

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-78
DA Number	DA-2020/7
LGA	Willoughby City Council
Proposed Development	Demolition of the existing structure and concept approval for a building envelope for a commercial development incorporating Chatswood RSL Club.
Street Address	446 Victoria Avenue, CHATSWOOD NSW 2067
Applicant/Owner	Chatswood RSL Club Limited
Date of DA lodgement	Chatswood RSL Club Limited
Number of Submissions	13
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Capital investment value (CIV) over \$30 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>SEPP (Infrastructure) 2007 - Schedule 3 – Traffic Generating Development</i> • <i>SEPP 55 – Remediation of Land</i> • <i>SEPP 65 Design Quality of Residential Apartment Development (SEPP 65) and NSW Apartment Design Guide (ADG)</i> • <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) – Deemed SEPP</i> • <i>Willoughby Local Environmental Plan 2012</i> • <i>Willoughby Development Control Plan</i> • <i>Chatswood CBD – Planning and Urban Design Strategy</i>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Assessment Report • Schedule of Conditions • Site Description and Aerial Photo • Controls, Referrals & Development Statistics • Section 4.15 (79c) Assessment • Clause 4.6 variation application • Notification Map
Report prepared by	Mark Bolduan (Senior Assessment Officer)
Report date	8 October 2020

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

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)?

No

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

COUNCIL ASSESSMENT REPORT

Conditions

Have draft conditions been provided to the applicant for comment?

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

Yes

SNPP NO: PPSSNH-78
COUNCIL: WILLOUGHBY CITY COUNCIL
ADDRESS: 446 VICTORIA AVENUE, CHATSWOOD NSW 2067.
DA NO: DA-2020/7
PROPOSAL: DEMOLITION OF THE EXISTING STRUCTURE AND
CONCEPT APPROVAL FOR A BUILDING ENVELOPE FOR A
COMMERCIAL DEVELOPMENT INCORPORATING
CHATSWOOD RSL CLUB.
RECOMMENDATION: APPROVAL
ATTACHMENTS:

1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS,
DEVELOPER CONTRIBUTION & REFERRALS
3. SUBMISSIONS TABLE
4. SECTION 4.15 (79C) ASSESSMENT
5. CLAUSE 4.6 VARIATION APPLICATION
6. ASSESMENT OF CLAUSE 4.6 VARIATION
APPLICATION
7. SCHEDULE OF CONDITIONS
8. NOTIFICATION MAP

RESPONSIBLE OFFICER: RITU SHANKAR - TEAM LEADER
AUTHOR: Mark Bolduan - Senior Development Assessment Officer
DATE: 08-OCT-2020

RECOMMENDATION: APPROVAL
LOCATION: 446 VICTORIA AVENUE, CHATSWOOD NSW 2067.
OWNER: CHATSWOOD RSL CLUB LIMITED
APPLICANT: CHATSWOOD RSL CLUB LIMITED
DATE OF LODGEMENT: 17-JAN-2020
REPORTING OFFICER: MARK BOLDUAN

1. PURPOSE OF REPORT

The proposal is regionally significant development as identified in Schedule 7 of the *State Environmental Planning Policy* (State and Regional Development) 2011. It has a capital investment value (CIV) of over \$30 million and therefore Sydney North Planning Panel is the determination authority.

1. OFFICER'S RECOMMENDATION

THAT the Sydney North Planning Panel (SNPP):

2.1. Support exceedance to the height of building standard contained in Clause 4.3 of *Willoughby Local Environmental Plan 2012* (WLEP 2012) for the following reasons:

- **The development's breach of the height of building development standard contained in the WLEP 2012 must be assessed in light of the future increase of that development standard.**
- **The development's breach of the height of building development standard contained in the WLEP 2012 has been configured to reduce overshadowing impacts and (subject to conditions) will have no significant adverse impacts on the privacy or solar access of residential neighbours.**
- **The proposal meets the relevant objectives of the height of building development standard and the B3 Commercial Core zone.**

2.2 Approve Development Application DA-2020/7 as a concept approval (under Section 4.22 of the Environmental Planning and Assessment Act 1979) for demolition of the existing structure and concept approval for a building envelope for a commercial development incorporating Chatswood RSL Club, subject to conditions contained in Attachment 7, for the following reasons:

- 2.2.1 Subject to conditions, the proposal will have reasonable impacts on the amenity of residential neighbours in terms of privacy, solar access, view loss and visual massing.**
- 2.2.2 Subject to conditions, the proposal is consistent with the existing and future character and scale of development of the locality, as set out in the WLEP 2012, WDCP and Chatswood CBD Strategy.**
- 2.2.3 Subject to conditions, the proposed development meets the desired outcomes and objectives of the development standards and B3 zone contained in the WLEP 2012.**

2. BACKGROUND

On 14 November 2019 Council held a pre lodgement meeting in respect to the proposed redevelopment of the site. The applicant was advised to ensure that the building envelope complied with the Chatswood CBD – Planning and Urban Design Strategy.

On 20 December 2019 Council approved DA 2019/273 for alterations to Chatswood RSL to create new roof openings above gaming room and associated works. The approved alterations were modest in scope and predominantly within the existing two storey building envelope.

3. PROPOSED DEVELOPMENT

The DA is a concept DA pursuant to Section 4.22 of the Environmental Planning and Assessment Act 1979. This DA therefore does not seek approval for building works, which will require further more detailed DA at a later stage (future DA).

The proposal is for redevelopment of the current RSL site in central Chatswood, near the Chatswood Railway Station. The application seeks approval for the building envelope of a commercial office tower and registered club and basement parking.

The built form will include podium and tower components. The tower will achieve a height of 93.7m (22 storeys). The RSL club will occupy the Lower Ground Level, Ground Floor Level and Levels 1 and 2. The commercial uses will occupy the 18 Levels above.

An open air plaza and ancillary through-site link will be provided at ground level.

The area of each component of the proposed development will be:

Club – 6,790m²

Commercial tower – 28,070m²

Total - 34,860m²

The ground level plaza will have an area of 132,8m².

Basement parking levels will provide 263 car spaces. These basement parking levels will be accessed from Thomas Street.

The proposed building envelope is best illustrated in the following extracts from the DA plans (the red plane indicates the WLEP 2012 80m building height limit – see discussion below).

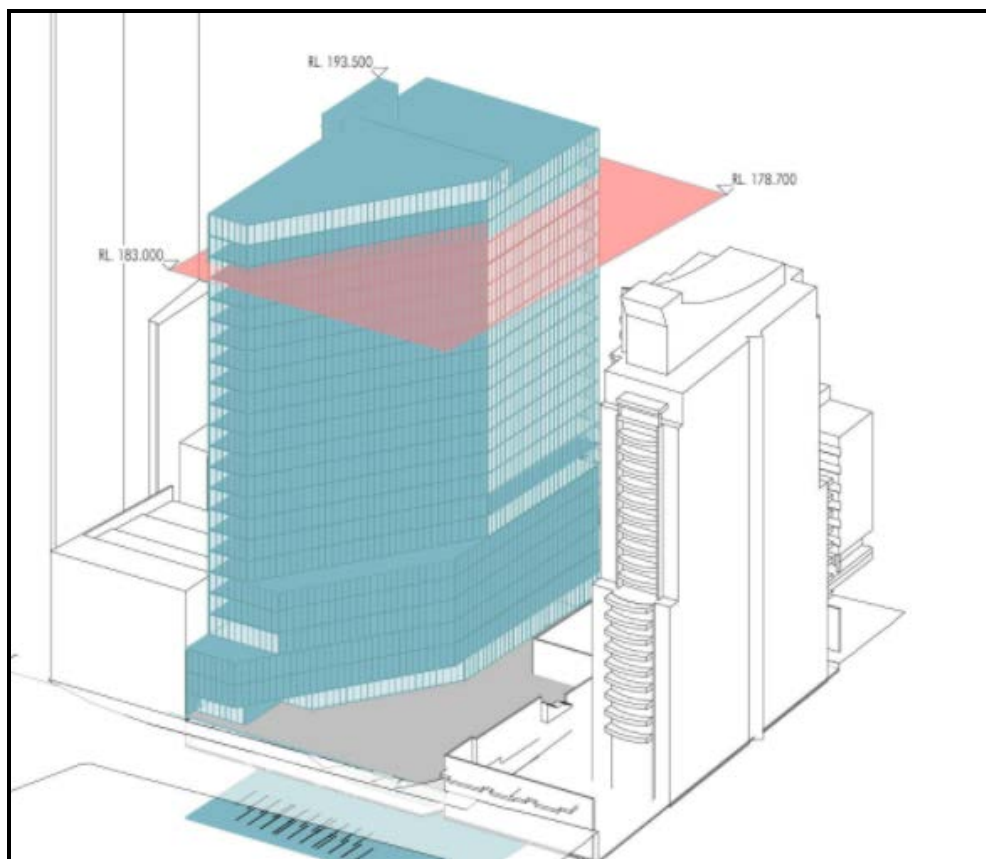


Figure 1: Proposed building envelope viewed from north (extract from architectural plans)

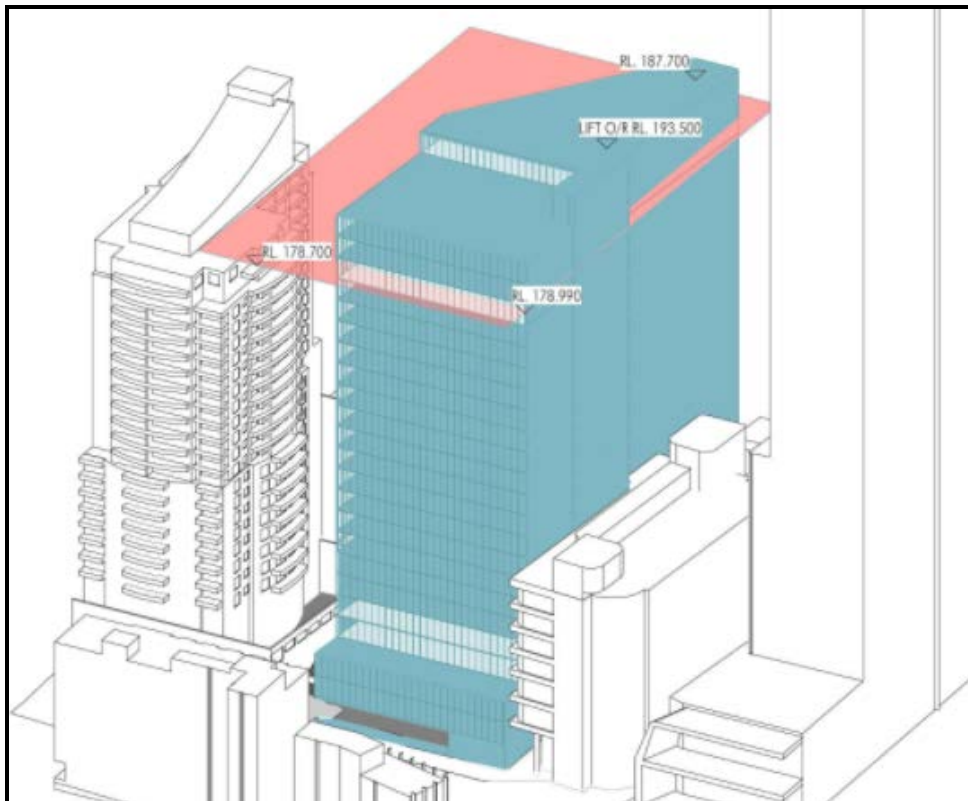


Figure 2: Proposed building envelope viewed from south (extract from architectural plans)

4. DISCUSSION

As stated above, the current application is a Concept DA pursuant to Division 4.4 of the Environmental Planning and Assessment Act 1979. This is defined in Section 4.22(1) as:

... a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.

As such, Council is only required to consider:

... the likely impact of the concept proposals and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.

The initial proposal was for a similar scheme, although one storey lower (height 89.33m) and slightly larger footprint at lower levels.

Assessment of this initial proposal led to a Council request for amendments to the building envelope. An amended proposal was lodged on 5 August 2020, which included the following features:

- Increased height of tower from 89.33m to 93.70m (21 storeys to 22 storeys);
- Reduced street wall on both Victoria Avenue and Thomas Street frontages to approximately 12m, with a setback above of 6m;
- Reduced building plate sizes at all Levels; and
- Same total gross floor area (34,860m²);

The amended plans were accompanied by an amended Clause 4.6 variation application in respect to height non-compliance.

Council also requested amendments to the proposed car parking provision. A Supplementary Transport Assessment was lodged on 3 August 2020.

It is the abovementioned amended scheme which forms the basis of this assessment.

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

5. CONCLUSION

The Development Application DA-2020/7 has been assessed in accordance with Section 4.15 (79C) of the *Environmental Planning and Assessment Act 1979*, *WLEP 2012*, *WDCP*, and other relevant codes and policies. It is considered that the proposal is acceptable in the particular location, subject to the consent conditions included in **Attachment 7**.

ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO

The site is located between Victoria Avenue (to the north) and Thomas Street (to the south), to the west of the Chatswood Railway Station.

The site is irregular in shape. The Victoria Avenue frontage is 48.73m in length, the Thomas Street frontage is 39.585m in length and the site depth is approximately 75m. The total site area is 3,320m².

The site is currently occupied by the existing Chatswood RSL Club facility. This consists of a one and two storey rendered building. A vehicle crossover and bitumen driveway from Thomas Street leads to a ground level hard stand car park with 25 car spaces.

The site is located in the Chatswood CBD, proximate to the Chatswood Rail and Metro Station. The site location is indicated in the following aerial photograph.

