

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-462
Parent DA Number	DA0197/18
eMOD Number	eMOD0047/23
LGA	Ku-ring-gai
Proposed Development	Section 4.56 Modification to Land and Environment Court Approval 391613 of 2018 (DA0197/18) proposing various internal and external changes to the approved mixed-use development, including changes to signage - Heritage Item
Street Address	1 and 1A Balfour Street, Lindfield (formerly known as 376-384 Pacific Highway, 386-390 Pacific Highway and 1 Balfour Street, Lindfield)
Applicant/Owner	Knight Frank Town Planning / PPI Lindfield Developments Pty Ltd
Date of eMOD lodgement	7 February 2024
Total number of Submissions	One submission
Recommendation	Approval
Regional Significant Development (Schedule 6 of the SEPP (Planning Systems) 2021	A Section 4.56 modification application to a development with a capital investment value of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Regulation 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • State Environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy (Industry and Employment) 2021 • Ku-ring-gai Local Environmental Plan 2015 (KLEP) • Ku-ring-gai Development Control Plan (KDCP) • Ku-ring-gai Contributions Plan 2010
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1 - Location sketch • Attachment 2 -Zoning Extract • Attachment 3 - Architectural plans • Attachment 4 - Landscape plans • Attachment 5 - Design Statement dated 28 May 2024 • Attachment 6 – Statement of Environmental Effects • Attachment 7 – Comparison Plans (Proposed vs Original) • Attachment 8 – Comparison Plans (Proposed vs Previous Substantive MOD) • Attachment 9 – Land and Environment Court Approval 391613 of 2018 Architectural plans
Summary of key submissions	<ol style="list-style-type: none"> i. Building height ii. Mass plantings – Balfour Street

	iii. External finish – northern facade
Report prepared by	Luke Donovan
Report date	29 May 2024

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

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 with 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

Issues:	i. Building height ii. Mass plantings – Balfour Street iii. External finish – northern facade
Submissions:	One
Land and Environment Court:	DA0197/18 was approved by the LEC Court (Appeal No. 18/391613)
Recommendation:	Approval

HISTORY

DA0197/18

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

The Court approved 2 phases of the development, Stage 1-A and 1-B, being the relocation of Balfour Lane from its former location (transversing the central part of the

site) to the western side of the site, and Stage 02, being the demolition of the existing structures and construction of the mixed-use building.

MOD0117/20

On 29 October 2020, Sydney North Planning Panel approved the modification (MOD0117/20) to amend Conditions 15, 16, 22, 23, 24, 46, 54, 69, 80, 102, 117, 118 and 124, to accommodate the staged construction process.

On 28 September 2021, Council issued a Subdivision Work Certificate (CC0003/21) for Stage 1 minor earthworks, stormwater drainage works, retaining wall construction, new pavement and concrete works.

On 24 February 2022, the subdivision of the site was endorsed by Council and the site was divided into two lots:

- Lot 11 DP 1257621 - 1 Balfour Street (future mixed-use building)
- Lot 12 DP 152532 - 1A Balfour Street (relocated Balfour Lane)

MOD0219/21

On 22 July 2022, Sydney North Planning Panel approved to the modification application (MOD0219/21) proposing changes to several conditions to break down the Stage 2 construction works into four phases. Internal and external alterations to the mixed-use building were also approved.

MOD0185/22

On 10 July 2023, Sydney North Planning Panel approved the modification application (MOD0185/22) proposing to modify three conditions of consent to reflect amendments to the plans, relevant green star provisions and allow the approved coffee shop to include a greater range of appliances.

MOD0001/23

On 6 July 2023, Sydney North Planning Panel approved the modification application (MOD0001/23) proposing amendment of Condition 17 .

eDA0131/24

On 15 May 2024, Council, under delegated authority, granted consent to development application (eDA0131/24) for the stratum subdivision of the approved mixed-use development comprising of 3 lots - residential, retail and heritage item, subject to conditions of consent.

Current Modification Application

Date	Action
7 February 2024	Application lodged.
27 February 2024	The application was notified to neighbouring property owners for a period of 14 days. One submission was received.

28 March 2024	<p>Council sent a letter to the applicant raising the following issues:</p> <ul style="list-style-type: none"> i. clarification on parapet changes and finished levels to communal open space ii. the proposed changes to the materials and finishes to the north-western façade of the building iii. clarification as to whether the additional horizontal skylights above unit PH07 hallway and ensuite; and Unit 216 hallway are required to satisfy daylight and ventilation requirements of the Apartment Design Guide iv. additional justification for the proposed graphic changes to the Coles/Liquorland signage; v. amendments to the Design Statement to address s 102 (2) of the Regulation
12 April 2024	<p>The Applicant responded to Council's letter of 28 March 2024 with additional information and amended plans. The amendments to the application include:</p> <ul style="list-style-type: none"> i. amended colour and finish to north-western façade. A change from the textured concrete panel "beige textured finish" (CF01) to a new "mid-brown textured finish" (CF03) ii. deleted the proposed additional paving around the structural root zone and tree protection zone of tree T19 (Balfour Street road reserve) iii. amended planting to street frontage and changes to planting in proximity to gas meter.
1 May 2024	SNPP briefing.
20 May 2024	The Applicant submitted amended comparison plans (comparison between the subject modification application and the originally approved development) and a revised statement of environmental effects addressing the "substantially the same" test in greater detail.
28 May 2024	Amended Design Statement prepared and submitted by the Architect.

THE SITE

Aerial photograph



Figure 1: Aerial image of the subject site with approved building footprint overlaid

Site Description

The site is now known as 1 and 1A Balfour Street, Lindfield (formerly known as 376-384 Pacific Highway, 386-390 Pacific Highway and 1 Balfour Street, Lindfield). The site is legally described as Lot 11 in DP 1257621 (1 Balfour Street) and Lot 12 in DP 152532 (1A Balfour Street). The works, the subject of this modification application, are located wholly within Lot 11 in DP 1257621 (1 Balfour Street).

The site is characterised as follows:

- The site has street frontage to the Pacific Highway (north-east) and Balfour Street (south-east).
- The site has an area of 5729m² and is irregular in shape.
- The site has a combined northern boundary of 92 metres, an eastern boundary of 61 metres, a Balfour Street frontage of 130 metres and a western boundary of 79 metres.
- The site slopes down to the west by approximately 7.6 metres.
- The approved development DA0197/18 (as previously modified) is currently under construction. The site currently contains the existing heritage item within the north-eastern part of the site.
- The approved and realigned Balfour Lane is partly located over Lot 12 in DP 152532 (1A Balfour Street) and provides 4 parking bays and entry to the residential car parking level of the development. Balfour Lane also provides access to Holy Family Catholic Primary School and the church.
- The site is identified as part of the 'Balfour Street Retail Area' under Part 14E.7 of the KDCP. Both the Pacific Highway and Balfour Street frontages are identified as 'Principal active frontage'.
- The site is zoned "E1 Local Centre" under the KLEP 2015 with a maximum building height of 20.5m and a maximum floor space ratio of 2.5:1.

Surrounding Development:

Surrounding development comprises the following -

- The south-western boundary of the site is adjacent to the Balfour Street/Highfield Road Heritage Conservation Area. The south-western boundary is also a zone interface, as the adjacent land is zoned R2 Low Density Residential with a height limit of 9.5 metres.
- There are pockets of R4 High Density zoned land to the south-east of Balfour Street and north-western side of Bent Street.
- The Pacific Highway retail area of Lindfield is located further to the south-east of the site.

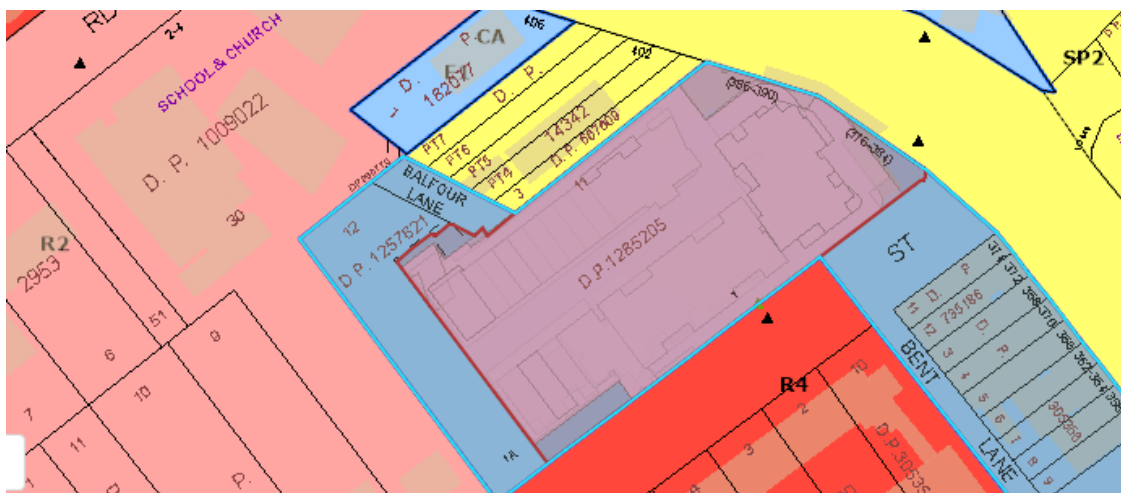


Figure 2: Extract from the KLEP 2015 zoning map

Constraint:	Application:
Zoning	E1 Local Centre
Height	Maximum permitted 20.5m
Floor space ratio	Maximum permitted 2.5:1
Site area	5729 m ²
Visual character study category	1920-1945
Heritage Item - Local	Yes
Heritage Item - State	No
Heritage conservation area	No
Within 100m of a heritage item	Yes
Bush fire prone land	No
Natural Resources Biodiversity	Yes
Natural Resources Greenweb	Yes
Natural Resources Riparian	No
Within 25m of Urban Bushland	No
Contaminated land	No
Within 25m of Classified Road	Yes
Within 25m of a rail corridor/tunnel	No

THE PROPOSAL

The applicant seeks to modify DA0197/18 under the provisions of Section 4.56 of the *Environmental Planning and Assessment Act 1979*. The proposed modifications involve various internal and external changes to the approved mixed-use development, including

changes to signage.

Part 4.2 of the SEE prepared by Knight Frank Town Planning dated May 2024 provides a detailed schedule of amendments which is copied in the table below -

Level	Description of modifications
<i>Basement (DA01-1 Rev B)</i>	<ul style="list-style-type: none"> • Increased rainwater tank footprint • Reduced and reconfigured fire tank footprint • Relocated retail switch room to Lower Ground 2 – room repurposed for sewer and stormwater pit
<i>Lower Ground 2 (DA01-2 Rev D)</i>	<ul style="list-style-type: none"> • Gas meter relocated • Added sprinkler booster to Balfour Lane • Relocated retail switch room from Basement level
<i>Lower Ground 1 (DA01-3 Rev D)</i>	<ul style="list-style-type: none"> • Gas meter relocated • Cold water pump room added (relocated from basement) • Services room added behind Lifts 1 & 2 • Extended blade wall beyond fire stair for shielding
<i>Upper Ground (DA01-4 Rev D)</i>	<ul style="list-style-type: none"> • Window relocated to Coles back of house area
<i>Level 1 (DA01-5 Rev D)</i>	<ul style="list-style-type: none"> • Adjusted waste room, fan room & retail switch room - cars relocated to suit, no net loss • Additional fan room & storage cages relocated to suit, no net loss
<i>Level 3 (DA01-7 Rev D)</i>	<ul style="list-style-type: none"> • Relocated solar panels to Level 4 roof
<i>Level 4 (DA01-8 Rev D)</i>	<ul style="list-style-type: none"> • Increased external terrace area to PH07 and introduction of a spa • Added Coles smoke exhaust and enclosure • Added roof to Fire Stair 04 • General communal roof height increased to allow for waterproofing & soil depths • Parapet heights increased for fall protection and soil depths • Additional glazing to Common Rooms to increase solar access and amenity

Roof (DA01-9 Rev C)

- *Increased extent of roof and parapet over PH07 external terrace*
- *Increased extent of 1800mm high plant louvre enclosure*
- *Reconfiguration of PH08 roof terrace, area maintained*
- *Low plant elements relocated to southern zone of northern roof*
- *Increased plant zone perimeter to allow for Coles chiller equipment;*
- *Added roof to Fire Stair 09*

Signage (DA01-10 Rev C)

- *Updated Coles & Liquorland signage to all frontages*
- *Under awning sign added to Balfour Street*
- *Updated signage schedule*

Elevations (DA02-1 Rev C)

- *Updated Coles signage to Pacific Highway & Balfour Street frontages*
- *Updated roof plant louvre enclosure*
- *Parapet heights increased for fall protection and changes to soil depths for roof top communal area and planters*
- *Updated window breakup and stepped sill for buildability and waterproofing*

Elevations (DA02-2 Rev D)

- *Window to Coles back of house area relocated*
- *Under awning sign added to Balfour Street*
- *Increased lift overrun height*
- *Revised precast façade panel break up*
- *Increased louvre area over residential entry ramp*
- *Updated roof plant louvre enclosure*
- *Parapet heights increased for fall protection and changes to soil depths for roof top communal area and planters*
- *Added sprinkler booster to Balfour Lane*

The proposed modifications involve changes to **Condition 1** (plan references), **Condition 110** (BASIX Certificate number and date) and **Condition 114** (extend timing of GBCA green star certificate from 3 months to 9 months – this is due to the time taken with respect to preparation and approval of the required certification).

As detailed in the internal referral comments later in this report, the proposed modifications will also necessitate changes to **Condition 53A** (to reference amended landscape plans and changes to landscape plantings) and the addition of **Conditions 129F and 154** to comply with access to spa requirements – PH07).

CONSULTATION

Community

In accordance with Appendix 1 of the Ku-ring-gai Community Participation Plan (CPP), owners of surrounding properties were given notice of the application for a period of 14 days between 5/03/2024 and 19/03/2024. In response, one submission from the following was received:

1. *John & Cecile Foulsham, no address provided*

The submission raised the following issues:

Increased height of the building and roof plant

The submission raises concerns that the air conditioning and refrigeration plant (Coles Chiller plant) to the roof will increase the RL building heights and that the plant is 1.8m above.

The development was approved with a maximum building height of 23.16m. The works proposed as part of the subject eMOD are limited to a building height of 22.85m, a breach of up to 2.35m. There is no change to the approved maximum building height of the development.

The greatest building height variations are confined to service elements of the development, specifically Coles smoke exhaust enclosure (2.35m variation), roof to fire stair 04 (2.25m variation) and plant enclosure for chiller equipment (1.98m variation). These elements are necessary for the proposed uses and are generally set back from the edges of the building.

These elements will not result in any additional view, solar access, visual amenity or privacy impacts (beyond the approved development), nor materially add to the bulk or scale at the top of the building when viewed from the public domain and adjoining properties.

The proposed variation to the building height standard is therefore acceptable on merit.

Unightly louvred roof plant enclosure

The submission raises concerns that the louvred structure [to the plant] is unsightly compared to the current approval.

The building services (including mechanical plant) on the rooftop of the building is appropriately located away from the outer edge of the building and screened by 1.8 metres high louvres to ensure they are not highly visible from the public domain and adjoining properties.

The screening is sympathetic with the brown and metal finish used throughout the building and will not detract from the streetscape character or create an “unsightly” addition to the building.

Noise impacts

The submission has identified that noise from the development can be a problem. It is assumed that this is noise from the proposed plant. Appropriate conditions were imposed on the consent to ensure mechanical noise complies with relevant noise criteria at the boundaries of the site or nearest residential receivers (**see Conditions 112 and 145**).

Amended plans dated 12 April 2024, 20 May 2024 and 28 May 2024

In accordance with the criteria in Appendix 1 of the CPP, Council's Development Assessment Team Leader, determined that notification of the amended plans and additional information was not required as the amendments were unlikely to detrimentally affect the enjoyment of adjoining or neighbouring land.

Internal Referrals

Urban design

Council's Urban Design Consultant commented on the proposal as follows:

1 Context and Neighbourhood Character

1. *Parapet and rooftop plant - There are changes to parapet heights and configuration of rooftop plant areas. These are generally set back from the building edge and are not expected to generate unreasonable visual impacts from the public domain along the Pacific Highway, Balfour Street or viewed from the rail line.*
2. *PH07 Terrace – the area has been increased on Level 3 by relocating space from Level 4. This consolidates all the unit's private open space to one level while the balustrades of the rooftop private open space terrace remain inboard of the building edge. It should be noted the inboard balustrading serves 2 purposes: firstly, to reduce the building bulk as the building form steps down the falling topography; and secondly, to provide screening and distance from the Lindfield zone substation that neighbours the subject site along its north-western boundary.*
3. *PH08 Terrace - remains on 2 levels. The Level 4 component has been reconfigured to be longer, narrower and with its balustrading moved approximately 2 metres north-west near the building edge. The reconfigured space reduces the wall area of the terrace previously adjacent to plant and creates a longer axis open to the sky that improves resident amenity. The*

intent of the original approval was for the balustrade to be set inboard of the building edge along this north-western elevation as a finer grain response to the interface with the heritage item. The extended parapet loses some of the original expression and will be a slightly bulkier interface with the heritage item viewed from the public domain. It is noted the extent of this modified parapet is limited to the PH08 area of the building form, the impact is therefore considered to be acceptable.

4. Roof top skylights – the documents confirm the skylights are not relied upon for ADG solar access or natural ventilation. The quality of amenity and construction for waterproofing, therefore, is a matter for the future resident and builder.
5. Signage – The new, more contrasting coloured signage represents a departure from the approved design that is more visually prominent. However, it is accepted the proposed is consistent with Coles current corporate branding and the proposed signage is generally consistent with the approved DA. Signage that supports wayfinding and safety is satisfactory.
6. Precast panelling – north-west façade – Proposed material/palette changes are acceptable, however, they do represent a less visually interesting public domain/boundary interface than the approved DA.

2 Built Form and Scale

1. Parapets and rooftop plant and location of solar panels – proposed amendments are minor and are not considered to result in an unacceptable change to the approved design.
2. North-west façade precast panels – proposed material/palette changes are acceptable; however, they do represent a less visually interesting public domain/boundary interface than the approved DA.

3 Density

1. No impacts arising for urban design.

4 Sustainability

1. Proposed horizontal skylights above PH07 – the documents confirm the skylights are not relied upon for ADG solar access or natural ventilation. The quality of amenity and construction for waterproofing, therefore, is a matter for the future resident and builder.

