

# PENRITH CITY COUNCIL

## NOTICE OF DETERMINATION

### DESCRIPTION OF DEVELOPMENT

Application number:	DA20/0867
Description of development:	Alterations and Additions To An Existing Building To Facilitate The Following Uses, Medical Centres, Recreation Facility (Indoor), Centre Based Child Care Centre ( x 126 Children), Veterinary Hospital, Gym, Specialised Retail, Neighbourhood Shop & Kiosks And Associated Landscaping & Infrastructure Works
Classification of development:	Class 6

### DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 12 DP 1192443
Property address:	243 - 261 Forrester Road, NORTH ST MARYS NSW 2760

### DETAILS OF THE APPLICANT

Name & Address:	Homeco (St Marys) Pty Ltd 19 Bay Street DOUBLE BAY NSW 2028
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### DECISION OF CONSENT AUTHORITY

In accordance with Section 4.18(1) (a) of the Environmental Planning and Assessment Act 1979, consent is granted subject to the conditions listed in attachment 1.

Please note that this consent will lapse on the expiry date unless the development has commenced in that time.

Date from which consent operates	14 December 2021
Date the consent expires	14 December 2026
Date of this decision	14 December 2021

## POINT OF CONTACT

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If you have any questions regarding this determination you should contact:

Assessing Officer:	Lucy Goldstein
Contact telephone number:	+61247328136

## NOTES

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### **Reasons**

The conditions in the attached schedule have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 as amended.

### **Conditions**

Your attention is drawn to the attached conditions of consent in attachment 1.

### **Certification and advisory notes**

You should also check if this type of development requires a construction certificate in addition to this development consent.

It is recommended that you read any Advisory Note enclosed with this notice of determination.

### **Review of determination**

The applicant may request Council to review its determination pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 within twelve months of receiving this Notice of Determination.

These provisions do not apply to designated development, complying development or crown development pursuant to Section 8.2(2) of the Environmental Planning and Assessment Act 1979.

### **Appeals in the Land and Environment Court**

The applicant can appeal against this decision in the Land and Environment Court within twelve months of receiving this Notice of Determination.

There is no right of appeal to a decision of the Independent Planning Commission or matters relating to a complying development certificate pursuant to clause 8.6(3) of the Environmental Planning and Assessment Act 1979.

### **Designated development**

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 56 days after the date of this notice.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 56 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

### **Sydney Western City Planning Panels**

If the application was decided by the Sydney Western City Planning Panel, please refer to Section 2.16 of the Environmental Planning and Assessment Act, 1979 (as amended) for any further regulations.

## OTHER APPROVALS

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### APPROVAL BODIES

<b>APPROVAL BODY NAME</b>	<b>DATE OF GENERAL TERMS OF APPROVAL</b>	<b>REF. NO.</b>	<b>NO. OF PAGES</b>	<b>RELEVANT LEGISLATION</b>
NSW Rural Fire Service	11/11/21	DA20210202000372-CL55-2	5	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

The approval bodies listed above have provided General Terms of Approval for this development in accordance with the relevant legislation. A copy of these General Terms of Approval is provided with this development consent notice. Compliance with the relevant State Government departments' General Terms of Approval are required in conjunction with the following conditions listed in Attachment 1: Conditions of Consent issued by Penrith City Council.

# ATTACHMENT 1: CONDITIONS OF CONSENT

## General

- 1 The development must be implemented substantially in accordance with the following approved plans and documents and any other plans, reports or documents approved by Council, except as may be amended in red on the approved plans and by the following conditions:

Drawing Title	Reference	Prepared By	Dated
Architectural Drawings <i>'Home Co St Marys 213 Forrester Rd, St Marys NSW 2760'</i>	Project No. 720048 Sheet No's. DA-0000 to DA-5007 Various Revisions B-K	Buchan	19 July 2021
St Marys- Childcare Tenancy 01 <i>Ground Floor Licensing Plan</i>	Project No. 421014 A-21-10, Revision 1	Cox Architecture	22 June 2021
<i>'Commercial Development 243 Forrester Rd, St Marys NSW Civil Engineering Works'</i>	Reference No. 20G21 Sheet No's. 20G21_DA_C000 to 20G21_DA_SE02 Revision 02	Henry & Hymas Consulting Engineers	9 April 2021
Landscape Plan <i>'Forrester Road, St Marys Landscape Development Application'</i>	Job. No SS20-4576, Drawing No's 000 to 501 Revision D	Site Image Landscape Architects	21 July 2021
<i>'North St Mary's Childcare NSW Landscape Concept Design Package'</i>	Project No. A20013-SK001 Revision B	Aspects Studios	8 July 2021

