

Rezoning Review Briefing Report – RR-2023-32

2 Day Street, 3 McIntosh Street and 40-42 Anderson Street, Chatswood – planning proposal seeks to reduce the provision of affordable housing from 10% to 4% under clause 6.8 Affordable Housing of the Willoughby Local Environmental Plan 2012.

Element	Description
Date of request	1 December 2023
Department ref. no	RR-2023-32 (PP-2022-4316)
LGA	Willoughby
LEP to be amended	Willoughby LEP 2012 (WLEP 2012)
Address	2 Day Street, 3 McIntosh Street and 40-42 Anderson Street, Chatswood (the site)
Reason for review	<input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment <input type="checkbox"/> Council failed to indicate support for the proposal within 90/115 days, or failed to submit the proposal after indicating its support
Has council nominated PPA role	<p>As Willoughby Council (Council) has resolved not to support the planning proposal, in accordance with Local Environmental Plan (LEP) Making Guideline (September 2022), the Sydney North Planning Panel should act as the PPA if it is supported to proceed to Gateway determination.</p> <p>Council's response to the rezoning review request was received on 22 April 2024 (Attachment B).</p>
Consultation	<p>The Willoughby Local Planning Panel (LPP) considered the planning proposal on 11 July 2023 and commented that it mostly meets the strategic framework. However, it has failed to incorporate the increased affordable housing provision of 10% (Attachment C).</p> <p>The LPP noted that the proposal did not form part of the savings list as determined by Council in the meeting held 12 December 2022.</p>
Brief overview of the timeframe/progress of the planning proposal	<p>22 August 2018 – preliminary meeting between Council and the proponent on preparing a planning proposal for the site.</p> <p>24 December 2021 – Gateway determination issued for the Willoughby Comprehensive LEP Review Planning Proposal (Comprehensive LEP) (Attachment D).</p>

Element	Description
	<p>The Comprehensive LEP intends to provide planning controls and capacity for growth over the next 15-20 years consistent with Council’s strategic planning studies. These changes seek to provide capacity for 6,400 new homes and 8,300 new jobs across the local government area.</p> <p>The Comprehensive LEP amended provisions on the site included the planning proposal, including the proposed:</p> <ul style="list-style-type: none"> • rezoning; • increases in building height; and • increases in FSR. <p>The Comprehensive LEP also sort to introduce a 10% affordable housing contribution rate on the site. The planning proposal seeks a 4% affordable housing contribution rate. This is the only amendment now being pursued and is the subject of this rezoning review request.</p> <p>The Gateway determination for the Comprehensive LEP included a condition requiring that affordable housing contribution rates should align with the Willoughby Affordable Housing Feasibility Report by SGS Economics and Planning, dated 30 August 2021 (Attachment E) because it found the blanket increase to a rate 10% for all areas may not be viable in all areas.</p> <p>15 March 2022 to 7 June 2022 – Public exhibition of the Comprehensive LEP.</p> <p>20 July 2022 – second preliminary meeting between Council and the proponent on preparing a planning proposal for the site.</p> <p>28 August 2022 – formal pre-planning proposal meeting between Council and the proponent on preparing a planning proposal for the site.</p> <p>November 2022 – Proponent states that Council established a position that any planning proposal lodged after the end of the exhibition of the Comprehensive LEP would not be supported with an affordable housing component of less than 10%. The proponent states that this was not widely published and they weren’t notified by Council of the decision.</p> <p>12 December 2022 – Council considered the post-exhibition report on the Comprehensive LEP, resolving that it should be finalised and made (Attachment F).</p> <p>20 December 2022 – the planning proposal lodged on the NSW Planning Portal.</p> <p>9 March 2023 – Council requested that the proponent increase the proposed affordable housing contribution rate proposed from 4% to 10% or invited the planning proposal to be withdrawn.</p>

Element	Description
	<p>30 June 2023 – the Comprehensive LEP is finalised and made by the Department (Attachment G).</p> <p>11 July 2023 – LPP considered the planning proposal and recommended to Council that it not proceed (Attachment C).</p> <p>2 August 2023 – DA-2023/194 lodged on the site seeking to implement the planning proposal. This development application was withdrawn on 17 November 2023.</p> <p>8 September 2023 – meeting held with Council and proponent.</p> <p>23 September 2023 – Council officers made aware of discussions to amalgamate with 38 Anderson Street which is adjacent to the site.</p> <p>5 October 2023 – DA-2023/276 lodged with Council. This is similar to withdrawn DA 2023/194 but includes 38 Anderson Street.</p> <p>DA-2023/276 remains under assessment as of this report’s date.</p> <p>27 November 2023 – Council resolved to not support the planning proposal noting the recommendations of the LPP and Council officers (Attachment H).</p> <p>1 December 2023 – rezoning review request submitted to the Department.</p> <p>19 February 2024 – complete rezoning request received.</p> <p>23 April 2024 – Council comments on rezoning review received (Attachment B).</p>
Department contact:	Shruthi Sriram – Planning Officer

