

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-127
DA Number	MOD0117/20
LGA	Ku-ring-gai
Proposed Development	Modification to Land & Environment Court Consent Proceedings 391613 of 2018 (DA0197/18) proposing amendments to conditions to accommodate the staged construction process
Street Address	376-384 & 386-390 Pacific Highway and 1 Balfour Street, Lindfield
Applicant/Owner	Coles Group Property Developments Ltd
Date of lodgement	26 June 2020
Number of Submissions	Nil
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	A section 4.56 modification application to a development with a capital investment value of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • SEPP 55 – Remediation of Land • Draft Remediation of Land State Environmental Planning Policy • Ku-ring-gai LEP (Local Centres) 2012 • Ku-ring-gai Local Centres DCP • Ku-ring-gai Contaminated Land Policy 2016
List all documents submitted with this report for the Panel's consideration	Attachment A – Covering letters dated 1 June 2020 and 22 July 2020 Attachment B – Geo-Logix letter dated 21 July 2020 Attachment C – Location Sketch Attachment D – Zoning Extract Attachment E – Approved staging plans Attachment F – Applicant response to conditions
Clause 4.6 requests	N/A - The proposed modification is to amend consent conditions, which relate to the staged construction process.
Summary of key submissions	Nil
Report prepared by	Bonnie Yue – Senior Development Assessment Officer
Report date	21 October 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not Applicable**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not Applicable**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

INTEGRATED PLANNING AND REPORTING

Places, Spaces & Infrastructure

Community Strategic Plan Long Term Objective	Delivery Program Term Achievement	Operational Plan Task
P2.1 A robust planning framework is in place to deliver quality design outcomes and maintain the identity and character of Ku-ring-gai	Applications are assessed in accordance with state and local plans	Assessments are of a high quality, accurate and consider all relevant legislative requirements

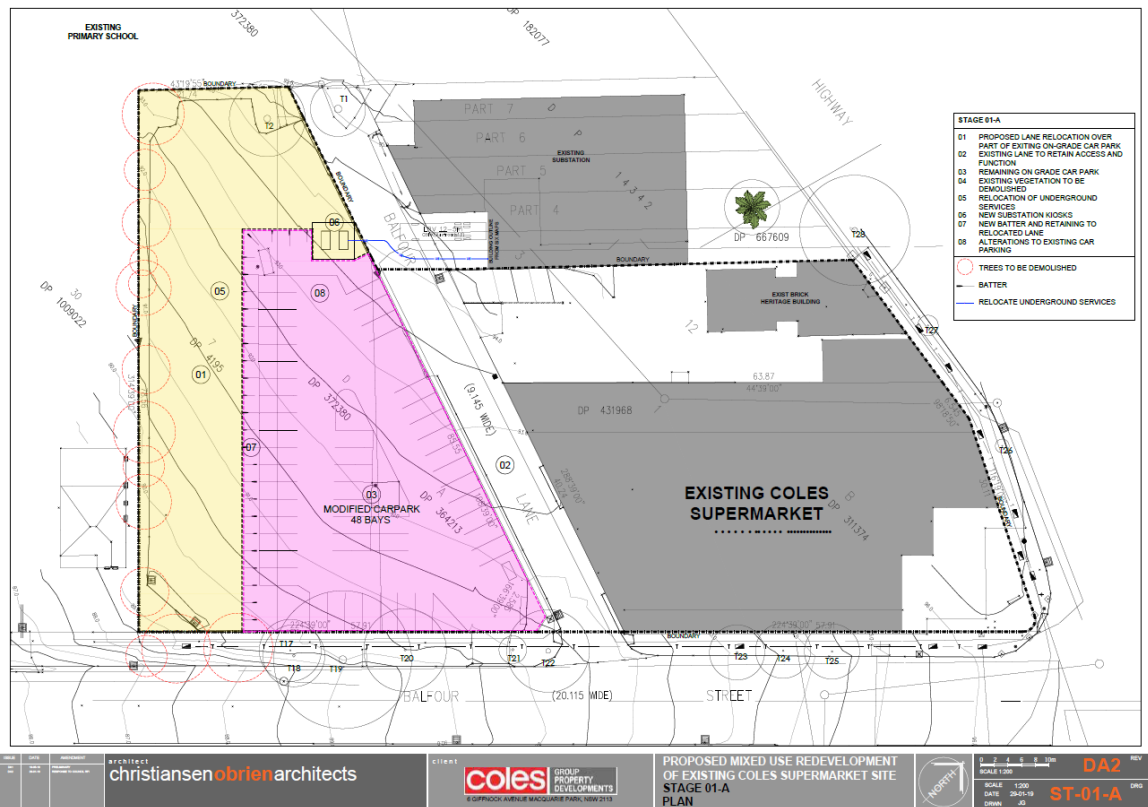
EXECUTIVE SUMMARY

Relevant site history

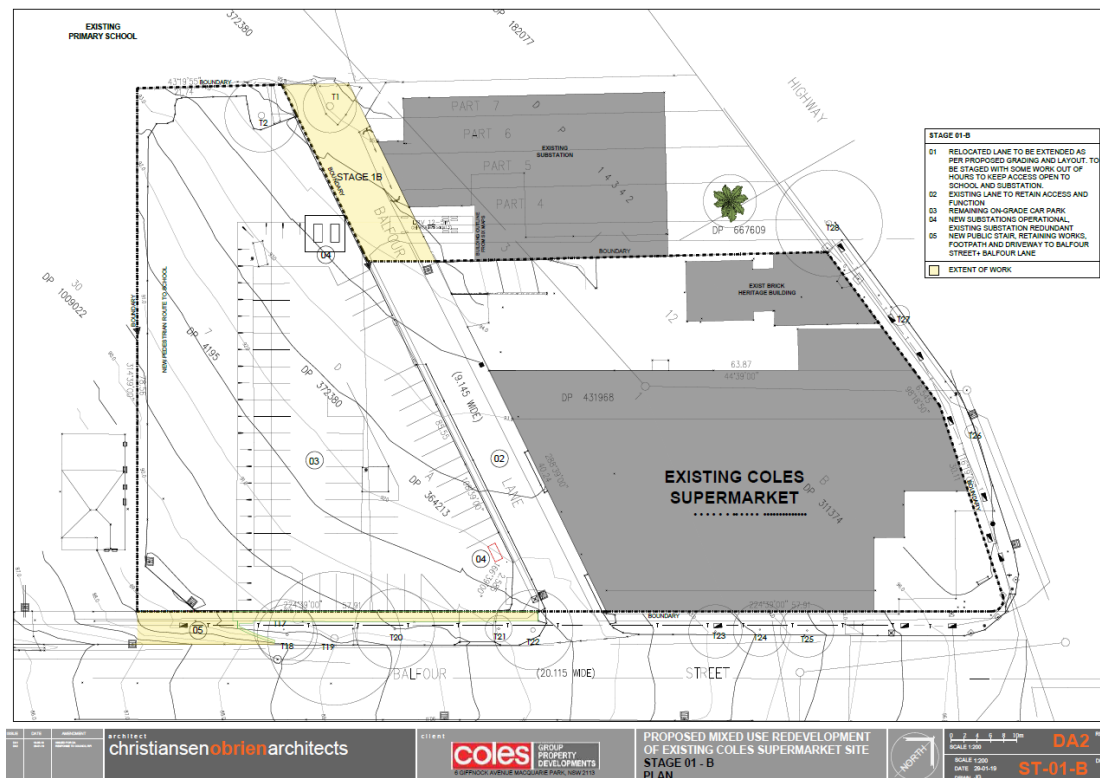
DA0197/18

By way of a section 34 agreement, on 29 August 2019, the Land and Environment Court granted development consent to DA0197/18 (Appeal No. 18/391613) for lot consolidation, demolition of the existing supermarket, partial demolition of a heritage item, relocation of Balfour Lane and construction of a 6 storey mixed use building comprising shop top housing including 70 apartments, supermarket, liquor store, coffee shop, office, car parking and associated work.

