

**DA NO:** DA-2023/190

**ADDRESS:** 11 DARLING STREET, CHATSWOOD NSW 2067.

**PROPOSAL:** INTERNAL AND EXTERNAL ALTERATIONS AND ADDITIONS, INCLUDING; CONVERTING AN EXISTING GARAGE INTO A LIVING ROOM; ALTERATIONS TO WINDOWS AND FRONT FAÇADE; NEW VERGOLA ROOF AND BBQ AREA; DEMOLITION AND CONSTRUCTION OF A NEW SWIMMING POOL; AND, ASSOCIATED WORKS.

**RECOMMENDATION:** APPROVAL

**ATTACHMENTS:**

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

**RESPONSIBLE OFFICER:** ARTHUR TSEMBIS- TEAM LEADER

**AUTHOR:** JANE MCMILLAN - TOWN PLANNING CONSULTANT

**REPORT DATE:** 30 JANUARY 2023

**MEETING DATE FOR ED** ELECTRONIC DETERMINATION

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## **1. PURPOSE OF REPORT**

The purpose of this report is to seek determination by Willoughby Local Planning Panel (WLPP) of Development Application DA-2023/190 for internal and external alterations and additions, including; converting an existing garage into a living room; alterations to windows and front façade; new vergola roof and BBQ area; demolition and construction of a new swimming pool; and, associated works at 11 Darling Street, Chatswood.

The application is required to be referred to the WLPP for determination because the variation to the floor space ratio development standard exceeds 10%.

## **2. OFFICER'S RECOMMENDATION**

**THAT the Willoughby Local Planning Panel:**

**2.1 Support the Clause 4.6 exception contained in Attachment 4 as it is considered unreasonable and unnecessary to comply with the development standard of Clause 4.4 *Willoughby Local Environmental Plan 2012* (Floor Space Ratio) as the gross floor area of the proposed development exceeds the development standard for the following reasons:**

**2.1.1 The existing development exceeds the floor space ratio of 0.4:1 by 59.76m<sup>2</sup> or 29%. The proposed development as amended does not increase the existing gross floor area of the building.**

- 2.1.2 The proposed development does not increase the bulk and scale of the existing dwelling house and the alterations and additions being at the ground floor level only do not cause any unreasonable amenity impacts to neighbouring properties. Therefore there are sufficient environmental planning grounds to justify a variation to the development standard.
- 2.1.3 As the non-compliance with the floor space ratio is existing it would be unreasonable and unnecessary to require the proposed development to comply with the development standard.
- 2.1.4 As the alterations and additions involve removing a garage at the front façade, the proposed development achieves a better planning outcome.
- 2.1.5 The proposed development has been found to be consistent with the objectives of the development standard for floor space ratio and the objectives for development in the R2 Low Density Residential zone and therefore is in the public interest.

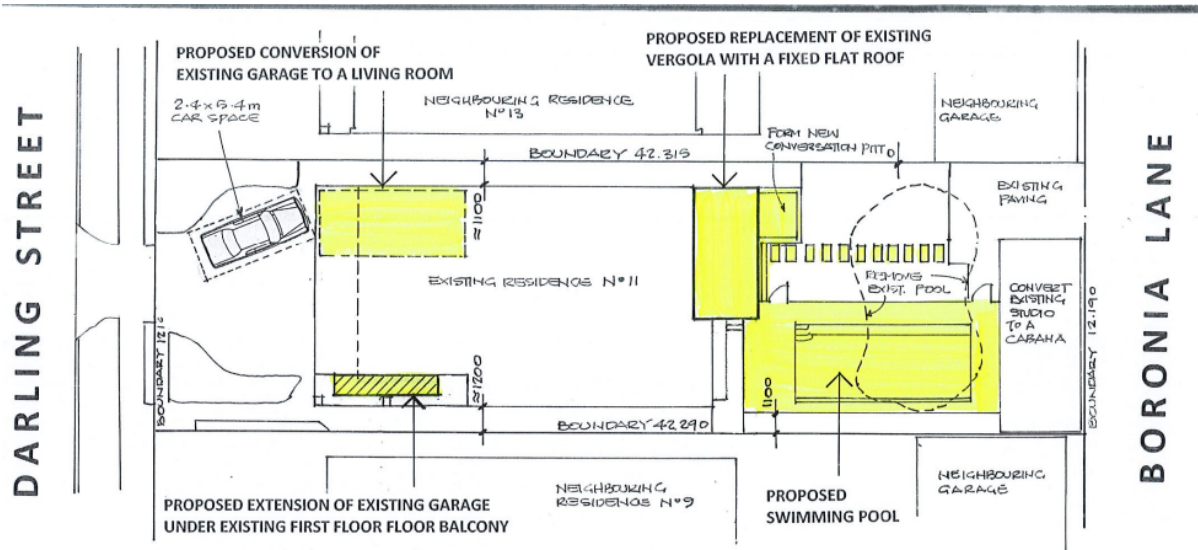
2.2 Approve Development Application DA-2023/190 for internal and external alterations and additions, including; converting an existing garage into a living room; alterations to windows and front façade; new vergola roof and BBQ area; demolition and construction of a new swimming pool; and, associated works at 11 Darling Street, Chatswood NSW 2067, subject to conditions contained in Attachment 6, for the following reasons:

- 2.2.1 The proposed development involves minor alterations and additions to an existing dwelling house that have been found to be consistent with the objectives for development within the R2 Low Density Residential zone.
- 2.2.2 The site is located within the North Chatswood Heritage Conservation Area and the proposed alterations and additions have been found to have an acceptable impact on the heritage significance of the Conservation Area, pursuant to Clause 5.10(4) of the *WLEP 2012*.
- 2.2.3 The proposed alterations and additions do not increase the gross floor area of the existing building which is non-compliant with the FSR development standard that applies to the site. As the proposal does not increase the existing gross floor area, the proposal is found to be acceptable and has been found to satisfy the objectives and provisions of Clause 4.6 of the *WLEP 2012*.
- 2.2.4 The proposed development improves amenity for the occupants of the dwelling house without causing any unreasonable impacts to the character of the North Chatswood Heritage Conservation Area or the amenity of neighbouring properties and for the abovementioned reasons is considered to be in the public interest.

### 3. BACKGROUND

The site is located within the North Chatswood Heritage Conservation Area, on the eastern side of Darling Street and has rear lane access to Boronia Lane. The dwelling house has two single garages and a driveway facing Darling Street. The site contains a two storey dwelling house, in-ground swimming pool and detached studio. A description of the site and surrounding area, including an aerial photograph is contained in **Attachment 1**.





Revised proposal: new uncovered parking space in front yard, convert garage to a living area, new vergola and bar-b-que area and outside studio converted to a cabana as well as the new and relocated swimming pool.

### Stormwater Management

Council's development engineer has conditioned a 5,000L rainwater tank for water retention and re-use because although the proposal has a reduction in impervious areas, the overall affected works are greater than 25m<sup>2</sup>, in which case the installation of 5kL rainwater tank (RWT) is required as per Part I of the Council's Stormwater DCP.

