

Form 43 (version 1)
UCPR 36.11

ORDER

COURT DETAILS

Court	LAND AND ENVIRONMENT COURT OF NEW SOUTH WALES
Division	Class 1
Registry	Level 4, 225 Macquarie Street, Sydney
Case number	10580 of 2012

TITLE OF PROCEEDINGS

Applicant	Hydrox Nominees Pty Limited
Respondent	The Hills Shire Council

DATE OF ORDER

Date made or given	29 May 2013
Date entered	11 JUN 2013


TERMS OF ORDER

The Court notes that the parties or their representatives have reached agreement at or after a conciliation conference held pursuant to s 34 of the *Land and Environment Court Act 1979*, presided over by Commissioner Brown on 9 April 2013, 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) as set out in the document annexed hereto.

By consent, the Court makes the following orders:

1. The Appeal is upheld.
2. Development application 187/2012/HA for a home improvement centre with café/restaurant and separate bulky goods tenancy located at Commercial road Rouse Hill (contained in Lots 1021 and 1022 DP 1091484) is approved subject to the conditions set out in Annexure "A"

SEAL AND SIGNATURE

Court seal
Signature 
Capacity **Leonie Walton**
Acting Registrar
Date **17 JUN 2013**



SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date

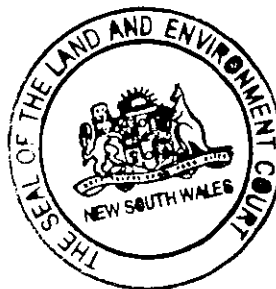
**NOTICE**

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

[Include the following section if the document is to be provided to the Registrar for sealing under UCPR 36.12.]

PERSON PROVIDING DOCUMENT FOR SEALING UNDER UCPR 36.12

Name	The Hills Shire Council, Respondent
Legal representative	M. Pearce
Contact name and telephone	M. Pearce – 9843 0166



Annexure 'A'

Conditions of Consent

Hydrox Nominees Pty Ltd v The Hills Shire Council

Deferred Commencement Conditions

A1. Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 deferred commencement consent is granted subject to the following:

1. Registration of Drainage Easement

The creation of a 3m wide (minimum) inter-allotment drainage easement over the downstream property Lot 5 DP 30916, 2 Carnoustie Street (alternatively referred as 34 Spring Mill Avenue). The location of the easement and pipe alignments must be considerate to the existing natural depression of the affected site and concept stormwater drainage associated with Green Hills Road design. Alternatively, the easement location shall be in accordance with the Drawing No.2 SY100362 SKC.09 prepared by ACOR Issue P2 dated 05/12/2011, which was submitted with the development application.

2. Submission and Approval of Stormwater Concept Plan

Submission of a Stormwater Concept Plan demonstrating the collection and conveyance of site stormwater runoff and external runoff enters the site through the existing easement, which must be piped to the existing drainage structure within Council's Drainage reserve Lot 14 DP 1057138 (18 McCombe Ave) east of the subject site. This must be aligned with the drainage easement created under the item 1 above, to be approved by Council.

A2. The applicant must provide Council with written evidence demonstrating that the matters listed under Part A1 above have been satisfactorily addressed no later than four weeks before the lapsing date.

B. Upon compliance with the requirements of Part A1, a full consent will be issued subject to the following conditions:

GENERAL MATTERS

1. Development in Accordance with Submitted Plans

The development being carried out in accordance with the following approved plans and details, stamped and returned with this consent except where amended by other conditions of consent.



REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	REVISION
DA00/B	Title Sheet	16.11.11 Issue B
DA01/N	Site Plan	25.01.13 Issue N
DA02/G	Floor Plan	12.6.12 Issue G
DA03/E	Roof Plan	12.6.12 Issue E
DA04/F	Elevations	12.6.12 Issue F
DA05/E	Elevations	12.6.12 Issue E
DA06/F	Sections	12.6.12 Issue F
DA07/F	Tenancy	25.06[1].13 Issue F
000	Coversheet	Issue D
001	Landscape Masterplan	Issue D
101	Landscape Plan	Issue D
102	Landscape Plan	Issue D
103	Landscape Plan	Issue D
104	Landscape Plan	Issue D
501	Landscape Plan	Issue D
---	External Colours and Finishes Schedule	16 October 2012

No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.

2. Further Development Application for Separate Bulky Goods Tenancy

The submission of and approval by Council of a Development Application for the occupation, fit-out and signage for the separate bulky goods tenancy (Tenancy No. 1).

3. Signage

The following signage is permitted to be erected on site:

Southern (front) Elevation of Building:

- (i) 'Masters Home Improvement' sign with logo centrally located on the façade with a total area of 103.672m² of fabricated polycarbonate with internal LED illumination and translucent vinyl to face.
- (ii) 'Trade' sign of cut-out individual letters with dimensions of 4.7m x 1.5m (area 7.05m²). This sign is not to be illuminated.
- (iii) 'Garden' sign of cut-out individual letters with dimensions of 6.3m x 1.5m (area 9.45m²). This sign is not to be illuminated.

Total signage proposed on front façade is 120.7m².



Northern (rear) Elevation of Building:

A 'Masters Home Improvement' sign with logo centrally located on the façade with dimensions of 8.8m x 1.6m (area 14.08m²). The lettering is to be painted onto the façade and is not to be illuminated.

Pylon signage:

A business identification pylon at the south west corner of the site adjacent to the Commercial Road frontage. The sign is required to be amended to comply with the following requirements:

- A maximum 10 metres in height;
- The maximum width of the entire structure shall be two metres;
- The maximum advertising display area within the structure shall be no greater than 12.0m² with maximum advertising dimensions 1.5 metres in width and 8.0 metres in height;
- No advertising shall be permissible within the bottom 2.0 metres of the structure;
- The sign may be double sided with internal LED illumination

Way finding and Information signs

Way finding and information signage may be accommodated within the car park. This will include a combination of pole and wall mounted signs and stand-alone blades strategically located to direct customers and goods vehicles. These signs are not to include any 'Masters' advertising or logos or any general advertising.

All lighting associated with signage is to be turned off by 10pm on Monday to Friday and by 8pm on Saturday and Sunday.

A further Development Application is required for any additional signage. In addition, a Development Application is required for signage for the secondary tenancy.

