



Clause 4.6 Variation Request

Maximum Street Frontage Height

410-416 Victoria Avenue, Chatswood

Submitted to Department of Planning, Housing and Infrastructure
on behalf of Novus Investco Pty Ltd

Prepared by Colliers Urban Planning

9 October 2025 | 2230512



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Colliers Urban Planning acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past and present.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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1.0 Introduction

1.1 Overview

This Clause 4.6 Variation Request has been prepared by Colliers Urban Planning (formerly Ethos Urban) on behalf of Novus Investco Pty Ltd ('Novus' or 'the Applicant'). It is submitted to the Department of Planning, Housing and Infrastructure (DPHI) in support of a State Significant Development Application (SSDA) for a proposed Build-to-Rent (BTR) shop-top housing development on land identified at 410-416 Victoria Avenue, Chatswood (the Site).

Clause 4.6 of the *Willoughby Local Environmental Plan 2012* (WLEP 2012) enables the consent authority to grant consent for development even though the development contravenes the development standard. This Clause 4.6 Variation Request relates to the development standard for the maximum height of building of the street frontage along Victoria Avenue under Clause 4.3 of the WLEP 2012. It should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Colliers Urban Planning (formerly Ethos Urban).

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

This document demonstrates that compliance with the maximum podium height under the maximum building height development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

1.2 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386 (*upheld on appeal in Randwick City Council v Micaul Holdings Pty Ltd* (2016) 225 LGERA 94); and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 variation request:

- Identifies the site and proposed development (**Section 2.0**);
- Identifies the development standard to be varied (**Section 3.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**).

2.0 Site and Proposed Development

2.1 Site Description

The Site is generally rectangular in shape and is bounded by Victoria Avenue to the north, Victor Street to the east, and Post Office Lane to the south. It is located within the Willoughby City Council Local Government Area (LGA). The Site has an area of approximately 1,050sqm and is legally described as and comprises of:

- Lot A and B in DP406105 (410-414 Victoria Avenue, Chatswood); and
- Lot 4 in DP82303 (416 Victoria Avenue, Chatswood).

A Site aerial image is provided in **Figure 1** below.

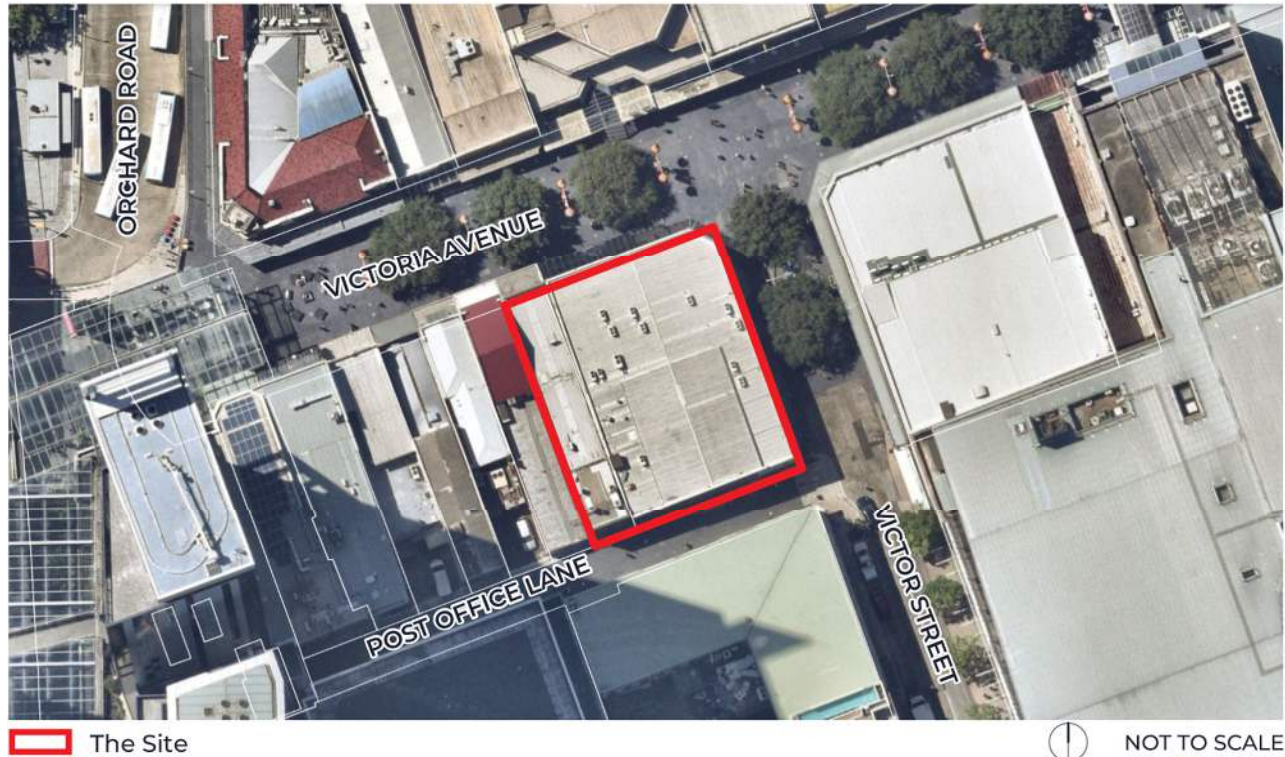


Figure 1 Site Aerial

Source: Nearmap, Colliers Urban Planning

The site is located within a key area of the Chatswood CBD and benefits from a high level of pedestrian activity to all frontages, being:

- **Victoria Avenue**, which is the primary 18m-wide retail spine extending east-west through the majority of the Chatswood CBD, and is pedestrianised between the Chatswood Transport Interchange and Anderson Street;
- **Victor Street**, which is mostly pedestrianised along the boundary of the Site; and
- **Post Office Lane**, which serves a primary function as a service laneway to multiple retail properties fronting Victoria Avenue but also serves as a pedestrian link between the Chatswood Transport Interchange and Westfield Chatswood, having recently been converted to a shared zone by Council.

