



**Land and Environment
Court**
of New South Wales

Level 4 225 Macquarie Street SYDNEY NSW 2000
Level 4 GPO Box 3565 SYDNEY NSW 2001
DX 264, Sydney

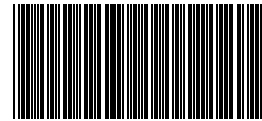
Telephone: 02 9113 8200
Facsimile: 02 9113 8222
02 91138208

Email: lecourt@justice.nsw.gov.au
Website: <http://www.lec.justice.nsw.gov.au>

ABN: 52 659 114 436

Colin McFadzean
Colin.McFadzean@cumberland.nsw.gov.au

Your Ref:



D0001DD4EF

22 January 2021

NOTICE OF ORDERS MADE

Case number 2020/00327518
Case title Lot 11 Neil Street Pty Limited v Cumberland Council

On 22 January 2021 the following orders (and/or directions) were made:

The Court orders that:

- (1) Leave is granted for the Applicant to amend the application to rely on the amended documentation listed at condition 2 of the conditions of consent at Annexure A and attached at Annexure B.
- (2) The Applicant's Clause 4.6 written request prepared by Chapman Planning Pty Ltd in relation to the height of buildings development standard pursuant to clause 4.3 of the Holroyd Environmental Plan 2013 is upheld.
- (3) The Applicant's Clause 4.6 written request prepared by Chapman Planning Pty Ltd in relation to the floor space ratio development standard pursuant to clause 4.4 of the Holroyd Environmental Plan 2013 is upheld.
- (4) The appeal is upheld.
- (5) Development Application No. DA2020/0103 for the construction of four additional storeys comprising 32 additional residential units and a rooftop communal open space on top of an approved 12 storey residential flat building (known as Building 3) (Development Consent DA2016/496) at 20-22 Dressler Court, Merrylands is approved, subject to the conditions at Annexure A.

For the Registrar

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2020/0103
Development: Construction of four storeys on top of an approved twelve storey residential flat building (building 3) (Development Consent DA2016/496) to provide an additional 32 residential units and a roof top communal open space area
Site: Lot 30 DP 1268071, being No. 22 Dressler Court, Merrylands

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 22 January 2021

Date from which consent takes effect: Date the consent is registered on the NSW Planning Portal.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as Lot 30 DP 1268071, being No. 22 Dressler Court, Merrylands.

The conditions of consent are as follows:

1. **General**

This consent shall lapse five years after the date from which it operates, unless building, engineering or construction work has physically commenced.

2. **Approved Plans and Supporting Documents**

The development must be carried out in accordance with the following endorsed plans and documents, except as otherwise provided by the conditions of this consent.

Drawing Title / Plan or Reference Number	Prepared By	Rev.	Dated
Level 12 Plan / 08689 / DA:001	Zhinar Architects	DA-B	22/07/2020
Levels 13-14 Plan / 08689 / DA:002			
Level 15 Plan / 08689 / DA:003			
Roof Plan / 08689 / DA:004		DA-E	16/09/2020
Accessible Plans / 08689 / DA:005		DA-B	22/07/2020
North Elevation / 08689 / DA:006		DA-D	09/09/2020
South Elevation / 08689 / DA:007		DA-B	22/07/2020
East Elevation / 08689 / DA:008			
West Elevation / 08689 / DA:009			
Detail Section / 08689 / DA:010			
Landscape Plan Building 3 Level Twelve / LS-304	Greenplan	D	29/01/2020
Cover Sheet / 20140028 / SW500	SGC	E	17/07/2020
Stormwater Concept Design – Basement 3 Plan / 20140028 / SW501			
Stormwater Concept Design – Ground Floor Plan / 20140028 / SW502			
Stormwater Concept Design – Ground Floor Plan / 20140028 / SW503			
Stormwater Concept Design – Building 3 Roof Plan / 20140028 / SW504			
Stormwater Concept Design – Building 4 Roof Plan / 20140028 / SW505			
Stormwater Concept Design – Details Sheet / 20140028 / SW506			
Stormwater Concept Design – Erosion and Sediment Control / 20140028 / SW507			
Acoustic Report / R160099B3	Rodney Stevens	0	01/11/2016
BASIX Certificate / Certificate Number 773454M_02	-	-	20/12/2019
Waste Management Plan / 2016/0902	Senica Consultancy Group	0902-4	20/12/2019

(Reason: To confirm and clarify the details of the approval)

3. **Obtaining a Construction Certificate for Building Work**

This Development Consent does not constitute approval to carry out construction work. Construction work may only commence upon the issue of a Construction Certificate, appointment of a Principal Certifier, and lodgement of Notice of Commencement.

If demolition is associated with the erection of or extension to an existing building, then demolition must not commence prior to the issue of a Construction Certificate.

(Reason: Information)

4. **Australia Post Guidelines**

Letter boxes are to be provided for each occupancy within the development in accordance with the relevant Australia Post Guidelines.

(Reason: To ensure compliance with mail delivery regulations)

5. Lighting

Any lighting on the site shall be designed so as not to cause a nuisance to other residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with AS 4282-1997 Control of the obtrusive effects of outdoor lighting.

(Reason: Protect amenity of surrounding area)

6. Street Numbering of Lots and Units

Numbering of units/properties shall be prominently displayed at the front of the property and shall be maintained in accordance with the property numbers allocated by Council. Should the property be strata subdivided, the approved numbering system shall be included in the final plans of strata subdivision.

(Reason: Identification of property for emergency services and mail deliveries)

7. Telecommunications/ TV Antennae

No more than one telecommunications/TV antenna is to be installed on the building. For the purpose of this condition, the building comprises the four storeys approved under this application in conjunction with the earlier approved 12 storeys.

(Reason: To prevent the proliferation of telecommunications/TV antennae)

8. Waste Management

Requirements of the approved Waste Management Plan shall be complied with during site preparation and throughout construction phases of the development.

(Reason: Compliance with approval)

9. Modification of Development Consent DA2016/496

Development consent DA2020/0103, relating to 22 Dressler Court, Merrylands, amends and changes various aspects of development consent DA2016/496 relating to 20-22, 24, 24R & 27 Dressler Court, Merrylands.

Pursuant to Section 4.17(1)(b) of the *Environmental Planning and Assessment Act, 1979*, prior to the issue of a construction certificate, development consent DA2016/496 relating to 20-22, 24, 24R & 27 Dressler Court, Merrylands, must be modified in the following manner:

The following conditions of development consent DA2016/496 related to 20-22, 24, 24R & 27 Dressler Court, Merrylands, are amended to read as follows:

2. Development shall take place in accordance with the following plans and information, except where amended by the conditions of this consent:

- Architectural plans prepared by Marchese Partners International Pty Ltd, Job Number 14001:

Drawing No. DA11.04 S9611.04 (Amended by deferred commencement satisfied on 23/08/2018)	Site Plan	Rev. A Rev. B	Dated 28/10/2016 Dated 16/11/2017
Drawing No. DA12.01 S9612.01 (Amended by deferred commencement satisfied on 23/08/2018)	Basement 3 Floor Plan	Rev. A Rev. B	Dated 28/10/2016 Dated 16/11/2017

<p>S96C 12.01 (Amended by DA2016/496/4 on 13/03/2019) S4.56 E 12.01 (Amended by DA2016/496/7 on 28/08/2019) S4.56 H 12.01 (Amended by DA2016/496/8 on 27/05/2020)</p>		<p>Rev. C</p> <p>Rev. E</p> <p>Rev. H</p>	<p>Dated 6/06/2018</p> <p>Dated 8/07/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12.02</p> <p>S9612.02 (Amended by deferred commencement satisfied on 23/08/2018) S96C 12.02 (Amended by DA2016/496/4 on 13/03/2019) S4.56 E 12.02 (Amended by DA2016/496/7 on 28/08/2019) S4.56 H 12.02 (Amended by DA2016/496/8 on 27/05/2020)</p>	Basement 2 Floor Plan	<p>Rev. A</p> <p>Rev. B</p> <p>Rev. C</p> <p>Rev. E</p> <p>Rev. H</p>	<p>Dated 28/10/2016</p> <p>Dated 16/11/2017</p> <p>Dated 6/06/2018</p> <p>Dated 8/07/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12.03</p> <p>S9612.03 (Amended by deferred commencement satisfied on 23/08/2018) S96C 12.03 (Amended by DA2016/496/4 on 13/03/2019) S4.56 E 12.03 (Amended by DA2016/496/7 on 28/08/2019) S4.56 H 12.03 (Amended by DA2016/496/8 on 27/05/2020)</p>	Basement 1 Floor Plan	<p>Rev. A</p> <p>Rev. B</p> <p>Rev. C</p> <p>Rev. E</p> <p>Rev. H</p>	<p>Dated 28/10/2016</p> <p>Dated 16/11/2017</p> <p>Dated 6/06/2018</p> <p>Dated 8/07/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12.04</p> <p>S9612.04 (Amended by DA2016/496/2 on 11/09/2017) S9612.04 (Amended by deferred commencement satisfied on 23/08/2018) S96C 12.04 (Amended by DA2016/496/4 on 13/03/2019)</p>	Building 3 Ground Floor Plan	<p>Rev. B</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. C</p>	<p>Dated 16/02/2017</p> <p>Dated 29/06/2017</p> <p>Dated 16/11/2017</p> <p>Dated 6/06/2018</p>

<p>S4.56 E 12.04 (Amended by DA2016/496/7 on 28/08/2019)</p> <p>S4.56 H 12.04 (Amended by DA2016/496/8 on 27/05/2020)</p>		<p>Rev. D</p> <p>Rev. H</p>	<p>Dated 6/09/2018</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12-05</p> <p>S9612.05 (Amended by DA2016/496/2 on 11/09/2017)</p> <p>S9612.05 (Amended by deferred commencement satisfied on 23/08/2018)</p> <p>S96C-12.05 (Amended by DA2016/496/4 on 13/03/2019)</p> <p>S4.56 E 12.05 (Amended by DA2016/496/7 on 28/08/2019)</p> <p>S4.56 H 12.05 (Amended by DA2016/496/8 on 27/05/2020) – refer to condition 38H</p>	<p>Building 3 Level 1-8 Floor Plan</p>	<p>Rev. A</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. C</p> <p>Rev. D</p> <p>Rev. H</p>	<p>Dated 28/10/2016</p> <p>Dated 29/06/2017</p> <p>Dated 16/11/2017</p> <p>Dated 6/06/2018</p> <p>Dated 29/03/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12-06</p> <p>S9612.06 (Amended by DA2016/496/2 on 11/09/2017)</p> <p>S9612.06 (Amended by deferred commencement satisfied on 23/08/2018)</p> <p>S96C-12.06 (Amended by DA2016/496/4 on 13/03/2019)</p> <p>S4.56 E 12.06 (Amended by DA2016/496/7 on 28/08/2019)</p> <p>S4.56 H 12.06 (Amended by DA2016/496/8 on 27/05/2020) – refer to condition 38H</p>	<p>Building 3 Level 9-11 Floor Plan</p> <p>Building 3 Level 9 Floor Plan</p> <p>Building 3 Level 9-11 Floor Plan</p>	<p>Rev. A</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. C</p> <p>Rev. E</p> <p>Rev. H</p>	<p>Dated 28/10/2016</p> <p>Dated 29/06/2017</p> <p>Dated 16/11/2017</p> <p>Dated 6/06/2018</p> <p>Dated 8/07/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. S9612.08 (Added by deferred commencement satisfied on 23/08/2018) (Deleted by DA2016/496/4 on 13/03/2019)</p>	<p>Building 3 Level 10-11 Floor Plan</p>	<p>Rev. B</p>	<p>Dated 16/11/2017</p>

<p>Drawing No.-DA12.09</p> <p>S9612.09 (Amended by DA2016/496/2 on 11/09/2017)</p> <p>S9612.09 (Amended by deferred commencement satisfied on 23/08/2018)</p> <p>S96C 12.09 (Amended by DA2016/496/4 on 13/03/2019)</p> <p>S4.56 E 12.09 (Amended by DA2016/496/7 on 28/08/2019)</p> <p>S4.56 H 12.09 (Amended by DA2016/496/8 on 27/05/2020)</p> <p>(Deleted by Land and Environment Court DA2020/0103 on 22 January 2021)</p>	Building 3 Roof Plan	<p>Rev. A</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. C</p> <p>Rev. E</p> <p>Rev. H</p>	<p>Dated 28/10/2016</p> <p>Dated 29/06/2017</p> <p>Dated 16/11/2017</p> <p>Dated 6/06/2018</p> <p>Dated 8/07/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12.14</p> <p>S9612.14 (Amended by deferred commencement satisfied on 23/08/2018)</p> <p>S9612.14 (Amended by DA2016/496/3 on 13/03/2019)</p> <p>S96B 12.14 (Amended by DA2016/496/4 on 13/03/2019)</p> <p>S4.56 E 12.14 (Amended by DA2016/496/7 on 28/08/2019)</p> <p>S4.56 H 12.14 (Amended by DA2016/496/8 on 27/05/2020)</p>	Building 4 Ground Floor Plan	<p>Rev. B</p> <p>Rev. B</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. D</p> <p>Rev. H</p>	<p>Dated 16/02/2017</p> <p>Dated 16/11/2017</p> <p>Dated 24/05/2017</p> <p>Dated 21/03/2018</p> <p>Dated 29/03/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12.15</p> <p>S9612.15 (Amended by deferred commencement satisfied on 23/08/2018)</p> <p>S9612.15 (Amended by DA2016/496/3 on 13/03/2019)</p> <p>S96B 12.15</p>	Building 4 Level 1-5 Floor Plan	<p>Rev. A</p> <p>Rev. B</p> <p>Rev. A</p> <p>Rev. B</p>	<p>Dated 28/10/2016</p> <p>Dated 16/11/2017</p> <p>Dated 24/05/2017</p> <p>Dated 21/03/2018</p>

<p>(Amended by DA2016/496/4 on 13/03/2019) S4.56 E 12.15 (Amended by DA2016/496/7 on 28/08/2019) S4.56 H 12.15 (Amended by DA2016/496/8 on 27/05/2020) – refer to condition 38G</p>		<p>Rev. E</p> <p>Rev. H</p>	<p>Dated 8/07/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12.16</p> <p>S9612.16 (Amended by deferred commencement satisfied on 23/08/2018) S9612.16 (Amended by DA2016/496/3 on 13/03/2019) S96B 12.16 (Amended by DA2016/496/4 on 13/03/2019) S4.56 E 12.16 (Amended by DA2016/496/7 on 28/08/2019) S4.56 H 12.16 (Amended by DA2016/496/8 on 27/05/2020)</p>	Building 4 Level 6 Floor Plan	<p>Rev. A</p> <p>Rev. B</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. E</p> <p>Rev. H</p>	<p>Dated 28/10/2016</p> <p>Dated 16/11/2017</p> <p>Dated 24/05/2017</p> <p>Dated 21/03/2018</p> <p>Dated 8/07/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12.17</p> <p>S9612.17 (Amended by deferred commencement satisfied on 23/08/2018) S9612.17 (Amended by DA2016/496/3 on 13/03/2019) S96B 12.17 (Amended by DA2016/496/4 on 13/03/2019) S4.56 E 12.17 (Amended by DA2016/496/7 on 28/08/2019) S4.56 H 12.17 (Amended by DA2016/496/8 on 27/05/2020)</p>	Building 4 Level 7 Floor Plan	<p>Rev. A</p> <p>Rev. B</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. E</p> <p>Rev. H</p>	<p>Dated 28/10/2016</p> <p>Dated 16/11/2017</p> <p>Dated 24/05/2017</p> <p>Dated 21/03/2018</p> <p>Dated 8/07/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12.18</p> <p>S9612.18 (Amended by deferred commencement satisfied on 23/08/2018)</p>	Building 4 Level 8 Floor Plan	<p>Rev. A</p> <p>Rev. B</p>	<p>Dated 28/10/2016</p> <p>Dated 16/11/2017</p>

<p>S9612.18 (Amended by DA2016/496/3 on 13/03/2019) S96C.12.18 (Amended by DA2016/496/4 on 13/03/2019) S4.56 H 12.18 (Amended by DA2016/496/8 on 27/05/2020)</p>		<p>Rev. A</p> <p>Rev. C</p> <p>Rev. H</p>	<p>Dated 24/05/2017</p> <p>Dated 6/06/2018</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12.19</p> <p>S9612.19 (Amended by deferred commencement satisfied on 23/08/2018) S9612.19 (Amended by DA2016/496/3 on 13/03/2019) S96B.12.19 (Amended by DA2016/496/4 on 13/03/2019) S4.56 H 12.19 (Amended by DA2016/496/8 on 27/05/2020)</p>	Building 4 Level 9-11 Floor Plan	<p>Rev. A</p> <p>Rev. B</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. H</p>	<p>Dated 28/10/2016</p> <p>Dated 16/11/2017</p> <p>Dated 24/05/2017</p> <p>Dated 21/03/2018</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA12.20</p> <p>S9612.20 (Amended by deferred commencement satisfied on 23/08/2018) S96B.12.20 (Amended by DA2016/496/4 on 13/03/2019) S4.56 H 12.20 (Amended by DA2016/496/8 on 27/05/2020)</p>	Building 4 Roof Plan	<p>Rev. A</p> <p>Rev. B</p> <p>Rev. B</p> <p>Rev. H</p>	<p>Dated 28/10/2016</p> <p>Dated 16/11/2017</p> <p>Dated 21/03/2018</p> <p>Dated 20/03/2020</p>
<p>Drawing No. S4.56 H 12.21 (Added by DA2016/496/8 on 27/05/2020)</p>	Building 4 Upper Roof Plan	Rev. H	Dated 20/03/2020
<p>Drawing No. DA13.04</p> <p>S9613.01 (Amended by DA2016/496/2 on 11/09/2017) S9613.01 (Amended by deferred commencement satisfied on 23/08/2018)</p>	Building 3 – Neil Street Elevation	<p>Rev. B</p> <p>Rev. A</p> <p>Rev. B</p>	<p>Dated 28/03/2017</p> <p>Dated 29/06/2017</p> <p>Dated 16/11/2017</p>
<p>Drawing No. DA13.11</p> <p>S9613.11</p>	Building 3 – North Elevation	Rev. B	Dated 28/03/2017

