



# 44-52 Anderson Street, Chatswood

## Clause 4.6 Variation Request

Clause 4.4 Floor Space Ratio

Willoughby Local Environmental Plan 2012

PREPARED FOR

BRIDGESTONE PROJECTS PTY LTD

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Mecone acknowledges the Traditional Custodians of the land on where this project is undertaken and across the Mecone offices that this report is prepared, paying respect to the Elders past and present. We recognise the ongoing connection of Aboriginal and Torres Strait Islander peoples to land, waters, and culture.


## Project Director

Ian Cady

## Contributors

Gemma Bassett

Paige Matthews

REVISION	REVISION DATE	STATUS	AUTHORISED: NAME & SIGNATURE	
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\* This document is for discussion purposes only unless signed and dated by the persons identified.  
This document has been reviewed by the Project Director.

## Contact

Suite 1204b, Level 12, 179 Elizabeth Street  
Sydney, New South Wales 2000  
info@mecone.com.au  
mecone.com.au

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# 1 Introduction

This Clause 4.6 Variation Request has been prepared by Mecone on behalf of Bridgestone Projects Pty Ltd (the **Applicant**) in support of a Development Application (**DA**) for a shop top housing development at 44-52 Anderson Street, Chatswood (the **site**). It seeks a variation to the maximum floor space ratio (**FSR**) development standard per Clause 4.4 of the *Willoughby Local Environmental Plan 2012* (the **LEP**).

The proposed residential carparking on site exceeds the *Willoughby Development Control Plan 2023* (the **DCP**) parking rates and therefore excess carparking spaces will constitute gross floor area (**GFA**) which requires a variation to the FSR development standard.

The objectives of Clause 4.6 are:

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

This Clause 4.6 variation request demonstrates that strict compliance with the FSR development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate for the context of the site and as such is justified on environmental planning grounds.

This Clause 4.6 variation request demonstrates that:

- Strict application of the FSR development standard is unreasonable and unnecessary as the underlying object or purpose of Objectives (b) and (e) of Clause 4.4 would be defeated or thwarted if compliance was required (*Wehbe* test 3) and the remaining objectives of the standard are achieved notwithstanding non-compliance with the standard (*Wehbe* test 1).
- As it relates purely to car-parking spaces - in excess of the requirements of Council, the variation to FSR bears no impact on the ability to meet objectives (c), (d), (g), (h), (i), (j), (k) of Clause 4.4 of the LEP.
- The following are **sufficient environmental planning grounds** to justify the contravention of the development standard:
  - Adequate residential carparking provision is required to cater to the travel needs of **downsizers, aging owner-occupiers, young families and the luxury market** as public transport does not meet all the travel needs of these residents, especially for destinations not well-served by public transport.
  - The Cardno Report on *Review of Parking Rates*<sup>1</sup> indicates there is an increasing trend in car ownership in Chatswood while train continues to have the highest mode share in journey to work for residents in the Chatswood CBD. This suggests that **car ownership does not necessarily contribute to traffic generation** as the use of private vehicles generally occur in non-peak hours for personal/recreational trips.
  - Limiting the provision of residential carparking would undermine the **competitiveness of the Chatswood CBD** and make it less desirable compared to neighbouring localities with a higher parking rate. Transit-oriented development with insufficient carparking is likely to compromise the

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<sup>1</sup> Review of Parking Rates dated 9 February 2021 was prepared by Cardno for Willoughby City Council: [https://www.willoughby.nsw.gov.au/files/assets/public/v/1/documents/publications-reports-master-plans-strategies-action-plans/ecm\\_6875816\\_v1\\_20210209-final-v2-willoughby\\_review-of-parking-rates.pdf](https://www.willoughby.nsw.gov.au/files/assets/public/v/1/documents/publications-reports-master-plans-strategies-action-plans/ecm_6875816_v1_20210209-final-v2-willoughby_review-of-parking-rates.pdf)

market acceptability and hence delivery of housing within such development within Chatswood.

- The Willoughby DCP maximum carparking rate is a **significantly more restrictive** than the most restrictive carparking rates in other areas of Sydney.
- While there is an established market for studio and 1-beds with no parking, there is very limited demand for larger apartments without parking. The flat rate irrespective of apartment size provides disincentivises the provision of larger apartment types, which has negative **implications on housing choice**.
- The proposed additional FSR responds directly to the desire to allow growth for a mix of retail, business and commercial purposes, by providing **sufficient parking for both residents, tenants and customers** utilising the services on the site. This will in turn minimise additional pressure on the existing on-street parking.
- As confirmed in the Traffic and Parking Assessment Report submitted with the DA, the proposed additional carparking will have a **lower traffic generating potential** than the approved Planning Proposal for the site given the reduction in number of apartments and carparking spaces from the Planning Proposal scheme.
- The **Future Conditions Report prepared by Arup**<sup>2</sup> confirmed that the future transport network would be able to accommodate the uplift scenarios in 2026 and 2036 based on the Chatswood CBD Strategy. Despite the excess carparking proposed, **the additional carparking spaces do not directly contribute to traffic generation potential**, and hence the proposed carparking variation does not impact on the estimated private vehicle trips in the Chatswood CBD.
- The proposed FSR variation **does not result in any adverse impact with respect to the built form, bulk, scale, view loss, privacy, visual intrusion or overshadowing** as it is contained entirely within basement levels and will not be visible from the public domain. The FSR variation arises only in response to the provision of sufficient parking for the residential component of the development which seeks to cater for families and downsizers.
- The proposed FSR resulting from the proposed parking provision represents the outcome of a 5-year design process, involving a site-specific Planning Proposal and subsequently an Architectural Design Competitions, which have informed the basement, building core and structural design of the building, all of which is integral to the overall development. Notably, **the winning design endorsed by the Jury comprised a scheme that complied with the parking rates of the former DCP 2006**.
- The DCP came into effect with new parking controls, and **no savings provisions** on 4<sup>th</sup> October 2023 - some **4 months after this DA was lodged** on 6 June 2023.

Strict compliance with the FSR control – and by extension, the DCP 2023 parking rates - would dis-incentivise the provision of 3 and 4-bedroom apartments. It would be inconsistent with the key direction of the *Willoughby City Local Strategic Planning Statement* (LSPS) seeking to increasing housing diversity to cater for various population groups and households. It also prevents the proposal from achieving the Object of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to promote the orderly and economic use and development of the land.

