

**DA NO:** DA-2021/27/C

**ADDRESS:** 16 & 18 WARNERS AVENUE, WILLOUGHBY NSW 2068.

**PROPOSAL:** MODIFY ORIGINAL PROPOSAL TO INCLUDE LIFT LOCATION AND DETAILS, CHANGES TO LANDSCAPING, FAÇADE AND WINDOWS OF TOWNHOUSE 1, REVISED TANK DESIGN AND ASSOCIATED WORKS.

**RECOMMENDATION:** APPROVAL

**ATTACHMENTS:**

1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS, DEVELOPER CONTRIBUTION & REFERRALS
3. SECTION 4.55 ASSESSMENT
4. SECTION 4.15 (79C) ASSESSMENT
5. SUBMISSIONS TABLE
6. SCHEDULE OF CONDITIONS
7. NOTIFICATION MAP

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

**AUTHOR:** PATRICK WILLIAMS - DEVELOPMENT ASSESSMENT OFFICER

**REPORT DATE:** 30 NOVEMBER 2022

**MEETING DATE FOR PUBLIC MEETING:** 6 DECEMBER 2022

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## 1. PURPOSE OF REPORT

The purpose of this report is to seek determination by Willoughby Local Planning Panel (WLPP) of modification application DA-2021/27/C. The application seeks consent to modify the original proposal by amending plans to include:

- Amendments to the location of common-area lift shaft
- Amendments to House 4 western elevation with regards to windows.
- OSD Tank design

The application is required to be referred to the WLPP for determination because the proposed modifications received fifteen (15) individual submissions.

## 2. OFFICER'S RECOMMENDATION

**THAT the Willoughby Local Planning Panel:**

**2.1 Approve Development Application DA-2021/27/C for modify original proposal to include lift location and details, changes to landscaping, façade and windows of townhouse 1, revised tank design and associated works at 16 & 18 Warners Avenue, Willoughby NSW 2068, subject to conditions contained in Attachment 8, for the following reasons:**

**2.1.1 The proposed development will not have unreasonable impacts on the streetscape, the residential amenity of the neighbouring properties or the surrounding locality;**

**2.1.2 It is considered that the proposed development meets the desired outcomes and objectives of the development standards contained in the *Willoughby Local Environmental Plan 2012 (WLEP)* and objectives of the *Willoughby Development Control Plan (WDCP)*.**

### **3. BACKGROUND**

The original development application (DA-2021/27) for 'demolition of existing buildings and construction of 8 townhouses' was granted consent by the Willoughby Local Planning Panel on 31 August 2021.

The consent was later modified under DA-2021/27/B for amendments to the retaining walls throughout the site and the eastern planter box arrangement. This was granted approval by the Willoughby Local Planning Panel on 29 November 2022.



