

**JOINT REGIONAL PLANNING PANEL  
(Sydney East Region)**

<b>JRPP No</b>	<b>2013SYE035</b>
<b>DA Number</b>	<b>DA-2013/142</b>
<b>Local Government Area</b>	<b>Willoughby</b>
<b>Proposed Development</b>	<b>Demolition of existing buildings and construction of three (3) mixed use buildings containing retail and commercial, shop top housing, child care centre, serviced apartments and associated works</b>
<b>Street Address</b>	<b>36-44 Hercules Street, CHATSWOOD NSW 2067</b>
<b>Applicant/Owner</b>	<b>Chatswood Place Pty Ltd c/o Platino Properties / Oscar Pty Ltd, Hercules Thirty Six Pty Ltd</b>
<b>Number of Submissions</b>	<b>3</b>
<b>Recommendation</b>	<b>Deferred Commencement Approval</b>
<b>Report by</b>	<b>Ana Vissarion - Development Planner</b>

## Assessment Report and Recommendation

### 36-42 Hercules Street, CHATSWOOD NSW 2067

JRPP REF: 2013SYE035  
DA NO: DA-2013/142  
ATTACHMENTS: 1. PLANS AND ELEVATIONS  
2. NOTIFICATION MAP  
MEETING DATE: 12-DEC-2013

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**LOCATION:** ON THE WESTERN SIDE OF HERCULES STREET, WITH STREET FRONTAGES TO ALBERT AVENUE AND OSCAR STREET

**APPLICANT:** CHATSWOOD PLACE PTY LTD

**PROPOSAL:** DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF THREE (3) MIXED USE BUILDINGS CONTAINING RETAIL AND COMMERCIAL, SHOP TOP HOUSING, CHILD CARE CENTRE, SERVICED APARTMENTS AND ASSOCIATED WORKS

**DATE OF LODGEMENT:** 19-APR-2013

**REPORTING OFFICER:** ANA VISSARION

**RESPONSIBLE OFFICER:** IAN ARNOTT

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#### Executive summary

The proposal seeks consent for demolition of existing buildings and ancillaries and construction of three separate buildings over two to three basement levels of car parking. The development comprises of 74 apartments over retail at ground floor and commercial levels at first floor and 26 serviced apartments over a childcare centre.

The site is bordered by the Chatswood Central Business District (CBD) to the west and northwest and it is approximately 800m from Chatswood Railway Station. Surrounding built environment consists of Chatswood Village on west of Oscar Street, Chatswood community nursing home with an approved application for buildings of up to 7 storeys and an adaptive re-use of a listed heritage item to the north and single dwellings located within a heritage conservation area to the south of Albert Avenue. Single storey houses zoned for medium density residential are located to the east of Hercules Street.

The proposal complies with the total floor space ratio (FSR) for the site but seeks to vary the maximum shop-top housing FSR component. The applicant engaged Hill PDA to undertake a review of the market and complete a feasibility modelling and supports the end result of the range of uses that constitute the proposed development. The retail proposed at ground floor and the commercial level on Oscar Street aim to contribute to the vibrancy of the commercial centre and active streetscapes, while the provision of residential above aims to cross subsidise the cost of the retail and commercial floorspace provision. The development

strives to recognise the importance of increasing employment in Chatswood, while remaining financially viable.

The subject development will result in site isolation for a property of 557.48m<sup>2</sup> located at the corner of Oscar Street and Albert Avenue, known as 17 Albert Avenue. The property currently comprises a detached dwelling house and outbuilding. The application is tested against the relevant planning principles established by the L&E Court Case '*Melissa Grech v Auburn Council [2004] NSWLEC 40*' and concludes that reasonable efforts were made to amalgamate the site, however negotiations failed. Consequently, a schematic plan for the isolated site was proposed by the applicant. The conceptual plans indicate that No 17 Albert Avenue can be independently developed as a three (3) storey building with basement parking, in a manner that is consistent with the WLEP 2012 and other relevant controls.

The application is reported to Sydney East JRPP for determination as it meets the relevant criteria to be considered regional development under Schedule 4A of the EP&A Act 1979, more specifically the Capital Investment Value (CIV) for the proposal is estimated to exceed \$20 million (\$30,315,628).

## DESCRIPTION OF PROPOSAL

The proposal as amended seeks development approval for the following:

- Demolition of the existing buildings and structures;
- Construction of three (3) mixed use buildings along each of the three (3) street frontages (Hercules Street to the east, Oscar Street to the west and Albert Avenue to the north), ranging in height from three (3) to six (6) storeys. Retail premises, commercial and shop-top housing will be located within two (2) of the buildings (fronting Hercules Street and Oscar Street ) and a childcare centre with serviced apartments above will be located within the third building (fronting Albert Avenue);
- Construction of basement car parking over three (3) levels, with retail on the ground and upper basement levels, fronting Hercules Street and Oscar Street. Within three levels of basement are located 159 car parking spaces (33 spaces in lower basement, 80 spaces in basement, 46 spaces in upper basement), storage, waste facilities and related facilities; and
- Site landscaping and associated works.

The proposed building fronting Hercules Street (**Hercules St building**), is located on the eastern side of the site, is 6 storeys (22m) in height and will accommodate:

- 464m<sup>2</sup> retail floor space (ground floor RL90.80);
- 44 dwellings (5 levels of residential);
- Communal open space with barbeques facilities on roof.

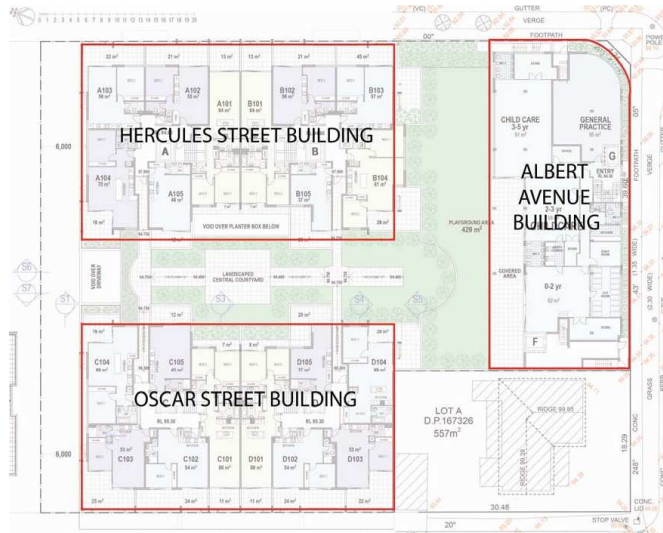
The proposed building fronting Oscar Street (**Oscar St building**) is located on the western side of the site, is 6 storeys (22.5m) in height and will accommodate:

- 503m<sup>2</sup> retail floor area (ground floor RL90.80, RL91.5 and RL92.30 - 3 tenancies);
- 792m<sup>2</sup> commercial floor space;
- 30 dwellings (4 levels of residential);
- Communal open space with lap pool on roof.

The proposed building fronting Albert Avenue (**Albert Ave building**) is located to the south of the site, is 3 storeys in height (10.2m) and will accommodate:

- Childcare Centre (70 children & 14 staff / 407m<sup>2</sup>)
- 26 Serviced Apartments (1,197m<sup>2</sup>).

The proposed 74 dwellings include three (3) affordable housing dwellings to be provided under the Willoughby Council Affordable housing scheme.



Proposed configuration of buildings

## Neighbour Notification

The original application was notified for a period of 21 days in accordance with Part B.4 of the Willoughby Development Control Plan (WDGP) from 13 May 2013 to 3 June 2013.

Three (3) submissions were received objecting to the proposal on behalf of:

- 17 Albert Avenue;
- 45 Hercules Street; and
- 59 Hercules Street.

The key issues raised in the submissions are:

- Loss of privacy and overshadowing of 17 Albert Avenue;
- Lack of negotiations with 17 Albert Avenue;
- Inappropriate nil setback on boundaries with 17 Albert Avenue;
- Errors on drawings and potential overshadowing and other amenity impacts on 59 Hercules Street;
- The FSR proposed is exceeding the maximum FSR for the site;
- Parking on Hercules Street will be affected;
- The Albert Avenue building does not address the Heritage Conservation Area located to the south.

During assessment of the application, Council's officer raised concerns with regard to site isolation, setbacks, landscape, traffic, stormwater, childcare and access to formerly proposed medical centre. In response to the concerns raised, the applicant submitted amended plans incorporating the following changes:

- The number of apartments was reduced from 84 to **74**;
- The layouts of units has been amended in order to increase compliance with recommendations in the Residential Flat Design Code;
- The number of adaptable housing increased from 24 to **37 apartments** (50% of total no of apartments);
- The number of adaptable car spaces was been reduced from 17 to **12**;

- Deletion of the initially proposed medical centre and subsequent extension of the child care centre;
- Increasing the capacity of the childcare centre from 60 to **70 children** (16 children between 0-2 years, 15 children between 2-3 years, 39 children between 3-5 years);
- The **26 serviced apartments** have now a lift for their exclusive use and a dedicated storage area;
- The affordable housing to be provided to Willoughby Council is now indicated to be in the form of three (3) apartments (adding up to **4% of GFA**), in compliance with WLEP 2012 requirements.
- Amended landscaping plan.

The amended plans were renotified for a period of 21 days from 30 August to 20 September 2013. Two (2) submissions were received, on behalf of 17 Albert Avenue and 45 Hercules Street, reiterating similar issues to the ones raised with the original application. The issues raised in the submissions are addressed later in this report.

The applicant further amended the plans to optimise traffic, minimise impacts on adjoining 17 Albert Avenue and improve the presentation of the Albert Avenue building. The latest set of plans is stamped by Council 13 November 2013 and is described under the 'Description of proposal' section above. These plans were not re-notified as they did not result in a greater detrimental impact or in an impact of a different nature to neighbouring properties and are the subject of this report.

## Relevant History / Pre DA

The proposal in a different form was subject of a Pre-Development Assessment Meeting held on 8 February 2013. The applicant was advised by Council's officers that the plans and documentation must be amended to reflect the controls and recommendation of the WLEP 2012 and WDCP and include detailed site and context analysis, justification for the non-compliance with 9m and 20m height controls and for the non-compliance with the 1.25:1 maximum residential component, increase in the area allocated to retail/commercial, compliance with SEPP 65 for the shop-top component, potential widening of Oscar Street to 12.8m, safer-by-design considerations, childcare issues and how childcare use relates to the serviced apartments and site isolation.

## Existing Building, and Site Context

The development site is located on the western side of Hercules Street with street frontages to Albert Avenue and Oscar Street. The site is L-shape with 4079m<sup>2</sup> in area. It has frontage to Oscar Street of 45.72m, 73.2m to Hercules Street and 39.6m to Albert Avenue. The land slopes down 4 m to the north (from approx. RL 94.0 along Albert Avenue down to approx. RL 90.0 at the northern boundary).

The existing developments at the site are former cottages used for the provision of health services by the Department of Health. They present as single storey houses erected between 1900 and 1920.

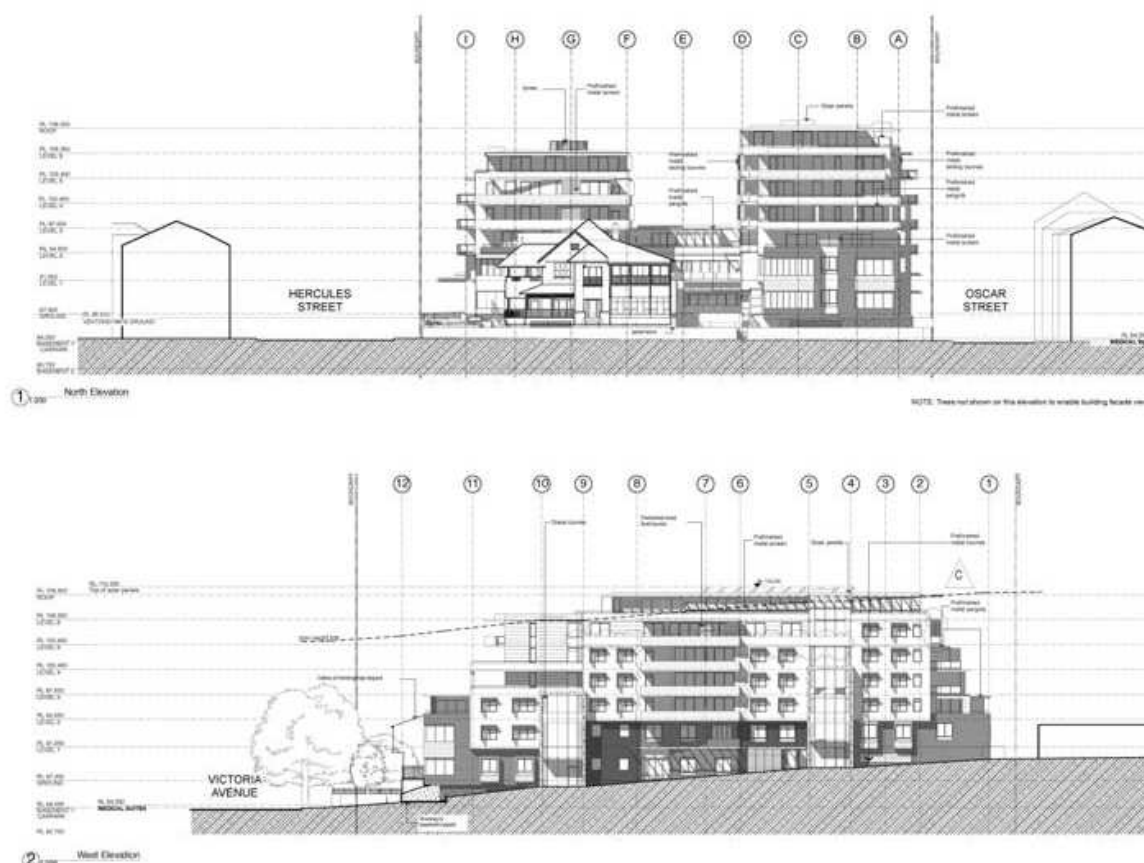
The development site does not include the small allotment at No 17 Albert Ave, at the corner of Albert Avenue and Oscar Street, which currently accommodates a single dwelling house.

Immediately to the north of the site, with frontage to Victoria Ave, are properties accommodating the Chatswood Community Nursing Home (CCNH). The lots have been amalgamated and on 21 March 2011 the JRPP approved as Deferred Commencement a Development application *DA-2010/549 for 256 Victoria Avenue & 38 Hercules Street, Chatswood for Adaptive re-use of listed heritage item in association with construction of*

*residential aged care facility, including seniors living units.*

The Consent was activated on 11 July 2011.

The approved DA includes buildings of up to 7 storeys and an adaptive re-use of the listed heritage item. This development consent has not been commenced to date. The general outline of the approved development is illustrated on the submitted plans and model of the subject application.



*Western and Northern Elevations of the neighbouring DA-2010/549 to north which includes adaptive reuse of the heritage item and adds two new buildings which are more than 20m in height*

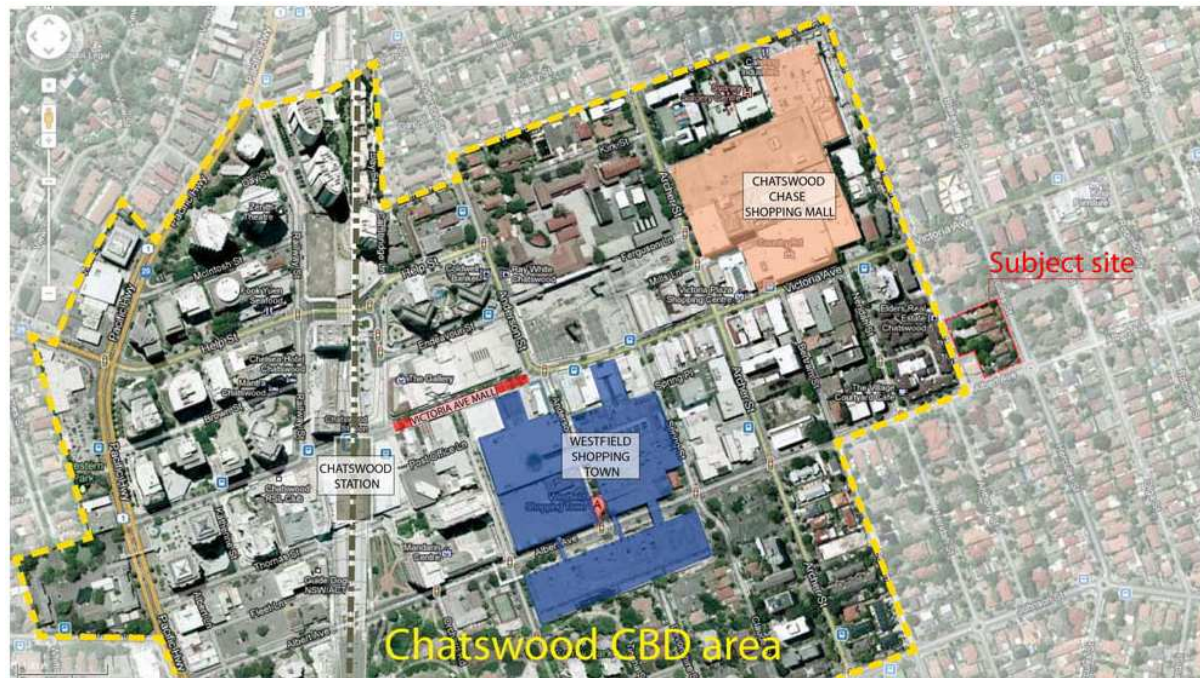
To the west of the site, on the opposite side of Oscar Street are mixed use and commercial developments, including a large mixed use complex known as Chatswood Village (No 45 & 47 Neridah Street), residential flat development with 12 Units at No 268 Victoria Ave, a medical centre complex at No 270 Victoria Ave, and a commercial building at No 272 Victoria Ave. These buildings are mostly 4 to 7 storey in height (14m to over 20m). These developments are unlikely to be redeveloped in the short or mid-term because of strata ownership.

The site is located at the eastern edge of the Chatswood CBD. Bus services are along Victoria Avenue with services to Willoughby, Chatswood, and the City. Chatswood bus and rail interchange is approximately 700m walking distance from the site. Major shopping centre, Chatswood Chase is less than 100m walking distance from the site.

