to the Pacific Highway and the Gore Hill Expressway, which provide connections to North Sydney, the Sydney CBD, and Hornsby.</p>

Figure 1 Site Aerial



Source: Urbis

2. Proposed Development

The proposal seeks consent for the demolition of existing structures on the site and the development of residential apartments (including affordable housing), commercial office space, food and beverage uses and retail tenancies with servicing areas and parking contained within the building's basement. A publicly accessible through-site link is also proposed providing a direct connection between Archer Street and Bertram Street and allowing opportunities for outdoor dining and passive recreation.

Specifically, the SSDA seeks development consent for:

- Demolition of existing buildings, structures and tree removal.
- Excavation of the site to a basement depth of RL 71.85m.
- Construction of a mixed-use building to 28 storeys (RL 184.25m) comprising residential and commercial uses.
- The development of 125 apartments (including 28 affordable housing units) with residential amenities and services, commercial office space, food and beverage tenancies and retail uses.

The proposal is for a 28-storey building with 6 basement levels. The development contains the following uses:

- Residential apartments: A total of 125 apartments (including 28 affordable housing units) comprising 29 x 1 bed apartments, 55 x 2 bed apartments, 30 x 3 bed apartments and 11 x 4 bed apartments with recreational facilities at Level 8.
- Office tenancies: occupying levels 1 and 2.
- Retail tenancies: double storey retail units fronting Bertram Street.

- Food and beverage tenancies: ground level.
- Basement parking: 154 car spaces, 11 motorbike spaces, 28 bicycle spaces and end of trip facilities.
- Servicing and plant equipment.
- Publicly accessible landscaped through site link.
- The gross floor area (**GFA**) for the proposed development is described below:
 - Total GFA: 14,230m²
 - Residential GFA: 12,318m²
 - Non-residential GFA: 1,912m²

Architectural plans detailing the proposal have been prepared by Fuse Architects and are attached under a separate cover. A photomontage of the proposal is provided in Figure 2 below.

