

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA20/0581.02
<b>Proposed development:</b>	Section 4:55(1A) Modifications to Car Parking Layout for Approved Child Care Centre
<b>Property address:</b>	72 Mulgoa Road, JAMISONTOWN NSW 2750
<b>Property description:</b>	Lot 200 DP 1230338
<b>Date received:</b>	29 September 2021
<b>Assessing officer</b>	Phillip Doy
<b>Zoning:</b>	SEPP WSA - Affected by Obstacle Limitation SEPP WSA - Affected by Wildlife Buffer Zone Zone B5 Business Development - LEP 2010
<b>Class of building:</b>	Class 9b
<b>Recommendations:</b>	Approve

## Executive Summary

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Council is in receipt of a modification application lodged under Section 4.55 of the Environmental Planning and Assessment Act 1979 (the Act), for modifications to car parking layout for an approved child care centre at 72 Mulgoa Road Jamisontown.

The modification includes:

- Revised car-parking layout to allow two (2) way traffic flow in the car-park;
- Removal of stacked parking as approved; and
- Provision of nine (9) dedicated childcare drop off parking spaces.

The proposed amendments will result in the addition of one car space.

The site is zoned B5 Business Development under the Penrith Local Environment Plan 2010 and the proposal which is ancillary to an approved centre based childcare facility, is permissible in the zone with consent.

The application was referred to Council's Development Engineering, Traffic Engineering and Environmental Health teams, who upon the submission of amended stormwater plans, provided conditions of consent and raised no concerns with the proposal.

Five (5) allocated landscape blisters have been removed from the original consent, and have not been replaced. Council has discussed with the applicant, and prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to ensure that a minimum of one (1) raised planter bed is installed in the carpark adjacent to the south western corner of the childcare centre as marked on the stamped approved plans. The raised planter bed is to incorporate a minimum of one (1) tree which would reach a minimum height at maturity, of 6 metres and is to include appropriate ground covers and/or grasses, and soil is to be mounded to increase soil volume. The selected tree is to be a minimum of 40L at the time of planting. The landscaping in the raised planter bed is to be maintained in perpetuity and replaced if planting fails.

An assessment of the proposal under Section 4.15 and 4.55 (1A) of the Act has been undertaken and the application is recommended for Approval, subject to the recommended amended and existing conditions.

## Site & Surrounds

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The subject site is known as HomeCo Penrith, 72 Mulgoa Road, Jamisontown and is legally described as Lot 200 DP 1230338. The site has a land area of 3.015 Ha and is overall rectangular in shape, with a 147.17m (north-western facing) frontage to Mulgoa Road and a 160.94m (south-east facing) frontage to Regentville Road. The main access to the car park is via a traffic signalised intersection off Mulgoa Road with an L-shaped access (handle) and a secondary vehicular access point from Regentville Road. Majority of the site is affected by overland flooding flows, except adjacent to the northern, southern and eastern corner sections. The site contains a number of easements adjacent to the south-western boundary, including a drainage easement and right of carriage easement, etc.

Existing development on the site consists of HomeCo Penrith, which accommodates a number of bulky goods premises/retail outlets, in addition to an ancillary café and has a gross floor area of 13,517m<sup>2</sup> and 365 car parking spaces. Immediately adjacent to the south of the site are four bulky goods tenancies, with 2,736m<sup>2</sup> of approved GFA and 95 car parking spaces that were part of the approval of the previous Masters Home Improvements store.

The site is located approximately 2km south of Penrith City Centre. Land to the north and south is a mixture of bulky goods and similar commercial land uses including The Good Guys, car dealerships and home building supplies businesses. Development to the east of the site comprises a range of industrial land uses including construction material supplies, machinery supplies and car repairers.

To the west of the site, opposite Mulgoa Road is a low-density residential area, which is generally characterised by single detached dwellings and are principally accessed from Mulgoa Road via Willoring Crescent, Stuart Street and Jamison Road.

## Proposal

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The applicant seeks to modify development consent no. DA20/0581, which approved use of the erection of a centre-based child care facility with a capacity of 110 child care placements, by altering the approved carpark layout, at 72 Mulgoa Road Jamisontown.

The proposal comprises the following:

- Revised car-parking layout to allow two (2) way traffic flow in the car-park;
- Removal of stacked parking as approved; and
- Provision of nine (9) dedicated childcare drop off parking spaces.

## Plans that apply

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- Local Environmental Plan 2010
- Development Control Plan 2014
- State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

- **Section 4.55(1A) - Modifications involving minimal environmental impact**

(1A) Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

a) it is satisfied that the proposal modification is of minimal environmental impact, and;

b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent was modified (if at all), and;

c) it has notified the application in accordance with -

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires notification or advertising of applications for modification of a development consent, and;

d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1), (2) and (5) do not apply to such a modification.

The development has been assessed in accordance with the matters for consideration under Section 4.15 and Section 4.55(1A) of the Environmental Planning and Assessment Act 1979, and in this regard, complies with the above. It is considered that the modification is substantially the same development and therefore was not required to be re-notified.

- **Section 7.12 - Developer Contributions**

Section 7.12 Contributions are not payable for the proposed development as the cost of works is below the applicable threshold.

### **Section 4.15(1)(a)(i) The provisions of any environmental planning instrument**

## **State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017**

An assessment was undertaken during the original consent Under the State Environmental Planning Policy (Education Establishments and Child Care Facilities) 2017.

Due to the modifications to the carpark allocated spaces, further assessment was undertaken under Clause 23 of this policy. The proposed configuration results in the addition of one (1) car parking spaces to the approved development and therefore, remains satisfactory.

Furthermore, the modified layout maintains a pedestrian pathway from the parking area and a separate pedestrian pathway from the street, which are considered to be satisfactory.