2.2 Existing Development

The Site currently comprises adjoining small-scale retail / commercial buildings, primarily containing retail shopfronts at ground floor and commercial uses at Level 1, which generally present as a two-storey built form to Victoria Avenue. The existing retail uses have frontages to both Victoria Avenue and Victor Street, with Post Office Lane providing rear lane vehicular access to the Site and neighbouring properties with direct service and emergency vehicle access.

The existing development on the Site is shown in **Figure 2** to **Figure 4** below.



Figure 2 Existing Development to Victoria Avenue Frontage (looking south-west, subject Site outlined red)

Source: Colliers Urban Planning



Figure 3 Existing Development to Victor Street Frontage (looking north-west, subject Site outlined red)

Source: Colliers Urban Planning

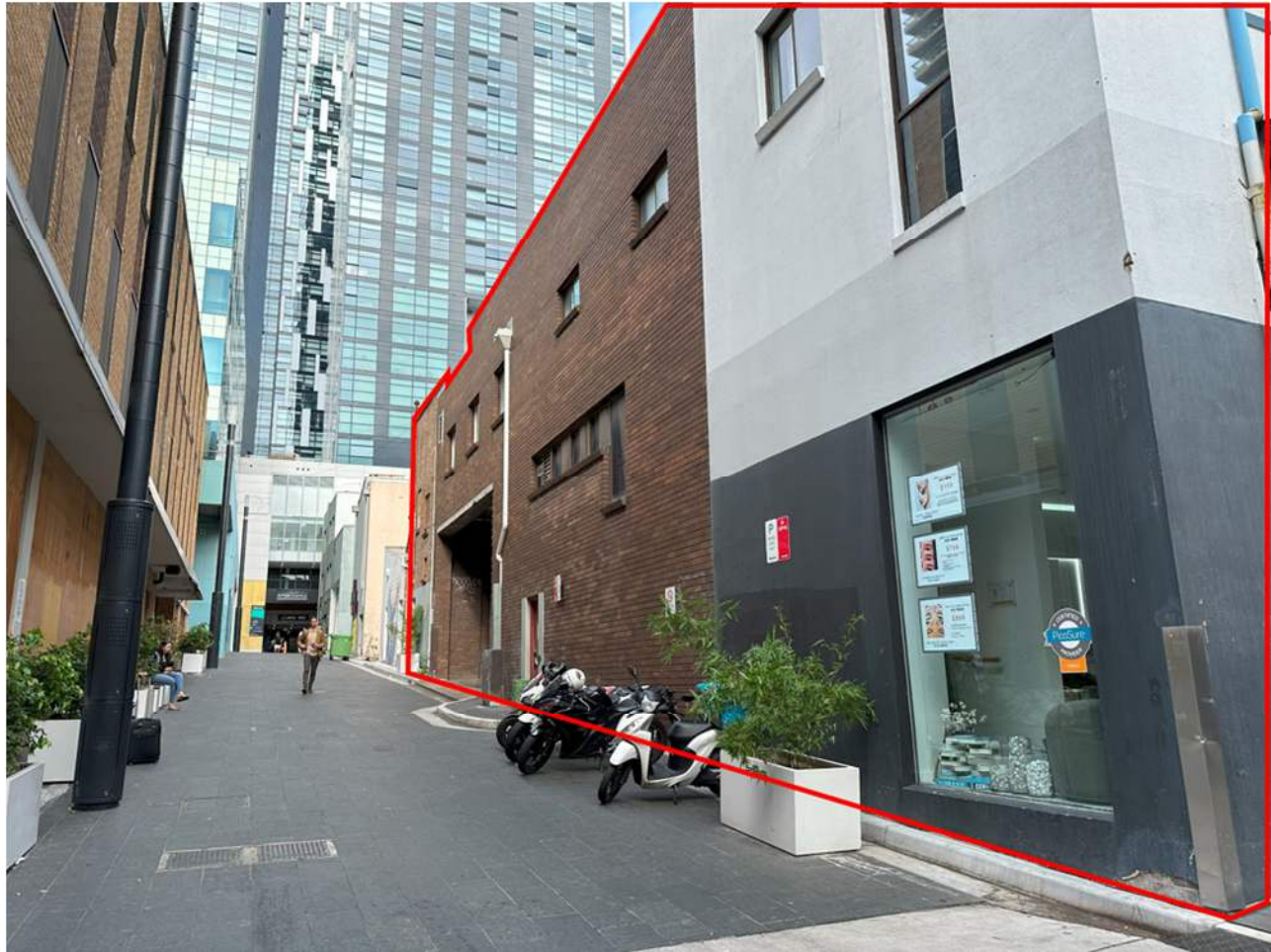


Figure 4 Existing Development to Post Office Lane Frontage (looking west, subject Site outlined red)

Source: Colliers Urban Planning

2.3 Description of the Proposed Development

The Applicant will seek development consent under ‘Division 4.7 – Stage Significant Development’ of the EP&A Act for the development of a BTR shop-top housing development, with Ground and Level 1 retail premises and residential lobby areas, as well as associated basement carparking and communal recreation areas (the Proposal).

The Proposal includes the following key components:

- Site preparation works including demolition of the existing buildings, excavation and earthworks;
- Construction and use of a 46-storey BTR shop-top housing development comprising:
 - Ground and Level One retail premises and residential lobby areas;
 - Residential amenities throughout the building including a pool, gym, coworking facilities, outdoor terrace, resident lounge and dining areas, and multi-purpose spaces; and
 - 260 BTR dwellings.
- Landscaping located on Levels 2, 6 and 23.
- Construction of two (2) basement Levels, comprising loading facilities, plant and associated basement uses.
- Extension and augmentation of services and infrastructure and services as required.

Photomontages of the development are provided below in **Figure 5** and **Figure 6**.



Figure 5 View of the Proposal from Anderson Street (facing West)

Source: Fender Katsalidis



Podium as viewed from Victoria Avenue



Podium as viewed from Victor Street

Figure 6 Streetscape perspectives of the podium

Source: Fender Katsalidis

3.0 Development Standard to be Varied

Table 1 summarises the relevant environmental planning instrument (EPI), development standard and proposed variation.

