

Draft Condition	Proposed Amendment	Justification from Applicant	Response from Council (1/7/2025)
General Conditions			
2. Clarification of Sequencing Sequencing of the development must generally be in accordance with the Master Plan Construction Management Plan Sheet 1 prepared by Sparks and Partners (Drawing. DA1501), except where modified by the following and subject to the requirements of conditions of this consent. ... ii. Prior to commencement of any works associated with Building 5 Block 1, the internal carriageway which provides access from the Captain Cook side of Building 1 to Captain Cook Drive must be wholly constructed to the Council carriageway, including those Building 5 parking spaces, kerb and gutter, drainage infrastructure and landscaping between the internal carriageway and Captain Cook Drive;	2. Clarification of Sequencing Sequencing of the development must generally be in accordance with the Master Plan Construction Management Plan Sheet 1 prepared by Sparks and Partners (Drawing. DA1501), except where modified by the following and subject to the requirements of conditions of this consent. ... ii. Prior to commencement of any works associated with Building 5 Block 1, the internal carriageway which provides access from the Captain Cook side of Building 1 to Captain Cook Drive must be wholly constructed to the Council carriageway, including those Building 5 parking spaces, kerb and gutter, drainage infrastructure and landscaping between the internal carriageway and Captain Cook Drive; ...	As shown on the Amended Preliminary Staging Plan, car spaces and landscaping between the internal carriageway and Captain Cook Drive from Building 5 to Building 1 are within the area shown to be completed prior to issue of the Occupation Certificate for Building 5. This means that Building 5 Block 1's operation will have the necessary landscaped screening. Detailed structural design of the car parking, drainage infrastructure and landscaping between the internal carriageway and Captain Cook Drive is subject to Sydney Water detailed endorsement due to proximity to the Sydney Water sewer main asset beyond the site boundary. This detailed endorsement is a lengthy process, and represents a considerable risk to the development and ongoing operation of the site. It is not reasonable to risk delaying the commencement for Building 5's construction because of a separate Sydney Water endorsement that does not relate to the detailed construction of Building 5.	The condition seeks to ensure that main vehicular access and associated landscaping is provided and maintained along the southern part of the site prior to and during construction of Building Block 5. This access is required for existing tenancies and forms part of the principal means of access under previous conditions attached to earlier development consent for Building 1. Closure of this access and delay in the provision of landscape until the completion of building 5 is not considered reasonable, given limited or no certainty in terms of the delay. This will enable the internal access road and landscaping along the Captain Cook to be 'fenced out' during construction of building 5. For the above reasons, no change is recommended to this condition.
Before Issue of Construction Certificate			
36. Trees on Private Land The removal of the following trees is approved: <ol style="list-style-type: none"> The removal of the following trees is approved: <ul style="list-style-type: none"> Trees identified within the Arborist Report prepared by Green Tree Consultancy as "existing tree to be removed" as amended by Plan 005 Revision G dated 12.06.25 to retain an additional 17 trees. Any declared noxious plant. The applicant is to ensure that all noxious plants are properly identified and controlled/removed. Any tree species exempted by the Sutherland Shire Local Environmental Plan 2015. All other vegetation that would require approval to be removed must be protected. 442 trees are approved for removal as part of this consent. Where trees are proposed to be removed Sutherland Shire Council requires indigenous replacement canopy tree planting at a ratio of 8:1 on private land (Council Resolution EHR003-17 of 18 July 2016). In this instance the extent of required compensatory planting (3,536) is reduced by 50% to 1,768 noting the substantial revegetation proposed along the north-eastern boundary of the site with Woollooware Bay. 387 replacement trees are required to be planted as shown on the approved landscape plan. For the remaining 1,381 replacement trees required, council offers offsite planting under a 	36. Trees on Private Land The removal of the following trees is approved: <ol style="list-style-type: none"> The removal of the following trees is approved: <ul style="list-style-type: none"> Trees identified within the Arborist Report prepared by Green Tree Consultancy as "existing tree to be removed" as amended by Plan 005 Revision G dated 12.06.25 prepared by Watson Young to retain an additional 17 trees. Any declared noxious plant. The applicant is to ensure that all noxious plants are properly identified and controlled/removed. Any tree species exempted by the Sutherland Shire Local Environmental Plan 2015. All other vegetation that would require approval to be removed must be protected. 