

COUNCIL ASSESSMENT REPORT

Panel Reference	2018SNH039
DA Number	DA-2018/158
LGA	Willoughby City Council
Proposed Development	Demolition of existing two (2) storey commercial building and erection of a new four (4) storey commercial building comprising of office space and trafficable roof top at Victoria Avenue frontage and demolition of existing retail tenancy and erection of fifteen (15) storey hotel at Brown Street frontage
Street Address	475-501 Victoria Avenue, Chatswood
Applicant/Owner	Cromwell Diversified Property Trust/ Cromwell BT Pty Ltd
Date of DA lodgement	25 May 2018
Number of Submissions	11 submissions
Recommendation	Deferred Commencement
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Capital investment value (CIV) over \$30 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>SEPP (Infrastructure) 2007 - Schedule 3 – Traffic Generating Development</i> • <i>SEPP 55 – Remediation of Land</i> • <i>SEPP (Vegetation in Non-Rural Areas) 2017</i> • <i>SEPP 64 – Advertising and Signage</i> • <i>SEPP 65 Design Quality of Residential Apartment Development (SEPP 65) and NSW Apartment Design Guide (ADG)</i> • <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) – Deemed SEPP</i> • <i>Willoughby Local Environmental Plan 2012</i> • <i>Willoughby Development Control Plan</i> • <i>Chatswood CBD – Planning and Urban Design Strategy</i>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Assessment Report • Schedule of Conditions • Site Description and Aerial Photo • Controls, Referrals & Development Statistics • Clause 4.6 and Clause 4.6 Assessment • Submissions Table • Section 4.15 (79c) Assessment • Notification Map • Architectural Plans
Report prepared by	Pooja Chugh (Development Planner)
Report date	13 March 2019

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Yes

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Yes

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Yes

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

SNPP REF: 2018SNH039

COUNCIL WILLOUGHBY CITY COUNCIL

ADDRESS: 475-501 VICTORIA AVENUE, CHATSWOOD NSW 2067.

DA NO: DA-2018/158

PROPOSAL: DEMOLITION OF EXISTING TWO (2) STOREY COMMERCIAL BUILDING AND ERECTION OF A NEW FOUR (4) STOREY COMMERCIAL BUILDING COMPRISING OFFICE SPACE AND TRAFFICABLE ROOF TOP AT VICTORIA AVENUE FRONTAGE AND DEMOLITION OF EXISTING RETAIL TENANCY AND ERECTION OF FIFTEEN (15) STOREY HOTEL AT BROWN STREET FRONTAGE. REFURBISHMENT OF EXISTING THROUGH-SITE LINK, LANDSCAPING AND ASSOCIATED WORKS

RECOMMENDATION: DEFERRED COMMENCEMENT

1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS, DEVELOPER CONTRIBUTION & REFERRALS
3. SUBMISSIONS TABLE
4. APPLICANT'S CLAUSE 4.6 (FLOOR SPACE)
5. CLAUSE 4.6 ASSESSMENT (FLOOR SPACE)
6. SECTION 4.15 (79C) ASSESSMENT
7. SCHEDULE OF RECOMMENDED CONDITIONS
8. NOTIFICATION MAP
9. ARCHITECTURAL PLANS

RESPONSIBLE OFFICER: IAN ARNOTT (PLANNING MANAGER)

AUTHOR: POOJA CHUGH (DEVELOPMENT PLANNER)

DATE: 13-MAR-2019

1. PURPOSE OF REPORT

The application DA-2018/158 is reported to Sydney North Planning Panel (SNPP) for determination as it meets the relevant criteria to be considered regionally significant development, as outlined under Schedule 7 of the State Environmental Planning Policy (State and Regional Development) 2011, noting that it comprises a Capital Investment Value (CIV) that is estimated to exceed \$30 million (\$75,412,620).

2. OFFICER'S RECOMMENDATION

THAT the Sydney North Planning Panel (SNPP):

- 2.1 Supports the submitted Clause 4.6 variation to the floor space ratio development standard contained in Clause 4.4 of Willoughby Local Environmental Plan (WLEP) 2012 for DA-2018/158 (475-501 Victoria Avenue, Chatswood) for the following reasons:**

- 2.1.1 The proposed commercial office building, subject to amendments as recommended and the proposed hotel development is consistent in bulk and scale to the surrounding developments.
- 2.1.2 The proposal will generate additional employment opportunities within a walking distance of Chatswood Transport Interchange which is consistent with the relevant objectives of the B3 Commercial Core zone.
- 2.1.3 The addition of floor space to the existing site will deliver office and business space in Chatswood's Office precinct and within close proximity to public transport which is consistent with the strategic objectives of the *Greater Sydney Region Plan* and the *North District Plan*, as well as the *Chatswood CBD Planning and Urban Design Strategy*.
- 2.2 Approve the development subject to the attached conditions and issue 'Deferred Commencement' consent for the application DA-2018/158 for the demolition of an existing two (2) storey commercial building and erection of a new four (4) storey commercial building comprising office space and trafficable roof top at the Victoria Avenue frontage and demolition of an existing retail tenancy and erection of a fifteen (15) storey hotel at the Brown Street frontage, refurbishment of an existing through-site link, landscaping and associated works, subject to conditions contained in Attachment 7, for the following reasons:
 - 2.2.1 The Clause 4.6 Variation request in relation to Clause 4.4 – Floor Space Ratio standard contained in the *Willoughby Local Environmental Plan 2012* is well founded and demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.
 - 2.2.2 The proposal will retain and enhance the existing through-site link to enable a smooth pedestrian movement between Victoria Avenue and Brown Street.

The proposal, subject to the recommended amendments, is consistent with the specific objectives of the B3 – Commercial Core in terms of providing additional office and business floor space; creating additional employment opportunities in close proximity to public transport and strengthens the role of Chatswood as a major centre and improve its public domain and pedestrian links.

3. EXECUTIVE SUMMARY

The cover report provides a summary assessment of key considerations and issues raised during the assessment of the application. The remainder of the report provided as attachments sets out the comprehensive assessment of the proposal against the relevant planning controls and legislative requirements.

The site is located at 475-501 Victoria Avenue within the office precinct of the Chatswood CBD. The subject site is rectangular in shape with a site area of approximately 6031m². The site is located on the southern side of Brown Street and northern side of Victoria Avenue, Chatswood. The site accommodates two fourteen (14) storey commercial towers with Tower 1 fronting Brown Street, and Tower 2 fronting Victoria Avenue. In addition, there is a two-

storey commercial building with two retail tenancies located at ground floor, currently occupied by Kwik Kopy and Vega Korean. Level 1 of this building is currently vacant.

In summary, the proposal involves retention of the existing fourteen (14) storey commercial buildings, demolition of the existing two (2) storey commercial building and erection of a mixed development substantially for a four (4) storey office building at Victoria Avenue frontage and a fifteen (15) storey hotel at the Brown Street frontage, refurbishment of existing through-site link, landscaping and associated works.

The proposal is permissible with consent in the B3 Commercial Core zone. The proposal complies with *Willoughby Local Environmental Plan (WLEP) 2012* height control of 90m, however, it exceeds the Floor Space Ratio (FSR) control of 5:1 (base FSR) by 20.9% (FSR of 6:1 is proposed). A Clause 4.6 variation request has been submitted with the application.

The general form and function of the development is consistent with Council's direction for future developments in Chatswood CBD. However, a number of discussions with the applicant have been required to address issues related to pick-up and drop-off area for the hotel, landscape area and floor space exceedance. Whilst most of these issues have been addressed, there remain issues over which Council seeks additional or amended information through a Deferred Commencement Consent.

4. DESCRIPTION OF PROPOSAL

The proposed development comprises:

Office Building:

Demolition of the existing two (2) storey commercial building and erection of a new four (4) storey office building comprising office space and trafficable rooftop terrace at the Victoria Avenue frontage.

Hotel Building:

Demolition of an existing retail tenancy and erection of a 15-storey hotel development, comprising a two (2) storey podium with 12-storey tower above at the Brown Street frontage as follows:

- Ground Level - Hotel lobby and reception on Brown Street frontage and through-block link; admin and staff office space; restaurant including outdoor dining area; lift access, plant area and amenities.
- Level 1 - Lap pool and gymnasium for hotel guest; three (3) conference spaces; outdoor terrace; lift access, plant area and amenities.
- Levels 2-14 - Ten (10) rooms and two (2) suites on each level totalling one hundred and fifty six (156) hotel rooms including six (6) accessible rooms/suites.

Public Domain:

The public domain works include landscaping and refurbishment of through-site link with removal of seventeen (17) significant trees and replacement planting of five (5) trees; new landscaped planters; new public furnishings and seating areas; new water features to mark the entrance from the through-site link to the hotel and installation of new public bicycle parking (14 spaces) and feature pavement treatment. In addition to the public domain works,

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

a small (20m²) retail tenancy/ 'coffee pod' with associated seating area is proposed at the ground level on the Brown Street frontage.

Basement Car Park:

The proposal includes retention of the existing three-level basement car park accessed via Brown Street with alterations and additions comprising structural elements, services, and lift cores to reduce the existing three hundred and sixty five (365) parking spaces to two hundred and ninety one (291) spaces. In addition, level 1 of the basement proposes parking for ninety eight (98) bicycles, change rooms (9 showers), and lockers (98 units).

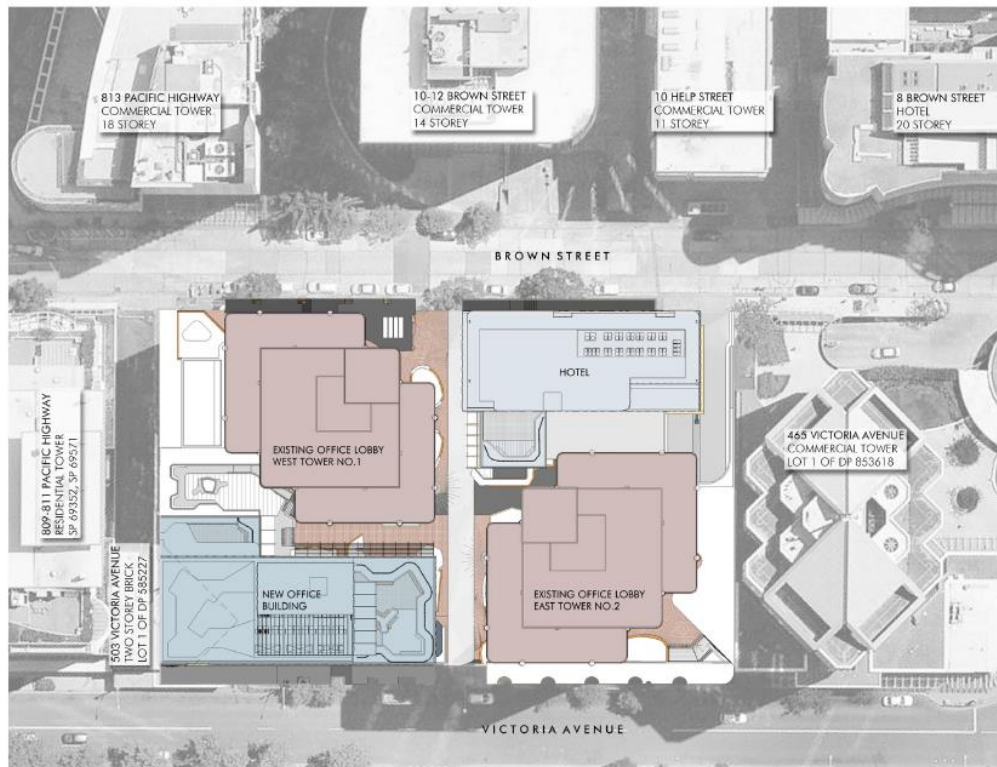


Figure 1: Site Plan in context of surrounding developments (Source: Nettleton Tribe)

5. BACKGROUND

The subject site is located on land that is zoned B3 – Commercial Core under the provisions of *Willoughby Local Environmental Plan 2012* (WLEP). The site is within the office precinct of the Chatswood CBD.

The subject site is rectangular in shape with a site area of approximately 6031m². The site accommodates two fourteen (14) storey commercial towers with Tower 1 fronting Brown Street, and Tower 2 fronting Victoria Avenue. In addition, there is a two-storey commercial building fronting Victoria Avenue with two retail tenancies located at ground floor. A description of the site and the surrounding area, including an aerial photograph is contained in **Attachment 2**.

The application was notified in accordance with Part B of the *Willoughby Development Control Plan (WDGP)* from 7 June 2018 to 2 July 2018. Council received eleven (11) submissions in response to the notification. The issues of concern raised in these submissions relate to site isolation; residential amenity impacts; population density; traffic generation; noise; visual impact and crowding; 15 storey building height and impacts during

construction and demolition phase of the proposed development. A table of the issues raised in the submissions objecting to the proposal and the assessing officer's response is contained in **Attachment 3**.

A brief was provided to the Sydney (North) Planning Panel regarding assessment of the subject Development Application on 5 September 2018. The main issues raised concerning the application included exceedance of floor space; site isolation; loss of on-street parking spaces on Brown Street to provide pick-up and drop-off bays for the hotel; loss of landscape area and issues related to traffic, stormwater management and amenity impacts. The applicant was advised of these concerns and has submitted additional information and amended plans.

6. KEY ISSUES

The main issues of concern relate to the floor space exceedance; landscape area; pick-up and drop-off area and parking; site isolation and through-site link. These issues are discussed below:

Floor Space Exceedance

The base floor space ratio (FSR) applicable to the subject site is 5:1 with a maximum FSR of 10.5:1 subject to Clause 4.4A(12) of the *WLEP*. In order to achieve this uplift in the FSR, the site area is required to be greater than 2500m²; a minimum of 40% of the site is required for landscaping, publicly accessible space and through site links and provide a maximum site coverage of 60%.

The proposal does not benefit from the uplift in the FSR as it does not meet the site coverage and landscape area requirements. The application is therefore accompanied by a Clause 4.6 variation. In this respect design changes are recommended to reduce the floor space at the ground floor level with a consequential increase in the landscape area. It is recommended that part of the office building (southern entry) that is single storey in height with roof terrace above is reduced (by approximately 75m²), as demonstrated in Figures 2 and 3 below. This part of the office building is not above the basement and therefore deep soil/ canopy planting can be provided. Furthermore, deletion of the first floor level roof terrace is considered to minimise amenity impacts on the adjoining commercial premise at No. 503 Victoria Avenue, Chatswood and existing shop-top housing development at Nos 809-811 Pacific Highway (Leura Building).

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

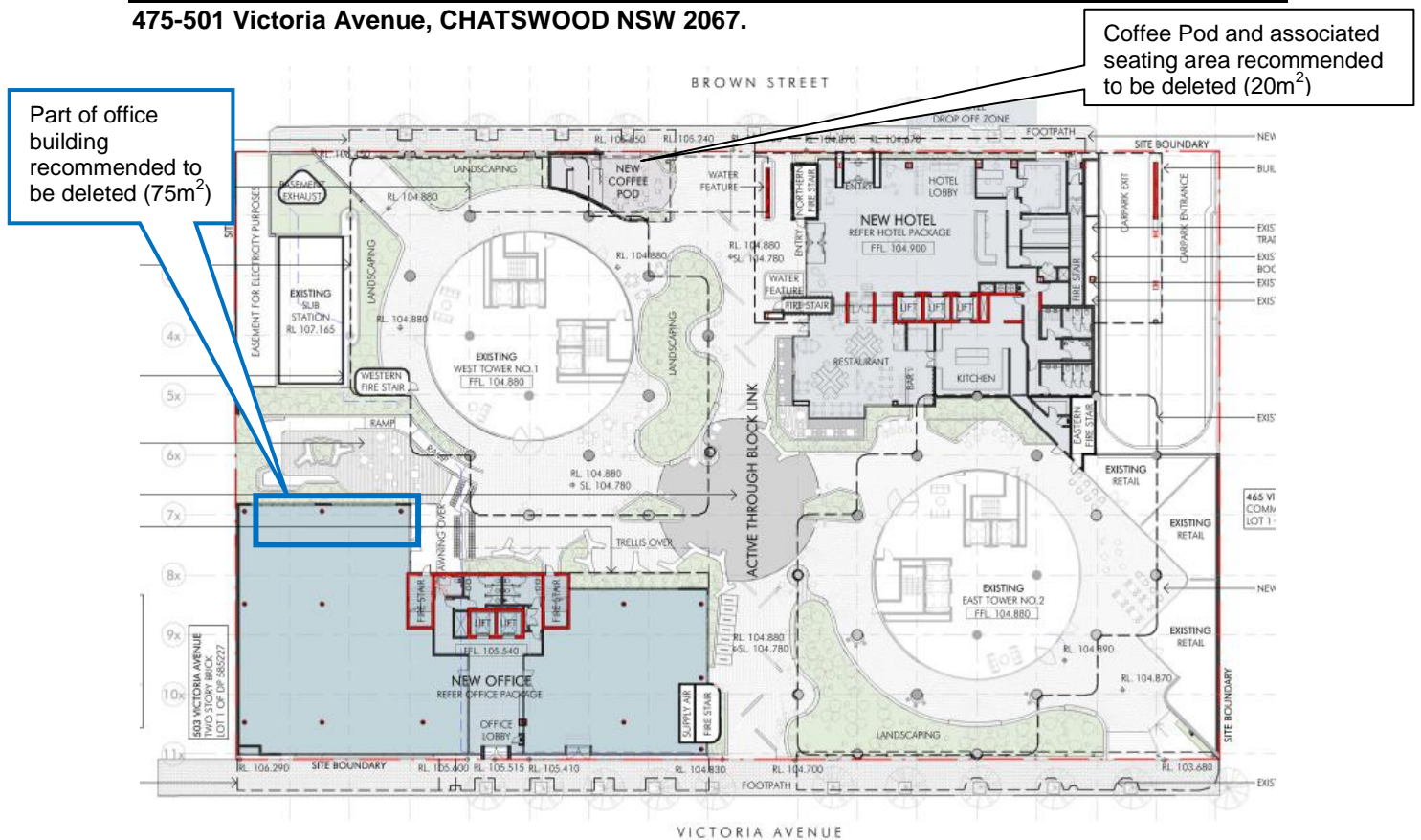


Figure 2: Overall Ground Floor – Drawing No. Q3294_DA0105

Perspective view of the proposed office building which shows the southern entry:



Figure 3: Perspective view of office building (southern entry)

In addition to the reduction in the ground floor level footprint of the office building, the coffee pod (20m²) and the associated outdoor seating area proposed along the Brown Street frontage is recommended to be deleted. Deletion of the coffee pod will ensure the existing landscape area in front of the office tower 1 (existing) is retained. A condition is recommended in this respect.

The proposal with reduction in the floor space is considered to meet the intent and objectives of the development standard; B3 - Commercial Core zone and *the Chatswood CBD Planning and Urban Design Strategy*. Details of the Clause 4.6 variation submitted and assessment of the Clause 4.6 is provided in **Attachments 4 and 5** respectively.

Landscape Area

The existing landscape area which is predominantly in the form of raised planter beds is approximately 1218m² or 20.2%. The original proposal provided 686.4m² or 11.4% as landscape area. The WDCP requires that landscaping in the Chatswood City Centre shall consider and ameliorate the microclimatic circumstances of a site in particular adverse wind, noise and shadowing impacts. The WDCP requires a minimum of 20% of podium and a minimum of 20% of rooftop open space to be provided as vegetated area (turf, gardens and planters). *Chatswood CBD Planning and Urban Design Strategy* which has been adopted by Council requires a minimum of 20% of the site to be provided as soft landscaping which may be located on ground, podium or roof top levels or green walls of buildings. In this respect, the amended proposal with increased vertical landscape area and increase soft landscape area due to the reduction in the footprint of the office building and deletion the coffee pod and associated seating area, provides approximately 28% of the site as landscape area. The amended proposal with changes (as recommended) to increase the landscape area is considered to be acceptable.

Pick-up and Drop-off Area and Parking

The original proposal included removal of two (2) existing on-street parking spaces in front of the site on Brown Street to provide pick-up and drop-off bays for the hotel, as illustrated below:

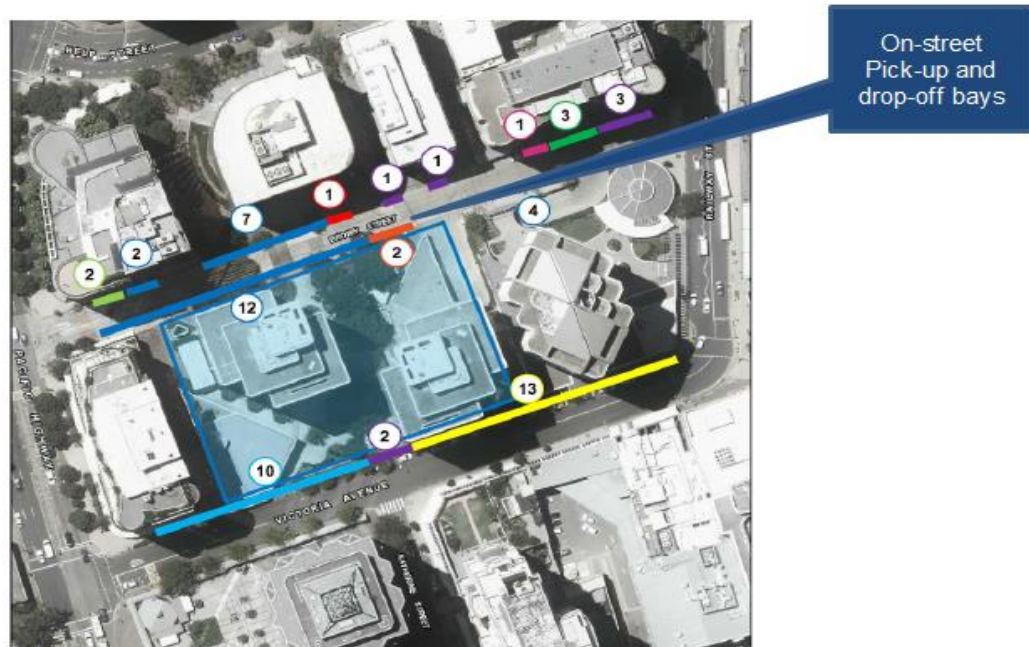


Figure 4: On-street pick-up and drop-off bays (Source: Traffic and Transport Assessment by Arup)

The applicant was advised to provide an off-street Porte Cochere, given the site's location and impact on the existing vehicular and pedestrian traffic. A Porte Cochere within the site would require removal of three (3) on-street parking currently provided along Brown Street.