## **State Environmental Planning Policy (Infrastructure) 2007**

The State Environmental Planning Policy (Infrastructure) 2007 provides the legislative planning framework for infrastructure delivery and the provision of services across NSW. The development proposal does not trigger any traffic generating thresholds under the SEPP given that the annual average daily traffic volume of Mulgoa Road is less than 20,000 vehicles. It also noted that the additional gross floor area is less than 2,500m<sup>3</sup> and that the development site is sited distant from the Mulgoa Road frontage and therefore will not be impacted by any future road widening. As such, the proposal does not trigger a referral to Transport for NSW.

In addition, the proposal is of a suitable scale with adequate access provided via a traffic signal intersection off Mulgoa Road and alternative vehicular access via Regentville Road. Therefore, it is not considered likely that the proposal will result in any major impacts to the functionality of Mulgoa Road, noting that the submitted NIA (as amended through DA20/0581) demonstrates that relevant noise criteria and amenity is satisfactory.

## **State Environmental Planning Policy (Western Sydney Aerotropolis) 2020**

The subject site is situated outside of the State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 (SEPP WSA) Aerotropolis Boundary Map. However, the SEPP WSA contains an Obstacle Limitation Surface Map and Wildlife Buffer Map, whereby the site is identified as being located within the area of these maps.

In consideration of Clause 21 Wildlife hazards of the SEPP WSA, the development type is not identified as a "relevant development", which trigger the requirements for further consideration under Clause 21 and hence, no wildlife poses any risk to the operation of the airport.

In addition, Clause 24 Airspace operations of the SEPP WSA relates to development that would penetrate the prescribed air space for the airport and be a 'controlled activity'. The development neither penetrates the prescribed air space, nor is it a controlled activity, therefore does not trigger any additional considerations under this clause.

## **State Environmental Planning Policy No 55—Remediation of Land**

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) provides aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Under Clause 7 of SEPP 55, it must be considered as to whether the land is contaminated, and if so, Council must be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which development is proposed to be carried out.

In this regard, the subject site was previously used as part of a trucking depot and then part of a fuel depot in the 1980s (both of which extended to the west and north of the site). As part of the original assessment,

a detailed site investigation and remedial action plan (RAP) was carried out on-site, including the removal of fuel infrastructure (a number of above ground storage tanks and underground ground storage tanks and associated impacted soils, above ground oil/water separators), bioremediation and/or excavation and off-site disposal of contaminated soils, mechanical service pits, sumps and drains, asphalt bunds and redundant buildings on-site, surficial asbestos fragments and the encapsulation of lead and asbestos impacted fill material beneath a marker layer of white geofabric and capping layer (comprising 200mm of road base substrate and 30mm of asphalt). The Remediation and Validation Report concluded that petroleum impacted soils and the removal of surface asbestos has been remediated to levels suitable for commercial/industrial land use. The Environmental Management Plan (EMP) for the site outlines the ongoing management of the site with respect to the containment cell and outlines the procedures for when breaches of the containment cell arise.

The previous contamination assessments and validation certificates are based on the site being suitable for commercial/industrial land use and compliance with the National Environment Protection (Assessment of Site Contamination) Measure HIL D -Commercial/industrial health based investigation levels. A 'Summary of Contaminated Land Condition' was submitted with the original development application, whereby the summary provided a number of recommendations, including the requirement for a soil vapour assessment (SVA) to be carried out. Notwithstanding, the aforementioned contamination assessments/validation are not considered to be adequate to determine if the site is suitable for the proposed use as a child care centre, given that it is a more sensitive land use. In addition, the EMP requires that the EMP be reviewed every five years, which recommends that *"a construction environmental management plan is prepared for the site"* and that *"the document should include an unexpected finds protocol which should detail the controls required should stained, or odorous soil be encountered"*.

As such, as part of the original assessment, the applicant was requested by Council to undertake further contamination assessments and provide a revised EMP and Unexpected Finds Protocol in accordance with the proposed use and to give consideration to the preparation and implementation of an appropriate construction environmental management plan (CEMP) and workplace health and safety measures, including the installation of services, facilities, footings, etc., which may potentially penetrate and/or compromise the contamination capping and consequently expose contaminated land.

Several reports were provided in response, including a SVA, conceptual site model (CSM), CEMP and long-term environmental management plan (LTEMP). The documentation contains detailed investigations, including soil samples and concluded that the site is suitable for the proposal, subject to the implementation of a LTEMP, in addition to the requirement for a CEMP. However, concerns were raised in the original assessment in regard to the potential pathways that may be available during the construction period and once the development is completed, such as the requirement to provide details of how service infrastructure will be installed, how the slab and footings will be constructed and how landscaping embellishments will be managed, locations of potential penetration of the capping layer and the process for reinstating/reconstructing the cap should it be penetrated during site works, identification of works compounds, stockpile areas and waste areas, etc.

An environmental statement and audit process letter was subsequently provided, summarising that, *"overall the remedial strategy proposed is reasonable based on the site history, the nature and extent of contamination, and the proposed development (no handling of impacted fill material). Should detailed design of the development identify the need to handle impacted fill material, a revision to the CEMP (or preparation of a RAP) will be required"* and that recommended consent conditions should be imposed for any development consent being granted, including that a Site Auditor review the EMP, CSM and CEMP and the preparation of an independent audit assessment letter prior to the issuing of a Construction Certificate. In addition, an Auditor was engaged to review the Validation Report and EMP and preparation of a Section A - Site Audit Statement and Site Audit Statement Report prior to the issuing an Occupation Certificate and also compliance with the EMP. It was noted that the concrete slab laid upon the existing

site surface with the Centre built above will prevent access to the sub-soil and any areas where the cap has been penetrated for piling will be fully filled by concrete piles to seal it. In regard to the risk of constructions workers and intrusive maintenance workers after construction due to the capping layer being only 300mm thick, the risk of this potentially complete pathway is managed via the LTEMP on Council's Section 10.7 certificate and the Section 88b instrument associated with the site, in addition to a site specific LTEMP prepared for the Centre.

In conclusion, the documentation provided in then original assessment indicates that the site is suitable for its intended proposed development and land use, which was endorsed by Council's Environmental Management Unit, subject to recommended condition consents. In addition, a recommended consent condition was imposed to address any unexpected finds by way of an unexpected finds protocol. Therefore, the site was considered to be suitable for the development and the relevant provisions of SEPP 55 have therefore been satisfied.

