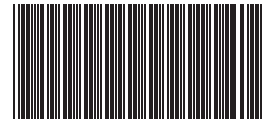




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### Section 34 Agreement

#### COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2021/00028720

#### TITLE OF PROCEEDINGS

First Applicant	MUSCAT DEVELOPMENTS PTY LTD trading as MUSCAT DEVELOPMENTS PTY LTD ACN 059306900
First Respondent	CAMDEN COUNCIL ABN 31117341764

#### FILING DETAILS

Filed for	CAMDEN COUNCIL, Respondent 1
Legal representative	Anthony Mark Hudson
Legal representative reference	
Telephone	02 9299 3311
Your reference	CR: 880019

#### ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Section 34 Agreement (20210730 s.34 Agreement Camden ats Muscat.pdf)

[attach.]

## AGREEMENT BETWEEN PARTIES

### Section 34(3)(a)

#### COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2021/28720

#### TITLE OF PROCEEDINGS

Applicant	<b>MUSCAT DEVELOPMENTS PTY LTD t/as MUSCAT DEVELOPMENTS PTY LTD</b>
Respondent	<b>CAMDEN COUNCIL</b>

#### FILING DETAILS

Filed for	<b>CAMDEN COUNCIL</b> , Respondent
Legal representative	Anthony Mark Hudson Wilshire Webb Staunton Beattie Lawyers
Legal representative's reference	CR: 221064
Contact name and telephone	Cecilia Rose (02) 9299 3311

#### AGREEMENT BETWEEN PARTIES – Section 34(3)(a)

- A The parties have reached an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions).
- B The terms of the decision are as follows:
- 1 The Appeal is upheld.
  - 2 The Applicant is granted leave to rely upon the plans prepared by Martens & Associates, dated 15 July 2021: PS02-C100 – Earthworks Grading Plan, Rev A; PS02-C500 – Earthworks Cut-Fill Plan, Rev A; PS02-600 – Earthworks Site Sections, Rev A; PS02-E100 – drainage Plan and Details, Rev A; and PS02-E600 – Hydrology Catchment Plans and Modelling Details, Rev A, and Landscape Plan (L01 Issue A) dated 19 May 2021.

- 3 The consent no. DA1999/1112 is modified in the terms set out in **Annexure A**.
- 4 The development consent No DA/1999/1112/ 4 for the retrospective approval of an earth mound is approved, as modified by the Court set out in **Annexure B**.

C Pursuant to section 34(3)(a), the parties request that the Commissioner dispose of these proceedings in accordance with the terms of the decision set out in paragraph B above, if the decision is a decision that the Court could have made in the proper exercise of its functions. The parties have identified reasons for the agreement between the parties together with the jurisdictional pre requisites of relevance in these proceedings, a copy which is **Annexure C** to this agreement. The parties are in agreement that the jurisdictional pre requisites have been satisfied.

## SIGNATURE

Signature of legal  
representative



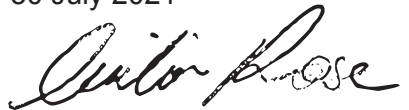
Capacity

Solicitor for the Applicant

Date of signature

30 July 2021

Signature of legal  
representative



Capacity

Solicitor for the Respondent

Date of signature

30 July 2021

## Annexure A

### DETERMINATION OF APPLICATION FOR MODIFICATION OF DEVELOPMENT CONSENT

**Modification Application No:** DA/1999/1112/4

**Development Consent modified:** DA 1999/1112

**Description of development to be carried out under the consent (as previously modified):** Approval of a poultry farm (four tunnel ventilated chicken sheds)

**Address and particulars of title of land on which development to be carried out:** Lot 262 in DP 612623, known as 90 Westbrook Road, Bickley Vale

**Description of modification to the development consent:** Modification to amend poultry farm consent to include retrospective approval for an earth mound

**Determination:** The development consent is modified as follows:

1. Modify condition 1 as follows:

1. **Approved Plans and Documentation -**

The development must comply with the conditions of approval and the following approved plans and documents:

- Plan ref: 6568-1 dated 20 September 1999,
- Mound Regrading Plan set (Sheets: PS02-A000, PS02-C100, PS02-C500, PS02-C600, PS02-E100, PS02-E600) Revision A, dated 15 July 2021,
- Landscape Plan (L01 Issue A) dated 19 May 2021, and
- Unexpected Finds Protocol (P1907574JC08V01 dated 12 May 2021).

