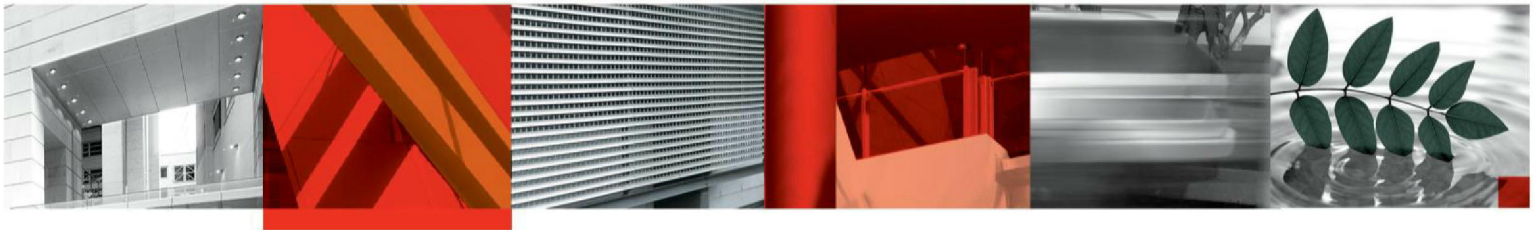


ATTACHMENT 3 – CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD

Clause 4.6 Variation to Development Standard Floor Space Ratio



67 Albert Avenue, Chatswood

4.6 Variation to Development Standard

Submitted to Willoughby City Council

On Behalf of CorVal Partners Limited (CorVal)

10 May 2017 ■ 16695

Reproduction of this document or any part thereof is not permitted without prior written permission of JBA Urban Planning Consultants Pty Ltd.

JBA operates under a Quality Management System. This report has been prepared and reviewed in accordance with that system. If the report is not signed below, it is a preliminary draft.

This report has been prepared by:



Prugya Maini

11/05/2017

This report has been reviewed by:



Harry Quartermain and Clare Swan

11/05/2017

Contents

1.0	Request to Vary a Development Standard	1
2.0	Development Standard to be varied	3
3.0	Nature of the Variation Sought	4
4.0	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	5
4.1	The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)	5
4.2	The underlying object / purpose would be defeated if compliance was required (Second Method).	10
5.0	There are sufficient environmental planning grounds to justify contravening the development standard	11
6.0	It is in the public interest because it is consistent with the objectives of the particular standard and zone	13
7.0	Secretary's Concurrence	15
8.0	Conclusion	16

1.0 Request to Vary a Development Standard

This request to vary a development standard has been prepared under Clause 4.6 of the *Willoughby Local Environmental Plan 2012* (Willoughby LEP 2012) and is submitted to Council in support of a Development Application (DA) for a commercial development. The proposed variation relates to the development standard specified under Clause 4.4 Floor Space Ratio in the Willoughby LEP 2012.

Clause 4.6 of the Willoughby LEP 2012 allows Council to grant consent for development even though the development contravenes a development standard imposed by the Willoughby LEP 2012. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6 (3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard as detailed below:

- that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court provides assistance on the approach to justifying a contravention to a development standard under State Environmental Planning Policy 1 – Development Standards (SEPP 1) through the judgement of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (Webbe).

These judgements are also of assistance to the assessment of variations under Clause 4.6 of an LEP.

Additional assistance can be found in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (Four2Five); *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386 and *Moskovich v Waverley Council* [2016] NSWLEC 1015 which was upheld by Pain J on appeal.

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

- identifies the development standard to be varied (Section 2);
- identifies the variation sought (Section 3);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Section 4);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (Section 5);
- demonstrates that the proposed variation to the development standard is in the public interest (Section 6); and

- provides an assessment of the matters the secretary is required to consider before providing concurrence (Section 7).

This Clause 4.6 variation request should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by JBA dated April 2017 in relation to the proposed commercial development at 67 Albert Avenue, Chatswood.

2.0 Development Standard to be varied

The development standard to be varied as part of this application is 'Clause 4.4 Floor Space Ratio' relating to the maximum floor space ratio (FSR) permitted for development. Under the Willoughby LEP 2012, the site has a maximum FSR of 8:1.

