



## Land and Environment Court New South Wales

<b>Medium Neutral Citation:</b>	<b>Detissera v Penrith City Council [2024] NSWLEC 1334</b>
<b>Hearing dates:</b>	Conciliation Conference 8 April, 20 and 27 May 2024
<b>Date of orders:</b>	19 June 2024
<b>Decision date:</b>	19 June 2024
<b>Jurisdiction:</b>	Class 1
<b>Before:</b>	Espinosa C
<b>Decision:</b>	<p>The Court orders:</p> <p>(1) The applicant is to pay the respondent's costs thrown away by reason of the amendment of the development application pursuant to s 8.15(3) of the <i>Environmental Planning and Assessment Act 1979</i> in the sum of \$1,000.00 within 28 days of these orders.</p> <p>(2) The appeal is upheld.</p> <p>(3) Development Application D20/0726 is determined by grant of consent for the demolition of all existing structures on site and the erection of four (4) townhouses, landscaping, and associated site works at 312 Great Western Hwy, St Marys, subject to the conditions contained at Annexure A.</p>
<b>Catchwords:</b>	DEVELOPMENT APPEAL – affordable rental housing - conciliation conference – agreement between the parties - orders
<b>Legislation Cited:</b>	<p><i>Environmental Planning and Assessment Act 1979</i>, ss 4.16, 8.7, 8.15</p> <p><i>Land and Environment Court Act 1979</i>, s 34</p> <p>Environmental Planning and Assessment Regulations 2021, s 38</p> <p>Penrith Local Environmental Plan 2010, cl 4.1, 4.3, 5.10, 7.1, 7.30, Sch 5</p> <p>State Environmental Planning Policy - (Building Sustainability Index: BASIX) 2004</p>

State Environmental Planning Policy (Affordable Rental Housing) 2009, cl 10, 14, 15, 16A, 17

State Environmental Planning Policy (Housing) 2021, Sch 7A

State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6

State Environmental Planning Policy (Transport and Infrastructure) 2021, ss 2.118, 2.119, 2.120

**Texts Cited:**

Department of Infrastructure, Planning and Natural Resource, Seniors Living Policy: Urban Design Guidelines for Infill Development, March 2004

Department of Planning, Industry and Environment, Low Rise Housing Diversity Design Guide, July 2020

**Category:**

Principal judgment

**Parties:**

Chaminda Bombawala Detissera (Applicant)

Penrith City Council (Respondent)

**Representation:**

Counsel:

S Patterson (Solicitor)(Applicant)

A Avery (Solicitor)(Respondent)

Solicitors:

Wilshire Webb Staunton Beattie (Applicant)

Penrith City Council (Respondent)

**File Number(s):**

2023/294563

**Publication restriction:**

No

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**JUDGMENT**

- 1 **COMMISSIONER:** This is a Class 1 Development Appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) being an appeal against the refusal of development application DA20/0726 for demolition of existing structures

and the construction of 4 townhouses pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009 (the Proposed Development) at 312 Great Western Highway, St Marys legally described as Lot 2 in DP 237858 (the Site).

2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which has been held on 8 April, 20 and 27 May 2024. I presided over the conciliation conference.

3 At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions.

4 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.

5 The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.

6 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings to be the terms of a number of environmental planning instruments and the parties explained how the jurisdictional prerequisites have been satisfied in a joint jurisdictional statement. I now set out a summary of that explanation.

7 The Proposed Development was lodged on 5 November 2020 (Lodgement Date) with the Respondent under the now repealed, State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH), specifically pursuant to Division 1, In-fill Affordable Housing. Although the SEPP ARH was repealed on 25 November 2021, the savings provisions included within Sch 7A of State Environmental Planning Policy (Housing) 2021 (Housing SEPP) state that the new Housing SEPP does not apply to a development application made, but not yet determined, on or before the commencement date being the 26 November 2021.

8 The Site has an area of 720.8m<sup>2</sup> and is located in an R3 Medium Density Residential zone pursuant to the Land Use Table of the Penrith Local Environmental Plan 2010 (PLEP) and the Proposed Development, characterised as "multi-dwelling houses", is permissible with consent. At the Lodgement Date, cl 4.1 of the PLEP applied to the subdivision of land and prescribed a minimum lot size resulting from the subdivision of

- land for the purpose of multi-dwelling housing in Zone R3 Medium Density Residential to be 800m<sup>2</sup>. However, the Proposed Development does not seek consent for subdivision and in any event, the ARH SEPP prescribes a minimum lot size of 450m<sup>2</sup>.
- 9 The Site is subject to a 8.5m maximum Height of Buildings development standard (HOB) pursuant to cl 4.3 of the PLEP and the Proposed Development does not contravene the HOB.
- 10 The Site is not a heritage item, nor is it located within a heritage conservation area. However, it is located proximate to an item of heritage, namely St Mary Magdalene Anglican Church, Hall, Cemetery and Grounds nominated in Sch 5 of the PLEP (Item No 301), and certain considerations are required pursuant to cl 5.10 of the PLEP regarding heritage conservation. The terms of cl 5.10 of the PLEP are satisfied by the Statement of Environmental Effects filed with the Class 1 Application under Tab 4 which provides at pages 23 and 24 as follows:
- “the proposed development will not have a physical or material impact on the item of heritage. Great Western Highway provides ample separation to ensure no physical impacts occur, while the same separation ensures that the new development does not infringe upon the fabric or setting of the item.
- Views toward the heritage item remain uninterrupted by the development. No existing views are available from the properties in a southerly direction. The property to the west only has views available from the first floor, street facing balconies, to which no impact occurs.”
- 11 Consent is sought for earthworks pursuant to cl 7.1 of the PLEP and the Respondent has considered the matters in cl 7.1(3) and explains to the Court that the proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability.
- 12 The Proposed Development is supported by a BASIX certificate No 1120578M filed with the Class 1 Application at Tab 5 and a Sections & BASIX Notes Plan dated May 2024 (Rev G) prepared by ATJ Architects pursuant to the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- 13 Notwithstanding that cl 7.30 of the PLEP was not applicable as at the date of lodgment of the Proposed Development, the parties have considered and are satisfied that planning and design measures are incorporated to reduce the urban heat island effect that do the following:
- (a) maximise green infrastructure, and
  - (b) retain water in the landscape, and
  - (c) use design measures to ensure the thermal performance of the development achieves a high degree of passive cooling, and
  - (d) use building, paving and other materials that minimise heat impacts, and

