

15.7 PLANNING PROPOSAL FOR 45 VICTOR STREET AND 410-416 VICTORIA AVENUE CHATSWOOD**ATTACHMENTS:**

1. IMPLICATIONS
2. COUNCIL DETAILED ASSESSMENT
3. COUNCIL ASSESSMENT OF DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT'S 'A GUIDE TO PREPARING PLANNING PROPOSALS'
4. PLANNING PROPOSAL CONCEPT PLANS
5. PLANNING PROPOSAL ECONOMIC APPRAISAL ADVICE, JLL ADDENDUM LETTER AND CBRE ADDENDUM LETTER
6. WILLOUGHBY LOCAL PLANNING PANEL RECORD OF ADVICE 30 MARCH 2021
(ATTACHMENTS 2 – 6 INCLUDED IN ATTACHMENT BOOKLET 2)

RESPONSIBLE OFFICER: CHRIS BINNS – ACTING PLANNING & INFRASTRUCTURE DIRECTOR

AUTHOR: CRAIG O'BRIEN – STRATEGIC PLANNER

CITY STRATEGY OUTCOME: 3.5 – MAINTAIN QUALITY OF LIFE BY BALANCING POPULATION GROWTH WITH THE PROVISION OF ASSETS AND SERVICES
5.1 – BE HONEST, TRANSPARENT AND ACCOUNTABLE IN ALL THAT WE DO

MEETING DATE: 12 APRIL 2021

1. PURPOSE OF REPORT

The purpose of this report is to seek endorsement to not forward the Planning Proposal for 45 Victor Street, and 410-416 Victoria Avenue, Chatswood to the Department of Planning, Industry and Environment for a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979* and public exhibition.

Members of the Sydney (North) Planning Panel should retire from Council Chambers during consideration of the Agenda Item.

2. OFFICER'S RECOMMENDATION

That Council:

1. **Not forward the Planning Proposal to the Department of Planning, Industry and Environment seeking a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*, as the Planning Proposal:**
 - a) **Is a departure from the current planning controls on the site which prohibit residential land use apart from, for the part of the site fronting Victoria Avenue, limited shop top housing with development consent if the ground level and first level of the development are used for the purpose of retail premises or business premises.**

- b) Is inconsistent with the Council endorsed *Chatswood CBD Planning and Urban Design Strategy 2036* which identifies this site as B3 Commercial Core and prohibits residential land use.
 - c) Is inconsistent with the strategic objectives of the *Greater Sydney Region Plan* and the *North District Plan* which encourages protection of the Chatswood CBD commercial core for employment purposes.
 - d) Is inconsistent with the Council endorsed *Chatswood CBD Planning and Urban Design Strategy 2036* which identifies this site as having a maximum height of 7m on the Victoria Avenue frontage, for a minimum setback of 6m, with a possible maximum height of RL 246.8m, an approach to design excellence and specified setbacks and street wall heights.
2. Not support the inclusion of part of Post Office Lane as part of the subject Planning Proposal.
 3. Notify the proponent and Department of Planning, Industry and Environment of Council's decision.

3. BACKGROUND

The *Chatswood CBD Planning and Urban Design Strategy 2036* (CBD Strategy) was endorsed by Council on 26 June 2017, supported by the Greater Sydney Commission on 18 May 2018, and fully endorsed by the Department of Planning, Industry and Environment (DPIE) on 9 July 2020 with qualifications regarding residential land use within the B3 Commercial Core on the eastern side of the North Shore rail line (Discussed below under 4.1 Land Use). Endorsement of the CBD Strategy was further noted by Council on 14 September 2020.

The site has been recommended to be retained as a B3 Commercial Core Zone, with a maximum height of 7m on the Victoria Avenue frontage and a possible maximum height of RL 246.8m for the remainder of the site, and a no maximum floor space ratio. This is subject to the satisfaction of other CBD Strategy requirements. Residential development is not permitted in the Commercial Core under the CBD Strategy.

4. DISCUSSION

The site is located within the existing Chatswood CBD boundary which has been extended in the *Chatswood CBD Planning and Urban Design Strategy 2036* (CBD Strategy).