4. Low Scale Security Lighting

Low scale security lighting is permitted within the site. Any lighting on the site shall be designed so as not to cause a nuisance to residences in the area or to motorists on nearby roads and to ensure no adverse impact on the amenity of the surrounding area by light overspill. All lighting shall comply with the *Australian Standard AS 4282:1997 The Control of Obtrusive Effects of Outdoor Lighting*.

5. No Access to/from Prestwick Avenue

No vehicle or pedestrian access is permitted to/from Prestwick Avenue from the site, with the exception of for the purpose of landscape maintenance.



6. External Finishes

External finishes and colours shall be in accordance with the details submitted with the development application and approved with this consent.

7. Provision of Parking Spaces

The development is required to be provided with 389 off-street car parking spaces, which includes 8 accessible spaces and 6 car-trailer spaces. These car parking spaces shall be available for off street parking at all times.

8. Construction Certificate

Prior to construction of the approved development, it is necessary to obtain a Construction Certificate. A Construction Certificate may be issued by Council or an Accredited Certifier. Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the Development Consent.

9. Building Work to be in Accordance with BCA

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

10. Tree Removal

Approval is granted for the removal of all trees shown with broken outline on Landscape Masterplan Drawing number 001 Issue D prepared by Site Image.

11. Planting Requirements

All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m.

Elaeocarpus reticulatus is to be replaced with *Eucalyptus moluccana* (Coastal Grey Box).

An additional twelve *Eucalyptus crebra* (Narrow Leaved Ironbark) are to be incorporated into the landscape strip at the Commercial Road frontage.

The landscape strip at the north western boundary is to be planted with the following:

8 *Eucalyptus tereticornis* (Forest Red Gum)

8 *Eucalyptus moluccana* (Coastal Grey Box)

8 *Eucalyptus crebra* (Narrow Leaved Ironbark)

The understorey of this area is to be planted with shrubs and groundcover endemic to the Cumberland Plain woodland vegetation community.



12. Separate Application for Subdivision

A separate development application must be submitted to excise any necessary road widening along the site's Commercial Road frontage to accommodate the proposed traffic signals and to dedicate the extension of

Prestwick Avenue. The final boundary location must generally reflect the approved plans and is subject to Council's approval.

13. Protection of Public Infrastructure

Council must be notified of any damage to public infrastructure caused by the development. Adequate protection must be provided prior to work commencing and maintained during building operations. Any damage caused must be made good, to the satisfaction of Council, before an Occupation Certificate can be issued. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site.

14. Structures Adjacent to Piped Drainage Easements

Buildings and structures, including footings and brick fences, adjacent to existing or proposed drainage easements must be located wholly outside the easement. A design must be provided by a structural engineer certifying that the structure will not impart a load on the pipe in the easement.

15. Requirements for Council Drainage Easements

No works are permitted within existing or proposed public drainage easements unless approved by Council. Where works are permitted, the following requirements must be adhered to:

Provision for overland flow and access for earthmoving equipment must be maintained.

The existing ground levels must not be altered. No overland flow is to be diverted out of the easement.

No fill, stockpiles, building materials or sheds can be placed within the easement.

New or replacement fencing must be approved by Council. Open style fencing must be used.

16. Vehicular Access and Parking

The formation, surfacing and drainage of all driveways, parking modules, circulation roadways and ramps is required, with their design and construction complying with:

- a) AS/ NZS 2890.1:2004
- b) AS/ NZS 2890.6:2009
- c) AS 2890.2:2002
- d) DCP Part D Section 1 – Parking
- e) Council's Driveway Specifications

Where conflict exists the Australian Standard must be used.



The following must be provided:

- i. All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- ii. All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.
- iii. All driveways and car parking areas must be concrete or bitumen. The pavement design must consider the largest design service vehicle and their proposed paths of travel through the site.
- iv. All driveways and car parking areas must be graded, collected and drained by pits and pipes and discharged from the site in the manner described in the Browns Consulting report dated May 2012 as approved by this consent.

17. Gutter and Footpath Crossing Application

Each driveway requires the lodgement of a separate gutter and footpath crossing application, accompanied by the current fee as prescribed by Council's Schedule of Fees and Charges.

18. Minor Engineering Works

The design and construction of the engineering works listed below must be provided for in accordance with the following documents and requirements:

- a) Council's Design Guidelines Subdivisions/ Developments
- b) Council's Works Specifications Subdivisions/ Developments

Any variance from these documents requires separate approval from Council.

Works on existing public roads or any other land under the care and control of Council must be approved and inspected by Council in accordance with the Roads Act 1993 or the Local Government Act 1993.

i. Driveway Requirements

The design, finish, gradient and location of all driveway crossings must comply with the above documents and Council's driveway specifications which can be found on Council's website:

<http://www.thehills.nsw.gov.au/>

The proposed driveways must be built to Council's heavy duty standard.

A separate driveway application fee is payable as per Council's Schedule of Fees and Charges.

ii. Disused Layback/ Driveway Removal

All disused laybacks and driveways must be removed and replaced with a kerb and gutter together with the restoration and turfing of the adjoining footpath verge area.



iii. Concrete Footpath Paving

A 1.5m wide concrete footpath paving, including access ramps at all intersections, must be provided across the Commercial Road frontage of the development site transitioning into the existing footpath adjacent in accordance with Council's standard footpath detail and the above documents. A separate minor engineering works application and inspection fee is payable as per Council's Schedule of Fees and Charges.

iv. Footpath Verge Formation

The grading, trimming, topsoiling and turfing of the footpath verge fronting the development site is required to ensure a gradient between 2% and 4% falling from the boundary to the top of kerb is provided. This work must include the construction of any retaining walls necessary to ensure complying grades within the footpath verge area. All retaining walls and associated footings must be contained wholly within the subject site. Any necessary adjustment or relocation of services is also required, to the requirements of the relevant service authority. All service pits and lids must match the finished surface level.

v. Site Stormwater Drainage

The entire site area must be graded, collected and drained by pits and pipes to a suitable point of legal discharge based on a 1 in 10 year ARI storm event.

19. Supervision of Works

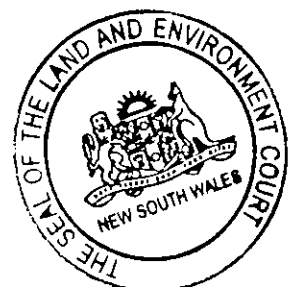
All work in the road reserve must be supervised by a suitably qualified and experienced person. The supervisors name, address and contact phone number must be submitted to Council prior to works commencing in the road reserve. A construction programme and anticipated duration of works must be submitted to Council prior to works commencing in the road reserve.

