

JRPP No.	2011SYW069
Application Number	DA11/0546
Local Government Area	Penrith City Council
Applicant	Middle East Pty Ltd
Proposed Development	116 Lot Subdivision
Property Description	Lots 50-58 DP 1069025
Property Address	731-769 Great Western Highway (corner French Street), Werrington
Date Received	30 May 2011
Type of Development	Integrated Development
Capital Investment Value	Capital Investment Value = \$10.25 Million
Assessing Officer	Karl Berzins- Consultant Planner
Recommendation	Approval

Assessment Report and Recommendation

Executive Summary

Council is in receipt of a Development Application which proposes a 116 Lot subdivision within the northern part of the WELL precinct. This application has a construction investment value of \$10.25 million and was submitted to Council when the threshold for referral to the Joint Regional Planning Panel (JRPP) was for developments greater than \$10 million.

The development will be staged over four stages providing a total of 110 residential allotments. Four of these lots are "super lots". The proponent has also lodged a development application for four multi storey buildings containing 250 dwellings on the super lots in Stage 2 of the development. This development application will be reported separately to a future JRPP meeting.

The subject land is zoned under Penrith LEP 1998 (Urban Lands) and contains the following zones: 10(a) Mixed Use – Residential, 10(b) Mixed Use – Employment and 5(a) Special Use – Army. Three lots will be created in the 10(b) Mixed Use – Employment and the 5(a) Special use land will be contained within a residue allotment.

The proposal is defined as 'Integrated Development' as General Terms of Approval were required from the NSW Office of Water under the Water Management Act 2000. The General Terms of Approval have been issued for the proposed development. The proposal also requires a bushfire safety authority from the Rural Fire Service as per the provisions of Section 100B of the Rural Fires Act 1997. The requisite bushfire safety authority has been issued.

The 110 lot subdivision generates a Section 94 monetary contribution of \$3million pursuant to Council's resolution of June 2011 to implement the WELL Precinct Section 94 Plan.

The applicant has offered to enter into a Voluntary Planning Agreement (VPA) with Council for:

- full provision of Section 94 works and contributions for the 110 lot subdivision and;
- provides \$0.6million in funds to cover future development for which Council may be severely limited in obtaining monetary contributions for infrastructure resulting from changes to legislation or Ministerial directions.

At its Ordinary meeting of the 10th December 2012, Council resolved to enter into a Voluntary Planning Agreement (VPA) with the proponent.

The proposed development was notified to adjoining property owners and placed on public exhibition on two occasions from 13 June 2011 to 13 July 2011 and from 26 March to 27 April 2012. A total of thirteen submissions were received and these submissions are addressed in this report.

The application has been assessed under Section 23G and Section 79C of the *Environmental Planning and Assessment Act 1979* (as amended). Having regard to the matters discussed in this report, the application is recommended for approval, subject to the imposition of conditions.

Background

This application has a construction investment value of \$10.25 million and was submitted to Council when the threshold for referral to the Joint Regional Planning Panel (JRPP) was for developments greater than \$10 million. Under changes made in September 2011 development applications with a CIV between \$10 million to \$20 million lodged with Council before 1 October 2011 will continue to be determined by the JRPP.

Progress in the assessment of the development application has been reported to the JRPP on 14 July 2011 and 30 August 2012. Since the matter was last reported to the JRPP, the proponent and Council officers have met on a number of occasions to resolve some key issues such as permissibility of the proposed development, intersection alignment with respect to the French/George Street intersection, the encroachment of residential development into the employment zoned land to the south, Section 94 contributions and offsets.

As a result of these discussions the proponent has amended the proposal. The proponent has deleted a subdivision pattern over land zoned Special Uses (5a) in the north-eastern corner of the site. The road layout intersection with George Street has also been realigned to resolve previously identified traffic concerns. This new realignment provides for residential development 20 metres south of the zone boundary that runs in an east-west direction through the site.

The proponent has also lodged a development application for four multi storey buildings containing 250 dwellings on the super lots in Stage 2 of the development. This development application will be reported separately to a future JRPP meeting.

The Section 94E direction issued by the Minister for Planning in March 2011 has impacted on the total amount of Section 94 contributions that can be levied from the developers of the release areas in Penrith. This will result in a substantial impost on Council's finances and could result in the paring back of the level of infrastructure to be provided within release areas. Council officers have discussed options with the proponent with respect to the provision of all infrastructure identified within the current relevant Section 94 contributions plans applying to the site.

Following numerous discussions with Council staff, the proponent has submitted a development contributions proposal. It should be noted that the three proposed industrial lots and the three residue lots are not subject to Section 94 contributions.

The developer in their offer have advised that they are prepared to enter into a Voluntary Planning Agreement (VPA) in lieu of carrying out works and paying monies to Council in accordance with Council's Section 94 Contributions Plan applying to the site.

Site and Surrounds

The site is an irregular shaped parcel of land consisting of nine separate allotments with a combined land area of 22.04 hectares and is known as the former Werrington Signals Site. The site is currently vacant and is largely clear of vegetation with the exception of scattered trees and several patches of remnant Cumberland Plain Woodland, primarily located along the north-south ephemeral drainage line which bisects the site.