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<sup>2</sup> Future Conditions Report – Chatswood CBD Strategic Study dated September 2020 was prepared by Arup for Willoughby City Council: [https://www.willoughby.nsw.gov.au/files/sharedassets/public/v/1/ecm/willoughby-council-website/publications-reports-master-plans-strategies-action-plans/publications-reports-master-plans-strategies-action-plans/future\\_conditions\\_report\\_september\\_2020.pdf](https://www.willoughby.nsw.gov.au/files/sharedassets/public/v/1/ecm/willoughby-council-website/publications-reports-master-plans-strategies-action-plans/publications-reports-master-plans-strategies-action-plans/future_conditions_report_september_2020.pdf)

Accordingly, the consent authority can be satisfied that compliance with the FSR development standard is unreasonable and unnecessary since the objectives of the standard are achieved notwithstanding the non-compliance.

## 2 Development Standard to be Varied

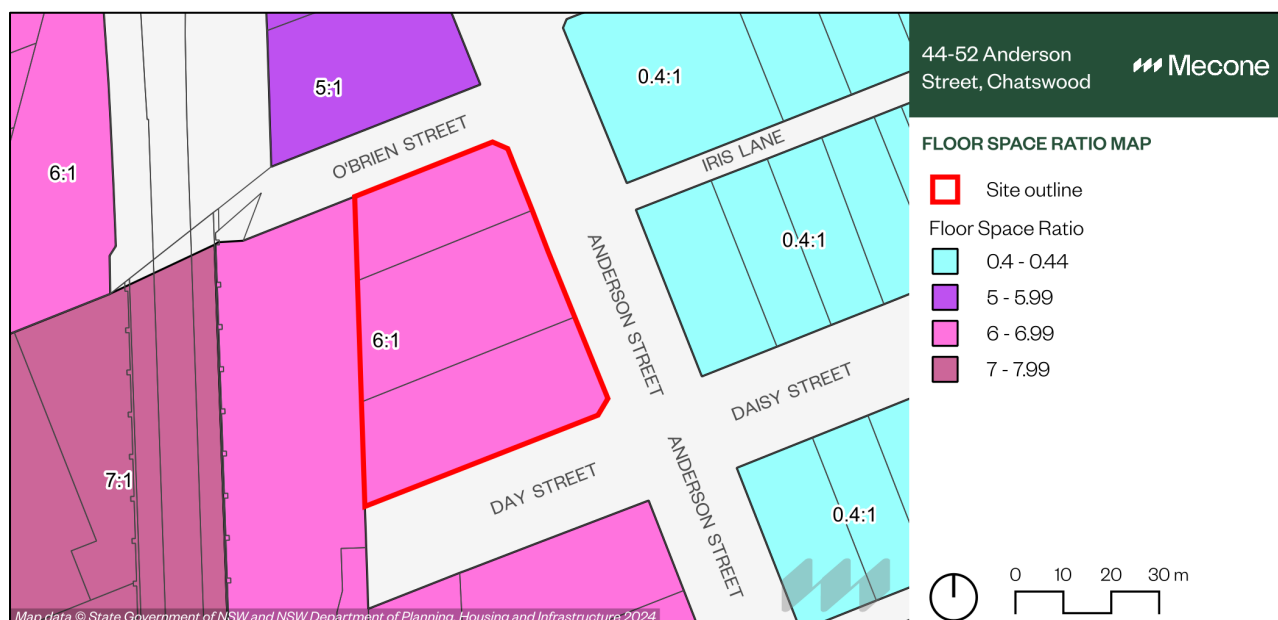
The development standard sought to be varied under this written request is Clause 4.4 Floor space ratio under the LEP.

### 2.1 Clause 4.4 Floor Space Ratio

The development standard sought to be varied under this written request is the FSR standard set out at Clause 4.4(2) of the LEP.

Clause 4.4(2) of the LEP provides that 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*'.

The FSR Map prescribes a maximum FSR of 6:1 (see **Figure 1**).



**FIGURE 1 FSR MAP**

Source: Mecone

The site area is 2,687m<sup>2</sup> and therefore the maximum permitted GFA based on an FSR of 6:1 is 16,122m<sup>2</sup>.

### 2.2 Is the Planning Control in Question a Development Standard?

The maximum FSR prescribed in Clause 4.4 of the LEP is a development standard involving a measurable quantum that can be varied.

## 2.3 Extent of Variation Proposed

The proposed variation to LEP Clause 4.4 (Floor Space Ratio) is summarised at **Table 1** below.

**TABLE 1 CLAUSE 4.4, LEP 2012 VARIATION SUMMARY**

Standard	Control	Proposed	Proposed Variation
Clause 4.4	6:1	6.39:1	
Floor space ratio	GFA: 16,122m <sup>2</sup>	GFA: 17,129.97m <sup>2</sup>	6.25%

The site has an area of 2,678m<sup>2</sup> and the development is subject to a maximum FSR control of 6:1. The proposal has an FSR of 6.39:1 which represents a 6.25% variation to the standard. This arises exclusively from carparking for the residential component which exceeds the maximum car parking rates adopted in Part F of the DCP 2023 (see further discussion below). Notwithstanding excess car parking, the proposed FSR is 6:1 with an GFA of 16,122m<sup>2</sup>, which complies with the 6:1 FSR standard.

The LEP definition of GFA states (**our emphasis**):