- **Amendments to House 4 western elevation with regards to windows.**

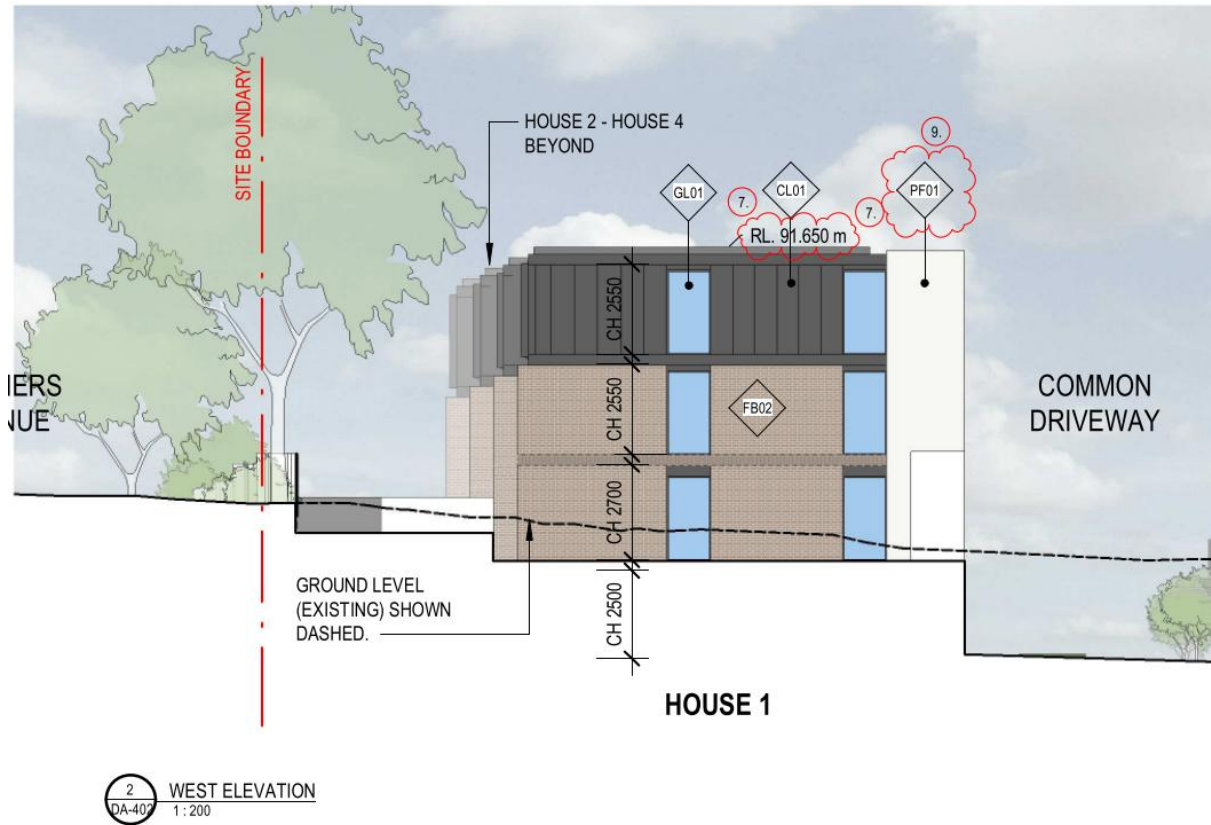


Figure 3: Approved western elevation

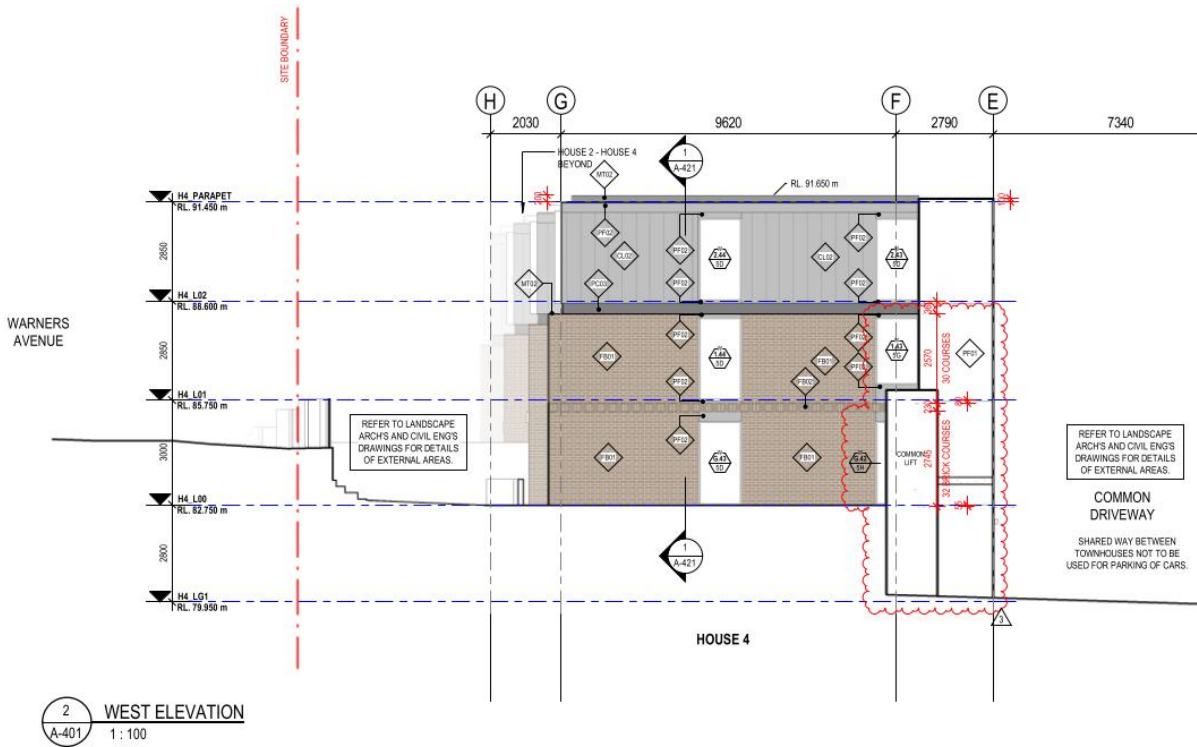


Figure 4: Proposed western elevation showing lift location and glazing amendments.

