
JRPP REF NO.	2010SYE023
RECOMMENDATION:	DEFERRED COMMENCEMENT APPROVAL
LOCATION:	ON THE WESTERN SIDE OF PENSHURST STREET BETWEEN CLANWILLIAM STREET AND CHURCH
APPLICANT:	PROPERTY DEVELOPMENT CORPORATION
OWNER:	THE UNITING CHURCH IN AUSTRALIA PROPERTY TRUST NSW
PROPOSAL:	CONSTRUCTION OF FOUR STOREYS RESIDENTIAL FLAT BUILDING WITH TWO LEVELS OF BASEMENT CAR PARKING
DATE OF LODGEMENT:	19 APRIL 2010
VALID APPLICATION DATE:	24 MAY 2010
REPORTING OFFICER:	ANNIE LEUNG – DEVELOPMENT PLANNER

DESCRIPTION OF PROPOSAL

Development application 2010/202 seeks consent for the construction of a residential flat building containing 41 dwellings. It will provide:

- Twenty (23) - 1 bedroom units;
- Seventeen (17) – 2 bedroom units;
- One (1) – 3 bedroom units; and
- 60 car parking spaces (including 11 visitor car spaces)

Car parking spaces are provided over basement levels with access off Penshurst Street near the northern boundary of the site. A schedule of unit type and sizes are provided on the submitted drawing numbered SK01.

The proposed L-shape building aligns with the street boundary (eastern) and the northern boundary of the site (adjoining No 266 Penshurst Street), and encloses the proposed communal open space in the south west corner of the site. Two pedestrian entries are provided to the building, which contains a northern wing (30 units) and southern wing (11 units) along Penshurst Street.

The proposed building is part 3 and part 4 storey in height. The fourth level of the proposed building has a smaller floor plate and is partly incorporated in the proposed roof forms with chamfered roof planes.

The application has been referred to the Joint Regional Planning Panel pursuant to clause 13 B (1) (a) of the State Environmental Planning Policy - Major Development as the capital investment value exceeds \$10 million and the proposal is not a Part 3A development under the Environmental Planning and Assessment Act.

Subsequent to discussion between Council's Officers and the applicant the following additional/amended information have been received.

- Revised FSR Calculation Plans (showing inclusion of corridors all levels, and calculations based on Draft WLEP)
- Amended adaptable dwelling plans and report
- Sketch plans to: (Also see reference in recommended deferred commencement conditions)
 - Modify proposed flat roofs with pitched side roof planes into skillion roof forms facing the street and chamfered roof planes from the rear, and also to the southern elevation of the northern wing
 - Increase setbacks from rear and side boundaries by removing enclosed roof volumes within pitched roof planes.
 - Change floor layout on the second and third floor.

The sketch plans (SK05/M (Second floor plan), SK06/M (Third floor plan), SK07/M (Roof Plan), SK08/M (Elevations), and SK09/M (Section DD), dated June 10, prepared by Mckenzie Architects) are included as **Attachment 4** to this report.

- Additional shadow diagram on Elevations of No 240 Penshurst Street.
- Additional statement from the applicant's traffic consultant with respect to non-compliance with AS2890.2 for maximum gradient for driveway access for small rigid vehicle.

Relevant History and Site Context

The site is located on the western side of Penshurst Street between Clanwilliam Street and Church Street. The development site is a vacant allotment identified as Lot 1 DP 1046059 with a site area of 2973m² and over 70m of frontage on Penshurst Street. The site is zoned Residential C. The site has a cross fall of approximately 2.5m from the northern boundary towards the southern boundary.

The locality of the site mainly comprises of established medium density and residential flat building developments envisaged by the 2(b) and 2(c) zoning of the area. Developments immediately adjoining its southern and northern boundaries are three (3) and four (4) storeys residential flat buildings. However, properties at No 1, 3, & 5 Clanwilliam Street adjoining the southern (rear) boundaries of the site remain as low scale developments due to the local heritage listing of these properties.

Penshurst Street is a major public transport corridor serviced by state buses. The nearest bus stop is approximately 20m north of the site on Penshurst Street near the intersection with Church Street. The site is in close proximity to neighbourhood shops, existing churches, and is directly opposite the Willoughby Legion Club. There is an existing signalised pedestrian crossing near the southern boundary of the site.

The site is known to be the former Dairy Farmers' factory, but was demolished with consent DA1999/503. An amendment was made to the WLEP 1995 to permit additional development purpose on the land for a place of public worship. Subsequent development consent, DA2002/538 was granted for redevelopment of the site for new community & worship centre with basement carpark, but the development consent has not been acted upon and has lapsed.

A previous application, DA2009/694 was lodged with Council for construction of a residential flat building development comprising of 50 dwellings. This application was withdrawn by the applicant subsequent to discussions with Council's officers who raised issues of concern about the density, height, poor internal amenity of the proposed dwelling, and unacceptable external impacts.

Neighbour Notification

The application was notified from 3 May 2010 – 24 May 2010. Seven (7) Submissions were received in this period. The issues raised in the submissions primarily relate to the likely impacts of the proposed development to the adjoining heritage items with frontage on Clanwilliam Street, and its overshadowing impacts on the adjoining residential flat building at No 240 Penshurst Street.

A list of the correspondence and issues raised in their submissions are provided in [Attachment 3](#).

Discussion of these issues is provided under the [Neighbour Notification Issues](#) section of this report.

Referrals

The application has been referred to the following internal and external departments.

Internal

Building	Standard conditions of consent are recommended.
Waste	<p>A large garbage room is provided in the basement Level 1 of the proposed development, accommodating both bulk garbage bins and recycling bins. A hydraulic lift is provided from this garbage room to the ground level for waste removal and collection.</p> <p>The waste management provisions for the proposed development are satisfactory. Conditions of consent are imposed with respect to the construction of the garbage room. Condition 28.</p>
Development Engineering	Standard conditions of consent are recommended.
Traffic	<p>The proposed development is generally satisfactory with the exception of the driveway gradient's non-compliance with maximum change in grade and maximum gradient for a small rigid vehicle in accordance with AS2890.1 and AS2890.2.</p> <p>See assessment under Part C.4 of WDCP.</p>

Environment Health	<p>Due to known previous industrial/production history of the site, a preliminary site assessment report has been requested from the applicant. It is satisfied that the site can be remediated and made suitable for the proposed development based on assessment of this report. Condition 19 & 49.</p> <p>See SEPP 55 assessment.</p>
Landscaping	<p>The submitted Arborist Report identifies 15 mature trees, including three (3) street trees on Penshurst Street, and three (3) trees on adjoining properties to the rear of the site. Seven (7) white cedar trees location within the front setback area of the proposed development will be removed and replaced by the proposed landscaping. These white cedar trees have an average spread of approximately 2m and height range from 5- 8m. The trees proposed to be removed are identified to be in fair condition, but present dieback/deadwood and have short SULE (Safe & Useful Lift Expectancy).</p> <p>Council's landscape officer raises no objection against the proposed removal of trees and also supports the proposed landscaping scheme.</p> <p>The proposal complies with the numerical provisions of WDCP - Part C.9 – Landscaping as noted in the Development Statistics.</p>
Heritage	<p>The submitted Heritage Impacts Statement has been assessed by Council's Heritage Architect. The proposed development is found to have acceptable impacts to adjoining local heritage items and heritage items in the vicinity of the site.</p> <p>See further discussion under WLEP - Heritage Impacts Assessment.</p>
External Roads & Traffic Authority	<p>RTA has reviewed the proposed development with respect to Clause 104 of SEPP (Infrastructure) – Traffic Generating Development, and has also given concurrence to the development with respect to s138 of the Roads Act 1993 subject to conditions being imposed on the consent (Condition 6)</p> <p>See further discussion under SEPP (I) Assessment.</p>
Police (CPTED)	<p>The application has been referred to NSW Police – NS LAC Chatswood station. Police recommends Condition 83.</p>
SEPP 65	<p>The application has been referred externally to an independent Urban Design consultant, Architectus for assessment in accordance with SEPP 65.</p> <p>The proposal's compliance with the numerical controls/rules of thumbs contained in the Residential Flat Design Code are provided in the <u>Development Statistics</u> section of this report</p>

See further discussion under SEPP 65 Assessment.

Controls and Classification

- i) Willoughby LEP 1995: Yes, Applicable.
- ii) Conservation Area: Not in conservation area, but adjoins local heritage items at No 1, No 3 & No 5 Clanwilliam Street, and also in the vicinity of local heritage items No. 10 – 12 Clanwilliam Street and No 238 Peshurst Street.
- iii) Zoning: 2(c) – Residential C
- iv) Applicable DCP (SEPPs, REPs): SEPP 1, SEPP (Basix), SEPP 65, SEPP 55, SEPP (Infrastructure)
- v) S94 Contribution Plans: Yes, **See Condition 9.**
- vi) Draft WLEP 2009 Zoning: R3 – Medium Density Residential

Development Statistics

	Proposed	Standard	Compliance
WLEP 1995			
Site Area (m²)	2973m ²	-	-
Gross Floor Area (m²)	G: 948.27 1st: 977.73 2nd: 928.39 3rd: 511.93 Total: 3391.28m ²	2675.7m ²	No. See SEPP 1 assessment.
Floor Space Ratio (Clause 23 WLEP/ D3.1 WDCP)	1.14:1	0.9:1	No. See SEPP 1 assessment.
Height (Clause 24 WLEP/ D3.2 WDCP)	4 Storeys	3 Storey	No. See SEPP 1 assessment.
Minimum allotment size for RFB development having frontage to state road (Clause 22 WLEP)	2973m ² & > 70m at front building line	1100m ² & 27m frontage @bldg line	Yes
Draft WLEP 2009	(Exhibited 25 March – 20 May2010)		
Floor Space Ratio (Area L)	1.05:1	0.9:1	See Draft WLEP considerations.
Height (Area M)	12.9m	Max 12m	
Minimum Allotment Size (Clause 6.8)	2973m ²	Min 1100m ² & 27m at front building alignment	
WDCP			

	Proposed	Standard	Compliance
Car Spaces (C.4) Car spaces (Major Public Transport Corridor – Penshurst St South of Victoria Ave)	60 car spaces including 11 visitor car spaces. 1 Loading bay provided for Small Rigid Vehicle and also act as a turning area	1 bedroom- 1 space (23) 2 bedroom- 1 space (17) 3+ bedroom- 1.25 spaces (1.25) Visitor - 1 per 4 dwlgs (10.25) Req = 51.5 car spaces Loading bay for removalist truck for RFB with >15units	Yes. Also see Part C.4 WDCP assessment. Yes, but issue with gradient of access driveway.
Motorbikes Bicycle lockers Bicycle Racks (Additional Req C4.7)	0 7 on Basement Lv 2 5 on Basement Lv 2	1 /25 car spaces (1.2x3m) 1/ 10 dwlg 1/12 dwlg	No. Condition 7 Yes Yes
Water Management (C.5)	Stormwater proposal submitted.	OSD requirements and technical standards	Satisfactory
Access/Mobility (C.6) Adaptable housing (C6.3)	21 units & 6 adaptable car space	50% adaptable dwlg >3 storeys (ie. 20 dwellings)/ 33% 3 storeys plus 1 adaptable car space/adaptable unit	Yes
Accessibility	Lift access provided.	To and within every floor containing a dwelling required to be adaptable.	Yes
Disabled car space	6 car spaces are identified on the submitted plans (including 1 visitor's space)	1 accessible visitor's space in parking area with more than 50 spaces.	Yes
Waste Mgt (C.8)	Garbage room in basement with bulk bins and recycling bins. Direct lift access to street level. Not shown on drawings	RFB >18 units Bulk bins service & recycling service (garbage room) Recycling receptacle within each unit	Yes Condition 4
Soft Landscaped area (C.9)	43% Basement area generally within building footprint	35% (1040.55m ²) (50% must be recreational open space. See Part D3.6) 500mm min soil depth above slab	Yes Yes
Safer by Design (C.11)	See page 21 of SEE.	Assessment by NSW Police.	Condition 83

	Proposed	Standard	Compliance
Fencing (C.13)	500mm garden edge at street boundary, but entrance wall and gate greater than 1.6m in height are not setback.	1.1-1.6m at b'dy 1.6 – 1.8m (setback 1m from b'dy)	No. Condition 4
Contaminated land (C.13)	Preliminary site investigation report submitted for previous Dairy Farmer Factory use.	SEPP 55	See SEPP 55 assessment
Design/Streetscape (D3.3)	A L-shape building with link element along street frontage similar in height & scale to adjoining building. Flat roofs with pitched side roof planes	Sensitive to the surrounding characters & existing street pattern Within 5° roof pitch of surrounding developments	See SEPP 65 assessment.
Site coverage (D3.4)	33.56%	28% - 4 Storey 30% - 3 storey	No. See Part D3.4 WDCP assessment
Setbacks (D3.5)			
Front (Penshurst St)	8.5 – 12.1m	7.5m/ Streetscape-	Yes
Side (N) Adj No 266 Penshurst Street	Min. 9.416m (ground) Min 6.2m (2 nd Storey) Min 6.25 (3 rd & 4 th)	3m (Ground) 4.2m 2 nd Storey 6.6m 3 rd Storey & above	Yes Yes No. See Part D3.4 WDCP assessment
Side (SE) Adj No 240 Penshurst Street	Min 4.698 (ground) Min 5.9m(2 nd Storey) Min 6.05m(3 rd Storey)	3m (Ground) 4.2m 2 nd Storey 5.4m 3 rd Storey	Yes Yes Yes
Rear (SW) Adj No 1 Clanwilliam Street	Min 6m (ground) Min 6m(2 nd Storey) Min 6.943m(3 rd Storey)	3m (Ground) 4.2m 2 nd Storey 5.4m 3 rd Storey	Yes Yes Yes
Rear (W) Adj 2-4 Church Street & No 7 Clanwilliam Street	5.4m (Ground) 5.4m (2 nd Storey) Min 5.4m (3storey)	3m (Ground) 4.2m 2 nd Storey 5.4m 3 rd Storey	Yes Yes Yes
Distance between buildings (D3.5)			
Side (SE) No 240 P St	Min 10m	Eave Height x 1.5m 9m x 1.5 = 13.5m	No, but also see SEPP 65 assessment
Side (N) No 266 P St	Min 9.3m	9 to 11.2m x 1.5 = 13.5 to 16.8m	
Recreational open space (%) (D3.6)	63% >80%	54% (4 Storey) & 52% (3 Storey) of site area (80% of rec open space must be in the form of outdoor open space)	Yes

	Proposed	Standard	Compliance
Private open space (D3.6)			
Ground floor units	Complies, except Unit 9 (2b – 35.14m ²)	35/50/60m ² for 1/2/3-bedroom dwlgs Principal area min. 20m ² Width 4m min.	No, but complies with SEPP 65 requirements
Above ground units	Min. 10m ²	10/10/15m ² for 1/2/3-bedroom dwlgs Principal area min 10m ²	Yes
	Min 2m	Width 2.4m min Access from Living Rm.	No, but complies with SEPP 65 requirements
Communal open space	1067m ²	30m ² x no. above ground units (30 x 31) = 930m ²	
	>5m	Min 5m in width	
	30m ² of playground (5x6m)	3 hours of winter solar access to principal portion Children play area of Min 30m ² & min 5m in width	Yes
Privacy (D.3.7)	Acoustic report submitted.	Acoustic insulation – external noise Common wall separation Visual Privacy	Yes. See requirements under <i>SEPP(I)</i> & <u>Assessment</u> section of the report.
Views & Vista (D3.8)	Appreciation of adjoining local heritage items (cottages) are not considered to be affected. Reasonable outlook from adjoining RFB is maintained.	Views to Local Heritage items and general out look from adjoining RFB.	Yes. See Heritage impacts assessment & Notification Issues.
Solar Access (D3.9)	Submitted shadow diagrams shows 3 hours maintained to adjoining properties.	3 hours of winter solar access	Yes. Also see Part D.3.9 WDCP assessment

	Proposed	Standard	Compliance
Services & Amenities	Noted near main entries	Letter boxes	Yes
	Internal laundry provided to each unit	Laundry	Yes
	Ground floor units have private drying areas. Communal drying yard = 33m ²	Drying yard 10m ² for first 2 dwlg + 2.5m ² per additional dwlg Req = 2.5(31-2)+ 10 = 82.5m ²	No. Condition 4.
	3m ³ provided for each dwelling	Storage area – 3m ²	Complies with SEPP 65 requirements
	Not shown	Common toilet	No. Condition 4
	Substation with landscape screening noted on plans	Substation	Yes
	Not shown	TV antennae/ Satellites	Condition 103
Sustainable development (also see C.3)	Submitted	Scorecard/Basix/SEPP65	Satisfactory
Reflectivity (D3.12)	Not identified on material schedule	Reflectivity – Max 20%	Def Comm Condition D.

SEPP 65 (RFB Code)			
Part 1			
Building type	Courtyard apartment	-	-
Building envelope	Building envelope based on Site coverage requirement at 30% and 3 storey height restriction represent 100% of the achievable floor space at 0.9:1. The proposed FSR at 1:14.1 is 26% above the maximum permissible floor space, and site coverage is at 33.56%.	Building envelopes should be at least 20-25 percent greater than their achievable floor area to allow for building articulation.	See SEPP 1 and SEPP 65 assessment.

Primary Dev Control			
Height	4 Storey	3 Storey	No. See SEPP 1 assessment
Depth	10.5 - 20.7m	10 - 18m (daylighting and natural ventilation are to be achieved)	No. See SEPP 65 assessment.
Building Separation			
Side (SE) No 240 P St	6 - 10m (No 240 P St has balconies facing the subject site with setback of 2-3m from the common b'dry with the site.)	up to four storeys/12 metres - 12 metres between habitable rooms/balconies - 9 metres between habitable/balconies and - non-habitable rooms - 6 metres between non-habitable rooms	No. See SEPP 65 assessment.
Side (N) No 266 P St (2.8 to 3m from common b'dy)	6 -12m (No 266 P St has balconies facing the subject site with setback of 3-3.5m from the common b'dry with the site.)		Yes
Part 2			
Deep soil zone	>40%	Min. of 25% of the open space area	Yes
Fences & walls	Low garden edge along street frontage with high fence for private open space within front setback.	Various (pp 45 of RFDC)	Acceptable. Condition 4.
Landscape design	Provide large landscaped communal open space, and dense screen planting along all boundaries.	Various (pp46-47 of RFDC)	Acceptable. Condition 78
Open space			
Communal Open Space	> 30%	25-30% of site area	Yes
Private open Space (G/podium units)	Min 35.14m ² & min 4m width	25m ² ; Min width 4m.	
Planting on structure	Some planters provided to south western elevation of the southern wing	Various (pp53 of RFDC)	Yes
Stormwater management	10000L rainwater tank for irrigation of 400m ² of common landscaped area on the site (noted on Basix Cert)	Various (pp 54-55 of RFDC)	Satisfactory
Safety	See page 21 of SEE.	Carry out a formal crime risk assessment for all residential developments of more than 20 new dwellings.	Condition 83.

