DA NO: DA-2021/27/B

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

PROPOSAL: MODIFICATION TO APPROVED APPLICATION OF

DEMOLITION OF EXISTING BUILDINGS AND

CONSTRUCTION OF 8 TOWNHOUSES TO INCLUDE

ADDITION OF RETAINING WALLS.

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: 23 NOVEMBER 2022 MEETING DATE FOR 29 NOVEMBER 2022

MEETING DATE FOR PUBLIC MEETING:

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/B. The application seeks consent to modify the original proposal by amending plans to include retaining wall amendments throughout the site. This includes:

- Defining internal retaining walls throughout the site with RL's.
- Amendments to the eastern boundary retaining wall design to include fibreglass planter boxes in lieu of masonry planters.
- Minor amendment to overall landscape planting.

The application is required to be referred to the WLPP for determination because the proposed modifications received Thirteen (13) individual submissions.

2. OFFICER'S RECOMMENDATION

THAT the Willoughby Local Planning Panel:

2.1 Approve Development Application DA-2021/27/B for MODIFICATION TO APPROVED APPLICATION OF DEMOLITION OF EXISTING BUILDINGS AND CONSTRUCTION OF 8 TOWNHOUSES TO INCLUDE ADDITION OF RETAINING WALLS at 16 & 18 Warners Avenue, Willoughby NSW 2068, subject to conditions contained in Attachment 8, for the following reasons:

Reference: DA-2021/27/B Page 1 of 21

- 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.

This modification has been initiated partly as a result compliance action on the site and in consultation with Council. The modification application proposes to amend the endorsed landscape plan including;

- To finalise the landscape design and confirm retaining wall locations and heights.
- To rectify issues around party wall consent. The approved design resulted in the design relying on the retaining wall on 14 Warners Avenue without consent. Changes to the design ensure the proposed wall is structurally independent.
- Amend the planter box design along the eastern retaining wall, seeking fiberglass pots in lieu of masonry.

The below figure 1 to 5 show the major changes in the planter box and retaining wall design throughout the site.

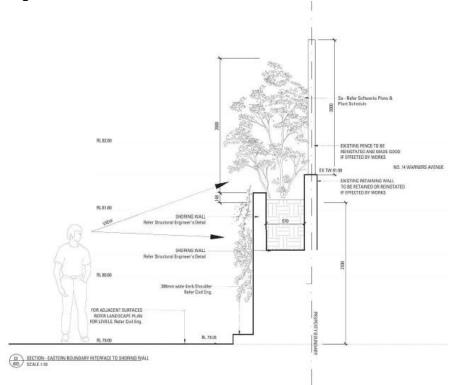


Figure 1: Approved planters along the eastern boundary.

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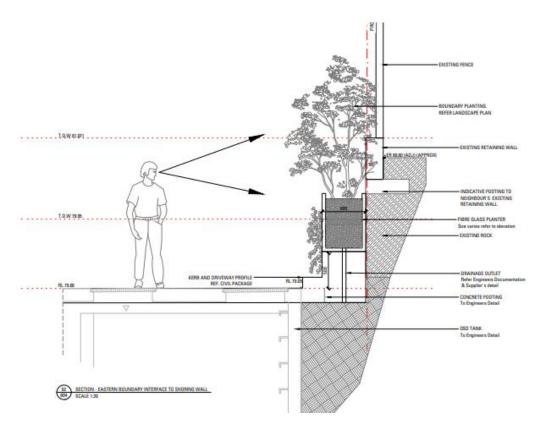


Figure 2: Proposed planters along the eastern boundary.



Figure 3: Endorsed landscape plan.

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Figure 4: Proposed landscape plan.

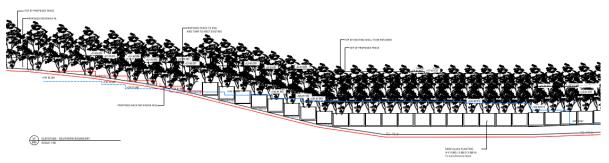


Figure 5: Proposed treatment along the eastern boundary.

