

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA20/0867
<b>Proposed development:</b>	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
<b>Property address:</b>	243 - 261 Forrester Road, NORTH ST MARYS NSW 2760
<b>Property description:</b>	Lot 12 DP 1192443
<b>Date received:</b>	21 December 2020
<b>Assessing officer</b>	Lucy Goldstein
<b>Zoning:</b>	IN2 Light Industrial - LEP 2010
<b>Class of building:</b>	Class 6
<b>Recommendations:</b>	Approve

### Executive Summary

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Council is in receipt of a development application for Alterations and Additions to an Existing Building To Facilitate the Following Uses, Medical Centres, Recreation Facility (Indoor), Centre Based Childcare Centre (x126 Children), Veterinary Hospital, Gymnasium, Specialised Retail, Neighbourhood Shop, and Kiosks, and Associated Landscaping & Infrastructure Works at 343-261 Forrester Road, North St Marys NSW 2760.

Under Penrith Local Environmental Plan 2010, the site is zoned IN2 Light Industrial, and the proposal is permissible with consent.

The development is defined as Integrated Development under Section 4.45(1) of the Environmental Planning and Assessment Act 1979 (The Act), requiring separate approval under Section 100B of the Rural Fires Act 1997, as the site is mapped as Bushfire Prone Land and the proposal includes a childcare centre which constitutes a Special Fire Protection Purpose. On 11 November 2021, the NSW RFS issued General Terms of Approval and a Bushfire Safety Authority for the proposal.

In accordance with Council's Community Engagement Strategy, the proposed development was advertised and notified to nearby and adjoining properties. The application was exhibited between 25 January 2021 and 22 February 2021, and the proposal was advertised in a local newspaper on 21 January 2021. Council received no submissions.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to conditions.

## Site & Surrounds

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The site is legally described as Lot 12 DP 1192443, known as 243 Forrester Road, North St Marys. The site is located on the eastern side of Forrester Road, at the intersection of Forrester Road, Ropes Crossing Road, and Links Road.

The site is adjacent to the St Mary's Rugby League Club, which is located to the south and south-east of the site. Adjoining the site to the north and east is vegetated riparian corridor. To the west of the site (opposite side of Forrester Road) are industrial developments within the Dunheved industrial precinct. St Marys train station is located approximately 2km to the south of the site, and bus stops are located along Forrester Road which provide connections to St Marys and Mount Druitt.

### Site Constraints:

- Partly mapped Bushfire Prone Land
- 88B Instrument. The property has several restrictions on title relating to right of access easements, easements for underground cables, easement for substation, ongoing management of stormwater infrastructure, and prohibiting the obstruction of overland flow paths. The current proposal does not conflict with existing restrictions on title.
- Scenic and Landscape Values mapped
- Flood related development controls apply

### Background / Past Approvals

- **Development consent DA11/0493** for 2x lot subdivision was approved. This consent effectively excised the subject lot (Lot 12) from the adjoining lot containing the St Marys Rugby League Club.
- **Development consent DA11/0470** for Masters Home Improvement Store was approved on the site. The approved building had a gross floor area of 13,071sqm, 357x at-grade car parking spaces, and associated landscaping and drainage works.
- **Development consent DA16/1351** for the change of use of an existing building to a bulky goods premise, including enclosure of an existing garden centre and associated advertising signage was approved. The accompanying Statement of Environmental Effects advises that consent DA16/1351 was not activated, and the site has been vacant since 2016.

## Proposal

The application seeks consent for alterations and additions to an existing building and car parking area for the purpose of a health and wellness precinct, and involves the following aspects:

- External building amendments including the removal of existing entry doors, shopfronts, roller doors, louvres and ACM panels in the front elevation; removal of part of the rear wall to allow for creation of a new loading zone; removal of existing doors in side elevations, and removal of part of existing roof;
- External alterations and additions to infill walls, provide new façade finishes and glazing, install new awnings, replace area of roof, create new feature building entry and create new shopfronts for tenancies;
- Removal of garden centre and associated fencing adjacent to the northern side elevation;
- Internal building alterations including demolition of internal walls and creation of tenancies within the existing building;
- Amendments to car parking layout and new loading zone, noting that existing site access arrangements are to be maintained.
- New ambulance parking adjacent to the eastern elevation of the building and eastern site boundary;
- Landscaping works, including creation of a new plaza adjacent to the building entry; and
- Relocation of the water tanks at the rear of the site.

Use of the building for the following purposes. The application does not include the individual fit out of tenancies and kiosks (except for the childcare centre), and will require separate approval(s) for fit out works, either 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 where requirements of the SEPP are met.

Proposed Use	Floor area of tenancy (approximately)
126x Place Childcare Centre	1085sqm internal area 1271sqm external area
Medical Centre	900sqm
Pharmacy	200sqm
Warehouse	550sqm
Soft Play	600sqm
Gymnasium	1,700sqm
Medical Imaging	401sqm
Dentist	401sqm
Nutritionist	150sqm
Physiotherapy	150sqm
Pet Store	550sqm
Veterinary	92sqm
3x Specialised Retail	857sqm; 901sqm; 1,089sqm
5x Food/Drink Kiosks	50sqm each

## 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 (State and Regional Development) 2011
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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### • Section 4.14 - Bushfire prone land assessment

The development has been assessed in accordance with the matters for consideration under Section 4.14 (Consultation and development consent—certain bush fire prone land) of the Environmental Planning and Assessment Act 1979, and is found to satisfy these provisions.

In this regard, the application was accompanied by a Bushfire Protection Assessment Report and addendum, prepared by Travers Bushfire & Ecology, dated July 2021 (Ref: 18RCP03). The Bushfire Protection Assessment advises that the proposal complies with relevant requirements under Planning for Bushfire 2019. The application and supporting Bushfire Protection Assessment Report and addendum was referred to the NSW RFS for consideration, who raised no objection to the proposal issuing General Terms of Approval dated 11 November 2021 for the development. Refer to discussion in this report under 'Clause 4.46 Integrated Development' for further details.