5 Landscape

1. Gas meter relocation and inclusion of a sprinkler booster - No impacts arising for urban design.

6 Amenity

1. Parapets, rooftop plant – proposed modifications are considered acceptable with no unreasonable impacts to the public domain experience of the development or impacts to retail users or residents.
2. Rooftop terrace PH07 and PH08 – generally the proposed modifications improve resident amenity. They are considered acceptable and result in no unreasonable impacts to the public domain experience of the development.

7 Safety

No impacts arising for urban design.

8 Housing Diversity and Social Interaction

No impacts arising for urban design.

9 Aesthetics

1. North-western façade wall – proposed material/palette changes are acceptable; however, they do represent a less visually interesting public domain/boundary interface than the approved DA.

DESIGN STATEMENT

The modification application was lodged after 14 December 2023, therefore Chapter 4 of the SEPP (Housing) 2021 is a matter for consideration in the assessment of the application and the amended design statement prepared by Ben Pomroy (Nominated Architect) dated 28 May 2024, addresses the relevant requirements under Section 29 and 102 of the Environmental Planning and Assessment Regulation 2021. The design statement also demonstrates that the proposed modifications achieve the design quality principles in Chapter 4 of the SEPP (Housing) 2021 and Parts 3 and 4 of the Apartment Design Guide.

Whilst the proposed changes to the north-western façade, may be “less visually interesting”, there is sufficient contrast in the colours to the textured finish of the façade to result in the visual bulk being acceptable noting that the façade will be partially obscured by the existing substation on the adjoining property.

Landscape & Tree Assessment Officer

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

SEPP (Building Sustainability Index: BASIX) 2004		
Part 3 Aims	Proposed	Satisfies
To encourage sustainable residential development	BASIX Certificate 1419881M_06 dated 11/04/2024 was submitted with the application. The following common landscape areas are	YES

	<p>identified:</p> <ul style="list-style-type: none"> - 96sqm common lawn area - 986.9sqm common garden area - 468sqm low water use/indigenous species planting area <p>A provision for common taps is provided.</p> <p>The proposal is consistent with the landscape outcomes within the BASIX certificate.</p>	
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KDCP COMPLIANCE TABLE		
Control	Proposed	Satisfies
Part 8 – Mixed use development		
8A.1 Objectives 1, 2 & 3	<p>Response: No material change.</p> <p>The replacement planting of a <i>Phoenix canariensis</i> (Canary Island date Palm) is specified as a 500 litres pot within the plant schedule, which does not provide any clarity for the height, at planting. As per the original approval it was required that the palm will have a trunk height of 5-6m at the time of planting. This was conditioned as part of an earlier modification to the consent (MOD0219/21).</p> <p>It is recommended that the existing condition (Condition 53A) be amended to reference the updated landscape plans and to otherwise retain the requirement for the proposed planting of a <i>Phoenix canariensis</i> (Canary Island Date Palm) to have a minimum trunk height of 5-6m at the time of planting. This will be conditioned (Condition 53A)</p>	YES
8C.8 Communal Open Space	Useable communal open space has been provided at level 2 (podium level) and level 4 (rooftop).	YES
To provide communal open space that adds to the amenity of the development		
Part KLCDP Part 14E		
14E.3 Precinct L1 Control 16 requires embellishment of the footpath areas including (in part) high quality paving and street tree planting.	<p>Footpath paving upgrade consistent with the Public Domain Plan and street tree plantings approved within Balfour Street is provided.</p> <p>Refer to landscape plan commentary below regarding proposed supplementary mass planting which is inconsistent with the Public Domain Plan.</p>	YES

<p>14E.7 Control 6 vi) Provide roof gardens on the podium for screening apartments from the neighbouring substation and roof top building services.</p>	<p>The proposal provides inbuilt planters adjacent to private terraces and rooftop gardens/communal open space. However, the proposed planting which comprises primarily groundcovers, fails to provide screening amenity. The proposed planting species was previously amended within the consent.</p> <p>The landscape plan has not been amended in response to the consent.</p> <p>It is recommended that the existing condition (Condition 53A) be modified but remain on the consent.</p>	<p>YES</p>
<p>Part 21 General Site Design</p>		
<p>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.</p>	<p>The landscape plan is not acceptable due to:</p> <ul style="list-style-type: none"> • Amenity screen planting as required by Part 14E.3 Control 6 vi) and as conditioned on the consent has not been provided. It is recommended the condition remain and be updated to reference the amended landscape plans. • The planting size of the Phoenix canariensis (Canary Island Date Palm) has not been provided. It is recommended the condition (Condition 53A) remain and be updated to reference the amended landscape plans. • Supplementary mass plantings are proposed within the Balfour Street nature strip between street tree plantings. These plantings are inconsistent with Council's Public Domain Plan (Vol 2, p.170). As the planting is inconsistent with the Public Domain Plan, it is required to be deleted. This is resolved by Condition 53A. 	<p>YES</p>

Heritage Advisor

Council's Heritage Advisor provided the following comments:

Heritage Status

Local Heritage Item	The site includes a heritage item at No 390 Pacific Highway, Lindfield
Heritage Conservation Area	No
Immediate vicinity of a heritage item	No
Immediate vicinity of a HCA	Yes C29

Statement of Significance

As a sufficient statement of significance has not been developed for the heritage item, the following statement of significance was prepared as part of the draft Conservation Management Strategy prepared in 2015 and finalised in 2018.

“The “Churchers Restaurant” is an architecturally-distinctive commercial building in Lindfield. The building is a good representative example of the Inter-War Old English Style architectural style, providing a historic built element within the Lindfield commercial precinct along the Pacific Highway.

The “Churchers Restaurant” site is of some research significance, as there is potential for subsurface remnants of a number of outbuildings, previously existing on the site, to be present.”

DCP Controls

Development Control	Complies
19F.3 Gardens and Landscaping	
Gardens, Setting and Curtilage	
1 Development in the vicinity of a Heritage Item or an HCA is to:	
i) retain original or significant landscape features associated with the Heritage Item or HCA, or which contribute to its setting	Yes
ii) retain the established landscape character of the Heritage Item or HCA.	Yes
iii) include appropriate screen planting on side and rear boundaries.	Yes

Objective

To ensure that new development does not impact on the landscape character and garden setting of any nearby Heritage Item or HCA

The proposed hard surface paving within the Tree Protection Zone of tree 19 is consistent with the approved plans.

Conclusion

The proposed amendments will have a minimal impact on the heritage item and heritage conservation area in the vicinity and are acceptable from a heritage perspective.

Environmental Health

Council’s Environmental Health Officer does not object to the proposed modifications, subject to amended and additional conditions of consent relating to mechanical ventilation, mechanical equipment and access to the roof top space (PH07) **(Conditions 53C, 125, 129F and 154).**

Building

Council's Senior Building Inspector advises that the proposed modifications can achieve compliance with the BCA requirements. A detailed BCA assessment will be undertaken by the Principal Certifier at amended construction certificate stage. The conditions recommended by Council's Senior Building Inspector relating to DDA access and fire safety certificate already exist on the consent and will be retained **(Conditions 37, 126 and 150)**.

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 for the following reasons –

- There is no change to the approved use of the development. The use of the development remains shop top housing, with a Coles supermarket and Liquorland retail store on the upper ground floor and residential apartments on the floors above.
- There is no material change to car parking within the basement levels of the development. Separate vehicular entry points and parking areas remain for the various uses.
- There is no change to the number of storeys nor the number of residential apartments. An earlier modification application reduced the number of residential apartments from 70 to 59.
- The residential apartments will maintain reasonable private open space. Apartments PH07 and PH08 will be afforded improved private open space with additional area including provision of a spa for PH07 and upper-level private open space for PH08.
- The provision of roof top communal open space will remain. The usability and amenity will be improved with changes to parapet heights and additional glazing to the common rooms.
- The building height and stepping in the design at the upper levels remain similar to that originally approved. The maximum building height of the development remains at 23.16m. The proposed works have a maximum building height of 22.85m.
- Business signage remains on the façade of the building, albeit slightly altered because of changes to corporate logos and need for additional directional signage for parking and the like.
- There are minor variations to bulk and scale, because of changes to roof top plant zones, parapet heights and design of fire stairs. These changes do not result in any significant visual impacts, reduction in privacy, views or solar access for adjoining properties or the public domain.
- Whilst the colours and finishes to the facades of the building have changed, they remain similar to that approved and compatible with the streetscape character.
- Landscaping remains along Balfour Street and at the roof top level.

In summary, the proposed modifications do not alter the essence or character of the development in any materially significant way and therefore the development as proposed to be modified remains substantially the same as that for which development consent was originally granted.

The Architect has provided comparison between the originally approved development and this modification application to enable a comparison in a qualitative and quantitative manner (**refer to Attachment 7**) to enable the above conclusion.

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 the 27 February 2024.

Subsection (1)(c) Notification of previous submitters

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

Subsection (1)(d): Submissions

One submission was received in response to the notification of the proposal. The issues relating to building height, privacy and visual impacts associated with the roof top enclosure that were identified in the submission have been considered in the 'Community Consultation' section of this report above.

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

The reasons for the NSW Land and Environment Court granting consent to the development application included:

- *The proposal is permissible under B2 Local Centres zone under the KLEP (Local Centres) 2012.*
- *Commissioner Walsh stated "the applicant's written request pursuant to Clause 4.6 of the KLEP (Local Centres) 2012 seeking to justify the breach of the height of buildings development standard pursuant to Clause 4.3 of LEP 2012, dated February, has been considered and I have formed the necessary opinion of satisfaction under Clause 4.6 (4) of the KLEP 2012. Consequently, the Applicant's written request is well founded and is upheld."*
- *The development complies with the floor space ratio standard at Clause 4.4 of the KLEP.*
- *Appropriate consideration has been given to earthworks (Clause 6.1 of the KLEP), and stormwater and water sensitive urban design (Clause 6.2 of the KLEP).*

- *The proposal meets the requirements in regard to ground floor development in business zones under Clause 6.6 of the KLEP.*
- *The development complies with the requirements of the minimum street frontages for lots in business zone provision at Clause 6.7 of the KLEP.*
- *The development complies with the provision of SEPP 65- Design Quality of Residential Apartment Development and prepared a design verification statement in satisfaction of clause 50(1AB) of the Environmental Planning and Assessment Regulation 2000.*
- *Pursuant to SEPP (Building Sustainability Index: BASIX) 2004, a BASIX certificate has been submitted. In combination with the conditions of consent, this satisfies the requirements of that instrument.*
- *Consideration has been given as to whether the subject site is contaminated as required by cl 7(1) of State Environmental Planning Policy No 55 - Remediation of Land. A phase 1 Environmental Site Assessment Report prepared by Geo-Logix dated 14 May 2018 in respect of the suitability of the site for the proposed use. This report recommends that further investigatory works to assess the presence or otherwise of contamination should be completed as a pre-construction certificate consent condition. The Commissioner of the Court was satisfied in regard to Clause 7(1) of SEPP 55.*

The proposed modifications do not result in a development that is contrary to the reasons provided by the Court in the granting of consent to the original development. The proposed modification has been assessed against the relevant environmental planning instruments and policies and was found to be acceptable.

This assessment report includes consideration of the relevant matters specified in Section 4.15 of the Act.

Section 4.15(1) considerations

State Environmental Planning Policy (Resilience and Hazards) 2021 - Chapter 4 Remediation of land

The provisions of Chapter 4 require consent authorities to consider the potential for a site to be contaminated. A Phase 1 Environmental Site Assessment Report (Stage 1 Preliminary Investigation) was provided with the original application and **Condition 24** of the consent requires that further assessments be carried out prior to the issue of a construction certificate for both stages of the development. The proposed modifications do not affect existing **Condition 24** nor raised any issue contrary to the provisions of this policy.

State Environmental Planning Policy (Transport and Infrastructure) 2021 – Division 17 Roads and traffic

The property has a frontage to a classified road, being the Pacific Highway and consideration is required pursuant to Division 17 of the SEPP.

The modified development continues to satisfy Clause 2.118 Development with frontage to classified road of the SEPP for the following reasons:

- the modifications do not cause change to the approved vehicular access points off Balfour Street and Balfour Lane;
- the modifications do not intensify the nature, volume or frequency of vehicles using the development noting no changes to the number of residential apartments or the number of parking spaces;
- the modifications include changes to the roof top terraces PH07 and PH08. These terraces are appropriately setback from the Pacific Highway and will receive reasonable amenity and minimise potential traffic noise and vehicle emissions.

The modified development continues to satisfy Clause 2.119 Impact of road noise or vibration on non-road development of the SEPP, noting **Condition 40** requires compliance with maximum noise standards and the guidelines to be demonstrated prior to the issue of any Construction Certificate.

Further consideration under Clause 2.121 Traffic-generating development is not required, as the proposed modifications do not increase the commercial area or number of dwellings.

State Environmental Planning Policy (Sustainable Buildings) 2022

An amended BASIX certificate (Number: 1419881M_06) has been submitted and is consistent with the amended architectural and landscape drawings and satisfies Chapter 2 of SEPP (Sustainable Buildings) 2022.

State Environmental Planning Policy (Industry and Employment) 2021 – Chapter 3 Advertising and signage

The proposed modifications seek to alter the approved signage scheme for development.

The proposed signage is compatible with the desired amenity and visual character of the Lindfield Local Centre, provides effective communication of the retail tenancies (Coles and Liquorland) within the development and is of a high quality and finish. The proposed signage is consistent with the objectives in Section 3.1 (1)(a) in SEPP (Industry and Employment) 2021.

Consideration is given below to the assessment criteria specified in Schedule 5 of the SEPP (Industry and Employment) 2021 –

1 Character of the area

- *Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?*
- *Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?*

The proposal remains compatible with the existing and desired future character of the Lindfield Local Centre. The signage is confined to business identification and way finding signage that is appropriately located on the facades of the building.

2 Special areas

- *Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?*

The signage is proposed to be generally flush with the facades of the building and internally illuminated. Whilst the colours of the signage have changed from that originally approved it is similarly located on the building and of a similar size. The signage will not detract from the amenity or visual quality of the heritage listed item located on the site or nearby heritage conservation area.

3 Views and vistas

- *Does the proposal obscure or compromise important views?*
- *Does the proposal dominate the skyline and reduce the quality of vistas?*
- *Does the proposal respect the viewing rights of other advertisers?*

The signage will not obscure or compromise any important views, noting that the signage is predominantly flush with the facades of the building or under awning and not located on the roof top.

4 Streetscape, setting or landscape

- *Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?*
- *Does the proposal contribute to the visual interest of the streetscape, setting or landscape?*
- *Does the proposal reduce clutter by rationalising and simplifying existing advertising?*
- *Does the proposal screen unsightliness?*
- *Does the proposal protrude above buildings, structures or tree canopies in the area or locality?*
- *Does the proposal require ongoing vegetation management?*

The signage is appropriate for a mixed use building on a corner site. The signage is of an appropriate scale and form that will provide visual interest to the building. The signage will not cause excess clutter given the size of the building and the fact that the signage is appropriately located along both the Balfour Street and Pacific Highway frontages.

5 Site and building

- *Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?*
- *Does the proposal respect important features of the site or building, or both?*
- *Does the proposal show innovation and imagination in its relationship to the site or building, or both?*

The signage is compatible with the scale and proportions of the site and mixed-use building. The signage does not impact any important architectural features of the building façade.

6 Associated devices and logos with advertisements and advertising structures

- *Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?*

Advertising signage is not proposed.

7 Illumination

- *Would illumination result in unacceptable glare?*
- *Would illumination affect safety for pedestrians, vehicles or aircraft?*
- *Would illumination detract from the amenity of any residence or other form of accommodation?*
- *Can the intensity of the illumination be adjusted, if necessary?*
- *Is the illumination subject to a curfew?*

The illumination will not result in unacceptable glare and/or impact the safety for vehicles or pedestrians, noting that the signage is predominantly located under or above the awnings and is generally flush with the facades. There will be no detrimental impacts on the amenity of the residential properties on the western side of Balfour Lane given the relatively small size of the signage alongside the loading dock, proposed landscaping along the western side of Balfour Lane and the physical separation between the signage and the residential properties. It is also noted that the larger of these two signs (Sign 3) is not illuminated. An additional condition is however recommended requiring that any illuminated signage not be illuminated between 11pm and 7am daily to protect the surrounding amenity (**Condition 155**).

8 Safety

- *Would the proposal reduce the safety for any public road?*
- *Would the proposal reduce the safety for pedestrians or bicyclists?*
- *Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?*

The signage is appropriately designed and located on the building so as not to reduce safety for either Pacific Highway or Balfour Street. The signage is generally located under or above the awning and in most instances flush with the facades of the building and therefore not reduce safety for pedestrian or bicyclists. The way-finding signage will likely improve safety for pedestrians and motorists by advising them of the location of parking within the development.

The proposed signage satisfies the assessment criteria specified in Schedule 5 of the SEPP (Industry and Employment) 2021.

State Environmental Planning Policy (Housing) 2021

Chapter 4 of SEPP (Housing) 2021 aims to improve the design quality of residential flat buildings across NSW.

Clause 29 of the Environmental Planning and Assessment Regulation 2021 requires the submission of a statement by a qualified designer that satisfies the requirements specified in subclause (2). The submitted statement (**Attachment 5**) includes an assessment of the modification against the Apartment Design Guide (ADG) and satisfactorily demonstrates that the relevant design principles of Schedule 9 of SEPP

(Housing) 2021 and the objectives of the ADG are satisfied by the proposed modification.

Pursuant to Section 147 of SEPP (Housing) 2021 in determining an application for the modification of a development consent, the consent authority is required to take into consideration –

- (a) *the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
- (b) *the Apartment Design Guide,*
- (c) *any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*

An assessment against the design quality principles is provided in the Urban Design comments above. An assessment against the ADG is contained in the table below. Kuring-gai Council does not have a design review panel.

Apartment Design Guide

The following table is an assessment of the proposed modifications against the relevant controls within the Apartment Design Guide.