Figure 2 Photomontages of the proposed development



Picture 1 Northern facade

Source: Fuse Architects



Picture 2 Bertram Street frontage

PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

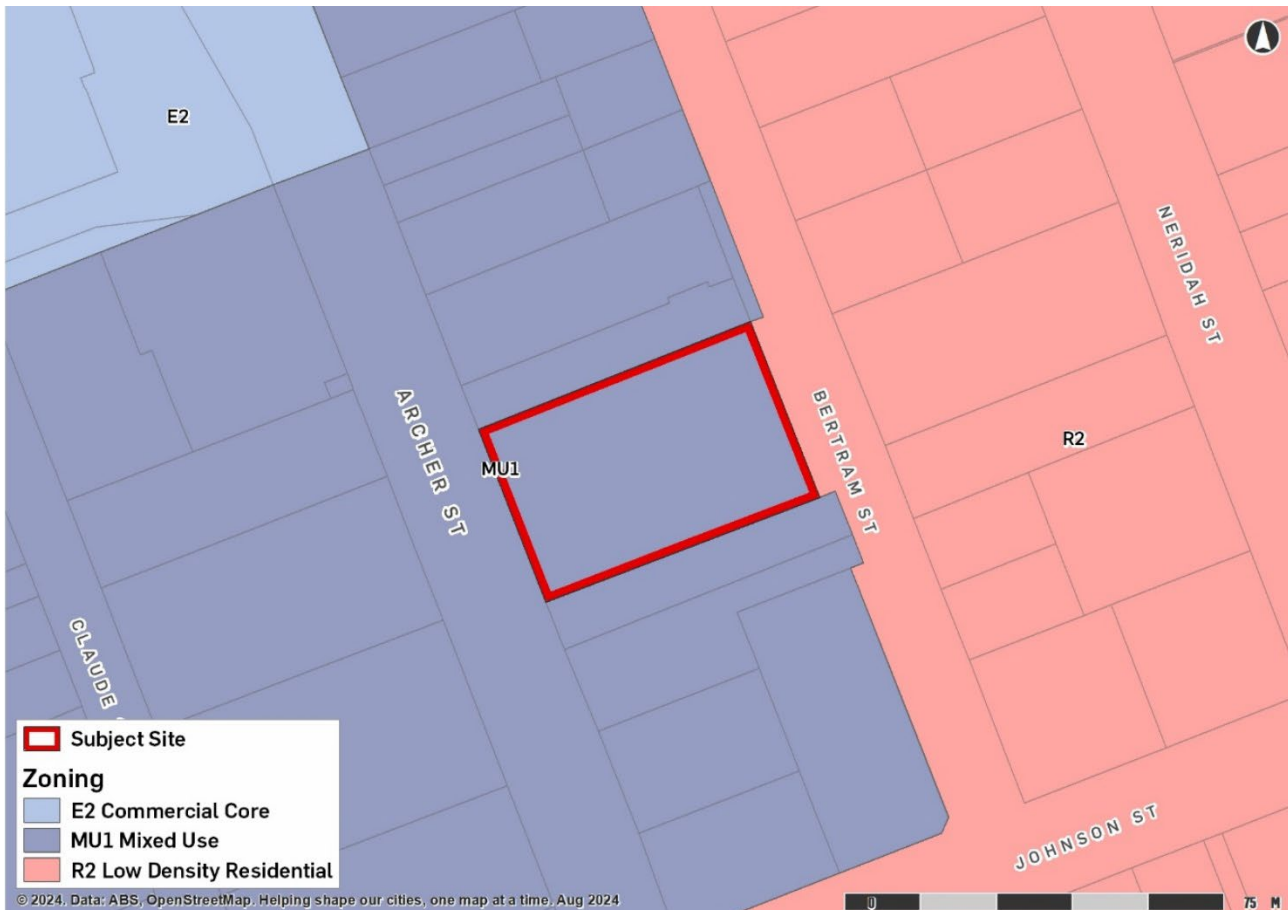
3. What is the planning instrument you are seeking to vary?

Willoughby Local Environmental Plan 2012.

4. What is the site's zoning?

The site is zoned MU1 Mixed Use under the WLEP 2012.

Figure 3 Zoning Map



Source: Urbis

5. What is the development standard to be varied?

This request seeks a variation to the non-residential GFA development standard which applies to the site under clause 6.25 of the WLEP 2012. Clause 6.25 provides that 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 that at least 17% of the gross floor area (**GFA**) of the building will be used for non-residential purposes. The proposal seeks consent for shop top housing and the site is in Zone MU1; therefore clause 6.25 applies.

There are no specific objectives identified for clause 6.25; however, the background to this control stems from the Chatswood Planning and Urban Design Strategy to 2036 (CBD Strategy) which originally sought to impose a minimum commercial FSR for development in the Mixed-Use Zone of 1:1. As detailed in a letter from Council to the then DPIE dated 9 August 2019, the intent of this requirement was to 'allow a broad range of non-residential uses to be accommodated to support local employment growth in the Chatswood CBD.' This requirement was later revised in the comprehensive LEP amendment to 17% of GFA (equivalent to 1:1 in a 6:1 development).

Given the above, there is a strong nexus between objectives of the MU1 Zone and the non-residential floor space requirement. These objectives are considered relevant and are reproduced below:

Zone MU1 Mixed Use

1 Objectives of 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.*

6. Type of development standard?

The non-residential GFA provision under Clause 6.25 is a numerical development standard that is capable of being varied under Clause 4.6(2). The requested variation is not excluded from the operation of Clause 4.6(2) for the reason that it does not comprise any of the matters listed in Clause 4.6(6) or Clause 4.6(8).

7. What is the percentage variation (between the proposal and the environmental planning instrument)?

Calculated on a site area of 2,201sqm and the WLEP 2012 FSR of 5:1, the maximum permissible GFA of the site is 11,005sqm. The proposed development will provide 1,912sqm of non-residential GFA, which equates to 17.4% of the permissible GFA under the WLEP 2012 or an FSR of 0.87:1.