**Amendments** - Any required amendments to the approved plans and specifications must be submitted for approval by the Consent Authority (ie Camden Council) before the amendments are effected.

The procedure for amending the approved plans is to submit an "Amended Development Application" form pursuant to Section 96 of the EP&A Act 1979.

2. Delete Condition 2.

3. Delete condition 3.
4. Insert new condition 5 as follows:
  5. **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.
5. Insert new condition 6 as follows:
  6. **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 Clause 103 of the EP&A Regulation 2000. 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.
6. Insert new condition 7 as follows:
  7. **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 Clause 104 of the EP&A Regulation 2000. 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.
7. Insert new condition 7A as follows:
  - 7A. **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.
8. Insert new condition 7B as follows:
- 7B. 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 (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours; and
  - c) the name, address and telephone number of the principal certifier.
- The sign shall be maintained while the work is being carried out and removed upon the completion of works.
9. Insert new condition 7C as follows:
- 7C. Site is to be Secured** - The site shall be secured and fenced.
10. Insert new condition 18 as follows:
- 18. Civil Engineering Plans** - Civil engineering plans indicating drainage, roads, access ways, 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 / Subdivision Works 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.

The following shall be included in the Stormwater plans:

- Collection point for surface runoff generated by the retaining wall along the existing internal road at the south eastern corner of the mound. This shall then be discharged to the existing dam via the existing pipes

and swales. A Drainage system shall be designed to capture this runoff and discharge it at the existing dam.

- A Swale shall be provided along the northern and eastern toe of the proposed mound to capture any flows from the external catchment and discharge into the existing dam. This is to prevent any erosion of the earth mound along the northern toe. This shall then be discharged to the existing dam via the existing pipes and swales. All calculations and design shall be shown to the satisfaction of the certifier. All works shall be provided within the subject lot.

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

11. Insert new condition 19 as follows:

19. **Design Standards** - The entire development shall be designed and constructed in accordance with Council's Engineering Specifications

12. Insert new condition 29 as follows:

29. **Construction Traffic Management Plan** - A construction 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.

13. Insert new condition 30 as follows:

30. **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.

14. Insert new condition 30A as follows:

30A. **Construction Waste Management Plan** - A construction waste management plan must be prepared for all construction work on the site. The plan must incorporate the concept of recycling and reuse where practicable, include the requirement to dispose of material not suitable for reuse or recycling at a licenced waste facility. The plan must be kept on site for compliance until the completion of all construction works.

15. Insert new condition 30B as follows:

30B. **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.

16. Insert new condition 30C as follows:

**30C. 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.

17. Amend condition 31.

18. Insert new condition 31A as follows:

**31A. Excavations and Backfilling** - All excavations and backfilling associated with this development consent shall be executed safely, and be properly guarded 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 on an adjoining allotment, the person causing the excavation shall:

- a) preserve and protect the building from damage;
- b) if necessary, underpin and support the building in an approved manner; and
- c) give at least seven (7) days notice to the adjoining owner before excavating, of the intention to excavate.

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.

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 has given consent in writing to that condition not applying.



19. Insert new condition 31B as follows:

31B. **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.

20. Insert new condition 31C as follows:

31C. **Construction 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.

21. Insert new condition 31D as follows:

31D. **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.

22. Insert new condition 31E as follows:

31E. **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.

23. Insert new condition 31F as follows:

31F. **Fill Compaction** - All fill must be compacted in accordance with Camden Council's current Engineering Design Specifications.

24. Delete condition 33.

25. Delete condition 36.

26. Insert new condition 47 as follows:

47. An application for Construction Certificate for all works relating to the earth mound shall be submitted to Principal Certifying Authority within two months of the granting of the approval of the modified development consent (1112-1999-4).