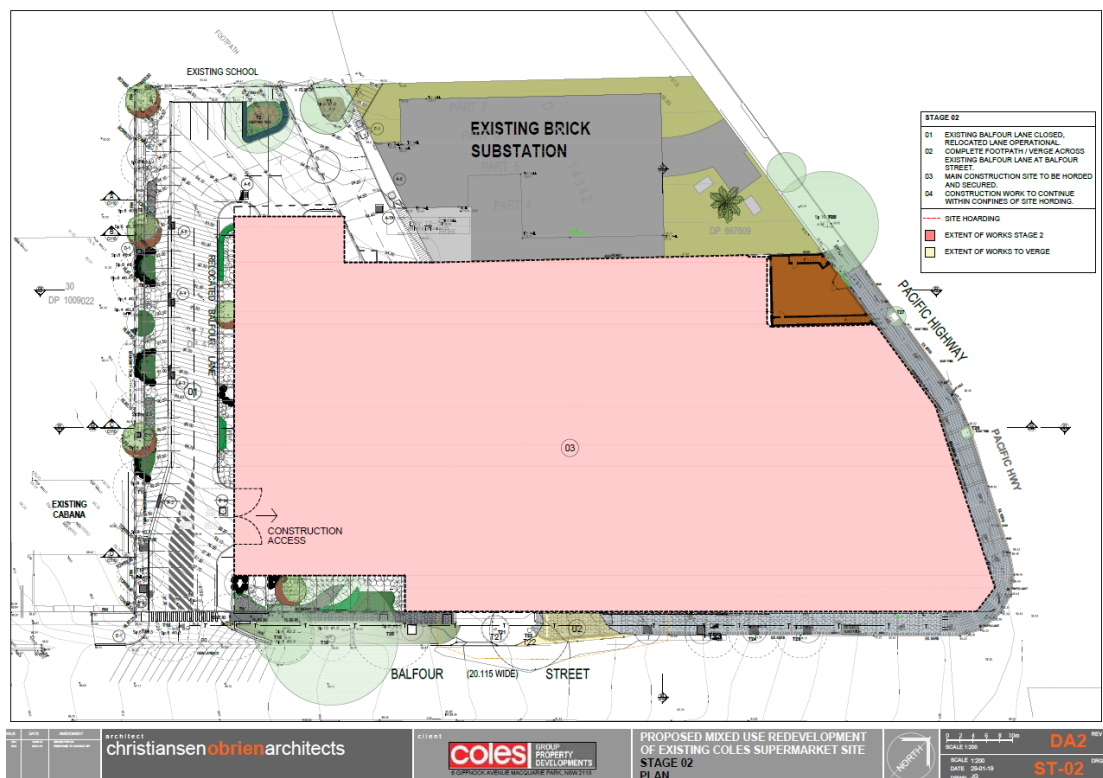
The Court approved 2 phases of the development, Stage 01 A & B, being the relocation of Balfour Lane from its current location to the western side of the site, and Stage 02, being the demolition of the existing structures and construction of the mixed use building.



Plan 1: approved plan for Stage 01-A of the development



Plan 2: approved plan for Stage 01-B of the development



Plans 3: approved plan for Stage 02 of the development

DA0188/19

On 20 September 2019, the Ku-ring-gai Local Planning Panel approved development application DA0188/19 for subdivision of part of the Balfour Lane road reserve to allow the creation of a new lot in connection with a proposed partial road closure of Balfour Lane.

Current Modification Application

Date	Action
26 June 2020	Application lodged.
17 July 2020	<p>The application was notified to neighbouring property owners for a period of 14 days. No submissions were received.</p> <p>Council advised the applicant via a letter that the modification to Condition 24 (which relates to SEPP 55 'Remediation of Land' requirements) was inconsistent with the advice in the letter prepared by Geo-Logix that is an approved document referenced in Condition 1 of the development consent. An amended letter, prepared by a contamination expert that supports the proposed modification to Condition 24 on the basis of the relevant requirements of SEPP 55 and the Contaminated Land Planning Guidelines, was requested.</p>
23 July 2020	The requested information was submitted, including a letter from Geo-Logix outlining the investigation and remediation process; and a letter from the applicant's planning consultant requesting the modification of Condition 1 to include this document.

17 August 2020

The application was registered with the Sydney North Planning Panel.

THE SITE



Aerial photograph of subject site

Site description:

Constraint:	Application:
Visual character study category	1920-1945
Easements/rights of way	Yes – Existing Council owned Local Road 'Balfour Lane' is part of the site.
Heritage Item - Local	Yes - 386-390 Pacific Highway, Lindfield – Churchers Restaurant.
Heritage Item - State	No
Heritage conservation area	No
Within 100m of a heritage item	Yes
Bush fire prone land	No
Natural Resources Biodiversity	Yes - overhanging canopy of Blue Gum High Forest (north-west corner of site)
Natural Resources Greenweb	Yes – Canopy Remnant and Landscape Remnant
Natural Resources Riparian	No
Within 25m of Urban Bushland	No
Contaminated land	No

Surrounding development:

The site comprises 3 allotments, being 376-384 Pacific Highway, 386-390 Pacific Highway and 1 Balfour Street, Lindfield. The site is located at the western corner of Pacific Highway and Balfour Street. The site has an area of 7,090.1m² and is irregular in shape.

The site currently comprises an existing Coles supermarket and smaller retail premises along the Pacific Highway frontage. At the rear of the supermarket is on-grade parking separated by Balfour Lane. Balfour Lane is a no-through road.

Balfour Lane provides access to Holy Family Catholic Primary School, a church and rear access to the electricity substation (No. 402 Pacific Highway) and No. 406 Pacific Highway, which is occupied by a commercial office building.

The north-eastern part of the site contains a heritage item.

The site is zoned B2 Local Centre under the Ku-ring-gai Local Environmental Plan (Local Centres) 2012.

THE PROPOSAL

Under the provisions of Section 4.56 of the *Environmental Planning and Assessment Act 1979*, it is sought to modify the development consent DA0197/18. The application seeks modification to conditions of consent (new text is shown in bold font) as follows:

- i. Condition 1 – Approved architectural plans and documentation (new development)

Letter from Geo-Logix to Howard Hathorn regarding satisfaction of SEPP 55 requirements, dated 21/07/2020

- ii. Condition 15 - Archival Recording of Buildings (heritage Items)

Prior to the commencement of ~~any works~~ **Stage 2 works** on site, the Principal Certifier shall be satisfied that an archival report has been completed and submitted to Council's Heritage Advisor for 386-390 Pacific Highway Lindfield (Churchers Restaurant)....

- iii. Condition 16 – Dilapidation survey & report (private property)

Prior to the commencement of ~~any works~~ **Stage 2 works**, the Applicant must obtain a dilapidation report on the identified private property/ies below and the Principal Certifier shall be satisfied that a dilapidation report on the visible and structural condition of relevant structures on the following properties has been completed and submitted to Council:...

- iv. Condition 22 - Noise & vibration management plan

Prior to the commencement of ~~any~~ **Stage 1 and Stage 2** works, a noise and vibration management plan is to be prepared by a suitably qualified expert addressing the likely noise and vibration from demolition, excavation and construction, of the proposed development, **relating to the relevant stage only** and provided to the Principal Certifier. The management plan is to identify amelioration measures to achieve the best practice objectives of AS 2436-2010 and NSW Department of Environment and Climate Change Interim Construction Noise Guidelines. The report shall be prepared in consultation with any geotechnical report that itemises equipment to be used for excavation works.

The management plan shall address, but not be limited to, the following matters **where relevant to each stage of the development only**:....

- v. Condition 23 - Support for Council roads, footpaths, drainage reserves

Council property adjoining the construction site must be fully supported at all times during all demolition, excavation or building works, **associated with the**

relevant stage only. Details of shoring, propping and anchoring of works adjoining Council property, prepared by a qualified structural engineer and/or geotechnical engineer, must be submitted to and approved by the Principal Certifier, before the commencement of any works. A copy of these details must also be forwarded to Council. Backfilling of excavations adjoining Council property or any void remaining at completion of construction between the building and Council property must be fully compacted prior to the completion of works.

vi. Condition 24 - SEPP 55 'remediation of land' investigation requirements

In accordance with the Geo-Logix letter dated ~~14/05/2018~~ **21/07/2020** and the staging plans referred to in condition 1 of the development consent, prior to the issue of a ~~construction~~ **subdivision** certificate for Stage 01 (new Balfour Lane) the following must occur:

- i. Detailed Site Investigation (DSI) comprising soil, groundwater and soil vapour testing in relation to Stage 01;
- ii. Preparation of a Remedial Action Plan for Stage 01 if required; and
- iii. Remediation and Validation if required to confirm the Stage 1 area shown on the approved staging plan drawings Nos ST-01-A and ST-01-B as suitable for redevelopment.

