

**DA NO:** DA-2021/340

**ADDRESS:** 43 DONNELLY ROAD, NAREMBURN NSW 2065.

**PROPOSAL:** PROPOSED MIXED USE DEVELOPMENT COMPRISING THE DEMOLITION OF EXISTING SCHOOL BUILDING, ADDITIONS TO ST LEONARDS CHURCH COMPRISING PARISH HALL AND PRESBYTERY, CONSTRUCTION OF MULTI DWELLING HOUSING, CONVERSION OF EXISTING PRESBYTERY TO A DWELLING AND CONSTRUCTION OF A DWELLING HOUSE.

**RECOMMENDATION:** REFUSAL

**ATTACHMENTS:**

1. SITE DESCRIPTION AND AERIAL PHOTO
2. DEVELOPMENT CONTROLS, STATISTICS, DEVELOPER CONTRIBUTION & REFERRALS
3. SUBMISSIONS TABLE
4. APPLICANT'S CLAUSE 4.6 SUBMISSION –HEIGHT
5. OFFICER'S CLAUSE 4.6 ASSESSMENT - HEIGHT
6. SECTION 4.15 ASSESSMENT
7. REASONS FOR REFUSAL
8. NOTIFICATION MAP

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

**AUTHOR:** MARK BOLDUAN - SENIOR DEVELOPMENT ASSESSMENT OFFICER

**REPORT DATE:** 19 JULY 2022

**MEETING DATE** 26 JULY 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 Development Application DA-2021/340 for proposed mixed use development comprising the demolition of existing school building, additions to St Leonards Church comprising parish hall and presbytery, construction of multi dwelling housing, conversion of existing presbytery to a dwelling and construction of a dwelling house at 43 Donnelly Road, NAREMBURN.

The application is required to be referred to the WLPP for determination because it is the subject of 10 or more unique submissions and because it contravenes a development standard of an environmental planning instrument by more than 10 percent.

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

**THAT the Willoughby Local Planning Panel:**

**2.1 Refuse the Clause 4.6 exception contained in Attachment 4 as it is considered reasonable and necessary to comply with the development standard of Clause 4.3 *Willoughby Local Environmental Plan 2012* (Height of Building) for the following reasons:**

**2.1.1 The proposal will not achieve Objective (a) of Clause 4.3 of the WLEP because its excessive height will be inconsistent with the scale of existing and desired future development within the streetscape.**

2.1.2 The proposal is not consistent with the objectives of the R3 Zone, because it will not accommodate development that is compatible with the scale and character of the surrounding residential development.

2.2 Refuse Development Application DA-2021/340 for proposed mixed use development comprising the demolition of existing school building, additions to St Leonards Church comprising parish hall and presbytery, construction of multi dwelling housing, conversion of existing presbytery to a dwelling and construction of a dwelling house at 43 Donnelly Road, NAREMBURN, for the following reasons:

2.2.1 Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed dwelling houses are impermissible in the R3 Zone applicable to the site pursuant to the *Willoughby Local Environmental Plan 2012*.

2.2.2 Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (b)(i), failing to conserve and balance the environmental heritage of the locality.

2.2.3 Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (b)(ii), failing to promote an appropriate balance between development and management of the environment through provision of adequate landscaping.

2.2.4 Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (c)(iii), failing to allow development at a scale that is sensitive to environmental constraints by provision of adequate stormwater measures.

2.2.5 Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (d), failing to promote development that is designed and constructed to enhance or integrate into the natural landform and the existing character of distinctive locations, neighbourhoods and streetscapes, and to contribute to the desired future character of the locality or to contribute positively to the public domain.

2.2.6 Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (e) to reduce adverse impacts from development on adjoining or nearby residential properties.

2.2.7 Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2(i) to conserve items of environmental and cultural heritage.

2.2.8 Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims

of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (j), failing to provide integrated development design of vehicular access and parking.

- 2.2.9 Pursuant to Section 4.15 (1) (a) (ii) of the Environmental Planning and Assessment Act 1979, the proposed development disregards the Aims of the draft *Willoughby Local Environmental Plan* in Clause 6.21 failing to reduce and remove urban heating from the environment, and protect community health and wellbeing by provision of deep soil landscaping and canopy trees.

### 3. BACKGROUND

The site is located at 43 Donnelly Road Naremburn. A description of the site and surrounding area, including an aerial photograph is contained in **Attachment 1**.

The proposal consists of the following:

- Demolition of the former St Leonards School Hall;
- Construction of a three storey multi dwelling housing development consisting of 12 townhouses (4 x 3 bedroom, 8 x 4 bedroom);
- New parish hall with ancillary rooms and new presbytery (priest's dwelling) at Level 2;
- Basement parking consisting of 24 car parking spaces for residents, 3 visitor car parking spaces and 25 presbytery / church parking spaces;
- Conversion of existing presbytery to separate dwelling house;
- Construction of new two-storey, four- bedroom dwelling house on eastern side of existing presbytery;
- Conservation works to St Leonards Church and existing presbytery building;
- Landscaping and site works;
- Consolidation of the site and Torrens title subdivision resulting in three lots. These will be Lot 1 (townhouses, parish hall and new presbytery and church building), Lot 2 (dwelling house converted from existing presbytery) and Lot 3 (new dwelling house).

### 4. DISCUSSION

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

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

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

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

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

<https://eplanning.willoughby.nsw.gov.au/pages/xc.track/SearchApplication.aspx?id=514761>

### 5. CONCLUSION

The Development Application DA-2021/340 has been assessed in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*, *WLEP 2012*, *draft WLEP*,

*WDCP*, and other relevant codes and policies. It is considered that the proposal is unacceptable in the particular location, and should be refused.

## ATTACHMENT 1: SITE DESCRIPTION AND AERIAL PHOTO

The subject site is located at 43 Donnelly Road, Naremburn and consists of Lot 1 DP 115889, Lot 1 DP 320984 and Lot A DP 341975.

The site has boundaries to Donnelly Road to the south (85.39m), Willoughby Road to the west (76.86m), and Merrenburn Avenue to the north (45.41m). The total area of the subject site is 5,888m<sup>2</sup>.

The location of the site is indicated in Figure 1 below.



Figure 1: Site aerial view

The site contains St Leonards Catholic Church, a former school building and a Church presbytery building.

The Church building, with prominent steeple, is a local landmark and listed Heritage Item I160 in the Willoughby Local Environmental Plan 2012 (WLEP 2012). The item description in WLEP 2012 is *St Leonards Church (including original interiors)*. This heritage listing does not apply to the whole lot.





*Figure 2: St Leonards Catholic Church (from intersection Willoughby Road and Donnelly Road to the south) (Google Streetview)*

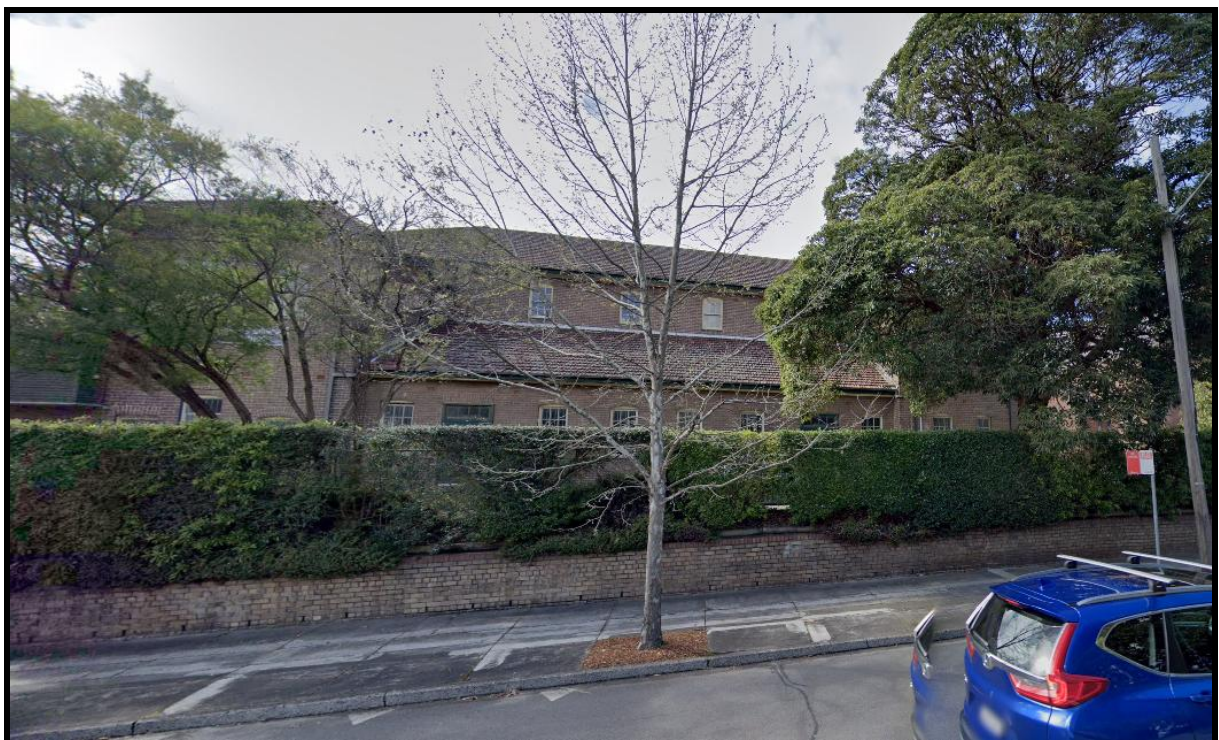


*Figure 3: St Leonards Catholic Church (from Willoughby Road to the west) (Google Streetview)*





*Figure 4: St Leonards Catholic Church (from Donnelly Road to the south) (Google Streetview)*



*Figure 5: Former School building (from Willoughby Road to the west) (Google Streetview)*

## Locality



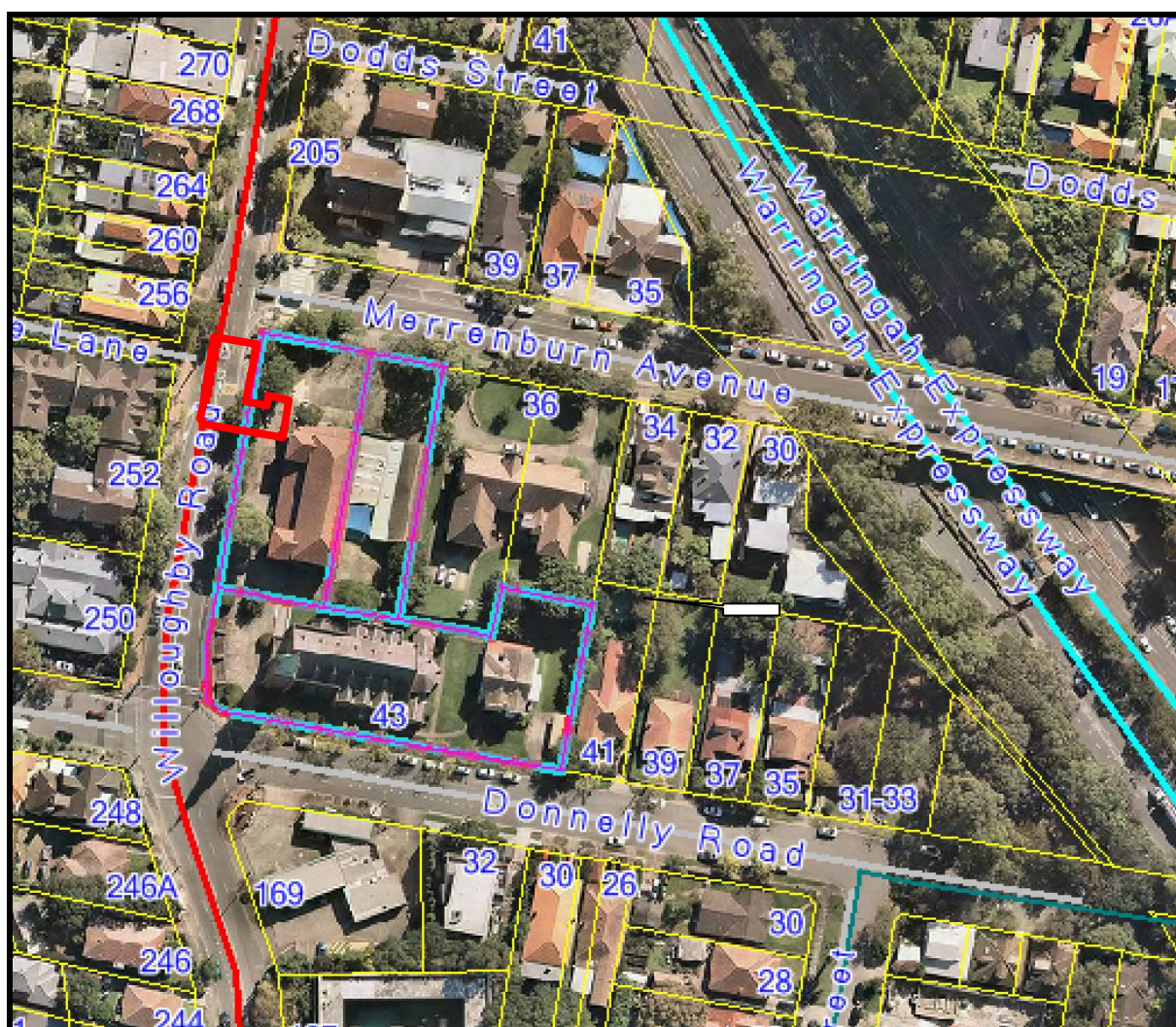


Figure 4: Locality aerial view

#### 205 Willoughby Road

This property is located on the opposite (northern) side of Merrenburn Avenue and is occupied by the Naremburn Anglican Church. The church is listed in the WLEP 2012 as Heritage Item 1172, which is described as *St Cuthbert's Anglican Church (including original interiors)*.





*Figure 6: Naremburn Anglican Church (from intersection of Willoughby Road and Merrenburn Avenue) (Google Streetview)*



*Figure 7: Naremburn Anglican Church (from Merrenburn Avenue to the south) (Google Streetview)*



39 Merrenburn Avenue

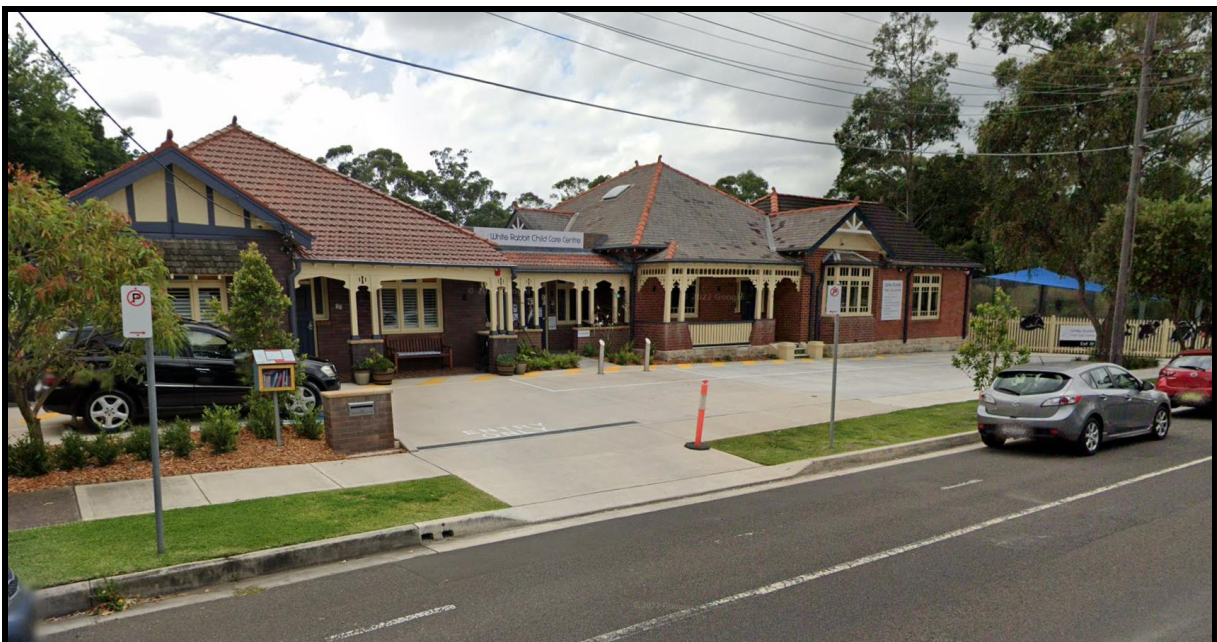
This property is located on the opposite (northern) side of Merrenburn Avenue from the site. The property is occupied by a single storey, period dwelling house with pitched tiled roof and in a landscaped setting.