Visual Privacy	Use of highlight windows and planters where appropriate. Living room balconies of the southern wing orientate away from the rear yards of heritage cottages.	(See Building separation)	Acceptable.
Building entry	Two entries provided from Penshurst Street frontage with 1:14 ramps, and direct lift access provided from basement. >20% of the dwelling are barrier free Driveway entry is located away from pedestrian entries Access report submitted.	Identify the access requirements from the street or car parking area to the apartment entrance. Australian Standard AS 1428 barrier free access to at least 20% of dwlg Driveway width max 6m & away from main pedestrian	Yes Yes Yes Yes
Part 3			
Apartment layout	7 - 9m 8m >4m 50 – 98m ²	Single-aspect apartments depth max 8 metres from a window. The back of a kitchen max 8 metres from a window. The width of cross-over or cross-through apartments over 15 metres deep should be min. 4 metres apartment sizes: - 1 bedroom - 50m ² - 2 bedroom - 70m ² - 3 bedroom - 95m ²	No. See SEPP 65 assessment. Yes Yes Yes
Balconies	Min 2m	Provide primary balconies for all apartments with a minimum depth of 2 metres.	Yes
Ceiling heights	2.8m except for parts of attic level/4 th level. 3 bedrooms on the third floor have skylights only. (Unit 25, 30 & 36). This issue will be resolved by the submitted sketches and recommended Def Comm. Condition Aa).	2.7 metre minimum for all habitable rooms on all floors 2.4 metres for all non-habitable rooms	Yes.
Ground floor apartments	The majority of ground floor apartments have separate entries to private open space from	Optimise the number of ground floor apartments with separate entries	Yes

	the common entry paths from the street. Ground floor apartment all have access to private open space 21 Adaptable units	Provide ground floor apartments with access to private open space Appropriate percentage of accessible units.	Yes Yes.
Internal circulation	12 unit accesses (2 nd F) from service core of northern wing	Max 8 units accessible from a single core/corridor Amenity for common lobbies, corridors and units	No. See SEPP 65 assessment.
Storage	6.4 – 37.47m ³	- studio apartments 6m ³ - one-bedroom apartments 6m ³ - two-bedroom apartments 8m ³ - 3 plus bedroom apartments 10m ³	Yes
Acoustic Privacy	See submitted acoustic report	BCA and road noise	Condition 20 & 81.
Day light access	32units (78%) 6 Apartments single aspect SW-SE apartments (15%)	70 % of Dwlg's Min 3 hours winter solar access Single-aspect SW-SE apartments to a max. 10 % of dwlg's	Yes No. See SEPP 65 assessment
Natural ventilation	Max 21m 26 Units (63.4%) 16 Units (39%)	10 to 18m (Bldg Depth) 60% of dwlg with natural cross ventilation (24.6 Units) 25% of kitchens with natural ventilation	No. See SEPP 65 assessment Yes Yes
Awning & Signage	Entries with porticos, building sign not shown on proposal.	Awning and sign to provide shelter, identity and compliment streetscape.	Condition 4
Façade Roof design	Street façade is divided into modules by strong balcony frames, and other elevations are provided with material variations. Flat roofs with pitched side roof planes, which will be replaced by amended skillion roofs facing the street and	Various (pp 89-92 of RFDC)	No. See SEPP 65 assessment, and also Def Comm. Condition A & D.

	mansard roofs to side and rear elevations illustrated by submitted sketch plans.		
Energy efficiency	<ul style="list-style-type: none"> - Basix requirements are met. - Where practical natural light and ventilation have been provided to bathrooms and kitchens. - Rainwater tanks provided for watering of communal landscaping area 	Various (pp 93 -97 of RFDC)	Satisfactory
Maintenance			
Water management & Water Conservation			

Notes:

1) *FSR calculations:*

- The FSR calculation in the above Development Statistics show discrepancies with the submitted Statement of Environmental Effects.
- Draft WLEP: Note that height and gross floor area definitions used in Draft WLEP 2009 is different to existing WLEP 1995. This results in the discrepancies in the statistics. The definitions in Draft WLEP are based on the Standard Instrument. The definitions in current WLEP 1995 apply to the development and further considered under the SEPP 1 assessment.
- Changes to dwelling mix: The recommended deferred commencement condition will change the mix of the proposed development as follows:
 1. Deletion of Unit 41 (2 bedrooms);
 2. Conversion of Unit 32 to a 3 bedrooms unit,
 3. Conversion of Unit 38 from a 1 bedroom unit to a 2 levels, 2 bedrooms unit;
 4. Conversion of Unit 39 from 1 bedroom unit to a 2 bedrooms units; and
 5. Conversion of Unit 36 from a 2 bedroom unit to a single level, 1 bedroom Unit.

This will result in twenty-one (21) 1-bedroom dwellings, seventeen (17) 2-bedrooms dwellings and two (2) 3-bedrooms dwellings, total 40 dwellings.

- 2) *SEPP 65 & WDCP controls:* Part D.3 of WDCP contains a number of controls with respect to separation distance between buildings, private open spaces, balcony widths which are in excess of the minimum requirements contained in SEPP65. It is noted that the application has addressed the controls in both the WDCP and SEPP 65. Where the proposal only presents minor departures from the requirements of the WDCP, but

complies with the requirements of SEPP 65, it is reasonable to consider the proposal to have achieved a reasonable standard of design and amenity.

- *Separation Distance*: Part D.3.5 stipulates greater separation distance than SEPP65, which prescribes separation distance between buildings based on height and the functions of rooms/windows rather than a linear relationship between height and separation distance. The proposed presents minor variations to the SEPP 65 requirements. Please see assessment under SEPP 65.
- *Balcony width*: The proposed balconies are minimum 2m in width in accordance with SEPP 65 requirements. The minor variation from the requirements of Part D3.6 which requires balconies to be 2.4m in width is considered acceptable.
- *Ground floor private open space*: Part D3.6 requires the provision of 50m² of private open space for a 2 bedroom ground floor unit. The proposed Unit 9 does not meet this requirement, but it meets the requirements of SEPP 65. The size of the private open space of Unit 9 is considered adequate in size and dimensions to provide for outdoor living. In addition, Unit 9 has direct access to the large communal open space for extension of outdoor living.
- *Storage space*: Storage areas are measured by m² in the WDCP, which does not reflect the volume of the storage space. The proposed dwellings meet the requirements of SEPP 65 and are considered to have adequate storage space for each dwelling.

3) *Car Parking (C.4 - WDCP)*: The proposed development provides car parking spaces in excess of the requirements of Part C.4, based on car parking rates for Major Public Transport Corridor. Under Part C.4 excess car parking can be included as Floor Space Ratio as a disincentive to additional development parking. In this regard, the recommended **Condition 5** requires the deletion of 5 car spaces from the proposed basement car parking levels to reduce the number of excess car spaces, and reduce the number of car parking spaces from 60 to 55 (including visitor parking). This small excess is acceptable.

Matters for Consideration Under S.79C EP&A Act

Satisfactory ✓ Unsatisfactory ✗ Not Relevant N/A

(a)(i)	The provisions of any environmental planning instrument (EPI)	✓✗
	State Environmental Planning Policies (SEPP)	✓
	Regional Environmental Plans (REP)	✓
	Local Environmental Plans (LEP)	✓
	Comments; Subject to deferred commencement conditions.	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	Draft State Environmental Planning Policies (SEPP)	N/A
	Draft Regional Environmental Plans (REP)	N/A
	Draft Local Environmental Plans (LEP)	✓
	Comment: The proposal shows only minor non-compliance with development standards contained in Draft WLEP 2009.	
(a)(iii)	Any development control plans	
	Development control plans (DCPs)	✓
(a)(iv)	Any matters prescribed by the regulations	
	Clause 92 EP&A Regulation-Government Coastal Policy	N/A

	Clause 93 EP&A Regulation-Fire Safety Considerations	✓
	Clause 94 EP&A Regulation-Fire Upgrade of Existing Buildings	N/A
	Comment:	
(b)	The likely impacts of the development	
	Context & setting	✓
	Access, transport & traffic, parking	✓
	Servicing, loading/unloading	✓
	Public domain	✓
	Utilities	✓
	Heritage	✓
	Privacy	✓
	Views	✓
	Solar Access	✓
	Water and draining	✓
	Soils	✓
	Air & microclimate	✓
	Flora & fauna	✓
	Waste	✓
	Energy	✓
	Noise & vibration	✓
	Natural hazards	N/A
	Safety, security crime prevention	✓
	Social impact in the locality	✓
	Economic impact in the locality	✓
	Site design and internal design	✓
	Construction	✓
	Cumulative impacts	✓
	Comment: Amended plans and deferred commencement conditions are necessary to ensure the proposal is satisfactory.	
(c)	The suitability of the site for the development	
	Does the proposal fit in the locality?	✓
	Are the site attributes conducive to this development?	✓
(d)	Any submissions made in accordance with this Act or the regulations	
	Public submissions	✓
	Submissions from public authorities	
(e)	The public interest	
	Federal, State and Local Government interests and Community interests	✓

ASSESSMENT

WLEP 1995

Residential Flat Development

The site is located within the Residential C zone (Clause 14D & 14F). Development for the purposes of residential flat building is permissible with consent. ***Residential flat building*** means a building containing two or more dwellings whether attached or detached and includes buildings commonly known as town houses and villa houses.

The general objectives of Medium and high density residential areas—Zones 2 (b), 2 (c), 2 (d) are:

- (a) To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network, and*
- (b) To encourage innovative design in providing a comfortable living environment which also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping.*

Other relevant provisions in the WLEP include:

- Aims and Objectives of the WLEP (Clause 2);
- Tree and bushland preservation order (Clause 13C);
- Amenity (Clause 13D);
- Objective of Floor Space Ratio Control (13E); and
- General Objectives for Residential Zones (Clause 14)

The specific objectives of the Residential C zone are:

- (a) To accommodate a variety of medium density housing, including such types as walk-up flats and town houses, which are compatible with the scale and character of the surrounding residential area, and*
- (b) To enable the provision of appropriate communal recreation facilities for use by residents.*

The objectives of the Residential C Zone are supported by the following development standards in the Plan:

- Minimum Allotment Size (Clause 22);
- Floor Space Ratio (Clause 23); and
- Height (Clause 24)

The proposed development is in breach of the FSR and Height standards. A SEPP 1 Objection has been submitted for each of these breaches. The objections are further considered below.

SEPP 1 Objections

A. Floor Space Ratio

The applicant objects to the FSR standard contained in Clause 23(b) of the WLEP, which prescribed a maximum FSR of 0.9:1 (Gross floor area = 2675.7m²) for the erection of a residential flat building in the 2(c) zone. The proposed development has a FSR of 1.14:1. (Gross floor area = 3391.28m²).

The objectives of the FSR standards are contained in Clause 13E of WLEP, which states:

- (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 limit the bulk and scale of that development.*

Grounds for objection

The applicant's consultant Chapman Planning P/L is of the opinion that the proposed development meets the objectives of the Zoning and the objectives of the control. The applicant's grounds justifying departure from the standard are contained in Appendix 7 of the submitted Statement of Environmental Effects (SEE) prepared by Chapman Planning P/L as quoted (*in italics*) and discussed below.

- a) *The upper most level of the building is designed within the roof space having 511.93m² of floor area (being less than 60% of the level below) and will not be visible from Peshurst Street or surrounding properties, or contribute to additional overshadowing.*
- b) *The exclusion of the floor area contained within the roof space from the FSR calculation results in a FSR of 0.92:1, a minor variation of 68m² to the floor area control.*

Comments: The inclusion of floor space in an attic level or roof forms does not exclude the floor area from being included in the calculation of floor space ratio. The amount of floor space accommodated within roof forms may affect the bulk and scale of the development and the massing with the rest of the building.

The proposed fourth level (including Unit 39, 40 & 41) also fails to meet the definition of an attic. Please see assessment under Building Height.

- c) *The development proposal is compatible with the scale of adjoining residential flat buildings. 240 Peshurst Street contains a 3 – 4 Storey building on a site of 658m², 266 Peshurst Street is 4 Storey on 1660m² and 2-4 Church Street is 4 Storey on 1609m².*
- d) *The bulk and scale of the development presents continuity of building form in this locality.*

Comments: The overall building height and the eave height of the proposed development are generally compatible with adjoining and surrounding 3 and 4 storeys buildings. However, the bulk of the development, particularly its roof forms, and its length along Peshurst Street are greater than adjoining and surrounding developments even though the link element between the northern and southern wings of the building assist in breaking up the scale of the development when viewed from the street.

- e) *The building is well articulated with framed elements, modulation, recessed portions and variation in building height to minimise the visual scale of the building viewed from Peshurst Street and adjoining properties.*

Comments: The modulation and articulation of the building façade fails to integrate with the massing of the proposed roof forms. Assessment of the proposed development by Council's Urban Design consultant also refers to the proposed roof forms being "static" mass along the extensive frontage of the site, and unsuccessful in reducing the bulk of the development.

- f) *The development proposal has adequate deep soil landscape area surrounding the subject site accommodating canopy tree planting around the perimeter of the building ensuring it time the building will be viewed between the tree canopy.*
- g) *The additional floor area does not result in unreasonable amenity impacts including overshadowing, loss of views or privacy impacts. The shadow diagrams prepared by Mackenzie Architects show that the adjoining residential dwellings will maintain 3 hours solar access to the main living areas and private open space at mid winter. The*

privacy/separation between building is addressed by the design (highlight bedroom and bathroom windows) and landscaping.

Comments: The proposed variation to the FSR standard is not considered to create unreasonable amenity impacts to adjoining developments nor compromise the soft landscape area, and tree planting required for the development. Deep soil planting along is proposed along the boundaries of the site to soften the visual mass of the proposed development.

h) The additional floor area does not impact in the heritage curtilage or setting of the cottages at 1 -5 Clawilliam Street, North Willoughby.

Comments: The proposed development does not unreasonably interfere with the views to the local heritage items which are primarily viewed from their street frontage on Clanwilliam Street. The southern wing of the proposed building facing the heritage cottages is progressively setback from the respective western boundary. Recommended Deferred Commencement Condition will also reduce the visibility of the fourth storey on the southern elevation of the northern wing of the proposed building by incorporating this level in a mansard roof form, and additional planters will be provided on this elevation to soften the appearance of the building when viewed as the backdrop of the heritage cottages.

i) The additional floor area will not result in unreasonable traffic and parking impacts on the surrounding streets. The traffic report submitted with the application found that the traffic generation is acceptable and there is adequate on-site parking.

Comments: In the case of a residential flat building, the traffic generation of the development shall be measured based on the number of proposed dwellings which determines the number of vehicles trips. In this regard, the traffic generation of the proposed development and its car parking provisions are acceptable for the proposed 41 (proposed to be reduced to 40) dwellings.

Considerations/Recommendations

Despite the development's breach of the FSR standard, the objectives a) (Environmental/Site Capacity) and b) (Traffic Generation) of Clause 13E –Objectives of FSR controls, are considered to have been met. The main issues of concern with respect to the proposed development's breach of the FSR standard relate to the bulk and scale of the development, and consequential visual impacts to adjoining properties and the existing streetscape.

The proposal's non-compliance is attributed to two building elements, namely the proposed fourth level of 511.93m² and the link element between the northern and southern wings of the building of 250m² as considered below:

Link element: The proposed link element is recessed from the front building line by 2.5m. When the proposed building is viewed from the street, the link element will be mostly obscured by the northern and southern wings of the building with visually dominant framed balconies that project forward of the general building facades. The architectural language of the link element is simple and subservient to the main building and creates a break in the visual scale of the development on its Penshurst Street elevation.

The deletion of the proposed link element or physical separation of the proposed northern and southern wings of the development to achieve numerical compliance with the FSR control is considered likely to result in a disused space between "the buildings" that has limited solar access or connection to the centrally located building service cores and entries. The resultant gap has limited benefits in terms of light or ventilation for the proposed

dwellings, which are mostly cross-over or dual aspect apartments. The proposed link element is not considered to contribute to the unreasonable bulk of the proposed building.

Also see assessment under SEPP 65 for further discussion on the relative scale of the building being compatible with the site's development context, and recommended **Deferred Commencement Condition A b) and B** to further break up the perceived length of the building when viewed from Penshurst Street.

Fourth level: The height of the proposed 4 storey building is not considered unacceptable with reference to the site's development context, and the SEPP 1 objection against the height standard is supported as detailed in building height assessment below. However, the proposed accommodation of floor space in the proposed massive flat roofs with pitched side roof planes are considered to contribute to the unreasonable building bulk and inconsistent with objective c) of Clause 13E.

The applicant seeks to accommodate additional space in accordance with provision contained in Part D3.2 of the WDCP, which refers to the use of habitable space in the roof space as follows (page D70)

Habitable rooms within the roof space may be permitted with a SEPP 1 objection to the height control standard and not counted as a storey, provided that the attic space is part of the dwelling immediately below and the resultant roof form will not:

- *cause undue overshadowing of adjacent properties and open spaces;*
- *cause undue loss of significant views from adjacent residential properties; or*
- *be excessive in scale and bulk relative to the rest of the building.*

However, the proposed architectural approach results in excessive bulk due to the massive volumes of space enclosed by the side roof planes, and the roof forms have continuous eave and "ridge" lines as viewed from the street with limited setback from the lower levels. The proposed roof forms appear disproportional to the building, and reinforce its mass and length along its street frontage.

For the proposed development to satisfactorily meet the objectives of the standard in controlling the bulk and scale of the proposed building, Council's officers and Urban Design consultant have recommended the following amendments to the proposed fourth level and roof forms of the development:

- *"The proposed roof forms are said to display "awkward" relationship and detailing and is not successful in reducing the building bulk. The comments relate to the bulk of the proposed pitched roof, which encloses large unusable volumes, and adds to unnecessary bulk. Lighter roof forms that are more integrated with the built forms are preferred; and*
- *Reduce the visibility/visual impacts of the four storey (southern wall) of the northern building from the dwellings on Clanwilliam Street by deletion of one of the two top floor end units (unit 39 & 41), and reduce the height of the southern wall to 3 storey."*

Subsequently amended sketches numbered SK05/M (Second floor plan), SK06/M (Third floor plan), SK07/M (Roof Plan), SK08/M (Elevations), and SK09/M (Section DD) have been submitted in response these recommendations. The sketches illustrate roof forms that are lightweight when viewed from the street, and setback from its lower levels to ensure it is subservient in scale, and will not add to the visual bulk of the building. The lightweight roofs are integrated with mansard roofs to the side/rear elevations to mitigate any perceived visual

bulk between the development and the adjoining building. The comparative reduction of roof volumes are shown on the submitted sketches with the original pitched roof forms shown in dotted. The amended roof forms are also considered to much improve the architectural integrity between the proposed roof forms and façade elements of the building with an overall contemporary architectural language.