27. Insert new condition 48 as follows:

48. A Construction Certificate for all works relating to the earth mound shall be issued by the Principal Certifying Authority within five months of the granting of the approval of the modified development consent (1112-1999-4).

28. Insert new condition 49 as follows:

49. Construction works shall commence within two months of the granting of the Construction Certificate.

29. Amend condition 50.

30. Insert new condition 51 as follows:

51. 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. All landscape works must be carried out under the supervision of a suitably qualified person and be completed prior to the issue of an occupation certificate.

## ANNEXURE B

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

**Development Application No:** DA/1999/1112  
**Development:** Poultry farm (four tunnel ventilated chicken sheds)  
**Site:** Lot 262, DP 612623, 90 Westbrook Rd, Bickley Vale  
**Schedule of Modifications:**

Date approved	Modification Application Number	Decision maker (Land and Environment Court or relevant council)	Proceedings Name and Number (if applicable)
2021	1999/1112/4	Land and Environment Court	2021/287720 – Muscat Developments Pty Ltd trading as Muscat Developments Pty Ltd v Camden Council

**Date of determination:** 26 June 2000

**Date from which consent takes effect:** Date of determination

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#### Plans

##### 1. Approved Plans and Documentation -

The development must comply with the conditions of approval and the following approved plans and documents:

- Plan ref: 6568-1 dated 20 September 1999,
- Mound Regrading Plan set (Sheets: PS02-A000, PS02-C100, PS02-C500, PS02-C600, PS02-E100, PS02-E600) Revision A, dated 15 July 2021,
- Landscape Plan (L01 Issue A) dated 19 May 2021, and
- Unexpected Finds Protocol (P1907574JC08V01 dated 12 May 2021).

Amendments - Any required amendments to the approved plans and specifications must be submitted for approval by the Consent Authority (ie Camden Council) before the amendments are effected.

The procedure for amending the approved plans is to submit an "Amended Development Application" form pursuant to Section 96 of the EP&A Act 1979.

2. Prior to any work commencing on this development, it is necessary to obtain a Construction Certificate. A Construction Certificate may be obtained from Camden Council (the Consent Authority) or from an Accredited Certifier.

### **Security Deposits & Fees**

3. **Works Division Fees** - The following fees must be paid to Council prior to a Construction Certificate being issued:

- a) Works Department inspection fee \$196.00 (small development).

The fee must be deposited into Account No. A.5151.203. This fee is applicable during the 1999/2000 financial year and is adjusted annually by Council.

### **Building Design & Construction**

4. **Comply with all Conditions** - The following conditions of the consent must be complied with or addressed prior to the issue of a Construction Certificate by the Principal Certifying Authority. In many cases the conditions require certain details to be included with or incorporated in the detailed plans and specifications which accompany any Construction Certificate Application.

5. **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.

6. **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 Clause 103 of the EP&A Regulation 2000. 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.

7. **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 Clause 104 of the EP&A Regulation 2000. 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.

**7A. 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.

**7B. 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 (or person in charge of the site) and a telephone number on which that person can be contacted at any time for business purposes and outside working hours; and
- c) the name, address and telephone number of the principal certifier.

The sign shall be maintained while the work is being carried out and removed upon the completion of works.

**7C. Site is to be Secured** - The site shall be secured and fenced.

**8. Project Management** - The applicant, builder, owner or Principal Certifying Authority must ensure that the project is adequately managed and the following requirements and facilities provided and maintained throughout the duration of activities on the site:

- a) Building Code of Australia - all building work must be carried out in accordance with the provisions of the "Building Code of Australia".
- b) Excavation and Backfilling -All excavations and backfilling associated with the erection or demolition of a building must be:
  - I. executed safely to professional standards; and be
  - II. guarded and protected to prevent them from being dangerous to life or property.
- c) Toilet Facilities - Toilet facilities must be provided for each site where a building is being erected in accordance with the requirements of Section 78.1 of the EP&A Act 1979.
- d) Storage of Building Materials and Equipment - Building materials and toilet receptacles must not be stored or placed upon public footpaths, roads or reserves.