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

The diagram is a detailed basement 1 site plan. It shows a large rectangular area enclosed by a red dashed line labeled 'SITE BOUNDARY'. The plan includes several buildings and areas:

- NEW HOTEL**: Located in the upper right, with a 'REFER HOTEL PACKAGE' area.
- HOTEL LOADING**: Adjacent to the hotel.
- NEW EOTF**: A large central structure with 'REFER DWG DADING' and '16 BIKES PARKING & EOTF'.
- EXISTING TOWER 1** and **EXISTING TOWER 2**: Located near the center.
- NEW OFFICE** and **CARPORT LOBBY**: Located in the lower left.
- EXISTING TOWER 3** and **EXISTING TOWER 4**: Located in the lower right.
- DRIVEWAYS**: Multiple areas labeled 'DRIVEWAY' are shown throughout the plan.
- Parking**: Various parking spaces are marked, including '16 BIKES PARKING & EOTF'.
- Access Points**: A yellow rectangle indicates a 'Drop-off bay'. Blue arrows show 'Taxi/Uber/Private Vehicle access route'. Green dashed arrows show 'Patron access to Hotel Lift'.
- Other Labels**: 'EXISTING TOWER 1', 'EXISTING TOWER 2', 'EXISTING TOWER 3', 'EXISTING TOWER 4', 'EXISTING TOWER 5', 'EXISTING TOWER 6', 'EXISTING TOWER 7', 'EXISTING TOWER 8', 'EXISTING TOWER 9', 'EXISTING TOWER 10', 'EXISTING TOWER 11', 'EXISTING TOWER 12', 'EXISTING TOWER 13', 'EXISTING TOWER 14', 'EXISTING TOWER 15', 'EXISTING TOWER 16', 'EXISTING TOWER 17', 'EXISTING TOWER 18', 'EXISTING TOWER 19', 'EXISTING TOWER 20', 'EXISTING TOWER 21', 'EXISTING TOWER 22', 'EXISTING TOWER 23', 'EXISTING TOWER 24', 'EXISTING TOWER 25', 'EXISTING TOWER 26', 'EXISTING TOWER 27', 'EXISTING TOWER 28', 'EXISTING TOWER 29', 'EXISTING TOWER 30', 'EXISTING TOWER 31', 'EXISTING TOWER 32', 'EXISTING TOWER 33', 'EXISTING TOWER 34', 'EXISTING TOWER 35', 'EXISTING TOWER 36', 'EXISTING TOWER 37', 'EXISTING TOWER 38', 'EXISTING TOWER 39', 'EXISTING TOWER 40', 'EXISTING TOWER 41', 'EXISTING TOWER 42', 'EXISTING TOWER 43', 'EXISTING TOWER 44', 'EXISTING TOWER 45', 'EXISTING TOWER 46', 'EXISTING TOWER 47', 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Council's Traffic Section has assessed the revised proposal to be acceptable as there is no reliance on the existing on-street parking on Brown Street for the purpose of hotel pick-up or drop off bays. Furthermore, it is considered that there will be a minimal impact on the pedestrian movement along Brown Street as provision of a porte-cochere at ground level would create a conflict between the vehicles and pedestrian traffic flow.

It is worthy to note that a reduction in the car-parking rates by utilising RMS car parking rates for sites close to public transport is one of the key elements of the CBD Strategy. The short fall in parking is therefore supported on merit. A detailed parking assessment is provided in **Attachment 2**.

The subject development adjoins a commercial building at No. 503 Victoria Avenue, Chatswood on its western boundary. This adjoining site provides a site area of

approximately 408.8m² which is well below the minimum lot size requirement of 2,500m². This site cannot be amalgamated with the existing shop-top housing development (Leura Building) on its western side at Nos 809-811 Pacific Highway, Chatswood. In this respect, the applicant was advised to consult with the adjoining property owner to seek a consolidated site outcome. The applicant met the adjoining property owner and his representative on 4 October 2018. This meeting did not result in any resolved outcome. The applicant's legal advice contends that the site isolation principle is not applicable to the proposed development as the subject site meets the minimum lot size requirements.

Part E.1.1 of the WDCP for a commercial development intends that no site is isolated by development on an adjoining allotment. Notwithstanding, the site is isolated due to the historic redevelopment of Nos 809 - 811 Pacific Highway and Nos 475 - 501 Victoria Avenue. In this regard, the assessment report (DA-1998/202) for the Leura Building at Nos 809-811 Pacific Highway notes that negotiation with the property owner of No. 503 Victoria Avenue was not successful despite multiple offers made by the applicant.

The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are set out in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 are:

Firstly, is amalgamation of the sites feasible?

Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

In answering the first question, the amalgamation of the sites may be feasible however it is not considered reasonable to enforce amalgamation as the subject development is on a site that meets the minimum lot size. Furthermore, the proposed development is for additions to the existing buildings on site.

In respect to the second question, it is acknowledged that the adjoining site cannot be re-developed to its full potential due its size and location. Notwithstanding, building of three (3) storeys can be achieved between the three-storey podium section of the Leura Building and the four (4) storey office building (subject development). Reduction in the footprint at the ground floor level of the office building and deletion of the first floor level terrace will assist in minimising amenity impacts in case of a future redevelopment of No. 503. It is worth noting that consent conditions for the Leura Building require provision to be made for 503 Victoria Avenue to have a shared use of the vehicular access and loading dock.

The proposed development is not considered to preclude future redevelopment of No. 503 and therefore is considered to meet the objectives of the planning principle in respect to site isolation.

Through-Site Link

The existing site provides a highly permeable ground plane that allows pedestrians movement to traverse the site in north-south, southwest-northeast, northwest-southeast directions, as demonstrated below:

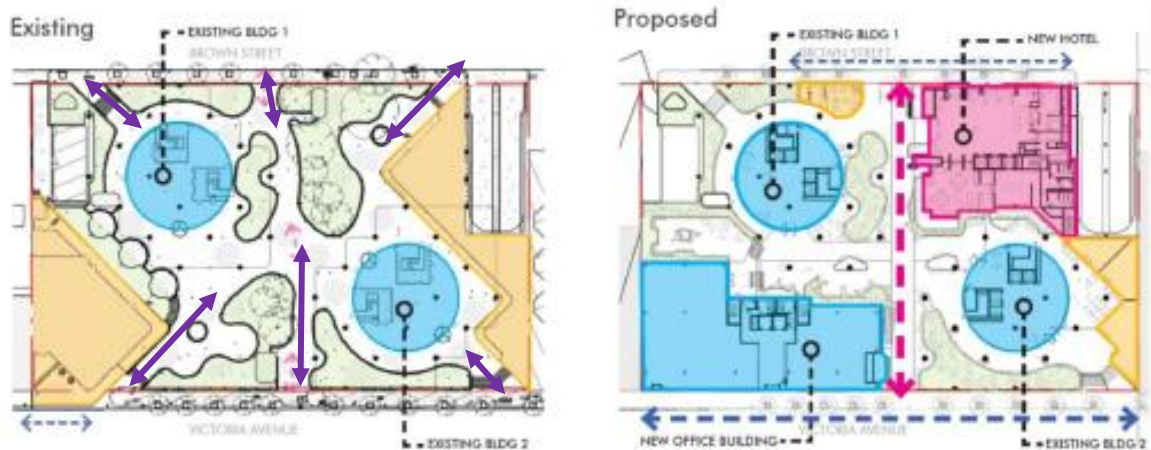


Figure 6: Existing and Proposed Ground Plane Study (Source: Nettleton Tribe)

The proposal retains the north-south and northwest-southeast links however the southwest-northeast is lost to accommodate the proposed office and hotel buildings. In this regard, the current proposal includes upgrade of the existing north-south link that runs through the centre of the site by providing seating areas and vertical landscape areas as demonstrated in the perspectives below:



Figure 7: Perspectives of the site-through link and vertical landscape planting (Source: Nettleton Tribe)

The *Chatswood CBD Planning and Urban Design Strategy* envision one 'through-building' link for the subject site. The proposal is therefore considered to be acceptable.

7. CONCLUSION

It is considered that the proposal for demolition of existing two (2) storey commercial building and erection of a new four (4) storey commercial building comprising office space and trafficable roof top at the Victoria Avenue frontage and demolition of an existing retail tenancy with erection of a fifteen (15) storey hotel at the Brown Street frontage, refurbishment of existing through-site link, landscaping and associated works will have acceptable impacts on the surrounding residential and commercial uses. The proposal with amendments to the office building and deletion of the coffee pod and associated seating area, as recommended, is considered worthy of approval.

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

The written request for variation to the floor space ratio development standard submitted under Clause 4.6 is considered satisfactory and demonstrates that, despite the numerical non-compliance, the proposed development (subject to changes as outlined in this report) meets the objectives of the development standard and the objectives for development in the B3 – Commercial Core zone.

The Development Application DA-2018/158 has been assessed in accordance with Section 4.15 (79C) of the *Environmental Planning and Assessment Act 1979*, *Willoughby Local Environmental Plan 2012*, *Willoughby Development Control Plan*, and other relevant codes and policies. The proposal is consistent with the vision of *Chatswood CBD Planning and Urban Design Strategy* to promote additional office and commercial floor space in close proximity to public transport. It is considered that the proposal is in the public interest.

It is considered that the proposal with minor amendments as recommended is acceptable in the particular location, subject to Schedule of Deferred Commencement Conditions outlined in **Attachment 7**.

ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO

The site is located at 475-501 Victoria Avenue within Chatswood the CBD. The subject site is rectangular in shape with a site area of approximately 6031m². The site is located on the northern side of Victoria Avenue and the southern side of Brown Street, Chatswood. The site accommodates two fourteen (14) storey commercial towers with Tower 1 fronting Brown Street, and Tower 2 fronting Victoria Avenue. In addition, there is a two-storey commercial building fronting Victoria Avenue with two retail tenancies located at ground floor, currently occupied by Kwik Kopy and Vega Korean. Level 1 of this building is currently vacant.

The existing commercial towers provide a small footprint at the ground level with substantial area of open space, landscaped garden beds, and publicly accessible through-site pedestrian link connecting Victoria Avenue and Brown Street.

The site currently accommodates parking for three hundred and sixty five (365) vehicles within three (3) levels of basement for car park and loading/unloading beneath the existing buildings. Access to the carpark is via Brown Street, adjacent to the eastern boundary of the site.

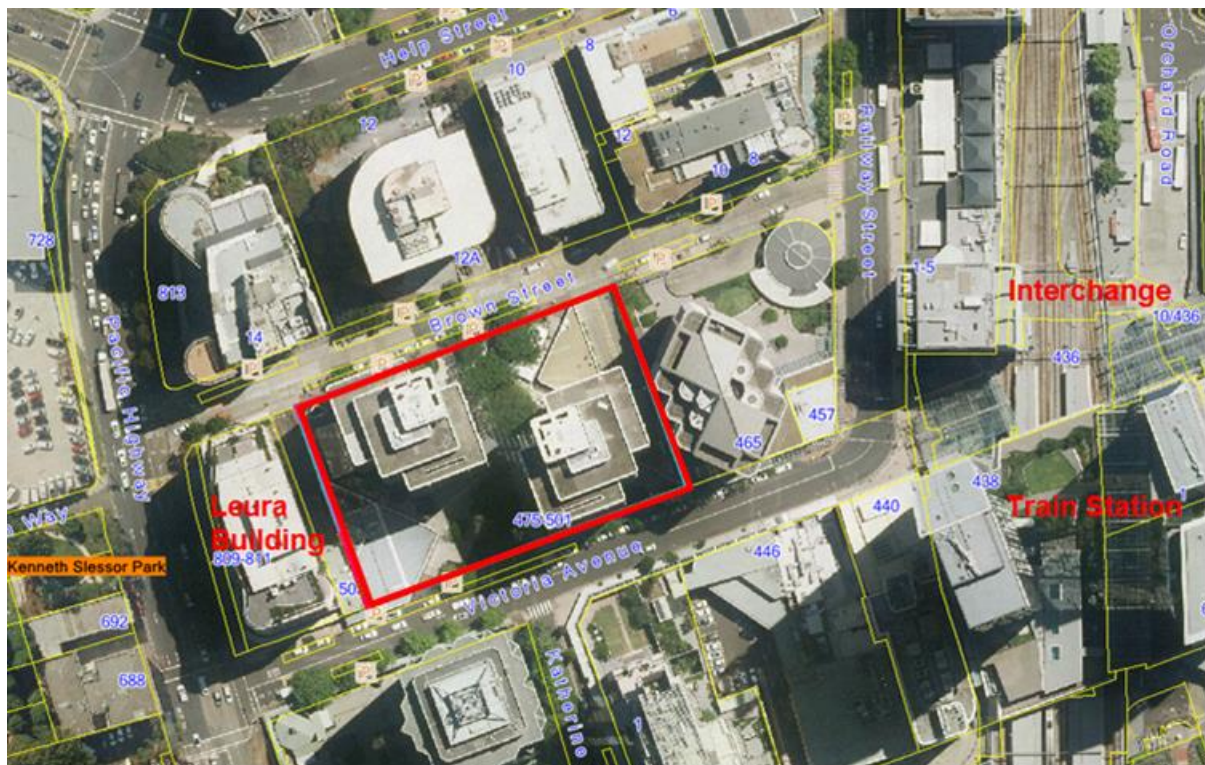


Figure 8 - Aerial photo of the development site and its surrounds (source: Council's Mapping)

There are a number of significant trees existing on and around the site. In addition to the trees there are large garden beds and landscape areas which are well used and contribute to the public domain.

The site is well served by a range of efficient transport modes. Chatswood bus Interchange and Chatswood railway are within a walking distance from the subject site. Future upgrades from Sydney Metro will further improve the existing public transport accessibility to the site.

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

The site is zoned B3 Commercial Core under the provisions of the *Willoughby Local Environmental Plan 2012 (WLEP)*:

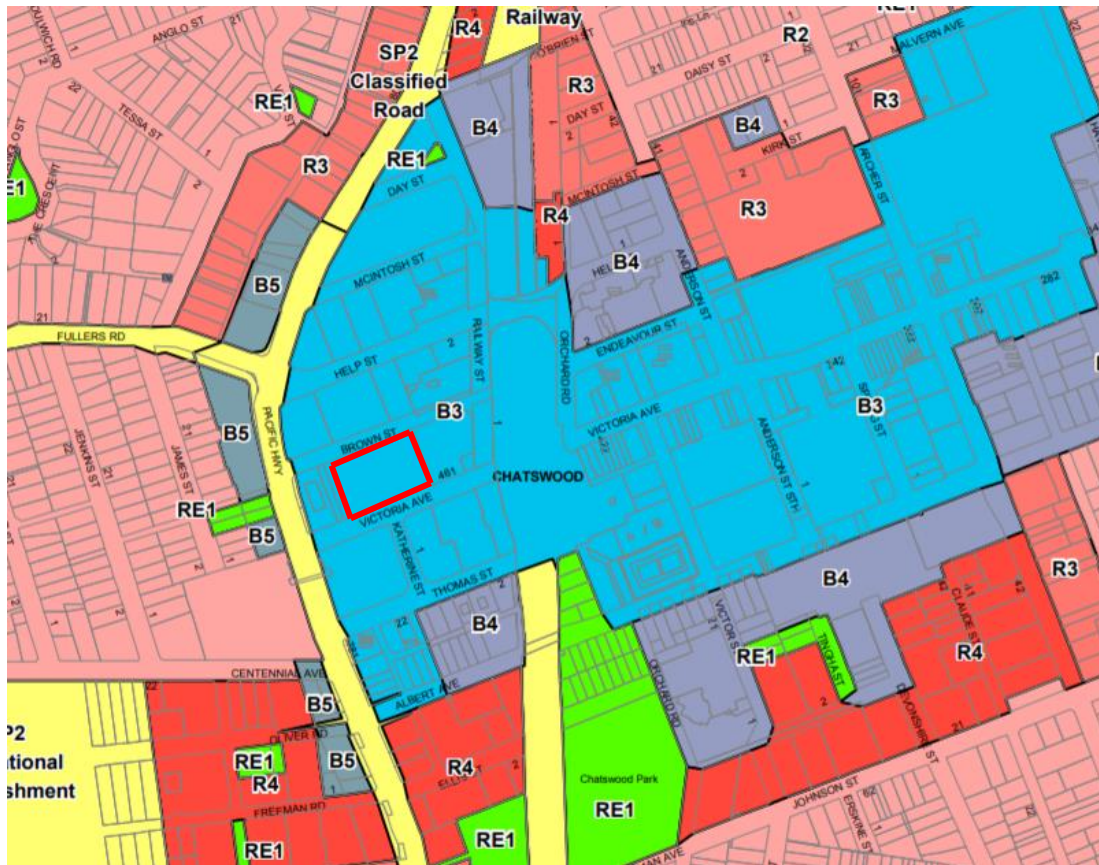


Figure 9 - Zoning Map extract from WLEP 2012 (Source: <https://www.legislation.nsw.gov.au>)

The site is located within the Chatswood CBD boundary identified in the *Chatswood CBD Planning and Urban Design Strategy* endorsed by Council on 26 June 2017. The site remains as B3 – Commercial Core with a maximum no maximum floor space for commercial development in the centre subject to satisfying a number of other standards. The maximum height of buildings in the CBD will be based on the Pans Ops plane.

ATTACHMENT 2: CONTROLS, REFERRALS & DEVELOPMENT STATISTICS

Controls that apply to the subject site:

Willoughby Local Environmental Plan 2012 (WLEP 2012)

- Zoning: B3 Commercial Core
- **Height:** 90 metres
- **FSR:** 5:1 to 10.5:1, with exceptions to floor space ratio – refer to Clause 4.4A(12)

Applicable DCP (SEPPs, REPs)

- *SEPP (Infrastructure) 2007 - Schedule 3 – Traffic Generating Development*
- *SEPP 55 – Remediation of Land*
- *SEPP (Vegetation in Non-Rural Areas) 2017*
- *SEPP 64 (Advertising and Signage)*
- *SEPP 65 Design Quality of Residential Apartment Development (SEPP 65) and NSW Apartment Design Guide (ADG)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) – Deemed SEPP*
- *Willoughby Development Control Plan*
- *Chatswood CBD – Planning and Urban Design Strategy*

Developer's Contributions

- S94A Developers Contributions: Yes
- Applicable rate: 3% (Chatswood Central Business District)
- The cost of development: \$75,412,620.00
- The total contribution payable: \$2,262,378.60

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP 2007) requires certain development listed in Schedule 3 to be referred to the RMS. The proposed development is 'traffic generating development' as it is for the purposes of shops and commercial premises above the relevant size or capacity with access to any road.

The proposal was referred to RMS for comments; no objections have been raised subject to the recommended Conditions.

State Environmental Planning Policy No. 55 - Remediation of Land

The current use of the site is commercial. The proposal retains the existing basement levels. No excavation works are proposed as such and therefore any site contamination is considered to be unlikely. Council's Environmental Unit has assessed the proposal to be acceptable in this regard.

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

An Arborist Report has been submitted. The report notes that the proposed development will result in the loss of 14 high category trees and 3 low category trees. Deferred Commencement Conditions require planting of canopy trees. The proposal subject to the recommended condition is considered to be consistent with the requirements of the Vegetation SEPP. The proposal has been assessed to be

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

acceptable by Council's Landscape Architect.

State Environmental Planning Policy 64 (Advertising and Signage)

The proposal includes indicative signage only. Any proposed signage will be subject of a separate approval.

SEPP 65 Design Quality of Residential Apartment Development (SEPP 65) and NSW Apartment Design Guide (ADG)

The proposed development is for the purpose of a commercial office and hotel buildings, and therefore SEPP 65 does not apply. It is noted however that SEPP 65 and the accompanying ADG state that commercial buildings should be separated from adjacent residential buildings in accordance with habitable room separation distances, being 12 metres up to 4 storeys, 18 metres up to 9 storeys, and 24 metres above 9 storeys. In this regard, the site is not located directly adjacent to the Leura Building as it is separated by commercial building at No. 503 Victoria Avenue. The proposed four storey office building provides separation of approximately 10 metres from the rear elevation of the Leura Building. The proposal meets its share (6 metres) of separation requirements. Given the site's location within the B3 Commercial Core zone within Chatswood CBD, the proposal is considered to achieve an acceptable outcome and is considered supportable.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) – Deemed SEPP

The deemed Harbour SEPP applies to the entire Willoughby City Council area, as identified on the Sydney Harbour Catchment Map. There is no specific matter contained in the Harbour SEPP and associated DCP that is considered to apply to the subject development.

