

**SNPP REF:** PPSSNH-333  
**COUNCIL** WILLOUGHBY CITY COUNCIL  
**DA NO:** DA-2022/240  
**ADDRESS:** 42 ARCHER STREET CHATSWOOD  
**PROPOSAL:** DEMOLITION OF EXISTING RESIDENTIAL FLAT BUILDING AND CONSTRUCTION OF A 26-STOREY BUILDING COMPRISING COMMUNITY FACILITIES FROM GROUND LEVEL TO LEVEL 3, RESIDENTIAL COMMUNAL OPEN SPACE AT LEVEL 3, 42 RESIDENTIAL UNITS ABOVE, AND 4 LEVELS OF BASEMENT CARPARKING.  
**RECOMMENDATION:** REFUSAL  
**ATTACHMENTS:**  

1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS, DEVELOPER CONTRIBUTION & REFERRALS
3. SEPP 65 ASSESSMENT AND APARTMENT DESIGN GUIDE
4. ASSESSMENT UNDER SEPPS, WLEP 2012 & WDCP
5. SUBMISSIONS TABLE
6. SECTION 4.15 (79C) & 4.55 ASSESSMENT
7. REASONS FOR REFUSAL
8. NOTIFICATION MAP

**RESPONSIBLE OFFICER:** AKSHAY BISHNOI - TEAM LEADER  
**AUTHOR:** PETER WELLS - CONSULTANT PLANNER  
**REPORT DATE:** 12 JULY 2023  
**MEETING DATE:** 19 JULY 2023

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## **1. PURPOSE OF REPORT**

The purpose of this report is to seek determination by Sydney North Planning Panel (SNPP) of Development Application DA-2022/240 for demolition of existing residential flat building and construction of a 26-storey building comprising community facilities from ground level to level 3, residential communal open space at level 3, 42 residential units above, and 4 levels of basement carparking.

The application is referred to the SNPP for determination because the capital investment value is more than \$30 million.

## **2. OFFICER'S RECOMMENDATION**

**THAT the Sydney North Planning Panel:**

**2.1 Refuse Development Application DA-2022/240 for DEMOLITION OF EXISTING RESIDENTIAL FLAT BUILDING AND CONSTRUCTION OF A 26-STOREY BUILDING COMPRISING COMMUNITY FACILITIES FROM GROUND LEVEL TO LEVEL 3, RESIDENTIAL COMMUNAL OPEN SPACE AT LEVEL 3, 42 RESIDENTIAL UNITS ABOVE, AND 4 LEVELS OF BASEMENT CARPARKING at 42 Archer Street Chatswood, for reasons contained in Attachment 7.**

### **3. BACKGROUND**

#### **Strategic planning in Chatswood**

1. The Architectus Report was finalised on 22 January 2018. The Architectus Report is a Planning and Urban Design Study of the Chatswood CBD in which Architectus reviews the planning framework that controls the development of the Chatswood CBD, and identifies, inter alia, the opportunities and constraints that impact on development in the Chatswood CBD. It also recommends a planning framework that may be implemented by Council to ensure that Chatswood “*sustainably grows as a competitive strategic centre of Sydney*” (pg6).
2. In March 2018, the Greater Cities Commission’s *North District Plan* was released which required all councils in the first instance to prepare a Local Strategic Planning Statement (**LSPS**).
3. On 10 February 2020, Council adopted the *Willoughby City Local Strategic Planning Statement (Willoughby LSPS)*, with support received from the Greater Sydney Commission on 20 March 2020. The Willoughby LSPS sets a 20-year vision with priorities and actions for the entire Local Government Area (**LGA**).
4. The Willoughby LSPS is aligned with the Council’s *Community Strategic Plan – Our Future Willoughby 2028 (Community Strategic Plan)*. The Community Strategic Plan identifies the priorities and aspirations of the community and the broader strategic direction of Council to align the delivery of policies, programs, projects and services. The LSPS specifies how its directions implements the actions from the Community Strategic Plan.
5. On 9 July 2020 the (then) Department of Planning, Industry and Environment endorsed the Chatswood CBD Strategy 2036. In September 2020, the Chatswood CBD Strategy 2036 received its final endorsement from Council. The Chatswood CBD Strategy 2036 seeks to inform amendments to the existing planning controls to provide capacity for the future growth of Chatswood and seeks to achieve exceptional design outcomes and a distinctive, resilient and vibrant CBD.

6. The Chatswood CBD Strategy 2036 identifies 11 different precincts with specific setbacks and street wall heights – designed to meet the envisioned outcomes of each precinct.
7. The Chatswood CBD Strategy 2036 informed the preparation of the Draft WLEP and Draft WDCP which update and refine the Council's planning controls to, inter alia, provide capacity for additional homes and employment growth in well-served areas to meet State Government targets.
8. Key components of the revised controls and uplift in development capability identified in the Draft WLEP and Draft WDCP include (a) the introduction of a design review process to improve design quality to achieve design excellence, and (b) affordable housing. In this sense, the Draft WLEP and Draft WDCP deliberately seeks to balance increase in density with a design excellence process and public benefits from affordable housing to ensure positive outcomes for Chatswood.
9. On 9 December 2019, Council adopted the *Willoughby Housing Strategy* and it was endorsed by the (then) Department of Planning, Industry and Environment (**DPIE**) in May 2021.
10. On 10 August 2020, Council adopted the *Willoughby Integrated Transport Strategy*, which provides the Council's overarching strategic framework for transport planning and initiatives across the LGA to 2036. The *Willoughby Integrated Transport Strategy* informs the Draft WLEP in relation to the management of transport with growth. It assists by defining the Council's transport and mobility related initiatives over the short, medium and long term.
11. In 2020, Council prepared a planning proposal (PP-2021-6242) which proposed amendments to the WLEP and WDCP, being the Draft WLEP and Draft WDCP (**Planning Proposal**).
12. At its meeting on 14 December 2020, Council resolved to forward the Planning Proposal to the (now) Department of Planning and Environment (**DPE**) for Gateway determination.
13. On 24 December 2021, the Planning Proposal received Gateway determination, with the delegate of the Minister for Planning determining that the Planning Proposal should proceed subject to conditions.
14. At its meeting on 15 June 2021, Council endorsed the Draft WDCP for exhibition along with the Draft WLEP.

15. The Draft WLEP and Draft WDCP were placed on public exhibition from 15 March 2022 to 8 June 2022.
16. The Draft WLEP and Draft WDCP reflect the recommendations in numerous existing strategies either adopted by the Council or by the State government which are referred to in the LSPS, including the Chatswood CBD Strategy 2036, the *Willoughby Housing Strategy*, and the *Willoughby Integrated Transport Strategy* which are referred to above, as well as:
  - a. the Willoughby Local Centres Strategy;
  - b. the Willoughby Industrial Lands Strategy; and
  - c. the St Leonards Crows Nest 2036 Plan.

On 28 March 2022, Council resolved to adopt the *Willoughby Planning Agreement Policy* and *Willoughby Planning Agreement Policy - Procedures Manual (VPA Policy 2022)* which repealed the Council's former policy dated 2013. Under the VPA Policy 2022, a "*Community Infrastructure Contribution*" (**CIC**) would apply to proponents seeking approval for additional gross floor area on land in the Chatswood CBD (see page 5).

17. On 12 December 2022, Council resolved to approve the amendments to the exhibited Draft WLEP and forward the combined document to DPE for finalisation.
18. As at the date of filing these contentions, the Planning Proposal has not yet been submitted to DPE or the NSW Parliamentary Counsel's Office.

#### **The DA**

19. The DA was lodged with Council on or about 8 August 2022.
20. The DA was notified in accordance with the Council's Community Engagement Framework for a period of 21 days from 24 August 2022 to 14 September 2022.
21. Council received 11 objections within the exhibition period. A further 3 objections were submitted between 15 September and 11 October 2022.
22. The DA has a Capital Investment Value of \$47,498,542.00, and accordingly was referred to the Sydney North Planning Panel (**Panel**) on or about 11 August 2022.
23. In September 2022, the Panel conducted a 'Kick-Off Briefing' attended by representatives of the Applicant and the Council. The principal issue discussed at this meeting was Council's concern that the DA was premature and should wait for finalisation of the proposed amendments to the WLEP which were not, in Council's opinion, imminent and certain.

24. On 19 October 2022, the Panel conducted a further briefing attended by representatives of the Applicant and the Council. The timing of Council's amendment to the WLEP was discussed further on this occasion.
25. On 4 November 2022, representatives of the Applicant attended a 'Pre-Planning Proposal Lodgement Meeting' with Council. The Applicant has not lodged any planning proposal in respect of the Site.
26. On 15 November 2022, the Applicant commenced these Class 1 proceedings appealing against the deemed refusal of the DA.
27. On 23 May 2023, a section 34 Conciliation Conference was held. The applicant submitted without prejudice material package prior to the meeting.
28. The parties experts were directed by the Commissioner to engage in discussions over the contentions and the extent to which the without prejudice package addressed various matters. Council experts explained to the Applicant's team, and the Court, the various issues with the proposal with respect to urban design, landscaping/arboriculture, engineering (civil and traffic), planning, and waste.
29. Commissioner Horton made the following directions:
  - 25 May 2023 – Applicant to provide summary of amendments it proposes to undertake arising from the discussion at the conciliation.
  - 25 May 2023 – Council must confirm the minimum headroom and gradient of ramp required by Council's waste consultants to be feasible, and any outstanding information.
  - 30 May 2023 – Council must reply to Applicant's letter of 25 May 2023 advising whether the proposed amendments are supported by Council.
  - 14 June 2023 – Applicant to provide amended material to Council's solicitors.
  - 21 June 2023 – Parties to come before the Court for mention at 4:15pm.

Council satisfied its obligations with respect to the above timetable.

Following Commissioner Horton's directions at the s 34, Council was to receive an amended package by 14 June 2023 with mention on 21 June 2023. The Applicant proposed to provide Council with the amended package by 28 June 2023 with mention on 5 July 2023.

On 14 June 2023, Council requested the Commissioner terminate the s 34, and that the matter be listed for second directions so that the parties can seek dates for a final hearing. The applicant did not agree that the s34 should be terminated.

On 5 July 2023, Commissioner Horton made orders to terminate the s34, and set the matter down for second directions on Wednesday 19 July 2023.

On 30 June 2023 Willoughby Local Environmental Plan 2012 (Amendment No 34) was made. The effect is that the subject site is zoned MU1 Mixed Use, FSR 6:1, and Height of building

90m. Clause 1.8A (2) WLEP confirms that an amendment in Willoughby Local Environmental Plan 2012 brought by Amendment 34 does not apply to a development application made, but not finally determined, before the commencement of that plan. Therefore, the amended WLEP 2012 does not apply to DA-2022/240.

A description of the site and surrounding area, including an aerial photograph is contained in **Attachment 1**.

