

COUNCIL ASSESSMENT REPORT

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| Panel Reference | PPSSNH-264 |
| DA Number | DA-2021/300 |
| LGA | Willoughby City Council |
| Proposed Development | Demolition of existing dwellings and construction of 5 residential flat buildings comprising a total of 164 units over basement car parking as a two staged development, landscaping, road widening, new footpath and street planting. The proposal is Integrated Development (Roads Act 1993). |
| Street Address | 1A - 27 Walter Street and 452 - 460 Willoughby Road WILLOUGHBY NSW 2068 |
| Applicant/Owner | Applicant: Mo Chehelnabi (Architecture Urbaneia) Owners: Walter Projects Pty Ltd |
| Date of DA lodgement | 12 October 2021 |
| Number of Submissions | Sixteen (16) objections |
| Recommendation | Deferred Commencement Consent |
| 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 style="list-style-type: none"> • <i>SEPP (Infrastructure) 2007 - Schedule 3 – Traffic Generating Development</i> • <i>SEPP No 55 – Remediation of Land</i> • <i>SEPP (Vegetation in Non-Rural Areas) 2017</i> • <i>SEPP No 65 - Design Quality of Residential Apartment Development and NSW Apartment Design Guide (ADG)</i> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> • <i>SEPP 70 – Affordable Housing (Revised Schemes) 2002</i> • <i>Sydney Regional Environmental Plan (Sydney Harbour Catchment) – Deemed SEPP</i> • <i>State Environmental Planning Policy No 19—Bushland in Urban Areas</i> • <i>Willoughby Local Environmental Plan 2012</i> • <i>Willoughby Development Control Plan</i> • <i>Site Specific Development Control Plan</i> |
| List all documents submitted with this report for the Panel's consideration | <ul style="list-style-type: none"> • Assessment Report • Schedule of Conditions • Site Description and Aerial Photo • Controls, Referrals & Development Statistics • Clause 4.6 Statements and Clause 4.6 Assessments • Submissions Table • Section 4.15 (79c) Assessment • Plans • Notification Map |
| Clause 4.6 requests | Willoughby LEP 2012 CI 4.3 Building Height CI 6.10 (4) (h) Allotment size |
| Report prepared by | Peter Wells (Development Consultant) |
| Report date | 21 January 2022 |

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Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

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

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

Clause 4.6 Exceptions to development standards

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

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

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SNPP NO: PPSSNH-264

COUNCIL: WILLOUGHBY CITY COUNCIL

ADDRESS: 1A – 27 WALTER STREET & 452 – 460 WILLOUGHBY ROAD, WILLOUGHBY NSW 2068.

DA NO: DA-2021/300

PROPOSAL: DEMOLITION OF EXISTING STRUCTURES AND CONSTRUCTION OF FIVE RESIDENTIAL FLAT BUILDINGS CONTAINING 164 UNITS, BASEMENT CARPARKING, LANDSCAPING, ROAD WIDENING, NEW FOOTPATH AND STREET PLANTING

RECOMMENDATION: DEFERRED COMMENCEMENT CONSENT

ATTACHMENTS :

1. SITE DESCRIPTION AND AERIAL PHOTO
2. NOTIFICATION, CONTROLS, DEVELOPER CONTRIBUTIONS AND REFERRAL ASSESSMENT COMMENTS
3. ASSESSMENT OF SEPP 65 (DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT)
4. ASSESSMENT OF STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007
5. ASSESSMENT UNDER WLEP AND WDCP
6. ASSESSMENT UNDER SITE SPECIFIC DCP
7. OFFICER'S CLAUSE 4.6 ASSESSMENT – ALLOTMENT SIZE
8. OFFICER'S CLAUSE 4.6 ASSESSMENT – BUILDING HEIGHT
9. SUBMISSIONS TABLE
10. SECTION 4.15 ASSESSMENT
11. NOTIFICATION MAP
12. SCHEDULE OF CONDITIONS

APPENDIX

1. APPLICANT'S CLAUSE 4.6 SUBMISSION – ALLOTMENT SIZE
2. APPLICANT'S CLAUSE 4.6 SUBMISSION – BUILDING HEIGHT

RESPONSIBLE OFFICER: IAN ARNOTT (PLANNING MANAGER)

AUTHOR: PETER WELLS – CONSULTANT

REPORT DATE: 21 JANUARY 2022

MEETING DATE: 2 FEBRUARY 2022

1. PURPOSE OF REPORT

The proposal is regionally significant development as identified in Schedule 7 of the *State Environmental Planning Policy* (State and Regional Development) 2011. It has a capital investment value (CIV) of over \$30 million and therefore Sydney North Planning Panel is the determination authority.

2. OFFICER'S RECOMMENDATION

THAT the Sydney North Planning Panel (SNPP) approve the development subject to the a Deferred Commencement consent and the attached conditions for the application DA-2021/300 for DEMOLITION OF EXISTING DWELLINGS AND CONSTRUCTION OF 5 RESIDENTIAL FLAT BUILDINGS COMPRISING A TOTAL OF 164 UNITS OVER BASEMENT CAR PARKING AS A TWO STAGED DEVELOPMENT. THE PROPOSAL IS INTEGRATED DEVELOPMENT (ROADS ACT 1993). at 452 - 460 Willoughby Road & 1A - 27 Walter Street WILLOUGHBY NSW 2068.

THAT the Sydney North Planning Panel (SNPP):

2.1 Supports the submitted Clause 4.6 variation to the Allotment Size development standard contained in Clause 6.10 (h) of the *Willoughby Local Environmental Plan (WLEP) 2012* for the following reasons:

- a) It has been demonstrated that it is unreasonable and unnecessary in the circumstances of the case to comply with the standard in that the objectives of the standard have been satisfied notwithstanding numerical departure from the standard;
- b) Sufficient environmental planning grounds for the departure have been established.
- c) The proposed development is in the public interest because it is consistent with the objectives of the allotment size standard and the objectives for development within the R4 High Density Residential zone.

2.2 Supports the submitted Clause 4.6 variation to the Building Height development standard contained in Clause 4.3 of the *Willoughby Local Environmental Plan (WLEP) 2012* relating to a portion of Building B upon Lot 11 DP 129153, Lot 1 DP 178525, Lot 1 DP 75133, and Lot 12 DP 129153) which relates to 1A Walter Street and 452 – 456 Willoughby Road, Willoughby NSW 2068 for the following reasons:

- a) It has been demonstrated that it is unreasonable and unnecessary in the circumstances of the case to comply with the standard in that the objectives of the standard have been satisfied notwithstanding numerical departure from the standard;
- b) Sufficient environmental planning grounds for the departure have been established.
- c) The proposed development is in the public interest because it is consistent with the objectives of the building height standard and the objectives for development within the R4 High Density Residential zone.

2.3 GRANT Deferred Commencement Consent for the Development Application for Demolition of existing structures and construction of five residential flat buildings containing 164 units, basement carparking, landscaping, road widening, new footpath and street planting at 1A - 27 Walter Street and 452 - 460 Willoughby Road Willoughby:

- a) The RFBs satisfy all relevant SEPP, LEP and DCP objectives and contain sufficient elements to achieve design excellence.
- b) The RFBs do not create any adverse or unreasonable impacts to surrounding residences and the surrounding locality;
- c) The RFBs satisfy CI 4.15 of the Environmental Planning & Assessment Act 1979.

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 five (5) Residential Flat Buildings comprising 164 units in total and ranging from 5 to 8 storeys, adopting the following mix:
 - i. 1 bedroom – 15 units
 - ii. 2 bedroom – 99 units
 - iii. 3 bedroom – 50 units
- c) Basement parking (2 to 3 levels) comprising 218 car spaces (177 residential spaces and 41 visitor spaces).
- d) Landscaping and road widening and footpath works.

The application is Integrated Development (Roads Act 1993).



Figure 1: Pedestrian perspective of the completed development from Willoughby Road (source: Architecture and Landscape Design Report, Architecture Urbaneia)



Figure 2: Pedestrian perspective of the completed development from Walter Street looking east from Block F – which is the building at left (source: Architecture and Landscape Design Report, Architecture Urbaneia)



Figure 3: Perspective of the completed development from Walter Street looking east from Block E – which is the building at left (source: Architecture and Landscape Design Report, Architecture Urbaneia)



Figure 4: Perspective of the completed development from Walter Street looking east from Block D – which is the building at left (source: Architecture and Landscape Design Report, Architecture Urbaneia)

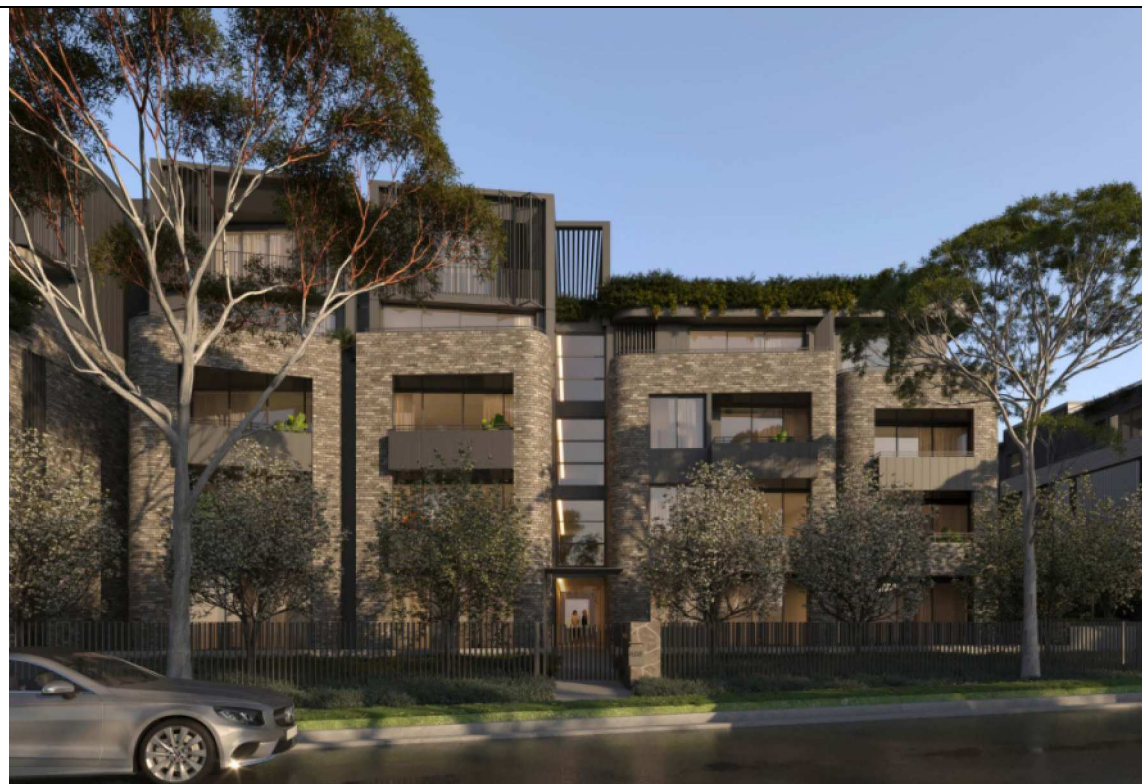


Figure 5: Perspective in part of the completed Building B from Willoughby Road (source: Architecture and Landscape Design Report, Architecture Urbaneia)

3.1.1 Demolition

All existing buildings and outbuildings are to be demolished. Conditions of consent are recommended to minimise impacts associated with these demolition works.

3.1.2 Excavation and Basement Carpark

Excavation up to a depth of 15m shall occur for the proposed basement carparking for the development. More specifically, the lower western basement level (RL 52.77) is situated where the existing ground level is approximately RL 67.5 (nearby it is RL 69.0), meaning the slab level is 14.73m below the existing ground level. The lower eastern basement level (RL 45.3 and RL 47.19) is situated where the existing ground levels are RL 56.0 and RL 61.0 respectively, meaning the lower basement level is 10.7m and 13.81m (respectively) below existing ground level.

3.1.3 Details of Proposed Development:

The below table provides summary of the proposed development:

| EASTERN PORTION OF SITE (STAGE 1 OF WORKS) | | |
|---|--------------------------------|---|
| Building | Use | Details |
| Basement Level 2 – East (FFL RL 45.23 to RL47.25) Drawing A.101/ST1 Rev D | Car Park | <ul style="list-style-type: none"> • 58 car parking spaces - inclusive of 15 accessible spaces - 1 x car wash bay • Access to lifts and stairs • Services rooms • Private storage space • Vehicular ramp to upper basement levels • Bicycle spaces |
| Basement Level 1 – East (FFL RL 47.90 to RL 50.15) Drawing A.102/ST1 Rev D | Car Park | <ul style="list-style-type: none"> • 57 car parking spaces: • Inclusive of 23 accessible spaces • 5 motorbike spaces • Bins storage area • Garbage rooms • Access to lifts and stairs • Services rooms • Vehicular ramp to upper basement level • Residential waste service collection point |
| Basement / Ground Floor Foyer Building D (FFL RL 53.05) Drawing A.103/ST1 Rev D | Car Park / Foyer / Common Room | <ul style="list-style-type: none"> • 10 car parking spaces: - Inclusive of 6 accessible club spaces • Common room • Vehicular ramp • Access to lifts and stairs • Garbage room • Services rooms • Accessible Unisex Sanitary Facilities • Cleaner's room |
| Building B | Residential Flat Building | <p>Five (5) storey building</p> <p>A total 28 units comprising of:</p> <ul style="list-style-type: none"> • 6 x 1 bedroom units • 19 x 2 bedroom units • 3 x 3 bedroom units |
| Building C | Residential Flat Building | <p>Seven (7) storey building</p> <p>A total 36 units comprising of:</p> <ul style="list-style-type: none"> • 6 x 1 bedroom units • 21 x 2 bedroom units • 9 x 3 bedroom units <p>Vehicular entry into basement carparking, which is located under Buildings B, C and D.</p> |
| | | |

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| | | |
|---|---|---|
| Building D | Residential Flat Building | <p>A part seven (7) and eight (8) storey building plus rooftop terrace.</p> <p>A total 28 units comprising of:</p> <ul style="list-style-type: none"> • 28 x 3 bedroom units • Rooftop terrace |
| WESTERN PORTION OF SITE (STAGE 2 OF WORKS) | | |
| Building | Use | Details |
| Basement Level 2 – West (FFL RL 52.50 to RL 52.81) Drawing A.112/ST2 Rev D | Car Park | <ul style="list-style-type: none"> • 27 car parking spaces - inclusive of 4 accessible spaces - 3 motorbike spaces • Access to lifts and stairs • Services rooms • Private storage space • Vehicular ramp to upper basement levels |
| Basement Level 1 – West (FFL RL 55.25 to RL 55.56) Drawing A.113/ST2 Rev D | Car Park | <ul style="list-style-type: none"> • 37 car parking spaces • inclusive of 6 accessible spaces • 1 car wash bay • Access to lifts and stairs • Services rooms • OSD tank • Private storage space • Vehicular ramp to upper basement levels • Bicycle spaces |
| Part Basement & Residential Level – West (FFL RL 58.00 to RL 58.51) Drawing A.114/ST2 Rev D | Car Park / Residential units (see Bld E & F Ground Level) | <ul style="list-style-type: none"> • 29 car parking spaces - inclusive of 6 accessible spaces - 2 motorbike spaces • Vehicular entry • Delivery area • Access to lifts and stairs • Services rooms • Garbage rooms • OSD tank • Bicycle spaces |
| Building E | Residential Flat Building | <p>A part seven (7) and eight (8) storey building.</p> <p>A total 36 units comprising of:</p> <ul style="list-style-type: none"> • 1 x 1 bedroom unit • 30 x 2 bedroom units • 5 x 3 bedroom units |
| Building F | Residential Flat Building | <p>A part seven (7) and eight (8) storey building.</p> <p>A total 36 units comprising of:</p> <ul style="list-style-type: none"> • 2 x 1 bedroom unit • 29 x 2 bedroom units • 5 x 3 bedroom units <p>Vehicular entry into basement caparking, which is</p> |

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| | | |
|------------|--|---|
| | | located under Buildings E and F. |
| Road works | | Widen Walter Street by 1.73m to 1.96m to enable a parking lane, new footpath and landscaping on both sides of Walter Street. New wombat crossing to connect to future cyclepath. |

Table 1: A summary of the proposed development

4. BACKGROUND

4.1 Planning Proposal and LEP amendment

On 24 April 2017 DA-2016/263 (PPS-2017SNH035) for a Child Care Centre at 1-1A Walter Street and 452-460 Willoughby Road was refused.

On 1 February 2017 DA-2016/210 was approved on 5-9 Walter Street for demolition of dwellings and construction of a residential flat building, landscaping, basement carparking and associated works. This consent lapses on 2 February 2022.

On 7 April 2017 DA-2016/452 was approved on 21-27 Walter Street for demolition of existing dwellings and construction of 2 buildings consisting of 28 residential units over 3-5 levels, landscaping and associated works. This consent lapses on 8 April 2022.

On 23 March 2017 DA-2016/303 was approved on 11, 11A, 13 and 13A Walter Street for demolition of structures and construction of a four-storey residential flat building, carparking, landscaping and associated works. This consent lapses on 24 March 2022.

With respect to the current scheme, at the meeting of 8 April 2019 Council resolved not to support Planning Proposals for two sites (1-1A Walter Street, 452-462 Willoughby Road) and 3-31 Walter Street which sought to amend the (then) R3 Medium Density Residential zoning to R4 High Density Residential. Following the Council decision the proponent applied to the Department of Planning, Industry and Environment (DPIE) for a Gateway Review which was subsequently issued on 14 February 2020.

On 22 July 2019, Council resolved to advise the Planning Panel Secretariat that if a gateway was issued it wished to be the Planning Proposal Authority (PPA) for a Planning Proposal at 1-31 Walter Street and 452-462 Willoughby Road as this would allow Council to continue to be involved in developing controls, oversee the public exhibition and negotiate a Voluntary Planning Agreement (VPA) for the site.

Council resolved on 20 April 2020 to support and execute a VPA subject to the outcome of its public exhibition. The VPA documents proposed community benefit by a monetary contribution towards a new pedestrian and cycle connection along Walter Street as well as upgrading of the Willoughby Leisure Centre. The VPA was executed on 30 November 2020 and the full amount of monetary contributions under the VPA was paid at LEP gazettal stage, in advance of the obligated timing of instalments specified under the VPA.

The subject LEP gazettal occurred on 3 March 2020 and made the following amendments to Willoughby Local Environmental Plan 2012:

Rezone the land from R3 Medium Density Residential to R4 High Density Residential;
Increase the FSR from 0.9:1 to 1.5:1;
Increase the maximum height of buildings from 12m to part 17m, 24m and 27m;

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To introduce a Design Excellence clause;
To amend the Special Provisions Area Map;
To amend Clause 6.10(g) regarding minimum lot sizes; and
To amend Clause 6.8(2) and (7) regarding affordable housing.

The Willoughby Design Excellence Review Panel assessed the proposal (on 31 August 2021) and made recommendations for the implementation of design quality improvements that it said would permit its endorsement as a project that has the potential to achieve design excellence.

On 14 October 2021 DA-2021/300 (subject application) was lodged with Council. The subject application is Integrated Development under s4.46 Environmental Planning and Assessment Act 1979 as it requires Roads Act 1993 consent to carry out a work in, on or over a public road, and dig up or disturb the surface of a public road. Transport for NSW has issued its General Terms of Approval.

The subject application excludes 462 Willoughby Road (1,682m²) from the overall development site, which in the Planning Proposal supported Building A. The subject application also excludes 29, 29A and 31 Walter Street (total 1,640m²) which supported Building G in the Planning Proposal. The applicant has submitted Clause 4.6 requests in response to variances to the LEP.

4.2 Kick-off Briefing and request for additional information

Council conducted its Kick-Off Briefing with the DPIE and the applicant on 2 November 2021. On 24 November 2021 Council issued a letter seeking further information from the applicant, including Clause 4.6 variations for allotment size, site isolation, future access and serviceability to 462 Willoughby Road, exceedance of the FSR and building height standards, compliance with the site specific DCP and Design Excellence requirements, SEPP Infrastructure Cl 101 considerations, acoustic, geotechnical, accessibility, BCA, parking, flooding, stormwater and OSD, and TfNSW requirements.

The applicant supplied further information for assessment up to 24 December 2021 as detailed below.

4.3 Provision of Amended Plans and additional information

An schedule of changes was provided on 24 December 2021 and identifies the following changes:

- Building D car ramp and levels amended
- Increase number of disabled accessible parking spaces, reduce overall car spaces
- Add fire stair from B1 under Block B to reduce exit travel distances
- Allocate storage for adaptable units
- Visitor spaces widths increased to 2.5m
- Building C driveway amended
- Building D car ramp and ground floor pedestrian ramps amended to comply with access requirements
- Unit 102 balcony extended by 1m to capture solar access to private open space
- Minor changes to internal layouts for Block D
- Block D planter box extended by 1m to northern boundary
- Minor changes to internal layouts for Block D
- Basement car ramp and levels amended
- Increase number of disabled accessible parking spaces, reduce overall car spaces
- North-facing planter boxes repositioned by 1m to northern boundary
- Building D lowered in response to BCA report and fire engineering brief

The applicant also provided the following updated accompanying documentation:

- Draft Plan of Amalgamation showing the entire site (Stage 1 Eastern Portion and Stage 2 Western Portion) amalgamated into one site. Previously it was proposed to create 2 separate allotments divided by the Stage 1 / Stage 2 boundary. This in effect deals with the previous exceedance of the FSR standard on one of the previously proposed lots.
- Updated Clause 4.6 for allotment size
- Updated Clause 4.6 for building height (only Building B exceeds the standard)
- Response to site isolation
- Response to Site Specific DCP and Design Excellence
- Response to SEPP Infrastructure (CI 101)
- Updated acoustic report
- Updated geotechnical report
- Updated access report
- Updated BCA report and Fire Engineering Brief
- Response to Traffic and Parking Report
- Supplementary Flood Report
- Updated stormwater details
- Reponse to TfNSW requirements

5. DISCUSSION

The application proposes demolition of all structures on the site and construction of 5 x residential flat buildings between 5 and 8-storeys comprising a total of 164 units and basement carparking (2 to 3 levels) comprising 218 spaces.

The site is zoned R4 - High Density Residential under Willoughby LEP 2012 and the proposal is defined as a 'residential flat buildings' which is a permissible use in the zone with consent.

The proposal satisfies Clause 6.10 (minimum allotment size) with the exception of subclause (h) – due to the applicant's inability to acquire 462 Willoughby Road, resulting in a departure of 21% to the standard and triggering site isolation considerations. A Clause 4.6 variation accompanies the application and is considered to be well-founded. Site isolation has been addressed satisfactorily in accordance with Land & Environment Court principles.

The development comprises 16,871m² (1.5:1) of gross floor area (GFA), which satisfies the FSR standard.

The proposal complies with the height standards of 17m, 24m and 27m that apply across the site, with the exception of Building B which exceeds the standard of 17m by 1.02m which equates to a departure of 6%. A Clause 4.6 variation accompanies the application and is considered to be well-founded.

The proposal satisfies SEPP 55 and SEPP 65 among other State policies.

The proposal satisfies DCP requirements including car parking, soft landscaping and deep soil requirements.

The proponent has undertaken adequate steps to satisfy the requirements of the Willoughby Local Environmental Plan Design Excellence Clause.

The proposal makes a dedication of 4% as affordable housing, which equates to 9 units.

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A detailed assessment of the proposal for approval under S4.15 (S79C) of the *Environmental Planning and Assessment Act 1979* is provided in **Attachment 10**.

6. CONCLUSION

The Development Application DA-2021/300 has been assessed in accordance with Section 4.15 (79C) of the *Environmental Planning and Assessment Act 1979*, *Willoughby Local Environmental Plan 2012*, *Willoughby Development Control Plan*, and other relevant codes and policies. It is considered that the proposal is acceptable in the particular location, subject to Schedule of Conditions outlined in **Attachment 12**.

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ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO

Description of the Subject Site

The subject sites are known as 1A – 27 Walter Street and 452 – 460 Willoughby Road, Willoughby, NSW 2068. The proposed development is located within twenty-two (22) allotments as shown in Table 2 and Figure 2 below:

| | Legal description | Zoning | Total Lot Size |
|------------------------------------|--------------------|--------|-----------------------------|
| 452 Willoughby Road | Lot 11 DP 129153 | R4 | 11,247.40m2 or 1.12474ha |
| 454 Willoughby Road | Lot 1 DP 178525 | R4 | |
| 456 Willoughby Road | Lot 1 DP 75133 | R4 | |
| 458 Willoughby Road | Lot 1 DP 81135 | R4 | |
| 460 Willoughby Road | Lot 1 DP 1161181 | R4 | |
| 1A Walter (or 450 Willoughby Road) | Lot 12 DP 129153 | R4 | |
| 1 Walter Street | Lot 1 DP 1084753 | R4 | |
| 3 Walter Street | Lot 2 DP 1161181 | R4 | |
| 5 Walter Street | Lot 3 DP 150607 | R4 | |
| 7 Walter Street | Lot 2 DP 150607 | R4 | |
| 9 Walter Street | Lot 1 DP 150607 | R4 | |
| 11 Walter Street | Lot 2 DP 590018 | R4 | |
| 11A Walter Street | Lot 1 DP 590018 | R4 | |
| 13 Walter Street | Lot 362 DP 1032203 | R4 | |
| 13A Walter Street | Lot 361 DP 1032203 | R4 | |
| 15 Walter Street | Lot 35 DP 1037751 | R4 | |
| 17 Walter Street | Lot 34 DP 1037751 | R4 | |
| 19 Walter Street | Lot 33 DP 508777 | R4 | |
| 21 Walter Street | Lot 1 DP 166910 | R4 | |
| 23 Walter Street | Lot 2 DP 166910 | R4 | |
| 25 Walter Street | Lot 1 DP 168467 | R4 | |
| 27 Walter Street | Lot 30 DP 977055 | R4 | |

Table 2: The individual parcels of land that make up the total development site.



Figure 6: Aerial view of all relevant lots (Council's mapping system). North is to the top of page.



Figure 7: Applicant's aerial perspective of the completed development. The proposal comprises 5 separate RFBs. Buildings B to F are identified from right (east) to left (west). The Planning Proposal located a Building A within the triangular site (immediately north of Building B) and a Building G within the site immediately west of Building F, however the applicant advises these sites could not be acquired and hence do not form part of this development application.

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

The site currently contains dwelling houses and semi-detached dwellings, a swimming pool and outbuildings.

The site is located within an established urban residential area that is undergoing change from low to high density residential. The site is surrounded by the following:

North

To the north of the site is 2 Artarmon Road (16,330m²) which comprises high density RFBs, and 14 Artarmon Road (previous Channel 9 site) which is currently undergoing a significant redevelopment.

South

To the south of the site are dwelling houses fronting Walter Street, located upon SP2 zoned land. Some of these parcels are privately owned, the balance by Transport for NSW. Bushland is located on the southern side of Walter Street at its western end. The Gore Hill Freeway is located to the south of the existing dwellings and bushland.

East

To the east of the site (across Willoughby Road) is Hallstrom Park.

West

To the west of the site is a pair of semi-detached dwellings (29 and 29A Walter Street) and a dwelling house (31 Walter Street) which formed part of the Planning Proposal to accommodate Building G (no longer the case due to the applicant's inability to acquire the sites). To the west of these sites is the Richmond Avenue Reserve.

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

The development application was notified in accordance with the Willoughby Community Participation Plan for a period of twenty-eight (28) days from 25 October to 22 November 2021. During the notification period, sixteen submissions were received by Council. The issues detailed within the submissions are addressed in **Attachment 9** of this report.

Controls and Classification

| | |
|----------------------------|--|
| WLEP 2012 Zoning: | See Attachment 1 for zoning of each allotment |
| Conservation Area | No |
| Heritage Item | No |
| Vicinity of Heritage Items | Heritage item I232 "Bridge - Willoughby Road over Flat Rock Creek" is located approximately 22 metres south of the junction of Walter Street and Willoughby Road. This item is not impacted by the proposed development. |
| Bushfire Prone Area | No |
| Flood Prone Lot | Yes – minimum flood level set for Building B. |

Table 3: Controls and Classification

Developer's Contribution Plans:

| Summary of development statistics | | | | |
|--|---------------------------|---------------------------|-----------|---|
| Building | 1-bed | 2-bed | 3-bed | Subtotal |
| B (5 storeys) | 6 | 19 | 3 | 28 |
| C (7 storeys) | 6 | 21 | 9 | 36 |
| D (8 storeys) | - | - | 28 | 28 |
| E (7 storeys) | 1 | 30 | 5 | 36 |
| F (7 storeys) | 2 | 29 | 5 | 36 |
| Subtotal | 15 | 99 | 50 | 164 |
| Affordable Housing (AH) inclusive in the stats | (4 being nominated as AH) | (5 being nominated as AH) | - | Discounting 9 AH units from contribution calculation. (CI 2.6 of WLIC Plan stipulates contribution can't be charged on AH) |
| Total | 11 | 94 | 50 | 155 units |

Given the demolition of 20 existing 3 to 4-bedroom dwellings, credit of 20 dwellings is given.

Therefore, 155 additional dwellings (AH units discounted) will be developed on the resulting amalgamated lots. In accordance with clauses 2.8 & 2.9 of the *Willoughby Local Infrastructure Contributions Plan 2019*, s7.11 contribution applies and is calculated in the following manner:

| S7.11 Calculation | | | |
|--|------------|---------------|-----------------------|
| Proposed Development | Qty | Proposed Calc | |
| 1-bed dwelling (discounted 4 AH units) | 11 | x \$11,045.36 | \$121,498.96 |
| 2-bed dwelling (discounted 5 AH units) | 94 | x \$15,544.09 | \$1,461,144.46 |
| 3 or more-bed dwelling | 50 | x \$20,000 | \$1,000,000.00 |
| Subtotal | 155 | | \$2,582,643.42 |

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| Credit of existing structures | | Credit Calc | |
|---|--------------|---------------|-----------------------|
| Demolishing existing dwellings (=/>3-bedroom) | less | 20 x \$20,000 | \$400,000 |
| S7.11 yielding amount based on above statistics: | Total | | \$2,182,643.42 |

This assessment also considered the subject development with an estimated cost of works over \$10 million (i.e. \$71,316,060 - GST inclusive and excludes professional fees), being eligible to defer development contributions payment before the issue of first Occupation Certificate (OC).

This deferral is permitted as a result of a Ministerial direction gazetted on 8 July 2020 with a new legislative clause 154F under the *EP&A Regulation 2000*, made to temporarily defer the payment of contribution levy until the issuing of an OC for certain types of development.

Assessment Comments from Referral Bodies

| Internal Council Referrals | |
|--------------------------------|--|
| Urban Design Specialist | Council's Urban Design Specialist finds the proposal satisfactory on design excellence grounds, pursuant to Clause 6.23 WLEP. |
| Engineering | Council's Development Engineer has issued conditions of consent. |
| Traffic Management | <p>Council's Traffic & Transport Team Leader has issued conditions of consent and commented as follows:</p> <ul style="list-style-type: none">• Increase capacity of Walter Street to manage increased traffic, pedestrian and bicycle movements and parking in a safe and efficient manner.• Management of the intersection of Willoughby Road and Walter Street to manage increased traffic, pedestrian and bicycle movements and parking in a safe and efficient manner. <p>It is noted that TfNSW has indicated that a weekday morning and afternoon peak period right turn restriction is appropriate in Willoughby Road, and possibly Walter Street although the advice is not clear.</p> <p>An assessment of this intersection has been undertaken to determine what is considered the safest long term solution for the community. The assessment considered the traffic reports, design of the intersection, the intersection location along Willoughby Road, traffic operations now and post development opening, development traffic generation, and types of users and bicycle/ pedestrian movement along Willoughby Road. <u>It is considered that a more appropriate, safer and self-enforcing traffic and pedestrian management of the intersection is to deny all right turn movements at this intersection at all times, that is motor vehicle movements are limited to left in and left out of Walter Street at all times.</u></p> |

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| | <p>Compliance and pedestrian and bicyclist safety and amenity would be improved with a physical device in Walter Street, and possibly in Willoughby Road.</p> <p>Other factors supporting the full-time ban to right turn movements are:</p> <ul style="list-style-type: none"> ○ Traffic generation from the new development is low based on the advice in the traffic reports. ○ Full time restrictions are simpler in operation and understanding than part time restrictions ○ Turn restrictions through signs only without regular monitoring and enforcement leads to poor compliance. It is unlikely that NSW Police will consider this intersection a priority so an arrangement that is self-enforcing is a better management approach. ○ The connected road network in the vicinity of the development will be able to safely and efficiently manage all traffic generated by the development at all times. Amenity in the local road network will not be unreasonably impacted. <p>1. <u>Other issues that may need to be addressed (eg. Headroom, column location, bicycle/motorbike parking, disabled access, access to/impact on public transport, provision of a green travel plan).</u></p> <p>Whilst not provided as part of the DA or proposed as a condition of consent it is considered that the provision of a new bicycle/ pedestrian link from Walter Street to the Gore Hill Fwy shared path would benefit access and safety for these transport user groups to/ from the development to the local area including adjacent parks, regional bicycle links and bus stops.</p> <p>2. <u>Is a construction management plan required, showing details of truck routes and movements?</u></p> <p>Yes, a condition has been introduced to mandate that a construction traffic and transport management plan is created and used to manage construction activities in a safe manner.</p> <p>3. <u>Concluding statements/recommendations</u></p> <p>There are no objections to the DA from a traffic and transport perspective based on the implementation of the conditions proposed in this report.</p> |
| Waste Management | <p>Council's Waste Management Officer has issued conditions of consent for the proposal.</p> |

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| Landscaping | <p>Council's Landscape Officer has provided the following assessment comments:</p> <p>The Arborist's report prepared by Redgum Horticultural and Landscape Plans prepared by John Lock and Associates are noted.</p> <p>The Arborist's report identifies trees to be retained as per the Site Specific DCP and the Landscape Plans indicate those trees required to be retained and those to be removed.</p> <p>The Landscape Plans indicate extensive planting throughout the site as well as public domain works to be implemented as part of the proposal.</p> <p>The Plans are considered to satisfy the Site Specific DCP with regard to part E – Open Space and Landscaping. I would recommend that all the Landscape Plan provided with the application be incorporated within any consent if approval is to be granted.</p> <p>No objections are raised with regard to landscape issues subject to conditions as provided in Pathway.</p> |
| Health Department | <p>Council's Environmental Health Officer has issued conditions of consent in the event of approval.</p> |
| Building Services | <p>Council's Certification Officer has issued conditions of consent in the event of approval.</p> |
| External Council Referrals | |
| Transport for New South Wales (TfNSW) | <p>Council referred the development application to Transport for New South Wales (TfNSW) as the development is Integrated Development under Section 4.46 Environmental Planning and Assessment Act 1979. The application was also referred to TfNSW on the basis that it meets the definition of 'Traffic-generating development' in accordance with Clause 104 of the State Environmental Planning Policy (Infrastructure) 2007.</p> <p>The RMS issued a letter to Council on 20 December 2021 that deals with both the General Terms of Approval a list of recommended conditions to be imposed on the consent and this has been actioned.</p> |
| AUSGRID | <p>In accordance with Clause 45 of the <i>State Environmental Planning Policy (Infrastructure) 2007</i>, 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.</p> <p>AUSGRID confirms no objection to the proposal and draws the applicant's attention to Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, and "as constructed" minimum clearances to the mains. Ausgrid requires that:</p> <p>"Should the existing overhead mains require relocating due to the</p> |

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| | minimum safety clearances being compromised in either of the above scenarios (during and after construction), this relocation work is generally at the developers cost". |
| NSW Police Force | Council referred the development application to the NSW Police in order for an assessment to be conducted under the Crime Prevention Through Environmental Design Program (CPTEP), but no response was received. A condition has been drafted into the consent that deals adequately with CPTEP. |

Table 4: Referral comments from internal and external departments

ATTACHMENT 3: ASSESSMENT OF SEPP 65 (DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT)

Assessment under SEPP 65

In accordance with clause 4 of SEPP 65, Residential Flat Buildings (RFB) 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 provides an assessment of the proposed RFBs in accordance with the requirements of SEPP 65.

Design Quality Principles (Schedule 1 of SEPP 65)

There are 9 design quality principles in Schedule 1 of SEPP 65. The proposal is considered to satisfy each of the design quality principles. The applicant supplied a Design Verification Statement and commentary on the proposal's attainment of the design quality principles.

Principle 1: Context and Neighbourhood Character

This principle identifies that good design responds and contributes to its context where 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. The principle says that responding to context involves identifying the desirable elements of an area's existing or future character and that well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Finally, it emphasises that consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

The applicant says the site is an opportunity site by virtue of its rezoning from R3 to R4 in 2021, that it is located in the centre of Willoughby and greater Northern Sydney with direct connections to Warringah Freeway, Willoughby Road and Artarmon Road. Further, that the site is in close proximity to major districts including Chatswood, Lane Cove, Artarmon, North Sydney, Crows Nest and public transportation including St Leonards train station, Artarmon train station and future Crows Nest Metro Station.

The applicant says, and it is agreed, that increased density of the area over time, will continue to enhance activity levels and pedestrian movement around the site. The proposal responds appropriately to this increase in pedestrian activity with new footpaths each side of Walter Street and a parking lane. The improved pedestrian access appropriately responds to a future connection of a bike and walking path from Walter Street under the Gore Hill Freeway. It also enhances the pedestrian experience along Walter Street and connection to Hallstrom Park, Bicentennial Reserve Oval and Willoughby Leisure Centre.

The proposal is 500m away from the Willoughby South Local Centre and 550m from Naremburn Local Centre, both of which support greater densities with supporting infrastructure. The Naremburn Local Centre has cycle ways that link the centre to the principle bike network – this is one of Naremburn's strengths as identified in the Strategy. The future bike path to connect under the Gore Hill Freeway and proposed footpath widening would support this network.

The proposal is an appropriate response for its location and high density zoning, and will enhance the quality and identity of the area, enhance pedestrian activity and vibrancy in this space and better connect with the recreational and nearby local centres.

Principle 2: Built form and scale

SEPP 65 identifies that good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings, and 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.

The applicant states that the proposal's built form, height and scale is in accordance with the approved Planning Proposal and meets the objectives of the site specific DCP. The applicant says that articulated podium massing reduces scale and integrates into the streetscape along the Willoughby Road frontage. The applicant says overall form with layered vertical and horizontal transitions is appropriate for the street context and more broadly in the urban development of the area under transition.

A 3-storey podium has been adopted for Willoughby Road and is carried into Walter Street. The proposal transitions from 3 storeys at 462 Willoughby Road, stepping to 5-storey form on the corner of Willoughby Road and Walter Street, then 7-8 storeys on Walter Street.

The building bulk is distributed into 5 distinctly separate blocks with front setbacks of 6m – 9m from Walter Street with deep soil landscaping within the front setback. The design approach has been mindful of solar access to Walter Street. The footprint, layout of units and separation between buildings allows for access to natural light, ventilation and view corridors.

Principle 3: Density

SEPP 65 says that good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context. It also says that appropriate densities are consistent with the area's existing or projected population, and can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

The density is not just measured by the floor space ratio of the development (which is more a measure of quantum) but the manner in which the development is compartmentalised into units. Parking can be a useful way to determine if a development is too dense, in that it cannot meet its parking demand or by meeting it creates detrimental impacts in other ways. The internal residential amenity is another measure – if the ADG requirements are not satisfied this can be an indication of a cramped building (too dense) or one that is poorly configured.

In this case the proposal satisfies the maximum FSR of 1.5:1 inclusive of the 4% affordable housing component.

The unit breakdown in the proposal is:

15 x 1 bed (9%)
98 x 2 bed (60%)
51 x 3 bed (31%)
Total = 164 units

The portion of 3 beds is representative of an emerging market who seek to live in larger units to cater for changing lifestyle and needs, downsizers who wish to welcome visitors and family and entertain. It complies with the ADG requirements and its objectives. The density of the proposal is satisfactory.

Principle 4: Sustainability

SEPP 65 says that good design combines positive environmental, social and economic outcomes and 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.

This proposal adopts an appropriate balance of solidity for good thermal performance and glazing for solar access, and the layout of units facilitates high levels of natural ventilation and mid-winter solar access to living spaces and private open spaces within units.

By limiting the footprints of building (including basements) deep soil planting opportunities are increased, thereby increasing opportunities to plant larger, canopy trees to visually soften the proposed from the public domain. Water retention for garden watering and appropriate selection of planting ensures the development meets minimal water requirements. The updated BASIX Certificate shows an appropriate and sufficient number of commitments to energy saving.

Principle 5: Landscape

SEPP 65 says that 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. It says that 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.

The proposal seeks to provide an attractive living environment that complements and contributes to the local character while functioning successfully as a high-density residential community. Distinct landscape areas are incorporated into the development to provide a high level of amenity, gatherings or quiet contemplation. A large communal open space is provided on the north side of Buildings B, C and D. A common room is provided on the north-east corner of Building D. an adventure children's playground will be incorporated into the sloping ground to the north-west for climbing and nature play.

Front setbacks of 6-9m allow large spaces to support local Eucalypt species to be planted with native shade tolerant shrubs and ground covers. Security to the apartments will be provided at the building line, allowing front gardens semi-public space, to be open and visually contribute to the streetscape by supporting a number of native trees and shrubs.

In the public domain wide verges allow for a new avenue of Tallowood street tree planting, undergrounded power lines and new lighting provided. Undergrounding the power allows for unencumbered large canopy growth to form a consistent native tree avenue and foliage over the road, providing an attractive streetscape. Planting islands are proposed to define parking bays in the street, and new 1.5m wide footpaths are provided with more gentle grades than existing to assist with safe and convenient access for residents in the street and to cross the road to access a bike and walking path, which will link to an existing network under Gore Hill Freeway also potentially to Artarmon Reserve.

Principle 6: Amenity

SEPP 65 says that good design positively influences internal and external amenity for residents and neighbours and that achieving good amenity contributes to positive living environments and resident well being.

It acknowledges that 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.

The proposal has been arranged, in a three-dimensional sense, to gain optimal residential amenity (including solar access, natural ventilation, privacy, and views) without unreasonably comprising the existing residential of nearby properties. Privacy for units is achieved using external screens or solid upstands in conjunction with spatial separation. Good solar access is provided to the communal open space, and a communal roof top is located at Building D. A link is provided between the communal open spaces at the eastern and western portions of the site.

Principle 7: Safety

SEPP 65 says that good design optimises safety and security within the development and the public domain and that 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 this case all residential lobbies are accessible from Walter Street, except Building B which is accessible from Willoughby Road via two security-controlled lobbies which flow from the street to the common gardens. Access lobbies and common corridors are well lit. Apartments are orientated to look over the communal spaces, noting that these spaces are restricted to residents only. Car parking is secured by CCTV and access cards.

The proposal clearly distinguishes between public and private spaces to ensure that the front yards along Walter Street are discernible as such, notwithstanding the manner in which these yards are incorporated into the overall landscaping theme.

Principle 8: Housing diversity and social interaction

SEPP 65 says good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets. It states that well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix, and involve practical and flexible features including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

The size of apartments are well in excess of the minimum size requirements to enhance the enjoyment and practicality for occupants as they move through different stages of their life. The unit mix caters for singles, couples, downsizers and 50% of the units have been designed as adaptable to cater for an aging population, people with a disability and generally those in need of more options around accessibility.

Principle 9: Aesthetics

SEPP 65 says that good design achieves a built form that has good proportions and a balanced composition of elements and 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.