<p>(Amended by DA2016/496/2 on 11/09/2017) S9613.11 (Amended by deferred commencement satisfied on 23/08/2018) S96B 13.11 (Amended by DA2016/496/4 on 13/03/2019) S4.56 H 13.11 (Amended by DA2016/496/8 on 27/05/2020)</p>	<p>Building 3 – North East Elevation</p> <p>Building 3 – North Elevation</p>	<p>Rev. A</p> <p>Rev. B</p> <p>Rev. B</p> <p>Rev. H</p>	<p>Dated 29/06/2017</p> <p>Dated 16/11/2017</p> <p>Dated 21/03/2018</p> <p>Dated 20/03/2020</p>
<p>Drawing No. S96G 13.11 (Added by DA2016/496/4 on 13/03/2019) S4.56 E 13.11 (Amended by DA2016/496/7 on 28/08/2019)</p>	<p>Building 3 – South West Elevation</p>	<p>Rev. C</p> <p>Rev. E</p>	<p>Dated 6/06/2018</p> <p>Dated 8/07/2019</p>
<p>Drawing No. DA13.12 S9613.12 (Amended by DA2016/496/2 on 11/09/2017) S9613.12 (Amended by deferred commencement satisfied on 23/08/2018) S96C 13.12 (Amended by DA2016/496/4 on 13/03/2019) S4.56 E 13.12 (Amended by DA2016/496/7 on 28/08/2019) S4.56 H 13.12 (Amended by DA2016/496/8 on 27/05/2020)</p>	<p>Building 3 – South East Elevation</p> <p>Building 3 – South Elevation</p>	<p>Rev. B</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. C</p> <p>Rev. E</p> <p>Rev. H</p>	<p>Dated 28/03/2017</p> <p>Dated 29/06/2017</p> <p>Dated 16/11/2017</p> <p>Dated 6/06/2018</p> <p>Dated 8/07/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA13.13 S9613.13 (Amended by deferred commencement satisfied on 23/08/2018) S4.56 H 13.13 (Amended by DA2016/496/8 on 27/05/2020)</p>	<p>Building 3 – East Elevation</p>	<p>Rev. B</p> <p>Rev. B</p> <p>Rev. H</p>	<p>Dated 28/03/2017</p> <p>Dated 16/11/2017</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA13.14 S9613.14 (Amended by DA2016/496/2 on 11/09/2017)</p>	<p>Building 3 – West Elevation</p>	<p>Rev. B</p> <p>Rev. A</p>	<p>Dated 28/03/2017</p> <p>Dated 29/06/2017</p>

<p>S9613.14 (Amended by deferred commencement satisfied on 23/08/2018) S4.56 D 13.14 (Amended by DA2016/496/7 on 28/08/2019) S4.56 H 13.14 (Amended by DA2016/496/8 on 27/05/2020)</p>		<p>Rev. B</p> <p>Rev. D</p> <p>Rev. H</p>	<p>Dated 16/11/2017</p> <p>Dated 29/03/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA13.21</p> <p>S9613.21 (Amended by deferred commencement satisfied on 23/08/2018) S9613.21 (Amended by DA2016/496/3 on 13/03/2019) S96B 13.21 (Amended by DA2016/496/4 on 13/03/2019) S4.56 D 13.21 (Amended by DA2016/496/7 on 28/08/2019) S4.56 H 13.21 (Amended by DA2016/496/8 on 27/05/2020)</p>	<p>Building 4 — North Elevation</p> <p>Building 4 — North East Elevation</p> <p>Building 4 – North Elevation</p>	<p>Rev. B</p> <p>Rev. B</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. D</p> <p>Rev. H</p>	<p>Dated 28/03/2017</p> <p>Dated 16/11/2017</p> <p>Dated 24/05/2017</p> <p>Dated 21/03/2018</p> <p>Dated 29/03/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA13.22</p> <p>S9613.22 (Amended by deferred commencement satisfied on 23/08/2018) S9613.22 (Amended by DA2016/496/3 on 13/03/2019) S96B 13.22 (Amended by DA2016/496/4 on 13/03/2019) S4.56 H 13.22 (Amended by DA2016/496/8 on 27/05/2020)</p>	<p>Building 4 — South Elevation</p> <p>Building 4 — South West Elevation</p> <p>Building 4 – South Elevation</p>	<p>Rev. B</p> <p>Rev. B</p> <p>Rev. A</p> <p>Rev. B</p> <p>Rev. H</p>	<p>Dated 28/03/2017</p> <p>Dated 16/11/2017</p> <p>Dated 24/05/2017</p> <p>Dated 21/03/2018</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA13.23</p> <p>S9613.23 (Amended by deferred commencement satisfied on 23/08/2018) S9613.23 (Amended by DA2016/496/3 on 13/03/2019)</p>	<p>Building 4 — East Elevation</p>	<p>Rev. B</p> <p>Rev. B</p> <p>Rev. A</p>	<p>Dated 28/03/2017</p> <p>Dated 16/11/2017</p> <p>Dated 24/05/2017</p>

<p>S96B 13.23 (Amended by DA2016/496/4 on 13/03/2019)</p> <p>S4.56 H 13.23 (Amended by DA2016/496/8 on 27/05/2020)</p>	<p>Building 4 – South West Elevation</p> <p>Building 4 – East Elevation</p>	<p>Rev. B</p> <p>Rev. H</p>	<p>Dated 21/03/2018</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA13.24</p> <p>S9613.24 (Amended by deferred commencement satisfied on 23/08/2018)</p> <p>S9613.24 (Amended by DA2016/496/3 on 13/03/2019)</p> <p>S96C 13.24 (Amended by DA2016/496/4 on 13/03/2019)</p> <p>S4.56 D 13.24 (Amended by DA2016/496/7 on 28/08/2019)</p> <p>S4.56 H 13.24 (Amended by DA2016/496/8 on 27/05/2020)</p>	<p>Building 4 – West Elevation</p> <p>Building 4 – South West Elevation</p> <p>Building 4 – West Elevation</p>	<p>Rev. B</p> <p>Rev. B</p> <p>Rev. A</p> <p>Rev. C</p> <p>Rev. D</p> <p>Rev. H</p>	<p>Dated 28/03/2017</p> <p>Dated 16/11/2017</p> <p>Dated 24/05/2017</p> <p>Dated 6/06/2018</p> <p>Dated 29/03/2019</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA14.01</p> <p>S9614.01 (Amended by deferred commencement satisfied on 23/08/2018)</p> <p>S96B 14.01 (Amended by DA2016/496/4 on 13/03/2019)</p> <p>S4.56 H 14.01 (Amended by DA2016/496/8 on 27/05/2020)</p>	<p>Building 3 – Section AA</p>	<p>Rev. A</p> <p>Rev. B</p> <p>Rev. B</p> <p>Rev. H</p>	<p>Dated 28/03/2017</p> <p>Dated 16/11/2017</p> <p>Dated 21/03/2018</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA14.02</p> <p>S9614.02 (Amended by deferred commencement satisfied on 23/08/2018)</p> <p>S96B 14.02 (Amended by DA2016/496/4 on 13/03/2019)</p> <p>S4.56 H 14.02 (Amended by DA2016/496/8 on 27/05/2020)</p>	<p>Building 3 – Section BB</p>	<p>Rev. A</p> <p>Rev. B</p> <p>Rev. B</p> <p>Rev. H</p>	<p>Dated 28/03/2017</p> <p>Dated 16/11/2017</p> <p>Dated 21/03/2018</p> <p>Dated 20/03/2020</p>
<p>Drawing No. DA14.03</p> <p>S9614.03</p>	<p>Building 4 – Section CC</p>	<p>Rev. B</p>	<p>Dated 28/03/2017</p>

(Amended by deferred commencement satisfied on 23/08/2018) S9614.03 (Amended by DA2016/496/3 on 13/03/2019) S96B 14.03 (Amended by DA2016/496/8 on 27/05/2020)		Rev. B Rev. A Rev. B	Dated 16/11/2017 Dated 24/05/2017 Dated 20/03/2020
Drawing No. DA14.04 S9614.04 (Amended by deferred commencement satisfied on 23/08/2018) S9614.04 (Amended by DA2016/496/3 on 13/03/2019) S96B 14.04 (Amended by DA2016/496/8 on 27/05/2020)	Building 4 – Section DD	Rev. B Rev. B Rev. A Rev. B	Dated 28/03/2017 Dated 16/11/2017 Dated 24/05/2017 Dated 20/03/2020
Drawing No. DA16.01 S9616.01 (Amended by deferred commencement satisfied on 23/08/2018)	Building 3 – Adaptable Unit Plan 01	Rev. A Rev. B	Dated 28/03/2017 Dated 16/11/2017
Drawing No. DA16.03 S9616.03 (Amended by deferred commencement satisfied on 23/08/2018)	Building 3 – Adaptable Unit Plan 03	Rev. A Rev. B	Dated 28/03/2017 Dated 16/11/2017
Drawing No. DA16.04 S9616.04 (Amended by deferred commencement satisfied on 23/08/2018)	Building 3 – Adaptable Unit Plan 04	Rev. A Rev. B	Dated 28/03/2017 Dated 16/11/2017
Drawing No. DA16.05 S9616.05 (Amended by deferred commencement satisfied on 23/08/2018)	Building 3 – Adaptable Unit Plan 05	Rev. A Rev. B	Dated 28/03/2017 Dated 16/11/2017
Drawing No. DA16.11 S9616.11 (Amended by deferred commencement satisfied on 23/08/2018) S9616.11	Building 4 – Adaptable Unit Plan 01	Rev. A Rev. B Rev. A	Dated 28/03/2017 Dated 16/11/2017

(Amended by DA2016/496/3 on 13/03/2019)			Dated 24/05/2017
Drawing No. DA16.12 S9616.12 (Amended by deferred commencement satisfied on 23/08/2018) S9616.12 (Amended by DA2016/496/3 on 13/03/2019) S4.56 D 16.12 (Amended by DA2016/496/7 on 28/08/2019)	Building 4 – Adaptable Unit Plan 02	Rev. A Rev. B Rev. A Rev. D	Dated 28/03/2017 Dated 16/11/2017 Dated 24/05/2017 Dated 29/03/2019
Drawing No. DA16.13 S9616.13 (Amended by deferred commencement satisfied on 23/08/2018) S9616.13 (Amended by DA2016/496/3 on 13/03/2019)	Building 4 – Adaptable Unit Plan 03	Rev. A Rev. B Rev. A	Dated 28/03/2017 Dated 16/11/2017 Dated 24/05/2017
Drawing No. DA16.14 S9616.14 (Amended by deferred commencement satisfied on 23/08/2018) S9616.14 (Amended by DA2016/496/3 on 13/03/2019)	Building 4 – Adaptable Unit Plan 04	Rev. A Rev. B Rev. A	Dated 28/03/2017 Dated 16/11/2017 Dated 24/05/2017
Drawing No. DA16.15 S9616.15 (Amended by deferred commencement satisfied on 23/08/2018) S9616.15 (Amended by DA2016/496/3 on 13/03/2019)	Building 4 – Adaptable Unit Plan 05	Rev. A Rev. B Rev. A	Dated 28/03/2017 Dated 16/11/2017 Dated 24/05/2017
Drawing No. DA16.16 S9616.16 (Amended by deferred commencement satisfied on 23/08/2018) S9616.16 (Amended by DA2016/496/3 on 13/03/2019)	Building 4 – Adaptable Unit Plan 06	Rev. A Rev. B Rev. A	Dated 28/03/2017 Dated 16/11/2017 Dated 24/05/2017
Drawing No. S9617.21 (Amended by DA2016/496/2 on 11/09/2017) S9617.21	External Finishes – Sheet 01	Rev. A Rev. B	Dated 28/03/2017 Dated 16/11/2017

(Amended by deferred commencement satisfied on 23/08/2018) S9617.21 (Amended by DA2016/496/3 on 13/03/2019) S4.56 H 17.21 (Amended by DA2016/496/8 on 27/05/2020)		Rev. A	Dated 24/05/2017
		Rev. H	Dated 20/03/2020

- Landscape plans prepared by Greenplan, Job Number 16713, listed below:

Drawing No. LS	Landscape Cover	Iss. A	Dated 26/10/2016
Drawing No. LS-101	Landscape Site Photos	Iss. A	Dated 25/10/2016
Drawing No. LS-201	Landscape Site Plan Ground Floor	Iss. B	Dated 25/10/2016
Drawing No. LS-301	Landscape Plan Building 3 Ground Floor	Iss. B	Dated 25/10/2016
Drawing No. LS-302	Landscape Plan Building 4 Ground Floor	Iss. B	Dated 25/10/2016
Drawing No. LS-303	Landscape Plan Building 4 Level 6	Iss. B	Dated 25/10/2016
Drawing No. LS-401	Landscape Planting	Iss. A	Dated 25/10/2016
Drawing No. LS-402	Landscape Planting Details	Iss. A	Dated 25/10/2016

- Stormwater plans prepared by SGC, Project Number 20140028, listed below:

Drawing No. SW500	Cover Sheet	Rev. A	Undated
Drawing No. SW501	Stormwater Concept Design—Basement 3 Plan Building 3 & 4	Rev. A	Dated 01/11/2016
Drawing No. SW502	Stormwater Concept Design—Ground Floor Plan Sheet 1 of 2	Rev. A	Dated 01/11/2016
Drawing No. SW503	Stormwater Concept Design—Ground Floor Plan Sheet 2 of 2	Rev. A	Dated 01/11/2016
Drawing No. SW504	Stormwater Concept Design—Building 3 Roof Plan	Rev. A	Dated 01/11/2016
Drawing No. SW505	Stormwater Concept Design—Building 4 Roof Plan	Rev. A	Dated 02/11/2016
Drawing No. SW506	Stormwater Concept Design—Details Sheet	Rev. A	Undated
Drawing No. SW507	Erosion and Sediment Control—Plan and Details	Rev. A	Dated 02/11/2016

Drawing No. SW101	Stormwater Drainage Design—Specification Sheet	01	25 July 2017
Drawing No. SW200	Stormwater Drainage Design—Site Plan	01	15 March 2018
Drawing No. SW201	Stormwater Drainage Design—Basement 3 Plan	02	15 March 2018
Drawing No. SW202	Stormwater Drainage Design—Basement 2 Plan	02	15 March 2018
Drawing No. SW203	Stormwater Drainage Design—Basement 1 Plan	02	15 March 2018
Drawing No. SW204	Stormwater Drainage Design—Ground Floor Plan—Sheet 1 of 4	02	15 March 2018

Drawing No. SW205	Stormwater Drainage Design – Ground Floor Plan – Sheet 2 of 4	02	15 March 2018
Drawing No. SW206	Stormwater Drainage Design – Ground Floor Plan – Sheet 3 of 4	02	15 March 2018
Drawing No. SW207	Stormwater Drainage Design – Ground Floor Plan – Sheet 4 of 4	02	15 March 2018
Drawing No. SW300	Stormwater Drainage Design – Details Sheet – Sheet 1 of 2	02	21 February 2018
Drawing No. SW301	Stormwater Drainage Design – Details Sheet – Sheet 2 of 2	02	15 March 2018
Drawing No. SW400	Erosion and Sediment Control – Plan and Details	02	15 March 2018

(Amended by deferred commencement satisfied on 23/08/2018)

Drawing No. SW500	Cover Sheet	B	Undated
Drawing No. SW501	Stormwater Concept Design – Basement 3 Plan	B	5 November 2019
Drawing No. SW502	Stormwater Concept Design – Ground Floor Plan – Sheet 1 of 2	B	5 November 2019
Drawing No. SW503	Stormwater Concept Design – Ground Floor Plan – Sheet 2 of 2	B	5 November 2019
Drawing No. SW504	Stormwater Concept Design – Building 3 Roof Plan	B	5 November 2019
Drawing No. SW505	Stormwater Concept Design – Building 4 Roof Plan	B	5 November 2019
Drawing No. SW506	Stormwater Concept Design – Details Sheet	B	Undated
Drawing No. SW507	Erosion and Sediment Control – Plan and Details	B	5 November 2019

(Amended by DA2016/496/8 on 27/05/2020)

Drawing No. SW500	Cover Sheet	Rev. E	17 July 2020
Drawing No. SW501	Stormwater Concept Design - Basement 3 Plan	Rev. E	17 July 2020
Drawing No. SW502	Stormwater Concept Design - Ground Floor Plan	Rev. E	17 July 2020
Drawing No. SW503	Stormwater Concept Design - Ground Floor Plan	Rev. E	17 July 2020
Drawing No. SW504	Stormwater Concept Design - Building 3 Roof Plan	Rev. E	17 July 2020
Drawing No. SW505	Stormwater Concept Design – Building 4 Roof Plan	Rev. E	17 July 2020
Drawing No. SW506	Stormwater Concept Design – Details Sheet	Rev. E	17 July 2020
Drawing No. SW507	Erosion and Sediment Control	Rev. E	17 July 2020

(Amended by the Land and Environment Court under DA2020/0103 on 22 January 2021)

- Site Waste Management Plan prepared by Senica Consultancy Group, Report Number 2016/0901, dated 1 November 2016;
- BASIX Certificate Number 770665M, dated 2 November 2016, 770665M_05, dated 2 November 2016 (Amended by DA2016/496/7 on 28/08/2019), 770665M_08, dated 25 October 2019 (Amended by DA2016/496/8 on 27/05/2020);
- Tree Report prepared by Dr. Treegood, Reference Number 2014-476, dated April 2014;
- Arborist Report prepared by Dr. Treegood, Job Number 62778, Reference Number 2018-822, dated September 2018 (Added by DA2016/496/7 on 28/08/2019);
- Acoustic Report prepared by Rodney Stevens Acoustics, Report Number R160099B3, Revision 0, dated 1 November 2016;

- Site Contamination Audit Report prepared by Environmental Earth Sciences NSW, Version 1, dated 4 March 2016;
- Correspondence from Endeavour Energy, dated 22 March 2017, 2 November 2017 (Added by DA2016/496/3 on 13/03/2019), 24 May 2018 (Added by DA2016/496/4 on 13/03/2019), 25 June 2019 (Added by DA2016/496/7 on 28/08/2019), 28 February 2020 (Added by DA2016/496/8 on 27/05/2020), and all conditions contained therein;
- Correspondence from NSW Police Force – Holroyd Local Area Command, Police Reference D/2016/704554, dated 5 January 2017, and all conditions contained therein;
- Correspondence from Water NSW, dated 18 January 2017, 8 February 2017 (Added by DA2016/496/3 on 13/03/2019), and all conditions contained therein;
- Correspondence from Sydney Water, dated 4 April 2016, and all conditions contained therein;
- Correspondence from Sydney Trains, dated 7 April 2017, 20 August 2018 (Added by deferred commencement satisfied on 23/08/2018), and all conditions contained therein; and
- Correspondence from Heritage Office, Reference Number DOC16/618389, dated 17 January 2017, and all conditions contained therein.
- Correspondence from Roads and Maritime Services, Reference Number SYD16/01689/03, dated 7 November 2017 (Added by DA2016/496/3 on 13/03/2019), and all conditions contained therein.

Condition 127 under Schedule 'B' is amended to read as follows:

Certificates / Documentary Evidence

127. Prior to the issue of a final occupation certificate an Accredited Principal Certifier shall submit to the Principal Certifying Authority a signed checklist as per Appendix A of AS4299-1995, confirming that ~~sixty-three (63)~~ seventy (70) units, as nominated on the approved Architectural plans, have achieved the designed level of adaptability (i.e. "Adaptable House Class A or B"). (Amended by the Land and Environment Court under DA2020/0103 on 22 January 2021)

A new condition 2AA is to be inserted into the conditions of consent to DA 2016/4967 as follows :

2AA Relationship with consent to DA2020/0103

This consent is to be read in conjunction with the consent DA2020/0103. Where there is an inconsistency between this consent and the consent to DA 2020/0103, then consent to DA 2020/0103 shall prevail to the extent of the inconsistency.