Subject to the recommended amendments being successful in mitigating the visual bulk of the development where the FSR requirement is exceeded, the proposed numerical non-compliance to the FSR standard is supported for the following reasons:

- The objectives of the FSR standard as contained in Clause 13E are met by the development subject to the recommended amendments to reduce the bulk and scale of the proposed roof forms.
- The floor area of the fourth level of the proposed building is only 55% of the level below. With the reduced roof volumes as shown on the submitted sketches, the accommodation of additional floor area is considered to meet the intent of Part 3.2 with respect to *Habitable rooms within the roof space*, where additional floor areas are being accommodated within volumes that would otherwise be occupied by conventional pitched roof forms.
- The proposed link element is considered an acceptable mean of accommodating additional floor space by taking advantage of the large site with extensive street frontage without unreasonable external impacts.

Given that the objectives of the FSR control can be achieved subject to the amendments generally in accordance with the submitted sketches, the strict application of the numerical standard is considered unnecessary and unreasonable.

In this regard, it is recommended that the SEPP 1 objection against the FSR standard be accepted, and the submitted sketches are recommended for adoption as deferred commencement conditions with further changes to ensure the proposed fourth level will provide adequate setback from respective boundaries, and to ensure the amended layout of the proposed dwellings will meet the requirements of SEPP65.

B. Building Height

The applicant objects to the height standard contained in Clause 24 of the WLEP, which prescribed a maximum height of 3 storeys for residential flat developments.

Storey is defined in Clause 5 of the WLEP, and provided below:

storey, in relation to a building, means the space between any 2 successive floors, or the space between natural ground level and any floor immediately above that level, or the space between any floor and its ceiling or roof above. Any such space that exceeds 3.5 metres in height is counted as 2 storeys. The following spaces are not to treated as storeys for the purposes of this definition:

- (a) spaces where the ceiling of that floor or level is less than 1 metre above natural ground level at all points,
- (b) in the case of an existing building, an attic with a floor area that does not exceed 60% (including lift towers and plant rooms) of the floor area of the level below. Such an attic is excepted only if it does not alter the pitch or profile of the roof of the building except by the inclusion of dormer or similar windows,

- (c) *in the case of a proposed building, an attic with a floor area that will not exceed 60% (including lift towers and plant rooms) of the floor area of the level of the building immediately below. Such an attic is excepted only if it will not result in the pitch or profile of the roof of the building or height of the eaves being inconsistent with the roofs or eave height of surrounding buildings (disregarding the inclusion of dormer or similar windows for the purpose of comparison).*

The storey definition needs to be cross-reference to the definition of *attic* also defined in Clause 5 of the WLEP, and provided below:

Attic *means a habitable space totally within the roof space of a dwelling, or of a building including a dwelling, being a dwelling that occupies all or a substantial part of the level of the building immediately below the habitable space and of which dwelling the habitable space is part.*

Whilst the objectives of the height control are not explicitly stated in the WLEP, it is assumed that the control seeks to support the objectives of the 2(c) zone, and corresponds with the intent and performance criteria of Part D3.2 Density and Height of the WDCP, in particular:-

The height of the building must ensure that:

- *solar access and overshadowing objectives for adjoining properties are complied with;*
- *views from neighbouring dwellings are not unduly compromised; and*
- *the building height does not overwhelm the public street and is of compatible scale with surrounding developments.*

Extent of variation

The applicant's SEPP 1 objection (Appendix 8 of the submitted SEE) identifies that the extent of variation to the height standard is limited to the northern wing of the proposed building, which clearly shows 4 storeys height on its external elevations (northern and southern elevation). This is reliant on the fourth level and roof forms of the southern wing of the proposed building being accepted as consistent with subclause c) of the definition of a *storey*, and the definition of an *attic*.

An assessment of attic level/fourth level of the proposed building is outlined below:

- The floor area of the attic/fourth level of the proposed building is 55% of the level below.
- The pitch of the proposed side roof planes is 30 degrees. This is considered comparable to adjoining and surrounding properties, which have roof pitches ranging from approximately 18 to 32 degrees. The property at No 240 Penshurst Street has roof pitch at approximately 25 degrees, and also accommodates an attic level within its roof form. The floor area of the attic level of No 240 Penshurst Street is approximately 23% of its level below.
- The eave height of the proposed development is similar to adjoining buildings. The eave height of the southern wing is at RL108.1 and the northern wing is at 109.74. The eave heights of the properties at No 240 Penshurst Street and No 266 Penshurst Street are at RL108.02 and RL110.69 respectively. The change in eave height reflects the natural fall of the land from the north to the south along Penshurst Street.
- Unlike conventional pitch roofs of buildings in the locality, the proposed roof forms incorporate large areas of flat roofs in the mid-section of the roof forms to

accommodate additional floor space. Whilst the flat roof section is not visible from surrounding properties, the roof profile of the proposed building is substantially different to its adjoining and surrounding development despite similar roof pitch and eave height. The difference in roof profile of the proposed development results in significantly greater building bulk than adjoining and surrounding developments.

- The proposed Unit 39, 40 and 41 are wholly contained within the uppermost level/fourth level of the building (hence not habitable space that is part of any dwelling on the level immediately below) and are not consistent with the definition of an attic.

Based on the above, it is not satisfied that the proposed attic/fourth level of the proposed development is consistent with subclause c) of the definition of a storey. The profile of the proposed roof forms, including large section of flat roofs is substantially different to surrounding and adjoining development in its volumetric/ 3-dimensional measures, and a substantial part (Unit 39 - 41) of the proposed northern wing is not part of an attic. Thus, the fourth level of the proposed development should not be excluded from the definition of a storey. In this regard, the proposed development is four storeys in height, with the exception of the link element between the northern and southern wings of the building.

Grounds for objection

The applicant's grounds justifying departure from the standard are contained in Appendix 8 of the submitted SEE as quoted (*in italics*) and discussed below.

- a) *The development proposal is compatible with the scale of adjoining residential flat buildings at 240 Penshurst Street, 266 Penshurst Street and 2 – 4 Church Street*

Comments: The overall heights of the proposed development at RL 110.706, and RL 112.202 (lift and light well at RL112.902) are compatible with adjoining and surrounding developments. The ridge heights of No 240 Penshurst Street and 266 Penshurst Street are at RL111.20 and RL112.54 respectively.

- b) *The component of the building which constitute 4 storeys will not result in unreasonable amenity impacts to the adjoining properties with regards to overshadowing, loss of views/outlook or privacy impacts.*

Comments: The proposed development is not considered to cause unreasonable amenity impacts to adjoining developments with regards to overshadowing, loss of views/outlook and privacy impacts. The proposed development satisfies the requirements of SEPP 65 and WDCP with respect to privacy and overshadowing impacts.

- c) *The building height steps with the topography and there is articulation in height defining the northern and southern wings of the building breaking the visual dominance of the building height.*

Comments: The visual dominance of the proposed building is not considered to be a result of its height, but rather its length along the street frontage of the site at 60m, and the bulk of the proposed roof forms being disproportional to its base, and incompatible with adjoining developments. These issues are previously discussed under FSR assessment, and addressed by recommended **Deferred Commencement Conditions A**.

- d) *The upper most level of the building is contained within a pitched roof form ensuring the building presents as three (3) storeys and compatible with the building form in Penshurst Street.*

Comments: The containment of the proposed fourth level within the roof forms mitigate some of the visual impacts of the proposed development as viewed from the street as well as from adjoining properties. However, the length and bulk of the proposed roof forms, including projection of the large dormers from the roof forms are not compatible with adjoining developments or the existing streetscape along Penshurst Street.

- e) *The 4 storeys component of the building will not be highly visible from the heritage cottages at No 1-5 Clanwilliam Street ensuring there is adequate visual separation between the upper levels of the building ensuring the bulk and scale impacts to these single storey properties is acceptable.*

Comments: The separation distance between the proposed development and the heritage cottages along Clanwilliam Street are considered to be acceptable. The northern wing of the building is approximately 24.25m from the rear boundaries of the heritage cottages. Part of the four storey walls and balconies on the fourth level on the southern elevation of the northern wing however will be visible from the heritage cottages.

The southern wing of the proposed development has a minimum setback of 6.033m from the eastern boundary of the closest property at No 1 Clanwilliam Street, and progressively setback as the building increases in height. The fourth level of the southern wing of the building is not visible from the heritage cottage due to its setback, sight distance and the proposed roof forms.

- f) *The Draft Willoughby LEP 2010 applies a 12m building height control to the subject site, representing 4 storey building height. Further, the 4 storey component of the proposed building complies with the 12m height control.*

Comments: Due to the definition of building height contained in Draft Willoughby LEP 2009 being inclusive of external ancillary elements such as lift shaft, there is no expectation that four storeys building can be achieved under the draft control. The draft 12m building height control is considered to take into account convention pitch roof forms. However, the draft control will permit greater flexibility in the consideration of building height without restriction by the definition of attics and storeys. However, the draft LEP whilst it is a relevant consideration for this application, is not a determining factor in assessing the SEPP 1 objection against the current height control contained in WLEP 1995.

Considerations/Recommendations

The height control relies upon the assessment of a development with respect to the WLEP's definition of a storey and attic. Such assessment will be dependent upon the development context, and circumstances of individual sites. Due to the size of the development site and length of the development's frontage on Penshurst Street, the proposed roof profiles are visually massive and disproportional to the scale of the building when viewed from the street. The applicant's intention to conform to the definition of attic and subclause c) (exclusion from the definition of a storey) by incorporating the fourth level into large flat roof forms with pitched side roof planes lacks architectural merit. However, the overall height, and eave heights of the development are considered compatible with its development context with no unreasonable overshadowing or privacy impacts.

The existing development context on Penshurst Street, Clanwilliam Street and Church Street comprises a range of older residential flat developments, which include a mix of both 3 and 4 storey buildings. Despite the fourth level of the proposed development being inconsistent with the bulk and scale of adjoining and surrounding development, the extent of its impacts can be reasonably mitigated through amendments and reduction to the design of the

proposed roof forms. The external impacts of the breach of the height standard alone are limited to its contribution to the development's building bulk, and are separately addressed by the recommended deferred commencement conditions. The development's bulk and scale issues also relate to the development's breach of FSR, but are not considered to form reasons for refusal for its SEPP 1 objection against the height control.

Based on the assessment above, the scale of the proposed development is considered appropriate, and that the objectives of the height standard can be reasonably achieved by alternative architectural treatment of the proposed roof forms as recommended. Thus, strict compliance with the height standard is not considered reasonable or necessary in the circumstances of the development.

Heritage Impacts (Clause 58 & 59)

The site is not located within a conservation area nor is it identified to be a heritage item, but the site adjoins local heritage items at No 1, No 3 & No 5 Clanwilliam Street, and also in the vicinity of local heritage items No. 10 – 12 Clanwilliam Street and No 238 Penshurst Street. The items are listed under Schedule 7 of the WLEP as having local heritage significance, as well as in the Draft WLEP 2009.

- No 1 Clanwilliam Street (also known as Kia Ora) is a single storey cottage with rendered brickwork and metal roof. The item is representative of late Victorian architecture.
- No. 3 & 5 Clanwilliam Street (also known as Bloomsfield) is a pair of single storey semi-detached cottages with architectural aesthetic significance.

No 1, 3 & 5 Clanwilliam Street adjoin the south western boundaries of the site.

- No. 10 – 12 Clanwilliam Street is a church complex containing significant buildings known as the Manse (two storey building) and the original Uniting Church building. The site is currently undergoing redevelopment and restoration works. This item has no common boundary with the site, and is approximately 40m away from the south western boundary of the site.
- No 238 Penshurst Street (also known as Forsyth House) is a single storey Federation style dwelling. This item has no common boundary with the site, and is approximately 40m away from the southern boundary of the site.

In accordance with the requirements of Clause 59 of the WLEP, a heritage impact statement has been submitted with the application. The HIS includes photographs and detailed description of each of the heritage items. Council's Heritage Architect is satisfied that the proposed development will have acceptable impacts to the heritage significance of the adjoining heritage items and heritage items in the vicinity of the site. She notes that:

"The heritage items Nos 1, 3 & 5 Clanwilliam Street are located to the south west of the site. Whilst the height of the new development exceeds the scale of the heritage items, the intervening open space and setbacks proposed will mitigate impact, and appear as a backdrop when viewed from the primary street frontage of Clanwilliam Street. It is noted that the amended sketches will accommodate the south facing fourth storey within a mansard roof form to reduce visual impacts of the primary view of the heritage items."

Public appreciation of the subject local heritage items are primarily from their street frontages on Clanwilliam Street. The proposed residential flat building falls into the backdrop

of the properties at No 1, 3 & 5 Clanwilliam Street and unlikely to visually dominate views to these heritage items. The proposed development does not visually relate to views to the properties at No 10 & 12 Clanwilliam Street or 238 Penshurst Street.

Council's Heritage Architect also provides the following recommendations to further mitigate potential heritage impacts of the proposed development:

- (i) *Material, colours and finishes to be neutral and recessive and non reflective. In this regard the attached schedule is considered acceptable from a heritage viewpoint. (Def. Comm. Condition D)*
- (ii) *Ensure location of canopy trees are positioned to provide a softening of the backdrop of new development when viewed from heritage items particularly along the south, western boundary of the proposal. (As shown on the submitted landscaped plan.)*
- (iii) *Increase the number of planter boxes along western façade of south western elevation to create a softening of the development, and when viewed as a backdrop from Clanwilliam Street and heritage items. (Condition 4).*

Draft WLEP 2009

Draft WLEP 2009 applies to the whole of the City of Willoughby. It was publicly exhibited from 25 March to June 2010. The development standards contained in the Draft WLEP with respect to Building Heights, Floor Space Ratio, Heritage and Conservation for the proposed development are considered equivalent to existing standards in the current WLEP.

The proposed R3 – Medium Density Residential zoning also permits the proposed residential flat development. However, the definitions of Height of Building and GFA in the Draft WLEP are based on the Standard Instrument—Principal Local Environmental Plan, and result in numerical discrepancies as noted in the Development Statistics table of this report. The changes in definitions with respect to the proposed development are considered as follows:

- GFA in the Draft WLEP is measured from the internal face of an external wall when compared to the current definition refers to measurements from the external face of walls. The extent of FR non-compliance is less when measured with the Draft WLEP definition (1.05:1 cf 1.14:1); and
- In the Draft WLEP, the measure of building heights is not restricted by the definition of *storey* or *attic*, but restricted to 12m maximum height measured from existing ground to the highest point of the building (including lift overruns). The proposed building is in breach of height standard in the Draft WLEP by 900 mm due to the proposed lift shaft for its northern wing.

SEPP (Infrastructure)

Traffic Generation (Clause 104)

Pursuant to Clause 104 of the SEPP (Infrastructure), the proposed development with basement car parking to accommodate 60 car spaces and access from a classified road (Penshurst Street) is identified to be traffic generating development in Schedule 3 of the SEPP. The application has been referred to the Roads and Authority for assessment, and also for concurrence in respect s138 of the Roads Act 1993 for the proposed vehicular access on Penshurst Street. The authority has granted concurrence to the proposed development subject to **Condition 6**. RTA also considers the traffic generation by the proposed development is “low volume” with no great impact on Penshurst Street.

The submitted traffic report prepared by Varga Traffic Planning P/L notes the daily volume of vehicles on Penshurst Street is estimated to be 29,000-30,000 vehicles per day (north and south bound). (pp.16). Based on RTA's *Guide to Traffic Generating Developments, Section 3 - Landuse Traffic Generation*, the proposed development is estimated to generate a potential of approximately 12 vehicle trips per hour during commuter peak periods. This is not considered to cause any unacceptable traffic implications in terms of road network capacity. (pp. 17)

In addition, the proposed development provides sufficient car parking spaces in accordance with the requirements of the Part C.4 of the WDCP. A loading bay is also provided to allow for occasional loading access such as removalist vans and couriers. Please also see assessment under Part C.4 of the WDCP.

Noise and Vibrations (Clause 102)

The site is affected by road noise from classified state road, Penshurst Street and is subject to requirements of Clause 102 of SEPP (Infrastructure) with respect to Impact of road noise or vibration on non-road development.

The application is accompanied by a Preliminary Traffic Noise Assessment report prepared by Acoustic Consulting. The report provides limited noise survey, but the survey sampled peak pm traffic along Penshurst Street, and demonstrated that the proposed dwelling would be able to meet the required acoustic performance criteria.

Council's Environmental Health officers recommends that conditions of consent be imposed to ensure the noise criteria required by SEPP (I) are met, including further development of acoustic treatment prior to issue of construction certificate and acoustic certification prior to occupation of the development with respect to *AS2107:2000 – Acoustics – Recommended design sound levels and reverberation times for building interiors*; and *Department of Planning (2009) Development near Rail Corridors and Busy Roads – Interim guideline*.
(Condition 20 & 81)

SEPP 55 (Remediation of Land)

The site is known to be last occupied by the Dairy Farmer's factories, which was demolished with consent in 1999. A preliminary site assessment report has been requested from the applicant to ensure the site can be suitably remediated from the previous industrial use and made suitable for the proposed residential development.

The submitted preliminary site assessment report prepared by Environmental Investigation Services finds that *"elevated concentrations of PAHs (including benzo(a)pyrene) and TPH encountered in the fill soils are considered likely to be associated with ash and slag deposits within the fill material."* However, other contaminants such as heavy metal and asbestos were not encountered in the samples. (pp19 -21).

It concludes that the site can be made suitable for the proposed development provided that (pp23 & 24):

- *"An excavation management plan is prepared prior to commencement of the excavation works that specifies removal of all of the fill material from the site;*
- *All of the fill material is removed from the site in accordance with the excavation management plan;*

- *Sampling of the underlying natural soil is undertaken to demonstrate that the fill material has been removed from the site; and*
- *Any unexpected subsurface conditions encountered during excavation/construction works are inspected by a suitably qualified environmental consultant and an appropriate course of action is established.*
- *Normal good engineering site management practice including control of run-off and dust suppression is recommended during earthworks and construction.”*

Council’s Environmental Health Officer has reviewed and satisfied with the findings of this report, and recommends that the recommended remediation measures in the report be imposed as conditions of consent. (**Condition 19 & 49**)

SEPP 65 (Design Quality of RFB)

The proposed development is a ‘residential flat building’ as defined by Clause 3 of SEPP 65, and is required to meet the Design Quality Principles and the Residential Flat Design Code of the SEPP. The proposed development is designed by a qualified designer and a Design Verification Statement by a registered architect has been submitted as required by the SEPP. Council has engaged an external Urban Design consultant to carry out an independent assessment of the proposal against the requirements of SEPP 65.