20. Public Liability Insurance

All contractors working in the road reserve must have a current public liability insurance policy with an indemnity limit of not less than \$10,000,000.00. A copy of this insurance must be submitted to Council prior to works commencing in the road reserve.

21. Upgrading of Existing Water and Sewerage Services

Should the development necessitate the installation or upgrade of water or sewerage services within an area that is either heavily vegetated or traversed by a natural watercourse, services must be located in a route that causes the least amount of impact on the natural environment. Excavation by hand or small machinery is required where the ecological impact would otherwise be considered excessive.



22. Water Sensitive Urban Design Handover Process

An operations and maintenance plan must be prepared for all WSUD proposals. The operations and maintenance plan must include:

- a) The location and type of each WSUD element, including details of its operation and design;
- b) A brief description of the catchment characteristics, such as land uses, areas etc;
- c) Estimated pollutant types, loads and indicative sources;
- d) Intended maintenance responsibility, Council, landowner etc;
- e) Inspection method and estimated frequency;
- f) Adopted design cleaning/ maintenance frequency;
- g) Estimate life-cycle costs;
- h) Site access details, including confirmation of legal access, access limitations etc;
- i) Access details for WSUD measure, such as covers, locks, traffic control requirements etc;
- j) Description of optimum cleaning method and alternatives, including equipment and personnel requirements;
- k) Landscape and weed control requirements, noting that intensive initial planting is required upfront to reduce the requirement for active weed removal;
- l) A work method statement;
- m) A standard inspection and cleaning form.

For the purposes of complying with the above a WSUD treatment system is considered to include all functional elements of the system as well as any landscaped areas directly surrounding the system.

Refer to the consultation draft document entitled Managing Urban Stormwater: Urban Design (October 2007) prepared by the SMCMA and the then NSW DECCW for more information.

23. Road Opening Permit

Should the subdivision/ development necessitate the installation or upgrading of utility services or any other works on Council land beyond the immediate road frontage of the development site and these works are not covered by a separate construction approval issued by Council under the Roads Act 1993, as required elsewhere in this consent, then a separate road opening permit must be applied for and the works inspected by Council's Restorations Coordinator.

The contractor is responsible for instructing sub-contractors or service authority providers of this requirement. Contact Council's Construction Engineer if it is unclear whether a separate road opening permit is required or not.



24. Contamination

Any new information, which comes to light during construction works, which has the potential to alter previous conclusions about site contamination, shall be immediately notified to Council.

25. Adherence to Approved Waste Management Plan

The Waste Management Plan submitted to and approved by Council must be adhered to at all stages in the demolition/construction/design of facilities and on-going use phases. All waste material nominated for recycling must be reused or recycled. Any material moved offsite is to be transported in accordance with the requirements of the Protection of the Environment Operations Act (1997) and only to a place that can lawfully be used as a waste facility. Dockets/receipts verifying recycling/disposal must be kept and presented to Council when required.

26. Waste Collection

Waste and recycling material, generated by the premises, must only be collected between the hours of 6am and 10pm except for Sundays and public holidays, where collection shall be between 8am and 10pm.

Collection of waste and recycling material, generated by the premises, must not cause nuisance or interference with the amenity of the surrounding area.

27. Garbage Storage – Odour Control

A waste contractor shall be engaged to remove all waste from the garbage storage area on a regular basis so that no overflow of rubbish will occur. Practical measures are also to be taken to ensure that odour emission from the garbage storage area does not cause offensive odour as defined by the Protection of the Environmental Operations Act, 1997.

28. Waste Management

To ensure the adequate storage and collection of waste from the occupation or use of the premises, all garbage and recyclable materials emanating from the premises must be stored in secured receptacles with lids. Arrangements must be in place in all applicable areas of the development for the separation of recyclable materials from general waste and for the movement of recyclable materials and general waste to the storage areas/receptacles.

The waste storage area must be:

- i) provided with a hose tap connected to the water supply;
- ii) paved with impervious floor materials;
- iii) graded and drained to a waste disposal system in accordance with requirements of the relevant regulatory authority (Sydney Water);
- iv) adequately ventilated (mechanically or naturally) so that odour emissions do not cause offensive odour as defined by the Protection of the Environment Operations Act 1997;



- v) fitted with appropriate interventions to meet fire safety standards in accordance with the Building Code of Australia.

29. Waste Storage and Separation - Construction and Demolition

The reuse and recycling of waste materials must be maximised during construction and demolition. The separation and recycling of the following waste materials is required:

- 1) masonry products (bricks, concrete, concrete roof tiles) to be sent for crushing/recycling;
- 2) timber waste to be separated and sent for recycling;
- 3) metals to be separated and sent for recycling;
- 4) clean waste plasterboard to be returned to the supplier for recycling (excluding plasterboard from demolition); and
- 5) mixed waste (plastic wrapping, cardboard etc) to be sent to a licenced recycling or disposal facility

This can be achieved by constructing a minimum of five trade waste compounds on-site. Each waste compound must be adequately sized to enclose the waste. Alternatively, mixed waste may be stored in one or more adequately sized waste compounds and sent to a waste contractor/waste facility that will sort the waste on their site for recycling. Waste must be adequately secured and contained within designated waste areas and must not leave the site onto neighbouring public or private properties. Personal waste must not litter the site. Copies of actual weighbridge receipts verifying recycling/disposal must be kept and presented to Council when required.

30. Surplus Excavated Material

The disposal/landfill of surplus excavated material, other than to a DECC licensed facility, is not permitted without formal approval from Council prior to the commencement of works. Any unauthorised disposal of waste, which includes excavated material, is a breach of the *Protection of the Environment Operations Act 1997* and subject to substantial penalties. Unless Council approves an alternate site, then all surplus excavated material must be disposed of at a licensed waste facility. Copies of actual receipts verifying recycling/disposal must be kept and presented to Council when required.

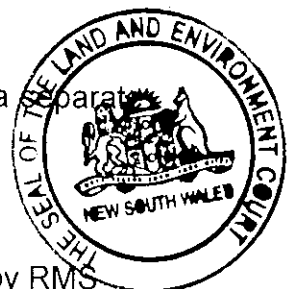
31. Fitout of food premises

The fitout of any area used for a food premise shall be subject to a separate Development Application.

