

AGREEMENT BETWEEN PARTIES

SECTION 34(3)(A) AND 34(3)(B) LAND AND ENVIRONMENT COURT ACT 1979

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	2019/00321826

TITLE OF PROCEEDINGS

Applicant	Principal Healthcare Finance Pty Limited
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Respondent	Penrith City Council
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FILING DETAILS

Filed for	Principal Healthcare Finance Pty Limited, applicant
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Legal representative	Anthony Whealy Mills Oakley Level 7 151 Clarence Street Sydney NSW 2000
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Legal representative reference	AJWS/CYCS/3405502
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Contact name and telephone	Clare Collett	02 9121 9027
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Contact email	ccollett@millsoakley.com.au
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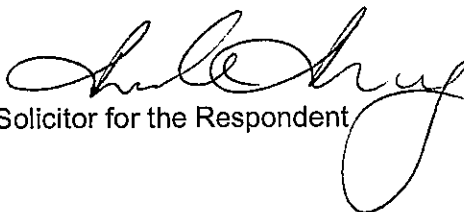
TERMS OF AGREEMENT

1. Pursuant to section 34(3) of the *Land and Environment Court Act 1979* (NSW) ("**Act**"), the parties:
 - (a) have reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties (as set out below); and
 - (b) note the proceedings involve a written request pursuant to clause 4.6 of the *Penrith Local Environmental Plan 2010* ("**PLEP**") to vary the development standard contained in clause 40(4)(c) of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*; and
 - (c) say there is no dispute and that the decision is one the Court could have made in the proper exercise of its functions.
2. Pursuant to section 34(3)(a) and (b) of the *Land and Environment Court Act 1979* (NSW), the parties request that the Commissioner dispose of these proceedings in accordance with the terms of the agreement as follows:
 - (a) Leave is granted to the Applicant to amend the Development Application and rely on the plans listed in Condition 1 of the Conditions of Consent at **Annexure A**;

- (b) The Clause 4.6 variation application in relation to the development standard contained in clause 40(4)(c) of the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* is upheld.
- (c) The appeal is upheld.
- (d) Development Application No. DA19/0419 lodged with the Respondent on 25 June 2019 and as amended by the plans, drawings and material listed in Condition 1 of the Conditions of Consent for the demolition of existing structures and construction of a 2 storey Residential Aged Care Facility including 142 beds, an allied health facility, at-grade carparking, earthworks and landscaping at 5-7 Floribunda Avenue, Glenmore Park NSW 2745 is approved subject to the conditions annexed to this agreement as **Annexure A**.
- (e) The Applicant is to pay the Respondent's costs thrown away pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979* (NSW), in the amount of \$5,000, payable within 28 days of the date of this agreement.

DATE: 19/5/2020

Employed Solicitor for the Applicant


Solicitor for the Respondent

Annexure A – Conditions of Consent

Conditions of Consent

DA19/0419 – 5-7 Floribunda Avenue, Glenmore Park

TERMINOLOGY

- a) Any reference in this document to a "consent" means a "development consent" defined in the Environmental Planning and Assessment Act 1979 (**EP&A Act**).
- b) Any reference in this consent to a "Compliance", "Occupation" or "Subdivision" Certificate is a reference to such a certificate as defined by Sections 6.3, and 6.16 of the EP&A Act.
Reference to a "Construction Certificate" means a Construction Certificate under section 6.4 of the EP&A Act or if the Former Building and Subdivision provisions apply, under s109C of the Act.
- c) Any reference to the "Site" means the land at 5-7 Floribunda Avenue, Glenmore Park NSW 2745, also known as Lot 1 in DP 825553.
- d) Any reference to the "Council" is a reference to Penrith City Council.
- e) A reference to a 'construction certificate' includes any relevant construction certificate and it is acknowledged that the applicant may obtain multiple construction certificates.

General

- 1 The approved development must be carried out substantially in accordance with the following plans and documents except as may be amended by the following conditions.

Plan/Report No.	Description	Prepared by	Revision	Date
A000	Title Page	CalderFlower	B	-
A002	Site Plan	CalderFlower	B	27.02.2020
A003	Demolition Plan	CalderFlower	B	27.02.2002
A100	Lower Ground Floor	CalderFlower	C	15.04.2020
A101	Ground Floor Plan	CalderFlower	C	15.04.2020
A102	First Floor Plan	CalderFlower	B	27.02.2020
A103	Roof Plan	CalderFlower	B	27.02.2020
A200	Elevations	CalderFlower	C	15.04.2020
A210	Sections	CalderFlower	B	27.02.2020
A800	Materials	CalderFlower	B	27.02.2020
A901	Photomontages	CalderFlower	C	15.04.2020
LA000	Cover Sheet	Taylor Brammer	B	02.03.2020
LA201	Community Courtyard & Native Courtyard	Taylor Brammer	B	02.03.2020