ADG COMPLIANCE TABLE	
Guideline	Compliance
<i>Objective 3B-2</i> Overshadowing of neighbouring properties is minimised during mid-winter	YES
<i>Objective 3C-1</i> Transition between private and public domain is achieved without compromising safety and security	YES
<i>Objective 3C-2</i> Amenity of the public domain is retained and enhanced	YES
<i>Objective 3D-1</i> An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping	YES
<i>Design criteria</i>	
1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)	YES
2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	YES

ADG COMPLIANCE TABLE				
Guideline				Compliance
Objective 3D-2 Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting				YES
Objective 3D-3 Communal open space is designed to maximise safety				YES
Objective 3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy				YES
Design criteria				
Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:				YES
Building height	Habitable rooms and balconies	Non-habitable rooms	Proposal	
up to 12m (4 storeys)	6m	3m	>12m	
up to 25m (5-8 storeys)	9m	4.5m	>18m	
Objective 3F-2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.				YES
Objective 4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.				YES
Design criteria				
1	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.			YES
Objective 4A-2 Daylight access is maximised where sunlight is limited				YES
Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity				YES

ADG COMPLIANCE TABLE			
Guideline		Compliance	
Design criteria			
All apartments are required to have primary balconies as follows:		YES	
Dwelling type	Minimum area	Minimum depth	
Studio apartments	4m ²	-	
1 bedroom apartments	8m ²	2m	
2 bedroom apartments	10m ²	2m	
3+ bedroom apartments	12m ²	2.4m	
The minimum balcony depth to be counted as contributing to the balcony area is 1m		Balconies width	
		2m	
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m			
<i>Objective 4E-2</i>		YES	
Primary private open space and balconies are appropriately located to enhance liveability for residents.			
<i>Objective 4E-3</i>		YES	
Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.			
<i>Objective 4E-4</i>		YES	
Private open space and balcony design maximises safety.			
<i>Objective 4M-1</i>		YES	
Building facades provide visual interest along the street while respecting the character of the local area.			
<i>Objective 4M-2</i>		YES	
Building functions are expressed by the façade.			
<i>Objective 4N-1</i>		YES	
Roof treatments are integrated into the building design and positively respond to the street.			
<i>Objective 4N-2</i>		YES	
Opportunities to use roof space for residential accommodation and open space are maximised.			
<i>Objective 4N-3</i>		YES	
Roof design incorporates sustainability features.			

ADG COMPLIANCE TABLE	
Guideline	Compliance
<i>Objective 4O-1</i> Landscape design is viable and sustainable.	YES
<i>Objective 4O-2</i> Landscape design contributes to the streetscape and amenity.	YES
<i>Objective 4P-1</i> Appropriate soil profiles are provided.	YES
<i>Objective 4P-2</i> Plant growth is optimised with appropriate selection and maintenance.	YES
<i>Objective 4P-3</i> Planting on structures contributes to the quality and amenity of communal and public open spaces.	YES
<i>Objective 4U-1</i> Development incorporates passive environmental design.	YES
<i>Objective 4U-2</i> Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.	YES
<i>Objective 4X-3</i> Material selection reduces ongoing maintenance costs.	YES

Ku-ring-gai Local Environmental Plan 2015

Zoning and permissibility:

The site is zoned E1 Local Centre. The proposed modification does not seek to change the approved *shop top housing* land use.

The objectives of this zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for residential housing close to public transport, services and employment opportunities.*
- *To encourage mixed use buildings that effectively integrate suitable commercial, permitted residential development and other development.*

The modified proposal remains consistent with the zone objectives, given that it continues to deliver a mixed-use building with retail, housing and employment opportunities within an accessible location.

Development standards:

Development standard	Proposed	Complies
CI 4.3 - Height of buildings: Maximum Building Height - 20.5 metres	Approved - 23.16m Proposed – 22.85m	NO NO
CI 4.4 - Floor space ratio (FSR): Maximum total FSR - 2.5:1 Maximum commercial premises FSR Area 4 – 1.2:1	A reduction in GFA of 12.8m ² with the reconfiguration of the 3 x waste rooms on Level 1. FSR complies with the development standard.	YES
CI 6.7 - Active street frontages in certain business zones: Ground floor of the building— <ul style="list-style-type: none"> • will not be used for the purposes of residential accommodation or a car park or to provide ancillary car parking spaces, and • will consist of design elements that encourage interaction and flow between the inside of the building and the external public areas of the building, and • will be used for purposes that encourage the movement and flow of people between the internal and the external public areas of the building. 		NO CHANGE
CI 6.8 - Minimum street frontages for lots in Zone B2: Primary street frontage of at least 20m		NO CHANGE

Clause 4.3 - Height of buildings

The approved development has a maximum building height of 23.16 metres and contravened the maximum 20.5 metres height limit under Clause 4.3 of KLEP.

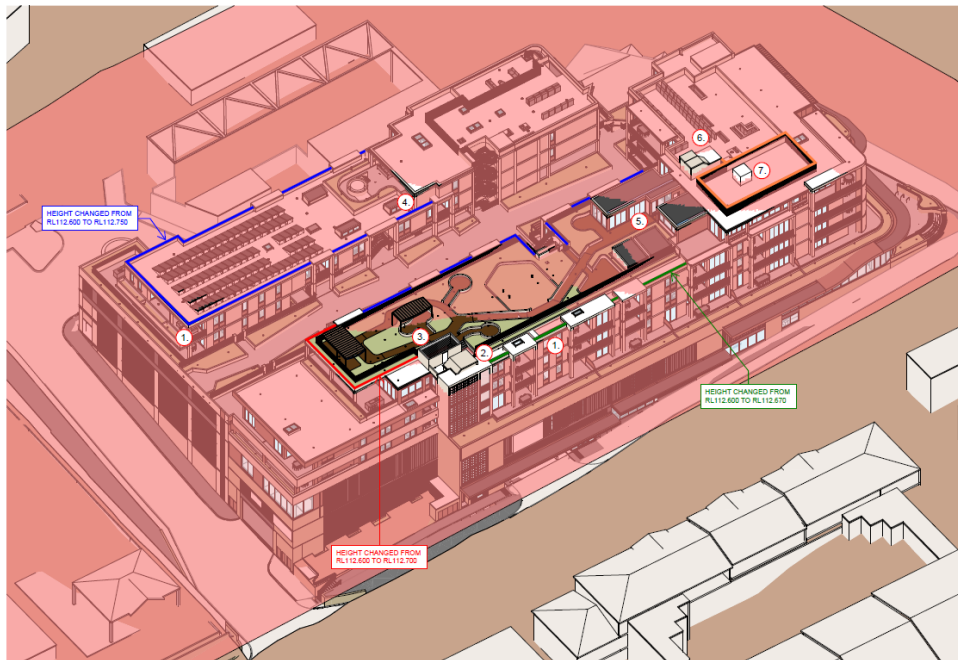
The proposed modifications to the proposal result in new built elements that also breach the maximum 20.5 metres height limit. The works proposed, as part of the subject application, are limited to a building height of 22.85 metres, a breach of up to 2.35 metres. There is no change to the approved maximum building height of the development at 23.16 metres.

The elements of the development that breach the building height standard are detailed in

the table below (copied from the submitted SEE – **Attachment 6**) –

Component	Proposed RL	Height Exceedance
Parapet Heights	112.75 RL	0.93m
Roof to Fire Stair 04	114.05 RL	2.25m
Smoke Exhaust Enclosure	114.3 RL	2.35m
Roof and Parapet over Ph07	115.55 RL	0.86m
Common Room Heights	115.45 RL	0.77m
Roof Stair 09	117.7 RL	1.47m
Plant Enclosure for Chiller Equipment	117.05 RL	1.98m

The Architect has provided this information on a building height blanket diagram below in **Figure 3: -**



SCHEDULE OF AMENDMENTS

1. INCREASED PARAPETS FOR FALL PROTECTION AND SOIL DEPTHS
HEIGHT CHANGED FROM RL112.600 TO RL112.750 SHOWN WITH BLUE LINE
HEIGHT CHANGED FROM RL112.600 TO RL112.670 SHOWN WITH GREEN LINE
HEIGHT CHANGED FROM RL112.600 TO RL112.700 SHOWN WITH RED LINE
2. ADDED ROOF TO FIRE STAIR 04
3. ADDED COLES SMOKE EXHAUST ENCLOSURE
4. INCREASED EXTENT OF ROOF AND PARAPET OVER PH07 EXTERNAL TERRACE.
5. INCREASED COMMON ROOM HEIGHTS TO ALLOW FOR DRAINAGE
6. ADDED ROOF TO FIRE STAIR 09
7. EXTENDED PLANT ENCLOSURE FOR COLES CHILLER EQUIPMENT
EXTENT OF INCREASED PLANT ZONE SHOWN WITH ORANGE LINE

Figure 3: Height Blanket Diagram and Schedule of Amendment at roof top level

The greatest building height variations are confined to service elements of the development, specifically Coles smoke exhaust enclosure (2.35m variation), roof to fire stair 04 (2.25m variation) and plant enclosure for chiller equipment (1.98m variation). These elements are necessary for the proposed uses within the development and are generally set back from the edges of the building.

These elements will not result in any additional view, solar access, visual amenity or privacy impacts (beyond the approved development), nor materially add to the bulk or scale at the top of the building when viewed from the public domain and adjoining properties.

The proposed variation to the building height standard is therefore acceptable on merit when considered against the objectives of the height standard.

Part 5 Miscellaneous provisions

Clause 5.10 – Heritage conservation

The subject site contains a heritage item, is located within 100m of an Item and is not within a heritage conservation area although is in proximity to one.

The proposed modifications have been considered by Council's Heritage Advisor and were found to be acceptable.

Part 6 Additional local provisions

Clause 6.2 - Earthworks

The proposed modifications involve additional excavation with amendments to the rainwater tank and fire tank footprints. The additional excavation is minor and will not impact drainage patterns, soil stability or the amenity of adjoining public and private lands. An appropriate condition was imposed on the original consent to manage excavation (**Condition 81**).

Clause 6.3 - Biodiversity protection

A small section of Balfour Lane is mapped as land comprising biodiversity significance. The proposed modifications will not impact this native vegetation.

Clause 6.5 - Stormwater and water sensitive urban design

The proposed modifications do not seek to amend the approved stormwater management design. The BASIX water commitments are consistent with the approved stormwater management plans.

Ku-ring-gai Development Control Plan

Part 1A.5 General aims of the DCP

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

Part 8 - Mixed use development

The proposed modifications have been assessed against the relevant controls in Part 8 of the KDCP, as discussed below:

8C.7 Roof Forms and Podiums

The service elements and solar panels are well integrated into the design of the roof and appropriately screened and comply with Controls 2 and 4 in Part 8C.7.

8C.8 Communal Open Space

The roof terrace will continue to be used for communal open space for the residents of the apartments. The new glazing to the roof top common room will improve solar access and amenity and facilitate greater social interaction. The perimeter landscape planters and increased parapet heights will ensure appropriate safety, privacy and amenity for the development and comply with Controls 2 and 3 in Part 8C.8.

8C.9 Building Façades and articulation

The proposed modifications include changes to parapet heights and finishes to the northern façade of the building. The changes to the heights of the parapets are minor (70mm-150mm) and will not materially increase the scale of the development or increase solar access impacts. The changes to the finishes of the northern façade are acceptable to Council's Urban Design consultant (*see Internal Comments earlier within this report*). It is also noted that the existing substation on the adjoining property will obscure large parts of the northern façade of the development.

8C.18 Services

The building services on the rooftop are appropriately located and screened so as not to be highly visible from the public domain and comply with Control 2 in Part 8C.18.

Part 14E - Lindfield Local Centre

The proposed modifications have been assessed against the relevant controls in Part 14E. The site is located within Precinct L1 of the Lindfield Local Centre.

14E.3 - Proposed Community Infrastructure

The landscape plans indicate supplementary mass plantings within the Balfour Street nature strip between street tree plantings. These plantings are inconsistent with Council's Public Domain Plan. Council's Landscape and Tree Assessment Officer has recommended the deletion of this mass plantings to ensure consistency with the Part 14E.3 of the KDCP.

14E.4 – Setbacks

14E.5 – Built form

14E.6 – Building entries, car parking and service access

The proposed modifications do not alter approved building setbacks, principal active frontages, vehicular or pedestrian entry/exit points. The visual bulk and scale

associated with the proposed modifications are appropriately minimised through the setting back and screening the plant zones at roof top level.

14E.7 Precinct L1: Balfour Street Retail Area

The proposed modifications ensure that the height of the built form reduces towards the western boundary, as required by Control 1 ii) in Part 14E.7. The new covered terrace to PH07 is appropriately set back from the western boundary with a landscaped planter edge. The roof over fire stair 04, the Coles smoke exhaust and enclosure and screened plant areas are generally set back from the edges of the building and mainly confined to the north-eastern or southern side of the development. These elements do not increase the height of the development at its western boundary and an appropriate transition will be maintained to the adjoining low density residential properties.

The proposed modifications include appropriate roof gardens to screen the PH07 from the neighbouring substation and roof top building services consistent with control 6 vi) in Part 14E.7.

Part 12 – Signage and Advertising

The proposed signage complies with the relevant controls in Parts 12.3, 12.5 and 12.7 in KDCP.

Part 19 – Heritage and Conservation Areas

The proposed modifications have been considered by Council's Heritage Advisor and were found to be acceptable.

Part 20 – Development near Road or Rail noise

The proposed modifications will ensure reasonable acoustic amenity is maintained for the private open spaces of PH07 and PH08 and the roof top communal open space which are generally located on the western side of the development and appropriately screened.

Part 23 – Building Design and Sustainability

The proposed modifications to the finishes along the northern façade are acceptable as they are durable and of high quality. The changes to the communal roof top and common rooms will improve amenity, encourage social interactions between occupants and is useable and accessible.

The 1.8metres high screening to the roof top plant will ensure they are not visually intrusive on the streetscape.

The proposed exhausts are integrated and concealed within the building and in suitable locations at either roof level or the outer edges of the communal open spaces.

The changes to the timing of the GBCA green star certification (from 3 months to 9 months, post Occupation Certificate) is reasonable and will not impact the green star rating of the building.

Ku-ring-gai Contributions Plan 2010

The modification does not alter the gross floor area of the 'retail' uses or changes the number of dwellings in shop top housing development, therefore no change to the approved development contributions. The development contribution was deferred to Occupation Certificate stage as per **Condition 59** of the consent, as modified.

LIKELY IMPACTS

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

SUITABILITY OF THE SITE

The site remains suitable for the modified development.

PUBLIC INTEREST

The modified development is in the public interest, given the proposal's compliance with the relevant considerations, as assessed throughout this report.

EPA REGULATION 2021

The modification relates to development for which the development application was required to be accompanied by a BASIX certificate. The current BASIX certificate is no longer consistent with the proposed development and a new BASIX certificate has been provided, accordingly the requirements of Section 100(3)(b) are satisfied.

The modification relates to residential apartment development and the development application was required to be accompanied by a design verification statement from a qualified designer under Section 29. A design verification statement for the proposed modification has been prepared by a qualified designer and submitted with the application per the requirements of Section 102 (**Attachment 5**).

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 throughout this report.

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 satisfied 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 DA0197/18 in the manner proposed in modification of consent application

eMOD0047/23 for various internal and external changes to the approved mixed-use development, including changes to signage, subject to amended conditions at 1 and 1A Balfour Street, Lindfield.

All the conditions that now apply in the Notice of Determination to DA0197/18, as amended, are detailed below:

CONDITIONS THAT IDENTIFY APPROVED PLANS:

1. Approved architectural plans and documentation (*Modified - MOD0117/20, MOD0219/21, MOD0185/22 and eMOD0047/23*)

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

Plan no.	Drawn by	Dated
<i>Architectural Plans</i>		
DA-00-01 Revision DA4	Christiansen Obrien Architects	4/07/2019
DA-01-02 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-03 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-04 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-05 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-06 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-07 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-08 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-01-09 Revision DA3	Christiansen Obrien Architects	31/05/2019
DA-01-10 Revision DA3	Christiansen Obrien Architects	5/07/2019
DA-02-1 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-02-2 Revision DA5	Christiansen Obrien Architects	4/07/2019
DA-02-3 Revision DA5	Christiansen Obrien Architects	5/07/2019
DA-03-1 Revision DA4	Christiansen Obrien Architects	5/07/2019
DA-03-2 Revision DA3	Christiansen Obrien Architects	5/07/2019
DA-03-3 Revision DA2	Christiansen Obrien Architects	5/07/2019
DA-04-1 Revision DA1	Christiansen Obrien Architects	29/01/2019
DA-04-2 Revision DA1	Christiansen Obrien Architects	29/01/2019
DA-04-3 Revision DA1	Christiansen Obrien Architects	29/01/2019
DA-04-4 Revision DA1	Christiansen Obrien Architects	29/01/2019
DA-04-5 Revision DA1	Christiansen Obrien Architects	29/01/2019
DA-04-6 Revision DA2	Christiansen Obrien Architects	5/07/2019
DM-01 Revision DA1	Christiansen Obrien Architects	18/05/2018
SK-IMG-01 Revision DA2	Christiansen Obrien Architects	5/07/2019
SK-IMG-02 Revision DA2	Christiansen Obrien Architects	5/07/2019
SK-IMG-03 Revision DA2	Christiansen Obrien Architects	5/07/2019
SK-IMG-04 Revision DA2	Christiansen Obrien Architects	5/07/2019
SK-IMG-05 Revision DA2	Christiansen Obrien Architects	5/07/2019
<i>Subdivision Plan</i>		
PS01 Revision B	Trehy Ingold Neate	25/05/2018
<i>Staging Plans</i>		
ST-01-A Revision DA2	Christiansen Obrien Architects	29/01/2019
ST-01-B Revision DA2	Christiansen Obrien Architects	29/01/2019
ST-02 Revision DA2	Christiansen Obrien Architects	29/01/2019

<i>Landscape Plans</i>		
Existing Vegetation Management and Tree Survey	Conzept Landscape Architects	4/07/2019
LPDA 18-154 Page L101 Revision I	Conzept Landscape Architects	7/06/2019
LPDA 18-154 Page L102 Revision I	Conzept Landscape Architects	4/07/2019
LPDA 18-154 Page L103 Revision H	Conzept Landscape Architects	7/06/2019
LPDA 18-154 Page L104 Revision H	Conzept Landscape Architects	4/07/2019
LPDA 18-154 Page L105 Revision H	Conzept Landscape Architects	4/07/2019
LPDA 18-154 Page L106 Revision F	Conzept Landscape Architects	4/07/2019
LPDA 18-154 Page L108 Revision E	Conzept Landscape Architects	24/06/2019
LPDA 18-154 Page L109 Revision C	Conzept Landscape Architects	24/06/2019
LPDA 18-154 Page L110 Revision D	Conzept Landscape Architects	4/07/2019
<i>Civil Drawings</i>		
14888_DA_C000 Revision 05	Henry & Hymas	28/05/2019
14888_DA_C100 Revision 12	Henry & Hymas	23/01/2019
14888_DA_C110 Revision 07	Henry & Hymas	7/06/2019
14888_DA_C111 Revision 09	Henry & Hymas	3/07/2019
14888_DA_C112 Revision 06	Henry & Hymas	3/07/2019
14888_DA_C200 Revision 05	Henry & Hymas	11/01/2019
14888_DA_C201 Revision 05	Henry & Hymas	c/01/2019
14888_DA_C250 Revision 07	Henry & Hymas	11/06/2019
14888_DA_C500 Revision 08	Henry & Hymas	29/05/2019
14888_DA_SE01 Revision 06	Henry & Hymas	30/01/2019
14888_DA_SE02 Revision 04	Henry & Hymas	11/01/2019
14888_DA_SE03 Revision 01	Henry & Hymas	11/01/2019
14888_DA_BE01 Revision 05	Henry & Hymas	30/01/2019

