

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

JRPP No	2014SYE128
DA Number	DA-2014/445
Local Government Area	Willoughby City Council
Proposed Development	Demolition of existing structures and construction of five (5) mixed use buildings containing retail premises, business premises, shop-top housing, car parking, childcare centre, landscaping, restoration of a heritage building and associated works
Street Address	36-38 Hercules Street & 256 Victoria Avenue, CHATSWOOD NSW 2067
Applicant/Owner	Chatswood Place Pty Ltd
Number of Submissions	5
Regional Development Criteria (Schedule 4A of the Act)	Capital Investment Value (CIV) of the proposal is \$75,504,560.
List of All Relevant s79C(1)(a) Matters	WLEP 2012; SEPP State and Regional Development 2011 (SRD SEPP); Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; SEPP 55; SEPP Building Sustainability Index: BASIX 2004 (The BASIX SEPP); SEPP 65; Residential Flat Design Code; Draft WLEP; Draft Apartment Design Guide (Draft ADG); WDCP; S94A Plan.
List all documents submitted with this report for the panel's consideration	Plans - A3 @ Scale 1:500 - Supporting Documentation & Diagrammatic Drawings.
Recommendation	Approval
Report by	Ana Vissarion - Development Planner
Report date	18 August 2015

Assessment Report and Recommendation

36-38 Hercules Street & 256 Victoria Avenue, CHATSWOOD NSW 2067

JRPP REF: 2014SYE128
DA NO: DA-2014/445
ATTACHMENTS: 1. PLANS AND ELEVATIONS
2. NOTIFICATION MAP
MEETING DATE: 10-SEP-2015

RECOMMENDATION: APPROVAL

LOCATION: 36-38 HERCULES STREET & 256 VICTORIA AVENUE, CHATSWOOD NSW 2067

APPLICANT: CHATSWOOD PLACE PTY LTD

OWNER: OSCAR PTY LTD AND HERCULES THIRTY SIX PTY LTD AND CHATSWOOD COMMUNITY CARE ASSOCIATION LIMITED AND CHATSWOOD COMMUNITY CARE ASSOCIATION

PROPOSAL: DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF FIVE (5) MIXED USE BUILDINGS CONTAINING RETAIL PREMISES, BUSINESS PREMISES, SHOP-TOP HOUSING, CARPARKING, CHILDCARE CENTRE, LANDSCAPING, RESTORATION OF A HERITAGE BUILDING AND ASSOCIATED WORKS.

DATE OF LODGEMENT: 15-OCT-2014

REPORTING OFFICER: ANA VISSARION

EXECUTIVE SUMMARY

The proposal seeks consent for restoration of a heritage building and demolition of the other existing buildings and ancillary structures on site and construction of five (5) mixed use buildings containing retail and business premises, shop-top housing, childcare centre, basement car parking, landscaping, and associated works.

The site is bordered by the Chatswood Central Business District (CBD) to the west and north-west and it is approximately 800m from Chatswood Railway Station. The surrounding built environment consists of Chatswood Village to the west on Oscar Street, single and double storey houses and residential flat buildings to the east of Hercules Street.

The proposed development involves the construction of five (5) new buildings. The two (2) buildings located along the Hercules Street frontage and two (2) buildings located on Oscar Street are subject to a 20m height limit. The fifth building is located along Albert Avenue and is subject to a 9m height control.

The proposal complies with the overall floor space ratio (FSR) for the site but seeks to vary the maximum shop-top housing FSR component.

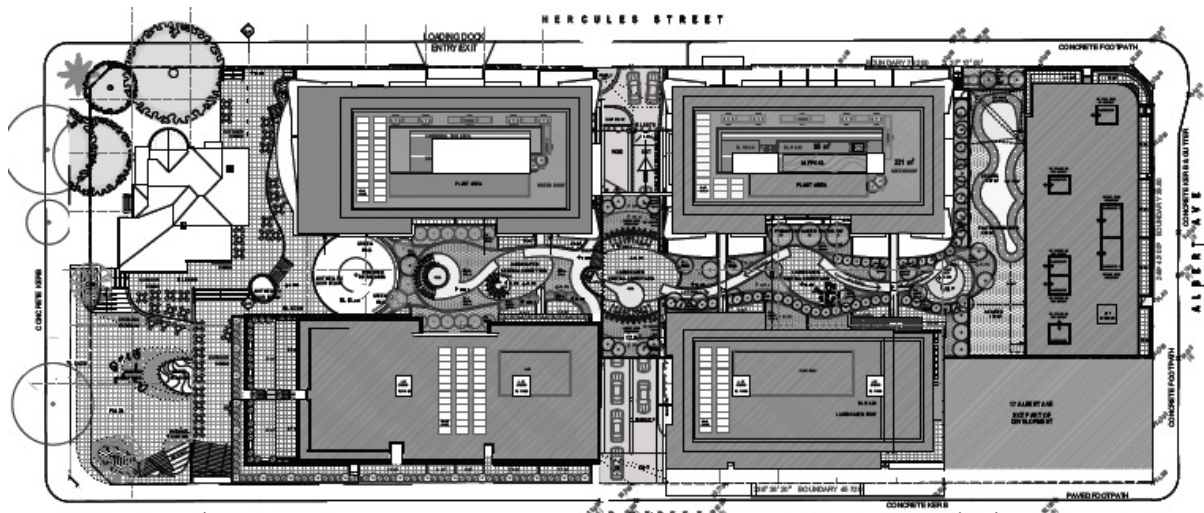
The development will result in site isolation of a property located at the corner of Oscar Street and Albert Avenue, known as 17 Albert Avenue. The isolated property is 557.48m² in size and is currently developed with a detached dwelling house and outbuilding. Efforts made to amalgamate the site failed. With previous applications it was demonstrated that No 17 Albert Avenue can be independently developed as a three (3) storey building with basement parking, in a manner that is consistent with the WLEP 2012 and other relevant controls. The current proposal maintains opportunities for independent re-development of this site.

The application is reported to Sydney East JRPP for determination as it meets the relevant criteria to be considered regional development under Schedule 4A of the EP&A Act 1979. More specifically, the Capital Investment Value (CIV) for the proposal is estimated to exceed \$20 million (\$75,504,560).

DESCRIPTION OF PROPOSAL

The proposal seeks development approval for the following:

- Demolition of the existing buildings and structures on site other than the heritage item;
- Restoration and adaptive reuse for retail purposes of the existing locally listed heritage building (the internal fit-out and the use to be part of a separate DA);
- Provision of a north-facing public plaza to Victoria Avenue, which provides a forecourt to the retail component and a curtilage to the heritage building;
- Construction of five (5) mixed use buildings along the four (4) street frontages (Hercules Street to the east, Oscar Street to the west, Victoria Avenue to the north and Albert Avenue to the south), being up to 27.1m in height (three (3) to eight (8) storeys) to accommodate approx. 3,885m² of retail space, a childcare centre for 67 children, business premises, all above 435 car parking spaces, motorcycle and bicycle parking areas, storage and ancillary facilities, and below 217 shop-top residential dwellings:
 - *Albert Ave building* to front Albert Avenue is proposed to accommodate a childcare centre, business premises and shop-top housing;
 - *Northern Hercules St* and *Southern Hercules St buildings* to front Hercules Street are proposing to accommodate retail premises at ground and mezzanine levels and shop-top housing above;
 - *Northern Oscar St* and *Southern Oscar St buildings* to front Oscar Street are proposing to accommodate ground level retail premises and shop-top housing.
- Construction of basement car parking; and
- Landscaping on the site and, where appropriate, on the perimeter streets, and associated works.



The proposal includes the locally listed heritage building and 5 new mixed use buildings.

NEIGHBOUR NOTIFICATION

The original application was notified for a period of 21 days in accordance with Part B.4 of the Willoughby Development Control Plan (WDGP) from 27 October 2014 to 17 November 2014.

Five (5) submissions were received objecting to the proposal on behalf of:

- 17 Albert Avenue;
- 2 Havilah Street;
- Suite 78, Chatswood Village, 47 Neridah Street Chatswood;
- Federation of Willoughby Progress Associations and Chatswood East Progress Association; and
- Northern Sydney Local Health District – Royal North Shore Community Health Centre.

The key issues raised in the submissions are:

- Potential impact on local traffic and parking noting the development has a shortfall of 11 car spaces;
- Potential impact on existing Chatswood Village businesses due to traffic increase in the area;
- Loss of privacy, increase in overshadowing and potential drainage impacts on 17 Albert Avenue;
- Potential impact on future development of 17 Albert Avenue; and
- Proposal disregards height and FSR controls for Shop Top Housing.

During assessment of the application, Council's officer raised concerns with regard to bulk and scale, landscape, traffic, stormwater, shop top definition, childcare and urban design. In response to the concerns raised, the applicant submitted amended plans incorporating the following changes:

- The maximum building height has been reduced from 33.1 metres to 27.1 metres by deleting up to two levels from the Oscar Street North and South buildings;
- The overall FSR was decreased from 2.46:1 to 2.36:1 (where FSR of the Shop Top Housing component has been reduced from 2.00:1 to 1.87:1);

- The number of residential apartments has been decreased from 233 to 217;
- The number of car parking spaces has been reduced from 439 to 435 cars;
- The traffic and parking layout was revised, new showers and lockers added at the end-of-trip bicycle parking facilities;
- The ground floor retail was setback 3.6m from Oscar Street to accommodate a wider footpath, changes to access and design for increased security, changes to pedestrian areas at the plaza and retail levels for increased safety and social interaction;
- The landscaping plans were revised to include new rainwater tanks and water fountains in the plaza, and
- The ground floor childcare centre on Albert Avenue was amended to include an additional emergency exit.

The latest set of plans is stamped by Council 13 March 2014 and is described under the 'Description of proposal' section above. These plans were not re-notified as they have similar or less impacts to neighbouring properties and are the subject of this report.

EXISTING BUILDING, SITE CONTEXT AND RELEVANT HISTORY

The site is known as 36-50 Hercules Street and 256-260 Victoria Avenue, Chatswood (Lot 101 DP 1158779, Lot 100 DP 1158779 and Lot 1 DP 828606). The block is bounded to the east by Hercules Street, to the west by Oscar Street, to the south by Albert Avenue and to the north by Victoria Avenue. The site is rectangular in shape and has an area of 8,889m², with a frontage of approx. 156m to Hercules Street, 127m to Oscar Street, 42m to Albert Avenue and 60m to Victoria Avenue. No. 17 Albert Avenue is located on the south-west corner of Oscar Street and Albert Avenue and does not form part of the site.

The site includes a locally listed heritage item identified in Schedule 5 Environmental Heritage of the WLEP 2012 as Community Hospital 256 Victoria Avenue, Part of Lot 1, DP 828606, Local Item I133.

This northern part of the site is occupied by the Chatswood Community Nursing Home (CCNH) and includes the locally listed heritage building on the corner of Victoria Avenue and Hercules Street. On 21 March 2011, JRPP approved as Deferred Commencement development application DA-2010/549 for 256 Victoria Avenue & 38 Hercules Street, Chatswood for Adaptive re-use of listed heritage item in association with construction of residential aged care facility, including seniors living units. The Consent was granted on 11 July 2011. The approved DA includes buildings of six (6) and seven (7) storeys in height and the adaptive re-use of the listed heritage item. This development consent has not commenced to date.

The southern part of the site comprises various vacant single storey dwelling houses, most recently occupied by NSW Heath Infrastructure for health related purposes. Consent was granted over this part of the property (36-44 Hercules Street Chatswood) for a mixed use development comprising retail, commercial, childcare centre, serviced apartments and shop-top housing (DA-2013/142).

Development located to the north, on the opposite site of Victoria Avenue includes various commercial developments and residential flat buildings. To the east of the site are generally three (3) and four (4) storey residential buildings. To the west of the site, on the opposite side of Oscar Street are mixed use and commercial developments, including a large mixed use complex known as Chatswood Village (No 45 & 47 Neridah Street), residential flat development with 12 Units at No 268 Victoria Ave, a medical centre complex at No 270

Victoria Ave, and a commercial building at No 272 Victoria Ave. These buildings are generally four (4) to seven (7) storeys in height (14m to over 20m).

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

Consent was previously granted to two separate proposals on the site, one for a development on the “northern” site, adjoining Victoria Avenue, and one for a development on the “southern” site, adjoining Albert Avenue.

The current proposal was subject to a number of Pre-Development Assessment Meetings. The applicant was advised by Council’s officers that the plans and documentation must reflect the controls and objectives of the WLEP 2012 and WDCP and include detailed site and context analysis, compliance with SEPP 65 for the shop-top component, potential widening of Oscar Street, safer-by-design considerations, and ensure permissibility having regard to recent Court judgements regarding the definition of shop-top housing (with reference to the child-care component).

A separate but concurrent Planning Proposal is currently being assessed by Council which seeks to increase the allowable FSR on site to 3.3:1 (and the residential component to 2.5:1). The Planning Proposal incorporates a significantly larger retail component via a medium-sized supermarket and the proposal also includes a Voluntary Planning Agreement to widen Oscar Street.