The modification of development consent DA2016/496 related to 20-22, 24, 24R & 27 Dressler Court, Merrylands, must be given in the manner prescribed by Section 4.17(5) of the *Environmental Planning and Assessment Act, 1979*, and Clause 97(1) and (2) of the *Environmental Planning and Assessment Regulation, 2000*.

(Reason: To ensure consistency between development consents DA2016/496 and DA2020/0103)

10. Sydney Trains

The following Sydney Trains conditions are applicable:

- a) During all stages of the development the Applicant must take extreme care to prevent any form of pollution entering the railway corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the Applicant.
- b) The Applicant must ensure that all drainage from the development is adequately disposed of and managed and not allowed to be discharged into the railway corridor unless prior written approval has been obtained from Sydney Trains.
- c) The proposed development is to comply with the deemed-to-satisfy provisions in the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads-Interim Guidelines".

- d) The Applicant must ensure that at all times they have a representative (which has been notified to Sydney Trains in writing), who:
 - Oversees the carrying out of the Applicant's obligations under the conditions of this consent and in accordance with correspondence issued by Sydney Trains;
 - Acts as the authorised representative of the Applicant; and
 - Is available (or has a delegate notified in writing to Sydney Trains that is available) on a 7 day a week basis to liaise with the representative of Sydney Trains, as notified to the Applicant.
- e) Where a condition of consent requires consultation with Sydney Trains, the Applicant shall forward all requests and/or documentation to the relevant Sydney Trains External Interface Management team. In this instance the relevant interface team is West Interface and they can be contacted via email on West_Interface@transport.nsw.gov.au.
- f) Sydney Trains or Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of this condition, must be permitted to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and the requirements of this consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.

(Reason: Compliance with conditions of Sydney Trains concurrence)

11. Development Consent 2016/496

This consent is to be read in conjunction with the consent to DA 2016/496. This Development Consent shall prevail to the extent of any inconsistency with the design approved under Development Consent 2016/496, dated 26 June 2017, and subsequent modifications.

(Reason: To ensure this consent prevails over Development Consent 2016/496)

Conditions which must be satisfied prior to the issue of a Construction Certificate

12. Amendments to Approved Plans

Amended plans/documents shall be submitted to the Registered Certifier prior to the issue of a Construction Certificate addressing the following matters:

- a) Detail shall be provided, confirming the bin rooms within the basement of building 3 can accommodate the additional bins required to service the development, that being 4 x 1100 litre garbage bins, and 11 x 240 litre recycling bins or 3 x 1100 litre recycling bins.
- b) The plant area ductwork is in close proximity to the communal open space barbeque areas on Level 12. The building ventilation intakes shall be located and designed to avoid drawing in barbeque smoke.
- c) The north-eastern doors to the access corridor on Level 12 shall be annotated on the plans.
- d) High or mid-level frosted north facing window/s shall be introduced to the kitchen of Unit 3.12.04 on Level 12, to introduce additional northern light into the unit.
- e) An acoustic statement and odour impact statement shall be prepared by a qualified consultant for Units 3.12.03 and 3.12.04 on Level 12, Units 3.L.03 and 3.12.04 on Levels 13 and 14, and Units 3.15.03 and 3.15.04 on Level 15, confirming the amenity of the units will not be compromised by the plant area on Level 12, which is adjacent to the communal open space area.
- f) Screening shall be designed to the plant area on Level 12, which is adjacent to the communal open space area, to improve the outlook from Units 3.L.03 and 3.12.04 on Levels 13 and 14, and Units 3.15.03 and 3.15.04 on Level 15.

(Reason: To confirm and clarify the terms of Council's approval)

13. Application for a Construction Certificate

Construction work must not commence until a Construction Certificate has been obtained from Council or Registered Certifier.

(Reason: Statutory requirement)

14. Double Dipping Covenant

A restrictive covenant shall be created for the common property of SP 102461 under s.88B of the *Conveyancing Act 1919* preventing the creation of floor area in that strata plan. Cumberland Council shall be identified as the authority able to modify, vary or release the restriction. Evidence that the restriction on the use has been registered with NSW Land Registry Services is to be provided to Council prior to the release of a Construction Certificate.

(Reason: Under previous development applications and development consents, the site area component for the purpose of calculating FSR had been measured on the basis of Lot 3 DP 1248018 which was the parent lot of now Lots 30 and 31 DP 1268071 and SP 102461. Planning instruments, in particular *Holroyd local Environmental Plan 2013 (Amendment No. 20)*, inclusive of its FSR control, were prepared on the basis of Lot 3, not Lots 30 and 31 / SP 102461. Each of Lot 30 and 31 / SP 102461 contain a separate residential flat building. The FSR contemplated across Lot 3 (now Lots 30 and 31 / SP 102461) has been exhausted with the additional gross floor area approved under this consent. The subsequent subdivision to create Lots 30 and 31 / SP 102461 results in disproportionate FSR calculations for both lots when calculated individually. Particularly, the FSR for lot 30 is well above the FSR control of the LEP while the FSR for lot 30 / SP 102461 is well below the control. The deficit of gross floor area on Lot 31 / SP 102461, measured not in real terms but in the context of permissible FSR on that lot in isolation, has been taken up by an exceedance of the FSR on Lot 30. Any further application proposing additional gross floor area on Lot 31 / SP 102461 would amount to a double dipping on gross floor area and would undermine the FSR control)

15. Disabled Access & Facilities

Access and facilities for people with disabilities must be provided in accordance with the relevant requirements of the National Construction Code (for all new building work) and in addition, with the relevant requirements of the 'Disability (Access to Premises - Building) Standards 2010'. Details of the proposed access, facilities and car parking for people with disabilities are to be included in the plans/specifications for the construction certificate.

(Reason: To ensure compliance with the requirements of the National Construction Code)

16. Payment of Bonds, Fees and Long Service Levy

The Council or registered certifier is to ensure and obtain written proof prior to the issue of a Construction Certificate that all bonds, fees and contributions as required by this consent have been paid to the applicable authority. This includes payment of a long service levy as required under part 5 of the Building and Construction Industry Long Service Payments Act 1986.

(Reason: To ensure that the applicable bonds, fees and levies are paid)

17. Section 7.11 Contribution

Prior to the issue of a Construction Certificate, a monetary contribution of \$76,000 under Section 7.11 of the Environmental Planning and Assessment Act 1979 and the Cumberland Local Infrastructure Contributions Plan 2020, as amended by a planning agreement applying to the site, is to be paid to Council. The amount of the contribution will be determined at the time of payment in accordance with the relevant Contributions Plan in force at that time. A copy of the Cumberland Local Infrastructure Contributions Plan 2020 – Neil Street Precinct Plan can be viewed on Council's website at www.cumberland.nsw.gov.au or inspected at Council's Service Centre located at 16 Memorial Avenue, Merrylands between the hours of 8am and 4.30pm Monday to Friday.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new developments)

18. Protection of Public Places

The adjoining or adjacent public area is not to be obstructed by any materials, vehicles, refuse skips and the like, under any circumstances unless approved in writing by Council.

If the work involved in the construction of a building is likely to disrupt or obstruct pedestrian or vehicular traffic in a public place, or building involves the closure of a public place, a barrier, fence or hoarding shall be erected prior to the commencement of any work subject to approval of a Traffic Management Plan.

(Reason: Safety)

19. Hoardings

A separate Hoarding approval for the erection of a Class A (fence type) or Class B (overhead type) hoarding along the street frontage(s) must be obtained from Council. The relevant application form shall be submitted to Council with a footpath occupancy fee based on the area of footpath to be occupied according to Council's Schedule of Fees and Charges, and the application shall be approved before the commencement of work.

(Reason: Safety & information)

20. Construction and Traffic Management Plan

For the purpose of this condition, the building comprises the four storeys approved under this application in conjunction with the earlier approved 12 storeys. The applicant shall provide a Construction and Traffic Management Plan, prepared by a suitably qualified consultant and submitted to Council for approval. The following matters shall be specifically addressed in the Plan:

- i. A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
 - a) Dedicated construction site entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways;
 - b) Signage type and location to manage pedestrians in the vicinity;
 - c) The locations of any proposed Work Zones in the frontage roadways – note: Work Zone fees apply in accordance with Council's Fees and Charges;
 - d) Locations and type of any hoardings proposed along all street frontages;
 - e) Area of site sheds and the like;
 - f) Location of any proposed crane standing areas;
 - g) A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
 - h) Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected;
 - i) The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible; and
 - j) Any variation to the above is subject to Council's Manager Engineering approval.
- ii. All necessary concurrences and approvals from RMS must be obtained for any construction works impacting on the traffic signals at the Pitt Street with Terminal Place intersection.
- iii. A Traffic Control Plan for the site must be prepared for approval by Council incorporating the following: -
 - a) Traffic control devices proposed in the road reserve must in accordance with the RMS publication "Traffic Control Worksite Manual" and designed by a person licensed to do so (minimum RMS 'red card' qualification). The main stages of the development requiring specific construction management measures are to be identified and specific traffic control measures identified for each.
 - b) A detailed description and route map of the proposed route for vehicles involved in spoil removal, material delivery and machine floatage must be provided detailing: -

- Light traffic roads and those subject to a load or height limit must be avoided at all times; and
 - A copy of this route is to be made available to all contractors, and shall be clearly depicted at a location within the site.
- c) Evidence of RMS concurrence for the construction access.
- d) A schedule of site inductions to be held on regular occasions and as determined necessary to ensure all new employees are aware of the construction management obligations. These must specify that construction-related vehicles to comply with the approved requirements;
- e) For those construction personnel that drive to the site, the Applicant where possible shall provide on-site parking so that their personnel's vehicles do not impact on the area.

Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.

- iv. Any use of Council property shall require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- v. Failure to provide complete and detailed information may result in delays. It is recommended that your Construction and Traffic Management Plan be lodged with Council as early as possible.
- vi. Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: Traffic management, pedestrian safety and amenity during construction phase)

21. Landscape Maintenance Strategy

To ensure the survival of landscaping following works, a landscape maintenance strategy for the owner/occupier to administer over a 12 month establishment period following the issue of the Occupation Certificate shall be prepared and provided to the satisfaction of the Registered Certifier with the Construction Certificate application. The strategy is to address maintenance issues such as, but not limited to plant survival, irrigation, soil testing, weeding, staking, fertilizing, remedial pruning and plant replacement.

(Reason: Ensure landscape survival)

22. On Slab Landscaping

The on slab landscaping shown on the approved landscaping plan is to be designed to include a minimum soil depth of 650 mm for shrubs and screen planting and 300 mm for ground cover planting. Adequate drainage and a permanent, automatic irrigation system shall be provided conforming to Sydney Water's current Waterwise Policy. Details shall be submitted with the Construction Certificate application to demonstrate compliance with this condition.

(Reason: To ensure the site landscaping thrives)

23. Available Visitor Car Parking Signage

A sign shall be erected in a suitable location on the property near the driveway entrance indicating where visitor parking is available on the site. Details shall be submitted to the satisfaction of the Council or registered certifier prior to the issue of the Construction Certificate.

(Reason: Adequate access and egress)

24. Off Street Car Parking - Residential Buildings

Each of the car parking spaces provided for the additional units approved under this consent shall comply with the following:

- a) All car spaces shall be allocated and marked according to this requirement. Tandem spaces must be allocated to the same unit.

- b) If the development is to be strata subdivided, the car park layout must reflect the appropriate allocation and shall be part of the entitlement of that strata lot.
- c) Each space shall have minimum dimensions in accordance with the relevant Australian Standard.
- d) Visitor spaces shall only be used by persons visiting residents of the property or persons with a legitimate legal reason to be upon the land.
- e) Car parking spaces are to be situated wholly within Lot 30 stratum.
- e) Access to visitor parking shall not be restricted without development approval.

Details are to be submitted to the Principal Certifier prior to the issue of a Construction Certificate showing compliance with this condition.

(Reason: Parking and access)

25. Translucent Glazing for Privacy in Wet Areas

Translucent glazing must be installed in all bathroom, ensuite and toilet windows.

(Reason: Amenity)

26. Site Cranes

Site Crane/s and hoist/s proposed within the boundary of the land being developed must comply with Australian Standards AS 1418, AS 2549 and AS 2550 and all relevant parts of these standards.

Cranes must not swing or hoist over any public place unless the principal contractor or owner builder have the relevant approval under the Local Government Act 1993, Crown Lands Act 1989 or Roads Act 1993.

(Reason: Safety and statutory compliance)

27. Detailed Stormwater Drainage System Design

Prior to the issue of the Construction Certificate a detailed stormwater drainage plan for the safe disposal of stormwater from the site, prepared in accordance with the approved plans, Council's "On-Site Stormwater Detention Policy", the "Stormwater and On Site Detention Drawing Submission Checklist " and the "Upper Parramatta River Catchment Trust's On-site Stormwater Detention Handbook" shall be submitted and approved by the Council or Registered Certifier.

Should any changes be required to the approved stormwater drainage plan, the amended design shall achieve equivalent performance standards in accordance with Council's "On-Site Stormwater Detention Policy".

Please note that where the proposed design extends beyond the property boundary, separate approval under Section 138 of the Roads Act 1993, must be obtained from Council prior to the commencement of works.

The stormwater plans shall be in accordance with the endorsed stormwater plans, and address the following:

- a) All the rainwater outlets denoted as 'RWO' within the common circulation road (driveway) between Buildings 3 and 4, shall have sufficient inlet capacity to prevent overflowing the surface runoff.
- b) All roof-runoff from Building 3 and 4 shall be directed into the OSD system.
- c) The basement pump-out tank shall incorporate a sump approximately 400mm deep, to house the pumps installation, and to ensure continuation of priming of the pump to avoid cavitation.
- d) Appropriate measures shall be employed to prevent the surface stormwater runoff from the common circulation road (driveway) between Buildings 3 and 4, flowing down to the basement.
- e) The basement pump-out tank shall have a total holding capacity of 9.3m³ during the pump failure, with underground capacity of at least 4.1m³, and the rest on aboveground ponding area around the pump-out tank.
- f) The roof gutter and downpipe system shall be designed to convey the 5 minute duration 1% AEP storm event into the OSD system with no gutter overflows.
- g) Areas of the site that will by-pass the detention system/s shall be clearly delineated on the drawing, and the OSD design summary calculations shall correspond.
- h) Retaining walls forming above ground On-site Stormwater Detention (OSD) storage basin, or

water retaining structure walls, shall be constructed wholly within the property, and must be constructed of leak-proof, watertight solid (i.e. masonry/brick) construction, with a typical sectional detail provided. No timber retaining wall is acceptable.

- i) The stormwater plan shall indicate the finished surface levels within all detention storage areas at critical locations, such as each corner and at the change of gradient, etc.
- j) A safety fence or an equivalent barrier shall be provided where there is a vertical drop of greater than 500mm from a walkway into an above ground basin area.
- k) Emergency overflow spillway weir of at least 1.2m wide, shall be provided on the OSD retaining wall for an emergency overflow escape route.
- l) Emergency overflow spillway weir of at least 1.2m wide shall be provided at a level not lower than RL15.95mAHD for an emergency overflow escape route.
- m) All mulch to landscaped areas of the above ground basin shall be non-floatable (i.e. rock/gravel or similar).
- n) Amendments in red as shown on the endorsed plans.

The amended plans shall be submitted to the Council or registered certifier for approval, prior to the issue of a Construction Certificate.

(Reason: Stormwater management)

28. Certification of the Stormwater Drainage System Design

The proposed stormwater design shall be certified by a suitably qualified person, in accordance with Council's "On-site Stormwater Detention Policy" and shall be submitted to the Council or Registered Certifier prior to the issue of the Construction Certificate.

Certification of the proposed stormwater design shall be obtained from a qualified practising professional engineer with the Engineers Australia membership (formerly Institution of Engineers) and shall be submitted to the Council or Registered Certifier prior to the issue of the Construction Certificate.

(Reason: Adequate stormwater management)

29. Grated Drain Across the Driveway within the Ramp

A grated trench drain shall be provided across the full width of the driveway, within the ramp. Unless otherwise designed by a qualified Civil Engineer, the dimensions of the trench grate shall not be less than 200mm wide by 150mm deep at the shallow end, and have a minimum slope of 2%. This trench drain shall be connected to an approved drainage system. The grated drain calculation shall be in accordance with AS/NZS3500.

The above information must be indicated on all relevant drawings to be submitted with the Construction Certificate.

(Reason: Environmental protection)

30. Silt Arrestors and Gross Pollutant Traps

Silt and gross pollutant traps shall be fitted in all stormwater pits, designed in accordance with Council's Engineering Specifications and Holroyd Development Control Plan 2013, and to the satisfaction of Council or the Registered Certifier. Details are to be submitted with the design prior to the issue of the Construction Certificate.

(Reason: Environmental protection)

31. Dilapidation Report

A dilapidation report should be prepared for any adjoining or nearby property that may be subject to potential damage as a result of any works being undertaken on the site as part of this approved development. This is designed to assist all parties should damage occur which is not preventable. The dilapidation reports must be completed and submitted to the owner/s of the affected property/ies, Council and the Principal certifier prior to undertaking any works that may cause damage. All costs shall be borne by the applicant/person acting on the consent.

The dilapidation report is to be prepared by a suitably qualified practising engineer.

Please note:

- a) Any damage that may be caused is a civil matter. This consent does not allow or authorise any party to cause damage, trespass, or any other unlawful act and Council will not be held responsible for any damage that may be caused to adjoining buildings as a consequence of the development being carried out.
- b) Council will not become directly involved in disputes between the builder, owner, developer, its contractors and the owners of neighbouring buildings.

(Reason: To ensure there is an adequate record of the state of neighbouring properties prior to works commencing on site)

32. Telecommunications

If the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Council or registered certifier prior to the issue of a Construction Certificate or any works commencing, whichever occurs first.

(Reason: Ensure services are not disturbed)

33. Adjustment to Telecommunications

The arrangements and costs associated with any adjustment/relocation of telecommunications infrastructure shall be borne in full by the applicant/developer. Details are to be submitted with the application for a Construction Certificate.

(Reason: Ensure the applicant is responsible for costs associated with adjustments to Telecommunications infrastructure)

34. Compliance with Acoustic Report

Prior to the issue of a Construction Certificate, the construction drawings and construction methodology must be assessed and certified by a suitably qualified acoustic consultant to be in accordance with any requirements and recommendations of the approved acoustic report prepared by Rodney Stevens, Reference Number R160099B3, Revision 0, dated 1 November 2016.