### • 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 4.46 - Integrated development

The development is defined as Integrated Development under Section 4.45(1) of the EP&A Act 1979, as the proposal requires separate approval from the following authorities:

Authority	Relevant Legislation	Decision
NSW Rural Fire Service	Section 100B of the <i>Rural Fires Act 1997</i> , as the site is mapped as Bushfire Prone Land and the proposal includes a childcare centre which constitutes a Special Fire Protection Purpose.	General Terms of Approval issued on 11 November 2021.
Natural Resource Access Regulator (NRAR)	Section 91 of the <i>Water Management Act 2000</i> as the proposal involves works within 40m of a mapped watercourse.	On 4 February 2021 NRAR issued correspondence to Council advising that for the purpose of the Water Management Act 2000, a controlled activity approval is not required for the proposed works, and that no further assessment by NRAR is necessary.

#### NSW Rural Fire Service:

The application (as amended) has been reviewed by RFS, who issued General Terms of Approval and a Bushfire Safety Authority dated 11 November 2021 (DA20210202000372-CL55-2). The RFS provided several recommended conditions, relating to the following matters:

- An Asset Protection Zone (APZ) is required to be established across the entire site except for the front

portion of the site containing 'excluded vegetation', as shown in Schedule 1 of the accompanying Bushfire Report. In this regard, Schedule 1 of the Bushfire Report provides a map showing the APZ location, which consists of the entire car park area. The 'excluded vegetation' area comprises the strip of vegetation located along the Forrester Road boundary of the site, which is excluded from the APZ.

- Landscaping within the APZ is to be managed as an Inner Protection Area, and is to comply with requirements of Appendix 4 of Planning for Bushfire Protection 2019.
- The entire building including the childcare centre must comply with Section 3 and Section 5 (BAL 12.5) Australian Standard AS3959-2018, and Planning for Bushfire Protection 2019.
- The provision of water, electricity and gas shall comply with the requirements of Planning for Bushfire Protection 2019.
- A Bushfire Emergency Management and Evacuation Plan must be prepared and be consistent with the NSW RFS document: A Guide to Development a Bushfire Emergency Management and Evacuation Plan.

A condition of consent has been imposed requiring the development to comply with the General Terms of Approval issued by the NSW RFS. Therefore, the proposal meet the requirements under Clause 4.45 of The Act.

## • **Section 7.12 - Developer Contributions**

Penrith City Council's *Section 7.12 City Wide Development Contributions Plan for Non-Residential Development* (The Plan) came into force on 24 August 2020, and applies to non-residential development across the City that have a cost of works that exceed \$100,000. The Plan applies to (among other development types) commercial premises, health care facilities and education facilities.

The current proposal is for non-residential development, including health care facilities, education facilities (childcare centre) and various commercial premises. Therefore, The Plan applies to the development.

The application was supported by a Quantity Surveyors Cost Estimate Report, prepared by Napier & Blakeley dated 11 December 2020, which confirms that the cost of works of the development is \$4,605,031 inclusive of GST. As the development exceeds \$100,000 cost threshold, the development triggers Section 7.12 contributions.

Accordingly, a condition of consent has been imposed requiring Section 7.12 contributions in accordance with the following calculation:

Section 7.12 Fixed Development Consent Levy:

**Cost of works** = \$4,605,031

**Rate of Charge** = 1% of cost of works

**Contribution Charge** = \$46,050.00

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

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

The proposal seeks consent for the use and fit-out of a 126x place childcare centre located at the north-east wing of the building. Accordingly, the proposal has been assessed against relevant criteria of the State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017 (SEPP). The proposal is found to satisfy the requirements of this policy, as summarised below:

#### **SEPP (Educational Establishments and Childcare Facilities) 2017:**

#### **Clause 22-Centre Based Childcare Facility Concurrence of Regulatory Authority Required for Certain Development**

The application was supported by a 'Ground Floor Licensing Plan' that details the design of the Childcare

Centre. As shown on the 'Ground Floor Licensing Plan', the proposal provides sufficient indoor unencumbered space and outdoor unencumbered space as required under the Education and Care Services National Regulations based on a maximum capacity of 126 children. In this regard, the proposal provides:

	Proposed	Required
<b>Indoor Unencumbered Space</b>	450sqm	409.5sqm (being 3.25sqm per child)
<b>Outdoor Unencumbered Space</b>	1210sqm	882sqm (being 7sqm per child)

Therefore, Clause 22 does not apply and concurrence of the Regulatory Authority is not required.

**Clause 23-Centre Based child care facility Matters for consideration by consent authorities**

Clause 23 requires that before determining an application for a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the Child Care Planning Guideline (2017). The proposal has been assessed against the Child Care Planning Guideline, and the proposal is considered to be consistent with the objectives and design principles within the Guideline, as outlined below.

**Childcare Planning Guideline August 2017**

- **Section 3.1 Site Selection and Location, and 3.2 Local Character, Streetscape and the Public Domain Interface**

The childcare centre is located in the north-eastern edge of the building, adjoining the proposed medical centre and warehouse. The adjoining land uses are compatible with a childcare centre, being uses that are low risk in terms of environmental and safety hazards. The nearest industrial development is located approximately 250m to the south-west of the childcare centre (opposite side of Forrester Road), providing sufficient separation. The childcare centre is considered compatible with the existing local character, being located within an existing commercial building.

- **Section 3.3. Building Orientation, Envelope and Design**

The childcare centre is located at ground floor and the front entrance is located in close proximity to the car park area, providing suitable access. The childcare centre tenancy provides sufficient indoor space with a range of learning spaces. The Childcare Centre comprises three playrooms rooms for ages 0-2, two playrooms for ages 2-3, and two playrooms for ages 3-5. The internal layout separates playrooms and sleeping areas to minimise conflicts between quiet/play areas.

- **Section 3.4 Landscaping**

The proposal was accompanied by a concept Landscape Plan for the outdoor play area of the childcare centre. The concept Landscape Plan identifies the design principles of the outdoor play, including creating an environment that allows children to develop gross motor skills, areas that stimulate sensory development and allows for a variety of construction and art activities for educational development.