LA202	Wind and Light & look at	Taylor Brammer	B	02.03.2020
LA203	Landscape Terrace	Taylor Brammer	B	02.03.2020
LA204	Dementia Courtyard	Taylor Brammer	A	02.03.2020
LA301	Landscape Sections	Taylor Brammer	B	02.03.2020
LA302	Landscape Section	Taylor Brammer	B	02.03.2020
LA303	Landscape Sections	Taylor Brammer	A	02.03.2020
LA400	Planting Plan & Schedules	Taylor Brammer	B	02.03.2020
LA700	Typical Details	Taylor Brammer	B	02.03.2020
LA200	Landscape Masterplan	Taylor Brammer	D	09.03.2020
LA500	Tree Retention & Removal Plan	Taylor Brammer	D	09.03.2020
LA600	Finishes Plan	Taylor Brammer	B	09.03.2020
19017	Assessment of Traffic Parking Implications	Transport & Traffic Planning Associates	G	Feb 2020
HH Ref 19117	Civil Engineering Report	Henry & Hymas	4	Feb 2020
191177	Bio Retention Maintenance Plan	Henry & Hymas	-	-
191177	Stormwater Maintenance Plan	Henry & Hymas	-	-
DA_C000	Cover sheet, Drawing schedule, Notes	Henry & Hymas	05	25.02.2020
DA_C100	Ground Floor Plan	Henry & Hymas	11	08.04.2020
DA_C101	Lower Ground Floor Plan	Henry & Hymas	11	06.03.2020
DA_C110	Site Sections	Henry & Hymas	03	06.03.2020
DA_C200	Stormwater Misc. Details & Pit Lid Sched.	Henry & Hymas	05	25.02.2020
DA_C201	Bio-Retention Basin Plan Section & Details	Henry & Hymas	08	8.04.2020
DA_C250	Stormwater Catchment Plan	Henry & Hymas	05	21.02.2020
DA_C500	Pavement Plan	Henry & Hymas	08	25.02.2020
DA_SE01	Sediment & Erosion Control Plan	Henry & Hymas	05	25.02.2020
DA_SE02	Sediment & Erosion Control Typ. Sections & Details.	Henry & Hymas	05	25.02.2020

1. Prior to the issue of a Construction Certificate, the Principal Certifying Authority is to be provided with evidence from the design team confirming that a 'suitable access pathway' (as defined by Clause 26(4) of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004), is provided as per the applicable requirements for the development, which are specified in Clause 26, in particular subclause (2), (3) and (4) of the Seniors SEPP.

2. Prior to the issue of a Construction Certificate, the Applicant must:

- (a) Ensure the creation of an easement to drain water (minimum of 2.5 metres wide) over Lot 10 DP832179 in favour of Lot 1 DP 825553 to contain the stormwater outlet pipe and headwall delineated on Plan 19117_DA_C101, revision 11, dated 06.03.2020, prepared by Henry & Hymas.
 - (b) Submit to Council suitable documentary evidence that indicates the creation of the abovementioned easement as being registered with NSW Land Registry Services.
3. In accordance with Clause 18 of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004, a restriction as to user must be registered against the title of the property on which the development is to be carried out, in accordance with Section 88E of the Conveyancing Act 1919, limiting the use of any accommodation to which the development relates to the kinds of people referred to in subclause (1) of Clause 18. The restriction shall be registered on the title **prior to the issue of an Occupation Certificate.**

4. **Approved hours of operation**

The approved hours of operation of the Wellness Centre, which may be open to the general public are Monday to Friday 8.30am to 6.00pm and Saturdays 9.00am to 2.00pm, closed Sundays.

The approved operational hours of the Residential Aged Care Facility are 24hours, seven days for staff and residents.

Delivery and service vehicles are restricted to between 7.00am and 7.00pm daily and are not to unreasonably impact on the amenity of adjacent residential uses. Delivery of milk and bread only is permissible from 6am.

5. The approved development is to remain compliant with the NSW Rural Fire Service Bush Fire Safety Authority issued, as provided in the General Terms of Approval, under division 4.8 of the Environmental Planning and Assessment Act 1979, and a Bush Fire Safety Authority, under Section 100B of the Rural Fires Act 1997, which have been issued subject to conditions. Conditions to be complied with are detailed within NSW Rural Fire Service correspondence dated 18 May 2020, Reference no. D19/0419 (CNR 7071) - DA20200505001563-Original-1.
6. **Prior to the issue of a Construction Certificate**, the architectural plans are to be delineated to ensure that:
- (a) the waste trucks or service vehicles will not make a reverse manoeuvres in any area designated for staff or visitor car parking, and
 - (b) the northernmost entry/exit driveway is to be designed to continue consistently through to kerb crossover (i.e. across the verge area).
7. **Prior to the issue of a Construction Certificate**, an amended BASIX Certificate is to be provided to the Principal Certifying Authority. The BASIX Certificate is to reflect the approved plans as listed in this consent.
8. **Prior to the issue of a Construction Certificate**, the waste bin storage area is to be provided with the following:
- (a) The bin storage area is to be designed and constructed such that the floor falls to a floor

waste which is connected to the sewer.

