

LAND AND ENVIRONMENT COURT  
 15 NOV 2013  
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 A/R Init.

# RESPONDENT'S STATEMENT OF FACTS AND CONTENTIONS

## COURT DETAILS

Court Land and Environment Court of New South Wales  
 Division Class 1  
 Case number 13/10810

## TITLE OF PROCEEDINGS

Applicant **Meriton Property Services Pty Limited**  
 First Respondent **Minister for Planning and Infrastructure**

## FILING DETAILS

Filed for **Minister for Planning and Infrastructure, Respondent**  
 Legal representative Ms Jennifer Smith  
 Manger, Litigation, Legal Services  
 Department of Planning & Infrastructure  
 Legal representative reference 13/17668  
 Contact name and telephone Kirsty Thomas: (02) 9228 6341

## PART A - FACTS

### The Project

1. On 28 September 2010, the Minister for Planning approved Project Application MP09\_0066 for a commercial/residential development at the Thomas Street Carpark site in Chatswood ('the site') comprising:
  - a. the construction of a residential building (Building 1) on the northern portion of the site consisting of a 3 storey retail/commercial podium and 26 storey residential tower above;
  - b. the construction of a commercial building (Building 2) on the southern portion of the site comprising of a 3 storey retail/commercial podium and 18 storey commercial tower above;
  - c. a 5 level basement level car park containing 506 car parking spaces (including 250 public car parking spaces); and
  - d. public domain works including:
    - i. publicly accessible open space and a through site pedestrian link; and
    - ii. a vehicular right of way between Thomas Street and Fleet Lane ('original approval').
  
2. Since the grant of the original approval there have been a number of applications for modifications under the former s75W of the *Environmental Planning and Assessment Act 1979* (NSW) ('EPA Act') as set out in the table below. With the exception of MOD 5 (which was withdrawn) and MOD 6 (the subject of the present appeal), those applications have been granted. The approval as thereby modified is referred to below as the 'current approval':

	<b>Application details</b>	<b>Determination</b>
MOD 1	Staging of construction related conditions.	Approved by A/Director Metropolitan & Regional Projects South on 7 June 2012.

MOD 2	Amendments to conditions relating to adaptable units, on-site detention, rainwater harvesting, stormwater, dilapidation report and car parking.	Approved by the PAC on 1 November 2012.
MOD 3	Change of use of commercial building to serviced apartments, increase in height of commercial building from 21 to 29 storeys and other associated changes.	Approved by the Executive Director Major Projects Assessment on 18 February 2013.
MOD 4	Encroachment of the basement car park structure into Fleet Lane.	Approved by the Director, Metropolitan & Regional Projects North on 14 December 2012.
MOD 5	Increase in the height of the buildings, floor space, and car parking including above ground car parking.	Withdrawn by the proponent on 22 November 2012.
MOD 7	Below ground basement amendments, including replacing the sloped aisle system with a ramped system, consolidating the public car parking spaces, relocating lift cores; and minor increased depth of excavations.	Approved by the Director, Metropolitan & Regional Projects South on 21 June 2013.

3. On 30 September 2013, the Planning Assessment Commission ('PAC') as delegate for the Minister for Planning and Infrastructure refused MP09\_0066 MOD 6 ('MOD 6'), the application the subject of this appeal. MOD 6 seeks to modify the approved Project to:
- increase the height of the residential tower (Building 1) from 29 storeys to 47 storeys (an additional 53.45m) and increase the number of residential apartments by 122 (from 233 to 355);
  - increase the height of the serviced apartment tower (Building 2) from 29 storeys to 37 storeys (an additional 24.75m) and increase the number of serviced apartments by 57 (from 302 to 359);
  - increase the number of parking spaces from 506 to 660;
  - create a new podium containing above ground car parking, apartment uses, child care and other mixed uses;
  - increase in floor space from 45,148m<sup>2</sup> to 58,621m<sup>2</sup>; and
  - change the building envelope, public domain, landscape design, awnings and external finishes
4. Below is a table summarising the changes between the original approval, the current approval and MOD 6:

	Original Approval	Current Approval	MOD 6
<b>Use</b>			
Building 1	Residential Apartments	Residential Apartments	Residential Apartments
Building 2	Commercial Offices	Serviced Apartments	Serviced Apartments
<b>Height</b>			
Building 1	199.9 RL (29 storeys)	199.9 RL (29 storeys)	253.35 RL (47 storeys)
Building 2	197.20 RL (21 storeys)	197.20 RL (29 storeys)	221.95 RL (37 storeys)
<b>GFA</b>	44,491 m <sup>2</sup>	45,148 m <sup>2</sup>	58,621 m <sup>2</sup>

