



## Land and Environment Court New South Wales

Case Name:	<b>Principal Healthcare Finance Pty Limited v Penrith City Council</b>
Medium Neutral Citation:	[2023] NSWLEC 1462
Hearing Date(s):	Conciliation conference on 12 July 2023
Date of Orders:	17 August 2023
Date of Decision:	17 August 2023
Jurisdiction:	Class 1
Before:	O'Neill C
Decision:	<p>The orders of the Court are:</p> <p>(1) The appeal is upheld.</p> <p>(2) Development Application No. 21/0607 for the demolition of a dwelling, tree removal and construction of a two-storey residential aged care facility, comprising 149 beds and associated facilities/services, drainage and landscaping works, at 94-100 Explorers Way, St Clair NSW 2759, is determined by the grant of consent, subject to the conditions of consent at Annexure A.</p>
Catchwords:	DEVELOPMENT APPLICATION – residential aged care facility – conciliation conference – agreement between the parties – orders
Legislation Cited:	<p>Biodiversity Conservation Act 2016, Pt 7, s 7.7</p> <p>Environmental Planning and Assessment Act 1979, ss 4.16, 8.7</p> <p>Environmental Planning and Assessment Regulation 2000, cl 55, 55AA, 121</p> <p>Environmental Planning and Assessment Regulation 2021, Sch 6 s 3</p> <p>Land and Environment Court Act 1979, s 34, 39</p> <p>Penrith Local Environmental Plan 2010, cl 4.3, 4.6, 5.21, 7.1, 7.4, 7.30</p> <p>State Environmental Planning Policy (Resilience and Hazards) 2021, Ch 4</p>

State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.60, 2.118, 2.119

Cases Cited:

Cumming v Cumberland Council (No 2) [2021]  
NSWLEC 117  
Four2Five Pty Ltd v Ashfield Council [2015]  
NSWLEC 90  
Initial Action Pty Ltd v Woollahra Municipal Council  
(2018) 236 LGERA 256; [2018] NSWLEC 118  
RebelMH Neutral Bay Pty Limited v North Sydney  
Council [2019] NSWCA 130  
Wehbe v Pittwater Council (2007) 156 LGERA 446;  
[2007] NSWLEC 827

Texts Cited:

Category:

Principal judgment

Parties:

Principal Healthcare Finance Pty Limited (Applicant)  
Penrith City Council (Respondent)

Representation:

Counsel:  
A Whealy (Solicitor) (Applicant)  
A Avery (Solicitor) (Respondent)

Solicitors:  
Mills Oakley (Applicant)  
Penrith City Council (Respondent)

File Number(s):

2023/65908

Publication Restriction:

No



## JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal of Development Application No. 21/0607 for the demolition of a dwelling, tree removal and construction of a two-storey residential aged care facility, comprising 149 beds and associated facilities/services, drainage and landscaping works (the proposal), at 94-100 Explorers Way, St Clair NSW (the site) by Penrith City Council (the Council).
- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 12 July 2023. I presided over the conciliation conference. At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties.
- 3 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.
- 4 There are preconditions to the exercise of power to grant development consent for the proposal.

### Amended Plans

- 5 The Environmental Planning and Assessment Regulation 2000 (EPA Regulation) continues to apply to the application, because the application was lodged on 17 August 2021 and not yet determined on 1 March 2022 (s 3 of Sch 6 to the Environmental Planning and Assessment Regulation 2021 (2021 Regulation)). Pursuant to s 3(2) of Sch 6 to the 2021 Regulation, there is a requirement to use the NSW Planning Portal under the 2000 Regulation,

therefore cl 55(1), 55AA(2)(d) or 121B(1) do not apply if the development application is subject to proceedings in the Court.

- 6 The Council, as the consent authority, consented to the amendment of the application. The amended application amended the proposal, the subject of the application.

### **Planning framework**

- 7 The site is zoned R2 Low Density Residential pursuant to the Penrith Local Environmental Plan 2010 (LEP 2010). The objectives of the R2 zone, to which regard must be had, are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To promote the desired future character by ensuring that development reflects features or qualities of traditional detached dwelling houses that are surrounded by private gardens.
- To enhance the essential character and identity of established residential areas.
- To ensure a high level of residential amenity is achieved and maintained.

- 8 Health services facilities are permitted with development consent in the R2 zone pursuant to s 2.60(1) of the State Environmental Planning Policy (Transport and Infrastructure) 2021.

- 9 The height of buildings development standard for the site is 8.5m pursuant to cl 4.3 of LEP 2010. The proposal has a maximum building height of 9.84m.

- 10 The site is not affected by mainstream flooding and only by overland flow flooding. I accept the conclusions of the Stormwater Management Report provided with the application that the proposal will have no tangible impact on the flood levels through the site and that the swale has been carefully designed



to ensure that it provides the capacity to direct flows up to the 100-year storm event, pursuant to the matters for consideration under cl 5.21 of LEP 2010.

- 11 I accept the conclusions of the Geotechnical Assessment submitted with the application that the matters required to be considered under cl 7.1(3) of LEP 2010 are satisfied.
- 12 I accept the conclusions of the Section J Report submitted with the application that the proposal is a sustainable development, having had regard to the matters under cl 7.4 of LEP 2010.
- 13 I accept the conclusions of the Detailed Site Investigation Report submitted with the application that the matters under cl 7.6(2) have been addressed.
- 14 I accept the Council's submission that the amended landscape proposal demonstrates that planning and design measures are incorporated into the proposal to reduce the urban heat island effect as listed under cl 7.30(3) of LEP 2010.
- 15 Pursuant to Pt 7 of the *Biodiversity Conservation Act 2016*, the application includes a letter from Abel Ecology that confirms the Biodiversity Development Assessment Report demonstrates the proposal has avoided and minimised the impacts on Cooks River / Castlereagh Ironbark Forest. Section 7.7(2) of the Act requires a biodiversity development assessment if a development is likely to significantly affect threatened species, and this has been provided with the application.
- 16 A Detailed Site Investigation Report is provided with the application. The report concludes that a Remediation Action Plan should be provided to guide the remediation of known asbestos containing material contamination. Following the remediation works, the site is considered suitable for the proposed use, pursuant to Ch 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.



- 17 Chapter 2 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 applies. Section 2.118 deals with development with frontage to a classified road. Access is not provided to the site from the M4 and the development will not have any detrimental impact on its safety, efficiency and ongoing operation. Section 2.119 relates to impact of road noise or vibration on non-road development. A noise impact assessment report was submitted with the application. This report includes an assessment of noise from the M4 motorway and the recommended acoustic treatments to ensure internal noise criteria are achieved. This report recommends the appropriate acoustic treatments including external glazing thickness, which are included in the proposal.

