

12 REPORTS TO COUNCIL**PLANNING & INFRASTRUCTURE DIRECTORATE****12.9 PLANNING PROPOSAL - 3 MCINTOSH STREET, 2 DAY STREET, 40 AND 42 ANDERSON STREET, CHATSWOOD****ATTACHMENTS:**

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DETAILED ASSESSMENT

PLANNING PROPOSAL 2023/2

3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street, Chatswood

The Site

The site has a total area of 3,122m², 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.

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

The site is located approximately 350m from the Chatswood Railway Station and Transport Interchange and within the expanded Chatswood CBD boundary identified in the *Chatswood CBD Planning and Urban Design Strategy 2036* (the CBD Strategy). Refer below to **Figure A – Location Plan**.

Figure A – Location Plan



The four sites contain three storey residential apartment buildings.

Under *Willoughby Local Environmental Plan 2012* (WLEP 2012) the site is zoned R3 Medium Density Residential, with a maximum height of 12m and Floor Space Ratio of 0.9:1.

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

The Locality

To the north, on the other side of Day Street is 44-52 Anderson Street. A Planning Proposal has been finalised (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, part of the site is opposite the North Chatswood Conservation Area and 39 Anderson Street.

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, running from O'Brien Street to McIntosh Street adjacent this Planning Proposal site.

Background

The *Chatswood CBD Planning and Urban Design Strategy 2036* (the 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 and Environment (DPE) 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. Endorsement of the CBD Strategy was further noted by Council on 14 September 2020.

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

The CBD Strategy has been incorporated into the comprehensive WLEP 2012 review, supported for finalisation at the Council Meeting dated 12 December 2022, and made 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.

Planning Proposal 2023/2

The Planning Proposal was originally submitted seeking to:

- Change the zoning from R3 Medium Density Residential to B4 Mixed Use
- Increase the permissible building height from 12m to 90m.
- Increase the 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.

Following WLEP 2012 (Amendment 34, 30 June 2023), the site has the following controls:

- A zoning of MU1 Mixed Use.
- A building height maximum of 90m.
- A floor space ratio maximum of 6:1.
- An affordable housing requirement of 10% of the residential gross floor area.

Therefore the submitted Planning Proposal is now seeking:

- To vary the affordable housing requirement from 10% to 4%.

The proposed amendments to WLEP 2012 are detailed in Table 1 below.

Table 1 – Summary of Planning Proposal 2023/2 Amendments

	3 McIntosh Street, 2 Day Street, 40 and 42 Anderson Street	Compliance
Zoning		
Current WLEP 2012	MU1 Mixed Use	
Proposed in Planning Proposal	No change	Yes
Floor Space Ratio		
Current WLEP 2012	6:1	
Proposed in Planning Proposal	No change	Yes
		Note: A 6:1 FSR is consistent with the CBD Strategy, but within that maximum, an affordable housing component of 10% is to be provided in accordance with Amendment 34 to WLEP 2012.

<p>Height</p> <p>Current WLEP 2012</p> <p>Proposed in Planning Proposal</p>	<p>90m</p> <p>No change</p>	<p>Yes</p> <p>Note: As stated in CBD Strategy Key Element 20 (and updated WDCP): <i>“Achievement of nominated height maximums will depend on addressing site constraints, surrounding context and other aspects of this Strategy in addition to satisfying SEPP 65 and Apartment Design Guidelines.”</i></p> <p>Refer to CBD Strategy discussion below under Key Element 14 (affordable housing) and 28 (setbacks).</p>
<p>Affordable Housing</p> <p>Current WLEP 2012</p> <p>Proposed in Planning Proposal</p>	<p>10% of total residential GFA</p> <p>4%</p>	<p>No</p> <p>The Planning Proposal provides 4% affordable housing.</p> <p>10% is to be provided in accordance with Amendment 34 to WLEP 2012.</p> <p>Refer to discussion below under history of Planning Proposal and comprehensive WLEP 2012 review and Key Element 14.</p>

Concept plans show the potential redevelopment of the entire site as follows:

- Two storey non-residential podium
- Two residential towers above
- Tower 1 – Eastern Tower (towards Anderson St and Day St corner)
 - Height: 90m (28 storeys in total).
 - Landuse

- Retail ground floor
- Commercial Level 1
- 25 storeys residential
- 1 roof top level
- o Tower 1 setbacks and street wall heights
 - Ground level setback to Anderson Street: 3m
 - Ground level setback to Day Street: Nil
 - Ground level setback to 38 Anderson Street: Between Nil and 3m

 - Street wall to Anderson Street: 9.3m
 - Street wall to Day Street: 9m
 - Street wall to 38 Anderson Street: 11.7m

 - Tower setback to Anderson Street: 1.5m (total 4.5m when ground level setback included)
 - Tower setback to Day Street: 4.5m
 - Tower setback to 38 Anderson Street: 9m and above
- o Floor plate size: Between 459m² and 489m²

- Tower 2 – Western Tower (towards Day Street and 1 Day Street corner)
 - o Height: 58.6m (18 storeys)
 - Retail ground floor
 - Commercial Level 1
 - 15 storeys residential
 - 1 roof top level
 - o Tower 2 setbacks and street wall heights
 - Ground setback to Day Street: Nil
 - Ground setback to 38 Anderson Street: Between 1.5m and 6m
 - Ground setback to western boundary with 1 Day Street (and public pathway): Between 4m and 5m

 - Street wall to Day Street: 11m
 - Street wall to 38 Anderson Street: 11.2m
 - Street wall to western boundary with 1 Day Street (and public pathway): 11.2m

 - Tower setback to Day Street: 5.5m
 - Tower setback to 38 Anderson Street: 3m
 - Tower setback to western boundary with 1 Day Street (and public pathway): 5m
 - o Floor plate size: Between 14m² and 189m²

- Total FSR
 - o Total: 18,730m²
 - Retail and Commercial: 3,122m² (1:1)
 - Residential: 15,608m² (5:1)
 - Total number of residential apartments: 162

- The proponent identifies public benefits as follows:
 - o Publicly accessible open space at ground level.

