

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2017SNH051
<b>DA Number</b>	DA-2017/157
<b>LGA</b>	Willoughby City Council
<b>Proposed Development</b>	New commercial tower – construction of sixteen (16) storey commercial building, plaza, landscaping, car parking and associated works ( <b>Revised Scheme</b> )
<b>Street Address</b>	67 Albert Avenue, Chatswood NSW 2067
<b>Applicant/Owner</b>	CorVal Partners Limited / Willoughby City Council
<b>Date of DA lodgement</b>	12 May 2017
<b>Number of Submissions</b>	19 submissions and 3 petitions (totalling 565 signatures)
<b>Recommendation</b>	Deferred Commencement Consent
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	n/a
<b>List of all relevant s4.15(1)(a) matters</b>	Willoughby LEP 2012; Deemed SEPP–Sydney Harbour Catchment 2005; Willoughby DCP 2017 (WDCP); Chatswood Central Business District S94A Plan.
<b>List all documents submitted with this report for the Panel's consideration</b>	Supplementary Report to Amended Plans in response to SNPP Deferral Revised Schedule of Conditions Applicants Response to Deferral Revised Architectural Plans Supplementary Reports
<b>Report prepared by</b>	Architectus – appointed as independent planning consultant by Willoughby City Council
<b>Report date</b>	19 July 2018

### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

**Not Applicable**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Not Applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**Not Applicable**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

### Conditions

Have draft conditions been provided to the applicant for comment?

**Yes**

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

Thursday, 19 July 2018

Mr Peter Debnam  
Chair, Sydney North Planning Panel  
c/o Planning Panels Secretariat  
320 Pitt Street  
Sydney NSW 2000

Architecture  
Urban Design  
Planning  
Interior Architecture

To: Mr Peter Debnam  
Chair, Sydney North Planning Panel

**67 Albert Avenue, Chatswood**

Panel Ref: 2017SNH051 – Willoughby – DA2017/157, Supplementary Report

Dear Peter,

This Supplementary Report is provided by Architectus, appointed as independent planners on behalf of Willoughby City Council, for the proposed development at 67 Albert Avenue, Chatswood (DA2017/157). The DA was considered at the Sydney North Planning Panel (SNPP) meeting held on Wednesday 23 May 2018. The SNPP unanimously decided to defer the determination of the DA at that meeting and requested further information (refer further below), be provided to inform their decision. A number of design changes were also identified as being required.

The development application (DA) seeks consent for demolition of some landscaping elements at the existing podium level, including removal of 18 trees, and construction of a new commercial tower and associated public domain improvements. The proposed new tower comprises a 16 storey commercial office with a lobby retail space level and 2 levels of existing basement car parking.

The site is located in the Willoughby Local Government Area (LGA) and subject to the Willoughby Local Environmental Plan (WLEP) 2012.

The DA was reported to SNPP for determination as it meets the relevant criteria to be considered regionally significant development (under Schedule 7 of the *State Environmental Planning Policy (State and Regional Development) 2011*) as it comprises a Capital Investment Value (CIV) that is estimated to exceed \$30 million (\$57,187,146), and the site being Council owned land.

On Friday 15 June 2018, Ethos Urban, planning consultant representing the Applicant, provided a response to the deferral that addresses the items requested by the Panel. Refer to **Attachment C**. A revised set of architectural plans were subsequently received on 11 July 2018. Refer to **Attachment D**.

The SNPP Record of Deferral (dated 23 May 2018) requires the planning assessment officer to provide a Supplementary Report to the Panel within four (4) weeks of receipt of the information. Given the Applicant provided information on the 15 June 2018 the date four weeks thereafter is 13 July 2018. However, revised architectural plans were received by Council on 11 July 2018, just two days before the Panel's deadline, and as such, additional time has been required (approximately one week) to adequately review and consider the revised plans and incorporate an assessment of the plans into this Supplementary Report.

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This Supplementary Report provides an assessment of the Applicant's responses to the issues identified by the SNPP Record of Deferral. Amended conditions of consent are provided at **Attachment A** (in track changes) and **Attachment B** (a full revised set of conditions).

### **Sydney North Planning Panel deferral**

The SNPP Record of Deferral (dated 23 May 2018) requires the following matters and information to be addressed and provided by the Applicant, before the application can be determined:

- 1) *A detailed approval history of the site and surrounding developments to clarify the prior intended function of the land on which the proposed building is to be built. Consideration of the implications of this analysis on the subject proposal. Clarification of the approved uses in the Sebel building is also required. The Panel requests the Council to assist the Applicant in this respect.*
- 2) *Clarification of the "existing ground level" of the site in respect of which the height of the building is determined. The maximum height of the building to be subsequently confirmed. A clause 4.6 Variation Request is required to justify any breach.*
- 3) *Clarification of the site area and the subsequent resulting proposed floor space ratio.*
- 4) *Provision of solar analysis to the Gardens of Remembrance at Winter and both equinoxes. Confirmation of how much solar access (hours) and what time of year that solar access occurs.*
- 5) *Clarification of the impact of the proposed or existing easements and surrounding uses (eg loading dock below the site). Further, was owner's consent required and/or obtained from those who benefit from easement / right of way.*
- 6) *Provision of a wind analysis report.*

*Notwithstanding the above, the following design changes would be required:*

- 1) *Fixed external louvres on northern and eastern elevations (or alternative solution) to ensure no cross viewing to the adjacent buildings;*
- 2) *Achieve SEPP65 ADG separation; and*
- 3) *Comply with the maximum floor space ratio by lessening the view impact.*

Responses to the matters identified above have been provided by the Applicant and are assessed further below.

### **Key changes to the proposed development**

The proposed development has been amended by the Applicant in their response to the SNPP comments and required design changes. Key changes to the development proposed by the Applicant from the original DA (lodged 12 May 2017) are summarised below.

#### **– Floor Space Ratio (FSR)**

Reduction of total FSR to comply with the maximum FSR development standard under Clause 4.4 of the WLEP 2012. The proposed development is therefore no longer reliant on the Clause 4.6 variation to the FSR development standard as previously submitted.

*Summary of FSR calculation:* The subject site has an area of 3,006m<sup>2</sup> (it is noted that the site area has been clarified, as requested by the Panel, and remains the same). The site already features an existing commercial building which has a total GFA of 16,055m<sup>2</sup>, therefore resulting in an FSR of 5.3:1. The floor space of the proposed development has been reduced from 10,295m<sup>2</sup> (previous scheme) to 7,949m<sup>2</sup>, resulting in a total floor space of 24,004m<sup>2</sup> (of a total permissible 24,048m<sup>2</sup> of GFA) for the site. This will result in a total FSR of 7.99:1, thereby complying with the maximum WLEP 2012 FSR of 8:1 for the site.

– Height of building

Reduction of building height by 0.5 metres to provide a maximum building height of 80 metres (RL174.60 metres), thereby complying with the maximum height of buildings development standard under Clause 4.3 of the WLEP 2012.

Note this change to building height was as a result of calculation of the correct 'existing ground level', which meant the previously proposed development inadvertently exceeded the maximum building height development standard. Refer to further discussion regarding 'existing ground level' further below.

– Visual privacy

Addition of external louvres (fixed vertical metal louvres) on the building's eastern façade extending for 14.3 metres across the building, and applied to all commercial office levels, to prevent cross viewing between the proposed development and the existing 'Sebel' building to the east of the site.

– View impact

Reduction in area of each commercial floor plate level of the tower to provide an improved outlook for residents to the north of the site ('Metro View' apartments). The proposed development has been reduced predominantly on its western side by approximately 5 metres in depth, thereby also reducing the proximity of the building to the Garden of Remembrance.

## **Clarifications and additional information**

The Applicant's responses to the matters identified in the SNPP Record of Deferral are assessed below.

### **1. Approval history of the site and surrounding developments**

#### **Approval history of the site**

The Panel has requested that the approval history of the site and surrounding developments be clarified by the Applicant to better understand the prior intended function of the subject site.

It is understood that the Applicant requested assistance from Willoughby Council to access information regarding the historic approval of the existing landscaped podium level portion of the site (which is currently used by the public as open space) and the surrounding developments. However, due to a historic fire in the Council archive, it is understood the details of the site's approval history are no longer available.

The Applicant has provided commentary relating to the approval history of the site noting that no restrictive covenant was placed on the site's Certificate of Title, and as such, "no restriction was placed on the future development of the site" and therefore "the proposed development is permissible with consent". Architectus agrees with the approach and assessment by the Applicant on this matter.

#### **Approved uses in the Sebel building**

The Panel has requested clarification of the approved uses in the Sebel building.

The Applicant has provided commentary noting that it was not possible to obtain information regarding the approved uses in the Sebel building due to a historic fire in the Council archive, and that the information is "immaterial to the assessment of the proposed development". Given SEPP 65 and the ADG do not apply to the proposed development (refer to Section 8 below), Architectus agrees that obtaining the approved uses in the Sebel building is not required.

## 2. Clarification of the existing ground level of the site

The Panel has requested that the 'existing ground level' of the subject site be clarified further by the Applicant in respect of the way that the building height is determined, and the maximum building height is to be subsequently confirmed.

The Applicant has provided that the "existing ground level beneath and surrounding the proposed development is heavily modified, as such is it not possible to accurately survey the existing ground level beneath each point within the footprint of the proposed development". Architectus acknowledges that the extent of excavation on the subject site (two levels of basement car parking) would result in different height limits applying to adjoining sites if the literal interpretation of 'existing ground level' were applied (i.e. the lowest level of the basement). Therefore the most practical method to determine the 'existing ground level' is to be clarified and justified.

The following WLEP 2012 definitions are relevant to defining 'existing ground level':

**basement** means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).

**building height (or height of building)** means:

- a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

**ground level (existing)** means the existing level of a site at any point.

The definition of *building height* provides that the height of a building is measured from the *ground level (existing)*, however the definition of *ground level (existing)* does not provide sufficient detail when relating to adjoining sites with varying ground level to the subject site. It is noted that *basements* are defined as being located below existing ground level – it therefore follows that the level of the basement floor cannot be taken to be existing ground level (as referenced in paragraph 39 of *Bettar v Council of the City of Sydney [2014]*).

The following case law is referred to by the Applicant and can be used as instructive and practical interpretations of existing ground level:

- *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*; and
- *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189*.

The *Bettar* case provides that the 'existing ground level' can be established by determining the ground level at the site boundary and extrapolating this level across the site to measure the vertical distance to the highest point of the building.

The *Stamford Property* case references the *Bettar* case and notes that "*Bettar* provides a practical operation to the definition...it places the proposed building in its context, rather than relying on the present built form of any existing development on a site". The *Stamford Property* case provides that 'existing ground level' can be determined by establishing "average boundary levels based on actual and surveyed levels in the public domain, with a figure in the centre of the site being an average between two surveyed points rather than a surveyed ground level".

The Applicant has applied the *Stamford Property* method of averaging the height between surveyed points to establish the 'existing ground level' on the site. The resulting extrapolated ground levels result in an 'existing ground level' range from RL94.60 metres in the east to RL95.68 metres in the west.

While it would have been beneficial to receive legal advice from the Applicant to confirm that the *Stamford Property* case is the most appropriate means of determining existing ground level for this site, it is Architectus' view that the *Stamford Property* case is the relevant and instructive case law in this instance. Its method is considered acceptable and appropriate given the modified nature of the site, and is more recent than the *Bettar* case, while building on the same principles.

As a result of clarifying the existing ground level of the site, the Applicant determined that the height of the proposed development breached the maximum 80 metre height plane. The Applicant has proposed to reduce the total building height by the amount of height breached (approximately 500mm). As such, the proposed development complies with the 80 metre building height limit and a Clause 4.6 variation to the height of buildings development standard (Clause 4.3 of the WLEP 2012) is not required.

### 3. Clarification of site area

The Panel has requested clarification of the site area and the resulting proposed FSR.

The Applicant acknowledges that the proposed development area was amended during the assessment period, however they provide that the change does not affect the site area. The amendment was to exclude a stratum lot from the development area which is located above the ground plane (at the podium level of the site). As such, the site area remains 3,006m<sup>2</sup>.

Architectus considers the Applicant's clarification of the site area to be acceptable. It therefore follows that the proposed FSR is calculated as provided by the table below:

Component	Existing	Proposed	Compliance
Site area	3,006m <sup>2</sup>	3,006m <sup>2</sup>	N/A
GFA	16,055m <sup>2</sup>	7,949m <sup>2</sup> (Resulting in a total combined GFA of 24,004m <sup>2</sup> of a maximum permissible GFA of 24,048m <sup>2</sup> )	N/A
FSR	5.3:1	7.99:1 (of a maximum permissible 8:1)	Yes

### 4. Detailed solar access analysis

The Panel has requested the provision of additional detailed solar analysis to the Gardens of Remembrance at winter and both equinoxes, and confirmation of how much solar access would reach the Gardens (provided as number of hours) and what time of year that solar access occurs.