Prior to the issue of a construction certificate for Stage 02 (Mixed use development) the following must occur:

vii. Condition 35 - Long service levy

A Construction Certificate, **for each relevant stage only**, shall not be issued until any long service levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid **for that stage only**. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided to Council.

viii. Condition 46 - Ausgrid requirements

Prior to issue of any Construction Certificate **for each Stage of the development (i.e. Stage 01 and Stage 02)**, Ausgrid must be contacted regarding power supply **only relative to each individual stage**, for the subject development. A written response, detailing the full requirements of Ausgrid (including any need for underground cabling, substations or similar within or in the vicinity of the development) shall be submitted and approved by the Certifier for approval prior to issue of any Construction Certificate **for the relevant stage only**.

Any structures or other requirements of Ausgrid shall be indicated on the plans issued with the Construction Certificate **(for the relevant stage only)**, to the satisfaction of the Certifier and Ausgrid. The requirements of Ausgrid must be met in full prior to issue of a **Subdivision Certificate (for Stage 1) and an Occupation Certificate (for Stage 2)**.

ix. Condition 54 - Infrastructure damage security bond and inspection fee

To ensure that any damage to Council property as a result of construction

activity is rectified in a timely matter:

(a) All work or activity undertaken pursuant to this development consent must be undertaken in a manner to avoid damage to Council property and must not jeopardise the safety of any person using or occupying the adjacent public areas.

(b) The applicant, builder, developer or any person acting in reliance on this consent shall be responsible for making good any damage to Council property and for the removal from Council property of any waste bin, building materials, sediment, silt, or any other material or article.

(c) The Infrastructure damage security bond and infrastructure inspection fee must be paid to Council **for each Stage of the development (i.e. Stage 01 and Stage 02)** by the applicant prior to both the issue of the Construction Certificate **for that stage** and the commencement of any earthworks or construction. **The bond value will be determined based on the impact to the direct surrounding works being undertaken in each relative stage only.**

(d) In consideration of payment of the infrastructure damage security bond and infrastructure inspection fee, Council will undertake such inspections of Council Property as Council considers necessary and will also undertake, on behalf of the applicant, such restoration work to Council property, if any, that Council considers necessary as a consequence of the development. The provision of such restoration work by the Council does not absolve any person of the responsibilities contained in (a) to (b) above. Restoration work to be undertaken by Council referred to in this condition is limited to work that can be undertaken by Council at a cost of not more than the Infrastructure damage security bond payable pursuant to this condition.

(e) Release of the bond — **Upon receipt of the Final Subdivision Certificate for Stage 01** Council will undertake an inspection of Councils Infrastructure and release the Stage 01 bond if no damage is found. **Upon receipt of the Final Occupation Certificate for Stage 02 Council will undertake an inspection of Councils Infrastructure and release the Stage 02 bond if no damage is found.**

For development relating to more than 2 dwellings, there will be a six months holding period after the receipt of the final occupation certificate, after which you may request Council to return any bond monies. If there is damage found to Council property the bond will not be released until the damage has been rectified to Council's satisfaction.....

x. Condition 69 - Tree planting on nature strip

Prior to the issue of the **Subdivision** Certificate for Stage 01-B the following species shall be planted, at no cost to Council, in the nature strip fronting the property along Balfour Street. The tree/s used shall be a minimum 25 litres and massed planting 200mm container size specimen/s:.....

xi. Condition 80 - post construction dilapidation report

A suitably qualified person shall prepare a post construction dilapidation report at the completion of the construction works **of each relevant Stage only**. This report is to ascertain whether the construction works created any

structural damage to adjoining buildings, infrastructure and roads. The report is to be submitted to the Principal Certifier. In ascertaining whether adverse structural damage has occurred to adjoining buildings, infrastructure and roads, the Principal Certifier must:

- compare the post-construction dilapidation report with the pre-construction dilapidation report
- have written confirmation from the relevant authority that there is no adverse structural damage to their infrastructure and roads

A copy of this report is to be forwarded to Council at the completion of construction works.

xii. Condition 102 - Completion of landscape works

Prior to the issue of the **Subdivision** Certificate for Stage 01-B, the Principal Certifier is to be satisfied that all landscape works within the new Balfour Lane, including the removal of all environmental weed species as listed in Council's Weed Management Policy and/or species listed within Council's Development Control Plan, have been undertaken in accordance with the approved plan(s) and conditions of consent.

xiii. Condition 117 - Certification of drainage works

Prior to issue of the **Subdivision** Certificate for Stages 01 (A and B) and **the Occupation Certificate for Stage 02**, the Principal Certifier is to be satisfied that:.....

xiv. Condition 118 - Works As Executed Plans for stormwater management and disposal

Prior to issue of the **Subdivision Certificate for Stage 01 (A and B) and Occupation Certificate for Stage 02**, a registered surveyor must provide a works as executed survey of the relevant completed stormwater drainage and management systems. The survey must be submitted to and approved by the Principal Certifier prior to issue of the relevant **Subdivision or Occupation** Certificate. The survey must indicate:

xv. Condition 124 - Infrastructure repair

Prior to issue of **a Subdivision Certificate for Stage 01 or an Occupation Certificate for Stage 02** of the development and upon completion of any works which may cause damage to Council's property, the Principal Certifier must be satisfied that any damaged public infrastructure caused as a result of construction works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) is fully repaired to the satisfaction of Council and at no cost to Council.

xvi. Condition 130 - Special conditions to be satisfied prior to the issue of a Subdivision Certificate

1. The Application for the subdivision certificate is to show the new Balfour Lane being dedicated to Council as public road; and
2. Prior to the release of any subdivision certificate the new part of Balfour Lane is to be constructed and landscaped, **or a bond entered into for those**

work, to the Council's satisfaction.

Additional information lodged 23 July 2020

The additional information included:

- (i) A letter prepared by Geo-Logix, dated 21 July 2020, which responded to Council's stop the clock letter requesting an amended statement prepared by a contamination expert that supports the modification of Condition 24 in relation to SEPP 55 requirements.
- (ii) A letter prepared by City Plan Strategy & Development, dated 22 July 2020 requesting modification of Condition 1 to include the above document.

CONSULTATION

Community

In accordance with Appendix 1 of the Ku-ring-gai Community Participation Plan, owners of surrounding properties were given notice of the application. No submissions were received.

Additional information lodged 23 July 2020

The additional information was not notified to surrounding residents as the proposed amendment to Condition 1 would not result in a greater environmental impact than the original proposal.

Internal Referrals

Public Domain

Council's Public Domain Coordinator – Local Centres commented on the proposal as follows:

The modification seeks changes to numerous LEC consent conditions. The conditions related to the public domain and landscape works are Conditions 69 and 102.

The amendments as specified by the applicant for both conditions is supported. The applicant's reasoning/justification is accepted.

It is recommended that Conditions 69 and 102 be amended as per the applicant's wording."

Heritage

Council's Heritage Advisor commented on the proposal as follows:

Ku-ring-gai Local Environmental Plan KLEP (Local Centres) 2012:

*Clause 5.10 (4) of the KLEP2012 requires that before granting consent to the proposed works Council must consider the effect of the works on the heritage values of a place listed in the Heritage Schedule of **KLEP (Local Centres) 2012**.*

*Clause 5.10 of the **KLEP (Local Centres) 2012** requires that before*

granting consent to the proposed works Council must consider the effect of the works on the heritage item, nearby items or conservation area concerned. Clause 5.10 (5) allows Council to require a Heritage Impact Statement before granting consent.

Heritage status

<i>KLEP 2012 (Local Centres)</i>	<i>Yes</i>
<i>Local Heritage Item</i>	<i>Yes includes 390 Pacific Highway, Lindfield</i>
<i>Heritage Conservation Area</i>	<i>No</i>
<i>Immediate vicinity of a heritage item</i>	<i>No</i>
<i>Immediate vicinity of a HCA</i>	<i>Yes</i>

The Heritage Item at No.390 Pacific Highway, Lindfield and is known as “Churcher’s Restaurant” and dates from the Inter-war period (1920-1940) and is designed in the Inter-war Old English style. The exterior of the building is substantially intact. The place is considered significant for its aesthetic and representative qualities owing to its overall form and detailing, as an excellent example of an Inter-war Old English style commercial building.