- **Section 3.5 Visual and Acoustic Privacy and Section 3.6 Noise and Air Pollution**

The application was accompanied by a Noise Impact Assessment (NIA), prepared by Acoustic Logic, Reference 20201297.1/0607A/R2/AZ, dated 6 July 2021, which addresses noise impacts associated with the childcare centre. The NIA provides assessment (among other items) of traffic noise intrusion from the nearby busy roads to the childcare centre, noise intrusion from the use of the shared loading dock within the development to the childcare centre, and noise emissions associated with the childcare centre on surrounding uses.

The NIA concludes that the development will be capable of complying with all relevant noise criteria, and that noise intrusion into the childcare centre will comply with the requirements of the *Association of Australasian Acoustic Consultants (AAAC) - Guideline for Childcare Centre Acoustic Assessment 2020*, subject to compliance with several recommended requirements. The recommended requirements provided by the NIA relating to the childcare centre include construction standards, including glazing and thickness of inter-tenancy walls, and provision of an acoustic fence of 1.8m height along the northern, western and eastern perimeter of the outdoor play area of the childcare centre (shown on the architectural drawings).

Council's Environmental Management Officer has reviewed the proposal and supporting NIA, and raised no objections to the proposal subject to conditions. Importantly, a condition of consent has been imposed to require the development to be carried out in accordance with the NIA.

- **3.7 Hours of Operation**

The accompanying Noise Impact Assessment (prepared by Acoustic Logic, Reference 20201297.1/0607A/R2/AZ, dated 6 July 2021) has been prepared on the assumption that the Childcare Centre will operate between 6:30am to 6:30pm, Monday to Sunday. These hours of operation are considered acceptable, noting that the nearest residential receivers are distanced approximately 450m away, located on Boronia Road to the south of the site. A condition of consent has been imposed to reflect these hours of operation.

- **3.8 Traffic, Parking and Pedestrian Circulation**

Under Penrith DCP 2014, a childcare centre is required to provide onsite car parking at a rate of 1x car space per 10x children and 1x car space per staff member. Using this calculation, as the proposed childcare centre can accommodate 126x children and 27x staff, a total of 39.6x car spaces is required.

The development utilises the existing car park on the site, with some minor amendments to the car park layout. Overall, the proposal provides a total of 372x onsite car parking spaces, inclusive of 17x dedicated pick up/drop off car parking spaces for the childcare centre, which are located adjacent to the entrance of the centre. Given that the various tenancies will have varying peak times for car parking demand throughout the day, it is considered that sufficient car parking is provided on the site to serve the development.

It is noted that the application was accompanied by a Transport Impact Assessment report, which addresses car parking demands. The proposal and Transport Impact Assessment report has been reviewed by Council's Traffic Engineer and found to be satisfactory, subject to conditions.

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

The accompanying Statement of Environmental Effects identified that the proposal triggered Traffic Generating Development under Schedule 3 of the State Environmental Planning Policy (Infrastructure) 2007. Noting that the proposal will generate 50 or more motor vehicles per hour, and the site has access to a classified road or road that connects to a classified road, being Forrester Road. Accordingly, the proposal was referred to Transport for NSW for consideration under Clause 104 of the SEPP (Infrastructure)

In their response dated 12 October 2021, Transport for NSW (TfNSW) did not raise objections to the proposal, providing the following advisory comments to Council for consideration:

- *TfNSW has reviewed the additional traffic generation information and internal swept path plan in the updated traffic report and does not seek any further information. Forrester Road is an unclassified Regional Road in this location and Council should be satisfied that the existing vehicular access with deceleration lane on Forrester Road is adequate to accommodate the estimated traffic volumes and swept paths of service vehicles.*

In regard to the above comment, Council's Traffic Engineer and Development Engineer has reviewed the application and confirmed satisfactory vehicle access and maneuvering is provided on the site.

- *The submitted SIDRA modelling considers potential impacts of the development on the two existing roundabout on Forrester Road. However, TfNSW understands that there is a separate proposal to upgrade the existing roundabouts into signalised intersections, and the proposal may need to consider impacts on the signalised intersections.*

In regard to the above comment, as the signalised intersection is subject of a separate proposal which is not yet finalised, further assessment of this aspect is not warranted.

## **State Environmental Planning Policy (State and Regional Development) 2011**

The proposal does not trigger Regionally Significant Development under Schedule 7 of the State Environmental Planning Policy (Regionally Significant Development) 2011. In this regard, it is noted that Clause 5 of Schedule 7 defines private infrastructure and community facilities, including health facilities that have a cost of works greater than \$5 million, as regionally significant development. Whilst the development is for the purpose of health service facilities, the proposal does not exceed the cost threshold of \$5 million. In this regard, the application was accompanied by a Quantity Surveyors report which identifies a cost of works of \$4,605,031. Therefore, the proposal does not trigger regionally significant development, and the application is not required to be reported to the Regional Planning Panel.

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

The proposal has been assessed against relevant criteria of State Environmental Planning Policy No 55- Remediation of Land (SEPP 55), and found to be satisfactory as detailed below:

To address SEPP 55, the 'Preliminary Site Investigation Report': 243-261 Forrester Road, North St Marys NSW 2760 prepared by GeoLogix Pty Ltd (PSI, dated 4 August 2020, Ref. 2001041Rpt01FinalV01\_4Aug20) was submitted. The PSI report documented a review of previous investigations relating to the site, historical information, the findings of a site inspection and a review of site conditions.

The investigation found that there are two key areas of environmental concern the potential for uncontrolled fill to have been imported during the development of the site and the presence of an asbestos containment cell. From a review of an 'Asbestos Management Plan' prepared by Getex for the site, GeoLogix identified that a geofabric liner has been placed over an area of contaminated soil, with 1 metre of clean fill material placed over the top, and that the cell is "not considered to present a risk to human health or the environment". GeoLogix concluded "that the site can be made suitable for the proposed development", subject to the carrying out of a Detailed Site Investigation to address the potential for fill of unknown origin, and the implementation of controls for managing the asbestos containment cell (through an Environmental Management Plan).