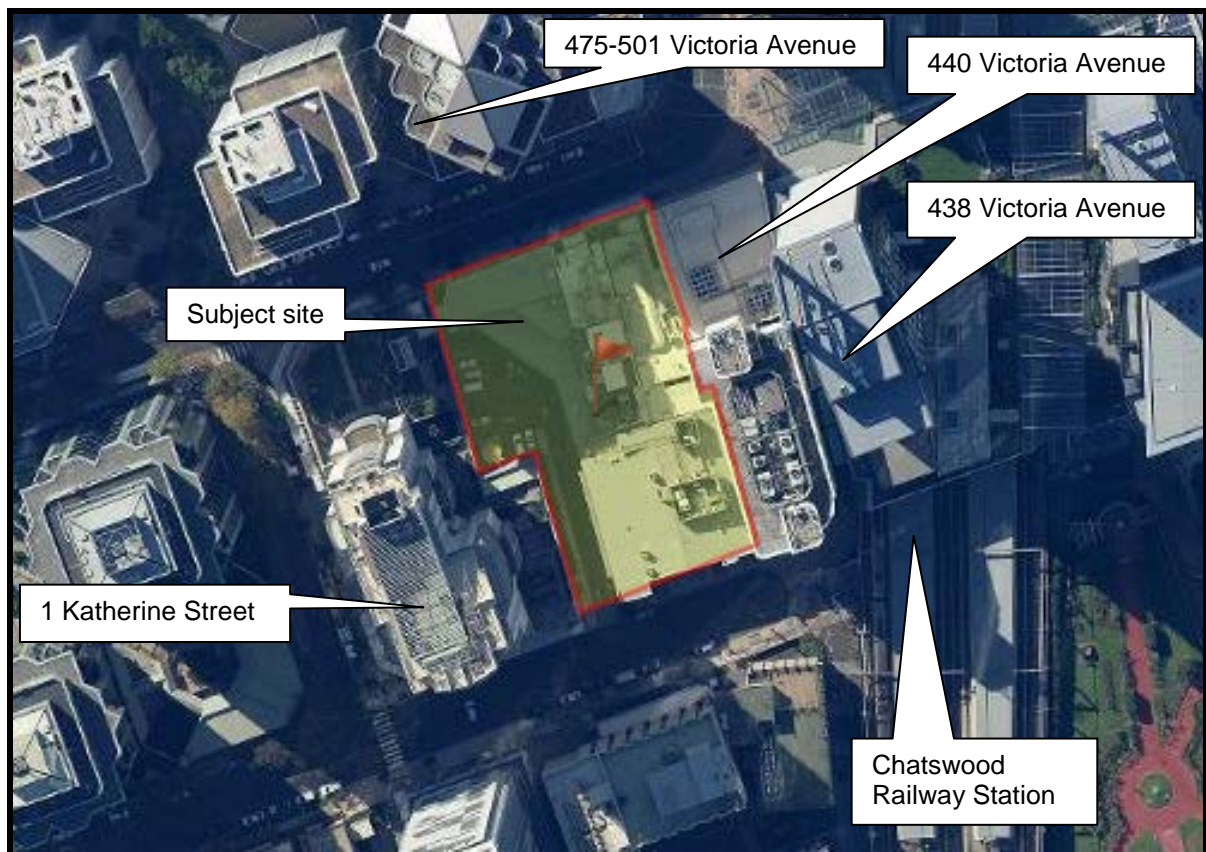


Figure 3: Site aerial photograph (Six Maps)

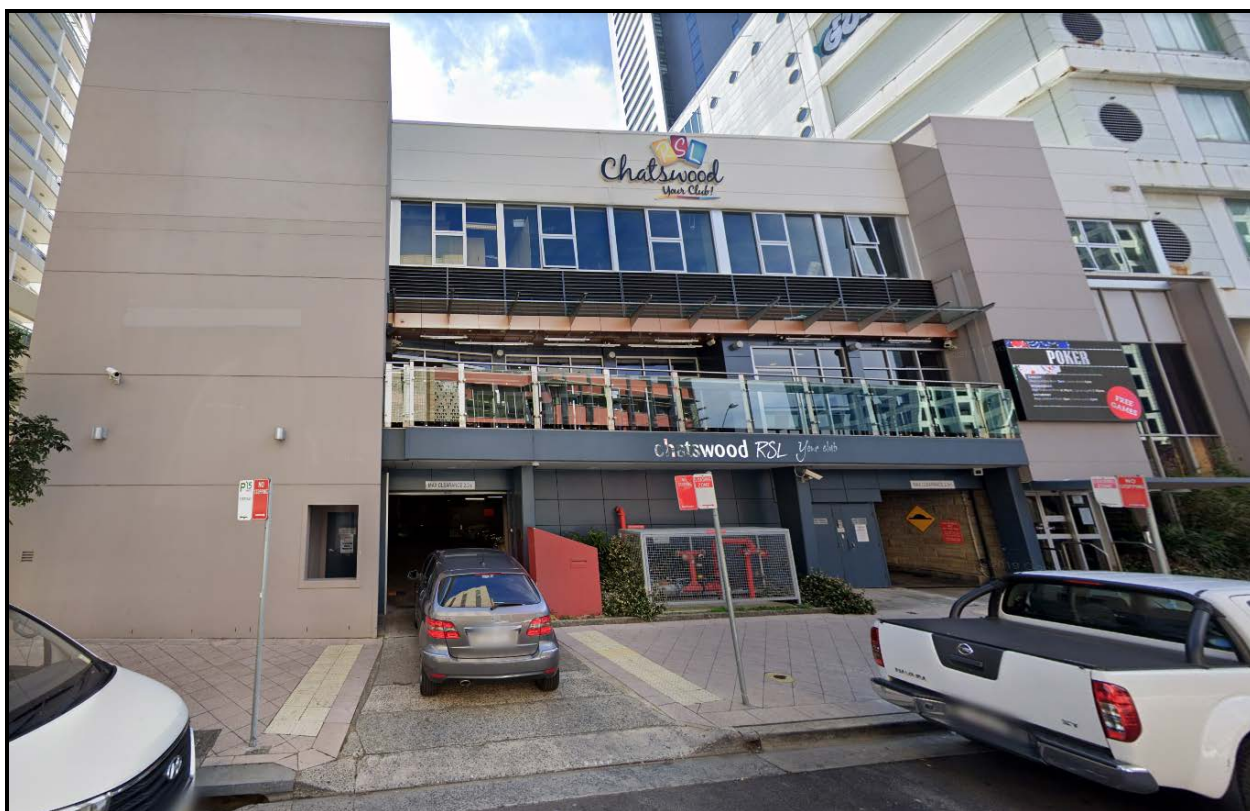
The site and surrounding context is zoned B3 Commercial Core in the Willoughby Local Environmental Plan 2012.

The site and nearby properties are indicated in the photographs below.

446 Victoria Avenue (subject site)



Photograph 1: Subject site -from Victoria Avenue (Google Streetview)



Photograph 2: Subject site -from Thomas Street (Google Streetview)

440 Victoria Avenue (Telstra Exchange)



Photograph 3: 440 Victoria Avenue - from Victoria Avenue (Google Streetview)

This property is occupied by a Telstra exchange building, a multi storey brick and concrete panel building. The western façade, which faces the subject site, consists of a brick and concrete wall with some small windows.

Vehicle access is obtained from Thomas Street to the rear.

1 Katherine Street

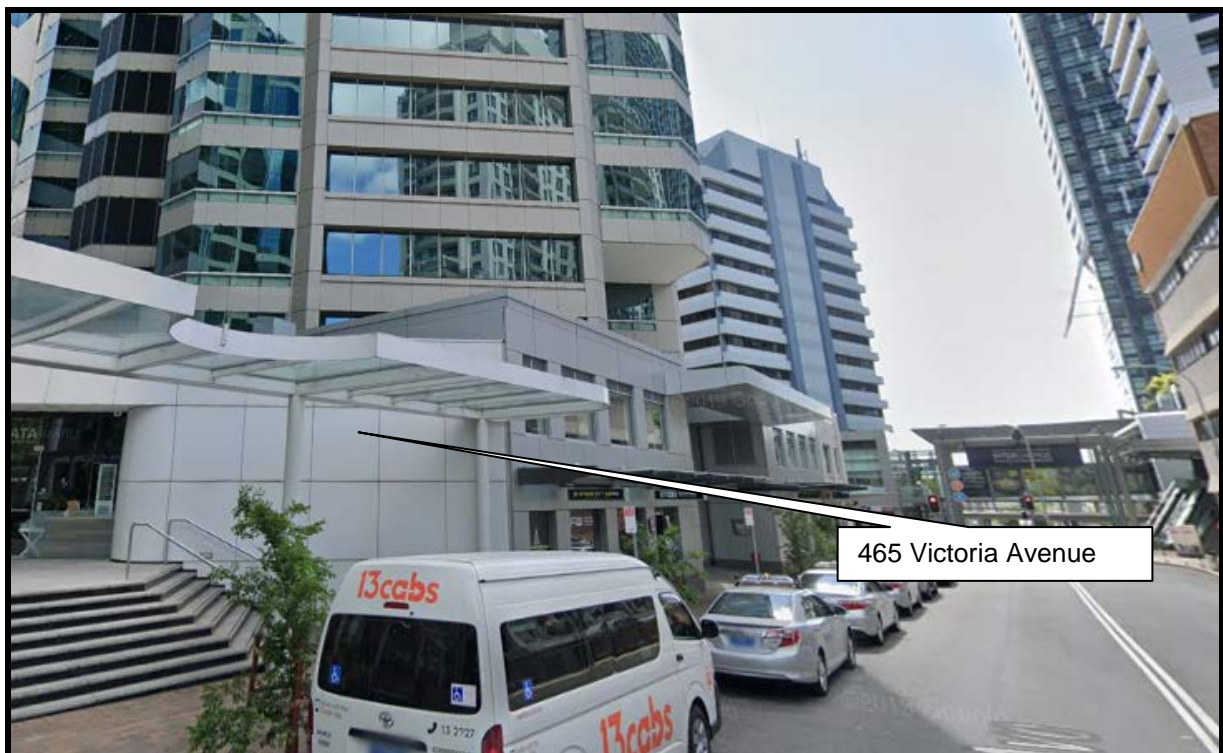
This property is occupied by a high storey mixed use building, with ground floor commercial uses and shop top housing above. East facing residential units overlook the subject site.



Photograph 4: 1 Katherine Street - seen from Victoria Avenue (Google Streetview)

465 Victoria Avenue

This property is situated on the opposite (northern) side of Victoria Avenue. It is occupied by a high rise office building with retail uses at ground level.



Photograph 5: 465 Victoria Avenue (Google Streetview)

475 – 503 Victoria Avenue

This property is also situated on the opposite (northern) side of Victoria Avenue. It is occupied by a double high rise office tower development with retail uses at ground level. An 18 storey hotel has also been approved by Council for the northern side of the property, where it fronts Brown Street.



Photograph 6: 475-503 Victoria Avenue (Google Streetview)

438 Victoria Avenue Chatswood (Chatswood Interchange)

This property is occupied by one of two twin towers which together (and with the adjacent Chatswood Railway and Metro Station and shopping centre) form the Chatswood Interchange development. The residential tower on the property has 40 storeys, and includes west facing dwellings that overlook the subject site.



Photograph 7: 438 Victoria Avenue (Google Streetview)

ATTACHMENT 2: CONTROLS, REFERRALS & DEVELOPMENT STATISTICS

Controls and Classification	
<i>Willoughby Local Environmental Plan 2012 (WLEP 2012)</i>	
Zoning	B3 – Commercial Core
Primary Development Standards	<ul style="list-style-type: none"> Floor Space Ratio – 10.5:1 Height of Building – 80m
Applicable DCP	<i>Willoughby Development Control Plan (WDCP)</i>
Applicable SEPPs	<ul style="list-style-type: none"> <i>SEPP (Infrastructure) 2007</i> <ul style="list-style-type: none"> Clause 85 - Development adjacent to rail corridors Clause 86 - Excavation in or adjacent to rail corridors Clause 104 & Schedule 3 - Traffic Generating Development <i>SEPP 55 – Remediation of Land</i> <i>SREP (Sydney Harbour Catchment) 2005</i>
Other applicable instruments	<ul style="list-style-type: none"> <i>Chatswood CBD – Planning and Urban Design Strategy</i>
Developer's Contributions	Payment of developer contributions will be required for any subsequent Development Applications relating to this concept proposal.
Referrals	
Building Services	No objections. Further information and conditions were noted to be required for later DAs.
Engineering Officer	No objections, no further conditions.
Traffic Officer	No objections. Further conditions were noted to be imposed on later DAs
Urban Design Officer	No objections. Further information and conditions were noted to be required for later DAs.
Strategic planning officer	No objections, no further conditions
Strategic transport officer	Proposal accepted. Further information was noted to be required for later DAs
Landscape officer	No objections. Further information was noted to be required for later DAs
Environmental	No objections. Further information and conditions were noted to be required for later DAs
Police	No objections.
TfNSW	<p>Letter dated 17/02/2020 (in response to initial DA proposal) requested and expanded network traffic analysis and travel plan. Reduction in the number of car spaces was requested.</p> <p>Following lodgement of Supplementary Transport Assessment dated 3 August 2020, Council's traffic officer has advised that the information already provided by the proponent is adequate. Council has therefore considered the TfNSW response in accordance with Clause 104 of the SEPP (Infrastructure) 2007, but has reached its own determination that the proposed traffic impacts are acceptable.</p>

State Environmental Planning Policy No. 55 - Remediation of Land

The Preliminary Site Investigation lodged with the DA concludes that potential risks associated with contamination of the site exist however the site can be made suitable for the proposed development subject to the recommendations provided in the report. Further site investigation and conditions will apply to later DAs.

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

There is no specific matter contained in the Harbour SEPP and associated DCP that is considered to apply to the proposed development.

Willoughby Local Environmental Plan 2012

Site Area 3,320m ²	Proposed	Standard	Compliance
Cl. 4.3 - Height of Buildings	93.70m	80m	Acceptable– See Attachments 4 and 5 for details of Clause 4.6 variation of building height development standard.
Cl. 4.4A - Floor Space Ratio	10.5:1 (34,860m ²)	10.5:1 (34,860m ²) subject to compliance with conditions in Clause 4.4A(12) for bonus FSR	Yes –see discussion below
Cl. 6.7 – Active Street Frontage	No information	Victoria Avenue frontage is required to have active street frontage	Yes subject to condition requiring any future DA to include active uses at ground level.

Clause 4.4 and 4.4A Floor Space Ratio

The FSR development standard under Clause 4.4 WLEP is 5:1. Clause 4.4A(12) provides a bonus FSR (total 10.5:1) if:

- (a) the site area exceeds 2,500 square metres, and*
- (b) the floor space ratio will not exceed 10.5:1, and*
- (c) a minimum of 40% of the site is available for landscaping, publicly accessible space and through site links, and*
- (d) site coverage does not exceed 60%.*

The proposed ground level public plaza has an area of 1328m², which is 40% of the site area. The building footprint occupies 60% of the site area. The proposal therefore satisfies all of the above conditions and the maximum FSR of 10.5:1 (34,860m²) applies.

The proposal has a GFA of 34,860m² and therefore complies with Clause 4.4A WLEP 2012.