Planning Proposal

Table 1. Overview of planning proposal

Element	Description
Site Area	3,122m ²
Site Description	<p>The planning proposal applies to 2 Day Street, 3 McIntosh Street and 40-42 Anderson Street, Chatswood (the site).</p> <p>The site is occupied by several 3 storey residential flat buildings with ground and basement parking (Figure 1).</p>
Surrounding Area	<p>The site is in the north of the Chatswood CBD, with the surrounding area including to the immediate (Figures 1 and 2):</p> <ul style="list-style-type: none"> north (44-52 Anderson Street) and south (3-5 Help Street) of the site, the land is zoned MU1 Mixed Use, with maximum LEP building heights of 90m facilitating development of 30 storeys (Figure 3);

Element	Description
	<ul style="list-style-type: none"> east is the North Chatswood Conservation Area zoned R2 Low Density Residential; and west is a publicly accessible walkway and a 4 storey residential flat building at 1 Day Street beyond. <p>Chatswood Station is approximately 350m to the south.</p>
<p>Proposal summary</p>	<p>The objective of the Planning Proposal is to facilitate the future development of a high quality, metropolitan scale, mixed-use development.</p> <p>The planning proposal states that it has been developed by a private proponent as the result of Council’s Chatswood CBD Planning and Urban Strategy 2036.</p> <p>The proposal sort to give these objectives effect by amending the WLEP 2012 to:</p> <ul style="list-style-type: none"> rezone from R3 Medium Density Residential to MU1 Mixed Use; increase the maximum height of buildings from 12m to 90m; increase the maximum FSR from 0.9:1 to 6:1; and include a 4% affordable housing contribution rate. <p>On 30 June 2023, these LEP amendments were implemented with the finalisation of the Comprehensive LEP – except a 10% affordable housing contribution rate was applied to the site.</p> <p>The proposal now seeks to reduce the WLEP 2012 requirement for a 10% affordable housing contribution introduced by the Comprehensive LEP to a 4% rate (Figure 4). This is the only amendment now being pursued and is the subject of this rezoning review request.</p> <p>Table 2 below summarises the former, current and proposed LEP provisions on the site.</p> <p><u>Development concept scheme</u></p> <p>The proposal is supported by a development concept seeking to facilitate a mixed use development including (Figures 5 to 8):</p> <ul style="list-style-type: none"> 2 towers with 26 and 17 levels respectively; 3 podium levels for commercial and retail purposes 3,122m² commercial floor space facilitating approximately 168 jobs; 15,608m² residential floor space facilitating approximately 162 dwellings; and 5 basement levels of car parking with 167 spaces.

Element	Description
<p>Relevant State and Local Planning Policies, Instruments</p>	<ul style="list-style-type: none"> • Greater Sydney Region Plan • North District Plan • Chatswood CBD Planning and Urban Design Strategy 2036 (the Chatswood CBD Plan) • Willoughby Local Strategic Planning Statement (the LSPS) • Willoughby Local Housing Strategy (the LHS) • Willoughby Affordable Housing Strategy 2020 (the WAHS) • WLEP 2012 • Willoughby Development Control Plan 2023 (the DCP) • SEPPs <ul style="list-style-type: none"> ○ SEPP (Housing) 2021 • 9.1 Ministerial Directions <ul style="list-style-type: none"> ○ 6.1 Residential Zones ○ 7.1 Business and Industrial Zones.
<p>Willoughby Affordable Housing Strategy</p>	<p>The purpose of the WAHS is to increase affordable rental housing for moderate-income key and essential worker households in order to maintain a liveable and prosperous City (Attachment I).</p> <p>Outcome 1: <i>Affordable Housing supply</i> aims to increase the supply of affordable rental housing through affordable housing targets and policy.</p> <p>One of the measures of this outcome is to increase the LEP Affordable Housing requirement from 7% to 10% with the WAHS stating that this seeks to give effect to the North District Plan.</p>