- 2 The development must be carried out in accordance with the General Terms of Approval and Bushfire Safety Authority issued by the NSW Rural Fire Service for the said development, referenced DA20210202000372-CL55-2, and dated 11 November 2021, as set out below:

### Asset Protection Zones:

(a) From the start of building works and in perpetuity, the entire property (except for the 'excluded vegetation' area as shown in Schedule 1 of the bush fire report prepared by TBE Environmental Pty Ltd, ref. 18RCP03, dated 16 July 2021) must be managed as an inner protection area (IPA) in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019. When establishing and maintaining an IPA, the following requirements apply:

- Tree canopy cover be less than 15% at maturity;
- Trees at maturity are not touching or overhang the building;
- Lower limbs are removed up to a height of 2m above the ground;
- Tree canopies are separated by 2 to 5m;
- Preference is given to smooth-barked and evergreen trees;
- Large discontinuities or gaps in vegetation are provided to slow down or break the progress of fire towards buildings;
- Shrubs are not located under trees;

- Shrubs do not form more than 10% of ground cover;
- Clumps of shrubs are separated from exposed windows and doors by a distance of at least twice the height of the vegetation.
- Grass to be kept mown (as a guide grass should be kept to no more than 100mm in height);
- Leaves and vegetation debris are removed; and
- NSW Rural Fire Service's document Standards for asset protection zones.

(b) Landscaping within the inner protection area (IPA) must comply with Appendix 4 of Planning for Bush Fire Protection 2019. In this regard, the following principles are to be incorporated:

- Planting is limited in the immediate vicinity of the building;
- Planting does not provide a continuous canopy to the building (i.e. trees or shrubs are isolated or located in small clusters);
- Landscape species are chosen to ensure tree canopy cover is less than 15% (IPA) at maturity and trees do not touch or overhang buildings;
- Avoid species with rough fibrous bark, or which retain/shed bark in long strips or retain dead material in their canopies;
- Use smooth bark species of trees species which generally do not spread fire up the bark into the crown;
- Avoid planting of deciduous species that may increase fuel at surface/ ground level (i.e. leaf litter);
- Avoid climbing species to walls and pergolas;
- Locate combustible materials such as woodchips/mulch, flammable fuel stores away from the building;
- Locate combustible structures such as garden sheds, pergolas and materials such as timber garden furniture away from the building; and
- Low flammability vegetation species are used.

**Construction Standards:**

(c) The entire building (including the childcare centre building) must comply with section 3 and section 5 (BAL 12.5) Australian Standard AS3959-2018 Construction of buildings in bush fire-prone areas or NASH Standard (1.7.14 updated) National Standard Steel Framed Construction in Bushfire Areas – 2014 as appropriate, and Section 7.5 of Planning for Bush Fire Protection 2019.

(d) Any new Class 10b structures as defined per the National Construction Code (including the feature walls and batten screens) must be non-combustible.

**Water and Utility Services:**

(e) The provision of water, electricity and gas shall comply with Table 6.8c of Planning for Bush Fire Protection 2019.

**Emergency and Evacuation Planning Assessment:**

(f) A Bush Fire Emergency Management and Evacuation Plan must be prepared and be consistent with the NSW RFS document: A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan. The Bush Fire Emergency Management and Evacuation Plan must include planning for the early relocation of occupants. Note: A copy of the Bush Fire Emergency Management and Evacuation Plan should be provided to the Local Emergency Management Committee for its information prior to occupation of the development.

A copy of the NSW RFS approval shall be submitted to Penrith City Council with the copy of the Construction Certificate, if Council is not the Principal Certifying Authority.

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

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

**to the issue of the Occupation Certificate in relation to the Childcare Centre.** The occupier is to contact Council's Environmental Health Team to organise an appointment at least 72 hours prior to the requested inspection time.

4 This consent does not approve signage. A separate development application for the erection of a sign or advertising structure, other than signage permitted under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, is to be submitted to Penrith City Council, complying with the requirements of Section C9-'Advertising and Signage' under Penrith Development Control Plan 2014.