- (e) reduce reliance on mechanical ventilation and cooling systems, to conserve energy and to minimise heat sources.
- 14 The above state of satisfaction is achieved by the parties because of the updated landscape plan prepared by RFA Landscape Architects dated May 2024 (Rev F) that includes and retains significant vegetation including canopy trees and green ground cover.
- 15 Clause 10 of the ARH SEPP provides that the ARH SEPP applies to the Proposed Development because:
- (1) It is permitted with consent under the PLEP;
  - (2) The Site is not a heritage item nor is it subject of an interim heritage order;
  - (3) One dwelling is proposed as affordable, being Unit 1, and this unit is greater than 20% of the total proposed GFA.; and
  - (4) The Site is located in an accessible area as site is 380m walking distance from the St Marys Community Centre, Mamre Road bus stop located to the west of the site and 400m from the Queen Street before Carsons Lane bus stop.
- 16 In relation to the standards that cannot be used to refused consent pursuant to cl 14 of the ARH SEPP, the parties explain as follows:
- (1) Subclause 1(b) – the site is over 450m<sup>2</sup> (it is 720.8m<sup>2</sup>).
  - (2) Subclause 1(c) – more than 30% of the site is landscaped.
  - (3) Subclause 1(d) – more than 15% of the site is deep soil zone.
  - (4) Subclause 1(e) – living rooms and private open spaces for more than 70% of the dwellings receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter.
  - (5) Subclause 2(a) – The proposed development comprises two (2) x three (3) bedroom townhouses and two (2) x two (2) bedroom townhouses. Per the ARH SEPP, car parking is required at a rate of 1.5 car spaces per 3 or more bedrooms and 1 parking space is provided for each dwelling containing 2 bedrooms. A total of five (5) spaces are required and provided.
  - (6) Subclause 2(b) - All units comply with the minimum unit sizes.
- 17 Clause 15 of the ARH SEPP relates to design considerations. The parties have considered and are satisfied that the proposed development is consistent with Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004 and the Low Rise Housing Diversity Design Guide.
- 18 Clause 16A of the ARH SEPP requires the consent authority to take into consideration whether the design of the development is compatible with the character of the local area. The parties agree that the Proposed Development, as amended, is compatible

with the character of the local area.

- 19 Clause 17 of the ARH SEPP requires that the dwelling proposed to be used for the purposes of affordable housing (being Unit 1 shown on Site Plan, 1703 ap01 (Rev G) prepared by ATJ Architects dated May 2024) will be used for the purposes of affordable housing, and all accommodation that is used for affordable housing will be managed by a registered community housing provider, and a restriction to that effect will be registered, before the date of the issue of the occupation certificate, against the title of the property. A suitable condition, condition 71, has been proposed to give effect to this clause.
- 20 In accordance with s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP), the parties agree that consideration has been given to whether the land is contaminated. The Proposed Development is on land which has historically been used for residential purposes and is unlikely to contain any contamination. Accordingly, no further investigation is required for the purpose of s 4.6.
- 21 The Site has a frontage to the Great Western Highway, a classified road, and is the sole access point to the site. In accordance with s 2.118(1) of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP), the Proposed Development was referred to TfNSW for concurrence and on 24 March 2022, TfNSW provided a response confirming that it had no objections subject to the imposition of conditions of consent. The parties have taken this response into consideration as required under s 2.118(2).
- 22 Section 2.119 of the Transport and Infrastructure SEPP provides that a consent authority must not grant consent unless it is satisfied that:
- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and
  - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—
    - (i) the design of the vehicular access to the land, or
    - (ii) the emission of smoke or dust from the development, or
    - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
  - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.
- 23 The Applicant relies on a traffic report by Traffix dated 16 October 2020 and a subsequent letter dated 3 March 2022, both filed with the Class 1 Application, and the report concludes, at page 10, that the anticipated traffic generation will have no

noticeable traffic impacts on the road network. This, together with the sole access to the Site being from the classified road, satisfies the terms of s 2.119 of the Transport and Infrastructure SEPP.

- 24 As the Proposed Development provides residential accommodation and Site is located adjacent to a road corridor (being the Great Western Highway) which has an annual average daily traffic volume of more than 20,000 vehicles, the terms of s 2.120(3) of the Transport and Infrastructure SEPP must be satisfied regarding acoustic amenity. Section 2.120 provides that the consent authority must not grant consent to the Proposed Development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.

- 25 The Applicant relies on an acoustic assessment prepared by Acouras Consultancy dated 15 July 2020 filed with the Class 1 Application at Tab 13 and concludes, at page 10, that subject to implementation of the recommendations set out in the report, the Proposed Development is predicted to comply with the acoustic requirements listed at [24].
- 26 The Proposed Development seeks consent for landscaping which includes tree removal. An Arboricultural Impact Assessment and Tree Management Plan dated 26 August 2017 prepared by Redgum Horticultural was filed with the Class 1 Application at Tab 14. The report identified a number of trees to be removed to facilitate the proposed works. The Landscape Plan Drawing No L-01 Issue F dated 21 May 2024 identifies the trees to be removed and this plan is listed as a consent drawing in Annexure A and the Respondent has included a number of specific conditions to ensure that the retained trees are adequately protected during the construction and for the life of the development.
- 27 The Site is located outside of the Western Sydney Aerotropolis, however, the *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* (Aerotropolis SEPP) includes a map that relates to wildlife buffer areas and that map shows the Site is within a “wildlife buffer zone” of the airport. The Aerotropolis SEPP was repealed by the *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* which took effect from 1 March 2022. The provisions of the Aerotropolis SEPP were transferred into Chapter 4 of the Western Parkland SEPP. However, the Western Parkland SEPP included a savings and transitional provision at cl. 4.51 which provides:

(1) A development application for development on land to which this Chapter applies that was lodged and not finally determined before the commencement of this Chapter is to be determined as if this Chapter had not commenced.