The proposed additional works are not considered to impact the previous assessment, and were referred to Councils Environmental Health department, who raised no concerns or objections to the proposal.

### **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

An assessment has been undertaken of the proposal against relevant criteria within Sydney Regional Environmental Plan No. 20—HawkesburyNepean River (No. 2—1997) which aims to protect this river system.

The nature and scope of the development proposal is minor in scale. Subject to recommended conditions of consent in relation to construction management and ongoing stormwater management, the proposal is not considered likely to adversely impact on the Hawkesbury Nepean catchment.

### **Local Environmental Plan 2010**

<b>Provision</b>	<b>Compliance</b>
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
Clause 5.10 Heritage conservation	Complies
Clause 5.21 Flood planning	Complies - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.4 Sustainable development	Complies
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

**Clause 5.21 - Flood planning**

The subject site is affected by overland flooding flows, whereby an Overland Flowpath Assessment and Stormwater Management Report prepared by Mott MacDonald, Revision C, dated 22 May 2014 was approved with the original Masters Home Improvement Store under development consent No. DA13/1257. This report indicates that the existing development improved floor levels, overland flowpaths and safety. Council's Development Engineer reviewed the report and development proposal and raised no concerns in regard to adverse flooding impacts, subject to recommended conditions, such as the requirement for habitable floor levels being above the flood planning level and electrical services being flood proofed, etc.

**Clause 7.2 Flood planning**

Repealed - Refer to discussion under Clause 5.21.

**Clause 7.5 Protection of scenic character and landscape values**

The proposal is suitable setback from the Mulgoa Road frontage and is does not penetrate any particular scenic values from the streetscape. The overall bulk and scale is moderate relative to the existing HomeCo building, which will minimise any visual quality impacts on the immediate surrounds.

**Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrument**

The Draft SEPP (Environment), Draft SEPP (Remediation of Land), and Draft SEPP (Cumberland Plain Conservation) are at present applicable to the subject site, but while so, do not affect or alter the recommendations of this report, noting that the proposal is not considered inconsistent with these Draft SEPPs.



## Section 4.15(1)(a)(iii) The provisions of any development control plan

### Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
D5.1. Application of Certification System	N/A
D5.2. Child Care Centres	Complies - see Appendix - Development Control Plan Compliance
D5.3. Health Consulting Rooms	N/A
D5.4. Educational Establishments	N/A
D5.5 Parent Friendly Amenities	N/A
D5.6. Places of Public Worship	N/A
D5.7. Vehicle Repair Stations	N/A
D5.8. Cemeteries, Crematoria and Funeral Homes	N/A
D5.9. Extractive Industries	N/A
D5.10 Telecommunication Facilities	N/A
D5.11 Boarding Houses	N/A

## Section 4.15(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements in place, which are applicable to the development proposal.

## Section 4.15(1)(a)(iv) The provisions of the regulations

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia (BCA) and fire safety requirements, will be imposed as consent conditions where applicable, as recommended by Council's Building Surveyor. In this regard, the proposal complies with the relevant BCA and fire safety requirements of the Environmental Planning and Assessment Regulation 2000.

### **Section 4.15(1)(b)The likely impacts of the development**

The likely impacts of the development as identified during the assessment of the original proposal remain in principle unaltered.

### **Section 4.15(1)(c)The suitability of the site for the development**

The development proposal is considered to be of a suitable scale and is unlikely to result in any unreasonable impacts on the surrounding natural or built environments, including local traffic flows. The subject site has connections to existing services and the site does not contain any significant flora or fauna, nor any valuable resources. Land contamination, water and waste management and visual and noise impact considerations have been adequately addressed. The site is therefore considered to be suitable for the proposal.

### **Section 4.15(1)(d) Any Submissions**

#### **Community Consultation**

In accordance with Council's adopted Community Engagement Strategy and Community Participation Plan 2020, and due to the nature and scale of the proposal, notification of the application was not required.

#### **Referrals**

The application was referred to the following stakeholders and their comments have formed part of the assessment:

<b>Referral Body</b>	<b>Comments Received</b>
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Environmental - Environmental management	No objections
Environmental - Public Health	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions

### **Section 4.15(1)(e)The public interest**

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and in accordance with the prevailing planning controls. In this regard, the proposal is considered to be generally consistent with the relevant planning provisions and subject to compliance with the recommended conditions of consent, the proposal is considered worthy of support and is not considered likely to pose any significant public interest impacts.

## **Conclusion**

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In assessing this development proposal against the relevant environmental planning policies, including Penrith Local Environmental Plan 2010, Penrith Development Control Plan 2014, State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy (Western Sydney Aerotropolis) 2020, State Environmental Planning Policy No. 55—Remediation of Land, and Sydney Regional Environmental Plan No. 20 Hawkesbury/Nepean River (No. 2 1997), the proposal generally satisfies the aims, objectives and provisions of these policies. Overall, the development is unlikely to have any unreasonable impacts on the surrounding natural, social or economic environments. The site is suitable for the development and the proposal is in the public interest. Therefore, the application is worthy of support and is recommended for approval, subject to conditions.

## **Recommendation**

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That DA20/0581.02 for the Section 4:55 (1A) modification to car parking layout for approved child care centre approved through DA20/0581 at 72 Mulgoa Road, Jamisontown be approved, subject to the following conditions.

# CONDITIONS

## General

### 1 A001 - Approved plans table

The development must be implemented substantially in accordance with the following plans and documents stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the stamped approved plans and as amended by the following conditions.