According to the PSI report, the asbestos containment cell is located in the north eastern corner of the site (shown in Figure 2 of the PSI). From this site map, it can be seen that the cell lies beneath the northern half of the entire current warehouse structure, and below what will be the child care centre (including indoor and outdoor play spaces), medical centre, and soft play spaces of the proposed development.

However, given that the development in part proposes a more sensitive land use than that which has been previously approved for the site (namely a child care centre) Council requested that additional information be provided to demonstrate that the site is suitable for the proposed new use, including:

- A Detailed site investigation;
- A Conceptual Site Model (CSM) to detail any potential routes of exposure and confirm whether any potential pathways are complete.
- Construction and Environmental Management Plan (CEMP) be prepared to support the construction of the development recognising the presence of the contaminated material and need to ensure that health and safety risks are managed and that the integrity of the containment cell and cap is maintained.

In response to these concerns raised by Council's Environmental Management Officer, the Applicant submitted the following information:

- Environmental Management Plan prepared by GeoLogix and dated 28/09/2021 (Revision Number 03) (Ref:Final Report 2101028Rpt02FinalV03\_28Sep21)
- 'Response to Penrith City Council Request for Information' 243261 Forrester Road, North St Marys prepared by GeoLogix Pty Ltd and dated 21 July 2021 Asbestos Management Plan prepared by Getex and dated 14 May 2013; and
- Civil Engineering Statement prepared by H&H Consulting Engineers Pty Ltd and dated 19 July 2021

The information provided demonstrates that a breach of the existing containment cell is unlikely and that appropriate management protocols and reporting procedures will be implemented to address the unlikely



event of an accidental breach of the containment cell. The Response Letter (as referenced above) advises that the applicant is in the process of engaging a NSW EPA Accredited Site Auditor. A condition of consent has been imposed to ensure that an NSW EPA Accredited Site Auditor is engaged and Site Auditor documentation is obtained. Based upon the additional detail that has been submitted in support of this application, this approach is considered satisfactory.

In conclusion, the application has provided sufficient detail and insight into the proposed works, the containment cell located on site, and importantly the relationship between the two. The information demonstrates a thorough consideration of the site and the proposed development in terms of the encapsulated contamination and provides a satisfactory framework for developing and implementing management procedures during both construction and ongoing operational phases. Accordingly, Council's Environmental Management Officer raises no objection is raised to proposal, subject to recommended conditions.

With consideration to the above, the proposal has satisfied the requirements of SEPP 55, and the site is considered suitable for the proposal.

### **State Environmental Planning Policy No 64—Advertising and Signage**

This application does not include signage. Accordingly a condition of consent has been imposed to require that all future signage be subject to a separate development application, unless otherwise permitted under the provisions of the State Environmental Planning Policy (Exempt and Complying Development Code) 2008.

Therefore, the provisions under State Environmental Planning Policy No 64—Advertising and Signage are not relevant to this application.

It is noted that the application as lodged sought approval for 'signage zones' on building elevations and a pylon sign. However, no detailed designs were provided to be able to assess the suitability of signage on the site. In correspondence sent to Council (prepared by Willow Tree Planning dated 16 April 2021 WTJ20-559\_DA20/0867), the Applicant advised that detailed signage designs could not be provided due to tenants being unknown at this stage. In this correspondence, the Applicant acknowledged that future signage would require separate approval.

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

Sydney Regional Environmental Plan No 20 - Hawkesbury-Nepean River (No 2-1997) (SREP 20) aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

The proposal is consistent with the aims and objectives under SREP 20. In this regard, Council's Environmental Management- Waterways Officer has reviewed the application and raised no objections subject to conditions. As the proposal does not involve an increase in existing impervious area of the site, water sensitive urban design (WSUD) treatment is not required in accordance with Council's Water Sensitive Urban Design (WSUD) Policy. The proposal include retention of rainwater tanks for non-potable water on the site to provide water reuse.

With regard to the above matters, the proposal satisfies the aims and objectives of SREP 20.

## Local Environmental Plan 2010

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 2.5 Additional permitted uses for particular land	Complies - See discussion
Clause 2.7 Demolition requires development consent	Complies - See discussion
Clause 4.3 Height of buildings	Complies - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 5.4 Controls relating to miscellaneous permissible uses	Complies - See discussion
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.4 Sustainable development	Complies - See discussion
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion
Clause 7.7 Servicing	Complies - See discussion

### Clause 2.3 Permissibility

Pursuant to Penrith LEP 2010, the site is zoned IN2 Light Industrial. The proposal involves the following development, which are all permitted land uses with consent as detailed in the below table:

Proposal	Definition under Penrith LEP 2010	Permissible
Medical Centre	Medical Centres	Medical Centres are permitted in the IN2 Light Industrial zone with consent under Penrith LEP 2010.
Allied Health (Dentist, Imaging, Physiotherapy)	Medical Centres	Permitted, as detailed above. It is noted that allied health services are suitably captured under the definition of Medical Centres, which ' <i>means premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals. It may include the ancillary provision of other health services.</i> '