- The 5m wide setback on the western boundary is adjacent the existing public pathway on 1 Day Street.
- Car Parking and loading
 - All vehicle access, including loading, to site via Day Street.
 - All car parking at basement level
 - All loading at basement level.

The Concept Plans are at **Attachment 9**.

A Voluntary Planning Agreement letter of offer has also been received by Council.

Discussion

A) History of Planning Proposal 2023/2 and comprehensive WLEP 2012 review – having regard to the issue of affordable housing

A timeline of events is provided below, together with excerpts of letters sent.

- **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 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 increase in 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."

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. Fee receipt dated 23 January 2023.
- **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 consultation:

"we have continued to arrange and pay for pre-PP meetings."

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 28th September 2022. We reject that "Council's position would be well known" after exhibition"

The letter sought *"support for a comprehensive departmental review of Willoughby Council's current housing affordability policy so that clarity may be provided to all affected stakeholders."*

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.

This letter also stated:

"We note and acknowledge the work carried out by your client to date. The preparation of Planning Proposals (PPs) take time and during that process certain benchmarks change. In this case it has been the parallel processing of our comprehensive Local Environmental Plan (LEP) which was exhibited from 5 March until 7 June 2022."

All property owners were notified of the exhibition of the draft LEP and Council carried out an extensive process to promote the exhibition. Any ownership of land involving your client by March 2022 would have resulted in the receipt of a letter from Council as we consulted with every ratepayer. The exhibition material clearly stated the affordable housing rate was being increased to 10% in the Chatswood CBD.

The Pre-Planning Proposal Meeting Notes of August 2022 were provided in good faith and are only relevant at the date they are issued. Such notes do not establish ongoing controls.

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. The point is made that Council needs to provide a cut-off point from 4% to 10% affordable housing provision at some stage in the process of progressing the comprehensive LEP."

The letter concluded:

"We are encouraged that your client embraces the need to provide affordable housing. We hope that we can work with your client to provide a resultant development which not only provides a benefit for the developer but also contributes such an important housing benefit for the Willoughby community."

- **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**).
This letter stated:
"The position outlined by you and the intention of your client to not withdraw the Planning Proposal is noted."

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."

- **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.
The positions of the proponent and Council officers were further 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.
- **3 October 2023** – Prelodgement development application form received involving the subject site and 38 Anderson Street, proposing a mixed use development with 4% affordable housing.
- **20 November 2023** – Letter from Parade Consulting stating that the proponent / applicant was now 3 McIntosh Pty Ltd, with the contact being Mecone.

B) 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:

- 58 Anderson Street Chatswood
 - Planning Proposal 2018/1 (Council reference) lodged 22 January 2018.
 - Planning Proposal 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.
 - Planning Proposal made at the Council Meeting 3 November 2021.
 - Gazetted as Amendment 18 to WLEP 2012 on 4 March 2022.
- 3-5 Help Street Chatswood
 - Planning Proposal 2017/8 (Council reference) lodged 19 December 2017.
 - Planning Proposal 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.
 - Planning Proposal made at the Council Meeting 28 March 2022.
 - Gazetted as Amendment 23 to WLEP 2012 on 13 May 2022.

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

C) 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).

D) CBD Strategy, WLEP 2012 and WDCP

Discussion of the Planning Proposal is based on the 'Key Elements of Future LEP and DCP Controls' contained in the CBD Strategy dated September 2020, listed 1 to 35, with comments provided. These 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). Any mention of the B4 Mixed Use zone should be read as MU1 Mixed Use under WLEP 2012 (Amendment 34).

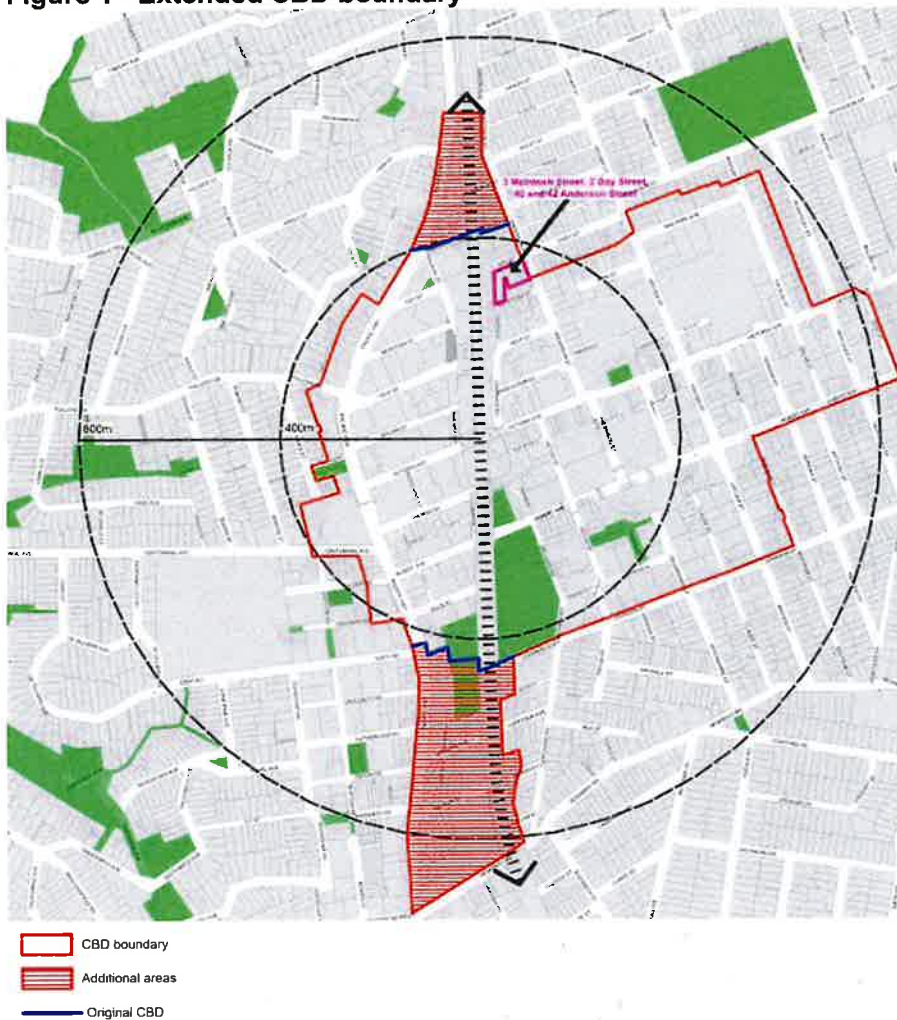
CBD Boundary

Key Element 1. The Chatswood CBD boundary is expanded to the north and south as per Figure 1 to accommodate future growth of the centre.

