

Recommended Conditions of Consent DA22/0318 – Applicant’s Request & Council Comments for SWCPP

Condition	Applicant’s Request 23/2/24	Independent Assessment Comment 27/2/24	Applicant’s Comment
Condition 97 – Point 1			
<p>97 PART A - Deferred Commencement Conditions</p> <p>This development consent is granted subject to satisfaction of the below conditions. Pursuant to s 4.16(3) of the Environmental Planning and Assessment Act 1979, this development consent does not operate until the applicant satisfies Council, in accordance with the regulations, as to any matters specified below:</p> <p>1. A full set of architectural, civil, stormwater and landscape plans and associated documentation reflecting the approved subdivision layout and amendments below is to be submitted to, and approved by, Penrith City Council. All plans and documentation are to correlate. The following plan amendments are required:</p> <p>a) The mound and existing vegetation along the David Road frontage shown on the plans for removal is to be retained to provide a dense mature tree canopy. The Details on the amended plans and documentation with respect to the mound must include:</p> <p>1. The final extent and footprint of the mound. 2. Substantial retaining of the mound and edge treatments, supported by further engineering investigations in consultation with the Arborist and updated tree assessment that ensures retention and protection of existing trees fronting David Road. 3. Identification of any trees that must be removed with supporting justification. 4. Proposed embellished landscaping which</p>	<p>Condition 97.1</p> <p>- Delete “Architectural” from the first part of Condition 1.</p> <p>The proposal does not include any built form or architectural plans.</p> <p>- Delete part a) 1 to 5 of the Condition 1.</p> <p>As outlined in this correspondence, we request the Panel make a determination on whether the mound can be removed. Assuming the Panel approves the removal of the mound, part a) 1-5 of the condition can be deleted.</p> <p>- Move part b) to d) of Condition 1 to “prior to Subdivision Works Certificate.</p> <p>The requirements in these conditions are to be resolved in detailed design. Note: We acknowledge that a deferred commencement condition needs to be applied regardless of whether the mound is retained or not, due to last minute amendments to a small section of road.</p>	<p>Support deletion of “Architectural” from the first part of Condition point 1 and replacement with “Subdivision Plans”.</p> <p>Do not support removal of trees and mound and any associated changes suggested to conditions by the Applicant relate to the mound and trees not being retained, which is contrary to commitment by the Applicant to retention of the trees and associated mounding below via a letter dated 14 July 2023 (Attachment 23.4) and acceptance of a relevant condition of consent.</p> <p>Do not support deletion of part a) 1 to 5 of Condition point 1 as necessary to achieve compliance with legislative controls.</p> <p>Could consider support to move part b) to d) of Condition point 1 to “prior to Subdivision Works Certificate”. It was considered that as the plan set was being updated to be a consistent set of approved plans so there is no uncertainty, these changes and information could be undertaken at this time.</p> <p><u>Revised Condition 97 – Point 1:</u></p> <p>97 PART A - Deferred Commencement Conditions</p> <p>This development consent is granted subject to satisfaction of the below conditions. Pursuant to s 4.16(3) of the Environmental Planning and Assessment Act 1979, this development consent does not operate until the applicant satisfies Council, in accordance</p>	<p>Object to Council’s proposed wording</p> <p>Noting the compromised position shown by the Applicant in Attachment A, the Applicant would be accepting of the following amendment to the wording of the condition:</p> <p>Proposed condition:</p> <p><i>“1 A full set of civil, stormwater and landscape plans reflecting the approved subdivision layout and mound retention diagram is to be submitted to, and approved by, Penrith City Council. All plans and documentation are to correlate”.</i></p> <p>On account the condition will reference a plan, Part a) 1 to 5 of condition point 1 can be deleted. On account:</p> <ul style="list-style-type: none"> - 1. a) 1. - The final extent of the retained mound is now confirmed in the referenced plan. - 1 a) 2. Edge treatments are shown (with further detail as part of the updated Civil Plans). - 1 a) 3. Trees to be removed are identified, - 1 a) 4. Updated landscaping plans are required to be provided under Part 1 of the condition. - 1 a) 5. Updated civil plans are required to be provided under Part 1 of the condition. <p>Part b) to d) of condition point 1 can be moved to prior to Subdivision Works Certificate. This level of detail is not required to make the consent operational.</p>

<p>provides additional landscaping whilst retaining trees to provide the visual buffer to the development. 5. Proposed civil features in the vicinity of the trees being retained including services, pipes, retaining walls, supported by further engineering investigations in consultation with the Arborist and updated tree assessment.</p> <p>b) Plant species and densities proposed to be installed in the wetland areas shall be added to the plans.</p> <p>c) The access paths (e.g. north of wetland B) shall also be updated to incorporate sufficient space to enable a vehicle to turn around or be extended to connect to the path of the southern side of wetland B.</p> <p>d) The location of bike racks and public seating within Lot 31 (wetlands), Lot 38 (pathway) and public areas including the Swift Parrot Corridor are to be shown on the Landscape Plans and are to be easily accessible and clearly identifiable to encourage use.