#### **4. DESCRIPTION OF PROPOSAL**

1. The DA seeks consent for the demolition of the existing 4-storey residential flat building on a site at 42 Archer Street, Chatswood, and construction of a 26-storey mixed use building comprising 42 residential units (21 x 2 bed; 20 x 3 bed; 1 x 5 bed) over four levels of basement parking (**Proposed Development**).
2. A breakdown of the proposal is as follows:

Basement 04 (FFL RL 78.15)	9 car spaces, comprising: <ul style="list-style-type: none"><li>- 7 residential spaces all accessible</li><li>- 2 community facility spaces</li></ul> 1 x car wash bay Private storage (19 compartments) Lifts and stairs Tanks and plant below floor Vehicular access ramp
Basement 03 (FFL RL 81.15)	9 car spaces, comprising: <ul style="list-style-type: none"><li>- 7 residential spaces all accessible</li><li>- 2 community facility spaces</li></ul> 1 x motorbike space Private storage (19 compartments) Lifts and stairs Vehicular access ramp
Basement 02	9 car spaces, comprising:

(FFL RL 84.15)	<ul style="list-style-type: none"> <li>- 7 residential spaces all accessible</li> <li>- 2 community facility spaces</li> </ul> <p>1 x motorbike space</p> <p>8 x bicycle spaces</p> <p>Private storage (4 compartments)</p> <p>Lifts and stairs</p> <p>Vehicular access ramp</p> <p>Plant</p>
<p>Basement 01</p> <p>(FFL RL 87.15)</p>	<p>2 car spaces, comprising:</p> <ul style="list-style-type: none"> <li>- 1 residential (accessible)</li> <li>- 1 community facility space (accessible)</li> </ul> <p>Waste storage room (residential)</p> <p>Waste storage room (non-residential)</p> <p>Waste holding room</p> <p>Bulky good storage room</p> <p>Vehicular turntable</p> <p>Plant including fire tank and fire pump room</p> <p>OSD tank</p> <p>Lifts and stairs</p> <p>Vehicular access ramp</p>
<p>Ground Floor Level</p> <p>(FFL RL 91.35 and RL 91.87)</p>	<p>Residential lobby (107m<sup>2</sup>) including access to residential lifts</p> <p>Secondary community facility lobby with lift access</p> <p>Lifts and stairs</p> <p>Services</p>

	<p>2 x community facilities (87m<sup>2</sup>, 46m<sup>2</sup>)</p> <p>Substation</p> <p>Plant including main switch room, condenser room, fan room, carpark mechanical exhaust intake, fire control room.</p> <p>Driveway</p> <p>Vehicular access ramp</p> <p>Through site link</p> <p>Landscaping</p>
<p>Level 01</p> <p>(FFL RL 96.20)</p>	<p>1 x community facility tenancy (164m<sup>2</sup>)</p> <p>Upstairs level to 2 x community facility tenancies located at ground floor (118m<sup>2</sup>, 69m<sup>2</sup>)</p> <p>Community facility lobby</p> <p>Lifts and stairs</p> <p>Services</p> <p>Green roof over vehicular access ramp</p>
<p>Level 02</p> <p>(FFL RL 99.70)</p>	<p>2 x community facility tenancies (218m<sup>2</sup>, 165m<sup>2</sup>)</p> <p>Community facility lobby</p> <p>Lifts and stairs</p> <p>Services</p>
<p>Level 03</p> <p>(FFL RL 104.20)</p>	<p>1 x community facility tenancy (136m<sup>2</sup>) with balcony (17m<sup>2</sup>)</p> <p>Residential outdoor space with undercroft barbecue area and open lawn area and plunge pool (206m<sup>2</sup>)</p>



	Residential and community facility lobby  Lifts and stairs  Services
Level 04 to 23 inclusive  (20 storeys at 3200mm floor-to-floor)	40 residential units (20 x 2 bed, 20 x 3 bed)  Residential lobby  Lifts and stairs  Services  Waste room
Level 24  (FFL RL 171.70)	2 residential units (1 x 2 bed, 1 x 5 bed)  Residential lobby  Lifts and stairs  Services  Waste room
Level 25  (FFL RL 174.90)	Upstairs of 5-bed unit located on Level 24  Residential outdoor space with barbecue area and pergola over (109m <sup>2</sup> )  Residential lobby  Lifts and stairs  Services
Roof plan  (RL 178.25, RL 179.80, RL 180.55)	Lift overruns  Plant  PV panels  Pergola over eastern portion of roof  Skylight to unit below

The controls and development statistics that apply to the subject land, as well as referrals, are provided in **Attachment 2**.

A SEPP 65 and ADG assessment is provided in **Attachment 3**.

An LEP/DCP assessment is provided in **Attachment 4**.

A public submissions table and the assessing officer's response is contained in **Attachment 5**.

A s4.15 assessment of the proposal is provided in **Attachment 6**.

The reasons for refusal are provided in **Attachment 7**.

A notification map is provided in **Attachment 8**.

## **5. CONCLUSION**

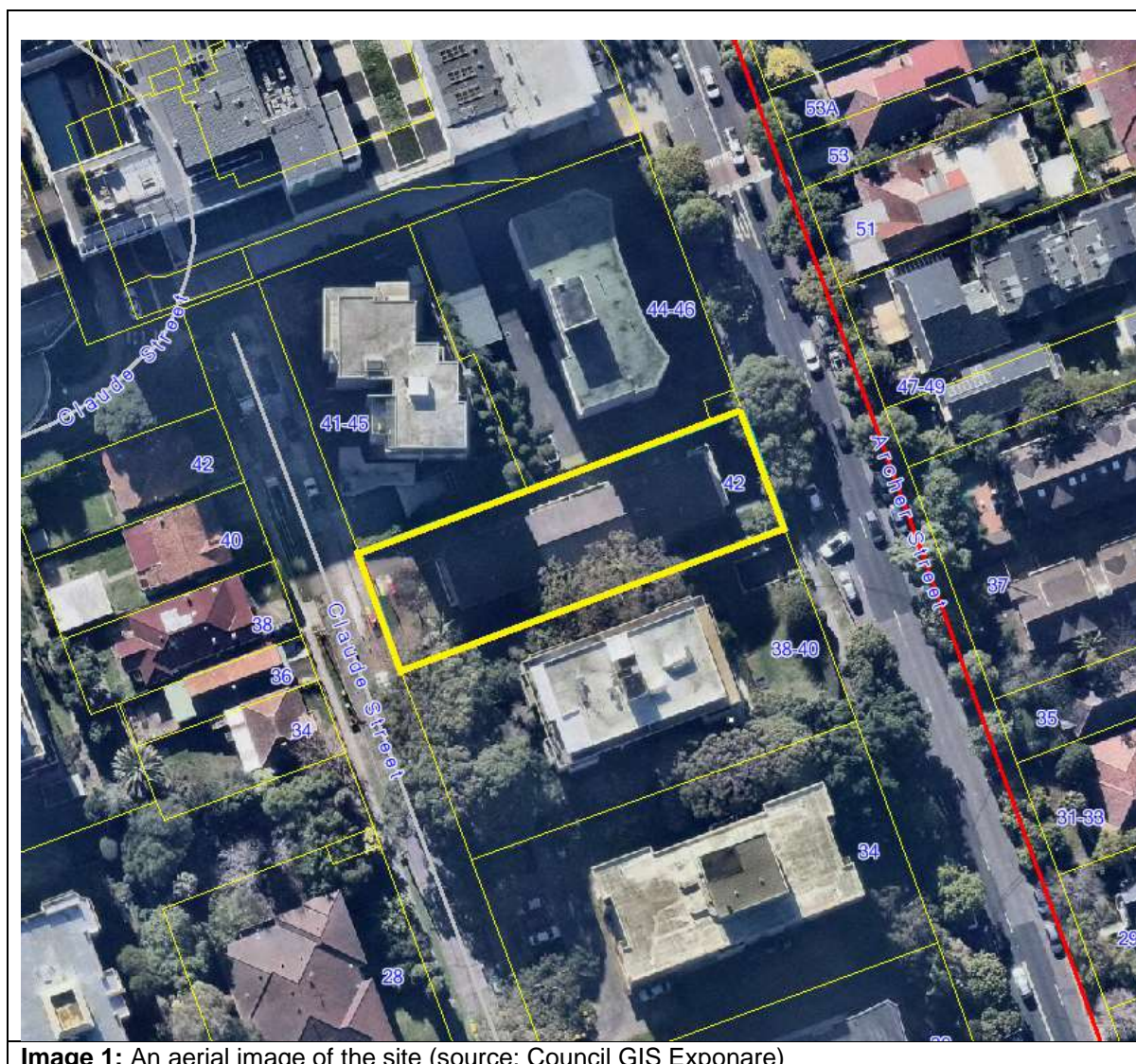
The Development Application DA-2022/240 has been assessed in accordance with Section 4.15 (79C) of the Environmental Planning and Assessment Act 1979, SEPP 65, WLEP 2012, Draft WLEP 2012, WDCP, and other relevant codes and policies.

The LEP as made would apply to the development application if it were made today, but the subject application is saved from the new controls due to the saving provisions. A development seeking to leverage the fresh controls should do those things that underpin the fresh controls, such as (inter alia) design excellence, affordable housing and the like. This application does not do this – instead, it “cherry picks” what it wants from the uplift in development capacity but stops short of delivering the requirements that are tethered to (and cannot be severed from) the uplift. It is not in the public interest to support the application.

It is considered that the proposal is unacceptable for the reasons provided in **Attachment 7** and should be refused.

## ATTACHMENT 1: SITE DESCRIPTION AND SURROUNDS

1. The DA relates to land at 42 Archer Street, Chatswood, which is legally known as SP4747 (**Site**).
2. The Site is located on the western side of Archer Street, between Johnson Street and Albert Avenue. It has 2 street frontages (Archer Street and Claude Street).
3. The Site is rectangular in shape and has:
  - a. an area of 1,115m<sup>2</sup>;
  - b. a frontage of 18.29m to both Archer Street and Claude Street, and a length of 60.96m; and
  - c. a fall of approximately 2.06m to the east at an average gradient of 3%.
4. There is presently a 4-storey residential flat building on the Site. The residential flat building is strata titled.
5. The existing vehicular access to the Site is via Claude Street.
6. The Site is located in close proximity to the South Chatswood Heritage Conservation Area (C11), being 94m from Bertram Street and 126m from Johnson Street.
7. A heritage item is located at 27 Archer Street (I56) identified for local significance as "*House (including original interiors)*". There are also other heritage items in proximity to the Site, including at:
  - a. 34 Neridah Street (I103) "*House (including original interiors)*";
  - b. 28 Neridah Street (I102) "*House (including original interiors)*";
  - c. 15 Johnson Street (I78) "*House (including original interiors)*";
  - d. 17 Johnson Street (I79) "*House (including original interiors)*";
  - e. 34 Johnson Street (I80) "*House (including original interiors)*";
  - f. 28 Albert Avenue (I51), "*House (including original interiors)*"; and
  - g. 34 Albert Avenue (I52), "*House (including original interiors)*".
8. The Site is identified within the Chatswood CBD Planning and Urban Design Strategy – Final Report by Architectus (**Architectus Report**), as one of the "*Sites too small or isolated for significant development*" (page 109).



**Image 1:** An aerial image of the site (source: Council GIS Exponare)

## ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS

<b>WLEP 2012 Zoning:</b>	R4 High Density Residential  Note: The zoning of the site was changed to MU1 Mixed Use zone (changed from on 30 June 2023 via WLEP 2012 Amendment 34)
Site Area (SCC footprint)	1,115m <sup>2</sup>
Permissibility	Residential flat buildings and Community facilities are permitted in the R4 zone.
Additional Permitted Use	N/A
Conservation area	NO
Aboriginal Heritage	NO
Heritage Item	NO
Vicinity of Heritage Item	NO
Natural Heritage Register	NO
Bushfire Prone Area	NO
Flood related planning control	NO
Foreshore Building Line	NO
Adjacent to classified road	NO
Road/lane widening	NO
BASIX SEPP	YES
Infrastructure SEPP - Rail	NO
Infrastructure SEPP - Road	NO
Development near Lane Cove Tunnel	NO
Contaminated Land	NO
Adjacent / above Metro	NO
Land Issues - Exponare	NO
Other relevant ACTS, SEPPS & EPIs	<ul style="list-style-type: none"> <li>a. <i>Environmental Planning &amp; Assessment Act 1979 (EP&amp;A Act);</i></li> <li>b. <i>Environmental Planning and Assessment Regulation 2021 (EP&amp;A Reg);</i></li> <li>c. <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021;</i></li> <li>d. <i>State Environmental Planning Policy (Resilience and Hazards) 2021;</i></li> <li>e. <i>State Environmental Planning Policy (Transport and Infrastructure) 2021;</i></li> </ul>

	<p>f. <i>State Environmental Planning Policy (Planning Systems) 2021</i>;</p> <p>g. <i>State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (SEPP 65)</i>, and the Apartment Design Guide (ADG);</p> <p>h. <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>;</p> <p>i. <i>Willoughby Local Environmental Plan 2012 (WLEP)</i> ;</p> <p>j. <i>Draft Willoughby Local Environmental Plan (Draft WLEP)</i>;</p> <p>k. <i>Willoughby Development Control Plan (WDCP)</i>; and</p> <p>l. <i>Draft Willoughby Development Control Plan (Draft WDCP)</i>.</p>
Relevant DCPs policies and resolutions	WDCP

## Referrals

### Internal referrals

	<p><b><u>Stormwater Comments</u></b></p> <p>The above application has been investigated with respect to aspects relevant to this Division. It is advised that the following matters shall be addressed by the applicant prior to further assessment:</p> <ol style="list-style-type: none"> <li>1) In order to prevent any backwater effects, invert level of the discharge orifice must be designed so that it is set above the HGL of the downstream drainage system where the top of kerb level is to be used as the tailwater level when connecting into the underground drainage system. No submerged condition and/or the use of non-return valve will be permitted. AS such, the OSD system must be redesigned to comply with the above requirement.</li> <li>2) Basement pump out system including supporting calculations and pump specification must be provided.</li> </ol> <p>Revised stormwater plans addressing the above issue shall be submitted to Council for further assessment.</p>
Engineer ring	