*Figure 8: 39 Merrenburn Avenue (Google Streetview)*

35-37 Merrenburn Avenue

This property is occupied by single storey, period brick dwelling houses with pitched, tiled roofs. These buildings are being used as a child care centre.



*Figure 9: 35-37 Merrenburn Avenue (Google Streetview)*



36 Merrenburn Avenue

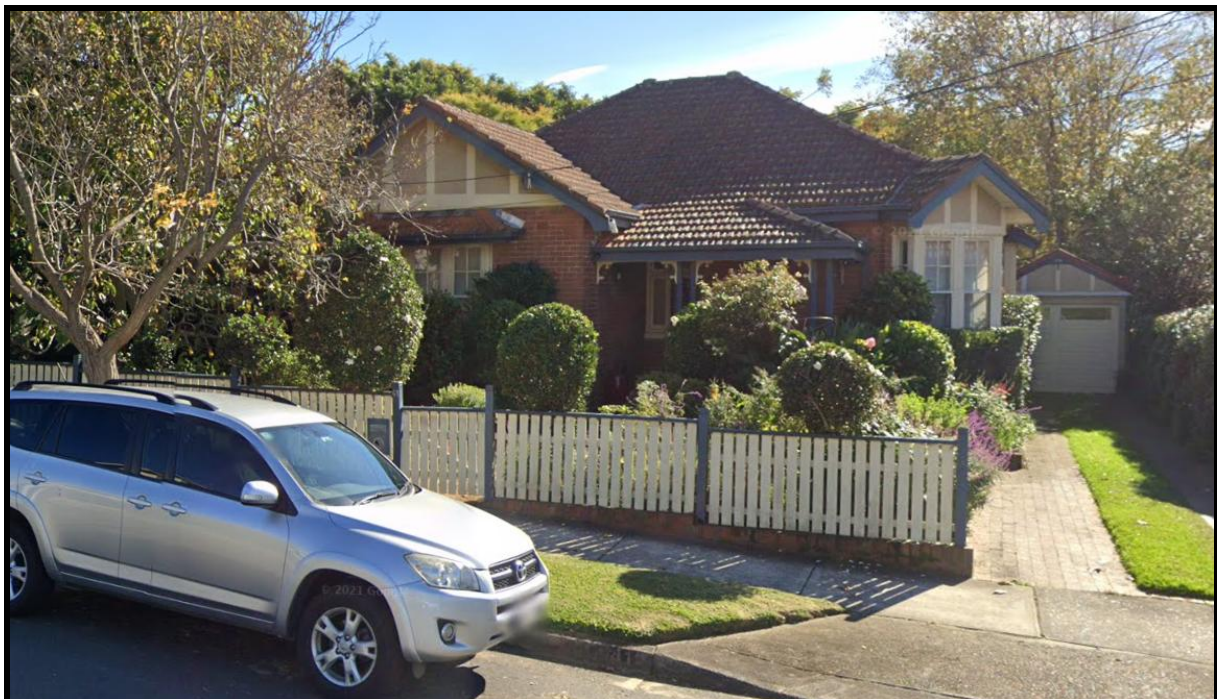
This property abuts the eastern side boundary of the subject site and is occupied by St Josephs Convent. The building is constructed of brick and masonry with a pitched tiled roof. This building is set in a large landscaped garden set behind a brick wall along the street frontage.



*Figure 10: 36 Merrenburn Avenue (Google Streetview)*

41 Donnelly Road

This property abuts the eastern side boundary of the subject site and is occupied by a single storey, detached brick dwelling with a pitched tiled roof, in a landscaped setting.



*Figure 11: 41 Donnelly Road (Google Streetview)*



### 32 Donnelly Road

This property is located on the opposite (southern) side of Donnelly Road from the site and is occupied by three-to-four storey residential flat building.



*Figure 12: 32 Donnelly Road (Google Streetview)*

### 169 Willoughby Road

This property is located on the south-eastern corner of the intersection of Donnelly Road and Willoughby Road. It is occupied by a petrol station and car wash.



*Figure 13: 169 Willoughby Road (Google Streetview)*



248 Willoughby Road

This property is located on the south-western (opposite) corner of the intersection of Donnelly Road and Willoughby Road from the site. It is occupied by a two storey residential building with pitched, tiled roof. The property is listed in the WLEP 2012 as Heritage Item I173, which is described as *House (including original interiors)*.

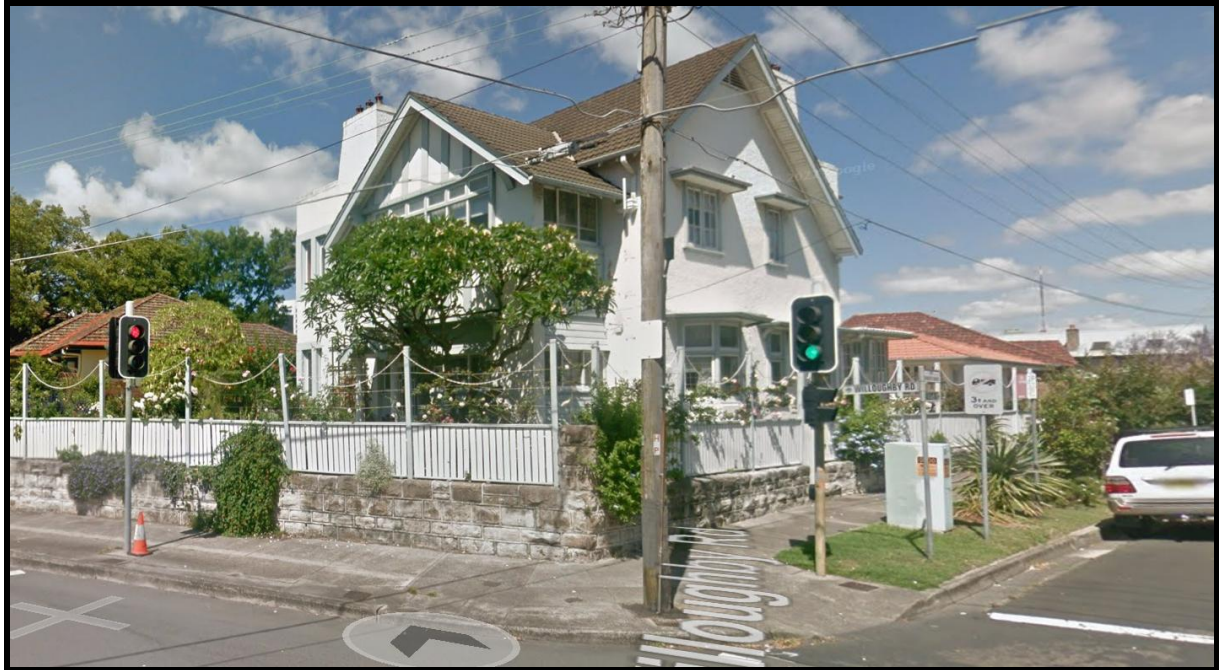


Figure 14: 248 Willoughby Road (Google Streetview)

250 Willoughby Road (Naremburn School)

Naremburn School is located on the western (opposite) side of Willoughby Road from the site. The property is occupied by one-to-three storey brick and masonry school buildings with pitched, metal roofs. The property is listed in the WLEP 2012 as Heritage Item I156, which is described as *Converted Naremburn Public School and Resources Centre*.

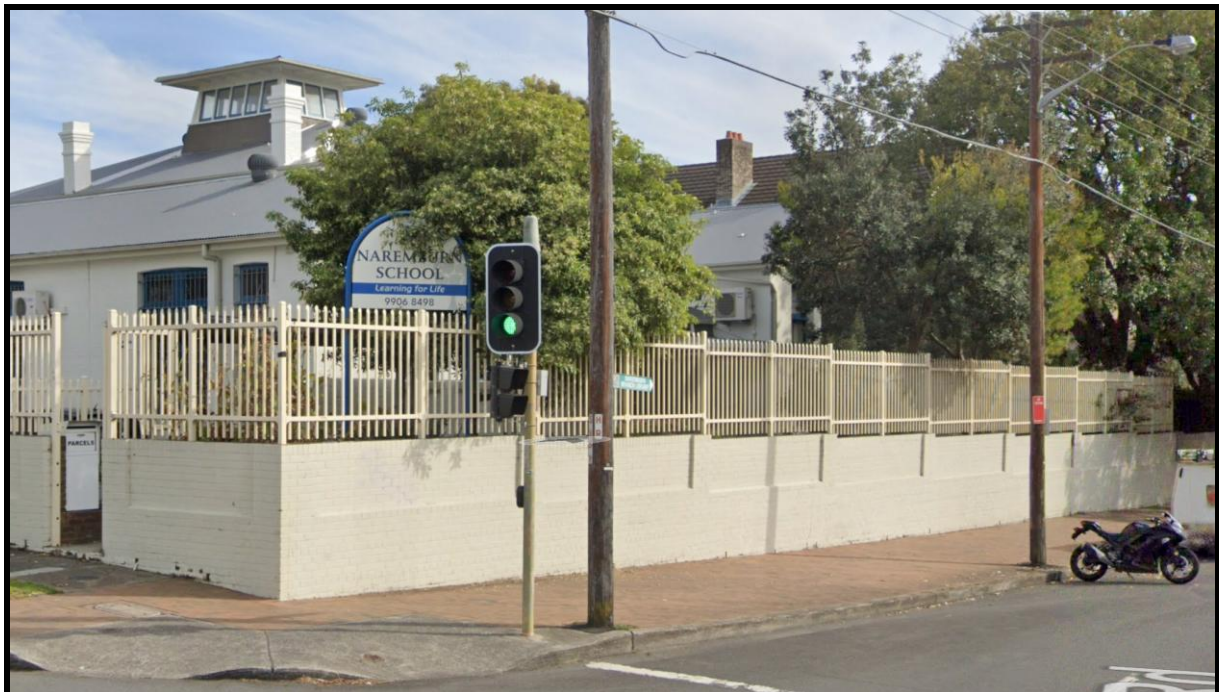


Figure 14: 250 Willoughby Road (Google Streetview)



252 Willoughby Road

This property is a large lot occupied by a number of brick and masonry residential buildings, with pitched tiled roofs. Part of the property (along Willoughby Road) is listed in the WLEP 2012 as Heritage Item I156, which is described as *Converted Naremburn Public School and Resources Centre*.



Figure 15: 250 Willoughby Road (Google Streetview)

254 - 268 Willoughby Road

A row of narrow residential lots is located on the western side of Willoughby Road, opposite the site, between Faunce Lane to the south and the small local Naremburn commercial centre to the north. Each of these lots is occupied by a single storey detached or semi-detached dwelling houses, constructed of brick with pitched tiled roofs.



Figure 16: 254 - 268 Willoughby Road (Google Streetview)



## ATTACHMENT 2: CONTROLS & DEVELOPMENT STATISTICS AND REFERRALS

|   |  |
|---|--|
| <b>Willoughby Local Environmental Plan 2012 Zoning:</b> | R3 Medium Density Residential  |
| Existing Use Rights                                     | No (see discussion below)  |
| Additional Permitted Use                                | No   |
| Conservation area                                       | No   |
| Aboriginal Heritage                                     | No   |
| Heritage Item   | Yes - listed Heritage Item I160 <i>St Leonards Church (including original interiors)</i> . |
| Vicinity of Heritage Item                               | Yes  |
| 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  |
| SEPP (Transport and Infrastructure) 2021                | No   |
| SEPP (Resilience and Hazards) 2021                      | No   |
| Acid Sulphate Soil Category                             | 5  |
| Development near Lane Cove Tunnel                       | No   |
| Contaminated Land                                       | No   |
| Adjacent / above Metro                                  | No   |
| Other relevant SEPPS                                    | State Environmental Planning Policy (Biodiversity and Conservation) 2021                   |
| Relevant policies and resolutions                       | WDGP   |

### Church hall and presbytery - parking

Clause C.4 Transport Requirements for Development requires one car parking space per 10m<sup>2</sup> for a Public hall / place of assembly / place of public worship. The hall has an area of approximately 200m<sup>2</sup>, so the appropriate parking provision is 20 spaces.

There are 25 spaces allocated to church hall/ adjacent presbytery. This is considered to be appropriate.

### Dwelling houses Issues

The proposal includes two dwelling houses, situated on Donnelly Road. The presbytery building is currently used as a dwelling house occupied by the Church priest. This is proposed to be converted into a use as a separate dwelling house and located in Lot 2 (indicated in Blue lines in Figure 17 below). An additional dwelling house is proposed to be located between the presbytery and eastern side boundary of the site and located in Lot 3 (indicated in Red lines in Figure 17 below).

### Categorisation of Presbytery

The site is zoned R3 Medium Density Residential. Dwelling houses are not permissible in the R3 Zone. An issue arises as to whether the presbytery should be categorised as a separate dwelling house now, in which case it would be an existing use. Its proposed use as a dwelling house would therefore be assessed as an existing use, albeit on a new cadastral lot. Alternatively, the presbytery could be categorised as being ancillary to the dominant use, that is, the Church.

In support of the categorisation as being ancillary to the Church use, the presbytery is only used, and (as the available evidence indicates) has only ever been used by the Church priest. Furthermore, the presbytery is situated on the same cadastral lot as the Church building.

In support of the categorisation as being a dwelling house, it could be argued that there has never been any legal obstacle to using the building as a separate dwelling and renting it on the open market. It is therefore a dwelling house which happens to have been occupied by the Church priest.

However, the same argument could be made of many uses of buildings. The point is what it was used for, which in this case has always been for accommodation of the Church priest, not what it could have been used for.

The presbytery therefore seems best understood as being ancillary to the main Church. Its proposed use as a dwelling house will therefore be a change of use and must be assessed accordingly.

#### Permissibility

As stated above, the site is zoned R3 Medium Density Residential. Dwelling houses are not permissible in the R3 Zone.

The applicant has argued that both of the proposed dwelling houses (Lots 2 and 3) can be approved pursuant to the heritage conservation incentives in Clause 5.10(10) of the WLEP. That sub-clause states:

**(10) *Conservation incentives*** *The consent authority may 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, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—*

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (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, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

The applicant argues that approval of the dwelling houses would provide funds for the conservation of the heritage item and the presbytery in accordance with the Schedule of Conservation Works lodged with the DA.

Council does not accept that the proposed dwelling houses are located on land on which a heritage building is erected for the purposes of Clause 5.10(10). While the relevant land

Lots 2 and 3 shown in Figure 17 below) currently forms part of the same cadastral lot as the heritage item (the Church), that is not in itself determinative.

Council has received legal advice that the meaning of 'land' must be considered in its context (*Scully v Leichhardt Council (1994) 85 LGERA 109* at 110). In the current context, the heritage item does not extend over the whole lot, and does not include the proposed dwelling houses, as seen in Figure 17 below. Furthermore, the heritage listing in the WLEP 2012 specifies that the heritage item applies to Part of Lot 1 DP 115889.