The Applicant has provided additional shadow studies. It is noted that the shadow studies provided (dated 14 June 2018) are in addition to supplementary shadow studies requested of the Applicant in the Request for Information letter issued by Willoughby Council (dated 20 September 2017) and provided by the Applicant (dated 11 December 2017). The shadow studies provided demonstrate that the proposed development will cause additional overshadowing to the Garden of Remembrance between 9am and 12 noon in mid-winter, and between 9am and 12 noon during the Spring and Autumn equinoxes. However, as the additional overshadowing will not cause increased overshadowing impacts to the Garden of Remembrance between 12.00pm and 2.00pm, the development complies with the requirements of WLEP 2012 Clause 4.3A(8).

It is noted that the Panel requested confirmation from the Applicant regarding the exact details of the solar access provided to the Garden of Remembrance in terms of number of hours and at what time of year that solar access occurs. This has not been provided by the Applicant.

Notwithstanding, it is the view of Architectus that as the proposed development meets the LEP development standard for solar access provision, and in the absence of any additional DCP requirement for solar access, that further detailed solar analysis is not required.

## 5. Easements

### Existing and proposed easements

The Panel has requested clarification of the existing and proposed easements on the site (such as loading dock access) and the impact of the proposed development on the surrounding uses.

The Applicant has provided a legal review of all the easements on the site as prepared by HFW (dated 29 November 2017). It is noted that clarification of the existing and proposed easements was requested by Willoughby Council in the Request for Information letter (issued 20 September 2017) and was provided by the Applicant in December 2017.

It is noted that the summary of easements, as provided by HFW, notes easements and rights of way that will require consent from the relevant party once the development application has been determined (refer to further detail below). Affected parties include Willoughby City Council, various State Government agencies (including Transport for NSW, RailCorp, Sydney Water and Ausgrid), and neighbouring property owners.

Architectus agrees with the approach and assessment by the Applicant on this matter.

### Loading dock access

With regard to loading dock access and function, the Applicant notes that access to the loading dock will be maintained for surrounding users “throughout the construction period, with overall disruption being minimised as far as practicable”. The Applicant refers to the Construction Management Plan (prepared by Taylor Construction and issued to Council in December 2017), which provides the following relating to loading dock access:

*Taylor will work with the stakeholders who use the existing loading dock to develop a plan to ensure that the access road is available for both parties to undertake their operations with minimal inconvenience. This plan will be agreed and documented in the detailed CMP prior to works commencing on site. We understand that there will be some flexibility required by all parties to accommodate unforeseen circumstances such as unscheduled deliveries. As part of the agreed CMP a process will be agreed amongst the project stakeholders to manage this as it occurs.*

This arrangement is considered acceptable. Refer to the recommended Conditions of Consent provided by Council relating to ‘Construction Management Plan’ (Condition 23).

### Land owners consent

The Panel has requested clarification relating to the requirement to obtain land owners consent from those who benefit from an easement / right of way attached to the site. The Applicant has provided legal advice, prepared by King & Wood Mallesons Lawyers (dated 5 June 2018), which states that consent is not legally required from the beneficiary of an easement which burdens the subject site prior to the granting of development consent (pursuant to Clause 49(1) of the *Environmental Planning and Assessment Regulation 2000*).

The Applicant provides that all issues relating to the existing and proposed easements would be resolved prior to the issue of a Construction Certificate, as required by the Condition of Consent. This approach is considered acceptable by Architectus. Refer to the recommended Conditions of Consent provided by Council relating to ‘Easements and right of ways’ (Condition 6).

## 6. Wind Report

The Panel has requested the provision of a Wind Analysis Report. It is noted that a Wind Report prepared by CPP (dated May 2017) was provided by the Applicant during the assessment of the DA that covered the public domain including brief consideration of the Garden of Remembrance, however an updated Wind Report (dated May 2018) has been provided to address the Panel's questions regarding anticipated wind impacts to the Garden of Remembrance.

The updated Report provides information about the expected wind velocity changes across the Garden of Remembrance as a result of the proposed development. The Report provides that the "inclusion of the proposed development will provide shielding from north-easterly winds for the Remembrance Park area", but "a small amount of downwash flow would be expected to reach the Remembrance Park area during winds from the west, however would not significantly impact pedestrian comfort". The report notes that the "most significant effects are likely to be limited to an area approximately within the property boundary, with conditions in areas such as the Remembrance Park Garden and Albert Avenue remaining similar to existing".

The Report concludes that "wind conditions in and around the site would be expected to be similar to existing conditions" and the proposed development will not detrimentally impact the pedestrian level wind environment in the majority of locations. As such, it is understood that the wind impacts to the Garden of Remembrance would not be significant enough to preclude development. The Applicant's response to wind issues is considered acceptable by Architectus.

It is noted that the Wind Report provides recommendations to ameliorate wind impacts to the upper level outdoor terraces of the proposed building, including perimeter landscaping, tall balustrades, and full-height vertical screening at building corners. It is recommended that the Applicant implement these features to ensure amenity on the outdoor terraces. Refer to the recommended Conditions of Consent provided by Council relating to 'Control of Wind Movements' (Condition 81).

### Design changes

As summarised above, the key changes to the proposed development include:

- Reduction of total FSR to comply with the maximum FSR development standard under Clause 4.4 of the WLEP 2012;
- Reduction of the building height to comply with the maximum height of buildings development standard under Clause 4.3 of the WLEP 2012;
- Addition of fixed vertical external louvres on the eastern façade of the building to prevent cross viewing between buildings; and
- Reduction in the commercial floor plate area of the tower to provide an improved outlook for residents to the north of the site ('Metro View' apartments).

Responses to the design changes required by the Panel are assessed below.

## 7. Installation of fixed external louvres

The Applicant has adopted the Panel's requirement to include external louvres on the building's eastern façade to prevent cross viewing between the proposed development and the existing 'Sebel' building. Vertical metal louvres that are fixed to the outside of the building are proposed and will extend for 14.3 metres across the eastern façade of the building and will be applied to all commercial office levels.

The Indicative Architectural Drawings provided demonstrate the proposed application of louvres to the building (perforated metal in a rust/ochre orange colour) and are considered acceptable.



## 8. Building separation requirements

The Panel requires the Applicant to achieve building separation according to *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65) and the accompanying *Apartment Design Guide* (ADG). During the SNPP meeting on Wednesday 23 May 2018, the Panel's comments specifically related to the tower separation to the residential buildings to east of the subject site.

### SEPP 65 and ADG

The Applicant has provided legal advice, prepared by King & Wood Mallesons Lawyers (dated 5 June 2018), which clarifies the application of SEPP 65 to the proposed development.

The legal advice provides the following in relation to the application of SEPP 65:

*SEPP 65 only applies to development for three specific purposes, being:*

- 1) *residential flat building;*
- 2) *shop top housing; or*
- 3) *mixed use development with a residential accommodation component.*

*The proposed development, DA2017/157 (the DA), is for the purpose of a commercial office building. The DA is not for one of the specific purposes provided in Clause 4, meaning that the SEPP and ADG can have no application to the DA.*

*We note that Part 2F Building Separation of the ADG states:*

*"When measuring the building separation between commercial and residential uses, consider office windows and balconies as habitable space".*

*This statement relates to building separation in circumstances where a residential development (which requires consideration of the ADG) is to be constructed adjacent to a commercial development, and not vice versa. This is because legally the ADG can have no application to a commercial development.*

The legal advice provided establishes that SEPP 65 and the accompanying ADG do not apply to the development of commercial office buildings because the development does not contain residential flat buildings, and as such, the SEPP 65 and ADG requirements cannot apply to the proposed development.

Notwithstanding that the ADG does not apply to commercial development, it is noted that the addition of fixed external vertical louvres to the building's eastern façade (to prevent cross viewing) means that the building will no longer provide "office windows" on this façade, and will instead present as a solid wall when viewed from the Sebel building. Therefore the sentence of the ADG that refers that offices with windows and balconies should be considered as "habitable space" when considering building separation does not apply.

### Willoughby Development Control Plan 2016

Given the above, the only building separation distances that the DA can be assessed against are those contained within the *Willoughby Development Control Plan 2016* (DCP), specifically *E.3 Chatswood City Centre*. The DCP requires building separation distances of a "minimum of 12 metres for buildings above 30 metres in height". The proposed development complies with the DCP tower separation setbacks to the residential buildings to the north and east of the subject site.

It is noted that the southern setback of 6 metres is to an existing commercial building located on the same lot as the proposed development. In the SEE dated May 2017, the Applicant provides that the building separation allows for a potential future bridge link between the proposed and existing building.

Given the legal advice provided that SEPP 65 and the ADG do not apply, and the proposed development's compliance with DCP tower separation setbacks, the proposed setbacks are considered to be compliant and acceptable by Architectus.

## 9. Compliance with the maximum FSR and lessening view impact

The Applicant has responded to the Panel's requirement to comply with the WLEP 2012 maximum FSR development standard by reducing the total FSR of the building from 8.8:1 to 7.99:1, thereby achieving compliance with the maximum FSR control of 8:1. By reducing the total FSR of the building, the Applicant proposes to lessen the view impacts to the adjoining building to the north of the site, known as the 'Metro View' apartments. The proposed development will be reduced in density on its western side, thereby lessening view impacts on the Metro View apartments to the south (towards Sydney's CBD). Ideally the Applicant should have provided view analysis demonstrating the amount of additional views afforded to the Metro View apartments as a result of this amendment.

While it is noted that the previously proposed scheme of FSR of 8.8:1 (which exceeded the maximum FSR control by 10%) was supported by Architectus, the Applicant's amendment to the proposed development to reduce the total FSR, and thereby comply with the WLEP 2012 development standard, is acknowledged and supported.

### Conditions of consent

The conditions of consent previously tabled before the Panel have been amended to account for changes to architectural plans and those conditions discussed with the Applicant at the last Panel meeting. **Attachment A** includes only those conditions amended, and shows track changes. **Attachment B** is a full revised set of conditions.

### Conclusion

It is considered that the Applicant has made substantial changes to the proposed development in order to achieve the design changes required by the Panel. The proposed development is now compliant with maximum building height controls and maximum FSR controls under WLEP 2012. A key design change is the proposed amendment to the building form to improve view impacts from the adjoining Metro View apartments to the north of the site by reducing the building's density to the west. As such, it is considered that the development will provide an acceptable planning outcome for the site.

It is also considered that the Applicant has provided all of the additional information requested by the Panel, with the exception of the hourly solar access plans, which is justified further above.

The proposed development will result in acceptable impacts on the amenity and character of its surroundings and is supported given the site's location within the Chatswood CBD adjacent the Chatswood Railway Interchange and the directions of the *Draft Chatswood CBD Planning and Urban Design Strategy* (2016). Approval is recommended subject to conditions.

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Should you have any queries on the above advice please contact Jane Anderson, Urban Planner, on 8252 8400 or [jane.anderson@architectus.com.au](mailto:jane.anderson@architectus.com.au).

Yours sincerely,

**Jane Fielding**

Senior Associate, Planning, Architectus



## **ATTACHMENTS**

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**Attachment A – Revised Conditions of Consent (track changes)**

**Attachment B – Revised Conditions of Consent (full revised set)**

**Attachment C – Applicant Response to Deferral**

**Attachment D – Revised Architectural Drawings**

**Attachment E – Supplementary Reports, including:**

- Certificate of Title;
- Indicative Architectural Drawings;
- Overshadowing Analysis;
- Easement Summary Development Application Advice;
- Supplementary Wind Report; and
- Legal Advice Relating to SEPP65/ADG and Easements.