- (b) A hose, hose cock and hot and cold-water supply is to be provided to the waste bin storage area.

9. A security system must be installed and operational on all pedestrian exit points including to the lifts, lobby and any basement storage areas. An intercom, code or card lock or similar system must be installed for the building entries.
10. CCTV is to be installed covering communal public spaces, entry areas and the loading dock area. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations during the day or night. Signage must be displayed to indicate that CCTV cameras are in use.
11. Any graffiti at the site, including on the fencing, gates, signage, the building, the substation, or hydrants is to be removed as soon as practical and any vandalism to property is to be promptly repaired.
12. All parking areas, lobby, lift, storage and fire stair areas are to be well-lit, with consistent lighting to prevent shadowing or glare with details included with the **Construction Certificate** application.
13. **Prior to the issue of any Construction Certificate**, a Site Fencing and Hoarding Plan must be submitted to Penrith City Council. That plan is to include all required site fencing and hoarding, including the locations, heights and the materials and finishes proposed. Any advertising or display suite or sales information is to be limited to 25% coverage of each elevation of the site fencing.

All site fencing and hoarding is to be maintained in good working order and is to be kept tidy. All damage and/or graffiti is to be removed and/or rectified as soon as practicable.
14. **The approved development must not be used or occupied until an Occupation Certificate has been issued.**
15. **Prior to the issue of an Occupation Certificate**, a lighting system shall be installed for the development so as to provide uniform lighting across any common areas and driveways. The lighting must comply with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).
16. **A Construction Certificate** must be obtained prior to commencement of any building works.
17. Any car parking space must not be subleased.
18. The operating noise level of any plant and associated equipment must not exceed 5db(a) above the background noise level when measured at the boundary of the Site. The provisions of the Protection of the Environment Operations Act 1997 (as amended), apply to the development to regulate any offensive noise.
19. The external walls of the approved building including any attachments, must comply with the relevant requirements of the National Construction Code (NCC). **Prior to the issue of both**

the Construction Certificate and the Occupation Certificate, the Certifying Authority and Principal Certifying Authority must:

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

20. Any fencing that is installed along the front boundary is to be:

- (a) Less than 1.2m in height, or if of a greater height, be constructed in accordance with the requirements of Council's DCP, and
- (b) if of masonry construction, be of a palisade style or of "open" construction with slatted timber or similar material spanning between 'posts' or 'pilasters'.

Any fencing to be erected along the side and rear boundaries, is to be a maximum of 2.4m in height.

21. Prior to the issue of a Construction Certificate, the Principal Certifying Authority is to ensure that the design of the development is provided with waste facilities that allow recycling by the provision of appropriate facilities and allow for sufficient area in the waste bay for the separation of recyclable waste streams.

22. Upon completion of demolition works and prior to the issue of the earthworks

Construction Certificate, a further assessment of contamination is to be undertaken and submitted Penrith City Council's Development Services Manager for approval. This assessment is to supplement and respond to the recommendations contained within the Detailed Site Investigation prepared by Martens and dated August 2019 (Report Reference: P1806759 JR02V03 version 1, version date 16/08/2019, Doc Set ID 8814634). The further assessment of contamination is to be undertaken in accordance with the NSW Environment Protection Authority's 'Contaminated Sites: Guidelines for Consultants Reporting on Contaminated Sites'. The assessment is to include (but is not limited to) further sampling under existing buildings and hard stand areas (to be demolished prior to construction of approved development) in accordance with the recommendations of the Detailed Site Investigation prepared by Martens and dated 16/08/2019.

Environmental - Public Health Matters

23. Warm water systems are to be registered with Penrith City Council by completing the registration form for regulated systems. This form is to be returned to Council **prior to the issuing of the occupation certificate** and operation of the system.

Advisory note

Air-handling systems, hot-water systems, humidifying systems, warm-water systems and water-cooling systems shall be operated and maintained in accordance with the Public Health Act 2010, Public Health Regulation 2012, AS3666.2:2011 *Air-handling and water systems of buildings – Microbial control - Operation and maintenance* and the current

edition of the NSW Code of Practice for the Control of Legionnaires Disease

The water-cooling system shall be operated and maintained in accordance with the Public Health Act 2010, Public Health Regulation 2012, AS3666.3:2011 *Air-handling and water systems of buildings – Microbial control – Performance-based maintenance of cooling water systems* and the current edition of the NSW Code of Practice for the Control of Legionnaires Disease.

