



COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-156
DA Number	DA0144/20
LGA	Ku-ring-gai Council
Proposed Development	Significant alterations and additions to upgrade Marian Street Theatre (249 seats), including new theatrette (63 seats), new rehearsal space (60 seats), café, lifts, signage, amendments to loading and parking arrangements, extensive landscaping works to adjoining Selkirk Park to include tree removal, accessible pathways and new outdoor amphitheatre (50 seats).
Street Address	2-2A Marian Street & Selkirk Park, Killara
Applicant/Owner	Ku-ring-gai Council
Owner	Ku-ring-gai Council
Date of DA Lodgement	7 May 2020
Number of Submissions	18
Recommendation	Approval, subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	A section 4.55(2) application that relates to a development consent for Regionally Significant Development that was granted by the SNPP and which seeks to make amendments to conditions of consent that were added by the SNPP and were not included in the council assessment report
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • SEPP 55 – Remediation of Land • Draft Remediation of Land SEPP • Ku-ring-gai Local Environmental Plan 2015 • Ku-ring-gai Development Control Plan • Ku-ring-gai Development Contributions Plan
Clause 4.6 requests	Clause 4.6
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 – Location sketch • Attachment 2 – Zoning extract • Attachment 3 – Architectural plans • Attachment 4 – Landscape plans • Attachment 5 – Operational plan of management • Attachment 6 – Clause 4.6

Report prepared by	Kerry Gordon, - Town Planning Consultant
Report date	28 July 2021

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? **Not applicable**

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? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

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

PURPOSE OF REPORT

To determine Development Application No DA0144/20 for significant alterations and additions to upgrade Marian Street Theatre (249 seats), including a new theatrette (63 seats), new rehearsal space (60 seats), café, lifts, signage, amendments to loading and parking arrangements, extensive landscaping works to adjoining Selkirk Park to include tree removal, accessible pathways and new outdoor amphitheatre (50 seats).

This application is reported to the Ku-ring-gai Local Planning Panel for determination as the applicant and land owner is Ku-ring-gai Council, in accordance with the Minister's S9.1 Local Planning Panels Direction.

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

Issues:	Noise, car parking provision, impact upon Selkirk Park and breach of height control.
Submissions:	14 submissions to initial notification and 4 to the second notification
Land and Environment Court:	N/A
Recommendation:	Approval

HISTORY

Site history:

The theatre building is currently vacant, having previously been used as a theatre for an extended period. The theatre site was leased (and occupied) by the Marian Street Theatre for Young People Inc., a not for profit organisation, which for many years held theatre classes and workshops at the premises and held theatrical performances on the site. Theatrical performances ceased to be held on the site in March 2008 due to the site not having a POPE licence, however theatrical classes and workshops, rehearsals and the supportive administrative uses continued from the site. Use of the theatre site ceased in 2012 due to the state of repair of the building.

The building on the site has undergone a number of changes since its construction in 1906 when it appears to have been used as a community hall, including some major refurbishments. Some of the works are identified below.

- In 1948 works were undertaken to upgrade stage lighting and dressing rooms to improve the amenities for the theatre.
- In 1978 kitchen renovations and additions were carried out to improve the amenity of the restaurant component.
- In 1990 major renovation works were carried out, providing new seats, upgrading storage and dressing rooms and renovating the restaurant component.
- In 2009 Development Consent DA0185/09 was granted to carry out works to improve fire safety, improve accessibility, improve the vehicular access and parking provision and improve the sound attenuation of the building. Approval was also sought for the use of the theatre for the showing of public theatre productions for children and young people and a POPE license for the ground floor and parts of the lower ground floor. These works were not undertaken.

Previous applications history:

A Pre-DA consultation was not undertaken with Council prior to the lodgement of this Development Application.

Council's records show a history of applications relating to the site as follows:

Type	Application	Description	Decision	Date
ConvCC	03/00843/FO	NEW SEATING PLATFORMS FOR AUDITORIUM AND NEW DUMB WAITER	#WITHDRAWN	08/06/2004
ConvCC	04/00454/FO	USE OF EXISTING PREMISES AS A THEATRE-RESTAURANT NEW DUMB WAITER & PLATFORMS TO AUDTRIUM	#WITHDRAWN	24/10/2004
ConvDA	1013/03/DO	NEW SEATING PLATFORMS FOR AUDITORIUM AND NEW DUMB WAITER	#WITHDRAWN	08/06/2004
ConvDA	581/04/DO	USE OF EXISTING PREMISES AS A THEATRE-RESTAURANT NEW DUMB WAITER & PLATFORMS TO AUDTRIUM	#WITHDRAWN	24/10/2004
ConvBA	81/01143	ADDS AND ALTS	#APPROVED	13/05/1982
ConvBA	81/01143A	ADDS AND ALTS	#APPROVED	13/05/1982
ConvBA	90/00663	Dressing room refurbishment	#APPROVED	23/05/1990
ConvBA	90/01673	AIR CONDITIONING SYSTEM	#APPROVED	21/11/1990
ConvBA	90/01876	ACCOUSTIC ENLOSURE FOR AIR CONDITIONING UNIT	#APPROVED	10/01/1991
CC	CC0112/09	CC for DA0185/09 to upgrade fire safety and access for the theatre to be used as a place of public entertainment	FinalOcc	
CC	CCPCA0498 /11	Piping of drainage easement		
DA	DA0177/13	Ku-ring-gai Twilight concert in the park to be held annually on the second Saturday in September and/or the third Saturday in October	#APPROVED	
DA	DA0185/09	To upgrade fire safety and access for the theatre to be used as a place of public entertainment	#APPROVED	28/07/2009
DA	DA0921/10	Piping of interallotment drainage easement and removal of trees	#APPROVED	23/02/2011

Current DA

Date	Action
7 May 2020	Application lodged.
27 May – 26 June 2020	The application was notified to neighbouring property owners for a period of 30 days.
19 January 2021	A letter was sent to the applicant seeking additional information.
20 April 2021	Applicant provided additional information/amended plans addressing matter raised in Council's letter of 19 January 2021.
3 May – 17 May 2021	The amended information was notified to neighbouring property owners.

THE SITE



Figure 1: Aerial photograph of site and surrounds

Site description:

The site of the Marian Street Theatre is a roughly rectangular shaped site, being Lot A in DP 329637, and is known as No. 2-2A Marian Street, Killara. The site has a 30.175m frontage to Marian Street and a rear boundary of the same dimension. The side boundaries have dimensions of 94.185m and the site has an area of 2,791m², with a fall from the street to the rear of 5m, rising again by up to 1.5m immediately adjoining the rear boundary. The site has an easement for drainage 1.3m wide running along the rear portion of the eastern boundary.

The site is occupied (approximately the front half) by the Marian Street Theatre, which was originally constructed in 1906, but which has undergone a series of minor and major renovations. To the rear of the site is a car park, for 36 vehicles, associated with the Theatre, accessed by a driveway along the eastern boundary. The Theatre is constructed to a variable setback from the street, of 0-2m, is setback 2.5m from the western boundary, 5.6m-7.4m from the eastern boundary and over 50m from the rear boundary.



Figure 2: Marian Street Theatre viewed from Marian Street



Figure 3: The side elevation of Marian Street Theatre and existing driveway viewed from Marian Street



Figure 4: Marian Street Theatre viewed from the rear car park

The second component of the site is located immediately to the west of the Marian Street Theatre and is Selkirk Park. Selkirk Park is located on the southern corner of the intersection of Marian Street and Culworth Avenue and comprises two allotments, being Lot A in DP 312594 and Lot C in DP 335377. Selkirk Park occupies an irregular shaped allotment and is located below the level of the footpath to both road frontages by approximately 2.5m to the Marian Street frontage and by less than 1m to the Culworth Avenue frontage.

Selkirk Park is developed with a playground roughly at its centre and the remainder of the park is grassed and contains a significant number of trees.

Constraint:	Application:
Visual character study category	Not categorised on map.
Easements/rights of way	Yes – easements to drain and for water supply
Heritage Item - Local	No
Heritage Item - State	No
Heritage conservation area	No
Within 100m of a heritage item	Yes
Bush fire prone land	No
Natural Resources Biodiversity	Yes
Natural Resources Greenweb	Yes
Natural Resources Riparian	No
Within 25m of Urban Bushland	Yes
Contaminated land	No



Figure 5: Selkirk Park viewed from Culworth Avenue in the location of the proposed driveway

Surrounding development:

Opposite the site to the north in Marian Street ,are local shops and apartment buildings and further to the north-west are detached dwellings. Behind the apartment buildings and to the rear and side of the shops is the Council car park which provides commuter parking for Killara Station, which is located on the opposite side of Culworth Avenue. Vehicular access to the car park is from Culworth Avenue, however pedestrian access is also available via a set of stairs from Marian Street adjoining the shops.

To the immediate west of the site is a mix of apartment buildings and dwellings, with the adjoining property being No. 4 Marian Street, containing 2 flats, but having approval for redevelopment as a residential flat building.

To the south of the site are apartment buildings and detached dwellings.

Opposite the site in Culworth Avenue is the railway line.

THE PROPOSAL

The application proposes significant alterations and additions to the Marian Street Theatre and works to Selkirk Park, as follows:

Marian Street Theatre

Level 0

- Removal of existing plant, part of rear wall, external plant room and part of eastern wall, demolish part of the slab
- Removal of external fire stairs
- Installation of lift from Level 0 to Level 2 at south-eastern corner
- Provision of internal waste storage room, pump room, store, laundry and workshop and loading dock

Level 1

- Demolish internal fitout walls (not major internal walls), part of existing rear and western walls and most of eastern wall
- Demolish kitchen, bar, WCs, dressing rooms, stairs and stage
- Remove majority of floor
- Demolish external plant and ducts along western wall
- Remove driveway along eastern side of building
- Install lift and stairs at north-eastern corner to connect with Level 2
- Provision of internal walls and part new floor
- Replace openings in western and rear walls
- Install external fire stair to rear of western wall
- Install kitchen/store/cool room, plant rooms
- Install 63 seat theatre with associated stage, green room, accessible WC and wing
- Install dressing rooms, WCs and green room for Level 2 theatre at rear with office
- Provide 48 seat flexible community space and store
- Install patrons WCs (including accessible)
- Install 41 seat café with internal (21) and external (terrace) seating (20)
- Provide external access stairs from Marian Street to new café terrace



Figure 6: Artist's impression of the proposed theatre as viewed from Marian Street



Figure 7: Artist's impression of the proposed theatre and cafe as viewed from Selkirk Park

Level 2

- Demolish balconies to eastern façade, most of eastern wall and part of rear, front and western walls
- Remove seating from theatre
- Demolish part of floor slab
- Demolish internal fitout walls (not major internal walls), stairs, box office, WCs and stage
- Demolish mezzanine level
- Extend south-eastern corner of building to provide accessible ramp to rear lift
- Install 60 seat rehearsal room and store to the rear
- Provide external sound locks to rehearsal room and theatre adjoining western boundary and internal sound lock
- Install new stage and 249 seats tiered seats and control room
- Provide new wing and tech store, box office and office
- Provide new foyer and entry ramp from Marian Street
- Provide balcony off foyer to the east adjoining Selkirk Park
- Provide bicycle parking racks and fire booster to Marian Street frontage

Roof

- Remove entire roof covering
- Demolish roof structure over eastern and rear portions of building but retain existing roof trusses over theatre seating area
- Replacing roof covering in the same location on the front, north-western, side of the building
- Increasing the height of the roof at the rear to accommodate new stage lighting and plant, including chillers, with the provision of PV cells to this portion.

- The eastern portion of the roof is to be extended to cover the proposed eastern extension and balcony.

The majority of the proposed works are contained within the existing footprint and structure of the building, with the exception of the airlocks to the western boundary, balcony to the eastern side and stage lighting and roof plant.

The modified building is to have a gross floor area of 1,291.48m².

It is also proposed to remove the existing car park containing 36 parking spaces, to be replaced by external loading space at the rear of the building, a fire sprinkler tank, fire sprinkler pumps and 8 parking spaces (to be used by staff/performers) along the rear boundary and landscaping to extend the park towards the centre of the car park. New lighting is proposed to the car park.

Illuminated building identification signage is proposed above the entrance to the building and an interchangeable light-box is proposed adjacent to the entrance to display performance details. Building identification signage is also proposed on the rear façade, to be illuminated by a spotlight.

Selkirk Park

Works to Selkirk Park include the provision of a 50 seat external amphitheatre (to be constructed over both the Park and Theatre sites), stairs from the park (adjoining the amphitheatre) to the café terrace and a ramp from Marian Street to the café ramp. Additionally, new pathways are proposed and associated landscaping. A new winding access driveway is proposed adjacent to the southern boundary of the park to provide vehicular access to the new parking for the Theatre.



Figure 8: Artist's impression of the proposed amphitheatre and café

The works result in the removal of one tree for the ramp to Marian Street and two trees for the driveway.

New landscape works are proposed adjoining the driveway, stairs and ramps, and around the amphitheatre.

- Confirmation of different uses throughout the day and which uses will occur together
- Amended acoustic assessment to address above matters
- Concern in relation to extended hours of use
- Acoustic impact of commuter car park
- Information in relation to the water cooling system and grease trap

AMENDED PLANS

In response, the applicant provided amended plans and additional information. The additional information provided and changes proposed are detailed below:

Amended/additional information

- Amended architectural and landscape plans
- Arborist response letter and report
- CPTED report
- Amended plan of management
- Amended lighting report
- Amended clause 4.6 variation request
- Civil response letter and civil plans
- Traffic response letter
- Acoustic response letter and amended report

Changes to proposal/additional information

- The site will be used for approximately 2-4 large scale events per year.
- The community space can be hired for private events such as birthday parties, etc subject to a maximum 50 attendees and hours of use 7am-9pm.
- A skate prevention edge will be incorporated into the deck and amphitheatre to reduce skateboarding and vandalism.
- The driveway is to be suspended (rather than filled), however some fill is proposed such that the driveway is not located more than 900mm above finished ground level.
- Additional planting provided to the north of the fire pumps and along the western boundary.
- Open to the suggestion of a pedestrian refuge in Marian Street.
- Plan of management updated to exclude from use commuter car parking spaces closest to residents to reduce noise levels (spaces highlighted in yellow in the Figure 10).
- Hours of use are reduced to:
 - The theatre building will be open and accessible to the public from: - 7am to 11.30pm, Wednesday to Saturday - 8.30am to 10pm, Sunday to Tuesday
 - The café/bar will close at 9pm
 - Staff access to the premises will be from: - 6.30am to 12am, Wednesday

to Saturday - 8am to 10.30pm, Sunday to Tuesday



Figure 10: Commuter parking area with yellow highlighted parking spaces resulting in acoustic impact on adjoining residents if used at night

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 by letter dated 27 May 2020. In response, submissions from the following were received.

1. *Dr Christina Adler – 5/1 Marian Street, Killara*
2. *Margie McCrae – 211 Old Canterbury Road, Dulwich Hill*
3. *Alex Carrodus and Sue Sticovich – 12/18 Marian Street, Killara*
4. *Richard Bennett – no address provided*
5. *Rod Hanson - 13/18 Marion Street, Killara*
6. *Geoff and Dianne Tylor – 22/10 Marian Street, Killara*
7. *Shirley Panaretto – 32/10 Marian Street, Killara*
8. *Judith Bloxham – no address provided*

9. *Jessica Blaxland Ashby – 7/592 Pacific Highway, Killara*
10. *David Castle – 16 Bayswater Road, Lindfield*
11. *Brian and Julie Williamson - 34/10 Marian Street, Killara*
12. *Marian Street Theatre for Young People*
13. *Rosemary Thane – 39/6-8 Culworth Street, Killara*
14. *James Mystakidis – 4/3 Marian Street, Killara*

The submissions raised the following issues:

Impact upon availability of on-street parking/loss of onsite parking/loss of parking in Culworth Avenue to provide driveway.

The Parking Assessment undertaken for the DA found that there will be adequate on and off-street parking available.

Request implementation of parking permits for residents.

The implementation of parking permits is outside the matters for consideration in the assessment of the application and is a separate matter for Council to consider.

Support application.

Noted.

Request clarity as to when Stage 2 will occur in relation to theatrette.

No information is available in relation to the timing of the works.

Should be able to operate the main theatre and theatrette at the same time as was the case previously.

This is not proposed and an assessment of the application cannot require such changes to the application.

Request provision of specific signage/path improvement to encourage use of railway car park by patrons rather than on street parking.

A condition of consent requires signage and management practices to be put in place addressing this (**Condition 22**).

Impact upon traffic/safety/request additional speed signposting and traffic calming devices/Traffic counts have not occurred on Culworth Avenue/Culworth Avenue is too narrow to allow safe passing when cars are parked on the street, particularly given increase in traffic. Needs to be widened and provided with kerb and guttering.

The impact of the development upon traffic movements and safety is addressed in the Traffic Engineering comments below.

Should introduce a one way system into the commuter carpark by providing another exit to avoid traffic problems.

The application does not involve such a change and as such it cannot be considered as part of the assessment.

Use of railway carpark at night is not safe given poor lighting, uneven footpaths and lack of pedestrian crossing.

The Traffic Engineer's comments address the provision of a pedestrian refuge and lighting thereto. The need for upgrade of lighting and the footpath surface will be addresses as part of the Pedestrian, Transport and Access Management Plan (**Condition 22**).

Don't support proposed change to time limits for on street parking near shops as it will make it difficult to find parking near the post office and shops.

The parking restrictions in Marian Street are provided to prevent all day commuter parking. The proposed change will still maintain that objective.

Don't support provision of driveway through the park given the reduction of parking to 9 spaces and the impact upon trees in the park and safety of park users. Should retain existing driveway or relocate staff parking to the commuter car park.

The driveway is designed to provide safety to park users (being elevated) and its elevated design also protects the surrounding trees, noting that some trees will require removal.

Retention of "Killara Soldiers Memorial" plaque is supported, but the flagpole and Australian flag are an integral part of the memorial to the soldiers of Killara and should also be retained.

Discussion with the applicant confirmed that the flag pole cannot be retained in its current position due to the proposed works. However, a condition of consent is recommended requiring the existing two RSL war memorial plaques to be relocated on-site in a location where they are visible to the general public. The display is to include a photograph of the existing flag pole and memorial and a flag (**Condition 75**).

Object to destruction of park by introduction of amphitheatre and driveway and impact upon haven for birds.

The ecological assessment has found that the impact of the works are acceptable, subject to conditions, it being noted that only 4 trees are to be removed for the proposal and additional landscaping is to be proposed to compensate for the loss of ground level vegetation in the location of the driveway. As such, the impact upon birdlife is likely to be neutral.

Object to acoustic impact of outdoor amphitheatre/ no assessment of noise from clapping and cheering.

Upon raising this concern with the applicant, it was agreed that the amphitheatre should be for daytime use only. A condition to this effect is recommended (**Condition**

104).

Object to outdoor amphitheatre as number of inappropriate weather days would make it a poor return on investment.

The extent of future use of the amphitheatre and whether it provides a good return for investment are not matters for consideration in the assessment of the application but rather are separate matters for consideration of Council.

Concerned outdoor amphitheatre would attract skateboarders and congregating unsupervised young people with resultant noise, littering, graffiti and safety impacts from misuse. Such outdoor amphitheatres fall into disuse and become eyesores.

This concern was raised with the applicant and in response the applicant indicated a skate prevention edge will be incorporated into the deck and amphitheatre to reduce skateboarding and vandalism. The area will be visible from the theatre, providing good casual surveillance which usually discourages use of an unauthorised nature.

Inadequate noise testing for acoustic report/ concerned about noise impacts. Request noise measurements to be taken from Building R6 of 10 Marian Street to determine impact of proposal.

The acoustic report has been updated and Council's Senior Environmental Health Officer has reviewed the report and considers the report appropriately addresses the acoustic impacts of the development.

The "few times a week" sleep disturbance identified as acceptable in the acoustic report are not acceptable and impact the amenity for neighbouring properties. Hours of proposed theatre are excessive and detrimentally impact the amenity for surrounding residents/ further increased by cleaning after use of theatre.

In response to concerns about noise from the use and the impact of that noise upon residents, the hours of operation have been reduced by the applicant. Having assessed the proposed hours, concern is still raised about the potential impact upon residents and as such a trial is recommended for the hours beyond 10pm to allow an assessment of whether the theatre can operate after 10pm without detrimental impact (**Conditions 102 and 104**).

Likely new road will be used by skateboarders, creating noise for residents. This could be avoided with a greener approach of narrow concrete strips with grassed paths between.

The proposed use of the driveway, being constructed as concrete strips with grass in between, is not feasible given the need to provide the driveway in an elevated manner to protect the trees. As such, the driveway is to be constructed on support posts rather than the area of the driveway being extensively filled.

More trees should be removed from park to "open it up" as it is too overshadowed and too cold to enjoy.

The park contains Blue Gum High Forest (STIF) listed as a Critically Endangered Ecological Community (CEEC) under the Biodiversity Conservation Act 2016 and the removal of additional trees would be inappropriate from an ecological viewpoint.

Amended plans dated 20 April 2021

The amended plans were also notified. Four submissions were received from the following:

1. *Judith Bloxham – no address provided*
2. *Marian Street Theatre for Young People*
3. *Sherry Lo – 28/10 Marian Street, Killara*
4. *Brian and Julie Williamson - 34/10 Marian Street, Killara*

The submissions in response to the amended plans raised the following issues (note, where the concerns raised were the same as those originally raised they are not repeated:

There is no demand for the expensive alterations and additions to the theatre

This concern is not a matter for consideration in the assessment of the application, but rather is a separate matter for Council to consider.

Will threaten the safety of the residential area by bringing non-residents into the area and introducing a commercial enterprise

There is no evidence that small theatres result in any safety concerns to the surrounding area.

