

3-5 Help Street, Chatswood

Clause 4.6 Variation Request

Clause 6.25 Shop top housing in Zone MU1 – Non-residential floor space

Willoughby Local Environmental Plan 2012

PREPARED FOR

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1 Introduction

This Variation Request under Clause 4.6 of the *Willoughby Local Environmental Plan 2012* (the **LEP**) accompanies a State Significant Development Application (**SSDA**) for a shop-top housing development at 3-5 Help Street, Chatswood (the **site**). The development proposes to vary the development standard for non-residential floor space provision contained in Clause 6.25 of the LEP.

The objectives of Clause 4.6 of the LEP 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 a suitable amount of non-residential floor space within the building podium to promote commercial and retail activity in the Chatswood CBD;
- Provide high quality retail tenancies on ground level to activate street frontages along Help Street, Cambridge Lane and McIntosh Street;
- Attract pedestrian traffic and contribute to the vibrancy of the public realm;
- Provide a podium which is comprised of non-residential uses;
- Encourage a mix of retail and commercial uses on the lower levels, 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 periphery of the Chatswood CBD whilst supporting the economic growth of the MU1 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 LEP Clause 6.25 minimum non-residential floor space development standard in accordance with the flexibility afforded under Clause 4.6 of the LEP.



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.

2.1 Clause 6.25 Shop top housing at certain sites at Chatswood

Clause 6.25 of the LEP 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 provides a total Gross Floor Area (**GFA**) of 17,584m², which is equivalent to an FSR of 7.68:1. In accordance with Clause 6.25, a total GFA of 17,584m², requires a minimum non-residential floor space of 2,989.28m².

The proposal provides a non-residential floor space of 2,345m², which equates to 13.3% of the total GFA proposed or 644.28m² less than that required.

2.2 Is the Planning Control in Question a Development Standard?

The non-residential floor space requirement under Clause 6.25 of the LEP 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 endorsed *Chatswood CBD Planning and Design Strategy 2036* (Chatswood CBD Strategy).



3 Extent of Variation Proposed

The proposed variation to the non-residential floor space development standard in the LEP is summarised in **Table 1** below:

Table 1: Non-residential floor space variation summary

GFA per Willoughby LEP 2012				Housing SEPP – with 28% GFA uplift			
FSR control (GFA)	Non-residential GFA Control (17%)	Proposed non-residential GFA	Variation % to LEP	Proposed FSR (of a maximum 7.68:1)	Non-residential GFA Control (17%)	Proposed Non-residential GFA	Variation % to Housing SEPP
6:1 (13,740m ²)	2,335.8m ²	2,345m ² (17.1%)	0.1%	7.68:1 (17,587.7m ²)	2,989.9m ²	2,345.4m ² (13.3%)	27.6%

The proposal seeks consent for **13.3%** of the total GFA to be used for non-residential purposes. The shortfall of 3.7% non-residential GFA (equivalent to **644.51m²**) proportionately represents a **27.6%** variation to the required minimum non-residential floor space provision of 17%.

As shown in **Table 1** above, the proposal complies with the provision of 17% non-residential GFA based on the LEP FSR control of 6:1.

In accordance with Clause 16(1) of the *State Environmental Planning Policy (Housing) 2012* (Housing SEPP), the site is eligible for the 30% ‘bonus’ uplift in GFA and height, which came into effect 1 July 2024. The intent of these bonuses was to permit additional market and affordable housing. However, the implications for other associated GFA requirements for sites was not contemplated when the Housing SEPP amendments were drafted. As such the Housing SEPP controls did not consider Willoughby LEP requirements at Clause 6.25, relating to the proportion of non-residential uses required.

Strict application of Clause 6.25 of the LEP, to the additional floor space bonus under the Housing SEPP, would hinder the proposal’s ability to align with the intent of Clause 16(1) of the Housing SEPP. Additional non-residential floor space would need to be provided within the residential tower, noting the limitations of providing additional non-residential floor space within the podium due to DCP imposed site specific constraints, as discussed further at Section 4.1 and 4.3 of this report.