Willoughby Development Control Plan

	Control	Proposed	Compliance
C4.2 Car Parking	Office / Business premises within railway precincts – 1 car space / 110m ² = 255 spaces Registered Club – 1 car space / 20m ² + 1 space / 2 employees = 325 spaces (+employees) Total = 580 spaces	Registered club - 150 spaces Commercial component – 113 spaces Total = 263 spaces	Satisfactory – see discussion below
C4.4 Alternative Transport Strategies	Motorcycle parking – 1 space / 25 car spaces = 26	N/A	Conditions to require included in future DAs
	Bicycle lockers – Office /business – 1/600m ² (47) Retail/restaurant – 1/450m ² (15) Total = 62	N/A	Conditions to require included in future DAs
	Bicycle racks – Office /business – 1/2500m ² (11) Retail/restaurant – 1/150m ² (45) Total = 56	N/A	Conditions to require included in future DAs
E1 Specific Controls for Commercial and Shop Top Housing	Where development is proposed to exceed 11m Site width at front alignment – 27m	Site width at front alignment – 48.73m	Yes
E1.2 Density Use and Height	Max 30% street frontage is to be used for vehicular and pedestrian access to lower and upper levels.	Victoria Ave frontage – 19.7% Thomas St – 20.7%	Yes
	Min 60% GFA at street level to be used for retail or business	N/A	Details to be finalised in future DAs
E1.4 Front Setback	Front setback is consistent with those of adjoining development. Some variation to the front setback can be considered where such variations are used to create streetscape variety and interest.	Front setback on Victoria Avenue consistent with adjoining properties (with zero setback). Plaza creates streetscape variety and interest.	Yes (also satisfies Chatswood CBD Strategy)
E1.4 Side Setback	Buildings should be designed with a staggered side setback in order to provide usable recreation spaces, reduce building bulk and provide solar access.	Building is entirely setback from western side boundary, which provides usable recreation spaces, reduces building bulk and provides solar access.	Yes (also satisfies Chatswood CBD Strategy)

	Control	Proposed	Compliance
E1.4 Rear Setback	Minimise building mass and bulk, particularly near boundaries, to reduce the impact of the development on adjacent properties by progressively increasing setbacks as wall heights increase.	Building minimises building mass and bulk to rear through 6m setback at Level 2	Yes (also satisfies Chatswood CBD Strategy)
E.1.5 - Building depth	20m max.	<20m	Yes
E.1.8 Privacy	Minimise overlooking of living spaces in dwellings and private open spaces.	Some dwellings at 1 Katherine Street will be within 14m of proposal.	Satisfactory subject to condition requiring privacy treatment
E.1.9 Views	The proposed development should be designed to maintain significant views where possible or achieve a degree of view sharing between properties.	The proposal will have a satisfactory impact on residential properties at 238 Victoria Avenue and 1 Katherine Street	Satisfactory – see below
E.1.10 Solar access	The north facing windows of living areas and the principal portion of the recreational open space of adjoining residential buildings should have at least 3 hours of sunlight between 9am and 3pm on June 22.	Adjoining residential buildings receive at least 2 hours of sunlight between 9am and 3pm on June 22.	Satisfactory (complies with ADG)
E.1.12 Reflectivity	To avoid glare to adjoining buildings, passing motorist & pedestrians	N/A	Conditions to require included in future DAs
E3 Chatswood City Centre	Max 60% site coverage where sites over 2,500m ²	60% site coverage	Yes
	Landscaped areas at the base of the building shall provide for through-site links connecting streets and building entrances.	Plaza provides for through-site link	Yes
	In the Chatswood City Centre, where an alternative delivery and car parking access is available from a secondary street the minimum frontage required is 20 metres.	Site width at front alignment – 48.73m	Yes
	Building separation between tower buildings (buildings over 14 metres in height) of a minimum of 6 metres shall be provided to allow sunlight penetration between buildings to the public domain and for view sharing. The building separation shall be increased to a minimum of 12 metres for buildings above 30 metres in height.	Zero setback from Telstra building on 440 Victoria Ave. 14m+ setback from building at 1 Katherine Street	Yes- see discussion below

	Control	Proposed	Compliance
	Any <u>development</u> shall not reduce the existing levels of sunlight access in the Gardens of Remembrance, Chatswood Park and Oval, the Concourse public plaza areas and Victoria Walk in the period between 11.30 am and 2pm in mid-winter.	Minor increase in overshadowing of Chatswood Park between 1pm and 2pm	Satisfactory (satisfies Chatswood CBD Strategy which protects sunlight to Chatswood Oval between 11am and 2pm on 22 June – see discussion below.

Clause C4.2 Car Parking

The applicable parking rates in the WDCP are 255 for the office component and 325 for the Club, totalling 580 spaces. The proposed car parking spaces are 263 spaces, which is a non-compliance with Clause C4.2.

The above WDCP parking rates are now somewhat dated and, pursuant to the recently endorsed Integrated Transport Strategy, Council is moving toward a reduction in car parking in the Chatswood CBD. Council's Traffic officer has therefore advised that the proposed number is acceptable.

Clause E1.8 Privacy

The intent of Clause E1.8 is:

- *To minimise overlooking of living spaces in dwellings and private open spaces.*
- *To balance the need for shop top housing development with the achievements of a reasonable level of privacy between dwellings.*

438 Victoria Avenue

The proposal will have satisfactory impacts on the residential neighbours at the high rise development to the east at 438 Victoria Avenue (the Interchange) because the proposal will include no east facing windows.

1 Katherine Street

The proposal will result in commercial floors facing the residential tower to the west at 1 Katherine Street. The proposal will be setback from the western side boundary by at least 7.5m, as indicated in the following extract from the DA plans. The building separation from the closest dwellings at 1 Katherine Street is therefore approximately 14m.

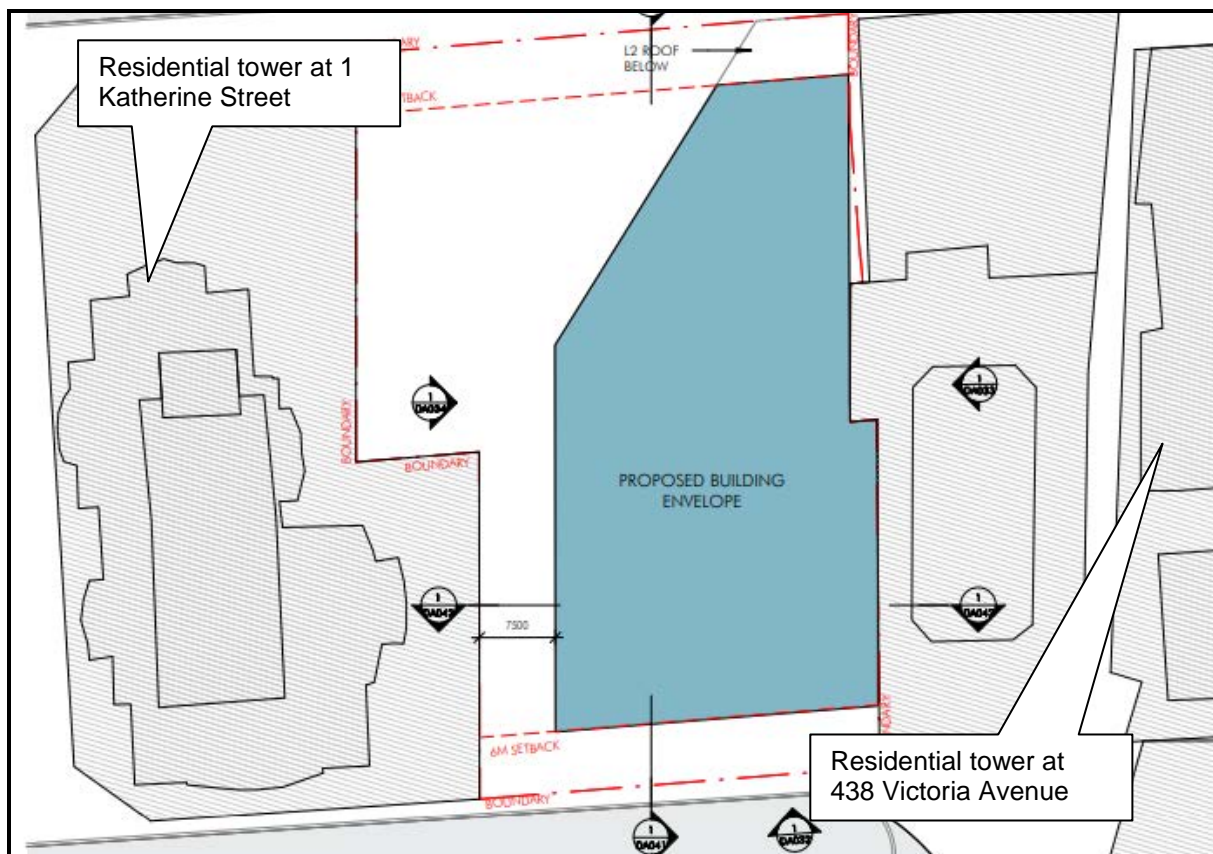


Figure 4: Relationship of proposed building envelope with nearby residential dwellings (extract from DA plans)

Part E3 WDCP states that in the Chatswood CBD:

The building separation shall be increased to a minimum of 12 metres for buildings above 30 metres in height.

Part E3 clarifies that the purpose of this control is:

to allow sunlight penetration between buildings to the public domain and for view sharing.

In other words, the Part E3 control is designed to allow sunlight to the public domain and view sharing. The control should not be seen as the appropriate building separation in order to protect the privacy of residential dwellings in a B3 Commercial Core zone.

The most appropriate guideline is Part 3F of the Apartment Design Guide (ADG). While the ADG is not directly applicable to a commercial development such as the current proposal, it does provide guidance on the appropriate building separation for commercial development from residential development. It states that for building heights over 25m, the setback of buildings from a side boundary should be 12m. This is the distance for habitable rooms, and Part 3F states:

For residential buildings next to commercial buildings, separation distances should be measured as follows:

- *for retail, office spaces and commercial balconies use the habitable room distances*

It is therefore proposed to impose the following condition:

Where the proposed building is setback from the western side boundary by less than 12m, the building shall include, at all levels, fixed and external privacy measures, such as privacy louvres, which prevent overlooking of dwellings at 1 Katherine Street.

Subject to the above condition, the proposal will have a satisfactory impact on the privacy of the dwellings at 1 Katherine Street.

Clause E.1.9 View sharing

Clause E1.9 states:

The proposed development should be designed to maintain significant views where possible or achieve a degree of view sharing between properties.

The method for assessment of view loss from private properties was determined by the Land and Environment Court in *Tenacity Consulting v Warringah* [2004] NSWLEC 140. The Court laid down a four step assessment process as follows.

26 The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

The views affected from 1 Katherine Street are mainly regional views, which are quite expansive from upper levels. Distant views of the Harbour Bridge, North Sydney and City skylines from some dwellings may be impacted.

The views affected from 238 Victoria Avenue (Interchange) are regional views towards the west and are also quite expansive from upper levels.

27 The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views from both 1 Katherine Street and 238 Victoria Avenue (Interchange) are across side boundaries.

28 The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

The views are from living areas and balconies from at least some of the dwellings.

1 Katherine Street – moderate
238 Victoria Avenue - moderate

29 The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

While the WLEP 2012 height limit is 80m, the height limit under the Chatswood CBD Strategy is RL246.8m as reduced by the Pan-Ops Plane (solar access to Chatswood Oval). The proposal will comply with the Pan-Ops Plane.

The proposal also complies with the WLEP 2012 FSR standard and importantly it exceeds the WDCP building separation control of 12m. That building separation control is expressly intended to allow for view sharing. This is appropriate for a high density CBD context. In this respect, it is noted that Part E3 of the WDCP specifically states (in respect of the Chatswood CBD), that *residents in Chatswood City Centre must accept a level of impact from city life and activity*. The proposal also complies with the various setback requirements of the Chatswood CBD Strategy (see below).

The compliance of the proposal with Council's existing and/or proposed building envelope controls indicates that the view loss experienced by residential neighbours will be reasonable. The proposal therefore satisfies the test in *Tenacity Consulting v Warringah* and Clause E1.9 WDCP.

Clause E.1.10 Solar access

Clause E.1.10 of the WDCP states:

The north facing windows of living areas and the principal portion of the recreational open space of adjoining residential buildings should have at least 3 hours of sunlight between 9am and 3pm on June 22.

438 Victoria Avenue

The proposal will not overshadow 438 Victoria Avenue for more than 3 hours between 9am and 3pm on 22 June.

1 Katherine Street

The proposed building envelope has been configured to increase solar access to east facing dwellings at 1 Katherine Street by stepping back on the northern side of the site. The result is that the east facing dwellings receive approximately 2 hours of sunlight on 22 June.

The WDCP control refers to 3 hours. However Part 4A of the ADG states:

Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area...

This ADG guideline is a more appropriate and recent guideline than Clause E.1.10 of the WDCP. The proposal therefore has satisfactory impact on the solar access of 1 Katherine Street.

E3 Setbacks

Clause E3 requires that:

Building separation between tower buildings (buildings over 14 metres in height) of a minimum of 6 metres shall be provided to allow sunlight penetration between buildings to the public domain and for view sharing. The building separation shall be increased to a minimum of 12 metres for buildings above 30 metres in height.

The proposal will have a zero setback from the property at 440 Victoria Avenue (Telstra Exchange). This is acceptable for the following reasons:

- The Telstra Exchange building, which is itself built to the common boundary with the subject site, contains no significant windows facing the site. There are therefore no adverse impacts on that property.
- The zero setback of the proposed development from 440 Victoria Avenue maximises the development potential of 440 Victoria Avenue. With an approximate site width of 18-25m, if that property were required to have side setbacks of 6m on each, its development potential would be greatly reduced. As it is, the zero setback of the subject site facilitates any future development of the property at 440 Victoria Avenue to extend to the common boundary with the subject site and form a consistent street wall.

Chatswood CBD Planning and Urban Design Strategy (Chatswood CBD Strategy)

The Chatswood CBD Strategy was endorsed by Council on 26 June 2017, supported by the Greater Sydney Commission on 11 May 2018 and the relevant sections discussed in this report were endorsed by the Department of Planning Industry and Environment on 9 August 2019.

The Chatswood CBD Strategy contains various Key Elements which prefigure expected amendments to the WLEP 2012 and WDCP in due course. The Key Elements therefore indicate the future desired character of the Chatswood CBD and are relevant to the current DA.

Key Element 20 Building Heights (KE20)

Under KE 20 the maximum building height is RL246.8m as reduced by the Pan-Ops Plane, to allow sun access to Chatswood Oval, as indicated in Figure 3.1.6 of the Chatswood CBD Strategy (see extract below). This corresponds to Key Element 19, which states that sun access will be incorporated into LEP controls to ensure no winter overshadowing of Chatswood Oval from 11am to 2pm.



Figure 5: Height control diagram (extract from Chatswood CBD strategy)

The shadow diagrams lodged with the DA indicate that the proposal will not cause additional overshadowing of Chatswood Oval between 11am and 2pm on 22 June. The proposal therefore complies with the height limit in KE 20.

Key Element 27 – Street Frontage Heights and Setbacks (KE 27)

Under KE 27 the site is situated in the Office Core Precinct. The frontage requirements are:

- 4-12m street wall height at front boundary
- Minimum 6m setback above street wall.

The proposal involves setbacks as follows:

Victoria Avenue

- 12m street wall height at front boundary
- 6m setback above street wall.

This is illustrated in the following extract from the west elevation.

The proposal therefore complies with KE 27 on the Victoria Road frontage.