### **Contravention of the height of development standard**

- 18 The applicant provided a written request seeking to justify the contravention of the height of buildings development standard prepared by BBC Consulting Planners and dated June 2023.
- 19 Clause 4.6(4) of LEP 2010 establishes preconditions that must be satisfied before a consent authority or the Court exercising the functions of a consent authority can exercise the power to grant development consent (*Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118 at [13] “*Initial Action*”). The consent authority must form two positive opinions of satisfaction under cl 4.6(4)(a). As these preconditions are expressed in terms of the opinion or satisfaction of a decision-maker, they are a “jurisdictional fact of a special kind”, because the formation of the opinion of satisfaction enlivens the power of the consent authority to grant development consent (*Initial Action* [14]). The consent authority, or the Court on appeal, must be satisfied that the applicant’s written request has adequately addressed the matters required to be addressed by cl 4.6(3) and that the proposal development will be in the public interest because it is consistent with the objectives of the contravened development standard and the zone, at cl 4.6(4), as follows:



(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

20 On appeal, the Court has the power under cl 4.6(2) of LEP 2010 to grant consent to development that contravenes a development standard without obtaining or assuming the concurrence of the Secretary of the Department of Planning and Environment, pursuant to s 39(6) LEC Act, but should still consider the matters in cl 4.6(5) of LEP 2010 (*Initial Action* at [29]).

*The applicant's written request to contravene the height of buildings development standard*

21 The first opinion of satisfaction required by cl 4.6(4)(a)(i) is that the applicant's written request seeking to justify the contravention of a development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3) of LEP 2010 (see *Initial Action* at [15]), as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard

22 The applicant bears the onus to demonstrate that the matters in cl 4.6(3) have been adequately addressed by the written request in order to enable the Court, exercising the functions of the consent authority, to form the requisite opinion of satisfaction (*Initial Action* at [25]). The consent authority has to be satisfied that the applicant's written request has in fact demonstrated those matters required to be demonstrated by cl 4.6(3) and not simply that the applicant has

addressed those matters (*RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [4]).

23 The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [42]-[51] ("*Wehbe*") and repeated in *Initial Action* [17]-[21] and are summarised below:

- (1) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- (2) the underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
- (3) the underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
- (4) the development standard has been abandoned by the Council;
- (5) the zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

24 The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).

25 The applicant's written request justifies the contravention of the height of buildings development standard on the basis that compliance is unreasonable or unnecessary because the objectives of the development standard are achieved, notwithstanding non-compliance with the standard. In summary, the



written request justifies the non-compliance with the height of buildings development standard on the basis of the following:

- The site slopes, and the brief requires a consistent floor level for ease of access for aged residents, resulting in a breach of the height of buildings development standard for a part of the roof of the facility.
- The height, bulk and scale of the proposed development is compatible with the existing and desired future character of the locality and is appropriate for the context;
- The building design and onsite arrangement will result in a development that is consistent with the character of the St Clair locality;
- The proposed additional height has minimum visual impact; and
- The exceedance of the height of buildings development standard does not result in amenity impacts on adjoining development.

26 The grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature, and environmental planning grounds is a phrase of wide generality (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]) as they refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects of the Act (*Initial Action* at [23]). The environmental planning grounds relied upon must be sufficient to justify contravening the development standard and the focus is on the aspect of the development that contravenes the development standard, not the development as a whole (*Initial Action* at [24] and *Cumming v Cumberland Council* (No 2) [2021] NSWLEC 117 at [78]). Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

- 27 I am satisfied, pursuant to cl 4.6(4)(a)(i), that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3). I am satisfied that justifying the aspect of the development that contravenes the development standard for the reasons set out above can be properly described as an environmental planning ground within the meaning identified by his Honour in *Initial Action* at [23].

*Whether the proposal is in the public interest because it is consistent with the objectives of the contravened development standard and the zone*

- 28 The second opinion of satisfaction in cl 4.6(4)(a)(ii) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard that is contravened and the zone objectives. The consent authority must be satisfied that the development is in the public interest because it is consistent with these objectives, not simply that the development is in the public interest (*Initial Action* at [27]). The consent authority must be directly satisfied about the matters in cl 4.6(4)(a)(ii) of LEP 2010 (*Initial Action* at [26]).
- 29 I accept the justifications that the proposal is consistent with the objectives of the development standard and zone set out in the written request.

## **Conclusion**

- 30 I have considered the submissions made by the Council in the Statement of Jurisdictional Issues filed with the Court on 19 July 2023 and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.

## **Orders**

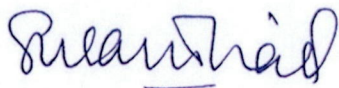
- 31 The orders of the Court are:

(1) The appeal is upheld.



- (2) Development Application No. 21/0607 for the demolition of a dwelling, tree removal and construction of a two-storey residential aged care facility, comprising 149 beds and associated facilities/services, drainage and landscaping works, at 94-100 Explorers Way, St Clair NSW 2759, is determined by the grant of consent, subject to the conditions of consent at Annexure A.

I certify that this and the preceding 8 pages are a true copy of my reasons for judgment.



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**Susan O'Neill**

**Commissioner of the Court**

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Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF  
CONSENT

Development Application No: DA21/0607

**Development:** Demolition of existing structures, removal of trees and existing vegetation, construction of a two (2) storey residential care facility consisting of 149 beds with ancillary uses and allied health facility, 36 car parking spaces, and earthworks, drainage, site and landscaping works.

**Site:** 94-100 Explorers Way, St Clair NSW 2759

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

**Date of determination:** 17 August 2023

**Date from which consent takes effect:** [Date the consent is registered on the NSW Planning Portal].

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as 94-100 Explorers Way, St Clair NSW 2759.

The conditions of consent are as follows:

A. 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 Number	Description	Prepared by	Revision	Date
<b>Architectural Plans</b>				
DA0.15	Demolition Plan	Custance	C	09.06.2023
DA0.20	Site Plan	Custance	D	16.06.2023
DA1.20	Ground Floor	Custance	E	16.06.2023
DA1.21	Level 1	Custance	C	09.06.2023
DA1.22	Roof Plan	Custance	D	16.06.2023
DA3.00	External Elevations 1	Custance	C	09.06.2023
DA3.01	External Elevations 2	Custance	C	09.06.2023
DA3.10	Building Sections	Custance	C	09.06.2023
DA3.11	Building Sections	Custance	C	09.06.2023
DA5.20	3D Isometric View	Custance	C	09.06.2023
DA5.21	3D Isometric View (8.5m height place)	Custance	C	09.06.2023
DA12.00	Material + Finishes Schedule	Custance	C	09.06.2023
DA12.10	Perspective Views	Custance	C	09.06.2023
<b>Landscape Plans</b>				
LA000	Cover Sheet	Taylor Brammer	F	09.06.2023
LA100	Landscape Master Plan	Taylor Brammer	H	09.06.2023
LA101	Melaleuca Courtyard	Taylor Brammer	F	09.06.2023
LA102	Springtime Courtyard	Taylor Brammer	F	09.06.2023
LA103	Gumnut Garden	Taylor Brammer	F	09.06.2023
LA104	Paperbark Courtyard	Taylor Brammer	F	09.06.2023
LA105	Entry Garden	Taylor Brammer	F	09.06.2023
DA201	Planting Plan 1	Taylor Brammer	F	09.06.2023
DA202	Planting Plan 2	Taylor Brammer	E	09.06.2023
DA203	Planting Plan 3	Taylor Brammer	E	09.06.2023
DA204	Planting Plan 4	Taylor Brammer	F	09.06.2023
DA300	Sections	Taylor Brammer	F	09.06.2023
DA301	Sections	Taylor Brammer	F	09.06.2023