</p>		<p>with the regulations, as to any matters specified below:</p> <p>1. A full set of architectural, <u>subdivision plans</u>, civil, stormwater and landscape plans and associated documentation reflecting the approved subdivision layout and amendments below is to be submitted to, and approved by, Penrith City Council. All plans and documentation are to correlate. The following plan amendments are required:</p> <p>a) The mound and existing vegetation along the David Road frontage shown on the plans for removal is to be retained to provide a dense mature tree canopy. The Details on the amended plans and documentation with respect to the mound must include:</p> <ol style="list-style-type: none"> 1. The final extent and footprint of the mound. 2. Substantial retaining of the mound and edge treatments, supported by further engineering investigations in consultation with the Arborist and updated tree assessment that ensures retention and protection of existing trees fronting David Road. 3. Identification of any trees that must be removed with supporting justification. 4. Proposed embellished landscaping which provides additional landscaping whilst retaining trees to provide the visual buffer to the development. 5. Proposed civil features in the vicinity of the trees being retained including services, pipes, retaining walls, supported by further engineering investigations in consultation with the Arborist and updated tree assessment. <p>b) Plant species and densities proposed to be installed in the wetland areas shall be added to the plans.</p>	
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Condition 97 – Point 2			
2. An updated Arborist Report is to be prepared and submitted which includes an updated assessment of all trees on the site to	Condition 97.2	Do not support the mound being removed and condition should stay. Do not support removal of trees and mound and any associated	Object to application of the condition as “deferred commencement”

<p>provide an accurate current assessment of the trees on the site. In that assessment the Arborist is to identify dead trees not required as habitat for removal, identifies dead trees capable of providing habitat with recommendations for remedial pruning (if required), proposes the removal of any trees where it is evidenced that their arboricultural condition indicates that retention is no longer viable. This updated Arborist Report shall inform Vegetation Management Plan and the basis of Tree Protection plans.</p>	<p>- In the event the mound is being removed, delete condition, or</p> <p>- In the event the mound is retained, amend condition to only require an updated arborist report for those trees to be retained in Lot 32-34.</p> <p>The amended arborist report is not required if the mound is being removed. If it is being retained, the arborist report does not need to reconsider all 726 trees across the site. There is no need for this condition to be met prior to the condition becoming operational</p>	<p>changes suggested to conditions by the Applicant relate to the mound and trees not being retained, which is contrary to commitment by the Applicant to retention of the trees and associated mounding below via a letter dated 14 July 2023 (Attachment 23.4) and acceptance of a relevant condition of consent.</p> <p>Council's Tree Management Officer has indicated that it is imperative for the Arborist Report to be updated given the time from the last review of the trees over the whole site and changes to climatic conditions and should occur prior to the final plan set to ensure the stamped approved plans are accurate.</p> <p>Do not support an amendment to condition to only require an updated arborist report for those trees to be retained in Lot 32-34.</p>	<p>The requirement for an Arborist to reconsider and provide additional detail on the TPZ measures is required under Condition 34 & 37.</p> <p>This review is not required prior to the issue of an Operational Consent and is more appropriately conditioned to be provided prior to Subdivision Works Certificate.</p>
Condition 97 – Point 3			
<p>3. A Vegetation Management Plan (VMP) is to be prepared for the following areas:</p> <ul style="list-style-type: none"> 'Constructed Wetlands ~ Lot 31' as shown in the revised Plan of Subdivision Rear setbacks of Lots 14~21; Lot 31 and Lot 33~38; and Area along the south to eastern boundary where it interfaces with the road and boundary fence. <p>The VMP is to be submitted to and approved by Penrith City Council's Senior Biodiversity Officer. The VMP must:</p> <ol style="list-style-type: none"> Be prepared by an Ecological Consultant or Bush Regenerator with theoretical and practical experience in bushland restoration 	<p>Condition 97.3</p> <p>- Amend condition as follows and move it to prior to Subdivision Works Certificate:</p> <ul style="list-style-type: none"> Amend Lot numbers (considered typos) Remove the requirement for a VMP over Lot 32-34 if the Panel agrees to removal of the mound. Delete item 13. In item 14, amend replacement planting rates to 1:1. <p>There is no need for the condition to be satisfied prior to the consent becoming operational. The VMP applies to trees in setback areas, not areas of diverse ecological significance or in a conservation area.</p> <p>The requirement that the VMP area should be the TPZ plus 3m significantly impacts the ability</p>	<p>Support changes to of Condition point 3 to correct typos to Lot numbers which were changed the Plan of Subdivision submitted on the day before the report was finalised. The correct numbering should be:</p> <ul style="list-style-type: none"> 'Constructed Wetlands - Lot 31' as shown in the revised Plan of Subdivision Rear setbacks of Lots 13-20; Lot 31 and Lot 32-38; and <p>Do not support change to timing or other suggested changes which are imperative from a biodiversity and tree management and protection perspective and respond to concerns previously raised regarding the likely damage to vegetation during construction in particular within the wetlands area.</p>	<p>Object to Council's wording and application as a "deferred commencement" condition.</p> <p>We continue to press that:</p> <ul style="list-style-type: none"> The Applicant is willing to accept the requirement for a VMP, despite the areas being a planted setback (not an area of identified conservation, riparian corridor etc). However, it is not appropriate for the VMP to be a deferred commencement condition. It is unreasonable to require the VMP to extend to an area of the TPZ + 3m. As previously outlined, the VMP area will be accessible at the rear of each individual lot. Each individual lot will be responsible for the maintenance of that land. The trees are at their mature height, with aerial imagery confirming

