



Land and Environment Court New South Wales

Case Name:	Squillaciotti v Camden Council
Medium Neutral Citation:	[2023] NSWLEC 1090
Hearing Date(s):	Conciliation conference on 6 and 20 December 2022; 24 January 2023, 24 February 2023.
Date of Orders:	01 March 2023
Date of Decision:	01 March 2023
Jurisdiction:	Class 1
Before:	Horton C
Decision:	<p>The Court orders that:</p> <p>(1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application for development consent in accordance with s 8.15(3) of the <i>Environmental Planning and Assessment Act 1979</i>, as agreed or assessed.</p> <p>(2) The appeal is upheld.</p> <p>(3) Development application 2021/1210/1, as amended during Land and Environment Court proceedings No. 2022/238636, for construction of a centre-based child care facility for 68 children between the ages of 0-5 years with associated car parking, landscaping and civil works at 30 Sharman Close, Harrington Park (Lot 16 DP 1094115) is determined by the grant of consent subject to the conditions in Annexure B.</p>
Catchwords:	DEVELOPMENT APPLICATION: centre based child care facility – heritage conservation area – conciliation conference – agreement between parties – orders
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979, ss 4.16, 8.7, 8.15</p> <p>Environmental Planning and Assessment Regulation 2000, cl 55</p> <p>Land and Environment Court Act 1979, s34</p>

Camden Local Environmental Plan 2010, cll 4.3, 4.4,
5.10, 7.4, Sch 5
State Environmental Planning Policy (Transport and
Infrastructure) 2021, ss 3.23, 3.25, 3.26
State Environmental Planning Policy (Resilience and
Hazards) 2021, s 4.6

Category: Principal judgment

Parties: Jay Squillaciotti (Applicant)
Camden Council (Respondent)

Representation: Counsel:
J Cole (Solicitor) (Applicant)
K Huxley (Solicitor) (Respondent)

Solicitors:
J Cole Planning (Applicant)
Holding Redlich (Respondent)

File Number(s): 2022/238636

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This Class 1 appeal is brought under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) following the deemed refusal by Camden Council (the Respondent) of development application 2021/1210/1 seeking consent for construction of a centre-based child care facility for 72 children between the ages of 0-5 years with associated car parking, landscaping and civil works at 30 Sharman Close, Harrington Park.
- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, at which I presided on 6 December 2022.
- 3 At the conciliation conference, the parties reached in-principle agreement as to the scope of amendments required for the parties to reach terms of a decision in the proceedings that would be acceptable to the parties, subject to time being granted for certain amendments to the development the subject of the development application.
- 4 I granted the parties an adjournment to permit the preparation of amended plans and other documents. I subsequently granted a further adjournment so that those amendments agreed to between the parties could be finalised in amended plans and other documents, and for the Respondent to notify surrounding residents of the amended proposal which occurred between 7 – 21 February 2023.
- 5 This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions.
- 6 A signed agreement prepared in accordance with s 34(10) of the LEC Act was filed with the Court on 24 February 2023.
- 7 The parties ask me to approve their decision as set out in the s34 agreement before the Court. In general terms, the agreement approves the development subject to amended plans that were prepared by the Applicant, and noting that

the final detail of the works and plans are specified in the agreed conditions of development consent annexed to the s34 agreement.

8 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising power under s 4.16 of the EPA Act. In this case, there are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties explained to me during the conference as to how the jurisdictional prerequisites have been satisfied in order to allow the Court to make the agreed orders at [19], as follows:

9 The site is located within the R2 Low Density Residential zone according to the Camden Local Environmental Plan 2010 (CLEP) in which centre based child care facilities are permitted with consent, where consistent with the objectives of the R2 zone, which are:

To provide for the housing needs of the community within a low density residential environment.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To allow for educational, recreational, community and religious activities that support the wellbeing of the community.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

10 The proposed development is within the height permitted by the height of building standard at cl 4.3 of the CLEP, and complies with the floor space ratio (FSR) permitted by the relevant standard at cl 4.4 of the CLEP. Relevantly, the FSR is also consistent with that permitted by s 3.25 of State Environmental Planning Policy (Transport and Infrastructure) 2021 (Infrastructure SEPP).

11 The site is located within the Struggletown Conservation Area (SCA) identified in Sch 5 of the CLEP. The development application is supported by a statement of heritage impact prepared by Stedinger & Associates dated October 2021. I consider the amendments evident in the amended development application

results in a development that is sympathetic to the heritage values of the SCA and so imposes no adverse impact pursuant to cl 5.10(4) of the CLEP.

- 12 I have considered those matters set out at cl 7.4(3) of the CLEP in respect of earthworks. On the basis of the Geotechnical Investigation prepared by Keighran Geotechnics dated December 2022, the letter prepared by Prascon Civil, Structural and Materials Engineers dated 6 January 2023 proposing a Preliminary Design and Proposed Construction Methodology for the basement perimeter wall, and the Stormwater Engineering Plans prepared by SGC Consulting engineers dated, I accept the earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses or heritage features of the area.

State Environmental Planning Policy (Transport and Infrastructure) 2021

- 13 Clause 3.26 of the Infrastructure SEPP contains non-discretionary development standards that, if complied with, preclude the requiring of more onerous standards. I note the proposal complies with the requirements of subs 3.26(2)(b) for indoor and outdoor space, and I accept that the materials and finishes nominated on the Finishes Schedule 1e and 2e of the architectural plans are appropriate for the SCA identified at [11], consistent with subs 3.26(2)(d).
- 14 I also accept that the proposed development has taken into account, and demonstrates consistency with, the applicable provisions of the Child Care Planning Guideline, in accordance with s 3.23 of the Infrastructure SEPP.

State Environmental Planning Policy (Resilience and Hazards) 2021

- 15 On the basis of the Contamination Report, Phase 1 and Validation prepared by National Asbestos Solutions, dated October 2021 and the Environmental Site Validation Report prepared by HEC dated 21 December 2022, I have considered whether the site is contaminated in terms set out at s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021, and I am

satisfied the site is suitable for the purpose for which the development is proposed to be carried out.

Conclusion

- 16 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 17 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.
- 18 I note Camden Council, as the relevant consent authority, agreed to the Applicant amending the development application in accordance with cl 55 of the Environmental Planning and Assessment Regulation 2000, by those plans and other documents in Annexure A, filed with the Court on 24 February 2023.

Orders

- 19 The Court orders that:
- (1) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment of the application for development consent in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, as agreed or assessed.
 - (2) The appeal is upheld.
 - (3) Development application 2021/1210/1, as amended during Land and Environment Court proceedings No. 2022/238636, for construction of a centre-based child care facility for 68 children between the ages of 0-5 years with associated car parking, landscaping and civil works at 30 Sharman Close, Harrington Park (Lot 16 DP 1094115) is determined by the grant of consent subject to the conditions in Annexure B.

I certify that this and the preceding 4 pages are a true copy of my reasons for judgment.



