

**DA NO:** DA-2019/317

**ADDRESS:** 9 CENTENNIAL AVENUE, CHATSWOOD NSW 2067.

**PROPOSAL:** SUBDIVISION OF ONE LOT INTO TWO LOTS,  
CONSTRUCTION OF AN ATTACHED DUAL OCCUPANCY,  
LANDSCAPING AND ASSOCIATED WORKS.

**RECOMMENDATION:** APPROVAL

**ATTACHMENTS:**

1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS,  
DEVELOPER CONTRIBUTION & REFERRALS
3. ASSESSMENT UNDER WDCP
4. ASSESSMENT UNDER CLAUSE 5.10 OF WLEP
5. APPLICANT'S CLAUSE 4.6 SUBMISSION - FSR
6. OFFICER'S CLAUSE 4.6 ASSESSMENT – FSR
7. APPLICANT'S CLAUSE 4.6 SUBMISSION – LOT SIZE
8. OFFICER'S CLAUSE 4.6 ASSESSMENT – LOT SIZE
9. SUBMISSIONS TABLE
10. SECTION 4.15 (79C) ASSESSMENT
11. SCHEDULE OF CONDITIONS
12. NOTIFICATION MAP

**RESPONSIBLE OFFICER:** RITU SHANKAR - TEAM LEADER

**AUTHOR:** CHRISTOPHER NGUYEN - DEVELOPMENT ASSESSMENT  
OFFICER

**MEETING DATE** 28 JULY 2020

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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-2019/317 for the subdivision of the subject site from one (1) lot into two (2) lots, construction of an attached dual occupancy, landscaping and associated works

The application is required to be referred to the WLPP for determination as the lot size for proposed Lot 2 is more than 10% under the minimum lot size requirement for a dual occupancy within an R2 zone (clause 6.10 of the WLEP).

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

**THAT the Willoughby Local Planning Panel:**

- 2.1 Support the proposed development in accordance with Clause 5.10 of the WLEP (conservation incentives). The proposed development facilitates the conservation and restoration of the Local Heritage Item. The proposed subdivision and dual occupancy is not likely to adversely impact the heritage significance of the item. The proposal does not adversely or unreasonably impact the amenity of the surrounding residents and locality;**

**2.2 Support the Clause 4.6 exception contained in Attachment 5 as it is unreasonable and unnecessary to comply with the development standard of Clause 4.4A *Exceptions to floor space ratio* of *Willoughby Local Environmental Plan 2012*, as the proposed development does not comply with the development standard for the following reasons:**

**2.2.1 The Clause 4.6 variation request has shown there are relevant environmental planning grounds to justify the breach in FSR for the following reasons:**

- a) The proposed dual occupancy within Lot 2 exceeds the maximum FSR limit by 6.98m<sup>2</sup> (2.32%). This breach has minimal impact and is a result of the battle axe configuration of the site;**
- b) A decrease of gross floor area by 6.98m<sup>2</sup> will have no material impact on the value of the Local Heritage Item and will not have an impact on the amenity of the surrounding neighbours.**

**2.3 Support the Clause 4.6 exception contained in Attachment 7 as it is unreasonable and unnecessary to comply with the minimum lot size for dual occupancies stipulated within Clause 6.10 *Minimum lot sizes for attached dwellings, dual occupancies, multi dwelling housing, residential flat buildings and secondary dwellings* of *Willoughby Local Environmental Plan 2012*, for the following reasons:**

**2.3.1 The proposed subdivision and dual occupancy provides heritage conservation incentives by way of enabling the facilitation of the preservation and restoration of the heritage item;**

**2.3.2 Lot 1 and 2 and the proposed dual occupancy within Lot 2 are considered adequate in size and scale to provide new low density residential development whilst maintaining the amenity for surrounding residences. The assessment found there are acceptable impacts on view sharing, solar access, privacy and general amenity for the surrounding residences and locality;**

**2.3.3 The proposed subdivision and dual occupancy does not adversely impact the heritage value of the Local Heritage Item.**

**2.4 Approve Development Application DA-2019/317 for subdivision of one lot into two lots, construction of an attached dual occupancy, landscaping and associated works at 9 Centennial Avenue, Chatswood NSW 2069, subject to conditions contained in Attachment 11, for the following reasons:**

**2.4.1 The proposal shall facilitate the preservation and restoration of the Local Heritage Item in accordance with Clause 5.10 of the WLEP;**

**2.4.2 The Clause 4.6 variation request submitted with the development application establishes the proposal meets the objectives of the development standards and the R2 Low Density Residential zone;**

**2.4.3 The proposal dual occupancy is compatible in size and scale with the surrounding low residential development and is not likely to adversely impact view sharing, solar access, privacy and general amenity for the surrounding residences and locality.**

### **3. BACKGROUND OF PROPOSED DEVELOPMENT**

#### **3.1 Dwelling Listed as Heritage Item**

A Complying Development Certificate (CDC) - reference number CD 2018/43 - was issued by a Private Principal Certifying Authority for the demolition of the existing dwelling and associated ancillary development on 9 February 2018. Demolition works commenced shortly after the issue of the CDC.

On 12 February 2018, a General Council Meeting was held and having regard to the imminent demolition of the existing dwelling, the Council resolved to issue an Interim Heritage Order as previous heritage studies undertaken identify the significance of the building and its curtilage. An Interim Heritage Order was issued to Parliamentary Counsel seeking gazettal as a matter of urgency on 14 February 2018.

Willoughby Council issued an Order on 16 February 2018 (Order No: 2972 and 2973) for all works on the site to cease as Council was not notified of the demolition works.

A Planning Proposal (PP2018/5) prepared by Council proposed to list the subject site as a Local Heritage Item. An Ordinary Council Meeting on 25 March 2019 motioned that Council amend the *Willoughby Local Environmental Plan 2012* (WLEP 2012) by including 9 Centennial Avenue, Chatswood (Lot D DP 336587) as a heritage item of local significance.

The subject site is now a listed Local Heritage Item in accordance with the WLEP 2012.

#### **3.2 Additional Development Application**

The applicant has lodged two development applications concurrently for the site. This development application (DA-2019/317) proposes the subdivision of the site and a dual occupancy.

The second development application (DA-2019/326) proposes restoration of the Heritage Item (dwelling), alterations and additions to the Heritage Item and an attached secondary dwelling. This development application shall be determined after the subdivision pattern of Lot 1 and Lot 2 is determined.

When considering the determination of the subdivision and dual occupancy, Council is required to ensure the required conservation works is conducted and completed in a reasonable time frame. This is discussed in depth in **Attachment 4** of this report.

#### **3.1 Request for Amendments to Proposal**

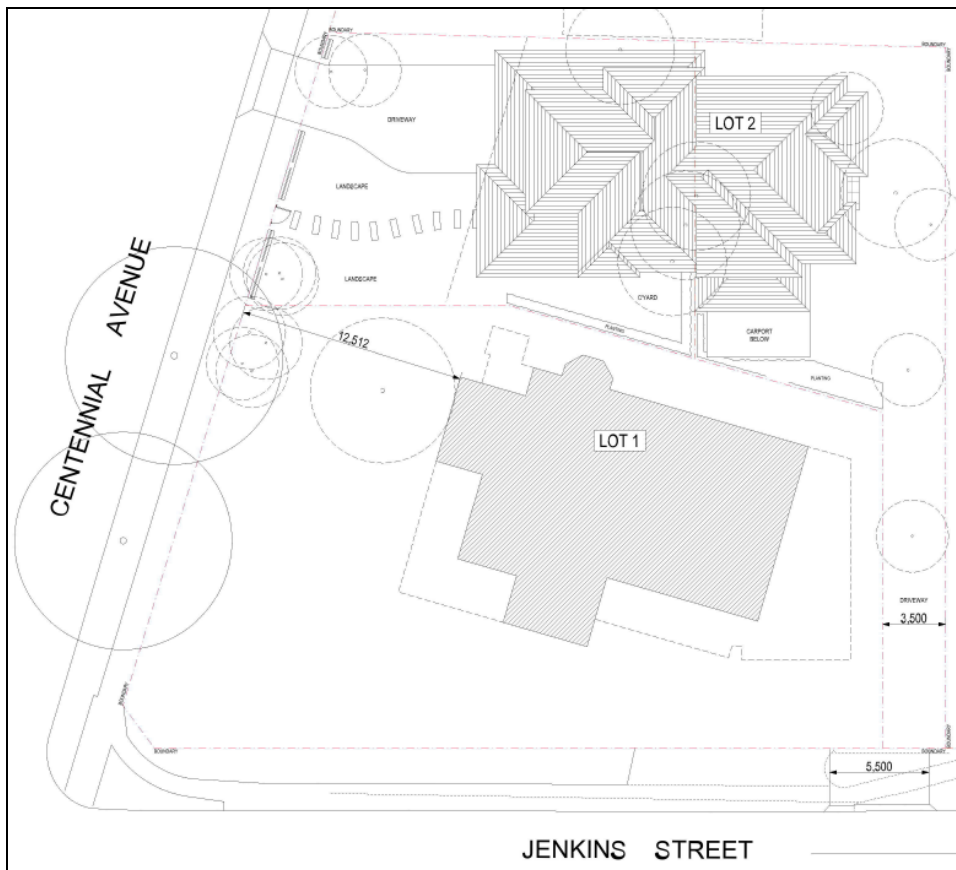
The Council requested the proposed development be amended to include the following:

- a) A 900mm setback from the battle-axe driveway to the boundary;
- b) The balcony on the first floor of the northern side of the dwelling to be deleted;
- c) A Stormwater Plan with details of a 10KI rainwater tank for each unit
- d) Amendments to proposed vehicle crossings at Centennial Avenue and Jenkins Street;
- e) Amendments to parking spaces for Unit 1 and 2 in order to comply with Australian Standards;
- f) Turning Path Diagrams to ensure a B85 vehicle can enter and leave the parking spaces in a forward direction.

The applicant provided an amended proposal to address the above concerns. The amended architectural drawings are considered to satisfy the above requirements. The applicant provides a 500mm setback from the battle-axe driveway to the boundary, however this is found to be acceptable.

#### **4. DISCUSSION**

This development application seeks consent for a torrens title subdivision of one lot into two lots. The existing dwelling which is a Local Heritage Item shall be located within Lot 1. A dual occupancy is proposed within Lot 2. The proposed subdivision pattern is portrayed in Figure 1 below:



*Figure 1: Proposed subdivision pattern and dual occupancy*

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

An assessment of the development application in accordance with the relevant controls of the WDCP can be found in **Attachment 3**.

The applicant has requested to consider the proposal in accordance with Clause 5.10(10) of the WLEP 2012 which allows Council to grant consent to a proposed development which facilitates the rectification and conservation of a heritage item. An assessment of Clause 5.10 can be viewed in **Attachment 4**.

The proposal breaches the floor space ratio and minimum lot size development standards within the WLEP 2012. The applicant's Clause 4.6 written request can be viewed in **Attachments 5 and 7**. A detailed assessment of the Clause 4.6 is provided in **Attachment 6 and 8**.

The issues and objections within the submissions received by Council and the assessing officer's response to the submissions can be found in **Attachment 9**.

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=495433>

## **5. CONCLUSION**

The Development Application DA-2019/317 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. The proposed development was found to facilitate the preservation and restoration of the Local Heritage Item. The proposed subdivision and dual occupancy are acceptable in bulk and scale and compatible with the low density residential setting of the locality.

The proposed subdivision and dual occupancy was found to not have an adverse or unreasonable impact on view sharing, solar access, privacy and general amenity for the surrounding residences and locality. It is considered that the proposal is acceptable in the particular location and can be approved under the provisions of Clause 5.10 of the *WLEP*, subject to the consent conditions included in **Attachment 11**.

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

The property is located on a corner lot at the intersection of Centennial Avenue and Jenkins Street. It is occupied by a two storey dwelling which is a listed Local Heritage Item (House including original interiors). The site is not located within a Heritage Conservation Area. The surrounding locality consists of one to two storey detached dwellings. To the east of the site is Chatswood Public School which is a Local Heritage Item. To the south-west of the site is Chatswood High School.



**ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS**

WLEP 2012 Zoning	R2 Low Density Residential
Conservation area	No
Heritage Item	Yes – The site including the dwelling (including original interiors) and curtilage is a Local Heritage Item
Vicinity of Heritage Item	Yes – To the east of the site is Chatswood Public School which is a listed Local Heritage Item. The proposed development is found to have no impacts on this Local Heritage Item
Bushfire Prone Area	No
Flood Planning Control	No
Adjacent to classified road	No
BASIX SEPP	Yes – a valid BASIX Certificate was provided
Acid Sulphate Soil Category	Class 5

**Development Statistics**

Development Statistics					
	Site Area (m <sup>2</sup> )	1562m <sup>2</sup> (indicated within Survey Plan)			
Willoughby Local Environmental Plan 2012 (“WLEP 2012”)					
Control (WLEP)		Existing	Proposed	Standard	Compliance
CI 4.3	Height	N/A	7.1m at highest point	8.5m	Yes
CI 4.4 and CI 4.4A	Gross Floor Area	Existing heritage item: 288.75m <sup>2</sup>	Lot 1 = 288.75m <sup>2</sup> Lot 2 = 271m <sup>2</sup>	Maximum GFA: Lot 1 = 354m <sup>2</sup> Lot 2 = 264.02m <sup>2</sup>	Dual occupancy on Lot 2 does not comply
	FSR	0.18:1	Lot 1 = 0.33:1 Lot 2 = 0.44:1	Maximum FSR: Lot 1 = 0.4:1 Lot 2 = 0.43:1	See <b>Attachment 6</b> of report
CI 6.10	Minimum Lot Size for Specific Development	N/A	Lot 1 = 885m <sup>2</sup>  Lot 2 = 614m <sup>2</sup> (excluding access handle)  Lot 2 = 679m <sup>2</sup> (including access handle)	Minimum lot size for dual occupancy (attached) in R2 zone is 700m <sup>2</sup>	Lot 2 does not comply  No – see <b>Attachment 8</b> of report

<b>Willoughby Development Control Plan (WDCP)</b>					
<b>Control (WDCP)</b>		<b>Existing</b>	<b>Proposed</b>	<b>Standard</b>	<b>Compliance</b>
<b>(C.4)</b>	<b>Car spaces</b>	N/A	Lot 1 = 2  <u>Lot 2:</u>  Unit 1 contains two car spaces  Unit 2 contains two car spaces	2 car spaces for each dwelling with 3 or more bedrooms	Yes
<b>(D.1.4)</b>	<b>Unarticulated Wall Length</b>	Complies	Complies	No blank facades	Yes
<b>(D.1.4)</b>	<b>Colours</b>	Complies	Heritage Officer indicates Schedule of Finishes to be acceptable	Colours and materials sensitive to surrounding area	Yes
<b>(D.1.7)</b>	<b>Building Height Plane (BHP)</b>	N/A	Unit 1 and 2 of dual occupancy comply Heritage dwelling falls outside of envelope	Envelope 3.5m high and inwards at 45 degrees	No – see <b>Attachment 3</b> of report
<b>Setbacks</b>					
	<b>Front Setback (Lot 1)</b>	Lot 1: Existing heritage item is 5.5m from the eastern boundary (facing Jenkins St) and 13.15m from the southern boundary (facing Centennial Ave) at the closest points	Lot 1: Front setbacks unchanged by this development application	Minimum 7.0m to primary street frontage.	Yes – as the existing dwelling on Lot 1 is unchanged, the proposal technically complies
	<b>Front Setback (Lot 2)</b>	Lot 2: N/A	Lot 2: 9.28m from the garage to the southern boundary at the closest point	Minimum 7.0m to primary street frontage.	Yes
	<b>Rear Setback (setback to northern boundary)</b>	8.5m	Lot 1 = 4.0m at closest point  Lot 2 = 5.4m at closest point (from staircase)	Minimum 6.0m for two storey structures	No – see <b>Attachment 3</b> of report
	<b>Side Boundaries for Lot 1</b>	N/A	3.0m from western façade  1.5m to alcove	Side boundaries:  900mm for walls of 1-2 storeys in height	Yes



Control (WDCP)		Existing	Proposed	Standard	Compliance
(D.1.7)	Side Boundaries for Lot 2	N/A	<p>The eastern façade of the attached dual occ. is 2.5m from the eastern side boundary at the closest point</p> <p>The carport is 0.27m from the eastern side boundary</p> <p>The western façade provides 1.5m to the western boundary</p>	<p>Side boundaries:</p> <p>900mm for walls of 1-2 storeys in height</p>	No – the setbacks from the walls of the dual occupancy comply however the carport does not. See <b>Attachment 3</b> of report
(D.1.8)	Soft Landscaped Area in Lot 1	1235m <sup>2</sup> of soft landscaped area	There is 405m <sup>2</sup> of soft landscaping within the front setback area	Minimum 389.62m <sup>2</sup>	Yes
	Soft Landscaped Area in Lot 2	The area within proposed Lot 2 is currently completely landscaped area	220m <sup>2</sup>	A minimum of 35% soft landscaping (214.9m <sup>2</sup> ) distributed proportionately for each dwelling in dual occupancy	Yes – the required landscaped area is calculated without taking into account the battle axe area
	Soft landscaping at Street frontage (50%)	Complies	Complies	50% of the area forward of the building line shall be soft landscaping	Yes
(D.1.9)	Private Open Space	Complies	<p>Lot 1: Complies</p> <p>Lot 2: Complies</p> <p>Unit 1 = 143m<sup>2</sup></p> <p>Unit 2 = 90m<sup>2</sup></p>	A minimum of 90m <sup>2</sup> is required per dwelling	Yes
(D.1.12)	Solar Access	Complies	Complies	Maintain 3 hours of solar access between 9am and 3pm on 22 June to living areas	Yes
<b>SEPP BASIX</b>	<b>BASIX</b>	A valid BASIX Certificate has been submitted (1049474M)			

**Developer's Contribution Plans**

<b>S7.11 Section 94A contribution:</b>	Yes
a. Applicable rate (%):	N/A
b. The cost of development (Part A CI 25J) (\$)	\$1,094,500.00
c. Date of accepted cost of development:	08 November 2020
d. The total contribution payable (\$)	\$40,000.00

**Referral Assessment Comments**

Internal Council Referrals	
Heritage Officer	<p>Council's Heritage Officer provided the following comments:</p> <p><i>The subject site is listed as a heritage item under the Willoughby Local Environmental Plan 2012. Existing on the site is two storey Federation Queen Anne style grand mansion. The statement of significance for the subject site, as outlined in Willoughby Council's Heritage Inventory form is as follows:</i></p> <p><i>“Extremely fine substantial two storey grand mansion residence. The residence demonstrates characteristics of the Federation Queen Anne style with face brick, heavy timberwork and an emphasized sheltering roof.</i></p> <p><i>Designed by prominent Sydney architects Castleden and Lake in 1895 for WJR Jenkins, it is one of the best surviving houses of the work of Castleden, who was very active in Chatswood during the Federation period and a resident of Centennial Avenue.”</i></p> <p><i>Heritage comments relating to a pre-lodgement meeting with Council officers were provided to the applicant on 4th September 2019. The applicant has addressed all the issues raised.</i></p> <p><i>The proposal to subdivide part of the existing lot to the western side is considered to be acceptable as the main curtilage of the existing heritage item is to the east and south. This is the predominant view of the item which is to be preserved. The proposed subdivision will not have an impact on this view and the curtilage and will preserve the heritage significance of the item. The proposed driveway from Centennial Avenue to the proposed new lot will be harmonious with the other driveways to the residential properties in Centennial Avenue. No heritage objection is raised to the second driveway from Jenkins Street, at the rear of the heritage item, which is to be shared by the heritage item and the proposed new lot. This driveway will act as a buffer between the listed item and No. 2 Jenkins Street.</i></p> <p><i>It is considered that the location of the proposed new attached dual occupancy on the new lot will not interrupt the prominent views of the listed item. The lower level roof over the porch and living room of Unit 1 of the dual occupancy further assists in preserving the prominence of the item.</i></p> <p><i>The two (2) Ornamental Pear (Pyrus ussuriensis) trees proposed in front of attached dual occupancy are acceptable from a heritage view point. As these are deciduous trees and not very tall, the view of the</i></p>

	<p><i>listed item will not be permanently blocked.</i></p> <p><i>No objection is raised to the proposed land subdivision to create a vacant lot for the proposed dual occupancy development. The Finishes and Colour Schedule submitted with the application for the proposed attached dual occupancy is acceptable.</i></p> <p><i>No objection to the proposed development from a heritage point of view, subject to conditions.</i></p>
<p>Engineering Officer</p>	<p>Council's Engineer originally raised concerns regarding the proposed driveway for Lot 1 and 2 and provided the following comments:</p> <p><i>We have reviewed the additional information submitted, and advise that the following items were either not submitted or were not satisfactory:</i></p> <ul style="list-style-type: none"> <li>• <i>The long-sections provided for the vehicle crossings were not at the requested scale of 1:20, and also did not clearly demonstrate that the B85 vehicle did not scrape.</i></li> <li>• <i>Council requires that the footpath section of the crossing is at a maximum grade of 2.5%. The sections on Jenkins St do not meet this requirement. Given the existing path is at an angle at this location, we note that the new path location within the crossing is to be located 600mm off the property boundary and be a minimum of 1.2m wide.</i></li> <li>• <i>Within the road reserve, there is to be no skewing of levels within the crossing. i.e. the level of the crossing at the boundary on the left had side of the crossing shall be the same distance above the gutter invert level as that on the right hand side. Any skewing of levels shall occur within the property,</i></li> <li>• <i>As the driveway from Unit 2 is long and passes the proposed garage for Lot 1, vehicles at Unit 2 must be able to turn around and leave the site in a forward direction. As the apron area in front of the house is restricted, swept path diagrams are to be provided for the garage and carport demonstrating how a B85 vehicle is able to enter and leave the site.</i></li> <li>• <i>The stormwater pipe from Unit 2 along the driveway to the pit at the boundary must have a 1% fall out to the street. The levels detailed have the pipe falling back towards the site and not out to the street.</i></li> <li>• <i>The internal garage door on Unit 1 impinges into the space required for a vehicle when opened. The door should be changed to swing in the other direction or to a sliding door, so it does not impinge into the parking space.</i></li> </ul> <p><i>We note that we have only reviewed the plans with regards Lot 2 works. However, we have undertaken a brief review of the stormwater drainage proposed for Lot 1, and advise that we have the following concerns:</i></p> <ul style="list-style-type: none"> <li>• <i>An underground tank is proposed, relatively close to a major tree, where there is potential for large tree roots to be present, which will prevent installation of the tank.</i></li> <li>• <i>The tank position also requires a charged stormwater system for a significant portion of the roof.</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>Due to the above two items, consideration should be given to whether the tank can be located beneath the courtyard, where it is further away from the tree and the extent of charged pipe can be minimised.</i></li> <li>• <i>There are two stormwater outlets shown from Lot 1. A single outlet from the site should be provided, with the connection to the kerb and gutter at as close to right angles as possible.</i></li> </ul> <p>The applicant provided an amended proposal to address the above issues. The amended proposal was referred to Council's Engineer and the subsequent comments were provided:</p> <p><i>We have reviewed the application with regards elements relevant to this division.</i></p> <p><i>The stormwater plans detail that a 10kL rainwater tank is proposed for each dwelling in the dual occupancy, and the existing dwelling in accordance with the requirements of Part C.5. The stormwater plans comply with the requirements of the DCP.</i></p> <p><i>Plans and long-sections have been provided for the two new crossings. For the new crossing for the existing dwelling / unit 2 levels at the boundary will need to change, which will require the footpath to be reconstructed for 2m beyond the crossing.</i></p> <p><i>Garage and carport dimensions comply with AS/NZS 2890.1. Swept paths have been provided to confirm that vehicles for Unit 2 are able to enter and leave in a forward direction, which is required due to the long driveway.</i></p> <p><i>The dual occupancy on Lot 2 will impact the footpath and the kerb and gutter in both Centennial Ave and Jenkins Street. As such, we are requiring that they be replaced. In Jenkins Street, this includes the removal of the existing crossing and replacement of the footpath and kerb and gutter for a distance of 20m from the Lot 2 boundary.</i></p> <p><i>This application is acceptable to this division, subject to the recommended conditions.</i></p>
<p>Landscape Officer</p>	<p>Council's Landscape Officer provided the following comments:</p> <p><i>The Statement of Heritage Significance and Landscape Plan submitted with the application are noted.</i></p> <p><i>The plans indicate removal of several trees from the site. Existing street trees on Centennial Avenue are to be retained.</i></p> <p><i>The Statement of Heritage Impact provided does not indicate that these plantings are of particular significance, concluding that they were later additions and no formal landscape setting appears evident.</i></p> <p><i>The landscape plans indicate replanting of trees and shrubs to complement the garden setting, which is supported by the Statement of Heritage Impact.</i></p>

	<p><i>In view of the above, no objections are raised to approval subject to the conditions as recommended.</i></p>
Building Services Officer	<p>Council's Building Services Officer provided the following comments:</p> <p><i>No issues subject to the recommended conditions.</i></p>

### **ATTACHMENT 3: ASSESSMENT UNDER WDCP**

**Attachment 3** provides an assessment of the proposed development in accordance with the *Willoughby Development Control Plan (WDCP)* and any non-compliance with the relevant controls.