Proposal will result in a loss of air quality due to the new road

The new road will only support the reduced number of parking spaces at the rear of the theatre and, as such, will generate a very low number of traffic movements. This lower number of vehicle movements are unlikely to result in a discernible change in air quality.

Number of days a week and hours of use should be reduced and a time limit should be placed upon the hours of use of the car park at the rear of the site.

Currently, the car park at the rear of the theatre has significantly more parking spaces than that proposed. The reduction in number of spaces and change to staff only parking will significantly reduce noise from this area.

Noise assessments were undertaken in winter when windows are closed and don't take into consideration the use of balconies by residents.

The timing of the noise readings is not problematic as they show the background noise level only and are not reflective of the noise impact of the use which is calculated based on reference to other similar theatres and their noise level. All calculations are determined at the residential boundary and, as such, it is not relevant whether the windows are open or balconies being used.

Request theatre not be used beyond 6pm on Sundays/ no waste removal on weekends or public holidays and no deliveries on Sundays or public holidays.

Whilst it is reasonable to restrict deliveries and waste removal, such that it occur on week days or Saturdays only, it would be unreasonable to reduce the hours of use of

the theatre as suggested on Sundays given the current approval for the theatre does not prevent use at this time (**Conditions 100-101**).

How can it be assured that patrons will not leave through the rear of the facility?

The rear entrance can only be accessed via the fire stairs or Lift 2. The access to both of these access points requires patrons to pass through the “back of house” area of the theatre and no access is available to patrons to this area. Accordingly, patrons cannot leave the premises from the rear of the theatre.

Internal Referrals

Building

Council's Senior Building Inspector commented on the proposal as follows:

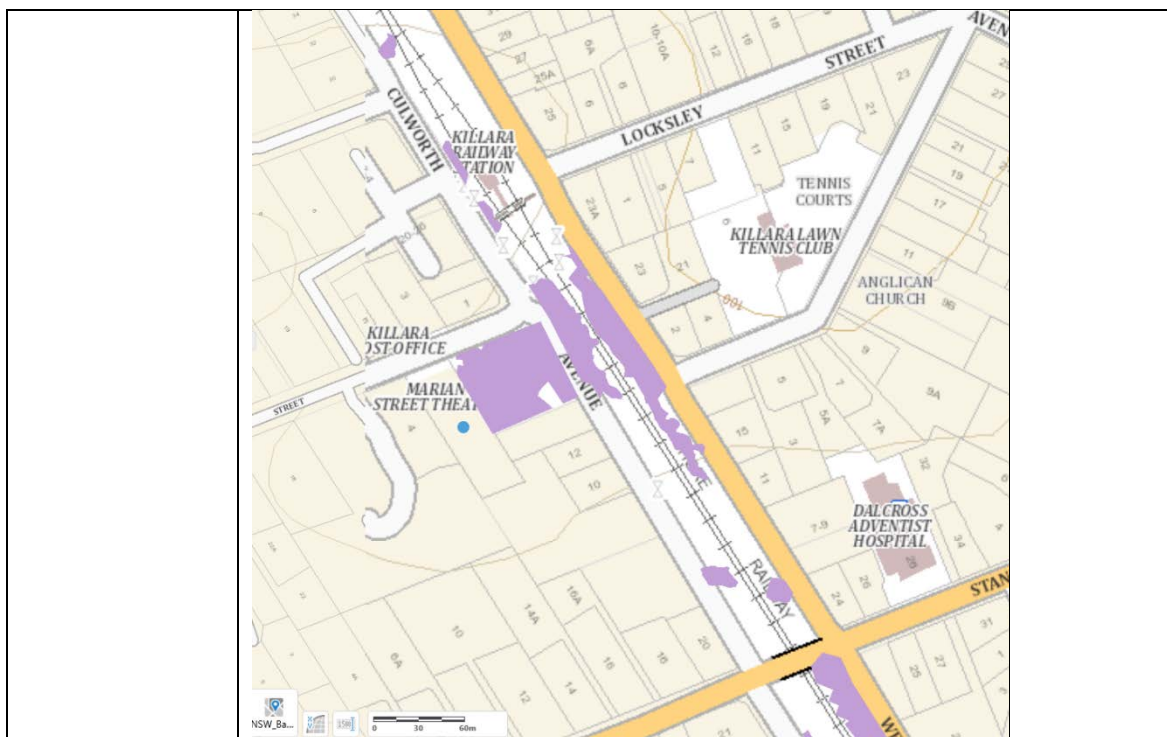
Received Structural report for the existing building from SDA Structural Pty Ltd, dated 28/01/20. The structural report states that the existing building does not have the capacity to support the required floor loads to Australian Standard AS 1170. It is advisable to upgrade the existing building to comply with the AS1170.

A condition to this effect is recommended (**Condition 24**).

Ecology

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

Biodiversity Conservation Act 2016		
Section 7.3	Proposed	Complies
<i>The purpose of the Act is to maintain a healthy, productive and resilient environment</i>	<p><i>The native vegetation within the northern portion of the subject property was determined to be representative of Blue Gum High Forest (STIF) listed as a Critically Endangered Ecological Community (CEEC) under the Biodiversity Conservation Act 2016.</i></p> <p><i>The proposal triggers entry into the Biodiversity Offsets Scheme (BOS) under the Biodiversity Conservation Act 2016 as the proposal is within lands mapped on the Biodiversity Value Map.</i></p> <p><i>A biodiversity development assessment report (BDAR) has been submitted with the proposal, which assess the impacts upon threatened species and the onsite BGHF. The findings of the BDAR is that the proposed development will require the retirement of 1 ecosystem credit of Plant community type (PCT) 1237- Sydney Blue Gum - Blackbutt - Smooth-barked Apple moist shrubby open forest on shale ridges of the Hornsby Plateau, Sydney Basin Bioregion. The retirement of 1 ecosystem credit of PCT 1237 has been conditioned (Condition 4).</i></p>	YES



Biodiversity Values Map & Threshold Tool.

SEPP 19 – Bushland in Urban Areas		
Part 2 - Aims	Proposed	Complies
<i>The aim of the SEPP is to preserve bushland within urban areas</i>	<p><i>The proposed driveway is located within Selkirk Park which contains ‘Urban Bushland’ as defined under the SEPP. The proposed development will result in the removal of Tree 8 Eucalyptus fibrosa (Ironbark) & Tree 9 - Lophostemon confertus (Brush Box) from lands containing ‘Urban Bushland’. T8/T9 are not representative of remnant bushland, as such, their removal is not considered to be inconsistent with the objectives and aims made under this policy.</i></p> <p><i>Enhancement planting is proposed as part of the DA which will improve the quality and diversity within the ‘urban bushland’ as such no further consideration deemed necessary under the SEPP.</i></p>	YES

KLEP 2015 COMPLIANCE TABLE		
Part 6 Additional local provisions	Proposed	Complies
<p>Clause 6.3 – Biodiversity Protection</p> <p><i>The objective of this clause is to protect maintain and improve the diversity and condition of native vegetation and habitat</i></p>	<p><i>The native vegetation within the site has been mapped as ‘Terrestrial biodiversity’.</i></p> <p><i>The proposed development will result in the removal of Tree 8 Eucalyptus fibrosa (Ironbark) & Tree 9 - Lophostemon confertus (Brush Box) from lands mapped ‘Terrestrial biodiversity’. T8/T9 are not representative of BGHF. The removal of T8/T9 is unavoidable due to the location of the driveway, repositioning the driveway would result in removal of native BGHF trees. Having consideration to clause 6.3. The proposal has been designed and sited to</i></p>	YES

	avoid potential adverse impacts upon Terrestrial biodiversity.	
Part 18 Biodiversity Controls		
18.4 Category – Landscape Remnant	The proposed development is located partially within lands mapped as being landscape remnant.	YES
18.7 Category – No net loss	<p>The driveway has been designed and sited to minimise the impacts upon the landscape remnant, the proposal will result in the removal of Tree 8 <i>Eucalyptus fibrosa</i> (Ironbark) & Tree 9 - <i>Lophostemon confertus</i> (Brush Box) from lands mapped as “Landscape Remnant”. Offset planting will replace trees removed from the landscape remnant.</p> <p>Amendments are required via condition of consent to the landscape plan to modify and replace the following species outlined below (Conditions 4 and 26).</p> <p><i>Arthropodium milleflorum</i> replacement <i>Doodia aspera</i> or <i>Blechnum cartilagineum</i> <i>Dichelachne micrantha</i> replacement <i>Poa affinis</i> <i>Pseuderanthemum variabile</i> replacement <i>Viola hederacea</i></p> <p>The substitute species above ensure that the planting is consistent with local characteristic species of the BGHF community.</p>	

Conclusion: The DA is acceptable on ecological grounds with conditions.

Heritage

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

Statement of Significance

Council's heritage inventory sheet has the following statement of significance for the adjacent **Marian Street Heritage Conservation Area (C24)**

The Marian Street Heritage Conservation Area is of high local historic and aesthetic significance as a good and largely intact residential precinct characterised by streetscapes of good, high quality examples of single detached houses from the Federation, Inter-war and Post-war periods. The built context is enhanced by large garden settings, wide street proportions, street plantings and remnant and planted native trees; elements which are synonymous with the Ku-ring-gai area. The early grant boundaries, estates and subdivision pattern significantly remain visible in the current layout and pattern of development and late 19th and early to mid-20th century building stock retains a high level of integrity. The early development is also overlayed by later land subdivisions and some consolidation and later development which reflect changes in the wider rail and road networks and ongoing evolution of the local and wider area. Despite these changes the area significantly retains part of the original vision for the area with emphasis on residential, recreational and cultural development.

Controls and Objectives

The following relevant objectives and controls apply:

DEVELOPMENT IN THE VICINITY OF HERITAGE ITEMS OR HERITAGE CONSERVATION AREAS (HCAS)	
Development Controls	Complies
19F.1 Local Character and Streetscape	
<p><i>General</i></p> <p><i>1 All development in the vicinity of a Heritage Item or HCA is to include a Heritage Impact Statement.</i></p>	YES - considered within the SoEE.
<p><i>2 Development on sites that either directly adjoin or are in the vicinity of a Heritage Item or an HCA is to have regard to:</i></p> <p><i>i) the form of the existing building or buildings including height, roofline, setbacks and building alignment;</i></p> <p><i>ii) dominant architectural language such as horizontal lines and vertical segmentation;</i></p> <p><i>iii) proportions including door and window openings, bays, floor-to ceiling heights and coursing levels;</i></p> <p><i>iv) materials and colours;</i></p> <p><i>v) siting and orientation;</i></p> <p><i>vi) setting and context;</i></p> <p><i>vii) Streetscape patterns.</i></p>	YES
Retail/Mixed use setting	
<p><i>3 New development adjacent to or in the vicinity of a Heritage Item or HCA within a retail/mixed use setting such as an existing row of two storey shops, are to:</i></p> <p><i>i) Retain the existing characteristics of the street including the setback, height and rhythm of facades, and is to be sympathetic to the materials and detailing of the earlier facades.</i></p> <p><i>ii) retain a pedestrian building scale at the street level and to set back any levels that are higher than the adjacent Heritage Item</i></p>	YES
Views	
<p><i>4 New development in the vicinity of a Heritage Item or HCA is to demonstrate that it will not reduce or impair important views to and from the Heritage Item from the public domain.</i></p>	YES
19F.3 Gardens and Landscaping	
Gardens, Setting and Curtilage	
<p><i>1 Development in the vicinity of a Heritage Item or an HCA is to:</i></p> <p><i>i) retain original or significant landscape features associated with the Heritage Item or HCA, or which contribute to its setting</i></p> <p><i>ii) Retain the established landscape character of the Heritage Item or HCA.</i></p> <p><i>iii) Include appropriate screen planting on side and rear boundaries.</i></p>	YES

More information regarding a specified/ selected colour for the masonry façade and the roof is required/ requested to be provided.

The proposed alterations and additions to the theatre will have a minimal impact on the adjacent heritage item and heritage conservation area. The proposal is therefore acceptable from a heritage perspective.

It is recommended that the colour of the painted masonry façade is to be selected from Dulux Warm Whites or similar. Very bright whites are generally not recommended. Mid Grey coloured roof sheeting is recommended for the roof.

Additional information was submitted by the applicant and Council's Heritage Advisor provided the following comments in response.

The revisions have sufficiently addressed the issues raised previously, as the applicant has supplied a materials finish as requested previously noting mid tone grey for the roof selection and an off white exterior colour.

Conclusion

The proposed work is acceptable with regard to its heritage impacts on the setting of the heritage items and conservation areas within the vicinity of the subject site.

Landscaping

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

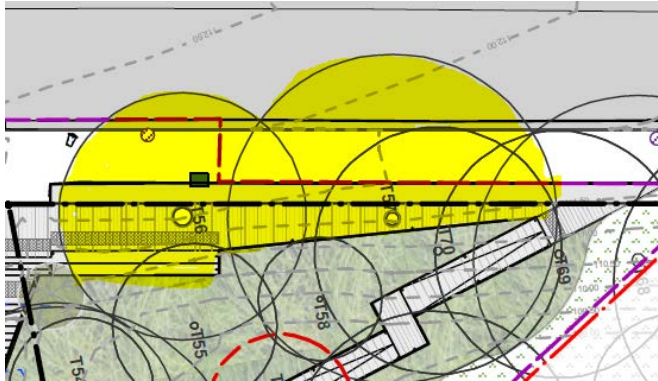
Further information is required to enable assessment.

Issue/s:	<p>1. Tree impacts</p> <p>a) <i>Encroachment of road on existing trees has not been fully assessed as Arborist has not reviewed Civil Plans. Relationship of proposed road to adjacent pedestrian path and ground levels to be resolved and impact of slotted drainage with road up to 1m above ground. Proposed access road encroachment to Tree 23, Tree 25, and Tree 26 is currently over 20%.</i></p> <p>b) <i>Pedestrian path levels adjacent proposed access road have not been provided to enable final assessment of impact on trees. Potential impacts to Trees 19, 20, 21, 23, 24, 29, 30 and 31 if filling required.</i></p> <p>c) <i>Proposed construction of 'concrete plank deck surrounding Trees 56 and 57 (TPZ 10.8 /SRZ 3.3) to northern boundary batter adjacent Marian Street footpath impacts trees and has not been addressed in Arborist report. Existing footpath and road are already a major encroachment on these trees.</i></p> <p>d) <i>Clarify reason for removal of Tree 71 Lagerstroemia indica (Crepe Myrtle). Tree is within 3m of front façade, however contributes to the streetscape. The Arborist report notes tree as in good condition and with no defect. No major construction works are within vicinity of tree if alternative fire hydrant booster location is available.</i></p> <p>e) <i>Carpark is a major encroachment on Tree 7 (3m TPZ/SRZ 2.1) with excavation within structural root zone with approximate 25% encroachment.</i></p>
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	<p>Landscape Issues</p> <ul style="list-style-type: none"> a) No setback or screen planting provided to western boundary of carpark to south of building adjacent loading dock in accordance with 9B.2 and 21.2 of KDCP b) Detail of height and size of proposed fire sprinkler storage tank to southern corner of carpark required with location outside of setback. c) Fully detailed planting plan to be provided. Existing screen planting of Lilly Pilly to southern park boundary to be retained.
<p>Amendments that could resolve the issue:</p>	<p>Tree impacts</p> <ul style="list-style-type: none"> a) Road design including edge treatment, piercing and adjacent levels to be provided as no additional filling within TPZ would be acceptable. Allow for Arboricultural review. Section through midpoint of access road would be beneficial to illustrate relationship of road with existing ground levels and proposed path. b) Provide levels to path adjacent to access road to allow for impact assessment on existing trees and any requirement to relocate path if required to protect trees. c) Clarify proposed construction method of concrete plank deck area to northern boundary. Arborist to review impacts on Trees 56 and 57 of deck and extension of footpath. A reduction within TPZ will benefit the existing trees already encroached by road and footpath d) Review alternative location of fire hydrant booster and potential to retain existing Tree 71 Lagerstroemia indica to front boundary to maintain streetscape. e) Carpark design to be amended to increase setback at south-eastern corner of proposed carpark to retain Tree 7 and reduce impacts on tree. <p>Landscape Issues</p> <ul style="list-style-type: none"> a) Provide setback to carpark to western boundary to south of building and continue screen planting to boundary. b) Confirm FL/height and size of proposed fire sprinkler storage tank to southern corner of carpark and remove from setback. Clarify if underground tank is viable. c) Full planting plan to be provided to indicate location of planting on plan. Group planting areas to indicate percentage mix, spacings and numbers to individual areas. Existing planting to be retained to be indicated on plans.
<p>Additional information required:</p>	<ul style="list-style-type: none"> a) Arborist report to be updated following review of Civil plans and amended Landscape Plans with the information requested by Council. b) Arborist Tree Protection Plan to be updated to indicate trunk protection on plan.

Landscape Referral - B1 Neighbourhood Centre/Recreational Area

SEPP (Vegetation in Non-Rural Areas) 2017		
Part 3 Aims	Proposed	Satisfies
<p>To protect the biodiversity value of trees and other vegetation and to preserve the amenity of non-rural areas through the preservation of trees and other vegetation.</p>	<p>Trees to be removed Tree 8 <i>Eucalyptus fibrosa</i> (Red Iron Bark) and Tree 9 <i>Lophostemon confertus</i> (Brush Box) are located within the proposed access road footprint. Tree 9 is a significant native tree in size, however not a species of Blue Gum High Forest. Tree 59 <i>Fraxinus</i> sp (Ash) is an exotic tree within proposed ramp. Tree 71 <i>Lagerstroemia indica</i> (Crepe Myrtle) is within 3m of front façade however contributes to the Streetscape. The Arborist report notes tree as in good condition and with no defects. Alternative location of fire hydrant booster to be reviewed and potential to retain existing tree if no reason for its removal provided.</p> <p>Trees to be retained Trees 2-7 exotic trees to carpark and neighbouring property to be retained. Trees 10-58, 60-70 within carpark and Selkirk Park to be retained are native predominantly Blue Gum High Forest species. Arborist report prepared by Moore Trees Arboricultural Services dated December 2019,</p> <p>Structural Engineer states that the new road through Selkirk Park to be designed to avoid loading existing root system zones and adopt a foundation system. Details of foundation system to be provided as part of the DA. Relationship of proposed road to adjacent pedestrian path and ground levels to be resolved including any safety fencing and impact of slotted drainage. Road is up to 1m above existing ground. Section through midpoint of access road would be beneficial to illustrate relationship of road with existing ground levels and proposed path. Incursion of access road on trees has not been addressed in Arborist report. Including Tree 23 (approx.20% encroachment), Tree 25 (approx.25% encroachment), and Tree 26 (approx.28% encroachment),</p> <p>Access road is a minor encroachment to Tree 19-15%, Tree 20 <10%, Tree 24 <10%, Tree 27 <10% Tree 28 <10%, Tree 29 <10% and Tree 30 <10%.</p> <p>Carpark to south-eastern corner is a major encroachment on Tree 7 (3m TPZ/SRZ 2.1) with excavation within structural root zone and approximate 25% encroachment.</p>	<p>NO</p>

	<p><i>Setback to be increased to retain tree and reduce impacts..</i></p> <p><i>Tree 6 (4.8/2.4) 10%, Tree 5 (10.8/3.3) 28% encroachment however existing carpark layout in same location as proposed.</i></p> <p><i>Tree 4 (3/2.1) and Tree 2 (2.4/1.9) minimal encroachment</i></p> <p><i>Tree 3 (12/3,2) Existing carpark is a major encroachment with additional 200-400mm filling however proposed carpark within same setback and a reduction of asphalt within TPZ</i></p> <p><i>Tree 1 Proposed retaining wall outside of structural root zone. Soft landscaping increased within TPZ to eastern and southern with the removal of carparking. Filling to western TPZ of Tree 1, however currently carparking surface. Arborist report states longevity of tree is limited due to evidence of Bracket Fungi.</i></p> <p><i>Trees 56 and 57 (Tpz 10.8 SRZ 3.3) are located on the northern boundary batter adjacent footpath. Arborist report has not addressed the impact of proposed 'concrete planks' surrounding trees and how area to be constructed</i></p>  <p><i>Trees 49, 50, 52, 53 and 54 existing encroachment from current driveway access to carpark.</i></p> <p><i>Trees to western neighbouring property 4 Marian street are approved for removal within consent for RFB.</i></p> <p><i>Tree protection plan does not indicate trunk protection on plan.</i></p>	
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KDCP COMPLIANCE TABLE		
Control	Proposed	Complies
Part 13 Tree and Vegetation Preservation		
<i>Landscape proposals are to retain existing trees where possible</i>	<p><i>The proposal retains significant existing trees.</i></p> <p><i>Unable to fully assess the impact on existing trees without additional information.</i></p>	NO

	<i>Encroachment of road and carpark on existing trees and final level detail has not been provided.</i>	
<i>Tree replenishment and planting to be provided</i>	<i>Sufficient tree replenishment and planting has been included on the landscape plan</i>	YES
Part 9A .3 Deep Soil Landscaping		
<i>Part 9A.3 Deep soil Landscaping (min 3m side and rear setbacks)</i>	<i>3m setback to rear boundary and part of western boundary. Eastern boundary driveway removed and replaced with landscaping and amphitheatre leading into park. Western boundary of carpark to south of building adjacent loading dock has no setback. Setback to increase and additional planting to be provided.</i> <i>Western boundary to existing building has no deep soil setback as existing building is retained.</i>	NO
<i>Part 9B.2 Car Parking</i>	<i>A maximum 5 parking bays with min 2m wide deep soil landscape islands between parking bays and around the perimeter of the area and broad canopy trees. Eight carparks in a row proposed however supported as total carpark area reduced and soft landscaping increased . Tree impacts are to be resolved as stated in Tree impacts.</i>	YES
Part 19 Heritage Items and Heritage Conservation Areas		
<i>19F.3 Gardens and Landscaping – in the vicinity of Heritage Items/HCAs</i>	<i>The landscape objectives have been addressed as follows:</i> <i>Landscape area increased and minimal tree removal</i>	YES
Part 21 General Site Design		
<i>21.1 Earthworks and Slope Landscape cut or fill should not be more than 600mm above or below natural ground line.</i> <i>A minimum 0.6m width is required between retaining walls.</i> <i>Existing ground level is to be maintained for a distance of 2m from any boundary.</i>	<i>Cut and fill</i> <i>Proposed access road through Selkirk Park is 300mm up to 1m above existing ground levels. Relationship of proposed road to adjacent pedestrian path and ground levels to be resolved. Requirement for any safety fencing to be indicated and detailed and impacts of drainage on trees to be considered.</i> <i>Levels to proposed pedestrian path adjacent proposed access road to be provided. Level changes with TPZ of existing trees is to be avoided. Potential impacts to Trees 19, 20, 21, 23, 24, 29, 30 and 31.</i>	NO
<i>21.2 Landscape Design To ensure the landscape design and species selection is suitable to the site its</i>	<i>Landscape Plan satisfactory Screen planting/setbacks to be provided to western boundary to south of building within carpark, adjacent to loading dock.</i>	NO

context and considers the amenity of residents and neighbours.	<p>Details of size of fire sprinkler storage tank and confirmation of above or below ground tank</p> <p>Stormwater from proposed access driveway slotted kerb and levels with existing ground level to be resolved.</p> <p>Fully detailed planting plan indicating species location on plan is to be provided. Existing Lilly Pilly to southern boundary to be retained and indicated on plan.</p>	
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Amended plans were submitted and the following comments have been provided by the Senior Landscape and Tree Assessment Officer:

Recommendation:

The application is acceptable, subject to recommended conditions.

