

**12.9 PLANNING PROPOSAL - 3 MCINTOSH STREET, 2 DAY STREET, 40 AND 42 ANDERSON STREET, CHATSWOOD****ATTACHMENTS:**

1. IMPLICATIONS
2. COUNCIL DETAILED ASSESSMENT
3. COUNCIL LETTER TO PARADE CONSULTING 9 MARCH 2023
4. HONES LAWYERS LETTERS TO COUNCIL 20 MARCH, 20 APRIL AND 7 JUNE 2023
5. LETTER FROM H, J AND R VAKILI TO MAYOR, RECEIVED 27 MARCH 2023
6. COUNCIL RESPONSE ON BEHALF OF MAYOR 3 APRIL 2023
7. COUNCIL LETTERS TO HONES LAWYERS 3 APRIL, 5 MAY AND 21 JUNE 2023
8. PRE-PLANNING PROPOSAL NOTES FOLLOWING MEETING 28 AUGUST 2022
9. PLANNING PROPOSAL CONCEPT PLANS
10. WILLOUGHBY LOCAL PLANNING PANEL RECORD OF ADVICE 11 JULY 2023
11. EMAIL FROM PARADE CONSULTING 26 JULY 2023
12. COUNCIL LETTER TO PARADE CONSULTING 4 AUGUST 2023
13. EMAIL FROM PARADE CONSULTING 10 AUGUST 2023
14. LETTER FROM H AND J VAKILI DATED 15 AUGUST 2023  
(ATTACHMENTS 2 – 14 CONTAINED IN ATTACHMENT BOOKLET 2)

**RESPONSIBLE OFFICER:** HUGH PHEMISTER – PLANNING & INFRASTRUCTURE DIRECTOR

**AUTHOR:** CRAIG O'BRIEN – STRATEGIC PLANNER

**CITY STRATEGY OUTCOME:** 3.7 – PROMOTE HOUSING CHOICE AND AFFORDABILITY

5.4 – ANTICIPATE AND RESPOND TO CHANGING COMMUNITY AND CUSTOMER NEEDS

**MEETING DATE:** 27 NOVEMBER 2023

**1. PURPOSE OF REPORT**

The purpose of this report is to seek endorsement not to proceed with an applicant initiated Planning Proposal applying to land at 3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street, Chatswood.

Members of the Sydney North Planning Panel (SNPP) may wish to retire from the chambers for consideration of this item in order to preserve their right to vote should the matter come before the SNPP in future as a rezoning review.

## 2. OFFICER'S RECOMMENDATION

That Council:

1. **Does not forward the Planning Proposal to the Department of Planning and Environment seeking a Gateway Determination under Section 3.34 of the Environmental Planning and Assessment Act 1979, as the Planning Proposal:**
  - (a) **Is inconsistent with Willoughby Local Environmental Plan 2012 as it does not meet the 10% affordable housing provision requirements of the plan.**
  - (b) **Is inconsistent with the strategic objectives of the Greater Sydney Region Plan and the North District Plan and the relevant directions of Willoughby Council's Local Strategic Planning Statement, which encourages the provision of affordable housing.**
  - (c) **Is inconsistent with the Chatswood CBD Planning and Urban Design Strategy 2036, as expressed in Willoughby Local Environmental Plan 2012 and Willoughby Development Control Plan, by seeking the maximum floor space and height and at the same time a reduced affordable housing rate of 4%.**
  - (d) **Does not provide updated supporting documentation satisfactorily addressing Willoughby Local Environmental Plan 2012 (Amendment 34) and Willoughby Development Control Plan (as updated).**
2. **Notify the proponent of Council's decision.**

## 3. BACKGROUND

The Planning Proposal was lodged on the NSW Planning Portal on 20 December 2022, with the required fees paid on 20 January 2023. The Planning Proposal was subsequently allocated the Council reference number 2023/2 and assessment commenced.

The site is located within the Chatswood CBD boundary identified in the *Chatswood CBD Planning and Urban Design Strategy 2036* (referred to in this report as the 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 and Environment (DPE) on 9 July 2020. Endorsement of the CBD Strategy was further noted by Council on 14 September 2020.

Under the CBD Strategy, the site was recommended as a B4 Mixed Zone with a maximum height of 90 metres and a floor space ratio of 6:1. This zone and maximum controls are subject to the satisfaction of other CBD Strategy key elements and *Willoughby Local Environmental Plan 2012* (WLEP 2012) requirements including affordable housing.

The CBD Strategy has now been incorporated into the comprehensive WLEP 2012 review, endorsed for finalisation at the Council Meeting dated 12 December 2022, and now made by DPE and notified on 30 June 2023 (Amendment 34).

Under WLEP 2012 (Amendment 34), the site is located in the MU1 Mixed Use zone, with a maximum height of 90m, floor space ratio of 6:1 and maps the land within Area 3 of the Affordable Housing Map, which allows the consent authority to impose an affordable housing contribution condition requiring a contribution equivalent to 10% of the residential gross floor area.

A detailed history of the Planning Proposal has been provided in part 4.6 of this report.

## 4. DISCUSSION

### 4.1 Summary

Development within the Chatswood CBD MU1 Mixed Use zone is expected to be in accordance with the elements and vision contained within the CBD Strategy, which have been endorsed by both the Council and Department of Planning and Environment, as well as incorporated into *Willoughby Local Environmental Plan 2012*, Amendment 34, 30 June 2023 (WLEP 2012), and *Willoughby Development Control Plan* as updated (WDCP).

The fundamental issue with Planning Proposal 2023/2 is the variation from 10% affordable housing as required in *Willoughby Local Environmental Plan 2012* to 4%. This Planning Proposal accepts the uplift provided in Amendment 34 with regard to height (90m) and floor space (6:1), and seeks to vary the affordable housing controls by reducing the contribution rate by 6%. This reduction is not supported, for the reasons outlined in Part 4.10 below.