Pharmacy	Neighbourhood Shop	<p>Neighbourhood Shops are permitted in the IN2 Light Industrial zone with consent under Penrith LEP 2010. Under Penrith LEP 2010, a Neighbourhood Shop <i>"means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises."</i></p> <p>During the assessment process, a detailed review was undertaken of the appropriateness of characterising a pharmacy as a Neighbourhood Shop. Initially, concerns were raised by Council's Planner regarding the characterisation of the pharmacy, given that a key aspect of a Neighbourhood Shop is that it is for the purpose of selling 'general merchandise' and a pharmacy could be considered a more specialised use, by offering specialised health services from a health professional (pharmacist).</p> <p>However, advice was obtained from Council's Legal Officer, which confirms that in the circumstances of the application, the pharmacy tenancy is suitably characterised as a Neighbourhood Shop on the basis that:</p> <p style="padding-left: 40px;">(i) In adopting the reasoning of Brown C in Altz, the sale of general merchandise meets the definition of a Neighbourhood Shop, permitting that an indicative list of items to be sold at the premise is provided which shows a range of general items will be sold.</p> <p style="padding-left: 40px;">(ii) The size and scale of the proposed pharmacy is in accordance with the 200sqm area control required under Clause 5.4 of LEP 2010.</p> <p>The Application was accompanied by an indicative list of goods to be sold at the pharmacy, as detailed in the Letter titled 'Response to Request for Additional Information', prepared by Willow Tree Planning, Reference WTJ20-559_DA20/0867 dated 22 July 2021. The indicative range of goods to be sold at the pharmacy include:</p> <ul style="list-style-type: none"> <li>- pharmaceutical goods such as prescription and over the counter medications;</li> <li>- health products such as vitamins, supplements, creams and ointments;</li> <li>- Personal care products such as skin care, sun care, beauty, hygiene; and</li> <li>- Other general merchandise such as cleaning products, home-wares, gift-ware, travel essentials</li> </ul> <p>The products to be sold at the pharmacy (as described above) conform to the definition of a Neighbourhood Shop in terms of being general merchandise, personal care products and the like to provide for the day to day needs of people. A condition of consent has been imposed requiring the range of products sold at the pharmacy to be restricted to the list as detailed above in accordance with the definition of a Neighbourhood Shop under Penrith LEP 2010.</p>
Gymnasium	Recreation Facilities (indoor)	Recreation Facilities (Indoor) are permitted in the IN2 Light Industrial zone with consent under Penrith LEP 2010.
Children's Soft Play Facility	Recreation Facilities (indoor)	Recreation Facilities (Indoor) are permitted in the IN2 Light Industrial zone with consent under Penrith LEP 2010.

Child Care Centre	Centre-Based Childcare Centre	Centre-based child care centres are permitted in the IN2 Light Industrial zone with consent under Penrith LEP 2010.
Veterinary Hospital	Veterinary Hospitals	Veterinary hospitals are permitted in the IN2 Light Industrial zone with consent under Penrith LEP 2010.
Specialised Retail	Specialised Retail Premise	<p>Schedule 1-Additional permitted uses, Clause 27 permits development for the purpose of specialised retail premises on the subject site, with consent. Under Penrith LEP 2010, Specialised Retail Premise means-</p> <p><i>a building or place the principal purpose of which is the sale, hire or display of goods that are of a size, weight or quantity, that requires</i></p> <p><i>(a) a large area for handling, display or storage, or</i></p> <p><i>(b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire,</i></p> <p><i>but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale, hire or display of other goods referred to in this definition.</i></p> <p><i>Note—Examples of goods that may be sold at specialised retail premises include automotive parts and accessories, household appliances and fittings, furniture, homewares, office equipment, outdoor and recreation equipment, pet supplies and party supplies. Specialised retail premises are a type of retail premises—see the definition of that term in this Dictionary.</i></p>
Health food/drink kiosks	Kiosks	Kiosks are permitted in the IN2 Light Industrial zone with consent under Penrith LEP 2010.

### Clause 2.3 Zone objectives

The proposal is compatible with the objectives of the IN2 Light Industrial Zone, specifically '*To encourage employment opportunities and to support the viability of centres, and 'To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.'* The proposal will provide a range of tenancies to encourage employment opportunities and enable other land uses that provide health services, specialised retail, veterinary health and food/drink services to meet the day to day needs of workers in the area.

### Clause 2.5 Additional permitted uses for particular land

Clause 2.5 of Penrith LEP 2010 permits additional land uses for particular land with development consent, as described within Schedule 1-'Additional permitted uses'. Clause 2.5 has effect despite anything to the contrary to the Land Use table or other provisions under Penrith LEP 2010.

The subject site is listed under Schedule 1, Clause 27. In this regard, the site benefits from an additional permitted use for the purpose of a specialised retail premise, as outlined below:

*27 Use of certain land at corner of Forrester Road and Boronia Road, St Marys*

*(1) This clause applies to land at the corner of Forrester Road and Boronia Road, St Marys, being Lot 12, DP 1192443, that is identified as "26" on the Additional Permitted Uses Map.*

*(2) Development for the purposes of specialised retail premises is permitted with development consent.*

The proposal includes a specialised retail premise pursuant to Schedule 1, Clause 27. The current application seeks development consent for this use in accordance with Clause 27(2).

### **Clause 2.7 Demolition requires development consent**

The proposal involves demolition works to the existing car park and building. Demolition works to the building are both internal and external, comprising internal walls, and external walls, shopfronts, doors and gates. The application was accompanied by Demolition Plans, which suitably details the extent of demolition works. Conditions of consent have been imposed relating to the management of demolition works, ensuring works are completed in accordance with Australian Standard 2601-1991 'The Demolition of Structures', and mitigating impacts associated with demolition, relating to noise, dust, safety.

### **Clause 4.3 Height of buildings**

Under Penrith LEP 2010, a Maximum Building Height of 12m is permitted on the site. The building has a maximum height of 11.16m, as shown on the submitted Elevation drawings. Therefore, the proposal complies with the Maximum Building Height standard. As a precautionary measure only, a condition of consent has been imposed to ensure that the building does not exceed the maximum building height permitted on the site, inclusive of all rooftop plant and equipment. In this regard, the proposal is considered to meet the objectives of Clause 4.3, particularly to ensure buildings are compatible with the height of the desired future character of the locality and minimise visual impacts of development.

### **Clause 5.4 - Controls relating to miscellaneous permissible uses**

Pursuant to Clause 5.4(6) of Penrith LEP 2010, a 'Kiosk' must not exceed a gross floor area of 50sqm. The proposal includes five Kiosks, numbered K01 to K05 on the architectural drawings. The proposed Kiosks K01 to K05 are a maximum gross floor area of 50sqm, and therefore comply with the requirements under Clause 5.4(6).