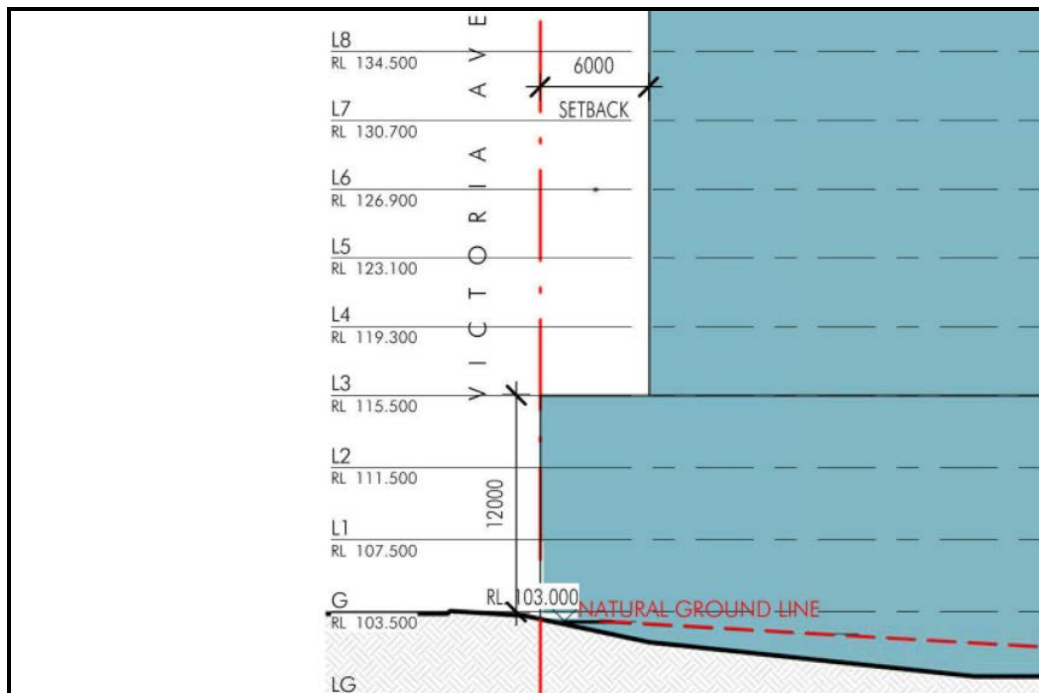


Figure 6: Proposed Setback from Victoria Avenue (extract from DA plans)

Thomas Street

- 12.66m street wall height at front boundary
- 6m setback above street wall.

This is illustrated in the following extract from the west elevation:

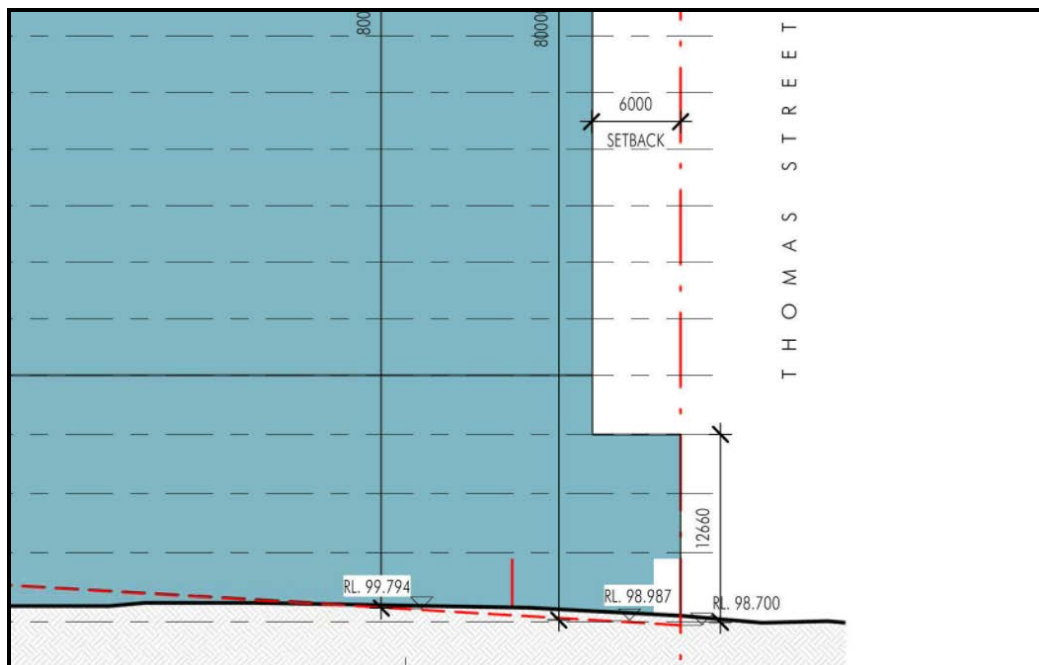


Figure 7: Proposed Setback from Thomas Street extract from DA plans)

The minor 0.66m non-compliance with the 12m street wall is considered to present to the street in a satisfactory manner, and reflects the need to resolve floor plates on a sloping site.

Key Element 29 Building Separation (KE 29)

KE 29 requires that all buildings have a minimum separation of 6m from all boundaries for commercial uses. The proposed development will be setback by at least 7.5m from the boundary with 1 Katherine Street, but will have a zero setback from the boundary with 440 Victoria Avenue.

Telstra has advised in writing that it intends to retain the property in its current use and form for the medium term, ie as a communications exchange building presenting a blank façade to the subject site. In these circumstances, allowing the proposal to abut the property at 440 Victoria Avenue will enable a street wall to be developed, to the extent of the height of the Telstra building, and this is considered to be preferable to requiring a narrow, unusable gap between the buildings.

Site Isolation

The proposed development will mean that the property at 440 Victoria Avenue (1593m²) will not be able to take advantage of the FSR bonus under Clause 4.4A(12) if, among other criteria, the site area is at least 2,500m². This means that the proposed development will potentially reduce the development potential of 440 Victoria Avenue.

Telstra has advised in writing that the property at 440 Victoria Avenue *is unable to be considered for redevelopment in the medium-long term due to critical infrastructure in the Northern Sydney Region*. The proposal therefore satisfactorily addresses the Land and Environment Court site isolation principle in *Karavellas v Sutherland Shire Council*.

Neighbour Notification

Owners of adjoining properties were notified of the proposal and 13 submissions (including two petitions) were received.

ATTACHMENT 3: SUBMISSIONS TABLE

Property	Issues raised	Response
27/1 Katherine Street, Chatswood	<ol style="list-style-type: none"> 1. During demolition, neighbours will experience noise, dust, and road access restrictions and may be entitled for considerable financial compensation. 2. Post construction - Increased car traffic and pedestrian traffic in an area that is already congested with train, tram and bus stations very nearby. 3. Increased risk of accidents involving pedestrians especially children and elderly as some patrons driving out recklessly after having too much to drink or too much money to lose on the pokies. 4. Increased noise level due to increased traffic. 5. Some residential unit nearby will lose their view, have very little privacy with such high tower rising close by and may lose their sunny advantage. 6. The existing club should be relocated somewhere more suitable. 	<ol style="list-style-type: none"> 1. Conditions regulating environmental impacts on neighbours during construction would be imposed on later DAs. 2. Council's traffic planners have considered the increased traffic caused by the proposal. Vehicle traffic is considered to be acceptable given that the proposed parking is well under the WDCP rates. Increased vehicle and pedestrian traffic is an inevitable feature of the uplift in density of the Chatswood CBD. 3. Conditions regulating traffic safety would be imposed on later DAs. 4. Conditions regulating acoustic impacts on neighbours would be imposed on later DAs. Some level of noise is an inevitable feature of living in a high density zone. 5. Impacts on the views, privacy and solar access of residential neighbours are considered reasonable for the reasons set out in this report. 6. The club is permissible in the zone. Conditions regulating impacts on neighbours would be imposed on later DAs.
Petition	<ol style="list-style-type: none"> 1. Vibration damage during construction 2. Vibration discomfort during construction 3. Reduction of natural light of east facing units 4. Reduction of views of east facing units 5. Increased traffic and congestion 	<ol style="list-style-type: none"> 1. Conditions regulating vibration impacts on neighbours would be imposed on later DAs. 2. Conditions regulating vibration impacts on neighbours would be imposed on later DAs. 3. Impacts on the solar access of residential neighbours are considered reasonable for the reasons set out in this report. 4. Impacts on the views of residential neighbours are considered reasonable for the reasons set out in this report. 5. Council's traffic planners have considered the increased traffic caused by the proposal. Vehicle traffic is considered to be acceptable given that the proposed parking is well under the WDCP rates. Increased vehicle and

Property	Issues raised	Response
		pedestrian traffic is an inevitable feature of the uplift in density of the Chatswood CBD.
<p>69 Albert Avenue, Chatswood</p> <p>1 Post Office Lane, Chatswood</p> <p>438 Victoria Avenue, Chatswood</p> <p>(Netstrata)</p>	<ol style="list-style-type: none"> 1. A further large commercial building will put strain on the already struggling road network 2. Shadowing of the neighbouring buildings, including that of residential apartments AND the memorial garden. 3. The narrow corridor that would exist between 438 Victoria Avenue, Chatswood & 446 Victoria Avenue, Chatswood would create a severe wind tunnelling effect to Telstra Lane and residential units facing West. 4. A large commercial building located in such a close proximity will result in a severe loss of privacy to the surrounding residential units, particularly the western units of 438 Victoria Avenue, Chatswood. 5. A large commercial building located in such a close proximity will result in a severe flood of lighting to the surrounding buildings at night. 6. The proposed development would impede the views of all western facing units and potentially devalue their properties. 7. Potential Conflict - Investigation as to the donations and funding of Council by the RSL club needs to be undertaken. 	<ol style="list-style-type: none"> 1. Council's traffic planners have considered the increased traffic caused by the proposal. Vehicle traffic is considered to be acceptable given that the proposed parking is well under the WDCP rates. Increased vehicle and pedestrian traffic is an inevitable feature of the uplift in density of the Chatswood CBD. 2. Impacts on the solar access of residential neighbours are considered reasonable for the reasons set out in this report. 3. The proposal exceeds the 12m building separation control in the WDCP. 4. The proposed development will include no residences. The eastern elevation (facing 438 Victoria Avenue) will contain no windows. 5. Expectations of low lighting in a high density CBD are unrealistic. 6. Subject to conditions restricting the height, the proposal achieves compliance with the desired building envelope. Any view loss is therefore considered to be inevitable. 7. This is not a relevant planning consideration.
Petition	<ol style="list-style-type: none"> 1. Too congested. Traffic already very bad in the area. Another high rise will make the condition worst. 2. The high-rise design will be an eyesore crammed in between nearby high rise buildings, with a narrow gap where the Telstra building 	<ol style="list-style-type: none"> 1. Council's traffic planners have considered the increased traffic caused by the proposal. Vehicle traffic is considered to be acceptable given that the proposed parking is well under the WDCP rates. Increased vehicle and pedestrian traffic is an inevitable feature of the uplift in density of the

Property	Issues raised	Response
	<p>is. If development has to proceed, I would suggest a height similar to the Telstra building. Visually, it will look more aerially spacious. Also reduces the overshadowing of the Garden of Remembrance, Chatswood Oval and neighbouring buildings, and reduces the impact of the other issues already mentioned.</p> <p>3. Traffic congestion in local streets.</p> <p>4. Noise pollution</p> <p>5. Construction site is too close to adjacent buildings (all four sides have high rise buildings - North, East, West, South).Who is responsible for damages made to these buildings? Willoughby Council or the new construction site management?</p>	<p>Chatswood CBD.</p> <p>2. Subject to conditions restricting the height, the proposal achieves compliance with the desired building envelope. Overshadowing is therefore considered reasonable.</p> <p>3. Refer to 1 above.</p> <p>4. Conditions regulating acoustic impacts on neighbours would be imposed on later DAs. Some level of noise is an inevitable feature of living in a high density zone.</p> <p>5. Conditions regulating geotechnical impacts on neighbouring buildings would be imposed on later DAs.</p>
181/1 Katherine Street	<p>1. Blocking of airflow to all residential units of 1 Katherine Street that will be directly facing the RSL.</p> <p>2. Loss of privacy for residential units of 1 Katherine Street that will be directly facing the RSL.</p>	<p>1. The proposal will be setback from the boundary with 1 Katherine Street by at least 7.5m, with a building separation of at least 14m. This exceeds the 12m control in Part E3 WDCP. The provision of airflow is therefore considered reasonable in a CBD context.</p> <p>2. The proposal will be setback from the boundary with 1 Katherine Street by at least 7.5m. This exceeds the 12m building separation control in Part E3 WDCP. The privacy impacts are therefore considered reasonable in a CBD context.</p>
185/1 Katherine Street	<p>1. This tower will reduce my view, reduce natural light and reduce privacy.</p> <p>2. A commercial tower should not be approved next to a residential tower due to the impact on amenity.</p> <p>3. This development should not be detrimental to the east facing units of 1 Katherine Street.</p> <p>4. This type of development is too dense for a suburb such as Chatswood and would</p>	<p>1. The proposal will be setback from the boundary with 1 Katherine Street by at least 7.5m. This exceeds the 12m building separation control in Part E3 WDCP. The view, solar access and privacy impacts are therefore considered reasonable in a CBD context.</p> <p>2. Amenity impacts are considered to be reasonable for the reasons set out in this report.</p> <p>3. Amenity impacts are considered to be reasonable for the reasons set</p>

Property	Issues raised	Response
	be more appropriate in somewhere like the Sydney CBD.	<p>out in this report.</p> <p>4. Council's controls and strategic documents envisage density of development consistent with the proposal.</p>
1 Katherine Street	<ol style="list-style-type: none"> 1. The proposed building is architecturally disproportionate. 2. The proposal should be low rise. 	<ol style="list-style-type: none"> 1. The proposal has a satisfactory architectural design. 2. Council's controls and strategic documents envisage density of development consistent with the proposal.
No address given	<ol style="list-style-type: none"> 1. We will lose the sunlight, air flow and privacy, also the future value. 2. RSL club is a charity and non-profit organisation. 	<ol style="list-style-type: none"> 1. The proposal will be setback from the boundary with 1 Katherine Street by at least 7.5m, with a building separation of at least 14m. This exceeds the 12m building separation control in Part E3 WDCP. The view, solar access and privacy impacts are therefore considered reasonable in a CBD context. 2. This is not a relevant planning consideration.
41/1 Katherine Street	<ol style="list-style-type: none"> 1. Visual amenity - the bulk, scale, and presentation of the proposed building to 1 Katherine Street is overbearing. The southern half of the west elevation should be angled to face the SW, in a similar way that the northern half is angled to the NW. 2. Solar Amenity - the NW facade should be pushed back to the east to provide better solar access in late morning to the units in the SE corner of 1 Katherine Street. 3. Privacy - the commercial offices face directly onto the living areas of the units, preventing residents from opening the east elevation windows to maintain privacy. Is a major concern due to the close proximity of the buildings. The amount of glazing facing 1 Katherine Street to be reduced, or an angled facade or internal blinds or blades adopted for the proposed 	<ol style="list-style-type: none"> 1. The proposal will be setback from the boundary with 1 Katherine Street by at least 7.5m, with a building separation of at least 14m. This exceeds the 12m building separation control in Part E3 WDCP. The visual massing impacts are therefore considered reasonable in a CBD context. 2. East facing apartments in 1 Katherine Street will receive approximately 2 hours sunlight on 22 June. The ADG requires that 70% of units receive that sunlight, so this is considered an acceptable outcome, particularly in a CBD environment. 3. The proposal will be setback from the boundary with 1 Katherine Street by at least 7.5m, with a building separation of at least 14m. This exceeds the 12m building separation control in Part E3 WDCP. Subject to conditions requiring privacy treatments, the privacy impacts are therefore considered reasonable in a CBD context. 4. Council's traffic planners have considered the increased traffic caused by the proposal. Vehicle traffic is considered to be