Issue/s:	<p>1. Tree impacts</p> <p>a) The pedestrian path levels adjacent to the proposed driveway have not been provided to enable final assessment of impact on trees. There are potential impacts to Trees 19, 20, 21, 23, 24, 29, 30 and 31 if filling is required.</p> <p>b) The proposed construction of the 'Concrete plank' deck surrounding Trees 56 and 57 to the northern boundary batter adjacent to the Marian Street footpath impacts these trees. This has not been fully addressed in the Arborist report or construction details fully resolved. The existing footpath and road are a major encroachment on these trees with the deck an additional encroachment within the Structural Root Zone (SRZ).</p> <p>c) The carpark is a major encroachment on Tree 7 with up to 1m excavation within SRZ and approximate 25% encroachment within the Tree Protection Zone (TPZ).</p> <p>Landscape Issues</p> <p>d) No retaining structure is indicated, and fill of up to 800mm depth to the western boundary of the carpark is proposed.</p> <p>e) Engineering plans are not consistent with the landscape plans.</p> <p>f) A fully detailed planting plan has not been provided. The existing screen planting of Syzigium sp (Lilly Pilly) to the southern boundary of Selkirk Park is to be retained.</p>
Conditions that could resolve the issue:	<p>The following issues are addressed by condition;</p> <p>Tree impacts</p> <p>a) The pedestrian path adjacent to the proposed new driveway is to be deleted.</p> <p>b) The concrete plank deck area to northern boundary is to be deleted within SRZ of Tree 56 and 57 by reducing the deck to a minimum 3.4m west of Tree 56.</p> <p>c) The carpark design is to be amended to relocate car space number 8 to an alternative location ensuring the new location is not within the TPZ of any existing tree to be retained. All plans to be updated to reflect new location.</p>

	<p>Landscape Issues</p> <p>d) A retaining wall is to be indicated to the western boundary. The wall is to be setback a minimum 2m distance from boundaries.</p> <p>e) Engineering plans are to be amended to reflect landscaping to the western boundary of carpark.</p> <p>f) A fully detailed planting plan to be provided to indicate the location of planting on plan. Any group planting areas to indicate percentage mix, spacings and numbers to individual areas. Existing planting to be retained to be indicated on plans, including Lilly Pilly hedge to south eastern boundary. Plant species to be substituted as follows; <i>Arthropodium milleflorum</i> replaced with <i>Doodia aspera</i> or <i>Blechnum cartilagineum</i> <i>Dichelachne micrantha</i> replaced with <i>Poa affinis</i> <i>Pseuderanthemum variabile</i> replaced with <i>Viola hederacea</i>.</p>
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Landscape Referral - B1 Neighbourhood Centre/Recreational Area

KDCP COMPLIANCE TABLE		
Control	Proposed	Complies
Part 13 Tree and Vegetation Preservation		
Landscape proposals are to retain existing trees where possible	<p>Arborist report prepared by Moore Trees Arboricultural Services prepared Dec 2019 and updated March 2021</p> <p>Trees to be removed Tree 8 <i>Eucalyptus fibrosa</i> (Red Iron Bark) and Tree 9 <i>Lophostemon confertus</i> (Brush Box) are located within the proposed access road footprint. Tree 9 is a significant native tree in size, however not a species of Blue Gum High Forest. Tree 59 <i>Fraxinus</i> sp (Ash) is an exotic tree within the proposed ramp. Tree 71 <i>Lagerstroemia indica</i> (Crepe Myrtle) The Arborist report notes this tree is in good condition and with no defects. The Applicant has confirmed there is no alternative location of fire hydrant booster to allow for tree retention.</p> <p>Trees to be retained Tree 1. The Structural Root Zone (SRZ) indicated on the amended plans show the proposed retaining wall is partially within SRZ. Filling of up to 400-800mm occurs within the Tree Protection Zone (TPZ) to north of Tree 1, however this is currently carparking surface. Soft landscaping is increased within the TPZ to the east and south with the removal of existing carparking and replacement with soft landscaping. The Arborist report states longevity of this tree is limited due to evidence of Bracket Fungi.</p>	<p>YES (Condition Nos 26, 33, 58, 59 60 61 and 62)</p>

	<p>Tree 2. There is minimal encroachment to this tree as proposed carpark is within the existing carpark footprint.</p> <p>Tree 3. The existing carpark is currently a major encroachment within the TPZ of this tree. There is an additional 200-400mm fill proposed within this area. However, the proposed carpark is within the existing carpark footprint and there is an overall reduction of asphalt within TPZ .</p> <p>Tree 4. There is minimal encroachment to this tree as the proposed carpark is within the existing carpark footprint.</p> <p>Tree 5. and Tree 6. Proposed carpark encroachment is acceptable as the proposed carpark is in same location as existing carpark footprint.</p> <p>Tree 7. The new carpark alignment to south eastern corner of carpark is a major encroachment. Excavation occurs within SRZ and encroachment within the TPZ. The carpark setback to this tree is to be increased to retain this tree and car parking space number 8 relocated by condition.</p> <p>Trees 10-58, 60-70 within carpark and Selkirk Park to be retained are native, predominantly Blue Gum High Forest species.</p> <p>The applicant's Structural Engineer states that the proposed driveway through Selkirk Park is to be designed to avoid loading the existing root system zones and adopt a foundation system. No construction details have been provided therefore this is unclear. The proposed driveway is up to 1m above existing ground levels. Conditions have been provided to address the footing design within the TPZs of these existing trees.</p> <p>Trees 19, 20, 24, 27, 28, 29, and 30. The proposed driveway is a minor and acceptable encroachment in relation to these trees.</p> <p>Trees 49, 50, 52, 53 and 54. The proposed decking and stairs is supported as the encroachments are less than the existing encroachments of the current driveway access.</p> <p>Tree 51. Deck and ramp are conditioned to be amended to be located a minimum of 500mm from trunk of this tree.</p> <p>Trees 56 and 57 (TPZ 10.8 SRZ 3.3) are located on the northern boundary batter, adjacent the footpath. Conditions have been provided to reduce the extent of the proposed deck to reduce impacts on the SRZs of these trees.</p>	
Tree replenishment and planting to be provided	Sufficient tree replenishment and planting has been included on the landscape plan. A detailed planting plan has been conditioned.	YES (Condition 26)

Part 9A .3 Deep Soil Landscaping		
<i>Part 9A.3 Deep soil Landscaping (min 3m side and rear setbacks)</i>	<i>Landscaping provided to 3m setback to rear boundary of carpark and increased to western boundary, except where fires services located. The existing driveway has been removed from the eastern boundary and replaced with landscaping and an amphitheatre leading into park. The western boundary to the existing building has no deep soil setback as the existing building footprint is retained.</i>	YES
<i>Part 9B.2 Car Parking A maximum 5 parking bays with minimum 2m wide deep soil landscape islands between parking bays and around the perimeter of the area and broad canopy trees</i>	<i>The proposed seven parking bays in a row are acceptable the total carpark area is reduced and the total soft landscaping increased. Conditions are provided to relocate Car Space 8 to retain Tree 7.</i>	YES (Condition 26)
Part 19 Heritage Items and Heritage Conservation Areas		
<i>19F.3 Gardens and Landscaping – in the vicinity of Heritage Items/HCAs</i>	<i>The landscape objectives have been addressed as follows: The soft landscape area is increased, there is minimal tree removal and a satisfactory new landscape treatment.</i>	YES
Part 21 General Site Design		
<i>21.1 Earthworks and Slope Landscape cut or fill should not be more than 600mm above or below natural ground line. A minimum 0.6m width is required between retaining walls. Existing ground level is to be maintained for a distance of 2m from any boundary.</i>	<i>Cut and fill Proposed access driveway through Selkirk Park is 300mm up to 1m above existing ground levels. Levels to proposed pedestrian path adjacent proposed access road are not provided or resolved. Potential impacts to Trees 19, 20, 21, 23, 24, 29, 30 and 31 due to level changes within TPZ. Under discussions with the Urban planner, the path is deleted by condition.</i>	YES (Condition 26)
<i>21.2 Landscape Design To ensure the landscape design and species selection is suitable to the site its context and considers the amenity of residents and neighbours.</i>	<i>Landscape Plan satisfactory Conditions have been provided to address the requirement of a fully detailed planting plan including retention of existing Syzigium sp (Lilly Pilly) planting to southern boundary. Species list reviewed by ecology and substitutions conditioned.</i>	YES (Condition 26)

Engineering

Council's Team Leader Development Engineers commented on the proposal as follows:

Water management

The site comprises of three separate lots. The site slopes approximately 8m from Marian Street in the north, towards the site's southern boundary. The site comprises a portion of Selkirk Park which is located immediately to the east of the Theatre building.

There is no proposed change to the existing stormwater collection for the main building. It is assumed that the stormwater runoff from the existing structures is captured by the existing downpipes and grated pits, and discharged to the existing Council stormwater pipe network in the south of the site. Details of the existing drainage arrangement are to be provided on the civil plans.

In accordance with Council's DCP, there is no requirement for OSD. Also, as there is no change to the existing roof area and/or drainage it is not feasible to request provision of a rainwater reuse tank.

The proposed works include removal of the existing driveway accessed from Marian Street and construction of a new access road providing vehicle access from Culworth Avenue through Selkirk Park.

A long section of this proposed access driveway has been submitted which shows this roadway to be an elevated structure. This structure has been shown as approximately 1m above the natural ground line. The civil plans indicate that this road is to be drained via a slotted kerb to the low side of the vehicular access, with surface water directed to existing stormwater infrastructure in reserve. Details of this arrangement shall be submitted prior to any development consent being issued.

Vehicular access and accommodation arrangements

A new vehicular access in Culworth Ave is proposed. The proposed access driveway allows for two way traffic through Selkirk Park for light vehicles and one way traffic for trucks. The driveway will be utilised by service vehicles and the general public to access the car parking spaces.

The circulation of the car parking is sufficient to accommodate a fire truck, which is the largest expected vehicle to access the site. The site has been designed to accommodate a Medium Rigid Vehicle (up to 8.8m long), which will access the loading dock at the rear of the building. The design of the car parking will allow sufficient area for the vehicle to undertake a 3-point turn within the site, in order to access and exit the site in a forward direction.

Parking for users of the Marian Street Theatre is currently provided within the at-grade carpark at the rear of the site. The upgrade of the Marian Street Theatre and associated landscape works will result in the removal of 26 publicly accessible car parking spaces. The reconfigured car park will accommodate nine (9) car parking spaces inclusive of one (1) disabled car parking space. The proposal also seeks to utilise the existing on street car parking and Killara commuter carpark.

Waste collection

A new vehicular access in Culworth Ave is proposed. The proposed access driveway allows for two way traffic through Selkirk Park for light vehicles and one way traffic for trucks. The driveway will be utilised by service vehicles and the general public to access the car parking spaces. The service vehicles generally include waste servicing trucks, delivery trucks and other servicing trucks associated with the café and the performances. A boom gate will also be installed to assist with the management of the access when the Marian Street Theatre is not in operation.

Flooding

A flood study is not required for the following reasons:

- There is no change to the footprint of the existing building.
- As the new road is proposed to be an elevated structure, it will have a minimal obstruction to any overland flow.
- The lowest floor level of the theatre, the rear loading dock, has a floor level of 107.67, which is approximately 2m above the lowest ground level to the rear 105.64.
- The proposed new car park works in the south of the site are mostly at grade and are expected to have no impact on flooding through the site.

Construction management

A preliminary construction traffic management (CTMP) has been provided. This submitted CTMP does not provide detail on truck routes or if a works zone is required. Conditions of consent for a detailed CTMP and a work zone are recommended (**Conditions 9 and 10**).

Impacts on Council infrastructure

A new vehicular crossing in Culworth Ave is proposed. The levels of this proposed crossing will not be a problem as the existing levels, which include a council footpath, are satisfactory.

The existing layback on Marian St shall be deleted as part of these works.

It has been conditioned (**Conditions 35 and 37**) that detailed design drawings suitable for construction issue purposes must be submitted and assessed by Council's Operations Department for approval under the Roads Act. The following infrastructure works are required:

- Removal of the existing layback on Marian Street frontage and replacement with kerb and gutter
- Construction of a new commercial vehicular crossing from Culworth Avenue

Geotechnical investigation

A geotechnical investigation was carried out using:

- A review of existing regional maps and reports relevant to the site held [on file](#).
- Clearance of underground services at proposed test locations.
- Visual observations of surface features.
- Subsurface investigation at eleven locations to sample and assess the nature and consistency of subsurface soils and bedrock at accessible areas of the

site. Investigations included hand and machine-drilled boreholes and conducting Dynamic Cone Penetrometer (DCP) soundings

- Carrying out laboratory tests on the recovered soil samples to provide engineering data.
- Engineering assessment and reporting.

The boreholes were auger drilled to depths of 1m to 3.1m below ground level (bgl) and were discontinued at the recorded depths due to reaching target depths or refusal. The DCP soundings were terminated at depths of 1m to 1.2m at 'practical' refusal and target depth.

Results discovered the following subsurface conditions:

Fill	ground surface – 0.2/0.6	Asphalt pavement and silty sand
Residual	0.2/0.6 - 0.3/2.3	Clay
Bedrock	1/2.6 - 3.1	Clayey shale

Groundwater was not observed in the boreholes during auger drilling to depths of 1m to 3.1m bgl

No recommendations for dilapidation reports of adjacent properties have been provided in the geotech report, however **Condition 8** requires further dilapidation reports to be undertaken.

Recommendations – Additional information required

Stormwater

- A long section of this proposed access driveway has been submitted which shows this roadway to be an elevated structure. This structure has been shown as approximately 1m above the natural ground line. The civil plans indicate that this road is to be drained via a slotted kerb to the low side of vehicular access with surface water directed to existing stormwater infrastructure in reserve. Details of this arrangement shall be submitted.
- There is no proposed changes to the existing stormwater collection for the main building. It is assumed that the stormwater runoff from the existing structures is captured by the existing downpipes and grated pits, and discharged to the existing Council stormwater pipe network in the south of the site. Details of the existing drainage arrangement shall be provided on the civil plans.

The applicant provided the above information and, in response, Council's Team Leader Development Engineer provided the following additional comment.

Water management

The proposed works include removal of the existing driveway accessed from Marian Street and construction of a new access road providing vehicle access from Culworth Avenue through Selkirk Park.

A long section of this proposed access driveway has been submitted which shows this roadway to be an elevated structure with one-way cross fall towards the north. This structure has been shown as approximately 1m above the natural ground line. The edge treatment along this low side will be slotted kerb to allow the stormwater to flow off the road and onto the ground below.

This arrangement is satisfactory.

Vehicular access and accommodation arrangements

The driveway shall be widened to 6m for the first 6m inside the boundary to allow for better access for vehicles entering from Culworth Avenue.

*The proposed elevated driveway shall provide barriers in accordance with AS 2890.1:2004, part 2.4.5.3, to avoid vehicles driving off the edge. This will be required via a condition of consent (**Condition 27**)*

Due to the winding and elevated nature of this proposed driveway, lighting shall be provided for safer access when it is dark. The submitted lighting report suggests that: "pole mounted streetscape luminaires will be placed along the roadways and parking spaces. "

*However, lighting to the proposed driveway will be subject of a condition. (**Condition 27**).*

The proposed boom gate at the top of the driveway shall be relocated to 6m inside the boundary to allow vehicles enter the site to use the intercom, and avoid vehicles queuing on Culworth Avenue.

Recommendation

*The application is acceptable, subject to (**Conditions 22, 27, 35, 36 37and 71**).*

Health

Council's Senior Environmental Health Officer commented on the proposal as follows:

Initial concerns:

- 1. Acoustic assessment** – *it is noted that the background noise level readings were taken at the front of the site adjoining Marian Street which is subject to vehicle noise and commercial activities around the shops. The noise levels at the front of the site are potentially not representative of the background noise level at the rear of the site which is located lower and some distance from the road. Residents adjoining the back of the site are likely to be impacted by deliveries, waste collections, loading/unloading activities and vehicle movements in the carpark rather than the noise of performances within the building. Additional assessment of the background noise level at the rear of the site should be provided to be confident that an appropriate external noise level criteria, particularly for the night-time period, has been established for the development.*
- 2. Hours of operation** - *The proposed hours of use from 7am to 11.30pm every day of the week, is not acceptable. These hours are likely to create unreasonable noise impacts for adjoining residential occupants, in particular, at night and especially days of the week such as Sunday nights where there is a greater expectation of reduced noise in the area. The acoustic report does not sufficiently address this concern and management procedures such as signage are not a reliable measure for noise control. Consideration should be given to limiting operational hours, as a minimum, between Sunday - Tuesday nights and public holidays to reduce noise impacts for adjoining residents. As an*

example performances could finish at 9:30pm Sunday – Tuesday with all patrons to leave the premises by 10:00pm and staff to have left by 10:30pm.

Additional information is required in relation to

- 1. Background noise level** - Additional assessment of the background noise level at the rear of the site should be undertaken to confirm the external noise level criteria for the development;
- 2. Operational hours** – Proposed hours should be reviewed to minimise noise impacts to surrounding residential occupants at night. Details of hours of operation of the individual uses of the premises such as performances, café, rehearsals could be provided and proposed hours should take into consideration noise impacts from the departure of patrons and staff late at night and should allow for earlier closing times on quieter days of the week such as Sundays – Tuesdays.
- 3. Amphitheatre** – Insufficient information has been provided about the likely use of this outdoor space and therefore it is difficult to determine the potential noise impacts for surrounding neighbours. Additional information should be provided about the proposed hours of use, types of activities, likely use of amplified equipment, lighting etc.
- 4. Water cooling system** – Council's records indicate that there was a cooling tower on the premises that was decommissioned in 2015. This tower may still be on site and it is unclear if it is to be removed or re-activated for this re-development. If it has been removed Council's Environmental Health team is to be advised.
- 5. Grease trap** – There is a commercial kitchen already on the site and the property may have a grease trap however it is not clear on the plans. If a grease trap is not on site it may be required to service the food business and Sydney Water should be contacted to clarify this.

The applicant provided the above requested information and additional information was also submitted by the applicant. Council's Senior Environmental Health Officer provided the following comment.

The amended plans associated with DA0144/20 were reviewed as requested and following comments made:

1. Cordoning off areas of the adjacent public car park

There are possible concerns about cordoning off areas of the public commuter carpark across the street between 10pm and 7am as suggested in the updated Noise Impact Assessment (Ref: S190363RP3 Revision F). These concerns relate to things like the feasibility, practicality and legality of attempting to enforce a condition that required Marian Street Theatre to cordon off areas of a public commuter carpark which is already open to the public between 10pm and 7am.

Discussion with Council's Planning Consultant has indicated that if the theatre closed before 10pm then the cordoning off of areas in the adjacent public commuter car park is not required. As such, the following conditions need to be imposed to restrict the operating hours of Marian Street Theatre which would then mean the Marian Street Theatre is not responsible for cordoning off areas of the adjacent public commuter car park.

1. Hours of operation- theatre building

At all times, the hours of operation are restricted to:

<i>Wednesday to Saturday</i>	<i>7.00am – 9.30pm</i>
<i>Sunday to Tuesday</i>	<i>8.30am – 9.30pm</i>

Staff and patrons must leave the premises by 10.00pm.

Reason: *To protect the amenity of the area.*

2. Inconsistency between the traffic report and acoustic report

There is an inconsistency between the acoustic report and the traffic report. This inconsistency is as follows:

- 1) The acoustic report states that the Auditorium (Level 2) cannot be used at the same time as the Theatrette (Level 1) as the Auditorium is directly above the Theatrette.*
- 2) The traffic report states that additional sound insulation was provided to permit the use of the Theatrette and the Auditorium at the same time.*

Discussion with Council's Planning Consultant has indicated that it is not financially viable for the Theatre to be acoustically insulated to permit the simultaneous use of the Auditorium and Theatrette.

As the traffic report over estimates the patronage on the basis of concurrent use of the auditorium and theatrette, there is no need to require it to be updated. The requested conditions have been included in the recommendation.