<b>FSR</b>	10.4:1	10.94:1	13.56:1
<b>Apartments</b>			
Building 1	202 residential apartments	233 residential apartments	355 residential apartments
Building 2	N/A - commercial office	302 serviced apartments	359 serviced apartments
<b>Car Parking</b>	506 spaces (fully within the 5 basement levels)	508 spaces (fully within the 5 basement levels)	660 (in 5 basement levels and 3 podium above ground levels)

**The Site and Locality**

- The site is within the Chatswood CBD in the Willoughby Local Government Area occupying a block between Thomas Street and Albert Avenue. It was formerly owned by Council and occupied by an at grade public car park known as the Thomas Street Car Park site
- The site has an area of 4,323m<sup>2</sup> and frontages to Thomas Street to the north and Albert Avenue to the south. It is bound by Albert Lane and commercial properties to the west and commercial properties to the east. The site is within 200 metres of the Chatswood Transport Interchange with rail and bus services to/from Sydney CBD and other centres. The site location is shown in figures 1 and 2.

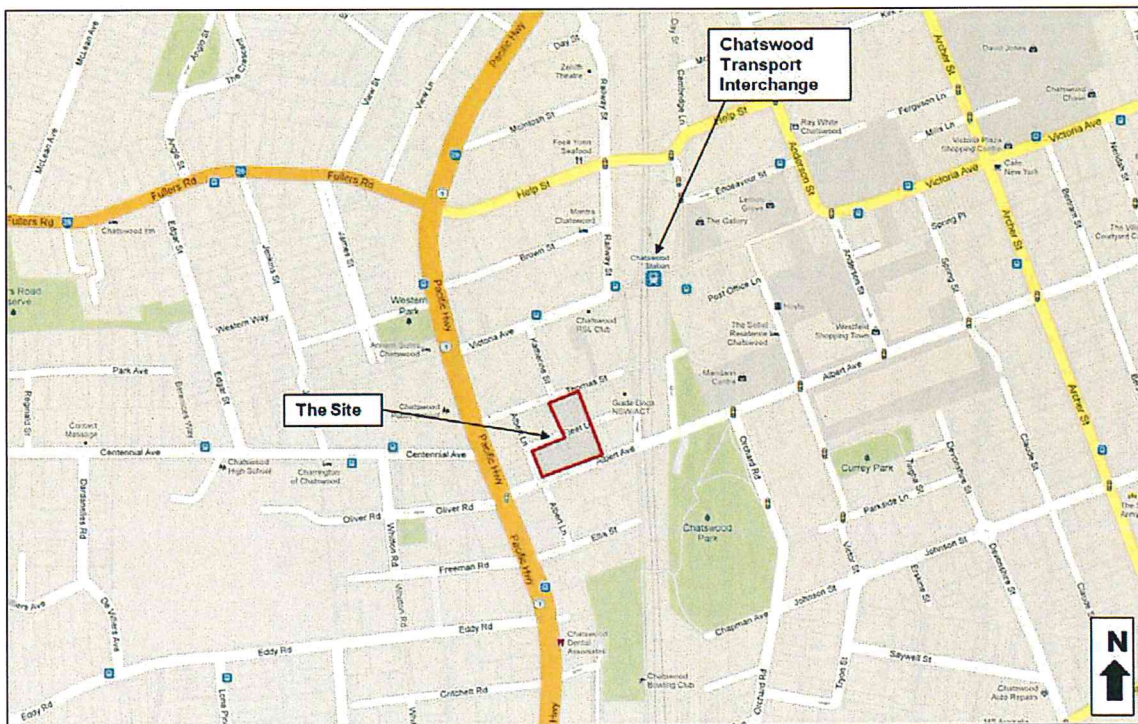


Figure 1: The Site and Locality



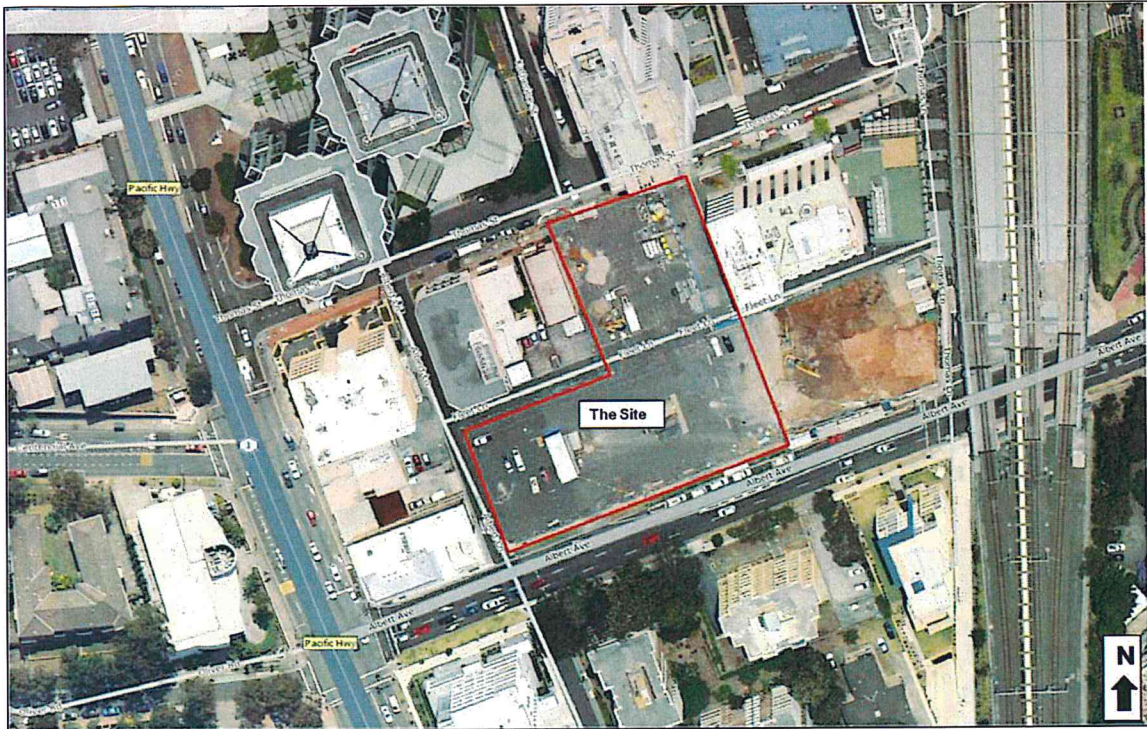


Figure 2: Aerial view of the site

7. The site is currently zoned part B3 Commercial Core and part B4 Mixed Use - under the *Willoughby Local Environmental Plan 2012* ('the LEP'). The LEP came into effect on 31 January 2013. The site is located at the edge of the Chatswood CBD under the LEP

### The statutory controls

8. The project the subject of the original approval was classified as a Major Project under Part 3A of the EPA Act as it was development for the purpose of a residential, commercial or retail project with a capital investment value of more than \$50 million and of importance in achieving State or regional planning objectives as required under clause 13 of Schedule 1 of *Statement Environmental Planning Policy (Major Projects) 2005* (as in force at the time).
9. By reason of the original approval the project is a transitional Part 3A project. It follows that Part 3A of the EPA Act, as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A to the EPA Act, continues to apply to the original approval and subsequent modifications.
10. The former s75W of the EPA Act allows a proponent to request the Minister to modify the Minister's approval for a project. Modifying an approval means changing the terms of a Minister's approval, including:
  - a. revoking or varying a condition of the approval or imposing an additional condition of the approval, and
  - b. changing the terms of any determination made by the Minister under Division 3 in connection with the approval.
11. The present application is being dealt with as an application for modification pursuant to s.75W of the EPA Act. It is incumbent on the Court as the decision-maker to satisfy itself that the MOD 6 application is properly so characterised an application for

modification within the meaning of s. 75W: *Barrick Australia Ltd v Williams* (2009) 74 NSWLR 733 at 742, [38]. This involves an evaluative judgment as to whether the application is a request to modify the current approval in the sense of changing the terms of that approval.

12. The Director-General and the PAC have dealt with MOD 6 to date on the basis that it is an application within the scope of s. 75W and do not contend otherwise for the purposes of the appeal.
13. The following environmental planning instruments, plans, guidelines and policies are of relevance to MOD 6:
  - (a) *State Environmental Planning Policy (Major Development) 2005*;
  - (b) *State Environmental Planning Policy 65- Design Quality of Residential Flat Buildings (SEPP 65) and Residential Flat Design Code*
  - (c) *Willoughby Local Environmental Plan 2012*;
  - (d) *RMS Guidelines for high density residential development located in metropolitan regional centres*
  - (e) *NSW 2021*
  - (f) *Draft Metropolitan Strategy for Sydney to 2031*
  - (g) *Draft Inner North Subregional Strategy*

#### **Actions of the Respondent:**

14. On 28 September 2010, the Minister for Planning approved MP09\_0066
15. On 18 December 2012, the MOD 6 was lodged with the Department of Planning and Infrastructure ('**the Department**').
16. MOD 6 went on public exhibition from 30 January 2013 – 1 March 2013. The Department received the following submissions:
  - (a) Willoughby City Council objecting to MOD 6;
  - (b) Sydney Regional Development Advisory Committee raising a number of issues;
  - (c) 67 public submissions (48 submissions were received during the exhibition period with the remainder received following exhibition).
17. A summary of the key issues raised in public submissions is provided below.