Document(s)	Dated
Accessibility Assessment Report prepared by City Plan Revision 05	21/01/2019
Wind Impact Assessment prepared by Vipac Engineers and Scientists	29/10/2018
Coles Supermarket Lindfield - Residential Component - Acoustic Assessment for DA prepared by Renzo Tonin & Associates Report Revision 4	1/02/2019
Coles Lindfield - Supermarket Component - Acoustic Assessment for DA prepared by Renzo Tonin & Associates Report Revision 2	23/01/2018
Basix certificate No. 755527M_04	8/07/2019
Nathers Certificate No. 0004005920	8/07/2019
Coles Lindfield Supermarket Operations Management Plan	30/04/2018
Development Application Report for Building Services Revision C	29/01/2019
Ausgrid letter	31/07/2018
Roads and Maritime Services letter reference SYD18/00918/04 (A26045482)	6/03/2019
Design Verification Statement prepared by Neil Christiansen of Christiansen Obrien Architects	10/07/2019
Apartment Design Guide - Compliance Assessment prepared by Christiansen O'Brien Revision DA4	31/05/2019
Air Quality Assessment prepared by Pacific Environment	8/05/2018
ESD and Green Star Strategy Report Revision B prepared by Donnelley Simpson Cleary	24/05/2018
Letter from Geo-Logix to Howard Hathorn regarding satisfaction of SEPP 55 requirements	14/05/2018

Phase 1 Environment Site Assessment Report prepared by Geo-Logix Revision V02	21/03/2017
Geotechnical Advice for Proposed Mixed Use Redevelopment of Existing Supermarket Site prepared by Geo-Logix - including Attachment A - Geotechnical Investigation prepared by JK Geotechnics dated 9/12/2014	21/03/2017
Conservation Management Strategy prepared by City Plan Revision 02	13/12/2018
Waste Management Statement prepared by Christiansen Obrien Architects Revision C	July 2019
Engineering Report - Commercial Development prepared by Henry & Hymas (not including Appendix C)	January 2019

Except where amended by the s4.56 (**MOD0117/20**) document endorsed with Council's stamp as listed below and except where amended by other conditions of this Development Consent:

Section 4.56 (MOD0117/20) Document	Dated
Geo-Logix Letter prepared by Geo-Logix Pty Ltd	21 July 2020

Except where amended by the s4.56 (**MOD0219/21**) plans and documentation endorsed with Council's stamp as listed below and except where amended by other conditions of this Development Consent:

Section 4.56 (MOD0219/21) Plans		
Plan no.	Drawn by	Dated
<i>Architectural Plans</i>		
DA-00-1 Cover sheet B	Rothelowman	24 June 2022
DA-01-1 Basement	Rothelowman	7 October 2021
DA-01-2 Lower Ground 2 A	Rothelowman	23 February 2022
DA-01-3 Lower Ground 1 A	Rothelowman	23 February 2022
DA-01-4 Upper Ground A	Rothelowman	23 February 2022
DA-01-5 Level 1 A	Rothelowman	23 February 2022
DA-01-6 Level 2 A	Rothelowman	23 February 2022
DA-01-7 Level 3 A	Rothelowman	23 February 2022
DA-01-8 Level 4 B	Rothelowman	24 June 2022
DA-01-9 Roof B	Rothelowman	24 June 2022
DA-01-10 Signage B	Rothelowman	24 June 2022
DA-02-1 Elevations A	Rothelowman	23 February 2022
DA-02-2 Elevations A	Rothelowman	23 February 2022
DA-03-1 Sections A	Rothelowman	23 February 2022
DA-03-2 Sections A	Rothelowman	23 February 2022
DA-03-3 Sections	Rothelowman	7 October 2021
DA-04-1 Detail Sections	Rothelowman	7 October 2021
DA-04-6 Acoustic Louvre Detail	Rothelowman	7 October 2021
TP10.04 A Storage plans	Rothelowman	23 February 2022
<i>Landscape Plans</i>		
000 Cover sheet Issue E	Arcadia	3 January 2022
101 Landscape Masterplan Upper Ground Level Issue E	Arcadia	3 January 2022
102 Landscape Masterplan Issue E	Arcadia	3 January 2022
103 Landscape Masterplan Issue E	Arcadia	3 January 2022
104 Landscape Masterplan Issue E	Arcadia	3 January 2022

400 Plant Schedule Issue E	Arcadia	3 January 2022
401 Softworks Plan Issue E	Arcadia	3 January 2022
402 Softworks Plan Issue E	Arcadia	3 January 2022
403 Softworks Plan Issue E	Arcadia	3 January 2022
404 Softworks Plan Issue E	Arcadia	3 January 2022
405 Softworks Plan Issue E	Arcadia	3 January 2022
406 Softworks Plan Issue E	Arcadia	3 January 2022
407 Softworks Plan Issue E	Arcadia	3 January 2022
408 Softworks Plan Issue E	Arcadia	3 January 2022
409 Softworks Plan Issue E	Arcadia	3 January 2022
410 Softworks Plan Issue E	Arcadia	3 January 2022
411 Softworks Plan Issue E	Arcadia	3 January 2022
412 Softworks Plan Issue E	Arcadia	3 January 2022
601 Landscape Details Issue E	Arcadia	3 January 2022
701 Landscape Specification Issue E	Arcadia	3 January 2022

Section 4.56 (MOD0219/21) Documents	Dated
External Finishes Schedule DA-02-3 A prepared by Rothelowman	23 February 2022
Access Report prepared by iAccess Residential Revision A	7 October 2021
BASIX certificate No. 1235564M_04	14 April 2022
Nathers Certificate No. NXDPVOTWNH	3 March 2022
Design Verification Statement prepared by of Rothelowman	3 March 2022

Except where amended by the s4.56 (**MOD0185/22**) plans and documentation endorsed with Council's stamp as listed below and except where amended by other conditions of this Development Consent:

Section 4.56 (MOD0185/22) Plans		
Plan no.	Drawn by	Dated
<i>Architectural Plans</i>		
RFI – 01 Basement and Comparative Plans	Rothelowman	27 April 2023
RFI – 02 Lower Ground 2 Comparative Plans	Rothelowman	27 April 2023
RFI – 03 Lower Ground 1 Comparative Plans	Rothelowman	27 April 2023
RFI – 04 Upper Ground Comparative Plans	Rothelowman	27 April 2023
RFI - 05 Level 1 Comparative Plans	Rothelowman	27 April 2023
RFI – 06 Level 2 Comparative Plans	Rothelowman	27 April 2023
RFI - 07 Level 3 Comparative Plans	Rothelowman	27 April 2023
RFI – 08 Level 4 Comparative Plans	Rothelowman	27 April 2023
RFI – 09 Carpark / Bicycle Park Schedule Comparison	Rothelowman	27 April 2023
SK03.01 – Coles Entry Sections	Rothelowman	28 April 2023
DA02-2 - Elevations	Rothelowman	23 September 2022
<i>Landscape Plans</i>		
000 Cover sheet Issue G	Arcadia	2 May 2023
101 Landscape Masterplan Upper Ground Level Issue G	Arcadia	2 May 2023
102 Landscape Masterplan Issue G	Arcadia	2 May 2023
103 Landscape Masterplan Issue G	Arcadia	2 May 2023
104 Landscape Masterplan Issue G	Arcadia	2 May 2023
400 Plant Schedule Issue G	Arcadia	2 May 2023
401 Softworks Plan Issue G	Arcadia	2 May 2023

402 Softworks Plan Issue G	Arcadia	2 May 2023
403 Softworks Plan Issue G	Arcadia	2 May 2023
404 Softworks Plan Issue G	Arcadia	2 May 2023
405 Softworks Plan Issue G	Arcadia	2 May 2023
406 Softworks Plan Issue G	Arcadia	2 May 2023
407 Softworks Plan Issue G	Arcadia	2 May 2023
408 Softworks Plan Issue G	Arcadia	2 May 2023
409 Softworks Plan Issue G	Arcadia	2 May 2023
410 Softworks Plan Issue G	Arcadia	2 May 2023
411 Softworks Plan Issue G	Arcadia	2 May 2023
412 Softworks Plan Issue G	Arcadia	2 May 2023
601 Landscape Details Issue G	Arcadia	2 May 2023
701 Landscape Specification Issue G	Arcadia	2 May 2023
<i>Stormwater Plans</i>		
C000/02	Henry & Hymas	29 March 2022
C010/02	Henry & Hymas	29 March 2022
C100/03	Henry & Hymas	22 April 2022
C101/03	Henry & Hymas	22 April 2022
C110/02	Henry & Hymas	22 April 2022
C111/01	Henry & Hymas	29 March 2022
C200/02	Henry & Hymas	29 March 2022
C201/03	Henry & Hymas	11 April 2022
SE01/02	Henry & Hymas	29 March 2022
SE02/02	Henry & Hymas	29 March 2022
BE01/A	Henry & Hymas	22 April 2022
EX01/02	Henry & Hymas	29 March 2022

Section 4.56 (MOD0185/22) Documents	Dated
Design Verification Statement prepared by of Rothelowman	2 May 2023

Except where amended by the s4.56 (eMOD00047/23) plans and documentation endorsed with Council's stamp as listed below and except where amended by other conditions of this Development Consent:

Section 4.56 (eMOD0047/23) Plans		
Plan no.	Drawn by	Dated
<i>Architectural Plans</i>		
DA-01-1 Basement Plan (Rev B)	Rothelowman	27 November 2023
DA-01-2 Lower Ground 2 (Rev D)	Rothelowman	27 November 2023
DA-01-3 Lower Ground 1 (Rev D)	Rothelowman	27 November 2023
DA-01-5 Level 1 (Rev D)	Rothelowman	27 November 2023
DA-01-7 Level 3 (Rev D)	Rothelowman	27 November 2023
DA-01-8 Level 4 (Rev D)	Rothelowman	27 November 2023
DA-01-9 Roof Plan (Rev C)	Rothelowman	27 November 2023
DA-01-10 Signage (Rev C)	Rothelowman	27 November 2023
DA-02-1 Elevations (Rev C)	Rothelowman	27 November 2023
DA-02-2 Elevations (Rev D)	Rothelowman	10 April 2024
DA-02-3 External Finishes Schedule (Rev B)	Rothelowman	10 April 2024
DA-03-1 Sections (Rev C)	Rothelowman	27 November 2023
<i>Landscape Plans</i>		
L-101 Upper Ground Level, Issue I	Arcadia	12 April 2024

L-102 Level 1 & 2, Issue I	Arcadia	12 April 2024
L-103 Level 3, Issue I	Arcadia	12 April 2024
L-104 Level 4, Issue I	Arcadia	12 April 2024
L-400 Plant Schedule, Issue I	Arcadia	12 April 2024
L-401 Upper Ground Level, Issue I	Arcadia	12 April 2024
L-402 Upper Ground Level, Issue I	Arcadia	12 April 2024
L-403 Upper Ground Level, Issue I	Arcadia	12 April 2024
L-404 Upper Ground Level, Issue I	Arcadia	12 April 2024
L-405 Level 1 and 2, Issue I	Arcadia	12 April 2024
L-406 Level 1 and 2, Issue I	Arcadia	12 April 2024
L-407 Level 1 and 2, Issue I	Arcadia	12 April 2024
L-408 Level 1 and 2, Issue I	Arcadia	12 April 2024
L-409 Level 3, Issue I	Arcadia	12 April 2024
L-410 Level 3, Issue I	Arcadia	12 April 2024
L-411 Level 4, Issue I	Arcadia	12 April 2024
L-412 Level 4, Issue I	Arcadia	12 April 2024
L-601 Landscape Details, Issue I	Arcadia	12 April 2024
L-701 Landscape Specification, Issue I	Arcadia	12 April 2024

Section 4.56 (eMOD0047/23) Document	Dated
Design Statement prepared by Ben Pomroy	28 May 2024
BASIX Certificate No: 1419881M_06	11 April 2024

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

1A. Staged construction and occupation – stage 2 (*Added – MOD0219/21*)

(a) Stage 02-04 works as per the approved staging plans referred to in Condition 1, may be carried out in stages with the relevant conditions being satisfied prior to the issue of a construction certificate for each stage as follows:

Stage 02 (Stage 02-04 on approved staging plans)	New mixed use building works
Phase 1	Early Works: <ul style="list-style-type: none"> • demolition • excavation shoring • services diversion and augmentation • footings/piling
Phase 2	Structure - lower basement slab and above
Phase 3	Retail (Cold shell only) and retail carparking and facades: <ul style="list-style-type: none"> • Lower Basement 1 and 2 • Facades to the whole building
Phase 4	Residential Apartments: <ul style="list-style-type: none"> • associated carparking

	<ul style="list-style-type: none"> • podium and roof top terrace landscaping • public domain • main building surrounds and landscaping
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(b) Any reference to a Construction Certificate or an Occupation Certificate relates to the first construction certification and/or occupation certificate unless a stage is nominated elsewhere in that particular condition.

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

2. Inconsistency between documents

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

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

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

3. ~~Tree protection fencing (Deleted – MOD0219/21)~~

~~Prior to the commencement of any Stage 01 (A&B) works, the tree protection zone of the listed trees is to be fenced off at the specified radius from the trunk/s to prevent any activities or storage of material within the fenced area. The fence/s shall be maintained intact until the completion of all Stage 01 (A&B) demolition/building work.~~

Tree/location	Radius in metres
T1 <i>Phoenix canariensis</i> (Canary Island Date Palm) Adjacent to northwest boundary/Balfour lane	Edge of proposed garden bed
T2 <i>Syncarpia glomulifera</i> (Turpentine) Adjacent to northwest site boundary/relocated Balfour Lane	Edge of proposed garden bed
T18 <i>Angophora costata</i> (Sydney Red Gum) Balfour St road reserve	Top of kerb, edge of proposed retaining wall, southeast edge of pedestrian path, 4.5m elsewhere
T19 <i>Eucalyptus pilularis</i> (Blackbutt) Balfour St road reserve	Top of kerb, southeast edge of pedestrian path, 10.0m elsewhere

Reason: ~~To protect existing trees.~~

4. Tree protection fencing (Modified – MOD0219/21)

Prior to the commencement of any Stage 02 works, the tree protection zone of the listed trees is to be fenced off at the specified radius from the trunk/s to prevent any activities

or storage of material within the fenced area. The fence/s shall be maintained intact until the completion of all Stage 02 demolition/building work.

Tree/location	Radius in metres
T18 <i>Angophora costata</i> (Sydney Red Gum) Balfour St road reserve	Top of kerb, edge of proposed , top of existing retaining wall, southeast edge of pedestrian path, 4.5m elsewhere
T19 <i>Eucalyptus pilularis</i> (Blackbutt) Balfour St road reserve	Top of kerb, southeast edge of pedestrian path, 10.0m elsewhere
Pyrus calleryana 'Capital' (Capital Ornamental Pear) x 7 Eastern side of Balfour Lane	Top of kerb to north south and west; western site boundary for the length of the garden bed
T1 Phoenix canariensis (Canary Island Date Palm) Adjacent to northwest boundary/Balfour lane	Edge of proposed garden bed
T2 Syncarpia glomulifera (Turpentine) Adjacent to northwest site boundary/relocated Balfour Lane	Edge of proposed garden bed

Reason: To protect existing trees.

5. Tree protective fencing type galvanised mesh

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

Reason: To protect existing trees.

6. Tree protection signage

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

The words:

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

and the following information:

- The name, address, and telephone number of the developer/builder and project arborist

Reason: To protect existing trees.

7. Tree protection mulching

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

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

Reason: To protect existing trees.

8. Ground protection - avoiding soil compaction

Prior to the commencement of any works, temporary measures, to avoid root damage and soil compaction, are to be installed in accordance with Section 4.5.3 (figure 4) of the current version AS4970 Protection of trees on development sites, within the specified radius of the following listed tree/s where pedestrian access is required (outside tree protective fencing):

Tree/Location	Radius in metres
T18 <i>Angophora costata</i> (Sydney Red Gum) Balfour St road reserve	4.5m
T19 <i>Eucalyptus pilularis</i> (Blackbutt) Balfour St road reserve	10.0m

Reason: To protect existing trees.

9. Inspection of tree protection measures

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

Reason: To protect existing trees.

10. Project arborist

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

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

Reason: To protect existing trees.

11. 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.

12. Notice of commencement

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

Reason: Statutory requirement.

13. Notification of builder's details

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

Reason: Statutory requirement.

14. Dilapidation survey and report (public infrastructure)

Prior to the commencement of any works, the Applicant must obtain a dilapidation report on the public infrastructure and 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 Pacific Highway and Balfour Street over 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 Applicant 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.

15. Archival recording of buildings (heritage items) (*Modified - MOD0117/20*)

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

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

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

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

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

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

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

16. Dilapidation survey and report (private property) (*Modified - MOD0117/20*)

Prior to the commencement of each of the following stages:

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

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

Address:

- 2-4 Highfield Road (southern side of the main school building)
- 2-4 Highfield Road (existing structures within the playground including retaining structures and COLA)
- 402 Pacific Highway
- 406 Pacific Highway

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

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

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

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

17. Construction traffic management plan (*amended – MOD0001/23*)

A construction traffic management plan (CTMP) is to be submitted to Council and approved prior to the commencement of any works.

~~The plan is to consist of a report with traffic control plans attached.~~

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

~~The report is to contain 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 a 12.5 metres long heavy rigid vehicle and 19.0 metres articulated vehicle.~~

~~The swept path analysis plans shall show the existing trees being retained and their tree protective fencing requirements (consistent with this Development Consent). These~~

~~plans shall be to scale to ensure that truck access and tree fencing requirements do not conflict and are consistent with the approved environmental site management plan.~~

~~The plan shall show locations for site offices and materials storage areas to be located outside the tree protection zones.~~

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

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

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

~~For safety and amenity, no construction vehicle movements are to occur in Balfour Street during school drop-off (8.00am to 9.30am) and pick-up (2.30pm to 4.00pm) times on school days.~~

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

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

A construction traffic management plan (CTMP) is to be submitted to Council and approved prior to the commencement of any works.

The plan is to consist of a report with traffic control plans attached.

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

The report is to contain 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 a 12.5 metres long heavy rigid vehicle and 19.0 metres articulated vehicle.

The swept path analysis plans shall show the existing trees being retained and their tree protective fencing requirements (consistent with this Development Consent). These plans shall be to scale to ensure that truck access and tree fencing requirements do not conflict and are consistent with the approved environmental site management plan.