32. RMS Requirements

The following condition is required by RMS or as otherwise agreed by RMS and Council in writing:

- a. The proposed signalised intersection shall be designed in accordance with RMS's Traffic Signal Design Manual, Austroads, RMS's



supplements and other Australian standards and endorsed by a suitably qualified practitioner.

The certified copies of traffic signal design and civil design plans as well as swept path analysis shall be submitted to RMS for consideration and approval prior to the release of the Construction Certificate and commencement of any road works.

RMS fees for administration, plan checking, signal works inspection and project management shall be paid by the developer prior to the commencement of works. A ten (10) year maintenance contribution fee (payable to RMS) will apply to the new signalised intersection.

- b. The developer is required to dedicate a section of their property as public road to allow RMS to locate and maintain traffic signal components. The length of the road area to be dedicated as public road will be determined at detailed design stage and could be up to 15 metres inwards from the primary stop line.
- c. The developer is to provide a left turn slip lane from Commercial Road into the site at the intersection of Commercial Road/Access Road. There shall be no right turn from Commercial Road into Rouse Hill town Centre Access Road. The developer may be required to dedicate a section of their property as public road to accommodate the slip lane and adequate footpath along the Commercial Road frontage of the property.
- d. At the intersection of Windsor Road and Commercial Road, the developer shall provide additional 60 metre storage for the right turn movement from Windsor Road into Commercial Road.
The developer will be required to enter into a Works Authorisation Deed (WAD) for the abovementioned traffic signal and civil works. The Works Authorisation Deed (WAD) will need to be executed prior to RMS assessment of the detailed traffic signal design plans. The Construction Certificate shall not be released until such time the WAD is executed.
- e. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1:2004 and AS 2890.2:2002.
- f. All vehicles are to enter and leave the site in a forward direction.
- g. Provision should be made for designated car and trailer parking.
- h. The required site lines to pedestrians and other vehicles in or around the car park or entrance are not to be compromised by landscaping, signage, fencing or display materials.
- i. All works/regulatory signage associated with the proposed development are to be at no cost to the RMS.

33. NSW Police Requirements

The following condition is required by NSW Police or as otherwise agreed by NSW Police and Council in writing:

- a) Natural surveillance is to be maximised and opaque glass and obstructed windows/doors are to be avoided.



- b) High resolution CCTV is to be installed inside the premises to monitor customers and also installed externally to monitor the car park access/egress points and all public areas of the development.
- (c) Lighting is required to meet Australian Standards. In particular, lighting is to be installed at the entry and exit points of the buildings and within the carparking areas.
- (d) All landscape works are to be maintained to ensure adequate sight lines are available and reduce opportunity for concealment and entrapment.
- (e) Bicycle parking is to be lockable and covered and be within sight of capable guardians.
- (d) All public access points are to be clearly marked.
- (e) The site is to be maintained at all times, including repair of vandalism and graffiti, the replacement of lighting and general site cleanliness.
- (f) Many graffiti vandals favour porous building surfaces, as 'tags' are difficult to remove and often a ghost image will remain even after cleaning. Easily damaged building materials may be less expensive to purchase initially, but their susceptibility to vandalism can make them a costly proposition in the long term, particularly in at-risk areas. This should be considered when selecting materials for construction.
- (g) The installation of gates or a similar form of access control within the carpark to restrict access to the carpark after hours. Signage is also to be erected indicating that the carpark is closed.
- (h) Offenders often target this type of development, including in the construction phase. Security sensor lights and a security company to monitor the site is to be used while construction is in progress.
- (i) It is recommended that either a full time or part time security guard be employed on Friday and Saturday nights to patrol the grounds after hours.

PRIOR TO THE ISSUE OF CONSTRUCTION CERTIFICATE

34. Not Used

35. Provision of Bicycle Parking

The provision of a minimum 22 bicycle parking spaces within the site



36. Landscape Bond

To ensure the public amenity of the streetscape a landscape bond in the amount of \$50,000.00 is to be lodged with Council prior to the issue of the Construction Certificate. It shall be refunded 6 months following the issue of the Final Occupation Certificate and the submission to Council of certification from a qualified Landscape Architect or Council's Tree Management Team, that the works have been carried out in accordance with the approved landscape plan.

37. Approved Plans to be Submitted to Sydney Water

The approved plans must be submitted to a Sydney Water Quick Check agent to determine whether the development will affect any Sydney Water wastewater and water mains, stormwater drains and/or easement, and if any requirements need to be met. Plans will be appropriately stamped.

Please refer to the web site www.sydneywater.com.au for:

- Quick Check agents details – See building and Developing then Quick Check
 - and
 - Guidelines for Building Over/Adjacent to /Sydney Water Assets – see Building and Developing then Building and Renovating.
- or telephone 13 20 92.

38. Works in Existing Easement

All adjoining properties either benefited or burdened by the existing easement must be notified of the proposed works within the easement in writing, including commencement and completion dates, before a Construction Certificate is issued.

39. Not Used

40. Draft Legal Documents

Where an encumbrance on title is required to be created as part of this consent, draft copies of all legal documents must be submitted to Council for checking before a Construction Certificate is issued.

41. Security Bond – Pavement and Public Asset Protection

In accordance with Section 80A(6)(a) of the Environmental Planning and Assessment Act 1979, a security bond of \$170,100.00 is required to be submitted to Council to guarantee the protection of the adjacent road pavement and public assets during construction works. The above amount is calculated at the rate of \$30.00 per square metre based on the public road frontage of the subject site (215m) plus an additional 50m on both sides (315m) and the width of the road measured from face of kerb on both sides (18m).

The bond must be lodged with Council prior to the issue of a Construction Certificate.

The value of this bond shall be confirmed with Council prior to submission and may be in the form of cash or an unconditional bank guarantee. The bond is refundable upon written application to Council along with payment of the applicable bond release fee, and is subject to all work being restored to Council's satisfaction. Should the cost of restoring any damage exceed the value of the bond, Council will undertake the works and issue an invoice for the recovery of these remaining costs.