### **Vehicular Access**

Preliminary assessment of the submitted architectural drawings has identified the following matters which shall be addressed by the applicant prior to further assessment:

- 1) A minimum 5.5m wide driveway must be maintained for the first 6 metres from the property boundary which then transition into a single 3.5m width driveway leading into the basement. These required dimensions must be clearly depicted on the drawings. In this regard, the Community Facilities WC/Carparking Exh. shall be redesigned to comply with this requirement.
- 2) The waiting bay shall have a minimum length of 6 metres with a maximum grade of 1 in 20 (5%) provided so that a B99 vehicle can stand wholly within the waiting bay and enter the driveway ramp without having to reverse onto the road reserve. As such, revised swept path diagrams must be provided demonstrating the following:
  - a) A B99 vehicle standing wholly within the waiting bay, allowing another B99 vehicle exiting the site from the driveway ramp.
  - b) A B99 vehicle standing at the same location within the waiting bay and entering into the driveway ramp without having to reverse onto the road reserve.
- 3) Dimensions of each parking space, aisle width and blind aisle shall be provided showing compliance with AS2890.1. In this regard, these required dimensions and the design envelope around parked vehicles as per Figure 5.2 of AS2890.1 are to be clearly depicted on each basement levels.
- 4) A 10.5m long waste collection truck shall be designed for waste collection. Further, the sole reliance of a mechanical turntable for the waste collection truck to ingress and egress the site in a forward direction is not supported. In this regard, the applicant must redesign the bin storage room to cater for a 10.5m long waste collection truck and provide swept path diagrams demonstrating that the truck can enter and egress the waste storage room in a forward direction with multiple turns in the event of the turntable's malfunction.
- 5) Intersection between driveway and ramps, and with parking aisles shall be designed so that both the approach driveway and the intersection area are wide enough to accommodate turning vehicles from both directions simultaneously with adequate sight distance. In this regard, revised swept path diagrams must be provided demonstrating that a B85 vehicle is able to pass a B99 vehicle simultaneously at all intersections in each basement level.

Revised architectural plans addressing the above issues shall be submitted to Council for further assessment.

### **Other Comments**

It is noted from the submitted geotechnical report that temporary ground anchors will probably be required for this development to support the shoring

	walls. In this regard, the applicant shall either provide owner's consent from all adjoining properties granting consent for placing such anchors or submit structural report and drawings showing that internal bracing and/or propping within the site can be achieved.
Traffic	<ul style="list-style-type: none"> <li>• WCC requires all new dwellings must install a 3-phase electricity supply to make provision for a dedicated electric vehicle (EV) charger.</li> <li>• I am not convinced the site can accommodate vehicle movements around the site.</li> </ul>
Building Services	No objections, conditions issued.
Landscape	<p>The application seeks consent for demolition of existing structures and construction of a 26 storey building with community facilities.</p> <p>Concern is raised with regard to the proposed landscape works and protection of existing trees.</p> <p>The Landscape Plans are difficult to read with regard to proposed planting over the site. The plans appear to rely on graphic symbols to identify proposed planting, however the Key to the symbols is too small to enable identification of proposed plants. It is noted that trees are indicated via letter code, but it appears that some areas where trees are indicated are not keyed out to identify proposed trees.</p> <p>The basement, which comprises 4 levels of structure underground is indicated to extend to the width of the site on the northern and southern boundaries and near to the extents of the eastern and western boundaries. The results in the majority of planting be over slab. No indication of proposed soil depth is provided and in some cases, it appears that no soil depth is proposed (e.g. OSD tank as indicated on the stormwater plans and landscape levels as indicated on the architectural sections).</p> <p>In general terms, the proposed landscape areas are considered inadequate, in terms of soil depth and area, to accommodate tall canopy trees typical of the area. Such trees are considered important to assist with integrating the development into the streetscape and provide a compatible landscape setting for a building of this height. No tall canopy trees are indicated on the landscape plans.</p> <p>The Arborist's Report indicates that several trees are required to be removed to accommodate the works.</p> <p>One of these trees, Tree 13, is indicated to be an A Category tree (worthy of being a material constraint) and is located on the adjoining property. Being outside of the subject site removal of the tree could not be supported.</p> <p>Trees 8,9 and 10 are High Significance trees located on the adjoining property. As the proposed basement is to extend to the property boundary, it is difficult to see how the trees can be retained due to the excavation and due to the extent of pruning that will be required to enable excavation and drilling equipment access, as referred to in the Arborist's Report.</p>



	At this stage, the proposal is not able to be supported with regard to landscape issues.			
Developer Contribution				
	<b>Proposed Development involves:</b> 1. Demolition of existing structures 2. Construction of a mixed-use development comprising 42 dwellings:			
	<b>AH</b>	<b>2-Bed</b>	<b>3-Bed</b>	<b>Notes</b>
	n/a	L4-23; L24	L4-23; L24-25	Affordable Housing (AH) units – 4% residential floor area dedication req'd under Chatswood Strategy (but none nominated so CAN'T apply deduction)
	<b>0</b>	<b>21</b>	<b>21</b>	<b>Total: 42 units</b>
	3. Community facilities throughout ground, L1-L3 levels			
	4. Basement car parking spaces			
	5. Associated landscaping works			
	<b><u>VPA Contribution applies as a result of proposed increased density</u></b>			
	Considering the increased density sought under this development (from existing FSR 1.7:1 to proposed 6:1), the developer should have lodged a site specific Planning Proposal (PP) ahead of the DA to seek for that higher density and allow Council to guide the developer the need to address the increased demand for public infrastructure as a result of this higher density development.			
	In addressing the provision of additional public infrastructure and with the development being located within the Chatswood CBD area, the PP would be subject to the Community Infrastructure Contribution (CIC) under CI 5.9 of the <a href="#">Planning Agreement Policy</a> for funding the needed public works and this contribution would have been secured under a VPA arrangement. The CIC calculation method would be: the additional residential Gross Floor Area (GFA) sought over and above the existing FSR x the adopted CIC rate of \$900/m <sup>2</sup> which will yield approximately <b>\$3,412,195.20</b> . (This includes deduction of floor area proposed for community facilities but excludes any entitled deduction of affordable housing floor area which has not been proposed but required as part of the Chatswood CBD development).			
<b><u>S7.12 Contribution applies to proposed mixed-use development</u></b>				
Although the Statement of Environment Effects states the proposal is a Residential Flat Building (RFB), proposal's ground, L1 to L3 levels contain floor areas designated for community facilities use.				

For this reason, the proposal is considered a mixed-use development, not a RFB, which will be subject to either s7.11 or s7.12, whichever yields the greater amount, in accordance with CI 2.5 and Table 1 of the [Willoughby Local Infrastructure Contribution Plan](#). This clause states that for a DA of mixed-used development resulting in a net increase in dwellings (i.e. a development comprising a mix of non-residential use and increased number of dwellings), either s7.11 or s7.12 will apply. Whichever amount yields more is demonstrated below:

If s7.11 Contribution Calculation	Qty	Proposed
<b>Dwellings / Residents Proposed</b>		<b>dwelling rate</b>
1-bed / studio unit	-	x \$11,045
2-bed unit	21	x \$15,544
3-bed unit	21	x \$20,000
Affordable Housing units – 4% residential floor area dedication req'd under Chatswood Strategy (but none nominated so CAN'T apply deduction)	-	
	42	Subtotal
In accordance with CI 2.9.1 of WLIC Plan, the following credits are given for the		
<b>Credits for demolishing existing structures</b>		<b>Credits - C</b>
		<b>dwelling rate</b>
12 existing units containing 2-bedrooms	12	x \$15,544
(assumption based on numbers of lots in council system and average dwelling size of SP lot area)		L
<b>s7.11 yield amount (with credits given):</b> (i.e. \$746,425.89 minus \$186,529.08)		

## Compared with...

If s7.12 Contribution Calculation		
Costs of Works (excludes professional fees) (based on Construction Cost + 10% GST = \$44,809,945 x 1.1)		
	Location	
	Applicable %	
<b>S7.12 yielding amount based on costs of works:</b>		

As demonstrated above, **\$1,478,728.19** of s7.12 contribution applies to this development because it yields greater amount than s7.11 contribution. Therefore, the following condition should be inserted:

**PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

**S7.12 Contribution**

	<p>Prior to the issue of the Construction Certificate, a monetary contribution is to be paid in accordance with section 7.12 of <i>Environmental Planning and Assessment Act, 1979</i> in the amount of <b>\$1,478,728.19</b> for the purposes of the Local Infrastructure identified in the <i>Willoughby Local Infrastructure Contributions Plan</i>.</p> <p>This contribution is based on 3% of the estimated cost of development, being \$49,290,940 at 27/06/2022 and the adopted <i>Willoughby Local Infrastructure Contributions Plan</i>.</p> <p><u>Indexation</u></p> <p>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.</p> <p>To calculate the indexed levy, the formula used to determine the monetary contribution is set out below:</p> $\frac{\$C_o \times \text{Current CPI}}{\text{Base CPI}}$ <p>Where:</p> <p>\$C<sub>o</sub> = the original development contribution determined by the percentage of the cost of development as set out in the Plan</p> <p>Current CPI = the Consumer Price Index (All Groups Index), Sydney, as published by the ABS at the quarter immediately prior to the date of payment</p> <p>Base CPI = the Consumer Price Index (All Groups Index), Sydney, as published by the ABS at the quarter ending immediately prior to the date of the condition requiring payment of a contribution</p> <p>Deferred payments of contributions will not be accepted.</p> <p>Prior to payment, Council can provide the value of the indexed levy.</p> <p>Copies of the <i>Willoughby Local Infrastructure Contributions Plan</i> are available for inspection online at <a href="http://www.willoughby.nsw.gov.au">www.willoughby.nsw.gov.au</a></p> <p>(Reason: Statutory requirement)</p>
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### External referrals

This letter is Ausgrid's response under clause 45(2) of the State Environmental planning Policy (Infrastructure) 2007.

The assessment and evaluation of environmental impacts for a new development consent (or where a development consent is modified) is undertaken in accordance with requirements of Section 79C of the Environmental Planning and Assessment Act 1979. One of the obligations

upon consent authorities, such as local councils, is to consider the suitability of the site for the development which can include a consideration of whether the proposal is compatible with the surrounding land uses and the existing environment.

In this regard, Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.

Ausgrid consents to the above mentioned development subject to the following conditions:-

### **Proximity to Existing Network Assets**

There are existing underground electricity network assets in ARCHER STREET CHATSWOOD. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

### **Substation**

There are existing electricity substation S3199 next to 42 ARCHER STREET.

There is an existing kiosk style electricity substation that may be impacted by the proposed construction. Subsidence and vibration must be minimised at the substation site. The use of ground anchors under a substation is generally not permitted due to the presence of underground cabling and earthing conductors which may be more than 10m deep. A further area of exclusion may be required in some circumstances.

The substation ventilation openings, including substation duct openings and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS 1668.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings.

In addition to above, Ausgrid requires the substation ventilation openings, including duct openings and louvered panels, to be separated from building ventilation system air intake and exhaust openings, including those on buildings on adjacent allotments, by not less than 6 metres.

Any portion of a building other than a BCA class 10a structure constructed from non combustible materials, which is not sheltered by a non-ignitable blast-resisting barrier and is within 3 metres in any direction from the housing of a kiosk substation, is required to have a Fire Resistance Level (FRL) of not less than 120/120/120. Openable or fixed windows or glass blockwork or similar, irrespective of their fire rating, are not permitted within 3 metres in any direction from the housing of a kiosk substation, unless they are sheltered by a non-ignitable blast resisting barrier.

The development must comply with both the Reference Levels and the precautionary requirements of the ICNIRP Guidelines for Limiting Exposure to Time-varying Electric and Magnetic Fields (1 HZ – 100 kHz) (ICNIRP 2010).

For further details on fire segregation requirements refer to Ausgrid's Network Standard 141.

Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid.

For further details refer to Ausgrid's Network Standard 143.

**For Activities Within or Near to the Electricity Easement:**

**Purpose Of Easement**

This easement was acquired for the 11,000 volt distribution assets currently owned and operated by Ausgrid. The purpose of the easement is to protect the distribution assets and to provide adequate working space along the route of the cables for construction and maintenance work. The easement also assists Ausgrid in controlling works or other activities under or near the distribution cables which could either by accident or otherwise create an unsafe situation for workers or the public, or reduce the security and reliability of Ausgrid's network.

