

Justification under Clause 4.6 of Willoughby Local Environmental Plan 2012 –  
Exceptions to Development Standards.

42 Archer Street, Chatswood

Clause 4.3 Height of Buildings

Control	34m
Proposed Height	90m
Draft LEP Amendment	90m

## 1.0 Introduction

The proposed development comprises the demolition of the existing residential flat building and the construction of a 26 storey residential flat building above four levels of basement car parking at 42 Archer Street, Chatswood (SP4747).

It is proposed to develop the subject site by demolishing the existing residential flat building and constructing a through-site link along the north of the site and constructing a 26 storey mixed use tower with four levels of community facilities and 22 levels of residential accommodation. The tower is constructed above four basement levels comprising 28 parking spaces (being 21 residential spaces (accessible) and 7 community facility spaces (1 x accessible)). The basements include 8 x bicycle spaces; 2 x motorcycle spaces; loading bay and garbage collection; 1 car wash bay and residential storage. The tower comprises four levels of community facilities and a residential lobby at ground floor with six community facility tenancies and 22 levels of residential accommodation comprising a total of 42 units (1 x 5 bed, 20 x 3 bed and 21 x 2 bed) with communal open space on levels 03 and 25.

Extensive landscaping is provided predominately in deep soil to the street frontages and the northern common boundary with extensive landscaping along the through-site link between Archer Street and Claude Street to the rear. The landscape plan reflects extensive planting and includes the provision of 10 x tuckeroos along the northern boundary. The street tree planting is retained to maintain the public domain and in conjunction with improvements to Archer and Claude Street providing pedestrian and bicycle through-site links between the streets.

The proposal has been demonstrated to comprise a development that has been designed in accordance with the Council's policies and planning instruments and will make a positive contribution to the neighbourhood and broader locality.

The subject site comprises an area of 1,115m<sup>2</sup> with a frontage to Archer Street (east) of 18.29m and a secondary frontage to Claude Street (west) of 18.29m. The northern common boundary comprises 60.96m and adjoins 44 – 46 Archer Street and 41 Claude Street. The southern common boundary comprises 60.96m and adjoins 38 – 40 Archer Street.

The subject site falls from south (RL91.06) to north (RL90.39) along Archer Street (0.67m) and falls (1.88m) from south-west (RL92.27) to north-east (RL90.39). The subject site accommodates a four storey residential flat building accommodating 12 units above ground floor at grade car parking.

The subject site is currently zoned R4 High Density Residential with a floor space ratio of 1.7:1 and a height of building of 34m. The subject site is in the process of being rezoned to B4 Mixed Use with a floor space ratio of 6:1 and a height of building of 90m. The amendments have been exhibited and are considered to be imminent and certain.

The site is located on the fringe of the Chatswood CBD and within 750m of Chatswood railway station and interchange. The site is located within the residential precinct south of Albert Street and located within a high density residential area to the south of the CBD. The area is generally characterised by a mix of mid-rise residential flat buildings of varying ages and styles.

The subject site is bounded by Archer Street to the east, Claude Street to the west, south of the Albert Avenue and north of Johnson Street. The immediate area is developed with mixed use medium density residential uses. The lands north of the site have approval for high rise high density residential and commercial development.

The properties on the western side of Claude Street are currently low density single dwellings.

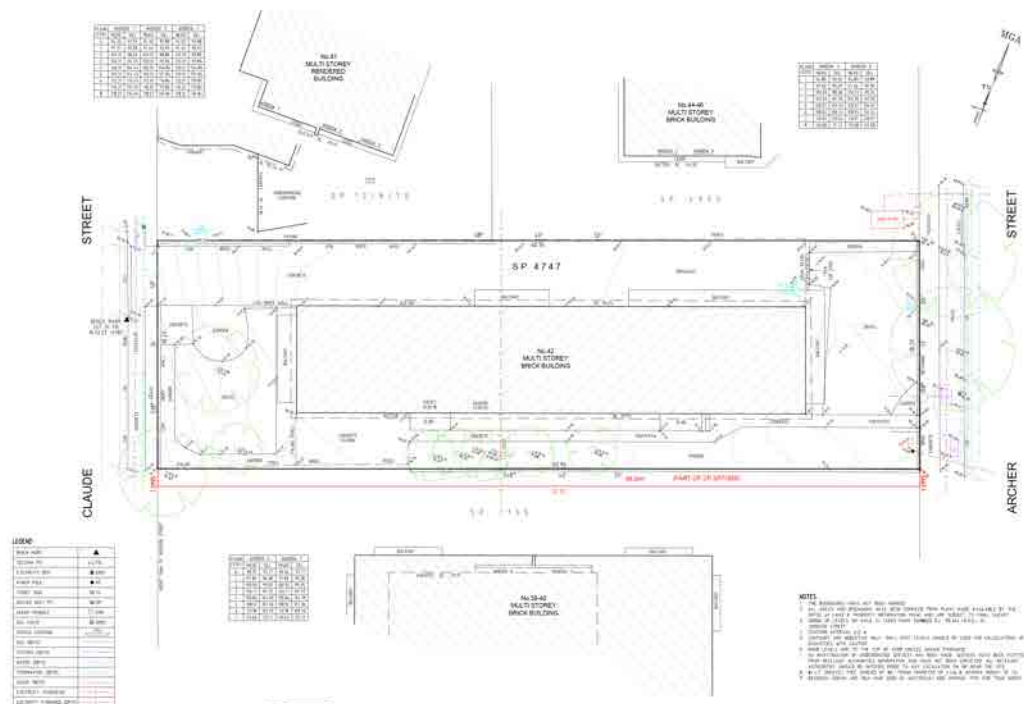
While the local area is relatively medium density residential uses it is characterised by good access to local facilities and public open space. The local context is also relatively good in terms of pedestrian connectivity and the occurrence of local centres. The local and neighbourhood centres within the Willoughby Local

