

MEMO

To: Joint Regional Planning Panel (Sydney East)
From: Ana Vissarion – Development Assessment Officer
Annie Leung – Team Leader Development Planning
Date: 2 November 2016
Address: 36-38 Hercules Street, 17 Albert Avenue & 256-260 Victoria Avenue,
CHATSWOOD NSW 2067
Ref/File No.: JRPP Ref 2016SYE068 --- DA-2014/445/C
Subject: S96 - Inclusion of 17 Albert site to extend the childcare centre, add 13
apartments and increase onsite car parking provision and associated works

Attachments:

Attachment 1 – Applicant’s detailed calculation of floor space

Attachment 2 – Correction on excluded floor space

Attachment 3 – Recommended Modified Conditions (revisions)

Dear Panel Chair and panel members,

I refer to email correspondence dated 2 November 2016 from panel member, Ms McClure raising concerns on:

1. Exclusion of affordable housing from the calculation of Floor Space Ratio; and
2. Dedication of affordable housing unit by way of a unit and/ or monetary contribution part thereof.

These matters are addressed and clarified below.

In addition, after discussions between Council officers and the applicant a table outlining the applicant’s outstanding contentions against the recommended modified contentions is provided in **Attachment 3** to this memo for the Panel’s consideration.

1. Exclusion of Affordable Housing from the calculation of Floor Space Ratio

A review of the calculations of floor space ratio in the reports confirms that the calculations in the officer’ report are correct and are supported by the plans and documents submitted with the application. An extract of the applicant’s detailed calculation of gross floor area is provided in **Attachment 1** to this memo.

In accordance with the requirements of Clause 4.4A of the Willoughby Local Environmental Plan 2012, affordable housing provided as part of the development is excluded in the gross floor area

and calculations of FSR. However, a typographic error occurred in the explanatory notes provided in brackets on what has been excluded from the floor space ratio calculations.

The explanatory notes in the officer's report incorrectly quoted the required 4% of affordable housing contribution inclusive of the monetary contribution to have been excluded. This error is rectified in the revised table provided in **Attachment 2** to this memo.

2. Dedication of affordable housing unit by way of a unit and/or monetary contribution part thereof

The monetary contribution part thereof as prescribed in recommended modified Condition 36 - Agreement to Transfer Affordable Housing Dwellings need to be understood in the context of previous modifications made to the development consent and the Deed already entered into and the contributions already made by the applicant.

- The original DA required 9 affordable housing dwellings to be transferred to Council and a monetary contribution for 31.36m² of floor space.

The applicant has paid the equivalent of 31.36m² to Council.

- The approved S96 modification 2014/445/B increased the number of affordable housing dwellings to be transferred to Council to 10 (*gross floor area 699.2m²*) and decreased the monetary contribution to 3.8m².

The applicant has subsequently entered into an Affordable Housing Deed with Council but did not receive/request a refund of 31.36m² monetary contribution paid.

- The current S96/C modification proposal maintains the number of apartments to be transferred to Council to 10 (*no change to gross floor area 699.2m²*).

A total monetary contribution of 57.56m² of floor space is prescribed in the recommended modified Condition 36 - Agreement to Transfer Affordable Housing Dwellings including a 31.36m² monetary contribution already paid and an additional contribution of 26.2m².

The acquisition of an additional unit instead of the provision of additional monetary contribution of 26.2m² will require Council to revise the Deed already entered with the applicant and also a refund of monetary contribution already paid.

(Note: As part of the current modification application (DA2014/445/C), some apartments around lift core E on Level 1 have been renumbered in order to ensure the apartments are consecutively numbered. The applicant has now requested that note to clarify Apartment E109 is referred to Deed entered between the applicant, and Council is the same as E110 in all respects be included in modified Condition 36. Please refer to **Attachment 3**)



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Attachment 1 – Applicant’s detailed calculation on floorspace (Snapshot of GFA calculation on the submitted DA2.21)

Residential GFA - LEP		
Floor (Story)	Zone Number	Measured Area
LEVEL 1	H-102	723.2
LEVEL 1	H-G01	28.0
LEVEL 1	H-G06	35.6
LEVEL 1	O-103	1,088.8
LEVEL 1	O-G04	26.7
LEVEL 1	O-G05	25.0
LEVEL 2	A-G07	39.8
LEVEL 2	H-101	690.9
LEVEL 2	H-202	720.4
LEVEL 2	O-104	721.6
LEVEL 2	O-203	1,031.3
LEVEL 3	A-105	1,070.4
LEVEL 3	H-201	683.2
LEVEL 3	H-302	728.7
LEVEL 3	O-204	727.5
LEVEL 3	O-303	1,004.1
LEVEL 4	A-205	1,007.4
LEVEL 4	H-301	664.4
LEVEL 4	H-402	728.1
LEVEL 4	O-304	673.3
LEVEL 4	O-403	979.3
LEVEL 5	H-401	665.0
LEVEL 5	H-502	450.7
LEVEL 5	O-404	752.5
LEVEL 5	O-503	978.0
LEVEL 6	H-501	462.4
LEVEL 6	O-503	752.5
LEVEL 6	O-602	885.0
LEVEL 7	O-602	510.8
LEVEL 7	O-701	758.3
		19,612.9 m ²

