



Land and Environment Court New South Wales

Case Name: **A & A Development Pty Ltd v Cumberland Council**

Medium Neutral Citation: [2022] NSWLEC 1071

Hearing Date(s): Conciliation Conference on 7 February 2022

Date of Orders: 11 February 2022 **CUMBERLAND COUNCIL**
File No:

Date of Decision: 11 February 2022 **16 FEB 2022**

Jurisdiction: Class 1

Before: Dickson C **REFERRED TO:**

Decision: The Court orders that:
(1) The written requests pursuant to clause 4.6 of the Auburn Local Environmental Plan 2010 to vary the development standards in clause 4.3 Height of Buildings and clause 4.4 Floor Space Ratio prepared by Think Planners dated February 2022 are upheld.
(2) The appeal is upheld.
(3) Consent is granted to Development Application No 2020/0336 for demolition of existing buildings, the consolidation of two allotments and the construction of a shop top housing development comprising 1 retail premises and 79 residential units at the property comprised in folios Lot 17 and Lot 18 Section 4 in Deposited Plan 982836, otherwise known as 22-24 Park Road, Auburn subject to conditions in Annexure A.

Catchwords: DEVELOPMENT APPLICATION – demolition and construction of shop top housing – amended plans – agreement between the parties – orders.

Legislation Cited: Auburn Local Environmental Plan 2010, cl 2.3, 2.7, 4.3, 4.4, 6.1, 6.2.
State Environmental Planning Policy (Infrastructure) 2007, cl 45(2)
Cumberland Local Environmental Plan 2021, cl 1.8A
Environmental Planning and Assessment Act 1979, ss 4.15, 8.7,

Environmental Planning and Assessment Regulation
2000, cl 55
Land and Environment Court Act 1979, s 34
Sydney Regional Environmental Plan (Sydney
Harbour Catchment) 2005, cl 3(2), 20-27
State Environmental Planning Policy (Building
Sustainability Index: BASIX) 2004
State Environmental Planning Policy No 55—
Remediation of Land, cl 7
State Environmental Planning Policy No 65 - Design
Quality of Residential Apartment Development, cl
28, 30(1)

Category:	Principal judgment
Parties:	A&A Development Pty Ltd (Applicant) Cumberland Council (Respondent)
Representation:	Counsel: J Smith (Applicant) C McFadzean (Solicitor) (Respondent) Solicitors: Centurion Lawyers (Applicant) Cumberland Council (Respondent)
File Number(s):	2021/168725
Publication Restriction:	No

JUDGMENT

- 1 **COMMISSIONER:** The proceedings are an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) by the Applicants against the actual refusal of Development Application No. DA/2020/0336 by Cumberland Council (the Respondent). The development application, as amended, seeks consent for the demolition of existing buildings, the consolidation of two allotments and the construction of shop top housing comprising one retail premise and 79 residential units. The development is proposed at 22-24 Park Road, Auburn, Lots 17 and 18 in Section 4 of Deposited Plan 982836.
- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (the LEC Act) between the parties, which was held on 29 September 2021. The parties failed to reach agreement and the conciliation was subsequently terminated.
- 3 The Applicant filed a Notice of Motion, on 25 November 2021, to rely on amended plans. The motion was granted on 26 November 2021. Prior to the hearing, the parties continued to conference based on the amended application.
- 4 Upon commencing the hearing, the parties advised the Court that an agreement under s 34(3) of the LEC Act was capable of being reached. On that basis, the matter was further listed for a s 34(1) conciliation conference on 7 February 2022. The decision agreed upon by the parties is that the appeal is upheld, subject to the conditions of consent annexed to this judgment.
- 5 I presided over the conciliation conference. As the presiding Commissioner, I am satisfied that the decision is one that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I have formed this state of satisfaction for the following reasons:

- (1) By reference to the development application form filed, Owner's consent has been given to the Applicant for lodgement of the Development Application.
- (2) An amended BASIX certificate has been filed to reflect the amended architectural plans in satisfaction of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- (3) Consideration has been given as to whether the subject site is contaminated as required by cl 7(1) of State Environmental Planning Policy No 55—Remediation of Land. The land is not known to the Council to be contaminated, is not within a nominated investigation area or been used for a purpose referred to in Table 1 of the Contaminated Planning. Based on the above, subcll 7(2) and (3) have no application. I am satisfied that the risk of contamination is low and that the site is suitable or can be made suitable for the intended use.
- (4) The development application meets the criteria for State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) to apply. No design review panel is in existence requiring consultation under cl 28. The application complies with minimum standards under cl 30(1) for car parking, apartment size and ceiling heights. I am satisfied that the amended development has given adequate regard to the Schedule 1 Design Quality Principles and Apartment Design Guide design criteria objectives. The DA, as amended, is accompanied by a revised Verification Statement dated 7 February 2022 which provides an assessment of the proposal against the Design Quality principles as set out in SEPP 65, Part 1.
- (5) In accordance with cl 45(2) of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP), the Council gave written notice of the development to Ausgrid and invited comments. Ausgrid responded raising no objection to the development. Ausgrid's response has been considered as required by cl 45(2) of ISEPP.

- (6) Pursuant to cl 3(2) of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP), the Site is not mapped as being within a Foreshores and Waterways Area, a strategic foreshore site, or a wetland protection area. Nor is it shown as containing a heritage item.
- (7) Clause 20(a) of SREP requires matters referred to in Part 3 Division 2 of the SREP be taken into consideration by the consent authority before granting development consent. In respect of the Division 2 matters I am satisfied as follows:
- clause 21: The development will have a negligible and acceptable impact on biodiversity, ecology and environmental protection. Subclauses (a)-(i) raise no matters that warrant refusal of the development.
 - clause 22: The development will have no impact upon public access to, and use of, the foreshore and waterway.
 - clause 23: The development has no implications for a working harbour.
 - clause 24: The development has no implications for use of the waterways or foreshore.
 - clause 25: The development has no impact upon the scenic quality of the waterways and foreshore.
 - clause 26: The development has no impact upon views.
 - clauses 27 (boat storage facilities), 27A (floating boat platforms) and 27B (mooring pens) have no relevance to the development.
- (8) The Auburn Local Environmental Plan 2010 (LEP 2010) applies to the site. Pursuant to LEP 2010 the site is zoned B4 Mixed Use Development.

The proposed development is for the purpose of retail premises and shop top housing both of which are permitted uses in the zone. Demolition is permissible pursuant to cl 2.7 of LEP 2010. In determining the development application, I have had regard to the objectives of the zone: cl 2.3(2) of LEP 2010.

- (9) Clause 4.3 of LEP 2010 provides for a maximum building height of 38m for the subject site. The amended development has a maximum height of 38.8m at the rear parapet of the building. The applicant submitted a clause 4.6 written request which I am satisfied demonstrates (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and (b) that there are sufficient environmental planning grounds to justify contravening the development standard. Further, I am satisfied that the development is in the public interest because it is consistent with the objectives of the building height standard and the objectives of the B4 zone. The requirements of cl 4.6(4) of LEP 2010 are satisfied.
- (10) Clause 4.4 of LEP 2010 provides for a maximum building floor space ratio (FSR) of 5:1 for the subject site. The amended development has a maximum FSR of 5.05:1. The applicant submitted a clause 4.6 written request which I am satisfied demonstrates (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and (b) that there are sufficient environmental planning grounds to justify contravening the development standard. Further, I am satisfied that the development is in the public interest because it is consistent with the objectives of the FSR development standard and the objectives of the B4 zone. The requirements of cl 4.6(4) of LEP 2010 are satisfied.
- (11) The site is marked as Class 5 land on the Acid Sulfate Soils Map in LEP 2010, but is not within 500m of any class 1, 2, 3 or 4 land. On that basis, development consent is not required under cl 6.1 of LEP 2010.

(12) Consent for proposed earthworks is required under cl 6.2 of LEP 2010. In respect of cl 6.2(3) considerations, I am satisfied that:

- Impacts on drainage patterns and soil stability will be satisfactory;
- The earthworks are related to and necessary for the future use / redevelopment of the land;
- The quality of soil to be excavated of is no more than necessary;
- Subject to adherence to conditions requiring safe means of excavation, the earthworks will have a negligible and satisfactory impact upon the existing and likely amenity of adjoining properties;
- The annexed conditions require the disposal of excavated material at an appropriate facility;
- The likelihood of disturbing relics is remote and not of determinative weight; and
- The site is not proximate to and will have negligible to no impact upon a waterway, drinking water catchment or environmentally sensitive area.

