

09117
20 May 2010

The General Manager
Willoughby City Council
PO Box 57
CHATSWOOD NSW 2057

Dear Sir

**SUBMISSION ON DRAFT WILLOUGHBY LOCAL ENVIRONMENTAL PLAN 2009
7 RAILWAY STREET, CHATSWOOD**

We would like to thank Council for the opportunity to comment on the Draft Willoughby Local Environmental Plan 2009 (Draft WLEP 2009). This submission has been prepared on behalf of Mirvac Projects Pty Limited and provides comments and recommendations in relation to 7 Railway Street, Chatswood (the site).

This submission addresses the following aspects of Draft WLEP 2009:

- **Zoning:** The proposed zoning is B3 Commercial Core. The draft LEP seeks to rezone the site from a commercial zone that allows residential development, to a zone that prohibits residential development an effective down zoning of the site. This zoning is contrary to the Department of Planning draft Activity Centres Policy which advocates zoning flexibility to enable the market to respond to demand with the mix of uses being left to market forces. This submission recommends that the site be zone B4 Mixed Use so as to allow a mix of uses including shop top housing or residential flat development. This would be consistent with the zoning of the land to the immediate north and immediate east. Alternatively that the land use of 'shop top housing' be listed as an additional permitted use at 7 Railway Street in Schedule 1 of the Draft WLEP 2009.
- **Height –** The proposed maximum height of a building on the southern portion of the site is 90m. This submission seeks a maximum height limit of RL231m (AHD) or 138m above existing ground level.
- **Floor Space Ratio (FSR) –** The maximum FSR permitted on the site is 10.5:1 assuming certain conditions are met. This application seeks an amendment to the drafting of the clause so as to clarify that the additional permissible FSR under clause 4.4(15) applies to the parts of the site that are located above and to the east of the North Shore Rail Line.

1.0 THE SITE

7 Railway Street is located to the south of the Pacific Highway and adjacent to the North Shore railway line (the railway line) in Chatswood (**Figure 1**). It is within a developed medium/high density residential precinct between Anderson Street to the east and Railway Street to the west (known as the Pacific Place Precinct). The property description of the site is Lot 6 in DP 1058962. The site is bounded by Help Street to the south, Railway Street to the west and the existing residential tower at 9 Railway Street (named 'Epica') to the north (see **Figures 2 and 3**). The site also includes the area above the adjacent railway corridor, as well as a parcel of land on its eastern side (**Figure 4**). The site has an area of approximately 4,913m².

The land has been under the ownership of Mirvac Projects Pty Ltd since 2000, in which time the site has been vacant and cleared in preparation for an approved commercial development. Part of the site occupies the area above the rail corridor and the approved commercial building was designed to be constructed above and to the west of the railway.



Figure 1 – Aerial view of the site and locality



Figure 2 – Site location map



Figure 3 – Photo of the site in the fore ground with existing residential development (Epica and Altura) to the north



Figure 4 – Part of the site on the eastern side of the railway line (surrounded in hoardings) looking west with the Zenith Towers in the background

2.0 SYDNEY REGIONAL ENVIRONMENTAL PLAN NO.5 – CHATSWOOD TOWN CENTRE

The site is currently subject to the provisions of *Sydney Regional Environmental Plan No. 5 – Chatswood Town Centre* (SREP 5). The relevant controls under the SREP are summarised in **Table 1** below.

Table 1 – Key Existing Planning Controls (SREP 5)

Key Issue	Control
Zoning	3(c2) Business Commercial
Permissible Land Uses	The following development is permissible with development consent: Demolition, Subdivision, Development for the purpose of: advertisements, brothels, child care centres, clubs, commercial premises (other than carparking stations), drainage, hotels, motels, places of public worship, public buildings, purposes referred to in Schedules 3 or 7, recreation areas, refreshment rooms, residential flat buildings, roads, taverns, utility installations. Any other development is prohibited in the zone.
Size of Shops	Shops are limited to a maximum of 150m ² within the 3(c2) Business Commercial zone
Maximum Building Height	52 metres
Maximum Floor Space Ratio	The maximum FSR applying to the site is 5:1

3.0 EXISTING PLANNING CONSENT D1999/1812

As Council is aware, development consent was granted on 20 January 2002 for the "Construction of a 21 storey commercial office building, retail shops, restaurant, basement car parking, and landscaped public precinct." The development consent has been the subject of several applications to modify the consent relating to refinement of car parking, stormwater detention, design changes to improve the relationship between the building and the public space, update the external façade, and to enable the subdivision of the Pacific Place Precinct so as to create a separate allotment for 7 Railway Street.