42. Security Bond – External Works

In accordance with Section 80A(6)(b) of the Environmental Planning and Assessment Act 1979, a security bond is required to be submitted to Council to guarantee the construction, completion and performance of all works external to the site. The bonded amount must be based on 150% of the tendered value of providing all such works. The minimum bond amount is \$10,000.00.

The bond must be lodged with Council prior to the issue of Construction Certificate.

The value of this bond shall be confirmed with Council prior to submission and may be in the form of cash or an unconditional bank guarantee. The bond is refundable upon written application to Council along with payment of the applicable bond release fee, and is subject to all work being completed to Council's satisfaction.

Note: All external works shall consist of those required under the conditions No 17, 18, 44 and 48 with the exception of road works forming part of this development and identified in any Works Authorisation Deed with RMS.

43. Bank Guarantee Requirements

Should a bank guarantee be the proposed method of submitting a security bond it must:

- a) Have no expiry date;
- b) Be forwarded direct from the issuing bank with a cover letter that refers to Development Consent DA 187/2012/JP;
- c) Specifically reference the items and amounts being guaranteed. If a single bank guarantee is submitted for multiple items it must be itemised.

Should it become necessary for Council to uplift the bank guarantee, notice in writing will be forwarded to the applicant fourteen days prior to such action being taken. No bank guarantee will be accepted that has been issued directly by the applicant.

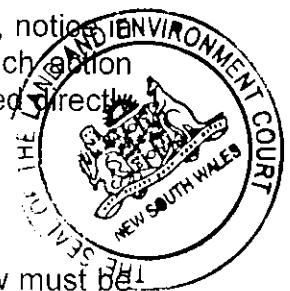
44. Engineering Works and Design

The design and construction of the engineering works outlined below must be provided for in accordance with the following documents and requirements:

- a) Council's Design Guidelines Subdivisions/ Developments
- b) Council's Works Specifications Subdivisions/ Developments

Variance from these documents can only be approved by Council's Manager – Subdivision and Development Certification.

All the works listed below are "building works". There are no "subdivision works" included as part of this development. These "building works" can be separated into three categories:



1. Works within an existing or proposed public road, or works within an existing or proposed public reserve. These works can only be approved, inspected and certified by Council in accordance with the Roads Act 1993 and the Local Government Act 1993 respectively. For Council to issue this approval the following must be provided:

- a) A completed application form.
- b) Four copies of the design plans and specifications.
- c) Payment of the applicable application and inspection fees.
- d) Payment of any required security bonds.



2. Works within the development site, or an adjoining private property, that relates to existing or proposed Council infrastructure assets, such as the laying of a stormwater pipeline or the formation of an overland flowpath within a public drainage easement. These works can only be approved, inspected and certified by Council because Council will have an ongoing risk exposure and management/ maintenance liability with respect to these assets once completed.

A "compliance certificate" as per Section 109(1)(a)(ii) of the Environmental Planning and Assessment Act 1979 must be issued certifying that the detailed design for these works complies with the requirements listed and the above documents. This "compliance certificate" must be issued by Council's Manager – Subdivision and Development Certification and not a private certifier, as discussed. Once approved, the works must be carried out under the supervision of Council's Construction Engineer in accordance with the terms attached to the issued "compliance certificate". Post construction a further "compliance certificate" as per Section 109(1)(a)(i) of the Environmental Planning and Assessment Act 1979 must be issued certifying that the as-built infrastructure and associated works have been carried out to the satisfaction of Council's Construction Engineer. Alternatively, these works can be incorporated into any construction approval granted under category (1) above.

3. Works within the development site, or an adjoining private property, that does not relate to existing or proposed Council infrastructure assets, such as water sensitive urban design elements or inter-allotment drainage pipelines. Such works can be approved, inspected and certified by either Council or a private certifier, so long as the private certifier is accredited to do so.

This certification must be included with the documentation approved as part of any Construction Certificate. The designer of the engineering works must be qualified, experienced and have speciality knowledge in the relevant field of work.

i. Commercial Road Traffic Signals

Traffic signals, and all associated approach and lead-in works, are to be provided in Commercial Road fronting the site in accordance with the plans, details and specifications approved by the Sydney Regional Development Advisory Committee and Council's Manager – Infrastructure and Transport Planning.

ii. Services

Any existing services, including those in Commercial Road, that need to be removed or relocated as part of the development must be removed or relocated in consultation with the relevant service authority. These servicing works must be shown on the submitted engineering drawings.

iii. Turning Head

A cul-de-sac turning head must be provided at the end of Prestwick Avenue generally in accordance with the concept design plans and details prepared by ACOR and submitted with the development application. The cul-de-sac must have a 19m diameter at its widest point measured from the face of kerb on each side.

iv Stormwater Pipe Extension

Detailed design and construction of stormwater structures associated with the site and pipe extension to the existing drainage structures within Council's Drainage reserve Lot 14 DP 1057138 (18 McCombe Ave) east of the subject site. The design shall be substantially in accordance with the Stormwater Concept Plans approved by Council under the Deferred Commencement Conditions No2.

Note:

The drainage works within the section of existing Council's reserve Lot 14 DP 1057138 must be bonded as required under the Condition No. 42 of the subject consent.

v. Stormwater Quality Treatment and Reuse

Stormwater quality treatment and reuse is required generally in accordance with the concept design plans and details prepared by ACOR and submitted with the development application, as discussed in the letter from ACOR dated 17 November 2011 submitted with the application.

45 Not Used

46. Concept Engineering Design Approval

The submitted concept engineering design plans are for DA purposes only and must not be used for construction.

47. Internal Pavement Structural Design Certification (Waste Services)

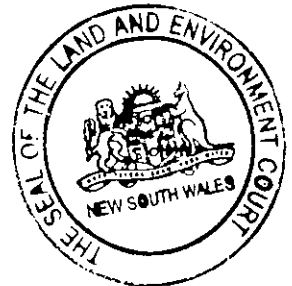
A Certified Practicing Engineer (CPEng) must confirm the structural adequacy of the internal pavement design to Council prior to the issue of a Construction Certificate. The proposed pavement design must be adequate to withstand the loads imposed by a loaded waste vehicle (i.e. 28 tonne axle load) from the boundary to the waste collection point including any manoeuvring areas.