**gross floor area** means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,

**but excludes—**

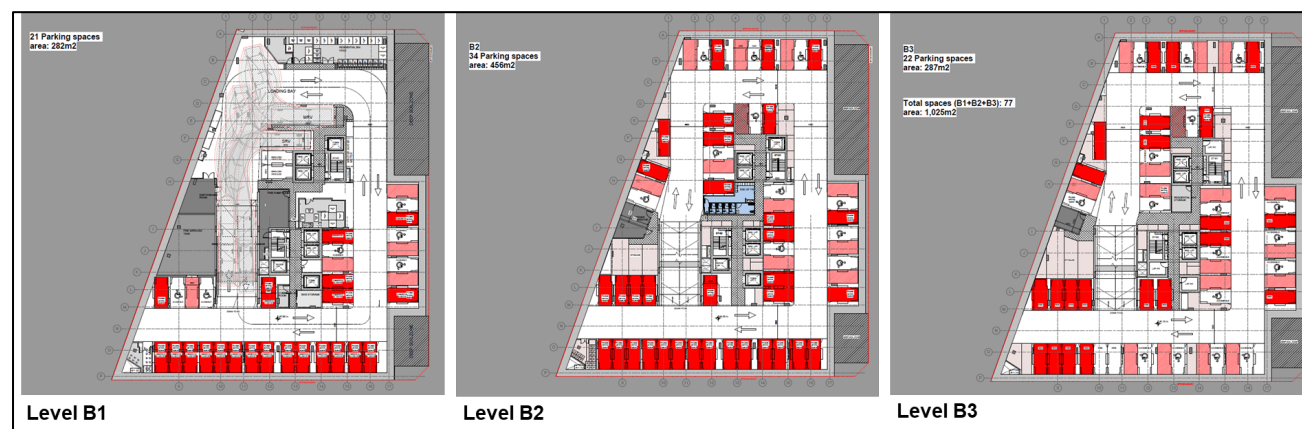
- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
  - (i) storage, and
  - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

As such, only car parking spaces provided in accordance with the DCP 2023 rate of 0.5 spaces per apartment can be excluded from the GFA calculation. A comparison of the proposed parking spaces and the maximum parking spaces under Part F of the DCP is provided at **Table 2**:

**TABLE 2 DCP PARKING RATES & PROPOSED PARKING RATES**

Land Use	Parking rate (maximum)	Required spaces	Proposed spaces	Excess spaces
<b>Residential component of shop top housing</b>				
Resident	0.5 / unit	48	119	71
Visitor	1 / 7 units	14	19	5
<b>Total residential</b>		<b>62</b>	<b>138</b>	<b>76</b>
<b>Non-residential</b>				
Retail	1 / 70m <sup>2</sup> (1,111.33 m <sup>2</sup> )	16	20	0
Commerical	1 / 400m <sup>2</sup> (1,629.99m <sup>2</sup> )	4		
<b>Total non-residential</b>		<b>20</b>	<b>20</b>	<b>0</b>
<b>Total</b>		<b>82</b>	<b>156</b>	<b>76</b>

The proposal includes 76 residential carparking spaces in excess of the maximum DCP parking rates, which by definition constitute GFA. As illustrated in the Architectural Plans, these additional spaces equate to 1,007.64m<sup>2</sup> of GFA.



**FIGURE 2 EXCESS CAR PARKING (SHADED IN RED)**

Source: Make Architects

The extent of the variation to the FSR development standard is required solely to accommodate residential car parking spaces within the basement of the building. Providing sufficient car parking is vital to marketability, and feasibility of the development and to ensure the future residents, tenants and visitors are appropriately catered for. It would be unreasonable to strictly enforce the maximum FSR control on the site, noting this would result in the built form being significantly minimised, which is not in alignment with the stated FSR objectives. Particularly, with regard to permitting ‘high density development’ in the Chatswood CBD.

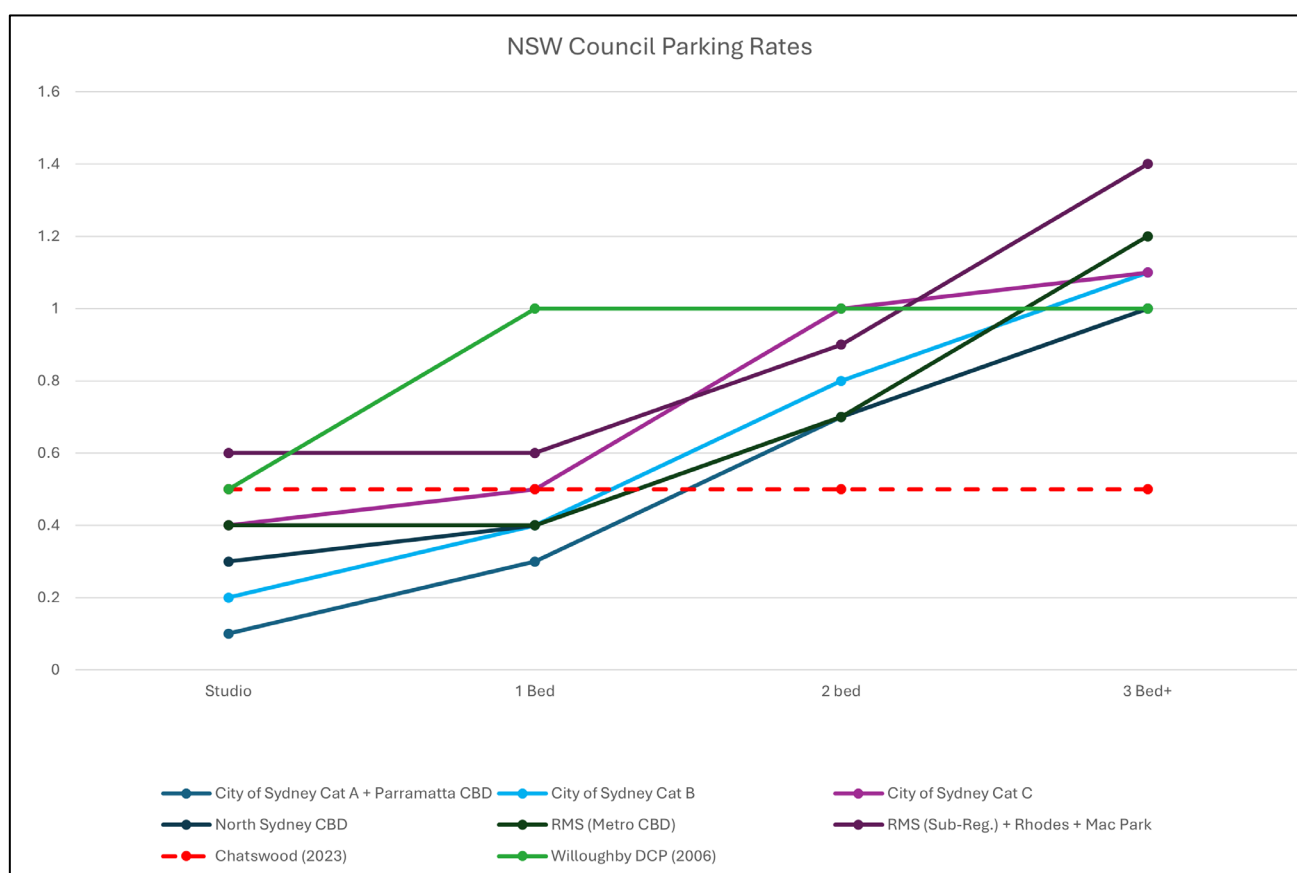
**Table 3** below provides a comparison of parking rates between the City of Sydney Category A Land and Parramatta CBD, former Willoughby DCP 2006, the Guide to Traffic Generating Development published by the Roads and Maritime Services (RMS) (2002) and the Draft Guide to Transport Impact Assessment (GTIA) released by Transport for NSW (TfNSW). It is noted that the exhibition for the Draft GTIA concluded on 31 May 2024 and is currently under review.