The current proposal has substantially addressed major internal amenity shortfall relating to a previous scheme (withdrawn by the applicant), DA2009/694, by reduction in the number of dwellings proposed in the development (from 50 dwellings to 41 dwellings). The assessment shows that the proposed development is generally satisfactory against the design quality principles of SEPP 65, with the exception of *aesthetics* of the proposed street façade, the use of large pitched roof forms, and the consistency of external finishes.

The proposed roof forms are said to display "awkward" relationship and detailing, and is not successful in reducing the building bulk. The comments relates to the bulk of the proposed pitched roof enclosing large unusable volumes, which contributes to unnecessary building bulk. The Urban Design consultant recommends that more contemporary roof forms that integrate with the overall architectural design, and cohesion with the proposed balcony frames on the street façade are to be used. It is considered that additional floor space being accommodated within an upper level well setback from the building line would result in a less bulky outcome than the proposed flat roofs with side pitched roof planes.

The Urban design consultant recommends revisions to the fourth level of the proposed development which *“includes architectural devices such as the incorporation of set back ‘fly away’ roofs, the visual division of the building to appear as two smaller buildings and the articulation of the façade horizontally to successfully reduce the perceived bulk of the building while adding to the contemporary design aesthetic”.* (pp17). These recommendations have been discussed with the applicant, and subsequent sketches (See reference in Deferred commencement conditions) have been submitted in response to these recommendations. The submitted sketches generally show a reduction in roof volume for the fourth level, and a more integrated overall contemporary architectural language to the development.

Design Quality Principles

Scale

“As the site is significantly larger than surrounding sites, the proposed building is significantly larger than other surrounding buildings being approximately 60m long along the Penshurst Street frontage. An attempt has been made to reduce the apparent bulk of the building by breaking it into two sections joined by a recessed link, but the overall building length is still 60m.”(pp3)

Comments: The development site of 2973m² is larger than adjoining and surrounding development sites, which range between 650 to around 2000m². However, the length of the proposed building is not considered to be unreasonable as the site’s street frontage subject to sufficient visual breaks and architectural articulation.

A review of existing residential flat developments adjoining the site and in the vicinity indicates that the length of residential buildings generally occupy 80% of the respective site frontage. The building at No 266 Penshurst Street is approximately 30m in length and represents approximately 81% of the site’s frontage. The building at No 240 Penshurst Street is approximately 20m in length and represents approximately 77% of the site’s frontage.

The proposed development is broken up into a northern wing of 28.3m, a recessed, and lower “link” element of 7.85m, and a southern wing of 22.8m, totally 58.95m over 73.125m frontage of the site. Notwithstanding the “link” element being visually subservient and unlikely to be detracting on the street façade, the total length (including the link element) occupies approximately 80% of the site’s frontage. The proposed lengths of the northern wing and southern wing of the development have also taken appropriate consideration of adjoining developments, and similar to adjoining buildings.

The visual separation of the proposed north and south wings of the proposed building is emphasised by their different façade treatment compared to the “link” element. The building façade of the proposed northern and southern wings are highlighted by the proposed visually dominating strong balcony frames. The roof over the balcony of the third level of the link element is also setback further from its lower levels.

In this regard, it is recommended that further consideration be given to improvement to the visual separation of the northern and southern wings of the proposed building as viewed from the streetscape. **(Def Comm. Condition A b) and Condition B)**

Amendments to “link” element (comprising Unit 5, Unit 17 and Unit 31)

*The front fence line enclosing the private open space of ground floor Unit 5 is to be setback a further 2.5m from the general high fence line enclosing the private open space of the ground floor dwellings fronting Penshurst Street. The resulting increased setback area is to be occupied by a feature landscaped area complying with Deferred Commencement Condition B.
(Reasons: Reduction of scale, and Improve Streetscape presentation)*

Feature Landscaped Area

Submission of a revised landscaped plan showing a feature landscaped area garden required by deferred commencement condition A subclause b) that includes but not limited to the following features:

- *Provide visual break in the uniform landscaped strip along the frontage of the site with differentiable landscaped feature that will attract greater visual interest.*

- A feature tree of a suitable flowering species with mature height not less than 8m, and a minimum of 200L pot size
- Dense but low height and low maintenance species be provide near the street boundary that would prevent pedestrian access.
(Reasons: Streetscape and landscape amenity)

Amenity

“Reliance on skylights for adequate daylight access in some of the upper level bedrooms of the proposed development will result in compromised amenity. The plan should be amended to avoid the use of skylights wherever possible. Whilst the proposed development complies with solar access requirements under the RFDC, the number of apartments with adequate solar access and northerly orientation could be improved through some minor replanning.”

Comment: The recommended Deferred Commencement Condition will resolve this issue of concern by providing appropriate natural light and ventilation to all proposed bedrooms on the uppermost floor in the form of a dormer window to rear/side elevation or full height window to the street.

Aesthetics

“The design needs to be amended to have a more consistent approach to the relationship between the roof and balcony frames. The proposal needs to be amended to have a more consistent approach to materials and finishes on all facades. An alternative treatment to reduce the apparent bulk on the upper level needs to be employed. A significantly reduced floor plate that is well setback from the building line and therefore not visible from the street would have a better result than the pitched roof form which ends up adding additional unusable volume to the upper level.”

Comments: The recommended changes to the aesthetics of the proposed building are generally met by the submitted sketches, numbered SK05/M (Second floor plan), SK06/M (Third floor plan), SK07/M (Roof Plan), SK08/M (Elevations), and SK09/M (Section DD), and recommended deferred commencement conditions of consent. The submitted Sketch SK09/M - Section DD illustrates the pedestrian view of the fourth level from the opposite side of Penshurst Street footpath will be very limited.

In addition, the proposed facades also need more design integration, and a consistent architectural language/expression. For example, the southern elevation of southern wing of the building appears to have too many material variations, but a lack of fenestration. Facebricks sparingly used on the southern wing of the development also appears inconsistent with the overall contemporary building appearance. In this regard, it is recommended that a revised schedule of material and finishes be submitted to address the redress the inconsistencies in materials composition of various elevations of the development. (**Def Comm. Condition D**)

Rules of Thumbs

The proposal’s numerical non-compliances with the “rules of thumbs” contained in the RF Design Code are considered minor, and acceptable for the reasons outlined below:

- The proposed 6 - 10m from the southern elevation of the development to the property at No 240 Penshurst Street does not comply with the numerical rules. However, the non-compliance is considered minor and any potential privacy impacts have been mitigated with the use of windows with high window sills.

- Whilst the proposed development exceeds the building depth specified in the RFDC, the majority of apartments have been designed to have dual aspects, thereby achieving the objective of the building depth requirement for natural light and ventilation.
- The northern building has twelve (12) apartments accessed from the same service core on the first and second floor, but the corridor is well articulated and naturally lit by the proposed generous lightwells with planters on either side of the corridor.

WDCP

General Development Guidelines - Part C

Part C of Willoughby DCP contains the general development guidelines for developments. As noted in the Development Statistic, the proposal generally complies with the relevant provisions of Part C of WDCP, and where appropriate addressed by recommended conditions of consent.

Transport provisions (C.4)

Car parking: The proposed development provides car parking spaces in excess of the requirements of Part C.4, based on car parking rates for Major Public Transport Corridor. The objective of the car parking control in Part C.4 refers to meeting the car parking demand generated by developments, but also to encourage the use of public transport and reduce car dependency.

In this regard, it is recommended that the number of excess car parking be reduced by deletion of:

- Car spaces No 3, 4, 35, and 36. These car spaces are located outside the building footprint and the deletion of these space will reduce the excavation, and increase deep soil planting; and
- Car space No 30. This car space has poor sight distance to on-coming traffic from adjacent ramp.

The recommended **Condition 5** requires the deletion of 5 car spaces from the proposed basement car parking levels to reduce the number of excess car spaces, and reduce the number of car parking spaces from 60 to 55 (for 40 dwellings with 4.5 excess car spaces). This is considered a reasonable outcome for the site with consideration of its public transport service, parking restriction along the site's frontage, and street parking situation in the immediate locality.

Loading: A loading bay is required for multi-unit residential development comprising 12 units or more. This is to cater for a removalist van/maintenance vehicles to park at the site. This is particularly important for the proposed development due to the site is located on a classified state road with no street parking. The Roads and Traffic Authority also concurs with this requirement.

The proposed development provides one loading bay catering for a small rigid vehicle in the basement area. However, the driveway access to the basement has a maximum 1:5 grade, which is steeper than the maximum gradient permissible for a SRV pursuant to AS2890.2. This issue of concern has been conveyed to the applicant, who responded with additional statement prepared by their traffic consultant asserting that the proposed gradient is acceptable given the gradient is acceptable by a Development control plan of an adjoining

council, and a recent approval by the Land and Environment Court for an industrial development in the East Chatswood Industrial Area has also accepted a steeper gradient than required by AS2890.2. However, the statement fails to state the circumstances of why the proposed driveway is suitable for the circumstances of the site or the reason for which the proposed driveway gradient cannot be amended to comply with AS2890.2.

Based on discussion with the applicant, it is noted that the gradient can be amended to comply with AS2890.2 subject to reduction of the ground floor units (Unit 1 & Unit 2) directly above the driveway entry to ensure there is sufficient headroom for the SRV to enter the basement. In this regard, it is recommended that the driveway gradient and associated changes be made as per **Deferred Commencement Condition C**.

Specific Controls for Residential Development – Part D

The proposal has been assessed with the relevant provisions of Part D.3 of Willoughby DCP contains the specific controls for multi-unit housing development as outlined in the development statistics and further discussed below.

Site Coverage (D3.4)

The proposed development has site coverage of 33.56%, and exceeds the maximum site coverage prescribed for 3 storeys at 30%, and 4 storeys at 28%.

The intent of the site coverage control contained in Part D3.4 of the WDCP is *“to ensure multi-unit residential developments have a high standard of amenity by controlling the proportion of site which may be covered by buildings to achieve adequate open space and reasonable privacy.”*

Part D3.4 of the WDCP includes performance criteria that allow the variation of site coverage requirement. The performance criteria of the control states that *“variation to the maximum site coverage requirements can be considered as long as the recreational open space and the natural landscape requirements, privacy, solar access and overshadowing considerations are complied with.”* The proposed variation is considered to satisfy the performance criteria as outlined below:

- The proposed development provides 43% landscaped areas and is above the required 35%. The submitted landscaped proposal also includes new screen planting along all site boundaries to provide soft landscape buffers between developments.
- The L shape building is considered an appropriate response to the site’s context, and provides adequate spatial separation between the heritage cottages to the south western corner of the site, as well as maintaining reasonable solar access to their rear yards.
- The proposed development will not unreasonably affect the privacy of adjoining properties. Where appropriate, the living areas, and balconies of the proposed units are orientated away from western and southern elevations of the proposed building to maintain a reasonable privacy between developments. In particular, all balconies on the southern wing of the proposed building is orientated to the street to avoid privacy conflicts with the rear yard of the heritage cottage and the balconies on the northern elevation of the residential flat building at No 240 Penshurst Street.

Despite its variation from the site coverage requirement, the development is considered to achieve adequate open space and reasonable privacy.

Setback (D3.5)

A 6.6m rear/side setback is required from the third storey for any four storey development. Whilst the fourth storey of the proposed development is partly enclosed within its roof forms, the northern elevation of the building facing 266 Penshurst Street is four storeys in height, but presents a minor shortfall to the required setback for four storey development.

From its northern boundary, the third storey is setback at 6.25m and the fourth storey is setback at 8.964m. The proposed variation is minor and does not create unreasonable privacy impacts or visual bulk to the adjoining development at No 266 Penshurst Street.

In addition to the above, the recommended deferred commencement conditions will cause technical non-compliances with side setback on the southern elevation of the southern wing of the proposed building, which is setback at a minimum 6.015m and up to 7.2m from the southern boundary. The variation is numerically minor, and the recommended condition will further reduce the visual bulk of the development when viewed from No 240 Penshurst Street by deleting the proposed pitch roof forms, and increase setback on the fourth level away from the southern boundary.

Privacy (D3.7)

The proposed development generally meets the separation distance required by SEPP 65, except for minor shortfall from No 240 Penshurst Street (which has limited setback from the common boundary). In addition, appropriate obscured glazing and highlight windows are provided on the southern elevation of the southern wing of the development facing this boundary, and is considered to suitably avoid overlooking or privacy conflicts with window and balconies at this adjoining development.

The living areas and associated balconies of the proposed dwellings are mostly orientated to the street frontage and the northern elevation of the building where a minimum 12m separation is provided between balconies of the development and the adjoining development at No 266 Penshurst Street. Where balconies are provided on the southern elevation of the proposed northern wing of the building, they are separated from the rear yards of adjoining properties by over 24m, and separated by the proposed communal open space with suitable screen planting along all site boundaries. The proposal demonstrates suitable considerations in maintaining a reasonable level of privacy between the site and adjoining properties.

Please also refer to Notification Issues section of this report in response to privacy concerns by public submissions.

Solar Access & Overshadowing (D3.9)

Rear yards of Clanwilliam St properties: The submitted shadow diagrams show that the proposed development will have limited overshadowing impacts to the rear yards of adjoining properties at No 1, 3, 5, & 7 Clanwilliam Street. The shadows of the proposed building will only affect these properties during early morning at Winter Solstice, and will not affect their afternoon sun. More than three (3) hours of solar access is maintained to the rear yards and living areas of these properties between 9am – 3pm, Winter Solstice.

No 240 Penshurst Street: The overshadowing impacts of the proposed development will affect the northern elevation of the residential flat building to the south of the site at No 240 Penshurst Street from approximately 10:30am onward at Winter Solstice due to the orientation of the building. The 3 storeys plus attic development at No 240 Penshurst Street contains six (6) dual aspect/corner units. Unit 1, 3, and 5 have north facing terrace/balconies facing the proposed development.

To further assess the overshadowing impacts of the proposed development, particularly the impacts on north facing terrace/balconies and living room, shadowing diagrams drawn on the northern elevation of 240 Penshurst Street have been requested from the applicant. The additional shadow diagrams show that the overshadowing impacts of the proposed development between 9:00am and 12 noon at Winter Solstice is limited to the north facing terrace of ground floor Unit 1/ 240 Penshurst Street. Unit 3 and 5/240 Penshurst Street would receive at least 3 hours of solar access between 9am and 3pm at Winter Solstice due to the altitude of the sun.

With respect to the north facing windows and terrace of ground floor Unit 1/ 240 Penshurst, the proposed development will create some additional shadows on the north facing windows from approximately 11:30am onwards. The overshadowing impact from the proposed development to Unit 1/240 Penshurst Street is primarily determined by the orientation of the property being directly south of the development site. It is noted that existing boundary fence, retaining walls and planter box along the northern boundary of No 240 Penshurst Street currently overshadows the terrace area of the ground floor unit. The additional shadows cast by the proposed development are considered minor and unlikely to affect the reasonable enjoyment of the terrace area/ living room.

Neighbour Notification Issues:

The application was notified from 3 May 2010 – 24 May 2010. Seven (7) Submissions were received in this period. The issues raised in the submissions are discussed below:

Overshadowing

Based on assessment of the submitted shadow diagrams, the proposed development will not unreasonably overshadow the private open space of the adjoining properties with frontage to Clanwilliam Street or the north facing private open space / balconies of adjoining residential flat development at No 240 Penshurst Street. The overshadowing impacts of the proposed development to adjoining properties are primarily determined by the orientation of the site being directly north of the adjoining properties, but with the proposed setbacks to the southern boundary, and the inclusion of a large communal open space at the south western corner of the site, the overshadowing impact of the development is considered reasonable. Existing shadows from fencing structures also affects solar access to adjoining properties at Clanwilliam Street, which have very high site coverage and limited setback from the northern boundary/ rear fence line. More than three (3) hours of solar access is maintained to the properties at No 1, 3 & 5 Clanwilliam Street, between 9am – 3pm, Winter Solstice.

Privacy:

240 Penshurst Street: The proposed development has employed suitable screening devices and appropriate window design on its southern elevation (of its southern wing) to avoid privacy conflict with windows and balconies on the northern elevation of the residential flat development at No 240 Penshurst Street. There are only four small windows on the subject southern elevation, all of which have sill height at 1750mm from the respective floor level. Privacy screens have also been provided to the side elevation of balconies orientated to the street.

Rear yards of Clanwilliam Street cottages: All balconies associated with living rooms on the southern wing of the development are orientated to the street. The only balcony on the western elevation of the southern wing of the building has access from the bedrooms of first floor Unit 20, but is less than 1m in width, and is appropriately screened by a planter box along its full length.

The southern elevation of the northern wing of the proposed development is setback over 24m from the rear boundary of No 1 and No 3 Clanwilliam Street, and is not considered to

unreasonably overlook adjoining properties. In addition, recommended conditions of consent are also considered to address the following issues of concern:

- The submitted elevations have shown that obscured/opaque glazing will be used for glass balustrade, and is recommended as deferred commencement condition to ensure compliance. (**Def Comm Condition D**)
- Additional planter boxes will be provided along the length of the south facing balconies on the northern wing of the development (**Condition 4**)
- Additional planter box will be provided along the western elevation of second floor Unit 18 and the western elevation of the window of Bedroom 1 of Unit 36 to provide suitable screening to these windows (**Condition 4**)
- South facing balconies on the fourth level will be deleted as part of recommended **Deferred Commencement condition Aa**.

Loss of View: There is no significant or reasonable view that can be established from the northern elevation of No 240 Penshurst Street or from the rear yards of properties on Clanwilliam Street. These properties currently look through the currently vacant site towards Penshurst Street. It is also noted that:

- The impacts of the proposed development to the northern aspect/outlook from the Clanwilliam Street cottages are limited. The northern/ rear boundaries of Clanwilliam Street cottages adjoin the well-landscaped communal open space of the development. Only the side/eastern boundary of No 1 Clanwilliam Street adjoins the western elevation of the southern wing of the development, which provides setback of 6m and over 10m on the fourth level (as amended by recommended deferred commencement condition) from this common boundary.
- Adequate separation is provided between the proposed development and the adjoining development at No 240 Penshurst Street to maintain reasonable outlook to the street. It is also noted that all dwellings contained in the residential flat development at No 240 Penshurst Street have dual aspects.