The proposed variation to the non-residential floor space standard is considered to be appropriate in the context of a **115.2m** shop top housing development with a total GFA of **17,583.7m²** that both fulfils the requirements of the Housing SEPP to maximise the provision of new housing while also achieving Council’s expectations for street activation and providing the opportunity for on-site jobs. With an entirely non-residential podium, the proposal has been designed to optimise the provision of non-residential uses whilst accommodating the spatial requirement of ground level loading and waste collection.

The proposed non-residential floor space includes the provision of active uses at ground level, which facilitates street activation and improves the amenity of the public domain. Combined with the non-residential tenancies on the mezzanine and Level 1, the proposed non-residential floor space will increase the supply of employment floor space in the Chatswood CBD and creates job opportunities close to home, contributing to the 30-minute city concept of the North District Plan.

The proposal also remains consistent with the intent of the non-residential floor space requirement under the Chatswood CBD Strategy as detailed in **Section 4.1.1** of this report.



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

Clause 4.6(3) of the LEP 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 the LEP 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

The relevant matters contained in Clause 4.6 of the LEP, 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 the LEP 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 include objectives for the non-residential floor space development standard. Notwithstanding, the intent of Clause 6.25 is set out in the Chatswood CBD Strategy. This Strategy is endorsed by Council and the Department of Planning, Housing and Infrastructure (**DPHI**).

The Chatswood CBD Strategy seeks to increase non-residential floor space within the Chatswood CBD to promote employment growth of the Strategic Centre. The boundary of the Chatswood CBD was expanded to the north and south and facilitates residential opportunities on the periphery of the CBD as part of a MU1 Mixed Use zone. This periphery was to provide key housing opportunities



whilst providing growth prospects for some smaller scaled commercial opportunities that supported the core of the CBD, being the E2 Commercial Core zone.

To support job growth in the CBD, the Chatswood CBD Strategy initially proposed a minimum non-residential floor space ratio of 1:1. This floor space was to be provided in the podium levels of a development that achieved a total maximum FSR of 6:1. This development standard was modified in the planning proposal and resulted in a requirement of 17% of total GFA to accommodate sites that may have or achieve a lower FSR control due to site constraints, surrounding context and the applicable built form controls.

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:

- *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 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 constrain the podium levels and availability of non-residential floor space, noting that the site is subject to a maximum street wall height of 6m – 14m at the front boundary. To comply with the 17% non-residential floor space requirement, would result in a 3-4 storey podium which would lead to an exceedance in this control and impact the desired approach to the streetscape and public domain.

*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 Help Street, McIntosh Street and Cambridge Lane.
- DCP - Section 4. (Setbacks and street frontage heights):
 - Help Street, McIntosh Street and Cambridge Lane
 - Minimum 3m setback at ground level from the street boundary to the podium street wall.
 - 6 – 14m podium street wall height at the required setback.
 - Minimum 7.5m setback from the street boundary to the tower.
 - Help Street, McIntosh Street and Cambridge Lane
 - Minimum 6m setback at ground level along the Cambridge boundary of the site, opposite the publicly accessibly open space at 1 Cambridge Lane, for the purposes of publicly accessible open space.
 - Tower Setbacks



- Minimum 7.5m setback from the street boundary to the tower
- Minimum 4.5m from any side (neighbouring) boundaries to the tower

While the proposed non-residential floor space provision is below the minimum 17% requirement, the extent of variation (being a shortfall of just 644.51m²) is relatively minor in the context of a development comprising 17,583.7m² of GFA. The proposal will provide an appropriate level of non-residential floor space, totalling 2,345.4m² within the podium of the development and in accordance with the above objective, no habitable residential floorspace is proposed within the building podium.

Commercial uses have been carefully integrated in the design to ensure high quality user amenity and experience. Commercial spaces of various sizes activate the new public domain across Cambridge Lane, Help and McIntosh Streets. Flexible and adaptable, commercial floor area extends over two floors (inclusive of a mezzanine), with ample access to daylight and two outdoor landscaped areas. The proposed non-residential uses on the lower levels are shown in **Figures 1 - 4**.

The new commercial address on Cambridge Walk is centred in a new vibrant, sun lit, and tree lined new public space. Convenient pick up and drop off exists along the shared way, with access to various modes of public transport, cafes, retail, and services. The entry is welcoming, with a double height lobby that has integrated food and beverage opening up to Cambridge Walk. This provides a convenient place to host meetings, outside the security line and a vibrant front door to the workplace.

