

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.
ATTACHMENTS: 1. AMENDED CLAUSE 4.6 VARIATION APPLICATION
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

This memo refers to and is supplementary to Council's Report dated 8 October 2020 in this matter.

The Report attached (at Attachment 5) the applicant's Clause 4.6 variation application dated August 2020 in respect to a breach of Clause 4.3 (Height of Buildings) of the Willoughby Local Environmental Plan 2012. That document was lodged with Council on 12 August 2020.

On 7 September 2020 the applicant lodged an amended Clause 4.6 variation application (also dated August 2020). That document is attached to this memo. The applicant requested that this amended Clause 4.6 variation application replace the earlier Clause 4.6 variation application and be considered by Council.

Council's assessment was carried out on the basis of the amended Clause 4.6 variation application, as set out in Attachment 6 to the Report. No change to that assessment is required.

The purpose of this memo is therefore simply to provide the Panel with a copy of the amended 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.

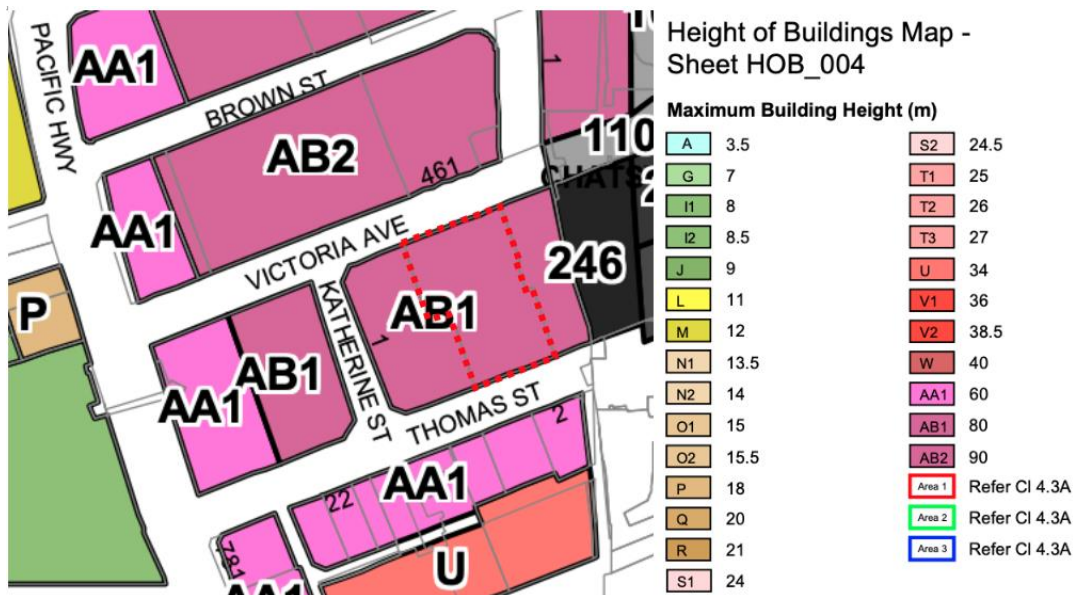


Figure 1. Height of Buildings Map Extract.
Source: WLEP 2012

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.

