

# COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSNH-387
<b>DA Number</b>	MOD0020/23
<b>LGA</b>	Ku-ring-gai
<b>Proposed Development</b>	Modification to Land and Environment Court Approval 14219 of 2018 (DA0418/15) for a residential aged care facility proposing additional tree removal
<b>Street Address</b>	25 Bushlands Avenue, Gordon
<b>Applicant/Owner</b>	Ada Cheng
<b>Date of DA lodgement</b>	23 February 2023
<b>Total number of Submissions Number of Unique Objections</b>	Two submissions
<b>Recommendation</b>	<b>Approval</b>
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	A Section 4.56 modification application to a development consent where the development has a capital investment value of more than \$30 million.
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>i. Environmental Planning and Assessment Regulation 2021</li> <li>ii. Biodiversity Conservation Act 2016</li> <li>iii. State Environmental Planning Policy (Biodiversity Conservation) 2021</li> <li>iv. State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>v. State Environmental Planning Policy (Housing) 2021</li> <li>vi. Ku-ring-gai Local Environmental Plan, 2015 (KLEP)</li> <li>vii. Ku-ring-gai Development Control Plan (KDCP)</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>i. Attachment A - Location sketch</li> <li>ii. Attachment B -Zoning Extract</li> <li>iii. Attachment C - Scope of modifications letter dated 10 February 2023)</li> <li>iv. Attachment D - Site Landscape plan contained within Attachment E</li> <li>v. Attachment E – Arborist report dated 10 February 2023</li> <li>vi. Attachment F - Biodiversity Development Assessment Report dated May 2023</li> <li>vii. Attachment G - Submissions</li> </ul>
<b>Clause 4.6 requests</b>	N/A
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Tree removal</li> <li>• Development is out of character for the area</li> </ul>

<b>Report prepared by</b>	Phil Johnston
<b>Report date</b>	28 July 2023

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

#### **Clause 4.6 Exceptions to development standards**

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

#### **Special Infrastructure Contributions**

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

#### **Conditions**

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

## PURPOSE OF REPORT

This application is reported to the Sydney North Planning Panel (SNPP) for determination as it is a Section 4.56 modification application to a development consent for works that had a capital investment value of more than \$30 million. Pursuant to Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021, the SNPP is the consent authority.

## 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

<b>Issues</b>	Removal of dead and/or dying trees
<b>Submissions</b>	Notification period: 21/03/2023 – 04/04/2023 Two submissions received.
<b>Land and Environment Court</b>	DA0418/15 was approved by the L & E Court (Appeal No. 14219 of 2018) No current matters before the L & E Court
<b>Recommendation</b>	Approval

## THE DEVELOPMENT CONSENT (DA0418/15)

On 7 May 2019, the Land and Environment Court granted deferred commencement development consent to DA0418/15 (Appeal No. 14219 of 2018) for demolition of existing structures and construction of a residential aged care facility, basement car parking and landscaping works at 25, 25A and 27 Bushlands Avenue, Gordon.

## **HISTORY**

### **Relevant site and application history**

#### **DA0418/15**

On 17 November 2017, the Sydney North Planning Panel refused DA0418/15 which sought approval to “demolish structures (except dwelling at 25 Bushlands Avenue) and construct a residential aged care facility, basement parking and landscaping works under the provisions of SEPP (Housing for Seniors or People with a Disability) 2004” at 25, 25A and 27 Bushlands Avenue, Gordon for the following reason:

*“The proposal would result in unacceptable noise impacts, particularly on the immediate neighbours. The use of the driveway during the night-time period has potential to give rise to sleep disturbance even with the nominated noise controls. The predicted noise levels for the use of the driveway between 11.00pm and 6.00am and the number of vehicle movements is uncertain as to ensuring the residents are not unreasonably disturbed. The extent or efficacy of the provision of additional noise control measures to ensure full compliance with the latest NSW EPA criteria for sleep disturbance is unknown.”*

On 15 January 2018, a Class 1 Appeal was lodged in the Land and Environment Court against the refusal of DA0418/15.

On 7 May 2019, the Land and Environment Court granted deferred commencement consent to DA0418/15 (Appeal No. 14219 of 2018).

#### **MOD0151/20**

On 29 January 2021, approval for a modification to the development consent to DA0418/15, proposing minor internal changes, external path-way changes and relocation of gas and water meters, was granted by Council under delegated authority.

#### **MOD0040/21**

On 1 April 2021 approval for modification to of the development consent to DA0418/15, proposing amendments to Condition 1B and Condition 40 was granted by Council under delegated authority.

#### **MOD0110/21**

On 25 November 2021 approval for modification to DA0418/15 proposing amendments to Conditions 1, 1C, 65, and 89 including additional tree removal and pruning was approved by Council under delegated authority.

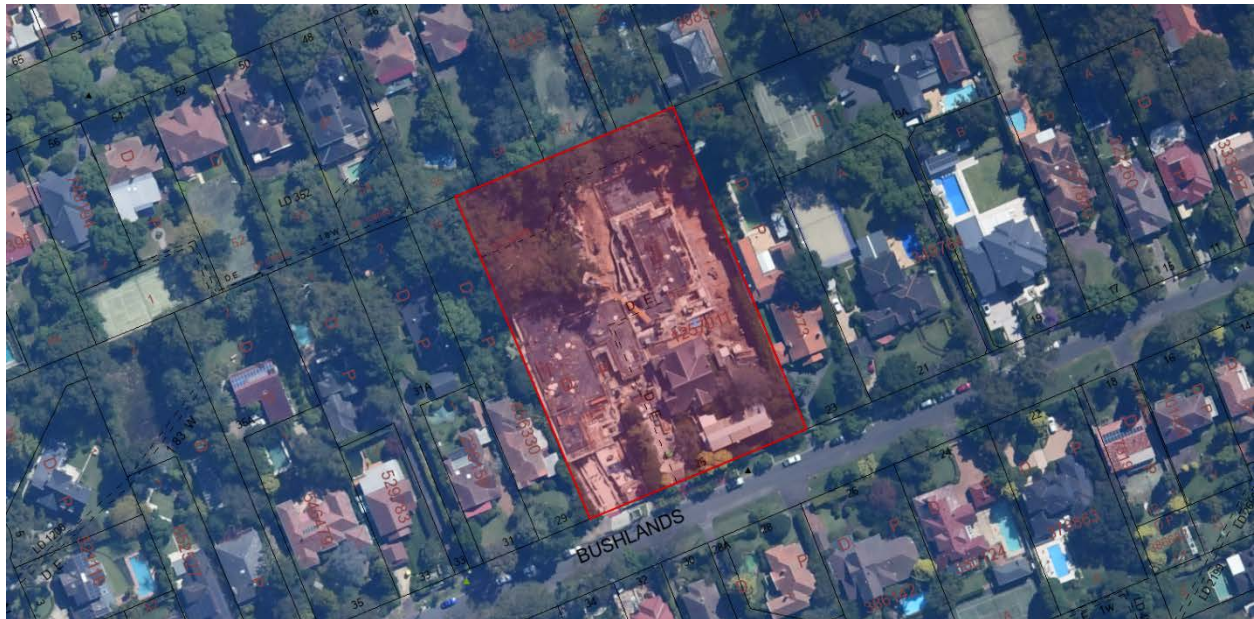
#### **MOD0143/22**

On 11 November 2022, MOD0143/22 to replace the deteriorated slate roof of “Birralelee” was withdrawn by the Applicant.

## Current application

Date	Action
3 March 2023	Application lodged.
14 March 2023	The application was notified and two submissions were received – <b>Attachment G</b> .
26 April 2023	<p>Council sent a letter to the applicant advising that the following issues were to be addressed:</p> <p>i. The proposal triggers entry into the Biodiversity Offset Scheme (BOS) as the proposed modification seeks to remove Tree 124 <i>Eucalyptus pilularis</i> (Blackbutt) which is located within the NSW biodiversity land values map. A biodiversity development assessment report (BDAR) is therefore required. The removal of Tree 27 <i>Angophora costata</i> (Smooth-barked Apple) is also to be assessed under the BDAR.</p> <p>The BDAR is to be prepared by an accredited assessor under the <i>Biodiversity Conservation Act 2016</i>.  <a href="https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/accredited-assessors">https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/accredited-assessors</a></p> <p>Council sent an email requesting the Applicant to upload a Cost Summary Report/ QS Report. <i>“This should identify the CIV (excl GST) for the proposed modified development under the subject application. Alternatively, where are no changes sought to the development that would alter the CIV or the CIV has not increased, a letter detailing these matters may be submitted along with the existing cost summary/QS for the Secretariate’s consideration.”</i></p>
5 May 2023	The Applicant submits a copy of the original project cost estimate and a covering letter explaining that the works subject of the MOD application will not vary the project cost.
26 May 2023	The Applicant submits a copy of the BDAR ( <b>Attachment F</b> ).
28 June 2023	The Sydney North Planning Panel was briefed on the subject application.
31 July 2023	The Applicant responds to wording for draft conditions.

## THE SITE



**Figure 1: Aerial image of the subject site.**

## SITE DESCRIPTION

Constraint:	Application:
Zoning	R2 Low Density Residential
Height	Maximum permitted 9.5 metres
Floor Space Ratio	Maximum permitted 0.3:1
Site area	7,406m <sup>2</sup>
Visual character study category	1920-1945
Easements/rights of way	Drainage easements; however, not associated with this modification.
Heritage Item - Local	Yes – “Berrilee” cottage
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 – support for Core Biodiversity and Biodiversity Corridors and Consolidation
Natural Resources Riparian	No
Within 25m of Urban Bushland	No
Contaminated land	No
Within 25m of Classified Road	No
Within 25m of a rail corridor/tunnel	No

Until recently, the site comprised of three allotments and was known as 25, 25A, and 27 Bushlands Avenue, Gordon. The site has recently been consolidated into one allotment, described as Lot 1 in DP 1257011 (25 Bushlands Avenue) (**Attachment A**).

The consolidated development site is 7,406m<sup>2</sup> and is irregular in shape.

The previous structures on the site have been demolished.

The street frontage of the site contains a heritage item (cottage), known as “Birralelee”.

## THE PROPOSAL

The applicant has submitted a scope of modifications (**Attachment C**).

Under Section 4.56 of the *Environmental Planning and Assessment Act 1979*, approval is sought to modify the development consent as follows:

Modify Condition 1C of the consent to DA0418/15, which requires the removal of four dead or dying trees from the subject site. The trees sought to be removed are shown within landscape plan as part of the BDAR (**Attachment F**).

The modifications described above require changes to **Conditions 42C** and **67** of the development consent and new **Conditions 1D, 1E, 19E** and **42E**.

No physical changes to the approved development are sought in the application.

### Amended documents submitted 5 May 2023 and 26 May 2023

In accordance with the criteria in Part 3 of the Community Participation Plan, Council’s Development Assessment Team Leader determined that notification of the additional information was not required, as the amendments were unlikely to detrimentally affect the enjoyment of adjoining or neighbouring land.