4. DISCUSSION

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.**

Reference: DA-2021/27/B Page 4 of 21

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=517807

5. CONCLUSION

The modification application DA-2021/27/B 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**.

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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.

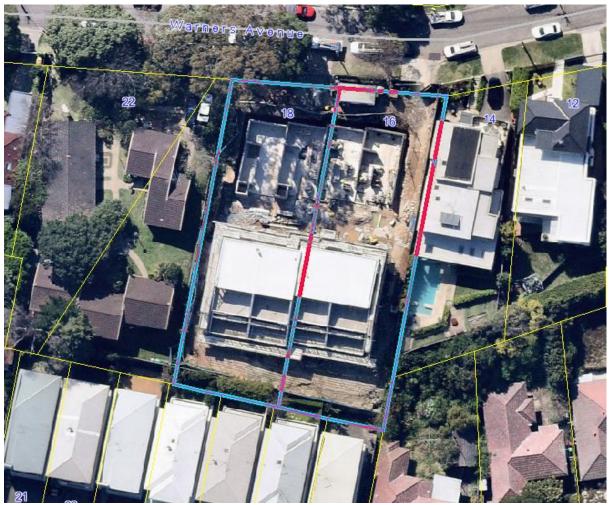


Figure 6: Aerial Image

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.

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Figure 7: Photo from 14 Warners backyard towards subject site. Photo shows existing fence for plan context and is the general location of visitor parking.

Reference: DA-2021/27/B Page 7 of 21



Figure 8: Photo from the proposed driveway on subject site along the eastern boundary. Photo towards Warners Ave and shows the general driveway grade and location of proposed retaining wall.

Reference: DA-2021/27/B Page 8 of 21



Figure 9: Photo from the proposed driveway on subject site along the eastern boundary towards the rear. Photo shows the location of the proposed retaining wall with planter boxes.

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.
 - DA-2021/27/A 'Amendments to retaining walls' was withdrawn due to lack of information.
 - o DA-2021/27/B Subject application
 - DA-2021/27/C 'Amend lift location and details, changes to landscaping, amend façade and windows of townhouse 1, revised OSD tank design' currently under assessment.

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ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS

Willoughby Local Environmental Plan	R3 Medium Density Residential		
2012 Zoning: Existing Use Rights	No		
Additional Permitted Use	No		
Conservation area	No		
	No No		
Aboriginal Heritage	1 1 2		
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			
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 and *DCP* controls as approved.

The proposed changes are clarifying retaining walls throughout the site that where not evident in the endorsed landscape plan by Council or the approved plan set. In addition, the proposed change of planter box has been reviewed by Council's Landscape officer who concludes that the fiberglass planter boxes will contain larger volume for the prosed planting to grow.

From a compliance with controls perspective, the modification is consistent with the relevant controls.

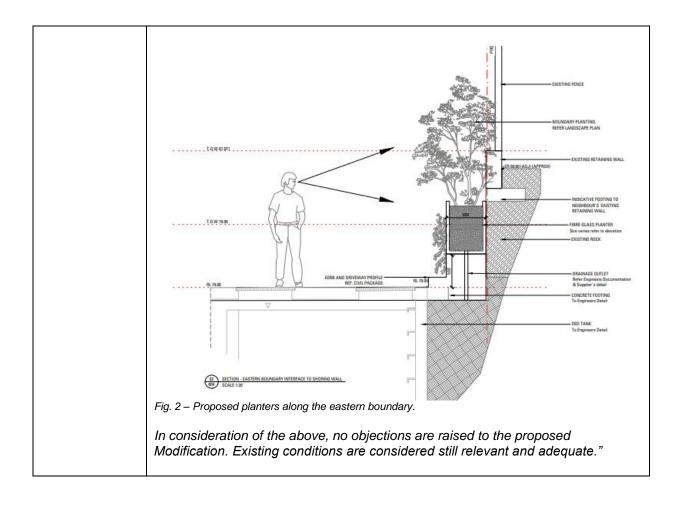
Referrals

Building	No objection to the modification subject to conditions already imposed.
services	