#### **D.1.7 Building Envelopes and Setbacks**

##### Building Envelope

The proposed subdivision pattern results in the Local Heritage Item within Lot 1 falling outside the building envelope when measured from the proposed subdivision boundaries. The proposed dual occupancy complies with the building envelope

As this development application does not propose works to the Heritage Item within Lot 1, the bulk and scale of the Heritage Item remains the same.

The proposed subdivision patterns provide adequate setbacks from the Heritage Item and the dual occupancy to the shared boundary so as to not appear excessive when viewed from each lot. Therefore the breach of the building envelope by the Heritage Item as a result of the subdivision pattern is acceptable.

##### Rear Setback

The Local Heritage Item and dual occupancy do not provide a minimum 6.0m setback to the northern rear boundary of their respective lots. The Heritage Item within Lot 1 is an existing dwelling and therefore its setbacks remain unchanged and therefore the non-compliance for Lot 1 is supported.

The dual occupancy in Lot 2 provides a 4.0m setback from the ground floor to the northern rear boundary at the closest point. The distance provided is considered acceptable. The location of the dual occupancy does not adversely impact privacy, solar access or view sharing for the adjoining neighbour to the north at 2 Jenkins Street. The dual occupancy complies with the maximum height requirement and therefore the dual occupancy shall not appear visually dominant from 2 Jenkins Street. The non-compliance of the rear setback distance is supported.

##### Side Setback

Unit 1 and 2 comply with providing the relevant side setback distances to their respective side boundaries. There is a non-compliance with the setback distance for the carport for Unit 2. As the carport is a lightweight structure, the non-compliance is considered acceptable and to not have an adverse impact on the Local Heritage Item.

#### **D.1.8 Landscaping**

##### Landscaping

A dual occupancy requires 35% of the lot to be soft landscaped area. In this case, Lot 2 provides 220m<sup>2</sup> of soft landscaped area. When viewing the landscape plan (L01/1 – K24702), there is more soft landscaping provided for Unit 1. This is due to Unit 1 containing a street frontage to Centennial Avenue, which would naturally have more available space for soft landscaping.

The amount of soft landscaped area provided for Unit 1 and 2 is suitable to be utilised for private open space and is acceptable.

## **ATTACHMENT 4: CLAUSE 5.10 – HERITAGE CONSERVATION INCENTIVES**

### **4.0 Heritage Conservation Incentives**

The applicant has requested Council to consider clause 5.10(10) of the *Willoughby Local Environmental Plan (WLEP)* which allows Council to grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected if it facilitates the conservation of the heritage item and meets the requirements of this clause. This section of the report provides an assessment on the proposed development in accordance with the requirements of clause 5.10(10) of the WLEP.

#### **4.1 Assessment in Accordance with Clause 5.10(10).**

Below are the requirements under Clause 5.10(10) and Council's assessment of each requirement:

##### ***(a) The conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent***

The Statement of Heritage Impact prepared by Perumal Murphy Alessi (PM-19037, dated October 2019) indicates the existing dwelling and site has been neglected and internal and external works to the dwelling would need to be conducted to restore the dwelling to a habitable state with an acceptable presentation that meets the heritage values of the site. After conducting several site inspections to the site, Council agrees with this assessment.

The extent of internal and external works required for the restoration of the dwelling will require significant financial expenditure by the owners of the site. The proposed subdivision and dual occupancy is considered an acceptable solution that provides the owners the financial capability to carry out the necessary works to the heritage listed dwelling.

Council acknowledges the proposed dual occupancy shall result in a loss of the landscape setting associated with the dwelling, however the dual occupancy is considered to have an acceptable impact on the heritage listed dwelling and the surrounding locality. The dual occupancy shall also provide the provision of appropriate housing for the owners.

##### ***(b) The proposed development is in accordance with a heritage management document that has been approved by the consent authority***

The second development application (DA-2019/326) proposes internal and external restoration works of the dwelling. This second application contains a Statement of Heritage Impact prepared by Perumal Murphy Alessi (PM-19037, dated October 2019) which provides a list of works to restore the dwelling (page 41 and onwards). Council's Heritage Officer has reviewed the proposed restoration works and considers the proposal to achieve the heritage values of the dwelling.

##### ***(c) The consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out***

It is imperative the consent issued by Council ensures the restoration of the heritage listed dwelling in a reasonable time period whilst considering the financial obligations of the owner of the site to achieve this.

The applicant has lodged a second development application (DA-2019/326) concurrently with this development application, which proposes the restoration and preservation of the Local Heritage Item.

In order to ensure the development of the site whilst ensuring the Local Heritage Item is restored in a reasonable time period, Council has imposed a Deferred Commencement Condition which states the consent is not operable until Council determines the development application for the restorations works for the Local Heritage Item.

Secondly, Council has imposed a condition prior to obtaining an Occupation Certificate, which requires adequate works to be completed before the issue of an Occupation Certificate for the dual occupancy. This condition (No. 38 of the consent) is as follows:

**38. Restoration and Preservation of Local Heritage Item**

*Prior to the issue of any Occupation Certificate, the following is to be fulfilled:*

- a) *Deferred Commencement condition No 1 is to be completed;*
- b) *A Construction Certificate is to be obtained for Development Application DA-2019/326;*
- c) *There is to be substantial commencement of restoration works to the heritage listed dwelling as indicated within the Statement of Heritage Impact prepared by Perumal Murphy Alessi (PM-19037, dated October 2019).*

*Written confirmation by Willoughby City Council is to be obtained confirming that substantial restorative works has commenced prior to receiving any Occupation Certificate.*

*(Reason: Restoration and preservation of Local Heritage Item)*

The Deferred Commencement Condition and the above condition shall ensure the owners of the site are provided with the financial capability to conduct the restorative works and assurance that the Local Heritage Item shall be restored and preserved within a reasonable time period.

***(d) The proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance***

Impact on Heritage Dwelling

The proposal in this application does not propose any physical changes to the Heritage Dwelling. The additional development application (DA-2019/326) lodged concurrently with this application proposes restoration of the Heritage Dwelling and an attached secondary dwelling, however this is subject to an assessment of DA-2019/326 subsequently after this development application for subdivision and dual occupancy is determined.

The Planning Proposal (PP-2018/5) which proposed to list the subject site as a Local Heritage Item contained a Heritage Study Review prepared by Architectural Projects. The study provides a review of the heritage value of the entire site. The Heritage Study did not indicate the landscaped area of the site to contain items of heritage significance, such as trees or landscaped gardens, however curtilage to the dwelling is seen to positively contribute to the heritage value of the site and is discussed in the next section.

Impact on Curtilage to Heritage Dwelling

The application proposes a dual occupancy to the west of the heritage dwelling. The dual occupancy removes a significant portion of the existing landscaped area of the site and shall be visible when viewed from Centennial Avenue. The landscaped setting of the existing lot is contributory to the heritage value of the site.



Council's Heritage Officer has conducted a review of the proposed development (see **Attachment 2** of report). When taking into consideration the assessment by the Heritage Officer, the main impact is concluded to be the loss of landscaped area and curtilage associated with the heritage dwelling when viewed from Centennial Avenue.

Although there is loss of the landscaped setting to the west of the heritage dwelling, the primary curtilage visible from Centennial Avenue and Jenkins Street is unaffected by the proposed subdivision and dual occupancy. The proposed dual occupancy is considered acceptable in bulk and scale and compatible with the low density residential context of the surrounding locality.

***(e) The proposed development would not have any significant adverse effect on the amenity of the surrounding area***

The proposed development was found to not have any adverse or unreasonable impact on the amenity of the surrounding area. This is discussed in detail in **Attachment 3, 4 and 9** of this report.

ATTACHMENT 5: APPLICANT'S CLAUSE 4.6 SUBMISSION – FSR

9-11 Centennial Avenue, Chatswood

numerous occasions throughout the pre-DA consultation process on the heritage grounds.

Under the circumstances, insisting strict compliance with the minimum lot size development standards and therefore not permitting the proposed development will be against Council's own actions so far and is considered completed unreasonable and unnecessary.

**4.1.2 FSR**

The gross floor area of the proposed dual occupancy development on 'Proposed Lot 2' will be 271m<sup>2</sup> which is calculated to be 0.441:1 in FSR including the access laneway and 0.399:1 in FSR excluding the access laneway.

Clause 4.4(2A) requires the access laneway of a battle-axe lot be excluded from FSR calculations as below:

*(2A) Despite subclause (2)—*

- (a) the maximum floor space ratio for a building on land in Zone R2 Low Density Residential or Zone E4 Environmental Living is to be determined as if the area of the access laneway of a battle-axe lot were not part of the area of the lot, and*
- (b) any part of the floor area of a building that—*
  - (i) is to be used for community facilities or affordable housing purposes, or*
  - (ii) is a heritage item,**is taken not to be part of the gross floor area of the building for determining the maximum floor space ratio of the building.*

The first question to be answered here is whether 'Proposed Lot 2' is a 'battle-axe lot' or 'standard lot'? Neither WLEP 2012 nor 'Standard Instrument—Principal Local Environmental Plan' provides definition of a battle-axe lot. However, Clause 1.5 (Interpretation – General) of 'SEPP (Exempt & Complying Development Codes) 2008' provides as below which we could all agree in common sense:

**'battle-axe lot means a lot that has access to a road by an access laneway.'**

To apply the definition, 'Proposed Lot 2' has two separate street frontages. Unit 1 of the

*9-11 Centennial Avenue, Chatswood*

proposed dual occupancy dwellings has a direct access from Centennial Avenue and Unit 2 have an access to Jenkins Street by a shared access laneway with the heritage house on 'Proposed 1'. As such, 'Proposed Lot 2' could be defined in either way. It has a normal street frontage to Centennial Avenue as a 'standard lot', whilst it has an access laneway of 5.25m in width to Jenkins Street as a 'bottle-axe lot'.

The second question to be answered is whether the access laneway to serve Unit 2 must be excluded from FSR calculation in this particular case? In practice, 'yes' the access laneway to Unit 2 should be excluded for the purpose of FSR calculations, as the area of the proposed access handle only serves as a vehicular driveway. However, the proposed subdivision lot sizes and shapes have been dictated by Council in achieving maximum conservation of the heritage house by requiring greater side setbacks than normal which resulted in making 'Proposed Lot 2' smaller.

As mentioned above, Clause 5.10(10) of WLEP 2012 provides conservation incentives allowing any purpose beyond the restriction. In addition, Clause 4.4(2A)(b) states that '*any part of the floor area of a building that is a heritage item is taken not to be part of the gross floor area of the building for determining the maximum floor space ratio of the building*' which is another form of a conservation incentive relating to building mass. To apply Clause 4.4(2A)(b), the overall numerical FSR for the whole site would be reduced dramatically.

Under the circumstances, the numerical development standards restricting the maximum FSR in this particular case is not very meaningful. In addition, not permitting the proposed development only because of the numerical non-compliance with FSR will be against the heritage incentive provisions of the LEP and is considered completely unreasonable and unnecessary.

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

The proposed variations to the development standards are justifiable on the following environmental planning grounds having regard to the object of the EP&A Act:

**Firstly**, despite the contravention the approval of the proposed development will

facilitate the sustainable and long term management of the original heritage house which is in need of extensive restoration works for the damage done upon the partial demolition.

**Secondly**, despite the contravention the approval of the proposed development will facilitate the opportunity of ensuring social and economic welfare and a better built environment for the community by providing affordable and well-designed housing that the original house on the oversized 1,562m<sup>2</sup> lot cannot offer.

**Thirdly**, despite the contravention the approval of the proposed development would facilitate ecologically sustainable development. The Commonwealth Government suggested the following definition for ESD in Australia: 'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased'. By allowing the proposed development, it will promote the slightly undersized suburban residential allotment (i.e. 'Proposed Lot 2') to accommodate well designed dual occupancy development consisting 2 dwellings which in turn maximises urban consolidation and minimises the cumulative impact of urban sprawl for the metropolitan Sydney in the long run, whilst preserving the heritage house.

**Fourthly**, despite the contravention the approval of the proposed development would promote the orderly and economic use and development of land without resulting in undue adverse environmental impact as discussed throughout the Statement of Environmental Effects.

**Fifthly**, despite the contravention the approval of the proposed development would protect the environment, including conservation of threatened and other species of native animals and plants, ecological communities and their habitats in the metropolitan context in the long run and would minimise urban sprawl occurring elsewhere to provide 2 new dwellings.

**4.3 Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone?**

**4.3.1 Objectives of the development standard & zone**

The proposed dual occupancy development is not considered contrary to the objectives of the R2 (Low Density Residential) Zone and Clauses 4.1, 4.1C and 6.10 in question, having considered the judgement in *Wehbe v Pittwater Council [2007] NSWLEC 827*.