Willoughby Local Environmental Plan 2012

	Proposal	Standard	Compliance
Min. Lot Size	6,031m ²	2,500m ²	Yes
FSR	6:1	5:1-10.5:1 Clause 4.4 & 4.4A(12)	No. A Clause 4.6 variation to the development standard has been submitted
	Existing GFA: 25,279m ² Proposed additional GFA: 11,277m ² Proposed total GFA: 36,556m ² Total GFA: 36,461m ² (as reduced to comply with Schedule A matters)		
Height	Office Building: 21.62m (24m including lift over run) Hotel Building: 62.6m	90m	Yes.

Willoughby Development Control Plan

Part C – General Development Guidelines

C.3 Sustainable Development	Sustainability Report and Preliminary Pedestrian Wind Comfort Report have been submitted with the DA.	Relevant Sustainability development criteria established in Part C.3. Sustainable Development includes	The proposal incorporates the following sustainability measures: <ul style="list-style-type: none">Natural ventilationSustainable transport - end of trip facilities
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SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

	<p>The Sustainability Report demonstrates that the proposal is capable of achieving compliance with Section J Energy Efficiency and 5 Star Green Star Design.</p> <p>The Preliminary Pedestrian Wind Comfort Report recommends screens to the terraces and dense shrubs for wind protection.</p>	microclimatic management.	<p>provided.</p> <ul style="list-style-type: none"> Water saving design features such as 5 to 6 star fixtures and equipment and landscape irrigation . <p>The proposal shall implement the measures detailed in the Sustainability Report and in the Preliminary Pedestrian Wind Comfort Report.</p> <p>Complies – subject to Condition</p>
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Part C.4 Transport Requirements:

Car parking	<p>The existing basement carpark comprises a total of 365 car parking spaces, of which 79 car parking spaces are required to be removed to make way for new structural columns, resulting in a total of 286 car parking spaces.</p> <p>(291 as per applicant)</p>	<p>Office/Business premises in Chatswood (Zone B3 under WLEP 2012) where access is only available from Pacific Highway, Albert Avenue, Victoria Avenue, Help or Railway Streets:</p> <p>1 car parking space per 200m²</p> <p>Refer the table below for detailed parking rate.</p>	<p>No.</p> <p>Of the total 286 car parking spaces, 246 spaces are to be dedicated to the existing and proposed office/commercial/retail developments on the site and 40 car spaces are to be dedicated for the proposed hotel development (as recommended by Council's engineering section).</p> <p>Refer to conditions of consent.</p>
Bicycle parking	<p>98 new bicycle spaces are proposed in a locked storage facility in Basement 1 and will service both the existing and proposed buildings.</p> <p>14 bicycle rails racks for visitors are provided in the public domain in the form of 7 u-rails (2 bikes per rail).</p> <p>In addition new end of trip facilities include 9 showers.</p>	<p>Office/Business premises:</p> <p>1 locker per 600m² plus 1 rail/rack per 2,500m²</p> <p>Retail premises:</p> <p>1 locker per 450m² plus 1 rail/rack per 150m²</p>	<p>Yes.</p> <p>Given the existing and proposed total office and hotel GFA will be 36,055m², 60 lockers and 14.4 bicycle rails/racks for visitors are required.</p> <p>Given the existing and proposed retail GFA will be 406m², 0.9 lockers and 2.7 bicycle rails/racks for visitors are required.</p> <p>In total 60.9 lockers and 17.1 rails/racks for visitors are required to comply with the DCP requirements for the site.</p>
Motorcycle	<p>The plans do not indicate any parking spaces for motorcycles. This will be addressed</p>	<p>1 space per 25 car spaces</p>	<p>Yes subject to condition.</p> <p>Given there will be a total of 286 car parking spaces, 11.4 motorcycle spaces are</p>

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

by way of a condition.

required to comply with the DCP requirements.

Car Parking Calculations					
Use	Particulars	Parking Rate	Required	Proposed	Comment
Hotel	156 rooms	1 space/unit	156 spaces	39 spaces	Serviced apartment rate of 1 space/4 units applied
Hotel Restaurant	122m ²	1 space/75m ²	2	2	Council's Engineer recommends a minimum of 40 parking spaces are to be allocated to the hotel development
Hotel Employees	25 employees	1 space/2 employees	12	6	
Business/office excluding 7747m ² of hotel (existing and proposed)	28,186m ²	1 space/200m ²	140	223	Council calculates these as 217 (6 lost due to structural elements)
Retail - existing and proposed	406m ²	1 space/25m ²	16	13	Possible sharing with parking spaces for office/business
Courier (new)				3	
Accessible(new)				5	
			326	*291	286 spaces available

*Council's assessment finds that there will be loss of 5 additional parking spaces to accommodate the structural elements. The total number of parking spaces will be 286 which includes 2 drop-off bays for the hotel.

Willoughby Development Control Plan

Proposal	Standard	Compliance
C.5 Water Management	Revised On-site Detention Plan submitted to address the issues previously raised by Council.	Stormwater Management and disposal in accordance with the Technical Standards contained in the WDCP
C.6 Access, Mobility and Adaptability	Design Review - Accessibility Report has been submitted	Relevant accessibility provisions in WDCP
		The relevant provisions of Part C.5 relating to water management, including water conservation and stormwater management, have been considered and found to be satisfactory, subject to the imposition of conditions. Complies
		The Accessibility Report makes a number of recommendations to achieve compliance with the relevant provisions of the Disability and Discrimination Act, Access to Premise Standards and the BCA. The proposal shall implement the measures detailed in the Accessibility Report.

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

			Complies – subject to Condition
	Proposal	Standard	Compliance
C.8 Waste Management	Waste management Plan has been submitted.	Waste minimisation principles and management of the operational waste in accordance with the WDCP	Council's Waste Services Team has considered the adequacy of waste facilities and operation of the waste management and conditions of the consent have been included. Complies
C.9 Preservation of Trees or Vegetation	The original DA submission included an Arborist Report and Landscape Plans. Council raised concerns with the number of existing trees that were proposed to be removed. Revised Landscape Statement with increased vertical landscape areas has been submitted.	To promote sustainable vegetation management and conserve and enhance the tree resources, natural systems including bushland, and landscape quality.	The amended proposal with increased vertical landscape area and increase soft landscape area due to the reduction in the footprint of the office building and deletion of the coffee pod and associated seating area is considered to be acceptable. Condition is recommended to provide canopy planting adjacent to the southern entry to the office building. Complies
C.11 Safety by Design	<p>CPTED Assessment Report and Hotel Operations Plan have been submitted.</p> <p>The CPTED Assessment Report makes a number of recommendations.</p> <p>The Hotel Operations Plan details surveillance and security measures; preparation of Emergency Management Plan, Alcohol Policy and Incident and Complaint Register.</p>	<p>WDCP provides that the following four crime principles will be considered in the assessment of DAs:</p> <ul style="list-style-type: none"> - Surveillance; - Access control; - Territorial reinforcement; and - Space management 	<p>The CPTED Assessment Report makes a number of recommendations including:</p> <ul style="list-style-type: none"> - Lighting of car park areas, publicly accessible through-site link and open areas. - Installation of CCTV, clear signage and access control measures. - Design measures, landscaping and graffiti resistant materials to avoid blank walls. <p>Therefore, the proposal is found to be satisfactory subject to implementation of recommendations detailed in the CPTED Assessment Report and Hotel Operations Plan.</p> <p>The proposal was referred to NSW Police; no objections were raised subject to recommendations.</p> <p>Complies – subject to Condition</p>

Part E – Specific Controls for Commercial and Shop Top Housing Development (as relevant to the Chatswood City Centre)

	Proposal	Standard	Compliance
E.1.1 Site Access and Car Parking	The proposal maintains existing vehicular access to the car parking from Brown Street, which is a secondary street.	Minimise access and deliveries from a primary street.	Complies
E.1.1 Interface with Street Fronts	The proposal includes active uses at the ground floor level and the existing site through links. The office building provides large glazed areas.	Ground level street frontages to be transparent to allow interaction with the public domain.	Complies
E.1.3 Design and Streetscape Qualities	A Schedule of Materials has been submitted.	For developments in areas of established streetscape with consistent stylistic or architectural character the design of new buildings should be integrated into and not be in contrast with the existing streetscape.	Materials, colours, finishes add interest to façades and complement the existing streetscape. Complies
E.1.5 Building Depth	Office Building: 18.8m Hotel Building: 17m	Development should have a maximum depth of 20m.	Complies
E.1.6 and E.3 Landscaping Requirements	The proposal includes terrace associated with the hotel and roof top terrace and green roof associated with the office building. The amended proposal provides increased vertical landscape area.	A minimum of 20% of podium and a minimum of 20% of rooftop open space is to be provided as vegetated area (turf, gardens and planters)	The amended proposal with increased vertical landscape area and increase soft landscape area due to the reduction in the footprint of the office building and deletion of the coffee pod and associated seating area, provides approximately 28% of the site as landscape area. >20% of the roof top terraces are landscaped. Complies
E.1.8 Privacy	Acoustic Report has been submitted which considers - noise intrusion in to the developments from surrounding environmental noise. - Noise impact from the proposed buildings. - Traffic noise generation due to	Development is to be designed and constructed for effective sound insulation and against road and rail traffic noise to maintain reasonable acoustic privacy for the development and surrounding properties. Minimise overlooking of	The Acoustic Report includes a number of recommendations including: - Min. glazing thickness of 8.38mm laminated. - Positioning and orientating mechanical plants away from receivers - Preparing an updated Acoustic Report once design of the mechanical

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

	increased vehicle movements.	living spaces.	<p>plants is finalised.</p> <p>The submitted report does not appear to include noise impacts from the rooftop terraces. Therefore, use of these areas shall be limited to 10pm – 7 days/week.</p> <p>The proposal is considered to be acceptable in achieving visual privacy as the west elevation of the office building does not provide and openings and it is restricted to four storeys in height. The Leura building provides three storey commercial podium.</p> <p>The proposal is found to be satisfactory subject to implementation of recommendations detailed in the Acoustic Report and restricting the use of rooftop terraces to 10pm.</p> <p>Complies – subject to Conditions</p>
E.1.9 Views and Vistas	The proposed office building is 4 storeys with green roof atop to ensure there will be a minimal impact on the existing views.	WDCP provides that existing views and vistas from and to commercial/residential precinct should be maintained.	<p>The distant views from and around the site are to the north-east. The Leura Building provides a three storey commercial podium. As the office building is 4 storeys, there will be a minimal overall impact. Furthermore, there will be no impact on the existing views obtained from the roof top level communal open space areas of The Leura Building.</p> <p>The proposal will restrict the existing views to the north and north-east obtained from the existing Tower 2 due to the proposed hotel building; however it will continue to obtain the existing views to the south and west.</p> <p>Notwithstanding, the internal separation of 5.7m to 11m between the existing office buildings and the proposed buildings is considered to be sufficient in retaining the existing internal views.</p> <p>Satisfactory</p>

	Proposal	Standard	Compliance
E.1.10 and E.3 Solar Access and Overshadowing	The Shadow Diagrams have been submitted to demonstrate shadow impact on surrounding residential uses and Chatswood City Centre.	The north facing windows of living areas and the principal portion of the recreational open space of adjoining residential buildings should have at least 3 hours of sunlight between 9am and 3pm on June 22. In Chatswood City Centre any development shall not reduce the existing levels of sunlight access in the Gardens of Remembrance, Chatswood Park and Oval, the Concourse public plaza areas and Victoria Walk in the period between 11.30 am and 2pm in mid-winter.	The Leura Buidling will continue to receive the existing solar access between 12noon and 3pm. The Shadow Diagarms demonstrate that the proposal will have no additional overshadowing impact on the key areas within Chatswood City Centre between 11.30am and 2pm mid winter. Complies
E.1.12 Reflectivity	A Schedule of Materials has been submitted.	The use of glass of more than 20% reflectivity or other highly reflective external materials and finish are not permitted. Mirrored glass is not to be used on building exteriors.	The materials proposed include full height glazing, timber form-worked concrete, metal cladding and screens. The maximum reflectivity of 20% for the glazing shall be addressed by way of a condition. Complies – subject to Condition
E.1.13 Awnings, Tree Planting and Paving	The proposal includes awnings to building elevations along the main pedestrian footpaths at Victoria Avenue and Brown Street. The Arborist's Report provided indicates 5 trees in the Brown Street road reserve to be removed due to poor health and replaced to Council's requirements	New awnings should maintain the same alignment of existing awnings to reinforce the continuity of the street. New awnings be continuous for the whole length of the site frontage, be set back 600mm from the footpath edge and have a height clearance above the footpath between 3m and 4.2m.	The proposed awnings along the Victoria Avenue and Brown Street pedestrian entry are acceptable. Council's Streetscape section has advised on required replacement species in the Brown Street road reserve, which have been included in the recommended conditions. There is opportunity for extending the street tree planting forward of the building as part of the works, which would improve the streetscape. Based on the spacing of existing trees forward of the site, it is considered that an additional 4 trees could be accommodated forward of

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

			the new Office Building. Awning cutbacks will be required to accommodate new trees. Complies – subject to Conditions
E.1.14 Sustainable Development			Refer to comments under Part C.3
E.3 Site Coverage	The Site Coverage Plans inclusive of the building (existing Towers 1 & 2) and excluding the building overhang have been submitted.	The maximum site coverage in the office precinct is 60% for sites over 2,500m ²	The site coverage inclusive of the building overhang is 74% and excluding the building overhang is 43%. Deferred Commencement Conditions require deletion of the single storey element of the proposed office building and the coffee pod. In addition, amended plans provide increased vertical landscaping. Acceptable on merit
E.3 Landscaping			Refer to comments under Part E.1.1.6
E.3 Setbacks (Internal)	Office Building (21.62m) provides 5.7m to 17.7m. The Hotel Building (62.6m) provides 7.2m to 13.2.	WDCP requires a minimum of 6m building separation for buildings over 14m in height and 12m for buildings over 30m in height	The intent and objective of the setback requirements is to allow sun light penetration and view sharing. As noted earlier, the proposal is considered to have a minimal additional overshadowing impact. By inlarge, the surrounding developments will continue to obtain the existing views. The proposal is therefore considered to be acceptable. Acceptable on merit
REFERRALS			
External Referrals			
Roads and Maritime Services			
The application was referred to RMS for comments. RMS raises no objection to the proposed development subject to recommended conditions of consent.			
Chatswood Police			
The application was referred to Chatswood Police for comments. Chatswood Police has made a number of recommendations in respect to CPTED strategies. These recommendations will form part of the approved documentation.			
Internal Referrals			
Strategic Planning	Council's Strategic Planning Section is supportive of the proposal for the following reasons: – <i>“Chatswood is a Strategic Centre under the Metro Strategy;</i>		

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

- *The CBD Strategy promotes offices in Chatswood's B3 core area to generate additional jobs;*
- *This DA being for office space and hotel is therefore in line with the direction Council is promoting;*

No conditions of consent are recommended.

Urban Design Consultant

Council's Urban Design Specialist is supportive of the proposal for the following reasons:

- This physical intrusion will result in a much denser street elevation with less apparent building separation. Acknowledging that this will be a change to the existing character, the outcome is an appropriate CBD scale and form.
- The building façade/elevation treatment to each building does provide an element of variety (and to some extent integration) with the existing street building character, and is appropriate for a commercial use/activity.
- The proposed roof terraces contribute to the CBD Planning and Urban Design Strategy.

No conditions of consent are recommended.

Traffic Section

Council's Traffic Section is supportive of the amended proposal with the pick-up and drop-off area relocated to the basement level 1 instead of Brown Street. The recommended conditions from Infrastructure Services include conditions in respect to the parking; construction and traffic management.

Environmental Unit

Council's Environmental Unit raises no objection to the proposal and recommended a number of conditions.

Refer to the conditions of consent at Attachment 7.

Waste Management Division

Council's Waste Management Division raises no objection to the proposal, recommended a number of conditions.

Refer to the conditions of consent at Attachment 7.

Open Space/Landscaping Division

Council's Open Space/ Landscaping Division recommends a number of conditions and made the following comments:

"The Arborist's Report provided indicates 5 trees in the Brown Street road reserve to be removed due to poor health and replaced to Council's requirements. No objections are raised to removal and replacement of the trees. Council's Streetscape section has advised on required replacement species, which have been included in the recommended conditions.

The plans indicate new awnings forward of the new Office Building on Victoria Avenue. There is opportunity for extending the street tree planting forward of the building as part of the works, which would improve the streetscape.

Based on the spacing of existing trees forward of the site, it is considered that an additional 4 trees could be accommodated forward of the new Office Building. Awning cutbacks will be required to accommodate new trees.

Council's Streetscape section has advised on suitable supplementary species, which have been included in the recommended conditions. An additional condition has been recommended requiring provision of awnings with setbacks to accommodate tree growth.

The landscape plans provided indicate general location of trees and

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

understorey plants, with more detail provided in the Landscape Design Statement. The general philosophy of the design intent and indicative Planting Palette provided in the statement and on the plans is supported.

Refer to the conditions of consent at Attachment 7.

Infrastructure Services

Council's Infrastructure Services has made the following comments:

"The number of parking spaces proposed is 291. We believe that the new structure will impact additional spaces and believe that 286 spaces should be used in the analysis. Under the DCP, the number of spaces required is 329, hence the amount proposed is 87% of the required.

The site is located in close proximity to the railway station, and the majority of office workers and retail staff will use public transport. The traffic report provided does indicate that at the time of survey, not all spaces were occupied. The survey did occur in the week before school holidays (when many private schools were already on holidays) and occupancy rates are potentially lower than normal and many of the spaces are reserved and not available for general parking. However, we believe that the proposed number of spaces is sufficient, given the proximity to the station.

Parking spaces do need to be reserved for hotel patrons. While hotel usage will mainly occur at different times to office workers, spaces will be required during the afternoon for check in, prior to many office workers leaving. The number of spaces reserved for the hotel should be approximately 40, and we recommend that a condition be imposed that requires this.

New awnings are proposed on both frontages. The edge of the awnings needs to be located 600mm back from the kerb line, to prevent damage by vehicles".

Refer to the conditions of consent at Attachment 7.

Building Services

Council's Building Services raise no objection to the proposal and recommend a number of conditions.

Refer to the conditions of consent at Attachment 7.

ATTACHMENT 3: SUBMISSION TABLE

The development application was notified in accordance with Part B of the Willoughby Development Control Plan (WDCP) from 7 June 2018 to 2 July 2018. Council received eleven (11) submissions in response to the notification.

The key issues raised in these submissions are summarised below:

From	Issues Raised	Response
809-811 Pacific Highway	<u>Height</u> <i>Our main concern is the final height of this building and would like reassurance that the building will not end up overshadowing our balcony, obstructing light, sunlight, privacy and openness.</i>	The proposed office building is 24m in height (inclusive of the lift overrun) and separated from the Leura building by a 2 storey commercial building at 503 Victoria Avenue. The original and the supplementary shadow diagrams demonstrate that the eastern elevation of the Leura Building is overshadowed by existing development between the hours of 9am-3pm at mid-winter. No additional overshadowing will occur as a result of the proposed development during this time.
46/809-811 Pacific Highway	<u>Noise</u> <i>What noise will emanate from the rooftop where there are maintenance and ventilation areas as well as a green garden and terrace area? Also, how much traffic is expected on the trafficable rooftop?</i> <i>The condenser units on the roof top and plant room will impact on is significantly during the day and evening hours.</i>	The DA is accompanied by an Acoustic Report which makes a number of recommendations including: <ul style="list-style-type: none"> - Min. glazing thickness of 8.38mm laminated. - Positioning and orientating mechanical plants away from receivers - Preparing an updated Acoustic Report once design of the mechanical plants is finalised. <p>The report concludes that with the implementation of recommended mitigation measures (acoustic louvres etc.), the specific noise levels will be met. It is noted; office business hours are generally from 8.00am to 6.00pm and mechanical plant and equipment will be calibrated to respond to the relevant demand.</p> <p>The submitted report does not appear to include noise impacts from the rooftop terraces. Therefore, use of these areas is limited to 10pm–7 days/week. A condition is recommended in this regard.</p>
57/809-811 Pacific Highway	<u>Amenity</u> <i>The new four (4) storey building is very close to my building (Leura). Not only that it will block the lights, the ventilation and the view of my apartment, it will also seriously affect my privacy and security. It deprives my right to enjoy a comfortable living.</i>	The depth of the office (18m) building above the ground floor level is approximately 30.2% of the site depth (59.5). Accordingly, the Leura building will continue to receive light and ventilation by virtue of the separation and scale of the office building in context of the total site area. The proposal is considered to have acceptable amenity impacts as there are no window openings on the western side of the office building.