- **OSD Tank redesign**

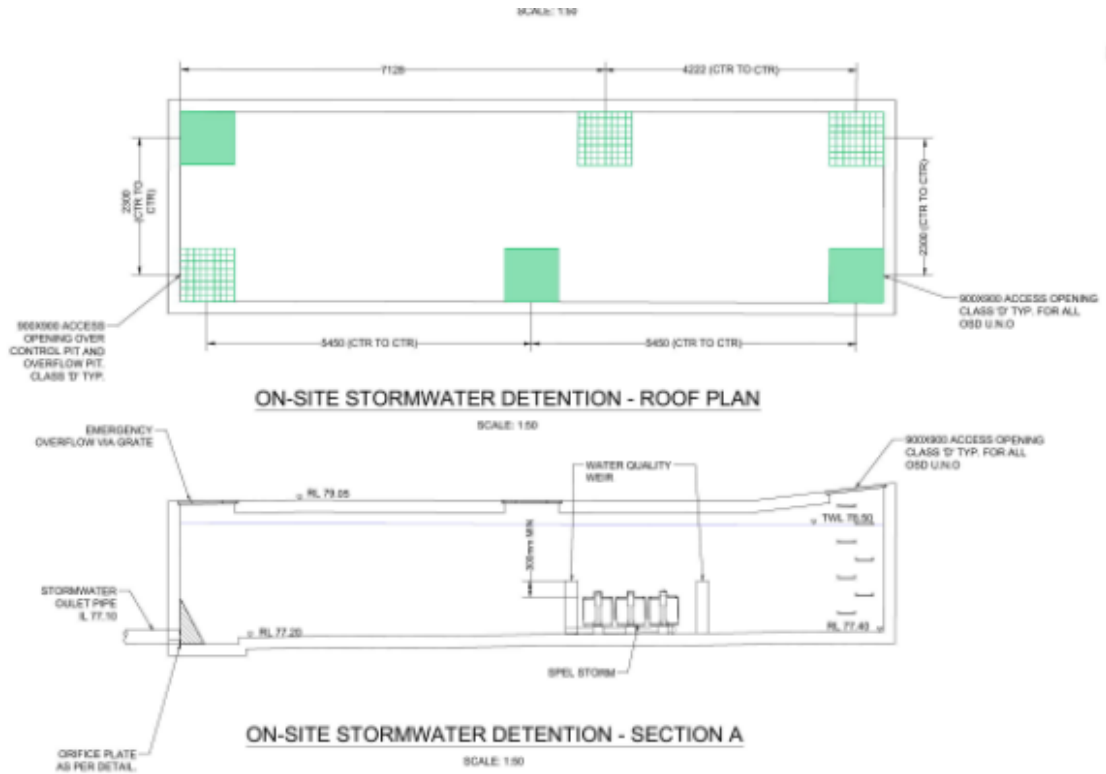


Figure 5: Approved OSD design

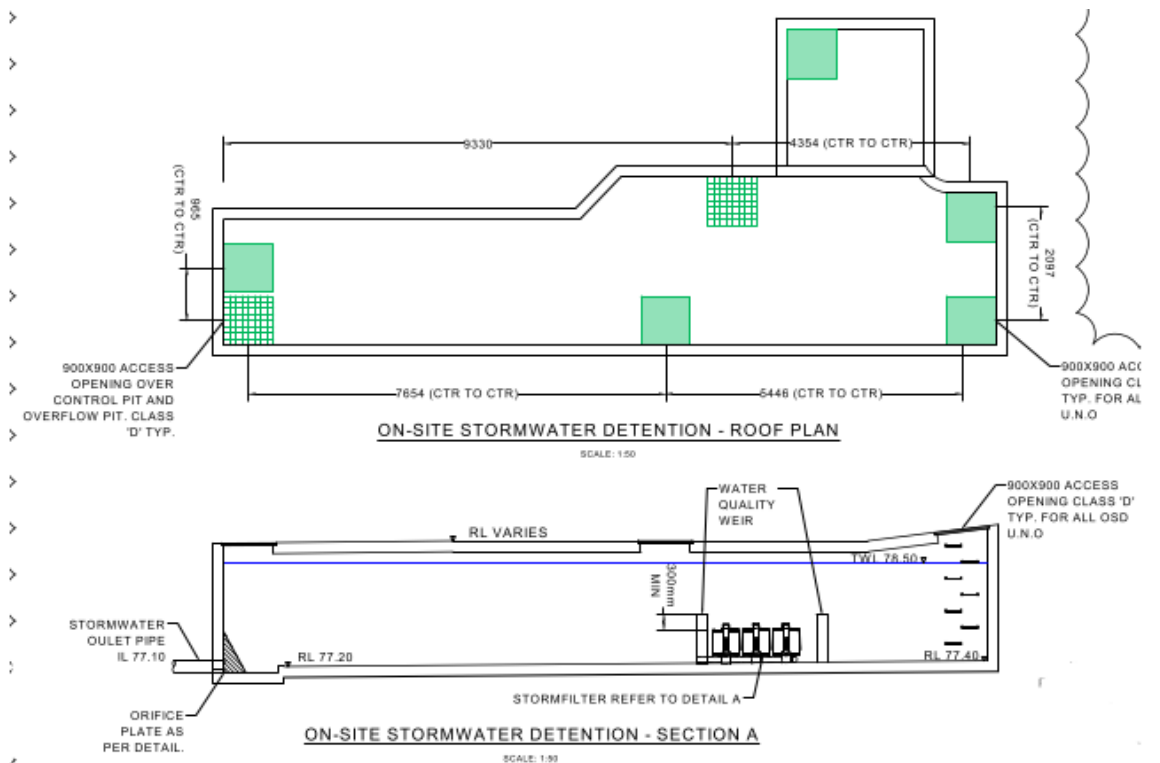


Figure 6: Proposed OSD.

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

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

An assessment in accordance with S4.55 of the *Environmental Planning and Assessment Act* (EP&A Act) is provided in **Attachment 3**.

An assessment in accordance with S4.15 (79C) of the EP&A Act is provided in **Attachment 4**.

The issues within the submissions objecting to the proposal and the assessing officer's response are contained in **Attachment 5**.

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

<https://eplanning.willoughby.nsw.gov.au/pages/xc.track/SearchApplication.aspx?id=523187>

## **5. CONCLUSION**

The modification application DA-2021/27/C has been assessed in accordance with Section 4.15 (79C) of the *Environmental Planning and Assessment Act 1979*, *WLEP 2012*, *WDCP*, and other relevant codes and policies. It is considered that the proposal is acceptable in the particular location, subject to the consent conditions included in **Attachment 6**.

## ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO

The sites subject to this application include 16 and 18 Warners Avenue and are described as Lots 12 and 13 DP 35206. Both lots are zoned R3 Medium Density Residential and front Warners Avenue, with a maximum depth of 54.195m. The sites are located on the southern side of Warners Avenue, with a north-south orientation.

