



Amended Clause 4.6 Request – Minimum Site Area

Willoughby Local Environmental Plan 2012
(Amendment 34)

Nos 629-639 Pacific Highway, Chatswood

Submitted to Willoughby Council
on behalf of Polytec Australia Development Pty Ltd

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1. EXECUTIVE SUMMARY

This is a written request prepared in accordance with Clause 4.6 of the Willoughby Local Environmental Plan 2012, Amendment 34 (WLEP) to justify a variation to the minimum site area development standard in an amended Development Application (DA) submitted to Willoughby Council for a mixed-use development at Nos 629-639 Pacific Highway, Chatswood (the site).

The amended development seeks to reduce the extent of variation from the 17% non-residential floor space requirement through a reconfiguration of ground floor space and the deletion of Unit 201 at the podium level. The residential floor space will be dedicated to the provision of additional communal open space and landscaping.

Clause 6.16 (3) sets a minimum lot size of 1,200m² for development for the purposes of mixed-use development on land zoned MU1- Mixed Use. The subject site has an area of 1185m², and the extent of variation amounts to 15m² and represents a 1.26 % variation from the development standard. Clause 6.16 does not include objectives for the minimum site area development standard. Notwithstanding, at page 32, the Chatswood CBD Strategy states the intent and underlying objectives of the minimum site area requirement.

The intent of the minimum site area development standard is to enable a site to be redeveloped to achieve an optimum outcome as envisioned under the Chatswood CBD Strategy. The underlying objectives which seek to ensure this are as follows:

- To achieve the maximum FSR applicable to the site.
- To avoid site isolation and encourage site amalgamation to meet this minimum requirement.
- To ensure the provision of required setbacks to achieve slender towers and building separation whether on-site or with neighbouring sites,
- To ensure the provision of ground level public realm or areas accessible by public on private land,
- To ensure appropriate vehicle entry / exit points
- To ensure the provision of parking and loading in basement with adequate on-site manoeuvrability,
- To ensure that commercial floor space and street activation at ground level is maximised,
- To maximising landscaping and deep soil planting.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the circumstances of this application.

The amended proposal involves a twenty-seven (27) storey mixed use tower development comprising two levels of retail/commercial and twenty-five (25) storeys of residential apartments. The amended proposal will entail:

- Demolition of existing structures
- Part 2, part 3-storey podium with ground floor retail premises, first floor commercial premises, second floor plant, and residential communal open space.
- Construction of 52 residential units;
- 5 level basements with car parking spaces (including basement mezzanine)
- Strata subdivision.

A detailed analysis and arguments in favour of the requisite preconditions relevant to Clause 4.6 of the WLEP are contained within this written submission.

In summary, the requirement to comply with the minimum site area development standard is unreasonable and unnecessary in the circumstances because: -

- The proposal satisfies the underlying objectives of the minimum site area development standard,

- There are sufficient environmental grounds to justify the variation, and
- The variation is in the public interest because it satisfies the objectives of the MU1 – Mixed Use Zone that applies to the land as well as the underlying objectives of the minimum site area development standard.

This request also addresses the requirement for the concurrence of the Secretary.

The proposed built form outcome is substantially consistent with the underlying objectives of Clause 6.16 as well as the MU1 – Mixed Use Zone and having regard to the likely transitioning character of the southern edge of the Chatswood CBD. The scale and bulk of the proposed development is consistent with the building massing envisaged for the site under the Willoughby LEP and Chatswood CBD Strategy.

2. INTRODUCTION

This is a written request prepared in accordance with Clause 4.6 of the Willoughby Local Environmental Plan 2012 (Amendment 34) to justify a variation to the minimum lot size development standard in an amended Development Application (DA), as described above submitted to Willoughby Council for a mixed-use development at Nos 629-639 Pacific Highway, Chatswood (the site).