Willoughby is the only LGA amongst similar centres in Greater Sydney and the RMS Guide that applies a flat parking rate irrespective of apartment sizes - it is the most restrictive carparking rate among similar centres. Unlike the 2006 DCP, the RMS Guide and the Draft GTIA, the 2023 DCP has a flat maximum rate of 0.5 spaces per apartment and provides no differential between parking provision for smaller and larger apartments. All other instruments provide a higher rate for 2 and 3 bed apartments than the current DCP.



**TABLE 3 CARPARKING RATE COMPARISON**

Residential type	City of Sydney Category A and Parramatta CBD	Willoughby DCP 2006	RMS Metropolitan Sub-regional centre	RMS Draft CBD rates and GTIA	Willoughby DCP 2023
Studio	0.1	0.5	0.6	0.4	0.5
1-bed	0.3	1	0.6	0.4	0.5
2-bed	0.7	1	0.9	0.7	0.5
3-bed +	1	1.25	1.4	1.2	0.5



**FIGURE 3 COUNCIL CARPARKING RATES ACROSS NSW**

Source: Mecone

### 3 Clause 4.6 Exceptions to development standard

Clause 4.6 of the LEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are:

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

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6 (3) requires that the consent authority to consider a written request from the applicant, demonstrating that:

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

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

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118

The relevant matters contained in clause 4.6 of the LEP, with respect to the FSR development standard are each addressed below, including with regard to these decisions.

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

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' and the 'third way' are relevant to establishing that compliance with the maximum FSR development standard pursuant to clause 4.4 of the LEP is unreasonable or unnecessary:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*

##### 3.1.1 Third test: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Of the 11 objectives stated at Clause 4.4(1), the underlying object or purpose of Objectives (b) and (e) would be defeated and thwarted if residential carparking provision is restricted to the DCP maximum parking rate to achieve compliance with the FSR standard.

The reasoning for this is discussed below:

- (b) to limit traffic generation as a result of that development,

The underlying object of objective (b) would be defeated or thwarted if compliance with the FSR standard was required because:

- The RMS *Guide to Traffic Generating Developments: Updated traffic surveys* (TDT 2013/04a) establishes traffic generation rates for high density residential development, which are based on the number of apartments, rather than the GFA of the development. Therefore, the traffic generation potential associated with the proposal is not affected by the proposed FSR variation.
- More broadly, car ownership does not mean that car will be the dominant travel mode for residents in the CBD and contribute to traffic generation in the Chatswood CBD. In the Cardno Report on Review of Parking Rates dated 9 February 2021, the majority of the households in the Chatswood CBD own at least one car while train and walking are two of the top three mode shares in journey to work for residents in the area. This is because car ownership does not discourage the use of public transport to commute to work, particularly if the work destinations are in areas like the Sydney CBD, North Sydney CBD, St Leonards or Parramatta where destination parking is limited and expensive, with a high peak hour traffic.
- Cars are still needed for households in high density areas as public transport does not necessarily meet all the travel needs of the residents, particularly for journeys to non-work destinations that are not served by public transport.
- As identified in the Future Conditions Report prepared by Arup dated September 2020, given the population increase in the Chatswood CBD, private vehicle trips will increase despite the mode shift towards public transport. The comparison of the base and uplift scenarios in 2026 and 2036 indicated only minor changes on the arterial road network. The Report concludes that the impacts of the uplifts envisaged in the Chatswood CBD Strategy on the transport network will be in the same order as the TfNSW forecasts and that the future transport network will be able to accommodate this demand. The findings of the Cardno Report and Arup Future Conditions Report are further discussed in **Section 3.2**.
- The lack of carparking would mean that residents may choose to live where residential car parking is provided which would be located further from public transport meaning that residents would need to rely on and use their vehicles to a greater extent.
- Strict application of the 0.5 spaces/apartment parking rate under the DCP will discourage developers from providing larger apartments and hence results in smaller rental stock consisting of studios and 1-bed apartments. This would then increase the number of apartments and therefore increasing the generation of traffic as stipulated in the RMS Guide.
- Therefore, requiring compliance with the DCP maximum parking requirement as a means to achieve FSR compliance would result in the underlying object or purpose of Objective (b) being defeated and thwarted.

*(e) to permit higher density development at transport nodal points,*

The market in the Chatswood CBD targets downsizers and families through providing a high-end product which competes with existing stock in the surrounding area. There is a preference (driven by market demand) for larger apartments. The provision of such housing with no parking is unlikely to be able to compete with existing housing stock in this market.

The proposed apartments are in excess of minimum apartment sizes under the Apartment Design Guide (ADG). This high-end product is attractive to downsizers, and as such the scheme proposes a significant proportion of 3-bed apartments. In order to attract this market, the product will need to be able to compete with housing options in the surrounding area, which have higher car parking allocations. The excessively restrictive rate under the DCP would undermine the competitiveness of residential developments in Chatswood CBD and render the area less desirable compared to neighbouring centres. Strict application of the DCP parking rate would have the effect of reducing the supply of transit-oriented development in Chatswood, as either:

- the proposed number of apartments would need to be reduced to achieve strict compliance with the FSR control with sufficient car parking.
- Proposed apartments would not be commercially marketable and therefore the site would not be developed.

As outlined in **Table 3** above, the current RMS rates and proposed GTIA rates are much higher than the DCP 2023 parking rate. While the parking rate of 0.4 for each studio and 1-bed apartment in the Draft GTIA are slightly lower than the maximum rate of 0.5/apartment in the DCP, the Draft GTIA differentiates the parking requirements for various apartment sizes and provides a greater allowance for apartments with greater number of bedrooms, up to 1.2 spaces per 3-bed+ apartments.