Table 1 *Planning instrument, development standard and proposed variation*

Matter	Comment
Environmental planning instrument (EPI) sought to be varied	<i>Willoughby Local Environmental Plan 2012 (WLEP 2012).</i>
The site's land use zone	E2 – Commercial Centre. The proposed shop-top housing BTR development is made permissible by virtue of the Housing SEPP.
Development standard sought to be varied	Clause 4.3 Height of buildings The objectives of this clause are: (a) to 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.
Type of development standard	Numerical development standard
Numerical value of the development standard in the EPI	- Maximum street frontage/podium height: 7m – non-compliant. - Maximum building height: 246.8m (RL) – compliant.  Figure 7 <i>Height of buildings map (site indicated in red)</i> Source: Willoughby LEP 2012

Difference between the existing and proposed numeric values

The Proposal seeks a variation to the maximum street frontage/podium height within the WLEP 2012 as per the following.

Building Component	WLEP 2012 Control	Proposed	Difference
Level 2 awning	7m (street wall)	12.49m (maximum extent of variation)	5.49m (78.4% variation – maximum extent)
Balustrade		10.79m (maximum extent of variation)	3.79m (54.1% variation – maximum extent)
Raised planter (behind balustrade line)		10.16m (maximum extent of variation)	3.16m (45.1% variation – maximum extent)
Edge planter box		9.9m (maximum extent of variation)	2.9m (41.4% variation – maximum extent)
Top of street wall/podium		9.46m (maximum extent of variation)	2.46m (35.1% variation – maximum extent)

Visual representation of the proposed variation

Figure 8 illustrates the proposed variation to the maximum street frontage/podium height standard applying to the site.



Figure 8 Indicative podium height plane on the Northern Elevation (LEP height shown in orange)

Source: Fender Katsalidis

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the WLEP 2012 provides that:

4.6 Exceptions to development standards

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:*
- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*);
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*);
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*)

The relevant matters contained in clause 4.6 of the WLEP LEP 2012, with respect to the maximum building height development standard, are each addressed below, including with regard to these decisions.

4.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses similar language to clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the WLEP 2012 is essentially the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the maximum building height development standard pursuant to the **First Method**.

4.1.1 First Method: The objectives of the standard are achieved notwithstanding non-compliance with the standard

There are no specific objectives for the maximum street frontage/podium height within the WLEP 2012. There are however general objectives included at Clause 4.3 of the WLEP 2012 applicable more generally to 'height of buildings:'

- (a) to 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.*

These objectives are addressed below, as far as they are relevant to the specific nature of this variation.

Objective (a): to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape

The treatment of the development forming part of Victoria Avenue has undergone significant consideration. The lower levels of the Proposal have been formulated to ensure that its activated street wall/podium aligns with the existing topography of the land, as well as the existing, street wall frontages and heights of adjacent developments.

Specifically, the Proposal provides a two-storey, street wall, with a maximum height of approximately 9.46m (excluding the lightweight elements above it including balustrades, planter boxes and awnings). This ensures consistency with the existing building on the Site (which provides an 11m height street wall), as well as the surrounding buildings along Victoria Avenue, whose street walls generally range in heights up to 11m.

It is noted that there are elements, that extend above the proposed, street wall height and that breach the height limit to a further extent. These include balustrades, planters and awnings serving the Level 2 outdoor communal space. Given their lightweight composition, these elements do not add to the bulk and scale of the street wall or discernibly change how it is interpreted from the public domain along Victoria Avenue. Further, in the case of the Level 2 awning, it is setback 4.3m from the street wall edge, which reduces its visibility from the public domain.

Figure 9 on the following page includes a pedestrian view analysis. It demonstrates the above findings, including that the proposed street wall height is consistent and in harmony with the existing street walls along Victoria Ave. Further, that the lightweight elements above the street wall do not materially impact how it is viewed/read from the public domain.

