Panel Reference	PPSSNH-26		
DA Number	DA-2019/247		
LGA	Willoughby City Council		
Proposed Development	Demolition of existing structures and construction of a new registered club, three seniors living apartments containing self-contained dwellings, a residential aged care facility, shop top housing, basement carparking and ancillary uses including a new park		
Street Address	26 Crabbes Avenue, Willoughby NSW 2068 and 243, 247 to 255 Penshurst Street, Willoughby NSW 2068		
Applicant/Owner	Applicant: Hyecorp Property Group Owners: Willoughby Legion Ex-Services Club Ltd (26 Crabbes Avenue) Dants Pty Ltd (247-255 Penshurst Street)		
Date of DA lodgement	9 September 2019		
Number of Submissions	One hundred and seven (107): 78 Object 29 Support		
Recommendation	Approval		
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Capital investment value (CIV) over \$30 million		
List of all relevant s4.15(1)(a) matters	<ul> <li>SEPP (Infrastructure) 2007 - Schedule 3 – Traffic Generating Development</li> <li>SEPP No 55 – Remediation of Land</li> <li>SEPP (Vegetation in Non-Rural Areas) 2017</li> <li>SEPP No 65 - Design Quality of Residential Apartment Development and NSW Apartment Design Guide (ADG)</li> <li>SEPP (Housing for Seniors or People with a Disability) 2004</li> <li>Sydney Regional Environmental Plan (Sydney Harbour Catchment) – Deemed SEPP</li> <li>Willoughby Local Environmental Plan 2012</li> <li>Willoughby Development Control Plan</li> </ul>		
List all documents submitted with this report for the Panel's consideration	<ul> <li>Assessment Report</li> <li>Site Compatibility Certificate and associated documents</li> <li>Schedule of Conditions</li> <li>Site Description and Aerial Photo</li> <li>Controls, Referrals &amp; Development Statistics</li> <li>Clause 4.6 Statements and Clause 4.6 Assessments</li> <li>Submissions Table</li> <li>Section 4.15 (79c) Assessment</li> <li>Notification Map</li> <li>Independent Review – SEPP 65 Report</li> </ul>		
Report prepared by	Christopher Nguyen (Development Assessment Officer)		
Report date	19 October 2020		

## 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.

Summary of s4.15 matters	
Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive	Yes
Summary of the assessment report?	
Legislative clauses requiring consent authority satisfaction	
Have relevant clauses in all applicable environmental planning instruments where the consent authority	Yes
must be satisfied about a particular matter been listed, and relevant recommendations summarized, in	
the Executive Summary of the assessment report?	
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	Yes
received, has it been attached to the assessment report?	
Special Infrastructure Contributions	
Does the DA require Special Infrastructure Contributions conditions (S7.24)?	No
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	

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.

SNPP NO: PPSSNH-26

COUNCIL WILLOUGHBY CITY COUNCIL

ADDRESS: 26 CRABBES AVENUE & 243, 247 - 255 PENSHURST

STREET NORTH WILLOUGHBY NSW 2068.

DA NO: DA-2019/247

PROPOSAL: DEMOLITION OF EXISTING STRUCTURES AND

CONSTRUCTION OF A NEW REGISTERED CLUB, SENIORS LIVING CONTAINING SELF CONTAINED DWELLINGS, A RESIDENTIAL AGED CARE FACILITY, NEW SHOP TOP HOUSING, BASEMENT CARPARKING AND ANCILLARY USES INCLUDING A NEW PUBLICLY ACCESSIBLE PARK.

RECOMMENDATION: APPROVAL

ATTACHMENTS: 1. SITE DESCRIPTION AND AERIAL PHOTO

2. NOTIFICATION, CONTROLS, DEVELOPER CONTRIBUTIONS AND REFERRAL ASSESSMENT COMMENTS

- 3. ASSESSMENT UNDER SITE COMPATIBILITY CERTIFICATE CONTROLS
- 4. ASSESSMENT OF SEPP (SENIORS HOUSING)
- 5. ASSESSMENT OF SEPP 65 (DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT)
- 6. ASSESSMENT UNDER WLEP AND WDCP
- 7. CLAUSE 4.6 ASSESSMENT FSR (R2 ZONE)
- 8. CLAUSE 4.6 ASSESSMENT FSR (R3 ZONE)
- 9. CLAUSE 4.6 ASSESSMENT HEIGHT OF RFB (R3 ZONE)
- 10. CLAUSE 4.6 ASSESSMENT HEIGHT (SENIORS SEPP)
- 11. ASSESSMENT OF RESIDENTIAL FLAT BUILDING AND SHOPS
- 12. ASSESSMENT OF CLUB
- 13. ASSESSMENT OF PARK AND LANDSCAPING
- 14. SUBMISSIONS TABLE
- 15. SECTION 4.15 (79C) ASSESSMENT
- 16. NOTIFICATION MAP
- 17. SCHEDULE OF CONDITIONS

**APPENDIX** 

- 1. APPLICANT'S CLAUSE 4.6 SUBMISSION FSR (R2 ZONE)
- 2. APPLICANT'S CLAUSE 4.6 SUBMISSION FSR (R3 ZONE)
- 3. APPLICANT'S CLAUSE 4.6 SUBMISSION HEIGHT (R3 ZONE)

APPENDIX (CONTINUED) 4. APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT

(SENIORS HOUSING SEPP)

5. INDEPENDENT ASSESSMENT - SEPP 65 REPORT

RESPONSIBLE OFFICER: IAN ARNOTT (PLANNING MANAGER)

AUTHOR: CHRISTOPHER NGUYEN - DEVELOPMENT ASSESSMENT

**OFFICER** 

DATE: 21-OCT-2020

#### 1. PURPOSE OF REPORT

The development application DA-2019/247 is reported to the Sydney North Planning Panel (SNPP) for determination as it meets the relevant criteria to be considered regionally significant development as outlined under Schedule 7 of the *State Environmental Planning Policy (State and Regional Development) 2011*, noting that it comprises a Capital Investment Value (CIV) that is estimated to exceed \$30 million (\$94,771,496.00).

#### 2. OFFICER'S RECOMMENDATION

**THAT the Sydney North Planning Panel (SNPP):** 

- 2.1 Supports the submitted Clause 4.6 variation to the floor space ratio (FSR) development standard contained in Clause 4.4 of the *Willoughby Local Environmental Plan (WLEP) 2012* within the R2 zoned lot (Lot 11 Section C DP 6291) for the following reasons:
  - a) The Site Compatibility Certificate (SCC) provides allowance for a greater FSR:
  - b) The proposed development within the lot is consistent with the controls of the SCC;
  - c) The proposed development within the lot was found to have acceptable impacts on privacy, solar access, view sharing, and general amenity for the surrounding residences;
  - d) The bulk and scale is compatible with the surrounding locality.
- 2.2 Supports the submitted Clause 4.6 variation to the floor space ratio (FSR) development standard contained in Clause 4.4 of the *Willoughby Local Environmental Plan (WLEP) 2012* within the R3 zoned lot (247-255 Penshurst Street, North Willoughby NSW 2068) for the following reasons:
  - a) The proposal was found to be compatible with the density allowance provided by the SCC for the adjoining development of the Club and Seniors Living development;
  - b) The proposed height was found to be compatible with the existing Residential Flat Buildings within Penshurst Street;
  - c) The proposed development was found to have acceptable impacts on privacy, solar access, view sharing, and general amenity for the surrounding residences.

- 26 Crabbes Avenue & 243, 247 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.
- 2.3 Supports the submitted Clause 4.6 variation to the height development standard contained in Clause 4.3 of the *Willoughby Local Environmental Plan* (*WLEP*) 2012 within the R3 zoned lot (247-255 Penshurst Street, North Willoughby NSW 2068) for the following reasons:
  - a) The proposed height was found to be compatible with the existing Residential Flat Buildings within Penshurst Street;
  - b) The proposed development was found to have acceptable impacts on privacy, solar access, view sharing, and general amenity for the surrounding residences;
  - c) The proposed height is compatible with the adjoining Club and the density of development granted by the SCC.
- 2.4 Supports the submitted Clause 4.6 variation to the height development standard contained in Clause 40 of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 for the following reasons:
  - a) The SCC provides a greater height allowance, indicating the site to be suitable for more intensive development;
  - b) The proposed height of each building was found to be acceptable. Building A is set back substantially from dwellings within Summerville Crescent, Horsley Avenue and Crabbes Avenue. Buildings B and C, and the Residential Aged Care Facility transition to three (3) and two (2) stories, providing an acceptable bulk and scale to the site;
  - c) The proposed Seniors Living and Residential Aged Care Facility was found to have acceptable impacts on privacy, solar access, view sharing, and general amenity for the surrounding residences;
  - d) The proposed Seniors Living and Residential Aged Care Facility shall provide suitable housing with a high amenity for the area.
- 2.5 Support the proposed Registered Club for the following reasons:
  - a) The Club provides adequate separation from residential dwellings to ensure there are no adverse or unreasonable impacts to surrounding residences and the surrounding locality;
  - b) The Club provides a range of recreational settings and activities which shall contribute to the community;
  - c) The development significantly enhances the natural environment of the site.
- 2.6 Support the proposed park for the following reasons:
  - a) The park shall be made publicly accessible;
  - b) The park provides an enhanced natural setting for appropriate recreational activities;
  - c) The park provides an acceptable open space for recreational purposes:
  - d) The design of the park shall significantly enhance the natural environment on the site.

#### 3. DESCRIPTION OF PROPOSAL

## 3.1 Proposed Development

The development application proposes the following:

- a) Demolition of all existing buildings and structures;
- b) Construction of a new three (3) storey registered Club fronting Penshurst Street:
- c) Construction of 106 seniors serviced self-care housing units accommodated within 3 (three) new buildings which are:
  - i) ILU Block A which is a part five (5) to part (6) storey building located in the middle of the site;
  - ii) ILU Block B which is a four (4) storey building located to the north-east corner of the site, fronting Crabbes Avenue;
  - iii) ILU Block C which is a three (3) storey building located to the eastern side of the site.
- d) Construction of a four (4) storey Residential Flat Building (RFB) with street level neighbourhood shops fronting Penshurst Street;
- e) Construction three (3) storey Residential Aged Care Facility (RACF) located to the southern side of the site.
- f) Construction of a publicly accessible park.

Figure 1 below portrays the proposed development and surrounding streets:

| Contract |

Figure 1: Site Analysis Plan – DA 1.02 (Hyecorp Property Group)

Note: The above description of the proposed development is the amended proposed development. The applicant amended the proposed development in response to concerns raised by Council. A description of the amendments made by the applicant can be found in section 4.1.3 of this report.

#### 3.1.1 Demolition

All existing buildings are to be demolished (including the bowling greens). The existing club shall operate until the new club building is constructed and ready for occupation. Once the new club is fully constructed and occupied, demolition of the existing club building will follow.

## 3.1.2 Excavation and Basement Carpark

Excavation of a depth ranging from 6m to 8m shall occur for the proposed three levels of basement carparking for the development.

## 3.1.3 Details of Proposed Details

	es summary of the proposed development:			
Building	Use	Details		
Basement Level 3 (portrayed in Plan 1)	Car Park	<ul> <li>152 car parking spaces (inclusive of 4 accessible spaces)</li> <li>Access to lifts and stairs</li> <li>Services rooms</li> <li>Storage space</li> <li>Vehicular ramp to upper basement levels</li> </ul>		
Basement Level 2 (portrayed in Plan 2)	Car Park	<ul> <li>246 car parking spaces:</li> <li>Inclusie of 116 accessible spaces</li> <li>1 car wash space</li> <li>1 loading bay</li> <li>1 ambulance bay</li> <li>Access to lifts and stairs</li> <li>Services rooms</li> <li>Vehicular ramp to upper basement level</li> </ul>		
Basement Level 1 (portrayed in Plan 3)	Car Park	<ul> <li>Venicular ramp to upper basement level</li> <li>43 car parking spaces: <ul> <li>Inclusive of 4 accessible club spaces</li> <li>16 club spaces</li> <li>17 neighbourhood shop spaces</li> <li>6 visitor spaces (for RFB units)</li> <li>Porte cochere</li> <li>Pick up and drop off area</li> <li>11 motorcycle spaces</li> <li>Vehicular ramp to upper Crabbes Avenue</li> <li>Access to lifts and stairs</li> <li>Services rooms</li> <li>Storage space</li> <li>Waste service collection points (residential and commercial) and loading dock</li> </ul> </li> </ul>		

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.

		Details
Building	Use Living	Details  A Part five (5) and six (6) stores structure:
Independent Living	Seniors Living	A Part five (5) and six (6) storey structure:
Unit (ILU) Building A	Block A	
		A total 53 units comprising of:
		23 x 3 bedroom units
		19 x 2 bedroom units
		11 x 1 bedroom units
		• ITX I bedroom units
Independent Living	Seniors Living	A four (4) storey structure:
Unit (ILU) Building B	Block B	
		A total 26 units comprising of:
		<ul> <li>18 x 3 bedroom units</li> </ul>
		2 x 2 bedroom units
		6 x 1 bedroom units
		• OX i bediooni units
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Independent Living	Seniors Living	A three (3) storey structure:
Unit (ILU) Building C	Block C	
		A total 24 units comprising of:
		8 x 3 bedroom units
		12 x 2 bedroom units
		4 x 1 bedroom units
		• 4 X i pedroom units
	5-5	
Residential Flat	RFB	A four (4) storey structure comprising of:
Building (RFB)		
		A total of 24 units and 7 shops comprosing of:
		Shops x 7
		2 x studio units
		4 x 1 bedroom units
		12 x 2 bedroom units
		6 x 3 bedroom units
Residential Aged	RACF	A three (3) storey structure comprising of:
Care Facility		7. tames (c) store) structure semprising on
(RACF)		49 RACF bedrooms with ensuites
(RACE)		49 RACE bediooms with ensures
	0	T
Registered Club	Club	The ground floor of the Club will comprise of:
		Club entry
		Reception
		Amenities
		Lounge/sports room
		Terrace/alfresco areas
		Cashier room
		Gaming room
		Plant room
		Kitchen and back of house
		Dining room
		Café
		Services space
		Lift and stair access
		- Lift and stail access

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.				
	The first floor of the Club will comprise of:			
	<ul> <li>Foyer</li> <li>Enclosed terrace</li> <li>Multipurpose space</li> <li>Store/back of house</li> <li>Outside terrace</li> <li>Club admin room x 2</li> <li>Board room</li> <li>Sub branch room</li> <li>Services space</li> <li>Lift and stair access</li> </ul> The second floor of the Club will comprise of:			
	<ul> <li>Foyer</li> <li>Terrace</li> <li>Auditorium space</li> <li>Meeting room x 4</li> <li>Store/back of house</li> <li>Services space</li> <li>Lift and stair access</li> </ul>			

Table 1: A summary of the proposed development

#### 4. BACKGROUND OF ASSESSMENT

## 4.1 Requirements for a Site Compatibility Certificate

The allotments located within 26 Crabbes Avenue and 243 Penshurst Street are zoned RE2 (Private Recreation) with the exception of Lot 11 Section C DP 6291 which is zoned R2 Low Density Residential. The site (lots zoned RE2 and R2) are owned and operated by a Registered Club.

In accordance with clause 24 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, a Site Compatibility Certificate is required to be obtained from the NSW Department of Planning (The Department) for the purpose of seniors housing development if the land is used for the purposes of an existing registered club.

Hyecorp Property Group lodged an application to the NSW Department of Planning to obtain a Site Compatibility Ceritifcate on 24 January 2018 with the intention to development seniors housing, a Residential Aged Care Facility and a new Registered Club at 26 Crabbes Avenue, North Willoughby.

## 4.1.1 Notification of Site Compatibility Certificate to Council

Willoughby Council was notified of the application for a Site Compatibility Certificate for the relevant sites on 07 February 2018. The Council provided a response to the Department on 20 March 2018 which addresses the loss of publicly accessible open space, a request for various development controls to be applied and concluded that Seniors Living development is compatible with the subject land.

#### 4.1.2 Issue of Site Compatibility Certificate

The Department issued a Site Compatibility Certificate (SCC) to the applicant on 30 August 2018. The SCC concludes the subject site is suitable for more intensive development and development for the purpose of seniors living is compatible with the surrounding land uses. Schedule 2 of the SCC provides the particular requirements imposed on the proposed development.

#### 4.1.3 Request for an Amended Proposed Development in Response to Issues

Council requested the following amendments be made:

- 1. The number of storeys in Building B to be reduced;
- 2. Building C to be further excavated for the ground level to be more in line with the existing ground level of the neighbouring properties within Summerville Crescent;
- 3. Various amendments to the basement to meet traffic and engineering requirements.

The applicant responded with the following:

- 1. The number of storeys in Building B has been reduced from five (5) to four (4);
- 2. Building C has been further lowered to RL 94.00 and RL 95.00;
- 3. Amendments have been made to comply with traffic and engineering requirements.

The applicant has provided amended plans and this assessment report provides an overall assessment on the latest updated plans.

## **ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO**

## 1.0 Description of the Subject Site

The subject sites are known as 26 Crabbes Avenue, 243 Penshurst Street and 247-255 Penshurst Street, North Willoughby, NSW 2068. The proposed development is located within seventeen (17) allotments as shown in Table 2 and Figure 2 below:

	Legal Description	Zoning	Total Lot Size	
26 Crabbes Avenue	Lots 4 to 10 Section C DP 6291 Lot 11 Section C DP 6291 Lots B DP 438684 Lot 1 DP 950651 Lots 1 and 2 DP 950652	RE1 R2 RE1 RE1 RE1	The total size of the lots combined which contain the Seniors Living and Club is 13788 sqm. This is assessed under the SCC.	
243 Penshurst Street	Lot A DP 438684 Lot B DP 364487	RE1 RE1		
247-255 Penshurst Street	Lot 100 DP 858335 Lots A and B DP 23465	R3 R3	The total size of the lots combined is 1164 sqm. These lots do not form part of the assessment of the SCC.	

Table 2: The lots of the subject sites, their Lot and DP numbers and the respective zoning of each lot



Figure 2: Aerial view of all relevant lots (Council's mapping system)

## 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.

For clarification, the allotments listed in Table 2 above shall be referred to collectively as 'the site' throughout this report.

The site currently contains a Registered Club (Club Willoughby), car park, sporting greens, a War Memorial and other ancillary structures. The Registered Club is two (2) storeys in height and located centrally on the site. There is a secondary one (1) storey building located in the south-western corner of the site (within Lot B DP 364487) which is utilised by the Club.

Within 247-255 Penshurst Street, there is an existing two (2) storey commercial premises which a frontage to Penshurst Street. The ground floor contains shops facing Penshurst Street.

The site is located within an established urban residential area comprising of detached dwellings and higher density residential buildings and commercial premises fronting Penshurst Street. A summary of the surrounding context is outlined as follows:

- Adjoining the site to the north-west is a two (2) storey commercial premise currently occupied by the Armenian Cultural Centre.
- To the north of the site is Crabbes Avenue which contains a number of detached dwellings ranging from one (1) to two (2) storey.
- To the east of the site is a low density residential area consisting of one (1) to two (2) storey detached dwellings. The dwellings within Summerville Crescent are located within the Horsley Avenue Conservation Area.
- To the south of the site are low density residential dwellings within Horsley Avenue and Forsyth Street consisting of one (1) to two (2) storey detached dwellings. The dwellings within Horsley Avenue are located within the Horsley Avenue Conservation Area. The dwellings within Forsyth Street are not located within a heritage conservation area.
- To the west, north-west and south-west of the site is Penshurst Street which contains a mixture of higher density residential buildings such as Residential Flat Buildings which range up to four (4) storeys in height. The zoning along Penshurst Street in close proximity to the site is R3 Medium Residential
- Further to the north-west of the site is an established local commercial centre in North Willoughby – zoned B2 Local Centre – which has a range of residential, commercial and community uses.
- Further to the south is an established local commercial centre (Penshurst Street centre) – zoned B2 Local Centre and B5 Business Development – which has a range of residential, commercial and community uses.
- Further to the east of the site is an established local commercial centre (High Street Centre) – zoned B1 Neighbourhood Centre – which has a range of residential, commercial and community uses.
- Bales Park is a publicly accessible park situated approximately 400m to the west of the site

# ATTACHMENT 2: NOTIFICATION, CONTROLS, DEVELOPER CONTRIBUTIONS AND REFERRAL ASSESSMENT COMMENTS

## 2.0 Neighbour Notification

The development application was notified in accordance with the Willoughby Community Participation Plan for a period of twenty one (21) days from 18 September 2019 to 9 October 2019. During the notification period, one hundred and seven (107) submissions were received by Council. The issues detailed within the submissions are addressed in **Attachment 14** of this report.

## 2.1 Controls and Classification

WLEP 2012 Zoning:	See Attachment 1 for zoning of each allotment		
Conservation Area	No – however the site adjoins the Horsley Avenue		
	Conservation Area and		
Heritage Item	No		
Vicinity of Heritage Items	No – there are Local Heritage Items located at 1, 3 and 5 Clanwilliam Street, 190, 206 and 208 High Street, and 238 Penshurst Street. These items are not impacted by the proposed development and are not considered within close proximity to the subject site.		
Bushfire Prone Area	No		
Flood Prone Lot	No		

Table 3: Controls and Classification

## 2.2 Developer's Contribution Plans:

S7.11 Contributions Calculation					
Dwellings / Residents Proposed (\$ rate / dwelling)	QTY	Contributions (\$)			
bedsit / studio or 1-bed dwelling (\$11,045.36)	6	\$ 66,272.16			
2-bed dwelling (\$15,544.09)	12	\$ 186,529.08			
3 or more-bed dwelling (\$20,000)	6	\$ 120,000			
Senior Living Self-contained dwelling (\$11,045.36)	103	\$ 1,137,672.08			
S7.11 yielding amount based on above statistics:	Total	\$ 1,510,473.32			
Proposed structures not inclusive in s7.11 calculation (ref. section 2.8.1 of WLIC Plan)					
construction of a 3-storey registered club	Not inclusive in s7.11 calculation				
seniors living residential aged care facility containing 49 beds	Not inclusive in s7.11 calculation				

Table 4: s7.11 Contributions Calculation

It should be noted that s7.11 contribution credits for demolishing existing structures are not given as the registered club is being replaced by the construction of a new club which is not to be inclusive for the purpose of calculating s7.11 contributions as demonstrated above.

#### 2.3 Assessment Comments from Referral Bodies

#### **Internal Council Referrals**

## Heritage

Council's Heritage Advisor has provided the following assessment comments:

The subject site is adjacent to the Horsley Avenue Heritage Conservation Area. The site contains a group of shops and Club Willoughby, the Willoughby Legion Ex Services Club. The site adjoins the rear of the Horsley Conservation Area to the south and partly to the rear of properties on the east, given the distance of the site from local heritage items at No 238 Penshurst Street, No's: 1-5 Clanwilliam Street and No's: 206 and 208 High Street, it is considered that these items will not be visually impacted upon.

The proposal includes the following works: demolition of the existing buildings and structures on the site, a new building for Club Willoughby with a frontage to Penshurst Street, a residential flat building with a frontage to Penshurst Street and ground level retail, a residential aged care facility, a medium density seniors living accommodation, basement parking and landscaping including a publicly accessible park at Crabbes Avenue.

In terms of the impact of scale on the Horsley Avenue Conservation Area, a part two and part three storey Retirement aged care facility is adjacent to the eastern boundary of the site, a part two and part three storey residential building adjacent to the northern boundary, (a 2-3 storey on the boundary transitioning to 5 storey at the centre of Crabbes Avenue, frontage a 5 storey mixed use and 3 storey Club building at the Penshurst Street frontage and a 6 storey residential building in the centre of the site adjacent to the proposed work.

Horsley Avenue Conservation Area is characterised by single storey inter-war dwellings with the building stock in Horsley Avenue generally dating from the 1920's and in Summerville Crescent from 1930's. Generally I concur with the findings of the submitted Statement of Heritage Impact that the impact of the proposed development has been minimised by the height distribution of the new buildings (with the taller buildings located in the centre of the site and the Crabbes Avenue and Penshurst Street frontages).

The height of the two buildings adjacent to the Conservation Area is limited to 2 storey scale with a sufficient setback of 6 metres to allow canopy trees and screen landscaping. This is considered to provide a transition in scale which will aid in mitigating heritage impact. The articulation of the façade of the development is also considered to mitigate the scale and bulk. It is noted, however that the upper levels of the Central building will be seen in the background views, but given the potential landscape screening and proposed setbacks this impact is considered acceptable.

The Assessment Officer has taken into consideration the above assessment and concludes the impact on the heritage value and character of the Horsley Avenue Conservation Area to be acceptable.

#### Engineering

Council's Development Engineer has provided the following assessment comments:

The site falls to the rear, and no evidence has been provided that they have attempted to obtain an easement. There is an existing pipe from the site to Horsley Avenue, but is does not have an existing easement and is undersized for the flow and needs to be replaced with a larger pipe. As far as I understand, the applicant has not approached any of the downstream owners to request an easement. They advised that they propose going to Court once they have approval, to obtain the easement. While we are not happy with this approach, a conversation with one of the solicitor's at HWL Ebsworth indicated that an owner can go to Court over an easement. They also indicated that the first stage of any Court proceedings was to approach the property owner to request an easement, which we understand has not occurred. As there is no way to drain the site without an easement, we will impose deferred commencement conditions requiring the applicant to obtain and register an easement prior to the final consent being issued, as it is not possible to manage stormwater drainage from the site without an easement.

An OSD tank with the required volume is proposed. The tank is partially located beneath the building, which is not preferred by Council. However, details have been provided by the applicant to address moisture and noise issues, and all access points have been relocated to common areas. Suitable conditions have been imposed regarding these items.

Stormwater quality improvement systems have been proposed, including a rainwater tank and a bio-retention system. We have concerns that these systems have not been fully co-ordinated with architectural and landscape plans, and that trees proposed for the landscaping will be located within the bio-retention basin, that will potentially reduce the ponding area available (and will possibly be compromised by the ponded water during a storm event). We have imposed conditions that will require co-ordination of the plans, and certification that the required treatment rates are achieved as proposed.

As the proposed stormwater management system includes items that have specific maintenance requirements, we have imposed conditions relating to a maintenance manual and ongoing maintenance.

The stormwater drainage system from the site is proposed to drain to Horsley Avenue and then to the Council pit located at this intersection of Summerville Crescent and Horsley Avenue. The Council system at this point is a minor system, intended to prevent overland flow from Horsley Avenue from flowing across the intersection. It discharges via a kerb outlet downstream from the intersection. It is not suitable to carry the additional flow from the development site. As such, the street stormwater system needs to be extended down to the intersection of Horlsey Avenue and High Street, where the system is suitable to carry the flow.

Following various amendments, parking arrangements meet the requirements of the relevant Australian Standards. Part of the pool is located over the access route between the entry / exist to the site and the ambulance bay and SRV loading dock. Plans have been provided that provide the required 3.5m headroom at this location. We have imposed conditions to ensure that this headroom is provided. The required headroom is available at the main loading dock.

The SRV loading dock and the main loading dock provide locations where a removalist van can park. We have imposed conditions that no loading / unloading is to occur on the street fronting the site.

The proposed works will result in damage to the footpath fronting the site in both Crabbes Avenue and Penshurst Street. As the path will be damaged, both the footpath and kerb and gutter will need to be replaced on both frontages.

The development will result in additional traffic in Crabbes Avenue, which will reduce the life of the existing road pavement. To mitigate this impact, reconstruction of half road pavement is required in Crabbes Avenue, for the section of the road fronting the site.

The plans have not been clear, but boomgates seem to be indicated on access to parking areas. As unimpeded access is required to visitor parking, club parking and the drop off zone at the entry, we have imposed conditions requiring unimpeded access to these locations.

The application is acceptable to this division, subject to the recommended conditions

## Traffic Management

The development application was referred to the Local Development Committee on 23 October 2019. The development application was reviewed by Council's Traffic Officer. The minutes released by the Local Development Committee does not state any objection to the proposed development, however provides a list of recommendations in order to manage traffic and parking internally and externally from the site.

The applicant has provided an amended proposal which addresses the issues raised by the Local Development Committee. Council's Traffic Officer has reviewed the amendments and finds them to be satisfactory.

A condition has been imposed for all heavy vehicles enter and leave via Penshurst Street only, that is, enter via a left turn from Penshurst Street into Crabbes Avenue then right turn into the development and exit via a left turn into Crabbes Avenue and a left turn into Penshurst Street. A Plan of Management of heavy vehicle access to the site (as described) shall be conditioned to be required by the Registered Club.

## Waste Management

Council's Waste Management Officer has provided the following assessment comments:

I have reviewed the proposal and the waste management plan submitted by Elephants Foot consulting. There are no issues with the proposed waste management of the development. There is acceptable waste storage within the basement area.

The Assessment Officer has taken into consideration the above assessment and concludes the basement arrangement of the development can adequately store waste and allow adequate disposal of waste.

## Landscaping

Council's Landscape Officer has provided the following assessment comments:

The Arborist's Report and Landscape Plans provided with the application are noted.

The Arborist's Report indicates that eleven trees of high landscape significance can be retained. Eleven other trees can be retained with appropriate protection and supervision, including six high retention value trees, though they are subject to potential impacts. Twenty two trees are proposed for removal, which include five trees assessed as high retention value.

The Landscape Plans provided detail hard and soft landscape works including paving, trees shrubs and groundcovers proposed. The Arborist's Report indicates that compensatory tree planting includes over 200 trees of varying heights and species as indicated on the proposed Landscape Plans provided.

The proposal is a comprehensive alteration to the existing landscape, currently dominated by bowling greens and various trees. If the proposal is to be approved, the Landscape Plans provided are considered to provide for a suitable landscaped setting to the development capable of supporting the planting as proposed.

In view of the above, no objections are raised with regard to landscape issues, subject to conditions. Specific conditions address tree protection, including appointment of a Project Arborist and tree planting conditions to ensure trees as proposed are included with the addition of two supplementary street trees in Penshurst St forward of the proposed shops.

The Assessment Officer has taken into consideration the above assessment comments. Conditions have been imposed for the requirement for a Project Arborist to oversee the protection and planting of trees and vegetation, tree planting, tree protection and the works within the Landscape Plan to be completed before the issue of a Final Occupation Certificate.

## Health Department

Council's Environmental Health Officer has provided the following assessment comments:

I refer to your request for comments on the Development Application for the proposed mixed development. I have perused the documents accompanying the application and have found in the acoustic report that relevant criteria shall be exceeded by up to 5dB  $L_{Aeq,15min}$  and 3db  $L_{Amax}$  from vehicles leaving the basement car park on the premises despite the implementation of the recommended noise control works. This calculation was based on up to 10% of car spaces (or 22 car movements) being vacated in any 15 minute period

## 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. as patrons leave the premises. If there are more than 22 car movements after trading ceases, particularly after a wedding or live music performance, then the impact will be greater. The acoustic consultant goes on to say "It is PKA's opinion that all reasonable and feasible noise control options have been undertaken from the development. For the potential of sleep disturbance to be reduced further, acoustic upgrades to the external glazing of nearby Crabbes Avenue residential receivers could be explored. However, the exceedance is marginal to moderate, it is PKA's opinion that acoustic upgrades are not necessary." Under the circumstances, this noise issue from vehicle movements leaving the premises does not seem enough to warrant refusal of the development application. The Assessment Officer has taken into consideration the above assessment comments. Council's Building Services Officer has provided the following assessment Building Services comments: There are no issues related to Building Services and the development is supported subject to the recommended consent conditions. The Assessment Officer has taken into consideration the above assessment comments. **External Council Referrals** Road and Council referred the development application to the Road and Maritime Maritime Services (RMS) as the development meets the definition of 'Traffic-Services generating development' in accordance with Clause 104 of the State Environmental Planning Policy (Infrastructure) 2007. (RMS) The RMS provided a list of recommended conditions to be imposed on the consent and this has been actioned. **AUSGRID** In accordance with Clause 45 of the State Environmental Planning Policy (Infrastructure) 2007, Council must give written notice to the electricity supply authority for the area if the proposed development is within 5.0m of an exposed overhead electricity power line. The proposed development is within 5.0m of an exposed overhead electricity powerline and therefore referred to AUSGRID. AUSGRID has provided a list of recommended conditions to be imposed on the consent and this has been actioned. **NSW Police** Council referred the development application to the NSW Police in order for **Force** an assessment to be conducted under the Crime Prevention Through Environmental Design Program (CPTEP). The NSW Police Force provided a CPTEP report providing a list of recommended conditions to be imposed on the consent as well as highlighting areas that 'needs action'. Council has provided an assessment of these areas that are highlighted as a concern in Attachment 12

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Fuse Architecture (Independent SEPP 65 Reviewer) Council engaged an independent Architectural Consultancy to provide a SEPP 65 review of the proposed development. The SEPP 65 Review Report was generally favourable of the proposed development and can be viewed in **Appendix 5** of this report.

Table 5: Referral comments from internal and external departments

# ATTACHMENT 3: ASSESSMENT UNDER SITE COMPATIBILITY CERTIFICATE CONTROLS

## 3.0 Requirements under the Site Compatibility Certificate

The Site Compatibility Certificate (SCC) issued by the Department provides a list of requirements imposed on the proposal within Schedule 2. This section of the report shall address each of the requirements within Schedule 2.

Note: the SCC was issued for the allotments within 26 Crabbes Avenue and 243 Penshurst Street (Lots 4 to 11 Section C DP 6291; Lot B DP 364487; Lots A and B DP 438684; Lot 1 DP 950651; and Lots 1 and 2 DP 950652) in accordance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

The requirements within Schedule 2 do not apply to the proposed development within the allotments of 243-255 Penshurst Street (zoned R3 Medium Density Residential).

## 3.1 Site Compatibility Certificate Conditions

#### **Condition 1**

This condition requires the seniors housing development to be limited to the land as indicated within the SCC application. Seniors Living development is only proposed within the allotments zoned RE2 and R2 in accordance with the SCC and therefore complies with this condition.

## Condition 2(a) - Floor Space Ratio

The maximum floor space ratio (FSR) for the entire site (being the allotments within 26 Crabbes Avenue and 243 Penshurst Street) is 1.35:1. Below is a table which provides the proposed FSR and Gross Floor Area (GFA):

	Lots zoned RE2	Lot zoned R2	Total	
Total Land Size	13231 sqm	558 sqm	13789 sqm	
Permissible Gross	17861.85 sqm	753.3 sqmm	18615.15 sqm	
Floor Area (GFA)				
Proposed Gross	15744.89 sqm	664.02 sqm	16408.91 sqm	
Floor Area (GFA)		-	,	
Permissible Floor	1.35:1	1.35:1	1.35:1	
Space Ratio (FSR)				
Proposed Floor	1.19:1	1.19:1	1.19:1	
Space Ratio (FSR)				

Table 6: Proposed FSR for allotments within RE2 and R2 zones (Seniors Living, RACF, Club)

Table 1 indicates the proposed FSR and GFA comply with the maximum requirement of 1.35:1 for the entire site. Council conducted its own calculation of the proposed gross floor area and finds the measurements of GFA and FSR to be accurate.

#### Condition 2(b) - Transition of building levels

Condition 1(b) states the following requirement:

A transition of building heights from five storeys at the centre of the site, graduating down to three storeys and two storeys at the north, east and south boundaries.

The development application proposes the following building heights for each relevant building:

Proposed Building	Location	Proposed Storeys	Maximum Storeys stated in Condition 1(b)	Compliance
Building A	Centre of site	5 storeys with a part 6 storey element	5	No
Building B	Northern End	4 storeys	3	No
Building C	Eastern End	3 storeys	3	Yes
Residential Aged Care Facility	Southern End	3 storeys	3	Yes

Table 7: The proposed number of storeys for each building

As can be seen from Table 6, the proposed development does not comply with the number of allowed storeys for Building A and B. Although the proposal does not comply with the maximum number of storeys permitted for the centre and northern end of the site, Council has conducted an assessment of Building A and B and concludes the proposed number of storeys to be acceptable.

## Building A – Non-compliance with Maximum Storeys

Building A proposes five (5) storeys with a part six (6) storey towards the eastern end of the building. The communal open garden is on the eastern end of the building, above the fifth storey. The non-compliance occurs due to the fall of the existing ground level of the site. As the fifth storey extends to the east, the building contains a six (6) storey element.

The proposed six (6) storey element and communal garden is not considered to have an adverse or unreasonable impact on the amenity of surrounding residents or the locality. The sixth storey is set back 33m from the eastern boundary and 34m from the southern boundary Therefore the sixth storey element is not considered to have a large visual bulk and scale impact when viewed from dwellings within Summerville Crescent and Horsley Avenue.

Building A was found to not have an adverse impact on solar access due to the orientation of the site. When considering the setback distance provided by Building A from each relevant boundary, there is significant distance in order for visual and acoustic privacy to be maintained.

When considering the above outcomes, the non-compliance is found to be acceptable and is supported.

## <u>Building B – Non-compliance with Maximum Storeys</u>

Building B proposes four (4) storeys of Seniors Living Housing. The fourth storey does not extend the entire length of the building as there is an open communal garden to the eastern end of the building.

The fourth storey is set back within the third storey of Building B with a setback distance of 13.39m from the northern boundary (along Crabbes Avenue) to the façade of the fourth storey. The setback distance is considerable and effective in minimising the visual impact when viewed from Crabbes Avenue.

Crabbes Avenue transitions from one to two storeys dwellings, increasing in height to three and four storey medium density development along Penshurst Street. When considering the location of the site at the corner of Crabbes Avenue and Penshurst Street, Building B is considered to be in an appropriate location to represent this transition from two storey development to three and four storey development along Penshurst Street.

The SCC concludes the site is compatible for more intensive development with the allowance of five storeys at the centre of the site. When considering the permitted built form provided by the SCC, the provision for a five storey building at the centre of the site, and the existing four storey structures along Penshurst Street, Building B and the fourth storey component are considered compatible with the surrounding locality in the immediate vicinity.

## Condition 2(c) - Metre notations for building height

The section drawings provided by the applicant (DA 4.01, DA 4.02, DA 4.03, and DA 4.04, Issue A, dated 06/08/2020, produced by Hyecorp) indicates the height of each floor level for every proposed building.

Based on the metre notations provided in the section drawings, the following height measurements are provided for each building in Table 8:

Location	Height
Building A	
Building A – Lift overrun	20.5m
Building A – Sixth storey element to the north	20.4m
Building B	
Building B – Lift overrun	14.5m
Building B – highest point on the western	12.9m
side	
Building C	
Building C – highest point on eastern side	9.4m
Residential Aged Care Facility	
Residential Aged Care Facility – Life overrun	9.6m
Residential Aged Care Facility – highest	10.0m
point on eastern side	
Residential Flat Building	
Residential Flat Building – Lift overrun	14.22m
Residential Flat Building – fourth level to	12.83m
Penshurst Street	
Residential Flat Building – fourth level facing	13.3m
the park	
Club	
Club – façade to Penshurst Street at highest	13.1m
point to the parapet design element	
Club – highest level to the rear at the highest point	14.38m

Table 8: Height measurements for each proposed building

#### Condition 2(c) - Building height measured in relation to RL of each building

The section drawings provided by the applicant (DA 4.01, DA 4.02, DA 4.03, and DA 4.04, Issue A, dated 06/08/2019, produced by Hyecorp) indicates the vertical distance from the Australian Height Datum to the highest point of the building. The architectural drawings were found to provide relevant RL levels for each floor and roof for each building. The applicant has provided adequate information to address this condition and it is considered adequate.

## Condition 2(d) - Setbacks

The proposed development is required to comply with the setbacks as indicated in Figure 14 of the Site Compatibility Certificate (SCC) application. Figure 14 is provided below for reference:

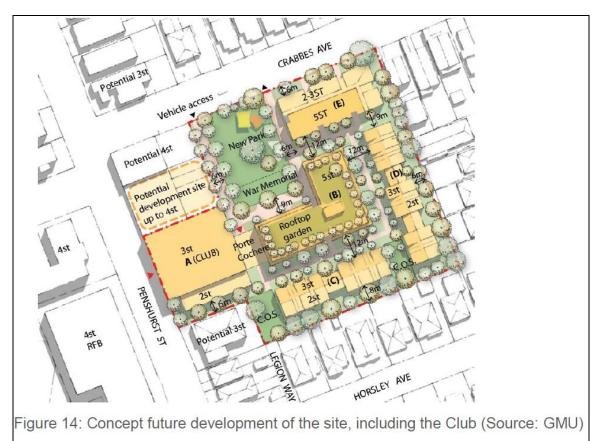


Figure 3: Figure 14 is displayed within the Site Compatibility Certificate Application Report, prepared by City Plan Services for the purposes of obtaining a SCC from the Department.

The proposed development meets all setback requirements as indicated within Figure 14 above. The proposed setback distances of the entire development can be viewed within architectural drawing DA 1.03, Issue A, titled 'Site Context (Micro Analysis)', prepared by Hyecorp Property Group, dated 14/06/2019.

# Condition 2 – Traffic, parking provisions, vehicular access arrangements, accessibility of service vehicles.

Council's Traffic Officer has assessed the proposed development, the accompanying Traffic Report and the likely impacts of traffic, parking and pedestrian movement by the proposed

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. development application. Council's Traffic Department has concluded the traffic impacts to be acceptable. Comments regarding traffic can be found in **Attachment 2** of this report.

# <u>Condition 3 – Arborist report detailing existing trees, trees to be removed/retained/replaced and proposed landscaping</u>

The development application provides an Arborist Report, prepared by Glenyss Laws, dated 28 June 2019 (Revision A). The report adequately identifies the existing trees on the site (as well as those outside of the site in close proximity), and adequately indicates which trees are proposed to be removed and protected.

The development application provides comprehensive landscape plans and a landscaping report (prepared by Hyecorp) which sufficiently addresses the proposed location of trees and vegetation, the design of the publicly accessible park, communal open spaces and how the landscaping impacts the surrounding locality.

An assessment of the proposed public park and landscaping of the site can be found in **Attachment 13** of this report.

## Condition 4 - Provision of suitable public open space with public access

Attachment 13 of this report provides an assessment on the following:

- The design of the public park and associated landscaping;
- The ongoing management of the public park;
- The overall contribution the public park provides to the general community.

## ATTACHMENT 4: ASSESSMENT OF SEPP (SENIORS HOUSING)

## 4.0 Assessment of Controls within the SEPP (Seniors Housing)

The State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP) requires a Site Compatibility Certificate (SCC) to be obtained for the purposes of Seniors Housing development. A SCC was issued by the Department on 24 January 2018. Further to this requirement, the consent authority is to ensure all development standards and design principles within the Seniors Housing SEPP are fulfilled.

Below is a table which addresses the requirements of the clauses within the Seniors Housing SEPP:

PART 2: SITE RELATED REQUIREMENTS					
Requirement	Proposed	Complies			
Clause 26 Location and access to facilities		1			
Clause 26 requires residents of the proposed development will have access to the following within 400m accessible by means of a suitable access pathway:  (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and (b) community services and recreation facilities, and (c) the practice of a general medical practitioner.  The access pathway must not have a gradient no more than 1:14.	The following amenities are available within the commercial centre of Willoughby North (intersection of Victoria Ave and Penshurst St), which is within 400m of the proposed development.  There is an access pathway along Penshurst Street which has a gradient below 1:14.	Acceptable			
Clause 27 Bush fire prone land					
The consent authority is to consult the NSW Rural Fire Services for development within bush fire prone areas.	None of the sites are located within a bush fire prone area.	Complies			
Clause 28 Water and sewer					
A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that the housing will be connected to a reticulated water system and have adequate facilities for the removal or disposal of sewage.	Council's Engineering Department has reviewed the proposed stormwater system, OSD tank and MUSIC assessment and finds the proposed development can adequately drain stormwater adequately	Complies			
Clause 29 Certain site compatibility criteria		1			
Clause 29 does not apply as a Site Compatibility Certificate was issued in accordance with Clause 24 of the Seniors Housing SEPP	N/A	Complies			

ng to address this clause:  Site Analysis, DA 1.02, prepared by Hyecorp Property Group, dated 14/06/2019  Site Context (Micro Analysis),	Complies
ng to address this clause:  Site Analysis, DA 1.02, prepared by Hyecorp Property Group, dated 14/06/2019  Site Context (Micro Analysis),	Complies
ng to address this clause:  Site Analysis, DA 1.02, prepared by Hyecorp Property Group, dated 14/06/2019  Site Context (Micro Analysis),	Complies
This clause applies to the proposed Seniors Housing (ILU A, ILU B and ILU C) and the Residential Aged Care Facility (RACF).  The provisions within the Seniors Living Policy: Urban Design Guideline for Infill Development is assessed in detail in Attachment 4, section 4.1 of this report.	
oposed development is ered to meet the requirements	Acceptable
oro ide	rt.  proposed development is dered to meet the requirements objectives of these clauses.

## Clause 39 - Waste management

The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.

Council's Waste Management Officer has reviewed the Waste Management Plan prepared by Elephants Foot and has found the Waste Management Plan to provide adequate waste and recycling facilities.

Acceptable

## PART 4: DEVELOPMENT STANDARDS TO BE COMPLIED WITH

Requirement	Proposed	Complies	
Clause 40 - Development standards - minimu	um sizes and building height		
The proposed development must comply with the following standards:	The proposed development meets the requirements of this clause.	Acceptable	
<ol> <li>The size of the site must be at least 1,000 square metres</li> <li>The site frontage must be at least 20</li> </ol>	The size of the site is larger than     square metres		
metres wide measured at the building line	Both frontages to Crabbes Avenue     and Penshurst Street are longer than		
<ol> <li>If the development is proposed in a residential zone where residential flat</li> </ol>	20 metres		
buildings are not permitted –  a) the height of all buildings in	3. The portion of development within the R2 zoned lot does not comply. The		
the proposed development	applicant has provided a Clause 4.6		
must be 8 metres or less, and	written request to vary this control.  This is addressed in <b>Attachment 7</b> of		
b) a building that is adjacent to a boundary of the site (being the	this report.		
site, not only of that particular			
development, but also of any other associated development	The remaining majority of the proposed Seniors Housing (ILU A, ILU		
to which this Policy applies) must be not more than 2	B and ILU C) and the Residential Aged Care Facility (RACF) are located within		
storeys in height, and	a RE2 zone and therefore this clause		
c) a building located in the rear 25% area of the site must not	does not apply to those respective lots.		

# PART 5: DEVELOPMENT ON LAND ADJOINING LAND ZONED PRIMARILY FOR URBAN PURPOSES

exceed 1 storey in height.

Requirement	Proposed	Complies		
Clause 42 – Development standards – minimum sizes and building height				
(1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have reasonable access to—  (a) home delivered meals, and	This clause does not apply to the Seniors Living Housing as it not serviced.  This clause does apply to the RACF. The application contains a Plan of Management for the RACF which adequately addresses the provisions for home delivered meals, personal care and assistance.	Complies		
(b) personal care and home nursing, and (c) assistance with housework.				

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SNPP REPORT	
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Clause 43 – Transport services to local centre	es
(1) A consent authority must not consent to a development application made pursuant to this Chapter to carry out development for the purpose of serviced self-care housing on land that adjoins land zoned primarily for urban purposes unless the consent authority is satisfied that a bus capable of carrying at least 10 passengers will be provided to the residents of the proposed development—	The basement parking plans show the capability for a bus to carry at least 10 passengers and is accessible for the RACF. Council is satisfied the RACF can provide the services outlined in Clause 43.
<ul> <li>(a) that will drop off and pick up passengers at a local centre that provides residents with access to the following—</li> <li>(i) shops, bank service providers and other retail and commercial services that residents may reasonably require,</li> <li>(ii) community services and recreation facilities,</li> <li>(iii) the practice of a general medical practitioner, and</li> <li>(b) that is available both to and from the proposed development to any such local centre at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day.</li> </ul>	
Clause 44 - Availability of facilities and service	ces
A consent authority must be satisfied that any facility or service provided as a part of a proposed development to be carried out on land that adjoins land zoned primarily for urban	Council is satisfied that the RACF can provide the necessary services to its residents

Complies

purposes will be available to residents when the housing is ready for occupation.

Complies

#### Clause 48 – Standards that cannot be used to refuse development consent for residential care facilities

This clause contains a list of minimum requirements for which a consent authority cannot refuse if the RACF meets all the requirements

The RACF was found to meet all the requirements stipulated in Clause 48 Complies

## Clause 50 - Standards that cannot be used to refuse development consent for self-contained dwellings

This clause contains a list of minimum requirements for which a consent authority cannot refuse if the self-contained dwellings meets all the requirements

The clause stipulates a consent authority cannot refuse a proposal that is less than 8.0m high and density of 0.5:1 or less. The proposal exceeds these standards, however is found to be acceptable. See Attachment 10 of this report.