The DCP parking rate is therefore far below what the market requires and what is available in the surrounding localities.

The additional GFA arising from car parking would support higher density development at the site, being in proximity to the Chatswood Transport Interchange. The proposed parking represents the needs of future residents and commercial tenants. The provision of only 0.5 parking space per apartment would be insufficient to satisfy the need for carparking within the development and is likely to result in additional pressure for on-street parking, or illegal parking in the surrounding area. Further, as demonstrated in the Transport Impact Assessment prepared by JMT Consulting, the projected level of traffic activity associated with the proposal (including the additional carparking) is consistent with that already contemplated in the Planning Proposal, as well as with the *Chatswood CBD Planning and Urban Design Strategy* (the Chatswood CBD Strategy).

While the number of residential apartments may be decreased to ensure that strict compliance with the FSR control is achieved notwithstanding excess car parking, this would be inconsistent with objective (e) as it would not permit high density development as envisaged under the Chatswood CBD Strategy.

Accordingly, limiting carparking provision to achieve compliance with the FSR standard will discourage higher density development in transport nodal points and hence the underlying object or purpose of Objective (e) would be defeated and thwarted.

### 3.1.2 First test: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The proposed FSR is consistent with Objectives (a), (b)-(d) and (f)-(k) of the FSR development standard as contained in clause 4.4 of the LEP. However, Objectives (a) and (f) are the most relevant to the proposed FSR variation, whilst the remaining objectives are not relevant to the variation request. Nevertheless, all aforementioned objectives have been considered and addressed for completeness and are detailed below.

- (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,*

#### Intensity of development / bulk and scale

The proposed FSR presents an appropriate intensity of development in the context of the Chatswood CBD. In terms of bulk and scale, the proposed built form with a 6.39:1 FSR would be no different to a building with a compliant 6:1 FSR and compliant parking provision when viewed from the public domain. This is because the additional floor space relates solely to residential carparking which is located entirely within the basement levels of the proposed development. Therefore, the proposed FSR does not result in any visual or amenity impacts beyond those associated with a building with a compliant FSR.

#### Environmental capacity

Regarding environmental capacity, the applicant has been issued GTA's by WaterNSW. Further, the Geotechnical report and Preliminary Site Investigation by Stantec also confirmed that the site can be made suitable for shop-top development subject to recommendations.

Therefore, the proposed FSR resulting from additional basement levels accommodating the additional carparking is in accordance with the environmental capacity of the land.

#### Zone objectives

Consistency with each MU1 zone objective is further discussed in **Section 4.2**.

- (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,*

In order to support the proposed retail, business and commercial uses within the development, additional carparking spaces are proposed for the commercial tenancies to enable flexibility in the parking need of the future commercial tenants. As discussed earlier, the additional carparking will not result in any unacceptable traffic implications in terms of road network capacity. The proposed additional parking will conserve the compactness of the Chatswood CBD as it will be contained within the basement and proposed building envelope, instead of taking up additional land to provide parking.

The remaining objectives of Clause 4.4 are addressed below.

**TABLE 4 ASSESSMENT AGAINST THE REMAINING OBJECTIVES OF CLAUSE 4.4**

Objective	Assessment
(c) <i>to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,</i>	<p>Not relevant.</p> <p>The proposed additional FSR is contained within the basement of the proposed development, being for the purpose of providing sufficient parking spaces (beyond that of the DCP parking rate). As the proposed carparking is not visible from the public domain and street level, the additional floor space will not result in the disruption of views, loss of privacy, overshadowing or visual intrusion.</p>
(d) <i>to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,</i>	<p>Not relevant.</p> <p>As discussed above, the additional FSR is entirely underground and does not affect the bulk and scale of the development. The proposed shop top housing development remains to be a 90m tower with a building envelope compliant with the DCP. Consistency with the zone objectives is further discussed in <b>Section 4.2</b>.</p>
(g) <i>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,</i>	<p>Not relevant.</p> <p>As discussed above, the proposed additional parking is provided to enable flexibility for the future commercial tenants, which will support commercial and retail development in the eastern portion of the Chatswood CBD.</p>
(h) <i>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>	<p>Not relevant.</p> <p>The proposed additional FSR in the basement will not inhibit the provision of open spaces within the development.</p>

Objective	Assessment
<i>(i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,</i>	Not relevant.  The proposed additional FSR does not affect the proposal from achieving transitions in building scale and density as envisaged in the Chatswood CBD Strategy.
<i>(j) to encourage the consolidation of certain land for redevelopment,</i>	Not relevant.  The proposed additional FSR does not impact on the consolidation of certain land for redevelopment.
<i>(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.</i>	Not relevant.  The proposed additional FSR does not impact on the provision of affordable housing associated with the proposal. 4% of affordable housing will be provided in accordance with Clause 6.8 of the LEP.

In light of the above, the proposed additional FSR is consistent with the relevant objectives of the FSR development standard. Therefore, pursuant to the First limb of the Wehbe test, compliance with the FSR development standard under Clause 4.4 is unreasonable or unnecessary.

### 3.2 Clause 4.6 (3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

Initial Action outlines the “test” under this subsection as follows:

*“The focus of cl 4.6(3)(b) is on **the aspect or element of the development that contravenes the development standard**, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.”*

The aspect of the development is the parking rate and the environmental planning grounds for contravening the standard are:

- **Carparking required to cater for the envisaged downsizers, aging owner occupiers, young families and the luxury market.**
- **Car ownership does not necessarily result in increased traffic generation.**
- **Inadequate carparking would reduce the delivery of transit-oriented developments.**
- **Reduction in traffic generation potential compared to the approved Planning Proposal**
- **A future transport network capable of accommodating the uplifts from the Chatswood CBD Strategy**
- **No unacceptable environmental, visual or amenity impacts**
- **No difference in bulk and scale compared to a compliant development.**
- **Long-term planning for the site**
- **Implications of strict compliance with the FSR development standard**

These are explained in further detail below.

Carparking required to cater for the envisaged downsizers, aging owner occupiers, young families and luxury market.