Comment

The subject site is located within the existing and proposed Chatswood CBD boundary in the CBD Strategy, as shown below in **Figure 1 - Extended CBD boundary**.

Figure 1 - Extended CBD boundary



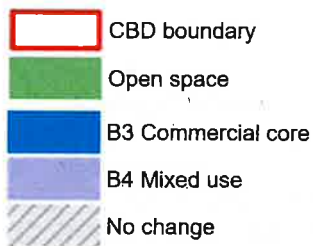
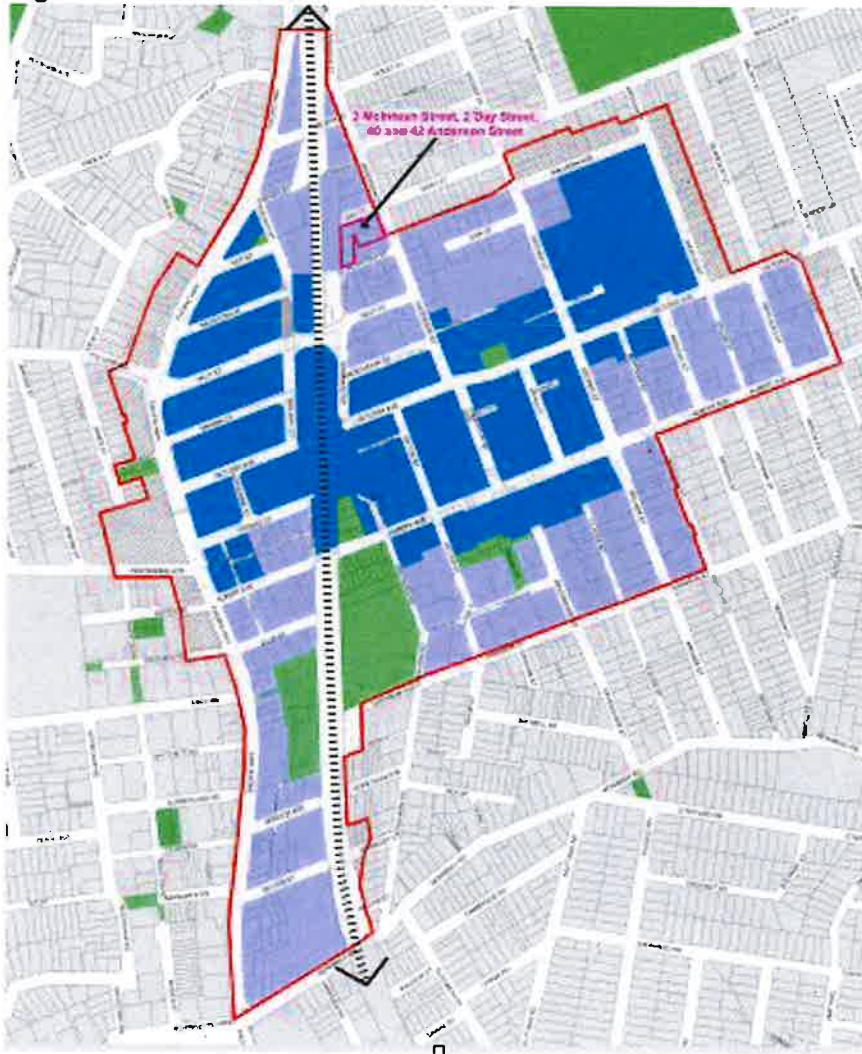
Land Use

- Key Element 2.** Land uses in the LEP will be amended as shown in Figure 2, to:
- (a) Protect the CBD core around the Interchange as commercial, permitting retail throughout to promote employment opportunities (with no residential permitted).
 - (b) Enable other areas to be mixed use permitting commercial and residential.

Comment

The subject site is located in that part of the Chatswood CBD identified as Mixed Use, meaning part commercial and part residential. Refer below to **Figure 2 – Land use**.

Figure 2 – Land use



The concept plans propose a Mixed Use development, with retail on the lower ground and ground floors, and commercial development on level 1 (total being 1:1), with residential on level 2 and above (total being 5:1).

Under WLEP 2012; Amendment 34, the site has been identified on the Land Zoning Map as MU1 Mixed use.

Key Element 3. The existing DCP limits on office and retail use in parts of the Commercial Core to be removed.

Comment

This Key Element is not applicable to the Planning Proposal as the site is not located within the Commercial Core zone.

Key Element 4. Serviced apartments to be removed as a permissible use from the B3 Commercial Core zone.

Comment

This Key Element is not applicable to the Planning Proposal as the site is not located within the Commercial Core zone.

Planning Agreements to fund public domain

Key Element 5. Planning Agreements will be negotiated to fund public domain improvements.

Comment

No discussion is provided as the Planning Proposal is not supported.

Key Element 6. A new Planning Agreements Policy will apply and be linked to a contributions scheme that will provide the public and social infrastructure in the Chatswood CBD necessary to support an increased working and residential population.

The scheme would:

- a) Apply to residential uses.**
- b) Apply to commercial uses above 10:1 FSR.**
- c) Operate in addition to any adopted Section 7.11 or 7.12 contributions scheme and separate from Affordable Housing requirements within Willoughby Local Environment Plan (WLEP).**
- d) Contribute to public domain improvements in the centre (including streets and parks) that would enhance amenity and support residential and commercial uses.**

Comment

No discussion is provided as the Planning Proposal is not supported.