<p>and management on the Cumberland Plain. They are required to hold a Certificate IV in Conservation and Land Management or equivalent tertiary qualifications, as a minimum.</p> <p>2. Be consistent with relevant and up to date environmental legislation and policies, including; but not limited to, the NSW Biodiversity Conservation Act 2016, NSW Biosecurity Act 2015, Water Management Act 2000, Commonwealth Environment Protection and Biodiversity Conservation Act 1999, and guidelines such as the Rural Fire Services Planning for Bushfire Protection 2019 and Recovering Bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland (DEC, 2005). It is to also have regard to any Recovery Plans and recovery actions that are relevant.</p> <p>3. Identify ongoing management and maintenance of the vegetated areas, in terms of impacts of flora and fauna and vegetation management requirements. The focus is to be on the protection and conservation of native vegetation and fauna habitats on the site and on maintaining connectivity.</p> <p>4. Clearly outline how vegetation will be protected and managed during construction of proposed future development.</p> <p>5. Identify potential impacts from the development and future industrial use of the site (both during construction and post construction) on the on-site and adjacent vegetation and habitats, and how these impacts will be managed and mitigated throughout the life of the development. Impacts include (but are not limited to) increased stormwater runoff and associated nutrients, weeds, erosion and sedimentation and other disturbance.</p>	<p>to deliver the development. The VMP areas can all be accessed from the relevant lots that contains the vegetation. It will be the lot owner's responsibility to maintain the area in accordance with the VMP. No 3m access strip is required. This condition would only be required where the responsible persons for managing the VMP area has restricted access to this area.</p> <p>We do not understand why the requirement for replacement planting is at 3:1. This requirement under Council's DCP is replacement planting is to be undertaken as an equal or greater number to those removed. The condition places a greater requirement than what is in Council's controls.</p>	<p>The additional 3m from the TPZ was to allow vehicle access for maintenance whilst subdivision works are being undertaken. The requirement for/use of this area can be reassessed when DA's come in for individual sites if needed.</p> <p>Further, it could take up to 5 years (before consent lapses) before any work is undertaken on the site in which time the trees will grow and TPZ size will increase. The 3m setback will allow for the continued growth of the trees ensuring works will still be outside the TPZ of the trees.</p> <p>The replacement planting rate of 3:1 is consistent with Councils DCP because it states, <i>"an equal or greater number than those removed"</i>. The ratio of 3:1 is commonly used in the industry and is reflective of the requirement to achieve urban heat measures.</p> <p><u>Revised Condition 97 - Point 3:</u></p> <p>3. A Vegetation Management Plan (VMP) is to be prepared for the following areas:</p> <ul style="list-style-type: none"> • 'Constructed Wetlands – Lot 31' as shown in the revised Plan of Subdivision • Rear setbacks of Lots 14-21<u>13-20</u>; Lot 31 and Lot 32<u>33</u>–38; and • Area along the south to eastern boundary where it interfaces with the road and boundary fence. <p>The VMP is to be submitted to and approved by Penrith City Council's Senior Biodiversity Officer. The VMP must:</p> <p>1. Be prepared by an Ecological Consultant or Bush Regenerator with theoretical and practical experience in bushland restoration</p>	<p>the mound and planted trees being established in the late 1980s/early 1990s – so there is no need for the 3m to accommodate additional growth.</p> <p>- The Applicant is still unclear on why a replacement rate of 3:1 is required, when a replacement rate of 1:1 is suitable in the circumstance where the VMP applies to a planted setback area in an existing industrial site – not an area of exceptional biodiversity, riparian area or similar where 3:1 might be an industry standard. The argument that the DCP allows for replacement planning of 1:1 of higher is not sufficient to justify the proposed condition requiring 3:1.</p>
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<p>6. Identify ongoing future management of the vegetation that is to be retained on site and any identified threatened species.</p> <p>7. Identify a suitable style of boundary fence, and fence for the protected vegetation that permits fauna movement to assist with maintaining connectivity and minimises the requirement to remove any further vegetation.</p> <p>8. Identify and map different management zones within the VMP area.</p> <p>9. Determine performance criteria for each management zone including but not limited to percentage survival rate for plantings, cover (as expressed as a percentage) of priority and environmental weeds at the end of each year, species and diversity for each zone.</p> <p>10. Identify habitat improvement measures that are to be undertaken across the site.</p> <p>11. Detail monitoring and reporting requirements.</p> <p>12. The VMP is to include a clear outline of works to be undertaken along with timing of works and estimated costs including materials, labour, watering, maintenance, monitoring and reporting should be included.