- The proposed additional carparking is needed to satisfy the need of future residents and to satisfy the market demand. The proposal has been designed to cater for downsizers, young families and aging owner-occupiers with 50% adaptable apartments. The proposal is also designed to cater to the luxury market which has an increasing demand for larger apartments. While the site is located approximately 400m walking distance from the Chatswood Transport Interchange, it is not practicable for older or less-able-bodied future residents to walk to public transport as their primary mode of travel.
- Provision of less than one parking space per apartment would unduly exclude these groups of future residents in this location, which is inconsistent with objective (a) in Part F Section 1.2 of the DCP:
  - a. *ensure developments make adequate provision for a reasonable number of off-street car parking spaces, including accessible (disabled) parking spaces*

The exclusion of the less-able-bodied and older residents from accessing housing with a car parking space is unreasonable and the maximum parking requirements under DCP do not allow for adequate provision of carparking in developments to satisfy the needs of future residents.

- Additionally, public transport does not meet all travel needs of the residents as in many cases non-work destinations are not well serviced by public transport. A car is often needed for personal/recreational trips to visit family, access services such as medical, educational, religious etc. These trips are more often made during off-peak hours and weekends.

#### Car ownership does not necessarily mean increase in traffic generation

- Section 4.3.2 of the Cardno Report on Review of Parking Rates commissioned by Council, demonstrates the majority of dwellings in the Chatswood CBD own at least one car, consistent with the 2006 DCP parking requirements, which permitted 0.5 spaces per studio and 1 space per dwelling for other apartment sizes. Section 4.3.8 of the Report also identifies the potential to better balance the parking provision in some areas to achieve a higher proportion of dwellings with equal vehicles and parking spaces.
- Further, Section 4.4.1 of the report identifies that the train is the largest mode share for residents in the CBD, accounting for 46% of the mode share, compared to only 35% for workers in the CBD. Car is the largest mode share for workers in the CBD, accounting for a total of 41% (driver and passenger), compared to only 22% for residents in the CBD. This reflects that the **demand for car usage is predominantly associated with workers in the CBD, rather than residents.**
- Walking trips are also significant for residents (16% of mode share) but very small for workers (6%), reflecting that many residents work locally and do not need to drive to work. The data demonstrates that owning a car does not necessarily mean car will be the dominant travel modes for residents in the CBD and hence will not necessarily contribute to peak hour traffic generation within the CBD – particularly given that train has the highest mode share for residents in CBD.
- Strict compliance with the maximum residential parking rate would result in insufficient parking that is required to satisfy the needs of residents (at least 1 space per dwelling) and would only increase pressure on off-street parking. Section 4.5.1 of the Cardno Report identifies an increasing trend in car ownership in the Chatswood-Lane Cove region (albeit train being the most dominant travel mode share for residents in the CBD). Therefore, reducing the supply of off-street carparking will likely result in additional pressure on on-street parking, or illegal parking in the surrounding area.
- While the DCP maximum parking rate can be used to control the number of on-site parking within the development, it cannot control the number of cars on the street. There is no certainty that the apartments will be occupied by households without cars as the occupants can simply choose to park the car on the street or in paid private car parks.

#### Inadequate carparking would reduce the delivery of transit-oriented developments

- Limiting car parking would make Chatswood CBD less competitive and less desirable compared to neighbouring centres with a higher carparking rate - as it would not satisfy the parking needs of the residents. The principle means of reducing car usage is the delivery of TOD housing however if TOD housing has inadequate carparking it is likely to compromise the market acceptability and hence the delivery of that housing.
- Additional carparking is therefore needed to ensure at least one carparking is provided to each apartment to enable car ownership within the development to satisfy the travel needs of the residents. This is also important to facilitate the development of high-density mixed-use shop top housing whilst capitalising on easy access to public transport infrastructure as envisaged in the Chatswood CBD Strategy.
- As demonstrated in **Section 2.3 Table 3**, the DCP maximum parking rate is significantly below the parking rates in the RMS Guide and results in an under-provision of carparking for two and three beds apartments.
- There has been a fundamental shift in the market which has increased demand for larger apartments in high density housing - which are attractive to a growing number of owner-occupiers and families who typically come from housing that had access to multiple parking spaces. For the development to be



commercially viable, it is important that the product responds to the emerging market demand. There is no market demand for 2 and 3 bed apartments with no carparking and therefore strict application of DCP parking rates would discourage developers from providing larger apartments. Ultimately this would be realised in a shift to delivery of smaller rental stock of studios and 1-bed apartments which will negatively impact housing diversity in the CBD. The target market of owner-occupiers and downsizers will therefore choose to live in the surrounding centres with a higher rate of carparking, thereby limiting the delivery of TOD in Chatswood, as it will not be able to compete in the market for which it is seeking.

#### Reduction in traffic generation potential compared to approved Planning Proposal

- The Transport Impact Assessment dated 1 June 2023 identifies that the proposal will generate a level of traffic that is less than the approved site-specific Planning Proposal of the site and is therefore not expected to result in any appreciable increase in vehicle delays, as there is an **overall net reduction in the traffic generation** potential of the site of during the commuter peak periods, when compared to the approved Planning Proposal.
- Importantly, apartment numbers are the primary factor determining traffic generation. Under the RMS Guide, the traffic generation potential of a high density residential flat building is calculated based on the number of dwellings. Therefore, the proposed additional carparking does not contribute to peak hour congestion.
- The projected level of traffic activity is consistent with the FSR and height limitations on the site which had already been considered by Council as part of the Planning Proposal and is consistent with the Chatswood CBD Strategy. Therefore, the proposed additional FSR created by the additional carparking will not have any unacceptable implications in terms of road network capacity or off-street parking/loading/access requirements.