LA400	Tree Retention and Removal Plan	Taylor Brammer	E	09.06.2023
LA500	Plant Schedule	Taylor Brammer	F	09.06.2023
LA600	Landscape Details	Taylor Brammer	E	09.06.2023
LA601	Fencing Plan	Taylor Brammer	E	09.06.2023
LA602	Levels Plan	Taylor Brammer	E	09/06/2023
LA603	Tree Canopy Calculations	Taylor Brammer	C	09/06/2023
SK309	Services Enclosure	Taylor Brammer	C	09.06.2023
<b>Civil &amp; Stormwater Plans</b>				
19755_DA_C000	Cover Sheet, Drawing Schedule, Notes and Locality Sketch	Henry & Hymas	05	07.06.2023
19755_DA_C100	General Arrangement Plan	Henry & Hymas	13	07.06.2023
19755_DA_C110	Site Sections	Henry & Hymas	05	07.06.2023
19755_DA_C121	Post Developed Flood Extent Plan	Henry & Hymas	04	23.09.2022
19755_DA_C123	Post Developed Flood Extent + 10% Plan	Henry & Hymas	02	07.06.2023
19755_DA_C200	Stormwater Miscellaneous Details & Pit Lid Schedule	Henry & Hymas	04	07.06.2023
19755_DA_C201	On-site Detention Tank, Sections and Details	Henry & Hymas	03	31.05.2022
19755_DA_C210	Stormwater Longitudinal Sections	Henry & Hymas	01	13.12.2021
19755_DA_C211	Swale Longitudinal Sections	Henry & Hymas	01	13.12.2021
19755_DA_C250	Stormwater Catchment Plan	Henry & Hymas	04	07.06.2023
19755_DA_EX01	External Works Plan	Henry & Hymas	01	30.05.2023
19755_DA_SE01	Sediment & Erosion Control Plan	Henry & Hymas	01	22.03.2021
19755_DA_SE02	Sediment & Erosion Control Typical Sections & Details	Henry & Hymas	01	22.03.2021
19755_DA_BE01	Bulk Earthworks Plan	Henry & Hymas	04	07.06.2023
<b>Reports</b>				



Access Compliance Report	Formiga1	B	13 May 2021
Arboricultural Impact Assessment Tree Protection Specification	Tree iQ	A	30 March 2021
Biodiversity Development Assessment Report	Abel Ecology	2	30 June 2022
Bush Fire Assessment Report	Bushfire Hazards Solutions	2	13 August 2021
Supplementary Bushfire Assessment	Bushfire Hazards Solutions	-	16 June 2023
Construction Management Plan	Pact PM	1	24 May 2021
Crime Prevention Through Environmental Design Report (CPTED)	BBC Consulting Planners	-	August 2021
Detailed Site Investigation	Martens	1	6 December 2021
Geotechnical Assessment	Martens	1	9 March 2021
NCC 2019 Section J Part J1 Statement of Compliance	JHA	-	6 January 2021
Noise Impact Assessment	Pulse White Noise Acoustics	3	13 August 2021
Memorandum of Acoustic Review	Pulse White Noise Acoustics	-	17 June 2022
Operational Plan of Management	Opal Health Care	-	10 August
Prescribed Ecological Actions Report	Abel Ecology	1	18 June 2021
Stormwater and Flood Report	Henry & Hymas	2	April 2021
Stormwater and Flooding Design Statement	Henry & Hymas	-	1 April 2022
Traffic and Parking Assessment	TTPA	H	June 2023
Waste Management Operational Brief	Universal Foodservice Designs	2	13 June 2023

2. The approved hours of operation of the Residential Care Facility are 24 hours, seven days a week for staff and residents.



The approved hours of operation of the Allied Health Facility open to the public is Monday to Friday 9:00am to 5:00pm.

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.

2A. Notwithstanding any other condition of this consent, any requirement to comply with a condition prior to the issue of a Construction Certificate is taken to relate to the Construction Certificate relevant to that component of the development only.

3. **Prior to the issue of a Construction Certificate**, the following amended or additional plans are to be submitted to and approved by the Development Assessment Coordinator at Penrith City Council:

(a) Plans are to be submitted which indicate a pedestrian footpath is provided along the northern side of Explorers Way, spanning across the Site's frontage (between each driveway crossover) and which provides a pram ramp, to allow north-south connectivity via the Explorers Way pedestrian refuge. Plans are to be designed having regard to Council's civil specifications.

(b) The 3 new street trees identified in the south-west portion of the Landscape Master Plan (LA100, revision H) shall be relocated along the verge of Explorers Way in a different location (in consultation with Penrith City Council). This shall be demonstrated on amended Landscape Plans.

(c) Further details of the services enclosure shall be submitted to Penrith City Council for review and approval. The documentation shall include detail regarding the materials and style of fencing and its relation with the blade screen.

Note: The enclosure shall be of open-style palisade fencing, utilising timber/timber look materials and neutral or passive colours. A solid clad blade screens are not supported.

4. 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 20 October 2021, Reference no. DA20210907003839- Original-1.

#### **B. Prior to the issue of a Construction Certificate Conditions**

5. All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia 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 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
  - c. a combination of (a) and (b).
6. A construction certificate must be obtained prior to the commencement of any building works.
7. The following must be implemented **prior to the issue of Construction Certificate**:
- a) The class and number of ecosystem credits in the table of ecosystem credits required to be retired – like for like – threatened ecological community must be retired to offset the residual biodiversity impacts of the development.
  - b) Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund must be provided to the consent authority and to Penrith City Council's Senior Biodiversity officer if Council is not the consent authority.

**Table of ecosystem credits required to be retired – like for like- threatened ecological community.**

Impacted threatened ecological community	Number of ecosystem credits	Hollow bearing trees (HBTs)	IBRA subregion from which credits can be used to offset the impacts from development	Trading group that can be used to offset the impacts from development
724- Shale Gravel Transition Forest in the Sydney Basin Bioregion. This includes PCT's: 724, 808) (HBT – Yes)	3	Yes	Cumberland, Burragorang, Pittwater, Sydney Cataract, Wollemi and Yengo Or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.	Shale Gravel Transition Forest in the Sydney Basin Bioregion

8. **Prior to any vegetation clearing or the issue of a Construction Certificate**, the class and number of species credits identified in the following table must be retired to offset the residual biodiversity impacts of the development.