To the east of the site, on the opposite side of Hercules Street, and to the north of the site, are some single dwelling houses but mostly 3 to 4 storey residential flat developments and the Chatswood Community Health Centre.



To the south of the site, on the opposite side of Albert Avenue is the South Chatswood Heritage Conservation Area which comprises predominately single storey detached dwellings.



Aerial showing the location of the subject site in relation to the Chatswood CBD area



Aerial photo

## Controls and Classification

- i) **Willoughby LEP 2012:** Yes
  - a. **Conservation Area:** No, but adjoins HCA to the south (across Albert Ave)
  - b. **Zoning:** B4 – Mixed Use
  - c. **Height:** 20m (Oscar Street and Hercules Street Map Q), 9m (Albert Ave Map J)
  - d. **FSR:** 2.5:1 (Clause 4.4A (14 a)) (Residential Maximum - 1.25:1)
  - e. **Affordable Housing:** Yes, on Special Provisions Area Map – Area 3 refers to Clause 6.8 of WLEP 2012 – Special Provisions Sites.

- ii) **Applicable DCP (SEPPs, REPs):** SEPP State and Regional Development 2011 (SRD SEPP); Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; SEPP 55; SEPP Building Sustainability Index: BASIX 2004 (The BASIX SEPP); SEPP 65; Residential Flat Design Code; WDCP.
- iii) **Developer's Contribution Plans:**
- S94A Developers Contributions:** Yes
  - Applicable rate:** 1%
  - The cost of development:** \$30,315,628
  - The total contribution payable** (subject to Building Price Indexing (Enterprise Bargaining Agreement)): \$303,156.28

## Development Statistics

	Proposed	Standards	Compliance
<b>WLEP 2012</b>			
Site Area	4079 m <sup>2</sup>		
FSR	Total: 8996m <sup>2</sup> (excluding affordable housing component of 234m <sup>2</sup> ) FSR: <b>2.21:1</b> of which 5,619m <sup>2</sup> residential, 1,200m <sup>2</sup> serviced apartments, 967m <sup>2</sup> retail (464m <sup>2</sup> on Hercules St & 503m <sup>2</sup> on Oscar St), 792m <sup>2</sup> commercial and 418m <sup>2</sup> childcare + 234m <sup>2</sup> affordable housing  <b>1.38:1</b> Residential  0.83:1 non-residential	<b>2.5:1</b> (Clause 4.4A (14 a))          Residential Maximum - <b>1.25:1</b> )	Yes          <b>No</b> <b>(Clause 4.6)</b>
Height	20m to lift overrun on Hercules St, 22.5m to lift overrun on Oscar St (6 storeys), and 10.2m to clerestory on Albert Ave (3 storeys)	20m (Hercules Street and Oscar Street - Map Q),  9m (Albert Ave - Map J)	<b>No</b> <b>(Clause 4.6)</b>
<b>WDCP</b>			
Setbacks <i>North</i> (adjoining 256 Victoria Ave, for both Oscar St and Hercules St buildings) (D.2.8 of WDCP & RFD Code)	6m for 1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> , 5 <sup>th</sup> level, 8,92m to roof level (with balconies encroaching in setback)  8m between buildings for 1 <sup>st</sup> level, 11m for 2 <sup>nd</sup> level, 11.5m for 3 <sup>rd</sup> level, 14m for 4 <sup>th</sup> level,	3m + 1.2/storey: 4.2m for 1 <sup>st</sup> level, 5.4m for 2 <sup>nd</sup> level, 6.6m for 3 <sup>rd</sup> level, 7.8m for 4 <sup>th</sup> level, 9m for 5 <sup>th</sup> level  RFDC: up to 4 storeys (3 <sup>rd</sup> level on plans)/12 metres between buildings five to eight storeys/up to 25 metres	No, but consistent with streetscape/urban design requirements



	17m for 5 <sup>th</sup> level		
Setbacks East (Hercules St building) (D.2.8 of WDCP & RFD Code)	0m for retail @ ground floor, 0m to balconies on 1 <sup>st</sup> & 2 <sup>nd</sup> levels, 2m to balconies on 3 <sup>rd</sup> & 4 <sup>th</sup> levels, 3m to balconies on 5 <sup>th</sup> level	Consistent with adjoining, reinforce streetscape character of Hercules St	Yes, acceptable
Setbacks West (Oscar St building) (D.2.8 of WDCP & RFD Code)	1.2m for retail @ ground floor, 0m for commercial @ 1 <sup>st</sup> level, 0m for residential balconies 2 <sup>nd</sup> & 3 <sup>rd</sup> levels, 2m to balconies on 4 <sup>th</sup> level, 3m to balconies on 5 <sup>th</sup> level,	Consistent with adjoining, reinforce streetscape character of Oscar St	Yes, acceptable
South (Oscar St building adjoining 17 Albert Ave) (D.2.8 of WDCP)	0m on all levels	3m + 1.2/storey: 5.4m for 2 <sup>nd</sup> level, 6.6m for 3 <sup>rd</sup> level, 7.8m for 4 <sup>th</sup> level, 9m for 5 <sup>th</sup> level	No
Centre courtyard, between Hercules St & Oscar St buildings (RFDC)	12.2m to 18m (up to 4 <sup>th</sup> level), 18m on 5 <sup>th</sup> level	RFDC: up to 4 storeys (3 <sup>rd</sup> level on plans)/12 metres between buildings 5 to 8 storeys (4 <sup>th</sup> & 5 <sup>th</sup> level)/up to 25 metres	Yes, acceptable
South Albert Ave Building	0m - 1m at ground floor (childcare) 0m on 1 <sup>st</sup> & 2 <sup>nd</sup> level	Consistent with adjoining, reinforce character of Albert Avenue	Yes, acceptable
Open Space and communal areas (D.2.9)	57% and >5m wide outdoor areas with appropriate facilities at ground level and on roof  all units have min one balcony of min 10m <sup>2</sup> and 2m wide	5 levels of residential – 56% of site area (min 5m wide) 3 hours solar access;  Balconies: min 10 m <sup>2</sup> & 2m wide	Yes  Yes
Mix of units (RFDC)	2 x 0bedrooms 42 x 1bedrooms 18 x 2 bedrooms 12 x 3bedrooms	0bedrooms ~ 38.5m <sup>2</sup> + 1bedrooms ~ 50m <sup>2</sup> + 2bedrooms ~ 70m <sup>2</sup> + 3bedrooms ~ 95m <sup>2</sup> + (minimum size for affordability)	Yes Yes Yes Yes
Adaptable housing (Part C.6.3 of WDCP)	37 adaptable apartments	50% of dwellings (shop top housing) equals 37 adaptable apartments	Yes

Affordable housing	234m <sup>2</sup> (1x1bedroom 2x2bedrooms, remainder in cash contribution)	4% of GFA	Yes
Car parking	<p>159 car parking spaces (33 spaces in lower basement, 80 spaces in basement, 46 spaces in upper basement)</p> <p>70 residential car parking spaces</p> <p>18 residential visitor car spaces</p> <p>12 adaptable car spaces</p> <p>9 serviced apartments car spaces</p> <p>7 commercial car spaces</p> <p>41 retail car spaces</p> <p>7 car spaces for employees of childcare 7 car spaces for drop-off and pick-up</p>	<p><b>Shop Top Housing:</b> Studio - 0.5 spaces 1 space/ dwelling (other than studios) Visitor spaces- 1 per 4 dwellings</p> <p>1 in 4 adaptable dwellings to have an adaptable car space (8 adaptable car spaces)</p> <p><b>Serviced Apartments:</b> 1 space / 4 units + 1 space/ 2 employees</p> <p><b>Commercial (office/business premises):</b> 1/ 110m<sup>2</sup></p> <p><b>Retail Shop:</b> 1 space per 25m</p> <p><b>Childcare:</b> 7car spaces for 14 employees of childcare 7 car spaces for 70 children (childcare drop- off/pick-up)</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Bicycle parking	16 bike rails & 15 lockers	<p>Residential Rail – 1 per 12 dwellings Lockers -1 per 10 dwellings</p> <p>Commercial Rail - 1 per 150m<sup>2</sup> Lockers -1 per 450m<sup>2</sup></p> <p>Office Rail - 1 per 600m<sup>2</sup> Lockers -1 per 2,500m<sup>2</sup></p> <p>(req: 13 rails and 11 bike lockers)</p>	Yes
Motorcycle	7 spaces	<p>1 per 25 car spaces</p> <p>req: 7 motorcycle spaces</p>	Yes
Landscaping	Landscaping provided within ground floor communal space, and top	A one metre wide landscaped setback area is to be provided along a	Yes

	floor terrace area.	boundary to a rear lane to soften the appearance of the development. A minimum of 20% of rooftop open space is to be provided as vegetated area.	The proposed communal open space provides a garden setting
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### Compliance with Plans or Policies

- (\*) The application seeks consent to vary two development standards contained in WLEP 2012, including the maximum height of building contained in Clause 4.3 and the maximum Floor Space Ratio for the housing component of the development contained in Clause 4.4/4.4A. The applicant has made written requests pursuant to Clause 4.6 of the WLEP 2012 to vary these development standards. The extent of proposed variation to the development standards, applicant's reasons for variation and consideration of these variations against the relevant objectives of the standards are discussed further in the assessment section below.
- (\*\*) The proposal is non-compliant with side setbacks and proposal does not meet the building separation 'rule of thumb' of the RFDC.  
The proposal is setback 6m from the boundary shared with No. 256 Victoria Avenue. This represents 50% of the required 12m separation distance between habitable rooms for buildings up to four (4) storeys under the SEPP 65. In this regard, the first four (4) storeys of the Hercules and Oscar Street buildings comply with the separation/setback distances envisaged under the RFDC. The RFDC requires an 18m separation between habitable rooms/private open spaces of buildings over five (5) storeys, which equates to a 9.0m setback. Only the upper levels of both the Oscar Street and Hercules Street buildings vary from this requirement with a 6.0m setback. The variation is considered acceptable taking into account that northern openings have been minimised and the apartments and private open space are principally oriented east or west. The proposal also incorporates a landscaped strip along the boundary which is a minimum of 1.8m wide and is increasing towards the centre of the site. In this regard, the separation / setbacks distance is adequate for achieving a landscape buffer.

### Referrals

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

Internal	
Building	Standard conditions of consent are recommended.
Waste	Standard conditions of consent are recommended.
Heritage	The plans and the Heritage Impact Statement submitted by the applicant received the following comments: "The proposed works include demolition of existing buildings on the site. These cottages were assessed for their heritage significance in the 2006 Heritage study by independent heritage consultants noting "the cottages do not possess enough qualities that would justify heritage listing." Construction consists of three buildings along the three street frontages of Oscar, Hercules and Albert Streets ranging in height from three to six storeys. Retail premises and shop – top housing will be located within 2 of the buildings and a childcare centre, medical centre and serviced apartments

	<p>will be located within the third building. Basement car parking will also be included. The buildings will incorporate face brick and rendered concrete, glazing, steel blades and aluminium window frames.</p> <p>In terms of heritage impact of the proposal on the above heritage items and South Chatswood Conservation Area, the following is noted.</p> <p>The heritage items at No. 8 and No. 28 are located to the south of the site, on the opposite side of the street and located within the South Chatswood Conservation Area. It is noted that the scale and nature of development on the northern side of Albert Avenue exhibits a different urban character, i.e. business and office uses, including Chatswood Village.</p> <p>I concur with the statement in the attached heritage Impact Statement that "the width and function of Albert Avenue, provides a clear point of transition between the form and scale of buildings within the conservation area and the more intense and mixed form on the northern side of Albert Avenue." In this respect a transitional element of 3 storeys fronts the conservation area and breaks up the scale of the larger buildings to the north, and mitigates the impact on the heritage items and conservation area.</p> <p>The heritage item at 256 Victoria Avenue, which forms part of the Chatswood Community Nursing home directly fronts Victoria Avenue and is physically separated from the proposed development by approved large scale development for seniors housing associated with the Community Nursing Home. Given the separation of this heritage item from the development, heritage impacts are mitigated noting that major views to the Chatswood Community Nursing home are still available along Victoria Avenue, such that its setting and curtilage are not significantly adversely affected, given the approved adjacent development. Conditions are recommended to further reduce heritage impacts:</p> <ol style="list-style-type: none"> <li>1. It is recommended that a photomontage be submitted of the southern façade fronting Albert Avenue, detailing material finishes and colours so as to assess their impact on the South Chatswood Conservation Area.</li> <li>2. Ensure canopy trees are provided along the Albert Avenue façade, which are of a sufficient height to provide screening to the southern facade of the development, adjacent to the South Chatswood Conservation Area,</li> <li>3. Consideration be given to further articulating the Albert Avenue façade by provision of vertical elements to break up horizontality of façade."</li> </ol> <p>The heritage recommendations were addressed in the amended plans and documentation to the satisfaction of the assessing officers and Council's Heritage Architect had no further objections.</p>
Development Engineering	<p>Council's Development Engineer initially advised that more information is needed in regard to OSD / stormwater systems proposed. Following submission of the amended plans, Council's Development Engineer made the following comments:</p> <p><i>"A perusal of the submitted revised stormwater plans has identified that the applicant has not fully addressed issues previously raised by Development Engineers. Should this application be supported from a planning perspective, it is considered that a deferred</i></p>

	<i>commencement approval should be given.”</i>
Traffic	<p>Following the submission of the amended plans and documentation, Council's Traffic &amp; Transport Group Leader recommended conditions and made the following comments:</p> <p><i>“The amended drawings are preferable to the previous proposal in terms of traffic impacts. While it would be ideal if a 5.3m setback from Oscar Street were to be provided it is noted that this is unlikely to be achieved given the lack of a Council resolution identifying a preferred route for a northern bypass and a lack of any specific controls with the WLEP 2012. The northern bypass route is still able to be achieved, albeit by a less direct route, utilising Hercules Street instead of Oscar Street. Given that Hercules Street is already 12.8m in width a bypass route utilising that road would not require any road widening.</i></p> <p><i>The reversal of the direction of flow of the One Way road through the car park under the current proposal is considered to address some of the traffic concerns previously raised as a west to east traffic flow through the development car park provides for: ease of access to the car park for larger vehicles; safer egress from the site as vehicles are able to exit to Albert Avenue with the aid of the roundabout at Hercules Street; ease of egress from the car park to Hercules Street given its greater road width when compared to Oscar Street.</i></p> <p><i>It is also noted that an additional loading/unloading space for courier vehicles has been provided in the current proposal. This partially addresses concerns raised in earlier memo's regarding a shortfall of loading bay spaces.</i></p> <p><i>Concern still remains in regard to the 11 adaptable spaces. These spaces are each shown as being 3.8m in width with a 1.6m “storage” area adjacent. As outlined in previous memos, there is concern that these adaptable parking spaces can too easily be used as two x 2.7m parking spaces which would significantly lift the total parking supply of the development above the DCP requirement. As dimensions of these spaces do not comply with current AS2890.6 for disabled parking. If the adaptable spaces on the basement level car park are to be used as disabled spaces, then shared areas 2.4m in width would need to be provided adjacent and marked in accordance with the requirements of AS2890.6, bollards would also need to be installed at the front of the shared areas to prevent parking in them.”</i></p> <p>In order to prevent the adaptable spaces to be used in conjunction with the storage area for additional parking, Council's Traffic &amp; Transport Group Leader required physical enclosure of all storage areas within the car park.</p>
Environment Health	<p>No objection subject to recommended conditions, noting that,</p> <ul style="list-style-type: none"> <li>- as details for the operation of the commercial/retail tenancies have not been provided it is recommended that a separate development application be submitted for these uses;</li> <li>- in regard to the childcare centre, an electro-magnetic radiation study was not requested to be undertaken. The location of the proposed childcare centre is considered not to be in the line of sight of a significant source of EMR. Having said this, it is recommended that</li> </ul>

	an advisory note is included in the DA consent document.
Children Services	Subject to a condition of consent to require an emergency evacuation plan, no objection is raised against the amended proposal.
Landscaping	Subject to recommended conditions of consent, no objection is raised against the proposal.
<b>External</b>	
Police (CPTED)	The original application has been referred to NSW Police – NS LAC Chatswood station. Police recommended that a number of safety issues be considered, mostly in relation to the child care centre. These issues were addressed by the amended plans (privacy screens to prevent overlooking from the serviced apartments into the child care play area, deletion of the medical centre adjoining the child care centre etc). A further condition ‘Safety by Design’ is included in the recommendation.
SEPP 65	<p>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.</p> <p>The application includes residential flat buildings along Hercules Street and Oscar Street and has been referred externally to an independent Urban Design consultant for assessment in accordance with SEPP 65.</p> <p>A number of recommendations from the Urban Design consultant have been discussed with the applicant and subsequently incorporated in the amended proposal.</p> <p>The proposal’s compliance with the numerical controls/rules of thumbs contained in the Residential Flat Design Code are provided in the ‘Development Statistics’ section of this report. Further discussion on how the proposed design meets the SEPP 65 guidance is detailed in the ‘Assessment’ section below.</p>



**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)	
	<ul style="list-style-type: none"> <li>State Environmental Planning Policies (SEPP)</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Regional Environmental Plans (REP)</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Local Environmental Plans (LEP)</li> </ul>	✓
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> <li>Draft State Environmental Planning Policies (SEPP)</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Draft Regional Environmental Plans (REP)</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Draft Local Environmental Plans (LEP)</li> </ul>	N/A
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> <li>Development control plans (DCPs)</li> </ul>	✓
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> <li>Clause 92 EP&amp;A Regulation- Demolition</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Clause 93 EP&amp;A Regulation-Fire Safety Considerations</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Clause 94 EP&amp;A Regulation-Fire Upgrade of Existing Buildings</li> </ul>	N/A
(b)	The likely impacts of the development	
	<ul style="list-style-type: none"> <li>Context &amp; setting</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Access, transport &amp; traffic, parking</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Servicing, loading/unloading</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Public domain</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Utilities</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Heritage</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Privacy</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Views</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Solar Access</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Water and draining</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Soils</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Air &amp; microclimate</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Flora &amp; fauna</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Waste</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Energy</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Noise &amp; vibration</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Natural hazards</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Safety, security crime prevention</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Social impact in the locality</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Economic impact in the locality</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Site design and internal design</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Construction</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Cumulative impacts</li> </ul>	✓
(c)	The suitability of the site for the development	
	<ul style="list-style-type: none"> <li>Does the proposal fit in the locality?</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Are the site attributes conducive to this development?</li> </ul>	✓

**Matters for Consideration Under S.79C EP&A Act****Satisfactory ✓ Unsatisfactory ✗ Not Relevant N/A**

(d)	Any submissions made in accordance with this Act or the regulations	
	<ul style="list-style-type: none"> <li>Public submissions</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Submissions from public authorities</li> </ul>	✓
(e)	The public interest	
	<ul style="list-style-type: none"> <li>Federal, State and Local Government interests and Community interests</li> </ul>	✓

**ASSESSMENT**

The following planning policies and control documents are of relevance to the development and were considered as required by Section 79C of the Environmental Planning and Assessment Act 1979:

**Deemed Harbour SEPP - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The deemed Harbour SEPP applies to the entire Willoughby City Council area identified on the Sydney Harbour Catchment Map. It focuses primarily on the foreshores and waterways, but also includes provisions to protect the hydrological catchment to maintain water quality, and the natural qualities and assets. The site is not identified:

- (a) within the Foreshores and Waterways Area;
- (b) as a strategic foreshore site;
- (c) as a heritage item (not listed on "Schedule 4 Heritage Items" of the Harbour SEPP)
- (d) within the wetlands protection area;

and therefore only Part 1 is applicable. Part 1 identifies aims of the plan from (a) to (h) and principles to be adopted in order to achieve these aims. The aims set out in Part 1 of the deemed Harbour SEPP have been considered and the application is assessed to be consistent with these aims.