Acceptable

## Schedule 3 of SEPP (Seniors Housing)

Various requirements for adequate living arrangements

Council is satisfied that the proposed apartments can provide the requirements listed within Schedule 3 of the SEPP

Complies

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.
4.1 Assessment under Seniors Living Policy: Urban Design Guideline for Infill Development

Clause 31 of the Seniors Housing SEPP requires an assessment of the proposed development in accordance with the *Seniors Living Policy: Urban Design Guidelines for Infill Development.* 

Below is a table which addresses the key guidelines within this document. The Assessment Officer has addressed each of the objectives for each of the five key guidelines:

#### Part 1 - Responding to Context

#### **Existing context:**

The character of the surrounding locality is characterised by low to medium density residential development. To the north of the site is Crabbes Avenue with lots containing single detached dwellings that are one to two storey in height.

To the east of the site is Summerville Crescent and to the south is Horsley Avenue. These streets are located within the Horsley Avenue Heritage Conservation Area and contain Interwar bungalows built of dark red/brown brick with roof forms predominantly hipped with vertically battened gables.

To the west of the site is Penshurst Street which contains a mixture of three to four storey residential flat buildings and single detached dwellings. Further to the north-west of the site is a commercial centre for North Willoughby.

#### Street layout and hierarchy:

The proposed development contains frontages to Crabbes Avenue and Penshurst Street. The proposed height and scale is appropriate to the existing street contexts of Crabbes Avenue and Penshurst Street and the desired future character of the surrounding locality.

The proposed Residential Flat Building (RFB), Shops and the Club are located on the western side of the site fronting Penshurst Street. The RFB and Shops is four storeys in height and the Club is three storeys in height. The height of the proposed RFB and Club are consistent in height with the existing three to four storey residential flat buildings within Penshurst Street that are in close proximity to the site. The Shops and Club fronting Penshurst Street provide further street activation on the ground level.

Seniors Living Building B (ILU B) is located to the northern side of the site fronting Crabbes Avenue, which is a part three to four storey building. Crabbes Avenue is predominantly one to two storey detached dwellings. Building B is acceptable in its location when considering the existing and future built form in the surrounding locality.

The SCC allows for a five storey structure in the middle of the site. The existing three to four storey RFBs in Penshurst Street are also comparable in height and density. The site is located on the corner of Penshurst Street and Crabbes Avenue. The location of Building B presents a natural transition from the one to two storey dwellings within Crabbes Avenue towards the three and four storey RFBs within Penshurst Street. The built form is therefore not out of character or incongruous in the context of the existing and future built form of the surrounding locality.

#### **Blocks and lots:**

The site contains 17 individual lots and therefore should be amalgamated to be uniform with the existing subdivision patterns of the surrounding locality. A condition of consent shall require the amalgamation of the lots zoned RE2 and R2, while the lots R3 shall be amalgamated to form its own separate single lot.

#### **Built environment:**

The existing built environment to the north, east and south of the site is characterised by low density residential allotments zoned R2 Low Density Residential comprising of one to two storey residential

dwellings. To the west of the site is Penshurst Street. The allotments along Penshurst Street are zoned R3 Medium Density Residential and contain a mixture of three and four storey Residential Flat Buildings as well as single detached dwellings.

The proposed development comprises of a transition of building heights from six storeys at the centre of the site, graduating down to three storeys and two storeys at the north, east and south boundaries. The proposed Club and RFB are three storeys and four storeys in height respectively.

The proposed height of the development is found to be compatible with the existing built form in the surrounding locality. The proposed structures provide considerable setbacks to boundaries in order to not impose on surrounding residential properties. The six storey structure in the middle of the site (ILU A) is set back considerably from each boundary to not appear excessive when viewed from a neighbouring property or public place.

#### Trees:

Refer to **Attachment 13** of this report for an assessment on the proposed park and landscaping of the site

#### Policy environment:

The proposed development is compatible with the surrounding locality. As the majority of the site is zoned RE1 Private Recreation and a Site Compatibility Certificate (SCC) was issued by the Department, the site contains its own unique controls. The SCC indicates that the site is suitable for more intensive development and that development for the purposes of Seniors Living is appropriate. The proposed development is considered acceptable considering the intended future character of the locality.

#### Part 2 - Site Planning and Design

#### To minimise the impact of new development on neighbourhood character:

This is discussed in detail in Part 1 of this table. The built form is found to be compatible with the existing and desired future character of the surrounding locality.

#### To retain existing natural features of the site that contribute to neighbourhood character:

The site does not contain many significant natural features. The large trees within the northern side of the site are located centrally on site and cannot be retained. The trees along the north-eastern boundary are proposed to be retained.

#### To provide high levels of amenity for new dwellings:

This is discussed in detail in Attachment 5 (SEPP 65 assessment)

To maximise deep soil and open space for mature tree planting, water percolation and residential amenity:

This is discussed in detail in Attachment 13 (assessment for park)

## To minimise the physical and visual dominance of car parking, garaging and vehicular circulation:

The proposed car spaces the development is underground which provides a positive outcome to the amenity of the site and surrounding locality.

#### To provide housing choice through a range of dwelling sizes:

The development is considered to provide a diverse range of seniors living housing that will positively contribute to the housing supply of the Willoughby Local Government Area.

#### Part 3 – Impacts on Streetscape

#### To minimise impacts on the existing streetscape and enhance its desirable characteristics:

The site contains a street frontage to Crabbes Avenue and Penshurst Street.

Seniors Living Building B has a frontage to Crabbes Avenue. The location of Building B presents a natural transition from the one to two storey dwellings within Crabbes Avenue towards the three and four storey RFBs within Penshurst Street. The built form is therefore not out of character or incongruous in the context of the existing and future built form of the surrounding locality.

The RFB, Shops and Club have a frontage to Penshurst Street. The proposed development will have a large impact in comparison to what exists on the site however one has to take into consideration the permissibility of uses on the site as well as the desired future character of the locality.

The height, bulk and scale of the Club and RFB are compatible with the existing three to four storey RFBs within Penshurst Street. The Club and Shops shall also provide street activation within its location to provide a higher amenity of services to residents.

To ensure new development, including the built form, front and side setbacks, trees, planting and front fences, is designed and scaled appropriately in relation to the existing streetscape:

The proposed Club contains a frontage along the boundary adjacent to Penshurst Street. The presentation of the Club to Penshurst Street is acceptable as it contains an acceptable design and articulation. The Club presents as a community and recreation facility for residents of the surrounding locality.

#### To minimise dominance of driveways and carpark entries in the streetscape:

The development contains one single entry and exit driveway in Crabbes Avenue which is desirable. The carpark is wholly underground. The proposal has minimised the impact of driveway and carparks as much as possible.

#### To provide a high level activation and passive surveillance to the street:

The Shops and Clubs facing Penshurst Street provide a high level of street activation and improves passive surveillance.

The Public Park and Building B improve the streetscape of Crabbes Avenue, leading to improved usage of the site which subsequently results in more passive surveillance and activation of the site.

## Part 4 - Impacts on Neighbours

#### To minimise impacts on the privacy and amenity of existing neighbouring dwellings:

The residents closest to the RACF are located within Horsley Avenue. The RACF complies with the setback requirement to the southern boundary. The RACF does not contain any balconies or private open spaces facing south and therefore the privacy impact on the residents within Horsley Avenue is acceptable.

The residents closest to Building C are located within Summerville Crescent. Building C complies with the setback requirement to the southern boundary. There is adequate privacy screening to ensure visual privacy is maintained.

Building B which fronts Penshurst Street is set back adequately to not cause a privacy issue to residents within Crabbes Avenue.

#### To minimise overshadowing of existing dwellings and private open spaces by new dwellings:

The applicant has provided solar access diagrams (insert reference here) to show that the existing dwellings surrounding the site and their respective primary living areas and private open spaces are not restricted to less than 3 hours of solar access on June 22. Therefore the proposal complies with this requirement.

#### To retain neighbours' views and outlook to existing mature planting and tree canopy:

The proposed development is not considered to obstruct any views of significance for surrounding residents.

#### To reduce the apparent bulk of development and its impact on neighbouring properties:

When considering the desired future character and development provided by the SCC and the existing RFBs within Penshurst Street, the bulk and scale of the development is found to be compatible with the neighbouring development. The proposal was found to have an acceptable impact on solar access, view sharing, privacy, heritage, and overall amenity for the neighbouring properties.

#### To provide adequate building separation:

The proposed complies with the setback distances to each relevant boundary as stipulated in the SCC. The proposed development also provides adequate building separation to maintain the amenity between the different uses.

#### Part 5 - Internal Site Amenity

#### To provide quality useable private and communal open spaces for all residents:

The proposed development was provides rooftop gardens, private communal gardens and a swimming pool area, which are sufficient in size for communal open spaces. Each apartment has adequate private open space.

#### To provide dwellings that have distinct identity and safe entries:

The residential component of the entire development has clear distinctive entry points. The basement levels contain appropriate access points for residents. As there is only one single entry and exit driveway with no car access on ground level, the development is considered to provide safe entry and exit points.

#### To provide safe and distinct pedestrian routes to all dwellings and communal facilities:

The proposal provides adequate pedestrian routes to the development and internally. The Park and Club can be accessed from Penshurst Street and Crabbes Avenue.

#### To ensure adequate solar access to living areas and private open spaces:

The applicant has provided solar access diagrams to show that the existing dwellings surrounding the site and their respective primary living areas and private open spaces are not restricted to less than 3 hours of solar access on June 22. Therefore the proposal complies with this requirement.

# To reduce the dominance of parking, garaging and vehicular circulation space on the internal character of new development:

The development contains one single entry and exit driveway in Crabbes Avenue which is desirable. The carpark is wholly underground. The proposal has minimised the impact of driveway and carparks as much as possible.

# ATTACHMENT 5: ASSESSMENT OF SEPP 65 (DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT)

#### 5.0 Assessment under SEPP 65

In accordance with clause 4 of SEPP 65, Residential Flat Buildings (RFB) and Seniors Housing which are at least three storeys and contain more than four dwellings are subject to an assessment of the design quality principles (Schedule 1) and the *Apartment Design Guideline*.

This section of the report shall provide an assessment of the proposed RFB and the Seniors Housing (ILU A, B and C) in accordance with the requirements of SEPP 65. The Club and Residential Aged Care Facility (RACF) are not subject to an assessment in accordance with SEPP 65 as they do not contain 'dwellings'.

#### 5.2 Independent Assessment under SEPP 65

The Council engaged FUSE Architecture to provide an independent assessment of the proposed development in accordance with the requirements of SEPP 65 and the accompanying Apartment Design Guidelines. FUSE Architecture has produced a SEPP 65 Review Report and can be found in **Appendix 5** of this report.

## 5.3 Design Quality Principles (Schedule 1 of SEPP 65)

FUSE Architecture has provided an assessment of the entire proposed development in accordance with the Design Quality Principles in pages 12 to 21 of the SEPP 65 Review Report. FUSE Architecture finds the proposed development to meet the objectives and desired outcomes of each design quality principle. Council also shares the view that the design quality principles are achieved for the following reasons stated within the SEPP 65 Review Report. FUSE recommends the following changes be made:

- Concerns were raised regarding the appearance of the driveway entrance. It was recommended that Block B extend over the driveway to remove the appearance of the driveway from view;
- 2. Reduction of the western wing of ILU Block A;
- 3. Creation of a consolidated civic park with an uninterrupted connection to the Club and Legion Way.

The Council did not enact the above changes for the following reasons:

- 1. Placing apartments above the driveway may lead to undesirable acoustic privacy impacts for the residents above. When considering the visual impact of the public park, the driveway entry is supportable;
- 2. The proposal complies with the maximum FSR limit and a reduction of Block A is not necessary. The separation between Block A and the RFB and Club is substantial to maintain amenity;
- 3. The proposed public park does not necessarily need to adjoin the Club and Legion Way to be an accessible park with a high quality landscape design. There is a pathway entrance from Crabbes Avenue and Legion Way which provides pedestrian access to the park. The visual design of the park shall provide a high level of amenity for the general public.

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Based on the evaluation by FUSE Architecture, the proposal is found to meet the design quality principles within Schedule 1 of SEPP 65.

## 5.4 Assessment under the Apartment Design Guidelines (ADG)

The applicant has provided an Apartment Design Guideline Compliance Table (produced by Amglen) to provide an assessment of the development in accordance with the SEPP 65 ADG. The Assessment Officer has taken this table and provides a comment (right hand column) for each relevant objective within the ADG. This table is displayed on the next page (page 35).

PART 3 – SITING THE DEVELOPMENT				
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Site Analysis	Objective 3A-1 Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	The site survey and site analysis contained within the architectural plans address the potential opportunities and constraints of the site.  Please refer to the Architectural Drawings set provided as part of the Development Application including the Site Analysis Plan, Drawing DA1.02  The Statement of Environmental Effects also documents the sites location and local context in relation to surrounding development.		The applicant has provided a Site Analysis Plan (DA1.02, Rev B, prepared by Hyecorp)  The Site Analysis plan provides adequate information to conduct an assessment of the application.
	Objective 3B-1 Building types and layouts respond to the streetscape site while optimising solar access within the development	The orientations of the built-forms address Crabbes Avenue and Penshurst Street. The building orientations are designed to maximise solar access to apartments and common areas. Trees have been incorporated into the design to provide appropriate shading where necessary.  The envelopes of the buildings have been shaped to allow for minimal overshadowing of neighbouring properties. Shadow diagrams within the architectural plans demonstrate that there is no unreasonable shadow impact on neighbouring properties.		The layout of each structure appropriately responds to the streetscape.
Orientation	Objective 3B-2 Overshadowing of neighbouring properties is minimised during mid-winter			The proposal was found to not restrict solar access to less than 3 hours from 9am to 3pm on June 22.

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	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW		
Public Domain Interface	Objective 3C-1 Transition between private and public domain is achieved without compromising safety and security	Clear sightlines are provided between Crabbes Avenue and all other entries to the development, as well as between Penshurst Street and the secondary entry to the development off Legion Way, in order to encourage passive surveillance and crime deterrence at all times.  Substantial landscaping and planting is proposed around the perimeter of the site to soften the appearance of the proposed development. There is		The proposed development provides clear differentiation between the private and public domain. The proposal also improves casual surveillance to improve safety for the surrounding locality.		
	Objective 3C-2 Amenity of the public domain is retained and enhanced	a 6m setback to the North and East and an 8m setback to the South as specified by the SCC, which enhances safety and amenity to pedestrians. These setbacks in tandem with the proposed landscaping will enrich the setting of the building.		The public domain will be vastly improved with the addition of the publicly accessible park. The landscape plan indicates deep soil around the site with substantial landscaping		
	Objective 3D-1	A communal open space area comprising of 5,797m² (38.77%) of the site area is provided on		The calculation for communal open space was found to be accurate. Therefore the proposal		
	An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	the ground floor with additional rooftop communal open spaces of <b>589m²</b> ( <b>3.93%</b> ) for a total of <b>6,386m²</b> ( <b>42.70%</b> ). The area located on the ground floor is also co-located with deep soil landscaping and planting on structures.	~	complies with providing 25% of the site as communal open space.  The communal open spaces achieve greater than 50% of direct sunlight in mid-winter.		
	1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)	The Development achieves greater than 50% direct sunlight to the principal usable part of the communal open space in mid-winter				
	Developments achieve a					

26 Crabbes Ave	Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.			
	minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (midwinter)			
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Communal and Public Open Space	Objective 3D-2 Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	The communal space is open and inviting for all to use and includes both hard and soft play areas for multiple uses. It accesses an on-site civic walk that provides multiple commercial offerings that has shared use between the public and private residents. There are also private communal spaces for residents that include an eatery, theatre, gym and pool.		The proposed communal spaces are found to be high quality spaces for the future residents.
	Objective 3D-3 Communal open space is designed to maximise safety	The proposed communal open space is designed to create conspicuous visibility and passive surveillance. The open space is well lit and safe with private communal areas contained within the boundary fence, accessible by security gate.		The communal open spaces are found to be designed to improve passive surveillance. The communal open spaces are attractive for future residents.
	Objective 3D-4 Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.	The proposed public open space responds to the existing pattern and uses of the neighbourhood by establishing a passive park for the purpose of light recreational activity and to create a natural link through to the extents of the site to the existing streetscapes.		The proposed publicly accessible park is found to provide a high amenity for residents. It is considered a vast improvement to the existing site and provides appropriate recreation spaces.

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Deep Soil Zones	Objective 3E-1 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality	The site has a total area of <b>14,953m</b> <sup>2</sup> A total of <b>2,779m</b> <sup>2</sup> <b>(18.58%)</b> deep soil landscaping is provided. The deep soil zone complies with the minimum 6m depth.		The proposed development complies with this control. The deep soil zones are appropriately located around the boundaries of the site to provide privacy, separation, and improve public amenity.	
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW	
Visual Privacy	Objective 3F-1  Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy  Note: Separation distances between buildings on the same site should combine require building separations depending on the type of room	Achieved through the use of articulation of built form and responsive layout of internal and external spaces.  Separation distances between each building are noted on all architectural plans and generally the development complies with the separations specified. In some instances, separation distances between buildings are higher than the minimums required. This has been achieved by ensuring habitable and non-habitable spaces are positioned to maximise external and internal visual privacy for all residents and neighbours.  Separation distances between the neighbouring properties and residential blocks within the development area as follows:  For Block A, separations range from 10.7m – 17.89m For Block B, separations range from 6.7m – 14.15m  For Block C, separations range from 6.7m – 14.15m		The separation distances are indicated on each of the floor plans. The proposed development complies with this objective.	

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Visual Privacy	Objective 3F-2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space	Façade articulation has enabled all units to have privacy from each other whilst still maintaining adequate solar access and cross ventilation. Screening devices have been provided to the units with balconies that face habitable spaces to comply with this objective.		The apartments and associated balconies contain adequate privacy screens to provide privacy. Solar access and cross ventilation is considered to be achieved.	
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW	
Pedestrian Access and Entries	Objective 3G-1 Building entries and pedestrian access connects to and addresses the public domain  Objective 3G-2 Access, entries and pathways are accessible and easy to identify  Objective 3G-3 Large sites provide pedestrian links for access to streets and connection to destinations	The main and secondary pedestrian entries face Crabbes Avenue and Penshurst Street respectively without obstruction, this allows the development to connect and address the public domain, as well as provide an additional link to revitalise Legion Way.  Achieved, the entry ways into the development are clearly visible from the public domain and communal spaces.  Pedestrian access within the site allows an easy walk to the local public transport corridor, creating better connections to destinations. A clear connection between Crabbes Avenue and Penshurst Street has been established, allowing for residents to navigate to the public domain easily and clearly through the site. An additional connection to Legion Way has been established, in order to revitalise the area and enhance the pedestrian links through the site.		The proposal provides clear access to buildings and pedestrian routes. All buildings contain accessible entry/exit and pathways.  The proposal provides a link from Legions Way to Crabbes Avenue. This improves pedestrian access to the surrounding locality.	

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Vehicle Access	Objective 3H-1 Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	The vehicular access point for the development is centrally located at the north face of the boundary of the site on Crabbes Avenue to help minimise conflict between pedestrians and vehicles and ensure the amenity of the public open space and residents is preserved.		The below ground basement carpark is supported.
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Bicycle and Car Parking	Objective 3J-1 Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas For development in the following locations:  On sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or  On land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre  the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less  The car parking needs for a development	Car parking has been provided in accordance with the SEPP Seniors Housing and the Council DCP where required.		The proposed development complies with providing the required amount of car spaces.

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	must be provided off street.					
	Objective 3J-2 Parking and facilities are provided for other modes of transport	Motor cycle and bicycle parking has been provided within the development.		The proposed development provides adequate bicycle and motorcycle parking, taking into consideration the type of development.		
	Objective 3J-3 Car park design and access is safe and secure	Achieved, access to the residential levels will require remote access.		Council's Engineer has reviewed the proposed basement car park plans and finds the proposal to provide adequate carparking that is safe to access.		
	Objective 3J-4 Visual and environmental impacts of underground car parking are minimised	Achieved, car park wall does not protrude above natural ground level.		There is no protrusion of the carpark above the natural ground level. The carpark layout is designed to facilitate easy access for residents, visitors, garbage disposal and emergency vehicles.		

POSED		
	COMPLIANT	COUNCIL'S REVIEW
development exceeds the criteria outlined objective 4A-1. For more information, please to Drawing DA-SUN Solar Access  g rooms and private open spaces have designed and orientated to maximise		The independent review by FUSE Architecture found that the proposal complies with providing adequate solar access to the apartments in accordance with the ADG.
oj∈ to g	ective 4A-1. For more information, please o Drawing DA-SUN Solar Access	rooms and private open spaces have designed and orientated to maximise

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Solar and Daylight Access	spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas  2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter  3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	Across the development 111 apartments (85.38%) receive the required minimum of at least 2 hours direct sunlight between 9 am and 3 pm at mid-winter  A deliberate effort was made to reduce the number of apartments receiving no direct sunlight with only 2 apartments (1.54%) receiving no direct sunlight between 9 am and 3 pm at mid-winter  The RFB facing Penshurst Street is fully compliant when assessed separately. 17 out of 24 apartments (70.83%) receive the required minimum of at least 2 hours direct sunlight between 9 am and 3 pm at mid-winter			
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW	
Solar and Daylight Access	Objective 4A-2 Daylight access is maximised where sunlight is limited	These objectives have been achieved. The building orientation provides optimum solar access to all apartments through the use of articulation of built form, responsive layout of internal spaces, privacy screens and glazing.		A large portion of private open spaces such as balconies and courtyards are orientated to the north to maximise solar access as much as possible.  The layout of the structures is spaced adequately in accordance with the ADG to allow solar access to each building.	
	Objective 4A-3 Design incorporates shading and glare control, particularly for warmer months	The apartments have been designed with shallow layouts to maximise the amount of solar penetration into the building.  Balconies and sun shading devises have been incorporated to extend past the face of the windows in order to shade the summer sun and allow winter sun to penetrate the living areas.		Balconies and courtyards have incorporated shading devises where appropriate.	

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Natural Ventilation	Objective 4B-1 All habitable rooms are naturally ventilated  Objective 4B-2 The layout and design of single aspect apartments maximises natural ventilation  Objective 4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents	All habitable rooms achieve natural ventilation, while single aspect units maximise natural ventilation.  Throughout the development, the apartments have been sited and designed in order to maximise the level of cross ventilation, with 89 apartments (68.46%) being naturally cross ventilated.  The RFB facing Penshurst Street is fully compliant when assessed separately. 15 out of 24 apartments (62.5%) are naturally cross ventilated.  A variety of opening types are proposed such as doors to balconies and doors/windows that adjoin kitchen layouts. These provide adjustable opening sizes for residents, allowing them to control air flows within their apartment.  Cross-through apartments do not exceed 18m in depth.		The applicant has provided a cross ventilation diagram (DA-CV, prepared by Hyecorp Property Group, dated 06/08/2020).  This diagram shows the apartments which achieve cross ventilation. The amount of apartments which provide cross ventilation meet this requirement.
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Ceiling Heights	Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access  Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms	A floor to floor height of 3.1m has been provided.  Minimum ceiling heights are capable of compliance and will be achieved. For more information on the development's floor to floor heights, please see the submitted Section Drawings (DA4.01 – DA 4.04) that form part of the Development Application.  All habitable spaces within the development will achieve 2.7m ceiling heights which provide		The section drawings provided by the applicant indicate that all rooms meet the required floor to ceiling height as stipulated within Objective 4C-1.  The ceiling heights provided for habitable rooms are adequate to provide a high quality of amenity.  The layout of the apartments provides flexibility in terms of use for the future residents.
	Objective 4C-3 Ceiling heights contribute to the	greater sense of space and allow for maximum liveability and freedom of use.		

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	flexibility of building use over the life of the building	All apartments comply with the guidelines set out in objective 4C-1, which allow for every habitable and non-habitable space to have flexible layout options, giving residents multiple options for the layout of their living spaces.		
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Apartment Size and Layout	Objective 4D-1  The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity	Achieved. All units are larger than ADG requirements due to the majority of the development being designated as Independent Living Units for Seniors.  The internal size of apartments across the whole development have the following ranges:  1 Bedroom: 55m2 – 75m2 2 Bedroom: 75m2 – 116m2 3 Bedroom: 99m2 – 144m2  A variety of apartment size, mix and layout have been provided to allow flexible configuration and use. The apartment layouts enable unobstructed access to all bedrooms, bathrooms and laundries from corridors.		A review of the floor plans indicates the units meet the required minimum internal areas for 1, 2 and 3 bedroom apartments.  The proposed development is considered to provide a mixture of apartment sizes. All habitable rooms contain access to windows.

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		All units are considered capable of facilitating a variety of different living arrangements, ensuring a high level of freedom of use for the lifetime of the development.  Every habitable room contains a window in an external wall with a minimum glass area that is greater than 10%. This is achieved through full height windows and the use of widened windows that provide heightened amounts of daylight and air to all habitable spaces.		
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Apartment Size and Layout	Objective 4D-2 Environmental performance of the apartment is maximised	Achieved. Given the guidelines outlined in Objective 4C-1, all habitable rooms are set to a height of 2.7m or greater, thus there are no habitable rooms with depths that do not comply with this objective.  All open plan layouts are designed to ensure that the maximum room depth for the habitable space that encompasses these areas outlined in this objective do not exceed 8m before becoming a new habitable space with its own designation.		The floor plans have been reviewed by Council and FUSE Architecture. The depth of each habitable room for each apartment is found to be acceptable.
	Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs	All master bedrooms are greater than 10 sqm and have a minimum dimension of at least 3m.  All bedrooms contain wardrobes that comply or exceed the requirements for minimum length.  Wardrobes are designed into dividing walls or		All master bedrooms were found to exceed the minimum requirement of 10 sqm.  All other bedrooms were found to meet the minimum requirement of 9 sqm.

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		spaces that would usually be unusable, ensuring that all bedroom spaces comply or exceed the requirements of this objective. This guarantees that the bedrooms are not encumbered by undesirable walls or have irregular shapes that would make the room less efficient.  All livings areas and bedrooms are located on the external face of buildings, while all living rooms comply or exceed the requirements for minimum width and depth as outlined in the Objective. These spaces are well proportioned and designed so that they are not shaped irregularly, allowing maximum freedom of use for all apartments.  There are no cross-over or cross-through apartments that have a width below 4m internally. This has been achieved by allowing for widths		All bedrooms and living rooms were found to meet the minimum widths required under this objective.  All bedrooms were found to be able to accommodate robes  The layouts of each apartment were found to be suitable for general household activities as well as the provision of furniture.
	OBJECTIVE AND DESIGN CRITERIA	greater then 4m in these apartments in order to ensure the greatest amenity possible for this typology.  PROPOSED	COMPLIANT	COUNCIL'S REVIEW
	OBJECTIVE AND DESIGN CRITERIA	PROFOSED	COMPLIANT	COUNCIL 3 REVIEW
Private Open Space and Balconies	Objective 4E-1 Apartments provide appropriately sized private open spaces and balconies to enhance residential amenity  Objective 4E-2 Primary private open space and balconies are appropriately located to enhance liveability for residents  Objective 4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building	Achieved. All balconies comply with or exceed the minimum required areas as shown in the architectural plans.  A vast majority of apartment also have been allocated an additional balcony for increased amenity to the residents which also comply with the guidelines outlined in Objective 4E-1.  All private open spaces are appropriately located to ensure the maximum amount of solar amenity and natural ventilation where possible, ensuring they have a high level of use for the resident.  Balcony areas range from: 10m² – 137m².		A review of the floor plans provided by the applicant found the balconies to comply with the minimum size requirements stipulated within objective 4E-1.  Balconies are appropriately located adjacent to living rooms or dining rooms. Some apartments contain an additional bedroom balcony which is supported for amenity.  The balconies are shown to be orientated appropriately in respond to the surrounding development and for solar access.  The applicant provided Material Schedules (Sheets 1 to 6) which show the balconies and

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	Objective 4E-4 Private open space and balcony design maximises safety	All ground floor units are capable of providing usable and high amenity outdoor spaces.  All balconies are a part of the architectural treatment of the building and the integrated materiality of the proposed balustrades are intended to express an attractive building form to the streetscape which is also achieved through use of screen planting and well-designed louvres, in order to enhance their appearance while also allowing for privacy to residents and increased passive surveillance of the public realm and communal areas.		private open spaces contain appropriate finishes and materials. There are no facade features that are predominantly glazing.  Balconies are designed to be safe. A condition of consent shall be imposed that the balconies and associated balustrades should meet the Australian Standards.
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Common Circulation and Spaces	Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments  Objective 4F-2 Common circulation spaces promote safety and provide for social interaction between residents	No more than 8 units are served from each circulation core, which promotes safety and interaction particularly with older residents.  The proposal has multiple common circulation spaces with access to all units from safe and usable areas. The main common circulation spaces are well lit and enjoy some natural ventilation creating a pleasant breezeway.		All residential buildings were found to contain 8 units or less for each circulation core, except for Level 2 of the RFB which contains 9. This is however acceptable as the additional unit is a studio and is found to not adversely impact the internal amenity for the residents of the RFB.  Natural ventilation and solar access have been provided to common circulation spaces.
Storage	Objective 4G-1 Adequate, well designed storage is provided in each apartment	Achieved. All units have adequate storage spaces located within the apartments.	~	There is a basement storage area for residents within the basement level of the proposal.
	Objective 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments	Additional storage has also been provided on basement levels. These spaces are secure and have convenient access as demonstrated in the architectural plans that form part of the Development Application.		

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Acoustic Privacy	Objective 4H-1 Noise transfer is minimised through the siting of buildings and building layout Objective 4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments	Achieved through the use of a discontinuous wall construction against all service areas. Where possible, rooms with noise requirements are also grouped together.  The developments garbage, removalist and delivery areas are all self- contained with the site, and are located within the basement.  For more information please refer to the Acoustic Report that forms part of the Development Application		An Acoustic Report was provided to Council. Council's Health Officer has found the findings to be satisfactory and the development to be acceptable in terms of acoustic impacts. See <b>Attachment 2</b> for Council's Health Officer's comments.		
	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW		
Noise and Pollution	Objective 4J-1 In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings  Objective 4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission	The residential uses on the site are located in a peaceful environment.  Each building is situated to provide maximum amenity to all residents by positioning the Club towards the active street frontage of Penshurst Street and placing all ILU's away from the Club Building, facing towards Crabbes Avenue. All residential walls throughout the building are provided with specialised insulation and bespoke mechanical duct work that ensures mitigation of Noise and Pollution as highlighted in the objectives.  For more information please refer to the Acoustic Report and Urban Design Report that form part of the Development Application.		Attachment 12 addresses noise management regarding the Club.  The proposed development provides adequate physical separation to maintain acoustic privacy.  Deep soil landscaping assists with minimising noise factors outside of the site.		
Apartment Mix	Objective 4K-1 A range of apartment types and sizes is provided to cater for different household types now and into the future	All residential ILU buildings within the proposal comply with the objective with a diverse apartment mix, relevant to the intended us - being larger apartments and Seniors Living in the Willoughby LGA.	~	When considering the development of Seniors Living, the proposed mix of apartments is considered appropriate.  The RFB is predominantly 2 bedroom		

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	Objective 4K-2 The apartment mix is distributed to suitable locations within the building  There is an additional RFB Block next to the Club, which has been allocated for general apartment living. This ensures that there is a healthy mix of resident typologies promoting the neighbourly aspect of the development while providing Senior residents with opportunities to integrate with Younger Residents and retain an active, social lifestyle. The apartment mix is outlined below:		apartments, however the Seniors Living development provides a large mixture of apartments to accommodate different needs.		
	OBJECTIVE AND DESIGN CRITERIA	Studio: 0   1 Bed: 21   2 Bed: 60   3 Bed: 49  PROPOSED	COMPLIANT	COUNCIL'S REVIEW	
Ground Floor Apartments	Objective 4L-1 Street frontage activity is maximised where ground floor apartments are located  Objective 4L-2 Design of ground floor apartments delivers amenity and safety for residents	Ground floor apartments have their own designation with the development, accessible via the main lobby of each building. This ensures the privacy and security of each ground floor apartment. The street frontage is activated through the clear identification of private open space, building entries and public open space. Ground floor units also have the benefit of larger private open spaces which ensure all building entries do not impact the privacy and security of ground floor residents.		The ground floor apartments are appropriately screened to maintain privacy.  The Landscape Plans indicate adequate landscape screening around ground floor apartments to clearly indicate private property whilst providing natural features to the site.  Access is a mixture of entry pathways or entry lifts which is supported.	
Facades	Objective 4M-1 Building facades provide visual interest along the street while respecting the character of the local area  Objective 4M-2 Building functions are expressed by the façade	Achieved, through articulation and the use of different material and colours, reducing the bulk and scale of the buildings. Building entries have been defined by façade features. The bulk of the buildings have been allocated to Penshurst Street, while half of the streetscape along Crabbes Avenue comprises a ground level Public Park which aids in breaking up the massing of the scheme and provided a high level of natural visual interest along the street.  For further information on the design language of the		Council has reviewed the Material Schedule (Sheets 1 to 6) and finds the variety of materials and colour scheme to be compatible with the residential context of the surrounding locality.  The treatment of the facades contains horizontal and vertical elements so that it provides variation and does not appear excessive and does not provide blank facades.	

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			façade of each building, please refer to the Urban Design Report prepared by Dickson Rothschild which has been submitted as part of the Development Application					

	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Roof Design	Objective 4N-1 Roof treatments are integrated into the building design and positively respond to the street  Objective 4N-2 Opportunities to use roof space for residential accommodation and open space are maximised  Objective 4N-3 Roof design incorporates sustainability features	The proposed roof spaces are communal open spaces which serve the residents of each respective building. These rooftop communal open spaces have been provided across multiple buildings to increase amenity for the residents within the development. The creation of these spaces offers an alternative to residents other than the space provided at the ground floor and the large public park provided as part of the proposal. The common areas have views to new proposed parklands and attractive landscaped areas.  These spaces have been architecturally designed in collaboration between Amglen and Site Image Landscape Architects in order to provide private open space that blends a high level of design sophistication and sustainable planting and roof features together in order to provide residents with an area that can be used for multiple purposes and be environmentally sustainable. For further information and detailed designs, please refer to the Landscaping Plans provided as part of the Development Application.		The proposed roof spaces are to be conditioned to be accessible to all residents of the Seniors Living development and the RFB.  The communal open spaces on the roof of each respective building are considered high quality spaces that can be utilised by residents. They are not accessible by the public.
Landscape Design	Objective 40-1 Landscape design is viable and sustainable	The landscaping plans provide high quality designs that provide active public domains with a variety of uses and user groups. It also provides for a public domain scheme that reinforces clear and accessible connections within the site as well as connecting to the existing public domain of Penshurst Street, Crabbes Avenue and Legion Way.		The proposed development vastly improves the natural landscaped setting on the site. The Landscape Plans and Landscape Design Report indicate a diverse range of planting. There is appropriate deep soil planting to maintain privacy to adjoining sites.

	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Planting on Structures	Objective 4P-1 Appropriate soil profiles are provided  Objective 4P-2 Plant growth is optimised with appropriate selection and maintenance  Objective 4P-3 Planting on structures contributes to the quality and amenity of communal and public open spaces	The scheme incorporates a mix of different landscaping designs which allow for complementary aesthetics throughout the development. All planting proposed is highly functional and low maintenance, with natural & sustainable stormwater treatment throughout all areas.  The soil volumes detailed within the plans submitted allow for a variety of planting types, including large trees in some areas which complement the new parklands which incorporate an ANZAC memorial.		Council's Landscape Officer and a review conducted by FUSE Architecture finds the proposed overall planting scheme to be acceptable.  There is a large amount of planting proposed on natural ground level or above basement levels. The planting incorporates different species suitable for its location.
Universal Design	Objective 4Q-1 Universal design features are included in apartment design to promote flexible housing for all community members  Objective 4Q-2 A variety of apartments with adaptable designs are provided  Objective 4Q-3 Apartment layouts are flexible and accommodate a range of lifestyle needs	Achieved – By creating larger than normal living spaces and bedrooms and ensuring that irregular spaces within apartments have been removed. This ensures all layouts are capable of providing flexible living arrangements for all lifestyles. The independent living units designed to Schedule 3 of SEPP Seniors are all capable of achieving compliance with silver level of the liveable housing guidelines. In excess of 50% of the residential units are independent living units designed to Schedule 3 of SEPP Seniors and are all capable of achieving compliance with AS4299.  For more information please see the Access Report prepared by Accessible Building Solutions which has been submitted as part of the Development Application.		Council has reviewed the floor plans and the layouts of the apartments. The layout of the apartments allows for appropriate access to communal and public areas.  The apartments provide adequate space to be utilised for various living purposes and needs.

	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Adaptive Reuse	Objective 4R-1 and 4R-2	Not applicable	Not applicable	N/A
Mixed Use	Objective 4S-1  Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement  Objective 4S-2 Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents	The proposed development will provide a mix of self-contained ILU and RFB dwellings, Club and associated facilities, RACF beds and associated facilities, car parking spaces across each building.  These buildings provide safe pedestrian movement between them, inclusive of passive surveillance. Their configuration improves the quality of the streetscape and affords residents a high level of accessibility to Crabbes Avenue, Penshurst Street and Legion Way.  For more information, please refer to the Urban Design Report prepared by Dickson Rothschild which has been submitted as part of the Development Application.		The Club and RFB that faces Penshurst Street provides street activation in this section of Penshurst Street. The ground floor shops shall provide diverse uses for the locality.  Building B which faces Crabbes Avenue is found to be compatible with the existing medium density development within Penshurst Street as well as the future medium density development for the site.
Awnings and Signage	Objective 4T-1 Awnings are well located and complement and integrate with the building design  Objective 4T-2 Signage responds to the context and desired streetscape character	The entries on Crabbes Avenue, Penshurst Street and Legion Way will have signage to identify development components and will create interest and identification to all buildings.		The Club and Shops fronting Penshurst Street contain awnings suitable for pedestrians.  The application does not contain identification signage for the Club facing Penshurst Street. This would be subject to a future development application.

	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Energy Efficiency	Objective 4U-1 Development incorporates passive environmental design  Objective 4U-2 Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer  Objective 4U-3 Adequate natural ventilation minimises the need for mechanical ventilation	The BASIX assessment prepared for this Development Application demonstrates that the proposed buildings have been designed for optimal energy efficiency. Additionally, our landscaping provides elegant and efficient natural solutions to reduce heat and provide relaxed amenities for all visitors and residents.		The applicant has provided a BASIX and NatHERs Assessment Report which details that the proposed development shall meet the required energy ratings.
Water Management & Conservation	Objective 4V-1 Potable water use is minimised  Objective 4V-2 Urban stormwater is treated on site before being discharged to receiving waters  Objective 4V-3 Flood management systems are integrated into site design	Achieved. Rainwater tanks have been incorporated into the design, which will be used for the maintenance of the landscaped areas. This proposal is accompanied by a drainage design. All discharge from the site will pass through a gross pollutant trap before entering the stormwater main. Onsite detention tanks have been designed by a qualified engineer in response to Council's requirements.		Council's Engineering Department has reviewed the proposed stormwater system, OSD tank and MUSIC assessment and finds the proposed development can adequately drain stormwater adequately

	OBJECTIVE AND DESIGN CRITERIA	PROPOSED	COMPLIANT	COUNCIL'S REVIEW
Waste Management	Objective 4W-1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents  Objective 4W-2 Domestic waste is minimised by providing safe and convenient source separation and recycling	Achieved. Sensors will be installed to control artificial lighting in common circulation and spaces will be provided. A building manager will be appointed during the ongoing management to ensure that the building is maintained at a high standard of quality. The proposed material selection, building design and architectural detailing is considered capable of providing adequate protection from the weather.		Council's Waste Management Officer has reviewed the Waste Management Plan and basement plans. The proposed development and its associated uses is found to provide adequate waste storage and adequate methods of disposal.
Building Maintenance	Objective 4X-1 Building design detail provides protection from weathering  Objective 4X-2 Systems and access enable ease of maintenance  Objective 4X-3 Material selection reduces ongoing maintenance costs	Achieved. All materials are chosen to have low levels of maintenance to minimise expenses for the Residents while also ensuring the aesthetic of the façade does not decline in the long-term life of the building.  Multiple Plans of Management have been submitted as part of the Development Application which detail how the various aspects of the scheme will be maintained and operated through the lifetime of the development.		Council shall impose conditions for the Plans of Management for the development to be enforced for the life of the development.

# **COUNCIL ASSESSMENT REPORT**

# ATTACHMENT 6: ASSESSMENT UNDER WLEP AND WDCP

# 6.0 Assessment under Willoughby Local Environmental Plan 2012 (WLEP)

This table below address the relevant clauses of the WLEP applicable to the assessment of the proposed development.

Land Use Table - RE2 Private Recreation	The proposed development is considered to meet the objectives of the RE2 Private Recreation zone. The proposed development provides a public park which shall be publicly accessible to the general public. Further details on the public park and its management are provided in <b>Attachment 12 &amp; 13</b> of this report.  The proposed Seniors Housing and Residential Aged Care Facility are considered compatible with the site in accordance with the issued Site Compatibility Certificate. The proposal also vastly enhances the amount of natural features on the site, enhancing its natural environment for recreation purposes.  The provision of the public park as well as the provision of a Registered Club shall provide a range of recreational settings that are compatible with the surrounding residential locality.
CI 5.4 Controls relating to miscellaneous permissible uses	Clause 5.4 does not permit shops more than 80 square metres. The proposed development provides shops at 247-255 Penshurst Street (sites zoned R3). These shops were found to be 80 square metres or less and therefore the proposal complies with this control.
CI 5.10 Heritage conservation	The site adjoins the Horsley Avenue Heritage Conservation Areas which comprises of Horsley Avenue and Summerville Crescent. The proposed development was found to meet the objectives of Cl 5.10. The proposed development and the number of levels for each building is acceptable considering the setback distance provided by the buildings. The proposal does not impact the streetscape of Horsley Avenue and Summerville Crescent. The proposal does not obstruct views of significance for properties within Horsley Avenue and Summerville Crescent. A review by Council's Heritage Advisor can be found in <b>Attachment 2</b> of this report.
CI 6.8 Affordable housing	The subject site is not located in "Area 3" of the Special Provisions Area Map
CI 6.10 Minimum lot sizes for residential flat buildings	The minimum required lot size for an RFB in an R3 zone is 1,100 square metres.  The three (3) lots within the R3 zone have a total combined site area of 1162 square metres. A condition of consent shall be imposed for these lots to be amalgamated.

Table 9: Applicable clauses within WLEP

# 6.1 Assessment under Willoughby Development Control Plan (WDCP)

The below table provides a list of the relevant controls within the WDCP applicable to the site and proposed development. The table contains the requirements of each relevant control and Council's assessment of the development for each control.

Willoughby Development Control Plan					
	Proposal	Standard	Compliance		
Part C - Genera	al Development Guideline	s			
C.3 Sustainable Development	The application provides a NatHERs and BASIX Report showing compliance with the requirements	Relevant Sustainability development criteria established in Part C.3.	Complies – subject to conditions		
Part C.4 Transp	oort Requirements				
Car parking	Refer to the table below for detailed parking requirements.	Refer to the table below for detailed parking requirements.	Complies		
Bicycle parking	Refer to the table below for detailed parking requirements.	Residential premises: 1 locker per 10 units 1 rail/rack per 12 units	Complies - 15 bicycle rail/racks		
		No specific bicycle requirements for a Registered Club			
Motorcycle	Refer to the table below for detailed parking requirements.	1 space per 25 car spaces	Complies – 19 spaces		

Car Parking (	Car Parking Calculations						
Proposed Use	Details of Proposal	Parking Rate Requirements	Required Spaces	Proposed Spaces	Comment		
Seniors Housing - parking requirements are under clause 50 of the SEPP (Seniors Living) 2004	103 Seniors Housing apartments.  Total of 103 Seniors Living units with 103 bedrooms in total.	(i) 0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider	51 spaces required	120 spaces provided	The proposal complies.		

Proposed Use	Details of Proposal	Parking Rate Requirements	Required Spaces	Proposed Spaces	Comment
Residential Aged Care Facility - parking requirements are under clause 48 of the SEPP (Seniors Living) 2004	One Residential Aged Care Facility Building comprising of forty nine (49) rooms. Dementia care is provided  Number of staff tbd  Dedicated ambulance bay is located on Basement Level 2	(i) 1 parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia), and  (ii) 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and  (iii) 1 parking space suitable for an ambulance.	3 spaces required based on 49 beds provided	17 RACF parking spaces, including 5 visitor and 12 staff spaces.  Dedicated ambulance bay is located on Basement Level 2	The proposal complies.  Although the RACF Management Plan does not indicate total number of staff, the 12 staff spaces covers a potential 24 staff and is therefore adequate.
Registered Clubs Parking requirements under Control C.4 of the WDCP	Registered Club with 2874 sqm floor space for spaces which contain a bar, lounge, dining room, function room, auditoria, garden lounge area.  No accommodation units  Number of Club staff tbd	1 space / 20m2 of bar, lounge, dining room, function room, auditoria, garden lounge area + 1 space / accommodation unit + 1 space / 2 employees	180 spaces	180 spaces	Complies
Residential car spaces for RFB in R3 Zone	Proposed RFB contains:  Studio – 2 units  1 Bedroom – 4 units  2 Bedroom – 12 units  3 Bedroom – 6 units  Total units – 24 units	For development on Penshurst St (South of Victoria Ave)  Studio/1 bedroom – 0.5 space  2 bedrooms – 1 space  3+ bedrooms – 1.25 spaces  Visitor spaces 1 per 4 dwellings	24 spaces	24 spaces	Complies
Car spaces for Shops in R3 Zone	8 shops	1 per 25 sqm	22.48	23	Complies
Accessible Spaces	No specific stated requirements in the DCP or Seniors SEPP	N/A	N/A	106 accessible spaces for residents  18 accessible visitor spaces	Complies

Willoughby De	Willoughby Development Control Plan			
Part C – General Development Guidelines				
	Proposal	Standard	Compliance	
C.5 Water Management	Stormwater system with OSD tank and stormwater treatments	Stormwater Management and disposal in accordance with the Technical Standards contained in the WDCP	Council's Engineering Department has reviewed the proposed stormwater system, OSD tank and MUSIC assessment and finds the proposed development can adequately drain stormwater adequately	
C.6 Access, Mobility and Adaptability	Design Review - Accessibility Report has been submitted	Relevant accessibility provisions in WDCP	Complies – the Accessibility Report and floor plans shows that the development is appropriately accessible for seniors and the disabled	
C.8 Waste Management	Waste management Plan has been submitted.	Waste minimisation principles and management of the operational waste in accordance with the WDCP	Complies - Council's Waste Services Team has considered the adequacy of waste facilities and operation of the waste management and conditions of the consent have been included.	
C.9 Preservation of Trees or Vegetation	The development provides a public park and considerable landscaping	To promote sustainable vegetation management and conserve and enhance the tree resources, natural systems including bushland, and landscape quality.	Complies – the public park, deep soil planting around the site, and the large amount of trees and plants substantially increases the amenity of the site	
C.11 Safety by Design	Applicant has provided CEPTED report	WDCP provides that the following four crime principles will be considered in the assessment of DAs: - Surveillance; - Access control; - Territorial reinforcement; and - Space management	The proposal was referred to NSW Police; no objections were raised however concerns regarding the associated uses of the Club and its impact on the existing and future surrounding residents were outlined in the report  This is addressed in Attachment 12	
C.12 Fencing	No fencing proposed	Maximum height of 1.8m if boundary fence proposed	Complies – no fencing proposed.  There is adequate boundary fencing along the eastern	

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			and southern boundaries for the adjoining properties in Summerville Crescent and Horsley Avenue.
C.13 Contaminated Land	The applicant has provided a Stage 1 and Stage 2 Contamination Report and a Remedial Action Plan. Council's Health Officer finds the proposed remediation works and action plan to be satisfactory and shall be conditioned appropriately	Contaminated land must be remediated to be made suitable for the purpose of the development	Complies - conditions have been imposed for the Remediation Action Plan in accordance with the Stage 1 and 2 Contamination Plans submitted by the applicant.

#### 6.2 Site Isolation (WLEP Consideration under CI 6.10)

The Site Isolation Report shows that the site does have adequate space to allow adequate floor space for development that is reasonable, however Council has imposed conditions for an easement for access benefitting 259 Penshurst Street. A further condition is imposed for a break through panel in Basement Level 1 to allow vehicle access to the site. This ensures that adequate car spaces is provided to the site for future development and the location of the existing driveway to 259 Penshurst Street (which is not located in an appropriate location) can be removed

#### ATTACHMENT 7: OFFICER'S CLAUSE 4.6 ASSESSMENT – FSR (R2 ZONE)

#### 7.0 Variation to CI 4.4 Floor Space Ratio

The applicant's Clause 4.6 Statement to vary the FSR within the R2 zoned lot can be found **Appendix 1** of this report.