The plan shall show locations for site offices and materials storage areas to be located outside the tree protection zones.

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

- demolition
- excavation
- concrete **pours for critical structural stage**
- 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.

For safety and amenity, no construction vehicle movements are to occur in Balfour Street during school drop-off (8.00am to 9.30am) and pick up (2.30pm to 4.00pm) times on school days, with the following exception:

- For critical concrete stage pours, no concrete truck movements are to occur in Balfour Lane.
- For critical concrete stage pours, no concrete truck movements are to occur in Balfour Street during school drop-off (8.00am to 9.30am) and pick up (2.30pm to 4.00pm) times on Mondays, Wednesdays and Fridays for school days only. Concrete truck movements on Tuesdays, Thursdays and Saturdays are to be unrestricted to Balfour Street only and occur between 7.00am to 5.00pm. An Out of Hours Work Application must be submitted and approved by Council prior to any works undertaken. An application fee is to be paid to Council.

The proponent is to ensure local residents, businesses, schools and other stakeholders in the affected area as well as emergency service organisations are notified of the changes associated with the CTMP, prior to its implementation.

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

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

18. Work zone

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

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

In the event the work zone is required for a period beyond that initially approved by the Ku-ring-gai Local Traffic Committee, the Applicant shall make a payment to Council for

the extended period in accordance with Council's schedule of fees and charges for work zones prior to the extended period commencing.

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

19. Temporary construction exit

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

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

20. Sediment controls

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

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

Reason: To protect and enhance the natural environment.

21. Erosion and drainage management

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

Reason: To protect the natural environment.

22. Noise and vibration management plan (*Modified - MOD0117/20*)

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

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

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

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

23. Support for Council roads, footpaths, drainage reserves (*Modified - MOD0117/20*)

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

Reason: To protect Council's infrastructure.

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

24. SEPP 55 'Remediation of Land' investigation requirements (*Modified - MOD0117/20*)

In accordance with the Geo-Logix letters, dated 14/05/2018 and 21/07/2020, and the staging plans referred to in condition 1 of the development consent, prior to the issue of

a construction certificate for Stage 01-A and 01B (new Balfour Lane) the following must occur:

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

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

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

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

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

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

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

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

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

Reason: To ensure compliance with SEPP 55.

25. Acoustic design report- supermarket (~~Modified~~– MOD0219/21)

An acoustic design report shall be prepared by an appropriately qualified acoustic consultant and submitted to the Certifier with the application for the Construction Certificate for Stage 02- Phase 3. The acoustic design report shall identify all mechanical ventilation equipment and other noise generating plant including, but not limited to air conditioners, car park exhaust, bathroom/toilet and garbage room exhaust, roller shutter doors, lifts and pumps associated with rainwater reuse systems proposed as part of the

approved development.

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

A Construction Certificate for Stage 02- Phase 3 shall not be issued unless the Certifier is satisfied that the acoustic design report satisfies the requirements of this condition and that the proposal will be constructed in accordance with its requirements.

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

26. Compliance with approved staging plans

Existing access arrangements for properties which rely upon the existing Balfour Lane shall be maintained until such time that the new Balfour Lane is operating as a public road. A construction certificate shall not be issued for any works identified as 03 and 04 in Stage 02 of the approved staging plan drawing No. ST-02 unless all earlier works have been completed and the new Balfour Lane is operating as a public road.

Reason: To ensure that access to properties which rely upon the existing Balfour Lane is maintained until such time that the new Balfour Lane is operating as a public road.

27. Amendments to conservation management strategy (*Modified – MOD0219/21*)

Prior to the issue of a Construction Certificate for Stage 02 - Phase 3 the approved Conservation Management Strategy is to be amended to include the following works:

- i. The existing north-east facade is to have the air-conditioning units and ducting removed and the brickwork behind is to be repaired to match the existing.
- ii. The existing south-east facade is to have the graffiti removed with appropriate cleaning methods endorsed by a heritage consultant.
- iii. The existing north-west facade is to have the paintwork removed with appropriate cleaning methods endorsed by a heritage consultant. The signs are to be removed and the existing brickwork repaired to match the existing.

Reason: To protect and enhance the heritage significance of the heritage item.

28. Livable housing units - construction certificate stage liveable housing guidelines- platinum and silver level (*Modified – MOD0219/21*)

Silver Level and Platinum Level Livable Housing units are to satisfy Livable Housing Australia (LHA) certification as follows:

- ~~i. Prior to the issue of a Construction Certificate for Stage 02, all Silver Level and~~

~~Platinum Level units are to acquire Livable Housing Design Provisional Stage Certification (DA and CC design) from an accredited LHA assessor.~~

Reason: ~~— To ensure compliance with the Livable Housing requirements of the Ku-ring-gai Development Control Plan.~~

Prior to the issue of any Construction Certificate for Stage 02 – Phase 4, detailed plans and construction drawings shall be prepared as follows:

- (a) Apartments identified as Silver - showing compliance with the Silver Level requirements of the Liveable Housing Australia Livable Housing Guidelines.
- (b) Apartments 101, 102, 103, 104, 201, 202, 203, 204, 303 and 304 identified as Platinum - showing compliance with the Platinum Level requirements of the Liveable Housing Australia Liveable Housing Guidelines.

The detailed plans and construction drawings showing full compliance with the requirements of each standard within the Liveable Housing Guidelines and as identified within the access report prepared by Access Report, prepared by iAccess Residential Revision A dated 7 October 2021 listed in condition 1 of the consent, shall be certified as compliant by an accredited Liveable Housing Australia assessor and provided to the Certifier for inclusion with the Construction Certificate documentation.

Reason: Equitable access.

29. Road markings

The plans submitted with the Construction Certificate application for Stage 01-A are to show *Keep Clear* markings in the new Balfour Lane across the southbound lanes, corresponding with the loading dock entrance.

Reason: The location of the loading dock/servicing entrance is supported, but *Keep Clear* markings are needed across southbound lanes in the new Balfour Lane, to minimise the possibility of queued vehicles from obstructing arriving/entering service vehicles.

30. Shower facilities (*Modified – MOD0219/21*)

The plans submitted with the Construction Certificate application for Stage 02, – Phase 3, are to include shower facilities (as part of bicycle support facilities for mixed-use developments) in accordance with control 3 in Part 8B.3 of the Ku-ring-gai DCP.

Reason: Lockers are provided for staff, but no shower facilities are provided. These facilities are required to support and encourage bicycle travel for staff of the retail component.

31. Electrolysis risk (*Modified – MOD0219/21*)

Prior to the issue of a Construction Certificate for Stage 02, – Phase ,2 an Electrolysis Expert is to prepare a report on the Electrolysis Risk to the development from stray currents. All the measures (if any) recommended in the report to control that risk are to be incorporated into the development and detailed in the documentation submitted with the Construction Certificate. A copy of the report is to be provided to the Certifier with the

application for a Construction Certificate.

Reason: To manage electrolysis risk.

32. Use of cranes

If a crane or other equipment capable of intruding into the airspace above the rail corridor and or operating over any overhead wiring or transmission lines is to be used at any stage of the proposed works, a plan showing all craneage and other aerial operations for the development must be submitted to Sydney Trains for assessment. The Certifier shall not issue a Construction Certificate until written confirmation has been received from Sydney Trains confirming that the craneage and aerial operations plan has been approved (if such a plan is required to be submitted to Sydney Trains).

Reason: To manage risks associated with the use of cranes.

33. Compliance with BASIX certificate (*Modified – MOD0219/21*)

Prior to the issue of any Construction Certificate for Stage 02 – Phase 4, the Certifier shall be satisfied that all commitments listed in approved BASIX Certificate (referred to under Condition 1) have been complied with.

Reason: Statutory requirement.

34. Statement of compliance with Australian Standards

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

Reason: To ensure compliance with the Australian Standards.

35. Long service levy

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

Reason: Statutory requirement.

36. Outdoor lighting (*Modified– MOD0219/21*)

Prior to the issue of any Construction Certificate for Stage 2 - Phase 3, the Certifier shall be satisfied that all outdoor lighting will comply with AS/NZS 4282:2019 *Control of the obtrusive effects of outdoor lighting* and be mounted, screened and directed in a way that it does not create a nuisance or light spill on to buildings on adjoining lots or public places.

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

Details demonstrating compliance with these requirements are to be submitted to the Certifier prior to the issue of the Stage 2 - Phase 3 Construction Certificate.

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

37. Access for people with disabilities (commercial) (*Modified – MOD0219/21*)

Prior to the issue of any Construction Certificate for Stage 02 - Phase 3, the Certifier shall be satisfied that access for people with disabilities from the public domain and all car parking areas on site to all tenancies within the building is provided. Consideration must be given to the means of dignified and equitable access.

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

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

38. Green star certification - construction certificate stage (*Modified – MOD0219/21, MOD0185/22*)

Prior to the issue of any Construction Certificate for Stage 02 – Phase 3, the Certifier must be satisfied that:

1. The Construction Certificate plans include all the matters referred to in the ESD and Green Star Strategy Report prepared by Donnelley Simpson Cleary project no 7853 dated 24/05/2018, and any additional ESD measures proposed for the achievement of the required 4 (or greater) Green Star - Design & As Built certification now superseded by Green Star Buildings v1 - Revision B Released:10/12/2021.
2. The plans for development have been registered with Green Building Council of Australia (GBCA) for a Green Star - Design & As Built certification now superseded by Green Star Buildings v1 - Revision B Released:10/12/2021 Certification (including the provision of a registration notice and invoice for registration payment); and
3. 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 Green Star - Design & As Built certification now superseded by Green Star Buildings v1 - Revision B Released:10/12/2021 Certification.

Reason: To ensure compliance with Part 23.2 Green Buildings of the Ku-ring-gai

39. Heritage conservation works (*Modified – MOD0219/21*)

Prior the issue of any Construction Certificate for Stage 02 – Phase 3, a schedule of conservation works to be undertaken concurrent with the development works is to be submitted to Council's Heritage Advisor for approval addressing the following:

- (b) The schedule is to detail the conservation of the front facade, any intact internal spaces, the shopfronts and the front portion of the roof (all fabric identified as having heritage significance)].
- (c) The schedule is to be supported by outline specifications, methodologies and detailed architectural sections, elevations and plans at 1:20 and 1:5 scales. The details should incorporate any structural and/or building services design for the building.
- (d) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building.
- (e) All conservation and adaptation works are to be in accordance with the Articles of the Australian ICOMOS Burra Charter 2013. Appropriately qualified contractors and tradespersons are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works within the heritage building.

Reason: To protect the significance of heritage items and conservation areas.

40. Noise from road and rail (residential only) (*Modified– MOD0219/21*)

Prior to the issue of any Construction Certificate for Stage 02 - Phase 4, the Certifier shall be satisfied that the development will be acoustically designed and constructed to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the building 35 dB(A) at any time between 10 pm and 7 am
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) 40 dB(A) at any time

Plans and specifications of the required acoustic design shall be prepared by a practicing acoustic engineer and shall be submitted to the Certifier prior to the issue of any Stage 02- Phase 4 Construction Certificate. The Certifier shall also be satisfied that the development will comply with the Department of Planning document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".

Reason: To minimise the impact of road noise on the occupants of the approved development.

41. Location of plant (residential flat buildings) (*Modified – MOD0219/21*)

Prior to the issue of any Construction Certificate for Stage 02 - Phase 3, the Certifier shall be satisfied that all plant and equipment (including but not limited to air conditioning equipment) is located within the basement (except for the plant and equipment approved to be located elsewhere).

Architectural plans identifying the location of all plant and equipment shall be provided to the Certifier prior to the issue of any Stage 02 - Phase 3 Construction Certificate.

Reason: To minimise noise impacts on surrounding properties and to improve the appearance of the approved development.

42. Acoustic design report- residential (*Modified– MOD0219/21*)

An acoustic design report shall be prepared by an appropriately qualified acoustic consultant and submitted to the Certifier with the application for the Construction Certificate for Stage 02- Phase 4. The acoustic design report shall identify all mechanical ventilation equipment and other noise generating plant including, but not limited to air conditioners, car park exhaust, bathroom/toilet and garbage room exhaust, roller shutter doors, lifts and pumps associated with rainwater reuse systems proposed as part of the approved development.

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

A Construction Certificate for Stage 02 - Phase 4 shall not be issued unless the Certifier is satisfied that the acoustic design report satisfies the requirements of this condition and that the proposal will be constructed in accordance with its requirements.

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

43. Driveway grades - basement car parks (*Modified – MOD0219/21*)

Prior to the issue of any Construction Certificate for Stage 02 – Phase 2, longitudinal driveway sections are to be prepared by a qualified civil/traffic engineer and be submitted to and approved by the Certifier. These profiles are to be at 1:100 scale along both edges of the proposed driveway, starting from the centreline of the frontage street carriageway to the proposed basement floor level. The civil/traffic engineer shall provide specific written certification on the plans that:

- vehicular access can be obtained using grades of 25% (1 in 4) maximum and
- all changes in grade (transitions) comply with Australian Standard 2890.1 -“Off-street car parking” (refer clause 2.5.3) to prevent the scraping of the underside of vehicles

If a new driveway crossing is proposed, the longitudinal sections must incorporate the driveway crossing levels as issued by Council upon prior application.

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

44. Basement car parking details (*Modified – MOD0219/21*)

Prior to issue of any Construction Certificate for Stage 02 – Phase 2, certified parking

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

- all parking space dimensions, driveway and aisle widths, driveway grades, transitions, circulation ramps, blind aisle situations and other trafficked areas comply with Australian Standard 2890.1 - 2004 "Off-street car parking".
- a clear height clearance of **2.6 metres** (required under Part 23.7 'Waste Management' for waste collection trucks is provided over the designated garbage collection truck manoeuvring areas within the basement and all other areas within the basement required for garbage collection truck manoeuvring.
- Council and its contractor requires unimpeded access to the waste storage facility within the development for the purpose of collecting waste and recycling materials.
 - Security doors or gates installed leading to the waste storage area are to be keyed to Council's master key to allow unimpeded access.
- the vehicle access and accommodation arrangements are to be constructed and marked in accordance with the certified plans.
- the 12 x residential visitor spaces on Lower Ground Floor 1 are marked and signposted.
- 1 x residential space and 1 x retail space is converted to a 24 hour electric vehicle charging station and is marked and signposted accordingly.
- The car parking is to be designed so that additional electric vehicle charging points can be installed at a later time.
- All on-site bicycle parking spaces and storage are to be designed to AS2890.3.

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

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

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

- Design details of the footpath in Balfour Street.
- Details and sections of the retaining walls within the road reserve designed in accordance with the Earth Retaining Structures Code. The external presentation of the retaining wall within the heritage conservation area (to the south-west of the new Balfour Lane) is to be traditional sandstone coursed block work wall rough split face dimensioned sandstone block 200-250mm wide. On the opposite side of the intersection the external appearance of the retaining wall (also known as shoring wall) shall match the retaining walls on the western side of the new Balfour Lane (i.e. sandstone faced and capped wall).
- Full drainage details including kerb inlet pit in Balfour Street;
- Details of the balustrades in Balfour Street.
- Streetscape improvement works across the Balfour Street and Pacific Highway frontages;
- New kerb and gutter and layback for the full frontage of Balfour Street.

The required plans and specifications are to be designed in accordance with the *General*

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

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

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

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

46. Ausgrid requirements (*Modified - MOD0117/20*)

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

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

Reason: To ensure compliance with the requirements of Ausgrid.

47. Utility provider requirements

Prior to issue of any Construction Certificate for Stage 2, the Applicant must make contact with all relevant utility providers whose services will be impacted upon by the development. A written copy of the requirements of each provider, as determined necessary by the Certifier, must be obtained. All utility services or appropriate conduits for the same must be provided in accordance with the specifications of the utility providers.

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

48. Underground services

All electrical services (existing and proposed) shall be undergrounded from the proposed building on the site to the appropriate power pole(s) or other connection point.

Undergrounding of services must not disturb the root system of existing trees and shall be undertaken in accordance with the requirements of the relevant service provided. Documentary evidence that the relevant service provider has been consulted and that their requirements have been met is to be provided to the Certifier prior to the issue of any Construction Certificate for Stage 02. All electrical and telephone services to the subject property must be placed underground and any redundant poles are to be removed.

Reason: To provide infrastructure that facilitates the future improvement of the streetscape by location of service lines below ground.

49. Telecommunications infrastructure

Prior to the issue of any Construction Certificate for Stage 02, satisfactory documentary evidence shall be provided to the Principal Certifier that arrangements have been made for the installation of fibre-ready facilities to all individual lots and/or premises so as to enable fibre to be readily connected to any dwelling or unit that is being or may be constructed.

Prior to the issue of any Construction Certificate for Stage 02, the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or dwellings shall be demonstrated to the Principal Certifier through a written agreement between the developer/owner and a carrier. The agreement will also confirm that the carrier is satisfied the fibre ready facilities are fit for purpose.

Reason: To ensure that telecommunications infrastructure is provided in accordance with the Commonwealth Telecommunications Act 1997.

50. Design and construction of food premises - supermarket (*Modified – MOD0219/21*)

Plans and specifications complying with the requirements of the Food Act 2003, Food Standards Code 3.2.3 Food Premises and Equipment, Australian Standard AS 4674 2004 – Design, construction and fit-out of food premises and National Construction Code shall be submitted to and approved by the Certifier prior to the issue of any Construction Certificate for Stage 02 - Phase 3. Plans and specifications shall address the following:

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

Note: A “Design and fit-out guide for food businesses” is available on Council’s website.

Reason: To ensure compliance with standards for food premises.

51. Garbage and recycling facilities - commercial premises (*Modified –*

MOD0219/21)

Details of the waste storage facilities shall be submitted to the Certifier prior to the issue of any Construction Certificate for Stage 02 - Phase 2, the Certifier must be satisfied that waste storage facilities shall be enclosed, adequately contain the garbage and recycled waste bins and all internal walls will be rendered and coved at the floor/wall intersections. The floor is to be graded and appropriately drained to the sewer and a tap with hot and cold water is to be located in close proximity to facilitate cleaning.

Reason: To protect amenity and to prevent environmental pollution.

52. Registration of subdivision

Prior to issue of any Construction Certificate for Stage 02, the approved subdivision shall be registered with NSW Land Registry Services.

Reason: To ensure that the legal property description is consistent with the proposed site layout and that continuous structures will not be placed across separate lots.