#### A future transport network capable of accommodating uplift from the Chatswood CBD Strategy

- A Future Conditions Report has been prepared by Arup in collaboration with Council and Transport for NSW (TfNSW) to assess the impact of increased employment and dwelling forecasts outlined in the Chatswood CBD Strategy on the future transport network in Chatswood. These were tested at 2026 and 2036 horizon years using the TfNSW Strategic modelling suite.
- The Report identifies that approximately 1,300 extra private vehicle trips are expected in the 2036 uplift scenario, attributed to a higher population in the Chatswood CBD. Private vehicle trips will increase despite the mode shift towards public transport. As discussed earlier, as the traffic generation potential is based on the number of dwellings, the proposed additional carparking will not contribute to the estimated private vehicle trips in the Chatswood CBD.
- The comparison of the base and uplift scenarios for 2026 and 2036 indicates only minor changes on the arterial road network such as Pacific Highway and Mowbray Road. Notable impacts generally occur within the eastern side of the precinct, which could lead to Victoria Avenue becoming more congested. This is likely related to the varying distribution of population and jobs.
- The Report concludes that the impacts on the transport network associated with the Chatswood CBD Strategy will have an impact in the same order of magnitude as the TfNSW forecasts and that the future transport network will be able to accommodate this demand.
- The Report recommends further measures to be implemented as part of the Chatswood CBD Strategy, including:
  - The formulation of parking innovations to address parking issues with a focus on encouraging the use of off-street parking.
  - Developing measures to adjust major traffic flows to avoid key corridors,

- Speed limit reductions, and
- Car share and on-demand provisions throughout the precinct.
- The cumulative traffic impacts associated with the uplift under the Chatswood CBD Strategy has been considered in the Future Conditions Report. As concluded in the Report, there will be minor changes to the impacts on the transport network in both the base and uplift scenarios. Therefore, the extent of the proposed additional carparking will not result in any material additional impact on the transport network of the Chatswood CBD and the surrounding arterial roads.

#### Long-term planning for the site

- The proposed parking provision results from a five-year development process in consultation with Council, evolving from the site-specific Planning Proposal, a development competition, and a Pre-DA meeting through to DA submission.
- Under the proponent-led Planning Proposal, the concept scheme comprising 156 apartments and 188 parking spaces (180 for residents) was assessed by Council as being consistent with the Chatswood CBD Planning and Urban Design Strategy and a Voluntary Planning Agreement (VPA) was entered into by the proponent and Council.
- The subsequent design competition was undertaken based on the parking rates agreed by Council and TfNSW as part of the ARUP benchmarking analysis as part of the Draft Chatswood CBD Strategic Transport Study at the time being:
  - 0.5 spaces per studio and 1-bed apartment
  - 1 space per 2-bed+ apartment
- The winning scheme endorsed by the Jury in the design competition proposed 117 units and a four-level basement comprising 147 parking spaces (139 for residents). Throughout design development, the number of apartments has been reduced from 147 to 95, with carparking increasing from 147 to 156 spaces.
- Overall, the proposed development delivers parking which is consistent with the long-term planned development for the site, and both overall and residential carparking is significantly less than originally contemplated as part of the Planning Proposal and endorsed in the winning competition scheme.

#### Environmental impacts

- The proposed variation to the maximum FSR does not result in any unacceptable environmental, visual or amenity impacts. In terms of excavation, the GFA arising from parking is accommodated within a four-level basement, which is consistent with the approved Planning Proposal and winning competition scheme endorsed by the Jury. No additional excavation or earthworks are required beyond those already contemplated in the Planning Proposal and winning competition scheme. The proposed additional FSR therefore does not result in any additional environmental impacts.

#### Visual impacts

- The proposed variation to the maximum FSR arises solely from excess car-parking which is entirely located in the basement and does not alter the external appearance of the proposed built form. There are no visual impacts arising from the proposed additional basement parking.
- The perceived built form of the development would be the same regardless of the provision of the additional FSR for carparking.

### Amenity impacts

- The proposed variation to the maximum FSR does not result in any amenity impacts as the additional basement levels are not non-habitable and are of a specialised nature and are not occupied by people for extended periods.

### Bulk and scale

- The proposed variation to the maximum FSR standard does not affect the proposal's ability to provide a shop-top housing development that is of appropriate bulk and scale. Notably, the proposal is compliant with the 90m building height limit and the setback controls under the DCP, which will deliver a high-density shop-top housing development that is reflective of desired future character of the Chatswood CBD.

### Implications of strict compliance with the FSR development standard

- Strict compliance with the maximum FSR would require either:
  - significant reduction of the carparking provision; or
  - removal of residential apartments equivalent to the additional GFA.

Both of these options would result in a poorer development outcome as they would either result in insufficient parking for the development or under-provision of residential apartments, which is inconsistent with the objectives of the FSR standard - as it does not support higher density development near the Chatswood Transport Interchange as a transport nodal point.

Removal of residential apartments would prevent the site from achieving the full development potential as envisaged in the Chatswood CBD Strategy and would impede housing supply in the periphery of the Chatswood CBD.

- The current DCP carparking rate provides no differential between parking provision for smaller and larger apartments. Strict application of the DCP maximum rates would result in the proposed 3-beds apartments (typically over 100sq.m) and 4-bed apartments (140-290sq.m) being unfeasible due to lack of parking and would result in a revised apartment mix consisting entirely of studios and 1-bedroom apartments. This smaller rental stock excludes family and downsizers from living in the CBD as the maximum rates only favour the provision of studios and 1-bedroom apartments, in which the demand for carparking is lower due to the smaller household size.
- Strict compliance with the FSR development standard by removing carparking would therefore be inconsistent with the key directions of the LSPS, particularly relating to *“increasing housing diversity to cater to families, the ageing population, diverse household types and key workers”*.
- Strict compliance with the FSR standard would also prove inconsistent with the Object (c) in Section 1.3 of the EP&A Act, being *“to promote the orderly and economic use and development of land”*, as it would prevent the site from achieving the full development potential as envisaged under the Chatswood CBD Strategy and providing housing diversity within the development in accordance with the LSPS.

Accordingly, the proposed FSR variation demonstrates sufficient environmental planning grounds to justify contravening the development standard.

## 4 Clause 4.6(4)(a)(ii) Consistency with objectives of the standard and the zone; and the public interest

Clause 4.6(4)(a)(ii) states that development consent must not be granted unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the zone.

### 4.1 Consistency with objectives of the development standard

As discussed in **Section 3.1**, the proposed variation to the maximum FSR is consistent with the relevant objectives of Clause 4.4.

### 4.2 Consistency with the objectives of the MU1 Mixed Use zone

The proposed FSR variation's consistency with the objectives of the MU1 Mixed Use zone as outlined in the LEP is addressed below.