One of the lots within the development site is zoned R2 Low Density Residential (Lot 4, Section C, DP 6291). This lot is located at the north-eastern corner of the site. The site contains a floor space ratio (FSR) development standard in accordance with Clause 4.4 of the Willoughby Local Environmental Plan (WLEP). The location of this lot is indicated in the diagram below with a blue outline:



Figure 4: Site of development. Blue outline indicates location of R2 zoned lot which is part of the existing Club

The proposed development within this specific lot contains a portion of Block B and C. The below table indicates the relevant floor space ratio statistics for the lot:

Site Area	Floor Space Ratio	Proposed Floor	Proposed Gross
	Standard (WLEP)	Space Ratio	Floor Area
558sqm	0.4:1	0.81:1	675.46sqm

Table 10: Proposed FSR within the R2 zoned lot

The proposed FSR represents a 102.5% variation in the FSR development standard under the WLEP.

In accordance with the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004,* a Site Compatibility Certificate (SCC) was issued by the Department which permits a maximum FSR of 1.35:1 for the entire site (lots zoned RE2 and R2).

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The SCC acts only to render the proposed development type and indicative form as "permissible". Any variation to the development standards within any Environmental Planning Instrument (EPI) is required to be assessed to ensure the relevant requirements imposed on the determination by the SCC is fulfilled.

#### 7.1 Applicant's Clause 4.6 Written Request

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

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has provided a written request seeking a variation to the floor space ratio development standard. The written request states the variation is acceptable and achieves the objectives of *Clause 4.4 Floor Space Ratio* for the following reasons:

- The subject site is in transition from the current controls and anticipated uses. The
  environmental capacity of the site when considered in isolation as compared to being
  integrated with the adjoining land for a comprehensive redevelopment changes the
  anticipated intensity and capacity of the individual site;
- 2. The proposed buildings in concern provide generous setbacks and are compatible in mass and scale;
- 3. The buildings within the lot are stepped down to ensure they are compatible with the existing adjoining low-density urban form;
- 4. The proposed development does not result in an adverse or unreasonable impact on solar access, view sharing, privacy, or general amenity for the surrounding residences;
- 5. The proposed seniors housing will form part of the wider redevelopment of the former Club Willoughby site;
- 6. The proposed development meets the objectives of the R2 Low Density Residential zone.

#### 7.2 Officer's Consideration of the Request for Variation

Council has conducted an assessment of the proposed development and the Clause 4.6 written request provided by the applicant. The applicant's Clause 4.6 written request has shown the objectives of *Clause 4.4 Floor Space Ratio* and *Clause 4.6 Exceptions to development standards* are achieved by the proposed development for the following reasons:

- The proposed development within the lot in concern forms part of the wider redevelopment of the former Club Willoughby site. Therefore it is appropriate to refer to the FSR controls as stipulated within the SCC;
- Level 1 and 2 of Building B and C provide a setback of 6.0m from the eastern boundary. The façade of Level 3 (Building B) provides an 8.5m setback to the eastern boundary. The façade of Level 3 (Building C) provides a 7.3m to the eastern boundary. These setback distances to the eastern boundary provide an adequate

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- 3. The balconies on Level 2 (Building C) facing east contain considerably privacy screens to maintain privacy and amenity between Building C and the adjoining neighbours within Summerville Crescent;
- 4. The proposed development within this lot shall not have an unreasonable or adverse impact on view sharing, privacy, solar access or general amenity for the residents within Crabbes Avenue or Summerville Crescent;
- 5. The proposed development was found to meet the objectives of the R2 Low Density Residential zone for the following reasons:
  - a) The proposed development provides housing needs of the community within a low density residential environment;
  - b) The bulk and scale of the buildings within the lot are compatible, taking into consideration the controls within the SCC and the overall proposed development;
  - c) Buildings B and C were found to not have an unreasonable or adverse impact on the residential amenity of the adjoining properties within Crabbes Avenue and Summerville Crescent;
  - d) The proposal does not impact the heritage character of the streetscape within Summerville Crescent.

Based on the above considerations, the proposed variation to the development standard is acceptable. The applicant's Clause 4.6 written request is considered to have demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the applicant's written request has adequately demonstrated the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

Variation of the standard is considered to be in the interests of the public given that the relevant objectives of the zone and standard are met by the proposal despite its numerical non-compliance with the development standard. The variation is not considered to raise any matter of regional and state significance, and concurrence of the Minister in approving this variation can be assumed by the SNPP.

#### ATTACHMENT 8: OFFICER'S CLAUSE 4.6 ASSESSMENT – FSR (R3 ZONE)

#### 8.0 Variation to CI 4.4 Floor Space Ratio

The applicant's Clause 4.6 Statement to vary the FSR within the R3 zoned lots can be found **Appendix 2** of this report.

The proposed Shops and Residential Flat Building (RFB) are located at 247-255 Penshurst Street. This address contains three lots zoned R3 Medium Density Residential. Therefore the maximum FSR stipulated within the WLEP applies to this site. The proposed development breaches the maximum FSR development standard. Below is a table which provides the proposed FSR for the building:

Total Size of R3 Zoned Lots Combined	Proposed FSR	FSR Standard	Variation
1155sqm	2.44:1 (2813.69 sqm)	0.9:1	171%

Table 11: Proposed FSR of the RFB within the R3 zoned lots

#### 8.1 Applicant's Clause 4.6 Written Request

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

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has provided a written request seeking a variation to the floor space ratio development standard. The written request states the variation is acceptable and achieves the objectives of *Clause 4.4 Floor Space Ratio* for the following reasons:

- 1. The proposed RFB with shops has a compatible mass and scale with the proposed future use of the site and the greater density of the Club and Seniors Living Housing granted through the Site Compatibility Certificate (SCC);
- 2. If the R3 zoned site and its associated maximum FSR of 0.9:1 was to be included with the Site Compatibility Certificate, the overall FSR would be 1.29:1. This is under the FSR of 1.35:1 granted by the SCC;
- The proposed development obtains vehicle access via a central entry/exit point in Crabbes Avenue. The development provides adequate parking spaces for the development. The site is also well serviced by public transport;
- 4. The proposed development does not have an adverse or unreasonable impact on view sharing, privacy, solar access or general amenity for the surrounding residences;

- 5. The proposed bulk and scale is compatible with the anticipated buildings and their associated uses as permitted by the SCC. The proposed RFB contains a maximum number of four storeys which is compatible with the existing RFBs in Penshurst Street and the adjoining Armenian Club;
- 6. The proposed development was found to not result in site isolation;
- 7. The proposed development maintains a transition in building scale and density with the existing surrounding development and the anticipated future development;
- 8. The lots zoned R3 Medium Density Residential shall be consolidated for the purpose of appropriate redevelopment and provide an appropriate subdivision pattern.

#### 8.2 Officer's Consideration of the Request for Variation

Council has conducted an assessment of the proposed development and the Clause 4.6 written request provided by the applicant. The applicant's Clause 4.6 written request has shown the objectives of *Clause 4.4 Floor Space Ratio* and *Clause 4.6 Exceptions to development standards* are achieved by the proposed development for the following reasons:

- Consideration is to be given to the more intensive development made permissible by the SCC issued by the Department. The proposed RFB is a four storey building and is compatible with the existing four storey RFBs directly across the road at Penshurst Street. The proposal is also compatible with the allowed density provided by the SCC, which allows provision for a five storey structure and a Club;
- 2. When considering the total FSR of the development is 1.29:1 when combining the site area of all the relevant lots, the proposed FSR is acceptable given the SCC provides an allowance of 1.35:1;
- 3. The proposed density of the development was found to not have an adverse impact on traffic generation within the surrounding vicinity. The site provides sufficient on-site parking and the amount of traffic generation is not considered excessive in accordance with the Traffic Report prepared by Colston Budd Rogers and Kafes Pty Ltd;
- 4. The proposal was found to not have an adverse or unreasonable impact on view sharing, privacy, solar access or general amenity for the surrounding residences;
- 5. The Site Isolation Report adequately addresses the potential development available to 259 Penshurst Street and is found to provide adequate justification that the site is not isolated:
- The proposed development does not result in an irregular subdivision pattern or fragmented lots.

Based on the above considerations, the proposed variation to the development standard is acceptable. The applicant's Clause 4.6 written request is considered to have demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the applicant's written request has adequately demonstrated the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

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Variation of the standard is considered to be in the interests of the public given that the relevant objectives of the zone and standard are met by the proposal despite its numerical non-compliance with the development standard. The variation is not considered to raise any matter of regional and state significance, and concurrence of the Minister in approving this variation can be assumed by the SNPP.

#### ATTACHMENT 9: OFFICER'S CLAUSE 4.6 ASSESSMENT - HEIGHT (R3 ZONE)

#### 9.0 Variation to CI 4.3 Height of Buildings

The applicant's Clause 4.6 Statement to vary the height standard within the R3 zoned lots can be found **Appendix 3** of this report.

The proposed Residential Flat Building (RFB) located at 247-255 Penshurst Street is within an R3 Medium Density Residential Zone and therefore the maximum height limit stipulated within the WLEP applies to this site. The relevant site is indicated below with a blue outline:



Figure 5: Site of development. Blue outline indicates location of R3 zoned lot which contains the proposed RFB

The below table provides the proposed height of the development and the level of breach of the standard:

Location of Breach	Height Standard (WLEP)	Proposed Height	Compliance
Top of the roof at highest point	Maximum 12.0m	12.83m	No (6.91% variation)
Lift overrun	Maximum 12.0m	14.13m	No (17.75% variation)

Table 12: Proposed height of RFB

**Note:** the calculations of height provided within the table are not the same as those stated within the Clause 4.6 Statement. This is because the development has been amended to produce a further setback from the fourth storey to the boundary along Penshurst Street. The reasoning and justification provided within the statement to justify the height breach remains the same.

#### 9.1 Applicant's Clause 4.6 Written Request

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

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has provided a written request seeking a variation to the floor space ratio development standard. The written request states the variation is acceptable and achieves the objectives of *Clause 4.3 Height of Buildings* for the following reasons:

- 1. The proposed RFB is a maximum of four (4) storeys which is consistent with the bulk and scale of the existing RFBs on the western side of Penshurst Street.
- 2. The bulk and scale of the RFB shall appear consistent with the proposed Club;
- 3. The proposal does not result in site isolation for 259 Penshurst Street. This site has the potential to develop with a similar height, bulk and scale that is compatible with the development in Penshurst Street;
- 4. The proposed development does not have an adverse or unreasonable impact on view sharing, privacy, solar access and general amenity for the surrounding residences and the proposed development;
- 5. The height breach from the lift overrun is set within the building and is not readily visible from an adjoining property or street;
- 6. The proposed development meets the objectives of the R3 Medium Density Residential zone.

#### 9.2 Officer's Consideration of the Request for Variation

Council has conducted an assessment of the proposed development and the Clause 4.6 written request provided by the applicant. The applicant's Clause 4.6 written request has shown the objectives of *Clause 4.3 Height of Buildings* and *Clause 4.6 Exceptions to development standards* are achieved by the proposed development for the following reasons:

- The proposed RFB is found to be compatible with the bulk and scale of the existing development within Penshurst Street. The proposed height of the roof (RL 113.00) was found to be comparable to the approved height of the Residential Flat Building directly across Penshurst Street (RL 112.74) within Development Application DA-2010/467/C:
- 2. The proposed RFB is compatible with the proposed bulk and scale of the development of the Club and Seniors Living Housing;

#### 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.

- 3. The proposed development was found to not result in site isolation as found by the applicant's Site Isolation Report;
- 4. The impacts on view sharing, privacy, solar access and general amenity for surrounding residences was found to have an acceptable impact;
- 5. The lift overrun is set back considerably within the building and therefore not visually excessive when viewed from the surrounding locality;
- 6. The Clause 4.6 written statement adequately provides environmental planning grounds to show that the objectives of the R3 Medium Density Residential zone are achieved.

Based on the above considerations, the proposed variation to the development standard is acceptable. The applicant's Clause 4.6 written request is considered to have demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the applicant's written request has adequately demonstrated the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

Variation of the standard is considered to be in the interests of the public given that the relevant objectives of the zone and standard are met by the proposal despite its numerical non-compliance with the development standard. The variation is not considered to raise any matter of regional and state significance, and concurrence of the Minister in approving this variation can be assumed by the SNPP.

#### ATTACHMENT 10: OFFICER'S CLAUSE 4.6 ASSESSMENT - HEIGHT (SENIORS SEPP)

# 10.0 Variation to CI 40(4) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

The applicant's Clause 4.6 Statement to vary the height standard within the Seniors SEPP can be found **Appendix 4** of this report.

The proposed development is subject to the development standards as stipulated within Clause 40 of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.* 

The applicant has provided three separate Clause 4.6 Statements requesting to vary each of the development standards within Clause 40(4). This clause is stated below:

#### 40 Development standards—minimum sizes and building height

- (4) Height in zones where residential flat buildings are not permitted If the development is proposed in a residential zone where residential flat buildings are not permitted—
- (a) the height of all buildings in the proposed development must be 8 metres or less, and

Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

Clause 40 only applies to residential zones where Residential Flat Buildings are not permitted. Therefore this clause only applies to one individual lot (Lot 4, Section C, DP 6291) from the entire development. The lot is zoned R2 Low Density Residential and located at the north-eastern corner of the site as shown below:



Figure 6: Site of development. Blue outline indicates location of R2 zoned lot which is part of the existing Club

The lot in concern contains portions of Building B and C as shown in figure 6. The height statistics within this lot are provided in the table below:

	Development Standards (SEPP)	Building B (Proposed)	Building C (Proposed)
Height	Maximum 8.0m	9.28m (RL 105.00)	8.81m (RL 103.90)
Number of Storeys	Maximum of two storeys	Three storeys	Three storeys
Buildings located at rear of site	Buildings to the rear must not exceed one storey	Three storeys	Three storeys

Table 13: Proposed height of buildings within the R2 zoned lot

In accordance with the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, a Site Compatibility Certificate (SCC) was issued by the Department for 'Development for the purposes of seniors housing, consisting of a residential care facility, with approximately 36 to 72 beds, and approximately 99 to 125 self-contained dwellings as serviced self-care housing'.

The SCC imposes the height control for the entire site (lots zoned RE2 and R2):

1(b) a transition of building heights from five storeys at the centre of the site, graduating down to three storeys and two storeys at the north, east and south boundaries

The SCC acts only to render the proposed development type and indicative form as "permissible". Any variation to the development standards within any Environmental Planning Instrument (EPI) is required to be assessed to ensure the relevant requirements imposed on the determination by the SCC is fulfilled.

## 10.1 Applicant's Clause 4.6 Written Request

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

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant has provided a written request seeking a variation to each of the development standards within Clause 40(4) of the Seniors Housing SEPP. The written request states the variation is acceptable for the following reasons:

- 1. The subject site is in transition from the current controls and anticipated uses. The environmental capacity of the site when considered in isolation as compared to being integrated with the adjoining land for a comprehensive redevelopment changes the anticipated intensity and capacity of the individual site;
- 2. The design of Building B and C provides adequate setback distances, recessed balconies and rooms within the roof, and the third level is recessed within the buildings. This results in a bulk and scale that is compatible with the surrounding residences and locality;
- 3. The additional height will not have an adverse impact on overshadowing, privacy, view sharing or general amenity for adjoining residences and the surrounding locality;
- 4. The controls stipulated within the SCC are required to be taken into consideration. The proposal would result in a better planning outcome than if compliance were to be achieved, as it allows for the co-ordinated redevelopment of the site;
- 5. The proposed development meets the objectives of the R3 Medium Density Residential zone.

## 10.2 Officer's Consideration of the Request for Variation

Council has conducted an assessment of the proposed development and the Clause 4.6 written request provided by the applicant. The applicant's Clause 4.6 written request has shown the objectives of Seniors Housing SEPP and *Clause 4.6 Exceptions to development* by the proposed development for the following reasons:

- 1. The proposed development within the lot in concern forms part of the wider redevelopment of the former Club Willoughby site. Therefore it is appropriate to refer to the height controls as stipulated within the SCC;
- 2. The proposed third storey for Building B and C provides a setback distance of 8.5m and 7.3m respectively from the façade to the eastern boundary. These setback distances are considered sufficient in ensuring the bulk and scale arising from the third storey are not imposing on the adjoining properties to the east;

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- 3. When considering the size of the entire site and the setbacks provided to each boundary, the third storey component of Building B is considered compatible with the existing streetscape of Crabbes Avenue;
- 4. The proposed height breach arising from the third storey does not result in an unreasonable or adverse impact on view sharing, solar access, privacy or general amenity for the adjoining residences in Crabbes Avenue, Summerville Crescent and Horsely Avenue;
- 5. When considering the justification provided in the Clause 4.6 written request as shown above, the proposed development meets the objectives of the R2 Low Density Residential zone.

Based on the above considerations, the proposed variation to the development standard is acceptable. The applicant's Clause 4.6 written request is considered to have demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the applicant's written request has adequately demonstrated the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

Variation of the standard is considered to be in the interests of the public given that the relevant objectives of the zone and standard are met by the proposal despite its numerical non-compliance with the development standard. The variation is not considered to raise any matter of regional and state significance, and concurrence of the Minister in approving this variation can be assumed by the SNPP.

## ATTACHMENT 11: ASSESSMENT OF RESIDENTIAL FLAT BUILDING AND SHOPS

## 11.0 Assessment of Residential Flat Building (RFB) and Shops

The proposed RFB and Shops are located at 247-255 Penshurst Street, Willoughby. There are three (3) lots associated with this address zoned R3 Medium Density Residential. This section of the report provides an assessment in accordance with the relevant controls of the WDCP.

## 11.1 WDCP Statistics Table - RFB and Shops

Willoughby De	Willoughby Development Control Plan		
Part E – Specifi	Part E – Specific Controls for Shop Top Housing Development		nt
	Proposal	Standard	Compliance
E.1.1 Frontages	Width of site is 27.0m Ground level shops provide quality interface to street	Minimum width of 27.0m Ground level frontages shall be transparent (no use of roller shutters)	Complies
E.1.2 Density, Use and Height	See Attachment 8 and 9	Refers to FSR and height controls in the WLEP	See Attachment 8 and 9
E.1.3 Design and Streetscape Design Qualities	Ground floor shops presenting to Penshurst Street  Residential levels set back from front boundary	Achieve attractive streetscape that provide a high level of amenity to pedestrian area, creates a high quality urban form and enhances the character of the locality	Complies – the proposed shop on the ground floor provide street activation with a high amenity.  The residential levels are set back from Penshurst Street appropriately to not appear imposing. The four storey structure is compatible with the surrounding RFBs within Penshurst Street.
E.1.4 Setbacks	Does not comply - refer to Attachment 6 for further details.	In established areas, new development should reinforce the streetscape character Staggered side and rear setbacks	Does not comply
E.1.5 Building Depth	Depth is 37.0m	Development should have a maximum depth of 20.0m	Does not comply
E.1.6 Landscaping Requirements	Landscaping not provided on the site.	To provide high quality and attractive landscaping which enhances the setting of the buildings in the streetscape	Does not comply – however acceptable considering the context of the park adjoining the site

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E.1.7 Open Space Requirements for Shop Top Housing	Minimum 30 square metres of communal open space Balconies to comply with ADG	Balconies to comply with ADG  Communal open space is to be 30 square metres for the first 15 dwellings plus 10 square metres per additional dwelling.	Acceptable – the site is too small to provide practicable communal open space for the RFB, however the apartments acceptable balconies for private open space and the park shall provide acceptable space for the residents for recreation.
E.1.8 Privacy	Privacy addressed by applicant in SEPP 65 ADG Table	The proposed development is to maintain adequate levels of acoustic and visual privacy for the residents of the proposed development as well as the surrounding residents	Complies – the RFB is adequately distanced from surrounding residences. There are no privacy breaches for the units within the proposed RFB.
E.1.9 Views and Vistas	Proposed development does not obstruct views or vistas of significance.	The preservation of views for residents and the general public.	Complies – does not obstruct views or vistas of significance
E.1.10 Solar Access and Overshadowing	The proposed RFB is located on the north-western corner of the site and therefore does not cast a shadow to surrounding dwellings due to the orientation of the site.	The development shall not restrict solar access to the primary open space and principal living areas of surrounding residential development to less than 3 hours between 9am and 3pm on June 22	Complies – solar access diagrams are provided and show the proposed development does not restrict solar access for neighbouring properties to less than 3 hours on June 22.
E.1.11 Service Facilities and Amenities	The proposed RFB provides adequate service facilities and amenities for the residents	The building shall provide the following facilities:	Complies – the proposal provides the required service facilities and amenities to provide a high amenity for the residents of the RFB
E.1.12 Reflectivity	The Schedule of Finishes provided with the application indicates acceptable colours and materials. The portion of glazing for facades is not excessive	Development shall avoid hazardous or undesirable glare to pedestrians, motorists and surrounding residents	Complies – a condition is imposed for the schedule of materials utilised to be non-reflective
E.1.13 Awnings, Tree Planting and Paving	There is an awning in front of the ground level shops fronting Penshurst Street that extends 1.0m over the footpath. The awning is 3.2m above the ground level of the footpath	To provide climate control, such as shelter from rain and sun, by the provision of awnings over the commercial/retail component of development.	Complies

#### 11.2 Assessment of RFB under the WDCP Controls

## E.1.4 Setbacks

The following setback distances are provided by the RFB:

	Required Setback	Proposed Setback	Compliance
Rear Setback	3.0m	6.8m	Yes
Side Setbacks	As shown in the diagram in WDCP Control E.1.4	Nil	No
Front Setback	7.4m at the third storey and upwards	3.3m at the third level 3.8m at the fourth level	No

Table 14: Setback distances provided by RFB

As seen from the above setback figures provided in the table, the proposal does not comply with the side and front setback controls. Although the proposal does not comply, consideration is to be given to the future development of the Club, the public park to the rear of the RFB and to the Seniors Living development which adjoin the proposed RFB.

The proposed RFB is considered to provide adequate front setback distances to align with the built form of the Club. An increase in front setback distances was explored, however this exposes the side façade of the Club and will result in an unattractive outcome to the streetscape of Penshurst Street.

The proposal provides nil setback to each side boundary, however this is preferred as it shall obstruct the side façade of the Club from view as well as any future development within 259 Penshurst Street which is adjacent to the RFB to the north. The ground floor Shops provide street activation and shall complement the use of the Club.

When taking into account the above considerations, the proposed setback distances are supported.

## E.1.5 Building Depth

The building depth is measured to be 37m which is beyond the maximum 20m stated within the WDCP. Regardless of the depth, the layout and design of the RFB provides sufficient solar access and ventilation. The amenity of the RFB is not compromised by its proposed depth and is supported.

#### ATTACHMENT 12: ASSESSMENT OF CLUB

This section of the report provides an assessment of the proposed Club in regards to the following:

- 1. The overall built form of the Club and its relation to the surrounding residences;
- 2. The proposed various uses of the Club and its impact on the surrounding residences and locality;
- 3. The ongoing management of the Club.

#### 12.1 Assessment of the Built Form of the Club

The WLEP and WDCP do not contain development controls specifically for a Club or entertainment facility. Therefore an assessment of the built form is primarily a merit based assessment, taking into consideration the controls stipulated within the SCC.

#### Height of Development

The height of the façade facing Penshurst Street rises to a height of 12.3m from the existing ground level to the roof. The height limit for development within Penshurst Street for lots zoned R3 Medium Density Residential is 12.0m. Therefore the height of the Club is not excessive or out of character with the development in the surrounding locality.

The height of the Club extends to 14.4m to the rear at the auditorium room. The auditorium room is set back 14.0m from the boundary along Penshurst Street and therefore shall not appear excessive when viewed from Penshurst Street. The height of the Club when viewed from the proposed park or Seniors Living Housing is not excessive. The Club is set back considerably from the nearest building (ILU Block A), with a setback distance of 17.89m from the rear façade of the Club to the closest apartment.

The proposed height of the Club is considered acceptable as it is consistent with the medium density residential development within Penshurst Street and the height of the proposed Seniors Living Housing.

#### Floor Space Ratio

The overall development provides an FSR of 1.21:1 and therefore complies with the maximum FSR of 1.35:1 stipulated within the SCC.

## Setbacks

The location of the Club complies with the setback requirements as stipulated within control 1(e) of the SCC. The Club provides a nil setback to the boundary along Penshurst Street. The nil setback is supportable for the following reasons:

- 1. The presentation of the Club and the façade facing Penshurst Street is of high quality and shall provide street activation to Penshurst Street;
- 2. The Club is unlike an RFB which typically requires a landscaped setting to the street. The visual presentation of the Club is suitable as a community and recreation facility;
- 3. The frontage of the Club is suitable to provide street activation in conjunction with the existing shops adjacent to the Club along Penshurst Street;
- 4. The location of the Club is appropriately located to provide access from Penshurst Street.

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The Club comprises the following:

Registered Club	Club	The ground floor of the Club will comprise of:
		Club entry
		Reception
		Amenities
		Lounge/sports room
		Terrace/alfresco areas
		Cashier room
		Gaming room
		Plant room
		Kitchen and back of house
		Dining room
		Café
		Services space
		Lift and stair access
		The first floor of the Club will comprise of:
		• Foyer
		Enclosed terrace
		Multipurpose space
		Store/back of house
		Outside terrace
		Club admin room x 2
		Board room
		Sub branch room
		Services space
		Lift and stair access
		The second floor of the Club will comprise of:
		• Foyer
		Terrace
		Auditorium space
		Meeting room x 4
		Store/back of house
		Services space
		Lift and stair access
Table 15: Uses within	n the proposed C	lub as provided within the statement of environmental

Table 15: Uses within the proposed Club as provided within the statement of environmental effects, prepared by City Plan Services

Council has conducted a review of the Plan of Management for Club Willoughby and notes the following key details provided in the report:

- 1) The report stipulates the operating hours for each terrace of the Club;
- 2) Live music shall be permitted until 12am on any night in the Multi-Purpose Room;
- 3) Security and CCTV shall be provided by the management of the Club;
- 4) The Licensee, management and staff shall be trained and promote responsible service of alcohol (RSA).

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When considering the use of the Club, the Seniors Living units, RACF, and surrounding residential locality, it is imperative to impose conditions of consent in relation to the operation of the Club and its associated uses to ensure that it does not have have an adverse impact on the amenity of the existing and future residents and the surrounding locality.

In order to ensure the amenity of the existing and future residents is maintained to a high degree, conditions of consent relating to the management of the Club shall be imposed to ensure the operation of the Club does not adversely or unreasonably impacts the amenity of existing and future residents.

The conditions relating to the management of the Club are **Condition 139** and can be viewed in **Attachment 17** 

The conditions are imposed for the following reasons:

- 1) To ensure the Club operates in accordance with the Plan of Management;
- 2) To maintain acoustic amenity and privacy;
- 3) To ensure patron behaviour is controlled;
- 4) To ensure no loitering occurs within the public park;

The Plan of Management and the conditions of consent are considered acceptable in managing the impacts of the Club on the existing and future residents of the surrounding locality.

#### ATTACHMENT 13: ASSESSMENT OF PARK AND LANDSCAPING

## 13.1 The Proposed Publicly Accessible Park

The proposed development includes a park and associated landscape works which shall be made publicly accessible. The Arborist Report indicates twenty-two (22) trees within the site to be removed and two hundred and six (206) to be planted, ranging from a height of 5m to 25m. The below figure portrays the proposed concept design of the park:



Figure 7: Proposed Park

The proposed landscape concept masterplan and the accompanying landscape plans indicate a vast amount of trees and vegetation to be planted within the park and along the pathway that navigates around the site. There is a substantial amount of deep soil planting around the north, south and eastern boundaries with an adequate width to accommodate tree planting.

The park was measured to be approximately 1150 square metres (the area outlined in red in **Figure 8**).

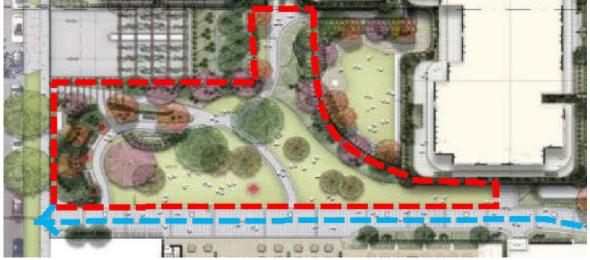


Figure 8: Proposed Park. The red outline indicate the publicly accessible space

#### 13.2 Use of Park

The existing site currently contains lawn bowl greens utilised by the Club and is privately leased out to external parties such as schools for sport activities. The greens are also privately leased for certain community events. The size of the greens is approximately 3300 square metres.

The proposed development removes the lawn bowl greens and provides a park that is approximately 1200 square metres. The park shall be accessible to the general public and this shall be a condition of consent. The open space on the site is changing from a space that was typically used for light sport activity to a park that provides a space for socialising and light recreation. The park shall also be utilised by the Club for events as specified within the Plan of Management.

The Council acknowledges that the removal of the lawn bowl greens utilised for sport recreation shall be a loss to educational institutions and the general community. The Council is satisfied that the change in nature of the privately owned recreational open space on the site is a positive contribution to the community. Although there is a loss of space for sport activities and events, a park that is 1200 square metres is to be provided and be made publicly accessible. The park provides a high level of amenity for the community that is suitable for providing recreation space for both the senior residents and the general public.

Although there is a decrease in accessible open space, the quality of open space provided is vastly improving. The design of the park provides a high quality space suitable for socialising and light recreation. The design of the park, gardens and the associated planting of trees and vegetation greatly enhances the natural amenity of the site. The proposal significantly enhances the amenity of the site in contrast with the lawn bowl greens.

#### 13.3 Landscaping

The proposed park, the associated landscaping and the planting of various trees and vegetation around the site significantly increases the amenity of the existing site. The deep soil landscaping plan (DA-DSL, prepared by Hyecorp Property Group) indicates the following landscape calculation:

DEEP SOIL CALCULATIONS	
SITE AREA	14953m²
PROPOSED DEEP SOIL AREA	2779m² (18.58%)
PROPOSED PLANTING ON STRUCTURES	4123m² (27.57%)
TOTAL LANDSCAPE AREA	6902m² (46.16%)

Table 16: Proposed landscaped area, taken from the soft landscaping plan (DA-DSL, prepared by Hyecorp Property Group)

The amount of deep soil planting adjacent to the north, east and south boundaries of the site shall provide substantial vegetation to assist with maintaining privacy as well as provide amenity to the site and adjoining properties.

The amount of total landscaped area is 6902 square metres. This figure includes the pathways which navigate around the site. The pathways are considered vital landscape treatments for the accessibility and use of the site. The amount of landscaped area is adequate and the design provides high quality spaces utilised for private and communal open spaces.

The landscape design of the park includes seating for visitors and significant lawn space for socialising and light recreational activities. The design is considered to be well integrated with the Shops, Club and residential components of the development. The access link from Crabbes Avenue to Legions Way improves pedestrian accessibility in the locality and is a significant improvement in accessibility in comparison to the existing context. The park is adequately distanced from the residential development.

## 13.4 Access from Legions Way

Council has assessed the suitability of Legions Way being utilised as a pedestrian only access point for the Club, Public Park, and Seniors Living development. Below is a photo of Legions Way, facing towards the site:



Figure 9: Photo of Legions Way looking towards the development site.

There is not considered to be sufficient pedestrian pathways or street lighting for Legions Way to be utilised as a publicly accessible thoroughfare through the site to Crabbes Avenue. There is not sufficient space to install a suitable pathway while retaining the vehicle access in Legions Way.

There are five (5) driveways which service dwellings and Residential Flat Buildings within Legions Way. This presents a safety issue if Legions Way is to be utilised as pedestrian access.

Therefore Council considers it necessary to impose a condition for Legions Way to be restricted so that pedestrians cannot access the site, however allow emergency vehicles to access the site from Legions way – **Condition 2** 

## 13.5 Management of Park

Council has conducted a review of the Plan of Management (Memorial Park) and notes the following key details:

- 1. The size of the park and associated through link is 2050 square metres;
- 2. The park is not fenced and will be publicly accessible 24 hours a day, 7 days a week;
- 3. Club Willoughby are the owners of the park;
- 4. Page 9 contains a list of activities that shall be prohibited;

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- 5. Club Willoughby shall be responsible for the management of the landscaping of the park;
- 6. A CCTV System shall be installed within the park to provide security. Security patrols shall be provided by Club Willoughby for the park;
- 7. Special events will be held within the park at a rate of no more than once per month, across a 12-month period;
- 8. The holding of events will not prohibit the use of park to other users.

The above details within the Plan of Management are considered integral in providing a park with high amenity which does not adversely or unreasonably impact the existing and future residents of the surrounding locality.

The Council has imposed conditions to ensure that the Plan of Management is carried out and the use of the park does not lead to an adverse impact on the existing and future residents. This can be viewed in **Condition 138 of Attachment 17** 

## **ATTACHMENT 14: SUBMISSIONS TABLE**

Council was in receipt of one hundred and seven (107) unique submissions from the following objectors:

1	1 Crabbes Avenue	Willoughby	NSW	2068
2	1 First Avenue	Willoughby	NSW	2068
3	1 Perina Close	Bangor	NSW	2234
4	1 Summerville Crescent	North Willoughby	NSW	2068
5	1/210 High Street	North Willoughby	NSW	2068
6	1/223 Penshurst Street	Willoughby	NSW	2068
7	5 Rosewall Street	North Willoughby	NSW	2068
8	10 Cobar Street	Willoughby	NSW	2068
9	10 Quiamong Road	Naremburn	NSW	2065
10	10 Warrane Road	Willoughby	NSW	2068
11	11 Crabbes Avenue	Willoughby	NSW	2068
12	11 Horsley Avenue	North Willoughby	NSW	2068
13	11/6-10 Hampden Road	Artarmon	NSW	2064
14	11A Crabbes Avenue	North Willoughby	NSW	2068
15	12 Alleyne Street	Chatswood	NSW	2065
16	12 Crabbes Avenue	Willoughby	NSW	2068
17	12 Crabbes Avenue	Willoughby	NSW	2068
18	12 Fairfax Road	Mosman	NSW	2068
19	12 Muttama Road	Artarmon	NSW	2064
20	12/2A Shirley Road	Roseville	NSW	2069
21	13 Horsley Avenue	North Willoughby	NSW	2068
22	13A Crabbes Avenue	North Willoughby	NSW	2068
23	14 Crabbes Avenue	North Willoughby	NSW	2068
24	14 Patrick Street	Willoughby	NSW	2068
25	14/2A Kooringa Road	Chatswood	NSW	2067
26	143 Sydney Street	Willoughby	NSW	2068
27	15 Cove Circuit	Castle Cove	NSW	2069
28	15 Horsley Avenue	North Willoughby	NSW	2068
29	16 Crabbes Avenue	North Willoughby	NSW	2068
30	17 Alexander Avenue	North Willoughby	NSW	2068
31	17 Crabbes Avenue	Willoughby	NSW	2068
32	17 First Street Street	Willoughby East	NSW	2068
33	18 Crabbes Avenue	North Willoughby	NSW	2068
34	18 Horsley Avenue	Willoughby	NSW	2068
35	18 Morotai Crescent	Castlecrag	NSW	2068
36	186 Penshurst Street	Willoughby	NSW	2068
37	18A Crabbes Avenue	North Willoughby	NSW	2068
38	19 Crabbes Avenue	Willoughby	NSW	2068
39	19 Crabbes Avenue	Willoughby	NSW	2068
40	19 Horsley Avenue	Willoughby	NSW	2068
41	19 Willoughby Road	Willoughby	NSW	2068
42	2 Bega Road	Northbridge	NSW	2063
43	2 Summerville Crescent	Willoughby	NSW	2068
44	2/223 Penshurst Street	Willoughby	NSW	2068
45	20 Horsley Avenue	North Willoughby	NSW	2068

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46	20/2 Artarmon Road	Willoughby	NSW	2064
47	203 Penshurst Street	Willoughby	NSW	2068
48	21 Crabbes Venue	Willoughby	NSW	2068
49	21 Crabbes Avenue	North Willoughby	NSW	2068
50	21 Tunks Street	Northbridge	NSW	2063
51	21/105 Burns Bay Road	Lane Cove	NSW	2595
52	21/260 Penshurst Street	North Willoughby	NSW	2068
53	219 Penshurst Street	North Willoughby	NSW	2068
54	23 Crabbes Avenue	Willoughby	NSW	2068
55	23 Crabbes Avenue	North Willoughby	NSW	2068
56	23 Horsley Avenue	Willoughby	NSW	2068
57	24 Glenmore Street	Naremburn	NSW	2065
58	25 Crabbes Avenue	Willoughby	NSW	2068
59	25 Horsley Avenue	Willoughby	NSW	2068
60	259 Penshurst Street	Willoughby	NSW	2068
61	260 Penshurst Street	Willoughby North	NSW	2068
62	266 Penshurst Street	Willoughby	NSW	2068
63	27 Crabbes Avenue	North Willoughby	NSW	2068
64	28 Mclean Avenue	Chatswood	NSW	2065
65	29 Tyneside Avenue	Willoughby	NSW	2068
66	3 Summerville Crescent	Willoughby	NSW	2068
67	3/210 High Street	North Willoughby	NSW	2068
68	31 Crabbes Avenue	Willoughby	NSW	2068
69	31 High Street	Willoughby	NSW	2068
70	34 Cambridge Street	Willoughby	NSW	2068
71	35 High Street	Willoughby	NSW	2068
72	37/260 Penshurst Street	Willoughby	NSW	2068
73	4 Crabbes Avenue	North Willoughby	NSW	2068
74	4 Crabbes Avenue	North Willoughby	NSW	2068
75	4 Summerville Crescent	North Willoughby	NSW	2068
76	4/147-153 Sydney Street	North Willoughby	NSW	2068
77	4/210 High Street	Willoughby	NSW	2068
78	4/223 Penshurst Street	Willoughby	NSW	2068
79	49 Bedford Street	North Willoughby	NSW	2068
80	5 Horsley Avenue	North Willoughby	NSW	2068
81	5/261-263 Penshurst Street	North Willoughby	NSW	2068
82	53 Second Avenue	Willoughby East	NSW	2068
83	54 Balgowlah Road	Balgowlah	NSW	2093
84	58/186 Boundary Street	Castle Cove	NSW	2069
85	58A Ann Street	Willoughby	NSW	2068
86	5A MacMahon Street	Willoughby	NSW	2068
87	6 Cevu Avenue	Willoughby	NSW	2068
88	6 Crabbes Avenue	North Willoughby	NSW	2068
89	6 Summerville Crescent	North Willoughby	NSW	2068
90	6 Summerville Crescent	North Willoughby	NSW	2068
91	610/1 Victor Street	Chatswood	NSW	2067
92	64 Sydney Street	Willoughby	NSW	2068
93	6A Hamilton Avenue	Naremburn	NSW	2065
94	7 Summerville Crescent	North Willoughby	NSW	2068
95	8 Crabbes Avenue	North Willoughby	NSW	2068

26 Crabbes	26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.				
96	8 Summerville Crescent	North Willoughby	NSW	2068	
97	84 Warrane Road	Willoughby	NSW	2068	
98	8A Summerville Crescent	North Willoughby	NSW	2068	
99	9 Cawarrah Road	Middle Cove	NSW	2068	
100	9 Crabbes Avenue	North Willoughby	NSW	2068	
101	9 Crabbes Avenue	North Willoughby	NSW	2068	
102	9 Horsley Avenue	Willoughby	NSW	2068	
103	9B Julian Street	ian Street Willoughby NSW		2068	
104	Chatswood Public School P&C Association	Chatswood	NSW	2067	
105	No address provided				
106	No address provided				
107	Protecting Your Suburban Environment Inc.(PYSE)				

Table 17: List of residences which lodged a submission

# From the 107 submissions received, 78 object to the proposal and 29 support the proposal.

The next page contains a table which contains the issues raised by the objectors and Council's response.

Note: The submissions received by Council respond to the original proposal. The proposed development plans have since been amended to address some of the issues raised.

Issues Raised	Officer's Comments
Height	
The height of Building A is six (6) storeys, excessive in height, and does not comply with the requirements of the SCC	Refer to Attachment 3
The height of Building B is five (5) storeys, excessive in height, and does not comply with the requirements of the SCC	The proposal has been amended and Building B is a total of four (4) storeys. Refer to <b>Attachment 3</b>
The height of Building C and the RACF is excessive and do not meet the requirements of the SCC	Building C and the RACF are both three (3) storeys each. The SCC allows for heights that are two and three storeys at the north, east and south boundaries. As Building C and the RACF provide progressive setbacks to each relevant boundary, this is considered to meet the requirements of the SCC.
The height of the RFB and Club are excessive and not in character with the locality.	Refer to Attachment 9 and 12.
Density	
The proposed development contains too many residential dwellings.	The Seniors Living, RACF and Club provide an overall FSR of 1.19:1. This complies with the maximum requirement of 1.35:1 provided by the SCC. The site is considered suitable for intensive development that accommodates medium density development.

26 Crabbes Avenue & 243,	247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.		
Issues Raised	Officer's Comments		
Traffic and Parking	Traffic and Parking		
The proposal will result in an unreasonable and adverse increase in traffic flow through Crabbes Avenue, Horsley Avenue, Penshurst Street and High Street.	Council's Traffic Department has reviewed the Traffic Report (prepared by Colson Budd Rogers and Kafes Pty Ltd, REF: 10526/1). The development application was referred to the Local Development Committee for review on 23 October 2019.  Council's Traffic Department notes the increase in pedestrian and vehicle numbers as specified within the Traffic Report. The Traffic Department and the Local Development Committee do not object to the development, considering the amount of off-street parking provided. The increase in traffic movement in surrounding residential streets within the report was found to not be unreasonable.  Council's Traffic Department shall design traffic calming measures within Crabbes Avenue to address the issue of increased traffic movement. A condition shall be imposed for the applicant to be liable for the construction and associated costs for the traffic calming measures.		
The proposed development will remove street parking for the surrounding local streets	The proposed development provides basement car parking for staff and visitors to the Club. There is also basement car parking for residents. The number of parking spaces complies with the requirements of the WDCP.		
The Club should not have drop off and pick up areas in residential streets	A condition of consent shall be imposed for the Club to not have drop off or pick up areas within surrounding residential streets and for any drop off or pick up of passengers to be within the porte cochere of the basement.		
Public Open Space			
The large loss of public open space for recreation such as sports for school and events is unacceptable. The new park is considerably smaller in size	Refer to Attachment 13		
Heritage Impact			
The proposal has an adverse impact on the heritage value for dwellings within Horsley Avenue and Summerville Crescent	Refer to <b>Attachment 2</b> for Council's Heritage Officer's comments regarding the impact on the Horsley Heritage Conservation Area. The proposal does not impact the streetscape for the dwellings in the Heritage Conservation Area.  The Seniors Living development is visible from the rear yards from properties within Horsley Avenue and Summerville Crescent, however the buildings are adequately set back in accordance with the provisions of the SCC.		
Stormwater Concerns			
An objector has raised concerns regarding the applicant not receiving consent from land owners within Horsley Avenue to provide a stormwater easement for the stormwater system	Council has input a deferred commencement condition to ensure the applicant can obtain an interallotment drainage easement through either Horsley Avenue or Summerville Crescent in order for the site to adequately dispose of stormwater – see <b>Deferred Commencement Condition 1</b>		

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4	26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.		
	Issues Raised	Officer's Comments	
	Visual and Acoustic Priva	су	

Concerns were raised by residents within Summerville Crescent with properties that adjoin the site. There are concerns regarding visual and acoustic privacy from Building C

Building C contains balconies adjacent to living areas. These balconies are set back 6.0m from the boundary adjoining the properties in Summerville Crescent in accordance with the SCC.

The balconies contain appropriate privacy screens to maintain privacy between Block C and the properties within Summerville Crescent. The façade to the primary living areas on the second floor is set back 8.3m, which is sufficient.

The bedrooms are set back 6.0m from the boundary. When considering these are not primary living areas, this is sufficient.

The development is comparable to a medium density development within an R3 zone. The required rear setback for an RFB that is three (3) storeys is 5.4m.

The third storey does not contain balconies facing properties in Summerville Crescent. The third storey is set back 7.27m from the boundary.

The existing ground level along the eastern boundary adjoining properties within Summerville Crescent range from RL 93.48 to RL 94.55. The proposed ground level of Building C starts RL 94.00 on the southern side and rises to RL 95.00 on the northern side. Therefore Block C will not be excessively high when viewed from the properties in Summerville Crescent.

Concerns were raised by residents within Horsley Avenue with properties that adjoin the site. There are concerns regarding visual and acoustic privacy from the RACF.

The RACF does not contain any balconies that face southwards towards the properties within Horsley Avenue.

The windows to the third floor facing south should be opaque.

The second storey is set back 7.6m from the boundary. The third storey is set back 11.0m from the boundary. These are considered sufficient setback distances to maintain privacy. This represents the two and three storey structure with progressive setbacks that the SCC intended.

As the third level is set back 11.0m from the boundary, it is not considered necessary to have the south facing windows to be frosted or opaque.

There are concerns the rooftop gardens within Building A and B shall cause an unreasonable impact on visual and acoustic privacy

Building A contains a communal rooftop garden. The rooftop planter is set back 33.95m to the eastern boundary adjoining properties in Summerville Crescent and 36.45m from the southern boundary adjoining properties in Horsley Avenue. These are substantial setback distances and addresses overlooking concerns. The trafficable rooftop garden is also set back appropriately with garden planters which will obstruct views of people on the rooftop.

A 1.8m privacy screen should surround the roof perimeter.

Building B contains a communal rooftop garden. The rooftop planter is set back 8.57m to the eastern boundary adjoining the property within Crabbes Avenue. This is adequately set back from the boundary. The trafficable rooftop garden is set back appropriate with garden planters which will obstruct views of people on the rooftop.

There should be no facilities such as food and drink services on the communal rooftops.

A 1.8m privacy screen around the entire roof perimeter will add unnecessary bulk and scale to the building and concluded to not be required for the above reasons.

The application does not propose food and drink services in rooftop communal gardens.

6 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.		
Issues Raised	Officer's Comments	
Visual and Acoustic Priva	cy (continued)	
There are concerns regarding acoustic impacts from the Club towards surrounding residents	Council has imposed conditions to ensure that activities and uses within the Club do not have an adverse acoustic impact to existing and future residents – see <b>Condition 31 and 169</b> .	
Concerns were raised regarding the balconies adjoining Unit B307 within Building B. The balcony has a trafficable balcony along the eastern side facing the neighbour at 18 Crabbes Avenue	The balcony to Unit B307 is considered excessive. A condition shall be imposed to have the balcony reduced – see <b>Condition 2</b> .	
Setbacks		
There should be a 8.0m setback on both eastern and southern boundaries. The proposed 6.0m is inconsistent with the SCC.	Control 1(e) of the SCC states the setbacks are to be in accordance with Figure 14 of the SCC application. This diagram is portrayed in <b>Attachment 3</b> of this report. It shows a 6.0m setback requirement to the eastern boundary. Therefore the proposal is consistent with the control as stated in the SCC.	
	The 6.0m setback to the eastern boundary is considered acceptable. The closest structure to the eastern boundary is Building B and C. These buildings are two and three storeys with progressive setbacks to the boundary. For medium density development within an R3 zone, these buildings would comply with the required 5.4m setback to the boundary stipulated in the WDCP.	
View Sharing		
The vistas to and from the Heritage Conservation Area are not adequately preserved	The vistas from the rear yards of properties within Summerville Crescent and Horsley Avenue contain views of the open sky and trees in the distance. They are not considered views of significance, particular to the heritage value of the conservation area. The buildings will be visible, but this does not mean that it is unreasonable.	
Solar Access		
Concerns were raised from residents within Crabbes Avenue, Horsley Avenue, Summerville Crescent and Penshurst Street regarding the potential impact on solar access for their properties.	Council has reviewed the Shadow Diagrams (prepared by Hyecorp, DA-SH-01 and DA-SH-02). Due to the orientation of the site, the properties within the surrounding street are not restricted to less than 3 hours of solar access to their primary living areas or private open spaces on June 22. This can be seen from the movement of the shadows cast from 9am through to 3pm in the Shadow Diagrams.	
Landscaping		
There must be no excavation within the tree root zones in neighbouring properties. The trees in the northeastern corner of the site should be maintained and protected	The north-eastern trees in concern are located along the north-eastern boundary and a large tree (T20) at the north-eastern corner of the site. These trees are indicated to be maintained. A condition has been imposed for a Project Arborist to oversee that construction does not adversely impact these trees.	