## Attachment A

### Revised Conditions of Consent

#### 1. Approved Plan/Details

The development must be in accordance with the following plans:

Type	Plan No.	Revision / Issue No	Plan Date (Amended)	Prepared by
Architectural – Site Location Plan	DA-001	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Site Analysis Sheet 01 Council DCP	DA-002	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Site Analysis Sheet 02	DA-003	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Site Analysis Sheet 03 Existing Conditions	DA-004	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Demolition Plans	DA-009	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Master Plan Proposed	DA-010	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Basement 02 Plan	DA-011	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Basement 01 Plan	DA-012	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Ground Plan at Albert Avenue	DA-013	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Upper Ground Plan at Entry Lobby	DA-014	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Mezzanine Plant	DA-015	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Level 01-11 Typical Office Floor Plan	DA-016	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Level 12 Floor Plan	DA-017	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Level 13 Floor Plan	DA-018	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Level 14 Floor Plan	DA-019	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Level 15 Floor Plan	DA-020	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – 16 Plant	DA-021	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners

Type	Plan No.	Revision / Issue No	Plan Date (Amended)	Prepared by
Architectural – Roof Plan	DA-022	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Section Sheet 01	DA-023	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Elevation Sheet 01	DA-024	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Elevation Sheet 02	DA-025	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Area Schedule	<del>DA-027</del> DA-030	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Materials Selection Sheet 01	<del>DA-031</del> DA-034	<del>3</del> 6	<del>02/03/2018</del> 11/07/2018	Fitzpatrick + Partners
Architectural – Easement Diagram Existing and Proposed	DA-036	6	11/07/2018	Fitzpatrick + Partners
Architectural – Façade Detail Louvres	DA-054	6	11/07/2018	Fitzpatrick + Partners
Architectural – Existing Bridge Structure Junction	RFI-025	3	05/04/2018	Fitzpatrick + Partners
Architectural – Existing Bridge Sections	RFI-026	2	05/04/2018	Fitzpatrick + Partners
Architectural – Existing Bridge Reference	RFI-027	2	05/04/2018	Fitzpatrick + Partners
Landscape Plan – Master Plan	DA-1704-01	B	08/05/2017	Stuart Noble Associates
Landscape Plan	DA-1704-02	B	08/05/2017	Stuart Noble Associates
Landscape Plan	DA-1704-03	B	08/05/2017	Stuart Noble Associates
Landscape Plan – Section	DA-1704-04	B	08/05/2017	Stuart Noble Associates
Stormwater Services – Site Plan	H02 [P3]	3	13/12/2017	AJ Whipps Consulting Group
Stormwater Services	H03[P3]	3	13/12/2017	AJ Whipps Consulting Group
Stormwater Services	H04 [P3]	3	13/12/2017	AJ Whipps Consulting Group
Stormwater Services – Detail Sheet 2	H14 [P3]	3	13/12/2017	AJ Whipps Consulting Group

The application form and any other supporting documentation submitted as part of the application and as amended to satisfy SCHEDULE 1 Conditions, except for:

- Any modifications which are “Exempt Development” as defined under S1.6 of the Environmental Planning and Assessment Act 1979 (previously S76(2));

b) Otherwise provided by the conditions of this consent.

(Reason: Information and ensure compliance)

## 2. Submit the following Information to Willoughby City Council

Prior to the lodgement of an application for a construction certificate, the applicant shall submit documentation satisfying the following requirements to Willoughby City Council for approval.

### D. Accessibility

~~The proposed accessible path of travel from the north of the site (Willoughby Council office building / Sebel building and Woolworths building) to the podium level of the proposed new building shall be clearly defined on a scalable plan and demonstrated to comply with BCA, DDA and relevant accessibility standards. In addition, the plans shall demonstrate compliance with the recommendations provided in the Access Review report dated 9 May 2017 and prepared by Morris Goding Accessibility Consulting (MGAC).~~

Investigations shall be made by an independent access consultant as to whether an accessible path of travel is required to be provided from the north corner of the site to the podium level of the proposed building in accordance with the BCA and DDA. If required, the new accessible path of travel shall be clearly defined on a scalable plan and demonstrated to comply with BCA, DDA and relevant accessibility standards, and the approved plans and consent accordingly amended.

In addition, the plans shall demonstrate compliance with the recommendations provided in the Access Review report dated 9 May 2017 and prepared by Morris Goding Accessibility Consulting (MGAC).

## 18. 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.~~ **do 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.**

Details of the proposed equipment, siting and any attenuation required shall accompany the application for Construction Certificate.

(Reason: Amenity, environmental compliance and health)

## ~~100. BASIX Certificate~~

~~Prior to the issue of the relevant Occupation Certificate, a completion certificate is to be submitted to the Certifying Authority demonstrating the manner in which the measures committed to in the latest BASIX Certificate have been satisfied.~~

~~(Reason: Environmental sustainability)~~

## **Attachment B**

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**Revised Conditions of Consent (full revised set)**



## **SCHEDULE 1**

### **DEFERRED COMMENCEMENT CONDITIONS**

In accordance with Section 4.16(3) (previously S80(3)) of the Act, this consent will not operate until the applicant has provided information to the satisfaction of the Council that the following conditions can be complied with. Upon receipt of written information from the applicant in relation to the conditions in this schedule the Council will advise in writing whether the information is satisfactory and, if so, will nominate the effective date for the commencement of this consent.

In accordance with Clause 95(3) of the Regulation, a twelve (12) month period is given from the date of the 'deferred commencement' notice to lodge plans and evidence that satisfactorily address the required amendments/detail. If not, then the 'deferred commencement' will lapse and a new development application will be required.

(Reason: Ensure compliance)

**A. The Applicant shall prepare and provide to Sydney Trains for approval/certification the following final version items:**

1. Structural report/drawings that meet Sydney Trains requirements.
2. Construction methodology including construction details pertaining to structural support during any ground penetration or excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.
3. Cross sectional drawings showing the rail corridor, sub soil profile, proposed supporting ground anchors and structural design of sub ground support. All measurements are to be verified by a Registered Surveyor.
4. Detailed Survey Plan showing the relationship of the proposed development with respect to Sydney Trains easements and rail corridor land.

A letter from Sydney Trains states the above points 1 to 4 shall be compiled, together with any conditions, documentations and drawings issued as part of Sydney Trains approval/certification and be submitted to Willoughby Council and shall form part of the consent conditions that the Applicant is required to comply with.

(Reason: Statutory)

## SCHEDULE 2

### CONDITIONS OF CONSENT

Development Application 2017/157 as follows:

#### 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 (Amended)	Prepared by
Architectural – Site Location Plan	DA-001	6	11/07/2018	Fitzpatrick + Partners
Architectural – Site Analysis Sheet 01 Council DCP	DA-002	6	11/07/2018	Fitzpatrick + Partners
Architectural – Site Analysis Sheet 02	DA-003	6	11/07/2018	Fitzpatrick + Partners
Architectural – Site Analysis Sheet 03 Existing Conditions	DA-004	6	11/07/2018	Fitzpatrick + Partners
Architectural – Demolition Plans	DA-009	6	11/07/2018	Fitzpatrick + Partners
Architectural – Master Plan Proposed	DA-010	6	11/07/2018	Fitzpatrick + Partners
Architectural – Basement 02 Plan	DA-011	6	11/07/2018	Fitzpatrick + Partners
Architectural – Basement 01 Plan	DA-012	6	11/07/2018	Fitzpatrick + Partners
Architectural – Ground Plan at Albert Avenue	DA-013	6	11/07/2018	Fitzpatrick + Partners
Architectural – Upper Ground Plan at Entry Lobby	DA-014	6	11/07/2018	Fitzpatrick + Partners
Architectural – Mezzanine Plant	DA-015	6	11/07/2018	Fitzpatrick + Partners
Architectural – Level 01-11 Typical Office Floor Plan	DA-016	6	11/07/2018	Fitzpatrick + Partners
Architectural – Level 12 Floor Plan	DA-017	6	11/07/2018	Fitzpatrick + Partners
Architectural – Level 13 Floor Plan	DA-018	6	11/07/2018	Fitzpatrick + Partners
Architectural – Level 14 Floor Plan	DA-019	6	11/07/2018	Fitzpatrick + Partners
Architectural – Level 15 Floor Plan	DA-020	6	11/07/2018	Fitzpatrick + Partners
Architectural – 16 Plant	DA-021	6	11/07/2018	Fitzpatrick + Partners
Architectural – Roof Plan	DA-022	6	11/07/2018	Fitzpatrick + Partners
Architectural – Section Sheet 01	DA-023	6	11/07/2018	Fitzpatrick + Partners
Architectural – Elevation Sheet 01	DA-024	6	11/07/2018	Fitzpatrick + Partners
Architectural – Elevation Sheet 02	DA-025	6	11/07/2018	Fitzpatrick + Partners
Architectural – Area Schedule	DA-030	6	11/07/2018	Fitzpatrick + Partners
Architectural – Materials Selection Sheet 01	DA-034	6	11/07/2018	Fitzpatrick + Partners
Architectural – Easement Diagram Existing and Proposed	DA-036	6	11/07/2018	Fitzpatrick + Partners
Architectural – Façade Detail Louvres	DA-054	6	11/07/2018	Fitzpatrick + Partners
Architectural – Existing Bridge Structure Junction	RFI-025	3	05/04/2018	Fitzpatrick + Partners
Architectural – Existing Bridge Sections	RFI-026	2	05/04/2018	Fitzpatrick + Partners

Type	Plan No.	Revision / Issue No	Plan Date (Amended)	Prepared by
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Landscape Plan – Master Plan	DA-1704-01	B	08/05/2017	Stuart Noble Associates
Landscape Plan	DA-1704-02	B	08/05/2017	Stuart Noble Associates
Landscape Plan	DA-1704-03	B	08/05/2017	Stuart Noble Associates
Landscape Plan – Section	DA-1704-04	B	08/05/2017	Stuart Noble Associates
Stormwater Services – Site Plan	H02 [P3]	3	13/12/2017	AJ Whipps Consulting Group
Stormwater Services	H03[P3]	3	13/12/2017	AJ Whipps Consulting Group
Stormwater Services	H04 [P3]	3	13/12/2017	AJ Whipps Consulting Group
Stormwater Services – Detail Sheet 2	H14 [P3]	3	13/12/2017	AJ Whipps Consulting Group

The application form and any other supporting documentation submitted as part of the application and as amended to satisfy SCHEDULE 1 Conditions, except for:

- a) Any modifications which are “Exempt Development” as defined under S1.6 of the Environmental Planning and Assessment Act 1979 (previously S76(2));
- 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 documentation satisfying the following requirements to Willoughby City Council for approval.

#### A. Car parking

A total of 131 car parking spaces are to be provided for the exclusive use by tenants of the commercial developments on the site.

Details of the agreement between the lease holder, CorVal, and sub-lease holder, Secure Parking, shall be provided to ensure that the required number of car parking spaces can be provided to comply with the WDCP, as per above.

#### B. Treatment of excluded stratum lot

Details of acceptable treatment to the areas adjacent to Lot 105 DP 1094273 (existing pedestrian bridge) shall be provided, including proposed landscaping treatment and paving.

The change of level from the pedestrian bridge link to the site shall be addressed to ensure demonstrated compliance with BCA, DDA and relevant accessibility standards.

#### C. Wind assessment

Details of acceptable wind impacts and wind velocity changes across the Garden of Remembrance shall be provided to ensure that the amenity post construction of the Garden is retained.

#### D. Accessibility

Investigations shall be made by an independent access consultant as to whether an accessible path of travel is required to be provided from the north corner of the site to the podium level of the proposed building in accordance with the BCA and DDA. If required, the new accessible path of travel shall be

clearly defined on a scalable plan and demonstrated to comply with BCA, DDA and relevant accessibility standards, and the approved plans and consent accordingly amended.

- E. In addition, the plans shall demonstrate compliance with the recommendations provided in the Access Review report dated 9 May 2017 and prepared by Morris Goding Accessibility Consulting (MGAC). **Consolidation of stairs**

The stairs at the podium level of the proposed new building shall be consolidated and rationalised wherever possible to reduce the number of level changes from the southern corner to the northern corner of the site. In particular, the level change in front of the existing entry to the 'Sage' building should be consolidated (between RL 98.98 and RL99.67).

**F. Vehicle circulation and access**

The arrangement of the subject site's ground level vehicle circulation and loading (including Orchard Road) should be constructed in such a way so that future ground level access to adjacent sites for loading is not precluded.

Written documentation confirming approval by Willoughby City Council of the above shall be submitted to the Certifying Authority for the application of a Construction Certificate.  
(Reason: Public amenity, 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**

Prior to the issue of the Construction Certificate, a monetary contribution of **\$1,708,778** (subject to indexing as outlined below) is to be paid in accordance with Section 94A of the Environmental Planning and Assessment Act 1979.

This contribution is based on 3% of the estimated development cost of **\$56,959,275** at 9 May 2017 and the adopted Chatswood Central Business District Section 94A Development Contributions Plan 2011.

To calculate the monetary contribution that is payable, the proposed cost of development is to be indexed to reflect quarterly variations in the Consumer Price Index, All Groups, Sydney, as published by the Australian Bureau of Statistics (ABS) 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.

$$IDC = ODC \times CP2/CP1$$

Where:

IDC = the indexed development contribution payable

ODC = the original development contribution determined by the Council as a percentage of the cost as set down in this contributions plan

CP2 = the quarterly Consumer Price Index, All Groups, Sydney, as published by the Australian Bureau of Statistics (ABS) immediately prior to the date of payment

CP1 = the quarterly Consumer Price Index, All Groups, Sydney as published by the ABS immediately prior to the date of imposition of the condition requiring payment of the contribution.

