

Panel Reference	PPSSNH-402
DA Number	DA-2023/166
LGA	Willoughby
Proposed Development	Mix of concept, construction and use and staged development. Nominated Integrated Development - Water Management Act 2000 s90 (WaterNSW). Development Application - Demolition of existing structures, removal of all trees, residential flat building containing 89 residential units, amendments to the layout and arrangement of 'communal' space, 4 levels of basement parking containing 57 car spaces, landscaping and associated works, through-site links, strata subdivision.
Street Address	691-699 Pacific Highway, Chatswood
Applicant/Owner	DPG 38 Pty Ltd c/o- JV Urban
Date of DA lodgement	28 June 2023
Number of Submissions	Eight (8)
Recommendation	Refusal
Regional Development Criteria - Schedule 6 of the SEPP (Planning Systems) 2021	Development that has a capital investment value of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • SEPP No 65 - Design Quality of Residential Apartment Development and NSW Apartment Design Guide (ADG) • Willoughby Local Environmental Plan 2012 (pre and post Amendment 34) • Willoughby Development Control Plan
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Assessment Report • Schedule of Conditions • Site Description and Aerial Photo • Notification, Controls, Developer Contributions and Referrals • Submissions Table • Section 4.15 (79c) Assessment • Notification Map
Report prepared by	Peter Wells – Consultant Planner
Report date	21 August 2024

Summary of s4.15 matters

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

Yes

Legislative clauses requiring consent authority satisfaction

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

Yes

- *e.g. Clause 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021, Clause 4.6(4) WLEP*

Clause 4.6 Exceptions to development standards

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

Yes

Special Infrastructure Contributions	
Does the DA require Special Infrastructure Contributions conditions (S7.24)?	Not Applicable
<i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	

Conditions	
Have draft conditions been provided to the applicant for comment where applicable?	No (Refusal)
<i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	

SNPP NO:	PPSSNH-402
COUNCIL	WILLOUGHBY CITY COUNCIL
ADDRESS:	691-699 PACIFIC HIGHWAY, CHATSWOOD NSW 2067
DA NO:	DA-2023/166
PROPOSAL:	MIX OF CONCEPT, CONSTRUCTION AND USE AND STAGED DEVELOPMENT. NOMINATED INTEGRATED DEVELOPMENT - WATER MANAGEMENT ACT 2000 S90 (WATERNSW). DEMOLITION OF EXISTING STRUCTURES, REMOVAL OF ALL TREES, RESIDENTIAL FLAT BUILDING CONTAINING 89 RESIDENTIAL UNITS, AMENDMENTS TO THE LAYOUT AND ARRANGEMENT OF ‘COMMUNAL’ SPACE, 4 LEVELS OF BASEMENT PARKING CONTAINING 57 CAR SPACES, LANDSCAPING AND ASSOCIATED WORKS, THROUGH-SITE LINKS, STRATA SUBDIVISION.
RECOMMENDATION:	REFUSAL
ATTACHMENTS:	1. SITE DESCRIPTION AND AERIAL PHOTO 2. NOTIFICATION, DEVELOPMENT CONTROLS, DEVELOPER CONTRIBUTION & REFERRALS 3. ASSESSMENT OF SEPP 65 (DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT 4. ASSESSMENT UNDER OTHER SEPPs, WLEP, WDCP 5. SUBMISSIONS TABLE 6. SECTION 4.15 (79C) ASSESSMENT 7. REASONS FOR REFUSAL 8. NOTIFICATION MAP 9. ARCHITECTURAL PLANS 10. LETTER FROM JV URBAN 11. CLAUSE 4.6 – BUILDING HEIGHT (DATED 22 MAY 2024) 12. CLAUSE 4.6 – FSR (DATED 22 MAY 2024) 13. PUBLIC SUBMISSIONS
RESPONSIBLE OFFICER:	RITU SHANKAR - TEAM LEADER
AUTHOR:	PETER WELLS - CONSULTANT PLANNER
DATE:	20-AUG-2024

EXECUTIVE SUMMARY

1. PURPOSE OF REPORT

The proposal is regionally significant development as identified in Schedule 6 of the SEPP (Planning Systems) 2021. It has a capital investment value (CIV) of over \$30 million and therefore Sydney North Planning Panel is the determination authority.

2. OFFICER'S RECOMMENDATION

2.1 THAT the Sydney North Planning Panel (SNPP) refuse development application DA-2023/166 for the reasons provided in the Schedule, relating to:

Mix of concept, construction and use and staged development; Nominated Integrated Development - Water Management Act 2000 s90 (WaterNSW); Demolition of existing structures, removal of all trees, residential flat building containing 89 residential units, amendments to the layout and arrangement of 'communal' space, 4 levels of basement parking containing 57 car spaces, landscaping and associated works, through-site links, strata subdivision.

at 691-699 Pacific Highway, Chatswood NSW 2067, for the following summary of reasons:

- a) The mix of concept, construction and use and staged Development Application is not accompanied by sufficient particulars to establish that the development can be characterised as development for the purposes of a "residential flat building".
- b) The Application is fundamentally inconsistent with the strategic planning framework applicable to the Site.
- c) The proposal is inconsistent with the desired future character.
- d) The cl 4.6 variation for building height is not well founded.
- e) The cl 4.6 variation for FSR is not well founded.
- f) WaterNSW has not issued General Terms of Approval.
- g) The Resilience SEPP has not been satisfied.
- h) The proposal is not a suitable one for the site.

3.0 DESCRIPTION OF PROPOSAL

3.1 Proposed Development

The development application proposes the following (a detailed breakdown of the proposal is at Section 3.2 of this report):

A mix of concept, construction and use (changed from a purely a concept DA on 22 May 2024).

1. A staged concept approval for:

- a. a 27-storey building with four basement levels;
- b. construction and use of 89 residential units within the building comprising a mix of 16 x 1br; 26 x 2br; 45 x 3br and 2 x 4br units and associated parking;
- c. construction of the remainder of the areas marked "communal open space" in the basement, ground level and first floor levels but not the fit-out or use of those areas, which is to be the subject of a separate development application in stage 2;
- d. the concept is to be carried out in two stages comprising:
 - i. stage 1 being the construction and use of the 89 residential units within the building and associated car parking; and
 - ii. stage 2 being for the use and fitout of the areas marked "communal open space" at ground and level 1.

2. A stage 1 operational consent for the construction and use of 89 residential units within the building comprising a mix of 16 x 1br; 26 x 2br; 45 x 3br and 2 x 4br units and associated parking (with stage 2 to be the subject of a further development application).

The proposal is Nominated Integrated Development - Water Management Act 2000 s90 (WaterNSW). The application includes the demolition of existing structures and removal of all trees, landscaping and associated works, through-site links, and strata subdivision.



Image 1: A photomontage of the view of the proposal from Pacific Highway (source: Drawing CDA-002 Issue A, dated 1 Feb 2024, prepared by Squillace Architecture).



Image 2: A photomontage of the view of the proposal from Pacific Highway (source: No title block, 3D Perspective that accompanied the original DA).



Image 3: A photomontage of the view of the proposed podium from Pacific Highway (source: Drawing CDA-002 Issue A, dated 1 Feb 2024, prepared by Squillace Architecture).



Image 4: Pedestrian view of the proposal (source: Drawing CDA-002 Issue A, dated 1 Feb 2024, prepared by Squillace Architecture).

3.2 Detailed breakdown of proposed Development

The below table provides summary of the proposed development:

Building	Details
Basement Level 4 (FFL RL 84.500) Drawing CDA-133 Rev B	<ul style="list-style-type: none"> • 19 car parking spaces, inclusive of <ul style="list-style-type: none"> - 4 accessible spaces - 4 x visitor spaces • Private storage areas • Lifts and stairs • Vehicular ramp to upper basement levels • Provision for future connection to 689 Pacific Highway
Basement Level 3 (FFL RL 87.600) Drawing CDA-132 Rev B	<ul style="list-style-type: none"> • 19 car parking spaces, inclusive of <ul style="list-style-type: none"> - 4 accessible spaces - 4 x visitor spaces • Private storage areas • Lifts and stairs • Vehicular ramp to upper basement levels • Provision for future connection to 689 Pacific Highway
Basement Level 2 (FFL RL 90.700) Drawing CDA-131 Rev B	<ul style="list-style-type: none"> • 19 car parking spaces, inclusive of <ul style="list-style-type: none"> - 4 accessible spaces - 5 x visitor spaces • Private storage areas • Lifts and stairs • Provision for future connection to 689 Pacific Highway
Basement Level B1 (FFL RL 93.800) Drawing CDA-130 Rev B	<ul style="list-style-type: none"> • 33 bicycle spaces • Waste and bulky waste room • End-of-journey facility • Communal gym • Plant room and services • Lifts and stairs
Ground Level (FFL RL 97.100) Drawing CDA-100 Rev B	<ul style="list-style-type: none"> • “Communal areas” (288m² and 59m²) including lobby to upstairs “communal room • Vehicular ingress and egress from Pacific Highway • Bin holding area • Substation • Public art • Through site links 3m wide (east-west and north-south) • Landscaping and pathways • Proposed 3m wide right-of-way to allow publicly accessible through-site link along the northern boundary, as well as the eastern boundary.
Level 1 (FFL RL 102.900) Drawing CDA-101 Rev B	<ul style="list-style-type: none"> • Communal area (973m²) • Lifts and stairs

Level 2 (FFL RL 106.500) Drawing CDA-102 Rev B	<ul style="list-style-type: none"> • Communal areas (58m² and 29m²) • Communal open space (874m²) • Lifts and stairs
Level 3 - 7 Drawing CDA-103 Rev B	<ul style="list-style-type: none"> • 5 x residential units (1 x 1-bed, 3 x 2-bed, 1 x 3-bed) with balconies • Waste room • A/C services room • Lifts and stairs
Level 8 - 18 Drawing CDA-108 Rev B	<ul style="list-style-type: none"> • 4 x residential units (1 x 1-bed, 1 x 2-bed, 2 x 3-bed) with balconies • Waste room • A/C services room • Lifts and stairs
Level 19 - 24 Drawing CDA-119 Rev B	<ul style="list-style-type: none"> • 3 x residential units (3 x 3-bed) with balconies • Waste room • A/C services room • Lifts and stairs
Level 25 Drawing CDA-125 Rev B	<ul style="list-style-type: none"> • 2 x residential units (2 x 4-bed) with balconies • Waste room • A/C services room • Lifts and stairs
Roof Plan Drawing CDA-125 Rev B	<ul style="list-style-type: none"> • Rooftop terrace for two 4-bed units on Level 25. • Awning (partially) above roof terraces. • Lifts and stairs
Roof (Lift overrun RL 185.70, awning RL 185.60, fire stair RL 185.60)	

3.3 Demolition

All existing buildings and outbuildings are to be demolished.

3.4 Excavation and Basement Carpark

The proposed basement carparking requires excavation to a depth of around 15m. WaterNSW has not yet offered its General Terms of Approval.

4.0 BACKGROUND

On 28 June 2023, the Concept Development Application was submitted on the NSW Planning Portal.

Between 20 July and 10 August 2023, the Concept Development Application was notified in accordance with Council's Community Participation Plan.

Council received a total of six (6) individual submissions. The issues raised in the submissions are summarised as follows:

- (a) Overshadowing and reductions in solar access;
- (b) Excessive height;
- (c) Increased demand on local traffic networks; and
- (d) Impacts on the availability of nearby parking.

The Concept Development Application was referred to the following external bodies:

- (a) Ausgrid;
- (b) Sydney Airport;
- (c) Transport for NSW; (d) NSW Police Force; and
- (e) Water NSW.

A Planning Proposal (PP-2023/1) relating to this site was lodged but subsequently withdrawn prior to the pre-Gateway meeting of 28 August 2023. The Willoughby Local Planning Panel (WLPP) had previously considered this PP and advised Council that:

"The Panel advises that while the proposal mostly meets the strategic framework it has failed to incorporate the increased affordable housing provision of 10%.