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T Horton

Commissioner of the Court

Annexure A

1. Architectural plans prepared by Cuevas and associates:
 - Site Plan Cover – DWG 00-P – 27/01/23
 - Floor Plans – DWG 01-AK – 23/02/23
 - Elevations – DWG 10-Y – 27/01/23
 - Roof Plan & Sections – DWG 02-U – 27/01/23
 - Carpark ramp – DWG 30-G – 27/01/23
 - Shadow Diagrams – DWG 20-E – 24/01/23
 - Finishes Schedule – 1e
 - Finishes Schedule – 2e
2. Evacuation Diagrams Sheets 1-7
3. Landscape Plans prepared by Paul Scrivener:
 - Ground & First Floor – Issue E – 25/1/23
 - Activity Areas – Issue E – 25/1/23
 - Planting Plan – Ground & First Floor – Issue E – 25/1/23
 - Soil Areas Plan – Soil Areas Plan – Issue E – 25/1/23
 - Section & Elevation – Issue E – 25/1/23
 - East & West Elevation / Unencumbered Play Area Calculations – Issue E – 25/1/23
 - Details – Issue E – 25/1/23
4. Stormwater Plans prepared by SGC Consulting Engineers:
 - Cover Sheet SW100 – Issue G – 18/1/23
 - Basement Plan SW200 – Issue G – 18/1/23
 - Ground Floor Plan SW201 – Issue G – 18/1/23
 - Roof Plan SW202 – Issue G – 18/1/23
 - Details Sheet SW300 – Issue G – 18/1/23
 - Erosion and Sediment Control – Plan and Details SW400 – Issue G – 18/1/23
 - Music Catchment Plan SW500 – Issue G – 18/1/23
5. Noise Impact Assessment: 30 Sharman Close, Harrington Park 1235-AC-B-04 prepared by Broadcrest Consulting – January 2023
6. Geotechnical Investigation 22072/GK1 prepared by GDK Keighran Geotechnics – December 2022
7. Emergency Evacuation Plan prepared by Michael Brown Planning Strategies – 26/1/23
8. Operational Plan of Management prepared by Michael Brown Planning Strategies – January 2023
9. Basement Perimeter Wall – Preliminary Design & Proposed Construction Methodology prepared by Prascon Australia Pty Ltd – 6/1/23

10. Environmental Site Validation Report prepared by Hayes Environmental
Consulting – 21/12/23

Annexure B

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: 2021/1210/1

Development: construction of a centre-based child care facility for 68 children between the ages of 0-5 Years with associated car parking, landscaping and civil works

Site: 30 Sharman Close, Harrington Park (Lot 16 DP 1094115)

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 01 March 2023

Date from which consent takes effect: Date the consent is registered on the NSW Planning Portal

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as 30 Sharman Close, Harrington Park (Lot 16 DP 1094115).

The conditions of consent are as follows:

1.0 - General Conditions of Consent

The following conditions of consent are general conditions applying to the development.

- (1) **Approved Plans and Documents** - Development shall be carried out in accordance with the following plans and documents, and all recommendations made therein, except where amended by the conditions of this development consent:

Plan Reference/ Drawing No.	Name of Plan	Prepared by	Date
Architectural Plans – Project No: 200461			
Drawing: 00 - P	Site Plan, Streetscape, Gross Floor Area	Cuevas & Associates	Date: 27/01/23
Drawing: 01 - AK	Floor Plans	Cuevas & Associates	Date: 23/02/23
Drawing: 02 - U	Roof Plan, Sections	Cuevas & Associates	Date: 27/01/23
Drawing: 10 - Y	Elevations	Cuevas & Associates	Date: 27/01/23
Drawing: 30 - G	Carpark Ramp	Cuevas & Associates	Date: 27/01/23
Drawing: 1e	Finishes Schedule	Cuevas & Associates	Undated.
Drawing: 2e	Finishes Schedule	Cuevas & Associates	Undated.
Engineering Plans			
Dwg: SW200	Stormwater Engineering Plan – Basement Plan	SGC Consulting Engineers	Rev: G, Date: 18/01/23
Dwg: SW201	Stormwater Engineering Plan – Ground Floor Plan	SGC Consulting Engineers	Rev: G, Date: 18/01/23
Dwg: SW202	Stormwater Engineering Plan – Roof Plan	SGC Consulting Engineers	Rev: G, Date: 18/01/23

Dwg: SW300	Stormwater Engineering Plan – Details Sheet	SGC Consulting Engineers	Rev: G, Date: 18/01/23
Dwg: SW400	Erosion and Sediment Control – Plan and Details	SGC Consulting Engineers	Rev: G, Date: 18/01/23
Dwg: SW500	Stormwater Engineering Plan – Music Catchment Plan	SGC Consulting Engineers	Rev: G, Date: 18/01/23
Landscape Plans – Job Ref: 22/2482			
Sheet: 1	Landscape Plan – Ground & First Floor	Paul Scrivener Landscape	Issue: E, Date: 25/01/2023
Sheet: 2	Activity Areas	Paul Scrivener Landscape	Issue: E, Date: 25/01/2023
Sheet: 3	Planting Plan – Ground & First Floor	Paul Scrivener Landscape	Issue: E, Date: 25/01/2023
Sheet: 4	Soil Areas Plan	Paul Scrivener Landscape	Issue: E, Date: 25/01/2023
Sheet: 5	Section & Elevation	Paul Scrivener Landscape	Issue: E, Date: 25/01/2023
Sheet: 6	East & West Elevation / Unencumbered Play Area Calculations	Paul Scrivener Landscape	Issue: E, Date: 25/01/2023
Sheet: 7	Details	Paul Scrivener Landscape	Issue: E, Date: 25/01/2023

Document Title	Prepared by	Date
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Noise Impact Assessment: 30 Sharman Close, Harrington Park 1235-AC-B-04	Broadcrest Consulting	January 2023
Geotechnical Investigation 22072/GK1	GDK Keighran Geotechnics	December 2022
Emergency Evacuation Plan Revision 2	Michael Brown Planning Strategies	26/01/23

(2) **Modified Documents and Plans** - The development shall be modified as follows:

- a) Carspace No. 17 upon the stormwater engineering plan basement plan SW200 Rev G, dated 18/1/23 shall be deleted and made a caged storage area consistent with floor plans, 01-AK, prepared by Cuevas & Associates, dated 23/02/23.
- b) The vehicular entry to the basement is to be from Pearson Crescent and the exit from the basement is to be to Sharman Close, as shown in the Drawing 01-AK dated 23/02/23 of the approved Architectural Plans. The directional arrows are to be reversed on the remaining approved plans and documents referred to in condition 1.0(1) to be consistent with Drawing 01-AK dated 23/02/23.

Amended plans or documentation demonstrating compliance shall be provided to the certifier and Council prior to the issue of a Construction Certificate.

- (3) **Separate Approval for Signs** - A separate development application for any proposed signs shall be provided to and approved by Council prior to the erection or display of those signs (unless the erection or display of those signs is exempt or complying development pursuant to State Environmental Planning Policy (Exempt and Complying Development Codes) 2008).
- (4) **Prior to the appointment of a Certifier** – Prior to the appointment of a Certifier by the Applicant, the Applicant is to amend the plans and the Plan of Management to the satisfaction of Camden Council, as follows:

- (i) A revised Plan of Management shall be submitted providing details of how the childcare centre undertakes laundry services, including storage of used / soiled linen, towels, clothing etc, transportation of used / soiled linen, towels, clothing etc and receipt of cleaned linen, towels, clothing etc.
- (ii) Provision for the disposal of waste water in a designated cleaners sink (located in a room near the kitchen on the ground floor) and space for storage of premises cleaning equipment (i.e. mops/brooms) shall be made within the childcare centre.