5 The approved operating hours of the development are as follows:

- 7:00am to 7:00pm, 7-days a week (except for the childcare centre and gymnasium);
- Childcare Centre: 6:30am to 6:30pm, Monday to Friday, closed on public holidays;
- Gymnasium: 24-hours, 7-days per week.

Delivery and service vehicles generated by the development are limited to 7:00am - 5:00pm, Monday to Friday.

6 All materials and goods associated with the use shall be contained within the building at all times.

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

8 The development is to be carried out in accordance with the Bushfire Report prepared by TBE Environmental Pty Ltd, ref. 18RCP03, dated 16 July 2021, unless as amended by the requirements of the NSW Rural Fire Service as outlined in their General Terms of Approval and Bushfire Safety Authority issued for the development.

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

10 The development is to be carried out in accordance with the submitted Access Review Report, prepared by Morris Goding Access Consulting, dated 1 December 2020.

Given the nature of the development and that the existing toilet facilities are to be utilised, **prior to the issue of a Construction Certificate**, an Accessibility Audit prepared by a suitably qualified Access Consultant, shall be submitted to the Principal Certifying Authority, which confirms that the existing toilet facilities meet all relevant access requirements and Australian Standards. Where relevant, the audit shall identify any required upgrades, which are to be incorporated into the construction certificate plans.

- 11 The Height of Building must not exceed 12.m (AHD) inclusive of rooftop plant, as per the requirements under Penrith Local Environmental Plan 2010.
- 12 The maximum number of children placed at the centre is to be limited to 126 children, comprising the following:
  - 36x children aged 0-2 years
  - 40x children aged 2-3 years
  - 50x children aged 3-5 years
- 13 The approved Childcare Centre must be maintained in a manner that always complies with the Education and Care Services National Regulations 2011.
- 14 The Childcare Centre 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 the Occupation Certificate and operation of the business.**
- 15 The acoustic barrier wall of 3m height located along the rear boundary adjacent to the loading lane, must not extend beyond that as shown in red on the stamped approved Site Plan. In this regard, the barrier wall must not extend further north beyond the ambulance bays.
- 16 This consent does not approve the fit out of individual tenancies and kiosks. Separate approval(s) must be obtained for the fit out of all tenancies and kiosks subject of this consent except for the childcare centre, by way of lodgement of a separate development application(s) to Penrith City Council, or where relevant by obtaining a Complying Development Certificate under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
- 17 The gross floor area of the Kiosks (tenancies numbered K01-K05 on the approved architectural plans) must not exceed 50 square metres, in accordance with the requirements under Clause 5.4 of Penrith Local Environmental Plan 2010. The kiosks must only offer for sale food, light refreshments and other small convenience items such as newspapers, films and the like.
- 18 The Pharmacy is to operate as a Neighbourhood Shop as defined under Penrith Local Environmental Plan 2010, and be carried out in accordance with the information submitted with the subject Development Application.

In this regard, and to ensure consistency with the information provided with the Development Application, the tenant is to retain product unit breakdown of those items sold from the Neighbourhood Shop. These product breakdowns are to demonstrate, to the satisfaction of Penrith City Council, that the Neighbourhood Shop is selling a range of general merchandise including: pharmaceuticals such prescription and over the counter medications; health products such as vitamins, supplements, creams and ointments; personal care products such as skincare, sun-care, beauty and hygiene; and other general merchandise such as cleaning products, home-wares, gift-ware, travel essentials.



The display area around the perimeter of the tenancy (visible from the entrance) must be stocked with a range of general merchandise. These display areas are not to be stocked and displayed with a single product line, in order to identify the premise to customers as stocking a range of merchandise consistent with the definition of a Neighbourhood Shop.

19 **Prior to the issue of a Construction Certificate**, the architectural plans are to be amended to provide a parenting room and parent friendly accessible toilet with baby care room of a minimum gross floor area of 20sqm, in accordance with the requirements of Section D.5.5 of Penrith Development Control Plan 2014. These facilities are to comply with the design requirements outlined in Section D.5.5, Clauses 1, 2 and 4 of Penrith Development Control Plan 2014.