In addition, the Panel advises that in terms of site specific merit the proposal was not satisfactory in terms of site isolation (689 Pacific Highway) and vehicular access.

The Panel notes all landowners were notified of the increased affordable housing provision to 10% during the WLEP 2012 exhibition period between 5 March and 7 June 2022. The Panel further notes that this proposal did not form part of the savings list as determined by Council at its meeting 12 December 2022.

For these reasons, the Panel does not recommend the planning proposal in its current form.

The Panel advises it is not satisfied that the planning proposal is worthy of being forwarded to the DP&E for a Gateway consideration having not demonstrated merit in relation to the affordable housing provision."

The assessment report for the Planning Proposal concluded that the proposal was inconsistent with the strategic objectives of the *Greater Sydney Region Plan* and the *North District Plan*, which encourages the provision of affordable housing and consistency with local strategic planning. The Willoughby Local Planning Panel also advised that it was not satisfied *"the planning proposal is worthy of being*

forwarded to the DP&E for a Gateway consideration having not demonstrated merit in relation to the affordable housing provision.”

The assessment report had recommended that, in the absence of a scheme providing 10% affordable housing and having regard to the other issues raised, Planning Proposal 2023/1 not be forwarded to the Department of Planning and Environment for a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*.

As earlier advised, the PP was withdrawn prior to the pre-Gateway meeting, so no formal decision was recorded. Notwithstanding, this information is useful to gauge the sentiment of WLPP and Council on the affordable housing aspect.

On 4 October 2023, the Sydney North Planning Panel conducted a "kick-off briefing", attended by representatives of the Applicant and Council. The principal issues discussed at this briefing were:

- (d) The characterisation of the use and permissibility;
- (e) Affordable housing;
- (f) Design excellence;
- (g) Compliance with the Apartment Design Guide;
- (h) Overshadowing;
- (i) Car parking quantum and access;
- (j) Site isolation;
- (k) Stormwater and flooding management; and
- (l) Adaptable housing.

On 19 December 2023 an architectural design competition was completed (the process commenced 25 September 2023). Competitors were Marchese Partners, Cottee Parker and Squillace. Mecone was the Competition Manager. Squillace scheme was awarded the winner.

The Jury identified the following **merits** in the proposal:

- The range of architectural expression and modelling achieved throughout the tower within a consistent material palette.
- The duality of the east and west facades and their specific response to context and environmental considerations.

- The balance of solid to glazing across the scheme balance of solid to void to reflect different orientations, including screening of the western sun, whilst opening to the eastern parklands and views.
- The resolution of the waste/loading and basement entry design including the eastern views to the parklands.
- The rationality and efficiency of the apartment planning.
- Detail of podium expression with angled glazing arrangements addressed the challenges of the Highway context.
- Opportunities provided for incorporation of public art.

The Jury also raised a number of **concerns** including:

- The visual and architectural disconnection between the tower and the podium.
- The perceived blankness of the northern and southern facades when viewed obliquely from the Pacific Highway.
- The slot in plan form was not sufficiently strong to visually break the massing of the tower as viewed on the oblique approaches from the Highway.
- Desirability/usability of external communal terrace on the western side of the core.
- The excessive defensiveness of the western façade, which was then undermined by cantilevered balconies with open palisade style metal balustrades.
- The interface between the top of podium commercial space and the adjacent communal open space, including the circuitous route between lifts and communal open space and separation of uses.
- The podium corner entry was not as well resolved as other areas of the podium and the diagonal internal connections represented in a diagram were not realised in the proposal.
- The high proportion of single orientation units given the small footprint tower type with four corners available.
- The proportion of 1 bedroom plans without media spaces.
- The comparative lack of generosity of living spaces in the two and three bedroom apartments relative to their overall size.
- The excessive emphasis on the eastern orientation and questions whether the concrete horizontal expression every three floors detracted from the fluted vertical expression.
 - Concern the west facing outdoor communal terrace spaces provided adjacent to the plant room will be used as it is intended or needed to be used.

Design Excellence is discussed throughout the report.

On 6 February 2024, the applicant lodged amended plans on the NSW Planning Portal. These amendments included reducing the number of residential units from 100 to 89, and reducing the number of car spaces from 130 to 122.

On 8 February 2024, a Class 1 appeal against the deemed refusal of the application was commenced.

On 15 February 2024, Council informed the Sydney North Planning Panel of the commencement of these proceedings.

On 28 February 2024, the Sydney North Planning Panel conducted a further briefing, attended by representatives of the Applicant and Council.

On 6 March 2024, the Court granted the Applicant leave to rely upon an amended Concept Development Application, making the court plans consistent with the 6 February 2024 SNPP plans.

On 8 April 2024 an RFI was sent raising issues including FSR, building height, affordable housing, desired future character, stormwater, flooding, vehicle access and parking, environmental health, waste.

Between 4 April and 3 May 2024, the Concept Development Application was re-notified in accordance with the Council's Community Participation Plan.

Council received two (2) individual submissions. The issues raised in the submissions are summarised as follows:

- (a) Overshadowing and reductions in solar access;
- (b) Excessive height;
- (c) Increased demand on local traffic networks; and
- (d) Impacts on the availability of nearby parking.

On 6 May 2024 amended plans were submitted on the NSW Planning Portal. These amended plans are the subject of this report. The number of car spaces was reduced from 122 to 57 spaces, however no change to the number of basement levels or volume of the basements. The deleted car spaces were replaced with storage cages. 89 units remains unchanged.

On 22 May 2024 updated cl 4.6 requests were lodged on the NSW Planning Portal relating to building height and floor space ratio. This package also included a shadow analysis of the Croquet Club, and a letter from JV Urban that **has the effect of changing the application from a purely concept DA to a mix of concept, construction and use and staged development**. That is, this development application now also seeks consent for the construction and use of the majority of the building.

On 28 June 2024 a Notice of Motion was filed with the court to align the court plans with the SNPP plans lodged 6 May 2024.

The amended scheme was renotified for 28 days from 25 July to 22 August 2024. No submissions were received.

A section 34 conciliation conference is scheduled to take place on 3 September 2024.

Strategic planning context

On 30 June 2023, substantial amendments to the *Willoughby Local Environmental Plan 2012* (**Unamended WLEP**) commenced, by the *Willoughby Local Environmental Plan 2012 (Amendment No 34)* (**Amended WLEP**). A new development control plan was prepared in connection with the Amended WLEP (**Willoughby DCP 2023**).

The Amended WLEP and the Willoughby DCP 2023 were placed on public exhibition from 15 March to 8 June 2022.

As made, the Amended WLEP provides that its amendments to the Willoughby LEP does not apply to a development application made, but not finally determined, before the commencement of the Amended WLEP.

The locality at the time of lodgement

As at 28 June 2023, the Site was zoned R3 Medium Density Residential pursuant to the Willoughby LEP. The Land Use Table to the Willoughby LEP provided that development for the purpose of "residential flat buildings" was permitted with consent on the Site.

The Site was located on the eastern fringe of a pocket of land generally zoned R3 Medium Density Residential, with more densely zoned commercial and residential lands located generally to the north, and lower density residential lands sited to the east.

Specifically, the Site was adjoined by land variously zoned SP2 Classified Road, RE1 Public Recreation, RE2 Private Recreation and additional lands zoned R3 Medium Density Residential. Image 5 is an extract from the Willoughby LEP's Land Zoning Map, as at 28 June 2023:

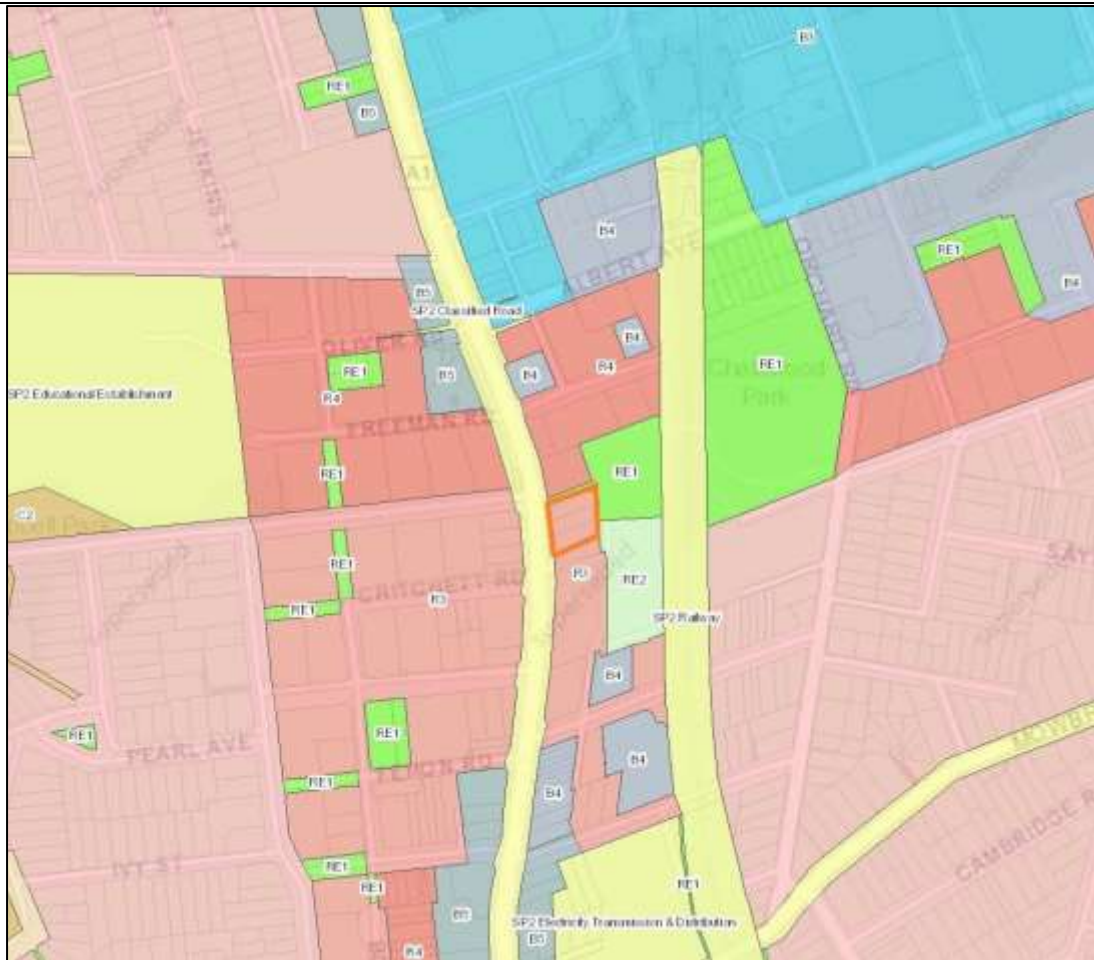


Image 5: The zoning pattern of the locality as at 28 June 2023. The Site is located in the centre of the image and bordered orange (Source: Willoughby LEP Land Zoning Map)

The Willoughby LEP provided the objectives of the R3 Medium Density Residential zone were:

- (a) To provide for the housing needs of the community within a medium density residential environment.
- (b) To provide a variety of housing types within a medium density residential environment.
- (c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- (d) To accommodate development that is compatible with the scale and character of the surrounding residential development.
- (e) 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.

- (f) 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 Site was subject to substantially more restrictive development controls, including a maximum building height control of 12 metres and a maximum floor space ratio control of 0.9:1.

The Site following the commencement of the Amending Instrument

12. The Site is now zoned MU1 Mixed Use pursuant to the Willoughby LEP. The Willoughby LEP provides that the objectives of the MU1 Mixed Use zone are:
- (a) To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
 - (b) To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
 - (c) To minimise conflict between land uses within this zone and land uses within adjoining zones.
 - (d) To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
 - (e) To allow for city living on the edges of the city centre of Chatswood, which encourages public transport use, shopping and the use of businesses and recreational services that contribute to the vitality of the city, without undermining its commercial role.