Clause 4.4 of Willoughby LEP 2012 states:

Clause 4.4 Floor Space Ratio

(1) The objectives of this clause are as follows:

- (a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,*
- (b) to limit traffic generation as a result of that development,*
- (c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- (d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,*
- (e) to permit higher density development at transport nodal points,*
- (f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,*
- (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*
- (h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,*
- (i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,*
- (j) to encourage the consolidation of certain land for redevelopment,*
- (k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.*

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

3.0 Nature of the Variation Sought

As described in the SEE and illustrated on the Architectural Drawings prepared by Fitpatrick + Partners (refer to **Appendix A**), the proposed development adds 10,397m² of commercial GFA to a site which already features an existing commercial building. A summary of the existing and proposed commercial GFA is provided in **Table 1**.

Table 1 – GFA Summary

	Existing	Proposed
Site Area	3,006m ²	3,006m ²
Commercial GFA	16,055m ²	16,055m ² + 10,397m ²
FSR	5.3:1	8.8:1

As shown in **Table 1**, the variation to the development standard is 0.8:1 or 10%. This is equal to a GFA of 2,404.8m². It is well established in case law that the extent of the numerical variation does not form part of the test to be exercised under Clause 4.6. Recent decisions in respect of *Michaul Holdings Pty Ltd v Randwick City Council* (55% exceedence of height and 20% exceedence of FSR) and *Moskorick v Waverley* (65% exceedence of FSR) reinforce this position.

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

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five 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 the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Sydney LEP is 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:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
4. *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).*
5. *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).*

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary, the First Method and Second Method are utilised.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of the development standard contained in Clause 4.4 of the Willoughby LEP 2012 are:

- (a) *to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,*
- (b) *to limit traffic generation as a result of that development,*
- (c) *to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*

- (d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,
- (e) to permit higher density development at transport nodal points,
- (f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,
- (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,
- (h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,
- (i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,
- (j) to encourage the consolidation of certain land for redevelopment,
- (k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.

Objective 1 - to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land

The proposed development is located within the middle of Chatswood CBD and immediately adjacent to a major transit interchange. The environmental capacity of the land on which the development will be carried out is not limited in such a way that the proposed increase of 10% over the FSR development standard will detrimentally impact the environmental capacity of the site.

An assessment of the environmental impacts of the proposed development has been undertaken and is provided within the accompanying Statement of Environmental Effects. This assessment demonstrates that the proposed development is generally in accordance with the environmental capacity of the site.

The site is zoned for B3 Commercial Core, an assessment of the proposed development, including the 10% increase in development intensity, is provided in **Table 2**.

Table 2 – Assessment against Zone Objectives

B3 Commercial Core Zone Objective	Assessment
To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.	The proposed development is in accordance with this objective, reducing the total proposed FSR by 10% would reduce the compliance with this objective by reducing the total floor space available within the new commercial building, therefore reducing the appeal of the new building to a wide range of prospective tenants in a central CBD location.
To encourage appropriate employment opportunities in accessible locations.	The proposed development is in accordance with this objective, reducing the total proposed FSR by 10% would reduce the compliance with this objective by reducing the total floor space available within the new commercial building, therefore reducing employment opportunities within the very accessible location adjacent to Chatswood Interchange.
To maximise public transport patronage and encourage walking and cycling.	The proposed development is in accordance with this objective, reducing the total proposed FSR by 10% would reduce the compliance with this objective by

B3 Commercial Core Zone Objective	Assessment
	reducing the total floor space available within the new commercial building. The proposed development does not include any new car parking, therefore reducing the total floor area would reduce number of people able to travel to work by train, foot and bike.
To support the role of St Leonards as a specialised centre providing health, research and education facilities.	The development is not located in St. Leonards.
To strengthen the role of Chatswood as a major centre for the inner north sub-region and to improve its public domain and pedestrian links.	The proposed development is in accordance with this objective, reducing the total proposed FSR by 10% would reduce the compliance with this objective by reducing the total floor space available within the new commercial building and within the Chatswood Centre. The proposed development, including the proposed 10% FSR exceedance, will help to deliver significant improvements to the public domain and pedestrian links.
To protect and encourage safe and accessible city blocks by providing active land uses on street and pedestrian frontage	The proposed development is in accordance with this objective, reducing the total proposed FSR by 10% would reduce the compliance with this objective by reducing the total floor space available within the new commercial building therefore reducing the use and activation of the block.