Government Area are located to the north-east and north-west with good retail precincts and community facilities within close proximity to the site.

The subject site is located immediately to the west of the Pacific Highway and north of the Gore Hill Freeway. This system offers excellent access to the metropolitan road network north and south. These are highly traffic routes which offer little pedestrian amenity and the current local road network attempts to offer alternative pedestrian and bicycle routes between these corridors.

The subject site comprises 42 Archer Street, Chatswood (SP4747) with an area of 1,115m<sup>2</sup> with a frontage to Archer Street (east) of 18.29m and a secondary frontage to Claude Street (west) of 18.29m. The northern common boundary comprises 60.96m and adjoins 44 – 46 Archer Street and 41 Claude Street. The southern common boundary comprises 60.96m and adjoins 38 – 40 Archer Street.

The subject site falls from south (RL91.06) to north (RL90.39) along Archer Street (0.67m) and falls (1.88m) from south-west (RL92.27) to north-east (RL90.39). The subject site accommodates a four storey residential flat building accommodating 12 units above ground floor at grade car parking.



Survey Extract

Source: LTS Surveying 2018

The site has two (2) street frontages, with the main frontage being to Archer Street comprising approximately 18.29 metres along the eastern boundary, and a frontage

of 18.29 metres to Claude Street along the western boundary. The common northern boundary comprises approximately 60.96 metres adjoining high density residential development. The common southern boundary is approximately 60.96 metres.