The applicant objected to this requirement on the basis that:

*The existing site is fully developed and is a house on a concrete slab with concrete paths and a driveway that surround the whole house and has an existing fully functioning stormwater system that drains by gravity to the street. It would be a large and very expensive job to direct all the downpipes to a new water tank which would require demolishing sections of the existing driveway and remodelling the entire front setback area.*

In response, Council's Development Control Team Leader advised as follows:

*The site is over 400m<sup>2</sup> in area, with a proposed impervious area of 85% and the area of the proposed works exceeds 25m<sup>2</sup>. In accordance with Table 4 Part I of the WDCP a 10kL rainwater tank is required for the development. Due to the works consisting of internal renovations, minor extensions, a new pool and landscaping, and that no new toilets are proposed, the size tank required has been reduced to 5kL. Given no changes are proposed to existing toilets and laundry, it is not required for the tank to be connected to existing fixtures. It only needs to be connected to new toilets, top up of the pool and external taps for landscape irrigation and car washing.*

*While the existing downpipes will need to be connected to the tank, this can occur along the side and rear of the building, with the existing outlet to the street retained in the front of the site.*

*Council requires the installation of rainwater tanks to both manage overall stormwater flows and contribute to sustainability. An exemption is granted where the works are minor, with an area of less than 25m<sup>2</sup>. Typically this would consist of a single carport or a minor extension.*

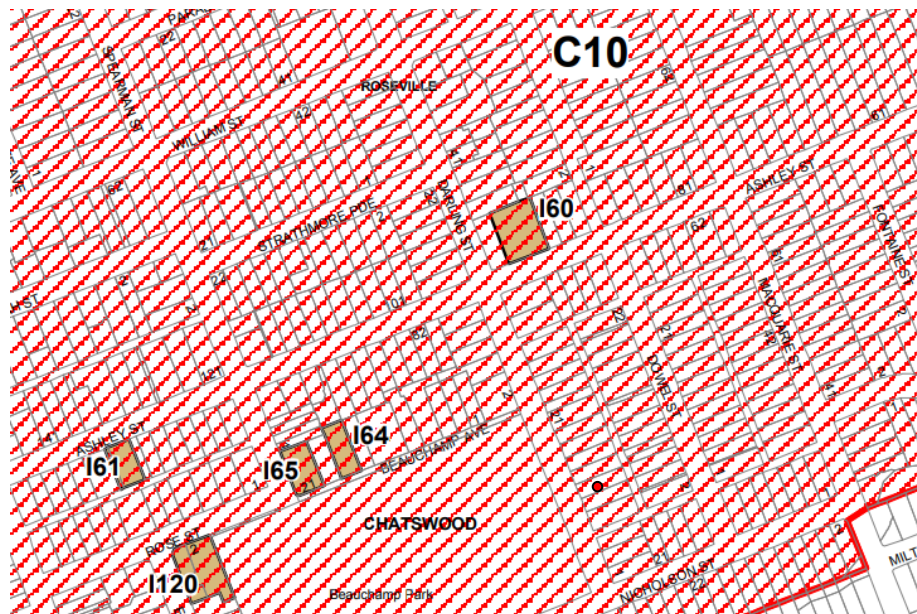
*The works proposed under this DA are more extensive than those for which an exemption is granted.*

### Heritage

The subject site –11 Darling Street Chatswood is located in the North Chatswood Heritage Conservation Area – C10

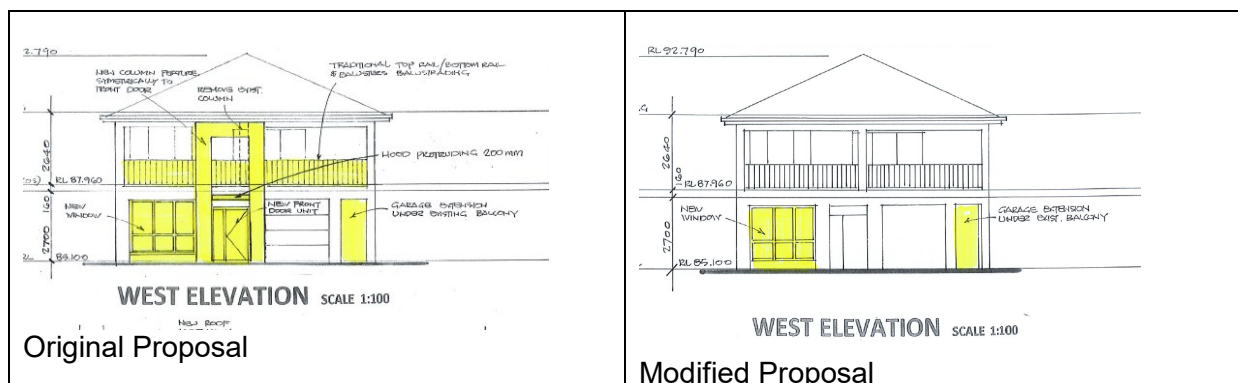
Council's Heritage Officer requested façade changes that simplified the appearance of the dwelling from the public domain.

The amended proposal was found to be acceptable under the provisions of Clause 5.10(4) of the *WLEP 2012*. The amended proposal has been found by Council's Heritage Officer to have an acceptable impact on the heritage significance of the North Chatswood Conservation Area.



Subject site –11 Darling Street Chatswood - located in the North Chatswood Heritage Conservation Area – C10

Council's Heritage Officer requested façade changes that simplified the façade.



## Summary

The proposal has been amended so that there is no increase to the gross floor area of the existing building on the site. As the existing building exceeds the FSR development standard by 59.76m<sup>2</sup> it would be unreasonable to require compliance with the development standard as this would require demolishing a large part of the existing building.

As all proposed works are to be located at the ground floor there will be no significant adverse amenity impacts to neighbouring properties. As the proposal involves removing a garage from the front façade, the proposal results in a better planning outcome for the North Chatswood Heritage Conservation Area.

In conclusion, the proposal is considered to satisfy the requirements of Clause 4.6, the requirements for heritage conservation contained in Clause 5.10 and the objectives for development contained in the *WDCP*.

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

A detailed assessment of the Clause 4.6 is provided in **Attachment 4**.

A detailed assessment of the proposal for approval is provided in **Attachment 5**.

The schedule of conditions is contained 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=531271>

## **4. CONCLUSION**

The Development Application DA-2023/190 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 6**.



## ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO



11 Darling Street Chatswood – legally described as Lot 18, Sec 1, DP 3973

The subject site has a rectangular shape and is located on the eastern side of Darling Street opposite Beauchamp Park. This site is rectangular in shape with a frontage of 12.19m, a depth of 42.315m for a maximum site area of 515.6m<sup>2</sup>. Boronia Lane adjoins the rear boundary of the site. The site is relatively flat with a north-east to south-west orientation. The property is not flood affected or bushfire prone.

