

Annexure A

DETERMINATION OF APPLICATION FOR MODIFICATION OF DEVELOPMENT CONSENT

Modification Application No: MOD2020/0414

Development Consent modified: DA2016/164/1

Description of development to be carried out under the consent (as previously modified): Demolition of existing structures, consolidation of 3 lots, the construction of a part 5 / part 7 storey shop top housing development comprising 86 residential units, 6 retail tenancies, a cafe and parking for 175 cars

Address and particulars of title of land on which development to be carried out: 9-11 Sherwood Road, Merrylands West being Lot Lot 1 in DP 548919 and Lot 101 in DP 789369

Description of modification to the development consent: Demolition of existing structures, consolidation of 2 lots, the construction of a part 5 / part 7 storey shop top housing development comprising 90 residential units, 4 retail tenancies and basement parking for 145 cars

Determination: The development consent is modified as follows:

1. **Delete conditions Nos. 11, 131, 183 and 198.**
2. **Delete condition No. 196 and replace with:**

Residential Waste Collection (Loading Bay 1)

196 The owner, or if strata subdivided, the Owners Corporation, must engage a caretaker or otherwise have arrangements in place for the relocation and temporary storage of waste bins from the bin room near Sherwood Road to the bin room near Coolibah Street. Bins must be relocated no earlier than 12 hours prior to the scheduled collection and must be returned no longer than 4 hours after collection.

Business/Trade Commercial Waste Collection (Loading Bay 2)

196A At all times, the owner, or is strata subdivided, Owners Corporation, must have arrangements in place for the collection of commercial waste from the retail bin room shown on drawing .02 Issue II by Architex. Collection must be with a private contractor, with the collection vehicle no greater size than a small rigid vehicle.

3. **Insert new condition Nos. 11A, 11B, 27A, 27B, 27C, 33A, 33B, 33C, 44A, 52A, 134A, 134B, 134C, 159A, 201, 202 203, 204, 205 and 206 as follows:**

Mechanical Ventilation

- 11A. 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*.

Future use of Mixed-Use Building for Commercial Tenancy

- 11B. 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 commercial units 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.

Parking/Driveway

- 27A. All internal circulation roadways, driveway, curved ramp, vehicle turning areas, and vehicle parking space dimensions shall be designed to comply with the relevant section of AS 2890.1:2004, AS2890.2:2018 and AS2890.6:2009. In this regard,
- a. The headroom clearance within the carpark shall comply with the intended usage. Refer to Condition 27B below for further details.
 - b. The curved ramp design for two-way traffic flow shall comply with section 2.5 in AS2890.1:2004.
 - c. A separator or traffic lane divider shall be installed along the centreline of two-way curved ramp.
 - d. At blind aisles, the aisles shall be extended a minimum of 1.0m beyond the last parking spaces as per clause 2.4.2 in AS2890.1:2004.
 - e. The driveway layout shall comply with AS2890.2:2018.

Details demonstrating compliance with this condition are to be submitted to the Council or registered certifier prior to the issue of a construction certificate.

Loading Bay Standards:

- 27B. Loading bay facilities must comply with Holroyd Development Control 2013 and the Australian/New Zealand Standard AS/NZS 2890.2-2018 - Off-street commercial vehicle facilities. In this regard,
- a. Separation between residential parking and service areas (loading/unloading areas) shall be provided as per clause C19 in part D of the Holroyd Development Control Plan 2013.
 - b. The loading bay shall be designed as per section 4 in AS2890.2:2018.
 - c. Headroom clearance within loading bay shall comply with the intended usage. A minimum 4.0m headroom shall apply for the travel and manoeuvring areas traversed by the adopted maximum service vehicle size (similar to an MRV but with a lesser headroom requirement). The adopted maximum service vehicle size to be provided by the applicant with reference to a formal agreement between the applicant and service vehicle provider with vehicle specifications included. A minimum height of 3.5m shall apply for the travel and manoeuvring areas traversed by the SRV service vehicle size for the retail loading / unloading area.

Details demonstrating compliance with this condition are to be submitted to and approved by the Council or registered certifier prior to the issue of a construction certificate.