Written confirmation of satisfaction is to be received from Camden Council prior to the appointment of a Certifier or the issue of a Construction Certification.

- (5) **National Construction Code – Building Code of Australia (BCA)** - All building work shall be carried out in accordance with the BCA. In this condition, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.
- (6) **Shoring and Adequacy of Adjoining Property** - If the approved development involves excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land, including a structure or work in a road rail corridor, 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 on adjoining land from possible damage from the excavation, and
 - b) if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation.

This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land gives written consent to the condition not applying.

A copy of the written consent must be provided to the principal certifier prior to the excavation commencing.

- (7) **Engineering Specifications** - The entire development shall be designed and constructed in accordance with Council's Engineering Specifications.

- (8) **Protect Existing Vegetation and Natural Landscape Features** - Approval must be sought from Council prior to the removal, pruning, impact upon or any disturbance of the existing vegetation and natural landscape features, other than any existing vegetation and/or natural landscape feature authorised for removal, pruning, impact upon or disturbance by this development consent.

The following procedures shall be strictly observed:

- a) no additional works or access/parking routes, transecting the protected vegetation shall be undertaken without Council approval; and
- b) pedestrian and vehicular access within and through the protected vegetation shall be restricted to Council approved access routes.

The protection of existing trees and other landscape features, other than any existing trees and natural landscape features authorised for removal, pruning, impact upon or disturbance by this Consent, must be carried out as specified in the Australian Standard AS 4970-2009 Protection of Trees on Development Sites.

All initial procedures for the protection of existing trees and landscape features, as detailed in AS 4970-2009, must be installed prior to the commencement of any earthworks, demolition, excavation or construction works on the Development site.

The works and procedures involved with the protection of existing trees and other landscape features, are to be carried out by suitable qualified and experienced persons or organisations. This work should only be carried out by a fully insured and qualified Arborist.

Suitable qualifications for an Arborist are to be a minimum standard of Australian Qualification Framework (AQF) Level 3 in Arboriculture for the actual carrying out of tree works and AQF Level 5 in Arboriculture for Hazard, Tree Health and Risk Assessments and Reports.

- (9) **Street Tree Establishment and Maintenance Period** - For a period of 12 months commencing from the installation date of the street trees and their protective guards, the applicant will be responsible for their successful establishment.

At the completion of the 12 month establishment and maintenance period all street trees plantings must have signs of healthy and vigorous growth and all protective guards must be in an undamaged, safe and functional condition.

- (10) **Outdoor Lighting** – The approved development must include lighting in all areas that complies with AS 1158 and AS 4282.
- (11) **Reflectivity** - The reflectivity of glass index for all glass used externally shall not exceed 20%.
- (12) **Roof Mounted Equipment** - All roof mounted equipment such as air conditioning units, etc., required to be installed shall be integrated into the overall design of the building and not appear visually prominent or dominant from any public view. Detail drawings shall be provided prior to the issue of a construction certificate.
- (13) **Noxious Weeds Management** - Weed dispersion must be minimised and weed infestations must be managed during all stages of the development. Any noxious or environmentally invasive weed infestations that occur during or after works must be fully and continuously suppressed and destroyed by appropriate means. New infestations must be reported to Council.

Pursuant to the *Biosecurity Act 2015* and the *Biosecurity Regulation 2017*, the applicant must at all times ensure that any machinery, vehicles or other equipment entering or leaving the site are clean and free from any noxious weed material to prevent the spread of all weeds to or from the property.

Earth moved containing noxious weed material must be disposed of at an approved waste management facility and be transported in compliance with the *Biosecurity Act 2015* and the *Biosecurity Regulation 2017*.

- (14) **Infrastructure in Road and Footpath Areas** – Infrastructure must not be removed and/or reconstructed without prior written approval from Council. Any costs incurred due to the relocation, restoration or reconstruction of tram ramps, footpath, light poles, kerb inlet pits, service provider pits, street trees or other infrastructure in the street footpath area for the proposed development shall be borne by the applicant, and not Council.

Note. The issue of this development consent does not imply concurrence or approval of any required public infrastructure work associated with the development.

2.0 - Prior to Issue of a Construction Certificate

The following conditions of consent shall be complied with prior to the issue of a Construction Certificate.

- (1) **Performance Bond** - The applicant is to lodge a bond with Council to provide security for works undertaken within the existing public domain in accordance with Council's Development Infrastructure Bonds Policy.

Note. Fees are payable for the lodgement and refund of the bond.

- (2) **Selection, Operation and Location of Mechanical Plant** - The selection of mechanical plant (including kitchen and basement exhausts) and its operation should not exceed the following noise criteria when measured at adjoining residences.

- Day 50 dB(A) (LAeq, 15min)
- Evening 45 dB(A) (LAeq, 15min)

Selection, location and attenuation of mechanical plant must be undertaken with the involvement of a suitably qualified acoustic consultant.

- (3) **Information for Construction Certificate** – The following information shall be provided to the certifier with the Construction Certificate application:

- a) The 375mm diameter pipe within the road reserve is to be designed to have minimum 600mm cover.

- (5) **Structural Engineer's Details** - The piers/slabs/footings/structural elements shall be designed and certified by a suitably qualified structural engineer and shall take into consideration the recommendations of any geotechnical report

applicable to the site. A statement to that effect shall be provided to the accredited certifier.

- (6) **Driveway Gradients and Design** - The design of all driveways shall comply with AS 2890.1-2004 'Off street car parking' and:

- a) the driveway shall comply with Council's Access Driveway Specifications; <https://www.camden.nsw.gov.au/assets/pdfs/Development/Preparing-a-DA/Development-Guidelines-and-policies/Access-Driveways-Specifications-and-Drawings.pdf>
- b) the driveway shall be at least 1m from any street tree, stormwater pit or service infrastructure;
- c) the level for the driveway across the footpath area shall achieve a gradient of 4%; and
- d) a Driveway Crossing Approval (PRA) must be obtained prior to the issue of a Construction Certificate.

Details demonstrating compliance shall be provided to the certifier prior to issue of a Construction Certificate.

- (7) **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 the accredited certifier must:

- a) be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use 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 includes an appropriate level of detail to demonstrate compliance with the NCC as proposed.

- (8) **Civil Engineering Plans** - Civil engineering plans indicating drainage, roads, accessways, earthworks, pavement design, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, shall be prepared in accordance with the approved plans and Council's Engineering Design and Construction Specifications.

Details demonstrating compliance shall be provided to the certifier with the Construction Certificate application.

A stormwater plan is to be submitted to the certifier prior to the augmentation of the existing drainage system to accommodate drainage from the approved development and to protect other property to the satisfaction of the certifier.

Note. Under the *Roads Act 1993*, only the Roads Authority can approve commencement of works within an existing road reserve.