The proposed dwelling houses will therefore not be located on 'land' on which the heritage item is erected for the purposes of Clause 5.10(10). The proposed conservation works therefore do not activate the power to approve an otherwise impermissible development allegedly given by Clause 5.10(10).

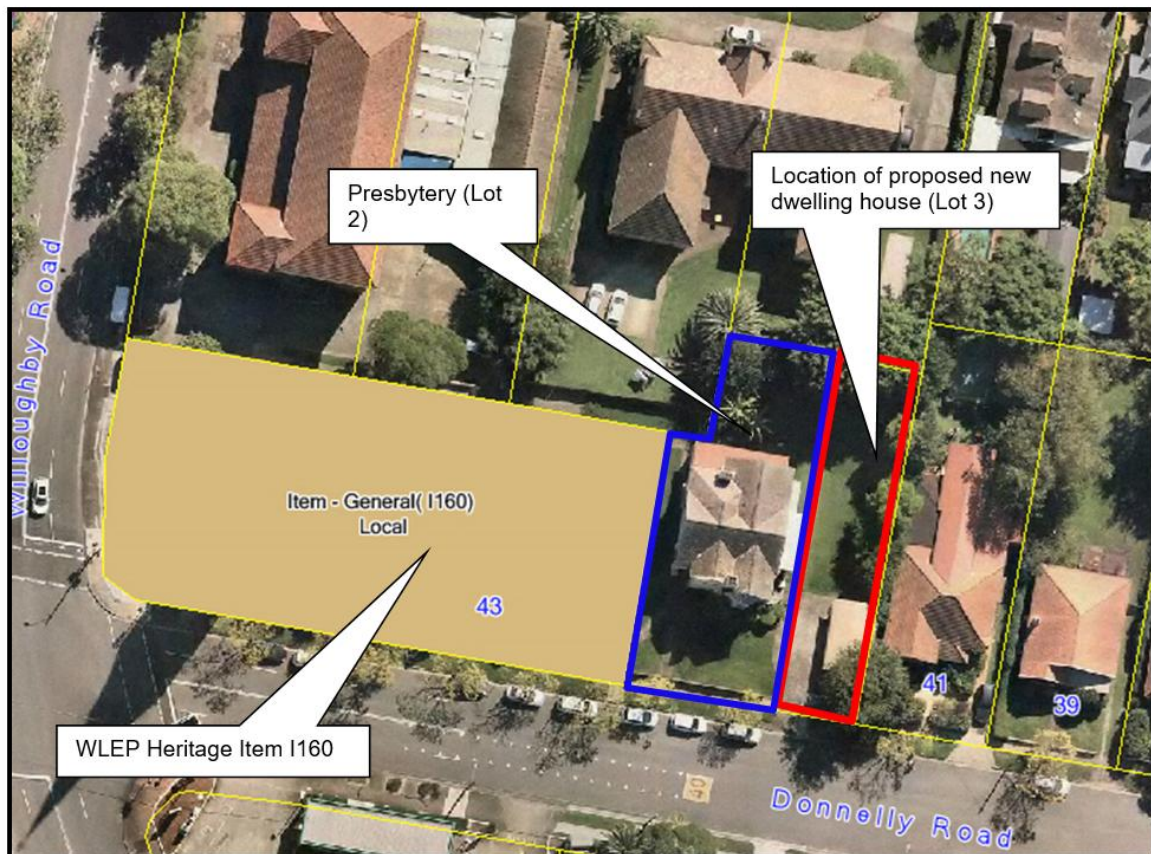


Figure 17: Location of proposed dwelling houses in relation to WLEP heritage item



## Assessment

The following assessment of the proposed dwelling houses is made further and in the alternative, notwithstanding the impermissibility of those dwelling houses.

### Presbytery Building (Lot 2)

#### WLEP 2012

| Area Lot 2 = 582 m <sup>2</sup> |                       |                              |                           |                           |                   |                               |
|---------------------------------|-----------------------|------------------------------|---------------------------|---------------------------|-------------------|-------------------------------|
| Clause                          | Control               | Existing Presbytery building | Proposed by applicant     | Calc. by Council          | Standard          | Numerical Compliance          |
| Cl.4.1                          | Minimum lot size      | 5,888m <sup>2</sup>          | Lot 2 = 582m <sup>2</sup> | Lot 2 = 582m <sup>2</sup> | N/A               | N/A                           |
| Cl.4.3                          | Height (m)            | 10.3m                        | 10.3m                     | 10.3m                     | 9m                | No- see Clause 4.6 assessment |
| Cl.4.4 & Cl. 4.4A               | GFA (m <sup>2</sup> ) | Unknown                      | 250m <sup>2</sup>         | 250m <sup>2</sup>         | 407m <sup>2</sup> | Yes                           |
|                                 | FSR                   | Unknown                      | 0.43:1                    | 0.43:1                    | 0.7:1             |                               |

#### WDCP

| Part       | Control              | Proposed by applicant | Calc. by Council   | Standard   | Numerical Compliance |
|------------|----------------------|-----------------------|--|--|----------------------|
| C.4        | Parking              | 2                     | 2  | 2 (4 bedrooms)   | Yes                  |
| C.5        | Water management (%) | 10,000L tank          | 10,000L tank   | 10,000L tank   | Yes                  |
| C.12       | Front Fence          | N/A                   | 0.67m-1.1m   | Max. height 1.1m if solid  | Yes                  |
| D1.4.2.4.3 | Development forms    | N/A                   | The proposed dwelling involves no significant changes to the existing built form. That built form is consistent with the prevailing character of the locality. | New development must have regard to:<br>the surrounding roof forms and pitch;<br>the treatment of facades of surrounding dwellings, their use of verandahs, balconies and windows;<br>the detail, proportions and scale of elements;<br>the use of materials, colours and finishes;<br>maintaining the landscape setting and the retention of existing trees on the site;<br>the location and the extent of car parking structures and driveways on the site;<br>the height and type of fencing to the street; and<br>the sharing of views | Yes                  |

|          |  |        |  |   |     |
|----------|--|--------|--|---|-----|
| D1.4.3.2 | Two storey wall length                     | N/A    | <6m max without articulation on west elevation   | 6m max without articulation   | Yes |
| D1.7     | Building Height Plane                      | N/A    | Breaches envelope 3.5m high at boundary and 45 degree angle inwards over east and west sides | envelope 3.5 m high at boundary and 45 degree angle inwards over site                                   | No  |
|          | Front Setback (m)                          | 9.65m  | 9.65m  | consistent with adjoining or 7m if no established building line   | Yes |
|          | Side Setback (m)                           | >0.9m  | >0.9m  | 0.9m  | Yes |
|          | Rear Setback (m)                           | 15.15m | 15.15m   | 6m for 2 storey dwelling and consistent with established line   | Yes |
| D1.8     | Soft Landscaped Area (m <sup>2</sup> )     | N/A    | 44%<br>258m <sup>2</sup>   | 39%<br>(229m <sup>2</sup> )   | Yes |
|          | Land-scaping within front setback area (%) | N/A    | 66% (105m <sup>2</sup> )   | 50% (79m <sup>2</sup> ) where < 18m frontage  | Yes |
| D1.9     | Private open space (>400m <sup>2</sup> )   | N/A    | 200m <sup>2</sup>  | 150m <sup>2</sup>   | Yes |
| D1.10    | Private Recreation Facilities              | N/A    | Pools < 1.5m high setback > 1 m from boundary  | Pools not to exceed 1.5m high setback min 1 m from boundary. Tennis courts min setback 2m from boundary | Yes |
| D1.11    | Privacy                                    | N/A    | Privacy provided   | Need for privacy protection   | Yes |
| D1.12    | Solar access                               | N/A    | >3 hours between 9am to 3pm on 22 June to private open space and living areas                | 3 hours between 9am to 3pm on 22 June to private open space and living areas                            | Yes |

WDCP Non-compliances

Clause D.1.7.3 states:

*Buildings should be sited within a building envelope determined by the following method. Planes are projected at 45° from a height of 3.5m above natural ground level at the side boundaries to a maximum height of 7m, 8m or 8.5 metres depending on the site location in accordance with the Height of Buildings Map in WLEP 2012.*

The proposed dwelling house will breach the above building envelope on Level 1 of each side elevation and will therefore breach Clause D.1.7.3.

The objectives of Clause D1.7 are:

- *To ensure the siting of buildings provides adequate separation for the amenity of residents and adjoining properties.*
- *To provide adequate space for landscaping.*
- *To achieve equitable access to sunlight and views.*
- *To minimise overshadowing of adjoining properties.*
- *To provide setbacks that reinforce the established streetscape pattern and allow for landscaping and open space to complement the streetscape.*
- *To minimise excessive bulk and scale.*

The proposal will not achieve the above objectives for the following reasons:

- While the building already exists, it is located within an expansive site. The proposal will result in a reduced lot size and this will result in the breach of Clause D1.7.
- The breach includes the balcony off the Level 1 Master bedroom. This will face directly toward the Level 1 rumpus room of the proposed dwelling house at Lot 3 (distance of approximately 3.9m). This will result in adverse privacy impacts for occupants of both dwellings.
- The breach on the eastern side will also result in excessive bulk and scale for the occupants of the proposed dwelling house at Lot 3.

**Proposed Dwelling House (Lot 3)**

WLEP 2012

| <b>Site Area Lot 3 = 464 m<sup>2</sup></b> |                            |                              |                           |                   |                             |
|--|----------------------------|------------------------------|---------------------------|-------------------|-----------------------------|
| <b>Clause</b>                              | <b>Control</b>             | <b>Proposed by applicant</b> | <b>Calc. by Council</b>   | <b>Standard</b>   | <b>Numerical Compliance</b> |
| <b>CI.4.1</b>                              | <b>Minimum lot size</b>    | Lot 3 = 464m <sup>2</sup>    | Lot 3 = 464m <sup>2</sup> | <b>N/A</b>        | N/A                         |
| <b>CI.4.3</b>                              | <b>Height (m)</b>          | 6.4m                         | 6.69m                     | 9m                | Yes                         |
| <b>CI.4.4 &amp; CI. 4.4A</b>               | <b>GFA (m<sup>2</sup>)</b> | 246m <sup>2</sup>            | 244m <sup>2</sup>         | 325m <sup>2</sup> | Yes                         |
|  | <b>FSR</b>                 | 0.53:1                       | 0.52:1                    | 0.7:1             |                             |



WDCP

| Part       | Control                | Proposed by applicant | Calc. by Council   | Standard   | Numerical Compliance |
|------------|------------------------|-----------------------|--|--|----------------------|
| C.4        | Parking                | 2                     | 2  | 2 (4 bedrooms)   | Yes                  |
| C.5        | Water management (%)   | 10,000L tank          | 10,000L tank   | 10,000L tank   | Yes                  |
| D1.4.2.4.3 | Development forms      | N/A                   | The proposed dwelling will be flat roofed, while the locality is mainly pitched roofed. Level 1 will be predominantly rendered and painted white, while the locality is dominated by brick. The landscaping will be inadequate and will be inconsistent with the landscaped setting of the locality. The two car garage will present a large blank façade to the street at ground level and this is inconsistent with the pattern of pitched roof carports or hard stand in Donnelly Road. | New development must have regard to:<br>the surrounding roof forms and pitch;<br>the treatment of facades of surrounding dwellings, their use of verandahs, balconies and windows;<br>the detail, proportions and scale of elements;<br>the use of materials, colours and finishes;<br>maintaining the landscape setting and the retention of existing trees on the site;<br>the location and the extent of car parking structures and driveways on the site;<br>the height and type of fencing to the street; and<br>the sharing of views | No                   |
| D1.4.3.2   | Two storey wall length | N/A                   | >6m max without articulation on west elevation   | 6m max without articulation  | No                   |
| D1.7       | Building Height Plane  | N/A                   | Breaches envelope 3.5m high at   | envelope 3.5 m high at boundary and 45 degree  | No                   |

|              |   |       |   |   |     |
|--------------|---|-------|---|---|-----|
|              |   |       | boundary and 45 degree angle inwards over east and west sides                 | angle inwards over site   |     |
|              | <b>Front Setback (m)</b>                          | 9.7m  | 9.7m  | consistent with adjoining or 7m if no established building line   | Yes |
|              | <b>Side Setback (m)</b>                           | >0.9m | >0.9m   | 0.9m  | Yes |
|              | <b>Side Setback (m)</b>                           | >0.9m | >0.9m   |   |     |
|              | <b>Rear Setback (m)</b>                           | 10.8m | 10.8m   | 6m for 2 storey dwelling and consistent with established line   | Yes |
| <b>D1.8</b>  | <b>Soft Landscaped Area (m<sup>2</sup>)</b>       | N/A   | 13%<br>61m <sup>2</sup>   | 34%<br>(158m <sup>2</sup> )   | No  |
|              | <b>Land-scaping within front setback area (%)</b> | N/A   | 26%   | 50% where < 18m frontage .  | No  |
| <b>D1.9</b>  | <b>Private open space (&gt;400m<sup>2</sup>)</b>  | N/A   | 128m <sup>2</sup>   | 150m <sup>2</sup>   | No  |
| <b>D1.10</b> | <b>Private Recreation Facilities</b>              | N/A   | Pools < 1.5m high setback > 1 m from boundary                                 | Pools not to exceed 1.5m high setback min 1 m from boundary. Tennis courts min setback 2m from boundary | Yes |
| <b>D1.11</b> | <b>Privacy</b>                                    | N/A   | Privacy provided  | Need for privacy protection   | Yes |
| <b>D1.12</b> | <b>Solar access</b>                               | N/A   | >3 hours between 9am to 3pm on 22 June to private open space and living areas | 3 hours between 9am to 3pm on 22 June to private open space and living areas                            | Yes |

WDCCP Non-compliances

D.1.4 Character, Design, Streetscape and View Sharing

Clause D1.4.2.3 states:

*New development must have regard to:*

- i. the surrounding roof forms and pitch;*
- ii. the treatment of facades of surrounding dwellings, their use of verandahs, balconies and windows;*
- iii. the detail, proportions and scale of elements;*
- iv. the use of materials, colours and finishes;*
- v. maintaining the landscape setting and the retention of existing trees on the site;*
- vi. the location and the extent of car parking structures and driveways on the site;*
- vii. the height and type of fencing to the street; and*
- viii. the sharing of views*

The proposed dwelling-house will breach Clause D1.4.2.3 for the following reasons:

- It will be dominated by unarticulated render and white paint at the upper level of all elevations. This will be inconsistent with the prevailing streetscape, which is dominated by brick buildings (consistently coloured brown).
- It will have a flat roof, whereas the predominant streetscape of the locality is pitched roofs.
- It will provide insufficient landscaping, contrary to the well landscaped presentation of the area.
- The two car garage will present a large blank façade to the street at ground level and this is inconsistent with the pattern of pitched roof carports or hard stand in Donnelly Road.
- It will not only breach the building envelope control, but cause the presbytery, which currently complies, to no longer comply with that building envelope control. Dwellings in Donnelly Road predominantly comply with the building envelope control.

Clause D1.4.3.2 also states:

*Two storey walls greater than 6m in length should provide articulation to reduce bulk impacts on neighbouring properties and when viewed from the street.*

The proposed dwelling-house will breach Clause D1.4.3.2 because it will include unarticulated, two storey walls.

The objectives of Part D.1.4 include:

- 1. To ensure that new development is consistent with the scale of, and complements the desired future character of the streetscape.*
- 2. To preserve and enhance the features which contribute to the important environmental and landscape qualities of the area.*



The proposed dwelling-house will not achieve the above objectives for the following reasons:

- The dwelling house will not complement the existing and desired future character of the streetscape because its material and colours will be out of keeping with that character.
- The proposed dwelling house will present bulk to its adjoining properties which is inconsistent that character.
- The proposed dwelling house will not provide the landscaped setting consistent with its immediate context.