Other CBD Strategy issues, carried through to WLEP 2012 and WDCP, relate to height and floor space being based on the provision of the required 10% affordable housing contribution. In addition, the Planning Proposal does not provide updated documentation satisfactorily addressing *Willoughby Local Environmental Plan 2012* (Amendment 34) and *Willoughby Development Control Plan* (as updated).

The Planning Proposal in its current form is considered to be inconsistent with the strategic objectives of the *Greater Sydney Region Plan* and the *North District Plan* which encourages the provision of affordable housing and consistency with local strategic planning.

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

In the absence of a scheme providing a contribution rate of 10% of the residential GFA towards affordable housing, and having regard to the other issues raised, it is recommended that Planning Proposal 2023/2 should not be forwarded to the Department of Planning and Environment for a Gateway Determination under Section 3.34 of the *Environmental Planning and Assessment Act 1979*.

### 4.2 The Planning Proposal

The Planning Proposal has been lodged by Parade Consulting on behalf of H and J Vakili, R Vakili, and 3 McIntosh P/L.

The overall site which is the subject of this Planning Proposal involves:

- 3 McIntosh Street, being SP 2650.  
Owner: Owners Corp Strata Plan 2650.
- 2 Day Street, being SP 76364.  
Owner: Owners Corp Strata Plan 76364.
- 40 Anderson Street, being SP 19181.  
Owner: Owners Corp Strata Plan 19181.
- 42 Anderson Street, Lot 1 DP 1604.  
Owner: Owners Corp Strata Plan 1604.

The Planning Proposal originally sought to change:

- Zoning from R3 Medium Density Residential to B4 Mixed Use
- Height from 12m to 90m
- Floor Space Ratio from 0.9:1 to 6:1

The Planning Proposal proposed the provision of an affordable housing contribution calculated as 4% of the residential gross floor area.

The detailed history of this Planning Proposal is provided below in Section 4.6 of the Discussion.

Refer to **Table 1** below for a summary of the amendments proposed by Planning Proposal 2023/1 as compared to the current controls under *Willoughby Local Environmental Plan 2012* (Amendment 34).

**Table 1: Summary of Planning Proposal 2023/2 Amendments**

	<b>3 McIntosh St, 2 Day St, 40 and 41 Anderson St</b>	<b>Compliance</b>
<b>Zoning</b>		
<b>Current WLEP 2012</b>	MU1 Mixed Use	
<b>Proposed in Planning Proposal</b>	No change	<b>Yes</b>
<b>Height</b>		
<b>Current WLEP 2012</b>	90m	
<b>Proposed in Planning Proposal</b>	No change	<b>Yes</b>
<b>Floor Space Ratio</b>		
<b>Current WLEP 2012</b>	6:1	
<b>Proposed in Planning Proposal</b>	No change	<b>Yes</b>
<b>Affordable Housing</b>		
<b>Current WLEP 2012</b>	10% of residential GFA	
<b>Proposed in Planning Proposal</b>	4% of residential GFA	<b>No 10% required</b>

The Planning Proposal is seeking to vary the affordable housing requirement from 10% to 4% of gross residential floor area, which is the previous rate that would have applied prior to the commencement of WLEP 2012 as amended by Amendment 34.

The concept plans are at **Attachment 9**.

#### **4.3 Subject Location**

The site has a total area of 3,122m<sup>2</sup>, bounded by Day Street to the north, 38 Anderson Street and McIntosh Street to the south, Anderson Street to the east, and 1 Day Street to the west. There is also a small boundary shared with 1 Cambridge Lane to the south west.

The site is battle axe in shape, primarily located with frontages to Anderson and Day Street, with a smaller frontage also to McIntosh Street. The site contains four properties but does not fully cover the block up to 1 Day Street, with 38 Anderson Street not being part of the Planning Proposal site.

To the north, on the other side of Day Street is 44-52 Anderson Street. A Planning Proposal has been made (27 June 2022) and notified (Amendment 27, 29 July 2022) on that site responding to the *Chatswood CBD Planning and Urban Design Strategy 2036* (the CBD Strategy), with a height of 90m and FSR of 6:1.

To the south, on the other side of McIntosh Street is 3-5 Help Street. A Planning Proposal has been finalised (28 March 2022) and notified (Amendment 23, 13 May 2022) on that site responding to the CBD Strategy, with a height of 90m and FSR of 6:1.

To the east, 40 and 42 Anderson Street is opposite the North Chatswood Conservation Area.