## COMMUNITY CONSULTATION

In accordance with Appendix 1 of the Ku-ring-gai Community Participation Plan, owners of surrounding properties were given notice of the application. In response, two submissions were received from the following:

Name	Address	
1. Katrina Ganin	37 Warwick Street	Killara
2. Jill Johnston	7 Yarabah Avenue	Gordon

The submissions raised the following issues:

***The development is already out of scale, out of character and inappropriate and the site already represents a considerable deforestation of the local area.***

On 7 May 2019 the Land and Environment Court approved the development. An approved landscape plan required replenishment of landscape features and trees. The current application (MOD0020/23) is for the removal of dead and/or dying trees, and it is recommended that suitable replacement trees be provided. (**Condition 19E**).

***As construction nears completion, even further concessions are being sought with more***

**trees to be removed.**

Approval was granted to MOD0110/21 on 25 November 2021 for tree limbs to be removed, which were being impacted by scaffolding and construction work. At the time of assessment, Council's Landscape and Tree Assessment Officer considered that, the impact created by the proposal was minimal. In addition, as noted above, replenishment planting is recommended by condition.

**Internal Referrals**

**Landscape**

Council's Landscape and Tree Assessment Officer provided the following comments:

KDCP COMPLIANCE TABLE												
Control	Proposed	Satisfies										
Part 4A.4 Landscaping and Part 13 Tree and Vegetation Preservation												
C1. Landscape proposals are to retain existing trees where possible	<p>The proposal includes the removal of trees:</p> <p>T11 – Acer palmatum (Japanese Maple) T27 – Angophora costata (Sydney Red Gum) T101.2 – Photinia sp. (Photinia) hedge x 5 specimens T124 – Eucalyptus pilularis (Blackbutt)</p> <p>The removal of Trees 11, 27, 101.2 and 124 is acceptable as they are either dead or in terminal decline and unlikely to recover.</p> <p>A condition will be recommended requiring replacement planting.</p>	YES										
C4. Tree replenishment and planting to be provided.	<p>The proposal satisfies this part.</p> <table border="1"><thead><tr><th>Lot size</th><th>Number of trees</th></tr></thead><tbody><tr><td>Less than 850m2</td><td>3</td></tr><tr><td>850m2 to 1,000m2</td><td>5</td></tr><tr><td>1,001 m2 to 1,500m2</td><td>7</td></tr><tr><td>Over 1,500m2</td><td>10 or as directed</td></tr></tbody></table> <p>The proposal retains in excess of 10 tree/s capable of attaining a minimum height of 13.0m, however a condition will be recommended to replace T27 and 124 within the biodiversity area at the rear of the dwellings.</p>	Lot size	Number of trees	Less than 850m2	3	850m2 to 1,000m2	5	1,001 m2 to 1,500m2	7	Over 1,500m2	10 or as directed	YES
Lot size	Number of trees											
Less than 850m2	3											
850m2 to 1,000m2	5											
1,001 m2 to 1,500m2	7											
Over 1,500m2	10 or as directed											



Part 19 Heritage Items and Heritage Conservation Areas		
19C.3 Gardens and Landscaping – Within HCAs: Alts and Adds	The site is fully landscaped in accordance with the approved plans. The removal of T11, 27, 101.2 & 124 will not adversely impact the HCA.  A condition will be recommended requiring replacement tree and shrub planting.	YES
19D.3 Gardens and Landscaping – Within HCAs: New Dwellings		
19E.4 Gardens and Landscaping – Heritage Items		
19F.3 Gardens and Landscaping – in the vicinity of Heritage Items/HCAs		
Part 21 General Site Design		
21.1 Earthworks and Slope	No landscape cut or fill is proposed.	YES
C3. Landscape cut or fill should not be more than 600mm above or below natural ground line.		
C4. A minimum 0.6m width is required between retaining walls.		
C5. Existing ground level is to be maintained for a distance of 2m from any boundary.		
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.	No replacement planting details have been provided for the proposed tree removal.  The issue can be resolved by <b>Condition 19E.</b>	NO

## Ecology

Council's Ecology Assessment Officer provided the following comments:

<b>Biodiversity Conservation Act 2016</b>		
<b>Section 7.3</b>	<b>Proposed</b>	<b>Complies</b>
The purpose of the Act is to maintain a healthy, productive and resilient environment	<p>The subject property supports plant community type (PCT) 1281 Turpentine - Grey Ironbark open forest on shale in the lower Blue Mountains, Sydney Basin Bioregion.</p> <p>PCT 1281 is representative of Sydney Turpentine Ironbark Forest (STIF) listed as a Critically Endangered Ecological Communities (CEEC's) under the <i>Biodiversity Conservation Act 2016</i>.</p> <p>The proposal triggers entry into the Biodiversity Offset Scheme (BOS) as the proposed modification seeks to remove Tree 124 <i>Eucalyptus pilularis</i> (Blackbutt) located within the NSW biodiversity land values map.</p> <p>The Biodiversity Offsets Scheme is therefore triggered under the Biodiversity Conservation regulation 2017, subsequently a biodiversity development assessment report (BDAR) has been submitted. The BDAR has been prepared by an accredited assessor who has applied the Biodiversity Assessment Method (the BAM) to assess the impacts of a proposal.</p> <p>The BDAR is acceptable on ecological grounds, subject to <b>Condition 1E</b>.</p>	<b>YES</b>

<b>SEPP Biodiversity Conservation</b>		
<b>Chapter 4 Koala Habitat Protection 2021</b>  This Chapter aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.	<b>Chapter 4 Koala Habitat Protection 2021</b>  The subject property features on the Koala land application map. The subject property occurs within the Central Coast Koala Management Area. No feed trees listed under Schedule 1 of the SEPP are to be removed. No further consideration is deemed necessary under this chapter.	<b>YES</b>

<b>LEP 2015 COMPLIANCE TABLE</b>		
<b>Part 6 Additional local provisions</b>	<b>Proposed</b>	<b>Complies</b>
<b>Clause 5.23 Public Bushland</b> (1) The objective of this clause is to protect and ensure the ecological viability of bushland, including rehabilitated areas in urban areas, by— (a) preserving biodiversity, habitat corridors and links between public bushland and other nearby bushland, and (b) preserving bushland as a natural stabiliser of the soil surface, and (c) preserving existing hydrological landforms, processes and functions, including natural drainage lines, watercourses, wetlands and foreshores, and (d) preserving the recreational, educational, scientific, aesthetic, environmental, ecological and cultural values and potential of bushland, and	<b>Clause 5.23 Public bushland</b>  The subject property does not adjoin 'Public Bushland', the proposal is unlikely to directly or indirectly impact upon Public Bushland. The proposal is considered to be consistent with the aims and objectives of this clause.	<b>YES</b>

LEP 2015 COMPLIANCE TABLE		
Part 6 Additional local provisions	Proposed	Complies
(e) mitigating disturbance caused by development.		

KLEP 2015 COMPLIANCE TABLE		
Part 6 Additional local provisions	Proposed	Complies
<b>Clause 6.3 –Biodiversity Protection</b> The objective of this clause is to protect maintain and improve the diversity and condition of native vegetation and habitat	<p>The proposed modification seeks to remove Tree 27 <i>Angophora costata</i> (Smooth-barked Apple) &amp; Tree 124 <i>Eucalyptus pilularis</i> (Blackbutt) located within lands mapped as “Terrestrial biodiversity”.</p> <p>The aforementioned trees have been assessed by the consultant arborist as being “<i>in terminal decline and unlikely are to recover</i>”.</p> <p>No objection is raised to the removal of Trees 27 &amp; 124 given the current state of these trees and the loss of these trees is not considered to be inconsistent with the objectives of this clause under the LEP.</p>	<b>YES</b>

KDCP COMPLIANCE TABLE		
Part 18 Biodiversity Controls		
18.3 Category – Support for core  18.5 Category – Biodiversity Corridors and Buffer Areas  18.7 Category –No Net Loss	<p>The subject includes land mapped as being Support for Core &amp; Biodiversity corridor and buffer areas under Part 18 of the KDCP.</p> <p>The proposed modification seeks to remove Tree 27 <i>Angophora costata</i> (Smooth-barked Apple) &amp; Tree 124 <i>Eucalyptus pilularis</i> (Blackbutt) located within lands mapped as under these parts.</p> <p>The aforementioned trees have been assessed by the consultant arborist as being “<i>in terminal decline and unlikely are to recover</i>”.</p>	<b>YES</b>

	<p>No objection is raised to the removal of Trees 27 &amp; 124 given the current state of these trees. The removal of T27 &amp; T124 is not considered to be inconsistent with the objectives and controls under these parts.</p> <p>The loss of Trees 27 and 127 is to be compensated by replacement planting. <b>(Condition 19E)</b></p>	
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## External Referrals

The proposal was not required to be referred to Transport NSW or the NSW Rural Fire Service.

## STATUTORY PROVISIONS

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

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

The development, as modified, is substantially the same development as that approved in the Development Consent to DA0418/15. The proposed modification does not alter the essence or character of the development in any materially significant way.

#### ***Subsection (1)(b): Notification***

The application was notified in accordance with the Ku-ring-gai Community Participation Plan.

As required by Section 107 of the Environmental Planning Assessment Regulation 2021, the Land and Environment Court were notified of the application on 13 March 2023.

#### ***Subsection (1)(c) Notification of previous submitters***

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

#### ***Subsection (1)(d): Submissions***

Two submissions were received in response to the notification of the proposal. The issues identified in the submissions have been considered in the 'Community Consultation' section of this report.

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

This assessment report includes consideration of the relevant matters specified in Section 4.15 of the Act. The modification application is considered acceptable, subject to the recommended conditions, as previously mentioned.

## **Section 4.15(1) considerations**

### **Biodiversity Conservation Act 2016**

#### **- Section 7.3**

The purpose of the Act is to maintain a healthy, productive and resilient environment.

The subject property supports plant community type (PCT) 1281 Turpentine - Grey Ironbark open forest on shale in the lower Blue Mountains, Sydney Basin Bioregion.

PCT 1281 is representative of Sydney Turpentine Ironbark Forest (STIF) listed as a Critically Endangered Ecological Community (CEEC's) under the *Biodiversity Conservation Act 2016*.

The proposal triggers entry into the Biodiversity Offset Scheme (BOS), as the proposed modification seeks to remove Trees 27 & 124 *Eucalyptus pilularis* (Blackbutt) located within the NSW biodiversity land values map.

The Biodiversity Offsets Scheme is therefore triggered under the Biodiversity Conservation Regulation 2017, subsequently a biodiversity development assessment report (BDAR) has been submitted to support the modification application. The BDAR has been prepared by an accredited assessor who has applied the Biodiversity Assessment Method (the BAM) to assess the impacts of a proposal.

The BDAR is acceptable on ecological grounds, subject to recommended **Condition 1E**.

### **State Environmental Planning Policy (Biodiversity Conservation) 2021**

#### **- Chapter 4 Koala Habitat Protection 2021**

This Chapter aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

The subject site is included on the Koala land application map. The subject property site is located within the Central Coast Koala Management Area. The subject property may support potential Koala habitat; however, the trees to be removed are not significant in size, and no feed trees listed under Schedule 1 of the SEPP are to be removed. The subject property does not support core Koala habitat. No further consideration is deemed necessary under this chapter.