53. Design and construction of food premises- coffee shop (*Modified – MOD0219/21)*

Plans and specifications complying with the requirements of the Food Act 2003, Food Standards Code 3.2.3 Food Premises and Equipment, Australian Standard AS 4674 2004 – Design, construction and fit-out of food premises and National Construction Code shall be submitted to and approved by the Certifier prior to the issue of any Construction Certificate for Stage 02 – Phase 3. Plans and specifications shall address the following:

- wash up sinks, hand basins and equipment such as coffee machines and dishwashers are to be connected to sewerage for the disposal of waste water
- the food handling areas are to have accessible hand basin(s) dedicated for the sole purpose of washing hands, face and arms. Hand basins are to be supplied with warm water through a single mixer tap, soap and single-use paper towels
- staff, accessible and public toilet facilities
- that the food handling area has a double bowl sink where the largest piece of equipment is capable of being immersed inside OR a single bowl sink and dishwasher where all equipment intended to be sanitised in the dishwasher is capable of fitting inside of the dishwasher
- floor plans, showing the layout of the fixtures and fittings, food storage and staff personal effects storage areas
- elevations and sections showing floor, wall and ceiling construction and finishes (floors in food handling areas are to be coved)
- elevations and sections showing the installation of fixtures and fittings
- garbage and recycling storage areas;
- grease trap areas (if applicable).

Note: A “Design and fit-out guide for food businesses” is available on Council’s website.

Reason: To ensure compliance with standards for food premises.

53A. Amendments to approved landscape plan (*Added – MOD0219/21, Modified – MOD0185/22, Modified – eMOD0047/23*)

Prior to the issue of any Construction Certificate for Stage 02 - Phase 4, the Certifier shall be satisfied that the approved landscape plan(s), listed below and endorsed with Council's stamp, have been amended in accordance with the requirements of this condition as well as other conditions of this Development Consent:

Plan no.	Drawn by	Dated
L-101 Rev E G I Landscape Master Plan	Arcadia	03/01/22
L-400 Rev E G I Plant Schedule		02/05/2023
L-401 Rev E G I Softworks Plan		12/04/2024
L-402 Rev E G I Softworks Plan		
L-403 Rev E G I Softworks Plan		
L-404 Rev E G I Softworks Plan		
L-405 Rev E G I Softworks Plan		
L-406 Rev E G I Softworks Plan		
L-407 Rev E G I Softworks Plan		

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

- ~~The proposed street tree plantings within the Pacific Highway road reserve shall be deleted.~~
- ~~The proposed Balfour Street tree plantings shall be amended to be consistent with Condition 70: 6 x *Pyrus calleryana* 'Capital' evenly spaced within the Balfour Street road reserve, with two located between the substation and the Pacific Highway.~~
- The area of proposed paving within the Balfour Street road reserve that is within 12 metres of Tree 19 *Eucalyptus pilularis* (Blackbutt) shall include a notation that the paving is to be constructed as per Council's Public Domain Plan Volume 3: Technical Manual for porous paving (Pages 44 & 45) at or above existing grades (no excavation).
- ~~The area of proposed paving within 12.0 metres of Tree 19 *Eucalyptus pilularis* (Blackbutt) located within the Balfour Street road reserve shall be reduced in area to be consistent with the approved architectural plan/s DA-01-2, prepared by Christian O'Brien Architects. The area of paving shall be limited to a 1.2 metres width adjacent to the site boundary and not expand further than the overhanging residential lobby awning.~~
- For improved residential amenity, the proposed plant species located within the north-western planters for Level 2 Dwellings: 217, 220, 222, 223, and 224 shall be amended to an evergreen shrub species capable of attaining a minimum height of 1.0 metre.
- Notation shall be placed on plan that the proposed planting of the *Phoenix canariensis* (Canary Island Date Palm) shall have a minimum trunk height of 4.0 – 5.0 metres at the time of planting.
- The plant schedule shall be amended to be consistent with the above requirements.
- The massed planting garden beds within Balfour St, between the retail carpark entry and the Pacific Highway shall be deleted. Only the individual street tree plantings of 6 x *Pyrus calleryana* 'Capital' shall be proposed.
- The proposed plantings of *Liriope muscari* (LM) and *Dichondra* 'Silver Falls' (DS) shall be deleted from the Balfour St nature strip and replaced with *Dianella caerulea* (Blue Flax lily).

- The tile finish for the supermarket forecourt is notated as having a 'P5' slip resistance.
- All retaining walls within the forecourt area on the corner of the Pacific Highway and Balfour Street must have a consistent sandstone finish.
- The roof top pergola along the south-western edge of the terrace is relocated 2 metres to the north-east, away from the south-western edge of the roof slab and planter.
- No screens or fencing is to be above the podium planter edge height and extend through the planters to the podium edge.

Prior to the issue of any Construction Certificate for Stage 02 - Phase 4, the Certifier shall be satisfied that the landscape plan has been amended as required by this condition.

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

Reason: To ensure adequate landscaping of the site.

53B. Paving near trees (*Added – MOD0219/21*)

Prior to the issue of any Construction Certificate, the Certifier shall be provided with and approve a paving design endorsed by an arborist with a minimum AQF Level 5 qualification. The paving works within the specified radius of the trunk/s of the following tree/s shall be constructed at or above existing grades and be of a design that ensures adequate water infiltration and gaseous exchange to maintain the tree/s root system is maintained as per Council's Public Domain Plan Volume 3: Technical Manual pages 44, 45:

Tree/Location	Radius in metres
T19 <i>Eucalyptus pilularis</i> (Blackbutt) Balfour St road reserve	12.0m
T19 <i>Angophora costata</i> (Sydney Red Gum) Balfour St road reserve	5.0m

Reason: To protect existing trees.

53C. Design and construction of mechanical ventilation (*Added – MOD0219/21*)

Prior to the issue of any Construction Certificate for Stage 02 - Phase 3, the Certifier shall be satisfied that plans and specifications demonstrate that the installation of mechanical ventilation systems will comply with:

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

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

53D. Waste and recycling storage facilities- residential (*Added – MOD0219/21*)

Details of the waste storage facilities shall be submitted to the Certifier prior to the issue of any Construction Certificate for Stage 02 - Phase 2. The Certifier must be satisfied that waste storage facilities shall be enclosed, adequately contain the garbage and recycled waste bins and all internal walls will be rendered and coved at the floor/wall intersections. The floor is to be graded and appropriately drained to the sewer and a tap with hot and cold water is to be located in close proximity to facilitate cleaning.

Reason: To protect amenity and to prevent environmental pollution.

53E. Amended architectural plans (*Added – MOD0219/21, Modified - MOD0185/22, Modified – eMOD0047/23*)

Prior to the issue of any Construction Certificate for Stage 02 – Phase 4, the Certifier shall be satisfied that the approved plans listed in Condition 1 above, have been amended in accordance with the requirements of this condition as well as other conditions of this Development Consent:

- (a) The roof top pergola along the south-western edge of the terrace is relocated 2 metres to the north-east, away from the south-western edge of the roof slab and planter.
- (b) The study area in Units 101, 201, 301 and 401 are deleted and replaced with additional storage.
- (c) The doorway to the study in Unit 402 is converted to a wider bi-fold door so this space can be opened up into the living area.
- (d) All shopfront glazing (includes street shopfronts and internal entry corridor and lobby) must:
 - a. Provide unobstructed, continuous views along all frontages between the public domain and internal spaces of the supermarket and Liquorland tenancies.
 - b. Not include signage and/or advertising with the exception of the signage above the glazed entry doors (east elevation) as indicated on the plans forming part of Condition 1 of this consent, as modified.
 - c. be:
 - i. transparent;
 - and
 - ii. floor to-ceiling height, or
 - iii. accommodate a maximum sill height to 400mm (incorporated with appropriate rails) where glazing requires protection from trolleys.
- (e) Services and Fire Hydrant Enclosure:

Prior to the issue of a Construction Certificate for works above ground slab level, the Certifier is to be provided with plans demonstrating that all services (gas meter, water meter and fire hydrant and sprinkler booster valves and the like) are enclosed in a manner that compliments the building and in accordance with the requirements of EP1.3 & EP1.4 of the BCA.

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

53F. Car parking allocation (*Added – MOD0185/22*)

Car parking within the development shall be allocated as follows:

Commercial/retail spaces	225 <ul style="list-style-type: none"> • Lower ground 2 – 100 • Lower ground 1 - 125
Resident car spaces	85 <ul style="list-style-type: none"> • Level 1 – 85
Visitor spaces	12 <ul style="list-style-type: none"> • Lower Ground 1 - 12
Car share	1 <ul style="list-style-type: none"> • Level 1 – 1
Total car spaces	323
Total bicycle parking	38 <ul style="list-style-type: none"> • Lower ground 2 – 10 • Lower ground 1 – 4 • Upper Ground – 6 • Level 1 - 18

Reason: To ensure the development is in accordance with the consent.

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

54. Infrastructure damage security bond and inspection fee (*Modified - MOD0117/20*)

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

- (a) All work or activity undertaken pursuant to this development consent must be undertaken in a manner to avoid damage to Council property and must not jeopardise the safety of any person using or occupying the adjacent public areas.
- (b) The applicant, builder, developer or any person acting in reliance on this consent shall be responsible for making good any damage to Council property and for the removal from Council property of any waste bin, building materials, sediment, silt, or any other material or article.
- (c) The Infrastructure damage security bond and infrastructure inspection fee must be paid to Council for each stage of the development (i.e. Stage 01-A & 01-B and Stage 02) by the applicant prior to both the issue of the Construction Certificate for that stage and the commencement of any earthworks or construction. The fee will be determined on the construction works relevant to each stage of the development.
- (d) In consideration of payment of the infrastructure damage security bond and infrastructure inspection fee, Council will undertake such inspections of Council Property as Council considers necessary and will also undertake, on behalf of the applicant, such restoration work to Council property, if any, that Council considers necessary as a consequence of the development. The provision of such restoration work by the Council does not absolve any person of the responsibilities contained in (a) to (b) above. Restoration work to be undertaken

by Council referred to in this condition is limited to work that can be undertaken by Council at a cost of not more than the Infrastructure damage security bond payable pursuant to this condition.

- (e) **Release of the bond** (i) Upon completion of Stage 01-A & 01-B works and receipt of a Subdivision Certificate for the approved subdivision, Council will undertake an inspection of Council's Infrastructure and release the Stage 01-A & 01-B bond if no damage is found. (ii) Upon receipt of the Occupation Certificate for Stage 02 Council will undertake an inspection of Council's Infrastructure and release the Stage 02 bond if no damage is found.

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

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

- (f) In this condition:

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

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

Reason: To maintain public infrastructure.

55. Structural adequacy of Churchers Restaurant heritage item

Prior to commencement of any work associated with Stage 02, the Principal Certifier shall be satisfied that those components of the building to be retained and/or altered will be structurally sound and able to withstand the excavation and demolition process.

Reason: To ensure that the development can be undertaken in accordance with accepted construction practices as indicated on the endorsed development plans.

56. Heritage interpretation strategy (*Modified – MOD0219/21*)

Prior to the issue of any Construction Certificate for Stage 02 – Phase 1, the Certifier shall be satisfied a Heritage Interpretation Strategy has been developed for the whole subject site to ensure that the sites past is understood and conveyed into the future.

Reason To convey the collective history of the subject site

57. Temporary protection plan (*Modified – MOD0219/21*)

Prior to the issue of any Construction Certificate for Stage 02 – Phase 1, the Certifier shall be satisfied that a temporary protection plan has been developed to ensure that all retained heritage fabric is protected during the works.

Reason: To protect the significance of the heritage item.

58. Construction Certificate plans (*Deleted – MOD0219/21*)

~~The Construction Certificate plans must not be inconsistent with the approved plans and documents referred to in Condition No. 1 of this Development Consent.~~

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

59. Section 7.11 Contributions – Centres (*Modified – MOD0219/21, MOD0185/22*)

~~This development is subject to a development contribution calculated in accordance with Ku-ring-gai Contributions Plan 2010, being a Contributions Plan in effect under the Environmental Planning and Assessment Act, as follows:~~

Key Community Infrastructure	Amount
Local recreation and cultural facilities; Local social facilities	\$141,391.36
Local roads, local bus facilities & local drainage facilities (new roads and road modifications)	\$662,074.84
Local parks and local sporting facilities	\$964,787.94
Local roads, local bus facilities & local drainage facilities (townscape, transport & pedestrian facilities)	\$555,129.43
Total:	\$2,323,383.57

~~The contribution shall be paid to Council prior to the issue of any Construction Certificate for Stage 02 in accordance with Ku-ring-gai Contributions Plan 2010. The certifier shall not issue a construction certificate for any of the works shown on the approved Staging Plan ST-02 Revision DA2 unless they have received confirmation from Ku-ring-gai Council that the contributions required by this condition have been paid in full.~~

~~The contributions specified above are subject to indexation and will continue to be indexed to reflect changes in the consumer price index and housing price index until they are paid in accordance with Ku-ring-gai Contributions Plan 2010 to reflect changes in the consumer price index and housing price index. Prior to payment, please contact Council directly to verify the current payable contributions.~~

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

~~**Reason:** To ensure the provision, extension or augmentation of the Key Community Infrastructure identified in Ku-ring-gai Contributions Plan 2010 that will, or is likely to be, required as a consequence of the development.~~

(a) This development is subject to a development contribution calculated in

accordance with Ku-ring-gai Contributions Plan 2010, being a Contributions Plan in effect under the Environmental Planning and Assessment Act, as follows:

Key Community Infrastructure	Amount
Local recreation and cultural facilities; Local social facilities	\$119,035.23
Local roads, local bus facilities & local drainage facilities (new roads and road modifications)	\$995,059.07
Local parks and local sporting facilities	\$767,983.01
Local roads, local bus facilities & local drainage facilities (townscape, transport & pedestrian facilities)	\$467,354.58
Total:	\$2,349,431.89

Key Community Infrastructure	Amount
Local recreation and cultural facilities; Local social facilities	\$124,543.06
Local roads, local bus facilities & local drainage facilities (new roads and road modifications)	\$788,896.06
Local parks and local sporting facilities	\$1,013,062.07
Local roads, local bus facilities & local drainage facilities (townscape, transport & pedestrian facilities)	\$488,978.44
Total:	\$2,415,479.63

The contribution specified above is subject to indexation and will continue to be indexed to reflect changes in the Consumer Price Index (All Groups Sydney) and Established House Price Index (Sydney) until paid in accordance with Ku-ring-gai Contributions Plan 2010. Prior to payment, please contact Council directly to verify the current contribution payable.

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

date.

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

Reason: To comply with the Ministerial Direction that came into effect on 8 July 2020 and to ensure the provision, extension or augmentation of the Key Community Infrastructure identified in Ku-ring-gai Contributions Plan 2010 that will, or is likely to be, required as a consequence of the development.

60. 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 DURING THE DEMOLITION, EXCAVATION AND CONSTRUCTION PHASES:

61. Arborist's inspection and reporting

The tree/s to be retained shall be inspected and monitored by an AQF Level 5 arborist in accordance with the current version of AS4970 - Protection of trees on development sites during and after completion of development works to ensure their long term survival.

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

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

Tree/location	Time of inspection
T1 <i>Phoenix canariensis</i> (Canary Island Date Palm) Adjacent to northwest boundary/Balfour lane	*Tagging and identification of all trees to be removed and retained consistent with the consent. *Certification and recording of tree protective fencing and protection consistent with the consent, prior to the commencement of any works. *Direct supervision of excavation works within the identified tree protection
T2 <i>Syncarpia glomulifera</i> (Turpentine) Adjacent to northwest site boundary/relocated Balfour Lane	
T18 <i>Angophora costata</i> (Sydney Red Gum) Balfour St road reserve	
T19 <i>Eucalyptus pilularis</i> (Blackbutt) Balfour St road reserve	

	zone/TPZ. *At three monthly intervals during development works *Following the removal of tree protective measures. *Prior to the issue of the Occupation Certificate
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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.

62. Trees on nature strip (*Modified – MOD0219/21*)

~~Removal of the following tree/s from Council's nature strip shall be undertaken at no cost to Council by an experienced tree removal contractor and or arborist holding public liability insurance amounting to a minimum cover of \$20,000,000. All pruning works shall be undertaken by an experienced arborist/horticulturist, within a minimum AQF Level 3 qualification as specified in the current version of AS 4373 — Pruning of amenity trees. :~~

Removal or pruning of the following tree/s on Council's nature strip shall be undertaken at no cost to Council by one of Council's approved tree contractors. A list of contractors is available from Council's Tree Management Team, who are in Council's Operation's Department.

Council's Tree Maintenance Supervisor must be advised via email, within a minimum of 48 hours prior to commencement of the works, with the following detail:

- selected contractor,
- the item code
- associated rate provided.

You and/or the contractor will be responsible for the reporting and/or repair of any services damaged because of works undertaken:

Tree/location
T14 <i>Ligustrum sp</i> (Privet) Balfour St road reserve
T15 <i>Alectryon tomentosus</i> (Woolly Rambutan) Balfour St road reserve
T16 <i>Alectryon tomentosus</i> (Woolly Rambutan) Balfour St road reserve
T17 <i>Alectryon tomentosus</i> (Woolly Rambutan) Balfour St road reserve
T20 <i>Alectryon tomentosus</i> (Woolly Rambutan) Balfour St road reserve
T21 <i>Cinnamomum camphora</i> (Camphor laurel) Balfour St road reserve
T22 <i>Cinnamomum camphora</i> (Camphor laurel) Balfour St road reserve
T23 <i>Platanus orientalis</i> 'Digitata' (Oriental Plane) Balfour St road reserve
T24 <i>Platanus orientalis</i> 'Digitata' (Oriental Plane) Balfour St road reserve
T25 <i>Platanus orientalis</i> 'Digitata' (Oriental Plane) Balfour St road reserve
T26 <i>Pittosporum rhombifolium</i> (Diamond Leaf Pittosporum) Pacific Highway road reserve
T27 <i>Pittosporum rhombifolium</i> (Diamond Leaf Pittosporum) Pacific Highway road reserve

Reason: To protect existing trees.

63. Canopy/root pruning

Canopy and/or root pruning of the following tree/s which is necessary to accommodate the approved building works shall be undertaken by an experienced arborist/horticulturist, with a minimum qualification of a horticulture certificate or tree surgery certificate. All pruning works shall be undertaken as specified in Australian Standard 4373-2007 - Pruning of Amenity Trees.

Tree/location	Tree works
T19 <i>Eucalyptus pilularis</i> (Blackbutt) Balfour St road reserve	Canopy reduction of spatially conflicting limbs only. Root pruning of spatially conflicting tree roots

Reason: To protect existing trees.

64. Cutting of tree roots and branches

Where it is unavoidable, tree roots and branches severed for the purposes of constructing the approved works shall be cut cleanly by hand, by an experienced arborist/horticulturist with a minimum AQF Level 3 qualification. All pruning works shall be undertaken as specified in Australian Standard 4373– Pruning of Amenity Trees. The arborist/horticulturalist shall provide a report to the Certifier confirming compliance with this condition.