- 28 As such, the given the DA was lodged prior to the commencement of the Western Parkland SEPP it is to be assessed against the relevant provisions of the Aerotropolis SEPP
- 29 Consideration has been given to cl. 21 of the Aerotropolis SEPP and the Proposed Development. The Proposed Development is not one of the types of uses that warrant additional consideration under the Aerotropolis SEPP with regards to wildlife and the operation of the airport.
- 30 The Site is also identified as being located within the Obstacle Limitation Surface Map. Clause 24 of the Aerotropolis SEPP relates to development that would penetrate the prescribed air space for the airport and be a controlled activity. The Proposed Development neither penetrates the prescribed air space nor is it a controlled activity.
- 31 I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act. I adopt the reasons given by the parties in accordance with this judgment.
- 32 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.

### Notations:

- 33 The Court notes:

- (1) that Penrith City Council, as the relevant consent authority, has agreed under s 38 of the Environmental Planning and Assessment Regulations 2021 to the Applicant amending Development Application DA20/0726 in accordance with the following plans and documents:

Plan and Revision	Plan Name	Date	Prepared by
Ap01 (Rev G)	Site Plan	May 24	ATJ Architects
Ap02 (Rev G)	Floor Plans	May 24	ATJ Architects
Ap03 (Rev G)	Elevations	May 24	ATJ Architects
Ap04 (Rev G)	Sections & BASIX Notes	May 24	ATJ Architects
Ap05 (Rev G)	Shadow Diagrams June 21	May 24	ATJ Architects



Ap06 (Rev G)	Shadow Diagrams June 21	May 24	ATJ Architects
Ap09 (Rev G)	Demolition Plan	May 24	ATJ Architects
L-01 (Rev F)	Landscape Plan	May 24	RFA Landscape Architects
9628a	Addendum to Redgum Horticultural report	30 April 2024	Redgum Horticultural

("the amended DA documents")

### Orders:

34 The Court orders:

- (1) The applicant is to pay the respondent's costs thrown away by reason of the amendment of the development application pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* in the sum of \$1,000.00 within 28 days of these orders.
- (2) The appeal is upheld.
- (3) Development Application D20/0726 is determined by grant of consent for the demolition of all existing structures on site and the erection of four (4) townhouses, landscaping, and associated site works at 312 Great Western Hwy, St Marys, subject to the conditions contained at Annexure A.

**E Espinosa**

**Commissioner of the Court**

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Annexure A

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated: 19 June 2024

## Annexure A

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

**Development Application No:** DA20/0726

**Development:** The demolition of all existing structures on site and the erection of four (4) townhouses, landscaping, and associated site works.

**Site:** 312 Great Western Highway, St Marys  
Legally described as Lot 2 in DP 237858

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

**Date of determination:** 19 June 2024

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

#### TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as 312 Great Western Highway, St Marys legally described as Lot 2 in DP 237858.

The conditions of consent are as follows:

**CONDITIONS****I. General**

- 1 The approved development must be carried out -in accordance with the following plans and documents, and any supporting information received with the application, except as amended by the following conditions.

Description	Drawing No.	Prepared by	Rev	Date
<b>Architectural Plans</b>				
<b>Demolition Plan</b>	1703 ap09	ATJ Architects	G	<b>May 2024</b>
<b>Site Plan</b>	1703 ap01	ATJ Architects	G	<b>May 2024</b>
<b>Floor Plans</b>	1703 ap02	ATJ Architects	G	<b>May 2024</b>
<b>Elevations</b>	1703 ap03	ATJ Architects	G	<b>May 2024</b>
<b>Sections &amp; Basix Notes</b>	1703 ap04	ATJ Architects	G	<b>May 2024</b>
<b>Landscape Plans</b>				
<b>Landscape Plan</b>	L-01	RFA Landscape Architects	F	May 2024

**Documents**

9628a	Addendum to Redgum Horticultural report	30 April 2024	Redgum Horticultural
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- 2 The building work must be carried out in accordance with the requirements of the Building Code of Australia. If the work relates to a residential building and is valued in excess of \$20,000, then a contract of insurance for the residential development shall be in force in accordance with Part 6 of the Home Building Act 1989.

Note: Residential building includes alterations and additions to a dwelling, and structures associated with a dwelling house/dwelling such as a carport, garage, shed, rural shed, swimming pool and the like.

- 3 All aspects of the design of the approved building must comply with the applicable performance requirements of the Building Code of Australia (BCA) 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 under the BCA can only be achieved by:
- (a) Complying with the deemed to satisfy provisions, or
  - (b) Formulating an alternative solution which:
    - i. Complies with the performance requirements, or
    - ii. Is shown to be at least equivalent to the deemed to satisfy provision, or
  - (c) A combination of (a) and (b).

- 4 All roadworks, stormwater drainage works, associated civil works and dedications, required to give effect to the approved development shall be undertaken at no cost to Penrith City Council.

## II. Prior to the issue of a Construction Certificate

- 5 **Prior to the issue of a Construction Certificate** an updated BASIX Certificate is to be provided to the Principal Certifier reflecting the development stated in Condition 1 of this consent. The Certifier is to ensure the Construction Certification plans reflect all commitments outlined in the updated BASIX Certificate.
- 6 Prior to the issue of any Construction Certificate, the Certifier shall ensure that any applicable application, including the payment of application and inspection fees, has been lodged with and approved by Transport for NSW (TfNSW) for any works within the (Classified Road Name) road reserve.