### **State Environmental Planning Policy (Housing) 2021**

- Chapter 3 Diverse housing**
- Part 5 Housing for seniors and people with a disability**

The general aim of this part of the policy is to facilitate the effective delivery of new housing for seniors and aged communities.

The proposal to remove dying trees and to replace them with new trees does not impact the delivery or outcome of the approved aged care facility, as outlined within this report.

## **Ku-ring-gai LEP 2015**

### **Zone objectives and Land Use Table**

KLEP 2015 identifies a number of provisions within Parts 4, 5 and 6 that would ordinarily apply to this site. These matters have been addressed by the Council's Landscape and Tree Assessment Officer and Ecological Assessment Officer.

The proposed modifications do not change the approved land use.

The proposed modifications do not result in any additional impacts on the diversity or condition of the native vegetation within the site nor involve any additional earthworks. Appropriate conditions were imposed on the DA consent.

The proposed changes are satisfactory in terms of the KLEP 2015.

### **Ku-ring-gai DCP**

Consideration is given to the applicable controls in the following Parts of the Ku-ring-gai DCP that have not already been addressed earlier in the report.

#### **Part 1A.5 General aims of the DCP**

The proposed modifications relate to removal of four dead and/or dying trees and have been assessed against the general aims of this DCP. The application is found to be acceptable, noting there are no physical built form changes proposed by this application.

#### **Part 4A.4 Landscaping and Part 13 Tree and Vegetation Preservation Controls**

The following Controls are applicable:

Control 1. Landscape proposals are to retain existing trees where possible.

The proposal includes the removal of the following trees:

- i. T11 – *Acer palmatum* (Japanese Maple)
- ii. T27 – *Angophora costata* (Sydney Red Gum)
- iii. T101.2 – *Photinia* sp. (*Photinia*) hedge x 5 specimens
- iv. T124 – *Eucalyptus pilularis* (Blackbutt)

The removal of Trees 11, 27, 101.2 and 124 is acceptable, as they are either dead or in terminal decline and unlikely to recover.

A condition is recommended requiring replacement of the dying trees (**Condition 19E**).

Control 4. Tree replenishment and planting to be provided.

The site has a site area greater than 1,500m<sup>2</sup>; therefore, in accordance with the following table development sites are required to provide 10 or as directed:

Lot size	Number of trees
Less than 850m <sup>2</sup>	3
850m <sup>2</sup> to 1,000m <sup>2</sup>	5
1,001 m <sup>2</sup> to 1,500m <sup>2</sup>	7
Over 1,500m <sup>2</sup>	10 or as directed

The site retains more than 10 tree/s capable of attaining a minimum height of 13.0m; however, a condition is recommended to replace T27 and 124 within the biodiversity area at the rear of the dwellings. (**Condition 19E**)

### Part 18 Biodiversity Controls

The following categories are applicable:

- 18.3 Category – Support for core biodiversity
- 18.5 Category – Biodiversity Corridors and Buffer Areas
- 18.7 Category – No Net Loss

The subject property supports lands mapped as being Support for Core & Biodiversity Corridor and Buffer areas under Part 18 of the KDCP.

The proposed modification seeks to remove T27 *Angophora costata* (Smooth-barked Apple) and T124 *Eucalyptus pilularis* (Blackbutt) located within lands mapped as under these parts.

These trees have been assessed by the consultant arborist as being “*in terminal decline and unlikely are to recover*”.

No objection is raised to the removal of T27 and T124, given the current state of these trees. The removal of T27 and T124 is not considered to be inconsistent with the objectives and controls under these parts.

The loss of T27 and T127 is to be compensated by replacement planting.

### Part 19 Heritage Items and Heritage Conservation Areas

One of the aims of this Part is to “*ensure the heritage significance, streetscape and landscape character of HCAs are maintained*”.

The following categories applicable for assessment of MOD0020/23 are:

- 19C.3 Gardens and Landscaping – Within HCAs: Alts and Adds
- 19D.3 Gardens and Landscaping – Within HCAs: New Dwellings
- 19E.4 Gardens and Landscaping – Heritage Items
- 19F.3 Gardens and Landscaping – in the vicinity of Heritage Items/HCAs

The site is fully landscaped in accordance with the approved plans. The removal of T11, 27, 101.2 & 124 will not adversely impact the HCA.

A condition is recommended to replace the lost trees and shrub planting (**Condition 19E**).



## **Part 21.1 Earthworks and Slope**

Objective 2 of this Part is “*to maintain the health of existing trees.*”

The development was provided with selected trees and shrubs, as part of the approved landscaping within the site. The proposal seeks to remove and replace dying trees. Council’s Landscape and Tree Assessment Officer has considered the proposal and does not object to the Applicant’s request, subject to the recommend conditions. The site is not subject to any significant slope.

## **Part 21.2 Landscape Design**

The objective is to ensure the landscape design and species selection is suitable to the site, its context, to and consider the amenity of residents and neighbours.

No replacement planting details have been provided. However, it is recommended that the issue be resolved through a condition requiring replacement tree and shrub planting.

## **Ku-ring-gai Contributions Plan 2010**

The proposed modifications do not alter the approved dwelling mix, as such there are no changes to the applicable contributions.

## **LIKELY IMPACTS**

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

## **SUITABILITY OF THE SITE**

The site remains suitable for the modified development.

## **PUBLIC INTEREST**

The modified development is not contrary to the public interest.

## **CONCLUSION**

Having regard to Section 4.56 of the Environmental Planning and Assessment Act 1979, the proposed modifications to the development consent are satisfactory for the reasons given within the above assessment.

## **RECOMMENDATION**

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

THAT the Sydney North Planning Panel, as the consent authority, being of the opinion that the proposed modification satisfies Section 4.56 of the Environmental Planning and Assessment Act 1979 and will be in the public interest, modifies the development consent to DA0418/15 in the manner proposed in modification of consent application MOD0023/23 subject to the following new and amended conditions.

**The following conditions are modified to read as follows:**

**CONDITIONS THAT IDENTIFY APPROVED PLANS:**

**1. Approved architectural plans and documentation (new development) (*Deleted – MOD0151/20*)**

~~The development must be carried out in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:~~

<b>Plan no.</b>	<b>Drawn by</b>	<b>Dated</b>
1506/DA 01 Amendment 18	Boffa Robertson Group	01/11/2018
1506 / DA 02 Amendment 18	Boffa Robertson Group	16/07/2018
1506 / DA 03 Amendment 114	Boffa Robertson Group	01/11/2018
1506 / DA 04 Amendment 23	Boffa Robertson Group	01/11/2018
1506 / DA 05 Amendment 18	Boffa Robertson Group	01/11/2018
1506 / DA 06 Amendment 14	Boffa Robertson Group	01/11/2018
1506 / DA 10 Amendment 5	Boffa Robertson Group	01/11/2018
01466_100 Revision 01	C & M Consulting Engineers	23/09/2016
01466_201 Revision 02	C & M Consulting Engineers	23/09/2016
01466_601 Revision 02	C & M Consulting Engineers	23/09/2016
01466_621 Revision 02	C & M Consulting Engineers	23/09/2016
01466_701 Revision 01	C & M Consulting Engineers	23/09/2016
01466_702 Revision 02	C & M Consulting Engineers	23/09/2016
aiatp1.01 Revision 0.3	Footprint Green	23/09/2016

**Document(s) Dated**

Acoustic Review for Development Application – prepared by ARUP	11/10/2017
Waste Management Plan - Construction undated DA Access Audit prepared by Independent Living Centre NSW	21/09/2015
Geotechnical Investigation prepared by JK Geotechnics	22/09/2015
Conservation Management Plan prepared by CCG Architects	6/11/2015
Stormwater Management Plan prepared by C & M Consulting Engineers Revision B	September 2016
Plan of Management Prepared by Evolution Planning	May 2017
Green Star Report prepared by Application Solutions	29/05/2017
Vegetation Management Plan prepared by Travers	16/07/2018
Bushfire & Ecology	

**1. Approved architectural plans and documentation (*Modified - MOD0151/20*)**

The development must be carried out in accordance with the plans and documentation listed

below and endorsed with Council's stamp:

The development must be carried out in accordance with the following plans and documentation listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

<b>Plan no.</b>	<b>Drawn by</b>	<b>Dated</b>
1506/DA 01 Amendment 18	Boffa Robertson Group	01/11/2018
1506 / DA 02 Amendment 18	Boffa Robertson Group	16/07/2018
1506 / DA 03 Amendment 14	Boffa Robertson Group	01/11/2018
1506 / DA 04 Amendment 23	Boffa Robertson Group	01/11/2018
1506 / DA 05 Amendment 18	Boffa Robertson Group	01/11/2018
1506 / DA 06 Amendment 14	Boffa Robertson Group	01/11/2018
1506 / DA 10 Amendment 5	Boffa Robertson Group	01/11/2018
01466_100 Revision 01	C & M Consulting Engineers	23/09/2016
01466_201 Revision 03	C & M Consulting Engineers	23/09/2016
01466_601 Revision 02	C & M Consulting Engineers	23/09/2016
01466_621 Revision 02	C & M Consulting Engineers	23/09/2016
01466_701 Revision 01	C & M Consulting Engineers	23/09/2016
01466_702 Revision 02	C & M Consulting Engineers	23/09/2016
1466_401 Revision 01	C & M Consulting Engineers	26/03/2020
Environmental Site Management Plan Issue 1 Pages 1 to 10 (inclusive)	Travers Bushfire and Ecology	08/04/2020
Tree Protection Plans Sheets 1 to 8 (inclusive)	Footprint Green	12/12/2019
aiatp1.01 Revision 0.3	Footprint Green	23/09/2016

<b>Document(s)</b>	<b>Dated</b>
Acoustic Review for Development Application - prepared by ARUP	11/10/2017
Waste Management Plan - Construction	undated
DA Access Audit prepared by Independent Living Centre NSW	21/09/2015
Geotechnical Investigation prepared by JK Geotechnics	22/09/2015
Conservation Management Plan prepared by CCG Architects	6/11/2015
Stormwater Management Plan prepared by C & M Consulting Engineers Revision B	September 2016
Plan of Management Prepared by Evolution Planning	May 2017
Green Star Report prepared by Application Solutions	29/05/2017
Vegetation Management Plan prepared by Travers Bushfire & Ecology	16/07/2018

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

Except where amended by that work shown in colour on the S.4.56 plans endorsed with Council's stamp as listed below and except where amended by other conditions of this Development Consent:

<b>Section 4.56 Plan no.</b>	<b>Drawn by</b>	<b>Dated</b>
<i>Architectural Plans</i>		

Cover Sheet	Boffa Robertson Group	25/11/2020
DA01 Site Plan - Amendment 25	Boffa Robertson Group	26/11/2020
DA02 Basement Plan - Amendment 24	Boffa Robertson Group	10/07/2020
DA03 Lower Ground Floor - Amendment 23	Boffa Robertson Group	26/11/2020
DA04 Ground Floor - Amendment 33	Boffa Robertson Group	26/11/2020
DA05 First Floor Plan - Amendment 25	Boffa Robertson Group	10/07/2020
DA06 Roof Plan - Amendment 18	Boffa Robertson Group	10/07/2020
DA10 Elevations - Amendment 10	Boffa Robertson Group	10/07/2020
<i>Landscape Plans</i>		
000, 001, 100, 301, 302, 303, 304, 401, 402, 403, 404, 501 & 502 - all Issue 'P3'	Site Image	25/11/2020
<i>Stormwater Management Plans</i>		
Drawing No. 01466_201 and _401 all issue 'C'	C&M Consulting Engineers	30/11/2020