Height & FSR (bulk and scale):

The height, FSR, bulk and scale of the proposed development is generally compatible with the established residential flat building context along Penshurst Street. As detailed in the SEPP 1 assessment, the proposed non-compliance with these development standards is acceptable subject to appropriate architectural treatment/devices to well contain the visual bulk of the non-complying elements, the fourth level and the link element. The overall height of the proposed development, despite the definition of a storey is compatible with surrounding 3 and 4 storey developments. The recommended deferred commencement condition will also reduce the visibility/visual impacts of the four storeys (southern wall) of the northern building from the dwellings on Clanwilliam Street by deletion of Unit 41, and by deleting any south facing balconies on this fourth level.

The proposed development is not considered to adversely affect the heritage significance of adjoining heritage cottages on Clanwilliam Street. The proposed L-shape building is considered an appropriate response to ensure the development will be a distant backdrop to the heritage item when viewed from the street. It is noted that the heritage items have no identifiable curtilage that support the appreciation of these items. Appropriate tree plantings at the subject site will positively contribute to their backdrops. In this regard, suitable screen planting along the boundaries of the site have been proposed. It is understood that the heritage cottages at Clanwilliam Street will always be of a difference density and scale, which are not representative of the surrounding residential flat development context or the

envisaged density of the zoning of the site. The zoning of the site contemplates a multi-unit development outcome.

Tree planting along boundary:

The proposed 8 -20 m trees planting will provide appropriate screening and greenery to the backdrops to the heritage cottages on Clanwilliam Street. It must be noted that tall canopy trees will provide appropriate summer shade (sunlight with high altitudes), but will permit the penetration of winter sun (sunlight with low altitude) between the tree trunks.

Infrastructure/public transport:

The site is located on a major public transport corridor, and is a suitable use of the site with respect to its zoning objectives. The proposed 40 dwellings are not considered to create any detrimental impacts to existing road infrastructure as assessed by the RTA. The issue of infrastructure or public transport supply cannot be reasonably addressed by the proposed development, but must be supported by strategic bus service, but also support the continual development of additional/increased service.

CONCLUSION

The site is a large residual development site within an established residential flat development area. The scale and density of the development is found to be appropriate to the environmental capacity of the site, its area and dimensions as well as the 3 and 4 storeys development context of the medium density residential area. The overall height and eave heights of the development are considered compatible with its main development context with no unreasonable overshadowing or privacy impacts subject to recommended design changes. The development's non-compliance with the height control is limited to its technical non-conformity to the definition of "storey" and "attic" as contained in the WLEP 1995, which will be replaced by the standard definition of Building height in the Standard Instrument (as contained in Draft WLEP 2009). As demonstrated by the submitted sketches discussed in the report, and referenced in the recommended Deferred Commencement Conditions, conventional pitched roofs and attic can result in greater roof volumes than that of a lightweight additional "storey" with appropriate setbacks.

The main issues of concern in the assessment of the applicant's SEPP 1 objections to FSR, and Height development standards relate to the appropriate architectural treatment of the additional floor area on the fourth level, and the visual impacts of the roof forms when viewed from adjoining properties and from the street. In this regard, the submitted sketches recommended as deferred commencement conditions, propose substantial reduction in the volume of built forms at the fourth level, and also increased setbacks of the fourth level from adjoining properties to reduce visual bulk as viewed from adjoining properties and from the street. The proposed amendments also add to the architectural quality of the development to achieve a higher standard of amenity, and building appearance, and are considered worthy of support based on its merits despite numerical non-compliance with the FSR standard.

Issues raised in the public submissions primarily relate to the bulk and scale of the development relative to the adjoining low scale and density heritage cottages to the south western corner of the site, as well as potential amenity impacts with respect to privacy and overshadowing. Despite the numerical non-compliance with the FSR control, the proposed development is not considered to unreasonably affect the amenity of the adjoining properties. The proposed L-shaped building is also considered a suitable response to the site, and its relationship with adjoining properties by providing a large landscaped communal open space adjoining the heritage cottages. The proposed development is not found to adversely affect the heritage significance of the local heritage items based on assessment by Council's Heritage Architect. In addition, appropriate conditions of consent are

recommended to further soften the interface between the development and adjoining properties with appropriate planters and screening planting along boundaries.

Based on the assessment of the application as detailed in this report, it is recommended that the application be approved subject to attached deferred commencement conditions of consent, and recommended conditions of consent to reduce the visual bulk of the proposed building, and address other minor outstanding design and amenity matters.

OFFICER'S RECOMMENDATION

- **That the submitted SEPP 1 objections against Clause 23 (FSR) and Clause 24 (Height) of the WLEP 1995 be supported pursuant to reasons stated in assessment report; and**
- **That the application be approved and delegated authority be granted to the General Manager to issue the attached Deferred Commencement Consent Notice subject to attached conditions in Schedule 1 and Schedule 2.**

SCHEDULE 1
DEFERRED COMMENCEMENT
CONDITIONS OF CONSENT

In accordance with Section 80(3) of the Act this consent will not operate until the applicant has provided information to the satisfaction of the Council that the following conditions can be complied with. Upon receipt of written information from the applicant in relation to the conditions in this schedule the Council will advise in writing whether the information is satisfactory and, if so, will nominate the effective date for the commencement of this consent.

In accordance with Clause 67(3) of the Regulation, a twelve (12) month period is given from the date of the 'deferred commencement' notice to lodge plans and evidence that satisfactorily address the required amendments/detail. If not, then the 'deferred commencement' will lapse and a new development application will be required.
(Reason: Ensure compliance)

A. Amended Plans

Submission of an amended proposal to incorporating the changes complying with the conditions below. The amendments must be documented by a full set of architectural plans showing:

- i) Setbacks of external walls, balustrade and fencing from respective site boundaries must be clearly marked on the floor plans for each level;
- ii) Floor area of each floor;
- iii) Unit number, unit size and unit type (number of bedrooms and study); and
- iv) Building heights, finished ceiling levels, and floor levels, must be shown on elevations with relative level referenced to Australian Height Datum.

(Reasons: Ensure compliance)

a) Roof forms and upper levels

The proposal be amended generally in accordance with submitted sketches numbered SK05/M (Second floor plan), SK06/M (Third floor plan), SK07/M (Roof Plan), SK08/M (Elevations), and SK09/M (Section DD), dated June 10, prepared by Mckenzie Architects, and the following amendments:

- i) Change in Dwelling mix, and reduce the total number of dwellings to 40 as follows:
 - 1. Deletion of Unit 41 (2 bedrooms);
 - 2. Conversion of Unit 32 to a 3 bedrooms unit,
 - 3. Conversion of Unit 38 from a 1 bedroom unit to a 2 levels, 2 bedrooms unit;
 - 4. Conversion of Unit 39 from 1 bedroom unit to a 2 bedrooms units; and
 - 5. Conversion of Unit 36 from a 2 bedroom unit to a single level, 1 bedroom Unit.

This will result in twenty-one (21) 1-bedroom dwellings, seventeen (17) 2-bedrooms dwellings and two (2) 3-bedrooms dwellings.

- ii) The third floor of the northern wing of the building must provide the following minimum setbacks as measure from the outer face of the external walls to the respective boundary:
 - 11m from the northern boundary
 - 12.5m from the western boundary
- iii) The third floor of both the northern and southern wings of the building must be setback a minimum of 9.9m from the street boundary of the site as measured from the outer face of the external walls;
- iv) The third floor of the southern wing of the building must be setback a minimum of 7m as measured from the outer face of the southern external walls of the level below;
- v) All dormer windows shown on side and rear elevations of the third floor are limited to 1.2m wide and the head of the dormer windows must be at least 300mm below the ridge height of the associated roof plane.
- vi) All revised dwelling layouts must comply with Part 3 of SEPP65 including:
 1. Apartment layout:
 - single aspect apartment depth is maximum 8m from a window
 - The back of a kitchen is a maximum 8m from a window
 - The width of cross over or cross through apartment if over 15m in depth must be at least 4m in width
 - Minimum apartment sizes at:
 - 1 bedroom - 50m²
 - 2 bedroom - 70m²
 - 3 bedroom - 95m²
 2. Minimum Balcony width of 2m and size of 10m²;
 3. Minimum Ceiling height of 2.7m for all habitable rooms and 2.4m for all non-habitable rooms,
 4. Minimum storage areas at:
 - studio apartments 6m³
 - one-bedroom apartments 6m³
 - two-bedroom apartments 8m³
 - 3 plus bedroom apartments 10m³

(Reason: Reduction of Bulk and Scale, Improve Building Appearance and Ensure compliance)

b) Amendments to “link” element (comprising Unit 5, Unit 17 and Unit 31)

The front fence line enclosing the private open space of ground floor Unit 5 is to be setback a further 2.5m from the general high fence line enclosing the private open space of the ground floor dwellings fronting Penshurst Street. The resulting increased setback area is to be occupied by a feature landscaped area complying with Deferred Commencement Condition B.

(Reasons: Reduction of scale, and Improve Streetscape presentation)

B. Feature Landscaped Area

Submission of a revised landscaped plan showing a feature landscaped area garden required by deferred commencement condition A subclause b) that includes but not limited to the following features:

- Provide visual break in the uniform landscaped strip along the frontage of the site with differentiable landscaped feature that will attract greater visual interest.
- A feature tree of a suitable flowering species with mature height not less than 8m, and a minimum of 200L pot size
- Dense but low height and low maintenance species be provide near the street boundary that would prevent pedestrian access.

(Reasons: Streetscape and landscape amenity)

C. Driveway gradient

Submission of a revised driveway design and associated changes to the ground floor units (Unit 1 & Unit 2) and basement floor plans to comply with the followings. The revised design must be documented with driveway longitudinal sections at 1:20 scale, driveway plan at 1:50 scale, and revised architectural drawings.

The gradient for the driveway is limited to a maximum of 1:6.5 to allow access for a small rigid vehicle to access the loading area on Basement Level 1. The design of this driveway, including any change in gradient, and headroom clearance must comply with the relevant provisions of AS2890.1 and AS2890.2. All vehicles must be permitted to enter and exit the site in a forward direction. Consequential Reduction of building footprint/floor area on the Ground floor of the development is required to comply with this Deferred Commencement Condition.

Reduction of dwelling size and revision of apartment layout on the Ground floor (Unit 1 and Unit 2) to cater for the required driveway access must comply with subclause vi) of Deferred Commencement Condition A)a), and a minimum open space of 35m² with minimum 4m width with direct access from living area must be maintained for any Ground floor dwellings.

(Reason: Safe vehicular access to loading facility)

D. Revised Schedule of external finishes

Submission of a revised schedule of external finishes complying with the following requirements:

- The roofing and cladding of the proposed building are to be of minimal reflectance (maximum of 20%) so as to avoid nuisance in the form of glare or reflections to the occupants of nearby buildings, pedestrians and/or motorists.
- External finishes on all elevations form a cohesive scheme. In this regard, the use of facebrick be deleted from the material schedule, and replaced with either the use of splitface block work or banded render; and the use of metal cladding is to be limited to the uppermost level only.
- The side elevation of street facing terraces/balconies on the southern and northern elevations of the development are to be provided with matching privacy screens comprises of aluminium frames and opaque fixed glazing (matching to windows shown on the northern elevation of Unit 13 and 25.) to provide suitable fenestration to the side elevations of the building as viewed from the street.
- The colours of the revised external finishes are to be generally consistent with the submitted colour schedule, using neutral and recessive colours.

- All glass balustrades to balconies are to be provided with obscured glass.
(Reason: Visual amenity, and Building appearance)

SCHEDULE 2

CONDITIONS OF CONSENT

GENERAL CONDITIONS

1. Hours of Work

All construction/demolition work relating to this Development Consent within the City must be carried out only between the hours of 7 am to 5 pm Mondays to Fridays and 7 am to 12 noon on Saturdays. No work is permitted on Sundays or Public Holidays.

An application under Section 96 of the Environmental Planning and Assessment Act for a variation to these approved hours must be lodged with Council at least 3 working days in advance of the proposed work. The application must include a statement regarding the reasons for the variation sought and must be accompanied by the required fee.

Note: This S96 application may require re-notification in some circumstances.
(Reason: Ensure compliance and amenity)

2. Approved Plan/Details

The development must be in accordance with Architectural plans numbered SK01 to SK09 (inclusive), dated 31.03.2010, Longitudinal Driveway Section numbered SK10, dated 11.04.2010, Environmental Site Management Plan numbered SK11, dated 09.04.2010, prepared by Mackenzie Architects, Landscape Plan numbered LPDA 10-106/2, Issue F, dated April 10, Stormwater plans numbered DA1.01 Rev 1, DA2.01 Rev 1, DA2.02 Rev 2, DA3.01 Rev 1, dated 15.04.09, prepared by Northrop, as amended by Deferred Commencement Conditions in Schedule 1, the application form and any other supporting documentation submitted as part of the application, except for:

- a) any modifications which are "Exempt Development" in SEPP (Exempt and Complying Development Codes) 2008.
- b) any modifications which are 'Exempt Development' in Willoughby Development Control Plan Part B.2, or as may be necessary for the purpose of compliance with the Building Code of Australia and any Australian Standards incorporated in the Code:
- c) otherwise provided by the conditions of this consent.
(Reason: Information and ensure compliance)

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

The following conditions of consent must be complied with prior to the issue of a construction certificate.

3. Detailed Drawings

Detailed construction drawings, specifications, and other supporting documentation required for a Construction Certificate are to be in accordance with the terms of this Consent and comply with the requirements of the Building Code of Australia.
(Reason: Ensure compliance)

4. Amendments – Various

Amendments complying with the following requirements must be shown on Construction Certificate plans:

- a) The gates and associated porticos leading to the entries to the building must be setback at a minimum of 1.2 m from the street boundary.
 - b) A common toilet, and an associated cleaners' store room is to be provided in the basement levels.
 - c) 20m² of additional drying areas is to be provided within communal open space area.
 - d) A planter box is to be provided along the western elevation of Unit 18. The design of the planter box must allow maintenance from the bedroom windows of the unit 18, and must be non-trafficable.
 - e) A planter box is to be provided along the western elevation of the window of Bedroom 1 of Unit 36. The design of the planter box must allow maintenance from the bedroom window of the Unit 36, and must be non-trafficable.
 - f) Planter boxes are to be provided to along the full length of the south facing balconies of Unit 21, 22, 37 & 38. A minimum width of 2m and minimum area of 10m² must be maintained for these balconies.
 - g) Provision of recycling receptacle in each dwelling.
- (Reasons: Streetscape, visual amenity, maintenance, services and facility)

5. Amendment – Deletion of car spaces

The following car spaces are to be deleted from the basement area as follows:

- i) Deletion of Car Space No 3, 4, 35 & 36, and reduce the area of basement excavation; and
 - ii) Deletion of Car Space No 30.
- (Reason: Compliance, Reduce car dependence, encourage public transport use, & safe parking)

6. Driveway and car parking design (Roads and Traffic Authority)

As conditions of the Roads and Traffic Authority granting concurrence to the development, the following requirements must be met:

- a) The layout of the proposed car parking areas associated with the subject development (including driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) must be in accordance with AS2890.1 – 2004 and AS2890.2-2002 for heavy vehicle usage;
- b) All vehicles must be able to enter and leave the site in a forward direction;
- c) All vehicles must be wholly contained within the property boundaries of the site before requiring to stop;
- d) The required site lines to pedestrians or other vehicles in or around the carpark or entrances must not be compromised by landscaping, signage, fencing or display materials.

- e) The swept path of the longest vehicle (including garbage truck) entering and exiting the site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS.

Plans and details complying with this condition must be shown on the Construction Certification Plans.

(Reasons: RTA requirements)

7. Motor cycle parking

Two (2) motorcycle parking spaces must be provided for motor cycle parking on basement level 1, adjacent to the duct and lift core for the northern wing of the building. Each space must have dimensions of 1.2 metres x 3 metres.

(Reason: Alternative transport and Parking)

8. Additional Details and Information

Any requirements outlined by conditions of this consent requiring changes and/or information to be noted on plans are to be incorporated within the Construction Certificate plans and documentation.

(Reason: Ensure Compliance)

9. Section 94 Contributions

The s94 contribution is calculated based on the development being amended in accordance with Deferred Commencement Conditions in Schedule 1.

A cash contribution is to be paid in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979, in relation to the following items specified below:

A	Childcare	\$30,619.29
	<u>Calculation</u>	
	\$785.11 per additional lots/dwellings	
	(40 – 1 = 39)	
B	Open Space and Recreational Facilities	\$316,194.29
	<u>Calculation</u>	
	\$6,475.48 per one bedroom dwelling (21)	
	\$9,827.86 per two bedroom dwelling (17)	
	\$12,538.24 per three bedroom dwelling (2)	
	Credit \$11,940.89 for existing lot	
C	Roads and Traffic Transport/Management	\$84,110.40
	<u>Calculation</u>	
	\$2,102.76 per residential unit (40)	
Total		\$430,923.98
<i>Office Use – Calculation Checked</i>		

This contribution is based on needs generated by the development as identified in the relevant adopted Section 94 Contributions Plan. The contribution rate and calculation is current until 30 June 2011, if payment is made after this date the rate/contribution will be increased in accordance with the CPI adjusted rates current at the time of payment.

Please note that payment will only be accepted by way of a bank cheque or cash.

Copies of the Contributions Plans and revised rates are available for inspection at the Councils Administration Building, 31 Victor Street, Chatswood or online at www.willoughby.nsw.gov.au
(Reason: Statutory requirement)

10. Services - Notification to Sydney Water

Suitable documentation is to be submitted to Council which indicates that Sydney Water has been informed of this development and that satisfactory arrangements have been made to adequately service the proposal.
(Reason: Ensure compliance)

11. Services - Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained prior to occupation. Application must be made through an authorised Water Servicing Coordinator, for details see Customer Service, Urban Development at www.sydneywater.com.au or telephone 13 20 92.

Following application a "Notice of Requirements" will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Water Servicing Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and the building, driveway or landscape design and therefore require further approvals of Council.