A copy of TfNSW approval shall be submitted to Penrith City Council prior to Penrith City Council issuing any Roads Act approval.

## Asbestos Material Survey

- 7 Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- A. the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- B. all removal must be in strict accordance with the requirements of the Work Cover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements.
- C. during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- D. Waste disposal receipts must be provided to the Principal Certifier as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

- 8 **Prior to the issue of a Construction Certificate**, the Principal Certifier shall ensure that the external materials and finishes provide for a minimum Solar Reflectance Index of 34. These amendments must be shown on the Construction Certificate plans.
- 9 The stormwater management system shall be consistent with the plan/s lodged for development approval, prepared by Promark, reference number 27112017, revision D, dated 31.01.2022.

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

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

- 10 **Prior to the issue of a Construction Certificate**, the Principal Certifier shall ensure that the foundations of proposed structures adjoining any drainage and/or services easement have been designed clear of the zone of influence.
- 11 **Prior to the issue of a Construction Certificate**, a site-specific Tree Protection Plan (Specification) and Drawing shall be prepared by a qualified arboricultural consultant with a minimum Level 5 qualification (AQF – Australian Qualification Framework) in accordance with the conditions of this consent and Section 5 of AS 4970 – 2009, *Protection of trees on development sites*.

NB: Should demolition of existing buildings and structures be proposed prior to the issue of a Construction Certificate a separate site-specific Tree Protection Plan (Specification) and Drawing will be required to protect all trees on the site during the demolition process. The plan shall provide methodologies for the removal of structures within Tree Protection Zones (TPZ's) and be in accordance with all other Tree Protection requirements provided in this consent. This individual plan will be required to be provided to Penrith City Councils Senior Tree Management Officer for final approval **prior to demolition**. The approved Tree Protection Plan (Specification) and Drawing for demolition is to be retained and implemented on site at all times.

The Tree Protection Plan (Specification) and Drawing(s) shall specifically address, but not be limited to:

- i. Location/s of the tree protection fence and specifications for ground protection for all trees to be retained and protected, noting that Trees 3, 4,6,7,8,9,10 (numbering in accordance with Appendix C- Site Plan A- Survey of Subject trees within the Arboricultural Impact Assessment & Tree Management plan prepared by Redgum Horticultural revised 19 January 2024 ( ref 9628) are to be retained and protected.
- ii. Instruction to where trunk and branch protection will be required (including pruning or temporary tying back of branches) during the stage/s of construction.
- iii. Provision of an individual Tree Protection Plan (Specification) and Drawing for each stage of the development; particularly where changes within the TPZ are required (i.e. prior to commencement, demolition, during construction, post-construction and landscaping, etc).
- iv. Removal of approved vegetation to ensure vegetation to be retained is not damaged during the removal process, particularly in regard to the removal of stumps located within the TPZ of a tree to be retained.

In addition, the arboricultural consultant is to identify key stages where monitoring and certification will be required as outlined in AS 4970 – 2009, Section 5, particularly where:

- i. There are works undertaken within an area designated by a Tree Protection Fence
- ii. Any in ground work within a TPZ is to be undertaken (fenced or unfenced)
- iii. There is a requirement for a change the alignment of tree protection fences, and
- iv. At any other times that the approved Tree Protection Plan (Specification) & Drawing prescribes.

The completed Tree Protection Plan (Specification) and Drawing is to be provided to Penrith City Councils Senior Tree Management Officer for final approval **prior to the issue of a Construction Certificate**. The approved Tree Protection Plan (Specification) and Drawing(s) are to be retained and implemented on site at all times.

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

- 14 **Prior to the issue of a Construction Certificate**, the Principal Certifier shall be satisfied that any

telecommunications infrastructure installed to service the approved development, must comply with the following:

- i. The requirements of the Telecommunications Act 1997;
- ii. For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
- iii. 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 approved development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

- 15 **Prior to the issue of a Construction Certificate**, lodgement of relevant Section 138 Roads Act application, including payment of application and Council fees together with any applicable bonds, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road).

You are required to lodge the applicable Section 138 Roads Act application for the below works that apply to your specific development prior to that work activity commencing. Please liaise with your builder to determine what applications are required for your development.

These works may include but are not limited to the following:

- a) Construction of driveways (including kerb reinstatement of redundant driveway crossings and reconstruction of any affected footpaths and/or cycleways)
- b) Temporary road reserve occupancies
- c) Road reserve openings for the installation of:
  - i. Utilities (water, sewer, power, telecommunications)
  - ii. Private stormwater connections to the kerb (including stormwater connection to Penrith City Council owned drainage)
  - iii. Reconstruction of concrete footpath and/or cycleways across the frontage
- d) Establishment of a construction work zone
- e) Establishment of road reserve hoardings and temporary structures/fencing etc.
- f) Operation of a tower crane over the road reserve
- g) Temporary ground anchors that encroach below the road reserve (for basement construction)

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

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

- 16 Prior to the issue of any Construction Certificate, the Certifier shall ensure that 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.
- 17 A Waste Management Plan is to be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- (d) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
  - (e) The design of the on-site waste storage and recycling area; and
  - (f) Administrative arrangements for waste and recycling management during the construction process.

### **Garbage and Recycling Facilities**

- 18 All areas on the premises which are used for the storage of garbage bins and recycling containers and all

waste and recyclable material generated must meet the following requirements :

- a) all internal walls of the storage area must be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained with a tap in close proximity to facilitate cleaning;
- b) provision for the separation and storage in appropriate categories of material suitable for recycling;

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

### Maintain Property Boundary Alignment Levels

- 19 Except where otherwise approved in these Conditions of Consent, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.
- The Principal Certifier must ensure that the building plans and specifications submitted for approval, referenced on and accompanying the issued Construction Certificate, and satisfy the requirements of this condition.