<b>Section 4.56 Document(s)</b>	<b>Dated</b>
Acoustic Review for Development Application - prepared by ARUP	11/10/2017
Waste Management Plan - Construction	undated
DA Access Audit prepared by Independent Living Centre NSW	21/09/2015
Geotechnical Investigation prepared by JK Geotechnics	22/09/2015
Conservation Management Plan prepared by CCG Architects	6/11/2015
Plan of Management Prepared by Evolution Planning	May 2017
Green Star Report prepared by Application Solutions	29/05/2017
Vegetation Management Plan prepared by Travers Bushfire & Ecology	16/07/2018

Except where amended by that work shown in colour on the S.4.56 plans endorsed with Council's stamp as listed below and except where amended by other conditions of this Development Consent:

<b>Section 4.56 Plan no.</b>	<b>Drawn by</b>	<b>Dated</b>
<i>Landscape Plans</i>		
tpppc 1.01 Rev 0.5 Sheet 1 of 8	Footprint Green P/L	-
tpptn1.01 Rev 0.5 Sheet 2 of 8	Footprint Green P/L	28/09/2021
tpptr1.01 Rev 0.5 Sheet 3 of 8	Footprint Green P/L	28/09/2021
aiasd 2.01 Rev 0.5 Sheet 3 of 8	Footprint Green P/L	28/09/2021
tppte 2.01 Rev 0.5 Sheet 4 of 8	Footprint Green P/L	28/09/2021
tppte 2.01 Rev 0.5 Sheet 5 of 8	Footprint Green P/L	28/09/2021
tpdp1.01 Rev 0.5 Sheet 6 of 8	Footprint Green P/L	28/09/2021
tpcp1.01 Rev 05 Sheet 7 of 8	Footprint Green P/L	28/09/2021
tppcs 2.01 Rev 0.5 Sheet 8 of 8	Footprint Green P/L	28/09/2021
<b>Section 4.56 Document(s)</b>		<b>Dated</b>
Arborist Report prepared by Footprint Green P/L		21/05/2021
Tree removal letter prepared by Grindley Ref: MOD0110/21		13/09/2021

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

#### **1A. Approved architectural plans and documentation (*Modified - MOD0040/40*)**

The development must be carried out in accordance with the following plans and documentation

listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

<b>Plan no.</b>	<b>Drawn by</b>	<b>Dated</b>
1506/DA 01 Amendment 18	Boffa Robertson Group	01/11/2018
1506 / DA 02 Amendment 18	Boffa Robertson Group	16/07/2018
1506 / DA 03 Amendment 14	Boffa Robertson Group	01/11/2018
1506 / DA 04 Amendment 23	Boffa Robertson Group	01/11/2018
1506 / DA 05 Amendment 18	Boffa Robertson Group	01/11/2018
1506 / DA 06 Amendment 14	Boffa Robertson Group	01/11/2018
1506 / DA 10 Amendment 5	Boffa Robertson Group	01/11/2018
01466_100 Revision 01	C & M Consulting Engineers	23/09/2016
01466_201 Revision 03	C & M Consulting Engineers	23/09/2016
01466_601 Revision 02	C & M Consulting Engineers	23/09/2016
01466_621 Revision 02	C & M Consulting Engineers	23/09/2016
01466_701 Revision 01	C & M Consulting Engineers	23/09/2016
01466_702 Revision 02	C & M Consulting Engineers	23/09/2016
1466_401 Revision 01	C & M Consulting Engineers	26/03/2020
Environmental Site Management Plan Issue 1 Pages 1 to 10 (inclusive)	Travers Bushfire and Ecology	08/04/2020
Tree Protection Plans Sheets 1 to 8 (inclusive)	Footprint Green	12/12/2019
aiatp1.01 Revision 0.3	Footprint Green	23/09/2016

<b>Document(s)</b>	<b>Dated</b>
Acoustic Review for Development Application - prepared by ARUP	11/10/2017
Waste Management Plan - Construction	undated
DA Access Audit prepared by Independent Living Centre NSW	21/09/2015
Geotechnical Investigation prepared by JK Geotechnics	22/09/2015
Conservation Management Plan prepared by CCG Architects	6/11/2015
Stormwater Management Plan prepared by C & M Consulting Engineers Revision B	September 2016
Plan of Management Prepared by Evolution Planning	May 2017
Green Star Report prepared by Application Solutions	29/05/2017
Vegetation Management Plan prepared by Travers Bushfire & Ecology	16/07/2018

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

Except where amended by that work shown in colour on the S.4.56 plans endorsed with Council's stamp as listed below and except where amended by other conditions of this Development Consent:

<b>Section 4.56 Plan no.</b>	<b>Drawn by</b>	<b>Dated</b>
<i>Architectural Plans</i>		
Cover Sheet	Boffa Robertson Group	25/11/2020
DA01 Site Plan - Amendment 25	Boffa Robertson Group	26/11/2020

DA02 Basement Plan – Amendment 24	Boffa Robertson Group	10/07/2020
DA03 Lower Ground Floor - Amendment 23	Boffa Robertson Group	26/11/2020
DA04 Ground Floor - Amendment 33	Boffa Robertson Group	26/11/2020
DA05 First Floor Plan – Amendment 25	Boffa Robertson Group	10/07/2020
DA06 Roof Plan - Amendment 18	Boffa Robertson Group	10/07/2020
DA10 Elevations - Amendment 10	Boffa Robertson Group	10/07/2020
<i>Landscape Plans</i>		
000, 001, 100, 301, 302, 303, 304, 401, 402, 403, 404, 501 & 502 - all Issue 'P3'	Site Image	25/11/2020
<i>Stormwater Management Plans</i>		
Drawing No. 01466_201 and _401 all issue 'C'	C&M Consulting Engineers	30/11/2020

<b>Section 4.56 Document(s)</b>	<b>Dated</b>
Acoustic Review for Development Application - prepared by ARUP	11/10/2017
Waste Management Plan - Construction	undated
DA Access Audit prepared by Independent Living Centre NSW	21/09/2015
Geotechnical Investigation prepared by JK Geotechnics	22/09/2015
Conservation Management Plan prepared by CCG Architects	6/11/2015
Plan of Management Prepared by Evolution Planning	May 2017
Green Star Report prepared by Application Solutions	29/05/2017
Vegetation Management Plan prepared by Travers Bushfire & Ecology	16/07/2018

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

#### **1B. Amendments to approved civil works plans (*Modified – MOD0040/21*)**

Prior to the issue of any Construction Certificate, the Certifier shall be satisfied that the approved 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:

<b>Plan no.</b>	<b>Drawn by</b>	<b>Dated</b>
General Arrangement Plan Drawing no. 01466_201 Revision C	C & M Consulting Engineers	30/11/20
Soil Works Plan Job no. SS15-3069 Drawing no. 002 Issue P1	Site Image	26/06/20

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

- The retaining wall layout of Courtyard 2 shall be in accordance with the approved landscape plan no. 403 Issue P3 dated 25/11/2020 approved under Section 4.56 Notice of Determination condition.

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

**Reason:** To ensure consistency between the plans.

### 1C. Approved tree works (*Modified – MOD0110/21*)

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

Tree/location	Approved tree works
Trees 13, 29, 30, 31, 32, 35, 36, 37, 53, 64, 65, 77, 113, 114, 118, 119, 120, 123.	Remove
Trees to be pruned are 38, 58, 82, 116	Prune in accordance with the approved arborist report by Footprint Green dated 13/01/20
Trees to be pruned are 50, 80, 99-101, 101.1	Prune in accordance with the arborist report by Footprint Green dated 21/05/21

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 the current version of 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 Council's Development Control Plan.

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

### 1D. Approved tree works (*Added - MOD0020/23*)

The following is to be undertaken to the specified trees:

Tree/location	Approved tree works
Trees 11, 27, 101.2 and 124.	Remove as per Footprint Green letter dated 10 <sup>th</sup> February 2023.

4. 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.
5. Canopy and/or root pruning shall be undertaken by an experienced arborist/horticulturist, with a minimum AQF Level 3 qualification.
6. All root or canopy pruning works shall be undertaken as specified in the current version of 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 Council's Development Control Plan.

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

#### **1E. Approved tree works (*Added - MOD0020/23*)**

<b>Section 4.56 Document(s)</b>	<b>Dated</b>
Streamlined Biodiversity Development Assessment Report prepared by Narla Environmental Pty Ltd	May 2023
Arboricultural Consultancy Services letter prepared by Footprint Green Pty Ltd	10/02/2023

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

#### **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 consent prevail.

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

#### **3. Approved landscape plans**

Landscape works shall be carried out in accordance with the following landscape plan(s), listed below and endorsed with Council's stamp, except where amended by other conditions of this consent:

<b>Plan no.</b>	<b>Drawn By</b>	<b>Dated</b>
000 Issue S	Site Image	13/07/2018
001 Issue S	Site Image	13/07/2018
002 Issue S	Site Image	13/07/2018
100 Issue R	Site Image	13/07/2018
301 Issue K	Site Image	13/07/2018
302 Issue J	Site Image	13/07/2018
303 Issue J	Site Image	13/07/2018
304 Issue J	Site Image	13/07/2018
401 Issue I	Site Image	22/06/2018
402 Issue J	Site Image	20/07/2018
403 Issue K	Site Image	20/07/2018
404 Issue H	Site Image	13/07/2018
501 Issue H	Site Image	13/07/2018
502 Issue B	Site Image	13/07/2018



MOD0151/20

<b>Plan no.</b>	<b>Drawn By</b>	<b>Dated</b>
000 Issue P3	Site Image	25/11/2020
001 Issue P3	Site Image	25/11/2020
002 Issue P3	Site Image	25/11/2020
100 Issue P3	Site Image	25/11/2020
301 Issue P3	Site Image	25/11/2020
302 Issue P3	Site Image	25/11/2020
303 Issue P3	Site Image	25/11/2020
304 Issue P3	Site Image	25/11/2020
401 Issue P3	Site Image	25/11/2020
402 Issue P3	Site Image	25/11/2020
403 Issue P3	Site Image	25/11/2020
404 Issue P3	Site Image	25/11/2020
501 Issue P3	Site Image	25/11/2020
502 Issue P3	Site Image	25/11/2020

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

#### **4. No demolition of extra fabric**

Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans (by way of notation). No approval is given or implied for removal and/or rebuilding of any portion of the existing building which is shown to be retained.

**Reason:** To ensure compliance with the development consent.

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

#### **5. 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 WorkCover Authority of NSW.

**Reason:** To ensure public safety

#### **6. Project arborist**

A suitably qualified project arborist (AQF level 5) is to be engaged to advise the Principal Certifying Authority Certifier on the protection of trees at the site and to supervise the installation and maintenance of tree protection measures required by this consent.