The modification application proposes a change to the timing of the required archival recording under Condition 15 of the consent.

Stage 1 of the development only relates to the relocation of Balfour Lane, with no other demolition works to be undertaken to the existing buildings, in particular those associated with the heritage item (Churchers Restaurant).

Preparation of an Archival Recording of the heritage item as required under Condition 15 can be undertaken as part of Stage 2.

The change in timing of the satisfaction of Condition 15 will not impact on the ability to obtain an adequate archival record of the heritage item and its context.

Therefore, the proposed change to the timing of the required archival recording under Condition 15 of the Consent is acceptable on heritage grounds.”

Landscaping

Council's Landscape & Tree Assessment Officer commented on the proposal as follows:

The modification seeks changes to numerous consent conditions. Conditions 69 and 102 are landscape related.

The amendments as specified by the applicant for both conditions is acceptable. The applicant’s reasoning/justification is accepted.

It is recommended Conditions 69 and 102 be amended as per the applicant's proposed wording."

Ecology

Council's Ecological Assessment Officer commented on the proposal as follows:

The modification to approved conditions is acceptable without further conditions."

Operations

Council's Team Leader - Design & Projects advised that the modification was acceptable from an engineering viewpoint.

Engineering

Council's Development Engineer commented on the proposal as follows:

"The section 4.56 modification seeks approval to amend several conditions of the subject consent for a mixed use development to enable more efficient and cost effective construction of its two key construction phases.

- Stage 1 is mainly limited to the construction of the new Balfour Lane; and*
- Stage 2 is mainly limited to removal of the existing Balfour Lane and the construction of the new mixed use building*

Recommendations

The following conditions are to be amended as follows:

Condition 16 - Dilapidation survey and report (private property)

Stage 01-A and 01-B and Stage 02 works are to be included in the condition. The properties listed for dilapidation report all back onto Stage 01 works relating to Balfour Lane/Street as well as works pertaining to Stage 02. The construction of the Balfour Lane will involve demolition works and potentially affect the structural conditions of these properties before works commence. It would be the responsibility of each developer to provide individual dilapidation reports.

Condition 23 - Support for Council roads, footpaths, drainage reserves

Accept changes to the condition to include "associated with relevant stage only" given that there are different developers for each stage and therefore the responsibility of each developer to protect Council's infrastructure.

Condition 46 - Ausgrid requirements

Accept changes to the condition given that there are different developers for each stage as well as referencing that no "Occupation Certificate" is required for Stage 01 (works only involve relocation of Balfour Lane). The condition has replaced "Occupation Certificate" with Subdivision Certificate" for Stage 01 only.

Condition 80 - Post construction dilapidation report

Accept changes to the condition given that there are different developers for each stage. It would be the responsibility of each developer to provide individual dilapidation reports.

Condition 117 - Certification of drainage works

Accept changes to the condition given that there is no Occupation Certificate for Stage 01.

Condition 118 - Works as executed plans for stormwater management and disposal

Accept changes to the condition given that there is no Occupation Certificate for Stage 01.

Condition 124 - Infrastructure repair

Accept changes to the condition given that there is no Occupation Certificate for Stage 01."

STATUTORY PROVISIONS

Part 6 (building and subdivision certification provisions) of Environmental Planning and Assessment Act 1979 (EP&A Act)

On 1 December 2019, amendments to Part 6 of the EP&A Act commenced and the new provisions include arrangements for building and certificate requirements. Under Section 6.13 of EP&A Act, a new type of certificate, known as subdivision works certificate, is required prior to carrying out subdivision work in accordance with the development consent and construction certificate will only be good for building works. Under the transitional regulations, for any development consent granted before this date, any construction certificate and occupation certificate will continue to be covered by the previous provisions.

The development consent for DA0197/18 was issued by the Court prior to the commencement of the subdivision works certificate provisions in the Environmental Planning and Assessment Act 1979 and Environmental Planning and Assessment Amendment (Building and Subdivision Certification) Regulation 2019. Accordingly, the conditions and headings in the consent do not make any reference to a subdivision works certificate.

Section 4.56 of the Environmental Planning and Assessment Act 1979 - Modification of consents granted by the Court

Subsection (1) (a): Substantially the same development

The development, as proposed to be modified, is substantially the same development as that approved. The proposed modifications do not alter the essence or character of the development in any materially significant way.

Subsection (1)(b): Notification

The application was notified in accordance with the Appendix 1 of the

Subsection (1)(c) Notification of previous submitters

Each person who made a submission in respect of the original development application has been notified or a reasonable attempt has been made to notify each person by sending a written notice to the last known address.

Subsection (1)(d): Submissions

No submissions were received.

Subsection (1A): Section 4.15(1) considerations and consideration of reasons for granting of the consent

The reasons for the Court granting consent to the development application included:

- (i) The proposal is permissible under B2 Local Centres zone under the KLEP (Local Centres) 2012.
- (ii) Commissioner Walsh stated *“the applicant’s written request pursuant to Clause 4.6 of the KLEP (Local Centres) 2012 seeking to justify the breach of the height of buildings development standard pursuant to Clause 4.3 of LEP 2012, dated February, has been considered and I have formed the necessary opinion of satisfaction under Clause 4.6 (4) of the KLEP 2012. Consequently, the Applicant’s written request is well founded and is upheld.”*
- (iii) The development complies with the floor space ratio standard at Clause 4.4 of the KLEP.
- (iv) Appropriate consideration has been given to earthworks (Clause 6.1 of the KLEP), and stormwater and water sensitive urban design (Clause 6.2 of the KLEP).
- (v) The proposal meets the requirements in regard to ground floor development in business zones under Clause 6.6 of the KLEP.
- (vi) The development complies with the requirements of the minimum street frontages for lots in business zone provision at Clause 6.7 of the KLEP.
- (vii) The development complies with the provision of SEPP 65- Design Quality of Residential Apartment Development and prepared a design verification statement in satisfaction of clause 50(1AB) of the Environmental Planning and Assessment Regulation 2000.
- (viii) Pursuant to SEPP (Building Sustainability Index: BASIX) 2004, a BASIX certificate has been submitted. In combination with the conditions of consent, this satisfies the requirements of that instrument.
- (ix) 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. A phase 1 Environmental Site Assessment Report prepared by Geo-Logix dated 14 May 2018 in

respect of the suitability of the site for the proposed use. This report recommends that further investigatory works to assess the presence or otherwise of contamination should be completed as a pre-construction certificate consent condition. The Commissioner of the Court was satisfied in regard to Clause 7(1) of SEPP 55.

The development consent was the result of a section 34 agreement and the conditions of consent submitted to the Land and Environment Court during the conciliation had regard to the staged construction process. However, opportunities to refine the conditions of consent to better reflect the staged construction process and avoid unnecessary delays have been identified. The proposed modifications have been assessed against the relevant environmental planning instruments and policies and have been found to be acceptable, with the exception of the amendments to Condition 130. The matters for consideration in section 4.15 of the Act are addressed as follows:

Section 4.15(1) considerations

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 require consent authorities to consider the potential for a site to be contaminated. A Phase 1 Environmental Site Assessment Report (aka Stage 1 Preliminary Investigation) Assessment was provided with the original application and the site was found to be suitable for the development subject to remediation, which was required via a condition of consent. Condition 24 of the consent requires that further assessments be carried out prior to the issue of a construction certificate for both stages of the development. Condition 24 also specifies that a construction certificate is not required for work that is carried out for the purposes of the remediation process, such as demolition, and excavation that is for the purposes of investigation, remediation or validation.

Condition 24 is reproduced below:

“24. SEPP 55 ‘Remediation of land’ investigation requirements

In accordance with the Geo-Logix letter dated 14/05/2018 and the staging plans referred to in Condition 1 of the development consent, prior to the issue of a construction certificate for Stage 01 (new Balfour Lane) the following must occur:

- i. Detailed Site Investigation (DSI) comprising soil, groundwater and soil vapour testing in relation to Stage 01;
- ii. Preparation of a Remedial Action Plan for Stage 01 if required; and
- iii. Remediation and Validation if required to confirm the Stage 1 area shown on the approved staging plan drawings Nos ST-01-A and ST-01-B as suitable for redevelopment.