Additional assessment of the development against the objectives of the zone is provided in **Section 6.1.2**.

As shown in **Table 2** the proposed development, including the proposed 10% increase in FSR, is in accordance with the zone objectives for the land. Reducing the FSR to the extent that it complies with the FSR development standard within the LEP would not help the development's accordance with the environmental capacity of the land, nor the objectives of the zone.

Objective 2 - to limit traffic generation as a result of that development

No additional car parking is proposed as part of the proposed development. The proposed development, including the 10% exceedance of the FSR development standard that is proposed, will not increase traffic generation.

In supporting a new commercial development that does not include any additional car parking, Council is demonstrating support for car-free developments in appropriate locations, such as adjacent to train stations, which will reduce traffic generation. The proposed development is located less than 100m from Chatswood Station, as such presents a key opportunity to reduce traffic generation.

Objective 3 - to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

The proposed development is entirely within the 80m height of buildings development standard. Any view loss experienced by surrounding neighbours beneath this height plane is reasonable, particularly given the sites CBD location and proximity to public transport. Reducing the FSR of the proposed development by 10% would not reduce view impacts, privacy, overshadowing or visual intrusion as experienced by surrounding properties.

Objective 4 - to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone

The proposed development is of appropriate bulk and scale for a commercial building, and is consistent with the objectives of the *B3 Commercial Core* land use zone as outlined in **Table 2**.

The proposed building, including the additional 10% FSR, will provide a feasible commercial floorplate in an appropriate location. The bulk and scale is not inconsistent with the surrounding developments, it achieves adequate tower separation from residential uses, and facilitates a transition of high density from the centre of Chatswood CBD to lower density outward.

Objective 5 - to permit higher density development at transport nodal points

The site lies within 100m of Chatswood Railway interchange, situated on the North Shore and Western Line and Northern Line. Chatswood Railway interchange provides direct city bound services to the major hubs of St Leonards, North Sydney and the Sydney CBD stations of Wynyard, Town Hall and Central. Chatswood Railway interchange is wheelchair accessible with appropriate ramps and assistance provided.

The proposed development is additionally advantageously located to benefit from bus services, as it numerous bus services operate at the Chatswood Railway interchange. These services overlap as well as supplement the rail service by providing frequent buses to locations that are not served by the rail network.

Objective 6 - to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood

The proposed development is located in the centre of Chatswood CBD, and is well within the boundary of the Chatswood City Centre. As such, the proposed development encourages the compactness of the CBD, encouraging commercial growth in proximity to Chatswood Interchange

Objective 7 - to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood

While the Willoughby LEP 2012 outlines the character of Chatswood CBD as commercial to the west of the railway line, and retail to the east, it is noted that more recent planning strategies have recommended alternative land use strategies.

The *Draft Chatswood CBD Planning and Urban Design Strategy (the Draft Strategy)* recommends that expansion of the existing office core to the west of the railway line into the east, in order to facilitate much needed office growth. Due to a lack of commercial opportunity sites and market demand, the strategy recommends that the *B3 Commercial Core* zone be protected for commercial-only development. The *Draft Strategy* makes a number of recommendations, which may be included in future updates to the Willoughby LEP and DCP. Amongst these, are that a base FSR of 10:1 be applied to commercial sites and that additional FSR (or no FSR cap) may be appropriate for some sites.

As the proposed FSR is less than 10:1 it is clearly consistent with this future vision. It is noted that, if the recommendations of the *Draft Chatswood CBD Planning and Urban Design Strategy* are fully adopted by Council, this request to vary the FSR development standard would not be necessary as such a development standard would not apply to this development on this site.

Objective 8 - to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,

The proposal provides improved passive and active enjoyment for workers, through the provision of stairs and informal street seating facing the Gardens of Remembrance. The proposal does not result in significant overshadowing of the adjoining Garden of

Remembrance, and improves access amenity to and from the open space, with the provision of an escalator and lift between ground and upper ground level.