Prior to the commencement of any works including demolition on the site in areas required to be protected by this consent, the project arborist shall inspect the site and satisfy himself/herself that the protection measures are in accordance with the approved design and must provide a written certification to the Principal Certifier to that effect.

If not satisfied, the project arborist must provide to the Principal Certifier a list of works that are to be completed to ensure compliance with all conditions of consent relating to the protection of trees at the site. Those works must be undertaken to the satisfaction of the project arborist.

**Reason:** To ensure protection of existing trees

## **7. Notice of commencement**

At least 48 hours prior to the commencement of any development (including demolition, excavation, shoring or underpinning works), a notice of commencement of building or subdivision work form and appointment of the Principal Certifier form shall be submitted to Council.

**Reason:** Statutory requirement.

## **8. Notification of builder's details**

Prior to the commencement of any development or excavation works, the Principal Certifier shall be notified in writing of the name and contractor license number of the owner/builder intending to carry out the approved works.

**Reason:** Statutory requirement.

## **9. Dilapidation survey and report (public infrastructure)**

Prior to the commencement of any development or excavation works on site, the Principal Certifier shall be satisfied that a dilapidation report on the visible and structural condition of all structures of the following public infrastructure, has been completed and submitted to Council:

Public infrastructure

- Full road pavement width, including kerb and gutter, of Bushlands Avenue from the Pacific Highway intersection to the western end of the site frontage.
- All driveway crossings and laybacks opposite the subject site.

The report must be completed by a consulting structural/civil engineer. Particular attention must be paid to accurately recording (both written and photographic) existing damaged areas on the aforementioned infrastructure so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development.

The developer may be held liable to any recent damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded by the requirements of this condition prior to the commencement of works.

**Note:** A written acknowledgment from Council must be obtained (attesting to this condition being appropriately satisfied) and submitted to the Principal Certifier prior to the commencement of any excavation works.

**Reason:** To record the structural condition of public infrastructure before works commence.

## **10. Dilapidation survey and report (private property)**

Prior to the commencement of any demolition or excavation works on site, the Principal Certifier shall be satisfied that a dilapidation report on the visible and structural condition of all structures upon the following lands, has been completed and submitted to Council:

Address:

- 23 and 29 Bushlands Avenue
- the residence to be retained at 25 Bushlands Avenue

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

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

**Note:** A copy of the dilapidation report is to be provided to Council prior to any excavation works been undertaken. The dilapidation report is for record keeping purposes only and may be used by an 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.

## **11. Structural adequacy (alterations and additions)**

Prior to commencement of any development or excavation works, the Principal Certifier shall be satisfied that those components of 25 Bushlands Avenue to be retained and/or altered will be structurally sound and able to withstand the excavation, demolition and construction process.

**Note:** Evidence from a qualified practising structural engineer, demonstrating compliance with the above and detailing, where relevant, means of support for those parts of the retained building shall be provided to the Principal Certifier.

**Reason:** To ensure that the development can be undertaken in accordance with accepted construction practices as indicated on the endorsed development plans, without the need for modification of the consent.

## **12. Construction and traffic management plan**

The applicant must submit to Council a Construction Traffic Management Plan (CTMP), which is to be approved prior to the commencement of any works on site.

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 construction vehicle routes for approach and departure to and from all directions.

The report is to contain a site plan showing entry and exit points. Swept paths are to be shown on the site plan showing access and egress for an 11 metre long heavy rigid vehicle.

The Traffic Control Plans are to be prepared by a qualified person (red card holder). One must be provided 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.

When a satisfactory CTMP is received, 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. Council's Rangers will be patrolling the site regularly and fines may be issued for any non-compliance with this condition.

**Reason:** To ensure that appropriate measures have been considered during all phases of the construction process in a manner that maintains the environmental amenity and ensures the ongoing safety and protection of people.

## **13. Work zone**

Prior to commencement of any works on site, the applicant must apply for a Works Zone along the site frontage and a No Stopping (or No Parking) during construction hours opposite the site in Bushlands Avenue. The implementation of these restrictions will be subject to the approval of the Ku-ring-gai Local Traffic Committee and payment of fees.

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 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 for the operation of the site during the construction phase.

#### **14. Erosion and drainage management**

Earthworks and/or demolition of any existing buildings shall not 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 NSW Department of Housing 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 preserve and enhance the natural environment.

#### **15. Tree protection fencing**

To preserve the existing tree/s that are to be retained, no work shall commence until the area beneath their canopy is fenced off as shown on approved tree protection plans as amended per other conditions, to prevent any activities, storage or the disposal of materials within the fenced area. The fence/s shall be maintained intact until the completion of all demolition/building work on site.

The tree protection fencing shall be constructed of galvanised pipe at 2.4 metre spacings and connected by securely attached chain mesh fencing to a minimum height of 1.8 metres in height prior to work commencing.

**Reason :** To protect existing trees during construction phase

#### **16. Tree protection signage**

Prior to works commencing, tree protection signage is to be attached to each tree protection zone, displayed in a prominent position and the sign repeated at 10 metres intervals or closer where the fence changes direction. Each sign shall contain in a clearly legible form, the following information:

Tree protection zone.

- This fence has been installed to prevent damage to the trees and their growing environment both above and below ground and access is restricted.
- Any encroachment not previously approved within the tree protection zone shall be the subject of an arborist's report.
- The arborist's report shall provide proof that no other alternative is available.
- The Arborist's report shall be submitted to the Principal Certifier for further consultation with Council.
- The name, address, and telephone number of the developer.

**Reason:** To protect existing trees during the construction phase.

### **17. Tree fencing inspection**

Upon installation of the required tree protection measures, an inspection of the site by the Principal Certifier is required to verify that tree protection measures comply with all relevant conditions.

**Reason:** To protect existing trees during the construction phase.

### **18. 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 AS 2436-2010 and NSW Environment Protection Authority 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 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 surrounding occupants 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 afforded to surrounding residents during the construction process.

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

### **19A. Preparation of heritage interpretation plan**

An interpretation plan for the garden and building of No. 25 Bushlands Avenue Gordon must be prepared in accordance with the Office of Environment and Heritage guideline “Interpreting Heritage Places and Items” prepared by the NSW Heritage Office. The interpretation plan shall be submitted to Council’s Heritage Advisor for approval prior to release of Construction Certificate.

**Reason:** To provide for the recording of garden.

### **19B. Archival recording of buildings (heritage items)**

Prior to the commencement of any demolition, excavation or building works on site, the Certifier shall be satisfied that an archival report for the house, garden and streetscape of No. 25 Bushlands Avenue Gordon has been completed and submitted to Council’s Heritage Advisor.

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

- title page
- statement of reasons the recording was made
- outline history of the item (including title records, subdivision plans, water and sewerage plans and any archival documents such as family records, old photographs, etc)
- statement of a heritage significance (to accepted Heritage Council criteria)
- specialised reports such as heritage assessments, dilapidation report, and builders or engineers reports
- location plan showing relationship of site to nearby area
- site plan to scale (1:200 - 1:500) showing all structures and site elements
- measured drawing including site survey, floor plans, all elevations, roof plan and one cross section (1:00)

- drawings of specific interiors or details nominated by Council's Heritage Advisor
- room inventories noting materials, profile of nominated decorative elements (1:2) and nominated by Council's Heritage Advisor
- archival quality colour photographs, contact prints, and selected prints (one copy of contact sheets and selected prints)
- digital images and archival quality DVD, CD or USB may be submitted as supplementary information.

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

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

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

**Reason:** To ensure the preservation and proper management of historical artefacts.

### **19C. Archaeological survey**

Prior to commencement of any demolition, excavation or building works, the Certifier shall be satisfied that an archaeological survey has been completed and submitted to Council's Heritage Advisor.

The survey shall be carried out by a qualified archaeologist and shall identify the likelihood of remains and/or artefacts, whether European or Aboriginal, being present on site.

If this report identifies that such items are likely to be present on site, demolition, earthworks and excavation shall be undertaken under the direct supervision of the consultant archaeologist. An excavation permit under s.140 of the Heritage Act may be required if it is likely relics will be uncovered.

In the event that remnants or artefacts are found during the progression of works on the site, excavation or disturbance of the area is to stop immediately. In accordance with s.146(a) of the Heritage Act, 1977 the applicant must ensure the Heritage Council of NSW is notified within a reasonable time of the discovery or location of these relics. Archaeological assessment and approval, or endorsement, may be required prior to works continuing in the affected area(s) based on the nature of the discovery.



A policy of managing the known relics and an interpretative strategy developed on how to interpret any relics found on the site must be developed and subject to separate approval by Council's Heritage Advisor.

**Reason:** To comply with the provisions of the NSW Heritage Act and to ensure the preservation and proper management of relics and historical artefacts.

#### **19D. Green star certification – Construction Certificate stage**

Prior to the issue of the Construction Certificate, the Certifying Authority is to be satisfied that the following documentation has been submitted with the application for Construction Certificate:

- i. An updated Credit Summary and ESD Report describing elements/systems incorporated to achieve the nominated (or higher) Green Star rating;
- ii. A Checklist Table of each ESD system/element (refer to Part 23R.3 of the DCP for an example of a Checklist);
- iii. Annotated Construction Certificate Drawings clearly indicating elements/systems described in the ESD Report including the requirements of Control 1 in Part 23.2 of the DCP;
- iv. A copy of the letter and invoices from the GBCA to the applicant, confirming the project is registered and will progress in assessment of the 'As Built' component of the Green Star - Design and As Built Certification.

**Reason:** To ensure compliance with Part 23.2 Green Buildings of the Development Control Plan.

#### **19E. Replacement tree planting plan (*Added – MOD0020/23*)**

Prior to the issue of any Construction Certificate a plan detailing replacement planting for the removal of T11, T27, T101.2 and T124 shall be submitted to the Certifier and approved by a landscape architect or qualified landscape designer.

The plan shall incorporate the following replacement species with a minimum container size of 25 litres:

- T11 shall be replaced with an *Acer palmatum* (Japanese Maple)
- T27 shall be replaced with an *Angophora costata* (Sydney Red Gum)
- T101.2 shall be replaced with 5 x screening shrubs that will attain a minimum height of 3 metres
- T124 shall be replaced with a *Eucalyptus pilularis* (Blackbutt)

## **20. Consolidation of lots**

Prior to the issue of the first Construction Certificate the existing lots (Lots 2, 3 and 4 in DP 578395) are to be consolidated into a single lot. Evidence of the consolidation, in the form of a plan registered with Land and Property Information, is to be submitted to the Certifying Authority with the application for Construction Certificate.

**Reason:** To ensure that development is carried out in an orderly manner.

## **21. Tanked basement design**

Prior to the issue of the Construction Certificate, the Certifying Authority is to be satisfied that the basement has been designed to be waterproof (tanked) as required under Part 22.3-4 of Ku-ring-gai DCP and as per Section 4.10.1 of the Statement of Environmental Effects by Evolution Planning.

**Reason:** To protect the environment.

## **22. Project ecologist/bush regenerator**

A Project ecologist/Bush regenerator shall be commissioned prior to the release of the construction Certificate to ensure all bushland/environmental protection measures are carried out in accordance with the conditions of consent and the approved vegetation management plan.