CONTROLS AND CLASSIFICATION

- i) **Willoughby LEP 2012:** Yes
 - a. **Heritage Item and Heritage Conservation Area (HCA):** Yes, heritage item; not within HCA, but adjoins a Conservation Area to the south (across Albert Ave)
 - b. **Zoning:** B4 – Mixed Use
 - c. **Height:** 20m (Victoria Avenue, Oscar Street and Hercules Street Map Q), 9m (Albert Ave Map J)
 - d. **FSR:** overall 2.5:1, with maximum allowable Residential component of 1.25:1 (*Clause 4.4A (14 a)*)
 - e. **Affordable Housing:** **Yes**, on Special Provisions Area Map – Area 3 refers to Clause 6.8 of WLEP 2012 – Special Provisions Sites.
- ii) **Applicable DCP (SEPPs, REPs):** SEPP State and Regional Development 2011 (SRD SEPP); Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; SEPP 55; SEPP Building Sustainability Index: BASIX 2004 (The BASIX SEPP); SEPP 65; Residential Flat Design Code; Draft WLEP; Draft Apartment Design Guide (Draft ADG); WDCP.
- iii) **Developer’s Contribution Plans:**
 - a. **S94A Developers Contributions:** Yes
 - b. **Applicable rate:** 1% (outside CBD)
 - c. **The cost of development:** \$ 75,504,560.00
 - d. **The total contribution payable** (subject to Building Price Indexing (Enterprise Bargaining Agreement)): \$755,045.60

DEVELOPMENT STATISTICS

	Amended Proposal	Standard	Compliance
WLEP 2012			
Site Area	8889 m ²		
FSR	2.36:1 of which 1.87:1 Residential 0.49:1 Non-residential <i>Total: 20,964m² of which 16,634m² residential, 3,885m² retail, 51m² commercial and 394m² childcare (excluding affordable housing component of 665m² and heritage floor space of 324m²)</i>	2.5:1 (Clause 4.4A (14 a)) Residential Maximum - 1.25:1	Yes No (Clause 4.6)
Height	23.0m to lift overrun on Hercules St North, 22.9m to lift overrun on Hercules St South, 27.1m to lift overrun on Oscar St North, 23.3m to lift overrun on Oscar St South, 10.2m to clerestory on Albert Ave	20m (Hercules Street and Oscar Street - Map Q), 9m (Albert Ave - Map J)	No (Clause 4.6)
WDCP & RFDC			
Northern Setback (Northern Oscar St Building)	14.5m for LG and G level, 20.5m for 1 st and 2 nd level, 22.3m for 2 nd to 5 th level 28.0m for level 6 31.7m for level 7	3m + 1.2 / storey: 4.2m for 1 st storey, 5.4m for 2 nd storey, 6.6m for 3 rd storey, 7.8m for 4 th storey, 9m for 5 th storey, 10.2m for 6 th storey, 11.4m for 7 th storey	Yes
Eastern Setback (Northern Hercules St building)	0m for G, and 1 st level 2.0m for 2 nd , 3 rd & 4 th level 6.0m for 5 th level 8.5m for 6 th level	Consistent	Yes, acceptable

Western Setback (Northern Oscar St building)	1.2m for G level 0m for 1 st , 2 nd and 3 rd level 2.6m for 4 th , 5 th , 6 th and 7 th level 4.6m for 8 th level	Consistent	Yes, acceptable
Southern Setback (Southern Oscar St building to adjoining site at 17 Albert Ave)	0m on all levels	RFDC: Allow zero building separation in appropriate contexts, such as in urban areas between street wall building types (party walls).	Yes, acceptable
Southern Setback (Albert Ave Building)	0m - 1m at ground floor (childcare / business premises) 0m on 1 st & 2 nd level	Consistent	Yes, acceptable
Centre courtyard, between Hercules St & Oscar St buildings (RFDC)	12.2m (up to 4 th level) 15.2m on 5 th level 18.0m on 6 th and 7 th level Note: Podium on Level 1	RFDC: 12 metres between buildings (up to 4 storeys above podium) 12 metres between buildings (storeys 5 to 8)	Yes, acceptable
Open Space and communal areas (D.2.9)	60% and >5m wide outdoor areas with appropriate facilities at ground level and on roof 199 units at least 10m ² 15 units have 9m ² 2 units have 8m ² 1 unit has 7m ²	Ranges from 50% of site area for 2 levels of residential, to 60% of site area for 7 levels of residential. 3 hours solar access; Balconies: min 10 m ² & 2m wide	Yes, acceptable (92% compliance for size of balconies)
Mix of units & size (RFDC)	21 x Studios 97 x 1 bedrooms 67 x 2 bedrooms 30 x 3 bedrooms 2 x 4 bedrooms (total of 217 units)	0bedrooms ~ 38.5m ² + 1bedrooms ~ 50m ² + 2bedrooms ~ 70m ² + 3bedrooms ~ 95m ² +	Yes Yes Yes Yes
Adaptable housing (Part C.6.3 of WDCP)	109 adaptable units	50% of dwellings (shop top housing) equals: 109 adaptable units	Yes
Affordable housing	665.36m ² (2 studios, 2 x one bedroom units, 4 x two bedrooms units, 1 x three bedroom units remainder of 31.36m ² in cash contribution)	4% of GFA	Yes

Car parking	<p><i>Total of 435 car parking spaces</i></p> <p>207 residential car parking spaces</p> <p>49 residential visitor car spaces 33 accessible car spaces</p> <p>nil - business premises car spaces</p> <p>162 retail car spaces</p> <p>7 car spaces for employees of childcare 7 car spaces for drop-off and pick-up</p>	<p>Shop Top Housing: 1 space/ dwelling (other than studios) 0.5 spaces / dwelling (Studio) (206 spaces required)</p> <p>Visitor spaces: 1 per 4 dwellings (54 required) 1 in 4 adaptable dwellings to have an accessible car space (27 required)</p> <p>Business Premises: 1space per 110m² (0 required)</p> <p>Retail Shop: 1 space per 25m² (155 required)</p> <p>Childcare: 7 car spaces for 14 employees of childcare & 7 required for 67 children (childcare drop off / pick-up)</p>	<p>Yes</p> <p>No</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>
Bicycle parking	<p><u>Residential</u> 20 bike rails 28 bike lockers</p> <p><u>Retail</u> 24 bike rails 22 bike lockers</p> <p><u>Office / Business</u> 0 bike rails 1 bike locker</p>	<p><u>Residential</u> Rail – 1 per 12 dwellings Lockers -1 per 10 dwellings</p> <p><u>Retail</u> Rail - 1 per 150m² Lockers -1 per 450m²</p> <p><u>Office / Business</u> Rail - 1 per 600m² Lockers -1 per 2,500m²</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
Motorcycle	21 spaces	1 per 25 car spaces (17 motorcycle spaces required)	Yes
Landscaping	<p>Extensive landscaping provided on the residential podium, and roof top terraces.</p> <p>50% of rooftop open space is vegetated.</p>	<p>A minimum of 20% of rooftop open space is to be provided as vegetated area</p> <p>A one metre wide landscaped setback area is to be provided along a boundary to a rear lane to soften the appearance of the development.</p>	Yes

REFERRALS

Internal	
Building	Standard conditions of consent are recommended.
Waste	Standard conditions of consent are recommended.
Heritage	<p>Council's Heritage Architect recommended a number of conditions and made the following comments:</p> <p>"The proposal generally results in the conservation of the heritage item and its immediate setting and will provide opportunities for continued community access. In comparison with previously approved DA (2010/549) the heritage building is now freestanding and not connected to other buildings and would now be appreciated as a separate building within an appropriate curtilage. Landscaping works around the corner of Hercules Street and Victoria Avenue improve visibility from the public domain.</p> <p>The opening up of the previously enclosed verandah areas and loggia will assist in returning the building to its original form, and return important features of the house. The reconstruction of the front garden and the original picket fencing will further contribute to the setting of the heritage item.</p> <p>Because of the potential scale of the development permitted on the site, the new development will, of necessity, form a contemporary backdrop to the local heritage item and will be of a substantially higher form. The proposal will therefore change the traditional residential scale of the surrounding buildings, however the proposed forecourt area does allow for an improved visual corridor towards the item viewed from Victoria Avenue from the West.</p> <p>I concur with the view expressed in the H.I.S that the current proposal does not have a greater heritage impact than the previously approved development in terms of visual impact on the setting of the item. Additional setbacks directly behind the item will provide more separation than previously, whilst the proposed retail forecourt area and setbacks will allow appreciation of the item in areas where most people will be viewing it.</p> <p>The proposed conservation works repair the separation of the structure from earlier additions to the rear (which are to be demolished as part of the proposed development). I concur with the assessment of the H.I.S that the demolition provides for an appropriate termination of the eastern façade whilst integrating the southern façade into the new development layout. A new two storey verandah structure (using traditional materials and details) is proposed across the rear of the house set under an extension of the existing roof, reflects the earlier configuration of the house prior to later modifications. Partial demolition to recreate the open verandahs and loggias on the former house are considered to have acceptable impact, as original features of the surviving original fabric are not impacted by the proposed works. The openings provided are compatible with other openings in the original facades for doors and windows, and do not impact on significant fabric. It is noted it is proposed to submit a separate application for the internal adaptation and conservation of the item in</p>

	<p>connection with change of use.</p> <p>The impact on the development on the South Chatswood Conservation Area is mitigated by its separation from the area by Albert Avenue. Further landscaping to screen the development would aid in softening the transition to the higher scale of the buildings.”</p> <p>The amended plans incorporate street trees on Albert Avenue, consistent with the recommendation above. Moreover, a condition of consent requires planting of a minimum of 13 new street trees on the Hercules Street frontage of the site and a minimum of 4 new street trees on the Albert Avenue frontage.</p>
Development Engineering	<p>Council's Development Engineer initially advised that more information is needed in regard to OSD / stormwater systems proposed (to be sized by DRAINS). Following submission of the amended engineering and stormwater plans, Council's Development Engineer recommended conditions.</p>
Traffic	<p>Following the submission of the amended plans, the updated 22 June 2015 Traffic report and the SIDRA modelling, and the comments received from RMS dated 30 July 2015, Council's Traffic & Transport Engineer agreed that the surrounding road network as existing has the capacity to deal successfully with the traffic generated by the development, recommended conditions in order to further improve the flow of the traffic and made the following comments:</p> <p><i>After reviewing the SIDRA intersection analysis, I am satisfied that the proposed development (DA 2014/445) will not adversely impact on the local road network and the proposed northern bypass route. Any changes to the local network, such as median islands on Oscar St and Havilah St will require a Traffic Management Plan to be submitted to the RMS for approval, and will also need to be considered by the Willoughby Traffic Committee.</i></p> <p><i>At this stage Council is not proposing to remove parking on Victoria Ave and Albert Ave during weekday and weekend peak periods.</i></p> <p>Conditions addressing the above requirements are included in the recommendation.</p>
Environment Health	<p>No objection subject to recommended conditions, noting that,</p> <ul style="list-style-type: none"> - Separate development applications / complying certificates will be submitted for the operation of the commercial/retail tenancies; - The location of the proposed childcare centre is considered not to be in the line of sight of a significant source of electro-magnetic radiation (EMR) and as such a study was not requested to be undertaken. Having said this, an advisory note is included in the recommended conditions.
Children Services	<p>Subject to a condition of consent to require an emergency evacuation plan, Children & Youth Services Manager agreed that the development is compliant with the Education and Care Services National Regulations and raised no objection against the amended proposal.</p>
Landscaping	<p>Subject to recommended conditions of consent, no objection is raised to the proposal.</p>

External	
Police (CPTED)	The original application has been referred to NSW Police – NS LAC Chatswood station. No response has been received to date, but Chatswood Police made recommendation on previous applications and concern was raised mostly with the safety of children at the child care centre. These issues were taken into account by the applicant when preparing the documentation and by the planning officer when making the recommendation. A condition ‘Safety by Design’ is also included in the recommendation.
RMS	The application was referred for comments pursuant to Clause 104 and Schedule 3 of the SEPP Infrastructure 2007, as the development is a ‘ <i>Traffic-generating development</i> ’ (proposing 435 car parking spaces and 217 residential dwellings). Comments were provided and reviewed by Council engineer who recommended conditions to be incorporated into any consent issued.
SEPP 65	<p>The proposed development is designed by a qualified architect. A Design Verification Statement by a registered architect has been submitted as required by the SEPP.</p> <p>The application includes shop top housing along Hercules Street and Oscar Street and has been referred externally to an independent Urban Design consultant for assessment in accordance with SEPP 65. The recommendations have been discussed with the applicant and the majority were incorporated in the latest amended proposal. Other design changes are required by conditions of consent.</p> <p>The proposal’s compliance with the numerical controls/rules of thumbs contained in the Residential Flat Design Code are provided in the ‘Development Statistics’ section of this report. Further discussion on how the proposed design meets the SEPP 65 guidelines is detailed in the ‘Assessment’ section below.</p>

ASSESSMENT

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

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) 	✓
(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

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

Satisfactory ✓ Unsatisfactory ✗ Not Relevant 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) 	✓
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> Development control plans (DCPs) 	✓
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> Clause 92 EP&A Regulation- Demolition 	✓
	<ul style="list-style-type: none"> Clause 93 EP&A Regulation-Fire Safety Considerations 	✓
	<ul style="list-style-type: none"> Clause 94 EP&A Regulation-Fire Upgrade of Existing Buildings 	N/A
(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 	✓
	<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 	N/A
	<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 	✓
	<ul style="list-style-type: none"> Cumulative impacts 	✓
(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? 	✓
(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 	✓
(e)	The public interest	

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

Satisfactory ✓ Unsatisfactory ✗ Not Relevant N/A

	<ul style="list-style-type: none">Federal, State and Local Government interests and Community interests	✓

SEPP 65 - Design Quality of Residential Flat Development

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

The proposed development includes residential flat building components, as defined by Clause 3 of SEPP 65. The proposal was accompanied by a design verification prepared by Revay & Unn Architects demonstrating that, in their opinion, the design quality principles set out in Part 2 of SEPP 65 - Design Quality of Residential Flat Development are achieved and surpassed.