Double Dipping Covenant

- 27C. A restrictive covenant shall be created over land presently comprising Lot 1 in DP 548919 under s.88B of the Conveyancing Act 1919 preventing the creation of additional floor area over that portion of land. Cumberland Council shall be identified as the authority able to modify, vary or release the restriction. Evidence that the restriction on the use has been registered with NSW Land Registry Services is to be provided to Council prior to the release of a Construction Certificate.

(Reason: Development is proposed concurrently over Lot 1 in DP 548919 (the restricted lot) and Lot 101 in DP 789369. The FSR for lot 101 is well above the FSR control of the LEP while the FSR for the restricted lot is below the control. Any further application proposing additional gross floor area over the restricted lot would amount to a double dipping on gross floor area and would undermine the FSR control).

Required Submissions To Certifying Authority

- 33A. Documentary evidence from Endeavour Energy shall be submitted confirming that satisfactory arrangements have been made for the connection of electricity and the design requirements for the substation prior to the release of the Construction Certificate.
- 33B. An application for connection of load shall be submitted to Endeavour Energy's Network Connections Branch for approval to carry out the final load assessment and the method of supply of electricity to the site. As part of the application, the applicant must address the compliance with fire rating and include an engineer's certificate identifying that all the external surfaces of the parts of the building within the fire restriction meet the appropriate fire rating as per Endeavour Energy's terms for the restriction in Endeavour Energy's Mains Design Instruction MDI 0044 'Easements and Property Tenure Rights'. The engineer must also specify the materials to be utilised and the fixing instructions for those materials in order to meet the stated fire rating. Padmount or indoor/chamber substations will need to be located within the property (in a suitable and accessible location) and be protected (including any associated cabling) by an easement and associated restrictions benefiting and gifted to Endeavour Energy.
- 33C. Approval for the permanent disconnection and removal of the current electricity supply must be obtained from Endeavour Energy's Network Connections Branch (contact via Head Office enquiries on business days on telephone: 133 718 or (02) 9853 6666 from 9am - 4:30pm) by Accredited Service Providers (ASP) with the relevant class of Authorisation for the type of work being carried out. The work could involve: • The disconnection and removal of an underground service cable or overhead service line, and • Removal of metering equipment. 33 The written request must be submitted to Endeavour Energy using Form FPJ4603 'Permission to Remove Service / Metering by Authorised Level 2 Accredited Service Provider' which must be accompanied by

Notification of Service Works (NOSW) forms provided as a result of service work activity performed by a Level 2 ASP. The retailer must also provide written agreement for the permanent removal of supply.

Post Construction Road Reserve Dilapidation Report (Major Development)

- 44A The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works and satisfactory infrastructure inspection must be approved by Council's Executive Manager Development and Building prior to the refund of any security deposits.

Mechanical Ventilation – Certification of Compliance

- 52A. 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.

Loading Dock Management Plan

- 134A. A Loading Dock Management Plan shall be prepared by the Applicant and submitted to and approved by Cumberland City Council's Executive Manager Development and Building prior to the issue of any Occupation Certificate. The Plan will need to demonstrate how the loading dock will be managed to ensure that there will be only one vehicle entering and exiting the loading dock access in any period and how safe servicing arrangements including waste collection will be undertaken without interrupting general traffic. The area designated as manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.

Operational Management Plan

- 134B. An Operational Management Plan (OMP) shall be prepared and submitted and approved by Cumberland City Council's Executive Manager Development and Building detailing the operation of the development. The OMP shall include, but not be limited to the following:
- a. Vehicle access and egress.
 - b. Through-site circulation of vehicle movements.
 - c. Management of car parking areas.
 - d. The location and content of directional signage.
 - e. Complaints management.
 - f. Noise management.
 - g. Truck delivery times and methods of control to manage the sequencing of the loading docks.
 - h. Waste management.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

- 134C. Only left turns into Coolibah Street are permitted for heavy vehicles leaving the site. In this regard, an appropriate traffic sign shall be installed within the site. Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

Mechanical Ventilation – Certificate of Completion

- 159A. 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.

Merchandise Location

- 201 At no time may any signs, sound amplification equipment and the like or goods for sale or display be placed on the public road, public footpath, service land, parking area and driveways, public or private pedestrian walkways or outside the retail premises without the prior consent of Council.