The Project ecologist/Bush regenerator shall have a minimum qualification of TAFE Certificate III in Bush Regeneration or Conservation and Land Management - Natural Area Restoration JT OR He/she shall have at least 4 years experience in the management of native bushland in the Sydney region.

Details of the ecologist including name, business name and contact details shall be provided to the Principal Certifier with a copy to Council.

**Reason:** To ensure the protection of existing biodiversity values of the site.

## **23. Nest boxes**

Prior to works commencing nine nest boxes comprising of 3 small mammal, 3 microbat & 3 medium mammal, shall be installed within the retained trees within the site. The nest boxes shall be constructed of durable wood material (marine ply) and installed at a minimum height of 6 metres from the ground and positioned under the direction of a qualified ecologist.

The qualified ecologist must hold an Animal Ethics Permit from the Office of Environment & Heritage and a wildlife licence under section 132C of the *National Parks and Wildlife Act 1974* issued by the Office of Environment and Heritage.

**Reason:** To ensure protection of fauna species.

## **24. Fauna protection**

Prior to works commencing and/or tree removal works a qualified ecologist shall investigate all trees for fauna occupation. In accordance with appropriate licensing requirements the ecologist shall supervise the relocation of any fauna found within the trees approved for removal.

The qualified ecologist must hold an Animal Ethics Permit from the Office of Environment & Heritage and a wildlife licence under section 132C of the National Parks and Wildlife Act 1974 issued by the Office of Environment and Heritage.

Evidence of engagement of the qualified ecologist and the required licensing must be provided to the Private Certifying Authority with a copy to Council prior to the trees being removed.

**Reason:** To ensure protection of fauna species.

## **25. Roller shutter to basement**

The plans submitted with the application for construction certificate shall reduce the height of the roller shutter so that the opening is no higher than the ceiling height of the basement.

**Reason:** To ensure that the height of the roller shutter is reduced and better relates to the character of the Bushlands Avenue streetscape.

## **27. Conservation**

Detailed plans of and schedules of conservation works for the house "Birralelee" are to be submitted prior to the issue of a construction certificate. The conservation works plans and schedules shall be prepared by a properly qualified and experienced conservation architect.

A preventative maintenance plan, in accordance with the preventative maintenance strategy set out in section 8.4 of the Conservation Management Plan prepared by CCG Architects dated 6 November 2015, shall be submitted prior to the issue of a construction certificate. The preventative maintenance plan shall be prepared by a properly qualified and experienced conservation architect.

**Reason:** To ensure the conservation of the heritage item.

## **29. Long service levy**

In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 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 a Construction Certificate, the Certifying Authority shall be satisfied that all outdoor lighting will comply with AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lighting and AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting.

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

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

### **31. External service pipes and the like prohibited**

Proposed water pipes, waste pipes, stack work, duct work, mechanical ventilation plant and the like must be located within the building. Details confirming compliance with this condition must be shown on construction certificate plans and detailed with construction certificate specifications. Required external vents or vent pipes on the roof or above the eaves must be shown on construction certificate plans and detailed with construction certificate specifications. External vents or roof vent pipes must not be visible from any place unless detailed upon development consent plans. Where there is any proposal to fit external service pipes or the like this must be detailed in an amended development (S96) application and submitted to Council for determination.

Vent pipes required by Sydney Water must not be placed on the front elevation of the building or front roof elevation. The applicant, owner and builder must protect the appearance of the building from the public place and the appearance of the streetscape by elimination of all external services excluding vent pipes required by Sydney Water and those detailed upon development consent plans.

**Reason:** To protect the streetscape and the integrity of the approved development.

### **32. Excavation for services**

Prior to the issue of the Construction Certificate, the Principal 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 Council's TreePreservation Order, located on the subject allotment and adjoining allotments.

**Note:** A plan detailing the routes of these services and trees protected under the Tree Preservation Order shall be submitted to the Principal Certifier.

**Reason:** To ensure the protection of trees.

### **33. Acoustic report - residential area**

Detailed review of all noise generating mechanical equipment and plant including, but not limited to car park/kitchen/garbage/laundry room exhaust, roller shutter doors, air conditioners and lifts proposed as part of the development should be undertaken by an accredited acoustic consultant once plant selections and locations are finalised. The acoustic review report should be submitted to the Certifying Authority prior to release of the Construction Certificate and include confirmation that the equipment/plant can meet the noise control requirements of the development consent. The review should include all details of required building design or acoustic treatments which are necessary to control plant noise emissions. The review shall address all issues identified in the Acoustic Review prepared by ARUP listed in condition 1 of the development consent.

**Reason:** Protect acoustic amenity of the area.

#### **34. Driveway crossing levels**

Prior to issue of the 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 Ku-ring- gai 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 Customer Services 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 pedestrian and vehicular traffic.

#### **35. Basement car parking details**

Prior to issue of the 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 Certifying Authority. 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 approved development.

### **36. Design of works in public road (Roads Act approval)**

Prior to issue of the Construction Certificate, the Certifying Authority shall be satisfied that engineering plans and specifications prepared by a qualified consulting engineer have been approved by Council's Development Engineer.

The plans to be assessed must be to a detail suitable for construction issue purposes and must detail the following infrastructure works required in Bushlands Avenue:

- 375mm diameter reinforced concrete pipe and new pits to connect the site stormwater management system to the existing kerb inlet pit in Bushlands Avenue

Development consent does not give approval to these works in the road reserve. The applicant must obtain a separate approval under sections 138 and 139 of The Roads Act 1993 for the works in the road reserve required as part of the development. The Construction Certificate must not be issued, and these works must not proceed until Council has issued a formal written approval under the Roads Act 1993.

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 2004. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. Survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 - 1996 - Field Guide for Traffic Control at Works on Roads - Part 1 and RTA Traffic Control at Work Sites (1998). 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 (3) weeks will be required for Council to assess the Roads Act application. Early submission of the Roads Act application is recommended to avoid delays in obtaining a Construction Certificate. An engineering assessment and inspection fee (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be

marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

**Reason:** To ensure that the plans are suitable for construction purposes.

### **37. Utility provider requirements**

Prior to issue of the Construction Certificate, all relevant utility providers whose services will be impacted upon by the development are to be contacted. A written copy of the requirements of each provider, as determined necessary by the Certifying Authority, must be obtained. All utility services or appropriate conduits for the same must be provided by the developer in accordance with the specifications of the utility providers.

**Reason:** To ensure compliance with the requirements of relevant utility providers.

### **38. Design of food preparation and storage areas**

Plans and specifications complying with the requirements of the Food Act and Regulations, Australian Standard AS 4674 2004, AS 1668 Parts 1 and 2 shall be submitted to and approved by the Principal Certifier prior to the issue of the Construction Certificate. Plans and specifications shall include the following:

- floor plans, showing the layout of the fixtures and fittings, bulk 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
- coolroom construction
- grease trap
- all proposed mechanical ventilation systems
- staff facilities

**Reason:** To ensure compliance with standards for food premises.

### **39. Acoustic fence**

The acoustic fence recommended in the ARUP Review shall be located on top of the western driveway retaining wall and shall have a height of 1.6m transitioning down to a height of 1.2m at the front boundary from a point 3m from the front boundary. The acoustic fence must have a critical mass of no less than 15 kg/m<sup>2</sup>, which can be achieved with a range of materials, including aerated concrete (ie Hebel), fibre-cement sheeting and/or polycarbonate for example. The fence shall be of solid non-transparent material for the lower 1.2m with a transparent material, such as polycarbonate, used from 1.2m to 1.6m. The construction and detailing of the fence shall be reviewed by an acoustic consultant during the design development and certified prior to issue of the construction certificate.

The acoustic fence shall be screened by additional landscaping to the west of the structure and the approved landscaping plan shall be appropriately revised prior to the issue of a Construction Certificate. Details of the acoustic fence, in accordance with this condition; an amended landscaping plan; and, certification from an acoustic engineer must be provided to the Certifying Authority with the application for Construction Certificate.

**Reason:** To minimise noise impacts from the development.

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

**40. Privacy measures**

1. The east facing window to the first floor level tea/activity room on the southern end of the eastern elevation is to have a minimum sill height of 1500mm above the finished floor level of the tea/activity room.
2. In addition to any privacy screens shown on the approved plans, all the west facing first floor windows opposite the rear wing of No. 29 Bushlands Avenue shall have privacy screens.

All privacy screens are to be constructed of a durable material such as corrosion resistant metal, have a minimum height of 1500mm above the finished floor level of the room and comply with the following requirements:

- (i) have no individual opening more than 30mm wide; and
- (ii) have a total area of all openings that is no more than 30% of the surface area of the screen or barrier.

Plans which demonstrate compliance with this condition are to be submitted with the application for construction certificate.

**Reason:** To prevent unreasonable overlooking.

**41. 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 the 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) 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.

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

##### **42A. Monitoring and protection of Tree 14**

Tree 14/*Cedrus deodar* (Himalayan Cedar) is to be retained with increased area of available garden area within the tree protection zone as shown on the SK01 drawing dated 31.10.2018. As Tree 14 is observed to be declining in health an arborist must assess the tree annually and make recommendations as to its retention commencing from the date of operation of the facility. The annual recommendations of the arborist shall be implemented. In the event that the arborist recommends removal of Tree 14 then the report shall be provided to Council for assessment and Tree 14 must not be removed without the approval of the Council. If Tree 14 is removed, then it is to be replaced with a similar tree of 400L container size.

**Reason:** To provide for the monitoring and protection of Tree 14.

##### **42B. Tree transplantation**

The following trees must be transplanted and successfully established elsewhere within the site:

- Tree 57 *Cyathea cooperi*

The applicant is to pay for all costs associated with the transplanting of the tree. The abovementioned tree/s shall be transplanted to a suitable alternate location on the site. The transplantation must be supervised by a qualified arborist. A transplantation method statement, detailing the following is to be prepared by an arborist qualified at certificate three (3) or above and must be provided prior to the issue of a Construction Certificate to the satisfaction of the Certifier:

- pre-transplantation schedule of works
- preparation of transplantation site
- transplantation method
- post-transplantation after care and duration

**Reason:** To ensure the safe transplantation of trees.

#### **42C Excavation near trees (*Modified – MOD0020/23*)**

No mechanical excavation shall be undertaken within the specified radius of the trunk/s of the following tree/s until root pruning, by hand digging and/or air knife to a depth of 500mm, is undertaken by an experienced arborist/horticulturist, with a minimum AQF Level 3 qualification. The arborist/horticulturist shall provide a report to the Principal Certifier confirming compliance with this condition:

<b>Trees</b>	<b>Radius in metres</b>
38	4.8m
80	5.4m
91	4.7m
99-101	2.4m
101.2	2.4m

**Reason:** To protect existing trees.

#### **42D. 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.

#### 42E. Approved tree works (*Added – MOD0020/23*)

The following is to be undertaken to the specified trees:

Tree/location	Approved tree works
Trees 11, 27, 101.2, 27 / Locations in accordance with Attachment A of the approved arborist report by Footprint Green dated 10/02/23	Remove

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 Council's Development Control Plan.