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

Clause D.1.7.3 states:

*Buildings should be sited within a building envelope determined by the following method. Planes are projected at 45° from a height of 3.5m above natural ground level at the side boundaries to a maximum height of 7m, 8m or 8.5 metres depending on the site location in accordance with the Height of Buildings Map in WLEP 2012.*

The proposed dwelling house will breach the above building envelope on Level 1 of each side elevation and will therefore breach Clause D.1.7.3.

The objectives of Part D.1.7 are:

- *To ensure the siting of buildings provides adequate separation for the amenity of residents and adjoining properties.*
- *To provide adequate space for landscaping.*
- *To achieve equitable access to sunlight and views.*
- *To minimise overshadowing of adjoining properties.*
- *To provide setbacks that reinforce the established streetscape pattern and allow for landscaping and open space to complement the streetscape.*
- *To minimise excessive bulk and scale.*

The proposed dwelling-house will not achieve the above objectives for the following reasons:

- The breach will result in additional bulk as viewed by neighbouring properties.
- This visual bulk will be exacerbated by the lack of articulation on the side elevations of the dwelling.
- The excessive bulk of Level 1 will be inconsistent with the streetscape.

#### D.1.8 Landscaping

Clause D.1.8.3.1 requires that 158m<sup>2</sup> of soft landscaping be provided (calculated as if the land were zoned R2, which is the most appropriate categorisation). This equates to 34% of the site area. The minimum dimension for a soft landscaped area is 1m. The proposed soft landscaping is 61m<sup>2</sup>, which equates to 13% of the site area. This is a breach of Clause D.1.8.3.1.

Clause D.1.8.3.3 requires that soft landscaping be provided to 50% of the front setback area (calculated as if the land were zoned R2, which is the most appropriate categorisation). The proposed soft landscaping in the front setback is 21%. This is a breach of Clause D.1.8.3.

The objectives of Part D.1.8 are:

- *To ensure residential developments have a high standard of amenity by controlling the proportion of the site which must be landscaped to achieve adequate open space and reasonable privacy.*
- *To enhance the visual quality and amenity of the residential areas.*
- *To maximise absorptive landscaped areas for on-site infiltration of stormwater.*
- *To ensure that the predominant landscape character of the area is maintained.*
- *To ensure tree planting takes into account the location of existing roof mounted solar energy systems.*

The proposed dwelling-house will not achieve the above objectives for the following reasons:

- It will not provide an adequately landscaped setting for the dwelling house in the streetscape.
- It will provide low quality visual quality and amenity for the dwelling house.
- The dwelling will not be consistent with the landscape character of the immediate locality.
- It will not maximise absorptive landscaped areas for on-site infiltration of stormwater.

#### Clause D.1.9 Private Open Space

Clause D.1.9 requires that the proposed dwelling provide a minimum of 158m<sup>2</sup> private open space. The proposal will provide 128m<sup>2</sup>, which is a breach of Clause D.1.9.

The objectives of Part D.1.9 include:

- *To provide usable, sufficient private open space for the reasonable recreational needs of residents.*

The proposed dwelling-house will not achieve the above because the non-compliant private open space will not be sufficient for the reasonable recreational needs of residents.

### **Townhouses**

#### WLEP 2012

|         |   | Calc by applicant   | Calc. by Council   | Standard            | Numerical Compliance |
|---------|---|---------------------|--|---------------------|----------------------|
|         | Site Area                                   |                     |  |                     | -                    |
| Cl.6.10 | Minimum lot size for multi dwelling housing | 4,842m <sup>2</sup> | 4,842m <sup>2</sup><br>2027m <sup>2</sup> (TH component) | 1,100m <sup>2</sup> | Yes                  |

|                        |                       | Calc by applicant   | Calc. by Council  | Standard  | Numerical Compliance   |
|------------------------|-----------------------|---|---|---|--|
| CI.4.3                 | Height (m)            | 10.5m (lift overrun of parish hall)<br>9.37m (multi dwelling housing)               | 10.5m (lift overrun of parish hall)<br>9.37m (multi dwelling housing)               | 9m  | No – see assessment of Clause 4.6 application below                    |
| TH - CI.4.4 & CI. 4.4A | GFA (m <sup>2</sup> ) | Lot 1 – 3390m <sup>2</sup><br>Lot 2 – 250m <sup>2</sup><br>Lot 3 -246m <sup>2</sup> | Lot 1 – 3390m <sup>2</sup><br>Lot 2 – 250m <sup>2</sup><br>Lot 3 -246m <sup>2</sup> | Lot 1 – 3389m <sup>2</sup><br>Lot 2 – 407m <sup>2</sup><br>Lot 3 -324m <sup>2</sup> | Yes  |
|                        | FSR                   | Lot 1 – 0.7:1<br>Lot 2 – 0.43:1<br>Lot 3 -0.53:1                                    | Lot 1 – 0.7:1<br>Lot 2 – 0.43:1<br>Lot 3 -0.53:1                                    | 0.70:1  |  |
| CI.6.8                 | Affordable housing    | Monetary contribution   | Affordable housing condition applicable   | Council to consider imposition one of the affordable housing conditions             | Yes (would be implemented via conditions if approval were recommended) |

## WDCP

|     |                      | Calc by applicant        | Calc. by Council   | WDCP Control   | Numerical Compliance |
|-----|----------------------|--------------------------|--|--|----------------------|
| C.4 | Parking - cars       |                          | 24 + 3 visitors = 27   | 1.25 / 3+ bed dwelling (x 12 = 15)<br>1 visitor space / 4 dwellings (3)<br>Total = 18              | Yes                  |
| C.4 | Parking - motorcycle | 3                        | 3  | 1/25 spaces (1)  | Yes                  |
| C.4 | Parking - bicycles   | N/A                      | 5 rails/racks<br>0 lockers                                   | 1 locker per 10 units (1) plus 1 rail/rack per 12 units (1)  | No, but satisfactory |
| C.6 | Adaptable housing    | 4                        | 4  | 3 storey - 33% (12x 35%) = 4.2 (which equates to 4)  | Yes                  |
| C.6 | Adaptable car space  | 4                        | 4  | 1 space  | No                   |
| C.8 | Waste management     | Bins in GFL storage room | Bins in GFL storage room                                     | Bins for kerbside collection   | Yes                  |
| C.9 | Tree Preservation    | N/A                      | 20 non-exempt trees to be removed, 34 proposed to be planted | Where trees are approved for removal, replacement planting is required at a rate of 3:1 (60 trees) | No                   |



|         |  | Calc by applicant   | Calc. by Council   | WDCP Control   | Numerical Compliance                         |
|---------|--|---|--|--|--|
| C.12.6  | Front Fencing - Multi dwelling housing     | Front fence to 1.8m and incorporates openings with minimum 50% transparency | Front fence to 1.8m and incorporates openings with minimum 50% transparency  | Front fence permitted up to 1.8m where fencing incorporates openings or consists of vegetation with minimum 50% transparency                         | Yes  |
| D.2.5   | Density and height                         | Does not comply with height   | Does not comply with height  | Comply with WLEP height and FSR  | No (but see Clause 4.6 variation assessment) |
|         | Density and Height                         | N/A   | Third storey of the development has > 60 percent of the area of the floor below  | Third storey of the development have a maximum of 60 percent of the area of the floor below.   | No   |
|         | Density and height                         | All 3 bedroom   | 4 x 3 bedroom<br>8 x 4 bedroom   | Provide mix of dwelling sizes (1, 2 and 3 bedrooms)  | Yes  |
| D.2.6   | Building mass and form                     | Flat roofs proposed but the streetscape is predominantly pitched roof.      | Flat roofs proposed but the streetscape is predominantly pitched roof.   | Flat roofs will be permitted where it can be shown that they are compatible with other flat roofed buildings in the streetscape.                     | No   |
| D.2.7.3 | Site coverage                              |   | 1018m <sup>2</sup> = 50% x 2027m <sup>2</sup> (TH component of Lot 1)<br><br>2086m <sup>2</sup> = 43% of 4842m <sup>2</sup> (total Lot 1 not including church forecourt) | Max 30% x 2027m <sup>2</sup> (TH section of Lot 1) = 608m <sup>2</sup> .<br><br>Max 30% x 4,842m <sup>2</sup> (whole of Lot 1) = 1,452m <sup>2</sup> | No   |
| D.2.8.3 | Front Setback (m)                          | 5.45m   | 5.45m (Merrenburn Ave)<br>7.5m-10.2m (Willoughby Rd)   | Conforming with the existing front setbacks or 7.5m if no established building line  | Partial non-compliance (Merrenburn Ave)      |
|         | Side setback-Merrenburn Ave (TH 4)         | N/A   | GFL – 10.35m<br>L1 – 10.35m<br>L2 – 10.35m   | GFL – 3m<br>L1 – 4.2m<br>L2 – 5.4m   | Yes  |
|         | Side setback-Willoughby Rd (TH 1) (corner) | N/A   | GFL – 7.5m<br>L1 – 6.4m<br>L2 – 7.5m   | GFL – 3m<br>L1 – 3m<br>L2 – 3m   | Yes  |
|         | Rear Setback – (THs 9 to 12)               | GFL – 4m<br>L1 – 4.6m   | GFL – 12.15m<br>L1 – 12.45m<br>L2 – 16.05m   | GFL – 3m<br>L1 – 4.2m<br>L2 – 5.4m   | Yes  |

|            |                         | Calc by applicant   | Calc. by Council  | WDCP Control   | Numerical Compliance                         |
|------------|-------------------------|---|---|--|--|
| D.2.9.3.1  | Recreational area       | N/A   | $1120\text{m}^2 = 55\% \times 2027\text{m}^2$<br>$1120\text{m}^2 = 23\% \times 4842\text{m}^2$ (whole of Lot 1)   | Min $52\% \times 2027\text{m}^2 = 1054\text{m}^2$<br>Min $52\% \times 4,842\text{m}^2$ (whole of Lot 1) = $2517\text{m}^2$ | Yes (for TH area)<br>No (for whole of Lot 1) |
| D.2.9.3.4  | Outdoor open space      | N/A   | 100% (1120m <sup>2</sup> )  | >80% recreational area (896m <sup>2</sup> )  | Yes  |
| D.2.9.3    | Private open space      | TH 1 – 131m <sup>2</sup> + 48m <sup>2</sup><br>TH 2 – 32m <sup>2</sup> + 27m <sup>2</sup><br>TH 3 – 32m <sup>2</sup> + 27m <sup>2</sup><br>TH 4 – 31m <sup>2</sup> + 105m <sup>2</sup><br>TH 5 – 60m <sup>2</sup> + 27m <sup>2</sup><br>TH 6 – 71m <sup>2</sup> + 31m <sup>2</sup><br>TH 7 – 71m <sup>2</sup> + 31m <sup>2</sup><br>TH 8 – 71m <sup>2</sup> + 31m <sup>2</sup><br>TH 9 – 57m <sup>2</sup> + 27m <sup>2</sup><br>TH 10 – 67m <sup>2</sup> + 31m <sup>2</sup><br>TH 11 – 71m <sup>2</sup> + 31m <sup>2</sup><br>TH 12 – 71m <sup>2</sup> + 31m <sup>2</sup> | TH 1 – 131m <sup>2</sup> + 48m <sup>2</sup><br>TH 2 – 32m <sup>2</sup> + 27m <sup>2</sup><br>TH 3 – 32m <sup>2</sup> + 27m <sup>2</sup><br>TH 4 – 31m <sup>2</sup> + 105m <sup>2</sup><br>TH 5 – 60m <sup>2</sup> + 27m <sup>2</sup><br>TH 6 – 71m <sup>2</sup> + 31m <sup>2</sup><br>TH 7 – 71m <sup>2</sup> + 31m <sup>2</sup><br>TH 8 – 71m <sup>2</sup> + 31m <sup>2</sup><br>TH 9 – 57m <sup>2</sup> + 27m <sup>2</sup><br>TH 10 – 67m <sup>2</sup> + 31m <sup>2</sup><br>TH 11 – 71m <sup>2</sup> + 31m <sup>2</sup><br>TH 12 – 71m <sup>2</sup> + 31m <sup>2</sup> | 3+ bed - 60m <sup>2</sup> + 15m <sup>2</sup> per dwelling  | No (but satisfactory)                        |
| D.2.10.3   | Soft landscaping        | N/A   | 161m <sup>2</sup> (8% x 2027m <sup>2</sup> )<br>570m <sup>2</sup> (12% x 4,842m <sup>2</sup> (whole of Lot 1))  | 709m <sup>2</sup> (35% x 2027m <sup>2</sup> )<br>1694m <sup>2</sup> (35% x 4,842m <sup>2</sup> (whole of Lot 1))           | No   |
| D.2.10.3.3 | Streetscape landscaping | Trees provided  | Landscape plans contain insufficient information  | Canopy trees should be planted in the front setback area.  | No   |

|          |              | Calc by applicant | Calc. by Council   | WDCP Control  | Numerical Compliance |
|----------|--------------|-------------------|--|---|----------------------|
| D.2.11.3 | Privacy      | N/A               | Openings of adjacent dwellings separated by a distance of at least 3m or separated by wall   | Openings of adjacent dwellings should be separated by a distance of at least 3m.  | Yes                  |
| D.2.11.3 | Privacy      | N/A               | Bedroom windows at least 3m from shared streets, driveways, service and parking areas of other dwellings.                          | Bedroom windows are to be at least 3m from shared streets, driveways, service and parking areas of other dwellings.               | Yes                  |
| D.2.13.3 | Solar access | N/A               | >3 hours between 9am to 3pm on 22 June to recreational open space and north facing living areas of adjoining residential buildings | 3 hours between 9am to 3pm on 22 June to recreational open space and north facing living areas of adjoining residential buildings | Yes                  |
| D.2.13.3 | Solar access | N/A               | TH9 receives only approx. 1 hour direct sunlight on 22 June.   | Maximise the entry of winter sun and minimise the entry of summer sun to most of the habitable rooms and private open spaces      | No                   |

### Non-compliances

#### Draft Willoughby LEP

The draft Willoughby LEP was placed on exhibition by Council from 15 March to 8 June 2022. As such, the draft WLEP may be considered by Council in its assessment under Section 4.15 of *Environmental Planning and Assessment Act 1979*.

Clause 6.21 (Urban Heat) of the draft WLEP states:

*(2) In deciding whether to grant development consent for the purposes of commercial premises, industries or residential accommodation, the consent authority must consider whether—*

...

*(e) the development accommodates sufficient tree canopy, open space and deep soil zones to achieve urban cooling benefits,*

*(3) In this clause—  
deep soil zone—*

*(a) means the soft landscaped part of a site area used for growing trees, plants and grasses that—*

*(i) is unimpeded by buildings or structures above and below ground, and*

*(ii) provides opportunities for groundwater infiltration and canopy trees, and*

*(b) does not include basement car parks, services, swimming pools, tennis courts and impervious surfaces including car parks, driveways and roof areas.*



As noted below, the proposal includes insufficient numbers of replacement trees as required by the WDCP. Furthermore, the landscape plans lodged with the proposal contain insufficient information to determine the location of canopy trees. The proposal also fails to provide adequate soft landscaping, which is equivalent to deep soil landscaping.

The proposal therefore breaches Clause 6.21 (Urban Heat) of the draft WLEP.

## WDCP

### Clause C.4 Transport Requirements for Development

An objective of Clause C.4 is to *provide for the safe, convenient, and efficient movement and accommodation of vehicles within the City*

Council's engineer has advised that the proposal does satisfy the above objective for the following reasons:

- *While swept path diagrams have been provided for Town House 9, they do show that the exiting vehicle uses the full width of the entry ramp, with views of on-coming traffic restricted and requiring the use of mirrors. This is not considered an acceptable solution.*
- *We do not believe that the proposed mirrors provide an acceptable solution for managing the one-way section of the ramp, particularly given the angled entry to the ramp and that views of vehicles exiting town house 5 are also restricted.*
- *The plan for the vehicle crossing did not clearly show the location of any existing street trees in the area, so we cannot assess the impact.*
- *There does not appear to be any provision made for service vehicles. We note that the DCP only requires access for removalist vehicles for residential development in excess of 12 units. However, given the site usage is combined with the Church, there should be provision for deliveries.*
- *We have reviewed the traffic report that details that access to the 25 spaces proposed for the Church will be freely available using key cards / access codes. We believe that this is a concern, as it is not clear that this can be managed and that the spaces won't be used, contributing to Church visitors parking on the street.*

### C.6.2.2 Accessible Car Parking

Clause C.6.2.2 WDCP requires that one accessible car space be provided for each adaptable unit. As there are four adaptable units, four accessible car spaces are required. The proposal provides no accessible car spaces, which is a breach of Clause C.6.2.2 WDCP.