</p> <p>13. The Vegetation Management Plan/restoration area shall extend to the full size of the TPZ of all trees to be retained, plus 3m as it intrudes into the site to allow for access of maintenance vehicles. The landscape strip is to be fenced to prevent intrusion from any earthworks.</p> <p>14. Identify replacement planting rates for damage to trees being retained, with particular note with respect to potential during the excavation along the edge of the wetlands during construction, at a rate of 3:1.</p>		<p>and management on the Cumberland Plain. They are required to hold a Certificate IV in Conservation and Land Management or equivalent tertiary qualifications, as a minimum.</p> <p>2. Be consistent with relevant and up to date environmental legislation and policies, including; but not limited to, the NSW Biodiversity Conservation Act 2016, NSW Biosecurity Act 2015, Water Management Act 2000, Commonwealth Environment Protection and Biodiversity Conservation Act 1999, and guidelines such as the Rural Fire Services Planning for Bushfire Protection 2019 and Recovering Bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland (DEC, 2005). It is to also have regard to any Recovery Plans and recovery actions that are relevant.</p> <p>3. Identify ongoing management and maintenance of the vegetated areas, in terms of impacts of flora and fauna and vegetation management requirements. The focus is to be on the protection and conservation of native vegetation and fauna habitats on the site and on maintaining connectivity.</p> <p>4. Clearly outline how vegetation will be protected and managed during construction of proposed future development.</p> <p>5. Identify potential impacts from the development and future industrial use of the site (both during construction and post construction) on the on-site and adjacent vegetation and habitats, and how these impacts will be managed and mitigated throughout the life of the development. Impacts include (but are not limited to) increased stormwater runoff and associated nutrients, weeds, erosion and sedimentation and other disturbance.</p>	
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		<p>6. Identify ongoing future management of the vegetation that is to be retained on site and any identified threatened species.</p> <p>7. Identify a suitable style of boundary fence, and fence for the protected vegetation that permits fauna movement to assist with maintaining connectivity and minimises the requirement to remove any further vegetation.</p> <p>8. Identify and map different management zones within the VMP area.</p> <p>9. Determine performance criteria for each management zone including but not limited to percentage survival rate for plantings, cover (as expressed as a percentage) of priority and environmental weeds at the end of each year, species and diversity for each zone.</p> <p>10. Identify habitat improvement measures that are to be undertaken across the site.</p> <p>11. Detail monitoring and reporting requirements.</p> <p>12. The VMP is to include a clear outline of works to be undertaken along with timing of works and estimated costs including materials, labour, watering, maintenance, monitoring and reporting should be included.</p> <p>13. The Vegetation Management Plan/restoration area shall extend to the full size of the TPZ of all trees to be retained, plus 3m as it intrudes into the site to allow for access of maintenance vehicles. The landscape strip is to be fenced to prevent intrusion from any earthworks.</p> <p>14. Identify replacement planting rates for damage to trees being retained, with particular note with respect to potential during the excavation along the edge of the wetlands during construction, at a rate of 3:1.</p>	
Condition 97 – Point 4			
4. A Site Audit Statement(s) and associated Site Audit Report(s), as prepared by a NSW	Condition 97.4	Do not support change to not require approval by Council of the Site Audit statements and	Object to the application of the condition as deferred commencement and suggest it is

<p>Accredited Site Auditor, are to be provided to Penrith City Council for approval. The Site Audit Statement(s) and associated Site Audit Report(s) are to address all land that is subject to this development application, except for the areas identified as 'Duck Pond' in Figure 2 of the 'Surface Water Management Options Assessment – 158 to 164 Old Bathurst Road, Emu Plains' prepared by JBS&G dated 24 February 2022. The Site Audit Statement and Site Audit Report are to confirm that the land is suitable for industrial and commercial uses.</p>	<p>Delete first sentence of the condition and move the condition to “prior to Subdivision Certificate”.</p> <p>The first sentence requires a Site Audit Statement and Report prepared by the Site Auditor to be “approved” by Council. It is not Council’s authority to approve a Site Audit Statement or Report. Further, the Consent Authority only needs to be satisfied that the Site is suitable for the proposed use at the time the use commences, not before works commences. It is reasonable to move this condition to “Prior to Subdivision Certificate”.</p>	<p>reports. This is required for Council to be satisfied that the site is suitable from a land contamination perspective prior to an active consent which allows works given that land remediation was removed from this current application.</p> <p>Further, site suitability is to be ensured prior to any disturbance to the land, which may not be effectively captured should the condition be revised to ‘Prior to Subdivision Certificate’. If this change to prior to SC was supported, subdivision works would have been carried out prior to this time and could result in a change to the condition of the land. Given the potential risks to human health (as well as the environment), it needs to be ensured that the land is remediated before construction workers are present on site, and also before land is moved about the site during earthworks (potentially spreading the contaminated materials). If the applicant did not obtain a Site Audit Statement until this time, the site Auditor may also not issue one and may require additional assessment as the land has been disturbed.</p>	<p>applied “prior to Subdivision Works Certificate”.</p> <p>The condition can equally be applied as “prior to Subdivision Works Certificate” and satisfy Council that no works will occur on the Site until such time a Site Audit Statement has been issued. Council will similarly have the power under such a condition to withhold the issue of a Subdivision Works Certificate until the Site Audit Statement is issued.</p>