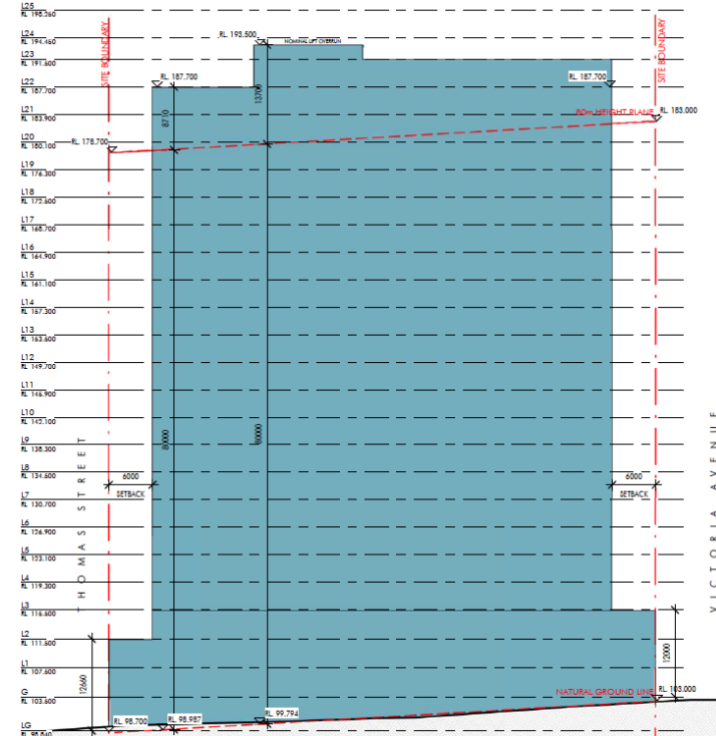


Figure 2 East Elevation
Source: Nettletontribe Architects

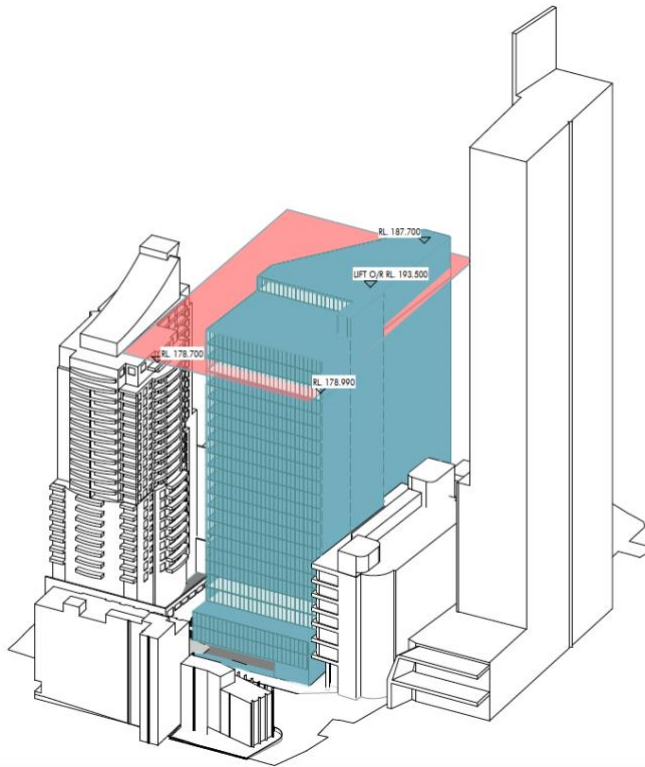


Figure 3. 3D Height Diagram – view from south-east.
Source: Nettletontribe Architects