The proposal adopts measures like podium massing and a selection of materials to better integrate within its setting. The applicant says that the podium design “anchors the building into the landscape zone”. Façade materiality involves a combination of precast/off form concrete, brickwork and light weight cladding to create a varied façade that is visually appropriate and appealing. Setbacks serve to modulate the building. The proposed lightweight materials at Building B above the 3-storey podium breaks down the visual scale when viewed from the public domain. The northern façade of buildings uses a variety of solid and void, and heavy and lightweight materials, to achieve objectives for privacy and solar access whilst achieving an attractive façade to northern neighbours.

Assessment under the Apartment Design Guidelines (ADG)

The following is an assessment of the proposal pursuant to the Apartment Design Guide.

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PART 3 – SITING THE DEVELOPMENT

| | OBJECTIVE AND DESIGN CRITERIA | ASSESSMENT | COMPLIANT | SUMMARY |
|---------------|---|---|-----------|--|
| Site Analysis | Objective 3A-1 <i>Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context</i> | <p>The applicant says that the built form is derived from its existing site topography; and is congruent with the built form and scale of neighbouring properties at Castle Vale and Mirvac development under construction.</p> <p>The Site Analysis Plan, Drawing A.022 dated 10.8.12 prepared by Architecture Urbaneia. The Statement of Environmental Effects also documents how the proposal responds to the site analysis, the site's location and local context in relation to surrounding development and proximity to commercial centres, parks and pedestrian / cycle links to these spaces. The sectional details in the architectural drawing set demonstrates how the topography has been used successfully in the design response.</p> | ✓ | <p>The Site Analysis Plan, Drawing A.022, dated 10.8.12 prepared by Architecture Urbaneia.</p> <p>The Site Analysis Plan and accompanying Statement of Environmental Effects and SEPP 65 Statement collectively provides adequate information to conduct an assessment of the application.</p> |
| | Objective 3B-1 <i>Building types and layouts respond to the streetscape site while optimising solar access within the development</i> | <p>The orientation of the proposed buildings and internal spaces in relation to the site and street is satisfactory. The site benefits from a direct northern aspect. The space between buildings allows the sun to strike living rooms and balconies of southern-oriented units (via the eastern and</p> | | <p>The proposal responds appropriately to the streetscape and to neighbouring properties with respect to orientation.</p> |

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| <p>Orientation</p> | <p>Objective 3B-2 <i>Overshadowing of neighbouring properties is minimised during mid-winter</i></p> | <p>western facades). In conjunction with the excellent opportunities for natural ventilation throughout the development, this solar access results in optimum residential amenity.</p> <p>The proposal responds appropriately to the desired streetscape character in accordance with the site specific DCP by observing a variety of front setbacks 6-9m to Walter Street, access paths from Walter Street and deep soil within front setbacks to allow for substantial planting.</p> <p>The proposal responds appropriately to the neighbouring buildings, where spatial separation between built form breaks the massing and opportunities for views, and by limiting overshadowing of the dwelling houses located on the southern side of Walter Street. Drawings A.800 to A.806 Rev E inclusive (View from the sun) shows that all dwelling houses receive at least 3 hours of sun. The front yards of 6, 8, 14, 16 and 18 Walter Street do not receive 3 hours of sun in mid-winter but there are opportunities for other spaces in the yard to receive sun.</p> | <p>✓</p> | <p>The proposal generally retains solar access to adjoining residential properties on the opposite side of Walter Street (see also Section G (1) of Site Specific DCP).</p> |
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| | OBJECTIVE AND DESIGN CRITERIA | ASSESSMENT | COMPLIANT | SUMMARY |
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| Public Domain Interface | Objective 3C-1 <i>Transition between private and public domain is achieved without compromising safety and security</i> | <p>Private terraces are slightly higher than the footpath level to provide surveillance and improve visual privacy (see sectional details on Drawings A.151/1 to A.156/1 Rev D inclusive.</p> <p>Ground floor units have sandstone and metal palisade fences for privacy and security.</p> <p>Front setbacks of 6-9m align with basement setbacks to achieve substantial deep soil areas within the front setback, ensuring that substantial planting can thrive. New 1.5m wide footpaths and planting islands to define parking bays on the street, together with a series of Tallowoods and Flowering Plums planting in the street will provide an aesthetically pleasing and welcoming space from the public domain.</p> | ✓ | <p>The proposed development provides a satisfactory transition between the private and public domain.</p> |
| | Objective 3C-2 <i>Amenity of the public domain is retained and enhanced</i> | | | <p>The public domain will be vastly improved with road widening, parking bays, street trees and 1.5m wide footpath. Deep soul planting within the development site complements this enhanced public domain space and provides visual softening of the built form and a pleasant and attractive residential environment.</p> |
| | Objective 3D-1 <i>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping</i> <i>1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3).</i> <i>2. Developments achieve a</i> | <p>The ADG requires a minimum of 2,811.85m² of communal open space, which is 25% of the site. A total of 3,437m² is provided, which equates to 30.56% of the site area and complies.</p> <p>The principal useable part of the communal open</p> | ✓ | <p>There is sufficient communal open provided within the development.</p> <p>The principal usable part of the communal open space achieves the minimum sun required in</p> |

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| | <i>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 (mid-winter)</i> | space is the provided to the north of Building C. This space receives all day sun in mid-winter (except at 3pm). | | mid-winter (almost for the entire day in mid-winter). |
| | OBJECTIVE AND DESIGN CRITERIA | ASSESSMENT | COMPLIANT | SUMMARY |
| Communal and Public Open Space | Objective 3D-2 <i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i> | <p>The largest, primary communal open space is provided north of Building C. An adventure playground is provided at the north-east corner of Building D), using the existing topography to incorporate rocks for climbing and nature play. A common room is provided also at the north-east corner of Building D and a BBQ area and timber decked seating area is located at the opposite side of the common room.</p>  <p>Communal open space located north of Building C, with good options for recreation, and connectivity with interconnecting paths throughout the landscape and to a common room in Building D.</p> | ✓ | The proposed communal spaces are adequately designed to allow for a range of activities, responds to the sit3 conditions (topography and solar access) and is suitably attractive and inviting. |

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| | | A large communal garden is provided to the north of Buildings E and F, where a number of separate spaces are proposed for resident use. Another children's adventure playground is located north of Building F, and another common room north of Building E. Multiple water pots flank the entry path for visual interest and the soft sounds of water can brighten the arrival experience and provide a sense of calm and tranquillity. | | |
| | Objective 3D-3 <i>Communal open space is designed to maximise safety</i> | The proposed communal open spaces are located to be readily visible from habitable rooms and private open spaces. | ✓ | The communal open spaces are attractive for future residents and are designed to improve passive surveillance. |
| Deep Soil Zones | Objective 3E-1 <i>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</i> | The site has a total area of 11,247.40m² . The ADG seeks a minimum 15% of deep soil for sites greater than 1,500m ² . This proposal achieves a deep soil provision of 35.8% (see Drawing A.050 Rev F, plot dated 11.01.22 prepared by Architecture Urbaneia). | ✓ | 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 | ASSESSMENT | COMPLIANT | SUMMARY |
| | Objective 3F-1 <i>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy</i> <i>Note: Separation distances between buildings on the same</i> | 12m separation between buildings is provided (up to 4 storeys) and 18m separation (above 4 storeys) in accordance with Part 3F of the ADG. Some minor variations occur as detailed: Building B / C 17.1m in lieu of 18m at a balcony corner on Level 4. Building C / D 16.4m in lieu of 18m at Level 4. | ✓ | The proposed development complies with the separation requirements of the ADG. |

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| Visual Privacy | <i>site should combine require building separations depending on the type of room</i> | <p>Building D / E 16.5m in lieu of 18m at Level 4.</p> <p>Building E / F 16.1m in lieu of 18m at Levels 4 to 6.</p> <p>Where there are variations to the separation requirements screening to proposed to mitigate privacy impacts.</p> <p>Setbacks from side and rear boundaries numerically comply.</p> | | |
| Visual Privacy | Objective 3F-2 <i>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</i> | Façade articulation has enabled all units to have privacy from each other whilst still maintaining adequate solar access and cross ventilation. A combination of spatial separation and screening devices are used to achieve privacy objectives. | ✓ | Unit and balconies achieve adequate privacy, solar access and cross ventilation. |
| | OBJECTIVE AND DESIGN CRITERIA | ASSESSMENT | COMPLIANT | SUMMARY |
| Pedestrian Access and Entries | <p>Objective 3G-1 <i>Building entries and pedestrian access connects to and addresses the public domain</i></p> <p>Objective 3G-2 <i>Access, entries and pathways are accessible and easy to identify</i></p> <p>Objective 3G-3 <i>Large sites provide pedestrian links for access to streets and connection to destinations</i></p> | <p>The main pedestrian entries face Walter Street and have clear sight lines. Pedestrian entries to Building B are from Willoughby Road, enhancing the pedestrian connection both physically and visually to this main road.</p> <p>Achieved, the entry ways into the development are clearly visible from the public domain and communal spaces.</p> <p>Pedestrian access within the site facilitate direct connections to open space, assisted by the sptail separation between RFBs on the site which serve to enhance visibility and principles of universal</p> | ✓ | The proposal satisfies pedestrian access objectives. |

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| | | design. | | |
| Vehicle Access | Objective 3H-1 <i>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</i> | The two vehicular access points (at Building C and Building F) are designed to minimise the potential for traffic and pedestrian conflict, being their entries being set within the site and good sightlines and wide footpaths. | ✓ | The proposal satisfies the objectives for vehicular access. |
| | OBJECTIVE AND DESIGN CRITERIA | ASSESSMENT | COMPLIANT | SUMMARY |
| Bicycle and Car Parking | Objective 3J-1 <i>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas</i> <i>For development in the following locations:</i> <ul style="list-style-type: none"> • <i>On sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i> • <i>On land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</i> • <i>the minimum car parking</i> | Car parking has been provided in accordance with the Council DCP as required. | ✓ | The proposed development complies with providing the required amount of car spaces. |

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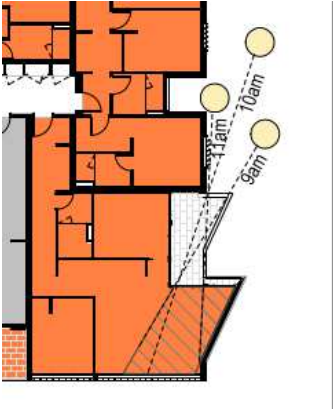
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| | <p><i>requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</i></p> <p><i>The car parking needs for a development must be provided off street.</i></p> | | | |
| | <p>Objective 3J-2 <i>Parking and facilities are provided for other modes of transport</i></p> | Motor cycle and bicycle parking has been provided within the development. | | The proposed development provides adequate bicycle and motorcycle parking. |
| | <p>Objective 3J-3 <i>Car park design and access is safe and secure</i></p> | Achieved, access to the residential levels will require remote access. | | Council's Engineer has reviewed the proposed basement car park plans and concludes the proposal is adequate in this regard. |
| | <p>Objective 3J-4 <i>Visual and environmental impacts of underground car parking are minimised</i></p> | Achieved, car park wall does not protrude above natural ground level. | | There is some protrusion of the carpark above the natural ground level at Buildings C, D, and E, however these elements are suitably interrogated into the landscape scheme. |

| PART 4 – DESIGNING THE BUILDING | | | | |
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| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
| | <p>Objective 4A-1 <i>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space</i></p> | The development exceeds the criteria outlined in Objective 4A-1. The applicant has undertaken at Council's a request a detailed solar study in plan to demonstrate sun strike angles to living rooms and private open spaces | | Complies. |

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| <p>Solar and Daylight Access</p> | <p>1. Living rooms and private open 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</p> <p>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</p> <p>3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p> | <p>(see Figure below) to ensure only units with adequate provision of sun to both are calculable to the minimum 70%.</p>  <p>An extract example of the applicant's detailed analysis of sun strike to living rooms and private open spaces.</p> <p>Across the development 164 apartments, 129 units (78%) receive at least 2 hours direct sunlight between 9 am and 3 pm at mid-winter to living rooms and private open space.</p> <p>Living rooms and private open spaces have been designed and orientated to maximise solar access.</p> <p>16 of the 129 units receive no direct sunlight between 9 am and 3 pm at mid-winter, which equates to 12% and satisfies the maximum of 15%.</p> | <p>✓</p> | |
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| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
|---------------------------|--|--|-----------|--|
| Solar and Daylight Access | Objective 4A-2 <i>Daylight access is maximised where sunlight is limited</i> | These objectives have been achieved. The building orientation provides optimum solar access to apartments through spatial separation between the RFBs, spatial arrangement of RFBs, the use of articulation of built form, responsive layout of internal spaces, privacy screens and glazing. | ✓ | Good northern aspect to capture sun. also, east and west-oriented units capture sun as a result of spatial separation and arrangement of RFBs and units within them. |
| | Objective 4A-3 <i>Design incorporates shading and glare control, particularly for warmer months</i> | Balconies and sun shading devices can be incorporated have been incorporated to east and west facing ends of balconies to offer relief in conjunction with shadowing afforded by slab above. | | There are good opportunities for screening balconies. |
| Natural Ventilation | Objective 4B-1 <i>All habitable rooms are naturally ventilated</i> Objective 4B-2 <i>The layout and design of single aspect apartments maximises natural ventilation</i> Objective 4B-3 <i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents</i> | All habitable rooms have the ability to achieve natural ventilation, however Acoustic Logic Report (Ref: 20210897.1) dated 8.12.2012 (Appendix 3) shows 82 units (50%) capable of natural ventilation (due to exceedance of internal noise levels according to NSW Department of Planning's "Development near Busy Roads and Rail Corridors". 23 of these 82 which identifies rooms other than the living spaces are capable of natural ventilation. The balance of units require mechanical ventilation to be installed. | ✓ | <p>Notwithstanding the limitations of internal noise criteria identified by Acoustic Logic, the proposal is assessed to otherwise (almost) 100% naturally cross-ventilated (unit G02 in Building E and unit G02 in Building F are not considered naturally cross-ventilated). This equates to a provision of 99%.</p> <p>With respect to the provision of 50% based on Acoustic Logic's Report, the proposal is satisfactory on the basis that it responds appropriately to the site and the public domain, is zoned for high density residential purposes, and tolerance for internal noise is subjective and able to be mitigated satisfactorily when the need arises through closing windows and doors where mechanical ventilation offers a satisfactory level of internal residential amenity.</p> |

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| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
|----------------------------------|---|--|-----------|---|
| Ceiling Heights | <p>Objective 4C-1 <i>Ceiling height achieves sufficient natural ventilation and daylight access</i></p> <p>Objective 4C-2 <i>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms</i></p> <p>Objective 4C-3 <i>Ceiling heights contribute to the flexibility of building use over the life of the building</i></p> | <p>A floor to floor height of 3.1m has been provided for almost the entirety of the development, excepting three levels in Building D. Ceiling heights of 2.7m are still achieved.</p> <p>Ceiling heights of 2.7m are achieved throughout the proposed development (as shown in Drawings A151/1 to A.156/1 Rev D inclusive).</p> | ✓ | The ceiling heights provided for habitable rooms are adequate to provide a high quality of amenity. |
| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
| Apartment Size and Layout | <p>Objective 4D-1 <i>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity</i></p> | <p>Achieved. All units are larger than ADG requirements.</p> <p>Every habitable room contains a window in an external wall with a minimum glass area that is greater than 10%.</p> | ✓ | Compliance contributes to the internal residential amenity of the units. |

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| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
| Apartment Size and Layout | Objective 4D-2 <i>Environmental performance of the apartment is maximised</i> | Achieved. All habitable rooms are set to a height of 2.7m and depths do not exceed the 2.7 x 2.5m. All open plan layouts are designed to ensure that the maximum habitable room depth does not exceed 8m. | ✓ | Compliance contributes to the internal residential amenity of the units. |
| | Objective 4D-3 <i>Apartment layouts are designed to accommodate a variety of household activities and needs</i> | All master bedrooms are greater than 10 sqm and have a minimum dimension of at least 3m. All bedrooms have a minimum dimension of 3m excluding wardrobes. | ✓ | All master bedrooms were found to exceed the minimum requirement of 10 sqm, other bedrooms 9 sqm, and minimum dimension of 3m. Minimum width of living rooms 3.6m (1 bedroom) and 4m (2+ bedrooms) satisfied. |
| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
| Private Open Space and Balconies | Objective 4E-1 <i>Apartments provide appropriately sized private open spaces and balconies to enhance residential amenity</i> | Complies. Balconies comply with or exceed the minimum areas. Ground floor units achieve the objectives of the ADG. | ✓ | Complies with the requirements for Part 4E ADG. 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. |
| | Objective 4E-2 <i>Primary private open space and balconies are appropriately located to enhance liveability for residents</i> | Many units have for than one balcony for increased options and thus amenity for residents. | | Balconies are appropriately located adjacent to living rooms or dining rooms. Additional balconies add considerably to the amenity of the units. |

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| | <p>Objective 4E-3 <i>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building</i></p> <p>Objective 4E-4 <i>Private open space and balcony design maximises safety</i></p> | <p>All balconies are incorporated successfully into the built form, contributing to horizontality that complements elements that vertically emphasise the building.</p> <p>All ground floor units are capable of providing usable and high amenity outdoor spaces.</p> | | <p>Proposed balconies respond appropriately to the surrounding development and for solar access.</p> <p>Material Schedules are provided on the elevations of the drawings, adopting face brick, concrete, precast concrete, metal cladding, stone and vertical louvres and bifold screens.</p> <p>A condition of consent shall be imposed that the balconies and associated balustrades should meet the Australian Standards.</p> |
| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
| Common Circulation and Spaces | <p>Objective 4F-1 <i>Common circulation spaces achieve good amenity and properly service the number of apartments</i></p> <p>Objective 4F-2 <i>Common circulation spaces promote safety and provide for social interaction between residents</i></p> | <p>No more than 8 units are served from each circulation core.</p> <p>The proposal's common circulation spaces adequately promote safety and interaction.</p> | ✓ | <p>All residential buildings were found to contain 8 units or less for each circulation core.</p> <p>Circulation spaces to be well lit at night.</p> |
| Storage | <p>Objective 4G-1 <i>Adequate, well designed storage is provided in each apartment</i></p> <p>Objective 4G-2 <i>Additional storage is conveniently located, accessible and nominated for individual apartments</i></p> | <p>Achieved. All units have adequate storage spaces located within the apartments.</p> <p>Additional storage has also been provided on basement levels (at least 50% of required storage is in the basement). These spaces are secure and have convenient access.</p> | ✓ | <p>There is a basement storage area for residents which can also secure bikes.</p> |

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| Acoustic Privacy | <p>Objective 4H-1 <i>Noise transfer is minimised through the siting of buildings and building layout</i></p> <p>Objective 4H-2 <i>Noise impacts are mitigated within apartments through layout and acoustic treatments</i></p> | <p>The developments garbage, removalist and delivery areas are located within the basement.</p> <p>Recommendations for construction are made in Acoustic Logic's Report.</p> | ✓ | Complies subject to compliance with the recommendations within the Acoustic Report by Acoustic Logic. |
| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
| Noise and Pollution | <p>Objective 4J-1 <i>In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings</i></p> <p>Objective 4J-2 <i>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission</i></p> | <p>The living spaces of units are located north and south of the site.</p> <p>The Acoustic Report provides recommendations for mitigating and attenuating noise impacts.</p> | ✓ | <p>The site presents a competing suite of opportunities – solar and quiet to the north, and views and streetscape to the south. The proposal strikes a good balance between capturing the positive attributes of the site and mitigating negative factors such as road noise, all whilst conjuring the floorplates to capture sun to primary internal and external living spaces.</p> <p>Compliance with the acoustic report required.</p> |
| Apartment Mix | <p>Objective 4K-1 <i>A range of apartment types and sizes is provided to cater for different household types now and into the future</i></p> <p>Objective 4K-2 <i>The apartment mix is distributed to suitable locations within the building</i></p> | <p>15 x 1 bedroom units 99 x 2 bedroom units 50 x 3 bedroom units</p> <p>Total = 164 units</p> <p>50% of the development (86 units) are adaptable.</p> | ✓ | <p>The proposal is appropriate given current market demands and projected future demographic trends.</p> <p>Flexible apartment configurations are provided to support diverse household types and stages of life.</p> |



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| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
|--------------------------------|---|--|-----------|--|
| Ground Floor Apartments | <p>Objective 4L-1 <i>Street frontage activity is maximised where ground floor apartments are located</i></p> <p>Objective 4L-2 <i>Design of ground floor apartments delivers amenity and safety for residents</i></p> | <p>Ground floor apartments fronting Willoughby Road have their own designated access gates and pathways, which serves to 'pedestrianise' its frontage to this main road.</p> <p>Maisonette units (Building C) and ground floor units in Buildings E and F fronting Walter Street have private open space with good connectivity to the street. Building D utilises an alternative pedestrian access model, via a communal path between Buildings C and D that swings into a communal lift arrangement in Building D (as well as a side entry to Building C) which enhances opportunities for social interaction and outdoor amenity.</p> | ✓ | Complies and enhances street frontage activity and resident amenity. |
| Facades | <p>Objective 4M-1 <i>Building facades provide visual interest along the street while respecting the character of the local area</i></p> <p>Objective 4M-2 <i>Building functions are expressed by the façade</i></p> | <p>Facades are satisfactorily articulated to provide visual interest, using various means to visually modulate the building in both the vertical and horizontal planes.</p> <p>East elevation of Building D provides a welcoming and attractive entry from the communal open space that invites entry to the common room and central lift core of Building D.</p> | ✓ | The objectives of Part 4M are satisfied. |

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| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
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| Roof Design | <p>Objective 4N-1 <i>Roof treatments are integrated into the building design and positively respond to the street</i></p> <p>Objective 4N-2 <i>Opportunities to use roof space for residential accommodation and open space are maximised</i></p> <p>Objective 4N-3 <i>Roof design incorporates sustainability features</i></p> | <p>A rooftop garden is proposed for Building D, including segregated areas for different groups to actively and comfortably use the space. A framed element surrounds the rooftop space, which provides some sense of visual transition between Buildings C and E.</p>  <p>Building D (at left) with the framed element at the rooftop terrace.</p> |  | <p>The proposed roof space at Building D contributes to the amenity for residents, and its roof treatment (open framed element at the rooftop terrace) serves a visual transition purpose.</p> |

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Building E (left) and Building D (immediately right), showing the rooftop element from a more distant perspective west along Walter Street.



The rooftop element of Building D from this perspective demonstrates it as a transitional mechanism.

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| Landscape Design | Objective 40-1 <i>Landscape design is viable and sustainable</i> | The landscaping scheme provides for a high level of restful and active enjoyment of the space, and contributes to the visual quality and amenity of the public domain. | ✓ | Deep soil planting at the frontage with Walter Street provides good opportunities for meaningful landscaping that will thrive and complement street planting to achieve a buffer between the street and residential levels. At ground level the landscape promotes a good balance between privacy and social interaction. |
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| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
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| Planting on Structures | <p>Objective 4P-1 <i>Appropriate soil profiles are provided</i></p> <p>Objective 4P-2 <i>Plant growth is optimised with appropriate selection and maintenance</i></p> <p>Objective 4P-3 <i>Planting on structures contributes to the quality and amenity of communal and public open spaces</i></p> | A variety of planting is proposed above basement levels (majority in deep soil). The planting incorporates different species suitable for its location. | ✓ | Council's Landscape Officer accepts the proposed subject to conditions. |
| Universal Design | <p>Objective 4Q-1 <i>Universal design features are included in apartment design to promote flexible housing for all community members</i></p> <p>Objective 4Q-2 <i>A variety of apartments with adaptable designs are provided</i></p> <p>Objective 4Q-3 <i>Apartment layouts are flexible and accommodate a range of lifestyle needs</i></p> | An Access Report provided by BCA Access demonstrates options and flexibility of use in the development. | ✓ | Satisfactory subject to conditions. |

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| | 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 and Objective 4S-2 | Not applicable | Not applicable | N/A |
| Awnings and Signage | <p>Objective 4T-1 <i>Awnings are well located and complement and integrate with the building design</i></p> <p>Objective 4T-2 <i>Signage responds to the context and desired streetscape character</i></p> | <p>Not applicable</p> <p>Signage indicated on the main perspective "Lawson Rise". There are no specific details otherwise of any signage and accordingly this signage is not formally assessed as part of this application.</p> | Not applicable | N/A |

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| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
|--|--|--|-----------|---|
| Energy Efficiency | <p>Objective 4U-1 <i>Development incorporates passive environmental design</i></p> <p>Objective 4U-2 <i>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer</i></p> <p>Objective 4U-3 <i>Adequate natural ventilation minimises the need for mechanical ventilation</i></p> | <p>The BASIX assessment prepared for this Development Application demonstrates that the proposed buildings have been designed for optimal energy efficiency.</p> <p>Further, landscaping provides effective and efficient natural solutions to reduce heat and provide relaxed amenities for all visitors and residents.</p> | ✓ | The applicant has provided a BASIX and NatHERs Assessment Report which demonstrates the proposed development satisfies the required energy ratings. |
| Water Management & Conservation | <p>Objective 4V-1 <i>Potable water use is minimised</i></p> <p>Objective 4V-2 <i>Urban stormwater is treated on site before being discharged to receiving waters</i></p> <p>Objective 4V-3 <i>Flood management systems are integrated into site design</i></p> | <p>This proposal is accompanied by a drainage design.</p> | ✓ | Council's Engineering Department has reviewed the proposed stormwater system and finds the proposal satisfactory. |

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| | OBJECTIVE AND DESIGN CRITERIA | PROPOSED | COMPLIANT | COUNCIL'S REVIEW |
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| Waste Management | Objective 4W-1 <i>Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents</i> Objective 4W-2 <i>Domestic waste is minimised by providing safe and convenient source separation and recycling</i> | Achieved. | ✓ | Council's Waste Management Officer has reviewed the Waste Management Plan and basement plans and confirms the proposal is satisfactory. |
| Building Maintenance | Objective 4X-1 <i>Building design detail provides protection from weathering</i> Objective 4X-2 <i>Systems and access enable ease of maintenance</i> Objective 4X-3 <i>Material selection reduces ongoing maintenance costs</i> | Achieved. | ✓ | Complies. |

ATTACHMENT 4: ASSESSMENT OF STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

Assessment under Infrastructure SEPP

Development with frontage to classified road – CI 101

CI 101 (c) Infrastructure SEPP requires that the development is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

An Air Quality Assessment (Ref: 20E-21-0427-TRP-25910-1), dated 2 December 2021 prepared by Vipac Engineers and Scientists Limited. Vipac found that the development did trigger consideration of air quality in design on the basis that the development is within 20m of a main road where there are more than 500 vehicles per hour (2,600 veh/hr in 2019 on Willoughby Road) under the 'Development Near Rail Corridors and Busy Roads – Interim Guideline (the Roads Guideline)'. Vipac flags the benefits of landscaping throughout the development that will act to reduce indoor and outdoor temperatures and absorb air pollutants including carbon dioxide and particulates. In summary Vipac concludes that the proposal is satisfactory with respect to CI 101 Infrastructure SEPP.

Impact of road noise or vibration on non-road development – CI 102

An acoustic report (Ref: 20210897.1), dated 8 December 2021 prepared by Acoustic Logic makes recommendations for attenuating traffic noise through thickness of windows and acoustic seals. The report clearly indicates which units can receive natural ventilation and which units are to rely on mechanical ventilation (Appendix 3 of Acoustic Logic's report).

Traffic Generating Development – CI 104 Schedule 3

The proposal constitutes Traffic Generating Development as it has 50 or more car parking spaces with access to a road that connects to classified road within 90m of that connection, and also on the basis that it contains more than 75 or more dwellings within 90m of a classified road. Accordingly, it was referred to Transport for New South Wales (TfNSW) which confirmed no objection to the proposal on traffic generation grounds.

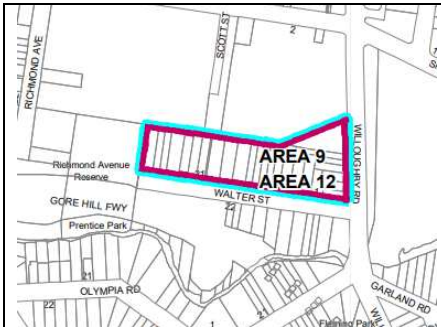
ATTACHMENT 5: ASSESSMENT UNDER WLEP AND WDCP
Assessment under Willoughby Local Environmental Plan 2012 (WLEP)

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

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| Land Use Table – R4 High Density Residential | <p>The proposed development satisfies the objectives of the R4 High Density Residential zone.</p> <p>The proposal provides a good mix of unit types approximately 500m from the Willoughby South and Naremburn Local Centres, where public domain improvements to the road appropriately offset impacts from increased density. The proposal satisfies objectives with respect to solar access, privacy, noise, views, vehicular access, parking and landscaping. Communal open spaces are provided for occupants and their visitors that offers a high level of amenity.</p> | | |
| | Standard | Proposed | Complies |
| CI 4.3 Building Height | 1 – 1A Walter Street 452-462* Willoughby Road Building B only 17m | 18.02m (plant) – exceeds standard by 6% (Clause 4.6) 17.54m (parapet) – exceeds standard by 3% (Clause 4.6) | No (CI 4.6) |
| | 3-13A Walter Street Buildings C and D 24m | Building C 24m Building D 24m | Yes |
| | 15-31* Walter Street Buildings E and F 27m * 462 Willoughby Road and 29-31 do not form part of this Development Application, which is reflected in the assessment commentary. | Building E 27m Building F 26.2m | Yes |
| CI 4.4 FSR | 1.5:1 | 1.5:1 | Complies |
| CI 6.8 Affordable housing | <p>4% of GFA to be dedicated as affordable housing. Located within Area 9.</p> <p>CI 6.8 (2) Development consent must not be granted to the erection of residential accommodation on land identified as “Area 3” or “Area 9” on the Special Provisions Area</p> | <p>4% of GFA dedicated as affordable housing, which equates to 674.84sqm.</p> <p>9 units are to be dedicated, as follows:</p> <p><u>Building B</u> G02 – 94 Sqm-2bed</p> | Complies |

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| | <p>Map unless the consent authority has taken the following into consideration—</p> <p>(a) the Willoughby Affordable Housing Principles,</p> <p>(b) the impact the development would have on the existing mix and likely future mix of residential housing stock in Willoughby,</p> <p>(c) whether one of the affordable housing conditions should be imposed on the consent for the purpose of providing affordable housing in accordance with the Willoughby Affordable Housing Principles.</p>  <p>Area 9 relates to CI 6.8 WLEP (Affo Area 12 relates to CI 6.23 WLEP (D</p> | <p>G03 – 92 Sqm-2bed G05 – 55 Sqm-1bed G06 – 62 Sqm-1bed 105 – 55 Sqm-1bed 205 – 55 Sqm-1bed 304 – 82 Sqm-2bed Total GFA =495sqm</p> <p><u>Building C</u> 102 – 90 Sqm-2bed 205 – 90 Sqm-2bed Total GFA=180sqm</p> <p>Total of Building B (495sqm) + Building C (180sqm) = 675sqm affordable housing contribution which achieves the minimum 674.84sqm.</p> | |
| <p>CI 6.10 Minimum lot sizes for residential flat buildings</p> | <p>Development consent may be granted to development for the purposes of residential flat buildings if the site area is equal to or greater than:</p> <p>CI 6.10 (4) (h) WLEP: (h) 7,960m² for land comprising 1 to 13 Walter Street (inclusive) and 452 to 462 Willoughby Road (inclusive). (i) 4,969m² for land comprising 15 to 27 Walter Street (inclusive).</p> <p><i>Note 1: CI 6.10 (4) (g) sets a minimum allotment size of 1,640m² for 29, 29A and 31 Walter Street. These allotments do not form part of this development application.</i></p> | <p>6,278m²</p> <p>4,969m² (The proposal seeks to amalgamate 1 to 27 Walter Street and 452 to 460 Willoughby Road, which equates to a total site area of 11, 247.40m²).</p> | <p>No (CI 4.6)</p> <p>Yes</p> |
| <p>CI 6.23 Additional local provisions - Design excellence at certain sites at Willoughby</p> | <p>The subject site is land identified as “Area 12” on the Special Provisions Area Map and is accordingly subject to a design excellence clause.</p> <p>(3) Development consent must not be granted to development to</p> | <p>The development exhibits design excellence. See assessment commentary.</p> | <p>Yes</p> |

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| | which this clause applies unless the consent authority considers that the development exhibits design excellence. | | |
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Table 5: Applicable clauses within WLEP

Assessment under Willoughby Local Environmental Plan (WLEP)

Cl 4.3 Building Height

The LEP was amended to incorporate the following building height standards:

| Site | Building | Height standard | Proposed | Complies |
|---|------------|-----------------|-------------|-----------------|
| 1-1A Walter Street and 452-460* Willoughby Road | Building B | 17m | 18.02m (6%) | No (Clause 4.6) |
| 3-13A Walter Street | Building C | 24m | 24m | Yes |
| | Building D | | 24m | Yes |
| 15-27* Walter Street | Building E | 27m | 27m | Yes |
| | Building F | | 26.2m | Yes |

* 462 Willoughby Road and 29-31 Walter Street have been deleted for clarity as the development application does not incorporate these properties as the Planning Proposal did.

The applicant has submitted a Clause 4.6 variation for the departure to building height at Building B. The applicant needs to, in essence demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant states that it is unreasonable and unnecessary in the circumstances of the case to comply with the standard because the objectives of the standard are satisfied notwithstanding the numerical non-compliance.

The applicant says that Building B is set at a “significantly lower level where the topography dips towards Willoughby Road”. Also, that “the breaches to the building height control only occur in limited locations at the east and centre of the site and that the proposal remains within the building height control for the majority of the building with no significant impacts and that that (sic) new development is in harmony with the bulk and scale of surrounding buildings and the streetscape”.

Cl 6.8 Affordable Housing

The exhibited Planning Proposal that precedes this Development Application sought to increase the FSR from 0.9:1 to 1.5:1 including (rather than excluding) 4% of gross floor area for affordable housing.

The site is located within “Area 9” on the Special Provisions Area Map.

Clause 6.8 (7) WLEP (as amended) says that “accountable total floor space” means for development on land identified in ‘Area 9’ on the Special Provisions Area Map – ‘the gross floor area of the part of the development used for residential accommodation’.

The Willoughby Affordable Housing Principles are identified in Clause 6.8 (1) of WLEP as follows:

- (a) affordable housing must be provided and managed in Willoughby so that accommodation for a diverse residential population representative of all income groups is available in Willoughby, and
- (b) affordable housing must be rented to tenants whose gross household incomes fall within the following ranges of percentages of the median household income for the time being for the Greater Sydney (Greater Capital City Statistical Area) according to the Australian Bureau of Statistics—

| | |
|---------------------------|--------------------------------|
| Very low income household | less than 50% |
| Low income household | 50% or more, but less than 80% |
| Moderate income household | 80–120% |

and at rents that do not exceed a benchmark of 30% of their actual household income, and

- (c) dwellings provided for affordable housing must be managed so as to maintain their continued use for affordable housing, and
- (d) rental from affordable housing received by or on behalf of the Council, after deduction of normal landlord’s expenses (including management and maintenance costs and all rates and taxes payable in connection with the dwellings), and money from the disposal of affordable housing received by or on behalf of the Council must be used for the purpose of improving or replacing affordable housing or for providing additional affordable housing in Willoughby, and
- (e) affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with the same type of dwellings within the development to which the development application relates, especially in terms of internal fittings and finishes, solar access and privacy.

Clause 6.8 (2) states that development consent must not be granted to the erection of residential accommodation on land identified as “Area 3” or “Area 9” on the Special Provisions Area Map unless the consent authority has taken the following into consideration—

- (a) the Willoughby Affordable Housing Principles,
- (b) the impact the development would have on the existing mix and likely future mix of residential housing stock in Willoughby,
- (c) whether one of the affordable housing conditions should be imposed on the consent for the purpose of providing affordable housing in accordance with the Willoughby Affordable Housing Principles.

Accordingly, the following assessment of the Willoughby Affordable Housing Principles is undertaken:

- (a) affordable housing is to be provided by the development at the rate of 4% (as shown below) so that accommodation for a diverse residential population representative of all income groups is available in Willoughby, and
- (b) The proposal will have a positive impact on the existing mix and likely future mix of residential housing stock in Willoughby.

The Willoughby Local Strategic Planning Statement 2020, which was endorsed by Council on 10 February 2020, sets out key priorities for future direction for the Willoughby LGA, a copy of which is at Annexure E to this report. Priority 2 is to

increase the provision of affordable housing in the Willoughby LGA. The Policy sets a baseline standard of 4 per cent of gross floor area as affordable housing (when development occurs as a result of uplift of allowable housing density) and a target increase of 7-10 per cent of gross floor area as affordable housing (when development occurs as a result of uplift of allowable housing density) by 2036.

In about August 2021, SGS Economics and Planning provided to Council its Willoughby Affordable Housing Feasibility Report dated 30 August 2021 (the SGS Report), a copy of which is at Annexure F to this report. The SGS Report states the following:

- i. The Willoughby LGA as a whole is categorised as ‘unaffordable’ and Northbridge specifically as ‘severely unaffordable’.
- ii. The SGS Report calculates the total demand for social and affordable housing in the Willoughby LGA (as of 2016) as being 4,186 households (14.6 percent of the total households). This figure is expected to increase in the future.
- iii. The SGS Report considers the commercial feasibility of an affordable housing contribution in 16 locations in the Willoughby LGA. On the basis of this analysis, contributions of between 4 to 10 per cent are recommended. Relevantly, the proposed contribution payable for the area in which the subject site is located is recommended to remain at a 4 per cent.
- iv. Council’s Willoughby Housing Strategy 2036 (endorsed by Department of Planning, Industry and Environment on 10 May 2021) contains a target of 70 affordable housing properties by 2026. Currently, there are only 37 affordable housing properties in the Willoughby LGA.

Having considered the above, it is assessed that there is a need for affordable housing across the Willoughby LGA and that this need is satisfactorily addressed with the dedication of 4% of the development as affordable housing. In this regard the proposal will have a positive impact on the existing mix and likely future mix of residential housing stock in Willoughby.

- (c) Following the assessment of the proposal through the lens of the Willoughby Affordable Housing Principles, a condition needs to be imposed on the consent. The requirement for 4% dedication to affordable housing, at any rate, is captured by the Planning Proposal.

Section 7.32(1) of the EP&A Act provides that conditions requiring contributions for affordable housing can only be imposed where:

- i. the consent authority is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, or
- ii. the consent authority is satisfied that the proposed development will create a need for affordable housing within the area, or
- iii. the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site, or
- iv. the regulations provide for this section to apply to the application.

SEPP 70 – Affordable Housing (Revised Schemes) 2002 contains affordable housing principles, and require that an affordable housing condition be imposed where the circumstances outlined in section 7.32 (1) (a) – (d) inclusive of the Environmental Planning & Assessment Act 1979 occur. It is noted that (at least) section 7.32 (1) (c) applies in that the proposed development is allowed only because of the initial zoning of a site, **or the rezoning of a site**”. (emphasis added) The intention of Council, via the Planning Proposal, was to link the increase in allowable density to an affordable housing dedication. This development consent is the vehicle upon which the dedication is executed. The proposed dedication satisfies section 7.32 (1) (c) Environmental Planning & Assessment Act 1979.

Section 7.32(3) of the EP&A Act provides that a condition may be imposed under this section only if:

- (a) the condition complies with all relevant requirements made by a State environmental planning policy with respect to the imposition of conditions under this section, and
- (b) the condition is authorised to be imposed by a local environmental plan, and is in accordance with a scheme for dedications or contributions set out in or adopted by such a plan, and
- (c) the condition requires a reasonable dedication or contribution, having regard to the following—
 - (i) the extent of the need in the area for affordable housing,
 - (ii) the scale of the proposed development,
 - (iii) any other dedication or contribution required to be made by the applicant under this section or section 7.11.

SEPP 70 is the applicable policy referred to by 7.32 (3) (a) above, and continues to apply to the determination of the Applicant's development application even though it has now been repealed with effect from 26 November 2021 by *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Relevantly, SEPP 70 provides as follows:

- (a) Clause 9 provides that, for the purposes of s 7.32(1) of the EP&A Act, SEPP 70 identifies that there is a need for affordable housing within each area of the State (which includes the Willoughby LGA);
- (b) Clause 10 provides that, for the purposes of s 7.32(3)(a) of the EP&A Act, the following requirement is prescribed with respect to the imposition of conditions under s 7.32 of the EP&A Act on development consents: "A consent authority is to have regard to the affordable housing principles set out in Schedule 2 before imposing such a condition"
- (c) Schedule 2 to SEPP 70 sets out the Affordable Housing Principles, which include the following:

Principle 1: Where any of the circumstances described in s 7.32(1)(a), (b), (c) or (d) of the EP&A Act occur, and a SEPP or LEP authorises an affordable housing condition to be imposed, **such a condition should be imposed** so that mixed and balanced communities are created.

Principle 2: Affordable housing is to be created and managed so that a socially diverse residential population representative of all income groups is developed and maintained in a locality.

It would be consistent with Principle 1 of SEPP 70 for an affordable housing dedication condition to be imposed in the consent. In relation to s 7.32(3)(b), the affordable housing dedication condition is authorised by Clause 6.8 of WLEP 2012 and is in accordance with Council's policies and strategic planning schemes for affordable housing contributions as detailed above.

In relation to s 7.32(3)(c)(i), the ongoing need for affordable housing in Willoughby Local Government Area is dealt with above.

In relation to s 7.32(3)(c)(ii), the reasonableness of requiring an affordable housing contribution on the proposed development on this site is dealt with above.

In relation to s 7.23(3)(c)(iii), the requirement for the affordable housing contribution is appropriate notwithstanding the proposed infrastructure contribution condition in the Draft Conditions which is proposed to be imposed pursuant to section 7.11 of the EP&A Act. That is because the two contributions are required for two quite different purposes, namely affordable housing and infrastructure required as a result of the creation of 164 new dwellings.

On 19 January 2022 the applicant nominated the affordable housing component as follows:

| | |
|-------------------------------|-----------|
| TOTAL NSA | 16871sqm |
| MIN. 4% AFFORDABLE GFA | 674.84sqm |

Building B

G02 – 94 Sqm-2bed
G03 – 92 Sqm-2bed
G05 – 55 Sqm-1bed
G06 – 62 Sqm-1bed
105 – 55 Sqm-1bed
205 – 55 Sqm-1bed
304 – 82 Sqm-2bed
Total GFA = 495 sqm

Building C

102 – 90 Sqm-2bed
205 – 90 Sqm-2bed
Total GFA = 180 sqm

Total of Building B (495) + Building C (180) = 675 sqm GFA affordable housing contribution.

Cl 6.10 Minimum allotment size (Site isolation)

Attachment 7 deals with the Clause 4.6 for allotment size. It is considered appropriate to deal with site isolation here.

Karavellas v Sutherland Shire Council [2004] NSWLCE 251 is the relevant Land and Environment Court Principle for site isolation. At [17] it says the general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

“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 principles to be applied in determining the answer to the first question are set down by Melissa Grech v Auburn Council [2004] NSWLCE 40 and asserts that where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners should commence at an early stage and prior to the lodgement of the development application. Negotiations have been under way with respect to 462 Willoughby Road for some time and a revised offer was made to purchase the property on 17 November 2020.

Further, details of the negotiations between the owners of the properties is required to accompany the development application, including offers made where a reasonable offer is based on at least one recent independent valuation. Council has received documentation that confirms the following:

16 June 2020 – Applicant receives valuation of 462 Willoughby Road (Ray White Valuations) \$6.2 million.

17 November 2020 – applicant makes (revised) offer of \$10 million. Previous offer \$8 million.

9 February 2021 – owner of 462 Willoughby Road asks \$12 million.

20 July 2021 – owner of 462 Willoughby Road indicates any offer lower than \$10 million is unacceptable and indicates asking price of \$13 million.