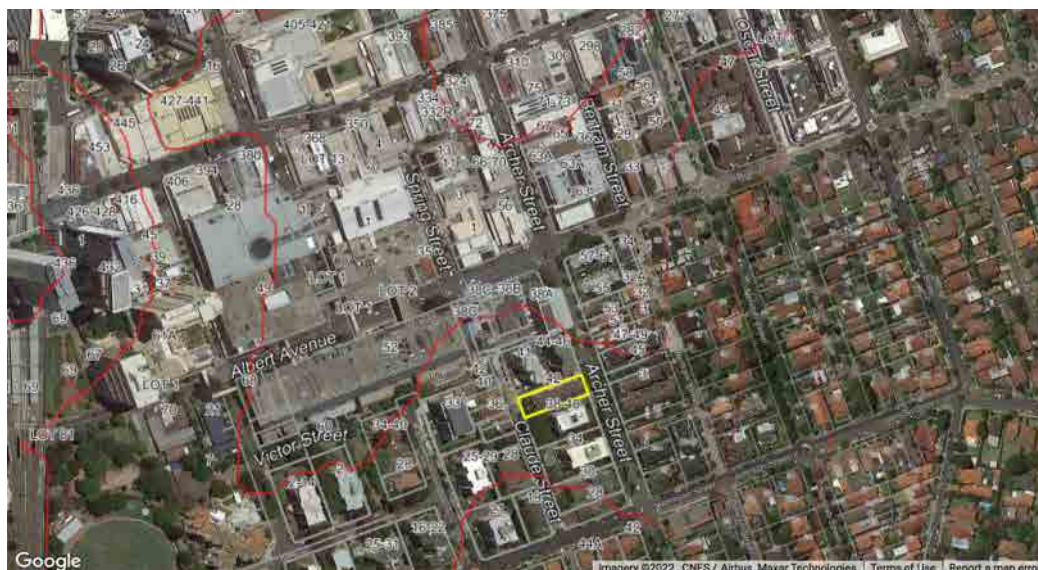


Site with 5m contour overlay Source: RPData 2022

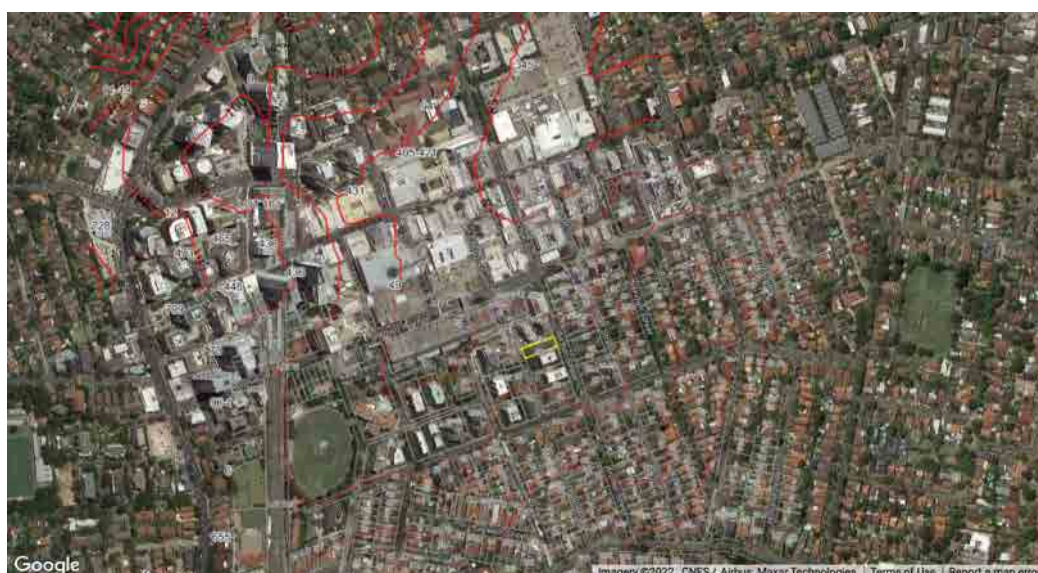


Site with 5m contour overlay Source: RPData 2022





Site with 5m contour overlay Source: RPData 2022



Site with 5m contour overlay Source: RPData 2022

The site is located approximately 80m from bus stops on Archer Street that are served by regular services to the Sydney Central Business District and other centres. The site is within walking distance to the CBD shops at to the north approximately 100m.





42 Archer Street view north-west from Archer Street



42 Archer Street southern elevation from Archer Street





42 Archer Street view west of Archer Street façade.



42 Archer Street view south-west of Archer Street façade.





42 Archer Street view south-west of Archer Street northern elevation.



42 Archer Street view south-east from Claude Street western elevation.





42 Archer Street view south-east from Claude Street northern elevation.



42 Archer Street view south-east from Claude Street northern elevation.

The locality accommodates a number of buildings of various ages and styles which are used as medium density dwellings. On-site parking is available on most sites

but on-street parking remains in demand. The buildings comprise mid-range residential flat buildings.

The land to the immediate south of the site has been significantly modified by its use as the major freeway north of the Sydney CBD. The freeway corridor is located below the level of the subject site within acoustic walls and for the most part screened by significant landscaping and open space.

The subject site does not contain any heritage listed items on Schedule 5 of the Willoughby Local Environment Plan (LEP) 2012, nor is it located within a Heritage Conservation Area (HCA). A heritage listed item is located on the corner of Archer Street and Johnson Street and the area south of Johnson Street is a heritage conservation area. It is considered none of the buildings or structures in close proximity contain any historic and aesthetic value. The existing buildings and structures do not meet the criterion for local heritage listing and they do not form a part of any *Heritage Conservation Area*.

The site in itself does not meet the criterion for local heritage significance nor does the history of use, contribution to the local character or the community require any building or structure to be retained and integrated into the redevelopment of the site.

Clause 4.6 of the Willoughby Local Environmental Plan 2012 (WLEP 2012) enables Council to grant consent for development even though the development varies a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6 (3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard, namely:

1. that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
3. that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be



carried out.

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court has given consideration to the matters that must be addressed in relation to whether a variation to development standards should be approved. While these cases originally referred to the former SEPP 1, the principles still remain relevant, more recently, further guidance on the approach to apply to applications to vary development standards under clause 4.6 of the Standard Instrument was provided by the Land and Environment Court. This Clause 4.6 gives consideration to the matters raised in:

- Big Property v Randwick City Council [2021];
- HPG Projects Pty Ltd v Mosman Municipal Council [2021];
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Turland v Wingecarribee Shire Council [2018] NSWLEC 1511;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;
- and
- Moskovich v Waverley Council [2016] NSWLEC 1015.
- Wehbe v Pittwater Council [2007] NSW LEC 827; and
- Winten Property Group Ltd v Willoughby Council [2001] 130 LGERA 79 at 89;

In accordance with the above requirements, this Clause 4.6 variation request:

2. identifies the development standard to be varied;
3. identifies the variation sought;
4. establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
5. demonstrates there are sufficient environmental planning grounds to justify the contravention;
6. demonstrates that the proposed variation is in the public interest; and
7. provides an assessment of the matters the secretary is required to consider before providing concurrence.

This Clause 4.6 variation request relates to the development standard for Height of Buildings under Clause 4.3 of the WLEP 2012 and should be read in conjunction

with the Statement of Environmental Effects prepared by Mersonn dated June 2022 as well as the supplementary documentation submitted to Council. This Clause 4.6 variation request demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variation to the standard.