Drawing Title	Prepared By	Project No.	DWG No.	Issue	Date
Overall Site Plan	Five Canons Architecture	19046	<b>S4.55-002</b>	<b>Z-1</b>	<b>31.01.2022</b>
Area Plan	Five Canons Architecture	19046	<b>S4.55-003</b>	<b>Z-1</b>	<b>31.01.2022</b>
<b>Site Plan (Existing)</b>	<b>Five Canons Architecture</b>	<b>19046</b>	<b>S4.55-100</b>	<b>Z-1</b>	<b>31.01.2022</b>
<b>Site Easement Plan</b>	<b>Five Canons Architecture</b>	<b>19046</b>	<b>S4.55-101</b>	<b>Z-1</b>	<b>31.01.2022</b>
<b>Site/Site Analysis Plan (Proposed)</b>	<b>Five Canons Architecture</b>	<b>19046</b>	<b>S4.55-102</b>	<b>Z-1</b>	<b>31.01.2022</b>
<b>Shadow Study</b>	<b>Five Canons Architecture</b>	<b>19046</b>	<b>S4.55-103</b>	<b>Z-1</b>	<b>31.01.2022</b>
Proposed Floor Plan	Five Canons Architecture	19046	<b>S4.55-201</b>	<b>Z-1</b>	<b>31.01.2022</b>
Roof Plan	Five Canons Architecture	19046	<b>S4.55-104</b>	<b>Z-1</b>	<b>31.02.2022</b>
Licensing Plan	Five Canons Architecture	19046	<b>S4.55-202</b>	<b>Z-1</b>	<b>31.01.2022</b>
Elevations	Five Canons Architecture	19046	<b>S4.55-300</b>	<b>Z-1</b>	<b>31.01.2022</b>
External Finishes Elevations	Five Canons Architecture	19046	<b>S4.55-301</b>	<b>Z-1</b>	<b>31.01.2022</b>
Sections	Five Canons Architecture	19046	<b>S4.55-400</b>	<b>Z-1</b>	<b>31.01.2022</b>
General Arrangement Plan	henry&hymas	--	<b>20820_S4.55_C100</b>	<b>02</b>	<b>04.02.2022</b>
Stormwater Miscellaneous Details & Pit Lid Schedule	henry&hymas	--	20820_DA_C200	01	<b>31.08.2020</b>
Soil & Erosion Control Plan	henry&hymas	--	20820_DA_SE01	01	<b>31.08.2021</b>
Soil & Erosion Control Details	henry&hymas	--	20820_DA_SE02	G	<b>31.08.2021</b>

#### Documents:

- Audit Process letter prepared by Rambol Australia Pty Ltd, Ref: 318001139, dated 8 March 2021;
- Building Code of Australia 2019.1 Design Review prepared by Hendry Group Pty Ltd, Reference No. 20200383, Revision 2, dated 31 October 2020;
- Childcare Centre Management Plan prepared by Aurrum Childcare and Preschool, dated September 2020;
- Civil Design Statement prepared by H&H Consulting Engineers Pty Ltd (henry&hymas), Ref: 20820/tr, dated 14 September 2020;
- Conceptual Site Model prepared by Senversa Pty Ltd, Ref: S18159\_006\_CSM\_Rev0, dated 10 December 2020;
- Construction Environmental Management Plan prepared by Senversa Pty Ltd, Ref: S18159\_007\_CEMP\_Rev0,

- dated 10 December 2020;
- Long Term Environmental Management Plan prepared by Senversa Pty Ltd, Ref: S18159\_008\_LTEMP\_Rev0, dated 10 December 2020;
- Landscape Concept Design Package prepared by Aspect Studios, Project No. A20014-SK001, dated 25 November 2020;
- Noise Impact Assessment, prepared by Rodney Stevens Acoustics Pty Ltd, Report No. 200754R1, Revision 1, dated 16 February 2021;
- Roof Water Harvesting letter prepared by VOS Group Pty Ltd, Ref: S9645, dated 20 November 2020;
- Site Suitability letter prepared by Senversa Pty Ltd, Ref: S18159\_009\_LTR\_Rev0, dated 1 March 2021;
- Soil Vapour Assessment Report prepared by Senversa Pty Ltd, Ref: S18159\_004\_LET\_Rev0, dated 20 October 2020;
- Summary of Contaminated Land Condition prepared by Senversa Pty Ltd, Ref: S18159\_002\_Let\_Rev0, dated 31 August 2020;
- Transport Impact Assessment prepared by onemilegrid, Ref: 200095TIA001F-F, dated **17 September 2021**;  
and
- Waste Management Plan prepared by Willow Tree Planning, Ref: WTJ20-149\_WMP, dated 10 December 2020.

***As amended on 24/02/2022 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.***

2 **A012 - Food Act**

The proprietor of the food business shall ensure that the requirements of the NSW Food Act 2003, NSW Food Regulation 2010 and the Australian and New Zealand Food Standards Code are met at all times.

3 **A019 - Occupation Certificate**

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

A satisfactory inspection from an authorised officer of Council's Environmental Health Team is required **prior to the issue of an 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.

4 **A021 - Business Registration**

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 issue of an Occupation Certificate and operation of the business**.

5 **A026 - Advertising sign (not for residential)**

A separate development application for the erection of a sign or advertising structure, other than advertising listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan 2014.

6 **A029 - HOURS OF OPERATION AND DELIVERY TIMES**

The operating hours are from 6:30am to 6:30pm, Mondays to Fridays.

7 **A039 - Graffiti**

The finishes of all structures and the building are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.

8 **A046 - Obtain Construction Certificate before commencement of works**

A **Construction Certificate** shall be obtained prior to commencement of any building works.

9 **A Special (BLANK)**

The maximum number of children placed at the centre is to be limited to 110, with 44 child care placements for 0-2 years old, 26 places for 2-3 years old, 40 places for 3-6 years old.

10 **A Special (BLANK)**

A NSW EPA Accredited Site Auditor is to be engaged and shall oversee and endorse the development works in accordance with the Contaminated Land Management Guidelines for the NSW Site Auditor Scheme (3rd edition) and the conditions of consent. All contamination management works are to consider and incorporate necessary engineering and other technical requirements to ensure the stability, durability, safety and longevity of the contamination containment system endorsed by the Site Auditor.