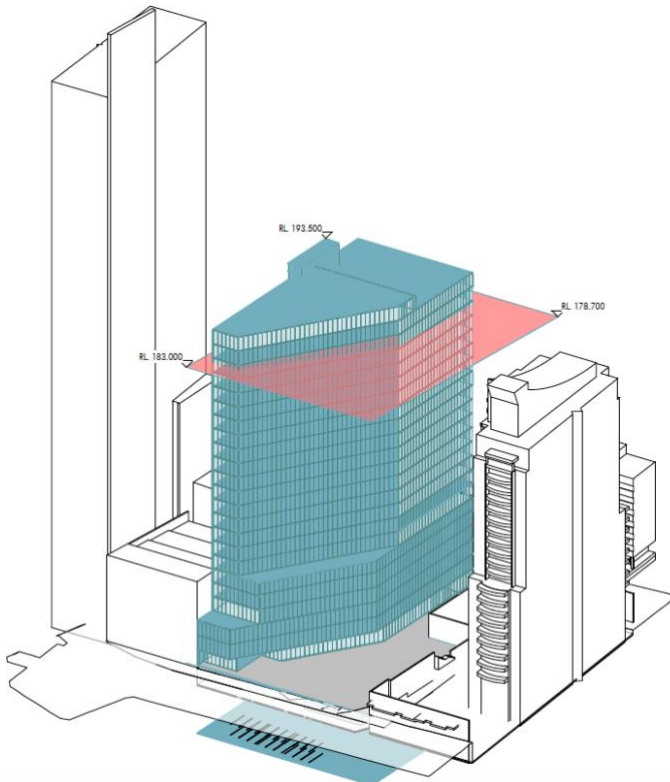


Figure 4. 3D Height Diagram – view from north-west.
Source: Nettletontribe Architects

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.*

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.

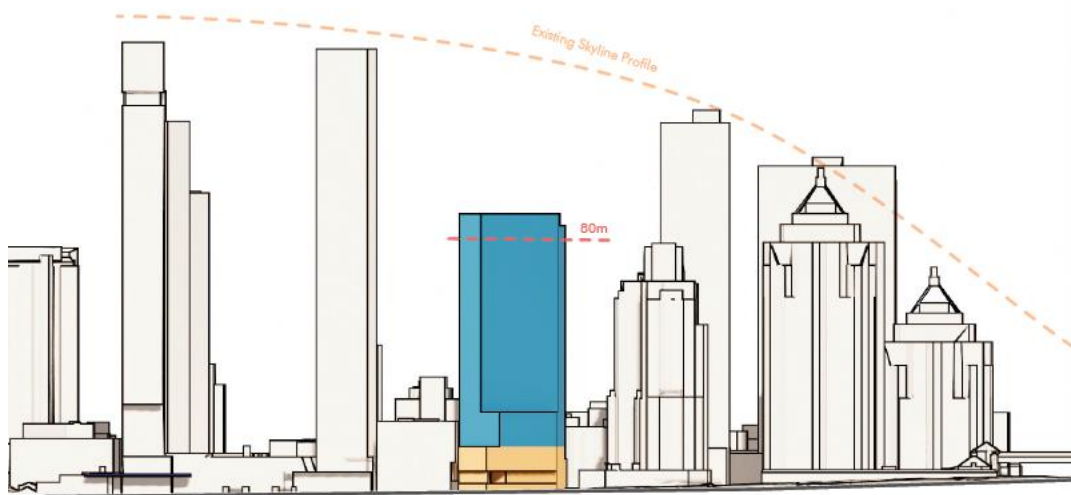


Figure 5 Existing Skyline profile - Victoria Avenue Elevation
Source: Nettletontribe Architects

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.

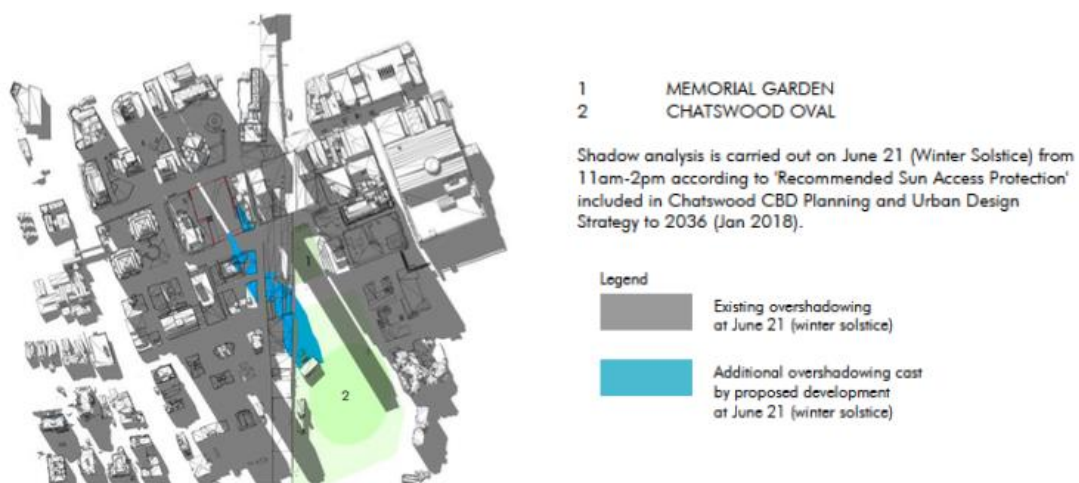


Figure 6 Solar Study – 2pm at winter solstice
Source: Nettletontribe Architects

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:

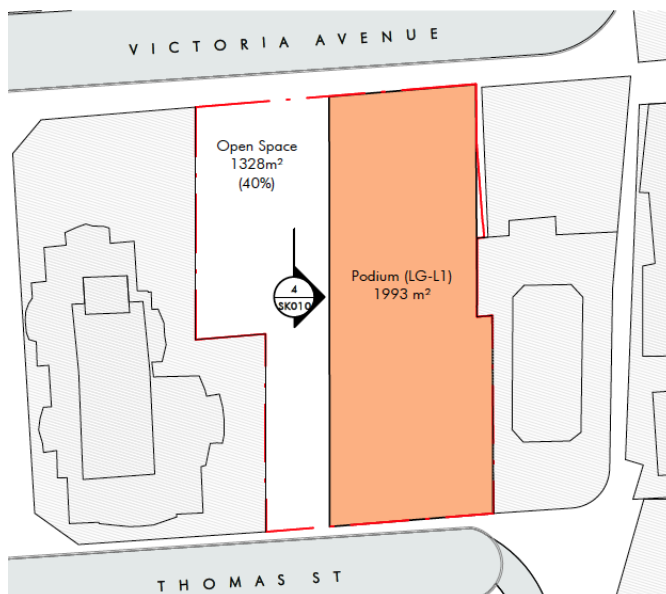


Figure 9 'Compliant' Scheme – floorplate Level G – Level 4
Source: Nettletontribe Architects

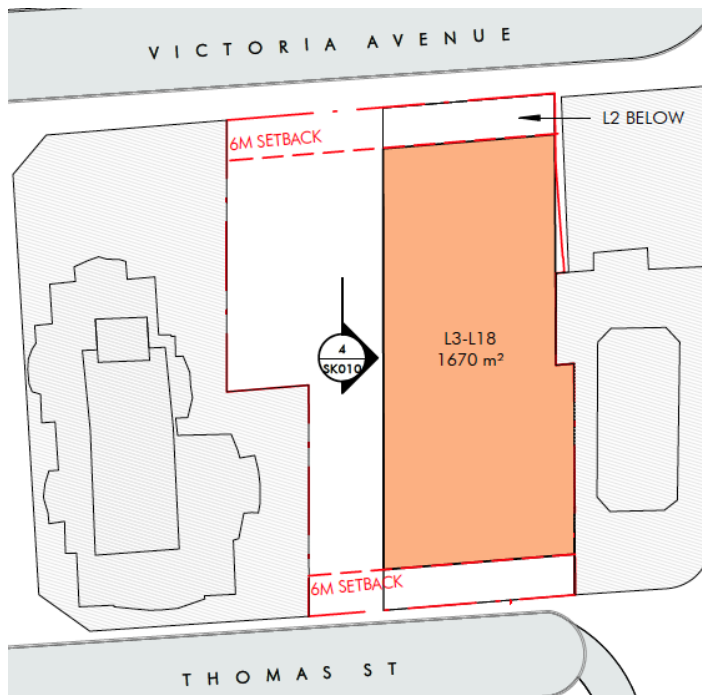


Figure 10 'Compliant' Scheme – floorplate Level 5 – Level 17
Source: Nettletontribe Architects