The objective of Part C6 Access, Mobility and Adaptability is to provide equitable access to residents. The proposal will not achieve that objective.

### Clause C9 Vegetation Management

Clause C9.6 Replacement Trees requires that where Council consents to the removal of an existing tree it will require the replanting of trees at a rate of 3:1. The proposal includes the removal of 20 non-exempt trees to be removed, which requires that 60 are planted. Only 34 proposed to be planted. This is a breach of Clause C9.6.

The objectives of Part C9 Vegetation Management include the following:

- *provide safe and enjoyable living spaces for residents and visitors*

- *prevent unnecessary damage or removal of trees and other vegetation*
- *maintain and enhance the urban landscape*
- *increase tree canopy to mitigate urban heat island effects*

The proposal will not achieve the above objectives because:

- The Landscape Plans contain inadequate information to adequately determine the location of proposed vegetation;
- It will not adequately maintain and enhance the urban landscape.
- The intensification of use on the site requires a high standard of landscaping to provide a landscaped setting for the residences.
- Additional canopy trees are required to enable Council to meet its objective to increase total tree canopy tree coverage from 36% to 40% as required by the North District Plan and Council's Local Strategic Planning Statement.

#### Clause D.2.6 Design and Streetscape Qualities

Clause D.2.6.2.7 states:

*For developments in areas of good established streetscapes with consistent stylistic or architectural character, the design of new buildings should be integrated into and not contrast with the existing streetscape, in particular with roof forms, building height and proportions of building elements.*

Clause D.2.6.2.9 states:

*External building materials and finishes, in particular for street facades and roofing, should not contrast with the existing character of the street.*

Clause D.2.6.3 states:

*The development should take account of the existing pattern of residential development, reinforce the streetscape character and respect the elements which contribute to this character, which include the form of surrounding buildings, their setbacks, their landscaped open space and the function of the street. A new development, when viewed from the street, should be compatible with the character of existing buildings in the site's visible locality. The development and landscaping at the street frontage should enhance the streetscape and neighbourhood character.*

Clause D.2.6.3.4 states:

*Where pitched roofs are used, the roof form should be similar to (but not more than 5 degrees below) the angle of pitch of predominant roof forms of surrounding properties. Where adjacent roofs are flat, steeper roof pitches that contribute to the streetscape can be used. Flat roofs will be permitted where it can be shown that they are compatible with other flat roofed buildings in the streetscape.*

The proposed roofs are flat. The roofs within the visual catchment of the townhouses are pitched or flat as follows:

Pitched - Catholic Church (onsite), Anglican church (205 Merrenburn Avenue), 248 Willoughby Rd, Naremburn School (250 Willoughby Rd), 252 Willoughby Rd, 254-268 Willoughby Rd, St Josephs convent (36 Merrenburn Ave)

Flat – 270 Willoughby Rd, 272 Willoughby Rd, 32 Donnelly Road, hall to rear of Anglican church (205 Merrenburn Avenue).

Of the flat roof structures, only the hall to the rear of Anglican church (205 Merrenburn Avenue) is readily visible. Therefore, on balance the predominant streetscape pattern in the locality is of pitched roofs. The proposed flat roof building is not compatible with the streetscape pattern. The proposed roof form of the townhouses fails to acknowledge the architectural elements of nearby heritage items and the civic precinct in general.

The statement in Clause D.2.6.3.4 that *Flat roofs will be permitted where it can be shown that they are compatible with other flat roofed buildings in the streetscape* is best understood as applying when the locality contains a significant number of flat roofs as an element of the streetscape. Otherwise all the other controls requiring that the existing streetscape character be respected would be of no effect.

#### Clause D.2.7.3 Site coverage

Clause D.2.7.3 requires that the maximum site coverage of the development is 30% of the site. This control sits within Part D2 of the WDCP which only applies to attached dwellings, multi dwelling housing, and residential flat buildings. In the current context, the only relevant part of the development is the multi dwelling housing. The multi dwelling housing (town houses) is located in a clearly distinct part of the site, and the most reasonable application of the controls in Part D2 is to that part of the site, as opposed to the whole site which includes the Church hall, Church and publicly accessible plaza. The part of the site subject to the town houses (north of the parish hall) has an area of 2027m<sup>2</sup> (referred to as 'the TH site', indicated in blue lines in Figure 18 below).



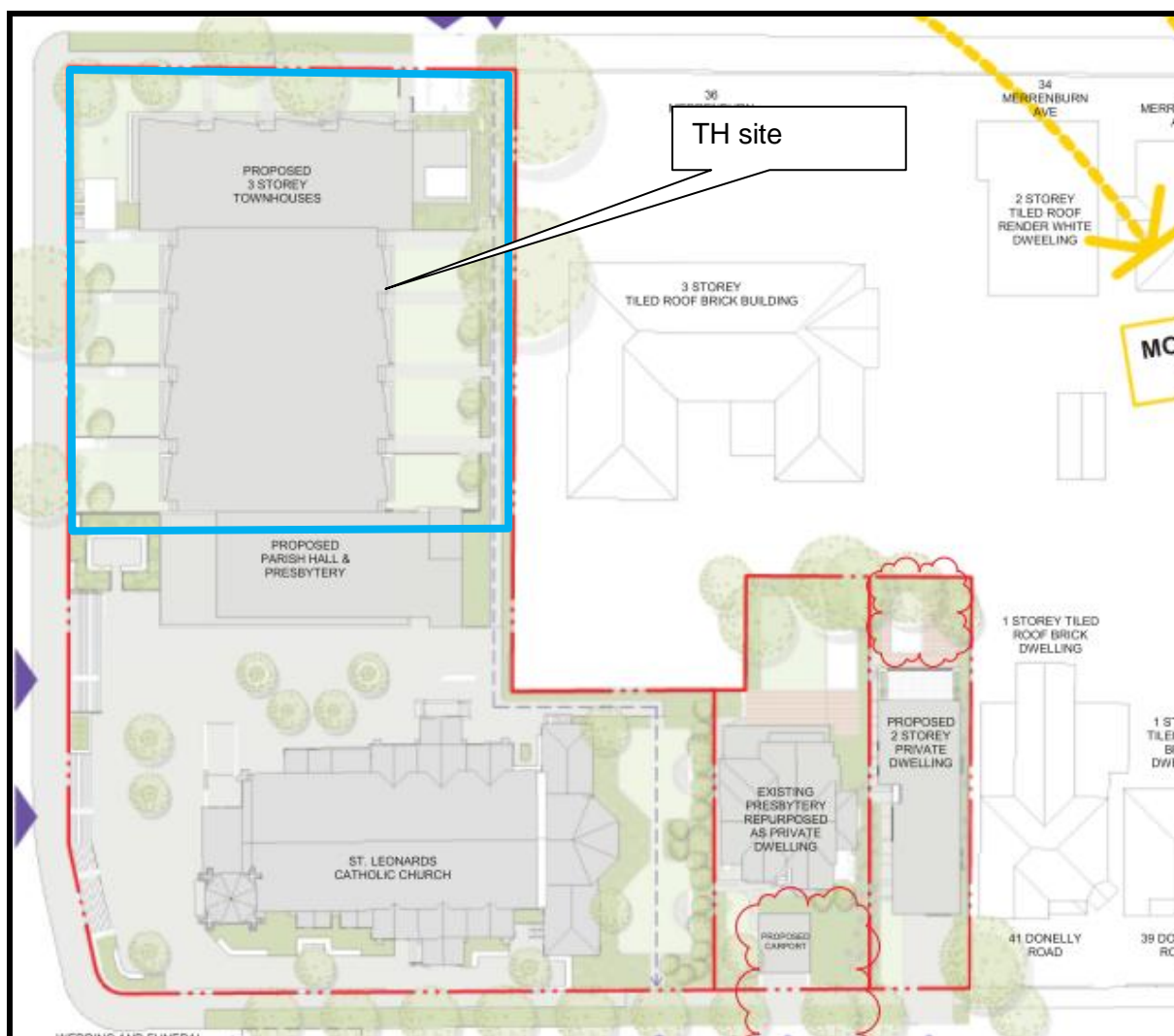


Figure 18: TH site (Extract from Architectural plans lodged by applicant)

If the site is taken to be the TH site, the maximum permissible site coverage is 608m<sup>2</sup> (30% site area). The proposed site coverage is 1018m<sup>2</sup> (50% site area), which is a breach of Clause D.2.7.3.

If the site is taken to be the whole of proposed Lot 1, the maximum permissible site coverage is 1,452m<sup>2</sup> (30% site area). The proposed site coverage is 2086m<sup>2</sup> (43% of 4842m<sup>2</sup>), which is also a breach of Clause D.2.7.3.

The objective of Part D2.7 is:

*To ensure attached dwellings, multi dwelling housing and residential flat buildings have a high standard of amenity by controlling the proportion of site which may be covered by buildings to achieve adequate open space and reasonable privacy.*

The proposal will not achieve the above objective because while the proposed townhouses contain satisfactory private open space, the large breach of the site coverage control indicates the proposal does not provide adequate total open space (which includes communal open space).

#### Clause D.2.8.3 Front Setback

Clause D.2.8.3 states that subject to conforming with the existing front setbacks of the street, a minimum 7.5m front setback is to apply.

The prevailing street setback in Merrenburn Avenue is approximately 7m. The proposed setback from Merrenburn Avenue is 5.4m, which is a breach of Clause D.2.8.3.

The objectives of Part D2.8 include:

- *To provide setbacks that spatially define the street, complement the streetscape and allow for landscaping and open space.*
- *To ensure the siting of new buildings contribute to the existing or proposed streetscape character.*

The proposal will not achieve the above objectives because:

- The proposal does not provide adequate soft landscaping, and the front setback non-compliance contributes to this.
- The proposal will be inconsistent with the streetscape in Merrenburn Avenue, and with greater intensity of use than the single detached dwellings in Merrenburn Avenue.

#### Clause D.2.9.3.1 Recreational Area

If the site is taken to be the TH site, the minimum recreational area is 1,054m<sup>2</sup> (30% site area). The proposed recreational area is 1,120m<sup>2</sup>, which complies with Clause D.2.9.3.1.

If the site is taken to be the whole of proposed Lot 1, the minimum recreational area is 2,517m<sup>2</sup>. The proposed recreational area is 1,120m<sup>2</sup>, which is a breach of Clause D.2.9.3.1.

The objectives of Part D2.8 include:

- *To provide a range of usable, attractive and accessible landscaped outdoor spaces and recreation areas for the use of the occupants of the dwellings.*
- *To achieve a high standard of amenity in attached dwellings, multi dwelling housing and residential flat buildings.*

The proposal will not achieve the above objectives because:

The lack of recreational area will adversely affect the amenity of residents.

#### Clause D.2.10.3 Landscaping

If the site is taken to be the TH site, the minimum area of soft landscaping is 709m<sup>2</sup>. The proposed area of soft landscaping is 161m<sup>2</sup>, which breaches Clause D2.10.3.

If the site is taken to be the whole of proposed Lot 1, the minimum area of soft landscaping is 1,694m<sup>2</sup>. The proposed area of soft landscaping is 570m<sup>2</sup>, which breaches Clause D2.10.3.

The objectives of Clause D2.10.3 are:

- *To provide high quality and attractive landscaping which enhances the setting of the buildings in the streetscape.*
- *To ensure landscaping provided at ground level is sensitive to site attributes such as streetscape character, land capability, microclimate, the natural landform, existing vegetation, views and vistas, and responds to local landscape environments (e.g. water courses or bushland).*

- To provide landscaping which enhances the amenity of a development by allowing for adequate open space, sunlight and shade.
- To provide absorptive landscaped areas for on-site infiltration of stormwater.
- To provide landscaping as a means of maintaining the amenity of surrounding development.

The proposal does not achieve the above objectives for the following reason:

The large non-compliance will result in a site that contains excessive hard surface, generates a heat island effect, does not contain sufficient vegetation and will not provide the canopy trees required to maintain the amenity of surrounding development.

Clause D.2.10.3.3 requires that canopy trees should be [planted in the front setback area. The landscape plans contain insufficient information to determine if this is the case, as the plans list species but do not indicate their precise location.

#### D.2.13.3 Solar Access

Clause D.2.13.3 requires that:

*New developments are to be designed to maximise the entry of winter sun and minimise the entry of summer sun to most of the habitable rooms and private open spaces of the dwelling units by the siting and orientation of the buildings and the use of appropriate landscaping and sun screening methods.*

The living areas on the Ground Floor Level of Unit 9 will receive 1-2 hours direct sunlight on 22 June. This is caused by the bulk and configuration of the proposed built form. This is a breach of Clause D.2.13.3.

#### **Referrals**

| Building services | Recommended standard conditions   |
|-------------------|---|
| Engineering       | <p>Proposal not acceptable</p> <p><u>Stormwater</u></p> <p>1. Unsatisfactory justification for why the outlet of the OSD tank is not above the downstream water level:</p> <ul style="list-style-type: none"><li>- The HGL analysis provided for the proposed downstream pipe system shows that the orifice is “drowned” even in a 5% AEP / 1 in 20year storm event, as the water level at the OSD tank is 80.549 and the invert level of the tank is 79.73m.</li><li>- The Drains file provided does not include the downstream pipe network. As such, the orifice will be modelled as free flowing and not drowned. As such, the model provided does not address the issue of the downstream water level, even in smaller storm events.</li><li>- Unless the analysis is undertaken for both the free flowing and drowned scenarios, it is not possible to determine if the OSD system will operate as designed in all storm events up to the 1%AEP storm, Council’s design event for OSD systems.</li><li>- Regardless of the analysis, Council does not support designs where the outlet is drowned, particularly for smaller storm events. As the orifice is lower than the downstream water level, it results in a situation where backflow can</li></ul> |



|                      |  |
|----------------------|--|
|                      | <p>occur from the downstream system, potentially resulting in blockage of the system or higher maintenance requirements.</p> <ul style="list-style-type: none"> <li>- The OSD system needs to be located above the downstream water level. This may require that the system is divided and OSD provided in more than one location of the site, such as one system for runoff from the roof and another for runoff from ground surfaces.</li> <li>- The overflow for the tank is not acceptable, as it involves an internal weir. Overflow from OSD tanks must be to a ground surface as overland flow, in a visible location. The location needs to be shown on the plans. The section and details provided also do not confirm that the required freeboard between the OSD overflow level and the adjacent floor levels is achieved.</li> </ul> <p><u>Parking and vehicle access</u></p> <ul style="list-style-type: none"> <li>- While swept path diagrams have been provided for Town House 9, they do show that the exiting vehicle uses the full width of the entry ramp, with views of on-coming traffic restricted and requiring the use of mirrors. This is not considered an acceptable solution.</li> <li>- We do not believe that the proposed mirrors provide an acceptable solution for managing the one-way section of the ramp, particularly given the angled entry to the ramp and that views of vehicles exiting town house 5 are also restricted.</li> <li>- The plan for the vehicle crossing did not clearly show the location of any existing street trees in the area, so we cannot assess the impact.</li> <li>- there does not appear to be any provision made for service vehicles. We note that the DCP only requires access for removalist vehicles for residential development in excess of 12 units. However, given the site usage is combined with the Church, there should be provision for deliveries.</li> <li>- We have reviewed the traffic report that details that access to the 25 spaces proposed for the Church will be freely available using key cards / access codes. We believe that this is a concern, as it is not clear that this can be managed and that the spaces won't be used, contributing to Church visitors parking on the street.</li> </ul> |
| Environmental Health | Recommended approval subject to standard conditions.   |
| Waste                | Recommended approval.  |
| Landscape            | <p>Recommended approval subject to conditions requiring 26 additional trees.</p> <p><b>Comment:</b> Council's landscape officer has recommended approval of the proposed species of vegetation, subject to conditions. However, the proposal does not satisfy the objectives of Part C9 Vegetation Management of the WDCP because:</p> <ol style="list-style-type: none"> <li>1. The Landscape Plans contain inadequate information to adequately determine the location of proposed vegetation;</li> </ol>  |