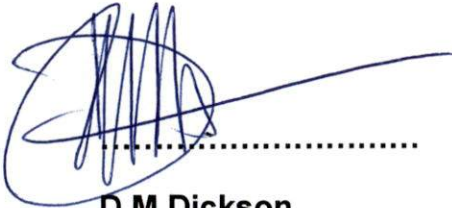
(13) Clause 6.5 of LEP 2010 requires the consent authority to be satisfied of access to various essential services for the proposed development. I am satisfied that the listed essential services are available or can be made available.

(14) The Cumberland Local Environmental Plan 2021 came into force on 5 November 2021. Pursuant to cl 1.8A, the application is to be determined as if the plan had not commenced.

- (15) The application was notified in accordance with the relevant development control plan, and I am satisfied that the submissions have been considered in the determination of the development application: s 4.15(1)(d) of the EPA Act.
- 6 Having reached the state of satisfaction that the decision is one that the Court could make in the exercise of its functions, s 34(3)(a) of the LEC Act requires me to “dispose of the proceedings in accordance with the decision”. The LEC Act also requires me to “set out in writing the terms of the decision” (s 34(3)(b)).
- 7 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any assessment of the merits of the development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.
- 8 The Court notes that:
- (1) Cumberland Council as the relevant consent authority has agreed, under cl 55(1) of the Environmental Planning and Assessment Regulation 2000, to the applicant amending the development application DA/2020/0336.
 - (2) That the amended development application is uploaded onto the NSW planning portal.
 - (3) That the applicant filed the amended development application with the Court on 25 November 2021.
- 9 The Court orders that:
- (1) The written requests pursuant to clause 4.6 of the Auburn Local Environmental Plan 2010 to vary the development standards in clause 4.3 Height of Buildings and clause 4.4 Floor Space Ratio prepared by Think Planners dated February 2022 are upheld.

- (2) The appeal is upheld.
- (3) Consent is granted to Development Application No 2020/0336 for demolition of existing buildings, the consolidation of two allotments and the construction of a shop top housing development comprising 1 retail premises and 79 residential units at the property comprised in folios Lot 17 and Lot 18 Section 4 in Deposited Plan 982836, otherwise known as 22-24 Park Road, Auburn subject to conditions in Annexure A.

I certify that this and the preceding 6 pages are a true copy of my reasons for judgment.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right. Below the signature is a dotted line.

D M Dickson

Commissioner of the Court

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2020/0336

Development: Demolition of existing buildings, the consolidation of two allotments and the construction of a shop top housing development comprising 1 retail premises and 79 residential units

Site: Lots 17 and 18 in Section 4 of Deposited Plan 982836, being No. 22-24 Park Road, Auburn

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

Date of determination: 11 February 2022.

Date from which consent takes effect: 11 February 2022.

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 No. 22-24 Park Road, Auburn being Lots 17 and 18 in Section 4 of Deposited Plan 982836.

The conditions of consent are as follows:

Schedule A - Deferred Commencement Conditions

1. Deferred Commencement Approval

This is a Deferred Commencement Consent under Section 4.16(3) of the Environmental Planning and Assessment Act 1979. This consent does not become operative until the applicant has satisfied Council of the requirements

listed in Schedule 'A' of this consent, and Council has advised in writing that those matters have been satisfactorily addressed. In accordance with s.4.53(6) of the Act, if the applicant fails to satisfy Council as to the matter/s specified in Schedule A within 5 years from the date of this consent, this consent lapses.

(Reason: Statutory requirement)

2. Stormwater Design

Stormwater pipes associated with the development must be located within the easement. In this regard, the location of the easement shall be modified. A detailed survey of the downstream easement and longitudinal section of the existing stormwater pipe from the site to Sydney Water/Council's system shall be submitted to and approved by Cumberland Council.

The proposed easement and stormwater system shall be clear of the structures.

The longitudinal section shall incorporate the depth and location of all the services.

(Reason: to ensure stormwater system is clear of obstructions and located with the downstream easement)

Schedule B - General Conditions

3. General

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

(Reason: Advisory)

4. 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.

Reference/Dwg No.	Title/Description	Prepared By	Date
A1.00 Issue F	Basement 3	moMA Architects	6/10/2021
A1.01 Issue F	Basement 2 plan		
A1.02 Issue E	Basement 1 plan		29/9/2021
A1.03 Issue G	Ground Floor plan		4/11/2021
A1.04 Issue F	Level 1 plan		6/10/2021
A1.05 Issue G	Level 2-10 Plan		4/11/2021
A1.07 Issue G	Roof Plan / Site Plan		4/11/2021

A2.00 Issue G	North Elevation		6/10/2021
A2.01 Issue F	West Elevation		
A2.02 Issue F	South Elevation		
A2.03 Issue F	East Elevation		
A2.04 Issue F	Streetscape Elevation		
A3.00 Issue F	Section (East-West)		
A3.01 Issue F	Section (North-South)		
A3.02 Issue F	Section (North-South)		
A4.00 Issue D	Schedule of Materials and Finishes		7/9/2021
A4.01 Issue F	Front Entry Facade		6/10/2021
A6.20 Issue D	Site Management Plan		7/9/2021
2020.1203DA1-1 Issue D	Ground Floor Landscape Plan	TGS Landscape Architects	6/10/2021
2020.1203DA1-2 Issue D	Landscape Lighting & Detailed Landscape Plan		
Sheet 1 of 5	Plan showing detail and levels	H Ramsay & Co	5/10/2021
SW566-1 Rev E	Construction notes and standard details	Wehbe Consulting	13.2.19
SW566-2 Rev E	Roof layout		
SW566-3 Rev E	L11 plan and typical floor upper levels layout		
SW566-4 Rev E	First floor layout		
SW566-5 Rev E	Stormwater site layout		
SW566-7 Rev E	Basement 1 and 2 layout		
SW566-8 Rev E	Basement 3 layout		
SW566-9 Rev E	CDS unit details		
Ref. P1203588JR03V0 1	Stage 2 ESA Report	Martens Consulting Engineers	November 2012

Ref. WB614-02F02(REV2)-WS REPORT	Pedestrian Wind Environment Statement	Windtech	Revision 2, 24/7/2020
Ref. 8008	Arborist Report	Redgum Horticultural	7/8/2012
Cert. No. 664233M_06	BASIX Certificate	EPA	2/2/2022
Ref. 20154	Access Report	Vista Access Architects	Revision A, 7/6/2020
Ref. 20200002/2007A/R0/LL	Acoustic Report	Acoustic Logic P/L	20/7/2020
Ref. 01674, Rev B	Mechanical Services Concept Design Report	Twoms	23/7/2020
-	Apartment Design Guide / SEPP 65 Design Verification Statement	moMA Architects	7/2/2022

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

5. 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 a Notice of Commencement.

(Reason: Information)

6. Australia Post Guidelines

A letter box is to be provided for the development in accordance with the relevant Australia Post Guidelines.

(Reason: To ensure compliance with mail delivery regulations)

7. 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)

8. Street Numbering of Lots and Units

Numbering of the units 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)

9. Telecommunications/ TV Antennae

No more than one telecommunications/TV antenna is to be installed.

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

10. Tree Preservation

All street trees and trees on private property that are protected under Cumberland Council's controls, shall be retained except where Council's prior written consent has been obtained.

(Reason: Tree preservation)

11. Mechanical Ventilation

The premises must be suitably ventilated in accordance with the National Construction Code 2019 and AS1668.1 and 2 - 2012. The Use of Ventilation and Air-Conditioning in Buildings - Mechanical Ventilation in Buildings.

(Reason: To ensure compliance with ventilation standards)

12. Waste Management

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

(Reason: Compliance with approval)

13. Future use of Mixed-Use Building for Commercial Tenancy

The building design must incorporate measures to enable the installation of appropriate mechanical ventilation systems that comply with relevant Australian Standards including AS1668 and are capable of accommodating any exhaust/ventilation requirements for ground floor retail unit in particular food premises. In the event that a food premises requires a mechanical exhaust system for charcoal cooking purposes, separate consent is required as additional filtration systems and odour assessment will be necessary.

(Reason: To ensure that future commercial tenancies can meet legislative requirements for mechanical ventilation)

14. Surface Runoff

Allowances shall be made for surface runoff from adjacent properties, and to retain existing surface flow path systems through the site. Any redirection or treatment of these flows shall not adversely affect any other property.