**ATTACHMENT 3: SEPP 65 ASSESSMENT AND APARTMENT DESIGN GUIDE**

The proposal has been considered pursuant to SEPP 65, including Parts 3 and 4 of the Apartment Design Guide.

The proposal does not satisfy the Design Quality Principles contained with Schedule 1 of SEPP 65, and does not sufficiently demonstrate compliance with Parts 3 and 4 of the Apartment Design Guide.

#### ATTACHMENT 4: ASSESSMENT UNDER WLEP & WDCP

##### Willoughby Local Environment Plan 2012 (WLEP 2012)

Assessment of the proposal against relevant parts of the WLEP 2012 and Draft WLEP is provided below.

WLEP 2012 controls	WLEP 2012	Draft WLEP 2012
WLEP 2012 zoning	R4 High Density Residential	MU1 Mixed Use via the Employment Zones Reform  Note: Shop top housing permissible in MU1 pursuant to cl 6.25.
CI 4.3 Height of Buildings	34m	90m
CI 4.4 Floor Space Ratio	1.7:1	6:1
CI 6.10 Minimum lot sizes for certain residential accommodation	CI 6.10 1,100m <sup>2</sup> for residential flat buildings	N/A Residential flat buildings not permitted within MU1. Note: The Site is identified within the Chatswood CBD Planning and Urban Design Strategy – Final Report by Architectus ( <b>Architectus Report</b> ), as one of the “ <i>Sites too small or isolated for significant development</i> ” (page 109).
CI 6.16 Minimum lot sizes for commercial and mixed use development in Chatswood CBD	-	1,200m <sup>2</sup>
CI 6.25	Shop top housing at certain sites at Chatswood Development consent for the purposes of shop top housing must not be granted unless the consent authority is satisfied at least 17% of the building's gross floor area will be used for non-residential purposes.	CI 6.25 Shop top housing in Zone MU1 Development consent for the purposes of shop top housing on land in Zone MU1 Mixed Use must not be granted unless the consent authority is satisfied at least 17% of the gross floor area of the building will be used for non-residential purposes.

##### Willoughby Development Control Plan (WDCP)

WDCP controls	Proposal	Comments
D.2.2 Design Verification Statement	No Design Verification Statement accompanies the application.	Fails to comply.
D.2.7 Site Coverage	Control is 20%. Proposed is 54%.	Fails to comply.
D.2.8 Setbacks	<p><u>Controls</u> Front setback = 9m Side setback = 3m for the ground floor level of the building with an increase of 1.2m for each storey of the building above the ground floor level. The total required setback is to apply to all floors from the 3rd floor up.</p> <p><u>Proposed</u> 8.6m front 3m side (south) 4.5 side (north)</p>	Fails to comply.
C.4 Transport requirements	<p><u>Controls</u> The ADG and WDCP in tandem require that a total of 56 parking spaces are provided, comprised of 46 for the residential use and 10 appurtenant to the community facilities.</p> <p>The DA proposes: 29 x parking spaces (comprising 22 residential spaces (all accessible), and 7 community facility spaces including 1 accessible space); 8 x bicycle spaces; 2 x motorcycle spaces; Loading bay and garbage collection; and 1 x car wash bay</p>	Fails to comply.



**ATTACHMENT 5 - SUBMISSIONS TABLE**

Council has received 19 unique submissions, which are detailed as follows:

1	2/2-8 Gordon Avenue	Chatswood	2067
2	807/38C Albert Avenue	Chatswood	2067
3	No Address Given		
4	1/38-40 Archer Street	Chatswood	2067
5	38-40 Archer Street	Chatswood	2067
6	44-46 Archer Street	Chatswood	2067
7	8/38-40 Archer Street	Chatswood	2067
8	1A Anembo Place	Eastwood	2122
9	14/38- 40 Archer Street	Chatswood	2067
10	2 Lindel Place	Lindfield	2070
11	7k/8 Sutherland Road	Chatswood	2067
12	8/44-46 Archer Street	Chatswood	2067
13	38/34 Archer Street	Chatswood	2067
14	22/38- 40 Archer Street	Chatswood	2067
15	No Address Given		
16	12/44- 46 Archer Street	Chatswood	2067

17	38-40 Archer Street	Chatswood	2067
18	4/44-46 Archer Street	Chatswood	2067
19	75 Eddy Road	Chatswood	2067

A brief summary of the concerns, and brief response, is provided as follows:

<b>Issues raised</b>	<b>Response</b>
Lack of specificity of use	Concerns are raised that the lack of specificity of use may mean any eventual use has not be properly canvassed in the traffic report. The drawing specifies "Community Facility" but provides no additional information on the use of the use.
Height	The height of the proposal is discussed throughout this report and is reflected in the reasons for refusal.
Inadequate consultation	Concerns are raised that the objector was not consulted regarding an offer to purchase an adjoining parcel of land. To date, the Applicant has not provided the Council with information to demonstrate that the amalgamation of Site with adjoining land is not feasible, as in <i>Karavellas v Sutherland Shire Council</i> [2004] NSWLEC 251 and <i>Melissa Grech v Auburn Council</i> [2004] NSWLEC 40.
Noise (community facilities)	It has not been demonstrated how this noise would be mitigated.
Noise (communal open space)	It has not been demonstrated how this noise would be mitigated.
Traffic generation	Lack of specificity of use of the community facilities does not assist in the accurate assessment of traffic generation.
Overdevelopment, bulk and scale	The site is not considered suitable for the development.
Non-compliance with controls	It is agreed that the proposal does not comply with the applicable controls, and is not accompanied by well-founded grounds for departure.
Geotechnical concerns	Concerns about undermining foundations of adjoining buildings (and owners consent) is reflected in the reasons for refusal.
Overshadowing	It is has not been demonstrated that the proposal has an acceptable shadow impact on adjoining properties.
Site is too small to accommodate the development q	Such concerns are reflected in the reasons for refusal.
Privacy	It has not been demonstrated that the proposal satisfies the privacy requirements contained in Part 3F ADG.
Character	Such concerns are reflected in the reasons for refusal.

Issues raised	Response
Oversized, too tall and too big.	Such concerns are reflected in the reasons for refusal.

## 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

Considered and Satisfactory ✓ No Satisfactory X and Not Relevant N/A

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> <li>State Environmental Planning Policies (SEPP)</li> </ul>	X
	<ul style="list-style-type: none"> <li>Regional Environmental Plans (REP)</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Local Environmental Plans (LEP)</li> </ul>	X
	<b>Comment:</b> The proposal fails to satisfy the aims and objectives of the relevant EPIs.	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> <li>Draft State Environmental Planning Policies (SEPP)</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Draft Regional Environmental Plans (REP)</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Draft Local Environmental Plans (LEP)</li> </ul>	X
	<b>Comment:</b> The proposal has been considered under WLEP 2012 and Draft (now made, Amendment 34) WLEP 2012. The proposal does not satisfy the objectives of these instruments.	
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> <li>Development control plans (DCPs)</li> </ul>	X
	<b>Comment:</b> The proposal does not satisfy the aims and objectives of the DCP.	
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> <li>Clause 61 (previously 92) EP&amp;A Regulation-Demolition</li> </ul>	X
	<ul style="list-style-type: none"> <li>Clause 62 (previously 93) EP&amp;A Regulation-Fire Safety Considerations</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Clause 64 (previously 94) EP&amp;A Regulation-Fire Upgrade of Existing Buildings</li> </ul>	N/A
	<b>Comment:</b> The survey shows that the masonry wall on the southern boundary is located on the land adjoining the Site, being SP7155 known as 38-40 Archer Street. That wall extends approximately 18-19 metres west from the top of the entry stairs facing the front boundary of 38-40 Archer Street, and forms part of the basement structure on that property. That wall is proposed to be demolished as part of the DA. The DA proposes works on land other than the Site without providing evidence of owner's consent.	
(b)	The likely impacts of the development	
	<ul style="list-style-type: none"> <li>Context &amp; setting</li> </ul>	X
	<ul style="list-style-type: none"> <li>Access, transport &amp; traffic, parking</li> </ul>	X
	<ul style="list-style-type: none"> <li>Servicing, loading/unloading</li> </ul>	X

**Matters for Consideration Under S.4.15 (79C) EP&A Act**

**Considered and Satisfactory ✓ No Satisfactory X and Not Relevant N/A**

	<ul style="list-style-type: none"> <li>Public domain</li> </ul>	X
	<ul style="list-style-type: none"> <li>Utilities</li> </ul>	X
	<ul style="list-style-type: none"> <li>Heritage</li> </ul>	X
	<ul style="list-style-type: none"> <li>Privacy</li> </ul>	X
	<ul style="list-style-type: none"> <li>Views</li> </ul>	X
	<ul style="list-style-type: none"> <li>Solar Access</li> </ul>	X
	<ul style="list-style-type: none"> <li>Water and draining</li> </ul>	X
	<ul style="list-style-type: none"> <li>Soils</li> </ul>	X
	<ul style="list-style-type: none"> <li>Air &amp; microclimate</li> </ul>	X
	<ul style="list-style-type: none"> <li>Flora &amp; fauna</li> </ul>	X
	<ul style="list-style-type: none"> <li>Waste</li> </ul>	X
	<ul style="list-style-type: none"> <li>Energy</li> </ul>	X
	<ul style="list-style-type: none"> <li>Noise &amp; vibration</li> </ul>	X
	<ul style="list-style-type: none"> <li>Natural hazards: Overland flowpath</li> </ul>	X
	<ul style="list-style-type: none"> <li>Safety, security crime prevention</li> </ul>	X
	<ul style="list-style-type: none"> <li>Social impact in the locality</li> </ul>	X
	<ul style="list-style-type: none"> <li>Economic impact in the locality</li> </ul>	X
	<ul style="list-style-type: none"> <li>Site design and internal design</li> </ul>	X
	<ul style="list-style-type: none"> <li>Construction</li> </ul>	X
	<ul style="list-style-type: none"> <li>Cumulative impacts</li> </ul>	X
	<b>Comment:</b> The proposal does not have acceptable impacts on the surrounding built environment.	
(c)	The suitability of the site for the development	
	<ul style="list-style-type: none"> <li>Does the proposal fit in the locality?</li> </ul>	X
	<ul style="list-style-type: none"> <li>Are the site attributes conducive to this development?</li> </ul>	X
	<b>Comment:</b> The site is not suitable for the development. Relevantly, the Site is identified within the Chatswood CBD Planning and Urban Design Strategy – Final Report by Architectus ( <b>Architectus Report</b> ), as one of the “ <i>Sites too small or isolated for significant development</i> ” (page 109).	
(d)	Any submissions made in accordance with this Act or the regulations	
	<ul style="list-style-type: none"> <li>Public submissions</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Submissions from public authorities</li> </ul>	✓
	<b>Comment:</b> Submissions have been considered in the assessment of the proposal.	
(e)	The public interest	
	<ul style="list-style-type: none"> <li>Federal, State and Local Government interests and Community interests</li> </ul>	✓
	<b>Comment:</b> The proposal is not considered to be sufficiently in the public interest.	

## ATTACHMENT 7: REASONS FOR REFUSAL

### RECOMMENDATION:

That DA-2022/240 be refused for the following reasons:

#### 1. **OWNER'S CONSENT**

The DA is unsatisfactory in that it proposes works on land other than the Site without providing evidence of owner's consent. In particular:

- a. The DA proposes the carrying out of works on land other than the Site. In particular:
  - i. the Geotechnical Report (Ref: 86327.00, dated 20 June 2022) prepared by Douglas Partners says that ground anchors on adjoining land will be required;
  - ii. the survey shows that the masonry wall on the southern boundary is located on the land adjoining the Site, being SP7155 known as 38-40 Archer Street. That wall extends approximately 18-19 metres west from the top of the entry stairs facing the front boundary of 38-40 Archer Street, and forms part of the basement structure on that property. That wall is proposed to be demolished as part of the DA; and
  - iii. the DA proposes the removal of an adjoining tree on land at 38-40 Archer Street.
- b. No evidence has been provided demonstrating that the Applicant has obtained the written consent of the owners of the adjoining land, SP7155, for the works proposed on that land.
- c. The failure to provide evidence of owners' consent is a jurisdictional bar to the grant of consent, pursuant to section 4.12 of the EP&A Act and section 23(1) of the EP&A Reg.