There are no significant trees on the site and limited soft landscaping. The two storey dwelling is larger than most of the surrounding dwellings and is an anomaly within the Conservation Area being out of character with the surrounding development.



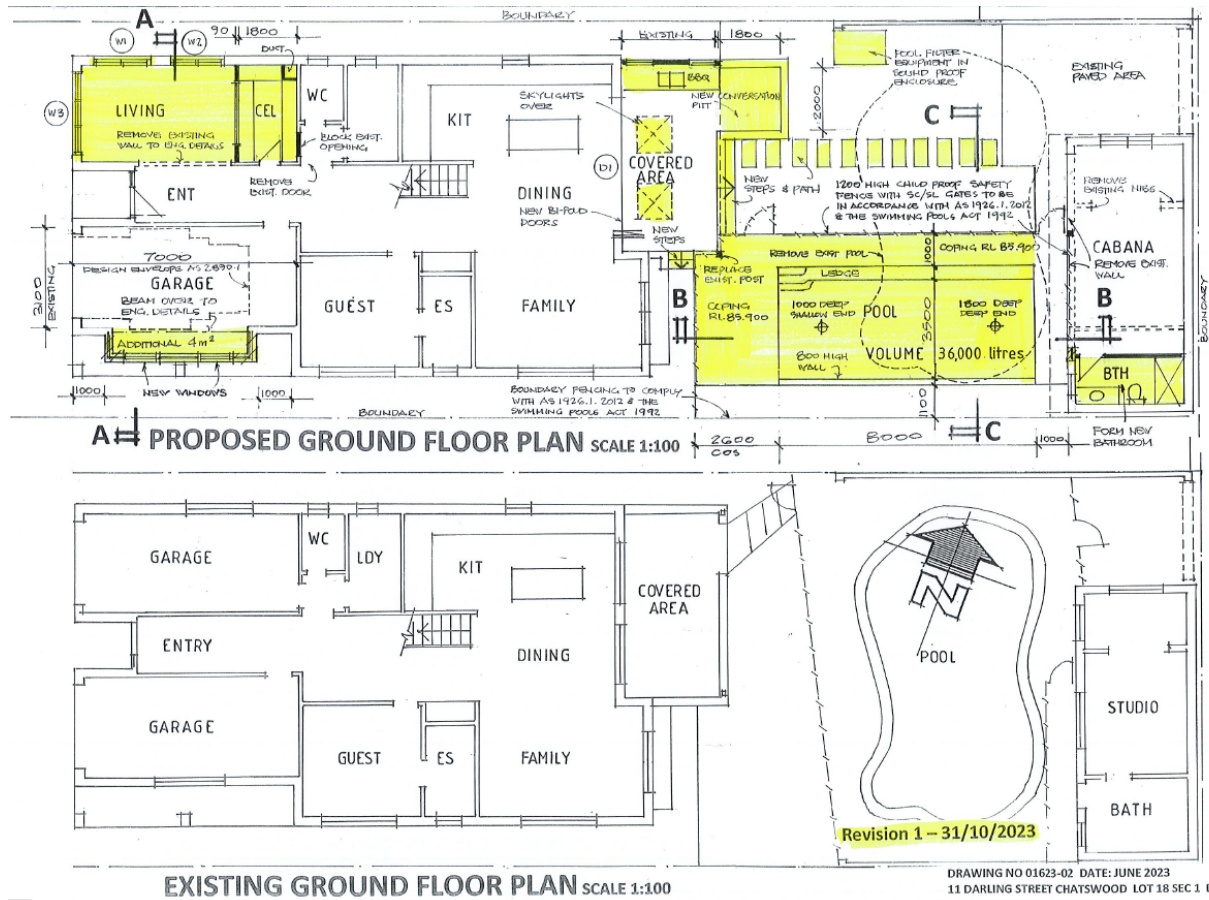
## ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS

<b>Willoughby Local Environmental Plan 2012 Zoning:</b>	R2
Existing Use Rights	No
Additional Permitted Use	No
Conservation area	Yes – North Chatswood
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	No
Road/lane widening	No
BASIX SEPP	Yes
Infrastructure SEPP - Rail	No
Infrastructure SEPP – Road	No
Coastal Management SEPP	No
Acid Sulphate Soil Category	5
Development near Lane Cove Tunnel	No
Contaminated Land	No
Adjacent / above Metro	No
Other relevant SEPPS	<i>SEPP (Resilience and Hazards) 2021- Remediation of Land; SEPP (Resilience and Hazards) 2021- Water Catchments</i>
Other relevant REPS	No
Relevant policies and resolutions	WDCP

Development Statistics (R2 & E4 – Dwelling House and/or ancillary development)						
Site Area (m²) 515.6						
<u>WLEP 2012</u>						
Clause	Control	Existing	Proposed by applicant	Calc. by Council	Standard	Numerical Compliance
Cl.4.3	Height (m)	7.7m	7.7m	7.7m	7.7 m 8m (HCA)	Yes
Cl.4.4	GFA (m²)	266 m²	266 m²	266 m²	206.24m²	No
	FSR	0.515:1	0.515:1	0.515:1	0.4:1(HCA)	



**WDCP**



As shown the floor plans above the proposed alterations and additions to the dwelling house and cabana are within the footprint of the existing buildings.

Under Part B, Clause 3.2 of the *WDCP*, 189.38m<sup>2</sup> (36.7%) of soft landscaping is required. The existing landscaping is 52.4m<sup>2</sup> (10.2%) and the proposed soft landscaping is being increased to 71.1m<sup>2</sup> (13.8%). The amount of proposed landscaping is considered to be reasonable given the site constraints and the extent of existing development on the site. Consistent with the objectives of the control for soft landscaping, the proposal maintains soft landscaping at the street frontage and rear useable landscaped private open space.

The swimming pool complies with the requirements of the Housing Code being located a minimum of 1m from the side boundary and the pool coping being less than 600mm above existing ground level (350mm).

Part H of the *WDCP* contains provisions for development within heritage conservation areas including the North Chatswood Heritage Conservation Area (Part 3.11). The existing dwelling house is an anomaly being a large contemporary two storey building which is in contrast to the original dwellings contained within the Conservation Area. As discussed, the removal of one garage at the front façade is considered to lessen the impact of the existing building on the heritage values of the conservation area and is a positive outcome. Council's Heritage Officer requested design changes to the front façade which were made as part of the amended proposal. Overall the proposed development is an improvement from a heritage perspective and is considered to be satisfactory with regard to the heritage provisions contained in the *DCP*.

**Developer's Contribution Plans:**

<b>S7.12 Section 94A contribution:</b>	Yes
a. Applicable rate (%):	1%
b. The cost of development (Part A CI 25J) (\$)	\$357,500.00
c. Date of accepted cost of development:	28 July 2023
d. The total contribution payable (\$)	\$3,575.00

**Referrals**

Building services	No.
Engineering	Yes, subject to conditions.
Environmental Health	No.
Waste	No.
Landscape	No.
Heritage	Yes, subject to conditions.