At [42], it was noted that '*the most common way to establish that compliance with a development standard is unreasonable or unnecessary is because the objectives of the development standard are achieved despite non-compliance with the control.*'

Then, the Court added at [43]:

*"Development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."*

The questions raised by this include:

- 1) *Would the proposal, despite a numerical non-compliance, be consistent with the relevant environmental or planning objectives?*

The objectives of R2 (Low Density Residential) include; (1) to provide for the housing needs of the community within a low density residential environment; (2) to accommodate development that is compatible with the scale and character of the surrounding residential development; (3) to retain and enhance residential amenity, including views, solar access, aural and visual privacy, and landscape quality; and (4) to retain the heritage values of particular localities and places. All other objectives refer to permissible non-residential development in R2 Zone which are not relevant in this case.

As mentioned in the Statement of Environmental Effects, the proposed development will be consistent with the aforementioned objectives that it will:

*9-11 Centennial Avenue, Chatswood*

- create an additional lot for residential development to meet the housing needs for the community and will maintain the low density residential character
- facilitate excision of the original heritage house and provide the dual occupancy development in moderate bulk and scale to complement the heritage house and other neighbouring dwelling houses in the streetscape context in accordance with Council advice to date. As such, the proposal is considered compatible with the scale and character of the surrounding residential development.
- maintain a reasonable degree of residential amenity including views, solar access, aural and visual privacy and landscape quality
- restore and conserve the heritage house

2) *Establish that the underlying objective or purpose [of the development standard] is not relevant to the development, with the consequence that compliance is unnecessary.*

Comment: N/A, in this case

3) *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required, with the consequence that compliance with the development standard is unreasonable.*

Comment: N/A, in this case

4) *Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the development standard, and hence compliance with the standard is unnecessary and unreasonable.*

Although the development standards in question have not been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standards in the past, the Planning Manager recommended before the Council at its Ordinary Meeting on 23 March 2019 to exercise conservation incentives pursuant to Clause 5.10(10) of Willoughby LEP 2012. In this regard, the Manager considered subdivision of the site with an area of

*9-11 Centennial Avenue, Chatswood*

1,561.83m<sup>2</sup> being achievable and also suggested to provide a further incentive to permit a dual occupancy on the vacant half of the site (i.e. 'Proposed Lot 2' under this DA) and attached dual occupancy on the site containing the heritage item (i.e. 'Proposed Lot 1' under this DA) in order to facilitate the restoration of the heritage house for a long term management strategy. As such, insisting strict compliance and therefore not permitting the DA in this case would be totally unnecessary and unreasonable.

- 5) *Establish that the zoning of particular land was unreasonable or inappropriate so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

Comment: N/A, in this case

**4.3.2 Public interest**

Council's support for the variations would be in the public interest in this case. 'The Guide to Section 79C (Currently Section 4.15)' published by the previous Department of Planning refers '(e) – the public interest' to be '*Federal, State and Local government interests and community interests*' as below:

*(e) – The public interest*

<i>Primary Matters</i>	<i>Specific Considerations</i>
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9-11 Centennial Avenue, Chatswood

<p>Federal, State and Local government interests and community interests</p>	<ul style="list-style-type: none"> <li>▪ Do any policy statements from Federal or State Governments have relevance?</li> <li>▪ Are there any relevant planning studies and strategies?</li> <li>▪ Is there any management plan, planning guideline, or advisory document that is relevant?</li> <li>▪ Are there any credible research findings, which are applicable to the case?</li> <li>▪ Do any covenants, relevant issues raised in public meetings and inquiries?</li> <li>▪ Have there been relevant issues raised in public meetings or inquiries?</li> <li>▪ Was there consultations and submissions made in addition to (d) above?</li> <li>▪ How will the health and safety of the public be affected?</li> </ul>
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To apply the specific considerations in the table to the proposed development, the following assessment is made:

- Numerous policy statements and planning studies and strategies (e.g. The Sydney Metropolitan Strategy 2031) have been published by the NSW Department of Planning and Environment in recent years to facilitate housing supply and urban consolidation so as to keep up with the increasing housing demand in NSW, whilst best protecting the environment. One of the key results is that the NSW Department of Planning and Environment has implemented the 'Low Rise Medium Density Housing Code' in July 2018 (although deferred until July 2020 in case of Willoughby Council area) to allow for R2 and R3 zoned sites greater than 400m<sup>2</sup> in area to build attached dual occupancy dwellings across the NSW unless a LEP specify a greater lot size. The design details and planning guidelines have already been published for the building design industry and the general public to refer. For 'Proposed Lot 2' the Low Rise Medium Density Code SEPP would allow for a gross floor area of up to 453.5m<sup>2</sup> (i.e. 25% of the lot area + 300m<sup>2</sup>) which is significantly larger than that of the proposal. As such, approval to the proposed development is considered to be in the interest of the state of NSW, despite the numerical variations.
- As discussed above, Willoughby Council at its Ordinary Meeting carried the motion to list the subject site as a heritage item and has decided to provide



'Conservation Incentives' by allowing subdivision of the land and subsequent dual occupancy development on the vacant half of the site, after extensive consultations with the stakeholders and public during the process.

- No covenant or registered easement exists that could possibly undermine the public interest.
- All written submissions objecting to the proposal can be adequately dealt with during Council's DA conciliation process if received.
- The health and safety of the public will not be adversely affected by the proposed variation.

#### **4.3.3 Precedent**

As the variations are directly related to the heritage preservation and conservation incentives, Council approval to the proposed development will not set an undesirable precedent for other people to follow.

## **5 CONCLUSION**

This application seeks approval for the Torrens Title subdivision of one lot into two lots to excise the heritage house, which is under 'Interim Heritage Order' and 'Planning Proposal' for heritage listing, then construction of attached dual occupancy dwellings on the new vacant lot.

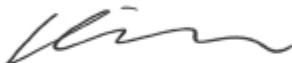
It has been established that the strict compliance with the development standards specified in Clause 4.1 (Minimum subdivision lot size), 4.1C (Minimum lot size for dual occupancies), Clause 6.10 (Minimum lot size for attached dwellings, dual occupancies, multi dwelling housing, residential flat buildings and secondary dwellings), Clause 4.4 (Floor space ratio) and Clause 4.4A (Exceptions to floor space ratio) of Willoughby LEP 2012 in this case is unreasonable and unnecessary for the reasons stated above and there are sufficient environmental planning grounds to justify contravening the development standards. It has also been demonstrated that the proposed development will satisfy the objectives of R2 (Low Density Residential) Zone and will be in the public interest.

Therefore, it is concluded that the proposed development is worthy of Council support

9-11 Centennial Avenue, Chatswood

notwithstanding the numerical non-compliance with the development standards.

Yours faithfully,



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- 21 -

**ATTACHMENT 6: APPLICANT'S CLAUSE 4.6 SUBMISSION**

The applicant has provided a Clause 4.6 written request to vary the floor space ratio (FSR) development standard which applies to the site in accordance with Clause 4.4A of the WLEP.

The below table indicates the floor space ratio development standard applicable for each lot, the proposed variation, and the extent of the variation to the development standard.

<b>CI 4.4A – Exceptions to floor space ratio</b>	<b>Development Standard (FSR)</b>	<b>Proposed FSR</b>	<b>Extent of Variation (%)</b>
<b>Proposed Lot 1 (Heritage Dwelling)</b>	Maximum 0.4:1 (Maximum 354m <sup>2</sup> )	0.33:1 (288.75m <sup>2</sup> )	Complies
<b>Proposed Lot 2 (Dual Occupancy)</b>	Maximum 0.43:1 (Maximum 264.02m <sup>2</sup> )	0.44:1 (271m <sup>2</sup> )	2.32% over development standard

**6.0 Variation of Maximum Floor Space Ratio**

There is a non-compliance with the maximum floor space ratio that applies to proposed Lot 2. The maximum FSR for Lot 2 is 0.43:1. The proposed FSR is 0.44:1 (2.32% exceedance).

The applicant has provided a written request seeking a variation to the minimum floor space ratio development standard. The written request states the variation is acceptable and meets the objectives of Clause 4.6 for the following reasons:

1. There are sufficient environmental planning grounds to justify the contravention:
  - a) Clause 5.10(10) of the WLEP allows for a consent authority to grant consent to a development, even though the development does not meet the minimum lot size development standard if the proposal results in the conservation of a heritage item. In this case, the proposal would allow for the retention and preservation of the Local Heritage Item at 9 Centennial Avenue;
  - b) The proposed subdivision pattern results in an access handle for Lot 2. The area of the access handle is not included in the total site area of Lot 2, limiting the amount of gross floor area permitted by the FSR control. This places a limitation to the maximum permitted FSR for Lot 2.
2. The proposal achieves the objectives of the R2 Low Density Residential zone as:
  - c) The proposed dual occupancy and its associated bulk and scale is consistent with the surrounding locality;
  - d) Neighbouring residences and the streetscape are not adversely impacted as the impact on views, solar access, privacy and amenity are maintained;
  - e) The conservation of the Local Heritage Item is achieved.
3. The objectives of the standard (CI 4.4 and CI 4.4A) are achieved notwithstanding non-compliance with the standard.

### **6.1 Consideration of Variation to Maximum Floor Space Ratio**

The applicant has demonstrated the relevant objectives of Clause 4.4 and CI 4.4A of the WLEP are achieved for the following reasons:

1. The proposed total gross floor area of Lot 2 exceeds the maximum permitted gross floor area by 6.98m<sup>2</sup>. This exceedance is not considered to unreasonable or adversely impact the visual bulk and scale of the dual occupancy;
2. The proposed dual occupancy contains two dwellings that are acceptable in bulk and scale. The dual occupancy provides adequate setbacks, compliant soft landscaped area, and complies with the maximum height and building envelope. Therefore the proposal is not excessive in scale;
3. The assessment has found that the proposal does not adversely or unreasonable impact view sharing, privacy, solar access or general amenity for the adjoining residences, the Local Heritage Item, or the streetscape.

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

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

ATTACHMENT 7: APPLICANT'S CLAUSE 4.6 SUBMISSION – MINIMUM LOT SIZE

9-11 Centennial Avenue, Chatswood

**APPENDIX – VARIATION TO THE DEVELOPMENT STANDARDS  
UNDER CLAUSE 4.6 OF WILLOUGHBY LEP 2012  
with regard to**

- **Clause 4.1 – Minimum subdivision lot size**
- **Clause 4.1C – Minimum subdivision lot size for dual occupancies**
- **Clause 6.10(2) – Minimum lot size for attached dwellings, dual occupancies, multi dwelling housing, residential flat buildings and secondary dwellings**
- **Clause 4.4 – Floor space ratio**
- **Clause 4.4A – Exceptions to floor space ratio**

**INTRODUCTION**

This written request to vary the aforementioned development standards is made pursuant to the provisions of SEPP No.1 and Clause 4.6 of Willoughby LEP 2012. In this regard, it is requested Council support variations with respect to compliance with the minimum subdivision lot size, the minimum subdivision lot size for dual occupancies and minimum lot size for dual occupancies contained within Clauses 4.1, 4.1C and 6.10(2) of Willoughby LEP 2012 respectively.

This written request has been submitted and structured having considered the approach adopted by the NSW Land & Environment Court in the case of *Winter Property Group v North Sydney Council* [2001] NSWLEC 46 at [26], in support of the proposed development.

**"4.6 Exceptions to development standards**

- (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.*
- (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."

**Comment:** Written request is submitted to allow for flexible application of the Development Standard regarding the minimum lot size for the proposed dual occupancy.

## 1. Is the planning control in question a development standard?

### 1.1 Subdivision lot size

Regarding the lot sizes, Willoughby LEP 2012 provides:

#### 4.1 Minimum subdivision lot size

(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.

(3) The size of any lot resulting from a subdivision of land to which this clause applies is **not to be less than the minimum size shown on the Lot Size Map** in relation to that land.

(3A) If a lot is a battle-axe lot or other lot with an access handle, the area of the access handle is not to be included in calculating the lot size.

#### 4.1C Minimum subdivision lot size for dual occupancies

(1A) Despite any other provision of this Plan, development consent must not be granted to the subdivision of a lot on which there is a dual occupancy except in accordance with this clause.

(1B) Development consent may be granted to the subdivision of a lot on which there is a dual occupancy if the size of any lot resulting from the subdivision is **not to be less than the minimum size shown on the Lot Size Map** in relation to that lot.

