

**15.9 PLANNING PROPOSAL - 3 ELLIS STREET, CHATSWOOD****ATTACHMENTS:**

1. IMPLICATIONS
2. COUNCIL DETAILED ASSESSMENT
3. COUNCIL ASSESSMENT OF DEPARTMENT OF PLANNING AND ENVIRONMENT'S "A GUIDE TO PREPARING PLANNING PROPOSALS"
4. PLANNING PROPOSAL CONCEPT PLANS
5. DRAFT DEVELOPMENT CONTROL PLAN PROVISIONS
6. PROPOSED WRITTEN AMENDMENTS TO WILLOUGHBY LOCAL ENVIRONMENTAL PLAN 2012
7. PROPOSED WILLOUGHBY LOCAL ENVIRONMENTAL PLAN 2012 LAND ZONING, HEIGHT OF BUILDINGS, FLOOR SPACE RATIO, SPECIAL PROVISIONS AREA, ACTIVE STREET FRONTAGES, AND LOT SIZE MAPS
8. WILLOUGHBY LOCAL PLANNING PANEL RECORD OF ADVICE 27 MAY 2021

**RESPONSIBLE OFFICER:** IAN ARNOTT – PLANNING MANAGER

**AUTHOR:** CRAIG O'BRIEN – STRATEGIC PLANNER

**CITY STRATEGY OUTCOME:** 3.5 MAINTAIN QUALITY OF LIFE BY BALANCING POPULATION GROWTH WITH THE PROVISION OF ASSETS AND SERVICES  
5.1 BE HONEST, TRANSPARENT AND ACCOUNTABLE IN ALL THAT WE DO

**MEETING DATE:** 15 JUNE 2021

---

**1. PURPOSE OF REPORT**

The purpose of this report is to seek endorsement for the forwarding of Planning Proposal 2020/007 for 3 Ellis Street, Chatswood, to the Department of Planning, Industry and Environment for a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979* and proceed to public exhibition.

Members of the Sydney (North) Planning Panel should retire from Council Chambers during consideration of the Agenda Item.

**2. OFFICER'S RECOMMENDATION**

**That Council:**

1. Forward the Planning Proposal to the Department of Planning, Industry and Environment seeking a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*, with the following amendments to *Willoughby Local Environmental Plan 2012*:

- a) To add Clause 4.4B 'Minimum non-residential floor space in the Mixed Use Zone' as follows:

**"4.4B Minimum non-residential floor space in the Mixed Use Zone**

Land zoned B4 Mixed Use is to contain a minimum non-residential floor space component. This is calculated at 17% of FSR as indicated on the Floor Space Ratio Map."

- b) To add Clause 5.6 'Architectural roof features', (2A) as follows:

"(2A) Despite subclause (2), development within Area 8 on the Special Provisions Area Map may only be carried out in accordance with the maximum height of Clause 4.3."

- c) To amend Clause 6.7 'Active street frontages' as follows:

"(1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in Zone B2 Local Centre, Zone B3 Commercial Core and Zone B4 Mixed Use.

(2) This clause applies to land identified as "Active Street Frontages" on the Active Street Frontages Map.

(3) Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that the building will have an active street frontage after its erection or change of use.

(4) Despite subclause (3), an active street frontage is not required for any part of a building that is used for any of the following—

- (a) entrances and lobbies (including as part of mixed use development),
- (b) access for fire services,
- (c) vehicular access.

(5) In this clause, a building has an active street frontage if:

- a) In the Zone B3 Commercial Core, all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.
- b) In the Zone B1 Neighbourhood Business, B2 Local Centre, B4 Mixed Use, B5 Business Development and B7 Business Park, all premises on the ground floor of the building facing the street are used for the purposes of non-residential premises."

- d) To amend Clause 6.8 (2) to include "Area 3 or Area 8 or Area 9" on the Special Provisions Area Map.

- e) To amend Clause 6.23 (2) to include "Area 8" or "Area 12" on the Special Provisions Area Map.