External Referrals

Traffic

The application was referred to Transport and Traffic Planning Associates for assessment given the application involved a Council property and the following comments were received in response.

The revised plans, the proposed revised operational circumstances and the supplementary letter statement from ptc in the context of their Traffic Impact Assessment dated January 2020 has been assessed as follows:

Parking

It is understood that the reliance of the ptc assessment on the criteria specified in the Council's DCP, however the potential reality of the parking outcome is as follows:

- A likely maximum number of persons on-site is:*
 - 249 Theatre*
 - 60 Rehearsal*
 - 45 Staff/performers*
 - Total 354 **

**café – common flexible common unlikely*

*Say 85% attendance and 5% non-car travel
284 by car @ average 2.0 per car
Total 142 cars (9 provided on-site)
133 elsewhere*

- Previously:

*280 seats
30 Staff/performers (say)
Total 310
85% and 5%
248 by car @ 2.0 per car
124 cars (36 on-site)
88 elsewhere*

- 45 additional cars parked compared to previous

The ptc report states that Council would accept a Consent Condition requiring the preparation and implementation of an Operational Transport and Pedestrian Access Management Plan. This should be titled Operational Parking, Transport and Pedestrian Access Management Plan.

The ptc report recommends the provision of 5 bicycle spaces based on the on-site provision of 9 parking spaces however there are no bicycle spaces shown on the development plans. If the required provision was 2% of the parking demand (either by DCP criteria or reality) the number required would be much higher. There is no apparent reason why some motor cycle parking could not be provided on site even if it is only for staff, actors etc. There is one accessible staff space shown alongside the building but the arrangement of the indicated space does not comply with AS2890.6 and I would think that the on-street accessible spaces similarly would not comply with this standard.

Traffic

The traffic assessment provided in the ptc report relates to potential car parking derived by applying the DCP parking criteria (i.e. 53 cars) and therefore does not reflect the reality of the traffic outcome (142 cars). It is inevitable that there will be significant setdown and pick-up activity and this is likely to include vehicles dropping off and picking up passengers due to the expected distance that the car will need to park away from the site. The recommended provision of 2 parking spaces with a 10 minute stay duration would not be adequate to serve this demand particularly for cars picking up passengers at the end of a performance.

Pedestrian

A significant proportion of pedestrians will seek to cross Marian Street at the site frontage to:

- Travel to/from the Railway Station*
- Travel to/from cars parked in the railway car park*
- Travel to/from cars parked on-street*

The provision of a pedestrian refuge island would result in the elimination of a very substantial number of kerbside parking spaces (see attached). A preferable alternative treatment would be to provide "kerb extensions" each side of Marian Street with flood lighting and "pedestrian" warning signage and assess whether a warrant for the provision of a marked footcrossing is satisfied under operational circumstances.

The above assessment raised concerns in relation to the provision of parking spaces and the capacity for drop-off and pick-up where the theatre is used at near capacity and the rehearsal room is used at the same time (even assuming the theatrette, café and community space are not used at the same time). To address this concern, a condition of consent is recommended requiring that where the theatre is to be occupied by more than 200 persons of an evening, no other uses on the site are permitted. Further, given the reliance upon the commuter car parking spaces, which will largely be occupied during daytime hours Monday-Friday, a further condition is recommended requiring that the theatre use for daytime performances on weekdays shall be limited to 150 persons, along with a requirement that the other uses, other than the café, not operate at the same time. (**Condition 106**).

Conditions of consent in relation to signage, footpath and lighting works in relation to access to the commuter car park are recommended (**Condition 22**), along with a condition in relation to the kerb extension recommended (**Condition 22**).

STATUTORY PROVISIONS

State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated. The application was accompanied by a Preliminary Site Investigation report which concluded that the site can be made suitable for the proposed development, subject to recommendations. Conditions of consent are included to require the recommendations to be addressed during the construction of the development (**Conditions 1 and 5**).

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*

As has been addressed, subject to the recommendations of the Preliminary Site Investigation report, the site can be made suitable for the proposed development.

State Environmental Planning Policy No. 19 – Bushland in Urban Areas

Consideration has been given to Clause 9 of the SEPP, Land adjoining land zoned or reserved for public open space (see Landscape comments). The proposed development will not result in the loss of any significant bushland on the land. Conditions are recommended to ensure minimal impact to the adjoining bushland and in particular to protect against erosion and siltation of soils into streams and waterways. The works are unlikely to result in the spreading of weeds and exotic plants into the bushland area.

As a result of the above and subject to the recommended landscape conditions (**Conditions 19, 26, 27 and 33**), it is considered that the bushland area will be protected and preserved consistent with the provisions contained in the SEPP.

State Environmental Planning Policy No. 64 – Advertising and Signage

The SEPP applies to all signage that can be displayed with or without development consent and is visible from any public place or reserve.

The provisions of Part 3 do not apply to building identification signs and, as such, they do not apply to the proposed signage at the front of the building on the awning or on the rear façade of the building. Both of these signs are of appropriate size and design for their location, however the flood lighting of the sign on the rear of the building is considered unnecessary and inappropriate given the adjoining residential properties. A condition of consent is recommended requiring the sign not to be floodlit (**Condition 109**). The sign on the front awning is to be illuminated and a condition of consent is recommended requiring the sign to be illuminated only when the premises are in operation. (**Condition 109**).

The final sign is to be located adjacent to the entrance of the theatre and is to have dimensions of 4.23m x 1.73m. The sign is to provide interchangeable performance advertisements and is to be internally illuminated by LED light. Such a sign is appropriate for a theatre, and subject to compliance with the recommendations of the lighting report, satisfies the design criteria of SEPP 64 (**Condition 109**).

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The SEPP commenced on 25 August 2017 and replaced clause 5.9 of Ku-ring-gai Local Environmental Plan 2015, which aimed to preserve trees and vegetation. The objective of the SEPP is to protect the biodiversity values of trees and other vegetation and to preserve the amenity of the area through the preservation of trees and other vegetation.

The proposed development involves the removal of some trees, however, subject to the recommended landscape conditions (**Conditions 19, 26, 27 and 33**) and having regard to the proposed landscaping, the removal of the trees is acceptable.

Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005

Matters for consideration under SREP 2005 include biodiversity, ecology and environmental protection, public access to and scenic qualities of foreshores and waterways, maintenance of views, control of boat facilities and maintenance of a working harbour. The proposal is not subject to the provisions that apply to the assessment of development applications as the site is not located in the Foreshores and Waterways Area.

Appropriate provision will be made for soil and sedimentation control during construction works.

Ku-ring-gai Local Environmental Plan 2015

Zoning and permissibility:

The site is part zoned B1 Neighbourhood Centre (theatre site) and part zoned RE1 Public Recreation (park). The proposed development is defined as a number of different uses. The development within the B1 zone is defined as an entertainment facility, restaurant or café, building identification sign and signage (see following definitions), all of which are permissible uses with consent.

entertainment facility means a theatre, cinema, music hall, concert hall, dance hall and the like, but does not include a pub or registered club.

restaurant or cafe means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

Note—

Restaurants or cafes are a type of **food and drink premises**—see the definition of that term in this Dictionary.

building identification sign means a sign that identifies or names a building and that may include the name of a building, the street name and number of a building, and a logo or other symbol but does not include general advertising of products, goods or services.

Note—

Building identification signs are a type of **signage**—see the definition of that term in this Dictionary.

signage means any sign, notice, device, representation or advertisement that advertises or promotes any goods, services or events and any structure or vessel that is principally designed for, or that is used for, the display of signage, and includes any of the following—

- (a) an advertising structure,
- (b) a building identification sign,
- (c) a business identification sign,

but does not include a traffic sign or traffic control facilities.

The development within the RE1 zone is defined as recreation area (and ancillary uses) and road (see following definitions). Recreation areas are a permissible uses with consent and roads are a permissible use without consent.

recreation area means a place used for outdoor recreation that is normally open to the public, and includes—

- (a) a children's playground, or
 - (b) an area used for community sporting activities, or
 - (c) a public park, reserve or garden or the like,
- and any ancillary buildings, but does not include a recreation facility (indoor), recreation facility (major) or recreation facility (outdoor).

road means a public road or a private road within the meaning of the [Roads Act 1993](#), and includes a classified road.

Zone objectives:

The objective of the B1 zone is as follows:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

The upgrading of the theatre and provision of a café will provide an improved facility

for the community which will serve the needs of the people who live and work in the surrounding neighbourhood and beyond and as such satisfies the objective of the B1 zone.

The objectives of the RE1 zone are as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*

The development on the RE1 zone is designed to protect the ecological, scientific, cultural and aesthetic values of the area, protecting trees during construction and by design, enhancing the landscaping of the park around the proposed structures and complementing the cultural use of the adjoining theatre. Whilst achieving these purposes the development seeks to ensure the space is available for public open space and recreational purposes and increases the range of settings and activities on the site. In combination with the additional landscaping of the current driveway and parts of the carpark of the theatre site, the development will protect and enhance the natural environment. As such the proposal is consistent with the objectives of the RE1 zone.

Development standards:

Ku-ring-gai Local Environmental Plan 2015

Development standard	Proposed	Complies
CI 4.3 - Height of buildings: Maximum Building Height - 9.5 metres	4.33m – 16.22m	NO
CI 4.4 - Floor space ratio (FSR): Maximum Floor Space Ratio - 0.75:1 Site 2,791m ² , maximum GFA 2,093.25m ²	GFA 1,302.8m ² * FSR 0.47:1	YES

* Note this calculation includes two areas of the building (11.3m²) not included in the applicant's calculations

Clause 4.6 Exceptions to development standards

The proposed development breaches the maximum building height development standard at clause 4.3 of the LEP. The applicant has made a submission pursuant of Clause 4.6 to vary this development standard. Clause 4.6 provides flexibility in applying certain development standards on the following grounds:

The extent of breach of the height control is shown in the following plans (Figures 11 and 12) in relation to the existing and proposed building. The area above the blue height plan in each figure shows the extent of the building that breaches the control. It is noted that the "white" building adjoining the theatre building in these figures is the approved apartment building on the adjoining site to the west.

Further, in order to understand the context of the breach of the height control it is noted that the properties to the south and west of the site are zoned R4 High Density Residential and have a maximum height control of 17.5m.



Figure 11: Existing theatre building with area above the blue height plane indicating the breach of the 9.5m height control

The front portion front portion of the building as it faces Marian Street is compliant with the height control, however, as the site slopes to the rear, the building breaches the height control currently and as proposed for the remaining length of the building. It is noted that the roof form of the front of the building complies with the height control at the eaves.

Accordingly, the proposal has the following maximum breaches of the height control of 9.5m. the table also identifies the extent of breach and the extent of increase over the height of the existing building.

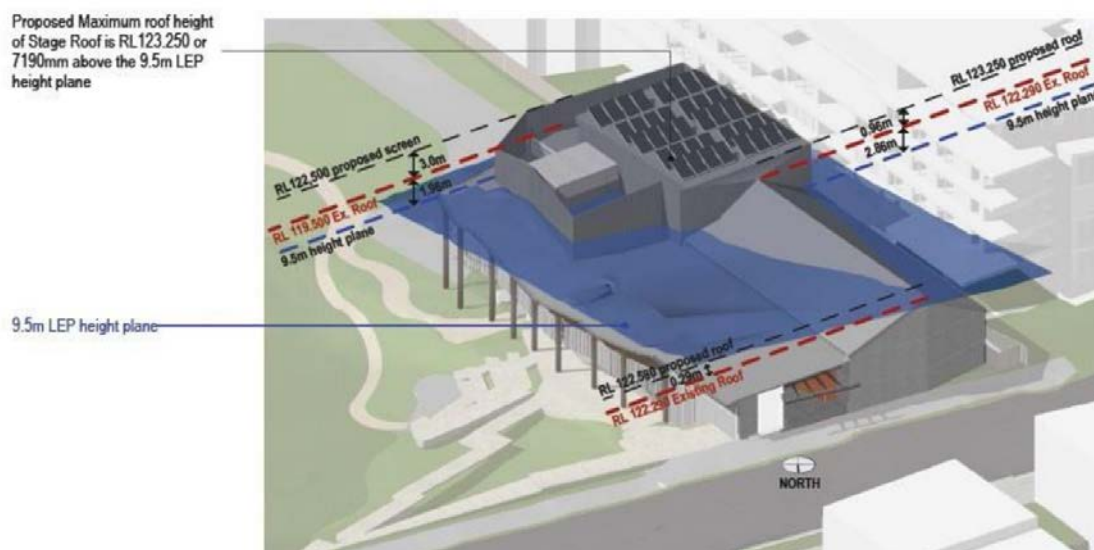


Figure 12: Proposed theatre building with area above the blue height plane indicating the breach of the 9.5m height control

Element	Max. height	Breach	Increase
Front roof ridge	9.4m - 13.1m	Complies – 3.6m (38%)	0.3m
Roof over stage lighting	13.8m – 14.7m	4.3m – 5.2m (45 - 55%)	0.9m-3.0m
Roof plant screen	13.9m – 14.5m	4.4m – 5m (46 – 53%)	3.0m – 4.9m
Solar panels	15.0m – 16.7m	5.5m – 6.7m (58-76%)	4.1m-4.8m

As can be seen in Figures 11 and 12, the greatest increase in height and breach of height control occurs at the rear of the site where the breach will not be visibly discernible from most viewing positions along Marian Street but will be when viewed from the park or adjoining residential properties.

The applicant has provided the following reasons for the increases in height of the building:

- *The existing auditorium roof requires structural strengthening and acoustic treatment. To conserve the existing roof structure that is visible from within the auditorium, a second roof layer has been applied over to accommodate the necessary structural and acoustic upgrades. The second roof layer has been designed to fit the existing roof fall and form, minimising the height exceedance and any shadow impacts.*
- *A new roof structure has been installed over the stage to increase the performance capabilities of the Theatre below. The void below this roof structure is also required for smoke exhaust over the auditorium stage to meet required fire protection upgrades to the building. Walls and screens surrounding the roof overrun have been angled where possible to minimise shadow impacts.*
- *The installation of PV cells to improve the efficiency and environmental performance of the building*

Clause 4.6 (KLEP) provision	Assessment
<p>Whether the proposed development is consistent with the objectives of the particular standard</p>	<p>The objectives of the standard are:</p> <p><i>(a) to ensure that the height of buildings is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres,</i></p> <p><i>(b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,</i></p> <p><i>(c) to enable development with a built form that is compatible with the size of the land to be developed.</i></p> <p>Notwithstanding the significant numerical breaches of the height control proposed, the development is considered to be of an appropriate scale for the centre in which it is located as it presents a single storey façade to Marian Street which is lower than buildings surrounding the site and the maximum height remains below that permitted on the adjoining properties to the west and south, which have a height control of 17.5m.</p> <p>The site does not adjoin low density residential properties, with the adjoining sites permitted a greater height and as such the breaching height control provides and appropriate transition to the height of development permitted on the adjoining residential properties. In relationship with the park is protected by the significant and large retained trees within the site and within the park and the proposed additional planting.</p> <p>The built form is compatible with the size of the allotment, which has a significant area and a frontage of over 30m.</p>

Clause 4.6 (KLEP) provision	Assessment
Whether the proposed development is consistent with the objectives for development within the zone	As has been addressed previously within this report the proposed development is consistent with the objectives of the B1 Neighbourhood Centre zone.
Whether compliance with the development standard unreasonable or unnecessary in the circumstances of the case	<p>The applicant has provided justification that strict compliance with the maximum height development standards is unnecessary and unreasonable as the proposal achieves the objectives of the control notwithstanding the breach for the following reasons:</p> <ul style="list-style-type: none"> • <i>The non-compliance if driven by the need to retain the existing building and undertake necessary structural, acoustic, functional and environmental upgrades to ensure the ongoing operation of the Theatre;</i> • <i>The height and scale of the proposed development will continue to provide a transition in scale between development to the west and Selkirk Park to the east;</i> • <i>The additions are generally limited to the rear of the building, thereby minimising impacts on the Marian Street streetscape;</i> • <i>The scale of the proposed development does not represent an over development of the site; and</i> • <i>The design protects the residential amenity of adjoining and surrounding properties, as well as the amenity of Selkirk Park to the east.</i> <p>As is discussed throughout this report and previously in this table and having regard to the justification contained in the applicant's clause 4.6 variation request, the proposal is considered to be consistent with the objectives of the control and zone. As such, compliance with the development standard is unreasonable and unnecessary in the circumstances of this case.</p>
Whether there are sufficient environmental planning grounds to justify contravening the development standard	<p>The applicant has provided adequate grounds/reasons for the proposed variation to the development standard as follows:</p> <p><i>Due to the topography of the site, the maximum RL for the development varies across the site. Parts of the existing building already exceed the 9.5m height limit by up to 2.37m at the rear (south) of the building and 5.1m in the centre of the building to the top of the existing Auditorium roof.</i></p> <p><i>The proposal comprises alterations and additions to the existing building. As a result, the development will continue to exceed the applicable height standard. The proposed additions to improve the structural, acoustic and environmental performance of the building, as well as the functionality of the Theatre, will result in a further exceedance of the 9.5m height limit by up to 6.06m (63.7%) to the top of the building, and 7.19m (75.7%) to the top of the PV cells. The exceedance is only 2.09m over the maximum height of the existing building.</i></p>

Clause 4.6 (KLEP) provision	Assessment
	<p><i>As noted above, the non-compliance is driven by the following proposed upgrades:</i></p> <ul style="list-style-type: none"> <i>The existing auditorium roof requires structural strengthening and acoustic treatment. To conserve the existing roof structure that is visible from within the auditorium, a second roof layer has been applied over to accommodate the necessary structural and acoustic upgrades. The second roof layer has been designed to fit the existing roof fall and form, minimising the height exceedance and any shadow impacts.</i> <i>A new roof structure has been installed over the stage to increase the performance capabilities of the Theatre below. The void below this roof structure is also required for smoke exhaust over the auditorium stage to meet required fire protection upgrades to the building. The height exceedance is primarily made up of the walls and roof that form the Theatre safety plant room and Theatre stage overrun. The Theatre built form has been designed to the minimum height and plan extents to ensure that a compliant, safe and functional Theatre can be constructed. Walls and screens surrounding the roof overrun have been angled where possible to minimise shadow impacts.</i> <i>The installation of PV cells to improve the efficiency and environmental performance of the building. The retention of the existing building represents the most viable outcome from an economic, environmental and social perspective. The retention of the existing building, and the proposed structural, acoustic, functional and environmental upgrades, necessitates a further exceedance of the height of building development standard by up to 6.06m (63.7%) to the top of the building, and 7.19m (75.7%) to the top of the PV cells. The exceedance is only 2.09m over the maximum height of the existing building.</i> <p><i>Notwithstanding, a number of measures have been used to minimise the extent of the height exceedance and reduce any impacts on neighbouring properties. These measures include:</i></p> <ul style="list-style-type: none"> <i>Using minimum compliant internal room clearance heights;</i> <i>Implementing a lighting only stage overrun instead of a fly tower overrun which would require a significant increase to the overrun height;</i> <i>Minimising internal circulation around plant areas;</i> <i>Sloping the MC 'Metal Cladding' screens where possible to maximise solar access to 4-8 Marian Street;</i> <i>Designing the stage overrun to a minimum footprint by locating it directly over the stage curtain and existing walls. Gantry access has been provided in lieu of separated corridors which would increase the stage overrun footprint substantially; and</i>

Clause 4.6 (KLEP) provision	Assessment
	<ul style="list-style-type: none"> • <i>Locating PV Cells above the roof overrun in a due north orientation, which optimises their performance and provides a sustainable power source for the theatre. Utilising a low slope roof profile of 2 degrees, maximises PV Cell exposure to solar access whilst maximising solar access to 4 – 8 Marian Street.</i> <p><i>Finally, the proposed development, including the exceedance of the LEP height standard, continues to be consistent with the objectives of the development standard, land use zone and the objects of the EP&A Act.</i></p> <p>The applicant has also indicated in the clause 4.6 variation request that the proposal results in necessary upgrade works to allow the theatre to recommence use and that strict compliance with the height control would render the upgrade unfeasible, resulting in the lost opportunity of allowing the reuse of the theatre for the public. This rationale advanced by the applicant to support the variation to the height control is accepted and it is acknowledged that the heights proposed have been minimised to a reasonable extent.</p> <p>The applicant has also provided an assessment of the impact upon the solar access of apartments within 4-8 Marian Street as a result of the breach of the height control, as follows: <i>The development, including the proposed exceedance of the mapped building height, will have an acceptable overshadowing impact on the property to the west of the site at 4 – 8 Marian Street. The site has been approved for the construction of a residential flat building with 31 apartments, including 14 affordable housing apartments. Construction has not yet commenced.</i></p> <p><i>TZG has undertaken a solar access analysis to compare the overshadowing impacts of an LEP compliant building and the proposed building on the future development at 4 – 8 Marian Street. The analysis has determined that the proposed building will result in two of the approved apartments no longer achieving 2 hours of solar access on the Winter Solstice. However, the proposed development, including the exceedance of the LEP height limit, would result in the same level of solar access as an LEP compliant building, with 64.5% of apartments achieving a minimum of 2 hours solar access on the Winter Solstice under both development scenarios. The level of impact varies across apartments between the Marian Street Theatre form and the LEP compliant building form, however the net impact of total solar access complaint apartments is the same.</i></p> <p>It is agreed in this instance, that the public benefit of upgrading the theatre to allow its continued use is of such significance that the impact upon solar access of the future building at 4-8 Marian Street is acceptable notwithstanding it results from breaches of the height control. This assessment has been made having also considered that a height compliant development could be erected on the subject site which would result in the same number of</p>

Clause 4.6 (KLEP) provision	Assessment
	<p>apartments in 4-8 Marian Street achieving a compliant 2 hours of solar access in midwinter, albeit it would affect different apartments.</p> <p>It is considered that the public benefit of the proposal constitutes a sufficient environmental planning ground for variation of the control.</p>
Whether the proposed development is in the public interest	The proposal is considered to be in the public interest as it is consistent with the zone and development standard objectives and provides for the upgrade and use of a publicly owned facility for the community.
Whether the proposed development is consistent with objectives of clause 4.6, being, whether by allowing flexibility in the particular circumstances a better outcome for and from the development is achieved	The applicant's justification provides that compliance is unreasonable and unnecessary as all clause 4.6 criteria are satisfied. The development achieves the objectives of both the standard and zone as applicable and there are sufficient environmental planning grounds to justify the variation.
Concurrence of the Director General	Circular PS 18-003 issued on 21 February 2018 informed Council that it may assume the Director-General's concurrence for exceptions to development standards. However, any variation to a standard that exceeds 10% must be considered by the Independent Hearing and Assessment Panel.
Any state or regionally significant planning matters raised by contravening the standard	There are no matters of state or regional planning significance in relation to the contravention of the standard.
The public benefit of maintaining the standard	In this instance, there is significant public benefit in varying the height standard on the subject site as it results in the upgrade and use of a publicly owned facility.