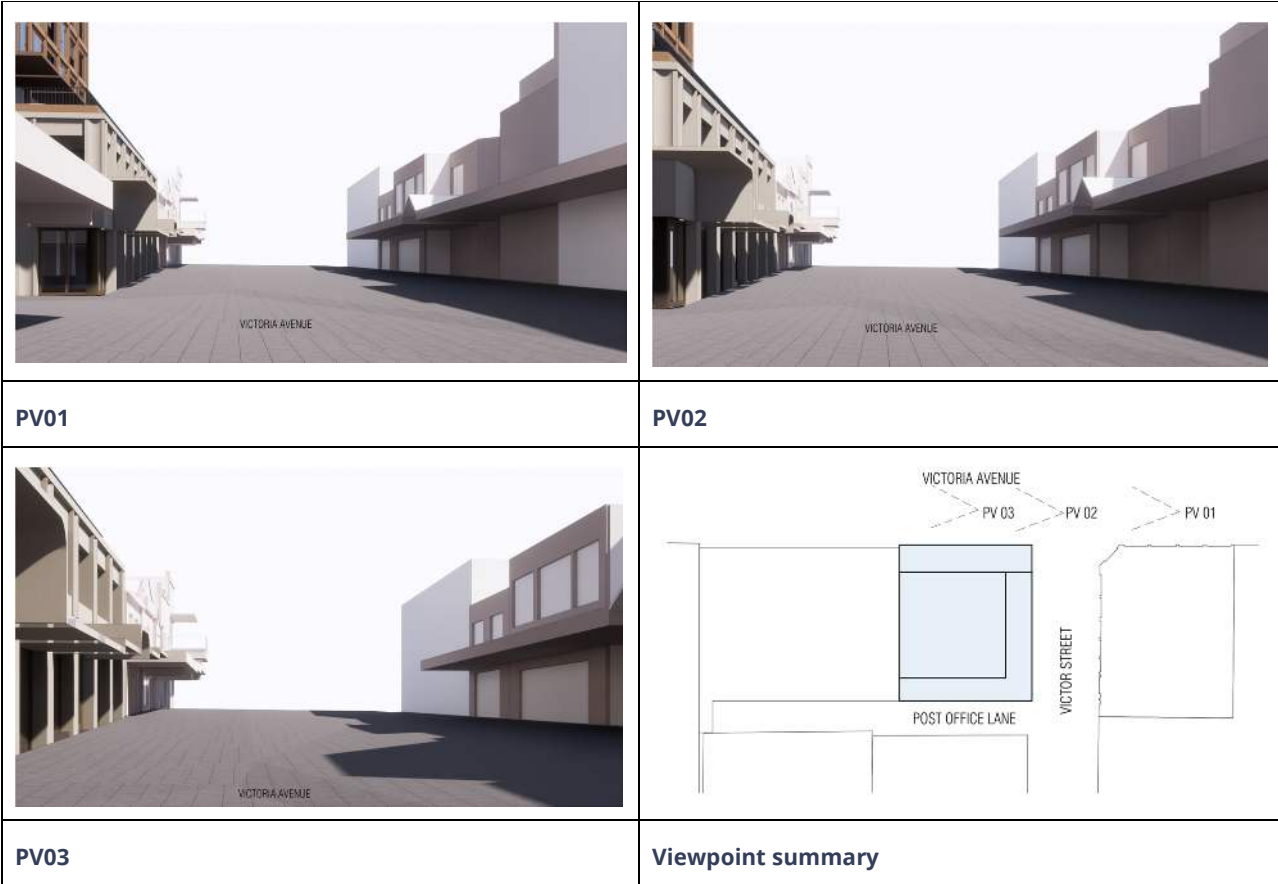


Figure 9 *Proposed streetscape view of the two-tiered podium from Victoria Avenue*

Source: Fender Katsalidis

Furthermore, it is noted that in December 2023, at the request of GANSW and Council, the Applicant commissioned a detailed, Urban Design Study (the Study) to be prepared, with collaboration and feedback from representatives from Council, GANSW and DPHI. The Study noted that throughout Victoria Avenue, the street wall height varies significantly, which provides opportunity for some variety to be appropriate, given that all street wall frontages are two storeys. This condition was considered by and reflected in the winning scheme that was subject to a Competitive Design Excellence Process undertaken in 2024 (required to be undertaken by the WLEP 2012), which is the genesis of the subject Proposal. The proposed street wall height was endorsed by the Design Integrity Panel (DIP) as part of the winning scheme in the Competitive Design Excellence Process conducted in 2024, in accordance with the requirements of WLEP 2012.

Overall, the proposed street wall height along Victoria Avenue is consistent with the intent of objective (a), which requires development to be consistent with the surrounding bulk and scale of the urban area a site is located in. It also facilitates the implementation of viable floor-to-floor heights (approximately 4.5m) for retail tenancies fronting Victoria Avenue (on both the ground and first floors), in addition to suitable alignment of awning heights.

Objective (b): to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

This objective is less applicable to the more fine-grain treatment of development heights along the street frontage of Victoria Avenue, which is not anticipated to result in an adverse outcome. Despite this, the Proposal's street frontage/podium height does not result in any impacts to existing views, visual privacy and overshadowing established along Victoria Avenue. Nor do the lightweight elements that are proposed to sit above it.

At a micro-scale, the proposed variation to the 7m maximum street wall height is consistent with the surrounding existing and future context of Victoria Avenue, as well as Council's vision for a two-storey street wall within the Chatswood CBD Strategy and Willoughby Development Control Plan 2023 (WDCP 2023), supporting activating retail uses.

Overall, the proposed wall height/podium height, and the lightweight elements above it, will not result in the disruption of views, loss of privacy, overshadowing or visual intrusion along Victoria Avenue. It is noted that minor overshadowing from

the street wall frontage does occur along Victor Street, although the majority of this minor exceedance is associated with self-shading from the podium extent. Further detail on the overshadowing to Victor Street is provided within **Section 4.2.3**. The intention to align the proposal's street wall height and awning positioning with surrounding allotments will ensure that there is no disruption of views along the site's frontage.

Objective (c): to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores

As illustrated in **Figure 10** the general alignment of the Proposal's podium height with the existing treatment of surrounding podiums, will ensure a high visual quality outcome is maintained to adjoining properties and further along Victoria Avenue.

Specifically, the general alignment of the Proposal's awning serving the ground level with those of adjoining properties, and positioning of the street wall to match the existing treatment along Victoria Avenue, acts as a positive urban design response, providing a high visual quality at a fine-grain level.

Furthermore, the quality of the podium's façade detailing and materiality assists to ensure the development is of high, visual quality when viewed from the public domain. This is achieved through architectural details including placement of columns and awning elements and substantial amounts of glazing.