Objective 9 - to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas

The proposal facilitates a transition of the Chatswood CBD skyline as indicated in **Figure 1**, providing a transition in height from higher built form in the centre of the CBD at Chatswood Interchange, to lower built form towards the surrounding residential area.

The proposed development is appropriately proportional to, and is consistent with the bulk and scale of surrounding development. A proposal that complies with the FSR development standard, by a reduction in height, would result in a shorter truncated building inconsistent with a CBD urban setting. This would additionally result in a less efficient transition in built form than that shown in **Figure 1**.

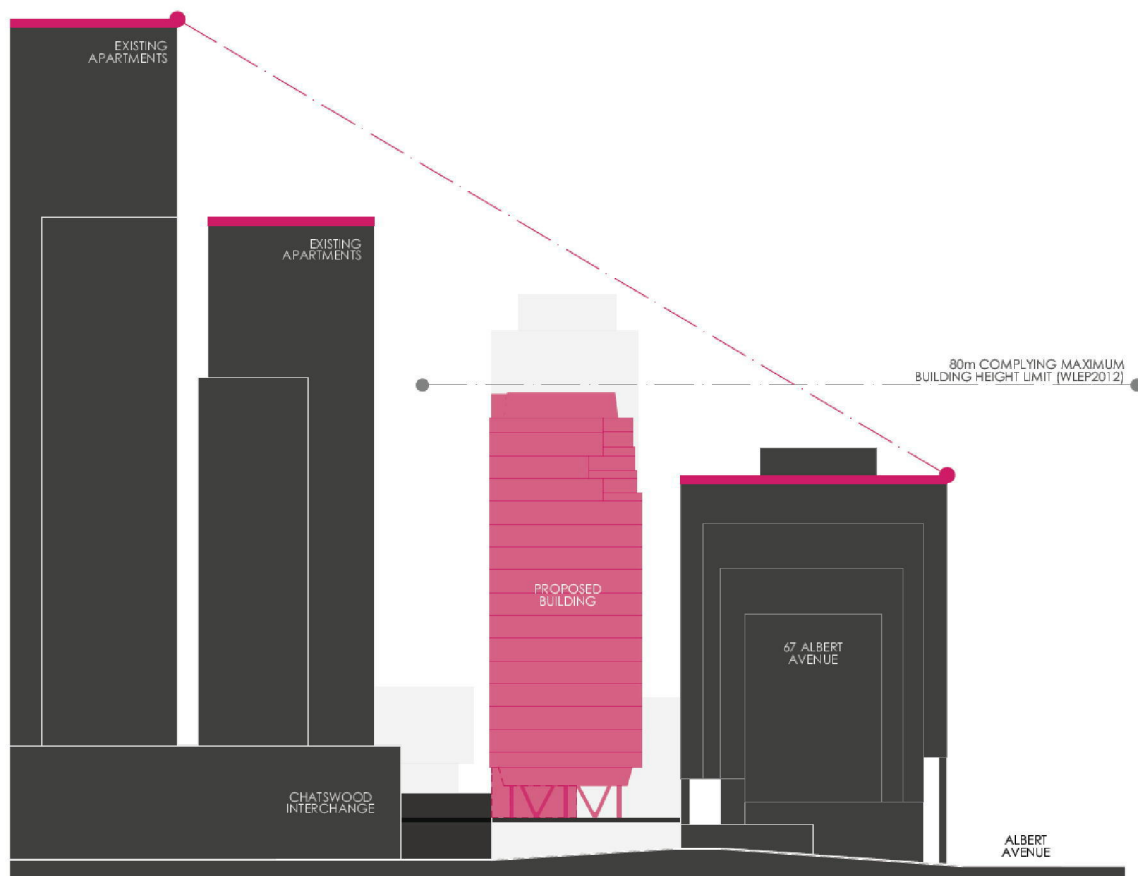


Figure 1 – Site context section and building transition
Source: Fitzpatrick + Partners

This transition of built form, which is facilitated by the increased FSR within the LEP maximum building height of 80m, will reinforce the Chatswood CBD identity, and increase wayfinding through landmark built form adjacent to Chatswood Station at the heart of Chatswood CBD. This transition in height is particularly important in the context of this development, as this section of the Chatswood CBD skyline can be viewed from the adjoining Garden of Remembrance and Chatswood Station.