The review includes consideration of the Residential Flat Design Code rules. SEPP 65 Amenity Compliance verification was endorsed by Steve King, of the Faculty of the Built Environment, University of NSW, providing an assessment of the proposal in regard to solar access and natural ventilation requirements by the RFDC. It is his view that the design takes advantage of the north-easterly bias of the long side elevation for the location of the living areas of the majority of apartments. SEPP 65 and RFDC requires that living rooms and private open spaces for at least 70% of apartments should receive a minimum of 3 h of direct sunlight between 9am and 3pm in mid-winter. In dense urban areas a minimum of 2 hours may be acceptable. The proportion of dwellings which are deemed to comply with the 3 hours or more sunlight controls in the subject development was found to be 75.1%. In regard to natural ventilation, all corner and 'through' apartments with openings on two principal facades are treated as cross ventilated. As such, 61.4% of apartments are achieving cross ventilation, in excess of the 60% numerical standard.

Independent urban design consultant Architectus has been engaged by Willoughby Council to carry out an independent assessment of the application in its original form against the requirements of SEPP 65. Most recommendations were later incorporated into the latest set of the plans. The following is an assessment of these plans against the Design Quality principles listed in *Part 2 of SEPP 65*:

Principle 1: Context

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

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

The site is located at the fringe of the Chatswood CBD, well serviced by existing services and infrastructure. The scheme acknowledges the locally listed heritage building at the corner of Hercules Street and Victoria Avenue by providing a generously proportioned curtilage. Setting back of development along Victoria Avenue and creating of a north-facing public space. The amended plans decreased height. The new proposed height, bulk and scale of the buildings facing all streets relate well to the surrounding area and acknowledge

the desired future character of the area. The proposed uses relate to the adjacent properties, both to the west and east.

Principle 2: Scale

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

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

The scale and proportion of the proposed buildings are generally consistent with the desired scale of the surroundings. At its highest point, the proposal is setback and the massing of development is stepped and broken. The bulk of the buildings is comparable to the scale and massing of developments along Victoria Avenue. The three (3) storey scale of the Albert Avenue building responds to the storey scale of the dwelling houses to the south, while providing a transition to the higher scale of development to the north. The Albert Avenue building generally maintains the same scale as the building approved at this location under DA2013/142. The site as a whole is seen to occupy an important transition zone between Chatswood CBD, the medium to high density residential development to the east and the low density residential to the south. Given this, the scale of development as modified is found to be appropriate within the context.

Principle 3 – Built Form

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

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

The building forms consist of articulated contemporary buildings with appropriate external finishes. Due to the site's topography, the public plaza along Victoria Avenue is tiered over two levels connected with stairs, which incorporate pockets of soft landscaping and areas nominated for alfresco dining. All this open space has a northern orientation and provides good solar access in mid winter. The location, form and setbacks proposed maximises amenity and will increase vitality to Victoria Avenue, as it flows into Chatswood CBD. The transition to the residential areas to the east and south is achieved through breaking the massing of the complex into five buildings. This approach helps connect private and public spaces, reducing the bulk and sense of enclosure along Oscar and Hercules Streets. The use of the buildings is also considered to be compatible with the established and future character of the area.

Principle 4: Density

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

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

The proposed development has an overall FSR of 2.36:1, compliant with the maximum FSR for the site of 2.5:1. However, the development seeks to vary the maximum FSR standard for the residential component, seeking to achieve a higher residential component and a lesser density of other uses as required by the WLEP 2012 controls. The scale of the buildings is consistent within the context, takes advantage of the available infrastructure,

public transport, surrounding facilities and overall environmental quality and provides a plaza accessible to the public surrounding a renovated heritage item to act as a focal point for the development.

Principle 5: Resource, energy and water efficiency

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

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

The development application was accompanied by a BASIX Certificate in accordance with State Environmental Planning Policy (BASIX) 2004. The primary concern of BASIX is to ensure that new residential developments are designed to use less potable water and be responsible for fewer greenhouse gas emissions by meeting energy and water reduction targets. The proposal complies with BASIX requirements and relevant legislation. Moreover, the applicant submitted a completed Commercial Building Waste Management Checklist and an updated Resource Recovery Plan, in accordance with WDCP requirements.

Principle 6: Landscape

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

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

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

The heritage listed building at the corner of Victoria Avenue and Hercules Street is currently surrounded with large mature trees. These trees, located on public land are proposed to be retained. Three out of four streets offer opportunities for planting for the public benefit and to soften the built form. Given this, conditions of consent will require new trees on Hercules Street. Within the site, the centre includes landscaped communal open space. Although with limited opportunities for deep soil, the landscaping is regarded as acceptable.

Principle 7: Amenity

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

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

Apartments are generally acceptable with regards to size and internal amenity. A good mix of apartments should generate a diverse social mix of residents. In regard to amenity, the buildings are oriented to capture maximum natural light and minimise overshadowing.

A report by Stephen King of SOLARCH, UNSW, states that 75.1% of apartments have appropriate solar access and 61.4% achieve cross-ventilation. These are confirmed by the independent consultant engaged by Council.

Principle 8: Safety and Security

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

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

The development has regard for safety and security for residents and public. The car parking basements will have security access. The two levels of retail on Victoria Avenue will receive passive surveillance from the shop top development. High structures and tall landscaping within the plaza are minimised to ensure clear lines of sight. A standard Safety by Design condition of consent is recommended.

Principle 9: Social Dimensions

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

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

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

The development provides an appropriate curtilage to the heritage building on the corner of Victoria Avenue and Hercules Street and is proposing to restore and re-use this heritage building for retail purposes, responding to the needs of the community. The childcare component on Albert Street also responds well to the needs of the local community. In regard to housing, from the total number of 217 apartments, 109 apartments are capable to be adaptable and the proposal is capable to comply with the accessibility requirements.

Moreover, in order to comply with Clause 6.8(2) of WLEP 2012, the development provides for 4% of gross floor area (665m²) as affordable housing, in the form of nine (9) affordable housing units and the remainder as a monetary contribution to Willoughby Council. Overall, the development responds well to the social context and the needs of the local community.

Principle 10: Aesthetics

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

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

NSW Residential Flat Design Code and the draft Apartment Design Guide

In order to help improve housing affordability and supply, a comprehensive review of SEPP 65 was finalised in 2015 (end of last month). It resulted in a number of changes to the policy, including the overhaul of the Residential Flat Design Code into the Apartment Design Guide.

The changes to SEPP 65 include savings provisions. For apartment development applications lodged prior to 19 June 2015 which is the case with this application, the Residential Flat Design Code applies. Nonetheless, the proposed development is not inconsistent with the objectives and requirements of the Apartment Design Guide.

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

'Local Context: Primary development controls': building height, building depth, building separation, street setback, side and rear setback, floor space ratio, and in regard to *'Site Design'*: site analysis, site configuration (deep soil zones, fences and walls, landscape design, open space, orientation, planting on structures, stormwater management), site amenity (safety, visual privacy), site access (building entry, parking, pedestrian access, vehicular access), and

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

A number of recommendations to improve the originally submitted design (including a decrease in overall height in order to minimise amenity impacts on streetscapes and neighbours), were provided by 'Architectus', discussed with the applicant, and incorporated in the amended proposal. The amended scheme provides consistency with the design principles and 'rules of thumb' of the RFDC and in this regard is assessed as satisfactory.

Willoughby Local Environmental Plan 2012 (WLEP 2012)

The subject site is zoned B4 Mixed Use under the provisions of WLEP 2012.

The proposed works are classified as demolition of existing structures on site and construction of a new mixed use development and are permissible on site with JRPP's consent.

Permissibility issues – Shop Top Definition

The building facing Albert Avenue is proposed to contain 394m² of childcare centre at ground floor and a small business premises and two (2) levels of residential dwellings above. The applicant argues that the building meets the definition of shop-top housing due to the fact that the childcare is a '*business premises*' as it provides the service of 'child care' directly to members of the public on a regular basis.

The definition of the shop top housing in WLEP 2012 reads:

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

Note. Shop top housing is a type of residential accommodation—see the definition of that term in this Dictionary.

Similarly, commercial premises is defined by LEP 2012 as follows:

commercial premises means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.

Shop top housing and all commercial premises are permissible with development consent in the B4 Mixed Use zone. Given the above, if childcare would meet the definition of a 'business premises', the building would be a 'shop-top housing development'.

LEP Practice Note PN 11-003 issued by the Department of Planning & Environment provides an overview of the standard definitions used in the Standard Instrument (Local Environmental Plans) Order 2006 after the 2011 amendments and clarifies the interpretation of the terms relevant for the application of LEPs. The Practice note establishes general relationship between land use terms. Office, business and retail premises sit under the group term '*Commercial Premises*' and include a variety of sub-terms. Child care centres are not specifically excluded from the group, however, they are separately listed as a stand-alone term related to the group term '*Infrastructure –Community*'.

The applicant submitted a Memorandum of Advice prepared by Jacinta Reid, Barrister, dated 16 February 2015 - concluding that

"the childcare centre will provide a service of child care, direct to members of the public on a regular basis" and therefore

"the childcare centre is properly characterised as 'business premises' and the residential accommodation located above that use falls within the definition of 'shop top housing' in the LEP, and is therefore permissible".

The applicant also provided written advice from a planner employed by the Department of Planning & Environment that concludes in a similar manner that *"the childcare centre is a 'business premises'.*

In December 2014 Sydney West Joint Regional Planning Panel approved Development Application 2014SYW091 – Hornsby, DA/674/2014 for *Demolition of existing structures and construction of a five storey mixed use development comprising a 56 place child care centre below shop-top housing with 26 residential units and basement car park accommodating 53 car spaces*, Lot 1 DP 206275, Lot 1 DP 795814 (No. 548) Pennant Hills Road, West Pennant Hills. This application had a similar challenge in regard to the shop-top definition as it included a "child care centre" and "shop-top housing". No other commercial uses were proposed at the ground level. The assessing officer agreed with the applicant and with Hornsby Council legal advice that

"a "child care centre" is a form of "business premise" as it would provide a service directly to members of the public and would constitute an occupation/profession or trade".

"A child care centre provides a "service" on a regular basis to paying members of the public. Whilst child care centre has not been included within the definition of "business premise", it has not been specifically excluded.

As such, the term "business premise" does not include an exhaustive list of uses. Given the nature of service provided by professionals, a child care centre can therefore constitute a business premise."

The Sydney West JRPP concurred with the assessment officer, Council's solicitors and legal advice, that the Hornsby development constitutes "shop-top housing". The application was approved on 17 December 2014.

Based on the supporting documentation provided with the current application and the precedent established by the above development, the building facing Albert Avenue constitutes “shop-top housing” above business premises and is permissible on the subject site subject to JRPP consent. As such, the development provides for the development of shop-top housing, a childcare centre, retail premises and business premises.

The development will be accommodated within five (5) new perimeter buildings located above an integrated basement car park. The proposal also involves the adaptive reuse and restoration of an existing heritage building. The new buildings range in height from three (3) to eight (8) storeys. The proposal exceeds the maximum height of buildings standard as specified in Clause 4.3A of WLEP 2012 and the maximum floor space ratio standard for housing component as specified in Clause 4.4A(14) of WLEP 2012.