The zoning pattern in the area now established by the Amending Instrument is illustrated in Image 6:

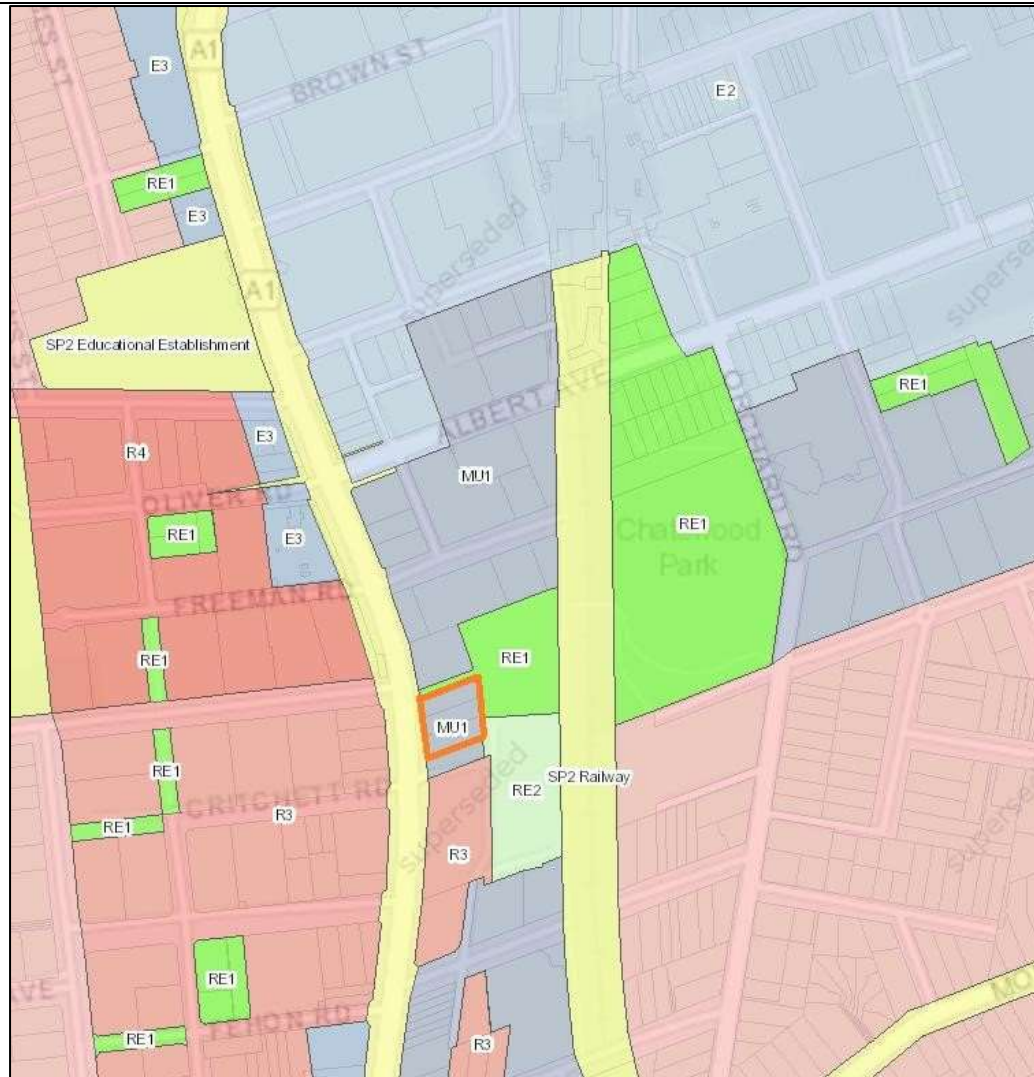


Image 6: The zoning pattern of the locality as at 30 June 2023. The Site is located in the centre of the image and bordered orange (Source: Willoughby LEP Land Zoning Map)

The Amended WLEP has introduced numerous changes to the land use controls which are relevant to this Concept Development Application. Principally, these amended development controls translate to a substantial uplift in development potential on the site - it is now subject to a maximum building height control of 90 metres and a maximum floor space ratio control of 6:1.

This uplift in development potential on the Site is subject to the following restrictions and qualifications imposed by the Amending Instrument:

- (a) The Land Use Table provides that "residential accommodation" (defined by the Dictionary to the Willoughby LEP to include "residential flat buildings") is generally a prohibited land use on land zoned MU1 Mixed Use;
- (b) The Land Use Table provides that development for the purpose of "shop top housing" is permissible with consent, but, by dint of clause 6.25 of the Willoughby LEP, this is subject to

the consent authority being satisfied that at least 17% of the gross floor area of the building will be used for "non-residential purposes";

- (c) The Site is located within the area identified as "Area 8" on the Special Provisions Area Map. By reason of clause 2.5(1) of the Amending Instrument and clause 27 to Schedule 1 of the Amending Instrument, "residential flat buildings" are permissible with consent on the Site, but only if the ground floor is used for non-residential purposes only and at least 17% of the gross floor area of the building will be used for non-residential purposes;
- (d) The Site is located within the area identified as "Area 5" on the Special Provisions Area Map. Consequently, by reason of clause 6.23:
 - i. Development consent must not be granted for development involving the erection of a new building or external alterations to an existing building unless the consent authority considers that the development exhibits design excellence; and
 - ii. For a building with a height of 35 metres or more above ground level (existing), the design of the development is the winner of an architectural design competition held in relation to the development.
- (e) The Site is located within the area identified as "Area 3" on the Affordable Housing Map published pursuant to the Willoughby LEP. Consequently, by reason of clause 6.8, the erection of residential accommodation on the land will require the contribution of 10% of the gross floor area of the development to Council, either as:
 - i. A dedication, in favour of Council, of land comprising 1 or more dwellings, each having a gross floor area of at least 50 square metres; or
 - ii. A monetary contribution paid to Council, calculated by reference to the market value of dwellings of a similar size to the dwellings in the proposed development; and
- (f) The Site is located immediately adjacent to the area identified both as "Area 4" on the Sun Access Map published pursuant to the Willoughby LEP. Consequently, by reason of clause 6.15, development consent must not be granted to development on land zoned MU1 Mixed Use (ie, the Site) that results in additional overshadowing on "Area 1" land; and
- (g) That, pursuant to clause 6.3, a consent authority consider certain matters relating to urban heat, including maximisation of green infrastructure and other thermal performance criterion.
- (h) The Site is now also land identified as "Active Street Frontages" for the purposes of clause 6.7 of the Willoughby LEP. This clause provides that development consent must not be

granted to the erection of a building on the Site unless the consent authority is satisfied that the building will have an active street frontage, such that all ground floor premises facing the street are used for commercial purposes.

Amended WLEP, Chatswood CBD Planning and Urban Design Strategy and Strategic Precinct DCP

The Amended WLEP is the culmination of a long-term, locality-wide strategy to ensure that the growth of the Chatswood CBD area is organised and targeted, encouraging the creation of new jobs within the locality. The Amending Instrument (and accompanying changes to the Willoughby DCP) deliberately seeks to balance the carefully planned increase in density with the public benefits associated with (for example) a design review process, increased affordable housing and public through-site links.

This strategy is embodied in key policies published pursuant to Division 3.1 of the EP&A Act. Relevantly:

- (a) In January 2018, the "Chatswood CBD Planning and Urban Design Strategy" was published by Architectus, commissioned by Council (**Architectus Report**). The stated purpose of the Architectus Report was to "establish a strong framework to guide all future private and public development" in the Chatswood CBD over a 20year period. The Architectus Report identifies the Site as being recommended for "mixed use" land uses, with a "key principle" of this recommendation being the "protection of Chatswood's office core and employment role for the future to ensure its development as a successful and complete centre".
- (b) In March 2018, the former Greater Sydney Commission's "Our Greater Sydney 2056: North District Plan — Connecting Communities" (**North District Plan**) was made, pursuant to section 3.6 of the EP&A Act. The North District Plan has informed the preparation of local strategic planning statements, local environmental plans and local planning generally. The North District Plan identifies the Site as falling within an area described as the "Eastern Economic Corridor". Planning Priority N10 identifies the "Chatswood strategic centre" as a "major employment hub", and recommended actions that protect and grow its commercial core.
- (c) In December 2019, the "Our Future Willoughby — Housing Strategy 2036" (**Willoughby Housing Strategy**) was published. While identifies the Site as falling within "Focus area 2" for new housing, it notes expressly that lands zoned for mixed uses within Focus area 2 will only permit residential development in the form of shop top housing. The Willoughby Housing Strategy notes expressly that the focus of the Chatswood CBD is to "retain the core central business district for commercial uses only", and that the "edge" of the CBD

"could be considered for mixed use type development", to "protect and increase employment opportunities".

- (d) In February 2020, the "Willoughby City Local Strategic Planning Statement" (**Willoughby LSPS**) was made, pursuant to section 3.9 of the EP&A Act. It is expressed as being made consistent with the vision set for Greater Sydney and the North District by the North District Plan. The Willoughby LSPS is also consistent with the Willoughby Housing Strategy — it notes that the Site falls within "Focus area 2" for new housing within the LGA, but is express in preserving the role of the Chatswood CBD as a key commercial centre within the Eastern Economic Corridor. In particular, Action 9.1 identifies a desire to locate retail uses at the ground and first floor levels of development within lands associated with the B4 Mixed Use zone.
- (e) In September 2020, the "Chatswood CBD Planning and Urban Design Strategy 2036" (**Chatswood CBD Strategy**) was published. The Chatswood CBD Strategy identifies, consistent with the North District Plan, a desire to "reinvigorate" the commercial core of the Chatswood CBD "to provide for future employment". Consistent with the Architectus Report, it identifies the Site as being recommended for "mixed use" development and including, at the rear, an open-air, 24-hour through-site link. Generally, the Chatswood CBD Strategy suggests that future local environmental controls would discourage site isolation and require the provision of affordable housing within the maximum floor space ratio on a site, but not clustered within a particular development.

The strategic planning vision for the Site and its precinct continued with the public exhibition of a draft Precinct Development Control Plan for lands on the eastern side of the Pacific Highway, between Gordon Avenue and Ellis Street (which relevantly includes the Site) from 15 December 2023 to 16 February 2024.

The Council Meeting of 25 March 2024 approved this Precinct DCP applying to the eastern side of Pacific Highway, between Gordon Avenue and Ellis Street, Chatswood (being 641-653, 655A, 689, 691-693, 695, 699, 701-705 and 745 Pacific Highway). These controls are now in force and form part of Willoughby DCP as Part L 13.1.17.