Prior to the issue of a Construction Certificate for Stage 02 (mixed use development) the following must occur:

- i. Detailed Site Investigation (DSI) comprising soil, groundwater and soil vapour testing in relation to Stage 02;
- ii. Preparation of a Remedial Action Plan for Stage 02 if required; and
- iii. Remediation and Validation if required to confirm the Stage 02 (Mixed use development) area shown on the approved staging plan drawing No. ST-02 as suitable for redevelopment.

A Certifier must not issue a Construction Certificate unless they have received advice from a land contamination expert that the requirements of this condition have been satisfied.

For the avoidance of any doubt, nothing in this condition requires any Construction Certificate prior to the commencement of:

- i. demolition;
- ii. site clearing;
- iii. hoarding;
- iv. fencing; and
- v. excavation and other work that is for the purposes of investigation, remediation or validation .

Reason: To ensure compliance with SEPP 55.”

The application seeks to amend Condition 24 to move the Stage 01A & 01B requirements for a Detailed Site Investigation, Remedial Action Plan, and Remediation and Validation Report, from pre Construction Certificate to prior to the issue of a Subdivision Certificate. The applicant's justification for this change is set out below:

“should this be required at Construction Certificate stage then this will cause a delay for commencing and disturbing the site area. It will also result in having an open area exposed while the Construction Certificate is being released.”

The additional information prepared by Geo-Logix, dated 21 July 2020, advises that the change from prior to Construction Certificate to prior to Subdivision Certificate will satisfy the requirements of SEPP 55.

Clause 7(1) of SEPP 55 requires consent authority to consider contamination and remediation in determining development application. The proposed modification seeks changes to the staging of remediation requirements.

A Phase 1 Environmental Site Assessment Report prepared by Geo-Logix and dated, 14 May 2018, was submitted with the development application. The report indicates that the site and surrounds have a mixed history of commercial and residential land use with several potentially contaminating activities having occurred onsite including:

- historical dry cleaner operations;
- demolition of former building structures potentially containing hazardous building materials;
- historical lawn mower repairs; and
- uncontrolled filling.

The above report concluded that the further investigation would be required and this investigation could be addressed as a condition of development consent. As a result, Condition 24 was imposed as part of the consent conditions.

Dry cleaning is identified in Table 1 of the Contaminated Land Planning Guidelines as an activity that may cause contamination, accordingly clause 7(3) of SEPP 55 allows consent authority to require that an applicant provide a detailed site investigation for consideration.

The Ku-ring-gai Contaminated Land Policy 2016 requires that detailed site investigations and remedial action plans (if required) be submitted at development application stage for all sites that have a history of potentially contaminating uses. Whilst these requirements were not strictly applied in the assessment of the parent DA, the current proposal to move the requirements for a detailed site investigation and remedial action plan prior to the issuing of a Construction Certificate to prior to the issue of the Subdivision Certificate is a significant departure from the process endorsed by the Policy.

The Planning Guidelines for SEPP 55–Remediation of Land, states that consideration should be given to whether those impacts are adequately identified and mitigated. In accordance with the information detailed in the Phase 1 ESA report and the Planning Guidelines, prior to the commencement of any construction works on site, a detailed site investigation is required to provide information about the extent and degree of contamination. Following the detailed site investigation, a plan for remediation including a remediation strategy and the recommended clean-up criteria may be required. It is considered important that the detailed site investigation and remedial action plan (if required) be prepared prior to the issue of any Construction Certificate to ensure that full unimpeded access to the Stage 01 area is available and that any required remedial actions can be incorporated into the construction programme.

It is recommended that the requirement to prepare a (i) Detailed Site Investigation and (ii) Remedial Action Plan for Stage 01 prior to the issue of the Construction Certificate remain, and that the requirement for a Remediation and Validation Report be changed from prior to the issue of a Construction Certificate to prior to the issue of Subdivision Certificate. This change will ensure that the land is verified as being suitable for use as a public road prior to it being used for that purpose and satisfies the requirements of Clause 7 of SEPP 55 and the Contaminated Land Planning Guidelines. Conditions 1 and 24 are to be modified to include the latest statement prepared by Geo-Logix, dated 21 July 2020.

Draft State Environmental Planning Policy (Remediation of Land)

The draft SEPP is a relevant matter for consideration as it is an Environmental Planning Instrument that has been placed on exhibition. New provisions will be added in the SEPP to:

- *require all remediation work that is to be carried out without development consent, to be reviewed and certified by a certified contaminated land consultant*
- *categorise remediation work based on the scale, risk and complexity of the work*
- *require environmental management plans relating to post-remediation management of sites or ongoing operation, maintenance and management of on-site remediation measures (such as a containment cell) to be provided to Council*

The merits of the proposed modification to Condition 24 are discussed under the SEPP 55 heading, the conclusions made therein are not altered by the provisions of the draft SEPP.

Ku-ring-gai LEP (Local Centres) 2012

Consolidating LEPs planning proposal

The Planning Proposal was on public exhibition from 25 October 2019 to 22 November 2019. The purpose of the Planning Proposal is to consolidate the Ku-ring-gai Local Environmental Plan (Local Centres) 2012 and Ku-ring-gai Local Environmental Plan 2015. The Planning Proposal is an amendment to KLEP 2015 and will correct site specific mapping errors, resolve the status of deferred areas, remove an existing land reservation in Gordon and amend heritage listings. The Planning Proposal does not seek to amend the zoning and development standards that apply to the subject site. The proposal is consistent with the Planning Proposal.

Zone objectives and land use table

The site is zoned B2 Local Centre zone. The proposed modification does not seek to change the approved land use. The modified proposal remains consistent with the zone objectives given the nature of the proposed changes to the staging of conditions only.

The proposed modification does not alter the building height and floor space ratio of the approved development.

Clause 5.10 – Heritage conservation

The site is heritage listed at 386-390 Pacific Highway, Lindfield (Churchers Restaurant), but is not within a heritage conservation area.

Council's Heritage Advisor has raised no objection to the proposed modification to Condition 15, which is to change the timing of the required archival recording from prior to the issue of the Construction Certificate for Stage 01 to prior to the issue of any Construction Certificate for Stage 02.

Part 6 Additional local provisions

Clause 6.2 - Stormwater and water sensitive urban design

The objective of this clause seeks to minimise the adverse impacts of urban water on the site and within the catchment. The proposed modification does not seek to alter the approved stormwater/water management design. The development remains consistent with the requirements of this clause.

Clause 6.3 - Biodiversity protection

The site is mapped as land comprising biodiversity significance. Council's Ecological Assessment Officer has no objection to the proposed modification.

Policy Provisions (DCPs, Council policies, strategies and management plans)

Ku-ring-gai Local Centres Development Control Plan

Part 13 Tree and Vegetation Presentation

The proposed modification does not seek to remove or impact upon any vegetation.

Section B

Part 14 – Urban Precincts and Sites

The site is within the Lindfield L1 Precinct Centre Urban Precinct under Part 14E of the KDCP. The site is identified as the 'Balfour Street Retail Area' by the Local Centres DCP. Both the Pacific Highway and Balfour Street frontages are identified as 'Principal active frontage'. The DCP contains detailed controls to guide the development of the site and achieve the objectives for the Lindfield Local Centre.

The proposed modification relates to the staging of the development and associated documentation requirements, it does not alter the building compliance with this part of the DCP.

Part 15 – Land Contamination

During the original development application assessment, the site was found to be suitable for the development subject to consent conditions for remediation. Please refer to the above SEPP 55 assessment regarding land contamination and remediation works.

Other conditions

The section 4.56 application also seeks to amend the following conditions:

Condition 22 - Noise & vibration management plan

The proposal is to amend this condition so that separate noise and vibration management plans are prepared prior to the issue of a Construction Certificate for each stage. The amendment is required to accommodate the staged construction process and is considered acceptable.

Condition 35 - Long Service levy

The application seeks to amend this condition so that the Long Service Levy is separated into separate payments for each stage of the development.

This condition is not required to be modified as the Long Service Levy is calculated on the value of the works identified in any Construction Certificate and the conditions of consent do not prevent separate Construction Certificates being issued for each stage.

Condition 46 - Ausgrid requirements

Council's Development Engineer has no objection to the modification of this condition. The amendments will ensure that Ausgrid requirements are incorporated into the Construction Certificates and that compliance is demonstrated prior to the issue of a subdivision certificate for Stage 01 and prior to the issue of an Occupation Certificate for Stage 2.