- f) To add Clause 6.25 as follows:

**“6.25 Sun access**

- (1) The objective of this clause is to:
  - (a) protect certain public space in Chatswood CBD from excessive overshadowing.
  - (b) Protect properties in South Chatswood Conservation Area from a reduction in solar access
- (2) The consent authority must not grant consent to development on land zoned B3 or B4 if the consent authority is satisfied that:
  - (a) the development will result in additional overshadowing in mid-winter between 12 noon and 2pm, on:
    - Victoria Avenue between the interchange and Archer Street
    - Concourse Open Space
    - Garden of Remembrance
    - Tennis and croquet club
  - (b) the development will reduce solar access to any individual property within the South Chatswood Conservation Area to less than 3 hours between 9.00am and 3.00pm mid-winter.

- g) Add to Schedule 1 Additional Permitted Uses:

**“75. Use of certain B4 land in Chatswood**

- (1) This clause applies to land zoned B4 in the Chatswood CBD.
  - (2) Development for the purpose of residential flat building is permitted with development consent if the consent authority is satisfied that:
    - (a) the ground level is used for non-residential purposes and
    - (b) A minimum of 17% of the total FSR is provided for non-residential purposes and
    - (c) No residential dwelling is located at the ground floor.”
- h) To amend the Land Zoning Map (Sheet LZN\_004) for 3 Ellis Street, Chatswood, to B4 Mixed Use.
- i) To amend the Height of Buildings Map (Sheet HOB\_004) for 3 Ellis Street, Chatswood, to 44 metres.
- j) To amend the Floor Space Ratio Map (Sheet FSR\_004) for 3 Ellis Street, Chatswood, to 4.5:1 (including affordable housing).
- k) To amend the Special Provisions Area Map (Sheet SPA\_004) to show 3 Ellis Street, Chatswood, as Area 8.
- l) To amend the Active Street Frontages Map (Sheet ASF\_004) to include 3 Ellis Street, Chatswood, to include the Ellis Street frontage.
- m) To amend the Lot Size Map (Sheet LSZ\_004) to include 3 Ellis Street, Chatswood, with a minimum lot size of 800 sq metres.



2. Subject to 1. above, endorse for public exhibition the Planning Proposal as amended.
3. Endorse for public exhibition the Planning Proposal, with the accompanying draft site specific Development Control Plan provisions, subject to the following amendments:
  - a) Section 4 'Street Frontage Heights and Setbacks'
    - i. Add Performance Criteria 4 as follows:  
"Adequate building separation to neighbouring properties must be provided."
    - ii. Add Control 2 as follows:  
"Building separation to neighbouring properties is to be consistent with the Apartment Design Guidelines."
  - b) Section 5 'Building Exterior'
    - i. Amend Performance Criteria 1 to read:  
"Buildings are to demonstrate a high visual quality of development when viewed from the public domain and the surrounding area, including the Frank Channon Walk."
    - ii. Amend Controls 1 to read:  
"Façade designs must be sensitive to the pedestrian environment in terms of wall height finishes and setbacks from planting."
    - iii. Amend Controls 2 to read:  
"Extensive blank walls will not be supported."
  - c) Section 6 'Amenity'
    - i. Amend Control 3 to read:  
"Residential amenity is to be in accordance with the Apartment Design Guidelines."
  - d) Section 9 'Traffic and Transport'
    - i. Add Control 4:  
"Two car share spaces are to be provided in Basement Level 2 close to lifts. Public access to be detailed at development application stage."
  - e) Section 11 'Design Excellence and Building Sustainability'
    - i. Amend heading to read:  
"Design Excellence"
  - f) Add Section 15 'Sustainability'
    - i. Add Performance Criteria  
"Achievement of design excellence shall include achievement of higher building sustainability standards."
    - ii. Add Control:  
"A minimum 5 star GCBA building rating is expected. A report is to be submitted at development application stage."
4. Subject to 1, 2 and 3 above, prior to public exhibition, concept plans are to be provided that clearly show that at no point the proposed mixed use building encroaches on the sun access protection plane determining height on this site.

5. **Note that following public exhibition the Planning Proposal will be reported back to Council detailing the outcome of the public exhibition period at which time Council may resolve:**
  - a) **To proceed as recommended.**
  - b) **To not proceed with the Planning Proposal.**
6. **Request that the Department of Planning, Industry and Environment nominate Council as the Planning Authority to finalise the Planning Proposal and that the Department of Planning, Industry and Environment delegate authority to the Council Planning Manager, Mr Ian Arnott to process and finalise the Planning Proposal documentation for the purposes of Section 3.36 of the Environmental Planning and Assessment Act, 1979.**
7. **Delegate authority to the Chief Executive Officer to make any minor amendments to the Planning Proposal which do not alter the policy intent.**

### 3. BACKGROUND

The proposal for a commercial podium and residential tower development is located on a site within the existing Chatswood CBD boundary which has been extended in the *Chatswood CBD Planning and Urban Design Strategy 2036* (referred to in this report as the CBD Strategy).