(1) Development consent may also be granted to the subdivision of a lot on which there is a dual occupancy if—

(a) the lot is not a lot in the area identified as "Area 1" on the Dual Occupancy Restriction Map, and

(b) the area of each lot resulting from the subdivision is **at least 350 square metres**, and

(c) each of the resulting lots will have one of the dwellings on it, and

- (d) the floor space ratio of each dwelling does not exceed—
- (i) 0.4:1, or
  - (ii) any floor space ratio specified under clause 4.4A for a building on the lot, whichever is the lesser, and

**6.10 Minimum lot sizes for attached dwellings, dual occupancies, multi dwelling housing, residential flat buildings and secondary dwellings**

(2) Development consent may be granted to development for a purpose shown in Column 1 of the Table to this subclause on a lot in a zone shown in Column 2 of that Table opposite that purpose, if the area of the lot is equal to or greater than the area specified for that purpose and shown in Column 3 of that Table.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
Secondary dwelling	Zone E4 Environmental Living	450 square metres
<b>Dual occupancy (attached)</b>	<b>Zone R2 Low Density Residential</b>	<b>700 square metres</b>
Dual occupancy (attached)	Zone E4 Environmental Living	700 square metres
Dual occupancy (detached)	Zone R2 Low Density Residential	900 square metres
Dual occupancy (detached)	Zone E4 Environmental Living	900 square metres
Attached dwelling	Zone R3 Medium Density Residential	1,100 square metres
Multi dwelling housing	Zone R3 Medium Density Residential	1,100 square metres
Residential flat building	Zone R3 Medium Density Residential Zone R4 High Density Residential	1,100 square metres

**1.2 FSR**

Regarding the FSR, Willoughby LEP 2012 provides:

**4.4 Floor space ratio**

(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.

**4.4A Exceptions to floor space ratio**

(1) The maximum floor space ratio for all buildings on a lot in Zone R2 Low Density Residential in the area identified as "Area 1" on the Floor Space Ratio Map, the total area of which is specified in Column 1 of the Table to this subclause, is the floor space ratio

9-11 Centennial Avenue, Chatswood

specified opposite that area in Column 2 of that Table.

**Maximum floor space ratio for Zone R2 in Area 1**

<b>Column 1</b>	<b>Column 2</b>
<b>Site area (square metres)</b>	<b>Floor space ratio (:1)</b>
Under 200	0.65
200-300	0.55
301-400	0.50
401-500	0.47
501-600	0.45
<b>601-700</b>	<b>0.43</b>
701-800	0.41
Over 800	0.40

(7) Development consent must not be granted to the erection of a dual occupancy on land in Zone R2 Low Density Residential if the floor space ratio of the dual occupancy would exceed 0.4:1.

The definition of "development standards" in Section 4(1) of the Environmental Planning & Assessment Act 1979 is:

*"development standards means 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:*

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring,*



- loading or unloading of vehicles,
- (h) the volume, nature and type of traffic generated by the development,
  - (i) road patterns,
  - (j) drainage,
  - (k) the carrying out of earthworks,
  - (l) the effects of development on patterns of wind, sunlight, daylight or shadows,
  - (m) the provision of services, facilities and amenities demanded by development,
  - (n) the emission of pollution and means for its prevention or control or mitigation, and
  - (o) such other matters as may be prescribed."

As such, Clauses 4.1, 4.1C and 6.10(2) of Willoughby LEP 2012 are considered 'development standards' as they fix requirements in respect of the minimum subdivision lot size for normal land subdivision and for dual occupancy development in accordance with the subclauses (a) above.

By the same token, Clauses 4.4 and 4.4A of Willoughby LEP 2012 are also considered 'development standards' as they fix requirements in respect of the maximum floor area of building to be permitted within the land in accordance with the subclauses (d) above.

## **2. What is the underlying object or purpose of the development standard?**

### **2.1 Subdivision lot size**

Willoughby LEP 2012 provides the objectives relating to the minimum subdivision lot size as below:

#### **4.1 Minimum subdivision lot size**

- (1) The objectives of this clause are as follows—
- (a) to retain the pattern of subdivision in low density residential and environmental living zones,
  - (b) to ensure lots have sufficient area for the effective siting of development in order to achieve a good relationship with adjoining dwellings and to provide adequate space for landscaped open space, drainage, parking, residential amenity and other services,
  - (c) to require larger lots along the foreshore or where the topography or other natural

*features of a site limit its subdivision potential,*

*(d) to ensure that subdivision does not cause fragmentation of sites that limits potential future uses or redevelopment in accordance with the zone objectives.*

**6.10 Minimum lot sizes for attached dwellings, dual occupancies, multi dwelling housing, residential flat buildings and secondary dwellings**

*(1) The objectives of this clause are—*

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

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

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

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

It is noted that Clause 4.1C of Willoughby LEP 2012 does not provide separate objectives of the development standard. However, it is not difficult to assume from Clause 4.1(1)(b) and Clause 6.10(1) that the intent of the standard is to ensure each resulting lot created by dual occupancy development to have a sufficient area to provide for appropriate landscaping, open space, drainage and separation between buildings for privacy and solar and vehicular access and parking.

**2.2 FSR**

Also, Willoughby LEP 2012 provides the objectives relating to the maximum floor area as below:

*(1) The objectives of this clause are as follows—*

*(a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,*

*(b) to limit traffic generation as a result of that development,*

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

*(d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,*

- (e) to permit higher density development at transport nodal points,
- (f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,
- (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,
- (h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,
- (i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,
- (j) to encourage the consolidation of certain land for redevelopment,
- (k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.

**3. Is compliance with the development standard consistent with the aim of SEPP 1 and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?**

In this instance, the aim of Clause 4.6 of Willoughby LEP 2012 is to be considered instead of the aim of SEPP 1:

**"4.6 Exceptions to development standards**

- (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."

In this regard the objects of the Environmental Planning & Assessment Act under Section 5(a)(i) and (ii) which have been replaced with Section 1.3 now are:

**Previously: Section 5(a)(i) and (ii) of the EP&A Act 1979**

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,

**Currently: Section 1.3 of the EP&A Act 1979 (equivalent subclauses highlighted in bold)**

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,**
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,**
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

Strict compliance with the subject development standards are not necessarily consistent with the aim of Clause 4.6 of Willoughby LEP 2012 and would hinder the attainment of the objects specified in Section 1.3 of the EP&A Act. In that, insisting

strict compliance and not permitting the proposed development with the variations relating to the minimum subdivision lot size, the minimum subdivision lot size for dual occupancy and floor space ratio:

- (a) would unnecessarily prevent the opportunity of ensuring social and economic welfare and a better built environment for the community by creating an additional residential lot for affordable and well-designed dual occupancy dwellings that the current site cannot offer.
- (b) would unnecessarily prevent the opportunity of facilitating ecologically sustainable development. The Commonwealth Government suggested the following definition for ESD in Australia: *'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased'*. By allowing the proposed development, it will facilitate excision of the oversized land for the retention of the original heritage house and promote 'Proposed Lot 2' to accommodate well designed dual occupancy development consisting 2 new dwellings which in turn maximises urban consolidation and minimises the cumulative impact of urban sprawl for the metropolitan Sydney in the long run.
- (c) would prevent the orderly and economic use and development of the subject oversized suburban residential land (i.e. 1,562m<sup>2</sup> in area).
- (d) would prevent the opportunity of promoting the housing diversity in a more affordable dwelling type. The variation is mainly due to ensuring a sufficient area and spacial separation for the maximum conservation and restoration of the original heritage house.
- (e) would not necessarily protect the environment, including conservation of threatened and other species of native animals and plants, ecological communities and their habitats in the metropolitan context in the long run, if urban sprawl occurs elsewhere (i.e. greenfield area) to provide 2 new dwellings, which the proposal is capable of providing within the established suburban area with no adverse environmental impacts.
- (f) would prevent the sustainable long term conservation and restoration of the original heritage house which is undergoing 'Planning Proposal' to be listed as a 'Heritage Item'. The original house was under threat for complete destruction under a CDC approval for demolition immediate before the 'Interim Heritage Order' was issued on 14 February 2018, as the original oversized suburban residential lot does not meet the financial and economic expectation of the new

owners to keep it as is. To address the sustainable and long term management of the heritage house issue, numerous discussions have taken place in Council meetings to allow for such a subdivision to excise the original house and to permit dual occupancy development on 'Proposed Lot 2' to make up for the lost development potential of the subject site.

- (g) would prevent the opportunity of promoting quality designed dwellings which are compatible in the streetscape and respect the original house in the heritage context.
- (h) would prevent the opportunity of facilitating the proper restoration and maintenance of the original heritage house which had undergone a partial demolition in early 2018. Not allowing for the subdivision and subsequent dual occupancy development would deplete the landowners' desire for the restoration works to the original house. In such a case, the protection of the health and safety of the future occupants and public would also be significantly jeopardised.
- (i) Council to note
- (j) Council to note

**4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

In this instance, the following sub-clauses are required to be considered in line with this question:

**"4.6 Exceptions to development standards**

- (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.*
- (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 Secretary has been obtained."

#### **4.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

##### **4.1.1 Subdivision lot size**

'Proposed Lot 2' has an area of 614m<sup>2</sup> excluding the access handle and 679m<sup>2</sup> including the access handle which is 36m<sup>2</sup> or 86m<sup>2</sup> short of the development standards contained in Clause 4.1 (Minimum subdivision lot size) or Clause 6.10 (Minimum lot size for attached dwellings, dual occupancies, multi dwelling housing, residential flat buildings and secondary dwellings) respectively. This represents 5.54% or 12.3% variation.

Also, the future resulting lots for the dual occupancy dwellings 1 and 2 on 'Proposed Lot 2' will be 348m<sup>2</sup> and 331m<sup>2</sup> respectively which are 2m<sup>2</sup> and 19m<sup>2</sup> short of the development standard contained in Clause 4.1C (Minimum lot size for dual occupancies). These represent 0.57% or 5.4% variation.

As briefly discussed in Section 1 ('The site & History') of the Statement of Environmental Effects, the original house had undergone partial demolition before being issued with an 'Interim Heritage Order' on 14 February 2018 to stop the demolition work. Then Council carried a motion to list the house as a heritage item in Schedule 5 of Willoughby LEP 2012 at its Ordinary Meeting on 23 March 2019.

At this Council meeting, Council's Planning Manager (Mr Ian Arnott) reported to Council as below:

*'Clause 5.10(10) of Willoughby Local Environmental Plan 2012 provides conservation incentives to provide owners of heritage items with more options for*

*9-11 Centennial Avenue, Chatswood*

uses within heritage items. The Clause enables the consideration of "any purpose" of a building that is a heritage item subject to amenity and conservation management considerations. This enables a use to be permitted beyond the restrictions of the land use table for the zone (in this case R2 Low Density Residential).

The site area is 1,561.83m<sup>2</sup>. The minimum lot size for subdivision of the area is 650m<sup>2</sup>. With the positioning of the dwelling on the site, a **subdivision is considered to be achievable**.

As an added incentive, Council could consider removing the dual occupancy restriction for the site which would enable the owner more flexibility for the family accommodation plans originally intended. **Should such a proposal be pursued, a dual occupancy could be created on the vacant half of the site and an attached dual occupancy on the site containing the heritage item.**

Council staff have met with the owner and on a separate occasion with the owner's heritage architect to discuss development options (including subdivision) which can be carried out with the retention of the building.

If Council resolves not to list as a heritage item, the dwelling is likely to be demolished for the redevelopment of the site.

Reinstatement of the property will be expensive. Heritage incentives are available to provide flexibility to develop the site. Should Council resolve to make the property at 9 Centennial Avenue a Heritage Item of Local Significance, it **could consider waiving the restriction of dual occupancy development to provide a development incentive to retain the building.**

The property has finally been listed as a heritage item in Schedule 5 of Willoughby LEP 2012.

The variations in the subdivision lot size are mainly due to providing a sufficient lot size for the original heritage house with appropriate side setbacks and boundary layout to allow for a proper spacial separation between the heritage house on 'Proposed Lot 1' and new buildings on 'Proposed Lot 2' in accordance with Council's advice on



*9-11 Centennial Avenue, Chatswood*

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numerous occasions throughout the pre-DA consultation process on the heritage grounds.

Under the circumstances, insisting strict compliance with the minimum lot size development standards and therefore not permitting the proposed development will be against Council's own actions so far and is considered completely unreasonable and unnecessary.

**ATTACHMENT 8: OFFICER’S CLAUSE 4.6 ASSESSMENT – MINIMUM LOT SIZE**

The applicant has provided a Clause 4.6 written request to vary the following development standards under the following clauses of the *Willoughby Local Environmental Plan (WLEP)* in relation to minimum lot size:

- a) Clause 4.1 – Minimum subdivision lot size;
- b) Clause 4.1C – Minimum subdivision lot size for dual occupancies;
- c) Clause 6.10(2) – Minimum lot size for dual occupancies

The below table indicates the development standard for each of the above clauses applicable to the site, the proposed variation to each development standard, and the extent of the variation to the development standard.