**State Environmental Planning Policy No. 55 - Remediation of Land**

Under clause 7(1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. The site has been used for residential and health care purposes (former cottages currently occupied by health services) and there is no history to suggest that the site is contaminated.

A Preliminary Site Investigation (PSI) prepared by Environmental Monitoring Services has been undertaken for the site. The assessment concluded that, following a review of all available information including past and present activities, the overall potential for site contamination is low. The proposal is considered to be consistent with the requirements of SEPP No. 55 and the application does not require further consideration in this regard.

**SEPP 65 - Design Quality of Residential Flat Development**

The State Environmental Planning Policy 65 – Design Quality of Residential Flat Development (SEPP 65) was introduced in 2002. It aims to improve the design quality of residential flat buildings in NSW. It contains principles for good design and provides guidance for evaluating the merit of design solutions.

SEPP 65 applies to the:

- (a) erection of a new residential flat building;
- (b) substantial redevelopment or the substantial refurbishment of an existing residential flat building; and the
- (c) conversion of an existing building to a residential flat building.

In this policy, a '*Residential flat building*' means *a building that comprises or includes:*

- (a) *3 or more storeys (not including levels below ground level provided for car parking or storage, or both, that protrude less than 1.2 metres above ground level), and*
- (b) *4 or more self-contained dwellings (whether or not the building includes uses for other purposes, such as shops),*  
*but does not include a Class 1a building or a Class 1b building under the Building Code of Australia.*

The proposed development includes '*residential flat building*' components, as defined by Clause 3 of SEPP 65. The Hercules Street and Oscar Street buildings are developments that are required to meet the Design Quality Principles and the Residential Flat Design Code (RFDC) of the SEPP.

The SEPP 65 states in Part 4 that "*a development application that relates to residential flat development, and that is made on or after 1 December 2003, **must be accompanied by a design verification from a qualified designer**, being a statement in which the qualified designer verifies:*

- (a) *that he or she designed, or directed the design, of the residential flat development, and*
- (b) *that the design quality principles set out in Part 2 of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development are achieved for the residential flat development.*"

The proposal was accompanied by a design verification prepared by Revay & Unn Architects demonstrating that, in their opinion, the design quality principles set out in Part 2 of SEPP 65 - Design Quality of Residential Flat Development are achieved. Furthermore, an Urban Design Report and SEPP 65 Review were prepared by GM Urban Design and Architecture assessing the design against the principles set out in SEPP 65. The review includes consideration of the Residential Flat Design Code rules. SEPP 65 Amenity Compliance verification was prepared by Steve King, of the Faculty of the Built Environment, University of NSW, providing an assessment of the proposal in regard to solar access and natural ventilation requirements by the RFDC. The numerical Rules of Thumb contained in the RFDC require 70% of all apartments to receive two (2) hours of sunlight in a dense urban environment between 9am and 3pm and 60% of all apartments to be cross ventilated. The assessment concludes the proposal complies with the requirements with 75% apartments receiving a minimum of two (2) hours of sunlight and 65.5% of apartments achieving cross ventilation.

Independent urban design consultant Architectus has been engaged by Willoughby Council to carry out an independent assessment of the application in its original form against the requirements of SEPP 65.

Clause 30A - *Standards that cannot be used as grounds to refuse development consent for residential flat buildings* states:

- (1) *A consent authority must not refuse consent to a development application for the carrying out of residential flat development on any of the following grounds:*

(a) ceiling height: if the proposed ceiling heights for the building are equal to, or greater than, the minimum recommended ceiling heights set out in Part 3 of the Residential Flat Design Code,

(b) apartment area: if the proposed area for each apartment is equal to, or greater than, the recommended internal area and external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code.

*Note. The Building Code of Australia regulates the minimum ceiling heights for residential flat buildings.*

(2) Nothing in this clause permits the granting of consent to a development application if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the design quality principles in Part 2 of this Policy.

The following is an assessment against the Design Quality principles listed in Part 2 of SEPP 65:

Principle 1: Context

*Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area.*

*Responding to context involves identifying the desirable elements of a location's current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.*

The new buildings will replace the dwellings and the outbuildings on site. The subject property is bounded by Victoria Ave, Hercules Street and Oscar Street to South, East and West and by the property known as 256 Victoria Avenue and 38 Hercules Street, to the North. The properties to the North obtained consent from JRPP in 2011 to demolish the nursing home existing on site and build a residential aged care facility with independent living units for seniors housing instead. Vehicular access for this development is provided via Hercules Street and via Oscar Street to a basement car parking area.

The development proposed under current application took into account the approved development to the north and potential development (independent or not) of the property in the south-west corner known as 17 Albert Avenue. The site is located at the fringe of the Chatswood CBD, within 100m walking distance to major shopping centres and is well serviced by existing services and infrastructure. It is considered that the height, bulk and scale of the proposed buildings facing all three streets are in character with the desired future character of the area.

Principle 2: Scale

*Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings.*

*Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.*

The scale and proportion of the proposed buildings are generally consistent with the desired and permitted scale of the three surrounding streets. The Hercules Street and Oscar Street buildings are generally consistent with the maximum height of 20 metre and the adjoining approved development. The plant and overruns of both buildings are exceeding the maximum permitted height. Given the area of non-compliance generally includes roof top open space and associated structures, there is not considered to be a significant impact in terms of the scale of development. The Albert Avenue building of only 3 storeys in scale

responds to the heritage area to the south. The curved corner appropriately marks the beginning of the commercial area and adds interest to the building and streetscape.

*Principle 3 – Built Form*

*Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements.*

*Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

The building form is an articulated contemporary building with appropriate external finishes. The site is situated in an important public location and the architecture adopted complements the streetscapes.

The development provides retail at ground floor level on both Oscar Street and Hercules Streets and, above retail, a level of commercial on Oscar Street. The building type, use mix and ultimately the design of buildings are considered to be compatible with the established and future character of the local area.

*Principle 4: Density*

*Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents).*

*Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.*

The proposed development has an overall FSR of 2.21:1, compliant with the maximum FSR for the site of 2.5:1. However, the development seeks to vary the maximum FSR standard for the residential component, seeking to achieve a higher residential component and a lesser density of other uses as established by the WLEP 2012 controls.

The bulk and scale of the proposed buildings is consistent within the context of existing and approved surrounding buildings. The size and the mix of dwellings will achieve a variety of housing type in close proximity to local services and facilities. The proposal has no significant impact on the amenity of the neighbouring properties, except on the existing dwelling at 17 Albert Avenue. The proposal however aims to enhance full future development opportunities for this adjoining site.

*Principle 5: Resource, energy and water efficiency*

*Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction.*

*Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.*

The development application was accompanied by a BASIX Certificate in accordance with State Environmental Planning Policy (BASIX) 2004. The primary concern of BASIX is to ensure that new residential developments are designed to use less potable water and be responsible for fewer greenhouse gas emissions by meeting energy and water reduction targets. The proposal complies with BASIX requirements and relevant legislation.

Principle 6: Landscape

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain.*

*Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.*

*Landscape design should optimise usability, privacy and social opportunity, equitable access and respect for neighbours' amenity, and provide for practical establishment and long term management.*

The landscaping along the street frontages is considered to respond appropriately to the site's context, being on the fringe of the Chatswood Town Centre within a mixed use zoning and adjacent to lower density residential development. As the development accommodates non-residential uses at ground level, the landscaping allows for maximum exposure to these uses.

The landscaping of the roof has been revised and increased to allow for the planting of small trees, palms and other feature plants. The landscaping of the outdoor area of the child care centre has also been modified. Subject to recommended conditions, Council's Landscape Officer is satisfied that a reasonable quantity and quality of landscaping is achieved on site.

Principle 7: Amenity

*Good design provides amenity through the physical, spatial and environmental quality of a development.*

*Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.*

Apartments are generally acceptable with regards to size and internal amenity. A good mix of apartments is proposed (2 x 0bedroom apartments, 42 x 1bedroom apartments, 18 x 2 bedroom apartments and 12 x 3bedroom apartments). A report by Stephen King of SOLARCH, UNSW, demonstrates that 75% of apartments have appropriate solar access and 65% have cross ventilation.

Amenity issues such as solar access, cross ventilation, visual privacy, acoustic privacy, balcony sizes and provision of storage areas were also reviewed by a consultant engaged by Council and found acceptable. The site is served adequately by public transport and it is located in the proximity of Chatswood CBD. The parking proposed satisfies the car parking requirement.

Principle 8: Safety and Security

*Good design optimises safety and security, both internal to the development and for the public domain.*

*This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.*



The development as a whole optimises safety and security for residents. All apartments feature clearly defined entries. The serviced apartments are entered via separate entrances and security controlled lifts. The proposed living rooms and balconies facing Hercules Street to east or Oscar Street to the west will overlook the respective streets providing 24 hour passive surveillance of the public domain. The car parking spaces located in the basement levels will have security access.

**Principle 9: Social Dimensions**

*Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities.*

*New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.*

*New developments should address housing affordability by optimising the provision of economic housing choices and providing a mix of housing types to cater for different budgets and housing needs.*

The proposal includes three (3) affordable housing units (234m<sup>2</sup>) within the residential flat building component of the development, in compliance with the 4% required by the WLEP 2012 standard: Unit A101, Unit C201 and Unit D204 on plans. More details are provided further in this report, under the WLEP 2012 section.

The amended plans provide for 74 apartments of varying size with direct separate access from Oscar Street in the Oscar building, and from Hercules Street in the Hercules building. Half of these apartments are designed to be adaptable. The number of adaptable apartments has been increased to 37 apartments (50% of total number, consistent with the requirements of the WDCP). As such, the development responds to the social context and needs of the local community.

**Principle 10: Aesthetics**

*Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.*

The proportions, scale and articulation of the proposed development generally sits well within the public domain. The materials and finishes of the development are considered to be satisfactory and reflect its predominant location and context.

**NSW Residential Flat Design Code**

The primary concern of the Residential Flat Design Code is providing design solutions that improve the amenity and comfort of residential flat buildings. It encourages passive environmental design through consideration of site planning and building layout in relation to density, orientation, adjacent development and open space design.

The NSW Residential Flat Design Code 2002 (RFDC) published by the NSW Department of Planning is part of a package of measures under SEPP 65 which the NSW Government is using to improve the design quality of residential flat development in NSW.

The RFDC provides design principles and 'rules of thumb' standards. The proposal was assessed against the provisions of the RFDC in relation to

'Local Context: Primary development controls': building height, building depth, building separation, street setback, side and rear setback, floor space ratio, and in regard to

'Site Design': site analysis, site configuration (deep soil zones, fences and walls, landscape design, open space, orientation, planting on structures, stormwater management), site amenity (safety, visual privacy), site access (building entry, parking, pedestrian access, vehicular access), and

'Building Design': Building configuration (apartment layout, mix, balconies, ceiling heights, flexibility, ground floor apartments, internal circulation, mixed use, storage), building amenity (acoustic privacy, daylight access, natural ventilation), building form (awnings and signage, facades, roof design), building performance (energy efficiency, maintenance, waste management, water conservation).

Overall the proposal was regarded as acceptable by the planning consultant engaged by Council. A number of recommendations to improve the design further were also made, including:

- reducing the floor space ratio in accordance with Council's desired future density for the site as established by the Willoughby LEP 2012;
- reducing the perceived bulk of the roof and enhancing entries;
- further clarification on waste management, parking allocation, storage and landscaping; and
- compliance with Australian Standards.

The recommendations provided by 'Architectus' were discussed with the applicant. Solutions and more information as per recommendations were subsequently incorporated in the amended proposal.

#### **State Environmental Planning Policy - Building Sustainability Index: BASIX 2004**

State Environmental Planning Policy (Building Sustainability Index: Basix (BASIX) applies to the proposed development. The application was accompanied by a BASIX certificate and conditions of consent have been included in the recommendation to ensure the fulfilment of the commitments listed in the BASIX certificate, as prescribed by Clause 97A of the Environmental Planning & Assessment Regulation 2000.

It is noted that the primary concern of the Residential Flat Design Code is providing design solutions that improve the amenity and comfort of residential flat buildings. It encourages passive environmental design through consideration of site planning and building layout in relation to density, orientation, adjacent development and open space design. These considerations also improve energy efficiency. Consequently, SEPP 65 and the Residential Flat Design Code support the BASIX SEPP by providing design guidance for the development of quality residential flat buildings that can also meet BASIX requirements.

#### **Willoughby Local Environmental Plan 2012 (WLEP 2012)**

The subject site is zoned B4 Mixed Use under the provisions of WLEP 2012. The proposed works are classified as demolition of existing dwellings on site and construction of a new mixed use development.

The proposal exceeds the maximum height of buildings standard as specified in Clause 4.3A of WLEP 2012 and the maximum floor space ratio standard for housing component as specified in Clause 4.4A(14) of WLEP 2012.

#### **Clause 4.6 Exceptions to development standards of WLEP 2012**

Clause 4.6 of WLEP 2012 provides an appropriate degree of flexibility in applying development standards to particular developments and enables Council to grant consent to a development that exceeds a development standard within the environmental plan.

A written exception pursuant to Clause 4.6 has been made requesting variation to

### **Clause 4.3 Height of buildings**

#### **Extent of Variation**

Clause 4.3(2) of the WLEP 2012 prescribes the maximum building height for the land as shown on the Height of Building Map. The proposed development exceeds the height standards prescribed in Clause 4.3 for all three (3) buildings. The areas/location of breach and the amount above the control are identified below:

	<b>Proposed</b>	<b>Development Standard</b>	<b>Percentage above control</b>
Hercules St building	20.4m to top of roof slab 22m to lift overrun	20m	10%
Oscar Street building	20.5m to top of roof slab 22.5m to lift overrun	20m	12.5%
Albert Ave building	7.5m to parapet 9.1m to top of roof slab 10.2m to clerestory	9m	13.33%

#### **Applicant's reasons in support of the variation**

Clause 4.6 (3) Exceptions to development standards of WLEP 2012 reads:

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant addressed in writing that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard, arguing that:

- the proposal satisfies the objectives of the B4 mixed use zone and the objectives of the building height standards;
- the scale of the proposed development is consistent with the scale of the surrounding development and streetscape along Oscar Street, Hercules Street and Albert Avenue;
- the non-compliance with the standard does not contribute to adverse environmental impacts in terms of overshadowing, visual impacts or view loss;
- the development complies with the maximum FSR development standard of 2.5:1 applying to the site;
- the proposed development is generally compliant with the controls, or the intent of the controls, contained in the WDCP.

The proposed development will be in the public interest because it is consistent with the objectives for development within the B4 Mixed Use zone and the objectives of the Height of buildings development standard, as follows:

### **Objectives of the Zoning**

The objectives for development within the B4 Mixed Use zone are listed under Land Use Table of WLEP 2012, and the reasonableness or necessity for compliance with each of these objectives is assessed below:

- *To provide a mixture of compatible land uses.*

Comments: The development is located on the fringe of the Chatswood CBD between commercial developments on the western side and the lower scale residential with some commercial uses on the eastern side of the site and low residential to the south. The proposal is sensitive to the opportunities offered by the specific context and provides for an appropriate mix of uses in scale with adjacent approved developments. One building will accommodate retail and shop-top housing, another building will accommodate retail, commercial premises and shop-top housing, while the third building to the south will accommodate a childcare centre and serviced apartments.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Comments: The site is close to the Chatswood City Centre and many buses connecting with Chatswood train station operate in close proximity to the site. Given the site's location at the edge of the Chatswood City Centre, the non-residential uses at the ground floor activate the streets and encourage use of public transport.

- *To allow for city living on the edges of the city centre of Chatswood, which supports public transport use, shopping, business and recreational services that contribute to the vitality of the centre, without undermining its commercial role.*

Comments: The site is an entry point to Chatswood CBD. The proposed development provides a transition from the busy retail environment of Victoria Avenue to the residential neighbourhood to the south. This location has excellent connections to public transport, employment opportunities, facilities and retail outlets and the proposal offers an appropriate residential density while providing for other uses like retail, commercial, childcare and serviced apartments, as part of the edge of Chatswood CBD.

### **Objectives of the Standard**

The objectives of the Height of buildings development standard are listed under Clause 4.3(1) of WLEP2012, and the reasonableness or necessity for compliance with the development standard has been assessed against each of its objectives below:

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

Comments: The height variation on the subject site reflects its desired transitional role in the locality, from the Chatswood CBD heights and density to the lower density residential areas to the south and east of the site. The buildings are generally consistent with the maximum height of 9m to the south and 20 metres on Hercules and Oscar Street and the surrounding approved developments. The lift overruns of both Hercules St and Oscar St buildings are up to 2 metres above the maximum building height, with part of the plant and overruns exceeding the maximum height. The Albert St building is also exceeding the height by 1.2m to clerestory. Contextually, the proposed development is considered acceptable, given that

the area of non-compliance generally includes roof top open space and associated structures.