48. Planting along the Prestwick Avenue Cul-de-Sac Head

Planting along the Prestwick Avenue cul-de-sac head is to incorporate two (2) of the following creeper screen plantings to form a screen over the retaining wall:

- Parthenocissus tricuspidata (Virginia Creeper);
- Myoporum debile Creeping Boobialla);
- Pyrostegia venusta (Orange Trumpet Creeper).



49. Review of mechanical plant

A detailed assessment of mechanical plant/services shall be undertaken to verify compliance with criteria established in acoustic report submitted with the application.

The applicant shall obtain written confirmation from an appropriately qualified acoustic consultant that the criteria may be achieved.

50. Waste Management Plan

The Waste Management Plan must be resubmitted to and approved by Council's Manager - Resource Recovery. The plan shall readdress:

- a. Details of likely waste recycling and disposal contractors or facilities.

The Western Sydney Recycling Directory is available to assist the applicant in selecting appropriate contractors and facilities. The directory may be obtained from Council's website www.thehills.nsw.gov.au

PRIOR TO WORK COMMENCING ON THE SITE

51. Principal Certifying Authority

A sign is to be erected in accordance with Clause 98 A (2) of the Environmental Planning and Assessment Regulations 2000.

52. Builder and PCA Details Required

Notification in writing of the builder's name, address, telephone and fax numbers to be submitted to the Principal Certifying Authority prior to work commencing.

Two days before work commences, Council shall be notified of the Principal Certifying Authority in accordance with the Regulations.

53. Management of Building Sites – Builder's Details

The erection of suitable fencing or other measures to restrict public access to the site and building works, materials or equipment when the building work is not in progress or the site is otherwise unoccupied.

The erection of a sign, in a prominent position, stating that unauthorised entry to the site is not permitted and giving an after hours contact name and

telephone number. In the case of a privately certified development, the name and contact number of the Principal Certifying Authority.

54. Approved Temporary Closet

An approved temporary closet connected to the sewers of Sydney Water, or alternatively an approved chemical closet is to be provided on the land, prior to building operations being commenced.

55. Consultation with Service Authorities

Applicants are advised to consult with Telstra, NBN Co and Australia Post regarding the installation of telephone conduits, broadband connections and letterboxes as required.

Unimpeded access must be available to the electricity supply authority, during and after building, to the electricity meters and metering equipment.

The building plans must be submitted to the appropriate Sydney Water office to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements. If the development complies with Sydney Water's requirements, the building plans will be stamped indicating that no further requirements are necessary.

56. Erosion and Sedimentation Controls

Erosion and sedimentation controls shall be in place prior to the commencement of site works; and maintained throughout construction activities until the site is landscaped and/or suitably revegetated. The controls shall be in accordance with the details approved by Council and/or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (Blue Book).

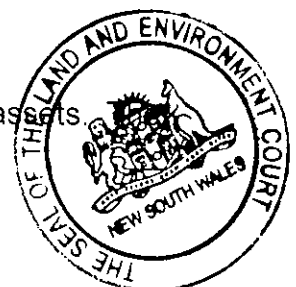
57. Stabilised Access Point

A stabilised all weather access point is to be provided prior to commencement of site works, and maintained throughout construction activities until the site is stabilised. The controls shall be in accordance with the requirements with the details approved by Council and/or as directed by Council Officers. These requirements shall be in accordance with Managing Urban Stormwater – Soils and Construction produced by the NSW Department of Housing (Blue Book).

58. Pre-Construction Public Infrastructure Dilapidation Report

A public infrastructure inventory report must be prepared and submitted to Council recording the condition of all public assets in the direct vicinity of the development site. The report shall include:

- a) Designated construction access and delivery routes; and
- b) Photographic evidence of the condition of all public assets. The report shall clearly identify the date of recording.



59. Separate WSUD Detailed Design Approval

No work is to commence until a detailed design for the WSUD system has been approved by either Council or an accredited certifier.

60. Traffic Control Plan

A Traffic Control Plan is required to be prepared in strict compliance with the requirements of AS 1742.3 and the current RMS Traffic Control and Work Sites Manual and submitted to Council for approval. The person preparing the plan must have the relevant RMS accreditation to do so. Where amendments to the approved plan are required, they must be submitted to Council for approval prior to being implemented.

61. NSW Roads and Maritime Services Design Approval

Prior to any works commencing, the design and construction of the works in Windsor Road and the traffic signals in Commercial Road must be approved by the NSW Roads and Maritime Services. Four copies of the NSW Roads and Maritime Services' stamped approved construction plans and a covering letter from the NSW Roads and Maritime Services advising that suitable arrangements have been made to enable the commencement of works must be submitted to Council.

62. Notification

Two days before work commences, Council shall be notified of the Principal Certifying Authority in accordance with Form 7 of the Regulation.

63. Principal Certifying Authority

A sign is to be erected in accordance with Clause 98 A (2) of the Environmental Planning and Assessment Regulations 2000.

64. Discontinuation of Domestic Waste Service(s)

Prior to commencement of any demolition works, Council must be notified to collect any garbage or recycling bins from any dwelling/building that is to be demolished and to discontinue the waste service (where the site ceases to be occupied during works). Construction or demolition workers must not use Council's domestic and garbage and recycling service for the disposal of waste. Please contact Council's Domestic Waste Hotline on 1800 623 895 for the discontinuation of waste services.

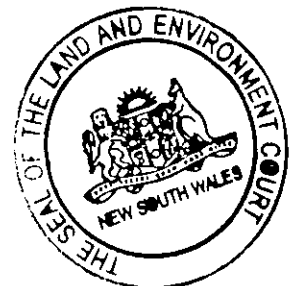
DURING CONSTRUCTION

65. Hours of Work

Work on the project to be limited to the following hours: -

Monday to Saturday - 7.00am to 5.00pm;

No work to be carried out on Sunday or Public Holidays.



The builder/contractor shall be responsible to instruct and control sub-contractors regarding the hours of work. Council will exercise its powers under the Protection of the Environment Operations Act, in the event that the building operations cause noise to emanate from the property on Sunday or Public Holidays or otherwise than between the hours detailed above.

66. Survey Report

Survey Certificate to be submitted to the Principal Certifying Authority at footings and/or formwork stage. The certificate shall indicate the location of the building in relation to all boundaries, and shall confirm the floor level prior to any work proceeding on the building.

67. Roof Water Drainage

Gutter and downpipes to be provided and connected to an approved drainage system upon installation of the roof covering.