The submitted request to vary the development standard is supported and applying flexibility in respect of height control is considered appropriate in this circumstance. The development satisfies the criteria outlined in Clause 4.6. The variation is considered acceptable.

Clause 5.10 – Heritage conservation

The subject site does not contain a heritage item, but is located opposite a heritage conservation area and within 100m of items of heritage. The proposed works do not affect any known archaeological or Aboriginal objects or Aboriginal places of heritage significance. The application has been considered by Council's Heritage Advisor who has no objection to the application.

Part 6 Additional local provisions

Clause – Acid sulphate soils

The site is classified as being in a Class 5 area under the Acid Sulphate Soils map of the LEP. Whilst the works involve some level of excavation, the excavation is relatively minor and but is not within 500m of any land classified 1-4. As such not further assessment is required.

Clause - Earthworks

The proposed development will not restrict the existing or future use of the site, adversely impact on neighbouring amenity, the quality of the water table or disturb any known relics. Additionally, the fill to be removed will be disposed of appropriately.

Clause - Stormwater and water sensitive urban design

Council's Development Engineer has given consideration to the objective of this clause which seeks to minimise the adverse impacts of urban water on the site and within the catchment. The stormwater design adequately manages water quality and control discharge volumes and frequency, subject to standard engineering conditions.

Clause - Biodiversity protection

The site is mapped as land comprising biodiversity significance.

The proposed development has been designed to minimise impacts on the diversity and condition of native vegetation, fauna and habitat as per the requirements of the LEP, subject to the recommended landscape conditions (**Conditions 19, 26, 27 and 33**).

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

Ku-ring-gai Development Control Plan

Part 1A.5 General aims of the DCP

The proposed development has been assessed against the general aims of this DCP and is found to be acceptable in all relevant respects for the reasons given throughout this report.

Part 2: Site analysis

A site analysis which identifies the existing characteristics of the site and the surrounding area has been provided as part of the development application. The site analysis is considered to satisfy the objectives of this part of the DCP.

Part 9 – Non-residential and Office Buildings

This part applies to all non-residential buildings in the B1 zone and as such applies to the subject application, indicating that the controls should apply to all new components of the building in the case of alterations and additions.

Part 9A1 Building Setbacks

The setback control requires buildings to conform with the established street and boundary setback pattern and comply with relevant setback controls in Part 14 and Part 8A.1. Part 8A.1 applies to mixed use developments and as such is not applicable. Part 14 addresses urban precincts and sites, however does not apply to the subject site. The proposal does not alter the existing front, western side or rear setback. There is a small change to the eastern side boundary setback to Selkirk Park in relation to the ground level café terrace, first floor balcony and roof over. This minor change results in a minimum setback of approximately 4m from the balcony and 2.6m from the roof, which are considered to be adequate in the context of the site.

Part 9A.3 Deep Soil Landscaping

The eastern side setback area is to be landscaped and will appear as an additional portion of Selkirk Park, with no boundary fencing proposed.

Part 9B.1 Service Access and Loading Facilities

Onsite provision is required for loading facilities for non-residential buildings and the proposal provides for an external loading bay (as is the current situation) at the rear of the theatre building.

Part 9B.2 Car Parking Provision

Compliance with the car parking requirements is addressed by the Traffic Engineer elsewhere in this report.

Part 9B.3 Bicycle Parking Provision

Compliance with the bicycle parking requirements is addressed by the Traffic Engineer elsewhere in this report.

Part 9C.1 Solar Access

Developments are to be designed to retain a minimum of 4 hours of direct solar access to all existing neighbouring solar collectors and solar hot water services. The development does not detrimentally impact any solar collectors or hot water services.

Part 9C.4 Building Entries

Buildings are to address the street with their main entrances to lift lobbies with entrances being level with the adjoining footpath. The proposal complies with these requirements.

Part 9C.6 Roof Forms, Terraces and Podiums

Service elements are to be integrated into the overall design so as not to be visible

from the public domain or surrounding developments. The proposal incorporates screens around the roof top plant/structures to satisfy this control.

Part 9C.13 Visual Privacy

Buildings are to be designed to ensure privacy for neighbouring buildings. The proposal does not alter the existing privacy situation for adjoining residential buildings, with no windows allowing overlooking from the western façade and with windows in the southern façade a sufficient distance from adjoining properties so as to protect privacy. The new balcony and café terrace will not introduce any privacy impacts to residential properties as they are designed to address Selkirk Park.

Part 9C.14 Acoustic Privacy

The proposal has the potential to result in unacceptable acoustic impacts to surrounding and nearby residential properties by way of noise from uses within the building (theatre, theatrette, flexible community space and café), use of the amphitheatre, use of the car park onsite and access thereto and from patrons leaving the site and going to their cars (to be parked on the street and in the commuter car park for Killara Station).

The potential impact of all of these noise sources has been addressed in the acoustic report and addressed in the comments Council's EHO within this report.

The acoustic impact of the mechanical plant can be conditioned to comply with an acoustic report required with any Construction Certificate. The building is proposed to be appropriately acoustically insulated to prevent escape of noise from the theatre and theatrette. Noise from the café and flexible community space, in particular from use of the external terrace will be controlled by hours of use and a condition to this effect is recommended. Noise from the first floor balcony off the foyer will also be controlled by hours of use and a condition to this effect is recommended (**Condition 92**).

The applicant has confirmed the amphitheatre will only be used during daylight hours, ensuring no detrimental impact to the amenity of the area.

Noise from the car park onsite is likely to be reduced by the proposal as the number of parking spaces are being reduced and will be used by staff only who are less likely than patrons to be talking whilst returning to their vehicles.

Given the small number of parking spaces onsite (9), noise from the new access road is not anticipated to be significant.

The most significant likely impact in relation to noise is that from patrons leaving the site and returning to their cars in the surrounding streets and the commuter car park. Such noise, particularly beyond 10pm has the potential to result in detrimental amenity impacts for nearby residents. The applicant, in response to the initial assessment of the application has reduced the proposed operating hours of the theatre to the following:

- The theatre building will be open and accessible to the public from: - 7am to 11.30pm, Wednesday to Saturday - 8.30am to 10pm, Sunday to Tuesday
- The café/bar will close at 9pm
- Staff access to the premises will be from: - 6.30am to 12am, Wednesday to

Saturday - 8am to 10.30pm, Sunday to Tuesday

Given concerns with noise from patrons leaving the theatre, the applicant has suggested within the Plan of Management (POM) that staff will be used to “*ensure patrons leave in an orderly an quiet manner, and do not loiter in the street or ar park*” and pedestrians “*will be directed to access the car park from Culworth Avenue, not from the pedestrian path adjacent to 19 Marian Street.*” It has also been suggested in the POM that signage, bollards or temporary fencing could potentially be used to prevent use of the more noise sensitive parking spaces within the commuter carpark (identified in yellow in **Figure 10**).

Due to the concern with the efficacy of such operational measures to ensure a suitable acoustic environment is retained for the surrounding residential area, it is considered that consent should only be granted for operation of the building until 10pm on any day, with staff leaving by no later than 10.30pm. It is also considered reasonable that a 12 month trial period should be approved for use on Thursday to Saturday until 11pm, with staff leaving by 11.30pm. Such a trial will give sufficient time to assess whether the later use of the theatre causes unacceptable noise impacts to the surrounding residential properties (**Condition 102**).

Part 12 – Signage and Advertising

The proposed signage is appropriately designed to be integrated into building and is constructed of appropriate materials. A condition of consent will require that the performance notification sign not be flashing or moving and that it not advertise anything that is not related to the theatre. The lighting report confirms the signage will not result in unacceptable light spill to the nearby residential properties. The proposed signage is consistent with the controls applicable. A timing device will be required by condition to ensure the signage is turned off outside the approved hours of operation of the theatre (**Condition 109**).

Part 15 – Land Contamination

The issue of land contamination has been addressed previously in this report in relation to SEPP 55 and the site can be made suitable for the proposed development and uses.

Part 18 – Biodiversity

The site is mapped as land comprising biodiversity significance.

Council's Ecological Assessment Officer is satisfied that the proposed development will not result in a significant detrimental impact contrary to the objectives of these provisions in relation to the diversity and condition of native vegetation, fauna and habitat, subject to conditions. Refer to Council's Ecological Assessment Officer's comments earlier in this report.

Part 19 – Heritage and Conservation Areas

The site is within 100m of other heritage items and is located opposite a heritage conservation area. Council's Heritage Advisor has not raised any concerns with the application.

Development Control	Proposed	Complies
Part 21 General Site Design		
21.1 – Earthworks and slope		
<p>Development consider site topography, drainage, soli landscapes, flora, fauna and bushfire hazard by:</p> <ul style="list-style-type: none"> Stepping buildings down the site Locate finished ground level as close to the natural ground level as practicable Level changes to occur primarily within building footprint Minimum 0.6 metres width between retaining walls Maintain existing ground level within 2m from any boundary Limit slope for embankments to 1:6 (grassed) and 1:3 (soil stabilising vegetation) No fill and excavation within sensitive environments Minimise altered groundwater flows 	<p>The proposal does not involve a significant amount of excavation or fill and the proposed works are acceptable, having no detrimental impacts.</p>	YES
21.2 – Landscape Design		
<p>Appropriate and sensitive site planning and design</p> <p>Existing appropriate screen planting is retained</p>	See landscape comments	YES
Bushland Protection – buffer zone adjacent to bushland	See landscape and ecologist's comments	YES
<p>Planting within 100m of bushland</p> <ul style="list-style-type: none"> 70% local native species 30% local native understorey species 	See landscape and ecologist's comments	YES
Part 22 - General access and parking		
22.1 – Equitable Access		
<p>Compliance with DDA demonstrated</p> <p>Entry access ramps located within the site and does not dominate the front façade</p> <p>Access ways for pedestrians and for vehicles are separated</p>	<p>Level entry is provided from the street to the building. An elevated access ramp is provided from the footpath to the amphitheatre which is appropriately designed and landscaped.</p>	YES

22.2 – General vehicle access		
<ul style="list-style-type: none"> Minimise width and number of vehicle access points Access driveways set back at least 10m from street intersections and 3m from pedestrian entrances Vehicle and pedestrian access to buildings clearly distinguished and separated at I Vehicle crossing width is acceptable for intensity of use proposed Vehicles must exit in a forward direction Vehicle entries are integrated into the external façade and are finished in a high quality material Retaining walls associated with driveways maximum height of 1.2m No driveways are longer than 30m unless a passing bay is provided 	See comments from traffic engineer.	YES
22.5 – Parking for people with a disability		
Accessible spaces are signposted and have a continuous path of travel to the principal entrance or a lift	The accessible spaces are signposted and provide an accessible path of travel.	YES
22.6 – Pedestrian Movement within Car Parks		
Pathways designed in accordance with AS1428.1	Appropriate pedestrian access is provided.	YES
Marked pedestrian pathways have clear sightlines, appropriate lighting, are visible, conveniently located and constructed of non-slip material	Pedestrian access is not marked but there is suitable sightlines and lighting to ensure safety given the limited use and number of parking spaces.	YES
22.7 – Bicycle Parking and facilities		
Bicycle parking and storage facilities satisfy AS2890.3	See comments from traffic engineer.	YES
Bicycle access paths have a minimum width of 1.5metres	N/A	N/A
23.6 – Building Services		
Services and related structures are appropriately located to minimise streetscape	All services and plant are	YES

impact	appropriately located	
In mixed use precincts substations and fire hydrants are not visible from the primary and principal street frontages	A condition of consent will require the hydrant to be screened.	YES, (Condition 25)
Air-conditioning units are well screened and do not create adverse noise impacts	All rooftop plant is screened and will be acoustically treated.	YES
23.7 – Waste Management		
Efficient, effective and sustainable waste management practices	See comments from EHO.	YES
23.8 – Acoustic Privacy		
Design minimises impact of internal and external noise sources	This has been addressed previously in the report.	YES
23.9 – Visual Privacy		
Visual privacy maintained for occupants and for neighbouring dwellings	This has been addressed previously in the report.	YES
23.10 – Construction, Demolition and Disposal		
Satisfactory Environmental Site Management Plan	Appropriately addressed subject to standard conditions	YES, (Conditions 8, 11, 12, 13,49,66)

Part 24 – Water management

Council's Development Engineer is satisfied that the proposed development has been designed to manage urban stormwater as per the requirements of the DCP, subject to conditions.

Ku-ring-gai Contributions Plan 2015

A condition of consent is recommended requiring the payment of a contribution **(Condition 42)**.

LIKELY IMPACTS

The likely impacts of the development have been considered within this report and are deemed to be acceptable, subject to conditions.

SUITABILITY OF THE SITE

The site is suitable for the proposed development.

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. On this basis, the proposal is not considered to raise any issues that are contrary to the public interest.

CONCLUSION

Having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979, the proposed development is considered to be satisfactory.

RECOMMENDATION

PURSUANT TO SECTION 4.16(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

- A THAT the Sydney North Planning Panel, as the consent authority, is of the opinion that the request submitted under clause 4.6 to vary the building height development standard of Clause 4.3 of the KLEP has met the requirements of Clause 4.6(3). The Panel is also of the opinion that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation to the development standard.
- B. THAT the Sydney North Planning Panel, as the consent authority, being satisfied that the proposed development will be in the public interest, grant development consent to DA0144/20 for significant alterations and additions to upgrade Marian Street Theatre (249 seats), including new theatrette (63 seats), new rehearsal space (60 seats), café, lifts, signage, amendments to loading and parking arrangements, extensive landscaping works to adjoining Selkirk Park to include tree removal, accessible pathways and new outdoor amphitheatre (50 seats) at No.2 Marian Street, Killara and Selkirk Park, subject to conditions. Pursuant to Section 4.53 of the Environmental Planning and Assessment Act 1979, this consent lapses if the approved works are not physically commenced within five (5) years of the date of the Notice of Determination.

SCHEDULE A: Conditions of Consent: -

The conditions of consent are as follows:

CONDITIONS THAT IDENTIFY APPROVED PLANS:

1. Approved architectural plans and documentation (alterations and additions)

The development must be carried out in accordance with work shown in colour on the plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this Development Consent.

Plan no.	Drawn by	Dated
<i>Architectural Plans</i>		

A-000 Cover Page – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-004 Proposed Site Plan – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-020 Level 0 Demolition Floor Plan – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-021 Level 1 Demolition Floor Plan – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-022 Level 2 Demolition Floor Plan – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-023 Roof Demolition Plan – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-024 Demolition Elevations – 1 – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-025 Demolition Elevations – 2 – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-100 Level 0 Floor Plan – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-101 Level 1 Floor Plan – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-102 Level 2 Floor Plan – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-103 Level 3 Roof Plan – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-104 Roof Plan – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-200 Elevations – 1 – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-201 Elevations – 2 – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-300 Sections – 1 – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-301 Sections – 2 – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-302 Sections – 3 – Rev A	Tonkin Zulaikha Greer	9.4.2021
A-405 Signage Plans – 1 – Rev A	Tonkin Zulaikha Greer	9.4.2021
<i>Landscape Plans</i>		
L-001 Cover Page	Spackman Mossop Michaels	7/4/2021
L-002 Design Statement	Spackman Mossop Michaels	7/4/2021
L-002 Landscape Plan	Spackman Mossop Michaels	7/4/2021
L-003 Existing Tree Plan	Spackman Mossop Michaels	7/4/2021
L-004 Demolition Plan	Spackman Mossop Michaels	7/4/2021
L-102 Detail Plan - North	Spackman Mossop Michaels	7/4/2021
L-103 Detail Plan - South	Spackman Mossop Michaels	7/4/2021
L-104 Detail Plan – Outdoor Amphitheatre	Spackman Mossop Michaels	7/4/2021
L-201 Section AA & BB	Spackman Mossop Michaels	7/4/2021
L-202 Detail Sections	Spackman Mossop Michaels	7/4/2021
L-301 Material Palette	Spackman Mossop Michaels	7/4/2021
L-302 Planting Palette	Spackman Mossop Michaels	7/4/2021
L-303 Lighting Strategy	Spackman Mossop Michaels	7/4/2021
<i>Stormwater Management Plans</i>		
DA1.01 Coversheet, Drawing Schedule and Locality Plan Rev 2	Northrop	24/1/2020
DA2.01 Concept Sediment and Erosion Control Plan Rev 2	Northrop	24/1/2020
DA2.11 Sediment and Erosion Control Details Rev 2	Northrop	24/1/2020
DA3.01 Concept Siteworks and Stormwater Plan Rev 4	Northrop	23/3/2021
DA4.01 Road Longitudinal Section – Sheet 1 Rev 3	Northrop	23/3/2021
DA4.02 Road Longitudinal Section – Sheet 2 Rev 3	Northrop	23/3/2021

Document(s)	Dated
Accessibility Review prepared by Funktion Ref: Issue 3	28/1/2020
Noise Impact Assessment Report prepared by Resonate Ref: Rev D	29/1/2020
Asbestos Building Materials Register & Management Plan prepared by Getex Ref: Rev 0	23/7/2018
Development Application Advice prepared by Resonate	26/3/2021
Arboricultural Development Assessment Report prepared by Moore Trees Ref: Final	December 3019
Biodiversity Development Assessment Report prepared by Niche Ref: Rev 2	7/1/2020
Building Code of Australia Assessment Report prepared by Blackett Maguire + Goldsmith Ref: Rev 4	3/1/2020
Building Code of Australia Compliance Statement prepared by Blackett Maguire + Goldsmith Ref: Rev 4	30/1/2020
Construction Management Plan (Preliminary), prepare by Ku-ring-gai Council	January 2020
Contamination Preliminary Site Investigation prepared by assetgeoenviro Ref: Rev 1	31/1/2020
Crime Prevention Through Environmental Design Report prepared by Ethos Urban Ref: RFI Update	14/4/2021
Fire Engineering Support prepared by Affinity Fire Engineering	28/1/2020
Flora and Fauna Report prepared by ## Ref:##	
Geotechnical Report prepared by assetgeoenviro Ref: Rev 1	3/2/2020
Lighting Design Report prepared by Northrop Ref: D	22/3/2021
Operational Plan of Management Ethos Urban	20/4/2021
Traffic Impact Assessment prepared by ptc Ref: Issue 7	29/1/2020
Structural Statement prepared by SDA	28/1/2020
Waste Management Plan prepared by MRA Ref: Final	22/1/2020
Proposed Changes to Traffic Response to Council's RFIs prepared by ptc	15/4/2021

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

2. Inconsistency between documents

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this Development Consent prevail.

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

CONDITIONS TO BE SATISFIED PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION:

3. Asbestos works

All work involving asbestos products and materials, including asbestos-cement-sheeting (ie. fibro), must be carried out in accordance with the guidelines for asbestos work published by Safework NSW.

Reason: To ensure public safety.

4. Biodiversity offset requirements

To offset the residual biodiversity impacts of the development the class and number of ecosystem/species credits listed in table below must be retired.

The requirement to retire credits may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator (the amount payable to discharge an offset obligation will be determined at the time of payment).

Impacted plant community/Species type	Number of ecosystem/Species credits	IBRA region	Plant community type(s)/species credits that can be used to offset the impacts from development
PCT 1237- Sydney Blue Gum - Blackbutt - Smooth-barked Apple moist shrubby open forest on shale ridges of the Hornsby Plateau, Sydney Basin Bioregion	1	Cumberland, Burragarang, Pittwater, Sydney Cataract, Wollemi and Yengo. or Any IBRA subregion that is within 100 kilometers of the outer edge of the impacted site.	Blue Gum High Forest in the Sydney Basin Bioregion This includes PCT's: 1237

Details demonstrating compliance with the requirement to retire credits or make payment to the Biodiversity Conservation Fund must be provided to Principal Certifier and copied to Council's Ecological Assessment Officer prior to issue of any Construction Certificate.

Reason: To offset the residual biodiversity impacts of the development.

5. Site contamination

The recommendations of the Section 3.2 of the Preliminary Site Investigation report, prepared by Asset Geoenviro dated 31/1/202, shall be complied with during the construction of the development.

Reason: To protect residential amenity.

6. Notice of commencement

At least 48 hours prior to the commencement of any demolition, excavation or building works, a notice of commencement of building works or subdivision lodgement form and appointment of the Principal Certifier form shall be submitted to Council.

Reason: Statutory requirement.

7. Notification of builder's details

Prior to the commencement of any works, the Principal Certifier shall be notified

in writing of the name and contractor licence number of the owner/builders intending to carry out the approved works.

Reason: Statutory requirement.

8. Dilapidation survey and report (private property)

Prior to the commencement of any works, the Applicant must obtain a dilapidation report on **4-8 Marian Street (east side)** and the Principal Certifier shall be satisfied that a dilapidation report on the visible and structural condition of all structures on this property/properties has been completed and submitted to Council:

The dilapidation report must include a photographic record of this property/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.