24. Air-Handling Systems, Hot-Water Systems, Humidifying Systems, Warm-Water Systems and Water-Cooling Systems must be installed in accordance with AS/NZS 3666.1:2011 “Air-Handling and Water Systems of Buildings—Microbial Control—Design, Installation and Commissioning”, as applicable to the specific system. An air-handling system must be fitted with supply air filters. This includes:

- (a) The Regulated System shall be thoroughly flushed before being brought into service and shall be located in a position to ensure that the exhaust discharge from the Cooling Tower is a minimum 6m away from occupied areas, pedestrian thoroughfares, trafficable areas, air intakes including lift vents and building openings.
- (b) When an Air Handling, Hot Water, Humidifying, Warm Water or Water Cooling System is installed a certificate is to be obtained certifying that the system has been installed in accordance with the Public Health Act, 2010, Public Health Regulation, 2012 and AS/NZS 3666.1:2011 “Air-Handling and Water Systems of Buildings—Microbial Control—Design, Installation and Commissioning”. There must be safe and easy access to a regulated system (as defined in the Public Health Act 2010) for the purpose of the cleaning, inspection and maintenance of the system.

A water-cooling system must be equipped with a disinfection procedure that is in operation at all times and that is designed to control microbial growth so that:

- (a) the level of Legionella in the system is not more than 10 colony-forming units per millilitre, and
- (b) the heterotrophic plate count in the system is not more than 100,000 colony-forming units per millilitre.

25. If these levels are exceeded, remedial action must be taken as soon as practicable by a competent person. The Applicant must ensure that any reportable test results are provided, in the approved form, to Council no later than 24 hours after they are received.

26. Any liquid discharge from the regulated system, resulting from the operation, maintenance and/ or cleaning operations, is to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.

27. The development shall not be used or occupied until an Occupation Certificate has been issued.

A satisfactory inspection from an authorised officer of Council’s Environmental Health Department is required prior to the issue of the Occupation Certificate. The occupier is to contact the Environmental Health Department to organise an appointment at least 72 hours prior to the requested inspection time. The business is to be registered with Penrith City Council by completing the “Registration of Premises” form. This form is to be returned to Council prior to the issuing of the occupation certificate and operation of the business.

28. The construction, fit-out and finishes of the food premises (kitchen and café) must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS4674-2004 *Design, Construction and Fit-out of Food Premises*. A Food Safety

Supervisor, with a current Food Safety Supervisor Certificate recognised by the NSW Food Authority, must be appointed by the business prior to commencement of the business.

29. Hand basins must be freestanding, serviced with hot and cold water through a single outlet, able to be mixed at a temperature of at least 40°C and fitted with a hands-free operation. Where sensor taps are installed the basin must not be more than 6metres from the hot water system. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.

30. Nursing and aged care facilities - The operator shall manage the deceased in accordance with the Public Health Act 2010 and Public Health Regulation 2012. NSW Health Guidelines for the Funeral Industry and any other relevant standards, guidelines or codes of practice published or endorsed by the NSW Ministry of Health.

31. Prior to the issue of a Construction Certificate, the applicant shall submit to Penrith City Council for approval, information in relation to management of the deceased demonstrating compliance with the Public Health Act 2010 and Public Health (Disposal of Bodies) Regulation 2002.

32. Prior to the issue of a occupation certificate, the applicant shall submit to Penrith City Council information on any regulated system as, defined in the Public Health Act 2010 and associated regulations and approvals from NSW Health. Details should be submitted to Council including, but not limited to, the number of systems, detailed design plans, type of systems, system details and location of the system.

Advisory Note:

The NSW Health website www.health.nsw.gov.au has an approved list for warm water systems and thermostatic mixing valves. If Council is not the Certifier issuing the Construction Certificate, then documentation demonstrating Council has reviewed and approved the information should be submitted to the Certifier. s

If the system automatically produces warm water for ablution purposes the system must not be installed in a defined health care facility (public hospital, private hospital, day procedure centre and aged care service), unless it is of a kind approved in writing by the NSW Department of Health.

33. Prior to the issue of a Construction Certificate, the applicant shall submit to Penrith City Council, a detailed description of the types of procedures and practices that will take place in relation to hairdressing and beauty procedures demonstrating compliance with Public Health Act 2010 and associated Regulations.

34. Hairdresser Beautician fit-out - Prior to the issue of a Construction Certificate, the applicant shall submit to Penrith City Council, the proposed fit out of the beautician and hairdressers demonstrating compliance with schedule 2 Local Government (General) Regulation 2005.

The plans shall include but not limited to, detailed floor and cross sectional plans, drawn to scale, showing:

- The proposed floor layout.
- Details of all construction materials and other materials that will be used within the premises (i.e. finishes of all floors, coving, walls and ceilings)
- Elevations of the walls and floor finish, showing the type and method of installation of

coving to be used.

- Locations and design details of proposed hand washing facilities.
- Locations and design details of proposed washing facilities and any floor wastes.
- Proposed location and details of all fixtures, fittings and appliances (including proposed method of installation).
- Details showing location, capacity and clearance of hot water services.