68. Compliance with Critical Stage Inspections and Other Inspections Nominated by the Principal Certifying Authority

Section 109E(d) of the Act requires certain specific inspections (prescribed by Clause 162A of the Regulations) and known as "Critical Stage Inspections" to be carried out for building work. Prior to permitting commencement of the work, your Principal Certifying Authority is required to give notice of these inspections pursuant to Clause 103A of the Regulations.

N.B. An Occupation Certificate cannot be issued and the building may not be able to be used or occupied where any mandatory critical stage inspections or other inspections required by the Principal Certifying Authority are not carried out.

Where Council is nominated as Principal Certifying Authority, notification of all inspections required is provided with the Construction Certificate approval.

NOTE: You are advised that inspections may only be carried out by the PCA unless by prior agreement of the PCA and subject to that person being an accredited certifier.

69. Standard of Works

All work must be completed in accordance with this consent and Council's Works Specification Subdivisions/ Developments and must include any necessary works required to make the construction effective. All works and public utility relocation must incur no cost to Council.

70. Engineering Construction Inspections

Construction inspections are required for the engineering works included in this consent at the completion of the following inspection stages:

- a) Prior to commencement of work;
- b) Traffic control to AS 1742-3;



- c) Bedding of pipes in trenches;
- d) Trench backfill within roads;
- e) Formwork for concrete structures;
- f) Sub-grade proof roller test;
- g) Proof roller test for kerb;
- h) Sub-base course proof roller test;
- i) Base course proof roller test;
- j) Prior to placing of fill;
- k) Road crossing;
- l) Final inspection; and
- m) Asphaltic concrete surfacing.

The inspection of works approved by Council can only be carried out by Council. An initial site inspection is required prior to commencement of works. 24 hours notice must be given for all inspections.

71. European Sites or Relics

If, during the earthworks, any evidence of a European archaeological site or relic is found, all works on the site are to cease and the Office of Environment and Heritage be contacted immediately. All relics are to be retained in situ unless otherwise directed by the Office of Environment and Heritage.

72. Construction of acoustic barriers

Parallel with the northern boundary, and inset 5 metre, an acoustic barrier shall be constructed to a height of 3 metres above the northern driveway/loading dock. The barrier may consist of lapped and capped timber, Colorbond or similar imperforate material.

Along the eastern boundary, an acoustic barrier shall be constructed to a height of 2.1 metres high and extend for 50 metres adjacent the driveway leading to Commercial Road. The barrier shall be constructed of lapped and capped timber. The barrier shall be constructed on top of a 2.1 metre high retaining wall. There shall be no gap between the retaining wall and the barrier greater than 30mm.

All fencing is to be at the cost of the developer.

73. Removal of scheduled chemical wastes

The scheduled chemical wastes (chlordane, dieldrin, heptachlor and heptachlor epoxide) identified in the 'Due Diligence Contamination Investigation' by Geo-Logic Pty Ltd shall be lawfully disposed off-site.



74. Gate for maintenance of buffer area

The double-width opening gate shall be of the same construction as the adjoining barrier, with gaps of less than 30mm from the ground as well as the adjoining barrier.

**PRIOR TO ISSUE OF AN OCCUPATION AND/OR SUBDIVISION
CERTIFICATE**

75. Registration of Drainage Easement

A drainage easement 1.5m wide (minimum) must be created over the subject site in favour of the upstream property, Lot 101 DP 1058862, prior to an Occupation Certificate being issued generally in accordance with plans and details prepared by ACOR and submitted with the development application. The width of the drainage easement must comply with Council's Design Guidelines Subdivisions/ Developments and the terms must nominate each lot burdened and benefited. A copy of the registered easement plan and associated 88B Instrument must be submitted to Council.

76. Landscaping Prior to Issue of Occupation Certificate

The landscaping of the site shall be carried out prior to issue of the Occupation Certificate in accordance with the approved plan. All landscaping is to be maintained at all times in accordance with BHDCP Part D, Section 3 – Landscaping and the approved landscape plan.

77. Section 73 Certificate must be submitted to the Principal Certifying Authority before the issuing of an Occupation Certificate

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Make early application for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Building and developing > Developing your land > water Servicing Coordinator or telephone 13 20 92.

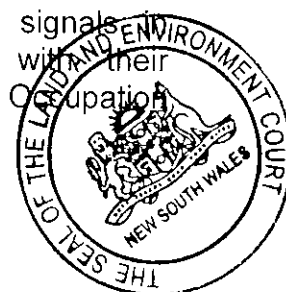
The Section 73 Certificate must be submitted to the Principal Certifying Authority before occupation of the development/release of the plan of subdivision.

78. Completion of Engineering Works

An Occupation Certificate must not be issued prior to the completion of all engineering works covered by this consent, in accordance with this consent.

79. Compliance with NSW Roads and Maritime Services Requirements

A letter from the NSW Roads and Maritime Services must be submitted confirming that all works in Windsor Road and the traffic signals in Commercial Road have been completed in accordance with their requirements and that they have no objection to the issuing of an Occupation Certificate.



80. Post Construction Public Infrastructure Dilapidation Report

Before an Occupation Certificate is issued, an updated public infrastructure inventory report must be prepared and submitted to Council. The updated report must identify any damage to public assets in the direct vicinity of the development site and the means of rectification for the approval of Council.

81. Dedication of Public Road

An Occupation Certificate must not be issued until the extension of Prestwick Avenue has been dedicated as public road at no cost to Council, requiring a separate application or road dedication plan. This dedication must occur at no cost to Council.

82. Dedication of Road Widening

An Occupation Certificate must not be issued until the road widening in Commercial Road, should widening be required to accommodate the traffic signals, has been dedicated at no cost to Council, requiring a separate application or road dedication plan. This dedication must occur at no cost to Council or the RMS.

83. Consolidation of Allotments

All allotments included in this consent must be consolidated into a single allotment before an Occupation Certificate is issued. A copy of the registered plan must be submitted to Council.