The Planning Proposal seeks to amend the *Willoughby Local Environmental Plan 2012* (WLEP 2012) as follows:

- Allow shop top housing as an additional permitted use across the site.
- Increase the maximum height to RL 262m across the entire site (with additional 11.7m high roof feature zone) and remove the 7m height limit fronting Victoria Avenue.
- Apply a maximum FSR of 20:1 and include a site specific control requiring a minimum FSR of 8:1 for non-residential uses.

The Planning Proposal is in relation to a proposed amalgamated site, being Lot 1 DP569727 at 45 Victor Street (the old Post Office site), Lot A and B in DP406105 at 410-414 Victoria Avenue and Lot 4 DP82303 at 416 Victoria Avenue, Chatswood. This site area is 2021.72m².

Separating the two land parcels is Post Office Lane, owned by Willoughby City Council. This provides rear service access for the six retail tenancies on 420-430 Victoria Avenue, the former Sydney Water building and former Post Office site and serves as a pedestrian access way to the Chatswood Interchange, including retail tenancies such as Woolworths.

The Planning Proposal also involves part of Post Office Lane, approximately 230m², that connects with Victor Street.

The total site area of the Planning Proposal, including Post Office lane, is 2,255m².

The site is located approximately 100 metres from the Chatswood Transport Interchange in the centre of the Chatswood CBD, with frontages to both Victor Street and Chatswood Mall. Westfield is opposite the site in Victor Street.

Planning Proposal 2016/7 was submitted to Council on 22 December 2016. It contained a Floor Space ratio of 22.4:1, with a residential component of 17.4:1. Council officers indicated to the proponent that this Planning Proposal was not consistent with the CBD Strategy and that a report was being prepared to a Council Meeting in June 2017 to not support further progress. At Mirvac's request, the matter was not reported to Council while options were explored to address the concerns of Council officers, in particular the provision of an entirely commercial proposal as the site is within the B3 Commercial Core.

Planning Proposal 2016/7/A was submitted on 25 September 2020, with this amended Planning Proposal containing a Floor Space Ratio of 20:1, being a residential component of 12:1 and a non-residential component of 8:1.

Council officers provided a preliminary assessment on 28 October 2020 where it was indicated that the amended Planning Proposal was not considered to be consistent with the CBD Strategy. A number of issues were identified, and as a result, it was concluded that this amended Planning Proposal was unlikely to be supported.

The proponent made a further submission dated 23 December 2020 in response to the Council preliminary assessment, however no changes were proposed to the significant issues raised, being the quantum of residential land use proposed on the site in the B3 Commercial Core, the height proposed and the approach to design excellence.

Other issues remain regarding inconsistency with the CBD Strategy, involving setbacks and street frontage heights.