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.				
Issues Raised	Officer's Comments			
Landscaping (continued)				
Concerns were raised by various objectors regarding the amount of trees and landscape screening to be provided within the deep soil zones around the site to screen the development from neighbouring properties	The Landscape Masterplan and associated Landscape Plans (produced by Hyecorp) indicate that trees with a maturity height ranging from 9m to 15m in height with a considerable spread are to be planted within the deep soil zone that is around the site.  There are also substantial trees along the eastern boundary that are indicated to remain and shall be conditioned to be protected accordingly.			
The amount of landscaping calculation is inaccurately calculated and inadequate.	Clause 50 of the Seniors Housing SEPP recommends a minimum of 30% of the site to be landscaped. Council conducted its own calculation of landscaped area and found the amount to be 4488 square metres. As the RE2 and R2 lots combined is a site area of 13765 square metres, the proposed soft landscaped area represents 32% of the site.			
	<ul> <li>Council's calculation included the following:</li> <li>Deep soil zones around the perimeter of the site;</li> <li>The public park;</li> <li>The pathway and associated planting that navigates around the site. This area is considered acceptable landscape treatments</li> </ul>			
	<ul> <li>The calculation did not include the following:</li> <li>Rooftop areas;</li> <li>The pathway from Legions Way to Crabbes Avenue;</li> <li>Planter boxes above ground level.</li> </ul>			
	When considering the above, the amount of landscaping meets the Seniors Housing SEPP and is considered adequate.			
Impacts of Club				
The Club is not appropriately distanced from residential areas	The second and third storeys of the Club contain plant rooms and service rooms on the northern side that are 7.23m wide. This is considered adequate distance to alleviate acoustic impacts to the adjoining RFB.			
	A condition is also imposed for acoustic testing to be conducted from all levels of the Club, measured from Unit D201 and D209 within the RFB, Unit A302 within Building A, and at the boundary shared with 221A Penshurst Street, prior to any Occupation Certificate issued for the each respective Seniors Living Building and the RFB.			
	There are further design amendments to be conditioned to ensure there is adequate distance between Building A and the Club.			
	There are conditions for the glazing to the front and the rear of the site to be treated so that an individual cannot see inside the Club from an external area such as Penshurst Street or the Seniors Living buildings.			
There is unrestricted access from the rear of the Club to the communal open spaces	The Access Control Sheets (DA-ACP1 and DA-ACP2) indicate controlled access points. It appears as though the communal open spaces located adjacent to Building B and C are accessible to the public through the staircase to the path that leads to these buildings. A condition shall be imposed for public access to be restricted to these communal open spaces – <b>Condition 145</b>			

	247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.			
Issues Raised	Officer's Comments			
Construction Concerns				
There must be no basement or parking beneath the 8.0m setback to the HCA, the new park, communal open space and Crabbes Avenue frontage, to allow for deep soil planting	The basement levels comply with the setback requirements stipulated within the SCC, with the exception of minor non-compliances on the southern side and the OSD tank. These exceptions are minor and do not have an adverse impact.  The proposal provides deep soil planting around the site to provide adequate tree planting for screening and amenity.  The park contains deep soil planting in order to facilitate the growth of large trees.			
Objectors raised concerns regarding damage from excavation to their properties and request a dilapidation report	When considering the extent of excavation, construction work, and a construction time frame stated as five (5) years within the Statement of Environmental Effects, a condition has been imposed for a dilapidation report for properties within Summerville Crescent and Horsley Avenue. There shall be a requirement for a pre-construction dilapidation report and a post construction dilapidation report – Condition 38 and 78			
Site Isolation				
The owners of 259 Penshurst Street (Armenian Club) have	The planning principle which the Court has adopted in relation to site isolation is <i>Karavellas v Sutherland Shire Council</i> [2004] NSWLEC 251.			
lodged a submission objecting to the proposed	The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:			
development as it leads to site isolation for their lot	Firstly, is amalgamation of the sites feasible?			
	Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?			
	The applicant has provided a Site Isolation report which provides details of the history of negotiations between the applicant and owners of 259 Penshurst Street. It also provides detailed concepts for what could potentially be developed on the objector's site if it were not to be incorporated with the proposed development.			
	Is Amalgamation of the Sites Feasible?			
	For this development application, the inclusion of 259 Penshurst Street is not feasible as negotiations between the parties failed as detailed in the Site Isolation Report. A detailed analysis of the submissions shows that the applicant made reasonable attempts to purchase the property with reasonable offers in accordance with property valuations conducted by the applicant.			
	Can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?			
	The Site Isolation Report provides the following options available:			
	<ol> <li>Redevelopment of the existing Club;</li> <li>A mixture of neighbourhood shops, community facilities and/or childcare centre;</li> <li>A Residential Flat Building and/or neighbourhood shops.</li> </ol>			
	The concept schemes in the report show that the above listed development is possible when considering the context of the site and			

26 Crabbes Avenue & 243,	247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.		
	the development potential of each scheme.		
	Conditions to Ensure Feasible Development of 259 Penshurst Street		
	The Site Isolation Report shows that the site does have adequate space to allow adequate floor space for development that is reasonable, however Council has imposed conditions for an easement for access benefitting 259 Penshurst Street. A further condition is imposed for a break through panel in Basement Level 1 to allow vehicle access to the site. This ensures that adequate car spaces is provided to the site for future development and the location of the existing driveway to 259 Penshurst Street (which is not located in an appropriate location) can be removed. – <b>See Condition 6 and 79</b>		
Issues Raised	Officer's Comments		
Accessibility			
There is no pedestrian access to Block C	Floor Plan 3 and 4 shows there are stairs and lift access to Blocks B and C.		
The development should not provide pedestrian access from Legions Way as it impacts privacy for residents within Penshurst Street and Horsley Avenue	Refer to Attachment 13		
Site Contamination			
There is uncertainty regarding the extent of site contamination and this should be determined in depth to ensure the safety of lives	In accordance with Clause 7 of SEPP 55, the Council has determined that the land is required to be remediated in accordance with the Stage 1 and 2 Contamination Reports provided by the applicant.  Council's Health Officer has reviewed the Contamination Reports and concludes the findings are acceptable. Conditions have been imposed for a Remediation Action Plan (RAP) to be carried out in accordance with the guidelines of the Environment Protection Authority (EPA) and the Stage 1 and 2 Reports (see Condition 32)		

## **ATTACHMENT 15: SECTION 4.15 ASSESSMENT**

# Matters for Consideration under S.4.15 (79C) *EP&A Act*Considered and Satisfactory ✓ Considered and Unsatisfactory × and Not Relevant N/A

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	State Environmental Planning Policies (SEPP)	✓
	Regional Environmental Plans (REP)	✓
	Local Environmental Plans (LEP)	<b>√</b>
	State Environmental Planning Policy – Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	
	The SREP applies to the entire Willoughby Local Government Area identified on the Sydney Harbour Catchment Map. There are no specific provisions in the SREP, which is a deemed SEPP that are considered to be determinative to the subject development.	
	State Environmental Planning Policy – (Building Sustainability Index: BASIX) 2004	
	A BASIX Certificate pursuant to the provisions of the <i>State Environmental Planning Policy</i> – (Building Sustainability Index: BASIX) 2004 has been submitted in accordance with the SEPP and considered satisfactory.	
	State Environmental Planning Policy No 55 – Remediation of Land	
	In accordance with Clause 7 of SEPP 55, the Council has determined that the land is required to be remediated in accordance with the Stage 1 and 2 Contamination Reports provided by the applicant.	
	Council's Health Officer has reviewed the Contamination Reports and concludes the findings are acceptable. Conditions have been imposed for a Remediation Action Plan (RAP) to be carried out in accordance with the guidelines of the Environment Protection Authority (EPA) and the Stage 1 and 2 Reports (see Condition 32)	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
( )( )	Draft State Environmental Planning Policies (SEPP)	N/A
	Draft Regional Environmental Plans (REP)	N/A
	Draft Local Environmental Plans (LEP)	N/A
	<b>Comment:</b> There are no draft SEPPs or any items under Draft WLEP 2012 (housekeeping amendments) that apply to the subject land.	
(a)(iii)	Any development control plans	
	Development control plans (DCPs)	✓
	Willoughby Development Control Plan (WDCP)	
	The proposed development has been assessed against the relevant requirements of the <i>WDCP</i> and is considered satisfactory.	
(a)(iv)	Any matters prescribed by the regulations	
	Clause 92 EP&A Regulation-Demolition	N/A
	Clause 93 EP&A Regulation-Fire Safety Considerations	N/A
	Clause 94 EP&A Regulation-Fire Upgrade of Existing Buildings	N/A
	Comment: There are no prescribed matters that affect the application.	
(b)	The likely impacts of the development	

## **SNPP REPORT**

26 Cra	bbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.	
	Context & setting	✓
	Access, transport & traffic, parking	✓
	Servicing, loading/unloading	✓
	Public domain	✓
	Utilities	✓
	Heritage	N/A
	Privacy	✓
	Views	✓
	Solar Access	✓
	Water and draining	✓
	Soils	✓
	Air & microclimate	✓
	Flora & fauna	✓
	Waste	✓
	Energy	✓
	Noise & vibration	✓
	Natural hazards	N/A
	Safety, security crime prevention	✓
	Social impact in the locality	✓
	Economic impact in the locality	✓
	Site design and internal design	✓
	Construction	✓
	Cumulative impacts	✓
	Comment: The proposed development, with conditions included to mitigate	
	any potential impacts, is not considered to have any unreasonable impacts	
	on the residential amenity of surrounding residents	
(c)	The suitability of the site for the development	
	Does the proposal fit in the locality?	✓
	<ul> <li>Are the site attributes conducive to this development?</li> </ul>	✓
	<b>Comment:</b> The proposal is in keeping with the surrounding locality of the area	
(d)	Any submissions made in accordance with this Act or the regulations	
	Public submissions	✓
	Submissions from public authorities	✓
	Comment:	
	One hundred and seven (107) submissions were received and the issues raised are addressed in <b>Attachment 14</b> of this report.	
(e)	The public interest	1
	<ul> <li>Federal, State and Local Government interests and Community interests</li> </ul>	<b>✓</b>
	<b>Comment:</b> The proposed development is considered to have acceptable impacts and therefore it is in the public interest.	

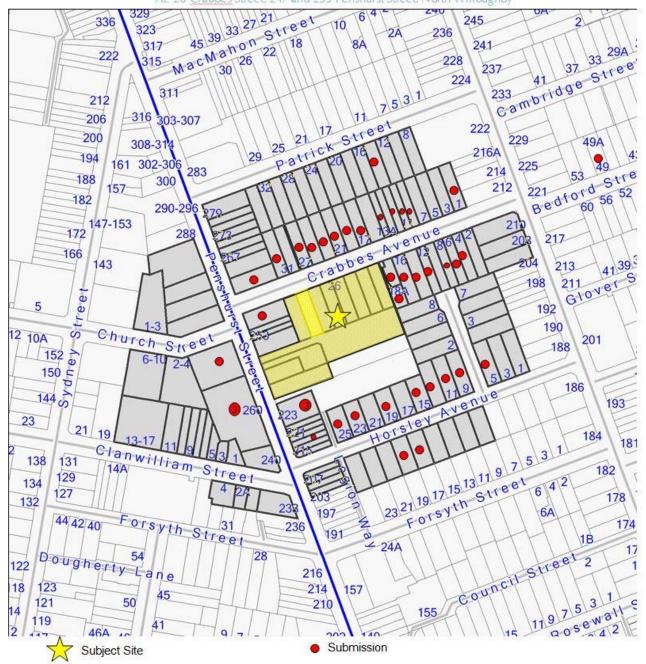
## **ATTACHMENT 16: NOTIFICATION MAP**



## Record of Neighbour Notifications sent relating to:

DA: DA-2019/247

At: 26 Crabbes Street, 247 and 255 Penshurst Street. North Willoughby



#### **ATTACHMENT 17: SCHEDULE OF CONDITIONS**

## **SCHEDULE 1**

#### **DEFERRED COMMENCEMENT**

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

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

## 1. Acquisition of Interallotment Drainage Easement

Submit documentary evidence by way of title documents and the associated instruments demonstrating that the subject property benefits from an interallotment drainage easement over the downstream property(s) to Horsley Avenue or Summerville Crescent. The size of the easement is to be in accordance with the widths detailed in Technical Standard 1 or as required to allow construction of the pipe, but shall not be less than 2.5m unless otherwise agreed by Council.

(Reason: Legal requirement)

## 2. Design of Interallotment Drainage Easement

Submit full hydraulic design documentation for the required interallotment drainage system from the subject property to the approved point of discharge to the public drainage system by gravity in Horsley Avenue or Summeville Crescent. Plans are to be prepared by a suitably qualified and experienced consulting civil engineer in accordance with the Willoughby DCP, Council's Technical Standard 1 and AS/NZS 3500.3. The new drainage pipe within the downstream easement drainage system shall be sized to have adequate capacity to carry uncontrolled runoff (1% AEP) from the subject property. The following engineering details must be included:

- Plan view of interallotment system to scale showing dimensions, location and reduced levels of all pits, grates, pipe inverts, flushing facilities and exact point of discharge,
- ii. The contributing catchment calculations and supporting pipe sizing information,
- iii. Longitudinal section showing existing ground levels and proposed pipe invert levels, grades and flow capacities,
- iv. Surrounding survey detail including buildings within 10m and all trees within seven(7) metres of the proposed interallotment drainage system,
- v. The proposed interallotment drainage pipeline shall be designed so that it has adequate capacity to carry uncontrolled runoff (up to 1% AEP) from each proposed allotment.

(Reason: Prevent nuisance flooding)

## **SCHEDULE 2**

**Conditions of Consent:** (Including reasons for such conditions)

## **CONSENT IDENTIFICATION**

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

## 1. Approved Plan/Details

The development must be in accordance with the following consent plans electronically stamped by Council:

Туре	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Architectural	DA 2.01	С	06/08/2020	Hyecorp Property Group
Drawings	DA 2.02	С	06/08/2020	
	DA 2.03	С	06/08/2020	
	DA 2.04	С	06/08/2020	
	DA 2.05	С	06/08/2020	
	DA 2.06	В	06/08/2020	
	DA 2.07	В	06/08/2020	
	DA 2.08	В	06/08/2020	
	DA 2.09	В	06/08/2020	
	DA 3.01	Α	14/06/2019	
	DA 3.02	В	06/08/2020	
	DA 3.03	Α	14/06/2019	
	DA 3.04	В	06/08/2020	
	DA 3.05	С	06/08/2020	
	DA 3.06	Α	14/06/2019	
	DA 4.01	В	06/08/2020	
	DA 4.02	С	06/08/2020	
	DA 4.03	В	06/08/2020	
	DA 4.04	В	06/08/2020	
Landscape Master Plan	C100	D	07/10/2020	Site Image (NSW) Pty Ltd
Landscape	100	All plans are	All plans are	Site Image (NSW) Pty Ltd
Plans	101	Issue D	dated 07/10/2020	
	102		07/10/2020	
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	104			
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26 Crabbes Avenue & 243 247	- 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.

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	501			
	502			
	503			
Stormwater Plans	19013-DA-C01	G	06/10/2020	IDC
	19013-DA-C02	Н	06/10/2020	IDC
	19013-DA-C04	I	06/10/2020	IDC
	19013-DA-C05	E	06/10/2020	IDC

the application form and any other supporting documentation submitted as part of the application, except for:

- (a) any modifications which are "Exempt Development" as defined under S.4.1(1) of the *Environmental Planning and Assessment Act 1979*;
- (b) otherwise provided by the conditions of this consent. (Reason: Information and ensure compliance)

#### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

## 2. Amendments to Development

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

- (a) The glazing to the western side of the Gaming Room and Multi-Purpose/Commercial Room shall be treated either with tinting or frosted glass so that one cannot view within the Club from Penshurst Street. A Schedule of Finishes is to be provided to the Principal Certifying Authority indicating these changes;
- (b) The glazing to the eastern side of the Multi-Purpose/Commercial Room shall be treated either with tinting or frosted glass so that one cannot view within the Club from Building A and the Residential Aged Care Facility. A Schedule of Finishes is to be provided to the Principal Certifying Authority indicating these changes;
- (c) The balcony to Apartment B307 within Building B shall be modified as follows:
  - i. The portion of the balcony eastwards of the eastern façade of the apartment is to be deleted i.e. the balcony should not extend beyond the eastern façade of the apartment.

(d) A suitable gate is to be provided at the entrance from Legions Way to obstruct pedestrian access yet allow the entrance for emergency vehicles.

Plans detailing these amendments are required to be shown on the relevant Construction Certificate plans.

(Reason: To maintain amenity)

#### 3. S7.11 Contribution

Prior to the issue of any Construction Certificate, a monetary contribution is to be paid to in accordance with section 7.11 of *Environmental Planning and Assessment Act*, 1979 in the amount of \$1,510,473.32 for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

S7.11 Contributions Calculation			
Dwellings / Residents Proposed (\$ rate / dwelling)	QTY	Contributions (\$)	
bedsit / studio or 1-bed dwelling (\$11,045.36)	6	\$ 66,272.16	
2-bed dwelling (\$15,544.09)	12	\$ 186,529.08	
3 or more-bed dwelling (\$20,000)	6	\$ 120,000	
Senior Living Self-contained dwelling (\$11,045.36)	103	\$ 1,137,672.08	
S7.11 yielding amount based on above statistics:	Total	\$ 1,510,473.32	
<b>Proposed structures not inclusive in s7.11 calculation</b> (ref. section 2.8.1 of <i>WLIC Plan</i> )			
construction of a 3-storey registered club  Not inclusive in s7.11 calculate		e in s7.11 calculation	
seniors living residential aged care facility containing 49 beds	Not inclusive in s7.11 calculation		

It should be noted that s7.11 contribution credits for demolishing existing structures are not given as the registered club is being replaced by the construction of a new club which is not to be inclusive for the purpose of calculating s7.11 contributions as demonstrated above.

## **Indexation**

The monetary contribution must be indexed between the date of this Development Consent and the date of payment in accordance with the following formula:

Where:

 $C_0$  = the contribution amount shown in this Development Consent expressed in dollars

- CPI<sub>P</sub> = the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics (ABS) at the quarter immediately prior to the date of payment
- CPI<sub>C</sub> = the Consumer Price Index (All Groups Index) for Sydney as published by the ABS at the quarter ending immediately prior to the date of imposition of the condition requiring payment of a contribution

Deferred payments of contributions will not be accepted.

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

Copies of the Willoughby Local Infrastructure Contributions Plan are available for inspection online at www.willoughby.nsw.gov.au

(Reason: Statutory requirement)

## 4. Services - Energy Australia

The applicant should consult with Energy Australia to determine the need and location of any electrical enclosure for the development. Should such an electrical enclosure be required, the location and dimensions of the structure are to be detailed on all the plans issued with any relevant Construction Certificate. In the event of Energy Australia requiring such a structure e.g. a substation, the applicant is required to dedicate the land for the substation as public roadway. The Plan of Dedication shall be lodged to Council prior to issue of any relevant Construction Certificate and registered at the Department of Lands prior to issue of any relevant Occupation Certificate.

(Reason: Compliance)

### 5. External Finishes – Solar Absorptance

The external roofing, glazing and walls of each building are to be of minimal reflectance so as to avoid nuisance in the form of glare or reflections to the occupants of nearby buildings, pedestrians and/or motorists. Details demonstrating compliance are to be submitted with any relevant Construction Certificate application.

(Reason: Visual amenity)

### 6. Break Through Panel

- (a) Prior to the issue of any relevant Construction Certificate, provision shall be made for connection into the adjoining property at 259 Penshurst Street being Lot 1 Section C DP 6291 to allow for possible future access between the two sites. The break through panel is to be provided to the north-western corner of Basement Level 1 at a width of 7.0m;
- (b) The break through panel must be shown on the construction drawings and related by accurate dimensions to the building grids. The building grids must be accurately dimensioned in two directions to at least two boundary corners of the site. The upper and lower limits of the break through panel must be clearly annotated on the construction drawings with levels related to Australian Height Datum (AHD), and a benchmark with an AHD value shown on the plan:
- (c) Building services are not to be located in the location of the break through panel;
- (d) The dimensions and location of the break through panel shall be submitted and approved by Council prior to the issue of any relevant Construction Certificate.

(Reason: Ensure compliance)

### 7. Sydney Water 'Tap In'

Prior to the issue of any relevant 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 relevant Construction Certificate.

(Reason: Ensure compliance)

## 8. Damage Deposit

Prior to the issue of the any Construction Certificate, the applicant shall lodge a Damage Deposit of \$250,000 (GST Exempt) to Council against possible damage to Council's assets and any infrastructure within the road reserve/footway 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 \$173 (GST Exempt) is payable to Council. Any damages identified by Council shall be restored by the applicant prior to release of the Damage Deposit.

Total Payable = \$250,000 + \$173 = \$250,173

(Reason: Protection of public asset)

## 9. Temporary Ground Anchors

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

(Reason: Encroachment of works)

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

Stormwater runoff from the site shall be collected and conveyed to the underground drainage system at the corner of Horsley Avenue and High Street via a suitably sized reinforced concrete pipe (RCP) in accordance with Council's specification. A grated drainage pit (min. 600mm x 600mm) shall be provided within the property and adjacent to the boundary prior to discharging to the Council's drainage system. In this regard, full design and construction details showing the method of disposal of surface and roof water from the site are to be submitted to Council for approval prior to the issue of any Construction Certificate.

(Reason: Prevent nuisance flooding)

## 11. Analysis of Outlet Condition

The capacity of the existing Council stormwater drainage system at the proposed connection of the outlet shall be hydraulically evaluated using the Hydraulic Grade Line method to ensure that no stormwater will be able to surcharge from Council's system to the proposed drainage system and that the outlet from the OSD tank is above the 1%AEP flood level. Full engineering details of the hydraulic evaluations prepared and signed by a practising Civil Engineer shall be submitted to Council for consideration prior to the issue of any Construction Certificate.

(Reason: Prevent property damage)

### 12. Detailed Stormwater Management Plan (SWMP)

Prior to the issue any Construction Certificate, submit to the Certifying Authority for approval, detailed stormwater management plans in relation to the on-site stormwater management and disposal system for the development. The plans shall include an OSD system, with a minimum storage volume of 500m³, and a water quality improvement system that meets the parameters detailed in Part C.5 of the Willoughby DCP and Technical Standard 1. The water quality improvement measures shall include but not be limited to:

- A bio-retention basin with an area of 225m<sup>2</sup> and a water ponding depth of 300mm. Should trees be planted in the basin, the area of the basin is to be increased by 10%.
- Enviropod pit inserts, or similar, in all grated inlet pits
- A 10kL rainwater tank, plumbed to non potable uses including flushing of toilets to a minimum of 25 apartments and landscape irrigation. A minimum roof area of 1,000m<sup>2</sup> shall drain to the tank.
- A device that target removal of oils for runoff from internal roadways and parking areas.

The construction drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and be in accordance with the IDC stormwater management plans 19013-DA C01/G, C02/H, C04/I, C05/E. 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.

A suitably qualified civil engineer, typically CPEng, shall certify that:

- The stormwater plans have been co-ordinated with the architectural, landscape and structural plans
- The OSD system complies with the requirements of Part C.5 of the Willoughby DCP and Technical Standard 1.
- The water quality improvement system complies with the requirements of Part C.5 of the Willoughby DCP and Technical Standard 1 and the required treatment rates are achieved.
- The overall stormwater system complies with AS/NZS 3500.3 (Reason: Ensure compliance)

#### 13. Basement Pumpout Drainage System

Prior to the issue of any Construction Certificate, the applicant shall submit, for approval by the Certifying Authority, detailed stormwater management plans in relation to the pump-out drainage system. The construction drawings and specifications, shall be generally in accordance with the approved stormwater management plans with the following requirements:

- (a) The pumpout drainage system shall comprise with two (2) submersible type pumps. The two pumps shall be designed to work on an alternative basis to ensure both pumps receive equal use and neither remains continuously idle.
- (b) Each pump shall have a minimum capacity of 10L/s or shall be based on the flow rate generated from the 1 in 100 year ARI 5-minutes duration storm event of the area draining into the system, whichever is greater.
- (c) An alarm warning device (including signage and flashing strobe light) shall be provided for the pump-out system to advise the occupant of pump failure. The location of the signage and flashing strobe light shall be shown on the stormwater management plans.
- (d) The volume of the pump-out tank shall be designed with a minimum storage capacity as required by AS/NZS 3500.3.

All drawings shall be prepared by a suitably qualified and experienced civil engineer and shall comply with Part C.5 of Council's Development Control Plan, AS3500.3 – *Plumbing and Drainage Code* and the National Construction Code. (Reason: Prevent nuisance flooding)

## 14. Construction Management Plan (CMP)

Prior to the issue of any relevant 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
- (f) Tree protection management measures for all protected and retained trees. (Reason: Compliance)

## 15. Road Pavement – Engineering Details

The applicant shall submit, for approval by Council as the road authority, prior to issue of any Construction Certificate, full engineering design plans and specifications prepared by a suitably qualified and experienced civil engineer for the reconstruction of half of the road pavement and any associated works fronting the subject site in Crabbes Avenue.

The required plans must be designed in accordance with Council's Specifications (AUS-SPEC). 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. (Reason: Protection of public asset)

## 16. Design of Works in Public Road (Roads Act Approval)

Prior to issue of any Construction Certificate, the applicant must submit, for approval by Council as a road authority, full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following infrastructure works:

- (a) Construction of 1.5 metres wide concrete footpath (max. 2.5% crossfall) for the full frontage of the development site in Crabbes Avenue in accordance with Council's specification and Standard Drawings SD105 and SD100. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- (b) Construction of a full width paver with asphalt infill footpath (max. 2.5% crossfall) for the full frontage of the development site in Penshurst Street in accordance with Council's specification and Standard Drawings SD112 and SD100, or other details as advised by Council. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long

# 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. section and cross sections at 5 metres interval shall be provided

- (c) Reconstruction of existing kerb and gutter for the full frontage of the development site in Crabbes Avenue and Penshurst Street in accordance with Council's specifications and Standard Drawing SD105.
- (d) Reconstruction of half road pavement for the full frontage of the development site in Crabbes Avenue.
- (e) Construction of two vehicle crossings in Crabbes Avenue in accordance with Council's specification and Standard Drawings SD105
- (f) Construction of a new stormwater system in Horsley Avenue, to connect the stormwater drainage system from the site to the existing Council system at the corner of Horsley Avenue and High Street. The new pipe shall be a minimum 450mm diameter reinforced concrete pipe with a minimum grade of 1%. Kerb inlet pits with 3.0m lintels shall be provided at intervals not exceeding 40m and at any change of direction. If the easement from the site results in drainage to Summerville Crescent, then the system shall extend from Summerville Street to the corner of Horsley Avenue and High Street.
- (g) Replacement of kerb and gutter and pavement associated with the construction of the new stormwater system in Horsley Avenue and Summerville Crescent.

The required plans must be designed in accordance with Council's specifications (AUS-SPEC). Longitudinal and cross-sections (at 5m intervals) shall be provided for all pavement works (road and footpath) and stormwater pipes. The location of existing services shall be shown on the stormwater cross-sections. Any doorway locations adjacent to the boundary shall be detailed on the plans and internal floor levels shown, to ensure that proposed public domain levels provide the required access into the site and building. A minimum of three (3) weeks will be required for Council to assess the Roads Act submissions. Early submission is recommended to avoid delays in obtaining any 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)

## 17. Driveway Longsection

Prior to issue of any Construction Certificate and in order to assess the susceptibility of vehicles to scraping as they pass over the proposed access driveway the applicant shall submit longitudinal sections for approval by the certifying authority along <u>each side</u> of the proposed vehicular access paths drawn at 1:20 Scale. The longitudinal sections shall include the following: -

(a) Horizontal distance from the centreline of the road to the proposed parking slab, including provision of Council's standard layback as per Council's standard drawing SD105 which is available from Council's website. Council's standard layback is 500mm wide and back of layback is 100mm above the gutter invert.

- (b) Both existing and proposed levels (in AHD) and gradients represented in percentage(%) of the vehicular crossing and driveway.
- (c) Crossfall on road pavement shall be shown on long sections.

The design shall be prepared by a suitably qualified civil engineer using Council's standard vehicle profile (SD100). All driveway grades and transitions shall comply with AS 2890.1 -2004 and Council's specifications.

The eastern crossing is to be 6.2m wide and the western crossing is to be 6.0m wide, with 1.6m separation between the two crossings. Both crossings are to have no splays and be constructed at right angle to street kerb. The footpath which forms part of the proposed crossing shall have a maximum crossfall of 2.5%. For the design levels of the vehicular crossing at the property boundary, the following shall be complied with, unless written approval is gained from Council for alternate levels:

- (a) At back of layback 100 mm above and parallel to the gutter invert.
- (b) At property boundary 150mm above and parallel to the gutter invert.

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

(Reason: Safe vehicular access)

## 18. OSD/Rainwater Tank Design

The design of all rainwater/OSD tanks shall comply with the requirements of the NSW Work Health and Safety Regulation 2017, to minimise risks associated with confined spaces. The design shall also consider "Safety in Design" requirements. Prior to issue of any Construction Certificate, a suitably qualified person shall certify that the design meets these requirements.

(Reason: Safe access to tanks)

## 19. Vehicle Access and Manoeuvring – Engineer's Certification

Prior to the issue of any Construction Certificate, the Applicant shall submit, for approval by the Principal Certifying Authority, certification from a suitably qualified and experienced Traffic Engineer relating to the design of vehicular access and manoeuvring for the development. This certification must be based on the architectural drawings and the structural drawings, and must make specific reference to the following:

- (a) That finished driveway gradients and transitions comply with AS 2890.1 and 2890.2 and will not result in scraping to the underside of cars.
- (b) That a maximum gradient of <u>5%</u> is provided for the first 6 metres from the property's front boundary into the site. All driveway grades shall comply AS2890.1, AS2890.2 and AS2890.6.
- (c) That the proposed vehicular path and parking arrangements comply in full with AS2890.1, AS2890.2 and AS2890.6 in terms of minimum dimensions provided.
- (d) That the headroom clearance of minimum 2.2 metres between the basement floor and any overhead obstruction (including overhead services) is provided for compliance with Section 5.3.1 of AS2890.1 and Section 2.4 of AS2890.6.
- (e) That the headroom clearance of minimum 2.5 metres is provided to all parking spaces for people with disabilities for compliance with Section

## 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. 2.4 of AS2890.6.

- (f) That the headroom clearance of minimum 3.5meters is provided from the access and egress of the site to the ambulance bay and the loading bay for the SRV at Level 2 in accordance with AS2890.2..
- (g) That the headroom clearance required in AS2890.2 for the largest vehicle using the site has been provided for the loading area and the path to and from the loading area.
- (h) Minimum dimensions of 2.4m x 5.4m shared area is provided adjacent to all disabled parking spaces to comply with AS2890.6. Bollards shall be provided at the location on each shared area specified in AS2890.6 which shall be clearly labelled and shown on plans.
- (i) Simultaneous manoeuvring of B99 and B85 vehicles at all ramps and ramp ends including the clearance lines for each vehicle, in accordance with AS2890.1, is complied with.
- (i) Simultaneous manoeuvrability of the largest vehicle using the site and a passenger vehicle including clearance in accordance with AS2890.1 and AS2890.2, is provided.
- (k) That access to visitor parking spaces, club allocated parking spaces and the drop off area is not restricted by boomgates or doors.

(Reason: Ensure compliance)

#### 20. Co-ordinated Plans

Prior to the issue of any Construction Certificate, a set of co-ordinated architectural, landscape and civil drawings shall be submitted to the certifying authority for approval. The architectural plans shall show the following items:

- The outline of the OSD tank and all access grates into the tank
- The location of the bio-retention basin and all grates and pits associated with the basin
- The location of the rainwater tank

The bio-retention basin, access grates to the OSD tank and rainwater tank are to be located in common areas.

(Reason: Ensure stormwater management measures comply)

## 21. Finished Surface Levels Along the Street Boundary

Prior to the issue of any Construction Certificate, finished surface levels for all internal and external works along the street boundary, including finished floor levels, driveway levels, paving levels and landscape levels, shall be detailed on construction drawings. The development's internal surface levels must be consistent with the public domain civil works plans approved by Council under the Roads Act (1993). Any changes required to finished floor levels approved under this development consent may require an application under S4.55 of the EP&A Act.

(Reason: Ensure internal levels complement street levels)

## 22. On Slab Landscape Planting and Associated Works

- a) Details shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided;
- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule;

- c) The following soil depths are required in order to be counted as landscaping:
  - a) 300mm for lawn;
  - b) 600mm for shrubs;
  - c) 1metre for trees.

(Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas and that adequate soil volume is provided for planting.)

## 23. Internal Noise Levels for Independent Living Residential Aged Care

To minimise noise intrusion into residential units and the aged care facility from any external noise source, the development shall be designed and constructed to comply with the following noise criteria with windows and doors closed:

Internal Space	Time Period	Criteria
		L <sub>Aeq (period)</sub>
Sleeping Areas	Night (10pm – 7am)	35 dB(A)
Other	Any time	40 dB(A)

#### Note:

- 1. The above "other" criterion does not apply to garages, kitchens, bathrooms or hallways.
- 2. The above criteria define the minimum acceptable levels. Buildings may be built to a better than average standard by applying more stringent criteria.
- 3. If internal noise levels with windows or doors open exceed the criteria by more than 10dB(A), the design of the ventilation for these rooms should be such that occupants can leave windows closed, if they so desire, and also to meet the fresh air ventilation requirements of the *National Code of Construction (NCC)*.

Certification from an appropriately qualified acoustic consultant that the building has been designed to meet these criteria shall be submitted to the Certifying Authority prior to issue of any relevant Construction Certificate for the residential units, seniors living units and the residential aged care facility.

(Reason: Amenity, environmental compliance and health)

## 24. Noise from Transport Corridor

To minimise the impact of noise from any external noise source on the amenity of the occupants, the buildings shall be constructed in accordance with the recommendations and specifications contained in Section 7.0 of the acoustic report by PKA Acoustic Consulting, Ref. No. 11532, dated 2 July 2019.

Details of the proposed acoustic treatment shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate. (Reason: Amenity, environmental compliance and health)

## 25. Building Ventilation

To ensure that adequate provision is made for ventilation of the buildings, mechanical and/or natural ventilation shall be provided. Particular attention shall be paid to any food preparation areas that require mechanical exhaust to serve cooking appliances, and any residential units that require a supply of fresh air to meet the internal noise

level criteria with windows closed. Ventilation 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 any Construction Certificate.

(Reason: Health and compliance)

#### 26. Mechanical Ventilation – Food Premises

Emission control equipment shall be provided in the mechanical exhaust system serving cooking appliances at the food premises to effectively minimise the emission of odours, vapours and oils. Solid fuel cooking equipment must have a separate exhaust ventilation system/s. Exhaust hoods must be of stainless steel construction with an internal 50mm x 50mm gutter, an unscrewable drainage plug at one corner and have removable grease filters for effective cleaning.

Prior to the issue of any relevant Construction Certificate, detailed design plans, to scale, and specifications and operational information of the proposed emission control equipment shall be submitted to the certifying authority demonstrating that the ventilation system has been installed and is operating in accordance with the following Australian Standard/New Zealand Standards:

- (a) AS/NZS 1668.1:1998 The use of ventilation and air conditioning in buildings Fire and smoke control in multi-compartment buildings;
- (b) AS/NZS 1668.2:2002 The use of ventilation and air conditioning in buildings ventilation design for indoor air contaminant control; and
- (c) AS/NZS 2918:2001 Domestic solid fuel burning appliances Installation.

(Reason: Amenity, environmental compliance and health)

#### 27. 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 AS2107-2016 — 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)

#### 28. Construction and Fitout of Food Premises

All works associated with the construction and fit out of food premises shall comply with the:

- (a) Australian Standard AS 4674:2004 Design, Construction and Fitout of Food Premises;
- (b) Food Standards Code (Australia) and Food Safety Standard 3.2.3 Food Premises and Equipment;
- (c) Food Act 2003 and Food Regulation 2015;
- (d) National Construction Code Building Code of Australia and any relevant Australian Standards;
- (e) Plumbing Code of Australia and Australian Standard/New Zealand Standard AS/NZS 3500 series on Plumbing and Drainage; and
- (f) Sydney Water commercial trade wastewater requirements for food premises and the most recent editions of any relevant *Water Services Association of Australia* codes of practice, guidelines, policies and requirements.

Detailed design plans of all areas relating to food premises operations, including sectional elevations, drawn to scale, and specifications of the equipment, finishes and operations, shall be submitted to the Certifying Authority for approval, prior to a Construction Certificate being issued for the relevant premises containing a food premises.

#### Note:

- (i) A "Food Premises Design, Construction and Fit-out Guide" (based on compliance with the above standards) is available on Council website;
- (ii) Copies of AS 4674-2004 may be obtained from SAI Global by visiting www.saiglobal.com; and
- (iii) Copies of the Food Standards Code (Australia) may be obtained from Food Standards Australia New Zealand by visiting www.foodstandards.gov.au.

(Reason: Public health, safety and compliance)

#### 29. Noise Mechanical Services

To minimise the impact of noise onto receivers on surrounding land, all mechanical services shall be designed to ensure "offensive noise", as defined under the provisions of the *Protection of the Environment Operations Act 1997*, is not emitted from the development. Details of the proposed equipment, siting, appropriate noise criteria and any attenuation required shall be prepared by an appropriately qualified acoustic consultant and accompany the application for a Construction Certificate.

(Reason: Amenity, environmental compliance and health)

#### 30. Dewatering of Construction Site

To ensure any water discharged into Councils stormwater system from the excavated portions of the site complies with relevant environmental criteria, appropriate pollution control methods shall be adopted. The following details shall be submitted to the Certifying Authority prior to the issue of any Construction Certificate:

- (a) Details of proposed pollution control methods
- (b) Certification from an appropriately qualified person verifying the adequacy of the proposed pollution control methods to ensure discharged water complies

water/sediment quality guideline values contained within the current Australia & New Zealand Guidelines for Fresh & Marine Water Quality.

(Reason: Pollution control and Environmental Health)

#### 31. Acoustic Assessment - Detailed Design Stage

An acoustic assessment by an appropriately qualified acoustic consultant shall be carried out to assess the impact of noise from the following sources:

- (a) the proposed club;
- (b) mechanical services including, but not limited to, ventilation equipment, swimming pool equipment, lift machinery and roller shutter doors; and
- (c) construction noise and vibration,

on receivers occupying the surrounding area, residential units, independent living units and the residential aged care facility, where applicable. Details of the identified receivers, appropriate noise criteria, proposed equipment, siting, any attenuation required and operation recommendations shall be compiled in an additional acoustic report and be submitted with an application for a Construction Certificate for the development.

(Reason: Amenity, environmental compliance and health)

#### 32. Contaminated Land – Remediation and Validation

Prior to the lodgement of any application for a Construction Certificate:

- (a) The site must be remediated in accordance with the approved Remedial Action Plan (RAP) prepared by Construction Sciences Pty Ltd, Ref. No. 5046190085, dated 29/11/2019, and the following:
  - i. Environment Protection Authority (EPA) 'Consultants reporting on contaminated land Contaminated land guidelines' (2020), and
  - ii. State Environmental Planning Policy No 55 Remediation of Land
  - iii. Managing Land Contamination Planning Guidelines SEPP55 Remediation of Land (1998)

Any necessary variations to the RAP must obtain the concurrence of Council prior to the commencement of any further work.

- (b) Council shall be notified 30 days before any category 2 remediation work under SEPP 55 commences. This notification shall provide Council with the information needed to verify that the work is not category 1 by reference to the criteria in clause 14 and 15 of SEPP 55, and contain the minimum detail in accordance with clause 16 of SEPP 55.
- (c) A Stage 4 Validation Report, clearly stating that the objectives stated in the approved RAP have been achieved and the land is suitable for the continued use, must be submitted to, and approved by Council in writing, together with notice of completion of remediation pursuant to clause 18 of SEPP 55.
- (d) The Validation Report and notice of completion of remediation must be submitted to Council prior to any excavation, demolition, or other building works, undertaken that are not associated with the remediation.

(Reason: Environmental compliance, public health)

#### 33. Hazardous Building Material Assessment

A hazardous building material assessment shall be undertaken by an appropriately qualified person prior to any demolition work commencing. The assessment shall identify any likely hazardous materials within any structure to be demolished and provide procedures on how to handle and dispose of such materials. Any hazardous materials found shall be removed in accordance with the assessment report and/or the Remedial Action Plan, whichever is appropriate. The assessment report is to be submitted to the Certifying Authority prior to the issue of any Construction Certificate. (Reason: Environmental protection, public health and safety)

#### 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.

## 34. External Finishes - Compatibility

All external building material shall be in colours and textures, which are compatible with the character of the locality. In this regard:

- (a) The Schedule of Colours and Finishes submitted with the application (DA 1.06, sheets 1 through to 6, Issue A, dated 14/06/2019, prepared by Hyecorp Property Group) satisfies this requirement;
- (b) The Schedule of Colours and Finishes shall be amended to comply with all requirements stipulated within Condition 2;
- (c) The Schedule of Colours and Finishes shall be submitted to the Certifying Authority prior to commencement of work.

(Reason: Visual amenity)

#### 35. Waste Management Plan

A Construction and Demolition Waste Management Plan which provides details of specific strategies to salvage and recycle a minimum target 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)

## 36. 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)

## 37. 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.

- (a) Details and contact telephone numbers of the owner, builder and developer;
- (b) Location and construction details of protective fencing to the perimeter of the site;
- (c) Location of site storage areas, sheds and equipment;
- (d) Location of stored building materials for construction;
- (e) Provisions for public safety;
- (f) Dust control measures;
- (g) Site access location and construction;
- (h) Details of methods of disposal of demolition materials;
- (i) Protective measures for tree preservation;
- (j) Provisions for temporary sanitary facilities;
- (k) Location and size of waste containers and bulk bins;
- (I) 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;
- (m) 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)

#### 38. Dilapidation Report of Adjoining Properties

Prior to commencement of work, submit a photographic survey and report of the following properties to the Certifying Authority and all owners of these adjoining properties:

18 Crabbes Avenue, North Willoughby NSW 2068
18A Crabbes Avenue, North Willoughby NSW 2068
13 Horsley Avenue, North Willoughby NSW 2068
15 Horsley Avenue, North Willoughby NSW 2068
17 Horsley Avenue, North Willoughby NSW 2068
19 Horsley Avenue, North Willoughby NSW 2068
21 Horsley Avenue, North Willoughby NSW 2068
23 Horsley Avenue, North Willoughby NSW 2068
25 Horsley Avenue, North Willoughby NSW 2068
223 Penshurst Street, North Willoughby NSW 2068
2 Summerville Crescent, North Willoughby NSW 20684
4 Summerville Crescent, North Willoughby NSW 20684
6 Summerville Crescent, North Willoughby NSW 20684
8A Summerville Crescent, North Willoughby NSW 20684

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)

#### 39. Public Risk Insurance Policy

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

## 40. 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)

## 41. 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)

#### 42. 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 TfNSW (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)

#### 43. Application for Vehicle Crossing

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

(Reason: Protection of public asset)

#### 44. 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 at Crabbes Avenue and High Street. Such street lighting shall also conform to Council's standard specifications.

(Reason: Public amenity)

#### 45. Underground Utility Services

Where excavation is proposed, 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)

## 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. 46. Project Arborist

- (a) A Project Arborist is to be appointed prior to commencement of works on site:
- (b) The Project Arborist is to have a minimum qualification AQF Level 5;
- (c) The Project Arborist is to oversee and authorise all tree protection works and inspection hold points detailed in the Arboricultural Impact Assessment Report dated 28 June 2019 prepared by Glenyss Laws Consulting Arborist and relevant conditions of consent;
- (d) The Project Arborist is to certify that all tree protection measures have been installed prior to commencement of works.

(Reason: Safety, environmental protection, landscape 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.

#### 47. Removal of Material

Remove all excess excavation and construction material from the site at the completion of works to the satisfaction of the Certifying Authority. Under no circumstances should any material be dumped or allowed to spill –

- (a) on to the adjoining public reserve
- (b) on to the land within a Foreshore Area
- (c) outside the primary or secondary building areas.

(Reason: Environmental protection)

#### 48. Excavation and/or Fill Containment

The excavation and/or fill is to be contained wholly within the subject allotment and the created banks are to be retained to the satisfaction of the Certifying Authority. If retaining walls are found to be necessary, a further Development Consent is to be obtained unless it is exempt development.

(Reason: Safety)

#### 49. Hours of Work

All construction/demolition work relating to this Development Consent within the City, unless varied by an Out of Hours Work Permit, must be carried out only between the hours of 7 am to 5 pm Mondays to Fridays and 7 am to 12 noon on Saturdays. No work is permitted on Sundays or Public Holidays.

An application for an Out of Hours Work Permit to allow variation to these approved hours must be lodged with Council at least 48 hours prior to the proposed commencement of the work. The application must include a statement regarding the reasons for the variation sought, the type of work/s to be carried out, the additional time required, the anticipated impact upon the local amenity and how this will be minimized, and must be accompanied by the required fee. One (1) permit is required for each variation to the approved working hours within any 24 hour period.

50.

## 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.

If a variation to these approved hours for multiple or extended periods is sought, an application under Section 4.55 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 Section 4.55 application may require re-notification in some circumstances. (Reason: Ensure compliance and amenity)

## 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)

#### 51. Provide Erosion and Sediment Control

Where work involves excavation or stockpiling of raw or loose materials, 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)

#### 52. Demolition Work AS 2601-2001

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

(Reason: Safety)

#### 53. 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)

#### 54. Neighbour Notification of Asbestos Removal

The applicant/builder is to notify anyone occupying premises in the immediate vicinity of the site, 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.

As a minimum, 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)

#### 55. Asbestos Removal and Disposal

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

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

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 Certifying Authority with a copy of all receipts issued by the waste disposal site as evidence of proper disposal.

(Reason: Environmental protection/Public health and safety)

#### 56. Survey Certificate

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

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

(Reason: Ensure compliance)

#### 57. 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)

#### 58. 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)

## 59. 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)

## 60. Swimming Pool Notice

During construction and in perpetuity following completion, a notice shall be displayed showing:

- (a) Appropriate instructions of artificial resuscitation methods.
- (b) A warning stating
  - (i) "YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS SWIMMING POOL",
  - (ii) "POOL GATES MUST BE KEPT CLOSED AT ALL TIMES", and
  - (iii) "KEEP ARTICLES, OBJECTS AND STRUCTURES CLEAR OF THE POOL FENCE AT ALL TIMES"

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

(Reason: Safety)

#### 61. Protection of Neighbouring Buildings and Public Assets

- (a) If development involves 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 at their own expense must:
  - (i) protect and support the building, structure or work from possible damage from the excavation, and
  - (ii) if necessary, underpin and support the building, structure or work to prevent any such damage, and
  - (iii) 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.

- (b) 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.
- (c) In this clause, "allotment of land" includes a public road and any other public place.

(Reason: Safety)

## 62. Temporary Ground Anchors – Supervision

A professional Geotechnical Engineer shall be on site to supervise the piling, excavation and finally the installation and stressing of any 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)

## 63. 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)

## 64. 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)

## 65. Public Tree Protection

- a) Unless identified by the development consent, no tree roots over 25mm diameter are to be damaged or cut without authorisation of the Project Arborist and all structures are to be bridged over such roots where possible.
- b) Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, the Project Arborist is to immediately Contact Council's Open Space section and resolve the matter to Council's satisfaction, including the cost of any authorised removal and replacement being borne by the applicant/owner.

(Reason: Tree management)

### 66. 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)

#### 67. Tree Trunk, Branch and Root Protection

- (a) Retain and protect the following trees and vegetation throughout the demolition and construction period: Trees numbered 20, 25, 27, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 in the Arboricultural Impact Assessment Report dated 28 June 2019 prepared by Glenyss Laws Consulting Arborist.
- (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 the recommendations of the Arboricultural Impact Assessment Report dated 28 June 2019 prepared by Glenyss Laws Consulting Arborist and 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 iii) above are to be certified by the Project Arborist prior to commencement of works.
- (e) Tree roots greater than 25mm diameter are not to be removed unless approved by The Project Arborist on site.
- (f) All structures are to bridge roots unless directed by The Project Arborist on site.

(Reason: Tree management)

#### 68. 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)

## 69. 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)

## 70. 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)

#### 71. 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)

#### 72. Construction Noise and Vibration

Construction noise shall be controlled to comply with the recommendations contained in the accepted detailed design stage acoustic report and the requirements 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.

Should complaints arise about noise and/or vibration, Council may require an acoustic assessment be carried out of construction activities and a report with recommendations to ameliorate any non-compliances be submitted to Council.

(Reason: Amenity)

## PRIOR TO OCCUPATION OF THE DEVELOPMENT

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

#### 73. 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 <a href="https://www.sydneywater.com.au/section73">www.sydneywater.com.au/section73</a> or call 1300 082 746.

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

## 74. Commercial – Shop Number Display

Prior to the issue of any relevant Occupation Certificate for the ground floor Shops, the shop number is to be clearly displayed to any relevant entrance.