Objective 10 - to encourage the consolidation of certain land for redevelopment

The proposal does not involve the consolidation of land for redevelopment. It however, makes use of an existing consolidated parcel for an additional commercial building which is consistent with this objective.

Objective 11 - to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.

The proposal does not involve the provision of community facilities or affordable housing, or the conservation of a heritage item. The proposal does however improve spaces of public interaction, particularly on the upper ground podium, which is currently seen to host unsociable behaviour, as demonstrated within the SEE.

4.2 The underlying object / purpose would be defeated if compliance was required (Second Method).

In the context of this development, the maximum FSR control is a somewhat crude and artificial measure of development capacity. It is possible for a commercial building, with a similar building envelope to that proposed, to achieve compliance with the FSR development standard through the introduction of internal voids, or by increasing the podium height. As such a similar building envelope could be proposed, within the 80m LEP height limit, but with artificially carved out voids to achieve FSR compliance.

The proposal seeks to optimise the height of the proposed tower, in order to create a skyline transition in height from the centre of Chatswood CBD outwards, and to provide an appropriate building scale that is commensurate with the LEP height control around the centrally located Chatswood Transport Interchange.

Due to the lack of opportunity sites for commercial development, as outlined in the *Draft Chatswood CBD Planning and Urban Design Strategy*, it is considered that a scheme that fails to optimise the maximum height control, would miss a key opportunity to increase commercial growth.

The overall bulk and scale of the proposal remains consistent with height and tower separation controls of WLEP 2012, and as such the view loss and overshadowing impacts would not be significantly reduced when compared to a compliant scheme that utilises internal voids. However, the inclusion of internal voids within the proposed tower would detrimentally affect the feasibility and lettability of floorplates for office use.

It could also be possible to provide an FSR compliant building that maintained the height transition between the existing 67 Albert Avenue Building and the Chatswood Interchange buildings (as outlined in **Figure 1**) by increasing the volume of the void above the existing podium. This increased void space would not be an acceptable outcome as it would be disproportionate to the human scale in the surrounding built form and would not relate well to the edges of the Garden of Remembrance.

The proposed development has been designed to relate appropriately to its context, including the human scale of the development at ground level and the transition of overall building height as buildings approach the centre of Chatswood. In order to allow for a building that is suitable for its location and that complies with the maximum building height development standard additional 10% FSR is considered to be acceptable. Were strict compliance with the FSR development standard to be enforced, the site would not be able to accommodate a building that appropriately addressed both its location within the Chatswood CBD and also the human scale of the adjoining parklands.

5.0 There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Willoughby LEP 2012 requires the departure from the development standard to be justified by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard.

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. There are particular circumstances that affect the site and for the variation proposed which warrant variation from strict compliance with the FSR standard. These are detailed below:

- The site includes a number of easements, rights of way and egress constraints on the ground and upper ground levels. These inhibit the development's ability to achieve strict compliance with the maximum FSR standard, whilst at the same time delivering a building with appropriate floor plates, of a height sought by Council's controls, and which also responds to market expectations:
- Compliance with the standard could be artificially achieved through the introduction of internal voids, without changes to the building bulk and scale that would result in significant improved public interest.
- Compliance with the current FSR standard would require the proposed tower to adopt increased setbacks, or to introduce voids within the building which would reduce flexibility for tenants and the economic feasibility of the building as a whole. This is particularly detrimental in the circumstances of the proposed development, as the proposal seeks to respond to a significant shortfall in office growth in Chatswood CBD.

In order to accommodate the tower setback requirements to neighbouring residents, and optimise the height of the development within the limits of the height of buildings development standard, while maintaining appropriate floor plates, a minor variation to the maximum FSR results. Whilst Clause 4.6 has no numerical cap on the extent of variation allowable, 10% is often within the general comfort of Council's when considering minor variations.