35. Prior to the issue of a Construction Certificate, details on water conservation measures, consistent with the approved plans listed in Condition 1, as outlined in Section 3.1 Council's WSUD Policy must be provided to Penrith City Council's Development Services Manager for approval

Demolition & Construction Works

36. All demolition works are to be carried out in compliance with the provisions of AS 2601-1991 "The Demolition of Structures". **Prior to the carrying out of any demolition works**, all services must be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

All material arising from any demolition or excavation works must be disposed of at a Council-approved location or waste facility. Details of the proposed disposal location(s) for all excavated material from the Site must be provided to the Principal Certifying Authority **prior to the commencement of any demolition works**.

37. Prior to commencement of any demolition works on the Site, a "Portaloo" with appropriate hand washing facilities must be located on the Site and made available throughout the construction and demolition works.

38. The worksite and adjacent verges are to be maintained and kept neat and tidy throughout construction and demolition works, until occupation of the building.

39. Prior to commencement of any demolition works on the Site, the Principal Certifying Authority is to be satisfied that:

- (a) Any appropriate measures are in place so as to comply with the SafeWork NSW Authority's "Short Guide to Working with Asbestos Cement" and
- (b) Where asbestos is present, the person employed to undertake the works is a licensed asbestos removal contractor and is holder of a current SafeWork NSW Asbestos License.

Any demolition works involving the removal of any asbestos from the Site must only be carried out by a licensed asbestos removal contractor who holds a current SafeWork NSW Asbestos License.

Any asbestos-laden waste, including asbestos cement flat and corrugated sheeting, must be disposed of at a tipping facility that is licensed by the Environmental Protection Authority to receive asbestos wastes.

Prior to commencement of any demolition works on the Site, the Applicant is referred to

40. Dust suppression techniques are to be employed during the carting out of any demolition works, so as to reduce any potential nuisance from dust, to surrounding properties.
41. During the carrying out of any construction and demolition works, all mud and soil from vehicular movements to and from the Site, must be contained, so as to avoid being deposited on any public road.
42. All demolition works are restricted to the following hours in compliance with the NSW Environment Protection Authority Noise Control Guidelines:
- Mondays to Fridays, 7.00am to 6.00pm,
 - Saturdays, 7.00am to 1.00pm if inaudible on any neighbouring residential
 - premises, otherwise 8.00am to 1.00pm.

No demolition work is permitted on Sundays and Public Holidays.

In the event that the demolition relates to works inside the approved building and does not involve works to any of the external walls or the roof, through the use of equipment that emits noise, then those demolition works are not restricted to the hours stated above.

Advisory note:

The provisions of the Protection of the Environment Operations Act 1997 in regulating offensive noise apply to all construction works.

Environmental Matters

43. Any erosion and sediment control measures shall be installed **prior to the commencement of works on Site** including the approved clearing of any Site vegetation. Any erosion and sediment control measures are to be maintained, so as to comply with the approved erosion and sediment control plan(s) and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.
44. Cut and fill operations on the Site are only permitted in conjunction with the building works as detailed on the approved plans.
45. Any waste materials stored on the Site are to be contained within a designated area such as a waste bay or bin, to ensure that no waste materials are allowed to enter the stormwater system or any neighbouring properties. The designated waste storage areas shall provide at least two waste bays or bins, so as to allow any waste materials to be separated from recyclable materials, and are to be fully enclosed at times including when the Site is unattended.
46. **Prior to the issue of the Occupation Certificate**, a Compliance Certificate is to be submitted to and approved by Council. The Certificate is to certify that the development, including all

plant and equipment, has been constructed and installed to comply with the Council approved established noise criteria. Should the Compliance Certificate identify any non-compliance issues, the Certificate is to provide suitable recommendations for mitigation of those issues. Any mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

47. Any liquid discharge from the air handling system, resulting from operation, maintenance and/or cleaning operations, are to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.

48. All excavated and other waste material generated as a result of the development are to be disposed of at a lawful waste management facility. Where the disposal locations or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

49. Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.

50. Construction works shall be carried out in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009. Prior to the issue of the Construction Certificate, a Construction Management Plan (CMP) is to be prepared by a suitably experienced / qualified person and submitted to Council for approval. If Council is not the certifying authority, a copy of Council's approval is to be provided to the Principal Certifying Authority.

The CMP is to address the environmental aspects of the construction phase of the development and is to include details on the environmental management practices and controls to be implemented on the site. The CMP is required to include (but is not limited to) the following:

- Water quality management,
- A Construction Noise and Vibration Impact Assessment and Management Plan, prepared by an appropriately qualified acoustic consultant. This assessment is to consider (at minimum) the details of the construction program, construction methods, equipment and vehicles in association with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009.
- Hours of operation
- Dust suppression,
- Waste management (including solid and liquid waste),
- Erosion and sediment control,

All construction activities on the site are to be implemented and carried out in accordance with the approved CMP.