## ATTACHMENT 3: APPLICANT'S CLAUSE 4.6 SUBMISSION – FSR



General Manager  
Willoughby Council  
31 Victor Street  
CHATSWOOD NSW 2067

17 January 2024

### REQUEST UNDER CLAUSE 4.6 WLEP 2012

Property/s: 11 Darling Street Chatswood

Proposal: Alterations and additions to dwelling and new swimming pool in heritage conservation area. Amended Plans – Revision 1 – 31/10/23.

Lot No. Plan: Lot 18, Section 1, DP 3973

Site Area: 515.6m<sup>2</sup>

Zoning: R2 Low Density Residential under the Willoughby Local Environmental Plan 2012

Development

Standard: Floor Space Ratio – Clause 4.4(2) WLEP 2012.

### 1. BACKGROUND

This precautionary written request is made pursuant to Clause 4.6(3) of the Willoughby Local Environmental Plan 2012 (the LEP) to provide justification to maintain an existing variation to a development standard, being the floor space ratio of the dwelling at No. 11 Darling Street Chatswood.

Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied as to the matters under Clause 4.6(4) of the LEP. It is the onus of the applicant to address the matters under Clause 4.6(3) of the LEP which are addressed through this written request.

The relevant floor space ratio development standard specified under the WLEP is 0.4:1. The existing dwelling has a floor space ratio of 0.515:1. The floor space ratio resulting from the proposal is 0.515:1. The total variation above the development standard is 29% although the difference above the existing is 0%. In the interests of full clarity, the development statistics are tabulated below.

SITE AREA 515.6m <sup>2</sup>	GFA m <sup>2</sup>	Difference above standard in sqm	Difference above standard as %	Difference above existing in sqm	Difference above existing as %	RESULTING FSR
STANDARD	206.24	-	-	-	-	0.4:1
EXISTING	266	59.76	29	0	0	0.515:1
PROPOSED	266	59.76	29	0	0	0.515:1

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## CLAUSE 4.6 VARIATION

### 2. ENVIRONMENTAL PLANNING GROUNDS

The environmental planning grounds relied upon are summarised as follows and the reasoning for justification is amplified throughout the body of this request.

1. The existing floor space ratio was approved under a former environmental planning instrument and it is reasonable to allow the retention of the previously approved floor space ratio.
2. The development achieves the objectives of the zone.
3. The development achieves the objectives of the development standard.
4. The alterations and additions occur at ground floor level of the dwelling and there are no unreasonable impacts arising such as visual impact or amenity impacts.
5. Although some reconfiguration is involved in the proposal, there will be no increase in the volume of the dwelling, maintaining the status quo.

### 3. IS THE STANDARD A DEVELOPMENT STANDARD?

Clauses 4.4(2) under the Willoughby Local Environmental Plan 2012 (the LEP) provides:-

- 2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

The relevant floor space ratio map indicates that a floor space ratio of 0.4:1 applies to the land.

A development standard is defined in S1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:-

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:-

... (d) the cubic content or floor space of a building, ..."

The floor space ratio control falls under subsection (d); therefore, the control is confirmed to be a development standard and Clause 4.6 of the WLEP is engaged.

### 4. CLAUSE 4.6 OF THE WILLOUGHBY LOCAL ENVIRONMENTAL PLAN 2012

Clause 4.6 of the Willoughby LEP is a variations clause that is similar in effect to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are also different to those in SEPP 1.

### 5. THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate:-

- (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.

According to the relevant case law, common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised in Wehbe

CLAUSE 4.6 VARIATION

v Pittwater Council (2007). The five tests under Wehbe are tabulated below. Only one of the tests needs to be satisfied. Consideration of a variation is not limited to these tests – they are simply the most common ways invoked in considering whether compliance is unreasonable or unnecessary.

The following analysis under Wehbe v Pittwater Council is provided, noting that only one of the tests needs be satisfied.

TESTS UNDER WEHBE	COMMENTS
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.	<p>The objectives of the floor space ratio development standard are expressed at Clause 4.4(1):-</p> <p>“The objectives of this clause are as follows:-</p> <ul style="list-style-type: none"> <li>(a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,</li> <li>(b) to limit traffic generation as a result of that development,</li> <li>(c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,</li> <li>(d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,</li> <li>(e) to permit higher density development at transport nodal points,</li> <li>(f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood’s sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,</li> <li>(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,</li> <li>(h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,</li> <li>(i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,</li> <li>(j) to encourage the consolidation of certain land for redevelopment,</li> <li>(k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.</li> </ul> <p>Comment: The objectives of the standard are primarily concerned with ensuring the intensity of development is commensurate with the environmental capacity of the land; to manage bulk and scale</p>



CLAUSE 4.6 VARIATION

	<p>and to control adverse impacts of development related to disruption of views, loss of privacy, overshadowing or visual intrusion.</p> <p>The proposed alterations and additions have been designed to be sensitive to both the dwelling and the surrounding environment. Care has been taken in the design to reconfigure aspects of the ground floor while maintaining the same building volume in terms of gross floor area and floor space ratio.</p> <p>The aesthetic presentation of the dwelling in the streetscape is to be improved through the deletion of the northern side garage and its replacement with a living room. This introduces a new window to the streetscape which is preferable to the existing garage door.</p> <p>It also eliminates one of two existing garages thereby lessening the dominance of garage doors and parking in the façade and the streetscape.</p> <p>On the southern side, the existing garage is to be enlarged beneath the cover of the first floor above. The new wall is recessed from the front façade and the new walls are otherwise contained within the extremities of the existing building envelope. These measures minimise any perceived or actual adverse bulk or scale impact.</p> <p>I conclude that the resulting building as modified is within the environmental capacity of the subject land and it is considered that the proposals achieves the objectives of the standard.</p> <p>For the above reasons, the objectives of the standard are considered to be satisfied.</p>
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;	The objective of the development standard is considered to be relevant to the development.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;	The existing development pre-dates the floor space ratio development standard and it would be unreasonable to cause compliance, particularly, the objectives of the standard are satisfied.
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;	The development standard has not been abandoned however it is evident by observation that numerous dwellings in the conservation area have floor space ratios which exceed the current development standard of 0.4:1. It should be remembered that much of the altered development in the area precedes and therefore exceeds the current development standard. As such, it would be unreasonable to restrict otherwise reasonable development such as that proposed.
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and	The zoning of the land is appropriate for the development standard, however we would argue that the numerical value of the development standard is unduly restrictive.

#### CLAUSE 4.6 VARIATION

compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.	The proposal is compatible with the established character of the area and the variation does not result in a building that is perceived as an overdevelopment of the land in the local context.
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In relation to the consideration of environmental planning grounds in justifying contravening a development standard, it is worth pointing out that in *Four2Five Pty Ltd v Ashfield Council* (2015) Commissioner Pearson made a judgement that a Clause 4.6 variation requires identification of environmental planning grounds that are particular to the circumstances to the proposed development. In other words, simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

In a follow up judgement on further appeal, the Chief Judge, upheld the *Four2Five* decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard" is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

In this instance there is a site specific environmental planning ground which is the existence of a development which already exceeds the current development standard. Causing compliance with the current standard would be unreasonable.