The design provides commercial activation on all three street frontages. Different tenancy depths support different commercial uses, each shaping the vibrant, new public space. In addition, the expanded and landscaped new public domain on Cambridge Walk is activated throughout the day by placing the apartment and commercial entry lobbies along its length. The vehicle entry is located away from these main public spaces and where they are best able to connect to the traffic network.

With a substantial fall across the length of Cambridge Walk, commercial tenancies have been positioned to terrace down from McIntosh St to Help St, allowing for a continuous public domain. Entries to commercial spaces and lobbies are consolidated along Cambridge Walk, with only the northern tenancy accessed off McIntosh St due to site levels.

The glazed façade maximises visual connectivity to Cambridge Walk and improves activation. A variety of single height and double height spaces also presents an opportunity for different commercial experiences and uses. Entries are denoted with accent awnings and feature stone cladding to allow for improved wayfinding and a luxurious arrival experience.

Additionally, detailed design refinements have been required to be made following the conclusion of the design competition in September – November 2022. The building core has been relocated further north, more centrally within the floor plate. This is efficient for service runs and improves the shape and proportion of the commercial tenancies on the ground floor.

Combined, the proposed non-residential floor space will create employment opportunities in an accessible location close to homes, contributing to a 30-minute city. Therefore, despite the non-compliance, the proposed development optimises the provision of non-residential floor space within the constraints of the site and complies with other LEP and DCP controls. Further, the proportion and design of the non-residential floorspace is considered appropriate and achieves the intent of the Chatswood CBD Strategy.



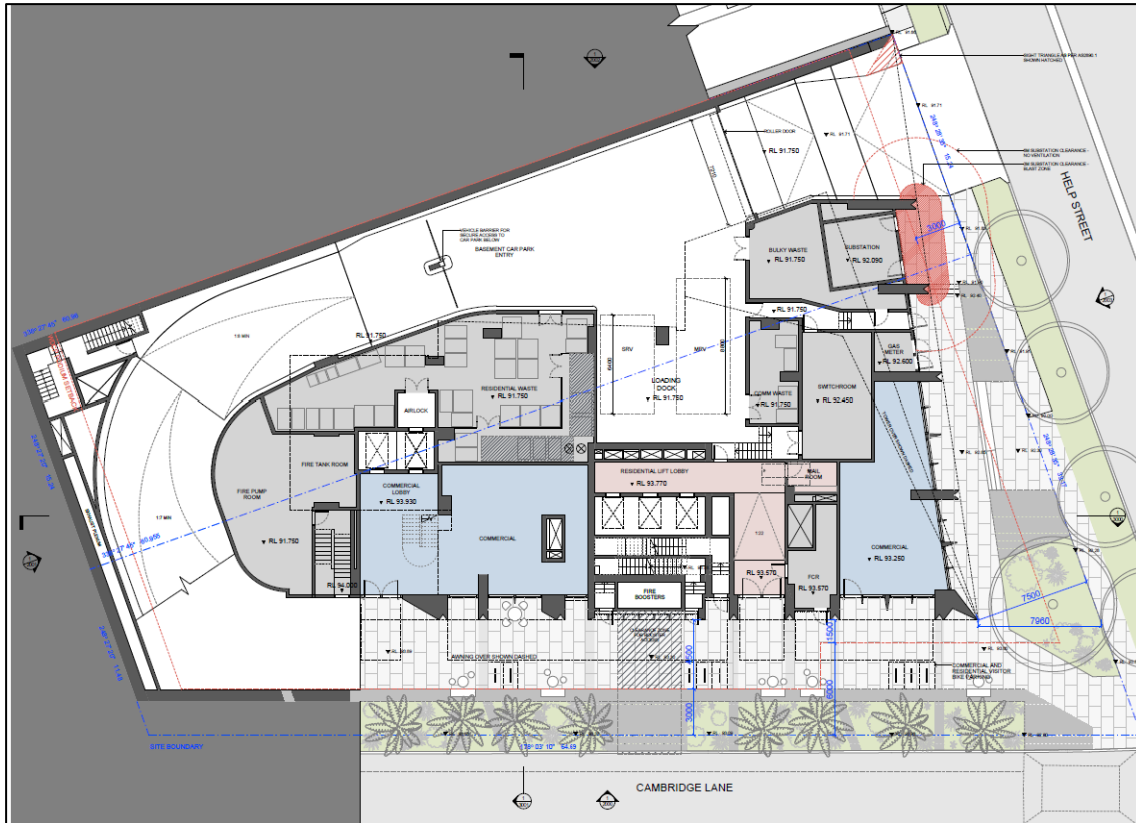


Figure 1 Proposed Lower Ground Level Floor Plan
 (Source: EM BE CE)