## 11 [A Special CPTED Requirements](#)

The following community safety and crime prevention through environmental design (CPTED) requirements are required to be implemented:

### **Lighting**

- All outdoor/public spaces throughout the development must be lit to the minimum AS 1158. Lighting must be consistent in order to reduce the contrast between shadows and illuminated areas and must be designed in accordance with AS 4282 - Control of the obtrusive effects of outdoor lighting.

### **Car Parking**

- All areas of the car park must be well-lit, with consistent lighting to prevent shadowing or glare.

### **Building Security & Access Control**

- Intercom, code or card locks or similar must be installed for all entries to the building.
- Australian Standard 220 – door and window locks must be installed.
- CCTV is to be provided to cover communal public space areas. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.
- Security provisions outlined in Plan of Management to be conditioned.

### **Graffiti/Vandalism**

- Graffiti resistant coatings must be used to external surfaces where possible, including signage, furniture, retaining walls etc.
- Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing, and common areas. This includes reporting incidents to police and/or relevant authorities.
- Outdoor equipment/furniture must be stored away after hours to minimise opportunities for vandalism/theft.

### **Landscaping**

- All vegetation must be regularly pruned to ensure that sight lines are maintained.

## **Demolition**

### 12 [B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE](#)

All demolition works are to be conducted in accordance with the provisions of AS 2601-1991 "The Demolition of Structures". **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

All demolition and excavated material shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location(s) of all excavated material from the development site shall be provided to the Principal Certifying Authority **prior to commencement of demolition**.

### 13 [B004 - Dust](#)

Dust suppression techniques are to be employed during demolition and construction works to reduce any potential nuisances to surrounding properties.

### 14 [B005 - Mud/Soil](#)

Mud and soil from vehicular movements to and from the site during demolition and construction works must not be deposited on the road.

## **Environmental Matters**

15 **D- Approved noise Level 3**

Construction works shall be carried out in accordance with the NSW Department of Environment and Climate Change's *"Interim Construction Noise Guideline"* 2009.

16 **D001 - Implement approved sediment& erosion control measures**

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained throughout the construction phase of the development until the landscaping, driveway and on-site parking areas have been completed for the development. Erosion and sediment control measures are to be in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's *Managing Urban Stormwater: Soils and Construction* 2004. (Note: To obtain a copy of the publication, you should contact Landcom on (02) 9841 8600).

These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

17 **D005 – No filling without prior approval (may need to add D006)**

No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.

18 **D013 - Approved noise level 1**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the Council approved *'Noise Impact Assessment: Proposed Child Care Centre, 72 Mulgoa Road, Jamisontown NSW 2750'* prepared by Rodney Stevens Acoustics and dated 16 February 2021 (Ref. 200754R1 Revision 1). The recommendations provided in section 6 the Noise Impact Assessment shall be implemented and incorporated into the design, construction and operation of the development, and shall be shown on plans accompanying the Construction Certificate application. This applies to the acoustic fencing required by the Noise Impact Assessment.

A compliance certificate is to be obtained from a qualified acoustic consultant certifying that the development (including acoustic fencing) has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to Penrith City Council **prior to the issue of an Occupation Certificate**.

19 **D014 - Plant and equipment noise**

All mechanical plant and equipment is to comply with the noise criteria outlined in the *'Noise Impact Assessment: Proposed Child Care Centre, 72 Mulgoa Road, Jamisontown NSW 2750'* prepared by Rodney Stevens Acoustics dated 16 February 2021 (Ref. 200754R1 Revision 1).

**Prior to the issue of a Construction Certificate**, further details on the type and location of all mechanical plant and equipment associated with the development is to be provided to Penrith City Council for consideration and approval. Suitable data and information, prepared by a suitably qualified acoustic consultant, on the noise impacts associated with this plant and equipment is to be supplied to demonstrate compliance with the established noise criteria.

**Prior to the issue of an Occupation Certificate**, a Compliance Certificate, prepared by a suitably qualified acoustic consultant, is to be submitted to and approved by Council. The Certificate is to outline that all plant and equipment has been installed to comply with the above information and the established noise criteria.

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

20 **D06A – Approval for bulk earthworks/major filling operations (Use for bulk earthworks/ major filling operations)**

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 Certifying Authority or Council. The Validation Certificate shall:

- state the legal property description of the fill material source site,
- be prepared by an appropriately qualified person 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 in accordance with the requirements of the NSW EPA (2015) 'Waste Classification Guidelines' or the requirements of the applicable resource recovery order (RRO) and resource recovery exemption (RRE) issued by the EPA under clause 93 of the Protection of the Environment Operations (Waste) Regulation 2014, and
- (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.

An appropriately qualified person/s shall:

- Supervise the filling works,
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and shall submit a review findings report to Council and any Principal Certifying Authority,
- Certify by way of a Compliance Certificate or other written documentation that fill materials have been placed on the site in accordance 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 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.

{Note: an appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soils science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}

A NSW EPA Accredited Site Auditor (as accredited under the Contaminated Land Management Act 1997) shall supervise the filling works. A Site Audit Statement and Site Audit Report must be submitted to Penrith City Council and any Principal Certifying Authority on completion of the filling works. The site must be suitable for its intended land use and shall not pose any unacceptable risk to human health or the environment.

The contact details of the EPA Accredited Site Auditor engaged for the works shall be provided with the Notice of Commencement.

21 **D131 - Approved noise level 2**

Due to noise requirements, restrictions apply to the number of children allowed in the outdoor play area at any one time. A maximum of:

- 44 children aged 0-2 years or
- 26 children aged 2-3 years or
- 40 children aged 3-5 years are permitted.