- e) Trade Waste Storage - All builders' refuse must be contained within the confines of the subject allotment so as to prevent nuisance and all such waste shall be removed from the site at or prior to completion and occupation of the project.

To minimise the opportunity for wind blown nuisance the site shall be provided with a waste receptacle to contain all plastic, paper, cardboard and other lightweight wastes. The waste receptacle shall be installed at initial site works. All wastes capable of being windblown shall be placed within the waste receptacle.

The provision of an industrial waste container, or alternatively, an enclosure consisting of four star posts driven into the ground at 2m centres with 1m high shade cloth stretched around the posts would meet Council's current requirements.

- f) Erosion and Sediment Control - Approved erosion and sediment control provisions must be installed on the site prior to any soil disturbance or site works commencing.

All such works must be undertaken in strict compliance with the Camden Council's adopted "Erosion and Sediment Control Policy" dated October 1995. Copies are available from Council on request.

Sediment control fencing must be maintained during the construction process and left in an operational manner on site when the building is complete or until such time as turf has been established.

- g) Burning Waste - The burning of builder's trade waste is prohibited. All waste must be regularly taken to an approved trade waste/recycling depot.

Compliance with the above requirements satisfies prescribed requirements of Section 78 of the EP&A Act, the Local Government Act 1993 and Protection of the Environment Operations Act 1997

**9. Building Classification** - The proposed development has been assessed under the provisions of the Building Code of Australia as:

Class - 7

Rise - one (1) storey

Type-C Construction

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

**10. Hours of Operation** - All construction work must be restricted to between:

- a) 7am and 6pm Mondays to Fridays (inclusive);
- b) 7am to 4pm, Saturdays, provided construction noise is inaudible to adjoining residential properties, otherwise 8am to 4pm;
- c) and is prohibited on Sundays and Public Holidays.

**11. Building Inspections** - The Principal Certifying Authority (PCA) must determine when inspections and compliance certificates are required. Where the Consent Authority (ie Camden Council) is nominated as the PCA, the following stages must be inspected and passed prior to proceeding to the subsequent stages of construction.



- a) Pier Holes - Pier holes prior to placement of concrete.
- b) Foundation Preparation - The foundation prior to the placement of slab preparation (ie prior to plastic and sand being placed).
- c) Wall & Roof Framing When the wall and roof frame work have been completed (with plumbing and electrical wiring installed), brick work complete (internal and external) and the roof loaded with its covering material. see note 1
- d) Final - The development is completed and before occupation or use is commenced. Furthermore, any required Fire Safety Certificate/s (in accordance with Part 7B Divisions 1 to 5 of the Environmental Planning and Assessment Amendment Regulations, 1998) and nominated Compliance Certificates must also be submitted to the Consent Authority (ie Camden Council) before use or occupation.

**12. Civil Engineering Compliance Certificate** – Inspections by the Works Department of Camden Council must be at the following stages and subject to payment of appropriate inspection fee to Council or compliance certificates from a Accredited Certifier including documentary evidence/plans:

- a) Prior to installation of erosion and sediment control structures.
- b) Prior to backfilling pipelines, subsoil drains and dams.
- c) Proof roller test of subgrade and sub-base.
- d) Final inspection after all works are completed.

**13. Structural Engineering Plans** - Where the Consent Authority (ie Camden Council) is nominated by the applicant to be the Principal Certifying Authority (PCA) certified Structural Engineering details must be submitted to Council for the undermentioned nominated works before a construction certificate can be issued:

- a) structural steelwork;
- b) wall and roofing framework bracing details.

**14. Structural Certification (Completed Building)** - A Compliance Certificate from a practising Structural Engineer must be submitted to Camden Council upon completion and prior to occupation of the building certifying that the building has been erected in accordance with the approved structural details and is structurally adequate for the imposed loads.