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

#### 43. Prescribed conditions

The development 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 80A (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:

- the work must be carried out in accordance with the requirements of the Building Code of Australia
- 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
- 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.

#### **44. 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.

Excavation using machinery 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 excavation using machinery 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 the RTA 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.

**Note:** Failure to obtain a permit to work outside of the approved hours will result in on the spot fines being issued.

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

#### **45. 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 the amenity of surrounding residents during the construction process.

#### **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. Engineering fees**

For the purpose of any development related inspections by Ku-ring-gai Council engineers, the corresponding fees set out in Councils adopted Schedule of Fees and Charges are payable to Council. A re-inspection fee per visit may be charged where work is unprepared at the requested time of inspection, or where remedial work is unsatisfactory and a further inspection is required. Engineering fees must be paid in full prior to any final consent from Council.

**Reason:** To protect public infrastructure.

#### **48. Construction noise**

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 and the recommendations of the approved noise and vibration management plan.

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

#### **49. 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 eye level 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.

#### **50. 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 erected at right angles to the prevailing wind direction or 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 daily

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

#### **51. Further geotechnical input**

The geotechnical and hydro-geological works implementation, inspection, testing and monitoring program for the excavation and construction works must be in accordance with the report by **JK Geotechnics dated 23 September 2015**. Over the course of the works, a qualified geotechnical/hydro-geological engineer must complete the following:

- further geotechnical investigations and testing recommended in the above report(s) and as determined necessary
- further monitoring and inspection at the hold points recommended in the above report(s) and as determined necessary
- written report(s) including certification(s) of the geotechnical inspection, testing and monitoring programs

**Reason:** To ensure the safety and protection of property.

#### **52. 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 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 **JK Geotechnics dated 23 September 2015**. Approval must be obtained from all affected property owners, including Ku-ring-gai Council, where rock anchors (both temporary and permanent) are proposed below adjoining property(ies).

Water NSW/ DPI Water may have requirements for licencing of construction stage dewatering.

**Reason:** To ensure the safety and protection of property.

### **53. 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 pathway 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.

### **54. Guarding excavations**

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.

**Reason:** To ensure public safety.

### **55. Toilet facilities**

During excavation, demolition and construction phases, toilet facilities are to be provided, on the work site, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

**Reason:** Statutory requirement.

### **56. Recycling of building material (general)**

During demolition and construction, the Principal Certifier shall be satisfied that building materials suitable for recycling have been forwarded to an appropriate registered business dealing in recycling of materials. Materials to be recycled must be kept in good order.

**Reason:** To facilitate recycling of materials.

### **57. 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 2.5m<sup>2</sup>
- are removed within 14 days of the completion of all construction works

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

#### **58. Approval for rock anchors**

Approval is to be obtained from the property owner for any anchors proposed beneath adjoining private property. If such approval cannot be obtained, then the excavated faces are to be shored or propped in accordance with the recommendations of the geotechnical and structural engineers.

**Reason:** To ensure the ongoing safety and protection of property.

#### **59. Maintenance period for works in public road**

A maintenance period of six (6) months applies to all work in the public road reserve carried out by the applicant - after the works have been completed to the satisfaction of Ku-ring-gai Council. In that maintenance period, the applicant shall be liable for any section of the public infrastructure work which fails to perform in the designed manner, or as would reasonably be expected under the operating conditions. The maintenance period shall commence once the applicant receives a formal letter from Council stating that the works involving public infrastructure have been completed satisfactorily.

**Reason:** To protect public infrastructure.

#### **60. 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 (1996) "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.

## **61. Services**

Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the applicant and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the applicants' full 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.

## **62. Temporary rock anchors**

If the use of temporary rock anchors extending into the road reserve is proposed, then approval must be obtained from Council and/or the Roads and Traffic Authority in accordance with Section 138 of the Roads Act 1993. The Applicant is to submit details of all the work that is to be considered, and the works are not to commence until approval has been granted. The designs are to include details of the following:

- How the temporary rock anchors will be left in a way that they will not harm or interfere with any future excavation in the public road
- That the locations of the rock anchors are registered with Dial Before You Dig
- That approval of all utility authorities likely to use the public road has been obtained. All temporary rock anchors are located outside the allocations for the various utilities as adopted by the Streets Opening Conference.
- That any remaining de-stressed rock anchors are sufficiently isolated from the structure that they cannot damage the structure if pulled during future excavations or work in the public road.
- That signs will be placed and maintained on the building stating that destressed rock anchors remain in the public road and include a contact number for the building manager. The signs are to be at least 600mm x 450mm with lettering on the signs is to be no less than 75mm high. The signs are to be at not more than 60m spacing. At least one sign must be visible from all locations on the footpath outside the property. The wording on the signs is to be submitted to Council's Director Technical Services for approval before any signs are installed.

Permanent rock anchors are not to be used where any part of the anchor extends outside the development site into public areas or road reserves.

All works in the public road are to be carried out in accordance with the Conditions of Construction issued with any approval of works granted under Section 138 of the Roads Act 1993.

**Reason:** To ensure the ongoing safety and protection of property.

### **63. Sydney Water Section 73 Compliance Certificate**

The applicant must apply for a **Section 73 Compliance Certificate** under the *Sydney Water Act 1994*. An application must be made through an authorised Water Servicing CoOrdinator. The applicant is to refer to “Your Business” section of Sydney Water’s web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then the “e-develop” icon or telephone 13 20 92. Following application a “Notice of Requirements” will detail water and sewer extensions to be built and charges to be paid. Please make early contact with the CoOrdinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

**Reason:** Statutory requirement.

### **64. Arborist’s report**

All trees to be retained shall be inspected and monitored by an AQF Level 5 Arborist in accordance with AS4970-2009, during and after completion of development works to ensure their long term survival. Regular inspections and documentation from the project arborist to the Principal Certifier are required during all works within the canopy spread of all existing trees on site and overhanging from adjoining sites, including date, brief description of the works inspected, and any mitigation works prescribed.

All monitoring shall be provided to the Principal Certifier prior to issue of the Occupation Certificate.

- 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.

### **65. Canopy/root pruning (Modified – MOD0020/23)**

Canopy and/or root pruning of the following tree/s shall be undertaken by an experienced Arborist/Horticulturist, with a minimum qualification of the Horticulture Certificate or Tree Surgery Certificate. All pruning works shall be undertaken as specified in Australian Standard 4373-2007 - Pruning of Amenity Trees.

<b>Schedule</b>	
<b>Tree/Location</b>	<b>Tree works</b>
Tree 38/ <i>Macadamia tetraphylla</i> ( <i>Macadamia</i> ) located at the northeast corner of the site	Minor canopy pruning for clearance to outdoor area

Trees 50, 80, 99-101, 101.1	Prune in accordance with the arborist report by Footprint Green dated 21/05/21
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**Reason:** To protect the environment.

## 66. Treatment of tree roots

If tree roots are required to be severed for the purposes of constructing the approved works, they shall be cut cleanly by hand, by an experienced Arborist/Horticulturist with a minimum qualification of Horticulture Certificate or Tree Surgery Certificate. All pruning works shall be undertaken as specified in Australian Standard 4373-2007 – Pruning of Amenity Trees.

**Reason:** To protect existing trees.

## 67. Hand excavation (*Modified – MOD0020/23*)

All excavation excluding for approved basement within the specified radius of the trunk(s) of the following tree(s) shall be hand dug:

### Schedule

Tree/Location	Radius from trunk
Tree 1/ <i>Arbutus unedo</i> (Irish Strawberry Tree)/ located at the southeast corner of the site	6.5m
Tree 2/ <i>Franklinia axillaris</i> (Gordonia)/ located at the southeast corner of the site	3.5m
Tree 6/ <i>Franklinia axillaris</i> (Gordonia)/ located on the front southern boundary of the site	5.0m
Tree 6.1 / <i>Ilex aquifolium</i> (Holly)/ located on the front southern boundary of the site	5.0m
Tree 7 / <i>Chamaecyparis obtusa</i> 'Crippsii' (Golden Cripps Cypress)/ located on the front southern boundary of the site	5.5m
Tree 8 / <i>Chamaecyparis obtusa</i> 'Crippsii' (Golden Cripps Cypress)/ located on the front southern boundary of the site	5.5m
Trees 1.1, 3, 8.1, 44, 12, 12.1, 42, 43, 76, 76.1, 77, 78, 98, 99-101, 101.1, 101.2, 104.1	2.4m
Tree 14/ <i>Cedrus deodara</i> (Himalayan Cedar) located within the front setback on the eastern boundary	12.0m
Tree 26/ <i>Pittosporum undulatum</i> (Sweet Pittosporum) located on the northern boundary.	4.5m
<del>Tree 27/ <i>Angophora costata</i> (Sydney Red Gum) located on the northern boundary.</del>	<del>4.0m</del>
Tree 29/ <i>Eucalyptus</i> sp. located at the northeast corner of the site	4.0m
Tree 38/ <i>Macadamia tetraphylla</i> ( <i>Macadamia</i> ) located at the northeast corner of the site	4.8m
Tree 30/ <i>Eucalyptus pilularis</i> (Blackbutt) located at the northeast corner of the site	11.0m

Tree 50/ <i>Syncarpia glomulifera</i> (Turpentine) located at the centre of the site	11.5m
Tree 59/ <i>Syncarpia glomulifera</i> (Turpentine) located at the centre of the site	10.5m
Tree 70/ <i>Pinus pinaster</i> (Maritime Pine) located at the centre of the site	10.5m
Tree 124/ <i>Eucalyptus pilularis</i> (Blackbutt) located at the centre of the site	15.0m

**Reason:** To protect existing trees.

#### **68. No storage of materials beneath trees**

No activities, storage or disposal of materials shall take place beneath the canopy of any tree protected under Council's Tree Preservation Order at any time.

**Reason:** To protect existing trees.

#### **69. 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.

#### **70. 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 5.0 metres whereby they will be protected by Council's Tree Preservation Order. 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.

#### **71. 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 Officer of Council.

**Reason:** To protect the environment.

#### **CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF AN**

## **OCCUPATION CERTIFICATE:**

### **72. Parking restrictions**

Prior to the issue of the Occupation Certificate, the Principal Certifier is to be satisfied that the applicant has made an application to Council for a permanent No Stopping restriction opposite the site and on either side of the entry driveway to facilitate the entry and exit of the community bus and the waste collection vehicle, and that any approved signage has been installed.

**Reason:** To allow for access by the types of vehicles required to service the development.

### **73. Garbage and recycling facilities**

Prior to the issue of the occupation certificate, the Principal Certifier shall be satisfied that the waste storage area has been installed, is of a size to adequately contain the waste bins, has rendered internal walls that are coved at the floor/wall intersection, has a floor that is graded and drained to the sewer and is provided with a tap with hot and cold water to facilitate cleaning.

**Reason:** To protect residential and environmental amenity.

### **74. Plant and machinery noise control - residential area**

Prior to release of the Occupation Certificate, the Principal Certifier shall be satisfied that all noise generating equipment associated with the use of the premises including but not limited to air conditioning systems, mechanical exhaust and ventilation systems, lift motors, roller shutter motors and the like does not exceed the background noise level by more than 5 decibels between 7am and 10pm when measured at the boundary of the nearest affected residence and shall not be audible between 10pm and 7am in a habitable room of a residential premises.