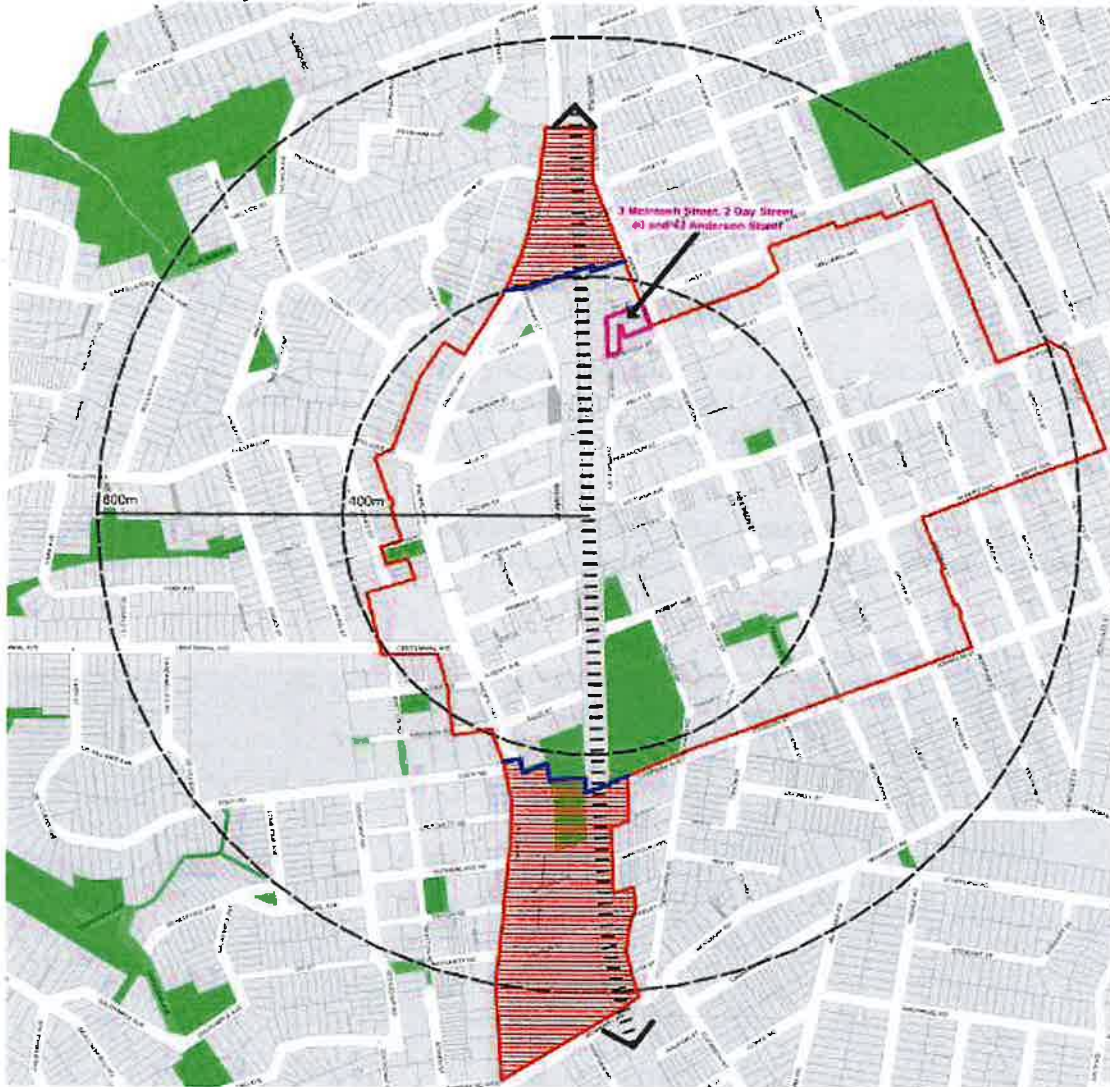
To the west of the site is a four storey medium density residential flat building at 1 Day Street. There is a publicly accessible pathway, located along the boundary of the 1 Day Street site, adjacent this Planning Proposal site running from O'Brien Street to McIntosh Street.

The site is located approximately 350m from the Chatswood Railway Station and Transport Interchange and within the expanded Chatswood CBD boundary identified in the CBD Strategy.

**Figure A – Location Plan**



Figure B – Locality Plan



#### 4.4 Affordable Housing

Under *Willoughby Local Environmental Plan 2012 (Amendment 34)*, (WLEP 2012), which came into effect on 30 June 2023, contributions can be sought for the provision of affordable housing within the Chatswood CBD at a rate of 10% of the residential gross floor area. Affordable housing is addressed under Clause 6.8 and the Affordable Housing Map of WLEP 2012, with the site being located within Area 3 (10%).

Under the comprehensive review of Council's LEP, which began in December 2020 and led to WLEP 2012 (Amendment 34), contributions towards affordable housing was proposed to be increased in some parts of the LGA from 4% to 10%. The subject site, which is located within the Chatswood CBD, was subject to the proposed increase.

In regards to the assessment of Planning Proposal 2023/1, the applicable affordable housing contribution rate is 10% of the total residential gross floor area under the now in force WLEP 2012.

The subject Planning Proposal proposes affordable housing contributions at 4% of total residential gross floor area.

Refer to **Table 2** below for the difference between what affordable housing contributions are required and what is proposed.

**Table 2: Difference between 10% and 4% affordable housing regarding PP 2023/2**

	Existing: 10%	Proposed: 4%	Difference
<b>Indicative yield (dwellings)</b>	162	162	N/A
<b>Maximum residential GFA (5:1)</b>	15,608m <sup>2</sup>	15,608m <sup>2</sup>	N/A
<b>Affordable Housing Requirement</b>	1,560.8m <sup>2</sup>	624.32m <sup>2</sup>	<b>936.28m<sup>2</sup></b>
<b>Indicative yield of affordable units</b>	16	6	<b>10</b>
Based on following assumptions: <ul style="list-style-type: none"> <li>• Exclusions estimated at 20%</li> <li>• Average unit size 80m<sup>2</sup></li> </ul>			

#### 4.5 Department of Planning and Environment Requirements

The Planning Proposal is not considered to be in accordance with the requirements under Section 3.33(2) of the *Environmental Planning and Assessment Act 1979* and the Department of Planning and Environment (August 2023) *Local Environmental Plan Making Guideline* for the reasons indicated below.

#### 4.6 Strategic Considerations

The application is considered to be inconsistent with the strategic objectives of the *Greater Sydney Region Plan* and the *North District Plan* which encourages development to be consistent with strategic planning undertaken by local Councils including the provision of affordable housing.

In regards strategic planning undertaken by Willoughby Council, considerable work has been done since 2016 in the form of *Our Future Willoughby 2032*, the *Willoughby City Local Strategic Planning Statement* (February 2020), the *Chatswood CBD Planning and Urban Design Strategy 2036* (September 2020) (the CBD Strategy), the *Willoughby Housing Strategy 2036* (May 2020) and the *Willoughby Local Environmental Plan 2012* review leading to Amendment 34 (30 June 2023).

The *Greater Sydney Region Plan* (updated June 2018) emphasises the importance of affordable housing in Section 4 'Liveability', 'Housing the City', Objective 11 'Housing is more diverse and affordable'. This strategic document states in regards affordability:

*"Across Greater Sydney, both home renters and purchasers face housing affordability challenges. Greater Sydney has been measured as being one of the least affordable housing markets globally and is the least affordable Australian city. This has been exacerbated in the past five years by rapid home price growth."*

The *North District Plan* identifies principles for housing strategies, including:

*"Affordable rental housing: through housing diversity for those on moderate incomes and affordable rental housing for low and very low-income households."*

*Our Future Willoughby 2032, Community Strategic Plan*, identifies the following community priorities:

- Under Outcome 3 'A City that is Liveable': 3.7 Promote housing choice and affordability.
- Under Outcome 5 'A City that is effective and accountable': Anticipate and respond to changing community and customer needs.