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

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

Clause 4.3 Height of buildings

Extent of Variation

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

	Proposed	Development Standard	Percentage above control
Albert Ave building	7.5m to parapet 9.1m to top of roof slab 10.2m to clerestory	9m	13.33%
Hercules St building North	20.5m to top of roof slab 23m to lift overrun	20m	15%
Hercules St building South	20.6m to top of roof slab 22.9m to lift overrun	20m	14.5%
Oscar St building North	27.1m to top of roof slab 27.1m to lift overrun	20m	35.5%
Oscar St building South	22.9m to top of roof slab 23.3m to lift overrun	20m	16.5%

Applicant's reasons in support of the variation

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

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

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

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

- the proposal remains consistent with the objectives of the B4 Mixed Use zone, despite the non-compliance;
- the proposal remains consistent with the objectives of the building height standard outlined in subclause 4.3(1) despite the non-compliance;
- the distribution of bulk and scale across the site provides an appropriate curtilage to the heritage building on the corner of Victoria Avenue and Hercules Street, with a minimum separation of 6m to Oscar North and Hercules North buildings and the provision of a north-facing public plaza to Victoria Avenue;
- the scale of the proposed development is consistent with the scale of the development along all surrounding streets;
- the development will have minimal impacts on adjoining and nearby properties in terms of views loss, overshadowing, loss of privacy and visual intrusion;
- compliance with the height standards would significantly limit the ability to achieve the allowable FSR of 2.5:1, without achieving any discernible environmental or amenity benefits in terms of solar access, privacy or views.



Oscar Street and Hercules Street elevations comparing height of previous DA approvals, original proposal and the latest amended scheme

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

Objectives of the Zoning

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

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

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

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

Comments: The site is close to the Chatswood City Centre and buses connecting with Chatswood train station. The provision of increased density in the form of mixed use development in this location reduces the need for car use, consistent with the objectives.

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

Comments: The site is at the eastern edge of the Chatswood CBD. The proposed development provides a transition from the busy retail environment of Victoria Avenue to the residential neighbourhood to the south. This location has excellent connections to public transport, employment opportunities, facilities and retail outlets and the proposal offers an appropriate residential density while providing for other uses like retail, commercial and childcare. The non-compliance with height controls do not compromise the visual quality of the development.

Objectives of the Standard

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

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

Comments: The height variation on the subject site reflects a transitional role from the Chatswood CBD heights and density to the lower density residential areas to the south and east of the site. Oscar Street buildings have a height of six (6) to eight (8) storeys. The Oscar St building North comprises of eight (8) storeys and achieves a height that is 5.8m higher than the building approved under DA-2010/549. The setback to the apartments at the last level has been increased, to minimise the visibility of this level from the street. The proposed height will not be out of character or scale with its surrounds, noting that the part of the development that displays the greatest encroachment into the height controls being the Oscar St North Building appropriately fronts the proposed plaza and the commercial strip on Victoria Avenue.

The height of the Oscar St building South is consistent with the previously approved building at this location under DA-2013/142, with the exception being the plant area - 1.3m higher than the previously approved building.

The proposed six (6) storey buildings on Hercules Street substantially complies with the 20m height control. Hercules St building North is in scale with Hercules St building South, both consistent with the scale of development previously approved on Hercules Street. The encroachment into the height control is principally attributed to the roof-top structures associated with the recreation facilities on both buildings. These structures and facilities are

setback from the edge to reduce their visibility. The height of Hercules Building South is consistent with the height of the building previously approved in this location under DA-2013/142.

The Albert Avenue building also exceeds the height, but manages to maintain the same scale as the building approved at this location under DA-2013/142. Contextually, the proposed development is considered acceptable, taking into account that the scale of the proposal has been driven by the need to ensure the distribution of floor space across the site while taking into account the broader urban context.

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

Comments: The proposal minimises the impacts on adjoining or nearby properties with the exception of the single storey dwelling at no. 17 Albert Avenue. Overshadowing of this dwelling house is unavoidable. Due to the location of this isolated site, a more compliant scheme would not minimise impacts. Nonetheless, future development potential for 17 Albert Avenue is taken into account. For these reasons, the site at 17 Albert Avenue retains potential to achieve a development of appropriate urban form with the level of amenity, overshadowing impacts and visual intrusion on No 17 considered acceptable.

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

Comments: The proposal integrates well into the urban context, both in terms of built form and in the mix of proposed uses. All facades appropriately address the streetscapes and the non-compliances with height controls do not compromise the visual quality of the development.

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

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

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

Comments: The development complies with the overall maximum FSR of 2.5:1 applying to the site and is consistent with the existing and future density for the area. The amended proposal incorporates robust landscape elements and conditions of consent as recommended by Council's Landscape Officer will enhance public landscaping and soften the built form.

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

Comments: The non-compliances with the height standards are limited, with the exception of the Oscar Street North Building. The highest levels are setback compared with the levels below to minimise visibility from the street level. Overall, the proposal responds to the desired character of the locality, as it fits a transition role between the medium density residential development to the east, low to medium residential to the south, and higher density commercial to north and west.

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

Comments: The development adjoins Chatswood CBD. It is considered that this location is appropriate for the mixed uses proposed. The form of retail proposed being accessible from Victoria Avenue is consistent with enforcing the retail character of the eastern side of the railway.

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

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

Grounds for Variation

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

- The proposal in its current form provides an appropriate curtilage to the heritage building, proposing a north facing plaza open to the wider community;
- The proposal generates acceptable amenity impacts on adjoining properties and on surrounding streetscapes and a more compliant scheme would not substantially diminish these impacts;
- The proposal provides a suitable transitional architectural response from Chatswood CBD to the lower density heritage listed residential area to the south; and
- The proposal meets the objectives of the height of building development standard and the objectives for development within the B4 Mixed Use zone.

Recommendations for the Clause 4.6 Exception

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

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

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

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

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

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

Extent of Variation

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

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

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

The proposed mixed use development located at 36-50 Hercules Street and 256-260 Victoria Avenue, Chatswood provides for a complying FSR of 2.36:1, but exceeds the maximum FSR of 1.25:1 for shop-top housing by 0.62:1, which represents a variation of 49.6%.

The FSR figure excludes the affordable housing component in accordance with Clause 6.8 Affordable Housing of the WLEP 2012.

	Proposed	Development Standard for shop-top	Percentage above control
Site Area	8889 m ²		
Shop-top housing (excluding affordable housing in accordance with Cl4.4(2A(b)(i))	16,634m ² (or 1.87:1)	1.25:1	49.6%

Applicant's reasons in support of the variation

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

- the proposal remains consistent with the intent of the zone;
- the proposal incorporates a good mix of retail, office uses and residential that contributes to the vitality of the area;
- the site is located outside the office core of the Chatswood Centre;
- the development provides for a scheme that is financially viable;
- the variation to the shop-top FSR does not impact traffic, bulk and scale, overshadowing or loss of views in an unacceptable way; and
- Various developments created similar precedents allowing for variations to shop-top housing FSR without undermining the role of the commercial core (eg DA 2013/309 for a mixed use development at 28-36 Anderson Street Chatswood with approval granted in December 2013).

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

Objectives of the Zoning

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

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

Comments: The development provides for a suitable mixture of uses including retail premises and shop-top housing. The commercial / retail at the ground floor provides streetscape activation and adds to the amenity to the surrounding streets.

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

Comments: The proposal offers an appropriate mix of business, retail and residential uses located about 800m from Chatswood Railway station, within a Major Public Transport Corridor, providing for appropriate on-site parking but also maximising opportunities for walking and cycling and public transport use.

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

Comments: The proposal incorporates shop-top housing and retail/commercial at ground level to provide an appropriate mix of uses which provides a transition from Chatswood CBD to the residential neighbourhood located to the south and east of the site.

Objectives of the Standard

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

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

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

Comments: Given the core retail and commercial functions of the CBD are located further west of the site and zoned B3 Commercial Core, the proposal appropriately incorporates a mix of retail and business uses with easy access from surrounding streets, together with shop-top housing, all of which support Chatswood's retail, business and cultural roles.

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

Comments: The site is adjoining Chatswood CBD to the west. The mix of uses is reinforcing its transitional contextual role from the low density residential development along Albert Avenue to the medium residential development to the east of the site and to the dense business and retail to the north, along Victoria Avenue. The development is appropriately addressing the surrounding area.

Grounds for Variation

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

- The bulk and scale of the development fits well within the context and suits the environmental capacity of the land;
- The buildings include a variety of uses, heights and façade treatments in order to address the architecture particularities of the streets;
- A more compliant scheme would not further diminish amenity impacts on adjoining properties;
- The proposal incorporates ground level retail to contribute to Chatswood's vitality and employment generating, while maintaining financial viability of the proposal due to the residential component; and
- The proposal meets the total numerical FSR control, relevant objectives of the FSR development standard and of development within the B4 Mixed Use zone.

Recommendations for the Clause 4.6 Exception

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

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

In this specific case compliance with the development standard is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard. The proposed development, including the variation to the development standard satisfies the objectives of the floor space ratio control and of the zone. Pursuant to Subclause (2) in Clause 4.6 of WLEP 2012, consent may be granted even though the development contravenes the residential FSR development standard imposed by the environmental planning instrument.

Heritage Conservation

The works are assessed to meet *Clause 1.2 (2)(i)* of the WLEP 2012 and the objectives of the zone. The subject site includes a listed heritage item (256 Victoria Avenue - Chatswood Community Nursing Home formerly Ku-ring-gai Community Hospital – item no I133 in Schedule 5 of WLEP 2012), is located opposite to the *South Chatswood Conservation Area* to the south.

The proposal involves the adaptive reuse and restoration of the heritage item on site. The conservation works repair the structure and remove earlier additions to the rear. Partial demolition to recreate the open verandahs and loggias on the former house are acceptable, as original features of the surviving original fabric are not impacted by the proposed works. A separate application will be submitted for the internal reconfiguration in connection with the proposed retail use.

The proposed north-facing public plaza to Victoria Avenue acts as a curtilage to the heritage building and as a forecourt area to the retail component.

The proposal is appropriately addressing the heritage context located to the south. The building fronting Albert Avenue is regarded as a transition between Chatswood Central Business district, the northern buildings on site and the dwelling houses within the heritage conservation area. Canopy trees are proposed to be planted along Albert Avenue, forward of the building, to provide screening to the southern facade of the development and improving the amenity of the streetscape, as recommended by Council's Heritage Architect for both this development and the previous similar development (DA 2013/142). Subject to

conditions, the works are satisfactory, relate well to the heritage significance of the HCA to the south and meet objectives in *Clause 5.10 Heritage Conservation of WLEP 2012*.

Clause 6.8 Affordable Housing

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

In accordance with the requirements of Clause 6.8 of WLEP 2012, a condition of consent is recommended to ensure 4% GFA (or 665m²), in the form of residential units and monetary contribution, is dedicated to Willoughby Council. A total of 8 car spaces are proposed to be allocated to the affordable housing units. The remainder of the affordable housing contribution up to 4% of the residential floor space (31m²) will be made in the form of a monetary contribution to Willoughby Council.

The affordable housing units obtained through these conditions will be managed by a community housing organisation and leased to tenants who meet the eligibility criteria specified in WLEP 2012. Therefore, subject to conditions, the development complies with Clause 6.8(2) of WLEP 2012 as:

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

Willoughby Development Control Plan (WDCP)

The subject site consists of the entire block which is surrounded by Hercules Street, Albert Avenue, Oscar Street and Victoria Avenue, but excludes No.17 Albert Avenue. Currently on site are a number of single-storey dwelling houses converted to health care clinics but closed for the last three years and a nursing home which ceased operating in the last 12 months. A heritage-listed dwelling is located in the north-eastern corner of the site.

A plaza opened for public access is proposed along the Victoria Avenue frontage. The plaza services as a forecourt space to the retail uses within the building and will provide opportunities for alfresco dining and for open space recreation for the local community. The plaza takes advantage of views to and from the heritage building from Victoria Avenue. The plaza incorporates water features and landscaping to maximise the amenity for users of the space, provides opportunities for various functions and activities and could accommodate public art exhibitions.

Traffic

All roads surrounding the site are local roads. At the recommendation of the RMS, a new series of weekday traffic surveys was undertaken at various intersections in the vicinity of the site. A revised Traffic and Parking Assessment report was also completed by Varga Traffic Planning Pty Ltd and has been submitted in June 2015. Following the report and discussions between the applicant and Council's Traffic Officers, the developer proposes the following works to improve the fluency of the traffic around the development:

- Restrict turning movements out of Oscar St to Victoria Ave to left only;
- Restrict turning movements out of Havilah St at Victoria Ave to left only.

The proposal is for a *total of 435 car parking spaces* within the development. The proposed development provides for a total of 21 motorcycle spaces, 50 bicycle lockers and 44 bicycle rails/racks, in excess of Council's WDCP requirements.

Taking into account the number of car spaces created with the development, Council officers originally suggested that consideration be given to either widening of Oscar Street or to a new set of traffic signals at the intersection of Victoria Avenue and Hercules Street. However, it is noted that the amended proposal provides a widened pedestrian pathway of 3.6m on the Oscar Street frontage and in the absence of a statutory requirement regarding Oscar Street widening, the proposal as amended is considered to be satisfactory.