15. The building must be finished in a mist green colour.

16. The maximum height of the proposed silos shall be 5m, measured from the finished ground level.

17. The chicken sheds must be a fully enclosed building constructed of insulated panels with mechanical ventilation and artificial lighting

#### **Roadworks/Footpaths/Traffic/Earthwork**

**18. Civil Engineering Plans** - Civil engineering plans indicating drainage, roads, access ways, 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.

The following shall be included in the Stormwater plans:

- Collection point for surface runoff generated by the retaining wall along the existing internal road at the south eastern corner of the mound. This shall than be discharged to the existing dam via the existing pipes and swales. A Drainage system shall be designed to capture this runoff and discharge it at the existing dam.
- A Swale shall be provided along the northern and eastern toe of the proposed mound to capture any flows from the external catchment and discharge into the existing dam. This is to prevent any erosion of the earth mound along the northern toe. This shall than be discharged to the existing dam via the existing pipes and swales. All calculations and design shall be shown to the satisfaction of the certifier. All works shall be provided within the subject lot.

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

19. **Design Standards** - The entire development shall be designed and constructed in accordance with Council's Engineering Specifications. All civil engineering work associated with the development must be carried out in accordance with requirements of the Council's standards contained in the document - "Construction Specifications for Road Work, Drainage and Other Work Associated with Subdivision and Other Developments", available for purchase for \$20 from Council.

20. The accessway must be provided in accordance with the plan submitted with the development application.

21. The proposed access to the property shall incorporate sealed tapers for semi- trailers to enter and exit with minimum damage to Westbrook Road. Details shall be submitted with the Civil Engineering plans.

22. The entry gate shall be located 25m from the front boundary, and the roadway between the gate and Westbrook Road must be sealed. Details to be provided with the Civil Engineering plans.

### **Stormwater**

23. All stormwater from the site shall be directed to the proposed dam on the site.

24. The proposed dam must be fitted with a release mechanism which ensures that the flow of water from the site after the development has been established is equal to or less than the discharge rate prior to the development commencing. Details to be provided with the Civil Engineering plans.

25. Seepage and surface water must be collected and diverted clear of the sheds by a subsurface/surface drainage system.

### **Site Landscaping**



**26. Required Plans** - A detailed landscape plan must be prepared and certified by a qualified landscape architect or suitably qualified persons knowledgeable in the field. Landscape plans must contain the following information:

- a) outline of the proposed building;
- b) provide for the embellishment of the site with suitable ground covers, shrubs and trees to complement the height, scale, design and function of the approved development;
- c) proposed planting (quantity, species and expected mature height);
- d) include measures designed to enable the easy term maintenance of the property;
- e) include provision for the planting of a combination of 35 litre, 75 litre and 100 litre.

The landscaping must involve screen plantings along the southern, eastern and northern boundaries and the proposed roadway to ensure full screening of the proposed sheds.

**27. Landscaping** - Site landscaping must be undertaken in accordance with the Camden Council approved plans, and any amendments made thereto.

Landscaped areas must be maintained at all times and dead plants, shrubs or trees replaced immediately.

Approved plant species must not be replaced with other varieties unless the prior written approval of Camden Council has been obtained.

All landscaping must be provided prior to a Construction Certificate being issued for the building works.

**28.** A watering system must be provided to all required landscaped areas

### **Environmental Controls**

**29. Construction Traffic Management Plan** - A construction 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.

**30. 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.

**30A. Construction Waste Management Plan** - A construction waste management plan must be prepared for all construction work on the site. The plan must incorporate the concept of recycling and reuse where practicable, include the requirement to dispose of material not suitable for reuse or recycling at a licenced waste facility. The plan must be kept on site for compliance until the completion of all construction works.

**30B. 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.

**30C. 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.

**31 Soil Erosion and Sediment Control Plans** - Soil erosion and sediment control plans must be designed and installed in accordance with the Consent Authority's (ie Camden Council) "Soil Erosion and Sediment Control Policy".

Control measures must be maintained during the entire development procedure and can only be removed upon completion of the project when all landscaping and disturbed surfaces have been stabilised.