## 2.0 Development Standard to be Varied

The development standard that is sought to be varied as part of this application is Clause 4.3 of the WLEP 2012, relating to the Height of Buildings. Under the WLEP 2012, the site is afforded Height of Buildings of 34m.

## 3.0 Nature of the Variation Sought

The maximum Height of Buildings on the site under the WLEP 2012 for this application is 34m. The proposed building on the site has a height of 90m and is in excess of the maximum Height of Buildings development standard applicable under the WLEP 2012 and requires a variation to the maximum Height of Buildings development standard through clause 4.6.

The proposed development seeks consent to exceed the Height of Buildings development standard applicable under the WLEP 2012 by 165%.

However, it is noted that the amendment has been exhibited by the Council and consequently is considered to be imminent and certain. It is noted that the Height of buildings proposed on the subject site is 90m which is compliant with the imminent and certain amendment.

It is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6. Decisions in respect of Micaul Holdings P/L V Randwick City Council (55% exceedance of height and 20% exceedance of FSR) and Moskovich V Waverley Council (65% exceedance of FSR) support this.

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

The five methods outlined in Wehbe include:

- 1. The objectives of the standard are achieved notwithstanding non-*



*compliance with the standard (First Method).*

*2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*

*3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*

*4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).*

*5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).*

In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

In this instance the whole of the proposed development is the aspect of the development that exceeds the development standard however, it is noted that the amendment has been exhibited by the Council and consequently is considered to be imminent and certain. It is noted that the Height of building proposed on the subject site is 90m which is compliant with the imminent and certain amendment. As a result of the amendment will comply with the height control.

The imminent and certain amendment would create taller tower on the fringe of the Chatswood CBD. The proposal reduces the footprint and sets back significantly so as to locate the tower form in a way that responds to the surrounding high rise buildings in the locality. It is considered that the environmental planning grounds justify the contravention of the development standard.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of Clause 4.3 Height of Buildings in WLEP 2012 2012 are;

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

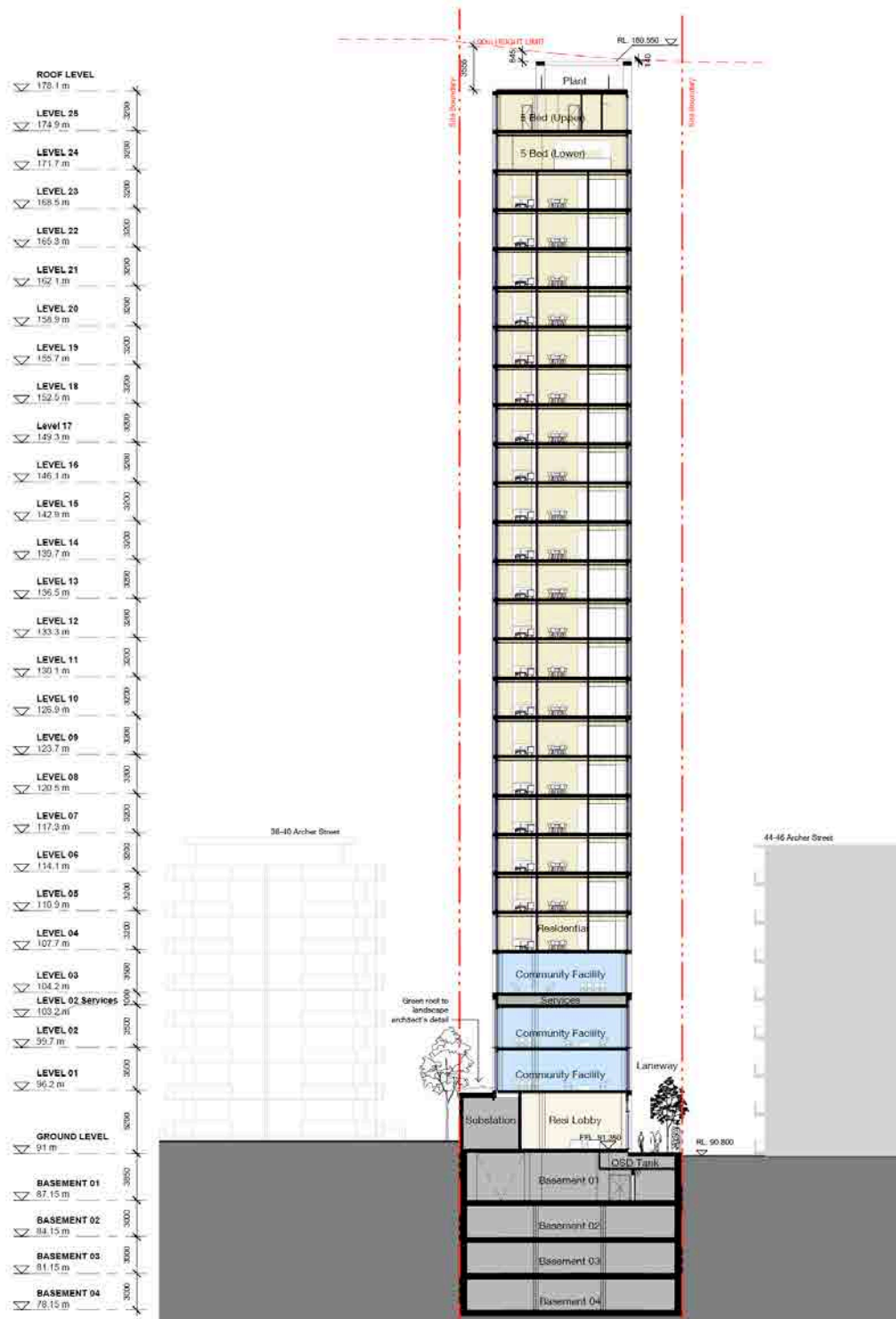
- (a) to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,*
- (b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- (c) to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,*
- (d) to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,*
- (e) to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,*
- (f) to use maximum height limits to assist in responding to the current and desired future character of the locality,*
- (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*
- (h) to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.*

