

JRPP REPORT - 28-30, 32, 36 ANDERSON STREET, 1 HELP STREET & 2A MCINTOSH STREET, CHATSWOOD NSW 2067 - DA 2013/309

JRPP NO: 2013SYE060
DA NO: DA-2013/309
COUNCIL: WILLOUGHBY CITY COUNCIL
ATTACHMENTS: NOTIFICATION PLAN
DATE: 19-NOV-2013

RECOMMENDATION: APPROVAL
LOCATION: 28-30, 32, 36 ANDERSON STREET, 1 HELP STREET & 2A MCINTOSH STREET, CHATSWOOD NSW 2067
APPLICANT: ASCOT PROJECT MANAGEMENT
PROPOSAL: DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF A MIXED USE DEVELOPMENT COMPRISING COMMERCIAL/RETAIL, SHOP TOP HOUSING AND ANCILLARY BASEMENT CAR PARKING
DATE OF LODGEMENT: 31-JUL-2013
VALID APPLICATION DATE: 19-NOV-2013 (AMENDED PLANS)
REPORTING OFFICER: NONI DE CARVALHO

DESCRIPTION OF PROPOSAL (AS AMENDED)

Development Application 2013/309 proposes a mixed use development on a site that is a consolidation of five allotments of land being 1 Help Street, 28-30, 32 and 36 Anderson Street and 2A McIntosh Street Chatswood. The development proposes commercial (retail, café, offices) floor space and shop-top housing with ancillary basement car parking.

The proposal as originally lodged included a component of 41 seniors housing units that was applied for as a vertical village and sought a bonus floor space pursuant to the provisions of SEPP (Housing for Seniors or People with a Disability) 2004. The applicant elected to remove the seniors housing from the application noting that the development application did not provide adequate undertaking for an on-site support service provider to operate the communal support services for the senior's residents or residents with a disability.

The development application now proposes construction of a mixed use development in a west facing U-shaped layout of 7 to 12 storeys above a landscaped podium. Due to the slope of the land an additional level is expressed on the Help Street frontage within the podium. The three levels of basement car parking, waste handling and delivery area are accessed from Help Street. The proposed development comprises the following:

1. Basement and lower ground floor car parking for 193 vehicles being 136 shop-top housing resident parking, 34 resident visitor spaces and 23 commercial spaces. The levels including a mezzanine part level also provide 25 motorcycle parking spaces, bicycle lockers (19 resident, 3 commercial), bicycle racks (17 resident, 8 commercial), resident storage spaces, 4 resident garbage rooms, resident recycling storage and a commercial garbage room, rainwater re-use tank and on-site stormwater detention system.
2. Lower ground floor level commercial/retail space of 270m² fronting Help Street.
3. Upper ground floor level commercial spaces in 5 locations totalling 1018m² in area. The use of the commercial spaces is indicative and includes café/restaurant, retail and/or office uses. The upper ground floor is at the top of the podium. The commercial spaces face the surrounding streets and the internal landscaped courtyard that is proposed in the centre of the U-shape of the layout of the building from upper ground level and above. Two of the suggested café tenancies facing Anderson Street are proposed to have outside seating associated with the tenancy.
4. Four residential lobbies are provided – two at lower ground level facing Help Street and two at upper ground level facing McIntosh Street. A commercial lobby is provided facing Anderson Street. The lift access in the lobbies also connects to the basement levels.
5. The public is able to access the communal landscape courtyard via an at-grade entry facing the Anderson Street/McIntosh Street corner or via the commercial lift lobby. The upper ground level commercial spaces have frontage to the internal space as well as the surrounding streets.
6. The shop-top housing is configured in the U-shaped building above. The four locations of lift access divides the shop-top housing into four parts that also reflect the varying finished heights of the proposed development as follows:
 - a) Residential Lobby 1 (Help Street) provides access to six levels of residential units with each level comprising 4 to 6 units and the roof top communal open space.
 - b) Residential Lobby 2 (Help Street) provides access to eight levels of residential units with each level comprising 3 to 5 units. Access to the roof level communal recreation space above the Lobby 1 units is provided at Level 7.
 - c) Residential Lobby 3 (McIntosh Street) provides access to eleven levels of residential units with each level comprising 2 to 6 units. Access to communal space is provided at Level 11 using the roof level above the Lobby 2 units.
 - d) Residential Lobby 4 (McIntosh Street) provides access to seven levels of residential units with each level comprising 3 to 4 units and the roof level communal recreation space.
7. The residential units accessed from Lobbies 3 and 4 are separated at Level 5 by a landscaped space that is designed to provide sunlight penetration into the courtyard and the units located above the Help Street frontage.
8. The proposed number of residential units is 136 comprising 62x1bed, 8x1bed+study, 23x2bed, 33x2bed+study, 2x3bed and 8x3bed+study.
9. The gross floor space proposed in shop-top housing is 12,131m² and in commercial is 1,310m². Total GFA is 13,441m² that represents a floor space ratio of 4:1.
10. The height of the proposed development is 26 to 29 metres (30 metres to the top of the lift motor room) on the Help Street frontage, 30 to 40 metres on the Anderson Street frontage, 36.5 metres to the Anderson Street/McIntosh Street intersection and 16 to 28 metres (29 metres to the lift motor room) on the McIntosh Street frontage.
11. The existing significant tree located at the corner of Help Street and Anderson Street is to be retained.

There are no short-cuts to summarising the description of the development as it is reasonably complex. Similarly each elevation facing the public roads presents differently.

The elevation to Help Street proposes the two storey commercial podium above which four levels of residential is located behind a decorative perforated screen that will provide privacy while providing outlook and allowing light and air to penetrate. The next two levels are set back 5 metres from the boundary (3.5 metres from the levels below) and articulated with full height fixed angled vertical louvers over the glazed areas and the two south facing balconies on each level.

The Anderson Street elevation proposes wintergardens on the first four residential levels above the commercial space. The next four levels are provided with a 1.5 metre set back to the levels below. The set back is increased at Level 9 and above. The north-eastern part of the elevation towards McIntosh Street is angled and provided with a variable setback and balcony detail that addresses the intersection.

The McIntosh Street elevation is provided with a setback of 4 metres on the ground floor commercial and from Level 5 and above of the residential units. Levels 1 to 4 are set back 2 metres and articulation is provided by changes to the external finish that interplays timber-effect panels with rendered and painted finishes and glazed balcony lines.

In response to Clause 6.8 of WLEP 2012 for provision of 4% of GFA for shop-top housing being provided for affordable housing units to be handed over to Council for its affordable housing program, the applicant has requested that the development provide the housing by way of the monetary contribution option of WLEP 2012.

Neighbour Notification

Surrounding neighbours were notified of the development and 39 submissions were received. The submissions were from 1 Cambridge Lane (Cambridge), 9 Railway Street (Epica), 3 Help Street, 5 Help Street, 2A and 2B Help Street (Regency), and 12 Thomas Street. Letters were also received from St Pius College and two submissions were forwarded to Council by the local Member for Willoughby, The Hon. Gladys Berejiklian MP. It is noted that the submission forwarded by the Honourable Member was also separately lodged with Council. A combined letter was received from the Owners Corporations of Towers A and B in The Regency, Cambridge and Epica.

All submissions were in response to the application as originally lodged. The amended application has not been renotified as it was considered that although there are still non-compliances the development changes have addressed a number of the concerns raised. This is discussed further in the assessment section of the report.

The following summarises the concerns in the submissions:

- 1) Increased shadowing adversely affecting 5 Help Street and loss of privacy.
- 2) Overshadowing, loss of light and privacy to 3 Help Street.
- 3) Increased traffic congestion in the area resulting in increased air and noise pollution in the area.
- 4) Over development – over crowded.
- 5) Excessive and non-complying building height – almost double the permissible height – impact on skyline.
- 6) Neighbours bought homes on the reasonable expectation that future development in the area would comply with the LEP.
- 7) Loss of views from Cambridge and Regency. Views will be punctuated by this development.
- 8) Excessive height on the higher part of the site will appear taller as a result.
- 9) Inconsistency with local character compared with the 3 to 4 storeys buildings existing in Help Street, Anderson Street and McIntosh Street.
- 10) The non-compliance will encourage future piecemeal variation leading to disordered and unpredictable urban design outcomes.

- 11) Excessive shop-top housing component – applicant justifies based on financial reasons but does not consider detrimental financial impact on neighbours due to decline in property values from shadowing, increased traffic, loss of outlook and visually distasteful contrast to surrounding 3-4 storey development.
- 12) Developer should have done due diligence before paying too much for the land – not an excuse to change the rules – viability does that mean 200% profit rather than 25%? Transfers wealth to the developer.
- 13) Does not have to be 15 storeys to be good design – can be 8 storeys.
- 14) Traffic Impacts and insufficient car parking provided on site. Help Street already a problem especially noting the recently completed Era building at the corner of Help and Railway Streets. Congestion in area is getting worse. Busses also use Help Street.
- 15) Will encourage more use of Cambridge Lane that will compromise bicycle and pedestrian safety. Surrounding streets close to schools and subject to 40km/h school zone.
- 16) Reduced sunlight access to the lower levels of the Regency between 11am and 3pm. Overshadowing in Help Street.
- 17) Development is not a pure senior's development (only 22%) and should not take unfair advantage. Unethical use SEPP (Seniors) in a manner not intended.
- 18) Would accept a lower scale say 5 to 8 storeys.
- 19) Adverse impacts during construction – noise, traffic, dust.
- 20) Will adversely affect the ambience around the Concourse as it closes in air space and views.
- 21) Detrimental impact on the supply of essential services to neighbours – sewage, water, power – no plans for upgrade.
- 22) Higher density housing beyond the core will lead to ghetto feeling – more crime.
- 23) Block design would maximise use of space rather than having empty space inside (wasted space).
- 24) Design is confused and haphazard.
- 25) If DA is approved it is a signal that the planning system cannot be trusted to protect small investors and home owners. Will encourage other developers to think of devious ways to break the rules. Need orderly development.

The submission from St Pius College is primarily concerned regarding safety of students (aged from 10 to 18) and pedestrians during the construction phase of the development. The College recommends that a Stakeholder Group be set up that conducts bi-monthly meetings to discuss and resolve issues arising from construction activities. The College also requests a number of construction conditions including but not limited to:

- Provision of hoardings that protect the footpath and keep it safe and well lit at night
- Upgrading of street lighting in Anderson Street required.
- Crane swings not to pass over the College.
- Construction traffic must be restricted to Help Street – no entry from Anderson Street.
- Delivery times not be permitted during main movement times of students (7.30 – 9am, 3-4pm)
- Upgrade of the pedestrian path on the eastern side of Anderson Street as pedestrians will seek to avoid the site.
- College needs to be informed if there are any hazardous materials on the site.
- Any infrastructure upgrade work in Anderson and Help Streets should take place in school holidays.
- Construction vehicles should not park in local streets.
- Noise must be minimised especially during exam periods.
- Should have a briefing of students and local community.
- Dust needs to be monitored and the mitigated.
- Developer should install permanent and suitable amenity bus stops for students in Anderson Street.

- Future uses must use access from Help Street and not be noisy. Adequate car parking must be provided.
- Line of sight from apartments to the St Pius playground must be minimised and mitigation measures put in place to protect the privacy of students

Existing Building, Relevant History and Site Context

The site is located on the northern fringe of Chatswood CBD and is zoned for Mixed Use development. Previous land use controls for the land permitted medium density residential development. WLEP 2012 amended the zone to permit Mixed Use development as the block bounded by Help Street Anderson Street, McIntosh Street and Cambridge Lane has a history of some sites in non-conforming commercial use with existing use rights. In carrying out the rezoning the new development standards also facilitated an increase in floor space if a minimum site area of 2,200m² was consolidated to ensure the orderly development of the fragmented parcels of land. This minimum area has been achieved by the subject application. The controls for the subject site also apply to 3 and 5 Help Street. A consolidation of those two sites would yield the minimum area for the additional permissible floor space to also apply.

The site has an area of 3,356m² with frontages to Help Street of approximately 55 metres, Anderson Street of approximately 61 metres and McIntosh Street of approximately 55 metres. It is regular in shape with a fall of over 4 metres from its frontage to McIntosh Street to its frontage in Help Street. Existing on the site is a two storey office building, a small Korean supermarket, a two storey residential flat building, a three storey residential flat building and a house that has been converted for use as offices.