(Reason: to prevent adverse impact on adjoining properties)

15. Service Relocation / Adjustment

The applicant shall be responsible for any damage to, or relocation of utility services required by the proposal including adjustment to the levels of pit lids etc. All works shall be carried out to the satisfaction of the relevant Authority or Council. All the costs shall be borne by the applicant.

(Reason: to protect utility services)

16. Bond Positive Covenant

The applicant shall lodge with Council a \$6,290 cash bond to cover the registration of a Positive Covenant and Restriction as to User over the On-site Detention system. This bond is refundable upon the submission of proof of registration of the Restriction as to User and Positive Covenant with the NSW Land Registry Service.

(Reason: to ensure Positive Covenant and Restriction as to User documents are registered)

17. Basement Drainage System

Basement drainage is to comply with Council's development control plan. In this regard,

- i. Two pump units being installed, the capacity of each being calculated on the basis of a hundred year storm recurrence interval and a storm duration of five minutes, one pump acting in reserve capacity.
- ii. The two pumps being designed to work on an alternate basis to ensure that both pumps receive equal usage and neither pump remains continuously idle.
- iii. A holding well being provided within the basement, of sufficient capacity to store the discharge based on a hundred year storm recurrence interval and storm duration of ninety minutes. In addition to this an above ground storage shall be provided up to a hundred year storm recurrence interval and storm duration of two hours. The holding well is to be designed so that a minimum volume of water is retained in the well for health reasons when the pumps are in the "off" position or if there is a break in electrical supply.
- iv. A storm of two hours' duration has been adopted as a basis for determining the size of the well, the assumption being that electrical supply will be reinstated within this period.
- v. The pump out system is to be independent of any gravity drainage lines, except at the property boundary where a grated surface pit is to be constructed from which a connection will be permitted to the gravity

drainage system. The invert levels of the pipes in the grated surface pit are to be such that the outlet from the pump out system is above the inlet of the gravity system.

- vi. Storage areas and areas used for purposes other than car parking or access aisles are to be constructed a minimum of 100mm above the top water level.
- vii. The contributing catchment area to the pump out system is to be limited to the access ramp area only and subsoil drainage.

(Reason: to prevent localised flooding.)

Conditions which must be satisfied prior to the commencement of demolition of any building or structure

18. Construction Certificate - Prior to the Commencement of any Demolition Works

Where demolition is associated with the erection of a new structure the demolition of any part of a building is commencement of building work pursuant of section 6.6 of the Act. In such circumstance all conditions of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier and Notice of Commencement under the Act.

(Reason: Statutory Requirement)

19. Demolition - General

Two working days (i.e. Monday to Friday exclusive of public holidays) prior to the commencement of any demolition work, notice in writing is to be given to the Council. Such written notice is to include:

- The date when demolition will commence,
- Details of the name, address and business hours contact telephone number of the demolisher, contractor or developer.
- The licence number of the demolisher, and relevant WorkCover licenses, (see minimum licensing requirements in (d) below, and
- Copies of the demolisher's current public liability/risk insurance policy indicating a minimum cover of \$10,000,000.00.

Demolition works are restricted as follows:

- Monday to Saturday inclusive - 7:00am - 5:00pm
- Sundays and Public Holidays - No work

Demolition Involving the Removal of Asbestos

General Information

Homes built or renovated prior to 1987 are likely to contain asbestos. Asbestos is most commonly found within eaves, internal and external wall cladding, ceilings and walls (particularly within wet areas such as bathrooms and laundries), and fences. Unless properly handled, asbestos disturbed or removed during renovations can cause the development of asbestos related diseases, such as asbestosis, lung cancer and mesothelioma.

To ensure work does not cause undue risk please see the following site for further information: www.asbestosawareness.com.au

Asbestos to be removed by licensed asbestos removalist

All works removing asbestos containing materials must be carried out by a suitably licensed asbestos removalist duly licensed with Workcover NSW, holding either a Friable (Class A) or a Non-Friable (Class B) Asbestos Removal

License which ever applies AND a current WorkCover Demolition License.

NOTE:

- Removal of asbestos by a person who does not hold a Class A or Class B asbestos removal license is permitted if the asbestos being removed is 10m² or less of non-friable asbestos (approximately the size of a small bathroom).
- Friable asbestos materials must only be removed by a person who holds a current Class A asbestos license.
- To find a licensed asbestos removalist please see www.workcover.nsw.gov.au

Compliance with applicable Legislation, Policies and Codes of Practice

Asbestos removal works are to be undertaken in accordance with the following:

- NSW Work Health and Safety Act and Regulation 2017;
- Safe Work Australia Code of Practice for the Management and Control of Asbestos in the Workplace [NOHSC:2018(2005)]
- NSW Government WorkCover Code of Practice - How to Safely Remove Asbestos;
- NSW Government WorkCover Code of Practice - How to Manage and Control Asbestos in the Workplace; and

Clearance certificate

Following completion of asbestos removal works undertaken by a licensed asbestos removalist re-occupation of a workplace must not occur until an independent and suitably licensed asbestos removalist undertakes a clearance inspection and issues a clearance certificate.

At least two working days prior to the commencement of asbestos removal works, the developer or demolition contractor must notify adjoining residents. Notification is to include, at a minimum:

- The date and time when asbestos removal works will commence;
- The name, address and business hours contact telephone number of the demolisher, contractor and/or developer;
- The full name and license number of the asbestos removalist/s; and
- The telephone number of WorkCover's Hotline 13 10 50

Warning Signs

Warning signs must be placed so they inform all people nearby that asbestos removal work is taking place in the area. Signs should be placed at all of the main entry points to the asbestos removal work area where asbestos is present. These signs should be weatherproof, constructed of light-weight material and adequately secured so they remain in prominent locations. The signs should be in accordance with AS 1319-1994 Safety signs for the occupational environment for size, illumination, location and maintenance.

20. Barricades for Asbestos Removal

Appropriate barricades must be installed as appropriate to prevent public access and prevent the escape of asbestos fibres. Barricades must be installed prior to the commencement of asbestos removal works and remain in place until works are completed.

(Reason: To ensure compliance with the relevant legislation and to ensure public and work safety)

21. Site Safety Fencing - Demolition Only

The site must be fenced to a minimum height of 1.8m in accordance with SafeWork NSW guidelines to prevent public access throughout demolition. The fencing must be erected before the commencement of any demolition work and maintained.

(Reason: Public safety)

22. Demolition Inspections

Council (not a private certifier) must inspect the site prior to and after demolition works.

After completion of demolition works, the applicant must notify Council within 7 days to assess the site and ensure compliance with AS2601-2001 - Demolition of Structures.

(Reason: To ensure compliance with the relevant legislation and to ensure public and work safety)

23. Demolition, Excavation, Construction Noise and Vibration Management Plan

A site specific Noise Management Plan shall be developed and submitted to Council prior to the commencement of any demolition, excavation and construction works on site.

The Plan must be prepared by a suitably qualified acoustic engineer being a consultant who holds a current member grade of the Australian Acoustical Society.

The Plan must include but not be limited to the following:-

- (a) Identification of any noise sensitive receivers near to the site;
- (b) A prediction as to the level of noise impact, including the proposed number of any high noise intrusive appliances, likely to affect the nearest noise sensitive receivers. A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated in the NSW EPA Interim Construction Noise Guideline (2009). Where resultant site noise levels are likely to be in exceedance of this noise criteria then a suitable proposal must be given as to the duration

and frequency of respite periods that will be afforded to the occupiers of neighbouring property;

- (c) A representative background noise measurement (LA90, 15 minute) should be assessed in the vicinity of any potentially affected receiver locations and measured in accordance with AS 1055:1.2.1997;
- (d) Confirmation of the level of community consultation that has/is and will be undertaken with Building Managers/ occupiers of the main adjoining noise sensitive properties likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases;
- (e) Confirmation of noise monitoring methodology that is to be undertaken during the main stages of work at neighbouring noise sensitive properties in order to keep complaints to a minimum;
- (f) The type of action will be undertaken following receipt of a complaint concerning offensive noise including provision of a site contact;
- (g) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupiers of neighbouring noise sensitive property to a minimum.