The commercial building has not been constructed and the site has remained vacant for more than a 10 year period due to a lack of demand for new commercial floor space and an increasing vacancy rate in existing commercial buildings in the Chatswood CBD.

4.0 PART 3A PROJECT APPLICATION

As a commercial development has proven to be economically unviable on the site, Mirvac Projects Pty Limited lodged a Part 3A Project Application (PA) and Preliminary Environmental Assessment (PEA) for a 43 storey mixed use commercial residential building on the site in July 2009. The PEA outlined that the first three storeys above the ground level would comprise strata commercial floor space (1,700m² GFA) and levels 5 to 42 would comprise residential apartments (33,960m² GFA).

The proposed building height was RL231m (AHD). Information was submitted which demonstrated how the proposed built form would sit within the exiting and future context of the Chatswood CBD as well as shadow diagrams which demonstrated that the proposal would not generate any adverse overshadowing impacts generally or specifically on the Victoria Avenue Pedestrian Mall.

On 18 September 2009 the Minister declared that the proposal met the mandatory criteria under the State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP) and is therefore is a Project to be determined under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Following the above declaration, the Director General issued his requirements for the assessment of the application dated 10 November 2009. With regards to the proposed land use, the following requirements were issued:

"The EA shall address the relevant metropolitan, regional and local strategies in relation to the desired future mix of land uses, and provide justification for the amount of residential floor space being proposed. In this regard, it is considered that the development should provide a substantial component of commercial floor space."

Mirvac are currently preparing an environmental assessment for the project which accords with the above level of commercial floor space and the remainder of the development will comprise shop top housing, a new public park between Epica and the proposed building, a new through site link from Railway Street to Cambridge Lane, and access to further public open space to be provided on top of the railway enclosure structure (RES).

5.0 DRAFT WLEP 2009

5.1 Zoning

The site is proposed to be zoned B3 Commercial Core. The Standard Local Environmental Plan (LEP) Template (on which Draft WLEP 2009 is based) provides the following standard objectives for the B3 Commercial Core zone:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*

In addition to these standard objectives, Willoughby Council is seeking to add the following LGA-specific objective to its B3 zone:

- *To provide for the role of St Leonards as a Specialist centre in terms of research, education and employment generation.*
- *To strengthen the role of Chatswood City Centre as a major centre for the Inner North sub-region as well as providing the retail, business, community, cultural and entertainment needs of the City and the surrounding area.*
- *To create opportunities to improve the public domain and pedestrian links throughout Chatswood City Centre.*
- *To protect and encourage safe and accessible city blocks by providing active frontages to streets and a network of active pedestrian friendly streets, lanes, arcades and plazas.*

The following uses are proposed to be permissible with consent in the B3 Commercial Core zone: Building identification signs; Business identification signs; Business Premises; Childcare centres; Community facilities; Educational establishments; Entertainment facilities; Function centres; Funeral chapels; Hotel or motel accommodation; Information and education facilities; Medical centres; Night club; Office premises; Passenger transport facilities; Place of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Registered clubs; Retail premises Roads; Services apartments; Sex services premises.

Any other development is prohibited within the zone, including shop top housing and residential flat buildings.

As shop top housing is currently permissible on the site, the proposed draft WLEP 2009 therefore has the effect of down zoning the site by amending a higher order deemed State Environmental Planning Policy (SREP 5). Without impact the intent of the B3 zone across the Local Government Area (LGA) it is possible to make shop top housing an additional permitted use on the site. This would enable future site development to meet the zone objectives as outlined below:

- Additional residential population will support the provision of a wide range of retail business, office, entertainment, community and other suitable land uses (first objective);
- Residential development will not compromise or affect retail, commercial and service employment within the Chatswood CBD (second objective);
- High density residential within 200m of the rail station, office, retail commercial and entertainment services, will minimise car usage in Willoughby and maximise public transport patronage (third objective);

- The additional residential (and commercial) population on vacant development sites will strengthen Chatswood's position as a "Major Centre" without detracting from it (fifth objective); and
- Shop top housing allows the creation of active and pedestrian friendly streets, lanes, arcades and places (seventh objective).