**Note:** Written confirmation from a suitably qualified acoustic consultant that the development achieves compliance with the noise criteria is to be submitted to the Principal Certifier prior to the release of the Occupation Certificate.

### **75. Construction of food preparation and storage areas**

Prior to the issue of the occupation certificate, the Principal Certifier shall be satisfied that the construction of the premises is in accordance with the requirements of the Food Act 2003, Food Standards Code 3.2.3 *Food Premises and Equipment* and Australian Standard 4674-2004 *Design, Construction and Fitout of Food Premises*.

**Reason:** To ensure compliance with standards for food premises.

### **76. Waste arrangements**

Prior to the issue of the Occupation Certificate, the Principal Certifier must be satisfied that a contract or contracts is/ are in place for the collection of all waste from the waste storage area in the basement.

**Reason:** To prevent pollution of the environment and to protect the amenity of the area.

## **77. Mechanical ventilation**

Following completion, installation and testing of all the mechanical ventilation systems the Principal Certifier shall be satisfied of the following prior to the issue of any Occupation Certificate:

1. The installation and performance of the mechanical ventilation systems complies with:
  - The Building Code of Australia
  - Australian Standard AS1668
  - Australian Standard AS3666 where applicable

**Reason:** To protect the health and amenity of occupants.

## **78. Completion of landscape works**

Prior to the release of the Occupation Certificate, the Principal Certifier is to be satisfied that all landscape works, including the removal of all noxious and/or environmental weed species, have been undertaken in accordance with the approved plan(s) and conditions of consent.

**Reason:** To ensure that the landscape works are consistent with the development consent.

## **79. Completion of tree works**

Prior to the release of the Occupation Certificate, the Principal Certifier is to be satisfied that all tree works, including pruning in accordance with AS4373-2007 or remediation works in accordance with AS4370-2009, have been undertaken in accordance with the approved plan(s) and conditions of consent.

**Reason:** To ensure that the tree works are consistent with the development consent.

## **80. Certification of drainage works**

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

- the stormwater drainage works have been satisfactorily completed in accordance with the approved Construction Certificate drainage plans

- the minimum retention and on-site detention storage volume requirements of Ku-ring-gai Development Control Plan have been achieved
- retained water is connected and available for use • all grates potentially accessible by children are secured
- components of the new drainage system have been installed by a licensed plumbing contractor in accordance with the Plumbing and Drainage Code AS3500.3 2003 and the Building Code of Australia
- all enclosed floor areas, including habitable and garage floor levels, are safeguarded from outside stormwater runoff ingress by suitable differences in finished levels, gradings and provision of stormwater collection devices

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

**Reason:** To protect the environment.

#### **81. WAE plans for stormwater management and disposal**

Prior to issue of the Occupation Certificate, a registered surveyor must provide a works as executed survey of the completed stormwater drainage and management systems. The survey must be submitted to and approved by the Principal Certifier prior to issue of the Occupation Certificate. The survey must indicate:

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

The works as executed plan(s) must show the as built details above in comparison to those shown on the drainage plans approved with the Construction Certificate prior to

commencement of works. All relevant levels and details indicated must be marked in red on a copy of the Principal Certifier stamped construction certificate stormwater plans.

**Reason:** To protect the environment.

## **82. OSD positive covenant/restriction**

Prior to issue of the Occupation Certificate, the applicant must create a positive covenant and restriction on the use of land under Section 88E of the Conveyancing Act 1919, burdening the owner with the requirement to maintain the on-site stormwater detention facilities on the lot.

The terms of the instruments are to be generally in accordance with the Council's "draft terms of Section 88B instrument for protection of on-site detention facilities" and to the satisfaction of Council (refer to Part 24R.8 of Ku-ring-gai DCP). For existing titles, the positive covenant and the restriction on the use of land is to be created through an application to the Land Titles Office in the form of a request using forms 13PC and 13RPA. The relative location of the on-site detention facility, in relation to the building footprint, must be shown on a scale sketch, attached as an annexure to the request forms.

Registered title documents, showing the covenants and restrictions, must be submitted and approved by the Principal Certifier prior to issue of an Occupation Certificate.

**Reason:** To protect the environment.

## **83. Sydney turpentine ironbark forest protection - section 88B instrument**

Prior to release of the Occupation Certificate, a positive covenant and restriction on the use of land are to be created under Section 88B of the Conveyancing Act 1919, burdening the land with the requirement to maintain the endangered ecological community Sydney Turpentine Ironbark Forest community as identified in the approved Vegetation management plan in perpetuity in accordance with the approved Vegetation management plan, Council is to be named as the authority to release, vary or modify the burdens.

**Reason:** To protect the area of biodiversity significance which contains Sydney Turpentine Ironbark Forest.

## **84. Sydney Water Section 73 Compliance Certificate**

Prior to issue of an Occupation Certificate the Section 73 Sydney water Compliance Certificate must be obtained and submitted to the Principal Certifier

**Reason:** Statutory requirement.

## **85. Certification of as-constructed driveway/carpark**

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



- the as-constructed car park complies with the approved Construction Certificate plans
- the completed vehicle access and accommodation arrangements comply with Australian Standard 2890.1 - 2004 "Off-Street car parking" and the Seniors Living State Environment Planning Policy in terms of minimum parking space dimensions
- finished driveway gradients and transitions will not result in the scraping of the underside of cars
- the vehicular headroom requirements of:
  - Australian Standard 2890.1 - "Off-street car parking",
  - The Seniors Living SEPP (as last amended) for accessible parking spaces, are met from the public street into and within the applicable areas of the basement carpark.

**Note:** Evidence from a suitably qualified and experienced traffic/civil engineer indicating 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 the consent.

## **86. Reinstatement of redundant crossings and completion of infrastructure works**

Prior to issue of the Occupation Certificate, the Principal Certifier must be satisfied that he or she has received a signed inspection form from Council which states that the following works in the road reserve have been completed:

- new concrete driveway crossing in accordance with levels and specifications issued by Council
- 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)
- full repair and resealing of any road surface damaged during construction
- full replacement of damaged sections of grass verge to match existing This inspection may not be carried out by the Private 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 streetscape.

#### **87. Construction of works in public road - approved plans**

Prior to issue of the 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 designing engineer and completed and approved to the satisfaction of Ku-ring-gai 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 must 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 the Occupation Certificate being issued.

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

#### **88. Restriction on land title - seniors living development**

Prior to the issue of the Occupation Certificate, the Principal Certifier is to be satisfied that restriction as to use of land under Section 88E of the Conveyancing Act 1919, has been created restricting the occupation of the premises to:

- people 55 or over or people who have a disability
- people who live with people 55 or over or people who have a disability
- staff employed to assist in the administration of and provision of services to housing provided in this development

**Reason:** To ensure that the development meets the provisions of the Seniors Living SEPP.

#### **89. Green star rating – Occupation Certificate stage (*Modified – MOD0110/21*)**

Prior to the release of the Final Occupation Certificate the certifying authority is to be satisfied that a copy of the Green Building Council of Australia Green Star Design & As Built Certification has been submitted to Council.

**Reason:** ~~To ensure compliance with Part 23.2 Green Buildings of the DCP.~~ To allow for multiple occupation certificates ensure compliance with legislative requirement.

#### **89A. Onsite banking services**

The applicant is required to satisfy the Council, by written evidence, that on site banking services will be provided for the residents of the proposed residential care facility.

The applicant is required to maintain this service, on a fortnightly basis, throughout the life of the development.

#### **CONDITIONS TO BE SATISFIED AT ALL TIMES:**

##### **90. Waste storage and collection**

At all times, all storage of waste, collection of waste, and loading and unloading of waste collection vehicles in connection with the use of the premises shall be wholly within the basement. Occupiers of the building shall not at any time store waste collection receptacles or any form of waste external to the building/ basement.

**Reason:** To prevent pollution of the environment, ensure safe traffic movement and to protect the amenity of the area.

##### **91. Waste collection contractor**

Prior to the issue of an Occupation Certificate, the applicant must submit to Council and the Principal Certifier details of the waste contractor engaged to service the building. These details are to include name, contact phone number, copy of the waste collection contract, and details of the vehicle that will be used to service waste collection for the building.

**Reason:** To ensure safe traffic movement and neighbourhood amenity.

##### **92. Noise control - plant and machinery**

All noise generating equipment associated with the use of the premises and including, but not limited to mechanical exhaust ventilation systems, air conditioning, roller shutter doors and lift motors must not exceed the background noise level by more than 5 decibels between 7am and 10pm when measured at the boundary of the nearest affected residence and must not be audible between 10pm and 7am in a habitable room of a residential premises.

**Reason:** To protect the amenity of occupants and surrounding residents.

##### **93. Plan of management**

At all times the facility shall be operated in accordance with the approved Plan of Management listed in Condition No. 1. At the discretion of the consent authority written requests for minor changes to the plan of management without the submission of a section 4.55 modification application may be considered on a case by case basis. Material changes to the Plan of Management will require the approval of a section 4.55 modification application.

**Reason:** To ensure that the operation of the facility is consistent with the application documentation and has minimal impacts on the amenity of the area.

**94. Restriction on the use of the community bus**

The community bus shall not travel up the basement ramp between the hours of 10.15pm and 6.45am.

**Reason:** To ensure that the use of the community bus does not have a negative impact on adjacent and nearby dwellings.

**95. Restriction on the use of non-emergency vehicles**

The use of non-emergency vehicles travelling up the basement ramp between the hours of 11pm and 6am shall not exceed 52 dB(A).

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

**96. Verification of compliance with condition 95**

Within 30 days of the commencement of the use acoustic compliance testing shall be undertaken to confirm full compliance with Condition 95. A report is to be provided to Council from an accredited acoustical engineer identifying the results of such testing (by way of noise level trace over time). Any non-compliance will require further noise control measures and re-testing to Council's satisfaction.

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

**97. Approved use**

The use approved by this consent is for a *residential care facility* operated by a social housing provider that is a not for profit organisation and is a direct provider of rental housing to tenants in accordance with SEPP (Housing for Seniors or People with a Disability) 2004 as in force as at the date of this consent.

**Reason:** To ensure that the use is operated in accordance with the requirements of SEPP (Housing for Seniors or People with a Disability) 2004.

**98. Further restriction on approved use – high care**

The development may only be occupied by residents which require high level care. For the purposes of this condition, high level care means care provided either by registered nurses, or under the supervision of registered nurses, on a 24 hour / day basis to people who need almost complete assistance with most activities of daily living. Nursing care is combined with accommodation, support services (cleaning, laundry and meals), personal care services (help with dressing, eating, toileting, bathing and moving around), and allied health services (such as physiotherapy, occupational therapy, recreational therapy and podiatry).

**Reason:** To ensure the operational characteristics of the facility are consistent with the application documentation and justification for the departure from clause 26 of SEPP Seniors.

**Signed**

**Phillip Johnston**  
**Executive Assessment Officer**

**Selwyn Segall**  
**Team Leader Development Assessment**

**Shaun Garland**  
**Manager Development**  
**Services**

**Assessment**      **Michael Miocic**  
**Director Development & Regulation**