#### **Summary of Key Issues Raised in Public Submissions**

Issue	Proportion of submissions (%)
Traffic congestion	91
Disabled and other access to Fleet Lane	78
Height/bulk	76
Overshadowing/loss of sunlight	74
Parking	52
Podium design	46
Pedestrian safety	41
Change of use from commercial to serviced apartments	33
Visual and amenity impacts	33
Lack of separation to 12 Thomas St	30
Density/overdevelopment	30
Noise	26

Issue	Proportion of submissions (%)
Streetscape impacts	17
Impact on businesses	15

18. On 18 April 2013, following a meeting with the Applicant where amended plans were discussed, the Council sent a further submission advising that it no longer objected to MOD 6, but setting out a number of matters for the further consideration of the Department including:

- a. that the scale, use and density of the proposal is contrary to the planning for the location having regard to its context and the role of Chatswood CBD as major employment centre;
- b. carparking provision and location
- c. access issues including the driveway crossing and provision of disabled access and;
- d. provision of further information including correcting inconsistencies in the plans, a comprehensive traffic plan, a wind report, revised landscape plan and detailed plans of the public carpark.

19. On 31 May 2013 the Applicant submitted a Preferred Project Report ('PPR').

20. In July 2013, the Director-General prepared an Environmental Assessment Report recommending approval of MOD 6 subject to conditions.

21. On 29 July 2013, the Department referred MOD 6 to the PAC for determination under the Minister's delegation dated 14 September 2011.

22. On 27 August 2013, the PAC held a public meeting. There were 13 speakers including Willoughby Council and 4 submissions were received.

23. On 12 September 2013, the PAC requested weekly shadow diagrams between April and June from the Applicant as the original shadow diagrams only covered 4 days of the year. The weekly shadow diagrams were provided on 19 September 2013.

24. On 30 September 2013, the PAC refused MOD 6.

25. On 4 October 2013, the Department notified the applicant that the PAC had refused MOD 6.

26. On 18 October 2013, the Applicant filed Class 1 proceedings with the Land and Environment Court appealing against the Minister's refusal of Mod 6.

## **PART B – CONTENTIONS**

The Minister contends that the following contentions and circumstances require or should cause the Court to refuse MOD 6.

### **1. Overshadowing**

The proposed modification will result in additional overshadowing of public and private open space and nearby residences (over and above that of the approved development) that is unacceptable.

### **Particulars**

- (i) The proposed modification seeks to substantially increase the height of both tower buildings (Building 1 from 29 storeys to 47 storeys and Building 2 from 29 storeys to 37 storeys, an increase of 53.45m and 24.75m respectively). The increase in height will result in an increase in adverse shadow impacts, over and above those already to be experienced as a result of the project under the current approval, on both public and private open space as well as on private properties.
- (ii) The development as currently approved already results in significant overshadowing impacts, particularly in relation to Chatswood Oval (public open space), the Chatswood Croquet Club and Tennis Club (private open space) and private residential properties in the vicinity. However the shadow impacts of the existing approval were deemed acceptable by the consent authority in approving the original application. The current modification will exacerbate these impacts and result in further cumulative impacts which are unacceptable.
- (iii) The proposed modification would result in public open space (Chatswood Oval) being subjected to additional overshadowing such that the cumulative shadow impact is unacceptable. The current approval (having regard to the impact of existing buildings and the proposed development) has the consequence that the Oval would be affected by shadows after approximately 2.10pm in mid-winter (to varying degrees) with shadows prior to 3pm extending from April through the Sept (i.e. 6 months of the year). Under MOD 6 this impact would be exacerbated with shadows commencing earlier i.e. from around 1.30pm onwards and range from an additional impact of 20 mins to 1.15 hours per day. The Oval is very important in providing for the open space needs of a growing resident and worker population in the Chatswood CBD. The shadow impacts to the Oval from the existing approval (and existing buildings) is substantial and any further impact would limit the usefulness of the space in meeting the open space needs of the community. Accordingly any increase in the existing shadow impact is unacceptable.
- (iv) The proposed modification will also result in additional adverse overshadowing impacts on the northern lawns of the Chatswood Croquet Club and Tennis Club (private open space) from approximately 12.30 – 2.30pm between the beginning of April and the beginning August (14 weeks of the year). This additional impact is unacceptable.
- (v) Further the additional height proposed will result in additional overshadowing of private properties over and above the current approval. While these shadows will move quickly the project as currently approved will already result in substantial shadow impacts. In the absence of any compelling argument in favour of the additional height, the resultant additional shadow is an additional concern.