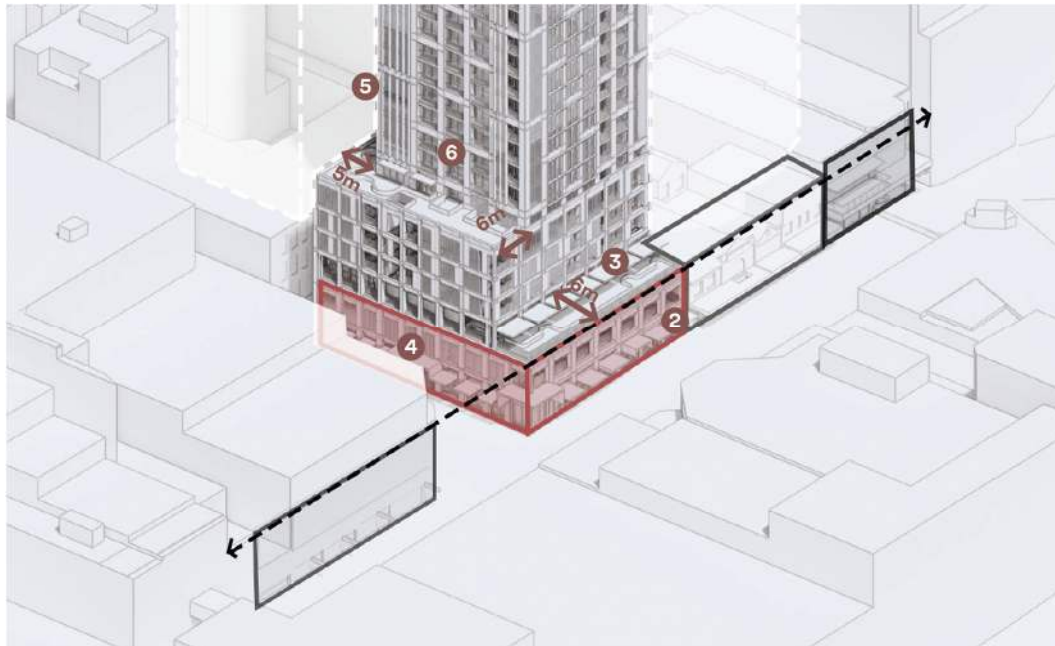


Figure 10 Proposal design envelope, treatment with adjacent street wall frontages indicated in black outline

Source: Fender Katsalidis

Objective (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

The maximum street frontage/podium heights along Victoria Avenue do not result in any disruptions to existing views, given their consistent alignment that defines the street edge. The provision of lightweight elements above will also not result in an adverse bulk and scale outcome or view impacts. It is noted that the Proposal's treatment of the street wall frontage along Victoria Avenue through the following elements has achieved reasonable view sharing at a fine-grain level along the pedestrian thoroughfare:

- Alignment of the awning height serving the Ground Level generally with the awnings of adjacent developments.
- The adoption of a two-tiered podium, which is highly modulated, reduces the podium's mass, and provides a positive urban design response along Victoria Avenue.
- Alignment of the street walls along Victoria Avenue will ensure that a consistent view sharing outcome from a pedestrian perspective is established.

Overall, the Proposal's Street wall height does not result in any disruptions to existing views, nor does it result in an adverse bulk and scale outcome.

Objective (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

The nature of the variation to the height of building development standard relates to the lower scale maximum street frontage/podium height of the development. Ultimately, this does not relate to the upper limits of the height of building development standard that applies to the site, which is RL246.8m. The proposed development has a maximum height of RL246.8 (46 storeys) and does not exceed this control.

Objective (f): to use maximum height limits to assist in responding to the current and desired future character of the locality

The maximum street frontage/podium height of 7m applicable under Clause 4.3 of the WLEP 2012 highlights the desired character of the retail frontages along Victoria Avenue. Notwithstanding, this provision does not account for the existing street frontage heights along the pedestrian thoroughfare, which are largely higher than the maximum 7m limit. Further, it also does not appear to recognise that desirable floor-to-floor heights for retail premises (the main focus of Victoria Avenue), are approximately 4.5m. Overall, the Proposal's street wall/podium aligns with the current and desired future character of Victoria Avenue, given its consistent massing and presentation, in addition to ensuring viable retail tenancies which will promote street activation.

Objective (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

The proposed development will deliver a 46-storey BTR shop-top housing development on a consolidated site within the E2 – Commercial Core zone. Despite the variation to the maximum street frontage height of 7m, the Proposal will continue to deliver an appropriate land use consistent with the retail core of Chatswood east of the North Shore Rail Line for the following reasons:

- The Proposal will deliver a density and height outcome that is consistent with the other built form outcomes set out in the WLEP 2012 and the Chatwood CBD Urban Design Strategy.
- The proposed development-built form is consistent with the emerging skyline throughout the Chatswood CBD, which is characterised by taller building heights up to 40 storeys +, whilst also providing a high-quality street frontage along Victoria Avenue which aligns with the existing development on the site, as well as adjacent shop frontages.
- The proposed development will continue to deliver employment generating floorspace in its podium, within a transit-oriented context. In this regard, the high-quality design outcome presented by the Proposal is considered to reinforce the desired future character of the Chatswood CBD, as outlined by the WDCP 2023.

Furthermore, the proposed development (inclusive of the street frontage height exceedance) is generally consistent with the objectives of the E2 – Commercial Core zone, as presented in **Table 2** below. This is despite BTR not being permissible in the E2 Zone under the WLEP 2012, but rather by virtue of Sections 72(2)(2)(a)(ia) and (3)(a)(b) of the Housing SEPP.

Table 2 Assessment of consistency with E2 Commercial Core zone objectives

Objectives of E2 Commercial Core Zone	Assessment of consistency
<i>To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.</i>	The proposed development provides 1,110m ² of retail gross floor area (GFA) within the Chatswood CBD retail core, equating to the provision of 131 Full-time equivalent jobs (with 60 provided directly on site) within a transit-oriented area. Furthermore, the provision of a two-tiered podium and consistent street frontage height with the adjacent buildings will further contribute to the fine-grain pedestrian activity along Victoria Avenue.
<i>To encourage investment in commercial development that generates employment opportunities and economic growth.</i>	As stated above, the Proposal encourages further investment in commercial/retail uses on the site through the provision of 1,110m ² of retail GFA within a high-quality dual-street frontage arrangement. This will replace the existing 1-2 storey aged building on the site and directly contribute to the not only the improvement of the built form in the Chatswood CBD. The Proposal will also encourage employment opportunities during its construction and operation creating economic growth in the Chatswood CBD retail core.