Additionally, there is no requirement under Clause 4.6 or case law that a non-compliant development must demonstrate a better planning outcome. (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018)). In this instance however, the development does provide a better planning outcome. This is attributable to the deletion of one of two garages in the façade which together contribute to the dominance of garaging and parking structures in a heritage conservation streetscape. The reduction of two garages to one will enhance the aesthetic of the dwelling to provide a positive contribution to the heritage conservation streetscape.

Altogether, the design achieves an appropriate built form where the new works are primarily located within the extremities of the building envelope.

#### 6. THE ONUS ON THE CONSENT AUTHORITY

Pursuant to Cl.4.6(4)(a), the Council must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by Clause 4.6(3)(a) and (b) and that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority does not have to directly form the opinion of satisfaction but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in Clause 4.6(3)(a) and (b) have been adequately addressed in the written request in order to enable the consent authority to form the requisite opinion of satisfaction. (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018)).

#### CLAUSE 4.6 VARIATION

In assisting the consent authority in forming its opinion of satisfaction as to the public interest test under Cl.4.6(4)(a)(ii), I refer to the objectives for development within the zone in which the development is proposed to be carried out.

The land is located in the R2 – Low Density Residential zone. The objectives of the R2 zone are:-

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

#### Comments

The development will be consistent with the zone objectives for the following reasons:-

- The development will continue to provide for the housing needs of the community in a low density residential environment.
- The resulting development will be compatible with the scale and character of the surrounding residential development. This is because the bulk and scale of the dwelling as viewed from the street will be almost unchanged.
- The resulting bulk and scale of the dwelling will be consistent with the existing dwelling which is a part of the local character notwithstanding that it has a non-compliant floor space ratio by current standards.
- There are no unreasonable residential amenity impacts upon neighbouring properties through loss of views, solar access, visual impact, aural privacy or landscape quality.
- The resulting additions respect the heritage values of the conservation area. While the existing dwelling is non-contributory, it will be enhanced aesthetically through the removal of the northern garage.

Having regard to the above objectives and observations in reply, the proposal demonstrates compatibility with the relevant zone objectives.

## 7. CONCLUSION

The purpose of the development is to allow for the construction of sympathetic alterations and additions to a dwelling in a heritage conservation area.

Development standards are typically numerical in nature and fail to take into consideration the nature of the development, the design, any site constraints or qualitative aspects of the development or of the particular circumstances of the site which may give rise for justification for a variation. Clause 4.6 of the Standard Instrument Local Environmental Plan allows such an analysis to be carried out.

CLAUSE 4.6 VARIATION

It has been demonstrated in this request that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.



Eugene Sarich  
Urbanesque Planning Pty Ltd

## ATTACHMENT 4: OFFICER'S CLAUSE 4.6 ASSESSMENT – FSR

### Description of non compliance

Development Standard	FSR Standard	Proposed FSR	%Variation
CI 4.4 Floor space ratio	0.4:1 206.24m <sup>2</sup>	0.515:1 266m <sup>2</sup>	29% 59.76m <sup>2</sup> over the standard

### **Key points of the applicant's submission:**

#### Sufficient Environmental Planning Grounds

- i) There are sufficient environmental planning grounds to justify the variation because:
- the FSR of the existing building was approved under a previous environmental planning instrument
  - the current proposal maintains the status quo and does not increase the volume of the building
  - the alterations and additions occur at ground floor level only where there are no unreasonable amenity impacts to neighbouring properties
  - The proposed development achieves the objectives of the development standard and the objectives of the zone
  - there is a site specific planning ground that is unique to the circumstances of the proposed development being that the existing building already exceeds the current development standard.

#### Compliance with the development standard is unreasonable and unnecessary

- i) Compliance with the development standard is shown to be unreasonable and unnecessary based on the 5-part test utilised in *Wehbe v Pittwater Council* (2007) and based on the fact that the existing building already exceeds the current development standard. Causing compliance with the current standard would be unreasonable.

#### Development will be in the public interest

- i) The alterations and additions are in the public interest because they are 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. They also result in a better planning outcome by removing one of the garages at the front façade thereby reducing garage dominance at the front facade.



## 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
<b>4.6(2)</b> 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.	The development standard is not expressly excluded from the operation of this clause.
<b>4.6 (3)</b> 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) Has the applicant's submission demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and	<p>The applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard</p> <p>In doing so, the applicant's written request has adequately demonstrated that the compliance with the development standard is unreasonable and unnecessary in the circumstances of this case.</p>
b) Has the applicant's submission demonstrated that there are sufficient environmental planning grounds to justify the non-compliance?	<p>The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>Therefore council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 (3)</p>
<b>4.6(4)</b> Development consent must not be granted for development that contravenes a development standard unless:	
a) i) Has the applicant's written request adequately addressed the matters required to be demonstrated in subclause 3	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
ii) Is the proposed development in the public interest because it is consistent with:	
• objectives of the particular development standard	Yes, see assessment below
• objectives for the development within the zone in which the development is proposed to be carried	Yes, see assessment below

**Consistency with the objectives of the Floor Space Ratio development standard:**

Consistency of the proposed development with the floor space ratio standard's objectives is discussed below:

Relevant Floor Space Ratio Development Standard Objectives	Response
<i>a)to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,</i>	The proposed alterations and additions maintain the status quo and the current intensity of development. The proposal results in minor alterations to a single occupancy dwelling which is a low density residential development consistent with the objectives of the R2 Low Density Residential Zone. The proposal increases slightly the soft landscaped area and includes the installation of a 5,000L rainwater tank for water retention and reuse. The proposal is within the environmental capacity of the land.
<i>b)to limit traffic generation as a result of that development,</i>	The proposed development which is alterations and additions to an existing single occupancy dwelling will not cause an increase in traffic generation as there is no increase in the intensity of the land use.
<i>c)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 proposed alterations and additions are at the ground floor level only and therefore have no significant impacts to adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion.
<i>d)to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,</i>	The proposed alterations and additions maintain the status quo and do not alter the bulk and scale of the existing dwelling house. The proposal results in minor alterations to a single occupancy dwelling which is a low density residential development consistent with the objectives of the R2 Low Density Residential Zone.