Retail GFA - LEP		
Floor (Story)	Zone Number	Measured Area
PLAZA	R01	1,145.7
PLAZA	R02	857.5
RETAIL	R04	359.4
RETAIL	R06	90.9
RETAIL	R07	156.1
RETAIL	R08	410.1
LEVEL 1	R10	276.3
LEVEL 1	R11	168.7
LEVEL 1	R12	108.8
LEVEL 1	R13	214.2
LEVEL 1	R14	121.2
LEVEL 2	R15	230.3
		4,139.2 m ²

Business GFA - LEP		
Floor (Story)	Zone Number	Measured Area
LEVEL 2	C01	524.5
		524.5 m ²

NB DOES NOT INCLUDE 415m² HERITAGE BUILDING

-(AFFORDABLE) 699m²
TOTAL RES 18 913.9m²

TOTAL SITE AREA: 9446m²
TOTAL FLOOR AREA: 23 578m²

				PROJECT: PROPOSED DEVELOPMENT AT 35-46 HERCULES STREET 296-299 VICTORIA AVENUE CHATSWOOD, NSW 2057		GROSS FLOOR AREA - LEP		DRAWING SET ID: DA2	DA2.21	C
C	ISSUED FOR PRELIMINARY	07/10/18				SCALE: ARCHITECTS: BENNY & LAM LEVEL 2, 30 YOUNG ST, NEUTRAL BAY NSW 2030 TEL: 0065 1883 FAX: 0065 1888		SUBJECT: DA2.21		
B	ISSUED TO COUNCIL	07/06/19						DRAWN BY: SUEBOD		
A	ISSUED FOR DA	10/10/14						THE HERCULES		
DATE: 15/06/18		ISSUE	REVISION	DATE						



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Attachment 2 – Correction on excluded floor space (see amendments in red bold text)

	S96(2) Proposal	Approved	Standard	Compliance
WLEP 2012				
Site Area	9446 m ²	8889 m ²	n/a	n/a
FSR	2.50:1	2.49:1	2.5:1 (Clause 4.4A (14 a))	Yes
	2.00:1 Residential 0.50:1 Non-residential 18,914m ² residential, 4,139m ² retail and 525m ² childcare Total: 23,578m ² <i>(excluding affordable housing component of 699.2m² and heritage floor space of 415m²)</i>	1.98:1 Residential 0.51:1 Non-residential 17,570m ² residential 4,121m ² retail and 437m ² childcare Total: 22,128m ² <i>(excluding affordable housing component of 699.2m² and heritage floor space of 324m²)</i>	Residential Maximum - 1.25:1	No, but acceptable.

Attachment 3 – Recommended Modified Conditions (revisions) - DA 2014/445/C

DRAFT Conditions in JRPP Report	APPLICANT'S proposed modifications to DRAFT Conditions	RESPONSE from WILLOUGHBY COUNCIL
<p>Condition 15A(i) is amended to read:</p> <p>A. Revised Stormwater Management Plans</p> <p>(i) <u>Hydraulic Grade Line Analysis</u> A hydraulic grade line analysis shall be prepared for the proposed stormwater connection from the plaza area to Councils trunk drainage system at the corner of Victoria Avenue and Oscar Street. This proposed connection to Council's drainage system shall be hydraulically evaluated and checked against backwater effect to ensure that the stormwater system functions hydraulically for all storm events in accordance with the minor/major design principles and Councils policies, for all storms up to and including the 100year ARI storms. Should this analysis fail, the applicant shall investigate solutions which may include modification/upgrade to Councils downstream stormwater network and/or modification of the surface levels of the proposed plaza area. Any proposed solution is to be in accordance with Councils policies.</p>	<p>Delete Condition 15A(i).</p>	<p>Disagree.</p> <p><u>Comments:</u></p> <p>Council's Engineers advise that there is a risk of backwash of stormwater from Council's infrastructures into the development site. This may cause some ponding/flooding at the low point (the Plaza area).</p> <p>To alleviate this problem, the applicant is currently in discussions with Council to "<i>drain by gravity to the pit in Havilah St without hydraulic issues and without interfering with existing services in Victoria Avenue</i>".</p> <p>Conditions 15A(i) and 26j) are consistent with the stormwater solution under discussion.</p>
<p>Condition 26j) is amended to read: Design of Works in Public Road (Roads Act Approval) (...)</p>	<p>Delete Condition 26j).</p>	<p>Disagree.</p> <p>Comments above apply.</p>