North of the site is three to four storey residential flat development. East of the site is St Pius College and the Presbyterian Church, south of the site is the Regency twin towers mixed use development and west of the site is two to three storey older style residential flat development with high rise residential and mixed use beyond on the Pacific Place development site (Cambridge, Era, B2E and Epica). Generally the context of the site can be described as high rise to the south and west with the exception of the site's immediate neighbours and low rise to the north and east.

Controls and Classification

- i) Willoughby LEP 2012:
- ii) Conservation Area: No
- iii) Zoning: B4 Mixed Use
- iv) Applicable DCP (SEPPs, REPs): SEPP 55 Remediation of Land, SEPP 65 Design Quality of Residential Flat Development, SEPP (Building Sustainability Index) 2004, SREP(Sydney harbour Catchment) 2005, Willoughby Development Control Plan
- v) BCA Classification: 2, 5, 6, 7
- vi) Developer's Contribution Plans:
 - a. S94A: Yes
 - b. Applicable rate (%): 3% (Chatswood CBD)
 - c. The cost of development: \$45,100,000
 - d. Date of accepted cost of development: 2 August 2013
 - e. The total contribution payable (subject to Building Price Indexing (Enterprise Bargaining Agreement)): \$1,353,000

Comparison of Development Proposed in the Original Application and the Amended Application

A summary is provided below comparing the proposal in its originally lodged form (as notified) and its amended form being assessed in this report.

Element	Original	Amended	Variation
Gross floor space	15,085m ²	13,441m ²	Less 1,639m ²
GFA commercial	1,166m ²	1,310m ²	Plus 144m ²
GFA dwellings	13,914m ² Includes 3,345m ² seniors housing	12,131m ²	Less 1,783m ²
No. of dwellings	158 Including 41 seniors housing	136	Less 22 dwellings No seniors housing
Adaptable units	50%	50%	No change
Total Floor Space Ratio	4.49:1	4:1	Less 0.49:1
Height	8 to 14 storeys	8 to 12 storeys	Less 2 storeys
Car parking spaces	216	193	Less 23 spaces
Communal open space	1,423m ²	2,460m ²	Plus 1,037m ²
Soft landscaping	1,201m ²	1,477.6m ²	Plus 276.6m ²

Development Statistics (as amended)

	Proposed	Standard	Compliance
a) Site Area (m ²)	3,356		
b) Gross Floor Area (m ²)	13,441	13,424	Yes
c) Floor Space Ratio Total	4:1	4:1	Yes
d) Floor Space Ratio Commercial	0.39:1	2:1	No
e) Floor Space Ratio Shop-top housing	3.61:1	2:1	No
f) Max. Height Help Street side	30	20	No
g) Max. Height McIntosh Street side	40	25	No

	Proposed	Standard	Compliance
h) Car Spaces	193	193	Yes
i) Adaptable Housing	50%	50%	Yes
j) Communal Open Space (m ²)	2,460	1,240	Yes

Compliance with Plans or Policies

While the total floor space complies with the development standards there are variations proposed to the proportion of shop-top housing and the height controls. The variations are discussed in the assessment section of the report pursuant to the requirements of Clause 4.6 of WLEP 2012.

Internal Referrals

Building Services has no objection subject to conditions should the application be approved. Building Services noted that the development will not comply with some of the Deemed-to-Satisfy provisions of the BCA but solutions may be resolved at Construction Certificate stage.

Landscape Services had concerns regarding the depth of proposed above slab planters to support landscaping. This is addressed in the amended plans. Also provided with the amended plans are an Arboricultural Impact Assessment Report and Tree Protection Specification by TreelQ for the *Angophora costata* located at the corner of Help Street and is to be retained in the development. Landscape Services had concern regarding the height of the ground cover around the base of the proposed street trees to ensure that there was no obstruction to sight lines and clarification as to who would maintain the proposed landscaping. The sight lines issue is addressed in the amended landscape plans and maintenance matters can be addressed by conditions.

Traffic Group advised that the traffic generation from the development is acceptable given the new traffic generation rates for Chatswood CBD provided by RMS. The layout of the car parking generally complies with AS 2890.1 for Class 1A (resident and employee) parking. Traffic Group requires that any approval require the provision of a Construction Management Plan (including Traffic Management Plan during construction) for approval of Council's Infrastructure Services Division noting the constraints of the road network in the vicinity.

Engineering Services had concerns regarding the location of the access in Help Street as it is at a low point in Help Street. A stormwater inlet kerb pit is at the location and the driveway has to be designed to prevent inundation in a major storm event. The driveway has not been designed to the levels recommended by Council from its Floodplain Management Policy and a plot of the long section in the current design indicates a car will scrape when accessing the building. Recent flooding in the area with storm events means further design development is required noting that Council will not accept use of mechanical flood gates as they fail in a power outage that is often associated with a storm event. This will require a deferred commencement approval to allow for potential consequential design review arising from resolving the access gradient and freeboard design levels that will impact the building internally. On that basis Engineering Services has provided a number of conditions that should the application be approved must be addressed in "deferred commencement" approval.

Environmental Services has no objection subject to conditions should the application be approved. The conditions include requirements addressing the lack of detail for food premises, noise impacts in the area on dwellings, acoustic performance of plant, demolition matters and construction matters.

The Waste Strategy Co-ordinator had concerns with the management of waste on the site. These concerns have generally been addressed in the amended plans subject to conditions if the application is approved. Compaction is proposed that will require transfer into bulk bins. A bulk store has been provided prior to collection. It is Council's requirement is that bulk bins are used in this scale of development for efficiency of collection and some design refinement will be required but there is sufficient space in the back of house area for that to occur.

External Referrals

RMS reviewed the proposal and has a number of conditions should the application be approved. These include conditions relating to construction management (site access, management of bus zones in Anderson Street, management of cycle-way in McIntosh Street and prohibition on work zones in Help Street). RMS commented that Council should give consideration to a second access point from McIntosh Street. This was considered but not supported as level changes make it problematic to ramp to the necessary grade and it would create issues for McIntosh Street which is a narrow one-way east bound street. Also traffic from the site will be left in and left out only.

GMU Urban Design and Architecture was commissioned by Council to carry out a review of the original proposal pursuant to SEPP 65. This review raised a number of concerns with the proposal including setbacks to 3 Help Street, concerns with the design of seniors housing units, some internal privacy issues between units, the depth and light penetration to some units especially the single aspect units, ceiling heights on the ground floor and excessive bulk, height and scale. Most of the concerns identified have been addressed in the amended plans. Further discussion is provided in the assessment section of this report.

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"> State Environmental Planning Policies (SEPP) 	✓
	<ul style="list-style-type: none"> Regional Environmental Plans (REP) 	✓
	<ul style="list-style-type: none"> Local Environmental Plans (LEP) 	✓
	<ul style="list-style-type: none"> Comment: See assessment 	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> Draft State Environmental Planning Policies (SEPP) 	N/A
	<ul style="list-style-type: none"> Draft Regional Environmental Plans (REP) 	N/A
	<ul style="list-style-type: none"> Draft Local Environmental Plans (LEP) 	N/A
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> Development control plans (DCPs) 	✓
	<ul style="list-style-type: none"> Comment: See assessment 	
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> Clause 92 EP&A Regulation-Demolition 	N/A
	<ul style="list-style-type: none"> Clause 93 EP&A Regulation-Fire Safety Considerations 	N/A
	<ul style="list-style-type: none"> Clause 94 EP&A Regulation-Fire Upgrade of Existing Buildings 	N/A
	<ul style="list-style-type: none"> Comment: The matters prescribed by the regulations requires assessment at Construction Certificate stage 	
(b)	The likely impacts of the development	
	<ul style="list-style-type: none"> Context & setting 	✓
	<ul style="list-style-type: none"> Access, transport & traffic, parking 	✓
	<ul style="list-style-type: none"> Servicing, loading/unloading 	✓
	<ul style="list-style-type: none"> Public domain 	✓
	<ul style="list-style-type: none"> Utilities 	✓

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

Satisfactory ✓ Unsatisfactory ✗ Not Relevant N/A

	<ul style="list-style-type: none"> Heritage 	✓
	<ul style="list-style-type: none"> Privacy 	✓
	<ul style="list-style-type: none"> Views 	✓
	<ul style="list-style-type: none"> Solar Access 	✓
	<ul style="list-style-type: none"> Water and draining 	✓
	<ul style="list-style-type: none"> Soils 	✓
	<ul style="list-style-type: none"> Air & microclimate 	✓
	<ul style="list-style-type: none"> Flora & fauna 	✓
	<ul style="list-style-type: none"> Waste 	✓
	<ul style="list-style-type: none"> Energy 	✓
	<ul style="list-style-type: none"> Noise & vibration 	✓
	<ul style="list-style-type: none"> Natural hazards 	
	<ul style="list-style-type: none"> Safety, security crime prevention 	✓
	<ul style="list-style-type: none"> Social impact in the locality 	✓
	<ul style="list-style-type: none"> Economic impact in the locality 	✓
	<ul style="list-style-type: none"> Site design and internal design 	✓
	<ul style="list-style-type: none"> Construction 	N/A
	<ul style="list-style-type: none"> Cumulative impacts 	✓
	Comment: See assessment	
(c)	The suitability of the site for the development	
	<ul style="list-style-type: none"> Does the proposal fit in the locality? 	✓
	<ul style="list-style-type: none"> Are the site attributes conducive to this development? 	✓
	Comment: See assessment	
(d)	Any submissions made in accordance with this Act or the regulations	
	<ul style="list-style-type: none"> Public submissions 	✓
	<ul style="list-style-type: none"> Submissions from public authorities 	✓
	Comment: See assessment	
(e)	The public interest	
	<ul style="list-style-type: none"> Federal, State and Local Government interests and Community interests 	✓

ASSESSMENT

State Environmental Planning Policy 55 – Site Remediation

The proposal is consistent with the requirements of SEPP 55. The history of use of the land being for residential, office and small scale retail uses indicates that there is little potential for site contamination. Council has no record of contamination on the land.

Conditions relating to management of removal and disposal of hazardous waste are required during demolition as asbestos may be found in the existing buildings on the site given their age.

The proposed development will require excavation to a depth of 9 to 12 metres and importing of fill should not be required. The Geotechnical Report lodged with the application indicates shale based soils that will require shoring of the excavation prior to commencement of construction.

State Environmental Planning Policy 65 – Design Quality of Residential Flat Development

The shop-top housing component of the development is subject to the provisions of SEPP 65. A design verification statement by Drew Dickson Architects in association with Kann Finch was provided with the application that considered that the proposed development was consistent with the context of the site and its orientation. It also considered that the built form, density and scale suited the context and would be contributory to the streetscape. It noted the sustainability principles incorporated into the design and the landscaping proposed to complement the built form. It notes the design of the development to address amenity and privacy issues. An Urban Design report and further SEPP 65 review was provided by Olsson and Associates Architects that also concluded that the proposed development was consistent with the 10 design principles of SEPP 65.

Council sought the advice of GMU Urban Design and Architecture to independently review the quality of the design having regard to the principles of SEPP 65 and the Residential Flat Design Code. As a result of this assessment a number of issues were identified with the proposal as originally lodged. This included but is not limited to the following:

- 14 storeys on the north eastern part of the site formed an abrupt edge and is out of context with development surrounding that part of the site.
- The depth of the building is acceptable but in some locations the relationship causes internal privacy issues between units.
- The depth and layout of some units including some single aspect units had issues with light and air penetration.
- The relationship to 3 Help Street with a zero set back over 5 levels on the southern side was unacceptable
- The design was inconsistent with the pattern of a podium design with a set back to the tower element in surrounding development and as articulated in WDCP for shop-top housing.
- Issues with the seniors' living units and their management.
- Provision of deep soil zones for planting.
- Differentiation of car parking between the different uses.
- Security issues of recessing public spaces.