Rezoning Review – Briefing Report

PP-2022-4316 (RR-2023-32)

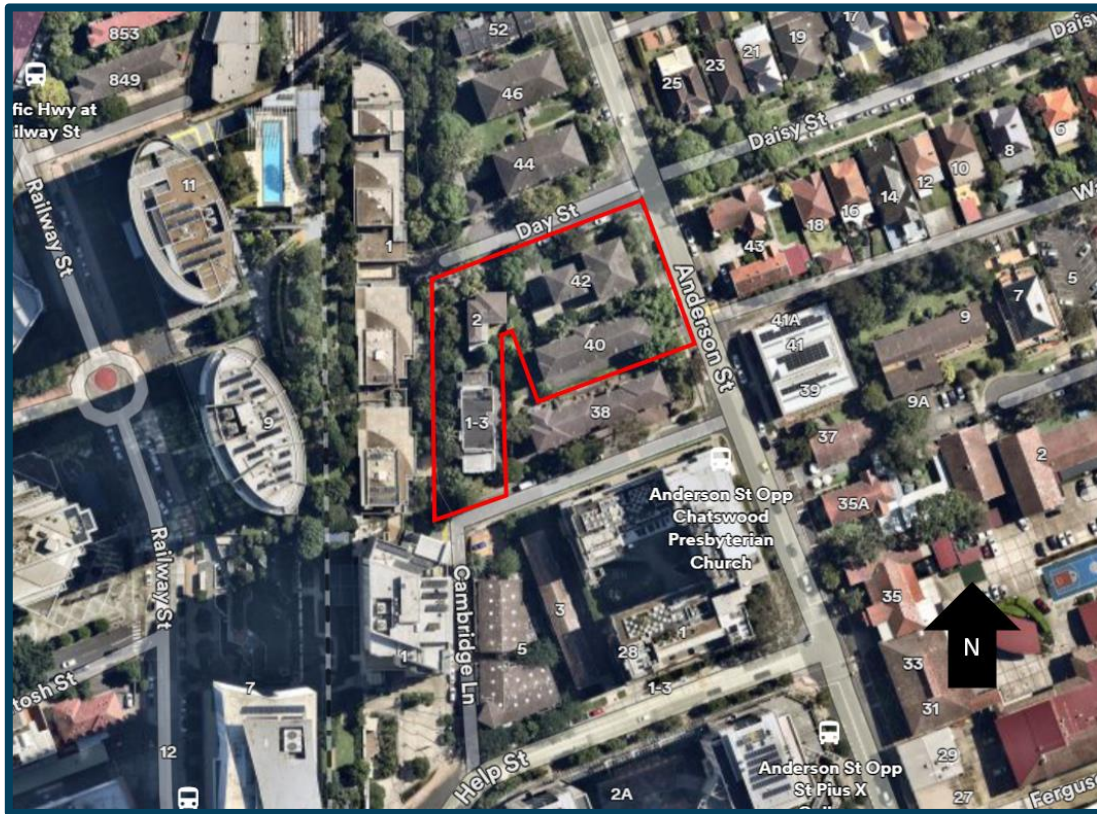


Figure 1: Aerial photo of the site and neighbouring area – the site is highlighted red (source: Nearmaps)



Figure 2: Site context map - Chatswood CBD highlighted red (source: Nearmaps)