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

Comments: The proposal minimises the impacts on adjoining or nearby properties with the exception of the single storey dwelling at no. 17 Albert Avenue. However, overshadowing of this dwelling house is unavoidable if the subject site is to be developed in accordance with the WLEP 2012 standards. A more compliant scheme would not minimise impacts in this case. Future development potential for 17 Albert Avenue is taken into account and maximised by the proposal. For these reasons, the site at 17 Albert Avenue retains potential to achieve a development of appropriate urban form with acceptable level of amenity and overshadowing impacts and visual intrusion on current development is considered acceptable.

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

Comments: The proposal integrates well into the context both in term of built form and in mix of uses chosen. The three facades are addressing the three streetscapes.

*(d) to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,*

Comments: The proposal does not disrupt existing views obtained from surrounding properties or public domain.

*(e) to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,*

Comments: The development complies with the maximum FSR for the site and is consistent with the existing and future density for the area and in scale with adjoining sites.

The amended proposal incorporates robust landscape elements and sufficient depth of soil above paving slabs to enable growth of trees. Furthermore, Council's Landscape officer recommended conditions in regard to street tree planting, softening the built form and adding to the public domain amenity.

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

Comments: The development has a maximum height of 22m on one building, 22.5m on the second building and 10.2m on the third building, including plant and lift overruns. The roof projections were reduced in the amended plans and the roof setback from the lower levels of the building and roof forms are not readily visible from the street level. The proposed buildings are considered comparable in height to the approved redevelopment of the Chatswood Community Nursing Home at the adjoining site at no 256 Victoria Avenue.

*(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*

Comments: The development adjoins Chatswood CBD. It is considered that this location is appropriate for the mixed use proposed.

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

Comments: The new development is in harmony with the bulk and scale of surrounding buildings and the streetscapes and appropriately provides a transition from the low density residential development along Albert Avenue to the higher density business, retail and residential development to the north along Victoria Avenue.

### **Grounds for Variation**

Sufficient environmental planning grounds exist to vary the height development standard as specified in Clause 4.3 of the WLEP 2012, as described below:

- The majority of the building meets the prescribed height limit as the breach is mostly a result of lift overruns and plant equipment;
- The proposal generates minimal amenity impacts on streetscapes;
- A more compliant scheme would not further diminish amenity impacts on adjoining properties;
- The proposal provides a suitable transitional architectural response from Chatswood CBD to the lower density heritage listed residential areas to the south; and
- The proposal meets the objectives of the height of building development standard and the objectives for development within the zone.

### **Recommendations for the Clause 4.6 Exception**

Clause 4.6 Exceptions to development standards of WLEP 2012 has the following objectives:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Compliance with the 20m and 9m development standards is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the development standards.

In this particular case, the variation to the development standards satisfies the objectives of the height control and of the zone. Pursuant to Subclause (2) in Clause 4.6 of WLEP 2012, consent may be granted even though the development contravenes the development standards imposed by the environmental planning instrument.

A written exception pursuant to Clause 4.6 has been made requesting variation to

### **Clause 4.4A(14) Maximum Floor Space Ratio for Shop-top Housing**

#### **Extent of Variation**

The proposal is nominated to comply with the maximum floor space ratio of 2.5:1 applicable to the site. Clause 4.4A(14) of WLEP 2012 identifies exceptions to the maximum FSR control and specifies a maximum FSR of 1.25:1 for shop-top housing on land within the B4 Mixed Use Zone, for land bounded by Victoria Avenue, Hercules Street, Oscar Street and Albert Avenue, which includes the subject site, as follows:

*“(14) Development consent must not be granted for shop top housing on land in Zone B4 Mixed Use if:*

- (a) for land bounded by Victoria Avenue, Hercules Street, Oscar Street and Albert Avenue, Chatswood — the floor space ratio for the housing will exceed 1.25:1”*



The new development is proposing an FSR of **1.38:1** for the shop-top housing component which exceeds the development standard of 1.25:1 in Clause 4.4A(14) of WLEP 2012 by **10.4%**. The FSR figure excludes the affordable housing component in accordance with Clause 6.8 Affordable Housing of the WLEP 2012.

### **Applicant's reasons in support of the variation**

In accordance with Clause 4.6(3) of WLEP 2012, the applicant addressed in writing that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard, arguing that:

- the proposal remains consistent with the objectives of the B4 Mixed Use zone;
- the proposal incorporates a mix of retail, office uses and a childcare centre on the ground level, maintaining Chatswood's retail, business and social roles;
- the site is located outside the office core of the Chatswood Centre;
- the development provides for a scheme that is financially viable;
- a complying development will potentially result in an inefficient and un-economic use of land leading to a poor urban design outcome (where housing occurs above vacant unusable commercial spaces); and
- the proposal is consistent with the provisions of orderly and economic development.

Further detailing the last two points above, the applicant submitted an Economic and Market Analysis report prepared by Hill PDA with respect to modelling options and market research to justify the higher residential component proposed. The application makes reference to a report also prepared by Hill PDA for Council in preparation of the newly adopted WLEP 2012 and entitled Chatswood Office Precinct Economic Analysis 2009. As the objective of preserving retail/commercial floor space within Chatswood deals with meeting the strategic employment targets for Chatswood, the applicant argues that the increase in residential component will help cross-subsidise the development of retail/commercial floor space promoting orderly and economic development of the land.

The proposed development will be in the public interest because it is consistent with the objectives for development within the B4 Mixed Use zone and the objectives of the FSR development standard for housing component, as follows:

### **Objectives of the Zoning**

The objectives for development within the B4 Mixed Use zone are listed under Land Use Table of WLEP2012, and the reasonableness or necessity for compliance with each of these objectives is assessed below:

- *To provide a mixture of compatible land uses.*

Comments: The development provides for a mixture of uses, specifically, retail premises and shop-top housing, a commercial level, a childcare centre and serviced apartments. The proposed mix of uses is suitable to the subject site. The use of retail and non-residential uses at the ground floor is supported in activating and adding amenity to the streets.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Comments: The proposal offers an appropriate mix of uses for the site. Pedestrian access on Oscar Street is encouraged by providing a front setback of 1.2m at ground floor, where

there is direct access to retail and connections to commercial areas at level one. Public bike rails are conveniently located just outside the car park entry.

- *To allow for city living on the edges of the city centre of Chatswood, which supports public transport use, shopping, business and recreational services that contribute to the vitality of the centre, without undermining its commercial role.*

Comments: The proposed development provides a transition from the busy retail environment of Victoria Avenue to the residential neighbourhood to the south, taking advantage of the excellent public transport connections provided by the location and offering a financially viable scheme where retail is located at ground floor and commercial is located on first floor, with easy access from Oscar Street.

### **Objectives of the Standard**

The objectives of the floor space ratio development standard are listed under Clause 4.4(1) of WLEP2012, and the reasonableness or necessity for compliance with the development standard has been assessed against each of its objectives.

It should be noted that the development is compliant with FSR and exceeds only the residential component on site. While providing a retail and commercial component are essential to maintaining the commercial character and retaining activity at street level, there are no specific objectives that relate to Clause 4.4A(14) in WLEP 2012. Noting that objectives (f) and (g) are relevant, assessment has to be made against all general objectives of the floor space ratio development standard as follows:

- (a) *to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,*

Comments: The proposal is consistent with the existing and approved density in an area and with the environmental capacity of the land.

- (b) *to limit traffic generation as a result of that development,*

Comments: The subject site is close to the Chatswood City Centre and many buses connecting with Chatswood train station operate in close proximity to the site.

- (c) *to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*

Comments: The proposal will have acceptable impacts on adjoining properties.

- (d) *to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,*

Comments: The height of the development is acceptable given that the majority of the building complies with the height controls, the last level is stepped back, and a fully compliant scheme would fail to further improve the amenity impacts on the surrounding sites or public domain.

- (e) *to permit higher density development at transport nodal points,*

Comments: The proposal is considered appropriate to the context.

- (f) *to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,*

Comments: The local context includes an approved mixed use development to the north, mixed retail/residential development to the east, detached dwellings to the south and a mix of low to medium density residential development to the east. Chatswood Chase shopping

centre is in close proximity to the site. Setting apart the residential component of the proposal, to contribute to Chatswood growth, the development is proposing an appropriate mix, with a retail level and a commercial level in the Oscar Street building, a retail level in the Hercules Street building and a childcare and services apartments in the Albert Avenue building.

*(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*

Comments: The site is adjoining Chatswood CBD to the west. The mix of uses is reinforcing its transitional role in the urban context.

*(h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,*

Comments: The open space proposed at ground floor is complemented by the rooftop space. Planting, outdoor furniture and a lap pool on top of the Oscar Street building will provide passive and active enjoyment for residents.

*(i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,*

Comments: The proposal provides a transition in scale from the low density residential development along Albert Avenue to the higher density business, retail and residential development to the north, along Victoria Avenue. The development is addressing the three (3) street frontages of Hercules Street, Oscar Street and Albert Avenue.

*(j) to encourage the consolidation of certain land for redevelopment,*

Comments: Consolidation with 17 Albert Avenue was encouraged. Details on how the site isolation is assessed and planning principles relevant to the determination are discussed under the WDCP section below. The proposal took into account future potential redevelopment of 17 Albert Avenue.

*(k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.*

Comments: Three (3) affordable housing apartments are included in the development and affordable housing is excluded from the gross floor area calculation.

### **Grounds for Variation**

Sufficient environmental planning grounds exist to vary the floor space ratio development standard for housing component as specified in Clause 4.4A(14), as described below:

- The bulk and scale of the development fits well within the context, suits the land use purpose and the environmental capacity of the land and is comparable with the scale of other developments in the locality;
- The development comprises of three buildings with various uses, heights and façade treatments in order to address each of the three streets it fronts;
- A more compliant scheme would not further diminish amenity impacts on adjoining properties;
- The proposal incorporates at ground level a suitable mix of retail uses, a commercial level and a childcare centre and serviced apartments, all contributing to Chatswood's

- retail and social roles and local employment generation, while maintaining financial viability of the proposal due to the residential component; and
- The proposal meets the total numerical FSR control, the objectives of the FSR development standard and the objectives for development within the zone.

### **Recommendations for the Clause 4.6 Exception**

Clause 4.6 Exceptions to development standards of WLEP 2012 has the following objectives:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

In this specific case compliance with the development standard is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard.

In the circumstances of the case, the variation to the development standard satisfies the objectives of the floor space ratio standard and of the zone. Pursuant to Subclause (2) in Clause 4.6 of WLEP 2012, consent may be granted even though the development contravenes the development standard imposed by the environmental planning instrument.

### **Clause 1.2 Aims of the Plan**

The works are assessed to meet *Clause 1.2 (2)(i)* that states that the aim of the WLEP 2012 is:

- (i) *for heritage - to conserve items of environmental and cultural heritage and to retain the character of heritage conservation areas.*

and the objectives of the zone. The subject site is located opposite to the *South Chatswood Conservation Area* to the south and within the vicinity of three local heritage items:

- 256 Victoria Avenue (Chatswood Community Nursing Home formerly Ku-ring-gai Community Hospital – item no I133 in Schedule 5 of WLEP 2012),
- 8 Albert Avenue (House – item no I50 in Schedule 5 of WLEP 2012) and
- 28 Albert Avenue (House – item no I51 in Schedule 5 of WLEP 2012).

The proposed building fronting the northern side of Albert Avenue is regarded as a transition between Chatswood Central Business district and the dwelling houses in the heritage conservation area. The application took into account the heritage context and, with the amended plans, addressed the presentation of the development to the south, facing the HCA, by including vertical elements that break the horizontality of the facade, by enhancing the main entries and presenting a two storey podium and recessed balconies. The second floor (marked level 3 on plans) is curved and set back at the corner of Hercules Street with Albert Avenue. The curved corner 'gateway' is a statement that emphasises the beginning of the retail area. The scale of the 3 storey building matches the lower scale of the Albert Street façade of Chatswood Village.

A row of canopy trees are conditioned to be planted along Albert Avenue, forward of the building, to provide screening to the southern facade of the development, as recommended by Council's Heritage Architect. Subject to conditions, the works respond satisfactory to the existing and future character of the area and relate well to the heritage significance of the HCA to the south and meet objectives in *Clause 5.10 Heritage Conservation of WLEP 2012*.

Clause 6.8 Affordable Housing

Clause 6.8 of the WLEP 2012 lists **Willoughby Affordable Housing Principles** as follows:

- (a) *affordable housing must be provided and managed in Willoughby so that accommodation for a diverse residential population representative of all income groups is available in Willoughby, and*
- (b) *affordable housing must be rented to tenants whose gross household incomes fall within the following ranges of percentages of the median household income for the time being for the Sydney Statistical Division according to the Australian Bureau of Statistics:*

<i>Very low income household</i>	<i>less than 50%</i>
<i>Low income household</i>	<i>50% or more, but less than 80%</i>
<i>Moderate income household</i>	<i>80–120%</i>

*and at rents that do not exceed a benchmark of 30% of their actual household income, and*
- (c) *dwellings provided for affordable housing must be managed so as to maintain their continued use for affordable housing, and*
- (d) *rental from affordable housing received by or on behalf of the Council, after deduction of normal landlord's expenses (including management and maintenance costs and all rates and taxes payable in connection with the dwellings), must be used for the purpose of improving or replacing affordable housing or for providing additional affordable housing in Willoughby, and*
- (e) *affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with other dwellings in Willoughby, especially in terms of internal fittings and finishes, solar access and privacy.*

The subject site is identified in Area 3 on the Special Provision Area Map for WLEP and the development provides for 4% of gross floor area as affordable housing.

Clause 6.8(3)(b) of WLEP states:

- (b) *if 4% of that accountable total floor space provides a sufficient amount of gross floor area, a condition requiring:*
  - (i) *the dedication in favour of the consent authority, free of cost, of land of the applicant comprised of one or more complete dwellings with a gross floor area of not more than the amount equivalent to that percentage, each dwelling having a gross floor area of not less than 50 square metres, and*
  - (ii) *if the total amount of gross floor area of the complete dwelling or dwellings is less than the amount equivalent to that percentage, the payment of a monetary contribution to the consent authority by the applicant that is the value, calculated in accordance with subclause (4), of the gross floor area equivalent to the difference between those amounts,*  
*to be used for the purpose of providing affordable housing in accordance with the Willoughby Affordable Housing Principles.*

A condition of consent (**Condition 4**) is imposed to ensure three (3) apartments that constitute the majority of the 4% GFA (or 234m<sup>2</sup>) of the housing proposed are dedicated to Willoughby Council. Two apartments are adaptable (Unit A101 and Unit C201 on plans), each with an adaptable car space. The third apartment (D204 on plan) has a car space allocated as well. Conditions of consent will ensure the standard of finishes is at the level of other dwellings within Willoughby LGA, as per WLEP 2012 requirements.

The affordable housing units obtained through these conditions will be managed by a community housing organisation and leased to tenants who meet the eligibility criteria specified in WLEP 2012.

The remainder of the affordable housing contribution to 4% of the residential floor space will be made in the form of a monetary contribution to Willoughby Council. A condition of consent has been imposed in this regard (**Condition 5**).

Therefore, the consent authority is satisfied that the development complies with Clause 6.8(2) of WLEP as:

- a) the Willoughby Affordable Housing Principles were taken into account;
- b) the impact the development on the existing mix and likely future mix of residential housing stock in Willoughby has been considered, and
- c) the affordable housing condition is part of the conditions of the consent.

#### Clause 6.9 Serviced Apartments

Clause 6.9 of WLEP 2012 lists objectives and controls in regard to Serviced Apartments, however, the Clause is not applicable as it specifically refers to “*the change of use from serviced apartments to a residential flat building*” and “*change of use from a dwelling in a residential flat building or shop top housing to a serviced apartment*”.

The definition for ‘serviced apartments’ reads:

*“serviced apartment means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner’s or manager’s agents.*

*Note. Serviced apartments are a type of tourist and visitor accommodation”*

Two levels of serviced apartments are proposed to be located above the childcare centre in the Albert Avenue building. The serviced apartments are accessed via a main entry with access from Albert Avenue and the entry includes stairs, lift and reception and is entirely separated from the childcare. Fire exit stairs lead onto Hercules Street. Storage areas for the serviced apartments are located in the upper basement, directly below the main entry, with access from Albert Avenue. Privacy screens together with shade structures ensure a degree of privacy for the childcare playground area below. Balconies of usable size are provided to the serviced apartments located on the Albert Avenue façade, creating a depth to the façade and being harmonious in form and scale to the character of the South Chatswood HCA.

#### Willoughby Development Control Plan (WDCP)

The site is bordered by the Chatswood Central Business district to the west and north-west. The north of the site is occupied by the Chatswood Community Nursing Home (CCNH). The CCNH have obtained development consent for the erection of a new nursing home and independent living units. The built form of the approved development to the north was taken into consideration during the design of this proposal.

#### Bulk and Scale and Streetscapes

The buildings are broken up into 3 individual building forms in order to address differently the three streetscapes of Oscar Street, Hercules Street and Albert Avenue. The desired future scale of development on the subject site is determined by the Height Building Map in WLEP 2012 which sets a maximum height of 20 metres for the Oscar Street and Hercules Street buildings, while the southern portion of the site permits up to 9m in height. The maximum height of the three buildings is exceeded; however, the non-compliances are primarily limited to the roof canopy located above the roof-top communal recreation facilities and to the lift



overruns. The roof canopies are well setback from the lower levels of the building and will not be visible from the street level. The non-compliances with the height control do not compromise the visual quality of the development and the proposal is consistent with the adjoining existing and approved development.

An objection under the provisions of Clause 4.6 of WLEP 2012 accompanies the development application. The consideration of this Clause 4.6 variation is discussed above and in this specific case the variation is found to be acceptable with respect to the site's development context and the desirable future character of the locality.

Fences are not proposed to street frontages, given buildings are generally built to the street, and include active retail and childcare frontage. It is considered that there is an appropriate delineation of public and private space, with residential areas appropriately provided with separate lobby entrances off the street.