### Adaptable Housing

- 20 The adaptable apartments identified in the application are to be designed with accessible features for disabled persons and must incorporate level entries and wider doorways and corridors, slip resistant surfaces, reachable power points, disabled toilet, and lever door handles and taps. These features are to be designed generally in accordance with the relevant Australian Standard 42gg - 1995. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

### BASIX Certificate

- 21 Under clause 75 of the Environmental Planning and Assessment Regulation 2027, it is a condition of this development consent that all the commitments listed in BASIX Certificate. No. 1205894M\_02 dated 19 August 2021 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.
- 22 This condition is imposed in accordance with Penrith City Council's Contributions Plan for Cultural Facilities. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$1,474.00 is to be paid to Penrith City 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 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 contributions invoice accompanying this consent should accompany the contribution payment. The Cultural Facilities Development Contributions Plan may be inspected at Council's Civic Centre, 601 High Street, Penrith and is also available on Council's website.

- 23 This condition is imposed in accordance with Penrith City Council's Contributions Plan for District Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$11,364.00 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 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 Contributions invoice accompanying this consent should accompany the contribution payment. The Penrith City District Open Space Facilities Development Contributions Plan may be inspected at Council's Civic Centre, 601 High Street, Penrith and is also available on Council's website.

- 24 This condition is imposed in accordance with Penrith City Council's Contributions Plan for Local Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$4,109.00 is to be paid to Penrith City Council **prior to a Occupation 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 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 contributions invoice accompanying this consent should accompany the contribution payment. The Penrith City Local Open Space Development Contribution Plan may be inspected at Council's Civic Centre, 601 High Street, Penrith and is also available on Council's website.

- 25 Prior to the issue of any Construction Certificate, the Principal Certifier shall ensure that all proposed construction work within the Tree Protection Zone (TPZ) of Tree 4 complies with the requirement to be constructed using pier and beam construction with a suspended slab to reduce any impact on the stability of the tree. In addition, there to be no increase of impervious surfaces within the TPZ of Tree 4. Any deviation from these requirements cannot be approved by the Principal Certifier without written consent from Penrith City Council's Senior Tree Management Officer.

### III. Prior to the commencement of any works

- 26 **A Construction Certificate** must be obtained prior to commencement of any building works.
- 27 An Infrastructure Restoration Bond is to be lodged with Penrith City Council where development involves works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council **prior to the commencement of any works on the site or prior to the issue of a Construction Certificate, whichever occurs first**. The bond and applicable fees are payable 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 City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

- 28 **Prior to commencement of any demolition works on the site:**
- i. Any appropriate measures must be in place to comply with the SafeWork NSW Authority's "Short Guide to Working with Asbestos Cement" and
  - ii. The person employed to undertake the works must be a licensed asbestos removal contractor and a holder of a current SafeWork NSW Asbestos License. Any demolition works involving the removal of any asbestos from the site must only be carried out by a licensed asbestos removal contractor who holds a current SafeWork NSW Asbestos License.
  - iii. Any asbestos-laden waste, including asbestos cement flat and corrugated sheeting, must be disposed of at a tipping facility that is licensed by the Environmental Protection Authority to receive asbestos wastes.

Advisory note:

Please refer to Council's Fact Sheet titled "Handling and Disposal of Fibrous Cement Products".



29 **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements. All demolition works are to be conducted in accordance with AS 2601-2001 - *The Demolition of Structures*. SafeWork NSW requirements apply to demolition work and compliance with those requirements, including the *SafeWork NSW Code of Practice Demolition Work August 2019*, is required.

30 **Prior to the commencement of any works**, sediment and erosion control measures shall be installed to ensure compliance with the Protection of the Environment Operations Act 1997 and Managing Urban Stormwater series from the Office of Environment and Heritage.

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

31 **Prior to the commencement of any 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:

- i. A standard flushing toilet connected to a public sewer, or
- ii. If that is not practicable, an accredited sewage management facility approved by Council, or
- iii. Alternatively, any other sewage management facility approved by Council.

(b) All excavations and backfilling associated with the erection or demolition of the approved development 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 the approved development extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- i. Must preserve and protect the building from damage, and
- ii. If necessary, must underpin and support the building in an approved manner, and
- iii. Must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice to the owner of the adjoining allotment of land of his or her intention to do so and furnish particulars of the excavation to the owner. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of the approved development is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work Site and the public place:

- i. If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- ii. The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- iii. Any such hoarding, fence or awning is to be removed when the work has been completed.

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

- i. employ a Principal Certifier 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 Environmental Planning and Assessment Regulation, and
- ii. submit a Notice of Commencement to Penrith City Council.

Information to accompany the Notice of Commencement

- 33 Two days before any earthworks, construction or demolition works are to commence on site (including the clearing of site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 6.6 of the Environmental Planning and Assessment Act 1979.

#### IV. During Construction Works

- 34 A qualified Arboricultural Consultant with a minimum AQF (Australian Qualification Framework) Level 5 qualification shall be retained for the duration of the demolition and construction of the development. The consultant shall be engaged to ensure that tree protection measures on the site are imposed as per the conditions contained in any approved consent and/or the approved Tree Protection Plan (Specification) & Drawing required by this consent.

(a) The appointed Project Arborist shall also:

- i. Clearly identify those trees approved for removal and those to be retained and protected.
- ii. Be present on-site during demolition and any of the key stages identified in the schedule required in the Tree Protection Plan (Specification) & Drawing.
- iii. Undertake inspections not less than monthly and at the critical checkpoints listed in the Tree Protection Plan (Specification) & Drawing.
- iv. Ensure all TPZs are maintained as per AS4970 - 2009, Section 4.6. Access to the TPZ is permitted to undertake necessary maintenance such as mowing, watering & weed control.
- v. Be present on-site to supervise all excavation works within the TPZ of Tree 4 and ensure that all piers are to be dug only by hand with non-motorised machinery.
- vi. Keep a written record (e.g. field notes and photos) to provide evidence of compliance with the approved Tree Protection Plan (Specification) & Drawing at times when they are present on site and when inspection at critical checkpoints is required.
- vii. Forward the written record of inspection to the Principal Certifier within 1 week of that inspection occurring.
- viii. Where there is a breach of the Tree Protection Plan (Specification) & Drawing, the project arborist must specify any remedial works and the timeframe in which these works must be completed.
- ix. If an inspection reveals that there has been a significant breach of the Tree Protection Plan (Specification) & Drawing, inspections from then on must be carried out weekly.