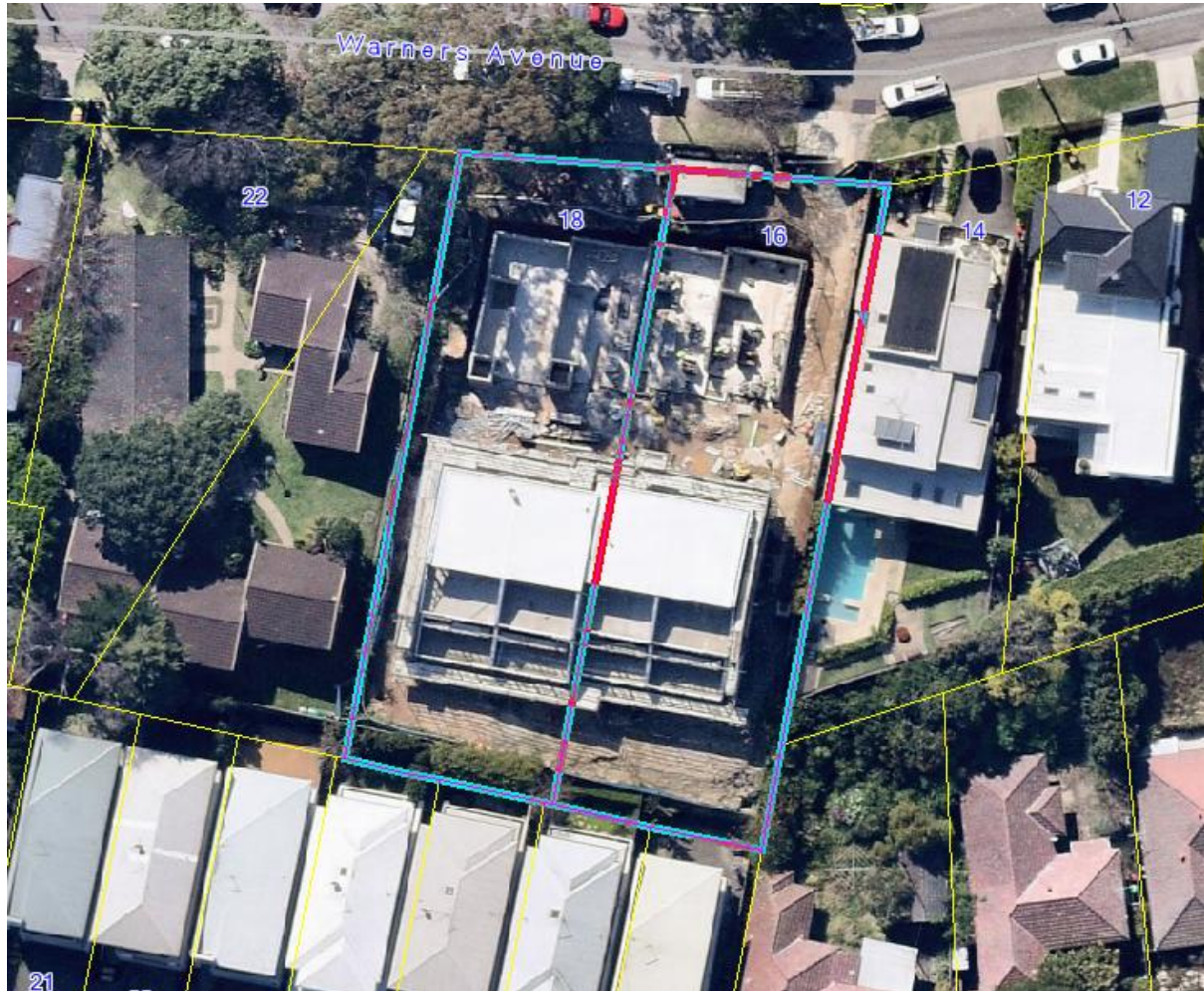


Figure 7: Aerial Image

The sites originally contained two brick residences and adjoining to the east and west by detached dwelling houses. Since approval the site has been cut to level with roughly a 3m drop from the frontage and the construction of the town houses as approved have begun.

### Site History

The lots were created by Torrens Title Subdivision registered in 1950. The lots were then subject to various approvals relating to the single dwellings that occupied the sites. More recently the following applications have been submitted with the site:

- DA-2018/191 - 'Demolition of existing building and construction of a boarding house with basement parking and associated works' was refused by the Land and Environment Court on 28 January 2020.
- DA-2021/27 - 'Demolition of existing buildings and construction of 8 Townhouses' approved by WLPP on 21 August 2021.
  - o DA-2021/27/A – 'Amendments to retaining walls' was withdrawn due to lack of information.

- DA-2021/27/B – amendments to the retaining walls throughout the site and the eastern planter box arrangement.
- DA-2021/27/C – Subject application.



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

<b>Willoughby Local Environmental Plan 2012 Zoning:</b>	R3 Medium Density Residential
Existing Use Rights	No
Additional Permitted Use	No
Conservation area	No
Aboriginal Heritage	No
Heritage Item	No
Vicinity of Heritage Item	No
Natural Heritage Register	No
Bushfire Prone Area	No
Foreshore Protection Area	No
Flood related planning control	No
Adjacent to classified road	No
Road/lane widening	No
BASIX SEPP	Yes
Infrastructure SEPP - Rail	No
Infrastructure SEPP – Road	No
Coastal Management SEPP	No
Acid Sulphate Soil Category	5
Development near Lane Cove Tunnel	No
Contaminated Land	Considered
Area 3 on the Special Provisions Map	Yes
Adjacent / above Metro	No
Other relevant SEPPS	SEPP 19 Bushland in Urban Areas, SEPP 55 Remediation of Land.
Other relevant REPS	Sydney Regional Environmental Plan (Sydney Regional Harbour catchment)
Relevant policies and resolutions	WDCP

**Development Statistics**

The modification does not change compliance with the relevant development standards as assessed under the parent consent.