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

<p>57/809-811 Pacific Highway</p> <p>156 Karimbla Road, Miranda</p>	<p><u>Over-Crowded</u></p> <p><i>Chatswood is already over-crowded with sufficient high-rise apartments and commercial buildings to meet people's needs.</i></p> <p><i>Population increase will further overload transport.</i></p> <p><i>More intense use would generate more vehicle parking and movement problem.</i></p>	<p>The proposal will deliver office and business space in Chatswood's Office precinct and close proximity to the public transport which is consistent with the strategic objectives of the <i>Greater Sydney Region Plan</i> and the <i>North District Plan</i>, as well as the <i>Chatswood CBD Planning and Urban Design Strategy</i>.</p> <p>The subject development will provide a minimum of 286 car parking spaces within the existing basement levels. In addition, 98 new bicycle spaces and new end of trip facilities including 9 showers are proposed in a locked storage facility in Basement 1. 14 bicycle rails racks for visitors are provided in the public domain. Overall, the proposal is considered to achieve a balanced outcome in respect to the parking facilities provided on the site and encouraging the use of bicycles or public transport.</p> <p>The proposal has been assessed by Council's Traffic Section to be acceptable.</p>
<p>809-811 Pacific Highway</p> <p>59/809-811 Pacific Highway</p> <p>156 Karimbla Road, Miranda</p> <p>1 Katherine Street</p>	<p><u>Demolition & Construction Impacts and Pedestrian Management Plan</u></p> <p><i>As you are already aware the traffic from September will be increased due to buses replacing trains from Chatswood on the Macquarie Park Line. This will bring additional noise and pollution to the already congested area of Victoria Avenue and Brown Street.</i></p> <p><i>The development would cause significant disruption to the bus stands during construction and later in operation.</i></p> <p><i>Consideration shall be given to access management and heavy vehicles routes</i></p>	<p>The applicant has submitted a Construction Management Plan (CMP) which addresses the issues in respect to the construction and bus traffic. The CMP provides measures that will be implemented to minimise any potential impacts on the surrounding residents and the streets.</p> <p>The amended proposal provides pick-up and drop-off bays within the basement to minimise any impact on Brown Street.</p> <p>The proposal has been assessed by Council's Traffic Section to be acceptable. A number of Conditions are included in respect to the traffic management during the construction and the operation phase of the development.</p> <p>The proposal was referred to RMS for comments and as such no objections have been raised in respect to the disruption to the bus stands, subject to the recommended conditions.</p> <p>The Leura building at No. 809-811 Pacific Highway enjoys existing views across its north-eastern side boundary shared with No. 503 Victoria Avenue. The proposed development is seeking a four storey office building and 14 storey hotel building</p>

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

<p>809-811 Pacific Highway</p> <p>59/809-811 Pacific Highway</p> <p>156 Karimbla Road, Miranda</p>	<p><u>Views</u></p> <p><i>"The above development will reduce our current view to Victoria Avenue and landscaped areas with lights by 100%. Our current view is looking over Victoria Avenue at the Club, people walking to the bus stops and the traffic going by. We also currently enjoy a view of trees, office workers coming to and from work, people strolling around on weekends, children playing. This will be reduced to a brick wall for us and is personally disappointing at best."</i></p>	<p>that will impact on the existing views over Victoria Avenue. In this regard, assessing the proposal against the planning principle established by Tenacity Consulting v Warringah Council in respect to view sharing, the proposal is supportable on merit for the following reasons:</p> <ul style="list-style-type: none"> • The office building with 24m in height (inclusive of the lift overrun) is well below the maximum permissible height of 90m. • The views Leura building will continue to obtain some views over the office building. • The Leura building will continue to obtain district views from the communal roof top open space.
<p>1407/8 Brown Street</p> <p>157/14 Brown Street</p> <p>187/14 Brown Street</p>	<p><u>Acoustic Impacts</u></p> <p><i>Chelsea Apartments are the top 10 floors of apartments located above the Mantra Hotel which are the lower 10 floors. The apartments contain many residents and families and with young children ranging in age from new born babies upwards.</i></p> <p><i>The acoustic report overview diagram for the DA describes this building as commercial failing to indicate this is a residential building or the nature of the building.</i></p>	<p>It is noted that the subject development and the Chelsea Apartments are located within Chatswood CBD in close proximity to the Transport Interchange. By virtue of its location, it is anticipated that the Chelsea Apartments will experience noise from the buses, trains and the surrounding developments. Notwithstanding, The report concludes that with the implementation of recommended mitigation measures (acoustic louvres etc.), the specific noise levels will be met. The proposal is considered to be acceptable as it is required to meet the relevant noise criteria detailde the Acoustic Report.</p>
	<p><u>Traffic and Congestion</u></p> <p><i>Buses, cars, taxis, residents, school kids and other outsiders all are fighting for crossing between Victoria Ave, Brown Street, Railway Street, Catherine Street and Pacific High way conjunctions, our children and residents are living in danger and fears, fatal accidents already have happened several times, our streets cannot swallow any more of traffics or population including</i></p>	<p>The original proposal included removal of two (2) existing on-street parking spaces in front of the site on Brown Street to provide pick-up and drop-off bays for the hotel. The amended proposal provides hotel pick-up and drop-off bays within the existing basement level 1 accessed from Brown Street. The basement includes two (2) dedicated drop-off bays.</p> <p>The amended proposal is considered to be acceptable as it continues to utilise the existing driveway to provide pick-up and drop-off bays and access to the parking spaces.</p> <p>RMS and Council's Traffic Section have assessed the proposal to be acceptable subject to conditions.</p>

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

1407/8 Brown Street	<p><i>hotel residents.</i></p> <p><i>There are enough service apartments and hotels in Chatswood, Mantra and Meriton are just less than 100ms from this new proposal hotel, also Quest, Sebel, Silkari, Orchard Travern, Charrington....., they are business are already struggling, adding one more here will kill those existing hotels and letting workers out of job.</i></p> <p><i>Reduction in quality of Office buildings for office tenants and staff.</i></p> <p><i>Squeezing in a 15 storey building taking away a rare relatively open space area.</i></p>	<p>The proposal will deliver office and business space in Chatswood's office precinct in close proximity to the public transport which is consistent with the strategic objectives of the Greater Sydney Region Plan and the North District Plan, as well as the Chatswood CBD Planning and Urban Design Strategy.</p> <p>The proposal, subject to the recommended amendments, is consistent with the specific objectives of the B3 – Commercial Core in terms of providing additional office and business floor space and creating additional employment opportunities in close proximity public transport.</p> <p>The subject site provides an approximate area of 6031m² and therefore can accommodate the hotel and the office building. The current proposal maintains the existing north-south link that runs through the centre of the site and includes upgrade works including seating areas and vertical landscape areas. The proposal is supported on merit.</p>
157/14 Brown Street		
187/14 Brown Street		
1 Katherine Street		
	<p><u>Wind Tunnel</u></p> <p><i>It appears from the drawings this development will create a 3 block more defined wind tunnel opportunity for southerly winds being Albert Avenue to Thomas Street (via the north south walkway through the Mertion/old Thomas Street car park development), Thomas Street to Victoria Avenue (via Katherine Street) and from Victoria Avenue to Brown Street (through the creation of a more defined north south walkway through the identified potential development site) Does the DA and the wind comfort report take the current wind tunnels in the Chatswood CBD into consideration?</i></p> <p><i>Wind tunnel effects at ground level and above.</i></p>	<p>A Preliminary Pedestrian Wind Comfort Report by Cundall, number 1016623 Chatswood Hotel Development, dated 9 April 2018 was submitted to assess problems regarding wind comfort. The Preliminary Pedestrian Wind Comfort Report which makes a number of recommendations including screens to the terraces and dense shrubs for wind protection.</p> <p>Whilst virtual modelling has been completed for the report, it was recommended in the report that a further wind tunnel test be completed prior to the detailed design stage. This will indicate further measures required to alleviate certain inclement outdoor conditions in the immediate vicinity as a result of this development.</p> <p>The Preliminary Pedestrian Wind Comfort Report is part of the documents/plans that are recommended to be endorsed (Condition 1 in Schedule 2). Accordingly, the Certifying Authority shall ensure that a detailed Pedestrian Wind Comfort Report is submitted in accordance with the recommendations in the Preliminary Report.</p> <p>The proposal is therefore considered to be acceptable in this regard.</p>

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

1 Katherine Street	<p><u>Hotel Use</u></p> <p><i>I would ask councillor the consenting authority to make it a condition of approval that the hotel cannot be converted to residential apartment or strata residential apartments.</i></p>	<p>The proposal is seeking consent for a hotel development which is clearly stated in the approved documentation. In this regard, use of the hotel for the as residential apartments is not permissible.</p>
503 Victoria Avenue	<p><u>Lot Isolation</u></p> <p><i>The 'performance criteria' required to meet the intent of the frontage controls suggests that sites are to be consolidated to achieve sufficient area for development and that development should avoid leaving isolated lots. Direction is included that neighbouring landowners should advise in writing if they are unwilling to be party to the consolidation.</i></p> <p><i>The performance criteria also suggest that buildings should have adequate frontages to accommodate vehicular access and maintain commercial activity.</i></p>	<p>Part E.1.1 of the WDCP for a commercial development intends that no site is isolated by development on an adjoining allotment. Notwithstanding, the site is isolated due to the historic redevelopment of Nos 809 - 811 Pacific Highway and Nos 475 - 501 Victoria Avenue. In this regard, the assessment report (DA-1998/202) for the Leura Building at Nos 809-811 Pacific Highway notes that negotiation with the property owner of No. 503 Victoria Avenue was not successful despite multiple offers made by the applicant.</p> <p>It is noted that the subject development is on a site that meets the minimum lot size. Furthermore, the proposed development is for additions to the existing buildings on site and therefore its considered unreasonable to enforce amalgamation.</p> <p>It is acknowledged that the adjoining site cannot be re-developed to its full potential due its size and location. Notwithstanding, building of three (3) storeys can be achieved between the three-storey podium section of the Leura Building and four (4) storey office building (subject development).</p> <p>It is noted that consent conditions for the Leura Building require provision to be made for 503 Victoria Avenue to have a shared use of the vehicular access and loading dock.</p>
	<p><u>Floor Space Ratio</u></p> <p><i>The proposal fails the site coverage requirement, owing in part to cantilevered elements of the existing tower's designs, and an exception to strict application if the development standard has been requested. The objective of Clause 4.6 is to achieve better outcomes for and from development by allowing flexibility in particular circumstances. The onus is</i></p>	<p>The base floor space ratio (FSR) applicable to the subject site is 5:1 with a maximum FSR of 10.5:1 subject to Clause 4.4A(12) of the WLEP. In order to achieve this uplift in the FSR, the site area is required to be greater than 2500m²; a minimum of 40% of the site is required for landscaping, publicly accessible space and through site links and provide a maximum site coverage of 60%.</p> <p>The proposal does not benefit from the uplift in the FSR as it does not meet the site coverage and landscape area requirements. The application is therefore accompanied by a Clause 4.6 variation. In this respect design changes are recommended to reduce the floor space at the ground floor level with a consequential increase in the landscape</p>

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

	<i>upon the proponent to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.</i>	area. It is recommended that part of the office building (southern entry) that is single storey in height with roof terrace above is reduced (by approximately 75m ²), as demonstrated in Figures 2 and 3 below. This part of the office building is not above the basement and therefore deep soil/ canopy planting can be provided. Furthermore, deletion of the first floor level roof terrace is considered to minimise amenity impacts on the adjoining commercial premise at No. 503 Victoria Avenue.
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SUPPLEMENTARY CLAUSE 4.6 VARIATION REQUEST WILLOUGHBY LEP 2012 CL. 4.4 FLOOR SPACE RATIO

**475-501 VICTORIA
AVENUE, CHATSWOOD**

25 OCTOBER 2018
SA6572
PREPARED FOR CROMWELL DIVERSIFIED PROPERTY TRUST

URBIS

TABLE OF CONTENTS

1.	Introduction	1
1.1.	Preliminary	1
2.	Relevant Assessment Framework	2
2.1.	Willoughby Local Environmental Plan 2012	2
2.2.	NSW Land and Environment Court: Case Law (tests)	2
3.	Extent of Variation.....	6
4.	Clause 4.4 Floor Space Ratio.....	8
4.1.	Consideration.....	9
4.1.1.	Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case.....	9
4.1.2.	Clause 4.6(3)(b) - Are There Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?	14
4.1.3.	Clause 4.6(4)(a)(ii) – Will the Proposed Development 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?.....	14
4.1.4.	Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?	16
4.1.5.	Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?	16
4.1.6.	Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?	16
5.	Conclusion	17
	Disclaimer.....	19

FIGURES:

Figure 1 – Proposed Site Coverage	7
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1. INTRODUCTION

1.1. PRELIMINARY

This **supplementary** Clause 4.6 variation request has been prepared by Urbis on behalf of Cromwell Diversified Property Trust (**Applicant**) with respect to Development Application (**DA**) no. DA-158/2018 submitted to Willoughby Council (**Council**) for the erection of a new four-storey commercial building and a new 15-storey hotel as well as associated landscape and public domain works at 475-501 Victoria Avenue, Chatswood (**the site**).

The purpose of this submission is to seek a variation to the floor space ratio (**FSR**) development standard applicable to the site, as established by Clause 4.4 to the *Willoughby Local Environmental Plan 2012 (WLEP 2012)*. The assessment of the proposed variation has been undertaken in accordance with the requirements of Clause 4.6 Exceptions to Development Standards to WLEP 2012.

1.2. REQUIREMENT FOR VARIATION

It is important to note, the current planning controls actively encourage substantially larger developments than that proposed with a potential FSR of up to 10.5:1, provided certain criteria are satisfied, see Clause 4.4A. Three out of four of these criteria are clearly satisfied by the proposed development. The only matter that can be considered unsatisfied, is the quantum of site coverage.

Under WLEP 2012, 'site coverage' is defined as follows:

site coverage means the proportion of a site area covered by buildings. However, the following are not included for the purpose of calculating site coverage:

- (a) any basement,
- (b) any part of an awning that is outside the outer walls of a building and that adjoins the street frontage or other site boundary,
- (c) any eaves,
- (d) unenclosed balconies, decks, pergolas and the like.

Eaves and awnings, building elements that do not cover any portion of site area at the ground plane but leave this area free of obstruction and available for landscaping, publicly accessible space and through site links, are excluded from the definition of site coverage.

The existing tower elements within the subject site comprise building footprints with larger building floorplates stacked above. The building overhang generated by these floorplates and supported on slender columns does not cover any portion of the site area at the ground plane, leaving this area free of obstruction and available for landscaping, publicly accessible space and through-site links.

Notwithstanding, exclusion of building overhang for the purpose of calculating site coverage is not made explicit by the standard definition and a strict interpretation of 'site coverage' that includes building overhang would arrive at a calculation of 74% rather than 43% for the subject site.

For abundant caution and to assist Council in its assessment of the proposal, it has been assumed that the proposal cannot rely on the FSR exception available under Clause 4.4A and an application for a Clause 4.6 variation is required.

2. RELEVANT ASSESSMENT FRAMEWORK

This section of the report outlines the environmental planning instruments relevant to the proposed development, including the objectives and assessment framework for seeking a variation to a development standard.

A summary of relevant planning principles and judgements issued by the NSW Land and Environment Court regarding the assessment of developments seeking exceptions to development standards is also provided.

2.1. WILLOUGHBY LOCAL ENVIRONMENTAL PLAN 2012

Clause 4.6 of WLEP 2012 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are listed within the LEP as:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the Consent Authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6 requires that the Consent Authority to consider a written request from the applicant, which demonstrates that:

- *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the Consent Authority must be 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 for development within the zone, and the concurrence of the Secretary has been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

1. *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
2. *The public benefit of maintaining the development standard, and*
3. *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

[Note: We understand that concurrence is currently assumed].

2.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

The correct approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118:

13. *The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*
14. *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for*

development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

15. The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
16. As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.
17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].
18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].
19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].
20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].
21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.
23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase

"environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". 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: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].
25. The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].
26. The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).
27. The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).
28. The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.
29. On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl

4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck\$ v Byron Shire Council (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41].

The above has been considered in the preparation of this Clause 4.6 Variation.

3. EXTENT OF VARIATION

Clause 4.4 to the WLEP 2012 establishes a maximum floor space ratio (FSR) development standard of 5:1 for the site. The site currently accommodates two commercial office towers as well as associated ground level commercial and retail tenancies. These improvements generate an existing GFA of 25,959 sqm (4.3:1 FSR).

DA-158/2018 proposes the addition of a 11,277 sqm GFA to the site, generating a post-development GFA of 37,236 and FSR of 6:1, which exceeds the relevant development standard.

It is noted that the site falls within the area identified as 'Area 8' on the WLEP 2012 Floor Space Ratio Map (sheet FSR_004). This area is subject of FSR exemptions under Clause 4.4A to WLEP 2012 that permit development with an FSR of up to 10.5:1. An assessment of the proposal against the provisions of Clause 4.4A is provided below.

Table 1 – Assessment against Clause 4.4A to WLEP 2012

Provision	Proposal
(12) The total floor space ratio for all buildings on land identified as "Area 8" on the Floor Space Ratio Map may exceed 5:1 if:	
(a) the site area exceeds 2,500 square metres, and	The site has an area of 6030.86 sqm
(b) the floor space ratio will not exceed 10.5:1, and	The proposed FSR is 6:1
(c) a minimum of 40% of the site is available for landscaping, publicly accessible space and through site links, and	An area of 3,436.46 sqm (57%) of the ground plane is available for landscaping, publicly accessible space, through-site links, and site access.
(d) site coverage does not exceed 60%.	Proposed site coverage is 43% when calculated on the basis of building footprint. Proposed site coverage is 74% when calculated to include building overhang. - see Figure 1 overleaf

The existing tower elements within the site are characterised by narrow building footprints comprising lobby entrances and lift cores with larger building floorplates stacked above and supported by slender structural columns. As a result, the existing towers cover a relatively small portion of site area at the ground plane.

Under WLEP 2012, 'site coverage' is defined as follows:

site coverage means the proportion of a site area covered by buildings. However, the following are not included for the purpose of calculating site coverage:

- (a) any basement,
- (b) any part of an awning that is outside the outer walls of a building and that adjoins the street frontage or other site boundary,
- (c) any eaves,
- (d) unenclosed balconies, decks, pergolas and the like.

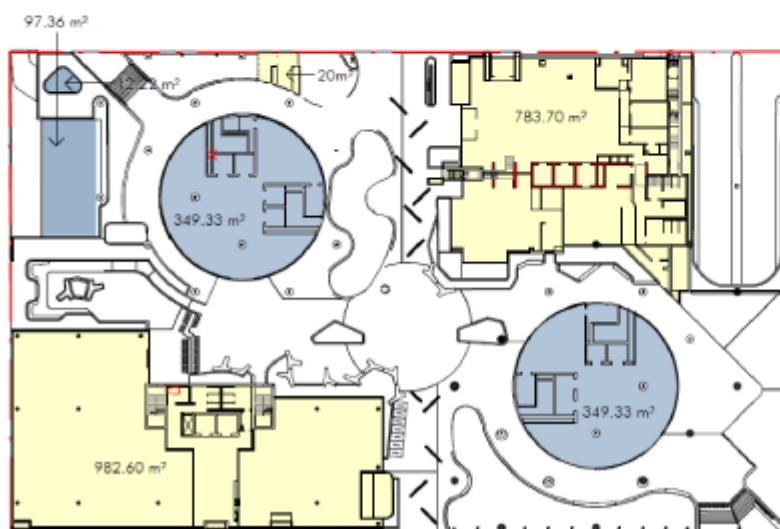
Eaves and awnings, building elements that do not cover any portion of site area at the ground plane but leave this area free of obstruction and available for landscaping, publicly accessible space and through site links, are excluded from the definition of site coverage as provided by WLEP 2012. Similarly, the building

overhang provided by the subject commercial towers does not cover any portion of the site area at the ground plane, leaving this area free of obstruction and available for landscaping, publicly accessible space and through-site links.

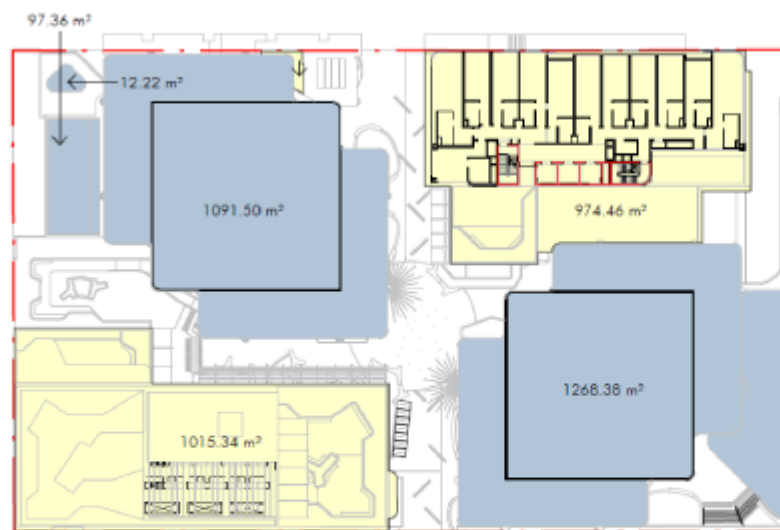
Notwithstanding, exclusion of building overhang for the purpose of calculating site coverage is not made explicit by the standard definition. For this reason, a strict interpretation of 'site coverage' that includes building overhang would arrive at a calculation of 74% rather than 43% for the subject site.