Condition 54 - Infrastructure damage security bond and inspection fee

There is no objection to the modification to the wording of Condition 54 c and e in terms of the timing of the bond and fee to be paid (such as, for each stage of the

development i.e. Stage 01 and Stage 02). Given that the works in Stage 1 of the development involve the relocation of Balfour Lane, therefore there is no Occupation Certificate is required for Stage 01. The proposed amendment to release the bond “upon receipt of the Subdivision Certificate for Stage 01” is considered acceptable.

Condition 130 - Special conditions to be satisfied prior to the issue of a Subdivision Certificate

The applicant seeks to amend the wording of Condition 130 to allow a bond to be entered into for the construction of the new road and landscaping of the public domain rather than these works being completed prior to the issue of the Subdivision Certificate, the revised wording is identified in red text below:

130. Special conditions to be satisfied prior to the issue of a subdivision certificate

1. The Application for the subdivision certificate is to show the new Balfour Lane being dedicated to Council as public road; and
2. Prior to the release of any subdivision certificate the new part of Balfour Lane is to be constructed and landscaped, or a bond entered into for those works, to the Council's satisfaction.

Reason: To ensure that the new public road is dedicated and constructed to an appropriate standard.

The relocation of Balfour Lane and the landscaping of the public domain is a crucial part of Stage 01 A & B of the development. The new Balfour Lane will provide access to Holy Family Catholic Primary School and church and the electricity substation. Any delay in the completion of the relocated Balfour Lane would be contrary to the public interest and adversely affect the quality of the public domain and access to the properties, which rely upon the existing lane. The provision of landscape should be completed prior to the issue of the Subdivision Certificate to ensure amenity of the neighbourhood and the adjoining properties in the R2 Low Density Residential zone. The proposed amendment to this condition also contradicts Condition 102, which relates to completion of landscape work for Stage 01 prior to the issue of the Subdivision Certificate. Condition 102 specifically requires all the proposed landscape works within the new Balfour Lane to be completed prior to the issue of a subdivision certificate and the handover to Council if the work is not completed and a bond is entered for the landscaping of the new road Condition 102 will not be satisfied and the Subdivision Certificate will not be able to be issued despite Condition 130 being satisfied.

Furthermore, there are no details provided as to the value of the works that may be subject to the bond and the timing for the completion of the works and how Council could ensure that the works are completed in the absence of the condition of consent that was imposed to ensure that the new road is completed prior to the commencement of Stage 02. Despite the deficiency of information, the works should be completed in their entirety before the Subdivision Certificate is issued and the handover to Council for the reasons of public interest and the public domain. For the aforementioned reasons it is considered that a bond for the construction of the new road and landscaping works is not acceptable and Condition 130 should remain unaltered.

LIKELY IMPACTS

The likely impacts of the modified development have been considered within this report and are deemed to be acceptable for the most part, subject to conditions. The proposed modification is unlikely to result in any significant adverse impacts.

SUITABILITY OF THE SITE

The site remains suitable for the development as proposed to be modified.

PUBLIC INTEREST

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by the Panel ensuring that any adverse effects on the surrounding area and the environment are minimised. The proposal has been assessed against the relevant environmental planning instruments and is deemed to be acceptable in part, on this basis, the proposal is not considered to raise any issues that are contrary to the public interest, subject to the amended conditions included in the recommendation

CONCLUSION

Having regard to the provisions of section 4.56 of the Environmental Planning and Assessment Act 1979, the proposed modifications are considered acceptable for the most part.

RECOMMENDATION

PURSUANT TO SECTION 4.56 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

THAT The Sydney North Planning Panel, as the consent authority modify the development consent to DA0197/18 in the following manner:

The below conditions are modified to read as follows:

1. Approved architectural plans and documentation (s.4.56)

The development must be carried out in accordance with the plans and documentation listed below and endorsed with Council's stamp:

Plan no.	Drawn by	Dated
<i>Architectural Plans</i>		
DA-00-01 Revision DA4	Christiansen Obrien Architects	4/07/2019
DA-01-02 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-03 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-04 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-05 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-06 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-07 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-08 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-09 Revision DA3	Christiansen Obrien Architects	31/05/2019
DA-01-10 Revision DA3	Christiansen Obrien Architects	5/07/2019

DA-02-1 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-02-2 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-02-3 Revision DA5	Christiansen Obrien Architects	5/07/2019
DA-03-1 Revision DA4	Christiansen Obrien Architects	5/07/2019
DA-03-2 Revision DA3	Christiansen Obrien Architects	5/07/2019
DA-03-3 Revision DA2	Christiansen Obrien Architects	5/07/2019
DA-04-1 Revision DA1	Christiansen Obrien Architects	29/01/2019
DA-04-2 Revision DA1	Christiansen Obrien Architects	29/01/2019
DA-04-3 Revision DA1	Christiansen Obrien Architects	29/01/2019
DA-04-4 Revision DA1	Christiansen Obrien Architects	29/01/2019
DA-04-5 Revision DA1	Christiansen Obrien Architects	29/01/2019
DA-04-6 Revision DA2	Christiansen Obrien Architects	5/07/2019
DM-01 Revision DA1	Christiansen Obrien Architects	18/05/2018
SK-IMG-01 Revision DA2	Christiansen Obrien Architects	5/07/2019
SK-IMG-02 Revision DA2	Christiansen Obrien Architects	5/07/2019
SK-IMG-03 Revision DA2	Christiansen Obrien Architects	5/07/2019
SK-IMG-04 Revision DA2	Christiansen Obrien Architects	5/07/2019
SK-IMG-05 Revision DA2	Christiansen Obrien Architects	5/07/2019
<i>Subdivision Plan</i>		
PS01 Revision B	Trehy Ingold Neate	25/05/2018
<i>Staging Plans</i>		
ST-01-A Revision DA2	Christiansen Obrien Architects	29/01/2019
ST-01-B Revision DA2	Christiansen Obrien Architects	29/01/2019
ST-02 Revision DA2	Christiansen Obrien Architects	29/01/2019
<i>Landscape Plans</i>		
Existing Vegetation Management and Tree Survey	Conzept Landscape Architects	4/07/2019
LPDA 18-154 Page L101 Revision I	Conzept Landscape Architects	7/06/2019
LPDA 18-154 Page L102 Revision I	Conzept Landscape Architects	4/07/2019
LPDA 18-154 Page L103 Revision H	Conzept Landscape Architects	7/06/2019
LPDA 18-154 Page L104 Revision H	Conzept Landscape Architects	4/07/2019
LPDA 18-154 Page L105 Revision H	Conzept Landscape Architects	4/07/2019
LPDA 18-154 Page L106 Revision F	Conzept Landscape Architects	4/07/2019
LPDA 18-154 Page L108 Revision E	Conzept Landscape Architects	24/06/2019
LPDA 18-154 Page L109 Revision C	Conzept Landscape Architects	24/06/2019
LPDA 18-154 Page L110 Revision D	Conzept Landscape Architects	4/07/2019
<i>Civil Drawings</i>		
14888_DA_C000 Revision 05	Henry & Hymas	28/05/2019
14888_DA_C100 Revision 12	Henry & Hymas	23/01/2019
14888_DA_C110 Revision 07	Henry & Hymas	7/06/2019
14888_DA_C111 Revision 09	Henry & Hymas	3/07/2019
14888_DA_C112 Revision 06	Henry & Hymas	3/07/2019
14888_DA_C200 Revision 05	Henry & Hymas	11/01/2019
14888_DA_C201 Revision 05	Henry & Hymas	24/01/2019
14888_DA_C250 Revision 07	Henry & Hymas	11/06/2019
14888_DA_C500 Revision 08	Henry & Hymas	29/05/2019
14888_DA_SE01 Revision 06	Henry & Hymas	30/01/2019
14888_DA_SE02 Revision 04	Henry & Hymas	11/01/2019
14888_DA_SE03 Revision 01	Henry & Hymas	11/01/2019
14888_DA_BE01 Revision 05	Henry & Hymas	30/01/2019

Document(s)	Dated
Accessibility Assessment Report prepared by City Plan Revision 05	21/01/2019