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

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

**4. Sydney Trains**

Prior to the issue of a Construction Certificate, the following actions and amendments are required by Sydney Trains:

- a) The Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.
- b) The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of Sydney Trains. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- c) If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan in relation to any potential risk to, or from, the rail corridor and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- d) Copies of any certificates, drawings, approvals/certification or documents endorsed by, given to or issued by Sydney Trains must be submitted to Council for its records prior to the issuing of a Construction Certificate.
- e) If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Engineering Management Interfaces to determine the need for public liability insurance cover. If insurance cover is deemed necessary this insurance be for sum as determined by Sydney Trains and shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The Applicant is to contact Sydney Trains Engineering Management Interfaces to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.
- f) If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Engineering Management Interfaces to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.
- g) Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.

Sydney Trains or Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of this condition, are entitled to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and these conditions of consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.

Any conditions issued as part of Sydney Trains approval/certification of any documentation for compliance with the Sydney Trains conditions of consent, those approval certification conditions will also form part of the consent conditions. The amendments resulting from the implementation of this condition are required to be shown on the Construction Certificate plans. Copies of any certificates, drawings, approvals/certification or documents endorsed by, given to or issued by Sydney Trains must be submitted to Council for its records prior to the issuing of a Construction Certificate.

The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

(Reason: Ensure compliance)

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

Prior to the issue of the 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 National Construction Code are to be incorporated within the Construction Certificate plans and/or documentation.

(Reason: Ensure compliance)

## **6. Easements and right of ways**

A registered surveyor is to certify prior to any Construction Certificate the extent the drainage lines, services or rights-of carriageway will be affected by the development. All owners and beneficiaries of existing drainage easements, service easements and/or rights-of carriageway present on the subject site must provide consent in writing.

The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from all affected interested parties.

(Reason: Ensure compliance)

## **7. Amendments – landscaping adjacent to pedestrian bridge**

Prior to the issue of the Construction Certificate, the proposal is to be amended in the following manner:

- a) In order to preserve pedestrian amenity in the event the existing eastern wall of the pedestrian bridge (adjacent to the proposed new building lobby) is removed in the future, the proposed landscaping between the existing pedestrian bridge and the proposed building (as shown at Section 1, Drawing no. RFI-026, dated 05/04/18) shall have the soil level provided to a level that is equal to or above the existing pedestrian bridge.
- b) In order to allow a line of sight from existing pedestrian bridge to the Garden of Remembrance, the proposed terraced landscaping to the west of the existing pedestrian bridge (as shown at Section 1, Drawing no. RFI-026, dated 05/04/18) shall be lowered to a maximum height of RL 102.250.

Details of these amendments are required to be submitted to the Principal Certifying Authority for approval and incorporated into the Construction Certificate plans.

(Reason: Public Amenity)

## **8. Sydney Water ‘Tap In’**

Prior to the issue of the Construction Certificate, the approved plans must be submitted online to “Sydney Water Tap In” to determine whether the development will affect Sydney Water’s sewer and water mains and to see if further requirements need to be met.

An approval receipt will need to be obtained prior to release of the Construction Certificate.

(Reason: Ensure compliance)

## **9. Damage Deposit**

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$180,000** (GST Exempt) as cash, cheque or an unconditional bank guarantee, to Council against possible damage to Council’s asset during the course of the building works. The deposit will be refundable subject to inspection by Council after the completion of all works relating to the proposed development. For the purpose of inspections carried out by Council Engineers, an inspection fee of **\$200** (GST Exempt) is payable to Council. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.

(Reason: Protection of public asset)

## **10. Temporary Ground Anchors**

Prior to the issue of any Occupation Certificate, all damages to Council’s / public infrastructure due to the works associated with any 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: Encroachment of works)

### **11. Stormwater to Street Drainage via Reinforced Concrete Pipe (RCP)**

Stormwater runoff from the site shall be collected and conveyed via an OSD system to the underground drainage system in Albert Avenue in accordance with Council's specifications. A grated drainage pit (min. 900mm x 900mm) shall be provided within the property and adjacent to the boundary prior to discharging to the drainage system. In this regard, full design and construction details showing the method of disposal of surface and roof water from the site are to be submitted to Council for approval.

(Reason: Prevent nuisance flooding)

### **12. Analysis of Stormwater Outlet Condition**

The capacity of the existing stormwater drainage system at the proposed connection of the outlet to the Albert Avenue stormwater system 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 with the detailed stormwater management plans.

(Reason: Maintain design stormwater discharge)

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

Submit for approval by the Certifying Authority, detailed stormwater management plans in relation to the on-site stormwater management and disposal system for the development. The construction drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and be in accordance with Drawing Nos. H01, H02, H05 – H14, Revision P3, dated 13/12/2017, prepared by AJ Whipps Consulting Group. All drawings shall comply with Part C.5 of Council's Development Control Plan and Technical Standards, AS3500.3 – Plumbing and Drainage Code and National Construction Code. The detailed stormwater management plans shall in particular provide the following:

- 1) The on-site detention (OSD) system must be provided to cover all the impervious areas from the development. The OSD system must be designed to capture and detain runoff from all impervious areas under development including the building and podium areas. Runoff for all storm events in accordance with the minor/major design principles shall be directed to the OSD tank(s). The OSD system shall be located in a common area and be readily visible and accessible for maintenance.
- 2) Storage volume and the Permissible Site Discharge rates (PSD) shall be calculated from Table 1 and Table 2 of Council's Technical Standard No.1 – On-Site Detention.
- 3) Demonstrate that the all impervious areas from the development including the building and podium areas drain through the detention tank(s) through pipe flows and surface flow path routes up to the 100 year ARI storm events in accordance with the minor/major design principles.
- 4) The OSD tank shall be located in a common area. Freeboard to floor levels adjacent to the OSD storage and the spillway shall be observed.
- 5) The OSD tanks must be readily accessible for maintenance purposes, with the access pit as near to the outlet as possible. All below ground OSD tanks are to have an additional access grate diagonally opposite the outlet for ventilation purposes. The minimum size of any access grate is to be 600mm x 900mm. Attention is drawn to the provisions of AS 2865-“Safe Working in Confined Spaces”.
- 6) Step irons are required at the outlet access grate of below ground storage tanks with a depth of 900mm or greater.
- 7) OSD storage outlet discharge of 20 l/s or more shall be connected directly to Council's underground drainage system or an extension of the system.
- 8) The below ground tanks and pits are required to drain completely dry at the cessation of any storm and therefore do not require sediment traps at the outlet point.
- 9) Minimum of two (2) sections / elevations showing the OSD structure including invert, finished surface levels and top water level, the trash rack, step irons if deeper than 0.9m and orifice plates. All levels shall be to AHD.
- 10) The orifice of the OSD system shall be set at least 200mm above the 100 year ARI water surface level at the point of connection to Council's system. Otherwise, a full Hydraulic Grade Line (HGL) analysis shall be carried out.
- 11) Details of an overflow spillway with an overland flow path. Calculations are required demonstrating that the overflow elements can cope with the uncontrolled 100 year ARI storm event.

- 12) The minimum diameter of any orifice shall be 65mm. Where the calculated orifice is less than 65mm, the OSD system shall be redesigned by reducing the water depths in the storage facility.
- 13) Details of a hot dipped galvanised debris mesh screen made of Lysaght's Maximesh RH3030 or similarly approved product shall be provided at the outlet discharge control to protect against blockage.
- 14) Freeboard from the top water level and spillway level as per Council's policy.

Details of the proposed stormwater connection including reduced levels of the invert and top of the existing stormwater pipe at the point of connection, 100 year water surface levels etc.

(Reason: Ensure compliance)

#### **14. Design of Civil Works in Public Road (Roads Act Approval)**

Prior to issue of any Construction Certificate, the Applicant must submit, for approval by Council as a road authority, full design engineering plans including longitudinal sections and cross sections at 5 metre intervals and specifications prepared by a suitably qualified and experienced civil engineer for the following infrastructure works:

- Reconstruction of full width footpath with approved pebblecrete pavers (max. 2.5% crossfall) for the full frontage of the development site in Albert Avenue. Detailed long section and cross section at 5 metres interval shall be provided.
- Construction of kerb and gutter for the full frontage of the development site in Albert Avenue.
- Reconstruction of the vehicular access driveway within the road reserve to Council specifications.
- Construction of half width road pavement and any associated works for the full frontage of the development site in Albert Avenue.
- Construction of the Reinforced Concrete stormwater pipe system connecting to the Council's stormwater system in Albert Avenue and associated works with details suitable for construction to Willoughby City Council's Specification.
- The required plans must be designed in accordance with Council's specifications (AUS-SPEC). A minimum of two (2) weeks will be required for Council to assess the Roads Act submissions. Early submission is recommended to avoid delays in obtaining a Construction Certificate. For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council prior to issue of the approved plans. Approval must be obtained from Willoughby City Council as the road authority under the Roads Act 1993 for any proposed works in the public road prior to the issue of any Construction Certificate

(Reason: Ensure compliance)

#### **15. Vehicle Access and Manoeuvring – 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:

- 1) Demonstrate that an overhead clearance height (to the underside of structures/services) of 2.5m minimum is available over the access path from the public road to the disabled car spaces.
- 2) Demonstrate that swept paths including clearances of the simultaneous movements of the B99 and B85 vehicles at ramps and at ramp ends are available and clear of any adjacent obstructions. The clearance lines required in AS 2890.1 shall also be observed.
- 3) Dimensioned ramp widths, radius and typical car space widths are included in the certified plans.
- 4) That finished driveway gradients and transitions fully comply with AS 2890.1 and 2890.2 and will not result in the scraping of the underside of cars/vehicles.
- 5) That the proposed vehicular paths and parking arrangements comply with AS2890.1 and 2890.2 in terms of minimum dimensions provided,
- 6) All parking spaces for people with disabilities comply with Section 2.4 of AS2890.6.
- 7) That finished driveway gradients and transitions will not result in the scraping of the underside of cars.

(Reason: Ensure Compliance)

#### **16. 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 National Construction Code:
  - 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 Certifying Authority prior to the issue of the Construction Certificate.

(Reason: Health and compliance)

#### **17. 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 Certifying authority prior to issue of the Construction Certificate.

(Reason: Amenity, environmental compliance and health)

#### **18. 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 do 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.

Details of the proposed equipment, siting and any attenuation required shall accompany the application for Construction Certificate.

(Reason: Amenity, environmental compliance and health)

#### **19. 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: Ensure compliance)

#### **20. Fire Egress**

A full 6 metre fire egress, or two pathways of 3 metres each as split, being maintained throughout the construction and operation of the site, is to be detailed prior to issue of the Construction Certificate.

(Reason: Ensure compliance)

#### **21. 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)

#### **22. Structural Engineer's Report**

A detailed Structural Engineer's report shall be submitted to the accredited certifier prior to the issue of the Construction Certificate separately qualifying the structural stability of, and the means of supporting the structure during construction. This report shall reference all components to be retained and/or altered, having regard to the overall development proposed.

(Reason: Ensure compliance)

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

Prior to the issue of the Construction Certificate, submit, for approval by the 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; and
- f) Tree protection management measures for all protected and retained trees.

(Reason: Ensure compliance)

### **24. Traffic Management Plan**

Prior to issue of the Construction Certificate, a detailed Construction Traffic Management Plan shall be prepared for pedestrian and traffic management and be submitted to Council for approval. The plan shall:

- a) Be prepared by a RMS accredited consultant
- b) Be in accordance with the current version of AS1742.3 and its associated handbook, and the RMS's Traffic Control at Worksites Manual.
- c) 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.
- d) 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.
- e) Confine temporary road closures to weekends and off-peak hour times and shall be the subject of approval from 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.
- f) All traffic management plans are to be audited by an accredited auditor prior to implementation. The road safety audit report should be submitted to Council for review and approval.

(Reason: Public safety and amenity)

### **25. Traffic Work**

Prior to issue of the Construction Certificate, any proposals for changes to the carriageway of a public road including shared paths, involving traffic arrangements shall be referred to the Local Traffic Committee for approval. All work shall be designed in accordance with RMS Technical Directives and Guidelines.