The *Willoughby City Local Strategic Planning Statement* identifies the following priorities for 'Housing the City':

- *"Priority 1 - Increasing housing diversity to cater to families, the aging population, diverse household types and key workers.*
- *Priority 2 - Increasing the supply of affordable housing."*

It also includes an Affordable Housing target of "7-10% GFA with new housing uplift by 2036". The matter of affordable housing is considered to be a clear priority for the City of Willoughby in 2023.

#### **4.7 History of the Planning Proposal 2023/2 and comprehensive WLEP 2012 review, having regard to the issue of affordable housing**

A timeline of events is provided below outlining the history of the Planning Proposal and comprehensive WLEP 2012 review, having regard to the issue of affordable housing.

- **22 August 2018** – A preliminary planning proposal meeting was held, at which time records show that there was discussion between Council and the Proponent regarding providing a 4% affordable housing contribution.
- **14 December 2020** - Council resolved to forward a Council initiated Planning Proposal regarding the comprehensive review of *Willoughby Local Environmental Plan 2012* to the Department of Planning and Environment (DPE) for a Gateway Determination (becoming Planning Proposal 2021/2).
- **30 August 2021** – *Willoughby Affordable Housing Feasibility Report* prepared by SGS Economics and Planning and submitted to DPE to assist in its consideration of proposed affordable housing changes. This report concluded: *"The feasibility analysis has shown that sites in Chatswood centre are likely to be developed with at least a 10 per cent contribution, consistent with the target under the NSW Government's district strategic plan."*
- **24 December 2021** - A Gateway Determination was issued by DPE, enabling exhibition of Planning Proposal 2021/2.
- **5 March and 7 June 2022** - Council initiated Planning Proposal 2021/2 regarding the comprehensive review of *Willoughby Local Environmental Plan 2012* was exhibited, with an affordable housing contribution rate of 10% of residential gross floor area.

All owners were sent a letter informing them of the exhibition period, which stated:

*"The changes to the LEP and DCP are designed to accommodate and plan for future growth. These documents contain the primary planning controls for our area and determine land use, height of buildings, and floor space, amongst a range of other planning controls.*

*The new plans can be viewed on Council's website, and Council will be hosting a range of webinars and information sessions where you can talk directly to Council*



*officers about what it may mean for your local area and how you can provide feedback.”*

Detail on the proposed change to affordable housing was listed on the Council Have Your Say page, located on the Council web site, for the exhibition period and onwards as a record, as follows:

*“Increased affordable housing in new residential developments, from 4% of Gross Floor Area (GFA) to 10%, in line with aspirations in the North District Plan and in recognition of the urgent need for more affordable rental housing in all parts of Sydney.”*

As part of the exhibition material, the increase in affordable housing was also addressed in “*A Guide to Willoughby’s new draft Local Environmental Plan and draft Development Control Plan*”, prepared to assist the community in understanding the proposed changes.

- **20 July 2022** – The proponent attended a second preliminary planning proposal meeting with Council to discuss the controls that would apply to a planning proposal at the site. The proponent’s position is that Council did not mention a requirement to increase the affordable housing contribution from 4% which was proposed, to 10%.
- **28 August 2022** – The proponent had a formal Pre-Planning Proposal Meeting with Council. Notes were provided referring to a minimum requirement of 4% affordable housing. In particular, the notes stated:  
*“A minimum of 4% affordable housing should be provided throughout the development (rather than together) in accordance with Council’s existing LEP and DCP requirements.”*

*“Any additional affordable housing contribution is encouraged as part of an offer to enter a Planning Agreement”.*

The notes also stated:

*“If a Planning proposal is submitted based on these pre Planning Proposal Notes, comprehensive internal consultations will be undertaken, further meetings with the proponent may be required, as well as additional amendments, prior to the submission of a report to Council to determine whether the Planning Proposal should proceed to Gateway and public exhibition.”*

***“Council officers have used their best endeavours to assist you, but please be aware that other issues may arise during the processing of the planning proposal.***

***NO UNDERTAKING OR GUARANTEE CAN BE GIVEN THAT YOUR PLANNING PROPOSAL WILL BE APPROVED TO PROCEED TO A GATEWAY DETERMINATION WHEN IT IS LODGED.”***

Refer to **Attachment 8** for the Pre-Planning Proposal Notes.

**Comment:**

Pre-Planning Proposal Meetings are encouraged by Council officers and Notes are provided to proponents in good faith to assist in the early preparation of planning proposals. The Notes do not establish ongoing controls or cover every matter that may pertain to the future development of a site at the eventual point of planning proposal lodgement – which is unknown by Council officers when the

Notes are written. It is the responsibility of a proponent to be informed of public matters that may impact the preparation of a planning proposal on a site, such as in this case, the concurrent progress of the comprehensive WLEP 2012 review and any proposed changes to controls.

Affordable housing was referred to in the Pre-Planning Proposal Notes as a minimum of 4%. The Notes also state that any planning proposal submitted based on the Notes may be subject to amendments and that no guarantee is given that a submitted planning proposal will be approved. The proposed affordable housing requirement of 10% was public knowledge at the time of the Notes and therefore a consideration in the preparation of the subject planning proposal.

- **7 December 2022** – Agenda for Council Meeting made public prior to 12 December 2022 Council Meeting. An affordable housing requirement of 10% of total residential GFA was one of the proposed changes for Council consideration.

