

DA NO: DA-2022/34

ADDRESS: 90-96 EASTERN VALLEY WAY, WILLOUGHBY NSW 2068

PROPOSAL: DEMOLITION OF STRUCTURES AT 90-96 EASTERN VALLEY WAY, WILLOUGHBY AND CONSTRUCTION OF 14 TOWNHOUSES AND ONE AFFORDABLE HOUSING UNIT, BASEMENT CAR PARKING, LANDSCAPING AND ASSOCIATED WORKS.

RECOMMENDATION: APPROVAL

ATTACHMENTS:

1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS, DEVELOPER CONTRIBUTION & REFERRALS
3. SUBMISSIONS TABLE
4. APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT
5. OFFICER'S CLAUSE 4.6 ASSESSMENT – HEIGHT
6. SECTION 4.15 (79C) ASSESSMENT
7. SCHEDULE OF CONDITIONS
8. NOTIFICATION MAP

RESPONSIBLE OFFICER: RITU SHANKAR - TEAM LEADER

AUTHOR: ANTHONY BLUE - CONSULTANT PLANNER

REPORT DATE: 30 JULY 2024

MEETING DATE FOR PUBLIC MEETING 13 AUGUST 2024

1. PURPOSE OF REPORT

The purpose of this report is to seek determination by Willoughby Local Planning Panel (WLPP) of Development Application DA-2022/34 for demolition of structures at 90-96 Eastern Valley Way, Wolloughby and construction of 14 townhouses and one affordable housing unit, basement car parking, landscaping and associated works.

The application is required to be referred to the WLPP for determination as Contentious Development because 10 or more unique submissions were received during the exhibition periods.

2. OFFICER'S RECOMMENDATION

THAT the Willoughby Local Planning Panel:

2.1 Allow the development to contravene the development standard in *Willoughby Local Environmental Plan 2012* Clause 4.3 Height of buildings, as allowed under clause 4.6 (refer to assessment in Attachment 5) for the following reasons:

2.1.1 The applicant's written request has demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard, and

2.1.2 The proposal is consistent with the objectives of the development standard for height of buildings and the objectives of the zone, and therefore it is reasonable to conclude it is in the public interest to allow the development.

2.2 Grant Deferred Development Commencement Consent to Development Application DA-2022/34 for demolition of structures at 90-96 Eastern Valley Way, Willoughby and construction of 14 townhouses and one affordable housing unit, basement car parking, landscaping and associated works 90-96 Eastern Valley Way, Willoughby, subject to conditions contained in Attachment 7, for the following reasons:

2.2.1 The proposed development does not conflict with the desired outcomes and objectives of the development standards contained in the *Willoughby Local Environmental Plan 2012 (WLEP)*.

2.2.2 The proposal is consistent with the objectives contained in *WDCP 2006* and *WDCP 2023*, and the numerical non-compliances are considered minor and adequately justified in respect to the relevant performance criteria.

2.2.3 The issue of site isolation has been addressed in accordance with the LEC Planning Principle.

2.2.4 The provision of an affordable housing dwelling within the development is a desirable planning outcome.

2.2.5 The development has been amended in response to submissions and issues identified since the initial notification of the application, and it is considered that the issues have been adequately addressed.

3. BACKGROUND

A description of the site and surrounding area, including an aerial photograph is contained in **Attachment 1**.

The application was lodged on 24 January 2022.

The application was first notified from 11 February to 10 March 2022. Ten submissions were received during the notification period. Two more submissions were received in August 2022.

On 2 March 2022, the TfNSW provided concurrence under section 138 of the Roads Act 1993, subject to conditions.

On 15 March 2022, an initial request for additional information was sent to the applicant in respect to engineering design issues of stormwater management design, easement for drainage details, and access and parking design details.

On 26 April 2022, a further request for additional information was sent to the applicant in respect to planning matters of:

- a. Site isolation – No 88 Eastern Valley Way,
- b. Affordable Housing requirements under *Willoughby LEP 2012*,
- c. Gross floor area and floor space ratio calculation,
- d. Building height,

- e. Building density and site coverage,
- f. Setbacks,
- g. Private open space,
- h. Recreational open space,
- i. Privacy,
- j. Adaptable housing, and
- k. Motorcycle parking.

On 16 May 2022, the applicant provided a response to the first request for additional information, including amended plans, to address the engineering issues raised.

Consideration of Site Isolation

The development will effectively isolate No.88 Eastern Valley Way as a development site because there is an existing consent for townhouse development over 82 to 86 Eastern Valley Way. Under clause 6.10 of *Willoughby LEP 2012*, a minimum lot size of 1,100m² is required for multi dwelling housing and residential flat buildings with in the R3 Zone. No. 88 Eastern Valley Way has an area of 563m², meaning that the site is unable to be developed in isolation (subject to possible consideration of a clause 4.6 written request).

The LEC has adopted Planning Principles for the consideration of Site Isolation (*Karavellas v Sutherland Shire Council [2004] NSWLEC 251*). The principles are:

1. Firstly, is amalgamation of the sites feasible?
2. Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

Assessment consistent with the Planning Principles is provided below:

Is amalgamation Feasible?

“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.”

History of Negotiations

On 31 May 2022 (based on advice gathered from the applicant and the owner of 88 Eastern Valley Way), the applicant met with the owner of 88 Eastern Valley Way. The owner advised that the asking price for the property was \$4.8M.

On 21 June 2022, the applicant advised the owner that valuation of the property had been obtained as between \$3M (CBA) and \$3.12M (ANZ). The applicant advised that they were willing to offer a 10% premium to the higher valuation, meaning an offer of \$3,420,000.

On 28 June 2022, the owner emailed the applicant that the valuations provided were not considered to be reflective of the true value of the property and requested a face to face meeting to discuss the further negotiations.

On 20 July 2022, the applicant emailed the owner advising that the previous offer of \$3,420,000 was no longer valid due to the securing of a detailed valuation report that provided a valuation of \$2.6M (Heron Todd White, 5 July 2022), a drop in property sales due to interest rate rises, and increased development costs. A revised offer of \$3.1M was provided.

On 5 August 2022, the owner emailed the applicant with a counter offer of \$4.45M.

On 12 August 2022, the applicant advised the owner that they did not accept the counter offer as it was considered to be much higher than market value and closed the negotiations.

On 15 August 2022, the applicant advised Council of the above negotiations, and sought to confirm that the requirements of the Planning Principle had been satisfied.

On 23 August 2022, Council officer emailed the owner of 88 Eastern Valley Way, advising that the applicant had provided evidence of the above negotiations and indicated that it appeared a reasonable offer of \$3.1M had been made and declined.

On 5 September 2022, the owner advised that an independent valuation report had been commissioned and sought time for that to be completed and considered by Council.

On 12 September 2022, the owner submitted a valuation report (Meadow Real Estate, 5 September 2022) assigning a valuation \$3,350,000.

On 12 September 2022, Council provided to the applicant, a copy of the owner's valuation, noting that it was significantly higher than their valuation.

On 12 November 2022, the applicant provided documentation demonstrating that an offer had been made to the owner to purchase the property for \$3,350,000, and confirming that the offer had been rejected.

On 8 February 2023, the applicant provided documentation demonstrating that an offer of \$3,360,000 had been rejected by the owner.

On 22 March 2023, the applicant provided documentation demonstrating that an offer of \$3,485,000 had been rejected by the owner. This offer represented the valuation price provided by the owner of \$3,350,000, plus \$135,000 to cover reasonable expenses associated with the owner purchasing a replacement property, such as stamp duty, legal fees and relocation costs.

Based on the documentation and information provided, it is concluded that a reasonable offer had been made for the property and the offer has been rejected.

Can orderly and economic use and development of the separate sites be achieved

“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.”

Concept Development of Isolated Site

On 2 February 2023, the applicant provided a concept layout for development of the isolated site, as shown in Figures 1 and 2. The plans included sufficient detail to indicate a townhouse development is possible on the site, with compliant setbacks and landscaped areas. The achievable FSR may fall short of the maximum permissible, but the development would be reasonably consistent with the development form for the zone.

Based on these concepts, it is considered that there will be reasonable opportunity for the isolated site to be developed, noting that any application will need to justify a departure from the minimum lot size control of clause 6.10 of *WLEP 2012*.

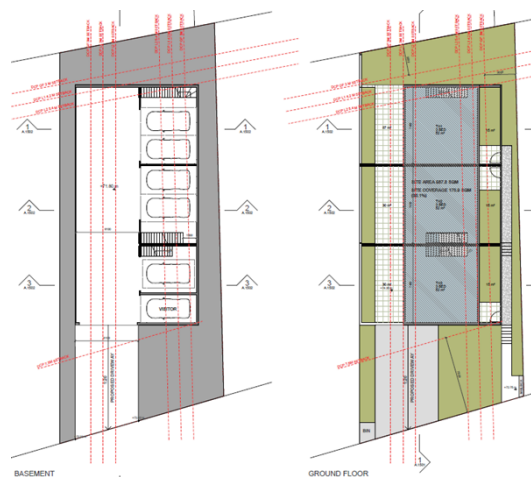


Figure 1 Concept Development - 88 Eastern Valley Way Basement and Ground Floor

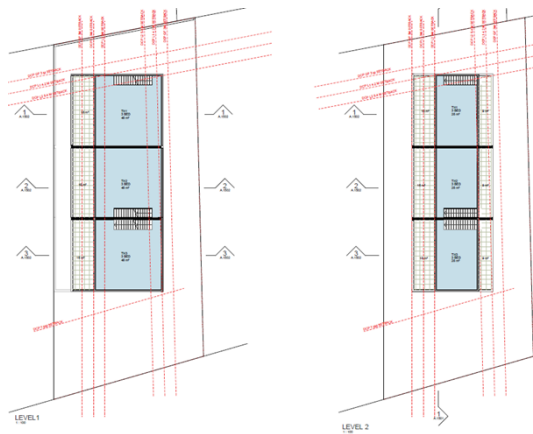


Figure 2 Concept Development - 88 Eastern Valley Way Levels 1 and 2

The issue of site isolation has been addressed and not likely to raise any concerns that will prevent the grant of approval.

History Following Resolution of Site Isolation Issue

On 30 May 2023, the applicant advised that a new architect had been engaged to progress the application.

On 2 June 2023, a meeting was held with the new architect to discuss the issues raised in the initial request for additional information from 22 April 2022.

On 30 June 2023, *WLEP 2012* (Amendment No. 34) came into effect. Notionally, *WDCP 2023* commenced, but subsequently endorsed correctly on 3 October 2023.

From June to August 2023, concept sketches of a revised scheme were discussed with the applicant.

On 14 August 2023, the applicant's planning consultant sought advice in respect to the status of *WDCP 2023*, and how it affects the current application. At that time, Council was waiting on legal advice regarding the absence of transitional provisions in *WDCP 2023*. In the interim, the applicant was advised to consider the *WDCP 2023* provisions particularly regarding changed parking rates and waste collection arrangements.

On 15 August 2023, the applicant submitted amended plans, that addressed the matters raised in Council's letter of 26 April 2022, including:

1. The provision of a small affordable housing dwelling within the development.
2. A reduction in FSR and a detailed calculation of GFA consistent with relevant case law.
3. A reduction in the building height, including a revised clause 4.6 written request.
4. A reduction in site cover.
5. An increase recreational open space.
6. An improved consideration of privacy.
7. Provision of 5 adaptable units, and
8. Provision of motorcycle parking.

The application was renotified from 18 September to 10 October 2023. Four submissions were received.

On 20 September 2023, the applicant was advised by email of issues arising from the amended plans:

1. *WDCP 2023* is to be addressed in a revised SEE.

2. Supplementary information in respect to waste collection arrangements based on *WDCP 2023*.
3. More stringent test is to be applied to height variations, and the design of TH04 is to be reconsidered to achieve a compliant height.
4. Engineering issues in respect to:
 - a. Details and assessment of the diversion of an existing Council stormwater system,
 - b. Stormwater management design and OSD details,
 - c. Car swept path analysis and longitudinal driveway sections.

On 16 November 2023, TfNSW advised that their previous concurrence and conditions remain unchanged.

On 23 February 2024, the applicant advised that the engineering requirements have been addressed with consequent changes to TH01 and TH02 in order to provide for overland flow.

On 29 February 2024, amended SEE and plans were submitted to address *WDCP 2023*, revised waste collection information, reduction in overall height, revised clause 4.6 request, driveway redesign and car swept paths, and amended landscape plans.

On 16 April 2024, following review of the plans by Council engineers, the applicant was advised that there was insufficient detail provided in respect to the required diversion of stormwater pipe and stormwater management design. These matters were consistent with the request for additional information on 20 September 2023. A new issue was raised in respect to adaptable parking and the requirement to comply with AS2890.6.

After an exchange of emails in respect to the new issue regarding adaptable parking, it was agreed with the applicant that TH06 and TH14 are capable of providing parking to AS2890.6, as these contain double garages. A consent condition is recommended requiring internal modifications as part of the construction certificate to demonstrate these dwellings satisfy the adaptable requirements.

On 1 May 2024, waste referral comments were received that identified a number of design issues that did not meet the current requirements of *WDCP 2023*. Noting the timing of lodgement of the application, under *WDCP 2006*, the applicant was requested to achieve compliance with *WDCP 2023* as far as possible without major redesign of the development.

On 9 May 2024, the applicant provided an amended basement layout plan that increased the size of the bin storage room with a reduction in the area of the basement level of TH05.

On 14 May 2024, the applicant was requested to make changes to the Waste Management Plan to satisfy the Waste referral comments.

On 16 May 2024, the applicant submitted updated civil design in respect to the diversion stormwater pipe and stormwater management design, updated waste management plan, and updated architectural drawings and landscape plans.

The difference between the notified plans (September 2023), and the final amended plans, are:

- minor increase in the side setback at basement and ground floor level of TH01 and TH02, of 1.2m,
- minor increase in the floor levels of TH01 and TH02 of 0.5m,
- minor increase in the overall height of TH01 and TH02 of 0.5m,
- minor increase in the floor area of the affordable housing dwelling,
- increase in the basement bin room area and reduction in basement area of TH05,

- minor increase in deep soil zone area primarily due to the increase in side setback of TH01 and TH02,
- minor increase in site coverage due to the redesign of TH01 and TH02,
- minor reduction in the area of the top floor level (Level 2) of TH04, with a consequent increase in the front setback and reduction in overall height and associated variation to the height limit.
- minor changes to basement levels and grades to TH07 to TH14 to accommodate clearances and adjustments to the OSD volume and levels.

The increase in floor levels results in an increase in the side elevation wall heights, and potential increase overlooking and visual intrusion of/onto 88 Eastern Valley Way. However, the setback of these walls remain compliant.

The increase in height of TH 01 and TH02 will increase overshadowing of the side elevation windows of No.88 Eastern Valley Way, to a marginal extent on the winter solstice from about 9.30am to 10.30am.

The impacts are considered similar to the notified plans and do not give rise to any new issues that require re-notification.

On 21 June 2024, final referral comments were received from Council's Waste referral officer, with recommended conditions of consent.

On 19 July 2024, engineering referral comments were received, noting that certain matters were still not addressed in sufficient detail, but are considered capable of being addressed through deferred commencement consent conditions.

4. DISCUSSION

The controls and development statistics that apply to the subject land are provided in **Attachment 2**.

A table of the issues raised in the submissions objecting to the proposal and the assessing officer's response is contained in **Attachment 3**.

A detailed assessment of the Clause 4.6 is provided in **Attachment 5**.

A detailed assessment of the proposal for approval is provided in **Attachment 6**.

The **plans** used for this assessment can be found in a file named **WLPP Plans** under the DA tracking functionality for this application on Council's website:

<https://eplanning.willoughby.nsw.gov.au/Pages/XC.Track/SearchApplication.aspx?id=516442>

5. CONCLUSION

The Development Application DA-2022/34 has been assessed in accordance with Section 4.15 (79C) of the *Environmental Planning and Assessment Act 1979*, *WLEP 2012*, *WDCP*, and other relevant codes and policies. It is considered that the proposal is acceptable in the particular location, subject to the consent conditions included in Attachment 7.

ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO



Figure 3 Site Location and Aerial Imagery (Source: Nearmap)

The subject allotment is described as 90-96 Eastern Valley Way, Willoughby and consists of four lots known as Lot 28, Lot 29, Lot 30 & Lot 31 DP 20044, and known as No. 90, 92, 94 & 96 Eastern Valley Way (The Site).

The site is located on the northern side of Eastern Valley Way, and is irregular in shape, with a curved frontage to Eastern Valley Way and a total area of 2,393m².

The site slopes from north-east to south-west (towards the Sailors Bay Creek crossing) with cross fall towards the south-west corner.

All vehicle access is currently from Eastern Valley Way.

The site is zoned R3 Medium Density Residential under the provisions of *WLEP 2012*.

The surrounding lots on the western side of Eastern Valley Way are similarly zoned R3 Medium Density Residential, with land to the eastern side zoned R2 Low Density Residential.

The site is accessible to bus routes to the City and Chatswood.

The site is currently occupied by single dwellings, which will be demolished.

ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS

Willoughby Local Environmental Plan 2012 Zoning:	R3 Medium Density Residential
Maximum Height: 9m	Permissible with consent
Maximum FSR: 0.7:1	9.52m – 5.78% variation
Minimum Lot Size – RFBs: 1,100m²	0.69:1 – complies
Existing Use Rights	No
Additional Permitted Use	No
Conservation area	No
Aboriginal Heritage	No
Heritage Item	No
Vicinity of Heritage Item	No
Natural Heritage Register	No
Bushfire Prone Area	No
Foreshore Protection Area	No
Flood related planning control	No
Adjacent to classified road	Yes
Road/lane widening	No
Acid Sulphate Soil Category	5
Development near Lane Cove Tunnel	No
Adjacent / above Metro	No
BASIX SEPP	Yes
Housing SEPP 2021	No
SEPP 65	No
SEPP (Transport and Infrastructure) 2021	Yes – TfNSW and Ausgrid referral
SEPP (Resilience and Hazards) 2021	
Chapter 2 Coastal Management	No.
Chapter 4 Remediation of Land (Contaminated Land)	PSI report submitted. No evidence of likelihood of contamination.
SEPP (Biodiversity and Conservation) 2021	Chapter 6 (former Sydney Regional Environmental Plan (Sydney Harbour Catchment)). No significant impacts.
Other relevant SEPPS	Nil
Relevant policies and resolutions	WDCP 2006 and 2023

Development Statistics		
Site Area (m²)	Total = 2,393m ²	
Willoughby Local Environmental Plan 2012		
Zone Objectives: R3 Medium density residential	To provide for the housing needs of the community within a medium density residential environment.	The proposal provides for the housing needs of the community consistent with a medium density residential environment.
	To provide a variety of housing types within a medium density residential environment.	The proposal provides for a mix of housing types, in terms of unit size, affordability and adaptability.