Since 1992 there have been no new large scale commercial building commenced or completed in Chatswood (reported to be at 17.8% in 2010 by Property Council of Australia). This absence of projects has bridged over several property cycles indicating structural issues which render new large scale commercial office development economically unviable in the Chatswood CBD with existing commercial floor space struggling to retain tenants. Evidence of this is found in office vacancies in Chatswood (reported to be at 17.8%); rental incentives on offer in Chatswood exceeding 33% and a comparison between comparable "A" grade rental on offer in newer buildings in Macquarie Park being over \$100 per m² less than available in Chatswood.

The site owner, Mirvac, has been unable to secure any commitment to a commercial development on this site due to rental levels that cannot support new development of this form. An analysis of project feasibilities reveals that a rental 30% above current market rents, with half of the prevailing rental incentives, need to be agreed by a tenant to enable construction to commence for an office tower at 7 Railway Street. Even with floor space incentives proposed in the draft LEP commercial (office) projects are not feasible, and are unlikely to ever be feasible for new development sites such as 7 Railway Street. In this context the proposal to rezone that site to B3 – Commercial Core is unreasonable as it would effectively sterilise from future development.

The site has remained vacant for 10 years due to the fact that commercial development is not viable on the site. It has been demonstrated that many of the existing commercial buildings in the Chatswood CBD are currently vacant or major tenants are due to relocate in the near future and that there is a low demand for commercial floor space in this area. With this in mind, the proposed zoning which will prohibit the development of a residential flat building or shop top housing on the site (a use which is presently permissible), will reduce the development potential of the site significantly.

Increasing the amount of commercial floor space on the site will not necessarily make it more commercially viable, particularly if that floor space is likely to remain vacant for a significant period of time.

It is therefore requested that the site be rezoned to B4 Mixed Use so that the full development potential of the site can be realised in accordance with the targets set within the Sydney Metropolitan Strategy and the draft Inner North Subregional Strategy. Excluding residential development from development of the subject site will be a poor planning outcome for a site that has been left vacant for over a decade and is unviable as a commercial office tower site. This would be consistent with the northern part of the Pacific Place Precinct and would allow for either commercial or residential or a mixture of both (as is currently proposed in the Part 3A application) to be developed on the site.

We believe that the B4 zone is appropriate for the site given its location at the edge of the CBD and would provide a suitable transition between the commercial development on the western side of the railway and the mixed use / residential development to the east of the railway.

If the site were to be rezoned to the B3 Commercial Core Zone as is proposed, without the listing of shop top housing as an additional permitted use, it would be likely to stay in its current vacant state indefinitely. This would not be in the interests of the Council, the community or the owner.

5.2 Height

The draft Height of building Map (Sheet HOC_004) prescribes two maximum height limits on the site as shown in **Figure 5**. The northern part of the site is limited to a maximum height of RL100m (AHD) and the southern section of the site is limited to a height of 90m.

The PEA submitted with the PA demonstrated that a building at RL231m (AHD) in height would sit comfortably within the urban form of the Chatswood CBD, providing a transition of buildings heights up towards the tall residential buildings approved over Chatswood Railway Station (see **Figure 6**). The shadow diagrams also submitted demonstrated that there would be no adverse overshadowing generated by a building of that height.

It is noted that the current scheme Mirvac are progressing seeks to provide a new public open space area which is in excess of 60% of the area of the site, this represents a considerable public benefit. The proposed maximum floor space could not be accommodated within a building envelope which has a footprint that occupies just over 30% and compliant with the maximum height limit proposed for the site. It is therefore requested that the Height of Building Map (Sheet HOB_004) be amended so as to designate a maximum height of RL231m (AHD) on the southern portion of the site. This would deliver a building which sits comfortably within the context of the Chatswood CBD as well as a significant public benefit in the form of an enlarged open space area.