Plans containing a minimum of four (4) sets of the undermentioned information must be prepared and submitted to the Principal Certifying Authority for approval prior to a Construction Certificate being issued:

- a) existing and final contours
- b) the location of all earthworks including roads, areas of cut and fill and regrading
- c) location of impervious areas other than roads
- d) location and design criteria of erosion and sediment control structures
- e) location of topsoil or other stockpiles
- f) diversion of uncontaminated. upper catchment around areas to be disturbed
- g) proposed techniques for re-grassing or otherwise permanently stabilising all disturbed ground
- h) procedures for maintenance of erosion and sediment controls
- i) details and procedures for dust control.

**31A. Excavations and Backfilling** - All excavations and backfilling associated with this development consent shall be executed safely, and be properly guarded 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 on an adjoining allotment, the person causing the excavation shall:

- a) preserve and protect the building from damage;
- b) if necessary, underpin and support the building in an approved manner; and
- c) give at least seven (7) days notice to the adjoining owner before excavating, of the intention to excavate.

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.

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 has given consent in writing to that condition not applying.

**31B. 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.

**31C. Construction 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.

**31D. 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.

**31E. 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.

**31F. Fill Compaction** - All fill must be compacted in accordance with Camden Council’s current Engineering Design Specifications.

**32. Re-vegetation** - Re-vegetation to the Consent Authority’s (ie Camden Council) specification must be applied to all disturbed areas as soon as practical and within fourteen (14) days after completion of earthworks.

**33. Deleted.**

**34. Maintenance of Soil Erosion Measures** - All required soil erosion and sediment control measures must be maintained during the entire construction period until all disturbed areas are restored by turfing, paving or revegetation.

**35.** The proposed development must be constructed and operated in accordance with the requirements contained in the report prepared for the development by Dick Benbow & Associates Pty Ltd, Environmental and Occupational Health Engineers.

**36. Deleted**

**37. Site Operations:** All deliveries to the site shall be made between the hours of 7.00am and 7.00pm. The collection of chickens which must be completed by 12.00am midnight, with

collection being permitted by this consent up to 1.00am for a maximum of twenty times each year.

(This condition was modified by Section 96 Modification 1112(2)/1999 on 10 May 2011)

37A. A Site Management Plan, relating to site operation must be prepared and submitted to Council for its concurrence within three (3) months of this Consent. All site operations are to be undertaken in accordance with the Site Management Plan.

(This condition was added by Section 96 Modification 1112(2)/1999 on 10 May 2011)

38. All dead birds are to be collected of a morning and evening and stored in a refrigerated container until collected by an external contractor.

39. No manure or shed litter is to be stored on-site. All manure and shed litter is to be deposited directly into trucks and removed from the site.

40. All vehicles entering and leaving the property are to be suitably covered.

41. The farm and poultry shed areas must be kept in a clean and tidy manner at all times. The farm grounds shall be kept free from rubbish; long grass and other material.

42. All detergents utilised in the wash down of the sheds shall be biodegradable.

43. Industry Best Management Practices shall be employed at all times in the operation of the existing farm and the proposed development.

### **Earthworks**

44. **Drainage Patterns Not to be Affected** - Filling must be undertaken in accordance with the approved plans and in such a manner that the drainage pattern on the site and on adjoining properties is not altered.

45. **Desilting Dams or Creeks** - A geotechnical report must be submitted detailing works required to desilt any existing dams or creek beds in conjunction with the engineering drawings prior to the Construction Certificate being issued. Such report must be prepared by a suitably qualified and experienced Geotechnical Engineer.

**Completion/Occupation Certificate**

**46. Occupation Certificate** - A final Occupation Certificate must be issued by the Principal Certifying Authority (PCA) prior to occupation or use of the development. In issuing an occupation certificate, the Principle Certifying Authority must be satisfied that the requirements of section 109H of the Environmental Planning and Assessment Act 1997 have been satisfied.

Timing of works authorised under 1112-1999-4

47. An application for Construction Certificate for all works relating to the earth mound shall be submitted to Principal Certifying Authority within two months of the granting of the approval of the modified development consent (1112-1999-4).

48. A Construction Certificate for all works relating to the earth mound shall be issued by the Principal Certifying Authority within five months of the granting of the approval of the modified development consent (1112-1999-4).