#### 2. **COMMUNITY FACILITIES USE**

The DA seeks consent for development described as "*community facilities*" without particularising the nature of the proposed use. In the absence of more specific information regarding the nature of the proposed use, the consent authority cannot

be satisfied that the proposed use is correctly characterised as a “*community facility*” as defined in the WLEP, and cannot carry out the evaluation required by section 4.15 of the EP&A Act. Consent to the DA must therefore be refused. In particular:

- a. The Statement of Environmental Effects describes the proposed development as comprising “*four levels of community facilities*”, with “*six community facility tenancies*”, and “*7 community facility [car parking] spaces (1 x accessible)*” provided within the basement.
- b. A “*community facility*” is defined in the Dictionary to the WLEP as:
  - a building or place –*
  - (a) owned or controlled by a public authority or non-profit community organisation, and*
  - (b) used for the physical, social, cultural or intellectual development or welfare of the community,*
  - but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.*
- c. No information has been submitted to demonstrate that:
  - i. either the Applicant or the owners of the Site (being the owners of SP4747), are a public authority or non-profit community organisation for the purpose of limb (a) of the definition; and
  - ii. the proposed facility will be “*used for the physical, social, cultural or intellectual development or welfare of the community*” for the purpose of limb (b) of the definition.

The consent authority therefore cannot be satisfied that the community facilities proposed as part of the DA are correctly characterised as community facilities as defined in the WLEP.

- d. The Proposed Development provides no particulars regarding the proposed use of the “*community facilities*”, which has the consequence that the consent authority cannot evaluate the proposal in accordance with section 4.15(1) of the EP&A Act. For example, the consent authority cannot:
  - i. identify with precision the relevant controls in the WDCP that apply to the DA, as required by section 4.15(1)(a)(iii);

- ii. assess the likely impacts of the Proposed Development, including the social and economic impacts on the locality, as required by section 4.15(1)(b);
- iii. assess the suitability of the Site for the Proposed Development, for which regard must be had to the nature of the community facilities proposed, as required by section 4.15(1)(c); or
- iv. consider whether granting consent to the use of the Site for the purpose of the proposed community facilities is in the public interest, as required by section 4.15(1)(e).

### 3. **FLOOR SPACE RATIO (FSR)**

The DA breaches the FSR development standard in clause 4.4 of the WLEP and this contravention is not justified in accordance with the requirements of clause 4.6 of the WLEP. In particular:

- a. Clause 4.4 of the WLEP imposes a maximum FSR of 1.7:1. The DA seeks consent for the construction of a residential flat building with a proposed FSR of 6:1 (gross floor area of 6,690m<sup>2</sup>), which is a breach of clause 4.4 of 4,794.5m<sup>2</sup> or 253% (based on the Applicant's calculations).
- b. The Proposed Development is excessive, and overwhelms and dominates the existing surrounding built environment, such that it is not in keeping with the Site's current zoning and surrounding development. The scale and density of the Proposed Development is not appropriate in the context and will be perceived as a substantial overdevelopment of the Site.
- c. The Proposed Development does not achieve an appropriate transition in building scale and density to surrounding development and has unacceptable impacts on surrounding development by reason of the excessive FSR.
- d. The Applicant has submitted a written request for variation of the FSR development standard under clause 4.6 of the WLEP (**4.6 Request – FSR**). Development consent cannot be granted for the Proposed Development pursuant to clause 4.6(2) of the WLEP because:
  - i. the 4.6 Request – FSR does not adequately address the matters required to be demonstrated by clause 4.6(3) – that is, it does not demonstrate:



1. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  2. that there are sufficient environmental planning grounds to justify contravening the development standard,
- as required by clause 4.6(4)(a)(i); and
- ii. it has not been demonstrated that the Proposed Development will be in the public interest because it is consistent with the objectives for the standard and the objectives for development within the zone in which the development is proposed to be carried out, as per clause 4.6(4)(a)(ii). This is including because:
    1. the Proposed Development is not consistent with the objectives for the standard in clause 4.4(1) of the WLEP, including objectives (a), (c), (d), (i) and (j); and
    2. the Proposed Development is not consistent with the objectives for the R4 Zone, including specifically the fifth dot point: *“To encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping.”*
- e. Further to particular (d) above, the 4.6 Request – FSR:
- i. relies upon the development standard proposed for the Site under the (then) Draft WLEP (now amendment 34), being 6:1, in circumstances where the amendments do not apply to the subject development pursuant to the saving provisions;
  - ii. incorrectly calculates the extent of the breach of the standard. The 4.6 Request – FSR says that the proposed FSR is 6:1, however the gross floor area calculations (Drawing A22.01 A) do not appear to be correct and the actual FSR would be higher and therefore non-compliant even with the FSR pursuant to WLEP amendment 34. Areas of concern include the waste room and 2-bedroom unit laundry storage on each

residential floor and the non-external walls between common vertical circulation elements and other GFA-included elements;

- iii. does not address clauses 4.4(2A)(b)(i) and 4.4(2B) of the WLEP which concern the calculation of floor area;
- iv. says that the proposal provides an appropriate built form and land use intensity consistent with adjoining properties, but does not provide any substantive analysis to support that conclusion. As stated in particular (x) below, the Proposed Development will be almost 3 times as tall as the existing residential flat buildings at 38-40 Archer Street and 44-46 Archer Street. The Proposed Development is therefore of an intensity that is not envisaged under clause 4.4 of the WLEP and is not consistent with objective (a) of the standard;
- v. says that there will not be any significant view loss from the Proposed Development on adjoining or nearby properties, but no substantive investigation or material is supplied to support this assertion. The 4.6 Request – FSR therefore fails to demonstrate consistency with objective (c) of the standard;
- vi. does not demonstrate that adequate privacy is afforded to surrounding properties, including in particular to future development to the north, and at lower levels to the (yet unspecified) community facilities. The 4.6 Request – FSR therefore fails to demonstrate consistency with objective (c) of the standard;
- vii. does not demonstrate that adequate solar access is received to the living rooms and balconies of the adjoining property at 38-40 Archer Street. The 4.6 Request therefore fails to demonstrate consistency with objective (c) of the standard;
- viii. does not address impacts arising from visual intrusion as identified in objective (c). In particular, it does not demonstrate that the Proposed Development does not result in unacceptable visual intrusion as a result of the excessive height, bulk and character of the proposed residential flat building within the Site's context. The 4.6 Request – FSR therefore fails to demonstrate consistency with objective (c) of the standard;

- ix. does not address how the Proposed Development manages the bulk and scale of the development to suit the land use purpose and objectives of the zone. As stated in particular (x) below, the Proposed Development will be starkly disproportionate to the bulk and scale of the adjoining residential developments at 38-40 Archer Street and 44-46 Archer Street. Further, the failure to particularise the proposed “*community facilities*” use means that the consent authority cannot be satisfied that the proposed bulk and scale of the development is suitable to that land use. The 4.6 Request – FSR therefore fails to demonstrate consistency with objective (d) of the standard;
- x. says that the Proposed Development provides an appropriate height transition with buildings in the locality. However, at 90m, there will be a significant disparity between the height of the proposed residential flat building and the existing residential flat buildings on the adjoining sites. For example, the Proposed Development will be 17 storeys taller than the existing buildings at 38-40 Archer Street and 44-46 Archer Street. The proposal is therefore not congruent with the surrounding built environment in terms of scale and spatial separation from boundaries. This is inconsistent with objective (i) of the standard;
- xi. says the “*proposal has sought to consolidate the land to the north*” but does not provide any information to satisfy a consent authority that consolidation/amalgamation is not feasible. This is significant, noting that the DA does not satisfy the site area control in clause 6.10 WLEP 2012 and clause 6.16 of the WLEP (Amendment 34). The 4.6 Request – FSR therefore fails to demonstrate consistency with objective (j) of the standard;
- xii. does not adequately address how the Proposed Development is consistent with the objectives of the zone, including the fifth dot point to “*encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping*”;
- xiii. does not address the requirement for design excellence in the (then) Draft WLEP (now WLEP amendment 34 as made) which, if applied, would require the proposal to be subject to an architectural design

competition. This requirement for design excellence cannot be severed from the uplift in development potential contemplated in the WLEP amendment 34 as made in relation to FSR;

- xiv. incorrectly asserts that the Proposed Development meets other development controls in relation to building height, landscaping, and deep soil, when that is not the case;
- xv. does not acknowledge the various inconsistencies between the Proposed Development and the standards in the then Draft WLEP which would have applied to the proposal if it had been lodged after the Draft WLEP is made. In this way, the Applicant ‘cherry picks’ the uplift in FSR envisaged under the Draft WLEP, but disregards other relevant controls under that instrument and does not attempt to demonstrate why compliance with those controls cannot be achieved or is unreasonable or unnecessary in the circumstances;
- xvi. does not acknowledge the various inconsistencies between the Proposed Development and the controls in the then Draft WDCP which would ordinarily have applied to the proposal if it had been lodged after the Draft WDCP was made. In particular, the Proposed Development does not comply with the minimum tower setback of 4.5m in Part L.4.3.4(b), the minimum street frontage control in Part B4.3.2, or the maximum site coverage control in Part B4.4.1(f); and
- xvii. contains a number of inaccuracies/errors, including the references to a freeway corridor and acoustic walls at page 11. These inaccuracies further demonstrate the deficiencies with the 4.6 Request – FSR as outlined in particular (d) above.

#### **4. BUILDING HEIGHT**

The DA breaches the height of buildings development standard in clause 4.3 of the WLEP and this contravention is not justified in accordance with the requirements of clause 4.6 of the WLEP. In particular:

- a. Clause 4.3 of the WLEP imposes a maximum building height of 34m. The DA seeks consent for the construction of a residential flat building with a proposed building height which is stated as being 90m. If this calculation were

accepted, this would constitute a breach of clause 4.3 by 56m, equating to a non-compliance of 165%. However, the roof elements at RL180.550 (Drawing A09.02 A) appear to be more than a vertical distance of 90m above ground level (existing) of RL 90.490 (Survey). So, the breach of the development standard is likely greater than stated in the DA, and even beyond that proposed in the then Draft, now made, WLEP.

- b. The height of the proposed residential flat building is excessive, and overwhelms and dominates the existing surrounding built environment, such that it is not in keeping with the Site's zoning and surrounding development. The bulk and scale of the Proposed Development is not appropriate in the context and will be perceived as a substantial overdevelopment of the Site.
- c. The Proposed Development does not achieve an appropriate transition in building bulk and scale to surrounding development and has unacceptable impacts on surrounding development by reason of the excessive building height.
- d. The Applicant has submitted a written request for variation of the height of buildings development standard under clause 4.6 of the WLEP (**4.6 Request – Height**). Development consent cannot be granted for the Proposed Development pursuant to clause 4.6(2) of the WLEP because:
  - i. the 4.6 Request – Height does not adequately address the matters required to be demonstrated by clause 4.6(3) – that is, it does not demonstrate:
    - 1. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
    - 2. that there are sufficient environmental planning grounds to justify contravening the development standard,as required by clause 4.6(4)(a)(i); and
  - ii. it has not been demonstrated that the Proposed Development will be in the public interest because it is consistent with the objectives for the standard and the objectives for development within the zone in which

the development is proposed to be carried out, as per clause 4.6(4)(a)(ii). This is including because:

1. the Proposed Development is not consistent with the objectives for the standard in clause 4.3(1) of the WLEP, including objectives (a), (b), (c), (d), (e), (f) and (h); and
2. the Proposed Development is not consistent with the objectives for the R4 Zone, including specifically the fifth dot point: *“To encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping.”*

e. Further to particular (d) above, the 4.6 Request – Height:

- i. relies upon the development standard proposed for the Site under the then Draft now made WLEP, being 90m, in circumstances where these controls do not apply;
- ii. incorrectly calculates the extent of the breach of the standard. The 4.6 Request – Height does not correctly calculate the proposed building height accounting for the roof elements at RL180.550 (Drawing A09.02 A);
- iii. says that the proposal presents as a building predominantly within the maximum height of buildings as it presents to the street, but does not provide any substantive analysis to support that conclusion. As stated in (xii) below, the Proposed Development will be almost 3 times as tall as the existing residential flat buildings at 38-40 Archer Street and 44-46 Archer Street. The Proposed Development is therefore significantly taller than the existing surrounding buildings, and will appear to be out of harmony with the streetscape. The 4.6 Request – Height therefore fails to demonstrate consistency with objective (a) of the standard;
- iv. says that there will not be any significant view loss from the Proposed Development on adjoining or nearby properties, but no substantive investigation or material is supplied to support this conclusion. The 4.6 Request – Height therefore fails to demonstrate consistency with objective (b) of the standard;