- (a) to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,*

It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposal presents as a building predominantly within the maximum height of buildings as it presents to the street but is well



setback from the street frontages and responds to the residential towers in the locality.



Section



Long Section

It is apparent from the photographs below that the immediate context comprises a number of high rise residential towers and the proposed hotel tower follows this

form being setback behind the streetscape buildings which contribute to the locality.



Photomontage View West



Photomontage View North-West





Photomontage View South-West

Although the LEP and draft LEP allow for extra height on the subject site, the proposal locates the building element in a location where the height of mixed use buildings on the fringe of the Chatswood which will change in the future. It is considered that the height of development is appropriate to the condition of the site and its context. It is considered that the proposal meets this objective of the standard.

*(b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*

The proposed development provides an appropriate height transitions between new development and the buildings in locality by setting back the tower form from Archer Street and Claude Square.

It is not anticipated that any significant view loss arises from the proposal given the siting of the building and the distance of the high rise residential flat buildings to the north, south and west. The tower form effectively sits well setback from the street edge and is considered to have minimal view impacts.

It is apparent from consideration of the surrounding buildings to the north, south and west where taller residential flat buildings exist that views are only obtained from

the upper levels well above the street wall height. The buildings to the west and south of the site are similarly of a level with views obscured by the existing street tree canopy and surrounding buildings.

The building envelope is setback 6m from the street frontages, reinforcing the street character and providing deep soil zones. The Planning and Urban Design Strategy 2036 controls propose a maximum height limit of 90m. A 4.5m wide through site pedestrian link is provided along the northern boundary, where level change is at a minimum and the public space can receive maximum solar access. Further setting back the tower form from the east and west ensures the residential apartments at 40 Archer St maintain a minimum of 2hrs of solar access on the winter solstice. A 3m tower side setback is provided to the southern boundary for fire separation.

The tower form is broken into two volumes - one facing east and one facing west. This break helps articulate the north and south facades and relates the building massing to the internal planning.

It is considered that on balance the proposal minimises the impacts of new development and is acceptable. It is considered that the proposal meets this objective of the standard. The massing is stepped in height to create an articulated and varied roofline. A single storey break between the podium and tower forms is introduced at Level 03 to emphasise the change of use between the podium and tower.

The proposed massing does not overshadow any of the open spaces designated in the Planning and Urban Design Strategy 2036. The proposed tower location and massing has been developed to ensure solar access to the apartments located at 38-40 Archer Street is maintained. The Apartment Design Guide defines solar access criteria as receiving a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter, to both the apartment balcony and living space. The diagram on this page illustrates in plan the angle of the sun between 9am-11am and 1pm-3pm at midwinter, and how this has defined the constraining envelope of our proposal.