Clause 6.16 (3) sets a minimum lot size of 1,200m² for development for the purposes of mixed-use development on land zoned MU1- Mixed Use. The subject site has an area of 1185m², and the extent of variation amounts to 15m² and represents a 1.26 % variation from the development standard.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (NSWLEC / Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130) and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]; and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

It is therefore considered appropriate in these circumstances to grant the Clause 4.6 variation request

3. STANDARD TO BE VARIED

The standard that is proposed to be varied is the minimum site area development standard which is set out in Clause 6.16 (3) of the WLEP 2012 as follows:

6.16 Minimum lot sizes for commercial and mixed-use development in Chatswood CBD

- (1) *This clause applies to land identified as “Area 8” on the Special Provisions Area Map.*
- (2) *The minimum lot size for development for the purposes of commercial premises on land to which this clause applies in Zone E2 Commercial Centre is 1,800m².*
- (3) *The minimum lot size for development for the purposes of mixed-use development on land to which this clause applies in Zone MU1 Mixed Use is 1,200m².*

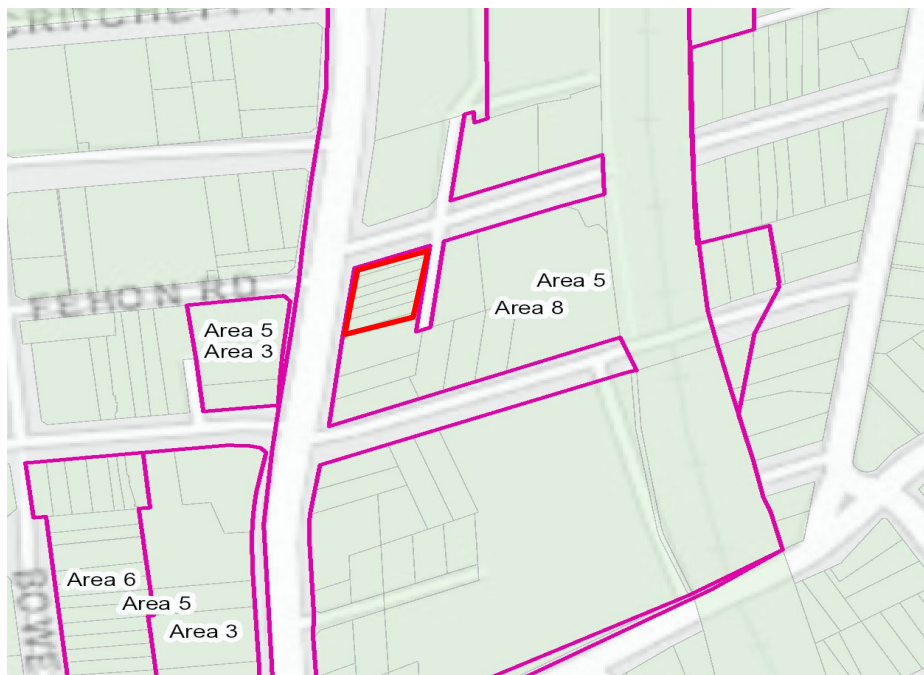


Figure 1: Extract of Minimum site area Map, subject site outlined in red. (Source: NSW Legislation)

Clause 6.16 (3) sets a minimum lot size of 1,200m² for development for the purposes of mixed-use development on land zoned MU1- Mixed Use located in Area 8. The subject site is located in Area 8.

The development standard to be varied is not excluded from the operation of clause 4.6 of the LEP.

4. EXTENT OF VARIATION

Minimum site area is not defined under the WLEP. The definition of site area is as follows:

site area means the area of land on which development is or is to be carried out. The land may include the whole or part of one lot, or more than one lot if they are contiguous to each other but does not include the area of any land on which development is not permitted to be carried out under this plan.

Clause 6.16 (3) sets a minimum lot size of 1,200m² for development for the purposes of mixed-use development on land zoned MU1- Mixed Use. The subject site has an area of 1185m², and the extent of variation amounts to 15m² and represents a 1.26 % variation from the development standard.

5. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
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 the standard is unreasonable and unnecessary; (Fourth Test) and
5. The zoning of the land is unreasonable or inappropriate. (Fifth Test)

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

Nonetheless, we have considered each of the ways as follows.

5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Clause 6.16 does not include objectives for the minimum site area development standard. Notwithstanding, at page 32, the Chatswood CBD Strategy states the underlying intent and objectives of the minimum site area requirement.