- (9) **Stormwater Detention and Water Quality** - An on-site detention system and water quality system shall be provided for the site and designed in accordance with Council's Engineering Specifications.

Where a Construction Certificate is required by this development consent, a detailed on-site detention and water quality report reflecting the Construction Certificate plans shall be provided to the certifier with the Construction Certificate application.

- (10) **Soil, Erosion, Sediment and Water Management** - An erosion and sediment control plan shall be prepared in accordance with 'Managing Urban Stormwater – Soils and Construction ('the blue book'). Details demonstrating compliance shall be provided to the certifier with the Construction Certificate application.
- (11) **Works in Road Reserves** - Where any works are proposed in a public road reservation, the relevant Public Road Activity Approval (Road Works Application, Road Opening Permit and/or Road Occupancy Permit) shall be obtained from Council in accordance with Section 138 of the Roads Act 1993.
- (12) **Garbage Room** - Plans showing the location and details of garbage room(s) and room(s) used for the washing and storage of garbage receptacles shall be provided to the accredited certifier for approval. Garbage room(s) are to be constructed of solid material and finished as a smooth even surface. A tap shall be provide for washing bins and cleaning the room. Floors are to be impervious, coved, graded and drained to an appropriate floor waste connection. Walls are to be smooth impervious surfaces to ensure no moisture, oils or similar material can soak in. Ventilation, pest proofing and a hose tap must be provided.

- (13) **Car Park Noise Control** – All off-street (including basement) car parks must have a coved finish with Slabseal 2000 SR sealant (or similar equivalent product) applied to the concrete floor. The coved finish and sealant must be suitably maintained on the floor of all car parks at all times to a standard that eliminates tyre squeal noise from being audible.

Details demonstrating compliance shall be provided to the accredited certifier with the Construction Certificate application.

- (14) **Detailed Landscape Plan** - A detailed landscape plan must be prepared in accordance with Appendix B of Camden Development Control Plan 2019. Details demonstrating compliance must be provided to the certifier.

- (15) **Sydney Water Trade Waste** - The applicant shall contact the Commercial Trade Waste section of Sydney Water regarding the trade waste requirements. A written response from Sydney Water demonstrating compliance shall be provided to the certifier and Council.

- (16) **Food Premises** - The design, construction, fit-out, use and ongoing operation of the food premises and/or food storage area shall comply with all applicable Acts, Regulation, codes and standards including:

- a) the *Food Act 2003*;
- b) the Food Regulation 2015;
- c) Food Standards Australia and New Zealand – Food Standards Code 2003;
- d) AS 1668.1-2015 and 1668.2-2012;
- e) the BCA; and
- f) AS 4674-2004 Design, construction and fitout of food premises

Details demonstrating compliance shall be provided to the certifier with the Construction Certificate application.

- (17) **Mechanical Ventilation** - Any room or area not provided with natural ventilation in accordance with the relevant requirements of the Building Code

of Australia must be provided with a system of mechanical ventilation that complies with the requirements of Australian Standard 1668, Parts 1 & 2. Details demonstrating compliance shall be provided to the certifier with the Construction Certificate application.

- (18) **Fibre-Ready Facilities/Telecommunications Infrastructure** – Documentary evidence must be provided to the certifier demonstrating that satisfactory arrangements have been made for:

- a) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. The carrier must confirm in writing that they are satisfied that the fibre-ready facilities are fit for purpose; and
- b) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

This condition does not apply where an applicable exemption exists under Commonwealth law. Documentary evidence of any exemption relied upon must be provided to the certifier.

- (19) **Damages Bond** - The applicant is to lodge a bond with Council to ensure any damage to existing public infrastructure is rectified in accordance with Council's Development Infrastructure Bonds Policy.

Note. A fee is payable for the lodgement of the bond.

- (20) **Long Service Levy** - In accordance with the *Building and Construction Industry Long Service Payments Act 1986*, the applicant shall pay a long service levy at the prescribed rate to either the Long Service Payments Corporation or Council. This applies to building and construction works with a cost of \$250,000 or more.

3.0 - Prior to Commencement of Works

The following conditions of consent shall be complied with prior to any works commencing on the development site.

- (1) **Public Liability Insurance** - The owner or contractor shall take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the

occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc) for the full duration of the proposed works. Evidence of this Policy shall be provided to Council and the certifier.

- (2) **Notice of Principal Certifier** - Notice shall be given to Council at least two (2) days prior to subdivision and/or building works commencing in accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*. The notice shall include:

- a) a description of the work to be carried out;
- b) the address of the land on which the work is to be carried out;
- c) the registered number and date of issue of the relevant development consent;
- d) the name and address of the principal certifier, and of the person by whom the principal certifier was appointed;
- e) the certifier's registration number, and a statement signed by the certifier consenting to being appointed as principal certifier; and
- f) a telephone number on which the principal certifier may be contacted for business purposes.

- (3) **Notice of Commencement of Work** - Notice shall be given to Council at least two (2) days prior to subdivision and/or building works commencing in accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*. The notice shall include:

- a) the name and address of the person by whom the notice is being given;
- b) a description of the work to be carried out;
- c) the address of the land on which the work is to be carried out;
- d) the registered number and date of issue of the relevant development consent and construction certificate;
- e) a statement signed by or on behalf of the principal certifier (only where no principal certifier is required) to the effect that all conditions of the consent that are required to be satisfied prior to the work commencing have been satisfied; and
- f) the date on which the work is intended to commence.

- (4) **Construction Certificate Required** - In accordance with the requirements of the *EP&A Act 1979*, building or subdivision works approved by this consent shall not commence until the following has been satisfied:
- a) a Construction Certificate has been issued by a certifier;
 - b) a principal certifier has been appointed by the person having benefit of the development consent;
 - c) if Council is not the principal certifier, Council is notified of the appointed principal certifier at least two (2) days before building work commences;
 - d) the person having benefit of the development consent notifies Council of the intention to commence building work at least two (2) days before building work commences; and
 - e) the principal certifier is notified in writing of the name and contractor licence number of the owner/builder intending to carry out the approved works.
- (5) **Sign of Principal Certifier and Contact Details** - A sign shall be erected in a prominent position on the site stating the following:
- a) that unauthorised entry to the work site is prohibited,
 - b) the name of the principal contractor, if any, for the building work and a telephone number on which the principal contractor may be contacted outside working hours, and
 - c) the name, address and telephone number of the principal certifier for the work.
- The sign must be maintained while the work is being carried out and removed when the work has been completed.
- (6) **Site is to be Secured** - The site shall be secured and fenced.
- (7) **Sydney Water Approval** – The approved construction certificate plans must also be approved by Sydney Water to determine if sewer, water or stormwater mains or easements will be affected by any part of the development. Go to www.sydneywater.com/tapin to apply.

A copy of the approval receipt from Sydney Water must be submitted to the principal certifier.

- (8) **Soil Erosion and Sediment Control** - Soil erosion and sediment controls must be implemented prior to works commencing on the site in accordance with 'Managing Urban Stormwater – Soils and Construction ('the blue book') and any Sediment and Erosion plans approved with this development consent.
- (9) **Dilapidation Report – Adjoining Property** – A dilapidation report prepared by a suitably qualified person, including a photographic survey of the following adjoining properties shall be prepared.