|          |  |
|----------|--|
|          | <p>2. The proposal includes the removal of 20 non-exempt trees, which Clause C9.6 WDCP requires to be replaced with 60 trees. Only 34 replacement trees are proposed to be planted.</p>  |
| Traffic  | <p>Recommended approval subject to consideration of the following measures to support safe movement and access to motor vehicle, bicycle and pedestrians to/ from the site.</p> <ul style="list-style-type: none"> <li>▪ Further information to confirm that the design of the access arrangements and on-site car parking provision adequately meets the need of the operation of the Parish Hall i.e. there is no parking on street as a result of the operation of the site (Church alone, Parish Hall alone and Church and Parish Hall together).</li> <li>▪ A 12 metre No Parking Wedding or Funeral Vehicles Excepted in Donnelly Road</li> <li>▪ Shared paths, associated connections to on-road measures and signs and markings along Donnelly Road, Willoughby Road and Merrenburn Avenue</li> <li>▪ A 1.0metre wide x 7.5metres long dedication of land from the development site in the vicinity of the bus zone and shelter to provide a 2.0metre minimum shared path at the rear (between shelter and development site) to support a safe and compliant shared path along Willoughby Road at the existing bus stop/ shelter.</li> <li>▪ New and modifications to existing parking restrictions in Merrenburn Avenue</li> <li>▪ The bicycle access into/ out of the site, to Australian Standards/ Austroads Guidelines etc will also need to be identified for safe movement on the site and to/ from the public road network.</li> <li>▪ An adequate number of on-site parking/ storage and end-of-trip facilities for bicycles.</li> <li>▪ Management Plan for the car park with access to/ from Merrenburn Avenue is developed and used so that queues in Merrenburn Avenue at peak times of traffic generation of the site do not create safety and movement problems into the car park.</li> </ul> |
| Heritage | <p>Proposal not acceptable</p> <p>The removal of the school building does not respect the context, character and setting of the Church, other nearby heritage items and the surrounding civic precinct.</p> <p>The new house proposed between the Presbytery and No. 41 Donnelly Road to be deleted from the proposal to allow for a visual setting and landscaped area, including deep soil landscaping, appropriate to the landmark qualities of the Church building and its associated presbytery building.</p>   |

### **ATTACHMENT 3: SUBMISSIONS TAB**

Council was in receipt of 20 individual submissions from the following properties (duplications indicate more than one discrete objection from same address).

1. 268 Willoughby Rd, Naremburn
2. 268 Willoughby Rd, Naremburn
3. 1/30 Donnelly Road, Naremburn
4. 28 Donnelly Road, Naremburn
5. 32 Merrenburn Ave, Naremburn
6. 37 Donnelly Road, Naremburn
7. 41 Donnelly Road, Naremburn
8. 31 Edinburgh Rd, Willoughby East
9. 31 Edinburgh Rd, Willoughby East
10. 14 Dargan St, Naremburn
11. 14 Dargan St, Naremburn
12. 2 Bushells Rd, Peats Ridge
13. 3/30 Donnelly Road, Naremburn
14. 31 Victor St, Chatswood
15. 34 Market St, Naremburn
16. 34 Merrenburn Avenue, Naremburn
17. 35 Donnelly Road, Naremburn
18. 39 Donnelly Road, Naremburn
19. Willoughby District Historical Society & Museum, 58 Johnson St, Chatswood
20. Naremburn Progress Association

### **Issues Raised**

1. The proposed subdivision of the Presbytery grounds for the erection of an infill dwelling will destroy the immediate heritage curtilage of the Presbytery (which has architectural merit even though not heritage listed), broader heritage curtilage of the heritage listed Church, and the heritage amenity of Donnelly Road.
2. The proposed construction of infill two storey dwelling will be an overdevelopment of the site. It will reduce the amount of greenspace, increase the area of impervious surface and reduce parking opportunities in Donnelly Road
3. The two-story box like proposed infill dwelling squeezed into an extremely narrow block is completely out of character with the heritage streetscape formed by the Church, the Presbytery, and all adjoining Federation style homes in Donnelly Road.
4. The narrow width of land for the proposed new dwelling is inappropriate given the very close proximity to both the existing Presbytery and the house next door and appears to result in significant loss of both green space including the cutting of established trees and bushes and diminishes the character of the street and the area to the detriment of residents.

5. Whilst the Church building is to stay intact, the scale, the style and bulk of the surrounding buildings will detract from this important sites 'eritage value.
6. Adverse visual massing, solar and privacy impacts on 41 Donnelly Road.
7. Removal of vegetation along boundary with 41 Donnelly Road will reduce amenity and privacy for 41 Donnelly Road.
8. Adverse privacy impacts on 34 Merrenburn Avenue.
9. Loss of privacy and landscaping amenity for 39 Donnelly Road.
10. The existing school building has high heritage significance, should be heritage listed and should not be demolished.
11. The existing school hall holds significance to those who attended the school, and to the local community.
12. The school site should be preserved and kept for community use.
13. The school is located in an area that the National Trust identified as historically significant situated in the Naremburn Historical Conservation area. While Council does not include this area in its heritage maps as conservation area, a national body recommended that 'the Civic area is worthy of classification because of its local importance visually (as a focus) and the intact nature of its fine buildings'.
14. The proposal should comply with the minimum required setbacks and maximum height controls dictated by Councils DCP.
15. The proposed driveway and cross-over to the basement parking for the proposal will add to already existing traffic delays and problems.
16. The area does not have capacity to support further densification.
17. The area needs schools and the school building should be used as such.
18. The site currently provides community access to hall hire, children's activities and welfare. The proposal will remove these public services.
19. There are contaminants on site.
20. The removal of 33 mature trees and green space is unacceptable.
21. The big tree near the church should be retained.
22. Lack of trees at corner of Merrenburn Avenue and Willoughby Rd does not reflect the size of the development.
23. The dark colours and metal elements will add to the heat island affect alongside the removal of mature trees.
24. The plans indicate that there will be 3-4 swimming pools onsite and whilst there are water tanks installed this number of pools would indicate that water usage and treatment with chemicals is not a sustainable undertaking.
25. The design of the proposed town houses is not in keeping with the style and design of St Leonards Church or the neighbouring St Joseph's Convent.
26. The development on site will have excessive bulk and scale.
27. The overall bulk and scale of the proposal and loss of visual amenity, noting the new buildings are not sensitive to surrounding existing residences, many of which exhibit



strong Federation features more than 100 years old and with gabled roofs, whilst the new buildings have flat roofs and somewhat bland exteriors. All the proposed new buildings exceed height limits, so are in contravention of current LEP regulations.

28. The proposed style fails to acknowledge any architectural elements of its heritage neighbours.
29. Increased demand for parking in Donnelly Road.
30. Residents along Willoughby Rd will be affected by the noise from the balconies and pool located in this corner. Pool should be enclosed.
31. Elevated communal areas should have enough vegetation to mute excessive noise for surrounding neighbours in the complex and along Willoughby Rd.
32. There should be a late night time restriction on the use of the hall to prevent excessive noise from people leaving the premises.
33. Insufficient parking provided.
34. Car emissions produced by additional cars using the facility may create further pollution to the surrounding areas very close to Residents and shops.

**Response:**

For the reasons set out in this report, the proposed townhouses and the new dwelling fail to acknowledge the architectural elements of nearby heritage items and the locality. The new dwelling house will adversely impact the amenity of neighbours. Landscaping, stormwater treatment and parking arrangements are inadequate. It is therefore proposed to refuse the DA.

All of the above submissions will be addressed by the proposed refusal of the DA.

ATTACHMENT 4: APPLICANT'S CLAUSE 4.6 SUBMISSION – HEIGHT

# WILLOWTREE PLANNING

14 October 2021



Ref: WTJ21-159  
Contact: Charbel Ishac



## CLAUSE 4.6 VARIATION: HEIGHT OF BUILDINGS

Proposed Demolition of Existing School Building. Additions to St Leonard's Church Comprising Parish Hall and Presbytery, Construction of Multi-Dwelling Housing, Conversion of Existing Presbytery to a Dwelling and Construction of a Dwelling House

43 Donnelly Road Naremburn  
Lot 1 DP 115889, Lot A DP 341975 and Lot 1 DP 320984

—  
Prepared by Willowtree Planning Pty Ltd  
on behalf of Metro Property Development

ACN: 146 035 707 ABN: 54 146 035 707  
Suite 4, Level 7, 100 Walker Street  
North Sydney, NSW 2060

enquiries@willowtp.com.au  
willowtreeplanning.com.au  
02 992 9 6974



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#### Clause 4.6 Variation - Height of Buildings

Proposed Demolition of Existing School Building, Additions to St Leonard's Church Comprising Parish Hall and Presbytery, Construction of Multi-Dwelling Housing, Conversion of Existing Presbytery to a Dwelling and Construction of a Dwelling House

43 Donnelly Road Naremburn (Lot 1 DP 115889, Lot A DP 341975 and Lot 1 DP 320984)



#### DOCUMENT CONTROL TABLE

|                            |  |                                   |                                   |
|----------------------------|--|-----------------------------------|-----------------------------------|
| Document Reference:        | WTJ21-159_Clause 4.6 Height of Buildings |                                   |                                   |
| Contact                    | Charbel Ishac                            |                                   |                                   |
| Version and Date           | Prepared by                              | Checked by                        | Approved by                       |
| Version No. 1 - 20/09/2021 | Charbel Ishac<br>Senior Planner          | Chris Wilson<br>Managing Director | Chris Wilson<br>Managing Director |
| Version No. 2 - 30/09/2021 | Charbel Ishac<br>Senior Planner          | Chris Wilson<br>Managing Director | Chris Wilson<br>Managing Director |
| Version No. 3 - 14/10/2021 | Charbel Ishac<br>Senior Planner          | Chris Wilson<br>Managing Director | Chris Wilson<br>Managing Director |

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**Clause 4.6 Variation - Height of Buildings**

Proposed Demolition of Existing School Building, Additions to St Leonard's Church Comprising Parish Hall and Presbytery, Construction of Multi-Dwelling Housing, Conversion of Existing Presbytery to a Dwelling and Construction of a Dwelling House

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#### Clause 4.6 Variation - Height of Buildings

Proposed Demolition of Existing School Building, Additions to St Leonard's Church Comprising Parish Hall and Presbytery, Construction of Multi-Dwelling Housing, Conversion of Existing Presbytery to a Dwelling and Construction of a Dwelling House  
43 Donnelly Road Naremburn (Lot 1 DP 115889, Lot A DP 341975 and Lot 1 DP 320984)



### PART A PRELIMINARY

#### 1.1 INTRODUCTION

This Clause 4.6 Variation request has been prepared in support of a Development Application (DA) for the proposed **mixed use development comprising the demolition of existing school building, additions to St Leonard's church comprising parish hall and presbytery as well as conservation works to St Leonard's Church and the existing presbytery, construction of multi-dwelling housing, conversion of existing presbytery to a dwelling and construction of a dwelling house** at 43 Donnelly Road, Naremburn (the Site). The Site is legally described as Lot 1 DP 115889, Lot A DP 341975 and Lot 1 DP 320984. The proposed non-compliance is related to clause 4.3 under *Willoughby Local Environmental Plan 2012* (WLEP2012), being the height of buildings. This Variation request has therefore been prepared in accordance with clause 4.6 of WLEP2012, which includes the following objectives:

- (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.

#### 1.2 PROPOSED NON-COMPLIANCE

Under the provisions of clause 4.3 in WLEP2012, the Site is subject to a maximum building height of 9m. The proposed development would result in a building height as outlined below:

- Existing St Leonard's Church: 15.9m (bell tower: 41.9m)
- Presbytery dwelling: 10.3m (existing)
- Proposed parish hall and presbytery: 10m (10.5m to lift overrun)
- Proposed multi dwelling housing: 9.37m
- Proposed dwelling house: 6.4m

The proposed development therefore exceeds the clause 4.3 building height control as outlined below.

| WLEP2012 Clause                   | WLEP2012 Development Standard | Proposed Non-Compliance                      | Variation      |
|-----------------------------------|-------------------------------|--|----------------|
| Clause 4.3<br>Height of Buildings | 9m                            | Presbytery dwelling: 10.3m (RL 92.75)        | 1.3m or 14.44% |
|                                   |                               | Parish hall and presbytery: 10.5m (RL 94.00) | 1.5m or 16.6%  |
|                                   |                               | Townhouses: 9.37m (RL 92.35)                 | 0.37m or 4.1%  |

The proposed development seeks to demolish the existing hall which comprises an existing non-compliance of 4.8m (53.3%) with a maximum height of 13.8m at its highest point. The proposed development also seeks to convert the existing presbytery to a dwelling which has an existing height non-compliance as outlined above.



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**Clause 4.6 Variation - Height of Buildings**

Proposed Demolition of Existing School Building, Additions to St Leonard's Church Comprising Parish Hall and Presbytery, Construction of Multi-Dwelling Housing, Conversion of Existing Presbytery to a Dwelling and Construction of a Dwelling House

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The Site also contains St Leonard's Church which has a height of 15.9m (bell tower: 41.9m) at it heights point resulting in an existing height non-compliance of 6.9m (76.7%) to the church and 32.9m (365.6%) to the bell tower.

This Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within clause 4.6 and the relevant development standards under WLEP2012. It considers various planning controls, strategic planning objectives and existing characteristics of the Site, and concludes that the proposed building height non-compliance is the best means of achieving the objective of encouraging orderly and economic use and development of land under section 5 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).



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#### Clause 4.6 Variation – Height of Buildings

Proposed Demolition of Existing School Building, Additions to St Leonard's Church Comprising Parish Hall and Presbytery, Construction of Multi-Dwelling Housing, Conversion of Existing Presbytery to a Dwelling and Construction of a Dwelling House  
43 Donnelly Road Naremburn (Lot 1 DP 115889, Lot A DP 341975 and Lot 1 DP 320984)



## PART B THRESHOLDS THAT MUST BE MET

### 2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of WLEP2012 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

*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.*

In addition, clause 4.6(4) states that (our emphasis added):

*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.*

Further to the above, clause 4.6(5) states the following (our emphasis added):

*In deciding whether to grant concurrence, the Planning Secretary must consider—*

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

Accordingly, a successful clause 4.6 variation must satisfy three limbs explained in detail below:

#### First Limb – cl 4.6(4)(a)(i)

Clause 4.6(4)(a)(i) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3).



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#### Clause 4.6 Variation - Height of Buildings

Proposed Demolition of Existing School Building, Additions to St Leonard's Church Comprising Parish Hall and Presbytery, Construction of Multi-Dwelling Housing, Conversion of Existing Presbytery to a Dwelling and Construction of a Dwelling House  
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These matters are twofold:

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*"Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3). Clause 4.6(3) requires the consent authority to have "considered" the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is "unreasonable or unnecessary" and that "there are sufficient environmental planning grounds to justify" the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced."*

Accordingly, a consent authority must be satisfied:

- a) that the clause 4.6 variation application addresses the matters in clause 4.6(3); and
- b) of those matters itself which means that there is greater scope for a consent authority to refuse a clause 4.6 variation.