A written account of the satisfactory completion of each of these stages as assessed by the consulting arborist is to be reported to the Principal Certifier.

- 35 Approval is granted for the removal of Trees 1, 2 & 5 (numbering in accordance with Appendix C- Site Plan A- Survey of Subject trees within the Arboricultural Impact Assessment & Tree Management plan prepared by Redgum Horticultural revised 19 January 2024 ( ref 9628) All other trees on the subject site are to be retained.

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).

Do not stump grind roots of any tree to be removed that is located within the TPZ of any tree to be retained. Stumps are to be removed in a manner that does not cause damage to the root system of trees to be retained.

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.

- v. , Trees 3, 4,6,7,8,9,10 (numbering in accordance with Appendix C- Site Plan A- Survey of Subject trees within the Arboricultural Impact Assessment & Tree Management plan prepared by Redgum Horticultural revised 19 January 2024 ( ref 9628) are to be retained and protected

- 36 as per the conditions below and the approved Tree Protection Plan (Specification) and Drawing(s) required by this consent and approved by Councils Senior Tree Management Officer.

Failure to comply with these conditions is an offence and may incur a fine or lead to prosecution.

Tree protection measures shall comply with *AS 4970-2009 Protection of trees on development sites*, together with the following conditions:

- i. The tree/s to be retained and protected together with their relevant Tree Protection Zone (TPZ)) shall be marked on all demolition and construction drawings. The marking of the plan shall indicate that work within that area will be subject to further conditions provided in the approved Tree Protection Plan (Specification) and Drawing(s).
- ii. All contractors and workers on site shall be briefed on the tree protection and management procedures in place as part of their site induction. A written record of the induction process is to be kept on site.
- iii. A 1.8m high chain link wire tree protection fence that complies with Section 4.3 of AS 4970 - 2009, Protection of trees on development sites; or appropriate trunk and ground protection shall be erected around the above trees to be retained. The tree protection is to be installed prior to demolition / construction, shall remain in place for the duration of the site works.
- iv. The applicant will display in a prominent location on the fencing of each protection zone a durable, weather resistant sign having a minimum dimension of 500mm high x 400mm wide of similar design and layout as per Appendix C, *Australian Standard AS4970-2009 Protection of trees on development sites* clearly showing:
  - a) The Development Consent number.
  - b) The name and contact number of the nominated consultant arborist and site manager.
  - c) Indication that access into the Tree Protection zone is not permitted.
- v. The above notice is to be in place prior to commencement of demolition or construction.
- vi. Fences are to be inspected on a regular basis to ensure that they are intact, comply with the above standard, installed to the appropriate dimensions and provide effective protection for the tree to be retained.
- vii. The TPZ shall be maintained as per AS4970 - 2009, Section 4.6. Access to the TPZ is permitted to undertake necessary maintenance such as mowing, watering & weed control.
- viii. No vehicular access, excavations for construction or installation of services shall be carried out within the fenced Tree Protection Zone.
- ix. Building materials, chemical storage, site sheds, wash out areas, and similar shall not be located within the fenced Tree Protection Zone.
- x. Trees marked for retention must not be damaged or used to display signage, or as fence or cable supports for any reason.
- xi. If tree roots are exposed during approved works, roots with a diameter less than 25mm are to be pruned cleanly using sharp hand tools and not torn or ripped by machinery. Tree roots greater than 25mm in diameter are to be assessed by a qualified arborist - minimum Australian Qualification Framework (AQF) Level 5 or equivalent – before any pruning work is undertaken. If necessary, changes in design or relocation of works may be required.

37 A demolition plan in accordance with Council DA submission requirements shall be submitted to the Principal Certifying Authority prior to issue of the Construction certificate. Structures nominated for demolition on the approved plans shall be demolished as part of the approved works.

38 Regulatory obligations (including licensing and notification requirements) for the management, control and removal of asbestos are prescribed in the following:

- i. Work Health and Safety Act 2011,
- ii. Work Health and Safety Regulation 2017,
- iii. 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, and AS 2601-2001 - 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.

- 39 Dust suppression techniques are to be employed during the carting out of any demolition works, to reduce any potential nuisance from dust, to surrounding properties.
- 40 During the carrying out of any construction or demolition works, all mud and soil from vehicular movements to and from the site, must be cleaned to avoid being deposited on any public road.
- 41 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 Principal Certifier. The Validation Certificate shall:
  - i. State the legal property description of the fill material source site,
  - ii. Be prepared by an appropriately qualified person (as defined in Penrith Contaminated Land Development Control Plan) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
  - iii. Clearly indicate the legal property description of the fill material source site,
  - iv. Provide details of the volume of fill material to be used in the filling operations,
  - v. Provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
  - vi. Provide confirmation (based on the fill classification) 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 (as defined in the Penrith Development Control Plan 2014) shall:

- i. Supervise the filling works,
- ii. Carry out an independent review of all documentation relating to the filling of the site upon completion of the approved filling works, and submit a report of his or her findings to the Council and any Principal Certifier,
- iii. Certify by way of a Compliance Certificate or other written documentation that all fill materials that have been placed on the site, comply with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to the Principal Certifier.

The contact details of any appropriately qualified person/s engaged for the works shall be provided with the Notice of Commencement.