- a) Lot 15 DP1072388 – 28 Sharman Close, Harrington Park
- b) Lot 8 DP1190680 – 32 Sharman Close, Harrington Park
- c) Lot 1 DP1190680 – 78 Pearson Crescent, Harrington Park

All costs incurred in preparing the dilapidation report and complying with the conditions it imposes shall be borne by the applicant.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant shall demonstrate in writing that all reasonable steps have been taken to obtain access to and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence shall be obtained from the principal certifier in such circumstances.

- (10) **Dilapidation Report – Council Property** - A dilapidation report prepared by a suitably qualified person, including a photographic survey of existing public roads, kerbs, footpaths, drainage structures, street trees and any other existing public infrastructure within the immediate area of the site shall be prepared. The report must be submitted to the principal certifier and Council at least 2 days prior to the commencement of works.

Should any public property or the environment sustain damage during the course of and as a result of construction, or if the construction works put Council's assets or the environment at risk, Council may carry out any works necessary to repair the damage or remove the risk. The costs incurred will be deducted from the applicant's damages bond.

- (11) **Traffic Management Plan** - A traffic management plan shall be prepared in accordance with Council's Engineering Specifications and AS 1742.3. The plan must be submitted to the principal certifier.

- (12) **Construction Management Plan** - A construction management plan that includes dust, soil and sediment and traffic management, prepared in accordance with Council's Engineering Design Specification, shall be provided to the principal certifier.
- (13) **Environmental Management Plan** - An environmental management plan (EMP) prepared in accordance with Council's Engineering Design Specification shall be provided to the principal certifier.

The EMP shall address the manner in which site operations are to be conducted and monitored to ensure that adjoining land uses and the natural environment are not unacceptably impacted upon by the proposal. The EMP shall include but not be necessarily limited to the following measures:

- a) measures to control noise emissions from the site;
 - b) measures to suppress odours and dust emissions;
 - c) soil and sediment control measures;
 - d) measures to control air emissions that includes odour;
 - e) measures and procedures for the removal of hazardous materials that includes waste and their disposal;
 - f) any other recognised environmental impact;
 - g) work, health and safety; and
 - h) community consultation.
- (14) **Construction Noise Management Plan** – A construction noise management plan shall be provided to the principal certifier and include the following:
- a) noise mitigation measures;
 - b) noise and/or vibration monitoring;

- c) use of respite periods;
 - d) complaints handling; and
 - e) community liaison and consultation.
- (15) **Protection of Existing Street Trees** - No existing nature strip, street tree, tree guard, protective bollard, garden bed surrounds or root barrier installation shall be disturbed, relocated, removed or damaged during earthworks, demolition, excavation (including any driveway installation), construction, maintenance and/or establishment works applicable to this consent, without Council agreement and/or consent.

The protection methods for existing nature strip, street tree, tree guard, protective bollard, garden bed surrounds or root barrier installation during all works approved by this development consent shall be installed in accordance with AS 4970-2009 Protection of Trees on Development Sites.

- (16) **Protection of Trees to be Retained** - Protection of trees to be retained shall be in accordance with Council's Engineering Specifications. The area beneath the canopies of the tree(s) to be retained shall be fenced. Tree protection signage is required to be attached to each tree protection zone, and displayed in a prominent position.

4.0 - During Works

The following conditions of consent shall be complied with during the construction phase of the development.

- (1) **Work Hours** - All work (including delivery of materials) shall be:
- restricted to between the hours of 7am to 5pm Monday to Saturday (inclusive), and
 - not carried out on Sundays or public holidays,
- unless approved in writing by Council.
- (2) **Excavations and Backfilling** - All excavations and backfilling associated with the approved development must be executed safely and protected to prevent

them from being dangerous to life or property, and in accordance with the design of a suitably qualified structural engineer.

If an excavation extends below the level of the base of the footings of a building, structure or work on adjoining land, including a structure or work in a road rail corridor, the person causing the excavation must:

- a) protect and support the building, structure or work on adjoining land from possible damage from the excavation,
- b) if necessary, underpin the building, structure or work on adjoining land to prevent damage from the excavation, and
- c) give at least 7 days notice of the intention to excavate to the owner of the adjoining land before excavating.

The above requirements do not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land gives written consent to the requirements not applying.

The principal contractor, owner builder or any person who needs to excavate and undertake building work, shall contact 'Dial Before You Dig' prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.

- (3) **Stormwater – Collection and Discharge Requirements** - The roof of the subject building(s) shall be provided with guttering and down pipes and all drainage lines, including stormwater drainage lines from other areas and overflows from rainwater tanks, conveyed to the approved drainage system.

Connection to the drainage easement or kerb shall only occur at the designated connection point for the allotment. New connections that require the rectification of an easement pipe or kerb shall only occur with the prior approval of Camden Council.

All roof water shall be connected to the approved roof water disposal system immediately after the roofing material has been fixed to the framing members. The principal certifier shall not permit construction works beyond the frame inspection stage until this work has been carried out.

- (4) **Site Management** - The following practices are to be implemented during construction:
- a) stockpiles of topsoil, sand, aggregate, spoil or other material shall be kept clear of any drainage path, easement, natural watercourse, kerb or road surface and shall have measures in place to prevent the movement of such material off site;
 - b) builder's operations such as brick cutting, washing tools, concreting and bricklaying shall be confined to the building allotment. All pollutants from these activities shall be contained on site and disposed of in an appropriate manner;
 - c) waste shall not be burnt or buried on site or any other properties, nor shall wind-blown rubbish be allowed to leave the site. All waste shall be disposed of at a licenced waste disposal facility;
 - d) a waste storage area shall be located on the site;
 - e) all building materials, plant, equipment and waste control containers shall be placed on the building site. Building materials, plant and equipment (including water closets), shall not to be placed on public property (footpaths, roadways, public reserves, etc);
 - f) toilet facilities shall be provided at, or in the vicinity of, the work site at the rate of 1 toilet for every 20 persons or part thereof employed at the site. Each toilet shall:
 - i) be a standard flushing toilet connected to a public sewer; or
 - ii) have an on-site effluent disposal system approved under the *Local Government Act 1993*; or
 - iii) be a temporary chemical closet approved under the *Local Government Act 1993*.
- (5) **Finished Floor Level** - A survey report prepared by a registered land surveyor confirming that the finished floor level complies with the approved plans or floor levels specified by the development consent, shall be provided to principal certifier prior to the development proceeding beyond floor level stage.
- (6) **Building Height** - A survey report prepared by a registered land surveyor confirming that the building height complies with the approved plans or as specified by the development consent, shall be provided to the principal certifier prior to the development proceeding beyond frame stage.

- (7) **Survey Report** - The building shall be set out by a registered land surveyor. A peg out survey detailing the siting of the building in accordance with the approved plans shall be provided to the principal certifier prior to the pouring of concrete.

- (8) **Traffic Management Plan Implementation** - All traffic management procedures and systems identified in the approved traffic management plan shall be introduced and maintained during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.