### **Clause 7.2 Flood planning**

The site is identified as flood affected. Accordingly, the application and supporting documentation has been reviewed by Council's Development Engineer, who raised no objections to the proposal subject to condition, and provided the following comments relating to flooding. Importantly, the proposal is for alterations and additions to an existing building, which was constructed under development consent DA11/0470. The previous consent DA11/0470 suitably addressed flooding matters, noting that detailed flood impact assessments were provided under the past application for the construction of the building.

Council's Development Engineer has reviewed the flood reports submitted with the previous application DA11/0470, and the current South Creek Flood Study via Council's mapping system, and a mainstream flood level of 24.7m AHD affects the site, to which a 500mm freeboard for the constructed building was achieved (FFL 25.2m AHD). The mainstream flood event does not prevent egress issues from the site in the 1% AEP event now that the development has been built up above the 1% AEP event (parking area now also above the 1%AEP). However, it is noted that areas off-site are shown to be cut off by the 1% AEP local overland flow path, and in this regard a condition of consent has been included for the provision of a Flood Evacuation Management Plan (FEMP).

The site is also shown to be affected by overland flow flooding as shown in the Overland Flow Overview Study (2006). However, as part of DA11/0470, large culverts were constructed fronting the site to aid in the diversion of this overland flow around the site. Modelling provided with DA11/0470 demonstrates that in the post development scenario, overland flow flooding in the 1% AEP event will not inundate the subject site due to operation of these culverts. A condition for the maintenance of these culverts has been provided.

With consideration to the above matters, the proposal is found to be acceptable in respect to flooding considerations, subject to conditions.

#### **Clause 7.4 Sustainable development**

Clause 7.4 requires the consent authority to in deciding whether to grant development consent, to have regard to the principles of sustainable development as they relate to the development based on a 'whole of building' approach. The application was accompanied by a Energy Efficiency Report (Prepared by Stantec Australia Pty Ltd, Reference 301350092, dated 30 November 2020) which addresses ecologically sustainable design principles and energy efficiency measures for the development. This report commits to achieving a minimum 4.5 Star NABERS Energy for Shopping centres rating and includes a range of environmental measures, including (but not limited to) rainwater harvesting and re-use through the provision of rainwater tanks, provision of water sensitive urban design measures, and re-use and recycling of building materials where possible. It is important to note that the proposal makes use of an existing building, which is consistent with the principles of ecological sustainable design in terms of adaptive reuse.

With consideration to the above, and subject to conditions of consent requiring the development to be carried out in accordance with the recommendations of the Energy Efficiency Report submitted with the application, the proposal satisfies the requirements of Clause 7.4.

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

The objectives of Clause 7.5 are as follows:

- (1) (a) 'to identify and protect areas that have particular scenic value either from major roads, identified heritage items or other public places,
- (1) (b) to ensure development in these areas is located and designed to minimise its visual impact.'

Clause 7.5(3) goes on to state that 'Development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places.'

The proposal involves alterations and additions to an existing building approved under development consent DA11/0470, and does not involve a net increase in the existing floor area. The proposed building footprint is generally consistent with the existing building and will not substantially alter the streetscape when viewed from surrounding public places. Further, the proposal includes design improvements to the existing facade to provide articulation and visual interest through architectural features, including glazed elements, feature batten screen framing, entrance statements and awnings. Therefore, the proposal is considered to satisfy the objectives and controls under Clause 7.5.

### **Clause 7.7 Servicing**

The proposal will be suitably serviced, as reinforced through recommended conditions of consent in regards to water, electricity and communications services. It is noted that a Section 73 Certificate will be required to be obtained for the development, as the proposal involves a change in use of an existing building that may result in increased demand for water.

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

### Development Control Plan 2014

Provision	Compliance
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	Complies
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
D5.3. Health Consulting Rooms	Complies - see Appendix - Development Control Plan Compliance
D5.4. Educational Establishments	N/A
D5.5 Parent Friendly Amenities	Complies - see Appendix - Development Control Plan Compliance
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)(iv) The provisions of the regulations

In accordance with the requirements under the Environmental Planning and Assessment Regulation 2000, conditions have been imposed that require the development to comply with all relevant requirements under the Building Code of Australia, including provisions relating to building fire safety. The proposal has been reviewed by Council's Building Surveyor, who raised no objections to the proposal, noting that a BCA report was provided with the application, which details that a Performance Solution for some BCA non-compliance's prior to a construction certificate. Any Performance Solution will be required to be reviewed by the Principal Certifying Authority before a construction certificate can be issued. In this regard, the proposal subject to conditions, is found to be satisfactory.

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

### Streetscape Impacts

The proposal adapts the existing built form and site infrastructure through alterations and additions. The proposal includes improvements to the existing facade to provide articulation and visual interest through



architectural features, including glazed elements, feature batten screen framing, entrance statements and awnings. The proposed plaza at the front of the building provides greater definition to the entrance of the building. Overall, the bulk and scale of the building is generally consistent with the existing building, and is therefore unlikely to significantly alter the existing streetscape.

### **Accessibility**

The proposal was accompanied by a Access Review Report, prepared by Morris Goding Access Consulting, dated 1 December 2020. The Access Review provides assessment of the proposal against the requirements of the Disability Discrimination Act (DDA), Building Code of Australia, and relevant Australian Standards relating to access. The Access Review concludes that the proposed architectural drawings indicates that accessibility requirements, pertaining to building access, common area access and sanitary facilities/ amenities can be achieved, subject to detailed design during the construction certificate phase. The following specific access matters are outlined in the report:

- The proposal provides a total of 8 x accessible car parking spaces with adjoining shared bays. The accessible car parking spaces are located adjacent to the front entrance of the building, with 4x spaces provided on both sides of the front entrance. The accessible car parking spaces are dimensioned 5.4m x 2.4m, with an adjoining shared area of the same size in accordance with Australian Standard requirements.
- The architectural plans provide for new adult change facilities within the building, located adjacent to the existing toilet facilities. Detailed design of the adult change facilities has not been provided with the development application, and are to be provided at the construction certificate phase, which is reasonable. A condition of consent has been imposed requiring the detailed design of the adult change facilities to comply with relevant standards.
- All common-use doors of the building are required to have 850mm min. clear width opening (each active door leaf) and suitable door circulation area, compliant with AS1428.1:2009. The Access Report concludes that the proposal will comply with this requirement.