Note: Suitably qualified Acoustic Consultant means a consultant who possesses the relevant tertiary qualifications and experience to render them eligible to be a Member or Fellow of the Australian Acoustical Society, or a member of the Association of Australian Acoustical Consultants (AAAC) .

(Reason: To ensure appropriate noise attenuation measures are used)

35. Mechanical Ventilation - Certification of Compliance

Details of any mechanical ventilation and/or air handling system must be prepared by a suitably qualified person and certified in accordance with Clause A2.2 (a) (iii) of the National Construction Code 2019, to the satisfaction of the Council or registered certifier prior to the issue of a Construction Certificate. The system must be certified as complying with AS1668.1 and 2 - 2012 The Use of Ventilation and Air-Conditioning in Buildings - Mechanical Ventilation in Buildings, the National Construction Code and relevant Australian Standards.

(Reason: To ensure adequate mechanical ventilation is provided)

36. Sydney Trains

The following Sydney Trains conditions are applicable:

- a) Prior to the issue of a Construction Certificate the Applicant is to provide structural details that the concrete slab or footings will be protected by a vapour barrier membrane. A copy of this detail is to be provided to the Council or registered certifier with the application for a Construction Certificate.
- b) Prior to the issue of a Construction Certificate, the Applicant shall provide an accurate survey locating the development with respect to the rail boundary and rail infrastructure. This work is to be undertaken by a registered surveyor, to the satisfaction of Sydney Trains representative.
- c) No work is permitted within the rail corridor, or any easements which benefit Sydney Trains/TAHE (Transport Asset Holding Entity), at any time, unless the prior approval of, or an

Agreement with, Sydney Trains/TAHE (Transport Asset Holding Entity) has been obtained by the Applicant. The Council or registered certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

- d) Given the possible likelihood of objects being dropped or thrown onto the rail corridor from balconies, windows and other external features (e.g. roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor, the development must have measures installed, to the satisfaction of Sydney Trains (e.g. awning windows, louvres, enclosed balconies, window restrictors etc.) which prevent the throwing of objects onto the rail corridor. The Council or registered certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- e) Prior to the issuing of a Construction Certificate the Applicant must submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Council or registered certifier is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.
- f) If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Council or registered certifier is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.
- g) If required, a risk analysis, which shall determine the required level of derailment protection (if any), shall be carried out in consultation with Sydney Trains. This risk analysis will determine the redundancy requirements or the minimum collision loads specified in Australian Standard AS5100 that needs to be complied with. The risk assessment is to be prepared in accordance with the Sydney Trains Safety Management System. The Council or registered certifier shall not issue the Construction Certificate until it has received written confirmation from Sydney Trains that the risk analysis has been prepared and the Council or registered certifier has also confirmed that the measures recommended in this risk analysis have been indicated on the Construction Drawings.
- h) Copies of any certificates, drawings, approvals/certification or documents endorsed by, given to or issued by Sydney Trains or TAHE (Transport Asset Holding Entity) must be submitted to Council for its records prior to the issuing of the applicable Construction Certificate.
- i) Where a condition of consent requires Sydney Trains or Transport for NSW endorsement the Council or registered certifier is not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those entities that the particular condition has been complied with. The issuing of staged Construction Certificates dealing with specific works and compliance conditions can be issued subject to written agreement from those entities to which the relevant conditions applies.

(Reason: Compliance with conditions of Sydney Trains concurrence)

37. Heritage Council of NSW

Prior to the issue of the Construction Certificate, the Applicant shall engage a suitably qualified historical archaeologist to undertake a detailed Historical Archaeological Assessment of the site as a whole. The Assessment shall comply with Heritage Council of NSW guidelines including but not limited to *Assessing Significance for Historical Archaeological sites and Relics 2009* and *Archaeological Assessments 1996*. The Assessment must identify the potential and significance of the archaeological resource and the level of impacts from works at the site.

(Reason: The subject site is listed for its archaeological values in the Holroyd Local Environmental

Plan (HLEP) 2013 and has potential to contain historical archaeological relics, which are protected under the Heritage Act 1977)

38. Endeavour Energy

Documentary evidence shall be provided from Endeavour Energy, confirming that satisfactory arrangements have been made for the connection of electricity, and the design requirements for the substation, prior to the issue of the Construction Certificate.

(Reason: To ensure network capacity / connection)

39. Infrastructure Fee

The infrastructure inspection fee in accordance with Councils Fees and Charges Schedule shall be paid prior to the issue of the Construction Certificate.

(Reason: to contribute to the cost of inspection and identification of any damage to Council's infrastructure as a result of the development)

40. SEPP 65 - Design Verification

The following requirements arising from State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development must be complied with:-

- a) The Council or registered certifier must not issue a Construction Certificate in respect of the development unless the Council or registered certifier has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the plans and specification achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.
- b) The principal certifier must not issue an Occupation Certificate to authorise a person to commence occupation or use of the development unless the principal certifier has received a design verification from a qualified designer, being a statement in which the qualified designer verifies that the development as shown in the plans and specifications in respect of which the Construction Certificate was issued, having regard to the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

(Reason: Statutory requirements)

41. Residential Storage

Storage areas for each unit shall be provided at the following rates:-

- 1 bedroom units - 6m³
- 2 bedroom units - 8m³
- 3 bedroom units - 10m³

A minimum of 50% of the storage area shall be provided within the unit.

Detail is to be submitted to the Principal Certifying Authority, prior to the issue of a Construction Certificate.

(Reason: Statutory requirements)

42. Lighting Design

The following shall be addressed with the lighting design of commercial portion of the development:

- Lighting shall be designed not to interfere with the amenity of residents or affect the safety of motorists.
- Light spill onto the street, and onto the public domain shall be minimised.
- Adequate lighting shall be provided to minimise shadows and concealment of spaces.
- Under awning lighting shall be provided to facilitate night use and to improve public safety. The lighting shall be recessed into the soffit of the awning, or wall mounted onto the building.
- Soft down lighting is preferred over up lighting to minimise light pollution.

- The lighting design shall be integrated with the interior design. The use of low voltage track lighting, recesses spotlighting and designer light fittings is encouraged.
- The light source shall be selected to provide the desired light effect; however, fitting and methods shall be chosen to produce the highest energy efficiency.
- Surface mounted fluorescent fixtures shall not be used.

Detail shall be submitted to the Council or registered certifier, prior to the issue of a Construction Certificate.

(Reason: Compliance with the Auburn Development Control Plan 2010)

Conditions which must be satisfied prior to the commencement of any development work

43. Appointment of Principal Certifier

No work shall commence in connection with this Development Consent until:

- a) A construction certificate for the building work has been obtained from a Certifier.
- b) the person having the benefit of the development consent has:
 - (i) appointed a principal certifier for the building work, and
 - (ii) given at least 2 days' notice to the Council, and the principal certifier if not the Council, of the person's intention to commence the erection of the building, and
- c) The principal certifier has, no later than 2 days before the building work commences:
 - (i) notified the Council of his or her appointment, and
 - (ii) notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- d) The person carrying out the building work has notified the principal certifier that the person will carry out the building work as an owner-builder, if that is the case
- e) The person having the benefit of the development consent, if not carrying out the work as an owner-builder, has:
 - (i) appointed a principal contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
 - (ii) notified the principal certifier of such appointment, and
 - (iii) unless that person is the principal contractor, notified the principal contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work.

(Reason: Statutory requirements)

44. Site Safety Fencing

Erect site fencing to a minimum height of 1.8m, to exclude public access to the site throughout the construction works. The fencing must be erected before the commencement of any work and maintained.

(Reasons: Statutory requirement and health and safety)

45. Principal Certifier Sign

Prior to commencement of any work, signage must be erected in a prominent position on the work site identifying:

- a) The Principal Certifier by showing their name, address and telephone number;
- b) The Principal Contractor (if any) by showing the Principal Contractor's name, address and telephone number (outside of work hours) for that person.
- c) The sign must state that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the work is being carried out, and must be removed when the work has been completed.

(Reason: Statutory requirement)

46. Sydney Water Tap in Approvals

The approved plans must be submitted through the Sydney Water 'Tap in' portal to determine whether

the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Sydney Water 'Tap in' customers will receive an approval receipt. For further details please refer to Sydney Water's web site at www.sydneywater.com.au/tapin or call 1300 082 746.

The Principal Certifier must ensure that the plans have been approved through the Sydney Water 'Tap in' process and an approval receipt is issued prior to the commencement of works.

(Reason: Statutory requirement)

47. Toilet Amenities for People Working at the Site

Suitable toilet amenities are to be provided at the work site at all times. If a temporary toilet is proposed, it must:-

- a) have a hinged door capable of being fastened from both inside and outside,
- b) be constructed of weatherproof material,
- c) have a rigid and impervious floor; and
- d) have a receptacle for, and supply of, deodorising fluid.

(Reason: To ensure suitable toilet amenities are provided for workers)

48. Notice of Requirements from Sydney Water

Following application to Sydney Water, they will assess the development and if required will issue a "Notice of Requirements" letter detailing all requirements that must be met. The Notice of Requirements letter must be submitted to the Principal Certifier before the commencement of works.

(Reason: To comply with statutory requirements)

49. Sydney Trains

The following Sydney Trains conditions are applicable:

- a) The Applicant shall provide a Geotechnical Engineering report to Sydney Trains for review by Sydney Trains Geotechnical section prior to the commencement of works. The report shall demonstrate that the development has no negative impact on the rail corridor or the integrity of the infrastructure through its loading and ground deformation and shall contain structural design details/analysis for review by Sydney Trains. The report shall include the potential impact of demolition and excavation, and demolition- and excavation-induced vibration in rail facilities, and loadings imposed on Sydney Trains Facilities by the development.
- b) Prior to the commencement of any works appropriate fencing must be in place along the rail corridor to prevent unauthorised access to the rail corridor during construction works. Details of the type of fencing and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.

(Reason: Compliance with conditions of Sydney Trains concurrence)

50. Approval for Disposal of Site Stormwater

The proposed disposal system constituting headwall adjacent to the creek, is subject to further approval by the relevant authority (Council / Sydney Water, whichever is applicable). A separate application shall be submitted to the authority. The application shall accompany details of the disposal measures and design to the satisfaction of the approval authority, prior to commencement of works. Appropriate inspection process and stage shall be arranged with the approval authority at various stages (such as excavation, connection, and prior to backfill).

(Reason: Protection and maintenance of infrastructure)

51. Protection of Footpath Paving, Kerb and Gutter

Protection must be provided for Council footpath paving, kerb and guttering. Wooden mats must also be provided at all entrances where the site fronts paved footpaths.

(Reason: To ensure protection of public asset)

52. Alterations / Removal of Services

The applicant is to arrange with the relevant public utility authority the alteration or removal of any

affected services in connection with the development. Any such work being carried out at the applicant's cost.

(Reason: Public utility authority requirement)

Conditions which must be satisfied during any development work

53. Construction Hours

No construction or any other related activities including the delivery of materials to the site shall be carried out on the site outside the hours of 7.00 am to 6.00 pm Mondays to Fridays and 8.00 am to 4.00 pm Saturdays. No work is to occur on Sundays and public holidays.

Where the development involves the use of jackhammers/ rock breakers and the like or other heavy machinery, such equipment may only be used between the hours of 7.00 am - 6.00 pm Monday to Friday.

(Reason: To minimise impacts on neighbouring properties)

54. Site Management

All possible and practical steps shall be taken to prevent nuisance to the occupants of the surrounding neighbourhood from windblown dust, debris, noise and the like during building works.

(Reason: Health and amenity)

55. Construction and Traffic Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction and Traffic Management Plan.

All controls in the Plan must be maintained at all times. A copy of the Plan must be kept on site at all times and made available to the certifier on request.

(Reason: Compliance with condition of consent)

56. Stamped Plans

Stamped plans, specifications, documentation and the consent shall be available on site at all times during construction.

(Reason: To ensure compliance with approved plans)

57. General Site Requirements Construction

All of the following are to be satisfied/complied with during construction and any other site works:

- a) A single entrance is permitted to service the site for construction. The footway and nature strip at the service entrance must be planked out with close boarded, hardwood timber footpath protection pads. The pad shall cover the entire width of the footpath opening for the full width of the fence.
- b) No blasting is to be carried out at any time during construction of the building.
- c) Care must be taken during building/ construction to prevent any damage to adjoining buildings.
- d) Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.
- e) Any excess construction materials are to be recycled wherever practicable.
- f) The disposal of construction waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- g) All waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water as defined by the Protection of the Environment Operations Act 1997.
- h) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it.
- i) All materials on site or being delivered to the site are to generally be contained within the site. The requirements of the Protection of the Environment Operations Act 1997 must be complied with when placing/stockpiling loose material, disposing of concrete waste, or other activities

likely to pollute drains or water courses.

- j) Details as to the method and location of disposal of materials (weight dockets, receipts etc.) should be kept on site as evidence of approved methods of disposal and recycling.
- k) Any materials stored on site must be stored out of view or in such a manner so as not to cause unsightliness when viewed from nearby lands or roadways.
- l) Public footways and roadways adjacent to the site must be fully maintained and cleared of obstructions during construction unless prior separate approval from Council is obtained including payment of relevant fees.
- m) Building operations such as brick cutting, washing tools or paint brushes, and mixing mortar shall not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- n) All site waters during construction must be contained on site in an approved manner to avoid pollutants entering into waterways or Council's stormwater drainage system.

(Reason: To ensure minimal disruption to the local area and to ensure building and any other site works are undertaken in accordance with relevant legislation and policy.)

58. Power Connection - Major Development

All power connection to the development shall be installed underground.

(Reason: To avoid visual clutter)

59. Communication Cabling

All communication cabling shall be installed underground as per the relevant authority's requirements.

(Reason: Environmental Amenity)

60. Road and Footpath Opening Permit

Pursuant to Section 138 of the Roads Act, should any work on the verge, footpath, public road reserve or public reserve (open space) be required, approval will need to be obtained from Council. In this regard the Applicant is to contact Council's Customer Services Centre to apply for a Road and Footpath Opening Permit, for works in relation to the excavation of the verge (e.g. for the purpose of installation of services such as private stormwater, private gas line, private sewer, private water pipe, etc.). This Permit is to be obtained prior to any works on the verge, footpath, public road reserve or public reserve being undertaken.

Road and Footpath Opening Permits do not include driveways, laybacks and major stormwater drainage construction, which are covered separately by the 'Application for Vehicular Crossing and Road Works' or the 'Application for Street Drainage Works Approval'.

(Reason: Maintain public asset)

61. Tree Protection

To minimise impacts on trees to be retained, no permanent fill or storage of building materials, excavated fill or topsoil during the site works shall take place within their drip lines/root zone area.

(Reason: Tree preservation)

62. Obstruction of Road or Footpath

The use of the road or footpath for the storage of any building materials, waste materials, temporary toilets, waste bins or any other matter is not permitted unless approved by Council.

(Reason: Protection of infrastructure, safety & information)

63. Compliance with the National Construction Code

All building work must be carried out in accordance with the provisions of the National Construction Code (NCC).

(Reason: Prescribed statutory control)

64. Progress Survey - Major Development (greater than two stories)

In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height

Datum, shall be prepared by a Registered Surveyor showing the following:

- a) Prior to placement of concrete, the first level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;
- b) Prior to placement of concrete at the third level, showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
- c) Prior to roofing, or completion of the highest point of the building, showing the anticipated level of the completed work and the relationship to the boundary; and
- d) At completion, works showing the relationship of the building to the boundary.

Progress certificates in response to points (a) through to (e) shall be produced to the Principal Certifier at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveals discrepancies between the approved plans and the proposed works.

(Reason: To ensure compliance with approved plans)

65. Air Conditioning Units - Location

Air conditioning units are not to be visible from the street or public place and are not to obscure windows/window frames or architectural features of the building.

(Reason: To ensure that air conditioning units associated with the development are appropriately located and do not detract from the appearance of the buildings)

66. Switchboards/Service Panels

Switchboards and/or service panels for utilities are not to be attached to the front facades/elevations of the building(s).

(Reason: To ensure that switchboards and service panels are appropriately located)

67. Sydney Trains

Without in any way limiting the operation of any other condition of this consent, the Applicant must, during demolition and construction works, consult in good faith with Sydney Trains in relation to the carrying out of the development works and must respond or provide documentation as soon as practicable to any queries raised by Sydney Trains in relation to the works.

(Reason: Compliance with conditions of Sydney Trains concurrence)

68. Inspection of Works (Stormwater Connection to Public Infrastructure)

The stormwater drainage works connecting into the public stormwater system shall be inspected by the relevant authority (Council / Sydney Water, whichever is applicable) during construction. Documentary evidence of compliance with Council's specifications shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages:

- a) Initial inspection to discuss concept and site conditions / constraints prior to commencement of the drainage connection.
- b) Prior to backfilling of the trench, following the laying and connection of the stormwater pipe / channel.
- c) Final inspection.

Council's standard inspection fee will apply to each of the above set inspection key stages. Additional inspection fees will apply for additional inspections required to be undertaken by Council.

Note: A private certifier or the PCA cannot be engaged to do this inspection.

(Reason: To protect Council's assets and maintain quality)

69. Inspection of Works (OSD System and Water Quality Treatment System)

The stormwater drainage and/or pollution control devices shall be inspected during construction, by the Council or by a suitably qualified Civil Engineer. Documentary evidence of compliance with Council's specifications shall be obtained prior to proceeding to the subsequent stages of construction, encompassing not less than the following key stages:

- a) Initial inspection to discuss concept and site conditions / constraints prior to commencement

- of the construction of the pollution control devices.
- b) After completion of storage but prior to installation of fittings (e.g. Screens, etc.).
- c) Final inspection.

Council's standard inspection fee will apply to each of the above set inspection key stages. Additional inspection fees will apply for additional inspections required to be undertaken by Council.

(Reason: To ensure work complies with the design standard and maintain quality of works)

Conditions which must be satisfied prior to the issue of any Occupation Certificate relating to the use of the building or part

70. Occupation Certificate (section 6.9 of the Act)

A person must not commence occupation or use of the whole or any part of a new building (within the meaning of section 6.10 of the Act) unless an Occupation Certificate has been issued in relation to the building or part.

The Principal Certifier is required to be satisfied, amongst other things, that:

- a) All required inspections (including each applicable mandatory critical stage inspection) have been carried out; and
- b) Any preconditions to the issue of the certificate required by a development consent have been met.

Note: A new building includes an altered portion of, or an extension to, an existing building.

(Reason: Statutory requirement)

71. Final Clearance

A final clearance is to be obtained from the relevant energy service provider if clearance has not previously been obtained.

(Reason: To ensure power is available for the site)

72. S73 Compliance Certificate

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained prior to the issue of the Occupation Certificate. Application must be made through Sydney Water or an authorised Water Servicing Coordinator (WSC). An assessment will be made to determine the availability of water and sewer services, which may require extension, adjustment or connection to Sydney Water mains. Please refer to Sydney Water's website at www.sydneywater.com.au or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

(Reason: To meet Sydney Water's requirements to adequately service the new subdivision with water, wastewater and stormwater facilities).