<p>j) Construction of any modification/upgrade to Councils stormwater network in the proximity of the development site to Willoughby Councils Specification.</p>		
<p>Condition 16(a) is partially amended to read:</p> <p>16. Other Amendments</p> <p>The proposal is to be amended in the following manner:</p> <p>(a) No encroachments over Council land and footpaths are permitted except for the awning over footpath. This awning shall:</p> <ul style="list-style-type: none"> • be set back minimum 600mm from the footpath edge; • be of opaque materials with glass inserts to allow light penetration; • have a minimum clearance height of no less than 3.6m above the level of the footpath below, measured to the underside of the encroaching structure. 	<p>This portion of Condition 16(a) to be amended to read:</p> <p>16. Other Amendments</p> <p>The proposal is to be amended in the following manner:</p> <p>(a) No encroachments over Council land and footpaths are permitted except for the <i>architectural embellishments shown on the approved plans and the</i> awning over footpath. This awning shall:</p> <ul style="list-style-type: none"> • be set back minimum 600mm from the top of kerb. 	<p>Agree, subject to amending the Condition 16(a) as follows:</p> <p>16. Other Amendments</p> <p>The proposal is to be amended in the following manner:</p> <p>(a) No encroachments over Council land and footpaths are permitted except for the <i>architectural embellishments shown on the approved plans and the</i> awning over footpath. This awning shall be set back minimum 600mm from the top of kerb.</p> <p>Works associated with the architectural embellishments and awnings that encroach over Council land fall under S138 of the Roads Act 1993 and accordingly shall form part of separate applications.</p> <p><u>Comments:</u></p> <p>Taking into account the slope of the land and the design of the awnings, certain parts of the awnings are lower than required by WDCP. Nonetheless, the newly proposed awnings subject to current S96 application provide for approx. 3m clearance above footpath and this</p>

		<p>is satisfactory.</p> <p>In regard to the buildings' embellishments, <i>Part C.17 Awnings, Public Road Encroachment and Use of Public Footways</i> in WDCP allow for encroachments that "add to the quality of the architectural form of the building", however, these are subject to separate applications, in accordance with S138 of the Roads Act 1993.</p>
<p>Condition 130 is amended to read:</p> <p>130. Erection Wholly within the Boundaries</p> <p>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.</p> <p>No encroachments are permitted onto Council property or footpath except for the awnings. (Reason: Ensure compliance)</p>	No amendment to Condition 130	Agree due to changes to Condition 16.
<p>Condition 36 is amended to read:</p> <p>36. Agreement to Transfer Affordable Housing Dwellings</p> <p>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 (<i>except it is to be modified such that nothing shall prevent the applicant from lodging a Section 96 application for Council's consideration</i>) and is to be submitted to the</p>	<p>Condition 36 to be amended to read:</p> <p>36. Agreement to Transfer Affordable Housing Dwellings</p> <p>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 (<i>except it is to be modified such that nothing shall prevent the applicant from lodging a Section 96 application for Council's consideration</i>) and is to be</p>	<p>Agree.</p> <p><u>Comments:</u></p> <p>As part of this application (DA2014/445/C), some of the apartments around lift core E on level 1 have been renumbered in order to ensure the apartments are consecutively numbered.</p> <p>The notes clarify that apartment E109 is the same as E110 in all respects.</p>

<p>Council and executed prior to the issue of a construction certificate for any works except Demolition and Excavation.</p> <p>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 any 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.</p> <p>The affordable housing dwellings providing a total gross floor area of 699.2m² 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:</p> <p><u>Unit B105 and Unit D105</u> – all studio apartments, <u>Unit B205, C204 and Unit H105</u> – all 1 bedroom apartments, <u>Unit E110, B204, B304 and Unit D204</u> – all 2 bedroom apartments, and <u>Unit J105</u> - 3 bedroom apartment.</p> <p>The units above must have a total of 9 car spaces on title, in accordance with the requirements of WDCP Part C.6 – Access,</p>	<p>submitted to the Council and executed prior to the issue of a construction certificate for any works except Demolition and Excavation.</p> <p>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 any 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.</p> <p>The affordable housing dwellings providing a total gross floor area of 699.2m² 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:</p> <p><u>Unit B105 and Unit D105</u> – all studio apartments, <u>Unit E109, B205, C204 and Unit H105</u> – all 1 bedroom apartments, <u>Unit B204, B304 and Unit D204</u> – all 2 bedroom apartments, and <u>Unit J105</u> - 3 bedroom apartment.</p>	
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<p>Mobility and Adaptability. (Reason: Ensure compliance)</p>	<p>The units above must have a total of 9 car spaces on title, in accordance with the requirements of WDCP Part C.6 – Access, Mobility and Adaptability.</p> <p><i>Note: For the purpose of the Affordable Housing Transfer Deed executed between the owners and Willoughby City Council on 5 Aug 2016, Unit E109 in DA2014/445/C (Plan DA 2.05 Issue E Dated 6/6/16) may be referred to as Unit E110 in DA2014/445/B (Plan DA 2.05 Issue D Dated 11/3/16).</i></p> <p>(Reason: Ensure compliance)</p>	
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