Moreover, the latest investigation regarding the crash history data completed by the applicant revealed nil crashes in the last 5 years in that specific intersection. The SIDRA modelling indicated that traffic signals are not required at the intersection, even when adding the traffic generation potential of the development, as provided by the Roads and Maritime Service's publication *Guide to Traffic Generating Developments, Section 3 – Land use Traffic Generation (October 2002)*. Subject to the traffic improvements proposed but with no further infrastructure upgrades, the proposed development is expected to have acceptable traffic implications on the adjoining roads and on critical intersections like Pacific Highway and Albert Avenue.

In order to improve the traffic within the car parking levels, the applicant is proposing a parking guidance system to advise drivers of the number of spaces available on each level. The parking guidance system should reduce waiting/queuing times thereby maximising the efficiency of the parking areas. Three loading bays are located on the retail parking level 2, at the rear of the retail component. Vehicular access to the loading area is gained via the entry/exit through Hercules Street. All deliveries are proposed to take place wholly within the site. The car parking facilities were designed to comply with the relevant requirements in the *Australian Standards: Parking Facilities Part 1 - Off-Street Car Parking AS2890.1*. A courier bay is located at the entrance to the Level 1 parking area, with access via Oscar Street. The electronic guidance system and a series of boom gates direct vehicles to the commercial components. However, access to the residential basement parking level is located at the bottom of the car park and will require the use of a remote control. There are no boom gate control points for residents exiting the car park. Subject to conditions, the proposal was found to be acceptable.

Adaptable Dwellings

Part C.6.3 of the WDCP applies to the shop top housing component within the development. In this regard, if lift access is to be provided, 50% of all dwellings are to be adaptable. The Access & Adaptable Housing Report prepared by Accessible Solutions provides an assessment of the accessibility of the proposal, including adaptable housing, in accordance with the relevant provisions of the BCA, The Disability Standards 2010, relevant Australian Standards and WDCP. From the total number of 217 apartments, 109 apartments are capable of adaptability, as required by WDCP. The overall development is also capable of complying with the accessibility requirements.

Undergrounding of Services

In order to comply with *Clause C.15 (Undergrounding of services)* of WDCP, a condition of consent is imposed to relocate to underground all existing overhead services around the perimeter of the site. The relocation underground of the overhead cables is justified as the development benefits of the entire length of the block on Hercules Street. A similar condition was imposed by JRPP on consent with DA-2010/549 (for cables on Hercules Street) and with DA-2013/142 (for relocating the overhead cables to underground on Hercules Street and bundling of existing cables on Albert Avenue). All new services and electricity connections to the development shall be located underground.

Setbacks

The proposal does not entirely meet the building separation 'rules of thumb' of the RFDC and it is non-compliant with side setback provisions in Part E1.4 of WDCP, however, the variations are considered acceptable taking into account the context and previous approvals on-site.

17 Albert Avenue is the only site on the block that does not form part of the development. The applicant argues that by adopting nil setback with this site, the proposal will enhance opportunities for re-development of this isolated site and it will meet the intent of the control *"to ensure the positioning of new buildings contribute to the existing or proposed streetscape character"*.

The proposal adopts nil setbacks in order to allow for both developments to be built to the boundary. This is of benefit for future development of 17 Albert Avenue, as the site is too small to allow for any setbacks and at the same time provide a quality development in accordance with the potential of the R3 zone.

Albert Avenue building

The three storey building on Albert Avenue is consistent with Council's intent to 'step down' development from the Chatswood City Centre to lower density residential areas to the south of the site. The design responds well to its heritage context located to the south and is similar in design to the previously approved DA-2013/142, comprising serviced apartments above a childcare centre. With current application the development consists of shop-top housing located above childcare centre and business premises at ground floor.

The capacity of the childcare centre is of maximum 67 children, of which:

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

Regarding the capacity of the childcare and internal partition and safety of children, Council's Children & Youth Services Manager agreed that, subject to conditions, the development is compliant with relevant current legislation, including the Education and Care Services National Regulations.

The child care centre will have 14 employees. Seven (7) car spaces are allocated for staff and seven (7) car spaces are allocated for drop-off/pick-up. Outside the weekdays peak hours of the childcare centre as well as on Saturdays, on Sundays and on Public Holidays, these car parking spaces may be used by residential visitors (as the development could benefit of more residential visitor car spaces). A condition of consent is recommended to in this regard, noting that the arrangement must be clearly marked and suitably signposted.

17 Albert Avenue – Site Isolation Issues

A critical intent of Part E1 is to ensure that:

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

The subject development will result in site isolation for the property at the corner of Oscar Street and Albert Avenue, known as No 17 Albert Ave. No 17 Albert Avenue is a single allotment with a detached dwelling house and outbuilding on a 557.48m² site.

As with the previously approved DA-2013/142, the site isolation proposed is tested against the planning principles established by the *L&E Court Case 'Melissa Grech v Auburn Council [2004] NSWLEC 40'* (as established by *G T Brown, Commissioner of the Court*):

- A. Negotiations between the owners of the properties commenced at early stages, prior to the lodgement of the development application. Independent valuation reports have been completed and submitted to Council.
- B. A long record of negotiations between the parties was submitted to Council and reasonable offers were made. Regardless, negotiations broke down as parties failed to achieve a satisfactory result and were unable to agree on a purchase price.
- C. As the counter-offers were regarded as unreasonable by the applicant and amalgamation of the sites could not be achieved, a co-ordinated approach to development on both of the sites should be undertaken, aiming to achieve an appropriate urban form that provides for an acceptable level of amenity on both sites. In the L&E Court decision *'Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189'*, the following is stated:

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

Current and previous developments proposed on the subject site demonstrate that 17 Albert Avenue may be developed independently as a three (3) storey building with basement parking and vehicular access from Oscar Street. The isolated site could be developed in a manner that is consistent with the WLEP 2012 intent and with the principles of WDCP and SEPP 65. The plans include provision for one future possible connection to the basement of the subject site, in the event a shared vehicle access is considered more desirable than an additional access on Oscar Street. This requires creation of an easement/ right-of-way over the subject site in favour of 17 Albert Avenue. A condition of consent is imposed in this regard, including a possible second access at a different level, consistent with the previous approval for DA-2013/142.

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

Neighbour Notification Issues:

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

- *The development will cause unreasonable loss of privacy to the existing dwelling and will constrain any future development of 17 Albert Avenue. "Windows facing 17 Albert Avenue should be non transparent and always closed as stated in the previous DA/construction conditions".*
Comment

The development has no openings on the boundary with 17 Albert Avenue site for Level 1, 2 and 3 and has obscure glass windows at Level 4 and 5. A condition of consent will ensure that these windows remain obscure and not operable for the life of the development, similar to the conditions imposed by DA 2013/142.

- *"No mention of remedial works has been defined" in regard to the proposed development.*

Comment

A condition is imposed for a Dilapidation Report of all Adjoining Properties. This condition is believed to ensure that any necessary 'remedial works' are taken care of.

- *Concern is raised in regard to the "magnitude of the proposed development" on "purely low density residential area"; "the Applicant sets his own standards, overriding the basic WLEP guidelines".*

Comment

The latest amended proposal decreased the scale of the development as initially proposed, however, the buildings continue to exceed current height controls and Shop Top Housing floor space ratio controls. The zoning, however, is not low density residential, but B4 Mixed Use. The proposal is assessed on its merits, taking into consideration the surrounding urban context.

In regard to height, the five (5) new buildings range from three (3) to eight (8) storeys. These buildings exceed the 9m height control by 13.3% and the 20m height control up to 35.5%. The Hercules Street buildings, opposite the medium density residential zone, generally comply with the 20 metre development standard and are similar to the previously approved building heights on the site (as approved by DA 2013/142 and DA 2010/549). The Albert Avenue building is consistent with the previously approved development (DA 2013/142) and is generally within the 9m height control. The greatest encroachment into the height controls is located within the Oscar Street North Building, which fronts the new plaza and Victoria Avenue.

In regard to floor space, the development is compliant with the overall FSR control for the site. However, the proposal exceeds the maximum FSR of 1.25:1 for shop-top housing by 0.62:1, which represents a variation of 49.6%.

The applicant has made written requests pursuant to Clause 4.6 of the WLEP 2012 to vary these development standards. The applicant's reasons for variation and consideration of these reasons against the relevant objectives of the standards are discussed in detail in the assessment section, and in this particular case the variations are supported.

- *The proposal has a shortfall of 11 car spaces and unacceptably impacts on traffic and parking, adds "significant stress in critical intersections" and creates opportunities for potential vehicle accidents "on all streets such as Victoria Ave, Oscar St, Hercules St and Havilah St"; Oscar Street should be widened to cope with the increased traffic.*

Comment

The amended proposal provides for 435 car spaces in the basement levels, mostly complying with car parking requirements except for the residential visitor car spaces, where 49 are provided and 54 would be required for the 217 residential dwellings. The shortfall of 5 car spaces is acceptable taking into account the size of the development and the compliance with car spaces requirements for other sections of the development and with sustainable means of transportation as bicycle parking and motorcycle parking.

The revised Traffic and Parking Assessment prepared by Varga Traffic Planning concluded that the proposed development will not have any unacceptable traffic implications on the adjoining road network and that no improvement works, road widening or intersection

upgrades will be required as a consequence of the proposal. Council's Traffic & Transport Senior Engineer reviewed the amended plans and documentation and agreed with the conclusions of the assessment subject to a number of recommended conditions.

- *"What passes for a 'public park' is merely public access between the buildings".*

Comment

The proposal provides for a plaza facing Victoria Avenue and restores and incorporates the heritage building at the corner of Victoria Avenue and Hercules Street. This plaza is proposed to be used freely by public. Taking into account the fact that the ownership of the land is private, there are important public benefits derived from incorporating the plaza into the proposal and from restoring and adaptively reusing the heritage item.

- *"The buildings fronting Oscar Street will cause over-shadowing of the premises on the western side of the road for extensive periods of the day"*

Comment

The amended proposal reduced the maximum building height from 33.1 metres to 27.1 metres, deleting two(2) levels from the Oscar Street North Building. Part of the southern portion of the top two levels of the Oscar Street South Building has been deleted/reduced in order to increase the setback of these floors from the southern boundary with 17 Albert Avenue. The proposed reduction of six (6) metres in building height will reduce the shadow cast compared with the original proposal. It should be noted that WDCP does not offer a control in regard to overshadowing of commercial premises or streets. Moreover, due to the north-south orientation of the site the shadow moves from the western side in the morning to the eastern side in the afternoon on 22 of June. As such, the overshadowing is assessed as acceptable.

- The traffic generated by the development will negatively impact on traffic and existing parking associated with the Chatswood Village businesses.

Comment

The parking associated with the new plaza and shops within the development is regarded as satisfactory taking into account the controls and the proximity to Chatswood CBD. The proposal is expected to impact on traffic in the area and potentially will attract more people to the businesses in the Chatswood Village. Overall, the revitalisation of the site may positively impact the Chatswood Village businesses.

- *The Royal North Shore Community Health Centre made comments on the original proposal recommending to incorporate solutions that encourage sustainable means for transportation to reduce car dependency and improve connectivity, adding pedestrian and bicycle pathways, ensure accessibility to public places for wheelchairs and prams, encourage social interaction via inclusion of child-friendly spaces, addition of community gardens, water fountains and so on.*

Comment

The suggestions were agreed with. The amended proposal took into account the recommendations and included design changes like a wider pedestrian footpath on Oscar Street, a rainwater tank for irrigation of the landscaped areas, showers and lockers to service the end-of-trip bicycle parking facilities, drinking water fountains to the public domain.

CONCLUSION

The application seeks approval for the demolition of the existing structures and the construction of a new mixed use development comprising of shop-top housing, a childcare centre, retail premises and business premises.

The use of the building on Albert Avenue must meet the definition of 'shop-top housing in order to be a permissible land use on the subject site. The applicant has submitted legal advice and DA 2014SYW091 – Hornsby, DA/674/2014 with similar uses was approved by Sydney West JRPP, concluding that a private "child care centre" is a form of "business premise" and the development constitutes "shop-top housing". Notwithstanding the above, from a variety of retail and business uses, at that specific location, a ground floor childcare centre is an appropriate outcome.

Contextually, the whole of the proposal responds well to the character of the surroundings. The non-compliances of the built form with the main controls are seen as acceptable as a strictly complying scheme would potentially diminish the public benefit generated by the proposed public plaza along Victoria Avenue along with the generous curtilage to the heritage item.

- The proposal has a maximum FSR of 2.36:1, compliant with the maximum FSR for the site.
- The proposal satisfies the objectives of the B4 Mixed Use zone and the intent of the standards.
- The increased height ensures the allowable FSR is contained within reduced building footprints across the site and enables the provision of a public plaza and appropriate curtilage to the heritage building.
- Non-compliance with the standard does not contribute to unacceptable environmental impacts in terms of overshadowing, visual impacts or view loss.
- The scale of the proposed development responds to the scale of surrounding development along Oscar Street, Hercules Street, Victoria Avenue and Albert Avenue.

Based on the assessment above, the proposal is found to provide an acceptable architectural solution for the site and it is recommended for approval subject to conditions.