The CBD Strategy was endorsed by Council on 26 June 2017, supported by the Greater Sydney Commission on 18 May 2018, and fully endorsed by the Department of Planning, Industry and Environment (DPIE) on 9 July 2020 with qualifications regarding residential land use within the B3 Commercial Core on the eastern side of the North Shore rail line. Endorsement of the CBD Strategy was further noted by Council on 14 September 2020.

The site has been recommended to be B4 Mixed Use, with a maximum height of 44m determined by sun access protection (which changes as the site slopes gradually up from Ellis Street to the rear boundary, with the middle of the site being RL 140m), and a Floor Space Ratio of 2.5:1. This is subject to the satisfaction of other CBD Strategy requirements.

A larger, non-compliant Planning Proposal on this site was previously considered by Council on 11 February 2019 involving retention of the R4 High Density Residential zone, FSR of 5.1:1 and height of 49m. It was resolved:

*"That Council:*

- 1) *Not forward the Planning Proposal to the Department of Planning and Environment seeking a Gateway Determination under Section 3.34 of the Environmental Planning and Assessment Act 1979, as the Planning Proposal:*
  - i. *Is a departure from the current planning controls on the site which limits height to 34 metres and the floor space ratio to 1.7:1.*
  - ii. *Is inconsistent with the Council endorsed Chatswood CBD Planning and Urban Design Strategy regarding the proposed land use, height, floor space ratio, minimum lot size, street frontage height and setbacks, ground floor use and street activation.*

- iii. *Is inconsistent with the strategic objectives of the Greater Sydney Region Plan and the North District Plan which encourages employment within the Chatswood CBD.*"

A Rezoning Review was subsequently lodged by the proponent, with the Sydney North Planning Panel supporting Council's view and determining on 5 November 2019 that the Planning Proposal should not proceed to a Gateway Determination because the proposal had not demonstrated strategic merit.

#### **4. DISCUSSION**

The Planning Proposal seeks to amend *Willoughby Local Environmental Plan 2012* (WLEP) at 3 Ellis Street Chatswood as follows:

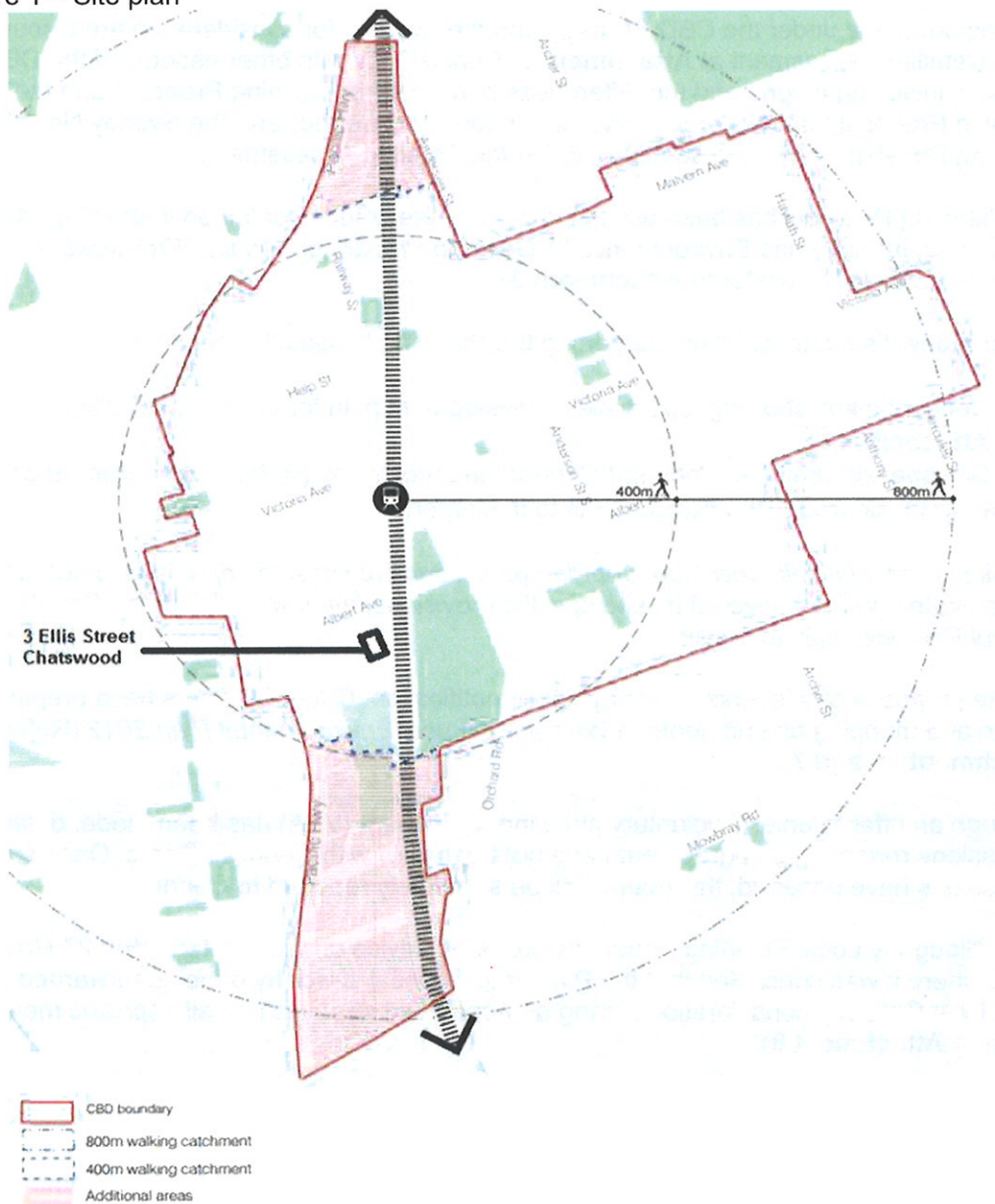
- Change the land use zone from R4 High Density Residential to B4 Mixed Use.
- Increase the height on the site from 34m to 44m.
- Increase the Floor Space Ratio on the site from 1.7:1 to 4.5:1.

Note the Planning Proposal contains two options and it is Option 1, as amended, containing a proposed FSR of 4.5:1, that is supported in this report.

The site contains SP 2715 and is bounded by Ellis Street to the south, 88 Albert Avenue to the north, 84-86 Albert Avenue to the east and 7-13 Ellis Street to the west.



Figure 1 – Site plan



The Planning Proposal seeks variations to the CBD Strategy with regards to maximum floor space ratio and minimum lot size. Otherwise, the Planning Proposal for a commercial podium and residential tower development is generally consistent with the recommendations of the CBD Strategy as endorsed by Council.

The CBD Strategy requires an FSR of 2.5:1 whereas 4.5:1 is proposed. This variation is able to be considered because the proponent has established that there is no overshadowing to key public spaces. In addition, the density is considered appropriate for this site located within the Chatswood CBD.

A variation is requested to the minimum lot size of 1,200m<sup>2</sup>, with 3 Ellis Street being 808.6m<sup>2</sup> (a reduction of 391.4m<sup>2</sup>). The variation is able to be considered in this instance due to the location of this site and the specific difficulty in amalgamating with neighbouring properties, while consistency with other aspects of the CBD Strategy is demonstrated.

The requested abovementioned variations, the objectives behind the FSR and minimum lot size requirements under the CBD Strategy and the reasons for consideration are discussed in the Detailed Assessment at **Attachment 2**. Consistency with other aspects of the CBD Strategy, including height, and the differences between this Planning Proposal and the Planning Proposal that was previously not supported by Council and the Sydney North Planning Panel in 2019 are also discussed in the Detailed Assessment.

The Planning Proposal has been assessed against the criteria contained in the Department of Planning, Industry and Environment's '*A Guide to Preparing Planning Proposals*' and is generally satisfactory (Refer to **Attachment 3**).

The proponent's documentation supporting the Planning Proposal, including:

- Concept plans showing a possible redevelopment plan for the site (Refer to **Attachment 4**)
- Site specific Draft *Development Control Plan* provisions (Refer to **Attachment 5**) are fully considered in the Attachments to this report.