**Consistency with the objectives of the R2 Zone:**

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

Relevant Zone Objectives	Response
<i>To provide for the housing needs of the community within a low density residential environment.</i>	The proposed alterations and additions improve the amenity of the existing dwelling for the occupants without adding to the size of the existing dwelling house. The proposal meets the housing needs of the occupants while retaining the low density nature of the development.
<i>To accommodate development that is compatible with the scale and character of the surrounding residential development.</i>	The proposal adds internal living area without altering the scale of the existing building by converting a garage into a living room. The proposal results in removing one garage from the front façade which improves the character of the building and its compatibility within the North Chatswood Heritage Conservation Area.
<i>To retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality</i>	The proposed alterations and additions retain and enhance residential amenity by increasing soft landscaping and by undertaking all works at the ground floor only ensuring that there are no unreasonable impacts to neighbouring properties

	with regard to views, solar access, aural and visual privacy.
<i>To retain the heritage values of particular localities and places.</i>	The development site is located within the North Chatswood Heritage Conservation Area. The existing dwelling is a large two storey building not in keeping with the character of the Conservation Area. The proposal improves the appearance of the existing building from the public domain by reducing garage dominance and is considered therefore to retain and improve the heritage value of the conservation area.

## ATTACHMENT 5 - 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:

Considered ✓ Not relevant N/A

(a)(i)	<b>The provisions of any environmental planning instrument (EPI)</b>	
	<i>State Environmental Planning Policies (SEPP)</i>	✓
	<i>Regional Environmental Plans (REP)</i>	✓
	<i>Local Environmental Plans (LEP)</i>	✓
	<p><b>Comment:</b> The proposal does not contravene any relevant matters for consideration under the provisions of any SEPPs.</p> <p>The existing building on the site exceeds the maximum FSR that applies to the site under the provisions of the <i>WLEP 2012</i>. The proposed development does not alter the existing floor space ratio for the building and the proposal is considered to be compatible with the objectives for development within the R2 zone and the objectives of the development standard for floor space ratio. Under the requirements of Clause 4.6 of the <i>WLEP 2012</i>, a written request to vary a development standard was prepared by the applicant. The written request was found to satisfy the objectives and provisions of Clause 4.6.</p> <p>The site is located within the North Chatswood Heritage Conservation Area and the provisions of Clause 5.10(4) apply. The proposed development was found to have an acceptable impact on the heritage significance of the North Chatswood Heritage Conservation Area.</p>	
(a)(ii)	<b>The provision of any draft environmental planning instrument (EPI)</b>	
	<i>Draft State Environmental Planning Policies (SEPP)</i>	✓
	<i>Draft Regional Environmental Plans (REP)</i>	✓
	<i>Draft Local Environmental Plans (LEP)</i>	✓
	<p><b>Comment:</b> There are no draft SEPPs that apply to the subject land. There are no draft plans or policies that apply to the subject site.</p>	
(a)(iii)	<b>Any development control plans</b>	
	<i>Willoughby Development Control Plan (WDCP)</i>	✓
	<p><b>Comment:</b> The proposal has been found to be satisfactory with regard to the objectives and relevant provisions of the <i>WDCP</i>.</p>	
(a)(iii)(a)	<b>Planning Agreements</b>	
	Any planning agreements including drafts that have been entered into or offered to enter into under section 7.4	N/A
	<b>Comment:</b> No Planning agreements affect the site.	
(a)(iv)	<b>Any matters prescribed by the regulations</b>	
	Clause 92 EP&A Regulation-Demolition of a building to AS2061	✓
	Clause 93 EP & A Regulation-Fire Safety Considerations	✓
	Clause 94 EP & A Regulation-Fire Upgrade of Existing Buildings	N/A
	<b>Comment:</b> There are no prescribed matters that affect the application.	

<b>(b)</b>	<b>The likely impacts of the development</b>	
	Context & setting	✓
	Access, transport & traffic, parking	✓
	Public domain	✓
	Utilities	✓
	Heritage (including cl 5.10 <i>WLEP</i> – Development within the North Chatswood Heritage Conservation area)	✓
	Privacy	✓
	Views	✓
	Solar Access	✓
	Water and draining	✓
	Soils	✓
	Air & microclimate	✓
	Flora & fauna	✓
	Waste	✓
	Energy	✓
	Noise & vibration	✓
	Natural hazards	N/A
	Safety, security crime prevention	✓
	Social impact in the locality	✓
	Economic impact in the locality	✓
	Site design and internal design	✓
	Construction	✓
	Cumulative impacts	✓
	<b>Comment:</b> The proposal will not result in any significant adverse impacts to adjoining or nearby properties	
<b>(c)</b>	<b>The suitability of the site for the development</b>	
	Does the proposal fit in the locality?	✓
	Are the site attributes conducive to this development?	✓
	<b>Comment:</b> The proposal does not adversely alter the character of the locality or impact on the streetscape or heritage values of the North Chatswood Heritage Conservation Area.	
<b>(d)</b>	<b>Any submissions made in accordance with this Act or the regulations</b>	
	Public submissions	✓
	Submissions from public authorities	N/A
	<b>Comment:</b> No referrals were required to public authorities and no submissions were received as a result of neighbour notification.	
<b>(e)</b>	<b>The public interest</b>	
	Federal, State and Local Government interests and Community interests	✓
	<b>Comment:</b> The proposal will not compromise the character of the locality and therefore approval of the application is in the public interest.	



## ATTACHMENT 6: SCHEDULE OF CONDITIONS

### SCHEDULE

**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
Site Plan	01623-01	1	31/10/2023	North Shore Building Design Group
Ground Floor Plan	01623-02			
First Floor Plan	01623-03			
North & South Elevations	01623-04			
East & West Elevations & Sections	01623-05			
Swimming Pool Elevations & Sections	01623-06	-	June 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)

#### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

##### 2. S7.12 Contribution

Prior to the issue of the Construction Certificate, a monetary contribution is to be paid in accordance with section 7.12 of *Environmental Planning and Assessment Act, 1979* in the amount of \$3,575.00 for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

This contribution is based on 1% of the estimated cost of development, being \$357,500.00 at 28/07/2023 and the adopted *Willoughby Local Infrastructure Contributions Plan*.

##### Indexation

To calculate the monetary contribution that is payable, the proposed cost of

development is to be indexed to reflect quantity variations in the Consumer Price Index, All Groups, Sydney, as published by the Australian Bureau of Statistics (ABS) between the date the proposed cost of development was agreed by the Council and the date the levy is to be paid as required by this Plan.

To calculate the indexed levy, the formula used to determine the monetary contribution is set out below:

$$\frac{\$C_o \times \text{Current CPI}}{\text{Base CPI}}$$

Where:

$\$C_o$  = the original development contribution determined by the Council based on a percentage of the cost of development as set out in the Contributions Plan

Current CPI = the Consumer Price Index (All Groups Index), Sydney, as published by the ABS at the quarter immediately prior to the date of payment

Base CPI = the Consumer Price Index (All Groups Index), 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](http://www.willoughby.nsw.gov.au)  
(Reason: Statutory requirement)

### **3. Heritage – Timber Windows**

Timber windows or wide-framed powder-coat aluminium/UPVC windows reflecting the proportions of timber windows are to be used to the front and side elevations, where new windows or alterations to existing windows are proposed. Details are to be shown on the Construction Certificate plans prior to the issue of the Construction Certificate.