(Reason: Information)

#### 75. Amalgamation of Sites and Street Numbering

Prior to the issue of the Whole Occupation Certificate, the allotments of the development are to be amalgamated into two single groups of allotments:

The following lots are to be amalgamated into one lot:

	Legal Description
26 Crabbes Avenue	Lots 4 to 10 Section C DP 6291 Lot 11 Section C DP 6291 Lots B DP 438684 Lot 1 DP 950651 Lots 1 and 2 DP 950652
243 Penshurst Street	Lot A DP 438684 Lot B DP 364487

The remaining lots are to be amalgamated into one lot:

247-255	Lot 100 DP 858335
Penshurst	Lots A and B DP 23465
Street	

Written application shall be made to the Geospatial Services Section of Council for the allocation of street numbering for each of the newly created strata lots and/or allotments. Documentary evidence of the allocated numbering issued by Council is to be lodged with the Subdivision Certificate Application and Linen Plans.

(Reason: To create an orderly subdivision pattern and ensure compliance with Council's House-Property Numbering Policy)

#### 76. Traffic Calming Measures within Crabbes Avenue

Prior to the issue of the Whole Occupation Certificate, the applicant and/or owners of the relevant sites shall be responsible for the construction of the traffic calming measures that are provided consent by the Willoughby Local Traffic Committee. The applicant and/or owners of the site shall be responsible for all construction costs associated with providing the traffic calming measures within Crabbes Avenue. (Reason: Manage traffic flow)

## 77. Traffic Management Plan for Club Operations

Prior to the issue of any Occupation Certificate, a Traffic Management Plan is to be prepared for pedestrian and traffic management. The plan shall include the following details:

- a) All attempts are to be made for development generated vehicles to park onsite and not in the surrounding road network;
- b) All heavy vehicles associated with the development shall enter and leave via Penshurst Street via the following method:
  - 1. Enter via a left turn from Penshurst Street into Crabbes Avenue and then turn right into the development;

- 2. Exit via a left turn into Crabbes Avenue and a left turn into Penshurst Street.
- c) Details regarding on-site parking area to accommodate a 12.5m bus/coach to facilitate patrons attending the Club;
- d) The provision of Local Traffic Calming Measures as determined by the Willoughby Local Traffic Committee;
- e) Provide, maintain and operate a Vehicle Access, Movement and Parking Management Plan for the development to ensure adequate provision and safe parking of car, mini-bus, service vehicle and goods delivery vehicles at all times.
- f) The Traffic Management Plan shall be owned and operated by the owner of the whole site and is to be made available on the premises.

(Reason: Control traffic within surrounding streets)

## 78. Dilapidation Report Post Construction

Prior to the issue of a Whole Occupation Certificate, a post-construction dilapidation report shall be prepared for the following adjoining properties:

1.	18 Crabbes Avenue, North Willoughby NSW 2068	
2.	18A Crabbes Avenue, North Willoughby NSW 2068	
3.	13 Horsley Avenue, North Willoughby NSW 2068	
4.	15 Horsley Avenue, North Willoughby NSW 2068	
5.	17 Horsley Avenue, North Willoughby NSW 2068	
6.	19 Horsley Avenue, North Willoughby NSW 2068	
7.	21 Horsley Avenue, North Willoughby NSW 2068	
8.	23 Horsley Avenue, North Willoughby NSW 2068	
9.	25 Horsley Avenue, North Willoughby NSW 2068	
10.	223 Penshurst Street, North Willoughby NSW 2068	
11.	2 Summerville Crescent, North Willoughby NSW 20684	
12.	. 4 Summerville Crescent, North Willoughby NSW 20684	
13.	6 Summerville Crescent, North Willoughby NSW 20684	
14.	8A Summerville Crescent, North Willoughby NSW 20684	

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)

## 79. Easement for 259 Penshurst Street, NSW 2068

- (a) Subject to agreement, an easement shall be created on reasonable grounds with the adjoining owners of 259 Penshurst Street (at no cost to the owners) to use the driveway access, ramp and circulation aisle of the proposal;
- (b) Provision is to be made for 259 Penshurst Street to have shared use of the vehicular access driveway to and within the basement parking levels. The development is to be structurally designed to allow for future vehicular access from Crabbes Avenue and future opening on Basement Level 1. The Creation of a

Positive Covenant and Restriction on Use of Land on the Title in respect to these vehicular access and parking provisions is to be made and documentary evidence of the registered Positive Covenant, the Restriction on the Use of Land shall be submitted to the Principal Certifying Authority Prior to the release of the Occupation Certificate. Any future subdivision plan is to provide for the maintenance of such an easement in favour of 259 Penshurst Street no cost to Council and registered at the Land Titles Office prior to the release of the Occupation Certificate

(Reason: To address vehicle access arrangements for any future development of 259 Penshurst Street)

#### 80. **Ausgrid Requirements**

The Principal Certifying Authority is to ensure the following requirements by Ausgrid are fulfilled before the issue of any relevant Occupation Certificate:

The substation ventilation openings, including substation duct openings and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS 1668.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings.

In addition to the above, Ausgrid requires the substation ventilation openings, including duct openings and louvered panels, to be separated from building ventilation system air intake and exhaust openings, including those on buildings on adjacent allotments, by not less than 6 metres.

Any portion of a building other than a BCA class 10a structure constructed from noncombustible materials, which is not sheltered by a non-ignitable blast-resisting barrier and is within 3 metres in any direction from the housing of a kiosk substation, is required to have a Fire Resistance Level (FRL) of not less than 120/120/120. Openable or fixed windows or glass blockwork or similar, irrespective of their fire rating, are not permitted within 3 metres in any direction from the housing of a kiosk substation, unless they are sheltered by a non- ignitable blast resisting barrier.

The development must comply with both the Reference Levels and the precautionary requirements of the ICNIRP Guidelines for Limiting Exposure to Time-varying Electric and Magnetic Fields (1 HZ - 100 kHZ) (ICNIRP 2010).

For further details on fire segregation requirements refer to Ausgrid's Network Standard 141.

Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid. For further details refer to Ausgrid's Network Standard 143.

(Reason: Requirements by Ausgrid)

#### 81. Swimming Pool – Heating and Cover

Prior to the issue of any relevant Occupation Certificate associated with the completion and use of the swimming pool, the swimming pool is to be fitted with a cover to maintain temperatures and minimise evaporation of water. Any heating shall be of energy efficient means.

(Reason: Ensure compliance/ sustainable development)

#### 82. Swimming Pool - Access

Prior to the issue of any relevant Occupation Certificate associated with the completion and use of the swimming pool, access to the swimming pool shall be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992.

- (a) The pool shall not be filled with water, or be allowed to collect stormwater, until the installation of the child resistant barrier is completed to the Certifying Authority's satisfaction.
- (b) The barrier is to conform to the requirements of AS 1926 –

Part 1 – "Safety Barriers for Swimming Pools"

Part 2 – "Location of Safety Barriers for Swimming Pools"

(Reason: Safety)

## 83. Emitted Noise - Swimming Pool/Spa

Prior to the issue of any relevant Occupation Certificate associated with the completion and use of the swimming pool and in perpetuity, the noise emitted by the swimming pool/spa pump and filter equipment shall be not more than 5dBA above the background noise level measured at the boundaries in accordance with the current Environment Protection Authority (EPA) guidelines for noise assessment. Further, in accordance with the Protection of the Environment Operations (Noise Control) Regulation 2017, the equipment is <u>not</u> to operate between 8pm to 7am weekdays and 8pm to 8am on weekends and public holidays if noise can be heard within any room in any other residential premises (that is not a garage, storage area, bathroom, laundry, toilet or pantry) whether or not any door or window to that room is open. A time switch is to be installed on the power source for the above equipment to ensure that the non-permitted hours are observed.

(Reason: Amenity)

#### 84. 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)

## 85. Sustainable Development - Final Occupation

Prior to the issue of the Whole Occupation Certificate, the measures proposed to be undertaken in the Ecological Sustainable Development Report (also known as the 'Sustainability Scorecard') submitted as part of the Development Application are to be implemented as part of the development. Should any variation to these measures be proposed, a new report with the amendments highlighted is to be submitted for the Principal Certifying Authority's approval and is required to continue to achieve the relevant mandatory measures and other sustainability measures.

(Reason: Environmental sustainability)

## 86. 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)

#### 87. Fire Safety Certificate Forwarded to NSW Fire and Rescue

Prior to the issue of any 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 any relevant Construction Certificate.

(Reason: Safety)

## 88. Swimming Pool Registration

The Swimming Pool must be registered on the NSW Swimming Pool Register when it is capable of holding water and before the issue of an Occupation Certificate. The swimming pool is to be registered at www.swimmingpoolregister.nsw.gov.au or in person at Willoughby City Council (Fee applies when registering at Council)

(Reason: Statutory Compliance)

## 89. Seniors Living - Documentation

Prior to the issue of a Whole Occupation Certificate, documentation relating to the constitution and operation of the development shall be submitted for Council's approval including a restriction on the occupation of the development to persons defined under Clause 18(1) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

(Reason: Ensure compliance)

#### 90. Safer by Design

Prior to the issue of any relevant 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)

#### 91. Services - Mailboxes

Prior to the issue of any relevant Occupation Certificate, all mail boxes provided on site shall comply with the requirements of 'Australia Post' in terms of size, location, numbering and clearing. Details of the requirements can be obtained from Australia Post or from their web site. Letter boxes for adaptable dwellings shall comply with AS 4299 CI 3.8.

(Reason: Legal Requirement)

## 92. Residential Flat Building - Service Facilities

Prior to the issue of any relevant Occupation Certificate, the following shall apply to the development:

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

(Reason: Ensure compliance, streetscape and amenity)

## 93. Seniors Living – Restriction

Prior to the issue of a Whole Occupation Certificate, a restriction shall be registered against the title of the property on which the approved Seniors Living Development is carried out, in accordance with Section 88E of the *Conveyancing Act 1919*, limiting the use of any accommodation to which the development consent relates to the kinds of people referred to in Clause 18(1) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

The terms of the restriction-as-to-user are to specify that it shall not be modified or extinguished without the written consent of Council.

(Reason: Ensure compliance)

#### 94. Temporary Ground Anchors – Destressing

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

(Reason: Destressing of ground anchors)

## 95. Inspection of Drainage Connection to Council's Drainage Line

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

(Reason: Ensure compliance)

## 96. On-site Water Management System

Prior to the issue of any Occupation Certificate, the stormwater runoff from the site shall be collected and disposed of via a 500m³ OSD system and the approved water quality improvement system in accordance with Sydney Water's requirements AS/NZS3500.3, Council's DCP and Technical Standards. The construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved design stormwater management plans (IDC plans 19013-DA C01/G, C02/H, C04/I, C05/E) and Council's specification (AUS-SPEC). (Reason: Prevent nuisance flooding)

## 97. Sign for On-site Stormwater Detention (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 tanks.

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

## 98. Confined Space Sign

Prior to the issue of any Occupation Certificate, securely install standard confined space danger signs in a prominent location within the immediate vicinity of access points to on site stormwater detention systems, rainwater tanks and confined spaces in accordance with the requirements of NSW Work Health and Safety Regulation 2017.

(Reason: Safe access to tank)

#### 99. 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. 1. (Reason: Legal requirement)

### 100. Certification of the Basement Pumpout Drainage System

Prior to the issue of any Occupation Certificate and upon completion of the pump-out system, the following shall be submitted to the Certifying Authority.

- (a) A suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify that the as-built pumpout system complies with Part C5 of Council's DCP, all relevant codes and standards and the approved stormwater management plans.
- (b) Work-as-executed plans based on the approved pump-out system plans from a registered surveyor to verify that the volume of storage and pump capacity are in accordance with design requirements. Any minor changes or variations to the approved plans should be highlighted in red on the approved pump-out system plans.
- (c) Certification from a licensed plumber to ensure that the constructed pump-out system complies with the current plumbing requirements of Sydney Water and AS/NZS3500.3.

(Reason: Ensure compliance)

#### 101. 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:

- (a) 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.
- (b) Engineer's certification of the OSD system together with the completed Council's standard form for On-Site Detention Record of Installation.

(Reason: Record of works)

## 102. S88B/S88E(3) Instrument

Create Positive Covenant and Restriction on the Use of Land on the Title in favour of Council as the benefiting authority for the as-built on-site stormwater detention system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council's Technical Standards.

The above instruments shall be created under Section 88B of the *Conveyancing Act* 1919 for newly created lots. For an existing lot, the instruments can be created under Section 88E(3) of the *Conveyancing Act* 1919 using Form 13PC and 13RPA respectively. The size and relative location of the OSD tank/s, in relation to the building footprint and property boundary, 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 NSW Land Registry Services shall be submitted to the Certifying Authority and Council prior to issue of any Occupation Certificate.

(Reason: Maintenance requirement)

### 103. Documentary Evidence of Positive Covenant, Engineers Certificate

Prior to the issue of any Occupation Certificate, the following documentary evidence of the completed drainage works shall be submitted to Certifying Authority and Council: -

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

(Reason: Public record)

## 104. Sight Triangles

Prior to the issue of any Occupation Certificate and in order to ensure adequate sight distances for pedestrians and traffic in the frontage road, sight triangles of 2m by 2.5m in accordance with AS/NZS 2890.1 shall be provided on each side of the vehicle crossings.

(Reason: Pedestrian safety)

#### 105. 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 in Crabbes Avenue and Penshurst Street.

(Reason: Public amenity)

#### 106. 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 in Crabbes Avenue shall be reconstructed in accordance with Council's approved drawings, conditions and specification (AUS-SPEC). Council's standard design traffic for this pavement is  $3x10^5$  ESA.

(Reason: Ensure compliance)

#### 107. Paving Bricks with Asphalt Infill

Prior to the issue of any Occupation Certificate, construct a full width footpath in approved paving bricks with asphalt infill for the full frontage of the site in Penshurst Street in accordance with Council Standard Drawing SD112, or other detail as supplied by Council.

(Reason: Public amenity)

## 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. 108. Concrete Footpath

Prior to the issue of any Occupation Certificate, construct a 1.5m wide concrete footpath for the full frontage of the development site in Crabbes Avenue. All works shall be carried out In accordance with Council's standard specifications and drawings.

(Reason: Public amenity)

## 109. Vehicular Crossing

Construct two new vehicular crossings (entry and exit) including the replacement of the existing layback and/or gutter and any associated road restoration as directed by Council's Engineers. All works shall be carried out in accordance with Council's specification AUS-SPEC C271 and Council's Standard Drawing SD105 - Council Vehicular Footpath Crossing and Kerb and Gutter details and any approved longitudinal sections. A separate application for the crossing including current fees and charges is to be submitted for approval by Council.

The eastern crossing is to be 6.2m wide and the western crossing is to be 6.0m wide, with 1.6m separation between the two crossings. Both crossings are to have no splays and be constructed at right angle to street kerb in plain concrete. The new crossings shall be located no closer than 1 metre from any power pole and 2 metres from any street tree unless otherwise approved by Council.

For the design levels of the vehicular crossing at the property boundary, the following shall be complied with unless written approval is gained from Council for alternate levels:

- (a) At back of layback 100 mm above and parallel to the gutter invert.
- (b) At property boundary 150mm above and parallel to the gutter invert.

The footpath which forms part of the proposed crossing shall have a maximum crossfall of 2.5%. The nature strip and footpath is to be adjusted for a minimum distance of 3.0 metres on both sides of the crossing to suit the new levels.

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

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

<u>Vehicular Crossing Formwork Inspection Sheet</u> shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifying Authority prior to issue of any Occupation Certificate.

(Reason: Public amenity)

## 110. Removal of Redundant Crossings

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

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

(Reason: Public amenity)

### 111. 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)

#### 112. Performance Bond

Prior to the issue of any Occupation Certificate, the Applicant shall lodge with the Council a performance bond of \$150,000 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)

## 113. Turfing of Nature Strip

Prior to the issue of a Whole Occupation Certificate and in the event of damages to the grass verge during works, trim the strip of land between the property boundary and the road, spread topsoil on top of the trimmed surface and lay approved turfing on the prepared surfaces. The turf shall be protected from vehicular traffic and kept watered until established.

(Reason: Public amenity)

#### 114. 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)

## 115. Vehicle Access and Manoeuvring - Construction & Certification

Prior to the issue of any Occupation Certificate, the Applicant shall submit, for approval by the Principal Certifying Authority, certification from a suitably qualified and experienced Traffic Engineer relating to the construction of vehicular access and manoeuvring for the development. This certification must be based on a site

inspection of the constructed vehicle access, manoeuvring and vehicle accommodation areas, with dimensions and 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 finished driveway gradients and transitions comply with AS 2890.1 and 2890.2 and will not result in scraping to the underside of cars.
- (c) That a maximum gradient of <u>5%</u> has been provided for the first 6 metres from the property boundary into the site.
- (d) All parking spaces are open type with no partitions.
- (e) That the as-constructed vehicular path and parking arrangements comply in full with AS/NZS 2890.1, AS 2890.2 and AS/NZS 2890.6 in terms of minimum dimensions provided.
- (f) 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 AS2890.1 and Section 2.4 of AS2890.6.
- (g) 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.
- (h) That the headroom clearance of minimum 3.5meters is provided from the access and egress of the site to the ambulance bay and the loading bay for the SRV at Level 2 in accordance with AS2890.2..
- (i) That the headroom clearance required in AS2890.2 for the largest vehicle using the site has been provided for the loading area and the path to and from the loading area.
- (j) Aisle widths throughout basements comply with AS2890.1.
- (k) Minimum dimensions of 2.4m x 5.4m shared area, has been provided adjacent to all disabled parking spaces to comply with AS2890.6. Bollards are provided at the location on each shared area specified in AS2890.6 which is clearly labelled and shown on plans.
- (I) Simultaneous manoeuvring of B99 and B85 vehicles at all ramps and ramp ends including clearances for each vehicle as per AS2890 is achieved.
- (m) Simultaneous manoeuvrability of the largest vehicle using the site and a passenger vehicle including clearance in accordance with AS2890.1 and AS2890.2, is provided.
- (n) That access to visitor parking spaces and club allocated parking spaces is not restricted by boomgates or doors.

(Reason: Ensure compliance)

## 116. Construct Stormwater Drainage Works

Prior to the issue of any Occupation Certificate, construct the following stormwater drainage works in the public domain:

- New kerb inlet pit with a 3.0m lintel at the kerb and gutter in line with where the site drainage system leaves the easement.
- New 450mm dia reinforced concrete pipe located at the kerb line, to connect the new pit with the existing Council pit at the intersection of High Street and Horsley Avenue. The pipes shall have a minimum grade of 1%, unless a flatter grade is approved by Council prior to construction.
- New kerb inlet pits with 3.0m lintel along the new pipe at intervals not exceeding 40m and at any change in direction.

(Reason: Manage stormwater)

#### 117. Certification – Stormwater Quality System

Prior to the issue of any Occupation Certificate, a suitably qualified civil engineer, typically CPEng, shall certify that the constructed stormwater quality improvement system meets the requirements of Part C.5 of the Willoughby DCP and Technical Standard 1 for stormwater quality improvement and is in accordance with the approved stormwater plans.

(Reason: Protect the environment)

#### 118. OSD Tank

Prior to the issue of any Occupation Certificate, the section of the OSD tank located beneath the building shall be water-proofed to prevent moisture impacting the building above and sound proofed / acoustically treated as required to prevent noise from the tank from impacting residents above. The works shall be in accordance with the reports provided to Council as part of the development application. All access grates shall be located in common areas. Grates are to be provided to the tanks to provide suitable ventilation.

(Reason: Amenity in units above the OSD tank and access to tank)

#### 119. Stormwater Maintenance Manual

Prior to the issue of any Occupation Certificate, a Stormwater Maintenance Manual shall be prepared for the site. The manual shall detail all stormwater management systems provided on the site, including stormwater quality improvement measures. It is to be in accordance with the recommendations of "Guidelines for the Maintenance of Stormwater Treatment Measures" published by Stormwater NSW or other relevant guidelines and manufacturer's recommendations for proprietary devices.

(Reason: Ensure required measures are maintained)

#### 120. Public Tree Maintenance

Prior to the issue of any relevant Occupation Certificate, the Project Arborist is to certify that:

- (a) All trees on public land have been adequately maintained, that there has been no net deterioration in health and condition, and that any remedial work complies with AS 4970-2009 "Protection of trees on development sites" and AS 4373 - 2007 "Pruning of Amenity Trees".
- (b) All new and replacement public trees are of the required species, container size, planting locations, planting standards, and have been grown and supplied from a recognised nursery complying to NATSPEC 2 Guide, "Specifying Trees", 2003.

(Reason: Tree management, public asset management)

## 121. Completion of Landscape Works

Prior to the issue of a Whole Occupation Certificate, landscape works including trees, shrubs and groundcovers shall be consistent with the approved Landscape Plans, completed to a professional standard, consistent with industry best practice and published standards.

(Reason: Landscape amenity)

## 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. 122. Public Tree Planting

Prior to the issue of a Whole Occupation Certificate, plant the following trees on Council land forward of the commercial premises located north of the registered club in Penshurst Street:

2 x Ulmus glabra "Lutescens"

The trees shall:

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

(Reason: Landscape amenity, tree canopy recruitment)

## 123. Tree Planting

a) Prior to the issue of a Whole 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 in Condition 1 and any other conditions of consent that modify the Landscape Plans.	As indicated on the approved Landscape Plans in Condition 1	As indicated on the approved Landscape Plans in Condition 1

b) Certification of a) above is to be provided by a qualified landscape designer of landscape architect to the Principal Certifying Authority prior to issue of a Whole Occupation Certificate

(Reason: Landscape amenity)

#### 124. Project Arborist Certification

Prior to the issue of any Occupation Certificate, the Project Arborist is to certify in writing that all tree protection measures and remediation works have been complied with as per conditions of consent.

(Reason: Protection of trees required to be retained)

#### 125. Acoustic Works – Report

Prior to the issue of any relevant Occupation Certificate, certification shall be provided upon completion of the works, accompanied with evidence from a suitably qualified and practising acoustic engineer, to the effect that the acoustic attenuation has been carried out in accordance with the acoustic report by PKA Acoustic Consulting, Ref. No. 11532, dated 2 July 2019, and any other subsequent reports, and meets the design criteria contained in those reports.

(Reason: Amenity, environmental compliance and health)

#### 126. Noise Emission – Equipment

Prior to the issue of any relevant 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)

#### 127. Certification – Ventilation

Prior to the issue of any relevant 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)

#### 128. Trade Waste Permit / Consent

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

(Reason: Environmental compliance and health)

## 129. Food Premises

Prior to the issue of any Occupation Certificate for a building containing a food premises, the fitout of all food premises shall comply with Australian Standard *AS* 4674:2004 – Design, Construction and Fitout of Food Premises, the provisions of the Food Standards Code (Australia) and the Food Act 2003. No approval is granted for any remote storage area.

If a Private Certifier is to be used, the final inspection of the food premises fit out shall be carried out by a suitably qualified person. Documentation is to be submitted to the Certifying Authority certifying compliance with all relevant requirements.

Council's Environmental Health Officer may be engaged to carry out this required inspection of the food premises. An inspection fee shall be charged in accordance with Council's current *Food Premises Fitout Inspection Fee*, as per the *Willoughby Council Management Plan – Fees and Charges Schedule*. This fee must be paid prior to the inspection.

(Reason: Public health, safety and compliance)

## 130. Food Premises Registration

Prior to any relevant Occupation Certificate being issued for a food premise, the food premises shall be registered with Willoughby City Council by completing and submitting the Food Business Registration Form available on Council's website.

(Reason: Public health, safety and compliance)

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.

PRIOR TO THE RELEASE OF LINEN PLANS/SUBDIVISION

CERTIFICATE/STRATA APPROVAL

The following are to be complied with prior to the issue of the Subdivision Certificate / Strata Approval and the release of the Linen Plans for registration at the Land and Property Information Office.

### 131. General Easement/ROW Provision and Certification

The creation of drainage easements, service easements and/or rights-of carriageway shall be carried out as required. A registered surveyor is to certify prior to the release of the subdivision certificate that all interallotment drainage lines, services or driveways are fully contained within the proposed allotment and/or that future provisions of such are fully covered by the proposed burdens. Alternatively if the surveyor is of the opinion that no easements and/or rights-of-carriageway are required then certification to this effect from the surveyor is to be submitted. (Reason: Ensure compliance)

## 132. Location of On-Site Detention System

The locations of the as-built on-site stormwater detention system(s) shall be shown on the final plan of subdivision/strata plan. Access to the OSD tank shall be located in common property.

(Reason: Ensure compliance)

## 133. Documentary Evidence of Registered Positive Covenant and Restriction on the Use of Land

Prior to issue of the Subdivision Certificate, the following documentary evidence of the completed on-site detention (OSD) system shall be submitted to Council:-

(a) Title Deed of the as-built OSD systems. Alternatively, the applicant shall create a Positive Covenant and Restriction on the use of Land with this application.

(Reason: Public record)

#### 134. Section 88B Instrument

A Section 88B Instrument is to be submitted with the Linen Plan for subdivision in respect to any proposed easements, rights-of-way and positive covenants.

(Reason: Ensure compliance)

## ONGOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

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.

## 135. Domestic Air Conditioning Units Noise Level

All air conditioning units installed shall not be heard in a habitable room in another residential premises between the hours of 10.00pm and 7.00am weekdays and 10.00pm and 8.00am weekends and public holidays.

(Reason: Compliance and amenity)

#### 136. Daily Garbage Disposal

Garbage including putrescibles shall be disposed of daily in accordance with Willoughby Development Control Plan.

(Reason: Health and amenity)

#### 137. Aboriginal Heritage

To ensure that any possible Aboriginal Heritage sites and/or objects are protected during site works, all disturbance shall stop immediately if potential Aboriginal sites or objects are identified and Council, the NSW Office of Environment and Heritage, and the Metropolitan Local Aboriginal Land Council are to be contacted in order to investigate the matter and establish steps to be taken prior to further disturbance. (Reason: Aboriginal heritage conservation)

### 138. Plan of Management – Memorial Park

All operational details, objectives and management measures stipulated within the Plan of Management for the Memorial Park (titled 'Plan of Management Memorial Park', prepared by City Plan Services, dated July 2019) are to be conducted and fulfilled by the operator of the Registered Club in perpetuity. The Plan of Management is also to be modified to include the following additional operational requirements and amendments:

- a) The Memorial Park is to be publicly accessible to the general public every day;
- b) The operator of the Registered Club is wholly responsible for the management and maintenance of the Memorial Park. The Memorial Park is to be maintained in accordance with the approved Landscape Plans;
- c) The operator of the Registered Club shall provide security patrols for the Memorial Park at hourly intervals during the approved operating hours of the Club:
- d) Signage is to be installed by the operator of the Registered Club for the following:
  - 1. Signage to clearly indicate entry and exits to Crabbes Avenue and Penshurst Street.
  - 2. Signage to indicate to patrons to leave in an orderly manner to not disturb surrounding residents;
  - 3. Signage within the Memorial Park to indicate the prohibited activities as outlined within the Plan of Management;
- e) Events held in the Memorial Park are to be restricted to once per month, across as 12-month period, as stated in the Plan of Management;
- f) Any request made by Willoughby City Council or the NSW Police for CCTV security footage to the Memorial Park shall be provided as soon as possible;
- g) Any trees that pose a serious risk to the health and life of the general public will be pruned or removed at the request of Willoughby City Council;
- h) Pedestrian ingress and egress from Legions Way is to be restricted, however access for emergency vehicles from Legions Way shall be facilitated;
- i) All other measures stipulated within the Plan of Management for the Memorial Park is to be conducted in perpetuity.

Any further modifications cannot be made to the Plan of Management unless conducted through a S4.55 Modification Application.

(Reason: Maintain amenity)

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. 139. Plan of Management – Registered Club

All operational details, objectives and management measures stipulated within the Plan of Management for the Registered Club (titled 'Plan of Management Club Willoughby', prepared by City Plan Services, dated July 2019) are to be conducted and fulfilled by the operator of the Registered Club in perpetuity. The Plan of Management is also to be modified to include the following additional operational requirements and amendments:

- a) The Registered Club is to operate in accordance with the requirements of a valid liquor licence and all requirements within the *Liquor Act 2007*;
- b) The location of the War Memorial is to be completed. All next of kin are to be notified of the location of the War Memorial;
- c) The following outdoor terrace areas are to be closed to patrons as stipulated within the Plan of Management:
  - 1. Front external terrace at ground floor level is to be closed at 9pm;
  - 2. Alfresco area at the ground floor level to the rear is to be closed at 8pm;
  - 3. Outdoor terrace on the first floor level to the rear is to be closed at 9pm;
  - 4. Rear external terrace on the first floor level to the front is to be closed at 9pm;
  - 5. Rear external terrace on the first floor level to the rear is to be closed at 8pm.
- d) Provide details regarding the amount of bookings and management of functions;
- e) Provide details regarding hiring procedures;
- f) Provide warning and instructional signs on patron behaviour;
- g) Comply with smoking and compliance with smoke-free legislation;
- h) Customer ingress and egress from Legions Way is to be restricted, however access for emergency vehicles from Legions Way shall be facilitated;
- i) Details regarding the ongoing review of the Plan of Management at a regular interval.

The Plan of Management and Complaint Register shall be kept on the premises at all times and produced when required to do so by an authorised officer at Council, Licensing and Gaming NSW or NSW Police. If complaints arise that are found to be justified, the Plan of Management may be required to be amended.

Any further modifications cannot be made to the Plan of Management unless conducted through a S4.55 Modification Application. (Reason: Maintain amenity)

#### 140. Plan of Management – Residential Aged Care Facility

All operational details, objectives and management measures stipulated within the Plan of Management for the Memorial Park (titled 'Plan of Management – Residential Aged Care Facility (RACF) inclusive of Emergency Response and Evacuation Plan', prepared by City Plan Services, dated July 2019) are to be conducted and fulfilled by the operator of the Registered Club in perpetuity.

Any further modifications cannot be made to the Plan of Management unless conducted through a S4.55 Modification Application.

(Reason: Maintain amenity)

#### 141. Communal Rooftop Gardens – No Sale of Food or Drinks

No food or drinks are to be sold or made available in the communal rooftop gardens by the operator of the Seniors Living Housing, Residential Aged Care Facility and Registered Club. The restaurant within Building A is to not provide food and drinks services to any communal rooftop area.

(Reason: Compliance and maintain amenity)

## 142. Operation of Restaurant in Building A

The restaurant on ground floor of Building A is to be operated by the Seniors Living operator. The restaurant is not to be leased to an external party.

(Reason: Maintain seniors living amenity)

#### 143. Patron Egress from Club

The Club is to restrict patrons from exiting the Club via the rear pathway that adjoins the park after 10pm. Patrons are to either exit the Club via the basement car park or via walking to the exit to Penshurst Street.

(Reason: Maintain amenity)

## 144. Loading and Unloading of Goods

All delivery vehicles associated with the operations and maintenance of the Registered Club, Seniors Living, Residential Aged Care Facility, Shops and Residential Flat Building shall load and unload goods within the Basement Carpark. (Reason: Maintain traffic and amenity)

## 145. No Public Access to Private Communal Open Spaces

Private communal open spaces shall be restricted to the public and patrons of the Club by appropriate access controls.

(Reason: Maintain security and amenity)

#### 146. Relocation of War Memorial

Within ninety (90) days after the date of the issue of any relevant Occupation Certificate for the Registered Club, the proprietors of the Club must appropriately relocate the War Memorial either within the Park or Registered Club. All next of kin for those who are interned within the War Memorial are to be given thirty (30) days notification of the relocation of the War Memorial. All reasonable attempts are to be made regarding identification of the next of kin and notification of the relocation of the War Memorial. The War Memorial is to be maintained for the life of the development. (Reason: Requirement for Club)

#### 147. 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)

## 148. Entertainment Venue - Display of Approval

A copy of this development consent including conditions for the use of the premises as an entertainment venue, together with a current copy of the buildings Annual Fire

Safety Statement are to be permanently displayed in a prominent, visible position within the main entry lobby to the entertainment area of the premises.

(Reason: Ensure compliance/Fire safety)

#### 149. Entertainment Venue (Club) - Patron Capacities

The following authorised patron capacities for the Registered Club are not to be exceeded. In this regard the staff are to monitor and control the following approved maximum numbers of persons as permitted under the Club Licence and the *Liquor Act* 2007

(Reason: Occupant egress/Fire Safety)

#### 150. Entertainment Venue - Noise Control

Noise levels emitted from the premises are not to exceed the background noise levels by more than 5dB(A) at anytime. Measurement is taken at the boundary of any affected property.

(Reason: Ensure compliance/Amenity)

## 151. Entertainment Venue - Occupant Egress

Exit doorway and paths of travel to exits are to be kept clear and unobstructed at all times.

(Reason: Occupant egress/Fire safety)

## 152. Entertainment Venue - Inspection of Premises

The premises are to be inspected by Council on an annual basis to ensure that adequate levels of public safety are provided. In this regard, a copy of the Annual Fire Safety Statement for the building is to be forwarded to Council together with the payment of an inspection fee in accordance with Council's Schedule of Fees applicable at the date of payment.

(Reason: Ensure compliance/Public Safety/Fire safety)

## 153. On-site Car Parking

The following on-site car parking provision wholly within the basement levels shall permanently be made available for the life of the development:

## Seniors Living Development

- a) 1 Bedroom Seniors Living units 21 parking spaces;
- b) 2 Bedroom Seniors Living units 36 parking spaces;
- c) 3 Bedroom Seniors Living units 63 parking spaces;

#### Residential Aged Care Facility (RACF)

- a) RACF 5 parking spaces;
- b) RACF Staff spaces 12 parking spaces;

## Registered Club

- a) Visitor parking 180 parking spaces;
- b) Staff parking 35 parking spaces;

# 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. Residential Flat Building (RFB) and Shops

- a) RFB resident parking 24 parking spaces;
- b) RFB visitor parking 6 parking spaces;
- c) RFB Shops parking spaces for tenants 23 parking spaces;

#### Other Required Parking Spaces

- a) 106 parking spaces out of the 120 parking spaces for the Seniors Living residents is to be accessible parking spaces;
- b) 18 Accessible visitor parking spaces;
- c) 1 carwash bay;
- d) 1 ambulance bay;
- e) 19 motorcycle spaces;
- f) 15 bicycle racks.

All spaces must be clearly and visibly marked on site for their intended use as parking for residents, visitors, staff, disabled persons, office and retail or loading bay. The basement levels of the development must be accessible to residents, visitors and retail/business staff and clients, and emergency vehicles at all times.

The basement level/level car parking comprising of residential car parking spaces must only be accessible to residents at all times.

(Reason: Ensure Compliance)

## 154. Illumination of Building or Car Park

Illumination of any part of the building or car parking areas is to be designed so as to avoid glare adversely affecting nearby residents.

(Reason: Amenity)

## 155. Signs

A separate Development Application shall be submitted to Council for approval in respect of any proposed advertising sign which will be visible from a public place to be designed to comply with Willoughby Development Control Plan. Please note that a separate DA is not required for signs which are "Exempt Development" as defined under S4.1(1) of the *Environmental Planning and Assessment Act 1979*.

(Reason: Ensure compliance)

## 156. Stormwater Treatment System – Ongoing Maintenance

The registered proprietor of the land shall take full responsibility for the ongoing maintenance of the Stormwater Treatment System constructed on the land. The maintenance of the system is to be undertaken in accordance with the recommendations of "Guidelines for the Maintenance of Stormwater Treatment Measures" published by Stormwater NSW or other relevant guidelines or publications.

(Reason: Ensure compliance)

## 157. Loading and Unloading

All loading and unloading of goods is to be conducted wholly within the site. Loading areas are to be maintained free of obstructions for the sole use of delivery vehicles. Under no circumstances are loading/unloading activities to be conducted from vehicles standing kerbside in Crabbes Avenue or High Street.

(Reason: Access and amenity)

#### 158. Access to Parking

Access to visitor parking, club parking and the drop off zone is to be freely available and not restricted by boom gates or doors.

(Reason: Access)

#### 159. Enter and Leave in Forward Direction

All vehicles shall enter and leave the site in a forward direction. No vehicle shall reverse out of the site.

(Reason: Vehicle and pedestrian safety)

## 160. 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)

#### 161. Noise Control - Offensive Noise and Vibration

To minimise the noise and vibration 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)

#### 162. Collection/Delivery Services

To minimise the noise impact of the development on the surrounding environment, the collection and delivery of goods and materials (including garbage and recycling waste) from and to the premises shall not take place outside the hours of 7am to 7pm Monday to Friday.

(Reason: Amenity)

# 163. Mechanical Ventilation Systems with Regulated Air Handling and Water Systems

Mechanical ventilation systems comprising regulated air handling and water systems (cooling towers, warm-water systems and the like) 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)

#### 164. Stormwater Drainage Management

Upon commencement of the use and in perpetuity, the site shall be operated and maintained to ensure all environmental risks are minimised and managed to prevent pollution of the stormwater system in accordance with the Protection of the Environment Operations Act 1997 and any current Environment Protection Authority (EPA) requirements or guidelines.

Ensure that stormwater drains in or near the property carry clean rainwater only. Any other liquids or solids are considered a pollutant. Do not allow any wash water, food stuffs, grease, litter or other pollutants from business operations to get into the stormwater drains. Drains must be free of litter, leaves or any other foreign matter at all times.

(Reason: Environmental protection)

# 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. 165. Mechanical Ventilation – Provisions for Future Use of Commercial/Retail Tenancy

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

(Reason: Amenity/Ensure compliance)

# 166. Waste Storage Area – Food Premises

The waste storage area shall be fitted out to comply with the following:

- (a) The floor of the garbage room shall be impervious, coved at the intersection with the walls, graded to a floor waste connected to the sewer;
- (b) The walls shall be finished with a smooth, impervious surface;
- (c) The garbage area shall be ventilated, proofed against pests, have self-closing doors; and
- (d) Provided with a hose tap connected to the water supply.

These provisions are to be in place prior to the occupation of the food premises. (Reason: Health & Amenity)

#### 167. Odour Emissions

Upon commencement of the use and in perpetuity, odour control and roasting equipment installed at the premises shall be maintained and operated in a proper and efficient manner to ensure that there is no noticeable odour outside the boundary of the property.

(Reason: Compliance)

# 168. Regulated Air Handling and Water Systems

All regulated air handling and water systems shall be maintained and operated in accordance with:

- (a) Australian/New Zealand Standard AS/NZS 3666.2:2011 Air handling and water systems of buildings Microbial Control Operation and maintenance;
- (b) Australian/New Zealand Standard AS/NZS 3666.3:2011 Air handling and water systems of buildings - Microbial Control – Performance based maintenance of cooling water systems;
- (c) Australian/New Zealand Standard AS/NZS 3666.4:2011 Air handling and water systems of buildings - Microbial Control – Performance based maintenance of air-handling systems (ducts and components);
- (d) the Public Health Act 2010; and
- (e) the Public Health Regulation 2012.

(Reason: Compliance and health)

# 26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. 169. Acoustic Compliance Report

During the first 90 day period after the date any Occupation Certificate is issued for the club facility, a suitably qualified acoustic engineer must be appointed and the following acoustic measures must be undertaken:

- a) The acoustic consultant must:
  - measure and verify that the noise emanating from the premises, including vehicles movements and patrons leaving the premises, complies with the noise criteria adopted in the acoustic report by PKA Acoustic Consulting, Ref. PKA11532 R01v1, dated 2 July 2019, and any subsequent acoustic report; and
  - ii) if necessary, make recommendations to ensure that the noise emanating from the use of the club complies with the noise criteria referred to above.
- b) The noise measurements must be:
  - taken from 10pm until 1am (after close of business) on at least three different nights of the week from Thursday to Sunday when the playing of live music is occurring; and
  - ii) submitted to Council's Compliance Unit for endorsement within 7 days of taking the measurements.
- c) If the acoustic consultant recommends that additional treatment or works be undertaken under part a) ii) above, those recommendations must be:
  - i) submitted to Council with the noise measurements as required in b) ii) above;
     and
  - ii) implemented to the acoustic consultant's satisfaction before the end of the 90 day period after the date of any Occupation Certificate being issued.
- d) If the acoustic consultant's recommendations are not able to be implemented in accordance with this condition, the playing of live music must not occur until such time as the recommendations are implemented and verified.
- e) If the acoustic consultant's report is not accepted by Council or the outcome is not satisfactory, Council reserves the right to take regulatory action to remedy the acoustic impact on noise receivers, require further acoustic assessment by a suitably qualified acoustic consultant, or require changes to the Plan of Management.

(Reason: acoustic compliance, amenity and health)

#### 170. Food Premises – Markets and Temporary Events

Amy temporary food stall shall comply with:

- (a) Food Safety Standards
  - (i) Standard 3.2.2 Food Safety Practices and General Requirements,
  - (ii) Standard 3.2.3 Food Premises and Equipment,

- (iii) Part 1.2 labelling and other information requirements,
- (iv) the 'Guidelines for Food Businesses at Temporary Event' from the Food Authority website

http://www.foodauthority.nsw.gov.au/\_Documents/retail/temp\_events\_guideline.pdf

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

- (b) Ensure that each stall is:
  - (i) Located in a dust free area,
  - (ii) Away from toilets and garbage bins,
  - (iii) Supplied with sufficient potable water,
  - (iv) Suitably constructed,
  - (v) Fitted with food handling facilities for storage, cooking, hot/cold holding, preparation serving, including hand washing,
  - (vi) Registered with Council for the preparation or manufacture of food.
- (c) For the sale of food prepared offsite, the stall shall be in possession of a Food Inspection Report from the respective local council that is no more than 12 months old.
- (d) A Food Safety Supervisor is required if the food being prepared and sold is:
  - (i) Ready to Eat,
  - (ii) Potentially hazardous,
  - (iii) Not sold and served in the suppliers' original package.
  - (iv) Food Safety Supervisors shall have their FSS certificate available for inspection and kept onsite.
- (e) Willoughby City Council is notified 1 week prior to the market or event

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

(Reason: Health and compliance)

# PRESCRIBED CONDITIONS

The following conditions are prescribed by Section 4.17 of the Environmental Planning & Assessment Act for developments involving building work.

# 171. 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)

#### 172. Entertainment Venue - Compliance with Regulations

The premises operating as an Entertainment Venue shall comply with the requirements of the National Construction Code and clause 98D and Schedule 3A of the *Environmental Planning and Assessment Regulation 2000*, where applicable. (Reason: Fire safety/ensure compliance)

# 173. Maximum Capacity Signage

As required by Clause 98D of the *Environmental Planning and Assessment Regulation 2000*, a sign must be displayed in a prominent position in the building that specifies the following:

- (a) the maximum number of persons, as specified in the development consent, that are permitted in any part of the building use,
- (b) the name, address and telephone number of the Council of the area in which the building is located,
- (c) the name and business telephone number of an owner or manager of the part of the building permitted to be used under this consent.

<u>Note:</u> Premises with more than one (1) entrance will require signs containing the abovementioned information in those locations.

(Reason: Information/Ensure compliance)

# **Note to Applicant:**

Section 4.17 (10B) of the *Environmental Planning & Assessment Act 1979* confers the right for the Consent Authority to review a condition that permits extended hours of operation and increases in the maximum number of persons permitted within a building.

#### STATUTORY REQUIREMENTS

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

#### 174. Construction Certificate

This consent IS NOT an approval to carry out any building works. A Construction Certificate may be required PRIOR TO ANY 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)

# 175. Notify Council of Intention to Commence Works

In accordance with the provisions of Section 6.6 of the *Environmental Planning and Assessment Act 1979* 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 person's intention to commence the erection of the building.

(Reason: Information and ensure compliance)

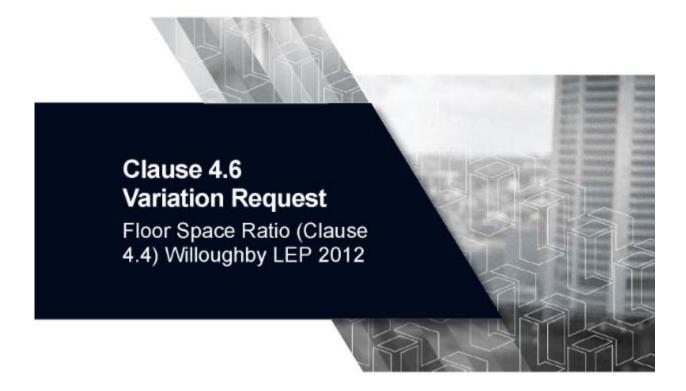
# **SNPP REPORT**

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. 176. Occupation Certificate

The building/structure or part thereof shall not be occupied or used until an occupation certificate has been issued in respect of the building or part. (Reason: Safety)

APPENDIX 1: APPLICANT'S CLAUSE 4.6 SUBMISSION - FSR (R2 ZONE)





# 26 Crabbes Avenue & 247-255 Penshurst Street, Willoughby

Submitted to Willoughby Council
On Behalf of Hyecorp Property Group & Club Willoughby

JULY 2019



4.6 Request – R2 FSR
Willoughby Legion Ex-Services Club & 247-255 Penshurst
Street, Willoughby
P-16261
July 2019

#### REPORT REVISION HISTORY

Revision	Date Issued	Revision Description	
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		Prepared by	Verified by
		Lucy Broadwell Senior Planner	T.Ofy
			Tina Christy
			Associate Director
02	22/07/19	Draft	
		Prepared by	Verified by
		Lucy Broadwell / Tina Christy Senior Planner / Associate Director	from 5 frais
			Sue Francis
			Executive Director
03	26/07/19	Final	
		Prepared by	Verified by
		Lucy Broadwell / Tina Christy Senior Planner / Associate Director	from 5 from
			Sue Francis
			Executive Director

#### Disclaimer

This report has been prepared by City Plan Strategy & Development P/L with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. City Plan Strategy & Development P/L accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

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4.6 Request – R2 FSR
Willoughby Legion Ex-Services Club & 247-255 Penshurst
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#### 1. INTRODUCTION

The subject site benefits from a Site Compatibility Certificate (SCC) issued on 30 August 2018 for "Development for the purposes of seniors housing, consisting of a residential care facility, with approximately 36 to 72 beds, and approximately 99 to 125 self-contained dwellings as serviced self-care housing." It supports a development with a maximum floor space ratio (FSR) of 1.35.1 and a height of buildings varying from 8.5m to 20.5m. However, the SCC acts only to render the development type and indicative form as "permissible." It remains that in submitting any development application the relevant provisions of any EPI, including any development standards contained therein, must be assessed and, if necessary, varied to achieve the built form anticipated by the SCC.

Therefore, this is a request prepared in accordance with Clause 4.6 of the Willoughby Local Environmental Plan 2012 to support a development application submitted to Willoughby Council for a consolidated development comprising of a new and expanded three (3) storey registered club fronting Penshurst Street, 106 seniors independent living units (ILUs) accommodated within 3 (three) new buildings ranging from two (2) storeys to part five (5) part six (6) storeys, a two (2) to three (3) storey seniors residential aged care facility (RACF) building with 49 beds, a four (4) storey residential flat building (RFB) comprised of 24 units with street level neighbourhood shops fronting Penshurst Street, basement car parking and publicly accessible open space fronting Crabbes Avenue at 26 Crabbes Avenue and 247-255 Penshurst Street ("the site"). A large portion of the consolidated site is the existing Willoughby Legion Ex- Services Club (also known as "Club Willoughby"). This cl.4.6 request relates only to a single lot of R2 zoned land on the eastern boundary of the consolidated site where there is a need to vary Clause 4.4 Floor Space Ratio under the Willoughby Local Environmental Plan 2012 under the R2 zone.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal 7.

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action"), Chief Justice Preston provided further clarification on the application of cl 4.6 and the preconditions which must be satisfied for consent to be granted pursuant to cl 4.6(4). That is, the consent authority must form two positive opinions of satisfaction under cl. 4.6(4)(a), as summarised below.

- the written request has adequately demonstrated that the matters under cl 4.6(3) are satisfied, being that compliance with the standard is unreasonable or unnecessary, and there are sufficient environmental planning grounds to justify contravening the development standard. It is not the consent authority's role to directly form an opinion as to whether these matters are satisfied, rather indirectly by the satisfaction that the written request has addressed these matters.
- be directly satisfied that the proposed development satisfies cl 4.6(4)(a)(ii), being the proposed development will be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. The consent authority must form this opinion directly, rather than indirectly satisfied that the written request has adequately addressed these matters.

The consent authority does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) (Initial Action [25]).

In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by Clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6 and 7 we address additional matters that the consent authority is required to be

<sup>1</sup> Relevant decisions include: Winten Property Group Limited v North Sydney Council [2001] NSWLEC 48; Wehbe v Pithwater Council [2007] NSWLEC 827; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 48; Moskovich v Waverley Council [2016] NSWLEC 1015; Randwick City Council v Micaul Holdings Pty Ltd (2016) NSWLEC 7 and Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.