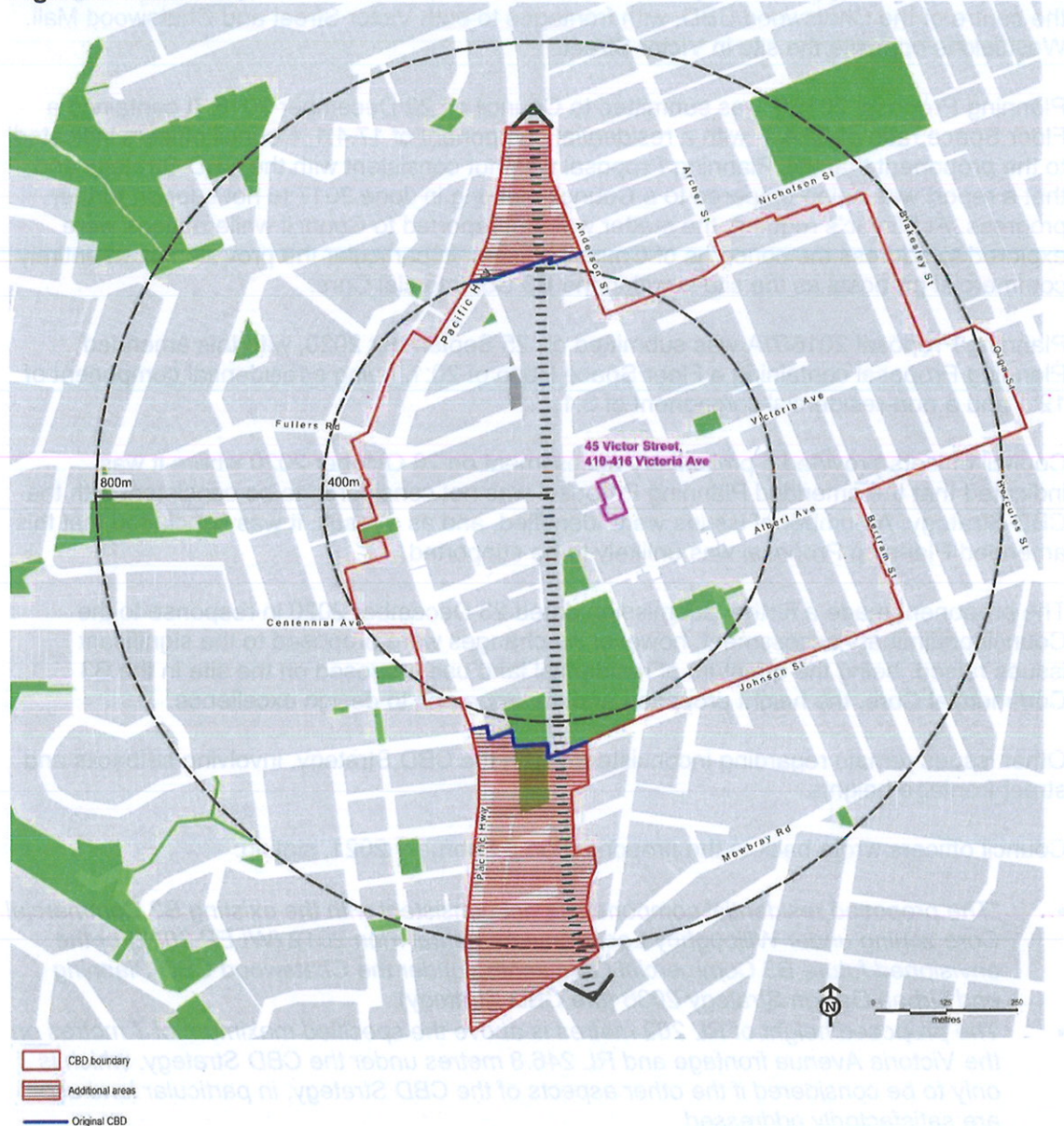
Council officers wrote back to the proponent on 5 February 2021, stating:

- *"The proposed residential component is not consistent with the existing B3 Commercial Core zoning under Willoughby Local Environmental Plan 2012 (WLEP 2012) or the envisioned future B3 Commercial Core zoning under the Chatswood CBD Planning and Urban Design Strategy 2036 (the CBD Strategy).*
- *The proposed height of RL 262 metres is above the specified maximum of 7 metres on the Victoria Avenue frontage and RL 246.8 metres under the CBD Strategy, which is only to be considered if the other aspects of the CBD Strategy, in particular land use, are satisfactorily addressed.*
- *In the same way, the proposed floor space ratio of no maximum under the CBD Strategy is only to be considered if the other aspects of the CBD Strategy are satisfactorily addressed."*

Council officers again invited an amended Planning Proposal, consistent with the CBD Strategy, which would continue to be welcomed on such a key site within the Chatswood CBD B3 Commercial Core zone.

The proponent advised Council officers on 3 March 2021 that the Planning Proposal is unable to be amended any further as the quantum of non-residential uses is at its highest viable outcome supported by residential land use. Furthermore, the proponent advised Council that a Rezoning Review had been lodged with the Department of Planning, Industry and Environment (DPIE).

Figure 1 – Site Plan



Under the *Willoughby Local Environmental Plan 2012* the site is zoned B3 Commercial Core consistent with surrounding land. The development standards for the site permit development to a height of 12 metres on 45 Victor Street and 14 metres on the properties fronting Chatswood Mall, and a floor space ratio of 2.5:1. In addition part of the site, being 410-416 Victoria Avenue, is affected by Schedule 1 'Additional permitted uses' Clause 31 which states:

"Use of certain land at Victoria Avenue, Chatswood

- (1) *This clause applies to land at Victoria Avenue, Chatswood, being "Area 5" on the Special Provisions Area Map.*
- (2) *Development for the purpose of shop top housing is permitted with development consent if the ground level and first level of the development are used for the purpose of retail premises or business premises."*

The part of the site being 410-416 Victoria Avenue is located within Area 5 on the WLEP 2012 Special Provisions Area Map.