The amended plans addressed the concerns regarding the depth and layout of units, the relationship and privacy impacts between some units. A 4.2 metre to 6.2 metre side setback is now provided to the southern component of the development adjacent of 3 Help Street. The height of the building with a zero setback at the location is now proposed to be less in height than the existing two storey office building abutting the boundary. The overall height of the development has been reduced by two storeys.

The height still varies around the site and the highest component is still located in the north-eastern part of the site. The applicant maintains the position that this layout minimises the overshadowing impacts on the Regency and the step down in height along McIntosh Street provides light penetration to the courtyard and to 3 Help Street. The applicant also notes that the setback and architecture of the building on that part of the site addresses the intersection of Anderson and McIntosh Street such that the articulation of its design provides a 'gateway' entry element to Chatswood in Anderson Street.

The seniors housing (vertical village) has been deleted from the proposal as the development proposal did not have a committed service provider to manage the vertical village. Therefore, the bonus floor space that applied for provision of a vertical village has been removed from the proposal.

Solar access analysis has demonstrated that at least 75.7% of units (103 out of 136) will have at least 2 hours of direct solar access in living areas. Ceiling heights on the commercial levels have been increased to measure 3 to 3.2 metres. Ceiling heights in the residential is 2.7 metres in accordance with the recommendations of the RFDC.

The amended landscaping plans indicate varying depths to the planters with greater depth being provided for planters proposed for trees. The soil depth in the planters for trees is to be a minimum of 500mm and 150mm for turf and ground covers.

The security issues have been addressed as the commercial spaces will have frontage to both the surrounding streets and the internal courtyard. This will provide passive surveillance and active use during the hours of operation of the commercial uses. Outside operating hours the application documentation advises the access to internal courtyard by the public will be secured off.

Car parking between the different uses on the site have been differentiated in the amended plans.

The applicant considers that the benefits of the U-shaped layout provides greater amenity for the development and its relationship to 3 Help Street than a block tower building form above a two to three storey podium. The applicant considers that the layout will also facilitate an appropriate mixed use redevelopment of 3 to 5 Help Street in the future that is also in Area 14 with the same development standards applying as the subject site.

Generally it is concluded that the concerns noted in the SEPP 65 assessment have been addressed by the amended plans.

State Environmental Planning Policy (Building Sustainability Index) 2004 and Sustainability Undertakings

The Basix report by Windtech has considered the amended plans and Basix Certificate 49289M_2 has been issued for the amended plans (dated 25 November 2013). The target score for Basix for water usage of 40% is achieved by the use of water efficient fittings and a 200L rainwater reuse tank is proposed in the development to use recycled water for irrigation of landscaping. Treatments such as glazing performance and insulation are recommended to ensure the Basix thermal performance is better than required. The energy target score of 20% is achieved by the choice of ventilation systems, lighting efficiency and choice of appliances. Also provided with the application in the Windtech Report is an ABSA certification (1005928013) that determines the average NatHERS rating will be 5.3 for the project.

Assisting the Basix assessment is the solar access report that demonstrates 75.7% of the units will achieve at least 2 hours direct solar access on the windows of living areas and 75% will achieve at least 2 hours of solar access on the floor slab of private open space areas. Also assisting the assessment is a BCA Section J Report by Windtech. The report assesses the building fabric, glazing, sealing, ventilation/air conditioning, hot water and lighting design and concludes that the proposal will comply with Section J Deemed to Satisfy provisions of the BCA.

Willoughby Local Environmental Plan 2012

WLEP 2012 zones the land B4 Mixed Use. The proposed land uses in the development are permissible in the zone.

The site is located on the northern edge of Chatswood CBD on the east side of the North Shore Rail Line. The location of the site is in an area targeted for redevelopment under the provisions of WLEP 2012 by its identification as an area (Area 14) for additional floor space with bonus increase in FSR from 2.7:1 to 4:1 permitted with site consolidation. The site consolidation has been achieved in the proposal providing a site area greater than the minimum of 2,200m². The consolidation is consistent with the theoretical modelling done as part of the preparation of WLEP 2012 and it leaves 3 to 5 Help Street for future consolidation

and orderly redevelopment in accordance with the development standards. The development consolidates a site area greater than that required but this is a consequence of the allotment configuration and layout within Area 14. The developer is commended for achieving the consolidation.

To comply with the maximum 4:1 FSR the balconies on Levels 1 to 4 facing Anderson Street must not be enclosed. This can be conditioned.

The areas of non-compliance with WLEP 2012 are with the height controls and the proportion of the development proposed in shop-top housing floor space. The non-compliance with the height controls is partly a consequence of the layout of the development and partly a consequence of the reduced height of a commercial podium. The analysis and consideration of the variations pursuant to Clause 4.6 of WLEP 2012 are discussed in more detail later in this report. The conclusion of that analysis is that the requested variations are reasonable in the circumstances and are considered acceptable.

Clause 5.9 of WLEP 2012 has regard to the preservation of trees. The development proposes to retain the significant tree on the site that is located at the corner of Help Street and Anderson Street. It also proposes an architectural backdrop and setting for the tree that will enhance the presentation of the site to the intersection.

Clause 5.10 considers environmental heritage matters. The site is not within a Conservation Area nor does it contain any heritage items. The site is near to the North Chatswood Conservation Area located north-east of the site and to the north of Wattle Lane. The site is sufficiently separated from the Conservation Area for development on the site to not have an adverse impact on the integrity of the Conservation Area.

WLEP 2012 requires (Clause 6.8) for Area 14 that 4% of the shop-top housing floor space be provided as affordable housing units to Council. The applicant requests that Council accept a contribution in lieu of actually providing the affordable housing on the site. 4% of the floor space is 485.24m². This is potentially about 8 one-bed units or 5 two-bed units. It is not the Council's generally preferred practice to accept a contribution in lieu of providing the units on site. However, in this instance the contribution is accepted because the design and layout of the building with multiple lift cores and waste rooms and architectural complexity means that the units proposed in the development are unlikely to fulfil the criterion for affordability in ongoing management fees and costs. Also Council has two sites in Artarmon that it is currently master planning for affordable housing projects and where the contribution can be directed.

The site is identified on the Active Street Frontages Map of WLEP 2012 (Clause 6.10) requiring active street frontages to Help Street and the southern part of Anderson Street. The proposed development satisfies the provisions of Clause 6.10 in providing for retail, restaurant or business premises at ground level fronting all the surrounding streets.

Willoughby Development Control Plan

Elements have been incorporated into the design of the development that reflects sustainability principles for the development. As noted above in the discussion on SEPP (Basix) this includes the design principles that achieve the Basix targets, rainwater reuse on site, BCA Section J undertakings for the detailed design and a layout to minimise the number of units without adequate solar access.

Traffic and car parking provision is discussed separately below.

Access for people with disabilities is provided to the site. The minimum of 50% of the shop-top housing units are capable of being adapted for a person with disabilities. Sixteen of the

adaptable units are provided with a complying car space for people with disabilities that exceeds minimum requirements by two spaces.

The development design considers the principles of “Safer by Design” in providing active uses to the public spaces proposed on site and the public domain with passive surveillance from the units above. The vehicular entries and pedestrian entries to the site are visible and unambiguous and provided with security and separation between the non-residential and the residential uses.

WDCP provides specific controls for shop-top housing in mixed use developments. The proposed development satisfies the requirements for minimum street frontage requirements, active commercial uses on the ground floor that interface with and activation of the public domain. The car parking and loading access is from the lowest point of the site in Help Street and the extent of frontage used by that access is kept to the minimum required to provide a separate entry and exit for cars and delivery trucks.

The setbacks of the building are not in accordance with those envisaged by WDCP but the setback provisions are based on a development form that has a single street frontage and then abuts other development on its side elevations. In the subject case the site has street frontages on three sides and only the western boundary abuts other development. The setbacks to the boundary with 3 Help Street vary depending on the location. Facing 3 Help Street the podium is expressed on the Help Street side of the site with a zero side setback on the up to 5.4 metres in height created by the “lid” over the driveway (lower than the height of the current office building in the location). On the northern side the podium at McIntosh Street is at ground level. The setback to 3 Help Street to the above podium building on the Help Street side is 4 to 6 metres. As a consequence of the U-shaped design and provision of the internal courtyard the setback increases to 37.5 metres in the centre of the site and then reduces to 2 to 3 metres. The setbacks are acceptable noting that the circumstances of the subject site are special in terms of multiple street frontages and are not applicable to the WDCP setback provisions.

The central communal spaces and the roof top communal spaces for the residents are proposed to be landscaped for casual recreational use providing for 70% of the podium and 56% of roof-top space to be landscaped and usable recreational space. The shop-top housing units are provided with private open space in the form of balconies. The minimum depth of the balconies is 2 metres in accordance with requirements and the balcony areas range in size from 6.5m² to 60m². The smaller units (one-bed) are required to have 10m² under the provisions of WDCP and the actual provision is 6.5m² to 10.5m². This is accepted as the units will have access to more than an adequate supply of communal space. Larger units are provided with balcony space that complies or exceeds requirements.

The relationship between units in the U-shaped configuration has necessitated the provision of some angled privacy screens to bedroom windows. Angled privacy screens are also proposed to the end units closest to 3 Help Street to provide privacy for the proposed units and manage view lines from the development towards 3 Help Street. The units in the centre of the U-shape have a 37.5 metre setback and only bedrooms are facing 3 Help Street with their living areas facing Anderson Street. The units facing The Regency benefit from the privacy provided by the perforated decorative screen or two storey louvre features proposed in the development design. In addition the building separation provided by the width of Help Street assists to minimise overlooking impacts between the sites. Similarly in McIntosh Street the width of the street and the setbacks with the proposed development and existing on the site opposite side moderates the overlooking relationship.

The development proposes internal laundries and storage spaces for each shop-top housing unit in accordance with the requirements of WDCP. The storage is provided both within the units and as storage cubicles within the basement levels.

Solar Access and Shadowing Impacts

As noted earlier in this report 75.7% of shop-top housing units will receive direct solar access for at least 2 hours a day in living areas.

The overshadowing impacts on development to the south have been reduced with the reduction in the height of the development although it is noted that the communal recreational opens space of the Regency development was not significantly impacted. Development to the west in 3 Help Street will experience a loss of morning sun both in the original and the amended scheme but the amended scheme has provided additional setbacks that will ensure adequate access to natural light. A difficulty arises with the existing building on 3 Help Street that is orientated north-south with balconies facing east towards its side boundary. It presents an end elevation to the north. As a result a fully complying development would also impact on 3 Help Street. The amended proposal with the internal setback and additional side setback will allow some sunlight penetration to some units. 5 Help Street is already impacted by 3 Help Street for morning sun access and The Cambridge for afternoon sun access. Some units in 5 Help Street face north and enjoy sunlight access. It is acknowledged that 3 and 5 Help Street have the potential to be redeveloped in the future in accordance with the development standards for Area 14.

On the eastern side of Anderson Street the Administrative buildings of St Pius College will be impacted by afternoon shadowing and this is acceptable. The playground spaces of the College are already impacted by shadowing from the College buildings.

Traffic Generation, Deliveries and Car Parking Provision

Access to the site is provided in the south-western corner of the site which is the lowest point. The plans indicate that the crossing to the driveway to 3 Help Street will require relocation as it is partly encroaching onto the frontage of the subject site. This requires a design of footpath crossings for both driveways in accordance with the Chatswood CBD standard. This requires that the grade of the footpath be constant (no kerb steps) to maintain pedestrian priority such that a vehicular must mount the footpath to enter the site. In the situation of the subject site the footpath can be reconstructed across both entrances in accordance with Council's CBD crossing requirements. Further the design can ensure that the width of the layback at the kerb allows for all vehicles to enter and leave the site using the kerb side lane. The exception is Council's 9.7 metre garbage truck but as the collection service provided by Council for the residential units occurs in the early morning prior to major traffic activity, the Council garbage truck exiting the site could safely encroach outside the kerb side lane when exiting the site.

Access to the site will require left in and left out only and a narrow median strip is already provided to prevent the right turn movement. This precludes vehicles obstructing Help Street when accessing the site and it means that vehicles exiting from the site will not have reason to use Cambridge Lane or McIntosh Street (one way) as the access will require the approach to the site to be from the west travelling in an easterly direction and exiting in an easterly direction.