442 trees are approved for removal as part of this consent. Where trees that are not susceptible to Fusarium Wilt, totalling 344 trees are proposed to be removed Sutherland Shire Council requires indigenous replacement canopy tree planting at a ratio of 8:1 on private land (Council Resolution EHR003-17 of 18 July 2016). In this instance the extent of required compensatory planting (3,536 2,752) is reduced by 50% to 1,768 1,376 noting the substantial revegetation proposed along the north-eastern boundary of the site with Woollooware Bay. 380 387 replacement trees are required to be planted as shown on the approved landscape plan. 	Reference to Watson Young to clarify author of the plan. Regarding point 3, the latest Vegetation Management Plan prepared by Ecologique states and shows that almost 100 trees are affected by fusarium wilt, a serious fungal disease that affects a range of palm species across the world including Australia. There is no effective treatment for this disease, and infection will eventually kill the tree. Fungal spores lay dormant in the soil until they detect a host. Dormant spores may move through the soil profile with groundwater or through foot traffic or vehicle traffic, on tools and equipment and by birds and possums. Almost 100 Canary Island date palms and Wahingston palms are already exhibiting death and dieback. Therefore, it is imperative that these affected palms are removed, to stop the further spread of this disease. As such, these trees should not be replaced. Moreover, palm trees have limited canopy cover. Ecologique has determined that the number of trees proposed to be removed that are not affected by Fusarium Wilt is 344. The extent of compensatory planting would therefore be 2,752 (=344 x 8), with the 50% reduction equalling 1,376.	No concern is raised to the inclusion of the author of the plan. This amendment is included in Draft Conditions V9. Council accepts the nominated palm trees may require irrespective of this application due to their declining health. Typically this scenario provides a reasonable basis on which to allow the removal of a tree, rather than avoid the need for suitable replacement. Notwithstanding, in this instance, consideration is also given to the species and potential for limited canopy. Council accepts the 344 trees as the number which require replacement. Agreed. This amendment is included in Draft Conditions V9.

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<p>'Deed of Agreement' as an alternative to on-site planting, at a cost specified in council's schedule of fees and charges.</p> <p>Offsite planting will be undertaken as part of council's Green Street Program. 'Deed of Agreement' forms can be downloaded from council's website at Off-Site tree replacement and Deed of Agreement Sutherland Shire Council (nsw.gov.au) <https://www.sutherlandshire.nsw.gov.au/plan-and-build/development-applications/what-happens-after-i-get-consent/off-site-tree-replacement-and-deed-of-agreement></p> <p>A completed form and payment must be submitted to council prior to the release of the construction certificate.</p> <p>Condition reason: To inform tree removal and replacement.</p>	<p>5. For the remaining 1,381 1,001 replacement trees required, council offers offsite planting under a 'Deed of Agreement' as an alternative to on-site planting. <i>The offsite tree replacement cost per tree is to be \$113.64, in accordance with Council's schedule of fees and charges for 2023-2024. at a cost specified in council's schedule of fees and charges.</i></p>	<p>Regarding point 4, the latest Landscape Plans state that 380 trees are proposed. 387 was the previously proposed number of trees. As the amended design has allowed 17 more trees to be retained, new trees are no longer required to be planted in their place.</p>	<p>Agreed. This amendment is included in Draft Conditions V9.</p>