The intent of the minimum site area development standard is to enable a site to be redeveloped to achieve an optimum outcome as envisioned under the Chatswood CBD Strategy. The underlying objectives which seek to ensure this are contained in the following table.

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed

variation (First test under Wehbe).

Table 1 Consistency with Objectives of Clause 4.4 of WLEP.

OBJECTIVE	DISCUSSION
6.16 Minimum site area (1) The assumed underlying objectives of this clause are as follows—	
To achieve the maximum FSR applicable to the site.	The subject site has an area of 1185m², and the extent of variation amounts to 15m² and represents a 1.26 % variation from the development standard. This shortfall in the site area is minor and does not result in any material impediment or constraint to achieving the overall floor space permitted on the site. Compliance is achieved with the overall gross floor area permitted on the site at 6:1. The proposal meets the 90m height maximum and provides a built form and massing which is considered to positively contribute to the quality and transitioning identity of the locality expected under the new Mixed-use zones. The built form is therefore consistent with that anticipated maximum FSR under the current planning controls notwithstanding the proposed minimum site area variation. The proposed variation does not undermine the attainment of this objective.
To avoid site isolation and encourage site amalgamation to meet this minimum requirement.	The proposal does not create any isolated development sites if developed in its own right. The adjoining site to the south contains a substantial stratum titled mixed use building (621-627 Pacific) and is currently the subject of a SSDA for a mixed-use tower development. In accordance with the WDCP requirements of the specific land-based controls for Nos 629-637 Pacific Highway, Chatswood and Nos 613-627 Pacific Highway, Chatswood, the applicant has made reasonable efforts towards investigating amalgamation and a single access point via a consolidated basement and undertaken enquiries and offers towards this aim. These negotiations have been unsuccessful and documentation demonstrating the applicants' efforts in relation to addressing this section has been detailed within the accompanying RFI response dated 19th May 2025. In relation to the abovementioned control, under the NSW planning framework, there is no power available by which a person can be compelled to sell their property to a private developer, nor is there any power for a private developer to force an unwilling landowner to be part of a future joint Development application. As such, Council Development controls must be understood in this context. The amalgamation control as described in the WDCP may be "preferable", but they are subject to other legal and market constraints that may prevent their attainment and hold significant uncertainty in terms of outcome. As such, a Council or Panel cannot force a developer to amalgamate or include adjoining sites in future planning or development proposals/considerations. The independent access arrangement does not in any way lead to the sterilization or isolation of the development site at Nos 613-627 Pacific Highway, Chatswood. This would be another discretionary consideration in determining the suitability of the proposed development in its current form. In such circumstances, it should also be considered unreasonable to require an applicant to negotiate with an adjoining landowner after a DA is submitted, given that this would lead to fundamental design amendments, an entire re-design and new DA and delays in providing badly needed housing.