<p>Condition 34 & Condition 37</p>			
<p>34 (a) The applicant shall engage a qualified Arboricultural Consultant with a minimum Level 5 qualification (AQF – Australian Qualification Framework) or the equivalent to be retained for the duration of the demolition and construction of the development.</p> <p>(b) Prior to the removal of vegetation or issue of a Subdivision Works Certificate:</p> <p>1. The Arborist shall prepare a site-specific Tree Protection Plan and Drawing in accordance with the</p>	<p>Conditions 34 & 37</p> <p>Delete one of the conditions</p> <p>Both conditions meet the same objective, but are just worded differently</p>	<p>There is a nuance between Conditions 34 and 37 which is –</p> <ul style="list-style-type: none"> • one condition requires a Project Arborist to be engaged to write a Site-Specific Tree Protection Plan (Specification) and Drawing; and • the other is the requirement for a Project Arborist to be onsite to manage the works. <p>In re-reading the conditions, it was noticed that Condition 37 should come before</p>	<p>Applicant accepts the Council’s rewording of the condition and condition order.</p>

<p>updated Arborist Report approved by Council, conditions of this consent and Section 5 of AS4970 – 2009, Protection of trees on development sites. All trees to be retained and protected, and trees located on adjoining properties within 5m of the subject property boundary, are to be covered by this report. This report shall also be consistent with/include the requirements of any approved Vegetation Management Plans.</p> <p>2. An individual Tree Protection Plan (Specification) and Drawing shall be required for each stage of the development where changes within the Tree Protection Zone (TPZ) are required.</p> <p>3. The Consulting arborist is to identify key stages where monitoring and certification will be required as outlined in AS 4970 – 2009, Section 5. A schedule outlining these stages is to be submitted to and approved by Penrith Council's Tree Management Officer prior to the issue of the Subdivision Works Certificate.</p> <p>(c) The relevant Tree Protection Plan (Specification) and Drawing is to be retained and implemented on site at all times.</p> <p>(d) The Consultant Arborist shall be present on-site during demolition and any of the key stages identified in the schedule required in the condition point above</p> <p>(e) A written account of the satisfactory completion of each of these stages as assessed by the consulting arborist is to be reported to the principle certifying authority.</p> <p>And</p> <p>37 Prior to the issue of a Subdivision Works Certificate:</p>		<p>Condition 34 (i.e. writing of the Tree Protection Plan (Specification) and Drawing first so the Project Arborist can then apply it once work starts. As such, minor changes could occur to Conditions 34 and 37 regarding timing and any duplicate points deleted.</p> <p>The tree conditions of consent have been re-written relating to the feedback from the applicant to read better, such as the compliance info has been moved up into the Tree Protection Plan and Drawings report as a requirement and then stated that when they engage an arborist they need to comply with the plan. However, there still needs to be two separate conditions - one requiring a report to be written, another requiring the arborist to supervise works in accordance with the approved plan.</p> <p><u>Revised Condition 34:</u></p> <p><u>34. Prior to the issue of a Subdivision Works Certificate:</u></p> <p><u>(a) The applicant shall engage a qualified Arboricultural Consultant with a minimum Level 5 qualification (AQF – Australian Qualification Framework) to prepare a site specific Tree Protection Plan and Drawings in accordance with the conditions of this consent and Section 5 of AS4970 – 2009, Protection of trees on development sites and any approved conditions of consent.</u></p> <p><u>(b) The Tree Protection Plan shall also specifically address (but not be limited to) the following points:</u></p> <p><u>i. All stages of the demolition/construction process;</u></p>	
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<p>(a) The applicant shall engage a qualified Arboricultural Consultant with a minimum Level 5 qualification (AQF – Australian Qualification Framework) to prepare a site-specific Tree protection Plan and Drawing in accordance with the conditions of this consent and Section 5 of AS4970 – 2009, Protection of trees on development sites and any approved conditions of consent.</p> <p>(b) The Tree Protection Plan shall also specifically address (but not be limited to) the following points:</p> <p>i. All stages of the demolition/construction process;</p> <p>ii. Specific tree protection requirements, especially when intrusion into the Tree Protection Zone (TPZ) or when trunk and branch protection is required;</p> <p>iii. A requirement/specification stating that all underground services to be installed within the designated TPZ of a tree to be retained must be installed using directional drilling/thrust boring techniques;</p> <p>iv. An individual Tree Protection Plan and Drawing for each stage of the development where changes within the Tree Protection Zone (TPZ) are required (i.e. prior to commencement, demolition, during construction, post construction and landscaping.