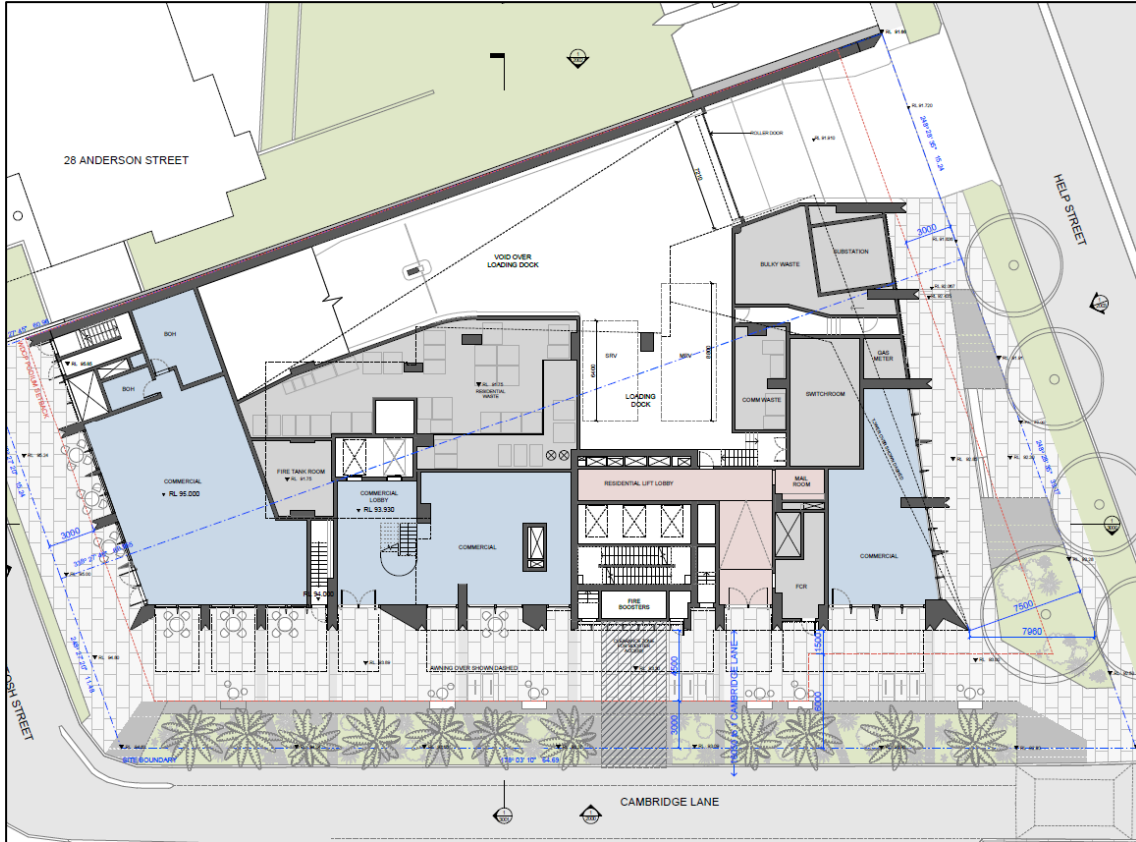


Figure 2 Proposed Upper Ground Level Floor Plan
 (Source: EM BE CE)