Deliveries, waste storage and waste handling on the site are located in the upper basement level. The loading area provides manoeuvring and parking for two trucks to operate at one time in the loading facility. Adjacent to the loading area are the five garbage rooms and recycling room as well as the dock office and other back of house. The head clearance in the loading and manoeuvring area is measured from the plans as 4.8 metres which is acceptable. Above the upper basement level there is a part floor mezzanine that contains residential storage cages, the rainwater reuse tank, the on-site stormwater detention tank and the fire systems, mechanical ventilation plant and electrical plant. The mezzanine does not extend over the loading area. Also located adjacent to the loading area are the motorcycle parking spaces and the bicycle lockers and racks.

At the rear of the upper basement level and requiring access across the loading area is residential parking for 36 cars including 2 spaces for people with disabilities. As the use of the car spaces will be by people familiar with the site, the requirement to cross the loading space and access a separate secure area is acceptable.

The balance of the car parking is provided in the two lower basement levels that connect directly from the entry driveway via internal ramp. The commercial and residential visitor spaces are provided first before entry to the secure area for the balance of the residential car parking. In total it is proposed to provide 136 residential spaces (including 16 accessible spaces for people with disabilities that can be allocated to the adaptable units). Thirty-four residential visitor spaces are proposed (including 5 accessible spaces for people with disabilities) and 23 commercial spaces (including 4 accessible spaces for people with disabilities). The total car parking provision of 193 spaces is acceptable noting that the residential visitor and commercial spaces are outside the secure area and grouped together. Shared use would be possible noting that the provision of commercial spaces relies on 368m² being for office use, 270m² being for retail use and 650m² being for café/restaurant use. The provision of 23 spaces is complying for the indicative break-down but it may not be the long term outcome. The layout of the car parking complies with AS 2890.1 for a Class 1A car park. Eleven motorcycle parking spaces and bicycle lockers and racks for the residential and commercial uses are provided.

The provision of the accessible spaces for people with disabilities are not all compliant with the latest version of AS 2890.6 that provides for two 2.4 metre wide spaces with a 2.4 metre wide bollard protected shared zone between. Many of the spaces are 3.2 to 3.6 metres in width that applied under the old standards. Nevertheless it appears that there is sufficient space in the basement car parking for some rearrangement to occur to achieve increased compliance and provided the same number of spaces. This can be conditioned.

The traffic generation from the site is based on peak hour traffic generation. Council's Traffic Group advises that the traffic generation from the site is acceptable given the new RMS generation rates for Chatswood CBD following recent surveys and noting the proximity of Chatswood Transport Interchange. The traffic generation in peak hours indicates that the intersection of Help Street with Anderson Street will still operate at Level B. The traffic report did not consider the "peak hour" traffic activity in Chatswood during weekends and Thursday night shopping but Council's Traffic Group was satisfied with the conclusion and the generation rates used.

Both RMS and Council's Traffic Group identified the major concern of construction traffic management with the site should the development proceed. Council's Traffic Group has required that a Construction Traffic Management Plan be required to be approved by Council that details the locations and sizes of Work Zones, truck access and departure routes, number of trucks, hours of operation, traffic control, pedestrian safety, travel/parking arrangements for site workers and arrangements for scheduling of deliveries particularly during excavation and concrete pour stages. RMS will not permit a construction zone in Help Street. RMS also notes that the Anderson Street frontage is utilised by a bus zone and a cycle path operates along Wattle Lane to Malvern Avenue. These requirements can be addressed in the conditions of consent if the development is approved.

RMS also suggested that Council consider requiring the provision of a second access point preferably to McIntosh Street, to allow easier entry and exit from the car park. This was not supported by Council having regard to the existing demands for use of the alternative roads and the inefficiencies introduced to the design by the level changes. There is sufficient space within the site for queuing of vehicles leaving the site to occur. RMS notes that it will not give consideration to any change of phasing of the lights at the intersection of Help Street and Anderson Street and this is supported.

Site Suitability and Context

Area 14 where the site is located was identified in WLEP 2012 as a location for redevelopment and increased densities given the low density of existing development, the age of the existing buildings within the area and its close proximity to Chatswood CBD and Chatswood Transport Interchange. Land to the west and south has experienced high density redevelopment. The Presbyterian Church opposite the site has a proposal to redevelop its site for a new church and parish facilities with an increase in the aged care housing on the site. This has been held over due to other the financial commitments of Presbyterian Aged Care. St Pius College has plans to expand its all-weather assembly space below a new building that provides additional classrooms and examination rooms and providing lift access.

Noting the context of the site, the location is appropriate for redevelopment to higher densities as proposed up to a maximum of 4:1. The non-compliance with the height controls and the proportion of shop-top housing has been considered in more detail below and found acceptable. While it is noted that the additional height is located on the higher part of the site which adds to the perceived bulk, this is a massing solution in response to shadowing impacts on the communal recreational space of the Regency development and is a consequence of the U-shaped configuration that considers the relationship to the public domain and to the existing and a future development on 3 (and 5) Help Street.

The additional height at the McIntosh Street/Anderson Street intersection provides a corner statement that is complemented by the corner statement incorporating the existing *Angophora costata* at the corner of Help Street.

Views and View Sharing

Considerable concern has been expressed in the responses to the notification concerning loss of views. The location of the higher elements of the building is on the north-eastern portion of the site which, although the location of the higher ground level, also means it is relatively the most remote location for impacting view lines from surrounding buildings.

In a highly urbanised location such as the subject site the principles of view sharing have to be applied. The buildings that will mainly experience view impact are the lower levels of the Cambridge (1 Cambridge Lane) and the eastern tower of The Regency (2A Help Street). Some angled views may be impacted in 2B Help Street. It is not accepted that there will be view impacts of concern view for the low rise of Epica (9 Railway Street) although submissions expressing this concern were received. In the case of Epica it is noted that the maximum finished height (lift overrun and roof plant rooms) of the southern building of B2E is approximately RL 118 and Cambridge is approximately RL 174 that also obstruct views from the low-rise of Epica.

The consideration of view sharing has regard to the Planning Principle of the Land and Environment Court established in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*. The stepped principles of the judgement are discussed below in the context of the proposal.

1. The assessment of the views affected is considered to be the views from the north face of The Regency lower north-eastern portion of the eastern tower and the lower central portion of the east face of the Cambridge. The views are distant views over Chatswood towards the ridge of Boundary Road and Castle Cove/Middle Cove. Water views may be possible in the higher levels but units enjoying these views would likely be above the roof height of the subject development. The views enjoyed would be of the schools, cottages and tree canopies interspersed with higher development along Victoria Avenue.

2. The proposed building mass will mainly impact the living and balcony spaces of units located in the lower levels of the surrounding buildings. As the massing of the building is at its maximum on the north eastern part of the site, the distance separation between buildings will enable angled views and outlook beyond and around the proposed development. It is noted that the highest part of the building which is the plant room is only 120m² in area with the roof height being 2.4 metres lower and only having a footprint of about 340m² in area reflecting the stepping of the building.
3. The extent of the impact will vary depending on the orientation. Nevertheless as noted before a degree of open outlook will be retained except for the units in the lower levels of the surrounding building where expectations of views cannot be assumed in an urban area. As noted previously the separation between the surrounding buildings and the subject development and having regard to the reduced footprint of the higher portions and shape of the building, the impact on views in an urban location is not unreasonable.
4. Consideration of the reasonableness of the impact considers the difference between a complying building mass and the non-compliance proposed. The view analysis provided with the application documentation is based on the scheme as originally lodged that has been amended to remove two storeys. The three-dimensional modelling of the building confirms that it is mainly the lower levels that are affected. From midway in the building height and above the principles of view sharing are respected. The schematic sections provided with the application documentation indicate the heights and floor levels is misleading especially in the case of Cambridge as it does not plot the building separation between the buildings accurately. Furthermore a complying development height would have other impacts in terms of solar access internally and externally to the development and mass and bulk impacts potentially in its relationship to 3 (and 5) Help Street. The height controls of 20 and 25 metres on the site in a tower block(s) design solution would still require careful design modulation to manage mass, bulk, view and solar access issues.

In the context of the location and accepting the principles of view sharing in a highly accessible urban location, the impacts on views are considered to be reasonable and acceptable.

Visual Impacts Bulk and Scale

The changing architectural form with each elevation and the stepping and variation in the facades and the height as well as the architecture of the corner elements are considered to moderate the visual impacts, bulk and scale of the proposal. The perforated architectural screen to Help Street above the commercial podium should provide a more commercial feel to the Help Street elevation. The variation between the lower expressed balconies and blades on the Anderson Street elevation juxtaposed with the set back and angled balcony lines above provide good articulation and modelling of the façade to create visual interest. The mass of the McIntosh Street elevation is moderated by the recessed ground floor, timber look panels on the low rise and recessed upper three levels with the void above level 5 separating the McIntosh Street from the Anderson Street mass.

The U-shaped configuration and side setbacks have been discussed earlier in this report and are noted to have an acceptable mass and bulk to development to the west of the site.

The visual impacts and mass and bulk of the development is considered acceptable.

Economic and Social Impacts

Socially the development will provide additional jobs on the site compared with the current uses. The six commercial tenancies spaces with a gross leasable floor space of 1,288m² have the potential to increase employment in the location from about 25 to 30 to about 65 in

a highly accessible location. The shop top housing proposed on the site will increase the number of dwellings on the site from an estimated 13 in 36 Anderson Street and 2A McIntosh Street to 136.

A "Market Appraisal and Feasibility Analysis" was provided with the original application and was prepared by Hill PDA. The report noted the strong demand for residential in Chatswood and the existence of a two tier market for commercial where the outlook and demand for A-grade commercial floor space is strong but less so for secondary commercial space especially on the fringes. There is reference also to the cost of the land consolidation to put together the development site.

The planning assessment consideration is the long-term achievement of the strategic planning objective to provide additional jobs and dwellings in strategic locations. This consideration is not concerned regarding the specific feasibility of a development proposed in a development application as market forces change over time.

The subject proposal does achieve the long term strategic direction of additional jobs and dwellings on the site. While the development standards sought to achieve an FSR of 2:1 in commercial uses and a jobs potential of 200 to 250, the development standards also sought to achieve land consolidation to provide for the orderly development of land given the allotment configuration of Area 14 by allowing a bonus floor space to 4:1 from 2.7:1.

The Hill PDA Report considered the 2009 advice the company provided to Council for its work in preparing WLEP 2012. The report noted that in mixed use development where the commercial floor space targets a smaller tenant in the B-grade market on the fringe of Chatswood CBD, the residential is required to cross subsidise the commercial floor space. This was acknowledged in the preparation of WLEP 2012 in introducing the B4 Mixed Use zone for the fringes of Chatswood CBD and to ensure the achievement of reasonable jobs generating commercial floor space, a maximum of 2:1 FSR in dwellings was required.

In the subject case the shape of the site and its large size lends itself to commercial use but the depth of a podium achievable in a mixed use development from each of the street frontages exceeds 20 metres. This means natural light will not penetrate the centre of the commercial space unless a light well or courtyard is provided within the podium. To provide a more than 3,000m² space with the central part of the space having limited or no access to natural light or no outlook would give a poor amenity for workers and, even if broken up into tenancy spaces, the spaces internal to the podium would have a less than appropriate address to the public domain. The provision of a central courtyard or light well would add significant constraint to the range of solutions for the achievement of high quality living in the shop-top housing above the podium. In addition although the commercial floor space in the subject proposal is less than the minimum required, its layout and flexibility for different uses because of the dual frontages to most of the tenancies adds to its attractiveness and usability and hence demand for different commercial uses.

As a result and as concluded in the assessment of the variation of the development standard for proportion of shop top housing, the variation is accepted in the circumstances of the design solution put forward in the subject application.

Future Development of 3 to 5 Help Street

The size and rectangular shape of 3 and 5 Help Street lends itself to a future redevelopment for a mixed use development on the site. The redevelopment would potentially involve a commercial podium with shop-top housing above. The dimensions of the land are considered to enable a complementary building to complete and end the U-shape of the subject development. The internal courtyard space that can extend onto the adjacent site in a stepped form will enable reasonable light access and privacy relationship between the two

sites. The development of the subject site in the manner proposed is not considered will compromise the redevelopment of the balance of the land in Area 14.