The *Draft Chatswood CBD Planning and Urban Design Strategy* outlines a summary of threats to commercial development, and provides recommendations to encourage the growth of Chatswood CBD as an employment centre. The site is identified within the strategy as one of the few opportunity sites for the new office development within the Chatswood CBD, and as such presents the perfect opportunity for facilitating office growth.

The *Draft Chatswood CBD Planning and Urban Design Strategy* makes a number of recommendations, which may be included in future updates to the Willoughby LEP and DCP. Amongst these are, that a base FSR of 10:1 be applied to commercial sites and that additional FSR may be appropriate for some sites.

As the proposed FSR is less than 10:1 it is clearly consistent with this future vision. It is noted that, if the recommendations of the *Draft Chatswood CBD Planning and Urban Design Strategy* are fully adopted by Council, this request to vary the FSR development standard would not be necessary as such a development standard would not apply to this development on this site.

The development proposes the first new commercial building in the centre of the Chatswood CBD for over 20 years. This report and the SEE demonstrates that aside from the FSR provisions, the proposal is generally consistent with key built form controls and objectives, including setbacks and separation distance requirements to neighbouring residents. In particular, it is anticipated to have no adverse impact on the surrounding road network whilst providing a significant boost to employment opportunities and amenities within the centre.

6.0 It is in the public interest because it is consistent with the objectives of the particular standard and zone

The proposed development has been assessed against the objectives of the FSR development standard and also against the objectives of the B3 Commercial Core zone.

Despite the proposed non-compliance with the maximum FSR development standard, the proposal is considered to be in the public interest as it satisfies the relevant objectives as discussed below.

6.1.1 Consistency with the objectives of the development standard

Refer to section 4.1

6.1.2 Consistency with the B3 –Commercial Core objectives

To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

In accordance with this objective, the proposed building provides for a variety of uses comprising a retail tenancy at podium level and commercial office spaces above. These two uses are compatible in that the retail tenancy will service the needs of the building's occupants, the growing workforce within the Chatswood CBD and the growing residential population in and around the centre.

The provision of these uses is consistent with the future desired character of the area nominated by the Chatswood City Centre Vision and *the Draft Chatswood CBD Planning and Urban Design Strategy (Draft Strategy)*. The *Draft Strategy* states the retail core east of the railway line is to accommodate office towers, to facilitate increased commercial land use in Chatswood CBD.

To encourage appropriate employment opportunities in accessible locations

The proposed development comprises a commercial tower in the Chatswood CBD and provides 10,397m² of commercial office spaces that will significantly increase the supply of employment opportunities in the area.

The site is situated directly adjacent to Chatswood Railway Interchange, and bus interchange. As such, the site can provide employment opportunities in accessible locations.

The *Draft Chatswood CBD Planning and Urban Design Strategy* outlines a summary of threats to commercial development, and provides recommendations to encourage the growth of Chatswood CBD as an employment centre.

It is noted in the strategy that a growth of a mere 900 employees was forecast in Chatswood by 2021 in a business as usual scenario. It is highly unlikely that Chatswood could achieve even the baseline target of 6,300 additional jobs by 2036 that is set out in the Greater Sydney Commission's Draft North District Plan without adopting the measures set out in the Draft Strategy. The Draft Strategy proposes the relaxation of development controls, including increasing the base FSR to 10:1. The site is identified as one of the few opportunity sites for the new office development within the Chatswood CBD, and as such presents the perfect opportunity for facilitating office growth.

To maximise public transport patronage and encourage walking and cycling

The development incorporates bicycle storage and end of trip facilities that will encourage the uptake of alternative transport. Furthermore, the site's proximity to public transport in the form of bus stops, a bus interchange and Chatswood railway station will further encourage public transport patronage.

The proposal does not provide any additional car parking, utilising the existing basement car parking, and its proximity to major transport hub at Chatswood Interchange. The additional floorspace above the base control is therefore likely to result in employment floorspace that encourages public transport use or end of trip facilities due to the no additional parking proposed.

To strengthen the role of Chatswood as a major centre for the inner north sub-region and to improve its public domain and pedestrian links.

In providing much needed new high quality office space at the heart of Chatswood CBD, the proposal and its additional 10% FSR supports its growth as a major centre.