## **2. Willoughby LEP 2012**

Under Part 3A the Court may (but is not required to) take into account the provisions of an environmental planning instrument that would not (because of section 75R) apply to the project if approved. Willoughby LEP 2012 (gazetted on 31 January 2013)



is the relevant planning instrument that would apply but for Part 3A. Given that the LEP has recently been gazetted and is the primary planning instrument that will guide future development in the area, it is appropriate for it to be taken into account in the assessment of the subject modification.

### **Particulars**

- (i) The proposed modification is inconsistent with various general aims of the Willoughby LEP 2012 as outlined in clause 1.2(2) including in particular:
  - (a) *for planning framework:*
    - (ii) *to enable the achievement of the goals and outcomes of the Willoughby City Strategy through planning controls,*
  - (c) *for environmental protection:*
    - (i) *to identify, protect and enhance environmentally sensitive areas such as native vegetation and fauna, foreshore areas, open space and areas of high scenic landscape value, and*
    - (ii) *to allow development at a scale that is sensitive to environmental constraints, and*
    - (iii) *to control and manage any adverse environmental impacts of development, and*
  - (d) *for urban design:*
    - (i) *to ensure development embraces the principles of quality urban design, and encourages innovative, high quality architectural design with long-term durability and environmental sustainability, and*
    - (ii) *to promote development that is designed and constructed:*
      - (A) *to enhance or integrate into the natural landform and the existing character of distinctive locations, neighbourhoods and streetscapes, and*
      - (B) *to contribute to the desired future character of the locality concerned, and*
    - (iii) *to ensure development design contributes positively to, and wherever possible facilitates improvements to, the public domain, and*
    - (iv) *to preserve, enhance or reinforce specific areas of high visual quality, ridgelines and landmark locations, including significant gateways, views and vistas, and*
  - (e) *for amenity:*
    - (i) *to maintain and enhance the existing amenity of the local community, and*
    - (ii) *to reduce adverse impacts from development on adjoining or nearby residential properties,*
- (ii) The proposed modification is also inconsistent with the height of building development standard and its objectives (refer clause 4.3) and floor space ratio development standard and its objectives (refer clause 4.4) under Willoughby LEP 2012 as further outlined in contentions 3 and 4 below.