(Reason: Public safety and amenity)

### **26. 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.

Technical details to this extent shall be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

(Reason: Vehicular access)

### **27. Details of Traffic Movements**

Prior to the issue of the Construction Certificate, the applicant shall submit, for approval by the Local Traffic Committee, detailed of traffic movements and swept paths for all truck movements at the building entry/exit ramps. The construction drawings and specifications (including signing and pavement markings), shall be in accordance with the Australian Standard and Roads and Maritimes Services Guidelines. A road safety

audit and corrective actions be carried out for the building entry and exit ramps to maximise accessibility whilst prioritising safety for all road users (motorists; trucks; cyclists; and pedestrians).  
(Reason: Ensure compliance and Maintain public safety)

## **28. Construction Staging**

Minimal impacts are to be demonstrated on the function of easements through the Preliminary Construction Management Plan. This is to include a staging plan to ensure through-site access and easement access requirements are maintained to the Sebel Hotel, the 'Sage' building, the Chatswood Railway Interchange.

(Reason: Ensure compliance)

## **29. Noise from Transport Corridor**

To minimise the impact of noise from any external noise source on the amenity of the occupants, the building shall be constructed in accordance with the recommendations and specifications of the acoustic report by Acoustic Logic – Environmental Noise & Vibration Impact Assessment, report no. 20161789.1/0805A/R2/GC dated 8/5/2017.

Details of the proposed acoustic treatment shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

(Reason: Amenity, environmental compliance and health)

## **30. Plant rooms**

The acoustic treatments to the plant rooms shall be determined to meet the required standards set out in the Environmental Noise Assessment prepared by Day Design Consulting Acoustical Engineers (6184-1.1R Rev B) dated 11/05/2017 prior to Construction Certificate to ensure acoustic amenity to adjacent residential buildings.

(Reason: Amenity)

## **31. Ausgrid**

- a) Ausgrid chamber substation S.6668 and associated electricity cables are located at the ground level within the proposed development site. The development shall comply with the requirements of Network Standard NS113 Site Selection and Construction Design Requirements for Chamber Substation (available at [www.ausgrid.com.au](http://www.ausgrid.com.au)).
- b) Ausgrid require unimpeded access to the substation and its cables, 24 hours per day, 7 days per week. This access is to be kept clear at all times including the duration of the proposed construction works, so that work trucks can access the substation and cables, cable routes are clear for excavation for repair work, all substation doors are fully open-able and not blocked off by construction fencing / hoarding, construction materials or any other items. Following the completion of construction, the area around the substation and the cable routes shall remain clear on a permanent and ongoing basis and is not to be subject to vegetation plantings, fencing installations around the assets, or the placement of any other obstructions, without the written approval of Ausgrid.
- c) Ausgrid have underground cables at the 67 Albert Avenue frontage of the development. The same access requirements stated above also apply to these cables.
- d) The finished surface levels over existing underground cables within 67 Albert Avenue, and at the Albert Avenue frontage, must not be altered without permission from Ausgrid.
- e) All proposed excavation works in proximity to the existing electricity supply cables, and to the substation must be in accordance with Ausgrid's Network Standard NS156 Working Near or Around Underground Cables.
- f) Given the scale of the proposed development, there will be significant increase in electricity demand at 67 Albert Avenue. The developer should not assume there will be electricity available to meet this demand increase. The developer is advised to submit a Connection Application for the development as soon as their maximum demand has been determined.

(Reason: Protection of assets)

### **32. Tree Management Plan**

- i. Submit to the Certifying Authority 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)

### **PRIOR TO COMMENCEMENT**

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

### **33. Sydney Trains – Certification Required**

Prior to the commencement of works, the Applicant shall provide certification from a qualified Geotechnical and Structural Engineers stating that the proposed works are to have no negative impact on the rail corridor and associated rail infrastructure.  
(Reason: Protection of assets)

### **34. Sydney Trains – Dilapidation**

If required by Sydney Trains, prior to the commencement of works, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.  
(Reason: Protection of assets)

### **35. Dilapidation Report of Council's Property**

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

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

This dilapidation report shall be submitted to Council and the Certifying Authority prior to commencement of work.

(Reason: Protection of Council's infrastructure)

### **36. Dilapidation Report of Adjoining Properties**

Prior to commencement of work, submit a photographic survey and report of the immediate adjoining properties to the Certifying Authority and all owners of these adjoining properties. The photographic survey and report should include (but not limited to) the existing building on 67 Albert Avenue, easements that cross the site and immediately adjacent to the site, the Garden of Remembrance, 65 Albert Avenue, 37 Victor Street, 436 Victoria Avenue and any adjoining Interchange assets. 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 Certifying Authority, 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)

### **37. Dilapidation Report of Public Open Space**

Submit a dilapidation report including photographic record of the Public Open Space adjoining the development, detailing the physical condition of items such as, but not exclusively to trees, grass and garden beds and physical improvements such as paths, furniture and memorials.

The applicant may be held liable to any damage to public infrastructures 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 Certifying Authority prior to commencement of works.

(Reason: Protection of Council's infrastructure)

### **38. 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 prior to commencement of work 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)

### **39. 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 Certifying Authority prior to commencement of work.

(Reason: Environment protection/waste reduction)

### **40. Garbage Compactor Vehicles**

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

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

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

(Reason: Ensure compliance)

### **41. Licensee Details**

The name, address and contractor licence number of the licensee who has contracted to carry out the work shall be furnished in writing to the Certifying Authority prior to commencement of work. N.B. Should changes be made for the carrying out of the work the Certifying Authority must be immediately informed.

(Reason: Information)

### **42. Building Site Hoarding**

Prior to the commencement of work, a hoarding, complying with StateCover NSW requirements which is to be erected to restrict public access to the site (including demolition and/or excavation site), 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)

### **43. Site Management**

A Site Management Plan shall be submitted to and approved by the Certifying Authority prior to commencement of work. 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 Certifying Authority/Council officers upon request.

(Reason: Environment protection, public health and safety)

#### **44. Ventilation Plans and Details**

Plans and specifications of mechanical ventilation, air conditioning systems and any associated pollution control equipment are to be prepared in accordance with current standards and submitted for approval by the Principal Certifying Authority.

(Reason: Ensure compliance)

#### **45. Permits and Approvals Required**

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

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

The public footway must not be obstructed at any time unless written approval has been granted by Council. Council's footpath and footway shall be maintained in a safe condition for pedestrians and the general public at all times.

(Reason: Legal requirements)

#### **46. Application for Reconstruction of Vehicle Access Driveway**

Submit an application with fees to Council for the reconstruction of a vehicle crossing driveway.  
(Reason: Protection of Public Assets)

#### **47. Adjustment to Street Lighting**

Prior to commencement of work, consult with utility authorities to determine the requirements of relocation/adjustment of electricity supply and street lighting services fronting the property. Such street lighting shall also conform to Council's standard specifications.  
(Reason: Public amenity)

#### **48. Removal of Trees**

Removal of approved trees is to be undertaken by a qualified Arborist (Minimum qualification AQF Level 3) with suitable public liability insurance.  
(Reason: Tree management)

#### **49. Garbage Rooms**

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

#### **50. Spoil Route Plan**

Submit a "to and from" spoil removal route plan to Council prior to the commencement of excavation on the site. Such a route plan should show entry and exit locations of all truck movements.  
(Reason: Public amenity)

### **DURING DEMOLITION, EXCAVATION AND CONSTRUCTION**

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

#### **51. Sydney Trains**

Unless advised by Sydney Trains in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects.

No rock anchors/bolts are to be installed into Sydney Trains property or easements.

During all stages of the development, environmental legislation and regulations will be complied with.

During all stages of the development extreme care shall be taken to prevent environmental harm within the railway corridor. Any form of environmental harm to areas within the railway corridor or legislative non-compliance that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.

During all stages of the development, extreme care shall be taken to prevent any form of pollution entering the railway corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.

The developer shall make provision for easy and ongoing access by rail vehicles, plant and equipment to support maintenance and emergency activities.

No scaffolding or hoarding is to be used facing the rail corridor unless prior written approval has been obtained from Sydney Trains. To obtain approval the proponent will be required to submit details of the scaffolding and hoarding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor. Unless agreed to by Sydney Trains in writing, scaffolding shall not be erected without isolation and protection panels.

## **52. 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 7am to 5pm Mondays to Fridays and 7am to 12noon 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)

## **53. Heritage – Garden of Remembrance**

Should any portion of the existing original garden memorials or pathways be damaged by the proposed works, all works on-site are to cease and written notification given to Council. No work is to resume until the consent to continue the works is obtained in writing from Council.

(Reason: Heritage Conservation and Ensure compliance).

## **54. 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 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)

## **55. 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. All parts of the fence, including the fencing blocks shall be located wholly within the property boundaries.

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

(Reason: Safety)



#### **56. Provide Erosion and Sediment Control**

Erosion and sediment control devices shall be provided wholly within the site 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)

#### **57. Suitable Screens**

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

(Reason: Maintain amenity to adjoining properties)

#### **58. Suitable Barricades**

Suitable barricades shall be erected during building works on Councils footpath and where directed by the Certifying Authority and/or Council to protect pedestrians using the footpath.

(Reason: Public safety)

#### **59. Demolition Work AS 2601-2001**

Any demolition must be carried out in accordance with AS 2601 – 2001 "The demolition of structures".

(Reason: Safety)

#### **60. Silencing Devices**

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

(Reason: Maintain amenity to adjoining properties)

#### **61. 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)

#### **62. 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)

#### **63. 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)

#### **64. 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)

#### **65. 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)

#### **66. 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)

#### **67. Asbestos Removal**

Works involving the removal of asbestos must comply with Council's 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)

#### **68. 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)

#### **69. Survey Certificate**

Certification of the following shall be submitted to the 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) 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)

#### **70. Road and Footpath**

Council's footpath, nature strip or roadway shall not be damaged and shall be kept clear at all times. The public footway must not be obstructed at any time unless written approval has been granted by Council and the footway including any footpath shall be maintained in a safe condition for pedestrians and the general public at all times.

(Reason: Maintain public safety)

#### **71. 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)

#### **72. 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)

### **73. Excavations and Backfilling**

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

(Reason: Safety)

### **74. Excess or Waste Concrete**

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

(Reason: Environmental protection)

### **75. Temporary Toilet Facilities**

Temporary toilet facilities shall be provided to the satisfaction of the 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)

### **76. 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)

### **77. 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)

### **78. 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)

### **79. 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)

### **80. Tree Protection**

- a) Retain and protect the following trees and vegetation throughout the demolition and construction period: All trees not indicated for removal on the approved plans unless exempt under relevant planning instruments or legislation.
- b) The above trees must be clearly marked and protection devices in place to prevent soil compaction and machinery damage.
- c) Tree roots greater than 50mm diameter are not to be removed unless approved by a qualified arborist on site.
- d) All structures are to bridge roots unless directed by a qualified arborist on site.

- e) Tree protection measures must comply with the AS 4970-2009 Protection of trees on development sites with particular reference to Section 4 Tree Protection Measures

(Reason: Tree management)

#### **81. Control of Wind Movements**

Where control of wind movements in and around the site relies on the proposed landscaping, the Landscaping Plan is to be endorsed by the wind expert confirming that the proposed landscaping will achieve an acceptable wind environment in and around the building.

(Reason: Amenity)

#### **82. No Access through Public Open Space**

Site access is not approved for construction of the development, through adjacent public land.

(Reason: Safety, landscape amenity, tree protection)

#### **83. 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)

#### **84. 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)

#### **85. 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)

#### **86. 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. Precertification of the imported material shall be made and details made available to Council upon request.

(Reason: Environment & Health Protection)

#### **87. 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)

#### **88. 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)

#### **89. Footings Near Easement**

All footings for buildings and/or other structures located adjacent to easements and/or Council/public drainage pipes shall be constructed outside of Council's easement. Footings must extend to at least 100mm below the invert of the Council's /public pipe system unless the footings are to be placed on competent bedrock.  
(Reason: Protection of public asset)

#### **90. Structures to Clear of Council's Drainage Infrastructure**

It is the full responsibility of the Applicant and their contractors to:

- Ascertain the exact location of the Council/public drainage infrastructure traversing the site in the vicinity of the works;
- Take full measures to protect the in-ground Council/public drainage system; and
- Ensure dedicated overland flow paths are satisfactorily maintained through the site.