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satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

As the following request demonstrates, by exercising the flexibility afforded by cl 4.6, in the particular circumstances of this application, not only would the variation be in the public interest because it satisfies the relevant objectives of both the R2 Low Density Residential zone and the development standard, but it would also result in a better planning outcome.

# 1.1. What is the Environmental Planning Instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is the Willoughby Local Environmental Plan 2012 (WLEP).

#### 1.2. What is the zoning of the land?

The zoning of the subject site is shown in Figure 1, pursuant to the Willoughby Local Environmental Plan 2012. The majority of the broader consolidated site is zoned RE2 Private Recreation with a minor portion of the site towards the north-eastern boundary zoned R2 Low Density Residential and a portion in the north-western boundary zoned R3 Medium Density Residential. This Clause 4.6 only relates to the contravention of floor space ratio (FSR) standard for the land zoned R2 being Lot 11 DP 6291.

A minor portion of the seniors housing (parts of the ILU buildings Block B and Block C) will be located within the portion of the site zoned R2 Low Density Residential, pursuant to the WLEP.



Figure 1: Extract of Land Zoning Map, consolidated site outlined red. The part of the site subject of this cl.4.6 outlined in blue (Source: NSW Legislation)



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Figure 2: Extract of Master Plan demonstrating approximate location of development in the R2 zone, outlined blue, relative to the consolidated development across the site (Source: Dickson Rothschild)

#### 1.3. What are the Objectives of the zones?

The objectives of the R2 zone are:

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To accommodate development that is compatible with the scale and character of the surrounding residential development.
- To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.
- · To retain the heritage values of particular localities and places.
- To encourage self-sufficiency with respect to energy and food supply.

#### 1.4. What is the development standard being varied?

The subject development standard is specified under Clause 4.4 Floor space ratio of the WLEP. This clause applies to specific land in a residential zone to which a maximum floor space ratio of 0.4:1 applies as shown on the 'Floor Space Ratio Map.' Refer to Figure 3.

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Figure 3: Extract of floor space ratio map, relevant area of the site outlined black. Broader consolidated site outlined red (Source: NSW Legislation)

The seniors SEPP under which this application is submitted does not contain a development standard in relation to FSR. Clauses 48(b) and 50(b) provide non-refuse provisions for residential aged care facilities and self-contained dwellings, respectively. Accordingly, the WLEP FSR development standards still have work to do.

#### 1.5. What are the objectives of the development standard?

The relevant objectives of Clause 4.4 of the WLEP are:

- (1) The objectives of this clause are as follows:
- (a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,
- (b) to limit traffic generation as a result of that development,
- (c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion.
- (d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone.
- (e) to permit higher density development at transport nodal points,
- (f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,
- (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,
- (h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,
- to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,

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

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

#### 1.6. Is the development standard excluded from the operation of Clause 4.6 of the EPI?

The development standard is not specifically excluded from the operation of Clause 4.6 of WLEP.

#### 2. EXTENT OF VARIATION

The R2 zoned portion of the site adjacent to the north-eastern boundary of the site where part of the ILU seniors housing within Blocks B and C is proposed, has a maximum FSR standard of 0.4:1 as specified under Clause 4.4 of the Willoughby Local Environmental Plan 2012 (WLEP) and as shown in Figure 3.

As demonstrated on the plans prepared by Hyecorp in association with Amglen, the proposed development within the R2 zone has a maximum FSR of 1.21:1. This has been established using a site area of Lot 11 being 558m2 and a GFA of the portions of Blocks B and C within the site area of Lot 11, being 674.46m2. The development contravenes the 0.4:1 FSR control by 0.81:1 (i.e. 202% variation).

The proposed development therefore seeks a variation to the FSR standard to ensure that the proposal delivers an appropriate built form that is consistent with the desired future character as outlined in the WLEP and achieve the built form anticipated by the SCC.



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Figure 4: Extract of GFA Plan Dwg No. DA-FSR1 A. Green line identifying the extent of the R2 zone and the development within the R2 zone over the three levels (Source: Hyecorp/Amglen)

# COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [CL.4.6 (3)(A)]

#### 3.1. Achieves the objectives of the standard

Table 1 below considers whether compliance with the FSR standard is unreasonable or unnecessary in the circumstances of this case because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard?

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<sup>2</sup> In Webbe v Pithwater Council (2007) NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in Foul/EPre Pty Ltd v Ashfield Council (2015) NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in Webbe are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with



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In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34], the Chief Justice held, "establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary". Demonstrating that there will be no adverse amenity impacts is therefore one way of showing consistency with the objectives of a development standard.

Table 1: Achievement of Development Standard Objectives.

#### Objective

#### Discussion

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

the land.

The subject site is a site in transition from the current controls and anticipated uses. The environmental capacity of the site when considered in isolation as compared to being integrated with the adjoining land for a comprehensive redevelopment changes the anticipated intensity and capacity of the individual site.

The SCC applying to the land states that the land has capacity for a greater intensity. Accordingly, by integrating the R2 zoned land into the consolidated site (it is currently being used as a car park as opposed to residential), likewise increases the capacity of that site.

The overall scheme provides generous setbacks, a park available to the general public, a new registered club and mixed housing to cater for seniors and other demographics, all within the approved SCC and hence in accordance with the anticipated environmental capacity of the land. So, despite the contravention of the standard, the proposed seniors housing development will be of compatible scale and mass with the anticipated future use of the land.

The contravention in floorspace specifically within the R2 zoned land primarily occurs due to the proposed ILU buildings Block B and Block C being partly located within the R2 zone and these Blocks forming part of the broader development of the site which is proposed in accordance with the approved SCC. In this instance, the contravention would affect only 10 units out of a total of 106 senior housing units proposed to be provided on the consolidated site. The portions of seniors housing in Blocks B and C within the R2 zone are lower in scale and height than the other seniors housing proposed over the consolidate site, ranging between two and three storeys only. The buildings are stepped down within this R2 zone to ensure they are compatible with the existing adjoining low-density urban form in the immediate locality along Crabbes Avenue and development adjoining the eastern boundary. Thus, this objective has been achieved despite the contravention in the standard.

(b) to limit traffic generation as a result of that development, As a consequence of the proposed site consolidation, vehicular access to the site can be achieved via a common entry and exit point in Crabbes Avenue. This minimises any potential conflict of vehicular activities. A Traffic Report prepared by Colston Budd Rogers & Kafes Pty Ltd for the development application has assessed the proposal's impacts of the proposed development on the operation of the surrounding road network. Overall, their assessment finds that "the surrounding road network can accommodate the additional traffic generated by the proposed development...traffic flows on Crabbes Avenue will be consistent with its local road function and there will be minimal impact on the operation of the intersections of Crabbes Avenue with High Street and Penshurst Street."

Furthermore, the proposed site is well serviced by public transport. There are two bus stops immediately in front of the western boundary of the site on Penshurst

the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or threated if compliance was required with the consequence that compliance is unreasonable; 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary or 5. The zoning of the land is unreasonable or inappropriate. The five ways are not exhaustive, and it may be sufficient to establish only one.

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Objective	Discussion
	Street. These bus stops have multiple buses that provide services to the surrounding area and beyond, including the Sydney City CBD, Chatswood, and Bondi Junction and will be available for use by future residents and visitors.
	The proposed variation of the FSR standard does not affect the achievement of the objectives of this control. It is noted that the current site so zoned R2 is actually used as a car park for the club. Accordingly, it already generates more traffic than would be anticipated by the zoning and relevant development standard.
(c) to minimise the impacts of new development on adjoining or nearby properties	Views  Views from surrounding properties will not be affected as a consequence of the variation to the floor space ratio within the portions of Blocks B and C within the R2 zone. Views in the surrounding area are generally limited to street level views, and views of other dwellings, sky and some tree canopy. The redevelopment of the site and in particular for seniors housing in Blocks B will not result in any adverse view impacts to the surrounding properties.  Substantial landscaping is proposed to the side boundaries. The closest adjoining

from disruption of views, loss of privacy, overshadowin g or visual intrusion,

# Substantial landscaping is proposed to the side boundaries. The closest adjoining

dwelling houses to the portions of Blocks B and C within the R2 zoned land are 18 and 18A Crabbes Avenue, also within the R2 zone, and these are presently single storey with principle views towards the north and south. The proposal, located due west of these existing dwellings, will not impact views currently enjoyed from these dwellings given their principle views are north/south.

#### Privacy & Visual Intrusion

The proposed setbacks together with the considered design of the proposed buildings ensures there would not be an unreasonable impact in terms of privacy as a result of the variation of the floor space ratio within the R2 zone. The proposed Blocks B and C within the R2 zone, will be setback from the boundaries of the site by a generous 6m, twice the minimum requirement under the Willoughby Development Control Plan 2016. This together with landscaping, privacy screens and view angles ensure that privacy will not be adversely impacted.

In relation to the adjoining dwellings at 18 and 18A Crabbes Avenue, these dwellings are presently single storey within the R2 zone. They have their principal views to the north and south with limited windows to their side western elevations, fronting the eastern boundary of the R2 site. Currently there exists a paling fence on the boundary (approximately 2.2m measured from the site) protecting their privacy from the proposed units at ground floor level (Level 1). Refer to Figure 5 below.



Figure 5: Photograph showing the existing boundary treatment between the R2 zoned portion of the site and the adjoining dwellings at 18 & 18A Crabbes Avenue.

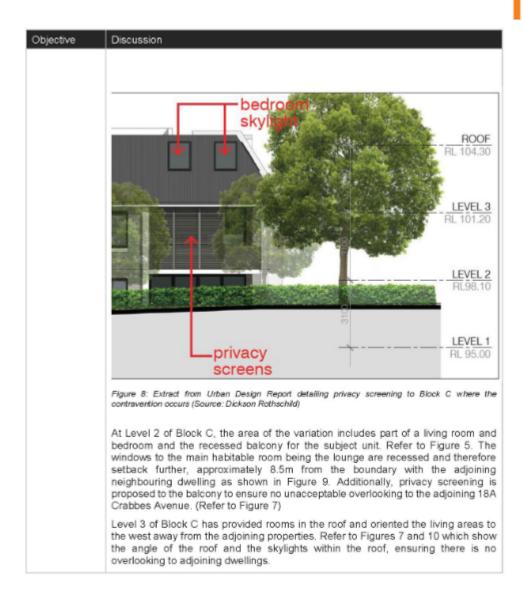


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# Objective Discussion At Level 2 the windows to the eastern elevation of Block B will not be full length and will be partly recessed, being 6.6m from the boundary with No. 18 Crabbes Avenue. Furthermore, the majority of these windows are to bedrooms only. Where there are windows to the proposed living room to the rear unit at Level 2 in Block B, these would overlook the rear of 18 Crabbes Avenue only and would be secondary windows, with main views from this room oriented towards the south, towards Block C. Refer to Figure 6 below. 18 Crabbes Avenue 18A Crabbers Avenue Figure 6: Extract of Level 2 showing primary view southwards to Block C from living room of proposed rear unit at Level 2 in Block B. (Source: Hyecorp/Amglen) Level 2 of Block B has also oriented the balconies to the north and south, away from the adjoining dwellings at 18 and 18A Crabbes Avenue, to further protect privacy. 18A Crabbes Avenue Figure 7: Extract of Level 3 showing main balcony areas oriented north and south away from adjoining dwellings (Source: Hyecorp/Amglen) At Level 3 of Block B on the eastern elevation, the primary usable balconies have been oriented to the north and south, away from the adjoining dwellings at 18 and 18A Crabbes Avenue. While it is proposed to have balcony area connecting the two main balcony spaces, this would have limited depth (approximately 1.2m) and as such is unlikely to be used to the same extent as the balconies oriented to the north and south which are larger in area. Additionally, the third-floor level has been further recessed (setback 8.5m), to reduce the angle of overlooking and windows at this level. (refer to Figure 8).

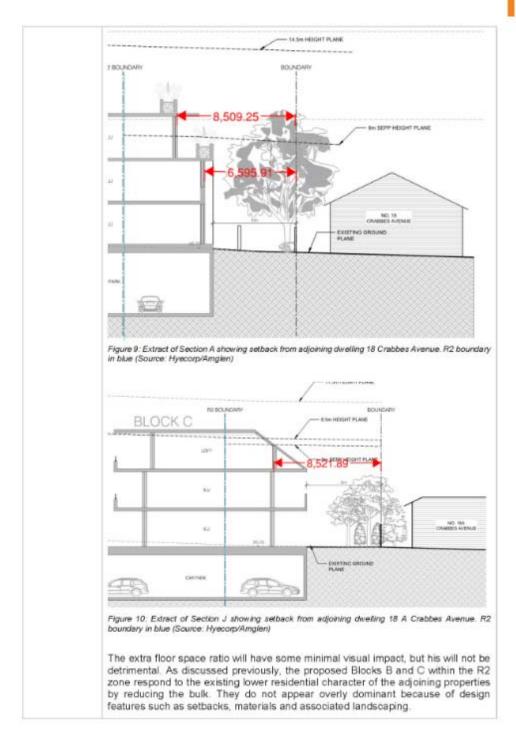


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#### Objective

#### Discussion

The proposed development as a whole will be visually consistent in terms of design and materials in that it represents fine grain urban form with large landscaped setbacks to the northern, eastern and southern boundaries responding to the existing lower residential character of the adjoining properties. This provides considerable separation between the proposed buildings, where the variation occurs on each Block, and the adjoining low-density development.

The proposal does not impact on neighbouring properties in terms of loss of privacy or visual intrusion.

#### Overshadowing

Hyecorp in association with Amglen have prepared detailed shadow diagrams for the proposal. The shadow diagrams demonstrate the proposed seniors housing within Blocks B and C in the R2 zone, would protect the amenity of neighbouring properties in relation to sunlight, despite the noncompliance with the FSR standard. The proposal has allowed for substantial 6m setbacks from the site boundaries and as such, the shadows do not start to impact on the eastern adjoining neighbours until 3pm mid-winter. The closest adjoining properties along the northem and eastern boundaries will receive in excess of 3hrs direct sunlight between 9am and 3pm mid-winter. Refer to Figures 10 and 11, extracts of the shadow diagrams provided over the page.

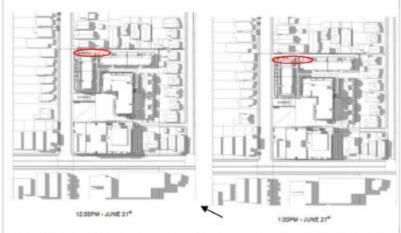
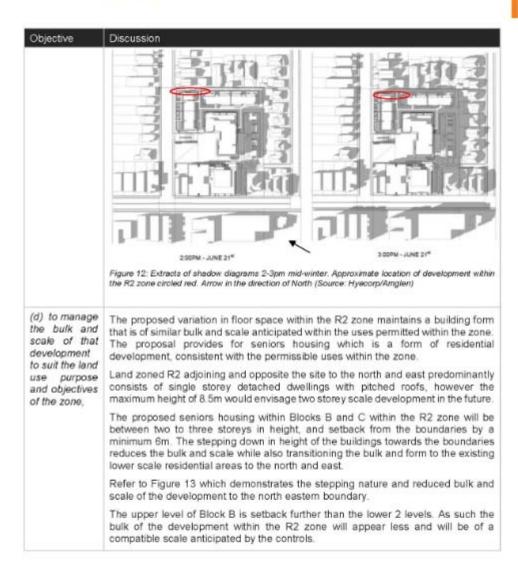


Figure 11: Extracts of shadow diagrams 12-1pm mid-winter. Approximate location of development within the R2 zone circled red. Arrow in the direction of North (Source: Hyecorp/Amglen)



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Objective	Discussion
city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,	
(h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,	N/A. The subject site is not located within the city centre of Chatswood.
(i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,	The consolidated proposed development of the broader site transitions up in height towards the centre of the site, where it is less visible to and from the surrounding area. Lower scale buildings are to be located along the boundaries of the site that adjoin the existing residential properties, including the north eastern boundary where the R2 zoned land adjoins 18 and 18A Crabbes Avenue, which are existing single storey residential houses  Blocks B and C within the R2 zone, being a maximum of two to three storeys in height and setback at least 6m from the boundaries to the north and east, ensure a compatible transition in height despite the variation of standard, and particularly due to design techniques which promote the two storey element. Due to the stepping nature and reduced bulk and scale of the proposal within the R2 zone it achieves a suitable transition in building scale and density, thus achieving this objective.
(j) to encourage the consolidation of certain land for	The proposed seniors housing will form part of the wider redevelopment of the former Club Willoughby site. The broader site, discussed in Section 1, will be developed as a consolidated site to provide seniors housing, a new registered club, a public park, underground car parking, landscaping and a residential flat building

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Objective	Discussion
redevelopmen t	with neighbourhood shops at street level. The variation of this standard still allows consistency with this objective.
(k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.	The variation of the development standard maintains consistency with this objective. The proposed units in Block B and C will provide for a community facility in the form of specifically designed seniors housing independent living.

# THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [CL. 4.6(3)(B)]

In Initial Action Pty Ltd v Woolahra Council [2018] NSWLEC 2018, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole.

As discussed earlier, the elements of the development that contravene the FSR standard relate to portions of the buildings referred to on plan as Block B and Block C and affect only development on the north eastern boundary. Despite the variation of the standard this element of the proposed seniors housing will be of compatible scale and mass to its neighbour. In this regard, as discussed in Section 3, there are no adverse environmental impacts associated with additional overshadowing, view loss or overlooking as a result of the proposed variation of the standard.

The SEE prepared for this DA provides a holistic environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development.

There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds. Some additional specific environmental grounds to justify the variation of the standard are summarised as follows:

- The proposed development satisfies the objectives of the standard and the objectives of the zone;
- The variation of the standard allows for a development that is consistent with the existing and desired future character of the area;
- The proposed non-compliance with the maximum floor space ratio for the site maintains the orderly and economic use of the land; and
- The proposal would result in a better planning outcome than if compliance were to be achieved, as it provides a consolidated development that meets the objective of the standard.

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# THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [CL.4.6(4)(A)(II)]

In Section 3 (above), it was demonstrated that the proposal is consistent<sup>3</sup> with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in **Table 2** (below).

Table 2: Consistency with R2 Zone Objectives.

Objective	Discussion		
R2 Zone			
To provide for the housing needs of the community within a low-density residential environment.	The variation of the standard does not result in an inconsistency with this objective. The proposed development will provide additional housing within the locality, nearby to a range of local services, facilities and amenities in accordance with the approved SCC.		
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The development is consistent with this objective as it provides a selection of independent living units of various sizes for seniors living. Furthermore, the proposal for seniors housing is a permissible use under the Seniors SEPP and the SCC.		
To accommodate development that is compatible with the scale and character of the surrounding residential development.	The variation of the standard does not result in an inconsistency with this objective. As previously discussed, the proposal will result in a development that is compatible with the scale and character of the surrounding residential development.		
To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.	The variation of the standard does not result in an inconsistency with this objective. As previously discussed, the proposal will not result in any adverse environmental impacts that would have a detrimental impact upon the amenity of the locality.		
To retain the heritage values of particular localities and places.	The proposed variation of the standard does not affect consistency with this objective. The built form relative to the boundaries of the site which are a conservation area have been maintained at a height and scale consistent with the character of the Conservation Area.		
To encourage self-sufficiency with respect to energy and food supply.	The proposed variation of the standard does not affect consistency with this objective.		

As can be seen from **Table 1** and **Table 2**, the proposal is consistent with the assumed objectives of the standard and the objectives of the zones and is therefore considered to be in the public interest.

<sup>3</sup> In Dem Gillespies v Warringah Council [2002] LGERA 147 and Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'



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# CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [CL. 4.6(5)(A)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

# THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [CL. 4.6(5)(B)]

There is no public benefit4 in maintaining strict compliance with the development standard.

The development complies with the stated objectives of the zone and the development standard seeking to be varied. The development will provide additional dwellings in an area identified as being a suitable location for the provision of housing, while still ensuring that the development is consistent with the existing and desired future character of the area. Further, there are no unreasonable environmental impacts as a result of the variation.

The variation of the development standard facilitates a contemporary development that will be characteristic of the massing, bulk and scale envisaged on the site and those in the immediate vicinity on Crabbes Avenue. It will not result in any unreasonable environmental impacts.

There is no public benefit in maintaining strict application of the standard and that the overall proposal will result in a public benefit.

#### 8. CONCLUSION

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the Willoughby Local Environmental Plan 2012, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The proposal meets the objectives of the development standard and is consistent with the objectives of the R2 Low Density Residential Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

<sup>4</sup> Ex Gratia P/L v Dungog Council (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. APPENDIX 2: APPLICANT'S CLAUSE 4.6 SUBMISSION – FSR (R3 ZONE)





# 26 Crabbes Avenue & 247-255 Penshurst Street, Willoughby

Submitted to Willoughby Council
On Behalf of Hyecorp Property Group & Club Willoughby

JULY 2019



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#### REPORT REVISION HISTORY

Revision	Date Issued	Revision Description	
01	05/07/19	Draft	
		Prepared by	Verified by
		Lucy Broadwell Senior Planner	Toby
			Tina Christy
			Associate Director
02	11/07/19	Draft	
		Prepared by	Verified by
		Tina Christy Associate Director	from 5 free
			Sue Francis
			Executive Director
03	26/07/19	Final	
		Prepared by	Verified by
		Tina Christy Associate Director	form 5 for
			Sue Francis
			Executive Director

#### Disclaime

This report has been prepared by City Plan Strategy & Development P/L with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. City Plan Strategy & Development P/L accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

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#### 1. INTRODUCTION

This is a request prepared in accordance with Clause 4.6 of the Willoughby Local Environmental Plan 2012 to support a development application submitted to Willoughby Council for a residential flat building with street level neighbourhood shops associated with the construction of a new and expanded three (3) storey registered club fronting Penshurst Street, 106 seniors ILUs accommodated within 3 (three) new buildings ranging from two (2) storeys to part five (5) part six (6) storeys, a two (2) to three (3) storey seniors RACF building with 49 beds., A large portion of the consolidated site is the existing Willoughby Legion Ex-Services Club (also known as "Club Willoughby").

The purpose of this Clause 4.6 variation request is to address a variation to Clause 4.4 Floor Space Ratio under the Willoughby Local Environmental Plan 2012 under the R3 zone.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal 1.

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action"), Chief Justice Preston provided further clarification on the application of cl 4.6 and the preconditions which must be satisfied for consent to be granted pursuant to cl 4.6(4). That is, the consent authority must form two positive opinions of satisfaction under cl. 4.6(4)(a), as summarised below:

- the written request has adequately demonstrated that the matters under cl 4.6(3) are satisfied, being
  that compliance with the standard is unreasonable or unnecessary, and there are sufficient
  environmental planning grounds to justify contravening the development standard. It is not the
  consent authority's role to directly form an opinion as to whether these matters are satisfied, rather
  indirectly by the satisfaction that the written request has addressed these matters.
- be directly satisfied that the proposed development satisfies of 4.6(4)(a)(ii), being the proposed development will be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. The consent authority must form this opinion directly, rather than indirectly satisfied that the written request has adequately addressed these matters.

The consent authority does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) (Initial Action [25]).

In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by Clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6 and 7 we address additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

As the following request demonstrates, by exercising the flexibility afforded by cl 4.6, in the particular circumstances of this application, not only would the variation be in the public interest because it satisfies the relevant objectives of both the R3 Medium Density Residential zone and the development standard, but it would also result in a better planning outcome.

<sup>1</sup> Relevant decisions include: Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46; Wehbe v Pittwater Council [2007] NSWLEC 827; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 48; Moskovich v Waverley Council [2016] NSWLEC 1015; Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 and Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.



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# 1.1. What is the Environmental Planning Instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is the Willoughby Local Environmental Plan 2012 (WLEP).

#### 1.2. What is the zoning of the land?

The zoning of the subject site is shown in Figure 1, pursuant to the Willoughby Local Environmental Plan 2012.

The proposed residential flat building (RFB) with neighbourhood shops at street level pursuant to the WLEP is located within the R3 Medium Density Residential zone only.

The majority of the broader consolidated site is zoned RE2 Private Recreation with a minor portion of the site towards the north-eastern boundary zoned R2 Low Density Residential and a portion in the north-western boundary zoned R3 Medium Density Residential. This Clause 4.6 only relates to the contravention of floor space ratio standard for the land zoned R3. (Outlined in blue in Figure 1 below)



Figure 1: Extract of Land Zoning Map, consolidated site outlined in red. The part of the site subject of this ci.4.6 outlined in blue (Source: NSW Legislation)



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Figure 2: Extract of Master Plan demonstrating location of RFB building in the R3 zone, outlined blue, relative to the consolidated development (Source: Dickson Rothschild)

# 1.3. What are the Objectives of the zones?

The objectives of the R3 zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- · To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To accommodate development that is compatible with the scale and character of the surrounding residential development.
- To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network.
- To encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping.

Figure 10



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#### 1.4. What is the development standard being varied?

The subject development standard is specified under Clause 4.4 Floor space ratio of the WLEP. This clause applies to specific land in a residential zone to which a maximum floor space ratio of 0.9:1 applies as shown on the 'Floor Space Ratio Map.' Refer to Figure 3 below.

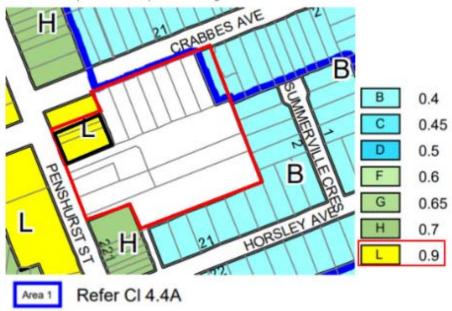


Figure 3: Extract of floor space ratio map, relevant area of the site circled outlined black. Broader consolidated site outlined red (Source: NSW Legislation)

#### 1.5. What are the objectives of the development standard?

The relevant objectives of Clause 4.4 of the WLEP are:

- (1) The objectives of this clause are as follows:
- (a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land.
- (b) to limit traffic generation as a result of that development,
- (c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
- (d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,
- (e) to permit higher density development at transport nodal points,
- (f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,



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- (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,
- (h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood.
- (i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas.
- (j) to encourage the consolidation of certain land for redevelopment,
- (k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.

#### 1.6. Is the development standard excluded from the operation of Clause 4.6 of the EPI?

The development standard is not specifically excluded from the operation of Clause 4.6 of WLEP.

#### 2. EXTENT OF VARIATION

The site where the RFB with street level neighbourhood shops is proposed has a maximum FSR standard of 0.9:1 as specified under Clause 4.4 of the Willoughby Local Environmental Plan 2012 (WLEP) as shown in Figure 3.

As demonstrated on the plans prepared by Hyecorp in association with Amglen, the proposed development has a maximum FSR of 2.49:1. Subsequently the development contravenes the 0.9:1 FSR control by 1.59:1 (i.e. 176% variation).

The proposed development therefore seeks a variation to the FSR standard to ensure that the proposal delivers an appropriate built form that is consistent with the desired future character as outlined in the WLEP.

# COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [CL.4.6 (3)(A)]

#### 3.1. Achieves the objectives of the standard

Table 1 below considers whether compliance with the FSR standard is unreasonable or unnecessary in the circumstances of this case because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard<sup>2</sup>.

2 in Wehbe v Pittweter Council [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.8 as confirmed by Pain J in Four2Five Pty Ltd v Ashtheid Council [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.8(4)(a)(ii). The 5 ways in Wehbe are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate. The five ways are not exhaustive, and it may be sufficient to establish only one.

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In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34], the Chief Justice held, establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary". Demonstrating that there will be no adverse amenity impacts is therefore one way of showing consistency with the objectives of a development standard.

Table 1: Achievement of Development Standard Objectives

#### Discussion Objective limit (a) to the The subject site is a site in transition from the current controls and anticipated intensity of uses. The environmental capacity of the site when considered in isolation as development 10 compared to being integrated with the adjoining land for a comprehensive which the controls redevelopment changes the anticipated intensity and capacity of the individual apply so that it will be carried out The Site Compatibility Certificate (SCC) to the adjoining land states that that land accordance with the has capacity for a greater density. Accordingly, by integrating 247-255 Penshurst environmental capacity of the land Street into that consolidated site, likewise increases the capacity of that site. and the zone So, despite the contravention of the standard the proposed RFB with objectives for the neighbourhood shops at street level will be of compatible scale and mass with land. the future use of the land. The contravention in floorspace primarily occurs due to the building being sited to the rear boundary, which would not have been the anticipated design outcome for this site in its current configuration. In this instance the RFB is part of a consolidated development across 17 allotments, with the overall scheme providing generous setbacks, a park available to the general public and mixed housing needs to cater for seniors and other demographics. The proposal is consistent with this objective given it is compatible with the existing urban form in the immediate locality along Penshurst Street. There are examples of developments of similar height, bulk and scale located opposite the site at 260 and 262 Penshurst Street. Refer to Figures 8 and 9 below which show similar developments within the (b) to limit traffic As a consequence of the proposed site consolidation, vehicular access to the site can be achieved via a central entry/exit point in Crabbes Avenue. This minimises generation of that any potential conflict of vehicular activities. A Traffic Report prepared by Colston result development, Budd Rogers & Kafes Pty Ltd for the development application has assessed the proposal's impacts of the proposed development on the operation of the surrounding road network. Overall, their assessment finds that "the surrounding road network can accommodate the additional traffic generated by the proposed development...traffic flows on Crabbes Avenue will be consistent with its local road function and there will be minimal impact on the operation of the intersections of Crabbes Avenue with High Street and Penshurst Street." Furthermore, the proposed site is well serviced by public transport. There are two bus stops immediately in front of the site on Penshurst Street. These bus stops have multiple buses that provide services to the surrounding area and beyond, including the Sydney City CBD, Chatswood, and Bondi Junction and will be available for use by future residents and visitors. The proposed contravention of

the FSR standard does not affect the achievement of the objectives of this control.

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#### Objective

#### Discussion

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

The amenity of adjoining developments is a result of various factors. These are discussed separately below as views, privacy and visual intrusion and overshadowing impacts:

#### Views

Views from surrounding properties will not be affected as a consequence of the contravention to the floor space ratio within the proposed RFB within the R3 zone. Views in the surrounding area are generally limited to street level views, with the taller buildings along Penshurst Road having general views of the surrounding district including buildings, sky and some tree canopy.

#### Privacy & Visual Intrusion

The proposed RFB will be located over 20m from the units opposite the site at 262 Penshurst Street. As such sufficient separation distance is proposed and there would be no privacy impacts or visual intrusion as a result of the contravention to this standard.

At the rear of the proposed RFB, there will be a new civic space in the form of a landscaped park, providing ample separation distance between the proposed RFB and the western elevations of the ILU building Blocks B and C. The distance would be over 40m, therefore there will be no loss of privacy to the future residents of the development.

In relation to the adjoining building immediately to the north of the site at 259 Penshurst Street, at lower levels the proposed RFB would abut the existing building on the boundary. At higher levels the proposed RFB would feature no windows in the northern elevation, ensuring privacy for the building and any future development on the site should it be redeveloped in future.

The proposal does not impact on neighbouring properties in terms of loss of privacy or visual intrusion.

#### Overshadowing

The proposed contravention to the standard will not result in any additional overshadowing impacts to neighbouring or adjoining properties, as the club is located directly south, Penshurst Street is located to the west and the adjoining site at 259 Penshurst Street is located to the north. Refer to the shadow diagrams extracted below, which show that even with the contravention in floor space ratio the shadow does not start to impact on the proposed park until 2pm midwinter, with the shadow cast at 3pm still being minor.

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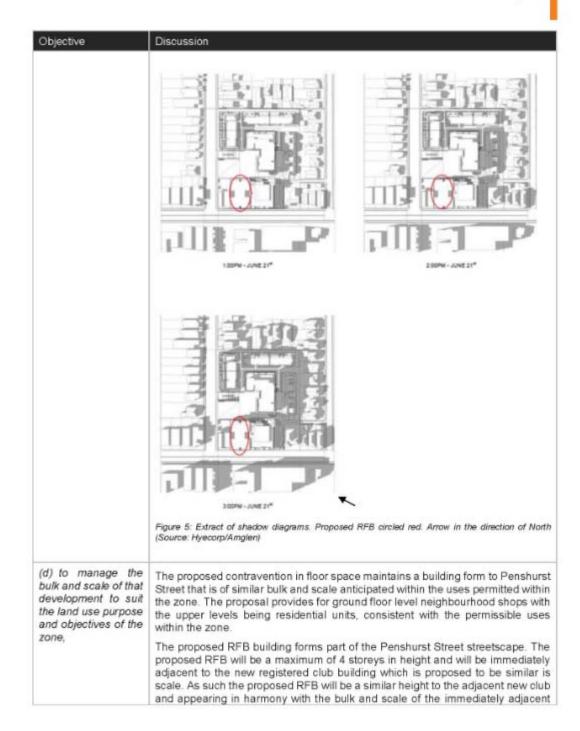


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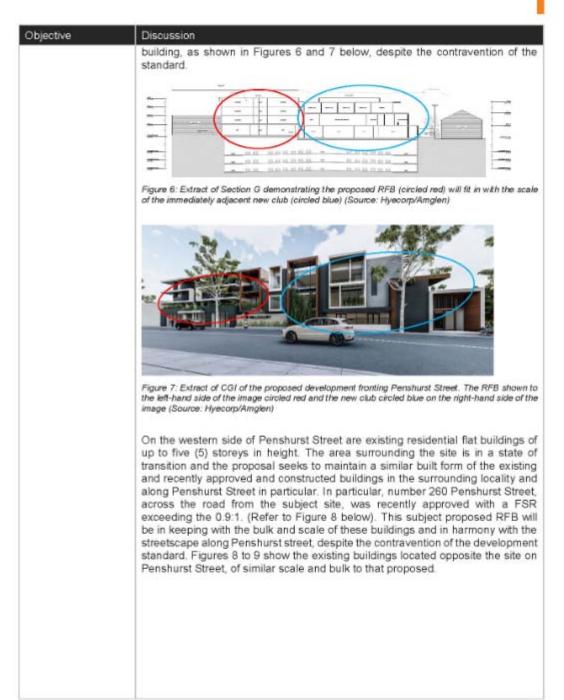


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# Objective Discussion



Figure 8: Photograph of existing RFB opposite the site at 260 Penshurst Street (Source: City Plan)



Figure 9: Photograph of existing RFB opposite the site at 262 Penshurst Street (Source: City Plan)

The proposed RFB with neighbourhood shops at street level will fit in seamlessly with the scale of the streetscape along Penshurst Street, appearing in harmony with the immediately surrounding buildings. It is considered the variation of the standard is consistent with the objective.

Immediately to the north on Penshurst Street, adjoining the site where the RFB is proposed, is an existing two (2) storey building at 259 Penshurst Street. This building is currently in use as an 'Armenian Cultural Centre' and there would be zero setbacks between the proposed RFB and this building, as is currently the existing situation between this building and the existing adjoining commercial building on the subject site. See Figures 10 and 11.



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## Objective

Discussion



Figure 10: Photograph of the existing two storey building at 259 Penshurst Street, circled blue. (Source: Google maps)



Figure 11: Photograph of the existing two storey building at 259 Penshurst Street, circled blue, and the existing buildings where the RFB is proposed, circled red. (Source: Google maps)

This building is also within the R3 zone and is therefore capable of being developed for a number of land uses permitted with consent in the R3 zone, including as a RFB to a maximum height of 12m pursuant to the WLEP. It is anticipated that access to that site would be from Crabbes Avenue, and it would more than likely maintain a similar scale to the existing building with additional levels and nil rear setback. As such it is anticipated this site will develop to the same bulk and scale as is proposed in this subject application.

Consequently, 259 Penshurst Street is not isolated by this proposal as it can be developed within the R3 controls in a similar manner, albeit probably utilising design features such as a car lift for vehicle parking.

The variation of the standard is consistent with the objective.



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Objective	Discussion
(e) to permit higher density development at transport nodal points,	The contravention in floor space ratio still maintains consistency with this objective. As discussed earlier, the proposed site is well serviced by public transport. There are two bus stops immediately in front of the site on Penshurst Street. These bus stops have multiple buses that provide services to the surrounding area and beyond, including the Sydney City CBD, Chatswood, and Bondi Junction and will be available for use by future residents and visitors.
(f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,	N/A. The subject site is not located within the city centre of Chatswood.
(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,	N/A. The subject site is not located within the city centre of Chatswood.
(h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents	N/A. The subject site is not located within the city centre of Chatswood.



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Objective	Discussion
and visitors to the city centre of Chatswood,	
(i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas.	The contravention in this standard still maintains a transition in building scale and density. Residential development fronting Penshurst Street ranges up to five (5) storeys in height. Density and height increase substantially towards Chatswood Centre.  The development will be consistent with the existing character of the area, which is transitioning to higher density residential development along Penshurst Street with the construction of recent developments, in particular those opposite the site at 260 and 262 Penshurst Street. The proposed RFB will feature neighbourhood shops at street level and the scale of the development is consistent with existing buildings within the immediate area, along Penshurst Street, and the adjoining proposed new club.
	In relation to the adjoining building at 259 Penshurst Street, the existing building on this adjoining site is two (2) storeys and it is envisaged this site would be developed within the R3 controls in a similar manner in the future and would add to the transition in building scale and density in the immediate locality.
(j) to encourage the consolidation of certain land for redevelopment,	The contravention of the development standard still maintains consistency with this objective. The site is actually consolidated for this RFB development.
(k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.	The contravention of the development standard maintains consistency with this objective. The proposed RFB and neighbourhood shops provides for community facilities and can accommodate affordable housing.

# THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [CL. 4.6(3)(B)]

In Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole.

As discussed earlier, the contravention in the FSR standard primarily occurs due to the building being sited boundary to boundary, which is not a usual design outcome, and something not anticipated by the control. However, in this instance the RFB with street level neighbourhood shops is part of a consolidated development across the broader site consisting of 17 allotments. The overall scheme provides a development that is compatible with the bulk and scale of the area, with generous setbacks, a park available



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to the general public and mixed housing to cater for seniors and other demographics. As discussed in Section 3, there are no adverse environmental impacts associated with additional overshadowing, view loss or overlooking as a result of the proposed variation of the standard.

The SEE prepared for this DA provides a holistic environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development.

There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds. Some additional specific environmental grounds to justify the contravention of the standard are summarised as follows:

- The proposed development satisfies the objectives of the standard and the objectives of the zone;
- The contravention of the standard allows for a type and scale of development that is consistent with the existing and desired future character of the area;
- As demonstrated by the shadow diagrams accompanying the DA, the variation of the floor space ratio standard does not result in any overshadowing impacts to adjoining residential dwellings and will not impact on the availability of solar access to adjoining and nearby neighbours;
- The contravention of the floor space ratio limit does not result in any additional overlooking, loss of privacy for neighbouring properties, or loss of views;
- The additional floor space will not have a detrimental visual impact on the surrounding area;
- The proposal will facilitate neighbourhood shops to serve the community;
- The proposed non-compliance with the maximum floor space ratio for the site maintains the orderly and economic use of the land;
- The proposal would not 'isolate' 259 Penshurst Street; and
- The proposal would result in a better planning outcome than if compliance were to be achieved, as it provides a consolidated development that meets the objectives of the standard.

# THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [CL.4.6(4)(A)(II)]

In Section 3 (above), it was demonstrated that the proposal is consistent<sup>3</sup> with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in **Table 2** (below).

Table 2: Consistency with R3 Zone Objectives.

Objective	Discussion
R3 Zone	<u>~</u>
To provide for the housing needs of the community within a medium density residential environment.	The contravention of the standard does not result in an inconsistency with this objective. The proposed development will in provide additional housing within the locality, nearby to a range of local services, facilities and amenities.

<sup>3</sup> In Dem Gillespies v Warringah Council [2002] LGERA 147 and Addentrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC the term "consistent" was interpreted to mean 'compatible' or 'capable of existing together in harmony'



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To provide a variety of housing types within a medium density residential environment.	The contravention in floor space ratio does not affect the proposal from complying with this objective.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The contravention of the standard does not result in an inconsistency with this objective. The proposed RFB will include neighbourhood shops at street level and will provide an active frontage to the street. The neighbourhood shops will attract a mix of tenures to support the viability of the area and provide valuable services to help meet the day to day needs of residents in the community.
To accommodate development that is compatible with the scale and character of the surrounding residential development.	The contravention of the standard does not result in an inconsistency with this objective. As previously discussed, the proposal will result in a development that is compatible with the scale and character of the surrounding residential development and will not render the adjoining site, 259 Penshurst Street, an isolated site.
To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network.	The proposed contravention of the standard does not affect consistency with this objective. The Traffic Report prepared for the DA by Colston Budd Rogers & Kafes Pty Ltd has assessed the proposal's impacts of the proposed development on the operation of the surrounding road network. Overall, their assessment finds that the surrounding road network can accommodate the additional traffic generated by the proposed development. Traffic flows on Crabbes Avenue will be consistent with its local road function and there will be minimal impact on the operation of the intersections of Crabbes Avenue with High Street and Penshurst Street. Furthermore, the proposal will result in all vehicle parking and associated noises and functions being located underground.
To encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping.	The proposed contravention of the standard does not affect consistency with this objective. The proposal represents a high-quality urban design outcome and as previously discussed, the proposal will not result in any adverse environmental impacts that would have a detrimental impact upon the amenity of the locality

As can be seen from **Table 1** and **Table 2**, the proposal is consistent with the assumed objectives of the standard and the objectives of the zones and is therefore considered to be in the public interest.



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# CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [CL. 4.6(5)(A)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

# THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [CL. 4.6(5)(B)]

There is no public benefit4 in maintaining strict compliance with the development standard.

The development complies with the stated objectives of the zone and the development standard seeking to be varied. The development will provide additional dwellings in an area identified as being a suitable location for the provision of housing, while still ensuring that the development is consistent with the existing and desired future character of the area. It promotes street activation by providing neighbourhood shops and a through link to the park at the rear. Further, there are no unreasonable environmental impacts as a result of the variation.

The variation of the development standard facilitates a contemporary development that will be characteristic of the massing, bulk and scale envisaged on the site and those in the immediate vicinity on Penshurst Street

There is no public benefit in maintaining strict application of the standard and that the overall proposal will result in a public benefit.

#### 8. CONCLUSION

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the Willoughby Local Environmental Plan 2012, that:

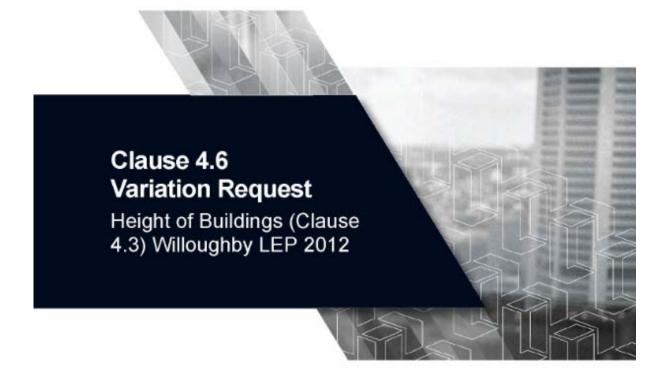
- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- · There are sufficient environmental planning grounds to justify the contravention;
- The proposal meets the assumed objectives of the development standard and is consistent with the
  objectives of the R3 Medium Density Residential Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- · The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

<sup>4</sup> Ex Gratia P/L v Dungog Council (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. APPENDIX 3: APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT OF RFB (R3 ZONE)





# 26 Crabbes Avenue & 247-255 Penshurst Street, Willoughby

Submitted to Willoughby Council
On Behalf of Hyecorp Property Group & Club Willoughby

JULY 2019



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		Lucy Broadwell Senior Planner	from to free
			Sue Francis
			Executive Director

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#### 1. INTRODUCTION

This is a request prepared in accordance with Clause 4.6 of the Willoughby Local Environmental Plan 2012 to support a development application submitted to Willoughby Council for a residential flat building with street level neighbourhood shops associated with the construction of a new and expanded three (3) storey registered club fronting Penshurst Street, 106 seniors ILUs accommodated within 3 (three) new buildings ranging from two (2) storeys to part five (5) part six (6) storeys, a two (2) to three (3) storey seniors RACF building with 49 beds. A large portion of the consolidated site is the existing Willoughby Legion Ex-Services Club (also known as "Club Willoughby").

The purpose of this Clause 4.6 variation request is to address a variation to Clause 4.3 Height of Buildings under the Willoughby Local Environmental Plan 2012 under the R3 zone.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal 1.

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action"), Chief Justice Preston provided further clarification on the application of cl 4.6 and the preconditions which must be satisfied for consent to be granted pursuant to cl 4.6(4). That is, the consent authority must form two positive opinions of satisfaction under cl. 4.6(4)(a), as summarised below:

- the written request has adequately demonstrated that the matters under cl 4.6(3) are satisfied, being that compliance with the standard is unreasonable or unnecessary, and there are sufficient environmental planning grounds to justify contravening the development standard. It is not the consent authority's role to directly form an opinion as to whether these matters are satisfied, rather indirectly by the satisfaction that the written request has addressed these matters.
- be directly satisfied that the proposed development satisfies of 4.6(4)(a)(ii), being the proposed development will be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. The consent authority must form this opinion directly, rather than indirectly satisfied that the written request has adequately addressed these matters.

In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by Clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6 and 7 we address additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

As the following request demonstrates, by exercising the flexibility afforded by cl 4.6, in the particular circumstances of this application, not only would the variation be in the public interest because it satisfies the relevant objectives of both the R3 Medium Density Residential zone and the development standard, but it would also result in a better planning outcome.

<sup>1</sup> Relevant decisions include: Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46; Wehbe v Pittwater Council [2007] NSWLEC 827: Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90: Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90: Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90: Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90: Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1015; Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 and Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.



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# 1.1. What is the Environmental Planning Instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is the Willoughby Local Environmental Plan 2012 (WLEP).

#### 1.2. What is the zoning of the land?

The zoning of the subject site is shown in Figure 1, pursuant to the Willoughby Local Environmental Plan 2012.

The proposed residential flat building (RFB) with neighbourhood shops at street level pursuant to the WLEP is located within the R3 Medium Density Residential zone only.

The majority of the broader consolidated site is zoned RE2 Private Recreation with a minor portion of the site towards the north-eastern boundary zoned R2 Low Density Residential and a portion in the north-western boundary zoned R3 Medium Density Residential. This Clause 4.6 only relates to the contravention of height standard for the land zoned R3. (outlined in blue in Figure 1. Below)



Figure 1: Extract of Land Zoning Map, consolidated site outlined in red. The part of the site subject of this CI.4.6 outlined in blue (Source: NSW Legislation)



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Figure 2: Extract of Master Plan demonstrating location of RFB building in the R3 zone, outlined blue, relative to the consolidated development. (Source: Dickson Rothschild)

## 1.3. What are the Objectives of the zones?

The objectives of the R3 zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- · To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To accommodate development that is compatible with the scale and character of the surrounding residential development.
- To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network.
- To encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping.

# 1.4. What is the development standard being varied?

The subject development standard is specified under Clause 4.3 Height of buildings of the WLEP. This clause applies to specific land in a residential zone to which a maximum building height of 12 metres applies as shown on the 'Height of Buildings Map.' Refer to Figure 3 below.



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Figure 3: Extract of height of buildings map, relevant area of the site circled highlighted blue. Wider consolidated site outlined red. (Source: NSW Legislation)

#### 1.5. What are the objectives of the development standard?

The relevant objectives of Clause 4.3 of the WLEP are:

- (1) The objectives of this clause are as follows:
- (a) to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape.
- (b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
- (c) to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,
- (d) to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,
- (e) to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping.
- (f) to use maximum height limits to assist in responding to the current and desired future character of the locality.
- (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,
- (h) to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.

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#### 1.6. Is the development standard excluded from the operation of Clause 4.6 of the EPI?

The development standard is not specifically excluded from the operation of Clause 4.6 of WLEP.

#### 2. EXTENT OF VARIATION

Development within the R3 zone on the subject site has a maximum building height standard of 12m (refer to Figure 3). The proposed RFB with neighbourhood shops at street level has a maximum height, as measured from the existing ground level, of 14.22m at (RL 114.35 to the top of the lift overrun) and 13.4m (RL 113.00 to the top of the roof), as confirmed by Hyecorp. The proposal exceeds the development standard by 850mm to the roof closest to Penshurst Street, 1.4m to the roof at the rear of the building and 2.2m to the top of the lift overrun located centrally within the building, which has been minimised by not providing access to the roof. Specifically, the portion of the building mass above the 12m height limit is a minor portion of the uppermost part of Level 4 of the building and the lift core which is located centrally within the building and is the tallest element of the structure. Therefore, importantly, the majority of the building mass is below the 12m height limit. Refer to Figure 4 and Figure 5.