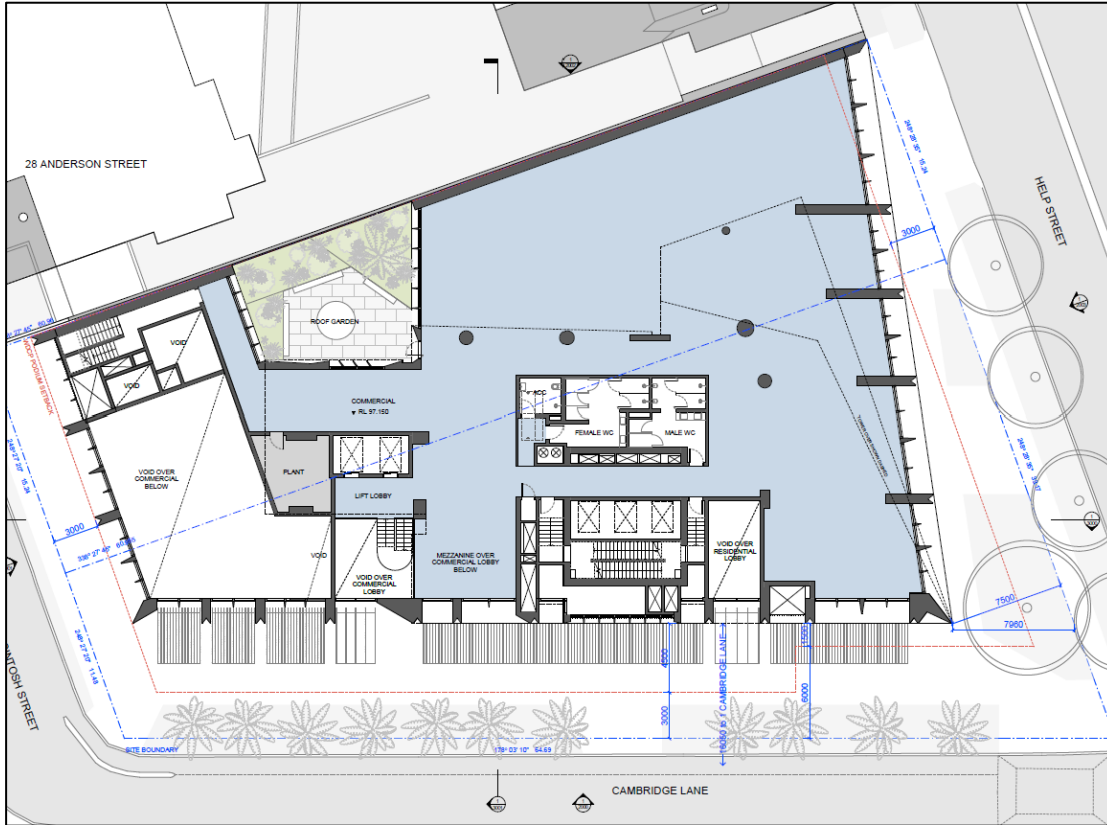


Figure 3 Proposed Mezzanine Floor Plan
 (Source: EM BE CE)