73. Engineer's Certificate

A Structural Engineer's certificate from the supervising structural engineer responsible for the design shall be submitted to the Principal Certifier. This certificate shall state that all reinforced concrete / structural members have been carried out/erected in accordance with the Engineer's requirements and the relevant standards/codes.

(Reason: Structural certification)

74. Adaptable Housing

A signed checklist as per Appendix A of AS4299-1995 confirming that seven (7) units (Units 3.12.05, 3.12.07, 3.13.05, 3.13.07, 3.14.05, 3.15.05, 3.15.07) have achieved the required level of adaptability (Adaptable Class "A" or "B") shall be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

(Reason: To ensure the units are constructed in accordance with the required level of adaptability).

75. Certification of Engineering Works

Prior to the issue of an occupation certificate, the following documents must be submitted to the Principal Certifier and Council.

- a) A Certificate from a qualified practising professional engineer with the Engineers Australia membership (formerly Institution of Engineers), and
- b) "Work - As - Executed" (WAE) drawings of the engineering works prepared by a Registered Surveyor or equivalent.
- c) The "As-built" On-site Stormwater Detention (OSD) storage volumes are to be prepared based on the as-built floor levels.
- d) OSD WAE Survey certification form and WAE dimensions form (Refer to UPRCT Handbook).
- e) Approved verses installed On-site Detention (OSD) Design Calculation summary Sheet certified by a qualified practicing Hydraulic Engineer.
- f) Certificate of Hydraulic Compliance from a qualified drainage / hydraulic engineer (refer to UPRCT Handbook). The person issuing Hydraulic certificate shall ensure that all the works have been completed and comply with the approved plans.
- g) Structural Engineer's Certificate for the OSD tank structure, basement pump out tank structure, OSD basin (retaining) wall certifying structural stability of the structure and leak-proof capability etc.

The abovementioned Certificate is to certify that:

- i. the stormwater drainage system, and/or
- ii. other civil works have been constructed in accordance with the Council approved plans and details and satisfies the design intent and complies with the appropriate SAA Codes relevant Standards and Council's Policies and Specifications.

Where Council is not the Principal Certifier, copies of the above documents are to be provided to Council prior to the issue of any Occupation Certificate.

(Reason: Asset management)

76. Provision of Street Numbers

A street number is to be displayed in a prominent position at the entrance to the premises. Numbers are to be of a colour contrasting with the wall to which they are affixed.

(Reason: To clearly identify the street number of the property)

77. Acoustic Verification Report

Prior to the issue of the Occupation Certificate, a suitably qualified acoustic consultant* must prepare an acoustic verification report to the satisfaction of the Principal Certifier that confirms the following:

- a) All recommendations contained in the DA acoustic report prepared by Rodney Stevens, Reference Number R160099B3, Revision 0, dated 1 November 2016 have been implemented, and
- b) The project specific noise criteria established in the DA acoustic report and any other noise and vibration criteria specified in this consent are being complied with.

**Note: Suitably qualified Acoustic Consultant means a consultant who possesses the relevant tertiary qualifications and experience to render them eligible to be a Member or Fellow of the Australian Acoustical Society, or a member of the Association of Australian Acoustical Consultants.*

(Reason: To protect residential amenity)

78. Fire Safety Certificate

A final Fire Safety Certificate shall be obtained in accordance with Part 9, Division 4 of the Environmental Planning and Assessment Regulation 2000, prior to the issue of the Occupation Certificate for the building.

A copy of the Fire Safety Certificate and fire safety schedule shall be:

- 1) Forwarded to Cumberland Council;
- 2) Forwarded to the Commissioner of the New South Wales Fire Brigade; and
- 3) Prominently displayed in the building.

(Reason: Fire safety)

79. Landscape

Prior to the issue of an Occupation Certificate all approved landscaping/tree planting works required on the subject site are to be completed to a professional standard in accordance with the endorsed landscape plan/s. At the completion of the landscape works, a final on-site inspection of the works and comparison with the relevant endorsed documents is required by the designer of the approved Landscape Plan or another suitably qualified person (not the person who carried out the landscape works).

Following the inspection and prior to the issue of an Occupation Certificate, certification of completion of all landscape/tree planting works in accordance with the relevant conditions of this Consent and the approved Landscape Plan/s must be provided to the Principal Certifier.

Any works that vary from the approved plan/s must be documented or shown on a Works-As-Executed Landscape Plan and attached to the certificate. A copy of the Landscape Certification is to be provided for Council's verification with the Occupation Certificate.

(Reason: Landscape certification)

80. Covenant & Restriction as to User for Stormwater Controlled Systems

Prior to occupation and the issuing of an Occupation Certificate, the Applicant shall register a Positive Covenant and a Restriction as to User, under section 88E and or section 88B of the Conveyancing Act as appropriate in favour of Council ensuring the ongoing retention, maintenance and operation of the stormwater System. This is to include the on-site stormwater detention system (OSD and the water quality treatment system, which are related to the OSD system.

Easement Registration

Where any drainage line or service conduit is to traverse any property other than that which it serves, an appropriate easement will be required. In this case, the applicant shall register an easement of minimum width 1.25m (or as specified by Council), over the proposed stormwater drainage line or service concurrently with any subdivision registration. Typical wording can be obtained from Council.

(Reason: Compliance and adequate maintenance of drainage system)

81. OSD Identification Plate

Prior to the issue of a Final Occupation Certificate, the applicant shall install an identification plate near or on the control structure of the On-site Stormwater Detention (OSD) system. This is to advise the registered proprietor of their responsibility to maintain the OSD facility and not to tamper with it in any manner without the written consent of Council. The wording and plate shall be in accordance with Council's standard requirements.

(Reason: To ensure that the OSD system is installed and identified in accordance with this approval)

82. Sydney Trains

The following Sydney Trains conditions are applicable:

The development shall have appropriate fencing fit for the future usage of the development site to prevent unauthorised access to the rail corridor by future occupants of the development. Prior to the issuing of an Occupation Certificate the Applicant shall liaise with Sydney Trains regarding the adequacy of any existing fencing along the rail corridor boundary or design and construction of new fencing. Details of the type of new fencing to be installed and the method of erection are to be to the satisfaction of Sydney Trains prior to the fencing work being undertaken.

Copies of any certificates, drawings, approvals/certification or documents endorsed by, given to or issued by Sydney Trains or TAHE (Transport Asset Holding Entity) must be submitted to Council for its records prior to the issuing of the applicable Occupation Certificate.

(Reason: Compliance with conditions of Sydney Trains concurrence)

83. Heritage Council of NSW

Prior to the issue of the Occupation Certificate by Council and/or the Principal Certifying Authority, the Applicant shall supply a copy of written correspondence from the Heritage Council of NSW or its delegate confirming that their requirements under any Heritage Act 1977 approval have been satisfied.

(Reason: The subject site is listed for its archaeological values in the Holroyd Local Environmental Plan (HLEP) 2013 and has potential to contain historical archaeological relics, which are protected under the Heritage Act 1977)

84. Maintenance Schedule for On-site Stormwater Detention (OSD) Stormwater System

A maintenance schedule for the stormwater and On-site Stormwater Detention (OSD), including a sketch plan of the components forming the sites stormwater drainage and OSD system shall be submitted. The maintenance schedule shall be prepared by a qualified hydraulic engineer and shall be in accordance with the Upper Parramatta River Catchment Trust requirements.

(Reason: To be aware and guide the owners for the required maintenance of the system)

Conditions which must be satisfied during the ongoing use of the development

85. Waste & Recycling Collection

The garbage and recyclable storage and bins must be adequate to contain the volume and type of garbage and recyclable matter on the food premises. All garbage and recyclable matter must be enclosed in the waste bins with lids completely closed at all times.

(Reason: To regulate noise and garbage collection arrangements)

86. Removal of Litter and Graffiti

In addition to Council's street sweeping and cleansing operations, the owner/manager of the building shall ensure that the footpath, gutter, building entry and surrounds are kept clean and clear of litter at all times.

The owner of the building shall also be responsible for the prompt removal of any graffiti from the building.

(Reason: To maintain a satisfactory level of amenity in the locality)

87. Annual Fire Safety Statement

Pursuant to Part 9, Division 5 of the Environmental Planning and Assessment Regulation the owner of the building shall furnish Council with an Annual Fire Safety Statement from a competent person to certify the essential fire safety measures in the building. The Annual Fire Safety Statement shall be issued within 12 months of the issue of the fire safety certificate, and then on an annual basis.

A copy of the Annual Fire Safety Statement shall also be:

- a) Forwarded to the Commissioner of the New South Wales Fire Brigade; and
- b) Prominently displayed in the building

(Reason: Fire safety)

88. Noise - Residential Buildings

Noise emitted by the air conditioning units / mechanical ventilation installed at the premises must comply with the following criteria:

- a) Shall be inaudible within any room in any other residential premises (that is not a garage, storage area, bathroom, laundry, toilet or pantry) whether or not any door or window to that room is open during the following hours:
 - i. before 8am or after 10pm on any Saturday, Sunday or public holiday, or
 - ii. before 7am or after 10pm on any other day, and
- b) Shall not emit an LAeq,15min noise level when measured at the boundary of any other residential property which exceeds the background (LA90, 15minutes) by more than 5dB(A) when used during all other times that are not restricted in (a) above.

(Reason: To protect residential amenity)

89. Waste Management Plan

The storage, handling and disposal of waste and recyclable materials generated on the premises must be carried out in accordance with the approved Waste Management Plan.

(Reason: To protect the environment)

90. Car Wash Residential

Washing of vehicles shall be conducted in a car wash bay, which is roofed and bunded to exclude rainwater. The carwash bay shall be regularly cleaned and maintained. Alternative water management and disposal options may be appropriate where water is recycled, minimised or re-used on the site.

The car wash bay shall be managed and maintained so that the following requirements are met:

- a) The Owners Corporation or building owner should advise all users of the car wash facilities, how to operate, maintain and use the equipment so that good housekeeping practices can be adopted at all times.
- b) Have clearly visible sign(s) indicating that no degreasing, engine washing or mechanical work is to be undertaken in the car wash bay, informs car wash bay users of how to use and maintain the system, and encourages users to minimise the use of detergents and water.

(Reason: To protect the environment)

91. Landscape Maintenance - General

All open space areas are to be regularly maintained in a neat and tidy state. In this regard, gardens weeded and mulched with any dead plants replaced. Property owners must maintain their trees in a safe growing condition.

(Reason: Safety and landscape amenity)

92. Visitor Parking Restriction

Visitor parking spaces must not be allocated, sold or leased to an owner, occupier or any other person or entity. In any strata subdivision, visitor parking spaces must be retained within the common property.

(Reason: Compliance)

93. Annual Maintenance Inspection of OSD

Annual maintenance inspection summary of the On-site Stormwater Detention (OSD) with associated certificates shall be sent to Council within the first month of every calendar year. In this regard:

- All critical inspections shall be carried out by a qualified person.
- A maintenance logbook shall be maintained as per the approved maintenance schedule on site, and readily available for inspection by a Council officer.
- All associated cost shall be borne by the owner(s).

(Reason: To ensure the onsite detention facility is in good working order)

Advisory Notes

1. Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please, contact Dial Before You Dig at www.1100.com.au or telephone 1100 before excavating or erecting structures. If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

2. Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's mobile network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution.

Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works, which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on Phone Number 1800 810 443 or <https://www.telstra.com.au/consumer-advice/digging-construction/relocating-network-assets>.

3. Dividing Fences

The erection of dividing fences under this consent does not affect the provisions of the Dividing Fences Act 1991. Under this Act, all relevant parties must agree prior to the erection of any approved dividing fence/s under this consent.

Council has no regulatory authority in this area and does not adjudicate civil disputes relating to the provision of or payment for the erection of dividing fences.

If there is a neighbour dispute about the boundary fence, the Community Justice Centre (CJC) can provide mediation. See the CJC website for more information - cjc.justice.nsw.gov.au

4. Skips on Council Footpath

The applicant must apply to Council's Customer Services Centre and pay the respective minimum ten (10) day application fees and deposit, should a mini-skip type or larger builder's waste container be required to be left on Council's footpath, nature strip or roadway for the removal of any builder's waste etc. These fees must be paid prior to the container's placement. In the event of the container being removed within the ten day period, and the Council being notified, a pro-rata refund will be made. If the container is to remain at the site for longer than ten days, a further fee must be paid before the ten day period expires. No consultation is necessary if placing the container within the property to which this application is related. However, caution should be exercised in placing the bin to ensure no damage occurs to Council property.

5. Work Health and Safety

For information regarding, codes of practice and guidelines regarding construction work, visit the SafeWork NSW website at safework.nsw.gov.au/your-industry/construction, or phone 13 10 50.

6. Compliance with Disability Discrimination Act

This approval does not necessarily protect or guarantee against a possible claim of discrimination (intentional or unintentional) under the Disability Discrimination Act 1992, and the applicant/owner is advised to investigate their liability under this Act. Please note that from 1 May 2011 under the Disability (Access to Premises - Buildings) Standards 2010, if access is provided to the extent covered by this Standard, then such access cannot be viewed as unlawful under the Disability Discrimination Act 1992.

(Reason: To inform of relevant access requirements for persons with a disability)

7. Critical Stage Inspections - General

Critical stage inspections must be called for by the Principal Contractor or Owner Builder as required by the Principal Certifier and any Service Agreement, the *Environmental Planning and Assessment Act 1979* (Act) and the Regulations.

Work must not proceed beyond each critical stage until the Principal Certifier is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the Act. 'Critical Stage Inspections' means the inspections prescribed by the Regulations for the purposes of section 6.5 of the Act or as required by the Principal Certifier and any Service Agreement.

Note 1: The Principal Certifier may require additional inspections beyond mandatory critical stage inspections in order to be satisfied that work is proceeding in accordance with this consent.

Note 2: The Principal Certifier may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the NCC in relation to any matter relevant to the development.

(Reason: Statutory requirement)

8. Inspections for Building Work - Critical Stages (Classes 2, 3 or 4)

- a) Where applicable inspections of the development site may be required to be undertaken at the following stages:
- b) Prior to covering of waterproofing in any wet areas, for a minimum of 10 % of rooms with wet areas within a building;
- c) Prior to covering any stormwater drainage connections; and
- d) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.

If the person having the benefit of the development consent appoints Council as the Principal Certifier, Council will give written advice as to what critical stage inspections apply.

Prior to issuing an occupation certificate or subdivision certificate the Principal Certifier must be satisfied that the work has been inspected on the above occasions.

Except as provided by subclause (d), the inspections may be carried out by the Principal Certifier or, if the Principal Certifier agrees, by another certifier.

The final inspection detailed at subclause (d) may only be carried out by the Principal Certifier.

For each inspection the principal contractor (or owner-builder) must notify the Principal Certifier at least forty eight (48) hours in advance that the site is ready to be inspected prior to the commencement of work on the next stage.

(Reason: Statutory Requirements)

Annexure B

Lot 11 Neil Street Pty Ltd v Cumberland Council

Amended Plans and Materials

6 January 2021

Clause 4.6 Variation to Development Standard

Property Description: Building 3 – 22 Dressler Court, Merrylands

Development: Additions to Residential Flat Building – 4 storeys

Development Standard: Height of Buildings

Introduction

This is a clause 4.6 request to support the development proposal for additions to the approved residential flat building – 4 additional storeys above Building 3 within the Mills development at 20-22 Dressler Court, Merrylands.

This clause 4.6 request seeks to contravene the 50m building height development standard contained in clause 4.3 – Height of Buildings of the *Holroyd Local Environmental Plan 2013 (Amendment 20)*.

The fundamental role of clause 4.6 in any local environmental plan is reflected in the recent decision of Commissioner Clay in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In particular, Commissioner Clay notes at [73] of his decision that:

“First, it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.”

The objectives of clause 4.6 facilitate the flexible application of development standards to particular development in order to achieve an improved environmental planning outcome.

This request has been prepared having regard to the Department of Planning and Environment’s Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the Land and Environment Court and Court of Appeal of NSW.

The development proposal results in a 12-16 storey form at Building 3. The variation to the height is measured to the top of the lift overrun with a maximum height of 50.87m.

The proposed upper level roof form is within the 50m height standard, the portions of the building above 50m measured from existing ground levels are confined to the lift overrun and building being which is located centrally on the roof as shown in figure 2 below. These elements of the building will not be visually discernible from the public domain.

The top of lift overrun has a maximum height of 50.87m being a maximum variation of 870mm to the 50m development standard pursuant to *Holroyd Local Environmental Plan 2013 (Amendment 20)*. The variation is 870mm and 1.74%.

The extent of the variation is shown on the sections provided below, which shows the lift overrun and building plant being above the 50m building height development standard.

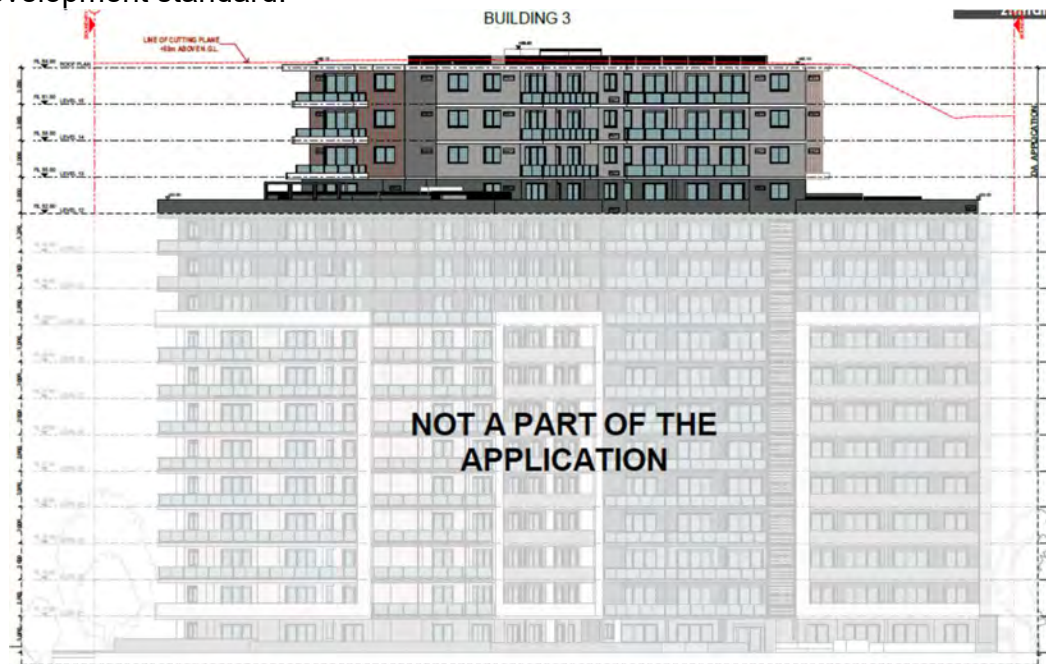


Figure 1: Elevation drawing indicating maximum extent of variation (Source: Zhinar Architects)

The building height plan set at 50m above existing ground level shows the lift overrun and plant on the roof of the building projecting above 50m.