OBJECTIVE	DISCUSSION
	This independent development of the site is considered a better planning outcome and promotes the orderly and economic use and development of land (CI 1.3(c) EP&A Act 1979) for this strip along the Pacific Highway with the subject site being only 15m² short of the minimum lot size and allowing for future redevelopment of No 627-613 Pacific Highway. The subject site has the advantage of laneway frontage for vehicular access and has sufficient area to provide for a slender tower form with adequate setbacks and provision of a ground level area of public realm, including areas accessed by the public on private land.
To ensure the provision of required setbacks to achieve slender towers and building separation whether on-site or with neighbouring sites.	Notwithstanding the shortfall in the site area, the proposed development substantially complies with the setback and separation requirements contained in the site specific DCP and ADG. The setbacks achieve an appropriate balance of space at streetscape level and to the podium and do not result in unreasonable impacts to adjoining commercial, retail, and residential development. The building complements the proposed setbacks by providing highly articulated facades and features with a mix of materials, colours and landscaping which make it visually sympathetic to neighbouring buildings. The podium and tower are carefully massed, to break up the buildings bulk and scale. The tower element is slender in appearance and conforms with the design that was resolved through the Design Excellence Competition. Importantly, the variation to the minimum site area development standard does not result in any unreasonable concentration of scale or bulk and does not result in any unreasonable impacts to residential amenity, solar access, views, or privacy.
To ensure the provision of ground level public realm or areas accessible by public on private land.	Footpaths are located on Pacific Highway, and Gordon Avenue frontages and provide direct pedestrian access to the site from major destinations within Chatswood CBD. The proposed development provides retail tenancies on ground level that have been orientated to address the street frontages of the Pacific Highway, Gordon Avenue and Hammond Lane, facilitating street activation that includes accessible paths of travel and social interaction between the tenancies and the local community. These spaces provide reasonable, attractive, desirable, and accessible retail and commercial floor space that are accessible from the public domain.
To ensure appropriate vehicle entry / exit points	All vehicles will access the site from Hammond Lane via Gordon Avenue as required by the WDCP. Hammond Lane is approximately 6.1m wide and is a no-through road. A 6.1m wide roadway permits two-way traffic flow. Pedestrian access is proposed to be provided via Gordon Avenue and Pacific Highway. There will be no vehicle access provided off Gordon Avenue and Pacific Highway. Existing site driveways via Gordon Avenue and Pacific Highway will be closed off to reduce traffic impacts on Pacific Highway and at the intersection.
To ensure the provision of parking and loading in basement with adequate on-site maneuverability.	The associated access arrangements from Hammond Lane is to be designed in accordance with the requirements of the relevant Australian Standards for Parking Facilities, AS2890. A minimum height clearance of 4.0m will be provided on the ground level access and basement level 1, based on the 3.57m high waste truck used by Council. Basement access

OBJECTIVE	DISCUSSION
	and collection & loading areas are provided for Councils 10.5m waste truck to enter and exit the site in a forward direction.
To ensure that commercial floor space and street activation at ground level is maximized.	The amended development will provide retail and commercial floor space with a total of 325.08m² located at ground floor level. Two separate ground floor level tenancies provide 97.18m² and 111.15m² with a strong sense of address facing the Pacific Highway. A further retail space of 116.75m² is located at the corner of Hammond Lane and Gordon Avenue and provides activated fronts to these frontages. The ground floor retail space dedicates approximately 93% of the floor plate to employment floor space (excluding ramp, services and lifts) and this is considered a reasonable and satisfactory area, noting the areas required to accommodate internal basement waste collection (ramps & driveways) and services for lifts, fire services, stairs and reasonably dimensioned lobby areas. In this regard it is considered that the commercial floor space and street activation at ground level is maximized. The ground floor spaces are dimensioned and of a nature that will attract a range of retail, hospitality, small offices and local services (as identified in the SGS Economic and Planning Report dated February 2020) as opposed to larger commercial space-related corporate tenants that are attracted to the core that seek co-location, a sense of commercial address and atmosphere. Despite the shortfall from the minimum site area, the proposed non-residential floor space facilitates the provision of commercially attractive and flexible floorplates that are suited to a wider range of businesses, and which makes the development itself economically feasible when compared with other permissible land uses. The proposed design is highly articulated and features a mix of materials, colours and landscaping which make it visually attractive to pedestrians. Footpaths are located on Pacific Highway, Gordon Avenue and Hammond Lane frontages and will provide direct pedestrian access to major destinations within Chatswood CBD. The Gordon Avenue walkway provides a direct connection to Frank Channon Walk which is 100m east of the site and provides a pedestrian friendly connection to Chatswood CBD. The proposed variation does not undermine the attainment of this objective.
To maximising landscaping and deep soil planting.	The proposal seeks to deliver a landscape outcome which is capable of coping in the site conditions, softens the built form and aids in delivering a legible ground plane. Landscaping and deep soil planting has been provided substantially in accordance with the ADG and site specific DCP provisions. Approximately 20% of soft landscaping has been provided and the podium level incorporates perimeter planter box planting to soften the base of the building and provide organic elements to the base of the tower. Of particular note, the amended development now provides suitable landscaping along the Hammond Lane frontage that has been the subject of Council staffs input and directions.