**Table of species credits required to be retired – like for like**



Impacted species credit species	Number of species credits	IBRA subregion from which credits can be used to offset the impacts from development	Species that can be used to offset the impacts from development
<i>Caladenia tessellata</i> / Thick Lip Spider Orchid	5	Anywhere in NSW.	<i>Caladenia tessellata</i> / Thick Lip Spider Orchid
<i>Callistemon linearifolius</i> / Netted Bottle Brush	2	Anywhere in NSW.	<i>Callistemon linearifolius</i> / Netted Bottle Brush
<i>Dillwynia tenuifolia</i> / <i>Dillwynia tenuifolia</i>	3	Anywhere in NSW.	<i>Dillwynia tenuifolia</i> / <i>Dillwynia tenuifolia</i>
<i>Grevillea parviflora</i> subsp. <i>parviflora</i> / Small-flower Grevillea	3	Anywhere in NSW.	<i>Grevillea parviflora</i> subsp. <i>parviflora</i> / Small-flower Grevillea
<i>Haliaeetus leucogaster</i> / White-bellied Sea-Eagle	4	Anywhere in NSW.	<i>Haliaeetus leucogaster</i> / White-bellied Sea-Eagle
<i>Hibbertia fumana</i> / <i>Hibbertia fumana</i>	5	Anywhere in NSW.	<i>Hibbertia fumana</i> / <i>Hibbertia fumana</i>
<i>Litoria aurea</i> / Green and Golden Bell Frog	4	Anywhere in NSW.	<i>Litoria aurea</i> / Green and Golden Bell Frog
<i>Marsdenia viridiflora</i> subsp. <i>viridiflora</i> - endangered population / <i>Marsdenia viridiflora</i> R. Br. subsp. <i>viridiflora</i> population in the Bankstown, Blacktown, Camden, Campbelltown, Fairfield, Holroyd, Liverpool and Penrith local government areas	3	Anywhere in NSW.	<i>Marsdenia viridiflora</i> subsp. <i>viridiflora</i> - endangered population / <i>Marsdenia viridiflora</i> R. Br. subsp. <i>viridiflora</i> population in the Bankstown, Blacktown, Camden, Campbelltown, Fairfield, Holroyd, Liverpool and Penrith local government areas
<i>Meridolum corneovirens</i> /Cumberland Plain Land Snail	3	Anywhere in NSW.	<i>Meridolum corneovirens</i> /Cumberland Plain Land Snail
<i>Myotis macropus</i> / Southern Myotis	3	Anywhere in NSW.	<i>Myotis macropus</i> / Southern Myotis
<i>Petaurus norfolcensis</i> / Squirrel Glider	3	Anywhere in NSW.	<i>Petaurus norfolcensis</i> / Squirrel Glider



<i>Pimelea curviflora</i> var. <i>curviflora</i> / <i>Pimelea curviflora</i> var. <i>curviflora</i>	3	Anywhere in NSW.	<i>Pimelea curviflora</i> var. <i>curviflora</i> / <i>Pimelea curviflora</i> var. <i>curviflora</i>
<i>Pommerhelix</i> <i>duralensis</i> / Dural Land Snail	3	Anywhere in NSW.	<i>Pommerhelix</i> <i>duralensis</i> / Dural Land Snail
<i>Pultenaea parviflora</i> / <i>Pultenaea parviflora</i>	3	Anywhere in NSW.	<i>Pultenaea</i> <i>parviflora</i> / <i>Pultenaea</i> <i>parviflora</i>
<i>Pultenaea</i> <i>pedunculata</i> / Matted Bush-pea	3	Anywhere in NSW.	<i>Pultenaea</i> <i>pedunculata</i> / Matted Bush-pea

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund must be provided to the consent authority and to Penrith City Council's Senior Biodiversity Officer where Council is not the consent authority.

9. **Prior to the issue of a Construction Certificate** a Vegetation Management Plan (VMP) for the area north of the development to include the area of Shale Gravel Transition Forest and the swale is to be submitted to Penrith City Council's Senior Biodiversity Officer for review and approval. The VMP must:

- a) The VMP is to be prepared by an Ecologist Consultant or Bush Regenerator with theoretical and practical experience in bushland restoration and management on the Cumberland Plain. They are required to hold a Certificate IV in Conservation and Land Management or equivalent tertiary qualifications (in a relevant field), as a minimum.
- b) Be consistent with relevant environmental legislation and policies, including, but not limited to, the *Biosecurity Act 2015*, *Rural Fires Act 1997* and guidelines such as the Rural Fire Services Planning for Bushfire Protection Guidelines 2019 and Recovering Bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland (CED, 2005). It is also to have regard to any Recovery Plans and recovery actions that are relevant.
- c) Identify ongoing management and maintenance of the northern portion of the site in terms of impacts of flora and fauna and vegetation management requirements. The focus is to be on the creation and protection of native vegetation and fauna habitats on the site and on maintaining connectivity and management of indirect impacts on adjoining land.
- d) Clearly outline how vegetation will be protected and managed during construction of proposed future development including adjoining residential development.
- e) Identify potential impacts from the development and future residential use of the site (both during construction and post construction) on the on-site and adjacent vegetation and habitats, and how these impacts will be managed and mitigated throughout the life of the development. Impacts include (but are not limited to) increased stormwater runoff and associated nutrients, weeds, erosion and sedimentation, recreation, on-going under scrubbing and tree removal, and other disturbance.



- f) Identify suitable style of boundary fence(s) for the protected vegetation that permits fauna movement, protects native vegetation and reduces indirect impacts associated with adjoining vegetation and trees.
- g) Provide a recommendation species list utilising species that are characteristic species from Shale Gravel Transition Forest, Cooks River / Castlereagh Ironbark Forest and/or Cumberland Plain Woodland. Suitable species should be proposed in different zones that will be suitable and appropriate for the zone.
- h) Identify the minimum plant densities per square metre and diversity for each zone.
- i) Determine performance criteria for the VMP area including but not limited to percentage survival rate for plantings, cover (as expressed as a percentage) of priority and environmental weeds at the end of each year and species diversity for each zone. Note priority weeds are to be less than 2% cover by end of each maintenance period and other environmental weeds are to be less than 4% at the end of each maintenance period. Additional performance criteria such as 'no encroachment of exotic lawn into the VMP area and no erosion or sedimentation beyond the boundary of the development should be included.
- j) Reasonable endeavours are to be used to ensure all plant material to be used throughout the area subject to the VMP will be of local provenance, collected from the Cumberland Plain.
- k) Any mulch to be used is to be eucalypt certified weed and pathogen free.
- l) Provide details of watering method. It is recommended a drip irrigation system is installed within the corridor to assist with watering the VMP area.
- m) Identify habitat improvement measures that are to be undertaken within the VMP area.
- n) Provide details and methods of proposed weed control in accordance with current guidelines and standards including removal strategies, timing, constraints, herbicides to be used, waste disposal and where relevant the recommended qualifications of those undertaking the works.
- o) The VMP is to include a clear outline of works to be undertaken along with timing of works and estimated costs including materials, labour, watering, maintenance, monitoring and reporting should be included.
- p) Identify and map location of fixed monitoring locations and details of monitoring requirement such as quadrats and fixed photograph points.
- q) Detail monitoring and reporting requirements. Monitoring reports are to include but not limited to include report on the progress of the works undertaken. The reports are to document the maintenance efforts and any corrective measures undertaken to ensure the performance criteria of the VMP is achieved.
- r) Monitoring reports are to be prepared at the following key stages:
  - a. Baseline monitoring report to be prepared upon completion of initial works i.e. on completion of installing tubestock
  - b. 6 monthly monitoring report following completion of initial works.
  - c. 12 monthly (1 year) following completion of initial works.
  - d. 2<sup>nd</sup> year following completion of initial works.
  - e. 3<sup>rd</sup> year following completion of initial works.
  - f. 4<sup>th</sup> year following completion of initial works.
  - g. 5<sup>th</sup> year following completion of initial works.