	<p>Offsite planting will be undertaken as part of council's Green Street Program. 'Deed of Agreement' forms can be downloaded from council's website at Off-Site tree replacement and Deed of Agreement Sutherland Shire Council (nsw.gov.au) <https://www.sutherlandshire.nsw.gov.au/plan-and-build/development-applications/what-happens-after-i-get-consent/off-site-tree-replacement-and-deed-of-agreement></p>	<p>Regarding point 5, the number of required tree replacement has been revised to reflect the proposed 380 trees.</p>	<p>1376-380 = 996 Trees, not 1,001. This amendment is included in Draft Conditions V9.</p>
		<p>It is unreasonable that the price of offsite tree replacement is not fixed, as Council can change the price in its schedule of fees and charges at any time and by any scale. This is very different to indexation, and gives the Applicant no certainty of the cost within its 5 year timeframe to commence the development.</p> <p>In fact, when this DA was lodged in October 2023, Council's off- site tree replacement cost was \$113.64 per tree (excl GST). For the 2023-2024 financial year, this cost has almost tripled to \$363.63/tree (excl. GST).</p> <p>The feasibility of the DA, and value of VMP works, was originally based on the \$113.64 tree replacement cost. It is unreasonable for Aliro to have to bear an increased cost per tree because assessment of the DA has taken 18 months.</p> <p>On this basis, the \$113.64 rate should apply for certainty. This would equate to a total Deed of Agreement value of \$113,753.64</p>	<p>The fee is fixed each year in accordance with the fees and charges. The \$400 per tree replacement was a decision of the Council held 20 May 2024.</p> <p>The business paper noted that the current re-planting scheme is not meeting the minimum nil tree canopy loss objective.</p> <p>Tree replacement planting and promoting tree retention are needed to achieve the tree canopy goals of the Community Strategic Plan (CSP) of no net canopy loss, the Local Strategic Planning Statement (LSPS) of increasing tree canopy cover in the local government area, as well as consideration of the State Government's tree canopy cover targets.</p> <p>The Council resolved that:</p> <p>"...In order to place a more realistic replacement cost for private trees removed for development purposes on private land, the fee per replacement tree be increased from \$125 to \$400 in the 2024/25 Schedule of Fees and Charges."</p> <p>The date of lodgement of an application is of no consequence in terms of the fees and charges levied by conditions.</p> <p>Should the Panel be minded to reduce the fee, reconsideration should be given to the number of trees required to be planted, as the \$125 fee will provide for the planting of approximately 25% of the 996 trees required.</p>
Occupation and Ongoing Use			
<p>124. Industrial activities outside the building</p> <p>There must be no industrial activities, storage or depositing of any goods or maintenance to any machinery conducted external to the building.</p>	<p>124. Industrial activities outside the building</p> <p>There must be no industrial activities, storage or depositing of any goods or maintenance to any machinery conducted external to the building. <i>This</i></p>	<p>This condition is illogical and unworkable for an industrial estate that has hardstand spaces external to the buildings. The definition of 'industrial activities' in the Standard Instrument</p>	<p>The revised wording maintains the intent of the condition. Accordingly, this amendment is included in Draft Conditions V9.</p>

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<p>Condition reason: To protect the amenity of the surrounding environment.</p>	<p>condition does not prevent use of hardstand areas external to buildings for loading, unloading and transportation of goods associated with the use of the buildings, and for temporary storage of goods on hardstand areas during loading and unloading.</p> <p>Condition reason: To protect the amenity of the surrounding environment.</p>	<p>LEP includes the 'transportation associated with any such activity'. This condition would render hardstand spaces under awnings unusable for any unloading or loading of goods. This would include temporary (or even commentary) placement of goods on hardstand while loading and unloading occurs.</p> <p>Council's condition inadvertently captures transportation, loading and unloading of goods.</p> <p>The proposed amendments ensure that the condition does not inadvertently prohibit use of hardstand areas external to buildings for loading, unloading and transportation of goods associated with the use of the buildings, and for temporary storage of goods on hardstand areas during loading and unloading.</p> <p>This clarifies the condition while still meeting the intent of Council's condition to retain amenity.</p>	