Neighbour Notification Issues:

The amended development proposal has reduced the height of the development, reduced the gross floor space, reduced car parking, improved waste storage and handling, improved delivery arrangements and manoeuvring, and, provided increased setbacks to 3 Help Street. The mass and bulk of the development has been moderated as a result.

The operation of the site access with left in and left out only means the use of Cambridge Lane and McIntosh Street will not be required by the site and it will not work as a by-pass for those attending the subject development. Adequate car parking is provided on site.

The north-south orientation of 3 Help Street means that its end façade faces north. The analysis of overshadowing has concluded that in the context of the site and the future development options the impacts are acceptable

The concerns of St Pius College primarily relate to the safety of students during construction work and management of noise and dust. These issues are fundamental to Council's consideration of the Construction Management requirements in the future. This will include the impacts on bus stops, pedestrian safety, provision of site hoardings and so on. These matters are required to be addressed prior to any construction work commencing on the site. St Pius has requested that a stakeholder group be set up. This is not considered necessary but a condition can require that St Pius be consulted and advised during the development of the Construction Management Plan and the Construction Traffic Management Plan noting that that the school bus zones may require temporary relocation north during construction.

In regard to the concerns for the privacy of boys in the playground it is noted that the playground is behind the administrative buildings of the College fronting Anderson Street and is separated from the College by the width of Anderson Street. The upper level units in the proposed development may have an elevated outlook but the highest part of the building aligns with Kirk Street and the classroom block fronting Kirk Street. It is considered that the relationship to the College is reasonable and acceptable.

Clause 4.6 WLEP 2012 Exception to Development Standard – Height Control (Clause 4.3)

a) Objectives of Zone

The site pursuant to WLEP 2012 is zoned B4 Mixed Use. The objectives of the Mixed Use zone are:

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

b) Objectives of the Standard

The objectives of height controls of Clause 4.3 in WLEP 2012 are:

- To ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape

- To minimise the impacts of new development on adjoining and nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion
- To ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores
- 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
- 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
- To use maximum height limits to assist in responding to the current and desired future character of the locality
- 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
- To achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.

c) What is the standard and the extent of the variation proposed?

The height controls of WLEP 2012 provide for a maximum height of 20 metres for 28 – 32 Anderson Street and 1 Help Street and 25 metres for 36 Anderson Street and 2A McIntosh Street.

The height variations proposed measured from existing ground level to the highest point of the building above are summarised as follows:

Address of Land	Height (m)	Variation (m) (%)
1 Help Street	5.4 to 29.8 (Lift overrun)	-14.6 to +9.8 -73% to +49%
28-32 Anderson St	19.2 to 38.5 (Roof)	-0.8 to +18.5 -4% to +92.5%
36 Anderson Street	16.2 to 40 (Plant room)	-8.8 to +15 -35% to +60%
2A McIntosh Street	25.5 to 30 (Lift overrun)	+0.4 to +5 +2% to +20%

The varying heights over the different parts of the site reflect the adjustments to the built form flowing from the U-shaped perimeter building design that addresses the street frontages. The design is noted provides variable setbacks to 3 Help Street and enables the retention of the significant tree at the corner of Anderson Street and Help Street. The stepping in the building, as noted in the application documentation, seeks to manage shadowing impacts on the communal open spaces of The Regency and provide sunlight access to the internal courtyard.

The greatest extent of variation is on the north-east part of the site which is well separated from surrounding high-rise. It would be possible to design a building of single aspect units in one or two towers above the podium rather than the current proposal where many of the units have two aspects. The solution would likely have issues of separation and privacy between the two towers and would likely have reduced setbacks to 3 Help Street and impacts on light penetration as a result. The provision of a consolidated usable communal space other than roof top would be less achievable. The flexibility of the commercial spaces with external and internal frontages for all the spaces and level of natural light penetration would less achievable. It would require the provision of a large light well within the podium to provide natural light penetration to the central parts of the below podium space which would also detract from the usable communal space and the ability to manage the mass, design and location of the shop-top housing and its impacts.

d) Whether the objectives of the Control is satisfied notwithstanding the non-compliance

The objective of the stepped height control on the site is to manage the shadowing impacts especially on the above podium communal recreational space in The Regency twin towers. It also means that the higher permissible height is on the northern part of the site.

The modelling of development in Area 14 during preparation of WLEP 2012 suggested a two to three storey podium and one or possibly two residential towers in staggered locations above. On balance in considering the external impact issues and the internal amenity issues of the hypothetical concept and the subject proposal it is considered that the development is a competent solution. There are non-compliances in the height controls but there are also benefits in solar access, privacy/outlook considerations, number of dual aspect units possible and setbacks possible with the proposed arrangement of the building mass on the site. As a result it is considered that the objectives of the height controls are satisfied notwithstanding the non-compliance. Even a complying development will impact on views for the lower levels of the surrounding buildings.

e) Whether or not compliance is unnecessary or unreasonable in the circumstances

On balance regarding the context and features noted above it is considered that compliance would be unreasonable in the circumstances.

f) Whether non-compliance with the development standard raises any matter of significance for State and Regional planning and the public benefit of maintaining the planning controls.

The site is within an area that has been identified for redevelopment to provide for additional jobs and dwellings in an area abutting Chatswood CBD. Area 14 is a discrete location defined and bounded by its surrounding roads. As such there is no precedent that can be established for persistent non-compliance except within Area 14 itself. This would still be subject to a full planning assessment of site context, impacts and the relationship to surrounding developing. Therefore it is considered that the non-compliance does not raise any matter of significance for State or regional planning.

g) Whether there are sufficient environmental planning grounds to justify contravening the development standard

It is evident from the preceding discussion and assessment that there are environmental grounds that justify the variation to the height control noting also the compliance with the overall floor space control and anticipated density on the site. For these reasons it is considered that there are sufficient environmental planning grounds to justify the contravention of the development standards for height over part of the site.

Clause 4.6 WLEP 2012 Exception to Development Standard - FSR for Shop-top Housing (Clause 4.4A(19))

a) Objectives of Zoning

The site pursuant to WLEP 2012 is zoned B4 Mixed Use. The objectives of the Mixed Use zone are:

- To provide for a mixture of compatible land uses
- 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

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

b) Objectives of the Standard

The objectives of the exceptions to the FSR controls of Clause 4.4A in WLEP 2012 are not specifically stated in the instrument. The objectives generally of the FSR controls of Clause 4.4 are noted to be:

- 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
- To limit traffic generation as a result of that development
- To minimise the impacts of new development on adjoining and nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion
- To manage the bulk and scale of that development to suit the land use purpose and objectives of the zone
- To permit higher density development at transport nodal points
- 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
- 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
- To provide functional 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
- To achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas
- To encourage the consolidation of the certain land for redevelopment
- To encourage the provision of community facilities and affordable housing and conservation of heritage items by permitting additional gross floor area for these land uses.

It is clear that several of the general objectives of the FSR controls allude to the exceptions to the controls identified in Clause 4.4A including but not limited to maintaining the compactness of Chatswood, encouraging consolidation of land, providing functional areas of open space, managing bulk and scale to suit the land use purpose and objectives of the zone while managing impacts of new development.

c) What is the standard and the extent of the variation proposed?

The variation proposed to the floor space ratio controls for the shop-top housing component of the development is from 2:1 to 3.61:1. This represents an increase of 80% and a reduction of 80% in the expectation of commercial floor space provision on the site. Overall the total floor space proposed on the site of 4:1 complies with the requirements for sites over 2,200m² in Area 14 under WLEP 2012. Thus the overall density of the development is complying and the issue is the proportioning of the land uses in the mix of land uses.

d) Whether the objective of the Control is satisfied notwithstanding the non-compliance

The hypothetical design basis upon which the development standards in WLEP 2012 were based sought to achieve the objective of site consolidation for the orderly development of

underdeveloped land to facilitate the provision of increased jobs generating floor space and increased dwellings in an area on the fringe of Chatswood CBD. At the time of development Council was guided by advice from CB Richard Ellis and Hill PDA. The advice indicated strong demand for A-grade office development and residential and less demand for fringe located B-grade smaller office spaces such that residential would cross-subsidised development in mixed use in fringe locations.

The standard form for mixed use development in WDCP is a reflection of the standard model for mixed use which is a podium containing commercial uses with residential set back above. The size and shape of the subject site creates a potentially square-shaped podium of approximately 3,000m² for commercial uses. The dimensions indicate that the central part of the space within the podium floor space will have a dimension greater than 20 metres from the outside face and street address. Even if broken up into several tenancy spaces, the internal areas in each level of the podium would have little or no access to natural light or outlook or exposure to the public domain. Providing for natural light and an outlook would require the provision of a significant light well or internal courtyard within. This would have an impact on the marketability of the commercial floor space and the potential configuration of the shop-top housing levels above including provision of usable residential communal space utilising the roof of the podium. It is noted that the size and shape of a future consolidation of 3 and 5 Help Street would not experience that same issue.

The subject proposal provides less commercial floor space but the space proposed is flexible and marketable for a range of uses on the fringe of Chatswood CBD. Some spaces have been nominated as café or restaurant but other than the small café space in the north-eastern part of the site any of the spaces could also be used for a range of other business uses. The internal courtyard in the subject proposal is designed to be open and publically accessible during business hours. It means that all but one of the tenancies have the potential for public domain and active internal courtyard exposure. The outlook and access to natural light is acceptable.

Therefore, it is considered that notwithstanding the non-compliance in the proportion of commercial floor space to shop-top housing floor space, in the circumstances of the size and shape of the subject site the objectives of the standard are reasonably achieved. This is concluded noting that the overall density on the site is complying and consistent with the intend outcome for development of the site.

e) Whether or not compliance is unnecessary or unreasonable in the circumstances

In the circumstances noted above it is considered that it would be unreasonable to require compliance in this instance.

f) Whether non-compliance with the development standard raises any matter of significance for State and Regional planning and the public benefit of maintaining the planning controls.

The objectives for fringe locations to Chatswood CBD reflects State and Regional policies for higher density city living with smaller scale commercial uses that activate the public domain and provide for an increase in jobs potential. The proposed development achieves those objectives such that the non-compliance with the development standard for shop-top housing will not raise any matter of significance for State and Regional planning

g) Whether there are sufficient environmental planning grounds to justify contravening the development standard

The overall density on the site is complying. The proposed commercial spaces in the development are considered flexible in design and will provide active uses addressing the public domain and an appropriate amenity for future employees and business that may use the spaces. The proposal also provides a quality solution for city living units by providing mostly dual aspect units with solar access, outlook and acceptable privacy relationships. As a result it is considered that there are sufficient environmental planning grounds to justify the contravening of the development standards in the circumstance of this site and the proposed design.

CONCLUSION

The Development Application 2013/309 (2013SYE060) proposes commercial premises and shop-top housing mixed use development on a consolidated site with frontages to Help Street, Anderson Street and McIntosh Street, Chatswood on the northern fringe of Chatswood CBD. The development complies with the overall maximum permissible floor space ratio but exceeds the floor space maximum for shop-top housing. It also exceeds the height controls largely arising from the U-shaped built form providing variable setbacks to neighbours and reducing the footprint of the shop-top housing. In the existing and future circumstances of the site the assessment has concluded that the proposal is acceptable subject to conditions in the form of a deferred commencement noting unresolved engineering matters.