Key Element 7. All redevelopments in the Chatswood CBD should contribute to public art in accordance with Council's Public Art Policy.

Comment

No discussion is provided as the Planning Proposal is not supported.

Design Excellence and Building Sustainability

Key Element 8. Design excellence is to be required for all developments based on the following process:

- a) A Design Review Panel for developments up to 35m high.**
- b) Competitive designs for developments over 35m high.**

Comment

No discussion is provided as the Planning Proposal is not supported.

Key Element 9. Achievement of design excellence will include achievement of higher building sustainability standards.

Comment

No discussion is provided as the Planning Proposal is not supported.

Key Element 10. The Architects for design excellence schemes should be maintained through the development application process and can only be substituted with written agreement of Council.

Comment

No discussion is provided as the Planning Proposal is not supported.

Floor Space Ratio (FSR)

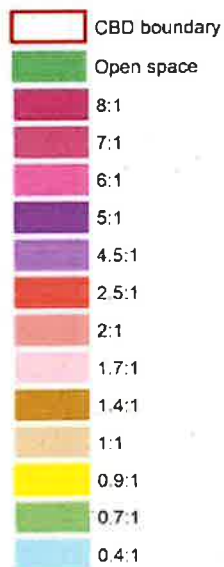
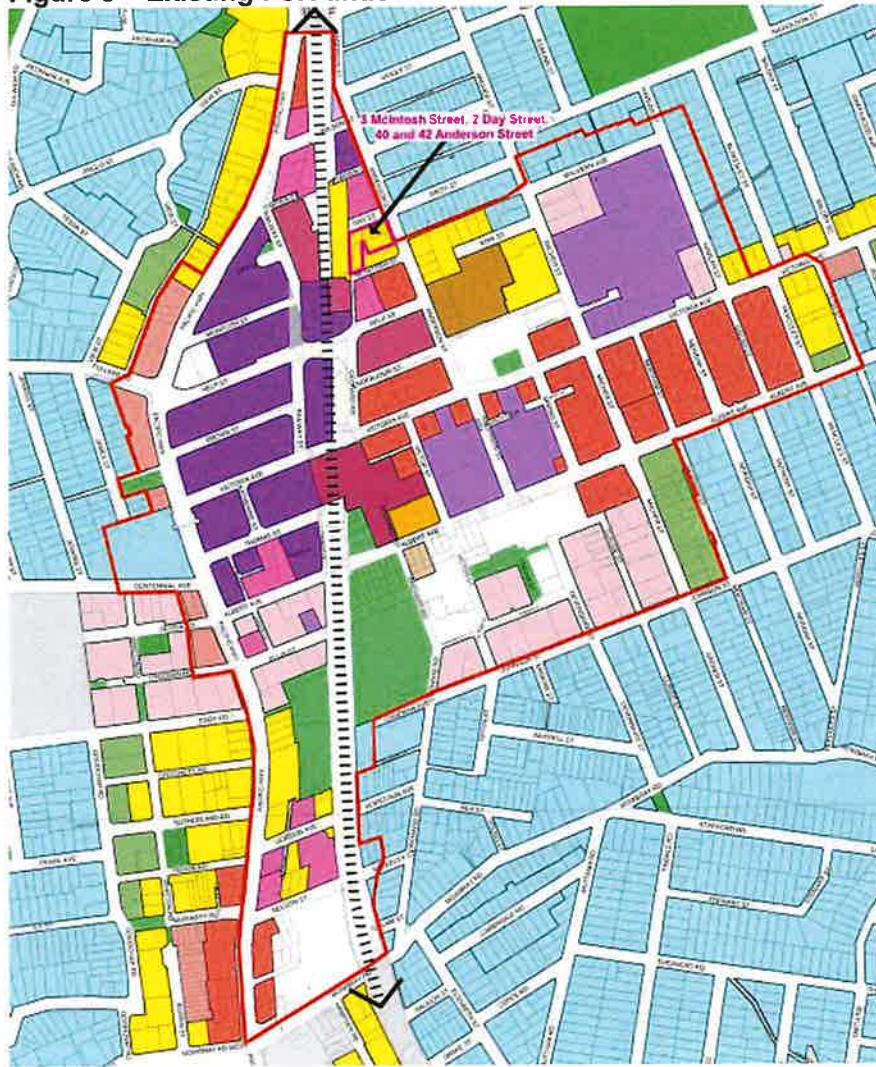
Key Element 11. Figure 3 shows the existing FSR controls under WLEP 2012.

Comment

The subject site is in a location with a maximum floor space ratio of 0.9:1 as shown below in **Figure 3 – Existing FSR under WLEP 2012.**

Under WLEP 2012, Amendment 34, the site has been identified on the Floor Space Ratio Map as having an FSR of 6:1.

Figure 3 – Existing FSR under WLEP 2012



- Key Element 12. Minimum site area of:**
- a) 1800sqm for commercial development in the B3 Commercial Core zone.
 - b) 1200sqm for mixed use development in the B4 Mixed Use zone.
- to achieve maximum FSR as indicated in Figure 4.

Site amalgamation is encouraged to meet this minimum requirement. In addition sites should not be left isolated.

Comment

The subject site is 3,122m² and is above the minimum site area of 1200m² for mixed use development in the MU1 / B4 Mixed Use zone. The 1,200m² minimum lot size for mixed use development in the Chatswood CBD is addressed in Clause 6.16 of WLEP 2012 (Amendment 34).

Concern is raised with the exclusion of 38 Anderson Street from this Planning Proposal site. Although 38 Anderson Street has a site area of 1,319m², it has an irregular shape which complicates the relationship with surrounding properties. The inclusion of 38 Anderson Street is strongly encouraged as part of an amalgamated site with 3 McIntosh Street, 2 Day Street and 40 and 42 Anderson Street, 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. This discussed further below with particular regard to setbacks and tower height.