For abundant caution and to assist Council in its assessment of the proposal, it has been assumed for the purposes of this Clause 4.6 application that the proposal cannot rely on the FSR exception available under Clause 4.4A and an application for a Clause 4.6 variation is required.

Figure 1 – Proposed Site Coverage



Picture 1 – Proposed site coverage, measured by building footprint



Picture 2 – Proposed site coverage, measured to include building overhang in accordance with WLEP 2012

Source: NettletonTribe

4. CLAUSE 4.4 FLOOR SPACE RATIO

The following sections of the report provide an assessment of the request to vary the development standard relating to the maximum FSR in accordance with Clause 4.6 of WLEP 2012. Consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents.

Is the Planning Control a Development Standard?

The maximum FSR control prescribed under Clause 4.4 of the WLEP 2012 is a development standard capable of being varied under Clause 4.6 of WLEP 2012.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The proposed variation is not excluded from the operation of Clause 4.6 as it does not comprise any of the matters listed within Clause 4.6(6) or Clause 4.6(8) of WLEP 2012.

What is the Underlying Object or Purpose of the Standard?

The objectives of the FSR standard as per WLEP 2012 are as follows:

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

4.1. CONSIDERATION

4.1.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The site currently accommodates two office towers as well as a number of lower scale retail tenancies that detract from the surrounding streetscape and are not suited to the ongoing role of Chatswood CBD as a major centre. An opportunity to redevelop these dated tenancies as well as refurbish the street level interface and public domain exists, however, this triggers non-compliance with Clause 4.4.

Strict adherence to the development standard is **unnecessary** as the objectives of the standard are achieved notwithstanding non-compliance with the standard. An assessment of the proposal against the objectives of the FSR development standard, as established under Clause 4.4 of the Willoughby LEP 2012, is provided in Table 2 below. This table demonstrates that the variation is consistent with the objectives of this development standard.

Table 2 – Assessment of Consistency with Development Standard Objectives

Objective	Comment
(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,	<p>The proposal's environmental impact upon site capacity in terms of traffic, stormwater, and services provision as well as its environmental performance is assessed by the Statement of Environmental Effects (SEE) prepared by Urbis under separate cover. The impact and performance of the proposal in this regard has been assessed as satisfactory.</p> <p>The proposal, therefore, is considered commensurate with the environmental capacity of the site.</p> <p>Compliance with the objectives of the B3 Commercial Core zone is addressed in Section 4.1.3 below.</p>
(b) to limit traffic generation as a result of that development,	<p>As detailed in the SEE, the site benefits from exceptional access to public transport connections due to its proximity to the Chatswood Transport Interchange comprising Chatswood Railway Station and bus terminal as well as the future Sydney Metro.</p> <p>It is further noted that the proposal includes the provision of 112 bicycle parking spaces as well as EOT facilities.</p> <p>A Traffic & Transport Assessment has been prepared by ARUP. The proposal is anticipated to generate an additional 18 vehicle trips per hour in the morning peak and a total of 20 vehicle trips per hour in the afternoon peak. ARUP's assessment concludes the proposal's contribution to traffic generation is negligible and will have no impact on the Pacific Highway Corridor.</p>
(c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,	<p>The proposal has been designed having regard to the sensitivity of nearby residential uses, particularly the Leura development to the west.</p> <p>The proposed commercial office building will be separated from the Leura development by the intervening commercial development at No. 503A. Notwithstanding, the commercial</p>

Objective	Comment
	<p>building is proposed to be lower in scale, rising to only four-storeys, to minimise amenity impacts in terms of loss of views, privacy, and solar access.</p> <p>A green roof is proposed for the new commercial office building to provide a green outlook to surrounding development with the trafficable portion of this rooftop located toward the middle of the subject site and away from residential uses to minimise acoustic and visual privacy impacts.</p>
(d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,	<p>The proposed hotel is consistent in both bulk and scale to surrounding tower-style developments with a primary frontage to Brown Street including the subject site, Solitaire, High Park Tower and the Mantra Chatswood. These developments range in height from 14-19 storeys and present street frontages ranging from 40-55 metres.</p> <p>With a height of 15 storeys and frontage of 40 metres width, the proposed hotel will fit comfortably into the existing built form context.</p> <p>With a street frontage of 45 metres, the proposed commercial office building will have a street presentation somewhat more expansive than the prevailing range of 30-40 metres provided by surrounding tower-style developments. However, this frontage is bisected by the building entrance and awning, which provide relief to the building length. With a height of only four-storeys the commercial building will be substantially lower in height than surrounding tower style developments, which range in height from 14-21 storeys.</p> <p>Compliance with the objectives of the B3 Commercial Core zone are addressed in Section 4.2 below.</p>
(e) to permit higher density development at transport nodal points,	<p>The site lies within 100 metres (2 minutes) walk of the Chatswood Transport Interchange. The location of higher density development at this site, therefore, is consistent with this objective.</p>
(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,	<p>The addition of new floorspace to the existing site will deliver an appropriate mix of new uses aligned with Chatswood's sub-regional role.</p> <p>In particular, the proposal identifies an opportunity for the delivery of new commercial office floorspace within the office precinct west of the railway line. Studies undertaken by Architectus and BIS Shrapnel note the delivery of new commercial office space within this precinct as fundamental to Chatswood's future identifying existing planning controls as an obstacle to such growth</p>

Objective	Comment
	Further, the new hotel will provide conference and visitor accommodation facilities in support of existing commercial land uses within the office precinct as well as cultural and entertainment uses east of the railway line.
(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,	<p>The proposal is for the addition of a new commercial office building and a new hotel including conference facilities to Chatswood's commercial office precinct. The proposal, therefore, is consistent with the primary land use of the city centre.</p> <p>As previously noted, the proposed built form is consistent with the existing and desired future character of the office precinct.</p>
(h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,	<p>Redevelopment of the site will enable substantial refurbishment of the ground plane to provide a series of programmed open spaces within the core of the Chatswood CBD office precinct as well as the rationalisation and improvement of the existing through-site link.</p> <p>In addition, the proposal will provide elevated terraces at Level 1 (hotel + office) as well as a trafficable green roof (office only) for the enjoyment of workers and visitors.</p> <p>The proposal will not generate any new shadows to identified key open spaces within the CBD during the lunch period including Victoria Avenue (between interchange and Archer Street), Concourse, Garden of Remembrance, Tennis and Croquet Club, and Chatswood Oval.</p>
(i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,	The subject site is located west of the railway line within the heart of the commercial core of the Chatswood CBD where the tallest buildings in Chatswood are concentrated. The proposal is consistent with both existing and likely future development in terms of height and FSR.
(j) to encourage the consolidation of certain land for redevelopment,	With a substantial site area of 6030.86 sqm, the site comfortably exceeds the minimum site area requirement of 2,500 sqm sought under Clause 4.4A as well as the minimum site area requirement of 1800 sqm recommended under the CBD Strategy without consolidation.
(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.	<p><u>Community Facilities</u></p> <p>The addition of new floorspace to the existing site will enable refurbishment of the existing through-site link, which is an important north-south connection within western office precinct. The proposal also includes the provision of three (3) conference spaces including associated servery, AV room, and outdoor terrace at Level 1 to the new hotel development.</p>

Objective	Comment
	<p><u>Affordable Housing</u></p> <p>Development for the purpose of residential accommodation is not permitted within the B3 Commercial Core zone.</p> <p><u>Heritage</u></p> <p>The site is not a heritage item nor does it lie within an identified heritage conservation area or in close proximity to other heritage items.</p>

Strict compliance with the FSR development standard is also **unreasonable** as it would defeat or thwart the achievement of objectives of the zone – particularly objectives (e), (f), and (g) – as well as prevent significant redevelopment of the site in the short to medium term giving rise to a missed opportunity to:

- redress a number of weaknesses identified in respect of Chatswood CBD; and
- to contribute to the achievement of strategic objectives for Chatswood CBD as identified in the Chatswood CBD Planning and Urban Design Strategy to 2036 (CBD Strategy).

A number of weaknesses of the Chatswood CBD are identified by the SWOT analysis presented in the CBD Strategy, which is now adopted by Council. Relevantly, the following:

- *Lack of confidence in office core* caused by a range of factors including:
 - Lack of recent investment.
 - Market changes and movements of tenants to other centres.
- Poor public realm quality.
- Weaknesses in open space *and green open space provision*.

The proposal represents an opportunity to redress the abovementioned weaknesses and will:

- deliver new commercial and visitor accommodation floorspace within the office core,
- trigger new investment within the CBD,
- create an opportunity for new tenants to locate to the centre while encouraging existing tenants to remain in a renewed site,
- render substantial refurbishment of the ground level public realm feasible, including:
 - Enhancement of the existing through-site link to enable fluid north-south pedestrian movement between Victoria Avenue and Brown Street.
 - Installation of focal points in the form of lighting, distinctive materiality and public art will create an identifiable development and public domain
 - Creation of a variety of seating opportunities in a variety of forms including flexible/ passive seating, communal 'break out' spaces, and formal seating opportunities to encourage both short- and long-stay use.
 - Embellishment of existing soft landscaped area will with new plant medium to create a varied, lush setting.
 - Addition of new planting areas to achieve verticality of greenery through the installation of wall climbers, arbour structures and upper level planting.
 - Upgrade of all site entrances that are not currently DDA compliant to ensure equitable accessibility.

A number of strategic objectives for the Chatswood CBD are identified by the CBD Strategy, which is now adopted by Council. Variation of the FSR standard will enable the redevelopment of the site to achieve a number of these objects, both directly and indirectly. Relevantly, the following:

- Promoting office growth – the CBD Strategy notes the market in Chatswood will continue to improve and it is vital that the centre accommodates this. This proposal will deliver 3,291 sqm of new office floorspace.
- Ensuring the right mix of uses – The proposal will deliver new office floorspace within the commercial core as well as hotel accommodation in support of both commercial and cultural uses within the CBD. Crucially delivery of new floorspace to this site will contribute toward the maintenance of a compact walkable centre with a diversity of uses
- Providing great public places – The proposal will deliver a variety of high quality, interesting spaces and links as well as active frontages.
- Addressing transport issues – The proposal adopts a balanced approach to transport needs exceeding bicycle parking and EOT facility requirements to ensure sustainable outcomes for Chatswood.
- Urban design quality – The redevelopment will achieve a high quality and cohesive environment that will provide an attractive centre for all.
- Greening the centre – Chatswood's role as the focal centre of the leafy North Shore is reflected in through the inclusion of a refurbished landscaped area at the ground level as well as elevated planted terraces and a green eco-roof.

The CBD Strategy concludes that, under the current planning controls, growth within Chatswood's commercial core is unlikely to keep pace with demand forecast for the next 30 years. The Strategy recommends an increase of the FSR within the western office precinct from 5:1 to 6:1. It is further noted that the Strategy recommends against imposing a maximum FSR for commercial development on this site. The proposed variation is consistent with these recommendations, which were recently endorsed by Council.

For the reasons outlined above, strict adherence to the FSR standard is unreasonable in the circumstances of this particular case given the strategic direction recently adopted by Council, which proposes no maximum FSR for commercial development within Chatswood's commercial core in a bid to secure Chatswood CBD's future as a strategic centre within Greater Sydney.

In addition, strict compliance with the FSR development standard is also **unreasonable** as the current planning controls actively encourage substantially larger developments with a potential FSR of up to 10.5:1, provided certain criteria are satisfied, see clause 4.4A. Three out of these four criteria are clearly satisfied by the proposed development. The only matter that can be considered unsatisfied, is the quantum of site coverage.

As previously noted, eaves and awnings - building elements that do not cover any portion of site area at the ground plane but leave this area free of obstruction and available for landscaping, publicly accessible space and through site links - are excluded from the definition of site coverage as provided by WLEP 2012. However, building overhang is not explicitly excluded notwithstanding its similar effect. The building overhang provided by the subject commercial towers does not cover any portion of the site area at the ground plane, leaving this area free of obstruction and available for landscaping, publicly accessible space and through-site links.

For abundant caution and to assist Council in its assessment of the proposal, it has been assumed that the proposal cannot rely on the FSR exception available under Clause 4.4A and an application for a Clause 4.6 variation is required. However, the underlying objective for the site coverage limitation is to ensure there is sufficient area for landscaping and deep soil planting. At the ground plain, site coverage is well under the 60% limitation, being only 43%. In this regard, the proposed development satisfies this objective notwithstanding its inability to meet the strict numerical criteria for site coverage due to existing improvements. Accordingly, the development meets the intent of the exception in clause 4.4A(1 2)(d).

Further, future planning controls outlined under the CBD strategy propose to remove the maximum FSR control for commercial development undertaken within the commercial core of Chatswood CBD. The proposed FSR exceedance from 5:1 to 6:1 appears relatively minor in the context of clause 4AA which allows an FSR of up to 10.5:1 and the CBD Strategy, which proposes no maximum FSR control at all for commercial development undertaken within Chatswood's Commercial Core.

4.1.2. Clause 4.6(3)(b) - Are There Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

It is considered that there are sufficient environmental planning grounds to support the variation as follows:

- The proposed variation results in more commercial (office and hotel) floorspace within the Chatswood CBD commercial core, which aligns with the State and local government objectives for protecting and enhancing employment floorspace within Strategic Centres.
- The proposal to deliver additional GFA in this location further complies with the strategic objective of maintaining a compact, walkable CBD. This too is consistent with State and local government objectives for Strategic Centres.
- The proposed variation will enable significant upgrades to the public domain including:
 - enhancement of the existing north-south link through the addition of Installation of focal points in the form of lighting, distinctive materiality and public art will create an identifiable development and public domain
 - Creation of a variety of publicly accessible meeting spaces and rest areas including flexible/ passive seating, communal 'break out' spaces, and formal seating opportunities.
 - Embellishment of existing soft landscaped area will with new plant medium and addition of new planting areas to achieve verticality of greenery through the installation of wall climbers, arbour structures and upper level planting to achieve vertical greening and create a varied, lush setting.
- The proposed variation is consistent with the strategic objectives under the CBD Strategy, now endorsed by Council, which proposes to remove the maximum FSR control from commercial development undertaken within the Commercial Core; and
- The proposal also satisfies the general objectives in section 1.3 of the EP&A Act in that it promotes the orderly and economic use and development of land and promotes good design and amenity of the built environment.
- The proposal achieves the objectives of the B3 Commercial Core Zone as well as the FSR development standard notwithstanding technical non-compliance with the metrics provided under Clause 4.4A. The proposal demonstrates achievement of site area, landscape provision, and open space to support additional FSR.

4.1.3. Clause 4.6(4)(a)(ii) – Will the Proposed Development 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?

The consistency of the development with the objectives of the development standard is demonstrated in Section 4.1.1 above.

The proposal is also consistent with the land use objectives that apply to the site under WLEP 2012. The land use table provided under Part 2 to WLEP 2012 identifies objectives for the B3 Commercial Core Zone. An assessment of the proposal against these objectives is summarised in Table 3 below.

Table 3 demonstrates that the variation is consistent with the objectives of the zone. The proposal is considered to be in the public interest as the development is consistent with the objective so the development standard, and the land use objectives of the zone.

Table 3 – Assessment of Consistency with Zone Objectives

Objective	Comment
To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.	As previously noted, addition of new floorspace to the existing site will deliver an appropriate mix of new uses aligned with Chatswood's sub-regional role.

Objective	Comment
	<p>In particular, the proposal identifies an opportunity for the delivery of new commercial office floorspace within the office precinct west of the railway line. Studies undertaken by Architectus and BIS Shrapnel note the delivery of new commercial office space within this precinct as fundamental to Chatswood's future, identifying existing planning controls as an obstacle to such growth.</p> <p>Further, the new hotel will provide conference and visitor accommodation facilities in support of existing commercial land uses within the office precinct as well as cultural and entertainment uses east of the railway line.</p>
To encourage appropriate employment opportunities in accessible locations.	<p>The addition of new floorspace to the site will deliver an estimated 351 direct and 192 indirect FTE jobs (total 543 jobs) within two (2) minutes' walk of the Chatswood Transport Interchange.</p> <p>Further, in the construction phase the proposal will generate an anticipated 124 FTE direct and indirect jobs.</p>
To maximise public transport patronage and encourage walking and cycling	<p>As noted, the proposal will deliver new employment-generating floorspace within two (2) minutes' walk of the Chatswood Transport Interchange supported by significant bicycle parking (112 spaces) and associated end of trip facilities (98 lockers + 9 showers).</p> <p>The proposal also includes street level active frontages and significant upgrades to the existing through-site link that will enhance the pedestrian experience, improve safety and encourage foot traffic.</p>
To support the role of St Leonards as a specialised centre providing health, research and education facilities.	Not relevant – proposal relates to the Chatswood CBD.
To strengthen the role of Chatswood as a major centre for the inner north sub-region and to improve its public domain and pedestrian links.	<p>As above, the addition of new floorspace will deliver an appropriate mix of uses in support of Chatswood's role as a strategic centre within Greater Sydney.</p> <p>The proposal includes the substantial refurbishment of public domain at street level including the provision of a series of programmed public open spaces, rationalised and enhanced through-site link and street awnings.</p>
To protect and encourage safe and accessible city blocks by providing active land uses on street and pedestrian frontages.	The proposal includes the addition of new active street level uses comprising hotel lobby, street-facing commercial tenancies, food and beverage offering with outdoor seating, coffee pod with outdoor seating and elevated outdoor terraces at Level 1.

Objective	Comment
	<p>The Ground Level of both the new office building and new hotel building primarily comprise glazing to encourage incidental surveillance.</p> <p>The proposal also includes the refurbishment of the existing through-site link and associated open spaces to encourage activity and lingering.</p> <p>A CPTED assessment has been prepared by Urbis under separate cover.</p>

4.1.4. Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

Although the development as a whole is considered to be regionally significant for the purposes of *Schedule 7 to the State Environmental Planning Policy (State and Regional Development) 2011*, the proposed non-compliance itself does not raise any matter of significance for State or regional environmental planning.

It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

4.1.5. Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the floorspace ratio development standard and the land use zoning objectives despite the proposed variation.

It is considered that the strict maintenance of the standard in this instance is not in the public interest as the proposal will result in significant public benefit by the delivery of high quality employment floor space, public domain as follows:

- Addition of new floorspace will deliver an appropriate mix of new uses including commercial office floorspace, which is aligned with Chatswood's sub-regional role as a strategic commercial centre. The new hotel will provide conference and visitor accommodation facilities in support of existing commercial land uses within the office precinct as well as cultural and entertainment uses east of the railway line.
- An estimated 351 direct and 192 indirect FTE jobs (total 543 FTE jobs) are anticipated to be generated by the proposal with a further 124 FTE direct and indirect jobs will be generated in the construction phase.
- Proposed variation will enable significant upgrades to the public domain including enhancement of through-site links, creation of a variety of publicly accessible meeting spaces and rest areas. Embellishment of existing soft landscaped area will with new plant medium and Addition of new planting areas create an identifiable development and public domain.

In light of the above, the strict application of the standard is contradictory with the intent of Clause 4.4 in the circumstances of this particular case as there would be no public benefit in maintaining the development standard.

4.1.6. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

Concurrence can be assumed. Nevertheless, there are no additional matters that need to be considered within the assessment of the Clause 4.6 Request and prior to granting concurrence, should it be required.

5. CONCLUSION

This request is made pursuant to Clause 4.6 of WLEP 2012 and seeks to vary the maximum FSR development standard under Clause 4.4 of the WLEP 2012.

This report has demonstrated that strict compliance with the numerical standard in this circumstance is both unreasonable and unnecessary for the following reasons:

- The maximum FSR control prescribed under Clause 4.4 of the WLEP 2012 is a development standard capable of being varied under Clause 4.6 of WLEP 2012. The proposed variation is not excluded from the operation of Clause 4.6 as it does not comprise any of the matters listed within Clause 4.6(6) or Clause 4.6(8) of WLEP 2012.
- Strict compliance with the FSR development standard is unnecessary as the proposed development achieves the objectives of the FSR development standard and the land use zoning objectives despite non-compliance.
- Strict compliance with the development standard is also unreasonable as it would defeat or thwart the achievement of objectives of the zone – particularly objectives (e), (f), and (g) – as well as prevent significant redevelopment of the site in the short to medium term giving rise to a missed opportunity to achieve the desired future character for Chatswood CBD as elaborated in the strategic objectives of the Chatswood CBD Planning and Urban Design Strategy to 2036.
- The proposal satisfies the relevant criteria of Clause 4.4A to WLEP 2012, which provides an exemption from the maximum FSR development standard and enables development of the site to a maximum 10.5:1. The only matter that can be considered unsatisfied, is the quantum of site coverage. As previously noted, eaves and awnings - building elements that do not cover any portion of site area at the ground plane but leave this area free of obstruction and available for landscaping, publicly accessible space and through site links - are excluded from the definition of site coverage as provided by WLEP 2012. However, building overhang is not explicitly excluded notwithstanding its similar effect.
- For abundant caution and to assist Council in its assessment of the proposal, it has been assumed that building overhang must be included and site coverage is calculated as 74% rather than 43%. However, the underlying objective for the site coverage limitation is to ensure there is sufficient area for landscaping and deep soil planting and this objective and this is clearly satisfied. Accordingly, the development meets the intent of the exception in clause 4.4A(1 2)(d).
- In addition, strict compliance with the FSR development standard is unreasonable as the current planning controls actively encourage substantially larger developments with a potential FSR of up to 10.5:1, provided certain criteria are satisfied, see clause 4.4A. Three out of these four criteria are satisfied by the proposed development. The only matter that is not satisfied, is the quantum of site coverage. The appropriate classification of building overhang for the purpose of calculating site coverage is not specified by the standard definition under WLEP 2012 and, for this reason, building overhang must be included and site coverage is calculated as 74% rather than 43%.
- Nevertheless, development meets the intent of the exception in clause 4.4A(1 2)(d). The underlying objective for the site coverage limitation is to ensure there is sufficient area for landscaping and deep soil planting. At the ground plain, site coverage is well under the 60% limitation, being only 43%. In this regard, the proposed development satisfies this objective notwithstanding its inability to meet the strict numerical criteria for site coverage due to existing improvements.
- Further, future planning controls outlined under the CBD strategy propose to remove the maximum FSR control for commercial development undertaken within the commercial core of Chatswood CBD. The proposed FSR exceedance from 5:1 to 6:1 appears relatively minor in the context of clause 4AA which allows an FSR of up to 10.5:1 and the CBD Strategy.
- As noted, development is consistent with the objectives of the FSR development standard and the land use zoning objectives despite non-compliance. The development, therefore, is in the public interest.
- In light of the above, the strict application of the standard is contradictory with the intent of Clause 4.4 in the circumstances of this particular case as there would be no public benefit in maintaining the development standard.