8 August 2021 - Applicant receives valuation of 462 Willoughby Road (Ray White Valuations) \$8 million.

The applicant's offers of \$8 million and \$10 million where the property was valued at \$6.2 million in 2020 demonstrates the reasonableness of the offers made. The distance apart of the parties is evident in the more recent valuation of \$8 million where the owner seeks \$12 million to \$13 million.

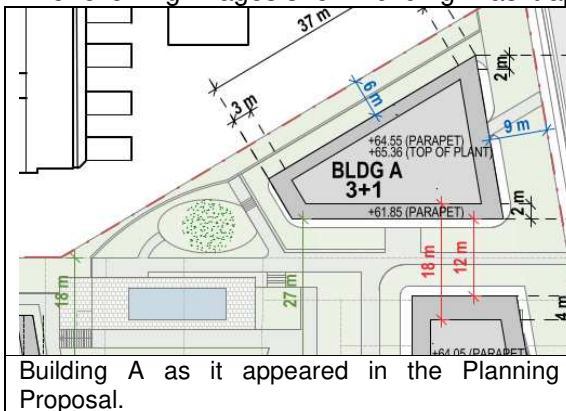
Then, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

This part of the site (462 Willoughby Road) supported a detached, individual built form in the Planning Proposal (Building A), which is testament to the ability of the site to be developed in its own right. At a site area of 1,682m² and an FSR standard of 1.5:1, 462 Willoughby Road has a potential to achieve up to a total gross floor area (GFA) of 2,523m² (1.5 x 1,682m²). Distributing this GFA over 4 storeys (as the Site Specific DCP contemplates for this part of the site) within a Building Height standard of 17 metres, provides the means of creating space around the development to achieve ADG objectives, including communal open space, deep soil and landscaping. The relationship of the site with its surrounds is such that solar access to proposed units could be satisfactorily achieved, and such that solar access is retained to surrounding development (including proposed Building B).

An important consideration to the inclusion of 462 Willoughby Road in the development was to achieve vehicular access from Walter Street rather than Willoughby Road as it would provide a safer and superior environmental planning outcome. The applicant confirms the subject application will continue to offer this vehicular access opportunity when 462 Willoughby Road develops and extends the basement to the northern boundary (Drawing A.102/ST1 Rev D, plot dated 8.12.21 prepared by Architecture Urbaneaia) with a notation "Future connection to 462 Willoughby Road". A condition of consent should cement this commitment on title.

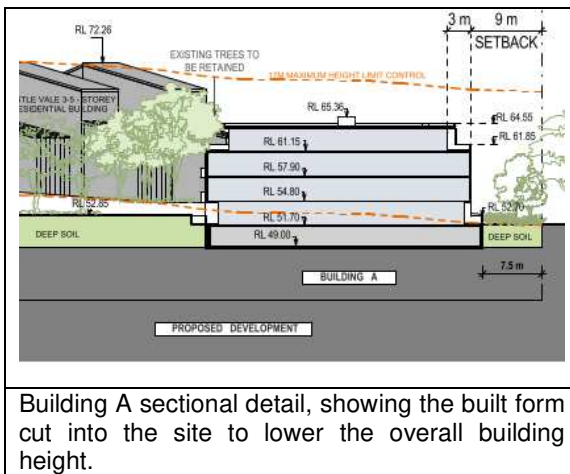
With respect to envisaging an envelope for the isolated site the applicant says this is demonstrated by the Planning Proposal drawings, which contains Building A cleanly on 462 Willoughby Road. The applicant says that this shows in sufficient detail "the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts consistent with the planning principle".

The following images show Building A as it appeared in the Planning Proposal:





Building A (shown centre of image) was proposed to be 4 storeys in height with basement under.



Building A sectional detail, showing the built form cut into the site to lower the overall building height.

It is considered that there is sufficient evidence that 462 Willoughby Road is capable of being developed in accordance with the planning controls and can achieve a development of appropriate urban form and with an acceptable level of amenity. It is concluded that the requirements for site isolation with respect to 462 Willoughby Road have been satisfied.

29, 29A and 31 Walter Street is not considered to constitute site isolation because Clause 6.10 (4) (g) WLEP requires that these parcels together form a lot size equal to or greater than 1,640m². When combined these parcels equate to 1,640m². As WLEP contemplates this amalgamated site as its own site, it so provides that it is capable of being developed in accordance with the planning controls and can achieve a development of appropriate urban form and with an acceptable level of amenity.

CI 6.23 - Design excellence at certain sites at Willoughby

The objective of the clause is to deliver the highest standard of architectural, urban and landscape design. CI 6.23 (4) WLEP says:

“(4) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters:

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved.
- (b) Whether the form, arrangement and external appearance of the development will improve the quality and amenity of the public domain,
- (c) Whether the development detrimentally impacts on view corridors.

Subclause (5) also requires the consent authority to have regard to how the development addresses:

- (a) The suitability of the land for development,
- (b) Existing and proposed uses and use mix,
- (c) Heritage and streetscape constraints,
- (d) Relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,
- (e) Bulk, massing and modulation of buildings,
- (f) Street frontage heights,
- (g) Environmental impacts such as sustainable design, overshadowing, wind and reflectivity,
- (h) Achieving the principles of ecologically sustainable development,
- (i) Pedestrian, cycle, vehicular and service access, circulation and requirements,
- (j) The impact on, and proposed improvements to, the public domain,
- (k) The impact on special character areas,
- (l) Achieving appropriate interfaces at ground level between the building and the public domain,
- (m) Excellence and integration of landscape design.

The proposal was considered by the Design Excellence Review Panel on 31 August 2021, where recommendations were made to assist the development in achieving a sufficient level of design excellence.

The applicant's response to the Design Excellence Review Panel Juror's Report is Appendix 3 to this report. Council's Urban Design Specialist has assessed the amended architectural scheme (Rev D) and commented as follows:

Council's Urban Design Specialist has assessed the proposal and responded as follows:

Following initial review of the submission prepared by the Proponent's consultant team, and subsequent submission of additional supporting documentation the proponent has undertaken adequate steps to satisfy the requirements of the *Willoughby Local Environmental Plan Design Excellence Clause* (WLEPDeX).

Improvement includes:

Reconfiguration and relocation of the basement loading dock away from the Walter St elevation, improving the streetscape amenity and reduction of the extent of vehicular access points.

Improved internal circulation interconnecting areas of private/communal open space, noting the constraints imposed by the linear configuration of the site and the level change across the site.

In this regard, a more consolidated approach to building massing may have supported larger areas of communal open space between building masses.

Provision of an internal court between building entries, While the DEAP suggested a stronger built form element, the introduction of internal courts contribute to the open space and landscape amenity of the overall site layout. These spaces offer the opportunity for casual and informal social engagement and interaction.

Noting that the proponent has not provided an interconnected basement. An initial design response did incorporate a basement connection allowing. This has been amended in the most current DA to retain 2 separate basement areas across the Walter St frontage. Each basement has separate access and basement loading areas.

Building Form Qualities and Character -:

Design Excellence

Should variations to the existing plan controls be supported then the proposed architectural design shall be subject to the relevant Design Excellence Policy requirements.

It is important to note that prior to the submission of the DA (historically) the site has been the subject of a protracted Planning Proposal incorporating significant design/development changes and evolution. This required significant review and feedback from Council (officers), resulting in a proponent commitment to a prescribed development outcome comprising the site planning and building form and configuration. A significant component of this review and feedback was undertaken prior to the requirement of the development to satisfy the Willoughby Local Environmental Plan Design Excellence Clause, and subsequent submission of the site design to the DEAP. The DEAP acknowledged this, incorporating initial comments regarding the proposed site/building configuration and building massing.

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5.2 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 – General Development Guidelines | | | |
| C.1 Demolition | Detailed measures to control impacts as provided in the Air Quality Assessment by Vipac Engineers and Scientists Limited (see Infrastructure SEPP CI 101 assessment in this report) | Criteria established in Part C1.1 | Complies – subject to conditions |
| 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 Transport 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 (or located in secure areas) | Complies |
| Motorcycle | Refer to the table below for detailed parking requirements. | 1 space per 25 car spaces | Complies |

| Car Parking Calculations | | | | | |
|---|----------------------------|--|--------------------------|--------------------------|----------|
| Proposed Use | Details of Proposal | Parking Rate Requirements | Required Spaces | Proposed Spaces | Comment |
| Residential car spaces for RFBs in R4 Zone (within Major Public Transport Corridor) | Proposed 5 x RFBs contain: | For development located within Major Public Transport Corridor | 177 spaces (residential) | 177 spaces (residential) | Complies |
| | 1 Bedroom – 15 units | 1 bedroom – 1 space | 41 spaces (visitors) | 41 spaces (visitors) | |
| | 2 Bedroom – 99 units | 2 bedrooms – 1 space | Total = 218 | | |
| | 3 Bedroom – 50 units | 3+ bedrooms – 1.25 spaces | | | |
| | Total units – 164 units | Visitor spaces 1 per | | | |

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| | | | | | |
|---------------------|----------|--|---------------------------------|---|----------|
| | | 4 dwellings | | | |
| | | Motorcycle parking 1 space per 25 car spaces | 9 spaces | 12 spaces | Yes |
| | | Bicycle parking 1 space per 10 units | 17 spaces | 18 spaces (residential) 14 spaces (visitors) Total = 32 spaces | Yes |
| Adaptable Spaces | 5 x RFBs | WDCP Part C.6.3.D table | 17 x adaptable car spaces | 55 adaptable spaces | Complies |

| <i>Willoughby Development Control Plan</i> | | | |
|---|---|--|---|
| <i>Part C – General Development Guidelines</i> | | | |
| | 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 and offered conditions of consent. |
| 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 occupants and visitors. See commentary below. |
| 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 <u>tree</u> resources, natural systems including <u>bushland</u> , and landscape quality. | Complies – the deep soil planting at the frontage of the site will promote the growth of Tallowood street trees and planting within the front setback with Walter Street, creating a pleasing landscape response that enhances amenity and softens the built form. |
| 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: <ul style="list-style-type: none"> - Surveillance; - Access control; - Territorial reinforcement; and - Space management | The proposal was referred to NSW Police; no response was received however a condition is included in the consent to deal adequately with CEPTED. |
| C.12 Fencing | Various | Maximum height of 1.1m front boundary fencing (if solid) or 1.6m if open-style | Complies |
| C.13 Contaminated Land | The applicant has provided a Stage 1 and Stage 2 | Contaminated land must be remediated to be made suitable for the | Complies - conditions have been imposed that deal adequately with the Detailed |

| | | | |
|--|--|--|--|
| | 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 | purpose of the development | Site Investigation and the Remediation Action Plan. |
| C.14 Development near Railway Corridors or Busy Roads | The proposal is located on a classified (State) road – Willoughby Road, which is deemed 'busy road' | Development to be designed and constructed to protect key transport infrastructure and comply with Infrastructure SEPP | Complies – detailed assessment has been undertaken under Infrastructure SEPP and the proposal complies subject to conditions. |
| C.15 Undergrounding of Services | 5 x RFBs, road widening and undergrounding of services | All services to be undergrounded | Complies – services proposed to be undergrounded and referral received from Ausgrid. |

C.6 Access, Mobility and Adaptability

The Access Report (Ref: 111943-Access-r 2) dated 13 December 2021 prepared by BCA Access identifies areas that do not comply and are in need of attention, including:

- Inaccessible ground floor entrance (from Walter Street) at Buildings E and F;
- Ground floor common room adjoining Buildings E and D, doorway with inadequate circulation space;
- Multiple gates with non-compliant door circulation spaces;
- Building D ground floor path at northern side of building, links between Building D and E, and pedestrian paths outside Building F does not achieve an a continuous and accessible path of travel;
- Standalone unisex accessible sanitary facility outside Building E and F is too small.
- No passing bays;
- Gradient and length of ramps.
- Minor detailing required to readily be capable for sanitary facilities circulation space within units.
- The access consultant flags where more information is required for assessment to ascertain compliance with paths through landscaped areas in the surrounds of the buildings.

A condition of consent is required to ensure that the proposal ultimately complies with all relevant access standards.

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82 units of the 164 are designed as adaptable units, which satisfies the 50% requirement of WDCP. The units dedicated for adaptability are identified on Drawing A.401 Rev A, plot dated 3.12.2021 prepared by Architecture Urbaneia. This drawing is located at the end of the Access Report.

| <i>Willoughby Development Control Plan</i> | | | |
|--|---|---|--|
| <i>Part D2 – Attached dwellings, Multi dwelling housing and Residential Flat Buildings</i> | | | |
| | Proposal | Standard | Compliance |
| D.2.2 Design Verification Statement | SEPP 65 and Design Verification Statement requirement applies | Design Verification Statement required to verify that the design quality principles contained within SEPP 65 are achieved | Complies – Design Verification Statement received |

ATTACHMENT 6: ASSESSMENT UNDER SITE SPECIFIC DCP**6.0 Assessment of Residential Flat Building (RFB)**

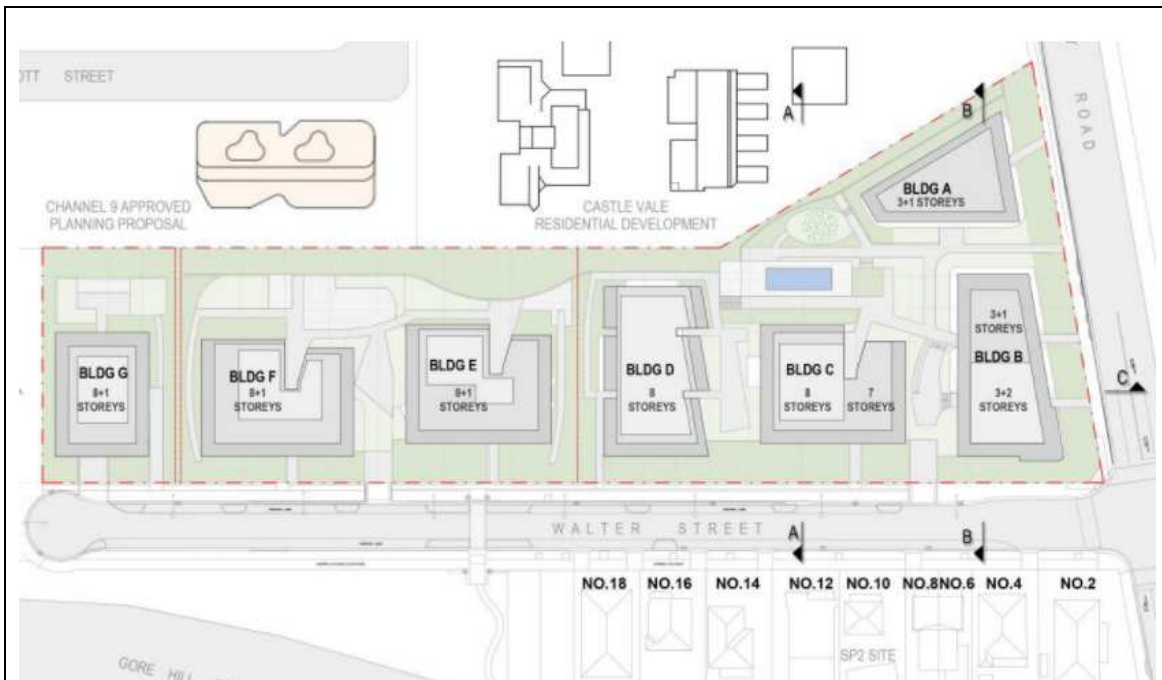
The proposed 5 x RFBs are located at 1A-27 Walter Street and 452 to 460 Willoughby Road, Willoughby. There are twenty-three (23) lots associated with this address zoned R4 High Density Residential (including an unnamed narrow reserve adjoining 21 Walter Street). This section of the report provides an assessment in accordance with the relevant controls of the Site Specific DCP and WDCP.

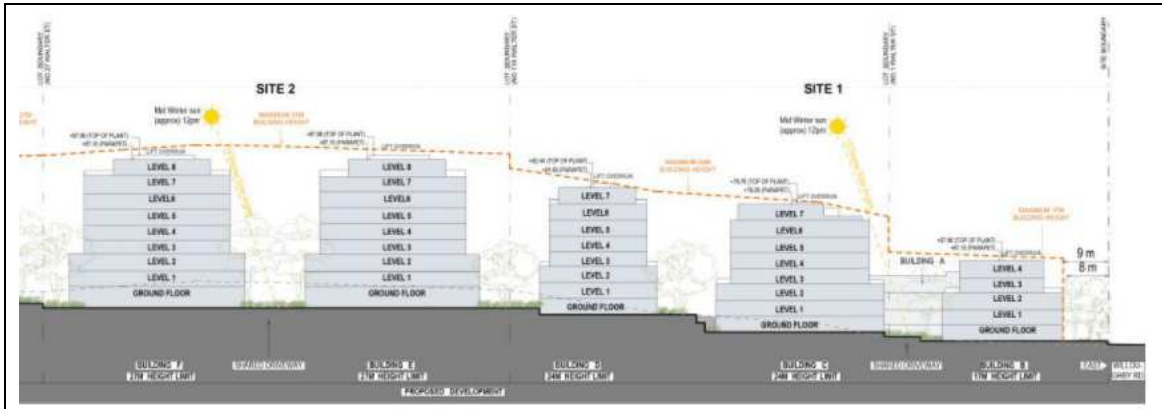
6.1 Site Specific DCP**A – Height****Objectives**

- a) To achieve an appropriate height transition across the site responding to the existing and future desired context; and
- b) To provide various height controls that maintain reasonable solar access to the private open space of nearby residential development and enhance solar access through the site.

Controls

1. The height of buildings in storeys are to be in accordance with the Building Envelope Plan.
2. The development is to provide a three-storey podium to Walter Street with a 3m setback above to reduce impacts on the public domain and surrounding residential buildings and provide a transition in scale.

Assessment**Control 1 Height of buildings in storeys****Building Envelope Plan (source: Site Specific DCP)**



Indicative Building Envelope Sections (source: Site Specific DCP)



Southern elevation of the proposal.

The proposal is one storey less than the DCP for Buildings C, D, E and F.

Building C is shown in the Building Envelope Plan within the Site Specific DCP as 8 storeys, but 7 storey at its eastern side. Proposed Building C is 7 storeys. The ground floor level between the Planning Proposal and the Development Application is roughly the same (at RL 53.01 and RL 53.0 respectively) and the proposed parapet is RL75.25, some 3m below the indicative building envelope drawings in the Site Specific DCP. A floor to floor height is observed throughout Building C with the exception of Level 2 which is 3.5m. The height of Building C satisfies the height standard and the DCP.

Building D is shown in the Building Envelope Plan within the Site Specific DCP as 8 storeys. Proposed Building D is 7 storeys with a rooftop terrace (and open frame surrounding the terrace area). The floor immediately below the ground floor, which serves predominantly as a parking area, also contains a pedestrian entry to lifts a stairway, and a common room that has good connectivity with Building C and the communal open space. To be clear, the DCP takes its ground level storey to be main residential floor (FFL RL 56.40), the floor above the 'common room floor'. Proposed Building D, then, is lower than that contemplated by the DCP.

Building E is shown in the Building Envelope Plan within the Site Specific DCP as 9 storeys. Proposed Building E is 8 storeys, where its parapet height is RL85.40 and the DCP contemplates a parapet height of RL87.15. The difference in parapet heights (given the reduction by a storey) may have been greater except that the proposed ground floor level is RL 58.60 where the Planning Proposal considered RL 57.80 – its increase by 0.8m serves to gain an elevation above the footpath level between 0.8m and 1.5m for the single orientation units at the ground floor of Building E, achieving a greater amenity for these units whilst not compromising height objectives.

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Building F is shown in the Building Envelope Plan within the Site Specific DCP as 9 storeys. Proposed Building F is 8 storeys. The proposed parapet height is RL85.40 where the DCP contemplates RL87.15. Like Building E, Building F's reduction in overall height from that contemplated by the DCP may have been greater except that the proposed ground floor level is RL 58.6 where previously (for the Planning Proposal) it was RL 57.80.

In some cases, then, the applicant has in effect 'absorbed' an increase in ground floor height by losing a storey. All matters considered, including compliance with the height of built form envisaged by the DCP, and the means of articulation and modulation of the built form, results in an overall satisfactory design response.

The above figure contains parapet and plant levels which are not legible in the diagram in this report, but are provided in the table below.

The heights of plant and parapets as provided in the Site Specific DCP (Figure 2 Indicative Building Envelope Sections) compared to the proposal, is shown as follows:

| Building | Control | | Proposed | | | |
|------------|--------------|----------------|-----------------------|--------|--|--------|
| | Top of plant | Top of parapet | Proposed top of plant | Comply | Proposed top of parapet | Comply |
| Building B | RL 67.96 | RL 67.15 | RL 68.12 | No | RL 67.50 | No |
| Building C | RL 78.76 | RL 78.26 | RL 76.20 | Yes | RL 75.25 | Yes |
| Building D | RL 82.44 | RL 81.64 | RL 82.17 | Yes | RL 80.77 (rooftop terrace frame) RL77.97 (parapet proper) | Yes |
| Building E | RL 87.98 | RL 87.15 | RL 86.20 | Yes | RL 85.40 | Yes |
| Building F | RL 87.98 | RL 87.15 | RL 86.20 | Yes | RL 85.40 | Yes |

Table: Comparison of Site Specific DCP levels and proposed levels

The applicant says in its correspondence dated 15 December 2021 that the storeys were reduced to "provide better solar access through the site and to southern neighbouring residences along Walter Street". The applicant says that the departure of Building B is due to a fall in topography and to gain freeboard above the flood level. The applicant says that the variation will not cause any adverse impacts to surrounding properties or the public domain.

The above table indicates that the height exceedance of Building B equates to 0.160m (top of plant) and 0.35m (top of parapet) which is approximate. A clause 4.6 variation has been submitted for a departure of 6% to the building height standard for Building B, and variation is assessed within this report. It is considered that the exceedance of Building B does not hinder the attainment of the objectives for height under the Site Specific DCP (nor of the Act) in that it contributes to a height transition across the site, and maintains reasonable solar access to the private open space of nearby residential development as well as through the subject site. Overshadowing is discussed under Site Specific DCP - Section G.

3-storey podium to Walter Street with 3m setback above

| | Podium height / front setback to Walter Street | Setback above podium |
|------------|--|----------------------|
| Building B | 3-storey / 6m | 2.2m |
| Building C | 3/4-storey / 7.5m | -2.1m |

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| | | |
|------------|-------------------|-------|
| | | +1.5m |
| Building D | 3/4-storey / 7.2m | 1.8m |
| Building E | 3-storey / 6m | 3m |
| Building F | 3-storey / 6m | 3m |

The podiums are defined through the use of setbacks and materiality, which achieves a satisfactory streetscape response and an overall design response that satisfies the desired future context.

B – Design Excellence

Objectives

- a) To encourage innovative, high quality architectural design; and
- b) To achieve long term durability of design and finish.

Controls

- 1. Before granting development consent for the erection of a new building development, the Council must consider the quality for the architectural design and the achievement of design excellence.
- 2. In considering the quality of the architectural design, the Council must consider feedback received from a Design Review Panel for developments of up to 35m high.
- 3. Achievement of design excellence will include achievement of higher building sustainability standards.
- 4. Any amelioration measures for environmental impacts such as architectural elements and landscaping are integrated into the design to achieve an overall high standard of design quality.

Assessment

Design Excellence

This matter is discussed earlier in this report with respect to CI 6.23 WLEP.

Feedback from Design Review Panel

Higher building sustainability standards

Overall high standard of design quality

The latest architectural drawings have been assessed by Council's Urban Design Specialist

General

This is review is based on Development Application documents submitted following an initial review by a Design Excellence Advisory Panel (DEAP).

The DA was accepted by Council prior to any subsequent review by the DEAP

1 General compliance with the Design Excellence Review Panel report

Following initial review of the submission prepared by the Proponent's consultant team, and subsequent submission of additional supporting documentation the proponent has undertaken adequate steps to satisfy the requirements of the Willoughby Local Environmental Plan Design Excellence Clause (WLEPDeX).

Improvements include:

Reconfiguration and relocation of the basement loading dock away from the Walter St elevation, improving the streetscape amenity and reduction of the extent of vehicular access points.

Improved internal circulation interconnecting areas of private/communal open space, noting the constraints imposed by the linear configuration of the site and the level change across the site.

In this regard a more consolidated approach to building massing may have supported larger areas of communal open space between building masses

Provision of an internal court between building entries. While the DEAP suggested a stronger built form element, the introduction of internal courts contribute to the open space and landscape amenity of the overall site layout. These spaces off the opportunity for casual and informal social engagement and interaction.

Noting that the proponent has not provided an interconnected basement. An initial design response did incorporate a basement connection allowing. This has been amended in the most current DA to retain 2 separate basement areas across the Walter St frontage. Each basement has separate access and basement loading areas

Building Form Qualities and Character –

Design Excellence

Should variations to the existing planning controls be supported then the proposed architectural design shall be subject to the relevant Design Excellence Policy requirements.

It is important to note that prior to the submission of the DA (historically) the site has been the subject of a protracted Planning Proposal, incorporating significant design/development changes and evolution. This required significant review and feedback from Council (officers), resulting in a proponent commitment to a prescribed development outcome comprising the site planning and building form and configuration. A significant component of this review and feedback was undertaken prior to the requirement of the development to satisfy the Willoughby Local Environmental Plan Design Excellence Clause, and subsequent submission of the site design to the DEAP. The DEAP acknowledged this, incorporating initial comments regarding the proposed site/building configuration, and building massing.

C – Allotment size and Consolidation

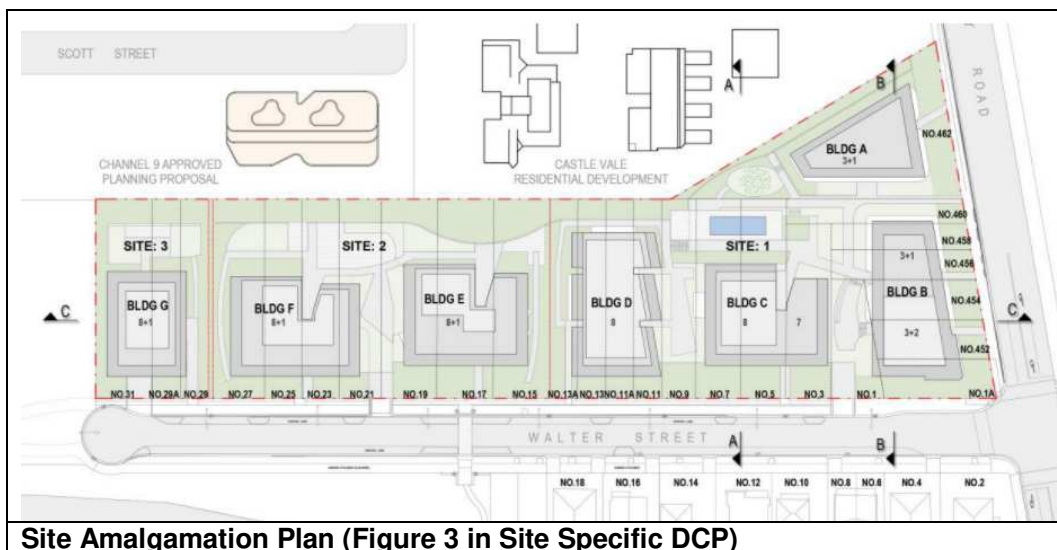
Objectives

- a) Allotments should be amalgamated to ensure that sufficient site area is available to achieve the stated development potential, adequate provision for landscaping and to avoid isolating any allotments subject to this section of the DCP from future development;
- b) Ensure that the site is amalgamated, so as to enable the substantial redevelopment of the site for high density residential development;
- c) Ensure that the development is complementary to the scale and character of development in the area;
- d) To encourage high quality, built form outcomes and achieve design excellence.

Controls

1. New development on the site will be required to consolidated all affected allotments;
2. The sites should be amalgamated in accordance with Figure 3 (see below);
3. A development application for the substantial redevelopment of fewer than all of the allotments, the subject of this section of the DCP, must be accompanied by evidence

- that consolidation of all the allotments has been reasonably attempted in accordance with the Land and Environment Court's Planning Principles.
- Any basement car parking proposed on the site is to make provision for shared access where appropriate, with necessary easements on title in accordance with Section 88B of the NSW Conveyancing Act 1919, appropriate circulation paths, and siting of breakthrough walls to allow shared/integrated basements with access from Walter Street only.



Assessment

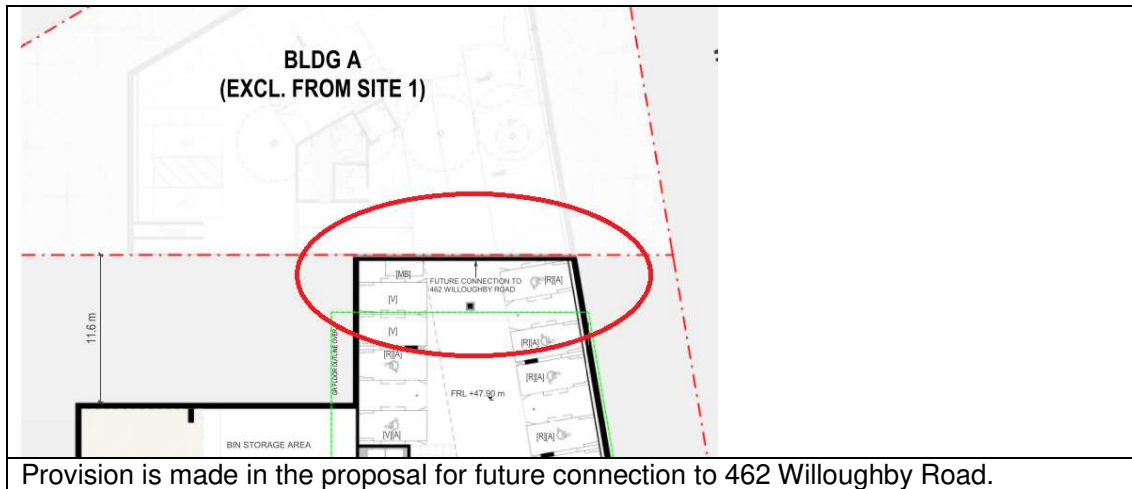
Consolidation

462 Willoughby Road was not successfully acquired by the applicant and is accompanied by information regarding valuations, asking prices and offers. This parcel of land does not form part of this development application. The applicant's documentation deals satisfactorily with site isolation when assessed against the Land and Environment Court principles.

With respect to 29, 29A and 31 Walter Street, the applicant advises that these allotments do not trigger site isolation in that these parcels together form a separate and single allotment under the LEP Clause 6.10 (4) (g) that can be, as demonstrated notionally by Building G in the Planning Proposal, developed satisfactorily and satisfy the minimum allotment size standard.

The applicant acknowledges and accepts the need for future access to be provided to 462 Willoughby Road, which is reflected in the basement drawings.

Site isolation and a Clause 4.6 variation for minimum allotment size is considered earlier in this report, and is found to be satisfactory.



D – Setbacks and Streetscape

Objectives

- a) To ensure future development appropriately recognizes the streetscape and contributes to the public domain; and
- b) To ensure residential development proposed on the site is consistent with the design criteria contained within the Apartment Design Guide.

Controls

1. A minimum 9m building setback to Willoughby Road but allowing an articulation zone of up to 2m within 10m from the corner of Walter Street and Willoughby Road;
2. A varied building setback alternating between 6m and 9m to Walter Street;
3. The below ground, basement parking to Willoughby Road to be setback a minimum of 7.5m;
4. The below ground basement parking to the northern boundary of 462 Willoughby Road to be setback a minimum of 6m;
5. The below ground, basement parking to Walter Street setback must follow that of the building above;
6. The upper level of the Willoughby Road buildings should be setback a minimum of 3m from the level below on all sides;
7. A further 3m setback on both street frontages is required above residential level 3 to create a podium;
8. The design of the development is not to be read as a single mass from Willoughby Road or Walter Street but should be broken into rhythm of buildings of varying width.
9. The design of the development facades is to create a visually interesting form incorporating recessed and projecting elements;
10. Separation between building forms is to be consistent with the criteria contained within the Apartment Design Guide;
11. The rear setback is to be consistent with the criteria contained within the Apartment Design Guide at a minimum but must on average demonstrate the provision of greater rear setback to maximize northern exposure for ground level communal open space.

Assessment

- (1) A setback of 9m from Willoughby Road is generally observed with the exception of elements that project into a 2 metre articulation zone, but this occurs across the eastern façade of the development (not just within 10m from the corner of Walter Street and Willoughby Road). The setback from Willoughby Road is considered to be satisfactory and, in conjunction with a modulation in built form and articulation of facades, is satisfactory.
- (2) A varied building setback alternating between 6m and 9m to Walter Street. The applicant says the proposed design applies averaging setbacks along Walter Street to create a varied façade so not to be read as a single mass, breaking the facades into a rhythm of buildings of varying width incorporating recesses and projecting elements. It is agreed that the variation in setbacks assists in breaking down the visual mass of the proposal, in conjunction with other architectural devices that are used, like solid to void ratio, modulation and texture.

The proposal adopts some changes to setbacks compared to the Planning Proposal, including:

Building C - front setback to Walter Street (podium) reduced from 9m (Planning Proposal) to 7.5m (subject application), rear setback remains unchanged at 18m.

Building D - front setback to Walter Street (podium) increased from 6m (Planning Proposal) to 7.2m (subject application), accompanied by a reduction in rear setback from 9m to 8m.

Building E – front setback to Walter Street (podium) reduced from 9m (Planning Proposal) to 6m (subject application), allowing the rear setback to increase from 18m to 21m.

The requirements of the DCP, to achieve a varied front setback of 6m to 9m to Walter Street, is achieved.

- (3) The below ground, basement parking to Willoughby Road achieves a setback of 7.5m.
- (4) Not applicable as 462 Willoughby Road is not included in the DA.
- (5) The below ground, basement parking to Walter Street setback follows that of the building above.
- (6) Building B - The upper level (top two floors in fact) of the Willoughby Road buildings is set back (from Walter Street) 2.2m from the podium ~~two floors below~~, and (from Willoughby Road) the top 2 floors are set back 3m from the storeys below (to the glass line). The architectural approach to Building B is considered satisfactory. It establishes its 3-storey podium, where the storeys above are set back 2.2m from the podium – ie 8.2m setback (to glassline) from Walter Street. The uppermost level comprises a non-trafficable element with privacy screens on the external perimeter, modulating the built form horizontally by creating a slight cantilever appearance of this upper level over the floor below. This architectural feature has a depth of 1m.
- (7) Building B - The proposal's recessed upper 2 floors by 2.2m (Walter Street) and 3m (Willoughby Road) satisfactorily expresses the podium and the use of materials creates a visually interesting and attractive lightweight upper built form.
- (8) The massing and arrangement of bulk of the proposal has satisfactorily reduced visual bulk.
- (9) The design of the facades achieves a visually interesting form that incorporates recessed and projecting elements.
- (10) Separation between building forms satisfies the Apartment Design Guide;
- (11) The rear setback suitably maximises northern exposure for ground level communal open space.

E – Open Space and Landscaping

Objectives

- a) Landscaping is to soften and complement the development;
- b) Landscaping is to retain and complement the existing mature tree plantings along the northern boundary of the site; and
- c) Landscaping at street level shall improve the amenity and appearance of the pedestrian environment and public domain.

Controls

- 1. The trees nominated in Figure 5; the significant tree diagram below are to be retained;
- 2. The planting to the setback areas is to maintain clear sight lines between the entrances and the street and within planted areas;
- 3. Open spaces within the front setback area are to present useable and accessible open space that improves the public domain;
- 4. Additional street tree planting will be required for new development. The location and species of the new planting will be nominated by Council as part of any new development.
- 5. Landscaped areas are to be adequately irrigated and drained;
- 6. The redevelopment of the site is to provide the inclusion of soft landscaping;
- 7. The maximum site coverage for each of the amalgamated sites is 30%;
- 8. The minimum communal open space is 25% of the site area and a minimum deep soil of 15% of the site area is to be maintained across each of the amalgamated sites.
- 9. Private open space is to be consistent with the criteria contained within the apartment Design Guide.
- 10. The minimum recreational open space is 55% of the site area across each of the amalgamated sites.
- 11. The minimum soft landscaping is 35% of the site area across each of the amalgamated sites.

Assessment

- (1) The trees nominated in Figure 5 are to be retained.
- (2) The planting to the setback areas will satisfactorily maintain clear sight lines between the entrances and the street and within planted areas.
- (3) Open spaces within the front setback area do present useable and accessible open spaces that also improves and contributes to the public domain.
- (4) Street tree planting is proposed and assessed as satisfactory.
- (5) Landscaped areas will be adequately irrigated and drained.
- (6) The redevelopment of the site does provide the inclusion of soft landscaping.
- (7) Drawing A.050 Rev F plot dated 19.1.22 by Architecture Urbaneia demonstrates that the site results in a site coverage of 29.9% and satisfies the maximum site coverage of 30%.
- (8) Drawing A.050 Rev F plot dated 19.1.22 by Architecture Urbaneia demonstrates that the communal open space achieved is 30.56% and satisfies the minimum required 25% of the site area. The same drawing shows those areas of the site that combine to achieve a deep soil of 35.1% to satisfy the minimum 15% requirement.
- (9) The private open space is consistent with the criteria contained within the apartment Design Guide.
- (10) The minimum recreational open space of 55% is achieved.
- (11) The minimum soft landscaping of 35% of the site area is achieved.

F – Access, Parking and Transport

Objectives

- a) The development shall meet Council's car parking requirements for sites located on Major Public Transport Corridors;
- b) The number of vehicle access points are to be minimised;
- c) Traffic generated from the proposed development should be mitigated;
- d) Vehicular access points are designed to minimise their impact on pedestrians and the flow of traffic; and
- e) Vehicular access points should be unobtrusive in the streetscape but ensure visibility for motorists and approaching pedestrians.

Controls

- 1. Proposed vehicular access is to be limited to the Walter Street frontage, no vehicle access is permitted from Willoughby Road.
- 2. The number of vehicle access points are not to exceed one per amalgamated site;
- 3. Future development of the site must ensure that measures are put in place so that development will have no significant impact on the efficiency and operation of the existing surrounding road network;
- 4. Active transport facilities including resident and visitor bicycle parking are to be provided;
- 5. Electric car charge points are to be provided within any basement car park.

Assessment

Due to the proposed amalgamation of the entire site (1A to 27 Walter Street and 452 to 460 Willoughby Road) a technical non-compliance occurs in that 2 vehicle access points per amalgamated site now occurs. Notwithstanding, the outcome achieves the objective of the control to minimise access points whilst ensuring a functionality of the development.

Resident and visitor bicycle parking is provided. Electric car charge points are to be provided within any basement car park.

G – Environmental Considerations

Objectives

- a) The design of the new development shall minimise the overshadowing impact on adjoining development;
- b) The shape, location and height of buildings should be designed to satisfy wind criteria for public safety and comfort at ground level.

Controls

- 1. New development is to minimise additional overshadowing of main private open space to living rooms of residential properties during the mid-winter period where the shadows would reduce sunlight access to below 3 hours per day between 9am and 3pm on June 22;
- 2. Any wind amelioration measures shall be integrated into the overall architectural or landscape design of the site.

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Assessment

Assessment of Solar access to adjoining properties is provided within the section responding to objections. The proposal satisfies the objectives of the DCP.

H – Geotechnical Requirements

Objectives

- a) Ensure the suitability of the site for high density housing;
- b) Existing topography should be retained where possible.

Controls

- 1. Future development is to be accompanied by provisions that examine all aspects for the geotechnical environment and suitability of the site for high density housing in accordance with the recommendations of the geotechnical assessment report prepared by JK Geotechnics dated 23 August 2019.

Assessment

An updated geotechnical report (Ref: GR1302.1J), dated 8 December 2021 prepared by JC Geotechnical Pty Ltd, makes recommendations for (inter alia) vibration control and stability of basement excavation for the development.

I – Drainage Easement

Objectives

- a) Ensure appropriate Drainage between adjoining properties.

Controls

- 1. An easement is to be provided on the site in favour of the former Channel 9 site at 14 Artarmon Road to ensure satisfactory disposal of stormwater. The exact location is to be determined in consultation with and approved by Willoughby Council's Development Control Engineer.

Assessment

A drainage easement is shown on Drawing C2-2-00 Rev C, plot dated 13.12.2021 prepared by Calibre Group.

ATTACHMENT 7: OFFICER'S CLAUSE 4.6 ASSESSMENT – ALLOTMENT SIZE**Variation to CI 6.10 Allotment size**

The applicant has submitted a Clause 4.6 variation for variation to minimum allotment size relating to Clause 6.10 (h) WLEP, which sets a minimum allotment size of 7,960m² for the properties known as 1 -13 Walter Street and 452 – 462 Willoughby Road. The applicant has submitted information demonstrating reasonable but failed attempts to acquire 462 Willoughby Road. Consequently, this portion of the development site required to achieve 7,960m² achieves 6,278m², a departure of 21% or 1,682m² to the standard, as shown in the table below:

| Minimum allotment size | Standard | Proposed | Extent Variation |
|------------------------|---------------------|---------------------|----------------------------|
| CI 6.10 (h) WLEP | 7,960m ² | 6,278m ² | 1,682m ² or 21% |

The applicant says that information has been provided to enable sufficient comfort that the site can be developed in its own right, notwithstanding it will necessitate a variation to the allotment size standard. The applicant also says it has made provision for future vehicular access to 462 Willoughby Road in the scheme.

As an aside, the allotments called upon by Clause 6.10 (i) to achieve a minimum lot size of 4,969m² (known as 15-17 Walter Street) have been acquired in full (including the drainage reserve) and satisfy the minimum lot size for this portion of the site. For clarity, Clause 6.10 (g) which requires 29A, 29 and 31 Walter Street to achieve a lot size of at least 1,640m² has no work to do as the development does not extend to this land. It is considered that the exclusion of 29A, 29 and 31 Walter Street from the application does not constitute site isolation by virtue of the LEP identifying these allotments, once amalgamated, as a numerically compliant lot size under the clause – and one that can support a high density residential development.

Clause 4.6 (3) of WLEP states:

(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.

Unreasonable and unnecessary

The objectives of the minimum lot size standard are:

(a) to achieve planned residential density in certain zones by—

(i) enabling development sites to be of sufficient size to provide adequate area for drainage, landscaping, and separation between buildings for privacy and solar and vehicular access, and

(ii) reducing the instances of isolated lots being left with reduced development potential, and

(b) to increase the efficiency and safety of the road network by minimising the number of driveway crossings.