The "Notice of Requirements" relating to the approved development in accordance with this consent is to be submitted to Council.
(Reason: Ensure Statutory Compliance)

12. Services - Energy Australia

The applicant should consult with Energy Australia to determine the need and location of any electrical enclosure for the development. Should such an electrical enclosure be required, the location and dimensions of the structure are to be detailed on all the plans issued with the Construction Certificate. In the event of Energy Australia requiring such a structure eg. a substation, the applicant is required to dedicate the land for the substation as public roadway. The Plan of Dedication shall be lodged to Council prior to issue of the Construction Certificate and registered at the Department of Lands prior to issue of the Occupation Certificate.
(Reason: Compliance)

13. Damage Deposit

The applicant shall lodge a Damage Deposit of \$30,000 (GST Exempt) by way of cash deposit or unconditional bank guarantee to Council against possible damage to Council's asset during the course of the building works. The deposit will be refundable subject to inspection by Council after the completion of all works relating to the proposed development. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.
(Reason: Protection of public asset)

14. Stormwater to Street Drainage via Reinforced Concrete Pipe (RCP)

Stormwater runoff from the site shall be collected and conveyed to the underground drainage system in Penshurst Street via a 450 mm RCP in accordance with Council's specification. A grated drainage pit (min. 450mm x 450mm) shall be provided within the property and adjacent to the boundary prior to discharging to the Council's drainage system. In this regard, full design and construction details showing the method of disposal of surface and roof water from the site are to be submitted to Council for approval.

(Reason: Prevent nuisance flooding)

15. Basement Pumpout Drainage System

The applicant shall submit, for approval by the Principal Certifying Authority, detailed stormwater management plans in relation to the pump-out drainage system. The construction drawings and specifications, shall be generally in accordance with the approved stormwater management plans with the following requirements:

- The pumpout drainage system shall comprise with two (2) submersible type pumps. The two pumps shall be designed to work on an alternative basis to ensure both pumps receive equal use and neither remains continuously idle.
- Each pump shall have a minimum capacity of 10L/s or shall be based on the flow rate generated from the 1 in 100 year ARI 5-minutes duration storm event of the area draining into the system, whichever is greater.
- An alarm warning device (including signage and flashing strobe light) shall be provided for the pump-out system to advise the occupant of pump failure. The location of the signage and flashing strobe light shall be shown on the stormwater management plans.
- The volume of the pump-out tank shall be designed with a minimum storage capacity equivalent to the runoff volume generated from of the area draining into the tank for the 1 in 100 year ARI 2-hours duration storm event.

All drawings shall be prepared by a suitably qualified and experienced civil engineer and shall comply with Part C.5 of Council's Development Control Plan, AS3500.3 – *Plumbing and Drainage Code* and the BCA.

(Reason: Prevent nuisance flooding)

16. Detailed Stormwater Management Plan

Submit for approval by the Principal Certifying Authority, detailed stormwater management plans, prepared by a suitably qualified and experienced civil engineer in relation to the stormwater management and disposal system for the development. The construction drawings and specifications shall be prepared in accordance with the concept stormwater plans approved by Council, Part C.5 of Council's Development Control Plan and Technical Standards and AS3500.3 – *Plumbing and Drainage Code* and the BCA.

(Reason: Ensure Compliance)

17. Building Ventilation

To ensure that adequate provision is made for ventilation of the building, mechanical and/or natural ventilation shall be provided. These shall be designed in accordance with the provisions of:

- a) The Building Code of Australia

- b) AS1668.1-1998 – The use of ventilation and air conditioning in Buildings
- c) AS1668.2-1991 – The use of ventilation and air conditioning in Buildings
- d) The Public Health Act-1991
- e) The Public Health (Microbial Control) Regulation 2000
- f) AS3666.1 – 2002 – Air Handling and Water Systems in Buildings
- g) AS3666.2 – 2002 – Air Handling and Water Systems in Buildings
- h) AS3666.3 – 2000 – Air Handling and Water Systems in Buildings

Details of all mechanical ventilation and exhaust systems, and certification provided by an appropriately qualified person verifying compliance with these requirements, shall accompany the application for the Construction Certificate.
(Reason: Health protection)

18. Adaptable units

Adaptable residential units for disabled persons are to be provided as identified by the submitted Adaptable Housing Report prepared by Mark Relf (Accessibility Solutions (NSW P/L) dated 28 May 2010. Each adaptable unit is to be nominated on the Construction Certificate drawings and is to be provided with disabled car spaces where required under the Willoughby Development Control Plan Part C.6 – Access, Mobility and Adaptability.
(Reason: Amenity)

19. Contaminated Land – Excavation Management Plan

An Excavation Management Plan shall be prepared prior to the issue of a construction certificate in accordance with the requirements of the Preliminary Environmental Site Assessment (Ref: E23739rpt) dated February 2010 prepared by EIS. Excavation Management Plan must include, but not limited to the following:

- All of the fill material is removed from the site in accordance with the excavation management plan;
- Sampling of the underlying natural soil is undertaken to demonstrate that the fill material has been removed from the site; and
- Any unexpected subsurface conditions encountered during excavation/construction works are inspected by a suitably qualified environmental consultant and an appropriate course of action is established.
- Normal good engineering site management practice including control of run-off and dust suppression is recommended during earthworks and construction.
(Reason: Environmental Health)

20. Noise - Acoustic Report

To minimise the impact from the adjoining road corridor on the amenity of the occupants, the building shall be constructed in accordance with the requirements of the State Environmental Planning Policy (Infrastructure) 2007, the guideline Development Near Rail Corridors and Busy Roads – Interim Guideline (2008) and all recommendations and proposed actions in the Preliminary Traffic Noise Assessment – 260 Penshurst Street, Willoughby (Dated February 2010) prepared by PKA Acoustic Consulting.

Details and plans demonstrating compliance of this condition, including relevant legislative requirements shall be provided in an acoustic report and submitted to the certifying authority for approval, prior to the issue of a construction certificate.
(Reason: Amenity)

21. Arboricultural Method Statement

Submit to the accredited certifier an Arboricultural Method Statement. The Statement shall address tree protection and management for the development, and must comply with the requirements detailed in WCC Landscape Specification 04/2007, Development Site Tree management – Arboricultural Method Statement.
(Reason: Tree protection)

22. Submit Erosion and Sediment Control Plan

Details of the control devices shall be submitted to the accredited certifier.

Erosion and sediment control devices shall be provided whilst work is being carried out in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into Council's stormwater system, natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the requirements of the Protection of Environment Operations Act 1997 and the Environmental Protection Authority guidelines. The control devices are to be maintained in a serviceable condition AT ALL TIMES.

(Reason: Environmental protection)

23. Vehicle Access – Engineer's Certification

The Applicant shall submit, for approval by the Principal Certifying Authority, certification from a suitably qualified and experienced traffic/civil engineer. This certification must be based on the architectural drawings and the structural drawings, and must make specific reference to the following:

- a) That a 2m x 2.5m splay corner is provided on each side of the driveway exit to comply with AS2890.1.
- b) That finished driveway gradients and transitions will not result in the scraping of the underside of cars.
- c) That the proposed vehicular path and parking arrangements comply in full with AS2890.1 – 2004 in terms of minimum dimensions provided,
- d) That the headroom clearance of minimum 2.2 metres between the basement floor and any overhead obstruction has been provided which complies with Section 5.3.1 of AS 2890.1 and Section 2.4 of AS2890.6.
- e) That the headroom clearance of minimum 2.5 metres has been provided to all parking spaces for people with disabilities which complies with Section 2.4 of AS2890.6.

(Reason: Ensure Compliance)

24. Redundant Crossings

All redundant crossings are to be removed and replaced with kerb and gutter to match existing. The driveway is to be designed and constructed to AS2890.1-2004 and RTA requirements. Details of these requirements are to be obtained from RTA's Project Services Manager, Traffic Projects Section, Parramatta – 8849 2496.

A certified copy of the design plans shall be submitted to the RTA for consideration and approval prior to the release of a construction certificate.

Note: A plan checking fee and lodgement of performance bond may be required prior to the release of approved road design plans by the RTA.
(Reason: RTA requirements)

25. Design of Civil Works in Public Road (Roads Act Approval)

Prior to issue of any Construction Certificate, the Applicant must submit, for approval by Council as a road authority, full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following infrastructure works:

- Construction of full width footpath (max. 2.5% crossfall) including reconstruction of kerb access ramp for the full frontage of the development in Peshurst Street. Detailed long section and cross section in 5 metres interval shall be provided.
- Construction of kerb and gutter with associated road restoration of a minimum of 1 metre wide if the existing pavement is damaged as a result of kerb and gutter and/or construction work.
- Construction of 5.5 metres wide vehicular crossing. The design levels at the property boundary shall be 250mm above and parallel to the gutter invert.

The required plans must be designed in accordance with Council's specifications (AUS-SPEC). For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current *Fees and Charges Schedule* are payable to Council prior to issue of the approved plans. Approval must be obtained from Willoughby City Council as the road authority under the Roads Act 1993 for any proposed works in the public road prior to the issue of any Construction Certificate.
(Reason: Ensure compliance)

26. Traffic Management Plan

A detailed Traffic Management Plan shall be prepared for pedestrian and traffic management and be submitted to the relevant road authority for approval. The plan shall: -

- a) Be prepared by a RTA accredited consultant.
- b) Implement a public information campaign to inform any road changes well in advance of each change. The campaign shall be approved by the Traffic Committee.
- c) Nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
- d) Temporary road closures shall be confined to weekends and off-peak hour times and are subject to the approval of Council. Prior to implementation of any road closure during construction, Council shall be advised of these changes

and a Traffic Control Plan shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.

(Reason: Public safety and amenity)

27. Construction Management Plan (CMP)

Submit, for approval by the Principal Certifying Authority, detailed Construction Management Plan (CMP). The CMP shall address:

- (a) Construction vehicles access to and egress from the site
- (b) Parking for construction vehicles
- (c) Locations of site office, accommodation and the storage of major materials related to the project
- (d) Protection of adjoining properties, pedestrians, vehicles and public assets
- (e) Location and extent of proposed builder's hoarding and Work Zones
- (f) Tree protection management measures for all protected and retained trees.

(Reason: Compliance)

28. Waste & Recycling Room

The waste and recycling container room shall be constructed to comply with all the relevant provisions of Willoughby Development Control Plan and in particular :-

- a) The floor being graded and drained to an approved drainage outlet connected to the sewer and having a smooth, even surface, coved at all intersections with walls.
- b) The walls being cement rendered to a smooth, even surface and coved at all intersections.
- c) Cold water being provided in the room with the outlet located in a position so that it cannot be damaged and a hose fitted with a nozzle being connected to the outlet.
- d) An overhead type door being provided to the room having a clear opening of not less than 1.8m.
- e) A galvanised steel bump rail at least 50 mm clear of the wall being provided at the height of the most prominent part of the garbage containers.
- f) Mobile containers suitable for connection to the garbage collection vehicle being provided in the room. In addition suitable recycling containers must also be provided in the room.

Plans and details complying with this condition must be submitted to the certifying authority for approval and endorsed with the Construction Certificate.

(Reason: Health and amenity)

PRIOR TO THE COMMENCEMENT OF ANY WORKS

The following conditions of consent have been imposed to ensure that the administration and amenities relating to the proposed development comply with all relevant requirements. All of these conditions are to be complied with prior to the commencement of any works on site, including demolition.

29. Construction Certificate Required

This consent IS NOT an approval to carry out any building works (with the exception of demolition work). A Construction Certificate is required PRIOR TO ANY BUILDING WORKS BEING COMMENCED.

Enquiries regarding the issue of a construction certificate can be made to Council's Customer Service Centre on 9777 1000.

(Reason: Ensure compliance and Statutory requirement)

30. Notify Council of Intention to Commence Works

In accordance with the provisions of Clause 81A(2) of the Environmental Planning and Assessment Act 1979 the person having the benefit of the development consent shall appoint a Principal Certifying Authority and give at least 2 days' notice to Council, in writing, of the persons intention to commence the erection of the building.

(Reason: Information and ensure compliance)

31. Waste Management Plan

A Construction and Demolition Waste Management Plan which provides details of specific strategies to salvage and recycle a minimum of 85% of used and unused demolition and construction materials shall be submitted to Council.

(Reason: Environment Protection/Waste Reduction)

32. Construction Information sign

A clearly visible all weather sign is required to be erected in a prominent position on the site detailing:

- (a) that unauthorised entry to the work site is prohibited;
- (b) the excavator's and / or the demolisher's and / or the builder's name;
- (c) contact phone number/after hours emergency number;
- (d) licence number;
- (e) approved hours of site work; and
- (f) name, address and contact phone number of the Principal Certifying Authority (if other than Council)

ANY SUCH SIGN IS TO BE REMOVED WHEN THE WORK HAS BEEN COMPLETED.

Council may allow exceptions where normal use of the building/s concerned will continue with ongoing occupation, or the works approved are contained wholly within the building.

(Reason: Ensure compliance)

33. Licensee Details

The name, address and contractor licence number of the licensee who has contracted to carry out the work or the name and permit number of the owner-builder who intends to carry out the work shall be furnished in writing to Council.

NB: Should changes be made for the carrying out of the work Council must be immediately informed.

(Reason: Information)

34. Building Site Fencing

Public access to the site and building works, materials and equipment on the site is to be restricted, when work is not in progress or the site is unoccupied.

A temporary safety fence is to be provided to protect the public, located to the perimeter of the site (unless the site is separated from the adjoining land by an existing structurally adequate fence, having a minimum height of 1.5m). Temporary fences are to have a minimum height of 1.8m and be constructed of cyclone wire or similar with fabric attached to the inside of the fence to provide dust control.

Fences are to be structurally adequate and be constructed in a good and workmanlike manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible.

The public safety provisions and temporary fences must be in place **PRIOR TO THE COMMENCEMENT OF ANY DEMOLITION, EXCAVATION OR BUILDING WORKS** and be maintained throughout construction.

(Reason: Safety)

35. Suitable Screens

Suitable screens and/or barricades shall be erected during demolition and building work and where required by the principal certifying authority to reduce the emission of noise, dust, water effluent or other matter from the site.

(Reason: Maintain amenity to adjoining properties)

36. Access to site

During Demolition, Excavation and Construction, access to the site is to be available in all weather conditions, and stabilised to prevent vehicles tracking soil materials onto public roads.

(Reason: Environmental protection)

37. Dilapidation Report of Council's property

Submit a dilapidation report including photographic record of Council's property extending to a distance of 50m from the development, detailing the physical condition of items such as, but not exclusively to, the footpath, roadway, nature strip, and any retaining walls.

The developer may be held liable to any recent damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded under the requirements of this condition prior to the commencement of works. In this regard, the damage deposit lodged by the applicant may be used by Council to repair such damage on Council's property.

This dilapidation report shall be submitted to Council and the Principal Certifying Authority.

(Reason: Protection of Council's infrastructure)

38. Dilapidation Report of adjoining properties

A dilapidation report is to be prepared by a practising Structural Engineer, at no cost to Council or adjoining property owners, detailing the structural adequacy of adjoining properties, including Council's property, and their ability to withstand the proposed excavation. This report must include any measures required to be incorporated to

ensure that no damage will occur during the course of works. The report shall be submitted to the PCA and relevant adjoining property owners including Council.
(Reason: Protection of adjoining properties)

39. Ventilation Plans and Details

Plans and specifications of mechanical ventilation, air conditioning systems and any associated pollution control equipment are to be submitted and approved by the PCA.
(Reason: Ensure Compliance)

40. Asbestos sign to be erected

On sites involving demolition or alterations and additions to building where asbestos cement is being repaired, removed or disposed of a standard commercially manufactured sign not less than 400mm x 300mm containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" is to be erected in a prominent visible position on the site. The sign is to be erected PRIOR TO THE COMMENCEMENT OF WORKS AND IS TO REMAIN IN PLACE UNTIL SUCH TIME AS ALL ASBESTOS CEMENT HAS BEEN REMOVED FROM THE SITE TO AN APPROVED WASTE FACILITY.
(Reason: Public Health & Safety/Ensure Compliance)

41. Neighbour Notification of Asbestos Removal

The applicant/builder is to notify the adjoining residents five working days prior to demolition works involving removal of asbestos. Such notification is to be clearly written, giving the date work will commence, Work Cover NSW phone number 131 050, Councils phone number 9777 1000.

This notification is to be placed in the letterbox of every property (including every residential flat or unit) either side and immediately at the rear of the site.
(Reason: Public Health)

42. Tree Protection

Retain and protect the following trees and vegetation throughout the demolition and construction period:

All trees not indicated for removal on the submitted Landscape Plan Dwg No. LPDA 10-106/2F Dated Apr 10 prepared by Conzept.

The protective measures must comply with the following specifications:
i. WCC Landscape Specification 01/2007: Tree Protection Area;
ii. WCC Landscape Specification 02/2007: Tree Protective Fencing.
(Reason: Tree Management)

43. Provide Erosion and Sediment Control

Erosion and sediment control devices shall be provided whilst work is being carried out in order to prevent sediment and silt from site works (including demolition and/or excavation) being conveyed by stormwater into Council's stormwater system natural watercourses, bushland, trees and neighbouring properties. In this regard, all stormwater discharge from the site shall meet the requirements of the Protection of Environment Operations Act 1997 and the Department of Environment, Climate

Change and Water guidelines. The control devices are to be maintained in a serviceable condition AT ALL TIMES.
(Reason: Environmental protection)

44. Application for Vehicle crossing

Submit an application with fees to Council for the construction of a plain concrete vehicular crossing.
(Reason: Protection of public asset)

45. Permits and Approvals Required

Application is to be made to Council's Infrastructure Services Division for the following approvals and permits as appropriate:-

- a) Permit to erect Builder's hoarding where buildings are to be erected or demolished within 3.50m of the street alignment. Applications are to include current fees and are to be received at least 21 days before commencement of the construction.
- b) Permit to stand mobile cranes and/or other major plant on public roads. Applications are to include current fees and security deposits and are to be received at least seven days before the proposed use. It should be noted that the issue of such permits may also involve approval from the NSW Police Force and the RTA. A separate written application to work outside normal hours must be submitted for approval.

It should also be noted that, in some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.

- c) Permit to open public roads, including footpaths, nature strip, vehicular crossing or for any purpose whatsoever. All applications are to include current fees.
- d) Permit to place skip/waste bin on footpath and/or nature strip. (Maximum three (3) days)
- e) Permit to work and/or place building materials on footpath and/or nature strip. (Maximum two (2) weeks)
- f) Permit to establish Works Zone on Public Roads adjacent to the Development including use of footpath area. Applications must be received by Council at least twenty-one days prior to the zone being required. The application will then be referred to the Council's Local Traffic Committee for approval, which may include special conditions.
- g) Permit to construct vehicular crossings over Council's footpath, road or nature strip.
- h) To obtain a work zone on Penshurst Street the applicant is to contact the RTA's Traffic management section on 8849 2053 for a works instruction.
(Reason: Legal requirements)

46. Detailed Drawings Geotechnical Report

The site and adjoining sites (including Penshurst Street, the road reserve or other public space) are to be inspected by an independent Geotechnical Engineer and a comprehensive report including detailed drawings and geotechnical reports relating to the excavation of the site, and supporting structures must be submitted to the Roads and Traffic Authority for assessment together with the cost of any assessment by RTA.