</p> <p>(c) In addition, the Consulting arborist is to identify key stages where monitoring and certification will be required as outlined in AS 4970–2009, Section 5.</p> <p>(d) The completed Tree Protection Plan and Drawing is to be provided to the Manager of Development Services for final approval prior to the issue of a Subdivision Works Certificate.</p>		<p><u>ii. Specific tree protection requirements, especially when intrusion into the Tree Protection Zone (TPZ) or when trunk and branch protection is required;</u></p> <p><u>iii. Clearly identify all trees to be removed and retained.</u></p> <p><u>iv. A requirement/specification stating that all underground services to be installed within the designated TPZ of a tree to be retained must be installed using directional drilling/thrust boring techniques;</u></p> <p><u>v. An individual Tree Protection Plan and Drawings for each stage of the development where changes within the Tree Protection Zone (TPZ) are required (i.e. prior to commencement, demolition, during construction, post construction and landscaping.</u></p> <p><u>(c) In addition, the Tree Protection Plan and Drawings shall require (But not be limited to):</u></p> <p><u>i. Identify key stages where monitoring and certification by the Consulting Arborist will be required as outlined in AS 4970–2009, Section 5.</u></p> <p><u>ii. Require the Consulting Arborist to undertake inspections not less than weekly (more frequently if required) to evidence compliance with the approved Tree Protection Plan and Drawings.</u></p> <p><u>iii. Require a written record (e.g., field notes and photos) of works undertaken during each day onsite to provide evidence of compliance with the Tree Protection Plan and Drawings</u></p>	
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<p>(e) The approved Tree protection Plan retained and implemented on site at all times.</p>		<p><u>iv. The consulting Arborist to forward the written record of inspection to the Principal Certifying Authority within 3 days of each site visit.</u></p> <p><u>v. Where there is a breach of the Tree Protection Plan (Specification) & Drawings, the project arborist must specify any remedial works and the timeframe in which these works must be completed.</u></p> <p><u>(d) The completed Tree Protection Plan and Drawings is to be provided to the Manager of Development Services for final approval prior to the issue of a Subdivision Works Certificate.</u></p> <p><u>(e) The approved Tree protection Plan and Drawings is to be retained and implemented on site at all times.</u></p> <p><u>Revised Condition 37:</u></p> <p><u>37. Prior to the removal of vegetation or issue of a Subdivision Works Certificate, the applicant shall engage a qualified Project Arborist with a minimum AQF (Australian Qualification Framework) Level 5 qualification in Arboriculture to be retained for the duration of the demolition and construction of the development to ensure Tree Protection measures are applied in accordance with the approved conditions of consent, and approved Tree Protection Plan (Specification) & Drawings and AS4970 – 2009, Protection of trees on development sites.</u></p> <p><u>(a) The Consultant Arborist shall be present onsite during demolition and any of the key stages identified in the schedule, at times where weekly visits are required and at any other times their services may be required.</u></p>	
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		<p><u>(b) A written account of the satisfactory completion of each of these stages as assessed by the consulting arborist is to be reported to the principle certifying authority in accordance with the Approved Tree Protection Plan and Drawings.</u></p> <p><u>(c) The approved Tree protection Plan and Drawings is to be retained and implemented on site at all times.</u></p>	
Condition 35			
<p>35 The following vegetation management matters must be complied with:</p> <p>(a) The vegetation along the northern boundary and western boundary mound from the proposed entry way off David Road to the boundary at Old Bathurst Road shall be subject to a Vegetation Management Plan that strategically removes weeds, nominates dead trees not required as habitat for removal, identifies dead trees capable of providing habitat with recommendations for remedial pruning (if required), proposes the removal of any trees where it is evidenced that their arboricultural condition indicates that retention is no longer viable and provides a replacement planting plan to replace trees that are removed and provide shrubs and ground covers to present a natural environment suitable for native animals.</p> <p>(b) The Vegetation Management Plan/restoration area shall extend to the full size of the TPZ of all trees to be retained, plus 3m as it intrudes into the site to allow for access of maintenance vehicles.</p> <p>(c) Once identified, the landscape strip is to be fenced to prevent intrusion from any earthworks.</p>	<p>Condition 35</p> <p>Where the Panel consents to the removal of the mound – part (a) of the condition is to be reworded.</p> <p>The VMP does not need to apply to Lots 32 and 33 if the mound is being removed. Therefore the condition can be reworded to “The vegetation being retained within the frontage to Old Bathurst Road for Lots 34-38 shall be subject to a VMP...”</p> <p>Delete part (b) of the condition.</p> <p>As per comment on condition 97.3 above, the requirement for the VMP to include the TPZ + 3m is onerous.</p>	<p>Do not support removal of trees and mound and any associated changes suggested to conditions by the Applicant relate to the mound and trees not being retained, which is contrary to commitment by the Applicant to retention of the trees and associated mounding below via a letter dated 14 July 2023 (Attachment 23.4) and acceptance of a relevant condition of consent.</p> <p>Do not support suggested changes which are imperative from a tree management and protection perspective. Refer to above regarding 3m from the TPZ.</p>	<p>Object to part of the condition.</p> <p>The Applicant accepts the condition, however as per response to condition 97.3 rejects the requirement for the APZ+3m.</p>