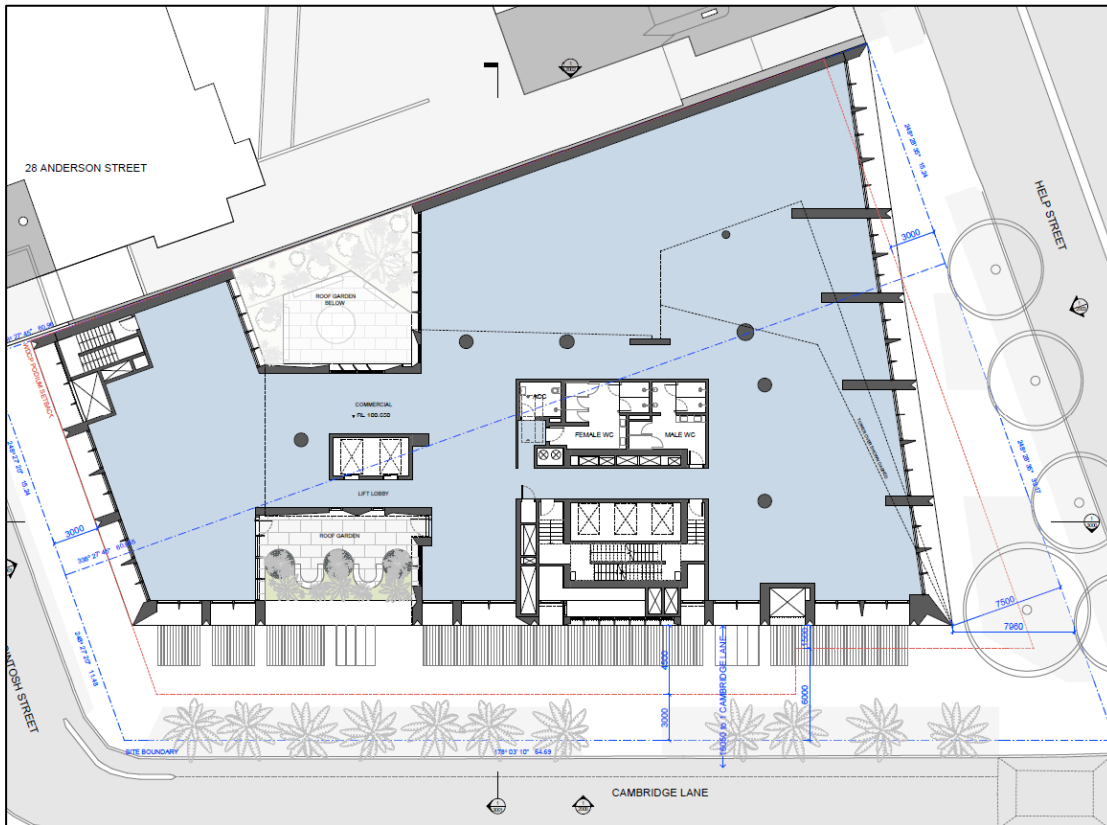


Figure 4 Proposed Level One Floor Plan
 (Source: EM BE CE)



4.2 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 because:

- The proposed non-residential floor space provision is consistent with the underlying objective of the standard as demonstrated in **Section 4.1.1** of this report.
- The objectives of the MU1 Mixed Use zone are as follows:
 - *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 proposed non-residential floor space provision is consistent with the abovementioned MU1 zone objectives as it:

- Enables the provision of residential, retail and non-residential 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, pedestrian site links that will attract pedestrian traffic, thus contributing to provision of vibrant, diverse and functional streets.
- The proposed non-residential floor space provision is consistent with the intent of the Chatswood CBD Strategy in that it provides a wholly non-residential podium, contributing to the supply of employment floor space in the Chatswood CBD.
- The proposal has optimised the provision of non-residential floor space within the constraints of the required setbacks in the site-specific DCP and the ADG, as well as the vehicular access requirements.
- The proposed non-residential floor space includes the provision of active uses at ground level, which facilitates street activation and improves the amenity of the public domain. Combined with the non-residential floorspace on Level 1, the proposal will increase the supply of employment floor space in the Chatswood CBD and create job opportunities close to home, contributing to the 30-minute city concept of the North District Plan.
- The variation to the non-residential floor space development standard does not affect the proposal's ability to provide a mixed-use development that is of appropriate bulk and scale. Notably, the proposal is compliant with the maximum 115.2m building height and maximum overall FSR of 7.68:1 allowable in accordance with *Part 2, Division 1 of the Housing SEPP*.



Compliance with these other key controls will deliver a high-density mixed-use development that is reflective of the desired future character of the Chatswood CBD while also contributing much needed housing supply.

- Strict compliance with the non-residential floor space would require either:
 - provision of non-residential floor space within the tower component (i.e. top of podium) thereby reducing the quantum of housing, and/or
 - result in a 3-4 storey podium which would lead to an exceedance in the street wall height control, impacting the desired approach to the streetscape and public domain; and/or
 - Substantially less deep soil and landscaping to the northern and eastern parts of the site; and/or
 - Increase in waste collection and loading bay requirements;

All these options would result in a poorer design outcome as they would either diminish the top-of-podium residential amenity and podium articulation, remove landscape area, deep soil and street setbacks, as well as surrounding sites, and result in on-street waste loading.

The requirement to provide the full 17% non-residential GFA may have the potential to make the development more unfeasible.

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. These options would result in outcomes which would be inconsistent with the future desired character of the area.