In the Council report, it was stated:

*“There are planning proposals (mainly in Chatswood CBD) that have been progressed in tandem or ahead of this comprehensive LEP review. If they have been lodged before the end of the exhibition period with a 4% agreed rate, it is proposed that rate remains as is.”*

*A provision will be added to the final version of the LEP that will clarify this decision. These Planning Proposals are specified in Attachment 8”*

- **12 December 2022** - Council initiated Planning Proposal 2021/2 was reported to a Council Meeting, supported for finalisation and to be forwarded to DPE to be made. The affordable housing provision of 10% of total residential GFA was supported. The Council initiated Planning Proposal 2021/2 did not include the site the subject of the Subject Planning Proposal on the list of planning proposals to be ‘saved’ and subject to a 4% (rather than a 10%) affordable housing contribution.

A motion was passed (Item 12.11) which included resolution 2:

*“Approve the amendments to the exhibited Draft Local Environmental Plan as outlined in Attachment 8, and forward the combined document to the Department of Planning and Environment for finalisation.”*

The amendments set out in Attachment 8, as adopted by the Council’s resolution and set out in the meeting minutes, included a specific change to the draft instrument. At page 1 of Attachment 8 was the following statement:

*“A savings provision will be added to the final version of the LEP that will clarify the 4% will still apply to site specific Planning Proposals lodged before the making of this LEP. This will mainly apply to sites in Chatswood CBD which have a separate planning proposal.”*

This was further addressed in Recommendation 1(a) in Attachment 8 which said:

*“Recommendation 1(a)*

*Transfer all affordable housing sites from the Special Provisions Area Map to a new Affordable Housing Map with 3 rates of 4%, 7% and 10%, with a savings provision to be included that clarifies the 4% will apply to negotiated planning proposals.”*

- **20 December 2022** - Subject Planning Proposal, with a 4% affordable housing contribution rate, was lodged on NSW Planning Portal.

- **20 January 2023** - Subject Planning Proposal fee paid to Council, identified as Planning Proposal 2023/2, and Council assessment commenced.
- **9 March 2023** - Council sent a letter to the proponent Parade Consulting regarding Planning Proposal 2023/2 (Refer to **Attachment 3**). This letter invited the proponent to either withdraw the Planning Proposal and receive a full refund or to increase the affordable housing provision to 10%. It was also outlined that the proponent's Planning Proposal would be on a very similar timeframe to Council's own Planning Proposal 2021/2.

The letter stated:

*"A position was established in November 2022 that any Planning Proposal lodged after the 5 March and 7 June 2022 exhibition with an affordable housing component of less than 10% is unlikely to be supported as after this exhibition Council's position would be well known."*

- **20 March 2023** - Hones Lawyers sent a letter to Council on behalf of the proponent (Refer to **Attachment 4**). This letter stated:  
*"Our client is concerned at the position taken by Council with regard to the application of a 10% affordable housing requirement ...*

*Our client is not concerned however at the requirement for affordable housing in general and indeed embraces it, rather the concern arises from the reasonable understanding arising from representations made by Council, and the history of the matter, that the affordable housing requirement was to be set at 4% of gross floor area (GFA)."*

The letter concludes by saying that the fairest way to address this is to include a savings provision such that the subject Planning Proposal is excluded from the application of the Council initiated Planning Proposal 2021/2.

- **27 March 2023** – Letter from H, J and R Vakili sent to the Mayor (Refer to **Attachment 5**). This letter stated in regards the 9 March 2023 Council letter:  
*"This letter is in direct conflict with advice that we have in writing from Willoughby Council confirming the 4% affordable housing control for our site on the 28<sup>th</sup> September 2022. We reject that "Council's position would be well known" after exhibition ..."*

**Comment:**

No correspondence was provided by Council dated 28 September 2022. It is assumed the writer is referring to the 28 August 2022 Pre-Planning Proposal Notes. This is the only pre-PP meeting where a fee was paid and Notes were issued by Council.

- **3 April 2023** - Council sent a letter to Hones Lawyers stating the applicability of the 10% affordable housing requirement to PP 2023/2 (Refer to **Attachment 7**) and providing options moving forward. The options proposed were:
  1. Withdraw the planning proposal and receive a full refund;
  2. Revise the planning proposal to include a 10% affordable housing contribution rate; or
  3. Council assesses the planning proposal, which is unlikely to be supported.

- **3 April 2023** – Council sent a letter on behalf of Mayor to H, J and R Vakili, providing the 3 April 2023 Council letter to Hones Lawyers. (Refer to **Attachment 6**)
- **20 April 2023** - Hones Lawyers sent a letter to Council (Refer to **Attachment 4**). This letter stated:  
*"...your letter seems to rely upon "a position established in November 2022". We are unaware of how that "position" was established. It certainly does not appear that comments from the public were sought prior to establish such a position, nor was our client afforded any opportunity to address Council concerning it"*  
*"Irrespective to these matters, our client will not be withdrawing its planning proposal. Rather our client wishes for Council to fairly assess its proposal."*  

This letter repeated the proponent's request for a savings provision to be inserted into the instrument to 'save' planning proposals lodged before the making of Council initiated Planning Proposal 2021/2.
- **5 May 2023** - Council sent a letter to Hones Lawyers (Refer to **Attachment 7**) restating the applicability of the 10% affordable housing requirement to PP 2023/2 and that the PP would be progressed to a Council meeting.
- **7 June 2023** - Hones Lawyers sent a letter to Council (Refer to **Attachment 4**). This letter stated:  
*"we have requested that our client's site be included in the savings provision for Council's planning proposal so that the 10% affordable housing criteria does not apply to its site."*  
*"In the event Council does not agree, then reluctantly our client has instructed us to investigate what legal options it might have to challenge any decision Council may take to not include our client in the savings provisions. In other words, to challenge the making, and decision making process, of Council's planning proposal."*
- **21 June 2023** - Council sent a letter to Hones Lawyers (Refer to **Attachment 7**). This letter stated:  
*"The position outlined in your 7 June 2023 letter is again noted. Council has also considered the final paragraph where you identify the course of action you may take going forwards. Council continues to reaffirm the importance of affordable housing and the relevance of 10% affordable housing provision with regards to Planning Proposal 2023/002. As previously indicated, Council staff will proceed to conclude the assessment and report the Planning Proposal to a Council Meeting for a decision. The proponent will be advised of the meeting date when it has been identified."*
- **30 June 2023** - Comprehensive WLEP 2012 review made and notified on the NSW legislation website as *Willoughby Local Environmental Plan 2012, Amendment 34*.