	To enable other land uses that provide facilities or services to meet the day to day needs of residents.	NA
	To accommodate development that is compatible with the scale and character of the surrounding residential development.	The development is broadly compatible with the scale and desired future character of the area.
	To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network.	The site is well located for public transport with a direct bus service within a few minutes' walk that is then 10-20 minutes to Chatswood Station during shopping and business hours.
	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 design is considered to be well considered to provide liveable dwellings without significant impact on solar access, privacy, noise, or views. Council's development engineer is satisfied with the vehicular access.
	<p>Comment: The proposed development is a permissible land use that seeks to provide a mix of adaptable and standard residential accommodation in a multi dwelling housing development. The height exceeds the maximum permissible but has been assessed as being a variation able to be supported. See Attachment 5. The site is in reasonable proximity to bus services and Chatswood train and metro station. The design provides a reasonable design solution with acceptable comfort and sustainability levels, without significant impact on solar access, privacy, noise views, vehicular access parking and landscaping. It's considered that the proposed development is consistent with the objectives of the zone.</p>	

WLEP Control		Proposed	Standard	Compliance
1.8A	Savings provisions	Relies on previous provisions in respect to exclusion of AH floor space from calculation of FSR	An amendment made to this plan by <i>Willoughby Local Environmental Plan 2012 (Amendment No 34)</i> does not apply to a development application made, but not	Complies with previous provisions of clause 4.4(2A)(b)(iii) – see below

WLEP Control		Proposed	Standard	Compliance
			finally determined, before the commencement of that plan.	
CI 4.3	Height	9.52m (5.78% variation)	9m	No – see Attachment 5
CI 4.4	FSR			Yes
	Clause 4.4 (2A)(b)(iii) Excludes affordable housing GFA	1,636m ² 0.68:1	1,675m ² 0.7:1	
CI 6.8	Area 3 Affordable Housing ^{#1}	50m ²	4% = 65.44m ²	Condition recommended, contribution equivalent to 15.44m ²
	(3)(a) Minimum Affordable housing dwelling GFA	50m ²	50m ²	Yes
CI 6.10	Minimum lot size	Unable to acquire No 88 Eastern Valley Way. Concept plan submitted for potential redevelopment of No. 88.	Objectives include reducing instances of site isolation	Yes. Site Isolation Planning Principle considered to be satisfied.
		Consolidated lots = 2,393m ²	1,100m ²	Consent condition recommended requiring consolidation of lots.

Note ^{1#} Provisions prior to making of Am No.34

Exhibited Draft Planning Instruments: Willoughby LEP 2012 (Am 34)

A major review of *WLEP 2012* was exhibited after lodgement of the application, which has now been made as Amendment No.34. The exhibited draft *LEP* included:

1. An amendment to clause 4.4 Floor space ratio, deleting the exclusion of gross floor area of affordable housing from the calculation of floor space ratio, and
2. An amendment to the wording of clause 6.8 Affordable Housing. The changes provided more direct requirements and required increased percentage floor space for affordable housing in key areas where there was a significant uplift in development potential, but there was no change for the subject site.

Noting the savings provisions under clause 1.8A, the application is required to be assessed in accordance with the provisions as they existed prior to the making of *WLEP 2012* (Amendment No. 34).

Clause 4.4 – Floor space ratio

The proposal complies with the maximum FSR calculation as it existed prior to *WLEP 2012* (Amendment No. 34).

It is noted that, under the current provisions, the AH dwelling floor space would be included and would have a FSR of 0.7046:1, in excess of the maximum of 0.7:1. This is 11m² over the maximum permitted, a variation of 0.89%. This is not considered to be significant.

Clause 6.8 Affordable Housing

The provisions of clause 6.6 prior to *WLEP 2012* (Amendment No. 34) require the following consideration.

Requirement for provision of affordable housing

The four properties were located within Area 3 on the Special Provisions Area Map, as referred to in Clause 6.8(2). Area 3 is indicated in pink lines in the *WLEP* map extract (Figure 4).

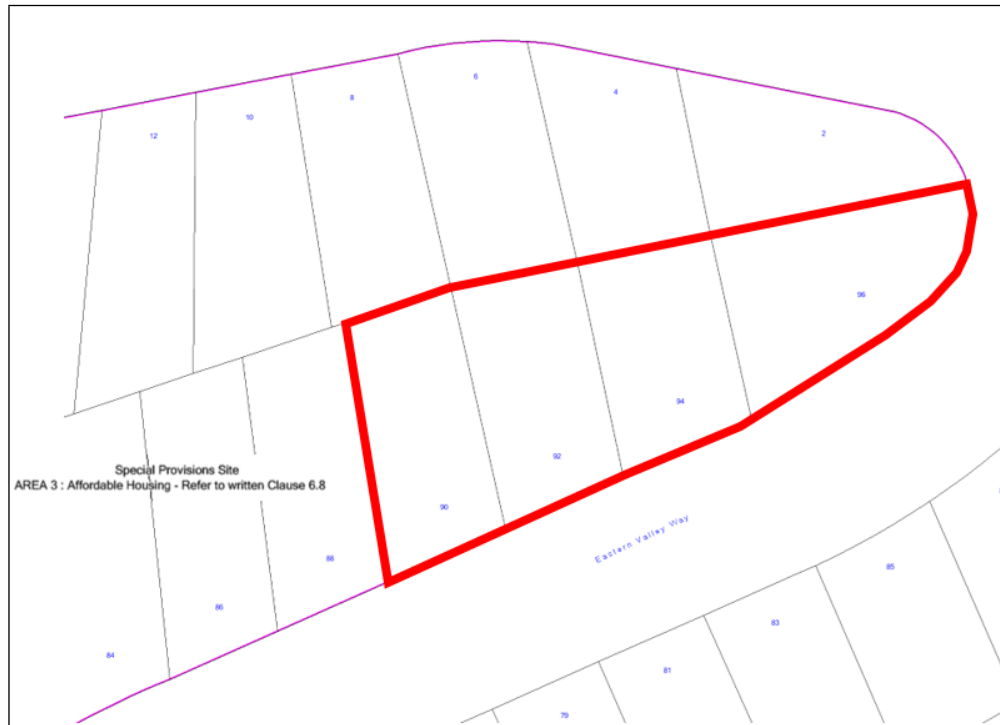


Figure 4 Special Provisions Map - WLEP 2012 (Pre Am No. 34)

Clause 6.8(2) has the effect that consent cannot be granted unless the consent authority has taken into consideration the following matters:

- (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.*

The 'affordable housing conditions' are set out in Clause 6.8(3) and may include a condition requiring dedication of 4% of the accountable total floor space to affordable housing; payment of an equivalent monetary contribution; or a combination of dedication of floor space and payment of a contribution.

The 'Willoughby Affordable Housing Principles' (the WAH Principles) are set out in Clause 6.8(1) and include:

- (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*
- (d) *rental from affordable housing received by or on behalf of the Council 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.

Compliance with Clause 6.8

In relation to clause 6.8(2)(a), Council is required to consider the WAH Principles, that is, the need to provide affordable housing (as referred to in clause 6.8(1)(a) and (d)). For the reasons set out below, there exists a significant need for further affordable housing in the Willoughby Local Government Area (Willoughby LGA).

In relation to clause 6.8(2)(b), the development as proposed, in the absence of provision of affordable housing or an equivalent monetary contribution, would not increase the stock of affordable housing in the mix of residential housing stock in the Willoughby LGA.

In relation to clause 6.8(2)(c), there has been a series of strategic studies carried out at State and local level over a period of over 20 years which have demonstrated the need for affordable housing in Willoughby. Some key findings have been as follows:

- Clause G4.2 of the *WDCP 2006* noted:
In 1998, Willoughby City Council had 3.5% of its housing stock in public and community housing, compared with the state average of 6% (Taskforce Report 1998:61).
- In 1999, an affordable housing levy of 4 per cent of the total floor space of new dwellings within identified Willoughby Local Housing Precincts to be provided as affordable housing was included in *Willoughby Local Environmental Plan 1995* (by means of Amendment 21) and the accompanying *Willoughby Development Control Plan*.
- As of 2006, the proportion of housing in Willoughby that comprised social housing remained far lower than the rest of Sydney. At that time, there were approximately 370 public housing dwellings in Willoughby. Public housing accounted for 1.5% of all housing in Willoughby, compared to an average of 4.5% for the Greater Metropolitan Region.
- In 2007, the NSW Department of Housing provided information to Council about the Willoughby housing market in a letter dated 24 January 2007 (2007 Departmental letter). The 2007 Departmental letter stated that:
Willoughby has significant levels of housing need and considerable pressures on affordability within both the rental and purchase markets, with very limited affordable options now available for low to moderate income households. Active measures are needed to stem the loss of affordable stock and encourage the provision of more affordable housing.
- The 2007 Departmental letter noted that the proportion of affordable rental stock in Willoughby City December 2005 was 8% (compared to a Sydney average of 41%); the proportion of affordable purchase stock in Willoughby City December 2005 was 1% (compared to a Sydney average of 4%); the proportion of households in rental “housing stress” in Willoughby City 2001 - 75% (compared to Sydney average of 60%); and the proportion of households in “home purchase stress” in Willoughby City 2001 was 66% (compared to Sydney average of 50%).

- In 2012, Council provided a report regarding residential development to the State Government accompanying the draft *WLEP 2012*. This report stated (at pages 36-37):

... it is proposed to require all medium/ high density housing and shoptop housing sites to provide affordable housing units or a cash contribution for affordable housing. This includes sites currently zoned for medium/ high density and shoptop housing in WLEP1995 and new areas proposed to be rezoned for medium density housing in the new LEP, i.e. from all sites which can provide additional dwellings in the City (other than dual occupancy development and secondary dwellings). 4% of the residential floor space of each development will be required to be dedicated for affordable housing purposes. This includes the following zones: R3, R4, B1, B2, B3, B4 and B5 (i.e. all zones that permit residential development)

Over the next 20 years it is anticipated that the new provisions could result in the equivalent of approximately 200 new affordable housing units.

Cash contributions received for affordable housing will be used for improving existing affordable housing, purchasing properties to be managed by community housing, or for joint ventures with the Department of Housing or community organisations.

- These matters led to Council deciding to include Clause 6.8 in the *WLEP 2012*, including, among other things, the provision for Council to require dedication of 4% of the accountable total floor space to affordable housing or payment of an equivalent monetary contribution.
- 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. 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 August 2021, SGS Economics and Planning provided to Council its *Willoughby Affordable Housing Feasibility Report* dated 30 August 2021 (the SGS Report). The SGS Report states the following:

(a) The Willoughby LGA as a whole is categorised as 'unaffordable'.

(b) 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.

- 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.
- 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.

In light of the above, it is therefore concluded that one of the affordable housing conditions should be imposed on the consent as required by clause 6.8(2)(c).

Requirements for affordable housing contribution conditions under section 7.32 of the Environmental Planning and Assessment Act 1979 (EP&A Act)

Section 7.32(1) of the EP&A Act states:

This section applies with respect to a development application for consent to carry out development within an area if a State environmental planning policy identifies that there is a need for affordable housing within the area and—

...

(c) the proposed development is allowed only because of the initial zoning of a site, or the rezoning of a site...

In relation to s 7.32(1), the relevant policy is State Environmental Planning Policy (Housing) 2021 (Housing SEPP), which provides that, for the purposes of s 7.32(1) of the EP&A Act, there is a need for affordable housing within each area of the State (which therefore includes the Willoughby LGA).

The subject site was rezoned from 2(a) Low Density residential to R3 Medium Density residential under the *WLEP 2012* which commenced on 31 January 2013. The four existing lots were included within Area 3 (and therefore subject to Clause 6.8 *WLEP 2012*) at the same time. As set out above, the intention of Council was to link the increase in allowable density to an affordable housing contribution.

For these reasons, the requirements of s 7.32(1)(c) are satisfied in respect of the proposed development.

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.*

Clause 15 of the Housing *SEPP* provides:

Before imposing a condition under the Act, section 7.32, the consent authority must consider the following—

- (a) affordable housing must aim to create mixed and balanced communities,*

- (b) affordable housing must be created and managed so that a socially diverse residential population, representative of all income groups, is developed and maintained in a locality,*
- (c) affordable housing must be made available to very low, low and moderate income households, or a combination of the households,*
- (d) affordable housing must be rented to appropriately qualified tenants and at an appropriate rate of gross household income,*
- (e) land provided for affordable housing must be used for the purposes of the provision of affordable housing,*
- (f) buildings provided for affordable housing must be managed to maintain their continued use for affordable housing,*
- (g) affordable housing must consist of dwellings constructed to a standard that, in the opinion of the consent authority, is consistent with other dwellings in the area.*

It is considered that the imposition of a condition to require dedication of the affordable housing unit and a payment of a monetary contribution will:

- (a) facilitate creation of a mixed and balanced community
- (b) enable the creation and management of a socially diverse residential population, with opportunity to develop and maintain such a population in the locality,
- (c) enable affordable housing to be made available to range of very low to moderate income households,
- (d) enable Council to ensure appropriately qualified tenants rent the property,
- (e) ensure the property will be used for the purposes of providing affordable housing,
- (f) ensure affordable housing will be managed and maintained for continued use as affordable housing,

In respect to (g), a consent condition is recommended to ensure the dwelling is constructed and fitted out to an equivalent standard to all dwellings in the development.

In relation to s 7.32(3)(b), an affordable housing condition in this current application is authorised by clause 6.8 of the *WLEP 2012* and is in accordance with Council's policies and strategic planning schemes for affordable housing contributions identified above.

In relation to s 7.32(3)(c)(i), the ongoing need for affordable housing in Willoughby Local Government Area has been described in the previous section of this report.

In relation to s 7.32(3)(c)(ii), the provision of one affordable dwelling and the balance to be satisfied by payment of a contribution is considered reasonable having regard to the scale of the development.

In relation to s 7.23(3)(c)(iii), the requirement for the affordable housing contribution is appropriate in addition to the proposed infrastructure contribution condition 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 new dwellings. In particular, the s 7.11 contribution seeks monetary contributions towards the provision of the following infrastructure (none of which relate to affordable housing):

- (a) Active transport and public domain facilities;
- (b) Open space and recreation activities;
- (c) Plan administration
- (d) Recoupment – community facilities; and
- (e) Recoupment – open space and recreation.

Summary

The EPA Act, the Housing SEPP and Clause 6.8 WLEP 2012 contain various requirements before a condition requiring provision of affordable housing or monetary equivalent can be imposed. Those requirements have been met.

Clause 6.8(3) WLEP allows affordable housing to be provided by:

- (a) a condition requiring the dedication in favour of the consent authority, free of cost, of land comprised of one or more complete dwellings with a gross floor area of the amount equivalent to 4% of the accountable total floor space, with each dwelling having a gross floor area of at least 50 square metres.
- (b) a condition requiring the payment of a monetary contribution to the consent authority by the applicant that is the value, calculated in accordance with subclause (4), of 4% of the accountable total floor space.
- (c) a condition requiring—
 - (i) the dedication in favour of the consent authority, free of cost, of land comprised of one or more complete dwellings with a gross floor area of less than the amount equivalent to 4% of the accountable total floor space (the dedication amount), with each dwelling having a gross floor area of at least 50 square metres, and
 - (ii) the payment of a monetary contribution to the consent authority by the applicant that is the value, calculated in accordance with subclause (4), of the gross floor area equivalent to the difference between the dedication amount and 4% of the accountable total floor space.

In this case the plans designate AH15 as an affordable housing unit and this is proposed to be given effect by conditions. It is noted that AH15 has an area of 50m². The ‘accountable floor space’ is defined as:

...for development on land identified as “Area 3” on the Special Provisions Area Map—the gross floor area of the residential component of the development, excluding the residential floor space of the development that is used for affordable housing

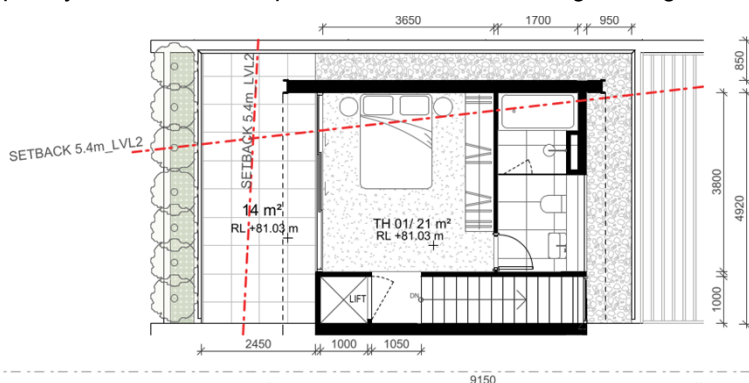
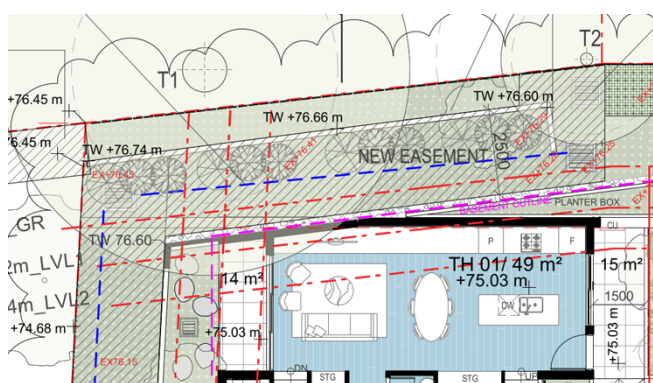
The accountable floor space is 1,636m². The required affordable housing provision of 4% is 65.44m². Unit AH15 will have an area of 50m². The balance of 15.44m² is to be satisfied by the payment of a contribution.