All proposed structures and construction activities shall be located clear of Council/public drainage pipes, drainage easements, watercourses and/or trunk overland flow paths on the site. Trunk or dedicated overland flow paths shall not be impeded or diverted by fill or structures unless otherwise approved by Council. In the event of a Council/public drainage pipeline being uncovered during construction, all work in the vicinity of this area shall cease and the Certifying Authority and Council shall be contacted immediately for advice. Any damage caused to a Council/public drainage system must be immediately repaired in full as directed, and at no cost to Council.  
(Reason: Protection of public assets)

#### **91. Relocation of Power Pole, Utility Services and Road Signs**

Relocation of the power pole, any utility mains and pits and road signs in the vicinity of the vehicular access crossings shall be carried out in accordance with approvals from and to the requirements of the relevant utility authorities and the RMS. All work shall be carried out at the developer's expense.  
(Reason: Ensure Compliance)

#### **92. Public Tree Protection**

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

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

#### **93. Tree Trunk, Branch and Root Protection**

- a) Retain and protect the following trees and vegetation throughout the demolition and construction period:
  - i. All trees not indicated for removal on the approved plans unless exempt under relevant planning instruments or legislation.

- b) The above trees must be clearly marked and protection devices in place to prevent soil compaction and machinery damage.
- c) Tree protection measures must comply with AS 4970-2009 Protection of trees on development sites with particular reference to Section 4 Tree Protection Measures.
- d) Tree protection measures in accordance with c) above are to be certified by a qualified Arborist prior to commencement of works.
- e) Tree roots greater than 50mm diameter are not to be removed unless approved by a qualified Arborist on site.
- f) All structures are to bridge roots unless directed by a qualified Arborist on site.  
(Reason: Tree management)

#### **94. Loading and Unloading during Demolition, Excavation and Construction**

The following requirements apply:

- All loading and unloading associated with construction must be accommodated on site.
- The structural design of the building must permit the basement and/or the ground floor to be used as a loading and unloading area for the construction of the remainder of the development.
- If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- In addition to any approved Works Zone, provision must be made for loading and unloading to be accommodated on site once the development has reached ground level.
- If a Work Zone is required an application must be made to Council prior to commencement of work on-site. An approval for a Works Zone may be given for a specific period and certain hours of the day to meet the particular need of the site for such facility at various stages of demolition, excavation and construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the demolition, excavation and construction activities.
- Application for a Works Zone must be submitted to Council a minimum of 8 weeks prior to being required. Works Zone permit application form is available on the Willoughby City Council's Website.
- Relevant Council permits are to be obtained to support activities associated with the site works including demolition, excavation and construction as necessary.

(Reason: Public safety and amenity)

#### **PRIOR TO OCCUPATION OF THE DEVELOPMENT**

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

#### **95. Sydney Trains**

Prior to the issuing of an Occupation Certificate the Applicant is to submit as-built drawings to Sydney Trains and Council. The as-built drawings are to be endorsed by a Registered Surveyor confirming that there has been no encroachment into Sydney Trains property or easements, unless agreed to be these authorities. The Principal Certifying Authority is not to issue the final Occupation Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

(Reason: Protection of assets)

#### **96. Signage and Wayfinding Strategy**

The preparation of the wayfinding strategy, detailing all pedestrian entry points to the site, is to be completed and approved by the Certifying Authority. The strategy must be implemented through appropriate signage prior to the issue of any Occupation Certificate.

(Reason: Information)

#### **97. Section 73 Compliance Certificate**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained prior to the issue

of a Final Occupation Certificate. An application must be made either directly to Sydney Water or through a Sydney Water accredited Water Service Coordinator. For details go to [www.sydneywater.com.au/section73](http://www.sydneywater.com.au/section73) or call 1300 082 746.

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

#### **98. Street Number Display**

The street number at least 100mm high shall be clearly displayed prior to the issue of any Occupation Certificate.  
(Reason: Information)

#### **99. Surface Water Runoff**

Surface water runoff from paved areas shall be directed away from neighbouring properties and disposed of to the satisfaction of the Certifying Authority.  
(Reason: Health and amenity)

#### **100. 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)

#### **101. Fire Safety Certificate Forwarded to NSW Fire and Rescue**

Prior to the issue of the Final Occupation Certificate and 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)

#### **102. Marked Parking Bays**

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

#### **103. Access/Parking – Multiple Occupation of a Building**

Prior to the issue of any Occupation Certificate and where multiple occupation of a building or site is proposed, the appropriate number of parking spaces under Willoughby Development Control Plan Part C.4 shall be allocated in respect of each individual use and the spaces so allocated shall be identified numerically on a sketch plan of the parking area which is to be submitted with any future application for consent to use any particular portion of the building or site.

N.B. The issue of an interim occupation / final occupation certificate to use particular portion of a building or site will be contingent, in part, upon the availability of car parking in accordance with DCP requirements.  
(Reason: Ensure compliance)

#### **104. Car spaces allocation**

A total of 131 car parking spaces shall be allocated for the exclusive use of the commercial tenancies as per the minimum rate required by the Willoughby DCP of one car parking space per 200m<sup>2</sup> of commercial floor space (part thereof rounded down).  
(Reason: Car parking management)

### 105. Safer by Design

Prior to the issue of any Occupation Certificate and to minimise the opportunity for crime and in accordance with CPTED principles, the development shall incorporate the following:

- a) 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.

- b) The ceiling and vertical structures of the basement parking area shall be painted white (or equivalent) in order to ensure good visibility, surveillance and less reliance on artificial lighting lux levels.
  - c) 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.
  - d) 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.
  - e) 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.
  - f) Adequate signage within the development to identify facilities, entry/exit points and direct movement within the development.
  - g) A small portion of each storage area shall be of solid construction (i.e. Cupboard).
- (Reason: Safety and surveillance, energy efficiency, amenity)

### 106. Temporary Ground Anchors – Destressing

Prior to the issue of any Occupation Certificate, all damages to Council's/public 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)

### 107. Sign for OSD System

Prior to the issue of any Occupation Certificate, an aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the OSD system.

The wording for the plaque shall state *"This is the OSD 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)

### 108. Certification of OSD

Prior to the issue of any Occupation Certificate, 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.2.

(Reason: Legal requirement)



#### **109. Works-As-Executed Plans – OSD**

Prior to the issue of any Occupation Certificate and upon completion of the OSD System, the following shall be submitted to the 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)

#### **110. 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 OSD 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 OSD 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 Certifying Authority and Council prior to issue of any Occupation Certificate.

(Reason: Maintenance requirement)

#### **111. Construction of Kerb & Gutter**

Prior to the issue of any Occupation Certificate, construct a new kerb and gutter together with any necessary associated pavement restoration in accordance with Council's specification for the full frontage of the development site with associated pavement restoration and half road width in Albert Avenue.

(Reason: Public amenity)

#### **112. Reconstruct Pavement**

Prior to the issue of any Occupation Certificate, half the road pavement including any necessary associated works adjoining to the full frontage of the development site to Albert Avenue shall be reconstructed in accordance with Council's approved drawings, conditions and specification (AUS-SPEC).

(Reason: Ensure compliance)

#### **113. Pebblecrete/Approved Tiling**

Prior to the issue of any Occupation Certificate, construct a full width footpath in approved pebblecrete/approved tiling for the full frontage of the streets adjoining to the site all in accordance with Willoughby City Council's CBD Pavement Policy. 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)

#### **114. 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 Certifying Authority prior to the issue of any Occupation Certificate.

(Reason: Ensure compliance)

#### **115. Performance Bond**

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

(Reason: Ensure compliance and specification)

#### **116. Reconstruct Vehicular Access Driveway**

Prior to the issue of any Occupation Certificate, the vehicular access driveway in Albert Avenue at Orchard Road including any necessary associated works shall be reconstructed in accordance with Council's approved drawings, conditions and specification (AUS-SPEC).

(Reason: Ensure compliance)

#### **117. 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,
- b) That a maximum gradient of 5% has been provided for the first 6 metres from the property boundary.
- c) That finished driveway gradients and transitions will not result in the scraping of the underside of cars.
- d) That the as-constructed vehicular path and parking arrangements comply in full with AS2890.1 – 2004 in terms of minimum dimensions provided,
- e) That the headroom clearance of minimum 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.
- f) That the headroom clearance of minimum 2.5 metres has been provided to all parking spaces for people with disabilities to comply with Section 2.4 of AS2890.6.

(Reason: Ensure Compliance)

#### **118. Lighting and Furniture**

Prior to the issue of any Occupation Certificate, provide approved street lighting and furniture in accordance with Willoughby City Council's street furniture manual and Australian Standard AS/NZ 1158(2005). In this regard, a letter from Willoughby Council stating that the lighting and furniture is completed in a satisfactory manner is to be provided to the Certifying Authority.

(Reason: Public amenity)

#### **119. Completion of Landscape Works**

Prior to the issue of any Occupation Certificate, the approved landscape works shall be consistent with the approved design, completed to a professional standard, consistent with industry best practice and published standards.

(Reason: Landscape amenity)

#### **120. Tree Planting**

Prior to the issue of any Occupation Certificate, 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 approved Landscape Plan	As indicated on the approved Landscape Plan

(Reason: Landscape amenity)

#### 121. Sound Level Output Certification

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

(Reason: Amenity)

#### 122. Acoustic Works – Report

Prior to the issue of any Occupation Certificate, certification shall be provided upon completion of the works, accompanied with evidence from suitably qualified and practising acoustic engineer, to the effect that the acoustic attenuation has been carried out in accordance with the Environmental Noise Assessment prepared by Day Design Consulting Acoustical Engineers (6184-1.1R Rev B) dated 11/05/2017.

This shall include but not be limited to:

- Locating noisier items of plant equipment as far away from adjoining residences as practicable,
- Plant room to be constructed out of masonry with ventilation opening limited to the western and southern wall and acoustically treated, and
- Installation of circular duct attenuators following detailed recommendations contained in the environmental noise assessment.

(Reason: Amenity, environmental compliance and health)

#### 123. Noise Emission – Equipment

Prior to the issue of any Occupation Certificate, certification shall be provided from a suitably qualified acoustic engineer certifying that the noise from all sound producing plant, equipment, machinery and/or mechanical ventilation system complies with the relevant noise criteria.

(Reason: Amenity, environmental compliance and health)

#### 124. Certification – Ventilation

Prior to the issue of any Occupation Certificate, 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: Amenity, environmental compliance and health)

#### 125. Waste & Recycling Room

Prior to the issue of any Occupation Certificate, the waste and recycling container room shall be constructed to comply with all the relevant provisions of Willoughby Development Control Plan and in particular:

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

- f) Mobile containers having a capacity of not less than 120 litre and suitable for connection to the garbage collection vehicle being provided in the room. In addition suitable recycling containers must also be provided in the room.

(Reason: Health and amenity)

#### **126. Registration with NSW LRS**

Documentary evidence of registration with Land Registry Services of any changes to easements and/or rights-of-carriageway present on the subject site shall be submitted to the Certifying Authority prior to the issue of any Occupation Certificate.(Reason: Ensure 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.

#### **127. Sydney Trains**

During all stages of the development, the proposal shall comply with the following:

- During all stages of the development, environmental legislation and regulations will be complied with.
- During all stages of the development extreme care shall be taken to prevent environmental harm within the railway corridor. Any form of environmental harm to areas within the railway corridor or legislative non-compliance that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.
- During all stages of the development, extreme care shall be taken to prevent any form of pollution entering the railway corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.
- The developer shall make provision for easy and ongoing access by rail vehicles, plant and equipment to support maintenance and emergency activities. No rock anchors/bolts are to be installed into Sydney Trains property or easements.
- No scaffolding or hoarding is to be used facing the rail corridor unless prior written approval has been obtained from Sydney Trains. To obtain approval the proponent will be required to submit details of the scaffolding and hoarding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor. Unless agreed to by Sydney Trains in writing, scaffolding shall not be erected without isolation and protection panels.

Sydney Trains or Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of this condition, are entitled to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and these conditions of consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.

Any conditions issued as part of Sydney Trains approval/certification of any documentation for compliance with the Sydney Trains conditions of consent, those approval/certification conditions will also form part of the consent conditions that the Applicant is required to comply with.

(Reason: Protection of assets)

#### **128. 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)

#### **129. 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)

#### **130. 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)

#### **131. Road Closure**

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

#### **132. 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, subcontractors, 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)

#### **133. 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)

#### **134. 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)

#### **135. Annual Fire Safety Statement**

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

#### **136. Mechanical Ventilation Systems Comprising Water Cooling**

Mechanical ventilation systems comprising water cooling, and/or evaporative cooling systems shall be registered with Council on completion of the installation in accordance with the requirements of the Public Health Act 2010 and Public Health Regulation 2012.  
(Reason: Health protection)

#### **137. Waste Materials**

No waste materials are to be stored outside the approved waste storage area at any time. The garbage receptacles are not to be used for the disposal of any type of liquid waste.  
(Reason: Health and amenity)

## **PRESCRIBED CONDITIONS**

The following conditions are prescribed by S4.17 of the Environmental Planning & Assessment Act 1979 (previous S80A) for developments involving building work.