**TABLE 5 CONSISTENCY WITH THE MU1 ZONE OBJECTIVES**

Objective	Comment
<ul style="list-style-type: none"><li>To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.</li></ul>	<p>The proposed additional FSR has allowed for a surplus in carparking for the non-residential uses to enable flexibility in meeting the operational needs of the future commercial tenants.</p> <p>The proposed non-residential floor space has also been designed to accommodate a diversity of retail, business and office land uses that generate employment opportunities.</p>
<ul style="list-style-type: none"><li>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.</li></ul>	<p>The proposed additional FSR in the basement does not inhibit the development from providing active street frontages. Notably, the proposal provides active frontages along Anderson Street, Day Street and O'Brien Street, which will attract pedestrian traffic and add to the vibrancy of the locality.</p>
<ul style="list-style-type: none"><li>To minimise conflict between land uses within this zone and land uses within adjoining zones.</li></ul>	<p>The proposed additional FSR does not result in land use conflicts. The proposed shop top housing use is consistent with the vision for the MU1 Mixed Use zone as envisaged in the Chatswood CBD Strategy.</p> <p>The proposal is compatible with the adjoining R3 Medium Density Residential zone to the north, south and west. The proposed shop top housing development will complement the existing residential development in the locality by providing additional housing. The proposal will also enable the provision of mixed-use developments that are compatible with the recreational settings and activities in the existing Chatswood Bowling Club within the RE2 zone.</p>

Objective	Comment
<ul style="list-style-type: none"> <li>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</li> </ul>	<p>The proposed additional FSR does not inhibit the provision of commercial land uses on the ground floor. Specifically, the proposal includes 15 commercial/retail tenancies that are suitable for a number of non-residential uses, and appropriate car parking to support their long-term viability.</p>
<ul style="list-style-type: none"> <li>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.</li> </ul>	<p>The proposed additional FSR would support city living in the periphery of the Chatswood CBD as it would ensure sufficient carparking is provided to serve the needs of the future residents and commercial tenants. As discussed earlier, the provision of adequate carparking on site would not detract people from using public transport. Specifically, data from the Cardno Report indicates that residents in the CBD predominantly uses train to commute to work. A significant portion of the residents also walk to work, indicating a number of residents work locally and do not drive to work.</p> <p>Given the proximity to the Chatswood commercial core, the proposed shop-top housing development would encourage the use of local services that contribute to the vitality of the centre. The proposal would complement the commercial function of the CBD core and would not undermine its commercial role.</p>

### 4.3 Public interest

*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 emphasised that the proponent is to demonstrate that the proposed non-compliance with a development standard is in the public interest.

Clause 4.6(4)(a)(ii) requires the proposal to be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out.

**Sections 3.1** and **4.2** demonstrate the proposal's consistency with the relevant underlying objective of the standard and the MU1 zone objectives under the LEP.

In summary, the proposal provides the following public benefits:

- The proposed development provides for strong residential growth at the edge of the CBD, ensuring the employment centre of Chatswood is protected.
- Notwithstanding the FSR variation, the proposal will ensure adequate carparking is provided to serve the needs of the future residents and commercial tenants.
- The proposed additional FSR will not impact on the perceived built form and will not result in any visual or amenity impacts, and it is entirely contained in the basement.
- The proposal will ensure sufficient off-street parking is provided on site and minimise the need for on-street parking and the act of illegal parking in the surrounding area.

The proposal will not result in any public disadvantages relating to amenity or environmental impacts on the neighbouring properties or the locality.

The proposal is therefore considered to be in the public interest.

## 5 Clause 4.6(4)(b) Concurrence of the Planning Secretary

In accordance with Planning Circular PS 20-002 (issued on 5 May 2020), Sydney district and regional planning panels may assume the Secretary's concurrence where development standards are contravened.

As the proposal constitutes regionally significant development, the Sydney North Planning Panel may assume the Secretary's concurrence for the proposed variation to the minimum non-residential floor space standard.

Notwithstanding, under Clause 4.6(5) in deciding whether to grant concurrence, the Planning Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

These matters are addressed in detail below.

### 5.1 Matters of State or regional significance

The proposed variation for Clause 4.4 will not give rise to any matters of significance for State or regional environmental planning. Specifically, the proposed variation will not contravene any overarching State or regional objectives or standards.

### 5.2 Public interest in maintaining the standard

There is nominal public benefit in maintaining the FSR development standard. As demonstrated in **Section 3.2**, strict compliance with Clause 4.4 will require either:

- significant reduction of the carparking provision; or
- removal of residential apartments equivalent to the additional GFA.

Reduction of carparking to strict compliance with the DCP maximum rates would result in insufficient car parking provision, which would pose constraints on on-street parking in the locality and likely an increase in illegal parking. It would also impact on the feasibility of the larger apartments (3 and 4-bedroom apartments) due to the lack of parking, which would be unattractive to downsizers and families. Excluding downsizers and families from the Chatswood CBD is unreasonable and is not in the public interest.

Removal of residential apartments to achieve FSR compliance would also be inconsistent with the key direction under the LSPS relating to increasing housing diversity to cater for various population groups, as well as the Object of the EP&A Act to promote the orderly and economic use and development of the land.

Strict compliance with the standard will also undermine the design excellence of the proposal as endorsed by the Jury in the design competition, ultimately preventing the proposal from delivering the best urban design outcome.

Therefore, there is no identifiable public benefit to be achieved in maintaining the maximum FSR development standard for the purpose of ensuring adequate carparking provision in this instance.

### 5.3 Any other matters required to be taken into consideration

None.

## 6 Conclusion

This Clause 4.6 Variation Request is for a variation to the maximum FSR development standard under Clause 4.4 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 4.4 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 3.1**;
- There are sufficient environmental planning grounds to justify the contravention of the development standard as demonstrated in **Section 3.2**;
- The underlying object or purpose would be defeated or thwarted if compliance was required, as demonstrated in **Section 3.1.1**;
- The underlying objective of the standard is achieved notwithstanding the non-compliance with the standard, as demonstrated in **Section 3.1.2**;
- The proposed variation is supportable as it provides adequate carparking to serve the needs of the future residents and commercial tenants;
- The proposed variation will not result in any unreasonable environmental, visual or amenity impacts; and
- The proposal represents an optimal development outcome when compared to scenarios for achieving strict compliance.

Overall, the objectives of Clause 4.6(1) are to provide an appropriate degree of flexibility to achieve a better outcome for and from development. Strict compliance with the maximum FSR standard would prevent the proposed development from proceeding and delivering the public benefits and outcomes described. The proposal will provide a shop top housing development that responds to the vision and development potential envisaged in the Chatswood CBD Strategy.

Accordingly, the proposed variation to the maximum FSR development standard is well-justified and warrants approval.