51. All excavated material and other wastes generated as a result of the construction of the

approved development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Any waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials has not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

52. No fill material shall be imported to the Site until such time as a Validation Certificate (with a copy of any report forming the basis for the validation) for the fill material has been submitted to Council. The Validation Certificate shall:

- state the legal property description of the fill material source site,
- be prepared by an appropriately qualified person (as defined in Penrith Contaminated Land Development Control Plan) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
- clearly indicate the legal property description of the fill material source site,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
- provide confirmation (based on the fill classification) whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

An appropriately qualified and experienced professional shall:

- Supervise the filling works,
- Carry out an independent review of all documentation relating to the filling of the Site upon completion of the approved filling works, and submit a report of his or her findings to the Council and any Principal Certifying Authority,
- Certify by way of a Compliance Certificate or other written documentation that all fill materials that have been placed on the Site, comply with all conditions of this consent and that the Site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.

The contact details of any appropriately qualified person/s engaged for the works shall be provided with the Notice of Commencement.

If the Principal Certifying Authority is not satisfied that suitable fill materials have been used

on the Site, further Site investigations or remediation works may be requested to be carried out. In these circumstances, such further Site investigations or remediation works shall be carried out prior to the carrying out of any other works approved under this consent.

53. No approval is granted for the installation of any air conditioning units not shown to be located in the areas indicated on the approved plans listed in this consent.

54. If any archaeological relics or items or places of aboriginal cultural significance are uncovered during the course of the carrying out of the works authorised by this consent. No further works are to be undertaken until or unless further directed by NSW Office of Environment and Heritage.

The applicant is advised that depending on the possible significance of any relics, place or items, an archaeological assessment and an excavation permit under the Heritage Act 1977 may be required to be obtained before further work can be commenced in or around the impacted area of the Site.

BCA Matters

55. The applicant or the owner of the approved building must provide Penrith City Council with an annual fire safety statement. The annual fire safety statement for the building must:

- (a) deal with each essential fire safety measure in the building, and
- (b) be given:
 - i. within 12 months after the last such statement was given, or
 - ii. if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- (a) must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- (b) prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

56. All aspects of the design of the approved building must comply with the applicable performance requirements of the Building Code of Australia (**BCA**) so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements under the BCA can only be achieved by:

- (a) complying with the deemed to satisfy provisions, or
- (b) formulating an alternative solution which:
 - i. complies with the performance requirements, or
 - ii. is shown to be at least equivalent to the deemed to satisfy provision, or
 - iii. a combination of (i) and (ii).

Health Matters and OSSM installations

57. All rainwater tanks must be maintained so as not to create a nuisance within the approved development or to any adjoining properties and must be protected against mosquito infestation.

Utility Services

58. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s website at www.sydneywater.com.au then the “e-developer” icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority **prior to the issue of any Occupation Certificate.**

59. No approval is granted for the installation of a pad mounted substation in any other location other than that which is indicated on the plans listed as approved, as part of this consent, or that may be endorsed in writing by the Manager of Development Services at Penrith City Council.
60. **Prior to the issue of a Occupation Certificate**, the Principal Certifying Authority must be satisfied that any telecommunications infrastructure installed to service the approved development, complies with the following:

- The requirements of the Telecommunications Act 1997;
- For a fibre ready facility, the NBN Co’s standard specifications current at the time of installation; and
- For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the approved development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

Prior to the issue of any Occupation Certificate, written certification from all relevant service providers must be submitted to the Principal Certifying Authority, certifying that the telecommunications infrastructure has been installed in compliance with the conditions of this consent and the applicable legislation at the time of construction of the approved development.

61. **Prior to the issue of a Construction Certificate**, Penrith City Council must be consulted about and must approve the proposed location of the hydrant booster if its location, design and scale differs from that which is indicated on the listed plans in this consent. Details must be provided to the manager of development services at Penrith City Council to confirm the material and design dimensions of any heat shield that may be required. The need for

the installation of a heat shield is to be avoided through design and hydrant positioning.

Construction Work

62. Stamped plans, specifications, a copy of this development consent, the Construction Certificate and any other Certificates that are relied upon, shall be available on Site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the Site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work Site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work Site is prohibited,
- the designated waste storage area must be covered when the Site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage (but no more than 2 signs) stating the details required by this condition are to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work Site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

63. An Unexpected Finds Protocol (the Protocol) is to be developed by an appropriately qualified environmental consultant. Prior to the issue of the Construction Certificate, the Protocol is to be submitted to Council for approval. If Council is not the certifying authority for this development, the report is required to be provided to Council for approval.

The Protocol is to address, at minimum, the management of any contamination found on the site during the excavation/construction phase of the development, including at minimum, contaminated soils, groundwater, buried building materials, asbestos, odour and staining.