However, the proposed development seeks to utilise the provisions of Part 2 Division 1 of the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)* which permits a 20-30% FSR bonus if the development provides 10-15% of the total GFA as affordable housing for a minimum period of 15 years.

The gross floor area of the development is 14,230sqm which equates to an FSR of 6.5:1. 17% of the total proposed GFA is 2,419sqm or an FSR of 1.1:1. If the calculation for Clause 6.25 were to be based on the development's total GFA an additional 520sqm non-residential floorspace over and above that currently proposed would be required.

Table 2 below details the proposed numeric differences and the percentage variation to the development standards.

Table 2 Variation to shop top housing control

FSR	Required GFA	Required Non- Resi FSR	Proposed GFA	Proposed Non-Resi FSR	Proposed in sqm	# Variation	% Variation
Base FSR of 5:1	1,871sqm (17% of base GFA)	0.85:1	1,912sqm (17.3%)	0.87:1	1,912sqm	+41m ²	N/A. Compliant
Total FSR of 6.5:1	2,432sqm (24% of base GFA, or 17% of total GFA)	1.1:1	1,912sqm (13.44%)	0.87:1	1,912sqm	-520m ²	21%

JUSTIFICATION FOR THE PROPOSED VARIATION

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

Table 3 Justification for the variation

Key Questions	Response
a) Are the objectives of the development standard achieved notwithstanding the non-compliance?	<p>As noted earlier in section 5 there is a strong nexus between the objectives of MU1 Zone and the non-residential floor space control and as such these have been considered below</p> <p><i>Zone MU1 Mixed Use</i></p> <p><i>1 Objectives of zone</i></p> <ul style="list-style-type: none"> <i>To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.</i> <i>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.</i> <i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i> <i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i> <i>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.</i> <p>The development is consistent with the objectives of the MU1 Mixed Use Zone in that:</p> <ul style="list-style-type: none"> It provides an appropriate combination of residential and non-residential uses. These outcomes ensure that the Chatswood CBD will continue to fulfil its key economic, social, and cultural role within the locality; It provides retail and commercial premises and residential accommodation in a highly accessible location (including affordable housing to meet the needs of very low-, low- and moderate-income households); The proposal proposes a publicly accessible through-site link with public domain upgrades to create a liveable environment; and The development will contribute to the vitality of Chatswood CBD by providing a use that supports and complements surrounding mixed use and commercial role of the Chatswood CBD. <p><u>Objective of Clause 6.25</u></p> <p>Clause 6.25 provides that development consent for the purposes of shop top housing on land in Zone MU1 Mixed Use must not be granted unless at least 17% of the GFA of the building will be used for non-residential purposes. There are no specific objectives identified for Clause 6.25; however, there is a nexus between this clause and the objectives of the Mixed Use zone. In addition, as discussed in section 5, the original intent behind this clause was to provide a broad range of non-residential uses to be accommodated to support local employment growth in the Chatswood CBD.</p> <p>The proposal provides a substantial quantum of non-residential floor space (1,912sqm) that will facilitate investment, employment-generation, and economic growth of the Chatswood CBD. This equates to 13.44% of the total proposed GFA. If strict compliance with the clause was required, this would result in a non-residential FSR of 1.1:1 which is 561sqm above the originally proposed non-residential requirement of 1:1 before it was revised to 17% as part of the comprehensive WLEP amendment.</p>