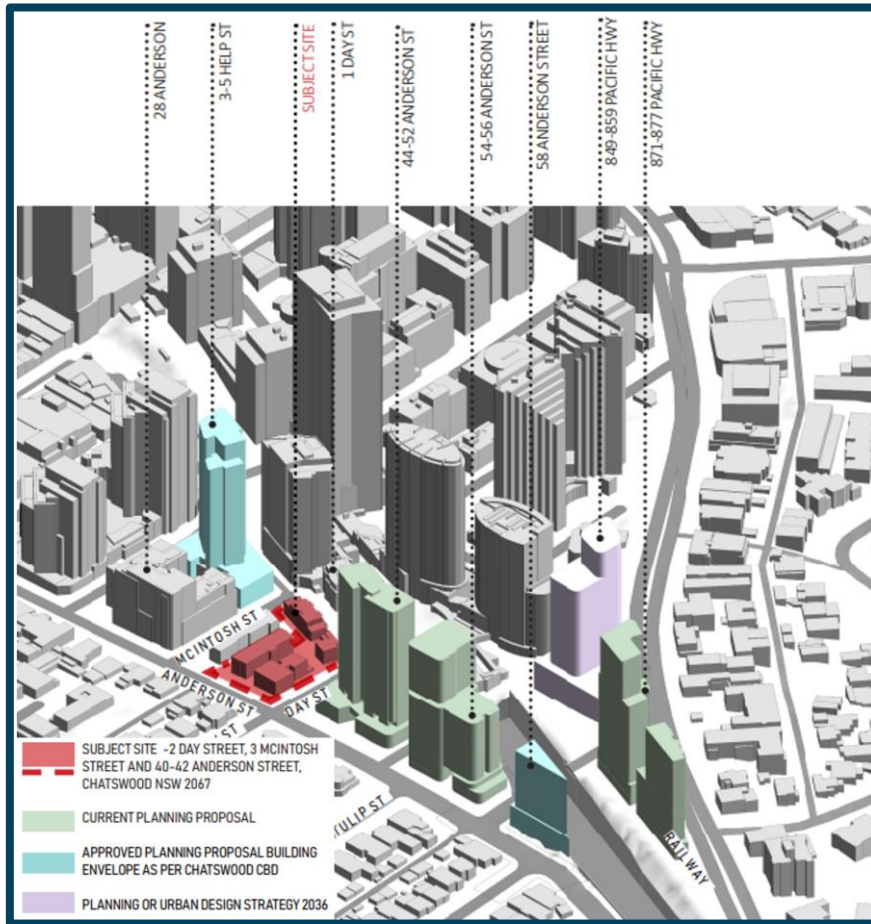


Figure 3: Current site relative to existing and proposed development in the Chatswood CBD (source: Drew Dickson Architects). Note: the sites shown as green and purple have now been approved through development consent

The planning proposal seeks to amend the WLEP 2012. A comparison table of former, current and proposed LEP provisions at the site is below.

Table 2. Current and proposed controls

Control	Prior to finalisation of the Comprehensive LEP	Current	Proposed
Zone	R3 Medium Density	MU1 Mixed Use	No change
Maximum height of buildings	12m	90m	No change
Floor space ratio	0.9:1	6:1	No change
Minimum lot size	N/A	1,200m ²	No change
Affordable Housing	No affordable housing contribution	Area 3 – 10%	Area 1 – 4%