The Department of Planning and Environment *Plan Finalisation Report PP-2021-6242, Willoughby Local Environmental Plan 2012 (Amendment 34)*, dated June 2023, states the following in regards the consideration of affordable housing:

- "Two site specific planning proposals not supported to remain at 4%*
- *691-699 Pacific Highway, Chatswood; and*
  - *2 Day Street, 3 McIntosh Street and 40-42 Anderson Street, Chatswood*

The Department has received correspondence for the proponents of these sites raising concerns with the application of an affordable housing contribution rate of 10% instead of 4%.

The planning proposal at 691-699 Pacific Highway (PP-2022-4052) was not included on Council's resolution in the list of proposals that were sufficiently advanced to apply the 4% contribution rate.

It is Council's position that previously negotiated planning proposals lodged before the exhibition of the Comprehensive LEP review would be subject to the 4% affordable housing contribution rate and this proposal will be subject to the new 10% affordable housing contribution rate.

The planning proposal at 2 Day Street, 3 McIntosh Street and 40-42 Anderson Street (PP-2022-4316) is in a similar situation to the planning proposal at 691-699 Pacific Highway. Council has the same position on this planning proposal and it will be subject to a 10% affordable housing contribution rate."

- **26 July 2023** – Email to Council from Parade Consulting (Refer to **Attachment 11**)

This email stated:

"With regards to our Planning Proposal... we seek confirmation of the following:

1. We understand that there is currently a difference of opinion between Council and the Project Proponent (our Client) with regards the value of the affordable housing component that should be applied to the site – and at this time (with regards to this email) I wish to park that issue to the side – for separate resolution in due course.

To be clear, this affordable housing component issue is not the subject matter that this email is attempting to address or resolve in any way..."

- **2 August 2023** – Development Application lodged (DA 2023/194) on subject site proposing a mixed use development similar to the Planning proposal concept plans with 4% affordable housing.
- **4 August 2023** – Council sent a letter to Parade Consulting (Refer to **Attachment 12**) In addition to the fundamental issue of affordable housing, in response to the question in the 26 July 2023 email from Parade Consulting, five other issues were identified. These were:
  - All 1:1 non-residential floor space is to be located at ground level or above.
  - Based on a 1.5m tower setback for Tower 2 (the western tower) to the boundary with 38 Anderson Street, then the Tower 2 overall maximum height is to be 30m.
  - All loading and unloading is to be located within basement levels, with non-residential floor space to be maximised at ground level.
  - Addressing the issue of amalgamation with 38 Anderson Street.
  - Documentation to be updated to address WLEP 2012 (Amendment 34) and WDCP (as updated).

This letter also stated:

"In your email dated 26 July 2023, you state:

*"Please advise accordingly if our planning proposal is currently adequate and sufficient to proceed with regards to any and all detail (other than the affordable housing discrepancy)"*

*In response, and excluding the fundamental affordable housing issue as requested, please note the following issues with this Planning Proposal and the accompanying documentations...*

*...To be clear and to assist you going forwards, there is a risk involved in updating the Planning Proposal to address the issues ... while not satisfactorily addressing the fundamental issue of affordable housing.*

*You are encouraged to satisfactorily address the fundamental issue as a priority, as already outlined in correspondence, as well as addressing the other issues identified in this letter..."*

- **10 August 2023** – Email from Parade Consulting (Refer to **Attachment 13**)  
The email outlined that four of the abovementioned five issues were able to be addressed and that amended plans would be prepared. In regards the issue of amalgamation, the email stated:

*"At this time we are unable to include 38 Anderson Street Chatswood into our consolidated project site or this current Planning Proposal."*

On the issue of affordable housing, this email stated:

*"Further correspondence will shortly be provided relating to the Affordable Housing discrepancy."*

- **15 August 2023** – Letter sent from H and J Vakili to Council (Refer to **Attachment 14**)

This letter stated:

*"I trust that you will appreciate my frustration that all of our feasibility and amalgamation were carried out based on ... advice of 4%.*

*I sincerely hope that you can see our being caught in this administrative mishap and I desperately hope that you would kindly put a rather positive comment with regards to this matter through to the Council meeting in which our Planning Proposal is going to be discussed."*

- **17 August 2023** – Email from Council to H and J Vakili, and Parade Consulting  
This email stated:  
*"The letter from H and J Vakili dated 15 August 2023 and email from Parade Consulting dated 10 August 2023 will be part of the consideration of this Planning Proposal at a future Council Meeting."*
- **28 August 2023** – A report on the finalisation of *Willoughby Local Environmental Plan 2012* and *Willoughby Development Control Plan* was considered at a Council Meeting. It was resolved:  
  
"That Council:  
1. Note the making of the new *Willoughby Local Environmental Plan* (known as *Willoughby Local Environmental Plan 2012 – Amendment 34*) and *Willoughby Development Control Plan 2023*."
- **31 August 2023** – A cover sheet and plans were submitted to address the Council letter dated 4 August 2023. The amendments are as follows:

- All 1:1 non-residential floor space has been located at ground level or above.
- Eastern portion of Tower 2 (Western Tower) setback has been increased to 3m.
- All loading and unloading has been located within basement levels, with non-residential floor space to be maximised at ground level.