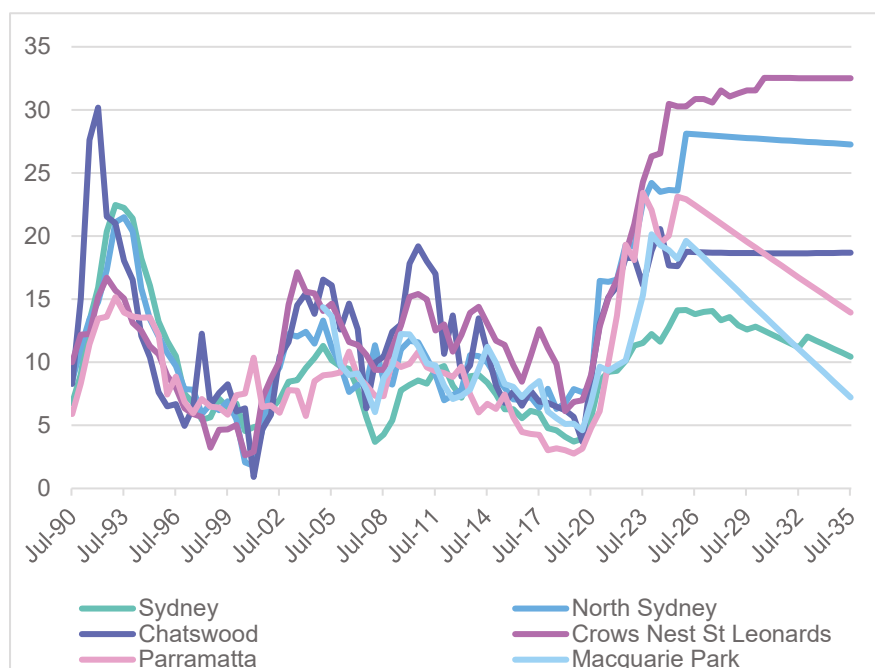
Key Questions

Response

It has been noted within a range of Willoughby Council submissions on other SSDAs seeking to vary Clause 6.25, that the 17% requirement is based on the floor space provided within the development, to achieve the desired land use mix within the Chatswood CBD. This assumes that the residential yield provided within the development above the base WLEP 2012 controls, increases demand for non-commercial uses at the same rate as a compliant built form. This does not consider the location of the proposed development, and the capacity within the existing commercial market.

Since the adoption of the Chatswood CBD Strategy, there have been significant disruptions to the office market including COVID-19 and the increase in flexible working arrangements, contributing to the decrease in demand for commercial premises. Based on analysis prepared by Urbis and the Property Council of Australia (PCA) in 2024, the Chatswood CBD has experienced a 15.1% increase in office space vacancies. This is almost double the vacancy rate increase in the Sydney CBD during the same period. This vacancy rate is forecasted to remain higher than average within most office markets in the Greater Sydney Region, with the Chatswood CBD having the third greatest vacancy rate in Greater Sydney by 2030. The Chatswood CBD Discussion Paper also acknowledges the decreasing demands for office space within the Chatswood CBD, stating that the vacancy rate in Chatswood is at 20.6% as of October 2024. Therefore, strict compliance with Clause 6.25 to provide additional non-residential floor space, is expected to result in the provision of additional vacant floor space, and contribute to the declining commercial market in the Chatswood CBD.

Vacancy Forecasts – Major Sydney Office Markets (Urbis, PCA 2024)



It is acknowledged that non-residential land uses are not limited to office premises and can also include a range of other land uses permitted within the MU1 zone. The definition of non-residential purposes in the WLEP 2012 states:

non-residential purposes means land uses other than the following—
 (a) residential accommodation,
 (b) serviced apartments.

The proposal delivers a diversity of employment-generating land uses, including retail premises, food and beverage uses and office premises. Consistent with objectives of the MU1 Zone and the original intent of clause 6.25, the non-residential land uses will contribute 167 operational jobs. The ground and podium retail uses will attract pedestrian traffic, foster ground plane activation, increase