Figure 2: Height plane at 50m from existing ground level (Source: Zhinar Architects)

The request to contravene the development standard for the building height has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170;
and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the development consistent with the objectives of the zone?
2. Is the proposed development consistent with the objectives of the development standard which is not met?
3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a) and cl 4.6(4)(a)(i))

4. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded? ? (cl 4.6(3)(b) and 4.6(4)(a)(ii))
5. Is the proposed development in the public interest because it is consistent with the objectives of the standard and the zone? (cl 4.6(4)(a)(ii))

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a) of the LEP, the variation to the height of buildings development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because the proposed development is consistent with the objectives of the height of buildings standard, notwithstanding non-compliance with the standard.

• Objectives of the Height of Buildings Development Standard

The objectives of the height of buildings standard are as follows:

- (a) to minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,*
- (b) to ensure development is consistent with the landform,*
- (c) to provide appropriate scales and intensities of development through height controls.*

The development proposal achieves the objectives of clause 4.3 of the LEP based on the following:

Objective (a): The proposed 4-storey addition above the existing approved residential flat building is appropriate for the subject site. The additional height at the south-eastern corner is supported in principle through planning proposal and the *Holroyd Local Environmental Plan 2013 (Amendment 20)* which allows a height of 50m at the south-eastern portion of the site.

The proposed upper level and more specifically the portion of the building exceeding the height standard (lift overrun and building plant) will not result in unreasonable overshadowing or privacy impacts to the surrounding properties.

Additionally, the proposed development has been reviewed and is supported by Cumberland Design Excellence Panel reiterating that the form and scale of development is acceptable in the context and desired future character of the locality.

Objective (b): The proposal is suitable with regard to the topography of the site, with the upper levels (4 storeys) creating a strong urban corner at the south-east portion of the site. This portion of the site sits below Neil Street and so the siting of the additional 4 storeys is consistent with the site's landform.

Objective (c): The proposed upper level (4 storeys) is appropriate for the subject site as the upper level identifies and reinforces the site as a gateway to the Merrylands Town Centre from Neil Street to the east. The additional storeys are consistent with the 50m building height standard at the south-eastern portion of the site, and consistent with the surrounding built form and present a suitable transition in building height from the higher scale mixed use development in the core of the Merrylands Town Centre to the lower-scale residential development and the Holroyd Gardens to the north.

It is unnecessary to require compliance with the height of buildings development standard due to the following reasons:

- The variation is to the top of lift overrun that has a maximum height of 50.87m being a maximum variation of 870mm to the 50m development standard.
- The variation to the 50m height standard is confined to the lift overrun and building plant associated with the proposed 4-storey addition to the approved residential flat building. The lift overrun and building plant will not result in any significant adverse visual impacts upon adjacent properties or the public domain, with the additional 4-storeys being suitable for the south-eastern corner of the site.
- The proposed building height is a result of the additional floor area (2,468m²) directed by the Planning Proposal and results in an additional 4 storeys to the building that are serviced by a lift and associated plant on the roof.

The building height is within the scope of the building height (an additional 4 storeys) intended by the planning proposal. Strict compliance with the 50m height standard to accommodate the lift overrun and building plant would require a reduction in the number of storeys and would defeat the planning outcome for the subject site and Building 3 as applied under test No. 3 – *Wehbe v Pittwater Council* [2007] NSWLEC 827.

- The height is suitable for the subject site and compatible with the planning objectives and intended outcomes of the planning proposal for the site and the objectives of the R4 – High Density Residential zone.
- The development has been reviewed and is supported by the Cumberland Design Excellence Panel being of high architectural design that will contribute to the streetscape and visual amenity of the locality.

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, it is clear that compliance with a development standard is unreasonable or unnecessary if the objectives are met.

There are sufficient environmental planning grounds to justify contravening the development standard

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard because:

- The variation to the 50m height standard pursuant to the *Holroyd Local Environmental Plan 2013 (Amendment 20)* is confined to the lift overrun and building plant associated with the proposed 4-storey addition to the approved residential flat building. The lift overrun and building plant will not result in any significant adverse visual impacts upon adjacent properties or the public domain, with the additional 4-storeys being suitable for the south-eastern corner of the site.
- The portion of the building exceeding the height standard will not be visually discernible, in this case, the building form is suitable for the subject site and compatible with the planning objectives and intended

outcomes of the planning proposal for the site and the objectives of the R4 – High Density Residential zone.

- The variation to the height limit confined to the lift overrun and building plant does not contribute to additional bulk and scale that is contrary to the scale of development envisioned by the planning proposal. The additional storeys will not result in unreasonable privacy impacts, overshadowing, or the loss of views/outlook from the adjoining properties.
- The shadow diagrams (plan No. DA:011) confirm that the additional levels and minor variation to the 50m height standard do not cast shadow onto potential development to the south (opposite side of Neil Street) after 11.30am mid-winter and the north elevation concept development will receive more than 2 hours of solar access consistent with the design principles at Part 4D – Solar Access. This is demonstrated in the figure below.

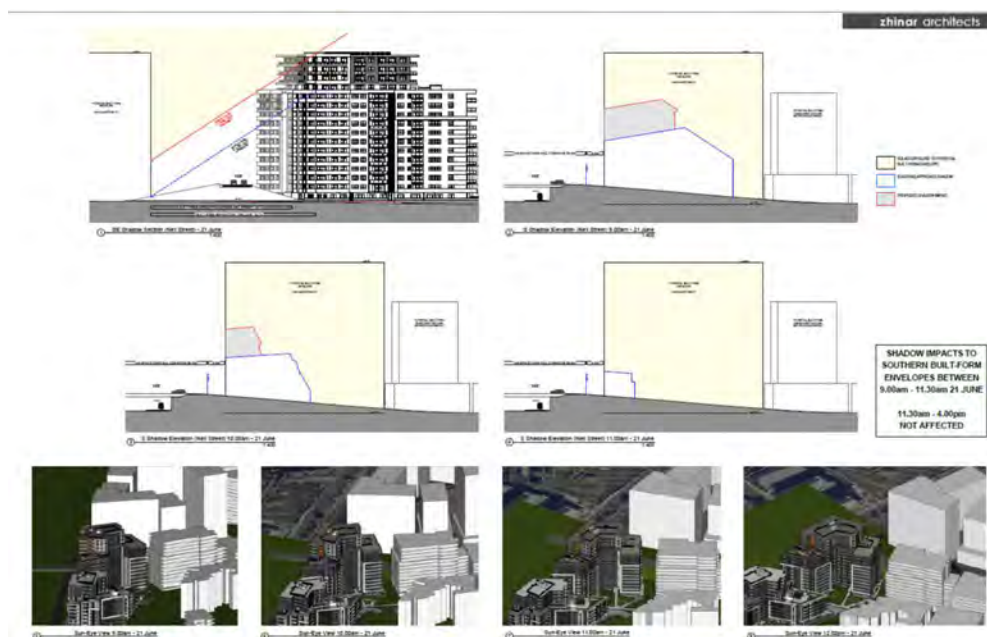


Figure 3: Shadow modelling – Additional levels Building 3 (Source: Zhinar Architects)

- The lift overrun and plant that exceeds the 50m height standard will not result in additional overshadowing. The shadow cast by these building elements falls onto the roof of the building. This is demonstrated in the figure below.

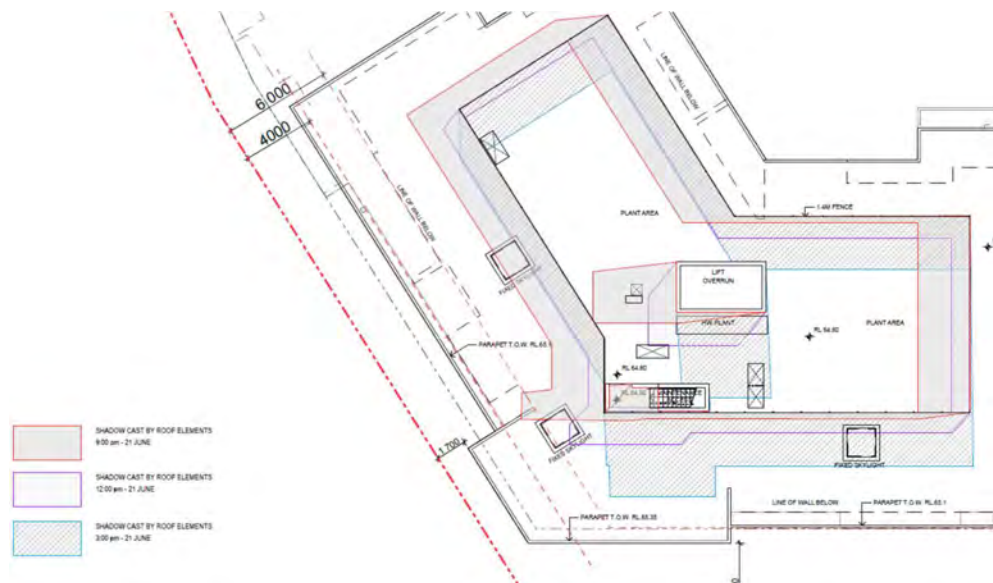


Figure 4: Shadow cast by building elements above 50m (Source: Zhinar Architects)

- The variation in height is consistent with the following relevant aims of the Holroyd LEP 2013 found at clause 1.2(2).
 - (2)(b) The proposed upper levels (4-storeys) will allow for additional housing on the subject site to meet the needs of the community.
 - (2)(d) The proposed upper levels (4-storeys) allows for an increased density on the subject site within close proximity – 300m walking distance of Merrylands Railway Station and Town Centre.
 - (2)(e) The proposed upper levels (4-storeys) will allow for a development yield that is consistent with the Neil Street Masterplan, noting the subject site has previously been reduced in size as a result of the dedication of land to Council for public infrastructure, including recreation, drainage, and local road uses.
 - (2)(f)(i) The variation to height will not have an adverse impact upon the archaeological significance of the *Millmaster Feeds Site* noting no additional building footprint is proposed that would potentially disturb the archaeological site.
 - (2)(f)(ii) The proposal will not have an adverse impact upon the riparian corridor adjoining the site – A’Beckett’s Creek, with no additional building footprint proposed.
- The variation in height is consistent with the following objects of the Environmental Planning and Assessment Act 1979 as follows:

- 1.3(c) - The proposal is an orderly and economic use of the site noting the development is proposed in response to planning proposal and is supported by the *Holroyd Local Environmental Plan 2013 (Amendment 20)* which allows a 50m height control at the south-eastern portion of the site.
- 1.3(d) - The proposed upper levels (4 storeys) allows for additional dwellings to be provided on the subject site (including 1 and 2 bedroom dwellings) which will contribute to housing choice and affordability in the R4 High Density Residential zone.
- 1.3(f) - The variation to height will not have an adverse impact upon the archaeological significance of the *Millmaster Feeds Site* noting no additional building footprint is proposed that would potentially disturb the archaeological site.
- 1.3(g) - The proposed upper levels (4-storeys) present a good design and amenity outcome for the development, allowing for additional building density at a suitable location being the south-eastern corner of the site.
- 1.3(g) - The proposed upper levels (4-storeys) have been designed to maximise cross-ventilation and solar access to provide a high level of residential amenity for future occupants.
- 1.3(i) - The proposed variation aligns with the intended outcomes of the planning proposal which has been granted Gateway Determination by the Department of Planning, Industry & Environment.

Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance.
2. The environmental planning grounds relied on are sufficient to justify the development standard.

The relevant items in Clause 4.6(3) have been demonstrated above.

The proposed development is in the public interest

In relation to clause 4.6(4)(a)(ii) of the LEP, the proposed 4 storey addition to an existing approved residential flat building is in the public interest because it is consistent with the objectives of the applicable height of buildings standard and the objectives for development in the R4 – High Density Residential zone in accordance with the planning assessment provided as follows:

Objective	Consistency
<i>To provide for the housing needs of the community within a high density residential environment.</i>	<p>The proposed development will provide for additional housing within a high-density residential environment to contribute towards the achievement of dwelling targets specified under the Sydney Metropolitan Strategy.</p> <p>The proposed development provides an additional 32 residential units that will support the local community being located within the R4 High Density Residential zone.</p>
<i>To provide a variety of housing types within a high-density residential environment.</i>	<p>The proposed additional 4 storeys contain 1 and 2 bedroom units contributing to the dwelling mix and housing choice in close proximity to public transport being 300m from the Merrylands Railway Station and Merrylands Town Centre.</p> <p>The proposal provides a variety of residential apartment types appropriately located in the R4 High Density Residential zone.</p>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<p>The proposed development will not contravene this objective.</p>

In addition to the above reasons, the proposal is also in the public interest because:

- The proposed upper levels (4 storeys) is appropriate for the subject site and the additional height at the south-eastern corner is supported in principle through planning proposal and the *Holroyd Local Environmental Plan 2013 (Amendment 20)* which allows a height of 50m at the south-eastern portion

of the site. The proposal will not result in unreasonable overshadowing or privacy impacts beyond those envisioned by the planning proposal and within the R4 high-density residential zone.

- The proposal results in an improved built form outcome for the locality, with a strong urban corner element presenting a more suitable height transition from the higher-scale mixed use development in the core of the Merrylands town centre to the lower-scale residential development and the Holroyd Gardens to the north of the site.

Taking into consideration the above, the proposed development is in the public interest as it is consistent with the objectives of the development standard and the R4 – High Density Residential Zone under the *Holroyd Local Environmental Plan 2013*.

The variation to the 50m building height standard is confined to the lift overrun and building plant. The development does not attempt to affect the intended planning outcome for the locality; rather the works are consistent with the envisioned scale and form of development planned for the site under planning proposal and the *Holroyd Local Environmental Plan 2013 (Amendment 20)*.

For these reasons, the proposal and the variation does not undermine the integrity of the building height development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.

The concurrence of the Secretary

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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 Secretary before granting concurrence.*
- (a) The variation to the 50m height development standard does not raise any matter of significance for State or regional environmental planning. As addressed above the upper levels (4-storeys) are consistent with the 50m height standard pursuant to the *Holroyd Local Environmental Plan 2013*

(*Amendment 20*). The proposal is considered to be in the public interest because the proposed development is consistent with the objectives of the height standard and the objectives of the R4 – High Density Residential zone.

- (b) The public benefit of maintaining the development standard is not considered significant because the proposed building height is consistent with the 50m height standard contained in *Holroyd Local Environmental Plan 2013 (Amendment 20)*.

The lift overrun and building plant being elements of the proposal exceeding the height control will not be visually discernible or generate unreasonable additional overshadowing or amenity impacts upon adjoining properties.

- (c) No other matters have been prescribed to be taken into consideration as the Court is not constrained from approving the development.

Conclusion

The development proposal has a variation to the 50m building height control contained in Clause 4.3 of the *Holroyd Local Environmental Plan 2013 (Amendment 20)*; notwithstanding, the proposal has been designed with a built form that is consistent with the intent of the height limit and is suitable for the subject site.

The variation to the building height standard does not attempt to affect the planning outcomes for the broader locality; rather the proposed upper level (additional storeys) are consistent with the scale and form of development planned for the locality including development south of the subject site within the Merrylands Town Centre.

The lift overrun and plant at the proposed upper level of the building exceeding the 50m height control will not be visually dominant at the street level, and the additional storeys will result in an improved built form outcome for the locality contributing to a more suitable height transition from the Merrylands Town Centre to Holroyd Gardens to the north. The proposal will not adversely impact upon the public domain or adjoining properties and will not generate unreasonable overshadowing or amenity impacts.

The building height is within the scope of the building height (an additional 4 storeys) intended by the planning proposal. Strict compliance with the 50m height standard to accommodate the lift overrun and building plant would require a reduction in the number of storeys and would defeat the planning outcome for the subject site and Building 3 as applied under test No. 3 – *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The application to vary the 50m building height development standard pursuant to *Holroyd Local Environmental Plan 2013 (Amendment 20)* is well founded and, as addressed above, the proposed height meets the objectives of the building height development standard. The proposal achieves an acceptable design that does not result in unreasonable visual and amenity impacts upon surrounding properties and is a desirable outcome in terms of built form for the site and locality.

In accordance with the environmental planning grounds addressed in this clause 4.6 variation, the building height can be supported.



Garry Chapman
Chapman Planning Pty Ltd
Certified Practising Planners

11 January 2021

Clause 4.6 Variation to Development Standard

Property Description: Building 3 – 22 Dressler Court, Merrylands

Development: Additions to Residential Flat Building – 4 storeys

Development Standard: Floor Space Ratio

Introduction

This is a clause 4.6 request to support the development proposal for additions to an existing approved residential flat building – 4 additional storeys above Building 3 within the Mills development at 20-22 Dressler Court, Merrylands.

This clause 4.6 request seeks to contravene the floor space ratio development standard contained in clause 4.4 – Floor Space Ratio of the *Holroyd Local Environmental Plan 2013 (Amendment 20)*.

The fundamental role of clause 4.6 in any local environmental plan is reflected in the recent decision of Commissioner Clay in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In particular, Commissioner Clay notes at [73] of his decision that:

“First, it should be noted cl 4.6 of WLEP is as much a part of WLEP as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome.”

The objectives of clause 4.6 facilitate the flexible application of development standards to particular development in order to achieve an improved environmental planning outcome.

This request has been prepared having regard to the Department of Planning and Environment’s Guidelines to Varying Development Standards (August 2011) and various relevant decisions in the Land and Environment Court and Court of Appeal of NSW.

It is the applicants position that the proposed GFA of 26,373m² (Buildings 3 and 4) is applied to site area of 6466.4m² (stratum Lots 30 and 31 DP1268071). The variation to the permissible GFA is 2,705.9m² or 11% to the FSR development standard of 3.66:1 pursuant to *Holroyd Local Environmental Plan 2013 (Amendment 20)*.

Notwithstanding the above, due to uncertainty regarding the application of site area and resulting floor space ratio (FSR) calculation with the abundance of caution this written request pursuant to clause 4.6 applies to the proposed GFA of Building 3 to the site area of Lot 30 (DP1268071). The area of Lot 30 that is subject to the FSR development standard is 3188.4m². The proposed GFA of Building 3 is 16,411.2m² and the FSR calculation is 5:15:1.