(Reason: Heritage conservation)

### **4. Damage Deposit**

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$4,000.00** (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 **\$250.00** (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 = \$4,000.00 + \$250.00 = \$4,250.00**

(Reason: Protection of public asset)

**5. 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. Any new drainage pipe connections to street kerb shall be made using a 125mm wide x 75mm high x 4mm thick hot dip galvanised Rectangular Hollow Section (RHS) with a grated drainage pit of minimum 450mm x 450mm provided within the property and adjacent to the boundary prior to discharging to the 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)

**6. Detailed Stormwater Management Plan Including Rainwater Tank (SWMP)**

Prior to the issue of the Construction Certificate, submit for approval by the Certifier, detailed stormwater management plans for collection of stormwater drainage from the site and connection to the kerb and gutter. The plans shall include a rainwater re-use tank(s) system with a minimum storage volume of 5m<sup>3</sup>, in accordance with Sydney Water's requirements and Part I of the *Willoughby DCP* and Technical Standard No. 1. Runoff from roof areas shall be directed to the tank(s). The rainwater reuse tank system shall be connected to supply non-potable use including flushing of any new toilets, pool top-up, landscape irrigation and car washing. Overflow from the rainwater tank(s) shall be directed to the receiving stormwater-system by gravity. Any above ground rainwater re-use tank shall be located behind the front alignment of the building to which the tank is connected.

The construction drawings and specifications shall be prepared by a qualified and experienced civil engineer in accordance with Part I of the *Willoughby DCP*, Technical Standard 1, AS/NZS 3500.3 – *Plumbing and Drainage Code*, Sydney Water's requirements and the National Construction Code.

(Reason: Ensure compliance)

**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)

## **PRIOR TO COMMENCEMENT**

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

### **8. Licensee Details**

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

(Reason: Information)

### **9. Report Existing Damages on Council's Property**

Prior to commencement of any works on site, submit to Council and the Principal Certifier a report with digital photographs of any existing damages to Council's assets fronting the property and the immediate adjoining properties. Failure to do so will result in the applicant being liable for any construction related damages to these assets. In this respect, the damage deposit lodged by the applicant may be used by Council to repair such damages.

(Reasons: Protection of Council's Infrastructure)

### **10. 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)

## **11. 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)

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

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

## **12. 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)

**13. Building Site Fencing**

Public access to the site and building works, materials and equipment on the site is to be restricted, when work is not in progress or the site is unoccupied.

A temporary safety fence is to be provided to protect the public, located to the perimeter of the site (unless the site is separated from the adjoining land by an existing structurally adequate fence, having a minimum height of 1.5m). Temporary fences are to have a minimum height of 1.8m and be constructed of cyclone wire or similar with fabric attached to the inside of the fence to provide dust control.

Fences are to be structurally adequate and be constructed in a good and workmanlike manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible. All parts of the fence, including the fencing blocks shall be located wholly within the property boundaries.

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

(Reason: Safety)

**14. 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)

**15. Suitable Screens**

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

(Reason: Maintain amenity to adjoining properties)

**16. Demolition Work AS 2601-2001**

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

(Reason: Safety)

**17. 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)

**18. Road and Footpath**

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

(Reason: Maintain public safety)

**19. No Storage or Parking on Footway/Nature Strip**

Building materials, plant and equipment and builder's waste, are not to be placed or stored at any time on Council's footpath, nature strip or roadway adjacent to building sites unless prior written approval has been granted by Council.

Further, the parking of motor vehicles on footpaths, nature strips and cross overs and unloading vehicles while double parked or otherwise unsafely parked is not permitted. All vehicles are required to be parked legally and safely

(Reason: Safety)

**20. Skips and Bins**

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

(Reason: Safety)

**21. Excavations and Backfilling**

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

(Reason: Safety)

**22. Swimming Pool Safety During Construction**

The swimming pool is to be made safe during the construction of the dwelling, by the erection of a temporary safety fence to the satisfaction of the registered certifier. The pool is not to be filled with water until the dwelling is completed and occupied and a child resistant barrier erected in accordance with the regulations prescribed in the *Swimming Pool Act 1992*.

(Reason: Safety)

**23. Swimming Pool Notice**

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



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

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

(Reason: Safety)

#### **24. Erection Wholly within the Boundaries**

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

(Reason: Ensure compliance)

#### **25. 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)

#### **26. 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)

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

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

#### **27. Automatic Fire Detection**

Prior to the issue of any relevant Occupation Certificate, an automatic fire detection and alarm system complying with Part H3D6 of the Housing Provisions or smoke alarms complying with AS 3786 connected to the mains electricity and having a stand by power supply shall be provided to the dwelling. Smoke alarms must be interconnected and installed in a Class 1 building on or near the ceiling in:

- (a) any storey containing bedrooms
  - (i) between each part of the dwelling containing bedrooms and the remainder of the dwelling;
  - (ii) where the bedrooms are served by a hallway, in the hallway.

- (b) any other storey not containing bedrooms.  
(Reason: Safety)

**28. Swimming Pool – Heating and Cover**

Prior to the issue of the Occupation Certificate and in perpetuity, the swimming pool is to be fitted with a cover to maintain temperatures and minimise evaporation of water. Any heating shall be of energy efficient means.  
(Reason: Ensure compliance/ sustainable development)

**29. Swimming Pool - Access**

Prior to the issue of the Occupation Certificate for the swimming pool, access to the swimming pool shall be restricted by a child resistant barrier in accordance with the regulations prescribed in the *Swimming Pools Act 1992*.

- (a) The pool shall not be filled with water, or be allowed to collect stormwater, until the installation of the child resistant barrier is completed to the Certifier's satisfaction.
- (b) The barrier is to conform to the requirements of AS 1926 –  
Part 1 – “Safety Barriers for Swimming Pools”  
Part 2 – “Location of Safety Barriers for Swimming Pools”

(Reason: Safety)

**30. Emitted Noise – Swimming Pool/Spa**

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

**31. Spa/Swimming Pool Backwash and/or Overflow**

Prior to the issue of an Occupation Certificate for the spa and/or swimming pool, water from the spa/swimming pool, including any backwash, overflow and runoff shall be effectively contained and discharged to the sewer by appropriate, permanent piping, drainage and design so this water does not:

- (a) enter any land, waters or the stormwater disposal system, including during wet weather events;
- (b) cause, or be likely to cause, damage to other land, or a building on the land or other land; and
- (c) cause discharge of sewer from the residential premises at a flow rate exceeding 2 Litres per second per Sydney Water's requirements.