Key Questions	Response
	<p>job supply, contribute to vibrant, diverse and functional streets and public spaces, and strengthen the role of the Chatswood CBD, contributing to the vitality of the city.</p> <p>In the case that the proposed development was compliant with clause 6.25 there is the potential for vacant non-residential tenancies, reducing the feasibility of the development and overall vitality of the centre which conflicts with the objectives of the MU1 Zone and the intent of clause 6.25. Strict compliance would require commercial floorspace to be provided at level 3 of the development. Given the CBD fringe location, there is not sufficient market demand for commercial or other non-residential space at level 3 of a mixed-use building to be occupied, particularly when taking into consideration the amount of available commercial space within the CBD core. This would result in this level of the development remaining vacant, instead of providing much needed residential accommodation including affordable housing.</p> <p>It is noted that the site is located at the edge of the Chatswood CBD. The market and demand for above ground commercial space is significantly reduced at the CBD fringe. The current provision of 1,912sqm of non-residential floorspace results in commercial space being provided at ground and levels 1 and 2 of the development. The provision is above the 17% requirement when calculated on the base FSR.</p> <p>Feasibility testing provided by SGS found that commercial floor space of 1:1 within a 6:1 mixed use development could be feasible. However, this advice was undertaken pre-COVID, and as such, is not reflective of the current economic environment, nor the need for additional housing and affordable housing in accessible areas as outlined in detail above. It is also noted that this feasibility study did not appear to consider Council's proposed 10% requirement for affordable housing in its analysis. In addition, feasibility testing undertaken by SGS in relation to Council's affordable housing requirements didn't appear to consider the minimum commercial floor space requirements.</p> <p>Interviews conducted during the preparation of the SGS feasibility testing highlighted potential challenges to leasing out non-residential floor space in mixed-use developments. Businesses prefer to co-locate with other businesses and therefore the presence of significant amounts of residential accommodation could constrain the attraction of tenants. There is the need for a commercial atmosphere for non-residential land uses to succeed. Businesses are also reluctant to deal with strata committees composed primarily of residential apartment owners.</p> <p>The proposed delivery of residential dwellings will contribute towards a 24-hour economy. Future residents will catalyse significant flow-on benefits to retailers, businesses, and service providers and support long-term economic growth, activation, and vibrancy of the CBD. Future residents will generate significant expenditure in retail spending annually, contributing activity and investment to local and wider economic growth.</p> <p>Ultimately, the proposed quantum of non-residential floor space is considered sufficient to service the demands of the proposed development, locality, and consistent with the objectives of the Chatswood CBD Strategy. As detailed above, the commercial market outlook for the Chatswood CBD sees office vacancies remaining high, to at least 2030, with no foreseeable correction. Therefore, strict compliance with Clause 6.25 to provide additional non-residential floor space, is expected to result in the provision of additional vacant floor space, and contribute to the declining office market in the Chatswood CBD. Further, a compliant scheme would result in non-residential floor space being provided at Level 3 or above. Given the CBD fringe location, there is not sufficient market demand for commercial or other non-residential space at level 3 of a mixed-use building to be occupied and even less so at higher levels of the development. The provision of commercial space at this upper level would also result in less residential accommodation being provided, for which there is a critical need.</p>
b) Are the underlying objectives or purpose of the development	<i>Not relied upon. Refer above.</i>

Key Questions	Response
standard not relevant to the development? (Give details if applicable)	
c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)	<i>Not relied upon. Refer above.</i>
(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?	<i>Not relied upon. Refer above.</i>
e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?	<i>Not relied upon. Refer above.</i>

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

The non-compliance with the non-residential GFA development standard of clause 6.25 is a direct consequence of the applicant's decision to utilise the in-fill affordable housing FSR and height of building bonuses under Chapter 2, Division 1 of the Housing SEPP to deliver affordable housing to meet the needs of very low-, low-, and moderate-income households.