Willoughby Development Control Plan 2006 (WDCP 2006)			
WDCP 2006	Proposed	Standard	Compliance
Part C – General Requirements			

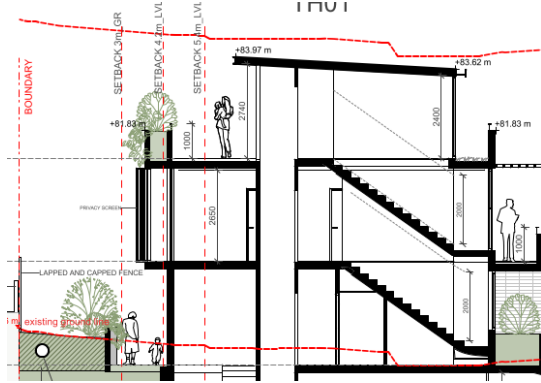
Willoughby Development Control Plan 2006 (WDCP 2006)				
WDCP 2006		Proposed	Standard	Compliance
C.2.2	Site Consolidation and Isolation	See discussion under Background	Council will require appropriate documentary evidence to demonstrate that a genuine and reasonable attempt has been made to purchase an isolated site based on a fair market value. Where amalgamation of an isolated site is not feasible, applicants will be required to demonstrate that an orderly and economic use and development of the separate sites can be achieved, and that future potential development of that site in accordance with zone objectives can be adequately achieved.	Yes
C.4	Car spaces MPTC – Eastern Valley Way	7xsingle garage 7xdouble garage 4 visitor spaces = 25 spaces	1 bed: 1 space 3+ bed – 1.5 spaces Visitor - 1 space/4dw = 14x1.5 + 1x1 + 15/4 =26 spaces	No allocated parking provided for the affordable unit. However, there are 4 visitor parking spaces available, and the site is close to a regular bus service.
C5	Water Management	OSD, gravity disposal	OSD to ensure pre-development flows, gravity discharge of stormwater	Satisfactory, subject to conditions.
C.6	Access/ Mobility	5 (36%) Adaptable units – TH09, TH10, TH11, TH12, TH13	33% of units to be adaptable = 5 units	Yes (TH06, TH10, TH11, TH12 and TH14)
	Adaptable car spaces	5	2 adaptable spaces required for 5 adaptable units	Consent condition recommended to require TH06 and TH14 to be adaptable dwellings with car parking to AS2890.6.
C.8.4.7	Waste Management	Generated waste calculations adjusted to match <i>WDCP 2023</i> volumes. Number and type of bins accommodated satisfy <i>WDCP 2023</i> requirements.	<i>WDCP 2006</i> required: <ul style="list-style-type: none"> • Resource Recovery Management Plan to be submitted. • communal waste and recycling room may be provided. • Sufficient space to 	Considered to be compliant with <i>WDCP 2006</i> . See Discussion section of this report under Waste Management and Collection.

Willoughby Development Control Plan 2006 (WDCP 2006)				
WDCP 2006		Proposed	Standard	Compliance
			accommodate the number of bins required for the estimated generated waste. <ul style="list-style-type: none"> • Where communal room provided in basement, Council's Waste Management Staff must be consulted to determine whether kerbside collection or collect and return service will be provided. • Path for mobile garbage bins (MGBs) between bin room and collection vehicles is to be level, free of steps, and not exceed 15m. 	
C9	Vegetation Management	Ten trees to be retained, and 14 trees to be removed. Landscape plan proposes 88 new trees.	Trees to be retained where possible. Tree protection measures to be implemented during construction. Replacement planting at 3:1.	Yes.
C11	Safety Design by	<ul style="list-style-type: none"> • High visibility front entries • Well lit pathways • Security gate to basement. • Passive surveillance of the street frontage and entryways. 	<ul style="list-style-type: none"> • Requires design that allows people to see what others are doing in public and common spaces • Access control – physical and symbolic barriers that can be used to attract, channel or restrict the movement of people; • Territorial reinforcement clear design cues on who is to use space and what it is used for; and • Space management ensuring that 	Generally considered satisfactory.

Willoughby Development Control Plan 2006 (WDCP 2006)				
WDCP 2006		Proposed	Standard	Compliance
			space is appropriately utilised and well cared for.	
C12	Fencing	Front courtyard fencing setback about 1.1m	Fences higher than 1.6m to be setback not less than 1m.	Yes
D.2.4	Minimum Frontages	About 108m	27m	Yes
D.2.5	Density and Height	14 by three bedroom and 1 by one bedroom	Provide mix of dwelling sizes	No. However, townhouse development is a housing form that is difficult to provide a variety of sizes and optimise height and FSR potential. In the circumstances, the provision of the one bedroom dwelling is considered a reasonable outcome for the development form.
		Each floor steps in from the floor below.	Progressively increase setbacks as wall heights increase	Yes
		TH 5, TH 6, TH7, TH8 and TH 14 do not comply.	3 rd storey no greater than 60% of floor below	While 5 the dwellings do not strictly comply, this is a result of the stepping in of the middle floor of each. All dwellings comply if compared to the ground floor area.
D.2.7	Site Coverage	37%	3 storey - 30%	No – see next.
		The proposal complies with the recreational open space provisions, natural landscape requirements, privacy, solar access and overshadowing provisions – see below.	Variation to the maximum site coverage requirements can be considered as long as the recreational open space and the natural landscape requirements, privacy, solar access and overshadowing considerations are complied with.	Yes.
D.2.8	Setbacks:			
	Front	TH 4: 5.625m - 7.5m TH 5: 7.1m – 8.6m TH 6: 6.3m – 7.1m TH 7: 6.9m – 8.6m	Front: 7.5m min, Variations up to 25% (5.625m), max of 1/3 of front boundary	The site is considered to be partially a corner lot, being adjacent the intersection with

Willoughby Development Control Plan 2006 (WDCP 2006)			
WDCP 2006	Proposed	Standard	Compliance
Corner Lots	TH 8: 6.3m – 6.9m TH 9: 7.8m – 8.9m TH 10: 6.4m – 7.8m TH 11: 7.5m – 9.1m TH 12: 5.625m – 7.5m TH 13: 7.5m – 7.9m TH 14: 4.6m – 7.7m	3.5m for secondary frontage	Warners Ave. TH 1 to TH 13 comply with primary frontage setbacks and allowable variations. TH 14 complies with the secondary road setback and is considered to reasonably comply.
	Setbacks: Side and rear	Single storey (AH) – 3m	Single storey – 1.5m
	TH 1 GF – 3.6m FF – 3.2m SF – 4.2m	2 storey and <8m – 3m 3 storey – 5.4m	Yes - See comment below
	TH 14 GF – 3.5m FF – 4.2m SF – 5.4m	2 storey <8m – 3m 3 storey – 5.4m	Yes
<p>Comment: TH 1 adjoins the north western corner boundaries and is the closest part of the development to side and rear boundaries, with the top floor encroaching into the setback requirement of 5.4m for 3 storey development. See Figure 5.</p> <p>Due to the slope of the site, TH 1 is cut into the site, with the proposed finished ground level being RL 75.03. Survey levels show existing ground level to be RL 76.45m, meaning the proposed ground floor is 1.42m below existing ground levels. See Figure 6.</p> <p>The top of wall height of TH 1 reaches a maximum RL 83.90m. Consequently, the wall height adjacent the rear (north) boundary, is a maximum of 7.47m high. See Figure 7.</p> <p>Consequently, the setback complies based on the wall height being less than 8m.</p>			
			
<p>Figure 5 TH 1 - Second (Top) Floor Level Showing Setback Encroachment</p>			
			

Willoughby Development Control Plan 2006 (WDCP 2006)

WDCP 2006	Proposed	Standard	Compliance					
<p style="text-align: center;">Figure 6 TH 1 Ground Floor Levels and Existing Spot Levels</p>  <p style="text-align: center;">Figure 7 TH 1 Section Showing Cut into Site</p>								
D.2.9.3	Open Space Recreational Areas	Total recreational area = 1,337m Site area = 2,993m ² =56%	3 storey – minimum 52% of site area	Yes				
<p>Private Open Space</p>								
1 bedroom		37m ²	Courtyards 35m ²	Yes				
3 bedroom		<table border="1" style="width: 100%;"> <tr> <td>Courtyard</td> <td>Balcony</td> </tr> </table>	Courtyard	Balcony	<table border="1" style="width: 100%;"> <tr> <td>Courtyards 60m²</td> <td>Balconies 15m²</td> </tr> </table>	Courtyards 60m ²	Balconies 15m ²	See Comment below.
Courtyard	Balcony							
Courtyards 60m ²	Balconies 15m ²							
TH 1		42m ² 18m ²						
TH 2		47 18						
TH 3		51 18						
TH 4		53 17						
TH 5		47 20						
TH 6		58 19						
TH 7		92 18						
TH 8		86 18						
TH 9		78 18						
TH 10		72 18						
TH 11		62 18						
TH 12		53 18						
TH 13		43 18						
TH 14		43 16						
<p>Comment: The submitted plans provide a calculation of proposed private open space for each dwelling. On detailed analysis, the calculation excludes landscaped areas that are attached to or form part of the private open space area for each dwelling. In respect to TH 1, the side setback area has been excluded, and is reasonably included. In respect to all the balcony calculations, the area has excluded the area of planter boxes that form part of the balcony. The figures shown above include these areas.</p> <p>The provisions of <i>WDCP 2006</i> provides two minimum area requirements: for courtyards and balconies. The provision is ambiguous as it may imply that each dwelling has to provide both the minimum courtyard and minimum balcony area. However, the following provision in the <i>DCP</i> sets a minimum area for communal open space if the only form of private open space provided to any dwelling is balconies. Communal open space must be provided for use by occupants of the development at the rate of 30m² per dwelling.</p> <p>Each dwelling provides more than 30m² within the individual courtyards.</p> <p>There is a communal open space area that has an area of 145m².</p>								

Willoughby Development Control Plan 2006 (WDCP 2006)				
WDCP 2006	Proposed	Standard	Compliance	
	<p>WDCP 2023 requires a minimum area of private open space of 24m² per dwelling.</p> <p>The performance criteria are:</p> <ul style="list-style-type: none"> • Private open spaces should address the private recreational requirements of the dwelling units. Each dwelling unit is to have an area of private open space for the exclusive use of the occupants of the unit. • Private open spaces should be: <ul style="list-style-type: none"> ○ located adjacent to and accessible from main living areas of the dwelling; ○ located so as to maximise solar access, i.e. preferably orientated from northeast to northwest; ○ located to ensure privacy and away from noisy locations, where possible; and ○ screened by vegetation or a wall to ensure privacy. <p>All courtyards are adjacent the main living area of each dwelling. The courtyards for TH 05 to TH 14 are oriented to the north. The main courtyards for TH 1 to TH 4 are oriented to the west, with additional small courtyards located the entry side on the east. These 4 dwellings also have a top floor balcony/terrace that obtain good solar access, although not located adjacent to primary living areas.</p> <p>It is considered that the proposed provision of private open space and communal open space satisfies the WDCP performance criteria, It is also noted that the numerical control has been significantly reduced in WDCP 2023.</p>			
D.2.9.5	Children's' play area	48m ² children's play area	More than 10 dwellings, provide play area 30m ² minimum.	Yes
D.2.10	Landscaping	Proposed 845m ² = 35.3%	Soft landscaping 35% of site to be minimum = 838m ²	Yes
		A range of canopy trees are proposed in the front setback area and new street trees.	Canopy trees should be planted in the front setback area.	Yes
D.2.11.3	Privacy	In most instances, more than 3m separation. Fin walls provided where not achieved.	Openings of adjacent dwellings to be separated by 3m minimum	Yes, subject to provision of screens between top floor terraces.
		See Comment below for detailed description.	Windows or balconies within 12m of other dwelling windows or balconies, provide screening.	Yes – see detailed assessment below.
			Avoid overlooking by locating windows to not face directly towards windows, balconies and private open space of adjoining dwellings. Offset windows. Splay window locations. Provide screening, landscaping.	See assessment below. Condition recommended for screens between top floor balconies.
<p>Comment: Two areas of potential impact on privacy are identified. The first is from TH 1, TH2 TH3 and TH4 overlooking the dwelling and private open space</p>				

Willoughby Development Control Plan 2006 (WDCP 2006)

WDCP 2006	Proposed	Standard	Compliance
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area of No. 88 Eastern Valley Way. See Figure 8.

The second is between TH 11 and TH 12 with proposed new townhouse development at 2-4 Warners Ave. See Figure 14.

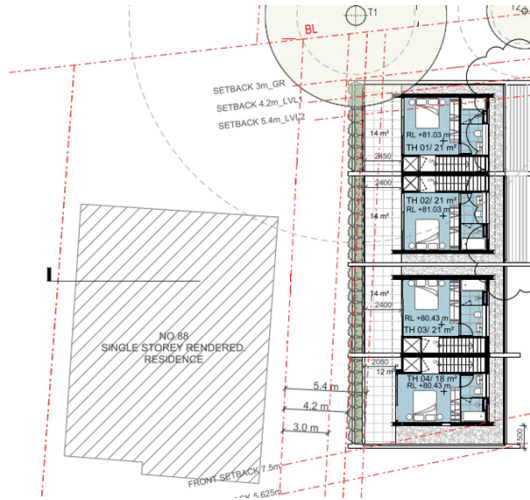


Figure 8 Proximity of TH 1, TH2, TH3 and TH 4 to No. 88 Eastern Valley Way TH 1 and TH 2

TH1 and TH 2 are cut into the site, with the primary living areas, at ground floor level, located 1.5m below existing ground level of the rear yard of No.88. See Figures 9 and 10. Level 1 of each dwelling contains bedrooms and a study, with privacy screen louvres proposed. Level 2 proposes raised planters at the outer edge of the balcony. It is considered that the proposal satisfies the privacy requirements for TH 1 and TH 2 in respect to the adjoining dwelling.

There is a potential for privacy issues between the top floor balconies. Consent condition is recommended to provide screening between the top floor balconies where they adjoin.

TH 3 and TH 4

The ground floor level of TH 3 and TH 4 are set at about the existing ground level. See Figures 11 and 12. Level 1 of each dwelling contains bedrooms and a study, with privacy screen louvres proposed. Level 2 proposes raised planters at the outer edge of the balcony. It is considered that the proposal satisfies the privacy requirements for TH 2 and TH 3.

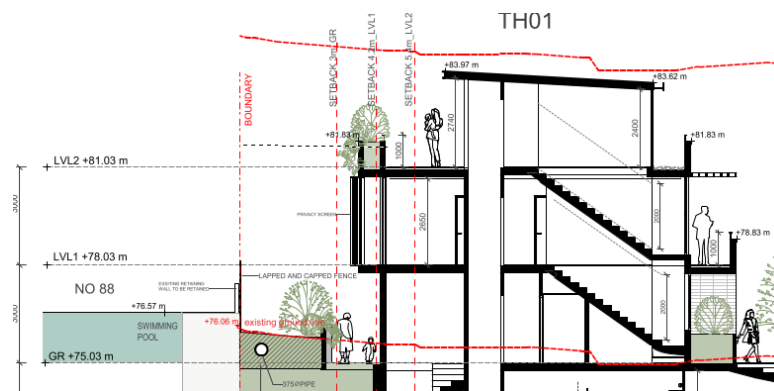


Figure 9 Section TH 1 and Rear of 88 Eastern Valley Way

Willoughby Development Control Plan 2006 (WDCP 2006)

WDCP 2006	Proposed	Standard	Compliance
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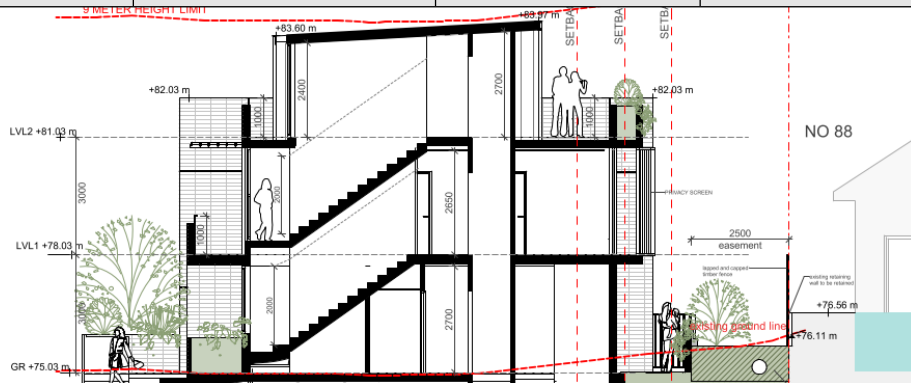


Figure 10 Section through TH 2 and Rear of 88 Eastern Valley Way

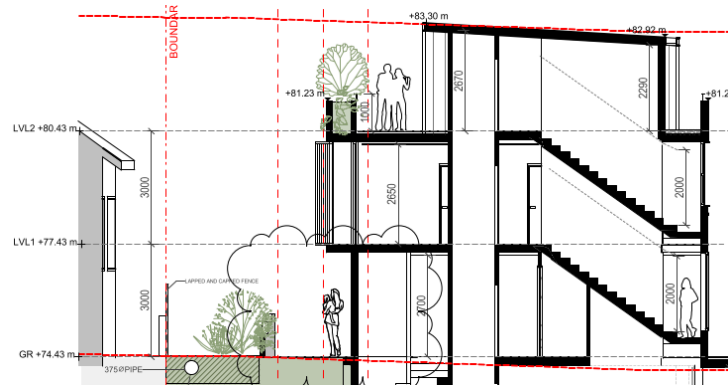


Figure 11 Section through TH 3 and Dwelling at 88 Eastern Valley Way

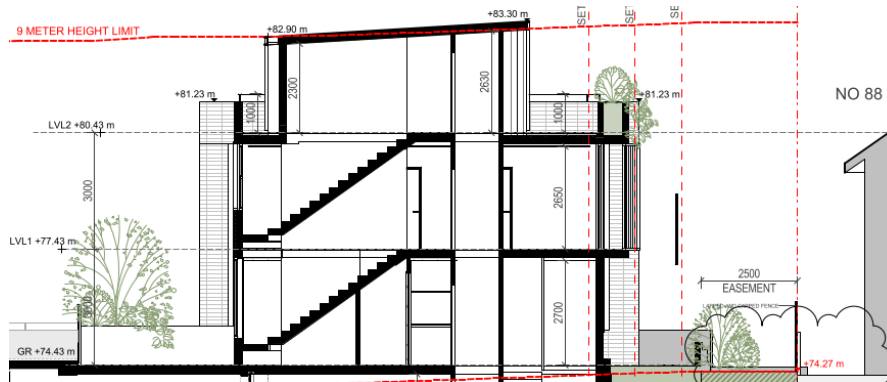


Figure 12 Section through TH 4 and Dwelling at 88 Eastern Valley Way

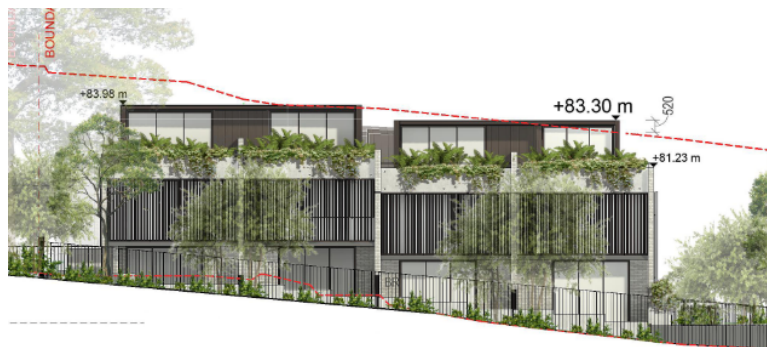
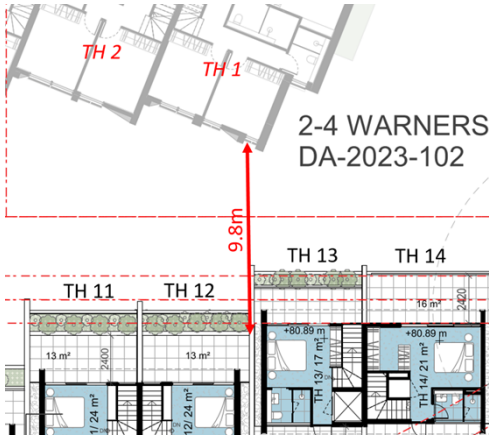
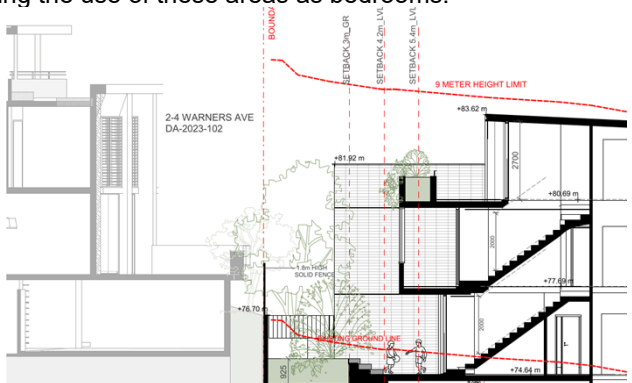


Figure 13 Elevation of TH 1, to TH 4 Facing 88 Eastern Valley Way

TH 11 and TH 12

Figure 14 shows the juxtaposition of TH 11 to TH 14 and the new townhouses proposed at 2-4 Warners Ave.