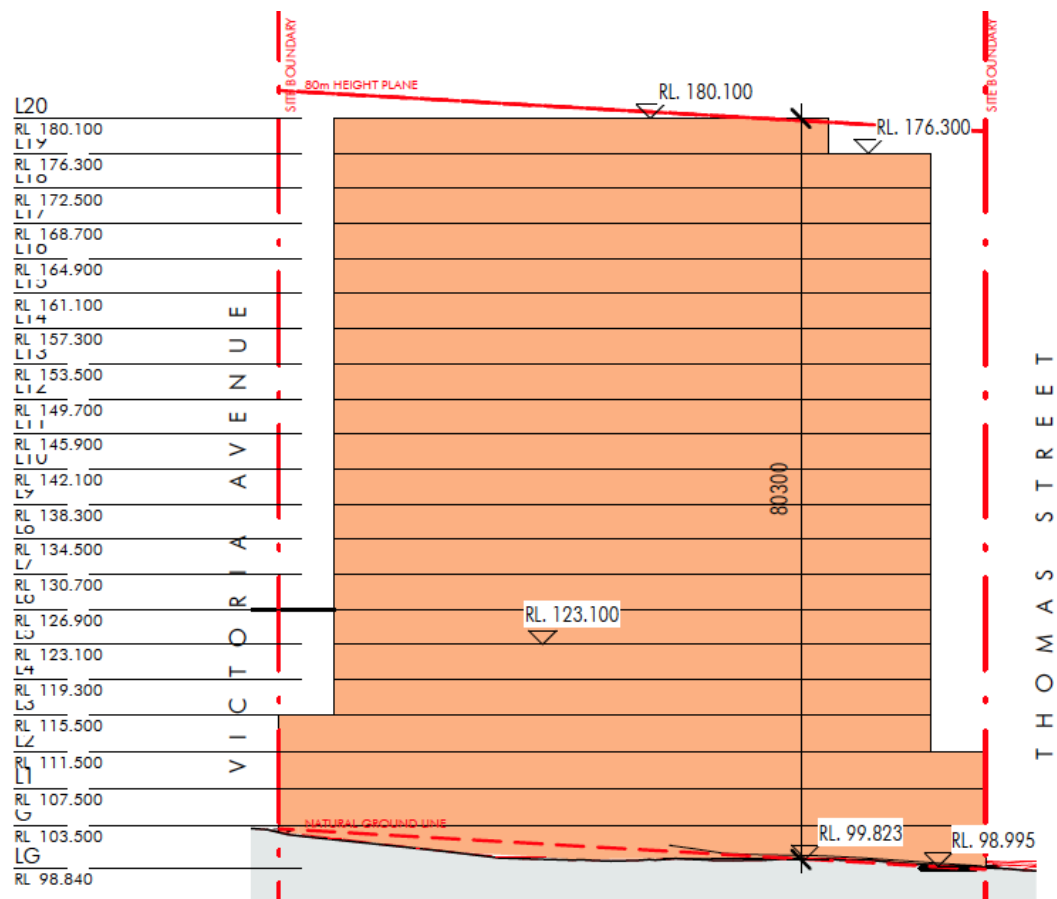


Figure 11 Section A-A Plan – 'Compliant Scheme'
Source: Nettletontribe Architects

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.