- (9) **Site Signage** - A sign shall be erected at all entrances to the site and be maintained until the development has been completed. The sign shall be constructed of durable materials, be a minimum of 1200mm x 900mm, and read as follows:

"WARNING UP TO \$8,000 FINE. It is illegal to allow soil, cement slurry or other building materials to enter, drain or be pumped into the stormwater system. Camden Council (02 4654 7777) – Solution to Pollution."

The wording shall be a minimum of 120mm high and the remainder a minimum of 60mm high. The warning and fine details shall be in red bold capitals and the remaining words in dark coloured lower case letters on a white background, surrounded by a red border.

- (10) **Vehicles Leaving the Site** - The construction supervisor must ensure that:

- all vehicles transporting material from the site cover such material so as to minimise sediment transfer;
- the wheels of vehicles leaving the site:
 - do not track soil and other waste material onto any public road adjoining the site; and
 - fully traverse the site's stabilised access point.

- (11) **Seal Up Existing Redundant Laybacks** – All existing redundant laybacks must be sealed up to match the existing concrete gutter on the road.

- (12) **Fill Compaction** - All fill must be compacted in accordance with Camden Council's current Engineering Design Specifications.
- (13) **Removal of Waste Materials** - Where there is a need to remove any identified materials from the site that contain fill/rubbish/asbestos, the waste material shall be assessed and classified in accordance with the NSW EPA Waste Classification Guidelines 2014 (refer to: www.epa.nsw.gov.au/wasteregulation/classify-guidelines.htm)

Once assessed, the materials shall be disposed of to a licensed waste facility suitable for that particular classification of waste. Copies of tipping dockets shall be retained and supplied to Council upon request.

- (14) **Soil, Erosion, Sediment and Water Management – Implementation** - All requirements of the erosion and sediment control plan and/or soil and water management plan shall be maintained at all times during the works and any measures required by the plan shall not be removed until the site has been stabilised.
- (15) **Noise During Work** - Noise levels emitted during works must comply with:
- (a) Construction period of 4 weeks and under:
- The LAeq level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- (b) Construction period greater than 4 weeks and not exceeding 26 weeks:
- The LAeq level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A).
- (c) Construction period greater than 26 weeks:
- The LAeq level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background level by more than 5 dB(A).

Alternatively, noise levels emitted during works shall be restricted to comply with the NSW Environment Protection Authority Interim Construction Noise Guidelines.

- (16) **Location of Stockpiles** - Stockpiles of soil shall not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies. All stockpiles of contaminated materials shall be suitably covered to prevent dust and odour nuisance.
- (17) **Disposal of Stormwater** - Water seeping into any site excavations is not to be pumped into the stormwater system unless it complies with relevant EPA and ANZECC standards for water quality discharge.
- (18) **Delivery Register** - The applicant must maintain a register of deliveries which includes date, time, truck registration number, quantity of fill, origin of fill and type of fill delivered. This register must be made available to Council officers on request and be provided to the Council at the completion of the development.
- (19) **Fill Material (VENM)** - Prior to the importation and/or placement of any fill material on the subject site, an assessment report and sampling location plan for such material must be provided to and approved by the principal certifier.

The assessment report and associated sampling location plan must:

- a) be prepared by a contaminated land specialist; and
- b) be endorsed by a practising engineer with Specific Area of Practice in Subdivisional Geotechnics; and
- c) be prepared in accordance with;

Virgin Excavated Natural Material (VENM):

- i) the Department of Land and Water Conservation publication "Site investigation for Urban Salinity;" and
 - ii) the Department of Environment and Conservation - Contaminated Sites Guidelines "Guidelines for the NSW Site Auditor Scheme (Third Edition) - Soil Investigation Levels for Urban Development Sites in NSW."
- d) confirm that the fill material;
- i) provides no unacceptable risk to human health and the environment;
 - ii) is free of contaminants;

- iii) has had salinity characteristics identified in the report, specifically the aggressiveness of salts to concrete and steel (refer Department of Land and Water Conservation publication "Site investigation for Urban Salinity");
- iv) is suitable for its intended purpose and land use; and
- v) has been lawfully obtained.

Sampling of VENM for salinity of fill volumes:

- e) less than 6000m³ - 3 sampling locations; and
- f) greater than 6000m³ - 3 sampling locations with 1 extra location for each additional 2000m³ or part thereof.

For e) and f) a minimum of 1 sample from each sampling location must be provided for assessment.

Sampling of VENM for contamination and salinity must be undertaken in accordance with the following table:

Classification of Fill Material	No of Samples Per Volume	Volume of Fill (m ³)
Virgin Excavated Natural Material	1 (see Note)	1000 or part thereof

Note – Where the volume of each fill classification is less than that required above, a minimum of 2 separate samples from different locations must be taken.

- (20) **Offensive Noise, Dust, Odour and Vibration** - All work shall not give rise to offensive noise, dust, odour or vibration as defined in the *Protection of the Environment Operations Act 1997* when measured at the property boundary.
- (21) **Building Construction Components** - To control noise emissions the building treatment options must be consistent with "Table 8.1.1" in *"Noise Impact Assessment: 30 Sharman Close Harrington Park, Prepared by Broadcrest Consulting, Dated January 2023."*
- (22) **Acoustic Wall** - A solid acoustic fence of 1.8 metres in height is to be constructed part way along the carpark entry driveway on the southern side and return along the property boundary (facing Sharman Close) to meet the southern side boundary consistent with "Section 8.3" in report *"Noise Impact Assessment: 30 Sharman Close Harrington Park, Prepared by Broadcrest Consulting, Dated January 2023."*

(23) **Acoustic Fences** - Solid acoustic fences of 2.0 metres in height are to be constructed along the northern– east and south-west property boundaries and a 1.8 metre acoustic fence to the outdoor play area 2 metres inside the south west boundary consistent in location with “Section 8.3” in report “*Noise Impact Assessment: 30 Sharman Close Harrington Park, Prepared by Broadcrest Consulting, Dated January 2023.*”

(24) **Acoustic Fences** - Solid acoustic balustrades of 1.2 metres in height are to be constructed along the perimeter of the outdoor play area on level 1 consistent with “Section 8.3” in report “*Noise Impact Assessment: 30 Sharman Close Harrington Park, Prepared by Broadcrest Consulting, Dated January 2023.*”

(25) **Erosion and Sedimentation Control** - Soil erosion and sedimentation controls are required to be maintained for the duration of the works. The controls must be undertaken in accordance with version 4 of the Soils and Construction – Managing Urban Stormwater manual (Blue Book).

Soil erosion and sediment control measures shall only be removed upon completion of the works when all landscaping and disturbed surfaces have been stabilised (for example, with site turfing, paving or re-vegetation).

(26) **Construction Noise Management Plan** - All operations must be carried out in accordance with the recommendations contained in the Construction Noise Management Plan, including:

- a) noise mitigation measures
- b) noise and/or vibration monitoring
- c) use of respite periods
- d) complaints handling, and
- e) community liaison and consultation

(27) **Protection for Existing Trees** – The protection of existing trees (on-site and street trees) must be carried out as specified by AS 4970 Protection of Trees on Development Sites.

(28) **Unexpected Finds Contingency (General)** - Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.),

such works shall cease immediately until a certified contaminated land consultant has been contacted and conducted a thorough assessment.