Condition 36			
<p>36 The following vegetation management matters must be complied with:</p> <p>(a) All trees to be retained shall be provided with a Tree protection fence to the full size of their Tree Protection Zones (TPZ's) plus 3m as it intrudes into the site to allow for access of maintenance vehicles. Construction must be able to be undertaken without the requirement to remove this fencing.</p> <p>(b) Once identified, landscape strip is to be fenced to prevent intrusion from any earthworks.</p> <p>(c) The area shall then be maintained as a landscape strip and be subject to a Vegetation Management Plan to provide shrubs and ground covers and replacement trees to present a natural environment suitable for native animals.</p> <p>(d) Where trees have been removed along this boundary/railway easement, replacement trees are to be provided within the capacity of easement restrictions.</p>	<p>Condition 36</p> <p>Delete condition</p> <p>The condition doubles up on the requirements of condition 12 and 35. Further the condition applies the VMP to the TPZ + 3m which is unreasonable as described in the comment to condition 97.3 in this document.</p>	<p>Conditions 35 and 36 refer to different areas of the site. In addition, Condition 12 is more specific to the whole site and is a coverall in case all reports are not provided/followed and provides the bare essentials for tree protection.</p> <p>The preference is for the conditions to remain separate.</p> <p>Do not support suggested changes which are imperative from a tree management and protection perspective. Refer to above regarding 3m from the TPZ.</p>	<p>Object to part of the condition.</p> <p>The Applicant accepts the condition, however as per response to condition 97.3 rejects the requirement for the APZ+3m.</p>
Condition 38			
<p>38 Approval is granted for the removal of trees identified in the Tree Condition Report required to be submitted for approval by Penrith Councils Tree Management Officer or Natural Systems Team Leader prior to removal of any vegetation and prior to issue of the Subdivision Works Certificate.</p> <p>All tree removal works must comply with the Amenity Tree Industry – Code of Practice, 1998 (Workcover, NSW) and Guide to Managing</p>	<p>Condition 38</p> <p>In the event the mound is being removed, delete condition, or</p> <p>In the event the mound is retained, amend condition to only require an updated arborist report for those trees to be retained in Lot 32-34.</p> <p>As outlined in the response to condition 97.2 above</p>	<p>Do not support removal of trees and mound and any associated changes suggested to conditions by the Applicant relate to the mound and trees not being retained, which is contrary to commitment by the Applicant to retention of the trees and associated mounding below via a letter dated 14 July 2023 (Attachment 23.4) and acceptance of a relevant condition of consent.</p> <p>The removal method is standard industry requirement. Trees to be removed need to be</p>	<p>Noting the compromised position regarding the retention of part of the mound and trees – if the compromised position was approved the Applicant would be accepting of the condition.</p>

<p>Risks of Tree Trimming and Removal Work (Safe Work Australia 2016).</p> <p>All other vegetation not specifically identified above, and protected by Penrith Council Development Control Plan 2014, C2 Vegetation Management, is to be retained and protected from construction damage and pruning. The Tree Management Order protects trees over 3.5m in height.</p>		<p>correctly identified and agreed to ensure the correct trees are removed. A clear plan will ensure correct trees are removed and will inform the extent of replanting required.</p> <p>Do not support suggested changes which are imperative from a biodiversity and tree management and protection perspective.</p> <p>The tree conditions of consent have been re-written relating to the feedback from the applicant to read better and the additional sentence added below.</p> <p><u>Revised Condition 38:</u></p> <p>38 Approval is granted for the removal of trees identified in the Tree Condition Report required to be submitted for approval by Penrith Councils Tree Management Officer or Natural Systems Team Leader prior to removal of any vegetation and prior to issue of the Subdivision Works Certificate.</p> <p><u>Removal of trees must be undertaken by an Arborist with a minimum of AQF (Australian Qualification Framework) Level 3 Arborist.</u></p> <p>All tree removal works must comply with the Amenity Tree Industry – Code of Practice, 1998 (Workcover, NSW) and Guide to Managing Risks of Tree Trimming and Removal Work (Safe Work Australia 2016).</p> <p>All other vegetation not specifically identified above, and protected by Penrith Council Development Control Plan 2014, C2 Vegetation Management, is to be retained and protected from construction damage and pruning. The Tree Management Order protects trees over 3.5m in height.</p>	
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Condition 39			