The relocation of the Common-Area lift shaft will remove approximately 2.3m<sup>2</sup> of total landscaped area which still remains DCP compliant. Shown below.

**WDCP**

		Existing	Proposed	Standard	Numerical Compliance
<b>D.2.10</b>	<b>Landscaping</b>	761m <sup>2</sup>	758.7m <sup>2</sup>	624.12m <sup>2</sup> (35% of site area)	Yes

**Referrals**

Engineering	No objection subject to existing conditions.  <i>“We have reviewed the plans and have no objections to the proposed changes. No changes are shown on the roof catchments and the proposed OSD amendments are satisfactory. No changes are required to existing conditions.”</i>
Landscape	No objection subject to the existing conditions.  <i>“Landscape conditions currently applicabe to the development are considered still relevant and adequate”</i>

**ATTACHMENT 3: SECTION 4.55 ASSESSMENT**

**Considerations Under S4.55(2) EP&A Act - Other modifications**

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

**Satisfactory ✓ Unsatisfactory ✗ Not Relevant N/A**

(a)	It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).	✓
	<b>Comment:</b> The proposed modification is substantially the same development.	
(b)	It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent.	✓
	<b>Comment:</b> N/A.	
(c)	It has notified the application in accordance with: the regulations, if the regulations so require, or a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent.	✓
	<b>Comment:</b> The modified application was notified in accordance with Part D and E of <i>Willoughby Community Participation Plan (WCPP)</i> from 24 Oct 2022 to 14 Nov 2022. Council received fifteen (15) submissions and is addressed in <b>Attachment 5</b> of this report.	
(d)	It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.	✓
	<b>Comment:</b> Council received fifteen (15) submissions and is addressed in <b>Attachment 5</b> of this report.	

**ATTACHMENT 4 - 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>	✓
	<b>Comment:</b> The modified proposal does not contravene any relevant matters for consideration under the provisions of any SEPPs, REPs or development standards under WLEP 2012.	
(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>	✓
	<b>Comment:</b> The Willoughby Draft LEP 2022 is not considered immanent and certain. There are no other draft planning instruments 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>	✓
	<b>Comment:</b> The proposal is consistent with the provisions of the WDCP.	
(a)(iv)	Any matters prescribed by the regulations	
	<ul style="list-style-type: none"> <li>Clause 92 EP&amp;A Regulation-Demolition</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Clause 93 EP&amp;A Regulation-Fire Safety Considerations</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Clause 94 EP&amp;A Regulation-Fire Upgrade of Existing Buildings</li> </ul>	N/A
	<b>Comment:</b> There are no prescribed matters that affect the modification 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>	✓
	<ul style="list-style-type: none"> <li>Heritage</li> </ul>	N/A
	<ul style="list-style-type: none"> <li>Privacy</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Views</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Solar Access</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Water and draining</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Soils</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Air &amp; microclimate</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Flora &amp; fauna</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Waste</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Energy</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Noise &amp; vibration</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Natural hazards: None</li> </ul>	✓
	<ul style="list-style-type: none"> <li>Safety, security crime prevention</li> </ul>	✓

Matters for Consideration Under S.4.15 (79C) EP&A Act

Considered and Satisfactory ✓ Considered and Unsatisfactory ✗ and Not Relevant N/A

	<ul style="list-style-type: none"> <li>• Social impact in the locality</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Economic impact in the locality</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Site design and internal design</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Construction</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Cumulative impacts</li> </ul>	✓
	<b>Comment:</b> The proposal will not result in any additional adverse impacts on adjoining or nearby properties as approved in the parent consent.	
(c)	The suitability of the site for the development	
	<ul style="list-style-type: none"> <li>• Does the proposal fit in the locality?</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Are the site attributes conducive to this development?</li> </ul>	✓
	<b>Comment:</b> The modified proposal will not adversely alter the character of the approved parent consent.	
(d)	Any submissions made in accordance with this Act or the regulations	
	<ul style="list-style-type: none"> <li>• Public submissions</li> </ul>	✓
	<ul style="list-style-type: none"> <li>• Submissions from public authorities</li> </ul>	✓
	<b>Comment:</b> Notification took place between 24 Oct 2022 to 14 Nov 2022. Submissions from sixteen (16) objectors were received. Issues raised in the submissions have been considered in the assessment of the development application and key issues are addressed in <b>Attachment 5</b> .	
(e)	The public interest	
	<ul style="list-style-type: none"> <li>• Federal, State and Local Government interests and Community interests</li> </ul>	✓
	<b>Comment:</b> The proposal will not adversely impact the character of the locality and therefore approval of the application is in the public interest.	