Property	Issues raised	Response
	<p>development.</p> <p>4. Traffic - this is a major concern. Thomas Street is a significant pedestrian link to Chatswood Station. Vehicle access is not controlled by any signalisation of nearby intersections. Further, right-turning traffic on Pacific Highway into Thomas Street is similarly uncontrolled and accident prone. Given the proximity to public transport, car parking should be significantly reduced to offset the traffic generation, and appropriate traffic calming measures taken to protect all road users.</p> <p>5. Building Standards - given the depth of excavation, there are serious concerns for the stability of adjacent buildings. Appropriate measures and indemnities must be provided to protect the 1 Katherine Strata Plan unit holders from failures similar to Mascot Towers.</p>	<p>acceptable given that the proposed parking is well under the WDCP rates.</p> <p>5. Conditions regulating geotechnical impacts on neighbouring buildings would be imposed on later DAs.</p>
1 Katherine Street	<p>1. The development is not legal with RSL's charity and not for profit status.</p> <p>2. Construction will cause danger to kids going to school and childcare.</p> <p>3. Construction will cause noise and pollution.</p> <p>4. Neighbouring properties will be adversely impacted in terms of privacy and sunlight.</p> <p>5. Chatswood is already overcrowded with too many high rise buildings.</p>	<p>1. This is not a relevant planning consideration.</p> <p>2. Public safety during construction will be addressed by relevant conditions applicable to later DAs.</p> <p>3. Environmental impacts of construction will be addressed by relevant conditions applicable to later DAs.</p> <p>4. For the reasons set out in this report, impacts on the privacy and sunlight of neighbouring properties are considered reasonable.</p> <p>5. Council's controls and strategic documents envisage density of development consistent with the proposal.</p>
4/12 Thomas Street	<p>1. Thomas Street is a significant wind tunnel.</p>	<p>1. The compliance with the building envelope controls indicates that wind effects are considered an inevitable feature of the redevelopment of the Chatswood CBD.</p>

Property	Issues raised	Response
	<ol style="list-style-type: none"> 1. Traffic congestion in Thomas Street. 2. Parking is grossly less than the number required by the DCP. 3. Overshadowing of commercial buildings in Thomas Street 4. Overshadowing of Garden of Remembrance. 5. Pedestrian safety in Thomas Street will be adversely affected. 6. The bulk and sheer face of the proposal will result in a decreased amenity in Thomas Street. 7. Residents in 1 Katherine Street will be adversely impacted in terms of overshadowing, loss of privacy, loss of aspect, noise. 	<ol style="list-style-type: none"> 1. Council's traffic planners have considered the increased traffic caused by the proposal. Vehicle traffic is considered to be acceptable given that the proposed parking is well under the WDCP rates. Increased vehicle and pedestrian traffic is an inevitable feature of the uplift in density of the Chatswood CBD. 2. The WDCP parking rates are now somewhat dated and, pursuant to the recently endorsed Integrated Transport Strategy, Council is moving toward a reduction in car parking in the Chatswood CBD. Council's Traffic officer has therefore advised that the proposed number is acceptable. 3. Overshadowing of Commercial buildings in a CBD context is acceptable. 4. The proposed development will not reduce the existing levels of sunlight access in the Gardens of Remembrance, between 11.30 am and 2pm in mid-winter and complies with Clause E3 WDCP. 5. Conditions regulating traffic safety would be imposed on later DAs. 6. The proposal complies with the building envelope controls requiring a podium and tower configuration in Thomas Street. Articulation of the building façade will be addressed in future DAs. 7. Subjects to conditions, the impacts on residents in 1 Katherine Street will be satisfactory for the reasons set out in this report.
11/1 Katherine Street	<ol style="list-style-type: none"> 1. Loss of privacy and sunlight 2. Noise and dust during construction. 3. Congestion in Thomas Street 	<ol style="list-style-type: none"> 1. Subjects to conditions, the impacts on residents in 1 Katherine Street will be satisfactory for the reasons set out in this report. 2. Environmental impacts of construction will be addressed by relevant conditions applicable to later DAs. 3. Increased vehicle and pedestrian traffic is an inevitable feature of the uplift in density of the Chatswood CBD.

ATTACHMENT 4: 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"> Regional Environmental Plans (REP) 	✓
	<ul style="list-style-type: none"> Local Environmental Plans (LEP) 	✓
	<ul style="list-style-type: none"> Comment: The applicant has provided a satisfactory Clause 4.6 variation in respect to building height non-compliance 	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> Draft State Environmental Planning Policies (SEPP) 	N/A
	<ul style="list-style-type: none"> Draft Regional Environmental Plans (REP) 	N/A
	<ul style="list-style-type: none"> Draft Local Environmental Plans (LEP) 	N/A
	Comment: N/A	
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> Development control plans (DCPs) 	✓
	Comment: See assessment in this report	
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> Clause 92 EP&A Regulation-Demolition 	N/A
	<ul style="list-style-type: none"> Clause 93 EP&A Regulation-Fire Safety Considerations 	N/A
	<ul style="list-style-type: none"> Clause 94 EP&A Regulation-Fire Upgrade of Existing Buildings 	N/A
	Comment: N/A	
(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 	N/A
	<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 	✓
	<ul style="list-style-type: none"> Soils 	✓
	<ul style="list-style-type: none"> Air & microclimate 	✓
	<ul style="list-style-type: none"> Flora & fauna 	✓
	<ul style="list-style-type: none"> Waste 	✓
	<ul style="list-style-type: none"> Energy 	✓
	<ul style="list-style-type: none"> Noise & vibration 	✓
	<ul style="list-style-type: none"> Natural hazards 	✓
	<ul style="list-style-type: none"> Safety, security crime prevention 	✓
	<ul style="list-style-type: none"> Social impact in the locality 	✓
	<ul style="list-style-type: none"> Economic impact in the locality 	✓
	<ul style="list-style-type: none"> Site design and internal design 	N/A
	<ul style="list-style-type: none"> Construction 	✓
	<ul style="list-style-type: none"> Cumulative impacts 	✓
	Comment: Subject to conditions, impacts of the building envelope are acceptable. Further details will be resolved in future DAs.	

Matters for Consideration Under S.79C EP&A Act**Considered and Satisfactory ✓ Considered and Unsatisfactory ✗ Not Relevant N/A**

(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: Subject to conditions, the site is compatible with the existing and future desired character of the context.	
(d)	Any submissions made in accordance with this Act or the regulations	
	• Public submissions	✓
	• Submissions from public authorities	✓
	Comment: Subject to conditions, the proposal adequately addresses the submissions	
(e)	The public interest	✓
	• Federal, State and Local Government interests and Community interests	
	Comment: Subject to conditions, the proposal is in the public interest.	

ATTACHMENT 5: CLAUSE 4.6 VARIATION APPLICATION

446 Victoria Avenue, Chatswood (Chatswood RSL)

Clause 4.6 Variation to Height of Buildings

On behalf of
Chatswood RSL Club Limited
August 2020



1 Introduction

This Clause 4.6 Variation Request relates to the Concept Development Application (DA) for 446 Victoria Avenue, Chatswood (**subject site**), which proposes a commercial tower for the subject site. We specifically request to vary the development standard for maximum Height of Buildings under Clause 4.3 of the *Willoughby Local Environmental Plan 2012 (WLEP 2012)*.

This Clause 4.6 Variation Request demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary in this circumstance and our justification are well founded. The variation allows for a development that represents the orderly and economic use of the land in a manner which is appropriate when considering the site's context and specific environmental conditions. The variation provides a better outcome on environmental planning grounds.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance, the proposed development:

- Achieves the objectives of the development standard in Clause 4.3 of WLEP 2012 (Wehbe#1);
- Has sufficient environmental planning grounds to permit the variation;
- Achieves the objectives of the B3 Commercial Core zone under WLEP 2012;
- Is consistent with the applicable and relevant State and Regional planning policies; and
- Therefore is in the public interest.

As a result, the DA may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the WLEP 2012.

2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the WLEP 2012 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 enables a variation to the height standard to be approved upon consideration of a written request from the applicant that justifies the contravention in accordance with Clause 4.6.

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

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

The consent authority's satisfaction as to those matters must be informed by the objectives of Clause 4.6, which are:

1. providing flexibility in the application of the relevant control; and
2. to achieve better outcomes for and from development.

The Land and Environment Court has established questions to be addressed in variations to developments standards lodged under *State Environmental Planning Policy 1 – Development Standards (SEPP 1)* through the judgment of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (**Wehbe**). An additional principle was established in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (**Four2Five**) which was upheld by Pain J on appeal.

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court. It is noted, it also reflects the further finding by Commissioner O'Neill for *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSW LEC 1097 when the case was remitted back to the LEC as a Class 1 Appeal and the findings of *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 as referred to in *Baron Corporation Pty Ltd v City of Sydney* [2019] NSWLEC 61 ("Baron").

Clause 4.6 of the WLEP 2012 reads as follows:

Clause 4.6 Exceptions to development standards

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

(a) *to provide an appropriate degree of **flexibility in applying certain development standards** to particular development,*

(b) *to **achieve better outcomes for and from development by allowing flexibility** in particular circumstances.*

(2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

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

(a) *that compliance with the development standard is **unreasonable or unnecessary in the circumstances of the case**, and*

(b) *that there are **sufficient environmental planning grounds to justify contravening the development standard**.*

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately **addressed** the matters required to be demonstrated by subclause (3), and*

(ii) the proposed development will be **in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out**, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(emphasis added)

3 The Development Standard to be varied

This Clause 4.6 Variation has been prepared as a written request seeking to justify contravention of the maximum height of building development standard as set out in Clause 4.3 (2) of the WLEP 2012. Clause 4.3 states:

4.3 Height of buildings

(1) The objectives of this clause are as follows—

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

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

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

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

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

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

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

(h) to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

As identified on the WLEP 2012 Height of Buildings Map (see Figure 1 below), the subject site has a maximum building height limit of 80 metres.

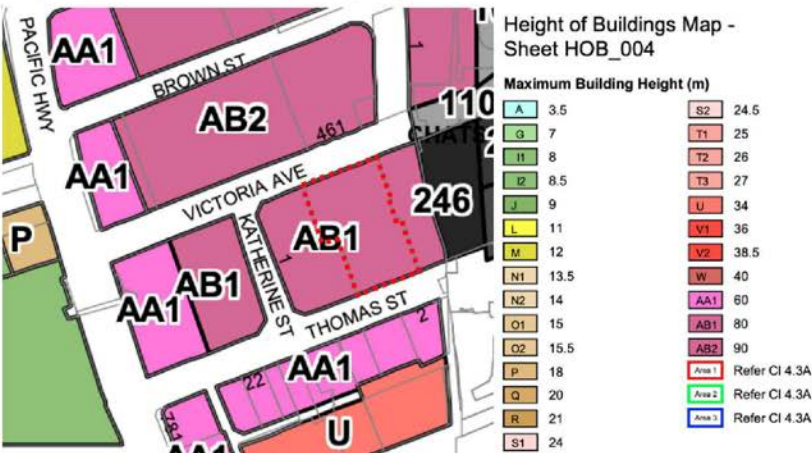


Figure 1. Height of Buildings Map Extract.
Source: WLEP 2012

4 Extent of Variation to the Development Standard

The proposal seeks to vary the 80 metre height control by proposing a maximum height of 93.70m (or at RL 193.5) including lift overrun, which exceeds the maximum height by 13.7m or 17.12% variation with the height control. Despite the variation, the majority of the development conforms with the height control.

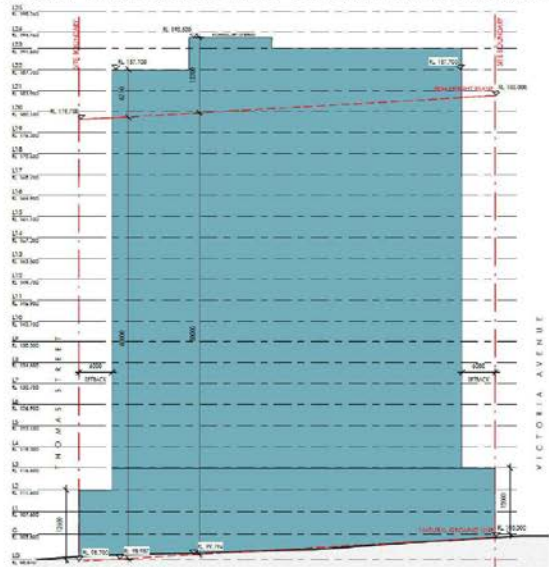


Figure 2 East Elevation
Source: Nettletontribe Architects

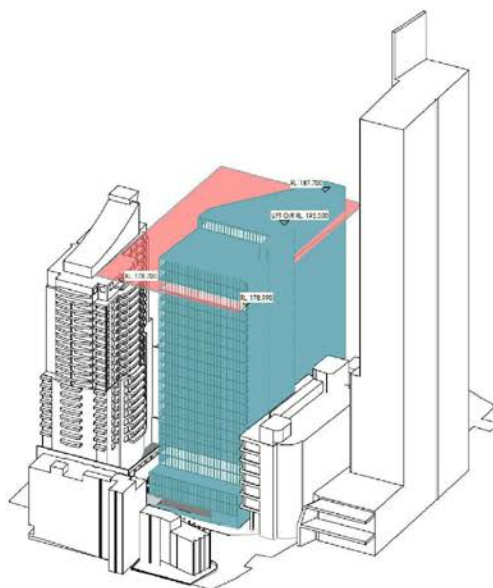


Figure 3. 3D Height Diagram – view from south-east.
Source: Nettletontribe Architects

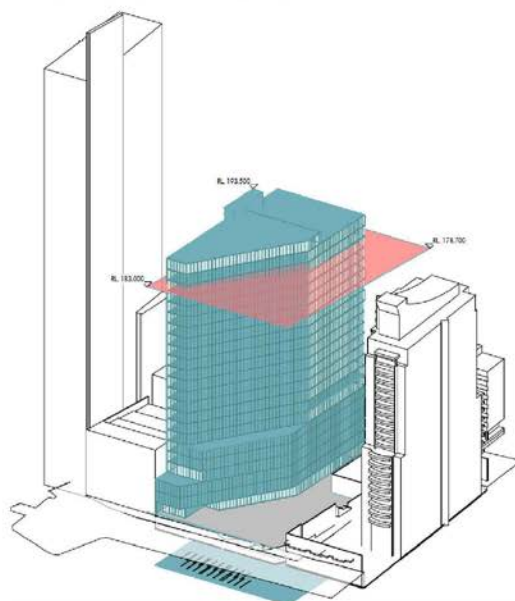


Figure 4. 3D Height Diagram – view from north-west.
Source: Nettletontribe Architects

5 Objectives of the Standard

The objectives of the Clause 4.3 Height of Buildings are as follows:

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

6 Objectives of the Zone

The objectives of the B3 Commercial Core zone are as follows:

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

7 Assessment

Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Compliance with the height standard is unreasonable and unnecessary given the following;

- As detailed in *Williams v Ku-ring-gai Municipal Council* [2017] NSWLEC 1098, *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [44]–[48], a number of approaches could be used to establish that compliance with a development standard is unreasonable or unnecessary.
- *Wehbe* Test 1, as described in *Williams*, is relevant to the proposed variation to the height development standard:
 - *Wehbe* Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Wehbe Test 1 - Objectives of the Height Control Standard are met despite the numerical variation

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

The proposed built form fits in with the surrounding developments and streetscape. The site is located within Chatswood City Centre and is predominantly occupied by high rise commercial and residential towers. The proposed height is well under the existing skyline profile and is contextually appropriate when the surrounding built form are considered. The existing skyline profile of the Chatswood CBD is illustrated in figure below.