#### Ring Road – Road Widening

A notice of motion has been adopted by Council at a 2010 meeting, with respect to the creation of a ring road for the northern and eastern side of the Chatswood CBD. As there are no specific written controls in the WLEP 2012 or WDCP, Council planners were not in a position to pursue future road widening of Oscar Street in the scope of this application. Council's Traffic & Transport Group Leader also noted that

*"while it would be ideal if a 5.3m setback from Oscar Street were to be provided, it is noted that this is unlikely to be achieved given the lack of a Council resolution identifying a preferred route for a northern bypass and a lack of any specific controls with the WLEP 2012. The northern bypass route is still able to be achieved, albeit by a less direct route, utilising Hercules Street instead of Oscar Street. Given that Hercules Street is already 12.8m in width a bypass route utilising that road would not require any road widening."*

#### 17 Albert Avenue – Site Isolation Issues

A critical intent of Part E1 is to ensure that:

*"no site is isolated by development on an adjoining allotment."*

As previously mentioned in this report, the subject development will result in site isolation for the property at the corner of Oscar Street and Albert Avenue, known as No 17 Albert Ave. No 17 Albert Avenue is a single allotment with a detached dwelling house and outbuilding on a 557.48m<sup>2</sup> site.

Is amalgamation of the sites feasible?

The site isolation proposed with the subject development is tested against the planning principles established by the *L&E Court Case 'Melissa Grech v Auburn Council [2004] NSWLEC 40'* (as established by *G T Brown, Commissioner of the Court*).

- A. *Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.*

Negotiations commenced at an early stage, prior to the lodgement of the development application. A reasonable offer has been made to the owner of 17 Albert Avenue, but the negotiations failed.

- B. *Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the*

*owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.*

Following Council officers requests, an independent valuation report from John Virtue Valuations (JVV) has been procured by the applicant and submitted to Council. A record of negotiations between the parties was also submitted to Council. Regardless, negotiations broke down when the applicant and the owner of 17 Albert Avenue were unable to agree on a purchase price.

- C. *Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.*

The counter-offer made by the owners of the isolated site was regarded at the time as unreasonable (the applicant offered \$1.4 Million and the owners of 17 Albert Avenue asked for \$3.7 Million). In cases where amalgamation of the sites is not achieved, a co-ordinated approach to development on both of the sites should be undertaken, aiming that both sites achieve a development that is consistent with the planning controls or both sites are able to achieve a development of appropriate urban form and with acceptable level of amenity. In the L&E Court decision '*Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189*', the following is stated:

*"To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road."*

Sketch plans were submitted with the application demonstrating that 17 Albert Avenue may be developed independently as a three (3) storey building with basement parking and vehicular access from Oscar Street. *GM Urban Design & Architects* verified the viability of the concept plan, more specifically, if No. 17 Albert Avenue could be developed in a manner that is consistent with the WLEP 2012 intent and the principles of WDCP and SEPP 65 without the negative implications that are usually associated with an isolated site. The amended plans now include provision for a future possible connection to the basement of the subject site, in the event a shared vehicle access is considered more desirable than an additional access on Oscar Street. This requires creation of an easement/ right-of-way over the subject site in favour of 17 Albert Avenue. A condition of consent is imposed in this regard (**Condition 73**).

Subject to conditions, the proposed development will not restrict development of 17 Albert Avenue. The amalgamation of the subject site with 17 Albert Avenue would not result in a superior development, but in a development that would have avoided unwanted amenity impacts on the existing dwelling house. In the absence of an agreement between the owners, subject to conditions in Schedule 2, the proposed development stands the planning principle test above and will result in orderly development of land.

### Setbacks

The proposal does not meet the building separation 'rule of thumb' of the RFDC and it is non-compliant with side setbacks provisions in Part E1.4 of WDCP. The building is setback 6.0m from the boundary shared with No. 256 Victoria Avenue. This represents 50% of the required separation distance between habitable rooms for buildings up to four (4) storeys under the SEPP 65. In this regard, the first four (4) storeys of the Hercules and Oscar Street buildings comply with the separation/setback distances envisaged under the RFDC. The RFDC requires an 18.0m separation between habitable rooms/private open spaces of buildings over five (5) storeys, which equates to a 9.0m setback. Only the upper levels of both the Oscar Street and Hercules Street buildings vary from this requirement with a 6.0m setback.

It should be noted that although the approved scheme for no. 256 Victoria Avenue (DA 2010/549) provides for landscaping on the boundary, the proposal for the subject site also incorporates a landscaped strip along the northern boundary approx. 1.8m wide. Taking into account the landscaping buffer and the fact that openings on the northern façades have been minimised and the apartments and private open spaces are principally oriented towards east or west, the variation to northern setbacks is considered acceptable.

The proposal does not meet site separation with 17 Albert Avenue. The applicant argues that the non-compliance is a result of meeting the intent of the control itself:

*To ensure the positioning of new buildings contribute to the existing or proposed streetscape character.*

The proposal adopts nil setbacks in order to allow for both developments to be built to the boundary, as the concept plans for 17 Albert Avenue demonstrate. This is of benefit mostly for 17 Albert Avenue, as the site is too small to allow for setbacks and at the same time provide a quality development in accordance with the potential of the R3 zone. The amended development also allows for reasonable solar access to future development on 17 Albert Avenue.

### Visual & Acoustic Privacy

Part E1.8 deals with privacy impacts. To east, west and south, the proposed development is unlikely to significantly affect the privacy of neighbours in the vicinity of the site due to separation by public roads. The Albert Avenue building (childcare/serviced apartments) wall with nil setback to 17 Albert Avenue will be blank and will raise no privacy issues. The Oscar Street building wall with nil setback to 17 Albert Avenue will have a two rows of fixed, obscure glass windows, located above the maximum permissible re-development height of 17 Albert Avenue.

Matters relating to internal amenity of future residents of the proposed shop-top developments are discussed under the SEPP 65 section of this report.

### Car Parking

The application includes 159 car parking spaces over three (3) basement levels: 33 spaces in lower basement, 80 spaces in basement and 46 spaces in upper basement.

Major Public Transport Corridors (MPTCs) are defined in Clause C.4.1 - E and include Victoria Avenue west of Penshurst Street. Where any part of the street block adjoins a MPTC, the whole of that block is considered to be included as a MPTC.

The proposed development makes provision for a total of 159 off-street parking spaces, in compliance with *Part C.4.2 Car Parking Requirements of WDCP* as follows:

Development	Car parking spaces required by WDCP	Car parking provided & location in basement	Compliance
74 apartments (8 studios + 36 of 1 bedroom, 18 of 2 bedroom, 12 of 3 bedroom)	<b>Shop Top Housing:</b> Studio-0.5 space 1 space/ dwelling (other than studios) +  Visitor spaces - 1 per 4 dwellings	70 residential car spaces (33 @ lower basement; 37 @basement) +  18 residential visitor car spaces (16 @ basement, 2 @ upper basement)	Yes  Yes
26 serviced apartments (13 studios + 13 of 1 bedroom)	<b>Serviced Apartments:</b> 1 space / 4 units + 1 space/ 2 employees	9 serviced apartments car spaces @ upper basement	Yes
Commercial office 792m <sup>2</sup>	<b>Commercial (office/business premises):</b> 1/ 110m <sup>2</sup>	7 office car spaces @ basement	Yes
Retail 967m <sup>2</sup>	<b>Retail Shop:</b> 1 space per 25m <sup>2</sup>	41 retail car spaces 13 @ basement, 28 @ upper basement	Yes
Childcare 418m <sup>2</sup> 70 children, 14 staff	<b>Childcare:</b> 1 space/ 2 employees  1 space/ 8 children	7 childcare car spaces staff (basement) 7 childcare spaces drop- off/pick-up (upper basement)	Yes
		<u>Total of:</u> 159 car spaces across a three-level ground floor, basement and lower basement car parking area	

The car parking facilities have been designed to comply with the relevant requirements in the Australian Standards: Parking Facilities Part 1 - Off-Street Car Parking AS2890.1 in respect of parking bay dimensions, ramp gradients and aisle widths. The loading/servicing area for the proposed development will be used by the garbage trucks as well. All vehicles enter and exit the site in a forward direction.

Subject to conditions in Schedule 2, the proposal was found to be acceptable by the Council's Development Engineer, Traffic Engineer and Waste Service Co-ordinator.

#### Adaptable Dwellings

Part C.6.3 of the WDCP applies to the shop top housing component within the development. In this regard, if lift access is to be provided, 50% of all dwellings are to be adaptable.

The proposal has 37 adaptable apartments, complying with the control. In regard to car parking accommodation, the development incorporates 12 adaptable car spaces, in excess of the 8 car spaces required by WDCP.

The submitted application is accompanied by an adaptability report and suitable adaptable plans to illustrate compliance with the design requirements.

#### Tree Preservation and Landscaping

The amended landscape plan indicates that the applicant will incorporate street trees to Council's specification. A condition of consent will address this issue, including planting of 4 *Lagerstromia indica* (Crepe Myrtle) trees forward of the property on the Albert Street frontage (**Condition 117**).

A Soil Depths Plan has been included in the amended landscape plan, which shows soil depths within the internal courtyard. Given the size of the planters, there will be adequate root volume to accommodate the planting proposed and to facilitate its ongoing success. The roof-top planting has been redesigned to provide an attractive landscape setting for future use of the roof-top areas. The planters are generous enough to accommodate small tree species, drought tolerant and low maintenance.

#### Active Street Frontages

The block located between Victoria Avenue to the north, Albert Avenue to the south, Hercules Street to east and Oscar Street to the west is not part of the *Active Street Frontages Map*.

#### Undergrounding of Services

In accordance with *Clause C.15 (Undergrounding of services) of WDCP*, all services are required to be located underground for mixed use development and redevelopment of sites in commercial zones. A standard condition of consent is imposed to relocate existing overhead cables to underground as well as provide all new services underground (**Condition 87**). The relocation underground of the overhead cables is justified as a similar condition was imposed by JRPP on consent for DA-2010/549 for residential aged care facility / seniors housing on the adjoining land to the north (256 Victoria Avenue & 38 Hercules Street).

*Part E of WDCP* is addressing specific controls for commercial, shop top housing. The proposed development, displaying a high standard design, meets the principal objectives in Part E, creating a unified streetscape.

By setting back 1.2m the retail on Oscar Street, the proposal allows for a 3.6m wide footpath in order to improve pedestrian amenity and accessibility along this street. A 1 m setback is provided to Albert Avenue in order to provide opportunities for landscaping.

The proposal as a whole is reinforcing the importance of pedestrian areas and provides an attractive environment. The retail, commercial and the residential uses above are well integrated, with separate entries and appropriately located parking within the basement levels. The proposal achieves high levels of residential amenity such as solar access, privacy, noise, views, security, landscaped open space, convenience of access and parking to the occupants and meets the objectives and standards of SEPP 65 – Residential Flat Design Code as detailed above.

#### Albert Avenue building

The six-storey building on Oscar Street is located to the west of the site, with the six-storey building on Hercules Street located to the east of the site and the three-storey building on Albert Avenue located to the south of the site. This follows current height recommendations and is consistent with Council's intent to 'step down' development from the Chatswood City Centre to lower density residential areas to the south. The design responds well to its heritage context located to the south.

The building adjoining Albert Avenue is a three (3) storey development with a proposed childcare centre on the ground floor. The two upper levels include **26 serviced apartments**. The building is positioned along Albert Avenue with a 1m setback to the street. The building is appropriately vertically modulated in response to the single dwelling architecture present in the heritage conservation area across Albert Avenue. The 1m setback allows for landscaping in front of the building and is seen as appropriate given the site's location within a mixed use zone.

The main entry to the Childcare is located centrally on Albert Avenue. There are two other exists (fire exits) from the child care area. The main entry to the serviced apartments is entirely separated from the child care area, located to the side, adjacent to the boundary with 17 Albert Avenue. Privacy screens and minimal balconies towards north ensure that there are minimal opportunities for overlooking from the upper level of the serviced apartments towards the outdoor area of the childcare.

The use and occupation of the ground level of the Albert Avenue building as a childcare centre and the associated car parking on the upper basement level form part of the subject application. This is reflected in the amended development application documentation, although an evacuation plan for the childcare was not submitted. Amendments to the internal layout of the childcare centre have been undertaken to achieve compliance with current legislation and best practices.

The capacity of the centre is of maximum 70 children, of which:

- 16 children between zero (0) and two (2) years of age,
- 15 children aged two (2) and three (3) years, and
- 39 children aged between three (3) and five (5).

Seven (7) drop-off/pick-up spaces are located within the upper level basement, directly below the child care centre and near the designated lift which provides access to the centre. A condition of consent will allow other visitors of the site to use these car spaces outside the childcare operation hours (**Condition 133**). Seven (7) car spaces are allocated exclusively for staff and located at basement level.

The Department of Education and Communities will safeguard that the fit-out of the childcare centre complies with the current legislation (**Condition 131**). To ensure that quality child care facilities in terms of safety and design standards are provided with the application, the plans and documentation were reviewed by Council's Children Services Resource and Support Co-Ordinator who recommended inclusion of a third exit for the child care area. This exit is incorporated in the latest set of plans and enables use in case of fire emergency, should there be a fire in the kitchen area. As such, the children will have three clear exit points from the garden through the building.

Furthermore, a condition of consent requires that an evacuation plan is to be prepared once the operator for the childcare centre is nominated (**Condition 74**). The evacuation plan for the childcare has to take into account the evacuation plan for the serviced apartments and should be submitted to Chatswood Police and Council.

Council's Health Coordinator also imposed conditions to minimise potential adverse impacts on the centre due to noise or potential sources of significant electromagnetic radiation. Subject to recommended conditions, the proposal is assessed to meet objectives and recommendations in *Part G.8 Child Care Services of WDCP*.

## **Neighbour Notification Issues:**

Matters raised within public submissions and commentary on those matters is summarised below:

- The development will cause unreasonable loss of privacy for the existing dwelling and outdoor area at 17 Albert Avenue.

### **Comment**

The development has no openings where adjoining the eastern boundary of the 17 Albert Avenue site (the childcare/serviced apartment building) and fixed with obscure glass windows where adjoining the northern boundary (the retail/commercial/residential building).

**Condition 2(a)** ensures that the development will have minimal visual impacts on the privacy of 17 Albert Avenue.

- The development will cause unreasonable overshadowing on 17 Albert Avenue.

### **Comment**

Any development on the subject site to the maximum FSR and height will cast shadow on the existing underdeveloped site at 17 Albert Avenue. Efforts were made to include 17 Albert Avenue into the proposal. However, as the negotiations in acquiring the site were unsuccessful, the alternative pursued was to have greater regard for future development on 17 Albert Avenue. In this context, overshadowing of existing is viewed as unavoidable.

- The design of the development has an inappropriate nil setback on boundaries with 17 Albert Avenue.

### **Comment**

As negotiation broke down, the applicant submitted sketch plans demonstrating that, despite the limited dimensions, 17 Albert Avenue can be developed independently with nil setbacks from boundaries. The nil setbacks of the development are adopted in order to allow development on the isolated site to directly adjoin the buildings on the subject site.

- No negotiation took place between the applicant and the owners of 17 Albert Avenue.

### **Comment**

The applicant has documented his attempts to negotiate with 17 Albert Avenue. More details on site isolation assessment tested against the planning principles established by the L&E Court can be found in the WDCP section of this report.

- "There is no mention of protective works to 17 Albert Avenue".

### **Comment**

Although unclear on the meaning of "protective works" within the context of the submission, if this refers to a dilapidation report, **Condition 31** of consent is imposed in this regard. Moreover, **Condition 34** requires an independent Geotechnical Engineer and a comprehensive report indicating how the works will be undertaken with safety.

- The drawings are unclear on what amenity impacts will be generated by the development on 59 Hercules Street, including overshadowing due to exceeding height controls; 59 Hercules Street is a single dwelling not a residential flat building as wrongly marked on plan.

### **Comment**

The development will have minimal impacts on 59 Hercules Street located diagonally opposite on the north east corner. No shadow will be cast between 9.00am and 3.00pm mid-winter on the north east corner or on the property in question.

The error has been noted, however, there are no major implications for the assessment.

- The development is proposing an FSR of 2.2:1 exceeding the FSR of 1.25:1.

### **Comment**

The development is proposing a total FSR of 2.21:1, where 2.5:1 is allowed by WLEP 2012. The development is compliant in this regard.

- On street parking will be diminished by the development.

#### Comment

The development provides adequate onsite parking and from a parking point of view the proposal is acceptable.

- The Albert Avenue building did not address the HCA located to the south on Albert Avenue, more specifically “it is too tall and bulky and not in keeping with the single storey facade on the opposite side of Albert avenue and the predominately single storey facade within the conservation area”.

#### Comment

Noted. The fact that the architecture of the Albert Avenue building should better address the heritage area to the south was discussed with the applicant. The latest amended plans now incorporate vertical elements to break up the horizontality of the façade and better address the HCA. However, the height of the building of 9.1m to top of roof slab is seen as acceptable taking into account the maximum height permitted of 9m and the fact that the site is adjoining areas of 20m in height to the north. Council’s Heritage Architect reviewed the amended plans and found the amended design acceptable from the heritage viewpoint. Nonetheless, to better integrate within the context and soften the façade, a row of Crepe Myrtle trees are also required to be planted on the Albert Avenue frontage, forward of the property (**Condition 117**).

#### Conclusion

The subject site is located on the fringe of the Chatswood CBD, between medium scale commercial development on the western side of the block and the lower scale residential with scattered commercial use development on the eastern side of the site. The subject site provides a north-south transition from the busy retail environment of Victoria Avenue to the residential neighbourhood with heritage values located to the south. This location has excellent connections to public transport, presents employment opportunities, easy access to facilities and retail outlets.

The three (3) buildings proposed are aligned and address each of the three street frontages of the site, vary in height from 3 storeys on Albert Avenue to 6 storeys along Hercules and Oscar Streets, in scale with the current local controls and provide a basement car park on 3 levels in order to meet car accommodation requirements.

Contextually, the proposal responds well to the character of the surroundings. The proportion of residential / non-residential FSR is considered acceptable taking into account the location of the site, just outside the core retail and office areas of the Chatswood CBD. The proposed development as amended and further recommended for changes as per *Deferred Commencement Conditions in Schedule 1* provides a good urban design that positively responds to the site, topography and context, while minimising the impact on streetscape and neighbours. The application provides enough details about the childcare centre and associated car parking to facilitate assessment. It is considered that the use and occupation as a childcare centre is acceptable subject to the recommended conditions.