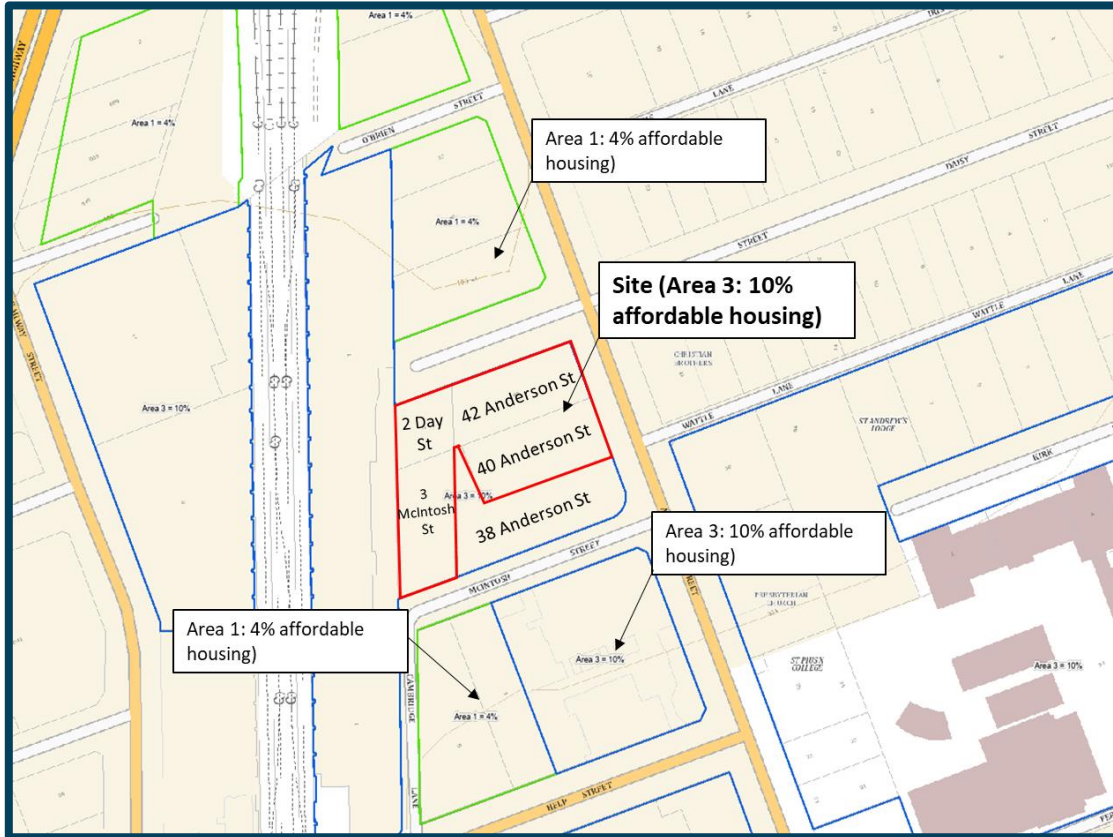


Figure 4: Current Affordable Housing WLEP 2012 map (source: Spatial Viewer, 2024)

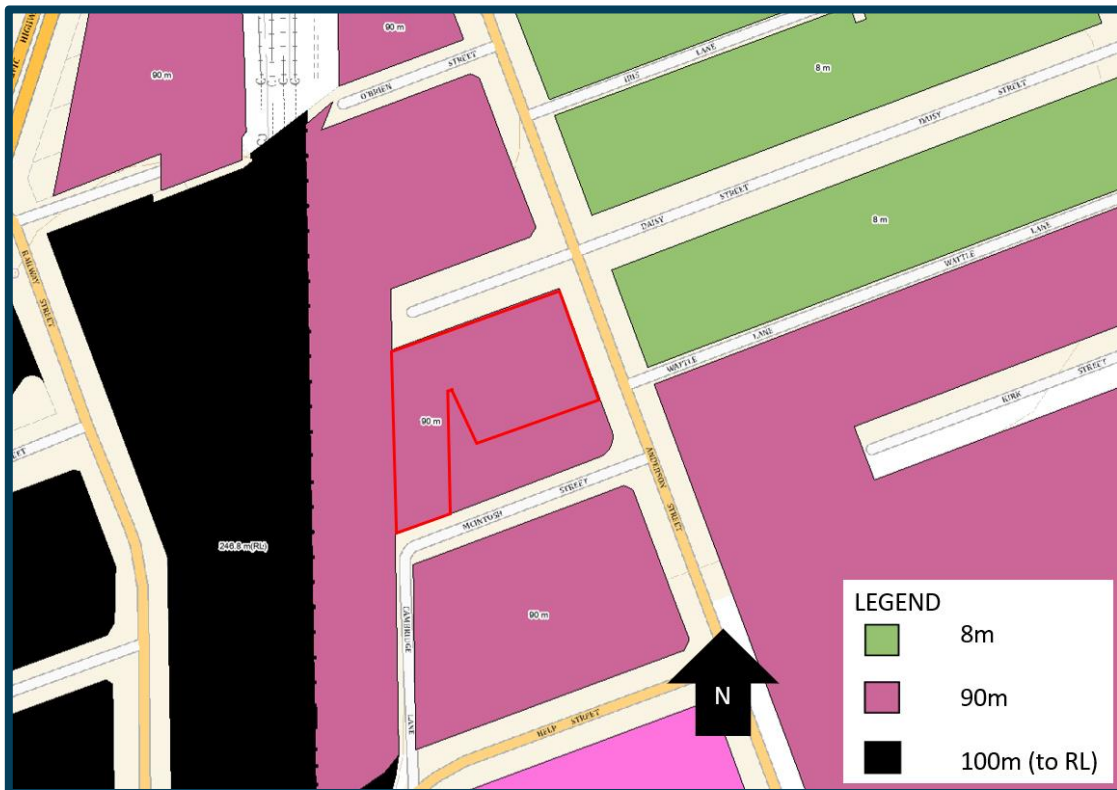


Figure 5: Current maximum Height of Buildings WLEP 2012 map (source: Spatial Viewer, 2024)

Rezoning Review – Briefing Report

PP-2022-4316 (RR-2023-32)