Upon completion, certification from an independent, licenced and practising plumber and any engaged suitable pool specialists must be submitted to the Principal Certifier certifying that the spa/swimming pool, any associated components and all drainage at the premises complies with the most recent, relevant editions of:

- (d) the *Plumbing Code of Australia*;
- (e) Australian Standard/New Zealand Standard AS/NZS 3500 series on *Plumbing and Drainage*;
- (f) the *Building Code of Australia* and relevant Australian Standards and Australian Standard/New Zealand Standards for spas, swimming pools and any associated components featured or installed at the premises;
- (g) Part I – *Water Management* of the *Willoughby Development Control Plan (WDCP)*; and
- (h) Sydney Water editions of the relevant *Water Services Association of Australia* codes of practice and any Sydney Water guidelines, policies and relevant requirements.
- (i) Australian Standard 1926.3 – *Swimming Pool Safety – Water Recirculation Systems*

(Reason: Environmental compliance, health and safety)

### **32. Surface Water Runoff**

Prior to the issue of the Occupation Certificate and in perpetuity, surface water runoff from new paved areas shall be directed away from neighbouring properties and disposed of to the satisfaction of the Certifier.

(Reason: Health and amenity)

### **33. Swimming Pool Registration**

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

(Reason: Statutory Compliance)

### **34. Painted Finishes in Conservation Area**

Prior to the issue of any Occupation Certificate, all painted finishes are to be neutral, recessive colours appropriate to the character of the conservation area.

(Reason: Visual amenity)

### **35. Removal of Impervious Areas**

Prior to the issue of a Whole Occupation Certificate, the impervious areas nominated on the approved plans for removal are to be removed and replaced with soft landscaping.

(Reason: Landscape amenity/stormwater absorption)

**36. On-site Water Management System**

Prior to the issue of any Occupation Certificate pertaining to any works other than internal renovations, the stormwater runoff from the site shall be collected and disposed of to the kerb and gutter in accordance with Sydney Water's requirements AS/NZS3500.3, Part I of Council's *DCP* and Technical Standards 1 and 2. All runoff from roof areas shall drain to the required rainwater tank. The construction of the stormwater drainage system of the proposed development shall be generally in accordance with the approved detailed stormwater management drawings required under this development consent and Council's specification (AUS-SPEC).  
(Reason: Prevent nuisance flooding)

**37. Rainwater Re-use - 5kL tank**

Prior to the issue of any Occupation Certificate pertaining to any works other than internal renovations, and in perpetuity, the applicant shall supply and install rainwater re-use tanks with a minimum storage volume of 5m<sup>3</sup> in accordance with the approved stormwater management plans, Sydney Water's requirements and Part I of Council's *DCP* and Technical Standards 1 and 2. The rainwater reuse system shall be connected to supply non-potable use including, but not limited to new toilet flushing, pool top-up, washing of vehicles and landscape irrigation. Any above ground rainwater tanks shall be located behind the front alignment of the building to which the tank is connected. Runoff from roof areas shall drain to the rainwater tank(s).  
(Reason: Ensure compliance and stormwater management)

**38. Sign for Rainwater System**

Prior to the issue of any Occupation Certificate pertaining to any works requiring a Rainwater Reuse system, an aluminium plaque measuring no less than 400mm x 200mm is to be permanently attached and displayed within the immediate vicinity of the rainwater tank/s.

The wording for the plaque shall state *"This is the rainwater retention and reuse 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)

**39. Certification of Rainwater Reuse System**

Prior to the issue of any Occupation Certificate pertaining to any works requiring a Rainwater Reuse system and upon completion of the Rainwater Retention and Reuse System, a licensed plumber shall certify that the rainwater retention and reuse system has been constructed in accordance with the approved stormwater management plans and that the as-built system has been fitted with proprietary first flush device and connected to non-potable use including toilet flushing, laundry and landscape irrigation. All plumbing/drainage works shall be carried out which comply with the current plumbing requirements of Sydney Water and the National Construction Code Volume 3.  
(Reason: Record of works)

**40. Works-As-Executed Plans – Rainwater Reuse**

Prior to the issue of any Occupation Certificate pertaining to any works requiring a Rainwater Reuse system and upon completion of the Rainwater Reuse System, the following shall be submitted to the Certifier:

- (a) Work-as-executed plans based on the approved stormwater plans from a registered surveyor to verify that the volume of storage, invert levels of inlet, overflow pipes and discharge outlet 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) Plumber's certification that the Rainwater Reuse system has been fitted with proprietary first flush device and connected to non-potable use including toilet flushing, laundry and landscape irrigation. The Certificate shall detail the number and type of fixtures connected to the tank. All works completed shall comply with the current plumbing requirements of Sydney Water and the National Construction Code Volume 3.

(Reason: Record of works)

**41. 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)

**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.**

**42. Use of swimming pool**

The swimming pool/spa shall not be used for hire or for the purpose of any trade, industry, business or commercial gain.

(Reason: Preserve amenity)

**43. Heritage – Maintain Portion of Existing Building and No Demolition of Extra Fabric**

Alterations to, and demolition of, the existing building shall be limited to that documented on the approved plans (by way of notation) or conditioned in this consent.

No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is shown to be retained.

Should any portion of the existing building which is indicated on the approved plans to be retained be damaged, all the works on-site are to cease and written notification given to Council. No work is to resume until the written approval of Council is obtained.

(Reason: Heritage conservation and Ensure compliance)

**44. Stormwater Kerb Outlet**

New stormwater connection outlets at the street kerb shall be made using 125mm wide x 75mm high x 4mm thick hot dip galvanised Rectangular Hollow Section (RHS). Where there are multiple outlets required, a minimum distance of 100mm shall separate these outlets. A grated drainage pit (min. 450mm x 450mm) shall be provided within and adjacent to the property boundary prior to discharging to the Council's drainage system.

(Reason: Protection of public asset)

**45. Rainwater Retention and Re-Use Tank(s) System – Ongoing Maintenance**

The registered proprietor of the land shall take full responsibility for the ongoing maintenance of the Rainwater Retention and Re-Use Tank(s) system constructed on the land, in accordance with the conditions of this consent, the certified constructed system and the Registered Surveyor's Work As Executed plans. The registered proprietor shall not carry out any alterations to this system and shall carry out regular maintenance to tanks, pipelines, walls and other structures, plumbing fixtures, first flush apparatus, gutters, leaf gutter guards, downpipes, pumps, pipe connections and any associated devices relevant to the system, to keep the system clean, in good working order and to ensure efficient and on-going operation of the system

(Reason: Ensure compliance)

**PRESCRIBED CONDITIONS**

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

**46. 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)

**47. Construction Information Sign**

A clearly visible all weather sign is required to be erected in a prominent position on the site detailing:

- (a) that unauthorised entry to the work site is prohibited;
- (b) the excavator's and / or the demolisher's and / or the builder's name;
- (c) contact phone number / after hours emergency number;
- (d) licence number;
- (e) approved hours of site work; and
- (f) name, address and contact phone number of the Certifier (if other than Council)

ANY SUCH SIGN IS TO BE REMOVED WHEN THE WORK HAS BEEN COMPLETED.

Council may allow exceptions where normal use of the building/s concerned will continue with ongoing occupation, or the works approved are contained wholly within the building.

(Reason: Ensure compliance)

## **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**

### **48. 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)

### **49. 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)

### **50. 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)