20 Prior to the issue of an Occupation Certificate, the following community safety and crime prevention through environmental design (CPTED) requirements are to be implemented:

#### **Lighting**

- All outdoor/public spaces throughout the development must be lit to the minimum Australian Standard of 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 tenancies.
- Australian Standard 220 – door and window locks must be installed in all premises.
- 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.

#### **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 furniture (i.e. in the outdoor plaza) must be well secured or stored away after hours.

#### **Landscaping**

- Vegetation shall be regularly pruned to ensure that sight lines are maintained.

## Demolition

- 21 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.
- 22 Regulatory obligations (including licensing and notification requirements) for the management, control and removal of asbestos are prescribed in the:
- *Work Health and Safety Act 2011,*
  - *Work Health and Safety Regulation 2017*
  - *SafeWork NSW Code of Practice How to Manage and Control Asbestos in the Workplace August 2019,*
  - *SafeWork NSW Code of Practice How to Safely Remove Asbestos August 2019.*
  - *Australian Standard AS2601-2001 The demolition of structures*

Compliance with the above legislation is required and reference should be made to SafeWork NSW and to the Asbestos Policy Penrith City Council 2014.

All asbestos laden waste must be disposed of at a waste management facility licensed by the NSW Environment Protection Authority to receive asbestos waste.

## Environmental Matters

- 23 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.

24 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 the 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 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:* for the purpose of this condition 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, soilscience, 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.

25 All construction 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 be fully enclosed when the site is unattended.

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

- 27 Noise levels from the premises shall not exceed the relevant noise criteria detailed in the Council approved *Noise Impact Assessment prepared by Acoustic Logic and dated 6/07/2021 (Ref: 20201297.1/0607A/R2/AZ)*. The recommendations provided in 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 includes (but is not limited to) acoustic fencing, mechanical plant and equipment and tenancy specific building elements as detailed in the approved Noise Impact Assessment.

**Prior to issue of the Construction Certificate**, information is to be submitted to Penrith City Council (including architectural plans, construction details and specifications) supported by a Noise Impact Assessment Report, prepared by a suitably qualified acoustic consultant, confirming that the final design and construction of the development will be in accordance with the Council approved *Noise Impact Assessment prepared by Acoustic Logic and dated 6/07/2021 (Ref: 20201297.1/0607A/R2/AZ)*. Council approval of this information is to be obtained **prior to issue of the Construction Certificate**.

A compliance certificate is to be obtained from a qualified acoustic consultant certifying that the development (including acoustic fencing, mechanical plant and equipment and specific gym and childcare tenancies fit-out) has been constructed to meet the noise criteria in accordance with the approved Noise Impact Assessment. This certificate is to be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.

- 28 All mechanical plant and equipment is to comply with the noise criteria outlined in the *Noise Impact Assessment prepared by Acoustic Logic and dated 6/07/2021 (Ref: 20201297.1/0607A/R2/AZ)*.

**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 the Principal Certifying Authority. 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.

- 29 **Prior to the issue of the Construction Certificate**, a Construction Environmental Management Plan (CEMP) is to be prepared by a suitably experienced / qualified person and submitted to and approved by Council. If Council is not the certifying authority, a copy of Council's approval is to be provided to the

Principal Certifying Authority.

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

- Water quality management,
- Noise control and hours of operation,
- Dust suppression,
- Waste management (including solid and liquid waste),
- Erosion and sediment control,
- Dust control.

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

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

31 **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 on-site storage, management, waste stream separation, designated waste contractors and lawful waste management disposal locations. The Waste Management Plan is to provide a protocol for the management of any potentially contaminated waste material providing specific storage, management, separation and disposal details for any such material. This requirement is of relevance to the presence of the containment of asbestos containing material on site and reference to the NSW EPA Accredited Site Auditor endorsed Environmental Management Plan for the site is required.

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.

32 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 of 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.

33 A Noise Management Plan (NMP) is to be prepared for the Childcare Centre and Gym components of the development. These Noise Management Plans are required to be prepared by a suitably qualified acoustic consultant and submitted to Penrith City Council for consideration and approval **prior to the issue of an Occupation Certificate**. The NMP's are to be prepared and presented as separate documents for each separate use (Childcare Centre and Gym) and may need to be amended to incorporate Council

comments.

Each 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.

- 34 **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 the 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'.