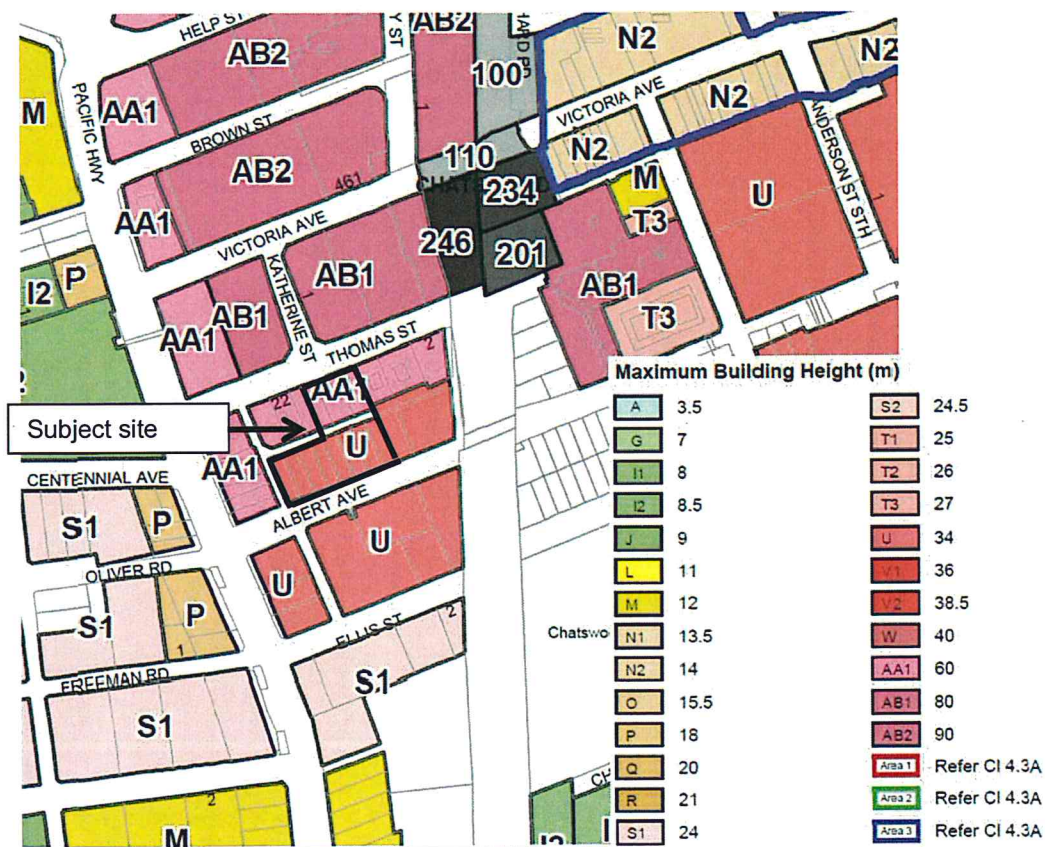
### **3. Height and scale**



The proposed modification would result in a development that is not consistent with Willoughby Council's vision for the Chatswood CBD, is out of scale with adjacent development, is inconsistent with the local planning controls and will result in adverse visual and amenity impacts.

**Particulars**

- (i) The proposed increase in height of Building 1 by 53.45m to maximum height of RL 253.35 (approximately 158m) and Building 2 by 24.75m (maximum RL 221.95 or approximately 127m) will result in buildings that are inconsistent with the proposed future character of the Chatswood CBD.
- (ii) Willoughby Council has implemented a vision for Chatswood CBD with the highest buildings to be located at the heart of the CBD (Transport interchange) with buildings scaling down to the edges transitioning to the surrounding residential precincts. This vision is embodied in the Willoughby LEP 2012 which provides for a maximum height of 60m on the site of Building 1 and 34m on the height of Building 2. In contrast buildings within the centre of the CBD have maximum buildings heights up to RL 246. The proposed buildings as currently approved already exceed the specified site maximums by a substantial margin. The proposed modification will exacerbate this non compliance.



**Figure 1: Willoughby LEP 2012 Height of Buildings Map**

- (iii) LEP 2012 sets the planning controls that will control the future development of land within the Chatswood CBD and in particular sets the maximum height limits for surrounding sites. Under the LEP development surrounding the subject site has a maximum height limit of 60m (fronting Thomas St and the Pacific Highway) and 34m (immediately to the south) with a limit of 24m beyond. Accordingly the proposed development, even as currently approved, will be substantially out of scale with future development in the locality. This disparity would be further exacerbated by the proposed modification.
- (iv) Willoughby LEP 2012, through the allocation of height, recognises the Chatswood Interchange site as the centre of the Chatswood CBD and accordingly provides for the site to be clearly identifiable by allowing for the tallest building within the Centre (RL 246) to be constructed on the site. Approval of the subject modification would undermine this intent as the proposed Tower 1 would be comparable in height notwithstanding that it is on the edge of the CBD.
- (v) Further the proposed development is inconsistent with the objectives of the maximum height limit as identified in clause 4.3 of Willoughby LEP 2012, as follows:
  - (a) *ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,*
  - (b) *to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
  - (c) *to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,*
  - (d) *to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,*
  - (e) *to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,*
  - (f) *to use maximum height limits to assist in responding to the current and desired future character of the locality,*
  - (g) *to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*
  - (h) *to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.*

The modification is in particular inconsistent with objectives (a), (b), (e), (f), (g) and (h).