In regards to the amalgamation with 38 Anderson Street, the proponent has advised:

*"Whilst this outcome is clearly desirable, we are not currently in a position to offer this. We are still pursuing amalgamation of the total site and will update Council if and when this situation changes."*

In regards to the provision of relevant documentation to address the above amendments, WLEP 2012 (Amendment 34, dated 30 June 2023) and WDCP and the revised car parking rates (as updated 31 July 2023), the proponent has advised:

*"The Planning Proposal documentation will be updated to address the revised carparking rates."*

**Comment:**

The assessment of this Planning Proposal has been based on the amended documentation (including amended plans) received by Council on 31 August 2023. Concern remains regarding the exclusion of 38 Anderson Street from the Planning Proposal site, and the non-provision of the requested documentation

- **8 September 2023** – Online meeting between Council officers and M Hurst, H and R Vakili.  
Positions of proponent and Council officers explained.
- **25 September 2023** - Council officers made aware of progress on possible amalgamation of 38 Anderson Street. However the Planning Proposal was unchanged in this regard.
- **5 October 2023** – Stage 1 Concept Development Application lodged (DA 2023/276) for demolition of existing structures and approval of a Building Envelope containing multistorey mixed use development with, basement car parking, and related landscaping and associated works. This application was lodged by 3 McIntosh Pty Ltd and involved 38 Anderson Street.
- **20 November 2023** – Letter from Parade Consulting stating that the proponent / applicant was now 3 McIntosh Pty Ltd, with the contact being Mecone.

A more detailed history is provided in **Attachment 2 – Detailed Assessment**.

**4.8 Other Planning Proposals involving Parade Consulting as proponent, acting on behalf of H, J and R Vakili and 3 McIntosh Pty Ltd**

The proponent, being Parade Consulting acting on behalf of H, J and R Vakili and 3 McIntosh Pty Ltd, has elected to progress a planning proposal at the same time as Council has been progressing the comprehensive WLEP 2012 review. The proponent has had two planning proposals progress to being made and gazetted as follows:

- **3-5 Help Street Chatswood**
  - Planning Proposal 2017/8 (Council reference) lodged 19 December 2017.
  - Supported for referral to Gateway at Council Meeting 11 February 2019.
  - Gateway Determination issued by DPE 24 November 2020.

- Exhibition 24 March to 21 April 2021, and again from 3 to 21 June 2021.
- Made at the Council Meeting 28 March 2022.
- Gazetted as Amendment 23 to WLEP 2012 on 13 May 2022.
- 58 Anderson Street Chatswood
  - Planning Proposal 2018/1 (Council reference) lodged 22 January 2018.
  - Supported for referral to Gateway at Council Meeting 12 November 2018.
  - Gateway Determination issued by DPE 22 January 2021.
  - Exhibition 22 April to 20 May 2021.
  - Made at the Council Meeting 3 November 2021.
  - Gazetted as Amendment 18 to WLEP 2012 on 4 March 2022.

These two planning proposals were supported with a 4% affordable housing provision, as all were lodged, exhibited, made and gazetted prior to the comprehensive WLEP 2012 review exhibition from 5 March to 7 June 2022.

#### **4.9 Planning Proposals eligible for 4% affordable housing and submitted based on the CBD Strategy**

A total of thirteen planning proposals within the Chatswood CBD Mixed Use zone and submitted based on the CBD Strategy have been made and gazetted with 4% affordable housing. Of these thirteen, the last planning proposal to be lodged prior to 7 June 2022 was:

- 10 Gordon Avenue and 15, 17 and 19 Nelson Street Chatswood:
  - Planning Proposal 2022/3 (Council reference) submitted on NSW Planning Portal 21 May 2022 and lodged with Council 2 June 2022.
  - Supported for referral to Gateway at Council Meeting 12 December 2022.
  - Exhibition from 30 March to 27 April 2023.
  - Made at the Council Meeting 26 June 2023.
  - Gazetted as Mapping Amendment No. 3 to WLEP 2012 on 25 August 2023.

There are two other planning proposals submitted prior to the conclusion of the exhibition period, and are currently under assessment, which will also be considered with an affordable housing provision of 4%, being:

- PP 2020/6 (1 - 13 Spring Street, 56 – 76 Archer Street, 35 Albert Avenue Chatswood).
- PP 2022/1 (641-653 Pacific Highway and 655A Pacific Highway Chatswood).

#### **4.10 CBD Strategy, WLEP 2012 and WDCP**

The CBD Strategy 35 Key Elements have been incorporated, as appropriate, into *Willoughby Local Environmental Plan 2012 (WLEP)*, Amendment 34, made and notified on 30 June 2023 and *Willoughby Development Control Plan* (endorsed by Council and updated accordingly).

Council does not consider there to be sufficient consistency between the concept plans submitted with the planning proposal and the CBD Strategy, WLEP 2012 and WDCP to justify amending the current planning controls as proposed. As discussed above, particular concern is raised regarding the issue of affordable housing. In regards the CBD Strategy, concern is raised with Key Elements 13, 14 and 20, as detailed below:

- Key Element 13 and floor space ratio  
The proposed 6:1 FSR is consistent with the CBD Strategy FSR maximum for the site, however, within that maximum, an affordable housing component of 10% is required in accordance with Amendment 34 to WLEP 2012.  
Under WLEP 2012, floor space ratio is addressed in Clause 4.4 and the Floor Space Ratio Map.



- Key Element 14 and affordable housing  
Affordable housing is provided within the maximum floor space ratio (4%), which is not at the required % of GFA under the new WLEP 2012 (10%).  
Under WLEP 2012, affordable housing is addressed in Clause 6.8 and the Affordable Housing Map.
- Key Element 20 and height  
To achieve the height permitted under the CBD Strategy, the other Key Elements are required to be satisfied. In addition, the requirements of *Willoughby Local Environmental Plan 2012* (WLEP 2012) are also to be satisfied. Particular attention is drawn to Key Element 28 and affordable housing.  
Under WLEP 2012, height is addressed in Clause 4.3 and the Height of Buildings Map.

Furthermore although the minimum lot size is achieved, the inclusion of 38 Anderson Street is strongly encouraged as part of an amalgamated site, in order to achieve a comprehensive approach to planning for this block (up to the 1 Day Street western boundary), and to remove complications such as irregular shaped boundaries with neighbouring properties.

#### **4.11 Matters to be addressed in this Planning Proposal**

As noted above in the Officers recommendation, this Planning Proposal is not supported based on the fundamental issue of inadequate provision of affordable housing contributions, with the variation of 6% (from 10% to 4%) not supported.