84. Creation and Registration of Restrictions and Positive Covenants

a) Creation of Restrictions and Positive Covenants

The submission to Council of all necessary documentation together with payment of the endorsement fee prescribed in Council's Schedule of Fees and Charges to create the following over the title of the property. The wording must nominate The Hills Shire Council as the authority to release, vary or modify each restriction or positive covenant. Standard wording is available on Council's website and must be used.

i. Restriction – WSUD Modification

A restriction restricting development over or the varying of any finished levels and layout of the constructed water sensitive urban design elements.

ii. Positive Covenant – WSUD Maintenance

A positive covenant to ensure the ongoing maintenance of the constructed water sensitive urban design elements at the expense of the property.



iii. Restriction – Vehicular Access

A restriction must be created restricting access to Prestwick Avenue from the subject site.

b) Registration of Request Documents

The request documents endorsed by Council must be registered and a copy of the registered documents submitted to Council before an Occupation Certificate is issued.

85. Completion of Water Sensitive Urban Design Elements

An Occupation Certificate must not be issued prior to the completion of the WSUD elements conditioned earlier in this consent. The following documentation must be submitted in order to obtain an Occupation Certificate:

- a) WAE drawings and any required engineering certifications;
- b) Records of inspections;
- c) An approved operations and maintenance plan; and
- d) A certificate of structural adequacy from a suitably qualified structural engineer verifying that any structural element of the WSUD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime.

Where Council is not the PCA a copy of the above documentation must be submitted to Council.

86. Works as Executed Plans

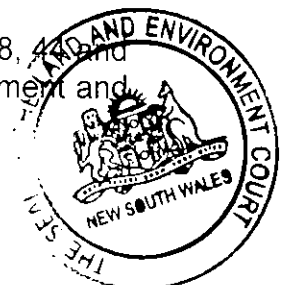
Works as Executed (WAE) plans prepared by a suitably qualified engineer or registered surveyor must be submitted to Council when the engineering works are complete. The WAE plans must be prepared in accordance with Council's Design Guidelines Subdivisions/ Developments on a copy of the approved engineering plans. An electronic copy of the WAE plans, in ".dwg" or ".pdf" format, must also be submitted.

Where applicable, the plans must be accompanied by pavement density results, pavement certification, concrete core test results and site fill results.

87. Performance/ Maintenance Security Bond

A performance/ maintenance bond of 5% of the total cost of the engineering works is required to be submitted to Council. The bond will be held for a minimum defect liability period of one year and may be extended to allow for the completion of necessary maintenance or in the case of outstanding works. The minimum bond amount is \$5,000.00. The bond is refundable upon written application to Council along with payment of the applicable bond release fee, and is subject to a final inspection.

Note: All works shall consist of those required under conditions 17, 18, 44 and 48 with the exception of the road works forming part of this development and identified in any Works Authorisation Deed with RMS.



88. Confirmation of Pipe Locations

A letter from a registered surveyor must be provided certifying that all pipes and drainage structures are located within the proposed drainage easements.

89. Stormwater CCTV Recording

All piped stormwater drainage systems and ancillary structures external to the site which will become Council assets must be inspected by a CCTV and a report prepared. A hard copy of the report must be submitted along with a copy of the CCTV inspection on either VHS or DVD (in WMA format).

90. Public Asset Creation Summary

A completed public asset creation summary form must be submitted with the WAE plans. A blank form can be found on Council's website.

91. Interim Fire Safety Certificate

An Interim Fire Safety Certificate must be issued prior to the issue of an Interim Occupation Certificate to use or change the use of a building, except in the case of a Class 1a or Class 10 building(s).

92. Internal Pavement Construction Certification (Waste Services)

Certification from a Certified Practicing Engineer (CPEng) must be submitted to Council prior to the issue of an Occupation Certificate confirming that the internal pavement has been constructed in accordance with the approved plans and is suitable for use by a loaded waste vehicle.

THE USE OF THE SITE

93. Security Screens/Locking Devices (Fire Safety)

All required fire exits or paths of travel to an exit shall not be fitted with security screens and/or locking devices that will impede safe egress of the building occupants and visitors without prior consent from Council. This condition does not apply to the entry door of the sole occupancy residential units.

94. No Obstruction to Path of Travel

The placement of storage racks, cabinets, floor stock, pallets or the like, shall not obstruct any path of travel to an exit nor the efficient operation and effective coverage of any fire hose reel, fire hydrant, fire extinguisher or other essential fire safety measures.

95. Waste Storage and Collection

To ensure the adequate storage and collection of waste from the occupation or use of the premises, all garbage and recyclables emanating from the



premises must be stored in the designated waste storage area. Arrangement must be in place in all areas of the development for the separation of recyclable materials from general waste.

96. Servicing of Bins

Council contracted or private garbage/recycling collection vehicles servicing the development are not permitted to reverse in or out of the site. Collection vehicles must be travelling in a forward direction at all times to service bins.

97. Hours of Operation

The proposed hours of operation of the home improvement centre and separate bulky goods tenancy are:

Monday to Friday 6am – 10pm; and
Saturday and Sunday 6am to 8pm.



98. Hours of operation of loading dock

The loading docks shall only be operated:

- between 7am and 10pm Monday – Saturday; and
- between 8am and 10pm on Sunday and any public holiday.

99. Restriction on use of forklifts in eastern loading dock

There shall be no use of forklifts in the eastern loading dock, servicing Tenancy 1, in order to ensure acoustic criteria is met.

100. Restriction on speed of trucks

Within the development, trucks driving on the site shall be limited to 10km/h to ensure acoustic criteria are met. To assist in compliance, a typical 10km/h sign shall be displayed in prominent locations on the site.

101. Maintenance of Buffer Zone along Northern Boundary

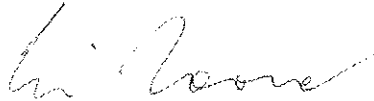
The buffer zone area between the northern acoustic fence and the residential properties is to be maintained at all times by the owner and include:

- (i) The installation of a sprinkler system using tank water;
- (ii) Regular maintenance including the removal of rubbish, weed management and the replacement of any dead/dying plants.
- (iii) Ensure that the area remains free from graffiti and overgrown vegetation. Note – this does not apply to the removal of any trees or Endangered Ecological Community.

102. No Storage of Goods/Materials Externally

All goods/materials are to be stored internal to the building and garden centre area including pallets, racking and similar items but excluding any display of

merchandise undertaken at the front/southern side of the building during approved trading hours. Any display of merchandise on the pathways/pedestrian accessways is to have regard to pedestrian circulation, use by those with trolleys and prams, access for the mobility impaired and safe egress during emergencies.



Tim Moore
Senior Commissioner