Figure 4: Extract of Height Plane Diagram. Development above the blue height plane representing the extent of the contravention (Source: Hyecorp)

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Figure 5: Extract of Section H detailing the extent of the development above the 12m height limit, shaded yellow. (Source: Hyecorp/Amalen)

# COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [CL.4.6 (3)(A)]

#### 3.1. Achieves the objectives of the standard

Table 1 below considers whether compliance with the maximum building height standard is unreasonable or unnecessary in the circumstances of this case because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard<sup>2</sup>.

In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34], the Chief Justice held, "establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary". Demonstrating that there will be no adverse amenity impacts is therefore one way of showing consistency with the objectives of a development standard.

Table 1: Achievement of Development Standard Objectives.

Objective	Discussion
(a) to ensure that new development is in harmony with	height. Density and height increase substantially towards Chatswood Centre, west of

2 in Wehbe v Pittwater Council [2007] N SWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP I, it remains relevant to requests under clause 4.6 as confirmed by Pain J in FourizFive Pty Ltd v Astrieid Council [2015] N SWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in Wehbe are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard, 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate.

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the bulk and scale of surrounding buildings and the streetscape, The proposed RFB forms part of the Penshurst Street streetscape. The proposed RFB will be a maximum of 4 storeys in height and will be immediately adjacent to the new registered club building which is proposed to be three storeys in height and forms part of the wider development application. However, the new club building will feature floor to floor heights of between 4.2 to 4.5m to create high amenity space within the club. As such the proposed RFB will be a similar height to the adjacent new club and appearing in harmony with the bulk and scale of the immediately adjacent building, as shown in Figures 6 and 7 below, despite the contravention of the standard.

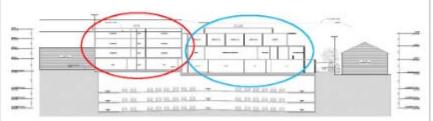


Figure 6: Extract of Section G demonstrating the proposed RFB (circled red) will fit in with the scale of the immediately adjacent new club (circled blue). (Source: Hyecorp/Amglen)



Figure 7: Extract of CGI of the proposed development fronting Penshurst Street. The RFB shown to the lefthand side of the image, circled red and the new club circled blue on the right-hand side of the image (Source: Hyecorp/Amalen)

On the western side of Penshurst Street are existing residential flat buildings of up to four (4) storeys in height. The area surrounding the site is in a state of transition and the proposal seeks to maintain a similar built form of the existing and recently approved and constructed buildings in the surrounding locality and along Penshurst Street in particular. The proposed RFB will be in keeping with the bulk and scale of these buildings and in harmony with the streetscape along Penshurst street, despite the contravention of the development standard. Figures 8 to 9 show the existing

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buildings located opposite the site on Penshurst Street, of similar scale and bulk to that proposed. The buildings have similar approved heights with:

- 266 Penshurst St approved at RL 112.54,
- 262 Penshurst St approved at RL 112.2, and
- 240 Penshurst St approved at RL 111.2.



Figure 8: Photograph of existing RFB opposite the site at 260 Penshurst Street (Source: City Plan)



Figure 9: Photograph of existing RFB opposite the site at 262 Penshurst Street (Source: City Plan)

The proposed RFB with neighbourhood shops at street level will fit in seamlessly with the scale of the streetscape along Penshurst Street, appearing in harmony with the immediately surrounding buildings.

Immediately to the north on Penshurst Street, adjoining the site, is an existing two (2) storey building at 259 Penshurst Street. This building is currently in use as the 'Armenian Cultural Centre' and there would be zero setbacks between the proposed RFB and this building, as is currently the existing situation between this building and the existing adjoining commercial building on the subject site, see below Figures 10 and 11.



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Figure 10: Photograph of the existing two storey building at 259 Penshurst Street, circled blue. (Source: Google maps)



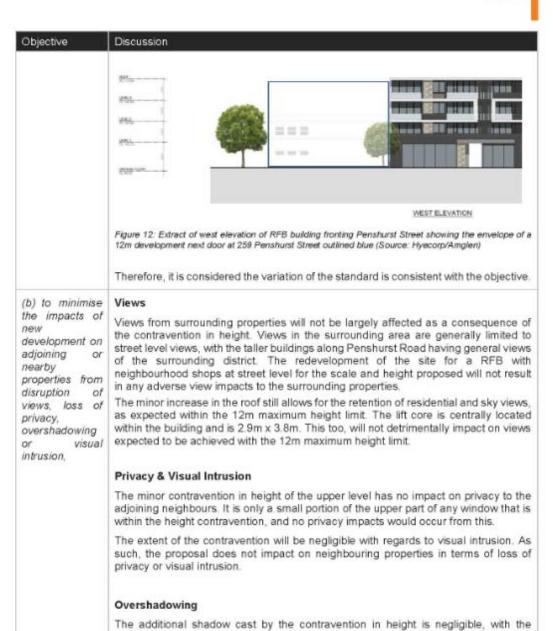
Figure 11: Photograph of the existing two storey building at 259 Penshurst Street, circled blue, and the existing buildings where the RFB is proposed, circled red. (Source: Google maps)

This building is also within the R3 zone and is therefore capable of being developed for a number of land uses permitted with consent in the R3 zone, including as a RFB to a maximum height of 12m pursuant to the WLEP. As such it is anticipated this site will achieve the maximum 12m height limit sometime in the future.

Figure 12 demonstrates that despite the contravention in height, this proposal still ensures the development is in harmony with the future expected bulk and scale of the northern adjoining building. Consequently, it is not considered the site at 259 Penshurst Street is rendered an isolated site by this proposal as it can be developed within the R3 controls in a similar manner, albeit likely utilising design features such as a car lift for vehicle parking from Crabbes Avenue.



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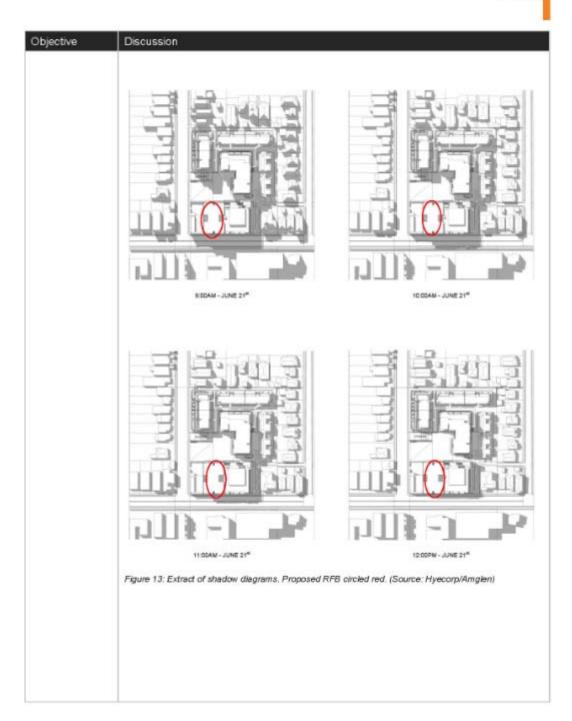


shadow predominantly falling on the road and/or proposed club. The shadow does not start to impact on the proposed park until 2pm midwinter, with the shadow cast at 3pm

still being minor. Refer to the shadow diagrams extracted below.

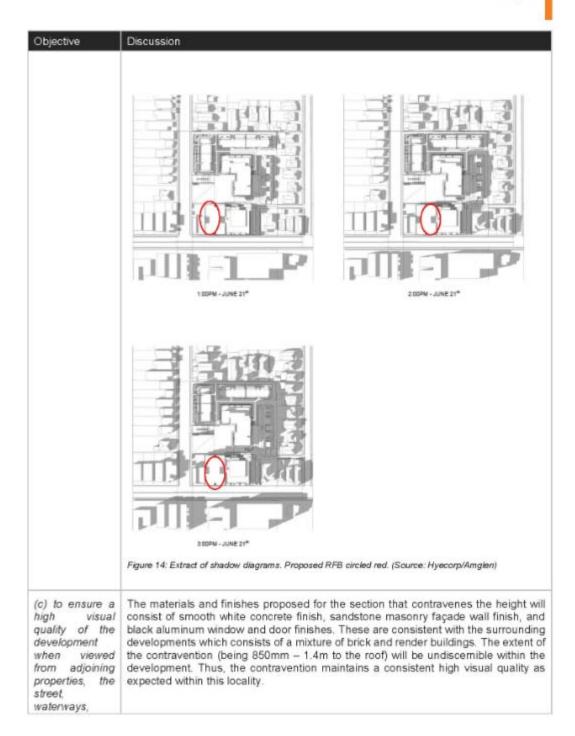


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Objective	Discussion
public reserves or foreshores,	
(d) to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,	As discussed in part (b) above, views from surrounding properties will not be affected as a consequence of the minor contravention in height.
(e) to set upper limits for the height of buildings that are consistent	As previously discussed, the proposed RFB within the R3 zone will be consistent with existing and future development within Penshurst Street in terms of height and also with the proposed adjacent new club (the subject of the SCC). While there would be a minor contravention of 850mm – 1.4m to the height standard for the roof, the majority of the proposed building mass would be under the height limit.
with the redevelopment potential of the relevant land given other development restrictions, such as floor space and	It is relevant to consider that whilst the 12m height limit would be assumed to allow for a four (4) storey development, the control established in the WLEP in 2012 has not been updated to address the requirements of the 3.1m floor to floor height requirement of the Apartment Design Guide (ADG), published in 2015. The Residential Flat Design Code, which the ADG replaced, did not stipulate a floor to floor height and 3m was the norm prior to the ADG. Therefore, the proposal at 3.1m floor to floor heights for the residential floors results in approximately 300mm additional height required to satisfy this ADG requirement over the three residential levels.
landscaping,	Additionally, the height contravention is also contributed to by the changes in the Building Code Australia (BCA) standards requiring sprinkler systems in all buildings greater than three (3) storeys in height. As above, prior to the ADG being published in 2015, developments could show that services did not require as much space to be fitted between floors, reducing the space required for services compared to what is now required under the ADG. These changes in standards and requirements have occurred after the WLEP height control was established in 2012. Therefore, the anticipated four (4) storeys built form within the 12m height control, together with compliance with the necessary BCA and ADG requirements, is difficult to achieve without a technical contravention to the control. Further to this, the ground floor provides neighbourhood shops which have a higher floor to ceiling height than that expected for a typical residential development. This contributes to the overall contravention of 850mm – 1.4m.
	The lift core itself is only 2.9m x 3.8m. This contravention in height will be centrally located within the building and not easily seen from the street, adjoining buildings and/or proposed park to the east. This is not uncommon within residential flat buildings and creates no detrimental impacts.



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Objective	Discussion
	The minor contravention in height still allows the RFB to maintain a four storey building as envisaged within the height controls and is consistent with the expectant redevelopment potential of the site.
	Thus, this objective has been complied with, despite the minor contravention.
(f) to use maximum height limits to assist in responding to the current and desired future character of the locality,	The minor contravention in height maintains a four storey building, consistent with what is expected with the maximum 12m height limit. As previously discussed, the proposal is similar in bulk and scale to existing developments and the desired future character of the locality, including the site to the immediate north which is expected to be redeveloped in the future.  The variation of the standard does not affect consistency with this objective
(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the refail shopping core of Chatswood,	N/A. The subject site is not located within the city centre of Chatswood.
(h) to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.	The proposed RFB with neighbourhood shops at street level would be compatible with the character and scale already existing along Penshurst Street and also the future character of the area, being compatible in scale and height with the proposed adjoining new club building. In relation to the adjoining building at 259 Penshurst Street, the existing building on this adjoining site is two (2) storeys and it is envisaged this site would be developed within the R3 controls in a similar manner, thus increasing intensity and height. Together with the wider consolidated development, the proposal will contribute to creating a sense of place and community and a suitable transition in built form from the taller built form in Penshurst Street to the surrounding residential areas in streets such as Crabbes Avenue and Horsley Avenue.  The minor contravention to the height standard of 12m does not affect the achievement of this objective, as it maintains a building height consistent with the expected four storeys in the immediate locality.



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# THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [CL. 4.6(3)(B)]

In Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole.

As discussed earlier, the elements of the development that contravene the height standard relate to the roof and uppermost parts of the fourth-floor level of the building only. The majority of the building mass, however, sits below the maximum height limit. In this regard the environmental impacts are negligible. As discussed in Section 3, there are no adverse environmental impacts associated with additional overshadowing, view loss or overlooking as a result of the proposed variation of the standard.

The SEE prepared for this DA provides a holistic environmental planning assessment of the proposed development and concludes that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development.

There is robust justification through the SEE and accompanying documentation to support the overall development and contend that the outcome is appropriate on environmental planning grounds. Some additional specific environmental grounds to justify the contravention of the standard are summarised as follows:

- The proposed development satisfies the objectives of the standard and the objectives of the zone;
- The contravention of the standard allows for a development that is consistent with the existing and desired future character of the area;
- As demonstrated by the shadow diagrams accompanying the DA, the variation of the height standard does not result in any overshadowing impacts to adjoining residential dwellings and will not impact on the availability of solar access to adjoining and nearby neighbours;
- The contravention of the height limit does not result in any additional overlooking or loss of privacy for neighbouring properties;
- · The additional height does not change the overall bulk and scale of the development,
- The additional height in the ground floor will facilitate neighbourhood shops to serve the community;
- The proposed non-compliance with the maximum height limit for the site maintains the orderly and economic use of the land;
- The proposed height is compatible with the existing development in the immediate context of the site and with the emerging pattern of development in the locality. The tallest part of the building that exceeds the development standard, namely the lift overrun, has been located in the centre of the building to reduce its visual appearance when viewed from the public domain; and
- The proposal would not render the adjoining site, 259 Penshurst Street, an 'isolated site'.



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# THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [CL.4.6(4)(A)(II)]

In section 3 (above), it was demonstrated that the proposal is consistent<sup>9</sup> with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in **Table 2** (below).

Table 2: Consistency with R3 Zone Objectives.

Objective	Discussion
R3 Zone	
To provide for the housing needs of the community within a medium density residential environment.	The contravention of the standard does not result in an inconsistency with this objective. The proposed development will provide additional housing within the locality, nearby to a range of local services, facilities and amenities.
To provide a variety of housing types within a medium density residential environment.	The contravention in height does not affect the proposal from complying with this objective.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The contravention of the standard does not result in an inconsistency with this objective and allows for the provision of ground floor shops and upper level residential units which comply with the ADG floor to floor requirements.
To accommodate development that is compatible with the scale and character of the surrounding residential development.	The contravention of the standard does not result in an inconsistency with this objective. As previously discussed, the proposal will result in a development that is compatible with the scale and character of the surrounding residential development and will not render the adjoining site, 259 Penshurst Street, an isolated site.
To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network.	The proposed contravention of the standard does not affect consistency with this objective. It does not result in additional residential density on the site.
To encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping.	The proposed contravention of the standard does not affect consistency with this objective. The proposal represents a high-quality urban design outcome and as previously discussed, the proposal will not result in any adverse environmental impacts that would have a detrimental impact upon the amenity of the locality.

<sup>3</sup> in Dem Gillespies v Warringah Council [2002] LGERA 147 and Addentrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC the term "consistent" was interpreted to mean compatible" or "capable of existing together in harmony"



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As can be seen from Table 1 and Table 2, the proposal is consistent with the assumed objectives of the standard and the objectives of the zones and is therefore considered to be in the public interest.

# CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [CL. 4.6(5)(A)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

# THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [CL. 4.6(5)(B)]

There is no public benefit4 in maintaining strict compliance with the development standard.

The development complies with the stated objectives of the zone and the development standard seeking to be varied. The contravention in height still allows the development to be consistent with the existing and desired future character of the area. Further, there are no unreasonable environmental impacts as a result of the variation.

The elements of the development that contravene the height standard relate to the uppermost part of the fourth-floor level of the building and the centrally located lift core only. The majority of the building mass, however, sits below the maximum height limit. The proposed number of storeys, being four in total, is consistent with other residential flat building developments and in the immediately surrounding area.

Given the above, there is no public benefit in maintaining strict application of the standard and that the overall proposal will result in a public benefit.

#### 8. CONCLUSION

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the Willoughby Local Environmental Plan 2012, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- · There are sufficient environmental planning grounds to justify the contravention;
- The proposal meets the assumed objectives of the development standard and is consistent with the
  objectives of the R3 Medium Density Residential Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard, and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

<sup>4</sup> Ex Gratia P/L v Dungog Council (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public disadvantages of the proposed development" outweigh the public disadvantages of the proposed development.

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068.
APPENDIX 4: APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT (SENIORS HOUSING SEPP)





# 26 Crabbes Avenue & 247-255 Penshurst Street, Willoughby

Submitted to Willoughby Council
On Behalf of Hyecorp Property Group & Club Willoughby

JULY 2019



4.6 Request - 9m height
Willoughby Legion Ex-Services Club & 247-255 Penshurst
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		Prepared by	Verified by
		Lucy Broadwell Senior Planner	Toly
			Tina Christy
			Associate Director
02	18/07/19	Draft	
		Prepared by	Verified by
		Lucy Broadwell / Tina Christy Senior Planner / Associate Director	from 5 from
			Executive Director
03	26/07/19	Final	
		Verified by	
		Sue E Francis Executive Director	

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#### 1. INTRODUCTION

The subject site benefits from a Site Compatibility Certificate (SCC) issued on 30 August 2018 for "Development for the purposes of seniors housing, consisting of a residential care facility, with approximately 36 to 72 beds, and approximately 99 to 125 self-contained dwellings as serviced self-care housing." It supports a development with a maximum floor space ratio (FSR) of 1.35:1 and a height of buildings varying from 8.5m to 20.5m. However, the SCC acts only to render the development type and indicative form as "permissible." It remains that in submitting any development application the relevant provisions of any EPI, including any development standards contained therein, must be assessed and, if necessary, varied to achieve the built form anticipated by the SCC.

Therefore, this Clause 4.6 variation is to address a variation to Clause 40(4)(a), relating to the height of buildings, of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP); specifically, "(a) the height of all buildings in the proposed development must be 8 metres or less." This cl.4.6 variation relates only the residential zones at the site where Seniors Housing is proposed, as such it relates to only the R2 zoned land on the eastern boundary of the consolidated site.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

This request has been prepared having regard to the Department of Planning and Environment's guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal 1.

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action"), Chief Justice Preston provided further clarification on the application of cl 4.6 and the preconditions which must be satisfied for consent to be granted pursuant to cl 4.6(4). That is, the consent authority must form two positive opinions of satisfaction under cl. 4.6(4)(a), as summarised below:

- the written request has adequately demonstrated that the matters under cl 4.6(3) are satisfied, being that compliance with the standard is unreasonable or unnecessary, and there are sufficient environmental planning grounds to justify contravening the development standard. It is not the consent authority's role to directly form an opinion as to whether these matters are satisfied, rather indirectly by the satisfaction that the written request has addressed these matters.
- be directly satisfied that the proposed development satisfies of 4.6(4)(a)(ii), being the proposed development will be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. The consent authority must form this opinion directly, rather than indirectly satisfied that the written request has adequately addressed these matters.

The consent authority does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) (Initial Action [25]).

In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by Clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6 and 7 we address additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

The following request demonstrates, by exercising the flexibility afforded by cl 4.6, in the particular circumstances of this application, not only would the variation be in the public interest because it satisfies the relevant objectives of both the zones and the development standard, but it would also result in a better planning outcome.

<sup>1</sup> Relevant decisions include: Winten Property Group Limited v North Sydney Council [2001] NSWLEC 48; Weibbe v Pittwater Council [2007] NSWLEC 87; Four2Five Pty Ltd v Ashtheid Council [2015] NSWLEC 1009; Four2Five Pty Ltd v Ashtheid Council [2015] NSWLEC 99; Four2Five Pty Ltd v Ashtheid Council [2015] NSWLEC 448; Moskovich v Waverley Council [2016] NSWLEC 1015; Randwick City Council v Micaul Holdings Pty Ltd (2016) NSWLEC 7 and Initial Action Pty Ltd v Woorlahre Municipal Council [2016] NSWLEC 118.



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# 1.1. What is the Environmental Planning Instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP). However, we note that the Willoughby Local Environmental Plan 2012 (WLEP) also applies to the land.

#### 1.2. What is the zoning of the land?

The zoning of the subject site is shown in Figure 1, pursuant to the Willoughby Local Environmental Plan 2012.

The development standard being varied relates only to the R2 residential zone and is not relevant for the RE2 Zoned land, as per Clause 40 (4) of the Seniors SEPP.

The majority of the site is zoned RE2 Private Recreation with a minor portion of the site towards the north-eastern boundary zoned R2 Low Density Residential and a portion in the north-western boundary zoned R3 Medium Density Residential.

The proposed seniors housing consisting of Independent Living Units (ILUs) and a Residential Aged Care Facility (RACF) pursuant to the Seniors SEPP are located within the RE2 zone and the R2 zone only and benefit from a SCC as referenced above. The proposal intends to retain the Club use on the site in a new building located fronting Penshurst Street.



Figure 1: Extract of Land Zoning Map, consolidated site outlined red. The part of the site subject of this cl.4.6 outlined in blue. (Source: NSW Legislation)



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Figure 2: Extract of Master Plan demonstrating approximate location of development in the R2 zone, outlined blue, relative to the consolidated development across the site. (Source: Dickson Rothschild)

#### 1.3. What are the Objectives of the zones?

The objectives of the R2 zone are:

- 1 Objectives of zone
- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To accommodate development that is compatible with the scale and character of the surrounding residential development.
- To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.
- · To retain the heritage values of particular localities and places.
- To encourage self sufficiency with respect to energy and food supply.

#### 1.4. What is the development standard being varied?

The relevant development standard is the "height in zones where residential flat buildings are not permitted" standard under Clause 40(4)(a) of the Seniors SEPP. Refer below.

#### 40 Development standards—minimum sizes and building height

(4) Height in zones where residential flat buildings are not permitted



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If the development is proposed in a residential zone where residential flat buildings are not permitted:

 (a) the height of all buildings in the proposed development must be 8 metres or less, and Note

Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

#### 1.5. What are the objectives of the development standard?

The Seniors SEPP provides no instruction on the intent of the height controls in Clause 40(4)(a) and does not otherwise nominate any objectives to underpin the intent of the various height controls. It is therefore necessary to assume what the purpose of the standard might be to then evaluate whether a variation to the control would be consistent with these objectives. It is therefore assumed that the intent/purpose (objectives) of this control are:

- To ensure that the development is compatible with the surrounding area by virtue of its scale and bulk and consistent with the existing and future character of the area;
- To not cause unreasonable amenity impacts on adjoining developments

The rationale behind this is because Clause 40(4)(b) of the Seniors SEPP refers specifically to the height in relation to streetscape and Clause 40(4)(c) refers to the height at the rear of the site. Therefore, it is assumed Clause 40(4)(a) is relevant to the overall height of the development in relation to the surrounding area.

#### 1.6. Is the development standard excluded from the operation of Clause 4.6 of the EPI?

The development standard is not specifically excluded from the operation of Clause 4.6 of WLEP.

#### 2. EXTENT OF VARIATION

The maximum allowable height is 8m, pursuant to Clause 40(4)(a) of the Seniors SEPP.

The definition of height within the Seniors SEPP is:

height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

The Seniors SEPP does not have a definition for storey, so the standard definition within the Standard Instrument is relied upon:

Storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) A space that contains only a lift shaft, stairway or meter room, or
- (b) A mezzanine, or
- (c) An attic.

As demonstrated in Figure 3 by the plans prepared by Hyecorp in association with Amglen, portions of the seniors housing proposed within the R2 zoned land are within proposed ILU Blocks B and C. The proposal seeks to provide a maximum height of 9.28m (RL 105.00) to the portion of Block B within the R2 zoned land and a maximum height of 8.81m (RL 103.90) to the portion of Block C within the R2 zoned land above existing ground level, as confirmed by Hyecorp. The contravention occurs at Level 3 only.



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Figures 3 to 5 give an understanding of the contravention of the standard

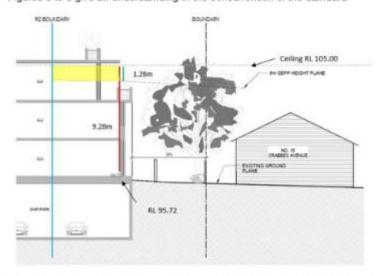


Figure 3: Extract of Section A east/west through proposed Block B. R2 boundary shown on the section as blue and built form above the 8m SEPP height limit within the R2 zone highlighted yellow (Source: Hyecorp/Amglen)

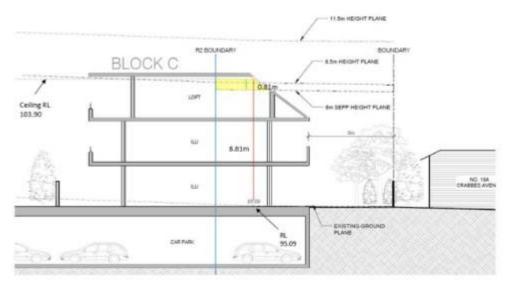


Figure 4.Extract of Section J east/west through proposed Block C. R2 boundary shown in blue and built form above the 8m SEPP height limit within the R2 zone highlighted yellow (Source: Hyecorp/Amglen)



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Figure 5: Extract of GFA Plan Dwg No. DA-FSR1 A (Plan 5). Green line denotes R2 zoned land and the portions of Blocks B & C within the R2 land highlighted yellow (Source: Hyecorp/Amglen)

The proposed development seeks a variation to the height standard to ensure that the proposal delivers an appropriate built form that is consistent with the desired future character as outlined in the SCC.

## COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [CL.4.6 (3)(A)]

#### 3.1. Achieves the objectives of the standard

As noted earlier, the Seniors SEPP provides no instruction on the intent of the height controls in Clause 40(4)(a) and does not otherwise nominate any objectives to underpin the intent of the various height controls. Therefore, it is assumed that the objectives, or rather, intent/purpose of this control are:

- To ensure that the development is compatible with the surrounding area by virtue of its scale and bulk and consistent with the existing and future character of the area;
- To not cause unreasonable amenity impacts on adjoining developments.

In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34], the Chief Justice held, "establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary". Demonstrating that there will be no adverse amenity impacts is therefore one way of showing consistency with the objectives of a development standard.

Table 1 below discusses the development standard and whether the intent/purpose of the development standard is achieved, notwithstanding non-compliance with the standard2:

2 In Wehbe v Pithwater Council [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4,6 as confirmed by Pain J in Pout2Five Pty Ltd v Ashtfeid Council [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in Wehbe are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate. The five ways are not exhaustive, and it may be sufficient to establish only one.



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Table 1: Achievement of assumed Development Standard Objectives.

#### Objective

#### jective

To ensure that the development is compatible with the surrounding area by virtue of its scale and bulk and consistent with the existing and future character of the area:

#### Discussion

The contravention of the standard occurs within the R2 zoned land which is located within the north eastern part of the consolidated site. The extent of contravention extends for a width of 3.67m fronting Crabbes Avenue and for a length of approximately 15.7m along the adjoining eastern boundary, at Level 3 only at Block B. The contravention in height for Block C is maximum 0.81m and extends for a length of approximately 7.3m on the eastern boundary, at Level 3 only.

Buildings on the opposite side of Crabbes Avenue are a mixture of one and two-storey dwellings. The adjoining properties to the east at Numbers 18 and 18A both currently have single storey dwellings. However, Crabbes Avenue has a maximum height limit of 8.5m under the WLEP and as such, both sites could achieve two-storey buildings with pitched roofs under the R2 zone to within 0.9m of the common side boundary with the subject site.

Fronting Crabbes Avenue the proposed ILU building Block B will present as two storeys to the street, as the third level balcony is recessed, and the design has emphasised the two storey element by the use of colours and materials. (Refer to Figure 6 below).

The proposed seniors housing within Blocks B and C within the R2 zone will be between two to three storeys in height, and setback from the boundaries by 6m. The stepping down in height of the buildings towards the boundaries reduces the bulk and scale while also transitioning the bulk and form to the existing lower scale residential areas to the north and east.

To the eastern side boundary within the R2 zoned land where the contravention in height occurs to the third level only of Block B, this level is setback further than the lower two levels at 8.58m from the boundary. Refer to Figure 3 and Figure 11.



Figure 6: Extract of north elevation showing transition in heights to two storeys. Approx. R2 zone boundary yellow. Approx. portion of the building above the contravention shaded green. Approx. two storey dwelling on adjacent site shown blue. (Source: Dickson Rothschild)

The result for Block B is a building that is compatible in bulk and scale with the existing and expected future character of the area, as it transitions to a lower scale at the closest point with the eastern adjoining neighbours.

Block C at the rear of the R2 zoned portion of the subject site is designed to appear as a two-storey building with the third level containing rooms in the roof. The contravention in height for this building is less than in Block B, being maximum 0.81m.

The building will appear as a two-storey building when viewed from the eastern boundary. The WDCP requires a 6m rear setback for this site, (the rear being



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Objective	Discussion
	the southern boundary), to ensure low scale residential development has sufficient landscaping and open space and to minimize overshadowing and provide adequate separation between buildings. Although the proposed Block C extends within the rear portion of the R2 zone, Lot 11 DP6291, it is proposed to have a 6m setback to the adjoining common boundary with Numbers 18 and 18A Crabbes Avenue. This will allow for a variety of deep soil landscaping, including mature trees and will be an improvement from the existing club carpark that is currently on the site (Refer to Figure 7 below). Further, Number 18 Crabbes currently sits 5.76m from its rear boundary and Number 18A Crabbes currently is located 5.6m from its rear boundary. Thus, the bulk and scale of the proposed Building C will be compatible with the existing and future character of the area.
To not cause unreasonabl e amenity impacts on adjoining development	The contravention in height for Block B is 1.28m and extends for a length of 15.7m. The contravention in height for Block C is 0.81m and extends for a length of approximately 7.3m.  Views  Views  Views from surrounding properties will not be largely affected as a consequence of the contravention of the development standard and the redevelopment of the site within the R2 zoned land. Views in the surrounding area are generally limited to street level views, sky and some canopy trees.  The proposed Blocks B and C will be setback from the adjoining boundaries by at least 6m. Furthermore, Blocks B and C are designed to achieve a sensitive transition to the existing low-density residential development on the northern and eastern boundaries. The upper level to Block B is recessed further than the two levels below, enabling the gradual stepping of the building. The roof design of Block C also means the bulk of this building is reduced at upper level.  The closest adjoining dwelling houses to the portions of Blocks B and C within the R2 zoned land are 18 and 18A Crabbes Avenue. These dwellings are also within the R2 zone and are presently single storey with principle views towards the north and south. The proposal, located due west of these existing dwellings, will not impact views currently enjoyed from these dwellings given their principle views are north/south. The western boundary of 18 and 18A Crabbes Avenue, adjoining the site and between the proposed development and the adjoining dwellings, is a high paling fence limiting any existing views towards the site (approximately 2.2m measured from the site).



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Figure 7: Photograph of the existing high close board

#### Overshadowing

Hyecorp in association with Amglen have prepared detailed shadow diagrams for the proposal. These demonstrate the proposed seniors housing development above the 8m height standard within the R2 zoned land would protect the amenity of neighbouring properties in relation to sunlight, despite the noncompliance with the height standard. The closest adjoining properties along the north, east and south boundaries will receive in excess of 3hrs direct sunlight between 9am and 3pm mid-winter. The majority of the shadows will fall on the site itself throughout the day and the proposed development within the R2 zoned land that contravenes the height standard does not overshadow any rear yard to the adjoining dwellings at 18 and 18A Crabbes Avenue until approximately 3pm at which time the shadow impact is only partial. Refer to Figures 8 & 9, extracts of the shadow diagrams provided below.

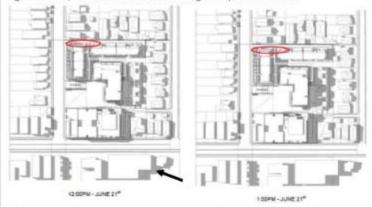


Figure 8: Extracts of shadow diagrams 12-1pm mid-winter. Approximate location of development within the R2 zone circled red. Black arrow in the direction of North (Source: Hyecorp/Amglen)



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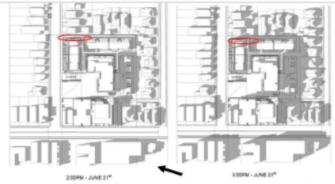


Figure 9: Extracts of shadow diagrams 2-3pm mid-winter. Approximate location of development within the R2 zone circled red. Black arrow in the direction of North (Source: Hyecorp/Amglen)

#### Privacy

The proposed setbacks of over 6m to Level 3 where the contravention occurs within the R2 zoned land together with the considered design of the proposed buildings ensures there would not be an unreasonable impact in terms of privacy as a result of the scheme. The Willoughby DCP 2016 allows a minimum side setback of 0.9m for walls 1-2 storeys in height, and a minimum of 1.5m for walls in excess of 2 storeys.

Where the contravention occurs, at the third level on both proposed blocks, the development would be located in excess of 6m from the boundary. This is demonstrated in Figure 11. Furthermore, the contravention occurs only to the uppermost parts of Level 3 Blocks B and C within the R2 zone.

Block B would be setback approximately 8.5m from the adjoining eastern boundary where the contravention occurs at Level 3 and has its balconies oriented north and south away from the adjoining properties as 18 and 18A Crabbes Avenue. While there would be balcony area connecting the two main balcony spaces, this would have a limited depth (approximately 1.2m) and as such is unlikely to be used to the same extent as the balconies to the north and south which are larger in area (circled blue in Figure 10). Additionally, the third-floor level has been recessed to reduce the angle of overlooking, and windows at this level would be setback 8.5m from the common boundary, much greater than a standard development within the R2 zone.



Figure 10: Extract of Level 3 showing main balcony areas oriented north and south away from adjoining dwellings (Source: Hyecorp/Amglen)

Block C is proposed to be setback 7.4m from the adjoining eastern boundary where the contravention occurs at the upper level. However, these are rooms



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#### Objective Discussion

within the roof with their principal living areas oriented to the west. Due to the angle of the roof and the skylights, shown in Figure 4, there would be no overlooking as a result of this area of the contravention within Block C.

The substantial setbacks, together with landscaping to the boundaries, will ensure the proposal does not result in sightlines that would result in a loss of privacy to these adjoining dwellings on the eastern boundary.



Figure 11: Extract of Plan 5 showing the setbacks to the boundaries with 18 and 18A Crabbes Avenue, Area of contravention highlighted yellow. (Source: Hyecorp/AmglenCity Plan)

Fronting Crabbes Avenue, the proposed units to the northern boundary within ILU building Block B will be located at a distance of approximately 31.4m from the front elevations of dwellings on the opposite side of the road. The generous setbacks and design of the building will ensure there are no unreasonable amenity impact to dwellings opposite in Crabbes Avenue, in terms of privacy.

#### Visual Impact

The extra height which forms the contravention will have some minimal visual impact, but this will not be detrimental. As discussed above, the proposed Blocks B and C where the contravention occurs at the third level, responds to the existing lower residential character of the adjoining properties by reducing the bulk to limit the building's visual dominance. The additional height as a result of the contravention does not cause the buildings to appear overify dominant or bulky because of the design features such as setbacks, materials and associated landscaping. The contravention occurs at only the uppermost part of Level 3 to each building and given the majority of the development is within the height limit, the contravention would not result in a detrimental visual impact, over and above the visual impact caused by a compliant development.

The proposed development as a whole will be visually consistent in terms of design and materials in that it represents fine grain urban form with large landscaped setbacks to the northern, eastern and southern boundaries responding to the existing lower residential character of the adjoining properties. This provides considerable separation between the proposed buildings, where the contravention occurs on each Block, and the adjoining low-density development.



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The proposed height and massing of the buildings ensure that:

- the development is compatible by virtue of its bulk and scale with the existing and future character
  of the area; and
- the development does not cause unreasonable amenity impacts on adjoining properties.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the assumed objectives of the standard are achieved notwithstanding the non-compliance.

# THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [CL. 4.6(3)(B)]

In Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole.

As discussed earlier, the ILU buildings, Blocks B and C, for seniors housing accommodation will contravene the height standard, because the development has been designed in accordance with the approved SCC and to greater heights. Nevertheless, the contravention of the height standard is limited to only a small portion of the third levels within each building. A compliant development would clearly result in a lesser built form, but in this case the parts of the buildings that contravene the standard do not cause any adverse impacts to surrounding residential properties. Therefore, it can be concluded that the proposal does not result in any unreasonable environmental impacts and it is considered there are sufficient environmental planning grounds to justify the contravention.

Some additional specific environmental grounds to justify the contravention of the standard are summarised as follows:

- The proposed development satisfies the assumed objectives of the standard and the objectives
  of the zone;
- The design of the proposal incorporates generous setbacks, recessed balconies to Building B
  and rooms within the roof to Building C, steps away from the site boundaries and with the use of
  skillful materials enforces the two-storey portion and recessed third level, to complement the built
  form and assist in reducing the scale of the development when viewed from public and private
  domain. This ensures the proposal results in minimal amenity impact and is compatible with the
  surrounding area in terms of bulk and scale;
- The additional height will not have a detrimental visual impact on the surrounding area;
- There are no adverse environmental impacts such as unacceptable additional overshadowing or overlooking as a result of the proposed building for seniors housing and contravention of the standard; and
- The proposal would result in a better planning outcome than if compliance were to be achieved, as it allows for the co-ordinated redevelopment of the site.

# THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [CL.4.6(4)(A)(II)]

In section 3 (above), it was demonstrated that the proposal is consistent® with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in **Table 2** (below).

3 In Dem Gillespies v Warringah Council [2002] LGERA 147 and Addentirooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'

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Table 2: Consistency with RE2 Zone Objectives.

Objective	Discussion
R2 Zone	0.
To provide for the housing needs of the community within a low-density residential environment.	The contravention of the standard does not result in an inconsistency with this objective. The proposed development will provide additional housing within the locality of Willoughby, nearby to a range of local services, facilities and amenities in accordance with the approved SCC.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The contravention of the standard does not result in an inconsistency with this objective. The wider proposal includes a new registered club and neighbourhood shops and new public park. Furthermore, the proposal for seniors housing is permissible under the Seniors SEPP and the SCC.
To accommodate development that is compatible with the scale and character of the surrounding residential development.	The contravention of the standard does not result in an inconsistency with this objective. As previously discussed, the proposal will result in a development that is compatible with the scale and character of the surrounding residential development.
To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.	The contravention of the standard does not result in an inconsistency with this objective. As previously discussed, the proposal will not result in any adverse environmental impacts that would have a detrimental impact upon the amenity of the locality
To retain the heritage values of particular localities and places.	The proposed contravention of the standard does not affect consistency with this objective. The built form relative to the boundaries of the site which are a conservation area have been maintained at a height and scale consistent with the character of the Conservation Area.
To encourage self-sufficiency with respect to energy and food supply.	The proposed contravention of the standard does not affect consistency with this objective.

As can be seen from **Table 1** and **Table 2**, the proposal is consistent with the assumed objectives of the standard and the objectives of the zone and is therefore considered to be in the public interest.

# CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [CL. 4.6(5)(A)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.



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## THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [CL. 4.6(5)(B)]

There is no public benefit4 in maintaining strict compliance with the development standard. The development will provide additional housing choice and seniors accommodation and care for the community in purpose-built facilities with excellent internal and external amenity, in an area identified as being a suitable location for the provision of more intensive development in accordance with the approved SCC application. The proposal will ensure that development is consistent with the existing and desired future character of the area and there are no unreasonable environmental impacts as a result of the variation.

Given the above, there is no public benefit in maintaining strict application of the standard and that the overall proposal will result in a public benefit.

#### 8. CONCLUSION

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the Willoughby Local Environmental Plan 2012, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- · There are sufficient environmental planning grounds to justify the contravention;
- The proposal meets the assumed objectives of the development standard and is consistent with the objectives of the R2 zone and importantly the requirements of the approved SCC application;
- The proposed development, notwithstanding the variation, is in the public interest and there is no
  public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

<sup>4</sup> Ex Gratia PVL v Dungog Council (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outwelgh the public disadvantages of the proposed development"





# 26 Crabbes Avenue & 247-255 Penshurst Street, Willoughby

Submitted to Willoughby Council
On Behalf of Hyecorp Property Group & Club Willoughby

JULY 2019



4.6 Request – 2 storeys
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# REPORT REVISION HISTORY

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01	11/07/19	Draft	
		Prepared by	Verified by
		Tina Christy Associate Director	Sue Francis Executive Director
02	26/07/19	Final	
		Prepared by	Verified by
		Tina Christy Associate Director	Sue Francis Executive Director

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#### 1. INTRODUCTION

The subject site benefits from a Site Compatibility Certificate (SCC) issued on 30 August 2018 for "Development for the purposes of seniors housing, consisting of a residential care facility, with approximately 36 to 72 beds, and approximately 99 to 125 self-contained dwellings as serviced self-care housing." It supports a development with a maximum floor space ratio (FSR) of 1.35:1 and a height of buildings varying from 8.5m to 20.5m. however, the SCC acts only to render the development type and indicative form as "permissible." It remains that in submitting any development application the relevant provisions of any EPI, including any development standards contained therein, must be assessed and, if necessary, varied to achieve the built form anticipated by the SCC.

Therefore, this Clause 4.6 variation is to address a variation to Clause 40(4)(b), relating to the height of buildings, in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP); specifically "(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must not be more than 2 storeys in height.", as it relates to a single lot of R2 zoned land on the eastern boundary of the consolidated site.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal 1.

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action"), Chief Justice Preston provided further clarification on the application of cl 4.6 and the preconditions which must be satisfied for consent to be granted pursuant to cl 4.6(4). That is, the consent authority must form two positive opinions of satisfaction under cl. 4.6(4)(a), as summarised below:

- the written request has adequately demonstrated that the matters under cl 4.6(3) are satisfied, being that compliance with the standard is unreasonable or unnecessary, and there are sufficient environmental planning grounds to justify contravening the development standard. It is not the consent authority's role to directly form an opinion as to whether these matters are satisfied, rather indirectly by the satisfaction that the written request has addressed these matters.
- be directly satisfied that the proposed development satisfies of 4.6(4)(a)(ii), being the proposed development will be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. The consent authority must form this opinion directly, rather than indirectly satisfied that the written request has adequately addressed these matters.

The consent authority does not have to directly form the opinion of satisfaction regarding the matters in cl. 4.6(3), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl. 4.6(3) (Initial Action [25]).

In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by Clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6 and 7 we address additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

<sup>† 1</sup> Relevant decisions include: Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46; Wehbe v Pittwater Council [2007] NSWLEC 827; Four/2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four/2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four/2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four/2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four/2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four/2Five Pty Ltd v Ashfield Council [2016] NSWLEC 1015; Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 and Initial Action Pty Ltd v Wooliahra Municipal Council [2018] NSWLEC 118.



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The following request demonstrates that by exercising the flexibility afforded by Cl 4.6, in the particular circumstances of this application, not only would the variation be in the public interest because it satisfies the relevant objectives of the zone and the development standard, but it would also result in a better planning outcome.

# 1.1. What is the Environmental Planning Instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP). However, we note that the Willoughby Local Environmental Plan 2012 (WLEP) also applies to the land.

#### 1.2. What is the zoning of the land?

The zoning of the subject site is shown in Figure 1, pursuant to the Willoughby Local Environmental Plan 2012.

The development standard being varied relates only to the residential R2 zone and is not relevant for the RE2 Zoned land, as per Clause 40 (4) of the Seniors SEPP.

The majority of the site is zoned RE2 Private Recreation with a minor portion of the site towards the northeastern boundary zoned R2 Low Density Residential and a portion in the north-western boundary zoned R3 Medium Density Residential.

The proposed seniors housing consisting of Independent Living Units (ILUs) and a Residential Aged Care Facility (RACF) pursuant to the Seniors SEPP are located within the RE2 zone and the R2 zone only and benefit from a SCC as referenced above. The proposal intends to retain the Club use on the site in a new building located fronting Penshurst Street.



Figure 1: Extract of Land Zoning Map, subject site outlined in red (Source: NSW Legislation) blue outline shows the area of R2 Zoned land



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Figure 2: Extract of Master Plan demonstrating location of ILU and RACF buildings relative to the zones in Figure 1. (Source: Dickson Rothschild) Blue outline shows approximate location of the R2 Zoned land.

## 1.3. What are the Objectives of the zones?

The objectives of the R2 zone are:

- 1 Objectives of zone
- · To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To accommodate development that is compatible with the scale and character of the surrounding residential development.
- To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.
- · To retain the heritage values of particular localities and places.
- · To encourage self sufficiency with respect to energy and food supply.

### 1.4. What is the development standard being varied?

The relevant development standard is the "height in zones where residential flat buildings are not permitted" standard under Clause 40(4)(b) of the Seniors SEPP. Refer below.

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#### 40 Development standards—minimum sizes and building height

(4) Height in zones where residential flat buildings are not permitted

If the development is proposed in a residential zone where residential flat buildings are not permitted:

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must not be more than 2 storeys in height.

Note.

The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

As per the note in this Clause, the intention of this is to ensure development is compatible with the scale of development in the streetscape and reflects how the development transitions with the adjoining buildings.

#### 1.5. What are the objectives of the development standard?

The Seniors SEPP provides no objectives for the height controls in Clause 40(4)(b) other than the "Note" specified in the instrument. It is therefore assumed that the intent/purpose (objective) of this control is:

To avoid an abrupt change in the scale of development in the streetscape.

#### 1.6. Is the development standard excluded from the operation of Clause 4.6 of the EPI?

The development standard is not specifically excluded from the operation of Clause 4.6 of WLEP.

#### 2. EXTENT OF VARIATION

The buildings adjacent to a boundary of a site must not be more than 2 storeys in height, pursuant to Clause 40(4)(b) of the Seniors SEPP.

The definition of height within the Seniors SEPP is:

**height** in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

The Seniors SEPP does not have a definition for storey, so the standard definition within the Standard Instrument is relied upon:

Storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) A space that contains only a lift shaft, stairway or meter room, or
- (b) A mezzanine, or
- (c) An attic.

As demonstrated Figures 3 and 4 below, the relevant building adjacent to the site boundaries for the purposes of scale of development in the streetscape is:

Building B fronting Crabbes Avenue and located within the north-eastern corner of the site.

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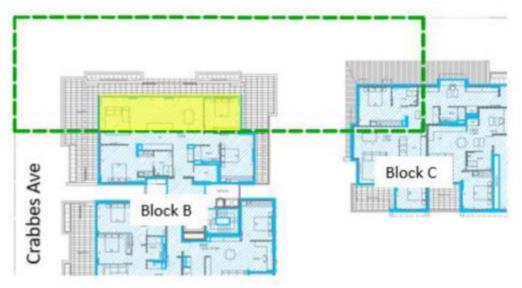


Figure 3: Extract of GFA Plan showing extent of contravention in yellow (Source: Hyecorp/Amglen)



# NORTH ELEVATION

Figure 4: Extract of North Elevation Plan of Block B fronting Crabbes Avenue showing extent of contravention in yellow (Source: Hyecorp/Amglen)



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The northern elevation of Building B which fronts Crabbes Avenue is 3-storeys at this elevation, with the balcony recessed. (Refer to Figures above). The eastern elevation of Building B steps down to 2 storeys adjoining Numbers 18 and 18A Crabbes Avenue.

The proposed development seeks a variation to the height standard to ensure that the proposal delivers an appropriate built form that is consistent with the desired future character as outlined in the SCC.

# COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [CL.4.6 (3)(A)]

#### 3.1. Achieves the objectives of the standard

As noted earlier, the Seniors SEPP provides no instruction on the intent of the height controls in Clause 40(4)(b) and does not otherwise nominate any objectives to underpin the intent of the various height controls. Therefore, it is assumed that the objectives, or rather, intent/purpose of this control are:

To avoid abrupt change in the scale of development in the streetscape.

In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34], the Chief Justice held, "establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary". Demonstrating that there will be no adverse amenity impacts is therefore one way of showing consistency with the objectives of a development standard.

Table 1 below discusses the development standard and whether the intent/purpose of the development standard is achieved, notwithstanding non-compliance with the standard?:

Table 1: Achievement of assumed Development Standard Objectives.