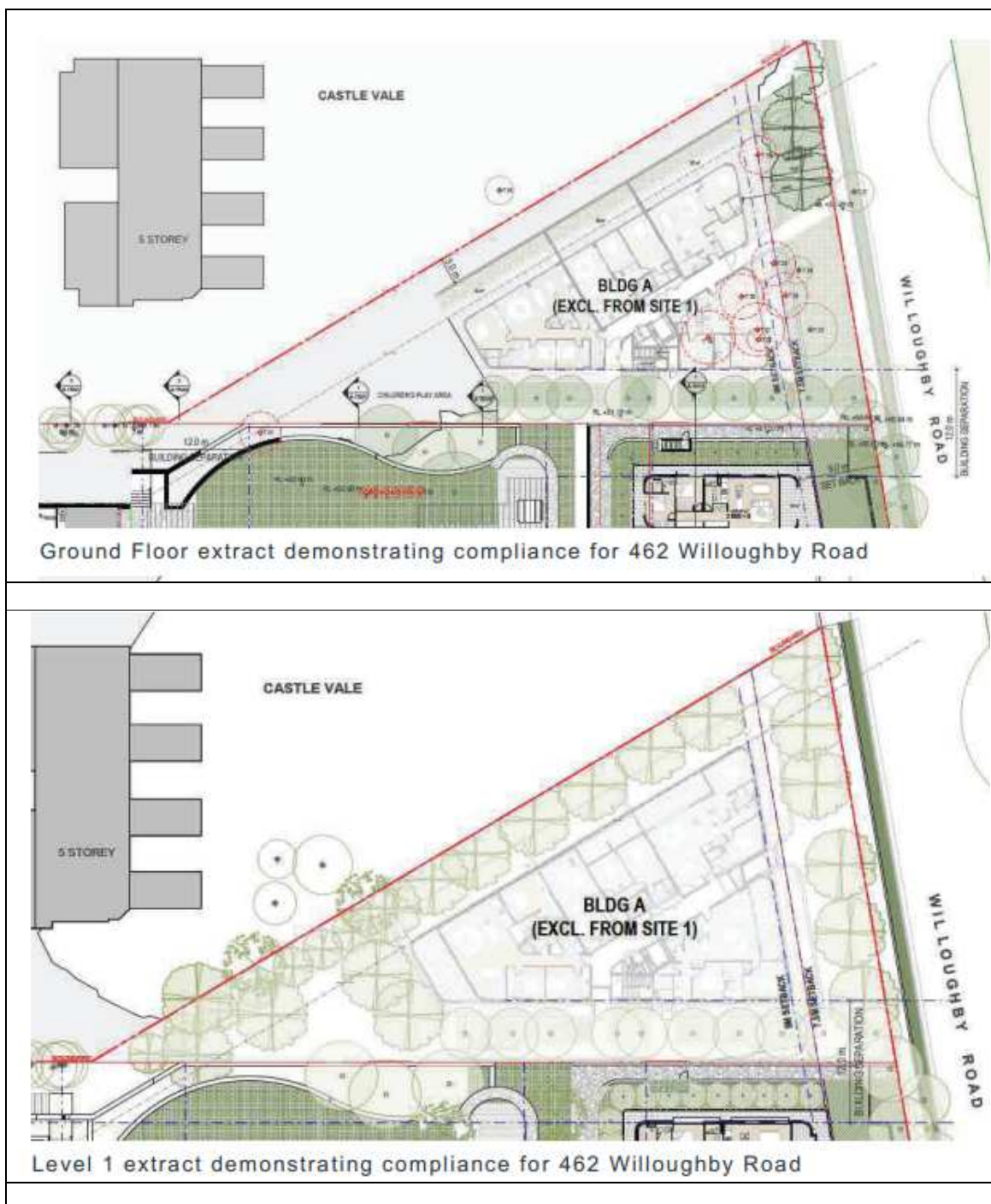
With respect to item (i) the applicant advises that negotiations between the owners commenced at an early stage prior to the lodgement of the development application, in

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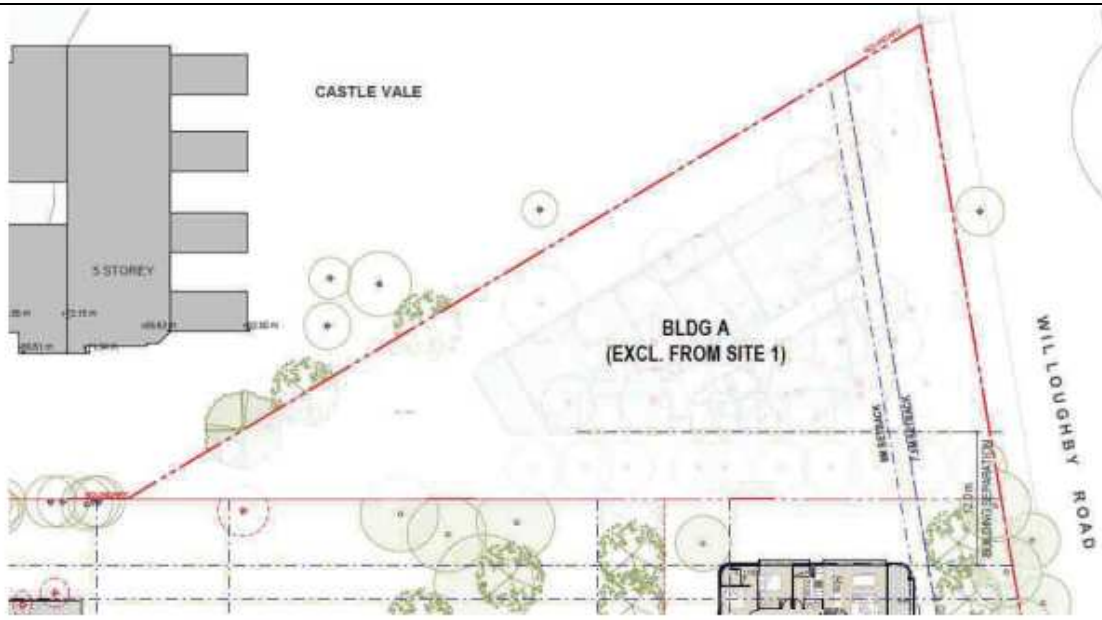
accordance with the planning principle. The applicant has provided information that confirms that development can achieve a development that is consistent with the planning controls including height, setbacks, site coverage.

With respect to item (ii) the applicant reiterates that sufficient detail has been supplied that 462 Willoughby Road will not be an isolated site and that both sites are able to achieve a development of appropriate urban form with acceptable level of amenity consistent with the planning principle. The applicant provides the following diagrams to assist in this demonstration:

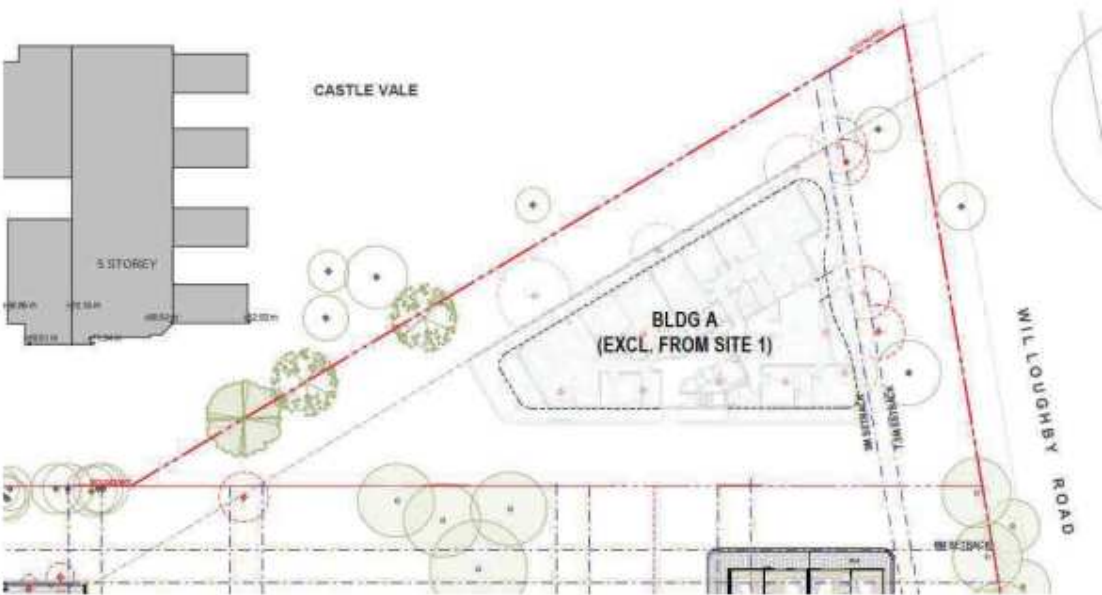


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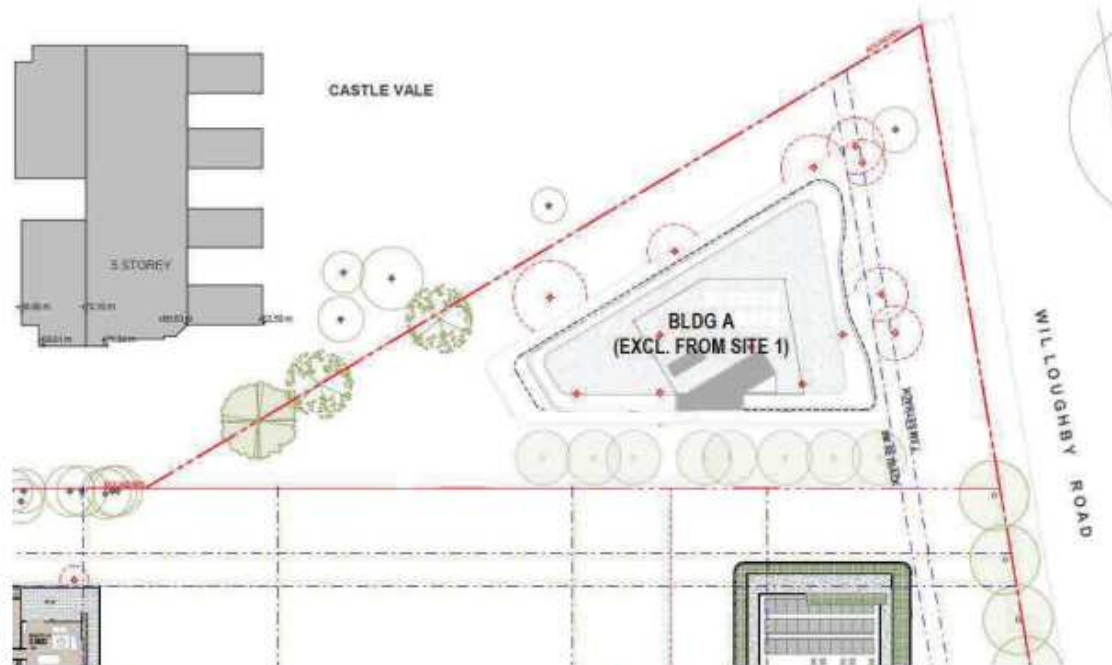
Level 2 extract demonstrating compliance for 462 Willoughby Road



Level 3 extract demonstrating compliance for 462 Willoughby Road

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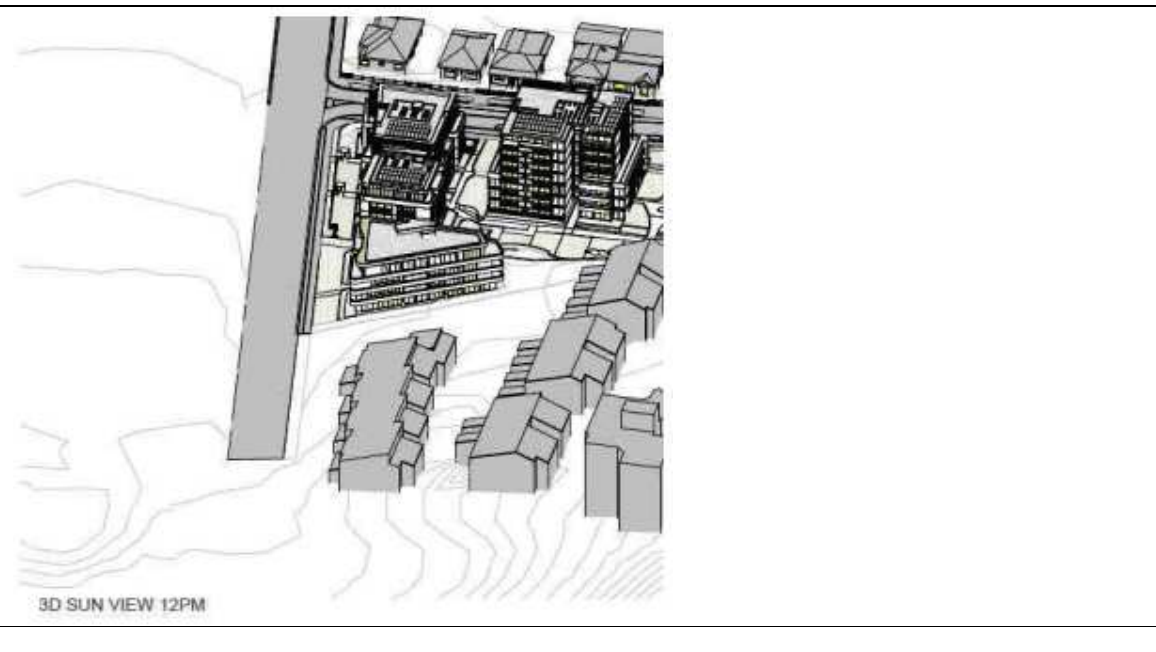
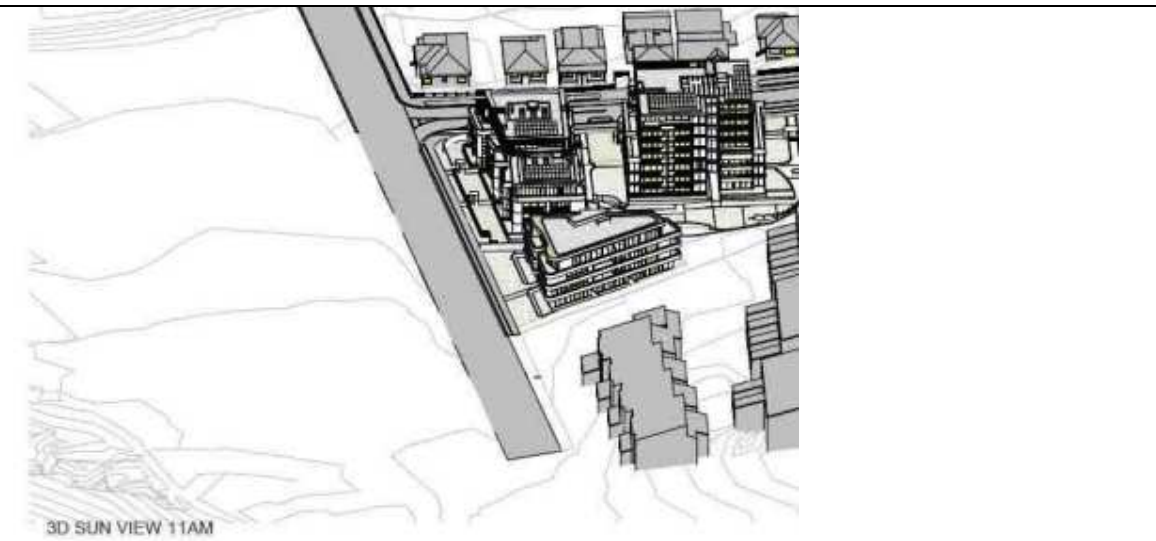
Level 4 extract demonstrating compliance for 462 Willoughby Road



3D SUN VIEW 9AM

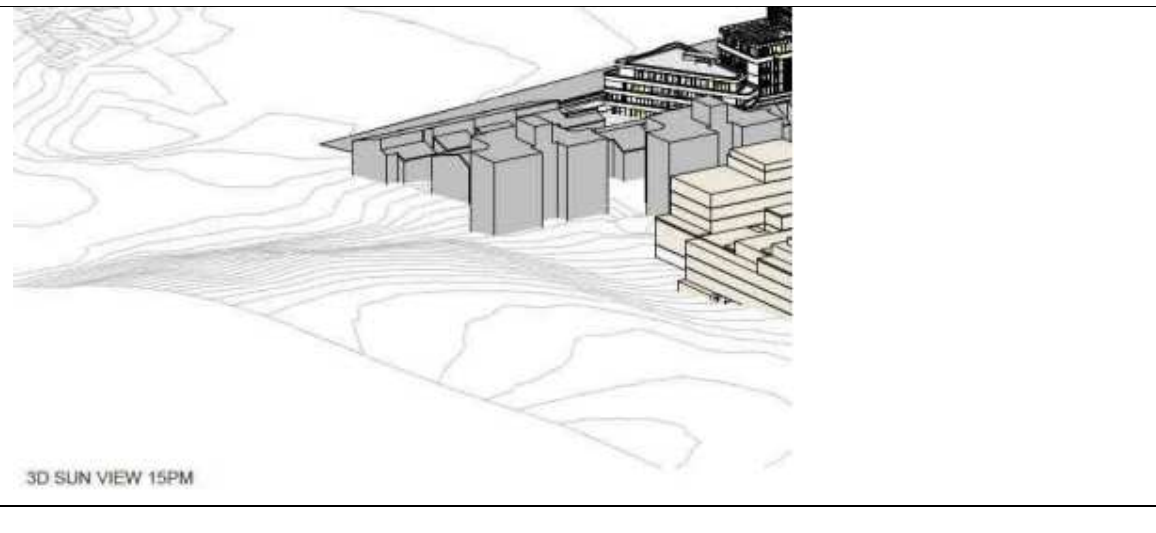
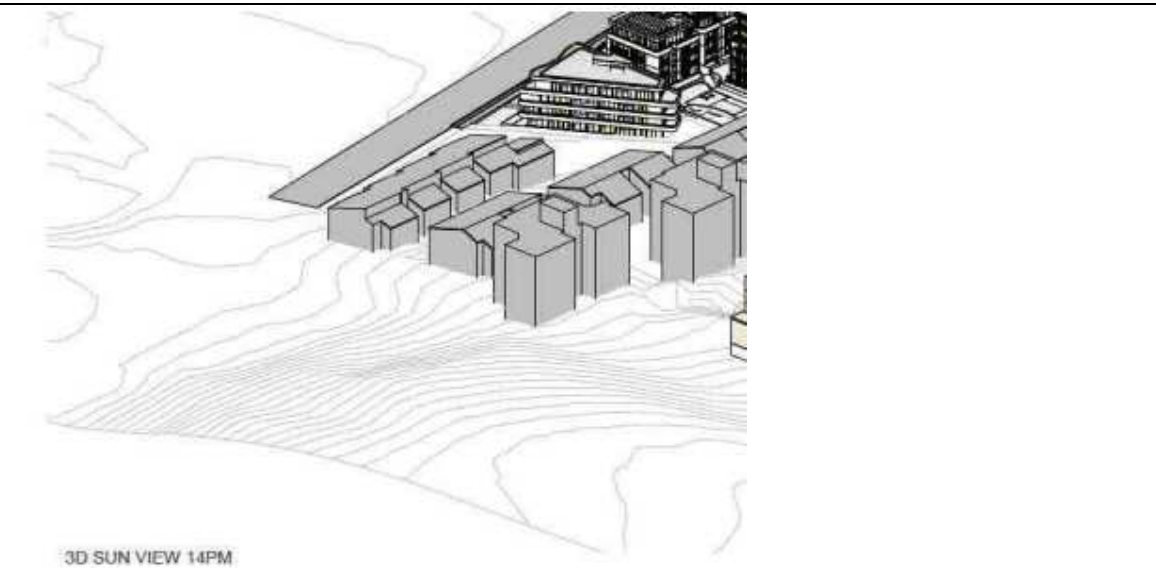
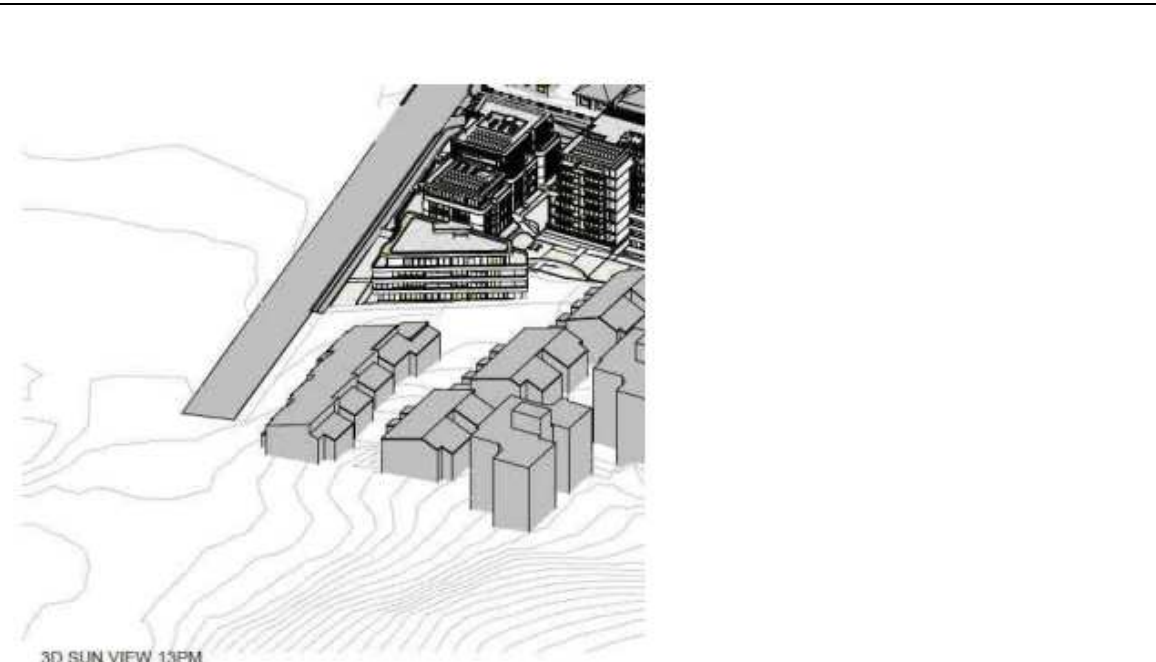
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With respect to item (b) which seeks to increase the efficiency and safety of the road network by minimising the number of driveway crossings, the applicant has made provision for access to 462 Willoughby Road via a basement connection so that vehicular access is not required from Willoughby Road when this lot is developed.

The applicant says that the proposal is consistent with the planning controls and affords the isolated site satisfactory and sufficient opportunities to achieve development consistent with the standard.

The applicant adds that the proposal does not give rise to any significant adverse impact on the isolated neighbouring property, is consistent with the planning controls and is consistent with the desired future character of the locality. Also, that the proposal relates satisfactorily to the surrounding buildings and public areas and will provide an appropriate built form and land use intensity consistent with the objectives of the clause. The applicant confirms that the Statement of Environmental Effects details the proposal's compliance with the relevant environmental planning instruments and satisfies objectives around overshadowing, traffic, heritage, wind, reflectivity, stormwater, flooding, noise, waste, economic and social impacts.

In this regard the applicant says the objectives of the standard are satisfied, which is a reason upon which an argument may be based that it is unreasonable and unnecessary for compliance with a development standard.

Environmental planning grounds

With respect to environmental planning grounds, the applicant says that the breach to the minimum lot size standard arises from the owner of 462 Willoughby Road "not accepting offers well above the recent independent valuation of the site" and that, notwithstanding, it has been demonstrated that future development of the both sites can accommodate a future building that is consistent in bulk and scale with the desired future character.

The applicant states that "a failure to accept the environmental planning grounds articulated above would result in Site 1 not being developed. This is considered to be a better outcome consistent with the objectives of this clause".

The applicant says that the proposal is consistent with the objectives of the zone in that it:

- Provides for the housing needs of the community within a high density residential environment with good amenity and access to services and facilities in accordance with this objective.
- Provides a variety of housing types within a high density residential environment.
- Allows 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.
- Encourages 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 and says that these aspects have also been reviewed by the design excellence panel.

Officer assessment of Clause 4.6

The applicant has adequately demonstrated that the proposal satisfies the objectives of the standard, particularly in that it *both* sites (being 462 Willoughby Road and the site contemplated by Clause 6.10 (h) minus 462 Willoughby Road) enable development to be of sufficient size to provide adequate area for drainage, landscaping, and separation between buildings for privacy and solar and vehicular access, and satisfactorily prevent isolation of any lots that would have a reduced development potential. It has been demonstrated that 462 Willoughby Road can realise a development that is envisaged by the controls. It has also

demonstrated that the provision of future vehicular access to 462 Willoughby Road is a satisfactory solution to an otherwise problematic outcome, and satisfies the zone objective to minimise the potential for adverse impacts of increased density on the efficiency and safety of the road network.

The site at 462 Willoughby Road can achieve a development that is consistent with the planning controls notwithstanding its departure from the minimum allotment size set by Clause 6.10 (h). The length of the site's frontage to Willoughby Road means a contributive form of development can extend on and work with the appropriate urban form of the subject proposal. The amenity of any future development on 462 Willoughby Road would be acceptable by virtue of the availability of sunlight and opportunity for ADG compliant spatial separation to ensure privacy to and from surrounding buildings.

At a site area of 1,682m² and an FSR standard of 1.5:1, 462 Willoughby Road has a potential to achieve up to a total gross floor area (GFA) of 2,523m² (1.5 x 1,682m²). Distributing this GFA over 4 storeys (as the Site Specific DCP contemplates for this part of the site) provides the means of creating space around the development to achieve ADG objectives, including communal open space, deep soil and landscaping. This part of the site supported a detached, individual built form in the Planning Proposal (Building A), and this is testament to the ability of the site to be developed.

The proposal satisfies the zone objective 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. It must also be noted that 462 Willoughby Road is captured by the design excellence clause 6.23 which will require any future development of that lot to exhibit design excellence including (inter alia) bulk, massing, modulation of buildings, overshadowing, vehicular access and relationship with the public domain.

The proposal has demonstrated there are sufficient environmental planning grounds to justify the departure and that in the circumstances of the case future development of the both sites can accommodate development that is consistent in bulk and scale with the desired future character and that vehicular access to 462 Willoughby Road in the future will not be required from Willoughby Road.

The Clause 4.6 variation is considered well founded and worthy of support.

ATTACHMENT 8: OFFICER'S CLAUSE 4.6 ASSESSMENT – BUILDING HEIGHT**Variation to CI 4.3 Building Height**

The proposal exceeds the development standard for building height at (and only at) Building B, where 18.02m in lieu of 17m is sought. This 1.02m exceedance equates to a departure of 6% to the standard, as shown in the table below:

| Building Height | Standard | Proposed | Extent Variation |
|-----------------|----------|------------------------------------|----------------------------|
| CI 4.3 WLEP | 17m | 18.02m (plant) 17.57m (parapet) | 1.02m or 6% 0.57m or 3% |

The applicant has submitted a Clause 4.6 variation for the departure to building height at Building B. The development standard for building height for that part of the site where Building is located is 17m.

The proposed parapet is 17.57m, an exceedance of 0.57m which equates to a departure of 3% to the standard. The plant is 18.02m, an exceedance of 1.02m which equates to a departure of 6%.

Clause 4.6 (3) of WLEP states:

(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.*

Unreasonable and unnecessary

The applicant states that it is unreasonable and unnecessary in the circumstances of the case to comply with the standard because the objectives of the standard are satisfied notwithstanding the numerical non-compliance. The objectives for building height under Clause 4.3 (1) WLEP are considered below, and the discussion of findings thereafter.

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

The applicant says that Building B is set at a “significantly lower level where the topography dips towards Willoughby Road”. Also, that “the breaches to the building height control only occur in limited locations at the east and centre of the site and that the proposal remains within the building height control for the majority of the building with no significant impacts and that that (sic) new development is in harmony with the bulk and scale of surrounding buildings and the streetscape”. It is agreed that Building B departs from the standard only in limited sections, primarily the eastern sides of the building, closest to Willoughby Road.

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

The applicant states there is no significant impacts on adjoining or nearby properties with respect to loss of views, privacy, overshadowing or visual intrusion. The view from the sun diagrams do support the applicant's case that Building B, by virtue of its location and spatial

relationship with properties on Walter Street, does have an acceptable shadow impact on these existing Walter Street dwellings.

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

The applicant says the proposal encourages 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 and it is noted these aspects have been reviewed by the design excellence panel in accordance with this objective.

(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.

The applicant reiterates that the development breaches the standard in limited sections of the building and that the majority of the building satisfies the numerical standard, where there are no significant impacts on adjacent development or public open spaces, and where reasonable view sharing is achieved.

(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.

The applicant says that the FSR and landscaping requirements are satisfied and that the breach occurs only due to the flood level.

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

The applicant says the proposal is consistent with the desired future character of the locality in that it has recently been rezoned and is in transition, and that the breach occurs in response to observing the minimum flood level.

(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.

The applicant acknowledges this objective is not applicable.

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

The applicant says that the proposal satisfactorily minimises overshadowing, loss of privacy and visual impacts for neighbouring properties in accordance with objectives. Shadow diagrams have been provided, both in plan and in perspective (view from the sun). The applicant says the proposal provides an appropriate built form and land use intensity consistent with the objective, and produces a cohesive streetscape.

Environmental planning grounds

The applicant says that there are sufficient environmental planning grounds to justify breaching the standard in that Building B was found by Calibre Hydrology and Hydraulic Analysis Report and supplementary report dated 2 December 2021 to be located within a low point on Walter Street and as a result of catchment modelling requires a 100 year floor level plus 0.5m freeboard, resulting in a minimum finished floor level of RL 51.27. This is the level adopted by the proposal (not higher).

A compliant building, says the applicant, would unnecessarily reduce the roof form of the whole of the building in order to achieve the height control, and that providing a roof form

consistent with the existing surrounding buildings provides a better planning outcome for both the occupant and neighbours and retains an acceptable level of solar access and view sharing for neighbouring buildings.

The applicant says that the proposal provides for “a better outcome in making available accommodation within the building, which benefits from high amenity and high levels of solar access and outlook”. This reason does not constitute an environmental planning ground in that the reasons need to relate specifically to the departure, not the proposal as a whole.

Officer assessment of Clause 4.6

The applicant submits that “the water level in Willoughby Road is RL 50.77m AHD, therefore the buildings fronting Willoughby Road need to be raised to RL 51.27m”. The drawings show that this freeboard has been achieved as the proposed post-developed finished floor level of Building B is RL 51.27 (see Drawing A.103/ST1 Rev D).

Drawing A.151/1 Rev D – ‘Cross Section Bldg B’ shows that the floor to floor levels in Building B are compliant with the Apartment Design Guide (ADG) at 3.1m to achieve 2.7m floor to ceiling levels at all levels. Only between Levels 2 and 3 is it greater than 3.1m (it is 3.25m) however the floor to ceiling height remains at 2.7m. Essentially, the building abides by the minimum ADG standards as well as the number of storeys set by the Site Specific DCP, however as a by-product of complying with the flood levels, projects above the height standard by 3% and 6%.

It is agreed the proposal satisfies the objectives of the building height standard, and that there are no detrimental impacts that arise from the numerical departure. It is agreed that the departure occurs only in limited areas of the building, primarily the eastern side where the site falls away. It is considered that the applicant has justified that it is unreasonable and unnecessary in the circumstances of the case to impose the numerical standard.

The environmental planning grounds argument advanced by the applicant is generally acceptable, based on the primary reason that the flood level causes a need to thrust the building up and out of the flood level. This is a specific circumstance of the site.

There are competing factors and constraints on the site that call for a multi-faceted response. In this case, a site specific DCP calls for 4 to 5 storeys for Building B, comprising a 3-storey podium that must be capable of achieving design excellence. The perspective demonstrates the overall architectural merit of Building B, but in particular the contribution the upper level makes to the overall design response. It is a highly articulated form that, in combination with setbacks from the podium, achieves visual interest, proportion and merit. To comply with the development standard would deny the development this upper level (certainly at the eastern side of the building where streetscape presentation is important) which would have the effect of reducing the overall architectural merit of the building.

The test is whether the objectives are satisfied and whether there are sufficient environmental planning grounds. In this case the objectives are found to have been sufficiently satisfied. The environmental planning grounds go to the specific need of this part of the site to observe flood levels, and in doing so still achieve the objectives of the DCP. In this regard there is a need to depart from the standards, and this is a strong case for supporting a Clause 4.6 variation.



The upper level of Building B serves an important architectural purpose.

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ATTACHMENT 9: SUBMISSIONS TABLE

Council was in receipt of 16 unique submissions from the following properties:

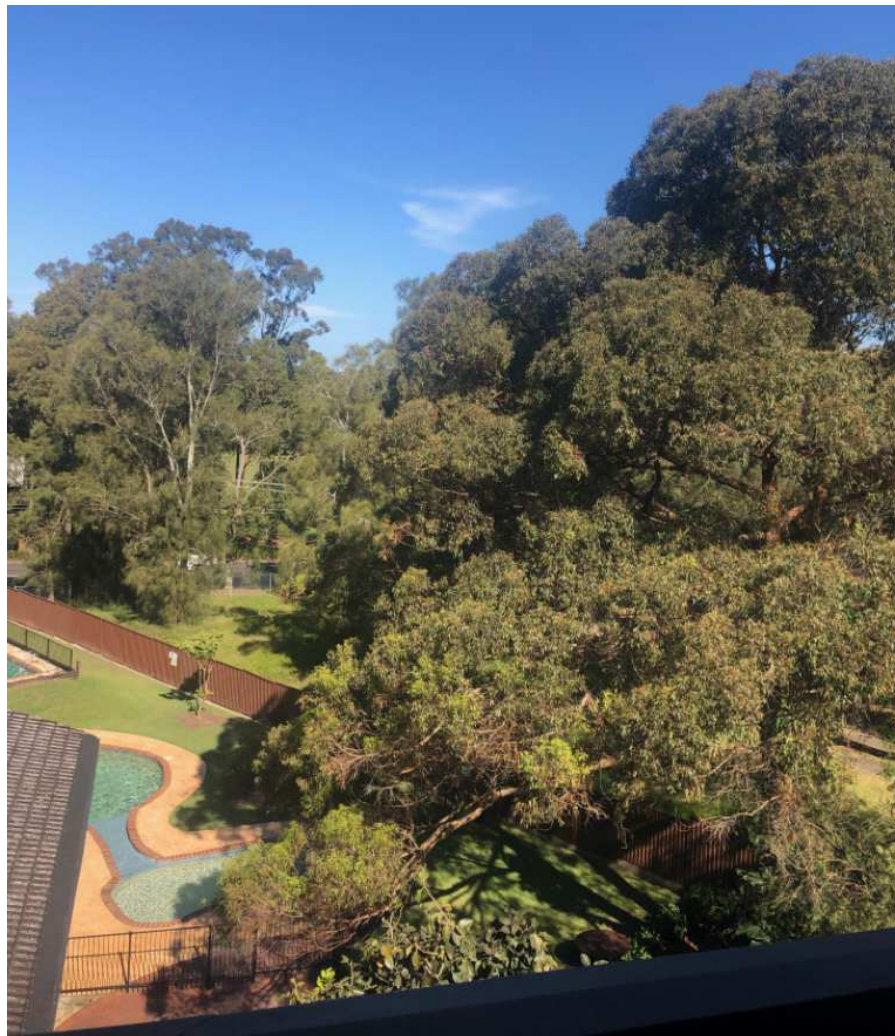
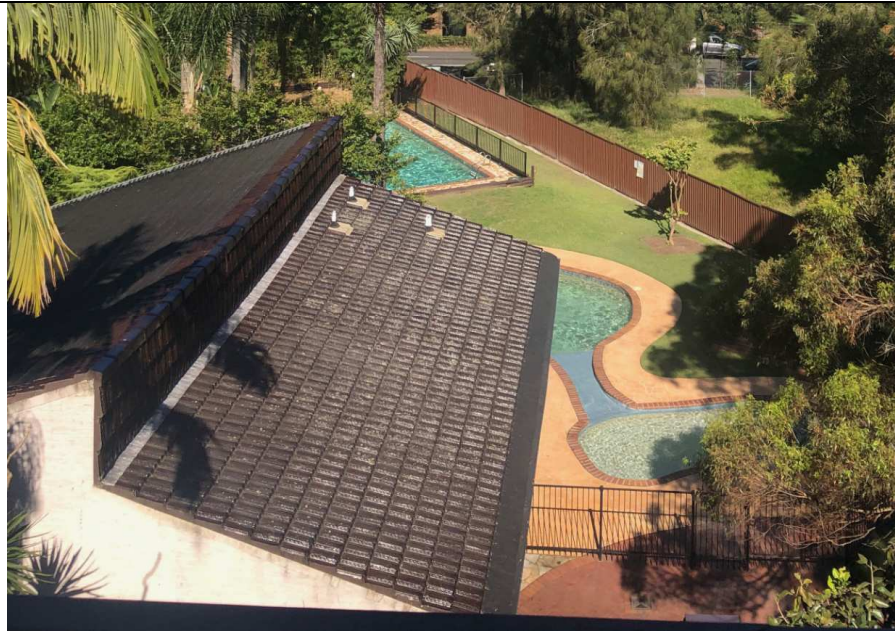
| | | | | |
|----|--------------------------------|-------------|-----|------|
| 1 | 53/2 Artarmon Road | Willoughby | NSW | 2068 |
| 2 | 1 Darvall Street | Naremburn | NSW | 2065 |
| 3 | 10 Darvall Street | Naremburn | NSW | 2065 |
| 4 | 69 Garland Road | Naremburn | NSW | 2065 |
| 5 | 4 Walter Street | Willoughby | NSW | 2068 |
| 6 | 12 Salisbury Road | Willoughby | NSW | 2068 |
| 7 | 54 Waters Road | Naremburn | NSW | 2065 |
| 8 | 28 Calbina Road | Northbridge | NSW | 2063 |
| 9 | 64/2 Artarmon Road | Willoughby | NSW | 2068 |
| 10 | 29 Walter Street | Willoughby | NSW | 2068 |
| 11 | 29A Walter Street | Willoughby | NSW | 2068 |
| 12 | 594 Willoughby Road | Willoughby | NSW | 2068 |
| 13 | 462 Willoughby Road | Willoughby | NSW | 2068 |
| 14 | 8 Walter Street | Willoughby | NSW | 2068 |
| 15 | 10 Walter Street | Willoughby | NSW | 2068 |
| 16 | Naremburn Progress Association | | | |

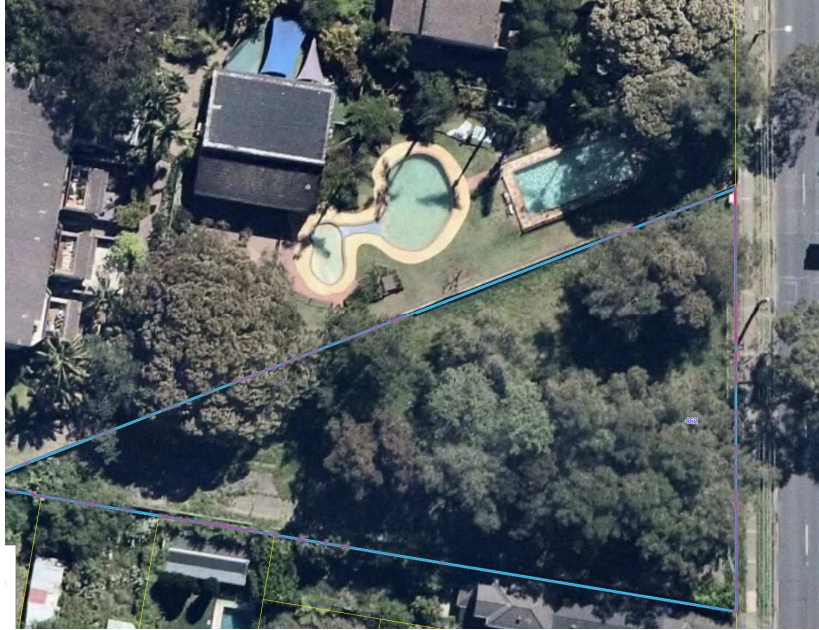
Table 6: List of residences which lodged a submission

All 16 submissions object to the proposal (none in support).

This table contains the issues raised by the objectors and Council's response.

| Issues Raised | Officer's Comments |
|--|--|
| Height | |
| Effect on outlook and block current vista towards Hallstrom Park | <p>Concerns are raised that the proposed height will create an unpleasant outlook from this unit located within Castle Vale and block current vista towards Hallstrom Park, and Naremburn. The objector advises their residence is "on the top floor of the Tamaree building within Castlevale".</p> <p>It is evident from the photograph provided by the objector (below) that the unit adjoins 462 Willoughby Road. This can be deduced from the next image down that is taken from Council's GIS system Exponare.</p> |







The relationship of Castle Vale to 462 Willoughby Road.