The request to contravene the floor space ratio development standard has been prepared in accordance with the principles applied in relevant case law including:

1. *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79;
2. *Wehbe v Pittwater Council* (2007) 156 LGERA 446;
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
4. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
5. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170;
and
6. *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130

This Clause 4.6 variation request is set out in accordance with the relevant principles established by the Court including:

1. Is the development consistent with the objectives of the zone?
2. Is the proposed development consistent with the objectives of the development standard which is not met?
3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl 4.6(3)(a) and cl 4.6(4)(a)(i))
4. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore the Applicant's written request to vary the development standard is well founded?(cl 4.6(3)(b) and 4.6(4)(a)(ii))
5. Is the proposed development in the public interest because it is consistent with the objectives of the standard and the zone? (cl 4.6(4)(a)(ii))

Site and Development History

The following is relevant to the request to contravene the FSR development standard.

- On July 2018 Landmark Group Australia Pty Ltd lodged a planning proposal. The proposal was for an additional 4 storeys and 2,468m² of GFA to Building 3. The proposal sought to increase the permitted FSR for a 7,053m² portion of land which Buildings 3 and 4 are located with an FSR of 3.66:1. The additional GFA of 2,468m² was calculated as the land area multiplied by the proposed FSR of 3.66:1, less the approved GFA of Buildings 3 and 4.

The rationale underlying the proposed increase in FSR related to the offsetting the loss of development potential from the SP2 and RE1 zones introduced under LEP amendment 15.

- On March 2019, modifications 2016/496/3 and 2016/496/4 were approved for alterations and additions to Buildings 3 and 4, resulting in Building 3 having a GFA of 13,657m² and Building 4 having a GFA of 9,962m².
- On 5 April 2019, DP 1248018 was registered, subdividing consolidated Lot 20 into 6 lots, numbered 1-6. Buildings 3 and 4 were located on Lot 3 DP 1248018. Lot 3 had an area of 6,765m². Of that area, approximately 298.6m² was zoned SP2 and was not subject of a FSR control. The remainder (6,466.4m²) was zoned R4 and subject to a FSR control of 3.5:1.
- On 23 September 2019, gateway approval was given for the Planning Proposal to increase the permitted FSR and height to 3.66:1 and 50m respectively.
- On 15 September 2020, Council approved modification application 2020/0102. The effect of modification 2020/0102 was to subdivide approved Lot 3 into two stratum lots (Lots 30 and 31). The reason for the stratum subdivision relates to basement parking not sitting evenly under the ground level subdivision pattern.
- On 18 November 2020, DP 1268071 was registered being a stratum subdivision of Lot 3 into Lots 30 and 31.
- *Holroyd Local Environmental Plan (Amendment No. 20)* came into force on 25 September 2020. The LEP prescribed an FSR of 3.66:1 for all but 298.6m² of Lot 3. There is no FSR control for the 298.6m² area which correlates to the SP2 zoning.

- The area of land subject to the FSR standard of 3.66:1 being 6,466.4m² is less than the 7,053m² envisaged by the planning proposal. The GFA applied to the reduced site area results in an FSR calculation of 3.99:1 if calculated against former Lot 3 DP 1248018 being the combined areas of current lots 30 and 31 DP 1268071.

Site Area and Floor Space Ratio

It is the applicant's position that the site area for the purpose of calculating the FSR applies to stratum Lots 30 and 31 that is a registered stratum subdivision (DP1268071), registered on 18 November 2020. The stratum subdivision (Lots 30 and 31) applies to the Buildings 3 and 4. The site area based on DP 1268071 is:

- **Part Lot 30:** 3,333m² noting 144.6m² is not subject to an FSR control leaving 3,188.4m².
- **Part Lot 31:** 3,432m² noting 154m² is not subject to an FSR control leaving 3,278m².
- **Total area:** 3,188.4 + 3,278 = 6466.4m²

The total proposed GFA of 26,373m² and the FSR calculation is 4.08:1.

The above site area calculation is consistent with clause 4.5(3)(b) of the Holroyd LEP 2013.

Pursuant to Clause 4.4 of the *Holroyd Local Environmental Plan 2013 (Amendment 20)*, with reference to the Floor Space Ratio (FSR) map the proposal is subject to an FSR of 3.66:1 and gross floor area (GFA) 23,667.02m².

The total proposed GFA of 26,373.2m² exceeds the total allowable GFA and the maximum FSR of 3.66:1 as a result of the following:

1. The site is subject to the Planning Proposal that approved an additional 2,468m² of GFA on the site and changed the maximum FSR from 3.5:1 to 3.66:1. The floor area of the proposed additional 4-storeys is consistent with the additional GFA envisioned under the Planning Proposal.
2. The site area prior to gateway determination of the Planning Proposal amounted to 7,053 m².
3. The proposed FSR of 4.08:1 is a result of a reduction in site area to 6466.4m² in accordance with the registration of DP 1268071 following the Planning Proposal.
4. The GFA is confined to the proposed additional levels which have a floor area of 2,754.2m² (as generally envisioned under the Planning Proposal).

The proposed FSR for the development is within the scope of the additional floor area contemplated by the planning proposal.

Alternatively to the above calculations and with caution due to uncertainty on the correct method calculating site area applied to Building 3 the following addresses the proposed GFA of Building 3 to the site area of Lot 30 (DP1268071).

The area of Lot 30 that is subject to the FSR development standard is 3188.4m². The proposed GFA of Building 3 is 16,411.2m² and the FSR calculation is 5:15:1.

Notwithstanding the above calculation, compliance with the FSR development standard of 3.66:1 to Lot 30 is not consistent with the strategic intent for Building 3 noting the planning proposal sought to permit an additional 2,468m² to Building 3.

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a) of the LEP, the variation to the floor space ratio development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because the proposed development achieves the objectives of the floor space ratio standard, notwithstanding non-compliance with the standard.

• Objectives of the Floor Space Ratio Development Standard

The objectives of the floor space ratio standard are as follows:

- (a) to support the viability of commercial centres and provide opportunities for economic development within those centres,*
- (b) to facilitate the development of a variety of housing types,*
- (c) to ensure that development is compatible with the existing and desired future built form and character of the locality,*
- (d) to provide a high level of amenity for residential areas and ensure adequate provision for vehicle and pedestrian access, private open space and landscaping.*

The development proposal achieves the objectives of clause 4.3 of the LEP based on the following:

Objective (a): The proposal results in additional residential dwellings within close proximity (approximately 300m north-east) to the Merrylands Town Centre, the Stockland Shopping Centre and various public transport options. The resulting increased density is suitable within the Neil Street Precinct and will support the economic viability of the Town Centre. The site is also approximately 3.5km south-west from Parramatta CBD and 25km north-west from Sydney CBD.

The development proposal provides 32 units that contribute to the viability and economic development of the Merrylands Town Centre.

Objective (b): The development will provide for a variety of residential apartment types in a high-density residential environment to contribute towards the achievement of dwelling targets specified under the Sydney Metropolitan Strategy. The approved 12 storey building incorporates a mix of 1, 2 and 3 bedroom units and the units in the additional 4 storeys will offer a mix of unit types being 1 and 2 bedroom units so as to contribute to the housing types in the high-density residential locality.

Objective (c): The proposed 4-storey addition and increased density is compatible with the desired future character of the locality presented in the Holroyd LEP and DCP, and the intended outcomes of the Planning Proposal for the site. The proposal will allow for a development yield that is consistent with the original Neil Street Masterplan, noting that a previous planning proposal initiated by Holroyd Council required the dedication of land for public infrastructure, including recreation, drainage, and local road uses.

The built form of the proposed addition is consistent with the form and scale of other development in the locality, noting development south of the site at 220-224 Pitt Street, Merrylands has a height of 54m. The proposal will provide additional building density at the south-eastern corner of the subject site resulting in a more suitable transition in building mass from the higher-scale mixed-use development in the core of the Merrylands town centre to the lower-scale residential development and the Holroyd Gardens to the north of the site.

The proposed development has been reviewed and is supported by Cumberland Design Excellence Panel reiterating that the form and scale of development is acceptable in the context and desired future character of the locality.

Objective (d): The additional 4 storeys incorporates a rooftop communal space which will offer a high level of amenity for future residents. The proposed addition will not have a significant adverse impact upon the residential amenity of the surrounding residential area. The additional parking demand generated by the increased density proposed on the site

can be adequately accommodated within the existing approved basement parking level. The proposed addition will not affect existing landscaped areas on the site with no additional building footprint proposed as part of the application.

Further, the residential apartments achieved good residential amenity in accordance with the Apartment Design Guide (ADG), have sufficient private open space and will not affect the approved landscape setting surrounding the building.

As stated in *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [87]-[88], there is no requirement that the impacts be neutral or non-existent, rather the test is simply whether the objectives of the development standard are met.

It is unreasonable to require compliance with the FSR development standard as follows:

- The proposed development (additional 4 storeys) is consistent with the form and scale of development envisaged by the R4 High Density Residential zone and the objectives of the development standard.
- The additional floor area – 2,754.2m² is consistent with the floor area envisioned by the Planning Proposal. The variation to the FSR of 3.66:1 is a result of the change to the site area following the lodgement of the Planning Proposal reducing the site area to 6,466m².
- The GFA that includes the proposed additional levels has a floor area of 2,754.2m² and total GFA of 26,373m² resulting in an FSR calculation of 4.08:1.

The proposed FSR for the development is within the scope of the additional floor area envisioned by the planning proposal in that the additional 4 storeys and associated GFA reflected the intention of the planning proposal that allowed an FSR of 3.66:1 to the site containing Buildings 3 and 4. The variation to the FSR standard is a result of the site area to which the standard applies being less than the envisioned site area of 7053m².

In this case, strict compliance with the FSR development standard would defeat the planning outcome for the subject site and Building 3 as applied under test No. 3 – *Wehbe v Pittwater Council* [2007] NSWLEC 827.

- The development has been reviewed and is supported by the Cumberland Design Excellence Panel, which has noted the high quality architectural design that will contribute to the streetscape and visual amenity of the locality.

In line with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, it is clear that compliance with a development standard is unreasonable or unnecessary if the objectives are met.

There are sufficient environmental planning grounds to justify contravening the development standard

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate that there are other environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Preston CJ noted in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, that in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the aspect of the development that contravenes the development standard should be the focus (as opposed to the development as a whole) of any analysis.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the floor space ratio development standard because:

- The proposed additional GFA for Building 3 is consistent with the approved Planning Proposal that envisioned additional floor area amounting to 2468m².
- The overall building form and additional density proposed is suitable for the subject site and compatible with the planning objectives and intended outcomes of the planning proposal for the site and the objectives of the R4 – High Density Residential zone.
- The variation to the FSR standard does not contribute to additional bulk and scale that is contrary to the scale of development envisioned by the planning proposal. The additional storeys will not result in unreasonable privacy impacts, overshadowing, or the loss of views/outlook from the adjoining properties.
- The additional floor area is within the upper levels envisioned by the planning proposal and designed within a recessed building form reducing the visual scale of the upper level and ensuring adequate separation is provided to surrounding buildings.

- To require strict compliance with the technical application of the FSR development standard would lead to a development density below the development potential that could be achieved on the site prior to the dedication of land to Council for public uses. The proposal would continue to provide a better environmental planning outcome in this instance by improving residential amenity and providing equitable access to communal open space and building 3. Analysis of amenity impacts for the additional storeys has been undertaken and the impacts are negligible.
- The variation to floor space ratio is consistent with the following relevant aims of the *Holroyd Local Environmental Plan 2013 (Amendment 20)* found at clause 1.2(2).
 - (2)(b) The additional density proposed will allow for 32 additional dwellings on the subject site to meet the needs of the community. The additional units will include both 1 and 2 bedroom apartments. Further, 6 x adaptable dwellings are proposed in addition to those previously approved within Building 3.
 - (2)(d) The variation allows for an increased density and additional dwellings on the subject site within close proximity (300m walking distance) to Merrylands Railway Station and Town Centre.
 - (2)(e) The proposed variation will allow for a development yield that is consistent with the Neil Street Masterplan, noting the subject site has previously been reduced in size as a result of the dedication of land to Council for public infrastructure including recreation, drainage, and local road uses.
 - (2)(f)(i) The variation to FSR will not have an adverse impact upon the archaeological significance of the *Millmaster Feeds Site* noting no additional building footprint is proposed that would potentially disturb the archaeological site. The additional density proposed is adequately separated from the nearby heritage item to the north and will not impact upon the curtilage or heritage significance of the item.
 - (2)(f)(ii) The proposal will not have an adverse impact upon riparian corridor adjoining the site – A’Beckett’s Creek, with no additional building footprint proposed.

- The variation to the FSR control is consistent with the following objects of the Environmental Planning and Assessment Act 1979 as follows:
 - 1.3(c) - The proposal is an orderly and economic use of the site and the development is consistent with the intended outcomes of planning proposal that seeks an increased density on the site. The proposed form of the addition is consistent with the surrounding built form and the desired future character of the locality.
 - 1.3(d) - The proposed variation allows for additional dwellings to be provided on the subject site (including 1 and 2 bedroom dwellings) which will contribute to housing choice and affordability in the R4 High Density Residential zone.
 - 1.3(f) - The proposed FSR variation will not have an adverse impact upon the archaeological significance of the *Millmaster Feeds Site* noting no additional building footprint is proposed that would potentially disturb the archaeological site. The additional density proposed by the 4 storey addition is adequately separated from the nearby heritage item to the north and will not impact upon the curtilage or heritage significance of the item.
 - 1.3(g) - The variation to the FSR control presents a good design and amenity outcome for the development, allowing for additional building density at a suitable location being the south-eastern corner of the site, providing a strong corner element serving as a gateway to the Merrylands Town Centre from Neil Street to the east.
 - 1.3(g) - The proposed units within the 4 storey addition have been designed to maximise cross-ventilation and solar access to provide a high level of residential amenity for future occupants.
 - 1.3(i) - The proposed variation aligns with the intended outcomes of the planning proposal which has been granted Gateway Determination by the Department of Planning, Industry & Environment.

Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance.
2. The environmental planning grounds relied on are sufficient to justify the development standard.

The relevant items in Clause 4.6(3) have been demonstrated above.

The proposed development is in the public interest

In relation to clause 4.6(4)(a)(ii) of the LEP, the proposed 4 storey addition to an existing approved residential flat building is in the public interest because it is consistent with the objectives of the applicable floor space ratio standard and the objectives for development in the R4 – High Density Residential zone in accordance with the planning assessment provided as follows:

Objective	Consistency
<i>To provide for the housing needs of the community within a high density residential environment.</i>	<p>The proposed development will provide for additional housing within a high-density residential environment to contribute towards the achievement of dwelling targets specified under the Sydney Metropolitan Strategy.</p> <p>The proposed development provides an additional 32 residential units that will support the local community being located within the R4 High Density Residential zone.</p>
<i>To provide a variety of housing types within a high density residential environment.</i>	<p>The proposed additional 4 storeys resulting in a variation to the FSR standard contains 1 and 2 bedroom units contributing to the dwelling mix and housing choice in close proximity to public transport being 300m from the Merrylands Railway Station and Merrylands Town Centre.</p> <p>The proposal provides a variety of residential apartment types appropriately located in the R4 High Density Residential zone.</p>

<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed development will not contravene this objective.
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In addition to the above reasons, the proposal is also in the public interest because:

- The proposed additional density is appropriate for the subject site and the additional bulk at the south-eastern corner is supported in principle through Planning Proposal which allowed an FSR of 3.66:1 for the site. The proposed FSR 5.15:1 (based on a precautionary assessment of the site area applying to Building 3) is a result in change to the site area that is subject to the FSR development standard since lodgement of the Planning Proposal.

Further, the proposed increase in density is consistent with that initially proposed for the subject site, prior to the dedication of land to Council for public uses – recreation, drainage, and public open space.

- The proposed additional building bulk will not result in unreasonable overshadowing or privacy impacts beyond those envisioned by the planning proposal and within the R4 high-density residential zone.
- The proposal results in an improved built form outcome for the locality, with a strong urban corner element presenting a more suitable transition in building density and height from the higher-scale mixed use development in the core of the Merrylands town centre to the lower-scale residential development and the Holroyd Gardens to the north of the site.

Taking into consideration the above, the proposed development is in the public interest as it is consistent with the objectives of the development standard and the R4 – High Density Residential Zone under the *Holroyd Local Environmental Plan 2013*.

The variation to the FSR standard is a result of the proposed 4-storey addition to the approved residential flat building and is supported by the Planning Proposal for the subject site that allowed for an additional 2,468m² of GFA. The variation to the FSR calculation is a result in the reduction of the site area.

The development does not attempt to affect the intended planning outcome for the locality; rather the works are consistent with the envisioned scale and form of development initially planned for the site under the Planning Proposal and granted Gateway Determination on 23 September 2019.

The proposal does not undermine the intent and effectiveness of the FSR development standard in Clause 4.4 or the objectives of the FSR development

standard and the zone for achieving positive outcomes on environmental planning grounds.

For these reasons, the proposal and the variation does not undermine the integrity of the FSR development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.

The concurrence of the Secretary

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (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 Secretary before granting concurrence.*
- (a) The variation to the FSR development standard does not raise any matter of significance for State or regional environmental planning. As addressed above the non-compliance with the FSR standard under *Holroyd Local Environmental Plan 2013 (Amendment 20)* is a result of the reduction in site area to 6,466.4m². The proposal is considered to be in the public interest because the proposed development is consistent with the objectives of the FSR standard and the objectives of the R4 – High Density Residential zone.
- (b) The public benefit of maintaining the development standard is not considered significant because the proposed additional building density is consistent with that envisioned by the planning proposal for the site, and its intended outcomes. The proposed variation will result in a development yield that is consistent with the Neil Street Masterplan, noting the subject site has previously been reduced in size as a result of the dedication of land to Council for public infrastructure, including recreation, drainage, and local road uses.
- (c) No other matters have been prescribed to be taken into consideration as the Court is not constrained from approving the development.

Conclusion

It is that applicant's position that the development proposal seeks a variation of 11% to the 3.66:1 floor space ratio control contained in Clause 4.4 of the *Holroyd Local Environmental Plan 2013 (Amendment 20)*.

However, due to the uncertainty in the application of site area for the purpose of calculating the FSR standard applied to Building 3 and with the abundance of caution and alternative approach is that the proposed GFA of Building 3 is 16,411.2m² applied to site area of 3188.4m² (area of Lot 30) and the FSR calculation is 5:15:1.

Notwithstanding this, the proposed development has been designed with a built form that is consistent with the intent of the standard and the Planning Proposal for the site, and is suitable for the subject site.

The proposed additional GFA to Building 3 is within the scope of the additional floor area envisioned by the planning proposal. The proposed FSR of 5.15:1 is the result of land dedication following the lodgement of the Planning Proposal that reduced the site area to 6466.4m² and compliance with the FSR standard of 3.66:1 would defeat the underlying intent for development of Building 3 in accordance with the planning proposal that envisioned an additional 4 storeys to Building 3. In accordance with the test 3 applied in *Wehbe v Pittwater Council* compliance with the FSR development standard is unreasonable in the circumstances of this case.