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

- As this variation relates to a proposal that is of regional significance, the concurrence of the Secretary can be assumed for the purposes of this Clause 4.6 application.

ATTACHMENT 5: ASSESSMENT OFFICER CLAUSE 4.6 ASSESSMENT

The base floor space ratio (FSR) applicable to the subject site is 5:1 with a maximum FSR of 10.5:1 subject to Clause 4.4A(12) of the *WLEP*. In order to achieve this uplift in the FSR, the site area is required to be greater than 2500m²; a minimum of 40% of the site is required for landscaping, publicly accessible space and through site links and provide a maximum site coverage of 60%.

The proposal is seeking a maximum FSR of 6:1. The proposal does not benefit from the uplift in the FSR as it does not meet the site coverage and landscape area requirements. The application is therefore accompanied by a Clause 4.6 variation.

Clause 4.6 Exceptions to development standards of *WLEP* 2012 Subclause (3) reads:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(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.

With regard to the proposal's variation to the Floor Space Ratio development standard, a review of the development against the zone objectives and development standard is below:

Zone B3 Commercial Core

Objectives of zone

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- To encourage appropriate employment opportunities in accessible locations.*
- To maximise public transport patronage and encourage walking and cycling.*
- To support the role of St Leonards as a specialised centre providing health, research and education facilities.*
- To strengthen the role of Chatswood as a major centre for the inner north sub-region and to improve its public domain and pedestrian links.*
- To protect and encourage safe and accessible city blocks by providing active land uses on street and pedestrian frontages.*

The proposed development will generate additional employment opportunities within a walking distance of Chatswood Transport Interchange which is consistent with the relevant objectives of B3 Commercial Core zone. The proposal, subject to the recommended amendments, is consistent with the specific objectives of the B3 – Commercial Core in terms of providing additional office and business floor space; creating additional employment opportunities in close proximity public transport and strengthen the role of Chatswood as a major centre and improve its public domain and pedestrian links.

4.4 Floor space ratio

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

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

Comment: The proposed commercial office building, subject to amendments as recommended and the proposed hotel development is consistent in bulk and scale to the surrounding developments. The proposal will generate additional employment opportunities within a walking distance of Chatswood Transport Interchange. The proposal provides end of trip facilities to encourage greater use of public transport.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (Wehbe v Pittwater Council)

- **The objectives of the standard are achieved notwithstanding the non-compliance**
- **The underlying purpose of the standard is not relevant**
- **The underlying objective of the standard would be thwarted if compliance was required**
- **The development standard has been abandoned or destroyed by Council granting consents that depart from the standard and hence compliance is unnecessary and unreasonable**
- **The zoning of the particular land is unreasonable or unnecessary.**

It is considered that the objectives of the standard are met notwithstanding the non-compliance as the proposed development is generally in harmony with the bulk and scale of surrounding buildings and the streetscape.

Has the applicant's written request adequately addressed that there are sufficient environmental planning grounds to justify contravening the development standard?

The applicant's written request has successfully demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. As discussed above, the proposal achieves the planning objectives for promoting offices in the Chatswood CBD's B3 core area.

Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

The proposal will retain and enhance the existing through-site link to enable a smooth pedestrian movement between Victoria Avenue and Brown Street. Based on the above assessment, it is considered that the proposed development is consistent with the objectives of the floor space ratio development standard and the B3 Commercial core zone.

Does the Council have delegation to exercise the concurrence function of the Secretary of the Department of Planning and Infrastructure for development that contravenes a development standard? If so:

- (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.**

Pursuant to the Notification of assumed concurrence of the Secretary under clause 4.6(4) (and the former clause 24(4)) of the Standard Instrument contained in Planning Circular PS 18-003 (dated 21 February 2018) the concurrence of the Secretary of the Department of Planning and Environment under clause 4.6(4)(b) of *WLEP 2012* may be assumed to the approval of development consent for a development that contravenes the development standard for building height in clause 4.3(2) of the *WLEP 2012*.

Variation from the adherence to the building height standard on this occasion is considered to be of benefit to the orderly use of the site and there is no public benefit in maintaining the development standard in this instance.

The proposed development and variation from the development standard does not raise any matters of significance for State or regional environmental planning.

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

ATTACHMENT 6: SECTION 4.15 (79C) ASSESSMENT

The application has been assessed under the provisions of S.4.15 (79C) of the *Environmental Planning and Assessment Act*.

The most relevant matters for consideration are assessed under the following headings:

Matters for Consideration Under S.4.15 (79C) EP&A Act Satisfactory ✓ Unsatisfactory ✗ Not Relevant N/A

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	<ul style="list-style-type: none">State Environmental Planning Policies (SEPP)	✓
	<ul style="list-style-type: none">Regional Environmental Plans (REP)	✓
	<ul style="list-style-type: none">Local Environmental Plans (LEP)	✓
	WLEP 2012: <i>Zoning:</i> The subject land is zoned B3 – Commercial Core. The office building and the hotel development is permissible in the B3 – Commercial Core zone. The proposal will deliver office and business space in Chatswood's Office precinct and close proximity to the public transport which is consistent with the objectives of the B3 zone. <i>Development Standards:</i> The development is compliant with the Height of Building development standard. The proposal is non-compliant with the Floor Space Ratio development standard as provided in the Development Statistic Table in Attachment 3 of this report. The Clause 4.6 variation submitted and officer's assessment is provided in Attachment 4 and Attachment 5 respectively.	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<ul style="list-style-type: none">Draft State Environmental Planning Policies (SEPP)	N/A
	<ul style="list-style-type: none">Draft Regional Environmental Plans (REP)	N/A
	<ul style="list-style-type: none">Draft Local Environmental Plans (LEP)	N/A
	Comment: There are no draft SEPPs that apply to the subject land.	
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none">Development control plans (DCPs)	
	Comment: The proposed development has been assessed against the relevant requirements of the WDCP, and is considered satisfactory. Specific non-compliances are identified and addressed in Attachment 2 - Development Statistics and by the recommended conditions of consent as relevant.	
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none">Clause 92 EP&A Regulation-Demolition	✓
	<ul style="list-style-type: none">Clause 93 EP&A Regulation-Fire Safety Considerations	N/A
	<ul style="list-style-type: none">Clause 94 EP&A Regulation-Fire Upgrade of Existing Buildings	N/A
	Comment: The proposal involves demolition of the existing two (2) storey commercial building and the retail tenancy. A standard condition which requires the demolition to be carried out in accordance with the requirements of AS 2601 is included in the attached 'Schedule of Conditions'.	
(b)	The likely impacts of the development	
	<ul style="list-style-type: none">Context & setting	✓

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

Matters for Consideration Under S.4.15 (79C) EP&A Act Satisfactory ✓ Unsatisfactory ✗ Not Relevant N/A

	<ul style="list-style-type: none"> • Access, transport & traffic, parking 	✓
	<ul style="list-style-type: none"> • Servicing, loading/unloading 	✓
	<ul style="list-style-type: none"> • Public domain 	✓
	<ul style="list-style-type: none"> • Utilities 	✓
	<ul style="list-style-type: none"> • Heritage 	N/A
	<ul style="list-style-type: none"> • Privacy 	✓
	<ul style="list-style-type: none"> • Views 	✓
	<ul style="list-style-type: none"> • Solar Access 	✓
	<ul style="list-style-type: none"> • Water and draining 	✓
	<ul style="list-style-type: none"> • Soils 	✓
	<ul style="list-style-type: none"> • Air & microclimate 	✓
	<ul style="list-style-type: none"> • Flora & fauna 	✓
	<ul style="list-style-type: none"> • Waste 	✓
	<ul style="list-style-type: none"> • Energy 	✓
	<ul style="list-style-type: none"> • Noise & vibration 	✓
	<ul style="list-style-type: none"> • Natural hazards: Overland flowpath 	✓
	<ul style="list-style-type: none"> • Safety, security crime prevention 	✓
	<ul style="list-style-type: none"> • Social impact in the locality 	✓
	<ul style="list-style-type: none"> • Economic impact in the locality 	✓
	<ul style="list-style-type: none"> • Site design and internal design 	✓
	<ul style="list-style-type: none"> • Construction 	✓
	<ul style="list-style-type: none"> • Cumulative impacts 	✓
	Comment: It is considered that the proposed development will not have any significant or unreasonable impacts on the surrounding developments.	
(c)	The suitability of the site for the development	
	<ul style="list-style-type: none"> • Does the proposal fit in the locality? 	✓
	<ul style="list-style-type: none"> • Are the site attributes conducive to this development? 	✓
	Comment: The proposal is retaining the existing heritage building and in keeping with future desired character of the locality.	
(d)	Any submissions made in accordance with this Act or the regulations	
	<ul style="list-style-type: none"> • Public submissions 	✓
	<ul style="list-style-type: none"> • Submissions from public authorities 	✓
	Comment: Eleven (11) submissions were received. Specific issues of concern raised in public submissions regarding the proposal are addressed in Attachment 3 .	
(e)	The public interest	
	<ul style="list-style-type: none"> • Federal, State and Local Government interests and Community interests 	✓
	Comment: The proposed development will provide additional office and business floor space, create additional employment opportunities in close proximity public transport, strengthen the role of Chatswood as a major centre and improve its public domain and pedestrian links. The proposal is therefore in the public interest.	

ATTACHMENT 7: SCHEDULE OF CONDITIONS

SCHEDULE 1

CONDITIONS OF CONSENT

DEFERRED COMMENCEMENT

In accordance with Section 4.16(3) (previously S80(3)) of the Act this consent will not operate until the applicant has provided information to the satisfaction of the Council that the following conditions can be complied with. Upon receipt of written information from the applicant in relation to the conditions in this schedule the Council will advise in writing whether the information is satisfactory and, if so, will nominate the effective date for the commencement of this consent.

In accordance with Clause 95(3) of the Regulation, a twelve (12) month period is given from the date of the 'deferred commencement' notice to lodge plans and evidence that satisfactorily address the required amendments/detail. If not, then the 'deferred commencement' will lapse and a new development application will be required.
(Reason: Ensure compliance).

Design Amendments

1. Revised plans incorporating the following design amendments shall be submitted to Willoughby City Council for approval:
 - a. The single storey element (north-west corner) of the proposed office building inclusive of the roof top terrace above shall be deleted in the following manner:
 - The northern wall shall be pulled back to be in line with the outer edge of the fire stairs and new office lobby area wall.

Alternatively the single storey element of the proposed office building shall be recessed a minimum of 1m from the northern wall of the fire stairs and new office lobby area to provide an awning.
 - b. The proposal shall provide deep soil planting including canopy planting within the north-western part of the proposed office building that is required to be deleted.
 - c. The coffee pod and the associated outdoor seating area proposed along the Brown Street frontage shall be deleted to provide maintain the existing landscape area.
(Reason: Landscape, Streetscape and Amenity)

SCHEDULE 2

Conditions of Consent: (Including reasons for such conditions)

CONSENT IDENTIFICATION

The following condition provides information on what forms part of the Consent.

1. Approved Plan/Details

The development must be in accordance with the following consent plans electronically stamped by Council:

Type	Plan No.	Revision / Issue No	Plan Date (as Amended/ Received)	Prepared by
Architectural Plans – As amended to address Schedule "A" Matters	Q3294_DA0002	A	19.03.2018	Nettleton Tribe
	Q3294_DA0101	A	19.03.2018	
	Q3294_DA0102	A	19.03.2018	
	Q3294_DA0103	A	10.01.2019	
	Q3294_DA0105	A	13.11.2018	
	Q3294_DA0106	A	13.11.2018	
	Q3294_DA0107	A	19.03.2018	
	Q3294_DA0108	A	19.03.2018	
	Q3294_DA0109	A	13.11.2018	
	Q3294_DA0202	A	19.03.2018	
	Q3294_DA1105	A	19.03.2018	
	Q3294_DA1106	A	19.03.2018	
	Q3294_DA1107	A	19.03.2018	
	Q3294_DA1108	A	19.03.2018	
	Q3294_DA1109	A	19.03.2018	
	Q3294_DA1115	A	19.03.2018	
	Q3294_DA1201	A	19.03.2018	
	Q3294_DA1202	A	19.03.2018	
	Q3294_DA1205	A	19.03.2018	
	Q3294_DA1206	A	19.03.2018	
	Q3294_DA1207	A	19.03.2018	
	Q3294_DA1208	A	19.03.2018	
	Q3294_DA1301	A	19.03.2018	
	Q3294_DA1302	A	19.03.2018	
	Q3294_DA1303	A	19.03.2018	
	Q3294_DA2101	A	19.03.2018	
	Q3294_DA2102	A	19.03.2018	
	Q3294_DA2103	A	19.03.2018	
	Q3294_DA2105	A	19.03.2018	
	Q3294_DA2106	A	19.03.2018	
	Q3294_DA2107	A	19.03.2018	

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

	Q3294_DA2108	A	19.03.2018	
	Q3294_DA2115	A	19.03.2018	
	Q3294_DA2201	A	19.03.2018	
	Q3294_DA2202	A	19.03.2018	
	Q3294_DA2205	A	19.03.2018	
	Q3294_DA2206	A	19.03.2018	
	Q3294_DA2207	A	19.03.2018	
	Q3294_DA2208	A	19.03.2018	
Landscape Plans – As amended to address Schedule “A” Matters	LD-DA100	2	14.05.2018	Scot Carver
	LD-DA110	2	14.05.2018	
	LD-DA111	2	14.05.2018	
	LD-DA112	2	14.05.2018	
	LD-DA120	2	14.05.2018	
	LD-DA121	2	14.05.2018	
	LD-DA200	2	14.05.2018	
	LD-DA201	2	14.05.2018	
	LD-DA202	2	14.05.2018	
Stormwater Plans – As amended to address Schedule “A” Matters	CV-0852	2	14.11.2018	Enstruct Group Pty Ltd
	CV-0200	5	16.11.2018	
	CV-0851	3	16.11.2018	
Hotel Operations Plan			March 2018	Michael Herman – TFE Hotels
Design Review Accessibility Report – Ref: AN17-210221			16.03.2018	Philip Chun
Acoustic Report – Ref: 36392-SYD-N			01.05.2018	Wood & Grieve Engineers
Arborist Report			10.03.2018	The Ents Tree Consultancy
Preliminary Pedestrian Wind Comfort Report – Ref: 1016623			09.04.2018	Cundall
Sustainability Report – Ref: SY172846-SER01			15.03.2018	Northrop

The application form and any other supporting documentation submitted as part of the application, except for:

- (a) Any modifications which are “Exempt Development” as defined under S.4.1(1) of the *Environmental Planning and Assessment Act 1979*;
- (b) Otherwise provided by the conditions of this consent.
(Reason: Information and ensure compliance)

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate.

2. Fixed Development Consent Levies

Prior to the issue of the Construction Certificate, a monetary contribution of **\$2,262,378.60** (subject to indexing as outlined below) is to be paid in accordance

with Section 7.12 of the *Environmental Planning and Assessment Act, 1979*.

This contribution is based on 3% of the estimated development cost of \$75,412,620 at 29 May 2018 and the adopted Section 94A Contributions Plan.

To calculate the monetary contribution that is payable, the proposed cost of development is to be indexed to reflect quantity variations in the Consumer Price Index, All Groups, Sydney, as published by the Australian Bureau of Statistics (ABS) between the date the proposed cost of development was agreed by the Council and the date the levy is to be paid as required by this Plan.

To calculate the indexed levy, the formula used to determine the cash contribution is set out below.

$$IDC = ODC \times CP2/CP1$$

Where:

IDC = the indexed development contribution payable

ODC = the original development contribution determined by the Council as a percentage of the cost as set down in this contributions plan

CP2 = the quarterly Consumer Price Index, All Groups, Sydney, as published by the Australian Bureau of Statistics (ABS) immediately prior to the date of payment

CP1 = the quarterly Consumer Price Index, All Groups, Sydney as published by the ABS immediately prior to the date of imposition of the condition requiring payment of the contribution.

Prior to payment Council can provide the value of the indexed levy.

Copies of the S94A Contributions Plan are available for inspection online at www.willoughby.nsw.gov.au

(Reason: Statutory requirement)

3. Damage Deposit

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$160,000** (GST Exempt) as cash, cheque or an unconditional bank guarantee, to Council against possible damage to Council's assets and any infrastructure within the road reserve/footway during the course of the building works. The deposit will be refundable subject to inspection by Council after the completion of all works relating to the proposed development. For the purpose of inspections carried out by Council Engineers, an inspection fee of **\$165** (GST Exempt) is payable to Council. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.

(Reason: Protection of public asset)

4. Roads and Maritime Services

A Construction Traffic Management Plan (CTMP) detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be prepared in consultation with Sydney Coordination Office (SCD) of the Transport for NSW and submitted to Council for approval prior to the issue any Construction Certificate. In this regards any further enquiry related with the CTMP should be directed to Joel Azzopardi on 0466 427 016 or e-mail at

Joel.Azzopardi@transport.nsw.gov.au or David Collaguazo on 0435 658 792 or e-mail at David.Coliaguazo@transport.nsw.gov.au for their attention.

(Reason: RMS Requirement)

5. **Services - Energy Australia**

The applicant should consult with Energy Australia to determine the need and location of any electrical enclosure for the development. Should such an electrical enclosure be required, the location and dimensions of the structure are to be detailed on all the plans issued with the Construction Certificate. In the event of Energy Australia requiring such a structure e.g. a substation, the applicant is required to dedicate the land for the substation as public roadway. The Plan of Dedication shall be lodged to Council prior to issue of the Construction Certificate and registered at the Department of Lands prior to issue of the Occupation Certificate.

(Reason: Compliance)

6. **External Finishes – Solar Absorptance**

The external roofing, glazing and walls of the proposed buildings are to be of minimal reflectance so as to avoid nuisance in the form of glare or reflections to the occupants of nearby buildings, pedestrians and/or motorists. Details demonstrating compliance are to be submitted with the Construction Certificate application.

(Reason: Visual amenity)

7. **Stormwater to Street Drainage via Reinforced Concrete Pipe (RCP)**

Stormwater runoff from the site shall be collected and conveyed to the underground drainage system in Brown Street via a 375 mm RCP in accordance with Council's specification. A grated drainage pit (min. 600mm x 600mm) shall be provided within the property and adjacent to the boundary prior to discharging to the Council's drainage system. In this regard, full design and construction details showing the method of disposal of surface and roof water from the site are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

(Reason: Prevent nuisance flooding)

8. **Detailed Stormwater Management Plan (SWMP)**

Prior to the issue of the Construction Certificate, submit to the Certifying Authority for approval, detailed stormwater management plans in relation to the on-site stormwater management and disposal system for the development. The construction drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and in accordance with Enstruct drawings CV-0200/5, CV-0851/3 and CV-0852/2. The plans shall include an on-site detention tank with a minimum storage volume (below overflow) of 200m³ and stormwater quality improvement devices as per Enstruct's Stormwater Management Report Revision D dated August 2018. All drawings shall comply with Part C.5 of Council's Development Control Plan and Technical Standards, AS3500.3 – *Plumbing and Drainage Code* and National Construction Code.

(Reason: Ensure compliance)

9. **Construction Management Plan (CMP)**

Prior to the issue of the Construction Certificate, submit, for approval by the Certifying Authority, detailed Construction Management Plan (CMP). The CMP shall address:

- (a) Construction vehicles access to and egress from the site
- (b) Parking for construction vehicles
- (c) Locations of site office, accommodation and the storage of major materials related to the project
- (d) Protection of adjoining properties, pedestrians, vehicles and public assets
- (e) Location and extent of proposed builder's hoarding and Work Zones
- (f) Tree protection management measures for all protected and retained trees.