If the Principal Certifier is not satisfied that suitable fill materials have been used on the site, further Site investigations or remediation works may be requested to be carried out. In these circumstances, such further site investigations or remediation works shall be carried out prior to the carrying out of any other works approved under this consent.

- 42 All demolition works and 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 are to be fully enclosed when the site is unattended.
- 43 Waste materials associated with the demolition works are to be classified and disposed of at a lawful waste facility, or, if suitable, re-used or recycled in accordance with the approved waste management plan.

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.

- 44 Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.

If mains sewer is not available or if Sydney Water will not allow disposal to the sewer, then a suitable waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.

Waste licensing requirements apply in NSW. Where required, the waste contractor and waste facility are to be licensed by the NSW Environment Protection Authority. Reference should be made to the NSW Environment Protection Authority for licensing requirements.

- 45 The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.
- 46 Approved plans, specifications, a copy of this development consent, the Construction Certificate and any other Certificates that are relied upon, shall always be available on-site during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- i. The name of the Principal Certifier, their address and telephone number,
- ii. The name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- iii. That unauthorised entry to the work site is prohibited,
- iv. The designated waste storage area must be covered when the site is unattended, and
- v. 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 details required by this condition are to be erected:

- i. At the commencement of, and for the full length of the, construction works on site, and
- ii. 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.

- 47 Construction works that are carried out in compliance with this consent, and which involve the use of heavy vehicles, heavy machinery, and any other equipment likely to cause noise or vibration impacts to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- i. Mondays to Fridays, 7.00am to 6.00pm.
- ii. Saturdays, 7.00am to 1.00pm if inaudible on neighbouring residential premises, otherwise 8.00am to 1.00pm.
- iii. No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building and which 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.

- 48 All landscape works are to be constructed in accordance with the stamped approved plans and Chapter C6 Landscape Design of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- i. in accordance with the endorsed plans required by this consent, and
- ii. 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.

- 49 All plant material associated with the construction of approved landscaping is to be planted in compliance with Appendix F5, Landscape Technical Specifications and Chapter C6 Landscape Design of the Penrith Development Control Plan 2014.
- 50 All landscape works are to meet industry best practice and the following relevant Australian Standards:
  - i. AS 4419 Soils for Landscaping and Garden Use,
  - ii. AS 4454 Composts, Soil Conditioners and Mulches, and
  - iii. AS 4373 Pruning of Amenity Trees.
- 51 No trees are to be removed, ringbarked, cut, topped or lopped or willfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

#### **V. Prior to the issue of an Occupation Certificate**

- 52 **The approved development shall not be used or occupied until an Occupation Certificate has been issued.**
- 53 **Prior to the issue of an Occupation Certificate**, the Principal Certifier shall ensure that an adequate irrigation system is in place for the garden beds.
- 54 A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifier **prior to the issue of an Occupation Certificate**.

- 55 **Prior to the issue of an Occupation Certificate**, a lighting system shall be installed for the development to provide uniform lighting across common areas and driveways. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).
- 56 **Prior to the issue of an Occupation Certificate**, written certification from all relevant service providers must be submitted to the Principal Certifier, certifying that the telecommunications infrastructure has been installed in compliance with the conditions of this consent and the applicable legislation at the time of construction of the approved development.
- 57 **Prior to the issue of an Occupation Certificate**, the Principal Certifier shall ensure that all works associated with the Section 138 Roads Act approval have been inspected and signed off by Penrith City Council.
- 58 **An Occupation Certificate is to be obtained from the Principal Certifier on completion of all works and prior to the occupation of the buildings.**

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding. A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifier.

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

An original set of works-as-executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Penrith City Council is not the Principal Certifier

- 60 **Prior to the issue of an Occupation Certificate**, the Principal Certifier shall ensure that the stormwater management systems (including on-site detention and water sensitive urban design) and overland flowpath works:
- i. have Been satisfactorily completed in accordance with the approved Construction Certificate or Subdivision Works Certificate and the requirements of this consent;
  - ii. have met the design intent with regard to any construction variations to the approved design, and;
  - iii. any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works As Executed drawings.

- 61 On 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 Certifier attesting to the satisfactory completion of the landscaping works for the development. The report is to be prepared by suitably qualified and experienced landscape professional.

**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 Certifier, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

- 62 The rainwater tanks are to be:
- i. Installed in the locations shown on the stamped-approved site plans for the development;
  - ii. Structurally sound and constructed in accordance with AS/NZS 3500 1.2- 1998: National Plumbing and Drainage - Water Supply - Acceptable Solutions;
  - iii. Fully enclosed and all openings sealed to prevent access by mosquitoes;
  - iv. Fitted with a first flush device;
  - v. Fitted with a trickle system to top up from mains water;
  - vi. Provided with an air gap; and
  - vii. Installed by a licensed plumber in accordance with Sydney Water's "Plumbing requirements Information for rainwater tank suppliers and plumbers April 2003" and the NSW Code of Practice: Plumbing and Drainage.

Additionally, the following are to be provided:

- i. A back-flow prevention device shall be provided at the water meter in accordance with Sydney Water requirements.
- ii. In the event of a power failure, a backup supply of mains water shall be provided to at least one toilet in the dwelling.
- iii. The rainwater tank(s) and associated piping is to be labelled 'Rainwater - Not for Drinking' in accordance with Sydney Water requirements.

- iv. The rainwater tank and pipework are to be painted in colours matching the external finishes of the dwelling and are to be of non-reflective finish.
- v. The overflow for the rainwater tank is to be connected into the existing stormwater disposal system on the site.

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

- i. The Manufacturer's Specifications, and
- ii. Sydney Water and NSW Health requirements.

This certificate or documentation is to be provided by the licensed plumber who installed the rainwater tank on the property and is to be submitted to the Principal Certifier **prior to the issue of the Occupation Certificate**.

63 **Prior to the issue of an Occupation Certificate**, the Principal Certifier shall ensure that upon completion of all works in the road reserve, all verge areas fronting the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.