The report must address the following key issues:

- The impact of excavation/rock anchors on the stability of Penshurst Street and detailing how the carriageway would be monitored for settlement;
- The impact of the excavation on the structural stability of Penshurst Street; and
- Any other issues required by the Roads and Traffic Authority (Contact: Geotechnical Engineer, Stanley Yuen on 8837 0246 or Graham Yip on 8837 0245 for details).

The report must also indicate how the work is to be undertaken with safety, and identifying the stages at which the engineers' personal supervision is to occur during the works.

(Reason: RTA requirements and Protection of adjoining properties)

PRIOR TO OCCUPATION OF THE DEVELOPMENT

The following conditions of consent must be complied with prior to the issue of an occupation certificate.

47. Occupation Certificate

The building/structure or part thereof **SHALL NOT BE OCCUPIED OR USED UNTIL AN INTERIM OCCUPATION / FINAL OCCUPATION CERTIFICATE HAS BEEN ISSUED** in respect of the building or part.

(Reason: Safety)

48. Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained prior to occupation. Application must be made through an authorised Water Servicing Coordinator, for details see Customer Service, Urban Development at www.sydneywater.com.au or telephone 13 20 92.

The Section 73 Certificate must be submitted to the Principal Certifying Authority.

(Reason: Ensure Statutory Compliance)

49. Contamination/Remediation - Documentary evidence

Documentary evidence shall be submitted prior to completion of the development that has been prepared by a suitably qualified environmental consultant certifying that sampling of the underlying natural soil has been undertaken to demonstrate that the fill material has been removed from the site and that the land is suitable for residential use.

(Reason: Environmental protection & Public Health)

50. Grated Box Drain

For stormwater control a 225 mm wide grated trench drain with a heavy duty removable galvanised grate is to be provided in front of the garage door/basement parking slab to collect driveway runoff. The trench drain shall be connected to the main drainage system and must have an outlet of minimum diameter 150mm to prevent blockage by silt and debris.

(Reason: Proper disposal of stormwater)

51. Certification of the Basement Pump-out Drainage System

Upon completion of the pump-out system, the following shall be submitted to the Principal Certifying Authority.

- A suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify that the as-built pumpout system complies with Part C5 of Council's DCP, all relevant codes and standards and the approved stormwater management plans.
- Work-as-executed plans based on the approved pump-out system plans from a registered surveyor to verify that the volume of storage and pump capacity are in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved pump-out system plans.
- Certification from a licensed plumber to ensure that the constructed pump-out system complies with the current plumbing requirements of Sydney Water and Committee on Uniformity of Plumbing and Drainage Regulations of NSW.

(Reason: Ensure Compliance)

52. On-site Water Management System

The stormwater runoff from the site shall be collected and disposed of via an approved on-site detention system in accordance with Sydney Water's requirements, the NSW Code of Practice – Plumbing and Drainage, Council's DCP and Technical Standards. The construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved design stormwater management plans and Council's specification (AUS-SPEC).

(Reason: Prevent nuisance flooding)

53. Sign for On-site Detention System

An aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the on-site detention system.

The wording for the plaque shall state "*This is the on-site detention system required by Willoughby City Council. It is an offence to alter any part of the system without written consent from Council. The registered proprietor shall keep the system in good working order by regular maintenance including removal of debris*".

(Reason: Prevent unlawful alteration)

54. Confined Space Sign

Securely install a standard confined space danger sign in a prominent location within the immediate vicinity of access grate of the on-site detention system.

(Reason: Safe access to tank)

55. Certification of OSD

A suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify on Council's standard certification form that the as-built OSD system is in accordance with the approved plans and complies with Council's DCP and Technical Standards. Council's standard certification form is available in the appendix of Council's Technical Standard No.1.

(Reason: Legal requirement)

56. Works As Executed Plans - OSD

Upon completion of the OSD System, the following shall be submitted to the Principal Certifying Authority:

- Work-as-Executed plans based on the approved stormwater management plans from a registered surveyor to verify that the volume of storage, PSD, water and floor levels are constructed in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved stormwater plans.
- Engineer's certification of the OSD system together with the completed Council's standard form for On-Site Detention Record of Installation.

(Reason: Record of works)

57. Works As Executed Plans – Rainwater Reuse

Upon completion of the Rainwater Re-use System, the following shall be submitted to the Principal Certifying Authority:

- Work-as-executed plans based on the approved stormwater plans from a registered surveyor to verify that the volume of storage, invert levels of inlet, overflow pipes and discharge outlet are constructed in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved stormwater plans.
- Plumber's certification that the Rainwater Re-use system has been fitted with proprietary first flush device and connected to non-potable use including toilet flushings, laundry and landscape irrigations. All works completed shall comply with the current plumbing requirements of Sydney Water and Committee on Uniformity of Plumbing and Drainage Regulations of NSW.

(Reason: Record of works)

58. S88B/88E(iii) Instrument

Create Positive Covenant and Restriction on the Use of Land on the Title in favour of Council as the benefiting authority for the as-built On-site Detention System. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council's Technical Standards.

The above instruments shall be created under Section 88B of the Conveyancing Act 1919 if the proposed development is to be strata subdivided. If not, the instruments shall be created under Section 88E(3) of the Conveyancing Act 1919 using Form 13PC and 13RPA respectively. In this regard, the relative location of the On-site Detention System, in relation to the building footprint, must be shown on a scale sketch, attached as an annexure to the request forms.

Documentary evidence of registration of these instruments with the Land and Property Management Authority shall be submitted to Council.
(Reason: Maintenance requirement)

59. Documentary Evidence of Positive Covenant, Engineers Certificate

The following documentary evidence of the completed drainage works shall be submitted to Principal Certifying Authority and Council: -

- Registered Positive Covenant and Restriction on the Use of Land by way of the Title Deed.
- Certification from a suitably qualified and experienced civil engineer (generally CP Eng. Qualification) for the as-built OSD system and/or plumber's certification of the as-built rainwater reuse system.
- Work-as-Executed plans highlighting in red based on the approved stormwater management plans from a registered surveyor for the as-built OSD system and/or rainwater reuse system.

(Reason: Public record)

60. Inspection of Civil Works on Road Reserves

All required road pavement, footpath, kerb and gutter, drainage works and/or any necessary associated works on the road reserve shall be completed in accordance with the Council approved drawings, conditions and specification (AUS-SPEC).

Pursuant to Section 138 of the Roads Act 1993, all works carried out on the road reserve shall be inspected and approved by Council's Engineer. Upon completion, Work-as-Executed drawings prepared by a registered surveyor shall be submitted to Council for record purposes. A completion certificate shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

(Reason: Ensure compliance)

61. Performance Bond

The Applicant shall lodge with the Council a performance bond of \$15,000 against defective public civil works undertaken by the main Contractor for a period of twelve (12) months from the date of the completion certificate issued by Council as the road authority under the Roads Act 1993. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee which will be refundable subject to the approval of Council's Engineers at the end of the maintenance period. In this period, the Applicant is liable for any part of the work which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary.

(Reason: Ensure compliance and specification)

62. Construction of Kerb & Gutter

Construct new kerb and gutter together with any necessary associated pavement restoration in accordance with Council's specification for the full frontage of the development site with associated pavement restoration 1 metre wide in Peshurst Street.

(Reason: Public amenity)

63. Concrete Footpath

Construct a full width concrete footpath for the full frontage of the development site in Peshurst Street. All works shall be carried out in accordance with Council's standard specifications and drawings.

(Reason: Public amenity)

64. Splay Corner for Fence

In order to ensure adequate sight distances for pedestrians and traffic in the frontage road, the boundary fence shall be designed and constructed by a 2 metres x 2.5 metres splay corner provided on each side of the driveway exit to comply with AS2890.1.

(Reason: Pedestrian safety)

65. Vehicle Access - Construction & Certification

The Applicant shall submit, for approval by the Principal Certifying Authority, certification from a suitably qualified and experienced traffic/civil engineer. This certification must be based on a site inspection of the constructed vehicle access and accommodation areas, with dimensions measurements as necessary, and must make specific reference to the following:

- a) That the as-constructed carpark complies with the approved Construction Certificate plans,
- b) That a 2m x 2.5m splay corner has been provided on each side of the driveway exit to comply with AS2890.1.
- c) That finished driveway gradients and transitions will not result in the scraping of the underside of cars.
- d) That the as-constructed vehicular path and parking arrangements comply in full with AS2890.1 – 2004 in terms of minimum dimensions provided,
- e) That all parking spaces are “opened” with no side obstructions which complies with AS2890.1 in terms of minimum dimensions.
- f) That the headroom clearance of minimum 2.2 metres has been provided between the basement floor and any overhead obstruction to comply with Section 5.3.1 of AS 2890.1 and Section 2.4 of AS2890.6.
- g) That the headroom clearance of minimum 2.5 metres has been provided to all parking spaces for people with disabilities to comply with Section 2.4 of AS2890.6.

(Reason: Ensure Compliance)

66. Vehicular Crossing

A separate application for the crossing including current fees and charges is to be submitted for approval by Council.

New vehicular crossing including reconstruction of the existing layback and/or gutter and any associated road restoration is to be constructed in accordance with Council's specification AUS-SPEC C271 and Council's Standard Drawing SD105 - Council Vehicular Footpath Crossing and Kerb and Gutter details and any approved longitudinal sections.

The crossing is to be **5.5 metres** wide and is to be constructed at right angles to the street kerb in plain concrete. The new crossing shall be located no closer than 1 metre from any power pole.

For the design levels of the vehicular crossing at the property boundary, the following shall be complied with:

- back of layback – 100 mm above and parallel to the gutter invert.
- property boundary – 250 mm above and parallel to the gutter invert.

The footpath which forms part of the proposed crossing shall have a maximum crossfall of 2.5%. The nature strip and footpath is to be adjusted for a minimum distance of 6 metres on both sides of the crossing to suit the new levels.

The suitability of the grade of driveway inside the property is the sole responsibility of the applicant and the required alignment levels fixed by Council may impact upon these levels.

All adjustments to the nature strip, footpath and/or public utilities' mains and services as a consequence of the development and any associated construction works shall be carried out at the full cost to the Applicant. All driveway grades and transitions must comply with AS/NZS 2890.1.

Vehicular Crossing Formwork Inspection Sheet shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.
(Reason: Public amenity)

67. Removal of Redundant Crossings

Remove all redundant crossings together with any necessary works and reinstate the footpath, nature strip and kerb and gutter accordingly. Such work shall be carried out in accordance with Council's specification.
(Reason: Public amenity)

68. Sweep & Clean Pavement

Sweep and clean pavement surface adjacent to the ingress and egress points of earth, mud and other materials at all times and in particular at the end of each working day or as directed by Council's Engineer.
(Reason: Legal requirement)

69. Turfing of Nature Strip

In the event of damages to the grass verge during works, trim the strip of land between the property boundary and the road, spread topsoil on top of the trimmed surface and lay approved turfing on the prepared surfaces. The turf shall be protected from vehicular traffic and kept watered until established.
(Reason: Public amenity)

70. Gates adjoining public footways

Any gate openings shall be constructed so that the gates, when hung will be fitted in such a manner that they will not open over the footway or public place.
(Reason: Ensure compliance)

71. BASIX Certificate

A completion certificate is to be submitted to the Principal Certifying Authority demonstrating the manner in which the measures committed to in the BASIX Certificate relevant to this development consent have been satisfied.
(Reason: Environmental Sustainability)

72. Fire Safety Certificate forwarded to NSW Fire Brigades

Upon completion of the building work a Fire Safety Certificate shall be furnished by the owner to Council, and the owner must cause a copy of the certificate (together with a copy of the current fire safety schedule) to be forwarded to the Commissioner of New South Wales Fire Brigades, and must cause a further copy of the certificate (together with a copy of the current fire safety schedule) to be prominently displayed in the building in accordance with Clause 172 of the Environmental Planning and Assessment Regulation 2000 in respect to each essential fire safety measure included in the Schedule attached to the Construction Certificate.
(Reason: Safety)

73. Marked parking bays

All parking bays and/or truck docks and the direction of traffic movement being permanently marked on the pavement surface in accordance with the approved parking and driveway layout to the satisfaction of the Principal Certifying Authority. Where it is proposed that a building or site be used for multiple occupation, all parking bays being identified by corresponding consecutive numbers.
(Reason: Ensure compliance)

74. On-site car parking

The approved car spaces must be allocated in the following manner:

- A minimum of 1 car space per 1 bedroom and 2 bedrooms dwellings
- 2 car space for the approved 3 bedroom dwellings
- 10 visitor car spaces

Any subsequent strata subdivision must reflect this allocation and be to specific units. All visitor car spaces must be dedicated as common property.
(Reason: Ensure compliance)

75. Provision of bicycle racks

Five (5) bike racks and seven (7) bike lockers are to be provided for the use of cyclists in accordance with the approved plans.
(Reason: Amenity)

76. Visitor car parking bays

All visitor parking bays are to be grouped together and physically identified by suitable signs and/or pavement and being permanently accessible and reserved for the exclusive use of visitors to the premises.
(Reason: Ensure compliance)

77. Public Tree Maintenance

The applicant's Arborist or landscape designer is to certify that:

- i. All trees on public land have been adequately maintained, that there has been no net deterioration in health and condition, and that any remedial work complies with the industry standards BS5837:2005, "Guide for Trees in relation to Construction" and AS 4373 -1996 "Pruning of Amenity Trees".
(Reason: Tree management, Public Asset Management)

78. Completion of landscape works

The approved landscape works are to be consistent with the approved design, completed to a professional standard, consistent with industry best practice and published standards. All planted trees cannot be pruned unless such pruning complies with Council's Tree Preservation order or removed without a permit issued under Council's Tree Preservation Order.
(Reason: Landscape amenity)

79. Weed Removal

All noxious and environmental weeds shall be removed from the property prior to completion of building works. Documentary evidence of compliance with this condition shall be submitted to the Principal Certifying Authority prior to the release of the final Occupation Certificate.
(Reason: Environmental Protection; landscape Amenity)

80. Turfing of Nature Strip

In the event of damages to the grass verge during works, trim the strip of land between the property boundary and the road, spread topsoil on top of the trimmed surface and lay approved turfing on the prepared surfaces. The turf shall be protected from vehicular traffic and kept watered until established.
(Reason: Public amenity)

81. Acoustic Treatment – Certification

Certification shall be provided from a suitably qualified acoustic engineer certifying that the acoustic treatment of the building complies with the requirements of the development consent. The report shall include all post construction validation test results.
(Reason: Amenity)

82. Certification – Ventilation

Submit a Certificate from a suitably qualified mechanical engineer certifying that all work associated with the installation of the mechanical and/or natural ventilation systems has been carried out in accordance with the conditions of the development consent.
(Reason: Compliance)

83. Safer by Design

To minimise the opportunity for crime and in accordance with CPTED principles, the development shall incorporate the following:

- i. In order to maintain a safe level of visibility for pedestrians within the development, adequate lighting to AS1158 is to be provided to all common areas including the basement car park, common open space and any common stair access to these areas and pedestrian routes, particularly including the waste storage areas.

This lighting shall ensure consistency to avoid contrasts between areas of shadow/illumination and preferably be solar powered and with an automatic/timed switching mechanism, motion sensor or equivalent for energy efficiency. Such lighting shall be installed and directed in such a manner so as to ensure that no nuisance is created for surrounding properties or to drivers on surrounding streets. Car parking lighting system is to be controlled by sensors to save energy during periods of no occupant usage.

- ii. The roof of the basement parking area shall be painted a gloss white (or equivalent) in order to ensure good visibility, surveillance and less reliance on artificial lighting lux levels.
- iii. The design, installation and maintenance of landscaping (and associated works) within pedestrian routes around the site (and adjacent to mailboxes) shall not impede visibility and clear sight lines along the pedestrian footway from one end to the other.
- iv. Security keying of lifts and doors and other measures must be implemented for access control to the building entries, and car parking areas.
- v. Walls/screens between balconies shall be designed to avoid foot holes or natural ladders so as to prevent access between balconies/terraces within the development.
- vi. Adequate signage within the development to identify facilities, entry/exit points and direct movement within the development.
- vii. A small portion of each storage area shall be of solid construction (i.e. Cupboard.)

(Reason: Safety and surveillance, energy efficiency, amenity)

ADDITIONAL CONDITIONS

The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land, and relevant legislation.

84. Road and Footpath

Council's footpath, nature strip or roadway not being damaged and shall be kept clear at all times.

(Reason: Maintain public safety)

85. No storage on foot/roadway

Building materials, plant and equipment and builder's waste, are not to be placed or stored at any time on Council's footpath, nature strip or roadway adjacent to building sites unless prior written approval has been granted by Council.

(Reason: Safety)

86. Skips and Bins

Rubbish skips or bins are not to be placed on Council's footpath, nature strip or roadway unless prior written approval has been granted by Council.
(Reason: Safety)

87. Ground Levels

The finished ground levels external to the building are to be consistent with the development consent and are not to be raised.
(Reason: Ensure compliance)

88. Asbestos Removal

Works involving the removal of asbestos must comply with Councils Policy on handling and disposal of asbestos, and must also comply with the Code of Practice for Safe Removal of Asbestos (National Occupational Health and Safety Committee 2002).

Demolition is to be carried out in accordance with the applicable provisions of Australian Standard AS 2601 – The Demolition of Structures.
(Reason: Public Health & Safety/Ensure Compliance)

89. Asbestos Disposal

All asbestos laden waste, including bonded or friable asbestos must be disposed of at a waste disposal site approved by the NSW Department of Environment, Climate Change and Water.

Upon completion of the asbestos removal and disposal the applicant must furnish the Principal Certifying Authority with a copy of all receipts issued by the waste disposal site as evidence of proper disposal.
(Reason: Environmental Protection/Public Health and Safety)

90. Excavations and Backfilling

All excavations and backfilling associated with the erection or demolition of a building must be executed safely, and must be properly guarded and protected to prevent them from being dangerous to life or property.
(Reason: Safety)

91. Retaining walls and drainage

If the soil conditions require it:

- a) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided, and
 - b) adequate provision must be made for drainage.
- (Reason: Safety)

92. Support for neighbouring buildings

- (1) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
 - a) must preserve and protect the building from damage, and

- b) if necessary, must underpin and support the building in an approved manner, and
 - c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (2) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- (3) In this clause, “allotment of land” includes a public road and any other public place.
(Reason: Safety)

93. Excess or waste concrete

Excess or waste concrete from mobile concrete agitators or concrete pumping equipment shall not be washed down, spilled or disposed of onto the road reserve, Council's stormwater system, road, pavement, reserves or Council land.
(Reason: Environmental protection)

94. Excavation and/or Fill containment

The excavation and/or fill is to be contained wholly within the subject allotment and the created banks are to be retained to the satisfaction of the Principal Certifying Authority. If retaining walls are found to be necessary, a further Development Consent is to be obtained unless it is exempt development.
(Reason: Safety)

95. Temporary toilet facilities

Temporary toilet facilities shall be provided to the satisfaction of the Principal Certifying Authority.