(Reason: Environmental and residential protection)

24. Hazardous Materials Survey Required

Prior to the commencement of any demolition works on site, a Hazardous Materials Survey Report must be prepared by a suitably qualified person (such as a certified Occupational Hygienist) and submitted to the satisfaction of the certifier, with a copy provided to Council. The report must identify and record the type, location and extent of any hazardous materials on the site and make recommendations as to the safe management and/or removal to ensure the site is safe for demolition, construction and future use/occupation.

(Reason: To ensure controls are in place for hazardous materials)

25. Sediment and Erosion Control measures

Prior to the commencement of any works, temporary sediment and erosion control measures are to be installed in accordance with Landcom's Managing Urban Stormwater: Soils and Construction guidelines and maintained during the demolition, excavation and construction phase of the project to the satisfaction of Council and the principal certifier. The following measures should be included:-

- (a) A stabilised dish shaped diversion drain or similar structure constructed above the proposed building works to divert overland run-off to a stabilised discharge area such as dense ground cover or turf;

- (b) Sediment-trapping fencing using a geotechnical fabric specifically designed for such purpose and installed to manufacturer's specifications is to be placed in suitable locations below the construction area;
- (c) Provision of one designated point for vehicular access which is adequately covered at all times with blue metal or the like to prevent mud and dirt leaving the site and being deposited on the street. Wheel wash/shakers may be required for extensive construction works;
- (d) Building operations such as brick cutting, washing tools or brushes and mixing mortar must not be carried out on public roadways or footway areas;
- (e) Stockpiles such as topsoil, sand, aggregate, soil or other material shall not be located on any drainage line or easement, natural watercourse, footpath or roadway. Stockpiles shall be protected with adequate sediment controls; and
- (f) Gutters, downpipes and the connection of downpipes to the stormwater disposal system must be complete prior to the fixing of the roof cladding.

(Reason: To minimise/prevent impacts on waterways by minimising soil erosion and sediment leaving the site)

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

26. Application for a Construction Certificate

Construction work must not commence until a Construction Certificate has been obtained from the Council or a registered certifier.

(Reason: Statutory requirement)

27. 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)

28. Works within Boundary

No portion of the works are to encroach beyond the boundaries of the subject property. Alternatively, documentary evidence that the owner of the adjoining property has no objection to the required works or access, is to be submitted to the Council or a registered certifier prior to the issue of a Construction Certificate.

(Reason: To ensure protection of adjoining properties)

29. Damage Deposit for Council Infrastructure

A Damage Deposit (calculated in accordance with Council's adopted Fees and Charges) shall be paid to Council prior to the issue of the Construction Certificate. This Damage Deposit can be refunded upon the completion of all works with the issue of an Occupation Certificate. A written request shall be submitted to Council to release the bond.

Council may use part or all of the deposit to carry out rectification work for any damage caused by the development to Council's infrastructure.

(Reason: To protect Council infrastructure)

30. 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)

31. Section 7.11 Contribution

Prior to the issue of a Construction Certificate, a monetary contribution imposed under Section 7.11 of the Environmental Planning and Assessment Act 1979 and Cumberland Local Infrastructure Contributions Plan 2020 for the amount of **\$1,235,454.00** is to be paid to Council. The amount of the contribution will be determined at the time of payment plus CPI in accordance with the relevant Contributions Plan in force at that time. A copy of the Cumberland Local Infrastructure Contributions Plan 2020 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)

32. Fees to be paid to Council prior to issue of the Construction Certificate

Damage Deposit	\$2,995
Sect. 7.11 Contributions	\$1,235,454 + CPI
Stormwater Bond	\$6,290
TOTAL	\$1,244,739 + CPI where applicable

Please note that other fees and charges may be applicable to the proposal, and the total fees calculated at the time of payment may exceed the figures detailed above. Further, fees to be paid to Council will be determined at the time of payment in accordance with Council's current adopted Fees and Charges Policy and therefore may exceed the fee amount quoted above.

(Reason: Statutory requirement and information)

NOTE: COVID-19 Response Measures: Infrastructure Contributions - Timing of Payment

A monetary contribution that is required to be paid under the conditions of this consent must be paid before the issue of the first occupation certificate in respect of any building to which this consent relates, except as provided below.

If no construction certificate in respect of the erection of any building to which the consent relates has been issued before or on 25 September 2022, the monetary contribution must be paid before the issue of the first construction certificate after that date for any such building.

The above does not prevent the entry into an arrangement with the Council for deferred payment of the monetary contribution in accordance with the policy for deferred payments set out in the (insert relevant Contributions Plan).

(Reason: To comply with Ministerial Direction with regard to timing of

Infrastructure Contributions during COVID-19 period)

33. Footpath Design Levels

Detailed footpath levels shall be obtained from Council before finalisation of the footpath and driveway design for Construction Certificate application by lodging an "Application for Property Boundary Line Levels". Any required adjustments shall be included in the plans and the interface across the street boundaries shall be designed to incorporate smoothly the designated levels.

When lodging the Application for Property Boundary Line Levels, fees are payable in accordance with Council's adopted fees and charges.

Unless an alternative specific design is submitted and approved by Council, the footpath levels adjoining the site shall generally be as follows:

- (a) The internal driveway levels shall be designed to meet Council's footpath verge levels such that a maximum cross fall of 2.5% is achieved where the formal footpath meets the driveway.
- (b) The level of the boundary line as it crosses the driveway shall incorporate a cross fall equivalent to the general longitudinal grade of the street. Any required adjustments shall be included in the plans and submitted for approval (under s.138 of the Roads Act) prior to the release of the Construction Certificate.

Note: Care should be taken in steep landforms to ensure scraping of vehicles is avoided.

(Reason: Public infrastructure)

34. 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 demolition or 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 any necessary approval from Council.

(Reason: Safety)

35. Submission of Plans for Works within the Road Reserve

The submission to Council of three copies and an electronic copy of Civil Engineering drawings for the design of all works within the road reserve required adjacent to 22-24 Park Road, Auburn including long and cross sections, details of proposed structures, ancillaries (e.g. footpaths, signage etc.) and specifications.

The drawings must be approved by Council in writing and all fees and charges paid prior to the issue of the Construction Certificate.

Such design shall be:

- (a) Prepared and submitted in electronic format, undertaken by a consulting Civil Engineer,
- (b) Approved in writing by Council under s.138 of the Roads Act, prior to the issue of the Construction Certificate, and
- (c) All Civil Engineering works adjacent/near/outside 22-24 Park Road Auburn is to be fully supervised by Council. A maintenance period of six months or as specified by Council shall apply to the work after it has been completed and approved. In that period the applicant shall be liable for any part of the work which fails to perform in the manner outlined in Council's specifications, or as would reasonably be expected under the design conditions, and
- (d) Upon completion of the works, the Applicant is to provide to Council two copies of work as executed plans. The plans are to show relevant dimensions and finished levels and are to be certified by a registered surveyor. Also the applicant is to provide to Council, in an approved format, details of all public infrastructure created as part of the works, including certification from the design engineer.

Note: Driveway construction will require a separate approval vehicular crossing and road works.

(Reason: To ensure compliance of engineering works/Council assets are constructed to acceptable standards for engineering works)

36. Vehicular Crossings, Redundant Vehicular Crossings and other Works

The concrete vehicular crossing shall be installed across the footpath at the entrance to the site in accordance with Council requirements. All disused or redundant vehicle crossings and laybacks shall be removed and reinstated with concrete kerb and gutter or to the existing edging profile as specified by Council and the footpath area is to be restored to the satisfaction of Council's Engineer.

A separate Council approval is required and in this regard the applicant must lodge an application (available from Council's Customer Services Centre or from Council's website), and pay the appropriate fees and charges prior to the issue of the Construction Certificate.

This application will also be required where new pavement, repair or reinstatement of footpath or other ancillary works such as kerb and gutter and stormwater pit construction is proposed and/or required.

(Reason: To ensure appropriate access to the site can be achieved)

37. 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)

38. Separate Approval for Works in the Public Road (External Works) - Section 138 Roads Act

In accordance with s.138 of the Roads Act 1993 and prior to the issue of any Construction Certificate, the applicant must submit a Road and Footpath Opening Permit application with detailed plans. Written approval must be obtained from the appropriate road authority (in this case Council), for any works in the road reserve.