49. Construction works shall commence within two months of the granting of the Construction Certificate.

50. Construction works shall be completed, and landscaping shall be implemented and an Occupation Certificate issued within 14 months of the granting of the Construction Certificate. A modification application must be provided to and determined by Council prior to the expiration of this time period if additional time is required (due to delays such as weather and other matters that are outside of the control of the persons benefiting from the development consent) It is recommended that the modification application be lodged with Council at least 3 months prior to the expiry of this consent.

51. 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. All landscape works must be carried out under the supervision of a suitably qualified person and be completed prior to the issue of an occupation certificate.

## Annexure C

### JURISDICTIONAL NOTE

#### COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2021/00028720

#### TITLE OF PROCEEDINGS

Applicant	<b>Muscat Developments Pty Ltd</b> <b>ACN 059 306 900</b>
Respondent	<b>Camden Council</b> <b>ABN 31 117 341 764</b>

#### FILING DETAILS

Filed for	Muscat Developments Pty Ltd - Applicant
Legal representative	Cheryl Ann Williams CAW Legal
Legal representative reference	CW:GB:2020040
Contact name and telephone	Cheryl Ann Williams 0480102280
Contact email	admin@cawlegal.com

#### JURISDICTION NOTE

1. The proceedings arose from the determination to refuse the Modification Application for an existing earth mound to modify the Development Consent (DA 1112/99) to modify the approved development (Development) to include retrospective approval for an existing earth mound.
2. The appeal was commenced pursuant to section 8.7(1) of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**).
3. The parties have reached an agreement as to the terms of a decision in the proceedings that would be acceptable to the parties, being a decision the Court could have made in the proper exercise of its functions for the following reasons:

#### State Environmental Planning Policy No 55-Remediation of Land (SEPP 55)

4. SEPP 55 applies to the site. SEPP 55 provides a State-wide planning approach to the remediation of contaminated land.
5. Clause 7 requires the consent authority to assess:



- whether the land is contaminated;
    - if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
  - if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.
6. The Martens and Associates Site Contamination Assessment dated April 2021 concludes that the extensive laboratory testing together with the detailed visual inspections have concluded that the earth mound contains a very low risk of contamination and is suitable for the proposed agricultural purpose.

Sydney Regional Environmental Plan No 20-Hawkesbury-Nepean River (No 2-1997) (SREP 20)

7. SREP 20 applies to the site. SREP 20 aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.
8. Clauses 5 and 6 contain provisions that must be considered in assessing a DA. The parties consider the proposal acceptable having regard to clauses 5 and 6 in the SREP.

Camden Local Environmental Plan (CLEP)

9. The land is zoned RU1- Primary Production. The proposal is permissible with development consent.
10. Clause 4.3 of the LEP provide a maximum height of 9.5m for structures. The proposal has a maximum height of [5m].
11. Clause 7.4 of the LEP requires an assessment by the consent authority of the likely disruption or effect on drainage patterns, and the effect on the future re development of the land. These matter have been addressed in the amended plans, and the proposal is not considered to negatively effect the future use of the land. Clause 7.4 also requires assessment of the quality of the fill. This assessment has been undertaken by Martens and Associates and the fill is considered acceptable. All the matters under clause 7.4



have been assessed and considered acceptable (see also part 4.1.2 page 12-13 of the SEE).

*Environmental Planning and Assessment Act 1979*

12. Notification requirements under the EPA Act have been satisfied and all submissions have been taken into consideration.
13. Owner's consent has been provided for the modification application.
14. The conditions of development consent annexed to the section 34 agreement are reasonable, relate to the development for which consent is sought and are for a proper planning purpose and otherwise permissible pursuant to section 4.17 of the EPA Act.
15. The parties are not aware of any other legal reasons preventing the Court from making the proposed orders and approving the Development Application.
16. In light of the above, pursuant to section 34(3)(a) of the *Land and Environment Court Act 1979* the parties request the Commissioner to dispose of the proceedings in accordance with the terms of the decision set out in the section 34 agreement.