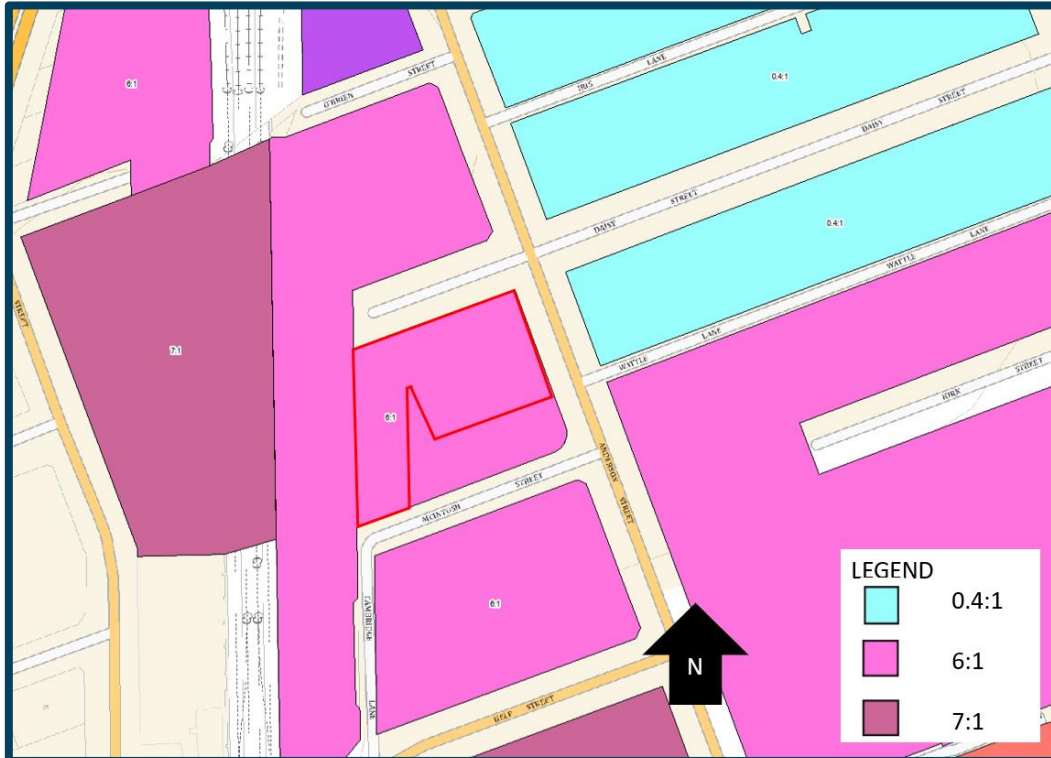


Figure 6: Current maximum Floor Space Ratio WLEP 2012 map (source: Spatial Viewer, 2024)