All activities on site are to be implemented and carried out in accordance with the VMP, Council may request a review and if necessary, updating the VMP to reflect current environmental standards and site conditions.

Council must be satisfied with any changes prior to the amendment of the VMP. The VMP, once it is approved by Council, must be implemented in its entirety.

10. **Prior to the issue of a Construction Certificate**, a Waste Management Plan detailing the type, volume and method of disposal of waste during the demolition and construction phases of the development shall be submitted to the Principal Certifying Authority.

11. **Prior to the issue of any Construction Certificate**, an easement for drainage and overland flow of variable width in benefit of Penrith City Council shall be provided over the existing Council drainage line (as diverted), proposed diversion culvert and overland flow swale. Evidence of registration of the easement with Land Registry Services (LRS) shall be submitted to Penrith City Council.

Easement widths shall be in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments document.

12. **Prior to the issue of a Construction Certificate**, written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the approved development.

13. **Prior to the issue of a Occupation Certificate**, any telecommunications infrastructure installed to service the approved development must comply with the following:

- a. The requirements of the Telecommunications Act 1997;
- b. For a fibre ready facility, the NBN Co's standard specifications current at the time of installation;
- c. For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line must 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.

14. **Prior to the issue of any Construction Certificate**, the Certifier 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 provision of the proposed pedestrian refuge and the required associated footpath within the Explorers Way road reserve.

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 document, Council's Engineering Construction Specification for Civil Works Policy, 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:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- All works associated with the Roads Act approval must be completed **prior to the issue of any Occupation Certificate** as applicable.

15. **Prior to the issue of any Construction Certificate**, the Certifier 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 the provision of drainage and overland flow path works at the rear of the site in benefit of Council.

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.

Applications under section 68 of the Local Government Act are now lodged via the NSW Planning Portal. Further information on the lodgement process can be found on the NSW Planning Portal website.

Please contact Penrith City Council's Development Engineering Department on 4732 7777 to obtain a formal fee proposal prior to lodgement on the portal or if you require assistance with the lodgement process.

Advisory note:

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

16. The stormwater management system shall be consistent with the plan/s lodged for development approval, prepared by Henry & Hymas, reference number 19755, dated 07/06/2023.

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



Engineering plans and supporting calculations for the stormwater management system are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate.

17. **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that the foundations of proposed structures adjoining any proposed future drainage easements have been designed clear of the zone of influence.

18. **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that vehicular access, circulation, maneuvering, pedestrian and parking areas associated with the subject development are in accordance with Penrith City Council's Development Control Plan 2014, AS2890.1, AS2890.2 and AS2890.6.

19. 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 Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

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

- a. employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
- b. 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 (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council.

21. An Electromagnetic Energy (EME) report is to be provided to Council **prior to the issue of a Construction Certificate** detailing the electromagnetic energy likely to be



produced by the proposed substation at the development. The EME report is to be prepared by a suitably qualified and practicing person in accordance with the methodology developed by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA), Energy Australia and any other relevant standards or policies. The report is to consider the location of the proposed substation and whether it is appropriate or what mitigation measure are required to protect the health of the residences.

If it is deemed that an EME report is not required, a letter prepared by a suitable qualified and practicing professional is to be submitted to Council on letterhead to state this.

22. 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.
23. Prior to the issue of the relevant **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.
24. 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 use all reasonable endeavours to undertake a dilapidation report for all immediately adjacent buildings and Council-owned infrastructure to monitor any damage that may occur due to the works associated with the development.
25. 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.

### **C. Prior to Commencement of Works, During Works and Operations Conditions**

26. Approved plans, specifications, a copy of the development consent, Construction Certificates and any other Certificates to be relied upon shall be available on-site at all times during construction.
27. **Prior to the commencement of construction works:**
  - a. Toilet facilities at or in the vicinity of the worksite 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:



- i. a standard flushing toilet connected to a public sewer, or
  - ii. if that is not practicable, an accredited sewage management facility approved by the council, or
  - iii. alternatively, any other sewage management facility approved by Council.
- b. All excavations and backfilling associated with the erection or demolition of a building 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 a building 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:
  - i. Must preserve and protect the building from damage, and
  - ii. If necessary, must underpin and support the building in an approved manner, and
  - iii. 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 of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. 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 worksite and the public place:
  - i. 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,
  - ii. the worksite must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
  - iii. any such hoarding, fence or awning is to be removed when the work has been completed.

**28. Prior to the issue of commencement of any building works,** all fencing and retaining wall works must be at the full cost of the landowner. The materials and colours of any fencing and retaining walls must match or complement the external materials of the approved building. All retaining walls must be of masonry (or similar) construction and are not to be constructed of timber.

**29. Prior to the commencement of any demolition works,** details of the proposed disposal location(s) for all excavated material from the Site must be provided to the



Principal Certifying Authority (PCA). If the Council is not the PCA, those details must also be provided to Council.

30. **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.

31. **Prior to the commencement of any demolition works:**

- a. All appropriate measures must be in place to comply with the SafeWork NSW Authority's "Short Guide to Working with Asbestos Cement"; and
- b. The person employed to undertake the works must be a licensed asbestos removal contractor and is a 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.

32. **Prior to the commencement of any works on-site**, a hazardous building materials survey for the site is to be undertaken and submitted to Penrith City Council for approval. The survey is to be undertaken in accordance with Work Health and Safety legislation. Should hazardous building materials be identified, a demolition plan to remove these materials is to be provided to Penrith City Council for approval. The approved hazardous building materials survey is to be followed for relevant works on site.