The Draft Precinct DCP contemplates lands within the precinct being amalgamated into three blocks — one block comprising the Site and the neighbouring property immediately to the south, being 689 Pacific Highway. Developments would be required to adopt "through-site links" in accordance with those depicted in Image 7 below:

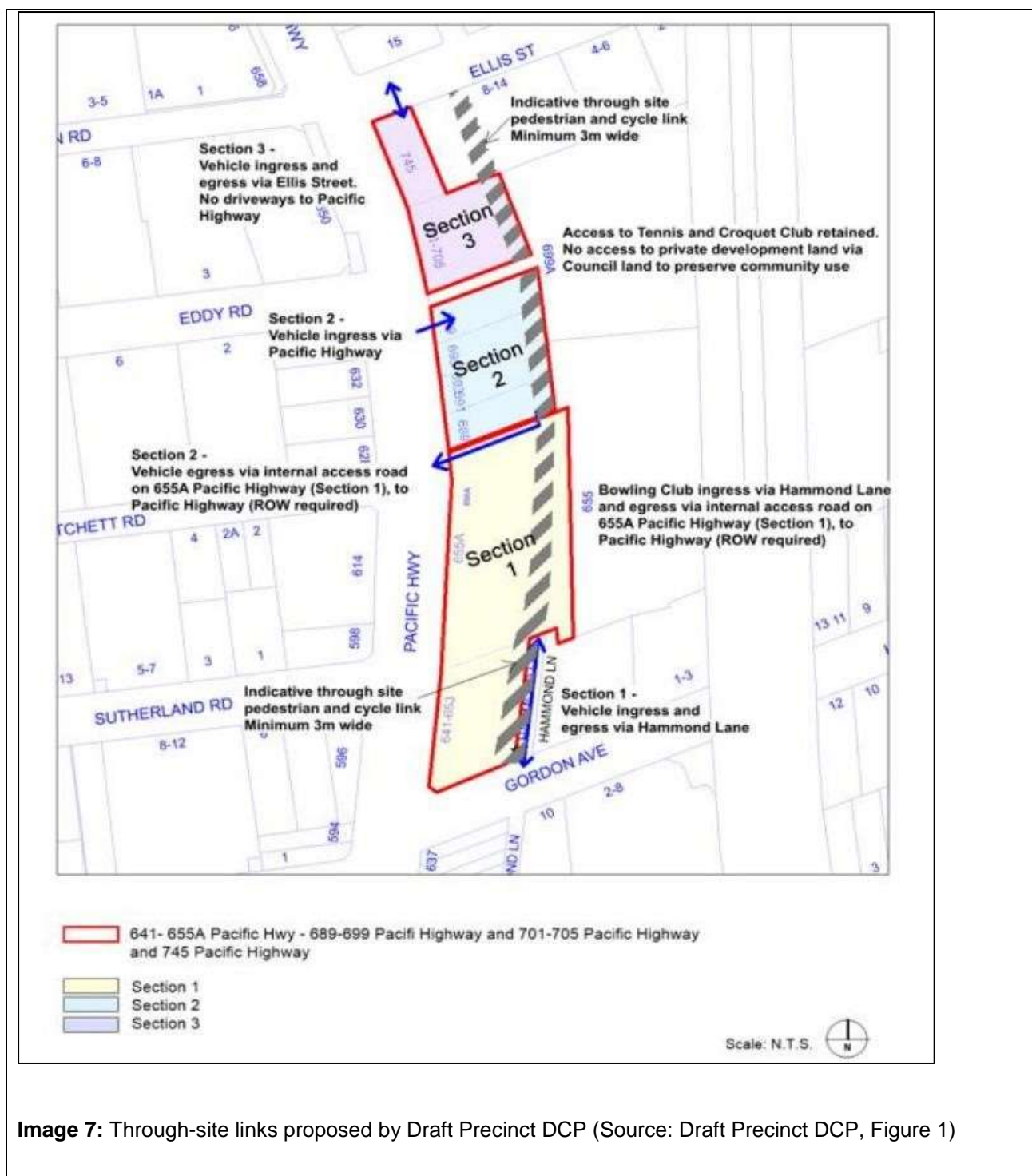


Image 7: Through-site links proposed by Draft Precinct DCP (Source: Draft Precinct DCP, Figure 1)

Council's assessment officer has had ongoing discussions with the applicant's planner, including 24 April 2024, and 16 May 2024, where issues including affordable housing were discussed.

5.0 DISCUSSION

The proposal seeks a substantial increase in FSR (566%) and building height (650%) to the controls that applied to the site on lodgement date. The 4.6 Requests rely on the Amended WLEP for its 90m

height and 6:1 FSR. The Amended WLEP introduces other controls that ride in tandem with the uplift, such as affordable housing and active street frontage.

The proposal is considered unsatisfactory in the circumstances of the case.

The site description and aerial photo are in **Attachment 1**.

The assessment of controls, developer contribution and referrals are in **Attachment 2**.

The assessment of the proposal under SEPP 65 (ADG) is in **Attachment 3**.

The assessment of the proposal under other SEPPs, WLEP, Draft WLEP and Shared Path Policy is in **Attachment 4**.

A table of the issues raised in the submissions objecting to the proposal and the assessing officer's response is contained in **Attachment 5**.

The assessment of the proposal under Section 4.15 EPAA is in **Attachment 6**.

The draft reasons for refusal, if the Panel is of a mind to refuse, is in **Attachment 7**.

A Notification Map is contained in **Attachment 8**.

6.0 CONCLUSION

The Development Application DA-2023/166 has been assessed in accordance with Section 4.15 (79C) of the Environmental Planning and Assessment Act 1979, Unamended and Amended WLEP 2012, WDCP and WDCDP 2023, and other relevant codes and policies. The proposal cannot be supported and is recommended for refusal for the reasons provided in **Attachment 7**.

ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO

The Site is located on the eastern side of the Pacific Highway, between Gordon Avenue and Ellis Street. It is comprised of the following parcels:

Lot 1 DP 187216 (691 Pacific Highway)

Lot 2 DP 952311 (695 Pacific Highway)

Lot 1 DP 952311 (699 Pacific Highway)

It is depicted in **Image 8** below:



Image 8: The site (Source: SixMaps)

The Site is a parallelogram in shape, with an area of 1,810 square metres. It is subject to a fall of approximately 0.86 metres towards the east, at an average gradient of 2%.

The following existing development is located on the Site:

- (a) Each of 691-693 and 695 Pacific Highway contain a dwelling house; and
- (b) 699 Pacific Highway contains a two-storey residential flat building (which is not strata titled).

The Site has four frontages:

- (c) Its primary frontage, to the west, is to the Pacific Highway;
- (d) To the north, the Site adjoins the access handle of Lot 1 in Deposited Plan 1152647, associated with the Chatswood Croquet Club;
- (e) To the east, the Site adjoins both the Chatswood Croquet Club and the Chatswood Bowling Club; and
- (f) To the south, the Site adjoins 689 Pacific Highway (legally described as Lot 2 in Deposited Plan 187216), a four-unit residential flat building development.

ATTACHMENT 2: NOTIFICATION, DEVELOPMENT CONTROLS, DEVELOPER CONTRIBUTION & REFERRALS

Neighbour Notification

Between 20 July and 10 August 2023, the Concept Development Application was notified in accordance with Council's Community Participation Plan.

Between 4 April and 3 May 2024, the amended Concept Development Application was re-notified in accordance with the Council's Community Participation Plan.

The amended scheme was renotified for 28 days from 25 July to 22 August 2024. No submissions were received.

A total of eight (8) submissions were received across the three notification periods, six to the original notification and two to the amended plans.

The issues detailed within the submissions are addressed in **Attachment 5** of this report.

Controls and Classification summary

	Unamended WLEP 2012 ¹	Amended WLEP (and Draft WLEP)
Zoning	R3 Medium Density Residential zone	MU1 Mixed use zone
FSR	0.9:1	6:1
Building height	12 metres	90 metres
Active Street frontage (cl 6.7)	No	Yes, to Pacific Highway
Affordable housing (cl 6.8)	No	10% (Area 3)
Design excellence (cl 6.23)	No	Yes (Area 5)
Shop top housing at certain sites at Chatswood (cl 6.25)	Shop top not permissible	Shop top permissible via cl 6.25 (1) (d) Amended WLEP, contingent on minimum 17% of GFA to be used for non-residential purposes.
Residential flat buildings (RFB)	RFB permissible	RFB permissible if: (a) The ground floor is used for non-residential purposes only, and (b) at least 17% of the gross floor area of the building will be used for non-residential purposes. [2.5 Additional permitted uses Schedule 1 (27) Amended WLEP]
Design Excellence	No	Yes, clause 6.23 Amended WLEP
Sun Protection clause	No	Yes, clause 6.15 Amended WLEP
Urban Heat	No	Yes, clause 6.3 Amended WLEP
Existing Use Rights	N/A	N/A
Conservation area	No	No

Aboriginal Heritage	No	No
Heritage Item	No	No
Vicinity of Heritage Item	No	No
Natural Heritage Register	No	No
Bushfire Prone Area	No	No
Flood related planning control	Yes	Yes
Foreshore Building Line	No	No
Adjacent to classified road	Yes	Yes
Road/lane widening	No	No
BASIX SEPP	Yes	Yes
Infrastructure SEPP - Rail	N/A	N/A
Infrastructure SEPP - Road	Yes	Yes (Concurrence received from TfNSW)
Coastal Management SEPP	No	No
Acid Sulphate Soil Category	5	5
Development near Lane Cove Tunnel	No	No
Contaminated Land	No – see report for further information.	No
Adjacent / above Metro	No	No
Other relevant SEPPs	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • SEPP No 65 - Design Quality of Residential Apartment Development and NSW Apartment Design Guide (ADG) 	
Relevant DCPs policies and resolutions	WDGP 2006	WDGP 2023

¹ These are the controls that applied on the date of lodgement of the Concept DA.

Assessment Comments from Referral Bodies

Internal Council Referrals	
Urban Design Specialist	<p>Initial Comments:</p> <ul style="list-style-type: none"> • Public Art <ul style="list-style-type: none"> ○ They have only provided part of the requirements (Public Art Plan), there is more detail to add. ○ Not required as part of the Concept DA. ○ It is heading in the right direction anyway. • Through Site Link) pedestrian link eastern boundary <ul style="list-style-type: none"> ○ They are still showing the planting area within the 3000mm easement. ○ Can be clarified and conditioned to be addressed in subsequent DA • Commercial areas _ Intent Plan <ul style="list-style-type: none"> ○ Are you OK to progress with this/condition etc?

Engineering	<p><u>Flooding</u></p> <p>The revised flood report has removed the proposed flood void and provided the requested detailed information on flood levels at relevant locations. This has addressed the freeboard requirements.</p> <p>In reviewing the aflux diagrams, the report shows that flood levels increase on the adjacent property by up to 50mm. This does not comply with the requirements of Technical Standard 1, which requires nil aflux. (Council does accept up to 10mm of increase, as minor increases are within the tolerance of the models) In order to prevent this increase on the adjacent property, it is possible that the driveway / access roadway will need to be located away from the southern boundary of the site, to provide an overland flow path within the property, to allow from the Pacific Highway to the rear of the site.</p> <p>The report does not address what might occur when the adjacent property is developed. The draft plans for a possible development of the adjacent property have access from the boundary between the two properties, which currently forms the overland flow path.</p> <p>The flood information provided is not sufficient for approval of a standard development application. However, this is for a concept DA and the information provided indicates that the concept is possible, subject to future changes. As a future development application will be required for the building, the flood study provided is considered satisfactory for a concept design. However, conditions are required to ensure that a detailed flood study is provided as part of any future development application. We have required that the study is to provide details that demonstrate that no aflux will occur on adjacent properties as a result of the development.</p> <p><u>Stormwater Management</u></p> <p>The amended information has not fully addressed all Council's concerns. In particular, the access to the OSD tank is a concern, as access point to the tank are located approximately 3.6m above the adjacent floor level, which will require ladder access. As the OSD tank will be a confined space, we do not believe that this method of access meets Safety in Design requirements and is not compliant with safe access to a confined space. In addition, it increases the difficulty in inspecting the tank, to determine if it needs maintenance.</p> <p>As this is a concept DA, we are able to condition that a revised concept plan be provided with any future development application. This condition will require that the safe access for inspection and maintenance be addressed as part of the design and is to consider safe access to a confined space.</p> <p>While we are able to condition the stormwater management, the stormwater drawings are not to be included in the list of approved drawings, as they are not approved.</p> <p><u>Vehicle access and parking</u></p> <p>Vehicle access arrangements have been demonstrated to a suitable</p>
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	<p>level for a concept DA. Further detail will be required as part of any future development application.</p> <p>We note that to construct the vehicle crossing as documented, an existing street tree will need to be removed. This is not detailed on the plans and needs to be reviewed by the landscape officer.</p> <p>As the application is for a concept DA, I understand that a further development application will be required for the site. As such, the conditions proposed relate to documentation required to be submitted as part of any future application, as part of which details conditions will be required.</p>
Traffic and Transport	No response at time of completion of report.
Waste Management	No objection to proposal.
Landscaping	There is an issue with the lack of 'canopy tree' planting along the Pacific Highway frontage of the site, either in the front setback or along the road reserve.
Environmental Health	<p>A <i>Concept Development Application</i> for the demolition of the existing buildings and construction of a 27-storey residential flat building, at 691-699 Pacific Highway, Chatswood has been submitted to Willoughby City Council for comment.</p> <p>From an Environmental Health perspective Council does not support approval of this Concept DA in its current form, as the below points have not been fully addressed.</p> <ol style="list-style-type: none"> 1. Carry out Intrusive sampling and testing as part of a targeted soil investigation to assist in characterising the contamination status of fill material and the site. Sampling should be conducted from as many locations as possible, including the front, side and rear gardens, and driveway, and should comply with NSW EPA Contaminated Land Guidelines for sampling design. A report is to be prepared by a suitably qualified contaminated land consultant and submitted to Council for review and concurrence. Should sampling find that the latest NEPM Site Contamination Health Investigation Levels (HIL B) limits to be exceeded, a Remedial Action Plan (RAP) will be required. <p>A letter from Mr Greg Brickle, Principal Environmental Scientist with eiaustralia, Ref. E25855.E99.Rev0, dated 19 April 2024, has been provided to Council in response to the above. Mr Brickle states in the findings of the desktop PSI, he does not consider that an intrusive investigation is required. However, Council disagrees with this statement, given that without a targeted soil investigation it is not possible to rule out that demolition and construction workers, as well as users of adjacent land during construction could potentially be exposed to contaminants present in the fill material previously</p>