<i>To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.</i>	Accessibility for pedestrians is prioritised heavily within the design of the proposal, which provides five (5) pedestrian entrances throughout the ground floor plane in a dual frontage arrangement. Furthermore, the Proposal also embeds visually permeable active frontages through the provision of significant glazing, aided by a consistent awning along the Victoria Avenue and Victor Street frontages.
<i>To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.</i>	The proposed shop-top housing development (including BTR dwellings and ground/first floor retail) is permissible with consent in the E2 zone by virtue of Sections 72(2)(2)(a)(ia) and (3)(a)(b) of the Housing SEPP.
<i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</i>	As highlighted above, the consolidated development of the Site within the Proposal improves existing pedestrian activity along Victoria Avenue, whilst also creating new activation opportunities along Victor Street. This will contribute to the creation of a vibrant and diverse street grid, whilst continuing to encourage an appropriate dual frontage design outcome.
<i>To encourage employment opportunities to strengthen the Eastern Economic Corridor.</i>	The proposed development provides 1,110m ² of retail gross floor area (GFA) within the Chatswood CBD retail core, equating to the provision of 131 Full-time equivalent jobs (with 60 provided directly on site) within a transit-oriented area. Particularly, this contribution will contribute to the Eastern Economic Corridor, with the proximity of the Chatswood Metro and Railway station providing connections to Macquarie Park, Macquarie University, St Leonards, North Sydney CBD and the Sydney CBD, all key anchors of the Eastern Economic Corridor.
<i>To maximise public transport patronage and encourage walking and cycling, including by protecting and encouraging safe and accessible pedestrian routes.</i>	The Proposal results in minimal car parking provision on the existing site, through the provision of 1 car parking space. The development is located centrally within the Chatswood CBD, which is anticipated to significantly reduce the demand for parking, noting the Site's excellent access to the Chatswood Transport Interchange. Overall, the design of the proposal is anchored in improving active and public transport patronage through providing 52 bicycle parking spaces, as well as a significantly improved fine-grain outcome along each of the surrounding street frontages.
<i>To support the role of St Leonards as a health and education centre.</i>	N/A.
<i>To strengthen the role of Chatswood as a strategic centre for the North District.</i>	The Proposal contributes to the strengthening of Chatswood as a strategic centre within the North District through the provision of 260 dwellings ranging in unit sizes, and 131 full-time equivalent jobs (with 60 provided directly on site) within a transit-oriented area. The provision of both residential and employment opportunities on the site aligns with the housing and employment targets set within the North District Plan.
<i>To improve the public domain and pedestrian links in Chatswood.</i>	As highlighted above, the Proposal will lead to a direct improvement in a key section of public domain within the Chatswood CBD, along Victoria Avenue (which acts as the primary pedestrian spine).
<i>To enhance the visual appearance of the area by ensuring new development achieves high architectural, urban design and landscape standards.</i>	The Proposal has been created on the basis of several key design opportunities which will improve not only the fine-grain public domain but also tower built form outcomes which ensure it achieves a high quality architectural, urban design and landscaping outcome. Key design principles which have shaped the high-quality outcome on the site include: • Prioritising existing pedestrian flow; • Site arrival & servicing; • Activation; • Envelope with setbacks & street wall; • Division of forms; • Optimising amenity & outlook; and • Façade articulation.

Objective (h): to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas

The Site is located within the central portion of the retail shopping core of Chatswood, represented by the area to the east of the North Shore Rail Line. It is noted that the objective is related to the provision of tower heights, rather than the bulk

and scale of podium heights. Notwithstanding the minor street height frontage exceedance, the Proposal is consistent with the existing streetscape and enables a viable floor to floor heights to support future retail uses to be established.

Conclusion on Clause 4.6(3)(a)

The above sections have demonstrated that compliance with the maximum permitted building height standards is unnecessary in the circumstances of the case.

The principal purpose of Clause 4.3 of the WLEP 2012 is to impose a suitable restriction in regard to the maximum height of development on the Site. The proposed development reinforces the purpose of Clause 4.3, as it provides a building form that along the Victoria Avenue Street frontage that will not result in significant environmental impacts within the Chatswood CBD, including in relation to height-specific assessment matters such as such as overshadowing, visual impact and privacy. It is also noted that the proposal is consistent with design-assessment impacts, as it ensures the proposed street frontage along Victoria Avenue is consistent with the existing street wall and awnings of adjacent properties. Further, the lightweight design elements above the street wall will not result in any discernible difference to the interpretation of its bulk and scale from Victoria Avenue. It has been established that the proposed development is consistent with the objectives of Clause 4.3. These objectives are supported notwithstanding the height variations proposed, which equates to:

- A variance of 5.49m or 78.4% when accounting for the vertical distance between the existing ground level (level) and the highest point of the Level 2 awning (which is 4.3m setback from the podium edge).

4.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the WLEP 2012 requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. In this instance the relevant aspect of the development is the proposed exceedance of the permitted maximum street frontage height by 5.49m. There are sufficient environmental planning grounds to justify contravention of height of building development standard in this specific instance, as described below.

4.2.1 A coherent streetscape is established notwithstanding non-compliance with the standard

The two-storey street wall height is set at approximately 9.46m along the Victoria Avenue frontage. As per **Figure 8**, this largely consistent with the RL of the northern elevations of 420 Victoria Avenue (8.5m) and 426-428 Victoria Avenue (9.4m). The proposed street wall height will also be perceived from the public domain as consistent with 398-400 Victoria Avenue Overall, in unison, a coherent streetscape will be achieved through generally consistent two-storey street wall heights and a consolidated awning design approach, as displayed in **Figure 11** below.