Willoughby Development Control Plan 2006 (WDCP 2006)				
WDCP 2006		Proposed	Standard	Compliance
		 <p>Figure 14 TH 11 to TH 14 and 2-4 Warners Ave Development</p> <p>Of these four dwellings, TH 12 has the most direct potential views between the two proposed developments. As indicated in Figure 14, the closest point between the top floor terrace and the bedroom windows at TH 1 of 2-4 Warners Ave is 9.8m. Figure 15 provides a section indicating the differential heights of the two dwellings. The proposed planter at the outer edge of the terrace is considered to provide reasonable screening between the two dwellings noting the use of these areas as bedrooms.</p>  <p>Figure 15 Section between TH 12 and 2-4 Warners Ave</p>		
D.2.12	Views and Vistas	There is some outlook from properties in Warners Ave over the existing houses on the site. However, the views are not considered to be significant.	Maintain Existing Views of adjoining Properties	Yes
D.2.13	Solar Access and Overshadowing	Except for TH 11 and TH12, all dwellings receive more than 3 hours of solar access between 9am and 3pm on the winter solstice. TH 11 and TH 12 will receive solar access to the upper level balconies, but not to the ground floor open space and living areas on the winter solstice. Solar access is achieved for all dwelling before the equinox.	New developments are to be designed to maximise the entry of winter sun and minimise the entry of summer sun to most of the habitable rooms and private open spaces of the dwelling units by the siting and orientation of the buildings and the use of appropriate landscaping and sun screening methods.	The wording of this provision implies that not all dwellings are required to satisfy the 3 hour minimum. The achievement of 13 of 15 (87%) is considered a reasonable outcome for the site. See additional discussion under WDCP 2023 Part B Attachment 2 b. 4. Solar Access.

Willoughby Development Control Plan 2006 (WDCP 2006)				
WDCP 2006	Proposed	Standard	Compliance	
	The proposed communal open space area receives sunlight from 9am until after 2pm on the winter solstice.	The principal portion of any outdoor communal open space of the development must have at least 3 hours of sunlight between 9am and 3pm on June 22.	Yes	
	No overshadowing of the adjoining dwelling at No 88 after about 10.30am on the winter solstice.	Maintain 3 hours of solar access between 9am and 3pm on 22 June to living areas (such as family rooms, rumpus, lounge / dining, kitchen) and the principal open space	Yes	
D.2.14	Service Facilities and Amenities Letterboxes	TH 5 to TH 14 have individual street frontages and letter boxes are to be placed adjacent to individual entries. TH 1 to TH 4 and AH are provided a location adjacent the pedestrian entry.	Letter boxes must be provided in accordance with Australia Post's Requirements for the Positioning and Dimensions of Mail Boxes in new Residential Developments.	Yes
	Laundries and drying areas	Each townhouse has a laundry in the basement area. There are no nominated drying areas in the private open space areas.	Laundry facilities should be incorporated into each dwelling unit. Each dwelling should have access to a drying area for the exclusive use of the occupants of the dwelling, having the minimum area of 5m ² or 4.5m ² of clothes line. Drying yards on balconies are not to be located forward of the building line or within the setback to any street frontage and should not be visible from any public areas by the use of screens or landscaping.	Considered to be compliant. There is adequate opportunity in each dwelling to provide a small clothes line, either within the ground floor terrace areas or on balconies that are behind the building.
	Storage areas	Each townhouse has a combined storage and laundry room in the respective basement garage area. The storage/laundry rooms have an area of between 6m ² and 8m ² .	Allow a minimum space of 3m ² / dwelling exclusively for storage. Storage space may form part of a garage.	Yes.


Willoughby Development Control Plan 2006 (WDCP 2006)				
WDCP 2006		Proposed	Standard	Compliance
		It is considered that the laundry component is 2.5m ² , meaning 3.5m ² to 5.5m ² of storage is provided.		
D.2.15	Sustainable Development	Bicycle storage space provided in each garage.	Bicycle storage required	Yes
		Not submitted	Transport access guide	This is no longer required under <i>WDCP 2023</i> .
		BASIX Certificate provided.	BASIX Certificate	Yes
		Not shown, but able to be satisfied	3 hours solar access for outdoor clothes drying	Yes
		Landscape plan satisfies requirements.	70% locally indigenous plants	Yes
		Included in WMP	Recycling construction waste	Yes
		Included in WMP	Recycling/ composting of greenwaste	Yes
		Included in WMP	Space for recycling service area	Yes
		Noise report submitted – acoustic treatments recommended	Noise mitigation on main roads	Yes – consent condition recommended
		Not submitted	Draft owners corporation manual prior to occupation	No longer required under <i>WDCP 2023</i> .
D.2.1 6.12	Controls for Specific Areas	52-84 Edinburgh Road, 1-29 and 2-24 Warners Avenue and 82-100 Eastern Valley Way. See Figure 16		
		Access is proposed from Eastern Valley Way.	No direct vehicular access is to be obtained to a site from Eastern Valley Way.	No. This requirement is considered unreasonable and unachievable for any specific developer in this context. TfNSW have granted approval to the proposed access. Note that <i>WDCP 2023</i> has deleted this requirement.
				

Figure 16 Extract from *WDCP 2006* - Controls for Specific Areas

Willoughby Development Control Plan 2006 (WDCP 2006)				
WDCP 2006		Proposed	Standard	Compliance
G.4	Affordable Housing	Proposed GFA: 1,636m ² Required AH = 4% of GFA = 65.44m ² . Proposed AH = 50m ² . Contribution for 15.44m ² required.	Transfer of title to Council free of cost, or monetary payment in lieu. Combination of transfer of title and monetary contribution for any shortfall on the required amount.	Consent conditions requiring transfer of title and payment in lieu for equivalent of 15.44m ² of GFA.

At the time of lodgement of the application, the *WLEP 2012* (Amendment No. 34) and *WDCP 2023* had not been exhibited. However, both have since been finalised. While *WLEP 2012* (Amendment No. 34) includes transitional provisions, *WDCP 2023* does not. There is some case law on the consideration of draft *DCPs*, and it is considered that it may be unreasonable to require strict compliance with more stringent controls that are included in the new *DCP*.

The following table identifies relevant provisions of *WDCP 2023* that have been changed from *WDCP 2006*.

Willoughby Development Control Plan 2006 (WDCP 2006)			
WDCP 2023	Proposed	Standard	Compliance
Part B Residential Development			
Attachment 2			
Controls for manor houses, attached dwellings and multi dwelling housing in the R3 zone			
b. Amenity development standards			
2. Privacy screen	See comment under <i>WDCP 2006</i> D.2.11.3	Privacy screen must be provided if the floor level of the habitable room is more than 3m above existing ground level and the window faces a side or rear boundary and is less than 6m from that boundary	<i>WDCP 2023</i> provides additional numerical values for the specification of when privacy screens are required. Analysis of comparative floor levels and separation distances in the <i>WDCP 2006</i> assessment indicates general compliance with the requirements of <i>WDCP 2023</i> provisions for privacy screens. The recommendation for screens between top floor balconies is consistent with the new provisions of <i>WDCP 2023</i> .
3. Balconies, decks, patios, terraces or verandahs	See comment under <i>WDCP 2006</i> D.2.11.3	Privacy screen must be provided if balcony is more than 3m, above existing ground level and the edge faces a side or rear boundary and is less than 6m from that dwelling	

4. Solar access	See comment under <i>WDCP 2006 D.2.13</i>	A minimum of 3 hours of solar access must be provided for residents of the development between 9am and 3pm on 21 June to living areas, such as family rooms, rumpus, lounge/dining, kitchen, and the principal open space and recreational areas	<i>WDCP 2023</i> provides a more stringent standard than <i>WDCP 2006</i> , requiring all dwellings to receive 3 hours of solar access to living areas. TH 11 and TH 12 will be impacted by overshadowing from the proposed development of 2-4 Warners Ave. This is considered difficult to avoid, due to the site being lower than 2-4 Warners Ave, and the shallow depth of each of the sites. The design incorporates balconies at upper levels to provide areas with solar access, and also communal open space at the eastern end of the site that receives good solar access. The outcome is considered reasonable for the site.
d. Controls for attached dwellings and multi dwelling housing			
3. Landscaped area	35.3% = 845m ²	40% = 957m ²	<i>WDCP 2023</i> increases the minimum landscaped area from 35% to 40%. The impact of this change will require a more compact built form. This may include reducing ground floor terraces to increase soft landscaping and limiting the scope for middle floor levels to step in from the ground floor level.
4. Deep soil zone	22% = 530m ²	20% = 478.6 ²	Yes
6. Dimension of all landscaped areas	Some areas are less than 1.5m in width	Minimum width and length is 1.5m	This a new provision that would reduce the soft landscaped area calculation, and will increase the impact of the increase in minimum landscaped area.

7. Landscaped area for individual lots	Preliminary assessment indicates 6 of 15 dwellings would comply.	Minimum 30% of each potential lot	This is a new provision. The impact will be to reduce the area of paved terraces and replacement with soft landscaping, and for this site, would require some re-alignment of lot boundaries. In the circumstances, it would be unreasonable to require any further changes to the application, noting the timing of lodgement of the application and the adoption date of <i>WDCP 2023</i> .
10. Primary road setback	See <i>WDCP 2006 D.2.8</i>	6m and 4.5m for building elements	<i>WDCP</i> reduces the minimum front setback from 7.5m to 6m, but deletes the provision for 25% variation (5.625m setback). Part of TH04 encroaches into the 6m setback, due to the angle of the front boundary. The average setback is 6.56m. Having regard to the shape of the site, the front setbacks are considered reasonable.
12. Side setbacks	See <i>WDCP 2006 D.2.8</i>	1.5m for 1 and 2 storey dwellings + 1.2m for each level above 2 storeys	<i>WDCP 2023</i> reduces the minimum side setback from 3m to 1.5m for 2 storey development, and from 5.4m to 2.7m for 3 storey development. TH12, TH13 and TH14 are considered to be adjacent the equivalent of a side setback and comply.
14. Secondary road setback for corner lots	See <i>WDCP 2006 D.2.8</i>	3m	<i>WDCP 2023</i> reduces the setback from 3.5m to 3m.

15. Classified road setback	See <i>WDCP 2006</i> D.2.8	9m	This is a new requirement in <i>WDCP 2023</i> , and would have a significant impact on this site. In the circumstances, it would be unreasonable to require any further changes to the application, noting the timing of lodgement of the application and the adoption date of <i>WDCP 2023</i> .
18. Minimum principal private open space for each dwelling	SEE <i>WDCP 2006</i> D.2.9.3	16m ²	<i>WDCP 2023</i> significantly reduces the minimum area required for private open space.
Part F Transport and Parking Management Attachment 2			
3.1 Parking provisions and Car Parking Rates	7xsingle garage 7xdouble garage 4 visitor spaces = 25 spaces	0.5 space per 1 bedroom unit; 1 space per 3 bedroom units; 1 visitor space per 7 dwellings = 16 spaces	<i>WDCP 2023</i> has substantially reduced the parking requirements for residential development, and seeks to increase public transport use and reduce reliance on private cars. For the subject development, this would enable the area of the basement to be reduced, and enable reduced site cover and increased deep soil zone. As noted above, the timing of the changes are considered to have been too late in the assessment process to be imposed on the current application.
5.4 Accessible Parking	5	Number required = number of accessible units (5 in this case)	Yes (Two dwellings to be required to provide parking to AS2890.6)

Developer’s Contribution Plans:

Willoughby Local Infrastructure Contributions Plan 2019 applies to the development, However, under clause 2.6, affordable housing is exempt from contributions under the Plan.

Contributions are payable for proposed dwellings other than affordable dwellings:

Table 1 Dwellings other than Affordable Housing

Proposed Number of Dwellings Excluding Affordable Dwelling	
3 bedroom	14

Table 2 Contributions Payable for Proposed Development

	Per 3 or more bed dwelling / Per Lot	3 bed	Total
Recoupment - open space and recreation	\$160.29	14	\$2,244.06
Recoupment - community facilities	\$3,014.84	14	\$42,207.76
Open space and recreation facilities	\$15,676.35	14	\$219,468.90
Active transport and public domain facilities	\$852.95	14	\$11,941.30
Plan administration	\$295.57	14	\$4,137.98
Total	\$20,000.00	14	\$280,000.00

Table 3 Credit for Existing Development, and Balance Payable

	Total from Table #2	Credit/ Lot	Total Credit	Balance allocation
Recoupment - open space and recreation	\$2,244.06	\$160.29	\$641.16	\$1,602.90
Recoupment - community facilities	\$42,207.76	\$3,014.84	\$12,059.36	\$30,148.40
Open space and recreation facilities	\$219,468.90	\$15,676.35	\$62,705.40	\$156,763.50
Active transport, public domain facilities	\$11,941.30	\$852.95	\$3,411.80	\$8,529.50
Plan administration	\$4,137.98	\$295.57	\$1,182.28	\$2,955.70
Total	\$280,000.00	\$20,000.00	\$80,000.00	\$200,000.00

Referrals

Internal Referrals	
Building services	No objection subject to the development subject to conditions.
Engineering	Deferred commencement condition required.
Waste	Consent conditions recommended noting minor non-compliance with minimum travel distance from dwellings to bin room.
Landscape	<p>Amended Plans, including Landscape Plans prepared by Studio 151 and Arborist's Report Rev 3 prepared by Urban Arbor are noted.</p> <p>The Arborist's report indicates that 14 trees on the site are to be removed to accommodate the proposed works.</p> <p>The Report also recommends tree root mapping for Trees 1, 2 and 19 and Tree sensitive construction works for Trees 12, 13, 14 and 19. Conditions to address these issues have been included.</p> <p>The amended Landscape Plans indicate replanting of 88 new native trees capable of attaining a minimum height of 5m at maturity, over the site in addition to numerous tall and medium shrubs, and ground covers.</p> <p>The replanting includes 12 new street trees.</p> <p>No objections are raised with regard to landscape issues subject to conditions as recommended.</p>
Environmental Compliance	It is noted that the Acoustic Assessment (BGMA 211020 A, BGMA Pty Ltd, December 2021) submitted as part of this DA application was drafted during Covid lockdown, and as a result estimations have been used, but no noise measurements were directly made. Nevertheless

	<p>the traffic noise estimations used are more conservative than comparable results submitted for DA at neighbouring property (1 Warners Rd, DA2021/27) which proposed daytime traffic noise level of 64dB vs 70.5dB indicated in this report. Theoretically, this stringent estimation would provide a better outcome for the future residents. Conditions of consent recommended.</p>
<p>External Referrals</p>	
<p>TfNSW</p>	<p>TfNSW has reviewed the submission and provides concurrence to the proposed civil works on Eastern Valley Way under Section 138 of the Roads Act 1993, subject to the following conditions being included in any consent issued by Council:</p> <ol style="list-style-type: none"> 1. 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 in height or depth along the Eastern Valley Way boundary. 2. The design and construction of the kerb and gutter crossing in a left in and left out arrangement on Eastern Valley Way 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 gutter 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. 3. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued. 4. 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. 5. All vehicles are to enter and exit the site in a forward direction. 6. All vehicles are to be wholly contained on site before being required to stop. 7. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Eastern Valley Way. 8. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on

	<p>traffic flows on Eastern Valley Way during construction activities. A ROL can be obtained through https://myrta.com/oplinc2/pages/security/oplincLogin.jsf</p> <p>In addition to the above, TfNSW provides the following advisory comments to Council for its consideration:</p> <ol style="list-style-type: none"> 1. 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 AS 2890.2 – 2018 for heavy vehicle usage. Parking Restrictions may be required to maintain the required sight distances at the driveway. 2. The proposed development will generate additional pedestrian movements in the area. Pedestrian safety is to be considered in the vicinity. 3. Car parking provision should be provided to Council's satisfaction.
<p>AUSGRID</p>	<p>Ausgrid does not object to the proposed development.</p> <p>The applicant/developer should note the following information regarding any development proposal near existing electrical network assets.</p> <p>Ausgrid Underground Cables are in the vicinity of the development</p> <p>Care should be taken to ensure that construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.</p> <p>It is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Information regarding the position of cables along footpaths and roadways can be obtained by contacting Dial Before You Dig (DBYD).</p> <p>The following points should be taken into consideration.</p> <p>Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.</p> <p>Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.</p> <p>In addition to DBYD the proponent should refer to the following documents to support safety in design and construction:</p> <ul style="list-style-type: none"> - SafeWork Australia – Excavation Code of Practice. - Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables. This document can be found by visiting the Ausgrid website via www.ausgrid.com.au. - The Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can also be found by visiting the Ausgrid website : www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries <p>Ausgrid Overhead Powerlines are in the vicinity of the development</p> <p>The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines</p>

	<p>the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.</p> <p>Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.</p> <p>The “as constructed” minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website at www.ausgrid.com.au.</p> <p>It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer’s cost.</p> <p>Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances “Working Near Ausgrid Assets - Clearances”. This document can be found by visiting the following Ausgrid website: www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquirie</p>
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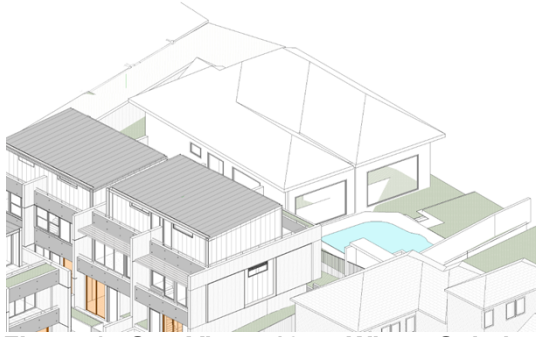
ATTACHMENT 3: SUBMISSIONS TABLE


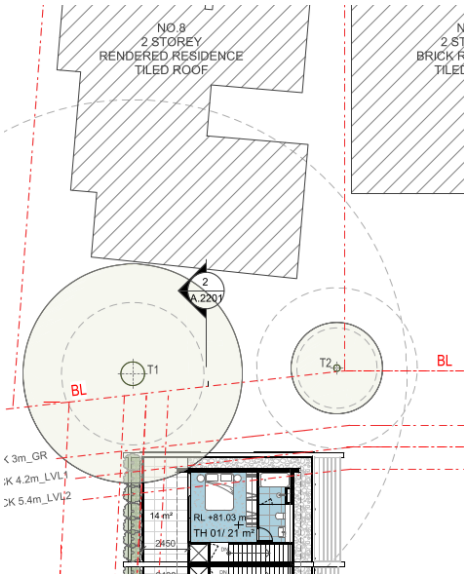
Council was in receipt of 16 unique submissions.