As demonstrated in Table 1 above, the assumed underlying objectives of the FSR development standard are achieved

notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the FSR development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, the other recognised ways are considered as follows.

5.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

5.3. The objective would be defeated or thwarted (undermined) if compliance was required with the consequence that compliance is unreasonable;

Compliance cannot be achieved in the circumstances of this application. Attempts to amalgamate with the neighbouring property have been unsuccessful.

5.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary;

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon.

5.5. The zoning of the land is unreasonable or inappropriate.

The zoning of the land is reasonable and appropriate, and this reason is therefore not relied upon.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

The environmental planning grounds to justify the variation of the minimum development standard are set out in the preceding sections in detail. As discussed in the above sections, the variation is a pre-existing site constraint. The proposed development, notwithstanding the shortfall in site area, does not undermine relevant statutory goals (when compared with a compliant development) and does not result in any meaningful adverse environmental impact.

Aside from the justifications provided in Table 1, the environmental planning grounds to justify the departure from the minimum site area standard are as follows:

- The proposed building complies with the maximum 90m building height that applies to the site and attains substantial compliance with the setbacks and spatial separation requirements prescribed under the ADG & DCP. The proposal complies with the overall FSR control at 6:1 and provides generous amounts of communal open space and landscaping. Despite the shortfall in site area, the proposal provides a built form and massing which is considered to positively contribute to the quality of urban built form and transitioning identity of the locality that is anticipated having regard to the new Mixed-use zones. The built form is therefore consistent with that anticipated under the current planning controls notwithstanding the proposed minimum site area variation. Accordingly, the proposal achieves the objective in section 1.3(c) of the Environmental Planning and Assessment Act 1979 (EP&A Act), "to promote the orderly and economic use and development of the land".
- A Design Excellence Competition was undertaken for the development. The amended design is substantially based on the concept that was selected and was deemed to be an outcome that represented the highest quality of architectural, urban and landscape design for the redevelopment of the site. Whilst the encroachment to Hammond Lane was not considered in the competition Councils staff have now endorsed the design approach that includes a cafeteria adjoining a covered colonnade that will be compatible with the Shared zone objectives and through site link initiatives. Despite the undersized allotment constraint, this scheme achieved compliance with most built form controls (except for justifiable variations to setback, building separation and non-residential floor space) that are fundamentally based on a site area minimum of 1200m². Accordingly, the proposal achieves the objective in section 1.3(c) of the Environmental Planning and Assessment Act 1979 (EP&A Act), "to promote the orderly and economic use and development of the land".
- The proposed development maximises the provision of commercial floor space within the constraints of the site. Despite the variation, the retail tenancies on ground level have been orientated to address the street frontages of the Pacific Highway, Gordon Avenue and Hammond Lane, facilitating street activation and social interaction between the tenancies and the local community.

These spaces provide reasonable, attractive, desirable, and accessible commercial floor space and employment opportunities in a mixed-use location set under the strategic planning documents for the southern edge of the

Chatswood CBD. The proposal also maintains complementary and safe access to these spaces and a built form and massing at street and podium level that is considered to positively contribute to the quality and transitioning commercial identity of the locality and is compatible with adjoining development. The built form is therefore consistent with that anticipated under the current planning controls notwithstanding the shortfall in site area.

- The proposed development is highly articulated and features a mix of materials, colours and landscaping which make it visually sympathetic to neighbouring buildings. The podium and tower are carefully massed, to break up the buildings bulk and scale. Importantly, the variation to the minimum site area does not result in any unreasonable impacts to residential amenity, solar access, views, or privacy. Accordingly, the objective achieves objective 1.3 (g) of the EP&A Act, “to promote good design and amenity in the built environment”.
- The proposed development provides adequate vehicle entry / exit points, car parking and loading bay areas to meet the demands of the development and adequate on-site manoeuvrability to accommodate waste truck collection.
- The proposal does not create any isolated development sites if developed in its own right.
- This site has the advantage of a laneway frontage for vehicular access and has sufficient area to provide for a slender tower form with adequate setbacks and provision of a ground level area of public realm, including areas accessed by the public on private land.
- The proposed development achieves the aims, design quality principles and design objectives contained within State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide. The proposal provides adequate building separation, solar access, communal open space, apartment and private open space size, visual and acoustic privacy as required by the ADG.