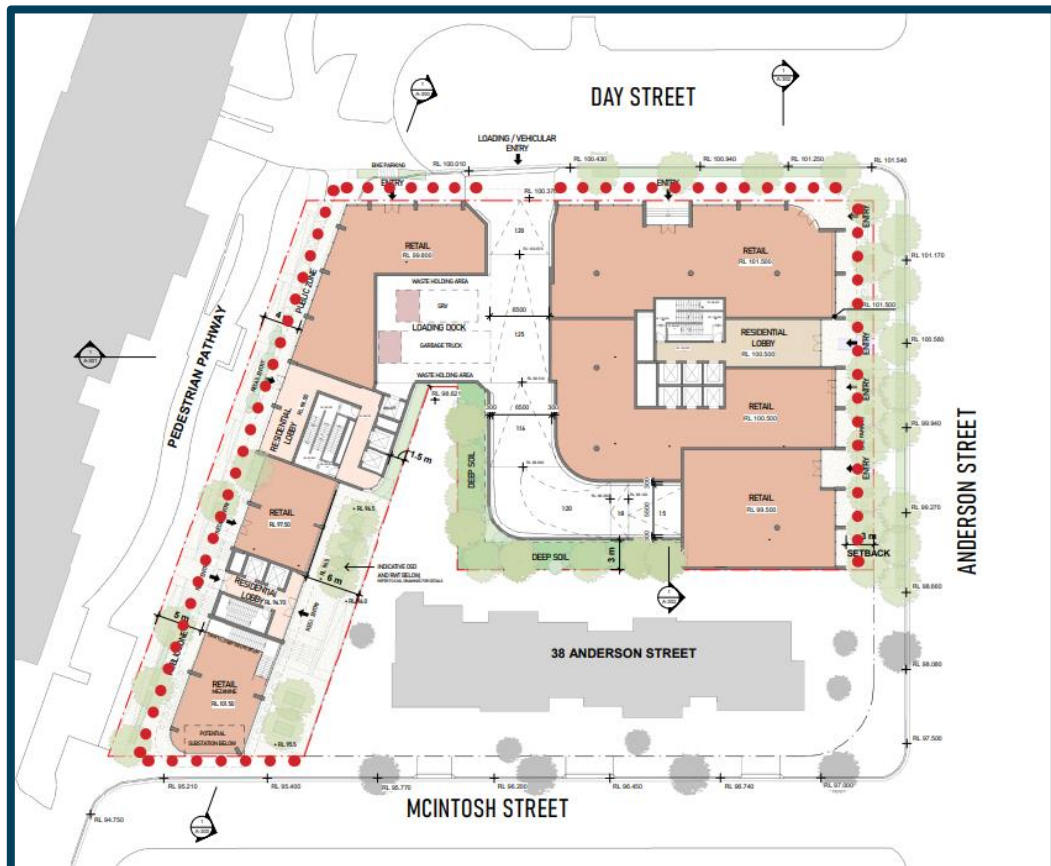


Figure 7: Proposed ground floor plan (source: Drew Dickson Architects)

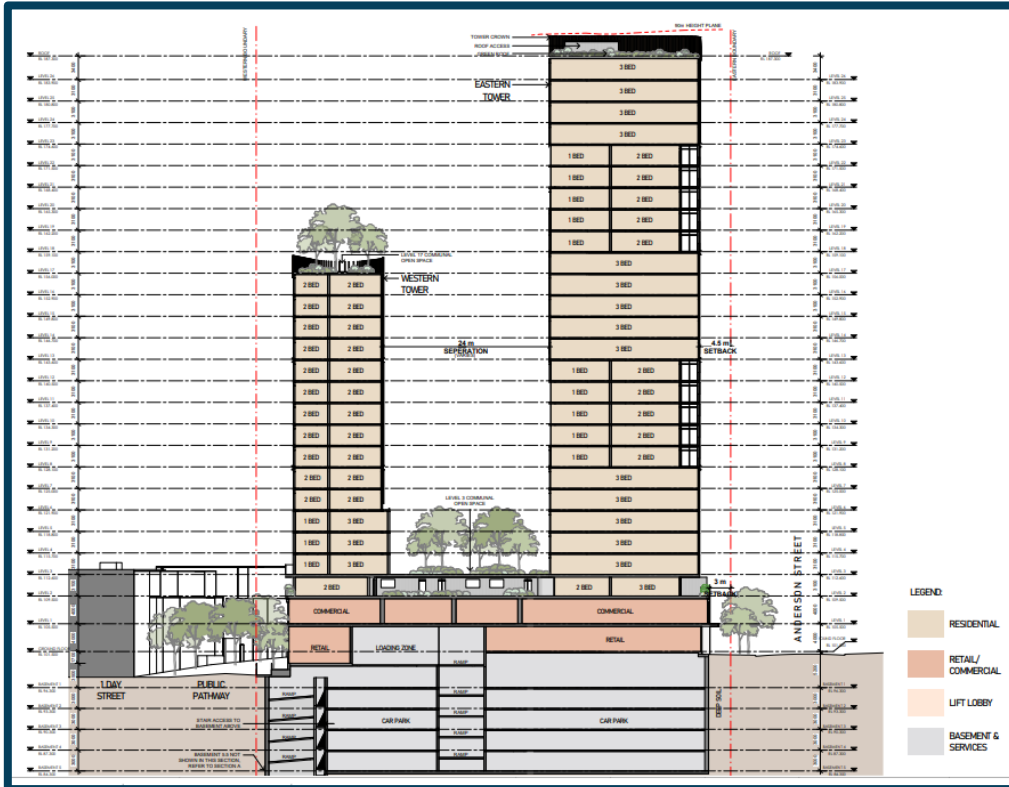


Figure 8: Proposed concept – east-west section (source: Drew Dickson Architects)

Key Issues

The following section summarises the key issues, drawn from the proponent’s rezoning review request (**Attachment A**), proponent’s planning proposal (**Attachment B**), Council Officer’s Report to Council (**Attachment C**), and Council’s response to the rezoning review request (**Attachment I**).