First Notification Period (March 2022)	
Tony Bellia	11 Warners Ave Willoughby
Belinda Bourke	13 Warners Ave Willoughby
Leah Bulfin	14 Warners Ave Willoughby
C and A Carman, F and E Logan	85 Eastern Valley Way 83 Eastern Valley Way
Alison He	88 Eastern Valley Way
C and A Parisi	17 Warners Ave
Mary-Ann Petitto	12 Warners Ave
R and J Phillips B Arnold L and M Jensen M Jehromi N Lowe and S Scully	2/82 Edinburgh Road 1/82 Edinburgh Road 3/82 Edinburgh Road 4/82 Edinburgh Road 5/82 Edinburgh Road
A Ryan and T Rannard	87 Eastern Valley Way
R Selby	4 Warners Ave
Received in August 2022	
Edwina Baruffi	6 Warners Ave Willoughby
Phillip Baruffi	6 Warners Ave Willoughby

Second Notification Period (October 2023)	
R and J Phillips	2/82 Edinburgh Road
C and A Carman, F and E Logan	85 Eastern Valley Way 83 Eastern Valley Way
Alison He	88 Eastern Valley Way
Yu Tao Zhang	8 Warners Ave Willoughby

The below table provides the issues raised by the objectors and Council’s response.

Issues Raised	Officer’s Response
Overshadowing	
Development will overshadow 88 Eastern Valley Way until midday.	<p>The sun view diagrams show that overshadowing of 88 Eastern Valley Way is relatively minor by 10am, and no overshadowing by 11am, on the winter solstice.</p>  <p>Figure 17 Sun View - 10am Winter Solstice</p>

	 <p style="text-align: center;">Figure 18 Sun View - 11 am Winter Solstice</p>
<p>Development will overshadow frontage of 83 and 85 Eastern Valley Way</p>	<p>These properties are located on the southern side of Eastern Valley Way, more than 28m from the top floor balconies. The submitted sun view diagrams indicate no overshadowing of these properties on the winter solstice until after 2pm.</p>
<p>Privacy</p>	
<p>Impact on privacy of 88 Eastern Valley Way - TH01 to TH04 facing side boundary is primary cause of privacy impacts and should be orientated to face front boundary.</p>	<p>The privacy impact on 88 Eastern Valley Way has been assessed in detail in the discussion under <i>WDCP 2006</i> D.2.11.3. Having regard to the zoning and the expected development form, the compliant side setbacks and the provision of screens and planters at the edge of the balconies, it is considered that the impact is not excessive.</p>
<p>Impact on privacy of 83 and 85 Eastern Valley Way</p>	<p>These properties are on the southern side of Eastern Valley Way, more than 28m from the top floor balconies of TH09 and TH10. There is no impact on the privacy of these properties.</p>
<p>Impact on privacy of 8 Warners Ave</p>	<p>8 Warner Ave is located to the north of TH01 (see Figure 19). The existing ground level at the boundary between 8 Warners Ave and the development site is at RL 76.56m. The top floor of TH01 has a floor level of 80.43m, being 3.87m above ground level at the boundary. Existing ground levels continue to rise north of the boundary. The elevation of TH01 facing the boundary with 8 Warners Ave is shown in Figure 20. The source of any potential impact on privacy is a view over the end of the balcony, which is accessed from the bedroom on the top floor of TH01. There is some substantial existing planting at the rear of 8 Warners Ave (see Figure 21) that provides reasonable screening for privacy.</p>  <p style="text-align: center;">Figure 19 - Position of TH01 and No 8 Warners Ave</p>


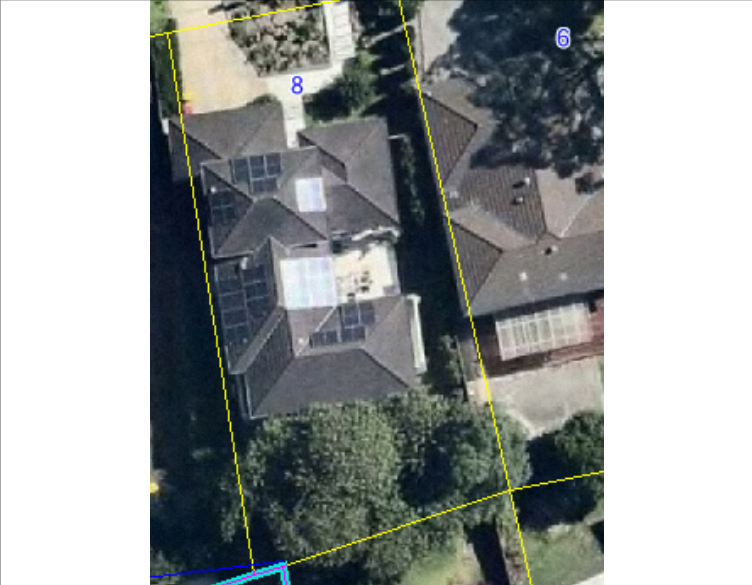
	 <p style="text-align: center;">Figure 20 Elevation of TH01 facing 8 Warners Ave</p>  <p style="text-align: center;">Figure 21 Aerial image of 8 Warners Ave</p>
<p>Impact on privacy of 12 Warners Ave</p>	<p>No 12 Warners Ave does not adjoin the development site and the nearest boundary is about 21m from the rear western corner of the development site. There is no significant impact on privacy of 12 Warners Ave.</p>
<p>Affordable Housing</p>	
<p>Developer not meeting responsibility for affordable housing</p>	<p>The submission relates to the first notification period. The development now includes a one bedroom AH dwelling, in partial satisfaction of the affordable housing provisions.</p>
<p>Height exceeds maximum permissible</p>	
<p>Height limits – exceeds by more than 10%</p>	<p>The submission relates to the first notification period. The height has been reduced to less than a 6% variation. The variation is assessed in Attachment 5 and is considered reasonable.</p>
<p>Basement projects more than 1m above existing ground level and therefore development is 4 storey, and should comply with related controls</p>	<p>The floor level of the storey immediately above the basement is less than 1 metre above ground level (existing) at all locations on the site. The proposal is three storey development.</p>
<p>Floor space ratio exceeds maximum permissible</p>	
<p>Claims the FSR exceeds maximum permissible</p>	<p>The proposed FSR complies. The submission may have confused FSR with site cover control. See below.</p>
<p>Building Bulk</p>	
<p>Bulky, unattractive, characterless building, out of character with streetscape</p>	<p>The submission relates to the first notification period. Figure 22 and 23 provides a comparison of the original notification and the current proposal. It is considered the current plans provide a significant improvement in the design of the street presentation, and is consistent with the desired future character noting the zoning of the land.</p>



Figure 22 Original Notification - Street Elevation



Figure 23 Current Application - Street Elevation

Views

No gaps between buildings will block views of Northbridge/Castlecrag

No 6 Warners Ave currently enjoys some outlook across the rear boundary and over the subject site from the upstairs bedroom windows to the south. See Figure 24.

The view is not considered to be of particular significance. The proposed development, immediately behind No. 6 Warners Ave, complies with the 9m height limit. There will be a minor view corridor retained between the building containing TH 1 to TH 4 and TH 5. In the circumstances, the proposed development is reasonable and there is insufficient justification to consider design modifications to improve view sharing.



Figure 24 View from No.6 Warners Ave

Tree Loss

Multiple developments in the immediate area causing significant tree loss and displacement of local fauna

The area is undergoing transition from single dwelling houses to medium density housing developments. Retention of existing trees is pursued as far as reasonably possible and offset planting is required at a ratio of 3 for 1.

DCP Non-Compliance

Impact on No.88 – Site Isolation

The applicant has demonstrated reasonable offers were made to purchase No. 88, but the offer was not accepted. A concept development plan has been provided for No 88 indicating a

	reasonable potential for development of the site for townhouse development.
Inadequate mix of dwelling sizes	Providing a mix of dwelling sizes for town house development is difficult due to the design parameters for height and floor space ratio. The provision of one affordable housing unit on the site is considered a reasonable achievement for dwelling size mix.
Top floor exceeds 60% of area of floor below	The submission relates to the first notification period. The design of the dwellings has been amended and each top floor is less than 60% of the ground floor, noting that the middle floor steps in, with each top floor stepping in further from the middle floor.
Attic should be treated as 3 rd storey and assessed under the DCP as 3 storey development	The original application sought assessment as a 2 storey development, which allows a higher site cover, reduced setbacks and reduced floor area for the top storey. The current amended plans are assessed as 3 storey development. This submission was in respect to the original plans and the amended plans are considered to have reasonably addressed the issues raised.
Variation to front setbacks and impacts on streetscape	The variations to front setbacks are considered to be consistent with allowable variations under <i>WDCP 2006</i> . <i>WDCP 2023</i> requires a 9m setback to a classified road which is a significant change to the controls. See the assessment under <i>WDCP 2023</i> Part B: d.15.
Variation to side setbacks	The side setbacks have been assessed in detail in the discussion under <i>WDCP 2006</i> D.2.8 and are considered to be compliant.
Site Cover exceeds maximum	<i>WDCP 2006</i> allows a variation to the maximum site cover of 30% if the recreational open space, natural landscape requirements, privacy, solar access and overshadowing considerations are satisfied. Detailed consideration of these components has been provided in Attachment 2, in the table assessment under <i>WDCP 2006</i> . On this basis, the site cover variation is considered acceptable.
Inadequate landscaped area	The soft landscaping area has been increased since the original notification of the plans, to which this submission relates. The landscaped area complies with the minimum required under <i>WDCP 2006</i> and <i>WDCP 2023</i> .
Children's play area required	Play area proposed at eastern end of development site.
No access to Eastern Valley Way to be permitted	This provision was intended to manage traffic conflicts on Eastern Valley Way. TfNSW has provided approval conditions for the development. The requirement to provide access to the site from Warners Ave for this development is considered an unreasonable requirement in consideration of TfNSW providing its support to the development.
Car Parking	
On-site parking insufficient, overflow onto Warners Ave	The proposed number of off street parking complies with Council's requirements. There is a bus stop adjacent the site which provides for public transport to reduce reliance on cars.
Other Matters	
Traffic Impact on Eastern Valley Way	TfNSW have advised that the proposed access arrangements are acceptable.
Increased traffic in Warners Ave	The development will increase traffic in Warners Ave. While it is accepted this will have impacts, this is an outcome of continued population growth and residential demand within Willoughby LGA.
Construction Noise and Traffic	Redevelopment of the R3 Zone will continue to generate construction noise and traffic. Standard consent conditions are recommended to limit those hours to weekdays and Saturday mornings.
Potential Asbestos and other	Consent conditions recommended for the management of any

contamination	asbestos found on site during demolition works. There is no history of contaminating land uses on these sites.
Lack of consideration for impacts on remaining dwelling houses	There will be impacts as the R3 Zone transitions from single dwelling houses to multi dwelling houses. Direct impacts from potential overshadowing and privacy has been reasonably minimised. Construction noise is proposed to be controlled by consent condition for hours of work. Demand for street parking will increase over time. Council is seeking to encourage increased public transport use and reduced car ownership however, this will be a long term project.
Overdevelopment in the area generally	The area has been zoned for increased residential development. The proposal, and adjoining developments are generally consistent with the zoning.
Ensure hours of work strictly adhered, including rock excavation	Consent conditions are recommended. Compliance during the construction period is a matter for Council's compliance team to respond to any complaints.

ATTACHMENT 4: APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT

Vaughan Milligan Development Consulting Pty Ltd

**APPENDIX 1
CLAUSE 4.6 – HEIGHT OF BUILDINGS**

(Revised February 2024)

**WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF
WILLOUGHBY LOCAL ENVIRONMENTAL PLAN 2012**

**90-96 EASTERN VALLEY WAY, WILLOUGHBY
FOR THE DEMOLITION OF THE EXISTING STRUCTURES AND CONSTRUCTION OF A 3 STOREY
MULTI DWELLING HOUSING DEVELOPMENT**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT AS
DETAILED IN CLAUSE 4.3 OF THE WILLOUGHBY LOCAL ENVIRONMENTAL PLAN 2012**

For: Demolition of the existing structures and construction of a multi dwelling housing development
At: 90-96 Eastern Valley Way, Willoughby
Owner: Norvista P4 Pty Ltd
Applicant: Norvista P4 Pty Ltd – Architecture Urbaneia Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Willoughby Local Environmental Plan 2012 (WLEP 2012). It is requested that Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of WLEP 2012.

The relevant maximum building height for development at the subject site is 9.0m. The maximum building height is a development standard as defined by Section 4 of the Environmental Planning and Assessment Act (EP&A Act).

The proposed development reaches a maximum height of 9.52m. The non-compliance represents a variation of 0.52m or 5.77% of the 9.0m height limit prescribed by clause 4.3 of WLEP 2012.

1.1 Willoughby Local Environmental Plan

1.1.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R3 Medium Density Residential (the R3 zone) and the Land Use Table in Part 2 of WLEP 2012 specifies the following objectives for the R3 zone:

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

- *To accommodate development that is compatible with the scale and character of the surrounding residential development.*
- *To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network.*
- *To encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping.*

The proposed development is for the construction of a multi dwelling housing development. The proposed development is permissible with consent within the R3 Zone.

1.1.2 Clause 4.3 – Height of Buildings

Clause 4.3 of WLEP 2012 sets out the maximum building height, as follows:

- (1) The objectives of this clause are as follows—*
- a. to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,*
 - b. to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
 - c. to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,*
 - d. to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,*
 - e. to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,*
 - f. to use maximum height limits to assist in responding to the current and desired future character of the locality,*
 - g. to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*
 - h. to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.*
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The maximum height for the proposed development is 9.0m, as shown on the Height of Buildings Map of WLEP 2012.

The Dictionary to WLEP 2012 operates via clause 1.4 of WLEP 2012. The Dictionary defines “building height” as:

building height (or height of building) means—

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

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

The Height of Buildings Map specifies a maximum building height of 9m which is the vertical distance from Australian Height Datum (AHD) to the highest point of the building pursuant to the definition of building height under Clause 4.3 WLEP 2012. In the circumstances of this assessment, it is important to note that the site will be excavated to a depth below AHD.

As a consequence of the sloping topography and excavation to meeting the existing Eastern Valley Way street level, the multi-level dwellings will present a non-compliant height for a minor portion of the roofline of Unit 4 to a height of 9.52m, resulting in a non-compliance of 0.52m or 5.77% to the control, as noted in Figures 1, 2 & 3.



Figure 1: Extract from architectural plans noting area of roof which exceeds the 9.0m height standard (9.52m maximum height proposed) (Source – Architecture Urbaneia)



Figure 2: Extract from architectural plans noting area of roof which exceeds the 9.0m height standard (9.52m maximum height proposed) (Source – Architecture Urbaneia)

2.0 Is Clause 4.3(2) of WLEP 2012 a development standard?

The definition of “development standard” in clause 1.4 of the EP&A Act includes:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work

Clause 4.3 relates to the maximum height of a building. Accordingly, Clause 4.3 is a development standard.

3.0 Purpose of Clause 4.6

WLEP 2012 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

Clause 4.6(1) of WLEP 2012 provides:

(1) The objectives of this clause are as follows:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130 at [1], [4] & [51]* where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by clause 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular,

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neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of the LEP provides:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Clause 4.3(2) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of the LEP.

Clause 4.6(3) of WLEP 2012 provides:

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

The proposed development does not comply with the maximum building height development standard pursuant to clause 4.3(2) of WLEP 2012 which specifies a maximum height of 9m for a development at the site.

Strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP 2012 provides:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) 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, and*
 - (b) the concurrence of the Planning Secretary has been obtained.*

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In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (clause 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

As confirmed in Planning Circular PS20-002 dated 5 May 2020, the Secretary has given written notice to each consent authority, confirming that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6.

Clause 4.6(5) of WLEP 2012 provides:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Council and the Court on appeal has the power under clause 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in clause 4.6(4)(a), and should consider the matters in clause 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3(2) of WLEP 2012 from the operation of clause 4.6.

5.0 The Nature and Extent of the Variation

This request seeks a variation to the maximum height of buildings development standard contained in clause 4.3(2) of WLEP 2012.

Clause 4.3(2) of WLEP 2012 specifies a maximum height of 9.0m for development at the subject site.

The proposed development reaches a maximum height of 9.52m. The non-compliance represents a variation of 0.52m or 5.77% of the 9.0m height limit prescribed by clause 4.3 of WLEP 2012.

The architectural submission prepared by Architecture Urbaneia includes detailed site assessment which highlights the substantial fall on site levels from north to south through the building area, which is a significant contributor to the minor non-compliance with the maximum height control. The

building has been excavated into the site to maintain appropriate access levels to the underground car Park area however due to the cross fall, minor portions of the southern extremity of the upper floor roof will breach the 9m height control by up to 520mm.

This request seeks to vary the height control to a maximum of 9.52m for the minor portions of the roof as identified in the previous figures.

6.0 Relevant Caselaw

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.3(2) of WLEP 2012 a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3(2) and the objectives for development for in the R3 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3(2) of WLEP 2012?

7.0. Request for Variation

7.1 Is compliance with clause 4.3(2) unreasonable or unnecessary?

This request relies upon the first way identified by Preston CJ in *Wehbe*, which seeks to establish that the objectives of the standard are achieved, despite non-compliance with the standard prescribed.

Each objective of the maximum height of buildings development standard and reasoning why compliance is unreasonable or unnecessary is set out below:

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

Comment: The proposed development has a three storey presentation to Eastern Valley Way, consistent with the bulk and scale that is anticipated within the locality and the wider R3 zone. The proposal has been designed to sit comfortably within this context. Particular care has been taken to ensure that the development provides appropriate transitions to neighbouring developments in terms of landscaping, setbacks and scale.