For completeness, we note that the size of any variation which in the circumstances of this case amounts to 15m² (1.26%) is not in itself, a material consideration as to whether the variation should be allowed. There is no constraint on the degree to which a consent authority may depart from a numerical standard under clause 4.6: *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85].

Some examples that illustrate the wide range of common place numerical variation to development standards under clause 4.6 (as it appears in the Standard Instrument) are as follows:

- In *Baker Kavanagh Architects v Sydney City Council* [2014] NSWLEC 1003 the Land and Environment Court granted a development consent for a three storey shop top housing development in Woolloomooloo. In this decision, the Court, approved a floor space ratio variation of 187%.
- In *Abrams v Council of the City of Sydney* [2019] NSWLEC 1583 the Court granted development consent for a four-storey mixed use development containing 11 residential apartments and a ground floor commercial tenancy with a floor space ratio exceedance of 75% (2.63:1 compared to the permitted 1.5:1).
- In *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 the Court granted development consent to a six-storey shop top housing development with a floor space ratio exceedance of 42% (3.54:1 compared to the permitted 2.5:1).

- In *Artazan Property Group Pty Ltd v Inner West Council* [2019] NSWLEC 1555 the Court granted development consent for a three storey building containing a hardware and building supplies use with a floor space ratio exceedance of 27% (1.27:1 compared to the permitted 1.0:1).
- In *88 Bay Street Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1369 the Land and Environment Court granted development consent for a new dwelling house, swimming pool and landscaping at 6 Bayview Hill Road, Rose Bay with a height exceedance of 49% (14.16m compared to the permitted 9.5m).

In short, clause 4.6 is a performance-based control so it is possible (and not uncommon) for variations to be approved in the right circumstances.

7. PUBLIC INTEREST

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. This is required by clause 4.6(4)(a)(ii) of the LEP.

In section 4 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard (see comments under "public interest" in Table 1).

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 2: Consistency with MU1- Mixed Use Zone

OBJECTIVES OF MU1- MIXED USE ZONE	DISCUSSION
To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.	The proposed development integrates a range of business, retail, and office uses (1176.6m²) in an accessible location to maximize public transport patronage and encourage walking and cycling. This is indicative of the desired future character of the locality even though new development tends to be towards residential land uses. The commercial focus of the proposal is consistent with the desired future character of the locality and will generate employment opportunities through both construction and future tenancies. The proposal is compatible with its context and responds to the expected future character of the Mixed-use zones. Specifically, the proposal seeks to retain a reasonable retail and economic physical presence in a changing context. The proposed variation does not undermine the attainment of this objective.
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.	The proposed development will have active and diverse street frontages through delivering an attractive streetscape and inviting façades and entryways to the Pacific Highway, Gordon Avenue & Hammond Lane. The proposed design is highly articulated and features a mix of materials, colours and landscaping which make it visually attractive to pedestrians. Footpaths are located on Pacific Highway, and Gordon Avenue and provide direct pedestrian access to major destinations within Chatswood CBD. The Gordon Avenue walkway provides a direct connection to Frank Channon Walk which is 100m east of the site and provides a pedestrian friendly connection to Chatswood CBD. The proposed variation does not undermine the attainment of this objective.