### **138. Compliance with National Construction Code**

All building works must be carried out in accordance with the performance requirements of the National Construction Code.

(Reason: Compliance)

### **139. 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 1979 and the Environmental Planning & Assessment Regulations and are provided to assist applicants.

### **140. 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)

### **141. Notify Council of Intention to Commence Works**

In accordance with the provisions of Section 4.19 of the Environmental Planning and Assessment Act 1979 (previous S81A) the person having the benefit of the development consent shall appoint a 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)

### **142. 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)

## Attachment C

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### **Applicant Response to Deferral**

*Prepared by Ethos Urban, dated 14 June 2018*

Our Ref: 16695  
Panel Ref: 2017SNH051

14 June 2018

16695

Mr Peter Debnam  
Chair, Sydney North Planning Panel  
C/O Planning Panels Secretariat  
320 Pitt Street  
Sydney NSW 2000

**2017SNH051 – Willoughby – DA2017/157, Response to Deferral, 67 Albert Street, Chatswood**

Dear Peter,

At the meeting of Wednesday 23 May 2018, the Sydney North Planning Panel unanimously decided to defer the determination of the above development application (DA) pending the address of the following matters:

1. Provision of a detailed approval history of the site and surrounding developments to assist in clarifying the intended function of the land on which the proposed development is situated;
2. Clarification of the existing ground level at the site, required to accurately measure the height of the proposed development;
3. Clarification of the site area and the resulting Floor Space Ratio (FSR);
4. Provision of detailed solar access analysis for the adjacent Gardens of Remembrance at winter and in both equinoxes;
5. Clarification of the impact on the existing easements and surrounding uses and clarification about the requirements to obtain consent from the beneficiaries of any easements at the time of DA lodgement;
6. The provision of a wind report;
7. The documentation of the following design changes:
  - The installation of fixed louvres on the northern and eastern elevations to address perceived overlooking issued;
  - Achieving separation distances as prescribed in the *Apartment Design Guide* (ADG); and
  - Comply with the maximum FSR development standard within the *Willoughby Local Environment Plan 2012 'by lessening the view impact'*.

A response to these issues is provided within this correspondence, which is supported by the following attachments:

- Certificate of Title (**Attachment A**)
- Indicative architectural plans prepared by Fitzpatrick and Partners (**Attachment B**);
- Additional solar studies of the Gardens of Remembrance prepared by Fitzpatrick and Partners (**Attachment C**);
- Summary of affected easements prepared by HFW Lawyers (**Attachment D**);
- Supplementary Wind Report prepared by CPP (**Attachment E**); and
- Legal opinion in relation to the application of the ADG and the requirement for consent from beneficiaries of affected easements at DA lodgement, prepared by King Wood Mallesons Lawyers (**Attachment F**).

## 1.0 Detailed approval history of the site

The Panel has requested that a detailed site approval history be provided to enable a consideration of the intended function of the area on which the proposed development is located. The Panel has also requested that information relating the approved uses of the Sebel building be provided.



Although a request for assistance in responding to this request was made to Council by the Panel, Council have been unable to provide any relevant information, we understand that, due to a historic fire in the Council archive, the details of many historic approvals are no longer available.

In the absence of any detailed approval history from Council's archive in relation to this point, we offer commentary below to address the Panel's query.

### 1.1 Use of the open space area

We understand that the Panel have requested this information in order to ascertain if the open space on which the proposed development is located was allocated, or in any other way connected, to any prior development. Although a full review of approval documentation associated with all the surrounding developments has not been possible, it is reasonable reach a conclusion to this point without such a review.

To this end we note that, should any of the surrounding developments have been reliant on the open space provided by the subject site to the extent that development of this area in the future was required to be restricted, then this restriction would have been placed on the title of the land in the form of a restrictive covenant.

A review of the Certificate of Title for the site (provided for reference as **Attachment A**) reveals no restrictive covenant that could prevent future development of the site by virtue of a requirement to maintain the area as 'open space'.

In the absence of any restrictive covenant it is noted that the owner of the site, or any other party with the consent of the site owner, is permitted to seek consent to develop the site for any purpose permitted by the zoning provisions and development standards provided within the *Willoughby Local Environment Plan 2012* (WLEP). The site is zoned for *B3 Commercial Core* by the WLEP. The proposed development is consistent with the zoning provisions and development standards provided by the WLEP.

It is therefore concluded that, despite the fact that it has not been possible to review approval documents from the surrounding developments, it can be concluded that no restriction was placed on the future development of the site as no restrictive covenant was required to be placed on the Certificate of Title of the subject site and the proposed development is permissible with consent in the B3 Commercial Core zone and is consistent with the applicable FSR standard.

### 1.2 Approved use of the Sebel Building

We understand that the Panel has requested information to be provided pertaining to the approved use of the 'Sebel' Building in order to ascertain if it is approved to be used as a residential building or a serviced apartment building (a commercial use).

Although, as outlined above, the information relating to the approved use of the Sebel building has not been forthcoming from Council and therefore cannot be provided to the Panel by the applicant, for reasons that are outlined below, this information is immaterial to the assessment of the proposed development.

The primary reasons for which the Panel may wish to ascertain the approved use of the Sebel building relates to the establishment of appropriate building separation distances. As further outlined below in Section 7.2, in the assessment of the proposed development, being a commercial building, the consent authority must have regard to the Section 5.3 Chatswood City Centre of the *Willoughby Development Control Plan 2016* (WDCP) which states:

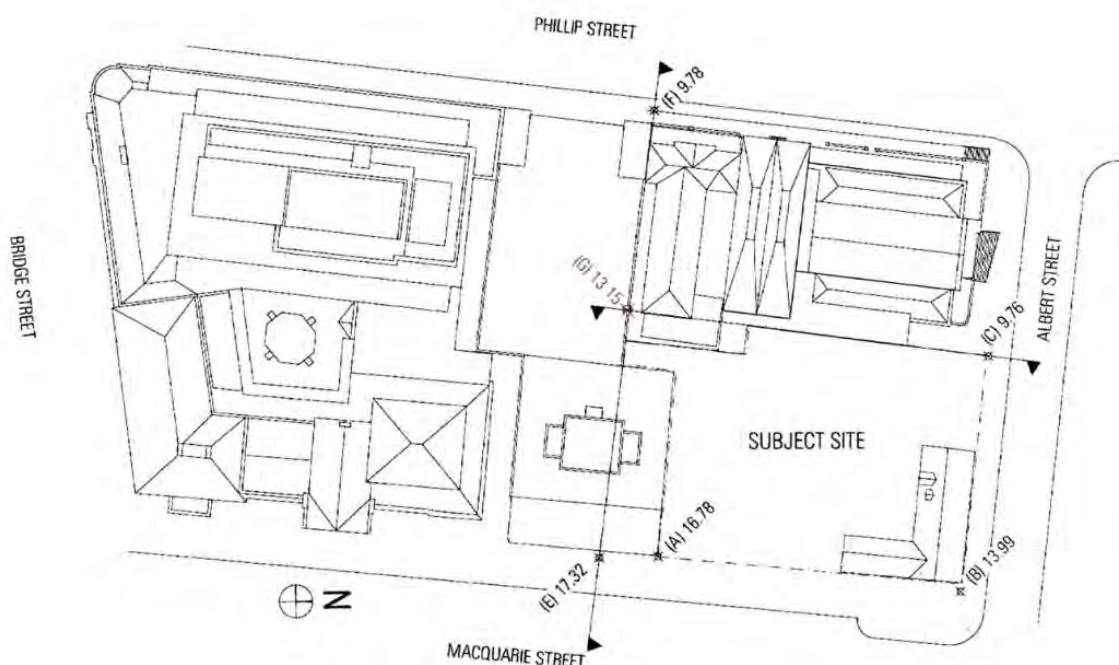
*"building separation between tower buildings (buildings over 14 metres in height of a minimum of 6 metres in the office precinct of Chatswood City Centre shall be provided to allow sunlight penetration between buildings to the public domain and view sharing. The building separation shall be increased to a minimum of 12 metres for buildings above 30 metres in height".*

The proposed development complies with the 12m building separation distances suggested by the WDCP, which are not affected by the approved use, be it residential or otherwise, of any surrounding building.

## 2.0 Clarification of the existing ground level at the site

The existing ground level beneath and surrounding the proposed development is heavily modified, as such is it not possible to accurately survey the existing ground level beneath each point within the footprint of the proposed development. *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189* is instructive in determining how the existing ground level should be measured in cases such as this as it is more recent and builds on the principles established in *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*. In paragraph 288 of this judgement, Pearson C and Smithson AC note the following:

*...we are satisfied that there is sufficient information to determine “ground level (existing)” for the site, and we agree with Ms Robinson and Mr Chambers that the definition is workable. That is in fact demonstrated by the plan provided by Mr Harrison (Ex G, Figure 1) (refer to **Figure 1**) showing measurement of average boundary levels based on actual and surveyed levels in the public domain, with a figure in the centre of the site being an average between two surveyed points rather than a surveyed ground level:*



**Figure 1** – Extract from *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC*

Consistent with the approach suggested in this case by Mr Harrison, and agreed by Pearson C and Smithson AC, Fitzpatrick and Partners have provided two surveyed ground levels adjacent to the proposed building to determine the existing ground level on the western side of the proposed building. To determine the existing ground level at the eastern side of the building, surveyed levels have been obtained on Victor Street, the existing ground level on the west of the site can then be demonstrated to be the pro-rata average of two surveyed points. This is illustrated below in **Figure 2**.



**Figure 2** – Existing ground level, surveyed and extrapolated locations

The resulting extrapolated ground levels on the site have been shown to range from RL 94.600m in the east to RL95.680 in the west. The building, as previously proposed, had a maximum height of RL175.1m. This means that up to 500mm of plant room façade, on the eastern side of the building only, would exceed the 80m maximum height of buildings development standard.

As the Panel has made it clear that any variance to development standards would not be supported, the height of this plant room façade has been reduced to a maximum of RL174.60m. This is illustrated within the indicative architectural drawings provided in **Attachment B**.

As the entire building, as now proposed, has a total height of less than 80m when the existing ground level as measured in accordance with the principles established by *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189, no request to vary a development standard in accordance with Clause 4.6 of the WLEP is required.

### 3.0 Clarification of the Site Area

As noted in the architectural plans provided as **Attachment B**, the site area for the purposes of determining the FSR of the proposed development is 3,006m<sup>2</sup>. In accordance with the provisions clause 4.4 of the WLEP, the site has a maximum FSR of 8:1. A maximum GFA of 24,048m<sup>2</sup> (inclusive of the existing structures on the site, is therefore permissible. The existing structures on the site comprise 16,055m<sup>2</sup> of GFA. There is therefore capacity for a maximum of 7,993m<sup>2</sup> of GFA without exceeding the maximum FSR prescribed by the WLEP.

It is acknowledged that some areas of the previously proposed development have been removed from the development (as now proposed) during the assessment period. It should be noted that these areas are located within stratum lots which are located vertically from the ground plane and do not affect the reading of site area. The removal of these stratum lots from the development site does not affect the total site area for the purposes of determining the total FSR for the site.

In determining the site area for this DA, we have had regard to the provisions of Clause 4.5 of the WLEP, for which the objectives are:

- (a) *to define floor space ratio,*
- (b) *to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to:*
  - (i) *prevent the inclusion in the site area of an area that has no significant development being carried out on it, and*
  - (ii) *prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and*
  - (iii) *require community land and public places to be dealt with separately.*

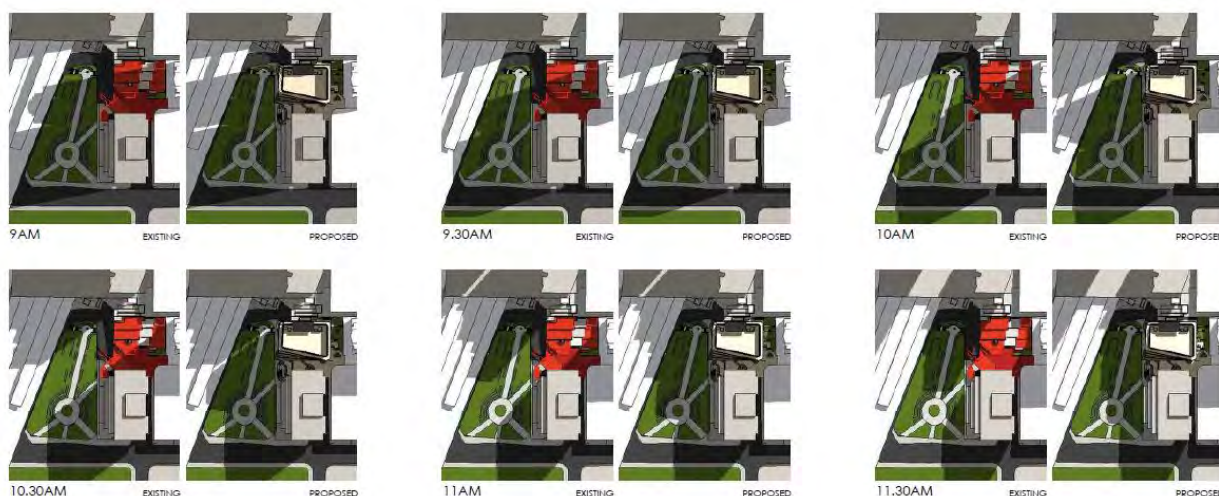
It should be noted that the subject site is not a 'public place' as it defined by the *Local Government Act 1993*.