- Key Element 13. The FSRs in Figure 4 should be considered as maximums achievable in the centre subject to minimum site area and appropriate contributions, and are as follows:**
- a) No maximum FSR for commercial development in the B3 zone.
 - b) A range of FSR maximums in the B4 zone, surrounding the B3 zone, reflecting context.
 - c) Retention of 2.5:1 FSR along northern side of Victoria Avenue east.

Floor space ratio maximums are not necessarily achievable on every site, and will depend on satisfactorily addressing:

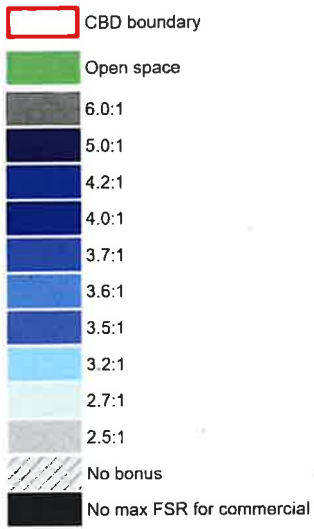
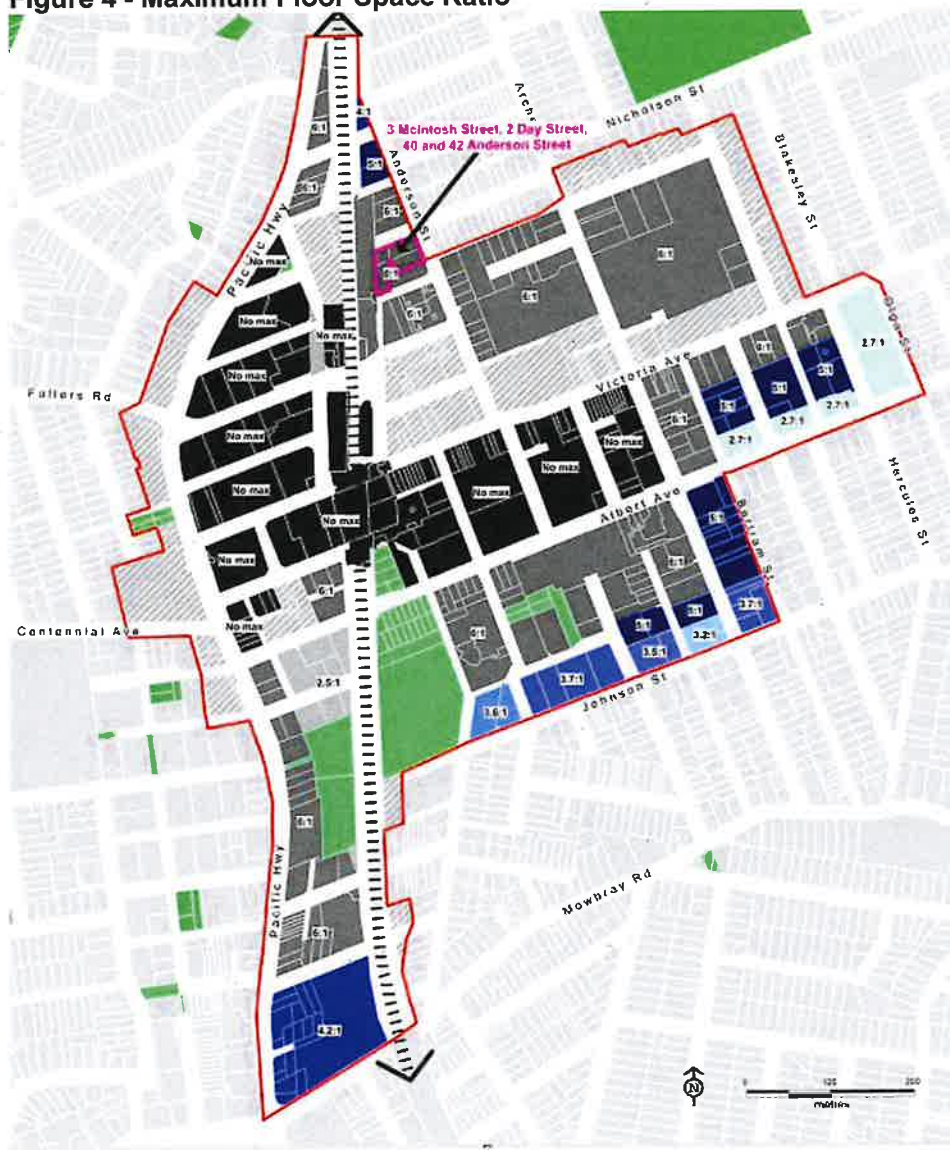
- a) Site constraints,
- b) Surrounding context,
- c) Other aspects of this Strategy including setbacks at ground and upper levels,
- d) SEPP 65 and the associated Apartment Design Guidelines.

Comment

The subject site is in a general location with an FSR of 6:1, as shown below in **Figure 4 - Maximum Floor Space Ratio**.

Under WLEP 2012, Amendment 34, the site has been identified on the Floor Space Ratio Map as having an FSR of 6:1.

Figure 4 - Maximum Floor Space Ratio



Key Element 14. Affordable housing is to be provided within the maximum floor space ratio, and throughout a development rather than in a cluster.

Comment

Not consistent.

Affordable housing is provided within the maximum floor space ratio, however not at the required percentage of GFA under WLEP 2012.

Affordable housing has been increased from 4% under Amendment 34 to the new WLEP 2012 to 10%.

The subject Planning Proposal provides for 4% affordable housing and therefore seeks to vary this WLEP 2012 control.

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

Based on Planning Proposal and Concept Plans	WLEP 2012: 10%	PP 2023/2: 4%	Difference
Total number of Units in development:	162	162	
Residential Gross Floor Area (5:1)	15,608m ²	15,608m ²	
10% Residential Gross Floor Area	1,560.8m ²	624.32m ²	936.28m²
Number of affordable units Based on following assumptions: <ul style="list-style-type: none"> • Exclusions estimated at 20% • Average unit size 80m² (2 bedrooms) Note: Gross Floor Area is defined in WLEP 2012	16	6	10

A history of the Planning Proposal and comprehensive WLEP 2012 review which led to Amendment 34, having regard to the issue of affordable housing, is provided above.