Reference: DA-2021/27/B Page 10 of 21

Engineering No objection to the modification subject to conditions already imposed. "[Engineering] have reviewed the plans and have no objections to the proposed changes. Landscape plans detail that there is a 300mm wide kerb edge between the driveway / parking space and the wall, which complies with the requirements of AS/NZS2890.1." Landscape No objection to the modification subject to conditions already imposed. "The Modification incudes replacement of constructed masonry planters along the eastern side of the site with fiberglass planters. The sections provided indicate that the proposed planters provide a wider and deeper area of soil volume to accommodate proposed plants. The Planting Plan indicates that an additional 4 x Syzygium australae 'Pinnacle' (80 from 76) are to be provided along the boundary. S. australae 'Pinnacle' is noted as being a narrow screen plant to 6m height, which can be readily hedged/pruned to desired shape and height. The main visual impact of the amended planters will be from within the subject site. Approved Plans (Fig 1 below) indicate a raised plater on a retaining wall with planting to screen the adjoining fence and cascading down the retaining wall. R1 82 80 NO 14 WARNERS AVENUE RL 81.60 (B) SECTION - EASTERN BOUNDARY INTERFACE TO SHORING WALL 800) SCALE 1:00 Fig. 1 – Approved planters along the eastern boundary. The Modification (Fig 2 below) proposes the same planting, however the planters are not as elevated, potentially exposing the top of the existing fence. No additional visual impacts are anticipated from adjoining properties.

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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).	✓
	Comment : 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.	*
	Comment: 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.	✓
	Comment : The modified application was notified in accordance with Part D and E of <i>Willoughby Community Participation Plan (WCPP)</i> from 01 April 2022 to 19 April 2022. Council received Thirteen (13) submissions and is addressed in Attachment 5 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.	✓
	Comment : Council received Thirteen (13) submissions and is addressed in Attachment 5 of this report.	

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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)	ered and Satisfactory ✓ Considered and Unsatisfactory × and Not Relevant N/A The provisions of any environmental planning instrument (EPI)	
()()	State Environmental Planning Policies (SEPP)	1
	Regional Environmental Plans (REP)	✓
	Local Environmental Plans (LEP)	✓
	Comment: The modified proposal does not contravene any relevant matters for consideration under the provisions of any <i>SEPPs</i> , <i>REPs</i> or development standards under <i>WLEP 2012</i> .	
(a)(ii)	The provision of any draft environmental planning instrument (EPI)	
	Draft State Environmental Planning Policies (SEPP)	N/A
	Draft Regional Environmental Plans (REP)	N/A
	Draft Local Environmental Plans (LEP)	✓
	Comment: The <i>Willoughby Draft LEP 2022</i> 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	
	Development control plans (DCPs)	✓
	Comment: The proposal is consistent with the provisions of the <i>WDCP</i> .	
(a)(iv)	Any matters prescribed by the regulations	
	Clause 92 EP&A Regulation-Demolition	✓
	Clause 93 EP&A Regulation-Fire Safety Considerations	✓
	Clause 94 EP&A Regulation-Fire Upgrade of Existing Buildings	N/A
	Comment: There are no prescribed matters that affect the modification application.	
(b)	The likely impacts of the development	
	Context & setting	✓
	Access, transport & traffic, parking	✓
	Servicing, loading/unloading	✓
	Public domain	✓
	Utilities	✓
	Heritage	N/A
	Privacy	√
	Views	✓
	Solar Access	✓
	Water and draining	√
	Soils	√
	Air & microclimate	✓
	Flora & fauna	✓
	Waste	√
	Energy	✓