## 22 **D special BLANK**

Works shall be carried out generally in accordance with the NSW EPA accredited Site Auditor endorsed:

- 'Conceptual Site Model, Proposed Childcare Centre, 72-80 Mulgoa Road, Penrith NSW', dated 10 December 2020 (the CSM);
- 'Construction Environmental Management Plan, Proposed Childcare Centre, 72-80 Mulgoa Road, Penrith NSW', dated 10 December 2020 (the CEMP);
- 'Long-Term Environmental Management Plan, Child Care Centre, 72-80 Mulgoa Road, Penrith, NSW', dated 10 December 2020 (the EMP);
- Any additional NSW EPA accredited Site Auditor requirements as identified during site development works;
- Audit Process Letter titled 'Re: Contamination Audit Process Letter, 72 Mulgoa Road, Jamisontown NSW' prepared by Ramboll and dated 8 March 2021 (author NSW EPA Accredited Auditor 1505); and
- The applicant/developer must manage the site in accordance with any Environmental Management Plan approved by the Site Auditor (if any).

as well as Penrith Development Control Plan 2014, applicable NSW Environment Protection Authority Guidelines (including the Contaminated Land Management Guidelines for the NSW Site Auditor Scheme), and the National Environment Protection (Assessment of Site Contamination) Measure (1999) [NEPM 2013].

**Prior to issue of an Occupation Certificate**, the following documentation is to be submitted for approval to the Principal Certifying Authority and Penrith City Council, if Council is not the Principal Certifying Authority:

- Site Audit Statement and Site Audit Report prepared by a NSW EPA Accredited Site Auditor and confirming that the land is suitable for the proposed land use as a child-care centre.

## 23 **D Special BLANK**

**Prior to the issue of an Occupation Certificate**, the applicant shall register a Restriction as to User with Land and Property Information, relating to the NSW EPA Accredited Site Auditor endorsed Environmental Management Plan regarding containment of contamination on site with Council being the beneficiary. The Restriction as to User shall contain words that are in accordance with the Site Audit Statement and Site Audit Report and include words to the effect:

'This land is subject of an Environmental Management Plan that contains specific requirements in relation to managing activities on this land. Please contact Penrith City Council on 4732 7777 to access information contained in this report'.

## 24 **D Special BLANK**

**Prior to the issue of a Construction Certificate**, the following reports are to be submitted to Penrith City Council for approval. The reports are to be endorsed by a NSW EPA accredited Contaminated Sites Auditor and be submitted together with the associated Site Auditor Interim Audit Advice (IAA) letter as detailed in the document titled '*RE: Contamination Audit Process Letter, 72 Mulgoa Road, Jamisontown NSW*' prepared by Ramboll Australia and dated 8 March 2021 (ref: 318001139).

The required reports are to include, but not necessarily be limited to:

- Environmental Management Plan (EMP);
- Conceptual Site Model (CSM); and
- Construction Environment Management Plan (CEMP).

All activities on the site are to be implemented and carried out in accordance with the above Site Auditor endorsed and Council approved documents, as well as the conditions of this consent.

25 [D Special BLANK](#)

**Prior to the issue of a Construction Certificate**, a Construction Waste Management Plan is to be submitted to Council for approval. This Plan is to address all waste materials generated during the construction phase of the development, including details of the proposed waste volumes, on site storage and management, designated waste contractors and waste facilities.

The approved Waste Management Plan must be implemented and adhered to on site, with supporting documentation/receipts retained in order to verify the disposal of materials in accordance with the approved Plan.

26 [D Special BLANK](#)

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 issue of an 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 and the signs are to be constructed **prior to the issue of an Occupation Certificate**.

27 [D Special BLANK](#)

In the event of 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.

28 [D Special BLANK](#)

A Noise Management Plan (NMP) is to be prepared and submitted to Penrith City Council for consideration and approval **prior to the issue of an Occupation Certificate**. The NMP shall be prepared by suitably qualified persons, and may need to be amended to include any comments provided by Council. The NMP is to address all noise related aspects of the development's operational phases, including:

- address the relevant conditions of this consent; and
- recommend any systems/controls to be implemented to minimise the potential for any adverse noise impact(s); and
- incorporate a program for ongoing monitoring and review to ensure that the NMP remains contemporary with relevant environmental standards.

The approved Noise Management Plan is to be implemented and complied with at all times.

29 [D Special BLANK](#)

Should remediation be required that is outside the scope of works detailed in the Construction Environmental Management Plan and Long Term Environmental Management Plan submitted with this application, Penrith City Council is to be notified and consulted before the remediation works commence. This applies in addition to the requirement for endorsement by a NSW EPA Accredited Site Auditor.

## BCA Issues

30 [E004 - Floor wastes](#)

The requirements of Clause 143 of the Environmental Planning and Assessment Regulation 2000 are to be taken into consideration **prior to the issue of a Construction Certificate**. In particular, but not limited to, the consequence of the construction of the child care centre on the open space requirements of the existing building as per Clause C2.3 of the Building Code of Australia is to be addressed. This may be by the formulation of a "Performance Solution".

31 [E006 - Disabled access and facilities](#)

Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility". Details of compliance are to be provided in the relevant plans and specifications accompanying the relevant Construction Certificate application.

32 [E01A - BCA compliance for Class 2-9](#)

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:

- complies with the performance requirements, or
- is shown to be at least equivalent to the deemed to satisfy provision, or

(c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

## Health Matters and OSSM installations

33 [F001 - General Fitout](#)

The construction, fit-out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS 4674-2004 *Design, Construction and Fit-out of Food Premises*.

34 [F022 - Commercial kitchen\(exhaust system\)](#)

Cooking appliances which exceed a total maximum power input of 8kw for electrical, or a total gas input of 29MJ/h for a gas appliance are required to have a kitchen exhaust system installed in accordance with Clause F4.12 of the Building Code of Australia and AS 1668 Parts 1 & 2.

Detailed plans together with calculations for the system must be provided as part of the development application or as part of the Construction Certificate application.

The exhaust hood must completely cover the equipment to be ventilation and extended at least 200mm beyond the perimeter of the equipment. The exhaust hood must be provided with a condensation gutter around its base. The gutter must be at least 50mm wide by 25mm deep. Where abutting walls are located the hood must be constructed so as to finish flat against the wall surface.

The low edge of a canopy type exhaust hood must be at least 2000mm above floor level.