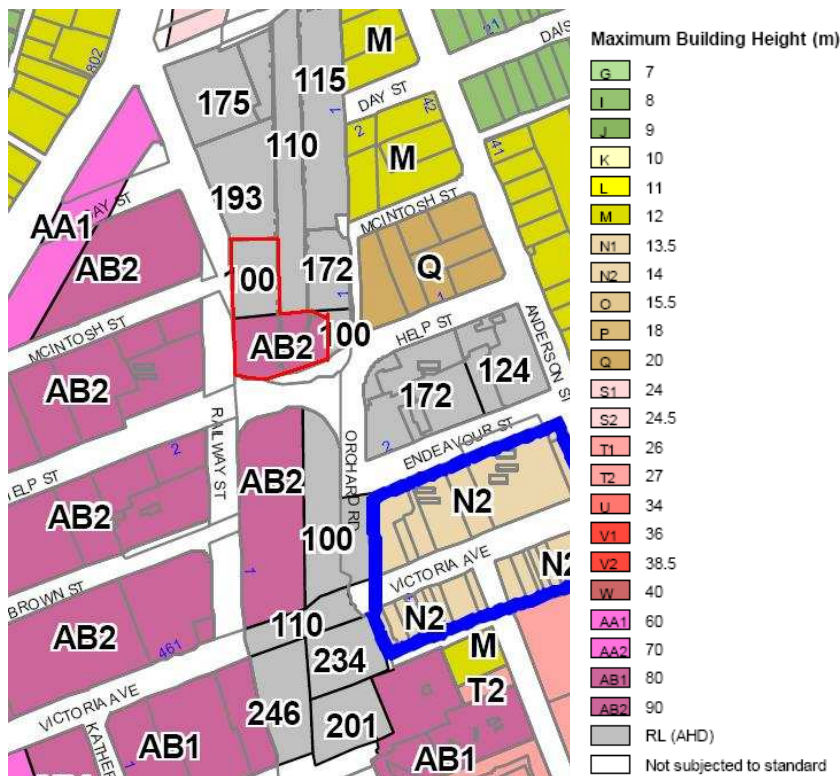


Figure 5 – Proposed maximum Height of Building Map extract

Source: Willoughby City Council

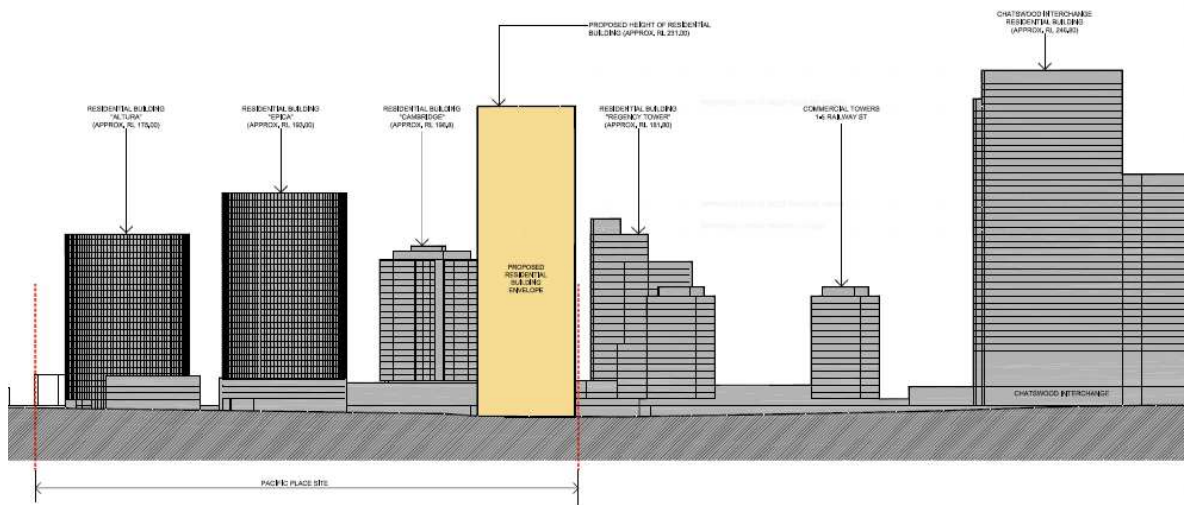


Figure 6 – Proposed building envelope within the context of the Chatswood CBD West elevation