The Planning Proposal is accompanied by concept plans showing a conceptual redevelopment plan for the site (**Attachment 4**). Economic advice has been provided in the form of an Economic Appraisal of the proposed redevelopment from Ernst and Young, reports and addendum letters from JLL and CBRE (**Attachment 5**) for the Economic Appraisal and addendum letters from JLL and CBRE) which discusses the economic benefits associated with the redevelopment of the subject site and viability as Mixed Use. Draft Development Control Plan provisions have been provided. The proponent has indicated willingness to negotiate a voluntary planning agreement with Council based on DPIE guidelines, however objections have been raised regarding Council's *Draft Willoughby Planning Agreement Policy*.

A Council detailed assessment and assessment of the DPIE *A Guide to Preparing Planning Proposals* is provided at **Attachments 2 and 3**.

4.1 Land Use

The Planning Proposal involves a land use split of 60% residential and 40% non-residential land uses. On this substantial issue, the Planning Proposal is inconsistent with the expected development under both WLEP 2012 and the CBD Strategy.

The site is currently Zoned B3 Commercial Core under WLEP 2012. Residential is not permitted other than on part of the site, being 410-416 Victoria Avenue, where under Schedule 1, Clause 31, a minimum of two levels of commercial on the ground and first levels, and then residential above is allowed in a limited capacity. It should be noted that development on this basis remains governed by the remaining controls in WLEP 2012 and in particular height (in this case 14 metres). This would result in a development comprising 2 levels of commercial and 2 or 3 levels of residential.

Having regard to WLEP 2012, two previous Planning Proposals lodged in 2012 (PP 2012/2) and 2013 (PP 2013/3) for 45 Victor Street were considered by Willoughby Council. Both sought to add 'shop top housing' as an additional permitted use on the site and increase the maximum height. Council did not support either Planning Proposal and refused both. A major concern of Council was that proposed mixed use development, with residential floor space being dominant, was inconsistent with the city core location and strategic planning policy that seeks to reinforce the commercial role of the CBD core and encourage mixed use development outside but around that core.

The site has been confirmed as B3 Commercial Core in the CBD Strategy, which does not permit residential land use. The future vision established for this site under the CBD Strategy is based on the B3 Commercial Core zone, with the substantial economic benefits associated with a successful employment generating commercial core (attracting A-grade tenants) within the Chatswood CBD. The CBD Strategy provides for residential land use within the Chatswood CBD in the B4 Mixed Use areas that surround the B3 Commercial Core.

It is noted that the DPIE stated in its letter of 9 August 2019:

- *"That mixed use development can be permitted within appropriate parts of the remaining CBD Core area (i.e. east of the North Shore rail line), but only where this results in demonstrable, significant and assured job growth, thereby aligning with the key objective of the District Plan to support job growth.*
- *"That any planning proposals for the CBD Core area do not result in significant traffic or transport impacts, as sites in this part of the CBD are highly accessible to Chatswood rail and bus interchange."*

The conditions of the DPIE endorsement of the Strategy are acknowledged, however it is not considered that the extent of residential proposed aligns with the intent of the DPIE direction. The quantum of residential land use in this Planning Proposal, being 12:1 (approximately 27,563m²) and 32 storeys compared to the non-residential land use of 8:1 (approximately 18,376m²) and 13 storeys is not supported based on strategic planning reasons. Council continues to emphasize that the subject site being located within the Commercial Core, very close to the Chatswood Interchange and other services, is not an appropriate location for this scale of additional residential floor space and associated residential related vehicle movement. It is also considered that the extent of residential related vehicle movement in Victor Street that would result, on a site with such immediate access to the Chatswood Interchange, is also at odds with the intent of the DPIE direction.