(Reason: Compliance)

10. Design of Works in Public Road (Roads Act Approval)

Prior to issue of any Construction Certificate, the applicant must submit, for approval by Council as a road authority, full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following infrastructure works:

- (a) Construction of full width footpath (max. 2.5% crossfall) using Council's standard CBD pavers for the full frontage of the development site in Brown Street and Victoria Avenue in accordance with Council's specification and Segmental Footpath Paving Code. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- (b) Reconstruction of existing kerb and gutter for the full frontage of the development site in Brown Street and Victoria Avenue in accordance with Council's specifications and Standard Drawing SD105.
- (c) Reconstruction of 3m wide road pavement in Victoria Avenue for the full frontage of the new office building.

The required plans must be designed in accordance with Council's specifications (AUS-SPEC). A minimum of three (3) weeks will be required for Council to assess the Roads Act submissions. Early submission is recommended to avoid delays in obtaining a Construction Certificate. For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council prior to issue of the approved plans.

Approval must be obtained from Willoughby City Council as the road authority under the *Roads Act 1993* for any proposed works in the public road prior to the issue of any Construction Certificate.

(Reason: Ensure compliance)

11. Vehicle Parking – Engineer's Certification

Prior to the issue of a Construction Certificate, submit for approval by the Certifying Authority certification from a suitable qualified and experienced traffic engineer that vehicular access and parking affected by new structure associated with the development complies with the requirements of A/NZS 2890.1 – 2004 and AS/NZS2890.6 – 2009. In particular, the sizes of parking spaces are to comply with the requirements for minimum dimensions and clearances to structures.

(Reason: Ensure compliance)

12. Awning Location

Prior to the issue of a Construction Certificate, submit plans to the Certifying Authority which show the edge of the new awnings on Victoria Avenue and Brown Street set back 600mm minimum from the kerb line and are designed to provide adequate setbacks around existing, replacement and required trees within the road reserves fronting the sites to accommodate tree growth.

Amended plans are to be submitted to the Principal Certifying Authority for approval prior to issue of a Construction Certificate.

(Reason: Ensure Compliance and Streetscape amenity)

13. Building Ventilation

To ensure that adequate provision is made for ventilation of the building, mechanical and/or natural ventilation shall be provided. These shall be designed in accordance with the provisions of:

- (a) The National Construction Code:
 - (i) AS1668.1, AS1668.2 and AS3666.1 as applicable; and/or
 - (ii) Alternative solution using an appropriate assessment method

Details of all mechanical ventilation and exhaust systems, and certification provided by an appropriately qualified person verifying compliance with these requirements, shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

(Reason: Health and compliance)

14. Internal Noise Levels Commercial

To minimise noise intrusion from any external noise source on the commercial component of the development, the building shall be designed and constructed to comply with the requirements of Australian Standard AS2107-2000 – Acoustics – Recommended design sound levels and reverberation times for building interiors.

Certification from an appropriately qualified acoustic consultant that the building has been designed to meet this criteria shall be submitted to the Certifying authority prior to issue of the Construction Certificate.

(Reason: Amenity, environmental compliance and health)

15. Noise Mechanical Services

To minimise the impact of noise onto residential receivers, all mechanical services shall be designed and installed to ensure ambient noise levels are maintained. Details of the proposed equipment, siting and any attenuation required shall accompany the application for Construction Certificate.

(Reason: Amenity, environmental compliance and health)

PRIOR TO COMMENCEMENT

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. All of these conditions are to be complied with prior to the commencement of any works on site, including demolition.

16. External Finishes - Compatibility

All external building material shall be in colours and textures, which are compatible with the character of the locality. In this regard:

- (a) A schedule of these colours and textures shall be submitted to the Certifying Authority prior to commencement of work.
- (b) The Schedule of Colours and Finishes submitted with the application satisfy this requirement.

(Reason: Visual amenity)

17. Noise – Construction In Accordance With Acoustic Report

To minimise the impact of noise from the development on the amenity of the adjoining properties, the development shall be constructed and operated in accordance with all recommendations contained within the Acoustic Report prepared by Wood and Grieve Engineers.

(Reason: Amenity)

18. Roads and Maritime Services

The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime.

Details should be forwarded to: Suppiah.Thillai@rms.nsw.gov.au

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings.

The notice is to include complete details of the work.

(Reason: RMS Requirement)

19. Roads and Maritime Services

Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.

Details should be forwarded to: Suppiah.Thillai@rms.nsw.gov.au

The notice is to include complete details of the work.

A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the Civil Works requirement please contact the Roads and Maritime Project Engineer, External Works Ph: 88492114 or Fax: 88492766.

(Reason: RMS Requirement)

20. Roads and Maritime Services

A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Pacific Highway during construction activities.

(Reason: RMS Requirement)

21. Waste Management Plan

A Construction and Demolition Waste Management Plan which provides details of specific strategies to salvage and recycle a minimum of 85% of used and unused demolition and construction materials shall be submitted to the Certifying Authority prior to commencement of work.

(Reason: Environment protection/waste reduction)

22. Building Site Hoarding

Prior to the commencement of work, a hoarding, complying with StateCover NSW requirements which is to be erected to restrict public access to the site (including demolition and/or excavation site), building works, materials or equipment. A separate application is to be made to Council's Infrastructure Services Division for this purpose should the hoarding be located on Council property.

(Reason: Safety)

23. Site Management

A site Management Plan shall be submitted to and approved by the Certifying Authority prior to commencement of work. The site management plan shall include the following measures as applicable.

- (a) Details and contact telephone numbers of the owner, builder and developer;
- (b) Location and construction details of protective fencing to the perimeter of the site;
- (c) Location of site storage areas, sheds and equipment;
- (d) Location of stored building materials for construction;
- (e) Provisions for public safety;
- (f) Dust control measures;
- (g) Site access location and construction;
- (h) Details of methods of disposal of demolition materials;

- (i) Protective measures for tree preservation;
- (j) Provisions for temporary sanitary facilities;
- (k) Location and size of waste containers and bulk bins;
- (l) Soil and Water Management Plans (SWMP); comprising a site plan indicating the slope of land, access controls, location and type of sediment controls and storage/control methods for material stockpiles;
- (m) Construction noise and vibration management.

The site management measures shall be implemented prior to the commencement of any site works and maintained during the construction period. A copy of the approved Site Management Plan shall be conspicuously displayed, maintained on site and be made available to the Certifying Authority/Council officers upon request. (Reason: Environment protection, public health and safety)

24. Dilapidation Report of Council's Property

Submit a dilapidation report including photographic record of Council's property extending to a distance of 50m from the development, detailing the physical condition of items such as, but not exclusively to, the footpath, roadway, nature strip, and any retaining walls.

The developer may be held liable to any recent damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition prior to the commencement of works. In this regard, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

This dilapidation report shall be submitted to Council and the Certifying Authority prior to commencement of work.

(Reason: Protection of Council's infrastructure)

25. Permits and Approvals Required

Application is to be made to Council's Infrastructure Services Division for the following approvals and permits as appropriate:-

- (a) Permit to erect Builder's hoarding where buildings are to be erected or demolished within 3.50m of the street alignment. Applications are to include current fees and are to be received at least 21 days before commencement of the construction.
- (b) Permit to stand mobile cranes and/or other major plant on public roads. Applications are to include current fees and security deposits and are to be received at least seven days before the proposed use. It should be noted that the issue of such permits may also involve approval from the NSW Police Force and the RMS. A separate written application to work outside normal hours must be submitted for approval.

It should also be noted that, in some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.

- (c) Permit to open public roads, including footpaths, nature strip, vehicular crossing or for any purpose whatsoever. All applications are to include current fees.
- (d) Permit to place skip/waste bin on footpath and/or nature strip. (Maximum three (3) days).
- (e) Permit to work and/or place building materials on footpath and/or nature strip. (Maximum two (2) weeks).
- (f) Permit to establish Works Zone on Public Roads adjacent to the Development including use of footpath area. Applications must be received by Council at least twenty-one days prior to the zone being required. The application will then be referred to the Council's Local Traffic Committee for approval, which may include special conditions.
- (g) Permit to construct vehicular crossings over Council's footpath, road or nature strip.

The public footway must not be obstructed at any time unless written approval has been granted by Council. Council's footpath and footway shall be maintained in a safe condition for pedestrians and the general public at all times.

(Reason: Legal requirements)

26. Underground Utility Services

Where excavation is proposed, locate and establish the size and levels of all utility services in the footpath and road reserve. Contact "Dial Before You Dig" Service" prior to commencement of any works.

All adjustments to public utilities' mains and services as a consequence of the development and associated construction works shall be at the full cost to the applicant.

(Reason: Protection of utilities)

27. Removal of Trees in Public Areas

Prior to the commencement of work,

- (a) Written notification is to be provided to Council's Team Leader - Streetscapes giving a minimum of 7 days warning prior to undertaking the removal of any trees approved for removal in public areas
- (b) Removal of approved trees is to be undertaken by a qualified Arborist (Minimum qualification AQF Level 3) with suitable public liability insurance.

(Reason: Management of Public Land)

28. Garbage Compactor Vehicles

In order that garbage compactor vehicles can service the premises entrances, exits, driveways, vehicle ramps, loading dock way and garages, shall be designed with the following minimum dimensions:

- (a) 3700 mm width, 3800 mm clear height;
- (b) 10500 mm radius turning circle;
- (c) Ramp gradients should be 1 in 15m for the first 4 m from street or colonnade alignment then 1 in 8 or 1 in 6 with a transition of 1 in 12 for 4 m at the lower end.

Note: Clearance must take account of roller shutters, service ducts, pipe work etc.
(Reason: Ensure compliance)

29. Garbage Rooms

Garbage rooms must be large enough to store the generated waste from the proposed uses and allowance should be made for separation of putrescible waste from waste suitable for recycling. The garbage room is not to be smaller than 5000mm x 4000mm, have a 2400mm ceiling height, with a door entry width not less than 2200mm.

(Reason: Ensure compliance)

30. Bulky Goods Storage Room

On-site storage for bulky goods must be provided at a minimum of 2m².

(Reason: Ensure compliance)

31. Waste Chute Systems

Developments that propose to use a waste chute system must also provide recycling cupboards on each residential floor.

(Reason: Environment protection/waste reduction)

DURING DEMOLITION, EXCAVATION AND CONSTRUCTION

The following conditions are to be complied with throughout the course of site works including demolition, excavation and construction.

32. Roads and Maritime Services

All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Pacific Highway.

(Reason: RMS Requirement)

33. Hours of Work

All construction/demolition work relating to this Development Consent within the City, unless varied by an Out of Hours Work Permit, must be carried out only between the hours of 7 am to 5 pm Mondays to Fridays and 7 am to 12 noon on Saturdays. No work is permitted on Sundays or Public Holidays.

An application for an Out of Hours Work Permit to allow variation to these approved hours must be lodged with Council at least 48 hours prior to the proposed commencement of the work. The application must include a statement regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be minimized, and must be accompanied by the required fee. One (1) permit is required for each variation to the approved working hours within any 24 hour period.

If a variation to these approved hours for multiple or extended periods is sought, an application under Section 4.55 of the *Environmental Planning and Assessment Act 1979* must be lodged with Council at least twenty-one (21) days in advance of the proposed changes to the hours of work. The application must include a statement

regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be minimized, and be accompanied by the required fee. Note: This Section 4.55 application may require re-notification in some circumstances.

(Reason: Ensure compliance and amenity)

34. Construction Information Sign

A clearly visible all weather sign is required to be erected in a prominent position on the site detailing:

- (a) That unauthorised entry to the work site is prohibited;
- (b) The excavator's and / or the demolisher's and / or the builder's name;
- (c) Contact phone number/after hours emergency number;
- (d) Licence number;
- (e) Approved hours of site work; and
- (f) Name, address and contact phone number of the Certifying Authority (if other than Council)

ANY SUCH SIGN IS TO BE REMOVED WHEN THE WORK HAS BEEN COMPLETED.

Council may allow exceptions where normal use of the building/s concerned will continue with ongoing occupation, or the works approved are contained wholly within the building.

(Reason: Ensure compliance)

35. Building Site Fencing

Public access to the site and building works, materials and equipment on the site is to be restricted, when work is not in progress or the site is unoccupied.

A temporary safety fence is to be provided to protect the public, located to the perimeter of the site (unless the site is separated from the adjoining land by an existing structurally adequate fence, having a minimum height of 1.5m). Temporary fences are to have a minimum height of 1.8m and be constructed of cyclone wire or similar with fabric attached to the inside of the fence to provide dust control.

Fences are to be structurally adequate and be constructed in a good and workmanlike manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible. All parts of the fence, including the fencing blocks shall be located wholly within the property boundaries.

The public safety provisions and temporary fences must be in place and be maintained throughout construction.

(Reason: Safety)

36. Demolition Work AS 2601-2001

Any demolition must be carried out in accordance with AS 2601 – 2001, *The demolition of structures*.

(Reason: Safety)

37. Survey Certificate

Certification of the following shall be submitted to the Certifying Authority by a registered surveyor:

- (a) Prior to the construction of footings or first completed floor slab (i.e. prior to pouring of concrete) showing the area of the land, building under construction and boundary setbacks;
- (b) At each level indicating the level of that floor to Australian Height Datum;
- (c) Upon completion of the roof framing, before the roofing is laid, indicating the ridge height to Australian Height Datum;
- (d) At roof slab level indicating the level of that slab to Australian Height Datum;
- (e) At completion indicating the relation of the building and any projections to the boundaries, and that the building has been erected to the levels approved in the Development Application.

(Reason: Ensure compliance)

38. Sweep & Clean Pavement

Sweep and clean pavement surface adjacent to the ingress and egress points of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council.

(Reason: Legal requirement)

39. Street Signs

The applicant is responsible for the protection of all regulatory / parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works are to be replaced at full cost to the applicant.

(Reason: Protection of public assets)

40. Tree Protection

- (a) Retain and protect the following trees and vegetation throughout the demolition and construction period: All trees not indicated for removal in the Arboricultural Impact Assessment dated 10 March 2018 prepared by The Ents Tree Consultancy, unless exempt under relevant planning instruments or legislation.
- (b) The above trees must be clearly marked and protection devices in place to prevent soil compaction and machinery damage.
- (c) Tree roots greater than 50mm diameter are not to be removed unless approved by a qualified Arborist on site.
- (d) All structures are to bridge roots unless directed by a qualified Arborist on site.
- (e) Tree protection measures must comply with the Arboricultural Impact Assessment and AS 4970-2009 Protection of trees on development sites with particular reference to Section 4 Tree Protection Measures

(Reason: Tree management)

41. Public Tree Protection

Unless identified by the development consent, no tree roots over 50mm diameter are to be damaged or cut and all structures are to be bridged over such roots.

Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, the applicant is to immediately Contact Council's Streetscapes section and resolve the matter to Council's satisfaction.

(Reason: Tree management)

42. Storage of Materials on Council Land Prohibited

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in the Council reserve is prohibited.

(Reason: Safety, environmental protection)

43. Waste Classification – Excavation Materials

All materials excavated and removed from the site (fill or natural) shall be classified in accordance with the *Environment Protection Authority* (EPA) Waste Classification Guidelines prior to being disposed of to a NSW approved landfill or to a recipient site.

(Reason: Environment and health protection)

44. Importation of Fill

Any material to be imported onto the site for levelling, construction or engineering purposes must satisfy the Office of Environment & Heritage (OEH) requirements for *virgin excavated natural material* (VENM), or *excavated natural material* (ENM). The determination of VENM or ENM must be made by suitable qualified consultant. Pre-certification of the imported material shall be made and details made available to Council upon request.

(Reason: Environment & Health Protection)

45. Dust Control

The following measures must be taken to control the emission of dust:

- (a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work.
- (b) Any existing accumulation of dust (e.g. in ceiling voids and wall cavities) must be removed using an industrial vacuum cleaner fitted with a high efficiency particulate air (HEPA) filter.
- (c) All dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the street or stormwater system.
- (d) All stockpiles of materials that are likely to generate dust must be kept damp or covered.
- (e) Demolition work must not be carried out during high winds, which may cause dust to spread beyond the boundaries of the site.

(Reason: Amenity)

46. Construction Noise

Construction noise shall be controlled to comply with the requirements as set out in the EPA Interim Construction Noise Guideline. Noise levels shall not exceed the rated background level by more than 10dB(A) at the most sensitive receiver during the standard construction hours. A noise monitoring plan shall be implemented during construction. Where noise levels may be exceeded appropriate measures to control excessive noise shall be implemented immediately.

(Reason: Amenity)

PRIOR TO OCCUPATION OF THE DEVELOPMENT

The following conditions of consent must be complied with prior to the issue of an occupation certificate.

47. Awnings

Prior to the issue of an Occupation Certificate, the Certifying Authority shall ensure that the new awnings on Victoria Avenue and Brown Street have been constructed in accordance with the approved plans, as amended to address **Condition 12** of this consent.

(Reason: Ensure Compliance)

48. Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained prior to the issue of a Final Occupation Certificate. An application must be made either directly to Sydney Water or through a Sydney Water accredited Water Service Coordinator. For details go to www.sydneywater.com.au/section73 or call 1300 082 746.

The Section 73 Certificate must be submitted to the Certifying Authority.

(Reason: Ensure statutory compliance)

49. Access for the Disabled - Disability Discrimination Act

The building/development must comply with the requirements of the Disability Discrimination Act.

It should be noted that this approval does not guarantee compliance with this Act and the applicant/owner should investigate their liability under this Act.

(Reason: Access and egress)

50. Fire Safety Certificate Forwarded to NSW Fire and Rescue

Prior to the issue of the Final Occupation Certificate and upon completion of the building work, a Fire Safety Certificate shall be furnished by the owner to Council, and the owner must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be forwarded to the Commissioner of New South Wales Fire and Rescue, and must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building in accordance with Clause 172 of the *Environmental Planning and Assessment Regulation 2000* in respect to each essential fire safety measure included in the Schedule attached to the Construction Certificate.

(Reason: Safety)

51. Marked Parking Bays

Prior to the issue of any Occupation Certificate, all parking bays, pick-up and drop-off area and the direction of traffic movement shall be permanently marked in accordance with the approved parking and driveway layout to the satisfaction of the Certifying Authority. Where it is proposed that a building or site be used for multiple occupations, all parking bays shall be identified by corresponding consecutive numbers.

(Reason: Ensure compliance)

52. Access/Parking - Multiple Occupation of a Building

Prior to the issue of any Occupation Certificate and where multiple occupation of a building or site is proposed, the appropriate number of parking spaces under Willoughby Development Control Plan Part C.4 shall be allocated in respect of each individual use and the spaces so allocated shall be identified numerically on a sketch plan of the parking area which is to be submitted with any future application for consent to use any particular portion of the building or site.

N.B. - the issue of an interim occupation / final occupation certificate to use particular portion of a building or site will be contingent, in part, upon the availability of car parking in accordance with DCP requirements.

(Reason: Ensure compliance)

53. Safer by Design

Prior to the issue of any Occupation Certificate and to minimise the opportunity for crime and in accordance with CPTED principles, the development shall incorporate the following:

- (a) In order to maintain a safe level of visibility for pedestrians within the development, adequate lighting to AS1158 is to be provided to all common areas including the basement car park, common open space and any common stair access to these areas and pedestrian routes, particularly including the waste storage areas.

This lighting shall ensure consistency to avoid contrasts between areas of shadow/illumination and preferably be solar powered and with an automatic/timed switching mechanism, motion sensor or equivalent for energy efficiency. Such lighting shall be installed and directed in such a manner so as to ensure that no nuisance is created for surrounding properties or to drivers on surrounding streets. Car parking lighting system is to be controlled by sensors to save energy during periods of no occupant usage.

- (b) The ceiling and vertical structures of the basement parking area shall be painted white (or equivalent) in order to ensure good visibility, surveillance and less reliance on artificial lighting lux levels.
- (c) The design, installation and maintenance of landscaping (and associated works) within pedestrian routes around the site (and adjacent to mailboxes) shall not impede visibility and clear sight lines along the pedestrian footway from one end to the other.
- (d) The means to isolate the residential and commercial components of the building shall be incorporated into the development, including the security keying of lifts and doors and other measures for access control.

- (e) Walls/screens between balconies shall be designed to avoid foot holes or natural ladders so as to prevent access between balconies/terraces within the development.
- (f) Adequate signage within the development to identify facilities, entry/exit points and direct movement within the development.
- (g) A small portion of each storage area shall be of solid construction (i.e. Cupboard).

(Reason: Safety and surveillance, energy efficiency, amenity)

54. NSW Police CPTED Strategies

Prior to the issue of any Occupation Certificate, the recommendations provided by the NSW Police Force - Ref: D/2018/495865 dated 28 June 2018 (attached to the consent), shall be considered, which includes the following:

- i) The building should be clearly identified with signage that is visible from the street. This will enable all emergency services to locate the premises.
- ii) Surrounding shrubs and gardens should be maintained to reduce opportunity for concealment.
- iii) Appropriate signage should be erected inside and around the perimeter of the entire property to warn of security treatments in place e.g. "This site is under 24 hour video surveillance".
- iv) An electronic surveillance system should be included to provide maximum surveillance of all areas of the building including entry/exit points. The system should be capable of recording high-quality images of events. The recording equipment should be locked away to reduce the likelihood of tampering. Monitors should be placed in the store/office areas to allow staff to view all areas under camera surveillance. In particular extensive coverage should be established throughout the pedestrian link.
- v) CCTV cameras should be installed to cover entrances, mail box areas, lobby and lift areas, the entrance to the car park and any bicycle storage areas.
- vi) All CCTV cameras installed should be of a good resolution and accompanied with good lighting.
- vii) All recording made by the CCTV system must be stored for at least 30 days and ensure that the system is accessible by at least one member of staff at all times it is in operation, and provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector. The CCTV cameras will need to be placed in suitable locations to enhance the physical security and assist in positively identifying an individual, who may be involved in criminal behaviour.
- viii) The CCTV footage should also cover the car parking facilities. "Park Smarter" signage should be displayed within this area to warn/educate motorists to secure their vehicles and not leave valuable items visible in their cars. The car park will also need to have adequate lighting.