Reason: To protect existing trees.

65. Retention of tree roots (*Modified – MOD0219/21*)

No tree roots of 50mm or greater in diameter located within the specified radius of the trunk/s of the following tree/s shall be severed or injured in the process of any works during the construction period without first being exposed unharmed, being assessed by an AQF Level 5 arborist and a report submitted to Council.

Tree/location	Radius in metres
T1 <i>Phoenix canariensis</i> (Canary Island Date Palm) Adjacent to northwest boundary/Balfour lane	5.0m
T2 <i>Syncarpia glomulifera</i> (Turpentine) Adjacent to northwest site boundary/relocated Balfour Lane	9.6m
T18 <i>Angophora costata</i> (Sydney Red Gum) Balfour St road reserve	4.5m
T19 <i>Eucalyptus pilularis</i> (Blackbutt) Balfour St road reserve	9.0m north-east, 12.0m elsewhere

Reason: To protect existing trees.

66. Approved tree works (*Modified – MOD0219/21*)

Prior to the commencement of any Stage 04-02 works, the following is to be undertaken to the specified trees:

Tree/location	Approved tree works
T3 <i>Cinnamomum camphora</i> (Camhor Laurel) Adjacent to southwest site boundary	Removal
T4 <i>Cinnamomum camphora</i> (Camhor Laurel) Adjacent to southwest site boundary	Removal
T5 <i>Phoenix canariensis</i> (Canary Island Date Palm) Adjacent to southwest site boundary	Removal
T6 <i>Cinnamomum camphora</i> (Camhor Laurel) Adjacent to southwest site boundary	Removal
T7 <i>Cinnamomum camphora</i> (Camhor Laurel) Adjacent to southwest site boundary	Removal
T8 <i>Cinnamomum camphora</i> (Camhor Laurel) Adjacent to southwest site boundary	Removal
T9 <i>Lagerstroemia indica</i> (Crape Myrtle) Adjacent to southwest site boundary	Removal
T10 <i>Callistemon salignus</i> (Willow Bottlebrush) Adjacent to southwest site boundary	Removal
T11 <i>Melaleuca armillaris</i> (Bracelet Honey Myrtle) Adjacent to southwest site boundary	Removal
T12 <i>Jacaranda mimosifolia</i> (Jacaranda) Adjacent to southwest site boundary	Removal
T13 <i>Chamaecyparis obtusa</i> (Hnoki Cypress) Adjacent to southern site corner	Removal

T14 <i>Ligustrum sp</i> (Privet) Balfour St road reserve	Removal
T15 <i>Alectryon tomentosus</i> (Woolly Rambutan) Balfour St road reserve	Removal
T16 <i>Alectryon tomentosus</i> (Woolly Rambutan) Balfour St road reserve	Removal
T17 <i>Alectryon tomentosus</i> (Woolly Rambutan) Balfour St road reserve	Removal
T20 <i>Alectryon tomentosus</i> (Woolly Rambutan) Balfour St road reserve	Removal
T21 <i>Cinnamomum camphora</i> (Camphor laurel) Balfour St road reserve	Removal
T22 <i>Cinnamomum camphora</i> (Camphor laurel) Balfour St road reserve	Removal
T23 <i>Platanus orientalis</i> 'Digitata' (Oriental Plane) Balfour St road reserve	Removal
T24 <i>Platanus orientalis</i> 'Digitata' (Oriental Plane) Balfour St road reserve	Removal
T25 <i>Platanus orientalis</i> 'Digitata' (Oriental Plane) Balfour St road reserve	Removal
T26 <i>Pittosporum rhombifolium</i> (Diamond Leaf Pittosporum) Pacific Highway road reserve	Removal
T27 <i>Pittosporum rhombifolium</i> (Diamond Leaf Pittosporum) Pacific Highway road reserve	Removal
T19 <i>Eucalyptus pilularis</i> (Blackbutt) Balfour Street road reserve	Canopy and root pruning of spatially conflicting limbs and roots only

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.

67. Hand excavation (*Modified – MOD0219/21*)

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

Tree/location	Radius in metres
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T1 <i>Phoenix canariensis</i> (Canary Island Date Palm) Adjacent to northwest boundary/Balfour lane	5.0m
T2 <i>Syncarpia glomulifera</i> (Turpentine) Adjacent to northwest site boundary/relocated Balfour Lane	9.6m
T18 <i>Angophora costata</i> (Sydney Red Gum) Balfour St road reserve	4.5m
T19 <i>Eucalyptus pilularis</i> (Blackbutt) Balfour St road reserve	9.0m north-east, 12.0m elsewhere

Reason: To protect existing trees.

68. No storage of materials beneath trees

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

Reason: To protect existing trees.

69. Tree planting on nature strip (~~Modified – MOD0117/20~~) (~~Deleted – MOD0219/21~~)

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

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

~~**Reason:** To provide appropriate landscaping within the streetscape.~~

70. Tree planting on nature strip (~~Modified – MOD0219/21~~)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the following tree species shall be planted, at no cost to Council, in the nature strip fronting the property along Balfour Street. The tree/s used shall be a minimum 45 litres container size specimen/s:

Tree/species	Quantity	Location
<i>Pyrus calleryana</i> 'Capital'	6	Evenly spaced within Balfour Street road reserve, with two located between the substation and Pacific Highway

Reason: To provide appropriate landscaping within the streetscape.

71. 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.

72. Landscape works near trees (*Modified – MOD0219/21*)

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

Tree/location	Radius in metres
T1 <i>Phoenix canariensis</i> (Canary Island Date Palm) Adjacent to northwest boundary/Balfour lane	5.0m
T2 <i>Syncarpia glomulifera</i> (Turpentine) Adjacent to northwest site boundary/relocated Balfour Lane	9.6m
T18 <i>Angophora costata</i> (Sydney Red Gum) Balfour St road reserve	4.5m
T19 <i>Eucalyptus pilularis</i> (Blackbutt) Balfour St road reserve	12.0m

Reason: To protect existing trees.

73. 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.

74. 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 and other properties during the construction process.

75. No demolition of extra fabric to Churchers Restaurant heritage item

During any demolition, excavation and construction the Principal Certifier shall be satisfied alterations to, and part 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.

76. 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.

77. 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 and other properties during the construction process.

78. Site notice

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

The site notice must:

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

Reason: To ensure public safety and public information.

79. Dust control

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

- physical barriers shall be placed around or over dust sources to minimise 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
- no advertising or signage is permitted to be attached to dust cloth material.

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

80. Post-construction dilapidation report (*Modified - MOD0117/20*)

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

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

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

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

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

Reason: Management of records.

81. Compliance with submitted geotechnical report

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

Geotechnical aspects of the development work, namely:

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

must be undertaken in accordance with the recommendations of the Geotechnical Investigation by JK Geotechnics dated 9/12/2014 and peer review by Geo-Logix dated 21 March 2017.

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

Reason: To ensure the safety and protection of property.

82. Use of road or footpath

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

Reason: To ensure safety and amenity of the area.

83. Toilet facilities

1. Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons working at the site.
2. Each toilet must:
 - a. be a standard flushing toilet connected to a public sewer, or
 - b. have an on-site effluent disposal system approved under the Local Government Act 1993 <<https://www.legislation.nsw.gov.au/>>, or
 - c. be a temporary chemical closet approved under the Local Government Act 1993 <<https://www.legislation.nsw.gov.au/>>.

Reason: Statutory requirement.

84. 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.

85. Garbage receptacle

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

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

86. Construction signage

All construction signs must comply with the following requirements:

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

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

87. 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 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.

88. Road reserve safety

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

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

89. Services

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

with the relevant utility authorities to ascertain the impacts of the proposal upon utility services (including water, phone, gas and the like). Council accepts no responsibility for any matter arising from its approval to this application involving any influence upon utility services provided by another authority.

Reason: Provision of utility services.

90. Erosion control

Temporary sediment and erosion control and measures are to be installed prior to the commencement of any works on the site. These measures must be maintained in working order during construction works up to completion. All sediment traps must be cleared on a regular basis and after each major storm and/or as directed by the Principal Certifier and Council officers.

Reason: To protect the environment from erosion and sedimentation.

91. Sydney Water Section 73 Compliance Certificate

An application for a **Section 73 Compliance Certificate** under the *Sydney Water Act 1994* shall be made through an authorised Water Servicing Co-ordinator. The applicant should refer to Sydney Water's web site at www.sydneywater.com.au 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 Co-ordinator, 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.

92. No storage of materials beneath trees

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

Reason: To protect existing trees.

93. 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.

94. Survey and inspection of waste collection clearance and path of travel

At the stage when formwork for the ground floor slab is in place and prior to concrete being poured, a registered surveyor is to:

1. Ascertain the reduced level of the underside of the slab at the driveway entry.
2. Certify that the level is not lower than the level shown on the approved DA plans.

3. Certify that the minimum headroom of 2.6 metres will be available for the full path of travel of the small waste collection vehicle from the street to the collection area.

This certification is to be provided to Council's Development Engineer prior to any concrete being poured for the ground floor slab.

No work is to proceed until Council has undertaken an inspection to determine clearance and path of travel.

At the stage when formwork for the ground floor slab is in place and prior to concrete being poured, Council's Development Engineer and Waste Contract Coordinator to carry out an inspection of the site to confirm the clearance available for the full path of travel of the small waste collection vehicle from the street to the collection area. This inspection may not be carried out by a private certifier because waste management is not a matter listed in Clause 161 of the Environmental Planning and Assessment Regulation 2000.

Reason: To ensure access will be available for Council's contractors to collect waste from the collection point.

95. On site retention of waste dockets

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

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

Reason: To protect the environment.

96. Salvage and re-use of existing material

Existing building elements and materials in good condition are to be carefully removed during the works and securely stored in a place protected from damage, damp and sunlight. The salvaged building elements and materials are to be re-used in the new work, or if this is not possible, forwarded to an appropriate registered business dealing in salvaged building elements and materials.

Care should be taken in the removal of the existing doors, architraves and skirtings so they can be stored on site in a secure location such as the roof space for future restoration works.

Reason: To ensure the continuing heritage significance of the heritage item.

97. Maintenance of site

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

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

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

During construction:

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

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

Reason: To ensure the site is appropriately maintained.

98. Prescribed conditions

The applicant shall comply with any relevant prescribed conditions of development consent under clause 98 of the Environmental Planning and Assessment Regulation.

For the purposes of section 4.17 (11) (previously s80A (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.

99. 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 Roads and Maritime Services (RMS) 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.

100. External walls and cladding flammability

The external walls of the building including attachments must comply with the relevant requirements of the *National Construction Code (NCC)*. Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:

- (a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the relevant requirements of the NCC; and
- (b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

Reason: Statutory requirement to ensure the safety of occupants.

101. Site fencing

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

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

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

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

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

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

Reason: To ensure public safety.

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

102. Completion of landscape works (~~Modified – MOD0117/20~~) (~~Deleted – MOD0219/21~~)

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

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

103. Completion of landscape works (*Modified – MOD0219/21*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier is to be satisfied that all landscape works, 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.

104. Dedication of land as a public road (*Modified – MOD0219/21*)

Prior to the relevant Occupation Certificate being issued for any part of the development the new part of Balfour Lane is to be dedicated to the Council as a public road.

Reason: To ensure that the new road is created prior to the issue of any Occupation Certificate.

105. Construction of commercial food preparation premises - supermarket (*Modified – MOD0219/21*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that the construction of the food premises and all food storage areas is in accordance with the requirements of the Food Act 2003, Food Standards Code 3.2.3 Food Premises and Equipment, Australian Standard AS 4674 2004 – Design, construction and fit-out of food premises and National Construction Code.

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

Reason: To ensure compliance with standards for food premises.

106. Shopping trolley management (*Modified – MOD0219/21*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, a Plan of Management (POM) for the on-site storage, collection, (both on and off site) and the management of shopping trolleys shall be submitted to Council for the approval of Council's Manager Compliance and Regulation.

The POM shall include:

1. the location and design principles for trolley storage bays.
2. a trolley containment system that encourages the confinement of trolleys to the site. Containment systems may include the following (but not limited to):
 - coin/token operated systems with refund
 - trolleys with wheel locks activated by radio signal or magnetic strip
 - specialised paving, installation of bollards or other physical barriers that limit the removal of trolleys from the centre
3. a map and written schedule of surveillance and collection schedules detailing abandoned trolley services around the local town centres and neighbouring residential areas is to be supplied. This service map and schedule to be reviewed and updated, at least on an annual basis. In particular, the schedule of surveillance and collection should detail the style of service to be offered and the relevant contact details of service provider. Particular attention should be given to those areas known to regularly attract abandoned trolleys, such areas are to be provided with a service at least every 24 hours.

The POM shall also include reference regarding the intended signage and public education programs which may include (but not limited to):

- signage within stores and car parks
- signage at entry and exit points of stores and car parks
- signage on trolleys
- pamphlets in stores explaining the need for customer co-operation
- local newspaper publicity
- in-store messaging over PA systems

The POM should include the commitment of the retailer or shopping centre management to the implementation of actions identified within the POM.

If containment systems are required to be installed in public land, these works shall be at no cost to Council and be the responsibility of the retailer to maintain at all times. If any part of the containment system is required to be installed on private lands, the written consent of the landowner shall be furnished with the initial submission of the Plan of Management.

The Principal Certifier shall not issue the relevant Occupation Certificate unless they have received written confirmation from Council that a POM has been approved by Council's Manager Compliance and Regulation.

Reason: To ensure the amenity of the area. To provide for the safety of shoppers,

pedestrians and road users. To recognise and respond to community expectations in minimising the problem of abandoned shopping trolleys.

107. ~~Livable Housing Units – Occupation Certificate Stage silver and platinum units (Modified – MOD0219/21)~~

~~Silver Level and Platinum Level Livable Housing units are to satisfy Livable Housing Australia (LHA) certification as follows:~~

~~i. Prior to the issue of an Occupation Certificate for Stage 02, all Silver Level and Platinum Level units are to acquire Livable Housing Design Final Stage Certification (as-built) from an accredited LHA assessor.~~

~~**Reason:** To ensure compliance with the Livable Housing requirements of the Ku-ring-gai Local Centres Development Control Plan.~~

Prior to the issue of the relevant Occupation Certificate for Stage 02, an accredited Liveable Housing Australia assessor shall certify that:

(a) Apartments identified as Silver - comply with the Silver Level requirements of the Liveable Housing Australia Liveable Housing Guidelines and as detailed on the Construction Certificate plans.

(b) Apartments 101, 102, 103, 104, 201, 202, 203, 204, 303 and 304 identified as Platinum - comply with the Platinum Level requirements of the Liveable Housing Australia Liveable Housing Guidelines and as detailed on the Construction Certificate plans.

An accredited Liveable Housing Australia assessor shall certify that the as constructed development achieves compliance with the requirements of each standard within the Liveable Housing Guidelines and the certification shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure equitable access.

108. Parking Restrictions (Modified – MOD0219/21)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the following must occur:

1. The operator of the premises shall seek approval from Ku-ring-gai Council to provide enforcement of parking restrictions within the retail car park.
- OR
2. A number plate recognition, boom gate and parking fee payment system to discourage the use of the retail car park for long term parking (i.e. greater than 3 hours) shall be installed.

Reason: A system of parking management of the retail/public parking spaces is needed to prevent long stay parking by commuters and employees in the Lindfield local centre.

109. Storage (Modified – MOD0219/21)

Prior to the issue of the relevant Occupation Certificate for Stage 02, all storage required by the Apartment Design Guideline Parts 4G-1 and 4G-2 is to be constructed within all dwellings at the following rates:

studio apartments	4m ²
1 bedroom apartments	6m ²
2 bedroom apartments	8m ²
3+-bedrooms apartments	10m ²

And,

- ii. A maximum of 50% of the requirement identified above may be located outside the dwelling;
- iii. All storage is to be full-height and a minimum depth of 600mm; and
- iv. Storage calculations must not include bedroom wardrobes, kitchen cupboards (including pantries), bathrooms, and space within laundry cupboards accommodating appliances and tub.

Reason: To ensure all dwellings provide adequate minimum storage for bulkier items such as vacuum cleaners, ironing boards, linen, general household possessions and items such as sports equipment and larger infrequently used items.

110. Compliance with BASIX Certificate (*Modified – MOD0219/21, eMOD0047/23*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that all commitments listed in the approved BASIX Certificate (referred to under Condition No 1, as modified) have been complied with.

Reason: Statutory requirement.

111. Clotheslines and clothes dryers (*Modified – MOD0219/21*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that the units have access to an external clothes-line located in a common area.

Reason: To provide access to clothes drying facilities.

112. Mechanical noise control (*Modified – MOD0219/21, eMOD0047/23*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that the mechanical ventilation systems and other plant, including but not limited to retail plant/exhaust, air conditioners, car park and garbage room exhaust, roller shutter doors, lifts and pumps associated with rain water reuse systems when in operation either as an individual piece of equipment or in combination with other equipment will not be audible within any habitable room in any residential occupancy before 7.00am and after 10.00pm. Outside of these restricted hours noise from an individual piece of equipment or in combination shall not be greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the nearest adjoining property boundary. The background (LA90, 15 min) level is to be determined without the source noise present. Written confirmation from an acoustic engineer that the

development achieves the above requirements is to be submitted to the Principal Certifier.

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

113. Completion of landscape works (*Modified – MOD0219/21*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier is to be satisfied that all landscape works, including the removal of all environmental weed species as listed in Council's Weed Management Policy and/or species listed within Council's Development Control Plan, have been undertaken in accordance with the approved plan(s) and conditions of consent.

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

114. Green star rating - occupation certificate – Stage 02 (*Modified – MOD0219/21, MOD0185/22, eMOD0047/23*)

- a) Prior to the issue of the relevant Occupation Certificate for Stage 02, an up to date green star credit schedule demonstrating sufficient credits to achieve a GBCA certified outcome of 4 (or greater) stars (or equivalent) for the "as built" component of the constructed development (under Green Star - Design & As Built certification now superseded by Green Star Buildings v1 - Revision B Released:10/12/2021) is to be provided to the Certifier. A supporting statement from a GBCA accredited project ESD consultant is to accompany the schedule stating that the contractor (and associated sub-contractors) has carried out the works in accordance with the green star standards required to achieve the Green Star - Design & As Built certification now superseded by Green Star Buildings v1 - Revision B Released:10/12/2021.
- c) Within 3 9 months of the relevant Occupation Certificate for Stage 02 being issued, the Owner is to submit to the Certifier, and a copy submitted to Council for its records a copy of the GBCA green star - design & as built certificate now superseded by Green Star Buildings v1 - Revision B Released:10/12/2021 confirming the achievement of a 4 (or greater) green star rating, or equivalent.