The CBD Strategy encourages commercial development within the commercial core, by prohibiting erosion of commercial sites by residential development. The economic work carried out by BIS Oxford Economics, underpinning the CBD Strategy, emphasises the importance of Chatswood's office core in ensuring the future success of the centre. Consultants who assisted in the preparation of the CBD Strategy, also noted that protection of the capacity and capability of the commercial core to grow will be fundamental to Chatswood's successful economic future.

The CBD Strategy aims to assist implementation of the Greater Sydney Commission *Greater Sydney Region Plan* and the *North District Plan*. Particular regard is given to the preservation of the commercial core and employment generation, as well as the provision of mixed use development around this core, all within the identified Strategic Centre of Chatswood. Council has provided for residential within the CBD boundary, in the B4 Mixed Use zone, and believes residential will occur in this area as anticipated.

The Planning Proposal is not considered consistent with these strategic planning documents and the strategic planning work that has resulted in the CBD Strategy and endorsed in Council's *Local Strategic Planning Statement* (LSPS). An alternative vision has been proposed by the proponent which is not supported.

4.2 Height

Under the CBD Strategy a maximum height of 7m on the Victoria Avenue frontage, for a minimum setback of 6m is permitted, with a possible maximum of RL 246.8m on the remainder for a commercial development. The Planning Proposal seeks a RL 262m height control over the entire site (including the Victoria Avenue frontage), with the concept plans showing an additional 11.7m high roof feature zone towards the Chatswood Mall frontage. This would make the proposed building at its highest point RL 273.7m, 26.9m above the maximum height envisioned in the CBD Strategy. This approach to height is not supported by Council as it would create an unacceptable built outcome not envisioned under the CBD Strategy.

4.3 Design Excellence

Council seeks an approach to design excellence and building sustainability that is consistent with the CBD Strategy and Willoughby Council's Design Excellence Policy.

4.4 Post Office Lane

The subject site as proposed is above the 1800m² minimum site area requirement for commercial development in the B3 Commercial Core zone. It is noted that achieving the 1800m² is based on the inclusion of part of Post Office Lane in the development site. It is recommended that Council not support the inclusion of Post Office Lane for the purpose of this Planning Proposal. Should a more acceptable Planning Proposal be submitted, the inclusion of Post Office Lane can be reconsidered.

4.5 Further Issues

A detailed assessment of other aspects of the Planning Proposal has not been undertaken as the development is not supported on the fundamental issue of strategic planning in relation to land use. However, the following concerns are raised:

- Setbacks and street wall heights are to be in accordance with the CBD Strategy to achieve the expected built outcomes
- Floor plate size that would be permitted for commercial development (to encourage commercial development) is proposed for the residential tower component, and is not consistent with the CBD Strategy

At its meeting of 30 March 2021 the Willoughby Local Planning Panel were also of the opinion that this planning proposal did not demonstrate strategic merit and could not therefore be supported for Gateway. See full advice at **Attachment 6**.

As the Planning Proposal is inconsistent with the CBD Strategy and not supported, discussions to progress negotiations regarding a planning agreement have not been held with the proponent.

5. CONCLUSION

The site has been confirmed as B3 Commercial Core in the *Chatswood CBD Planning and Urban Design Strategy 2036* (CBD Strategy) endorsed by Council on 26 June 2017, supported by the Greater Sydney Commission on 18 May 2018, and fully endorsed by the Department of Planning, Industry and Environment (DPIE) on 9 July 2020 with qualifications. The CBD Strategy was also further noted by Council on 14 September 2020.

Under the Council endorsed CBD Strategy B3 Commercial Core zoning, residential development is not a permitted land use. The proponent has proposed residential as an additional land use, with a 60% residential and 40 % non-residential land use split.

The Planning Proposal is inconsistent with WLEP 2012 and the Council endorsed CBD Strategy. It is also considered that the Planning Proposal is inconsistent with the *Greater Sydney Region Plan* and the *North District Plan*, as well as Council's *Local Strategic Planning Statement*.

Council officers have encouraged, and continue to encourage, a Planning Proposal that is consistent with the CBD Strategy, including in regards to land use, height, design excellence, setbacks and street wall height.

Based on the above, it is recommended that this Planning Proposal should not be forwarded to the Department of Planning, Industry and Environment for a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*. It is noted the proponent has informed Council officers that a Rezoning Review will be lodged with DPIE regarding this Planning Proposal.