The variation to the FSR standard does not attempt to affect the planning outcomes for the broader locality; rather the proposal is a response to the planning proposal for the subject site and granted Gateway Determination by the Department of Planning and Public Spaces.

The proposal is consistent with the FSR control and the floor area envisioned for the site noting the variation will result in a density on the subject site that was initially planned under the Neil Street Precinct Masterplan, prior to the dedication of part of the site to Council for public use.

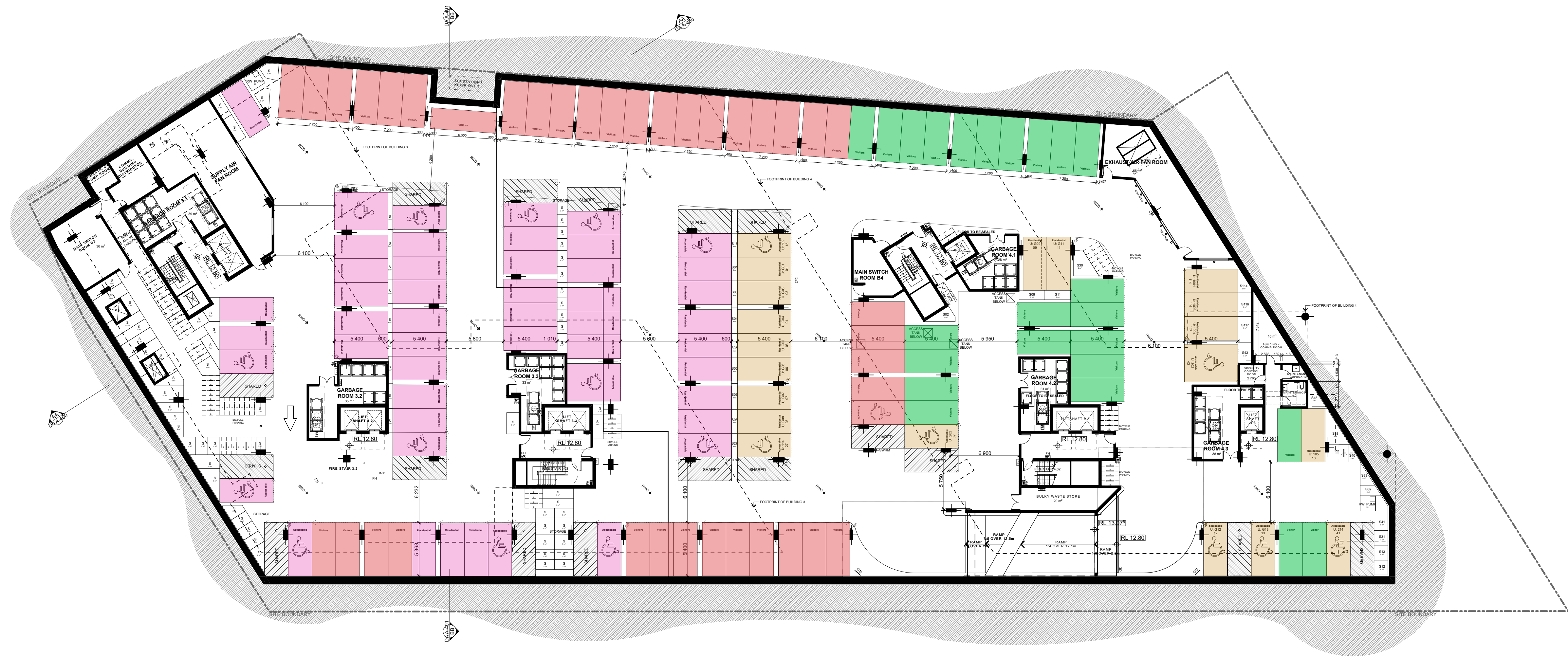
The proposal resulting in the variation to the control will not be visually dominant at the street level, and will result in an improved built form outcome for the locality contributing to a more suitable transition in building density and height from the Merrylands Town Centre to Holroyd Gardens to the north. The proposal will not adversely impact upon the public domain or adjoining properties and will not generate unreasonable overshadowing or amenity impacts.

The application to vary the FSR development standard is well founded and as addressed the proposal meets the objectives of the development standard. The proposal achieves a suitable design that does not result in unreasonable visual and amenity impacts upon surrounding properties and is an acceptable built form

outcome for the site and locality. In accordance with the environmental planning grounds addressed in this clause 4.6 variation, the proposed floor space ratio can be supported.



Garry Chapman
Chapman Planning Pty Ltd
Certified Practising Planners

BASEMENT 1
1:250

CAR PARKING SCHEDULE			
Building 3		Building 4	
B1 Residential	36	B1 Residential	13
Accessible	13	Accessible	6
B2 Residential	72	B2 Residential	49
Accessible	16	Accessible	10
B3 Residential	74	B3 Residential	58
Accessible	15	Accessible	10
GF Visitor	4		
B1 Visitor	38	B1 Visitor	24
V. Accessible	1	V. Accessible	1
Sub-Total		Sub-Total	
Residential	182	Residential	120
Accessible	44	Accessible	26
Visitor	42	Visitor	24
	269		171
TOTAL			
Residential		Residential	302
Accessible		Accessible	70
Visitor		Visitor	66
V. Accessible		V. Accessible	2
GRAND TOTAL		GRAND TOTAL	440

BUILDING 3
VISITOR PARKING
39 Spaces

BUILDING 4
VISITOR PARKING
25 Spaces

BUILDING 3
RESIDENT CARSPACE
49 Spaces

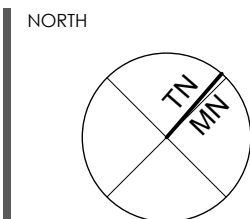
BUILDING 4
RESIDENT CARSPACE
20 Spaces



DA-E	50m HOV ZONE PERIMETER (AREA 'Y') ADDED TO ROOF PLAN; BLD 4 PARKING/STORAGE ALLOCATION	31/09/2020	MM	VB
DA-D	AMENDED STORAGE CAGE ALLOCATION	14/09/2020	MM	VB
DA-C	AMENDED FLOOR R.L.'s FOR STRUCTURAL ENGINEERING COMPLIANCE	1/09/2020	MM	VB
DA-B	AMENDED AS PER COUNCIL RFI LETTER - 09 July 2020	22/07/2020	MM	VB
ISSUE	AMENDMENT	DATE	DRAWN	CHECKED
Drawing is NOT VALID or issued for use, unless checked.				



GENERAL NOTES
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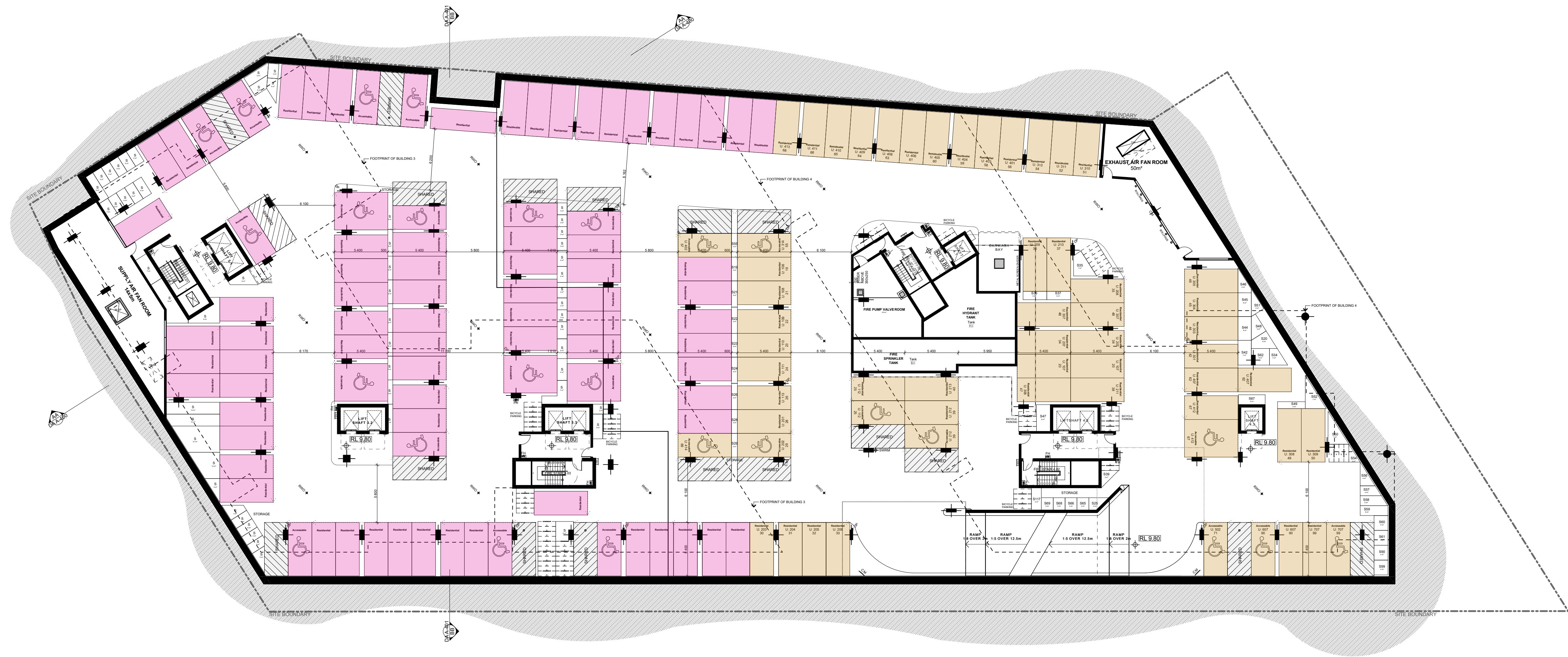


PROJECT STATUS
DA Alterations & Additions
Original DA:
Ghazi Al Ali Architect

SHEET TITLE
**Basement 1
Parking Allocation**
DESIGNED: GAA DRAWN: MM COMMENCED: July 2020 SCALE: AS NOTED PRINT: A1 SHEET
L.G.A.: Cumberland City Council

Zhinar Architects Pty Ltd
Suite 1, Level 2
2 Rowe Street
Eastwood NSW 2122
+61 2 8893 8888 / p
+61 2 8893 8833 / f
www.zhinar.com.au / w
28 495 869 790 / o/bn

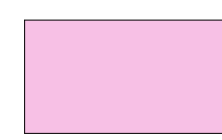
PROJECT NAME
**The Mills | Buildings 3&4
Residential Flat Building**
20-22 Dressler Court, Merrylands NSW 2160
JOB No. 08689 DRAWING No. DA:015
ISSUE E



1

BASEMENT 2
1:250

CAR PARKING SCHEDULE			
Building 3		Building 4	
B1 Residential	36	B1 Residential	13
Accessible	13	Accessible	6
B2 Residential	72	B2 Residential	49
Accessible	16	Accessible	10
B3 Residential	74	B3 Residential	58
Accessible	15	Accessible	10
GF Visitor	4		
B1 Visitor	38	B1 Visitor	24
V. Accessible	1	V. Accessible	1
Sub-Total		Sub-Total	
Residential	182	Residential	120
Accessible	44	Accessible	26
Visitor	42	Visitor	24
	269		171
TOTAL		TOTAL	
Residential		Residential	302
Accessible		Accessible	70
Visitor		Visitor	66
V. Accessible		V. Accessible	2
GRAND TOTAL		GRAND TOTAL	440

 BUILDING 3 (STAGE 2)
RESIDENT CARSPACE
87 Spaces

 BUILDING 4 (STAGE 1)
RESIDENT CARSPACE
59 Spaces



DA	DESCRIPTION	DATE	DRAWN	CHECKED
DA-E	50m HOB ZONE PERIMETER (AREA 'Y') ADDED TO ROOF PLAN; BLD 4 PARKING/STORAGE ALLOCATION	31/09/2020	MM	VB
DA-D	AMENDED STORAGE CAGE ALLOCATION	14/09/2020	MM	VB
DA-C	AMENDED FLOOR R.L.'s FOR STRUCTURAL ENGINEERING COMPLIANCE	1/09/2020	MM	VB
DA-B	AMENDED AS PER COUNCIL RFI LETTER - 09 July 2020	22/07/2020	MM	VB
ISSUE				
Print Date:	Friday, 9 October 2020 2:47 pm			

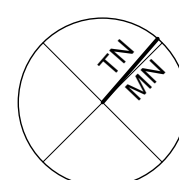
CLIENT



GENERAL NOTES

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NORTH



PROJECT STATUS

DA Alterations & Additions

Original DA:
Ghazi Al Ali Architect

SHEET TITLE

Basement 2
Parking Allocation

DESIGNED: GAA DRAWN: MM COMMENCED: July 2020 SCALE: AS NOTED PRINT: A1 SHEET
I.G.A.: Cumberland City Council

Zhinar Architects Pty Ltd
Suite 1, Level 2
2 Rowe Street
Eastwood NSW 2122

+61 2 8893 8888 / p
+61 2 8893 8833 / f
www.zhinar.com.au / w
28 495 869 790 / otn

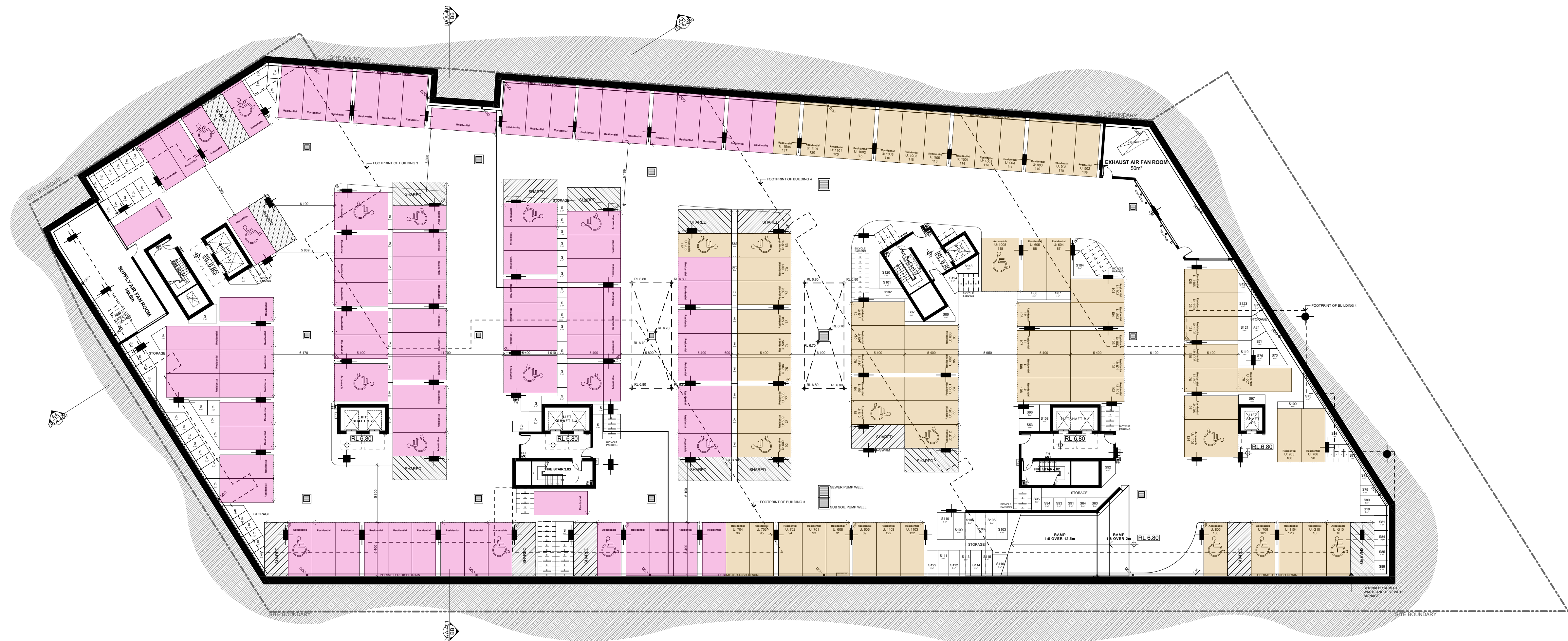


PROJECT NAME

The Mills | Buildings 3&4
Residential Flat Building
20-22 Dressler Court, Merrylands NSW 2160
JOB No. 08689 DRAWING No. DA:016

ISSUE

E



BASEMENT 3
1:250

CAR PARKING SCHEDULE			
Building 3		Building 4	
B1 Residential	36	B1 Residential	13
Accessible	13	Accessible	6
B2 Residential	72	B2 Residential	49
Accessible	16	Accessible	10
B3 Residential	74	B3 Residential	58
Accessible	15	Accessible	10
GF Visitor	4		
B1 Visitor	38	B1 Visitor	24
V. Accessible	1	V. Accessible	1
Sub-Total		Sub-Total	
Residential	182	Residential	120
Accessible	44	Accessible	26
Visitor	42	Visitor	24
	269		171
TOTAL		TOTAL	
Residential		Residential	302
Accessible		Accessible	70
Visitor		Visitor	66
V. Accessible		V. Accessible	2
GRAND TOTAL		GRAND TOTAL	440

BUILDING 3 (STAGE 2)
RESIDENT CARSPACE
89 Spaces

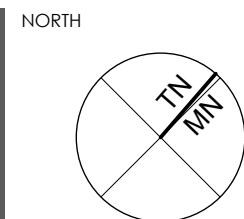
BUILDING 4 (STAGE 1)
RESIDENT CARSPACE
68 Spaces



DA	DESCRIPTION	DATE	DRAWN	CHECKED
DA-E	50m HOB ZONE PERIMETER (AREA 'Y') ADDED TO ROOF PLAN; BLD 4 PARKING/STORAGE ALLOCATION	31/09/2020	MM	VB
DA-D	AMENDED STORAGE CAGE ALLOCATION	14/09/2020	MM	VB
DA-C	AMENDED FLOOR R.L.'s FOR STRUCTURAL ENGINEERING COMPLIANCE	1/09/2020	MM	VB
DA-B	AMENDED AS PER COUNCIL RFI LETTER - 09 July 2020	22/07/2020	MM	VB
ISSUE				
Print Date:	Friday, 16 October 2020 10:00 am			

CLIENT
Landmark
Landmark Group Australia Pty Ltd

GENERAL NOTES
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PROJECT STATUS
DA Alterations & Additions
Original DA:
Ghazi Al Ali Architect

SHEET TITLE
**Basement 3
Parking Allocation**
DESIGNED: GAA
DRAWN: MM
COMMENCED: July 2020
SCALE: AS NOTED
PRINT: A1 SHEET
I.G.A.: Cumberland City Council

Zhinar Architects Pty Ltd
Suite 1, Level 2
2 Rowe Street
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PROJECT NAME
**The Mills | Buildings 3&4
Residential Flat Building**
20-22 Dressler Court, Merrylands NSW 2160
JOB No. 08689
DRAWING No. DA:017
ISSUE E