In regards the subject Planning Proposal, the applicable affordable housing rate is 10%.

Key Element 15. Where the maximum floor space ratio of 6:1 is achieved, the minimum commercial floor space ratio sought in development in a Mixed Use zone is 1:1.

The objective of this Key Element is to achieve a satisfactory level of commercial in the B4 Mixed Use zone to deliver a reasonable amount of employment floor space, typically to be within the podium levels of a development. This will be moderated depending on the overall FSR.

Comment

No discussion is provided as the Planning Proposal is not supported.

Built Form

- Key Element 16.** In order to achieve the slender tower forms sought by Council the maximum floor plate at each level of a development should be no more than:
- a) 2000sqm GFA for office (to achieve this maximum a large site would be required).
 - b) 700sqm GFA for residential towers above Podium within Mixed Use zones.

Comment

No discussion is provided as the Planning Proposal is not supported.

- Key Element 17.** In pursuit of the same goal of slender tower forms, the width of each side of any tower should be minimised to satisfactorily address this objective. To the same end, design elements that contribute to building bulk are not supported, and should be minimised.

Setbacks are considered an important part of achieving slender tower forms.

Comment

No discussion is provided as the Planning Proposal is not supported.

- Key Element 18.** If there is more than one residential tower on a site, sufficient separation is to be provided in accordance with setbacks required in this Strategy, SEPP 65 and the Apartment Design Guidelines, to ensure that the slender tower form objective is achieved. Council will seek to avoid an outcome where two towers read as one large tower. Towers are not to be linked above Podium and should operate independently regarding lifts and services.

Comment

No discussion is provided as the Planning Proposal is not supported.

Sun Access to Key Public Spaces

Key Element 19. The sun access protection in Figure 5 will be incorporated into LEP controls, to ensure no additional overshadowing and protection in mid winter of:

- a) Victoria Avenue (between interchange and Archer St) 12pm - 2pm.
- b) Concourse Open Space 12pm - 2pm.
- c) Garden of Remembrance 12pm - 2pm.
- d) Tennis and croquet club 12pm - 2pm.
- e) Chatswood Oval 11am - 2pm (which in turn also protects Chatswood Park).






- f) In addition,
Heights adjoining the South Chatswood Conservation Area will provide for a minimum 3 hours solar access between 9am and 3pm mid winter.

Comment

No discussion is provided as the Planning Proposal is not supported.

Figure 5 - Sun Access Protection for Public Spaces



-  CBD boundary
-  Open space
-  LEP control - no additional overshadowing 12.00am-2pm mid-winter
-  LEP control - no additional overshadowing 11am-2pm mid-winter
-  Conservation areas - WLEP2012 (North Chatswood, South Chatswood)

Building Heights

- Key Element 20. Maximum height of buildings in the CBD will be based on Figure 6, based on context and up to the airspace limits (Pans Ops plane), except as reduced further to meet:**
- a) Sun access protection.

Achievement of nominated height maximums will depend on addressing site constraints, surrounding context and other aspects of this Strategy in addition to satisfying SEPP 65 and Apartment Design Guidelines.

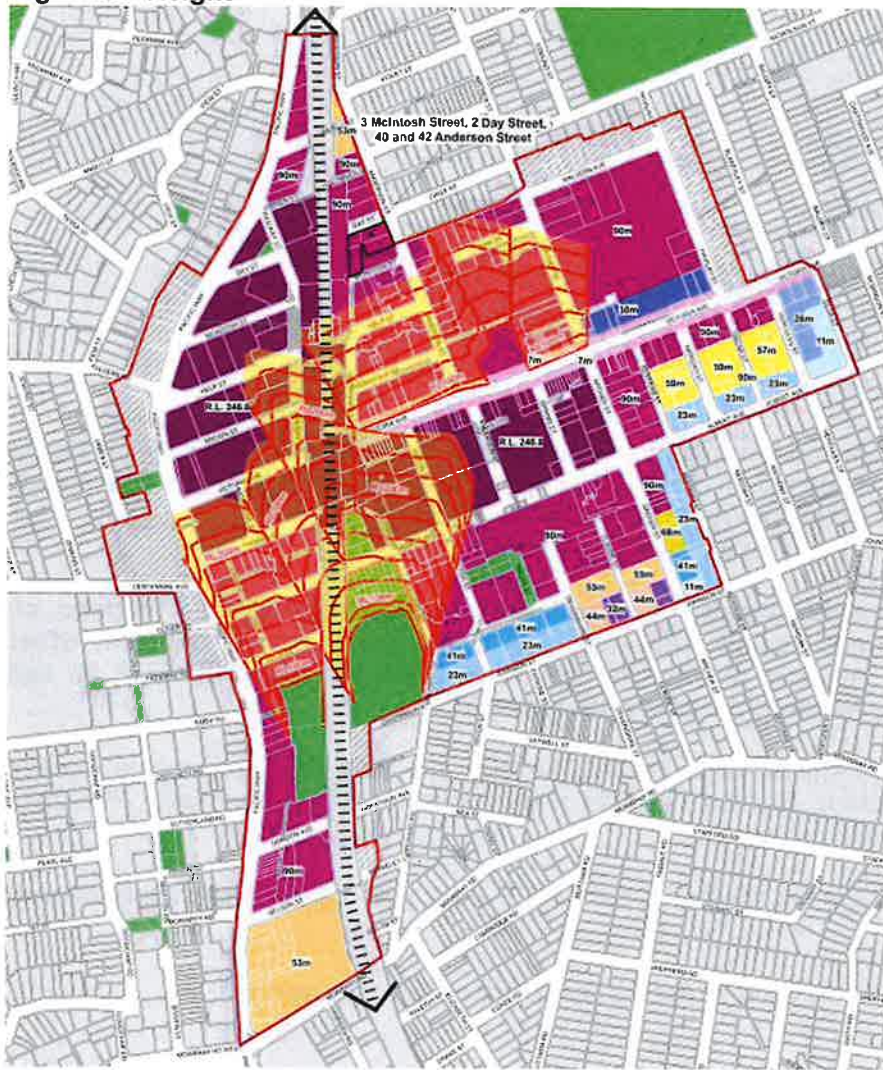
Comment

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.