9am



10am



11am



12pm



1pm



2pm



3pm



## Views from the sun



Winter Solstice 9AM



Winter Solstice 10AM



Winter Solstice 11AM



Winter Solstice 12PM



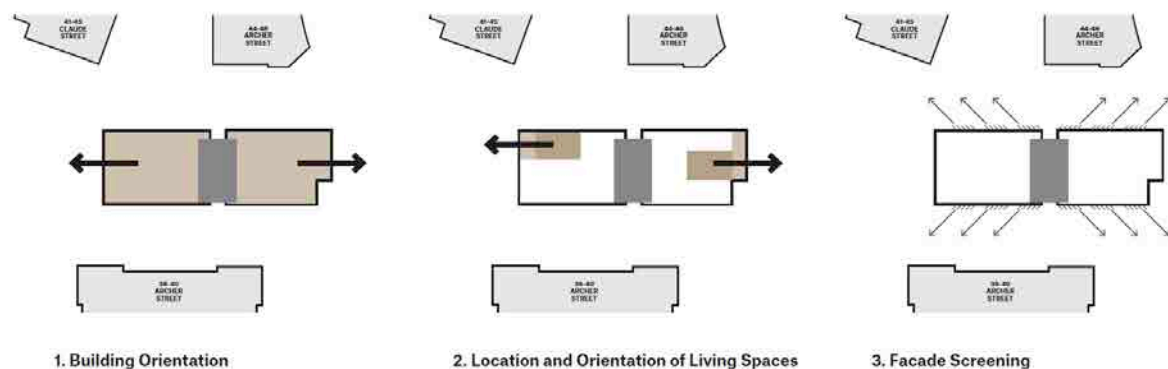
Winter Solstice 1PM



Winter Solstice 2PM



These screens are specifically angled to direct views away from the neighbouring buildings.



It is considered that the proposal meets this objective of the standard.

*(c) to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,*

The proposal consists of a residential tower and a podium containing a mix of non-residential uses. The three storey podium creates a human scale at the ground plane whilst a north facing through-site link connecting Claude Street with Archer Street delivers an important component to achieving a permeable and accessible CBD.

The tower contains a total of 42 apartments over 21 residential floors. Apartment layouts have been designed to maximise view, solar access and cross ventilation, whilst vertical screens provide sun shading and visual privacy for residents.

Roof terraces at Level 03 and Level 25 provides communal outdoor space for residents, with both terraces having good solar access and partially covered outdoor spaces for weather protection. Set back from the streets, the ground floor aims to maximise active frontages to the streets and along the publicly accessible through site link.

Overlooking Archer Street and the laneway, the residential lobby is a generous space providing a highly visible front door to the building. Foot traffic moving through the laneway will pass two flexible double storey retail units.



Basement access and building services are discreetly located along the southern side of the ground floor. The substation has been integrated within the building, keeping the landscaped frontage to Archer Street clear of obstruction. Vehicle access to the basement car park and loading dock is provided from Claude Street. A traffic management system allows for a single lane ramp to the basement, maximising space on the ground floor for active uses such as retail and entry lobbies.

Envisioned as a local link, the twenty four hour pedestrianised laneway is activated by retail frontage and entry lobbies for the commercial and community use above. North facing for maximum solar access, the laneway will provide an important link between Archer Street and Claude Street, delivering a critical public domain component of the Chatswood Planning and Urban Design Strategy 2036. Metal awnings define a series of building entries along the laneway.

The residential lobby is located off the Laneway adjacent to Archer Street. The lobby is conceived as a generous arrival space welcoming residents home. Containing a small lounge area and the residents mailboxes, the space will be highly glazed for natural light, as well as providing casual surveillance of the laneway and Archer Street.

On the Claude Street frontage, the building presents as a 3 storey podium, with the residents communal terrace located on Level 03. At ground, the retail tenancy fronts onto Claude Street creating an active corner. Upper level retail on Level 01 and a community facility on Level 02 provide further activation and casual surveillance of Claude Street. Building services and the vehicular entry to the basement have been discreetly located in the south west corner of the podium, and integrated into the overall podium design.

Level 01 and 02 contain non-residential uses within a podium volume. Level 01 accommodates the upper floors of the retail units and a community facility, whilst Level 02 contains a full floor of community facilities. Fixed screening to the north and southern facades provide sun-shading, whilst ensuring privacy to adjacent lots.

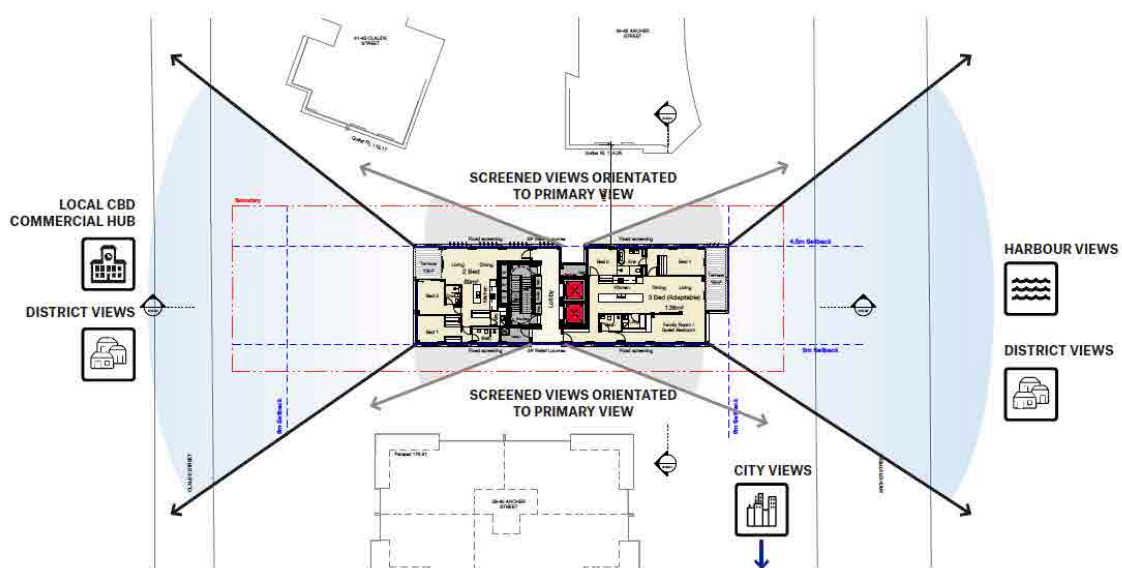
Level 03 consists of a community facility located to the eastern side of the plan, and a large communal residential outdoor space is located to the western side of the plan. The outdoor space consists of an open air landscaped terrace and a more sheltered BBQ area, which provides weather protection and privacy from adjacent overlooking apartments. The terrace is set back from the perimeter with large planters, softening the built form and creating an acoustic and privacy buffer.