As can be seen in the correspondence exchanged on behalf of the proponent and Council, the proponent has consistently sought for the Planning Proposal to be subject to a 4% affordable housing contribution rate, rather than the 10% that applies under WLEP 2012 (Amendment 34). The proponents position appears to be that:

- they were led to believe that a 4% affordable housing contribution was acceptable, as a result of statements made (or not made) by Council officers as part of pre-lodgement meetings;
- they believe the Council's resolutions at the 12 December 2022 meeting reflected an intention by the Council to save any planning proposals lodged before the making of the comprehensive WLEP review instrument (rather than those lodged prior to the close of the relevant exhibition period); and
- they say the Planning Proposal was substantially advanced prior to the making of WLEP 2012 (Amendment 34) and so the Council should apply the 4% contribution rate, rather than the increased 10% rate.

Council's correspondence in response identifies that Council staff disagrees with the position articulated by the proponent including because:

- statements made during pre-Planning Proposal meetings or other meetings or correspondence are not binding and are only intended to assist proponent's in preparing documentation;
- the proponent elected to progress the Planning Proposal alongside the Council's comprehensive LEP review;
- the proponent was aware of the exhibition of the comprehensive LEP review package which did not identify the site as being 'saved' and subject to a 4% contribution rate; and
- any statements of intention are only reflective of the Council's intention at that time and do not bind the position of Council at future times.

However, given that the Planning Proposal is now before Council for the purpose of considering whether to forward the Planning Proposal to the Department of Planning and

Environment to seek a Gateway Determination, it is open to the Council to consider this issue afresh.

In this regard, and having considered the correspondence exchanged and the position of the proponent anew, the position remains that the Planning Proposal cannot be supported unless it makes provision for affordable housing contributions at the rate of 10%, consistent with WLEP 2012 (Amendment 34), for the reasons summarised above.

Concern remains with 38 Anderson Street not being amalgamated with the Planning Proposal site to provide a comprehensive solution for this block.

In addition, the other matter in this Planning Proposal yet to be satisfactorily addressed is the non-provision of updated documentation to address WLEP 2012 (Amendment 34) and WDCP (as updated).

#### **4.12 Willoughby Local Planning Panel (WLPP)**

On 11 July 2023, the WLPP considered a number of issues in its review of PP-2023/2: 3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street, Chatswood including:

- *“compliance with the strategic framework,*
- *Percentage of affordable housing to be provided,*
- *History of Planning Proposal 2023/2 and comprehensive WLEP 2012 review – resulting in WLEP 2012 Amendment 34,*
- *Amalgamation with 38 Anderson Street, and*
- *Inconsistency with CBD Planning and Urban Design Strategy 2036 and Willoughby Development Control Plan requirements.”*

In regards PP-2023/1, the WLPP advised Council that:

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

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

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

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

Refer to **Attachment 10** for the full WLPP Record of Advice.

The provision on amended plans on 31 August 2023 does not change the above WLPP advice to Council.

## 5. CONCLUSION

Planning Proposal 2023/2 at 3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street, Chatswood, has been assessed and is not recommended to proceed to Gateway as it:

- (a) Is inconsistent with Willoughby Local Environmental Plan 2012 as it does not meet the 10% affordable housing provision requirements of the plan.
- (b) Is inconsistent with the strategic objectives of the Greater Sydney Region Plan and the North District Plan and the relevant directions of Willoughby Council's Local Strategic Planning Statement, which encourages the provision of affordable housing.
- (c) Is inconsistent with the Chatswood CBD Planning and Urban Design Strategy 2036, as expressed in Willoughby Local Environmental Plan 2012 and Willoughby Development Control Plan, by seeking the maximum floor space and height and at the same time a reduced affordable housing rate of 4%.
- (d) Does not provide updated supporting documentation satisfactorily addressing Willoughby Local Environmental Plan 2012 (Amendment 34) and Willoughby Development Control Plan (as updated).

## ATTACHMENT 1

IMPLICATIONS	COMMENT
<b>City Strategy Outcome</b>	3.7 – Promote housing choice and affordability 5.4 – Anticipate and respond to changing community and customer needs
<b>Business Plan Objectives, Outcomes / Services</b>	The Planning Proposal, which proposes a 4% affordable housing provision, is not consistent with the new <i>Willoughby Local Environmental Plan 2012</i> (WLEP 2012). In addition the Planning Proposal is not consistent with the <i>Chatswood CBD Planning and Urban Design Strategy 2036</i> (the CBD Strategy), which anticipates an affordable housing provision in this location of 10% consistent with WLEP 2012.
<b>Policy</b>	The <i>Chatswood CBD Planning and Urban Design Strategy 2036</i> 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 and Environment (DPE) on 9 July 2020 with qualifications, and noted by Council on 14 September 2020. The CBD Strategy aims to assist implementation of the Greater Sydney Commission <i>Greater Sydney Region Plan</i> , the <i>North District Plan</i> and the <i>Willoughby Council Local Strategic Planning Statement</i> (LSPS).
<b>Consultation</b>	In line with the normal Council process, this Planning Proposal has not been publicly exhibited. Furthermore, the Planning Proposal is not recommended for public exhibition as it is not supported.
<b>Resource</b>	No additional resources have been used to prepare this report beyond existing operational budgets.
<b>Risk</b>	The approval of this Planning Proposal would undermine <i>Willoughby Local Environmental Plan 2012</i> (WLEP) and the required affordable housing contribution rate of 10%.
<b>Legal</b>	The Planning Proposal should be consistent with <i>Willoughby Local Environmental Plan 2012</i> , the endorsed <i>Willoughby Council Local Strategic Planning Statement</i> and <i>Chatswood CBD Planning and Urban Design Strategy 2036</i> .
<b>Legislation</b>	Under <i>Environmental Planning and Assessment Act 1979</i> provisions.
<b>Budget/Financial</b>	Under WLEP 2012, 10% of the gross floor area of residential development in this location is required to be dedicated to Council and then provided for use as affordable housing in perpetuity. The proposed rate of 4% towards affordable housing is therefore contrary to this requirement.