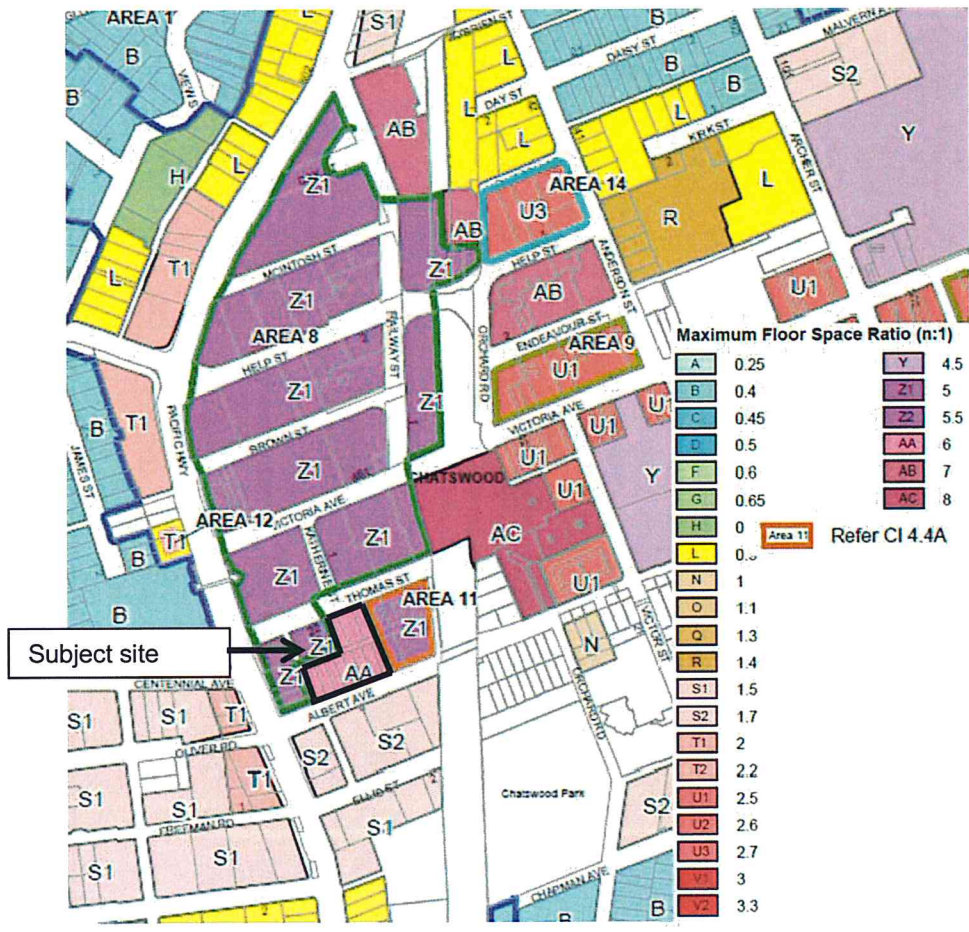
#### **4. FSR and density**

The FSR proposed for the site will result in a scale, massing and density of development that is out of character with the locality.



**Particulars**

- (i) The proposed increase in FSR from 10.94:1 (as currently approved) to 13.56:1 (proposed modification) will result in buildings that are inconsistent with the proposed future character of the Chatswood CBD.
- (ii) Willoughby Council has implemented a vision for Chatswood CBD with the highest density of development (8:1) located at the heart of the CBD (Transport interchange and along the railway line) with buildings scaling down to the edges transitioning to the surrounding residential precincts. This vision is embodied in the Willoughby LEP 2012 which provides for a maximum FSR of 6:1 on the subject site. The proposed development as currently approved already exceeds this maximum by a substantial margin (+4.94:1). The proposed modification would exacerbate this exceedance and further exaggerate the inconsistency of the development with surrounding buildings. Under the LEP development surrounding the subject site has a maximum FSR limit generally of 5:1 (land to the west fronting Thomas St and the Pacific Highway), 7:1 to the west in 'Area 11' (subject to certain requirements) and 1.7:1 (to the south). Accordingly the proposed development, even as currently approved with an FSR of 10.94:1, will be substantially out of scale with future development in the locality.



**Figure 2: Willoughby LEP 2012 Floor Space Ratio Map**



(iii) Further the proposed development is inconsistent with the objectives of the FSR control as identified in clause 4.4 of Willoughby LEP 2012 as follows:

- (a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,*
- (b) to limit traffic generation as a result of that development,*
- (c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- (d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,*
- (e) to permit higher density development at transport nodal points,*
- (f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,*
- (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*
- (h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,*
- (i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,*
- (j) to encourage the consolidation of certain land for redevelopment,*
- (k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.*

The modification is in particular inconsistent with objectives (a), (b), (c), (d), (h) and (i).

(iv) In addition, increasing the FSR to accommodate a more intense form of development will:

- a. result in an increase in car parking and associated increase in traffic impacts when compared to the current approval
- b. result in an increase in demand on existing services and infrastructure within the locality in particular including demand on local open space, education facilities etc.



## Particulars

- (i) The proposed modification to the podium design which is intended to accommodate additional car parking spaces as a result of the additional development yield, will result in an inferior design and treatment of the proposed through site connection. The modified space will be partially covered, narrower than currently approved and will as a result not perform the function of an open landscaped plaza as originally intended. The modified space will be perceived as a private space, have limited access to sunlight and will be difficult for pedestrians to identify as a public connection. In addition the space will provide limited opportunities for active frontages and corresponding passive surveillance due to above ground car parking. It is also questioned whether the proposed retail shops will be viable given their limited size, number and visibility.
- (ii) The above ground car parking includes parking areas across the eastern half of the frontage (approx. 36m of 80m frontage) on Albert Avenue on Levels 1, 2 and 3. In addition the ground floor in this location is dominated by car park entries / exits. This façade treatment, which is the direct result of above ground car parking, will limit activation of this frontage and have an adverse streetscape impact.
- (iii) The podium façade treatment of the ground level on the Thomas Street frontage is similarly dominated by car park entries / exits with approximately 16m of a 40m frontage dedicated to vehicular access. This similarly will adversely affect the streetscape on Thomas Street and limit potential activation of the street.