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

	Noise & vibration	✓
	Natural hazards: None	✓
	Safety, security crime prevention	✓
	Social impact in the locality	✓
	Economic impact in the locality	✓
	Site design and internal design	✓
	Construction	✓
	Cumulative impacts	✓
	Comment: 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	
	Does the proposal fit in the locality?	✓
	Are the site attributes conducive to this development?	✓
	Comment: 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	
	Public submissions	✓
	Submissions from public authorities	✓
	Comment: Notification took place between 01 April 2022 to 19 April 2022.	
	Submissions from Thirteen (13) objectors were received. Issues raised in the	
	submissions have been considered in the assessment of the development	
	application and key issues are addressed in Attachment 5 .	
(e)	The public interest	
	Federal, State and Local Government interests and Community	✓
	interests	
	Comment: The proposal will not adversely impact the character of the locality	
	and therefore approval of the application is in the public interest.	

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ATTACHMENT 5 – SUBMISSIONS TABLE

Council was in receipt of Thirteen (13) individual submissions from the following objectors:

1.	Taylor Tsieng	70 Edinburgh Road, Willoughby	
2.	Cathy & Anthony Parisi	17 Warners Avenue, Willoughby	
3.	Alison He	88 Eastern Valley Way, Willoughby	
4.	Christopher Bourked	13 Warners Avenue, Willoughby	
5.	Carrie Louise Yannakou	33 Garden Place, Willoughby	
6.	Michael and Susan Baldwin	31 Garden Place, Willoughby	
7.	Chris Lewis	13 Garden Place, Willoughby	
8.	Mary-Jane Salier	8 Warners Avenue, Willoughby	
9.	Kate Lamb	23 Chelmsford Avenue, Willoughby	
10.	Doug Bennett of Precise Planning	152 Sailors Bay Road, Northbridge	
11.	Kristina Dodds	28 Calbina Road, Northbridge	
12.	Jeff Bulfin	14 Warners Avenue, Willoughby	
13.	Leah Bulfin	14 Warners Avenue, Willoughby	

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

Officer's Response
The original plans made reference to a Shoring wall design for along the eastern boundary. This was later amended after further geotechnical advice which resulted in this design being abandoned and a conventional wall achievable on site.
Multiple revisions of the plans showed the proposed eastern boundary wall and planter boxes being incorporated into the existing wall along 14 Warners Ave. No permission has been given for Party wall consent and no permission is given to underpin the wall with concrete. The applicant has rectified the plans with advice from their engineer.
The proposed plans for approval have been amended to clearly show and state that all walls on the site can be structurally independent from adjoining lots and are located within the subject site. To ensure the proposed walls are structurally independent, a condition is proposed as follows:

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"Structurally Independent Retaining Walls

Prior to the issue of a Construction Certificate, a structural engineer is to certify that the retaining walls throughout the site will be structurally independent and not rely on adjoining lots of land (including structures).

Reason: Compliance "

Inadequate Plans

"oppose the approval of the modifications until we are given all the relevant plans and elevations and the actual dimensions are presented to Willoughby Council."

The original lodgement plans contained a number of errors in both measurements, clarification and building detail.

Additionally, Council's DA tracker did not display the applicants Statement of Environmental Effects (SEE) in the first days of notification. This was shortly rectified.

"The plan is very unclear to me in regard to the fencing"

"The developer has not submitted all the necessary documentation to clarify and explain what exact modification they are proposing" Throughout the assessment process the clarity of the plans and the information they displayed was questions and required additional information requests. The plans and the supporting SEE were amended to address the assessing officers concerns after several reiterations and comments from objectors.

"the developer has not provided the mandatory documentation to explain what modification they are specifically seeking" The plans as proposed clearly show the proposed works and contain accurate information that is suitable for endorsement.

"This modification should not proceed without all required documentation"

"be refused on the grounds that the applicant has not provided adequate (comprehensible) description of the change/s sought"

"I request that Council reject this application because insufficient information has been provided"

Traffic light system

"We object to the traffic light system which will impact the flow of traffic on Warners Avenue which is a single-lane road."

The modification proposes no changes to the Traffic light system or condition.