Wind Impact Assessment prepared by Vipac Engineers and Scientists	29/10/2018
Coles Supermarket Lindfield - Residential Component - Acoustic Assessment for DA prepared by Renzo Tonin & Associates Report Revision 4	1/02/2019
Coles Lindfield - Supermarket Component - Acoustic Assessment for DA prepared by Renzo Tonin & Associates Report Revision 2	23/01/2018
Basix certificate No. 755527M_04	8/07/2019
Nathers Certificate No. 0004005920	8/07/2019
Coles Lindfield Supermarket Operations Management Plan	30/04/2018
Development Application Report for Building Services Revision C	29/01/2019
Ausgrid letter	31/07/2018
Roads and Maritime Services letter reference SYD18/00918/04 (A26045482)	6/03/2019
Design Verification Statement prepared by Neil Christiansen of Christiansen Obrien Architects	10/07/2019
Apartment Design Guide - Compliance Assessment prepared by Christiansen O'Brien Revision DA4	31/05/2019
Air Quality Assessment prepared by Pacific Environment	8/05/2018
ESD and Green Star Strategy Report Revision B prepared by Donnelley Simpson Cleary	24/05/2018
Letter from Geo-Logix to Howard Hathorn regarding satisfaction of SEPP 55 requirements	14/05/2018
Phase 1 Environment Site Assessment Report prepared by Geo-Logix Revision V02	21/03/2017
Geotechnical Advice for Proposed Mixed Use Redevelopment of Existing Supermarket Site prepared by Geo-Logix - including Attachment A - Geotechnical Investigation prepared by JK Geotechnics dated 9/12/2014	21/03/2017
Conservation Management Strategy prepared by City Plan Revision 02	13/12/2018
Waste Management Statement prepared by Christiansen Obrien Architects Revision C	July 2019
Engineering Report - Commercial Development prepared by Henry & Hymas (not including Appendix C)	January 2019

Except where amended by the s4.56 document endorsed with Council's stamp as listed below and except where amended by other conditions of this Development Consent:

Section 4.56 Document	Dated
Geo-Logix Letter prepared by Geo-Logix Pty Ltd	21 July 2020

Reason: To ensure that the development is in accordance with the Development Consent.

15. Archival recording of buildings (heritage items)

Prior to the commencement of Stage 02 works on site, the Principal Certifier shall be satisfied that an archival report has been completed and submitted to Council's Heritage Advisor for 386-390 Pacific Highway Lindfield (Churchers Restaurant).

The report must be a bound A4 report, prepared by a recognised NSW Heritage Office heritage consultant and must contain the following minimum requirements:

- title page
- statement of reasons the recording was made

- outline history of the item (including title records, subdivision plans, water and sewerage plans and any archival documents such as family records, old photographs, etc)
- statement of a heritage significance (to accepted Heritage Council criteria)
- specialised reports such as heritage assessments, dilapidation report, and builders or engineers reports
- location plan showing relationship of site to nearby area
- site plan to scale (1:200 - 1:500) showing all structures and site elements
- measured drawing including site survey, floor plans, all elevations, roof plan and one cross section (1:00)
- drawings of specific interiors or details nominated by Council's Heritage Advisor
- room inventories noting materials, profile of nominated decorative elements (1:2) and nominated by Council's Heritage Advisor
- archival quality colour photographs, contact prints, and selected prints (one copy of contact sheets and selected prints)
- digital images and archival quality DVD, CD or USB may be submitted as supplementary information.

All photographs in the report are to be mounted, labelled and cross-referenced to the relevant site plan and floor plans and showing position of camera. A photographic recording sheet must be included. Photographs of the following must form part of the archival report:

- each elevation
- each interior room
- photographs of specific details nominated by Council's Heritage Advisor
- all structures on site, such as sheds, outhouses and significant landscape features
- several photographs of house from public streets or laneways including several views showing relationship to neighbouring buildings

Note: Two copies of the report must be submitted to Council's Heritage Advisor. A written acknowledgment from Council must be obtained (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifier prior to the commencement of any works.

Reason: To ensure the preservation and proper management of historical artefacts through comprehensive historical recording prior to any alteration being undertaken.

16. Dilapidation survey and report (private property)

Prior to the commencement of each of the following stages:

1. Stage 01 works (01-A and 01-B)
2. Stage 02 works

the Applicant must obtain a dilapidation report on the identified private property/ies below and the Principal Certifier shall be satisfied that a dilapidation report on the visible and structural condition of relevant structures on the following properties has been completed and submitted to Council:

Address:

- 2-4 Highfield Road (southern side of the main school building)

- 2-4 Highfield Road (existing structures within the playground including retaining structures and COLA)
- 402 Pacific Highway
- 406 Pacific Highway

The dilapidation report must include a photographic record of adjoining properties detailing their physical condition, both internally and externally, including such items as walls ceilings, roof and structural members. The report must be completed by a consulting structural/geotechnical engineer as determined necessary by that professional based on the excavations for the proposal and the recommendations of the submitted geotechnical report.

In the event that access for undertaking the dilapidation survey is denied by a property owner, the Applicant must demonstrate in writing to the satisfaction of the Principal Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

A copy of the dilapidation report is to be provided to Council prior to the commencement of any works. The dilapidation report is for record keeping purposes only and may be used by the Applicant or affected property owner to assist in any civil action required to resolve any dispute over damage to adjoining properties arising from works.

Reason: To record the structural condition of likely affected properties before works commence.

22. Noise and vibration management plan

Prior to the commencement of Stage 01 (01-A and 01-B) and Stage 02 works, a noise and vibration management plan is to be prepared by a suitably qualified expert addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to the Principal Certifier, relating to the relevant stage only. The management plan is to identify amelioration measures to achieve the best practice objectives of AS 2436-2010 and NSW Department of Environment and Climate Change Interim Construction Noise Guidelines. The report shall be prepared in consultation with any geotechnical report that itemises equipment to be used for excavation works.

The management plan shall address, but not be limited to, the following matters, where relevant to each stage of the development only:

- i. identification of the specific activities that will be carried out and associated noise sources
- ii. identification of all potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment
- iii. the construction noise objective specified in the conditions of this consent
- iv. the construction vibration criteria specified in the conditions of this consent
- v. determination of appropriate noise and vibration objectives for each identified sensitive receiver
- vi. noise and vibration monitoring, reporting and response procedures
- vii. assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles and any traffic diversions
- viii. description of specific mitigation treatments, management methods and

- procedures that will be implemented to control noise and vibration during construction
- ix. construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
- x. procedures for notifying residents of construction activities that are likely to affect their amenity through noise and vibration
- xi. contingency plans to be implemented in the event of non-compliances and/or noise complaints

Reason: To protect the amenity afforded to surrounding residents during the construction process.

Condition 23 - Support for Council roads, footpaths, drainage reserves

Council property adjoining the construction site must be fully supported at all times during all demolition, excavation or building works, associated with the relevant stage only. Details of shoring, propping and anchoring of works adjoining Council property, prepared by a qualified structural engineer and/or geotechnical engineer, must be submitted to and approved by the Principal Certifier, before the commencement of any works. A copy of these details must also be forwarded to Council. Backfilling of excavations adjoining Council property or any void remaining at completion of construction between the building and Council property must be fully compacted prior to the completion of works.

Reason: To protect Council's infrastructure.

24. SEPP 55 'Remediation of Land' investigation requirements

In accordance with the Geo-Logix letters, dated 14/05/2018 and 21/07/2020, and the staging plans referred to in condition 1 of the development consent, prior to the issue of a construction certificate for Stage 01-A and 01B (new Balfour Lane) the following must occur:

- i. Detailed Site Investigation (DSI) comprising soil, groundwater and soil vapour testing in relation to Stage 01; and
- ii. Preparation of a Remedial Action Plan for Stage 01 if required;

Prior to the issue of a Subdivision Certificate for the approved subdivision (new Balfour Lane) the following must occur:

- iii. Remediation and Validation if required to confirm the Stage 1 area shown on the approved staging plan drawings Nos ST-01-A and ST-01-B as suitable for redevelopment.

Prior to the issue of any Construction Certificate for Stage 02 (Mixed use development) the following must occur:

- i. Detailed Site Investigation (DSI) comprising soil, groundwater and soil vapour testing in relation to Stage 02;
- ii. Preparation of a Remedial Action Plan for Stage 02 if required; and
- iii. Remediation and Validation if required to confirm the Stage 02 (Mixed use development) area shown on the approved staging plan drawing No. ST-02 as suitable for redevelopment.

A Certifier must not issue a Construction Certificate unless they have received advice from a land contamination expert that the requirements of this condition have been

satisfied.