Deliveries

- 202 To minimise noise disturbance for the approved residential apartments and for surrounding residential dwellings, no deliveries are to occur before 7.00am or after 9.00pm Monday to Saturday and before 9.00am or after 6.00pm on Sundays and public holidays.

Flashing Lights

- 203 No flashing, moving or intermittent lighting, visible from any public place may be installed on the premises or to any external sign associated with the development.

Hours of Business Operation

- 204 The hours of operation for the retail premises are restricted to between 7:00am to 10:00pm, seven days per week.

Compliance with Acoustic Report - Ongoing Use

205. All recommendations contained in the DA acoustic report prepared by Day Design Pty Ltd report reference 7255-1.1R, dated 8 September 2021 relating to use and/or management of the site must be implemented and complied with.

Sightlines within Carpark

206. The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by structures.

4. Amend Condition Nos. 2, 14, 27, 36, 39, 47, 96, 99, 108, 120, 138, 145, 154, 172, 174, 182 and 191 to read as follows:

2. Development shall take place in accordance with the attached endorsed plans and documentation:

Architectural Plans (Job No. 2220)

Drawing	Title	Issue	Date	Prepared by
DA 01	Basement Level 1	GG	7/9/2021	architex
DA 02	Level 1	II	7/9/2021	architex
DA 03	Level 2	II	14/9/2021	architex
DA 04	Level 3	EE	7/9/2021	architex
DA 05	Level 4	EE	7/9/2021	architex
DA 06	Level 5	FF	14/9/2021	architex
DA 07	Level 6	FF	14/9/2021	architex
DA 08	Levels 7 & 8	DD	30/6/2021	architex
DA 09	Roof Level	EE	7/9/2021	architex
DA 10	East Elevation	EE	14/9/2021	architex
DA 11	West Elevation	EE	7/9/2021	architex
DA 12	North – South Elevations	EE	7/9/2021	architex
DA 13	Site Elevations	EE	7/9/2021	architex
DA 13a	Site Elevations 2	EE	7/9/2021	architex
DA 13b	Building Height Details	EE	7/9/2021	architex
DA 14	Site Sections	EE	7/9/2021	architex
DA 15	Adaptable Units Layouts	A	3/5/2016	architex
DA 16	Unit Layouts	L	8/9/2017	architex
DA 17	Unit Layouts	A	3/5/2016	architex
DA 18	Unit Layouts	F	12/1/2017	architex
DA 23	Demolition Plan	A	3/5/2016	architex
DA 24	Ramp Details	C	7/9/2021	architex
DA 24a	Driveway Section & Site Details	A	7/9/2021	architex
DA 25	Waste Management Plan & Mailbox Details	J	17/8/2021	architex
DA 35	Sections – Sewer Pipe Clearance	T	9/3/2020	architex
DA 36	Section – Sewer Pipe/Shaft Detail	T	9/3/2020	architex
DA 40	Substation Details	HH	17/8/2021	architex
DA 41	Substation Details 2	FF	22/4/2021	architex

Engineering Plans (Job No. 152022016DA)

Drawing	Title	Issue	Date	Prepared by
15202-01/B	Erosion & Sediment Control Plan	B	19/12/2016	ING Consulting Engineers
15202-02/B	Basement Plan	B	19/12/2016	ING Consulting Engineers
15202-03/B	Level 1 Floor Plan	B	19/12/2016	ING Consulting Engineers
15202-04/B	Level 2 Floor Plan	B	19/12/2016	ING Consulting Engineers

15202-05/B	Level 3 Floor Plan	B	19/12/2016	ING Consulting Engineers
15202-06/B	Level 4 Floor Plan	B	19/12/2016	ING Consulting Engineers
15202-07/B	Level 5 Floor Plan	B	19/12/2016	ING Consulting Engineers
15202-08/B	Level 6 Floor Plan	B	19/12/2016	ING Consulting Engineers
15202-09/B	Level 7 & 8 Floor Plan	B	19/12/2016	ING Consulting Engineers
15202-10/B	Roof Plan	B	19/12/2016	ING Consulting Engineers
15202-11/B	Notes & Details	B	19/12/2016	ING Consulting Engineers
15202-12/B	Notes & Details 2	B	19/12/2016	ING Consulting Engineers
Council's OSD No. 2017-068				