(Reason: Protection of Public Assets and information)

39. Construction Management Plan

Prior to the issue of any Construction Certificate, a Construction Management Plan shall be submitted to the Council or registered certifier providing details of the following:

- a) Actions and works proposed to ensure safe access to and from the site, including how the road and footpath area will be protected from building activities, plant and materials delivery, or static loads from cranes, concrete pumps and the like.
- b) The proposed method of loading and unloading excavation machines, building materials, formwork, and the erection of any part of the structure within the site.
- c) The proposed areas within the site to be used for a builder's site office and amenities, the storage of excavated material, construction materials and waste containers during the construction period.
- d) How it is proposed to ensure that soil/excavated material is not transported on wheels or tracks of vehicles or plant and deposited on surrounding roadways.
- e) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve - the proposed method of support is to be designed by a qualified Civil Engineer.
- f) A Soil and Water Management Plan detailing all sedimentation controls.

(Reason: Safety, amenity and protection of public infrastructure and the environment)

40. Construction Traffic Management Plan

Prior to the issue of any Construction Certificate, the applicant shall submit and have approved by Council, a detailed Construction Traffic Management Plan (CTMP). The plan shall demonstrate how construction and delivery vehicles will access the development site during the demolition, excavation and construction phase of the development. The plan shall be certified by a suitably qualified and experienced traffic consultant and all traffic associated with the subject development shall comply with the terms of the approved CTMP.

The following matters (at a minimum) must be addressed in the CTMP:

- a) A detailed description and route map of the proposed truck/construction vehicle access routes.
- b) The locations of any proposed Construction Works Zones along the site frontage.
- c) Provide a construction schedule.
- d) Tradesperson parking (parking shall be provided on-site where possible).
- e) Provide relevant Traffic Control Plans (must be certified by a suitably qualified RMS ticket holder).
- f) Provide relevant Pedestrian Management Plans.
- g) A site plan which indicates site entrances and exits, turning areas within the site for construction and spoil removal vehicles allowing a forward ingress and egress for all construction vehicles on the site (superimposed truck swept path diagrams). Site entrances and exits shall be controlled by a certified traffic controller.

(Reason: Traffic safety and amenity during construction phase)

41. Parking Layout and Driveway Access Design

Amended architectural plans and driveway/access ramp longitudinal section addressing following shall be submitted to and approved by Cumberland Council:

- a) Intersections between circulation roadways and ramps, and with parking aisles shall be designed to pass one another as per section 2.5.2 (c) of the Australian standard AS2890.1. Detail swept path analysis shall be provided to ensure that cars can pass one another.
- b) The width of the circulation aisle shall be minimum 6.1m where one side restricted by obstruction such as walls. In this regard, circulation aisle widths shall be redesigned to provide minimum 6.1m near stairs and lift walls.
- c) A convex mirror shall be provided to improve the sight distance for parking spaces where sight distance is restricted by wall or other obstructions.

- d) Driveway access ramp design including grades, transitions and headroom details shall comply with Australian standard AS2890.1 and AS2890.6.
(Reason: to ensure basement design complies with Australian Standard AS2890.1 and AS2890.6.)

42. Available Visitor Car Parking Signage

A sign shall be erected in a suitable location on the property 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)

43. Off Street Car Parking - General

A total of 108 off-street car parking spaces comprising of 89 residential, 16 visitors and 3 commercial car spaces; are to be suitably marked in accordance with the approved plans (unless elsewhere specified) shall be provided. Each space shall have minimum dimensions in accordance with the relevant Australian Standard.

Details are to be submitted to the Council or the registered certifier prior to the issue of a Construction Certificate showing compliance with this condition.

(Reason: Parking and access)

44. Substation /Fire Hydrant Boosters

No approval is granted or implied for any encasing structures (i.e., blast walls or radiant heat shields) associated with the installation of any substations or fire hydrant booster pumps. Separate Development Consent is required for such structures.

(Reason: Streetscape amenity)

45. 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)

46. 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 Council's "On-Site Stormwater Detention Policy", and "Stormwater and On Site Detention Drawing Submission Checklist " 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 s.138 of the Roads Act 1993, must be obtained from Council prior to the commencement of works.

(Reason: Stormwater management)

47. 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 Council or the registered certifier prior to the issue of the Construction Certificate.

Certification of the proposed stormwater design shall be obtained from a qualified practising Engineer with Engineers Australia membership and shall be submitted to the Council or the registered certifier prior to the issue of the Construction Certificate.

(Reason: Adequate stormwater management)

48. Stormwater Design

The onsite stormwater detention system design shall be updated to comply with existing/proposed stormwater pipe within the downstream easement. Updated plans shall be submitted to and approved by Council.

49. Installation of Temporary Ground Anchor

Where ground anchors are proposed for the protection of Council's land or assets such as utility services, footpaths, kerb and gutter and other ancillary infrastructure, a separate application form for temporary ground anchors shall be submitted with payment of the relevant fees and charges prior to the issue of a Construction Certificate. For Council to consider this option, a statement from a qualified structural or geotechnical engineer must be submitted with the application demonstrating there is no other alternative method of stabilisation.

(Reason: Protection of Council assets)

50. Engineering Design - Basement Excavation

The following engineering details or design documentation (where appropriate) shall be submitted to the Council or the registered certifier prior to the issuing of a Construction Certificate:-

- a) Documentary evidence prepared by a suitably qualified professional geotechnical engineer that confirms the suitability and stability of the site for the proposed excavation and building as well as certifying the suitably

and adequacy of the proposed design and construction of the building for the site.

- b) A report shall be prepared by a professional engineer detailing the proposed methods of excavation, shoring or pile construction. This report must include details of vibration emissions and any possible damage which may occur to adjoining or nearby premises from the proposed building and excavation works. Any practices or procedures specified in the engineer's report in relation to the avoidance or minimisation of structural damage to nearby premises, are to be fully complied with and incorporated into the plans and specifications for the Construction Certificate. A copy of the engineer's report is to be submitted to the Council, if the Council is not the registered certifier.
- c) Driven type piles/shoring must not be provided unless a geotechnical engineer's report is submitted which states that damage should not occur to any adjoining premises and public place as a result of the works.
- d) The installation of ground or rock anchors (including underneath a public roadway or public place) are subject to separate approval. Works associated with proposed anchors must not be carried out without the specific written consent of the owners of the affected adjoining premises and (where applicable) details of compliance must be provided to the principal certifier prior to the commencement of any excavation or building works.

(Reason: To ensure the proposed method of excavation is suitable for the site and to prevent damage occurring to adjoining premises)

51. Excavations Extending Below the Base of Footings of Adjoining Development

Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner. The person causing the excavation must give the owner of the adjoining property at least seven days' written notice of its intention to excavate below the level of the base of the footing. The person must also furnish the adjoining property owner with particulars of the proposed work.

(Reason: To ensure the support for neighbouring buildings)

52. Dilapidation Report

A dilapidation report shall be prepared by a suitably qualified engineer 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 registered certifier

prior to undertaking any works that may cause damage. All costs shall be borne by the applicant/person acting on the consent.

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)

53. Structural Engineer's Details

Structural engineer's details (in duplicate) prepared and certified by a practising qualified structural engineer of all reinforced concrete and structural members shall be submitted to the Council or registered certifier.

(Reason: To ensure safety and the proper design of structural elements of the building)

54. Electricity Substation

Documentary evidence of compliance with the relevant energy authority's requirements is to be provided to the Council or registered certifier prior to the issue of a Construction Certificate.

(Reason: Access to utility)

55. 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)

56. 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 Acoustic Logic dated 20/07/2020 reference 20200002/2007A/R0/LL.

Note: Suitably qualified Acoustic Consultant means a consultant who

possesses the qualifications to render them eligible for membership of the Australian Acoustics Society.

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

57. Waste Storage Facilities and Management Strategy (Mixed Use Development)

Designated waste and recyclable storage facilities must be provided within the premises in accordance with the following requirements:

- a) The waste storage room/s must be fully enclosed, suitably sized to contain all waste and recyclable material generated on the premises, adequately ventilated and constructed with a concrete floor and concrete or cement rendered walls;
- b) The waste storage facilities including collection bays and storage rooms must be easily accessible for the collection and disposal of all waste and recyclable material;
- c) The floor must be graded and drain to sewer in accordance with Sydney Water requirements;
- d) A hot and cold hose cock shall be provided within the room;
- e) If there is a mix of residential and commercial uses on site, then separate storage rooms complying with the above requirements must be provided for each.