The site specific *Development Control Plan* provisions are satisfactory. It is also noted that, where matters are not covered by site specific provisions, the remainder of the *Development Control Plan* will apply to the site.

For the purposes of this report and any public notification, Council Officers have prepared written and mapping amendments to *Willoughby Local Environmental Plan 2012* (Refer to **Attachments 6 and 7**).

Although an offer to enter a voluntary planning agreement (VPA) has been made, detailed discussions regarding an agreement have not been held with Council officers. Once such discussions have occurred, this matter will be separately reported to Council.

The Willoughby Local Planning Panel has provided Advice on this matter dated 27 May 2021, where it was concluded that the Planning Proposal is worthy of being forwarded to the DPIE for a Gateway consideration having demonstrated strategic and site specific merit (Refer to **Attachment 8**).

## 5. CONCLUSION

With the exception of FSR and minimum lot size, the Planning Proposal for a commercial podium and residential tower development is generally consistent with the recommendations of the CBD Strategy as endorsed by Council, the strategic objectives of the *Greater Sydney Region Plan*, the *North District Plan* and Councils' *Local Strategic Planning Statement* (LSPS).

The variations requested may be considered in the circumstances of this case, which are discussed in **Attachment 2**.

It is considered that the relevant requirements under Section 3.33 of the *Environmental Planning and Assessment Act 1979* and the matters identified in the Department of Planning, Industry and Environment's '*A Guide to Preparing Planning Proposals*' are adequately addressed and that the environmental impacts are acceptable for referral to Gateway and further consideration following public exhibition.

It should be noted that following exhibition and further assessment, amendments may be required.



Based on the above, it is recommended that Council forward the Planning Proposal to the Department of Planning, Industry and Environment, seeking a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*. It is further recommended that Council advise the Department of Planning, Industry and Environment that the Planning Manager, be nominated as delegate to process and finalise the Planning Proposal.

## ATTACHMENT 1

IMPLICATIONS	COMMENT
<b>City Strategy Link:</b>	3.5 – Maintain quality of life by balancing population growth with the provision of assets and services 5.1 – Be honest, transparent and accountable in all that we do
<b>Business Plan Objectives, Outcomes/ Services</b>	To ensure this Planning Proposal generally consistent with the <i>Chatswood CBD Planning and Urban Design Strategy 2036</i> to accommodate future growth needs.
<b>Policy</b>	This Planning Proposal is generally consistent with the <i>Chatswood CBD Planning and Urban Design Strategy 2036</i> , endorsed by Council on 26 June 2017. The amendment in the Planning Proposal will lead to amendments to <i>Willoughby Local Environmental Plan 2012</i> and <i>Willoughby Development Control Plan</i> .
<b>Consultation</b>	Prior to endorsement by Council, the draft <i>Chatswood CBD Planning and Urban Design Strategy</i> was publicly exhibited between 4 February and 27 March 2017.  This Planning Proposal would also be publicly exhibited following Gateway Determination.
<b>Resource</b>	No additional operating resources used to prepare this report beyond budget.
<b>Risk</b>	Risk of not achieving the endorsed <i>Chatswood CBD Planning and Urban Design Strategy 2036</i> objectives and accommodating future growth requirements. It is considered that any variation to the CBD Strategy in this instance, with particular regard to floor space ratio and minimum lot size, is satisfactory based on the circumstances of the case and the Planning Proposal put forward. It is not considered to set a precedent for other sites.
<b>Legal</b>	The Planning Proposal should be consistent with the endorsed <i>Chatswood CBD Planning and Urban Design Strategy 2036</i> . Any variation is based on the circumstances of the case and the Planning Proposal put forward.  Amendments are proposed to the <i>Willoughby Local Environmental Plan 2012</i> , which would provide the basis for future development application assessment. In addition <i>Development Control Plan</i> provisions are proposed to further guide future development application assessment.  The Planning Proposal is accompanied by a Letter of Offer for a voluntary planning agreement to provide for demands on Council services and infrastructure – which will be separately negotiated.
<b>Legislation</b>	Under <i>Environmental Planning and Assessment Act 1979</i> provisions.
<b>Budget/Financial</b>	No budget or financial issues arise as a result of this report.