- v. does not demonstrate that adequate privacy is afforded to surrounding properties, including in particular to future development to the north, and at lower levels to the (yet unspecified) community facilities. The 4.6 Request – Height therefore fails to demonstrate consistency with objective (b) of the standard;
- vi. does not demonstrate that adequate solar access is received to the living rooms and balconies of the adjoining property at 38-40 Archer Street. The 4.6 Request – Height therefore fails to demonstrate consistency with objective (b) of the standard;
- vii. does not address impacts arising from visual intrusion as identified in objective (b) of the standard. In particular, it does not demonstrate that the Proposed Development does not result in unacceptable visual intrusion as a result of the excessive height, bulk and character of the proposed residential flat building within the Site's context. The 4.6 Request – Height therefore fails to demonstrate consistency with objective (b) of the standard;
- viii. does not address how the Proposed Development ensures that a high visual quality is achieved, particularly noting that the proposal has not undergone design excellence review which would ordinarily be required for a building of this scale under the then Draft, now made, WLEP. The 4.6 Request – Height therefore fails to demonstrate consistency with objective (c) of the standard;
- ix. does not adequately demonstrate how the Proposed Development minimises disruption to existing views or achieves reasonable view sharing, thereby failing to demonstrate consistency with objective (d) of the standard;
- x. does not adequately demonstrate how the Proposed Development is consistent with objective (e) of the standard which concerns the intention of the control to set upper limits for the height of buildings. This is particularly relevant given the significant extent of the non-compliance with the standard. The 4.6 Request – Height therefore fails to demonstrate consistency with objective (e) of the standard;
- xi. does not adequately demonstrate how the Proposed Development is consistent with objective (f) of the standard which concerns the

intention of the control to set maximum height limits to assist in responding to the current and desired future character of the locality. This is including because it fails to identify the ways in which the Proposed Development is inconsistent with controls (other than building height) which would apply to the Site under the then Draft, now made, WLEP. It also incorrectly asserts that the Proposed Development complies with the building height control, consistent with this objective, when the 4.6 Request – Height seeks a variation of 165%. The 4.6 Request – Height therefore fails to demonstrate consistency with objective (f) of the standard;

- xii. says that the Proposed Development provides an appropriate height transition with buildings in the locality. However, at 90m, there will be a significant disparity between the height of the proposed residential flat building and the existing residential flat buildings on the adjoining sites. For example, the Proposed Development will be 17 storeys taller than the existing buildings at 38-40 Archer Street and 44-46 Archer Street. The proposal is therefore not congruent with the surrounding built environment in terms of scale and spatial separation from boundaries. This is inconsistent with objective (h) of the standard;
- xiii. does not adequately address how the development is consistent with the objectives of the zone, including the fifth dot point to “*encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping*”. In particular, it incorrectly asserts that the Proposed Development has been reviewed by the design excellence panel in accordance with this objective (at page 29). That is not the case, and the requirement is for an architectural design competition in any event (not a panel review) and no such competition has been conducted. The 4.6 Request – Height therefore fails to demonstrate consistency with the objectives of the zone;
- xiv. does not address the requirement for design excellence in the (then) Draft (now made) WLEP which, if applied, would require the proposal to be subject to an architectural design competition. This requirement



for design excellence cannot be severed from the uplift in development potential contemplated in the then Draft, now made, WLEP in relation to building height;

- xv. incorrectly asserts that the Proposed Development meets other development controls in relation to FSR, landscaping, and deep soil, when that is not the case;
- xvi. does not acknowledge the various inconsistencies between the Proposed Development and the standards in the then Draft, now made, WLEP which would have applied to the proposal if it had been lodged after the Draft WLEP was made. In this way, the Applicant ‘cherry picks’ the uplift in building height envisaged under the Draft WLEP, but disregards other relevant controls under that instrument and does not attempt to demonstrate why compliance with those controls cannot be achieved or is unreasonable or unnecessary in the circumstances;
- xvii. does not acknowledge the various inconsistencies between the Proposed Development and the controls in the Draft WDCP which would ordinarily have applied to the proposal if it had been lodged after the Draft WDCP was made. In particular, the Proposed Development does not comply with the minimum tower setback of 4.5m in Part L.4.3.4(b), the minimum street frontage control in Part B4.3.2, or the maximum site coverage control in Part B4.4.1(f); and
- xviii. contains a number of inaccuracies/errors, including the references to a freeway corridor and acoustic walls at page 10 and a hotel at page 16. These inaccuracies further demonstrate the deficiencies with the 4.6 Request – Height as outlined in particular (d) above.

## 5. URBAN DESIGN

The DA does not satisfy the SEPP 65 Design Quality Principles and the Design Criteria and Design Guidance of the Apartment Design Guide. In particular:

- a. The DA does not provide sufficient setbacks pursuant to Part 3F of the Apartment Design Guide (**ADG**).

- b. ADG Objective 3F-1 Design Criteria 1 requires minimum separation distances from buildings to side boundaries to achieve visual privacy. The western portion of the northern façade presents unscreened windows of habitable rooms to the boundary. This fails to take into account the possible future redevelopment of sites to the north. Further, the screening to the community facilities on the north and south facades of the lower floors appears to be relatively transparent (Design Report page 29) and may cause visual privacy impacts to both existing and future neighbours in a similar way to how commercial uses would (ADG Objective 3F-1 Design Guidance 3). The Proposed Development therefore impacts unreasonably on the visual privacy of adjoining properties, both presently and in the future context.
- c. The Proposed Development does not satisfy the minimum required deep soil provision (ADG Part 3E), which further demonstrates an overdevelopment of the Site. Technically, none of the areas claimed as deep soil zones satisfy the ADG deep soil zone criteria because no area achieves the minimum 3m (3m x 3m) specifications. Further, some of the areas identified as deep soil areas are partially occupied by hard paving and bicycle parking (Drawing A03.00 A and Landscape Concept p15).
- d. The DA does not sufficiently demonstrate that the overshadowing of neighbouring properties is minimised during mid winter (ADG Objective 3B-2 Design Guidance 1 and 2). The view from the sun diagrams (Drawing A21.10 A) does not appear to show the windows of the building at 38-40 Archer Street accurately such that its east facing living room windows may not receive 2 hours solar access from 9am to 11am.
- e. The DA does not sufficiently demonstrate that the Proposed Development receives 2 hours direct sunlight to 70% of apartments between 9am and 3pm in mid winter (ADG Objective 4A-1 Design Criterion 1) or ensure that a maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm at mid winter (ADG Objective 4A-1 Design Criterion 3). The ADG Glossary defines 'solar access' as '*the ability of a building to **continue to** receive direct sunlight without obstruction from other building or impediments*' (emphasis added). The proposal fails to take into account that the possible future redevelopment of sites to the north may obstruct solar access to the proposal in the future (Drawing A21.10 A).

- f. The DA does not sufficiently demonstrate that the Proposed Development provides windows with an unobstructed opening equal to at least 5% of the floor area served (ADG Objective 4B-1 Design Guidance 3). The limited opening of the window suites appears to restrict natural ventilation of habitable rooms such that the opening type and/or size may not be adequate (Drawing A11.01 A).
- g. The proposed living room open plan layouts in the typical 3-bedroom apartment have a habitable room depth greater than 8m from a window (ADG Objective 4D-2 Design Criterion 2) (Drawing A03.04 A). This does not maximise the environmental performance of the apartment.
- h. The proposed Bed 2 in the typical 2-bedroom apartment has its primary window looking directly into the 'frosted glazing' of the lobby and is adjacent to a services area (Drawing A03.04 A). This provides poor outlook and creates potential light and noise impacts for occupants of these rooms.
- i. The Proposed Development includes transparent, full-width full-height balustrades to all residential balconies to Archer Street (ADG Objective 4E-3 Design Guidance 1 and 2) (Drawing A23.01 A). It would be preferable if partially solid or solid balustrades were utilised, particularly at lower floors to provide visual privacy from the street.
- j. The Proposed Development does not separate residential car parking and communal facilities (ADG Objective 4S-2 Design Guidance 1) (Drawings A03.B01 A to A03.B04 A). It would be preferable if residential parking was secure from community facility parking. Further, the security of sharing lifts between residential and community uses is not supported and is contrary to good design practice (Drawings A03.00 A to A03.03 A).
- k. The Proposed Development does not provide well located, screened outdoor areas for clothes drying (ADG Objective 4U-1 Design Guidance 2).
- l. For the reasons above, the Proposed Development does not satisfy SEPP 65 Design Quality Principle 4: Sustainability, Principle 5: Landscape, Principle 6: Amenity, and Principle 7: Safety.
- m. The Proposed Development also does not satisfy SEPP 65 Design Quality Principle 1: Context and neighbourhood character, Principle 2: Built form and scale, and Principle 3: Density.

**6. DESIRED FUTURE CHARACTER**

The DA is not consistent with the desired future character of the area. In particular:

- a. The Proposed Development does not meet key built form controls which inform the desired future character for residential flat buildings as expressed in the WDCP. The DA does not provide:
  - i. a maximum site coverage of 20% for residential flat buildings with 8 or more storeys as required by WDCP, Part D.2.7.3;
  - ii. the minimum front setback of 9m required by WDCP, Part D.2.8.3(2);  
or
  - iii. the minimum side setbacks of 3m plus 1.2m for each storey above ground floor required by WDCP, Part D.2.8.3(4).
- b. To the extent that the DA relies on the Draft WDCP to inform desired future character, it is also relevant that the Proposed Development does not meet key built form controls which inform the desired future character for the residential components of mixed use developments in the business zones as expressed in the Draft WDCP. In particular, the DA does not provide:
  - i. a minimum tower setback from the southern boundary of 4.5m as required by Draft WDCP, Part L.4.3.4(b);
  - ii. a minimum street frontage of 27m as required by Draft WDCP, Part B4.3.2; or
  - iii. a maximum site coverage of 20% for residential flat buildings with 8 or more storeys as required by Draft WDCP, Part B4.4.1(f).
- c. For these reasons, the Proposed Development is not consistent with the desired future character of the area, as expressed in either the WDCP or the Draft WDCP.

**7. VEGETATION MANAGEMENT**

The DA does not achieve the objectives of Part C.9 of the WDCP to maintain and enhance the urban landscape, prevent unnecessary damage or removal of trees and other vegetation, and increase tree canopy to mitigate urban heat island effects. In particular:

- a. The DA proposes the removal of a tree on adjoining land at 38-40 Archer Street, and no evidence is provided demonstrating that the Applicant has obtained the approval of that adjoining owner for the removal of that tree. This tree has high landscape and streetscape amenity. It also has a function of screening between buildings and providing a green outlook, which are notable urban design benefits. The Applicant's arborist identifies this tree as suitable for retention for more than 10 years and worthy of being a material constraint. The removal of this tree is therefore not supported.
- b. The wall adjacent to Trees 8, 9 and 10 is a brick wall and not a block wall. It is noted that this brick wall is failing, possibly due to root pressure and the possibility of tree roots entering the Site is not confirmed.
- c. The extent of the proposed root and crown pruning and their impact on the viability of adjoining trees is not specified. The Development Application fails to demonstrate that the proposed root and crown pruning does not give rise to adverse impacts to trees proposed to be retained. In particular:
  - i. the Applicant's arborist report notes excessive pruning of Trees 8, 9 and 10 is likely. These trees have canopy over the existing building on the Site and excavation equipment and piling rigs to construct the basement may also affect these trees; and
  - ii. the demolition of the northwest retaining walls and excavation to the boundary will impact on trees on the adjoining land at 41-45 Claude Street and potentially on trees within 5m of common boundary on 44-46 Archer Street (per C9.5.2(4) of the WDCP).
- d. The Tree Protection Zones (**TPZ**) of street Trees 1 and 2 and adjoining Tree 13 are significantly understated by the Applicant's arborist due to a lack of physical measurement of their trunk dimensions. For example, Tree 1 has a trunk diameter above its root buttress of 775mm, which suggests a typical trunk DBH of around 675mm, a TPZ radius of 8.1m, and a Structural Root Zone of 2.97m. The consent authority therefore cannot be satisfied that the Proposed Development does not have adverse impacts to the trees proposed for retention in the DA.
- e. The low brick boundary wall on the Site's eastern boundary is not considered to be a significant deterrent to tree root growth and/or access to soil resources within the Site. The proposal has a new masonry wall constructed

along the Site frontage which will likely have a more robust footing than the existing brick wall. Roots of these trees may have entered the Site or at the least be at the wall/path interface (recent path repair works suggest this). The Applicant's arborist report needs to provide more than just generic advice for this area.