- 35 **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

- 36 **Prior to issue of the Construction Certificate**, a NSW EPA Accredited Site Auditor (Site Auditor) is to be engaged by the applicant. Details of the Site Auditor, including Site Auditor Interim Advice is to be submitted to, and approved by Penrith City Council **prior to issue of the Construction Certificate**.

The Site Auditor is required to review the Environmental Management Plan prepared by Geo-Logix and dated 28/09/2021 (Revision Number 03, Ref: Final Report 2101028Rpt02FinalV03\_28Sep21) and any other associated investigation reports, management plans and documentation as deemed necessary by the Site Auditor to enable issue of a Site Audit Statement and Site Audit Report for the site, **prior to issue of the Occupation Certificate**.

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

- Environmental Management Plan prepared by Geo-Logix and dated 28/09/2021 (Revision Number 03) (Ref: Final Report 2101028Rpt02FinalV03\_28Sep21)
- Any additional NSW EPA Accredited Site Auditor requirements as identified during site development works

All activities on the site are to be implemented and carried out in accordance with the above as well as the conditions of this consent.

37 The following waste management requirements must be complied with and details of compliance demonstrated to Council **prior to the issue of a Construction Certificate**:

- (a) All on-site waste collection infrastructure, doors and access points are to be locked/accessed through an Abloy Key System/security key system to permit access to the assigned collection contractors.
- (b) The commercial waste collection room to be of sufficient size to accommodate the waste volumes and streams produced for each tenancy in accordance with section 3.3 of the 'industrial, commercial and mixed-use waste management guideline' document.
- (c) The waste collection room to provide internal infrastructure in accordance with section 3.4.1 of the 'industrial, commercial and mixed-use waste management guideline' document.
- (d) An updated Waste Management Plan and Plan of Operations to be provided to outline the volumes, waste streams and service arrangement for all tenancies in accordance with section 2.2.6 of the 'industrial, commercial and mixed-use waste management guideline' document.
- (e) Amended architectural plans to be submitted to reflect the amended Waste Management Plan and Plan of Operations submitted to Council.

## BCA Issues

- 38 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

39 The construction, fit out and finishes of the food premise (Childcare Centre) must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS46742004 Design, Construction and Fitout of Food Premises.

Your attention is drawn to the following requirements:

- (a)** 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.
- (b)** 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.

**(c)** 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.

**(d)** 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.

**(e)** 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.

**(f)** 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.

**(g)** 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:

(i) 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.

(ii) 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.

(iii) 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 46742004 – Sections 4.2 and 4.3)

**h)** 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.

**(i)** 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.

**(j)** 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.



40 The rainwater tank must be maintained so as not to create a nuisance and it must be protected against mosquito infestation.

41 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 Australian Standard AS1668 Parts 1 & 2.

Details of the installation of the kitchen exhaust system shall be submitted with the Construction Certificate application.

The kitchen exhaust system must be designed to prevent or minimise air pollution including the emission of odours, vapours and oils in accordance with the Protection of the Environment Operations Act 1997.

**Prior to the issue of an Occupation Certificate**, the installer of the kitchen exhaust system (either the individual person or the Company who installed the exhaust system) shall certify or submit appropriate documentation (as instructed by the Principal Certifying Authority) that all practical pollution control measures have been installed to achieve the requirements of the Protection of the Environment Operations Act 1997.

42 To effectively wash/sanitize, a double bowl sink or dishwasher is required to be provided in the kitchen of the childcare centre. In the instance where a double bowl sink is provided, the sink must be constructed of stainless steel, have a minimum bowl size of 450mm x 300mm x 300mm to enable cleaning of large pots and equipment, be fitted with a draining area at each end, and have a splashback as part of the unit at least 300mm up the wall. **Prior to the issue of a construction certificate**, these details shall be shown on the plans.

43 All food businesses are 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 operation of the relevant food business.

## Utility Services

44 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 relevant Occupation Certificate.

45 **Prior to the issue of the relevant 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.

In the event that a pad mounted substation is necessary to service the development, Penrith City Council shall be consulted over the proposed location of the substation before the Construction Certificate for the development is issued as the location of the substation may impact on other services and building, driveway or landscape design already approved by Council.

46 **Prior to the issue of the relevant Construction Certificate**, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:

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

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

**Prior to the issue of the relevant Occupation Certificate**, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements above and the applicable legislation at the time of construction, must be submitted to the Principal Certifying Authority.