Issue: 10% Affordable Housing Provision

Council’s view:

Council considered the Planning proposal at its Ordinary Meeting on 27 November 2023, and resolved not to support the planning proposal. Council considered the proposal to be inconsistent with the WLEP 2012 as it does not meet the 10% affordable housing provision requirements which were introduced as part of Amendment 34 of the LEP, in June 2023.

Council resolved not to progress the planning proposal for a Gateway determination on the basis that:

- The Planning Proposal accepted the uplift provided in WLEP 2012 Amendment 34 with regard to height (90m) and floorspace (6:1) but sought to vary the expected affordable housing controls by reducing the contribution rate to 4%. Affordable housing provision lower than 10% lodged with Council after 7 June 2022, was not supported. Council required any new proposals to be based on the WLEP 2012 affordable housing requirements and the applicable strategic planning documents.

Proponent's view:

- The planning proposal seeks 4% affordable housing contributions exceeds the WLEP 2012 affordable housing provision in force at the time of lodgement– noting that 0% affordable housing was required in December 2022 (month of lodgement).
- Council feedback from the September 2022 pre-planning proposal lodgement meeting, stated that a *'minimum of 4% affordable housing should be provided throughout the development'* This advice is consistent with the approach taken for all other sites subject to planning proposals, located in the northern CBD precinct.
- Council gazetted an affordable housing rate of 4% for 15 CBD sites subject to planning proposals at a similar time. The proposal at 38-42 Anderson Street was similarly progressed and had been in discussion with Council since 2018.
- Council established a position in November 2022, that any planning proposal lodged after 7 June 2022 would not be supported with an affordable housing component of less than 10%, however, this was not widely published, and the proponent was not notified by Council. Delays to the lodgement of the Planning Proposal arose from the proponent seeking to consolidate 38 Anderson Street into the site, in accordance with Council advice.
- The Planning Proposal was lodged before the Comprehensive LEP and the DCP were published. The proposal satisfactorily addresses the LEP and DCP in force at the time.
- Council stated during pre-lodgement correspondence that it “cannot guarantee that the controls exhibited in the draft LEP will be adopted”. Given the level of uncertainty surrounding the exhibited controls, the proponent could not reasonably have incorporated these into any planning proposal.

Issue: Affordable Housing rates consistency with Strategic Plans

Council's view:

Council considered the proposal to also be inconsistent with the objectives of relevant strategic plans, including the directions of the LSPS, and the Chatswood CBD Planning and Urban Design Strategy 2036.

- Inconsistencies with strategic plans such as the CBD Strategy are outlined, including:
 - Key Elements 13 and 20 - floor space ratio and Height - The proposed 6:1 FSR and 90m HOB is consistent with the CBD Strategy, however, within that, an affordable housing component of 10% is required in accordance with Amendment 34 to WLEP 2012.
 - Key Element 14 - 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.

Proponent's view:

- The proposal is consistent with the objectives of relevant strategic documents. The Greater Sydney Region Plan and North District Plan do not mandate a minimum affordable housing target, though do state that Affordable Rental Housing Targets within the range of 5–10% of new residential floor space are generally viable, subject to testing.

- Council feedback from the 2022 pre-planning proposal lodgement meeting states that a “minimum of 4% affordable housing should be provided throughout the development”. The LSPS requirement was not raised by council officers.
- A rate of 4% has been mapped for 15 other adjacent CBD sites subject to Planning Proposals within the Chatswood CBD. Inconsistency with the Chatswood CBD Planning and Urban Design Strategy 2036 was not raised as a concern for any of these sites. The planning proposal seeks a 4% affordable housing contribution which is consistent with this strategy.

Attachments

Attachment A – Rezoning Review Application

Attachment B – Council response to Rezoning Review request dated 22 April 2024

Attachment C – LPP record of advice dated 11 July 2023

Attachment D – The Department’s Gateway determination for Comprehensive LEP

Attachment E – Willoughby Affordable Housing Feasibility Report by SGS Economics and Planning dated 30 August 2021

Attachment F – Council Meeting Agenda and Minutes re post-exhibition for Comprehensive LEP dated 12 December 2022

Attachment G – The Department’s finalisation report for the Comprehensive LEP including relevant report attachments

Attachment H – Council Meeting Agenda and Minutes dated 27 November 2023

Attachment I – Willoughby Affordable Housing Strategy 2020



15 May 2024

Alexander Galea

Manager, Planning Proposal Authority



(Signature)

__21/5/24_____
(Date)

Louise McMahon

Director, Planning Proposal Authority

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Assessment officer

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