Note: 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.

9. Construction traffic management plan

A construction traffic management plan (CTMP) is to be submitted to Council and approved prior to the commencement of any works. The plan is to consist of a report with traffic control plans attached.

The report is to contain commitments which must be followed by the demolition and excavation contractor, builder, owner and subcontractors. The CTMP applies to all persons associated with demolition, excavation and construction of the development. The report is to contain the following:

- construction vehicle routes for approach and departure to and from all directions, showing loaded and empty vehicles
- a site plan showing entry and exit points
- swept paths on the site plan showing access and egress for a 12.5 metres long heavy rigid vehicle and 19.0 metres articulated vehicle
- swept path analysis plans showing the existing trees being retained and their tree protective fencing requirements (consistent with this Development Consent) these plans shall be to scale to ensure that truck access and tree fencing requirements do not conflict
- show locations for site offices and materials storage areas which are to be

located outside the tree protection zones

The traffic control plans are to be prepared by a TfNSW accredited consultant. One traffic control plan must be provided to Council for each of the following stages of the works:

- demolition
- excavation
- concrete pour
- construction of vehicular crossing and reinstatement of footpath
- traffic control for vehicles reversing into or out of the site

Traffic controllers must be in place at the site entry and exit points to control heavy vehicle movements in order to maintain the safety of pedestrians and other road users.

No loaded trucks on Treatts Road or Park Avenue railway bridge will be permitted. Other railway bridges will require the applicant to provide approval from Transport for NSW (TfNSW) for all vehicles over 4.5t gross vehicle mass as well as obtaining a permit under the National Heavy Vehicle Regulator (NHVR) if required by Heavy Vehicle National Law (HVNL)

When a satisfactory CTMP is received and the relevant fees paid in accordance with Council's adopted fees and charges, a letter of approval will be issued with conditions attached. Traffic management at the site must comply with the approved CTMP as well as any conditions in the letter issued by Council. No works may be carried out unless Council has approved the CTMP.

Reason: To ensure that appropriate measures have been made to minimise impacts upon surrounding roads during the construction phase.

10. Work zone

Prior to the commencement of any works, a works zone is to be provided in Marian Street, subject to the approval of the Ku-ring-gai Local Traffic Committee.

No loading or unloading must be undertaken from the public road or nature strip unless within a works zone which has been approved and paid for.

In the event the work zone is required for a period beyond that initially approved by the Ku-ring-gai Local Traffic Committee, the Applicant shall make a payment to Council for the extended period in accordance with Council's schedule of fees and charges for work zones prior to the extended period commencing.

Reason: To ensure that appropriate measures have been made to minimise impacts upon surrounding roads during the construction phase.

11. Temporary construction exit

A temporary construction exit, together with necessary associated temporary fencing, shall be provided prior to commencement of any work on the site and shall be maintained throughout the duration of construction works.

Reason: To reduce or prevent the transport of sediment from the construction site onto public roads.

12. Sediment controls

Prior to any works commencing, sediment and erosion control measures shall be installed along the contour immediately downslope of any future disturbed areas.

The form of the sediment controls to be installed on the site shall be determined by reference to the Landcom manual '*Managing Urban Stormwater: Soils and Construction*'. The erosion controls shall be maintained in an operational condition until the development activities have been completed and the site is fully stabilised. Sediment shall be removed from the sediment and erosion control measures following each heavy or prolonged rainfall period.

Reason: To protect and enhance the natural environment.

13. Erosion and drainage management

No works shall commence until an erosion and sediment control plan is submitted to and approved by the Principal Certifier. The plan shall comply with the guidelines set out in the Landcom manual '*Managing Urban Stormwater: Soils and Construction*'. Erosion and sediment control works shall be implemented in accordance with the erosion and sediment control plan.

Reason: To protect the natural environment.

14. Tree protective fencing type galvanised mesh

Prior to the commencement of any works, tree protection fencing shall be constructed of galvanised pipe at 2.4 metres spacing and connected by securely attached chain mesh fencing to a minimum height of 1.8 metres.

Reason: To protect existing trees.

15. Tree protection signage

Prior to the commencement of any works, tree protection signage is to be attached to the tree protection fencing, displayed in a prominent position and repeated at 10 metres intervals or closer where the fence changes direction. Each sign shall contain in a clearly legible form the name, address, and telephone number of the developer/builder and project arborist as well as the words:

- Tree protection zone/No access.
- This fence has been installed to prevent damage to the tree/s and their growing environment both above and below ground.

Reason: To protect existing trees.

16. Tree protection mulching

Prior to the commencement of any works, the tree protection zone is to be mulched to a depth of 100mm with composted organic material.

The mulch is to be replenished so as to be consistent with the above requirement throughout the duration of construction works.

Reason: To protect existing trees.

17. Inspection of tree protection measures

Upon installation of the required tree protection measures, an inspection is to be conducted by the project arborist or the Principal Certifier to verify that tree protection measures comply with all relevant conditions of this Development Consent.

Reason: To protect existing trees.

18. Project arborist

Prior to the commencement of any works, a project arborist shall be engaged to ensure all tree protection measures and works are carried out in accordance with the conditions of this Development Consent.

The project arborist shall have a minimum AQF Level 5 qualification with a minimum of 5 years' experience. Details of the arborist including name, business name and contact details shall be provided to the Principal Certifier with a copy provided to Council.

Reason: To protect of existing trees.

19. Tree protection plan

Prior to the commencement of any works, tree protection works shall be carried out in accordance with the following approved tree protection plan(s), listed below and endorsed with Council's stamp, except where amended by other conditions of this Development Consent:

Plan no.	Drawn by	Dated
Appendix 1 Plan 1 Tree Protection Plan	Moore Trees	16/3/21

The above Tree Protection plan(s) shall be amended as follows:

- Indicate tree protective fencing, in addition to trunk protection, along line of existing driveway to protect trees within Selkirk Park until access and works within park are required to be undertaken.
- Indicate tree protective fencing, in addition to trunk protection, to Trees 1, 2, 3 and Tree 7 for a minimum 3m radius.
- Trees 4, 5 and 6 protected by site fence and do not require trunk protection.

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that the tree protection plan has been amended as required by this condition.

Reason: To protect existing trees.

20. Noise and vibration management plan

Prior to the commencement of any 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. The management plan is to identify amelioration measures to achieve the best practice objectives of Australian Standard 2436-2010 - *Guide to noise and vibration control on*

construction, demolition and maintenance sites 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:

- identification of the specific activities that will be carried out and associated noise sources
- identification of all potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment
- the construction noise objective specified in the conditions of this consent
- the construction vibration criteria specified in the conditions of this consent
- determination of appropriate noise and vibration objectives for each identified sensitive receiver
- noise and vibration monitoring, reporting and response procedures
- assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles and any traffic diversions
- description of specific mitigation treatments, management methods and procedures that will be implemented to control noise and vibration during construction
- construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
- procedures for notifying residents of construction activities that are likely to affect their amenity through noise and vibration
- contingency plans to be implemented in the event of non-compliances and/or noise complaints

Reason: To protect the amenity of surrounding residents during construction.

21. CCTV report of existing Council pipe system near works

Prior to the commencement of any works, qualified practitioners must undertake a closed circuit television inspection in accordance with the Australian Water Association guidelines, including full pan at each joint and then report on the existing condition of the Council drainage pipeline traversing the subject property. The Applicant or their contractor is to obtain the relevant pipe and pit identification numbers from Council prior to the CCTV inspection and use these numbers in the CCTV recording and report. The report must be provided to Council's Development Engineer and is to include a copy of the video footage of the pipeline. A written acknowledgment from Council's Development Engineer (attesting to this condition being satisfied) shall be obtained and submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To protect Council's infrastructure.

22. Access to commuter car park works

Prior to the commencement of any works, the path of access from the commuter car park located in Culworth Avenue to the theatre site shall be assessed to identify any upgrades required in relation movement of pedestrians to the following:

- Safety of footpath – including gradient and trip hazards;

- Lighting of footpath;
- Lighting within car park; and
- Provision of kerb extension (3.6m wide kerb extensions filling in the sections of the parking lanes on both sides of Marian Street) with flood lighting and “pedestrian” warning signage and assess whether a warrant for the provision of a marked foot crossing is satisfied under operational circumstances.

The path of travel to be assessed for pedestrians would be leaving the car park via Culworth Avenue, then travelling along Marian Street, crossing Marian Street to the theatre site in proximity to the location of the existing driveway to that site.

The work shall be carried out by a suitably qualified and experienced engineer. Any works recommended in the report are to be referred to the Ku-ring-gai Traffic Committee for approval, and if approved, shall be constructed prior to the issue of an Occupation Certificate.

Reason: To protect ensure a safe pedestrian path of travel.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE:

23. Design and construction of mechanical ventilation

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that plans and specifications demonstrate that the installation of mechanical ventilation systems will comply with:

- The National Construction Code
- Australian Standard 1668
- Australian Standard 3666 where applicable.

Reason: To protect the amenity of occupants and neighbouring properties.

24. Structural support

The existing building shall be upgraded to comply with the Australian Standard AS1170. Details shall be provided with any Construction Certificate application.

Reason: To ensure the structural stability of the building.

25. Fire hydrant

The proposed fire hydrant shall be appropriately screened from view from Marian Street. Details shall be provided for approval with the Construction Certificate Application.

Reason: To protect residential amenity.

26. Amendments to approved landscape plan

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that the approved landscape plan(s), listed below and endorsed with Council's stamp, have been amended in accordance with the requirements of this condition as well as other conditions of this Development Consent:

Plan no.	Drawn by	Dated
Landscape Plan L-002	Spackman Mossop Michaels	7/4/21
Detail Plan - North L-102	Spackman Mossop Michaels	7/4/21
Detail Plan - South L-103	Spackman Mossop Michaels	7/4/21
Detail Plan - Outdoor Amphitheatre L-104	Spackman Mossop Michaels	7/4/21

The above landscape plan(s) shall be amended as follows:

- Pedestrian path adjacent proposed new driveway is to be deleted.
- Concrete plank area to northern boundary to be deleted from under Trees 56 and 57 up to minimum 3.4m west of Tree 56.
- The proposed deck and ramp to east of theatre to be amended to allow for minimum 500mm setback from trunk of Tree 51 *Melaleuca quinquenervia* (Broad Leaved Paperbark) as currently indicated over tree.
- Car parking area and driveway to be amended in accordance with Amended Engineering Plan Conditions, including relocation of carpark space number 8 outside of Tree Protection Zone of existing trees, location of retaining walls and driveway entrance.
- Existing screen planting of Syzigium sp (Lilly Pilly) to Selrirk Park's southern boundary to be indicated on plans for retention.
- Fully detailed planting plan to be provided to indicate location and quantity of planting on plan and a detailed plant schedule. Any group planting areas to indicate percentage mix, spacings and numbers to individual areas.
- The following proposed plant species are to be substituted;
 - *Arthropodium milleflorum* replaced with *Doodia aspera* or *Blechnum cartilagineum*
 - *Dichelachne micrantha* replaced with *Poa affinis*
 - *Pseuderanthemum variabile* replaced with *Viola hederacea*

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that the landscape plan has been amended as required by this condition.

An amended plan, prepared by a landscape architect or qualified landscape designer shall be submitted to the Certifier.

Reason: To ensure adequate landscaping of the site.

27. Amendments to approved engineering plans

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that the approved engineering plan(s), listed below and endorsed with Council's stamp, have been amended in accordance with the requirements of this condition as well as other conditions of this Development Consent:

Plan no.	Drawn by	Dated
Civil Engineering Works Package	Northrop	23/3/21

The above engineering plan(s) shall be amended as follows:

- The proposed elevated driveway shall be provided with barriers in accordance with AS2890.1:2004, part 2.4.5.3.
- To provide safe access to the carpark at dark, lighting shall be provided to the proposed elevated driveway
- The driveway shall be widened to 6m for the first 6m inside the boundary

to allow for better access for vehicles entering the property from Culworth Avenue

- The proposed boom gate at the top of the driveway shall be relocated to 6m inside the boundary to allow vehicles enter the site to use the intercom, and avoid vehicles queuing on Culworth Avenue.
- Detailed design of the proposed drainage arrangement on the elevated driveway which includes a slotted kerb to the low side of the driveway with surface water directed to existing stormwater infrastructure in reserve
- Carparking to southern boundary to be reconfigured to remove any works within the 3m Tree Protection Zone of Tree 7 and relocate car space number 8 to a position outside of the Tree Protection Zone of all existing trees to be retained.
- Landscaping to western boundary within carpark loading zone to be in accordance with Landscape Plans.
- Filling and required retaining structures to western edge of carpark are to be set back a minimum 2m from western boundary to retain existing levels at the boundary.

An amended engineering plan, prepared by a qualified engineer, shall be submitted to the Certifier.

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

28. Statement of compliance with Australian Standards

The demolition work shall comply with the provisions of Australian Standard AS2601: 2001 *The Demolition of Structures*. The applicant must provide work plans required by AS2601: 2001 and a written statement from a suitably qualified person that the proposal contained in the work plan comply with the safety requirements of the Standard. The work plan and the statement of compliance shall be submitted to the satisfaction of the Principal Certifier prior to the commencement of any works.

Reason: To ensure compliance with the Australian Standards.

29. Long service levy

A Construction Certificate 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. Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided to Council.

Reason: Statutory requirement.

30. Outdoor lighting

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that all outdoor lighting will comply with AS/NZS 4282:2019 *Control of the obtrusive effects of outdoor lighting* and be mounted, screened and directed in a way that it does not create a nuisance or light spill on to buildings on adjoining lots or public places.

Lighting at vehicle access points to the development must be provided in

accordance with AS/NZS 1158 Set:2010 *Lighting for roads and public spaces*.

Note: Details demonstrating compliance with these requirements are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To provide high quality external lighting for security without adverse impacts on public amenity from excessive illumination.

31. Access for people with disabilities (commercial)

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that access for people with disabilities from the public domain and all car parking areas on site to all tenancies within the building is provided. Consideration must be given to the means of dignified and equitable access.

Compliant access provisions for people with disabilities shall be clearly shown on the plans submitted with any Construction Certificate. All details shall be provided to the Certifier prior to the issue of any Construction Certificate. All details shall be prepared in consideration of the *Disability Discrimination Act* and the relevant provisions of AS1428.1, AS1428.2, AS1428.4 and AS 1735.12.

Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian standards.

32. Excavation for services

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that no proposed underground services (ie: water, sewerage, drainage, gas or other service) unless previously approved by conditions of consent, are located beneath the canopy of any tree protected under *Ku-ring-gai Development Control Plan*, located on the subject allotment and adjoining allotments.

Reason: To protect existing trees.

33. Pier and beam footings near trees

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that the footings of the approved elevated driveway, retaining walls to parking area, decking, 'Forest Walk' raised walkway and amphitheatre, will be isolated pier or pier and beam construction within the specified radius of the trunk/s of the following tree/s:

Tree/Location	Radius in metres
Tree 1 <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to carpark	7.2m
Tree 3 <i>Liquidambar styraciflua</i> (Liquidambar)/to south-western boundary	12m
Tree 10 <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	12m
Tree 19. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/to southern-boundary	10.8m
Tree 20. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/to southern boundary	7.2m
Tree 23. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	13.2m
Tree 21. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	9.6m
Tree 25. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	7.2m
Tree 26. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	12m
Tree 28. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/to southern boundary	4.2m

Tree 29. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	3m
Tree 48 <i>Lophostemon confertus</i> (Brushbox)/to east of theatre	12m
Tree 49. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to east of theatre	14.1m
Tree 50. <i>Angophora floribunda</i> (Rough barked Apple) /to east of theatre	3.4m
Tree 51. <i>Melaleuca quinquenervia</i> (Broad Leaved Paperbark) /to east of theatre	5m
Tree 52. <i>Pittosporum undulatum</i> (Sweet Pittosporum) /to east of theatre	3.4m
Tree 53. <i>Melaleuca quinquenervia</i> (Broad Leaved Paperbark) /to east of theatre	5m
Tree 54. <i>Pittosporum undulatum</i> (Sweet Pittosporum) /to east of theatre	3m
Tree 56. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	10.8m
Tree 57. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	10.8m
Tree 60. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/to east of theatre	5.4m
Tree 68. <i>Eucalyptus</i> sp. (Ironbark)/to northern boundary	9.6m
Tree 69. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/to northern boundary	5.4m
Tree 70. <i>Angophora floribunda</i> (Rough barked Apple) to northern boundary	4.1m

The piers shall be located such that no roots of a diameter greater than 30mm will be severed or injured during the construction period. The beam/s shall be of reinforced concrete or galvanised steel sections and placed in positions with the base of the beam being a minimum of 50mm above existing soil levels.

Reason: To protect existing trees.

34. Acoustic design report

An acoustic design report shall be prepared by an appropriately qualified acoustic consultant and submitted to the Certifier with the application for any Construction Certificate. The acoustic design report shall identify all potential noise sources from the use of the development including but not limited to amplified sound equipment, mechanical equipment, air conditioners, mechanical exhaust, refrigeration motors and other noise generating plant proposed as part of the approved development.

The acoustic design report shall provide acoustic design detailing and recommendations to address any potential noise impacts to ensure that the operation of an individual piece of equipment or operation of equipment in combination will not be audible within any habitable room in any residential occupancy before 7.00am and after 10.00pm. Outside of these restricted hours noise from an individual piece of equipment or in combination shall not be greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the nearest adjoining property boundary.

A Construction Certificate shall not be issued unless the Certifier is satisfied that the acoustic design report satisfies the requirements of this condition and that the proposal will be constructed in accordance with its requirements.

Reason: To comply with best practice standards for acoustic amenity.

35. Driveway crossing levels

Prior to issue of any Construction Certificate, driveway and associated footpath levels for any new, reconstructed or extended sections of driveway crossings between the property boundary and road alignment must be obtained from Council. Such levels are only able to be issued by Council under the *Roads Act*

1993. All footpath crossings, laybacks and driveways are to be constructed according to Council's specifications "Construction of Gutter Crossings and Footpath Crossings".

Specifications are issued with alignment levels after completing the necessary application form at Council's Customer Services counter and payment of the assessment fee. When completing the request for driveway levels application from Council, the Applicant must attach a copy of the relevant development application drawing which indicates the position and proposed level of the proposed driveway at the boundary alignment.

This development consent is for works wholly within the property. Development consent does not imply approval of footpath or driveway levels, materials or location within the road reserve, regardless of whether this information is shown on the development application plans. The grading of such footpaths or driveways outside the property shall comply with Council's standard requirements. The suitability of the grade of such paths or driveways inside the property is the sole responsibility of the Applicant and the required alignment levels fixed by Council may impact upon these levels.

The construction of footpaths and driveways outside the property in materials other than those approved by Council is not permitted.

Reason: To provide suitable vehicular access without disruption to pedestrians and vehicular traffic.

36. Car parking details

Prior to issue of any Construction Certificate, certified parking layout plan(s) to scale showing all aspects of the vehicle access and accommodation arrangements must be submitted to and approved by the Certifier. A qualified civil/traffic engineer must review the proposed vehicle access and accommodation layout and provide written certification on the plans that:

- all parking space dimensions, driveway and aisle widths, driveway grades, transitions, circulation ramps, blind aisle situations and other trafficked areas comply with Australian Standard 2890.1 - 2004 *"Off-street car parking"*
- the vehicle access and accommodation arrangements are to be constructed and marked in accordance with the certified plans

Reason: To ensure that parking spaces are in accordance with the Development Consent.

37. Design of works in public road (Roads Act approval)

Prior to issue of any Construction Certificate, full design engineering plans and specifications prepared by a suitably qualified and experienced civil engineer for the following infrastructure works shall be submitted to Council and approved by Council's Director of Operations on behalf of Council as a road authority:

- Removal of the existing layback on Marian Street frontage and replacement with kerb and gutter
- Construction of a new commercial vehicular crossing from Culworth Avenue

The required plans and specifications are to be designed in accordance with the *General Specification for the Construction of Road and Drainage Works in Ku-ring-gai Council*, dated November 2014. The drawings must detail existing utility services, (mains and house connections) and trees affected by the works. Construction of the works must proceed only in accordance with any conditions attached to the Roads Act approval issued by Council.

A minimum of three weeks will be required for Council to assess the *Roads Act 1993* applications. Early submission is recommended to avoid delays in obtaining a Construction Certificate. For the purpose of inspections carried out by Council Engineers, the corresponding fees set out in Council's current Fees and Charges Schedule are payable to Council prior to issue of any Construction Certificate. An engineering plan assessment fee is also applicable.

Approval must be obtained from Ku-ring-gai Council as the road authority under Section 139 *Roads Act 1993* for any proposed works in the public road prior to the issue of any Construction Certificate.

Reason: To ensure compliance with the requirements of *Roads Act 1993*.

38. Waste storage room - commercial premises

The Certifier must be satisfied that the waste storage room shall be of adequate size to contain the waste and recycling bins. Waste storage facilities shall be covered and all internal walls rendered and coved at the floor/wall intersection. The floor is to be graded and appropriately drained to the sewer and a tap with hot and cold water is to be located in close proximity to facilitate cleaning. Details of the waste storage room shall be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To protect amenity and to prevent environmental pollution.

39. Design and construction of food premises (kitchen, café prep and bar)

Plans and specifications complying with the requirements of the *Food Act 2003*, *Food Standards Code 3.2.3 Food Premises and Equipment*, *Australian Standard AS 4674 2004 - Design, construction and fit-out of food premises* and National Construction Code shall be submitted to and approved by the Certifier prior to the issue of any Construction Certificate. Plans and specifications shall address the following:

- floor plans, showing the layout of the fixtures and fittings, food storage and staff personal effects storage areas
- elevations and sections showing floor, wall and ceiling construction and finishes
- elevations and sections showing the installation of fixtures and fittings
- cool room/freezer construction
- garbage and recycling storage areas
- grease trap area
- all proposed mechanical ventilation systems
- staff, accessible and public toilet facilities

Note: The "Design and fit-out guide for food businesses" is available on Council's website.