**ATTACHMENT 5 – SUBMISSIONS TABLE**

Council was in receipt of fifteen (15) individual submissions.

1.	Kate Lamb	23 Chelmsford Ave, Willoughby
2.	Mary-Jane Salier	8 Warners Avenue, Willoughby
3.	Kristina Dodds	28 Calbina Road, Northbridge
4.	Tony Bellia	11 Warners AVE, Willoughby
5.	Taylor Tsieng	70 Edinburgh Rd, Willoughby
6.	Mary-Ann Petitto	12 Warners Ave, Willoughby
7.	John Weil Of CivPlan	390 Princes Hwy, Bomaderry
8.	Cathy Parisi	17 Warners Avenue, Willoughby
9.	Daniel Martens of Martens & Associates Pty Ltd	Suite 201, 20 George St., Hornsby
10.	Ben Frasco	158A Mowbray Rd, Willoughby
11.	Phillip and Rebecca Finnegan	9 Dalleys Rd, Naremburn
12.	Doug Bennett of Precise Planning	152 Sailors Bay Road, Northbridge
13.	Jeff Bulfin	14 Warners Avenue, Willoughby
14.	Joshua Bulfin	14 Warners Avenue, Willoughby
15.	Leah Bulfin	14 Warners Avenue, Willoughby

The below table provides the issues raised by the objectors and Council’s response. Most of the objections received also made comments in relation to modification DA-2021/27/B, specifically to do with retaining walls. These comments and other unrelated or unnecessary comments have not been addressed.

<b>Issues Raised</b>	<b>Officer’s Response</b>
<b>Privacy</b>	
“Window treatments to the east elevation of House 5 to be clarified.”	The modification proposes no changes to house 5.
“further privacy screenings is required in the development. .... This includes privacy screenings at the eastern end of the units of the development and opaque window treatments.”	
“occupants of House 5 being able to look from the side of their balconies directly over into our back entertaining area and house”	
<b>Removalist parking</b>	
“The area currently designated for visitor and ‘removalist’ parking should instead be used for deep soil planting with minimum hardstand for a	Whilst the OSD design is changing and is locate underneath the visitor parking, the modification does not change the existing arrangements as approved by the development.

visitor.”	
“unreasonable to have the area reserved for visitor and removalist parking with such a steep gradient, so close to the neighbouring property”	
“A typical ridged removalist vehicle appears to be unable to manoeuvre in and out of the visitor space...”	
“...the driveway design is so tight that larger vehicles cannot turn around or enter or exit the site safely.”	
<b>Traffic</b>	
“with respect to the newest proposal I am very concerned that the proposed changes will lead to additional traffic problems and reduced parking in the street”	The modification proposes no change to traffic generation or the approved impacts related to traffic.
“We are concerned that due to the steepness of the driveway”	
“concerned that no details have been provided for the intended traffic lights...”	
<b>OSD changes</b>	
“The proposed OSD represents a significant risk to damage of structures on 14 Warners Ave”	<p>The proposed OSD changes have been reviewed by Council’s development engineering section who raise no objection to the proposed amendment.</p> <p>To provide certainty for the neighbour of the development, a new condition (15A) will be included as below:</p> <p><b>15A. OSD Structural Certification</b></p> <p><i>Prior to the issue of a Construction Certificate, the following shall be submitted to the relevant PCA:</i></p> <ul style="list-style-type: none"> <li>a) <i>Geotechnical Engineer’s report regarding the stability of the proposed OSD system. The report is to include excavation methodology, the nature and type of any temporary shoring, and how geotechnical risks to 14 Warners Ave will be appropriately mitigated and managed.</i></li> <li>b) <i>Certification from a suitably qualified Structural Engineer, typically CPEng, that the design complies with the relevant standards.</i></li> </ul> <p>(Reason: Structural Adequacy)</p>
“very concerning that the developer would submit plans to build and extend the underground water tank right beside a neighbouring property without providing any plans or information on how this might impact on the neighbour’s property.”	
“The applicant has also not provided critical information for the assessment of the modified OSD design, including a plan showing structures within the zone of influence on the neighbouring property, a geotechnical report, or a construction methodology report”	