The minor non-compliance with the height limit predominantly arises towards the south-west corner of the site and is associated with the slope of the land and excavation for the development rather than the incorporation of an additional level.

The bulk and scale of the proposed development is appropriately minimised by virtue of the curved street frontage along with modulation and varied use of materials. The minor 0.52m

area of non-compliance does not contribute to the perception of excessive built form.

The overall height is in harmony with the surrounding residential area and will provide a positive contribution to the streetscape via a modernised and contemporary design consistent with the strategic medium density planning outcomes.

The development will be softened by landscaping forward of the development and within the road reserve to ensure that the visual impact is appropriately minimised.

The area is in transition, with single dwelling houses being replaced by multi dwelling housing. The proposed development has appropriate regard for the existing character of Eastern Valley Way, whilst also reflecting the future desired character anticipated by WLEP 2012 and WDCP 2013.

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

Comment: The minor area of non-compliant height within the development does not result in any adverse impacts upon the amenity of nearby or adjoining properties with regards to views or privacy.

The non-compliance is limited to the upper roof line, that contains no window openings, and is sufficiently setback from the front southern boundary, western side boundary and western neighbouring dwelling, reducing the visual impact.

There are no significant additional solar access impacts caused by the minor height variation. The neighbouring and future occupants will have direct access and sufficient exposure to direct sunlight, natural air flow while maintaining a landscaped outlook.

The additional height enables the flat roof treatment for the western units to be consistent with the design of the remaining multi-level dwellings. The additional height will not be readily identifiable from the street view, nor from neighbouring properties.

When considering that the proposed roofing will not have negative impacts in terms of privacy, views or solar access for neighbouring and nearby properties, the variation is reasonable in this instance.

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

Comment: The built form will read as a three storey series of townhouses from the public street view. The overall building height will be compatible and not out of context with similar existing and newly approved infill development to the north and west of the subject site.

The bulk and scale of the proposed development is appropriately minimised by virtue of a curved street frontage along with modulation and varied use of materials. The minor 0.52m area of non-compliance does not contribute to the perception of excessive built form.

The proposed development is well articulated and is to be finished in high-quality contemporary and natural materials to positively contribute to the existing streetscape.

The visual impact of the development is to be softened by extensive landscaping, particularly within the eastern corner and along the southern and western boundaries which will further assist in mitigating any adverse impacts upon the amenity of neighbouring dwellings.

The height non-compliance does not diminish the high visual quality of the development.

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

Comment: The site analysis has not identified any significant views currently enjoyed by neighbouring and nearby residents that will be affected by the proposal. Accordingly, the minor non-compliant roof element of the proposal is not thought to result in any adverse impacts upon views.

- 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,*

Comment: The area of non-compliance is a consequence of the slope of the land and the minor excavation to accommodate the proposed development. The built form and massing of the development, which has a three storey stepped presentation to Eastern Valley Way, is sufficiently consistent with the built form outcome associated with the 9.0m height limit prescribed.

The proposed development provides for the most appropriate distribution of floor space on the site, noting that the development is compliant with the maximum FSR and minimum landscaped area calculations prescribed.

- f. to use maximum height limits to assist in responding to the current and desired future character of the locality,*

Comment: The three storey presentation of the proposed development is consistent with the massing associated with a 9.0m height limit. The three storey character of the development is also consistent with other recent development seen throughout the area and the wider R3 zone.

The proposed built form and scale will define the public domain and contribute to the character of the streetscape, which features medium density housing of varying scales, and styles.

- 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,*

Comment: Not applicable – the site is not in Chatswood.

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

Comment: Not applicable – the site is not in a business or retail centre.

Strict compliance with the 9.0m maximum height development standard of WLEP 2012 is considered to be unreasonable and unnecessary as the objectives of the standard are otherwise achieved.

7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].*

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

The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:

- The proposal has a height and scale that generally reflects the controls that apply. The area is characterised by a variety of housing types and the proposal contributes to this variety.
- Non-compliance associated with the upper roof form is attributed to the slope of the land and required excavation to meet the existing street level of Eastern Valley Way.
- The non-compliance associated with the roof line within the south-west corner of the site is not readily perceivable as the minor variation only affects a limited volume of the

roof element about Unit 4, with the remaining building height complying at all other areas along the street frontage.

- The non-compliance also sufficiently setback from the western boundary so to not adversely impact upon the adjoining property to the west.
- The non-compliance does not detract from consistency with the objectives of the height of buildings development standard.
- The minor building height non-compliance will have no adverse effect to direct sunlight, natural air flow or outlook for the future occupants, their guests or neighbouring sites.
- The bulk and scale of the development is consistent with that of other medium density development that adjoin the site (to the north and west).
- The proposal has been designed to sit comfortably within the R3 context, with particular care taken to ensure that the multi-level development provides appropriate transitions to neighbouring developments in terms of setbacks and scale.
- Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSW LEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

Overall, the proposed design promotes the orderly and economic development and use of the land, and good design and amenity of the built environment, consistent with Objects 1.3(c) and (g) of the EP&A Act.

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development and the subject site.

7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3(2) and the objectives of the R3 zone?

Section 7.1 of this written request suggests the first test in *Wehbe* is made good by the development, in so far as the objectives of clause 4.3(2) of CBLEP 2013 are satisfied.

It is considered that notwithstanding the breach of the maximum building height, the proposed development will be consistent with the individual Objectives of the R3 zone as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

Comment: The proposed development provides a medium density housing product to contribute to the housing market of the Willoughby area. The development will add to the variety of housing in the local area and with the one and three bedroom configuration, provide accommodation for families in the area.

- *To provide a variety of housing types within a medium density residential environment.*

Comment: The proposed development comprises 14 x 3-bedroom adaptable dwellings and one 1 x bedroom affordable housing unit. The proposed development provides a suitable variety of housing products of itself, whilst also contributing to the diverse housing supply within the wider R3 zone.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Comment: Not applicable – the application proposes residential development.

- *To accommodate development that is compatible with the scale and character of the surrounding residential development.*

Comment: The bulk and scale of the development is consistent with that of other medium density development within the area, which is becoming more prevalent as the area transitions in accordance with the medium density residential zoning. The height and scale of the work is compatible with the approved development in the immediate vicinity which are under construction or recently completed.

- *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.*

Comment: The density of the proposed development does not result in any adverse impacts upon the safety or efficiency 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.*

Comment: The proposed development will provide a high level of amenity for future occupants without resulting in any adverse or unreasonable impacts upon the amenity of adjoining properties.

The proposed development is in the public interest, as it is consistent with the objectives of both the maximum building height development standard and the R3 Zone.

7.4 Has the Council obtained the concurrence of the Secretary?

The Council can assume the concurrence of the Secretary with regards to this clause 4.6 variation.

7.5 Has the Council considered the matters in clause 4.6(5) of WLEP 2012?

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is specific to the design of the proposed development for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region

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of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.

As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard in this particular instance.

There are no other matters required to be taken into account by the Secretary before granting concurrence.

8.0 Conclusion

This development proposes an 5.77% (0.52m) departure from the maximum 9m building height development standard. The area of non-compliance is a minor roof area above Unit 4.

The architectural submission also includes a detailed site assessment to highlight the substantial fall in sit slope from north to south of 3.93m over the building location.

The variation is considered acceptable largely due to the minor nature of the non-compliant roof structure, which is integral to the design and provide weather protection for residents. The roof structure is not considered to result in excessive bulk and scale, will be satisfactory in the streetscape and will not result in adverse shadow, views or amenity impacts on surrounding properties.

This exception request to the building height development standard is considered to be well founded and Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

This written request to vary to the maximum building height development standard specified in Clause 4.3(2) of the WLEP 2012 adequately demonstrates that the objectives of the standard will be met.

In summary, the proposal satisfies all of the requirements of clause 4.6 of WLEP 2012 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



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ATTACHMENT 5: OFFICER’S CLAUSE 4.6 ASSESSMENT – HEIGHT

Description of non compliance

Development Standard	Height Standard	Proposed Height	%Variation
Cl 4.3 Height of buildings	9.0m	9.52m	5.78% 0.52m over the standard

Note: clause 4.6 of the Standard Instrument was amended on 1 November 2023, however, transitional provisions require assessment of this application in accordance with clause 4.6 as it was prior to the amendment.

Figure 25 shows the location of four parts of the development that project through the height plane of 9m: TH02, TH04, TH06 and TH11/TH12.

The maximum breach is TH04, located at the front of the site, at its western end and adjacent to the entry ramp to the basement.

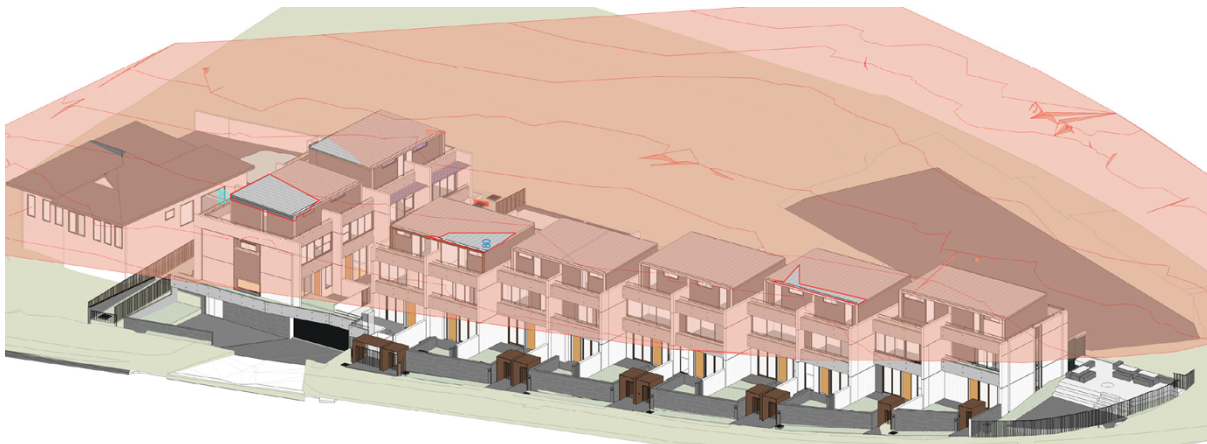


Figure 25 Height Plane

Key points of the applicant’s submission:

- i) The non-compliance is minor.
- ii) The height is exceeded by minor sections of the roof, and the top floor is setback further from the street than the floor below, minimising the visibility of any perceived breach of the height.
- iii) The non-compliance is predominately a result of the slope of the land.
- iv) The development achieves a consistent streetscape presentation of three storey development and an appropriate roof form.

Assessment Officer Comments

It is agreed that the non-compliance is minor, and that the small areas of roof form that project above the height plane are setback further than the floor levels below. This limits the visibility of the non-compliant roof form when viewed from the street.

The majority of the built form is below the 9m height plane and the overall appearance and character of the development is three storey, generally consistent with the expected character of development within the 9m height limit area.

The slope of the land creates design requirements for accessing the basement car park and a standing area for delivery vehicles on site. This requires the adjacent TH04 to be set at a slightly higher level to provide clearance to the basement. TH02 steps up the slope from the front two townhouses (TH03 and TH04), but similarly, the majority of the roof form is below the 9m height plane. The non-compliance associated with TH06 and TH11/TH12 are extremely small (0.08m).

The impacts of the height exceedance will be imperceptible when viewed from the street. Impacts from overshadowing from the additional height will be very minimal and the required minimum solar access criteria will be exceeded.

Privacy impacts are not increased as a result of the non-compliance, as the floor levels are below the maximum height. Privacy impacts are considered to be manageable and acceptable in a medium density residential area.

Noting that the variation to the height limit is 5.78% at the highest point, the majority of the roof form is below the height limit, and that the impacts from the height exceedance are minor, it is considered that strict compliance would be unreasonable in the circumstances.

The development is considered to be consistent with the objectives of the height standard and the zone. In this instance, strict compliance with the height standard is considered to be unnecessary.

Having regard to the lack of consequential material impacts as a result of the variation, the relatively minor quantum of variation, it is considered there are sufficient environmental planning grounds for Council to be satisfied that the written request is well founded.

Objectives of Clause 4.6

4.6 (1) The objectives of this clause are as follows:

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

CI 4.6 Criteria	Response
4.6(2) <i>Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</i>	The development standard is not expressly excluded from the operation of this clause.
4.6 (3) <i>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—</i>	
<i>a) Has the applicant's submission demonstrated that compliance with the standard is unreasonable or</i>	The applicant has provided a written request that seeks to justify the contravention of the development standard on the basis that

<i>unnecessary in the circumstances of the case, and</i>	compliance is unreasonable and unnecessary in the circumstances of this case.
<i>b) Has the applicant's submission demonstrated that there are sufficient environmental planning grounds to justify the non-compliance?</i>	The applicant's written request has sought to demonstrate sufficient environmental planning grounds.
4.6(4) Development consent must not be granted for development that contravenes a development standard unless:	
<i>a) i) Has the applicant's written request adequately addressed the matters required to be demonstrated in subclause 3</i>	The applicant's written request has adequately demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the non-compliance
<i>ii) Is the proposed development in the public interest because it is consistent with:</i>	
<i>• objectives of the particular development standard</i>	Yes, see assessment below
<i>• objectives for the development within the zone in which the development is proposed to be carried</i>	Yes, see assessment below

Consistency with the objectives of the Height of Buildings development standard:

Consistency of the proposed development with the height of building standard's objectives is discussed below:

Height of Building Development Standard Objectives	Response
<i>a) to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,</i>	The proposed height of the building is consistent with the bulk and scale of multi dwelling housing developments in the locality and is consistent with the future expected streetscape.
<i>b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,</i>	The development does not have any significant impact on views. Impacts on privacy, or visual intrusion are considered to be consistent with a compliant height proposal. Overshadowing impacts from the additional height are considered to be minor and still ensure adjoining properties achieve more than 3 hours solar access between 9am and 3pm during mid winter.
<i>c) to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,</i>	It is considered that the architectural design will provide a positive impact on the visual amenity of this redeveloping medium density residential area.
<i>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,</i>	There are no significant views from adjacent development or public open spaces near or around the site. Views achieved from properties in Warners Ave over across rear boundaries. The extent that views will be available between the proposed buildings is considered to be reasonable view sharing in this case.
<i>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,</i>	The development is compliant with the allowable FSR. Consequently, the height is considered to be consistent with the redevelopment potential of the land.

f) <i>to use maximum height limits to assist in responding to the current and desired future character of the locality,</i>	The proposed height is considered to be consistent with the desired future character of the locality.
g) <i>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,</i>	The proposed height does not impact on the primacy of Chatswood City Centre.
h) <i>to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.</i>	The site is not in the vicinity of any business or retail centre.

Consistency with the objectives of the R3 Zone:

Consistency of the proposed development with the Zone’s objectives is discussed below:

Zone Objective	Response
<ul style="list-style-type: none"> To provide for the housing needs of the community within a medium density residential environment. 	The proposal provides for the housing needs of the community consistent with a medium density residential environment.
<ul style="list-style-type: none"> To provide a variety of housing types within a medium density residential environment. 	The proposal provides 14 by three bedroom dwellings ranging in size from 106m ² to 121m ² and 1 by one bedroom dwelling of 50m ² . Of these, 5 (33%) are proposed to be adaptable units. This is considered to be a reasonable outcome for this scale of development.
<ul style="list-style-type: none"> To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	NA
<ul style="list-style-type: none"> To accommodate development that is compatible with the scale and character of the surrounding residential development. 	The development is broadly compatible with the desired future scale and character of the surrounding development.
<ul style="list-style-type: none"> To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network. 	The site is well located for public transport with a direct bus service within a 2 minute walk that is then 17 minutes to Chatswood Station. The amalgamation of four existing sites will reduce the number of existing accesses to Eastern Valley Way, and provide for vehicles to enter and exit in a forward direction which is currently not available.
<ul style="list-style-type: none"> 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 design is considered to be well considered to provide liveable dwellings without significant impact on solar access, privacy, noise, or views. The provision of landscaping and parking complies with <i>WDCP 2006</i> and generally with <i>WDCP 2023</i> . Council’s development engineer is satisfied with the vehicular access.

Clause 4.6 4) b) The Concurrence of the Secretary has been obtained

Based on the above considerations, the proposed variation to the development standard is acceptable. Variation of the standard is considered to be in public interest given that the relevant objectives of the zone and standard are met by the proposal despite its numerical non-compliance with the development standard.

The variation is not considered to raise any matter of regional and state significance, and concurrence of the Secretary in approving this variation can be assumed.

ATTACHMENT 6 - SECTION 4.15 (79C) ASSESSMENT

The application has been assessed under the provisions of S.4.15 (79C) of the *Environmental Planning and Assessment Act*.