Source: Mirvac

5.3 Floor space ratio (Clause 4.4)

Clause 4.4(2) of draft WLEP 2009 and the draft Floor Space Ratio Map (Sheet FSR_004) prescribe a maximum Floor Space Ratio (FSR) limit of 5:1 to the site. However, the site is identified as being within Area 8 on the same map and as such the following clause is applicable to the site:

“4.4(15) Despite subclause 2, for land within B3 – Commercial Core, west of the North Shore Railway Line in Chatswood in Area 8, development consent may be granted for purposes of erection and use of a building on the land that exceeds 5:1 only where;

- (a) the site area exceeds 2,500 square metres, and*
- (b) the floor space ratio will not exceed 10.5:1, and*
- (c) a minimum of 40% of the site is available for landscaping, publicly accessible space and through site lines (site coverage does not exceed 60%).”*

Mirvac Projects Pty Limited are supportive of this clause however, we note that the site, which is wholly within Area 8, comprises a portion of land which is directly above the North Shore Railway Line and a small portion which is east of the North Shore Railway Line. For sake of clarity, the following amendment is requested:

“4.4(15) Despite subclause 2, for land within ~~B3 – Commercial Core, west of the North Shore Railway Line in Chatswood in~~ Area 8 on the Floor Space Ratio Map, development consent may be granted for purposes of erection and use of a building on the land that exceeds 5:1 only where;

- (d) the site area exceeds 2,500 square metres, and*
- (e) the floor space ratio will not exceed 10.5:1, and*
- (f) a minimum of 40% of the site is available for landscaping, publicly accessible space and through site lines (site coverage does not exceed 60%).”*

5.4 Size of shops in B3 zone (Clause 6.10)

Clause 6.10 as currently drafted will limit the size of shops in the B3 zone to a maximum of 100m². Should Council accept the recommendation of this submission in relation to rezoning of the site to B4 Mixed Use, the provisions of Clause 6.10 which relate to the size of shops within zone B3 Commercial Core will not apply to the site. However, should Council not amend its proposed zoning, it is recommended that Clause 6.10 be amended such that it is consistent with the current provision within SREP 5 which limits the size of shops to 150m² within Zone 3(c2) Business Commercial zone.

The reduction of the minimum shop size from 150m² to 100m² will mean that the provision of ground floor shops, which have a positive benefit of creating street activation, will be less viable and therefore less likely to occur.

6.0 3% SECTION 94A LEVY

We note that Willoughby Council are seeking the introduction of a 3% Section 94A levy for all development with a total development cost over \$250,000. Increasing the levy to this amount is likely to have a further prohibitive element towards new commercial development in the Chatswood Town Centre.

With regard to the submission made to the Department of Planning regarding this proposal, we note that the report does not provide any substantial detail in relation to funds that have already been collected under the existing Section 94 Plan. Nor does it take into account works that have already been delivered through procurement of alternative fund sources, e.g. the signalisation of the intersection of Railway Street with Victoria Avenue at the western entrance to the railway station which we believe was delivered under the economic stimulus package?

7 Railway Street forms part of the greater Pacific Place Precinct, where a significant amount of the Section 94 contributions payable under the existing plan have already been made during the construction of other parts of the Precinct. It is therefore requested that a waiver mechanism be included in any future contribution system such that previous contributions can be taken into account when assessing future applications.

7.0 SUMMARY

Draft WLEP 2009 as currently drafted will impose a fundamental constraint upon the development potential of the site and the delivery of public benefits associated with it. Of primary concern is the proposed zoning of the site. It is requested that the zoning be revised to the B4 Mixed Use zone such that shop top housing is permissible on the site, consistent with adjacent sites.

It is also requested that the maximum height control be amended to RL 231m (AHD) which has been demonstrated to provide an appropriate building envelope that will sit comfortably within the context of the Chatswood CBD and does not generate any adverse overshadowing impacts.

Once again we would like to thank Council for the opportunity to comment on draft WLEP 2009 and hope that Council gives the proposed amendments serious consideration. Should you require any further information please do not hesitate to contact me or Jennie Buchanan on 9956 6962 of cbrown@jbaplanning.com.au.

Yours faithfully



Clare Brown
Director

CC. Nicole Vince – Mirvac Projects Pty Limited