A detailed waste and recycling management strategy including plans and specifications showing the design and location of all waste/recycling storage rooms; site collection approach including any required waste/recycling collection bays must be submitted to the Council or registered certifier prior to the issue of the Construction Certificate.

(Reason: To protect the environment and ensure waste is adequately contained and able to be easily collected)

58. 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)

59. Stormwater Disposal

Stormwater runoff generated from the development shall be directed to the On-Site-Detention (OSD) system prior to being discharged by gravity system as per approved plans. In this regard,

- a. The proposed stormwater system shall be generally in accordance with the stormwater concept plans SW566-1 to SW566-5 and SW566-7 to SW566-9 prepared by Wehbe Consulting subject to any modification approved as part of the schedule A condition. **Downstream easement and any changes to the drainage design shall comply with Schedule A approval. In this regard, stormwater plans shall be updated.**
 - b. The development has been identified as requiring an on-site stormwater detention system, which has formed part of the development consent. Therefore, in order to satisfy the drainage requirements for the building, any construction certificate for the building shall include the construction of the OSD system. In this regard, design and construction details of the OSD system demonstrating compliance with the development consent and Council's (former Auburn) DCP shall be submitted to Council or registered certifier prior to the issue of a construction certificate. The following shall also be addressed:
 - i. Stormwater discharge through the easement shall comply with the details approved as part of the deferred commencement condition. In this regard, stormwater plan shall be updated.
 - ii. Dry platform shall be clearly shown on the plan.
 - iii. All the OSD access opening shall be 900x900 in size with double (2/900x450) hinged grates.
 - iv. Grated drains shall be provided directly behind the flap as per Council's standard Drawings. The opening shall be 900x900 in size with double (2/900x450) hinged access grates.
 - v. OSD shall be clear of building floor and roof areas.
- (Reason: to prevent localised flooding)

60. Parking Layout

Parking lay out shall comply with AS2890.1 and AS2890.6. In this regard a detailed plan showing all necessary dimensions shall be submitted to and approved by Council or registered certifier prior to the issue of a Construction Certificate.

(Reason: to ensure Parking layouts comply with Australian Standard AS28890.1:2004)

61. Minimum Headroom – Adaptable Parking Spaces

Headroom clearance within accessible parking shall be a minimum of 2500mm to comply with AS2890.6 requirements. Headroom shall be measured clear of any beams and service ducts.

Sectional plans to comply with these headroom requirements showing all beams and service ducts shall be submitted to and approved by the Council or registered certifier prior to the issue of a Construction Certificate.

(Reason: to ensure headroom complies with AS2890)

62. Headroom Clearance

Headroom clearance shall comply with section 5.3 of the AS2890.1:2004. In accordance with AS2890.1:2004 minimum 2.2m headroom clearance shall be provided.

(Reason: to ensure the access ramps comply with Australian Standard AS28890.1:2004.)

63. Ramp Gradients

Circulation ramp grades and transitions shall comply with section 2.5.3 of the AS2890.1:2004. In this regard detail a longitudinal section along the ramp to a scale of 1:20, shall be submitted to and approved by the Council or registered certifier prior to the issue of a Construction Certificate.

(Reason: to ensure the access ramp comply with Australian Standard AS28890.1:2004)

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

64. 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)

65. Home Building Compensation Fund

No residential building work within the meaning of the Home Building Act 1989 may commence until:

- a) A contract of insurance in accordance with Part 6 of the Home Building Act 1989 is entered into and is in force, where such a contract is required under that Act;

- b) The Principal Certifier is satisfied that the principal contractor for the work is the holder of the appropriate licence and is covered by the appropriate insurance, in each case if required by the Home Building Act 1989 (unless the work is to be carried out by an owner-builder);
- c) If the work is to be carried out by an owner builder, that the owner builder is the holder of any owner-builder permit required under the Home Building Act 1989;
- d) Written notice of the following information has been provided to Council;
 - i. In the case of work for which a principal contractor is required to be appointed:
 - The name and licence number of the principal contractor, and
 - The name of the insurer by which the work is insured under Part 6 of the Home Building Act 1989,
 - ii. In the case of work to be done by an owner-builder:
 - The name of the owner-builder, and
 - If the owner-builder is required to hold an owner-builder permit under the Home Building Act 1989, the number of the owner-builder permits.

Where Council is not the Principal Certifier, the Principal Certifier is responsible for notifying Council of the above matters.

Where arrangements for doing residential building work change while the work is in progress so that the above information becomes out of date, the Principal Certifier (if not Council) must provide Council with written notice of the updated information.

(Reason: Statutory requirement)

66. 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)

67. Tree Removal / Protection

In relation to tree No. 10 (*Cassuarina cunninghamiana*) identified in the Arboricultural Impact Assessment report prepared by Redgum, the applicant must apply its best endeavours to obtain the consent of the owner of No. 16-20 Park Road for its removal. If consent is forthcoming, the applicant shall pay for the removal of the tree and reinstate the land to an equivalent landscape condition as that for proximate land. If consent is not forthcoming, then the applicant must consult with an AQ45 qualified arborist regarding tree sensitive construction design which allows the tree to be retained and remain viable throughout the development and submit to Council for review.

(Reason: Practical landscape amenity)

68. 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)

69. 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)

70. 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)

71. Protection of Landscape Features

To limit the potential for damage to the following tree/s to be retained, the area beneath their canopies must be fenced prior to the commencement of demolition, excavation or building works.

Species	Location
Tree 8 as per approved Arborist report prepared by Redgum Horticultural ref. 8008)	Refer to Appendix E of Arborist report.

The fencing must extend to the trees driplines and be kept in place until the completion of the building works and be marked by appropriate signage notifying site workers that the tree is to be retained and protected. The fencing should be a minimum of 1800mm high chain link fencing. All fencing shall be maintained for the duration of the construction works.

(Reason: Protection of trees to be retained)

Conditions which must be satisfied during any development work

72. 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 7.00am to 6.00pm Mondays to Fridays and 8.00am to 4.00pm Saturdays. No work is to occur on Sundays and public holidays.

Note: Demolition work is not permitted on weekends or public holidays- refer to specific demolition conditions for approved hours.

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 7.00am - 6.00pm Monday to Friday.

(Reason: To minimise impacts on neighbouring properties)

73. 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 the demolition, excavation and building works.

(Reason: Health and amenity)

74. Acid Sulphate Soils

Any excavation works carried out on site should be closely monitored to ensure no signs of Potential Acid Sulfate Soil (PASS) or Actual Acid Sulfate Soil (AASS) are observed. Indicators may include grey to greenish blue clays, unusual gold-yellow mottling or 'rotten egg' odours. If any of these indicators are observed, excavation of the site is to be stopped immediately, the Principal Certifier is to be notified and a suitably qualified environmental scientist should be contracted to further assess the site.

(Reason: Environmental protection)

75. Construction Traffic Management Plan

All development activities and traffic movements must be carried out in accordance with the approved Construction 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 Principal Certifier on request.

(Reason: Compliance with condition of consent)

76. 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)

77. General Site Requirements during Demolition and Construction

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

- a) All demolition is to be carried out in accordance with Australian Standards AS 2601-2001.
- b) A single entrance is permitted to service the site for demolition and 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.
- c) No blasting is to be carried out at any time during construction of the building.
- d) Care must be taken during demolition/ excavation/ building/ construction to prevent any damage to adjoining buildings.
- e) 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.
- f) Any demolition and excess construction materials are to be recycled wherever practicable.
- g) The disposal of construction and demolition waste must be in accordance with the requirements of the Protection of the Environment Operations Act 1997.
- h) 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. All excavated material should be removed from the site in the approved manner and be disposed of lawfully to a tip or other authorised disposal area.
- i) Section 143 of the Protection of the Environment Operations Act 1997 requires waste to be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation.
- j) 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.
- k) Details as to the method and location of disposal of demolition materials (weight dockets, receipts etc.) should be kept on site as evidence of approved methods of disposal and recycling.

- l) 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.
- m) 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.
- n) 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.
- o) All site waters during excavation and 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 demolition, building and any other site works are undertaken in accordance with relevant legislation and policy.)

78. Power Connection - Major Development

All power connection to the development shall be installed underground. Existing overhead power lines forward of the site within the road reserve shall be removed with power lines relocated below ground at the applicant's expense.