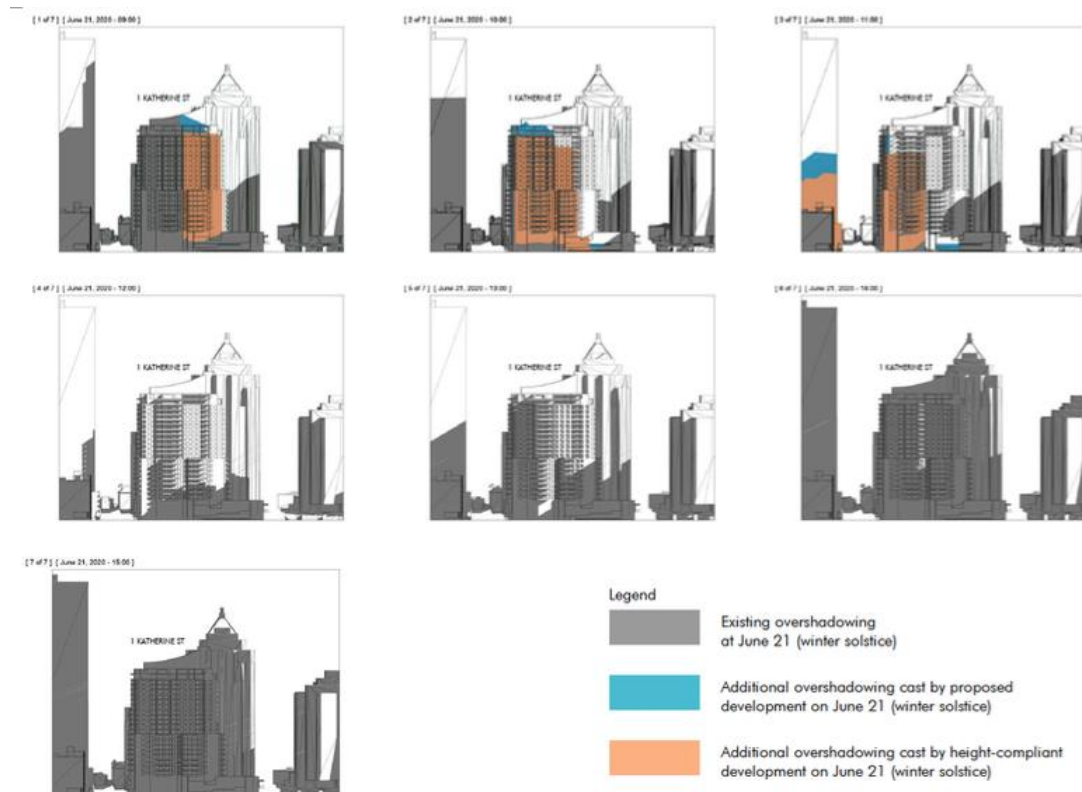


Figure 12 Comparative Shadow Diagram – Elevation

Source: Nettletontribe 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:

- 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.

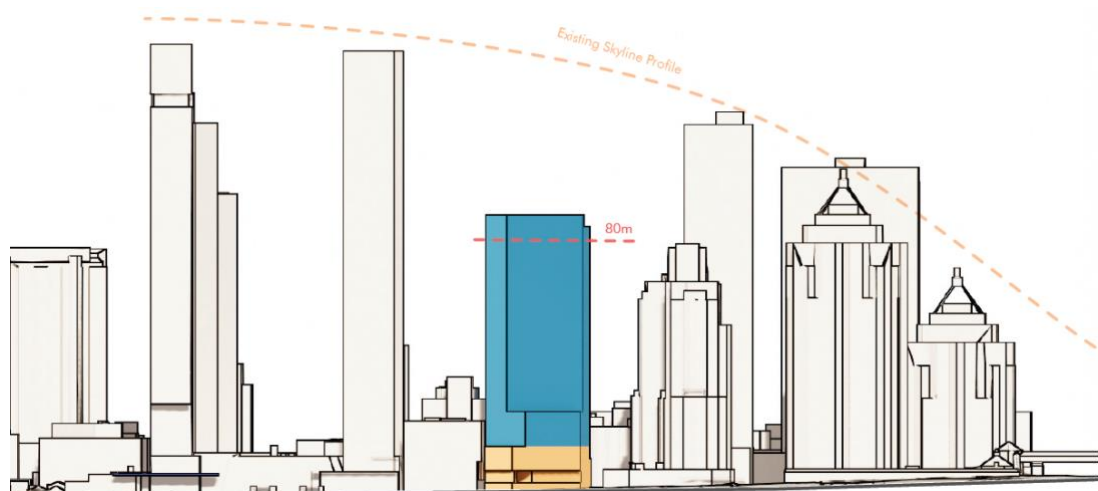


Figure 13 Existing Skyline - Victoria Avenue Elevation
Source: Nettletontribe Architects



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.