OFFICER'S RECOMMENDATION

- 1. THAT Sydney East JRPP support the Clause 4.6 objections as it is considered unreasonable to require compliance with the development standard of Clause 4.3 (Height) and Clause 4.4A (Proportion of shop-top housing floor space) of WLEP 2012 having regard to the circumstances of the site (size and shape) and the relationship to its existing and future surrounds.**
- 2. THAT the application be approved and delegated authority be granted to the General Manager of Willoughby Council to issue the "Deferred Commencement" consent notice subject to the attached conditions, Schedule 1 and Schedule 2.**

Schedule of Conditions

SCHEDULE 1

CONDITIONS OF CONSENT DEFERRED COMMENCEMENT

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)

1. Flood study

A flood study prepared by a practising civil engineer in accordance with Council's Floodplain Management Technical Standard No.3 shall be submitted showing the following:

- The establishment of 500mm and 300mm freeboard for the proposed finished habitable floor level and basement entry level respectively above the 1 in 100 year flood level.
- A 50% blockage to the enclosed drainage system shall be taken into considerations for the hydraulic analysis.
- The flood study shall take into account the new design levels for the road pavement in Help Street.
- The extent of the pre-developed and post-developed overland flowpath drawn at scale 1:100 shall be provided.
- Cross-sections details at 1:50 scale taken at right angles to the overland flowpath, with a maximum spacing of every 5 metres showing both the existing and post-developed flow sections with all levels to AHD, which shall include, but not limited to, the following locations:
 - a) at the upstream property boundary;
 - b) at the immediate upstream of the proposed structure that is closest to the floodpath;
 - c) at the downstream extent of the development work; and

Note: Cross-sections must show existing and proposed levels, top water levels, hydraulic data, flood extents.

- The flood study must be signed by the engineer declaring that the study has been undertaken in accordance with Australian Rainfall and Runoff, the NSW Floodplain Management Manual and Council's Floodplain Management Technical Standard.

(Reason: Prevent property damage)

2. Basement Entry Level

The applicant shall submit revised plans showing that the proposed finished level of the basement entry has a minimum freeboard of 300mm above the calculated 1 in 100 year ARI flood levels. The use of mechanical devices is not supported.
(Reason: Prevent property damage)

3. Design of Civil Works in Help Street

Since the proposed vehicular crossing will be built over the existing Council's drainage pit which is located in the low point of Help Street, the Applicant shall submit full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following modification works:

- a. The existing kerb inlet pit where the new vehicular crossing is proposed shall be replaced with two kerb inlet pits with 2.4m lintels via the extension of new 450mm diameter reinforced concrete pipes (RCP). One of the new kerb inlet pit shall be located adjacent to the proposed crossing for the subject property and the other kerb inlet pit shall be located immediately upstream of the new crossing for the neighbouring property. All design shall be carried out in accordance with Council's specification and standard drawing SD515.
- b. The existing kerb and gutter associated with half road pavement in Help Street shall be reconstructed. The applicant shall redesign the road pavement such that the low point in the Street will be situated at the location of the new kerb inlet pit which is adjacent to the new crossing for the subject property. Council's standard design traffic for this pavement is 1×10^6 HVAG.

The required plans must be designed in accordance with Council's specifications (AUS-SPEC). For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current *Fees and Charges Schedule* are payable to Council prior to issue of the approved plans.

(Reason: Ensure compliance)

4. Submit Long Sections

The applicant shall submit, for approval by the Accredited Certifier, long sections along each side/edge of each proposed vehicular access path drawn at 1:20 Scale.

For the proposed vehicular crossing for the neighbouring property, the long sections shall be prepared by a suitably qualified civil engineer using the B99 Ground Clearance Template from AS2890.1.

For the proposed vehicular crossing of the subject property, the long sections shall be prepared by a suitably qualified civil engineer using the Medium Rigid Vehicle Ground Clearance Template from AS2890.2.

Both long sections shall include the following: -

- Horizontal distance from the centreline of the road to the proposed parking slab, including provision of Council's standard layback as per Council's standard drawing SD105 which is available from Council's website. Council's standard layback is 500mm deep and the back of layback is 100mm above the gutter invert.
- Both existing and proposed levels (in AHD) and gradients represented in percentage of the vehicular crossing and driveway.
- Crossfall on road pavement shall be shown on long sections.
- The footpath width in Help Street shall be taken as 1.5m wide from the boundary alignment with a maximum crossfall 2.5%.

All driveway grades and transitions shall comply with AS 2890.1 -2004 and Council's specifications. 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.
(Reason: Ensure compliance)

SCHEDULE 2

Conditions of Consent: (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
Architectural	13015	DA00/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA01/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA02/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA10/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA11/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA12/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA13/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA14/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA15/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA16/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA17/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA18/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA19/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA20/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA21/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA22/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA23/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA27/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA30/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA31/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA32/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA33/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA34/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson

Architectural	13015	DA35/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA36/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA37/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA38/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA39/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA41/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA42/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA43/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA44/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA45/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA46/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA47/B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA48B	18.11.2013	19.11.2013	KannFinch/Drew Dickson
Architectural	13015	DA49/B	18.11.2013	2.12.2013	KannFinch/Drew Dickson
Architectural	13015	DA50/B	18.11.2013	2.12.2013	KannFinch/Drew Dickson
Architectural	13015	DA51/B	18.11.2013	2.12.2013	KannFinch/Drew Dickson
Architectural	13015	DA52/B	18.11.2013	2.12.2013	KannFinch/Drew Dickson
Landscape	S13-0045	SK02/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK03/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK04/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK05/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK06/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK07/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK08/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK09/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK010/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK011/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK012/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK013/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK014/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK015/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK016/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK017/E	26.11.2013	27.11.2013	Cloustons

Landscape	S13-0045	SK018/E	26.11.2013	27.11.2013	Cloustons
Landscape	S13-0045	SK019/E	26.11.2013	27.11.2013	Cloustons
Stormwater	25402-SYD	C01-00/C	30.7/2013	31.7.2013	Wood&Grieve
Stormwater	25402-SYD	C02-00/C	30.7/2013	31.7.2013	Wood&Grieve
Stormwater	25402-SYD	C03-00/C	30.7/2013	31.7.2013	Wood&Grieve
Stormwater	25402-SYD	C04-00/C	30.7/2013	31.7.2013	Wood&Grieve
Stormwater	25402-SYD	C05-10/B	30.7/2013	31.7.2013	Wood&Grieve

the application form and any other supporting documentation including but not limited to the Statement of Environmental Effects (as amended), traffic report (as amended), Basix and sustainability reports (as amended) including Section J, Shadow Analysis Design Statement, Arboricultural Impact and Specification, Stormwater submitted as part of the application, except for:

- a) any modifications which are “Exempt Development” as defined under S76(2) of the Environmental Planning and Assessment Act 1979;
- b) The Anderson Street Elevation (Architectural Plans) shall be amended to provide clear glazed balcony balustrade and not be capable of enclosure on Levels 1 to 4.
- c) See Condition 20. The waste handling design is to be approved by Council’s Waste Co-ordinator
- d) otherwise provided by the conditions of this consent.
(Reason: Information and ensure compliance)

PRIOR TO MAKING AN APPLICATION FOR A CONSTRUCTION CERTIFICATE

The following conditions are to be complied with before any Construction Certificate Application is made to the Certifying Authority.

2. Submit the Following Information to Willoughby City Council for Approval

Prior to the lodgement of an application for a construction certificate, the applicant shall submit plans and specifications satisfying the following requirements to Willoughby City Council for approval. A letter confirming the documentation is approved by Willoughby City Council, shall then be submitted to the certifying authority for the application of a construction certificate:

All plans and documentation addressing the requirements of Schedule 1. Note that the details of the approved plans noted in Condition 1 may be amended by the requirements of Schedule 1.

(Reason: 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.

3. Section 94A Contributions

A monetary contribution of \$1,353,000.00 (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 3% of the estimated development cost of \$45,100,000.00 at (2 August 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
(Reason: Statutory requirement)

4. External Finishes – Solar Absorptance

The external roofing, glazing and walls of the proposed dwelling are to be of minimal reflectance (solar absorptance of at least 0.70) so as to avoid nuisance in the form of glare or reflections to the occupants of nearby buildings, pedestrians and/or

motorists. Details demonstrating compliance are to be submitted with the Construction Certificate.
(Reason: Visual amenity)

5. Affordable Housing Contribution

A monetary contribution for the purpose of providing Affordable Housing that is calculated at 4% of the accountable total floor area of the development is to be paid to Council. 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 Family and Community Services 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. The contribution is to be paid **prior to release of the construction certificate**.
(Reason: Ensure compliance)

6. Sydney Water 'Quick Check' Certificate

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre to determine whether the development will affect Sydney Water's sewer and water mains and to see if further requirements need to be met.

Plans will be appropriately stamped and the Principal certifying authority must ensure the plans are stamped by Sydney Water prior to release of the Construction Certificate.
(Reason: Ensure compliance)

7. Fire Safety Schedule

Submission of the anticipated schedule of current and proposed fire safety measures to be implemented in the building, such fire safety schedule shall specify the minimum standard of performance for each fire safety measure.
(Reason: Compliance)

8. Damage Deposit

The applicant shall lodge a Damage Deposit of \$180,000 (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 \$132 (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)

9. 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)

10. Stormwater Conveyed to Street Drainage

Stormwater runoff from the site shall be collected and conveyed to the street drainage system in accordance with Council's specifications. A grated drainage pit (min. 900mm x 900mm) shall be provided within the property and adjacent to the boundary prior to discharging to the Council's drainage system. The existing kerb-inlet pit at the intersection of Help Street and Anderson Street where the stormwater connection is made shall be reconstructed to Council's Specification and Standard Drawing SD515. All drainage works shall comply with the requirements described in Part C.5 of Council's DCP and Technical Standards. In this regard, full design and construction details showing the method of disposal of surface and roof water from the site shall be shown on the Construction Certificate plans.
(Reason: Stormwater control)

11. 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)

12. Detailed Stormwater Management Plan (SWMP)

Submit for approval by the Accredited Certifier, detailed stormwater management plans in relation to the on-site stormwater management and disposal system for the development. The proposed on site detention (OSD) system shall have a minimum storage volume of 121m³. Stormwater runoff from all hard surface areas shall be collected and directed to the proposed OSD system.

The construction drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer with the following amendments:

- 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 plus the seepage inflow rate determined by a geotechnical engineer.
- The minimum capacity of the pump for the basement pump-out pit shall be 10L/s or based on the flow rate generated for 1 in 100yr ARI 5 minutes storm event, whichever is greater.

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)

13. Basement Pump-out Drainage System

The applicant shall submit, for approval by the Accredited Certifier, 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 pump-out 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 plus the seepage inflow rate determined by a geotechnical engineer.

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)

14. Construction Management Plan (CMP)

Submit, for approval by the Willoughby City Council, a detailed Construction Management Plan (CMP). The CMP shall address:

- (a) Construction vehicles access to and egress from the site including consideration of impact on the cycle-way, major traffic routes and bus stops
- (b) Parking for construction vehicles
- (c) Locations of site office, accommodation and the storage of major materials related to the project
- (d) Protection of adjoining properties, pedestrians, vehicles and public assets
- (e) Location and extent of proposed builder's hoarding and Work Zones noting that RMS will not allow use of Help Street
- (f) Tree protection management measures for all protected and retained trees.
- (g) Scheduling of construction on work and deliveries having regard to ensuring noise generating activity does not coincide with sensitive times for St Pius College activity, for example, examination times.
- (h) Relocation temporarily of any school zone bus stops during construction work if impacted by the construction activity or if there is any issue of safety for students at the nearby schools.
- (i) Methods for management of dust and noise generally on the site during construction.

Note that the CMP will be prepared after consultation with St Pius College to ensure that the concerns of the College for the safety of students and the amenity of the College are addressed during construction.

(Reason: Compliance)

15. Traffic Management Plan

A detailed Construction Traffic Management Plan shall be prepared for pedestrian, cycle, bus and traffic management and be submitted to Willoughby City Council for approval. The plan shall: -

- a) Be prepared by a RTA accredited consultant.
- b) Implement a public information campaign to inform any road changes well in

advance of each change. The campaign shall be approved by the Traffic Committee.

- c) Nominate a contact person who is to have authority without reference to other persons to comply with instructions issued by Council's Traffic Engineer or the Police.
- d) Temporary road closures shall be confined to weekends and off-peak hour times and are subject to the approval of Council. Prior to implementation of any road closure during construction, Council shall be advised of these changes and a Traffic Control Plan shall be submitted to Council for approval. This Plan shall include times and dates of changes, measures, signage, road markings and any temporary traffic control measures.