The Planning Proposal is not consistent with WLEP 2012 with regard to affordable housing provision.

No further discussion is provided as the Planning Proposal is not supported.

Figure 6 – Height



- CBD boundary
- Open space
- RL 246.8
- 90m
- 68m
- 59m
- 53m
- 44m
- 41m
- 32m
- 30m
- 26m
- 23m
- 11m
- 7m
- No change
- Area protected by sun protection (approximate RLs shown) - see sun access diagram

Key Element 21. All structures located at roof top level, including lift over runs and any other architectural features are to be:
a) Within the height maximums.
b) Integrated into the overall building form.

Comment

No discussion is provided as the Planning Proposal is not supported.

Links and Open Space

Key Element 22. The links and open space plan in Figure 7 will form part of the DCP. All proposals should have regard to the potential on adjacent sites. Pedestrian and cycling linkages will be sought in order to improve existing access within and through the CBD.










New linkages may also be sought where these are considered to be of public benefit. All such links should be provided with public rights of access and designed with adequate width, sympathetic landscaping and passive surveillance.

Comment

No discussion is provided as the Planning Proposal is not supported.

Figure 7 - Links and New Open Space



-  CBD boundary
-  Open space
-  New open space
-  Open air 24 hour through-site links
-  Open air 24 hour through-site links within block
-  Through-building links
-  Existing upper storey links
-  Proposed upper storey links
-  Streets and public places

Key Element 23. Any communal open space, with particular regard to roof top level on towers, should be designed to address issues of quality, safety and usability.

Comment

No discussion is provided as the Planning Proposal is not supported.

Public realm or areas accessible by public on private land

Key Element 24. Public realm or areas accessible by public on private land:

- a) Is expected from all B3 and B4 redeveloped sites.
- b) Is to be designed to respond to context and nearby public domain.
- c) Should be visible from the street and easily accessible.
- d) Depending on context, is to be accompanied by public rights of way or similar to achieve a permanent public benefit.

Comment

Refer to setbacks and street wall height discussion below.

No further discussion is provided as the Planning Proposal is not supported.

Key Element 25. All roofs up to 30 metres from ground are to be green roofs. These are to provide a green contribution to the street and a balance of passive and active green spaces that maximise solar access.

Comment

No discussion is provided as the Planning Proposal is not supported.

Key Element 26. A minimum of 20% of the site is to be provided as soft landscaping, which may be located on Ground, Podium and roof top levels or green walls of buildings.

Comment

No discussion is provided as the Planning Proposal is not supported.

Setbacks and street frontage heights

Key Element 27. Street frontage heights and setbacks are to be provided based on Figure 8, which reflect requirements for different parts of the Chatswood CBD. With setbacks of 3 metres or more, including the Pacific Highway, deep soil planting for street trees is to be provided.

- d) **Mixed use frontage with commercial Ground Floor:**
 - i. **6-14 metre street wall height at front boundary.**
 - ii. **Minimum 3 metre setback above street wall to tower.**

- h) **Anderson Street interface:**
 - i. **Minimum 3m setback at Ground Level from front boundary.**
 - ii. **6-14m street wall height.**
 - iii. **Minimum 1m setback above street wall to tower.**

Comment

Under the CBD Strategy, consideration has been given to different precincts within the Chatswood CBD with regard to setbacks and street wall heights – a total of 11 precincts are identified with different requirements for each. Refer below to Figure 8 - Setbacks and street frontage heights.

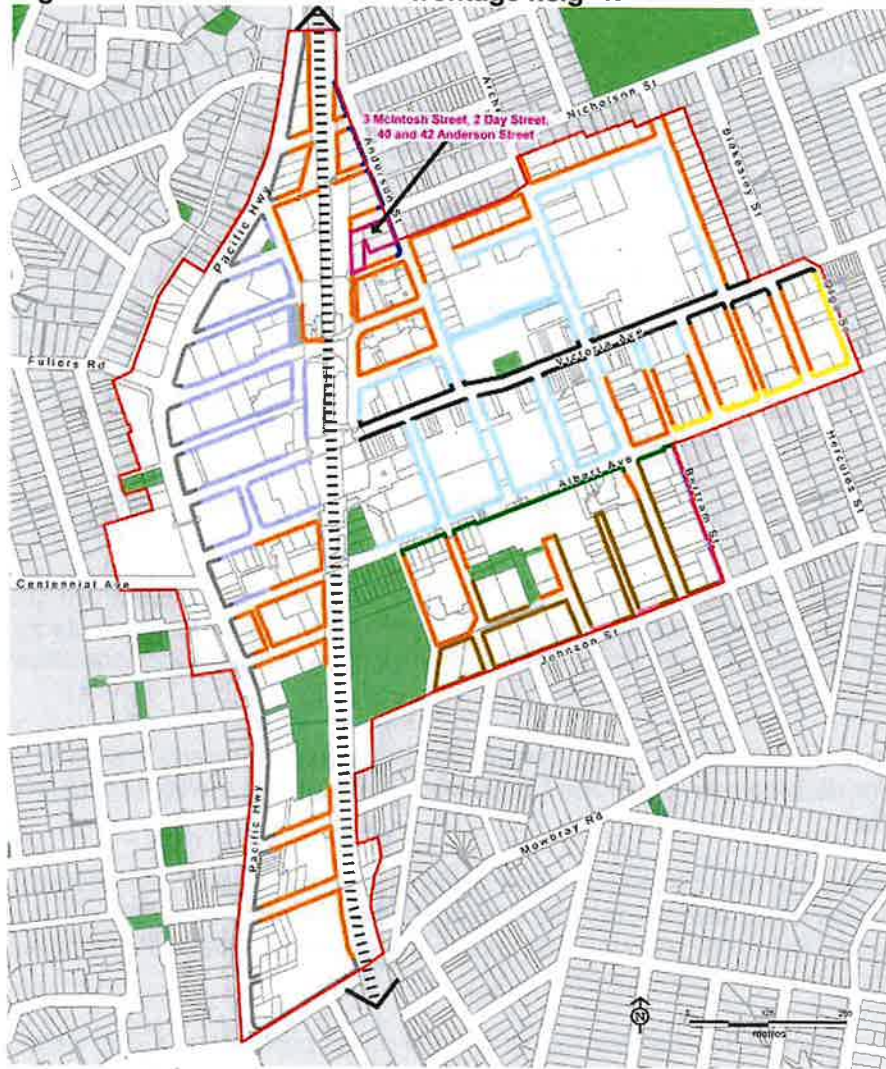
Building setbacks have been established to ensure building separation, and therefore a desired relationship for development within the Chatswood CBD with the public domain and neighbouring properties.