Sharing this floor is a community facility which benefits from an east facing terrace overlooking Archer Street.

It is considered that the proposal meets this objective of the standard.

*(d) to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,*

The three bed apartment benefits from unobstructed views east towards the harbour and oblique views to the Sydney CBD. The two bed apartment benefits from unobstructed views west towards Chatswood CBD and over the local suburban area. Screened facades on the north and south provide angled views in the same directions.



It is not anticipated that any significant view loss arises from the proposal given the siting of the building and the distance of the high rise residential flat buildings to the north, south and west. The tower form effectively sits well setback from the street edge and is considered to have minimal view impacts.

It is apparent from consideration of the surrounding buildings to the north, south and west where taller residential flat buildings exist that views are only obtained from

the upper levels well above the street wall height. The buildings to the west and south of the site are similarly of a level with views obscured by the existing street tree canopy and surrounding buildings.

It is considered that the proposal meets this objective of the standard.

*(e) to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,*

The height of the proposal is considered to be consistent with the desired character of the locality and the surrounding buildings particularly at zone boundaries. The proposal provides an appropriate built form and land use intensity consistent with the adjoining properties and ensures compatibility by the proposal.

The proposed development meets the other development restrictions of floor space ratio and landscaping and deep soil.

It is considered that the proposal meets this objective of the standard.

*(f) to use maximum height limits to assist in responding to the current and desired future character of the locality,*

It is noted that the proposed development is consistent with the desired future character of the locality (in that it has been exhibited and will be rezoned and is in transition) and the compliance with the building height control means that this building complies with the building height control consistent with this objective.

*(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*

This objective is not applicable to the subject site.

It is considered that on balance the compatibility outcome is acceptable. It is considered that the proposal meets this objective of the standard.



It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposed height breach is consistent with the imminent and certain planning controls and the building will minimise any view or solar impacts. Furthermore, its central location means that it will not be significantly visible from the streetscape or surrounding properties.

The SEE details that the proposal is largely consistent with the relevant environmental planning instruments and does not give rise to any adverse environmental impacts in respect to overshadowing, traffic, heritage, wind, reflectivity, stormwater, flooding, noise, waste, economic and social impacts.

It is considered that these objectives are met by the proposal.

5.0 There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the WLEP 2012 2012 requires the departure from the development standard to be justified by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of Buildings control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site.

The applicable circumstances that relate to the site are discussed below.

The proposal seeks flexibility in the application of the standard where the breach to the height control arises from a building, which is consistent in bulk and scale with the desired future character and the imminent and certain planning controls.

It is apparent from the views from the sun that the surrounding buildings are minimally affected and the proposal provides good solar access and amenity with very low levels of amenity impact to the neighbours. This is considered to achieve flexibility consistent with the objectives of this clause.

The proposal provides for a better outcome in making available extensive setbacks which benefits from high amenity and high levels of solar access and outlook. This is considered to be a better outcome consistent with the objectives of this clause.

The proposal does not reduce public views or significantly reduce solar access to public spaces. Shadow diagrams are provided with the application.

A consideration of the application and the submitted shadow diagrams demonstrate that no significant overshadowing, privacy, view or bulk and scale amenity impacts arise from the proposal. It is considered that the proposal is the better planning outcome encouraged by the provisions of Clause 4.6.

The proposed works above the height have no significant view impact and cause no overshadowing, nor bulk or scale impacts to the existing surrounding dwellings.

In the circumstances where there are sound environmental and site specific sufficient environmental planning grounds reasons for the breach to the height control it is considered to justify contravention of the control and consequently the exception to the height control standard under Clause 4.6 is considered acceptable.

In this regard, there are sufficient environmental planning grounds to justify contravening the development standard. The proposed additional height sought in this Clause 4.6 better allows the built form on the site to achieve the desired future character of the locality, as expressed under the DCP, as compared to the do nothing scenario.