33. The external walls of the approved building including any attachments, must comply with the relevant requirements of the National Construction Code (NCC). Suitable evidence must be available 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 the evidence must include an appropriate level of detail to demonstrate that compliance with the NCC can be achieved

34. **Prior to commencement of any works** associated with the development, sediment and erosion control measures shall be installed in accordance 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 all disturbed areas have been rehabilitated and stabilised.



35. No approval is granted for the installation of a pad mounted substation in any other location other than that which is indicated on the approved plans listed as approved, as part of this consent, or that may be endorsed in writing by the Development Services Coordinator at Penrith City Council.
36. 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.

37. **Prior to commencement of works** Tree Protection Measures including tree protection fencing, ground protection and trunk protection as per the requirements in Appendix 5: Tree Protection Specifications found in the Arboricultural Impact Assessment Tree Protection Specification prepared by Tree IQ dated 30 March 2021, shall be installed around the trees proposed to be retained as per the Tree Retention and Removal Plan Revision E prepared by Taylor Brammer Landscape Architects Pty Ltd dated 6 June 2023.

Evidence that the measures have been installed under the supervision of a qualified and experienced Level 5 Arborist is to be submitted to Penrith Council's Senior Biodiversity Officer. A site inspection may be required to validate evidence supplied.

38. Trees shown on the Tree Retention and Removal Plan Revision E prepared by Taylor Brammer Landscape Architects Pty Ltd dated 6 June 2023 are approved for removal. All other trees are to be protected and retained with the tree protection measures outlined in Appendix 5: Tree Protection Specifications in the Arboricultural Impact Assessment Tree Protection Specification prepared by Tree IQ dated 30 March 2021.

39. **Within four weeks of completion of trees removal within the site**, a report prepared by a qualified Ecologist is to be submitted to the Principal Certifying Authority (PCA) and to Penrith City Council's Senior Biodiversity Officer (if Council is not the PCA) certifying the following measures have been complied with during the removal of vegetation within the construction footprint.

To mitigate and ameliorate the impacts associated with the development on resident fauna and removal of native vegetation the following requirements must be complied with:

(a) Tree and vegetation Removal:

During any tree (vegetation) removal, a qualified (Tertiary in a relevant field)/ licenced Ecologist with a minimum of five (5) years field experience is to be present to re-locate any displaced fauna that may be disturbed during this activity. The following is to be undertaken to mitigate the impacts on resident fauna.

- i. Clearing of vegetation should occur outside of avian and microbat breeding seasons. Ideally this should occur during Autumn (March – May).
- ii. Prior to clearing habitat trees all non-habitat vegetation should be cleared



first to allow appropriate space for the felling of habitat trees and retrieval of any fauna that may be present within the habitat trees.

iii. Trees with hollows shall be lopped in a way that the risk of injury or mortality to fauna is minimised, such as top-down lopping, with lopped sections gently lowered to the ground, or by lowering whole trees to the ground with the 'grab' attachment of a machine.

iv. Where it is safe and feasible disturbed fauna should be left alone to relocate naturally into retained / adjacent trees. The supervising Ecologist is to provide guidance on whether works need to be postponed to ensure resident fauna can safely relocate.

v. Any injured fauna is to be placed in the hands of a wildlife carer (only appropriately trained and vaccinated personnel are to handle bats). Any fauna that is injured due to vegetation removal must be reported to Penrith Council.

vi. Any injured fauna is to be appropriately cared for and released on site when rehabilitated.

(b) Salvage of habitat features:

Where possible hollows should be sectionally dismantled from felled hollow-bearing trees and attached to a retained tree in the Restricted Development Area that will not compromise the health and safety of the host tree. This is to be done by a qualified and experienced climbing Arborist under the direction of the Ecologist.

Where this cannot occur a nest box will be installed in suitable retained tree in the Restricted Development Area. Nest boxes should reflect the size classes of the hollows to be removed (i.e., if a small hollow is removed a small parrot/mammal or microbat nest box should be installed).

Nest boxes should be installed by a qualified and experienced climbing arborist under the supervision of an ecologist.

(c) Additional Measures:

Where additional measures are identified by the Ecologist these should be implemented, documented and included in the reporting.

40. Structures nominated for demolition on the approved plans shall be demolished.
41. All demolition works are to be carried out in compliance with the provisions of AS 2601-1991 "The Demolition of Structures".
42. All material arising from any demolition or excavation works must be disposed of at a Council-approved location or waste facility.
43. 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.



44. Demolition and construction works are restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- a. Mondays to Fridays, 7am to 6pm
- b. Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- c. No demolition work is permitted on Sundays and Public Holidays.

Advisory note:

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

45. 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.

46. During the carrying out of any construction or demolition works, all mud and soil from vehicular movements to and from the Site, must be cleaned within the site so as to avoid being deposited on any public road

47. Site remediation works shall be carried out in accordance with the recommendations of the approved Detailed Site Investigation and the associated (to be prepared) Remedial Action Plan, as well Part C4.4 of the Penrith Development Control Plan 2014, the ANZECC and NHMRC Guidelines (1992) and applicable NSW Environment Protection Authority Guidelines.

On completion of the site remediation works, the following documentation is to be submitted to the Principal Certifying Authority and Penrith City Council, if Council is not the Principal Certifying Authority:

- Written notification that the site remediation works have been completed is to be submitted within 30 days that the said works have been completed.
- A validation report, prepared by an appropriately qualified person (as defined in the Penrith Development Control Plan 2014), is to be submitted before any building work can commence on the remediated site. The report shall certify that the remediation works have been carried out in accordance with the (to be prepared) Remedial Action Plan, relevant NSW Environment Protection Authority requirements and the Penrith Development Control Plan 2014.

48. All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved Waste Management Plan.

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 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. No fill material is to be imported to the site without the prior approval of Penrith City Council. No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.
50. 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, considered and approved by Council. The Validation Certificate shall:
- a. state the legal property description of the fill material source site,
  - b. 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,
  - c. clearly indicate the legal property description of the fill material source site,
  - d. provide details of the volume of fill material to be used in the filling operations,
  - e. 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
  - f. (based on the fill classification) determine 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.

If Penrith City Council is not the Principal Certifying Authority, a copy of the validation certificate is to be submitted to Council for their reference.

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation works may be requested. In these circumstances, the works shall be carried out prior to any further approved works.

- g. An appropriately qualified person/s (as defined in the Penrith Development Control Plan 2014) shall:
  - h. Supervise the filling works,
  - i. Carry out an independent review of all documentation relating to the filling of the Site upon the 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 must be submitted to Council and any Principal Certifying Authority.
51. All waste materials stored on-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 neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.
52. If any archaeological relics or items or places of aboriginal cultural significance are uncovered during the carrying out of the works permitted by this consent. no further



works are to be undertaken until or unless further directed by Penrith City Council or the NSW Office of Environment and Heritage.

53. Should any 'unexpected finds' occur during the excavation and earthworks, including, but not limited to, the identification or finding of contaminated soils, buried building materials, asbestos, any substances emitting or causing odour or staining, works are to cease immediately and Council is to be notified. Any such 'unexpected finds' shall be addressed by an appropriately qualified environmental consultant.