## 8. **LANDSCAPING**

The DA does not achieve the objectives of the WDCP, the ADG, and Design Principles 4 and 5 of SEPP 65, whereby development should provide a positive image and contextual fit by contributing to the landscape character of the streetscape and neighbourhood. The Proposed Development does not provide for the practical establishment of, and long-term management and sustainability of, the landscape. In particular:

- a. There is a lack of detail in the architectural and landscape plans with regard to soil depths above the basement and OSD along the northern boundary to demonstrate that the proposed tree species have sufficient soil area to attain their typical mature heights and contribute to the overall urban tree canopy.
- b. Deep soil zones (**DSZs**) capable of supporting medium or large canopy trees on the eastern and western setbacks are fragmented and substantially less than the recommended dimensions in Table 2 of ADG Part 3E and are contrary to the design criteria under Objective 3E-1 of the ADG and Control D2.10.3(1) Streetscape Landscaping of the WDCP. The DA says that it provides DSZs of 7.7% of the Site (Drawing A22.02 A), however this area is partially occupied by hard paving and bicycle parking and does not satisfy the minimum dimensions of 3m for sites 650m<sup>2</sup> - 1,500m<sup>2</sup> in area. Therefore, the actual quantum of the DSZs is even less than stated in the DA.
- c. DSZ areas proposed represent less than 5% of the Site area for groundwater recharge and long-term health and viability of canopy trees. The minimum 7% – 10% DSZ under Objective 3E-1 of the ADG is not achieved.
- d. The proposed planter dimensions and soil volume are insufficient to support proposed trees to typical mature heights and to provide for tree stability. The planters are substantially less than the minimum soil dimensions

recommended for planting over structures in Table 5 at ADG Part 4P which will result in a poor amenity outcome and is contrary to Objectives 4P-1 and 4P-2 of the ADG.

- e. There are a number of inconsistencies between the architectural and landscape plans regarding the proposed vehicle entry and landscaped area.
- f. The inadequate provision and protection of medium and large canopy trees, when coupled with insufficient DSZs and inadequate planters, is problematic because it means that the landscaping is not able to adequately ameliorate the impacts of the bulk and scale of the Proposed Development on the streetscape. The Proposed Development also does not provide for the practical establishment of, and long-term management and sustainability of, the landscape in a way that contributes to the landscaped setting of the Site over time. This is inconsistent with ADG Objective 4O-1 and Table 4 which identifies design criteria for ensuring landscape design is viable and sustainable.
- g. The landscaping arrangements for the Proposed Development also fail to satisfy relevant provisions of the Draft WDCP, including in Part B:
  - i. clause 2.1.2 which says that the site area and lot dimensions should, at (a), ensure adequate provision is made for usable open space and sufficient area for landscaping, including deep soil zones that can support tree planting;
  - ii. clause 2.1.3 which says that the objective of the setback control is to ensure that the siting of buildings “*provides space for landscaping (including deep soil zones)*”; and
  - iii. clause 4.4.5 which says that open space should be provided that “*can support healthy plant and tree growth and that is environmentally sustainable*”; and
  - iv. controls 1-4 in clause 4.4.5 which impose requirements relating to minimum specifications for soft landscaped areas and DSZs, and the inclusion of wide tree canopy species and semi-mature new trees.

**9. TRAFFIC**

The DA does not demonstrate that safe vehicular access can be provided to and within the Site. In particular:

- a. The driveway grades do not comply with section 2.5.3 of AS 2890.1:2004 or section 3.4.4 of AS 2890.21-2002. In particular, the plans do not demonstrate that a 5.5m wide driveway can be maintained for the first 6 metres from the property boundary, transitioning into a single 3.5m width driveway leading into the basement.
- b. The waiting bays do not comply with AS 2890.1:2004. In particular, the plans do not demonstrate that the waiting bays have a minimum length of 6 metres with a maximum grade of 1 in 20 (5%) provided so that a B99 vehicle can stand wholly within the waiting bay and enter the driveway ramp without having to reverse onto the road reserve.
- c. The proposal relies solely on a mechanical turntable for the waste collection truck to ingress and egress the Site in a forward direction. This is unsatisfactory, including because no information has been provided regarding operational procedures in the event that the mechanical turntable breaks down or there is a loss of power which prevents the turntable from being operated. This results in an unacceptable compromise to safety, as well as to convenience and operational deliverables.
- d. The approach driveway and the intersection area are not wide enough to safely accommodate turning vehicles from both directions, simultaneously with adequate sight distance. This presents an unacceptable safety risk.

**10. CAR PARKING**

The DA provides inadequate car parking. In particular:

- a. The DA proposes:
  - i. 29 x parking spaces (comprising 22 residential spaces (all accessible), and 7 community facility spaces including 1 accessible space);
  - ii. 8 x bicycle spaces;
  - iii. 2 x motorcycle spaces;



- iv. Loading bay and garbage collection; and
  - v. 1 x car wash bay,
- b. This is an insufficient number of car parking spaces to accommodate the scale of the Proposed Development. In particular, the ADG and WDCP in tandem require that a total of 56 parking spaces are provided, comprised of 46 for the residential use and 10 appurtenant to the community facilities. The DA therefore provides a shortfall of 27 parking spaces and is inadequate to meet the needs of the Proposed Development.

11. **INCONSISTENT WITH STRATEGIC PLANNING**

The Proposed Development seeks consent for development which is not consistent with Council's strategic planning for the Site and the locality, including the Chatswood CBD. In particular:

- a. The DA relies on the then Draft, now made, WLEP as a justification for the significant non-compliance with the FSR and height of buildings development standards in the WLEP, where the Development Application is saved from the LEP. In any event, the Proposed Development is inconsistent with the other controls in WLEP (Amendment 34) which would apply to a future development of the Site.
- b. The DA provides no analysis regarding whether the Proposed Development is consistent with relevant strategic planning documents which apply to the Site, including:
  - i. the Greater Sydney Commission's *The Greater Sydney Region Plan – A Metropolis of Three Cities*;
  - ii. the Greater Sydney Commission's *North District Plan*;
  - iii. Willoughby Local Strategic Planning Statement;
  - iv. Chatswood CBD Strategy 2036;
  - v. Willoughby Housing Strategy;
  - vi. Willoughby Integrated Transport Strategy; and
  - vii. Our Future Willoughby 2028.

- c. The Chatswood CBD Strategy 2036 provided for a Community Infrastructure Contribution (**CIC**) scheme. Under that scheme, the Applicant would have been required to contribute to the provision of civil infrastructure, public domain and physical facilities required to support the higher intensity of land use and built environment permitted on certain land in the Chatswood CBD where the policy applies. The DA contains no discussion regarding the CIC scheme and how this should be weighed when considering the public interest in granting consent to the Proposed Development in reliance on the uplift in development potential envisaged under the then Draft, now made, WLEP.
- d. The DA is inconsistent with the strategic planning documents identified in particular (b) above in a number of key respects, including the provision of affordable housing, the insufficient site area, design excellence, active street frontages, and setbacks.

12. **INCONSISTENCY WITH THEN DRAFT, NOW MADE, WLEP – CHARACTERISATION**

The DA does not consider the characterisation of the Proposed Development under the then Draft, now made, WLEP. Therefore, the consent authority cannot be satisfied that the type of development proposed in the DA is permissible under the Draft WLEP. In particular:

- a. The DA seeks consent for the erection of a “*residential flat building*”. Residential flat buildings are prohibited development in the (per Draft LEP, B4 Mixed Use zone – as made, MU1 Mixed Use zone). The DA does not contain any analysis of this and does not confirm whether the Proposed Development would be permissible under the then Draft, now made, WLEP. This also has implications for the controls that apply to the Proposed Development under the then Draft, now made, WLEP and Draft WDCP. In the absence of this information, it has not been demonstrated that the Proposed Development is consistent with the then Draft, now made, WLEP.

13. **INCONSISTENCY WITH DRAFT WLEP – SITE AREA**

The DA relies on the then Draft, now made, WLEP to justify exceedances of the FSR and height of buildings development standards where this LEP is now made

but saved from the subject Development Application. However, the Proposed Development does not satisfy other applicable provisions in the then Draft, now made, WLEP, including relating to site area. In particular:

- a. Under the WLEP (Amendment 34), the Site is rezoned from R4 High Density Residential under clause 6.10(2) of the WLEP (which provides a site area control of 1,100m<sup>2</sup> for residential flat buildings) to MU1 Mixed Use (which provides a site area control of 1,200m<sup>2</sup> for mixed use development).
- b. The Proposed Development is therefore non-compliant with the 1,200m<sup>2</sup> site area control in the then Draft, now made LEP, by 85m<sup>2</sup>, or 7%.
- c. To date, the Applicant has not provided the Council with information to demonstrate that the amalgamation of Site with adjoining land is not feasible, as in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 and *Melissa Grech v Auburn Council* [2004] NSWLEC 40.
- d. The Statement of Environmental Effects says that the Applicant made offers to both 44-46 Archer Street and 41 Claude Street on 6 June 2022 including valuation reports.
- e. The application of the site area control under the then Draft, now made, WLEP should also be considered having regard to the Architectus Report which notes at:
  - i. Section 3.1 – Principles for the development of controls (page 48) that: “Any uplift in controls for allowing for tall building forms should be only for sites of a minimum site areas and dimensions”; and
  - ii. Section 5.2 – Indicative amalgamation pattern (page 109) identifies the Site as one of the “Sites too small or isolated for significant development”.
- f. While the site area controls in the then Draft, now made, WLEP do not act as a jurisdictional bar to the grant of consent, it is a relevant consideration that must be weighed in considering the consistency between the DA and the new WLEP, and in particular, the substantial exceedance to the FSR and building height development standards sought as part of the DA. In this regard, substantial weight should be given to the fact that the Proposed Development is inconsistent with the objectives in clause 6.16 of the WLEP (Amendment 34).

- g. The DA has also failed to:
  - i. adequately demonstrate that the Proposed Development will not result in the isolation of sites;
  - ii. consider whether the Proposed Development would render the reasonable development of neighbouring sites difficult; or
  - iii. consider whether the orderly, economic and appropriate development of the subject Site and the neighbouring sites can be achieved.
- h. Noting that the Development Application fails to demonstrate that amalgamation is not feasible and that the Proposed Development does not result in adverse impacts to the development of neighbouring sites, it would not be in the public interest for consent to be granted to the DA for the Proposed Development which breaches the site area control of the Draft, now made, WLEP, whilst seeking to take up the full development potential envisaged in the WLEP (Amendment 34) in terms of building height and FSR.
- i. The inadequacy of the Site area is further demonstrated by the inconsistency between the Proposed Development and the key built form controls expressed in the then Draft, now made, WDCP, including controls relating to minimum tower setbacks, minimum street frontage, and maximum site coverage.

**14. INCONSISTENCY WITH DRAFT WLEP – DESIGN EXCELLENCE**

The DA relies on the Draft, now made, WLEP to justify exceedances of the FSR, but does not satisfy other applicable provisions in the WLEP (Amendment 34), including relating to design excellence. In particular:

- a. The Site is not identified in the WLEP as being “Area 12” on the Special Provisions Area Map for the purpose of clause 6.23 of the WLEP. This means that it is not subject to the design excellence controls under the current WLEP. However, the Site is identified as being “Area 5” on the Special Provisions Area Map of the (now made) WLEP, which imposes controls relating to design excellence.
- b. The proposed amendments to clause 6.23 of the (now made) WLEP (Design excellence) state that development consent must not be granted to

development to which this clause applies unless the consent authority considers that the development exhibits design excellence.

- c. The consent authority cannot be satisfied that the Proposed Development exhibits design excellence having regard to the matters in clause 6.23(4) and (5), because the DA has not been the subject of an architectural design competition under clause 6.23(6)(b) of the WLEP as made.
- d. While clause 6.23 of the now made WLEP does not act as a jurisdictional bar to the grant of consent, it is a relevant consideration that must be weighed in considering the substantial exceedance to the FSR and building height development standards sought as part of the DA. Noting that under the (then) Draft, now made, WLEP it is intended for substantial buildings, such as that proposed in the DA, to be the subject of an architectural design competition, it is not in the public interest for consent to be granted to the DA in reliance on the uplift provided for in the (then) Draft, now made, WLEP, where the consent authority cannot be satisfied that the proposal demonstrates design excellence.