The matters identified in the First Limb are addressed in **Sections 4.3 and 4.4** of this Variation Request.

#### Second Limb - clause 4.6(4)(a)(iii)

Clause 4.6(4)(a)(iii) provides that the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with:

- a. the objectives of the particular development standard; and
- b. the objectives for development within the zone in which the development is proposed to be carried out.

The opinion of satisfaction under cl 4.6(4)(a)(iii) differs from the opinion of satisfaction under cl 4.6(4)(a)(i) (ie the first limb) in that the consent authority must be directly satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the zone, not indirectly satisfied that the applicant's written request has adequately addressed those matters.

The matters identified in the Second Limb addressed in **Sections 4.1, 4.2 and 4.5** of this Variation Request.



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#### **Clause 4.6 Variation - Height of Buildings**

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#### Third Limb - clause 4.6(4)(b)

Clause 4.6(4)(b) requires that concurrence of the Secretary of the NSW Department of Planning, Industry and Environment (DPIE) has been obtained.

Clause 4.6(5) outlines the matters to be considered by the Planning Secretary in deciding whether to grant concurrence.

The matters identified in the Third Limb are addressed in **Sections 4.6** and **4.7** of this Variation Request.

#### Other relevant legal matters

The language used in a clause 4.6 variation application is of paramount importance. In the decision of *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 the court held that the applicant had inferred an entitlement to floor space and had asserted, expressly or by necessary inference, that floor space that would be forgone as a result of a variation not being permitted, would be required to be relocated elsewhere in a revised development. The court did not look favourably on this assertion and refused the variation to the development standard. Accordingly, the building envelope set by the development standards should be viewed as a maximum area and not an entitlement and language that infers an entitlement has the potential to jeopardise the success of the application.

The case law also outlines that it is important to focus on whether the exceedance that arises as a result of the variation to the development standard (in this case the exceedance of the maximum height of buildings standard) is consistent with the objectives rather than the totality of the whole development.

This written request has been prepared under clause 4.6 to request a variation to the "Height of Buildings" development standard at clause 4.3 of WLEP2012.



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#### **Clause 4.6 Variation - Height of Buildings**

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43 Donnelly Road Naremburn (Lot 1 DP 115889, Lot A DP 341975 and Lot 1 DP 320984)



### **PART C STANDARDS BEING OBJECTED TO**

#### **3.1 CLAUSE 4.3 HEIGHT OF BUILDINGS OF WLEP2012**

The development standard being requested to be varied is clause 4.3 Height of Buildings of WLEP2012, which provides the following:

##### **4.3 Height of buildings**

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

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

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

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

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

*(e) to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,*

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

*(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*

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

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The WLEP2012 map referred to in clause 4.3 identifies the Site as being subject to a maximum built height of 9m. Pursuant to clause 4.6 the proposed development seeks exception to the 9m building height standard prescribed by clause 4.3.



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#### Clause 4.6 Variation – Height of Buildings

Proposed Demolition of Existing School Building, Additions to St Leonard's Church Comprising Parish Hall and Presbytery, Construction of Multi-Dwelling Housing, Conversion of Existing Presbytery to a Dwelling and Construction of a Dwelling House

43 Donnelly Road Naremburn (Lot 1 DP 115889, Lot A DP 341975 and Lot 1 DP 320984)



### 3.2 PROPOSED VARIATION TO STANDARDS

The proposed development seeks approval for the proposed mixed-use development at 43 Donnelly Road Naremburn. The proposed development would result in a proposed maximum building height of 10.5m (RL 94.00) under clause 4.3 of WLEP2012.

**Table 1** outlines the proposed Variation to clause 4.3 of WLEP2012.

| TABLE 1. PROPOSED BUILDING HEIGHT VARIATION - WLEP2012 |   |  |                         |
|--|---|--|-------------------------|
| WLEP2012 Clause  | WLEP2012 Development Standard   | Proposed Development Non-Compliance          | Percentage of Variation |
| Clause 4.3<br>Height of Buildings                      | Clause 4.3 of WLEP2012 prescribes a maximum building height of 9m for the Site. | Presbytery dwelling: 10.3m (RL 92.75)        | 1.3m or 14.44%          |
|  |   | Parish hall and presbytery: 10.5m (RL 94.00) | 2.8m or 31.1%           |
|  |   | Townhouses: 9.37m (RL 92.35)                 | 0.37m or 4.1%           |

The Site is zoned R3 Medium Density Residential under the provisions of WLEP2012, whereby townhouses and places of public worship are permissible with consent. Notwithstanding, the proposed **dwelling houses** are expressly prohibited within the R3 zone pursuant to the WLEP2012. This Variation Request has been prepared in accordance with the objectives of clause 4.3 Height of Building and the R3 Medium Density Residential zone objectives of WLEP2012 as required in clause 4.6(4)(a)(ii).

This DA therefore relies upon what is reasonably concluded to be the underlying objectives of the standard and the R3 zone.



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#### **Clause 4.6 Variation - Height of Buildings**

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### **PART D PROPOSED VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS**

Pursuant to clause 4.6 of WLEP2012, exception is sought from the 9m height of buildings standard applicable to the Site pursuant to clause 4.3 of WLEP2012. Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

#### **4.1 OBJECTIVES OF THE STANDARD**

The objectives of clause 4.3 under WLEP2012 are as follows:

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

The proposed development is located within vicinity of a residential flat building (RFB) (34 Donnelly Road, Naremburn) of broadly similar bulk, scale and height in the immediate locality to the south of the Site. Further an existing dwelling house located to the south west of the Site has a similar height and scale to the proposed development.

The proposed bulk, scale and height is compatible with the existing development and desired future character within the locality. The proposed height will be compatible with the streetscape of Willoughby Road and Merrenburn Avenue, particularly to the context of future medium density development.

The proposed development seeks consent to convert the existing presbytery to a dwelling with an existing height non-compliance of 1.3m. Further, the existing character has clearly been established with the existing School Hall. The proposed townhouses, parish hall and presbytery seek consent for a maximum HOB of 10.5m which is lower than the existing School Hall which has a height of 13.8m therefore resulting in a net reduction in height. In addition and as identified in the Statement of Heritage Impact (SoHI) in **Appendix 17**, the building height is appropriate and sympathetic to the heritage item on Site being St Leonard's Church

As outlined above, the proposed development will not result in a material difference to the streetscape impacts and thus is in development is in harmony with the bulk and scale of surrounding buildings and the streetscape.

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

As stated above, the proposed development is of a height and scale less than the existing School Hall. As outlined within the SEE, the proposed HOB does not result in any significant amenity impacts on adjoining or nearby properties.



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The proposed height non-compliance ensures privacy to neighbouring properties as suitable measures have been proposed such as increased setbacks to the eastern boundary, glazing location, privacy screens and landscaping.

Further, the height non-compliance results in minimal overshadowing on neighbouring properties as depicted in the Shadow Diagrams in **Appendix 3**. In addition, the north facing windows of living areas of neighbouring properties continue to achieve in excess of 3 hours of sunlight between 9am and 3pm.

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

There are no waterways, public reserves or foreshores within the visual catchment of the proposed development. As outlined above in objective (a), the proposed height non-compliance results in a development with a lower HOB the existing School Hall as viewed from Willoughby Road and Merrenburn Avenue thus resulting in better streetscape amenity than the existing development.

Furthermore, the proposed development is compatible with the existing RFB to the south of the Site, is sympathetic to the heritage item on Site and has no material impact on visual quality as viewed from the neighbouring properties.

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

The proposed development results in building height less than the existing School Hall thus not only does the proposed have minimum disruptions to the existing views from adjacent development, it enhances it.

*(e) to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,*

The proposed development provides a complying Floor Space Ratio (FSR) and landscaping as depicted in the Architectural Plans and Landscape Plans attached in **Appendix 3** and **19** respectively.

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

The locality exhibits a character of a mix of single and double storey dwellings and four (4) storey RFB. The proposed development, although proposing a numerical building height non-compliance, does not significantly increase impacts on bulk and scale as the proposed development seeks a building height less than the existing School Hall. Given the above and Sites R3 zone, the proposed development is in keeping with the current and desired future character of the locality.



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#### Clause 4.6 Variation - Height of Buildings

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*(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,*

The Site is not located within the city centre of Chatswood.

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

The proposed development adheres to the objective of providing a transition in building scale in relation to the surrounding development, providing a built form that is reflective of the future character whilst ensuring key views are maintained from adjoining properties. The proposed urban design outcome provides a high level of visual interest, whilst continuing to provide a high level of residential amenity, for both the Site and adjoining properties.

In terms of transition, the sites to the north and east of the Site share the same height control whilst to the west and south of the Site have a 12m height control and once redeveloped will be of a similar height to the proposed development. It is considered this objective has been achieved.

#### 4.2 OBJECTIVES OF THE ZONE

The Site is currently zoned R3 Medium Density Residential under WLEP2012. Consistency with the R3 Medium Density Residential zone is addressed in **Table 2** below.

| TABLE 2. CONSISTENCY WITH THE R3 MEDIUM DENSITY RESIDENTIAL ZONE OBJECTIVES                        |   |
|--|---|
| Zone objectives  | Comments  |
| <b>R3 Medium Density Residential zone</b>  |   |
| To provide for the housing needs of the community within a medium density residential environment. | <p>The proposed development would provide housing within an established medium density locality, where people can access employment and other services. It would also positively contribute towards dwelling targets for the Willoughby LGA.</p> <p>The proposed development will provide an additional <b>14 dwellings</b> within a three (3) storey townhouse building and two (2) double storey dwellings that generally accord with the bulk and scale envisaged by the R3 zone thus providing for the housing needs for the community.</p> |
| To provide a variety of housing types within a medium density residential environment.             | <p>The proposed development would provide residential development in a medium density form as opposed to the dominant existing residential stock of detached dwellings in the immediate area. This presents an opportunity for greater housing diversity, potentially allowing a mix of demographics in the area. Furthermore, the</p>  |



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|  |  |
|--|--|
|  | <p>development allows for a considerable and immediate contribution to housing stock, supporting dwelling targets stipulated in strategic plans applicable to the wider area.</p> <p>The proposal seeks to redevelop an existing School Hall to a medium density residential development which more appropriately reflects the desired future development of the locality and will provide an alternative form of housing in an established residential area.</p> <p>Further, the proposed development provides three (3) and four (4) bedroom townhouses, being a form of medium density housing that is more affordable than standalone dwellings. Further the proposed development is within walking distance to St Leonards CBD.</p> <p>In light of the above, the proposed development satisfies this objective.</p>  |
| To enable other land uses that provide facilities or services to meet the day to day needs of residents.               | The objective is not affected by the variation sought.   |
| To accommodate development that is compatible with the scale and character of the surrounding residential development. | <p>The proposed development is considered to be compatible with the existing scale and character of the Site and surrounds for the following reasons:</p> <ul style="list-style-type: none"> <li>▪ The proposed development redevelops an existing Site to a mixed-use development including a medium density residential development which more appropriately reflects the desired and future development of the immediate surrounds;</li> <li>▪ The built form is designed to be compatible with the intended character of the local area and sits harmoniously with the adjoining and residential development;</li> <li>▪ The proposed development has been well-designed to provide a visually interesting façade that will enhance the viability, vitality and amenity of the immediate locality;</li> <li>▪ The proposed development will preserve and enhance the heritage item on Site;</li> <li>▪ The proposed development will not compromise adjoining properties and is consistent with those on neighbouring properties; and</li> </ul> |



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|  |  |
|--|--|
|  | <ul style="list-style-type: none"> <li>The proposed height, scale and character will be consistent with the attributes of the zoning of the Site.</li> </ul>   |
| To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network.   | <p>The Site is highly accessible via public transport, within close proximity to bus routes and rail networks. St Leonards Train Station is located approximately 675m to the south west. The surrounding bus network is available along Willoughby Road providing connectivity to the immediate locality, as well as the wider Sydney Metropolitan Area.</p> <p>The proposed development will provide an additional <b>14 dwellings</b> within a three (3) storey townhouse building and two (2) double storey dwellings that generally accord with the bulk and scale envisaged by the R3 zone.</p> <p>Further and as outlined within the Traffic and Parking Assessment (TPA) in <b>Appendix 20</b>, the proposed development results in potential traffic generation of approximately 8 vehicle trips per hour (vtp/h) during both the AM and PM peak hour.</p> <p>As a result of the proposed development, the nett increase in traffic activity is minimal, and will clearly not have any unacceptable traffic implications in terms of road network capacity.</p> |
| To encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping. | <p>The proposed development and Site layout have been informed and prepared with regard to detailed opportunities and identified constraints through a comprehensive Site analysis. The Site context is considered to be the principle influence on the design.</p> <p>The proposed development achieves complying solar access, adequate levels of privacy and landscaping.</p> <p>Vehicular access to the Site will be provided by a combined entry/exit ingress/egress ramp to the proposed basement for the town houses located along the Merrenburn Avenue frontage and two (2) single vehicular driveways to the proposed dwelling houses along the Donnelly Road frontage.</p>  |



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#### 4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* (refer to **Section 2.1**) emphasise the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

The following justification is provided as why the standard is unreasonable and unnecessary in this instance:

- It represents logical and co-ordinated development of the Site for a mixed use development comprising of townhouses, parish hall, presbytery and dwelling houses;
- It will result in improvements to the functionality and operations of the Site through a carefully designed built form that is responsive to the Site's constraints, context including heritage setting and its desired character;
- The architectural design provides a superior built form outcome for the Site and is functional for the proposed outcomes;
- Development will be compatible with the desired and future character of the immediate locality;
- The proposed building height is acceptable in terms of heritage impacts, and is an improved outcome noting that is a reduction from the height of the existing School Hall, resulting in an improved heritage outcome;
- The proposed variation to the building height will not give rise to any unacceptable environmental or amenity impacts to surrounding development in relation to views, overshadowing, solar access, noise and visual privacy;
- The proposed development will result in a development with a building height less than the existing School Hall thus bridging the gap between the existing building height non-compliance and the maximum HOB under the WLEP2012 thus ensuring a better streetscape outcome;
- Compliance may be achieved by reducing the scale of the development, but this would undermine both the visual quality and functionality of the design and the requirements of the medium density development would not be achieved;
- Reducing the building height to achieve a compliant building height would not deliver any measurable environmental or amenity benefits.

In view of the circumstances of the subject proposal, strict compliance with clause 4.3 of WLEP2012 is considered to be both unnecessary and unreasonable. The proposal does not conflict with the intent of clause 4.3 of WLEP2012 as demonstrated above and satisfies its objectives, notwithstanding the proposed numerical departure.

The proposed building height variation will retain compatibility with surrounding development and continue to support a wide range of residential land uses in the locality, consistent with the objectives of the R3 Medium Density Residential zone.



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The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Site. The objectives of the relevant clause and R3 Medium Density Residential zone would be upheld as a result of the proposed development. In light of the above, the application of the height of building development standard is therefore unreasonable and unnecessary in response to the proposed development.

#### **4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

The variation to the development standard for height of buildings is considered well founded on the basis that:

- The proposed building height variation is consistent with the underlying objective or purpose of the standard as demonstrated in **Section 4.1**;
- The proposed building height variation is consistent with the objectives of the R3 Medium Density Residential zone as described in **Section 4.2**;
- Compliance with the standard would be unreasonable and unnecessary for the reasons outlined in **Section 4.3**;
- The proposed height variation has been designed to be sympathetic and respectful to the amenity of the adjoining residential properties, particularly with regard to visual bulk, privacy, overshadowing and sunlight access. As demonstrated in the Shadows Diagrams submitted for the subject DA, the neighbouring residential properties would continue to receive adequate solar access.
- Notwithstanding the numerical departure from the building height development standard, the proposed building setbacks would ensure the adequate separation distances are provided between the Site and the adjoining residential properties. The proposed design approach is considered to present a scale and architectural treatment which do not compromise the scale and amenity of the adjoining dwellings.
- The proposal does not result in any undue environmental or amenity impacts to the surrounding or adjoining properties. In this respect, the proposal, including the building height encroachment, is commensurate to the context of the Site and the available outlook from surrounding sites to the development and does not provide opportunity for any unreasonable or unwarranted visual impacts.
- The proposed height is less than the existing built form and will provide a scale of development that is more commensurate of the area and streetscape;
- The breach in building height is a result of the characteristics of the Site including the slope and topography, orientation of the built form and the provision of the increased setback to Willoughby Road and Merrenburn Avenue. The proposal provides a design outcome that responds to the Site constraints and considers the context as well as the existing and anticipated built form;
- The proposed increase in height would not create any adverse visual or acoustic amenity impacts for the surrounding sensitive land users. Limiting the building height to a strict 9m would not



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deliver any measurable environmental or amenity benefits, nor would this support the provision of medium density residential land uses.