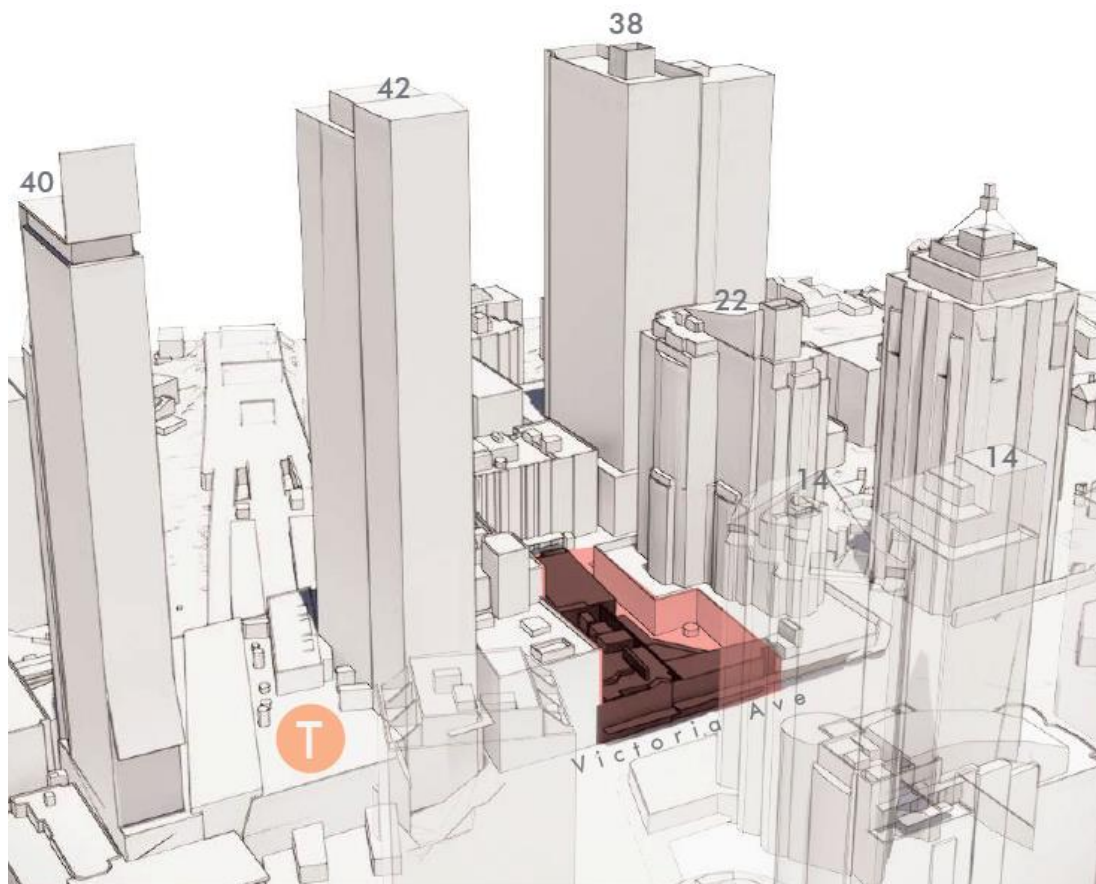


Figure 15 Existing Height of Buildings
Source: Nettletontribe Architects

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?

There are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

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. This is a particular environmental planning ground that results in an improved outcome for the site and future surrounding development;
3. Whilst it is acknowledged that compliance with the ADG is required for all existing development (*Davies v Penrith City Council* 2013 NSWLEC1141), the location of the residential building at 1 Katherine St in a commercial zone where residential accommodation is prohibited represents a particular environmental planning constraint at the subject site not ordinarily experienced in B3 zones.

4. Accordingly, 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.
5. **Irrespective, these particular 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;**
6. 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;
7. 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;
8. 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
9. The proposal will promote good design and amenity of the built environment.

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 on the subject site, 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, despite this not being a strict requirement at this stage.
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.

Accordingly, it is considered that there are sufficient environmental planning grounds to justify contravening the height of building development standard, 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.