In the event that contamination is identified as a result of this assessment and if remediation is required, all works shall cease in the vicinity of the contamination and Council shall be notified immediately.

Where remediation work is required, the applicant will be required to obtain consent for the remediation works.

- (29) **Salinity Management Plan** - All approved development that includes earthworks, imported fill, landscaping, buildings and associated infrastructure must be carried out or constructed in accordance with the salinity control measures contained in Council's Engineering Specifications.
- (30) **Relics Discovery During Works** – If any relic surviving from the past is uncovered during the work that could have historical significance (but is not an aboriginal object):
- all work must stop immediately in that area;
 - Heritage NSW must be advised of the discovery in writing in accordance with Section 146 of the *Heritage Act 1977*, and
 - any requirements of Heritage NSW must be implemented.
- (31) **Aboriginal Objects Discovered During Works** – If any Aboriginal object (including evidence of habitation or remains) is discovered during the work:
- all excavation or disturbance of the area must stop immediately in that area,
 - Heritage NSW must be advised of the discovery in writing in accordance with Section 89A of the *National Parks and Wildlife Act 1974*, and
 - any requirements of Heritage NSW must be implemented.
- (32) **Waste Management Plan** - All waste generated from the development must be managed in accordance with the plan "*Waste Management Plan*,

Prepared by Jay Squillacioti, Dated 15 June 2022." (or similar plan) and be kept on site until the completion of all construction works.

5.0 - Prior to Issue of an Occupation Certificate

An Occupation Certificate shall be obtained prior to any use or occupation of the development. The following conditions of consent shall be complied with prior to the issue of an Occupation Certificate.

- (1) **Fire Safety Certificates** - A Fire Safety Certificate shall be provided to the principal certifier in accordance with the requirements of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
- (2) **Survey Certificate** - A registered surveyor shall prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate shall be provided to the satisfaction of the principal certifier.
- (3) **Building Height** - A registered surveyor shall certify that the maximum height of the building is consistent with the height in the approved plans and this consent. The certification/verification shall be provided to the satisfaction of the principal certifier.
- (4) **Compliance Certificate** - Once the installation of the mechanical ventilation system is completed, a Certificate of Compliance prepared by a suitably qualified mechanical engineer with details of tests carried out shall be provided to the principal certifier. Verification shall be provided that the air handling system as installed has been tested and complies with the approved plans and specifications, including ventilation requirements and fire precautions.
- (5) **Driveway Crossing Construction** – A footpath crossing (where required) and a driveway crossing shall be constructed in accordance with this development consent and the driveway crossing approval prior to use or occupation of the development.

- (6) **Services** - Certificates and/or relevant documents shall be obtained from the following service providers and provided to the principal certifier:

- a) Energy supplier – A Notice of Arrangement for the provision of distribution of electricity from Endeavour Energy to service the proposed development;
- b) Water supplier – A Section 73 Compliance Certificate demonstrating that satisfactory arrangements have been made with a water supply provider to service the proposed development.

The assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to Sydney Water mains. Sydney Water will assess the development and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC). Go to www.sydneywater.com.au/section73 or phone 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

- (7) **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 an Occupation Certificate principal certifier must:

- a) be satisfied that suitable evidence is provided to demonstrate that the products and systems 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 includes an appropriate level of detail to demonstrate compliance with the NCC as built.

- (8) **Positive Covenant – OSD / On Site Retention / Water Quality Facility** - A positive covenant shall be created under Section 88E of the Conveyancing Act 1919 burdening the owner(s) with a requirement to maintain the on-site detention (OSD), water quality facility (WQF) and on-site retention (OSR)/re-use facilities on the property, prior to the issue of an Occupation Certificate.

The terms of the Section 88E instrument with positive covenant shall include the following:

- a) the Proprietor of the property shall be responsible for maintaining and keeping clear all pits, pipelines, trench barriers and other structures.
- b) The proprietor shall have the facilities inspected by a competent person in accordance with the frequency on the approved maintenance schedule.
- c) the Council shall have the right to enter upon the land referred to above, at all reasonable times to inspect, construct, install, clean, repair and maintain in good working order the facilities.
- d) The registered proprietor shall indemnify the Council and any adjoining land owners against damage to their land arising from the failure of any component of the OSD, WQF and OSR, or failure to clean, maintain and repair the OSD, WQF and OSR.
- e) The Council may recover as a liquidated debt the cost of such remedial work from the proprietor forthwith upon demand.

The proprietor or successor shall bear all costs associated in the preparation of the subject Section 88E instrument. Proof of registration with NSW Land Registry Services shall be provided to and approved by the PCA prior to the issue of an Occupation Certificate.

- (9) **Stormwater – Plan of Management (PoM)** - The registered proprietor of the land shall prepare a Plan of Management (POM) for the on-site detention facilities. The POM shall set out all design and operational parameters for the detention facilities including design levels, hydrology and hydraulics, inspection and maintenance requirements, and time intervals for such inspection and maintenance. The POM shall be provided to the principal certifier for approval.
- (10) **On-Site Detention and/or Water Quality Facility – Works As Executed Plans** - Works-As-Executed plans certified by a Registered Surveyor shall be submitted to the Principal Certifying Authority to verify that the drainage works have been completed in accordance with the stamped approved plans. The following details shall be shown on the Work-as-Executed plans and shall be marked in red on a copy of the original stamped approved plan at the Construction Certificate stage:
 - a) Sufficient levels and dimensions to verify the OSD and Water Quality Facility storage volume, including the volume achieved.

- b) Levels and other relevant dimensions of:
 - i) Internal drainage pipe
 - ii) Orifice plates
 - iii) Outlet control devices/pits
 - iv) Weirs, including widths
- c) Verification that the orifice plates have been fitted and the diameter of the fitted plates.
- d) Verification of the trash screen is stalled.

The details provided on the WAE plans shall also be in accordance with Council's Engineering Specifications.

- (11) **Completion of Road Works** - All approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance with the *Roads Act* Approval.
- (12) **Deleted.**
- (13) **Geotechnical Compliance Certificate** - A Certificate of Compliance prepared by a suitably qualified and experienced Geotechnical Engineer shall be provided to the principal certifier stating that the works detailed in the Geotechnical Report have been undertaken under the Engineer's supervision and to the Engineer's satisfaction, and that the assumptions relating to site conditions made in preparation of the report were validated during construction. This certificate shall accompany the Works as Executed plans.
- (14) **Reinstate Verge** - The applicant shall construct and/or reconstruct the unpaved verge area with grass, species and installations approved by Council.
- (15) **Waste Management Plan** - The principal certifier shall ensure that all works have been completed in accordance with the approved waste management plan referred to in this development consent.
- (16) **Waste Collection Contract** - The building owner shall ensure that there is a contract with a licensed contractor for the removal of all waste. A copy of the contract is to be held on the premises at all times.