- ix) Bollards of a standard to withstand a vehicle impact should be installed at the access points of the pedestrian through link.
- x) Lighting in and around the building should comply with Australian Standard AS: 1158 and should provide for adequate, uniform illumination. External lighting should be of a 'white light' source. Note that high or low pressure sodium 'orange' lighting is not compatible with quality surveillance systems. Internal lighting should be controlled from 'Staff only' areas, away from public access. If this is not possible, use tamper-resistant switches. Luminaries (light covers) should be designed to reduce opportunities for malicious damage. Internal after-hours security lighting should provide adequate illumination to allow inspection by security patrols.
- xi) Lighting around the building should be positioned in a way to reduce opportunities for offenders to commit crime i.e. vandalism and graffiti. The lighting will need to be sufficient to enable people to identify signs of intoxication and anti-social behaviour. The lighting will also need to be sufficient to support images obtained from any CCTV footage. Please note that some low or high pressure lighting is not compatible with surveillance systems.
- xii) All staff only areas should be clearly marked as such and physical barriers such as doors and gates should be erected to prevent unauthorised entry.
- xiii) Doors should be of solid construction, and should be fitted with quality deadlock sets that comply with the Building Code of Australia and Australian Standards - Lock Sets AS:4145.
- xiv) Windows should also be of solid construction. These windows should be fitted with quality window lock sets that comply with the Australian Standards – Lock Sets AS:4145. Glass within doors and windows should be reinforced to restrict unauthorised access. The glass can be either fitted with a shatter-resistant film or laminated to withstand physical attacks.
- xv) An emergency control and evacuation plan should be implemented within the building. Management and staff should be trained in the execution of the plan in emergency situations.
- xvi) Any wheelchair access points should at no time be blocked nor impede access to anyone with a disability.
- xvii) Fire exits should be monitored to ensure they are not left ajar and used as access points for break and enters.
- xviii) Bicycle storage racks should be placed inside a locked area that is covered by a CCTV camera and has lots of natural surveillance.
- xix) Contact names and phone numbers for building security staff should be provided to North Shore Police as soon as possible.

55. Allocated Pick-Up and Drop-Off Area

Prior to the issue of any Occupation Certificate, the site shall be sign-posted to advise of the dedicated pick-up and drop-off bays within the basement. The vehicles associated with the hotel patrons must use the dedicated pick-up and drop-off bays.
(Reason: Amenity)

56. DA Required for Use

As no specific fit-out or use has been approved in the Development Consent for the restaurant or the retail tenancy, it is the responsibility of the owner, managing agent and the propped user, individually and collectively to ensure that a Development Consent is lodged and consent issued and that an Occupation Certificate is issued prior to occupation of those premises or site.
(Reason: Ensure Compliance)

57. Inspection of Drainage Connection to Council's Drainage Line

Prior to the issue of any Occupation Certificate, inspection of any new drainage connection works to the existing Council's pipeline/pit shall be carried out by Council's Engineer. A completion certificate shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifying Authority. For the purpose of inspections carried out by Council Engineer, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council.
(Reason: Ensure compliance)

58. On-site Water Management System

Prior to the issue of any Occupation Certificate, the stormwater runoff from the site shall be collected and disposed of via an approved 200m³ on-site stormwater detention system in accordance with Sydney Water's requirements, the National Construction Code, Council's DCP and Technical Standards. The construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved design stormwater management plans and Council's specification (AUS-SPEC).
(Reason: Prevent nuisance flooding)

59. Sign for OSD System

Prior to the issue of any Occupation Certificate, an aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the OSD tank.

The wording for the plaque shall state *"This is the on-site stormwater detention system required by Willoughby City Council. It is an offence to alter any part of the system without written consent from Council. The registered proprietor shall keep the system in good working order by regular maintenance including removal of debris"*.
(Reason: Prevent unlawful alteration)

60. Confined Space Sign

Prior to the issue of any Occupation Certificate, securely install a standard confined space danger sign in a prominent location within the immediate vicinity of the access grate/s of the OSD tank.

(Reason: Safe access to tank)

61. Certification of OSD

Prior to the issue of any Occupation Certificate, a suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify on Council's standard certification form that the as-built OSD system is in accordance with the approved plans and complies with Council's DCP and Technical Standards. Council's standard certification form is available in the appendix of Council's Technical Standard No.2.

(Reason: Legal requirement)

62. Works-As-Executed Plans - OSD

Prior to the issue of any Occupation Certificate and upon completion of the OSD System, the following shall be submitted to the Certifying Authority:

- (a) Work-as-Executed plans based on the approved stormwater management plans from a registered surveyor to verify that the volume of storage, PSD, water and floor levels are constructed in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved stormwater plans.
- (b) Engineer's certification of the OSD system together with the completed Council's standard form for On-Site Detention Record of Installation.

(Reason: Record of works)

63. S88B/S88E(3) Instrument

Create Positive Covenant and Restriction on the Use of Land on the Title in favour of Council as the benefiting authority for the as-built on-site stormwater detention system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council's Technical Standards.

The above instruments shall be created under Section 88B of the *Conveyancing Act 1919* for newly created lots. For an existing lot, the instruments can be created under Section 88E(3) of the *Conveyancing Act 1919* using Form 13PC and 13RPA respectively. The size and relative location of the OSD system, in relation to the building footprint and property boundary, must be shown on the final plan of subdivision/strata plan or must be shown on the scale sketch, attached as an annexure to the request 13PC and 13RPA forms. The S88B instrument or 13PC/13RPA forms shall be lodged with Council's Standard S88B/S88E Lodgement Form with all supporting documentations listed in the Form. Council's Standard Form is available from Council upon requested.

Documentary evidence of registration of these instruments with the NSW Land Registry Services shall be submitted to the Certifying Authority and Council prior to issue of any Occupation Certificate.

(Reason: Maintenance requirement)

64. Documentary Evidence of Positive Covenant, Engineers Certificate

Prior to the issue of any Occupation Certificate, the following documentary evidence of the completed drainage works shall be submitted to Certifying Authority and Council: -

- (a) Registered Positive Covenant and Restriction on the Use of Land by way of the Title Deed.
- (b) Certification from a suitably qualified and experienced civil engineer (generally CP Eng. Qualification) for the as-built OSD system.
- (c) Work-as-Executed plans highlighting in red based on the approved stormwater management plans from a registered surveyor for the as-built OSD system.

(Reason: Public record)

65. Construction of Kerb & Gutter

Prior to the issue of any Occupation Certificate, construct a new kerb and gutter together with any necessary associated pavement restoration in accordance with Council's specification for the full frontage of the development site in Brown Street and Victoria Avenue with associated pavement restoration 0.6 metre wide in Victoria Avenue where half road reconstruction not required.

(Reason: Public amenity)

66. Paved footpath

Prior to the issue of any Occupation Certificate, construct a full width footpath in approved CBD pavers for the full frontage of Brown Street and Victoria Avenue adjoining the site in accordance with Willoughby City Council's Segmental Footpath Paving Code. Permission must be obtained from Council's Infrastructure Services Division prior to the opening and closure of the footpath and road pavement for construction works.

(Reason: Public amenity)

67. Inspection of Civil Works on Road Reserves

All required road pavement, footpath, kerb and gutter, drainage works and/or any necessary associated works on the road reserve shall be completed in accordance with the Council approved drawings, conditions and specification (AUS-SPEC).

Pursuant to Section 138 of the *Roads Act 1993*, all works carried out on the road reserve shall be inspected and approved by Council's Engineer. Upon completion, Work-as-Executed drawings prepared by a registered surveyor shall be submitted to Council for record purposes. A completion certificate shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifying Authority prior to the issue of any Occupation Certificate.

(Reason: Ensure compliance)

68. Performance Bond

Prior to the issue of any Occupation Certificate, the Applicant shall lodge with the Council a performance bond of \$80,000 against defective public civil works undertaken by the main Contractor for a period of twelve (12) months from the date of the completion certificate issued by Council as the road authority under the *Roads*

Act 1993. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee which will be refundable subject to the approval of Council's Engineers at the end of the maintenance period. In this period, the Applicant is liable for any part of the work which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary.

(Reason: Ensure compliance and specification)

69. Vehicular Access and Garaging

Driveways and vehicular access ramps shall be designed to provide adequate ground clearance to the underside of B99 vehicles. In all respects, prior to the issue of any Occupation Certificate, the proposed vehicle access including any parking spaces shall be designed and constructed to comply with the minimum requirements of AS/NZS 2890.1, AS/NZS 2890.6 and Council's standard specification.

(Reason: Vehicular access)

70. Public Infrastructure Restoration

Prior to the release of the Damage Deposit, any damaged public infrastructure caused as a result of the construction works on the subject site (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) must be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.

(Reason: Protection of public assets)

71. Reconstruct Pavement

Prior to the issue of any Occupation Certificate, a 3m wide road pavement including any necessary associated works adjoining to the full frontage of the new office building in Victoria Avenue shall be reconstructed in accordance with Council's approved drawings, conditions and specification (AUS-SPEC). Council's standard design traffic for this pavement is 1×10^6 ESA.

(Reason: Ensure compliance)

72. Completion of Landscape Works

Prior to the issue of any Occupation Certificate, the approved landscape works shall be consistent with the approved design, completed to a professional standard, consistent with industry best practice and published standards.

(Reason: Landscape amenity)

73. Public Tree Planting

- i) Prior to the issue of any Occupation Certificate, plant the following trees on Council land forward of the property:

Brown Street frontage: 5 x *Fraxinus oxycarpa* (to replace Tree Nos. 2, 3, 4, 6 & 8 as identified for removal in the Arboricultural Impact Assessment dated 10 March 2018 prepared by The Ents Tree Consultancy)

Victoria Ave frontage: 4 x *Ulmus parvifolia* forward of the New Office Building to supplement existing street tree planting.

- ii) The trees shall:
 - (a) Have a minimum container size of 100 litres and grown to NATSPEC 2 “Guide Specifying Trees”, (2003).
 - (b) Be planted in accordance with WCC Landscape Specification 08/2007 “Street Tree Planting”.
 - (c) Be planted generally in alignment with other street trees.

(Reason: Landscape amenity, tree canopy recruitment)

74. Tree Planting

Prior to the issue of any Occupation Certificate, trees are to be planted in accordance with the following table:

No. Required	Species	Location	Min Pot Size
All trees	As indicated on the approved Landscape Plan	As indicated on the Landscape Plan	75 litre

(Reason: Landscape amenity)

75. Acoustic Works – Report

Prior to the issue of any Occupation Certificate, certification shall be provided upon completion of the works, accompanied with evidence from suitably qualified and practising acoustic engineer, to the effect that the acoustic attenuation has been carried out in accordance with the Acoustic Report 36392-syd-n by Wood & Grieve Engineers dated 1 May 2018.

That is to include as a minimum glazing for the;

Hotel – 8.38mm Laminated with RW 34
Commercial - 8.38mm Laminated with RW 34

(Reason: Amenity, environmental compliance and health)

76. Noise Emission – Equipment

Prior to the issue of any Occupation Certificate, certification shall be provided from a suitably qualified acoustic engineer certifying that the noise from all sound producing plant, equipment, machinery and/or mechanical ventilation system complies with the relevant noise criteria.

(Reason: Amenity, environmental compliance and health)

77. Certification – Ventilation

Prior to the issue of any Occupation Certificate, certification shall be provided from a suitably qualified mechanical engineer certifying that all work associated with the installation of the mechanical and/or natural ventilation systems has been carried out in accordance with the relevant Australian Standards and or alternative solution.

(Reason: Amenity, environmental compliance and health)

78. Waste & Recycling Room

Prior to the issue of any Occupation Certificate, the waste and recycling container room shall be constructed to comply with all the relevant provisions of Willoughby Development Control Plan and in particular :-

- (a) The floor being graded and drained to an approved drainage outlet connected to the sewer and having a smooth, even surface, coved at all intersections with walls.
- (b) The walls being cement rendered to a smooth, even surface and coved at all intersections.
- (c) Cold water being provided in the room with the outlet located in a position so that it cannot be damaged and a hose fitted with a nozzle being connected to the outlet.
- (d) An overhead type door being provided to the room having a clear opening of not less than 1.8m.
- (e) A galvanised steel bump rail at least 50 mm clear of the wall being provided at the height of the most prominent part of the garbage containers.
- (f) Mobile Waste Containers or Bulk Bins must have the capacity to store waste volume for the development as calculated in accordance with Part C.8 of the Willoughby Development Control Plan and suitable for connection to the garbage collection vehicle being provided in the room. In addition suitable recycling containers must also be provided in the room.

(Reason: Health and amenity)

79. Compactors

Council does not provide compactor bins or machinery. Supply, maintenance and replacement of compactor bins and machinery is the responsibility of the building owner.

A compaction ratio of 1.5:1 is recommended

(Reason: Information)

80. Waste/Recycling Compliance Documentation

Evidence of disposal from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim/final Occupation Certificate.

(Reason: Environment protection/waste reduction)

ONGOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land, and relevant legislation.

81. Annual Fire Safety Statement

Attention is directed to Clause 177 of the *Environmental Planning and Assessment Regulation 2000* regarding the submission of an Annual Fire Safety Statement in relation to each essential fire safety measure implemented in the building or on the land on which the building is situated.

(Reason: Safety)

82. Car Spaces Allocation

The approved car spaces must be allocated as follows:

- a) A minimum of 286 car spaces are to be provided for the existing and proposed commercial/office/retail uses (inclusive of the hotel).
- b) A minimum of 40 car spaces (excluding 2 pick-up and drop-off bays) of the total car parking spaces are to be allocated to the hotel development.
(Reason: Car parking management)

83. Motor Cycle Parking

A minimum of eleven (11) parking space must be provided for motor cycle parking. These spaces are to have an area of 1.2 metres x 3 metres.
(Reason: Amenity)

84. Bicycle Lockers

The provision of ninety eight (98) bicycle locker, showers and change facilities for the use of hotel patrons, visitors and workers to the premises shall be provided.
(Reason: Amenity)

85. Provision of Bicycle Rail Racks

A minimum of seventeen (17) bicycle rails racks for visitors shall be provided for the use of cyclists.
(Reason: Amenity)

86. Staff Parking

Employees are not to be denied the right to use a parking space provided for staff parking purposes in accordance with the Willoughby Development Control Plan Part C.4 subject to such parking space not having been otherwise allocated to another staff member.
(Reason: Ensure compliance)

87. Accessibility to Car Parking Spaces

In perpetuity, the car parking spaces are to be accessible during all hours of operation of the business.
(Reason: Ensure compliance)

88. Illumination of Building or Car Park

Illumination of any part of the building or car parking areas is to be designed so as to avoid glare adversely affecting nearby residents.
(Reason: Amenity)

89. Site Lighting

Any lighting on the site is to be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.
(Reason: Amenity)

90. Amenity - No Music or Other Noise

No music or other noise being directed out over the footpath of the adjoining street or other public places.

(Reason: Amenity)

91. Signs

A separate Development Application shall be submitted to Council for approval in respect of any proposed advertising sign which will be visible from a public place to be designed to comply with Willoughby Development Control Plan. Please note that a separate DA is not required for signs which are "Exempt Development" as defined under S4.1(1) of the *Environmental Planning and Assessment Act 1979*.

(Reason: Ensure compliance)

92. Liquor Licence

No approval is implied or granted for the hotel to operate as a Licenced premise. A separate approval from the Office of Liquor and Gaming NSW shall be obtained for such.

(Reason: Compliance)

93. Hours of Operation

The hours of operation of the hotel and the associated outdoor terraces are to be restricted to those times listed below, i.e.:

- (i) The hours of operation of the **hotel** (accommodation and Concierge facility) is restricted to:

24 hours per day - Seven (7) days a week.

- (ii) The hours of operation of the **outdoor/rooftop terraces** is restricted to:

7:00am to 10:00pm – Seven (7) days a week.

Any variation to these hours is to be subject to the prior consent of Council.

(Reason: Amenity and Acoustic Privacy)

94. Revised Plan of Management

The Plan of Management for the hotel is to be revised and submitted to the Certifying Authority with the Construction Certificate Application to include the following:

The Revised Plan Management of Plan shall include:

- The hours of operation of the outdoor terraces;
- The procedure to enforce the hours of operation of the outdoor terraces;
- Mitigation measures, procedures and actions to deal with anti-social behaviour emanating from the hotel;
- Procedures, measures and a specified time-frame action for dealing with complaints filed in the "Complaints and Incident Register";

- A minimum of forty (40) parking spaces and two (2) pick-up and drop-off bays are allocated and sign-posted for the hotel.
- Procedures and measures to ensure the hotel patrons are dropped off and picked up from the designated bays within the basement.

Copies of the revised Plan of Management must be provided to the hotel manager, made available to Council upon request, and made available to all hotel staff.
(Reason: Operation management, Amenity)

95. Loading and Unloading

In perpetuity, loading and unloading of goods is to be conducted wholly within the site and especially in any loading facility, internal dock or goods handling area. These areas are to be maintained free of obstruction for the sole use of delivery vehicles. Under no circumstances are loading/unloading activities to be conducted from vehicles standing kerbside in Victoria Avenue and Brown Street or from any appurtenant right of way.
(Reason: Access and amenity)

96. Noise Control – Offensive Noise

To minimise the noise impact on the surrounding environment, the use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to an “offensive noise” as defined under the provisions of the *Protection of the Environment Operations Act 1997*.
(Reason: Amenity)

97. Mechanical Ventilation Systems Comprising Water Cooling

Mechanical ventilation systems comprising water cooling, and/or evaporative cooling systems shall be registered with Council on completion of the installation in accordance with the requirements of the *Public Health Act 2010* and *Public Health Regulation 2012*.
(Reason: Health protection)

98. Mechanical Ventilation – Provisions for Future Use of Commercial/Retail Tenancy

The base building design shall include provisions for the installation of mechanical ventilation to any commercial/retail tenancy where it may be approved to be used as a food premises or any other use which requires mechanical ventilation. The provisions shall allow any mechanical ventilation system installed to discharge vertically and comply with the requirements of the National Construction Code and any relevant Australian Standard.
(Reason: Amenity/Ensure compliance)

99. Swimming Pool registration

The swimming pool shall be registered with Council on completion of the installation in accordance with the requirements of the *Public Health Act 2010* and *Public Health Regulation 2012*.
(Reason: Health Protection)

100. Waste Materials

In perpetuity, no waste materials are to be stored outside the approved waste storage area at any time. The garbage receptacles are not to be used for the disposal of any type of liquid waste.

(Reason: Health and Amenity)

101. Refuse Collection Point

A suitable refuse collection point, adjacent to the garbage room(s), must be provided within the building envelope. The loading operation, including the movement of garbage receptacle must take place on a level surface away from gradients and vehicle ramps. No waste/recycling is to be placed on the public footpaths, roadways, plazas, reserves or building colonnade areas, at any time. All garbage receptacles must be returned to the garbage storage area within the property after the bins are serviced.

(Reason: Health and amenity)

102. Removal of Trade Waste

The building/business owner must ensure that there is a contract either with Council or a licensed contractor for the removal of trade waste. No garbage shall be placed on the public footpaths, roadways, plazas, reserves at any time.

(Reason: Health and amenity)

PRESCRIBED CONDITIONS

The following conditions are prescribed by Section 4.17 of the Environmental Planning & Assessment Act for developments involving building work.

103. Compliance with National Construction Code

All building works must be carried out in accordance with the performance requirements of the National Construction Code.

(Reason: Compliance)

STATUTORY REQUIREMENTS

The following advisory notes are statutory requirements of the Environmental Planning & Assessment Act and the Environmental Planning & Assessment Regulations and are provided to assist applicants

104. Construction Certificate Required

This consent IS NOT an approval to carry out any building works. A Construction Certificate may be required PRIOR TO ANY WORKS BEING COMMENCED.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 9777 1000.

(Reason: Ensure compliance and statutory requirement)

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

105. Notify Council of Intention to Commence Works

In accordance with the provisions of Section 6.6 of the *Environmental Planning and Assessment Act 1979* the person having the benefit of the development consent shall appoint a Certifying Authority and give at least 2 days' notice to Council, in writing, of the person's intention to commence the erection of the building.

(Reason: Information and ensure compliance)

106. Occupation Certificate

The building/structure or part thereof shall not be occupied or used until an interim occupation / final occupation certificate has been issued in respect of the building or part.

(Reason: Safety)

SNPP REPORT

475-501 Victoria Avenue, CHATSWOOD NSW 2067.

ATTACHMENT 8: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2018/158

At: 475-501 Victoria Avenue, CHATSWOOD



Comments:

Created on : Monday, 28 May 2018

Created by : DR

Caveat

The information represented in this map has been provided in good faith. Detailed records relating to this Development Application are recorded in Council's "Pathway" software application and this data should be seen as Council's official source of information relating to this Development Application.

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