54. The rainwater tank(s) is to be:

- a. erected on a self-supporting base in the approved location on the property in accordance with the approved site plans for the development,
- b. structurally sound and constructed in accordance with AS/NZS 3500 1.2- 1998: National Plumbing and Drainage - Water Supply - Acceptable Solutions,
- c. fully enclosed and all openings sealed to prevent access by mosquitoes,
- d. fitted with a first flush device,
- e. fitted with a trickle system to top up from mains water,
- f. provided with an air gap, and
- g. installed by a licensed plumber in accordance with Sydney Water's "Plumbing requirements Information for rainwater tank suppliers and plumbers April 2003" and the NSW Code of Practice: Plumbing and Drainage.

Additionally, the following are to be provided:

- h. A backflow prevention device shall be provided at the water meter in accordance with Sydney Water requirements.
- i. In the event of a power failure, a back-up supply of mains water shall be provided to at least one toilet in the dwelling.
- j. The rainwater tank(s) and associated piping is to be labelled 'Rainwater - Not for Drinking' in accordance with Sydney Water requirements.
- k. The rainwater tank and pipework is to be painted in colours matching the external finishes of the dwelling and is to be of non-reflective finish.
- l. The overflow for the rainwater tank is to be connected into the existing stormwater disposal system on the site.

Before a rainwater tank(s) can be used, a certificate or suitable document is to be submitted to the Principal Certifying Authority stating that the rainwater tank has been installed in accordance with:

- m. the manufacturer's specifications, and
- n. Sydney Water and NSW Health requirements

55. The rainwater tank supply must not be connected to drinking and bathing water tap outlets.



56. The pump must not exceed 5dBA above ambient background noise level at the nearest residential property boundary. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.
57. Upon completion of all works in the road reserve, all verge areas fronting and within the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.
58. No trees are to be removed, ringbarked, cut, topped, lopped or wilfully destroy vegetation above or below ground other than what is shown on the Tree Retention and Removal Plan Revision E prepared by Taylor Brammer Landscape Architects Pty Ltd dated 9 June 2023 without prior consent/ approval from Penrith City Council.
59. All landscape works are to be constructed in accordance with the approved landscape plan and Sections F5 "Planting Techniques", F8 "Quality Assurance Standards", F9 "Site Management Plan" of Penrith Council's Landscape Development Control Plan 2014.
60. All landscaping on the site, including in raised planting areas must be provided with an irrigation system.
61. The approved landscaping must be installed by a suitably qualified and experienced landscape professional.
62. All trees approved for removal shall be removed in a manner so not 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 Australian Standards, Protection of trees on development sites, AS 4970-2009.
63. All landscape works are to meet industry best practice and the following relevant Australian Standards including AS4419 Soils for Landscaping and Garden Use, AS 4454 Composts, Soil Conditioners and Mulches, and AS 4373 Pruning of Amenity Trees.
64. Any area that is subject to a Vegetation Management Plan (VMP) shall be managed in accordance with the Council approved Vegetation Management Plan as required by condition of consent in perpetuity by the property owner(s). All reports specified in the VMP are to be submitted to Councils Senior Biodiversity Officer within 2 months of the timeframe specified in the VMP.
65. 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.
66. 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.

67. All roadworks, stormwater drainage works, signage, line marking, associated civil works and dedications required to effect the consented development shall be undertaken by the applicant, at no cost to Penrith City Council.

68. Lodgement of relevant Section 138 Roads Act applications, including payment of application and Council fees together with any applicable bonds, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road).

Those acting on this consent are required to lodge the applicable Section 138 Roads Act application for the below works which apply to the specific development, prior to that work activity commencing. Please liaise with your builder to determine what applications are required under the Roads Act for your development. These works may include but are not limited to the following:

- (a) Construction of driveways,
- (b) Temporary road reserve occupancies,
- (c) Road reserve openings for the installation of utilities such as water, sewer, power, telecommunications infrastructure,
- (d) Establishment of a construction work zone,
- (e) Construction of pavement, blister islands and pedestrian refuges within the road reserve,
- (f) Establishment of road reserve hoardings and temporary structures/fencing etc., and
- (g) Operation of a tower crane over the road reserve.

All works shall be carried out in accordance with the Roads Act Approval and the conditions outlined in the Roads Act Applications, the development consent, including the approved plans, and Penrith City Council's Driveway and Road Reserve Restoration Works Specification, guidelines and engineering best practice.

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

Advisory notes:

- Separate approval may be required from Transport for NSW for classified roads.
- All works associated with the Roads Act approval(s) must be completed **prior to the issue of any Occupation Certificate as applicable.**

69. **Prior to the issue of any Roads Act application or Local Government Act approval,** a Performance Bond is to be lodged with Penrith City Council for provision of the proposed pedestrian refuge and associated footpath within the Explorers Way road reserve as well as the drainage and overland flow path works at the rear of the site in benefit of Council.



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 Development Engineering Department on 4732 7777 for further information relating to bond requirements.

70. **Prior to commencement of any works associated with the development**, a Traffic Guidance Scheme, including details for pedestrian management, shall be prepared in accordance with AS1742.3 Traffic Control Devices for Works on Roads and the Transport for NSW (TfNSW) publication Traffic Control at Worksites Technical Manual, and certified by an appropriately accredited TfNSW traffic controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Advisory notes:

- A copy of the Traffic Guidance Scheme shall accompany the Notice of Commencement to Penrith City Council.
- Traffic control measures may require road occupancy / road closure approvals issued under Section 138 of the Roads Act by Penrith City Council **prior to the issue of any Construction Certificate**.

71. Upon completion of all works in the road reserve, all verge areas fronting the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.

72. The approved 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.

73. All existing (aerial) and proposed services for the development, including those across the frontage of the development are to be located or relocated underground in accordance with the relevant authorities' regulations and standards.

74. All vehicle parking spaces, parking aisles and driveways/circulating roads must be designed and built in accordance with AS2890.1-2004; AS2890.6-2009 and Council's requirements.



75. All car spaces are to be sealed/line marked and dedicated for the parking of vehicles only and not be used for storage of materials/products/waste materials etc.
76. The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.
77. All vehicles are to enter/exit the site in a forward direction.
78. Subleasing of car parking spaces is not permitted by this Consent.
79. The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.
80. Noise levels from the premises shall not exceed the relevant noise criteria detailed in the acoustic report titled "Noise Impact Assessment" prepared by Pulse White Noise Acoustics dated 13/8/21 and "Memorandum" prepared by Pulse White Noise Acoustics dated 17 June 2022. The recommendations provided in the above-mentioned acoustic reports shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application. A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate.**

The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

81. Amplified music from the development is not to be audible at the boundaries of the property. No amplified music is to be used externally, including in the carpark.