A condition of consent has been imposed requiring the development to be carried out in accordance with the Access Review report.

### **Acoustic Impacts**

The application was supported by Noise Impact Assessment (NIA), which provides assessment of the noise impacts generated by the development, and noise impacts from surrounding sources on the development. Importantly, the NIA gives particular consideration to the sensitive receiver of the childcare centre within the development, and noise impacts generated by the proposed gym tenancy. Council's Environmental Management Officer has reviewed the NIA and raised no objections to the proposal, subject to conditions.

In this regard, the NIA provides recommendations specifically for the gym and childcare centre components of the development. The NIA identifies that further acoustic assessment is required at the Construction Certificate/final design stage, whilst satisfactorily providing sufficient information to demonstrate that noise and vibration mitigation measures are feasible and reasonable and can be implemented to prevent offensive noise emanating from the gym and childcare centre and impacting other tenancies. The NIA provides a satisfactory assessment of the development and provides guidance and recommendations relevant to all components in accordance with relevant acoustic guidelines and standards. The NIA demonstrates that compliance with applicable noise criteria is achievable. Conditions of consent have been imposed to require the development to be carried out in accordance with the recommendations of the NIA.

A further condition has been imposed which requires a Noise Management Plan to be prepared in relation to the Childcare Centre and Gym, to be submitted to and approved by Council before an occupation certificate is issued for these tenancies.

As a precautionary measure only, a further condition of consent has been imposed that requires that in the event that Council receives substantiated ongoing noise complaints relating to the development, 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

### **Vehicle Access and Traffic**

Access to the site is via the existing approved access into the former Masters Hardware site from Forrester Road. Service and loading vehicle access is proposed via One Way circulation lane-way around the rear (eastern) side of the existing building. The proposed service vehicle/loading configuration is only capable of facilitating a 12.5m (length) truck, according to the Transport Impact Assessment submitted with the application. Therefore site access is assumed to be limited to vehicles of no greater length than 12.5m, and a condition of consent has been imposed to this effect.

### **Car Parking**

The previous consent DA11/0470 approved an at-grade car park on the site for 357x cars. The current proposal seeks to use the existing car park, with modifications to the car park layout. Specifically, the proposed plaza at the front of the building results in the displacement of a number of car spaces, which have been relocated along the building boundary to the south. The proposal provides a net total of 372 car spaces to service the development. A total of 32 bicycle parking spaces have been provided in ground-mounted hoops, in several locations in the car park area.

Chapter C10 of Penrith DCP outlines the rate of car parking required for certain development types. Using the rate of car parking required under C10 of Penrith DCP for childcare centre, fitness centre/gym, medical centre, retail premises, warehouses and soft play, the development is required to provide a total of 386 onsite car parking spaces. The proposal provides 372 onsite car parking spaces resulting in a shortfall of 14x spaces.

However, suitable justification has been provided for the shortfall of car parking. In this regard, the various tenancies are expected to have differing peak times for car parking demand throughout the day. With varying peak times for car parking demand, and reduced number of trips associated with multi-purpose visitations, there is sufficient car parking to serve the development. It is noted that the accompanying Transport Impact Assessment report has been reviewed by Council's Traffic Engineer and found to be satisfactory, subject to conditions.

All standard car spaces have been designed with a length of 5.4 metres a minimum width of 2.6m and are accessed from two-way aisles of no less than 6.6 metres in accordance with the Australian Standard for Off-Street Car Parking AS2890.1.

### **Construction Management**

A condition has been imposed to require a Construction Waste Management Plan to be submitted to Council for approval, before the issue of a construction certificate. This condition suitably addresses waste management associated with the construction phase. A further condition has been imposed requiring a Construction Environmental Management Plan (CEMP) to be prepared and submitted to and approved by Council. The CEMP is required to address construction management measures relating to (but not limited to) water quality, noise control and hours of operation, dust suppression, and erosion and sediment control.

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

The site is suitable for the proposal for the following reasons:

- The proposal is compatible with surrounding land uses and will not negatively impact the existing streetscape, noting that the proposal utilises the existing building on the site and includes design improvements to the facade.
- The development is able to drain to the satisfaction of Council's Development Engineer.
- The application subject to conditions is suitable in respect to considerations under State Environmental Planning Policy No.55- Remediation of Land.
- The application subject to conditions is considered suitable for the development in respect to flooding considerations.

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

## Community Consultation

In accordance with Council's Community Engagement Strategy, the proposed development was advertised and notified to nearby and adjoining properties.

Council notified nineteen (19) residences in the area, and the exhibition period occurred between 25 January 2021 and 22 February 2021. The proposal was advertised in a local newspaper on 21 January 2021. Council received no submissions.

## Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Landscape Architect	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Environmental - Public Health	Not supported
Waste Services	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions
Community Safety Officer	No objections - subject to conditions
Social Planning	No objections

### Environmental - Public Health

The referral comments provided by Council's Environmental Public Health Officer raised concerns regarding the lack of design details provided in relation to the food/drink kiosks. However, the application has clarified that the fit out of tenancies and kiosks are not included in this application and will be subject to separate approvals(s) either by way of a separate development application, or where relevant via obtaining a Complying Development Certificate under the State Environmental Planning Policy (Exempt and Complying Development Code) 2008. A condition of consent has been included to this effect.

In respect to the Childcare Centre tenancy, Council's Public Health Officer provided initial comments relating to the fit out of the kitchen, requiring the walls, floors and ceilings of the kitchen to comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS4674-2004 Design, Construction and Fit out of Food Premises, and requiring a double bowl sink or dishwasher to be installed to effectively wash/sanitize. These matters have been addressed by conditions.

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

The proposal is unlikely to generate significant issues of public interest, noting that the proposal utilises an existing building and car park, albeit with alterations and additions, and no submissions were received in relation to the application. Further, the proposal will provide additional health, childcare, indoor recreation and commercial services the area.