The above Protocol is to be complied with at all times during the excavation/construction phase of the development.

64. Prior to the commencement of any construction works:

(a) Toilet facilities at or in the vicinity of the work Site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the Council, or alternatively, any other sewage management facility approved by Council.

(b) All excavations and backfilling associated with the erection or demolition of the approved development must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be

properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of the approved development extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice to the owner of the adjoining allotment of land of his or her intention to do so and furnish particulars of the excavation to the owner. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of the approved development is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work Site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work Site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

65. Construction works that are carried out in compliance with this consent, and which involve the use of heavy vehicles, heavy machinery and any other equipment likely to cause noise or vibration impacts to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7.00am to 6.00pm
- Saturdays, 7.00am to 1.00pm if inaudible on neighbouring residential premises, otherwise 8.00am to 1.00pm.
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building and which do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act 1997, in regulating offensive noise also apply to all construction works.

Engineering & Civil Matters

66. All roadworks, stormwater drainage works, associated civil works and dedications, required to give effect to the approved development shall be undertaken at no cost to Penrith City

Council.

67. An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to commencement of any works on site or prior to the issue of any Construction Certificate, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's City Works Department on 4732 7777 or visit Penrith City Council's website for more information.

68. Prior to the issue of any relevant Construction Certificate, a Section 138 Roads Act application, including payment of application and inspection fees together with any applicable bonds, shall be lodged and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings). All vehicular crossings shall be sited perpendicular to the kerb.
- b) Concrete footpaths and or cycleways
- c) Road opening for utilities
- d) Road occupancy or road closures
- e) The placement of hoardings, structures, containers, waster skips, signs etc. in the road reserve
- f) Temporary construction access

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

Contact Penrith City Council's City Assets Department on 4732 7777 or visit Penrith City Council's website for more information.

Advisory notes:

- 1. Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- 2. All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate.
- 3. On completion of any awning over the road reserve, a certificate from a practicing structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act.

69. Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that a Section 138 Roads Act application, including payment of application and inspection fees, has been lodged with and approved by Penrith City Council (being the Roads Authority under the

Roads Act) for conversion of the existing kerb inlet in Floribunda Avenue to a V-grate within the layback of the northern access driveway and construction of an additional kerb inlet pit upstream of the existing pit.

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines, and best engineering practice.

Contact Penrith City Council's Development Engineering Department on 4732 7777 to obtain a formal fee proposal prior to lodgement and visit Penrith City Council's website for more information.

Advisory notes:

1. Where Penrith City Council is the Certifying Authority for the development the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
2. All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate.

70. Prior to the issue of a Roads Act approval, a Performance Bond is to be lodged with Penrith City Council for conversion of the existing kerb inlet pit in Floribunda Avenue to a V-grate and all associated works. The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges.

Advisory note:

1. Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

71. Prior to the issue of any Occupation Certificate, a Maintenance Bond is to be lodged with Penrith City Council for conversion of the existing kerb inlet pit in Floribunda Avenue to a V-grate and all associated works.

The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges.

Advisory note:

Contact Penrith City Council's Engineering Services Department on 4732 7777 for further information relating to bond requirements.

72. Prior to the issue of any relevant Construction Certificate, the Certifying Authority shall ensure that an application under Section 68 of the Local Government Act, including payment of application and inspection fees, has been lodged with and approved by Penrith City Council for provision of a stormwater outlet pipe and headwall within Lot 10 in DP 832179.

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments,

Engineering Construction Specification for Civil Works, Austroads Guidelines, and best engineering practice.

Contact Penrith City Council's Development Engineering Department on 4732 7777, to obtain a formal fee proposal prior to lodgement and visit Penrith City Council's website for more information.

Advisory note:

All works associated with the Section 68 Local Government Act approval must be completed prior to the issue of any Occupation Certificate.

73. Prior to the issue of any relevant Construction Certificate, the Certifying Authority shall ensure that the stormwater management system is generally consistent with the approved engineering plans by Henry & Hymas Consulting Engineers Pty Ltd, as may be amended by the requirements of this consent, and as may be required to facilitate the outcomes expressed by the approved architectural and landscape plans listed in this consent.

Engineering plans and supporting calculations for the stormwater management systems are to be prepared by a suitably qualified and experienced professional and shall accompany the application for a Construction Certificate

Prior to the issue of any relevant Construction Certificate, the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage for Building Developments and Water Sensitive Urban Design (WSUD) policies.

74. Prior to the issue of any relevant Construction Certificate, the Certifying Authority shall ensure that:

- (a) vehicular access, circulation, manoeuvring, pedestrian and parking areas comply with AS 2890.1, .2 and .6,
- (b) Sight distances at the street frontage have been provided in accordance with AS 2890.1, and
- (c) All vehicles can enter and exit the site in a forward direction,
- (d) All accessible parking spaces are located close to the facility entrance with an accessible path of travel from the parking space to the entrance.