DEVELOPMENT PLANNER'S RECOMMENDATION

That the Joint Regional Planning Panel:

- 1. Supports the submitted Clause 4.6 variation to the *Height of buildings* development standard contained in Clause 4.3(2) of WLEP 2012 for DA2014/445 (36-38 Hercules Street & 256 Victoria Avenue, Chatswood) for the following reasons:**
 - The proposal is compatible with surrounding buildings;
 - The proposal generates acceptable impacts on surrounding streetscapes and on adjoining properties;
 - The proposal provides a suitable transitional architectural response to the south;
 - The proposal meets the B4 Mixed Use zone objectives and the objectives of the height of building development standard.
- 2. Supports the submitted Clause 4.6 variation to the Floor Space Ratio for housing development standard contained in Clause 4.4A(14) of WLEP 2012 for DA2014/445 (36-38 Hercules Street & 256 Victoria Avenue, Chatswood) for the following reasons:**

- The bulk and scale of the proposed development as a whole is acceptably within the environmental capacity of the land;
 - The proposal is addressing the streetscapes and is minimising amenity impacts on adjoining properties and public domain;
 - The proposal incorporates an appropriate mix of uses to contribute to the vitality of Chatswood, including employment generation and social interaction via the public plaza; and
 - The proposal complies with the total numerical FSR control, the objectives of the FSR development standard and the B4 Mixed Use zone objectives.
3. **Approves the development and issue consent for DA-2014/445 for *Demolition of existing structures and construction of five (5) mixed use buildings containing retail premises, business premises, shop-top housing, car parking, childcare centre, landscaping, restoration of a heritage building and associated works* at 36-38 Hercules Street & 256 Victoria Avenue, Chatswood.**

SCHEDULE OF CONDITIONS

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
Architecture	DA2.01, DA2.02, DA2.03, DA2.04, DA2.05, DA2.06, DA2.07, DA2.08, DA2.09, DA2.10, DA2.11, DA2.13, DA2.14, DA2.15, DA2.16, DA2.17 DA2.24, AD.1, AD.2, AD.3, AD.4, AD.5	B	7 Mar 2015	13 Mar 2015	Revay & Unn
Landscape	Cover sheet, 100, 107, 108 and 502 All job SS14-2894	B	-	13 Mar 2015	Site Image Landscape Architects
Landscape	101, 102, 103, 104, 105, 106, 501 All job SS14-2894	A	-	13 Mar 2015	Site Image Landscape Architects
Eng. / Stormwater	12308-01, 12308-03	D	6 Jul 2015	8 Jul 2015	ING Consulting Engineers
Eng. / Stormwater	12308-03 (retail), 12308-09	C	22 Jun 2015	23 Jun 2015	ING Consulting Engineers
Eng. / Stormwater	12308-04, 12308-05, 12308-06, 12308-07, 12308-08	C	13 Jun 2015	23 Jun 2015	ING Consulting Engineers

the application form and any other supporting documentation 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) 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

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. Revised Stormwater Management Plans

(i) Overflow route

Details of a satisfactory overflow route shall be provided. This overflow route must be capable of carrying the flows for a 1 in 100 year ARI design storm, assuming that the outlet to the OSD device is fully blocked. The proposed location of the OSD tank may cause inundation of the proposed Retail area (R01) during a malfunction. For this reason it is recommended relocating the proposed OSD tank. In addition, finished ground levels of the route must be shown on the plan.

(ii) Connection to Councils stormwater network

OSD storage outlet discharge flows of 20 l/s or more shall be connected directly to Council's underground drainage system or an extension of the system. Details of this connection to Councils stormwater network shall be provided.

(iii) Hydraulic Grade Line Analysis

A hydraulic grade line analysis shall be prepared from the proposed OSD control pit to the connection to Councils trunk drainage system.

(iv) OSD Checklist

The OSD Checklist (Appendix F of Councils technical standard No.1) shall be completed, signed and included in the submitted documentation.

B. Driveway Long Section

The submitted driveway sections, Drawing DA2.24, issue A shall be revised to show the following design levels:

For the design levels of the 2 vehicular crossings in Hercules Street at the property boundary, the following shall be complied with:

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

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

- At back of layback – 100 mm above and parallel to the gutter invert.
- At property boundary – 200 mm above and parallel to the gutter invert.

The footpath which forms part of the proposed crossings shall have a maximum crossfall of 2.5%. It shall be noted that the maximum gradient of 5% is required for the first 6 metres from the property boundary.

The proposed crossings shall be arranged as such: a 10 metres wide vehicular crossing in Hercules Street (Loading dock), a 3.5 metres wide vehicular crossing in Hercules Street (Residential/Retail exit), and a 6 metres wide vehicular crossing in Oscar Street (Residential/Retail entry/exit) in accordance with Council's specification and Standard Drawings SD105.

C. Sight triangles

As per AS 2890 and in order to ensure adequate sight distances for pedestrians and traffic in the frontage road, sight triangles of 2 metres x 2.5 metres shall be provided on each side of all three (3) proposed vehicular crossings.

Documentation confirming approval by Willoughby City Council shall then be submitted to the certifying authority for the application of a construction certificate.
(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 \$755,045.60 (subject to indexing as outlined below) is to be paid in accordance with Section 94A of the Environmental Planning and Assessment Act, 1979.

This contribution is based on 1% of the estimated development cost of \$75,504,560.00 at 21 October 2014 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. Amendments

The proposal is to be amended in the following manner:

- (a) All the windows shown on the approved plans and sections proposed to be located on the walls with nil setbacks to 17 Albert Avenue must be obscure and not operable for the life of the development.
- (b) The structural design of the Level 1 car park shall allow for a future connection of the basement with a potential car park located at 17 Albert Avenue in the north-eastern corner of no 17 Albert Avenue site (marked on Level 1 plan 'Possible Access for Parking'). The area fronting this potential access can be used as Residential Visitor car spaces until a Construction Certificate is granted for development at 17 Albert Avenue, making use of this access. From that moment forward, the area fronting this access must be kept clear of any obstructions and shall be marked accordingly.

Provision for a similar connection shall be made on plans at Retail level car park, below Level 1. The area fronting the potential access at this level can be used as Residential Visitor car spaces until a Construction Certificate is granted for development at 17 Albert Avenue, using this specific access. If so, from that moment forward, the area fronting the access must be kept clear of any obstructions and shall be marked accordingly.

- (c) The concrete kerb at the top of the down ramp between the retail level and

plaza level shall be moved back approx. 0.5 metres to allow easier access of a B99 vehicle into the retail level car park.

Details showing compliance with this condition shall be included on the Construction Certificate plans and submitted to the Principal Certifying Authority for approval.
(Reason: Ensure compliance)

5. 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)

6. 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)

7. Additional Details and/or Information for Construction Certificate

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

8. Agreement to Transfer Affordable Housing Dwellings

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

The terms of this agreement must be to the satisfaction of the Council and must include a provision to the effect that the transfer of the dwellings is to be completed within two months of the registration of any subdivision of the development creating the areas to be dedicated and within 6 months of the issue of an Occupation Certificate. The applicant must agree to pay the Council's reasonable legal costs in satisfying itself that the agreement is appropriate, and a provision to this effect is to be included in the agreement.

The construction certificate plans should demonstrate that the physical requirements specified in the Housing Transfer Deed are satisfied.

The affordable housing dwellings providing a total gross floor area of 634m² are to be dedicated to Willoughby City Council for the purpose of affordable housing in

accordance with Clause 6.8 of Willoughby Local Environmental Plan 2012 as outlined below:

Unit B105 and Unit D105 – all studio apartments,
Unit B205 and Unit F103 – all 1 bedroom apartments,
Unit B304, C204, D204 and D304 – all 2 bedroom apartments, and
Unit J105 - 3 bedroom apartment.

The units above must have a total of 8 car spaces on title, in accordance with the requirements of WDCP Part C.6 – Access, Mobility and Adaptability.
(Reason: Ensure compliance)

9. Affordable Housing Fittings and Finishes

The applicant is to submit to the Council details of all internal fittings and finishes of the affordable housing dwellings. The applicant is responsible for obtaining written confirmation from Council that it is satisfied that the internal fittings and finishes are at the same standard as other dwellings within the development.
(Reason: Amenity)

10. Affordable Housing Monetary Contribution

The applicant shall make a monetary contribution for the purpose of providing Affordable Housing that is calculated at 4% of the accountable total floor area of the development to Council.

In this case, additionally to the affordable housing dwellings nominated, a monetary contribution for **31.36m²** of floor space is required.

In calculating the monetary contribution reference is to be made to the market value of dwellings of a similar size and taken from the most recent median sales price of such dwellings for the Willoughby local government area as documented in the Rent and Sales Report NSW published by Housing NSW 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)

11. Adaptable Units

Adaptable residential units for disabled persons are to be provided at a rate of 50% of the units. Each adaptable unit is to be nominated on the Construction Certificate drawings and is to be provided with disabled car spaces where required under the Willoughby Development Control Plan Part C.6 – Access, Mobility and Adaptability.
(Reason: Amenity)

12. Heritage - Photographic Survey

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

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

(Reason: Heritage conservation)

13. External Finishes – Heritage Character

All external building material shall be in colours and textures, which are compatible with the heritage character of the locality. In this regard a schedule of these colours and textures shall be submitted to the Principal Certifying Authority.

(Reason: Visual amenity)

14. Traffic Management Plan

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

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

(Reason: Public safety and amenity)

15. Traffic Amendments

In order to cater for the increase in traffic generated by the development, the following conditions apply:

- A. Engineering plans and specifications must be prepared by a suitably qualified and experienced civil engineer for the following infrastructure works:
 - a) Construction of a median island or equivalent to physically restrict movements out of Oscar Street so that motorists may only turn left at Victoria Avenue.

- b) Construction of a median island or equivalent to physically restrict movements out of Havilah Street so that motorists may only turn left at Victoria Avenue.

Detailed plans must be submitted for approval to Willoughby Council as the road authority under the Roads Act 1993. Prior to lodging of a Construction Certificate, a written acknowledgement shall be obtained from Council's engineers confirming that this condition is appropriately addressed. All works subject to this condition are to be completed at no cost to Council.

B. The plans must be amended as follows:

- a) The retail car space in the centre of the Retail car park above the ramp-up from the Plaza level car park is to be replaced with a trolley storage area. Details are to be shown on the Construction Certificate plans.
- b) The concrete kerb at the top of the down ramp between the retail level and plaza level shall be moved back approx. 0.5 metres to allow easier access of a B99 vehicle into the retail level car park. Details are to be shown on the Construction Certificate plans.
- c) A "No Entry" sign shall be added directly to the north of Elevator C on the Retail level to prevent a tight turn from being executed by motorists. Details are to be shown on the Construction Certificate plans.
- d) Street lighting shall be added along entire Oscar Street. The design of the street lighting must comply with the requirements of AS1158.3 and other relevant standards and chosen in agreement with Council officers. Prior to lodging of a Construction Certificate, a written acknowledgement shall be obtained from Council confirming that this condition is appropriately addressed. All works subject to this condition are to be completed at no cost to Council.

C. A Parking Guidance System shall guide vehicular movements in the carpark. Details are to be shown on the Construction Certificate plans.

(Reason: Public safety and amenity)

16. Damage Deposit

The applicant shall lodge a Damage Deposit of \$230,000 (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 \$100 (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)

17. 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)

18. CCTV Report of Existing Council Pipe System

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

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

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

(Reason: Protection of public asset)

19. 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)

20. 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. Stormwater runoff from the site shall be collected and disposed of via an approved On-Site Detention System with a Permissible Site Discharge (PSD) of 151l/s, and a storage volume of 537m³ in accordance with Council's DCP and Technical Standards.

The construction drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and in accordance with the stormwater management plans, prepared by ING Consulting Engineers. All drawings shall comply with Part C.5 of Council's Development Control Plan and Technical Standards, AS3500.3 – *Plumbing and Drainage Code* and BCA.

(Reason: Ensure compliance)

21. Basement Pumpout Drainage System

The applicant shall submit, for approval by the Principal Certifying Authority, detailed stormwater management plans in relation to the pump-out drainage system. The

construction drawings and specifications, shall be generally in accordance with the approved stormwater management plans with the following requirements:

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

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

(Reason: Prevent nuisance flooding)

22. Construction Management Plan (CMP)

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

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

(Reason: Compliance)

23. 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) Construction of full width Brick Paver footpath (max. 2.5% crossfall) for the full frontage of the development site plus 6m over the frontage of the adjoining property in Oscar Street in accordance with Council's specification and Standard Drawings SD110. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- b) Construction of full width Bitumen Infill footpath (max. 2.5% crossfall) for the full frontage of the development site in Victoria Avenue in accordance with Council's specification and Standard Drawings. 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.