The subject proposal does not extend to 462 Willoughby Road and therefore the current greenery enjoyed by the objector will continue (for now) to be enjoyed. The objector also raised concerns about loss of an outlook and provided the photograph below.



| | |
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| <p>Photo provided by objector.</p> <p>The above photograph shows this view captures a distant township view that is dominated by tree canopies and punctuated by the spire of St Leonard's Catholic Church in Naremburn some 900m away. The tops of buildings expected to be North Sydney can be seen beyond. A closer high rise building can be seen at the far right of the photograph (partially screened by a palm).</p> <p>The Planning Principle established for loss of views is Tenacity Consulting v Warringah [2004] NSWLEC 140, and identifies the following test:</p> <ol style="list-style-type: none">(1) The first step is the assessment of views to be affected.(2) The second step is to consider from what part of the property the views are obtained.(3) The third step is to assess the extent of the impact.(4) The fourth step is to assess the reasonableness of the proposal that is causing the impact. <p>Following these steps the assessment finds:</p> <ol style="list-style-type: none">(1) Views to be affected are distant township and tree canopies, and foreground vegetation. It is deemed that these views are lost because the line shown in the diagram below is taken directly from St Leonard's Catholic Church in Naremburn to the objector's property to gauge angular relationship of the view to the proposed RFBs. The angular relationship is such that Building C would block the view. It is highly likely that the highrise building to the right of the objector's photo will be preserved between proposed Building's C and D. | |
|  |  |
| <p>The line of view to the distant buildings and church spire.</p> | <p>Layout of proposed buildings to gauge view impact.</p> |
| <ol style="list-style-type: none">(2) The view is enjoyed from a balcony of the unit.(3) The extent of the impact is that two-thirds of a distant view are blocked, where one-third (approximately) is retained. Views of | |

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| | <p>greenery closer to the site (looking towards Willoughby Road) is retained.</p> <p>(4) The proposal complies with the LEP standard for building height, (except for Building B, where the departure does not cause a detrimental loss of view to the objector's unit and where the Clause 4.6 variation is well founded). The proposal satisfies the FSR standard and satisfies the ADG with respect to separation of buildings. The proposal is situated within R4 High Density Residential zoning. Sufficient views are retained in the circumstances, a product of the spatial separation of the buildings. Further, retention of trees including trees within view of the objector's property (in accordance with the Site Specific DCP) will ensure the sense of greenery and vegetative surrounds are sufficiently retained. The proposal is reasonable.</p> |
| Number of storeys | <p>On objection requests that the height of the buildings be reduced to two storeys with half the number of proposed units.</p> <p>The height of the proposal satisfies the LEP (with the exception of Building B which is the subject of a Clause 4.6 variation) and the number of storeys satisfies the Site Specific DCP. The RFBs are suitably modulated to break the massing and visual scale of the buildings, including horizontal and vertical means of modulation. In conjunction with selected materials, the proposal is considered to satisfy the requirements of the relevant controls.</p> |
| Privacy | |
| The height will cause a loss of privacy to the swimming pool area at Castle Vale. | <p>The proposal satisfies the requirements for building separation under Part F of the Apartment Design Guide and offers suitable privacy protection. Additional spatial separation is created between the proposal and the pool area as 462 Willoughby Road is not utilised as part of the development. In addition, the proposed communal open space located north of Building C offers additional spatial separation.</p> <p>Building D has a landscape bed incorporated into the northern edge of the balcony for the first 4 floors where planting can assist in offering some privacy protection. A condition is imposed to ensure that this planting thrives and offers good privacy protection. Above this level the spatial separation in both the horizontal and vertical plane, and the tendency to view 'out' rather than down, contributes to a satisfactory privacy impact on the Castel Vale properties.</p> |
| Privacy screens sought for western façade of Building F | <p>Drawing A.179A Rev D, plot dated 08.12.2021 prepared by Architecture Urbaneia shows vertically arranged members at windows from L3 up (and for some openings below this level). Such privacy measures, in conjunction with separation of buildings, will achieve a satisfactory level of privacy. There is a 20m² west-facing balcony serving the living space of unit 305 that should have additional privacy measures to mitigate overlooking to adjoining properties on Walter Street. This appears as a condition of consent.</p> |
| Issues Raised | Officer's Comments |
| Traffic and Parking | |
| The proposal will | Concerns are raised that there is no clear understanding of how traffic |

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| <p>result in an increase in traffic which will affect access to Willoughby Road.</p> | <p>will enter Willoughby Road – is it left only onto Willoughby Road, and if so where does traffic turn to head south?</p> <p>There are concerns that there is “no understanding on impact to peak hour traffic and how this will have a flow on effect to many feeder streets and roads”.</p> <p>The Report (Ref: 20033r01d-210926) dated 26 September 2021 prepared by MLA Transport Planning states that the morning peak period generates 31 vehicle trips per peak hour, and evening peak 25 vehicle trips per peak hour (Section 6.2) and states that “the proposed development is not expected to create adverse traffic impacts worse than the approved revised masterplan” (where up to 67 vph was considered during the busiest peak period). This report says that the estimated development traffic of 31 vehicle trips per peak hour is “considered to be low especially when compared to the existing traffic flows on Willoughby Road (approximately 3,000 vph).</p> <p>TfNSW in its letter of 9 July 2020 advised Council that it is of the view that right turn movements at the Walter Street and Willoughby Road intersection be prohibited in the weekday peak periods (6-10am and 3-7pm) on road safety and network efficiency grounds via regulatory signposting.</p> <p>The General Arrangement Plan Drawing R-2-00 Rev B, plot dated 26.09.2021 prepared by Calibre Group (within the Civil set of drawings) shows “Keep Clear” road markings at the intersection on Willoughby Road, and the provision of the following signposting:</p> <p>“No-Right Turn 6am-10am 3pm-7pm Mon-Fri”</p> <p>Both into and out of Walter Street. Council's Traffic and Transport Team Leader has assessed the proposal and finds as follows:</p> <p>“It is considered that a more appropriate, safer and self-enforcing traffic and pedestrian management of the intersection is to deny all right turn movements at this intersection at all times, that is motor vehicle movements are limited to left in and left out of Walter Street at all times”. This has incorporated into the conditions of consent.</p> <p>With respect to the question of where traffic that is directed north, turns south, there are many options available including Frenchs Road, Mowbray Road and Artarmon Road. Assessments were conducted as part of the Planning Proposal scheme.</p> |
| <p>No right turn into Walter Street</p> | <p>Concerns are raised that the no-right turn into Walter Street from Willoughby Road restriction will impact the current ease of access to Walter Street and thus enjoyment of the property within this street.</p> <p>The restriction is a measure aimed at reducing the impact on the road system, and there are considered to be sufficient alternate options in the surrounding road network to arrive at Walter Street to enter left into the street, as well as exiting the street left to ultimately travel south.</p> |

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| More pressure on the road system and public transport between new builds and ongoing maintenance. | <p>Concerns are raised that the proposal, when added to the density of development at the former Channel 9 site, will introduce additional traffic to the road, causing extra traffic movements and potential congestion through the intersections at Willoughby (Walter Street and Garland Road) and Artarmon Roads. The Naremburn Progress Association says that traffic studies need to be cognisant of traffic increases caused by "... such mega-projects as the Warringah Freeway Upgrade, Western Harbour Tunnel and Beaches Link (and possibly even the Gore Hill Freeway upgrade) which will have the effect of forcing large volumes of additional traffic onto Willoughby Road, especially during the peak periods".</p> <p>Questions are asked whether improvements are proposed to be made to relieve congestion at the intersection of Willoughby Road and Small Street.</p> <p>The proposed development has been thoroughly assessed by TfNSW and Council's Traffic and Engineering teams, having had regard to multiple traffic reports and found to respond satisfactorily to the site and surrounding area with respect to traffic.</p> |
| Difficulty understanding the parking provision | <p>The parking provision has been assessed and found to be satisfactory. Overall the proposed development requires, pursuant to Major Public Transport Corridor parking requirements, 177 residential spaces (and 41 visitor spaces, distributed as follows:</p> <p>Stage 1 (eastern portion of site – Buildings B, C and D) 102 residential 23 visitor</p> <p>Stage 2 (western position of site – Buildings E and F) 75 residential 18 visitor</p> <p>The total parking demand has been achieved by the development and provision is correctly allocated to each basement in accordance with the above.</p> |
| Lack of parking | <p>Concerns are raised that the number of spaces is insufficient. The number of spaces provided satisfies the car parking demand and is satisfactory. In addition, on street parking is created with the proposed road widening.</p> |
| Infrastructure | |
| Concerns there has not been adequate investment in local facilities especially schools, community sports and open space. | <p>The applicant has made contributions in accordance with standard Planning Proposal requirements, to be dedicated to future bike path connection and Willoughby Leisure Centre. The contributions are deemed to be adequate in a regulatory sense.</p> |
| Permissibility | |
| Permissibility with respect to | <p>The submission says that Clause 6.10 (h) specifically references 462 Willoughby Road within 16 properties subject to the minimum lot size of</p> |

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| compliance with Clause 6.10 (4) (h) WLP | 7,960m2, and that the site is reduced to 6,278m2 with the loss of 462 Willoughby Road and does not comply with the clause. This is true in numerical terms, and is the basis upon which a Clause 4.6 accompanies the development application. The Clause 4.6 is considered to be well-founded. |
| Site isolation | |
| Whether the LEC Planning Principle has been satisfied | The submission considers that the planning principle in <i>Karavellas v Sutherland Shire Council</i> [2004] NSWLEC 251 has not been met and advises that the owners of 462 Willoughby Road 'have advised that they are willing to provide Council with details of the negotiations between the parties in order to provide clarity to the statements made in the Statement of Environmental Effects'. No such information has been received. The information provided by the applicant with respect to <i>Karavellas v Sutherland Shire Council</i> , for the purposes of assessing site isolation, has been assessed as satisfactory. |
| Access to 462 Willoughby Road | <p>Concerns are raised that the commitment to provide future vehicular access to 462 Willoughby Road may be stifled and complicated "in the event of delays on the approval/construction/completion of the proposed development". The submission questions whether Council would consider allowing 462 Willoughby Road direct access to Willoughby Road as an interim solution (pending development of the subject site) if a development application was lodged for this property that complied with all standards (except minimum allotment size). The submission states that, if not, future development of 462 Willoughby Road is beholden to the development of 1-13 Walter Street and 452-460 Willoughby Road – which the submission says would be "an unreasonable outcome in terms of the rights of the owners to redevelop their land in accordance with the zoning and development standards applying to the land".</p> <p>The submission requests that, in the event the Panel chooses to approve the development in its current form, a condition of consent be attached that requires a right-of-carriageway over the site and basement level to benefit the land at 462 Willoughby Road "providing unrestricted vehicular access 24 hours/7 days a week, 365 days of the year".</p> <p>The requirement for provision of vehicular access through the subject development site to 462 Willoughby Road is not severable from the consent. It is an essential feature of the consent and is an important factor in the favourable assessment of site isolation. If the circumstances described in the submission were to occur, it is generally considered reasonable that access be provided over the development site, as provided for by a right-of-carriageway. Specifics around movement of construction vehicles associated with construction of 462 Willoughby Road would, however, be subject to the conditions of any future Construction Traffic Management Plan and requirements of the owners of the burdened lot</p> |
| Character | |
| The proposal is not in character with the area. | <p>Concerns are raised that the proposal does not align with the character of the area and is "pretty much a concrete blob on our landscape".</p> <p>Concerns are also raised that the proposal is not "environmentally</p> |

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| | <p>sustainable” in that there is “no effort in design, to consider the impact on our environment”.</p> <p>A concern was raised that the proposal will constitute a “large unattractive eyesores directly across the street”. Another objection requests that the proposed development be reduced to 2 storeys with half the number of apartments.</p> <p>The quantum of the development, its density, height and spatial separation accords with the objectives of the controls.</p> <p>In addition, the proposal utilises an appropriate selection of materiality including face brick, concrete, precast concrete, metal cladding and stone that is used appropriately to ‘ground’ building and lighten upper levels. Also, horizontal and vertical emphasis in buildings is achieved through recessed sections of built form, achieving a suitable level of modulation.</p> <p>In addition, planting at the interface between Walter Street and the residential properties on the south side of Walter Street will have a visual softening effect to the built form. The spatial separation between buildings (ADG compliant) also serves to reduce impacts of the proposal by avoiding an elongated expanse of built form.</p> |
| Design | |
| Additional setbacks sought | <p>The objector suggests that levels 3 to 6 should have a setback of 10.2 metres (as opposed to 9m as shown) as this is the required setback under WDCP for the 3rd storey and above. The proposal has been assessed by Council’s Urban Design Specialist as satisfactory and to have achieved a sufficient level of design excellence in its current form.</p> |
| Impact on flora and fauna | |
| Limited consideration of impacts of the development, particularly on wildlife | <p>Concerns relate to there being “clear detail” on impacts on existing wildlife, including ‘flying foxes, lizards, frogs, bees, birdlife (including owls)’.</p> <p>The accompanying documentation submitted with the development application has satisfactorily discharged its responsibilities under the Environmental Planning & Assessment Act 1979. The land is zoned for high density residential development and the proposal responds to the site reasonably in accordance with the relevant environmental planning instruments and DCP controls.</p> |
| Open Space | |
| Open space is not clearly defined in the proposal. | <p>Concerns are raised that there is “no definition on open space’ and that it is not clear what the open space provision actually is.</p> <p>Drawing A.050 Rev F, dated 11.01.2022 prepared by Architecture Urbaneia shows the communal open space provision at 30.56%, which exceeds the Site Specific DCP Provision (Part E – Control 8).</p> |
| Impact of the proposal on existing open space | <p>There are concerns that the proposal will impact existing public open spaces like Bicentennial Reserve, Willoughby Leisure Centre, or Flar Rock Reserve. The proposal creates no detrimental impacts to Bicentennial Reserve and does not seek to use this land for any</p> |

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| | <p>purpose. Dust suppression during the course of construction is required and forms a condition of consent, so as to ensure that the adjoining lands are not impacted in this way.</p> <p>With respect to Willoughby Leisure Centre, a Contributions Payment has been made during the application process in accordance with Planning Proposal requirements, towards the Leisure Centre.</p> |
| Impact on Public Transport | |
| Ability of bus services to cope with increase in passengers | <p>The objector says that Garland Road bus stop heading to the city is already full, and questions what the proposal means for bus services to cope.</p> <p>Increased bus usage means that less cars on the road, which is a good outcome and is reflected in Part A.3 of WDCP Aims of the Plan as follows:</p> <ol style="list-style-type: none"> 1. Encourage the use of public transport and alternative modes of transport. |
| Tree removal | |
| Removal of mature trees | <p>Concerns are raised that the proposal may remove existing mature trees, particularly as these trees provide “valuable bird breeding habitat and hunting grounds”. The Naremburn Progress Association also raises concerns about tree loss.</p> <p>Part E Control 1 of the Site Specific DCP requires that trees as nominated in Figure 5 of that DCP be retained. Figure 5 is a Significant Tree Diagram with Tree Inventory. The inventory is taken directly from the Arborist Report (Ref: 4544.1, 29 August 2-19 and updated 24 September 2019 by Redgum Horticultural).</p> <p>The trees identified as being retained, by Tree Number within the arborist report and Common Name, are:</p> <p>Tree 2 Silver Banksia* Tree 3 Queensland Brush Box* Tree 4 Tallowwood* Tree 5 Bangalow Palm* Tree 27 Spotted Gum (Street Tree – fronting 462 Willoughby Road) Tree 64 Hills Fig Tree 65 Weeping Fig Tree 66 Weeping Fig Tree 67 Spotted Gum Tree 68 Spotted Gum Tree 69/6 stand of 4 x Spotted Gums Tree 70/7 stand of 5 x Spotted Gums Tree 71 Spotted Gum Tree 72 Spotted Gum Tree 73 Spotted Gum Tree 74 Spotted Gum Tree 78 Tallowwood Tree 79 Tallowwood Tree 80 Eucalypt Tree 83 Sydney Red Gum Tree 92/9 Green Wattle x 2</p> |

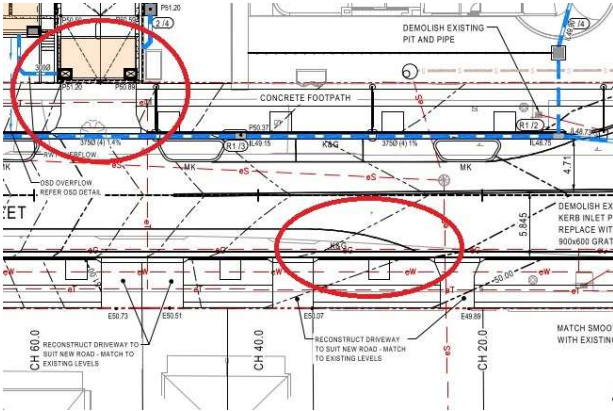
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| | <p>* these trees are located upon the Castle Vale site.</p> <p>These trees are located along rear boundary of the site. Council's Landscape Designer has assessed the proposal as satisfactory and issued conditions of consent.</p> |
| Potential damage to nearby properties | |
| Bulk excavation and vibration associated with construction | <p>Concerns are raised that the excavation and associated vibration will cause damage to nearby properties. The updated Geotechnical Report (Ref: GR1302.1J) dated 8 December 2021 prepared by JC Geotechnics Pty Ltd.</p> <p>Section 6.1 of the report recommends that dilapidation surveys be undertaken on 'neighbouring structures that falls within the zone of influence of the excavation' where the zone of influence of the excavation is defined by an imaginary line radiating back from the base of the excavation a distance equal to twice the height of the excavation. A condition is imposed requiring dilapidation surveys be undertaken.</p> <p>A vibration monitoring plan is recommended by the Geotechnical Engineer in this report (at Section 6.3) to monitor the potential vibration effects during bulk excavation, on existing buildings within adjoining properties and road reserves and carriageways along the site boundary. Recommended Maximum Peak Particle Velocities are provided in the report where, if exceeded, work must cease and the Geotechnical Engineer contacted immediately for appropriate reviews.</p> |
| Contamination | |
| Existing soil and groundwater contamination | <p>The Naremburn Progress Association raises concerns about soil and groundwater contamination including asbestos, lead, copper and zinc, PFAs, PCBs and VOCs requiring special mitigation and / or removal measures.</p> <p>The Detailed Site Investigation Report (Ref: 19.13) Rev 1, dated 24 September 2019 prepared by Trace Environmental, reports its findings and the Remedial Action Plan (Ref: 19.13.01 Rev 0), dated 11 December 2019 prepared by Trace Environmental makes recommendations for removal and or disposal of these contaminants. The reports indicate that protocols are in place to excavate soils that exceed remediation criteria. Any asbestos is to be carefully removed by licensed contractors. The issue of contamination has been expertly assessed and recommendations made that are incorporated into the conditions of consent. Finally, the proposal satisfies statutory criteria under SEPP 55.</p> |
| Sewerage | |
| Cumulative additional stresses on water and sewerage services | <p>The proposal is not considered unreasonable or unsatisfactory on the basis that it creates an acceptable load on the existing sewerage system. The sewerage and water authority Sydney Water takes into consideration capacity of existing infrastructure and the need for additional measures to deal adequately with it.</p> |
| Potential | |

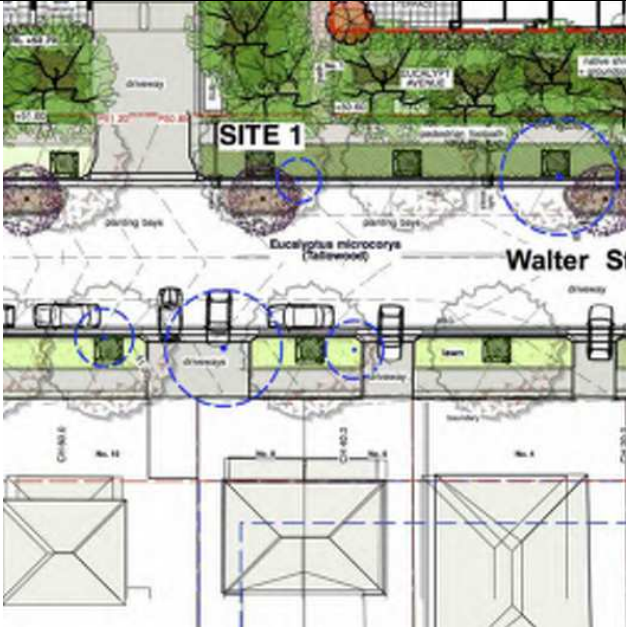
| impacts to nearby properties | |
|---|--|
| Dust and noise impacts during construction | <p>Concerns are raised that dust associated with undertaking the works may affect the health of children in nearby playing fields on the basis that there is contamination on the site. The Detailed Site Investigation Report (Ref: 19.13) Rev 1, dated 24 September 2019 prepared by Trace Environmental, reports that benzo(a)pyrene TEQ, lead and asbestos (but not respirable asbestos fibres in the soil) exceeding human health screening criteria was found in 4 locations sampled (26 new soil bores were carried out, and sampling was undertaken in 3 existing and 1 newly installed groundwater monitoring well). In addition, TRH, copper and zinc were found. A Remedial Action Plan (Ref: 19.13.01 Rev 0), dated 11 December 2019 prepared by Trace Environmental recommends that where soils exceed remediation criteria it be excavated. Any asbestos is to be carefully removed by licensed contractors. The report says that excavated soil is to be ideally loaded immediately into transport trucks or skip bins for disposal at a chosen facility, and that any stockpiles (as with loading of material into trucks, and general management of dust on the site) will be managed in accordance with the recommendations of the Trace Report.</p> <p>In addition, there are recommendations contained within the Air Quality Assessment Report that are required to be adhered to in order to reduce dust impacts associated with construction.</p> <p>With respect to noise, restrictions of working hours limits the duration of work and the times within which it can be conducted.</p> |
| Noise impacts emanating from the ongoing use of the development | <p>Concerns are raised that the proposal will cause noise impacts to the existing dwellings on the street (south side), exacerbated by the bedrooms of these existing houses being located at the front of the house. It is not considered so detrimental an increase in the expected noise that the proposal warrants amendment or refusal. The proposal brings many enhancements to the street including substantial landscaping at the Walter Street interface, which will act to visually screen and reduce noise and other impacts from the development.</p> |
| Solar access | <p>Concerns are raised that the proposal will result in a loss in sunlight to the existing properties on the south side of Walter Street. Reference is made to View from the Sun Drawings A.800 to A.806 Rev D inclusive, dated 06.12.2021 prepared by Architecture Urbaneia.</p> <p>An assessment of these drawings shows that there is sufficient solar access retained to dwellings on Walter Street, with all of them receiving minimum 3 hours solar to the dwelling in mid-winter. Four of the dwellings also receive at least 3 hours of sunlight to the front yard of the property. For those properties where sun is not received to the front yard for a full 3 hours, the rear yards and side boundary clearances remain unaffected, providing opportunities for sun all year round. The rear yards are considered more private than the semi-public spaces of the front yards, so there is merit in compensating for loss of front yard sun with rear yard sun.</p> <p>On balance the proposal is considered to comply with the solar access requirements of the Site Specific DCP which requires at least 3 hours of sun to the living rooms or main private open space.</p> |

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| | 9am | 10am | 11am | 12pm | 1pm | 2pm | 3pm | Dwelling | Front yard |
|--|--|------|------|------|-----|-----|-----|----------|------------|
| 2 Walter | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | X | Complies | >3hrs |
| 4 Walter | ✓ | ✓▽ | ✓ | ✓ | ✓ | X | X | Complies | >3hrs |
| 6 Walter | X | ✓▽ | ✓ | ✓ | ✓▽ | ✓▽ | X | Complies | <3hrs |
| 8 Walter | X | ✓▽ | ✓ | X | ✓▽ | ✓▽ | X | Complies | <3hrs |
| 10 Walter | ✓ | ✓ | X | ✓▽ | ✓ | X | X | Complies | >3hrs |
| 12 Walter | ✓ | X | ✓▽ | ✓ | ✓ | ✓▽ | X | Complies | >3hrs |
| 14 Walter | X | ✓▽ | ✓ | ✓ | ✓▽ | X | X | Complies | <3hrs |
| 16 Walter | X | ✓ | X | ✓▽ | ✓ | ✓▽ | X | Complies | <3hrs |
| 18 Walter | X | X | ✓ | ✓ | ✓▽ | ✓▽ | X | Complies | <3hrs |
| ✓ = sufficient solar access to dwelling and front yard ✓▽ = sufficient solar access to dwelling but not <u>front</u> yard X = insufficient solar access to dwelling and front yard | | | | | | | | | |
| Impacts on Flat Rock Gully and Creek | <p>Concerns are raised that the proposal will impact Flat Rock Gully. The proposal that is the subject of this development application does not extend to the reserve across the road, although a contribution has been made to make future connections to a walking/bike path in the future. At that time, considerations of flora and fauna may need to be made as will others considerations like an excavation within the Road reserve of Gore Gill Freeway, which will require assessment by TfNSW.</p> <p>With respect to potential for pollution to the Flat Rock catchment, the site is required to be adequately protected with sedimentation and erosion measures, as well as dust suppression and measures to mitigate against vehicle tracking material onto the road.</p> | | | | | | | | |
| Rezoning | | | | | | | | | |
| No benefits in uplift of development potential | <p>Commentary is received that there is no benefit in the rezoning from R3 medium to R4 high density residential and that “no one benefits bar the developer”. The Planning Proposal has been approved and the LEP amendments gazetted. This development application is not the platform to argue any inappropriateness of the R4 High Density Residential zoning.</p> <p>The proposal is considered a good planning outcome for the site, delivering high amenity units to provide for additional modern housing in the area including affordable housing, where the controls supporting the rezoning have been satisfied.</p> | | | | | | | | |
| Road widening | | | | | | | | | |
| Loss of nature strips | <p>An objector is concerned that the proposed road widening will encroach on the south side properties, removing the existing nature strips.</p> <p>Drawings R-2-00 Rev D dated 14.12.2021, and Drawing R-3-10 Rev C,</p> | | | | | | | | |

| | |
|-------------------------------------|--|
| | <p>dated 01.12.2021, both prepared by Calibre Group detail the road widening. It shows the road being widened by between 1.85m to 1.98m (from inside kerb to inside kerb) to assist in the formation of a parking lane along Walter Street. The proposed road widening does encroach into the existing nature strip, as it must to achieve a widening of the road. There is no encroachment onto private properties.</p> <p>Section 1 on Drawing R-2-00 Rev D, plot dated 14.12.2021 prepared by Calibre Group is taken outside 16 Walter Street and in plan appears to be representative of the entire strip fronting the existing dwellings on the south side of Walter Street. The section 1 detail on Drawing R-3-10 Rev D, plot dated 1.12.2021 prepared by Calibre Group shows a 4.56m wide nature strip remaining after the road widening (reduced from 6.41m).</p> <p>The proposed road widening is considered a good planning response with respect to creating enhanced opportunities for safe, practical and high amenity functioning of Walter Street.</p> |
| <p>Location of driveways</p> | |
| <p>Eastern driveway</p> | <p>Concerns are raised that the driveway serving Buildings B, C and D will cause impacts to residential properties on the southern side of Walter Street. The nature of the specific impact is not articulated in the submission but it is presumed the objector may be concerned about impacts such as headlight glare, noise and frequency of use of the driveway entry/exit.</p> <p>The subject driveway is opposite 10 Walter Street (the objector resides at 4 Walter Street). It is noted that the parking lane commences at 4 Walter Street, as circled in red below.</p>  <p>Extract from Drawing R-2-00 Rev D, dated 14.12.2012 prepared by Calibre Group, showing the relationship of the objector's property to the proposed eastern driveway.</p> |

| | |
|---|--|
| |  <p>Extract from Landscape Plan 2334 LP - 00, dated 20.09.2021 prepared by John Lock and Associates, showing the commencement of the parking lane at the front of 4 Walter Street and street planting.</p> <p>The parking lane and street planting offers a sense of spatial separation between the driveway and 4 Walter Street (and other properties in Walter Street), as well as relief from headlight glare and any perceived impacts associated with the frequency of use of the basement carpark. The proposed landscaping on the subject site also serves to minimise the visual impacts of cars entering the road from the ramp. Of course the frequency of trips will be greater than existing, but considered acceptable for the high density residential environment interface with a lower density of development (located upon an SP Infrastructure zone).</p> |
| Western driveway | <p>The objector seeks that the driveway position at Building F be relocated to the boundary of Building E to reduce excessive noise and movements near 29A Walter Street. The proposal in its current form is considered to satisfactorily located as it creates good separation from the eastern driveway and promotes the ability to successfully modulate the built form between Buildings E and F and supplement this area with landscaping enhancing the overall architectural merit and streetscape presentation.</p> |
| Access during construction | |
| Potential obstruction | <p>Concerns are raised that the development may obstruct access to the properties during construction. There must at all times be access to properties during the course of construction.</p> |
| Lack of accessibility to local public schools and open space | |
| More schools and public space is required to provide | <p>Concerns are raised that the closest public schools, which the author identifies as Willoughby Public, Willoughby Girls and Artarmon Public)</p> |

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| for increased population | <p>are overcrowded, and that more schools are in need to accommodate the current population, let alone an increase brought by developments such as this.</p> <p>These concerns do not constitute a reason to deny approval the subject proposal in this case, particularly in that the proposal satisfies the objectives of the LEP, DCP and relevant SEPPs. In this case the site is considered suitable for the proposed development pursuant to Section 4.15 (c) of the Environmental Planning & Assessment Act 1979. The serviceability of schools falls under the ambit of State Government.</p> |
| Plan of Management | |
| A Plan of Management (PoM) is requested. | <p>The objector requests a PoM to ensure vehicular and pedestrian access is safely maintained at 29, 29A and 31 Walter Street during construction via a Traffic Management Plan, as well as monitoring of noise, dust and vibration.</p> <p>The conditions of consent are considered to adequately deal with these matters.</p> |

ATTACHMENT 10: 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) | |
| | <ul style="list-style-type: none"> State Environmental Planning Policies (SEPP) | ✓ |
| | <ul style="list-style-type: none"> Regional Environmental Plans (REP) | ✓ |
| | <ul style="list-style-type: none"> Local Environmental Plans (LEP) | ✓ |
| | <p>State Environmental Planning Policy – Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</p> <p>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.</p> <p>State Environmental Planning Policy – (Building Sustainability Index: BASIX) 2004</p> <p>A BASIX Certificate pursuant to the provisions of the <i>State Environmental Planning Policy – (Building Sustainability Index: BASIX) 2004</i> has been submitted in accordance with the SEPP and considered satisfactory.</p> | |
| | <p>State Environmental Planning Policy No 55 – Remediation of Land</p> <p>In accordance with clause 7 of SEPP 55 a consent authority must not consent to the carrying out of any development on land unless—</p> <p>(a) it has considered whether the land is contaminated, and</p> <p>(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and</p> <p>(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.</p> <p>A Preliminary Environmental Site Assessment and a Detailed Site Investigation (Ref: 19.13), dated 24 September 2019 was prepared by Trace Environmental found that the site can be made suitable for the proposed high density residential land use subject to recommendations which include the preparation of a Remedial Action Plan (RAP).</p> <p>A RAP was prepared by Trace Environmental (Ref: 19.13.01), dated 11 December 2019 which concludes that the site will be suitable for its intended use following the successful implementation of the remediation/management strategy outlined in the RAP. Conditions are incorporated into the consent, should the Panel be of a mind to approve the application, that capture the recommendations of the Detailed Site Investigation and the RAP.</p> | |

| | | |
|----------|--|------------|
| | <p>State Environmental Planning Policy No 19 – Bushland in Urban Areas</p> <p>This SEPP essentially aims to ensure that bushland within urban areas is protected and preserved. “Bushland” under the SEPP means land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation. At the end of Walter Street (south side) some bush is sandwiched between Walter Street and the Gore Hill Freeway but it has not been identified as remnant, nor is it zoned or reserved for public open space purposes. It is zoned SP2 Infrastructure. For abundant caution and in the absence of information confirming its applicability or otherwise, consideration is given to SEPP 19. The proposal seeks to undertake works to the road and stormwater and services. Clause 6 (2) allows certain works such as these to be undertaken without consent. otherwise, there are considered to be sufficient measures in place to protect from sedimentation escaping to bushland. Conditions of consent will enforce that such measures be put in place. The objectives of SEPP 19 are satisfied in this respect.</p> | |
| (a)(ii) | The provision of any draft environmental planning instrument (EPI) | |
| | <ul style="list-style-type: none"> • Draft State Environmental Planning Policies (SEPP) | N/A |
| | <ul style="list-style-type: none"> • Draft Regional Environmental Plans (REP) | N/A |
| | <ul style="list-style-type: none"> • Draft Local Environmental Plans (LEP) | N/A |
| | Comment: 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 | |
| | <ul style="list-style-type: none"> • Development control plans (DCPs) | ✓ |
| | <p>Willoughby Development Control Plan (WDCP) Site Specific DCP (SSDCP)</p> <p>The proposed development has been assessed against the relevant requirements of the <i>WDCP</i> and <i>SSDCP</i> and is considered satisfactory.</p> | |
| (a)(iv) | Any matters prescribed by the regulations | |
| | <ul style="list-style-type: none"> • Clause 92 EP&A Regulation-Demolition | N/A |
| | <ul style="list-style-type: none"> • Clause 93 EP&A Regulation-Fire Safety Considerations | N/A |
| | <ul style="list-style-type: none"> • Clause 94 EP&A Regulation-Fire Upgrade of Existing Buildings | N/A |
| | Comment: There are no prescribed matters that affect the application. | |
| (b) | The likely impacts of the development | |
| | <ul style="list-style-type: none"> • Context & setting | ✓ |
| | <ul style="list-style-type: none"> • Access, transport & traffic, parking | ✓ |
| | <ul style="list-style-type: none"> • Servicing, loading/unloading | ✓ |
| | <ul style="list-style-type: none"> • Public domain | ✓ |
| | <ul style="list-style-type: none"> • Utilities | ✓ |
| | <ul style="list-style-type: none"> • Heritage | N/A |
| | <ul style="list-style-type: none"> • Privacy | ✓ |
| | <ul style="list-style-type: none"> • Views | ✓ |
| | <ul style="list-style-type: none"> • Solar Access | ✓ |
| | <ul style="list-style-type: none"> • Water and draining | ✓ |
| | <ul style="list-style-type: none"> • Soils | ✓ |
| | <ul style="list-style-type: none"> • Air & microclimate | ✓ |
| | <ul style="list-style-type: none"> • Flora & fauna | ✓ |
| | <ul style="list-style-type: none"> • Waste | ✓ |
| | <ul style="list-style-type: none"> • Energy | ✓ |

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| | <ul style="list-style-type: none"> Noise & vibration | ✓ |
| | <ul style="list-style-type: none"> Natural hazards | ✓ |
| | <ul style="list-style-type: none"> Safety, security crime prevention | ✓ |
| | <ul style="list-style-type: none"> Social impact in the locality | ✓ |
| | <ul style="list-style-type: none"> Economic impact in the locality | ✓ |
| | <ul style="list-style-type: none"> Site design and internal design | ✓ |
| | <ul style="list-style-type: none"> Construction | ✓ |
| | <ul style="list-style-type: none"> Cumulative impacts | ✓ |
| | Comment: The proposed development is not considered to have any unreasonable impacts on the residential amenity of surrounding residents subject to conditions of consent. | |
| (c) | The suitability of the site for the development | |
| | <ul style="list-style-type: none"> Does the proposal fit in the locality? | ✓ |
| | <ul style="list-style-type: none"> Are the site attributes conducive to this development? | ✓ |
| | Comment: The proposal is in keeping with the surrounding locality and satisfies the objectives of WLEP and relevant DCPs. | |
| (d) | Any submissions made in accordance with this Act or the regulations | |
| | <ul style="list-style-type: none"> Public submissions | ✓ |
| | <ul style="list-style-type: none"> Submissions from public authorities | ✓ |
| | Comment: Sixteen submissions were received and the issues raised are addressed in Attachment 9 of this report. | |
| (e) | The public interest | |
| | <ul style="list-style-type: none"> Federal, State and Local Government interests and Community interests | ✓ |
| | Comment: The proposed development is assessed to satisfy relevant controls, and to have acceptable impacts, and therefore is considered to be in the public interest. | |

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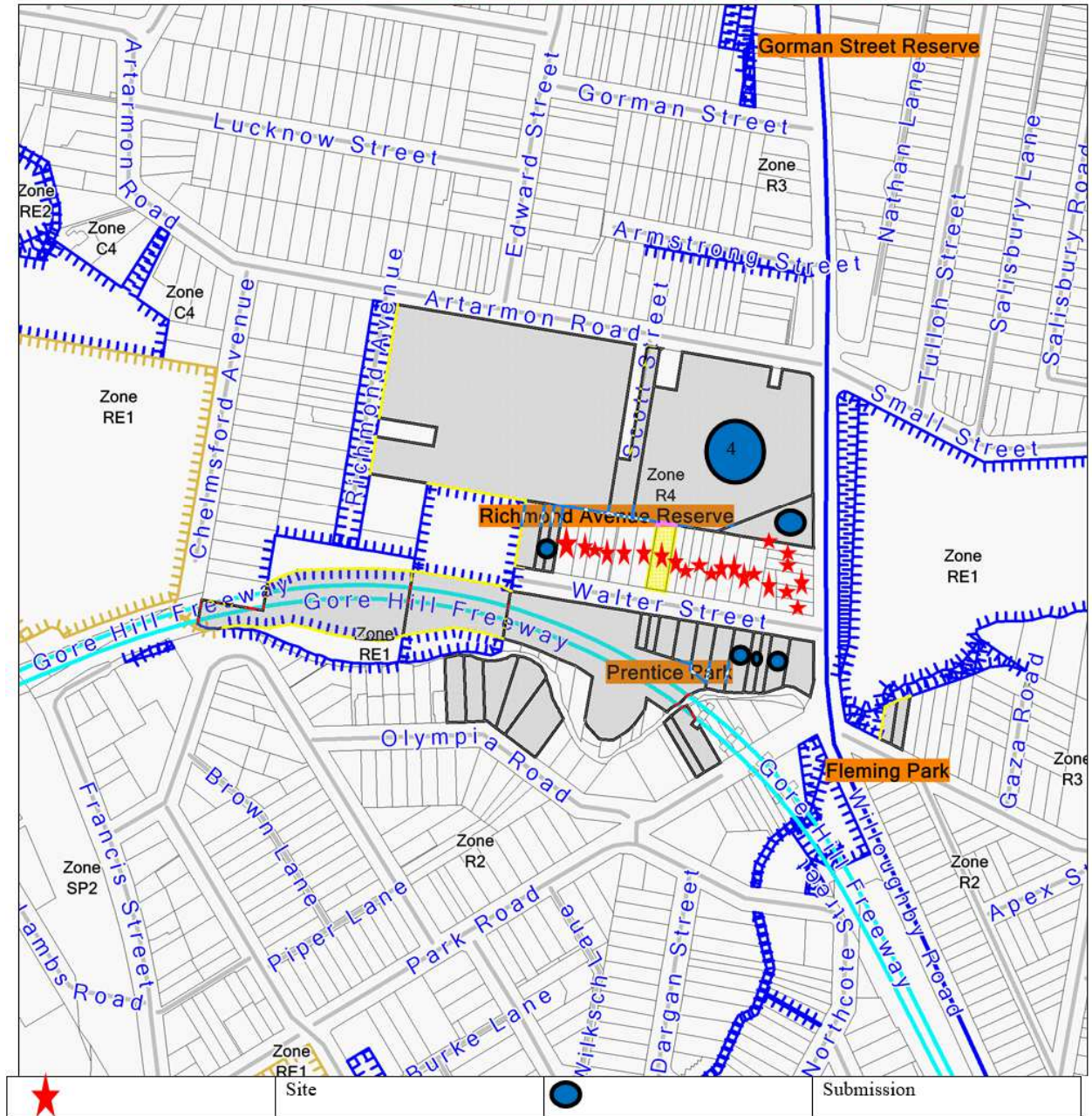
ATTACHMENT 11: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2021/300

At: 452 - 460 Willoughby Road & 1A - 27 Walter Street WILLOUGHBY NSW 2068



ATTACHMENT 12: SCHEDULE OF CONDITIONS**SCHEDULE 1****CONDITIONS OF CONSENT
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. Engineering

- (a) It must be demonstrated that the site can be adequately drained of stormwater and satisfies objectives and technical requirements with respect to flooding and stormwater management, in accordance with Willoughby Development Control Plan 2012 (Part C.5 – Water Management, Attachment 19: Technical Standard No. 1 – Stormwater Design Elements, and Attachment 22: Floodplain management technical standard). The stormwater management system needs to function for all storms up to and including the 1%AEP. Revised plans and supporting documents are to be submitted to Council for approval.

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:

| Type | Plan No. | Revision/ Issue No | Plan Date (as Amended) | Prepared by |
|---------------------------|-----------|-----------------------|------------------------------|--------------------------|
| Architectural Drawings | A.010 | D | 13/12/2021 | Architecture Urbaneia |
| | A.011 | E | 13/12/2021 | |
| | A.101/ST1 | D | 08/12/2021 | |
| | A.102/ST1 | D | 08/12/2021 | |
| | A.103/ST1 | D | 08/12/2021 | |
| | A.104/ST1 | D | 08/12/2021 | |
| | A.105/ST1 | D | 08/12/2021 | |
| | A.106/ST1 | D | 08/12/2021 | |
| | A.107/ST1 | D | 08/12/2021 | |
| | A.108/ST1 | D | 08/12/2021 | |
| | A.109/ST1 | D | 08/12/2021 | |
| | A.110/ST1 | D | 08/12/2021 | |
| | A.111/ST1 | D | 08/12/2021 | |
| | A.112/ST2 | D | 08/12/2021 | |
| | A.113/ST2 | D | 08/12/2021 | |
| | A.114/ST2 | D | 08/12/2021 | |
| | A.115/ST2 | D | 08/12/2021 | |
| | A.116/ST2 | D | 08/12/2021 | |
| | A.117/ST2 | D | 08/12/2021 | |
| | A.118/ST2 | D | 08/12/2021 | |
| | A.119/ST2 | D | 08/12/2021 | |
| | A.120/ST2 | D | 08/12/2021 | |
| | A.121/ST2 | D | 08/12/2021 | |
| | A.122/ST2 | D | 08/12/2021 | |
| | A.151/1 | D | 08/12/2021 | |
| | A.151/2 | D | 08/12/2021 | |
| | A.153/1 | D | 08/12/2021 | |
| | A.154/1 | D | 08/12/2021 | |
| | A.155/1 | D | 08/12/2021 | |
| | A.156/1 | D | 08/12/2021 | |
| | A.160 | D | 08/12/2021 | |
| | A.160A | C | 27/09/2021 | |
| | A.161 | D | 08/12/2021 | |
| | A.162 | D | 08/12/2021 | |

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|------------------------------------|---------------------------|-------|------------|-------------------------|
| | A.163 | D | 08/12/2021 | |
| | A.164 | D | 08/12/2021 | |
| | A.166 | D | 08/12/2021 | |
| | A.167 | C | 27/09/2021 | |
| | A.168 | C | 27/09/2021 | |
| | A.169 | D | 08/12/2021 | |
| | A.170 | D | 08/12/2021 | |
| | A.171 | D | 08/12/2021 | |
| | A.172 | D | 08/12/2021 | |
| | A.173 | D | 08/12/2021 | |
| | A.174 | D | 08/12/2021 | |
| | A.175 | D | 08/12/2021 | |
| | A.176 | D | 08/12/2021 | |
| | A.177 | D | 08/12/2021 | |
| | A.178 | C | 27/09/2021 | |
| | A.179 | D | 08/12/2021 | |
| | A.179A | D | 08/12/2021 | |
| | A.179B | D | 08/12/2021 | |
| Draft Plan of Amalgamation | - | - | 02/12/2021 | Joseph Manardo Surveyor |
| Adaptable and Liveable Drawing Set | A.401 | A | 03/12/2021 | Architecture Urbaneia |
| | A.402 to A.411 A413, A414 | D | 07/12/2021 | |
| | A.414A | A | 07/12/2021 | |
| | A.414B | A | 07/12/2021 | |
| | A.414D | A | 07/12/2021 | |
| | A.415 to A.420 inclusive | D | 07/12/2021 | |
| Master Landscape Plan | 2334 LP – 00 | 02 | 20/09/2021 | John Lock & Associates |
| Landscape Plans | 2334 LP – 00.1 | 02 | 20/09/2021 | John Lock & Associates |
| | 2334 LP – 00.2 | 02 | 20/09/2021 | |
| | 2334 LP – 00.3 | 02 | 20/09/2021 | |
| | 2334 LP – 00.4 | 02 | 20/09/2021 | |
| | 2334 LP – 00.4 | 02 | 20/09/2021 | |
| | 2334 LP – 01.1 | 02 | 20/09/2021 | |
| | 2334 LP – 01 | 02 | 20/09/2021 | |
| | 2334 LP – 02.1 | 02 | 20/09/2021 | |
| | 2334 LP – 02 | 02 | 20/09/2021 | |
| | 2334 LP – 03 | 02 | 20/09/2021 | |
| | 2334 LP – 04 | 02 | 20/09/2021 | |
| Civil Plans | R-0-00 | Rev B | 26/09/2021 | Calibre Group |
| | R-0-01 | Rev A | 26/09/2021 | |
| | R-0-02 | Rev B | 26/09/2021 | |
| | R-1-10 | Rev A | 26/09/2021 | |
| | R-1-15 | Rev A | 26/09/2021 | |
| | R-2-00 | Rev D | 14/12/2021 | |
| | R-3-10 | Rev C | 01/12/2021 | |
| | R-3-20 | Rev B | 26/09/2021 | |
| | R-3-80 | Rev B | 26/09/2021 | |

| | | | | |
|-------------------------------------|--------------------|-------|------------|---------------|
| | R-3-81 | Rev B | 26/09/2021 | |
| | R-4-20 | Rev A | 26/09/2021 | |
| Driveway Longitudinal Section | C1-2-10 C2-2-10 | B | 07/12/2021 | Calibre Group |
| Stormwater Plans | C1-2-00 | D | 14/12/2021 | Calibre Group |
| | C1-4-20 | C | 15/12/2021 | |
| | C1-4-30 | E | 15/12/2021 | |
| | C1-4-60 | C | 15/12/2021 | |
| | C2-2-00 | C | 13/12/2021 | |
| | C2-4-20 | B | 13/12/2021 | |
| | C2-4-30 | D | 15/12/2021 | |
| | C2-4-60 | B | 13/12/2021 | |
| | R-3-10 | C | 1/12/2021 | |

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)

2. Ausgrid Requirements

Safe Work NSW document - Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au

It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developer's cost.

it is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected to be entering and leaving the site.
(Reason: Compliance)

3. TfNSW Requirements

The following requirements are required to be carried out:

- A. All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited height or depth), along the Willoughby Road boundary.

- A. The reconstruction of redundant driveways and associated works on Willoughby Road shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to developerworks.sydney@transport.nsw.gov.au.

Detailed design plans of the proposed works are to be submitted to TfNSW for approval prior to the issue of a construction certificate and commencement of any road works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

The developer is required to enter into a Works Authorisation Deed (WAD) for the abovementioned works. TfNSW fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works.