"We are concerned about the traffic light system for a number of reasons.."

"Where are the plans which show the dimensions of fences and how this will effect neighbouring

Reference: DA-2021/27/B Page 17 of 21

properties"

"the traffic light system will affect traffic flow in Warners Ave and no details or updated traffic report has been provided"

"The traffic light system proposed for the development also seems fraught with issues."

Impacts from landscaping

"proposed planting on the [southern] common boundary will seriously interfere with solar access to our property."

The proposed landscaping is largely consistent with the previously endorsed landscape plan which has been reviewed by Council's Landscape officer.

Driveway and turning circles

"A typical rigid removalist vehicle appears to be unable to manoeuvre in and out of the visitor space that has been approved"

"Condition 3(f) of the consent also required the applicant to demonstrate that they "will mitigate any direct overlooking from the proposed lower ground level living spaces and adjoining outdoor areas including visitor car space and driveway into adjoining properties". As the photo on the following page shows, this is impossible. A typical removalist vehicle positioned right beside a 2 metre high fence will be able to see straight over the top of it."

The proposed modification proposed no change to isle width or grade of the internal roads as originally approved. Additionally, the proposed changes do not impact the movement of vehicles as assessed in the original approval.

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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:

Туре	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	Н	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	К		
	DA-421 Project 20036	С		
	DA-761 Project 20036	D		
	DA-920 Project 20036	F		
Landscape	p13, p14, p 15,	6	04.2021	ARCADIA
	Planting Schedule	•	-	
	Drawing 101 – planting plan (20) Drawing 601 – landscape details (21) Drawing 701 – landscape specification (22) Job 20-698	6	30.04.2021	
Engineering	001	А	18.12.2020	Indesco
	020, 025, 030, 040, 050, 051, 052, 053, 054, 055, 056, 057, 058	В	22.06.2021	
	041	Α		

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

Reference: DA-2021/27/B Page 19 of 21

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

Plan Type	Plan No.	Revision/ Issue No.	Plan Date (as Amended)	Prepared by
	L-101			
	L-201			
	L-300			
	L-301			
	L-400			
	L-401			
Landscape	L-600	N	22/11/22	ARCADIA
	L-601			
	L-602			
	L-603			
	L-604			
	L-605			
l	L-606			

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. The following conditions are added

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

3A. Structurally Independent Retaining Walls

Prior to the issue of a Construction Certificate, a structural engineer is to certify that the retaining walls throughout the site will be structurally independent and not rely on adjoining lots of land (including structures).

(Reason: Compliance)

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

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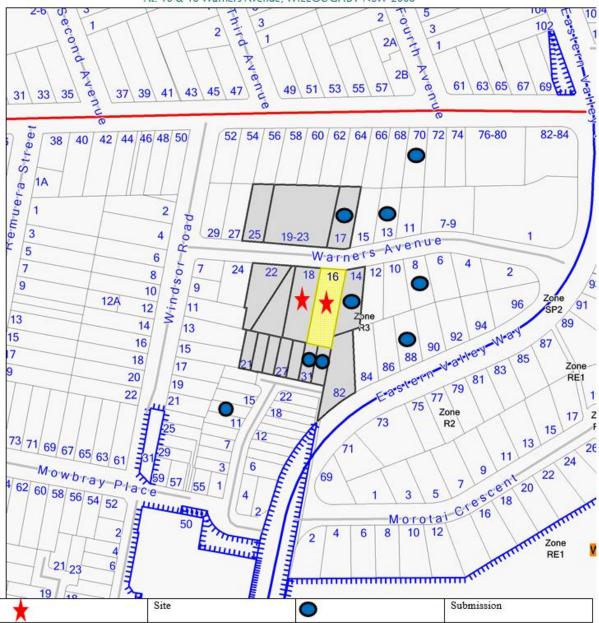
ATTACHMENT 7: NOTIFICATION MAP



Record of Neighbour Notifications sent relating to:

DA: 2021/27/B





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