64 **An Occupation Certificate is to be obtained from the Principal Certifier on completion of all works and prior to the occupation of the development.** The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifier.

### House Numbering (Dwellings)

- 65 Prior to any Occupation Certificate being issued an application must be made to Penrith City Council for written confirmation, or allocation, of the street address(es) or apartment number(s) for the completed project in accordance with Council's Property Addressing Policy. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2011.
- 66 If apartments are to be sold off the plan, the applicant must have written confirmation from Council of the address and apartment numbering if the apartment number is to be identified on the contract.

### Landscaping

- 67 The landscaping shown in the approved landscape plan as required by these conditions must be completed prior to the issue of any Occupation Certificate.

### Landscape Maintenance Plan

- 68 Prior to the issue of any Occupation Certificate, a Landscape Maintenance Plan, based on the landscape plans, prepared by RFA Landscape Architects dated 19 April 2024 must be submitted for the written approval of Council's Arboricultural Landscape Development Officer to ensure the ongoing viability and vigour of plant species, the practicalities of undertaking landscape maintenance are met as well as the retention of the intended aesthetic values of the Landscape Plan, including but not limited to:
  - i. Maintenance and usage of irrigation
  - ii. Mowing schedule
  - iii. Fertilizing schedule



- iv. Pruning and trimming schedule
- v. Re-mulching Replanting schedule
- vi. Replacement Schedule
- vii. Cleaning of exterior pavements,
- viii. Disposal of landscape waste

## **VI. Operational**

- 69 The stormwater management system shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan.

Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the stormwater management systems.

- 70 The rainwater tank pump must not exceed 5dBA above ambient background noise level at the nearest residential property boundary. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

- 71 All visitor car spaces are to be dedicated for the parking of vehicles only and are not to be used for the storage of materials, products, waste materials and the like.

### **72 Affordable Housing Requirement**

- (a) The dwelling proposed to be used for the purposes of affordable housing (being Unit 1 shown on Site Plan, 1703 ap01 (Rev G) prepared by ATJ Architects dated May 2024) is to be used for this purpose for a minimum of 10 years from the date of the issue of the occupation certificate.
- (b) Written confirmation of the proposed dwelling to be used for this purpose in accordance with the Affordable Housing provisions is to be provided to Council prior to the issue of the occupation certificate.
- (c) A restriction must be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the [Conveyancing Act 1919](#), that will ensure that the requirements of paragraph (a) are met.
- (d) All accommodation that is used for affordable housing will be managed by a registered community housing provider.

## **Waste Management Plan**

- 73 The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

## **Noise from Plant and Equipment**

- 74 The use of all plant and equipment installed on the premises must not:

- a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry 2017 shall be applied.
- b) Cause "offensive noise" as defined in the Protection of the Environment Operations Act 1997.

**National Construction Code**

75 All building work must be carried out in accordance with the provisions of the National Construction Code

**Maintenance of Approved Landscaping**

76 The owners of the premises at No. 312 Great Western Highway is to maintain the landscaping approved by this consent in accordance with Landscape Plan prepared by RFA Landscape Architects dated 19 April 2024.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approve. Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for non-deciduous or the reverse of any these) a modification to this consent will be required'.

## ADVISORY NOTES

### DEVELOPMENT CONSENT ADVICE

- (a) You are advised to consult with your utility providers (i.e. Energy Aust, Telstra etc) in order to fully understand their requirements before commencement of any work.
- (b) Dial Before You Dig Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets, please contact Dial before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before You Dig service in advance of any construction or planning activities.
- (c) Telstra Advice - Telecommunications Act 1997 (Commonwealth) Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Commonwealth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800810443.
- (d) All asbestos fibre demolition material and asbestos dust shall be handled, stored and removed in accordance with the relevant legislation and guidelines including: i) Work Health and Safety Act 2011 ii) Work Health and Safety Regulation 2011 iii) Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (2005)] iv) Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)] v) Protection of the Environment Operations (Waste) Regulation 2005
- (e) All work procedures shall be devised to minimise the release of dust and fibres. A checklist of safety precautions when working with asbestos is available in Health & Safety Guidelines prepared by the WorkCover Authority of NSW. Collection, storage and transportation is subject to the Protection of the Environment Operations (Waste) Regulation 2005.
- (f) Demolition and construction shall minimise the emission of excessive noise and prevent "offensive noise" as defined in the Protection of the Environment Operations Act 1997. Noise reduction measures shall include, but are not limited to the following strategies: i) choosing quiet equipment ii) choosing alternatives to noisy activities iii) relocating noise sources away from affected neighbours iv) educating staff and contractors about quiet work practices v) informing neighbours of potentially noise activities in advance vi) equipment, such as de-watering pumps, that are needed to operate on any evening or night between the hours of 8 p.m. and 7 a.m. or on any Sunday or Public Holiday, shall not cause a noise nuisance to neighbours of adjoining or nearby residences. Where the emitted noise exceeds 5 dB(A) [LAeq(15m)] above the background sound level [LA90] at the most affected point on the nearest residential boundary at any time previously stated, the equipment shall be acoustically insulated, isolated or otherwise enclosed so as to achieve the sound level objective.
- (g) All site works shall comply with the occupational health and safety requirements of the NSW WorkCover Authority.
- (h) In the event of any inconsistency between conditions of this approval and the drawings/documents referred to in condition 1, the conditions of this approval prevail.

## **ADDITIONAL INFORMATION**

To confirm the date upon which this consent becomes effective, refer to Section 4.20 of the Environmental Planning and Assessment Act, 1979. Generally, the consent becomes effective from the determination date shown on the front of this notice. However, if unsure applicants should rely on their own enquiries.

To confirm the likelihood of consent lapsing, refer to Section 4.53 of the Act. Generally, consent lapses if the development is not commenced within five years of the date of approval. However, if a lesser period is stated in the conditions of consent, the lesser period applies. If unsure applicants should rely on their own enquiries.