6.0 It is in the public interest because it is consistent with the objectives of the particular standard and the zone.

6.1 Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in Section 4.1 of this report.

6.2 Consistency with the Zoned R4 – High Density Residential objectives.

The objectives for development in this zone are;

## 1 Objectives of zone

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network.*
- *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.*

The proposal provides for the housing needs of the community within a high density residential environment with good amenity and access to service and facilities in accordance with this objective.

The proposal provides a variety of housing types within a high density residential environment in accordance with this objective.

The proposal allows for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network in accordance with this objective.

The proposal encourages 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 and it is noted these aspects have been reviewed by the design excellence panel in accordance with this objective.

The proposal is considered to meet the objectives for development in the zone.

The proposal is considered consistent with the objectives of the standard and for development in this zone as required by this subclause.

The bulk and scale of the proposal is considered to be consistent with the desired future character of the locality and provides an appropriate transition in height between the relevant parts of the new development. The proposal responds to the site relating the proposed building to the

topography maximising amenity and solar access.

The desired character of the locality and the surrounding buildings and public areas will continue to receive satisfactory exposure to sky and sunlight. The proposal provides an appropriate built form and land use intensity consistent with the objectives of this clause.

It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposed external works to the building are at the rear of the site and located to minimise any view impacts.

The SEE details that the proposal is largely consistent with the relevant environmental planning instruments and does not give rise to any adverse environmental impacts in respect to overshadowing, traffic, heritage, wind, reflectivity, stormwater, flooding, noise, waste, economic and social impacts. It is considered that these objectives are met by the proposal.

The proposal is considered consistent with the objectives of the standard and for development in this zone as required by this subclause.

#### 7.0 Secretary's Concurrence.

Under Clause 4.6(5) of WLEP 2012 2012, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the WLEP 2012, which must be considered by the Secretary.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

The variation to the Height of Buildings standard of WLEP 2012 2012 will not raise any matter in which could be deemed to have State or Regional significance. The extent of variation sought is minor in the context of the building heights.

The public benefit of maintaining the development standard.

Maintaining the development standard would not result in any public benefit in this situation. As detailed within the SEE, the height and bulk of the existing building is appropriate to the context and the proposal responds to the surrounding urban



context and the requirements of the Willoughby DCP and the amendments.

The built-form provided by the proposed building is generally consistent with the bulk and scale of the surrounding buildings, and requiring compliance with the Height of Buildings standard would result in an inconsistent building form.

The proposed development would allow the building as a whole to better meet the objectives of the DCP. The proposed variation to the Height of Buildings standard therefore allows the site to better meet the objectives of the DCP, the amendments and the desired future character of the area. DCPs are guiding documents prepared to express the desired future character; protect the public interest and are prepared through an extensive public exhibition process.

Therefore, to better meet the objectives of the DCP can be said to improve the development's presentation to the public domain and is in the public interest.

Any other matters to be taken into consideration by the Secretary  
None.

## 8.0 Conclusion

The assessment above demonstrates that compliance with the maximum Height of Buildings development standard contained in Clause 4.3 of WLEP 2012 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded on environmental planning grounds.

It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a superior outcome in planning and design terms. This Clause 4.6 variation demonstrates, notwithstanding the non-compliance with the maximum building height development standard, that:

- The development as proposed will deliver a superior built-form outcome in consideration of the site's characteristics and its location amongst the surrounding buildings;
- The development as proposed will provide environmental benefits particular to the site through improved amenity for future occupants of the development and for the surrounding area generally; and
- Compliance with the development standard would be both unreasonable and unnecessary in the instance because the development is able to fully satisfy

the objectives of the R4 – High Density Residential zone and the objectives of the Height of Buildings development standard.

The WLEP 2012 applies a maximum Height of Buildings development standard for the site of 34m. The proposed development has a height of 90m and is therefore in compliance with the imminent and certain of the maximum Height of Buildings development standard allowable under the WLEP 2012 amendment.

This variation therefore seeks consent for the proposed works as consistent with the specific site constraints and the character and form of the surrounding buildings and does not result in an over development of the site or any adverse impacts on the public domain. The proposed additional height is commensurate with surrounding developments and the built form that characterises the locality. It is also consistent with the design approach applied to other buildings within the immediate vicinity.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the Height of Buildings development standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the Height of Buildings development standard, the proposed development is considered to satisfy the objectives of the development standard and the R4 – High Density Residential zone.

The proposal will provide environmental benefits particular to the site through the provision of equitable access and improved amenity for future occupants of the development and for the surrounding area generally. On this basis, the Clause 4.6 variation is considered well founded and should be supported.

In this instance it is considered appropriate to make an exception to the Height of Buildings development standard under the provisions of Clause 4.6 for the reasons outlined in the preceding discussion.

A handwritten signature in blue ink, appearing to read 'Andrew Darroch', is written over a light yellow rectangular background.

Signature:

Name: Andrew Darroch

Date: June 2022