Based on the assessment above, in accordance with the provisions of Section 79C of the Environmental Planning & Assessment Act 1979, WLEP 2012, WDCP and other relevant codes and policies, the proposed development is considered to provide a good architectural response and a good development outcome for the site, noting the special circumstances for variation of the building height control standard in Clause 4.3(2) of WLEP 2012 and the FSR for housing control standard in Clause 4.4A(14) of WLEP 2012 being:



- The bulk and scale of the proposed development suits the land use purpose and the environmental capacity of the land;
- The non-compliances are acceptable in the streetscape context;
- The non-compliances are acceptable in the current economic context;
- The proposal generates acceptable impacts on adjoining properties;
- The objectives of the B4 Mixed Use zoning are met despite the numerical non-compliances; and
- The objectives of the respective controls are met despite the numerical non-compliances.

## **OFFICER'S RECOMMENDATION**

- 1. The submitted Clause 4.6 variation to the *Height of buildings* development standard contained in Clause 4.3(2) of WLEP 2012 be supported for the following reasons:**
  - The proposal is compatible with surrounding buildings and the majority of the building meets the prescribed height limit;
  - The proposal generates acceptable impacts on streetscapes and on adjoining properties;
  - The proposal provides a suitable transitional architectural response;
  - The proposal meets the B4 Mixed Use zone objectives and the objectives of the height of building development standard.
- 2. The submitted Clause 4.6 variation to the Floor Space Ratio for housing development standard contained in Clause 4.4A(14) of WLEP 2012 be supported for the following reasons:**
  - The bulk and scale of the proposed development as a whole suits the use and the environmental capacity of the land;
  - The proposal is addressing the streetscapes and is minimising amenity impacts on adjoining properties;
  - The proposal incorporates an appropriate mix of uses to contribute to the vitality of Chatswood, including employment generation; and
  - The proposal meets the total numerical FSR control, the objectives of the FSR development standard and the B4 Mixed Use zone objectives.
- 3. THAT the application be APPROVED and delegated authority be granted to the General Manager to issue the "Deferred Commencement" consent notice subject to the attached conditions in Schedule 1 and Schedule 2.**

## **SCHEDULE 1**

### **Deferred Commencement Conditions:**

(Including reasons for such conditions)

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 95(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. Revised Stormwater Management Plans**

The stormwater plans prepared by Northern Beaches P/L shall be amended to address the following matters:

- **Storage Volume Required and Permitted Site Discharge (PSD)**  
Full supporting calculations showing the breakdown of the catchment areas for the determination of the proposed storage volume and PSD for each OSD tank shall be submitted. For any bypassing area, the storage volume required and the PSD shall be adjusted by using a computer model such as DRAINS. The use of triangular hydrographs or mass curve calculations is not permitted.
- **Overflow route**  
Details of the overland flow route are to be provided in the event that a storm higher than the design storm occurs, or the OSD device(s) malfunctions. The flow route must be capable of carrying the flows for a 1 in 100 year ARI design storm, assuming that the outlet to the OSD device(s) is fully blocked. Finished ground levels of the route must be shown on the plan.
- **OSD Checklist**  
The OSD Checklist (Appendix F of Councils technical standard No.1) shall be completed, signed and included in the submitted documentation.
- **Stormwater pipes at 1%**  
It shall be noted that all stormwater pipes are to have a minimum longitudinal grade of 1%. The proposed pipe from OSD to junction point shown is shown at 0.50% which is not supported.
- **Pump-out rising main**  
Direct connection of a pumps rising main to Pit A will not be permitted. The rising main shall be directed to the on-site detention system. Grease, oil and sediment must be separated from the water before the water enters to Councils stormwater drainage system.
- **OSD Tank Arrangement**

- The proposed OSD tank arrangement is not supported as the top water level is higher than the level of OSD Tanks graded access.
- The long flat sections of OSD will not be supported as they do not allow the necessary pressure head for the system to operate successfully.
- The proposed 2 OSD tank arrangement with separate orifice plates shall not be supported. With the 2 OSD tanks located side by side there is no apparent reason to have 2 separate systems.

(Reason: Compliance)

## SCHEDULE 2

### Conditions of Consent that apply when consent commences to operate:

(Including reasons for such conditions)

### CONSENT IDENTIFICATION

The following condition provides information on what forms part of the Consent.

#### 1. Approved Plan/Details

The development must be in accordance with the following plans:

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Date Stamped by Council	Prepared by
arch	1.01, 1.02, 1.03, 1.04, 1.05, 1.06, 1.07, 1.08, 1.09, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.33	D	30 Oct 2013	13 Nov 2013	REVAY & UNN
eng	D01	E	5 Nov 2013	13 Nov 2013	Northern Beaches Consulting Engineers Pty Ltd
eng	D02, D03	D	5 Nov 2013	13 Nov 2013	Northern Beaches Consulting Engineers Pty Ltd
eng	D04	C	5 Nov 2013	13 Nov 2013	Northern Beaches Consulting Engineers

					Pty Ltd
eng	D05, D06	A	15 Apr 2013	13 Nov 2013	Northern Beaches Consulting Engineers Pty Ltd
eng	D07	B	5 Aug 2013	13 Nov 2013	Northern Beaches Consulting Engineers Pty Ltd
eng	D08	B	5 Nov 2013	13 Nov 2013	Northern Beaches Consulting Engineers Pty Ltd
Landscape	LP.01B Sheet 1	B	05 Aug 2013	-	NARELLE SONTER BOTANICA
Landscape	LP.01B Sheet 2	B	15 Jul 2013	-	NARELLE SONTER BOTANICA

the application form and any other supporting documentation submitted as part of the application *and as amended by Deferred Commencement Conditions in Schedule 1, except for:*

- a) any modifications which are “Exempt Development” as defined under S76(2) of the Environmental Planning and Assessment Act 1979;
- b) otherwise provided by the conditions of this consent.  
(Reason: Information and ensure compliance)

## PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

### 2. Amendments

The proposal is to be amended in the following manner:

- (a) All the windows shown on the approved plans to be located on the walls with nil setbacks to 17 Albert Avenue must be obscure and not operable for the life of the development.
- (b) The structural design of the upper basement car park shall allow for the future connection of the basement with a future car park located on 17 Albert Avenue in the north-eastern corner of no 17 Albert Avenue site (marked on plan ‘Possible Access for Parking’). The area fronting the potential access must be kept clear of any obstructions and shall be marked accordingly.

Details are to be included on the Construction Certificate plans.  
(Reason: Ensure compliance)

### 3. Section 94A Contributions

A monetary contribution of \$303,156.28 (subject to indexing as outlined below) is to be paid in accordance with Section 94A of the Environmental Planning and Assessment Act, 1979.

This contribution is based on 1% of the estimated development cost of \$30,315,628 at 15 April 2013 and the adopted Section 94A Contributions Plan.

To calculate the monetary contribution that is payable, the proposed cost of development is to be indexed to reflect quantity variations in the Building Price Index (Enterprise Bargaining Agreement) [BPI(EBA)] between the date the proposed cost of development was agreed by the Council and the date the levy is to be paid as required by this Plan.

To calculate the indexed levy, the formula used to determine the cash contribution is set out below.

$$NL = \$Lo + \$Lo \times \frac{[\text{current index} - \text{base index}]}{\text{base index}}$$

Where:

**NL** is the new section 94A levy

**Lo** is the original levy

**Current index [BPI(EBA)]** is the Building Price Index (Enterprise Bargaining Agreement) as published by the NSW Public Works available at the time of review of the contribution rate

**Base index [BPI(EBA)]** is the Building Price Index (Enterprise Bargaining Agreement) as published by the NSW Public Works at the date of the proposed cost of development as above

In the event that the current BPI(EBA) is less than the previous BPI(EBA), the current BPI(EBA) shall be taken as not less than the previous BPI(EBA).

Prior to payment Council can provide the value of the indexed levy.

Copies of the S94A Contributions Plan are available for inspection online at [www.willoughby.nsw.gov.au](http://www.willoughby.nsw.gov.au)  
(Reason: Statutory requirement)

### 4. Affordable Housing Dwellings

The applicant must enter into a Deed with the Council providing for the transfer of title of the affordable housing dwellings to the Council, free of charge. The Deed is to be generally in accordance with the Housing Transfer Deed template available at Council and must be submitted to the Council and executed prior to the issue of the Construction Certificate.

The terms of this agreement must be to the satisfaction of the Council and must include a provision to the effect that strata subdivision is to occur within four months of the issue of the Occupation Certificate and the transfer of the dwellings is to be completed within two months of the registration of any strata subdivision of the development. The applicant must agree to pay the Council's reasonable legal costs of the Council satisfying itself that the agreement is appropriate, and a provision to this effect is to be included in the agreement.

The construction certificate plans should demonstrate that the requirements of the Housing Transfer Deed are satisfied.

The affordable housing dwellings providing a total gross floor area of 230m<sup>2</sup> are to be dedicated to Willoughby City Council for the purpose of affordable housing in accordance with Clause 6.8 of Willoughby Local Environmental Plan 2012 as outlined below:

Unit A101 - 2 bedroom unit – adaptable - one adaptable car space provided,  
Unit C201 - 2 bedroom unit – adaptable - one adaptable car space provided, and  
Unit D204 - 1 bedroom unit - one car space provided.  
(Reason: Ensure compliance)

## **5. Affordable Housing Contribution**

A monetary contribution for the purpose of providing Affordable Housing that brings the total amount of floor space required for affordable housing to 4% of the accountable total floor area of the development is to be paid to Council. In this case, a monetary contribution for **4m<sup>2</sup>** of floor space is required.

In calculating the monetary contribution reference is to be made to the market value of dwellings of a similar size and taken from the most recent median sales price of such dwellings for the Willoughby local government area as documented in the Rent and Sales Report NSW published by the Department of Housing or, if another document has been approved for that purpose by the Director – General, that document.

Prior to payment of the contribution evidence shall be submitted to Council's Director of Environmental Services demonstrating how the contribution has been calculated in accordance with the above requirement and WLEP 2012 provisions.

The contribution is to be paid prior to issue of the Construction Certificate.  
(Reason: Ensure compliance)

## **6. Additional Details and/or Information for Construction Certificate**

Any requirements outlined by conditions of this consent requiring changes to be noted on plans and/or information to be submitted including compliance with the Building Code of Australia are to be incorporated within the Construction Certificate plans and/or documentation.  
(Reason: Ensure Compliance)

## **7. Adaptable Units**

Adaptable residential units for disabled persons are to be provided at a rate of 50% of units, to a total of 37 units. Each adaptable unit is to be nominated on the Construction Certificate drawings and is to be provided with minimum one car space

per unit, including the 12 adaptable residential car spaces (in accordance with the Willoughby Development Control Plan Part C.6 – Access, Mobility and Adaptability).  
(Reason: Amenity)

## **8. Heritage - Photographic Survey**

A photographic survey is to be submitted to the accredited certifier and a copy lodged with Willoughby City Council for its historical archives. The photographic survey is to be submitted in a report format, and shall include:

- a) A front cover marked with:
  - the name/location of the property;
  - the date of the survey;
  - the name of the company or persons responsible for the survey.
- b) A layout plan of the existing building and site; identifying rooms and features shown in the photographs.
- c) Photographs of the interior, exterior, grounds and a streetscape view of the building, labelled to indicate their location in relation to the layout plan. Photographic records of each elevation and each room and any architectural/decorative features or finishes are to be included. Where colour is a feature of the building (for example, the building features stained glass, leadlight or polychrome brickwork), additional colour photographs are to be included in the photographic survey report.

(Reason: Historical Archives of Willoughby CC)

## **9. Damage Deposit**

The applicant shall lodge a Damage Deposit of \$115,000 (GST Exempt) as cash, cheque or an 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. For the purpose of inspections carried out by Council Engineers, an inspection fee of \$66 (GST Exempt) is payable to Council. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.

(Reason: Protection of public asset)

## **10. Temporary Ground Anchors**

Obtain written permission from all private property owners affected by any encroachment either below ground or the air space above as a result of the above works prior to issue of the Construction Certificate. Copies of the permission shall be sent to Council. All works associated with the drilling and stressing of the ground anchors shall be installed in accordance with approved drawings.

(Reason: Encroachment of works)

## **11. CCTV Report of Existing Council Pipe System**

A qualified practitioner, with a certificate of attainment in NWP331A Perform Conduit Evaluation, shall undertake a closed circuit television (CCTV) inspection and then report on the existing condition of the Council drainage pipeline. No person is to enter any Council stormwater conduit without written approval from Council. The camera and its operation shall comply with the following: -

- The internal surface of the drainage pipe shall be viewed and recorded in a clear and concise manner.

- The CCTV camera used shall be capable to pan, tilt and turning at right angles to the pipe axis over an entire vertical circle to view the conduit joints.
- Distance from the manholes shall be accurately measured and displayed on the video.
- All pipe joints and defects are to be inspected by stopping movement and panning the camera to fully inspect the joint and/or defect.
- The inspection survey shall be conducted from manhole to manhole.

The written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council. A written acknowledgment shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

(Reason: Protection of public asset)

## **12. 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 Victoria Avenue via a 375 mm RCP in accordance with Council's specification. A grated drainage pit (min. 600mm x 600mm) 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)

## **13. Analysis of Outlet Condition**

The capacity of the existing Council stormwater drainage system at the proposed connection of the outlet shall be hydraulically evaluated using the Hydraulic Grade Line method to ensure that no stormwater will be able to surcharge from Council's system to the proposed drainage system. Full engineering details of the hydraulic evaluations prepared and signed by a practising Civil Engineer shall be submitted to Council for consideration.

(Reason: Prevent property damage)

## **14. Detailed Stormwater Management Plan (SWMP)**

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

(Reason: Ensure Compliance)

## **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. Construction Management Plan (CMP)**

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

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

(Reason: Compliance)

#### **17. 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: -

- Be prepared by a RTA accredited consultant.
- 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.
- 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.
- Detail anticipated truck movements to and from the site during various stages of construction, truck access routes to and from the site and the arterial road network, arrangements during construction for parking of construction workers, any anticipated requirements for work zones, measures to minimise the impact of construction on adjacent parking and through traffic, any measures to minimise impacts on pedestrians passing the site or to protect pedestrians.
- 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)

#### **18. Vehicle Access – Engineer’s Certification**

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

- a) That finished driveway gradients and transitions will not result in the scraping of the underside of cars.
- a) That a maximum gradient of 5% is provided for the first 6 metres from the property boundary.
- b) That the proposed vehicular path and parking arrangements comply in full with AS2890.1 – 2004 in terms of minimum dimensions provided,
- c) That the headroom clearance of minimum 2.2 metres between the basement floor and any overhead obstruction is provided which complies with Section 5.3.1 of AS 2890.1 and Section 2.4 of AS2890.6.
- d) That the headroom clearance of minimum 2.5 metres is provided to all parking spaces for people with disabilities which complies with Section 2.4 of AS2890.6.

(Reason: Ensure Compliance)

#### **19. Design of 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 Brick Paver footpath (max. 2.5% crossfall) for the full frontage of the development site plus 6m beyond in Oscar Street in accordance with Council's specification and Standard Drawings SD110. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- Construction of 1.5 metres wide footpath (max. 2.5% crossfall) and perambulator ramp for the full frontage of the development site plus 6m beyond in Albert Avenue and Hercules Street in accordance with Council's specification and Standard Drawings SD105 and SD100. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- Reconstruction of existing kerb and gutter with associated half road reconstruction for the full frontage of the development site in Albert Avenue, Hercules Street and Oscar Street in accordance with Council's specifications and Standard Drawing SD105.
- Reconstruction of half road pavement for the full frontage of the development site in Albert Avenue, Hercules Street and Oscar Street in accordance with Council's specifications (AUS-SPEC).

- Construction of a 5.5 metres wide vehicular crossing in Hercules Street and in Oscar Street in accordance with Council's specification and Standard Drawings SD105.
- Construction of one (1) Council's standard kerb inlet pit with a 2.4m lintel on Oscar Street at the north west corner of the subject property. Step irons must be provided if depth is greater than 1.2m.
- Construction of a minimum 375mm diameter Steel Reinforced Concrete Pipe (RCP) from the proposed kerb inlet pit at the north west corner of the subject property in Oscar Street to the existing kerb inlet pit at the corner of Oscar Street and Victoria Avenue.
- Reconstruction of one (1) Council's standard kerb inlet pit with a 2.4m lintel to the existing Council's underground system at the corner of Victoria Avenue and Oscar Street. Step irons must be provided if depth is greater than 1.2m.

The required plans must be designed in accordance with Council's specifications (AUS-SPEC). A minimum of three (3) weeks will be required for Council to assess the *Roads Act* submissions. Early submission is recommended to avoid delays in obtaining a Construction Certificate. 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)

## 20. Internal Noise Levels Residential

To minimise the noise intrusion from any external noise source, the building shall be designed and constructed to comply with the following criteria with windows and doors closed:

Internal Space	Time Period	Criteria $L_{Aeq}(\text{period})$
Living Areas	Any time	40 dB(A)
Sleeping Areas	Day (7am – 10pm)	40 dB(A)
	Night (10pm – 7am)	35 dB(A)

Note:

1. The above criteria does not apply to kitchens, bathrooms, laundries, foyers, hallways, balconies or outdoor areas.
2. The above criteria define the minimum acceptable levels. Buildings may be built to a better than average standard by applying more stringent criteria.

Certification from an appropriately qualified acoustic consultant that the building has been designed to meet this criteria shall be submitted to the Principal Certifying authority prior to issue of the Construction Certificate.  
(Reason: Amenity)

## **21. 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:
  - i) AS1668.1, AS1668.2 and AS3666.1 as applicable; and/or
  - ii) Alternative solution using an appropriate assessment method

Details of all mechanical ventilation and exhaust systems, and certification provided by an appropriately qualified person verifying compliance with these requirements, shall be submitted to the Principal Certifying Authority.

(Reason: Ensure compliance)

## **22. Hazardous Building Material Assessment**

A hazardous building material assessment shall be undertaken by an appropriate qualified person and is to be submitted to the Principal Certifying Authority for approval. The assessment shall identify any likely hazardous materials within any structure to be demolished and provide procedures on how to handle and dispose of such materials.