	<p>used. Noted that these potential receptors were identified in section 4.6 of the PSI submitted to Council (<i>Preliminary Site Investigation, eiaustralia, Report Number E25855.E01_Rev0, 22 November 2022</i>). As a result, Council must insist on a DSI, which shall include intrusive sampling being carried out after demolition of the structures on the site but prior to the lodgement of an application for a Construction Certificate.</p> <ol style="list-style-type: none"> 2. Communal rooms/spaces, particularly those on the ground floor (marked as “Retail” on the landscape concept plans) need be provided with mechanical ventilation ducting with vertical external discharge in such a way as to avoid offensive odours from food businesses or beauty salons. This should be incorporated into the construction design plans. Council will not accept horizontal ventilation discharge. 3. Indicate on construction design plans, the intended location for food business grease traps. It is noted that these should be located in areas of easy access for regular servicing. 4. Indicate on construction design plans, the location of components of heating and cooling (Air Conditioning) systems. These are to be located in such a way so as to not give rise to offensive noise or vibrations. 5. Indicate if a cooling water system (cooling tower) is being considered. 6. In order to avoid pollution of waterways, confirm that floor waste drains of any Car Washing bay, and Garbage Rooms on basement level 1 (or wherever garbage bins are intended to be washed) are connected to a sewer line and not stormwater.
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Developer Contributions

Proposed Development involves:

1. Demolition of 6 existing 2 to 3-bedroom dwellings
2. construction of a **Mixed Use** development comprising 89 residential units containing:
 - Part 2 and 3-storey non-residential podium
 - 23-storey residential tower comprising:
 - 2 x 4-bedroom units
 - 45 x 3-bedroom units (2 of these units is dedicated for affordable housing)
 - 26 x 2-bedroom units (5 of these units is dedicated for affordable housing)
 - 16 x 1-bedroom units (4 of these units is dedicated for affordable housing)

The proposed development contains commercial, communal and residential uses and is therefore considered a **mixed use** development (i.e. a development comprising 2 or more different land uses).

In accordance with CI 2.5 and Table 1 of the *Willoughby Local Infrastructure Contribution Plan 2019*, “where a single development application **comprises a mix of type (a) Residential Accommodation that would result in a net increase in residents on the land** and (b) other development that has a proposed cost of works more than \$100,000, **either a s7.11 contribution or a s7.12 levy** will be imposed. The contribution method which produces the greater amount will be the method used for that application.” The subject development falls under this scenario, as such will be subject to either s7.11 or s7.12, whichever yields the greater amount.

This calculation is demonstrated below:

S7.11 Calculation	Qty	Proposal -- Calculation	
Dwellings / Residents Proposed		dwelling rate	Contributions (\$)
1-bedroom dwelling	16	x \$11,045.36	\$176,725.76
2-bedroom dwelling	26	x \$15,544.09	\$404,146.34
3-or-more bedroom dwelling	47	x \$20,000	\$940,000.00
Subtotal	89		\$1,520,872.10
AH dedication req'd under WLEP CI 6.8 -- Area 10 (10%) CI 2.6 of WLIC Plan states that development contribution <u>does not</u> apply to Affordable Housing (AH). Hence exemption has been taken into account for the nominated 11 AH dwellings vary in sizes.			
			Exempt from contribution
Minus 4 x 1-bedroom dwelling	4	x \$11,045.36	\$44,181.44
Minus 5 x 2-bedroom dwelling	5	x \$15,544.09	\$77,720.45
Minus 2 x 3-bedroom dwelling	2	x \$20,000	\$40,000.00
Deduct subtotal	11	LESS	\$161,901.89
(i.e. \$1,520,872.10 minus \$161,901.89) Subtotal	78		\$1,358,970.21

In accordance with CI-2.9.1 of WLIC Plan, the following credits are given for this development:

Credits for demolishing existing structures		Credits -- Calculation	
		dwelling rate	Contributions (\$)
Existing dwellings in 2-bedroom dwellings	6	x \$15,544.09	\$93,264.54
Existing dwellings in 3-bedroom dwellings	1	x \$20,000	\$20,000.00
(assumption: based on dwelling sizes obtained from realestate.com)		LESS	\$113,264.54
s7.11 yield amount (with credits given): (i.e. \$1,358,970.21 minus \$113,264.54)	71		\$1,245,705.67

Compared with...

If s7.12 Contribution Calculation		
Costs of Works -- based on Construction Cost (incl GST) (note: excluded Professional Fees and no construction cost of AH units deducted as it is pending to be provided if necessary)		\$37,016,076.90
Location: (note: marginally outside WLIC Plan's CBD boundary)		Non-CBD
Applicable %		1%
S7.12 yielding amount based on costs of works (\$37,016,076.90 x 1%):		\$370,160.77

As demonstrated above, **\$1,245,705.67** of **s7.11** contribution **applies** to this development because **it yields greater amount** than s7.12 contribution. Therefore, condition **D03.003A** should be inserted as per below:

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

Active transport and public domain facilities	\$53,126.32
Open space and recreation facilities	\$976,405.95
Plan administration	\$18,409.49
Recoupment community facilities	\$187,780.21
Recoupment open space and recreation	\$9,983.70
TOTAL	\$1,245,705.67

If there are any **changes** to the development statistics **before finalising the consent**, please let me know.

Note: for the spreadsheet of s7.11 / s7.12 calculations, see ECM Doc Set #: 7050491

No VPA consideration necessary

Consideration has been taken on any existing VPA but there is none to be considered so no VPA related conditions are necessary for this DA.

External Referrals	
WaterNSW	On 13 May 2024, WaterNSW requested additional information. The applicant responded directly into the portal to the request, but as yet WaterNSW has not issued a response.
Sydney Trains	Approval granted subject to conditions.
Sydney Metro	<p>Sydney Metro takes the view that the proposed development would have negligible impacts on the Sydney Metro City & Southwest rail corridor as the proposed development does not involve excavation work occurring:</p> <ol style="list-style-type: none"> within, below or above, the Sydney Metro City & Southwest rail corridor; within 25m (measured horizontally) of the Sydney Metro City & Southwest rail corridor; within 25m (measured horizontally) of the ground directly below Sydney Metro City & Southwest rail corridor; or within 25m (measured horizontally) of the ground directly above an underground rail corridor.
TfNSW	<p>Reference is made to Council's referral regarding the abovementioned application which was referred to Transport for NSW (TfNSW for comment in accordance with clause 2.119 and 2.122 of the <i>State Environment Planning Policy (Transport and Infrastructure) 2021</i> and for concurrence in accordance with section 138 of the <i>Roads Act 1993</i>.</p> <p>TfNSW has reviewed the submitted application and provides concurrence under section 138 of the <i>Roads Act 1993</i>, for the proposed works within the Pacific Highway corridor subject to Development Consent (Consent) being issued by the relevant Planning Authority and the following requirements being included in any Consent issued:</p> <ol style="list-style-type: none"> All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Pacific Highway boundary. The design and construction of the kerb and gutter works on the Pacific Highway shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to developerworks.sydney@transport.nsw.gov.au. <p>Detailed design plans of the proposed gutter crossing and kerb and guttering are to be submitted to TfNSW for approval prior to the issue of a construction certificate and commencement of any road works. Please send all documentation to development.sydney@transport.nsw.gov.au.</p> <p>A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.</p> Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system that impact upon the Pacific Highway are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au.

	<p>A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.</p> <p>4. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.</p> <p>The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au</p> <p>If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.</p> <p>5. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on the Pacific Highway during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf.</p>
Ausgrid	<p>Standard conditions of approval regarding:</p> <p>Ausgrid Underground Cables are in the vicinity of the development</p> <p>Ausgrid Overhead Powerlines are in the vicinity of the development</p>
Sydney Airport	<p>No objection to the erection of the development to a maximum height of 186 metres AHD (which includes all lift overruns, vents, chimneys, aerials, TV antennae, construction cranes and the like.</p> <p>Further and separate approval is required to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.</p>
NSW Police	<p>Acceptable. A number of Crime Prevention Through Environmental Design (CPTED) treatment options (16 in total) suggested in order to reduce opportunities of crime.</p>

ATTACHMENT 3: ASSESSMENT UNDER SEPP 65

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65) – now repealed by SEPP (Housing) Chapter 5 - aims to improve the design quality of residential flat buildings and residential components of mixed-use developments. It applies to any building that comprises 3 or more storeys and 4 or more dwellings.

In determining a development application for residential flat development, a consent authority is to consider:

- (a) the advice (if any) obtained from the design review panel, and
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
- (c) the Apartment Design Guide.

The following table outlines how the proposal satisfies the design quality principles of SEPP 65 and objectives of Parts 3 and 4 of the Apartment Design Guide (ADG). Overall, the proposal satisfies the provisions of the ADG.

ADG Objective	Proposal	Satisfied
Objective 3D-1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.	The proposal provides 874m ² communal open space at Level 2. This provision is equal to 48% of the total site area. At least 50% of the useable part receives 50% direct sunlight for two or more hours on 21 June.	No
Design criteria 1. Communal open space has a minimum area equal to 25% of the site. 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).	Communal open areas provide residents with options for both communal engagement and private use. Notionally the minimum communal open space can be achieved in spatial terms, but the staged nature of the proposal causes uncertainty. JV Urban's letter of 22 May 2024 says Stage 2 relates to "... the use and fitout of the areas marked "communal open space" at ground and level 1", but no part of the staging refers to level 2.	
Objective 3E-1 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.	Nil. Deep soil < 6m wide 14m ² (0.8%)	No
Design criteria Deep soil zones minimum 7% or 10% if possible. 7% x 1810 = 126.7m ² Minimum widths to be greater than 6m to be counted.		
Objective 3F-1 Adequate building separation	Satisfied	Yes – except to the south