## Conclusion

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In assessing this application against the relevant environmental planning policies, being State Environmental Planning Policy No.55- Land Remediation, State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017, State Environmental Planning Policy (Infrastructure) 2007, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies.

The site is suitable for the proposed development and there is unlikely to be negative environmental and social impacts arising from the development. Therefore, the application is recommended for approval, subject to recommended conditions.

## Recommendation

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1. That Development Application DA20/0867 for Alterations and Additions to an Existing Building To Facilitate the Following Uses, Medical Centres, Recreation Facility (Indoor), Centre Based Childcare Centre (x126 Children), Veterinary Hospital, Gymnasium, Specialised Retail, Neighbourhood Shop, and Kiosks, and Associated Landscaping & Infrastructure Works be approved subject to the attached conditions (Development Assessment Report Part B); and
2. That relevant concurrence authorities be notified of the determination.

# CONDITIONS

## General

### 1 [A001 - Approved plans table](#)

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

### 2 [A005 - Approved Bodys Consent For Integrated DA's](#)

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 A019 - OCCUPATION CERTIFICATE**

**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 A026 - Signage**

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 [A029 - Hours of Operation and Delivery Times](#)

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 [A032 - Goods in buildings](#)

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

#### 7 [A039 - Graffiti](#)

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

#### 8 [A041 - Construction in Bushfire Areas](#)

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 [A046 - Obtain Construction Certificate before commencement of works](#)

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

#### 10 [A Special - Access](#)

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 [A Special - Building Height](#)

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 [A Special - Childcare Centre Capacity](#)

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 [A Special - Childcare Centre Compliance with Education and Care Services National Regulations 2011.](#)

The approved Childcare Centre must be maintained in a manner that always complies with the Education and Care Services National Regulations 2011.

14 [A Special - Childcare Centre Registration](#)

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 [A Special - Extent of Wall At Rear of Building](#)

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 [A Special - Fit out](#)

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 [A Special - Kiosks](#)

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 [A Special - Neighbourhood Shop \(Pharmacy\)](#)

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 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 [A Special \(Parent Friendly Rooms\)](#)

**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 [A Special CPTED Requirements](#)

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 [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.

### 22 [B003 - Asbestos](#)

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 **D005 – No filling without prior approval**

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 **D006 - No filling without prior approval (Use always, except for bulk earthworks/ major fill 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 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, 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.

25 **D009 - Covering of waste storage area**

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 **D010 – Appropriate disposal of excavated or other waste**

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 **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 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 **D014 - Plant and equipment noise**

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 **D Special - Construction Environmental Management Plan**

**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 **D special - Construction Noise**

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

## 31 **D Special - Construction Waste Management Plan**

**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 **D Special - Noise Complaints**

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 **D Special - Noise Management Plan**

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 **D Special - Restriction as to User**

**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 **D Special - Site Audit Statement and Site Audit Report**

**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 **D Special - Site Auditor**

**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 **D Special - Waste Requirements**

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 **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**

### 39 **F001 - Food Premise (Childcare Centre)**

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 [F006 - Water tank & nuisance](#)

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

#### 41 F022 – Commercial kitchens (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 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 F Special - Public Health Requirements for Childcare Centre Kitchen

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 F Special - Registration of Food Premises

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 G002 - Section 73

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 G004 - Integral Energy

**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 **G006 -**

**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 **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 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 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 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 H041 - Hours of work

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 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.

51 **K201 - Infrastructure Bond**

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 **K210 - Stormwater Management**

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 **K222 - Access, Car Parking and Manoeuvring - General**

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 **K301 - Sediment & Erosion Control**

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 **K503 - Works As Executed - Stormwater Management**

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 **K504 - Restriction as to User 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 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 **K511 - Directional Signage**

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 **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 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 **K Special - Access to Loading Areas**

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 **K Special - Australian Standards**

All car parking and manoeuvring must be in accordance with AS2890.1-2004; AS2890.6-2009 and Council's requirements.

61 **K Special - Entry/Exit of Vehicles**

All vehicles are to enter and exit in a forward direction.

62 **K Special - Loading and Servicing**

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 **K Special - No parking in loading areas**

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 **K Special - Restriction as to User**

**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 **K Special - Sight Lines**

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

66 **K Special - Signage and Linemarking**

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 **K Special - Use of Parking Areas**

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 [K Special Condition Flood Risk Management and Evacuation Plan](#)

**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 [L001 - General](#)

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 [L003 - Report requirement](#)

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 [L005 - Planting of plant](#)

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

## 72 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.

## 73 L008 - Tree Preservation

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.

## Development Contributions

### 74 N Special - Section 7.12 Contributions

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 Q01F - Notice of Commencement & Appointment of PCA2

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

- 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
- 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.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### D5 Other Land Uses

#### D5.3 Health Consulting Rooms

The application generally meets the objectives of D.5.3 of Penrith DCP, in that the proposed medical centre and allied health premises are not located in a residential area, and as such will not likely cause significant impact on adjoining uses. The site is not located on a cul-de-sac road or no-through road and is unlikely to result in adverse amenity impacts in respect to traffic generated. The site exceeds the minimum lot width of 18m required for a medical centre under D.5.3. The medical centre and allied health premises provide adequate onsite car parking, as detailed in the body of this report.

#### D.5.5 Parent Friendly Amenities

The provisions under Section D.5.5 require parenting rooms and parent friendly accessible toilets to be provided for all developments classed as 6, 9 and certain types of Class 10a buildings. In accordance with the requirements of Table D5.2, as the development is a Class 6 building with a gross floor area between 1,001sqm to 2,000sqm, the development is required to provide parenting rooms and parent friendly accessible toilet, with the baby care room having a minimum gross floor area of 20sqm. This requirement has been addressed by way of a condition of consent, that requires the architectural drawings to be revised to include a parenting room and parent friendly accessible toilets, complying with the design requirements under D5.2, Sections (1), (2) and (4) of Penrith DCP, prior to the issue of a construction certificate.