(Reason: Public safety and amenity)

16. Vehicle Access – Engineer's Certification

Prior to issue of any Construction Certificate, the Applicant shall submit, for approval by the Accredited Certifier, 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 all driveway gradients and transitions will not result in the scraping of the underside of cars.
- b) That a maximum gradient of 5% is provided for the first 6.5 metres for the driveway from the property boundary to the loading dock in Help Street.
- c) That the proposed vehicular path and parking arrangements comply in full with AS2890 in terms of minimum dimensions provided,
- d) That the headroom clearance of minimum 4.5 metres between the basement floor and any overhead obstruction is provided which complies with AS2890.2
- e) 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)

17. 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:

- a. The construction of new 1.5 metres footpath for the full frontage of the development site in Help Street, Anderson Street and McIntosh Street in accordance with Council's specification and Standard Drawing SD105.

For design finished levels, the new footpath shall have crossfall of 2.5% from the boundary alignment and fall towards the top of kerb. 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.

- b. The existing kerb and gutter associated with half road pavement in Help Street shall be reconstructed. The applicant shall redesign the road pavement such that the low point in the Street will be situated at the location of the new kerb inlet pit which is adjacent to the new crossing for the subject property. Council's standard design traffic for this pavement is 1×10^6 HVAG.
- c. The construction of new kerb and gutter associated with half road pavement for the full frontage of the development site in Anderson Street in accordance with Council's specifications and Standard Drawing SD105. Council's standard design traffic for this pavement is 3×10^5 ESA.

- d. The construction of new kerb and gutter with associated full road reconstruction for the full frontage of the development site in McIntosh Street in accordance with Council's specifications and Standard Drawing SD105. Council's standard design traffic for this pavement is 3x10⁵ ESA.
- e. The construction of new perm ramps in the intersection of Help Street and Anderson Street and in the intersection of Anderson Street and McIntosh Street in accordance with Council's specification and standard SD100.
- f. The construction of a new vehicular crossing in Help Street. Council's standard layback and gutter shall be provided in accordance with Council's specification and standard drawing SD105.
- g. The construction of a new vehicular crossing for the neighbouring property in Help Street. Council's standard layback and gutter shall be provided in accordance with Council's specification and standard drawing SD105.
- h. The existing kerb inlet pit where the new vehicular crossing is proposed shall be replaced with two kerb inlet pits with 2.4m lintels via the extension of new 450mm diameter reinforced concrete pipes (RCP). One of the new kerb inlet pit shall be located adjacent to the proposed crossing for the subject property and the other kerb inlet pit shall be located immediately upstream of the new crossing for the neighbouring property. All design shall be carried out in accordance with Council's specification and standard drawing SD515.
- i. The existing kerb-inlet pit where the stormwater connection is made shall be in accordance with Council's specification and standard drawing SD515.

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)

18. Overland Flow/Flood Level

Prior to issue of any Occupation Certificate, a suitably qualified and experienced civil engineer must certify that the finished floor levels of the habitable areas and at the basement entry have a minimum freeboard of 500mm and 300mm respectively above the 1:100 year ARI flood event as determined in the Flood Study.

The engineer must also undertake an assessment of the adjoining properties to ensure that the critical flows after the development do not cause any worse off effect to these properties.

(Reason: Reduce incidence of water damage to properties)

19. 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 AS2890.6 and Council's standard specification.

(Reason: Vehicular access)

20. Waste & Recycling Rooms

The waste and recycling container rooms 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 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 suitable for connection to the garbage collection vehicle being provided for the development. In addition suitable recycling containers must also be provided.

Note that the Waste Management Plan by Elelphants Foot lodged with the application (as amended) requires review to maximise the use of bulk bins to provide for efficiency in waste collection. This may require decanting of the 240L MGB.

(Reason: Health and amenity)

21. Arboricultural Method Statement

Submit to the accredited certifier an Arboricultural Method Statement. The Statement shall address tree protection and management on the site, and must comply with the requirements detailed in WCC Landscape Specification 04/2007, Development Site Tree management – Arboricultural Method Statement. Statement that addresses all requirements of the Arboricultural Impact Assessment Report and Tree Protection Specification by Tree1Q dated 27 November 2013 for the *Angophora costata*.

(Reason: Tree protection)

22. 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)

23. Noise from Transport Corridor

To minimise the impact of noise from any external noise source on the amenity of the occupants, the building shall be constructed in accordance with the recommendations and specifications of the acoustic report no: 20C-13-0132-TRP-466944-1 prepared by Vipac dated 30 July 2013.

Details of the proposed acoustic treatment shall be submitted to the Principal Certifying Authority.

(Reason: Amenity)

24. 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)

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)

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, including demolition.

26. 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)

27. 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)

28. 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)

29. 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)

30. Spoil Route Plan

Submit a “to and from” spoil removal route plan to Council prior to the commencement of excavation on the site. Such a route plan should show entry and exit locations of all truck movements.

(Reason: Public amenity)

31. Stormwater Works in Help Street

Prior to the commencement of any excavation works for the proposed vehicular crossing, the applicant shall construct the kerb inlet pits with the extension of 450mm diameter steel reinforced concrete pipe in Help Street in accordance with the approved plans, Council's Specification (AUS-SPEC) and to the satisfaction of Council's Engineers.

All stormwater works shall be carried out and completed to the satisfaction of Council's Engineers. A written acknowledge shall be obtained from Council (attesting to this condition being appropriately satisfied) prior to any excavation works for the proposed vehicular crossing. A road opening permit shall be obtained from Council prior to commencement of any works on Council's property.

(Reason: Ensure compliance and maintain public amenity)

DURING DEMOLITION, EXCAVATION AND CONSTRUCTION

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

32. Site Management

A Site Management Plan shall be submitted to and approved by the Principal Certifying Authority. The Site Management Plan shall have regard to and comply with the approved Construction Management Plan and Construction Traffic Management Plan. 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)

33. External Finishes - Compatibility

All external building material shall be in colours and textures, which are compatible with the character of the locality. In this regard a schedule of these colours and textures shall be submitted consistent with the approved plans.

(Reason: Visual amenity)

34. 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)

35. Construction Information Sign

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

- that unauthorised entry to the work site is prohibited;
- the excavator's and / or the demolisher's and / or the builder's name;
- contact phone number/after-hours emergency number;
- licence number;
- approved hours of site work; and
- 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)

36. 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)

37. Demolition Work AS 2601

Demolition works being carried out in accordance with the requirements of AS 2601 "The demolition of structures".

(Reason: Safety)

38. Silencing Devices

Sound attenuating devices shall be provided and maintained in respect of all power-operated plant used during demolition, excavation, earth works and the erection of the structure.

(Reason: Maintain amenity to adjoining properties)

39. 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)

40. 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)

41. 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)

42. 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)

43. 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)

44. 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)

45. 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)

46. 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)

47. 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)

48. 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)

49. 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)

50. 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)

51. Tree Protection

- i) Retain and protect the following trees and vegetation throughout the demolition and construction period:
All trees not indicated for removal on the approved plans
- 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)

52. 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)

PRIOR TO OCCUPATION OF THE DEVELOPMENT

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

53. 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)

54. 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)

55. 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)

56. Marked Parking Bays

All parking bays and/or truck docks and the direction of traffic movement being permanently marked on the pavement surface in accordance with the approved parking and driveway layout to the satisfaction of the Principal Certifying Authority. As the building is to be used for multiple occupation all parking bays shall be identified by corresponding consecutive numbers in their use group.

(Reason: Ensure compliance)

57. 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. A small portion of each storage area shall be of solid construction (i.e. Cupboard).

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

58. Visitor Parking Spaces

The 34 residential visitor and 23 commercial 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)

59. Identification of Car Parking Spaces

The 193 car parking spaces are to be physically identified on site and maintained free of obstruction. Under no circumstances are these spaces to be used for the storage of goods or waste products.

(Reason: Amenity)

60. Services - Electricity Supply and Telecommunication Mains

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

(Reason: Compliance)

61. 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)

62. Shop Top Housing - 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)

63. Shop Top Housing - Screening of Rooftop Plant/Structures

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

(Reason: Visual amenity)

64. Temporary Ground Anchors – De-stressing

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: De-stressing of ground anchors)

65. Grated Box Drain

For stormwater control a 300 mm wide grated trench drain with a heavy duty removable galvanised grate is to be provided in front of the garage door/basement parking slab to collect driveway runoff. The trench drain shall be connected to the main drainage system and must have an outlet of minimum diameter 150mm to prevent blockage by silt and debris.

(Reason: Proper disposal of stormwater)

66. On-site Water Management System

The stormwater runoff from the site shall be collected and disposed of via an approved 121m³ 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)

67. Sign for OSD system

An aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the On Site Detention System.

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

(Reason: Prevent unlawful alteration)

68. Confined Space Sign

Securely install a standard confined space danger sign in a prominent location within the immediate vicinity of access grate of the On Site Detention System and the basement pumpout tank.

(Reason: Safe access to tank)

69. 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)

70. Certification of Rainwater Reuse System

Upon completion of the Rainwater Retention and Reuse System, a licensed plumber shall certify on Council's standard certification form that the rainwater retention and reuse system has been constructed in accordance with the approved stormwater management plans and that the as-built system has been fitted with proprietary first flush device and connected to non-potable use including toilet flushings, laundry and landscape irrigations. All plumbing/drainage works shall be carried out which comply with the current plumbing requirements of Sydney Water and Committee on

Uniformity of Plumbing and Drainage Regulations of NSW". Council's Standard Certification form is available in the appendix of Council's Technical Standard No. 2.
(Reason: Record or works)

71. Certification of the Basement Pump-out Drainage System

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

- A suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify that the as-built pump-out 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)

72. 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)

73. Works-As-Executed Plans – Rainwater Reuse

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

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

(Reason: Record of works)

74. 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 stormwater management 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 either under Section 88B of the Conveyancing Act 1919 or under Section 88E(3) of the Conveyancing Act 1919 using Form 13PC and 13RPA respectively. The relative location of the on site detention tank and/or rainwater retention and reuse 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)

75. Documentary Evidence of Positive Covenant, Engineers Certificate

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

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

(Reason: Public record)

76. Splay Corner for Fence

In order to ensure adequate sight distances for pedestrians and traffic in the frontage road, a 2m x 2.5m splay to comply with Fig 3.3 of AS2890.1

(Reason: Pedestrian safety)

77. Construction of Kerb & Gutter

Prior to issue of any Occupation Certificate, the applicant shall complete the following civil works in accordance with Council's specification and to the satisfaction of Council:

- a) Construct new kerb and gutter together with half road reconstruction for the full frontage of the site in Help Street and Anderson Street.
- b) Construct new kerb and gutter together with full road reconstruction for the full frontage of the site in McIntosh Street.

(Reason: Public amenity)

78. Reconstruct Pavement

Prior to issue of any Occupation Certificate, the applicant shall complete the following civil works in accordance with Council's specification and to the satisfaction of Council:

- a) Half the road pavement for full frontage of the development site in Help Street and Anderson Street shall be reconstructed in accordance with Council's approved drawings, conditions and specification (AUS-SPEC). Council's standard design traffic for this pavement is 3x10⁵ ESA.

- b) Full width road pavement for full frontage of the development site in McIntosh Street shall be reconstructed in accordance with Council's approved drawings, conditions and specification (AUS-SPEC). Council's standard design traffic for this pavement is 3x10⁵ ESA.
(Reason: Ensure compliance)

79. Concrete Footpath

Prior to issue of any Occupation Certificate, the applicant shall complete the following civil works in accordance with Council's specification and to the satisfaction of Council:

- Construct a 1.5 metres concrete footpath for the full frontage plus 6 metres beyond the frontage of the development site in Help Street, Anderson Street and McIntosh Street. For design finished levels, the new footpath shall have cross-fall of 2.5% from the boundary alignment and fall towards the top of kerb.

All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. All works shall be carried out in accordance with Council's standard specifications and drawings.

(Reason: Public amenity)

80. Vehicular Crossing

Construct two new vehicular crossings including the replacement of the existing layback and 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 new crossing for the neighbouring property in Help Street shall be 3 metres wide with no splays and is to be constructed at right angles to the street kerb in plain concrete.

The new crossing for the subject property in Help Street shall be 8.6 metres wide at the boundary property and taper to 9.6 metres wide at the layback. The crossing shall be constructed in plain concrete.