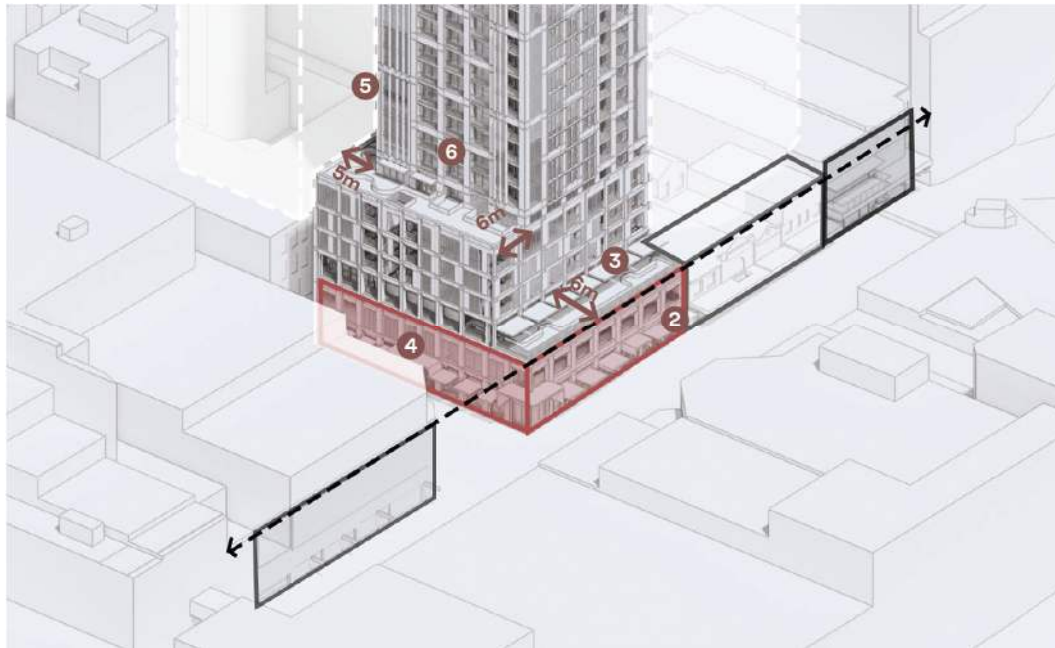


Figure 11 *Proposal design envelope, treatment with adjacent street wall frontages indicated in black outline*

Source: Fender Katsalidis

4.2.2 Proposed design represents a better outcome than the existing buildings on the Site

The proposed development's fine-grain treatment within the podium levels represents a significantly improved and overall better design outcome for the Site, than the currently fragmented small-scale retail / commercial buildings present. Ultimately, the consolidation of the three (3) existing allotments and buildings enables a cohesive design strategy to be adopted for the dual-frontage, corner site, which will better interact with the surrounding built form and lead to a high-quality corner lot outcome. This also provides improved opportunity to address a series of key issues at a more urban scale, facilitating improved public domain benefits and a more considered approach to the internal and external architectural design of the building. The following design improvements and efficiencies achieved within the proposal when compared to the current buildings on the site are summarised below:

- **Ground floor tenancy layout:** The consolidation of the overall Site, which is currently made up of separate buildings will significantly improve the efficiency of the operation of non-residential areas. Through having a consolidated ground floor plane, more diverse retail tenancy sizes can be adopted throughout the ground floor, enabling more informed public domain interactions with Victoria Avenue and an overall better interface with the surrounding public domain. Ultimately, the retail tenancies contribute to an improvement in the relationship of non-residential uses throughout the ground floor plane, whilst providing better opportunities to incorporate a consolidated residential lobby entrance for the tower above. This emulates the mixed-use character, incorporating both active frontages and residential uses intended for BTR development within the Housing SEPP.



Figure 12 Proposed ground floor retail tenancy layout (arrows indicate interface opportunities in comparison with the surrounding public domain)

Source: Fender Katsalidis, edited by Colliers Urban Planning

- Architectural design improvements:** The existing, separate buildings on the Site promotes a poor architectural outcome, with the separate built forms resulting in a poor, and ageing architectural composition fronting Victoria Avenue. Furthermore, the fragmented design of the existing 1-2 storey buildings does not represent a positive urban design outcome for the corner allotment. The Site presents a unique opportunity to deliver a consolidated built form outcome that achieves a positive frontage to three separate street frontages (Victoria Avenue, Victor Street, Post Office Lane), all with differing roles and pedestrian demands. The two-tiered podium design approach on the site alleviates the existing fragmented design present on the Site. This is supported by a renewed two-storey street frontage along Victoria Avenue and Victor Street, which better contributes to the fine-grain pedestrianised nature of the Chatswood CBD retail core.



Existing corner design treatment



Proposed corner design treatment

Figure 13 *Comparison of existing and proposed corner treatment*

Source: Google Maps and Fender Katsalidis

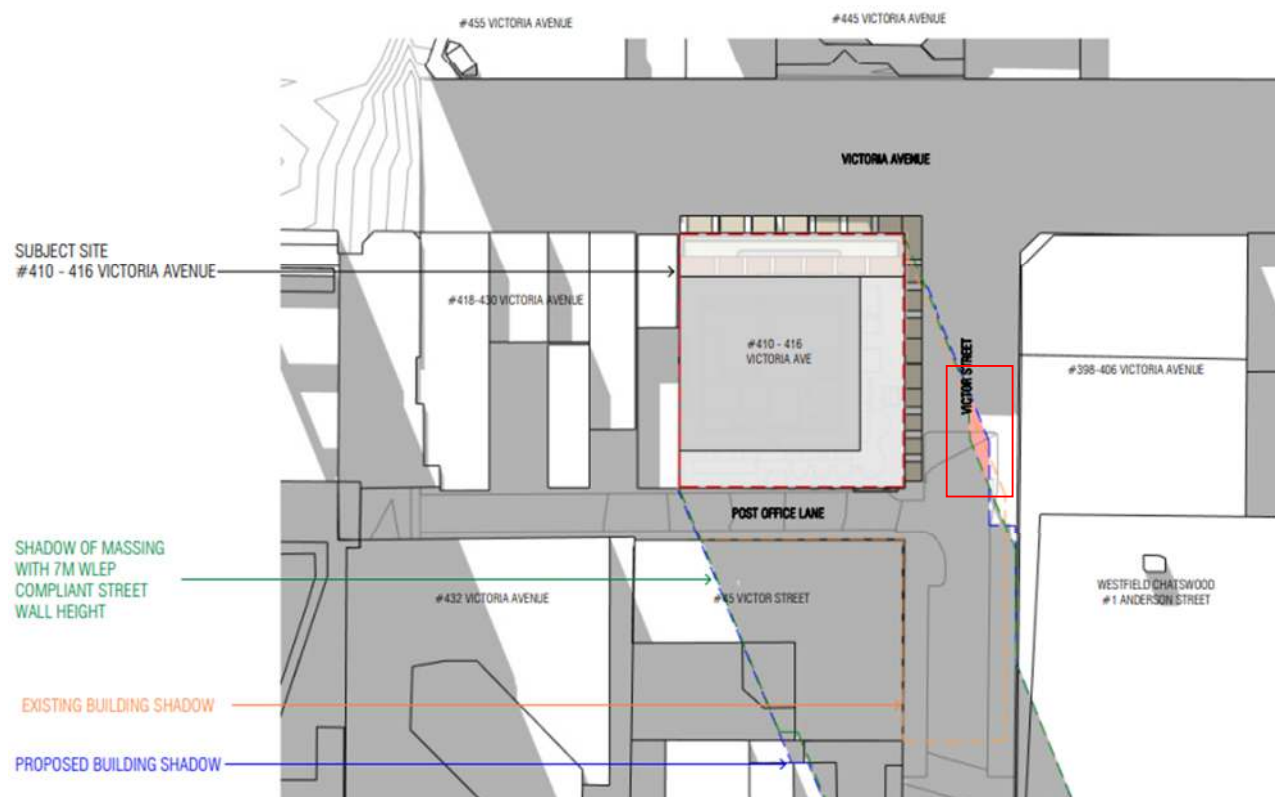
4.2.3 No significant environmental impacts notwithstanding non-compliance with the standard