- c) Construction of 1.5 metres wide footpath (max. 2.5% crossfall) and perambulator ramp for the full frontage of the development site in Albert Avenue and Hercules Street in accordance with Council's specification and Standard Drawings SD105 and SD100. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- d) Reconstruction of existing kerb and gutter for the full frontage of the development site in Victoria Avenue, Albert Avenue, Hercules Street and Oscar Street in accordance with Council's specifications and Standard Drawing SD105.
- e) Reconstruction of half road pavement for the full frontage of the development site in Victoria Avenue, Albert Avenue, Hercules Street and Oscar Street in accordance with Council's specifications (AUS-SPEC). Council's standard design traffic for this pavement is 3×10^5 ESA.
- f) Construction of: a 10 metres wide vehicular crossing in Hercules Street (Loading dock), a 3.5 metres wide vehicular crossing in Hercules Street (Residential/Retail exit), and a 6 metres wide vehicular crossing in Oscar Street (Residential/Retail entry/exit) in accordance with Council's specification and Standard Drawings SD105.
- g) Reconstruction of two (2) Council's standard kerb inlet pits with a 2.4m lintel to the existing Council's underground system, one at the corner of Victoria Avenue and Oscar Street, and the other at the corner of Victoria Avenue and Hercules Street. Step irons must be provided if depth is greater than 1.2m.
- h) Construction of Perambulator Ramps at all corners of the development site to Willoughby Council's Specification. Pram Ramps shall be designed in accordance with Council's standard drawing SD100.
- i) Include details and proposed timing for the construction of the median islands out of Oscar and Havilah Streets, of the street lighting on Oscar Street and any other works associated with the development that could temporarily impact traffic flow.

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.

Design and documentation in relation to Points i) must be submitted to the Local Traffic Committee for approval prior to the issue of any Construction Certificate.

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)

24. Vehicle Access – Engineer's Certification

The Applicant shall submit, for approval by the Principal Certifying Authority, certification from a suitably qualified and experienced traffic engineer. This

certification must be based on the architectural drawings and the structural drawings, and must make specific reference to the following:

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

(Reason: Ensure Compliance)

25. Tree Management Plan

- i) Submit to the accredited certifier a Tree Management Plan.
- ii) The Plan shall address tree protection and management on the site, and must comply with the requirements detailed in AS 4970-2009 Protection of trees on development sites, with particular reference to Chapter 4 – Tree Protection Measures.

(Reason: Tree protection)

26. Detailed Landscape Design

Submit to the Council a detailed landscape design prepared by a qualified landscape design professional. This information is to include the following information:

- I.
 - a) Provision of full width pavement to the Hercules Street and Albert Avenue frontages of the site in accordance with Council's streetscape paving specifications.
 - b) Undergrounding of power along the full length of the Hercules Street and Albert Avenue frontages to the site.
 - c) Provision of street trees along the length of the Hercules Street and Albert Avenue frontages to the site.
 - d) Provision of soil volume for each tree under paving of a minimum 15m³.
 - e) Provision of water sensitive urban design methods of harvesting stormwater to provide water to each tree.
- II. Include a minimum of 13 new street trees to the Hercules Street frontage of the site and minimum 4 new street trees to the Albert Avenue frontage of the site.
- III. Trees are to be selected from Council's Street Tree Masterplan, Precinct 1: Chatswood CBD - Proposed Street Tree Species list, to the satisfaction of Council's Tree Management Officer.

Landscaping plans addressing the above along with a letter from Council confirming the plans satisfactory address the issues above are to be submitted to the Principal Certifying Authority for approval prior to issue of a construction certificate.

(Reason: Landscape amenity)

27. 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} (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)

28. Building Ventilation

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

- a) The Building Code of Australia:
 - i) AS1668.1, AS1668.2 and AS3666.1 as applicable; and/or
 - ii) Alternative solution using an appropriate assessment method

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

(Reason: Ensure compliance)

29. Contaminated Land – Remedial Action Plan

A Stage 3 – Remedial Action Plan (RAP) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:

- a) Environment Protection Authority (EPA) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites' and
- b) Managing Land Contamination Planning Guidelines SEPP55 - Remediation of Land

The RAP shall incorporate any findings in any Preliminary or Detailed Site Investigations for the site, it shall clearly state proposed cleanup objectives, and demonstrate how the site can be made suitable for the proposed use.

The RAP shall be submitted to Principal Certifying Authority and a copy to Council for its records for review and concurrence prior to commencement of any remedial action works or any excavation, demolition or other building works undertaken that are not associated with the preparation of the RAP.

(Reason: Environment and health protection)

30. 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)

31. Internal Noise Levels Commercial

To minimise noise intrusion from any external noise source on the commercial component of the development, the building shall be designed and constructed to comply with the requirements of Australian Standard AS2107-2000 – Acoustics – Recommended design sound levels and reverberation times for building interiors.

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)

32. Kitchen Fitout Details

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

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

- a) The kitchen design and layout must ensure effective operation with a safe flow from raw and cooked food, suitably located hand washing facilities, separate wash areas for food preparation & cleaning of utensils/equipment and suitable storage facilities for dry goods and hot & cold food storage.
- b) The premises shall have separate facilities for the storage of staff clothing/personal belongings, office materials and for storing cleaning chemicals.
- c) A dedicated hand wash basin/s shall be located in each area where contamination of the hands is likely to occur and must be within 5m from any place where food handlers are handling food. The hand wash basin/s shall be of a suitable size (500mm x 400mm), fixed to the wall at bench height and accessible at all times.
- d) All floor and wall finishes to the food preparation/storage areas must be of an approved material that is impervious to moisture.
- e) Floors in the food preparation/storage areas shall drain to a floor waste and be coved at the intersection of the walls.

- f) All walls must be solid construction with no voids or gaps.
- g) All ceilings above the food preparation/storage areas must be of an impervious material such as plasterboard that is free of open joints.
- h) A double bowl washup sink with a minimum bowl size of 450mm x 300mm x 300mm and a separate designated food preparation sink shall be provided in the food preparation kitchen area.
- i) The cooking equipment and dishwasher shall be provided with mechanical ventilation.
- j) The openings to the restaurant in particular to the areas consisting of bi-fold doors shall be pest-proofed against flying insects by a mechanically ventilated air curtain that prevents insects entering.

(Reason: Health and compliance)

33. 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)

34. Acoustic Assessment

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

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

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

(Reason: Amenity)

35. Internal Noise Levels - Childcare

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

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

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

(Reason: Amenity)

PRIOR TO COMMENCEMENT

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

36. Surrender of Consent

In order for the development of land to proceed in a coordinated and orderly manner and to avoid potential conflicts with this consent, prior to commencement of any works and in the manner prescribed by clause 97 of the Regulation, the applicant shall surrender the following development consents

DA-2010/549 (2010SYE069) and DA-2013/142 (2013SYE035).

(Reason: Statutory requirement)

37. Dilapidation Report of Adjoining Properties

Submit a photographic survey and report of the adjoining properties at 17 Albert Avenue; 268, 339, 329 to 331, 315 and 240 Victoria Avenue; 47, 51 to 55, 57, 59, 61 to 63 Hercules Street; 12, 14, 16, 20 and 22 Albert Avenue and 47 Oscar Street to the PCA and all owners of these adjoining properties.

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

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

(Reason: Protection of adjoining owners)

38. Waste Management Plan

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

(Reason: Environment protection/waste reduction)

39. Licensee Details

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

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

(Reason: Information)

40. 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)

41. Site Management

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

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

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

(Reason: Environment protection, public health and safety)

42. Public Risk Insurance Policy

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

43. Ventilation Plans and Details

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

44. Geotechnical Report

The site and adjoining sites (including the road reserve or other public space) are to be inspected by an independent Geotechnical Engineer and a comprehensive report shall be submitted to the accredited certifier indicating how the work is to be undertaken with safety, and identifying the stages at which the engineers' personal supervision is to occur during the works.
(Reason: Protection of adjoining properties)

45. 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)

46. 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)

47. Application for 3 Vehicle crossings

Submit an application with fees to Council for the construction of 3 plain concrete vehicular crossings.

(Reason: Protection of public asset)

48. Removal of Trees in Public Areas

Written notification is to be provided to Council giving a minimum of 7 days warning prior to undertaking the removal of any trees approved for removal in public areas.

(Reason: Management of Public Land)

DURING DEMOLITION, EXCAVATION AND CONSTRUCTION

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

49. Hours of Work

All construction/demolition work relating to this Development Consent within the City, unless varied by an Out of Hours Work Permit, 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 for an Out of Hours Work Permit to allow variation to these approved hours must be lodged with Council at least 48 hours prior to the proposed commencement of the work. The application must include a statement regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be

minimized, and must be accompanied by the required fee. One (1) permit is required for each variation to the approved working hours within any 24 hour period.

If a variation to these approved hours for multiple or extended periods is sought, an application under Section 96 of the Environmental Planning and Assessment Act 1979 must be lodged with Council at least twenty-one (21) days in advance of the proposed changes to the hours of work. The application must include a statement regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be minimized, and be accompanied by the required fee. Note: This S96 application may require re-notification in some circumstances.
(Reason: Ensure compliance and amenity)

50. Construction Information Sign

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

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

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

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

(Reason: Ensure compliance)

51. Building Site Fencing

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

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

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

The public safety provisions and temporary fences must be in place and be maintained throughout construction.

(Reason: Safety)

52. 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 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)

53. Suitable Screens

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

54. Suitable Barricades

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

55. Demolition Work AS 2601

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

56. 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)

57. Access to Site

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

58. 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)

59. 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)

60. Asbestos Sign to be Erected

On sites involving demolition or alterations and additions to building where asbestos cement is being repaired, removed or disposed of a standard commercially manufactured sign not less than 400mm x 300mm containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" is to be erected in a prominent visible position on the site. The sign is to be erected prior to the commencement of works and is to remain in place until such time as all asbestos cement has been removed from the site to an approved waste facility.

(Reason: Public Health and safety/Ensure compliance)

61. Neighbour Notification of Asbestos Removal

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

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

(Reason: Public health)

62. Asbestos Removal

Works involving the removal of asbestos must comply with Councils Policy on handling and disposal of asbestos, and must also comply with the Code of Practice for Safe Removal of Asbestos (National Occupational Health and Safety Commission 2012 (1994).

Demolition is to be carried out in accordance with the applicable provisions of Australian Standard AS 2601 – The Demolition of Structures.

(Reason: Public health and safety/Ensure compliance)

63. 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)

64. Survey Certificate

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

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

(Reason: Ensure compliance)

65. 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)

66. 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)

67. 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)

68. 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)

69. Swimming Pool Safety During Construction

The swimming pool is to be made safe during the construction of the dwelling, by the erection of a temporary safety fence to the satisfaction of the accredited certifier.

The pool is not to be filled with water until the dwelling is completed and occupied and a child resistant barrier erected in accordance with the regulations prescribed in the Swimming Pool Act 1992.

(Reason: Safety)

70. 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)

71. 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)

72. 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)

73. Storage of Materials on Council Land Prohibited

The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in the Council reserve is prohibited.
(Reason: Safety, environmental protection)

74. 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 prior to commencement of demolition or construction work 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 approved Tree Management Plan and AS 4970-2009 Protection of trees on development sites.
(Reason: Tree management)

75. 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)

76. 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)

77. Unexpected Finds Protocol

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

78. Importation of Fill

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

79. 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)

80. 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)

PRIOR TO OCCUPATION OF THE DEVELOPMENT

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

81. Benefiting Easement

In order to allow proper and orderly development of no 17 Albert Avenue, the applicant is to provide a right of carriageway to the property, registered on the Title, burdening the circulating aisle at Level 1 and at Lower Basement Retail Level (to be marked on plans) for the benefit of 17 Albert Avenue. The easement shall entitle 17 Albert Avenue owners and users to use the driveway and access within the car parking levels to access any future parking associated with a future development on 17 Albert Avenue.

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

(Reason: Orderly and economic development of the land)

82. Emergency Evacuation Plans for Childcare Centre

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

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

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

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

(Reason: Safety and Emergency Evacuation)

83. Swimming Pool - Access

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

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

84. Swimming Pool Notice

The owner of the pool shall display a notice showing:

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

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

(Reason: Safety)

85. Emitted Noise

The noise emitted by the

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

equipment shall be not more than 5dBA above the ambient background noise level measured at the boundaries in accordance with the current Environment Protection Authority (EPA) guidelines for noise assessment. The equipment is not to operate between 8pm to 7am weekdays and 8pm to 8am on weekends and public holidays. A time switch is to be installed on the power source for the above equipment to ensure that the non-permitted hours are observed.

(Reason: Amenity)

86. Surface Water Runoff

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

(Reason: Health and amenity)

87. Roof Stormwater Disposal

Roof stormwater shall be disposed of to:

- a) Council's kerb and gutter
- b) In accordance with approved Hydraulic Engineer design

(Reason: Health and amenity)

88. 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)

89. 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)

90. 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)

91. Registration of Plan of Consolidation

All individual allotments involved in the development site (Lot 101 DP 1158779, Lot 100 DP 1158779 and Lot 1 DP 828606) being consolidated into a single allotment and evidence of the registration of the plan of consolidation to be submitted to Council prior to the issue of any Occupation Certificate.