The footpath which forms part of the proposed crossing shall have a maximum cross-fall of 2.5%. The nature strip and footpath is to be adjusted for a minimum distance of 9 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 at the property boundary 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)

81. Removal of Redundant Crossings

Remove all redundant crossings together with any necessary works and reinstate the footpath, nature strip and kerb and gutter accordingly in Help Street, Anderson Street and McIntosh Street. 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)

82. 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)

83. Performance Bond

The Applicant shall lodge with the Council a performance bond of \$90,000 against defective public civil works undertaken by the main Contractor for a period of twelve (12) months from the date of the completion certificate issued by Council as the road authority under the Roads Act 1993. The bond shall be lodged in the form of a cash deposit, cheque or unconditional bank guarantee which will be refundable subject to the approval of Council's Engineers at the end of the maintenance period. In this period, the Applicant is liable for any part of the work which fails to achieve the design specifications. Council shall be given full authority to make use of the bond for such restoration works within the maintenance period as deemed necessary.
(Reason: Ensure compliance and specification)

84. Turfing, Landscaping 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 and/or landscaping shall be protected from vehicular traffic and kept watered until established. Long term maintenance of the nature strip is the responsibility of the building owner(s).
(Reason: Public amenity)

85. Vehicle Access - Construction & Certification

Prior to issue of any Occupation Certificate, 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 car park complies with the approved Construction Certificate plans,
- b) That a maximum gradient of 5% has been provided for the first 6.5 metres from the property boundary to the loading dock in Help Street.
- c) That finished driveway gradients and transitions will not result in the scraping of the underside of cars.
- d) That the as-constructed vehicular path and parking arrangements comply in full with AS2890.1 – 2004 in terms of minimum dimensions provided,
- e) That the headroom clearance of minimum 4.5 metres has been provided between the basement floor and any overhead obstruction to comply with AS 2890.2 and Section 2.4 of AS2890.6.
- f) 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)

86. Certification of Stormwater Works In Help Street

Prior to issue of any Occupation Certificate, a suitably qualified and experienced civil engineer (CP Eng. Qualification) shall certify that the as-built stormwater drainage system in Help Street has been constructed in accordance with the approved plans and complies with Council's DCP and Technical Standards.

(Reason: Ensure compliance)

87. Works-As-Executed Plans – Stormwater Works In Help Street

Upon completion of the Stormwater Drainage System in Help Street, the following shall be submitted, for approval by Council as the road authority under the Roads Act 1993:

- Work-as-Executed plans based on the approved stormwater plans from a registered surveyor to verify that all as-built alignments and levels which 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 Stormwater Drainage Works.

(Reason: Ensure compliance and record of works)

88. Create Positive Covenant

Prior to issue of any Occupation Certificate, the applicant shall create a Positive Covenant under Section 88B or Section 88E of the Conveyancing Act 1919, burdening all property owner(s) and/or the body corporate with the requirement to safeguard and floodproof the property from any overland flooding due to the placement of the driveway and vehicular crossing in the low point of the street. The Positive Covenant is to be created through an application to the Land and Property Information (LPI) NSW in the form of a S88B instrument or in the request form using form 13PC.

Title documents showing the registered covenant shall be submitted and approved by the Principal Certifying Authority prior to issue of any Occupation Certificate.

The terms of the instruments are to be in accordance with the following:

1.1. The Registered Proprietor covenants as follows with the Prescribed Authority in respect of the ongoing maintenance and repair of the property as a result of any overland flooding on the Burdened Lot.

1.2. The Registered Proprietor agrees to:

1.2.1. accept full responsibility for the maintenance and upkeep the basement and for any works that may be required in or to the basement or building caused by any storm water entering the Burdened Lot.

1.2.3. accept full responsibility for any damage to any property in the basement caused by any storm water entering the Burdened Lot.

1.2.4. indemnify and keep indemnified the Prescribed Authority from and against all claims, demands, actions, suits, causes of action, for damages, costs and expenses which the Prescribed Authority or any other person may suffer as a result of any storm water entering the basement via the driveway and the vehicular crossing or any failure of the Registered Proprietor to comply with the terms of this Positive Covenant.

1.3. Nothing in this clause 1 operates in any way to fetter the Prescribed Authority's discretion to impose any condition of consent when acting as a consent authority pursuant to the Environmental Planning and Assessment Act 1979.

1.4. The Registered Proprietor will:

1.4.1. carry out the matters referred to in paragraphs 1.2 at the Registered Proprietor's expense;

1.4.2. permit the Prescribed Authority or its authorised agents from time to time upon giving reasonable notice (but at any time and without notice in the case of an emergency) to enter and inspect the Burdened Lot for compliance with the requirements of this clause;

1.4.3. comply with the terms of any written reasonable notice issued by the Prescribed Authority in respect to the requirements of this clause within the time stated in the notice.

1.5. In the event that Registered Proprietor fails to comply with the terms of any written notice served in respect of the matters referred to in clause 1.2, the Prescribed Authority or its authorised agents may, on having given reasonable notice to the Registered Proprietor, enter the Burdened Lot with all necessary equipment and carry out the work required pursuant to clause 1.2. The Prescribed Authority may recover from the Registered Proprietor the cost of carrying out such work and recover the amount due by legal proceedings (including legal costs and fees) and entry of a covenant charge on the land under Section 88F of the Act. In carrying out any work under this clause, the Prescribed Authority shall take reasonable precautions to ensure that the Burdened Lot is disturbed as little as possible.

1.6. This Covenant shall bind all persons who are, or claim under, the Registered Proprietor(s) as stipulated in Section 88E (5) of the Act.

1.7. Name of Authority having the power to release, vary or modify the PositiveCovenant referred to is Willoughby City Council.

In this Positive Covenant unless inconsistent with the context:

Act means the *Conveyancing Act 1919 (NSW)* as amended or replaced.

Prescribed Authority means the Willoughby City Council and its assigns and successors.

Registered Proprietor means the registered proprietor of the Burdened Lot from time to time and all of his/her heirs, assigns and successors in title of the Burdened Lot and where there are two or more Registered Proprietors of the Burdened Lot the terms of this Positive Covenant shall bind all those registered proprietors jointly and severally.

Documentary evidence of registration of this instrument 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)

89. Tree Planting

Tree planting is to be carried out generally in accordance with the approved Landscape Plans. Note that any ground cover other than turf proposed in the Landscape Plans in the nature strip shall ensure that there is no obstruction to sight lines for vehicles leaving the site.
(Reason: Landscape Amenity)

90. 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)

91. Public Tree Planting

- a) Plant trees on Council land forward of the property generally in accordance with the approved Landscape Plans:
 - b) The trees shall:
 - i. Have a minimum container size as indicated on the approved Landscape Plans 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)

92. Sound Level Output Certification

The sound level output 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)

93. Acoustic Treatment – Certification

Certification shall be provided from a suitably qualified acoustic engineer certifying that the acoustic treatment of the building complies with the requirements of the development consent.

(Reason: Amenity)

94. Acoustic Works – Report

To ensure all acoustic work has been completed, certification shall be provided upon completion of the works, accompanied with evidence from suitably qualified and practising acoustic engineer, to the effect that the acoustic attenuation has been carried out in accordance with the acoustic report no: 20C-13-0132-TRP-466944-1 prepared by Vipac dated 30 July 2013. The report shall include all post construction validation test results.

(Reason: Amenity)

95. Food Premises

The fitout of the food premises 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 cool rooms shall be provided with safety devices to comply with G1.2 of the BCA.
- d) No approval is granted for any remote storage area.
- e) The business being registered with NSW Food Authority.
- f) 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)

96. 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)

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.

97. 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)

98. On-site Car Parking

The on-site car parking provision shall be arranged as follows:

136 residential spaces

34 residential visitor spaces

23 commercial spaces:

Motor cycle and bicycle as identified on the approved plans.

The residential visitor spaces, commercial spaces are to be outside the residential secure parking area and be accessible to tenants/visitors at all times. Shared use of the residential visitor and commercial spaces during operating hours of the commercial uses is appropriate and required by this consent.

(Reason: Ensure compliance)

99. Security Controlled Car Parking

Should any security controlled car parking arrangement be introduced for the residential visitor, commercial, retail and community facility spaces, a visitor voucher or similar system is to be used to enable free access and parking for the tenants/visitors.

(Reason: Amenity)

100. Motor Cycle Parking

One motorcycle parking space per 25 car parking spaces or part thereof must be provided for motor cycle parking. These spaces are to have an area of 1.2 metres x 3 metres.

(Reason: Amenity)

101. Cycle Racks

The provision of 22 bicycle lockers and 24 rails for the use of residents/visitors to the premises. Where more than three bicycle lockers are provided for commercial/ retail/ restaurant uses, showers and change facilities must be provided.

(Reason: Amenity)

102. Visitor Car Parking Bays

Any visitor parking bays required in accordance with Willoughby Development Control Plan Part C.4, are to be grouped together and physically identified by suitable signs

and/or pavement and being permanently accessible and reserved for the exclusive use of visitors to the premises.
(Reason: Ensure compliance)

103. 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 Help, Anderson or McIntosh Streets.
(Reason: Access and amenity)

104. Hours of Operation

The hours of operation of the use are to be restricted as determined in the future applications for use and fit-out of the commercial floor space (office, café, retail, restaurant)

Any variation to those hours, when determined, will be subject to further consent of Council.
(Reason: Amenity)

105. Proposed Advertising & Identification Signs

Any proposed advertising and identification signs are to be the subject of a fully co-ordinated scheme for the whole site. Such signs should relate to the scale, design and architectural treatment of the proposed building and have regard to the likely impact on the surrounding area. A separate development application shall be lodged for any signage.
(Reason: Visual amenity)

106. 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)

107. 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)

108. 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)

109. 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)

110. Road Reserve Planting

Replacement planting proposed within the road reserve may be undertaken subject to the following conditions:

- i) The cost of all works being borne by the applicant.
- ii) All service location checks and liability being the responsibility of the applicant.
- iii) Ongoing maintenance and replacement planting will not be provided by Council.
- iv) Council retains the right to prune or remove the planting as may be required for road or service maintenance and safety.

(Reason: Management of public assets)

111. Trees on Adjoining Properties

No approval is given for the removal or pruning of trees on neighbouring private land.
(Reason: Environmental protection)

112. 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)

113. Noise Control – Operation

To minimise the impact of noise of the development on the amenity of the adjoining properties, the business shall be operated in accordance with the recommendations of the acoustic report no: 20C-13-0132-TRP-466944-1 prepared by Vipac dated 30 July 2013.
(Reason: Amenity)

114. 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)

115. 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)

116. RMS Condition – Construction Zones

All construction activity associated with the proposed development should be contained on site. A construction zone will not be permitted on Help Street

(Reason: Ensure compliance)

117. RMS Condition – Design of Car Parking

The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS2890.1-2004, AS2890.6-2009 and AS2890.2-2002 for heavy vehicle usage.

(Reason: Ensure compliance)

118. RMS Condition – Entrance and Exit

The entrance and exit driveways are to be clearly delineated and contain 'entry' and 'exit' signs to ensure one way movements to and from the site.

(Reason: Ensure compliance)

119. RMS Condition – Sight Lines

Any proposed landscaping and/or fencing must not restrict sight distances for pedestrians/cyclists travelling along the footpath of Help Street.

(Reason: Ensure compliance)

120. RMS Condition – Utility Adjustments

The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents.

(Reason: Ensure compliance)

PRESCRIBED CONDITIONS

The following conditions are prescribed by S80A of the Environmental Planning & Assessment Act for developments involving building work.

121. Compliance with Building Code of Australia

All building works must be carried out in accordance with the performance requirements of the Building Code of Australia.
(Reason: Compliance)

122. Support for Neighbouring Buildings

- (1) If development involves an excavation that extends below the level of the base of the footings of a building on an adjoining property, the person having the benefit of the development consent must, at the person's own expense:
 - a) protect and support the adjoining premises from possible damage from the excavation, and
 - b) if necessary, underpin and support the adjoining premises to prevent any such damage, and
 - c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (2) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- (3) In this clause, "allotment of land" includes a public road and any other public place.

(Reason: Safety)

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

123. 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)

124. Notify Council of Intention to Commence Works

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

(Reason: Information and ensure compliance)

125. 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)