The additional street frontage height does not result in any adverse impacts in terms of significant views, visual impact, privacy, or additional traffic generation. Nor does it result in any loss of trees, or lessor landscaped area than required.

4.2.3.1 Overshadowing

The proposed street frontage height results in a minor increase in overshadowing to the south-east along Victor Street in comparison to a compliant 7 metre street wall height, most notably at 3:00pm during the Winter Solstice. It should be noted that Victor Street is not a solar access protected, open space under the WLEP 2012. Notwithstanding, the shadow impact is a minor improvement on the existing street wall's impact at this time.

As per **Figure 14**, the extent of overshadowing along Victor Street is minor, with the majority of the additional overshadowing being concentrated within the carriageway of Victor Street. As such, the minor increase in overshadowing resultant from the proposed street wall height is minor and deemed acceptable.



3:00pm

Figure 14 Proposed overshadowing along Victor Street at 3:00pm during the Winter Solstice

Source: Fender Katsalidis

4.2.4 Consistency with Objects of the EP&A Act

In Initial Action, the Court stated that the phrase “environmental planning grounds” is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 3** the proposed development is demonstrated to better achieve relevant objects, when compared with a technically compliant development.

Table 3 Assessment of consistency of the proposed development with the Objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	The proposed street frontage height variation will promote the economic and social welfare of the community by enabling a better urban design outcome and viable retail tenancies, which is more efficient, has reduced impacts on neighbouring properties and enables a consistent architectural expression along Victoria Avenue.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposed consolidated BTR shop-top housing development will contain more efficient operating floor plates and continue to comply with the requirements of BASIX. It also includes significant on-structure planting to support biodiversity.
(c) to promote the orderly and economic use and development of land	The buildings/density on the Site currently underutilised its capacity under the planning framework. The Site is strategically located within

	the Chatswood CBD, in proximity to existing heavy rail, bus services and metro services. The Site will deliver 260 dwellings and 1,110m² of retail floorspace. Therefore, the site will contribute to housing and employment (in the form of 131 full-time equivalent jobs) within the Chatswood CBD in accordance with the future vision set out within the local strategic planning statement and regional strategic planning policy.
<i>(d) to promote the delivery and maintenance of affordable housing</i>	The proposed development will better contribute towards the provision of housing supply within the Chatswood CBD when compared to the existing development on the Site. Thus, better contributing towards meeting the demand for housing within the area.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats</i>	The proposed development, including the height variation will have no impact on threatened species or ecological communities.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)</i>	The Site does not contain buildings or elements of historic or cultural significance.
<i>(g) to promote good design and amenity of the built environment</i>	The Proposal with a two-storey street frontage height as established within the WDCP 2023 will enable a consistent architectural expression along Victoria Avenue to be adopted, favouring pedestrian activity with the delivery of five (5) pedestrian entrances, finer grain retail tenancies throughout the ground plane and a consistent awning arrangement which aligns with adjacent properties. The design by Fender Katsalidis represents an improvement upon the existing development on the site.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</i>	This proposed variations to the mapped maximum street frontage height do not preclude the development from complying with all relevant NCC requirements and will promote the health and safety of occupants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State</i>	This object is not relevant to this proposed development.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment</i>	The proposed development will be publicly notified in accordance with the SSDA requirements prescribed by the DPHI.

4.2.5 Conclusion on clause 4.6(3)(b)

For the reasons mentioned above, there are sufficient environmental planning grounds to justify the contravention of the maximum permitted building height standard that is imposed under Clause 4.3 of the WLEP 2012.

5.0 Conclusion

The assessment above demonstrates that compliance with the maximum height of building development standard in relation to maximum street frontage height contained in clause 4.3 of the WLEP 2012 is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the maximum height of building development standard (7m street wall):

- The extent of non-compliance is relatively minor, and leads to a design outcome which is consistent with the street frontage height of existing adjoining lots, as well as the existing development on the Site;
- Compliance with the development standard would be unreasonable and unnecessary, because:
 - it meets the relevant stated Clause 4.3 WLEP 2012 objectives; and
 - it meets the underlying intent outlined in the Chatswood CBD Planning and Urban Design Strategy 2036; and
- There are sufficient environmental planning grounds to justify the contravention, including:
 - the reason for the non-compliance is a combination of site and design requirements: namely: to establish suitable floor to floor heights for the podium retail uses to account for sloping topography in both north-south and east west directions, and the need to enable the delivery of viable retail tenancies in accordance with the strategic intent of the WLEP 2012 to retain the ground floor retail character of Victoria Avenue;
 - the lightweight design elements support the use and amenity of the Level 2 communal open space, and in the case of the awning, is generously setback from the façade line. They do not discernibly add to the bulk and scale of the proposed street wall.
 - a coherent street wall height is established with adjacent developments to the east and west; and
 - no significant environmental impacts arise.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in clause 4.6(3) of the WLEP 2012 and may grant development consent notwithstanding the contravention of the maximum building height development standard, relating to maximum street frontage height.



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