75. Prior to the commencement of any works associated with the approved development, all sediment and erosion control measures shall be installed to comply with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997, and Managing Urban Stormwater series from the Office of Environment and Heritage.

The erosion and sediment control measures shall remain in place and be maintained until any disturbed areas have been rehabilitated and stabilised.

76. Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to ensure that upon completion of all works in the road reserve, all verge areas fronting and within the development Site are turfed. The turf shall extend from the back of kerb to the Site's street

boundary, with the exception of concrete footpaths, service lids or any other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall be finished flush with the edge of the pavement. Turf is to be watered and maintained by those acting on the consent until fully established.

77. All car parking, manoeuvring and bicycle parking must be in accordance with AS 2890.1, AS 2890.3, AS 2890.6 and Council's DCP requirements.

78. The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.

79. Prior to the issue of any Occupation Certificate, the Principal Certifying Authority shall ensure that all works approved under a Section 138 Roads Act approval or Section 68 Local Government Act approval have been inspected and signed off by Penrith City Council..

80. Prior to the issue of any Occupation Certificate, a restriction as to user and positive covenant relating to the:

(a) Stormwater management systems (including on-site detention and water sensitive urban design)

Shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater and Drainage for Building Developments policy.

81. The stormwater management systems shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan.

Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the stormwater management systems.

82. Prior to the issue of an Occupation Certificate, Works As Executed drawings, final operation and maintenance plans and any other compliance documentation for the stormwater management systems shall be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, WSUD Technical Guidelines and Stormwater Drainage for Building Developments.

An original set of Works As Executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Penrith City Council is not the Principal Certifying Authority.

83. Prior to the issue of any Occupation Certificate, the Principal Certifying Authority shall ensure

that:

(a) the stormwater management systems (including on-site detention and water sensitive urban design):-

- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
- Have met the design intent with regard to any construction variations to the approved design.
- Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works As Executed drawings.

84. Prior to the issue of the Occupation Certificate, the Principal Certifying Authority is to ensure that all car parking spaces are line marked and that staff, visitor and ambulance parking bays are clearly marked as such.

85. Approved car spaces are not to be used for storage.

86. Prior to the issue of a relevant Construction Certificate, the Certifying Authority shall ensure that a geotechnical investigation, report and strategy has been conducted to ensure stability of the Council infrastructure and surrounding developments. The geotechnical investigation, report and strategy shall comply with the recommendations contained in the technical direction GTD 2012/001 prepared by the Road and Maritime Services as amended. The development shall undertake a dilapidation report for all immediately adjacent buildings and Council owned infrastructure to ensure that no damage occurs due to the excavations associated with the development.

If Council is not the Certifying Authority the dilapidation report shall be submitted to Penrith City Council prior to Construction Certificate and then updated and submitted **prior to any Occupation Certificate** confirming no damage has occurred.

Landscaping Matters

87. All landscape works are to be constructed in accordance with the endorsed landscape plans, and are to be prepared to comply with Appendix F5, Section 2.9 Landscape Technical Specifications of the Penrith Development Control Plan 2014

Landscaping shall be maintained:

- in accordance with the endorsed plans required by this consent, and
- in a healthy state, and in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent reasonably practicable, the same maturity as the vegetation which died or was removed.

88. The approved landscaping for the approved development must be installed by a suitably qualified experienced landscape professional.

89. Upon completion of the approved landscape works associated with the development and **prior to the issue of an Occupation Certificate** for the development, a Certificate from a landscaper must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development.

90. All landscape works are to meet industry best practice and the following relevant Australian Standards

- AS 4419 Soils for Landscaping and Garden Use,
- AS 4454 Composts, Soil Conditioners and Mulches, and
- AS 4373 Pruning of Amenity Trees.

91. All trees approved for removal shall be removed in a manner, so as to prevent damage to those trees that are to be retained. All trees identified for retention are to be protected in accordance with industry best practice and the applicable Australian Standards.

No trees are to be removed, ringbarked, cut, topped or lopped or willfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council.

92. All trees other than those approved for removal must be retained and protected in accordance with Australian Standards, Protection of trees on development sites, AS 4970-2009.

Trees on Public & Private Property

93. All precautions shall be taken to adequately protect trees on adjacent private, and adjacent public property (ie. footpaths, roads, reserves, etc.) against damage during construction of the approved development.

No trees on public property shall be removed, pruned or damaged during construction including by the erection of any fences, hoardings or other temporary works. No construction materials may be placed beneath the canopy of street trees.

Certification Matters

94. Prior to the commencement of any earthworks or construction works on Site, the proponent is to:

- (a) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two days before any earthworks or construction/demolition works are to commence on site

(including the clearing of site vegetation), the proponent shall submit a “Notice of Commencement” to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

95. An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding. A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

Reason for Conditions: These conditions have been imposed to ensure the protection of the environment and a better design outcome.