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

115. Easement for waste collection (*Modified – MOD0219/21*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, an easement for waste collection is to be lodged under Section 88B of the Conveyancing Act 1919. The terms of the easement are to be generally in accordance with Council's draft terms for an easement for waste collection and shall be to the satisfaction of Council's Development Engineer.

Reason: To permit legal access for Council, Council's contractors and their vehicles over the subject site for waste collection.

116. Retention and re-use positive covenant (*Modified – MOD0219/21*)

Prior to issue of the relevant Occupation Certificate for Stage 02, a positive covenant and restriction on the use of land under Section 88E of the Conveyancing Act 1919, burdening the property with the requirement to maintain the site stormwater retention and re-use facilities on the property shall be lodged.

The terms of the instruments are to be generally in accordance with the Council's "draft terms of Section 88B instruments for protection of retention and re-use facilities" and to the satisfaction of Council (refer to the Water Management Part 24R.8.2 of the relevant Ku-ring-gai Development Control Plan 2015). For existing titles, the positive covenant and the restriction on the use of land is to be created through an application to the NSW Land Registry Services in the form of a request using forms 13PC and 13RPA. The relative location of the reuse and retention 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 to and approved by the Principal Certifier prior to issue of an Occupation Certificate.

Reason: To ensure appropriate storm-water management.

117. Certification of drainage works (*Modified - MOD0117/20*) (*Modified – MOD0219/21*)

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

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

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

Reason: To ensure appropriate stormwater management.

118. Works as executed plans for stormwater management and disposal (*Modified - MOD0117/20*) (*Modified – MOD0219/21*)

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

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

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

Reason: To ensure appropriate stormwater management.

119. OSD positive covenant/restriction (*Modified – MOD0219/21*)

Prior to issue of the relevant Occupation Certificate for Stage 02, 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 shall be lodged.

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 the Water Management Part 24R.8.1 of the relevant Ku-ring-gai Development Control Plan). For existing titles, the positive covenant and the restriction on the use of land is to be created through an application to the NSW Land Registry Services 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 the relevant Occupation Certificate.

Reason: To ensure appropriate stormwater management.

120. Sydney Water Section 73 Compliance Certificate (*Modified – MOD0219/21*)

Prior to issue of the relevant Occupation Certificate for Stage 02, the Section 73 Sydney water Compliance Certificate must be obtained and submitted to the Principal Certifier.

Reason: Statutory requirement.

121. On-site detention system marker plate (*Modified – MOD0219/21*)

A marker plate is to be permanently attached and displayed within the immediate vicinity of the On-Site Detention System prior to the issue of the relevant Occupation Certificate for Stage 02.

The marker plate can be purchased from Council.

Reason: To prevent unlawful alteration.

122. Certification of as-constructed driveway/carpark – RFB (*Modified – MOD0219/21*)

Prior to issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier is to be satisfied that:

1. The as-constructed car park complies with the approved Construction Certificate plans.
2. The completed vehicle access and accommodation arrangements comply with Australian Standard 2890.1 - 2004 "Off-Street car parking" in terms of minimum parking space dimensions.
3. Finished driveway gradients and transitions will not result in the scraping of the underside of cars.
4. No doors, gates, grilles or other structures have been provided in the access driveways to the basement carpark, which would prevent unrestricted access for internal garbage collection from the basement garbage storage and collection area.
5. The development complies with vehicular headroom requirements of:
 - Australian Standard 2890.1 - "Off-street car parking",
6. 2.6 metres height clearance for waste collection trucks (refer Part 23.7 of the Kuring-gai DCP) are met from the public street into and within the applicable areas of the basement carpark.
7. The 12 x residential visitor spaces on Lower Ground Floor 1 are marked and signposted as *Residential Visitor Spaces*.
8. 1 x residential space and 1 x retail space is dedicated to a 24 hour electric vehicle charging station and is marked and signposted accordingly.
9. Each car parking space is to be designed and constructed so that additional electric vehicle charging points can be installed at a later time to each space.

Evidence from a suitably qualified and experienced traffic/civil engineer demonstrating compliance with the above is to be provided to and approved by the Principal Certifier prior to the issue of the relevant Occupation Certificate.

Reason: To ensure that vehicular access and accommodation areas are compliant

with Australian Standards and the Development Consent.

123. Construction of works in public road - approved plans (*Modified – MOD0219/21*)

Prior to issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier must be satisfied that all approved road, footpath and/or drainage works have been completed in the road reserve in accordance with the Council Roads Act approval and accompanying drawings, conditions and specifications.

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

The supervising consulting engineer is to provide certification upon completion that the works were constructed in accordance with the Council approved stamped drawings. The works are to be subject to inspections by Council at the hold points noted on the Roads Act approval. All conditions attached to the approved drawings for these works must be met prior to the relevant Occupation Certificate being issued.

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

124. Infrastructure repair (*Modified - MOD0117/20*) (*Modified – MOD0219/21*)

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

Reason: To protect public infrastructure.

125. Mechanical ventilation (*Modified – MOD0219/21*)

Following completion, installation and testing of all the mechanical ventilation systems the installation and performance of these systems must comply with:

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

The Principal Certifier shall be satisfied of the above prior to the issue of the relevant Occupation Certificate for Stage 02.

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

126. Fire safety certificate (*Modified – MOD0219/21*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that a fire safety certificate for all the essential fire or other

safety measures forming part of this Development Consent has been completed and provided to Council.

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

127. Construction of food premises- coffee shop (*Modified – MOD0219/21*)

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

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

Reason: To ensure compliance with standards for food premises.

128. ~~Garbage and recycling facilities~~ Waste and recycling storage facilities- commercial premises (*Modified – MOD0219/21*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that waste storage facilities have been installed and adequately contain the waste bins. All internal walls must be rendered and coved at the floor/wall intersection. The floor is graded and drained to the sewer and a tap with hot and cold water is located in close proximity to facilitate cleaning of the waste bins and waste storage facilities.

Reason: To protect amenity and prevent environmental pollution.

129. Trade waste permit/consent - food premises (*Modified – MOD0219/21*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, evidence of a Sydney Water permit or consent for the discharge of wastewater into the sewer shall be submitted to the Principal Certifier. Where a permit or consent may not be required from Sydney Water, certification shall be provided verifying that any discharges to the sewer will meet specific standards imposed by Sydney Water.

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

129A. Location of plant (*Added – MOD0219/21*)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that all plant and equipment (including but not limited to air conditioning equipment) is located in the basement (except for plant and equipment approved to be located elsewhere).

Reason: To minimise noise impacts on surrounding properties and to improve the appearance of the approved development.

129B. Noise from road and rail (residential only) (Added – MOD0219/21)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that acoustic treatments required to attenuate road and rail noise for future occupants of the development have been installed. Written advice from an acoustic engineer is to be submitted to the Principal Certifier confirming that the acoustic measures installed ensure that the following internal LAeq noise levels are not exceeded:

- a) in any bedroom in the building 35 dB(A) at any time between 10 pm and 7 am; and
- b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) 40 dB(A) at any time.

Reason: To protect the amenity of occupants of the approved development.

129C. Waste and recycling storage facilities- residential (Added – MOD0219/21)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that the waste storage facilities have been installed and adequately contain the waste bins. All internal walls are rendered and coved at the floor/wall intersection. The floor is graded and drained to the sewer and a tap with hot and cold water is located in close proximity to facilitate cleaning of the waste bins and waste storage facilities.

Reason: To protect amenity and prevent environmental pollution.

129D. Outdoor lighting (Added – MOD0219/21)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that all outdoor lighting will comply with AS/NZS 4282:2019 *Control of the obtrusive effects of outdoor lighting* and is mounted, screened and directed in a way that does not create a nuisance or light spill on to buildings on adjoining lots or public places.

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

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

129E. Street/shop number required (Added – MOD0219/21)

A street/shop number must be clearly displayed at the ground level frontages of the building to the satisfaction of the Principal Certifier prior to the issue of the relevant Occupation Certificate.

Reason: To identify each lot.

129F. PH07 roof top spa (Added – eMOD0047/23)

Prior to the issue of the relevant Occupation Certificate for Stage 02, the Principal Certifier shall be satisfied that:

1. Access to the spa is restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992.
2. All mechanical equipment, including filters, pumps and heaters associated with the spa are housed within an enclosure. The enclosure is to be sound-proofed to the extent that noise from the operation of the mechanical equipment does not exceed 5dB(A) above the background noise (LA90, 15 min) level during the day when measured at the nearest adjoining property boundary and is not audible in habitable rooms of any residential occupancy at night (from 8.00pm to 7.00am). The background (LA90, 15 min) level is to be determined without the noise source present.
3. The spa shall be registered on the NSW Swimming Pool Register (www.swimmingpoolregister.nsw.gov.au) in accordance with the Swimming Pools Act 1992.

Reason: Statutory requirement to ensure the safety of children and to protect the amenity of surrounding properties.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE:

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

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

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

131. Sydney Water Section 73 compliance certificate

Prior to the issue of a Subdivision Certificate, the Section 73 Sydney Water compliance certificate (if required) which refers to the subdivision application must be obtained and submitted to the Council.

Reason: Statutory requirement.

132. Requirements of public authorities for connection to services

Prior to the issue of a Subdivision Certificate, Council shall be satisfied that the requirements of any public authorities (e.g. Energy Australia, Sydney Water, Telstra Australia, AGL, etc) in regard to the connection, relocation and/or adjustment of the services affected by the proposed subdivision have been complied with. All costs related to the relocation, adjustment or support of services are the responsibility of the Applicant.

Note: Details of compliance with the requirements of any relevant public authorities are to be submitted to Council.

Reason: To ensure that services are available to the allotments of land.

133. Provision of services

Prior to issue of a Subdivision Certificate, separate underground electricity, gas and phone or appropriate conduits for the same, must be provided to each allotment to the satisfaction of the utility provider. A suitably qualified and experienced engineer or surveyor is to provide certification that all new lots have ready underground access to the services of electricity, gas and phone. Alternatively, a letter from the relevant utility provider stating the same may be submitted to satisfy this condition.

Reason: Access to public utilities

134. Issue of subdivision certificate

The Subdivision Certificate must not be issued until all conditions required to be satisfied prior to the release of the subdivision certificate have been satisfied.

Reason: To ensure that the requirements for the Subdivision Certificate are completed prior to transfer of responsibility for the site and development to another person.

135. Submission of 88b instrument

Prior to the issue of a Subdivision Certificate, an original instrument under Section 88B of the Conveyancing Act with the plan of subdivision, plus three (3) copies, shall be submitted to Council. Ku-ring-gai Council must be named as the authority whose consent is required to release, vary or modify the burdens.

Reason: To create all required easements, rights-of-carriageway, positive covenants, restrictions-on-use or other burdens/benefits as may be required.

136. Submission of plans of subdivision (Torrens title)

For endorsement of a Subdivision Certificate, an original plan of subdivision plus 3 copies, suitable for endorsement by Council shall be submitted to Council. The following details must be submitted with the plan of subdivision and its copies:

1. The endorsement fee current at the time of lodgement.
2. The 88B instrument plus 3 copies.
3. The Section 73 (Sydney Water) Compliance Certificate for the subdivision (if required).

Council will check the conditions on the Development Consent for subdivision. Failure to submit the required information will delay endorsement of the linen plan and may require payment of rechecking fees. **Plans and copies of subdivision must not be folded. Council will not accept bonds in lieu of completing subdivision works.**

Reason: Statutory requirement.

137. General easement/R.O.W. provision and certification

Prior to issue of a Subdivision Certificate, a registered surveyor is to provide details to Council that all physical structures are fully contained within the proposed allotments or will be fully covered by the proposed burdens upon registration of the final plan of subdivision. Alternatively, where the surveyor is of the opinion that creation of burdens and benefits is not required, then proof to this effect must be submitted to Council.

Reason: To ensure that all physical structures are fully contained within the proposed allotments or will be fully covered by the proposed burdens upon registration of the final plan of subdivision.

CONDITIONS TO BE SATISFIED AT ALL TIMES:

138. The use of the loading dock

The use of the loading dock is restricted to 7.00am to 10.00pm. Between 6.00pm and 10.00pm the roller door of the loading dock shall be closed except for temporary opening to allow for the entry and exit of vehicles. The roller door of the loading dock shall be closed whilst the loading dock is not in operation between the hours of 10.00pm to 7.00am.

Reason: To protect residential amenity.

139. Shopping trolley plan of management

The requirements of the approved Shopping Trolley Plan of Management are to be complied with at all times.

Reason: To ensure the effective management of shopping trolleys.

140. First use of ground floor of heritage item (Churchers Restaurant)

Development consent shall be obtained prior to the use of the ground floor of the heritage item.

Reason: To ensure that an assessment of the impact of the proposed use on the heritage significance of the heritage item is undertaken prior to the use commencing.

141. Residential waste arrangements

Access to the residential waste collection area shall be configured to accommodate the use of Council's Master Key. Residential waste management and handling processes shall not include the compaction of any waste or recyclables.

Reason: To ensure that practical arrangements for the management and collection of waste are maintained.

142. Maintenance of podium edge planters (*Modified – MOD0219/21*)

This condition applies to the raised planters of Units 101-108 (inclusive) and Unit 110. The maintenance of these planters shall be subject to a strata by-law that requires each strata owner to be responsible for maintaining the planting in each planter to a consistent

planting type and style per the approved landscape plans referred to in Condition 1. The strata by-laws for the residential component of the development shall enable the body corporate to rectify any deficiency or departure from the maintenance requirement.

Reason: To ensure the ongoing maintenance of the planting in the raised planters and to maintain the design quality of the development.

143. Restriction on permitted cooking equipment - coffee shop (Modified – MOD0185/22)

The coffee shop is approved for the sale of only hot and cold drinks and pre-packaged non-potentially hazardous food that requires no further food preparation such as pre-packaged muffins, biscuits and cakes. The equipment installed in the premises for the purpose of preparation of food for sale is limited to coffee machines, coffee grinders, refrigerators and freezers, microwaves and low powered heating appliances that do not require mechanical ventilation. Deep fryers, conventional ovens, stoves/portable stoves or other food cooking and heating equipment is not permitted.

Reason: To ensure compliance with standards for food premises.

144. Outdoor lighting

All external lighting must:

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

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

Reason: To protect the amenity of surrounding properties.

145. Noise control - plant and machinery

Noise levels associated with mechanical ventilation system/s, any plant, machinery or other equipment on any part of the site, including the supermarket and retail, shall not be audible within any habitable room in any residential premises before 7am and after 10pm. Outside these restricted hours the operation of mechanical ventilation system/s, any plant, machinery or other equipment on any part of the site, including the supermarket and retail shall emit a noise level of not greater than 5dB(A) above the background noise (LA90, 15 min) when measured at the boundary, balcony or external living area of the nearest affected residential occupancies. The background (LA90, 15 min) level is to be determined without the source noise present.

Reason: To protect the amenity of surrounding residents.

146. Noise control - rainwater re-use system

Noise levels associated with any rainwater re-use system/s shall not to exceed more than 5dB(A) above the background noise (LA90, 15 min) level during the day and shall

not exceed the background level at night (10.00pm - 7.00am) when measured at the boundary of the nearest potentially affected residential occupancies. The background (LA90, 15 min) level is to be determined without the source noise present.

Reason: To protect the amenity of surrounding residents.

147. Loading and unloading (*Modified – MOD0219/21*)

At all times, all loading and unloading of service vehicles (including waste collection) in connection with the use of the premises must be carried out wholly within the site. Car spaces must not be obstructed by vehicles loading or unloading and stock, supplies, crates, bins or other items for the business must not be stored in car parking spaces.

Reason: To ensure safe traffic movement and that parking spaces are used in accordance with the Development Consent.

148. Hours of trading for the supermarket and coffee shop

At all times the hours of trading are restricted to 6am to 12am. Cleaning, bakery activities and fresh food preparation may be undertaken at any time.

Reason: To protect the amenity of the area.

149. Hours of trading for the liquor store

At all times the hours of operation are restricted to:

Monday to Wednesday	9am to 9pm
Thursday to Friday	9am to 10pm
Saturday	8am to 10pm
Sunday	10am to 8pm

Reason: To protect the amenity of the area.

150. Annual fire safety statement

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

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

151. Waste and recycling collection times- commercial

All waste/recycling collection services for the site's commercial uses shall be carried out only between 7.00am and 8.00pm Monday to Saturday and between 8.00am to 8.00pm Sunday.

Reason: To protect the amenity of the surrounding area.

152. No goods displayed outside the premises (*Added – MOD0219/21*)

No goods are to be displayed outside the boundary of the premises, unless separate approval has been obtained from Council.

Reason: To protect public places.

153. Prohibition of flashing lights (*Added – MOD0219/21*)

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

Reason: To protect residential amenity.

154. PH07 roof top spa (*Added – eMOD0047/23*)

1. Access to the spa must be restricted by a child resistant barrier in accordance with the Swimming Pools Act 1992.
2. Noise levels from the operation of mechanical equipment, including filters, pumps and heaters associated with the spa, shall not exceed 5dB(A) above the background noise (LA90, 15 min) level during the day when measured at the nearest adjoining property boundary and must not be audible in habitable rooms of any residential occupancy at night (from 8.00pm to 7.00am). The background (LA90, 15 min) level is to be determined without the source noise present.
3. Devices or structures used for heating spa water must not be placed where they are visible from a public place.
4. The disposal of backwash and/or the emptying of a spa into a reserve, watercourse, easement or storm water drainage system is prohibited. These waters are to discharge via a permanent drainage line into Sydney Water's sewer in accordance with Australian Standard 3500.2 section 10.9.
5. Lighting in the spa area shall not detrimentally impact the amenity of other premises and adjacent dwellings.

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

155. Prohibition of signage illumination (*Added – eMOD0047/23*)

The illumination of the approved signage is to comply with the following:

- a) Signage along Balfour Street and on the North and West Elevations must not be illuminated between the hours of 12:00am and 6:00am daily. For the purpose of this condition, sign 08 at the intersection of the Pacific Hwy and Balfour St is not considered to be located on Balfour Street.
- b) Signage along the Pacific Highway is not subject to any limitation with regard to the hours of illumination.
- c) All signage must not flash or have any moving components. Any wiring to the approved signage must be concealed within the fabric of the building or contained behind the sign and must not be visible on the façade of the building.
- d) All illuminated signage must comply with AS/NZS 4282:2019: Control of the obtrusive effects of outdoor lighting.

Reason: To protect the surrounding amenity.

Signed

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Executive Assessment Officer**

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Signed

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