(Reason: To avoid visual clutter)

79. Communication Cabling

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

(Reason: Environmental Amenity)

80. Compliance with the Demolition, Excavation and Construction Noise and Vibration Management Plan

All demolition, excavation and construction works carried out on the premises which form part of this consent must be carried out in accordance with the Demolition, Excavation and Construction Noise and Vibration Management Plan submitted to and approved by Council as part of this consent.

(Reason: To protect residential amenity)

81. Compliance with Hazardous Materials Survey Report

All of the recommendations for management and/or removal of hazardous materials on the site, as outlined in the Hazardous Materials Survey Report prepared prior to commencement of demolition works, must be complied with.

Prior to the Occupation Certificate being issued, a clearance certificate must be submitted to the Principal Certifier from a suitably qualified person (such as a certified Occupational Hygienist) confirming that all hazardous materials identified have been contained, managed or removed in accordance with the recommendations given in the approved Hazardous Materials Survey Report, and that the site is safe for future occupation in accordance with the approved use.

(Reason: To ensure controls are in place for hazardous materials)

82. Classification of Waste

Prior to the exportation of waste (including fill or soil) from the site, the waste materials must be classified in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW EPA's Waste Classification Guidelines, Part1: Classifying Waste (2014). The materials must also be transported and disposed of in accordance with the Protection of the Environment Operations Act 1997 and the requirements of their relevant classification.

(Reason: Environmental protection)

83. Notification of New Contamination Evidence

- (a) Any new information which comes to light during site preparation, remediation, demolition or construction works which has the potential to alter previous conclusions about site suitability and contamination must be notified to the Principal Certifier and Cumberland City Council.
- (b) Council may require a NSW accredited site auditor to be engaged to review the contamination assessment and remediation/validation process (where applicable). If appropriate, Council may also require a new Remedial Action Plan (RAP) to be prepared and implemented to ensure the site can be made suitable for the approved use in light of the new information.
- (c) Where a NSW accredited Site Auditor is engaged in compliance with part (b) above, an occupation certificate must not be issued until a Section A Site Audit Statement has been submitted to Cumberland City Council by the Auditor confirming the site is now suitable for the proposed use.

(Reason: To ensure controls are in place for contamination management)

84. Excavation Pump-out (surface water)

Water that has accumulated in any excavation is not to be pumped into any stormwater disposal system unless the approval of Cumberland Council is obtained prior. The analytical results of any discharge must comply with relevant EPA and ANZECC standards for water quality and be made available to Council upon request. Any water to be discharged to Council's stormwater system shall not contain a concentration of suspended sediment exceeding 50mg/L, shall have a pH of between 6.5-8.0 and shall comply with the ANZECC

Guidelines for Fresh and Marine Water Quality and the NSW Department of Housing, Managing Urban Stormwater – Soils and Construction 2004.

Water testing shall be carried out by a suitably qualified environmental scientist. Water that does not comply with the above standards shall not be discharged to the stormwater system, and shall be disposed of using alternative approved means.

Results of water testing (if required) shall be provided to Council or in the Validation Report for remediation projects as required by the conditions of this consent. Documentation for the off-site disposal of water shall be included in the Validation Report.

Note: Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transporter for treatment/disposal to an appropriate waste treatment/processing facility.

(Reason: Environmental amenity)

85. Dust Control - Major Works

The following measures must be implemented (in part or in total), along with any other measures as directed by Cumberland Council, to control the emission of dust:

- a) Dust screens must be erected around the perimeter of the site and be kept in good repair for the duration of the work.
- b) All dusty surfaces must be wet down and any dust created must be suppressed by means of a fine water spray. Water used for dust suppression must not be contaminated or allowed to enter the stormwater system.
- c) All stockpiles of materials that are likely to generate dust must be kept damp or covered.
- d) All stockpiles of soil or other materials shall be placed away from drainage lines, gutters or stormwater pits or inlets.
- e) All stockpiles of soil or other materials likely to generate dust or odours shall be covered.
- f) All stockpiles of contaminated soil shall be stored in a secure area and be covered if remaining more than 24 hours or as directed by the Cumberland Council.

(Reason: To prevent the movement of dust outside the boundaries of the site)

86. 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)

87. 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)

88. 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) At the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;
- b) Prior to placement of concrete, the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;
- c) Prior to placement of concrete at levels 2, 4, 6, 8 and 10 showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
- d) 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
- e) 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)

89. 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)

90. Anti-Graffiti Coatings

The external fabric of the building shall utilise anti-graffiti coatings, where required, to prevent or mitigate against the application of graffiti to the buildings.

(Reason: To minimise the opportunity for graffiti)

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

91. 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.

(Reason: Statutory requirement)

92. 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)

93. Section 73 Compliance Certificate

A s.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).

94. Structural 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 foundation works/reinforced concrete/structural members have been carried out/erected in accordance with the engineer's requirements and the relevant standards/codes.

(Reason: Structural certification)

95. Adaptable Housing

A signed checklist as per Appendix A of AS4299-1995 confirming that a minimum of 9 units (Units A2.05, A3.05, A4.05, A5.05, A6.05, A7.05, A8.05,

A9.05, A10.05) 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).

96. Certification of Engineering Works

Prior to occupation, the following documents must be submitted to the Principal Certifier:

- a. A certificate from a qualified practising professional engineer with Engineers Australia membership that certifies the following 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:
 - i. the stormwater drainage system, and/or
 - ii. the car parking arrangement and area including circulating ramps, and/or
 - iii. any related footpath works, and/or
 - iv. the basement mechanical pump and well system, and/or
 - v. the proposed driveway and layback, and/or
 - vi. other civil works have been constructed in accordance with Council approved plans and details and satisfied the design intent and complies with the appropriate SAA Codes relevant Standards and Council's Policies and Specifications.
- b. The "as-built" On-Site Detention (OSD) storage volumes are to be presented in a tabular form (depth verses volume table).
- c. OSD Works-As-Executed (WAE) dimensions form (refer to UPRCT Handbook).
- d. Certificate of Hydraulic Compliance from a qualified drainage / hydraulic engineer (refer to UPRCT Handbook).
- e. Approved verses installed drainage design OSD calculation sheet.
- f. Work as executed drawings of the engineering works prepared by a registered surveyor or equivalent.

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)

97. Civil Works on the Footway

The following works are to be carried out at the applicant's expense and to Council's satisfaction prior to the issue of any occupation certificate:

- a) Reconstruct sections of cracked or defective footpath along the full frontage of the site.
- b) Reconstruct existing public drainage pit/pipe system.

- c) Construct a new vehicular crossing.
- d) Remove any redundant vehicular crossings and replace with kerb and gutter to match the adjoining.

Where the applicant nominates Council to undertake the civil and stormwater works, they must contact Council in order to obtain an estimated cost for construction and contract to undertake the works.

(Reason: To preserve Council's assets and amenity)

98. Construction of Concrete Footpath

A full width concrete footpath shall be constructed adjacent to the front and side of the property as per Council's requirements at no cost to Council.

Footpath surface treatment and paving details shall comply with relevant Council's standards for town centre. Details shall be obtained from Council Engineering Section.

The above works must be constructed prior to the release of any Occupation Certificate.

(Reason: To preserve Council's assets and amenity)

99. Mechanical Ventilation - Certificate of Completion

Prior to issue of an Occupation Certificate and following the completion, installation, and testing of all the mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with the National Construction Code 2019, must be submitted to the Principal Certifier.

(Reason: To ensure correct installation of mechanical ventilation systems)

100. Installation requirements for Water Cooling Systems

Prior to issue of any Occupation Certificate, the Principal Certifier shall be satisfied that the cooling water system is:

- a) Installed in accordance with AS/NZS 3666.1:2011 with a certificate from the installer;
- b) All drainage and liquid discharges are to be discharged into a waste water system (Note: discharge to stormwater is not permitted).
- c) All chemicals associated with the water cooling system are stored in a suitable covered location which will not impact on stormwater systems.

(Reason: To ensure compliance with health standards for infection control)

101. Acoustic Verification Report

Prior to the issue of the Occupation Certificate, a suitably qualified acoustic consultant being a consultant who holds a current member grade of the Australian Acoustical Society 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 Acoustic Logic dated 20/07/2020 reference 20200002/2007A/R0/LL 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.

(Reason: To protect residential amenity)

102. 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)

103. Landscape Certification

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)

104. 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)/ Pollution Control Device/mechanical pump-out system/ charged lines, 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 1.5m (or as specified by Council), over the proposed stormwater drainage line or service prior to issue of any construction certificate. Typical wording can be obtained from Council.