(Reason: Environmental protection/public health and safety)

## **23. Acoustic Assessment**

Prior to the issue of a Construction Certificate an acoustic assessment shall be undertaken by an appropriately qualified and practicing acoustical consultant. The assessment shall include but should not be limited to:

- Project description;
- Relevant guidelines or policy that have been applied;
- Background noise measurements;
- Details of instruments and methodology used for noise measurements (including reasons for setting descriptors used, calibration details);
- A site map showing noise sources, measurement locations and noise receivers;
- Noise criteria applied to the project (must be in accordance with the *NSW Industrial Noise Policy*);
- Noise predictions for the proposed development (must identify all operations conducted on site that may cause a noise impact including but not limited to the commercial/retail use, childcare centre use, use of loading bay and potential noise from vehicles entering and exiting the development);
- A comparison of noise predictions against noise criteria;
- A discussion of proposed noise mitigation measures, the noise reduction likely and the feasibility and reasonableness of these measures; and
- How compliance can be practically achieved together with a statement confirming compliance.

The Principal Certifying Authority (PCA) must ensure that the acoustic mitigation measures identified in the acoustic assessment are suitably incorporated into the development prior to the issue of the Construction Certificate.

(Reason: Amenity)

## **24. Childcare Kitchen Fitout Details**

The fitout of the food preparation kitchen areas of the childcare centre must comply with Australian Standard AS4674-2004 Design, Construction and Fitout of Food Premises and with the requirements of the Food Safety Standards. Detailed plans shall be submitted to the Principal Certifying Authority together with certification from a suitably qualified person that the fitout complies with the standards prior to a Construction Certificate being issued.

The plans are specifically required to show compliance with the following:

- a) A dedicated hand wash basin/s shall be located in each area where contamination of the hands is likely to occur and must be within 5m from any place where food handlers are handling food. The hand wash basin/s shall be of a suitable size (500mm x 400mm), fixed to the wall at bench height and accessible at all times.
- b) All floors, walls & ceiling finishes to the kitchen area must be of an approved material that is impervious to moisture.
- c) Floors in the kitchen shall drain to a floor waste and be coved at the intersection of the walls.
- d) All walls must be solid construction with no voids or gaps.
- e) All fixtures and equipment must be sealed to the wall and a solid plinth. Cupboards must be vermin proofed and shall not consist of voids. As an alternative, fixtures and equipment can be of an open design on legs with a minimum clearance of 150mm to the floor.
- f) A double bowl washup sink and a dishwasher shall be provided.
- g) The cooking equipment shall be provided with mechanical ventilation.  
(Reason: Health and compliance)

## **25. Noise Mechanical Services**

To minimise the impact of noise onto residential receivers, all mechanical services shall be designed and installed to ensure ambient noise levels are maintained. Details of the proposed equipment, siting and any attenuation required shall accompany the application for Construction Certificate.  
(Reason: Amenity)

## **26. Internal Noise Levels - Childcare**

The noise levels within the childcare centre must comply with the following:

- internal noise levels within indoor play or sleeping areas of the centre, when the childcare centre is in operation shall not exceed  $L_{Aeq1hr}$  40 dB(A).
- intrusive noise onto any outdoor play or activity area, when the childcare centre is in operation shall not exceed  $L_{Aeq1hr}$  55 dB(A).

Certification from an appropriately qualified acoustic consultant that the building has been designed to meet this criteria shall be submitted to the Principal Certifying authority prior to issue of the Construction Certificate.  
(Reason: Amenity)

## **PRIOR TO COMMENCEMENT**

**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.**

**27. 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 the Principal Certifying Authority.

(Reason: Environment Protection/Waste Reduction)

**28. 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 the Principal Certifying Authority.

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

(Reason: Information)

**29. Building Site Hoarding**

Provision of a hoarding, complying with WorkCover NSW requirements which is to be erected to restrict public access to the site (including demolition and/or excavation site) and building works, materials or equipment. A separate application is to be made to Council's Infrastructure Services Division for this purpose should the hoarding be located on Council property.

(Reason: Safety)

**30. Site Management**

A site Management Plan shall be submitted to and approved by the Principal Certifying Authority. The site management plan shall include the following measures as applicable.

- Details and contact telephone numbers of the owner, builder and developer;
- Location and construction details of protective fencing to the perimeter of the site;
- Location of site storage areas, sheds and equipment;
- Location of stored building materials for construction;
- Provisions for public safety;
- Dust control measures;
- Site access location and construction;
- Details of methods of disposal of demolition materials;
- Protective measures for tree preservation;
- Provisions for temporary sanitary facilities;
- Location and size of waste containers and bulk bins;
- Soil and Water Management Plans (SWMP); comprising a site plan indicating the slope of land, access controls, location and type of sediment controls and storage/control methods for material stockpiles;
- Construction noise and vibration management.

The site management measures shall be implemented prior to the commencement of any site works and maintained during the construction period. A copy of the approved Site Management Plan shall be conspicuously displayed, maintained on site and be made available to the PCA/Council officers upon request.

(Reason: Environment protection, public health and safety)

**31. Dilapidation Report of Adjoining Properties**

Submit a photographic survey and report of the adjoining properties at 38 Hercules Street and 17 Albert Avenue to the PCA and all owners of these adjoining properties. Also, submit a photographic survey and report of the adjoining properties at 47 Neridah Street; 256 Victoria Avenue; 47 Hercules Street, 51 to 55, 57 Hercules Street and 59 Hercules Street; 14, 16, 20 and 22 Albert Avenue to the PCA and all owners of these adjoining properties.

Such photographic surveys and reports shall be prepared by a suitably qualified person, detailing the physical condition of these properties, both internal and external including items as walls, ceilings, roof, structural members and other items as necessary.

In the event of a property owner refusing to allow access to carry out the photographic survey, the proponent must demonstrate in writing to the PCA, and provide a copy to Council, that the purpose of the survey was made clear to the property owner and that reasonable attempts to obtain access were made.

(Reason: Protection of adjoining owners)

**32. Public Risk Insurance Policy**

The Public Risk Insurance Policy held by (a) excavation (b) building contractor must not be less than \$10 million and must contain a clause indemnifying Council against any claims in respect of the (a) excavation (b) building contractor works. A copy of this policy is to be submitted to Council.

(Reason: Limit liability)

**33. 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 Principal Certifying Authority.

(Reason: Ensure Compliance)

**34. Geotechnical Report**

The site and adjoining sites (including the road reserve or other public space) are to be inspected by an independent Geotechnical Engineer and a comprehensive report shall be submitted to the accredited certifier indicating 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: Protection of adjoining properties)

**35. 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)

### **36. 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.

(Reason: Legal requirements)



**37. 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)

**38. Garbage Compactor Vehicles**

In order that garbage compactor vehicles can service the premises entrances, exits, driveways, vehicle ramps, loading dock way and garages, shall be designed with the following minimum dimensions:

- a) 3700 mm width, 3600 mm clear height;
- b) 10500 mm radius turning circle;
- c) ramp gradients should be 1 in 15 m for the first 4 m from street or colonnade alignment then 1 in 8 or 1 in 6 with a transition of 1 in 12 for 4 m at the lower end.

**Note:** Clearance must take account of roller shutters, service ducts, pipe work etc.

(Reason: Ensure compliance)

**39. Garbage Rooms**

Garbage rooms must be large enough to store the generated waste from the proposed uses and allowance should be made for separation of putrescible waste from waste suitable for recycling. The garbage room is not to be smaller than 5000mm x 4000mm, have a 2400mm ceiling height, with a door entry width not less than 2200mm.

(Reason: Ensure compliance)

**DURING DEMOLITION, EXCAVATION AND CONSTRUCTION**

**The following conditions are to be complied with throughout the course of site works including demolition, excavation and construction.**

**40. Affordable Housing - Fittings and Finishes**

The applicant is to submit to the Council details of all internal fittings and finishes of the affordable housing dwellings (ensuring that the internal fittings and finishes are at the same standard as other dwellings within the development) and is to advise Council when installation of fittings and finishes for the affordable dwellings is to commence.

Any costs associated with bringing the affordable housing dwellings to the standards required are to be borne by the applicant.

(Reason: Amenity)

**41. 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)

#### **42. 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)

#### **43. 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 and be maintained throughout construction.  
(Reason: Safety)

#### **44. 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)

**45. 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)

**46. Suitable Barricades**

Suitable barricades shall be erected during building works on Councils footpath and where directed by the Principal Certifying Authority and/or Council to protect pedestrians using the footpath.  
(Reason: Public safety)

**47. Demolition Work AS 2601**

Demolition works being carried out in accordance with the requirements of AS 2601 "The demolition of structures".  
(Reason: Safety)

**48. Suitable Footpath Crossing Provided**

Adequate provision is to be made to ensure that a suitable footpath crossing is provided to the site so as to allow safe pedestrian access along the footpath area at all times.  
(Reason: Protection of public safety)

**49. 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)

**50. Wash Down and Shaker Areas**

During Demolition, Excavation and Construction, wash down and shaker areas are to be provided with facilities for the collection and treatment of waste water.  
(Reason: Environmental protection)

**51. Rock Hammering/Sawing**

Having regard to the residential nature of surrounding area rock sawing is to be used in preference to rock hammering during the excavation/construction phase of the development.  
(Reason: Amenity)

**52. 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)

### **53. 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)

### **54. 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)

### **55. 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)

### **56. Survey Certificate**

Certification of the following shall be submitted to the Principal Certifying Authority by a registered surveyor:

- a) Prior to the construction of footings or first completed floor slab (i.e. prior to pouring of concrete) showing the area of the land, building under construction and boundary setbacks;
- b) At each level indicating the level of that floor to Australian Height Datum;
- c) Upon completion of the roof framing, before the roofing is laid, indicating the ridge height to Australian Height Datum;
- d) At roof slab level indicating the level of that slab to Australian Height Datum;
- e) At completion indicating the relation of the building and any projections to the

boundaries, and that the building has been erected to the levels approved in the Development Application.

(Reason: Ensure compliance)

**57. 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)

**58. 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)

**59. 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)

**60. 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)

**61. 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)

**62. 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)

**63. Swimming Pool Safety During Construction**

The swimming pool is to be made safe during the construction of the development, by the erection of a temporary safety fence to the satisfaction of the accredited certifier. The pool is not to be filled with water until the building is completed and occupied and a child resistant barrier erected in accordance with the regulations prescribed in the Swimming Pool Act 1992.

(Reason: Safety)

**64. Temporary Ground Anchors – Supervision**

A professional Geotechnical Engineer shall be on site to supervise the piling, excavation and finally the installation and stressing of the ground anchors. On completion of these works, a report from the Geotechnical Engineer shall be submitted to Council for record purposes.

A Chartered Professional Engineer shall monitor adjoining public infrastructures to detect any ground heaving or settlement during and after the installation of the piling and ground anchors. A rectification report shall be submitted to Council should unacceptable displacements occur within the zone of influence.

(Reason: Protection of public assets)

**65. 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.

(Reason: Legal requirement)

**66. 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)

**67. Tree Protection**

i) Retain and protect the following trees and vegetation throughout the demolition and construction period:  
All trees located within the Hercules St road reserve with the exception of tree Nos. 2 and 3, as noted in the report of Treescan dated March 2013, which are required to be removed to accommodate driveway crossover.

ii) The above trees must be clearly marked and protection devices in place to prevent soil compaction and machinery damage.

iii) Tree roots greater than 50mm diameter are not to be removed unless approved by a qualified Arborist on site. All structures are to bridge roots unless directed by a qualified Arborist on site.

iv) Tree protection measures must comply with the AS 4970-2009 Protection of trees on development sites.

(Reason: Tree Management)

**68. Public Tree Protection**

Unless identified by the development consent, no tree roots over 50mm diameter are to be damaged or cut and all structures are to be bridged over such roots.

Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, the applicant is to immediately Contact Council's Open Space section and resolve the matter to Council's satisfaction.  
(Reason: Tree management)

**69. 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)

**70. Waste Classification – Excavation Materials**

All materials excavated and removed from the site (fill or natural) shall be classified in accordance with the Environment Protection Authority (EPA) Waste Classification Guidelines prior to being disposed of to a NSW approved landfill or to a recipient site.  
(Reason: Environment and Health Protection)

**71. Hazardous Materials – Clearance Certificate**

Following completion of the removal of any identified hazardous material associated with demolition works, a clearance certificate shall be issued by an appropriately qualified occupational hygienist and submitted to the Principal Certifying Authority. The clearance certificate shall verify that the site is free from any hazardous materials from the demolished buildings.  
(Reason: Health and safety)

**PRIOR TO OCCUPATION OF THE DEVELOPMENT**

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

**72. Affordable Housing - Fittings and Finishes**

Written confirmation from Council that it is satisfied that the internal fittings and finishes of the completed affordable Housing Units are at the same standard as other dwellings within the development is to be submitted to the Principal Certifying Authority.  
(Reason: Ensure Compliance)

**73. Benefiting Easement**

In order to allow proper and orderly development of no 17 Albert Avenue, the applicant is to provide a right of carriageway to the property, registered on the Title, burdening the circulating aisle at Basement Level and at Upper Basement Level for the benefit of 17 Albert Avenue.

The easement should entitle 17 Albert Avenue owners and users to use the driveway and access within the car park in the upper basement to access any future parking associated with a future development on 17 Albert Avenue.

Documentary evidence of registration of the easement with the Land and Property Information in NSW shall be submitted to the Principal Certifying Authority and Council prior to issue of any Occupation Certificate.  
(Reason: Orderly and economic development of the land)

**74. Emergency Evacuation Plans for Childcare Centre**

An Emergency Evacuation Plan is to be prepared for the Childcare Centre in conjunction with the Emergency Evacuation Plan prepared for the Serviced Apartments located above the Childcare Centre.

Input shall be sought from the Fire Brigade during the Plan's preparation.

A copy of the Emergency Evacuation Plan for the Child Care is to be submitted to Council, PCA and to the Commander for North Shore LAC – NSW Police Force, Chatswood. A written acknowledgement shall be obtained attesting that the Police has no objections to the plan. The Childcare Centre must not be occupied in the absence of this acknowledgement.

A copy of the plan must be readily available on site at all times during the operation of the Childcare Centre.

(Reason: Safety and Emergency Evacuation)

**75. Certification of Slip Resistant Surfaces**

Upon completion, certification being submitted to the Principal Certifying Authority that all floor finishes and floor surfaces (excluding carpet) have been tested on site to achieve a slip resistant classification under wet and dry conditions to comply with the current version of AS/NZS 4586, Table 3 of CSIRO/SA publication HB 197 (An Introductory Guide to the Slip Resistance of Pedestrian Surface Materials) and Willoughby Development Control Plan Part C.6 Access, Mobility and Adaptability.

(Reason: Public safety)

**76. Swimming Pool - Access**

Access to the swimming pool shall be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992.

- a) The pool shall not be filled with water, or be allowed to collect stormwater, until the installation of the child resistant barrier is completed to the Principal Certifying Authority's satisfaction.
- b) The barrier is to conform to the requirements of AS 1926 –  
Part 1 – "Safety Barriers for Swimming Pools"  
Part 2 – "Location of Safety Barriers for Swimming Pools"

(Reason: Safety)

**77. Swimming Pool Notice**

The owner of the pool shall display a notice showing:

- (a) Appropriate instructions of artificial resuscitation methods.
- (b) A warning stating "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL"

NB: This notice shall be kept in a legible condition and at the pool side.

(Reason: Safety)

**78. Emitted Noise**

The noise emitted by the

- (a) Swimming pool pump and filter
- (b) Spa pool pump and filter



equipment shall be not more than 5dBA above the ambient background noise level measured at the boundaries in accordance with the current Environment Protection Authority (EPA) guidelines for noise assessment.

The equipment is not to operate between 8pm to 7am weekdays and 8pm to 8am on weekends and public holidays. A time switch is to be installed on the power source for the above equipment to ensure that the non-permitted hours are observed.

(Reason: Amenity)

**79. Surface Water Runoff**

Surface water runoff from paved areas shall be directed away from neighbouring properties and disposed of to the satisfaction of the Principal Certifying Authority.

(Reason: Health and amenity)

**80. Roof Stormwater Disposal**

Roof stormwater shall be disposed of to:

- a) Council's kerb and gutter
- b) In accordance with approved hydraulic engineer design.

(Reason: Health and amenity)

**81. 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 latest BASIX Certificate have been satisfied.

(Reason: Environmental Sustainability)

**82. Access for the Disabled - Disability Discrimination Act**

The building/development must comply with the requirements of the Disability Discrimination Act.

It should be noted that this approval does not guarantee compliance with this Act and the applicant/owner should investigate their liability under this Act.

(Reason: Access and egress)

**83. Access for the Disabled - Finished Floor at Front Door**

The finished floor at entries to the site is to be flush with and on the same grade as the existing footpath to facilitate access for people with disabilities.

(Reason: Access and egress)

**84. Fire Safety Certificate Forwarded to NSW Fire and Rescue**

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 and Rescue, 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)

## **85. 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 and vertical structures of the basement parking area shall be painted 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. The means to isolate the residential and commercial components of the building shall be incorporated into the development, including the security keying of lifts and doors and other measures for access control.
- 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. All storage areas within the car park to be physically enclosed and lockable for security reasons. A small portion of each storage area shall be of solid construction (i.e. Cupboard).

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

## **86. Visitor Parking Spaces**

The 18 residential visitor car parking spaces are to be physically identified on site, and maintained free of obstruction for the exclusive use of visitors to the premises at all times.

(Reason: Amenity)

## **87. Services - Electricity Supply and Telecommunication Mains**

All existing and proposed overhead electricity supply and telecommunication mains and other overhead services around the perimeter of the site are to be relocated underground to the satisfaction of the relevant utility provider (eg Energy Australia, Telstra) and Willoughby City Council at full cost to the applicant.

(Reason: Public amenity)

**88. 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)

**89. 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)

**90. Temporary Ground Anchors – Destressing**

All damages to Council's infrastructures due to the works associated with the piling and installation of the ground anchors shall be restored to the requirements of Willoughby City Council at no cost to Council. All ground anchors shall be de-stressed by the removal of the anchor heads and protruding tendons on completion of the works. A certificate issued by a professional Geotechnical Engineer verifying that all ground anchors have been decommissioned shall be submitted to Council.