**Prior to the issue of an Occupation Certificate**, and operation of the business, the exhaust system shall be certified by an appropriately qualified person to comply with the Building Code of Australia and AS 1668 Parts 1 & 2. A copy of the certification and supporting documentation must be provided to Council's Environmental Health Department if Council is not the Principal Certifying Authority.

35 [F031 - Floor & floor waste](#)

The floor of the food premises must be finished in an approved non-absorbent material, evenly laid, or graded and drained to a trapped floor waste. All floor wastes in the food preparation, service and scullery area must be fitted with a sump removable basket and grate, a minimum 200mm in diameter, and finished in all stainless steel.

36 **F032 - Floor covering**

Approved, recessed coving must be provided at all intersections of the floor with the walls within all food preparation, service, storage and scullery areas. All coving must have a minimum concave radius of 25mm and be installed so as to be integral to the surface finish of both floor and wall in such a manner as to form a continuous, uninterrupted surface.

37 **F033 - Walls – food prep area**

The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other approved material to a height of 2 metres. The intersection of tiles and render must have a flush finish, or be splayed at a 45 degree angle to eliminate a ledge that would allow dust and grease to accumulate.

38 **F034 - Walls – behind cooking appliances**

The walls at the rear of cooking appliances must be surfaced with an impervious material, such as stainless steel, which extends from the canopy to the floor. Where a cooking appliance is sealed to the wall, the material must be lapped over the top edge of the appliance to provide a grease and vermin proof seal. Cooking appliances must only be sealed to walls made of a non-combustible material.

39 **F035 - Ceilings**

The ceiling in the kitchen must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersection of the walls and ceiling must be tight jointed, sealed and dust proofed. Drop-in panel style ceilings are not permitted.

40 **F046 - Cleaners sink**

A cleaner's sink must be serviced with hot and cold water through taps fitted with hose connectors must be provided within the facility. Cleaner's sinks must be located outside of areas where open food is handled.

41 **F047 - Fixtures & fittings**

All fixtures, fittings and equipment must be provided with smooth and impervious surfaces, free from cracks and crevices to enable easy cleaning.

All fittings and fixtures must be built into the wall and floor so as to be free from joint, gaps and cavities to enable easy cleaning or alternatively, supported on one of the following:

- a. Plinths – plinths must be an integral part of the floor, constructed of solid materials similar to the floor at least 75mm in height and coved at the intersection with the floor. All plinths must have a smooth and impervious finish. All fittings and fixtures must be properly sealed to the plinth so to be free from gaps, cracks and cavities.
- b. Wheels or castors – fittings and fixtures can be supported on wheels or castors. The wheels and castors must be capable of supporting and easily moving a full loaded fitting. All wheels and castors must be provided with a restraining device.
- c. Legs – fittings and fixtures can be supported on legs but must be constructed of a non-corrosive, smooth metal or moulded plastic. All legs must be free from cracks and crevices. All legs must have a clearance space between the floor and the underside of the fitting of at least 200mm.

NOTE: False bottoms under fittings are not permitted (AS 4674-2004 – Sections 4.2 and 4.3).

42 **F057 - Waste storage**

All garbage must be stored in accordance with the requirements of the Food Safety Standards of the Australian and New Zealand Food Standards Code and the Protection of the Environment Operations Act 1997 to prevent the harbourage of vermin or generation of odours.

43 **F060 - Grease Arrestor**

The grease arrestor must not be installed in any kitchen, food preparation or food storage area. The grease arrestor shall be installed in accordance with Sydney Water's requirements.

44 **F Bottle preparation area**

A bottle preparation sink and a separate hand washing sink must be provided to all bottle preparation areas.

45 **F Construction Certificate**

**Prior to the issue of a Construction Certificate**, detailed specifications and plans of the kitchen fit-out must be provided to the Certifying Authority demonstrating Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS 4674-2004 *Design, Construction and Fit-out of Food Premises* will be met.

#### 46 [F Hand basins](#)

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 used the basin must not be more than 6 metres from the hot water system. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.

#### 47 [F Nappy Changing Areas](#)

Hand washing facilities must be provided immediately adjacent to nappy changing stations.

### Utility Services

#### 48 [G002 - Section 73 \(not for](#)

A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall 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 “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 an Occupation Certificate**.

#### 49 [G004 - Integral Energy](#)

**Prior to the issue of a Construction Certificate**, a 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 development.

### Construction

#### 50 [H001 - Stamped plans and erection of site notice](#)

Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be 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-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 above details are to be erected:

- at the commencement of, and for the full length of the, construction works on-site, 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 Final Occupation Certificate has been issued for the development.

## 51 H002 - All forms of construction

Prior to the commencement of 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 Council, or
- 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:

- 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 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 a building 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.

## 52 H041 - Hours of work (other devt)

Construction and demolition works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

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

Other construction works carried out inside a building/tenancy that 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

53 **K101 - Works at No Cost to Council**

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.

54 **K201 - Infrastructure Bond**

**Deleted on 24/02/22 under DA20/0581.02 as per Section 4.55 1(1A) of the Environmental Planning and Assessment Act 1979.**

55 **K205 - S68 Local Government Act - Stormwater Drainage Works**

**Deleted on 24/02/22 under DA20/0581.02 as per Section 4.55 1(1A) of the Environmental Planning and Assessment Act 1979.**

56 **K210 - Stormwater Management**

The stormwater management system shall be consistent with the plan/s lodged for development approval, prepared by Henry & Hymas, **reference number 20820\_S4.55\_C100, revision 2, dated 04.02.2022.**

Prior to the issue of any Construction Certificate or Subdivision Works 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 or Subdivision Works Certificate.

**As amended on 24/02/22 under DA20/0581.02 as per Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.**

57 **K212 - No Loading on Easements**

**Prior to the issue of a Construction Certificate**, the Certifier shall ensure that the foundations of proposed structures adjoining the drainage and/or services easement have been designed clear of the zone of influence.

58 **K215 - Flooding - Floor Levels (Minor Development)**

**Prior to the issue of a Construction Certificate**, the Certifier shall ensure that all habitable floor levels are a minimum RL 29.65m AHD.