The site is characterised by two different precinct setback and street wall requirements, reflecting the future vision expressed in the CBD Strategy for Anderson Street (being in the Anderson Street Interface Precinct), and McIntosh Street and Day Street (being in the Mixed use frontage with commercial Ground Floor Precinct).

There is no specified setback to 38 Anderson Street and the public pathway on 1 Day Street, however any new development is expected to interact in a sympathetic manner. Embellishment of the public pathway on 1 Day Street in a manner that enhances the public space, by providing additional publicly accessible land on the subject Planning Proposal site, is encouraged.

Further discussion is not provided as the Planning Proposal is not supported.

Figure 8 - Setbacks and street frontage heights



- CBD boundary
- Open space
- Pacific Highway frontage
- Office Core frontage
- Urban Core
- Victoria Avenue retail frontage
- Albert Avenue South
- Southern Precinct
- Anderson Street interface
- Johnson Street interface
- Bertam Street interface
- Albert Avenue north and Olga Street interface
- Mixed use frontage with commercial Ground Floor

Key Element 28. All towers above podiums in the B3 Commercial Core and B4 Mixed Use zones are to be setback from all boundaries a minimum of 1:20 ratio of the setback to building height.

This means if a building is:

- a) A total height of 30m, a minimum setback from the side boundary of 1.5m is required for the entire tower on any side.
- b) A total height of 60m, a minimum setback from the side boundary of 3m is required for the entire tower on any side.
- c) A total height of 90m, a minimum setback from the side boundary of 4.5m is required for the entire tower on any side.
- d) A total height of 120m, a minimum setback from the side boundary of 6m is required for the entire tower on any side.
- e) A total height of 150m, a minimum setback from the side boundary of 7.5m is required for the entire tower on any side.
- f) A total height of 160m, a minimum setback from the side boundary of 8m is required for the entire tower on any side.

The required setback will vary depending on height and is not to be based on setback averages but the full setback.

Comment

No discussion is provided as the Planning Proposal is not supported.

Key Element 29. Building separation to neighbouring buildings is to be:

- a) In accordance with the Apartment Design Guide for residential uses.
- b) A minimum of 6 metres from all boundaries for commercial uses above street wall height.

Comment

No discussion is provided as the Planning Proposal is not supported.

Active Street Frontages

Key Element 30. At ground level, to achieve the vibrant CBD Council desires, buildings are to maximise active frontages. Particular emphasis is placed on the B3 Commercial Core zone. Blank walls are to be minimised and located away from key street locations.

Comment

No discussion is provided as the Planning Proposal is not supported.

Further Built Form Controls

Key Element 31. Site Isolation will be discouraged and where unavoidable joined basements and zero-setback podiums should be provided.

Comment

Council officers have encouraged the amalgamation of 38 Anderson Street into this Planning Proposal site.

The Planning Proposal does not include 38 Anderson Street.

The exclusion of 38 Anderson Street is a concern for Council officers. The inclusion would effectively involve the block (up to 1 Day Street and the public pathway), resulting in a more complete development site able to deliver a high quality urban design outcome.

Provision has been made in the design to facilitate a basement and podium level connection to any future development at 38 Anderson Street.

Further discussion is not provided as the Planning Proposal is not supported.

Key Element 32. Controls will be applied to ensure the traditional lot pattern along Victoria Ave east (building widths of between 6-12m) is reflected into the future.

Comment

Not applicable.

Key Element 33. Floor space at Ground level is to be maximised, with supporting functions such as car parking, loading, garbage rooms, plant and other services located in Basement levels.

Comment

No discussion is provided as the Planning Proposal is not supported.

Key Element 34. Substations are to be provided within buildings, not within the streets, open spaces or setbacks and not facing key active street frontages.

Comment

No discussion is provided as the Planning Proposal is not supported.

Key Element 35. The CBD Strategy employs a Travel Demand Management approach seeking to modify travel decisions to achieve more desirable transport, social, economic and environmental objectives. A new CBD Transport Strategy will build on the approach.

In addition, site specific traffic and transport issues are to be addressed as follows:

- a) **Vehicle entry points to a site are to be rationalised to minimise streetscape impact, with one entry into and exiting a site. To achieve this objective loading docks, including garbage and residential removal trucks, are to be located within Basement areas.**
- b) **In order to facilitate rationalisation of vehicle entry points on neighbouring sites, all development sites are to provide an opportunity within Basement levels to provide vehicle access to adjoining sites when they are developed.**
- c) **All vehicles are to enter and exit a site in a forward direction. In this regard vehicle turntables should be provided where necessary.**
- d) **All commercial and residential loading and unloading is required to occur on-site and not in public streets.**

- e) **Car parking should be reduced by utilising RMS car parking rates for sites close to public transport, as well as reciprocal parking and car share strategies.**

Comment

No discussion is provided as the Planning Proposal is not supported.

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.