The provision of toilet facilities must be completed before any other work is commenced on site. NOTE: Portable toilet facilities are not permitted to be placed on public areas without prior approval having been obtained from Council.
(Reason: Health and amenity)

96. Noise Control – Offensive Noise

To minimise the noise impact on the surrounding environment, the use of the premises, building services, equipment, machinery and ancillary fittings shall not give rise to an “offensive noise” as defined under the provisions of the Protection of the Environment Operations Act 1997.
(Reason: Amenity)

97. Security controlled car parking

Should any security controlled car parking arrangement be introduced for the residential visitor spaces, a visitor voucher, intercom or similar system is to be used to enable free access and parking for the visitors.
(Reason: Amenity)

98. Loading and Unloading

All loading and unloading of goods is to be conducted wholly within the site and especially in any loading facility. These areas are to be maintained free of obstruction for the sole use of delivery vehicles. Under no circumstances are loading/unloading activities to be conducted from vehicles standing kerbside in Penshurst Street or from any appurtenant right of way.
(Reason: Access and amenity)

99. Services - Installation of kiosk type electricity substation

Provision being made on the site for the installation of a “kiosk” - type electricity substation, in the event that Energy Australia are desirous of installing same, and any such “kiosk” is to be positioned in accordance with Energy Australia’s requirements and to the satisfaction of the Development Planner. Should the installation of a “kiosk” be required, such is to be allowed for on the required landscape plan and is to be set back from the street frontage and screened by the provision of appropriate planting.
(Reason: Visual amenity)

100. Services - Electricity supply and telecommunication mains

All existing and proposed electricity supply and telecommunication mains and services around the perimeter of the site are to be underground to the satisfaction of Energy Australia and Telstra at the full cost of the applicant.
(Reason: Compliance)

101. Services - Mailboxes

All mail boxes provided on site are to comply with the requirements of ‘Australia Post’ in terms of size, location, numbering and clearing. Details of the requirements can be obtained from Australia Post or from their web site. Letter boxes for adaptable dwellings shall comply with AS 4299 Cl 3.8.
(Reason: Legal)

102. Residential Flat Building - Clothes to be dried in the open air

Where provision is made to enable clothes to be dried in the open air, this clothes drying area is to be screened by a fence or landscaping on the sides visible from public areas.
(Reason: Amenity)

103. Residential Flat Building - Service Facilities

The following shall apply to the development:

- i. Electricity and telephone lines must be placed underground from the street to the building.
- ii. One storage area shall be allocated to each unit.
- iii. A master TV antenna or satellite dish is to be provided for the building. This shall suitably screened from view from the street.

- iv. All plumbing pipes and installations must be concealed in ducts and not exposed on the external walls of the building and must be adequately soundproofed.
 - v. Secure bicycle parking facilities shall be provided in accordance with Willoughby Development Control Plan Part C. 4 and designed in accordance with AS2890.3.
- (Reason: Ensure compliance, streetscape and amenity)

104. Residential Flat Building - Screening of rooftop plant/structures

Any rooftop or exposed structures including lift motor rooms, plant rooms etc., together with air conditioning, ventilation and exhaust systems, are to be suitably screened and integrated with the building in order to ensure a properly integrated overall appearance.

(Reason: Visual amenity)

105. Site lighting

Any lighting on the site is to be directed in such a manner so that no nuisance is caused to adjoining properties or to drivers on surrounding streets.

(Reason: Amenity)

106. Refuse collection point

The loading operation, including the movement of garbage receptacle must take place on a level surface away from gradients and vehicle ramps. No waste/recycling is to be placed on the public footpaths, roadways, plazas, reserves or building colonnade areas, at any time. All garbage receptacles must be returned to the garbage storage area within the property after the bins are serviced.

(Reason: Health and amenity)

107. Transfer of bins for roadside collection

The transfer of all bins to the roadside for collection and returning them back to the bin rooms is the responsibility of the Strata Manager/caretaker of the building.

(Reason: Orderly waste collection)

108. Maintenance of bins

The garbage and recycling bins shall be cleaned periodically and maintained in working order.

(Reason: Health and Amenity)

109. Storage of materials on Council land prohibited

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in the Council reserve is prohibited.

(Reason: Safety, environmental protection)

110. Trees on adjoining properties

No approval is given for the removal or pruning of trees on the nature strip, adjoining reserves, or neighbouring private land.

(Reason: Environmental protection)

111. Underground Utility Services

Locate and establish the size and levels of all utility services in the footpath and road reserve. Contact “Dial Before You Dig” Service” prior to commencement of any works.

All adjustments to public utilities’ mains and services as a consequence of the development and associated construction works shall be at the full cost to the applicant.

(Reason: Protection of utilities)

112. Vehicular Access and Garaging

Driveways and vehicular access ramps must be designed not to scrape the underside of cars. In all respects, the proposed vehicle access must be designed and constructed to comply with the minimum requirements of AS2890.1 “Off-Street car parking”.

(Reason: Vehicular access)

113. Public Infrastructure Restoration

Prior to the release of the Damage Deposit, any damaged public infrastructure caused as a result of the construction works on the subject site (including damage caused by, but not limited to , delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) must be fully repaired in accordance with Council’s specification and AUS-SPEC at no cost to Council.

(Reason: Protection of Public Assets)

114. Adjustment to Electricity

All existing and proposed overhead electricity supply mains and other overhead services around the street frontage of the site are to be relocated underground to the specification of Energy Australia and Willoughby City Council at full cost to the applicant.

(Reason: Public amenity)

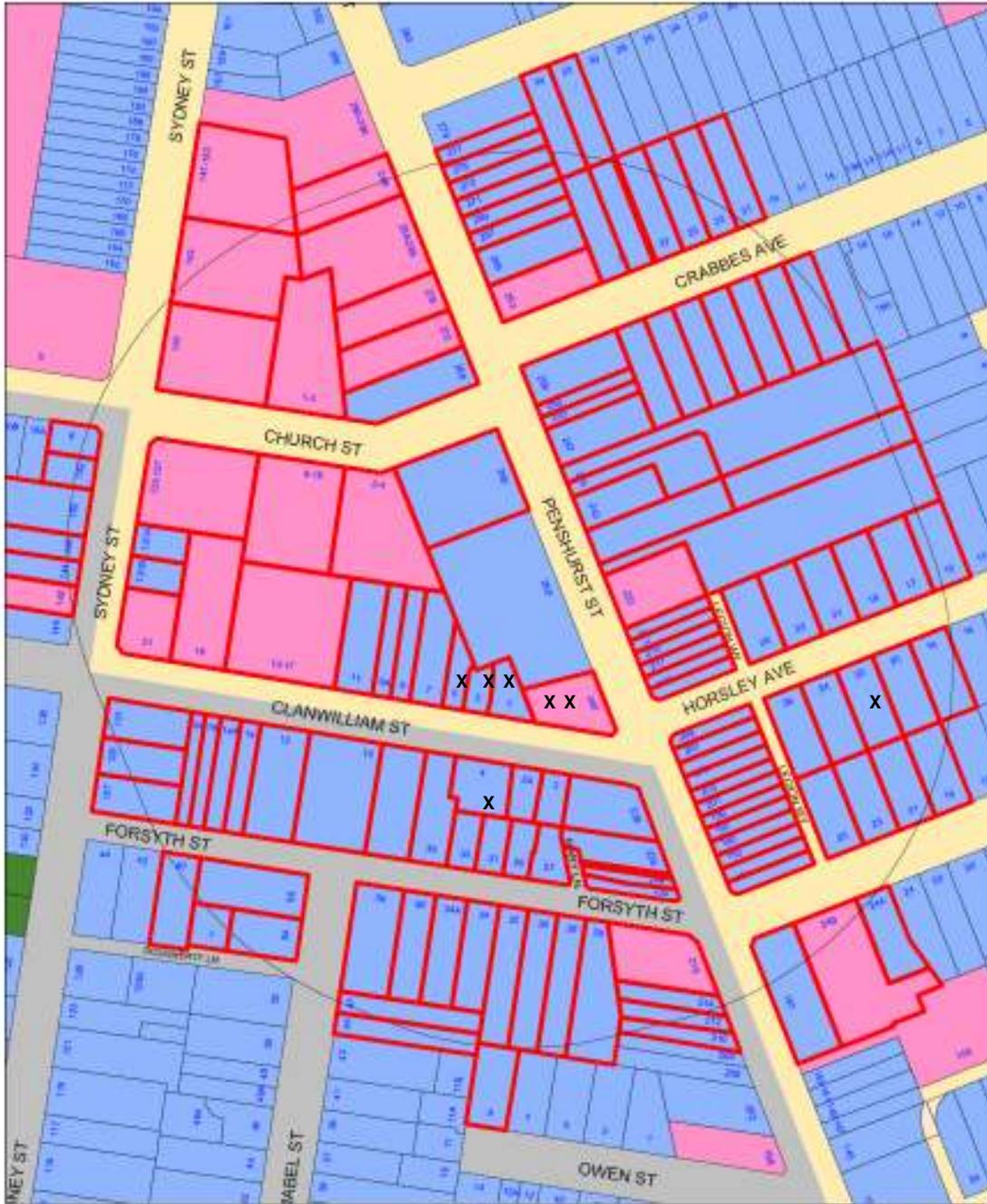
115. Street Signs

The applicant is responsible for the protection of all regulatory / parking / street signs fronting the property. Any damaged or missing street signs as a consequence of the development and associated construction works are to be replaced at full cost to the applicant.

(Reason: Protection of Public Assets)

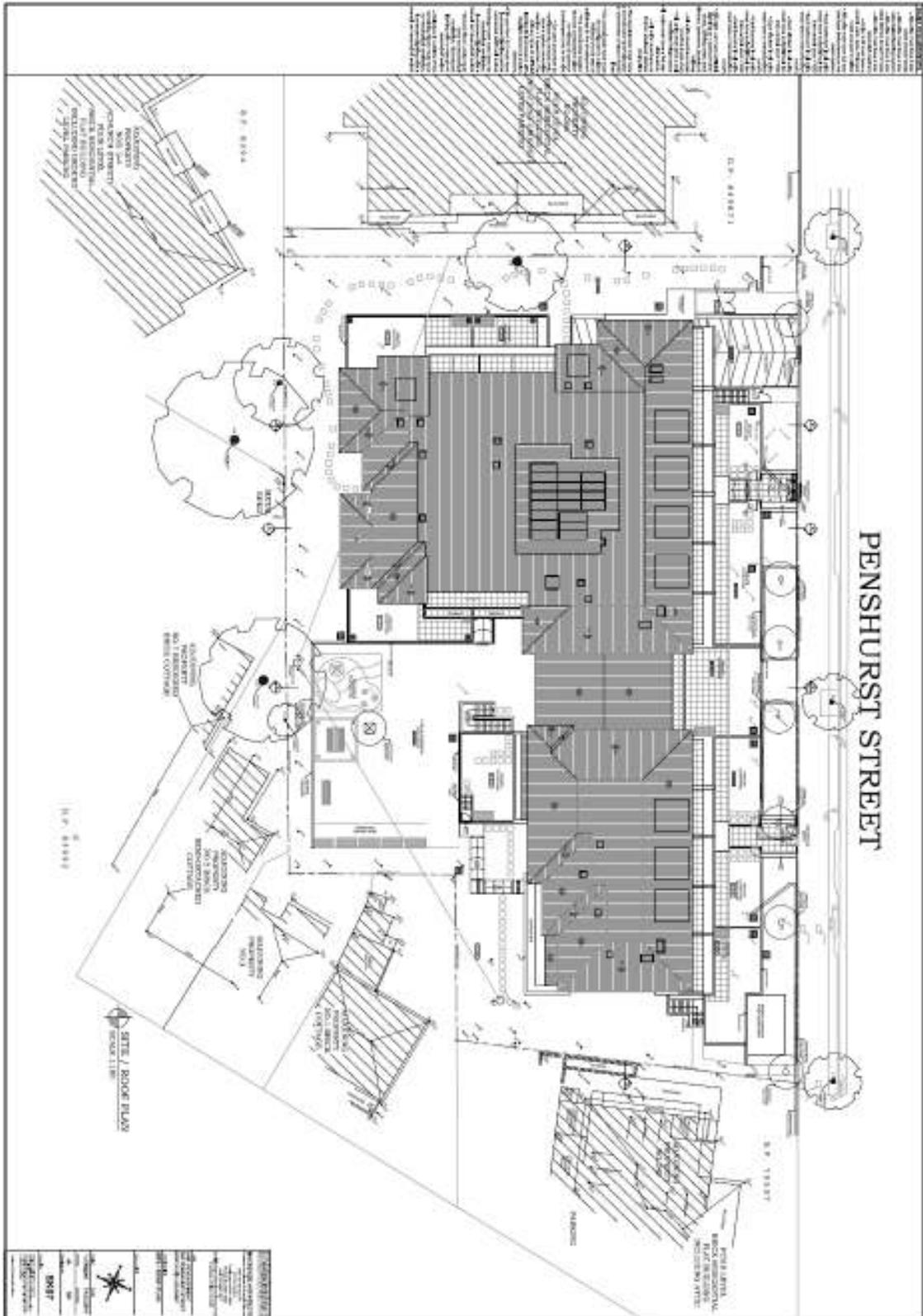
Attachment 1 - NOTIFICATION MAP

Map Showing Location of Properties Notified



<p>DA NUMBER 2010/202</p> <p>PROPERTY ADDRESS FOR DA 260 Penhurst Street, NORTH WILLOUGHBY NSW 2068.</p> <p><small>NOTE: All land parcels depicted herein are representations only of areas which are being defined by their registered Linter Plans. Overlapping existing lines and boundaries cannot be fully depicted and may be represented only as adjacent polygons. This is done solely to highlight the existence of such lands and all accurate positional details should be taken from the registered Linter Plans.</small></p>	<p>100 0m Scale 1:2,215</p> <p>X submissions received</p> <p> Properties Notified of DA</p> <p>DP 4241 Cadastral title detail label</p> <p>2E Property street address label</p>	 <p>Printed: 15:10 20/4/2010</p> <p>Author: SW</p>
---	---	---

Attachment 2 - Plans & elevation



Attachment 3 - Submission issues

A summary of issues raised in submission received for the application is provided below.

3/240 Penshurst Street

- Overshadowing of living and outdoor areas
- The southern wing of the building should be limited to two storey in height to reduce impacts on solar access and privacy and comply with the permissible FSR.

5/ 240 Penshurst Street

- Size and bulk of the development and its non-compliance with the FSR standard. The correspondent believes the proposal is an overdevelopment of the site.
- The proposed third and fourth storey will block the northerly view from the correspondent's property and look directly into the living areas and balcony spaces.
- The correspondent is of the opinion that the proposed southern wing should be reduced to two storeys in height given the size of the development site.
- Overshadowing impacts.

1 Clanwilliam Street

- Size and bulk of the development and the overwhelming impacts to the heritage cottages to on Clanwilliam Street
- Solar access to the dwellings (on Clanwilliam Street)
- Privacy impacts and overlooking into the correspondent's living areas
- The proposal's non-compliance with the FSR and height control cause unreasonable impacts in terms of privacy and solar access to the correspondent's property. The correspondent rejects statements made in the submitted SEPP 1 objections.
- The correspondent disagrees that the proposed fourth level is an attic given it contains separate dwellings to the floor below and also overlook the living rooms of the correspondent's property from the proposed balconies on the fourth level. The impacts of the proposed fourth level are considered unacceptable.
- The proposal is an overdevelopment of the site due to its non-compliance with the site coverage requirement.
- The proposed development will block view from the living room of the correspondent's property. The correspondent notes that a standing person standing within the living room the correspondent property will not be able to look over the proposed building, and considers the situation as unacceptable.
- The correspondent considers the proposed development to adversely affect the heritage values of the local heritage items at No 1, 3 and 5 Clanwilliam Street, particularly due to the lack of setback from the side (eastern) boundary of No 1 Clanwilliam Street.
- The correspondent does not accept that a permissible 3 storey development in the 2(c) zone should be permitted at the site due to its proximity to the local heritage items, and given the size of the site, removal of one or more level from the south wings of the proposed development should be considered.
- The correspondents also request progressive setback of the development from the side/eastern boundary of No 1 Clanwilliam Street.

3 Clanwilliam Street

- The northern wing of the proposed building will be visible to No 3 Clanwilliam Street as a fourth storey structure with exposed balconies and no step back into the roof forms. The ground level of the northern wing of the proposed building is approximately 1 m higher than No 3 Clanwilliam Street, adding to the overall height difference.
- The height of the proposed building is considered to adversely affect No 3 Clanwilliam Street in terms of privacy and solar access.

- The northern wing of the proposed development contains separate dwellings on the fourth level and is not loft spaces.
- Additional floor space will have direct impacts on population and car parking. The correspondent is concerned that visitor to the development will park on Clanwilliam Street.
- Overlooking from proposed south facing balconies.
- Proposed screen planting along the northern boundary of No 3 Clanwilliam Street may adversely affect solar access.

4 Clanwilliam Street

- The proposal's non-compliance with the FSR, site coverage and height control represent an overdevelopment of the site.
- Excessive building mass to the streetscape
- Overshadowing of adjoining properties
- Likelihood of new residents within the development will park in neighbouring streets
- The heritage cottages adjoining the development will be overwhelmed by the proposed development.

5 Clanwilliam Street

- The bulk and scale of the proposed development will overwhelm the adjoining heritage listed cottages.
- Adverse impact to the solar access of adjoining properties, particularly due to the development's non-compliance with the height control.
- Visual privacy due to overlooking from south facing balconies.
- The development's non-compliance with the FSR and site coverage requirements are considered evident of overdevelopment.
- The submitted SEPP 1 objections are not considered satisfactory with respect to the objectives of the development standards, particularly with respect to the bulk and scale of the development.
- The correspondent considers that the proposal will dominate the adjoining heritage items.
- The correspondent also requests that measures such as privacy screen and planters should be adopted to mitigate privacy impacts.

22 Horsley Avenue

- The correspondent believes the proposal is out of character with the location and is excessively large.
- The density of the development is likely to create problem with existing infrastructure.