Reason: To ensure compliance with standards for food premises.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE OR PRIOR TO DEMOLITION, EXCAVATION OR CONSTRUCTION (WHICHEVER COMES FIRST):

40. 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 by the applicant prior to both the issue of any Construction Certificate and the commencement of any earthworks or construction.
- (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 an Occupation Certificate, Council will undertake an inspection of Councils Infrastructure and release the 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.

41. Construction Certificate plans

The Construction Certificate plans must be consistent with the approved plans and documents referred to in Condition No. 1 of this Development Consent.

Reason: To ensure that the works are carried out in accordance with the Development Consent.

42. Section 7.12 Local infrastructure contributions

- (a) This development is subject to a development contribution calculated in accordance with Ku-ring-gai s94A Contributions Plan 2015, being a Contributions Plan in effect under the *Environmental Planning and Assessment Act*, in the amount of: **\$122,515.22** based on development costs of **\$12,251,522.00**, which shall be paid to Council to provide for additional local infrastructure improvements in accordance with the works programme listed in the s94A Contributions Plan. (Sections of the *Environmental Planning and Assessment Act* have been renumbered and former s94A is now known as s7.12).

The contribution specified above is subject to indexation and will continue to be indexed to reflect changes in the Consumer Price Index (All Groups Sydney) until paid in accordance with Ku-ring-gai s94A Contributions Plan 2015. Inflation is applied on all the Ku-ring-gai Contributions Plans on the day after the release of the Residential Property Prices Index by the Australian Bureau of Statistics (ABS). Prior to payment, please contact Council directly to verify the current contributions payable. Please see Council's website for more information about inflation and paying contributions.

- (b) A development contribution that is required under the conditions of this consent must be paid before the issue of the first occupation certificate in respect of any building to which this consent relates, except as provided by (c) below.
- (c) If no construction certificate in respect of the erection of any building to which the consent relates has been issued before or on 25 September 2022, the development contribution must be paid prior to the issue of the first construction certificate, Linen Plan, Subdivision Certificate or Occupation Certificate after that date.

Note: Copies of Council's Contributions Plan can be viewed at Council Chambers at 818 Pacific Hwy Gordon or on Council's website at www.kmc.nsw.gov.au <<http://www.kmc.nsw.gov.au>>.

Reason: To comply with the Ministerial Direction that came into effect on 8

July 2020 and to cater for the demand for additional infrastructure arising from cumulative developments in accordance with Ku-ring-gai S94A Contributions Plan 2015.

CONDITIONS TO BE SATISFIED DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES:

43. Road opening permit

The opening of any footway, roadway, road shoulder or any part of the road reserve shall not be carried out without a road opening permit being obtained from Council (upon payment of the required fee) beforehand.

Reason: Statutory requirement (*Roads Act 1993* Section 138) and to maintain the integrity of Council's infrastructure.

44. Prescribed conditions

The applicant shall comply with any relevant prescribed conditions of development consent under clause 98 of the *Environmental Planning and Assessment Regulation*. For the purposes of section 4.17 (11) of the *Environmental Planning and Assessment Act*, the following conditions are prescribed in relation to a development consent for development that involves any building work:

1. the work must be carried out in accordance with the requirements of the Building Code of Australia
2. in the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any works commence
3. if the development involves an excavation that extends below the level of the base of the footings of a building, structure or work (including any structure or work within a road or rail corridor) on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (a) protect and support the building, structure or work from possible damage from the excavation, and
 - (b) where necessary, underpin the building, structure or work to prevent any such damage.

Reason: Statutory requirement.

45. Hours of work

Demolition, construction work and deliveries of building material and equipment must not take place outside the hours of 7.00am to 5.00pm Monday to Friday and 8.00am to 12 noon Saturday. No work and no deliveries are to take place on Sundays and public holidays.

Demolition and/or excavation using machinery of any kind must be limited to between 7.00am and 5.00pm Monday to Friday, with a respite break of 45 minutes between 12 noon and 1.00pm. No demolition and/or excavation using machinery of any kind is to occur on Saturdays, Sundays or public holidays.

Where it is necessary for works to occur outside of these hours (ie placement of concrete for large floor areas on large residential/commercial developments or where building processes require the use of oversized trucks and/or cranes that are restricted by Transport for NSW (TfNSW) from travelling during daylight hours to deliver, erect or remove machinery, tower cranes, pre-cast panels, beams, tanks or service equipment to or from the site), approval for such activities will be subject to the issue of an "outside of hours works permit" from Council as well as notification of the surrounding properties likely to be affected by the proposed works.

Failure to obtain a permit to work outside of the approved hours will result in regulatory action.

Reason: To ensure reasonable standards of amenity for occupants of neighbouring properties.

46. Approved plans to be on site

A copy of all approved and certified plans, specifications and documents incorporating conditions of consent and certification (including the Construction Certificate if required for the work) shall be kept on site at all times during the demolition, excavation and construction phases and must be readily available to any officer of Council or the Principal Certifier.

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

47. Control of construction noise (noise and vibration management plan)

During any demolition, excavation or building works, noise generated from the site shall be controlled in accordance with the recommendations of the approved noise and vibration management plan.

Reason: To ensure reasonable standards of amenity to neighbouring properties.

48. Site notice

A site notice shall be erected on the site prior to any work commencing and shall be displayed throughout the works period. The site notice must:

- be prominently displayed at the boundaries of the site for the purposes of informing the public that unauthorised entry to the site is not permitted
- display project details including, but not limited to the details of the builder, Principal Certifier and structural engineer
- be durable and weatherproof
- display the approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice
- be mounted at height of 1.6 metres above natural ground on the perimeter hoardings/fencing and is to state that unauthorised entry to the site is not permitted

Reason: To ensure public safety and public information.

49. Dust control

During excavation, demolition and construction, adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood. The following measures must be adopted:

- physical barriers shall be placed around or over dust sources to prevent wind or activity from generating dust
- earthworks and scheduling activities shall be managed to coincide with the next stage of development to minimise the amount of time the site is left cut or exposed
- all materials shall be stored or stockpiled at the best locations
- the ground surface should be dampened slightly to prevent dust from becoming airborne but should not be wet to the extent that run-off occurs
- all vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust
- all equipment wheels shall be washed before exiting the site using manual or automated sprayers and drive-through washing bays
- gates shall be closed between vehicle movements and shall be fitted with shade cloth
- cleaning of footpaths and roadways shall be carried out at least daily
- no advertising or signage is permitted to be attached to dust cloth material.

Reason: To protect the environment and the amenity of surrounding properties.

50. Compliance with submitted geotechnical report

A contractor, with specialist excavation experience, must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation.

Geotechnical aspects of the development work, namely:

- appropriate excavation method and vibration control
- support and retention of excavated faces
- hydro-geological considerations

must be undertaken in accordance with the recommendations of the geotechnical report prepared by Asset Geo Enviro.

Prior approval must be obtained from all affected property owners, including Council, where rock anchors (both temporary and permanent) are proposed below adjoining property/ies.

Reason: To ensure the safety and protection of property.

51. Use of road or footpath

During excavation, demolition and construction phases, no building materials, plant or the like are to be stored on the road or footpath without written approval being obtained from Council beforehand. The footpath shall be kept in a clean, tidy and safe condition during building operations. Council reserves the right, without notice, to rectify any such breach and to charge the cost against the applicant/owner/builder, as the case may be.

Reason: To ensure safety and amenity of the area.

52. Toilet facilities

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons working at the site. Each toilet must:

- (a) be a standard flushing toilet connected to a public sewer, or
- (b) have an on-site effluent disposal system approved under the *Local Government Act 1993* [<https://www.legislation.nsw.gov.au/>](https://www.legislation.nsw.gov.au/), or
- (c) be a temporary chemical closet approved under the *Local Government Act 1993* [<https://www.legislation.nsw.gov.au/>](https://www.legislation.nsw.gov.au/).

Reason: Statutory requirement.

53. Garbage receptacle

A garbage receptacle must be provided at the work site before works begin and must be maintained until all works are completed. The garbage receptacle must have a tight fitting lid and be suitable for the reception of food scraps and papers. The receptacle lid must be kept closed at all times, other than when garbage is being deposited.

Reason: To ensure appropriate construction site waste management and to avoid injury to wildlife.

54. Construction signage

All construction signs must comply with the following requirements:

- are not to cover any mechanical ventilation inlet or outlet vent
- are not illuminated, self-illuminated or flashing at any time
- are located wholly within a property where construction is being undertaken
- refer only to the business(es) undertaking the construction and/or the site at which the construction is being undertaken
- are restricted to one such sign per property
- do not exceed 2.5m²
- are removed within 14 days of the completion of all construction works

Reason: To ensure compliance with Council's controls regarding signage.

55. Road reserve safety

All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works. Construction materials must not be stored in the road reserve. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site. Where public infrastructure is damaged, repair works must be carried out when and as directed by Council officers. Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (2009) "Manual for Uniform Traffic Control Devices for Work on Roads". If pedestrian

circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.

Reason: To ensure safe public footways and roadways during construction.

56. Services

Where required, the adjustment or inclusion of any new utility service facilities must be carried out in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the applicant's responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services (including water, phone, gas and the like). Council accepts no responsibility for any matter arising from its approval to this application involving any influence upon utility services provided by another authority.

Reason: Provision of utility services.

57. Drainage to existing system

Stormwater runoff from all new impervious areas and subsoil drainage systems shall be piped to the existing site drainage system. The installation of new drainage components must be completed by a licensed contractor in accordance with AS3500.3 (Plumbing Code) and the NCC (BCA). No stormwater runoff is to be placed into the Sydney Water sewer system. If an illegal sewer connection is found during construction, the drainage system must be rectified to the satisfaction of Council and Sydney Water.

Reason: To protect the environment.

58. Arborist's inspection and reporting

The tree/s to be retained shall be inspected and monitored by an AQF Level 5 arborist in accordance with the current version of **Australian Standard AS 4970 - Protection of trees on development sites** during and after completion of development works to ensure their long term survival.

The Principal Certifier must be provided with reports by the project arborist within 7 days of the inspection detailing date, trees no, location and species, tree health, compliance with conditions of the Development Consent, description of the works inspected, description of any impacts to trees and any rectification or and mitigation works prescribed and or undertaken.

Regular inspections and documentation from the arborist to the Principal Certifier are required but not limited to the following times or phases of work:

Tree/Location	Time of inspection
Tree 1 <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to carpark	Supervision of removal of existing parking surface.
Tree 2 <i>Jacaranda mimosifolia</i> (Jacaranda) /to carpark	Supervision of removal of existing asphalt, Excavation for services.
Tree 3 <i>Liquidambar styraciflua</i> (Liquidambar)/ to south western boundary	Supervision of removal of existing asphalt. Excavation for services.
Tree 4. <i>Ulmus</i> sp. /to southern	Supervision of removal of existing

boundary	asphalt. Excavation and at completion of works.
Tree 5 <i>Liquidambar styraciflua</i> (Liquidambar) to south western boundary	Supervision of removal of existing asphalt.
Tree 6. <i>Ulmus parvifolia</i> (Chinese Elm)/to southern boundary	Supervision of removal of existing asphalt
Tree 7. <i>Radermachera sinica</i> (China Doll Tree)/to southern boundary	Supervision of removal of existing asphalt
Tree 10. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	Supervision of removal of existing asphalt
Tree 11 <i>Eucalyptus saligna</i> (Sydney Blue Gum)/to southern boundary	Supervision of removal of existing asphalt and for services
Tree 19. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/to southern boundary	Excavation for piers and services and at completion of works.
Tree 20. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/to southern boundary	Excavation for piers and at completion of works.
Tree 23. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	Excavation for piers and at completion of works.
Tree 21. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	Excavation for piers and at completion of works.
Tree 25. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	Excavation for piers and at completion of works.
Tree 26. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	Excavation for piers and at completion of works.
Tree 27. <i>Angophora costata</i> (Sydney red Gum)/to southern boundary	Excavation for piers and at completion of works.
Tree 28. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/to southern boundary	Excavation for piers and at completion of works.
Tree 29. <i>Eucalyptus pilularis</i> (Blackbutt)/to southern boundary	Excavation for piers and at completion of works.
Tree 49. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to east of theatre	Supervision of removal of existing asphalt. Excavation for piers and at completion of works.
Tree 50. <i>Angophora floribunda</i> (Rough barked Apple) /to east of theatre	Supervision of removal of existing asphalt. Excavation for piers and at completion of works.
Tree 51 and 53. <i>Melaleuca quinquenervia</i> (Broad Leaved Paperbark) /to east of theatre	Supervision of removal of existing asphalt. Excavation for piers and at completion of works.
Tree 52. and 54 <i>Pittosporum undulatum</i> (Sweet Pittosporum) /to east of theatre	Supervision of removal of existing asphalt. Excavation for piers and at completion of works.
Tree 56. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	Excavation for piers and at completion of works.
Tree 57. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	Excavation for piers and at completion of works.
Tree 60. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to east of theatre	Excavation for piers and at completion of works.
Tree 68. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	Excavation for piers and at completion of works.
Tree 69. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to northern boundary	Excavation for piers and at completion of works.
Tree 70. <i>Angophora floribunda</i> (Rough barked Apple)/ to northern boundary	Excavation for piers and at completion of works.

All works as recommended by the project arborist are to be undertaken by an experienced arborist with a minimum AQF Level 3 qualification.

Reason: To ensure protection of existing trees.

59. Landscape works near trees

To avoid tree impacts, all landscape works such as soil preparation, soil spreading, mulching and planting shall be carried out by hand within the specified radius of the following trees.

Tree/Location	Radius in metres
Tree 1 <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to carpark	7.2m
Tree 10 <i>Eucalyptus pilularis</i> (Blackbutt)/ to southern boundary	12m
Tree 19. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to southern boundary	10.8m
Tree 20. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to southern boundary	7.2m
Tree 23. <i>Eucalyptus pilularis</i> (Blackbutt)/ to southern boundary	13.2m
Tree 21. <i>Eucalyptus pilularis</i> (Blackbutt)/ to southern boundary	9.6m
Tree 25. <i>Eucalyptus pilularis</i> (Blackbutt)/ to southern boundary	7.2m
Tree 26. <i>Eucalyptus pilularis</i> (Blackbutt)/ to southern boundary	12m
Tree 27. <i>Angophora costata</i> (Sydney red Gum)/ to southern boundary	1.8m
Tree 28. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to southern boundary	4.2m
Tree 29. <i>Eucalyptus pilularis</i> (Blackbutt)/ to southern boundary	3m
Tree 47 <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to east of theatre	7.2m
Tree 48. <i>Lophostemon confertus</i> (Brushbox)/ to east of theatre	12m
Tree 49. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to east of theatre	14.1m
Tree 50. <i>Angophora floribunda</i> (Rough barked Apple)/ to east of theatre	3.4m
Tree 51. <i>Melaleuca quinquenervia</i> (Broad Leaved Paperbark)/ to east of theatre	5m
Tree 52. <i>Pittosporum undulatum</i> (Sweet Pittosporum)/ to east of theatre	3.4m
Tree 53. <i>Melaleuca quinquenervia</i> (Broad Leaved Paperbark)/ to east of theatre	5m
Tree 54. <i>Pittosporum undulatum</i> (Sweet Pittosporum)/ to east of theatre	3m
Tree 56. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	10.8m
Tree 57. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	10.8m
Tree 60. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to east of theatre	5.4m
Tree 68. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	9.6m
Tree 69. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to northern boundary	5.4m
Tree 70. <i>Angophora floribunda</i> (Rough barked Apple)/ to northern boundary	4.1m

Reason: To protect existing trees.

60. Retention of tree roots

No tree roots of 50mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s shall be severed or injured in the process of any works during the construction period. All pruning of roots less than 50mm in diameter shall be undertaken by an experienced arborist/horticulturalist, with a minimum AQF Level 3 qualification.

Tree/Location	Radius
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	in metres
Tree 1. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to carpark	7.2m
Tree 2. <i>Jacaranda mimosifolia</i> (Jacaranda) /to south-western boundary	2.4m
Tree 3. <i>Liquidambar styraciflua</i> (Liquidambar) /to southern boundary	12m
Tree 4. <i>Ulmus</i> sp. /to southern boundary	3m
Tree 5 <i>Liquidambar styraciflua</i> (Liquidambar) /to southern boundary	10.8m
Tree 6. <i>Ulmus parvifolia</i> (Chinese Elm) /to southern boundary	4.8m
Tree 7. <i>Radermachera sinica</i> (China Doll Tree) /to southern boundary	3m
Tree 10. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	12m
Tree 19. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to southern boundary	10.8m
Tree 20. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to southern boundary	7.2m
Tree 23. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	13.2m
Tree 21. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	9.6m
Tree 25. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	7.2m
Plan Tree 26. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	12m
Tree 27. <i>Angophora costata</i> (Sydney red Gum) /to southern boundary	1.8m
Tree 28. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to southern boundary	4.2m
Tree 29. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	3m
Tree 48. <i>Lophostemon confertus</i> (Brushbox)/ to east of theatre	12m
Tree 49. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to east of theatre	14.1m
Tree 50. <i>Angophora floribunda</i> (Rough barked Apple) /to east of theatre	3.4m
Tree 51. <i>Melaleuca quinquenervia</i> (Broad Leaved Paperbark) /to east of theatre	5m
Tree 52. <i>Pittosporum undulatum</i> (Sweet Pittosporum) /to east of theatre	3.4m
Tree 53. <i>Melaleuca quinquenervia</i> (Broad Leaved Paperbark) /to east of theatre	5m
Tree 54. <i>Pittosporum undulatum</i> (Sweet Pittosporum) /to east of theatre	3m
Tree 56. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	10.8m
Tree 57. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	10.8m
Tree 60. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to east of theatre	5.4m
Tree 68. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	9.6m
Tree 69. <i>Eucalyptus saligna</i> (Sydney Blue Gum) / to northern boundary	5.4m
Tree 70. <i>Angophora floribunda</i> (Rough barked Apple)/ to northern boundary	4.1m

Reason: To protect existing trees.

61. Approved tree works

Prior to the commencement of any works, the following is to be undertaken to the specified trees:

Tree/location	Approved tree works
Tree 8 <i>Eucalyptus fibrosa</i> (Red Iron Bark)/ to southern boundary	Removal
Tree 9 <i>Lophostemon confertus</i> (Brushbox)/ to southern boundary	Removal
Tree 59 <i>Fraxinus</i> sp. (Ash)to northern boundary	Removal
Tree 71 <i>Lagerstroemia indica</i> (Crepe Myrtle)/to northern boundary	Removal

1. All trees are to be clearly tagged and identified in accordance with the specifications in the arborist report prior to the removal or pruning of any tree/s .
2. Canopy and/or root pruning shall be undertaken by an experienced

arborist/horticulturist, with a minimum AQF Level 3 qualification.

3. All root or canopy pruning works shall be undertaken as specified in current version of **Australian Standard AS 4373 - Pruning of amenity trees**.

Removal or pruning of any other tree on the site is not approved, excluding species and works exempt under *Ku-ring-gai Development Control Plan*.

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

62. Hand excavation

All excavation within the specified radius of the trunk/s of the following tree/s shall be carried out by hand digging and/or by an air knife and shall be supervised by an experienced arborist/horticulturist, with a minimum AQF Level 3 qualification. The arborist /horticulturalist shall provide a report to the Principal Certifier confirming compliance with this condition:

Tree/Location	Radius in metres
Tree 1. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to carpark	7.2m
Tree 2. <i>Jacaranda mimosifolia</i> (Jacaranda) /to south western boundary	2.4m
Tree 3. <i>Liquidambar styraciflua</i> (Liquidambar) /to southern boundary	12m
Tree 4. <i>Ulmus</i> sp. /to southern boundary	3m
Tree 5 <i>Liquidambar styraciflua</i> (Liquidambar) /to southern boundary	10.8m
Tree 6. <i>Ulmus parvifolia</i> (Chinese Elm) /to southern boundary	4.8m
Tree 7. <i>Radermachera sinica</i> (China Doll Tree) /to southern boundary	3m
Tree 10. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	12m
Tree 19. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to southern boundary	10.8m
Tree 20. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to southern boundary	7.2m
Tree 23. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	13.2m
Tree 21. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	9.6m
Tree 25. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	7.2m
Tree 26. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	12m
Tree 27. <i>Angophora costata</i> (Sydney red Gum) /to southern boundary	1.8m
Tree 28. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to southern boundary	4.2m
Tree 29. <i>Eucalyptus pilularis</i> (Blackbutt) /to southern boundary	3m
Tree 48. <i>Lophostemon confertus</i> (Brushbox)/ to east of theatre	12m
Tree 49. <i>Eucalyptus saligna</i> (Sydney Blue Gum) /to east of theatre	14.1m
Tree 50. <i>Angophora floribunda</i> (Rough barked Apple) /to east of theatre	3.4m
Tree 51. <i>Melaleuca quinquenervia</i> (Broad Leaved Paperbark) /to east of theatre	5m
Tree 52. <i>Pittosporum undulatum</i> (Sweet Pittosporum) /to east of theatre	3.4m
Tree 53. <i>Melaleuca quinquenervia</i> (Broad Leaved Paperbark) /to east of theatre	5m
Tree 54. <i>Pittosporum undulatum</i> (Sweet Pittosporum) /to east of theatre	3m
Tree 56. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	10.8m
Tree 57. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	10.8m
Tree 60. <i>Eucalyptus saligna</i> (Sydney Blue Gum)/ to east of theatre	5.4m
Tree 68. <i>Eucalyptus</i> sp. (Ironbark)/ to northern boundary	9.6m
Tree 69. <i>Eucalyptus saligna</i> (Sydney Blue Gum) / to northern boundary	5.4m
Tree 70. <i>Angophora floribunda</i> (Rough barked Apple)/ to northern boundary	4.1m

Reason: To protect existing trees.