The proposed development significantly improves the public domain of the existing site, as well the site's interface with the adjoining Gardens of Remembrance, as indicated in the Landscape plans at **Appendix C**.

The proposal will involve extensive improvement works to the ground and upper ground levels, including high quality and connected public domain. While the extension of the proposed upper ground podium is located wholly within the development site, the podium will connect to existing easements/access and will involve improvements to the existing conditions of the site, and connections with adjoining development site.

To protect and encourage safe and accessible city blocks by providing active land uses on street and pedestrian frontages.

The proposal includes the provision of retail on the upper ground level, within the lobby of the proposed commercial tower, facilitating activation of the adjoining Garden of Remembrance. The proposed upper ground floor uses improves the public domain of the site through crime prevention design principles, and disabled accessibility to Chatswood interchange with the inclusion of a lift from ground to upper ground levels.

7.0 Secretary's Concurrence

Under Clause 4.6(5) of LEP 2012, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the Sydney LEP which must be considered by the Secretary.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposal results in a minor 10% variation to the FSR standard nominated by the Willoughby LEP 2012. This variation is considered to be minor and will not raise any matter which could be deemed to have State or Regional significance.

The public benefit of maintaining the development standard

Maintaining the development standard would not result in any public benefit in this situation. Reducing the proposed FSR to comply with the development standard would either require a reduction in the height of the building, increased setbacks or the inclusion of voids within the building. Any of these outcomes could potentially result in unfeasible commercial floorplates for the proposed tower.

It is noted that in order to ensure the flexibility to meet changes to market demand for office space, the proposal seeks approval for an acceptable bulk and scale that would allow for feasible floorplates to be provided. The introduction of voids in the building will be subject to the specific requirements of the tenants and as such can be introduced at a later stage if required.

Furthermore, the development as a whole will deliver a number of public benefits to the area, including:

- providing office uses close to housing and public transport, therefore supporting the future growth of the Chatswood CBD;
- providing a retail tenancy that will contribute to servicing the needs of local residents and workers;
- enhancing and encouraging greater activation and passive surveillance of the adjoining public domain the Garden of Remembrance, and providing an escalator to increase connectivity with Chatswood Interchange;
- supporting *A Plan for Growing Sydney* by encouraging development that will generate long-term employment and encourage the long-term viability of the commercial core;
- meeting district plan employment targets mooted as difficult to meet unless development capacity increased in Chatswood CBD;
- by providing employment uses in close proximity to housing stock; and
- providing bicycle and end of trip facilities that will encourage the uptake of non-vehicular transport.

Any other matters required to be taken into consideration by the Secretary before granting concurrence

The proposed development will facilitate the orderly and economic development of the site for high density retail and office floorspace. The proposal will deliver a number of benefits to the Willoughby LGA, including:

- increasing the supply of employment opportunities;
- providing employment opportunities in close proximity to public transport; and
- facilitating the promotion of walking and cycling.

8.0 Conclusion

Clause 4.4 (Floor Space Ratio) of the LEP applies a maximum FSR of 8:1 to the site. The development proposes to introduce 10,397m² of GFA to the site, which would increase the total FSR of 8.8:1. This request under Clause 4.6 of the LEP is submitted to Council in support of this departure from the Floor Space Ratio development standard.

There are unique constraints that affect the site and result in a development that exceeds the FSR. These constraints include the need for any new development to address a high quality public domain responses to the site's current use as a landscaped podium, the aspiration to deliver feasible commercial floor plates of an appropriate size to meet market demand.

The building can be accommodated on the site within the allowable height limit, the proposed contravention does not result in an over development of the site or adverse impacts on surrounding properties. The proposed bulk and scale is commensurate with surrounding developments and the built form that characterises the locality.

Reduction in FSR would be an artificial stripping back of floorspace through the introduction of voids etc, therefore wasting the opportunity to capitalise and maximise on the central CBD location.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the FSR standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the floor space ratio development standard, the proposed development is considered to satisfy the objectives of the development standard, as well as those in the *B3 Commercial Core* zone and the Willoughby DCP. On this basis, the Clause 4.6 variation is considered well founded and should be supported.