The most relevant matters for consideration are assessed under the following headings:

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

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> • <i>State Environmental Planning Policies (SEPP)</i> <p><u>SEPP (Transport and Infrastructure) 2021:</u> Referral to TfNSW and Ausgrid completed. Concurrence granted by TfNSW. Ausgrid advised of no objections.</p> <p><u>SEPP (Resilience and Hazards) 2021 Chapter 4 Remediation of Land (Contaminated Land)</u> PSI report submitted. No evidence of likelihood of contamination.</p>	✓
	<ul style="list-style-type: none"> • <i>Local Environmental Plans (LEP)</i> <p>Comment: <u>WLEP 2012</u> The proposal breaches the <i>WLEP 2012</i> height standard but this is considered to be satisfactory for the reasons set out in Attachment 5.</p>	✓
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> • <i>Draft State Environmental Planning Policies (SEPP)</i> • <i>Draft Local Environmental Plans (LEP)</i> 	N/A N/A
	<p>Comment: There are no draft <i>SEPPs</i> that apply to the subject land. At the time of lodgement of the application:</p> <ol style="list-style-type: none"> 1. <i>WLEP 2012</i> (Amendment No. 34) had been exhibited. Clause 4.4 was proposed to be amended to delete the provision to exclude affordable housing gross floor area from the calculation of FSR. If the affordable housing gross floor area were to be included, the FSR would be 0.7046:1, which is less than 1% (11m²) more than the maximum permissible under the current provisions. 2. Clause 4.6 of the Standard Instrument was amended to change the process for assessment of variations to development standards. This change was effected through amendment to all Standard Instruments including <i>WLEP 2012</i>. Transitional provisions require assessment in accordance with the provisions at the time of lodgement. 	
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> • <i>Development control plans (DCPs)</i> <p>Comment: The application was lodged at a time when <i>WDCP 2006</i> was in effect. In October 2023, <i>WDCP 2023</i> came into effect. The main differences, in terms of this application are:</p> <ol style="list-style-type: none"> 1. The adoption of NSROC Waste Management Technical Guide for the sizing and design of waste management and collection for various size of residential development. This effectively nearly doubled the required capacity of waste bins on site. The bin room has been sized to cater for new rates. 2. The required rate of off street parking, if applied, would reduce the requirement by nine spaces, to 16 spaces. 	✓

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

	<p>3. The required rate of provision of adaptable spaces would increase from 2 to 5 spaces.</p> <p>The departures from <i>WDCP 2006</i> are described in Attachment 2, including:</p> <ul style="list-style-type: none"> • Under provision of off street parking, with no allocated space for the affordable housing unit. It is noted that there are 4 visitor spaces available. • Site coverage is 37%, while 30% is the maximum. However, <i>WDCP 2006</i> allows a variation where other provisions are satisfied, and in particular, recreational open space and natural landscape requirements, which are satisfied. <p>The departures from <i>WDCP 2023</i> are:</p> <ul style="list-style-type: none"> • All dwellings required to receive 3 hours of solar access on the winter solstice. The proposal will achieve 13 of 15 dwellings. • The landscaped area requirement is 40%. The proposal will achieve 35.3%. • Minimum dimension of landscaped areas is to be 1.5m. Some areas are less than this. • 30% of each potential lot is to be landscaped area. 6 of 15 of the dwellings comply. • Primary road setback of 6m. TH04 encroaches to 5.625m at its nearest point but the average setback is more than 6m. • Classified road setback of 9m. Extensive encroachment along the Eastern Valley Way frontage. • Waste Management – a maximum travel distance of 30m from any dwelling is required. Four of the dwellings are more than 30m from the bin room, with TH14 being the furthest at about 60m. <p>In respect to the arrangements for Waste Collection, the proposal has been considered to be acceptable in the circumstances. See the Discussion section of this report.</p>	
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> • Clause 61 EP&A Regulation-Demolition 	✓
	<ul style="list-style-type: none"> • Clause 62 EP&A Regulation-Fire Safety Considerations 	✓
	<ul style="list-style-type: none"> • Clause 64 EP&A Regulation-Fire Upgrade of Existing Buildings 	NA
	Comment: Matters reviewed by Council and appropriate conditions included within the consent.	
(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 	NA
	<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 	✓

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

	<ul style="list-style-type: none"> • Flora & fauna 	✓
	<ul style="list-style-type: none"> • Waste 	✓
	<ul style="list-style-type: none"> • Energy 	✓
	<ul style="list-style-type: none"> • Noise & vibration 	✓
	<ul style="list-style-type: none"> • Natural hazards: Overland flowpath 	✓
	<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 	✓
	<p>Comment: The impacts of the proposal on adjoining or nearby properties are considered to be reasonable in the context of the medium residential zone, the permissibility of the development and subject to the recommended conditions.</p>	
(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? 	✓
	<p>Comment: Having regard to the assessment outcomes, the provision of affordable housing, noting the permissibility of the use, the development is considered to be appropriate for the site</p>	
(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 	✓
	<p>Comment: 15 Submissions were received and addressed within Attachment 3.</p>	
(e)	The public interest	
	<ul style="list-style-type: none"> • Federal, State and Local Government interests and Community interests 	✓
	<p>Comment: The proposal is consistent with Strategic direction of both the State and Willoughby Council, and consistent with the broader public interest.</p>	

ATTACHMENT 7: SCHEDULE OF CONDITIONS

DEFERRED COMMENCEMENT

1. Stormwater Diversion Plan

Submit to Council for approval a detailed plan and sections for the diversion of the Council stormwater pipe. The documents shall include the following:

- Survey of the new easement and the area 5m each side of the easement
- Location and level of adjacent buildings
- Location of the diverted pipe and pits
- Longitudinal section of the pipe, which includes existing and proposed ground levels, location of the pipe, any existing services, chainages along the pipe and 5% and 1% AEP water levels.
- Sections at 5m intervals through the easement and extending to the proposed building. The sections shall include includes existing and proposed ground levels, location of the pipe, any existing services and 5% and 1% AEP water levels.

The documents must clearly demonstrate that 500mm freeboard is achieved between the 1%AEP water level in the overland flow path in the easement and the flood level in the building adjacent to the flow path. If a wall is relied on to achieve the freeboard, the location and level of the wall must be clearly shown on the plan and sections.

(Reason: Stormwater management, protection of Council asset and protection of property)

Upon satisfaction of the deferred commencement condition,

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
Cover Page	A.0000	E	17/05/2024	Urbaneia
Demolition Plan	A.0200	D	26/03/2024	
Basement	A.1000	E	17/05/2024	
Ground Floor	A.1001			
Level 1	A.1002	D	26/03/2024	
Level 2	A.1003			
Roof	A.1004	E	17/05/2024	
Elevations	A.2000			
Long Sections	A.2201	D	26/03/2024	
TH01 & TH 02	A.2202			
TH03 &TH04	A.2203			
TH05 & TH06	A.2204	E	17/05/2024	

TH07 & TH08	A.2205			
TH09 & TH10	A.2206			
TH11 & TH12	A.2207	D	26/03/2024	Studio 151
TH13 & TH14	A.2208			
Landscape Arrangements Plan	LDA100	13	16/05/2024	
Landscape Plan 01	LDA101	9		
Landscape Plan 02	LDA102	11		
Landscape Plan Level 01	LDA103	3	01/08/2023	
Landscape Plan Level 02	LDA104	2		
Detailed Landscape Plan	LDA105	5	31/01/2024	
Landscape Sections 01	LDA201	7	16/05/2024	
Landscape Sections 02	LDA202	9	22/02/2024	
Landscape Planting Palette	LDA301	2	01/08/2023	

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. TfNSW Requirements

Compliance with the following conditions from TfNSW:

1. 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 in height or depth along the Eastern Valley Way boundary.
2. The design and construction of the kerb and gutter crossing in a left in and left out arrangement on Eastern Valley Way 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 gutter 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.
3. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au
A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.
4. 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.

5. All vehicles are to enter and exit the site in a forward direction.
6. All vehicles are to be wholly contained on site before being required to stop.
7. All demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Eastern Valley Way.
8. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Eastern Valley Way during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>
(Reason: Ensure compliance)

3. Ausgrid Requirements

Compliance with the following conditions from Ausgrid:

Ausgrid Underground Cables are in the vicinity of the development

Special care should be taken to ensure that driveways and any other construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.

It is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Information regarding the position of cables along footpaths and roadways can be obtained by contacting Dial Before You Dig (DBYD).

In addition to DBYD the proponent should refer to the following documents to support safety in design and construction:

SafeWork Australia – Excavation Code of Practice.

Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables.

The following points should also be taken into consideration.

Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.

Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

Ausgrid Overhead Powerlines are in the vicinity of the development

The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.

Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.

The “as constructed” minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website at www.ausgrid.com.au.

It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer’s cost.

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances “Working Near Ausgrid Assets - Clearances”. This document can be found by visiting the following Ausgrid website:

www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

(Reason: Ensure compliance)

PRIOR TO MAKING AN APPLICATION FOR A CONSTRUCTION CERTIFICATE

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

4. Consolidation of Lots

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. Evidence of lodgement of the Plan of Consolidation with NSW Land Registry Services is to be submitted to Council with the application for Construction Certificate.

(Reason: Ensure the lot size complies with the minimum lot size requirement of *Willoughby LEP 2012* clause 6.10)

5. Submit the Following Information to Willoughby City Council

Prior to the lodgement of an application for a construction certificate, the applicant shall submit plans and specifications satisfying the following requirements to Willoughby City Council for approval. Documentation confirming approval by Willoughby City Council shall then be submitted to the Certifier for the application of a construction certificate.

- (a) Longitudinal section of the stormwater pipe from the outlet of the OSD system to the connection point to the Council pit in Eastern Valley Way. The section shall include a hydraulic grade line (HGL) analysis for the 1% AEP storm event that demonstrates that the outlet of the OSD system is above the 1%AEP water level. The analysis shall adopt the top of kerb level as the 1%AEP water level at the Council pit / connection point to the Council system.

(Reason: Ensure compliance)

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

6. S7.11 Contribution

Prior to the issue of the Construction Certificate, a monetary contribution is to be paid to in accordance with section 7.11 of *Environmental Planning and Assessment Act, 1979* in the amount of **\$200,000** for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

Active transport and public domain facilities	\$8,529.50
Open space and recreation facilities	\$156,763.50
Plan administration	\$2,955.70
Recoupment community facilities	\$30,148.40
Recoupment open space and recreation	\$1,602.90
Total	\$200,000.00

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)

7. 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)

8. Adaptable Units

Provision of a minimum of five adaptable dwellings for disabled persons, comprising a minimum of two dwellings with parking designed to satisfy AS2890.6 and a minimum of three additional dwellings with parking designed to satisfy AS2499. Each adaptable unit is to be nominated on the Construction Certificate drawings.

Note: TH06 and TH14 are capable of satisfying AS2890.6, and TH10, TH11 and TH12 are capable of satisfying AS2499.

(Reason: Amenity and provision of accessible parking and dwellings.)

9. Provision of Privacy Screens

Prior to the issue of the Construction Certificate, privacy screens are to be shown between adjacent top floor balconies with a height of 1.6m above floor height.

(Reason: Privacy)

10. 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 dwelling, identified as TH15, to the Council, free of charge. The Deed is to be drafted in accordance with the Housing Transfer Deed template available on Council's website and is to be submitted to the Council's Property Team and be 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)

11. 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)

12. Affordable Housing Monetary Contribution

The applicant shall make a monetary contribution for the purpose of providing Affordable Housing equating to 15.44 m² being the remainder of the requirement for 4% of the accountable floor area of the development to be provided as affordable housing.

Reference is to be made to the value of most recent sales price of such new dwellings of similar size at the subject development (in the absence of current sales price at the subject site, the recent sales price of similar sized dwelling(s) at other surrounding comparable development(s) within the Willoughby local government area is acceptable). Evidence, such as a valuation report or document(s) of recent sales of such dwelling(s), are to be provided to Council for approval before Council accepts the monetary contribution. In the event of a dispute between applicant / developer and Council in the valuation / validation of the evidence provided, Council will appoint an independent registered valuer to undertake a re-valuation. The applicant / developer is to pay Council all reasonable costs associated with the service provided by Council's appointed valuer for this re-valuation.

Prior to payment of the contribution evidence shall be submitted to Council's Director of Planning & Infrastructure demonstrating how the contribution has been calculated in accordance with the above requirement. The contribution is to be paid **prior to release of the construction certificate.**

(Reason: Ensure compliance)

13. 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)

14. Damage Deposit

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$85,000** (GST Exempt) to Council against possible damage to Council's assets and any infrastructure within the road reserve/footway during the course of the building works. The deposit will be refundable subject to inspection by Council after the completion of all works relating to the proposed development. For the purpose of inspections carried out by Council Engineers, an inspection fee of **\$260** (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 = \$85,000 + \$260 = \$85,260

(Reason: Protection of public asset)

15. Creation of Drainage Easement

The Applicant shall create, at no cost to Council, a drainage easement of 2.5 metre(s) wide, centred on the relocated Council pipe, over the allotment in favour of Council. The Plan to create the easement shall be lodged to Council prior to the

issue of the Construction Certificate and registered with the NSW Land Registry Services prior to the release of the Occupation Certificate. Council's costs, including legal fees associated with reviewing, approving and executing the Creation of the Easement together with associated PEXA fees must be paid by the Applicant. The Applicant is responsible for any stamp duty payable in respect of the dealing.
(Reason: Drainage maintenance)

16. Stormwater Conveyed to Street Drainage

Stormwater runoff from the site shall be collected and conveyed to the street drainage system in accordance with Council's specifications. A grated drainage pit of minimum 600mm x 600mm shall be provided within the property and adjacent to the boundary prior to discharging to Council's drainage system. All drainage works shall comply with the requirements described in Part I of Council's *DCP*, Technical Standards and AS 3500.3. In this regard, full design and construction details showing the method of disposal of surface and roof water from the site shall be shown on the Construction Certificate plans.
(Reason: Stormwater control)

17. Analysis of Outlet Condition

The capacity of the outlet pipe from the OSD system to the Council system shall be hydraulically evaluated using the Hydraulic Grade Line method to ensure that the outlet from the OSD system is above the downstream water level for the 1%AEP storm event. The adopted downstream water level for the analysis shall be the top of kerb level at the Council pie. Full engineering details of the hydraulic evaluations prepared and signed by a practising Civil Engineer shall be submitted to Council for consideration prior to the issue of the Construction Certificate.
(Reason: Prevent property damage)

18. Detailed Stormwater Management Plan (SWMP)

Prior to the issue of the Construction Certificate, 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 in accordance with the Capital Engineering Consultant's drawings SW010/L, SW020/L, SW021/L and SW022/L. All drawings shall comply with Part I of Council's Development Control Plan and Technical Standard 1, AS/NSZ3500.3 – *Plumbing and Drainage Code* and National Construction Code. The plans shall include an on-site stormwater detention (OSD) system with a minimum volume of 53m³ and a water quality improvement system.
(Reason: Ensure compliance)

19. 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 equivalent to the runoff volume generated from of the area draining into the tank for the 1% Annual Exceedance Probability storm event for 2-hours duration.

All drawings shall be prepared by a suitably qualified and experienced civil engineer and shall comply with Part I of Council's Development Control Plan, Technical Standard 1, AS/NZS 3500.3 – *Plumbing and Drainage Code* and the National Construction Code.

(Reason: Prevent nuisance flooding)

20. 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)

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

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

- (a) Construction of 1.5 metres wide footpath (max. 2.5% crossfall) towards the kerb for the full frontage of the development site in Eastern Valley Way 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. The path is to be located in a position agreed with Council, and shall not change direction within or adjacent to the vehicle crossing.
- (b) Removal of all existing vehicle crossings and construction of new kerb and gutter for a minimum distance of 1m beyond the existing crossing. The new kerb is to be in accordance with TfNSW specifications.
- (c) Construction of a vehicular crossing with separated entry and exit in accordance with TfNSW requirements and generally in accordance with

Capital Engineering Consultant's drawing CIVL010/06. The crossing shall be designed to require left turn in and left turn out by all vehicles.

The required plans must be designed in accordance with Council's specifications (AUS-SPEC). A minimum of three (3) weeks will be required for Council to assess the *Roads Act* submissions. Early submission is recommended to avoid delays in obtaining a Construction Certificate. For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council prior to issue of the approved plans.

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. Separate concurrence is to be obtained from TfNSW.
(Reason: Ensure compliance)

22. Driveway Longsection

Prior to issue of the Construction Certificate and in order to assess the susceptibility of vehicles to scraping as they pass over the proposed access driveway the applicant shall submit longitudinal sections for approval by Council 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 TfNSW standard layback.
- (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 the B99 vehicle template in accordance with AS/NZS 2890.1. All driveway grades and transitions shall comply with AS/NZS 2890.1 -2004 and Council's specifications.

The new crossing is to be angled to require left in and left out traffic movements as per TfNSW requirements. The footpath/footpath zone 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 – As per Capital Engineering Consultant's drawings CIVL010/06.

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)

23. 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)

24. Vehicle Access and Manoeuvring – Engineer’s Certification

Prior to the issue of the Construction Certificate, 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 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) 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 2890.2 and AS 2890.6 in terms of minimum dimensions provided 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 2.7 of AS 2890.6.
- (e) That the headroom clearance of minimum 2.5 metres is provided to all parking spaces for people with disabilities, including adaptable parking spaces, for compliance with Section 2.7 of AS 2890.6.
- (f) That all accessible and adaptable spaces have the shared zones and bollards required by AS 2890.6.
- (g) That the headroom clearance required in AS 2890.2 for a SRV has been provided for the service bay 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 a SRV and a passenger vehicle including clearance in accordance with AS2890.1 and AS2890.2, is provided between the frontage road and the service bay.

(Reason: Ensure compliance)

25. 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 finish 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)

26. Stormwater Diversion Plan

Prior to the issue of a Construction Certificate, approval is to be obtained from Council for the stormwater pipe diversion works. Detailed plans and specifications for the diversion are to be submitted to Council for the diversion works. The plans and specifications shall be prepared by a suitably qualified and experienced civil engineer shall include:

- Location of the proposed diverted pipe overlaid on the site survey and site plan.

- Junction pits at all changes of direction, at all changes of level and at intervals of 30m.
- Longitudinal section of the pipe, which includes existing ground level, proposed ground level, pipe invert level, grate / cover level of all pits, 5% and 1%AEP water levels.
- Sections through the easement and pipe at 5m intervals along the pipe. Sections are to include existing and proposed ground levels, boundary location, edge of easement, 1%AEP water level and location and level of any adjacent building.
- Floor levels of adjacent buildings and details to confirm that 500mm freeboard is provided between the 1%AEP water level in easement and the adjacent floor levels.

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 submission. 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.

(Reason: Stormwater management and protection of Council assets)

27. Tree root investigation and tree root map

- a. Prior to the issue of a Construction Certificate, a tree root mapping investigation for trees numbered 1, 2, and 19 as identified in the Arboricultural Impact Assessment Rev 3 dated 27 February 2024 prepared by Urban Arbor shall be undertaken, and a tree root map shall be documented that will be the basis for determining construction methodology near existing trees 1, 2, and 19.
- b. An Arborist with minimum AQF Level 5 in arboriculture shall supervise the works to verify tree root locations. A non-destructive root investigation shall be conducted complying with clause 3.3.4 of AS 4970-2009 Protection of Trees on Development Sites.
- c. The root investigation shall map existing roots of significance that must not be impacted by construction works. The tree root investigation shall be conducted to confirm the following data to be used for the location/alignment of any new proposed works:
 - i. confirmation of the location of any tree roots at or >25mm (Ø) diameter to areas that require excavation for proposed works. Alternative alignment of proposed works shall be provided as necessary to avoid major roots, and
 - ii. mapping of the suitable location/alignment of proposed works.
- d. the tree root map shall be issued to a qualified Structural Engineer as a basis for structural design, and for determining the final location/alignment and construction methodology of proposed works within the tree protection zone (TPZ).
- e. prior to the issue of a Construction Certificate, the Arborist shall provide certification to the Principal Certifier that the tree root investigation and clear distance recommendations have been adequately addressed in the Construction Certificate plans.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

(Reason: To ensure protection of vegetation proposed for retention or adjacent to the site.)

28. Footing design near trees.

- a. Footing structural layout plans for the works shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a tree root mapping investigation near existing trees numbered 1, 2, and 19 (as identified in the Arboricultural Impact Assessment Rev 3 dated 27 February 2024 prepared by Urban Arbor) to locate critical tree roots and potential impacts on Trees 12, 13 and 14 and recommend footing design and stormwater pipe locations for the construction works.
- b. The Arborist shall review, comment, recommend design revision as required and approve the footing and pipe layout, to ensure the locations of footings and stormwater pipes will be manageable in terms of tree protection measures for the trees nominated in a) above.
- c. The Arborist shall submit certification to the Certifier, that the locations of the footings and stormwater pipes for the trees nominated in a) above are accepted.
- d. The agreed footing structural layout plans shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.
(Reason: Tree protection)

29. Amended Landscape Plans

Prior to the issue of a Construction Certificate, Landscape Plans are to be amended to delete 12 x *Banksia integrifolia* as street tree planting and replace with 12 x *Eucalyptus haemastoma* as street tree planting. Minimum pot size 100 litre.