<p><i>distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</i></p> <p>Objective 3F-2</p> <p><i>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.</i></p>		
<p>Objective 3J-1</p> <p><i>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</i></p>	<p>0.5 space per studio and 1, 2, 3 or more bedroom units; 1 visitor space per 7 dwellings</p> <p>89 units x 0.5 space = 44.5 spaces 89 units / 7 = 12.7 spaces</p> <p>44.5 + 12.7 = 57 spaces required</p> <p>57 spaces provided</p>	<p>No – see comments under subheading “Carparking”.</p>
<p>Objective 4A-1 Solar Access</p> <p><i>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</i></p>	<p>Residential apartments receive 2 hours direct sunlight in mid-winter. The proposal is designed to optimise the number of apartments receiving sunlight to habitable rooms, primary windows, and open spaces</p>	<p>Yes</p>
<p>Objective 4B-3 Natural Cross Ventilation</p> <p><i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.</i></p>	<p>An acceptable number of apartments achieve natural cross ventilation. Some alternative means required to satisfy acoustic requirements.</p>	<p>Yes</p>
<p>Objective 4C-1 Floor to Ceiling Heights</p> <p><i>Ceiling height achieves sufficient natural ventilation and daylight access.</i></p> <p>Design criteria The minimum ceiling heights proposed are:</p> <ul style="list-style-type: none"> ▪ 2.7 m for habitable rooms; and ▪ 2.4 m for non-habitable rooms. 	<p>3.2m floor to floor height proposed for residential floors.</p>	<p>Yes</p>
<p>Objective 4D-1 Minimum Apartment Sizes</p> <p><i>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</i></p>	<p>The proposal is consistent with ADG requirements for the minimum size of rooms.</p>	<p>Yes</p>
<p>4E Private open space and balconies</p> <p><i>Minimum area Minimum depth</i> 1 bedroom apartments 8m² (2m depth) 2 bedroom apartments 10m² (2m depth) 3+ bedroom apartments 12m² (2.4m depth)</p>	<p>The proposal is consistent with ADG requirements for the size and depth of balconies.</p>	<p>Yes</p>
<p>4F Common circulation and spaces</p> <p>1. The maximum number of apartments</p>	<p>Satisfied</p>	<p>Yes</p>

<p>off a circulation core on a single level is eight</p> <p>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40</p>		
<p>Objective 4G-1</p> <p>1 bedroom apartments 6m³ 2 1 bedroom apartments 8m³ 2 3 bedroom apartments 10m³</p>	Can be conditioned	Yes – conditions
<p>4H Acoustic privacy</p> <p>Objective 4H-1 Noise transfer is minimised through the siting of buildings and building layout</p> <p>Objective 4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments</p>	Acoustic report is high level without specific recommendation for attenuation of rooms.	Partial
<p>4J Noise and Pollution</p> <p>Objective 4J-1 In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings</p> <p>Objective 4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission</p>	Satisfied	Yes
<p>4K Apartment mix</p> <p>Objective 4K-1 A range of apartment types and sizes is provided to cater for different household types now and into the future</p> <p>Objective 4K-2 The apartment mix is distributed to suitable locations within the building</p>	Satisfied	Yes
<p>4M Facades</p> <p>Objective 4M-1 Building facades provide visual interest along the street while respecting the character of the local area</p> <p>Objective 4M-2 Building functions are expressed by the facade</p>	Satisfied	Yes

Carparking

Before being amended to 57 car spaces a total of 122 car spaces were proposed (and 130 spaces in the original DA submission).

The Development Application, as amended, retains the full four basement levels and the volume that previously contained the car spaces, but re-labels these spaces (65 in total) as storage cages, and “potential future connection to 689 Pacific Highway”.

The storage cages are in excess of the ADG requirement, where 10m³ is required for 3+ bedroom apartments (4G-1).

Having regard to their size, location and prevalence, the identification of these areas as being for storage should, in substance, be regarded as likely future car spaces.

Substantial excavation is required to accommodate four basement floors. The extent of excavation is not justified having regard to its environmental impacts and its creation of an excessively large below-ground building footprint, limiting the adequate provision of deep soil and, consequently, the availability of canopy trees and other landscaping to relieve the bulk associated with a building of this size.

A floor space ratio far in excess of the FSR Standard results, noting that parking provided in excess of the prescribed maximum is not car parking to meet the requirements of the consent authority.

The Development Application, in calculating gross floor area, fails to have regard to the provision of car parking, which is substantially in excess of the requirements of Council. In total, the proposed floor space ratio is 6.69:1, based on a gross floor area of 12,109m². This represents a breach of 10,480m² or approximately 643%.

ATTACHMENT 4: ASSESSMENT UNDER OTHER SEPPs, WLEP, DRAFT LEP, WDCP

4.1 State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 provides that a consent authority must not consent to the carrying out of development on land unless it has considered whether the land is contaminated.

In response to Council's request for intrusive sampling and testing as part of a targeted soil investigation to assist in characterising the contamination status of site, the applicant's environmental consultant EI Australia considers that an intrusive investigation is not required.

Council's environmental health team do not agree with this statement, and maintain that without a targeted soil investigation it is not possible to rule out potential exposure to contaminants for demolition and construction workers. Accordingly, Council insists on a Detailed Site Investigation and considers that the likelihood of the land being contaminated has not been carried out to sufficient rigour.

4.2 State Environmental Planning Policy (Transport and Infrastructure) 2021

State Environmental Planning Policy (Transport and Infrastructure) 2021 aims to facilitate effective delivery of infrastructure by identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure and prescribing consultation requirements for certain development.

The following assessment is undertaken under the relevant provisions of the SEPP:

Provision	Assessment
Development adjacent to rail corridors	<p>The development site is not immediately adjacent to a railway line known as the 'North Shore Train Line' running along the eastern side of the site.</p> <p>This matter has not been the subject of a Sydney Trains / Metro assessment.</p>
Excavation in, above, below or adjacent to rail corridors	<p>The proposal does not involve penetration within 25m (measured horizontally) of a rail corridor. As such, no referral under Clause 2.99 is applicable.</p>

<p>Impact of rail noise or vibration on non-rail development</p>	<p>The site is located adjacent to a railway line and will be affected by rail noise. Clause 2.100 is applicable to the proposal and provides that the residential component must not exceed the following LAeq levels:</p> <ul style="list-style-type: none"> ▪ in any bedroom in the residential accommodation – 35 dB(A) at any time between 10.00 pm and 7.00 am; ▪ anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway) – 40 dB(A) at any time. <p>The Noise Impact Assessment details required acoustic construction of the building's façade, including external windows, to ensure that future internal noise levels comply with relevant noise levels of Australian Standard AS2107:2016, the Transport and Infrastructure SEPP, and DPIE's <i>Development Near Rail Corridor and Busy Roads – Interim Guideline</i> for noise intrusion.</p> <p>The acoustic report (Ref: S220617RP1 Rev A) dated 28.4.2023 by Resonate is a high level report with recommendations for reduction of impacts from the Pacific Highway.</p>
<p>Development with frontage to classified road</p>	<p>The site fronts Pacific Highway, which is a classified road. A Traffic Impact Assessment concludes that the proposals has an acceptable impact on the effective and ongoing operation of the Pacific Highway.</p>

Provision	Assessment
Impact of road noise or vibration on non-road development	<p>Development located adjacent to a classified road corridor is required to be subject to a noise intrusion assessment under Clause 2.119.</p> <p>The acoustic report (Ref: S220617RP1 Rev A) dated 28.4.2023 by Resonate is a high level report with high level recommendations for reduction of impacts from the Pacific Highway. and will be incorporated at the design development phase to ensure there are no adverse impacts to internal noise criteria.</p>
Excavation in or immediately adjacent to corridors	The proposal is located adjacent to the Pacific Highway. A referral to TfNSW was undertaken. Conditions of consent
Traffic generating development	<p>The proposal constitutes traffic generating development pursuant to Schedule 3 of the SEPP in that it comprises more than 75 dwellings and fronts a classified road (the Pacific Highway).</p> <p>Transport for NSW (TfNSW) has undertaken its assessment of the proposal.</p>

4.3 Unamended WLEP 2012 and Amended WLEP (Amendment 34)

This table below address the relevant clauses of the (then Draft), now finalised Amended WLEP applicable to the assessment of the proposed development.

Controls and Classification summary

	Unamended WLEP 2012 ¹	Proposed	Amended WLEP (Draft WLEP on date of lodgement)
Zoning	R3 Medium Density Residential zone	Residential flat building	MU1 Mixed use zone – see comment [1] below
FSR	0.9:1	6.69:1 (breach of 10,480m ² or 643%).	6:1 – see comment [6]
Building height	12 metres	90 metres (breach of 70m or 650%)	90 metres - see comment [5]
Active Street frontage (cl 6.7)	Not affected	No active street frontage	Affected by active street frontage, to Pacific Highway - see comment [2]
Affordable housing (cl 6.8)	Not affected	6% 15-yr period 4% perpetuity	Affected by affordable housing (Area 3) 10% - see comment [4]
Design excellence (cl 6.23)	Not affected	Design competition held	Affected, clause 6.23 Amended WLEP
Shop top housing at	Shop top housing not	Residential flat building	Shop top permissible via

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certain sites at Chatswood (cl 6.25)	permissible		cl 6.25 (1) (d) Amended WLEP, contingent on minimum 17% of GFA to be used for non-residential purposes – see comment [1]
Residential flat buildings (RFB)	RFB permissible	Permissible in R3 zone however does not align with the MU1 Mixed use zone	RFB permissible if: (a) The ground floor is used for non-residential purposes only, and (b) at least 17% of the gross floor area of the building will be used for non-residential purposes. [2.5 Additional permitted uses Schedule 1 (27) Amended WLEP] – see comment [1]
Sun Protection clause (cl 6.15)	Not affected	Affected by Area 4. Development must not be granted to development on the site that results in additional overshadowing on Chatswood Tennis Club and Croquet Club at mid-winter between midday and 2pm.	See commentary under subheading "Sun access"
Urban Heat	Not affected		Applies, clause 6.3 Amended WLEP

[1] Permissibility / Characterisation

The Development Application proposes, at the Ground Floor, Level 1 and Level 2 of the building, spaces identified as "communal". However, the Development Application identifies that no use is proposed for the spaces marked as "communal". The use is assigned at stage 2 according to JV Urban's letter of 22 May 2024. As such, the Panel cannot be satisfied that the use of these spaces will be for any of the permitted purposes of development on land zoned R3 Medium Density Residential.

Further, despite such identification, if the spaces identified as communal are properly characterised as ancillary to residential accommodation, the Development Application nevertheless proposes at least in concept a future, Stage 2, development application for the use of those spaces for commercial purposes. However, development consent cannot be granted to conceptual use for commercial purposes because development for commercial purposes is not permissible on the site, having regard to its zoning as R3 Medium Density Residential. Further, consent for commercial purposes cannot be granted as it would be inconsistent with any concept approval of "communal" spaces on Basement Level 1, the Ground Floor, Level 1 and Level 2 of the building.

[2] Inconsistency with strategic planning framework

The Development Application is fundamentally inconsistent with the strategic planning intention for the site, as embodied in the Amending Instrument, which was both imminent and certain and had been the subject of public consultation at the time the Development Application was made. Specifically:

- i. Despite seeking the benefit associated with increases in height and floor area permitted by the Amending Instrument, the Development Application fails to respond to the broader strategic intent of the Amending Instrument and the strategic planning framework, by not demonstrating design excellence, failing to provide affordable housing in a 10% quantum, and failing to provide an active street frontage.
- ii. Additionally, the Development Application is inconsistent with the Precinct DCP. It sites vehicle ingress and egress at the southern fringe of the Site, rather than making provision for ingress via the northern fringe and future provision for egress via lands associated with 689 Pacific Highway.

[3] Sun access

Drawing CDA-505 provides shadow analysis of the shadow effect on croquet club and bowling green. The drawings notate that there is no additional impact to the Croquet Club.

[4] Affordable Housing

The proposal comprises 4% said to be allocated as Affordable Rental Housing in perpetuity and 6% said to be allocated as Affordable Rental Housing for a 15-year period.

The Amended LEP places the Site within the area identified as "Area 3" on the Affordable Housing Map published pursuant to the Willoughby LEP. Consequently, by reason of clause 6.8, the erection of residential accommodation on the land will require the contribution of 10% of the gross floor area of the development to Council, either as:

- i. A dedication, in favour of Council, of land comprising 1 or more dwellings, each having a gross floor area of at least 50 square metres; or

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- ii. A monetary contribution paid to Council, calculated by reference to the market value of dwellings of a similar size to the dwellings in the proposed development; and

Council strongly prefers the delivery of the affordable housing as stock, and has consistently required this through the assessment of its DAs.