<b>Control</b>	<b>Development Standard</b>	<b>Proposed Lot Sizes</b>	<b>Extent of Variation (%)</b>
<b>CI 4.1 – Minimum Lot Size</b>	Minimum 650m <sup>2</sup>	Lot 1 = 885m <sup>2</sup>  Lot 2 = 614m <sup>2</sup>	Lot 1 complies  Lot 2 is 5.54% under the requirement
<b>CI 4.1C – Minimum subdivision lot size for dual occupancies</b>	Minimum 350m <sup>2</sup>	The application indicates the following indicative subdivision of Lot 2:  Unit 1 = 348m <sup>2</sup>  Unit 2 = 331m <sup>2</sup>	<b>Note:</b> The application does not propose the subdivision of the proposed dual occupancy. Dual occupancies cannot be subdivided for 5 years. Subdivision of the dual occupancy shall be subject to another development application and is not considered in this assessment
<b>CI 6.10(2) – Minimum lot size for dual occupancies</b>	Minimum 700m <sup>2</sup> in an R2 zone	Lot 1 = 885m <sup>2</sup>  Lot 2 = 614m <sup>2</sup>	Lot 1 complies  Lot 2 is 12.28% under the requirement

**8.0 Variation of Minimum Lot Size**

There is a non-compliance with the minimum required lot size that applies to proposed Lot 2. Dual occupancies require a minimum lot size of 700m<sup>2</sup>. Lot 2 provides 614m<sup>2</sup> where the dual occupancy is located. This is a shortfall of 12.28% (86m<sup>2</sup>) of the minimum requirement.

The applicant has provided a written request seeking a variation to the minimum lot size development standard. The written request states the variation is acceptable and meets the objectives of Clause 4.6 for the following reasons:

1. There are sufficient environmental planning grounds to justify the contravention:
  - a) Clause 5.10(10) of the WLEP allows for a consent authority to grant consent to a development, even though the development does not meet the minimum lot size development standard, if the proposal results in the conservation of a heritage item. In this case, the proposal would allow for the retention and preservation of the Local Heritage Item at 9 Centennial Avenue;
  - b) The proposed subdivision provides adequate lot sizes for proposed Lots 1 and 2. The proposed development does not have an adverse or unreasonable impact on the amenity of the surrounding residences or streetscape;

2. The proposal achieves the objectives of the R2 Low Density Residential zone as:
  - a) The proposal creates an additional lot for residential development to meet the housing needs of the community;
  - b) The proposed development and its bulk and scale is consistent with the Local Heritage Item and the surrounding residences;
  - c) Neighbouring residences and the streetscape are not adversely impacted as the impact on views, solar access, privacy and amenity are maintained;
  - d) The conservation of the Local Heritage Item is achieved.
3. The objectives of the standard (CI 6.10(2) – Minimum lot size for dual occupancies) are achieved notwithstanding non-compliance with the standard.

### **8.1 Consideration of Variation to Minimum Lot Size Standard**

The applicant has demonstrated the relevant objectives of Clause 4.6 and CI 6.10(2) of the WLEP are achieved for the following reasons:

1. The proposed lot sizes for Lots 1 and 2 are considered adequate in providing new low density residential development while maintaining the amenity for surrounding residences. The assessment found there are acceptable impacts on view sharing, solar access, privacy and general amenity for the surrounding residences and locality;
2. The proposal to subdivide the lot into two lots shall facilitate the retention and preservation of the Local Heritage Item;
3. The proposed development meets the objectives of the R2 Low Density Residential zone. The proposal provides a suitable lot for residential development within the low density context of the surrounding locality. The impacts on the surrounding residences is acceptable and the proposal contributes to the Local Heritage Item being retained;
4. The bulk and scale of the proposed dual occupancy does not adversely impact the heritage qualities of the Local Heritage Item. When considering the location of the dual occupancy, the view of the Local Heritage Item when viewed from a public space such as the street frontages of Centennial Avenue and Jenkins Street is maintained. The dual occupancy does not impose or detract from the visual presentation of the Local Heritage Item.

The applicant's written request is considered to have demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. The applicant's written request has adequately demonstrated the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

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

**ATTACHMENT 9 - SUBMISSIONS TABLE**

Council was in receipt of seven (7) unique submissions from the following objectors:

	<b>Submissions:</b>
1	2 Jenkins Street, Chatswood
2	28 Jenkins Street, Chatswood
3	29 Muttama Road, Artarmon
4	49 Muttama Road, Artarmon
5	74 Centennial Avenue, Chatswood
6	195/809-811 Pacific Highway, Chatswood
7	One submission which did not provide an address

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

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

<b>Issues Raised</b>	<b>Officer's Comments</b>
<b>Issues Raised by all Objectors</b>	
The proposed dual occupancy removes the garden and open space associated with the Heritage Item, adversely impacting the heritage value of the item and site.	<p>Council acknowledges the curtilage of the entire site forms part of the Heritage Item. The proposed dual occupancy removes a substantial portion of the landscaped setting associated with the dwelling, however the primary curtilage within the front setback area to Centennial Avenue and Jenkins Street is unaffected. Therefore the primary view of the heritage listed dwelling available to the public is maintained.</p> <p>Council's Heritage Officer's comments regarding this issue can be viewed in <b>Attachment 2</b>.</p>
The proposed dual occupancy is excessive in bulk and scale, which imposes on the heritage item, thus adversely impacting the heritage value of the item.	<p>The proposed dual occupancy complies with the building envelope, front and side setback requirements (with the exception of a carport), and therefore the bulk and scale does not impose on the Heritage Item.</p> <p>When viewed from Centennial Avenue, Unit 1 shall be visible however provides a compliant front setback to provide sufficient landscaped area. This is compatible with the low density residential context of the surrounding locality.</p> <p>When viewed from Jenkins Street, the view of the Heritage Item is unobstructed.</p>
The Heritage Item should be restored in order to preserve the heritage value of the item.	A condition (No. 33 of the list of conditions – Schedule 2) has been imposed to ensure the restoration of the heritage listed dwelling has substantially commenced before the owners of the site can receive an Occupation Certificate. This ensures the restoration is commenced and achieved within a reasonable time frame.
<b>Issues Raised by 2 Jenkins Street</b>	
The proposed bulk and scale of the dual occupancy is excessive. There should be consideration of the proposed floor space ratio.	The proposed dual occupancy is acceptable in bulk and scale as it complies with the maximum height limit, the building envelope and the setbacks provided are sufficient. The proposed floor space ratio is 6.98m <sup>2</sup> (2.32%) over the limit and a reduction to comply would have no material impact on visual scale.

<b>Issues Raised by 2 Jenkins Street (continued)</b>	
<p>The proposed driveway is located along the length of the shared side boundary. The log retaining wall along this boundary is not a load bearing wall and only a soil retaining wall. How will the stability of this wall be maintained during construction?</p> <p>Will the log retaining wall be capable of taking the load bearing from vehicles using the driveway?</p>	<p>The Assessment Officer noted on a site inspection of 2 Jenkins Street that a log retaining wall runs along the length of the shared side boundary between 9 Centennial Avenue and 2 Jenkins Street. This log retaining wall is considered unsuitable to support the structural load of the new driveway and vehicles utilising the driveway in the long term.</p> <p>The applicant has amended the proposal to have a setback of 500mm from the driveway to the side boundary. Within this 500mm buffer area, the applicant indicates a new retaining wall shall be constructed wholly within the site to support the new driveway and its long term use.</p> <p>Council has imposed a condition of consent that prior to obtaining a Construction Certificate, a Structural Engineer's report - prepared by a suitably qualified Structural Engineer - shall determine the required design of the retaining wall required for the driveway and vehicles utilising the driveway in the long term and ensure the retaining wall is structural adequate to prevent damage to the neighbouring property at 2 Jenkins Street, Chatswood.</p> <p>The drop in ground level from the subject site to the objector's site is indicated in drawing DA-033/A, prepared by SWA Group, dated 24 April 2020.</p>
<p>Council should seek a dilapidation report to ensure no damage to the log retaining wall along the shared side boundary</p>	<p>Council has recommended conditions of consent for the applicant to prepare an internal and external dilapidation report prior to obtaining a Construction Certificate for the log retaining wall, fence and dwelling at 2 Jenkins Street. A dilapidation report shall also be prepared prior to obtaining an Occupation Certificate to ensure no damage has occurred from construction.</p>
<p>The proposed garage and carport is in close proximity to the objector's living room, having an adverse acoustic impact from vehicle noise</p>	<p>The proposed garage and carport is 7.45m from the side boundary. This is adequate distance and complies with the required rear setback requirement. The amount of times a vehicle will drive to and from the site is not considered frequent as to having an adverse acoustic impact as it maintains a residential use.</p>
<p>A vehicle reversing out of the carport or garage creates an unreasonable safety</p>	<p>Council's Engineer requested swept paths to provide evidence that a vehicle can safely reverse and exit from the site in a forward direction. Swept paths were provided to Council and confirm vehicles can safely enter and exit the site.</p>
<p>The balcony facing north will directly overlook our backyard.</p>	<p>The applicant has amended the proposal and has removed the north facing balcony to the first level.</p>
<p>How will the dual occupancy and secondary dwelling (in the subsequent application DA-2019/326) be numbered if they share the same driveway?</p>	<p>Council's GIS Team reviewed the proposed application and provided the following addresses to each new dwelling:</p> <ul style="list-style-type: none"> <li>a) Unit 1 with vehicle access from Centennial Avenue is to have an address as 9A Centennial Avenue, Chatswood.</li> <li>b) Unit 2 with vehicle access from Jenkins Street is to have an address as 2A Jenkins Street</li> </ul> <p>When looking at the pattern of street numbers within Centennial Avenue and Jenkins Street, the addresses recommended by Council's GIS Team are considered to be appropriate and is accepted.</p>

Issues Raised by 2 Jenkins Street (continued)	
<p>The proposed 1.8m fence along the shared side boundary will sit on top of a 1.2m log retaining wall, resulting in a 3.3m fence when measured from the ground level of our site. The fence on top of the log retaining wall should have a maximum height of 1.5m.</p>	<p>The measurements provided by the objector regarding the fence are from the objector's side.</p> <p>Under the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>, fences cannot be constructed under Exempt Code if the lot contains a Heritage Item. However as the proposal seeks consent to subdivide the site so that Lot 2 does not contain a Heritage Item, it is possible for a 1.8m fence to be constructed along the shared side boundary of 9 Centennial Avenue and 2 Jenkins Street under the Exempt Code.</p> <p>The Exempt Code does not provide particular requirements for side boundary fences for a battle axe.</p> <p>Regardless of the Exempt Code, a 1.8m fence is considered suitable along the shared boundary of 9 Centennial Avenue and 2 Jenkins Street, however it should be gradually descend to a height of 1.2m once it passes the front setback of the existing dwelling at 2 Jenkins Street to reduce the visual bulk from the street frontage. This shall be conditioned accordingly.</p>
<p>All the plans show the RL for second floor windows of 2 Jenkins Street but do not show the ground floor windows and door. Therefore the proposal does not adequately show the impact to the ground floor rooms.</p>	<p>Although the site plans only shows the RL of the second floor windows for the dwelling at 2 Jenkins Street, the applicant has provided adequate information to assess the privacy and amenity impacts to the objector's site.</p> <p>The proposed dual occupancy is not directly aligned with the objector's dwelling and does not create a direct overlooking impact from a principal living area within the dual occupancy.</p> <p>To ascertain the privacy impact, the windows within Unit 2 facing north and north-east shall be examined.</p> <p>The ground floor contains a glass sliding door facing north-east, however there shall be a 1.8m privacy fence along the boundary between 9 Centennial Avenue and 2 Jenkins Street. This boundary fence alleviates privacy impacts from the ground floor.</p> <p>The large window to the staircase is a transient space which does not cause an unreasonable privacy issue.</p> <p>The first floor bedroom contains a window facing north-east. The window is set back 5.75m from the shared boundary. When considering the bedroom is not a primary living area, the privacy impact is considered acceptable. A condition shall be imposed for this window to have a minimum sill height of 1.6m when measured from the floor level of the bedroom.</p>

**ATTACHMENT 10 - 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 ✓ Considered and Unsatisfactory ✗ and Not Relevant N/A

(a)(i)	The provisions of any environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> <li>State Environmental Planning Policies (SEPP)</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Regional Environmental Plans (REP)</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Local Environmental Plans (LEP)</li> </ul>	✓
	<p><b>State Environmental Planning Policy – Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</b></p> <p>The SREP applies to the entire Willoughby Local Government Area identified on the Sydney Harbour Catchment Map. There are no specific provisions in the SREP, which is a deemed SEPP that are considered to be determinative to the subject development.</p> <p><b>State Environmental Planning Policy – (Building Sustainability Index: BASIX) 2004</b></p> <p>A BASIX Certificate pursuant to the provisions of the <i>State Environmental Planning Policy – (Building Sustainability Index: BASIX) 2004</i> has been submitted in accordance with the SEPP and considered satisfactory.</p>	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	<ul style="list-style-type: none"> <li>Draft State Environmental Planning Policies (SEPP)</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Draft Regional Environmental Plans (REP)</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Draft Local Environmental Plans (LEP)</li> </ul>	N/A
	Comment: There are no draft SEPPs or any items under Draft WLEP 2012 (housekeeping amendments) that apply to the subject land.	
(a)(iii)	Any development control plans	
	<ul style="list-style-type: none"> <li>Development control plans (DCPs)</li> </ul>	✓
	<p><b>Willoughby Development Control Plan (WDCP)</b></p> <p>The proposed development has been assessed against the relevant requirements of the <i>WDCP</i> and is considered satisfactory.</p>	
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> <li>Clause 92 EP&amp;A Regulation-Demolition</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Clause 93 EP&amp;A Regulation-Fire Safety Considerations</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Clause 94 EP&amp;A Regulation-Fire Upgrade of Existing Buildings</li> </ul>	N/A
	Comment: There are no prescribed matters that affect the application.	
(b)	The likely impacts of the development	
	<ul style="list-style-type: none"> <li>Context &amp; setting</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Access, transport &amp; traffic, parking</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Servicing, loading/unloading</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Public domain</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Utilities</li> </ul>	✓