63. No storage of materials beneath trees

No activities, soil compaction, storage or disposal of materials shall take place beneath the canopy of any tree protected under *Ku-ring-gai Development Control Plan* at any time unless specified in other conditions of this consent.

Reason: To protect existing trees.

64. Removal of refuse

All builders' refuse, spoil and/or material unsuitable for use in landscape areas shall be removed from the site on completion of the building works.

Reason: To protect the environment.

65. Canopy replenishment trees to be planted

The canopy replenishment trees to be planted shall be maintained in a healthy and vigorous condition until they attain a height of 5 metres when they will be protected by *Ku-ring-gai Development Control Plan*. Any of the trees found faulty, damaged, dying or dead shall be replaced with the same species.

Reason: To maintain the treed character of the area.

66. On site retention of waste dockets

All demolition, excavation and construction waste dockets are to be retained on site, or at suitable location, in order to confirm which facility received materials generated from the site for recycling or disposal.

- each docket is to be an official receipt from a facility authorised to accept the material type, for disposal or processing
- this information is to be made available at the request of an authorised Council officer.

Reason: To protect the environment.

67. Maintenance of site

All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.

Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.

Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.

During construction:

- all vehicles entering or leaving the site must have their loads covered, and
- all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.

At the completion of the works, the work site must be left clear of waste and debris.

Reason: To ensure the site is appropriately maintained.

68. Vibration

Vibration emitted from activities associated with the demolition, excavation, construction and fitout of buildings and associated infrastructure shall satisfy the values referenced in Table 2.2 of the Environment Protection Authority Assessing Vibration - a Technical Guideline.

Reason: To protect residential amenity during construction.

69. Control of construction noise (Australian Standard)

During excavation, demolition and construction phases, noise generated from the site shall be controlled in accordance with best practice objectives of AS 2436-2010 and NSW Environment Protection Authority Interim Construction Noise Guidelines.

Reason: To protect the amenity of neighbouring properties

70. Site fencing

The site must be secured and fenced prior to works commencing. All excavation, demolition and construction works shall be properly guarded and protected with hoardings or fencing to prevent them from being dangerous to life and property.

If the work involved in the excavation, demolition or construction of the development is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or building involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place.

If necessary, a hoarding is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place (note that separate approval is required prior to the commencement of works to erect a hoarding or temporary fence on public property).

The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons on public property.

The site shall be secured/locked to prevent access at the end of each day.

Any hoarding, fence or awning is to be removed when the construction work has been completed.

Reason: To ensure public safety.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE:

71. Operational parking, transport and pedestrian access management plan

An Operational Parking, Transport and Pedestrian Access Management Plan shall be prepared by a suitably qualified and experienced engineer, prior to the occupation of the theatre, addressing the following:

- pedestrian safety and control
- adequacy of parking provision and potential need to reduce concurrent use of elements
- adequacy of set down/pick up provision
- adequacy of lighting for the pedestrian travel paths
- measures to prevent use of the noise sensitive parking spaces in the railway car park

This plan is to be approved by Council's Traffic Engineer and is to include provision for monitoring and review after the development becomes fully operational. Any future amendments to the Plan shall occur only with the written approval of Council's Traffic Engineer. The Plan forms part of the development consent and the site must be operated in accordance with the Plan at all times.

Reason: To protect ensure appropriate provision for pedestrian access and parking.

72. Removal/decommission of cooling towers

Prior to the issue of an Occupation Certificate, the Principal Certifier shall obtain written confirmation that all cooling tower(s) on the premises are removed or are otherwise decommissioned in a manner that ensures they are isolated from the power and water supply and cannot be operated.

Reason: To ensure compliance with standards for public health.

73. Acoustic controls - building

Prior to the issue of an Occupation Certificate, written confirmation from an acoustic engineer shall be submitted to the Principal Certifier, confirming that all acoustic measures including wall, ceiling, glazing, door and roof treatments and recommended screening have been installed and achieves the project specific noise criteria.

Reason: To protect the amenity of neighbouring residents.

74. Acoustic controls - foyer and café

Prior to the issue of an Occupation Certificate, written confirmation from an acoustic engineer shall be submitted to the Principal Certifier, confirming that any speakers associated with amplified sound equipment in the foyer and/or café have had limiters installed and achieves the project specific noise criteria.

Reason: To protect the amenity of neighbouring residents.

75. RSL war memorial

The existing two RSL war memorial plaques shall be relocated on-site in a location where they are visible to the general public. The display is to include a photograph of the existing flag pole and memorial and a flag. The display is to be erected prior to the issue of an Occupation Certificate.

Reason: To protect and retain the RSL war memorial.

76. Mechanical ventilation

Following completion, installation and testing of all the mechanical ventilation systems

the installation and performance of these systems must comply with:

- The National Construction Code
- Australian Standard 1668
- Australian Standard 3666 where applicable.

The Principal Certifier shall be satisfied of the above prior to the issue of any Occupation Certificate.

Reason: To protect the amenity of occupants and neighbouring properties.

77. Completion of landscape works

Prior to the issue of an Occupation Certificate, the Principal Certifier is to be satisfied that all landscape works have been undertaken in accordance with the approved plan(s) and conditions of this development consent.

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

78. Mechanical noise control

Prior to the issue of an Occupation Certificate, the Principal Certifier shall be satisfied that amplified sound equipment, mechanical equipment, air conditioners, mechanical exhaust, refrigeration motors and other noise generating plant when in operation either as an individual piece of equipment or in combination with other equipment will not be audible within any habitable room in any residential occupancy before 7.00am and after 10.00pm. Outside of these restricted hours noise from an individual piece of equipment or in combination shall not be greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the nearest adjoining property boundary. The background (LA90, 15 min) level is to be determined without the source noise present. Written confirmation from an acoustic engineer that the development achieves the above requirements is to be submitted to the Principal Certifier.

Reason: To protect the amenity of occupants and neighbouring properties.

79. Outdoor lighting

Prior to the issue of the Occupation Certificate, the Principal Certifier shall be satisfied that all outdoor lighting will comply with AS/NZS 4282:2019 *Control of the obtrusive effects of outdoor lighting* and is mounted, screened and directed in a way that does not create a nuisance or light spill on to buildings on adjoining

lots or public places.

Lighting at vehicle access points to the development must be provided in accordance with AS/NZS 1158 Set:2010 *Lighting for roads and public spaces*.

Reason: To provide high quality external lighting for security without adverse impacts on public amenity from excessive illumination.

80. Certification of drainage works

Prior to issue of an Occupation Certificate, the Principal Certifier is to be satisfied that:

1. The components of the new drainage system have been installed by a licensed contractor in accordance with the National Plumbing and Drainage Code AS3500.3 (2018) and the Building Code of Australia.
2. The stormwater drainage works have been completed in accordance with the approved Construction Certificate drainage plans, the nominated BASIX commitments and Ku-ring-gai DCP Part 24 'Water Management'.

Evidence from the plumbing contractor or a qualified civil/hydraulic engineer confirming compliance with this condition is to be provided to Council prior to the issue of an Occupation Certificate.

Reason: To ensure appropriate stormwater management.

81. CCTV report of pipe after work

Prior to issue of an Occupation Certificate, a closed circuit television inspection and report on the Council drainage pipeline traversing the site is to be undertaken by appropriate contractors and provided to Council's Development Engineer. The report is to include a copy of the footage of the inside of the pipeline. Any damage that has occurred to the section of the pipeline since the commencement of construction on the site must be repaired in full to the satisfaction of Council's Development Engineer at no cost to Council.

Reason: To protect public infrastructure.

82. Certification of as-constructed driveway/carpark

Prior to issue of an Occupation Certificate, the Principal Certifier is to be satisfied that:

1. The as-constructed car park complies with the approved Construction Certificate plans.
2. The completed vehicle access and accommodation arrangements comply with Australian Standard 2890.1 - 2004 "Off-Street car parking" in terms of minimum parking space dimensions.
3. Finished driveway gradients and transitions will not result in the scraping of the underside of cars.
4. No doors, gates, grilles or other structures have been provided in the access driveways to the basement carpark, which would prevent unrestricted access for internal garbage collection from the basement garbage storage and collection area.

Evidence from a suitably qualified and experienced traffic/civil engineer

demonstrating compliance with the above is to be provided to and approved by the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure that vehicular access and accommodation areas are compliant with Australian Standards and the Development Consent.

83. Reinstatement of redundant crossings and completion of infrastructure works

Prior to issue of an Occupation Certificate, and upon completion of any works which may cause damage to Council's property, the Principal Certifier must receive a signed inspection form from Council which states that the following works in the road reserve have been completed:

1. new concrete driveway crossing in accordance with levels and specifications issued by Council
2. removal of all redundant driveway crossings and kerb laybacks (or sections thereof) and reinstatement of these areas to footpath, turfed verge and upright kerb and gutter (reinstatement works to match surrounding adjacent infrastructure with respect to integration of levels and materials)
3. full repair and resealing of any road surface damaged during construction
4. full replacement of damaged sections of grass verge to match existing
5. reconstruction of kerb and gutter with associated road pavement restoration for the full frontage of the development site

This inspection may not be carried out by the Principal Certifier because restoration of Council property outside the boundary of the site is not a matter listed in Clause 161 of the Environmental Planning and Assessment Regulation 2000.

All works must be completed in accordance with the General Specification for the Construction of Road and Drainage Works in Ku-ring-gai Council, dated November 2004. The Occupation Certificate must not be issued until all damaged public infrastructure caused as a result of construction works on the subject site (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. Repair works shall be at no cost to Council.

Reason: To protect the public infrastructure.

84. Construction of works in public road - approved plans

Prior to issue of an Occupation Certificate, the Principal Certifier must be satisfied that all approved road, footpath and/or drainage works have been completed in the road reserve in accordance with the Council Roads Act approval and accompanying drawings, conditions and specifications.

The works must be supervised by the Applicant's engineer and completed to the satisfaction of Council.

The supervising consulting engineer is to provide certification upon completion that the works were constructed in accordance with the Council approved stamped drawings. The works are to be subject to inspections by Council at the hold points noted on the Roads Act approval. All conditions attached to the

approved drawings for these works must be met prior to an Occupation Certificate being issued.

Reason: To ensure that works undertaken in the road reserve are to the satisfaction of Council.

85. Infrastructure repair

Prior to issue of an Occupation Certificate 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.

86. Fire safety certificate

Prior to the issue of an Occupation Certificate, the Principal Certifier shall be satisfied that a fire safety certificate for all the essential fire or other safety measures forming part of this Development Consent has been completed and provided to Council.

Reason: To ensure suitable fire safety measures are in place.

87. Construction of food premises (kitchen, café prep and bar)

Prior to the issue of an Occupation Certificate, the Principal Certifier shall be satisfied that the construction of the food premises and all food storage areas is in accordance with the requirements of the Food Act 2003, *Food Standards Code 3.2.3 Food Premises and Equipment, Australian Standard AS 4674 2004 - Design, construction and fit-out of food premises* and National Construction Code.

If a private certifier is to be used, the final inspection of the food premises fit out shall be carried out by a suitably qualified person. Documentation is to be submitted to the Principal Certifier certifying compliance with all relevant requirements.

Note: Council's Environmental Health Officer may be engaged to carry out the required inspection of the food premises. An inspection fee shall be charged in accordance with Council's current Schedule of Fees and Charges if this inspection is required. This fee must be paid prior to inspection being carried out.

Reason: To ensure compliance with standards for food premises.

88. Waste storage room - commercial premises

Prior to the issue of an Occupation Certificate, the Principal Certifier shall be satisfied that the waste storage room has been installed and is of an adequate size to contain the waste bins. All internal walls are rendered and coved at the floor/wall intersection. The floor is graded and drained to the sewer and a tap with hot and cold water is located in close proximity to facilitate cleaning of the waste bins and waste storage room.

Reason: To protect residential amenity and prevent environmental pollution.

89. Trade waste permit/consent - food premises

Prior to the issue of an Occupation Certificate, evidence of a Sydney Water permit or consent for the discharge of wastewater into the sewer shall be submitted to the Principal Certifier. Where a permit or consent may not be required from Sydney Water, certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.

Reason: To ensure compliance with environmental and health standards for food premises

CONDITIONS TO BE SATISFIED AT ALL TIMES:

90. Waste storage and recycling bin management

A contract with a commercial waste collection company must be maintained for collection of waste and recycling. Waste and recycling must be collected a minimum frequency of once a week. The emptied waste and recycling bins must be returned to the approved waste storage room on the property and must not be stored on the roadway, kerbside or other location outside of the property.

Reason: To protect health and amenity

91. Maximum occupancy

The premises shall operate in accordance with the following maximum occupancy levels (exclusive of staff, performers, etc):

theatre	249 persons
café	41 (21 internal and 20 external) persons
theatrette	63 persons
amphitheatre	50 persons
rehearsal room	60 persons
flexible community space	48 persons

The theatre and theatrette shall not operate concurrently.

Reason: To protect health and amenity

92. Noise control - balcony and cafe`

The doors to the balcony adjoining the foyer and the outdoor dining areas of the cafe are to be kept closed after 9pm.

Fixed or portable speakers associated with amplified sound systems are not permitted on the balcony adjoining the foyer or the outdoor dining area of the cafe. Any speakers within the foyer or cafe are to be fixed and installed so that they are not orientated toward doors or windows opening to the external environment.

Reason: To protect the amenity of residential properties.

93. Waste collections - commercial premises

All waste collection services for the business are only to be carried out:

- (a) between 8.00am - 5.00pm Monday to Friday; or
- (b) between 8.00am - 1.00pm Saturday.

Reason: To protect the amenity of the surrounding area.

94. Outdoor amphitheatre - amplification equipment

If amplification equipment is used in the outdoor amphitheatre, it must be portable and removed from the amphitheatre when not in use. The orientation of any speakers or amplification equipment must be towards Marian Street or Culworth Avenue and not towards neighbouring residential properties.

Reason: To protect residential amenity.

95. Outdoor lighting

All external lighting must:

- 1. Comply with AS/NZS 4282:2019: *Control of the obtrusive effects of outdoor lighting* and
- 2. Be mounted, screened and directed in a way that it does not create a nuisance or light spill on to buildings on adjoining lots or public places.

Lighting at vehicle access points to the development must be provided in accordance with AS/NZS 1158 Set: 2010 *Lighting for roads and public spaces*.

Reason: To protect the amenity of surrounding properties.

96. Noise control - mechanical plant

Noise levels associated with mechanical plant installed on the premises shall not be audible within any habitable room in any other neighbouring residential premises before 7.00am and after 10.00pm. Outside of these restricted hours noise levels associated with mechanical plant installed on the premises either as an individual piece of equipment or in combination shall not emit a noise level greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the nearest adjoining property boundary. The background (LA90, 15 min) level is to be determined without the source noise present.

Reason: To protect the amenity of neighbouring residential occupants and neighbouring properties.

97. Noise control - rainwater re-use system

Noise levels associated with rainwater re-use system(s) installed on the premises shall not be audible within any habitable room in any other neighbouring residential premises before 7.00am and after 10.00pm. Outside of these restricted hours noise levels associated with rainwater re-use system(s) installed on the premises, either as an individual piece of equipment or in combination, shall not emit a noise level greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the nearest adjoining property boundary. The background (LA90, 15 min) level is to be determined without the source noise

present.

Reason: To protect the amenity of neighbouring residential occupants and neighbouring properties.

98. Noise control - air conditioning

Noise levels associated with air conditioning units installed on the premises shall not be audible within any habitable room in any residential occupancy between the hours of 10.00pm and 7.00am. Outside of these restricted hours noise levels associated with air conditioning units installed on the premises either as an individual piece of equipment or in combination shall not emit a noise level greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the nearest adjoining property boundary. The background (LA90, 15 min) level is to be determined without the source noise present.

Reason: To protect the amenity of residential occupants and neighbouring properties.

99. Noise control - mechanical exhaust ventilation

Noise levels associated with mechanical exhaust ventilation installed on the premises shall not be audible within any habitable room in any other neighbouring residential premises before 7.00am and after 10.00pm. Outside of these restricted hours noise levels associated with mechanical exhaust ventilation installed on the premises either as an individual piece of equipment or in combination shall not emit a noise level greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the nearest adjoining property boundary. The background (LA90, 15 min) level is to be determined without the source noise present.

Reason: To protect the amenity of neighbouring residential occupants and neighbouring properties.

100. Loading and unloading

At all times, all loading and unloading of service vehicles in connection with the use of the premises shall be carried out wholly within the site.

Reason: To ensure safe traffic movement and protect residential amenity.

101. Deliveries - commercial premises

All deliveries for the business are to be carried out:

1. between 9.00am and 5.00pm Sunday to Tuesday; and
2. between 8.00am and 7.00pm Wednesday to Saturday.

Reason: To protect the amenity of the surrounding area.

102. Hours of operation – theatre, theatrette and flexible community space

At all times, the hours of operation are restricted to the following approved standard hours:

Wednesday to Saturday	7.00am - 9.30pm
Sunday to Tuesday	8.30am - 9.30pm

Staff and patrons must leave the premises by 10.00pm.

Notwithstanding the above approved standard hours, the theatre may operate on the basis of a 12 month trial period during the following hours:

Thursday to Saturday 7.00am - 11.00pm

The trial period will commence upon issue of an Occupation Certificate and Council shall be notified in writing at the commencement of the trial period.

During the trial period the theatre shall be operated in a manner where theatre staff direct patrons to park in the commuter car park and access the theatre from the car park (and return) using Culworth Avenue, not the pedestrian path adjacent to 19 Marian Street. Staff shall direct patrons to park in the commuter car park, utilising the spaces nearest to Culworth Avenue and avoiding the spaces identified in yellow in the approved Plan of Management.

Prior to the commencement of the trial period, signage is to be erected in the commuter car park (on the fences adjoining residential properties) directing patrons attending the theatre to avoid parking in those spaces.

For the duration of the trial period (and afterwards if the approved standard hours are modified) patrons are to be advised of the parking arrangements when purchasing tickets.

A minimum of 3 months prior to the cessation of the trial period a modification application shall be lodged with Council should consideration of an extension of the trial period be sought. Any such application shall be accompanied by a report addressing the efficacy of the parking management system and a summary of all noise objections received by the theatre identifying the nature of the noise complaint (ie the source of noise) and the date of the complaint.

In the absence of any modification of this condition, at the cessation of the 12 months trial period the use of the theatre shall revert to the approved standard hours.

The approved Plan of Management shall be amended to incorporate these provisions and the amended Plan of Management and details of the proposed signage shall be provided to Council for approval prior to the issue of an Occupation Certificate. All signage shall be erected prior to the issue of an Occupation Certificate.

Reason: To protect the amenity of the area.

103. Hours of operation - level one café

At all times, the hours of operation are restricted to:

Monday to Sunday 7.00am - 9.00pm

Reason: To protect the amenity of the area.

104. Hours of operation – rehearsal space

At all times, the hours of operation are restricted to:

Monday to Sunday 7.00am - 10.30pm
No performances are to occur in the rehearsal space.

Reason: To protect the amenity of the area.

105. Hours of operation - outdoor amphitheatre

At all times, the use of the outdoor amphitheatre is restricted to daylight hours.

If amplification equipment is used in the outdoor amphitheatre, it must be portable and removed from the amphitheatre when not in use. The orientation of any speakers or amplification equipment must be towards Marian Street or Culworth Avenue and not towards neighbouring residential properties.

Reason: To protect residential amenity.

106. Car park management

In order to ensure adequate car parking capacity for performances without detrimentally impacting the availability of on-street parking for surrounding residents the following standard operational requirements shall apply:

For all evening performances in the theatre where the audience capacity is to reach 200 persons or more	The theatrette, rehearsal room, café, flexible community space and amphitheatre shall not operate at the same time as the theatre
For all daytime performances from Monday-Friday in the theatre where the audience capacity of to reach 150 persons or more	The theatrette, rehearsal room, flexible community space and amphitheatre shall not operate at the same time as the theatre
For all daytime performances from Saturday - Sunday in the theatre where the audience capacity of to reach 200 persons or more	The theatrette, rehearsal room, flexible community space and amphitheatre shall not operate at the same time as the theatre
For all other performances in the theatre	The theatrette and amphitheatre shall not operate at the same time as the theatre

The approved Plan of Management shall be amended to incorporate these provisions and the amended Plan of Management shall be provided to Council for approval prior to the issue of an Occupation Certificate. All signage shall be erected prior to the issue of an Occupation Certificate.

Reason: To ensure adequate availability of on-street parking for residents the area.

107. Plan of management

The theatre and associated uses shall at all times operate in accordance with the

approved Plan of Management as required to be amended by the conditions of this consent. The amended Plan of Management forms part of the conditions of consent and any amendment to it may only occur with the written approval of Council.

Reason: To protect residential amenity.

108. Annual fire safety statement

Each 12 months after the installation of essential fire or other safety measures, the Owner of a building must provide the Council with an Annual Fire Safety Statement for the building. In addition, a copy of the Statement must be given to the NSW Fire Commissioner and a third copy must be displayed prominently in the building.

Reason: To ensure maintenance of essential statutory fire safety measures.

109. Signage

The building identification sign located on the southern façade (rear) of the building shall not be illuminated by floodlighting or any other means.

The building identification sign located on the awning to the entrance of the theatre and the interchangeable performance sign adjacent to the entrance of the theatre shall be fitted with a timer which is programmed to be turned off at the cessation of the approved hours of operation each night.

All illuminated signage shall be designed and operated in accordance with the recommendations of the approved lighting report.

Reason: To protect residential amenity.



Kerry Gordon
Consultant Town Planner