(Reason: Destressing of ground anchors)

**91. CCTV Report of Council Pipe System After Work**

A qualified practitioner, with a certificate of attainment in NWP331A Perform Conduit Evaluation, shall undertake a closed circuit television (CCTV) inspection and then report on the condition of the Council drainage pipeline after the completion of all works. No person is to enter any Council stormwater conduit without written approval from Council. The camera and its operation shall comply with the following: -

- The internal surface of the drainage pipe shall be viewed and recorded in a clear and concise manner.
- The CCTV camera used shall be capable to pan, tilt and turning at right angles to the pipe axis over an entire vertical circle to view the conduit joints.
- Distance from the manholes shall be accurately measured and displayed on the video.
- All pipe joints and defects are to be inspected by stopping movement and panning the camera to fully inspect the joint and/or defect.
- The inspection survey shall be conducted from manhole to manhole.

The written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council. Any damage that has occurred to the section of the pipeline since the commencement of any works on the site shall be repaired in full to the satisfaction of Council at no cost to Council, which may include full reconstruction. A written acknowledgment shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority.

(Reason: Ensure compliance and protection of public asset)

**92. Inspection of Drainage Connection to Council's Drainage Line**

Inspection of drainage connection works to the existing Council's pipeline/pit shall be carried out by Council's Engineer. A completion certificate shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority. For the purpose of inspections carried out by Council Engineer, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council.

(Reason: Ensure compliance)

**93. Swimming Pool – High Level Overflow**

High-level overflows from the swimming pool shall be gravity fed and connected to Sydney Water's sewer via an approved system. The connection must not directly vent the receiving sewer. Upon completion, certification from a licence plumber shall be submitted to the Principal Certifying Authority certify that the connection has been made in accordance with the Sydney Water's requirements and the current plumbing codes.

(Reason: Ensure compliance and prevent nuisance flooding)

**94. Grated Box Drain**

For stormwater control a 225 mm wide grated trench drain with a heavy duty removable galvanised grate is to be provided on the boundary to collect driveway runoff at Hercules Street and Oscar Street. 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)

**95. 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)

**96. 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 Tank.

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)

#### **97. Vehicle Access - Construction & Certification**

The Applicant shall submit, for approval by the Principal Certifying Authority, certification from a suitably qualified and experienced traffic 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,
- a) That a maximum gradient of 5% has been provided for the first 6 metres from the property boundary.
- b) That finished driveway gradients and transitions will not result in the scraping of the underside of cars.
- c) That the as-constructed 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 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.
- e) 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)

#### **98. 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 Tank.

(Reason: Safe access to tank)

#### **99. 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)

#### **100. Certification of the Basement Pumpout 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)

#### **101. 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)

#### **102. S88B/S88E(3) 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 for newly created lots. For an existing lot, the instruments can be created under Section 88E(3) of the Conveyancing Act 1919 using Form 13PC and 13RPA respectively. The relative location of the On-Site Detention Tank, in relation to the building footprint, must be shown on the final plan of subdivision/strata plan or must be shown on the scale sketch, attached as an annexure to the request 13PC and 13RPA forms. The S88B instrument or 13PC/13RPA forms shall be lodged with Council's Standard S88B/S88E Lodgement Form with all supporting documentations listed in the Form. Council's Standard Form is available from Council upon requested.

Documentary evidence of registration of these instruments with the Land and Property Information shall be submitted to the Principal Certifying Authority and Council prior to issue of any Occupation Certificate.

(Reason: Maintenance requirement)

#### **103. Splay Corner for Fence**

In order to ensure adequate sight distances for pedestrians and traffic in Hercules Street and Oscar Street, the building shall be designed and constructed with a min. 2m x 2.5m splay within the site on both sides of the driveway exit.

(Reason: Pedestrian safety)

**104. 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 half road pavement restoration in Albert Avenue, Hercules Street, and Oscar Street.

(Reason: Public amenity)

**105. Reconstruct Pavement**

Half the road pavement including any necessary associated works adjoining to the full frontage of the development site shall be reconstructed in accordance with Council's approved drawings, conditions and specification (AUS-SPEC). Council's standard design traffic for this pavement is  $3 \times 10^5$  ESA.

(Reason: Ensure compliance)

**106. Paving Bricks**

Construct a full width footpath in approved paving bricks for the full frontage of the streets adjoining to the site in accordance with Willoughby City Council's Segmental Footpath Paving Code. Permission must be obtained from Council's Infrastructure Services Division and the Police Department prior to the opening and closure of the footpath and road pavement for construction works.

(Reason: Public amenity)

**107. Concrete Footpath**

Construct a:

- a) Full width brick paver footpath for the full frontage of the development site in Oscar Street.
- b) 1.5m wide concrete footpath and perambulator ramp for the full frontage of the development site in Albert Avenue and Hercules Street.

All works shall be carried out in accordance with Council's standard specifications and drawings.

(Reason: Public amenity)

**108. Vehicular Crossings**

Construct 2 new vehicular crossings, 1 in Hercules Street and 1 in Oscar Street, including the replacement of the existing layback and/or gutter and associated road reconstruction as directed by Council's Engineers. All works shall be carried out 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. A separate application for the crossing including current fees and charges is to be submitted for approval by Council.

The crossings are to be 5.5 metres wide with no splays and are 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 and 2 metres from any street tree unless otherwise approved by Council. The centreline of the new crossing shall be "in-line" with the centreline of the parking space(s).

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

- At back of layback – 100 mm above and parallel to the gutter invert.
- At property boundary – 240 mm above and parallel to the gutter invert.

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

- At back of layback – 100 mm above and parallel to the gutter invert.
- At property boundary – 200 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 prior to issue of any Occupation Certificate.  
(Reason: Public amenity)

#### **109. 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.

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

#### **110. 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)



#### **111. Performance Bond**

The Applicant shall lodge with the Council a performance bond of \$57,500 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)

#### **112. 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)

#### **113. Signposting and pavement marking plan**

A signposting and pavement marking plan be submitted to Council's Infrastructure Services Director for approval prior to installation. The plan must include signposting and marking required by other conditions of this consent and the followings: -

- All parking spaces to be marked on site for their intended use;
- Thermoplastic pavement markings to be provided throughout the car park to indicate permissible directions of traffic flow;
- "No Entry" signage and pavement markings be provided at the junction of the car park driveway with Hercules Street to indicate permissible traffic movements to and from the car park; and
- Pavement arrows and "One Way" signage be provided at the junction of the upper basement car park with the through road to clearly define the permissible direction of traffic flow.

The signposting and traffic movements are to be marked on the pavement surface in accordance with the approved parking layout and signposting and approved pavement marking plan prior to issue of any Occupation Certificate.  
(Reason: Ensure compliance)

#### **114. Public Tree Maintenance**

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

- i All trees required to be retained 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 AS 4970-2009 "Protection of trees on development sites" and AS 4373 - 2007 "Pruning of Amenity Trees".
- ii All new and replacement public trees are of the required species, container size, planting locations, planting standards, and have been grown and supplied from a recognised nursery complying to NATSPEC 2 Guide, "Specifying Trees", 2003.

(Reason: Tree management, Public Asset Management)

**115. Tree Planting**

- i) Trees are to be planted in accordance with the Landscape Plans Dwg Nos. 1 & 2 dated 05.08.13 and 15.07.13 respectively, prepared by Narelle Sonter.
- ii) Trees are to be planted in the locations and at sizes as indicated on the Landscape Plans.

(Reason: Landscape Amenity)

**116. 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.

(Reason: Landscape amenity)

**117. Public Tree Planting**

Plant the following trees on Council land forward of the property on the Albert Avenue frontage:

4 x *Largerstromia indica* (Crepe Myrtle)

The trees shall:

- i. Have a minimum container size of 100 litres and grown to NATSPEC 2 "Guide Specifying Trees", (2003).
- ii. Be planted in accordance with WCC Landscape Specification 08/2007 "Street Tree Planting".
- iii. Be planted generally in alignment with other street trees.

(Reason: Landscape amenity, tree canopy recruitment)

**118. Sound Level Output Certification**

The sound level output from the use of the premises and from the equipment installed for the operation of the building shall not exceed 5dBA above the ambient background noise level measured at the boundaries of the property in accordance with the current Environment Protection Authority (EPA) guidelines for noise assessment. Certification of the level of sound output is to be provided by an appropriately qualified acoustical Consultant to the Principal Certifying Authority.

(Reason: Amenity)

**119. Acoustic Treatment – Certification**

Certification shall be provided from a suitably qualified acoustic engineer certifying that the acoustic treatment of the building complies with the construction details approved and the relevant design noise criteria.

(Reason: Amenity)

**120. Certification – Ventilation**

Certification shall be provided 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 relevant Australian Standards and or alternative solution.

(Reason: Compliance)

## **121. Food Premises - Childcare**

The fitout of the kitchen in the childcare centre shall comply with:

- a) Australian Standard AS4674-2004 – Design, Construction and Fitout of Food Premises.
- b) Food Safety Standards  
Standard 3.2.2 Food Safety Practices and General Requirements  
Standard 3.2.3 Food Premises and Equipment.
- c) The business being registered with NSW Food Authority.
- d) Comply with the requirements of Sydney Water – Trade Waste Section (grease trap).
- If a Private Certifier is to be used, the final inspection shall be carried out by a suitably qualified person to ensure that food standards are met. A fee shall be charged in accordance with Council's current "Food Premises Fitout Inspection Fee" as per Willoughby Council Management Plan – Fees and Charges Schedule. The fee shall be paid prior to inspection.

Note: Copies of AS 4674 may be obtained from Standards Australia  
Copies of the Food Standards Code may be obtained from Australia and New Zealand Food Authority.

Alternatively, you may obtain a copy of the *'Food premises design, construction and fit-out guide'* from Council's Customer Service.

This guide is based on the above standards and sets out minimum requirements to achieve compliance

(Reason: Health and compliance)

## **122. Food Premises Database - Childcare**

Prior to an Occupation Certificate being issued, Council's Environmental Health Unit must be notified that the kitchen area in the childcare centre is being used for the preparation or manufacture of food so that the premises can be registered on Council's food premises database.

(Reasons: Health and compliance)

## **123. 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 having a capacity of not less than XXXX m<sup>3</sup> and 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.

(Reason: Health and 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.**

### **124. 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)

### **125. Erection Wholly within the Boundaries**

All works (with the exception of any works approved under S138 of the Roads Act 1993) including footings, shall be erected wholly within the boundaries of the property.

(Reason: Ensure compliance)

### **126. Annual Fire Safety Statement**

Attention is directed to Clause 177 of the Environmental Planning and Assessment Regulation 2000 regarding the submission of an Annual Fire Safety Statement in relation to each essential fire safety measure implemented in the building or on the land on which the building is situated.

(Reason: Safety)

### **127. Separate Development Consent - Various**

The initial occupation of retail and commercial tenancies shall be the subject of a separate application.

(Reason: Ensure compliance)

### **128. On-site Car Parking**

The on-site car parking provision of 159 car parking spaces are to be permanently available for the life of the development in the lower basement, basement and upper basement car parks (together with the additional spaces for motor bikes) and shall be distributed as follows:

70 residential car spaces,  
18 residential visitor car spaces,  
9 serviced apartments car spaces,  
7 office/commercial car spaces,  
41 retail car spaces,  
7 car spaces for childcare staff, and

7 car spaces for childcare drop-off/pick-up.

All spaces must be clearly and visibly marked on site for their intended use as parking for residents, visitors, disabled, childcare centre, office and retail, serviced apartments.

The Upper Basement parking and part of the Basement parking comprising of retail, serviced apartments and childcare drop-off/pick-up and staff car spaces must be accessible to tenants and visitors at all times.

(Reason: Ensure compliance)

#### **129. Loading and Unloading**

All loading and unloading of goods is to be conducted wholly within the site and especially in any loading facility, internal dock or goods handling area. 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 Oscar Street, Hercules Street or Albert Avenue or from any appurtenant right of way.

(Reason: Access and amenity)

#### **130. Hours of Operation – Child Care Centre**

The hours of operation of the child care centre are restricted to the following times:

Weekdays	7am to 7pm
Saturdays,	closed
Sundays & Public Holidays	closed

Any variation to these hours is to be subject to the **PRIOR CONSENT OF COUNCIL.**

(Reason: Amenity)

#### **131. License - Childcare**

The Child Care Centre being licensed by the Department of Education and Communities and complying with the requirements of that Department and with the Education and Care Services National Law & Regulations and other relevant legislative framework for early childhood education.

(Reason: Ensure compliance)

#### **132. Signs**

A separate Development Application shall be submitted to Council for approval in respect of any proposed advertising signs which will be visible from a public place. These signs must be designed to comply with Willoughby Development Control Plan.

Please note that a separate DA is not required for signs which are “Exempt Development” as defined under S76(2) of the Environmental Planning and Assessment Act 1979.

(Reason: Ensure compliance)

#### **133. Car Parking Spaces - Childcare**

The seven (7) car parking spaces for drop-off / pick-up for the childcare centre located in the upper basement must be signposted for 15 min parking between the hours of 7am and 9:30am and 3:30pm and 7:00m for the drop-off and pick-up of

children. The drop-off area spaces should be clearly marked 'childcare centre only' during drop-off and pick-up times to reflect that they are for the exclusive use of the childcare users at the peak hours of the centre.

Outside the weekdays peak hours of the childcare centre, on Saturdays, on Sundays and on Public Holidays, these car parking spaces may be used by other visitors to the site, however, this needs to be clearly marked and suitably signposted.  
(Ensure compliance)

#### **134. Capacity of Child Care Centre**

The child care centre must have a *maximum* capacity of 70 children, of which:

- 16 children between zero(0) and two(2) years of age,
- 15 children aged two(2) and three(3) years, and
- 39 children aged between three(3) and five(5).

The child care centre must have a *maximum* capacity of 14 staff.

Any *increase* in children or staff numbers is to be subject to the **PRIOR CONSENT OF COUNCIL.**

(Reason: Ensure compliance)

#### **135. Analysis of Outlet Condition**

All storage outlet pipes from the OSD tank shall be above the 1 in 100 year ARI level.  
(Reason: Maintain designed discharge)

#### **136. Vehicular Access and Garaging**

Driveways and vehicular access ramps shall be designed to provide adequate ground clearance to the underside of B85 vehicles. In all respects, the proposed vehicle access and/or parking spaces shall be designed and constructed to comply with the minimum requirements of AS/NZS 2890.1 and Council's standard specification.

(Reason: Vehicular access)

#### **137. 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)

#### **138. Road Closure**

Any closure (full or partial) of a public road is strictly prohibited without the approval of Council.

(Reason: Public protection)

**139. 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)

**140. 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)

**141. 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)

**142. Dust Control**

The following measures must be taken to control the emission of dust:

- a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work.
- b) Any existing accumulation of dust (e.g. in ceiling voids and wall cavities) must be removed using an industrial vacuum cleaner fitted with a high efficiency particulate air (HEPA) filter.
- c) All dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be allowed to enter the street or stormwater system.
- d) All stockpiles of materials that are likely to generate dust must be kept damp or covered.
- e) Demolition work must not be carried out during high winds, which may cause dust to spread beyond the boundaries of the site.

(Reason: Amenity)

**143. Construction Noise**

Construction noise shall be controlled to comply with the requirements as set out in the EPA Interim Construction Noise Guideline. Noise levels shall not exceed the rated background level by more than 10dB(A) at the most sensitive receiver during the standard construction hours. A noise monitoring plan shall be implemented during construction. Where noise levels may be exceeded appropriate measures to control excessive noise shall be implemented immediately.

(Reason: Amenity)

**144. Mechanical Ventilation – Provisions for Future Use of Commercial/Retail Tenancy**

The base building design shall include provisions for the installation of mechanical ventilation to any commercial/retail tenancy where it may be approved to be used as a food premises or any other use which requires mechanical ventilation. The provisions shall allow any mechanical ventilation system installed to discharge vertically and comply with the requirements of the Building Code of Australia and any relevant Australian Standard.

(Reason: Amenity/Ensure compliance)

#### **145. Importation of Fill**

Any material to be imported onto the site for levelling, construction or engineering purposes must satisfy the Office of Environment & Heritage (OEH) requirements for *virgin excavated natural material* (VENM), or *excavated natural material* (ENM). The determination of VENM or ENM must be made by suitable qualified consultant. Pre-certification of the imported material shall be made and details made available to Council upon request.

(Reason: Environment & Health Protection)

#### **146. Unexpected Finds Protocol**

An unexpected finds contingency plan should be incorporated into site redevelopment works. In the event that previously unidentified contaminated soils or materials are identified during site redevelopment, works should cease in the immediate vicinity and the affected area isolated to minimise disturbance. A suitably qualified contaminated site consultant should be engaged to assess the degree, type and extent of contamination and establish a suitable remediation plan. The Site Manager/landowner shall notify Council in writing when they become aware of any contamination.

(Reason: Environment & Health Protection)

#### **147. Waste**

- a) A protective galvanized metal railing must be placed around the inside wall of all waste and recycling rooms and communal bin areas at 1 metre above the floor and at least 50 mm clear of the wall to protect the walls from damage caused by moving bins.
- b) Bins must be regularly cleaned (every 3-6 months) and maintained in working order.

### **STATUTORY REQUIREMENTS**

**The following advisory notes are statutory requirements of the Environmental Planning & Assessment Act and the Environmental Planning & Assessment Regulations and are provided to assist applicants**

#### **148. 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)



#### **149. 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)

#### **Advisory Notes:**

##### ***Electromagnetic Radiation (EMR) Shielding Measures***

Based on the principle of 'Prudent Avoidance' in the area of EMR it is recommended that the following measures be implemented prior to the occupation of the building, to protect the health and safety of children by reducing exposure to EMR within the childcare centre and outdoor play areas:

- a) Treating the exterior of the building to provide a barrier to EMR (only required to treat components which form part of the childcare centre). Treatment may include painting walls with exterior radiation shielding paint and/or providing glazing or fixed wire fly screens that block EMR.
- a) Treating shade coverings to the outdoor play area with a material which is effective barrier to EMR.
- b) Treating fences and balustrades with a material which is an effective barrier to EMR.
- c) Wireless technology such as cordless/mobile phones or Wi-Fi should not be used.