(Reason: Compliance and adequate maintenance of drainage system)

105. 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)

106. Evidence of Consolidation

The existing allotments shall be consolidated into a single lot. Evidence that the plan of consolidation has been registered as a deposited plan by the NSW Land Registry Services must be submitted to Council prior to the issue of the Occupation Certificate.

(Reason: Information)

107. De-stressing the Installed Rock Anchors

Upon completion of works, any rock anchors installed are to be completely de-stressed or removed without damage to Council's assets or to existing utility services. Proof shall be provided in the form of certification from the qualified structural or geotechnical engineer prior to the issue of an Occupation Certificate.

(Reason: Protection of public asset)

108. Certificate of Compliance

A certificate of compliance for the construction of vehicular crossings, footpath paving, kerb and guttering and roadworks shall be obtained from Council and be submitted to the Principal Certifier.

(Reason: Protection of public asset)

109. Structural Engineering Certificate

The applicant shall submit a structural engineer's certificate of adequacy verifying that the works as detailed on the approved plans for the storage tank have been completed under his/her supervision and that the design is adequate to support the anticipated design loads. The certificate shall be submitted to Council with the works as executed plan.

(Reason: to ensure the construction is structurally adequate.)

110. Maintenance Schedule – OSD

Prior to the issue of the occupation certificate, a maintenance schedule of the proposed on-site detention facility shall be submitted to Council for approval with the stormwater work as executed plan. This maintenance schedule shall be registered as part of the positive covenant.

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

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

111. Loading

All loading and unloading operations shall be carried out wholly within the confines of the site, at all times. All delivery vehicles shall enter and leave the site in a forward direction.

(Reason: Adequate servicing)

112. Hours of operation

- Hours of operation for the retail tenancy shall go beyond 6.00am to 10.00pm on Mondays to Saturdays excluding public holidays and 9.00am to 6.00pm on Sundays and public holidays.

(Reason: Residential amenity)

113. 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)

114. Air Emissions

The use of the premises shall not give rise to air pollution or and an odour nuisance as defined by the Protection of the Environment Operations Act 1997 and waste gases shall not be hazardous or harmful to human health or the environment.

(Reason: To protect human health and the environment)

115. Cooling Water System - Risk Assessment Required

- a) A risk assessment of all cooling water systems installed at the premises must be undertaken by, or under the supervision of, a competent person before the system commences operating. The assessment must be undertaken in accordance with the requirements of the Public Health Act 2010, Public Health Regulation 2012, AS 3666 Air handling and water systems of buildings - Microbial control, and any relevant guidelines published by NSW Health.

- b) The risk assessment must be in the form approved by NSW Health, and a copy of the Risk Management Plan Certificate must be submitted to Council along with the registration form within 7 days of receipt by the occupier.

(Reason: To ensure controls are in place for infection control)

116. Notification of Warm Water and Cooling Water Systems

Within one month of installation of any warm water and cooling water systems at the premises, the occupier must notify Council of the details of the system in accordance with the Public Health Act 2010. Registration forms are available on Council's website www.cumberland.nsw.gov.au.

(Reason: To ensure premises are notified to Council)

117. General Noise Emission Criteria

- a) Noise from the development must not exceed any required project amenity/intrusiveness noise level or maximum noise level as determined in accordance with relevant requirements of the NSW EPA Noise Policy for Industry 2017 (NPfI).
- b) Background noise monitoring for the purpose of ensuring compliance with the NPfI must be carried out in accordance with the long-term methodology in Fact Sheet B of the NPfI.
- c) An LAeq,15 minute (noise level) emitted from the development must not exceed the LA90, 15 minute (background noise level) by more than 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises at any time. Further:
 - i. The noise level and the background noise level shall both be measured with all external doors and windows of the affected residence closed.
 - ii. Background noise measurements must not include noise from the development but may include noise from necessary ventilation at the affected premise.
- d) Consideration must be given to any annoying characteristics of the noise in accordance with Fact Sheet C of the NPfI.

Corrections in Fact Sheet C of the NPfI are applicable to relevant noise from the development measured in accordance with this condition, however duration corrections are excluded from commercial noise.

(Reason: To protect residential amenity)

118. Noise – Residential Buildings

The air conditioners, mechanical ventilation systems/rainwater tank pumps must comply with the requirements of Protection of the Environment Operations (Noise Control) Regulation 2017 and shall not:

- (a) emit noise that is audible within a habitable room in any other residential property (regardless of whether any door or window to that room is open):
 - (i) before 8.00am and after 10.00pm on any Saturday, Sunday or public holiday; or
 - (ii) before 7.00am and after 10.00pm on any other day; and
- (b) emit a sound pressure level when measured at the boundary of any other residential property, at a time other than those specified in (i) and (ii) above, which exceeds the background (LA90, 15minutes) by more than 5dB(A). The source noise level must be measured as a LAeq 15 minute.

(Reason: To protect residential amenity)

119. 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)

120. Compliance with Acoustic Report - Ongoing Use

All recommendations contained in the DA acoustic report prepared by Acoustic Logic dated 20/07/2020 reference 20200002/2007A/R0/LL relating to use and/or management of the site must be implemented and complied with.

(Reason: to ensure acoustic impacts of the development are controlled.)

121. Landscape Maintenance – General

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

(Reason: Safety and landscape amenity)

122. Parking

At least 108 car parking spaces numbered and line marked in accordance with the endorsed plan, are to be made available at all times for vehicles associated with the occupation/use of the premises/building.

(Reason: Access to required car parking spaces)

123. Vehicle Access

All vehicles are to enter and exit the site in a forward direction.

(Reason: Traffic and pedestrian safety)

124. Annual Maintenance Inspection of OSD

Annual maintenance inspection summary of the onsite detention 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.

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

125. Convex Safety Mirror

Convex safety mirror shall be provided at the appropriate locations as shown on the approved plans titled Basement 3, Basement 2 Plan and Basement 1 Plan. Convex safety mirrors shall be maintained in good condition at all times.

(Reason: to improve the sight distance)

126. Limit of the Delivery Trucks

The largest vehicles making deliveries to the retail premises shall be a Medium Rigid Vehicle (MRV) as defined in Australian standard AS2890.2.

(Reason: to ensure delivery trucks use approved loading area and can enter/exit the site in a forward direction)

127. Stormwater Construction Works Within Easement

Stormwater drainage work within the downstream drainage easement shall be completed prior to commencement of any construction works above ground floor level. In this regard following shall be submitted to and approved by Principal Certifier:

- a) Work as executed plan showing the stormwater pipes within the easement prepared by the registered surveyor.
- b) Engineering certification for the stormwater works within the easement.
- c) Registered surveyor's certification that the pipes and pits are located within the downstream easement.

A copy of the above documents shall be submitted to Council if Council is not the Principal Certifier.

(Reason: to ensure drainage works within the easements are completed)

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 (This is the law in NSW). 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. Footway Lease - Business Use of Footpath

The operator of an approved business must apply to Council to lease Council's property (i.e. footways, plazas, or portions of public ways) should it be required for use in conjunction with the approved business.

The use of any footpath area requires separate Council approval by application under section 125-127 & 137-139 of the Roads Act, 1993 prior to the

commencement of any such use.

A leasing fee will apply to the use of Council's property. The lease must be executed upon commencement of the use of footpath, and renewed annually.

5. Process for Modification

The plans and/or conditions of this Consent are binding and may only be modified under section 4.55(8) or 4.56 of the Environmental Planning and Assessment Act, 1979. You are not to commence any action, works, contractual negotiations, or the like, on the requested modification until Council or the Court issues an amended consent.

6. Signage Approval

A separate development application for any proposed external signs must be submitted for the approval of Council, prior to the erection or display of any such signs. This does not apply to signage which is 'Exempt Development'.

7. Skips on Council Footpath

The applicant must apply to Council's Customer Services Centre and pay the respective minimum ten day application fee 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.

8. Work Health and Safety

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

9. 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)

10. 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.

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

Where applicable inspections of the development site may be required to be undertaken at the following stages:

- a) Prior to covering of waterproofing in any wet areas, for a minimum of 10% of rooms with wet areas within a building;
- b) Prior to covering any stormwater drainage connections;
- c) After the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
- d) Final.

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.

The final inspection detailed at subclause (d) may only be carried out by the Principal Certifier. Other inspections may be carried out by the Principal Certifier or, if the Principal Certifier agrees, by another certifier.

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