59 **K219 - Flooding - Flood Proofing**

**Prior to the issue of a Construction Certificate**, the Certifier shall ensure that all electrical services associated with the proposed building works are adequately flood proofed in accordance with Penrith Development Control Plan 2014 relating to flood liable land. Flood sensitive equipment (including electric motors and switches) shall also be located above the adopted flood level of RL 29.65m AHD.

60 **K301 - Sediment & Erosion Control**

**Prior to commencement of works**, sediment and erosion control measures shall be installed in accordance with the Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997.

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

61 **K401 - Flooding - Surveyor Verification of Floor Levels**

A certificate by a registered surveyor verifying that all habitable floor levels are at or above RL 29.65m AHD (adopted flood level +0.5m freeboard) shall be submitted upon completion of the building to that level. No further construction of the building is to be carried out until approval to proceed is issued by the Certifier.

62 [K501 - Penrith City Council Clearance - Roads Act / Local Government Act](#)

**Deleted on 24/02/22 under DA20/0581.02 as per Section 4.55 1(1A) of the Environmental Planning and Assessment Act 1979.**

63 [K503 - Stormwater Compliance](#)

Prior to the issue of an Occupation Certificate, the Principal Certifier shall ensure that the stormwater management system (including water sensitive urban design measures):

- 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, 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.

64 [K504 - Restriction on the Use of Land and Positive Covenant](#)

**Prior to the issue of an Occupation Certificate**, a restriction as to user and positive covenant relating to the stormwater management systems (including water sensitive urban design measures) shall be registered on the title of the property. The restriction as to uses and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater Drainage Specification for Building Development - Appendix F.

65 [K - Waterways - Stormwater Management system operation and maintenance](#)

The stormwater management systems shall continue to be operated and maintained in perpetuity to the satisfaction of Council in accordance with the final operation and maintenance plan. Regular inspection records are required to be maintained and made available to Council upon request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the treatment measure/s.

66 [K Special Condition BLANK](#)

All car spaces are to be sealed/line marked and dedicated for the parking of vehicles only and not to be used for storage of materials/products/waste materials, etc.

67 [K Special Condition BLANK](#)

Childcare Drop Off and Staff Parking spaces should be sign posted accordingly.

## Landscaping

68 [L001 - General](#)

All landscape works are to be constructed in accordance with the stamped approved plans and Appendix F4: Technical Information and C6 Landscape Design of the Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plan, 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 practicable, the same maturity as the vegetation which died or was removed.

69 [L002 - Landscape construction](#)

The approved landscaping for the site must be constructed by a suitably qualified and experienced landscape professional.



70 **L005 - Planting of plant**

All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specification prescribed in Penrith Development Control Plan 2014.

71 **L006 - Aust Standard**

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.

72 **L009 - Tree Preservation Order (subdivision)**

No trees are to be removed from within the subdivision without the prior consent of Penrith City Council. Any trees to be removed as part of the engineering work are to be shown on engineering plans submitted for Council's consideration and subsequent approval.

## Development Contributions

73 **N Special (BLANK)**

This condition is imposed in accordance with Penrith City Council's Section 7.12 Citywide Development Contributions Plan for Non-Residential Development. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$25,490.00 is to be paid to Council prior to a Construction Certificate being issued** for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.12 Contributions Plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.12 invoice accompanying this consent should accompany the contribution payment. The Section 7.12 Contributions Plan for Non-Residential Development may be inspected at Council's Civic Centre, 601 High Street, Penrith.

## Certification

74 **Q006 - Occupation Certificate (Class 2 - 9)**

A Final Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building/tenancy and commencement of the approved use. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

Before the Final Occupation Certificate can be issued for the development, Fire Safety Certificates issued for the building are to be submitted to Penrith City Council and the New South Wales Fire Brigades.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of that Certificate including the above mentioned documents shall be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

75 **Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)**

**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 6.6 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 in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

## **Unallocated**

76 **Z Special (BLANK)**

All car parking and maneuvering must be in accordance with AS2890.1; AS 2890.2; AS2890.6 and Council's DCP requirements

77 **Z Special (BLANK)**

All parking spaces are to be constructed with parking bays and circulation aisles clearly delineated in accordance with AS2890.1 and Council's DCP requirements.

78 **Z Special (Landscape blister)**

Prior to the issue of any Occupation Certificate, the Principal Certifying Authority is to ensure that a minimum of one (1) raised planter bed is installed in the carpark adjacent to the south western corner of the childcare centre as marked on the stamped approved plans. The raised planter bed is to incorporate a minimum of one (1) tree which would reach a minimum height at maturity, of 6 metres and is to include appropriate ground covers and/or grasses, and soil is to be mounded to increase soil volume. The selected tree is to be a minimum of 40L at the time of planting. The landscaping in the raised planter bed is to be maintained in perpetuity and replaced if planting fails.

Soil volume for the tree (measured in m<sup>3</sup>) is to be at least 0.6 times the projected mature canopy area of the tree (measured in m<sup>2</sup>) Soil is to be of high quality and fit for purpose. The minimum area of the planter is to be 1.8m x 3m

A Landscape Concept Plan is required which must outline how the area of planting will be maintained for the life of the development as per Chapter 6 'Landscape Design' of the *Penrith Development Control Plan 2014*.

79 **Z Special (Wheel stops)**

All car parking and drop-off/pick up spaces with nose to front orientation adjoining the day care building are to have wheel stops implemented.

# **Appendix - Development Control Plan Compliance**

## **Development Control Plan 2014**

### **D5 Other Land Uses**

#### **D5.2. Child Care Centres**

It should be noted that the provisions of the Child Care Planning Guideline 2017 take precedence over the DCP and that there are a number of development controls that either overlap or are not applicable to the development proposal. Overall, the proposal is considered to be generally compliant with the relevant development controls, including Section 5) Vehicle Access, Circulation and Parking and Section 6) Noise in the DCP, as detailed in the SEPP (Educational Establishments and Child Care Facilities) 2017 section of this report.