Landscape Plans

Drawing	Title	Issue	Date	Prepared by
1297.L.01	Landscape Plan Level 2 Area 1	F	14/9/2021	Greenland Design
1297.L.02	Landscape Plan Level 2 Area 2	F	14/9/2021	Greenland Design
1297.L.03	Landscape Plan Level 3 Planters	F	14/9/2021	Greenland Design
1297.L.04	Landscape Plan Level 4	F	14/9/2021	Greenland Design
1297.L.05	Landscape Plan Level 6	F	14/9/2021	Greenland Design
1297.L.06	Landscape Details & Specification	F	14/9/2021	Greenland Design

Documentation

- Stage 2 Detailed Site Investigation, prepared by SLR global environmental solutions, Report No. 610.16797-R01, dated 7 October 2016;
- Acoustic Impact Assessment Report prepared by Day Design Pty Ltd, report reference 7255-1.1R, dated 8 September 2021.
- Traffic and Parking Assessment prepared by McLaren Traffic Engineering, Reference No. 16086.01FA, dated 4 May 2016, and addendum report prepared by McLaren Traffic Engineering, Reference No. 16511.01FA, dated 13 January 2017;
- Supplementary Letter of Advice prepared by McLaren Traffic Engineering, Reference No. 210416.11FB, dated 9 September 2021;
- Electromagnetic Field Assessment prepared by NG Child & Associates, Project Ref. CA/21/153-2001, version 1, dated 13 September 2021;

- Waste Management Plan prepared by Dickens Solutions, Ref-20180, dated September 2021;
- Schedule of External Colours and Finishes filed with the Land and Environment Court on 20 September 2021;
- BASIX Certificate No. 722281M_05 dated 1 October 2021;
- Correspondence prepared by Roads & Maritime Services, Ref SYD16/0067/02, dated 12 April 2017 and all conditions contained therein; and
- Correspondence prepared by NSW Police, Holroyd LAC, Reference No. D/2016/244136, dated 9 June 2016 and all conditions contained therein.

Note: For inconsistencies that arise in respect of the ramp design or other features between engineering drawings and architectural drawings, the architectural plans prevail.

Section 94 Contribution

14. Prior to the issue of a Construction Certificate, a monetary contribution imposed under section 94 of the *Environmental Planning and Assessment Act 1979* and Holroyd Section 94 Development Contributions Plan 2013, for 12 x 1b/r, 71 x 2b/r & 7 x 3b/r dwellings and 448.79sqm of commercial floor space is to be paid to Council. At the time of this development consent, the current rate of the contribution is **\$1,268,928.00**. The amount of the contribution will be determined at the time of payment in accordance with the relevant s94 Contributions Plan in force at that time. A copy of the Holroyd Section 94 Development Contributions Plan 2013 can be viewed on Council's website at www.cumberland.nsw.gov.au or inspected at Council's Civic Centre located at 1 Susan Street Auburn between the hours of 8am and 4.30pm Monday to Friday.

Amended Plans

27. The following amendments are to be incorporated into the consent plans:
 - The proposal is to provide 14 separate adaptable apartments.
 - The site is to be serviced by Small Rigid Vehicle (SRV) vehicles for the retail loading / waste collection activities and by an Medium Rigid Vehicle (MRV) for the commercial loading / waste collection activities. The SRV and MRV types dimensions (except for the MRV height) are in accordance with AS2890.2-2018.
 - The elevations for Block A shall be amended to reflect the façade changes proposed as per the photomontage submitted to Council on 9 November 2017.
 - Tubular metal fencing shall be installed along the full length and on the northern edge of the garden bed adjoining the three north facing

clerestory windows/skylights on building B rooftop level/level 6 to prevent public access.

- The approved Stormwater plans must be updated to be consistent with the approved landscape and architectural plans.
- The area directly to the west of retail 4 and north of the pedestrian link shall be provided with security gate to allow access only by residents for use as a communal open space area.