- (17) **Mechanical Exhaust System** - A Certificate of Compliance prepared by a suitably qualified engineer confirming that the mechanical exhaust systems have been designed, constructed and installed in accordance with the relevant requirements of Clause F4.12 of the BCA and AS1668 Parts 1 and 2, shall be provided to the principal certifier. Certification shall be provided that the air handling system as installed has been tested and complies with the approved plans and specifications, including ventilation requirements and fire precautions.
- (18) **Acoustic Compliance Report** – A report shall be prepared by an independent acoustic consultant and be submitted to the principal certifier certifying that noise levels from mechanical plant will comply with the following criteria when measured at the nearest residential boundary:
- Mechanical Plant: Day 50dB(A) (LAeq, 15min)
 - Mechanical Plant: Evening dB(A) (LAeq, 15 min)

All noise attenuation materials and structures used for the mitigation and control of noise must be compliant with the conditions of this development consent.

For any non-compliance, the report must make recommendations for compliance or further attenuation of noise sources and these recommendations will be enforced by Council at the cost of the owner/occupier.

The owner/occupier must then provide a supplementary acoustic report to the principal certifier certifying that all compliance works have been completed and that noise levels comply with the above criteria.

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- (19) **Completion of Landscape Works** - All landscape works, including the removal of noxious weed species, are to be undertaken in accordance with the approved landscape plan and conditions of this development consent.
- (20) **Inspection of Existing Street Trees** – All existing street trees must be inspected by Council to ensure that they are undamaged and in a healthy condition.
- (21) **Food Premises Notification** - Council shall be notified that the premises is being used for the preparation, manufacture or storage of food for sale, or

food intended for sale. A 'Notification of Food Premises' form can be found on Council's website.

- (22) **Signage** – Suitable signage advising all carpark users to reduce noise is required to be fixed at the entrance and exit points of the childcare centre.

6.0 - Ongoing Use

The following conditions of consent are operational conditions applying to the development.

- (1) **Restricted Numbers of Children During External Play** – The maximum number of children permitted to participate in external play at any one time is restricted to 20 children.
- (2) **Noise Training for Staff** – All staff must receive appropriate training in noise control to minimise noise impact on external noise receivers.
- (3) **Windows and Doors** – All external windows and doors to the internal play areas must be closed during indoor play time and when music is played.
- (4) **Amplified Music** – The use of amplified music in outdoor areas of the childcare centre is prohibited.
- (5) **Operational Management Plan** – The operation of the centre (that includes the training of staff) must ensure compliance with the approved Operational Management Plan.
- (6) **Manoeuvring of Vehicles** - All vehicles shall enter and exit the site in a forward direction.
- (7) **Removal of Graffiti** - The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
- (8) **Hours of Operation** - The property is only to be open for business and used for the purpose approved within the following hours:

Day	Hours of Operation
Monday to Friday	7am – 6pm

- (9) **Waste and Delivery Vehicles Operating Hours** - Delivery and waste vehicles to the site shall only occur during the hours of 7.00am and 6.00pm Monday to Friday.
- (10) **Loading to Occur on Site** - All loading and unloading operations are to be carried out wholly within the building/site.
- (11) **Signage** - No consent is given or implied for any form of illumination or floodlighting to any sign.
- (12) **Driveways to be Maintained** - All access crossings and driveways shall be maintained in good order for the life of the development.
- (13) **Parking Areas to be Kept Clear** - At all times, the loading docks, car parking spaces, driveways and footpaths shall be kept clear of goods and shall not be used for storage purposes.
- (14) **Number of Children** – The centre is approved to accommodate a maximum of 68 children. However, this maximum number shall be reduced to any lower number of children that is separately approved for the centre by the Department of Education.
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- (15) **Department of Education Approval** – The centre must comply with all requirements of the Department of Education. A letter from the Department of Education which details the approved number and age of children to be accommodated at the centre, and any operational conditions, must be submitted to Council prior to the centre becoming operational.

Should the Department of Education approval be subsequently amended at any time the operator of the centre must submit a copy of the amended approval to Council.

- (16) **Discharge into Waterways** - No wastewater, chemicals or other substances shall be permitted to discharge to the waterway that runs through the site or Council's stormwater system. Only clean, unpolluted water is permitted to discharge. All liquids (such as oils lubricants, hydraulic fluids, fuel, paints, detergents and any other chemicals) shall be stored in a covered and suitably bunded area.
- (17) **Liquid Spills** - Sufficient supplies of appropriate absorbent materials and other spill prevention and clean-up materials shall be kept on site to recover any liquid spillage. Liquid spills shall be cleaned up using dry methods, by placing absorbent material on the spill and sweeping or shovelling the material into a secure bin. Materials used to clean up shall be disposed of to an appropriately licensed waste facility.
- (18) **Storage of goods** - The storage of goods and materials shall be confined within the building. At no time shall goods, materials or advertising signs be displayed or placed within the designated car parking spaces, landscaped areas or road reserve.
- (19) **Amenity** - The approved development shall be conducted and patrons controlled at all times so that no interference occurs to the amenity of the area, the footpath, adjoining occupations or residential/business premises.
- (20) **Pollution Control** - The use and operation of the premises shall not give rise to the discharge (by air, water or land) of any pollutant which may degrade the environment or be prejudicial to its inhabitants, in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.
- (21) **Offensive Noise and Noise Compliance** - The use and occupation of the premises including all plant and equipment shall not give rise to any offensive noise within the meaning of the *Protection of the Environment Operations Act 1997*. Noise must also comply with the NSW Noise Policy for Industry 2017.
- (22) **No Waste to Be Stored Outside of the Site** – No waste is to be placed on any public land (eg. footpaths, roadways, plazas, reserves, etc.) or any other properties at any time.
- (23) **Maintenance of Landscaping** - Landscaping shall be maintained in accordance with the approved landscape plan.

- (24) **Landscaping Maintenance Establishment Period** - Commencing from the date of practical completion, the applicant will have the responsibility to establish and maintain all hard and soft landscaping elements associated with this consent.

The 12 month maintenance and establishment period includes the applicant's responsibility for the establishment, care and repair of all landscaping elements including all street tree installations, plantings, lawn and hardscape elements including paths, walls, bins, seats, BBQs, shelters, playground equipment and soft fall treatments.

The date of practical completion is taken to mean completion of all civil works, soil preparation and treatment and initial weed control, and completion of all planting, turf installation, street tree installation and mulching.

At the completion of the 12 month landscaping maintenance and establishment period, all hard and soft landscaping elements (including any nature strip and road verge areas, street trees, street tree protective guards and bollards, etc) shall be in an undamaged, safe and functional condition and all plantings have signs of healthy and vigorous growth.

At the completion of the maintenance and establishment period, the landscaping works shall comply with the approved landscape plans and all improvements be in full working order.

- (25) **Food Premises** - All equipment (including pie warmers, hot food display units, etc) used for the display or storage of hot food shall maintain the food at a temperature of not less than 60°C.

All equipment used for the display or storage of cold food shall maintain the food at a temperature of not more than 5°C.

A food business must, at food premises where potentially hazardous food is handled, have a temperature measuring device (eg probe thermometer) that:

- a) Is readily accessible; and
- b) Can accurately measure the temperature of potentially hazardous food

to +/-1oC

A suitable waste contractor(s) must be engaged for the removal of wastes generated at the premises. All bins and waste storage facilities at the premises are to be sealed and emptied on a regular basis to prevent odour, vermin and fire hazards from occurring.