## Construction

47 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 the site:

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

Signage but no more than 2 signs stating the above details are to be erected:

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

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

48 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 the 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.

49 Construction 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 and 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

50 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.

51 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 or Subdivision Works 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.

52 The stormwater management system shall be consistent with plans lodged for development approval, prepared by Henry & Hymas Consulting Engineers, reference number 20G21, revision 02, dated 09/04/2021.

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 the relevant Australian Standards.

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

54 Prior to commencement of works 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.

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

55 Prior to the issue of any Occupation Certificate, final operation and maintenance documentation for the existing stormwater management systems on-site (including the culverts constructed along the western boundary) 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.

Copies of the final operation and maintenance management 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.

- 56 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 user 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
- 57 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.
- 58 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 management 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
- 59 The internal division of tenancies shall be constructed such that all tenancies have access to the proposed internal loading egress corridors linking individual tenancies to the rear (eastern) loading dock area.
- 60 All car parking and manoeuvring must be in accordance with AS2890.1-2004; AS2890.6-2009 and Council's requirements.
- 61 All vehicles are to enter and exit in a forward direction.
- 62 All loading and servicing of tenancies is to be undertaken via the proposed loading egresses to the rear (eastern) loading dock. Loading and servicing shall not take place via front entries to tenancies or in any part of the public car parking areas.
- 63 No car parking shall be permitted in the proposed loading lane/loading dock area. All loading and servicing vehicle manoeuvring is to be separated from car parking areas.
- 64 **Prior to the issue of an Occupation Certificate** the principal certifying authority shall ensure that the lot title is amended to include an 88B instrument creating a 'Restriction as to User' such that the lot is not to be serviced or accessed by any vehicle greater than 12.5m in length. Semi-trailer and B-Double vehicles are strictly not permitted for the life of the development.
- 65 The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.
- 66 Signage and linemarking arrows indicating the proposed One Way direction of service vehicle access is required at the entry and exit points to the loading area laneway on the eastern side of the building. Signage

indicating 'No Public Access' to loading and service vehicle manoeuvring areas is required at entry and exit points to the loading area laneway on the eastern side of the building.

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

68 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that a Flood Risk Management & Evacuation Plan is prepared by a qualified consultant and includes, but not limited to the following components:

- Preparation for a flood emergency
- Action plans in the likelihood/during a flood/after a flood
- Emergency Contact Details
- Flood Emergency Kit
- Integration with local flood and catchment plans
- South Creek/Local Overland Flow flooding evacuation route
- Implementation, maintenance and review program

The Flood Risk Management & Evacuation Plan shall be submitted to Council and will continue to be operated and maintained in perpetuity for the life of the development.

## Landscaping

69 All landscape works are to be constructed in accordance with the stamped approved Landscape Plans (Titled '*Forrester Road, St Marys- Landscape Development Application*', prepared by Site Image Landscape Architects, dated 21 July 2021, Revision D; and '*North St Mary's Childcare, NSW- Landscape Concept Design Package*', prepared by Aspects Studios, dated 8 July 2021, Revision B) and 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.

70 The following series of reports relating to landscaping are to be submitted to the nominated consent authority at the appropriate time periods as listed below. These reports shall be prepared by a suitably qualified landscape professional:

i. Implementation Report

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.

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.

ii. Maintenance Report

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.

71 All landscape works are to be completed by a suitably qualified landscape professional.

72 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.

73 No trees are to be removed, ring barked, cut, topped or lopped or willfully destroyed (except for trees identified for removal within the car park as shown on the stamped approved landscape plan) without the prior consent of Penrith City Council and in accordance with Part C, C2 Vegetation section of Penrith Development Control Plan 2014.



## Section 94

74 This condition is imposed in accordance with Penrith City Council's Section 7.12 Contributions Plan. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$46,050.00 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 may be inspected at Council's Civic Centre, 601 High Street, Penrith.

*Note:* The timing of contributions payable may be otherwise affected in accordance with Planning Circular PS20-003 dated 3 July 2020 and the associated NSW Government Ministerial Direction - Infrastructure Contributions.

## Certification

- 75 **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 in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

## SIGNATURE

Name:	Lucy Goldstein
Signature:	

For the Development Services Manager