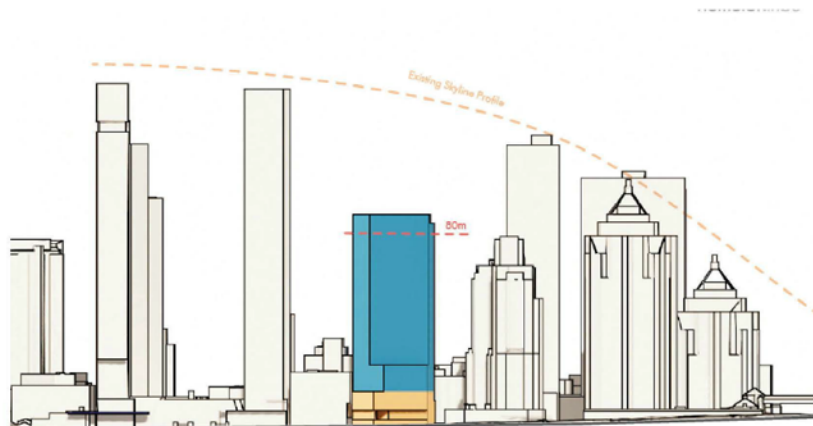


Figure 5 Existing Skyline profile - Victoria Avenue Elevation
Source: Nettletontribe Architects

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

Solar Access

The proposal includes a chamfered tower form which has been carefully designed to maximise solar access to the plaza space along Victoria Avenue, and to the adjoining

residential development to the west, as well as no additional overshadowing to Chatswood Oval.

Critically, the envelope has been developed to ensure that the adjoining residential development can still achieve ADG compliant solar access, despite the fact that it sits as a prohibited use within a commercial core, and is not a matter that would ordinarily require consideration when developing built form envelopes at this location given the precincts zoning as Commercial Core B3.

A detailed solar study has been carried out and provided in **Appendix 3** to support the proposal. The study demonstrates that the maximum additional overshadowing generated by the proposal is at 2pm on the winter solstice, which does not result in any overshadowing onto the Chatswood Oval (Refer to figure below). It also allows for a slender tower form that promotes a better view sharing with the neighbouring developments. Critically, the breach of height creates no further non-compliant overshadowing outcomes related to Chatswood Oval and results in an improved solar outcome for the residential development at 1 Katherine Street, even though it is a prohibited development in the zone.



Figure 6 Solar Study – 2pm at winter solstice
Source: Nettletontribe Architects

Views and privacy

A detailed view analysis has also been provided demonstrating the view loss created by the height exceedance is minor. To support the view analysis, the methodology has relied on the Planning Principles established by *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*. Strictly speaking the Planning Principles established by Tenacity do not require consideration of view impacts for non-residential uses. However, consistent with the recent decision of *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC*, non-residential uses have also been considered. The principles established by Tenacity requires that a view impact assessment be conducted in accordance with a four step process which includes an assessment against the following principles:

- Principle 1 – Assessment of the views to be impacted
 - Water views are valued more highly than land views;
 - Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons;
 - Whole views are valued more highly than partial views.
- Principle 2 – Consideration from what part of the property the views are obtained

- The protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries;
- Sitting views are more difficult to protect than standing views;
- The expectation to retain side views and sitting views is often unrealistic.
- Principle 3 – Assessment of the extent of the impact
 - View loss assessment should be done for the whole of the property, but just for the view that is affected;
 - The impact on views from living areas is more significant than from bedrooms or service areas;
 - View loss impacts should be assessed qualitatively as negligible, minor, moderate, severe or devastating.
- Principle 4 – Assessment of the reasonableness of the proposal
 - Assessment of compliance with all planning controls – a development that complies with all planning controls would be considered more reasonable than one that breaches them;
 - Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable;
 - With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of the complying development would probably be considered acceptable and the view sharing reasonable.

It is noted that the Court does not establish that a property owner has a right to retain all or part of the existing views afforded from their land. Furthermore, the proposal is accompanied by a detailed view loss analysis that has been prepared by Nettletontribe Architects in **Appendix 3**.

The commercial tower at 475 Victoria Ave, Chatswood and the residential flat building located at 1 Katherine St, Chatswood have been identified as potentially impacted by the proposal with respect to private views. The developments were selected due to their proximity to the site and the extent to which view corridors are likely to be affected by the proposed height non-compliance. To support the analysis, the view corridor analysis has been taken from the top level of each building (Refer to figures below).



Figure 7 Corridor A - View from top floor of 1 Katherine St (Oriented south-east)
Source: Nettletontribe Architects

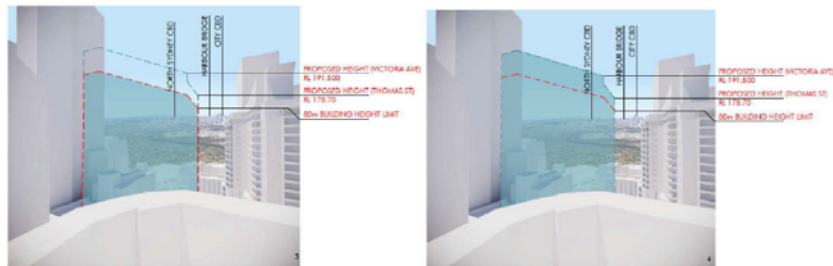


Figure 8 Corridor B - View from top floor of 475 Victoria Ave, Chatswood (Oriented south)
Source: Nettletontribe Architects

As shown, the views lost for Corridor A and Corridor B as a result of the height non-compliance relate only to open sky, which is considered as low value and is still abundantly provided from these view points in other areas. The commercial tower at 475 Victoria Ave, Chatswood would still maintain views towards Sydney CBD and the Harbour Bridge. The residential flat building located at 1 Katherine St, Chatswood would also maintain the views of Sydney CBD, North Sydney CBD and the Harbour Bridge.

In assessing the reasonableness of the proposal, it needs to be considered whether the impact on views arising from the non-compliance is unreasonable. It is our opinion that the views lost as a result of the height non-compliance are negligible when compared to a compliant scheme and do not unreasonably impact on the wider views that will continue to be available to affected properties. The negligible view loss is attributed to the proposal's skilful design.

With respect to privacy, the proposal complies with all required setbacks for the site and its use as a commercial building will create minimal privacy impacts for the residential uses in the evening or early morning.

Comparison with compliant height envelope

Nettletontribe has prepared a compliant scheme without the height exceedance (Refer to figures below) that would be possible if overshadowing impacts to the residential neighbour were to be ignored:

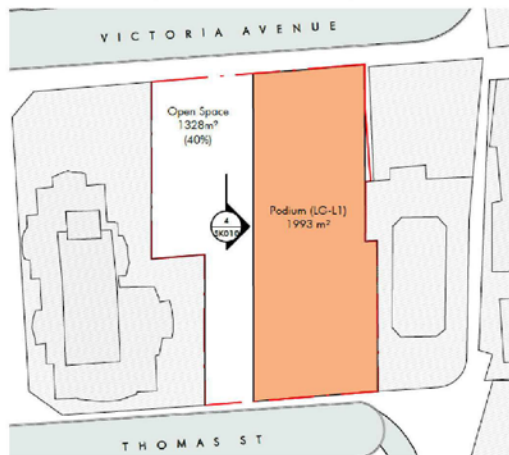


Figure 9 'Compliant' Scheme – floorplate Level G – Level 4
Source: Nettletontribe Architects

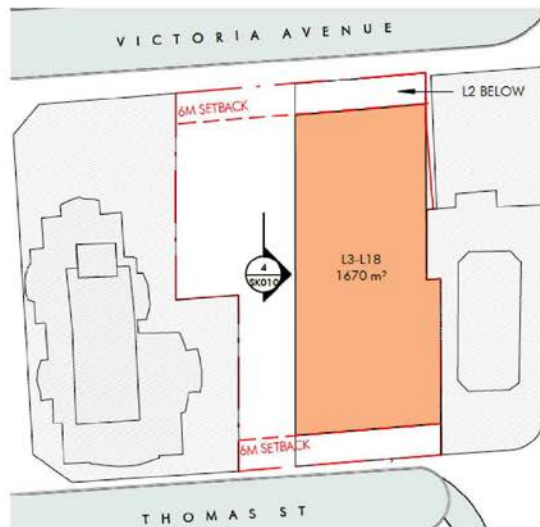


Figure 10 'Compliant' Scheme – floorplate Level 5 – Level 17
Source: Nettletontribe Architects

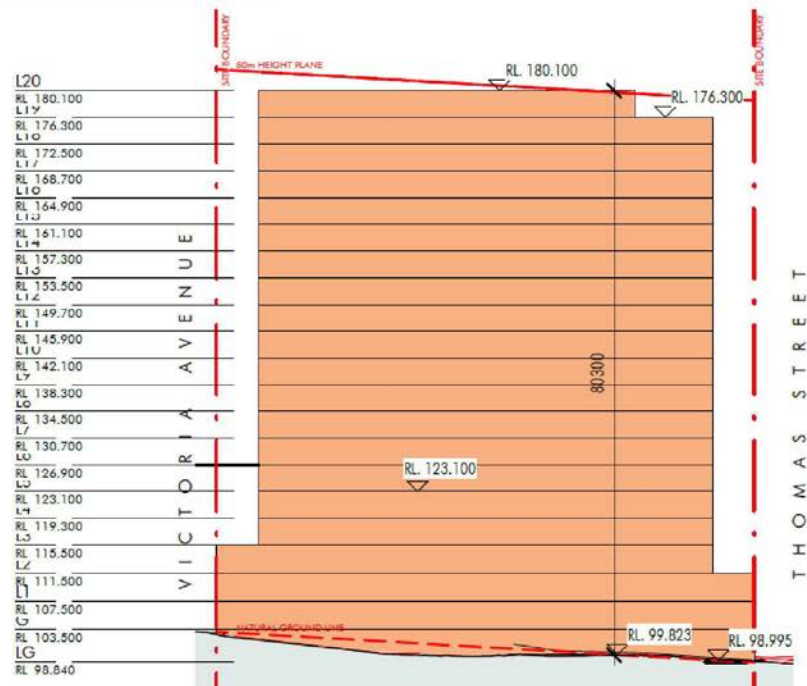


Figure 11 Section A-A Plan – 'Compliant Scheme'
Source: Nettletontribe Architects

As shown above, the 'compliant' scheme includes a proposed GFA of 34,861.6m² and complies with the key controls such as FSR, site coverage as well as providing sufficient

building separation. However, the scheme does not provide a further setback from Level 5 above, which would create additional overshadowing onto the residential flat building to the west.

A detailed overshadowing diagram has also been provided below demonstrating the scheme would create more overshadowing than the proposal between 10am to 12pm at winter solstice (Refer to figure below). Where grey represents the existing overshadowing at the residential flat building at 1 Katherine St, Blue represents the additional overshadowing generated by the proposal with the height exceedance, and Orange represents additional overshadowing created by the 'compliant' scheme without the height exceedance.

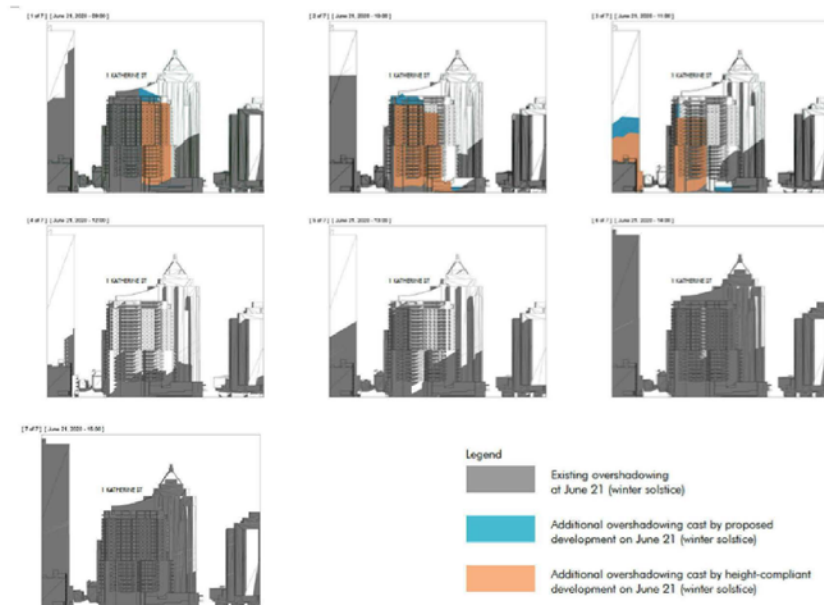


Figure 12 Comparative Shadow Diagram – Elevation
Source: Nettleontribe Architects

Therefore, the additional height is partially driven by a desire to create an envelope that minimises the potential overshadowing onto the nearby residential development to the west, being 1 Katherine St, Chatswood, despite it being a prohibited use in the zone. This approach strongly meets objective (b).

In conclusion, the building's design, including its height variation results in an overall development that better contributes to solar access of surrounding properties and the public domain, and creates negligible additional view impacts as a result of the non-compliance, therefore meeting Objective (b) of the standard.