(Reason: Ensure compliance)

92. 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 ceiling and vertical structures of the basements 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)

93. Services - Electricity Supply and Telecommunication Mains

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

Existing overhead electricity supply and telecommunication mains and other overhead services along Albert Avenue frontage are to be bundled to the satisfaction of the relevant utility provider and Willoughby City Council at full cost to the applicant.

All new services and electricity connections to the development shall be located underground at full cost to the applicant.

(Reason: Public amenity)

94. 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)

95. Residential Flat Building - Service Facilities

The following shall apply to the development:

- i. Electricity and telephone lines must be placed underground from the street to the building.
- ii. One storage area shall be allocated to each unit.
- iii. A master TV antenna or satellite dish is to be provided for the building. This shall suitably screened from view from the street.
- iv. All plumbing pipes and installations must be concealed in ducts and not exposed on the external walls of the building and must be adequately soundproofed.
- v. Secure bicycle parking facilities shall be provided in accordance with Willoughby Development Control Plan Part C. 4 and designed in accordance with AS2890.3.

(Reason: Ensure compliance, streetscape and amenity)

96. Affordable Housing – Fittings and Finishes

The Principal Certifying Authority must be satisfied that the affordable housing dwellings have the internal fittings and finishes at the same standard as the other dwellings within the development and in accordance with the schedule endorsed by Council.

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

(Reason: Amenity)

97. Temporary Ground Anchors – Destressing

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

(Reason: Destressing of ground anchors)

98. CCTV Report of Council Pipe System After Work

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

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

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

(Reason: Ensure compliance and protection of public asset)

99. Inspection of Drainage Connection to Council's Drainage Line

Inspection of drainage connection works to the existing Council's pipeline/pit shall be carried out by Council's Engineer. A completion certificate shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate. For the

purpose of inspections carried out by Council Engineer, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council.
(Reason: Ensure compliance)

100. Grated Box Drain

For stormwater control a minimum 225mm wide grated trench drain with a heavy duty removable galvanised grate is to be provided along the boundary to collect driveway runoff at all vehicular crossings. 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)

101. On-site Water Management System

The stormwater runoff from the site shall be collected and disposed of via an approved On-Site Detention System with a Permitted Site Discharge of 151l/s, and a storage volume of 537m³ 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)

102. Sign for On-Site Detention System

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

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

103. Confined Space Sign

Securely install a standard confined space danger sign in a prominent location within the immediate vicinity of access grate of the On-Site Detention Tank.
(Reason: Safe access to tank)

104. 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)

105. Certification of the Basement Pumpout Drainage System

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

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

(Reason: Ensure compliance)

106. 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)

107. S88B/S88E(3) Instrument

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

The above instruments shall be created under Section 88B of the Conveyancing Act 1919 for newly created lots. For an existing lot, the instruments can be created under Section 88E(3) of the Conveyancing Act 1919 using Form 13PC and 13RPA respectively. The relative location of the On-Site Detention System, 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)

108. 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)

109. Sight Triangles

As per AS 2890 and in order to ensure adequate sight distances for pedestrians and traffic in the frontage road, sight triangles of 2 metres x 2.5 metres shall be provided on each side of all three (3) proposed vehicular crossings.

(Reason: Pedestrian safety)

110. Concrete Footpath

Construct a:

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

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

(Reason: Public amenity)

111. Vehicular Crossing

Construct 3 new vehicular crossings, 2 in Hercules Street and 1 in Oscar Street including the replacement of the existing layback and/or gutter and any associated road restoration 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 crossings shall be located no closer than 1 metre from any power pole and 2 metres from any street tree unless otherwise approved by Council.

Hercules Street (Loading dock)

10 metres wide vehicular crossing is to be constructed in plain concrete. The centreline of the new crossing shall be "in-line" with the centreline of the loading dock.

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

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

Hercules Street (Residential/Retail exit)

3.5 metres wide vehicular crossing with no splays and is to be constructed at right angles to the street kerb in plain concrete. The centreline of the new crossing shall be "in-line" with the centreline of the exit lane.

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

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

Oscar Street (Residential/Retail entry/exit)

6 metres wide vehicular crossing with no splays and is to be constructed at right angles to the street kerb in plain concrete. The centreline of the new crossing shall be "in-line" with the centreline of the internal driveway.

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

- At back of layback – 100 mm above and parallel to the gutter invert.
- At property boundary – 200 mm above and parallel to the gutter invert.

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

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

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

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

112. Removal of Redundant Crossings

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

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

113. 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 prior to issue of any Occupation Certificate.
(Reason: Ensure compliance)

114. Performance Bond

The Applicant shall lodge with the Council a performance bond of \$115,000 against defective public civil works undertaken by the main Contractor for a period of twenty four (24) 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)

115. Turfing of Nature Strip

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

116. Construction of Kerb & Gutter

Construct new kerb and gutter together with associated half road pavement reconstruction in accordance with Council's specification for the full frontage of the development site in Victoria Avenue, Albert Avenue, Hercules Street, and Oscar Street.
(Reason: Public amenity)

117. Reconstruct Pavement

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

118. Paving Bricks

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

119. Vehicle Access - Construction & Certification

The Applicant shall submit, for approval by the Principal Certifying Authority, certification from a suitably qualified and experienced traffic engineer. This

certification must be based on a site inspection of the constructed vehicle access and accommodation areas, with dimensions measurements as necessary, and must make specific reference to the following:

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

(Reason: Ensure Compliance)

120. Swimming Pool – High Level Overflow

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

(Reason: Ensure compliance and prevent nuisance flooding)

121. Tree Planting

Trees are to be planted in accordance with the following table:

No. Required	Species	Location	Min Pot Size
All trees	As indicated on the approved Landscape Plans	As indicated on the Landscape Plans	As indicated on the Landscape Plans

(Reason: Landscape Amenity)

122. 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)

123. Public Tree Planting

- i) Plant the following trees on Council land forward of the property:

All trees as indicated on the approved Landscape Plans

- ii) Tree species, condition and location are to be inspected by and to the satisfaction of Council's Tree Officer prior to issue of an interim or final occupation certificate.

(Reason: Landscape amenity, tree canopy recruitment)

124. Contamination/Remediation – Site Validation Report

A Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:

- a) Environment Protection Authority (EPA) 'Contaminated Sites – Guidelines for Consultants Reporting on Contaminated Sites'; and
- b) State Environmental Planning Policy 55 (SEPP55) – Remediation of Land.

The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report shall be submitted to the Principal Certifying Authority and a copy to Council for its records for review and concurrence after the completion of all remediation works.

(Reason: Environment and health protection)

125. Sound Level Output Certification

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

(Reason: Amenity)

126. Acoustic Treatment – Certification

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

(Reason: Amenity)

127. Certification – Ventilation

Certification shall be provided from a suitably qualified mechanical engineer certifying that all work associated with the installation of the mechanical and/or natural ventilation systems has been carried out in accordance with the relevant Australian Standards and or alternative solution.

(Reason: Compliance)

128. Trade Waste Permit / Consent

Evidence of a Sydney Water permit or consent for the discharge of wastewater to the sewer shall be submitted to the Principal Certifying Authority. Where a permit or consent may not be required from Sydney Water certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.

(Reason: Ensure compliance)

129. 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. Council's Food Surveillance Officer may be engaged to carry out the required inspection. 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)

130. Food Premises Database

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

(Reasons: Health and compliance)

131. Section 73 Compliance Certificate

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

The Section 73 Certificate must be submitted to the Principal Certifying Authority.
(Reason: Ensure statutory compliance)

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.

132. Separate Development Consent - Various

The fit-out and use of the locally listed heritage item, as well as the occupation of the commercial tenancies shall be subject of separate applications, in accordance with current legislation, zoning permissibility and this consent.
(Reason: Ensure compliance)

133. Retaining Walls and Drainage

If the soil conditions require it:

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

(Reason: Safety)

134. Erection Wholly within the Boundaries

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

135. Signs

A separate Development Application shall be submitted to Council for approval in respect of any proposed advertising sign which will be visible from a public place to be designed to comply with Willoughby Development Control Plan. Please note that a separate DA is not required for signs which are "Exempt Development" as defined under S76(2) of the Environmental Planning and Assessment Act 1979.
(Reason: Ensure compliance)

136. 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 Victoria Avenue, Oscar Street, Hercules Street or Albert Avenue or from any appurtenant right of way.
(Reason: Access and amenity)

137. On-site Car Parking

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

207 residential spaces;
49 residential visitor spaces;
162 commercial/retail spaces;
7 childcare spaces for employees;

7 childcare spaces for drop-off and pick-up.

The residential visitor spaces, commercial spaces and retail spaces are to be accessible to tenants/visitors at all times.

A minimum of 20 bike rails and 28 bike lockers should be provided for residential and 24 bike rails and 22 bike lockers should be provided for commercial/retail.

A minimum of 21 motorcycle spaces shall be provided within the development.

The car parking allocated commercial/retail to shall provide for a minimum of 3 hours free of charges parking for the life of the development.

(Reason: Ensure compliance)

138. Hours of Operation – Child Care Centre

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

<i>Weekdays</i>	7am to 7pm
<i>Saturdays, Sundays & Public Holidays</i>	closed

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

(Reason: Amenity)

139. Illumination of Building or Car Park

Illumination of any part of the building or car parking areas is to be designed in such a way to avoid adversely affecting nearby residents.

(Reason: Amenity)

140. License - Childcare

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

(Reason: Ensure compliance)

141. Car Parking Spaces - Childcare

The seven (7) car parking spaces for drop-off / pick-up for the childcare centre located at Level 1 must be signposted for 15 min parking between the hours of 7am and 9:30am and between 3:30pm and 7:00pm, for the drop-off and pick-up of children. These spaces should be clearly marked '*childcare centre only*' during drop-off and pick-up times to reflect that they are for the exclusive use of the childcare users within the peak hours of the centre.

Outside the weekdays peak hours of the childcare centre as well as on Saturdays, on Sundays and on Public Holidays, these car parking spaces may be used by residential visitors - however, this needs to be clearly marked and suitably signposted.

(Ensure compliance)

142. Capacity of the Child Care Centre

The child care centre must have a *maximum* capacity of 67 children, of which:

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

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

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

(Reason: Ensure compliance)

143. Heritage – Maintain Portion of Existing Building

Should any portion of the existing building which is indicated on the approved plans to be retained be damaged, all the works on-site are to cease and written notification given to Council. No work is to resume until the written approval of Council is obtained. **FAILURE TO COMPLY WITH THE PROVISIONS OF THIS CONDITION OF CONSENT WILL RESULT IN THE CONSENT BECOMING VOID.**

(Reason: Heritage conservation and Ensure compliance)

144. Affordable Housing Dwellings

The affordable housing dwellings are to be dedicated to Willoughby City Council within two months of the registration of any subdivision of the development creating the areas to be dedicated and within 6 months of the issue of an Occupation Certificate for the purpose of affordable housing in accordance with Clause 6.8 of Willoughby Local Environmental Plan 2012 and Condition 8 of this consent.

145. 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)

146. 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)

147. Road Closure

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

(Reason: Public protection)

148. 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)

149. 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)

150. Trees on Adjoining Properties

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

(Reason: Environmental protection)

151. 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)

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

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

(Reason: Amenity/Ensure compliance)

153. Hand Wash Basin/s – Food Premises

A dedicated hand wash basin/s shall be located in each area where contamination of the hands is likely to occur and must be within 5m from any place where food handlers are handling food. The hand wash basin shall be of a suitable size (500mm x 400mm), fixed to the wall at bench height and accessible at all times. The basin shall be supplied with hot and cold water under pressure through an approved hands free mixing device which can be adjusted to enable the hands to be washed under hot water. A supply of liquid soap and paper towels is to be provided adjacent to the hand wash basin.

(Reason: Health & Compliance)

154. Walls – Solid Construction – Food Premises

All tenancy perimeter walls and internal walls including partition walls shall be solid construction. The walls are to be constructed in masonry, brickwork or other approved method with all voids filled with a suitable material.
(Reason: Health & Compliance)

155. Floor, Wall & Ceiling Finishes – Food Premises

All finishes shall comply with AS4674-2004 *Table 3.1, Table 3.2 and Table 3.3*. All finishes must be able to be effectively cleaned, be unable to absorb grease, food particles or water and must be unable to provide harbourage for pests.
(Reason: Health & Compliance)

PRESCRIBED CONDITIONS

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

156. 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)

157. Support for Neighbouring Buildings

- (1) If development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) 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 building, structure or work from possible damage from the excavation, and
 - b) if necessary, underpin and support the building, structure or work 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

158. 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)

159. 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)

160. Occupation Certificate

The building/structure or part thereof shall not be occupied or used until an interim occupation / final occupation certificate has been issued in respect of the building or part.

(Reason: Safety)

Advisory Notes:

Electromagnetic Radiation (EMR) Shielding Measures

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

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