OBJECTIVES OF MU1- MIXED USE ZONE	DISCUSSION
	The proposed development is carefully massed at street and podium level and will relate sympathetically to the existing neighbouring buildings and likely future development. The proposal is substantially compliant with the street façade height controls and has adopted carefully designed primary façades to the Pacific Highway and Gordon Avenue which result in a harmonious but vibrant streetscape presentation. The proposed variation does not undermine the attainment of this objective.
To minimise conflict between land uses within this zone and land uses within adjoining zones.	The proposed development is permissible with development consent in the Mixed-use zone. The proposal provides substantial compliance with the built form and land use objectives and controls and as such will be compatible with the existing array of land uses and the future character of the southern edge of the Chatswood CBD. The proposal provides a high-quality mixed-use building which exhibits a built form and massing which is considered to positively contribute to the quality and transitioning identity of the locality. In particular: - • The proposal satisfies the objectives of SEPP No. 65. • The skillful design of the development ensures adequate privacy and solar access is achieved for the surrounding residential uses. • The proposal provides for high-quality residential dwellings in a development that is compatible with the future character of the surrounding area. • The proposed development provides generous and accessible commercial/retail space in accordance with the WLEP & WDCP. • The site does not pose any prohibitive natural or artificial constraints. • The subject site has been found to be suitable for the proposed development; and • The proposed development is consistent with the desired future character of the mixed-use zones and the southern edge of the extended Chatswood CBD. The proposed variation does not undermine the attainment of this objective.

OBJECTIVES OF MU1- MIXED USE ZONE	DISCUSSION
To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.	The amended development will provide retail and commercial floor space with a total of 325.08m² located at ground floor level. Two separate ground floor level tenancies provide 97.18m² and 111.15m² with a strong sense of address facing the Pacific Highway. A further retail space of 116.75m² is located at the corner of Hammond Lane and Gordon Avenue and provides activated fronts to these frontages. The ground floor retail space dedicates approximately 93% of the floor plate to employment floor space and this is considered a reasonable and satisfactory area, noting the areas required to accommodate internal basement waste collection (ramps & driveways) and services for lifts, fire services, stairs and reasonably dimensioned lobby areas. In this regard it is considered that the commercial floor space and street activation at ground level is maximized. The proposed development provides for reasonable retail/commercial space at ground floor level which will encourage commercial viability on the southern edge of the Chatswood CBD. The proposed design is highly articulated and features a mix of materials, colors and landscaping which make it visually attractive to pedestrians and the community. The proposed variation does not undermine the attainment of this objective.
To allow for city living on the edges of the city centre of Chatswood, which encourages public transport use, shopping and the use of businesses and recreational services that contribute to the vitality of the city, without undermining its commercial role.	The proposed development will provide high quality residential living on the southern edge of the city centre of Chatswood. The proposed development satisfies the objective requirements in relation to providing commercial floor space. The Gordon Avenue walkway provides a direct connection to Frank Channon Walk which is 100m east of the site and provides a pedestrian friendly connection to Chatswood CBD and transport interchange. Bus stops are located on the Pacific Highway approximately 35m north of the site and 250m south of the site. The location of the site also encourages the use of the wide array of business and recreational services within the Chatswood CBD core. The proposed variation does not undermine the attainment of this objective.

As demonstrated in Table 2 the proposal is consistent with the objectives of the zone and in Section 4 it was demonstrated

that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

9. CONCLUSION

This submission requests a variation, under clause 4.6 of the *Willoughby Local Environmental Plan 2012*, to the minimum site area development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development.
- The development achieves the assumed objectives of the development standard and is consistent with the objectives of the 'MU1 – Mixed Use zone.
- There are sufficient environmental planning grounds to justify the contravention.
- The variation does not raise any matter of State or Regional Significance.

The Consent authority can be satisfied of the above and that the development achieves the objectives of the development standard and is consistent with the objectives of the MU1 – Mixed Use zone notwithstanding non-compliance with the FSR development standard and is therefore in the public interest.

There are sufficient environmental planning grounds to justify the variation. These planning grounds are based in consistency with the built form controls, in particular height and building massing controls envisaged by the ADG and the Willoughby Local Centres Strategy, WLEP and WDCP, lack of adverse environmental impacts and consistency with the relevant objects of the Environmental Planning and Assessment Act 1979.

This proposal is of an appropriate scale and form for the site and achieves the desired future character envisaged by the planning controls. The development will provide a catalyst for future development at the Southern edge of the Chatswood CBD.

The proposed development achieves the aims, design quality principles and design objectives contained within State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and the Apartment Design Guide. The proposal provides adequate building separation, solar access, communal open space, apartment and private open space size, visual and acoustic privacy as required by the ADG.

It is therefore considered appropriate in these circumstances to grant the clause 4.6 variation request. The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.