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

The proposal will ensure a high visual quality of the development when viewed from adjoining properties and streets by adopting the following key design principles:

- o A significant plaza and through-site link from Victoria Avenue to Thomas Street is proposed;

- The chamfered tower form will maximise solar access to the plaza space along Victoria Avenue, as well as creating a different and innovative built form that will create high visual quality;
- The proposal includes 6m setback above podium along Victoria Avenue and Thomas Street to reflect the proposed future character within the Chatswood CBD Strategy;
- The proposal generally complies with the street wall height of 4-12m outlined under the Chatswood CBD Strategy, with a slight overrun of 0.66m on Thomas Street to accommodate the site fall; and
- The proposal offers a slender tower form to minimise the visual bulk and scale appearance which is consistent with the key principles outlined in the Chatswood CBD Strategy. In fact, the proposal delivers a more slender and appropriate built form outcome consistent with the CBD Strategy than the earlier discussed 'compliant' form would.

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

The predominant views are considered to be the south, looking into the views towards Sydney CBD. A detailed view loss analysis has been provided in **Appendix 3** and demonstrates the height exceedance in the view loss analysis is considered minor. The site that will be most impacted in terms of view loss potential, will be the commercial building towards north west at 475 Victoria Avenue Chatswood and the residential flat building at 1 Katherine St, Chatswood.

As discussed above, the proposal has been assessed with the view analysis methodology under the Planning Principles established by *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*. The analysis demonstrates that the view loss created by the height exceedance is negligible and acceptable given the significant other views both buildings benefit from. It also clearly demonstrates that there is no meaningful additional impact to these view corridors as a result of the breach itself.

In addition, the subject site has a higher height control (RL200-RL220) under the Chatswood CBD Strategy, which is equivalent to a height of approximately 100m based the existing ground level of around RL105. Therefore, on the account the additional height does not create any significant amount of view loss, the proposed additional height is considered reasonable and consistent with the future built form expected within Chatswood CBD.

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

The proposed height is 93.7m, which is 13.7m or 17.12% over the maximum height limit. The lift overrun will be explored further and is to be incorporated into an architectural feature as part of the future Design Competition and detailed DA. The proposal complies with FSR and site coverage control under the WLEP 2012.

The commercial tower has been located adjacent to the Telstra Exchange site to enable future redevelopment of this site independently at a later stage should the Exchange no longer be required as key infrastructure. In addition, the form and location of the tower has been carefully chosen to respond to the following key planning and design drivers for the site:

- Chamfered tower form to maximise solar access to the plaza space along Victoria Avenue, and to the adjoining residential development and no additional overshadowing to Chatswood Oval;

- Slender tower form to respond to the key design principles within the CBD Strategy;
- A 6m setback above the podium along Victoria Ave and Thomas Street to reflect the proposed future character within the CBD Strategy;
- The proposal generally complies with the street wall height of 4-12m outlined under the Chatswood CBD Strategy, with a slight overrun of 0.66m on Thomas Street to accommodate the site fall; and
- Nil setback above the podium along Thomas Street to better respond to the adjoining Telstra Exchange building, with setback at upper levels to protect solar access to Chatswood Oval.

It should also be noted that this site will be able to achieve additional height under the CBD Strategy beyond what is being sought in this application, which is relevant when considering whether the proposal meets the Objectives need to ensure height of buildings "Are consistent with the redevelopment potential of the relevant land".

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

The site is surrounded by existing high-rise developments. The site has a recommended height of RL200-RL220m in accordance with the sun access protection plane and airspace limits outlined in the Chatswood CBD Strategy. It is our understanding that the existing ground level of the site is at approximately RL105m, which is equivalent to a building height of 95m to 100m. Furthermore, the Chatswood CBD Strategy envisioned significant height uplifts in the commercial core area of the town centre, with recommended height up to RL 246.8m, which will be significantly taller than the proposed development. The existing skyline profile of the Chatswood CBD is illustrated in Figure 13 and the recommended height under the Chatswood CBD Strategy is illustrated in Figure 14 below. Accordingly, it is clearly shown that the current proposed height control is consistent with the desired future character of the locality.

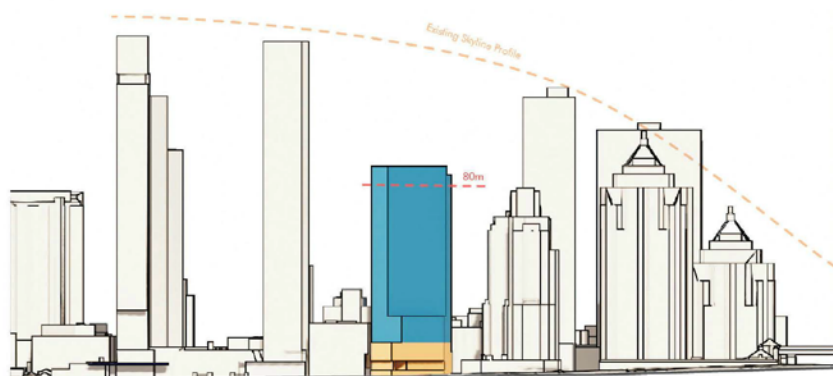


Figure 13 Existing Skyline - Victoria Avenue Elevation
Source: Nettleontribe Architects



Figure 14 Recommended height under Chatswood CBD Strategy
Source: Willoughby City Council

The proposal adopts the key design principles outlined within the Chatswood CBD Strategy. The proposal includes a slender tower form and has been revised with a 6m setback above the podium along Victoria Avenue and Thomas Street, to reflect the proposed future character within the strategy. The proposal generally complies with the street wall height of 4-12m outlined under the Chatswood CBD Strategy, with a slight overrun of 0.66m on Thomas Street to accommodate the site fall. Overall, the proposal is considered consistent with the current and desired future character of the Chatswood CBD centre.

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

The subject site is located on the western side of the North Shore Rail Line being the commercial office core of Chatswood. The proposal will transform an under-utilised site into a new major commercial office tower, with the impact RSL to remain after redevelopment. This development aligns very strongly with this Objective.

Objective (h) to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.

The subject site is surrounded by a number of high-rise buildings and the proposed height is considered a balanced transition in the locality (Refer to Figure 14 below). The residential building to the west at 1 Katherine St, Chatswood contains a 23 storey building. The residential tower above Chatswood Interchange contains 42 storeys and is located approximately 30m to the east of the subject site. A 38 storey serviced

apartment building is also located to the south-west of the subject site (Refer to Figure below). The proposal includes a 23 storey commercial building which is consistent with the surrounding buildings.

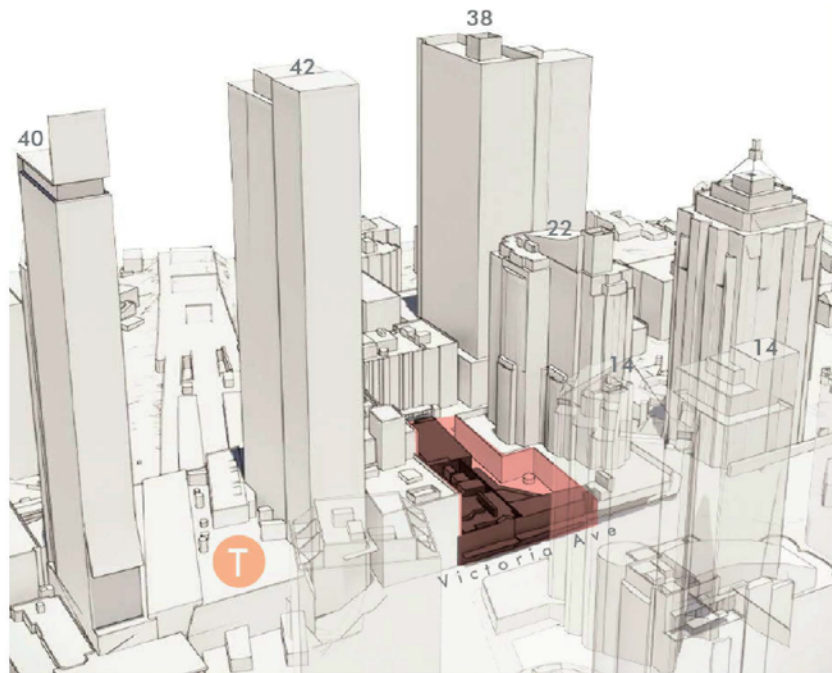


Figure 15 Existing Height of Buildings
Source: Nettletontribe Architects

In accordance with **Wehbe Test 1**, it is clearly demonstrated that the proposed development is able to comply with the objectives of the height of building control, notwithstanding the minor noncompliance with the numerical controls.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

As discussed above, Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do **more than** demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate other environmental planning grounds that justify contravening the development standard, preferably grounds that are specific to the site. Pain J also held that in order for a clause 4.6 variation to be accepted, seeking to justify the contravention is insufficient - the consent authority must be satisfied that clause 4.6(3)(a) and (b) have been properly addressed.

On appeal, Leeming JA in *Four2Five vs Ashfield Council* NSWCA 248 acknowledged Pain J's approach, but did not necessarily endorse it, instead restating Pain J and saying:

"matters of consistency with objectives of development standards remain relevant, but not exclusively so."

This approach was further reinforced by Commissioner O'Neill's determination of the subsequent Initial Action Class 1 appeal (LEC 2019 1097), where she stated that "the

environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (Initial Action [24]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action [24])

...

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by his Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act)."

There are sufficient environmental planning grounds to justify contravening the development standard as the proposed development allows for the promotion and co-ordination of the orderly and economic use and development of the land in the following ways:

Desired Future Character of the precinct in the CBD Strategy

1. The draft Chatswood CBD Strategy, which has been endorsed by the State Government for this part of the CBD permits a height of approximately 100m, which is higher than the current proposal.
2. Given that both Council and the State Government have endorsed the strategy for this part of the CBD, the proponent has agreed to ensure that their building setbacks comply with the Strategy to develop a building that aligns with the future environmental conditions for the precinct.
3. Given that the Strategy has been supported at both levels of Government, and the fact that the proposal's setbacks comply with the future Strategy, rather than the less onerous current setback requirements in the DCP, the additional height permitted by the Strategy should be considered a particular environmental planning ground reason for variation to the height control – particularly given the height breach does not create additional environmental amenity issues on surrounding properties or public domain.

Public Benefits of the design including north facing plaza and additional setbacks

1. The built form of the tower has been carefully designed to address the site-specific environmental constraints in order to obtain the best planning and environmental outcome, as well as key public benefits envisaged in the CBD Strategy;
2. The tower core has been pushed hard against the Telstra building's boundary in order to ensure that this site does not become isolated and can redevelop independently at a later stage should it no longer be required as critical infrastructure;
3. The tower and podium elements have been designed to ensure ADG compliant solar access to 1 Katherine Street, despite the building being a prohibited use in a commercial core zone. The chamfer required results in a built form that cannot achieve the maximum FSR within the height control. However, a building that did not consider this property could easily be delivered within both the height and floorspace controls;

4. These environmental planning grounds have led to a built form that better achieves Council's strategic planning priorities for the area, with an innovative and interesting built form, that delivers a significant ground-floor plaza with good solar access and strong connectivity to the envisioned future plaza at Victoria Street;
5. The higher building envelope will facilitate additional high-quality office space for future employment opportunities that strongly aligns with the existing objectives of the B3 Commercial Zone and the envisaged commercial core within Chatswood CBD Strategy;
6. Finally, the height breach has negligible environmental impacts to surrounding properties in terms of overshadowing, overlooking, view loss or sunlight to public spaces compared to a compliant scheme. Rather, the proposal significantly improves the amenity outcomes for adjoining buildings through the new plaza, as well as retained solar access to 1 Katherine Street;
7. The height exceedance does not create any additional overshadowing onto the key public open spaces, such as the Chatswood Oval and Garden of Remembrance, as is mandated by the CBD Strategy; and
8. The proposal will promote good design and amenity of the built environment.

Accordingly, it is considered that there are sufficient environmental planning grounds to justify contravening the development standards, as the development will deliver one of the key Objects of the Planning Act, by allowing for the promotion and coordination of the orderly and economic use and development of the land. In addition, it is noted that the proposed development will still produce a contextually appropriate outcome consistent with the objectives of the development standards, despite the non-compliance with the numerical provisions.

Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

1. As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:
 - i. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
 - ii. There are sufficient environmental planning grounds to justify contravening the development standard.
2. In accordance with the findings of Commissioner Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request adequately addresses the matters in Clause 4.6(3).

Clause 4.6(4)(a)(ii) - Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

The proposed development is in the public interest as it is consistent with the objectives of the development standard. The objectives of the development standard are addressed below under the relevant headings:

1. *Objectives of the particular standard*

It has been demonstrated elsewhere in this report that the development achieves the objectives of Clause 4.3, within the WLEP2012 notwithstanding the non-compliance with the standards.

2. *The objectives for development within the zone in which the development is proposed to be carried out.*

The site falls within the B3 Commercial Core zone. As outlined below the proposed development is in the public interest because it is consistent with the objectives of the B3 Commercial Core zone;

- **To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.**

The proposal will rejuvenate a currently underutilized commercial site with a significant amount of new, high quality, business and office space that is strongly in line with the Commercial Core envisioned in the Chatswood CBD Strategy. The redevelopment will also enable the expansion of the Chatswood RSL Club, which will continue to operate on the site, providing a range of key local services to continue to meet and support the local and wider community's need.

- **To encourage appropriate employment opportunities in accessible locations.**

The proposal includes a high-rise commercial tower which will provide significant employment opportunities within Chatswood CBD. The lower-ground, ground and lower levels will continue to be occupied by Chatswood RSL Club, the expansion of the club will also attract additional employment opportunities.

The site is set within the Chatswood CBD and is within close proximity to Chatswood Interchange, that includes Chatswood Railway Station and Chatswood Metro Station. The site is located within the bus interchange precinct, and is also within walking distance of various services, facilities and infrastructure within the city centre. The development will maximise public transport patronage and encourage walking and cycling.

- **To maximise public transport patronage and encourage walking and cycling.**

The site is located approximately 2 minutes walk to the Chatswood Interchange, which provides frequent train and metro frequent services to the north, north-west and linkage to the Sydney CBD. The proposal will provide bicycle spaces and end of trip facilities to support alternative travel options. A Green Travel Plan for the club will be provided at the detailed DA to continue maximising public transport patronage.

- **To support the role of St Leonards as a specialised centre providing health, research and education facilities.**

The subject site is not located in St Leonards.

- **To strengthen the role of Chatswood as a major centre for the inner north sub-region and to improve its public domain and pedestrian links.**

The proposal offers a significant amount of employment space that will continue to strengthen the role of Chatswood as a major centre. The proposal also includes a through site link which will improve the connectivity between Victoria Avenue and Thomas Street. A generous public open space with landscaping has also been provided at the Victoria Avenue frontage, which will significantly improve the streetscape along the street.