- B. Right turn movements from Willoughby Road into Walter Street shall be prohibited in the AM (0600-1000) and PM (1500-1900) peak periods through the provision of regulatory signage.
- C. Movements from Willoughby Road and Walter Street shall be restricted to left-in/left-out to/from Walter Street through the provision of regulatory signage.
- D. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

- E. All vehicles shall enter and exit the site in a forward direction.
- F. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS2890.2-2018.
- G. The developer shall be responsible for all public utility adjustment/relocation works, necessitated by the above work and as required by the various public utility authorities and/or their agents.

- H. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping.
- I. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Willoughby Road during construction activities. A ROL can be obtained through: <https://lmyrta.com/oplinc2/pages/security/oplincLogin.jsf>
(Reason: TfNSW Requirements)

PRIOR TO MAKING AN APPLICATION FOR A CONSTRUCTION CERTIFICATE

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

4. Amendments

Prior to the issue of any relevant Construction Certificate, the following must be shown on the Construction Certificate plans:

- (a) Building F - A privacy screen achieving an adequate level of privacy to western neighbours to be erected along the western edge of the west-facing balcony serving the living room in unit 303. The privacy screen must be minimum 1.6m in height and be comprised of a material having a lightweight, textured appearance (eg vertical louvres or the like).
- (b) A 1:20 scale drawing of privacy screens serving all west-facing windows in Building F must accompany the Construction Certificate, and demonstrate that these privacy screens offer an acceptable level of privacy to western neighbours.
- (c) The Construction Certificate plans and Landscaping plans must show that planting to front setback areas will satisfactorily maintain clear sight lines between the entrances and the street and within planted areas.
- (d) The location of Electric car charge points required by Part F Control 5 of the Site Specific DCP must be shown in each basement car park.
- (e) Building D - The planting incorporated within the northern extremity of the north-facing balconies at Levels 1 to 4 inclusive must achieve planting that provides an effective privacy screen to the Castle Vale development at 2 Artarmon Road, Willoughby.
- (f) Details of all front fencing demonstrating compliance with Willoughby Development Control Plan.

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

(Reason: To maintain amenity)

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

5. Development Contribution

s7.11 Contribution subject to the following requirement:

A monetary contribution that is required to be paid under this consent must be paid before the issue of the **first** Occupation Certificate in respect of any building to which this consent relates, except as provided by the following circumstance:

If no construction certificate in respect of the erection of any building to which the consent relates has been issued before or on 25 September 2022, the monetary contribution referred in section 'PRIOR TO OCCUPATION OF THE DEVELOPMENT' must be paid before the issue of the **first** Construction Certificate after that date (25 Sept 2022) for any such building.

(Reason: Statutory requirement)

6. 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 the 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 the Construction Certificate and registered at the Department of Lands prior to issue of the Occupation Certificate.

(Reason: Compliance)

7. External Finishes – Solar Absorptance

The external roofing, glazing and walls of the proposed dwelling 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 the Construction Certificate application.

(Reason: Visual amenity)

8. Surrender of Consent

In order for the development of land to proceed in a coordinated and orderly manner and to avoid potential conflicts with this consent, the Applicant shall, prior to issue of Construction Certificate for the approved works, surrender Development Consents DA-2016/210, DA-2016/303 and DA-2016/452 to the relevant planning authority in the manner prescribed by Clause 97 of the *Environmental Planning and Assessment Regulation*.

(Reason: Orderly development)

9. Certification of Gross Floor Area

Prior to the issue of a Construction Certificate, an Architect, Engineer, Registered Surveyor or Accredited Architectural Draftsperson shall submit to the Certifier for approval, a floor space ratio (FSR) calculation plan demonstrating that the proposed gross floor area of all buildings on the site does not exceed 16,871m².

(Reason: Bulk and scale control/compliance)

10. BASIX

Where required, the BASIX certificate shall be updated to reflect any changes resulting from this consent. The updated BASIX certificate shall be submitted with the construction certificate application.

(Reason: Environmental Sustainability)

11. Local Infrastructure Contributions

For development that involves subdivision and/or building work, any contribution required under Council's Local Infrastructure Plan must be paid to Council prior to the issue of the subdivision certificate or first construction certificate, whichever occurs first.

(Reason: Statutory requirement)

12. Access, Mobility and Adaptable Housing

Prior to the issue of a Construction Certificate, to provide suitable access for people with disabilities, the development shall comply with Disability (Access to Premises – Buildings) Standards 2010. Details demonstrating compliance must be submitted with the Construction Certificate application.

(Reason: Access and Compliance)

13. Fire Safety

Prior to the issue of a Construction Certificate, to enable the issuing of a fire safety schedule, information required by Clause 9 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* must be submitted with the Construction Certificate application.

(Reason: Safety and Compliance)

14. Additional Details and/or Information for Construction Certificate

Prior to the issue of the Construction Certificate, any requirements outlined by conditions of this consent requiring changes to be noted on plans and/or information to be submitted including compliance with the National Construction Code are to be incorporated within the Construction Certificate plans and/or documentation.

(Reason: Ensure compliance)

15. Sydney Water 'Tap In'

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

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

(Reason: Ensure compliance)

16. Hours of Work

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

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

If a variation to these approved hours for multiple or extended periods is sought, an application under Section 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)

17. Right of Carriageway

Prior to the issue of the Construction Certificate, a formal right-of-carriageway must be created over (to burden) the parcel of land comprising 1 - 13 Walter Street and 452 - 460 Willoughby Road Willoughby to provide (to benefit) 462 Willoughby Road with vehicular access to and from Walter Street. Verification of the registration on title of the right-of-carriageway must be submitted to and accepted by Council prior to the issue of the Construction Certificate.

(Reason: Site isolation)

18. Adaptable Units

Adaptable residential units for disabled persons are to be provided at a rate of 50% of the total number of units (Total 82 units to be adaptable). Each adaptable unit is to be nominated on the Construction Certificate drawings and is to be provided with disabled car spaces where required under the Willoughby Development Control Plan Part C.6 – Access, Mobility and Adaptability.

(Reason: Amenity)

19. Agreement to Transfer Affordable Housing Dwellings

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

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

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

(Reason: Ensure compliance)

20. Affordable Housing Fittings and Finishes

Prior to the issue of the Construction Certificate, the applicant is to submit to the Council details of all internal fittings and finishes of the affordable housing dwellings. The applicant is responsible for obtaining written confirmation from Council that it is satisfied that the internal fittings and finishes are at the same standard as other dwellings within the development.

(Reason: Amenity)

21. Fibre-Ready Facilities and Telecoms Infrastructure

Prior to the issue of a Construction Certificate, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifier that arrangements have been made for:

- (a) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose.

and

- (b) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note: *Real estate development project* has the meanings given in section 372Q of the *Telecommunications Act*).

(Reason: Compliance)

22. Arborist Report

Prior to the issue of a Construction Certificate, the applicant must note on the Construction Certificate plans that the Arborist /report (Ref 4544.1) dated 24 September 2021 prepared by Redgum Horticultural, will be fully complied with.

(Reason: Compliance)

23. Geotechnical Report

Prior to the issue of a Construction Certificate, the applicant must note on the Construction Certificate plans that the Geotechnical Report (Ref GR1302.1J dated 8 December 2021) prepared by JC Geotechnics, will be fully complied with.

(Reason: Compliance)

24. Fire Engineering Brief

Prior to the issue of a Construction Certificate, the applicant must note on the Construction Certificate plans that the Fire Engineering Brief (Ref 111943-FEB-r2.2 dated 9 December 2021) prepared by SGA, will be fully complied with.

(Reason: Compliance)

25. Acoustic Report

Prior to the issue of a Construction Certificate, the applicant must note on the Construction Certificate plans that the Acoustic Report (Ref 20210897 dated 8 December 2021) prepared by Acoustics Logic, will be fully complied with.

(Reason: Compliance)

26. BCA Report

Prior to the issue of a Construction Certificate, the applicant must notate on the Construction Certificate plans that the BCA Report (Ref 111943-BCA Statement dated 9 December 2021) prepared by BCA Logic, will be fully complied with.
(Reason: Compliance)

27. Contamination Report

Prior to the issue of a Construction Certificate, the applicant must notate on the Construction Certificate plans that the Contamination Report (Ref 19.13 dated 24 September 2021) prepared by Trace Environmental, will be fully complied with.
(Reason: Compliance)

28. Remedial Action Plan

Prior to the issue of a Construction Certificate, the applicant must notate on the Construction Certificate plans that the Remedial Action Plan (Ref 0 dated 11 December 2019) prepared by Trace Environmental, will be fully complied with.
(Reason: Compliance)

29. Waste Management Plan

Prior to the issue of a Construction Certificate, the applicant must notate on the Construction Certificate plans that the Waste Management Plan, dated 30 September prepared by EQ Construction, will be fully complied with.
(Reason: Compliance)

30. Demolition Plan

Prior to the issue of a Construction Certificate, the applicant must notate on the Construction Certificate plans that the Demolition Plan, dated 30 September 2021 prepared by EQ Constructions, will be fully complied with.
(Reason: Compliance)

31. Damage Deposit – Stage 1

Prior to the issue of the Construction Certificate for Stage 1, the applicant shall lodge a Damage Deposit of **\$230,000** (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 Stage 1 of the proposed development. For the purpose of inspections carried out by Council Engineers, an inspection fee of **\$176** (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 = \$230,000 + \$176 = \$230,176

(Reason: Protection of public asset)

32. Damage Deposit – Stage 2

Prior to the issue of the Construction Certificate for Stage 2, the applicant shall lodge a Damage Deposit of **\$150,000** (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 Stage 2 of the proposed development. For the purpose of inspections carried out by Council Engineers, an

inspection fee of **\$176** (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 = \$150,000 + \$176 = \$150,176

(Reason: Protection of public asset)

33. 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 any proposed temporary ground anchors prior to issue of the Construction Certificate. Copies of the permission shall be sent to Council. All works associated with the drilling and stressing of the ground anchors shall be installed in accordance with approved drawings. Any temporary ground anchors proposed for the road reserve must be a minimum of 1.5m below the ground level and be distressed and removed on completion of the works. Temporary ground anchors will not be approved in the road reserve adjacent to Willoughby Road.

(Reason: Encroachment of works)

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

Stormwater runoff from the site shall be collected and conveyed to the underground drainage system in Walter Street and Willoughby Road via a 375 mm 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 the Construction Certificate.

(Reason: Prevent nuisance flooding)

35. Analysis of Outlet Condition

A hydraulic grade line analysis shall be undertaken to ensure that the outlet from each OSD tank is above 1%AEP downstream water level. Full engineering details of the hydraulic evaluations prepared and signed by a practising Civil Engineer shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate for each stage.

(Reason: Prevent property damage)

36. Detailed Stormwater Management Plan (SWMP)

Prior to the issue of the Construction Certificate for each Stage, submit to the Certifier for approval, detailed stormwater management plans in relation to the on-site stormwater management and disposal system for the development. The construction drawings and specifications shall be prepared by a suitably qualified and experienced civil engineer and generally be in accordance with the concept stormwater management plans, prepared by Calibre – C1-2-00/E, C1-4-20/D, C1-4-30/F, C1-4-60/F, C2-2-00/D, C2-4-20/C, C2-4-30/E, C2-4-60/C all dated 21/1/2022. All drawings shall comply with Part C.5 of Council's Development Control Plan, Technical Standard 1, AS/NSZ3500.3 – *Plumbing and Drainage Code* and National Construction Code. The pipe network draining to the OSD tank/s shall be designed for the 1%AEP storm event, unless the overland flow path for the system drains to the tank/s. The overflow from the tanks is to be in a visible location and be either through the access grate in the top of the tank or an overflow weir through the site of the tank. The plans shall incorporate the following:

- For the Stage 1 tank, in addition to the access covers provided on the north side of the tank, an access grate shall be provided in a common area as close to the north side of the tank as possible.
- The outlet from the Stage 2 western OSD tank is to connect to the stormwater pit in Walter Street (R2/E5) and not to the pit in the private stormwater easement.
- For the eastern Stage 2 OSD tank (Site 2 Tank 2), access points are to be provided in all four corners of the tank.
- Treatment system is to be incorporated in the eastern Stage 2 OSD tank (Site 2 Tank 2), similar to other tanks.
- Runoff draining to rainwater tanks is to be from roof areas only, to minimise contamination of stored water.
- The invert level of the orifice is to be flush with the base of the outlet sump / tank floor.
- Minimum of 300mm freeboard between the overflow water level from the OSD tanks and the adjacent floor level.

(Reason: Ensure compliance)

37. Basement Pumpout Drainage System

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

- (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% Annual Exceedance Probability storm event 5-minutes duration 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/NZS2500.3.

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, AS/NZS 3500.3 – *Plumbing and Drainage Code* and the National Construction Code.

(Reason: Prevent nuisance flooding)

38. Flood Level

A suitably qualified and experienced civil engineer must certify that the finished floor levels of the proposed development comply with the minimum freeboard requirements of Technical Standard 3 and are in accordance with the recommendations of the Hydrology and Hydraulic Analysis report dated 30 July 2021 prepared by Calibre.

(Reason: Prevent property damage)

39. Construction Management Plan (CMP)

Prior to the issue of the Construction Certificate, submit, for approval by the Certifier, 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)

40. Design of Works in Public Road (Roads Act Approval) – Stage 1

Prior to issue of any Construction Certificate for Stage 1 works, 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 3.0 metres wide shared path, or narrower width as agreed with Council's Engineers, (max. 2.5% crossfall) towards the kerb for the full frontage of the development site on the north side of Walter Street in accordance with Council's specification and Standard Drawings SD105 and SD100. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- (b) Construction of 1.5 metres wide footpath (max. 2.5% crossfall) towards the kerb for the full frontage of the development site on the south side of Walter Street in accordance with Council's specification and Standard Drawings SD105 and SD100. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- (c) Reconstruction of existing kerb and gutter on both sides of the roadway for the full frontage of the development site in Walter Street in accordance with Council's specifications and Standard Drawing SD105.
- (d) Reconstruction of the full width of the existing road pavement for the full frontage of the development site in Walter Street in accordance with Council's specifications. The width of the road pavement between kerbs shall be as agreed with Council's Engineering Design Team.
- (e) Construction of a 6.6 metres wide vehicular crossing in Walter Street in accordance with Council's specification and Standard Drawings SD105
- (f) Construction of up to 2 new raised threshold speed humps, in accordance with Council's requirements and any recommendations from the Traffic Committee. The location and number are to be as agreed with Council's Traffic Engineers and Design Engineers
- (g) Construction of new landscape bays / blisters in Walter Street, in accordance with the requirements of Council's Engineering Design Team. The final locations are to be determined in consultation with the Design Team, with the maximum number to be as detailed on the DA approved drawings. The bays are to be constructed with kerb line running around the

outer edge, and not as an island with the gutter separating the landscape bay from the nature strip.

- (h) Construction of new stormwater pits and pipes along the northern side of Walter Street, generally in accordance with the stormwater drawings approved in this consent. Final layout of the connection to the Council system at the intersection of Willoughby Road and Walter Street, including possible removal of pits and replacement of pipes, shall be as agreed with Council's Engineering Design and Asset Team and TfNSW requirements. Minimum pipe size is to be 375mm diameter RCP. Detailed longitudinal sections are to be provided for all new pipes.
- (i) Construction of 1.5 metres wide footpath (max. 2.5% crossfall) towards the kerb for the full frontage of the development site in Willoughby Road 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.
- (j) Construction of any kerb ramps required to replace existing or connect new crossings to the new paths. Kerb ramps in Walter Street are to be in accordance with Council standard drawing SD100 and at the intersection with Willoughby Road in accordance with TfNSW requirements.
- (k) Construction of works to prevent vehicles turning right out of Walter Street into Willoughby Road. The extent of any such works are to be agreed with Council's Traffic Engineers and may require a median to direct vehicles to the left.
- (l) Construction of up to 2 pedestrian refuges along Walter Street. The number and location are to be as agreed with Council's Traffic Engineers.
- (m) Any adjustments required to street lighting to suit the new development, including lighting required for the pedestrian refuges to meet current lighting standards for crossings.
- (n) Removal of redundant vehicle crossings in Willoughby Road and construction of new kerb and gutter in accordance with TfNSW requirements
- (o) Any signage and linemarking required by Council's Traffic Engineers or statutory requirements.

The required plans must be designed in accordance with Council's specifications (AUS-SPEC). A minimum of three (3) weeks will be required for Council to assess the *Roads Act* submissions. Following assessment by Council Officers and agreement that the plans are acceptable, approval will be required from the Traffic Committee, which only meets every 1-2 months. Early submission is recommended to avoid delays in obtaining a Construction Certificate. For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council prior to issue of the approved plans. Separate approval / concurrence is to be obtained from TfNSW for the removal of laybacks and construction of new kerb and gutter for the redundant vehicle crossings in Willoughby Road and for any works located at the intersection of Willoughby Road and Walter St, including changes to the stormwater drainage system. Final approval from Council will not be obtained until concurrence is obtained from TfNSW.

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)

41. Design of Works in Public Road (Roads Act Approval) – Stage 2

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 3.0metres wide shared path (or narrower width as agreed with Council's Engineers) (max. 2.5% crossfall) towards the kerb the north side of Walter Street from the junction with the Stage 1 works to the connection point with the future link to the Gore Hill Freeway shared path, just to the west of 18 Walter Street in accordance with Council's specification and Standard Drawings SD105 and SD100. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- (b) Construction of 1.5 metres wide footpath (max. 2.5% crossfall) towards the kerb on the south side of Walter Street from the junction with the Stage 1 works to the connection point with the future link to the Gore Hill Freeway shared path 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.
- (c) Construction of 1.5 metres wide footpath (max. 2.5% crossfall) towards the kerb on the northern side of Walter Street from the shared path to the western end Walter Street in accordance with Council's specification and Standard Drawings SD105 and SD100. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- (d) Reconstruction of existing kerb and gutter on both sides of the roadway for the full frontage of the development site in Walter Street in accordance with Council's specifications and Standard Drawing SD105. The reconstruction shall include the turning circle at the end of the street, with the adopted radius to be in accordance with the requirements of Council's Traffic Engineers
- (e) Reconstruction of the full width of the existing road pavement for the full frontage of the development site in Walter Street in accordance with Council's specifications. The width of the road pavement between kerbs shall be as agreed with Council's Engineering Design Team.
- (f) Construction of a 7.0 metres wide vehicular crossing in Walter Street in accordance with Council's specification and Standard Drawings SD105
- (g) Reconstruction of the existing vehicle crossings on the south side of Walter Street, to suit the new works.
- (g) Construction of new landscape bays in Walter Street, in accordance with the requirements of Council's Engineering Assets Team. The final locations are to be determined in consultation with the Assets Team, with the maximum number to be as detailed on the DA approved drawings. The bays are to be constructed with kerb line running around the outer edge, and not as an island with the gutter separating the landscape bay from the nature strip.
- (i) Construction of new stormwater pits and pipes along the northern side of Walter Street, generally in accordance with the stormwater drawings approved in this consent. Minimum pipe size is to be 375mm diameter

RCP. Detailed longitudinal sections are to be provided for all new pipes.

- (j) If required by Council's Traffic Engineers, construction of 1 new raised threshold speed hump, in accordance with Council's requirements and any recommendations from the Traffic Committee. The location and need are to be as agreed with Council's Traffic Engineers and Design Engineers
- (k) Construction of 1 pedestrian refuges along Walter Street. The location is to be as agreed with Council's Traffic Engineers, but will be in line with the connection point for the future shared path link to the Gore Hill Freeway shared path.
- (l) Construction of new kerb ramps as required to suit new pedestrian refuges and path links. Kerb ramps are to be in accordance with Council standard drawing SD100
- (m) Any signage and linemarking required by Council's Traffic Engineers or statutory requirements.
- (n) Any adjustments required to street lighting to suit the new development, including for an new pedestrian refuges.

The required plans must be designed in accordance with Council's specifications (AUS-SPEC). A minimum of three (3) weeks will be required for Council to assess the *Roads Act* submissions. Following assessment by Council Officers and agreement that the plans are acceptable, approval will be required from the Traffic Committee, which only meets every 1-2 months. Early submission is recommended to avoid delays in obtaining a Construction Certificate. For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council prior to issue of the approved plans.

Approval must be obtained from Willoughby City Council as the road authority under the *Roads Act 1993* for any proposed works in the public road prior to the issue of any Construction Certificate.

(Reason: Ensure compliance)

42. Driveway Longsection

Prior to issue of the Construction Certificate for each Stage 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 each side of the proposed vehicular access path 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/NZS 2890.1 -2004 and Council's specifications.

The new crossing for Stage 1 is to be 6.6 metres wide with no splays and be constructed at right angle to street kerb and the new crossing for Stage 2 is to be

7.0m wide 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% towards the kerb. 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 minimum above and parallel to the gutter invert and above adjacent PMF level, whichever is higher

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)

43. 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 a Construction Certificate, a suitably qualified person shall certify that the design meets these requirements.

(Reason: Safe access to tanks)

44. Vehicle Access and Manoeuvring – Engineer’s Certification

Prior to the issue of the Construction Certificate for each stage, the Applicant shall submit, for approval by the Principal Certifier, certification from a suitably qualified and experienced Traffic Engineer relating to the design of vehicular access and manoeuvring for the stage of 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/NZS 2890.1 and AS 2890.2 and will not result in scraping to the underside of cars.
- (b) That a maximum gradient of 5% is provided for the first 6 metres from the property’s front boundary to the basement. All driveway grades shall comply AS/NZS 2890.1 and AS 2890.2.
- (c) That the proposed vehicular path and parking arrangements comply in full with AS/NZS 2890.1, AS 890.2 and AS/NZS 2890.6 in terms of minimum dimensions provided, aisle and circulation road widths and grades on parking spaces.
- (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 AS/NZS 2890.1 and Section 2.4 of AS/NZS 2890.6.
- (e) That the headroom clearance of minimum 2.5 metres is provided to all parking spaces for people with disabilities for compliance with Section 2.4 of AS/NZS 2890.6.
- (f) That shared areas are provided for all disabled and accessible parking spaces in compliance with AS/NZS 2890.6. A bollard shall be located in the shared zone in accordance with AS/NZS 2890.6.
- (g) That the headroom clearance of 4.1m has been provided for the loading area and the path to and from the loading area.
- (h) 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.
- (j) That the sight lines to pedestrians required by Clause 3.2.4(b) of AS/NZS2890.1 are provided

(Reason: Ensure compliance)

45. Finish Surface Levels Along the Street Boundary

Prior to the issue of a Construction Certificate, finished surface levels for all internal works along the street boundary, including floor levels, driveways, car spaces, landscaping, drainage structures etc., must be shown on the plans issued for construction. The development's internal surface levels along the street boundary must be consistent with the public domain civil works plans approved by Council under the *Roads Act (1993)*. Any changes required to the finish floor levels approved under this development consent may require an application under S4.55 of the EP&A Act.

(Reason: Ensure compliance)

46. Building Ventilation

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

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

Details of all mechanical ventilation and exhaust systems, and certification provided by an appropriately qualified person verifying compliance with these requirements, shall be submitted to the Certifier prior to the issue of the Construction Certificate.

(Reason: Health and compliance)

47. Contaminated Land – Remedial Action Plan

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

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

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

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

(Reason: Environmental protection, public health and safety)

48. Hazardous Building Material Assessment

A hazardous building material assessment shall be undertaken by an appropriate qualified person and is to be submitted to the Certifier for approval prior to the issue of the Construction Certificate. The assessment shall identify any likely hazardous materials within any structure to be demolished and provide procedures on how to handle and dispose of such materials.

(Reason: Environmental protection/public health and safety)

49. 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)

50. Construction Traffic and Transport Management Plan

Prior to issue of the Construction Certificate, a detailed Construction Traffic and Transport Management Plan (CTMP) shall be prepared to ensure safe and efficient movement to/ from the construction site (site) and the closest State Road by motor vehicles including buses, cars, motor bikes, emergency vehicles, trucks and heavy vehicles; and for pedestrians and bicycles moving to/ from and past the site (collectively referred to as traffic). The CTMP must be approved by the Principal Certifier and submitted to Council for registration. The CTMP shall: -

- (a) Be prepared by a suitably qualified and experienced traffic engineering consultancy. The traffic consultancy should hold, or contract a traffic control company with, a valid *Prepare Work Zone Traffic Management Plans* (PWZTMP) traffic control qualification in TfNSW's Traffic Control at Work Site Technical Manual. The personnel used must have undertaken refresher training in PWZTMP competency in the preceding two years from the date of qualification.
- (b) Be prepared in accordance with the current version of Austroads Guide to Traffic Management, Austroads Guide to Road Safety, Austroads Guide to Temporary Traffic Management, Australian Standard AS1742 Manual of Uniform Traffic Control Devices, TfNSW's Supplement to Australian Standard, TfNSW's Traffic Control at Work Site Technical Manual and TfNSW Traffic Modelling Guideline.
- (c) Identify and demonstrate that the pedestrian, bicycle and motor vehicle ingress and egress locations at the site are designed / managed/ operated in accordance with relevant standards, policies and guidelines and eliminate and minimise hazards and risks to maximise safety, amenity and mobility to site users and those moving past the site on the adjacent road and pathways.
- (d) Identify and describe the Council and TfNSW managed road network (road network) to be used by motor vehicles and pathway network to be used by pedestrians and bicycles generated by the site. Document and explain the administrative and functional classifications, interchanges i.e. bus stops, rail stations etc, types of user and management of the existing road and pathway networks.
- (e) Provide information on the existing operational performance of the road network including level of service, delays, queues for weekday morning and afternoon peak periods and, when requested by Council, other times of high traffic demand. The performance information should be sourced using industry standard and accepted data collection techniques and systems and traffic modelling tools such as SIDRA.

- (f) Identify and explain all construction methodology with a focus on site operation, generation and distribution of traffic on the road and pathway network. In situations where the construction methodology involves a subdivision of the site, this arrangement should be explained. The start/ end dates for each stage should be provided. Staging of each location and overlap of works across locations including duration and traffic demands should be explained. In circumstances where additional operational arrangements are also occurring on the site, this situation should also be explained and the pedestrian, bicycle and motor vehicle generation and movement determined.
- (g) Identify and explain all construction related motor vehicle generation, type, times of movement and routes to/ from the site for all construction phases including spoil removal, materials delivery and suppliers/ workers visiting and working on the site. The route chosen for heavy vehicle movement between the site and the State Road network should be the safest, least impact on the amenity of residents and most direct to the nearest intersection with a State Road.
- (h) Provide information on the forecast operational performance of the road network including level of service, delays, queues for weekday morning and afternoon peak periods and, where necessary, other times of high traffic demand during the construction period based on the construction methodology. The performance information should be sourced using industry standard and accepted data collection techniques and traffic modelling tools such as SIDRA.
- (i) Analyse, compare and assess the existing and forecast operational performance during the construction period. Identify and explain the change in operational performance including those intersections that have a worsening in operational performance during the construction period and stages therein.
- (j) Demonstrate that all heavy vehicles generated by the site will travel on the road network safely and in compliance with the NSW road rules.
- (k) Identify and explain management arrangements so that all construction related motor vehicles park on the site or in designated approved locations on the public roads adjacent to the site i.e. approved Work Zone. Identify and explain operational and mitigation measures to be implemented so that no or minimal construction related vehicles such as worker motor cars park or queue on the public road network.
- (l) Detail and explain all proposed changes to the public road network that will be in place for the duration, or for a significant period of time, during the construction period to support the construction methodology including, if desired, Work Zone provision, and to maintain a safe road and pathway network with an acceptable operational performance. Short term changes involving implementation and removal of a temporary change for one day only are addressed elsewhere in the CTMP. All regulatory parking, traffic control and traffic management changes to the road and pathways will require Council approval.
- (m) Detail and explain all construction related impacts to pathways including pedestrian footpaths and bicycle facilities such as bicycle lanes and shared paths. Identify and explain mitigation measures to maintain a safe and continuous connection for these vulnerable road users. All regulatory parking, traffic control and traffic management changes to the road and pathways will require Council approval.
- (n) Provide a schedule of short term temporary traffic changes (changes typically implemented and removed in one day only), relevant Council permit, times and dates of changes and accompanying *Work Zone Traffic Management Plan*. Road closures shall be the subject of approval from Council.
- (o) Public information and campaigns to be used to inform road users, residents, businesses, emergency services, public transport operators of any long term changes or temporary full road closures on the local road network well in advance of each change.

- (p) Nominate a contact person who is the owner of the CTMP and has authority without reference to other persons to change the CTMP to comply with instructions issued by Council's Safe City or the NSW Police.
(Reason: Public safety and amenity)

51. Road, Safety, Traffic and Active Transport Works

Prior to issue of the Construction Certificate, any proposed road safety, traffic management, intelligent transport system and road infrastructure changes to the carriageway and footways on a public road such as road widening, a new roundabout, pedestrian refuge, footpaths shall be referred to the Traffic Committee for consideration and Council for approval.

Traffic control signal designs and construction will be referred to Transport for New South Wales (TfNSW) for approval.

All work shall be designed in accordance with Council policies and guidelines, Austroads guidelines, Australian Standards, TfNSW policies, Technical Directives and Guidelines.

(Reason: Public safety and amenity)

52. Safety Road Works at the intersection of Willoughby Road and Walter Street

Prior to the issue of the Construction Certificate, detailed design plans and associated technical reports for the intersection of Willoughby Road and Walter Street outlining road safety, traffic management and road infrastructure changes such as concrete islands, refuge islands, regulatory signs and pavement markings to ensure the following traffic and pedestrian operations is self-enforcing is provided to Council:

- a) All motor vehicles that enter Walter Street from Willoughby Road and exit Walter Street to Willoughby Road do so in left turn movement only at all times.
- a) Right turn movements from Willoughby Road, southbound, into Walter Street and Walter Street, eastbound, into Willoughby Road are denied at all times.
- b) Pedestrians walking and bicyclists riding along Willoughby Road are able to safely wait within the carriageway of Walter Street and walk and ride across Walter Street in 2 stages.

The detailed design plans shall be referred to the Traffic Committee for consideration and Council for approval.

The detailed design plans shall be referred to Transport for NSW for consideration and approval should the road works impact on the design and operation of Willoughby Road.

The detailed design plans must integrate and seamlessly connect to the detailed design plans for Walter Street to ensure safe and effective pedestrian and traffic movement at all times.

All work shall be designed in accordance with Council policies and guidelines, Austroads guidelines, Australian Standards, TfNSW policies, Technical Directives and Guidelines.

Construction of all road works must be completed prior to occupation of the development to the satisfaction of Council. Operation of the road works must be to the satisfaction of Council.

(Reason: Public safety and traffic management)

53. Road and Traffic Management Works in Walter Street

Prior to the issue of the Construction Certificate, detailed design plans and associated technical reports for the road widening, traffic and pedestrian management of Walter Street between, and including, the intersection of Willoughby Road and Walter Street and the cul-de-sac at the western end of Walter Street outlining road safety, traffic management and road infrastructure changes such as road widening, traffic lanes, shared path, footpath, refuge islands, regulatory signs and pavement markings etc to ensure the following traffic and pedestrian operations is self-enforcing is provided to Council:

- a) Two trafficable lanes are available at all times, separate from parking lanes, comprising one eastbound and one westbound traffic lane.
- a) Parking lanes are provided on both sides of the road.
- b) Pedestrian refuge islands are located away from driveways and provide safe crossing points to cross Walter Street.
- c) Shared path and nature strip is provided on the northern side of the road.
- d) Footpaths and nature strip is provided on the southern side of the road.

The detailed design plans must integrate and seamlessly connect to the detailed design plans for the intersection of Willoughby Road and Walter Street to ensure safe and effective pedestrian and traffic movement at all times.

The detailed design plans shall be referred to the Traffic Committee for consideration and Council for approval.

All work shall be designed in accordance with Council policies and guidelines, Austroads guidelines, Australian Standards, TfNSW policies, Technical Directives and Guidelines.

Construction of all road and traffic management works must be completed prior to occupation of the development to the satisfaction of Council. Operation of the road and traffic management works must be to the satisfaction of Council.

(Reason: Public safety and traffic management)

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.

54. Noise – Construction In Accordance With Acoustic Report

To minimise the impact of noise from the development on the amenity of the adjoining properties, the development shall be constructed and operated in accordance with all recommendations contained within the acoustic report (Ref: 20210897.1/0812A/R4/LA), dated 08.12.2021 prepared by Acoustic Logic).

(Reason: Amenity)

55. Site Management

A site Management Plan shall be submitted to and approved by the Certifier 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;
- (l) 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 Certifier/Council officers upon request.

(Reason: Environment protection, public health and safety)

56. Dilapidation Report of Adjoining Properties

Prior to commencement of work, submit a photographic survey and report of the adjoining properties 2 Artarmon Road, 14 Artarmon Road, 29 Walter Street, 29A Walter Street and 31 Walter Street, as well as 2A – 18 Walter Street Willoughby (inclusive) to the Certifier and all owners of these adjoining properties. Your attention is drawn to Section 6.1 of the Geotechnical Report (Ref: GR1302.1J) dated 8 December 2021 prepared by JC Geotechnics, which identifies properties affected by the zone of influence. 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 Certifier, 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)

57. Public Risk Insurance Policy

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

(Reason: Limit liability)

58. 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)

59. 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.

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)

60. Hours of Work

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

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

If a variation to these approved hours for multiple or extended periods is sought, an application under Section 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)

61. Further Geotechnical Work

Prior to commencement of work, further geotechnical work in accordance with the Geotechnical Report (Ref: GR1302.1J) dated 8 December 2021 prepared by JC Geotechnics, including additional geotechnical investigation comprising deep cored boreholes across the entire site, seepage analysis, Dewatering Management Plan, detailed design of retaining wall systems and dilapidation surveys, must be undertaken.

(Reason: Compliance)

62. 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 Certifier advised of the submission prior to commencement of work.

(Reason: Protection of Council's infrastructure)

63. 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)

64. Application for Vehicle Crossing

Submit an application with fees to Council for the construction of a plain concrete vehicular crossing for each stage.
(Reason: Protection of public asset)

65. 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 in Walter Street and Willoughby Road. Such street lighting shall also conform to Council's standard specifications.
(Reason: Public amenity)

66. 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)

67. Ausgrid Requirements

Safe Work NSW document - Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au

It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developer's cost.

it is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected to be entering and leaving the site.

(Reason: Compliance)

68. Removal of Trees in Public Areas

Prior to the commencement of work,

- (a) Written notification is to be provided to Council giving a minimum of 7 days warning prior to undertaking the removal of any trees approved for removal in public areas as indicated on Existing Tree Plan Dwg No. LP-001 Rev 02 prepared by John Lock and Associates
- (b) Removal of approved trees is to be undertaken by a qualified Arborist (Minimum qualification AQF Level 3) with suitable public liability insurance and any other project specific licences such as working around powerlines.

(Reason: Management of Public Land)

69. 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 detailed in the Arboricultural Impact Assessment and Tree Management Plan dated 24 September 2021 prepared by Redgum Horticultural 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)

70. Waste Storage Room Construction

A design certificate and detailed plans are to accompany any Construction Certificate application which demonstrates that the waste storage has been designed to be constructed in accordance with the Waste Management Guide and including the following requirements:

- (a) The floor is to be constructed of concrete at least 75mm thick and adequately graded to drain to a Sydney Water approved drainage fitting;
- (b) The floor must be finished so that it is non-slip and has a smooth and even surface covered at all intersections;
- (c) The ceilings and walls must be finished with smooth faced non-absorbent material capable of being cleaned;
- (d) The room is to be provided with artificial light controllable within the room and adequate ventilation;

The room is to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.

(Reason: Environmental protection/waste reduction/public health and safety)

71. Access for Waste Collection Vehicles

A design certificate and detailed plans are to accompany the Construction Certificate application that confirms that the development can be accessed and serviced by the nominated waste collection vehicle in accordance with the Waste Management

Guide. The plans are to specifically demonstrate that the path of travel for the waste collection vehicle to the nominated collection area (which includes all entrance/exit, internal driveways, vehicle ramps, loading docks and basement) has been designed in accordance with AS2890.2- 2004.

The design certificate is also to confirm that the internal driveway, cross over, entry/egress points have been designed to meet the following loading requirements:

- (a) 25 tonne waste collection vehicles
- (b) Turning circle of 23 metres
- (c) Length of 12 metres

Clearance height of 4.5 metres (6m if using hook lift bins).

(Reason: Environmental protection/waste reduction/public health and safety)

72. Direct waste collection from basement

A design certificate and detailed plans are to accompany the Construction Certificate application that confirms that the waste can be directly collected from the basement as detailed in the Waste Management Plan. The design certificate is to be in accordance with the Waste Management Guide and specifically confirm that the:

- (a) Waste collection vehicle is able to access the basement, adequately manoeuvre into position, load bins and exit the basement
- (b) Adequate vertical clearance is provided along the route of travel to/from external entry/exit points to collection area
- (c) The collection vehicle must be able to manoeuvre in the basement with limited need for reversing
- (d) The grades of entry/exit must not exceed the capabilities waste collection vehicle
- (e) The floor of the basement has been designed to carry the load of the vehicle.

(Reason: Environmental protection/waste reduction/public health and safety)

73. Waste Chute Design

Where the development incorporates a Waste Chute as part of the waste management system, a design certificate and detailed plans are to accompany any Construction Certificate application which confirms that the waste chute can be constructed to satisfy the Waste Management Guide and specifically the following requirements:

- (a) Chutes, service openings and charging devices are constructed of metal or a smooth faced surface which is fire resistant and of impervious material
- (b) Chute is cylindrical in section, vertical and without bends as it passes through the floors
- (c) Chutes must terminate in the waste storage room and discharge into a waste bin
- (d) manufactures technical specifications and operational limitations.

(Reason: Environmental protection/waste reduction/public health and safety)

74. Interim Access for Waste Collection

The development site must be capable of being serviced for waste collection prior to the completion of the road network. A design certificate and detailed plans which

confirm that:

- (a) Waste collection vehicles can enter and exit the development site in a forward direction without the need for reversing
- (b) Turning circles and manoeuvring areas can accommodate a heavy rigid vehicle with a turning circle of 25 metres and length of 12m
- (c) Roads and manoeuvring areas have been designed in accordance with AS2890.2-2004

(Reason: Environmental protection/waste reduction/public health and safety)

DURING DEMOLITION, EXCAVATION AND CONSTRUCTION

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

75. Removal of Material

Remove all excess excavation and construction material from the site at the completion of works to the satisfaction of the Certifier. 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)

76. Hours of Work

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

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

If a variation to these approved hours for multiple or extended periods is sought, an application under Section 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)

77. 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)

78. 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)

79. Suitable Screens

In the event of likely emission of dust, noise, waste water or other matter, suitable screens shall be erected during demolition and building work to prevent their emission from the site.

(Reason: Maintain amenity to adjoining properties)

80. Suitable Barricades

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

(Reason: Public safety)

81. Demolition Work AS 2601-2001

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

(Reason: Safety)

82. Suitable Footpath Crossing Provided

Adequate provision is to be made to ensure that a suitable footpath crossing is provided to the site so as to allow safe pedestrian access along the footpath area at all times.

(Reason: Protection of public safety)

83. Access to Site

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

(Reason: Environmental protection)

84. Wash Down and Shaker Areas

During Demolition, Excavation and Construction, wash down and shaker areas are to be provided with facilities for the collection and treatment of waste water.

(Reason: Environmental protection)

85. 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 "How to Safely Remove Asbestos" approved under section 274 of the NSW Work Health and Safety Act 2011.

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

(Reason: Environmental protection/Public health and safety)

86. Survey Certificate

Certification of the following shall be submitted to the Certifier 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)

87. Skips and Bins

Rubbish skips or bins are not to be placed on Council's footpath, nature strip or roadway unless prior written approval has been granted by Council.

(Reason: Safety)

88. Temporary Toilet Facilities

Temporary toilet facilities shall be provided to the satisfaction of the Certifier.

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)

89. Erection Wholly within the Boundaries

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

(Reason: Ensure compliance)

90. Arborist Report

The Arborist Report (Ref: 4544.1), dated 24 September 2021 prepared by Redgum Horticultural, must be fully complied with.

(Reason: Compliance)

91. Geotechnical Report

The Geotechnical Report (Ref: GR1302.1J), dated 8 December 2021 prepared by JC Geotechnics, must be fully complied with.

(Reason: Compliance)

92. Fire Engineering Brief

The Fire Engineering Brief (Ref: 111943-FEB-r2.2), dated 9 December 2021 prepared by SGA, must be fully complied with.

(Reason: Compliance)

93. Acoustic Report

The Acoustic Report (Ref: 20210897), dated 8 December 2021 prepared by Acoustic Logic, must be fully complied with.

(Reason: Compliance)

94. BCA Report

The BCA Report (Ref: 111943-BCA Statement-r3), dated 9 December 2021 prepared by BCA Logic, must be fully complied with.

(Reason: Compliance)

95. Contamination Report

The Contamination Report (Ref: 19.13), dated 24 September 2019 prepared by Trace Environmental, must be fully complied with.

(Reason: Compliance)

96. Remedial Action Plan

The Remedial Action Plan (Ref: 0), dated 11 December 2019 prepared by Trace Environmental, must be fully complied with.

(Reason: Compliance)

97. Waste Management Plan

The Waste Management Plan dated 30 September 2021` prepared by EQ Construction, must be fully complied with.
(Reason: Compliance)

98. Demolition Plan

The Demolition Plan dated 30 September 2021` prepared by EQ Construction, must be fully complied with.
(Reason: Compliance)

99. 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)

100. 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)

101. 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)

102. Maintenance of Nature Strip

Where a nature strip and/or footpath is located directly adjacent to the property, the nature strip must be maintained during the construction period to ensure the turf/vegetation is no higher than 75mm in height and the public footpath is kept free of all rubbish, weeds and debris to ensure safe public access.
(Reason: Public amenity and safety)

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

The connection of the site stormwater drainage system to the Council drainage system shall be inspected by Council's Engineer when the pipes are exposed, prior to backfill, and it is possible to confirm that the connection complies with Council's requirements. The inspection must be booked via telephone with Council's Engineer and a minimum of 48hours notice provided. 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)

104. Tree Protection

- (a) Retain and protect the following trees and vegetation throughout the demolition and construction period: All trees not indicated for removal on the approved plans unless exempt under relevant planning instruments or legislation.
- (b) The above trees must be clearly marked and protection devices in place to prevent soil compaction and machinery damage.
- (c) Tree roots greater than 50mm diameter are not to be removed unless approved by a qualified Arborist on site.
- (d) All structures are to bridge roots unless directed by a qualified Arborist on site.
- (e) Tree protection measures must comply with the AS 4970-2009 Protection of trees on development sites with particular reference to Section 4 Tree Protection Measures

(Reason: Tree management)

105. Public Tree Protection

Unless identified by the development consent, no tree roots over 25mm diameter are to be damaged or cut and all structures are to be bridged over such roots.

Should any problems arise with regard to the existing or proposed trees on public land during the construction or bond period, the Project Arborist is to immediately Contact Council's Public Trees section and resolve the matter to Council's satisfaction.

(Reason: Tree management)

106. 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)

107. Protection of Rock and Sites of Significance

- (a) All existing rock outcrops outside and below the approved construction footprint are to be maintained and preserved during the works;
- (b) Should any Aboriginal sites be uncovered during works, works are to cease and the Council, the NSW Office of Environment and Heritage and the Metropolitan Local Aboriginal Land Council are to be contacted.