	• Heritage	✓
	• Privacy	✓
	• Views	✓
	• Solar Access	✓
	• Water and draining	✓
	• Soils	✓
	• Air & microclimate	✓
	• Flora & fauna	✓
	• Waste	✓
	• Energy	✓
	• Noise & vibration	✓
	• Natural hazards	N/A
	• Safety, security crime prevention	✓
	• Social impact in the locality	✓
	• Economic impact in the locality	✓
	• Site design and internal design	✓
	• Construction	✓
	• Cumulative impacts	✓
	Comment: The proposed development, with conditions included to mitigate any potential impacts, is not considered to have any unreasonable impacts on the residential amenity of surrounding residents	
(c)	The suitability of the site for the development	
	• Does the proposal fit in the locality?	✓
	• Are the site attributes conducive to this development?	✓
	Comment: The proposal is in keeping with the surrounding locality of Centennial Avenue and Jenkins Street	
(d)	Any submissions made in accordance with this Act or the regulations	
	• Public submissions	✓
	• Submissions from public authorities	✓
	Comment:  Seven (7) submissions were received and are addressed in <b>Attachment 9</b> of this report.	
(e)	The public interest	
	• Federal, State and Local Government interests and Community interests	✓
	Comment: The proposed development is considered to have acceptable impacts and therefore it is in the public interest.	



**ATTACHMENT 11: SCHEDULE OF CONDITIONS**

**SCHEDULE 1**

**CONDITIONS OF CONSENT  
DEFERRED COMMENCEMENT**

In accordance with Section 80(3) of the Act this consent will not operate until the applicant has provided information to the satisfaction of the Council that the following conditions can be complied with. Upon receipt of written information from the applicant in relation to the conditions in this schedule the Council will advise in writing whether the information is satisfactory and, if so, will nominate the effective date for the commencement of this consent.

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

**1. Determination of Development Application DA-2019/326**

The consent shall only become operable once a determination for Development Application DA-2019/326 has been provided by Willoughby City Council.  
(Reason: To ensure heritage works are restored and preserved)

## SCHEDULE 2

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

### CONSENT IDENTIFICATION

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

#### 1. Approved Plan/Details

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

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Architectural Drawings	DA-011, DA-013, DA-021, DA-022	C	24/04/2020	SWA Group
	DA-012	D		
	DA-032	B		
Landscape Plan	L01/1 – K24702	-	08/10/2019	Michael Sui
Subdivision Plan	191210-001B	-	21/10/2019	RGM Property Surveys

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

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

### PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

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

#### 2. Amendments

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

- (a) The architectural drawings and landscape plan are to be amended to indicate a 1.8m boundary fence that starts at the north-western corner of Lot 2 and extends along the north-eastern boundary of Lot 2 until it is in line with the front building line of the neighbouring dwelling within 2 Jenkins Street. If the applicant chooses to have the fence extend further towards the boundary at Jenkins Street, the fence is to gradually descend to a height of 1.2m at the boundary of Jenkins Street;
- (b) Any new fence along the southern and eastern boundaries facing Centennial Avenue and Jenkins Street is to be a maximum of 1.2m when measured from the existing ground level and indicated on the architectural drawings.

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

(Reason: Maintain privacy and amenity)

### **3. 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 **\$40,000** for the purposes of the Local Infrastructure identified in the *Willoughby Local Infrastructure Contributions Plan*.

Active transport and public domain facilities	\$ 1705.90
Open space and recreation facilities	\$ 31,352.70
Plan administration	\$ 591.14
Recoupment - community facilities	\$ 6029.68
Recoupment - open space and recreation	\$ 320.58
<b>Total</b>	<b>\$ 40,000</b>

#### 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](http://www.willoughby.nsw.gov.au)

#### Works-in-Kind agreement

The Applicant may negotiate with Council for the direct provision of facilities and services in lieu of the monetary contribution above (or any portion of that contribution) through a Works-In-Kind (WIK) offer to Council. Any WIK agreement between the Applicant and Council must be finalised, formally signed and in place prior to issue of Construction Certificate

(Reason: Statutory requirement)

**4. External Finishes – Solar Absorptance**

The external roofing, glazing and walls of the proposed dwelling are to be of minimal reflectance so as to avoid nuisance in the form of glare or reflections to the occupants of nearby buildings, pedestrians and/or motorists. Details demonstrating compliance are to be submitted with the Construction Certificate application.  
(Reason: Visual amenity)

**5. Structural Report for Retaining Wall**

Prior to the issue of any Construction Certificate, a Structural Engineer's Report – prepared by a suitably qualified Structural Engineer – shall determine the required design and specifications of the retaining wall along the northern boundary shared by 9 Centennial Avenue and 2 Jenkins Street. The report shall assess the required design and specifications of the proposed retaining wall and determine whether it can support the construction of the battle-axe driveway and the movement of vehicles to and from this driveway indefinitely.

The Structural Engineer's Report shall be provided to the Principal Certifying Authority and Willoughby City Council before the issue of any Construction Certificate.  
(Reason: Protection of property)

**6. 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)

**7. Unglazed Terracotta Tiles**

Unglazed terracotta colour and material, Marseilles pattern roof tiles are to be used. Details of compliance are to be shown on the Construction Certificate plans.  
(Reason: Heritage conservation)

**8. External Finishes – Heritage Character**

All external building material shall be in colours and textures, which are compatible and subservient to the listed heritage item. In this regard the Schedule of Colours and Finishes submitted with the application (Approved Architectural Drawing DA-021 and DA-022) satisfies this requirement and is to be provided to the Accredited Certifier.  
(Reason: Visual amenity)

**9. 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. Details are to be shown on the Construction Certificate plans prior to the issue of the Construction Certificate.  
(Reason: Heritage conservation)

**10. Damage Deposit**

Prior to the issue of the Construction Certificate, the applicant shall lodge a Damage Deposit of **\$32,000** (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 **\$169** (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 = \$32,000 + \$169 = \$33,169**

(Reason: Protection of public asset)

**11. 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 x 75mm x 4mm thick galvanised Rectangular Hollow Section (RHS) with a grated drainage pit of minimum 600mm x 600mm 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 C.5 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)

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

Prior to the issue of the Construction Certificate, submit for approval by the Certifying Authority, 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 10 m<sup>3</sup> per dwelling (including the existing dwelling) in accordance with Sydney Water's requirements and Part C.5 of the Willoughby DCP and Technical Standard No. 1. The rainwater reuse tank system shall be connected to supply non-potable use including toilet flushing, laundry use, 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 or suitably qualified stormwater drainage consultant and shall be in accordance with MBC Engineering drawings 2019690 1/5, 2/5 & 3/5. All drawings shall comply with Part C.5 of Council's Development Control Plan and Technical Standards, AS3500.3 – *Plumbing and Drainage Code*, Sydney Water's requirements and the National Construction Code.

(Reason: Ensure compliance)

**13. 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 1.2 metres wide footpath (max. 2.5% crossfall) for the full frontage of Lot 2 in Centennial Avenue. The works shall be in accordance with Council's specification and Standard Drawings SD105 and SD100. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- (b) Construction of 1.2 metres wide footpath (max. 2.5% crossfall) in Jenkins Street from a point 20m to the south of the northern boundary to the northern boundary of Lot 2, including the full width of the redundant driveway. The works shall be in accordance with Council's specification and Standard Drawings SD105 and SD100. All adjustments to public utility services and associated construction works in the nature strip are to be at the full cost to the applicant. Detailed long section and cross sections at 5 metres interval shall be provided.
- (c) Reconstruction of existing kerb and gutter for the full frontage of Lot 2 in Centennial Avenue, including 1.0m wide pavement restoration, in accordance with Council's specifications and Standard Drawing SD105.
- (d) Reconstruction of existing kerb and gutter, including 1.0m wide pavement restoration, in Jenkins Street from the northern boundary of Lot 2 for a distance of 20m to the south in accordance with Council's specifications and Standard Drawing SD105.
- (e) Construction of: a 3.0 metres wide vehicular crossing in Centennial Avenue for Unit 1 in accordance with Council's specification and Standard Drawings SD105
- (f) Construction of: a 4.0 metres wide vehicular crossing in Jenkins Street for Unit 2 and the existing dwelling in accordance with Council's specification and Standard Drawings SD105
- (g) Reinstatement of the footpath and kerb and gutter at the redundant vehicle crossing in Jenkins Street.

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.

(Reason: Ensure compliance)

#### **14. 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 the Certifying Authority along each side of the proposed vehicular access paths drawn at 1:20 Scale. The longitudinal sections shall include the following: -

- (a) Horizontal distance from the centreline of the road to 6m within the site, including provision of Council's standard layback as per Council's standard drawing SD105 which is available from Council's website. Council's standard

layback is 500mm wide and back of layback is 100mm above the gutter invert.

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

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

The new crossing for Unit 1 is to be 3.0 metres wide The new crossing for Unit 2 and the existing dwelling is to be 4.0m wide. . Both crossing are to have no splays and be constructed at right angle to street kerb. The footpath which forms part of the proposed crossings shall have a maximum crossfall of 2.5%. For the design levels of the vehicular crossing at the property boundary, the following shall be complied with, unless written approval is gained from Council for alternate levels:

#### Crossing for Unit 1

- (d) At back of layback –90 mm above and parallel to the gutter invert.
- (e) At 1.0m from the face of kerb – 130mm above and parallel to the gutter invert.
- (f) At 2.0m from the face of kerb – 280mm above and parallel to the gutter invert.
- (g) At property boundary – 320mm above and parallel to the gutter invert.

#### Crossing for Unit 2 and existing Dwelling

- (h) At back of layback – 100 mm above and parallel to the gutter invert.
- (i) At 1.69m from the face of kerb – 150mm above and parallel to the gutter invert.
- (j) At 2.89m from the face of kerb – 180mm above and parallel to the gutter invert.
- (k) At property boundary –20s0mm above and parallel to the gutter invert.

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

(Reason: Safe vehicular access)

## **15. Rainwater Tank Design**

The design of all rainwater 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)

## **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.**

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

Prior to commencement of work, submit a photographic survey and report of the adjoining property of 2 Jenkins Street, Chatswood, is to be provided to the Certifying Authority and all owners of the adjoining property. Such photographic survey and report shall be prepared by a suitably qualified person, detailing the physical condition of these properties, both internal and external including items as walls, ceilings, roof, retaining walls, structural members and other items as necessary.

In the event of a property owner refusing to allow access to carry out the photographic survey, the proponent must demonstrate in writing to the Certifying Authority, and provide a copy to Council, that the purpose of the survey was made clear to the property owner and that reasonable attempts to obtain access were made.

(Reason: Protection of adjoining owners)

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

Prior to commencement of any works on site, submit to Council and the Principal Certifying Authority 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)

### **18. Permits and Approvals Required**

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

- (a) Permit to erect Builder's hoarding where buildings are to be erected or demolished within 3.50m of the street alignment. Applications are to include current fees and are to be received at least 21 days before commencement of the construction.
- (b) Permit to stand mobile cranes and/or other major plant on public roads. Applications are to include current fees and security deposits and are to be received at least seven days before the proposed use. It should be noted that the issue of such permits may also involve approval from the NSW Police Force and TfNSW (RMS). A separate written application to work outside normal hours must be submitted for approval.  
It should also be noted that, in some cases, the above Permits may be refused and temporary road closures required instead which may lead to longer delays due to statutory advertisement requirements.
- (c) Permit to open public roads, including footpaths, nature strip, vehicular crossing or for any purpose whatsoever. All applications are to include current fees.



- (d) Permit to place skip/waste bin on footpath and/or nature strip. (Maximum three (3) days).
- (e) Permit to work and/or place building materials on footpath and/or nature strip. (Maximum two (2) weeks).
- (f) Permit to establish Works Zone on Public Roads adjacent to the Development including use of footpath area. Applications must be received by Council at least twenty-one days prior to the zone being required. The application will then be referred to the Council's Local Traffic Committee for approval, which may include special conditions.
- (g) Permit to construct vehicular crossings over Council's footpath, road or nature strip.