The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

82. **Twelve (12) months after the issue of the Occupation Certificate**, an Acoustic Compliance Report is to be submitted to and approved by Penrith City Council. The report is to be prepared by a suitably qualified acoustic consultant and is to address all noise generating activities on the site and the level of compliance with the noise criteria set within the Noise Impact Assessment prepared by Pulse White Noise Acoustics dated 13/8/21 (Ref. No.PWN20236\_201127\_Noise Impact Assessment\_BW\_R3) and the Memorandum, prepared by Pulse White Noise Assessment, dated 17 June 2022. It is to consider the requirements of the NSW Environment Protection Authority's Noise Policy for Industry, other relevant guideline documents and the conditions of this development consent.

Should the Compliance Report identify any non-compliance issues, the report is to provide suitable recommendations for the 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.

{Note: For the purpose of this condition a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member}.

83. In the event of substantiated, ongoing noise complaints relating to the development being received by Council, the owner and/or occupier of the development may be required by Council to obtain the services of a suitably qualified acoustic consultant to undertake a noise impact assessment on the development to address the concerns of the community.

The noise impact assessment report is to be prepared and provided to Council for approval within 45 days of being requested. Any mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

84. 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.

85. 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.

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 tower is away from occupied areas, air intake and building openings.

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 AS3666.1:2011.

86. Maintenance carried out on a warm-water system must comply with the document entitled *Requirements for the provision of cold and heated water* published by the NSW Ministry of Health.
87. 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.
88. Refrigerated body storage facilities in a body preparation room or holding room shall not be used for any other purpose than to store bodies.



89. Soiled laundry is to be dealt with in accordance with the submitted "Laundry Operational Brief - For D.A" Prepared by Universal Food Service Design dated 31st March 2021.
90. Offensive odours are not to be emitted from the site. Vapours, fumes, gases, particles or any other substance that are considered to be harmful to human health or the environment or impact unreasonably on a person outside of the premises are not to be emitted from the site.
91. Wastewater from the washing of garbage bins and vehicles is not to enter the stormwater system.
92. 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.

**D. Prior to the issuance of Occupation Certificate Conditions**

93. 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](http://www.sydneywater.com.au) then the "edeveloper" 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.

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

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operations 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.

95. All performance criteria for the primary works stage / initial works of the Council Approved Vegetation Management Plan (VMP) must be completed to the satisfaction of Penrith Council's Senior Biodiversity Officer **prior to the issue of an Occupation Certificate**. This includes:

- Site preparation completed.
- Irrigation is installed if identified to be required.
- Mulch is installed and appropriate for the purpose.
- Tubestock is supplied and installed.
- No weeds are to be present.

A statement (including photographic evidence) certifying compliance with this task is to be provided by the author of the VMP or an equally qualified and experienced person and submitted to Penrith Council's Senior Biodiversity Officer for review and approval.



An inspection of the works may be required by relevant Council's officer(s) to ensure this condition has been satisfied.

96. Upon completion of the landscape works associated with the development and **prior to the issue of an Occupation Certificate** for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development. The report is to be prepared by a landscape professional listed in Council's Approved Landscape Consultants Register as suitable to design category (2 / 3) landscape works.

An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

97. On the first anniversary of the date of the Occupation Certificate issued for the development, a Landscape Maintenance Report is to be submitted to Penrith City Council certifying that the landscape works are still in accordance with the development consent and the plant material is alive and thriving.

This report is to be prepared by a landscape professional listed in Council's Approved Landscape Consultants Register as suitable to design category (2 / 3) landscape works.

98. **Prior to the issue of any Occupation Certificate**, the Principal Certifier shall ensure that all works associated with a section 138 Roads Act approval or section 68 Local Government Act approval, have been inspected and are signed off by Penrith City Council.

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

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 Certifier.

100. **Prior to the issue of any Occupation Certificate**, the Principal Certifier shall ensure that the Stormwater management systems (including on-site detention and water sensitive urban design), and the overland flow-path works:

- have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent, and
- have met the design intent with regard to any construction variations to the approved design, and



- 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.

101. **Prior to the issue of any Occupation Certificate**, a restriction on the use of land and positive covenant relating to the:

- Stormwater management systems (including on-site detention and water sensitive urban design)
- Overland flowpath works,

shall be registered on the title of the property.

The restriction on the use of land and positive covenant shall be in Penrith City Council's standard wording as detailed in Council's Stormwater Drainage Specification for Building Developments – Appendix F.

102. **Prior to the issue of any Occupation Certificate**, and installation of regulatory/advisory signage and line marking, plans are to be lodged with Penrith City Council and approved by the Local Traffic Committee.

Advisory notes:

- Contact Penrith City Council's Engineering Services Department on 4732 7777 for further information on this process.
- Allow eight (8) weeks for approval by the Local Traffic Committee.
- Applicable fees are indicated in Council's adopted Fees and Charges.

103. **Prior to the issue of any Occupation Certificate**, entry and exit signage which is clearly visible from the public road shall be placed within the development site.

The signage shall indicate that the eastern vehicular access is to be used for egress purposes only and appropriately signposted "No Entry".

104. **Prior to the issue of any Occupation Certificate**, directional signage and line marking shall be installed indicating directional movements and the location of customer parking to the satisfaction of the Principal Certifier.

105. Appropriate signage is to be installed in the carpark and entrance of the centre requesting patrons to minimise noise and protect the amenity of the surrounding neighbourhood.

**Prior to the issuing of the Occupation Certificate** a suitable signage plan is to be submitted to Council for approval.

The signage plan is to provide details on the location, sizing and wording of the proposed signs. The signs are to be installed **prior to the issuing of the Occupation Certificate**.



106. **Prior to the issue of any Occupation Certificate**, a Maintenance Bond is to be lodged with Penrith City Council for provision of the proposed pedestrian refuge and associated required footpath within the Explorers Way road reserve as well as the drainage and overland flow path works at the rear of the site in benefit of Council. 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 Development Engineering Department on 4732 7777 for further information relating to bond requirements.

107. Street lighting is to be provided for the proposed pedestrian refuge island to the requirements of AS 1158.3.1 and must be installed and operational, **prior to the issue of an Occupation Certificate** for the approved building.

108. Cooling towers and 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 issue of any Occupation Certificate**

The occupier of premises at which a water-cooling system or warm-water system is installed must notify Council using the NSW Ministry of Health Notification Form available from [www.health.nsw.gov.au](http://www.health.nsw.gov.au):

- a. if the system is installed before he or she becomes the occupier, within one month after he or she becomes the occupier, or
- b. if the system is installed after he or she becomes the occupier, within one month after the system is installed.

The occupier of the premises must notify Council within 7 days of any change of details.

109. A satisfactory inspection from an authorised officer of Penrith City Council's Environmental Health Department is required **prior to the issue of an Occupation Certificate**. The occupier of the premises is to contact the Penrith City Council Environmental Health Department to organise an appointment at least 72 hours prior to the requested inspection time.