(Reason: Protection of significant environmental features)

108. Tree Trunk, Branch and Root Protection

- (a) Retain and protect the following trees and vegetation throughout the demolition and construction period: All trees not indicated for removal on the Existing Tree Plan Rev 02 dated 20-09-21 prepared by John Lock and Associates.
- (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 Arboricultural Impact Assessment and Tree Management Plan dated 24 September 2021 prepared by Redgum Horticultural 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 c) 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)

109. 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)

110. Hazardous Materials – Clearance Certificate

Following completion of the removal of any identified hazardous material associated with demolition works, a clearance certificate shall be issued by an appropriately qualified occupational hygienist and submitted to the Certifier. The clearance certificate shall verify that the site is free from any hazardous materials from the demolished buildings.

(Reason: Health and safety)

111. Unexpected Finds Protocol

An unexpected finds contingency plan should be incorporated into the Remedial Action Plan (RAP). 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)

112. 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 and activities 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. Activities could include, but are not limited to, rock-breaking, excavation, earth moving, drilling, and angle grinding, cutting, jack hammering and chiselling of concrete or masonry.
 - (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 and environmental protection)

113. Noise Monitoring Plan

Construction noise shall be controlled to comply with the requirements as set out in the EPA Interim Construction Noise Guideline. Noise levels shall not exceed the rated background level by more than 10dB(A) at the most sensitive receiver during the standard construction hours. A noise monitoring plan shall be implemented during construction. Where noise levels may be exceeded appropriate measures to control excessive noise shall be implemented immediately.

(Reason: Amenity)

114. Loading and Unloading During Construction

The following requirements apply:

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

(Reason: Public safety and amenity)

PRIOR TO OCCUPATION OF THE DEVELOPMENT

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

115. Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained prior to the issue of a Final Occupation Certificate. An application must be made either directly to Sydney Water or through a Sydney Water accredited Water Service Coordinator. For details go to www.sydneywater.com.au/section73 or call 1300 082 746.

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

116. Street Number Display

Prior to the issue of any Occupation Certificate and in perpetuity, the street number, at least 100mm high, shall be clearly displayed.
(Reason: Information)

117. Fencing - 1.8m High Lapped and Capped Fencing

Prior to the issue of a Final Occupation Certificate, a 1.8m high timber lapped and capped fence is to be provided along the side and/or rear boundaries.
(Reason: Amenity)

118. Street Numbering

Prior to the issue of any Occupation Certificate, 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: Ensure compliance with Council's House-Property Numbering Policy)

119. Certification of Gross Floor Area - Post Construction

Prior to the issue of an Occupation Certificate, an Architect, Engineer, Registered Surveyor or Accredited Architectural Draftsperson shall provide certification, for approval by the Principal Certifier, that the gross floor area of all buildings on the site does not exceed 16,871m² in area.
(Reason: Bulk and scale control/compliance)

120. Certification of Natural Landscape Area - Post Construction

Prior to the issue of an Occupation Certificate, an Architect, Engineer, Registered Surveyor or Accredited Architectural Draftsperson shall provide certification, for approval by the Principal Certifier that the natural landscape area provided on site is at least 5,336m² and the deep soil is at least 4,031m².
(Reason: Landscape amenity/compliance)

121. Payment of Monetary Contributions - S7.11 Contribution

Prior to the issue of the **first** Occupation Certificate in respect to any building to which this consent relates (except for the circumstance under condition “Development Contribution” referred in the section ‘PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE’), a monetary contribution is to be paid to Council in accordance with section 7.11 of *Environmental Planning and Assessment Act, 1979* in the amount of **\$2,182,643.42** for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

| | |
|---|-----------------------|
| Active transport and public domain facilities | \$93,084.64 |
| Open space and recreation facilities | \$1,710,794.17 |
| Plan administration | \$32,255.37 |
| Recoupment community facilities | \$329,016.30 |
| Recoupment open space and recreation | \$17,492.94 |
| TOTAL | \$2,182,643.42 |

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:

$$\frac{\$C_O \times CPI_P}{CPI_C}$$

Where:

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

CPI_P = 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_C = 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)

122. State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

Prior to the issue of any Occupation Certificate, a certifying authority must not issue an Occupation Certificate to authorise a person to commence occupation or use of residential apartment development unless the certifying authority has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the residential apartment development achieves the design quality of the development as shown in the plans and specifications in respect of which the construction certificate was issued, having regard to the design quality principles set out in Schedule 1 of *State Environmental Planning Policy No 65—Design Quality of Residential Flat Development*.

(Reason: Compliance)

123. Fire Safety

Prior to the issue of any Occupation Certificate, a final fire safety certificate prepared in accordance with Division 2 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* must be issued by or on behalf of the owner. Copies of both the final fire safety certificate and the fire safety schedule must be (1) supplied to Council, (2) forwarded to the Fire Commissioner and (3) prominently displayed in the building.
(Reason: Compliance)

124. Adaptable Housing

Certification must be provided from a suitably qualified access consultant confirming that 50% of the total number of units in the development have been constructed to satisfy the minimum requirements to classify as Class C AS4299-1995.
(Reason: Compliance)

125. Fire Engineering

A suitably qualified fire engineer must certify that the requirements of the Fire Engineering Brief (Ref 111943-FEB-r2.2 dated 9 December 2021) prepared by SGA have been adequately satisfied.
(Reason: Compliance)

126. BASIX Certificate

Prior to the issue of the relevant Occupation Certificate, a completion certificate is to be submitted to the Certifier demonstrating the manner in which the measures committed to in the latest BASIX Certificate have been satisfied.
(Reason: Environmental sustainability)

127. 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)

128. 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 the Construction Certificate.
(Reason: Safety)

129. Marked Parking Bays

Prior to the issue of any relevant Occupation Certificate, all parking bays and/or truck docks and the direction of traffic movement shall be permanently marked on the pavement surface in accordance with the approved parking and driveway layout to the satisfaction of the Certifier. Where it is proposed that a building or site be used for multiple occupations, all parking bays shall be identified by corresponding consecutive numbers.

(Reason: Ensure compliance)

130. Registration of Plan of Consolidation

Prior to the issue of any Occupation Certificate, all individual allotments involved in the development site shall be consolidated into a single allotment and evidence of the registration of the plan of consolidation to be submitted to Council.

(Reason: Ensure compliance)

131. 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)

132. Visitor Parking Spaces

Prior to the issue of a Whole Occupation Certificate, the 41 visitor car parking spaces shall be physically identified on site, and maintained free of obstruction for the exclusive use of visitors to the premises at all times.

(Reason: Amenity)

133. Identification of Car Parking Spaces

Prior to the issue of any Occupation Certificate, the 177 car parking spaces shall be physically identified on site and maintained free of obstruction. Under no circumstances are these spaces to be used for the storage of goods or waste products.

(Reason: Amenity)

134. Services - Electricity Supply and Telecommunication Mains

Prior to the issue of a Whole Occupation Certificate, all existing and proposed electricity supplies and telecommunication mains and services around the perimeter of the site shall be relocated underground to the satisfaction of the relevant utility provider and Willoughby City Council at the full cost of the applicant.

(Reason: Compliance)

135. Services - Mailboxes

Prior to the issue of any 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 Cl 3.8.

(Reason: Legal)

136. Affordable Housing – Fittings and Finishes

Prior to the issue of any Occupation Certificate, the Certifier must be satisfied that the affordable housing dwellings have the internal fittings and finishes at the same standard as the other dwellings within the development and in accordance with the schedule endorsed by Council.

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

(Reason: Amenity)

137. Affordable Rental Housing SEPP – Infill Housing

No less than 4% of the accountable floor space in accordance with Clause 6.8 (7)(b) Willoughby LEP of the approved development must be dedicated as Affordable Housing within the meaning of *State Environmental Planning Policy (Affordable Rental Housing) (AHSEPP) 2009*. These units are, within Building B: G02, G03, G05, G06, 105, 205, and 304, within Building C: 102 and 205.

(a) The following must be complied with for 10 years from the date of the issue of any occupation certificate for the approved development:

(i) the apartments that comprise of 4% of the gross floor area of the approved development identified to be used for the purposes of affordable housing must be used for the purposes of affordable housing, and

- (ii) all accommodation that is used for affordable housing must be managed by a registered community housing provider, and
- (b) A registered surveyor shall confirm that the apartments identified as Affordable Housing within the meanings of AHSEPP 2009 apartments comprise no less than 4% of the gross floor area of the approved development, and
- (c) A restriction must be registered, before the date of the issue of any occupation certificate for the development, against the title of the property on which development is to be carried out, in accordance with section 88E of the *Conveyancing Act 1919* that will ensure that the requirements of paragraph (a) are met. Upon registration of any strata plan, the restriction must be placed on the title of each strata allotment for which the apartment is nominated as affordable housing in lieu of the restriction applying to the overall development site.

Prior to the issue of any occupation certificate for the approved development, documentary evidence demonstrating compliance with every aspect of this condition of consent, including registration of title restriction and management agreement with a registered community housing provider for the approved affordable housing must be submitted to the Certifier and to Willoughby City Council.

(Reasons: Legislative Requirement & Ensure Compliance)

138. State Survey Marks

Prior to the issue of a Whole Occupation Certificate for each Stage, the Applicant shall reinstate any State/Permanent Survey Marks disturbed by works to the specification of the Land and Property Management Authority, including the following marks:

- PM22119 on Walter Street
- SS36598 on Walter Street
- PM22116 on Walter Street

A copy of the Location Sketch Plan of PM/SSM including reduced level (AHD) shall be submitted by a registered Surveyor. The degree of horizontal and vertical accuracy shall be acceptable to the NSW Land Registry Services.

(Reason: Public amenity)

139. 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 any 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)

140. Stormwater Runoff from Upstream Lots

Prior to the issue of any Occupation Certificate, if necessary to divert upstream flows around the site, provide an interceptor drainage system to capture and convey all stormwater runoff from the upstream neighbouring property to the Council or public drainage system. The drainage system is to comprise suitable inlet pits, grated drains, pipes and channels and is to be designed in accordance with Part C.5 of the Council's WDCP. This drainage system is to be designed for storm events up to and including the 1%AEP storm event.

(Reason: Prevent nuisance flooding)

141. CCTV Report of Council Pipe System After Work

Prior to the issue of an Occupation Certificate for Stage 1 and Stage 2 works, a qualified practitioner, with qualifications/training in accordance with Water Services Association of Australia WSA05-2013 Conduit Inspection Reporting Code of Australia Version 3.1, shall undertake a closed circuit television (CCTV) inspection and then report on the condition of the new stormwater drainage pipes constructed in the road reserve, including along the north side of Walter Street. No person is to enter any Council stormwater conduit without written approval from Council. The camera and its operation shall comply with the following: -

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

The written report, together with a copy of the digital video footage of the pipeline shall be submitted to Council. Any damage that has occurred to the section of the pipeline since the commencement of any works on the site or any works that do not meet Council's requirements shall be repaired in full to the satisfaction of Council at no cost to Council, which may include full reconstruction. A written acknowledgment shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifier.

(Reason: Ensure compliance and protection of public asset)

142. 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. Written confirmation shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifier. 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)

143. 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 an approved OSD and 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 in accordance with the approved detailed stormwater drawings required under this development consent and Council's specification (AUS-SPEC). The system shall include an OSD system for all impervious areas in accordance with the requirements of Technical Standard 1. The drainage system is to ensure that existing sub-catchment drainage

areas are to be maintained and no additional areas diverted away from their existing sub-catchments.

(Reason: Prevent nuisance flooding)

144. Sign for OSD System

Prior to the issue of any Occupation Certificate pertaining to any works requiring an On-Site Detention System, an aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the OSD Tank/s.

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)

145. 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)

146. Certification of OSD

Prior to the issue of an Occupation Certificate for Stage 1 and Stage 2 works, 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)

147. Certification of the Basement Pumpout Drainage System

Prior to the issue of an Occupation Certificate for Stage 1 and Stage 2 and upon completion of the pump-out system, the following shall be submitted to the Certifier.

- (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)

148. Works-As-Executed Plans - OSD

Prior to the issue of an Occupation Certificate for Stage 1 and Stage 2 works and upon completion of the OSD System, the following shall be submitted to the Certifier:

- (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)

149. 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 (OSD) system. The standard wording of the terms of the Positive Covenant and Restriction on the Use of Land are available in Council's Technical Standards.

The above instruments shall be created under Section 88B of the *Conveyancing Act 1919* for newly created lots. For an existing lot, the instruments can be created under Section 88E(3) of the *Conveyancing Act 1919* using Form 13PC and 13RPA respectively. The size and relative location of the OSD system, 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 Certifier and Council prior to issue of any Occupation Certificate.

(Reason: Maintenance requirement)

150. 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 Certifier 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 any variations based on the approved stormwater management plans from a registered surveyor for the as-built OSD system.

(Reason: Public record)

151. Construction of Kerb & Gutter – Stage 1

Prior to the issue of an Occupation Certificate for Stage 1 works, construct new kerb and gutter on both sides of Walter Street in accordance with Council's specification for the full frontage of the development site in Walter Street.

(Reason: Public amenity)

152. Construction of Kerb & Gutter – Stage 2

Prior to the issue of an Occupation Certificate for Stage 2 works, construct new kerb and gutter on both sides of Walter Street in accordance with Council's specification for the full frontage of the development site in Walter Street.

(Reason: Public amenity)

153. Reconstruct Pavement – Stage 1

Prior to the issue of an Occupation Certificate for Stage 1, reconstruct the full width of road pavement in Walter Street for the full frontage of the development site. The width between kerbs shall be as agreed with Council's Traffic Engineers. The works shall be reconstructed in accordance with Council's approved drawings, conditions and specification (AUS-SPEC). Council's standard design traffic for this pavement is 6×10^4 ESA.

(Reason: Ensure compliance)

154. Reconstruct Pavement – Stage 2

Prior to the issue of an Occupation Certificate for Stage 2 works, reconstruct the full width of road pavement in Walter Street for the full frontage of the development site. The width between kerbs shall be as agreed with Council's Traffic Engineers. The works shall be reconstructed in accordance with Council's approved drawings, conditions and specification (AUS-SPEC). Council's standard design traffic for this pavement is 6×10^4 ESA.

(Reason: Ensure compliance)

155. Concrete Footpath – Stage 1

Prior to the issue of an Occupation Certificate for Stage 1, construct:

- (a) A 1.5m wide concrete footpath for the full frontage of the development site in Willoughby Road .
- (b) A 3.0m wide concrete shared path (or narrower width if agreed with Council's Engineers) on the northern side of the street for the full frontage of the development site in Walter Street .
- (c) A 1.5m wide concrete footpath on the southern side of the street for the full frontage of the development site in Walter Street .

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

(Reason: Public amenity)

156. Concrete Footpath

Prior to the issue of an Occupation Certificate for Stage 2, construct:

- (a) A 3.0m wide concrete shared path (or narrower width if agreed with Council's Engineers) on the northern side of Walter Street from the Stage 1 shared

path to the connection point to the future link to the Gore Hill Freeway shared path .

- (b) A 1.8m wide concrete footpath on the northern side of Walter Street from the shared path to the western end of the street .
- (c) A 1.5m wide concrete footpath on the southern side of Walter Street from the Stage 1 path to the connection point to the future link to the Gore Hill Freeway shared path.

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

(Reason: Public amenity)

157. Street Lighting and Furniture

Prior to the issue of an Occupation Certificate for Stage 1 and 2, upgrade the street lighting in Walter Street as required to suit the works constructed. For any new pedestrian refuges, lighting requirements are to be in accordance with the relevant standards.

Reason: Public amenity and safety)

158. Vehicular Crossing

Construct a new vehicular crossing for each stage 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 crossing for Stage 1 is to be 6.6 metres wide with no splays and is to be constructed at right angles to the street kerb in plain concrete. The new crossing shall be located no closer than 1 metre from any power pole and 2 metres from any street tree unless otherwise approved by Council.

The crossing for Stage 2 is to be 7.0 metres wide with no splays and is to be constructed at right angles to the street kerb in plain concrete. The new crossing 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 – As per approved public domain drawings and 150 mm minimum above and parallel to the gutter invert.

The footpath which forms part of the proposed crossing shall have a maximum crossfall of 2.5% towards the kerb.

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

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

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

159. 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. Works in Willoughby Road shall be undertaken in accordance with TfNSW requirements.

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

160. 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 Certifier prior to the issue of any Occupation Certificate. Where TfNSW has provided concurrence for works, evidence will be required to be supplied to Council to confirm that TfNSW has approved the constructed works prior to the issue of any Completion Certificate.
(Reason: Ensure compliance)

161. Performance Bond – Stage 1

Prior to the issue of an Occupation Certificate for Stage 1, the Applicant shall lodge with the Council a performance bond of \$140,000 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)

162. Performance Bond – Stage 2

Prior to the issue of any Occupation Certificate, the Applicant shall lodge with the Council a performance bond of \$90,000 against defective public civil works

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

163. 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)

164. Public Infrastructure Restoration

Prior to the release of the Damage Deposit, any damaged public infrastructure caused as a result of the construction works on the subject site (including damage caused by, but not limited to , delivery vehicles, waste collection, contractors, sub-contractors, concrete delivery vehicles) must be fully repaired in accordance with Council's specification and AUS-SPEC at no cost to Council.
(Reason: Protection of public assets)

165. Vehicle Access and Manoeuvring – Construction & Certification

Prior to the issue of an Occupation Certificate for each stage, the Applicant shall submit, for approval by the Principal Certifier, 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/NZS 2890.1 and AS 890.2 and will not result in scraping to the underside of cars.
- (c) That a maximum gradient of 5% is provided for the first 6 metres from the property's front boundary to the basement. All driveway grades shall comply AS/NZS 2890.1 and AS 2890.2.
- (d) All parking spaces are open type with no partitions.
- (e) Aisle widths and circulation road and ramp widths throughout basements comply with AS/NZS 2890.1.
- (g) That the constructed vehicular path and parking arrangements comply in full with AS/NZS 2890.1, AS 890.2 and AS/NZS 2890.6 in terms of minimum dimensions provided and grades on parking spaces.
- (h) That 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 AS/NZS 2890.1 and Section 2.4 of AS/NZS 2890.6.

- (i) That headroom clearance of minimum 2.5 metres is provided to all parking spaces for people with disabilities for compliance with Section 2.4 of AS/NZS 2890.6.
- (j) That the headroom clearance of minimum 4.1m is provided for the loading area and the path to and from the loading area.
- (k) That shared areas are provided for all disabled / accessible parking spaces in accordance with the requirements of AS/NZS 2890.6, and that a bollard is located in accordance with AS/NZS 2890.6.
- (l) Simultaneous manoeuvring of B99 and B85 at all ramps and ramp ends including clearances for each vehicle as per AS/NZS 2890.1 is achieved.
- (m) Access and manoeuvrability of the largest vehicle accessing the site and simultaneous manoeuvrability of the largest vehicle using the site and a passenger vehicle including clearances in accordance with AS/NZS 2890.1 and AS 2890.2 is achieved.
- (o) That the sight lines to pedestrians required by Clause 3.2.4(b) of AS/NZS2890.1 are provided.
- (p) That bicycle parking, including rails and cages, comply with the requirements of AS 2890.3.
- (q) The access is freely available to the loading bay and visitor parking.

(Reason: Ensure compliance)

166. Stormwater Maintenance Plan

Prior to the issue of an Occupation Certificate for Stage 1 and 2 works, submit to the certifying authority approval a Maintenance Plan for the stormwater management system. The plan is to be in accordance with recommendations of "Guidelines for the Maintenance of Stormwater Treatment Measures" published by Stormwater NSW or other relevant guidelines or publications.

(Reason: Ensure operation of system complies)

167. Certification of Water Quality Improvement System

Prior to the issue of an Occupation Certificate for Stage 1 and Stage 2 works, a suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify that the as built water quality improvement system is in accordance with the approved plans and complies with the requirements of Technical Standard 1.

(Reason: Legal requirement)

168. Public Domain Works – Stage 1

Prior to the issue of any Occupation Certificate for Stage 1, construct the following works in the public domain:

- a) New raised thresholds as detailed on the Section 138 approved drawings
- a) New kerb ramps as detailed on the Section 138 approved drawings
- b) New landscape blisters as detailed on the Section 138 approved drawings
- c) New pedestrian refuges as detailed on the Section 138 approved drawings
- d) Replacement of existing vehicle crossings on the southern side of Walter Street.
- e) Signage and linemarking required to comply with Council, TfNSW and regulatory requirements.
- f) Paths, kerb and gutter and pavement reconstruction as required elsewhere in these conditions.

(Reason: Ensure Compliance)

169. Public Domain Works – Stage 2

Prior to the issue of any Occupation Certificate for Stage 2, construct the following works in the public domain:

- g) New kerb ramps as detailed on the Section 138 approved drawings
- h) New landscape blisters as detailed on the Section 138 approved drawings
- i) Replacement of vehicle crossings on the southern site of Walter Street as detailed on the Section 138 approved drawings.
- j) Signage and linemarking required to comply with Council, TfNSW and regulatory requirements.
- k) Paths, kerb and gutter and pavement reconstruction as required elsewhere in these conditions.

(Reason: Ensure Compliance)

170. Construct Street Stormwater Drainage

Prior to the issue of an Occupation Certificate for Stage 1 and Stage 2, construct a new stormwater drainage system on the northern side of Walter Street in accordance with the approved Section 138 drawings.

(Reason: Stormwater management)

171. Flood Certification

Prior to the issue of an Occupation Certificate for Stage 1 and Stage 2, submit to Council written certification, prepared by a suitably qualified and experienced civil engineer (generally CPEng), that the as-constructed works comply with the recommendations of Calibre's Hydrology and Hydraulic Analysis for the site dated 30 July 2021 and that:

- The as-constructed finished floor levels have 500mm freeboard to the 1%AEP flood level.
- That the access ramp to the basement is at or above the adjacent PMF flood level.

(Reason: Ensure compliance and prevent flood damage)

172. 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)

173. Completion of Landscape Works

Prior to the issue of a Whole Occupation Certificate, any approved landscape works shall be consistent with the approved design, completed to a professional standard, consistent with industry best practice and published standards. Certification of the above is to be provided by a qualified Horticulturalist, Landscape Architect or

Landscape Designer to the Principal Certifying Authority prior to the issue of a final Occupation Certificate
(Reason: Landscape amenity)

174. Weed Removal

All noxious and environmental weeds shall be removed from the property prior to completion of building works. Documentary evidence of compliance with this condition shall be submitted to the Certifier prior to the release of a Whole Occupation Certificate.
(Reason: Environmental protection; landscape amenity)

175. Tree Planting

Prior to the issue of a Whole Occupation Certificate, trees are to be planted and certified by the Project Arborist in accordance with the following table:

| No. Required | Species | Location | Min Pot Size |
|---------------------|---|---|--|
| All trees | As indicated on the approved Landscape Plans prepared by John Lock and Associates | As indicated within the subject site and on adjoining road reserves and lands on the approved Landscape Plans | As indicated on the approved Landscape Plans |

(Reason: Landscape amenity)

176. 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)

177. Contamination/Remediation – Site Validation Report

Prior to the issue of any Occupation Certificate, a Stage 4 – Site Validation Report (SVR) shall be prepared by a suitably qualified contaminated land consultant and shall be in accordance with:

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

The site validation report shall provide a notice of completion of remediation works, whether there are any ongoing site management requirements and a clear statement on the suitability of the likely proposed site use. The report shall be submitted to the Certifier and a copy to Council for its records for review and concurrence after the completion of all remediation works.
(Reason: Environmental protection, public health and safety)

178. 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 prepared by Acoustic Logic, project ID 20210897.1, dated 23.09.2021

(Reason: Amenity, environmental compliance and health)

179. 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)

180. 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)

PRIOR TO THE RELEASE OF LINEN PLANS/SUBDIVISION CERTIFICATE

The following conditions are to be complied with prior to the issue of the Subdivision Certificate and the release of the Linen Plans for registration at the Land Registry Services.

181. Section 73 Compliance Certificate

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained prior to the issue of the subdivision certification. An application must be made either directly to Sydney Water or through a Sydney Water accredited Water Service Coordinator. For details go to www.sydneywater.com.au/section73 or call 1300 082 746.

The Section 73 Certificate must be submitted in conjunction with the application for Subdivision Certificate/Strata Approval.

(Reason: Statutory requirement)

182. 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)

183. 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.
(Reason: Ensure compliance)

184. 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 as required by this DA 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)

185. 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)

186. Positive Covenant – Access to OSD tanks

For all access grates / covers to OSD tanks that are not located in common property and are located in private open space, a positive covenant is to be provided on the Strata and Subdivision Plans to allow access at all times to the access points by the Body Corporate and Council for inspection and maintenance of the OSD tank, including emergency access.

(Reason: Ensure access to tank for maintenance)

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.

187. Retaining Walls and Drainage

If the soil conditions require it:

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

(Reason: Safety)

188. 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)

189. On-site Car Parking

The on-site car parking provision of 218 car parking spaces, 12 motorbike spaces and 32 bike spaces are to be permanently available for the life of the development in the locations shown on the approved plans.

The car parking spaces shall be distributed as follows:

177 residential car spaces (of which 55 are adaptable car spaces)

41 residential visitor car spaces

All spaces must be clearly and visibly marked on site for their intended use as parking for residents, visitors, disabled, office and retail or loading bay.

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

(Reason: Ensure Compliance)

190. Analysis of Outlet Condition

All storage outlet pipes from the OSD tank shall be above the 1% AEP event water level.

(Reason: Maintain designed discharge)

191. Road Closure

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

(Reason: Public protection)

192. Overland Flow

The applicant's attention is drawn to potential overland flow from the upstream catchment. Appropriate measures where required shall be implemented to ensure overland flow does not enter the building and no additional flow is directed onto adjoining property.

(Reason: Protection of building)

193. 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)

194. Access to Visitor Parking and Loading Bay

Access to visitor parking and the loading bay shall be freely available at all times. All loading and unloading of goods shall occur within the site.

(Reason: Ensure access)

195. Road Reserve Planting

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

- (a) The cost of all works being borne by the applicant.
- (b) All service location checks and liability being the responsibility of the applicant.
- (c) Ongoing maintenance and replacement planting other than street trees will not be provided by Council.
- (d) Council retains the right to prune or remove the planting as may be required for road or service maintenance and safety.

(Reason: Management of public assets)

196. Trees on Adjoining Properties

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

(Reason: Environmental protection)

197. 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)

198. Waste Management Collection Policy

The development must operate in full compliance with Council’s Waste Management collection requirements

(Reason: Environmental protection/waste reduction/public health and safety)

199. On-Site Collection Point

The nominated on-site collection point is to be utilised to facilitate the collection of waste and recycling bins for the development. The on-site collection point is to be kept clear of obstructions at all times so not to restrict the collection of waste and recycling bins.

(Reason: Environmental protection/waste reduction/public health and safety)

200. Signage

Adequate signage is to be provided and maintained on how to use the waste management system and what materials are acceptable for recycling within all waste storage areas of the development. Signage is also to be provided and maintained which clearly identifies which bins (and containers) are to be used for general waste and recycling and what materials can be placed in each bin.

(Reason: Environmental protection/waste reduction/public health and safety)

201. Waste Chute Contingency

Where the waste management system incorporates the use of a waste chute system, a contingency plan should be in place for the development to allow for the continual disposal and collection of waste if the chute cannot be operated.

(Reason: Environmental protection/waste reduction/public health and safety)

PREScribed CONDITIONS

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

202. 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)

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

203. 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)

204. 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 Certifier 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)

205. 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 – ALLOTMENT SIZE

Justification under Clause 4.6 of Willoughby Local Environmental Plan 2012 –
Exceptions to Development Standards.

6.10 (h) Minimum Lot Size for Certain Residential Accommodation

| | |
|-------------------|---------------------|
| Lot Size | 7,960m ² |
| Proposed Lot Size | 6,278m ² |
| Lot Size breach | 1,682m ² |

1.0 Introduction

The Willoughby Local Environmental Plan 2012 (WLEP) specifies a minimum lot size for residential accommodation on the subject site under Clause 6.10(g), (h) and (i). The WLEP separates out three sites for the subject site in the following terms:

- (g) 1,640 square metres for land at 29a, 29 and 31 Walter Street, Willoughby, being Lots 100 and 101, DP 857252 and Lot 28, DP 977055,
- (h) 7,960 square metres for land in Willoughby described in the table to this paragraph—

| Column 1 | Column 2 |
|---------------------|---------------------|
| Address | Description |
| 1 Walter Street | Lot 1, DP 1084753 |
| 1A Walter Street | Lot 12, DP 129153 |
| 3 Walter Street | Lot 2, DP 1161181 |
| 5 Walter Street | Lot 3, DP 150607 |
| 7 Walter Street | Lot 2, DP 150607 |
| 9 Walter Street | Lot 1, DP 150607 |
| 11a Walter Street | Lot 1, DP 590018 |
| 11 Walter Street | Lot 2, DP 590018 |
| 13a Walter Street | Lot 361, DP 1032203 |
| 13 Walter Street | Lot 362, DP 1032203 |
| 452 Willoughby Road | Lot 11, DP 129153 |
| 454 Willoughby Road | Lot 1, DP 178528 |
| 456 Willoughby Road | Lot 1, DP 75133 |
| 458 Willoughby Road | Lot 1, DP 81135 |

460 Willoughby Road Lot 1, DP 1161181

462 Willoughby Road Lot 2, DP 586037

(i) 4,969 square metres for land in Willoughby described in the table to this paragraph—

| Column 1 | Column 2 |
|--|--------------------|
| Address | Description |
| 15 Walter Street | Lot 35, DP 1037751 |
| 17 Walter Street | Lot 34, DP 1037751 |
| 19 Walter Street | Lot 33, DP 508777 |
| Remnant strip of reserve between 19 and 21 Walter Street | Lot 1, DP 1239384 |
| 21 Walter Street | Lot 1, DP 166910 |
| 23 Walter Street | Lot 2, DP 166910 |
| 25 Walter Street | Lot 1, DP 168467 |
| 27 Walter Street | Lot 30, DP 977055 |

The WLEP 6.10(g) separates out 29a, 29 and 31 Walter Street, Willoughby as a separate site which does not form part of the subject application and these three properties remain as future development potential.

The WLEP 6.10(h) sets a minimum lot size of 7,960m² for the properties known as 1 – 13 Walter Street and 452 – 462 Willoughby Road. The applicant has acquired 15 of the nominated 16 properties but was unable to acquire 462 Willoughby Road. Consequently, the subject site which forms part of the development application has an area of 6,278m² rather than the required 7,960m² and as a consequence is 1,682m² less than the required minimum lot size or 78.9% of the required lot size.

It is noted that the applicant did try to acquire the site known as 462 Willoughby Road and followed the Land and Environment Court Planning Principle Isolation of site by redevelopment as outlined in *Karavellias v Sutherland Shire Council*[2004] NSWLEC 251 at 17-19. I have reproduced the relevant paragraphs from the Court Planning Principle below:

17 The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- 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?*

*18 The principles to be applied in determining the answer to the first question are set out by Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC 40. The Commissioner said:*

Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.

*19 In the decision *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189, I extended the principles of Brown C to deal with the second question and stated that:*

The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non-compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

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

and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.

Negotiations between the owners of the properties commenced at an early stage prior to the lodgement of the development application consistent with the planning principle.

The Council has been provided with details of the negotiations between the owners of the properties, including offers to the owner of the property and include a recent independent valuation and include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property consistent with the planning principle.

The Council has been provided with details of the negotiations between the owners of the properties, including offers well above the recent independent valuation consistent with the planning principle.

The applicant has provided the Council with details demonstrating that both sites can achieve a development that is consistent with the planning controls. While a variation to the planning controls would be required, for non-compliance with a minimum allotment size, it has been demonstrated that both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity consistent with the planning principle.

The applicant has provided the Council with details demonstrating an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This has been provided in sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts consistent with the planning principle. The applicant has made provision for access to 462 Willoughby Road from the subject site's Walter Street access and through providing a basement connection between the properties to ensure vehicular access is not require from Willoughby Road in accordance with the DCP

and a single vehicular access can be provided for the subject sites (including the isolated site) consistent with the planning principle.



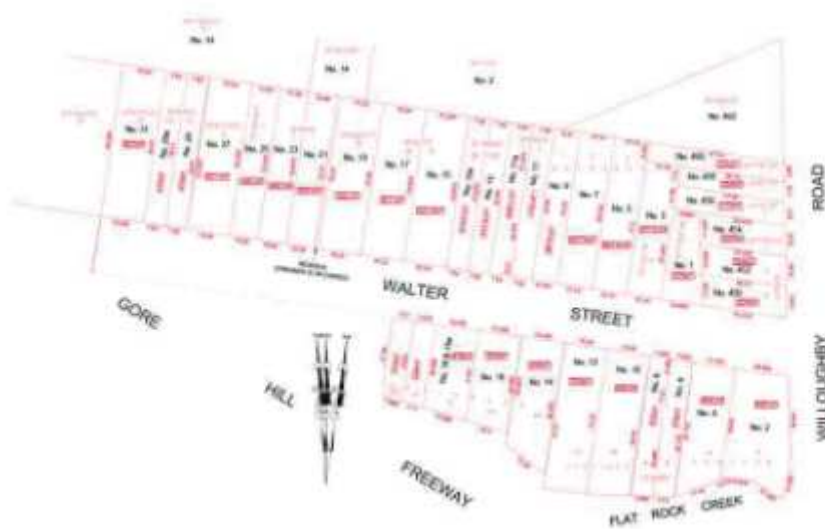
Extract from basement Plan demonstrating future vehicular access for 462 Willoughby Road.

The applicant has provided the Council with details demonstrating that the subject application meets the minimum in the planning controls, so that the development potential of both sites enables reasonable development of the isolated site to occur while maintaining the amenity of both developments consistent with the planning principle.

The WLEP 6.10(i) sets a minimum lot size of 4,969m² for the properties known as 15 – 27 Walter Street. The applicant has acquired all 8 of the nominated properties (including the drainage reserve) and consequently the subject site meets the required lot size under this Clause.

The applicant has consolidated all of the allotments within the proposed development application so that the subject site has an area of 11,247m² and comprises an irregular site that adjoins open space to the west, Walter Street to the south, Willoughby Road to the east and high density residential to the north of the site. The extent of the rezoned land does not include the land on the south

side of Walter Street which is zoned SP2 for a public purpose because of its operational nature.



Survey Extract

Source: Peak Surveying 2016

The site has two (2) street frontages, with the main frontage being to Walter Street comprising approximately 204.7 metres along the southern boundary, and a frontage of 54.7 metres to Willoughby Road along the eastern boundary. The common northern boundary comprises approximately 202.9 metres adjoining high density residential development. The common western boundary is approximately 53.9 metres.

The site is located approximately 2.5km south-east of the Chatswood CBD and within 400m of Willoughby local centre and 1200m from Artarmon local centre and railway station through a network of open spaces on the Artarmon to Middle Harbour Walking Track.

The site is located within a residential precinct bounded by open space to the east and west, high density residential to the north and the Gore Hill Freeway to the south. The area is generally characterised by a mix of low density residential dwellings of varying ages and styles. The immediate area is developed with mixed use low density residential uses and the lands north of the site have approval for high rise high density residential development. The properties on the southern

side of Walter Street as currently low density single dwellings but are zoned SP2 Infrastructure in conjunction with the Gore Hill Freeway.

The site is located approximately 145m from bus stops on Willoughby Road that are served by regular services to the Sydney Central Business District and other centres. The site is within walking distance to the neighbourhood shops at Naremburn to the south and Willoughby Road to the north.

The Channel 9 site at 6-30 Artarmon Road, Willoughby was the subject of a Part 3A Concept Plan Approval that was approved by the Planning Assessment Commission on 23 December 2014. The Concept Plan Approval provides for the residential redevelopment of the site for up to 400 residential dwellings with small-scale non-residential uses to support the new population. A modification to the concept plan was approved by the Independent Planning Commission on 31 January 2019 for 460 dwellings across nine residential flat buildings ranging in height from 4 to 9 storeys.

The site located to the north of the subject site comprises a high density residential development oriented north-south on the site in three rows of buildings. The buildings are set in extensive landscaped gardens and are accessed from Artarmon Road. The buildings are graduated in height decreasing from west to east. These range in height from 9 storeys to 5 and three storeys on the Willoughby Road frontage.

The subject site is located immediately to the north of the Gore Hill Freeway and between two major north-south arterials being Willoughby Road and Hampden Road. This system offers excellent access to the metropolitan road network north and south. These are highly traffic routes which offer little pedestrian amenity and the current local road network and walking track attempts to offer alternative pedestrian and bicycle routes between these corridors.



Walter Street (west end) view east



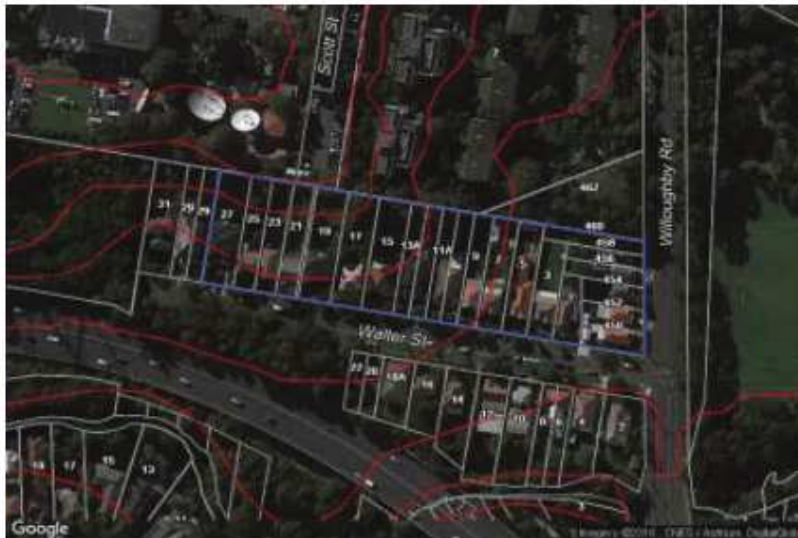
Walter Street (mid-section) view east



Walter Street (mid-section) view east



Site with 5m contour overlay Source: RPData 2021



Site with 5m contour overlay Source: RPData 2021



Site with 5m contour overlay Source: RPData 2021

The site accommodates a number of buildings of various ages and styles which are used as low density dwellings. On-site parking is available on most sites but on-street parking remains in demand. The buildings comprise traditional single and two storey freestanding dwellings.

Clause 4.6 of the Willoughby Local Environmental Plan 2012 (WLEP 2012) enables

Council to grant consent for development even though the development varies a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6 (3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard, namely:

1. that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
3. that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court has given consideration to the matters that must be addressed in relation to whether a variation to development standards should be approved. While these cases originally referred to the former SEPP 1, the principles still remain relevant, more recently, further guidance on the approach to apply to applications to vary development standards under clause 4.6 of the Standard Instrument was provided by the Land and Environment Court. This Clause 4.6 gives consideration to the matters raised in:

- Big Property v Randwick City Council [2021];
- HPG Projects Pty Ltd v Mosman Municipal Council [2021];
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Turland v Wingecarribee Shire Council [2021] NSWLEC 1511;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;
- and
- Moskovich v Waverley Council [2016] NSWLEC 1015.
- Wehbe v Pittwater Council [2007] NSW LEC 827; and
- Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79 at

89;

In accordance with the above requirements, this Clause 4.6 variation request:

2. identifies the development standard to be varied;
3. identifies the variation sought;
4. establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
5. demonstrates there are sufficient environmental planning grounds to justify the contravention;
6. demonstrates that the proposed variation is in the public interest; and
7. provides an assessment of the matters the secretary is required to consider before providing concurrence.

This Clause 4.6 variation request relates to the development standard for Minimum lot sizes for certain residential accommodation under Clause 6.10 of the WLEP and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Mersonn dated September 2021 as well as the supplementary documentation submitted to Council. This Clause 4.6 variation request demonstrates that compliance with the Minimum lot sizes for certain residential accommodation development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variation to the standard.

2.0 Development Standard to be Varied

The development standard that is sought to be varied as part of this application is Clause 6.10 of the WLEP, relating to the Minimum lot sizes for certain residential accommodation. Under the WLEP 2012, the site requires Minimum lot sizes for certain residential accommodation of 7,960m².

3.0 Nature of the Variation Sought

The Minimum lot sizes for certain residential accommodation under the WLEP 2012 for this application is 7,960m². The proposed site has a lot size of 6,278m² where the Minimum lot sizes for certain residential accommodation development standard applicable under the WLEP 2012 is 7,960m² and requires a variation to the Minimum lot sizes for certain residential accommodation development standard through clause 4.6.

The proposed development seeks consent to breach the Minimum lot sizes for certain residential accommodation development standard applicable under the WLEP 2012 by 21.1% or 1,682m²

It is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6. Decisions in respect of Micaul Holdings P/L V Randwick City Council (55% exceedance of height and 20% exceedance of FSR) and Moskovich V Waverley Council (65% exceedance of FSR) support this.

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The five methods outlined in Wehbe include:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
- 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 compliance with the standard is unnecessary and unreasonable (Fourth Method).*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).*

In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a

whole (Initial Action v Woollahra Municipal Council [24] and Turland v Wingecarribee Shire Council [42]).

In this instance part of the upper level of the proposed development exceeds the Minimum lot sizes for certain residential accommodation development standard and therefore require a further variation to that standard.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of Clause 6.10 Minimum lot sizes for certain residential accommodation in WLEP 2012 are:

- (a) to achieve planned residential density in certain zones by—*
 - (i) enabling development sites to be of sufficient size to provide adequate area for drainage, landscaping, and separation between buildings for privacy and solar and vehicular access, and*
 - (ii) reducing the instances of isolated lots being left with reduced development potential, and*
- (b) to increase the efficiency and safety of the road network by minimising the number of driveway crossings.*

- (a) to achieve planned residential density in certain zones by—*
 - (i) enabling development sites to be of sufficient size to provide adequate area for drainage, landscaping, and separation between buildings for privacy and solar and vehicular access, and*

Negotiations between the owners of the properties commenced at an early stage prior to the lodgement of the development application consistent with the planning principle.

The Council has been provided with details of the negotiations between the owners of the properties, including offers to the owner of the property and include a recent independent valuation and include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property consistent with the planning principle.

The Council has been provided with details of the negotiations between the owners of the properties, including offers well above the recent independent valuation consistent with the planning principle.

The applicant has provided the Council with details demonstrating that both sites can achieve a development that is consistent with the planning controls. While a variation to the planning controls would be required, for non-compliance with a minimum allotment size, it has been demonstrated that both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity consistent with the planning principle.

The applicant has provided the Council with details demonstrating an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This has been provided in sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts consistent with the planning principle.

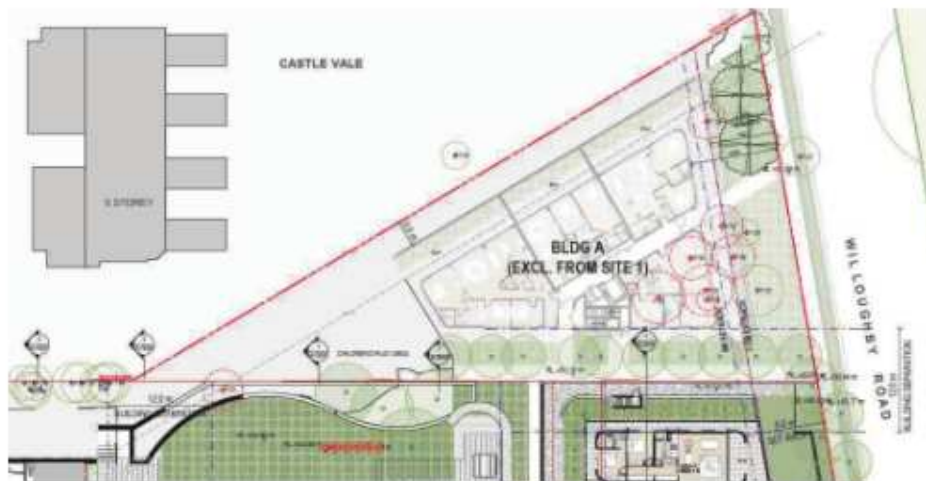
The applicant has provided the Council with details demonstrating that the subject application meets the minimum in the planning controls, so that the development potential of both sites enables reasonable development of the isolated site to occur while maintaining the amenity of both developments consistent with the planning principle.