<p>39 (a) All trees to be retained as shown on the Civil Engineering Services Plan, Wetland, prepared by Acor Consultants Pty Ltd, Project No NSW211637, Dwg No C7.002, Issue D, dated 17/10/2022 shall be protected by a Tree protection fence to the full size of their Tree Protection Zones (TPZ's). Construction must be able to be undertaken without the requirement to remove this fencing.</p> <p>(b) The areas where trees are to be retained shall be subject to a Vegetation Management Plan that strategically removes weeds, nominates dead trees not required as habitat for removal, identifies dead trees capable of providing habitat with recommendations for remedial pruning (if required), proposes the removal of any trees where it is evidenced that their arboricultural condition indicates that retention is no longer viable and provides a replacement planting plan to replace trees that are removed and provide shrubs and ground covers to present a natural environment suitable for native animals.</p>	<p>Condition 39</p> <p>Reword (a) of Condition to refer to Australian Standards and refer to approved plans and reports:</p> <p>For clarity, the condition should refer to approved plans and Australian Standards as follows:</p> <p>“(a) All trees to be retained as shown on the Civil Engineering Service Plan, Wetland prepared by Acor Consultants... shall be protected in accordance with AS4970-2009 and the Site Specific Tree Protection Report required under Condition 34”</p>	<p>It is Council's Tree Management Officer advice that a full TPZ is required. AS4970 – 2009, Protection of trees on development sites provides an intrusion of up to 10%, but this is not an automatic encroachment. The trees in the location are directly adjacent to substantial earthworks that require excavation and batter. If works are too close to the trees, destabilisation could occur, particularly if a 10% intrusion was permitted and then over excavation occurred (it cannot be controlled that excavation disturbance will not occur outside the extent of the “line on the plan”), therefore a full TPZ is required and can be substantiated.</p> <p>Do not support suggested changes which are imperative from a tree management and protection perspective.</p>	<p>The Applicant is accepting of the condition.</p>
Condition 29			
<p>29 Prior to the issue of a Subdivision Works Certificate or prior to the commencement of works (whichever comes first) a Dam Dewatering Plan is to be prepared and submitted to the satisfaction of Penrith City Council's Senior Biodiversity Officer for approval.</p> <p>The plan is to provide details on the following:</p> <ul style="list-style-type: none"> Fauna/aquatic survey prior to dam dewatering and a description of fauna residing within the waterbodies present on site. 	<p>N/A</p>	<p>Whilst not mentioned by the applicant, I have become aware of wording discussed in the report under 'Likely Impacts' relating to the Duck Pond on page 25 of the report which was indicated to be added to the conditions but was missed. As such, the following point should be added into Condition 29:</p> <p><u>Revised Condition 29:</u></p> <p>29 Prior to the issue of a Subdivision Works Certificate or prior to the commencement of works (whichever comes first) a Dam Dewatering Plan is to be prepared and submitted to the satisfaction of Penrith City</p>	<p>The Applicant does not object to the proposed condition.</p>

<ul style="list-style-type: none"> Proposed relocation site shown on a map and details on how fauna will be transported. Details of relevant licences and permits required such as Section 37 Fisheries management Act 1994, Biodiversity Conservation Licence or permit from NSW Department of Primary Industries (for those species listed under the Fisheries Management Act). Procedure of notifying NSW Fisheries of the activity 48 hours prior to relocation of fish. If large numbers of predatory fish (eg. Long-finned Eels) are recovered, additional release points must be considered so that the increased risk of predation on existing fauna at release sites is reduced. Methods to prevent injury to fauna during pumping of water from the dam. Details of how exotic pest species will be humanely euthanised in a manner consistent with the Prevention of Cruelty to Animals Act 1979. Methods of disposing of dam water and preventing the spread of carp eggs, juvenile pest species or eggs into the catchment and natural waterways. Details on how fauna will be rescued from dam sediments or allowed to relocate from the dam. 		<p>Council's Senior Biodiversity Officer for approval.</p> <p>The plan is to provide details on the following:</p> <ul style="list-style-type: none"> Fauna/aquatic survey prior to dam dewatering and a description of fauna residing within the waterbodies present on site. Proposed relocation site shown on a map and details on how fauna will be transported. Details of relevant licences and permits required such as Section 37 Fisheries management Act 1994, Biodiversity Conservation Licence or permit from NSW Department of Primary Industries (for those species listed under the Fisheries Management Act). Procedure of notifying NSW Fisheries of the activity 48 hours prior to relocation of fish. If large numbers of predatory fish (eg. Long-finned Eels) are recovered, additional release points must be considered so that the increased risk of predation on existing fauna at release sites is reduced. Methods to prevent injury to fauna during pumping of water from the dam. Details of how exotic pest species will be humanely euthanised in a manner consistent with the Prevention of Cruelty to Animals Act 1979. 	
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<ul style="list-style-type: none"> • Details on the appropriate timing (season) for dewatering. • Details on reporting of actions undertaken with tallies of fauna removed from the dam with details of their relocation destination (or destruction). 		<ul style="list-style-type: none"> • Methods of disposing of dam water and preventing the spread of carp eggs, juvenile pest species or eggs into the catchment and natural waterways. • Details on how fauna will be rescued from dam sediments or allowed to relocate from the dam. • Details on the appropriate timing (season) for dewatering. • Details on reporting of actions undertaken with tallies of fauna removed from the dam with details of their relocation destination (or destruction). • <u>the methods of disposing of dam water, noting the findings and recommendations of the 'Surface Water Management Options Assessment - 158 to 164 Old Bathurst Road, Emu Plains' prepared by JBS&G dated 24 February 2022.</u> 	
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