- **To protect and encourage safe and accessible city blocks by providing active land uses on street and pedestrian frontages.**

The primary entries to the commercial building and the club have been proposed fronting Victoria Avenue to maintain the active frontage of the street, with secondary entry to the Club through Thomas Street. Vehicle entry to the basement parking will continue to be diverted through Thomas Street to minimise the traffic on Victoria Ave.

The proposed development will be designed to allow for clear sight lines and passive surveillance to ensure that the principles of Crime Prevention Through Environmental Design (CPTED) are incorporated into the everyday use of the site.

For all of the above reasons, the proposal is considered in the public interest as it is consistent with the objectives of the development standard and the B3 Commercial Core zone.

8 Any matters of significance for State or regional environmental planning

The contravention of the height standard does not raise any matter of State or regional planning significance.

9 Secretary's concurrence

The Planning Circular PS 18-003, issued on 21 February 2018 (**Planning Circular**), outlines that all consent authorities may assume the Secretary's concurrence under clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006* (with some exceptions). The WLEP 2012 is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to clause 4.6 (5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

We note that under the Planning Circular this assumed concurrence is subject to some conditions - where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council unless the Council has requested it. The variation to the clause exceeds 10% for the subject site.

10 Conclusion to variation to height standard

This written request is for a variation to the height standard under Clause 4.6 of the WLEP 2012. The request justifies the contravention to the height standard in the terms required under Clause 4.6 of the WLEP 2012, and in particular demonstrates that the proposal provides a significantly better planning outcome with no significant adverse environmental impacts, and therefore in the circumstances of the case:

- Compliance with the height standard is unreasonable and unnecessary;
- There are sufficient environmental planning grounds for the contravention, including;
 - Achieves the objectives of the development standards in Clause 4.3 of the WLEP2012;
 - It is in the public interest in being consistent with the objectives of the height standard and B3 Commercial Core Zone under the WLEP2012;
 - It will deliver a development that is appropriate for its context despite the breaches to development standards and therefore has sufficient environmental planning grounds to permit the variation;
 - The proposal will transform an under-utilised site into a new major commercial office tower, with the impact RSL to remain after redevelopment. The proposal will create a significant amount of office space for future employment that will continue to strengthen the role of Chatswood as a major center and in line with the employment visions for the area as outlined in the Chatswood CBD Strategy;
 - The built form of the tower has been carefully designed to address the site-specific environmental constraints in order to obtain the best planning and environmental outcome;
 - The design of the envelope will enable the future redevelopment of the adjoining Telstra Exchange site independently at a later stage so as to isolate the site;
 - The proposal will include sufficient landscaping as part of the development and continue to support 'greening the CBD'; and
 - There are no matters of State or regional planning significance and no public benefits in maintaining the height standard in this case.

ATTACHMENT 6: ASSESSMENT OF CLAUSE 4.6 VARIATION APPLICATION

Clause 4.3 WLEP 2012 imposes a maximum building height of 80m for the site. The proposal has a building height of 93.70m, which is a non-compliance of 13.7m with Clause 4.3 WLEP 2012.

Clause 4.6 (Exceptions to development standards) provide a degree flexibility in applying development standards under the provisions of WLEP 2012. Subclauses (3) and (4) state:

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

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) the concurrence of the Secretary has been obtained.

Comment

A written request to vary the development standard has been lodged in accordance with Clause 4.6 of WLEP 2012.

Is compliance unreasonable or unnecessary?

The applicant has argued that compliance is unreasonable or unnecessary on the grounds that objectives of the Height Control Standard are met despite the numerical variation. For the reason set out below, the proposal achieves the objectives of the height standard.

The Clause 4.6 therefore demonstrates that compliance is unreasonable or unnecessary.

Sufficient environmental grounds

Under KE 20 of the Chatswood CBD Strategy the maximum building height is RL246.8m as reduced by the Pan-Ops Plane, to allow sun access to Chatswood Oval, as indicated in Figure 3.1.6 of the Chatswood CBD Strategy. The shadow diagrams lodged with the DA indicate that the proposal will not cause additional overshadowing of Chatswood Oval between 11am and 2pm on 22 June. The proposal therefore complies with the height limit in KE 20.

This is partially due to the setback of the top level (Level 22) from the southern edge of the levels below. Furthermore, there are no unreasonable adverse impacts arising out of the height non-compliance for the amenity of neighbours in terms of privacy, solar access or view loss.

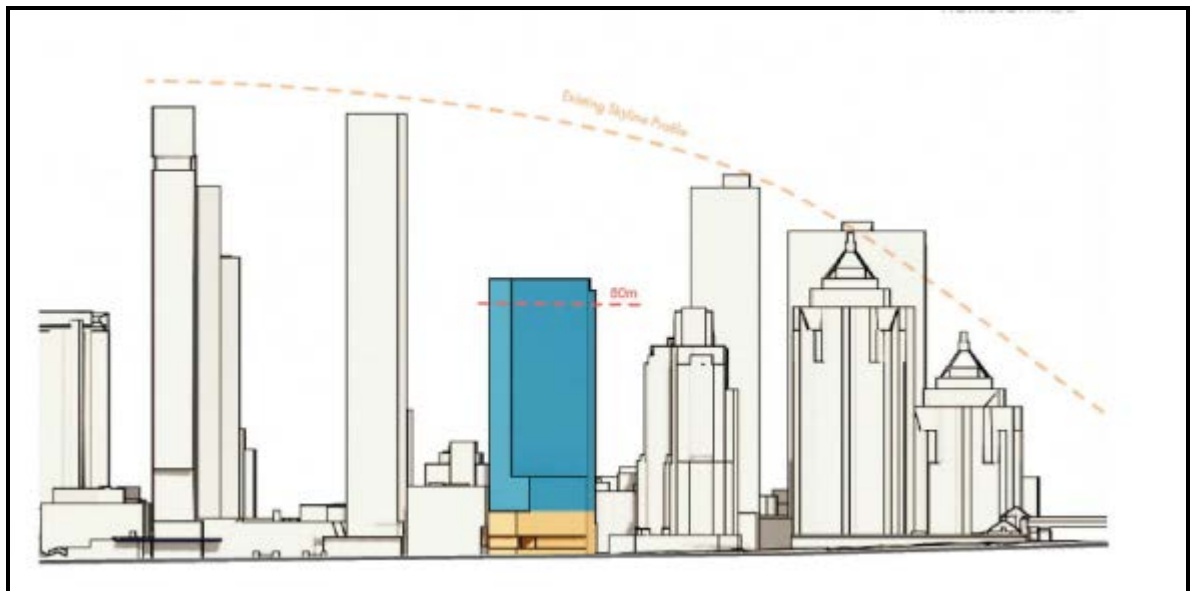
The Clause 4.6 objection has demonstrated that there are sufficient environmental grounds for the non-compliance.

Public interest

The objectives of the development standard under Clause 4.3 WLEP 2012 are:

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

The proposal has a podium and tower configuration which results in acceptable bulk and scale as experienced at street level. The height of the building will be well within the scale of the surrounding skyline, as indicated in the following extract from the DA plans.



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

1 Katherine Street

As discussed in this report, the proposal will be setback from the western side boundary by at least 7.5m. The building separation from the closest dwellings at 1 Katherine Street is therefore approximately 14m. This exceeds the 12m building separation control in Clause E3 WDCP and is considered acceptable.

All dwellings on the eastern side of 1 Katherine Street will receive approximately 2 hours sunlight on 22 June.

In terms of privacy, it is proposed to impose the following condition:

Where the proposed building is setback from the western side boundary by less than 12m, the building shall include, at all levels, privacy measures, such as fixed external privacy louvres, which prevent overlooking of dwellings at 1 Katherine Street.

Subject to the above condition, the proposal will have a satisfactory impact on the privacy of residents at 1 Katherine Street.

438 Victoria Avenue

As there will be no windows on the eastern side of the building, the proposal will have no adverse impacts on the privacy of dwellings at 438 Victoria Avenue (the Interchange). There will also be no overshadowing of those dwellings caused by the proposal.

For the reasons discussed in this report, the proposal will have acceptable impacts on the views of adjoining developments

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

Details of design and materials will be included in future DAs.

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

The compliance of the proposal with Council's existing and/or proposed building envelope controls indicates that the view loss experienced by residential neighbours will be reasonable. The proposal therefore satisfies the test in *Tenacity Consulting v Warringah* and Clause E1.9 WDCP.

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

The proposal complies with the floor space ratio standard in Clause 4.4A WLEP 2012. The proposal will satisfactorily address other building envelope controls in the WDCP and Key Elements of the Chatswood CBD Strategy.

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

As discussed above, the proposal is consistent with the current and desired future character of the locality.

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

As a commercial tower on top of the existing Club use, the proposal will be consistent with the character and use of the commercial office core of Chatswood.

- (h) to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.*

For the reasons set out in this report, subject to conditions, the proposal will have a satisfactory building size and form so as to manage impacts on surrounding residences.

The objectives of the B3 Commercial Core zone are:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*

The proposal will provide a range of dining and entertainment uses that serve the needs of residents in the local and wider community.

- *To encourage appropriate employment opportunities in accessible locations.*

The proposal will provide employment opportunities in the Club facilities and in the commercial uses above.

- *To maximise public transport patronage and encourage walking and cycling.*

The proposal will provide car parking well below the parking rates in the WDCP. The location of the site in close proximity to the Chatswood Rail and Metro and Bus Interchange will allow for public transport use and walking.

- *To support the role of St Leonards as a specialised centre providing health, research and education facilities.*

Not applicable.

- *To strengthen the role of Chatswood as a major centre for the inner north sub-region and to improve its public domain and pedestrian links.*

The proposal will allow the updating and improvement of the current Club and will strengthen the role of Chatswood as a commercial centre. The through site link will improve pedestrian access around the CBD.

- *To protect and encourage safe and accessible city blocks by providing active land uses on street and pedestrian frontages.*

Conditions will require active uses on the Victoria Avenue frontage in future DAs.

The proposal therefore achieves the objectives of the development standard and the zoning and satisfies the public interest test.

For the above reasons, the non-compliance satisfies the criteria of Clause 4.6 WLEP 2012 for variation of the building height control in Clause 4.3 WLEP 2012.

OFFICER'S RECOMMENDATION

THAT Council support the Clause 4.6 Exception as it is considered unreasonable and unnecessary to comply with the development standard of Clause 4.3 of WLEP 2012

ATTACHMENT 7: SCHEDULE OF CONDITIONS**1. Concept Approval**

Pursuant to Section 4.22 of the Environmental planning and Assessment Act 1979, approval is granted for a building envelope for a commercial development incorporating Chatswood RSL Club. This consent does not authorise the carrying out of development on any part of the site concerned unless consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site (future DA).

2. Approved Plan/Details

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

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Architectural	11305 SK000	3	05.08.2020	Nettleton Tribe
	11305 SK001			
	11305 SK002			
	11305 SK003			
	11305 SK004			
	11305 SK005			
	11305 SK006			
	11305 SK007			
	11305 SK008			
	11305 DA 020			
	11305 DA 031			
	11305 DA 032			
	11305 DA 033			
	11305 DA 034			
	11305 DA 041			
	11305 DA 042			

the application form and any other supporting documentation submitted as part of the application, except as otherwise provided by the conditions of this consent.
(Reason: Information and ensure compliance)

3. Built Form

Future Development Applications shall demonstrate that buildings do not exceed the building envelope shown in the approved plans.

4. Maximum Gross Floor Area (GFA)

The maximum GFA for the development shall not exceed 34,860m² comprising a maximum of:

- Club – 6,790m²
- Commercial tower – 28,070m²

These maximum figures are subject to future environmental assessment requirements. Compliance with these requirements may result in the maximum figures not being achieved.

5. Car parking

The following total car parking is approved:

Registered club -	150 spaces
Commercial component –	113 spaces
Total -	263 spaces

The allocation of car parking spaces to specific basement levels will be the subject of further plans to be lodged in future Development Applications.

6. Design Excellence

- (a) Future Development Applications shall demonstrate that the development achieves a high standard of architectural design incorporating a high level of modulation and articulation to the buildings, and in particular to the facades (including the eastern façade), and the incorporation of a variety of high quality materials and finishes.
- (b) Prior to lodging any future Development Application, the proponent must undergo a Design Excellence Competition in accordance with the Willoughby Design Excellence Policy.

7. Street level amenity

- (a) The proposed development is to be delivered with a cohesive and integrated street level treatment.
- (b) Ground floor uses fronting the Plaza space are to be active uses.

8. Vehicle Parking and access

Future Development Applications shall:

- (a) Demonstrate that the design of basement levels, parking modules, circulation roadways and ramps meet the requirements of all relevant Australian Standard, Austroads, TfNSW and Council policy and guidelines for all vehicles and designated areas/ users.
- (b) Demonstrate that any stop/ layover for buses, taxis, hire vehicles, car share vehicles will be on site will be accommodated on site and not on Thomas Street
- (c) Demonstrate that all deliveries must be received via the loading dock of the proposed development. No deliveries are to be made from vehicles standing kerbside in the adjacent streets.
- (d) Demonstrate that all waste and garbage is to be removed and/or recycled through an on site waste management system.
- (e) Demonstrate that potential conflict between any vehicle movements on site and in Thomas Street is adequately resolved.
- (f) Provide disabled pedestrian and motor vehicle access and on-site parking.
- (g) Provide motorcycle parking, bicycle lockers and bicycle racks in accordance with Part C4 of the Willoughby Development Control Plan.
- (h) Provide a green travel plan for the commercial floor space and the RSL club.

9. Infrastructure

Future Development Applications shall provide for utility infrastructure, including substations and services within the building envelope.

10. Open Space

The open air plaza and ancillary through-site link are to be publicly accessible. Future Development Applications shall include detailed landscape and architectural plans for the open space areas. These areas shall include high quality landscaping and paved areas.

11. Contributions

Conditions requiring payment of developer contributions towards the provision or improvement of public amenities and services will be required for any future Development Applications. The amount of the development contributions shall be determined by Council in accordance with the Willoughby Local Infrastructure Contributions Plan applied to the site at the time of lodgement for each future Development Application.

12. Contamination

Future Development Applications shall demonstrate compliance with the requirements of SEPP 55 and are to include a detailed contamination assessment including detailed remedial action strategy, and incorporation of any necessary remediation as part of future Development Applications.

13. Geotechnical

Future Development Applications shall demonstrate that the site is suitable for the proposed development and will maintain the stability of neighbouring properties.

14. Privacy

Where the proposed building is setback from the western side boundary by less than 12m, the building shall include at all levels fixed and external privacy measures, such as privacy louvres, which prevent overlooking of dwellings at 1 Katherine Street.

ATTACHMENT 8: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2020/7

At: 446 Victoria Avenue CHATSWOOD NSW 2067