### 4.0 Detailed solar access analysis of Gardens of Remembrance

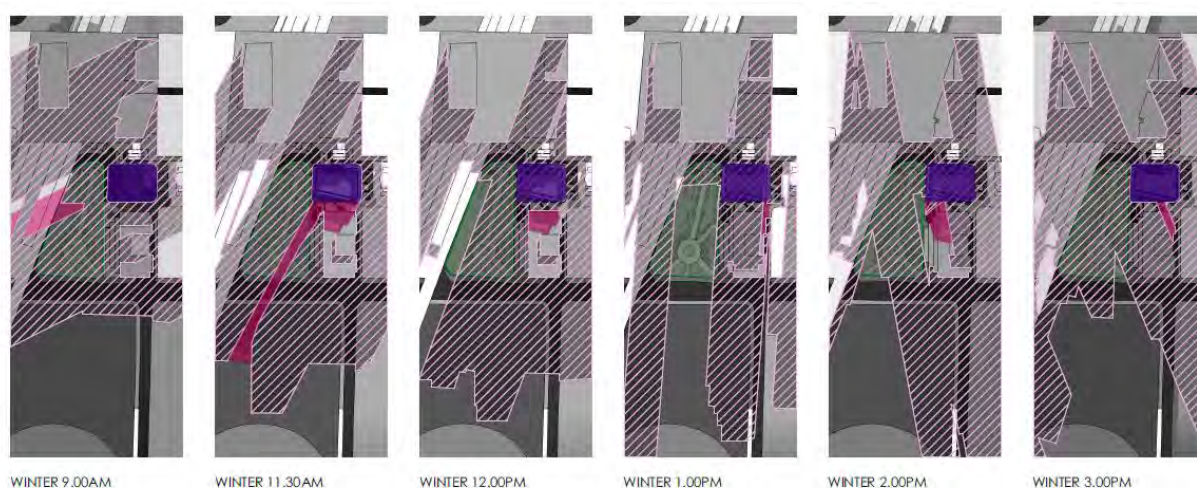
Detailed solar studies were prepared for Council as part of a response to a request for additional information dated 14 December 2017. In this response the following was noted:

- Additional overshadowing is introduced by the proposed development to the Gardens of Remembrance in the morning period, between 9am and noon in mid-winter. This has previously been demonstrated in information provided to Council.
- Additional overshadowing analysis undertaken at the request of the Panel for both equinoxes demonstrates that, consistent with the impact of the building in mid-winter, the impact of the building at the spring and autumn equinoxes will introduce additional overshadowing to the gardens between 9am and 12 noon but will have no impact on the gardens after this point. Extracts are provided below as **Figure 3**, and **Figure 4**.
- No additional overshadowing of the Gardens of Remembrance is introduced within the window for which additional overshadowing is prohibited by the provisions Clause 4.3A(8) of the WLEP (being at mid-winter between 12.00 pm and 2.00 pm).
- The expert advice of a consulting Rosarian was sought by the proponent to assist in assessing the relative importance of the additional overshadowing impacts on the overall health of the roses. The Rosarian reported informally that due to the complex and multiple variables that influence the health of rose plants (including soil conditions, sunlight, plant diseases, temperature, weather and moisture levels etc), it is difficult to conclusively ensure the survival of the roses within the Garden of Remembrance. Despite this, the rosarian was able to determine that the most shadow-impacted roses within the Garden are unlikely to become unhealthy due to the reduction in solar access.





**Figure 3** – morning shadow impact at Spring and Autumn equinox



**Figure 4** –shadow impact at mid winter

Detailed solar studies are provided to the Panel as **Attachment C**.

We note that the proposed development completely satisfies the provisions Clause 4.3A(8) of the Willoughby LEP, and also of the Chatswood CBD Strategy. We note that the draft CBD Strategy (endorsed by Council in June 2017) does not seek to introduce more onerous controls (either time of day or time of year) over and above the current LEP. If Council were of a mind to re-visit the controls in the current LEP, then the introduction of recommended new controls in this publicly exhibited document would have been an appropriate place to undertake more stringent controls. This did not occur.

## 5.0 Easements

The Panel has requested information relating to the impact of the proposed development on the existing easements and surrounding uses. Given the complexity of the arrangement of easements and restrictions on the site, a legal review of all the easements had been prepared by HFW, outlining the impacts of the proposed development (included at **Attachment D**) and was included in the development application documents assessed by Council.

Due to the highly complex nature of the easements applicable to the site, the design strategy sought to minimise any required changes and impacts to all beneficiaries. This information has been previously provided to Council to assist with the assessment of the DA.

In relation to the Panel's query regarding the use of loading docks surrounding the site, attention is drawn to the outline Construction Management Plan that was provided to Council during the assessment of the DA. The proponent is committed to the maintenance of access for surrounding users throughout the construction period, with overall disruption being minimised as far as practicable.

The Panel also requested confirmation that land owners consent is not required from the beneficiaries of affected easements at the point of DA lodgement. In response to this we refer to King and Wood Mallesons' advice (provided as **Attachment F**). As noted by this advice: *An easement is a right which attaches to a piece of land (the land benefitted) giving the owner or occupant rights over another piece of land (the land burdened). The beneficiary of an easement which burdens the subject land is not "the owner of that land" within the meaning of clause 49(1) of the EPA Reg, and their consent is not legally required in respect of the DA.*

As such, it is concluded that land owners' consent from the beneficiaries of any affected easements is not required at the point of DA lodgement. Council has included a condition of consent that would require the resolution of all issues relating to existing and proposed easements prior to issue of a Construction Certificate. This condition would be acceptable as only after the application has been determined can the applicant liaise with neighbouring properties to negotiate modifications to approved easements.

## 6.0 Wind Report

The Panel has requested that a Wind Report be prepared and supplied. Noting that a Wind Report was previously prepared by CPP and provided to Council during the assessment of the DA, it is assumed that the Panel's request is informed by representation made during the Panel hearing, which requested additional information pertaining to any wind effects experienced within the adjacent Gardens of Remembrance.

CPP's wind report has been updated and is provided again as **Attachment E**. Within this updated wind report CPP provide comment on the anticipated impact of the proposed development on the wind conditions experienced within the Gardens of Remembrance. An extract is provided below for reference.

*Qualitatively, integrating the expected directional wind conditions around the site with the wind climate, it is considered that wind conditions at the majority of locations around the site would be classified as suitable for pedestrian walking or standing under Lawson. All locations would be expected to pass the distress criterion. The most significant effects are likely to be limited to an area approximately within the property boundary, **with conditions in areas such as the Remembrance Park garden and Albert Avenue remaining similar to existing.** (our emphasis),*

## 7.0 Design Changes

The Panel has requested a number of design changes as outlined below. Indicative architectural plans have been provided within **Attachment B**. A full amended set of architectural drawings has not been prepared at this point as the applicant has not fully adopted the Panel's requested design recommendations and seeks the Panel's feedback prior to documenting a full set of drawings. Should the Panel be minded to grant consent to the DA, as amended, a full set of amended architectural drawings can be prepared and provided to the Panel (or their delegate) for approval within a reasonable number of working days to allow a timely approval.

### 7.1 Installation of fixed louvres

The Panel has requested that *'fixed external louvres be applied to the northern and eastern elevations (or an alternative solution) to ensure no cross viewing to the adjacent building'*. As indicated on the architectural drawings,

provided as **Attachment B**, this suggestion has been adopted and fixed vertical louvres can be incorporated within the final design of the building to improve privacy and restrict cross viewing between the proposed commercial building and its neighbouring residential buildings.

## 7.2 Separation distances as prescribed in the *Apartment Design Guide* (ADG)

The Panel has requested that the proposed development be amended to ‘*achieve SEPP65 ADG separation*’. *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65) is an environmental planning policy which requires that, in determining an application for consent to which SEPP 65 applies, a consent authority is required to take into account the *Apartment Design Guide* (ADG).

Clause 4 of SEPP 65 states that the Policy applies to development for three specific purposes, being:

- residential flat building;
- shop top housing; or
- mixed use development with a residential accommodation component.

As the proposed development is not one to which SEPP 65 can lawfully be applied, the ADG does not suggest suitable separation distances for this type of development. Separation distances for the DA must be assessed against E.3 Chatswood City Centre

It is noted that the ADG does state in Part 2F Building Separation:

*“When measuring the building separation between commercial and residential uses, consider office windows and balconies as habitable space”.*

This statement relates to building separation in circumstances where a residential development (which requires consideration of the ADG) is to be constructed adjacent to a commercial development, and not vice versa. This is because legally the ADG can have no application to a commercial development.

This opinion has been confirmed within a legal review of the record of deferral carried out by Debra Townsend of King and Wood Mallesons and documented in **Attachment F**. In light of the above, no increase to the applicable separation distances has been proposed.

Therefore, in the assessment of the proposed development, being a commercial building, the consent authority must have regard to the Section 5.3 Chatswood City Centre of the *Willoughby Development Control Plan 2016* (WDGP) which states:

*“building separation between tower buildings (buildings over 14 metres in height of a minimum of 6 metres in the office precinct of Chatswood City Centre shall be provided to allow sunlight penetration between buildings to the public domain and view sharing. The building separation shall be increased to a minimum of 12 metres for buildings above 30 metres in height”.*

The proposed development complies with the 12m building separation distances suggested by the WDGP.

Notwithstanding this, the applicant has adopted the louvers recommendation which would appropriately address privacy and overlooking concerns raised by the Panel and objectors and would address the issue without seeking to introduce separation distances significantly above the DCP control.

## 7.3 Compliance with maximum FSR and view impact

The Panel has requested that the proposed development be amended to ‘*comply with the maximum floor space ratio by lessening the view impact*’. In response, and as documented within **Attachment B**, the indicative floor plate of each commercial level has been amended to provide an improved outlook for residents to the north of the site. The resulting reduction in Gross Floor Area of the proposed development has reduced the overall FSR of the development to allow compliance with the ‘maximum FSR’ development standard as provided by Clause 4.4 of the WLEP.

We note that the draft Chatswood CBD Strategy seeks to remove commercial FSR standards in order to encourage commercial development in Chatswood. The site is ideally located adjacent to the Chatswood Transport Interchange which can support the FSR as proposed. As stated in the SEE with the application, the proposal is the first commercial building to be proposed in Chatswood in 20 years and it is the applicant's preference to retain a higher FSR and more usable and commercially viable floor plate size.

It is worth noting that the Chatswood Commercial office market has had a vacancy rate of 6.9% in June 2017, 6.8% in January 2018 and forecasted vacancy rate of 6.8% in June 2018 which is on par with North Sydney forecasted at 6.6% (stats as per PCA). This is contrary to the assertions made during the Panel hearing that commercial vacancy rates in Chatswood CBD are high.

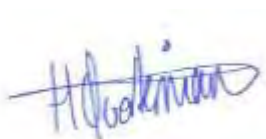
In light of the Panel's request, the proposal has been amended to reduce the FSR for the whole site (including the existing 'Sage Building') by 10%. It should be noted by the Panel that, in enforcing compliance with the 'maximum FSR' development standard, each floor of the building has been reduced in scale by approximately 22%. It is our view this is a lost opportunity for commercial floorspace in Chatswood CBD. However, after committing significant resources to the application, the applicant seeks a timely approval in order to advance the delivery of commercial floorspace and hence has adhered to the Panel's request.

## 8.0 Conclusion

At the meeting of Wednesday 23 May 2018 the Sydney North Planning Panel unanimously decided to defer the determination of the above development application. The above and attached information has been prepared in response to this deferral and is provided to assist the Panel in reaching a determination.

Should you have any questions in relation to the above, or wish to discuss this matter further, please contact Harry Quartermain on [hquartermain@ethosurban.com](mailto:hquartermain@ethosurban.com) or 9409 4908.

Yours sincerely,



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