Amended plans are to be submitted to the nominated Certifying Authority for approval prior to issue of a Construction Certificate.
(Reason: Local environmental amenity)

30. Internal Noise Levels Residential

To minimise the noise intrusion from any external noise source, all new building work shall be designed and constructed to comply with the following criteria with windows and doors closed:

Internal Space	Time Period	Criteria
		L_{Aeq} (period)
Living Areas	Any time	40 dB(A)
Sleeping Areas	Day (7am – 10pm)	40 dB(A)
	Night (10pm – 7am)	35 dB(A)

Note:

- 1. The above criteria do not apply to kitchens, bathrooms, laundries, foyers, hallways, balconies or outdoor areas.
- 2. The above criteria define the minimum acceptable levels. Buildings may be built to a better than average standard by applying more stringent criteria.

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

(Reason: Amenity, environmental compliance and health)

31. 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)

32. 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)

33. 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)

34. Construction and Demolition Waste Management Plan

Prior to the issue of any Construction Certificate, the Applicant is required to submit an amended Waste Management Plan that incorporates a Construction and Demolition Waste Management Plan in accordance with *WDMP 2023* (NSROC Section 2.1) which addresses the following items in particular:

- Provides evidence of waste volume calculation with a clear method of validation (e.g., an excavation plan);
- Demonstrates the volume of asbestos (or absence of asbestos) at the site, through a report or clearance certificate, to provide certainty around how asbestos would be handled; and
- Details of the proposed locations for onsite waste facilities during demolition and construction with truck access.

(Reason: compliance/waste reduction/public health and safety)

35. Updated Operational Waste Management Plan

Prior to the issue of any Construction Certificate, the Applicant is required to submit an updated Operational Waste Management Plan and architectural plans demonstrating that:

- (a) There is sufficient space at the kerbside to present a total of 25 x 240L bins, 30cm apart.
 - (b) The development complies with the waste storage area amenities, in accordance with *Willoughby Development Control Plan 2023* (NSROC 2018 Section 3.10.3), including:
 - a. Waste storage area amenities and conditions illustrated on architectural plans;
 - b. A minimum aisle space of 1.5m required in the bin storage area;
 - c. Doorways should be a minimum of 2.5m wide and at least 1.5m high;
 - d. Floors must be reinforced concrete, smooth, non-slip and at least 75mm thick;
 - e. Bin storage area must be supplied with hot and cold water; and
 - f. Bin storage area must drain to a Sydney Water approved sewer system.
 - (c) There is provision of space internally within units for residents to store a minimum of 2-days of waste volume with source separation capacity. This is in accordance with *Willoughby Development Control Plan 2023* (NSROC 2018 Section 3.8).
 - (d) There will be education for residents to encourage correct waste disposal and details around communication with residents for waste-related information.
- (Reason: compliance/waste reduction/public health and safety)

PRIOR TO COMMENCEMENT

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

36. 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)

37. 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. 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. (Minimum one (1) weeks' notice required.)
- (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.
- (h) Permit to install ground anchors beneath the road reserve.

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)

38. Application for Vehicle Crossing

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

39. Adjustment to Street Lighting

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

40. 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)

41. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with the Arboricultural Impact Assessment Rev 3 dated 27 February 2024 prepared by Urban Arbor and AS4970-2009 Protection of trees on development sites.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment Rev 3 dated 27 February 2024 prepared by Urban Arbor.

All tree protection measures specified must:

- a. be in place before work commences on the site, and
- b. be maintained in good condition during the construction period, and
- c. remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures have been satisfied, and the recommendations listed for the protection of the existing trees have been carried out satisfactorily to ensure no impact to the health of the trees. Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

(Reason: Tree protection)

42. 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)

43. 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)

DURING DEMOLITION, EXCAVATION AND CONSTRUCTION

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

44. 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)

45. 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)

46. Demolition Work AS 2601-2001

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

(Reason: Safety)

47. 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” 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)

48. 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)

49. 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)

50. 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)

51. Footings Near Easement

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

52. Structures to Clear of Council's Drainage Infrastructure

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

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

All proposed structures and construction activities shall be located clear of Council drainage pipes, drainage easements, watercourses and/or trunk overland flow paths on the site. Trunk or dedicated overland flow paths shall not be impeded or diverted by fill or structures unless otherwise approved by Council. In the event of a Council drainage pipeline being uncovered during construction, all work in the vicinity of the area shall cease and the Certifier and Council shall be contacted immediately for advice. Any damage caused to a Council drainage system must be immediately repaired in full as directed, and at no cost to Council. The existing Council stormwater pipe through the site shall not be demolished until the new diverted pipe is constructed and approval gained in writing from Council to demolish the existing pipe. CCTV of the new pipe demonstrating that it meets Council's specifications will be required prior to approval for demolition of the existing pipe.
(Reason: Protection of public assets)

53. 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)

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

The connection of the site stormwater drainage system to the existing Council pit 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 Council's website with Council's Engineer and a minimum of 2 working days' 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)

55. Council Stormwater Pipe

The existing Council stormwater pipe through the site shall not be demolished until the new pipe is constructed and Council has provided approval for the new pipe and demolition of the existing pipe. Work as executed drawings for the new pipe and

CCTV of the completed pipe system are to be submitted to and approved by Council prior to demolition of the existing pipe.

(Reason: Stormwater management and protection of Council system)

56. Tree Trunk, Branch and Root Protection

- a. Existing trees and vegetation shall be retained and protected, including:
 - i. all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
 - ii. all trees and vegetation located on adjoining properties,
 - iii. all trees and vegetation within the road reserve.
- b. Tree protection shall be undertaken as follows:
 - i. tree protection shall be in accordance with the Arboricultural Impact Assessment Rev 3 dated 27 February 2024 prepared by Urban Arbor and AS4970-2009 Protection of trees on development sites,
 - ii. existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist,
 - iii. removal of existing tree roots equal to or more than 25mm (Ø) diameter is not permitted without consultation with the Project Arborist,
 - iv. no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v. structures are to bridge tree roots equal to or more than 25mm (Ø) diameter unless directed the Project Arborist on site,
 - vi. excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist including advice on root protection measures,
 - vii. should either or all of v) or vi) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Project Arborist to the Principal Certifier,
 - viii. any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix. the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x. tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi. xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.
- c. The Principal Certifier must ensure that The arboricultural works listed in a) and b) are undertaken and certified by the Project Arborist as compliant with the Arboricultural Impact Assessment Rev 3 dated 27 February 2024 prepared by Urban Arbor and AS4970-2009 Protection of trees on development sites.

(Reason: Tree and vegetation protection)

57. Public Tree Protection

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

58. 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)

59. Tree removal within the property

This consent approves the removal of existing trees on the subject site as identified in the Arboricultural Impact Assessment Rev 3 dated 27 February 2024 prepared by Urban Arbor as listed below:

- a. Trees numbered 15, 16, 17, 18, 20, 3, 4, 5, 6, 7, 9, 10, 11, 17.
- b. a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

(Reason: To enable authorised development works)

60. Condition of trees

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from the Project Arborist during the works. In this regard all protected trees shall not exhibit:

- a. a general decline in health and vigour,
- b. damaged, crushed or dying roots due to poor pruning techniques,
- c. more than 10% loss or dieback of roots, branches and foliage,
- d. mechanical damage or bruising of bark and timber of roots, trunk and branches,
- e. yellowing of foliage or a thinning of the canopy untypical of its species,
- f. an increase in the amount of deadwood not associated with normal growth,
- g. an increase in kino or gum exudation,
- h. inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- i. branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Project Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

(Reason: Protection of trees)

61. 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)

62. Unexpected Finds Protocol

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

(Reason: Environment & Health Protection)

63. 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)

64. 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)

65. Waste Management Plan

Requirements of the approved Waste Management Plan (WMP) shall be complied with during all site preparation works, demolition (if proposed) and throughout all construction works.

When implementing the WMP the developer is to ensure:

- (a) The disposal of any demolition and construction waste must be undertaken in accordance with the requirements of the Protection of Environment Operations Act 1997
- (b) All waste on site is to be stored, handled and disposed of in such a manner as to not create air pollution, offensive noise or pollution of land and water as defined by the Protection of Environment Operations Act 1997
- (c) Generation, storage, treatment and disposal of hazardous waste is conducted in accordance with the relevant waste legislation administered by the EPA and relevant Occupational Health and Safety legislation administered by WorkCover NSW
- (d) All waste generated (including excavated materials) which cannot be reused or recycled must be transported to a facility which can lawfully accept it
- (e) Records are retained regarding the details and location of the disposal of all demolition and construction waste (including excavated material) and are to be kept on site as evidences of lawful disposal. Records are to include receipts and weighbridge dockets which verify material types and volumes, time and date of disposal and confirmation of the waste disposal facility
- (f) All materials and resources that are to be stored on site during construction works are contained on the site. The provisions of the Protection of Environment Operations Act 1997 must be complied with when placing/stock piling loose material, disposal of concrete waste or activities which have potential to pollute drains and water courses

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

PRIOR TO OCCUPATION OF THE DEVELOPMENT

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

66. 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)

67. 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)

68. 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)

69. State Survey Marks

Prior to the issue of a Whole Occupation Certificate, the Applicant shall reinstate any existing State/Permanent Survey Marks damaged by the works to the specification of the Land and Property Management Authority. 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)

70. 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)

71. CCTV Report of Council Pipe System After Work

Prior to the issue of any Occupation Certificate, 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 diverted Council drainage pipeline on completion of the construction of the pipe and after the completion of all works on site. 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.
- (f) Recorded CCTV footage & reports are to use Council asset pit numbers to identify the start and finish location of the CCTV. A plan can be obtained

from Council with these asset numbers at request.

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

(Reason: Ensure compliance and protection of public asset)

72. 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)

73. 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 to the stormwater pit in Eastern Valley Way via an approved OSD system with a minimum volume of 53m³ and a water quality improvement system in accordance with Sydney Water's requirements AS/NZS3500.3, Part I of Council's DCP and Technical Standards 1 and 2. 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).

(Reason: Prevent nuisance flooding)

74. Sign for On-site Stormwater Detention System

Prior to the issue of any Occupation Certificate pertaining to any works requiring an On-Site Detention System (OSD), 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 or basin.

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)

75. 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)

76. Certification of OSD

Prior to the issue of any Occupation Certificate, a suitably qualified and experienced civil engineer (generally CP Eng. Qualification) shall certify on Council's standard certification form that the as-built OSD system is in accordance with the approved plans and complies with Council's *DCP* and Technical Standards. Council's standard certification form is available in Appendix 2 of Council's Technical Standard No. 1.
(Reason: Legal requirement)

77. Works-As-Executed Plans - OSD

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

78. 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 and stormwater treatment 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 and stormwater treatment 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. Council's costs, including legal fees associated with reviewing, approving and executing the Positive Covenant and Restriction of Use together with associated PEXA fees must be paid by the Applicant. The Applicant is responsible for any stamp duty payable in respect of the dealing.

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)

79. 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)

80. Certification – Structures / Excavations near Council’s Easements

Prior to the issue of any Occupation Certificate for structures adjacent to the drainage easement or Council’s stormwater drainage system within the site, a Structural Engineer with Chartered status shall certify that all footings and structures adjacent to Council’s pipeline and/or easement have been constructed at least 100mm below the invert of the Council’s pipe unless the footings are placed on competent bedrock. All footings for buildings and/or other structures located adjacent to easements and/or Council drainage pipes shall be constructed outside of Council’s easement.

Certification is to be provided to the Certifier, and a copy provided to Council, prior to issue of any Occupation Certificate.
(Reason: Protection of public asset)

81. Construction of Kerb & Gutter

Prior to the issue of any Occupation Certificate, construct a new kerb and gutter to replace redundant vehicle crossings, extending a minimum of 1m beyond the existing crossings. The works are to be in accordance with TfNSW and Council specifications and include any associated pavement restoration.
(Reason: Public amenity)

82. Concrete Footpath

Prior to the issue of any Occupation Certificate, construct a 1.5m wide footpath for the full frontage of the development site in Eastern Valley Way. The location of the path shall be as agreed with Council, with no change in direction within or adjacent to the vehicle crossing.

All works shall be carried out in accordance with Council’s standard specifications and drawings.
(Reason: Public amenity)

83. Street Lighting

Prior to the issue of any Occupation Certificate, provide approved street lighting required for the development in accordance with Australian Standard AS/NZ 1158. (2005).
Reason: Public amenity)

84. Vehicular Crossing

Construct a new vehicular crossing 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 TfNSW requirements, 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 is to be as per the approved public domain drawings and is to be constructed 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 the approved public domain plans.

The footpath which forms part of the proposed crossing shall have a maximum crossfall of 2.5% towards the kerb. The nature strip and footpath is to be adjusted for a minimum distance of 2 metres on both sides of the crossing to suit the new levels.

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

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

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

85. Removal of Redundant Crossings

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

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

86. 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. The Work-as-Executed drawings shall be based on the Council approved drawings with all changes marked in red. 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. Concurrence is to be obtained from TfNSW prior to issue of the Completion Certificate by Council.
(Reason: Ensure compliance)

87. Performance Bond

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

88. 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)

89. Public Infrastructure Restoration

Prior to the release of the Damage Deposit, any damaged public infrastructure caused as a result of the construction and development 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)

90. Vehicle Access and Manoeuvring – Construction & Certification

Prior to the issue of any Occupation Certificate, 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 2890.2 and will not result in scraping to the underside of cars.
- (c) That all driveway grades comply AS/NZS 2890.1 and AS 2890.2.

- (d) Aisle widths throughout basements comply with AS/NZS 2890.1.
- (e) That the constructed vehicular path and parking arrangements comply in full with AS/NZS 2890.1, AS 2890.2 and AS 2890.6 in terms of minimum dimensions provided and grades on parking spaces.
- (f) 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 2.7 of AS 2890.6.
- (g) That headroom clearance of minimum 2.5 metres is provided to all parking spaces for people with disabilities, including adaptable parking spaces, for compliance with Section 2.7 of AS 2890.6.
- (h) That the headroom clearance required in AS 2890.2 for a SRV has been provided for the service bay and the path to and from the service bay.
- (i) That all accessible and adaptable spaces have the shared zones and bollards required by AS 2890.6.
- (j) 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.
- (k) Access and manoeuvrability of a SRV and a passenger vehicle including clearances in accordance with AS/NZS 2890.1 and AS 2890.2 is achieved.

(Reason: Ensure compliance)

91. Stormwater Maintenance Plan

Prior to the issue of an Occupation Certificate, 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)

92. Certification of Water Quality Improvement System

Prior to the issue of an Occupation Certificate, 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)

93. Diversion of Council Pipe

Prior to the issue of any Occupation Certificate the diversion of the Council stormwater pipe shall be constructed in accordance with the approved drawings and any associated conditions. On completion of the diversion works, work as executed drawings shall be submitted to Council for approval, with changes marked up in red on the approved plans. CCTV footage of the completed pipe shall be submitted to Council to demonstrate that the pipe meets Council's specification. 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.

(Reason: Manage stormwater and protection of Council assets)

94. Vehicle Access

Prior to the issue of any Occupation Certificate, vehicle access to the site shall be constructed to require left turn in and left turn out by all vehicles. Signage for exiting vehicles requiring a left turn out shall be provided within the property boundary unless approval gained from Council for an alternate location.
(Reason: Vehicle safety and authority requirements)

95. Tree Planting

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

No. Required	Species	Location	Min Pot Size
All trees	As indicated on Landscape Plan Dwg No. LDA101 Rev 8 and LDA102 Rev 10 dated 21/02/2024 prepared by prepared by Studio 151 (as amended by conditions of consent)	As indicated on the Landscape Plan	As indicated on the Landscape Plan

(Reason: Landscape amenity)

96. Public Tree Planting

Prior to the issue of a Whole Occupation Certificate, plant the following trees on Council land forward of the property, generally in locations as indicated on the approved landscape plans:

12 x *Eucalyptus haemastoma*

The trees shall:

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

(Reason: Landscape amenity, tree canopy recruitment)

97. 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)

98. 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, and certified in writing by a qualified horticulturalist, landscape architect or landscape designer.

(Reason: Landscape amenity)

99. 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)

100. 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 occupation 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)

101. Location of On-Site Detention System

The locations of the as-built on-site stormwater detention system(s) shall be shown on any plan of subdivision/strata plan. Access to the system, including access points to any underground tank, shall be located in common areas.

(Reason: Ensure compliance)

102. Domestic Waste Collection Agreement with Council

Prior to the issue of any Occupation Certificate, the developer is to enter into a formal agreement with Council for the utilisation of Council's Domestic Waste Collection Service. The development is also required to indemnify Council and its servants/contractors against claims for loss or damage or wear and tear of access roads or to other parts of the building.

Note: By entering into an agreement with Council for waste collection, the development will be required to operate in full compliance with Council's Waste Management collection requirements.

The provision of Council's waste collection service will not commence until formalisation of the agreement.

(Reason: Legal Requirement)

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.

103. 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)

104. 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)

105. Vehicle entry and exit

All vehicles shall enter and exit the site in a forward direction. Vehicle entry shall be left turn in and left turn out.

(Reason: Vehicle safety)

106. Trees on Adjoining Properties

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

(Reason: Environmental protection)

107. 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)

108. Noise Levels from Common Open Spaces

To minimise the noise intrusion from Common Open Spaces on the amenity of the residential occupants, a Common Open Spaces Management Plan is to be drawn up, establishing controls such as: Limiting times of use to 7am to 10pm; No high noise generating activities, large gatherings, playing of loud music, parties; No amplified music or use of electrically amplified electronic sound equipment allowed; prominent notices on display to remind residents of these requirements and minimise noise.

(Reason: Amenity, environmental compliance and health)

109. 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)

110. Kerbside Collection Point

The nominated kerbside collection point is to be utilised to facilitate the collection of waste and recycling bins for the development. All mobile garbage bins that are left kerbside for collection must be taken back within the property boundary on the same day of service.

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

111. Waste Storage Containers

No waste storage containers are to be located or placed outside the approved waste storage area at any time except for collection purposes.
(Reason: Environmental protection/waste reduction/public health and safety)

112. 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)

PRESCRIBED CONDITIONS

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

113. 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.

114. 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)

115. 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)

116. 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)

ATTACHMENT 8: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2022/34

At: 90-96 Eastern Valley Way, WILLOUGHBY NSW 2068