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

#### **19. Application for Vehicle Crossing**

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

#### **20. 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.**

#### **21. Removal of Material**

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

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

(Reason: Environmental protection)

## **22. Survey Certificate**

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

- (a) Prior to the construction of footings or first completed floor slab (i.e. prior to pouring of concrete) showing the area of the land, building under construction and boundary setbacks;
- (b) At completion indicating the relation of the building and any projections to the boundaries, and that the building has been erected to the levels approved in the Development Application;
- (c) At completion indicating that the retaining wall to be constructed along the northern boundary is wholly within the property boundaries of the site and does not encroach on 2 Jenkins Street, Chatswood.

(Reason: Ensure compliance)

## **23. 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)

## **24. 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)

**25. 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)

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

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

(Reason: Safety)

**27. 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)

**28. Neighbour Notification of Asbestos Removal**

The applicant/builder is to notify anyone occupying premises in the immediate vicinity of the site, five working days prior to demolition works involving removal of asbestos. Such notification is to be clearly written, giving the date work will commence, Work Cover NSW phone number 131 050, Councils phone number 9777 1000.

As a minimum, this notification is to be placed in the letterbox of every property (including every residential flat or unit) either side and immediately at the rear of the site.

(Reason: Public health)

**29. Asbestos Removal and Disposal**

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

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

All asbestos laden waste, including bonded or friable asbestos must be disposed of at a waste disposal site approved by the NSW Department of Environment, Climate Change and Water.

Upon completion of the asbestos removal and disposal the applicant must furnish the Certifying Authority with a copy of all receipts issued by the waste disposal site as evidence of proper disposal.

(Reason: Environmental protection/Public health and safety)

### **30. Temporary Toilet Facilities**

Temporary toilet facilities shall be provided to the satisfaction of the Certifying Authority.

The provision of toilet facilities must be completed before any other work is commenced on site. NOTE: Portable toilet facilities are not permitted to be placed on public areas without prior approval having been obtained from Council.

(Reason: Health and amenity)

### **31. 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)

### **32. 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)

### **33. Tree Protection**

(a) Retain and protect the following trees and vegetation throughout the demolition and construction period:

i) All trees not indicated for removal on the approved plans unless exempt under relevant planning instruments or legislation.

ii) All street trees.

(b) The above trees must be clearly marked and protection devices in place to prevent soil compaction and machinery damage.

(c) Tree roots greater than 25mm diameter are not to be removed unless approved by a qualified Arborist on site.

(d) All structures are to bridge roots unless directed by a qualified Arborist on site.

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

(Reason: Tree management)

**34. 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)

**PRIOR TO OCCUPATION OF THE DEVELOPMENT**

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

**35. Section 73 Compliance Certificate**

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

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

**36. Post Dilapidation Report**

Prior to the issue of any Occupation Certificate, a photographic survey and report of the adjoining property of 2 Jenkins Street, Chatswood, is to be provided to the Certifying Authority and all owners of these adjoining properties. Such photographic survey and report shall be prepared by a suitably qualified person, detailing the physical condition of these properties, both internal and external including items as walls, ceilings, roof, retaining walls, structural members and other items as necessary.

In the event of a property owner refusing to allow access to carry out the photographic survey, the proponent must demonstrate in writing to the Certifying Authority, and provide a copy to Council, that the purpose of the survey was made clear to the property owner and that reasonable attempts to obtain access were made.

(Reason: Protection of adjoining owners)

**37. Street Address of Properties**

The following street addresses apply:

- a) Unit 1 of the dual occupancy shall have a street address of 11 Centennial Avenue, Chatswood;
- b) Unit 2 of the dual occupancy shall have a street address of 2A Jenkins Street, Chatswood.

Prior to the issue of any Occupation Certificate, the street number, at least 100mm high, shall be clearly displayed.

(Reason: To clearly identify the street address of properties)

**38. Restoration and Preservation of Local Heritage Item**

Prior to the issue of any Occupation Certificate, the following is to be fulfilled:

- a) Deferred Commencement condition No 1 is to be completed;
- b) A Construction Certificate is to be obtained for Development Application DA-2019/326;
- c) There is to be substantial commencement of restoration works to the heritage listed dwelling as indicated within the Statement of Heritage Impact prepared by Perumal Murphy Alessi (PM-19037, dated October 2019).

Written confirmation by Willoughby City Council is to be obtained confirming that substantial restorative works has commenced prior to receiving any Occupation Certificate.

(Reason: Restoration and preservation of Local Heritage Item)

**39. Structural Adequacy of Retaining Wall**

Prior to the issue of any Occupation Certificate for Unit 2, a qualified Engineer shall review the retaining wall constructed along the northern boundary and provide written confirmation that the retaining wall is constructed in accordance with the Structural Engineer's Report (prepared for Condition 2) and the as-built retaining wall can support the battle-axe driveway and movement of vehicles to and from this driveway indefinitely. Written confirmation from the Engineer is to be provided to the Principal Certifying Authority.

(Reason: Protection of property)

**40. BASIX Certificate**

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

(Reason: Environmental sustainability)

**41. 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 kerb and gutter in accordance with Sydney Water's requirements AS/NZS3500.3, Council's DCP and Technical Standards. The construction of the stormwater drainage system of the proposed development shall be generally in accordance with the MBC Engineering's drawings 2019690 1/1, 2/5 and 3/5 and Council's specification (AUS-SPEC).

(Reason: Prevent nuisance flooding)

**42. Rainwater Re-use – Major**

Prior to the issue of any Occupation Certificate, and in perpetuity, the applicant shall supply and install rainwater re-use tanks with a minimum storage volume of 10 m<sup>3</sup> per dwelling (including the existing dwelling) in accordance with MBC Engineering drawings 2019690 1/5, 2/5 and 3/5, Sydney Water's requirements and Council's DCP and Technical Standards. The rainwater reuse system shall be connected to supply non-potable use including, but not limited to laundry, toilet flushing and landscape irrigation. Above ground rainwater tanks shall be located behind the front alignment of the building to which the tank is connected.

(Reason: Ensure compliance and conserve natural resources)

**43. Sign for Rainwater System**

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

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)

**44. 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 rainwater tanks and confined spaces in accordance with the requirements of NSW Work Health and Safety Regulation 2017.  
(Reason: Safe access to tank)

**45. 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, AS3500 and the National Construction Code Volume 3.  
(Reason: Record of works)

**46. 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 Certifying Authority:

- (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)

**47. Splay Corner for Fence**

Prior to the issue of any Occupation Certificate for any works / structures located forward of the building line including car spaces and in order to ensure adequate sight distances for pedestrians and traffic in the frontage road, the boundary fence shall be constructed with a minimum clear splay of 1m x 1m on both sides of the driveway exit.

Alternatively if the height of the fence or wall is 1200mm or less, no splay will be required.

(Reason: Pedestrian safety)

**48. Construction of Kerb & Gutter**

Prior to the issue of any Occupation Certificate, construct a new kerb and gutter together with associated pavement restoration (minimum 1.0m wide) in accordance with Council's specification for the full frontage of Lot 2 in Centennial Avenue and for a distance of 20m from the northern boundary of Lot 2 in Jenkins Street.

(Reason: Public amenity)

**49. Concrete Footpath**

Prior to the issue of any Occupation Certificate, construct a:

- (a) 1.2m width concrete footpath for the full frontage of Lot 2 in Centennial Avenue.
- (b) 1.2m wide concrete footpath from the northern boundary of Lot 2 to a distance of 20m to the south in Jenkins Street

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

(Reason: Public amenity)

**50. Vehicular Crossing**

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

The crossing for Unit 1 is to be 3.0 metres wide with no splays and is to be constructed at right angles to the street kerb in plain concrete. The crossing for Unit 2 and the existing dwelling is to be 4.0 metres wide with no splays and is to be constructed at right angles to the street kerb in plain concrete. The new crossings shall be located no closer than 1 metre from any power pole and 2 metres from any street tree unless otherwise approved by Council. The centreline of the new crossing shall be "in-line" with the centreline of the parking space(s).

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:



Crossing for Unit 1

- (a) At back of layback –90 mm above and parallel to the gutter invert.
- (b) At 1.0m from the face of kerb – 130mm above and parallel to the gutter invert.
- (c) At 2.0m from the face of kerb – 280mm above and parallel to the gutter invert.
- (d) At property boundary – 320mm above and parallel to the gutter invert.

Crossing for Unit 2 and existing Dwelling

- (e) At back of layback – 100 mm above and parallel to the gutter invert.
- (f) At 1.69m from the face of kerb – 150mm above and parallel to the gutter invert.
- (g) At 2.89m from the face of kerb – 180mm above and parallel to the gutter invert.
- (h) At property boundary –20s0mm above and parallel to the gutter invert.

The footpath which forms part of the proposed crossing shall have a maximum crossfall of 2.5%. The nature strip and footpath is to be adjusted for a minimum distance of 2.0 metres on both sides of the crossings 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 Certifying Authority prior to issue of any Occupation Certificate.

(Reason: Public amenity)

**51. Removal of Redundant Crossings**

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

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

(Reason: Public amenity)

**52. Inspection of Civil Works on Road Reserves**

All required road pavement, footpath, kerb and gutter, drainage works and/or any necessary associated works on the road reserve shall be completed in accordance with the Council approved drawings, conditions and specification (AUS-SPEC).

Pursuant to Section 138 of the *Roads Act 1993*, all works carried out on the road reserve shall be inspected and approved by Council's Engineer. Upon completion,

Work-as-Executed drawings prepared by a registered surveyor shall be submitted to Council for record purposes. A completion certificate shall be obtained from Council (attesting to this condition being appropriately satisfied) and submitted to the Certifying Authority prior to the issue of any Occupation Certificate.  
(Reason: Ensure compliance)

**53. Performance Bond**

Prior to the issue of any Occupation Certificate, the Applicant shall lodge with the Council a performance bond of \$10,000 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)

**54. 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)

**55. Vehicular Barriers**

Prior to the issue of any Occupation Certificate, the carparking area and / or driveway shall be provided with barriers complying with the requirements listed in AS/NZS 2890.1-2004 as required by AS/NZS2890.1. Where the drop off exceeds 600mm, the barrier shall be designed by a Structural Engineer.  
(Reason: Safety)

**56. Vehicular Access and Garaging**

Driveways and vehicular access ramps shall be designed to provide adequate ground clearance to the underside of B85 vehicles. In all respects, prior to the issue of any Occupation Certificate, the proposed vehicle access including any parking spaces and cross fall on pavements and driveways shall be designed and constructed to comply with the minimum requirements of AS/NZS 2890.1 and Council's standard specification.  
(Reason: Vehicular access)

**57. Public Infrastructure Restoration**

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

**58. 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. Landscape works are to be certified by a qualified landscape designer or landscape architect.  
(Reason: Landscape amenity)

**PRIOR TO THE RELEASE OF LINEN PLANS/SUBDIVISION CERTIFICATE/STRATA APPROVAL**

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

**59. General Easement/ROW Provision and Certification**

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

**60. Section 88B Instrument**

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

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

**The following conditions have been applied to ensure that the use of the land and/or building is carried out in such a manner that is consistent with the aims and objectives of the planning instrument affecting the land, and relevant legislation.**

**61. No Accessible Balcony to Bedroom 1 in Unit 2**

The void space adjoining Bedroom 1 in Unit 2 (as depicted in drawing DA-013) is to not contain floor space so that there is not an accessible balcony adjoining Bedroom 1.  
(Reason: Maintain privacy)

**62. No Subdivision of Dual Occupancy**

No approval has been granted under this consent for the subdivision of the Dual Occupancy. Please note that such an approval is subject to the provisions/restrictions of the Willoughby Local Environmental Plan.  
(Reason: Statutory and information)

**63. Stormwater Kerb Outlet**

New stormwater connection outlets at street kerb shall be made using 125x75x4 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. 600mm x 600mm) shall be provided within and adjacent to the property boundary prior to discharging to the Council's drainage system.

(Reason: Protection of public asset)

**64. 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)

**65. Unit 2 Vehicle Access**

All vehicles from Unit 2 must enter and exit Jenkins Street in a forward direction. They shall not reverse into or out of the site.

(Reason: Pedestrian and vehicle safety)

**66. 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)

**PRESCRIBED CONDITIONS**

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

**67. 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

### 68. 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)

### 69. Notify Council of Intention to Commence Works

In accordance with the provisions of Section 6.6 of the *Environmental Planning and Assessment Act 1979* the person having the benefit of the development consent shall appoint a Certifying Authority and give at least 2 days' notice to Council, in writing, of the person's intention to commence the erection of the building.

(Reason: Information and ensure compliance)

### 70. 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 12: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2019/317

At: 9 Centennial Avenue CHATSWOOD NSW 2067