## 6. Public benefit

The public benefit of the proposed modification is not of such magnitude as to outweigh the adverse impacts that would result from approval.

### Particulars

- (i) The applicant claims that the provision of an additional 122 residential apartments in a highly accessible location is a public benefit and is consistent with NSW 2021, Draft Metropolitan Strategy for Sydney and Draft Inner North Subregional Strategy. While it is correct that these policy documents contain relevant goals in this regard, Council has advised that zonings under Willoughby LEP 2012 will ensure that Council meets its dwelling targets as outlined in the above documents without the need for additional dwellings as proposed under the modification. The provision of additional dwellings within these buildings is therefore not considered to be necessary to meet the objectives in these policy documents.
- (ii) The applicant has proposed a developer agreement that would provide approximately \$12 million in funding to be used for upgrades to Chatswood Oval, Chatswood High Oval, Beauchamp Oval and CBD streetscape upgrades should the modification be approved. The public benefit of this funding does not outweigh the environmental and amenity impacts on public infrastructure, nearby residents and pedestrians and works in the area.



## 7. Access

The proposed vehicular entry/exit points on Thomas Street and Albert Avenue necessitated by the modification are unacceptable on pedestrian and traffic safety grounds.

### Particulars:

- (i) The Thomas Street driveway is some 16 metres wide and provides four lanes for entry/exit to the basement (entry/exit) and podium (entry/exit) parking levels. There is minimal separation between the entry/exit lanes for pedestrians to safely cross this wide and confusing driveway arrangement in an area of high pedestrian activity. Furthermore the design of the driveway is unsatisfactory as the layout is confusing and the western exit driveway fails to provide pedestrian sight lines as required by Clause 3.2.4 (b) of AS2890.1-2004.
- (ii) The Albert Avenue driveway is some 13 metres wide and provides one entry and two exit lanes. There is minimal separation between the entry/exit lanes for pedestrians to safely cross this wide and confusing driveway arrangement in an area of high pedestrian activity.

## 8. Parking

The proposed residential parking provision is considered excessive. This results in the need to provide additional access points and will result in a higher level of traffic generation. Thus the excess parking exacerbates the access and pedestrian issues identified in the contention on access.

### Particulars

- (i) 317 residential parking spaces are proposed for 355 units (149x1 bed, 178x2 bed and 30x3 bed). RMS Guidelines for high density residential development located in metropolitan regional centres suggest the following parking rates:
  - a. 0.4 spaces/1 bed unit;
  - b. 0.7 spaces/2 bed unit;
  - c. 1.2 spaces/3 bed unit; and
  - d. 1 visitor space per 7 units
- (ii) Applying these rates the residential component would require 271 spaces (including 50 visitor spaces which could be shared within the public car park and thus not require additional parking spaces subject to Council's agreement).

## 9. Traffic generation

The traffic assessment is inadequate as it is based on traffic generation rates for the residential component that are lower than RMS guidelines in circumstances where the proposed parking provision for the residential component exceeds RMS guidelines. It is not possible based on the inadequate traffic assessment to undertake a proper assessment of the access and pedestrian issues identified in the contention on access.

**Particulars**

- (i) The traffic assessment is based on the residential units generating 0.16 trips per unit in the weekday morning and afternoon peak hours with a parking provision of 0.89 spaces per unit. RMS Guidelines suggest a generation rate of 0.24 trips per unit (50% higher than the assumed rate) with a parking provision of 0.76 spaces per unit (15% lower than the proposed parking provision).

**10. Public interest**

The proposal is not in the public interest as it is contrary to relevant planning principles and in consideration of public submissions.

**Particulars**

- (i) On the balance of the above matters and in consideration of the public submissions received in relation to the application (to the extent that the matters raised in public submissions are raised above), approval of the proposed modification would not be in the public interest and is contrary to section 5(a)(ii) of the Environmental Planning and Assessment Act 1979 and relevant planning principles. The proposed modification does not promote the orderly and economic use and development of land, will result in a development that does not reflect the existing or desired future character and identity of the locality and will have adverse environmental social and environmental impacts in the locality.

**SIGNATURE**

Signature of authorised officer



Capacity

PAC Member

Date of signature

14 November 2013