Clause 4.4(1) of the Willoughby LEP provides the following relevant objective for clause 4.4 at (k):

- k. to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.

However, the cl 4.6 request fails to acknowledge that a significant qualification on the uplift in development potential on the Site is that affordable housing must be provided in accordance with clause 6.8 of the Amending Instrument and the Willoughby Affordable Housing Principles — instead, it implies that the provision of additional housing stock is sufficient and that the part permanent, part 15-year dedication of affordable housing is sufficient.

The Development Application fails to provide affordable housing in the manner which would be required by clause 6.8(3) of the Amending Instrument. This is a vital shortfall of the development application.

[5] Building height and clause 4.6 request

Clause 4.3 of the Willoughby LEP and the Height of Buildings Map published pursuant to the Willoughby LEP prescribe a maximum building height of 12 metres on the Site (**Building Height Standard**). The Development Application describes (but does not necessarily depict) a building with a maximum height of 90 metres, representing a breach of the Building Height Control of 78 metres, or approximately 650%.

The Development Application inaccurately states the maximum height of the proposed building. Roof elements located at RL185.70 appear to be at more than a vertical distance of 90 metres above the ground level (existing) of RL95.57. The extent of the breach of the Building Height Standard is likely greater than stated in the Development Application.

The Development Application is excessive in height, overwhelming and dominating the existing surrounding build environment, in a manner that is not in keeping with the Site's

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zoning and surrounding development. The bulk and scale of the Development Application is not appropriate in context and will be perceived as a substantial overdevelopment of the Site.

The Development Application does not achieve an appropriate transition in building bulk and scale to surrounding development, causing unacceptable impacts on surrounding developments as a direct consequence of its excessive building height.

The Development Application does not demonstrate design excellence.

The written clause 4.6 variation request fails to adequately justify the extreme nature of the breach of the Building Height Standard. Specifically:

- The variation request's response to clause 4.6's criterion refers to the impending introduction of the Amending Instrument and its substantial uplift in the development potential of the Site. The variation request fails to substantiate the numerous qualifications, conditions or limitations imposed on that uplift by the other provisions of the Amending Instrument. The variation request cherry picks the Building Height Standard uplift, but effectively disregards almost all other provisions of the Amending Instrument, contrary to objective (f) of the Building Height Standard.

With respect to privacy and consistency with objective (b) of the Building Height Standard:

- the variation request states that the Development Application "minimises any overshadowing, addresses potential loss of privacy and view sharing for the neighbouring properties consistent with the objectives", but fails to provide any analysis in support of that assertion — indeed, the property located at 689 Pacific Highway will be heavily overshadowed;
- the variation request (and the Development Application) does not demonstrate that adequate privacy to surrounding properties is provided, including future development to the south; and
- the variation request does not address impacts arising from visual intrusion which arise as a consequence of its excessive height, bulk and character.

The variation request fails to address the manner in which the Development Application has responded to the architectural design competition said to have been carried out in 2023, contrary to objective (c) of the Building Height Standard.

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The variation request fails to acknowledge inconsistencies between the Development Application and controls in place under the Willoughby DCP 2023 (upon which the increase in uplift is premised). In particular:

- The Development Application does not comply with the street frontage control in Control 4.4.2(b) to Part B of the Willoughby DCP 2023;
- The Development Application does not comply with the side setback controls for shop top housing and mixed use developments in Control 6.1.2 to Part D of the Willoughby DCP 2023, or the side setback controls for commercial uses in the Chatswood CBD in Control 4.3.4(d) to Part L of the Willoughby DCP 2023; and
- The Development Application does not comply with the maximum site coverage control in Control 4.4.1(f) to Part B of the Willoughby DCP 2023.

The variation request fails to justify the extent of excavation proposed by the Development Application, which is excessive having regard to the uses proposed for the four basement floors, being predominantly parking and storage. As a consequence, the Development Application proposes an excessively large below-ground footprint, limiting the adequate provision of deep soil and, as a consequence, limiting the availability of landscaping to relieve the excessive height of the proposed building.

The Development Application proposed the inclusion of 122 car parking spaces. The amended Development Application re-labels 65 of these spaces as storage cages. The combination of car parking and storage is excessive, and directly contributes to an overly large building footprint, increasing above-ground bulk and limiting the opportunity for any substantial deep soil planting and landscaping. The variation request fails to provide justification for this excessive, additional provision of floor space, which will limit deep soil in the manner stated above.

The clause 4.6 request is not considered to be well-founded.

[6] FSR and clause 4.6 request

Clause 4.4 of the Willoughby LEP and the Floor Space Ratio Map published pursuant to the Willoughby LEP prescribe a maximum floor space ratio of 0.9:1 on the Site (**FSR Standard**).

Clause 4.6 of the Willoughby LEP permits a consent authority to grant consent to development which proposes an exceedance of the FSR Standard if satisfied that:

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- i. Compliance with the FSR Standard is unreasonable or unnecessary in the circumstances of the case;
- ii. There are sufficient environmental planning grounds to justify contravening the FSR Standard; and
- iii. The proposed development is in the public interest.

The Development Application proposes a floor space ratio of 6.69:1, based on a gross floor area of 12,109m². This represents a breach of 10,480m² or approximately 643%. The Development Application, in calculating gross floor area, fails to have regard to the provision of car parking, which is substantially in excess of the requirements of the Council.

The Development Application is excessive in scale and inappropriate in its context, having regard to the applicable FSR Standard, overwhelming and dominating the surrounding built environment in a manner contrary to the objectives of the R3 Medium Density Residential zone and the objectives of the FSR Standard.

The Development Application does not achieve an appropriate transition in building scale and density to surrounding development, causing unacceptable impacts on surrounding development by reason of its excessive gross floor area.

The Development Application is not in the public interest, as it is inconsistent with the objectives of the FSR Standard — in particular, objectives (a), (b), (c), (d), (f), (i), (j) and (k) and the R3 Medium Density Zone.

The Development Application does not demonstrate design excellence.

The written clause 4.6 variation request fails to adequately justify the extreme nature of the breach of the FSR Standard. Specifically:

- i. The variation request responds to the clause 4.6's criterion by referring to the impending introduction of the Amending Instrument and its substantial uplift in the development potential of the Site. The variation request fails to address in substance the numerous qualifications, conditions or limitations imposed on that uplift by the other provisions of the Amending Instrument. The variation request cherry picks the FSR Standard uplift, but functionally disregards almost all other provisions of the Amending Instrument.
- ii. The variation request states that it is unreasonable and unnecessary to impose the FSR Standard because the Site is capable of supporting a residential flat building. This

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is contrary to the desired future character of the Site, which only contemplates residential uses being permissible as shop top housing (or some other mixed use development), based on at least 17% of the building's gross floor area being used for non-residential purposes. Similarly (and contrary to the text of the variation request), no active street frontage is provided.

- iii. The variation request is misaligned in respect of the provision of car parking. While it seeks benefit of the Amending Instrument's floor space ratio uplift, it provides car parking in accordance with a previous version of the Willoughby DCP, rather than in accordance with the reduced numerical requirements of the Willoughby DCP 2023. This is, further, contrary to objective (b) of the FSR Standard.

The variation request seeks to justify the excessive bulk and scale of the development by comparison to the Amending Instrument, but fails to provide a diverse and active street frontage to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces as required by the objectives and controls associated with land uses within the MU1 Mixed Use zone.

The variation request fails to acknowledge that a significant qualification on the uplift in development potential on the Site is that affordable housing must be provided in accordance with clause 6.8 of the Amending Instrument and the Willoughby Affordable Housing Principles — it simply suggests that the provision of additional housing stock is sufficient and that the part permanent, part 15-year dedication of affordable housing is sufficient.

The variation request fails to acknowledge inconsistencies between the Development Application and controls in place under the Willoughby DCP 2023 (upon which the increase in uplift is premised). In particular:

- The Development Application does not comply with the minimum site setback control in Control 4.4.4(b) to Part B of the Willoughby DCP 2023; and
- The Development Application does not comply with the maximum site coverage control of 20% in Control 4.4.1(f) to Part B of the Willoughby DCP 2023.

The variation request fails to justify the extent of excavation proposed by the Development Application, which is excessive having regard to the uses proposed for the four basement floors, being predominantly parking and storage. As a consequence, the Development

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Application proposes an excessively large below-ground footprint, limiting the adequate provision of deep soil.

The Development Application proposed the inclusion of 122 car parking spaces (130 spaces initially). The Development Application, as amended, re-labels 65 of these spaces as storage cages. The combination of car parking and storage is excessive, and directly contributes to an overly large building footprint, increasing above-ground bulk and limiting the opportunity for any substantial deep soil planting and landscaping. The variation request fails to provide justification for this excessive, additional provision of floor space.

4.2 Assessment under Willoughby Development Control Plan (WDCP)

Site isolation

The Development Application renders 689 Pacific Highway isolated and incapable of achieving a form of development density envisaged and established by the Amending Instrument.

The Development Application is not accompanied by a satisfactory analysis of the development potential of the Isolated Site, prepared in accordance with Control 4.3.1(h) to Part L of the Willoughby DCP 2023. Specifically:

- i. The indicative built form is of a very poor design which could not be supported. Solar access would be extremely poor, half of the dwellings would face the Pacific Highway and only two relatively small apartments could be achieved per floor. It is very likely that this built form could achieve financial viability.
- ii. The indicative built form would achieve very limited (if any) winter solar access and would be fully reliant on the Site for parking, waste and servicing.
- iii. The indicative built form would not achieve required Apartment Design Guide separations for the low scale residential developments to the south, and would have compromised privacy.
- iv. Generally, the relationship between the Development Application's tower and the indicative tower is very uncomfortable and not appropriately resolved.

Precinct DCP

The Development Application proposes, contrary to the Precinct DCP, that vehicle ingress and egress be secured from a single location, being located on the southern fringe of the Site, on land presently legally described as Lot 1 in Deposited Plan 187216.

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Parking

The Development Application proposes, properly characterised, 65 spaces over and above the prescribed maximum (in the form of storage cages which can easily be converted to spaces). The provision of parking in this excessive quantum is contrary to the Amending Instrument, the Willoughby DCP 2023 and the public interest.

Setbacks and street frontage heights

Pacific Highway frontage applies under Part L 4.3.4 WDCP 2023. This means:

- minimum 4m setback at ground level from front boundary (with exception of heritage sites)
- maximum 7m street wall height
- minimum 6m setback above street wall to tower

The tower is required to be set back minimum 4.5m from other boundaries (Part L 4.3.4 WDCP 2023 (b)).

The proposal generally satisfies the envelope criteria, although the interface with 689 Pacific Highway needs to be resolved.



ATTACHMENT 5: SUBMISSIONS TABLE

The application was notified for these periods:

- 20 July to 10 August 2023, where 5 submissions were received.
- 4 April 2024 to 3 May 2024, where 2 submissions were received.
- 25 July to 22 August 2024 (no submissions received at time of completion of report).