Compliance with Acoustic Report

36. 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 Day Design Pty Ltd report reference 7255-1.1R, dated 8 September 2021.

Note: Suitably qualified Acoustic Consultant means a consultant who holds a current member grade of the Australian Acoustical Society.

Waste Storage

39. 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.

47. Details of any control device (if proposed) for the roller door and the boom gates shall be shown on the plans. The control device/s should be on the drivers' side of vehicles entering the site; the control device shall not reduce the width of the access driveway below the minimum in accordance with AS 2890.1-2004, not impact on the flow of traffic (e/g/ vehicles queuing wholly within the site, etc) and road safety.
96. The developer/builder shall not install any audible intruder alarms within the units.

99. An intercom device is to be located:
 - (a) on the driver's side at an appropriate location within the basement car park so that visitors can access the visitor car parking spaces.
 - (b) within the basement foyer so that disabled persons can contact any unit if the lift is not working.

Acoustic Measures

108. The recommendations provided within the Noise Impact Assessment prepared by Day Design Pty Ltd report reference 7255-1.1R, dated 8 September 2021, shall be implemented.
120. A registered certifier shall submit to the Principal Certifying Authority a signed checklist as per Appendix A of AS4299-1995 confirming that a minimum of 14 dwellings have achieved the desired level of adaptability (i.e. "Adaptable House Class A or B").

Lot Consolidation

138. Lot 101 in DP 789369 and Lot 1 in DP 548919 are to be consolidated into one lot on title and all works shall be completed in accordance with this consent.

Acoustic Verification Report

145. Prior to the issue of the Occupation Certificate, a suitably qualified acoustic consultant* must prepare an acoustic verification report to the satisfaction of the Principal Certifier that confirms the following:
 - (a) All recommendations contained in the DA acoustic report prepared by Day Design Pty Ltd report reference 7255-1.1R, dated 8 September 2021 have been implemented, and
 - (b) The project specific noise criteria established in the DA acoustic report and any other noise and vibration criteria specified in this consent are being complied with.

*Note: Suitably qualified Acoustic Consultant means a consultant who holds a current member grade of the Australian Acoustical Society.

Roadworks

154. A full width **heavy** duty vehicular crossing shall be provided opposite each vehicular entrance to the site, with a width of 6 metres at the boundary line. These works shall be carried out by a licensed construction contractor at the applicant's expense and shall be in accordance with Council's issued drawings and level sheets.
172. So as to enable access to commercial car parking, either no roller shutter shall be provided at the Coolibah Street entry to the parking area, or, if provided, the roller door shall be on a timer so as to be permanently open for the approved hours of operation of the retail premises plus one hours either side.
174. At least 145 car parking spaces (including 14 accessible car spaces for residential use) numbered and line marked in accordance with the endorsed plan, are to be made available at all times for residents, employees and visitors' vehicles only in conjunction with the occupation of the building/premises.

182. All waste and recycling containers must be stored in the designated waste storage area. The owner, or if the building is strata subdivided the owner's corporation, shall clean the waste storage areas, dry arrestor pit/s and waste collection containers.

Noise - Residential buildings

191. Noise emitted by the air conditioning unit installed at the premises must comply with the following criteria:
- (a) Shall be inaudible within any room in any other residential premises (that is not a garage, storage area, bathroom, laundry, toilet or pantry) whether or not any door or window to that room is open during the following hours:
 - i. before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or
 - ii. before 7 am or after 10 pm on any other day, and
 - (b) Shall not emit an $L_{Aeq,15min}$ noise level when measured at the boundary of any other residential property which exceeds the background ($L_{A90,15minutes}$) by more than 5dB(A) when used during all other times not restricted in (a) above.

5. Addition of the following advisory notes:

- Y. The applicant is advised of s.49A of the Electricity Supply Act 1995, enabling Endeavour Energy to serve notice on the manner in which excavation work in, on or near Endeavour Energy's electrical infrastructure is to take place.
- Z. If the development entails the completion of any work in and / or affecting Endeavour Energy's adjoining electrical infrastructure, prior contact must be made to Endeavour Energy's Easements Officer, Philip Wilson, on 9853 7110 alternately Philip.Wilson@endeavourenergy.com.au.