The environmental planning grounds to justify variation to the development standard are detailed as follows:

- **Outdated planning framework:** In November 2023, the NSW Government released a policy initiative to incentivise and support the delivery of affordable housing under the Housing SEPP. Specifically, the Housing SEPP provides an FSR and height of buildings bonus of between 20 and 30% for projects that include residential development and provide at least 10-15% of the total GFA as affordable housing. Clause 6.25 (as current) of the WLEP 2012 was gazetted in June 2023 to provide a broad range of non-residential uses to be accommodated to support local employment growth in the Chatswood CBD. The control predates the introduction of the bonus provisions under the Housing SEPP and as noted was originally intended to apply as FSR control rather than as a percentage of overall GFA.

The proposed development is located on the edge of the Chatswood CBD, and 750m from the Chatswood Interchange. Whilst there is an identified demand for non-residential floorspace nearby to existing centres, there is also risk of over-provision of non-residential floorspace within this location. This has the potential to result in vacancies, and therefore the inefficient use of the land.

- **Economic viability:** The ability for the applicant to capitalise on the incentive provisions of the Housing SEPP to make a significant contribution to affordable housing stock is contingent on an economically viable development, which balances residential, affordable housing, and non-residential land uses. It is critical that the economic viability of the development, and by association the delivery of affordable housing, is not unreasonably burdened or compromised by strict compliance with the provision of the WLEP 2012 which does not anticipate or make allowance for additional floor space provided under a separate environmental planning instrument (in this instance, the affordable housing incentive provisions of the Housing SEPP).

The SGS Feasibility Study undertaken in 2020 did not appear to consider the impacts of Council's proposed 10% affordable housing requirement. In addition, it is noted that this feasibility study was undertaken pre-Covid and as such not considered reflective of the current low demand for commercial office which Willoughby Council identified in its 2024 Discussion Paper that the vacancy rate within the Chatswood CBD is 20.6%.

The requirement to provide non-residential floor space in strict compliance with clause 6.25 impacts feasibility and erode the quantum GFA allocated to housing as such would compromise the capacity of the development to achieve the intent of the uplift incentives of the Housing SEPP to provide housing to meet the needs of very low-, low-, and moderate-income households.

- **Site Location:** The location of the site on the edge of the Chatswood CBD suggests the potential for decreased provision of non-residential floor space in areas outside of the Chatswood CBD core. It is understood that as the quantum of residential accommodation intensifies, non-residential land uses should be developed concurrently to ensure that the demand of future and current residents are met. However, the location of the site towards the border of the Chatswood CBD is not the most suitable location for a significant quantum of non-residential GFA. Consideration should be given to the accessibility of non-residential floor space within this location and the potential lack of demand for non-residential uses within this location.
- **Loss of residential accommodation:** In the case that the proposed development complies with Clause 6.25 of the WLEP 2012, approximately 6 residential dwellings would not be delivered. The current priority of the Federal, State and Local governments under the National Housing Accord 2022 is to deliver 1.2 million well-located homes by 2029. Priority should be given to residential accommodation within this location, particularly affordable housing which is in critical short supply.

The research conducted by Urbis and the PCA in 2024 forecasted that the Willoughby LGA will fall 1,944 dwellings short of the target required to meet the National Housing Accord and DPHI housing targets. If the proposed development was to strictly comply with Clause 6.25, residential floor space would be eroded during a period of significant demand for residential accommodation. Research conducted by the PCA and Urbis in 2024, found that there will not be a return to pre COVID-19 levels of demand for office space within the Chatswood CBD. Therefore, priority should be given to the development of residential accommodation.

- **Significant contribution to non-residential floor space:** The proposed development will deliver 1,912sqm of non-residential floor space within the Chatswood CBD area which equates to 17.3%. This quantum of floor space will ensure that local employment is provided in accordance with the objectives of the MU1 Zone. The quantum of non-residential floor space proposed by the development is considered adequate and is over the requirement that would be required without the infill affordable housing bonus. In the case that the development is required to deliver additional non-residential floorspace, it is unlikely to be delivered.

For the reasons detailed in this request, the variation to Clause 6.25 of the WLEP 2012 is well-founded and justified and there are sufficient environmental planning grounds to warrant contravention.

DISCLAIMER

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