Issue / Concern	
Traffic impacts during construction	
Property (note: some address not provided by submitters)	Assessment Planner Response
Address not provided	<p>Concerns are raised that the proposal will result in traffic impacts during the construction phase, particularly with the development at 15 Ellis Street also under construction.</p> <p>The submitter says that streets like Ellis Street and Crispe Lane may to impacted, "particularly when the high school and primary school in Chatswood beginning and finishes classes for the day".</p> <p>It is noted that the proposal does not satisfy Willoughby DCP Part L 13.1.17, which aims to:</p> <ol style="list-style-type: none"> 1. Provide Precinct guidelines for 641-653, 655A, 689, 691-693, 695, 699, 701-705 and 745 Pacific Highway Chatswood. 2. Facilitate provision of pedestrian and cycle through site links connecting with adjacent or envisioned future pedestrian and cycle links within the Chatswood CBD. 3. Minimise traffic impacts on the surrounding road network.
Parking	
Property	Assessment Planner Response
Chatswood Croquet Club	<p>Concerns relate to the applicable parking rate (0.5 space per 1, 2 or 3 bedroom unit) and "totally inadequate visitor parking for the large number of units".</p> <p>The submitter (President of the Chatswood Croquet Club Inc) says that the lack of parking will "put huge pressures on available surrounding parking spots, including the parking spots upon which the Chatswood Croquet Club currently depends..."</p> <p>The submitter says that the loss of available car spaces will be "catastrophic to our club whose members require reasonable parking facilities in order for the club to function".</p> <p>The proposal is in excess of parking spaces set by Willoughby DCP, (57 spaces plus a series of storage cases set within standard parking spaces). The DCP target rates apply to development of the scale proposed. A lack of parking is not a reason for refusal.</p>
Chatswood Croquet Club Inc.	The submission expresses its satisfaction for the Precinct

	<p>Control Plan (PCP) – the same referred to in the Background of this report – as it will “ensure that we will continue to have access to our grounds via Hammond Lane and also via the laneway into our grounds from the Pacific Highway”. In addition, that the PCP “will preserve our access to our six allocated parking spaces on the Council’s easement for parking over the norther-western corner of the Chatswood Bowling Club grounds”. The PCP says: “Access to Tennis and Croquet Club retained. No access to private development land via Council land to preserve community use”.</p> <p>The submission says”.. it is essential that our parking spaces are our access approaches via Hammond Lane and via the laneway to our grounds from the Pacific Highway remain undisturbed by this development or by any related building and construction works. We strenuously oppose any of our parking areas or access routes being used by building and construction workers or contractors for parking, or by vehicles, trucks, cranes or machinery of any kind not related to the activities of our club”.</p> <p>Parking during construction activities can be conditioned as part of a consent, where a Construction Traffic Management Plan may be involved. In this case the recommendation is for refusal.</p>
Overshadowing	
Property	Assessment Planner Response
701/705 Pacific Highway, Chatswood (strata 39536)	<p>The submission requests that overshadowing not be “a cause for concern” to SP 39536.</p> <p>The sun access WLEP clause (6.15) requires that any structure on the site not overshadowing the Area 4 between 12pm and 2pm in mid-winter.</p> <p>The shadow diagrams indicate no impact to this property, which is to the north for the site.</p>
1 Eddy Road, Chatswood	<p>Concerns relate to the proposal’s overshadowing impact during the morning time “throughout the year”. The shadow diagram do indicate an overshadowing impact from 9.00am until around 10.30am in mid-winter, after which the shadow falls upon Pacific Highway and then properties to the south and east of the site. The comprehensive planning proposal that led to uplifts in development potential in the CBD, which will throw shadow to the extent shown in the shadow diagrams. In the circumstances of the case, the shadow impact on 1 Eddy Road is not so detrimental as to require amendment to the scheme.</p>
Chatswood Bowling Club	<p>Concerns are raised that the proposal overshadows the playing greens, and refers to the Urban Design Report. There is overshadowing of the bowling greens (to confirm, is not Area 4) as shown in image 9. The consideration of overshadowing to the greens will in part need to acknowledge the envelope established by WDCP 2023. In this case there are a number of other issues that result in the recommendation for refusal.</p>

	  <p>Image 9: Overshadowing of the Chatswood Bowling Club green (Source: Urban Design Report, DEM (Aust) Pty Ltd, May 2023, p32)</p>
Precedent	
Chatswood Croquet Club Inc.	<p>The Chatswood Croquet Club Inc. is concerned “of the terrible precedent it will set and the likelihood of a future high-rise development to our west and/or north-west resulting in even more shading of the croquet lawns”.</p> <p>The comprehensive LEP amendment has resulted in a significant uplift for sites throughout the CBD.</p>
Too high	
Property	Assessment Planner Response
1 Eddy Road, Chatswood	<p>The submitter raises the concern that the proposal will impact a view of the sky.</p> <p>The comprehensive LEP amendment has resulted in a significant uplift for sites throughout the CBD. Notwithstanding,</p>

	in the circumstances of this case, the cl 4.6 request for building height is not considered to be well-founded.
Noise levels during construction	
Property	Assessment Planner Response
Chatswood Croquet Club Inc.	<p>Requests that "some restriction" on both the noise levels that emanate from the building site and also on the working hours, including that such hours "not occur on weekends, which are important days of quiet enjoyment for our members playing croquet".</p> <p>This concern is capable of being dealt with by condition of consent.</p>

ATTACHMENT 6: SECTION 4.15 ASSESSMENT

Matters for Consideration Under S.79C EP&A Act

Considered and Satisfactory ✓ Considered and Unsatisfactory ✗ Not Relevant N/A

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> State Environmental Planning Policies (SEPP) 	✗
	<ul style="list-style-type: none"> Local Environmental Plans (LEP) 	✗
	<ul style="list-style-type: none"> Comment: The proposal is not satisfactory having regard to the SEPPs and LEP. 	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> Draft State Environmental Planning Policies (SEPP) 	✗
	<ul style="list-style-type: none"> Draft Local Environmental Plans (LEP) 	✗
	Comment: The proposal is not satisfactory having regard to the Draft (now made) LEP.	
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> Development control plans (DCPs) 	✗
	Comment: The proposal is not satisfactory having regard to the DCP.	
(a)(iv)	Any matters prescribed by the regulations	
	Clause 61 (prev 92) EP&A Regulation-Demolition	✗
	Clause 62 (prev 93) EP&A Regulation-Fire Safety Considerations	✗
	Clause 64 (prev 94) EP&A Regulation-Fire Upgrade of Existing Buildings	N/A
	Comment: The classification of the proposal in NCC terms changes with the proposed evolution of the scheme (stages 1 and 2).	
(b)	The likely impacts of the development	
	<ul style="list-style-type: none"> Context & setting 	✗
	<ul style="list-style-type: none"> Access, transport & traffic, parking 	✗
	<ul style="list-style-type: none"> Servicing, loading/unloading 	✗
	<ul style="list-style-type: none"> Public domain 	✗
	<ul style="list-style-type: none"> Utilities 	✗
	<ul style="list-style-type: none"> Heritage 	✗
	<ul style="list-style-type: none"> Privacy 	✗
	<ul style="list-style-type: none"> Views 	✗
	<ul style="list-style-type: none"> Solar Access 	✗
	<ul style="list-style-type: none"> Water and draining 	✗

Matters for Consideration Under S.79C EP&A Act

Considered and Satisfactory ✓ Considered and Unsatisfactory ✗ Not Relevant N/A

	• Soils	✗
	• Air & microclimate	✗
	• Flora & fauna	✗
	• Waste	✗
	• Energy	✗
	• Noise & vibration	✗
	• Natural hazards	✗
	• Safety, security crime prevention	✗
	• Social impact in the locality	✗
	• Economic impact in the locality	✗
	• Site design and internal design	✗
	• Construction	✗
	• Cumulative impacts	✗
	Comment: The above matters have ben considered.	
(c)	The suitability of the site for the development	
	• Does the proposal fit in the locality?	✗
	• Are the site attributes conducive to this development?	✗
	Comment: The proposal is not satisfactory having regard to the suitability of the site for the development.	
(d)	Any submissions made in accordance with this Act or the regulations	
	• Public submissions	✗
	• Submissions from public authorities	✗
	Comment: The proposal is not satisfactory having regard to the submissions made.	
(e)	The public interest	
	• Federal, State and Local Government interests and Community interests	✗
	Comment: The proposal does not satisfy public interest considerations.	

ATTACHMENT 7: REASONS FOR REFUSAL

It is recommended the development application be refused for the following reasons:

1. The Development Application seeks development consent for development which is not permissible on the Site.
2. The consent authority cannot be satisfied that the Concept Development Application is development for the purpose of a residential flat building.
3. The Development Application is fundamentally inconsistent with the strategic planning framework applicable to the Site in respect of land use, affordable housing, desired future character and development potential uplift.
4. The Development Application fails to establish that the Site is suitable for the development, contrary to the EP&A Act.
5. The Development Application is not accompanied by information required to be provided to enable an assessment of the design and sustainability of residential apartment development.
6. The Development Application fails to comply with the Willoughby LEP's applicable maximum floor space ratio standard. The clause 4.6 variation request is not well-founded.
7. The Development Application fails to comply with the Willoughby LEP's applicable maximum building height standard. The clause 4.6 variation request is not well-founded.
8. The Development Application is inconsistent with the desired future character of the locality.
9. The Development Application proposes unsatisfactory stormwater management arrangements.
10. The Development Application proposes excessive excavation and does not demonstrate that the extent of excavation will not have unacceptable adverse impacts to groundwater.
11. The Development Application does not demonstrate that the requirements of the Resilience and Hazards SEPP have been satisfied.
12. The Development Application isolates an adjacent allotment, diminishing opportunities for redevelopment and compromising the orderly development of land. The Development Application fails to make adequate provision for the future development of the isolated site.
13. The Development Application fails to adopt access arrangements in accordance with the Willoughby DCP and the Transport and Infrastructure SEPP. The Development Application does not demonstrate that safe vehicular access can be provided to and within the Site, and without adverse impact to the adjacent traffic. The access arrangements will also require the unacceptable removal of an established street tree.

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14. The Development Application provides an excessive amount of car parking, inconsistent with the Willoughby DCP 2023.
15. The Development Application fails to incorporate adequate passive and active crime prevention through environmental design (CPTED) measures.
16. The Development Application is not in the public interest, having regard to the matters raised by submissions.

ATTACHMENT 8: NOTIFICATION MAP



ATTACHMENT 9: ARCHITECTURAL PLANS (ATTACHED SEPARATELY ON PORTAL)

ATTACHMENT 10: LETTER FROM JV URBAN



PLANNING | DEVELOPMENT | URBAN DESIGN

22 May, 2024

The Northern Sydney Planning Panel
c/-The General Manager
Willoughby City Council
council@willoughby.nsw.gov.au

**RE: Cover Letter – SEE Addendum
691-699 Pacific Highway, Chatswood**

I refer to PAN 336266, being Development Application (CDA) - DA2023/166.

On behalf of the applicant, we seek to amend the application pursuant to clause 37(1) of the Environmental Planning and Assessment Regulation 2021 (EP&A Regs), in terms of the description of the proposed development and staging so as to address concerns expressed by Council in the Request for Further Information dated 8 April, 2024 and Statement of Facts and Contentions dated 16 April, 2024 as follows:

1. *A concept approval for:*
 - a. *a 26 storey building with four basement levels;*
 - b. *construction and use of 89 residential units within the building comprising a mix of 16 x 1br; 26 x 2br; 45 x 3br and 2 x 4br units and associated parking;*
 - c. *construction of the remainder of the areas marked “communal open space” in the basement, ground level and first floor levels but not the fit-out or use of those areas, which is to be the subject of a separate development application in stage 2;*
 - d. *the concept is to be carried out in two stages comprising:*
 - i. *stage 1 being the construction and use of the 89 residential units within the building and associated car parking;*
 - ii. *stage 2 being for the use and fitout of the areas marked “communal open space” at ground and level 1.*
2. *A stage 1 operational consent for the construction and use of 89 residential units within the building comprising a mix of 16 x 1br; 26 x 2br; 45 x 3br and 2 x 4br units and associated parking.*

Consent is only sought for the concept approval and stage 1 operational development consent at this stage. Stage 2 is to be subject to a separate subsequent development application to be lodged under the new LEP.



In addition, amended Clause 4.6 variations to the FSR and HOB standards have been uploaded to the portal together with this amendment application as required by the Regulations.

Yours faithfully,



Joe Vescio

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**ATTACHMENT 11: CLAUSE 4.6 – BUILDING HEIGHT (DATED 22 MAY 2024)
(ATTACHED SEPARATELY ON PORTAL)**

**ATTACHMENT 12: CLAUSE 4.6 – FSR (DATED 22 MAY 2024) (ATTACHED
SEPARATELY ON PORTAL)**

ATTACHMENT 13: PUBLIC SUBMISSIONS (ATTACHED SEPARATELY ON PORTAL)