(ii) reducing the instances of isolated lots being left with reduced development potential, and

The applicant has provided the Council with details demonstrating that both sites can achieve a development that is consistent with the planning controls. While a variation to the planning controls would be required, for non-compliance with a minimum allotment size, it has been demonstrated that both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity consistent with the planning principle. This is demonstrated in the extracted floor plans below.

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Ground Floor extract demonstrating compliance for 462 Willoughby Road



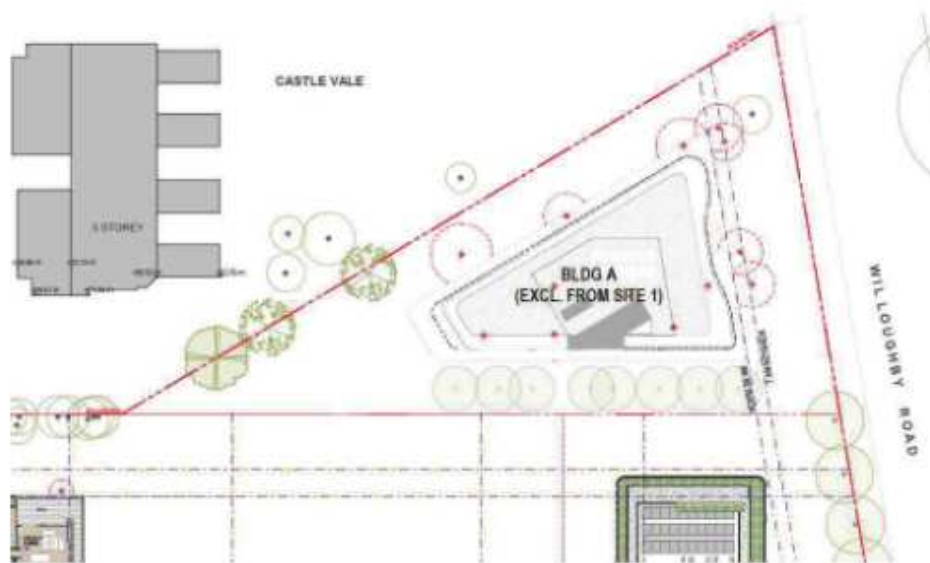
Level 1 extract demonstrating compliance for 462 Willoughby Road



Level 2 extract demonstrating compliance for 462 Willoughby Road



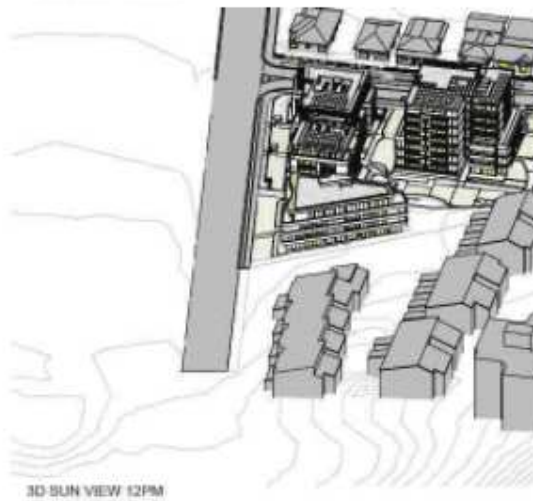
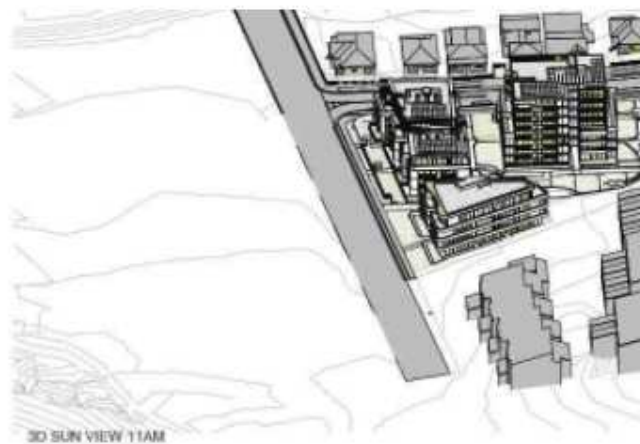
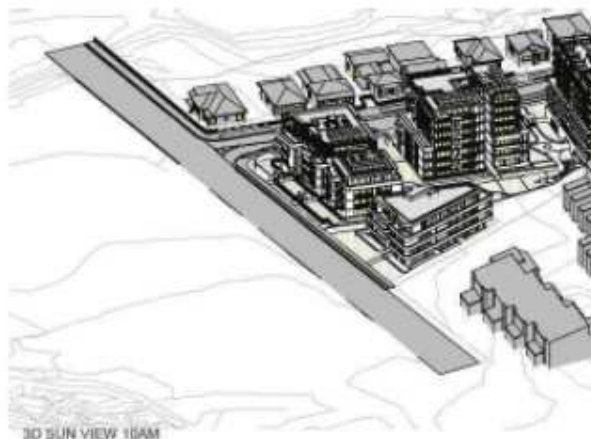
Level 3 extract demonstrating compliance for 462 Willoughby Road



Level 4 extract demonstrating compliance for 462 Willoughby Road

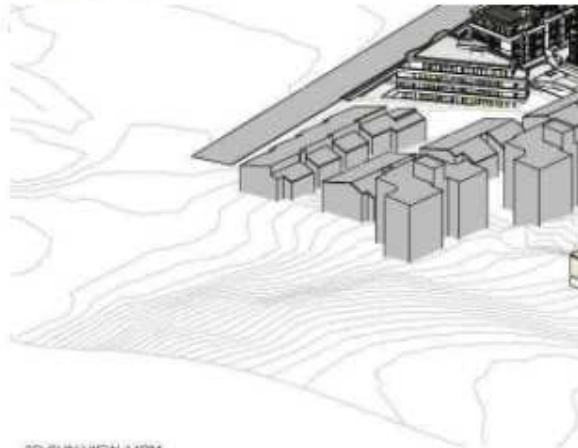
The applicant has provided the Council with details demonstrating an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This has been provided in sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development as demonstrated in the extracts below.



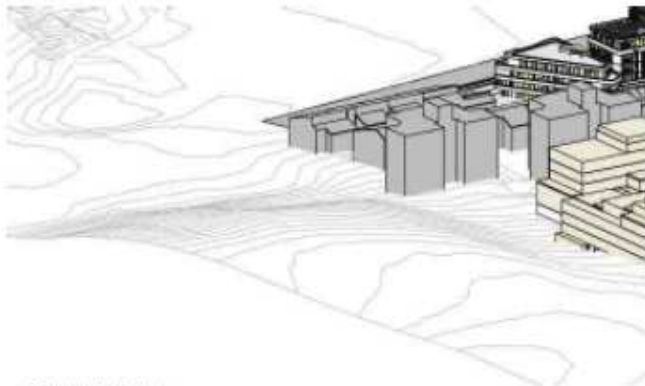




3D SUN VIEW 13PM



3D SUN VIEW 14PM



3D SUN VIEW 15PM

The applicant has provided the Council with details demonstrating that the subject application meets the minimum in the planning controls, so that the development potential of both sites enables reasonable development of the isolated site to occur while maintaining the amenity of both developments consistent with this objective.

(b) to increase the efficiency and safety of the road network by minimising the number of driveway crossings.

The applicant has made provision for access to 462 Willoughby Road from the subject site's Walter Street access and through providing a basement connection between the properties to ensure vehicular access is not require from Willoughby Road in accordance with the DCP and a single vehicular access can be provided for the subject sites (including the isolated site) consistent with the planning principle.



Extract from basement Plan demonstrating future vehicular access for 462 Willoughby Road.

This is considered to increase the efficiency and safety of the road network by minimising the number of driveway crossings and satisfying this objective of Clause 6.10.

It is demonstrated in the plans that the proposal meets the objectives of this clause. The proposal presents as a building consistent with the planning controls and affords the isolated lot consistent development with the objectives of the standard.

The proposal can be seen to not give rise to any significant adverse impact on the isolated neighbouring property and is consistent with the planning controls and is considered to be consistent with the desired character of the locality and the surrounding buildings and public areas will provide an appropriate built form and land use intensity consistent with the objectives of this clause. It is considered that these objectives are met by the proposal.

The SEE details that the proposal is largely consistent with the relevant environmental planning instruments and does not give rise to any adverse environmental impacts in respect to overshadowing, traffic, heritage, wind, reflectivity, stormwater, flooding, noise, waste, economic and social impacts.

It is considered that these objectives are met by the proposal.

5.0 There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the WLEP 2012 requires the departure from the development standard to be justified by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Minimum lot sizes for certain residential accommodation control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site.

The applicable circumstances that relate to the site are discussed below.

The proposal seeks flexibility in the application of the standard where the breach to the Minimum lot sizes for certain residential accommodation control arises from the owner of 462 Willoughby Road not accepting offers well above the recent

independent valuation of the site. However, the applicant has demonstrated that future development on the subject site could accommodate a future building, which is consistent in bulk and scale with the desired future character.

The applicant has provided the Council with details demonstrating that both sites can achieve a development that is consistent with the planning controls. While a variation to the planning controls would be required, for non-compliance with a minimum allotment size, it has been demonstrated that both sites are able to achieve a development of appropriate urban form and with acceptable level of amenity.

The applicant has provided the Council with details demonstrating an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This has been provided in sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for the residential development.

The applicant has provided the Council with details demonstrating that the subject application meets the minimum in the planning controls, so that the development potential of both sites enables reasonable development of the isolated site to occur while maintaining the amenity of both developments consistent with this objective.

This is considered to achieve flexibility consistent with the objectives of this clause.

The proposal provides for a better outcome in making available accommodation within the recently rezoned locality while providing for the opportunity for the isolated site to be redeveloped consistent with the planning controls, which benefits from high amenity and high levels of solar access and outlook. As an alternative a failure to accept the environmental planning grounds articulated above would result in Site 1 not being developed. This is considered to be a better outcome consistent with the objectives of this clause.

A consideration of the application and the submitted shadow diagrams demonstrate that no significant overshadowing, privacy, view or bulk and scale amenity impacts arise from the proposal on the isolated site. It is considered that the proposal is the better planning outcome encouraged by the provisions of Clause 4.6.

In the circumstances where there are sound environmental and site specific sufficient environmental planning grounds reasons for the breach to the Minimum lot sizes for certain residential accommodation control it is considered to justify contravention of the control and consequently the exception to the Minimum lot sizes for certain residential accommodation control standard under Clause 4.6 is considered acceptable.

In this regard, there are sufficient environmental planning grounds to justify contravening the development standard. The proposed reduced Minimum lot sizes for certain residential accommodation sought in this Clause 4.6 better allows the built form on the site to achieve the desired future character of the locality, as expressed under the DCP, as compared to the do nothing scenario.

6.0 It is in the public interest because it is consistent with the objectives of the particular standard and the zone.

6.1 Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the Minimum lot sizes for certain residential accommodation development standard, for the reasons discussed in Section 4.1 of this report.

6.2 Consistency with the Zone R4 *High Density Residential objectives*.

1 Objectives of zone

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- 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.

The proposal provides for the housing needs of the community within a high density residential environment with good amenity and access to service and facilities in accordance with this objective.

The proposal provides a variety of housing types within a high density residential environment in accordance with this objective.

The proposal allows 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 in accordance with this objective.

The proposal encourages 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 and it is noted these aspects have been reviewed by the design excellence panel in accordance with this objective.

The proposal is considered to meet the objectives for development in the zone.

The proposal is considered consistent with the objectives of the standard and for development in this zone as required by this subclause.

7.0 Secretary's Concurrence.

Under Clause 4.6(5) of WLEP 2012, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the WLEP, which must be considered by the Secretary.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation to the Minimum lot sizes for certain residential accommodation standard of WLEP 2012 will not raise any matter in which could be deemed to have State or Regional significance. The extent of variation sought is minor in the context of the Minimum lot sizes for certain residential accommodation.

The public benefit of maintaining the development standard.

Maintaining the development standard would not result in any public benefit in this situation. The proposed buildings and the future building on the isolated site is predominantly unchanged and the proposal responds to the surrounding urban context and the requirements of the Willoughby DCP 2012.

The current built-form provided by the proposed buildings and the future building on the isolated site is generally consistent with the bulk and scale of the surrounding buildings, and requiring compliance with the Minimum lot sizes for certain residential accommodation standard would result in inconsistent building form (being those buildings which are current on site).

The proposed development would allow the proposed buildings and the future building on the isolated site as a whole to better meet the objectives of the DCP by physically responding to the characteristic building form and its context and reinforcing the character of in consideration of the surrounding buildings. The proposed variation to the Minimum lot sizes for certain residential accommodation standard therefore allows the site to better meet the objectives of the DCP and the desired future character of the area. DCPs are guiding documents prepared to express the desired future character; protect the public interest and are prepared through an extensive public exhibition process.

Therefore, to better meet the objectives of the DCP can be said to improve the development's presentation to the public domain and is in the public interest.

Any other matters to be taken into consideration by the Secretary
None.

8.0 Conclusion

The assessment above demonstrates that compliance with the maximum Minimum lot sizes for certain residential accommodation development standard contained in Clause 6.10 WLEP 2012 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded on environmental planning grounds.

It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a superior outcome in planning and design terms. This Clause 4.6 variation demonstrates, notwithstanding the non-compliance with the Minimum lot sizes for certain residential accommodation development standard, that:

- The development as proposed will deliver a superior built-form outcome in consideration of the site's characteristics and its location amongst the surrounding buildings;
- The development as proposed will provide environmental benefits particular to the site through the provision of improved amenity for future occupants of the development and for the surrounding area generally; and
- Compliance with the development standard would be both unreasonable and unnecessary in the instance because the development is able to fully satisfy the objectives of the R4 – High Density Residential Zone and the objectives of the Minimum lot sizes for certain residential accommodation development standard.

The WLEP 2012 applies a Minimum lot sizes for certain residential accommodation development standard for the site. The proposed buildings and the future building on the isolated site while below the Minimum lot sizes for certain residential accommodation development standard allowable under the WLEP 2012 would remain consistent with the planning controls.

This variation therefore seeks consent for the proposed works as consistent with the specific site constraints and the character and form of the surrounding buildings and does not result in an over development of the site or any adverse impacts on the public domain. The proposed reduced lot size is commensurate with surrounding developments and the built form that characterises the locality. It is also consistent with the design approach applied to other buildings within the immediate vicinity.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the Minimum lot sizes for certain residential accommodation development standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the Minimum lot sizes for certain residential accommodation development standard, the proposed development is considered to satisfy the objectives of the development standard and the R4 – High Density Residential Zone.

The proposal will provide environmental benefits particular to the site through the provision of improved amenity for future occupants of the development and for the surrounding area generally. On this basis, the Clause 4.6 variation is considered well founded and should be supported.

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In this instance it is considered appropriate to make an exception to the Minimum lot sizes for certain residential accommodation 6.10 development standard under the provisions of Clause 4.6 for the reasons outlined in the preceding discussion.

A handwritten signature in black ink, appearing to read 'A. Darroch', is centered within a light yellow rectangular box.

Signature:

Name:

Andrew Darroch

Date:

December 2021

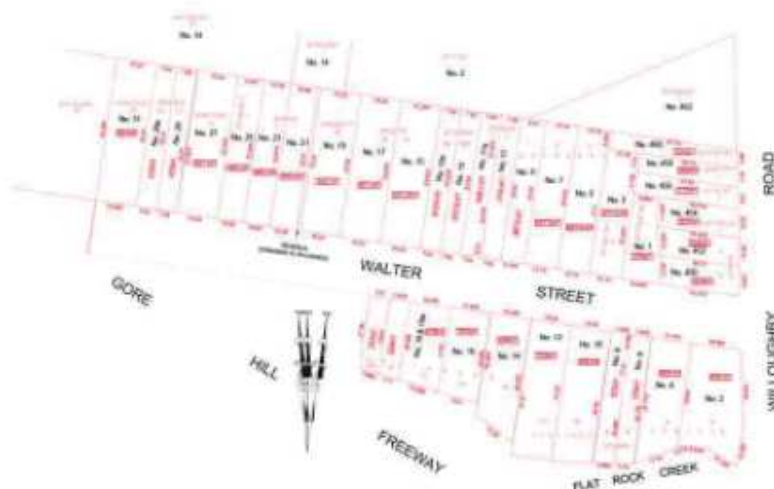
APPENDIX 2: APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT OF BUILDING

Justification under Clause 4.6 of Willoughby Local Environmental Plan 2012 – Exceptions to Development Standards.

| | |
|--------------------------|--------|
| Building B | |
| Building Height | 17m |
| Proposed Building Height | 18.02m |
| Height breach | 1.02m |

1.0 Introduction

The subject site has an area of 11,247m² and comprises an irregular site that adjoins open space to the west, Walter Street to the south, Willoughby Road to the east and high density residential to the north of the site. The extent of the rezoned land does not include the land on the south side of Walter Street which is zoned SP2 for a public purpose because of its operational nature.



Survey Extract

Source: Peak Surveying 2016

The site has two (2) street frontages, with the main frontage being to Walter Street comprising approximately 204.7 metres along the southern boundary, and a frontage of 54.7 metres to Willoughby Road along the eastern boundary. The common northern boundary comprises approximately 202.9 metres adjoining high

density residential development. The common western boundary is approximately 53.9 metres.

The site is located approximately 2.5km south-east of the Chatswood CBD and within 400m of Willoughby local centre and 1200m from Artarmon local centre and railway station through a network of open spaces on the Artarmon to Middle Harbour Walking Track.

The site is located within a residential precinct bounded by open space to the east and west, high density residential to the north and the Gore Hill Freeway to the south. The area is generally characterised by a mix of low density residential dwellings of varying ages and styles. The immediate area is developed with mixed use low density residential uses and the lands north of the site have approval for high rise high density residential development. The properties on the southern side of Walter Street as currently low density single dwellings but are zoned SP2 Infrastructure in conjunction with the Gore Hill Freeway.

The site is located approximately 145m from bus stops on Willoughby Road that are served by regular services to the Sydney Central Business District and other centres. The site is within walking distance to the neighbourhood shops at Naremburn to the south and Willoughby Road to the north.

The Channel 9 site at 6-30 Artarmon Road, Willoughby was the subject of a Part 3A Concept Plan Approval that was approved by the Planning Assessment Commission on 23 December 2014. The Concept Plan Approval provides for the residential redevelopment of the site for up to 400 residential dwellings with small-scale non-residential uses to support the new population. A modification to the concept plan was approved by the Independent Planning Commission on 31 January 2019 for 460 dwellings across nine residential flat buildings ranging in height from 4 to 9 storeys.

The site located to the north of the subject site comprises a high density residential development oriented north-south on the site in three rows of buildings. The buildings are set in extensive landscaped gardens and are accessed from Artarmon Road. The buildings are graduated in height decreasing from west to east. These range in height from 9 storeys to 5 and three storeys on the Willoughby Road frontage.

While the local area is relatively low density residential uses it is characterised by good access to local facilities and public open space. The local context is also

relatively good in terms of pedestrian connectivity and the occurrence of local centres. The local and neighbourhood centres within the Willoughby Local Government Area are located to the north-east and north-west with good retail precincts and community facilities within close proximity to the site.

The subject site is located immediately to the north of the Gore Hill Freeway and between two major north-south arterials being Willoughby Road and Hampden Road. This system offers excellent access to the metropolitan road network north and south. These are highly traffic routes which offer little pedestrian amenity and the current local road network and walking track attempts to offer alternative pedestrian and bicycle routes between these corridors.



Walter Street (west end) view east



Walter Street (mid-section) view east



Walter Street (mid-section) view east

The site accommodates a number of buildings of various ages and styles which are used as low density dwellings. On-site parking is available on most sites but on-

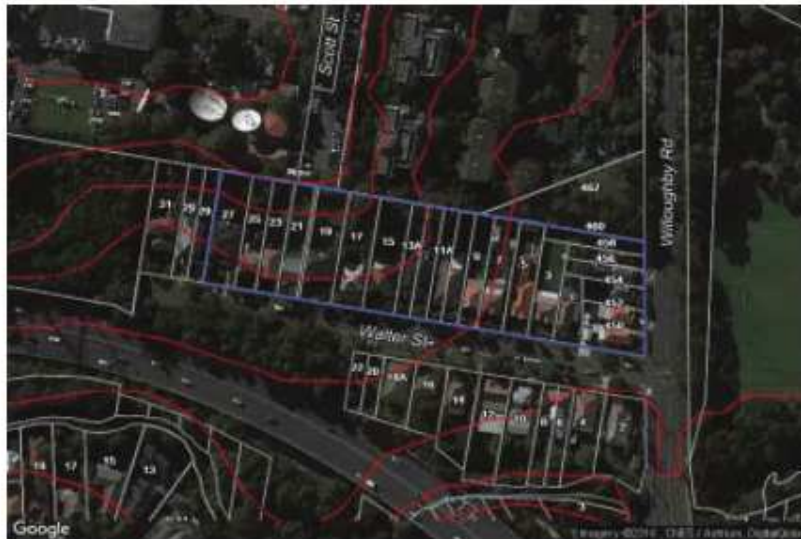
street parking remains in demand. The buildings comprise traditional single and two storey freestanding dwellings.

The land to the immediate south of the site has been significantly modified by its use as the major freeway north of the Sydney CBD. The freeway corridor is located below the level of the subject site within acoustic walls and for the most part screened by significant landscaping and open space.

The site slopes from the highest point in the north-west corner to the south-eastern corner frontage adjoining the intersection of Walter Street and Willoughby Road.



Site with 5m contour overlay Source: RPData 2021



Site with 5m contour overlay Source: RPData 2021



Site with 5m contour overlay Source: RPData 2021

The site accommodates a number of buildings of various ages and styles which are used as low density dwellings. On-site parking is available on most sites but on-street parking remains in demand. The buildings comprise traditional single and two storey freestanding dwellings.

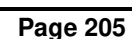
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It is apparent from consideration of the Calibre Hydrology and Hydraulic Analysis report dated 30 July 2021 and the supplementary report dated 2 December 2021 that Building B does not comply with the Height of Buildings Control as a consequence of it being located in a low point on Walter Street and as a result of the catchment modelling requires a 100 year flood level plus 500mm freeboard requiring the ground floor slab to be raised to RL51.27.



Extract from Building B Ground floor plan showing RL51.27 slab and surrounding ground levels varying from RL49.9 – RL51.8. (1.37m)



approximately the same as the pre-development catchments are already heavily developed, therefore, this development will not change the permeability of the catchment.

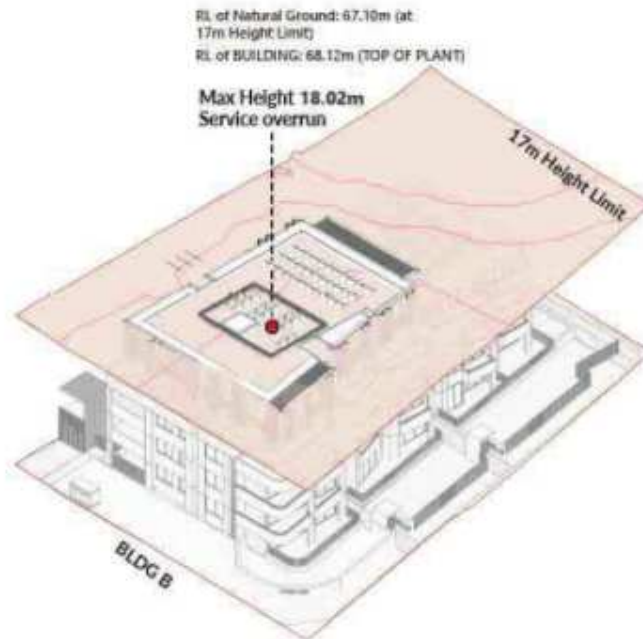
The results presented in the appendix, demonstrate that the site is located immediately to the west of a major flow path running down Willoughby Road to Flat Rock Creek near Willoughby Road. There is an existing trapped low point located at the western end of Walter Street prior to the water discharging under the Gore Hill Freeway to Flat Rock Creek. Due to the slope of Willoughby Road the flow velocities in Willoughby Road approach 2.5-3 metres per second in the 20% AEP event and in larger events exceed 6 metres per second. Even when shallow, flows of this velocity are a major risk to pedestrians and potentially vehicles if the flow depth is great enough. Therefore, we recommend that the proposed Property in Walter street be designed for residents to shelter in place during large storm events Councils Flood Plain Management Technical Standard specify that habitable floor levels within the site be set to the level of the 100-year flood level plus a 500mm freeboard. The water level in Willoughby Road is RL 50.77m AHD, therefore the buildings fronting Willoughby Road need to be raised to RL 51.27. Additionally, the buildings fronting Walter Street will need to be lifted to achieve the 500mm required freeboard.¹

The sections below indicate the extent of the modification to the landform of the subject site to accommodate the Building B on the subject site. It is apparent that the breach to the building height occurs where the proposed Building B extends above the flood planning level.



¹ Calibre Hydrology and Hydraulic Analysis Report 30 July 2021 p7

The 17m height plane blanket included below which has been raised from the site survey to indicate where the breach to the 17m height control occurs on Building B.



17m Height Blanket raised from survey

Clause 4.6 of the Willoughby Local Environmental Plan 2012 (WLEP 2012) enables Council to grant consent for development even though the development varies a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6 (3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard, namely:

1. that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development

standard; and

3. that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court has given consideration to the matters that must be addressed in relation to whether a variation to development standards should be approved. While these cases originally referred to the former SEPP 1, the principles still remain relevant, more recently, further guidance on the approach to apply to applications to vary development standards under clause 4.6 of the Standard Instrument was provided by the Land and Environment Court. This Clause 4.6 gives consideration to the matters raised in:

- Big Property v Randwick City Council [2021];
- HPG Projects Pty Ltd v Mosman Municipal Council [2021];
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Turland v Wingecarribee Shire Council [2021] NSWLEC 1511;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;
- and
- Moskovich v Waverley Council [2016] NSWLEC 1015.
- Wehbe v Pittwater Council [2007] NSW LEC 827; and
- Winten Property Group Ltd v North Sydney Council [2001] 130 LGERA 79 at 89;

In accordance with the above requirements, this Clause 4.6 variation request:

2. identifies the development standard to be varied;
3. identifies the variation sought;
4. establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
5. demonstrates there are sufficient environmental planning grounds to justify the contravention;
6. demonstrates that the proposed variation is in the public interest; and
7. provides an assessment of the matters the secretary is required to consider before providing concurrence.

This Clause 4.6 variation request relates to the development standard for Height of Buildings under Clause 4.3 of the WLEP and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Mersonn dated September 2021 as well as the supplementary documentation submitted to Council. This Clause 4.6 variation request demonstrates that compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variation to the standard.

2.0 Development Standard to be Varied

The development standard that is sought to be varied as part of this application is Clause 4.3 of the WLEP, relating to the Height of Buildings. Under the WLEP 2012, the site is afforded Height of Buildings for Building B of 17m.

3.0 Nature of the Variation Sought

The maximum Height of Buildings on the site for Building B under the WLEP 2012 for this application is 17m. The proposed building on the site has a height of 18.02m and is in excess of the maximum Height of Buildings development standard applicable under the WLEP 2012 and requires a variation to the maximum Height of Buildings development standard through clause 4.6.

The proposed development seeks consent to exceed the Height of Buildings development standard applicable under the WLEP 2012 by 5.7%.

It is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6. Decisions in respect of *Micaul Holdings P/L V Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) and *Moskovich V Waverley Council* (65% exceedance of FSR) support this.

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The five methods outlined in *Wehbe* include:

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- 2. The underlying objective or purpose of the standard is not relevant to the*

development and therefore compliance is unnecessary (Second Method).

3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).

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 compliance with the standard is unnecessary and unreasonable (Fourth Method).

5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).

In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

In this instance part of the upper level of the proposed development exceeds the Height of Building development standard and therefore require a further variation to that standard.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of Clause 4.3 Height of Buildings in WLEP 2012 are:

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

The subject site of Building B is set at a significantly lower level where the topography dips towards Willoughby Road in a localised zone as illustrated in the section below. It is noted that the topography rises at Walter Street and towards the rear (north) of the property.



It is noted that the breaches to the building height control only occur in limited locations at the east and centre of the site and that the proposal remains within the building height control for the majority of the building with no significant impacts

and that that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape.

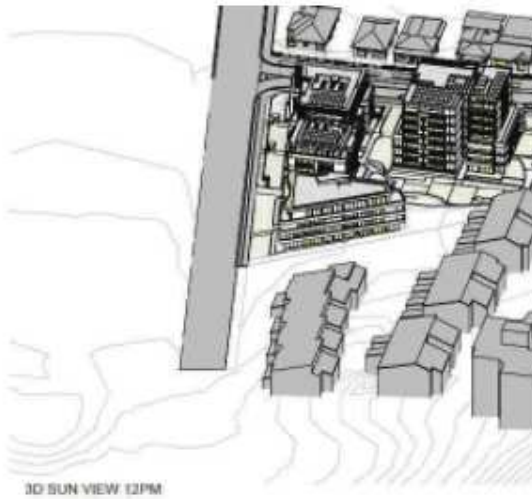
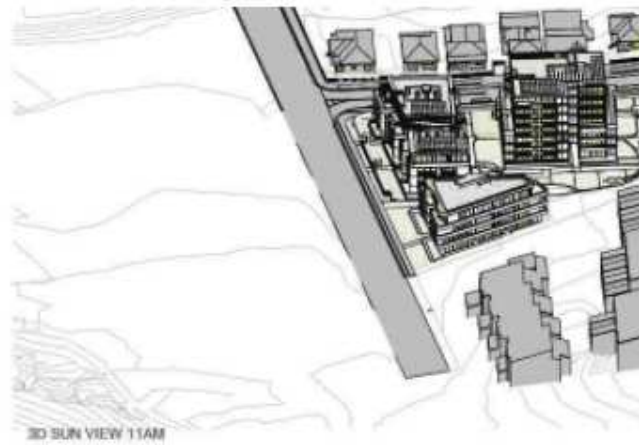
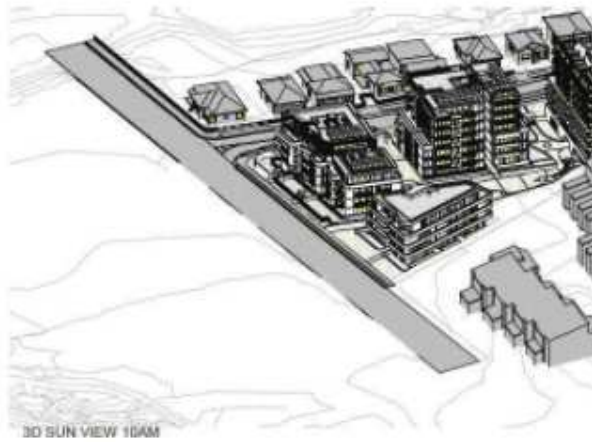
(b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

It is noted that the breaches to the building height control only occur in limited locations at the east and centre of the site and that the proposal remains within the building height control for the majority of the building with no significant impacts on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion as is illustrated by the extracts of the views from the sun below.



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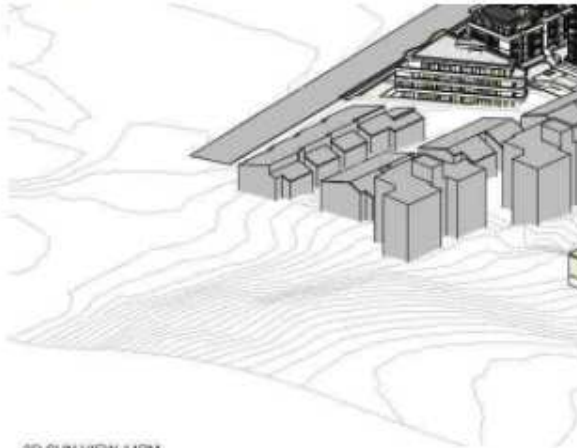


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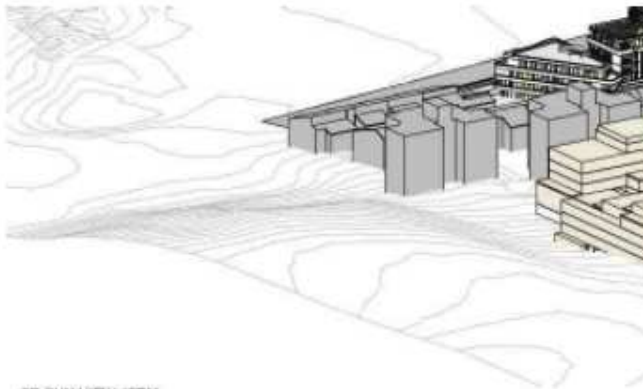
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3D SUN VIEW 13PM



3D SUN VIEW 14PM



3D SUN VIEW 15PM

These extracts demonstrate the limited impacts upon the on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion consistent with this objective.

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

The proposal encourages 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 and it is noted these aspects have been reviewed by the design excellence panel in accordance with this objective.

(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,

It is noted that the breaches to the building height control only occur in limited locations at the east and centre of the site and that the proposal remains within the building height control for the majority of the building with no significant impacts on adjacent development or public open spaces minimising disruption of views and achieving reasonable view sharing consistent with this objective.

(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,

It is noted that the proposed development is consistent with the floor space ratio and landscaping controls and the breach to the building height control only arises from the need to achieve the 100 year flood level with a 500mm threshold and even with this the majority of the building complies with the building height control consistent with this objective.

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

It is noted that the proposed development is consistent with the desired future character of the locality (in that it has recently been rezoned and is in transition)

and the breach to the building height control only arises from the need to achieve the 100 year flood level with a 500mm threshold and even with this the majority of the building complies with the building height control consistent 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 retail shopping core of Chatswood,

This objective is not applicable to the subject site.

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

This objective is not applicable to the subject site.

It is demonstrated in the plans that the proposal minimises any overshadowing, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposal presents as a building predominantly within the maximum height of buildings as it presents to the street and steps down the site. It is noted that only one building breaches the height control and the breach is only partial in that most of Building B remains compliant.

Shadow diagrams are provided with the application demonstrating that solar access requirements are achieved. It is apparent from the views from the sun prepared above that the surrounding properties retain compliant solar access compliant with the controls.

The proposal can be seen to not give rise to any significant adverse impact on the views of the neighbouring properties and is consistent with the view sharing principles for both public and private views.

The height of the proposal is considered to be consistent with the desired character of the locality and the surrounding buildings and public areas will continue to receive satisfactory exposure to views. The proposal provides an appropriate built form and land use intensity consistent with the objectives of this clause. It is considered that these objectives are met by the proposal.

The height of the proposal is considered to be consistent with and appropriate to the condition of the site and its context. The desired character of the locality and

the surrounding buildings and public areas will continue to receive satisfactory exposure to sky and sunlight. The proposal provides an appropriate height, roof form and will produce a cohesive streetscape consistent with the objectives of this clause.

The SEE details that the proposal is largely consistent with the relevant environmental planning instruments and does not give rise to any adverse environmental impacts in respect to overshadowing, traffic, heritage, wind, reflectivity, stormwater, flooding, noise, waste, economic and social impacts.

It is considered that these objectives are met by the proposal.

5.0 There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the WLEP 2012 requires the departure from the development standard to be justified by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard.

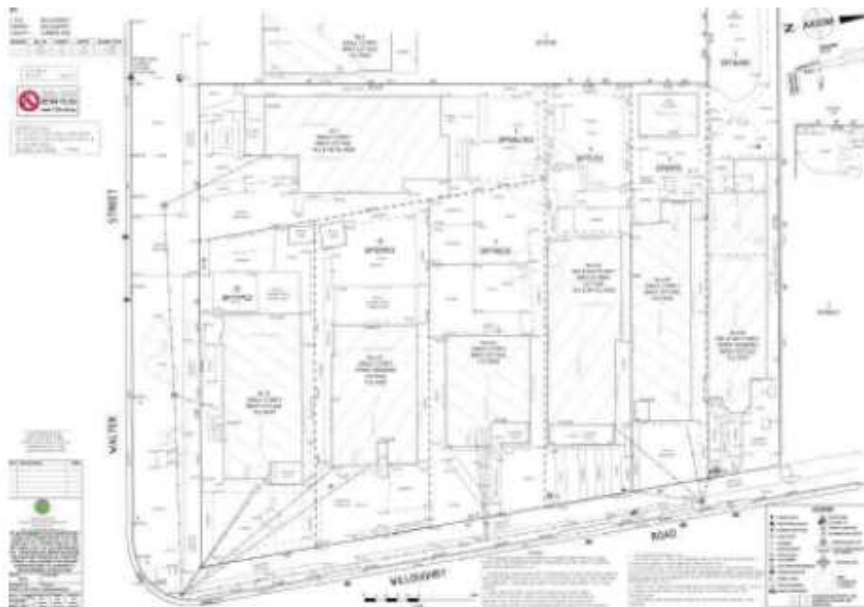
There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of Buildings control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site.

The applicable circumstances that relate to the site are discussed below.

It is apparent from consideration of the Calibre Hydrology and Hydraulic Analysis report dated 30 July 2021 and the supplementary report dated 2 December 2021 that Building B does not comply with the Height of Buildings Control as a consequence of it being located in a low point on Walter Street and as a result of the catchment modelling requires a 100 year flood level plus 500mm freeboard requiring the ground floor slab to be raised to RL51.27.



Extract from Building B Ground floor plan showing RL51.27 slab and surrounding ground levels varying from RL49.9 – RL51.8, (1.37m)



Extract Axiom Survey 2016 showing surrounding ground levels varying from RL49.9 – RL51.8, (1.37m).

The sections below indicate the extent of the modification to the landform of the subject site to accommodate the Building B on the subject site. It is apparent that the breach to the building height occurs where the proposed Building B extends above the flood planning level.



The proposal seeks flexibility in the application of the standard where the breach to the height control arises from the modification to the existing landform to accommodate the existing building, which is consistent in bulk and scale with the desired future character. A compliant building would unnecessarily reduce the roof form of the whole of the building in order to achieve the height control. This is considered to achieve flexibility consistent with the objectives of this clause.

The solution to provide a roof form consistent with the existing surrounding buildings provides a better planning outcome for both the occupants and the neighbours and retains an acceptable level of solar access and view sharing for the neighbouring buildings.

The proposal provides for a better outcome in making available accommodation within the building, which benefits from high amenity and high levels of solar access and outlook. This is considered to be a better outcome consistent with the objectives of this clause.

A consideration of the application and the submitted shadow diagrams demonstrate that no significant overshadowing, privacy, view or bulk and scale amenity impacts arise from the proposal. It is considered that the proposal is the better planning outcome encouraged by the provisions of Clause 4.6.

The proposed works above the height have no significant view impact and cause no significant overshadowing, nor bulk or scale impacts to the existing surrounding dwellings.

In the circumstances where there are sound environmental and site specific sufficient environmental planning grounds reasons for the breach to the height control it is considered to justify contravention of the control and consequently the exception to the height control standard under Clause 4.6 is considered acceptable.

In this regard, there are sufficient environmental planning grounds to justify contravening the development standard. The proposed additional height sought in this Clause 4.6 better allows the built form on the site to achieve the desired future character of the locality, as expressed under the DCP, as compared to the do nothing scenario.

6.0 It is in the public interest because it is consistent with the objectives of the particular standard and the zone.

6.1 Consistency with the objectives of the development standard.

The proposed development is consistent with the objectives of the FSR development standard, for the reasons discussed in Section 4.1 of this report.

6.2 Consistency with the Zone R4 *High Density Residential objectives*.

1 Objectives of zone

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *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.*

The proposal provides for the housing needs of the community within a high density residential environment with good amenity and access to service and facilities in accordance with this objective.

The proposal provides a variety of housing types within a high density residential environment in accordance with this objective.

The proposal allows 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 in accordance with this objective.

The proposal encourages 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 and it is noted these aspects have been reviewed by the design excellence panel in accordance with this objective.

The proposal is considered to meet the objectives for development in the zone.

The proposal is considered consistent with the objectives of the standard and for development in this zone as required by this subclause.

7.0 Secretary's Concurrence.

Under Clause 4.6(5) of WLEP 2012, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the WLEP, which must be considered by the Secretary.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation to the Height of Buildings standard of WLEP 2012 will not raise any matter in which could be deemed to have State or Regional significance. The extent of variation sought is minor in the context of the building heights.

The public benefit of maintaining the development standard.

Maintaining the development standard would not result in any public benefit in this situation. As detailed within the SEE, the height and bulk of the existing building is predominantly unchanged and the proposal responds to the surrounding urban context and the requirements of the Willoughby DCP 2012.

The current built-form provided by the existing building is generally consistent with the bulk and scale of the surrounding buildings, and requiring compliance with the Height of Buildings standard would result in an inconsistent building form.

The proposed development would allow the building as a whole to better meet the objectives of the DCP by physically responding to the characteristic building form and its context and reinforcing the character of the surrounding buildings. The proposed variation to the Height of Buildings standard therefore allows the site to better meet the objectives of the DCP and the desired future character of the area. DCPs are guiding documents prepared to express the desired future character; protect the public interest and are prepared through an extensive public exhibition process.

Therefore, to better meet the objectives of the DCP can be said to improve the development's presentation to the public domain and is in the public interest.

Any other matters to be taken into consideration by the Secretary
None.

8.0 Conclusion

The assessment above demonstrates that compliance with the maximum Height of Buildings development standard contained in Clause 4.3 of WLEP 2012 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded on environmental planning grounds.

It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a superior outcome in planning and design terms. This Clause 4.6 variation demonstrates, notwithstanding the non-compliance with the maximum building height development standard, that:

- The development as proposed will deliver a superior built-form outcome in consideration of the site's characteristics and its location amongst the

surrounding buildings;

- The development as proposed will provide environmental benefits particular to the site through the provision of improved amenity for future occupants of the development and for the surrounding area generally; and
- Compliance with the development standard would be both unreasonable and unnecessary in the instance because the development is able to fully satisfy the objectives of the R4 – High Density Residential Zone and the objectives of the Height of Buildings development standard.

The WLEP 2012 applies a maximum Height of Buildings development standard for the site of 17m. The proposed development has a building height of 18.02m and is therefore in excess of the maximum Height of Buildings development standard allowable under the WLEP 2012.

This variation therefore seeks consent for the proposed works as consistent with the specific site constraints and the character and form of the surrounding buildings and does not result in an over development of the site or any adverse impacts on the public domain. The proposed additional height is commensurate with surrounding developments and the built form that characterises the locality. It is also consistent with the design approach applied to other buildings within the immediate vicinity.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the Height of Buildings development standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the Height of Buildings development standard, the proposed development is considered to satisfy the objectives of the development standard and the R4 – High Density Residential Zone.

The proposal will provide environmental benefits particular to the site through the provision of improved amenity for future occupants of the development and for the surrounding area generally. On this basis, the Clause 4.6 variation is considered well founded and should be supported.

In this instance it is considered appropriate to make an exception to the Height of Buildings 4.3 development standard under the provisions of Clause 4.6 for the reasons outlined in the preceding discussion.

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A handwritten signature in black ink, appearing to be 'A. Darroch', on a light yellow rectangular background.

Signature:

Name:

Andrew Darroch

Date:

December 2021