- Provision of 644.51m² of additional non-residential floor space would result in the base of the tower being converted to non-residential floorspace, and therefore the loss of approximately 3-5 apartments which would be inconsistent with the Housing SEPP objectives to maximise the provision of additional housing opportunities.
- The proposed 13.3% (2,345m²) 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 proportional variation of 27.6%, the extent of variation is numerically small in the context of the overall development and will be imperceptible in the context of the wider CBD.
- The shortfall of 3.3% (644.28m²) in total building GFA is both insignificant and imperceptible in a CBD location that already has significant non-residential floor space and that is expected to grow through the development of other similar mixed use and new commercial developments elsewhere in the CBD. The proposed non-residential floor space provision is consistent with the underlying objectives and aims of the Chatswood CBD Strategy as demonstrated in **Section 4.3** of this report.

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 proximity to the Chatswood Transport Interchange, which will promote public transport patronage.

The proposal will facilitate city living on the periphery 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 the LEP.

4.3 Future Vision for Chatswood CBD.

The Chatswood CBD Strategy has been in place since 2018 and was given effect by LEP Amendment No. 34 in June 2023. The proposal is consistent with the aims and intent of the proposed controls with respect to non-residential floor space provision under the Chatswood CBD Strategy, as discussed below.

The 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 provides a mix of residential and non-residential uses to create a high-density environment with convenient access to local services, shops and employment opportunities. It also includes active street frontages and high levels of pedestrian amenity in the public realm on Help Street, Cambridge Lane and McIntosh Street.

The proposed mix of residential and non-residential floor space is appropriate as it will provide a suitable level of commercial floorspace to support the ongoing vibrancy of the surrounding area. The residential component will support the commercial core of Chatswood by providing high density residential communities within proximity to the commercial, cultural and community uses in the CBD.

- **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 will preserve the role of the Chatswood commercial core as an employment centre whilst supporting the growth of residential opportunities beyond the core of the Chatswood CBD. Importantly, the provision of non-residential floor space within the site is contained wholly within the building podium. This will support the vitality of the proposed mixed-use development and activation of the street, which serves a different role (being an extension to the CBD) to the commercial core of Chatswood. The Chatswood CBD core will maintain its strong position as an employment hub with a variety of offices and major retail facilities and will continue to be a vital component of the Eastern Economic Corridor.

Further, the proposed development will support residential growth on the periphery of the CBD, consistent with the principles of the CBD Strategy. In particular, the proposal will provide a high-density residential environment and increase the supply of residential accommodation in Chatswood.

Affordable housing contributions will also be made in accordance with the LEP to ensure the availability of accommodation for a diverse range of residential population. The proposed residential units will therefore support strong residential growth on the edges of the city centre of Chatswood.

Accordingly, the proposed shop top housing will not undermine the commercial role of the Chatswood city centre and will realise the mixed-use development on the edges of the CBD to contribute to the vitality of the centre as intended by the Chatswood CBD Strategy.

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



Response: Under the North District Plan, Chatswood has a baseline jobs target of 31,000 and a higher target of 33,000, requiring an additional 6,300 to 8,300 jobs by 2036. While the Chatswood CBD Strategy highlights the importance to meet the job targets set out by the North District Plan and maintain Chatswood's share of office employment amongst the strategic centres in Greater Sydney, it acknowledges that residential use is currently the most financially attractive land use which poses pressure on the existing stock and growth potential of Chatswood's office market. Without the provision for mixed use development, most development would favour residential over commercial.

In this regard, the proposed mixed-use development enables the delivery of both residential and commercial uses in response to the increasing demand for residential accommodation and employment opportunities. While the proposal involves a variation to the minimum non-residential floor space standard, the proposed 2,345m² non-residential floor space provision still represents a significant contribution to the employment floor space and provision of high-quality residential accommodation would support the vitality of the Chatswood CBD and respond to the market conditions that favour residential uses.



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 the LEP. The request justifies the contravention of the development standard in the terms required under Clause 4.6 of the LEP.

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:

- Compliance with the development standard is unreasonable and unnecessary as explained in **Section 4.1**;
- There are sufficient environmental planning grounds to justify the contravention of the development standard as demonstrated in **Section 4.2**;
- The underlying objective of the standard is achieved notwithstanding the non-compliance with the standard, as demonstrated in **Section 4.1.1**;
- The proposed development is consistent with the future vision of Chatswood CBD as discussed in **Section 4.3**;
- The extent of variation is considered minor and would be imperceptible in the context of the wider Chatswood CBD and the proposed development itself; and
- The proposal represents an optimal development outcome when compared to scenarios for achieving strict compliance.

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