<p>“There is no Geological report with the application”</p>	
<p><b>Lift changes</b></p>	
<p>“Lift changes do not appear to be user friendly as garbage bin movements will be less than ideal. This will lead to bins being left on the street, hardly enhancing street amenity.”</p>	<p>There are no changes to the lift size and how it operates from the parent approval. The modification proposes a slight shift in location.</p>
<p>“due to the modified lift design, the pedestrian stairs from the driveway to the street have been altered and lengthened. (General Arrangement Plan Lower Ground Floor A-100 Rev 8 11.08.22). The stairs now protrude into the driveway area.... unlikely that the vehicles from House 4 (still called House 1 on the swept path plans) and House 8 will be able to exit their garages”</p>	<p>As for the proposed impacts to the turning circles, the development engineering team have reviewed the minor adjustment and are satisfied that the approved path is still achievable.</p>
<p><b>Facade changes</b></p>	
<p>“Facade changes are not defined or sufficiently detailed”</p>	<p>The proposed facade amendments are minor and limited to proposed house 4 where the lift shaft requires window amendment.</p>
<p><b>Plans showing internal floor changes</b></p>	
<p>“We note that the plans submitted with this modification application (General Arrangement Plan First Floor A-102 Rev 5 dated 11.08.22) shows Townhouse 7 has reverted to a bedroom on the top floor instead of the approved living space, which means that Townhouse 7 will not achieve the minimum solar access to a living space.”</p>	<p>No approval is given for changes to bedroom numbers from the parent approval. The modification only seeks the amendments as listed in this report and within the supplied SEE. In addition, the plan that shows the bed as mentioned does not form part of the modified plan set, ensuring the original design/arrangement remains.</p>



**ATTACHMENT 6: SCHEDULE OF CONDITIONS**

**SCHEDULE**

Development Consent DA-2021/27 is modified as follows:

**A. Condition No. 1 is amended to read as follows:**

**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	DA-005, DA-010, DA-104, DA-760, DA-930, DA-931, All Project 20036	H	11.05.2021	Become
	DA-015 Project 20036	M		
	DA-100, DA-101, DA-102, DA-103, DA-400, DA-401, DA-402 All Project 20036	J		
	DA-420 Project 20036	K		
	DA-421 Project 20036	C		
	DA-761 Project 20036	D		
	DA-920 Project 20036	F		
Landscape	p13, p14, p 15, Planting Schedule	6	04.2021	ARCADIA
		-	-	
	Drawing 101 – planting plan (20) Drawing 601 – landscape details (21) Drawing 701 – landscape specification (22) Job 20-698	6	30.04.2021	
Engineering	001	A	18.12.2020	Indesco
	020, 025, 030, 040, 050, 051, 052, 053, 054, 055, 056, 057, 058	B	22.06.2021	
	041	A		

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

*As modified by (DA-2021/27/B)*

Plan Type	Plan No.	Revision/ Issue No.	Plan Date (as Amended)	Prepared by
Landscape	L-101	N	22/11/22	ARCADIA
	L-201			
	L-300			
	L-301			

	L-400			
	L-401			
	L-600			
	L-601			
	L-602			
	L-603			
	L-604			
	L-605			
	L-606			

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

*As modified by (DA-2021/27/C)*

Type	Plan No.	Revision/ Issue No	Plan Date (as Amended)	Prepared by
Architectural	A-050	4	11/08/22	Become
	A-100	8		
	A-101	7		
	A-400	2		
	A-401	3		
Landscape	L-201	K	5/08/22	ARCADIA
	L-301	K	22/11/22	
	L-401	N		
Engineering	001	R1	26/10/21	Indesco
	002	R1		
	003	R1		
	004	R1		
	020	R2	11/11/21	
	030	R2		

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)

**B. Condition 15A to be added as follows.**

**Prior to the issue of a Construction Certificate**

**15A. OSD Structural Certification**

Prior to the issue of a Construction Certificate, the following shall be submitted to the relevant PCA:

- a) Geotechnical Engineer's report regarding the stability of the proposed OSD system. The report is to include excavation methodology, the nature and type of any temporary shoring, and how geotechnical risks to 14 Warners Ave will be appropriately mitigated and managed.
  - b) Certification from a suitably qualified Structural Engineer, typically CPEng, that the design complies with the relevant standards.
- (Reason: Structural Adequacy)

**C. Comply with all other conditions of the original development consent.**

ATTACHMENT 6: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2027/27/C

At: 16 & 18 Warners Avenue, WILLOUGHBY NSW 2068