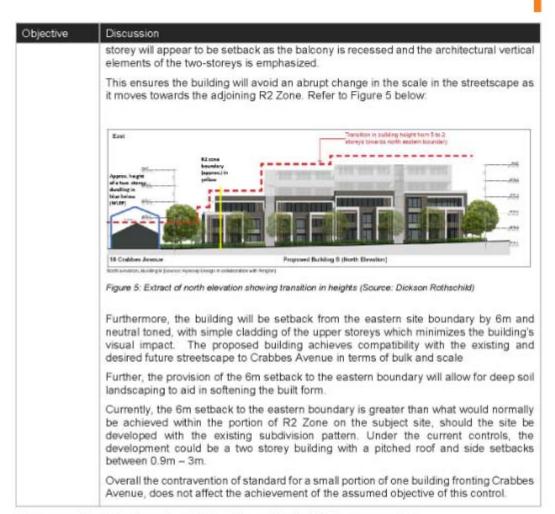
Objective	Discussion
To avoid an abrupt change in the scale of	The contravention of the standard occurs on the Crabbes Avenue frontage for a length of 6.5m. The building fronting Crabbes Avenue appears as 3 storeys, however the eastern elevation is stepped to 2 storeys and complies.
development in the streetscape	The streetscape of Crabbes Avenue is presently low scale dwellings between one to two storeys in height and all dwellings along Crabbes Avenue are within the R2 zone. This zone has a maximum height limit of 8.5m under the WLEP 2012 and as such, two storey dwellings are the desired outcome for this streetscape under the WLEP 2012.
	To Crabbes Avenue the proposed ILU building, shown on the plans as Block B, will present as two storeys to the street due to the architectural features used. The third

<sup>2</sup> in Wehbe v Pittwater Council [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in Wehbe are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate. The five ways are not exhaustive, and it may be sufficient to establish only one

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The proposed height and massing of the building within the R2 Zone ensures that:

. the building avoids abrupt change in the scale of development in the streetscape.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the assumed objective of the standard is achieved notwithstanding the non-compliance.

# 4. THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [CL. 4.6(3)(B)]

In Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written

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request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole.

A height-compliant development may result in a lesser height, but in this case the level of the building B that contravenes the standard does not cause any adverse impacts to surrounding residential properties and is set back approximately twice the anticipated requirement. Therefore, it can be concluded that the proposal does not result in any unreasonable environmental impacts. Moreover, the proposal would result in a better planning outcome.

Some additional specific environmental grounds to justify the contravention of the standard are summarised as follows:

- The proposed development satisfies the assumed objective of the standard and the objectives of the zone:
- The design of Building B incorporates generous setbacks, steps away from the site boundaries and
  with the use of skillful materials enforces the vertical element of the two-storey portion and recesses
  the third level. This reduces the scale of the development when viewed from public and private
  domain ensuring the proposal results in minimal amenity impact and is compatible with the
  surrounding area in terms of bulk and scale;
- The proposal would result in a better planning outcome than if compliance were to be achieved, as it
  locates the bulk of the development and greatest height towards the centre of the site, provides
  generous setback from the boundaries with existing neighbouring properties, and achieves the
  assumed objective of the standard and the development envisaged by the approved SCC; and
- The development will facilitate development of additional quality housing options for seniors in a highly desirable location.

# THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [CL.4.6(4)(A)(II)]

In Section 3 (above), it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal is also consistent with the objectives of the residential zone as explained in Table 2 (below).

Table 2: Consistency with RE2 Zone Objectives.

Objective	Discussion
R2 Zone	
To provide for the housing needs of the community within a low-density residential environment.	The contravention of the standard does not result in an inconsistency with this objective. The proposed development will provide additional housing within the locality of Willoughby, nearby to a range of local services, facilities and amenities in accordance with the approved SCC.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The contravention of the standard does not result in an inconsistency with this objective. The wider proposal includes a new registered club and neighbourhood shops and new public park.

<sup>3</sup> In Dem Gillespies v Warringah Council [2002] LGERA 147 and Addentirooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'



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	Furthermore, the proposal for seniors housing is permissible under the Seniors SEPP and the SCC.
To accommodate development that is compatible with the scale and character of the surrounding residential development.	The contravention of the standard does not result in an inconsistency with this objective. As previously discussed, the proposal will result in a development that is compatible with the scale and character of the residential development within Crabbes Avenue.
To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.	The contravention of the standard does not result in an inconsistency with this objective. As previously discussed, the proposal will not result in any adverse environmental impacts that would have a detrimental impact upon the amenity of the locality
To retain the heritage values of particular localities and places.	The proposed contravention of the standard does not affect consistency with this objective. The built form relative to the boundaries of the site which are a conservation area have been maintained at a height and scale consistent with the character of the Conservation Area.
To encourage self-sufficiency with respect to energy and food supply.	The proposed contravention of the standard does not affect consistency with this objective.

As can be seen from Table 1 and Table 2, the proposal is consistent with the assumed objectives of the standard and the objectives of the zone and is therefore considered to be in the public interest.

# CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [CL. 4.6(5)(A)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

# THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [CL. 4.6(5)(B)]

There is no public benefit4 in maintaining strict compliance with the development standard. The development will provide additional housing choice and seniors accommodation and care for the community in purpose-built facilities with excellent internal and external amenity, in an area identified as being a suitable location for the provision of more intensive development in accordance with the approved SCC application. The proposal will ensure that development is consistent with the existing and desired future character of the area and has been designed specifically to transition down to a lower scale at the "rear of the site". There are no unreasonable environmental impacts as a result of the variation.

<sup>4</sup> Ex Gratia P/L v Dungog Council (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development" outweigh the public disadvantages of the proposed development.



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Given the above, there is no public benefit in maintaining strict application of the standard and that the overall proposal will result in a public benefit.

#### 8. CONCLUSION

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the Willoughby Local Environmental Plan 2012, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The proposal meets the assumed objectives of the development standard and is consistent with the
  objectives of the R2 zone and importantly the requirements of the approved SCC application;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard, and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.





# 26 Crabbes Avenue & 247-255 Penshurst Street, Willoughby

Submitted to Willoughby Council
On Behalf of Hyecorp Property Group & Club Willoughby

JULY 2019



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		Prepared by	Verified by
		Tina Christy Associate Director	Sue Francis Executive Director
02	26/07/19	Final	
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			Sue Francis
			Executive Director

#### Disclaimer

This report has been prepared by City Plan Strategy & Development P/L with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. City Plan Strategy & Development P/L accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

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Figure 1: Extract of Land Zoning Map, subject site outlined in red (Source: NSW Legislation) The blue outlines the part of the site zoned R2, subject of this clause 4.6
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#### 1. INTRODUCTION

The subject site benefits from a Site Compatibility Certificate (SCC) issued on 30 August 2018 for "Development for the purposes of seniors housing, consisting of a residential care facility, with approximately 36 to 72 beds, and approximately 99 to 125 self-contained dwellings as serviced self-care housing." It supports a development with a maximum floor space ratio (FSR) of 1.35:1 and a height of buildings varying from 8.5m to 20.5m. However, the SCC acts only to render the development type and indicative form as "permissible." It remains that in submitting any development application the relevant provisions of any EPI, including any development standards contained therein, must be assessed and, if necessary, varied to achieve the built form anticipated by the SCC.

Therefore, this Clause 4.6 variation is to address a variation to Clause 40(4)(c), relating to the height of buildings, in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP); specifically, "(c) a building located in the rear 25% of the site must not exceed 1 storey in height.", as it relates to a single lot of R2 Zoned land on the eastern boundary of the consolidated site.

However, in the context of the subject site, the application of Clause 40(4)(c) has no real work to do and does not strictly apply. Nevertheless, a Clause 4.6 variation has been submitted for abundant caution.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal 1.

In Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action"), Chief Justice Preston provided further clarification on the application of cl 4.6 and the preconditions which must be satisfied for consent to be granted pursuant to cl 4.6(4). That is, the consent authority must form two positive opinions of satisfaction under cl. 4.6(4)(a), as summarised below:

- the written request has adequately demonstrated that the matters under cl 4.6(3) are satisfied, being
  that compliance with the standard is unreasonable or unnecessary, and there are sufficient
  environmental planning grounds to justify contravening the development standard. It is not the
  consent authority's role to directly form an opinion as to whether these matters are satisfied, rather
  indirectly by the satisfaction that the written request has addressed these matters.
- be directly satisfied that the proposed development satisfies of 4.6(4)(a)(ii), being the proposed development will be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. The consent authority must form this opinion directly, rather than indirectly satisfied that the written request has adequately addressed these matters.

The consent authority does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) (Initial Action [25]).

In Sections 3 and 4 of this request, we have explained how flexibility is justified in this case in terms of the matters explicitly required by clause 4.6 to be addressed in a written request from the applicant. In Sections 4, 5, 6 and 7 we address additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

The following request demonstrates that by exercising the flexibility afforded by cl 4.6, in the particular circumstances of this application, not only would the variation be in the public interest because it satisfies

<sup>1</sup> Relevant decisions include: Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46; Wehbe v Pitwater Council [2007] NSWLEC 827; Four/2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four/2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; Four/2Five Pty Ltd v Ashfield Council [2015] NSWCA 248; Moskovich v Waverley Council [2016] NSWLEC 1015; Randwick City Council v Micaul Holdings Pty Ltd (2016) NSWLEC 7 and Initial Action Pty Ltd v Woollahra Municipal Council [2016] NSWLEC 118.



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the relevant objectives of the zone and the development standard, but it would also result in a better planning outcome.

# 1.1. What is the Environmental Planning Instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP). However, we note that the Willoughby Local Environmental Plan 2012 (WLEP) also applies to the land.

#### 1.2. What is the zoning of the land?

The zoning of the subject site is shown in Figure 1, pursuant to the Willoughby Local Environmental Plan 2012

The development standard being varied relates **only** to the residential R2 zone and is not relevant for the RE2 Zoned land, as per Clause 40(4) of the Seniors SEPP.

The majority of the site is zoned RE2 Private Recreation with a minor portion of the site towards the northeastern boundary zoned R2 Low Density Residential and a portion in the north-western boundary zoned R3 Medium Density Residential.

The proposed seniors housing consisting of Independent Living Units (ILUs) and a Residential Aged Care Facility (RACF) pursuant to the Seniors SEPP are located within the RE2 zone and the R2 zone only and benefit from a SCC as referenced above. The proposal intends to retain the Club use on the site in a new building located fronting Penshurst Street.



Figure 1: Extract of Land Zoning Map, subject site outlined in red (Source: NSW Legislation) The blue outlines the part of the site zoned R2, subject of this clause 4.6



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Figure 2: Extract of Master Plan demonstrating location of ILU and RACF buildings relative to the zones in Figure 1. (Source: Dickson Rothschild) Approximate location of the site zoned R2, the subject of this Clause 4.6.

# 1.3. What are the Objectives of the zones?

The objectives of the R2 zone are:

- 1 Objectives of zone
- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To accommodate development that is compatible with the scale and character of the surrounding residential development.
- To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.
- To retain the heritage values of particular localities and places.
- · To encourage self sufficiency with respect to energy and food supply.

#### 1.4. What is the development standard being varied?

The relevant development standard is the "height in zones where residential flat buildings are not permitted" standard under Clause 40(4)(c) of the Seniors SEPP. Refer below.

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#### 40 Development standards—minimum sizes and building height

(4) Height in zones where residential flat buildings are not permitted

If the development is proposed in a residential zone where residential flat buildings are not permitted:

(c) a building located in the rear 25% of the site must not exceed 1 storey in height.

This Clause 4.6 is submitted without prejudice since, in any practical sense there is no "rear 25% of the site" within the R2 Zone. However, for purposes of abundant caution should this be interpreted to the contrary, the rear 25% has been assumed to be the rear 25% of Lot 11 Sec 2 DP 6291 which is zoned R2.

#### 1.5. What are the objectives of the development standard?

The Seniors SEPP provides no instruction on the intent of the height controls in Clause 40(4)(c) and does not otherwise nominate any objectives to underpin the intent of the various height controls. It is therefore necessary to assume what the purpose of the standard might be to then evaluate whether a variation to the control would be consistent with these objectives. It is therefore assumed that the intent/purpose (objectives) of this control are:

- To ensure that the development is compatible by virtue of its bulk and scale to be consistent with the
  existing and desired future character of the rear of the site; and
- To not cause unreasonable amenity impacts on adjoining developments, at the rear of the site.

#### 1.6. Is the development standard excluded from the operation of Clause 4.6 of the EPI?

The development standard is not specifically excluded from the operation of Clause 4.6 of WLEP.

#### 2. EXTENT OF VARIATION

A building located in the rear 25% area of the site must not exceed 1 storey in height, pursuant to Clause 40(4)(c) of the Seniors SEPP.

The definition of height within the Seniors SEPP is:

height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

The Seniors SEPP does not have a definition for storey, so the standard definition within the Standard Instrument is relied upon:

Storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:

- (a) A space that contains only a lift shaft, stairway or meter room, or
- (b) A mezzanine, or
- (c) An attic.

The rear 25% of the R2 Zoned land is shown in Figure 3 below. As demonstrated on the plans prepared by Hyecorp in association with Amglen, the proposal situated within the rear 25% of the R2 zoned part of the site consists of part of Building C (adjoining the eastern boundary), for a length of approximately 8m parallel



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with the eastern boundary and with a height of 2 storeys facing east and 3 storeys facing west (internal to the development). Refer to diagram 4 below.

The remainder of Building C is situated within the RE2 Zoned land and hence is not affected by this standard.



Figure 3:Extract of GFA Plan showing the rear 25% of the R2 zone portion of the site highlighted yellow (Source: Hyecorp/Amglen/City Plan)



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Figure 4: Extract of ILU Block C Elevations Plan. Length of building situated within the rear 25% of the R2 Zoned land is highlighted in yellow. (Source: Hyecorp/Amglen/City Plan)

The proposed development seeks a variation to the height standard to ensure that the proposal delivers an appropriate built form that is consistent with the desired future character as outlined in the SCC.

# COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THIS CASE. [CL.4.6 (3)(A)]

## 3.1. Achieves the objectives of the standard

As noted earlier, the Seniors SEPP provides no instruction on the intent of the height controls in Clause 40(4) and does not otherwise nominate any objectives to underpin the intent of the various height controls. Therefore, it is assumed that the objectives, or rather, intent/purpose of this control are:

- To ensure that the development is compatible by virtue of its bulk and scale to be consistent with the
  existing and future character of the rear of the site; and
- To not cause unreasonable amenity impacts on adjoining developments at the rear of the site.

In Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34], the Chief Justice held, "establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary". Demonstrating that there will be no adverse amenity impacts is therefore one way of showing consistency with the objectives of a development standard.

Table 1 below discusses the development standard and whether the intent/purpose of the development standard is achieved, notwithstanding non-compliance with the standard<sup>2</sup>:

<sup>2</sup> In Wehbe v Pitwater Council [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the



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Table 1: Achievement of assumed Development Standard Objectives.

### Objective

### To ensure that the development is compatible by virtue of its bulk and scale to be consistent with the existing and future character of the rear of the site:

## Discussion

At present there is no development at the rear of Lot 11 Sec C DP 6291 zoned R2, as it is the carpark of the existing club. So, in this case, the development standard has no work to do.

In relation to the adjoining development to the east, No 18 Crabbes Avenue, this property can achieve two-storey buildings with pitched roofs under the R2 zone to within 0.9m of the side boundary, (ie the eastern boundary of Lot 11 Sec C DP 6291). To the rear of 18 Crabbes Avenue, is 18A Crabbes, again a single storey dwelling house capable of being 2 storeys. (Refer to Figure 5 below)

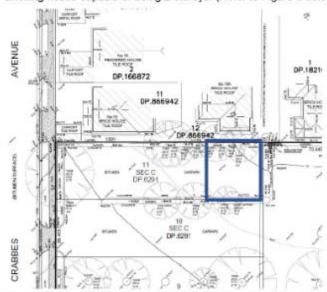


Figure 5: Approximate location of the rear 25% of the R2 zoned land shown in blue in relation to the northern adjoining sites at 18 and 18A Crabbes Avenue (Source: Survey prepared by C.M.S. Surveyors Pty Limited dated 11/03/13 & City Plan)

Further, the provision of a proposed 6m setback to the eastern boundary allows the provision of deep soil landscaping to aid in softening the built form.

Currently, the 6m setback to the eastern boundary is greater than what would normally be achieved within the portion of R2 Zone on the subject site, should the site be developed with the existing subdivision pattern. Under the current controls, the development could be a two storey building with a pitched roof and

decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90, notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(i). The 5 ways in Webbe are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate. The five ways are not exhaustive, and it may be sufficient to establish only one.

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## Objective Discussion

side setbacks between 0.9m – 1.5m. The expected southern (rear) setback under the Willoughby DCP for two-storey dwellings is 6m for developments anticipated within the R2 zone. However, it is clear from Figure 5 above that the dwelling at 18A (to the east of the subject site) and the dwelling to the south-east of the subject site, are both closer to the rear boundaries than 6m. The intention is to provide adequate landscaping and separation between buildings. The proposal achieves this with the large extent of deep soil landscaping proposed.

The adjoining RE2 Zone within the development site currently has no height and setback controls, and the site is underutilized. It is envisaged that any future development on this site would be an extension to the existing club with parking and buildings. Such development could extend much closer to the site boundary than the current proposal as there are no height and setback provisions within the RE2 zone.

Alternatively, should the RE2 zoned portion of the site be re-zoned, it would be reasonable to assume it would achieve R2 and/or R3 zones, similar to the surrounding existing zones. This would allow dwellings, dual occupancies, multi dwelling, Residential Flat Building and/or neighbourhood shop developments all situated much closer to the boundaries than 6m or 8m, and with heights extending from 2 storeys to 4 storeys. Thus, the proposal is consistent with the desired existing and future character of the area.



Figure 6: Extract of building setbacks and relationship to adjoining buildings (Source: Dickson Rothschild)

Overall the contravention of the standard does not affect the achievement of the assumed objectives of this control.

 To not cause unreasonable The extent of Building C which contravenes this standard is for a length of approximately 8m parallel with the eastern boundary (as shown in Figure 3). The



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## Objective

amenity impacts on adjoining developments to the rear of the site.

#### Discussion

amenity of adjoining developments is a result of various factors. The reduction in height at the rear of the site is generally so as to reduce the impacts from a development, particularly in relation to privacy, overshadowing, visual impact and views. These will be discussed below:

#### Privacy

The existing western boundary of 18 and 18A Crabbes Avenue do have windows facing the subject site. However, they are obscured by the existing solid paling fence. Further, the proposed setbacks of 6m to levels 1 and 2 within the R2 zoned land together with the considered design of the proposed buildings ensures there would not be an unreasonable impact in terms privacy as a result of the scheme. The Willoughby DCP 2016 allows a minimum side setback of 0.9m for walls 1 – 2 storeys in height and a minimum of 1.5m for walls in excess of 2 storeys.

Block C would be setback 7.4m from the adjoining eastern boundary where the contravention occurs at the upper level. However, these are rooms within the roof with their principal living area oriented to the west.

Substantial landscaping will be proposed to the boundaries and together with the setbacks and architectural features, such as recessed balconies and screens, and rooms within the roof; the proposal would not result in unreasonable privacy impacts.

#### Overshadowing

Hyecorp in association with Amglen have prepared detailed shadow diagrams for the proposal. The shadow diagrams demonstrate the closest adjoining properties along the east boundary will receive in excess of 3hrs direct sunlight between 9am and 3pm mid-winter. The majority of the shadows will fall on the site itself throughout the day and the proposed development does not overshadow any rear yard to any adjoining development until about 3pm at which time the shadow impact is only partial. Refer to Figures 7 and Figure 8, extract of the shadow diagrams provided below.

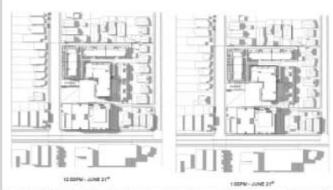
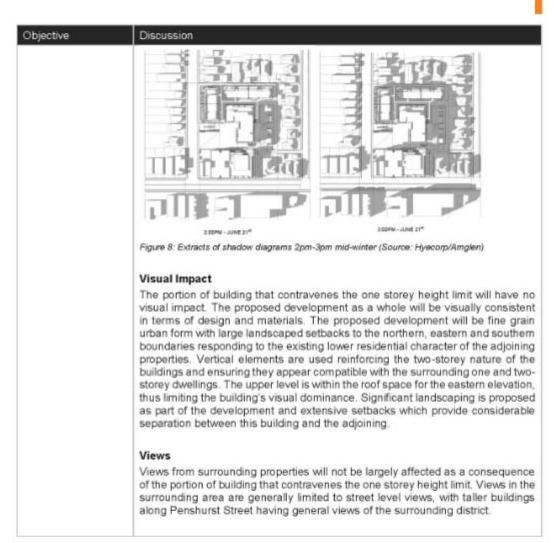


Figure 7: Extracts of shadow diagrams 12pm-1pm mid-winter (Source: Hyecorp/Amglen)



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The proposed development achieves compatibility with the existing and future character of built form and landscape in the area. Generous landscaped setbacks and the reduction of building heights near the site boundaries creates a transition in built form from the site to its surrounds, particularly in relation to the rear 25% of the R2 zoned site.

Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case because the assumed objectives of the standard is achieved notwithstanding the non-compliance.

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# THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE STANDARD. [CL. 4.6(3)(B)]

In Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole.

As discussed earlier, the development site is unusual in that a small portion of the development site is affected by this standard, where the majority of the site is zoned RE2. The length of building which contravenes this development standard is approximately 8m parallel to the eastern boundary.

A compliant development would result in a lesser built form, but in this case the part of the building that contravenes the standard does not cause any adverse impacts to surrounding residential properties and is setback approximately twice the anticipated requirements. Therefore, it can be concluded that the proposal does not result in any unreasonable environmental impacts and it is considered there are sufficient environmental planning grounds to justify the contravention.

Some additional specific environmental grounds to justify the contravention of the standard are summarised as follows:

- The proposed development satisfies the assumed objectives of the standard and the objectives of the zone;
- The design of the proposal incorporates generous setbacks, recessed balconies, privacy designs and
  rooms within the roof to complement the built form and assist in reducing the scale of the development
  when viewed from the eastern adjoining property ensuring the proposal results in minimal amenity
  impact and is compatible with the surrounding area in terms of bulk and scale;
- The contravention of the standard allows for a development that is consistent with the existent and desired future character of the area;
- . The additional height will not have a detrimental visual impact on the surrounding area;
- There are no adverse environmental impacts such as unacceptable additional overshadowing or overlooking as a result of the contravention of the standard;
- The proposal would result in a better planning outcome than if compliance were to be achieved, as it
  allows for the co-ordinated redevelopment of the site; and
- The development will facilitate development of additional quality housing options for seniors in a highly desirable location consistent with the SCC.



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# THE PROPOSAL WILL BE IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE OBJECTIVES OF THE ZONE. [CL.4.6(4)(A)(II)]

In section 3 (above), it was demonstrated that the proposal is consistent with the objectives of the development standard. The proposal is also consistent with the objectives of the residential zone as explained in **Table 2** (below).

Table 2: Consistency with RE2 Zone Objectives.

Objective	Discussion				
R2 Zone					
To provide for the housing needs of the community within a low-density residential environment.	The contravention of the standard does not result in an inconsistency with this objective. The proposed development will provide additional housing within the locality of Willoughby, nearby to a range of local services, facilities and amenities in accordance with the approved SCC.				
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The contravention of the standard does not result in an inconsistency with this objective. The wider proposal includes a new registered club and neighbourhood shops and new public park. Furthermore, the proposal for seniors housing is permissible under the Seniors SEPP and the SCC.				
To accommodate development that is compatible with the scale and character of the surrounding residential development.	The contravention of the standard does not result in an inconsistency with this objective. As previously discussed, the proposal within the rear 25% of the R2 Zone will result in a development that is compatible with the scale and character of the surrounding residential development.				
To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality.	The contravention of the standard does not result in an inconsistency with this objective. As previously discussed, the proposal within the rear 25% of the R2 Zoned site has been skilfully designed such that it will not result in any adverse environmental impacts that would have a detrimental impact upon the amenity of the locality				
To retain the heritage values of particular localities and places.	The proposed contravention of the standard does not affect consistency with this objective. The built form relative to the boundaries of the site which are a conservation area have been maintained at a height and scale consistent with the character of the Conservation Area.				

<sup>3</sup> in Dem Gillespies v Warringah Council [2002] LGERA 147 and Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC the term "consistent" was interpreted to mean 'compatible' or 'capable of existing together in harmony'

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To encourage self-sufficiency with respect to energy and food supply. The proposed contravention of the standard does not affect consistency with this objective.

As can be seen from Table 1 and Table 2, the proposal is consistent with the assumed objectives of the standard and the objectives of the zones and is therefore considered to be in the public interest.

# CONTRAVENTION OF THE DEVELOPMENT STANDARD DOES NOT RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING. [CL. 4.6(5)(A)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

# THERE IS NO PUBLIC BENEFIT OF MAINTAINING THE STANDARD. [CL. 4.6(5)(B)]

There is no public benefit4 in maintaining strict compliance with the development standard. The development will provide additional housing choice and seniors accommodation and care for the community in purpose-built facilities with excellent internal and external amenity, in an area identified as being a suitable location for the provision of more intensive development in accordance with the approved SCC application. The proposal will ensure that development is consistent with the existing and desired future character of the area and has been designed specifically to transition down to a lower scale at the "rear of the site". There are no unreasonable environmental impacts as a result of the variation.

Given the above, there is no public benefit in maintaining strict application of the standard and that the overall proposal will result in a public benefit.

## 8. CONCLUSION

This Clause 4.6 variation request demonstrates, as required by Clause 4.6 of the Willoughby Local Environmental Plan 2012, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- · There are sufficient environmental planning grounds to justify the contravention;
- The proposal meets the assumed objectives of the development standard and is consistent with the
  objectives of the R2 zone and importantly the requirements of the approved SCC application;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- . The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.

<sup>4</sup> Ex Gratia P/L v Dungog Council (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"

## **SNPP REPORT**

26 Crabbes Avenue & 243, 247 - 255 Penshurst Street NORTH WILLOUGHBY NSW 2068. APPENDIX 5: INDEPENDENT ASSESSMENT – SEPP 65 REPORT

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#### 1. INTRODUCTION

This report has been prepared by Fuse Architects.

Fuse Architects were engaged by Willoughby City Council to provide independent urban design and SEPP 65 expertise in the review and assessment of the Development Application for a:

Seniors Living and Mixed Use Development at 26 Crabbes Avenue & 247-255 Penshurst Street Willoughby

The following documents, provided by the client, form the basis of this

- Architectural Plans DA1.00 DA4.05 prepared by Hyecorp Design in collaboration with Amglen
- Landscape Plans L000 L503 prepared by Site Image Landscape Architects
- Apartment Design Guide Compliance table prepared by Amglen
- SEPP 65 Design Verification Statement prepared Amglen
- Urban Design Report prepared by Dickson Rothschild
- Statement of Environmental Effects prepared by City Plan

This report summarises Fuse Architects assessment of the proposal.

### 1.1. SUBJECT SITE

The subject site is located at:

26 Crabbes Avenue & 247-255 Penshurst Street Willoughby

The subject site, 26 Crabbes Avenue (also known as Club Willoughby) and 247-255 Penshurst Street, has a site area of 14,953m2 and consists of 17 allotments with an approximate 100m-wide frontage to Crabbes Avenue (north), a 50m-wide frontage to Penshurst Street (west), is in a well-established urban area, in close proximity to the local district of Willoughby North.

The site is subject to 3 different zones under the Willoughby Local Environmental Plan 2012 (WLEP 2012): RE2 Private Recreation Zone; R2 Low Density Residential and R3 Medium Density Residential.

Most of the site is within the RE2 Private Recreation zone with a minor portion of the site towards the north-eastern boundary zoned R2 Low Density Residential, and a portion in the north-western boundary zoned R3 Medium Density Residential. Trumping the LEP zones is a Site Compatibility Certificate (SCC) under the State Environmental Planning Policy (Housing for

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Seniors or People with a Disability) 2004 which allows for 36 to 72 RACF beds and 99-125 serviced self-care dwellings and defines specific development controls for the site.

A summary of the surrounding context is outlined as follows:

- Land adjoining the site to the east and south predominantly consists of single storey detached dwellings with pitched roofs. Multi-dwelling development is present in Crabbes Avenue. The zoning of the land is R2 low density residential.
- Residential development fronting Penshurst Street ranges up to 4 storeys in height. Specifically, there are various 4 storeys residential flat buildings (RFBs) on the western side of Penshurst Street opposite the site. The zoning of the land is R3 Medium Density Residential.
- Directly adjoining the site to the north west there is a 2 storey commercial premise-built boundary to boundary, currently occupied as the Armenian Cultural Centre.

#### 1.2. PROPOSED DEVELOPMENT

The proposed development includes:

- Construction of a 3 storey building for a new registered club (Club Willoughby) with a frontage to Penshurst Street;
- Construction of a 4 storey Residential Flat Building (RFB) to accommodate 24 units and street level neighbourhood shops with a frontage to Penshurst Street and the new site park;
- Construction of a 2-3 storey Residential Aged Care Facility (RACF) for seniors to the southern boundary with adjoining properties in Horsley Avenue to accommodate 49 beds;
- Construction of 3 new buildings to provide 106 units Independent Living Units (ILU) including: a part 2-3 storey building on the eastern boundary, 5-6 storey building at the centre of the site, and a part 4-5 storey building on Crabbes Avenue providing a total of 106 units;
- Car parking over 2-3 basement levels accessed from Crabbes Avenue for 441 vehicles;
- A park fronting Crabbes Avenue with through site link to connect Legion Way to Crabbes Avenue.

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### 2. ADG ASSESSMENT

#### 2.1. INTRODUCTION

The proposed development, in our assessment, generally demonstrates an acceptable level of compliance with the provisions of the Apartment Design Guide.

The proposal, as described in the documents outlined above, demonstrates:

- a good level of amenity for future residents
- an engaging and activated retail destination for the local community
- attractive and well considered facade design
- an engaged and balanced streetscape and public domain appearance
- a generous approach to communal open space
- appropriate transitions and treatment of site falls
- a safe and secure space for future residents
- appropriate consideration of the potential impacts on existing and future neighbouring developments

### 2.2. COMPLIANCE SUMMARY

Following is a summary of the project's compliance with key measures of the ADG.

Objective		Complies	Acceptable
3D-1	1. Communal Open Space Provision	Yes	
3D-1	2. Solar Access to Communal Open Space	Yes	
3E-1	1. Deep Soil Zone Provision	Yes	
3F-1	1. Building Separation	No	Possible
3H-1	Vehicle entrance integrated with building facade	No	No
3J-1	1. Car Parking Provision	Yes	
4A-1	Solar Access to Living Rooms and Private Open Space (Sydney Metro Region)	Yes	
4A-1	2. Solar Access to Living Rooms and Private Open Space (Other Areas)	NA	
4A-1	Apartments Receiving 0 hrs Solar     Access at Mid-Winter	Yes	
4B-3	1. Cross Ventilation	Yes	

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4B-3	<ol><li>Maximum Depth of Cross-Over or</li></ol>	No	Yes
	Cross-		
	Through Apartments		
4C-1	1. Ceiling Heights	Yes	
4D-1	1. Minimum Apartment Sizes	Yes	
4D-1	2. Habitable Room Windows	Yes	
4D-2	1 Habitable Room Depths	Yes	
4D-2	Combined Kitchen / Dining / Living     Depth	No	Yes
4D-3	1. Minimum Bedroom Areas	Yes	
4D-3	2. Minimum Bedroom Dimensions	Yes	
4D-3	3. Minimum Living Room Width	Yes	
4D-3	4. Maximum Width of Cross-Over or	Yes	
	Cross-Through Apartments		
4E-1	1. Primary Balcony Dimensions	No	Possible
4E-2	1. Ground Floor Private Open Space	Yes	
4F-1	Maximum Apartments Per Core (per floor)	Yes	
4F-1	Maximum Apartments Per Core (10 storeys)	NA	
4G-1	1. Storage	Yes	

NB: The summary above is not intended to be an exhaustive list of all criteria or guidelines outlined in the ADG, nor all design issues which may be applicable to the subject site and/or development. It contains the measures which, in our experience, most directly impact both the residential amenity of proposed developments and their acceptability in terms of urban design.

A broader discussion of how the proposed development addresses the nine design principles of SEPP 65, for which the detailed provisions of the ADG provide support, is included in section three of this report. This discussion addresses the intended outcomes of the ADG, without necessarily providing reference to individual design criteria or guidance.

Where additional criteria or guidance are considered particularly relevant to the proposed development, or where they provide useful clarification on an issue, they are referenced as required.

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#### 2.3. DISCUSSION OF ISSUES

In our assessment, the proposed development does not strictly comply with the recommendations of the ADG with respect to:

- 1. Building Separation
- 2. Vehicle Access Points
- 3. Maximum Depth of cross-through apartments
- 4. Open Plan room depth
- 5. Primary balcony dimensions

A detailed discussion of the non-compliances, and their potential acceptability in terms of urban design and amenity outcomes, is provided below.

# 1. BUILDING SEPARATION

The proposed development, in our assessment, does not demonstrate full compliance with the recommendations of the ADG for Visual Privacy and building separation.

The extent of the non-compliances are as follows:

## A. ILU BLOCK A AND ILU BLOCK B LEVELS 1-4

Required separation 12m

Provided Separation 10.7m (as measured)

Screening Provided Sometimes

### B. ILU BLOCK A AND ILU BLOCK C LEVELS 1-4

Required separation 12m

Provided Separation 11.7m (as measured)

Screening Provided Yes

## C. ILU BLOCK A AND ILU BLOCK B LEVELS 5

Required separation 18m

Provided Separation 11.5m (as measured)

Screening Provided No

## D. ILU BLOCK A AND RACF

Required separation 12m

Provided Separation 10.6m (as measured)

Screening Provided No

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E. ILU BLOCK A AND RSL

Required separation 12m

Provided Separation 11.5m (as measured)

Screening Provided Yes

The proposed non-compliances are, in our opinion, supportable because:

- At item A the 10.7m separation, is a minor deviation and will have no material effect on the amenity of the units
- At item A in the case of the balcony separations, the reduced separation is between the secondary outlook of balconies and screens and balcony planter boxes are provided to ameliorate potential amenity impacts.
- At item B the 10.7m separation, is a minor deviation and will have no material effect on the amenity of the units
- At item D the 10.6m separation, is a minor deviation and will have no material effect on the amenity of the units
- At item E the 11.5m separation, is a minor deviation and will have no material effect on the amenity of the units

The following proposed non-compliances can in our opinion be supported with the following amendments:

— At item C, the 11.4m separation, although a large variation from the required 18m, occurs between the secondary outlook of the Block A main balcony to the secondary balcony of Block B the addition of screening to the secondary balcony on Block B would make this acceptable.

In our opinion:

— the proposed non-compliances are acceptable with the amendments suggested as they do not significantly reduce the residential amenity of units and allow for compliant solar access to the communal open spaces between buildings and the apartments themselves.

The objective of Part 3F "to provide reasonable levels of external and internal privacy" are addressed adequately by the proposed development as outlined above.

With the proposed amendments the development's approach to visual privacy is supportable.

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### 2. VEHICLE ACCESS

In our assessment, the proposed development does not appear to demonstrate full compliance with the ADG's requirements for Vehicle Access and, the intent to create high quality streetscapes.

#### ADG Objective 3H-1 states:

Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians, and vehicles and create high quality streetscapes.

The driveway location has been positioned as far as is practical from the adjacent residential development on Crabbes Avenue, which aims to minimise the acoustic impacts of traffic on the existing neighbouring development which is a positive outcome. The driveway has also been consolidated into once crossover which makes for a single interruption to the public domain and minimises the impact on what would otherwise have been a large intervention on the streetscape.

By prioritising that consideration, the driveway location has been positioned directly adjacent the proposed new public park, causing the following sensitivities:

- Park entrance footpaths have been located directly adjacent the new driveway which creates potential minor conflicts with pedestrians leaving the site
- The ILU Block B adjacent the driveway has been stopped short leaving the driveway open to the sky and presenting an unattractive void at the main entrance to the park whilst also providing no definitive edge to the what is otherwise a well considered extension of the public domain.

To mitigate these shortcomings, we believe:

- The park paths should be repositioned to increase the distance from the driveway for improved safety and amenity.
- The ILU Block B should be extended over the top of the driveway to minimise the visual and acoustic impact of the driveway on the streetscape and the park.

With the proposed amendments the development's approach to vehicular access is supportable.

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#### 3. DEPTH OF CROSS THROUGH APARTMENTS

In our assessment, the proposed development does not appear to demonstrate full compliance with the ADG's requirements for depth of units for natural cross through apartments.

ADG Objective 3H-1 states:

Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.

The proposed cross through apartment in Block B has a maximum depth of 19.5m.

In our opinion, this non-compliance is supportable because:

- generally, the requirement for a maximum building depth of 18m allows for two 8m deep units with a 2m wide corridor
- the requirement for cross-over or cross-through units to be a maximum of 18m deep is a by product of the above, and not necessarily the measure of the ability for these units to achieve natural ventilation.

In our opinion, this non-compliance is acceptable as:

- the proposed unit depth is a minor deviation from the design criteria, being only 1.5m or 8%, greater than that allowed as such the proposed variation will have no material effect on the ability of the units to achieve adequate cross ventilation
- the apartment external walls are stepped such that the depth is at its narrowest is actually 16.5m well below the maximum allowed.
- the internal layout of the unit appears to be well considered in terms of facilitating adequate air flow and access to direct daylight, providing direct, unobstructed paths between the inlet and outlet sides of the apartment, through only one doorway.

In our opinion, the proposed units demonstrate the ability to achieve adequate cross ventilation and satisfy the objective of part 4B-3 "...to create a comfortable indoor environment for residents"

The proposed development's approach to cross ventilation is supportable.

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### 4. OPEN PLAN ROOM DEPTH

In our assessment, the proposed development does not appear to demonstrate full compliance with the ADG's requirements for maximum habitable room depth.

ADG Objective 4D-2 states:

In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window

The proposed cross through apartments in Block A has a depth of 9.4m. The cross through apartments in Block B have depth of 10.3m. The 2B apartments in Block B have a depth of 8.3m.

In our opinion, these non-compliances are supportable because:

- the internal layouts of the units appear to be well considered in terms of facilitating adequate air flow and access to direct daylight
- the environmental performance of the apartment is not compromised

The proposed development's approach to apartment size and layout is supportable.

#### 5. PRIMARY BACLONY DEPTH

In our assessment, the proposed development does not appear to demonstrate full compliance with the ADG's requirements for minimum private open space depth.

ADG Objective 4E-1 states:

All 3B apartments are required to have a primary balcony minimum depth of 2.4m

The proposed 3B unit on L5 of Block B has a minimum balcony depth of 1.8m.

Although parts of that balcony are compliant with ADG requirements, the principle living space is directly behind the narrowest part of the balcony and given the visual privacy non-compliance at Item 1 of these issues, this is unacceptable.

In our opinion, this non-compliance is easily rectified by reducing the living room depth and by extension increasing the depth of the balcony in that location.

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### 3. SEPP65 DESIGN QUALITY ASSESSMENT

#### 3.1. INTRODUCTION

State Environmental Planning Policy no. 65—Design Quality of Residential Apartment Development identifies nine "Design Quality Principles" which aim to improve apartment developments in terms of both residential amenity and urban design outcomes.

Our evaluation of the proposed development's performance relative to those principles follows.

#### 3.2. PRINCIPLE 1: CONTEXT AND NEIGHBOURHOOD CHARACTER

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

In our opinion, the proposed development is appropriate for its context.

The context of the subject site is sensitive in that it is at the confluence of conflicting land uses and objectives. The proposal is required to become both a landmark and destination but also a transition into the neighbouring low scale R2 zone.

The proposed development to Penshurst Street comprises a 4 storey RFB with ground level retail sandwiched between the existing Armenian Cultural Centre to the north and a new 3 storey RSL club to the south. The presentation to Crabbes Avenue is a 5 storey ILU building, with a large landscape setback and recesses upper levels that also steps down in height to its low scale residential neighbours. The Crabbes Street intervention culminates in what is a generous new civic park that by extension creates a north south site through link behind the club to Legion way.

Our primary concern with the proposal is the potential site isolation of the adjoining Armenian Cultural Centre.

We recommend that:

To ensure the site can deliver and adopt a strategy for the orderly, viable development of the corner site as a whole, that a concept development

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outline be provided for the Armenian Cultural Centre site, and that provisions for easements for all vehicular access be provided through the proposed basement and that these be locked into any development approval. We believe this is paramount to maintain the integrity of the corner development but also to eliminate any future requirement for an additional driveway crossover along Crabbes Avenue.

Provided a satisfactory resolution of the above is demonstrated, it is our opinion that the proposed development responds appropriately to the future urban character.

In particular it:

- utilises setbacks and a scale of built form to achieve compatibility with the existing streetscape.
- presents attractive street facades
- utilises appropriate massing to provide medium density residential and aged care development suitable to its urban setting
- is of a bulk and scale largely consistent with the SCC and Council's building envelope controls
- is of a similar bulk, scale and character to recently approved developments on similarly, zoned sites
- is of a contemporary design consistent with recently approved development

On evidence of the commercial development viability of The Armenian Cultural Centre site, the proposed development's approach to context and neighbourhood character is supportable.

#### 3.3. PRINCIPLE 2: BUILT FORM AND SCALE

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

In our opinion, the proposed development is largely of an appropriate bulk and scale.

A key measure of the appropriate bulk and scale of a development is its impacts on neighbours, particularly in terms of solar access and visual privacy. The proposed development does not appear to result in negative impacts on any neighbouring sites.

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Our concerns with the proposal are:

- 1. The allocation of the SCC approved mass
- 2. The Penshurst Street expression

## A. SCC MASSING

Although largely consistent with the Departments SCC approval, we believe the open driveway and the shape of the 6 storey ILU Block A acting as the visual termination of the Civic park compromise what is otherwise a powerful urban gesture.

In our opinion the site would be better served by the:

- extension of ILU Block B to overhang the current driveway;
- reduction of the western wing of ILU Block A to align with the new Block B and driveway edge.
- creation of a regular and consolidated civic park that provides a stronger uninterrupted visual connection to the club and the Legion Way site through link from Crabbes Street.

#### B. PENSHURST STREET MASSING

The massing and scale has been carefully considered resulting in an attractive and contemporary street façade with one caveat. The resolution and resulting RFB and Club building form have been crafted in a way to blur the lines between the two. This results in a 70m 4 storey street wall delivering fundamentally different uses but expressed in a singular way.

In our opinion, the site would be better served through:

- a subtle differentiation between the two uses and building expressions
- using the inherent requirements and variation for public and private use to help shape the form.

These items aside, in our opinion the proposed development's built form and scale is appropriate as it:

- provides appropriate transition between its landmark buildings and the neighbouring existing context
- respects the bulk and scale of its immediate adjoining neighbours
- utilises appropriate massing, articulation and building separations to reduce its visual bulk and presence, particularly when viewed from the public domain

The proposed development's built form and scale is supportable.

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#### 3.4. PRINCIPLE 3: DENSITY

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

The proposed development provides 24 residential apartments, 107 ILU apartments, 49 RCP rooms, for a total of 180 dwellings on a site area of 14953m2, which represents a dwelling density of approximately 1 dwelling per 83m2. An additional 2874m2 of Community Club and 673m2 retail tenancy is incorporated into the development.

In our opinion, the proposed density is appropriate as it:

- --- complies with Council's and the SCC FSR control
- does not appear to result in any negative impacts on the amenity of neighbouring developments
- allows for generous landscaped, deep soil and communal open space in excess of the required provisions
- allows for a high level of amenity for future residents, complying with all amenity provisions of the ADG

Additionally, the proposed development provides an appropriate density of residential development consistent with the area's existing and projected population and in line with the needs of the community.

The proposed development's density is supportable.

#### 3.5. PRINCIPLE 4: SUSTAINABILITY

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

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In our opinion, the proposed development provides positive environmental, social and economic outcomes.

The residential component of the proposed development is subject to the provisions of BASIX, requiring compliance with the environmental sustainability measures around; resource, energy and water efficiency, passive solar design, water capture and thermal performance.

The proposed development meets or exceeds the sustainability measures of the ADG including:

- providing cross ventilation to 80 units, or 62% of the development
- providing compliant solar access to 111 units or 85% of the development
- providing lobbies with natural light and ventilation
- utilising low maintenance building materials
- providing large areas of well designed communal open space
- providing well-considered, highly activated public open space
- providing a revamped community club that is at the heart of the community
- providing a variety of retail tenancy types and sizes to provide a range of services for the local community
- incorporating a substantial number of senior living apartments, to provide for the unique housing needs of the local community

Additionally, the proposed development is required to comply with part J of the National Construction Code (NCC), which mandates requirements for a range of performance criteria including acoustic and thermal insulation and lighting.

The proposed development provides residential dwellings and an array of retirement apartment options for all levels of care to allow for future residents to age in place for a socially sustainable and viable village.

The proposed development's approach to sustainability is supportable.

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#### 3.6. PRINCIPLE 5: LANDSCAPE

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks. Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.

In our opinion, the proposed development provides appropriate landscaping for residents, visual privacy, streetscape appearance and environmental sustainability.

The proposed communal open spaces are well considered and integrate with the built form to deliver a series of attractive, useable, safe and intimate spaces for the residents and the broader community alike.

The landscape design ensures that the proposed development is not only attractive to future residents, but also fits well within its broader context.

The proposed development demonstrates a considered and appropriate approach to the landscape treatment of the site by:

- extending the public domain via a new north facing public park.
- providing deep soil provisions well above ADG requirements.
- creating a north-south pedestrian site through link
- including a refurbished ANZAC memorial which currently faces Penshurst Street
- contributing positively to the character, attractiveness and usability of the proposed public open spaces
- providing an appropriate buffer to neighbouring properties
- providing a range of landscape features, plant and tree types
- providing landscape zones to all street frontages
- providing significant deep soil areas within the communal open spaces

The proposed development's approach to landscape is supportable.

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#### 3.7. PRINCIPLE 6: AMENITY

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

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

In our opinion, the proposed development provides an appropriate level of amenity for future residents and neighbours.

The proposed development meets or exceeds the ADG requirements for amenity including solar access, cross ventilation, apartment size and layout storage, and private and communal open spaces (except as noted in Section 2).

In addition to meeting the requirements of the ADG, the proposed development includes several other elements which, in our opinion, enhance the residential amenity for future residents. These include:

- over 60% of units are either corner or dual aspect units
- all lobbies are provided with natural light and ventilation
- legible and accessible entries and common spaces a variety of useable common spaces, including BBQ area, roof top terrace and a communal/ recreational room
- open common stair to encourage active living principles and opportunities for social interaction

Additionally, the new club along with the proposed retail tenancies and the activated public open spaces help create a positive living environment for future residents by providing on site services and the potential for a wide range of social interactions

The proposed development's approach to amenity is supportable.

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#### 3.8. PRINCIPLE 7: SAFETY

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

In our opinion, the proposed development achieves good outcomes for the safety of residents, club visitors and the general public.

We believe the proposed development is consistent with the Crime Prevention Through Environmental Design (CPTED) principles.

In particular, the proposed development:

- provides a high level of casual surveillance both to and from the public domain and the communal open spaces
- orients balconies and living room windows to maximise casual surveillance
- provides legible, direct access to building lobbies, communal and public open spaces, the Club and retail tenancies
- clearly delineates between public and private spaces through low fencing, landscaping and technological access control measures

The proposed development's approach to safety is supportable.

## 3.9. PRINCIPLE 8: HOUSING DIVERSITY AND SOCIAL INTERACTION

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

In our opinion, the proposed development achieves an appropriate level of housing diversity and social interaction.

The proposed development:

- provides a mix of 130 private and seniors living apartments with a variety of 1, 2, and 3 bedroom dwellings
- can accommodate and support a broad range of residents from young singles to small families and senior couples and senior singles with catering for different requirements of care.

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- incorporates distinct building frontages or addresses, creating individuality and identity to the development
- provides a variety of communal open spaces and scales to support a range of activities

The proposed development's approach to housing diversity and social interaction is supportable.

#### 3.10. PRINCIPLE 9: AESTHETICS

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures. The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

In our opinion, the aesthetic design of the development is appropriate for the site.

The development's appearance is considered, articulated and of a contemporary design.

Elements contributing to the aesthetics of the proposed development include:

- use of a range of materials and textures which respect the existing character of the area
- contrast of materiality, including juxtaposition of light and dark elements and textures to provide visual engagement
- the massing and articulation strategies that clearly define a theme for all the buildings that ensure that each building and façade though unique, forms part of the same unified language.
- use of design elements such as balconies and balustrades, fenestration, exposed slab edges, planter boxes, building indentations and screens to modulate the development's massing
- fenestration patterning and materiality coupled with stepped forms, enhance the buildings integration with the existing streetscape.

The proposed development's approach to aesthetics is supportable.

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## 4. CONCLUSION

As outlined above, in our opinion the proposed development is consistent with the requirements of the Apartment Design Guide, except were outlined above and can with minor modifications, overcome those short falls to meet the objectives of the relevant statutory planning controls without creating any undue environmental effects.

The proposed development addresses its statutory obligations and will deliver an appropriate, safe and attractive place to live and is an appropriate response to the site, with regards to the design quality principles set out in State Environmental Planning Policy — No. 65

In our opinion the proposed development is capable of support and approval.