15. **INCONSISTENCY WITH NEW WLEP – ACTIVE STREET FRONTAGES**

The DA relies on the (then) Draft, now made, WLEP to justify exceedances of the FSR and height of buildings development standards, however this DA is saved from those standards. The Proposed Development does not satisfy other applicable provisions in the (then) Draft, now made, WLEP, including relating to active street frontages. In particular:

- a. Clauses 6.7(2) and (3) of the (then) Draft, now made, WLEP require active street frontages to be provided for both frontages of the Site, being along Archer Street and Claude Street. An active street frontage is defined in clause 6.7(5) of that WLEP as “*all premises on the ground floor of the building facing the street are used for the purposes of commercial premises*” (noting the exclusions in clause 6.7(4)). This provision will have implications for the characterisation of the Proposed Development under the (then) Draft, now made, WLEP. This is because it may be that the use of the ground floor for commercial premises results in the proposed use being characterised as shop top housing, rather than a residential flat building. This would have

implications for the controls that would apply to the development under the (then) Draft, now made, WLEP and Draft WDCP and is therefore a matter that was required to be addressed by the Applicant so as to inform the assessment of the DA.

- b. The Proposed Development does not provide active street frontages on all frontages in accordance with clause 6.7 of the Draft WLEP.
- c. While the controls relating to active street frontages in the Draft WLEP do not act as a jurisdictional bar to the grant of consent, it is a relevant consideration that must be weighed in considering the substantial exceedance to the FSR and building height development standards sought as part of the DA. Noting that the Applicant has failed to provide active street frontages on all frontages, it would not be in the public interest for consent to be granted to the DA for the Proposed Development which breaches this control, whilst seeking to take up the full development potential envisaged in the (then) Draft, now made, WLEP.

**16. INCONSISTENCY WITH DRAFT WLEP – MINIMUM NON-RESIDENTIAL FLOOR SPACE**

The DA relies on the (then) Draft, now made, WLEP to justify exceedances of the FSR and height of buildings development standards; however, the Proposed Development does not satisfy other provisions in this WLEP, including relating to controls for minimum non-residential floor space. In particular:

- a. The Site is zoned MU1 Mixed use under the now made, WLEP. Clause 6.25 of this WLEP states that land zoned MU1 Mixed use is to contain a minimum non-residential floor space component. This is calculated at 17% FSR. The proposal does not satisfy this requirement.
- b. While the controls relating to minimum non-residential floor space in the Draft WLEP do not act as a jurisdictional bar to the grant of consent, it is a relevant consideration that must be weighed in considering the substantial exceedance to the FSR and building height development standards sought as part of the DA. Noting that the Applicant has failed to comply with the minimum non-residential floor space controls under the (now made) WLEP, it would not be in the public interest for consent to be granted to the DA for the

Proposed Development which breaches this control, whilst seeking to take up the full development potential envisaged in the (now made) WLEP.

17. **INCONSISTENCY WITH DRAFT WLEP – AFFORDABLE HOUSING**

The DA relies on the (now made) WLEP to justify exceedances of the FSR and height of buildings development. However, the Proposed Development does not satisfy other provisions in the (now made) WLEP, including the requirement to pay an affordable housing contribution in accordance with clause 6.8 of the Draft WLEP. In particular:

- a. The Site is land identified as “Area 3” on the draft Special Provisions Area Map for the purpose of clause 6.8 of the then Draft (now made) WLEP. This means that under the then Draft (now made) WLEP, development consent cannot be granted to the erection of residential accommodation unless the consent authority has taken the following into consideration –
  - i. the Willoughby Affordable Housing Principles;
  - ii. the impact the development would have on the existing mix and likely future mix of residential housing stock in Willoughby; and
  - iii. whether one of the affordable housing conditions should be imposed on the consent for the purpose of providing affordable housing in accordance with the Willoughby Affordable Housing Principles.
- b. The DA does not contain any substantive analysis of these provisions, particularly in the context of the Applicant’s 4.6 Request – FSR and 4.6 Request – Height, where the Applicant relies upon the then Draft (now made) WLEP to justify exceedances of the FSR and height of buildings development standards in the WLEP.
- c. Under the (now made) WLEP, the quantum of any affordable housing condition imposed under clause 6.8 is 10% of the accountable total floor space.
- d. The feasibility of an affordable housing condition equal to 10% of accountable total floor space was considered as part of the preparation of the then Draft (now made) WLEP – see the *Willoughby Affordable Housing Feasibility Report* prepared by SGS dated 30 August 2021.

- e. The Development Application cannot leverage the benefit arising from the uplift in FSR and building height envisaged under the (now made) WLEP, without also contributing towards the provision of affordable housing as required under clause 6.8 of the (now made) WLEP.

18. **INCONSISTENCY WITH DRAFT WLEP – URBAN HEAT**

The DA relies on the then Draft (now made) WLEP to justify exceedances of the FSR and height of buildings development standards, however the proposal does not satisfy the urban heat requirements of that LEP.

19. **PUBLIC ART**

The Development Application does adequately demonstrate the provision of public art. It does not provide a Detailed Public Art Plan prepared in accordance with Council's Public Art Policy and Procedures and Guidelines, and does not clearly indicate how it will deliver the public art identified in the Detailed Public Art Plan.

20. **SUITABILITY OF THE SITE**

The Site is not suitable for the Proposed Development which constitutes an overdevelopment of the Site. In particular:

- a. The Proposed Development proposes to carry out works on land other than the Site without providing evidence of owners' consent. The consent authority therefore cannot include that the Proposed Development is suitable for the Site, as per section 4.15(1)(c) of the EP&A Act.
- b. Until the nature of the proposed "*community facilities*" use is particularised by the Applicant, the consent authority is unable to form a view on the suitability of the Site for the Proposed Development for the purpose of section 4.15(1)(c) of the EP&A Act.
- c. The Proposed Development constitutes an overdevelopment of the Site.
- d. The position that the DA constitutes an overdevelopment of the Site is supported by the identification of the Site as one of "*Sites too small or isolated for significant development*" in Section 5.2 – Indicative amalgamation pattern (page 109) of the Architectus Report.



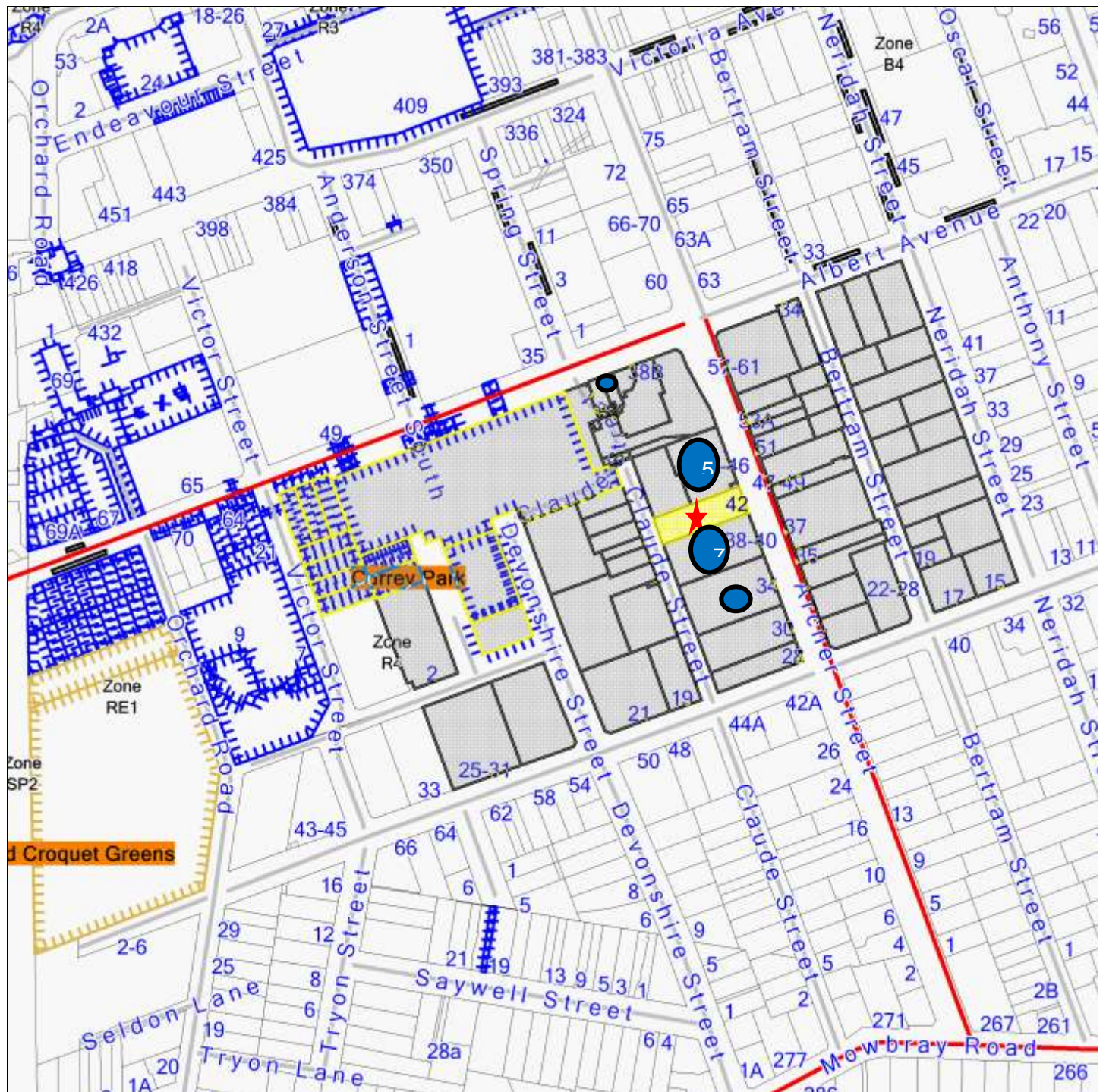
21. **PUBLIC INTEREST**

The DA is not in the public interest. In particular:

- a. The nature of the proposed use is not known, and therefore the consent authority cannot form a view as to whether granting consent for that use is in the public interest for the purpose of section 4.15(1)(e) of the EP&A Act.
- b. The DA does not comply with the development standards for FSR or building height in the WLEP. The requests submitted by the Applicant to justify those non-compliances rely upon the uplift in development potential envisaged under the then Draft (now made) WLEP, but the DA is saved from those controls. However, even if substantial weight could be placed on this instrument under section 4.15(1)(a)(ii) of the EP&A Act, the Applicant has not demonstrated how the Proposed Development is consistent with other relevant controls that would apply to the Proposed Development under the the then Draft (now made) WLEP. The Proposed Development is not consistent with a number of those controls. Granting consent to the DA would allow the Applicant to take the benefit in the uplift in development potential envisaged under the then Draft (now made) WLEP in terms of FSR and building height, in circumstances where the Proposed Development is inconsistent with the character and form of development provided for in the the then Draft (now made) WLEP (and the Draft WDCP). The DA is therefore not in the public interest for the purpose of section 4.15(1)(e) of the EP&A Act.
- c. Further to particular (b) above, the DA does not provide key public benefits that would ordinarily be required under the then Draft (now made) WLEP, including a contribution towards the provision of affordable housing and a “community infrastructure contribution”.
- d. The DA is otherwise an inferior proposal which results in adverse impacts in relation to heritage, urban design, desired future character, vegetation management, landscaping, traffic, and carparking when assessed against the current controls in the WLEP and WDCP (as well as the draft controls in the then Draft (now made) WLEP and Draft WDCP). These impacts, when considered in the context of the DA as a whole, demonstrate that the

Proposed Development is not in the public interest for the purpose of section 4.15(1)(e) of the EP&A Act.

## ATTACHMENT 8: NOTIFICATION MAP





## Record of Neighbour Notifications sent relating to:

PPSSNH-333 – DA/2022/240 – Willoughby Council – 42 Archer Street

Chatswood

	Site		Submission
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### Comments:

Created on : Tuesday, 11 July 2023

Created by : VB

### 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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NB\* All land parcels depicted over leaf are representations only of lands which are correctly defined by their registered Linen Plans.

Overlying and overlapping Strata and Stratum cannot be correctly depicted on the adjacent two dimensional map and may be represented as stylised shapes.

This is done solely to highlight the existence of such lands and accurate positional details and dimensions should be taken from registered Linen Plans.



Properties notified



Property where DA applies