A consent authority must not issue a Subdivision Certificate unless they have received advice from a land contamination expert that the requirements of this condition have been satisfied.

For the avoidance of any doubt, nothing in this condition requires any Construction Certificate prior to the commencement of:

- vi. demolition;
- vii. site clearing;
- viii. hoarding;
- ix. fencing; and
- x. excavation and other work that is for the purposes of investigation, remediation or validation .

Reason: To ensure compliance with SEPP 55.

46. Ausgrid requirements

Prior to issue of any Construction Certificate for each stage of the development (i.e. Stage 01-A and 01-B and Stage 02), Ausgrid must be contacted regarding power supply only relative to each individual stage, for the subject development. A written response, detailing the full requirements of Ausgrid (including any need for underground cabling, substations or similar within or in the vicinity of the development) shall be submitted and approved by the Certifier prior to issue of any Construction Certificate for the relevant stage only.

Any structures or other requirements of Ausgrid shall be indicated on the plans issued with the Construction Certificate (for the relevant stage only), to the satisfaction of the Certifier and Ausgrid. The requirements of Ausgrid must be met in full prior to issue of a Subdivision Certificate (for Stage 01-A and 01-B) and an Occupation Certificate (for Stage 02).

Reason: To ensure compliance with the requirements of Ausgrid.

54. Infrastructure damage security bond and inspection fee

To ensure that any damage to Council property as a result of construction activity is rectified in a timely matter:

- (a) All work or activity undertaken pursuant to this development consent must be undertaken in a manner to avoid damage to Council property and must not jeopardise the safety of any person using or occupying the adjacent public areas.
- (b) The applicant, builder, developer or any person acting in reliance on this consent shall be responsible for making good any damage to Council property and for the removal from Council property of any waste bin, building materials, sediment, silt, or any other material or article.
- (c) The Infrastructure damage security bond and infrastructure inspection fee must be paid to Council for each stage of the development (i.e. Stage 01-A & 01-B and Stage 02) by the applicant prior to both the issue of the Construction Certificate for that stage and the commencement of any

earthworks or construction. The fee will be determined on the construction works relevant to each stage of the development.

- (d) In consideration of payment of the infrastructure damage security bond and infrastructure inspection fee, Council will undertake such inspections of Council Property as Council considers necessary and will also undertake, on behalf of the applicant, such restoration work to Council property, if any, that Council considers necessary as a consequence of the development. The provision of such restoration work by the Council does not absolve any person of the responsibilities contained in (a) to (b) above. Restoration work to be undertaken by Council referred to in this condition is limited to work that can be undertaken by Council at a cost of not more than the Infrastructure damage security bond payable pursuant to this condition.
- (e) **Release of the bond** (i) Upon completion of Stage 01-A & 01-B works and receipt of a Subdivision Certificate for the approved subdivision, Council will undertake an inspection of Council's Infrastructure and release the Stage 01-A & 01-B bond if no damage is found. (ii) Upon receipt of the Occupation Certificate for Stage 02 Council will undertake an inspection of Council's Infrastructure and release the Stage 02 bond if no damage is found.

For development relating to more than 2 dwellings, there will be a six months holding period after the receipt of the final occupation certificate, after which you may request Council to return any bond monies.

If there is damage found to Council property the bond will not be released until the damage has been rectified to Council's satisfaction.

- (f) In this condition:

"Council property" includes any road, footway, footpath paving, kerbing, guttering, crossings, street furniture, seats, letter bins, trees, shrubs, lawns, mounds, bushland, and similar structures or features on any road or public road within the meaning of the Local Government Act 1993 (NSW) or any public place; and

"Infrastructure damage security bond and infrastructure inspection fee" means the Infrastructure damage security bond and infrastructure inspection fee as calculated in accordance with the Schedule of Fees & Charges adopted by Council as at the date of payment and the cost of any inspections required by the Council of Council property associated with this condition.

Reason: To maintain public infrastructure.

69. Tree planting on nature strip

Prior to the issue of the Subdivision Certificate for Stage 01-B the following species shall be planted, at no cost to Council, in the nature strip fronting the property along Balfour Street. The tree/s used shall be a minimum 25 litres and massed planting 200mm container size specimen/s:

Tree/species	Quantity	Location
<i>Lagerstroemia indica</i> (Crepe Myrtle) Hot Pink	2	Evenly spaced within Balfour Street road reserve, in front of the neighbouring school property.
<i>Agapanthus</i> 'White' mass planting	5 per m2	

Reason: To provide appropriate landscaping within the streetscape.

80. Post construction dilapidation report

A suitably qualified person shall prepare a post construction dilapidation report at the completion of the each of the following stages;

1. Stage 01 works (01-A and 01-B)
2. Stage 02 works

Each report is to ascertain whether the construction works created any structural damage to adjoining buildings, infrastructure and roads. The report is to be submitted to the Principal Certifier. In ascertaining whether adverse structural damage has occurred to adjoining buildings, infrastructure and roads, the Principal Certifier must:

- compare the post-construction dilapidation report with the pre-construction dilapidation report
- have written confirmation from the relevant authority that there is no adverse structural damage to their infrastructure and roads

A copy of this report is to be forwarded to Council at the completion of construction works

Reason: Management of records.

102. Completion of landscape works

Prior to the issue of the Subdivision Certificate for the approved subdivision, the Principal Certifier is to be satisfied that all landscape works within the new Balfour Lane, including the removal of all environmental weed species as listed in Council's Weed Management Policy and/or species listed within Council's Development Control Plan, have been undertaken in accordance with the approved plan(s) and conditions of consent.

Reason: To ensure that the landscape works are consistent with the Development Consent.

Condition 117. Certification of drainage works

Prior to issue of the Subdivision Certificate for Stages 01-A and 01-B and the Occupation Certificate for Stage 02, the Principal Certifier is to be satisfied that:

1. The relevant stormwater drainage works have been satisfactorily completed in accordance with the approved Construction Certificate drainage plans.
2. The minimum retention and on-site detention storage volume requirements of Ku-ring-gai Local Centres DCP Part 24 'Water Management' have been achieved. Council's On-Site Detention And Retention Certification sheet shall be completed.
3. Retained water is connected and available for use.
4. All grates potentially accessible by children are secured.
5. Components of the new drainage system have been installed by a licensed plumbing contractor in accordance with the Plumbing and Drainage Code AS3500.3 2018 and the Building Code of Australia.
6. All enclosed floor areas, including habitable and garage floor levels, are safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices.

Evidence from a qualified and experienced consulting civil/hydraulic engineer documenting compliance with the above is to be provided to Council prior to the issue of the relevant Occupation Certificate.

Reason: To ensure appropriate stormwater management.

118. Works as executed plans for stormwater management and disposal

Prior to issue of the Subdivision Certificate for Stage 01-A and 01-B and Occupation Certificate for Stage 02, a registered surveyor must provide a works as executed survey of the relevant completed stormwater drainage and management systems. The survey must be submitted to and approved by the Principal Certifier prior to issue of the relevant Subdivision or Occupation Certificate. The survey must indicate:

- as built (reduced) surface and invert levels for all drainage pits
- gradients of drainage lines, materials and dimensions
- as built (reduced) level(s) at the approved point of discharge to the public drainage system
- as built location and internal dimensions of all detention and retention structures on the property (in plan view) and horizontal distances to nearest adjacent boundaries and structures on site
- the achieved storage volumes of the installed retention and detention storages and derivative calculations
- as built locations of all access pits and grates in the detention and retention system(s), including dimensions
- the size of the orifice or control fitted to any on-site detention system
- dimensions of the discharge control pit and access grates
- the maximum depth of storage possible over the outlet control
- top water levels of storage areas and indicative RL's through the overland flow path in the event of blockage of the on-site detention system

The works as executed plan(s) must show the as built details above in comparison to those shown on the drainage plans approved with the Construction Certificate prior to commencement of works. All relevant levels and details indicated must be marked in red on a copy of the Certifier stamped construction certificate stormwater plans.

Reason: To ensure appropriate stormwater management.

124. Infrastructure repair

Prior to issue of a Subdivision Certificate for Stage 01-A and 01-B or an Occupation Certificate for Stage 02 of the development and upon completion of any works which may cause damage to Council's property, the Principal Certifier must be satisfied that any damaged public infrastructure caused as a result of construction works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) is fully repaired to the satisfaction of Council and at no cost to Council.

Reason: To protect public infrastructure.

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