- The visual impacts when viewed from adjoining properties and the public domain result in impacts considered to be in the low to negligible ranges and consistent with the evolving character of Naremburn;
- The proposal would have the perceived appearance of a three (3) storey building when viewed from the street level, which is consistent with the existing built form adjoining the Site;
- The visual impact of the height variation from the public domain has been minimised through the elements which exceed the prescribed maximum building height being setback and the articulation of the façade to reduce the bulk and scale of the built form;
- The proposed building height variation would remain compatible with Medium Density Residential land uses in light of the above; and
- Compliance with the remaining development standards applicable to the Site is achieved.

For the reasons outlined above, it is considered that the proposed variation to the building height control under clause 4.3 is appropriate and can be clearly justified having regard to the matters listed within clause 4.6(3)(b) under WLEP2012.

#### 4.5 PUBLIC INTEREST

As outlined in **Section 2.1**, *Four2Five Pty Ltd v Ashfield Council* emphasised that it is for the proponent to demonstrate that the proposed non-compliance with the development standard is in the public interest. Subclause 4.6(4)(a)(ii) requires the proposed development be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

**Sections 4.1** and **4.2** have already demonstrated how the proposed development is consistent with the objectives of both clause 4.3 and the R3 Medium Density Residential zone under WLEP2012.

In *Lane Cove Council v Orca Partners Management Pty Ltd (No 2)* [2015] NSWLEC 52, Sheahan J referred to the question of public interest with respect to planning matters as a consideration of whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development.

The public advantages of the proposed development are as follows:

- Modernisation of the existing School Hall which is in a fair to poor condition thus achieving the intended desired streetscape and character of the locality;
- Providing a new parish hall that will be utilised by the existing local Catholic community for events and functions;
- Facilitating the reuse of the existing presbytery as a residential dwelling, consistent with its historical use thus allowing the preservation and retention of the heritage significant building;
- Preserve and enhance the existing heritage fabric of St Leonards Catholic Church;



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- Attracting a greater number and diversity of residential uses into the locality;
- Contributing positively to the residential character of the R3 Medium Residential zone;
- Enabling an opportunity for increased housing;
- Stimulating a development outcome that is compatible with the existing and emerging residential area; and
- Facilitating development that is a permissible land use and consistent with the R3 zone objectives.

There are no significant public disadvantages which would result from the proposed development. The proposed development is therefore considered to be justified on public interest grounds and there is no material public benefit in maintaining the standard.

#### **4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE**

The proposed non-compliances with clause 4.3 of WLEP2012 will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full by Council rather than under delegation.

By including these non-compliances with clause 4.3 of WLEP2012, the proposal will better be able to meet the objectives of the North District Plan and Willoughby LSPS by:

- Providing a diverse housing mix that meets the needs of the growing population;
- The proposed development will provide a built form consistent with the objectives of WLEP2012;
- The proposed development is appropriate for the Site and context, and achieves a high level of amenity for residents within and surrounding the Site;
- As recognised in the LSPS, the additional housing supply makes available opportunities for a range of housing sizes and types within each community; and
- The proposed development will deliver diverse housing typologies to meet the need of the changing community demographics.

#### **4.7 PUBLIC BENEFIT IN MAINTAINING THE STANDARD**

Strict compliance with the clause 4.3 building height development standard would:

- Reduced opportunity for residential development in accessible areas, pursuant to the Willoughby LSPS;
- Greater impacts to the functional operation of the proposed use of the Site;
- The sterilisation of a significant portion of the Site from being able to be developed for residential accommodation; and
- Not result in any measurable environmental or amenity benefits to surrounding properties or the public domain.



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Further to the above, in the event the development standard was maintained, the resulting benefits to the adjoining properties and wider public would be nominal and would not warrant strict compliance at the expense of the matters identified above.

Accordingly, there is no genuine or identifiable public benefit in maintaining this strict building height control in the context of the proposed development.

#### 4.8 SUMMARY

For the reasons outlined above, it is considered that the variation to clause 4.3 of WLEP2012 is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in clause 4.6 of WLEP2012, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- The development is in the public interest (refer to **Section 4.5** as part of the Second Limb satisfied);
- The development is consistent with the objectives of the particular standard (refer to **Section 4.1** as part of the Second Limb satisfied);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve residential land (refer to **Section 4.2** as part of the Second Limb satisfied);
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.6** as part of the Third Limb satisfied);
- The public benefit in maintaining strict compliance with the development standard would be negligible (refer to **Section 4.7** as part of the Third Limb satisfied); and
- The objectives of the standard are achieved notwithstanding the non-compliance with the standard.

Overall, it is considered that the proposed variation to the maximum building height control is entirely appropriate and can be clearly justified having regard to the matters listed within clause 4.6 of WLEP2012.



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**PART E CONCLUSION**

It is requested that Willoughby City Council exercise its discretion and find that this Clause 4.6 Variation adequately addresses the matters required to be demonstrated by subclause 4.6(3) of WLEP2012. This is particularly the case given the proposed development's otherwise compliance with WLEP2012 and WDCP2006, and the Site's suitability for the proposed development at a local government level.

The proposal represents a suitable form of development that does not cause conflict with the adjoining properties or undermine their daily function.



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## ATTACHMENT 5: OFFICER'S CLAUSE 4.6 ASSESSMENT – HEIGHT

### Description of non compliance

| Development Standard          | Height Standard | Proposed Height             | %Variation                    |
|-------------------------------|-----------------|-----------------------------|-------------------------------|
| CI 4.3<br>Height of buildings | 9m              | Presbytery dwelling – 10.3m | 14%<br>1.3m over the standard |
|                               |                 | Church hall – 10.5m         | 16%<br>1.5m over the standard |
|                               |                 | Townhouses – 9.37m          | 4%<br>0.37m over the standard |

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

- i) Proposal is consistent with bulk and scale of the locality and streetscape (RFB at 34 Donnelly Road and an 'existing dwelling house located to the south west of the Site'). Proposal is lower than the existing school hall and will result in height reduction. Proposal is consistent with the heritage item (church).
- ii) Proposal does not adversely affect amenity of neighbouring properties' privacy, views or solar access.
- iii) Height breach is less than existing school building and therefore results in better streetscape amenity.

### Objectives of Clause 4.6

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

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

| CI 4.6 Criteria  | Response  |
|--|---|
| <b>4.6(2)</b> <i>Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</i> | The development standard is not expressly excluded from the operation of this clause.   |
| <b>4.6 (3)</b> <i>Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—</i>   |   |
| <i>a) Has the applicant's submission demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and</i>   | The applicant's written request has not 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 not adequately demonstrated that the compliance with the development standard is unreasonable and unnecessary in the circumstances of this case.   |
| a) <i>Has the applicant's submission demonstrated that there are sufficient environmental planning grounds to justify the non-compliance?</i> | <p>The applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p>Therefore council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 (3)</p> |
| <b>4.6(4)</b> <i>Development consent must not be granted for development that contravenes a development standard unless:</i>                  |   |
| a) i) <i>Has the applicant's written request adequately addressed the matters required to be demonstrated in subclause 3</i>                  | The applicant's written request has not adequately demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify the non-compliance   |
| ii) <i>Is the proposed development in the public interest because it is consistent with:</i>  |   |
| • <i>objectives of the particular development standard</i>  | No, see assessment below  |
| • <i>objectives for the development within the zone in which the development is proposed to be carried</i>                                    | No, see assessment below  |

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

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

| Height of Building Development Standard Objectives  | Response   |
|---|--|
| a) <i>to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,</i>  | The height non-compliance contributes to the inconsistency with bulk and scale of the locality and streetscape and the setting of heritage items the heritage item (church). |
| b) <i>to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,</i>                        | The height non-compliance (in combination with the unsympathetic design of the town houses and church hall) is visually intrusive in the locality.                           |
| c) <i>to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,</i>                                   | The height non-compliance (in combination with the unsympathetic design of the town houses) will have an adverse visual quality  |
| d) <i>to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,</i> | The height non-compliance does not significantly, adversely affect view sharing.   |
| e) <i>to set upper limits for the height of buildings that are consistent with the</i>  | The height of the proposal is inconsistent with the  |



|  |   |
|--|---|
| <i>redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,</i>   | redevelopment potential of the relevant land.   |
| f) <i>to use maximum height limits to assist in responding to the current and desired future character of the locality,</i>  | The height of the proposal (in combination with the unsympathetic design of the town houses and church hall) does not respond adequately to the current and desired future character of the locality. |
| g) <i>to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,</i> | N/A   |
| h) <i>to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.</i>   | N/A   |

### **Consistency with the objectives of the R3 Medium Density Residential Zone:**

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

| <b>Zone Objective</b>  | <b>Response</b>   |
|--|---|
| To provide for the housing needs of the community within a medium density residential environment.   | The proposal will provide additional housing.   |
| To provide a variety of housing types within a medium density residential environment.   | The proposal will add medium density housing to the residential mix of the neighbourhood.   |
| To enable other land uses that provide facilities or services to meet the day to day needs of residents.   | N/A   |
| To accommodate development that is compatible with the scale and character of the surrounding residential development.   | The height non-compliance (in combination with the unsympathetic design of the town houses and church hall) is incompatible with scale and character of the surrounding residential development for the reasons set out in this report. |
| To allow for increased residential density in accessible locations, while minimising the potential for adverse impacts of such increased density on the efficiency and safety of the road network.   | The proposal will provide additional residential density.   |
| To encourage innovative design in providing a comfortable and sustainable living environment that also has regard to solar access, privacy, noise, views, vehicular access, parking and landscaping. | The proposal does not provide adequate solar access, vehicular access, and landscaping for the reasons set out in this report.  |

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

Based on the above considerations, the proposed variation to the development standard is unacceptable. Variation of the standard is not considered to be in public interest given that the relevant objectives of the zone and standard are not met by the proposal.

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

## ATTACHMENT 6 - SECTION 4.15 ASSESSMENT

The application has been assessed under the provisions of S.4.15 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 EP&A Act Considered and Satisfactory ✓ and Not Relevant N/A

|          |   |     |
|----------|---|-----|
| (a)(i)   | The provisions of any environmental planning instrument (EPI)   |     |
|          | <ul style="list-style-type: none"> <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>   | x   |
|          | <b>Comment:</b> The proposal satisfies the provisions of relevant SEPPs, REPs and development standards under WLEP 2012, except for the WLEP height standard. A satisfactory Clause 4.6 application has not been lodged in respect to this breach.  |     |
| (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>   | x   |
|          | <b>Comment:</b> The proposal breaches Clause 6.21 Draft WLEP  |     |
| (a)(iii) | Any development control plans   |     |
|          | <ul style="list-style-type: none"> <li>Development control plans (DCPs)</li> </ul>  | x   |
|          | <b>Comment:</b> The proposal does not achieve the objectives of the WDCP in respect to parking and access (C4), water management (C5), tree preservation (C9), Character and Streetscape (D.1.4), building envelopes (D1.7), landscaping (D1.8), private open space (D1.9), density and height (D2.5), building mass and form (D2.6), site coverage (D2.7), setbacks (D2.8), soft landscaping (D2.10), streetscape landscaping (D2.10), solar access (D2.13). |     |
| (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 |
|          | <b>Comment:</b> 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>   | x   |
|          | <ul style="list-style-type: none"> <li>Access, transport &amp; traffic, parking</li> </ul>  | x   |
|          | <ul style="list-style-type: none"> <li>Servicing, loading/unloading</li> </ul>  | ✓   |
|          | <ul style="list-style-type: none"> <li>Public domain</li> </ul>   | x   |
|          | <ul style="list-style-type: none"> <li>Utilities</li> </ul>   | ✓   |
|          | <ul style="list-style-type: none"> <li>Heritage</li> </ul>  | x   |
|          | <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>  | x   |
|          | <ul style="list-style-type: none"> <li>Water and draining</li> </ul>  | x   |
|          | <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>   | ✓   |

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

|     |   |     |
|-----|---|-----|
|     | • Energy  | ✓   |
|     | • Noise & vibration   | ✓   |
|     | • Natural hazards: Overland flowpath  | ✓   |
|     | • Safety, security crime prevention   | ✓   |
|     | • Social impact in the locality   | ✓   |
|     | • Economic impact in the locality   | ✓   |
|     | • Site design and internal design   | ✓   |
|     | • Construction  | ✓   |
|     | • Cumulative impacts  | x   |
|     | <b>Comment:</b> The proposal will result in unacceptable impacts on the amenity of residents, the streetscape, and the context for nearby heritage items.       |     |
| (c) | The suitability of the site for the development   |     |
|     | • Does the proposal fit in the locality?  | x   |
|     | • Are the site attributes conducive to this development?  | x   |
|     | <b>Comment:</b> The proposal will be inconsistent with the character of the locality.   |     |
| (d) | Any submissions made in accordance with this Act or the regulations   | x   |
|     | • Public submissions  | N/A |
|     | • Submissions from public authorities   | •   |
|     | <b>Comment:</b> 20 submissions were received. Issues raised in the submissions will be addressed by the proposed refusal of the DA.                             |     |
| (e) | The public interest   |     |
|     | • Federal, State and Local Government interests and Community interests   | x   |
|     | <b>Comment:</b> The proposed development will compromise the character of the locality and therefore approval of the application is not in the public interest. |     |



## ATTACHMENT 7: REASONS OF REFUSAL

The reasons for **REFUSAL** are:

1. The Clause 4.6 exception contained in Attachment 4 does not demonstrate that it is unreasonable and unnecessary to comply with the development standard of Clause 4.3 *Willoughby Local Environmental Plan 2012* (Height of Building).
2. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development will be inconsistent with the zoning applicable to the site pursuant to the *Willoughby Local Environmental Plan 2012*.
3. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (b)(i), failing to conserve and balance the environmental heritage of the locality.
4. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (b)(ii), failing to promote an appropriate balance between development and management of the environment through provision of adequate landscaping.
5. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (c)(iii), failing to allow development at a scale that is sensitive to environmental constraints by provision of adequate stormwater measures.
6. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (d), failing to promote development that is designed and constructed to enhance or integrate into the natural landform and the existing character of distinctive locations, neighbourhoods and streetscapes, and to contribute to the desired future character of the locality or to contribute positively to the public domain.
7. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (e) to reduce adverse impacts from development on adjoining or nearby residential properties.
8. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2(i) to conserve items of environmental and cultural heritage.
9. Pursuant to Section 4.15 (1) (a) (i) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the *Willoughby Local Environmental Plan 2012* Clause 1.2 (j), failing to provide integrated development design of vehicular access and parking.
10. Pursuant to Section 4.15 (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*, the proposed development disregards the Aims of the draft *Willoughby Local Environmental Plan* in Clause 6.21 failing to reduce and remove urban heating from the environment, and protect community health and wellbeing by provision of deep soil landscaping and canopy trees.

## ATTACHMENT 8: NOTIFICATION MAP



### Record of Neighbour Notifications sent relating to:

DA: 2021/340

At: 43 Donnelly Road NAREMBURN NSW 2065