The site is bounded by the main western railway line to the north, the Great Western Highway to the south, French Street and existing residential development to the west and the University of Western Sydney (Werrington North campus) to the east.



Figure 1: Location of proposal.

The Proposed Development

The proposal can be summarised as the staged subdivision of the land into one hundred and sixteen (116) lots. The stages and lots per stage are shown in the table

below:

Stage	No. of Lots	Indicative average lot size (m ²)	Description
1	3	25000	Employment Lots
2	4	2400	Medium Density super lots
	16	240	Residential allotments
	2	1650 & 430	Residue allotments
3	62	450	Residential allotments
4	28	(20 x 450), (8 x 240)	Residential allotments
	1	340	Residue allotment
Total	116		

The proposal also provides:

- Drainage

The proposal also provides for a central drainage reserve draining the site from the south to the north. The applicant has indicated that this land will be dedicated to Council. The stormwater derived from the subdivided land will be piped from individual lots and the street drainage system into two new basins that will have a regulating function with respect to water quantity and quality derived from the site. There is an existing drainage structure on the site which drains the three proposed employment lots. This drainage structure will be upgraded as part of the proposal.

- Construction of new public roads, including the roadway, pedestrian/cycle paths and street tree planting.
- Associated earthworks, stormwater drainage works and tree removal.

STAGE	No. OF LOTS	DESCRIPTION
1	3	EMPLOYMENT ZONE
2	4	MEDIUM DENSITY
	16	RESIDENTIAL ALLOTMENTS
	2	RESIDUE ALLOTMENTS
3	62	RESIDENTIAL ALLOTMENTS
4	28	RESIDENTIAL ALLOTMENTS
TOTAL	115	

STAGE 5 TO BE RESOLVED AT A LATER DATE

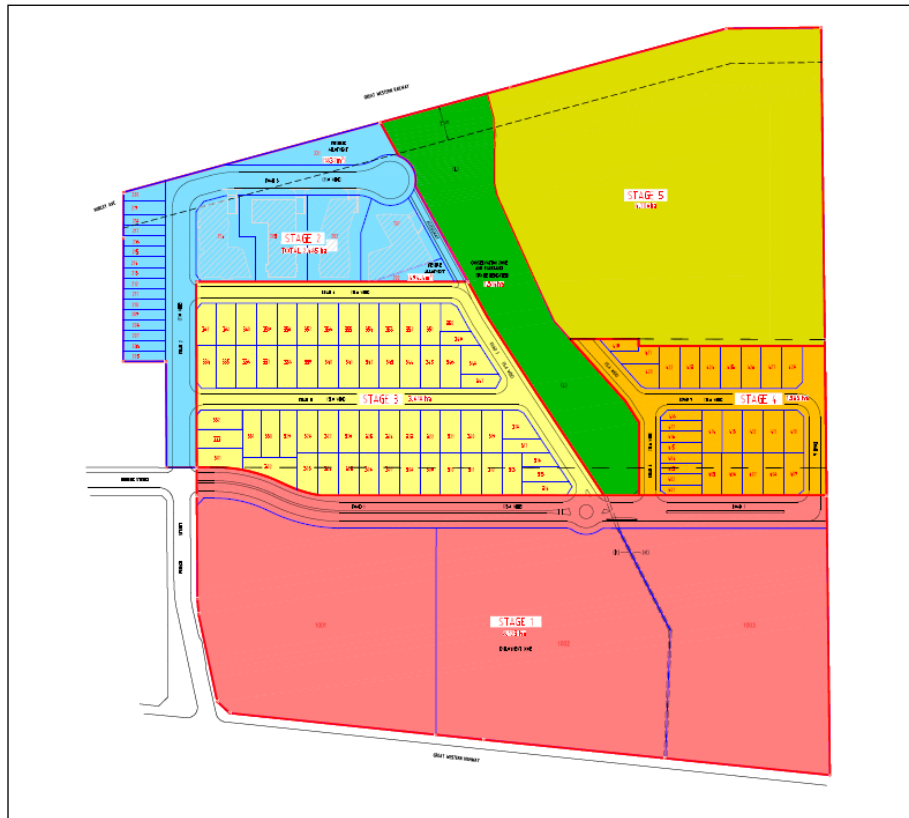


Figure 2: Subdivision design

Planning Assessment

The development has been assessed in accordance with the matters for consideration under Section 23G and 79C of the Environmental Planning and Assessment Act 1979 as follows:

Section 23G - Joint regional planning panels

A regional panel is empowered as a consent authority and may exercise any powers that would be vested in a consent authority under an environmental planning instrument. In this case, the regional panel is the consent authority as conferred on it under State Environmental Planning Policy (SEPP) (Major Development) 2005 due to the Capital Investment Value.

Section 79C(1)(a)(i) – Any Environmental Planning Instrument

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 provides that a consent authority must, prior to determining an application to which this clause applies, do the following:

- (a) *give written notice of the application to the RTA within 7 days after the application is made, and*
- (b) *take into consideration:*
 - (i) *any submission that the RTA provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RTA advises that it will not be making a submission), and*

- (ii) *the accessibility of the site concerned, including:*
 - (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) *the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
- (iii) *any potential traffic safety, road congestion or parking implications of the development.*

The application does not trigger the provisions of Schedule 3 of SEPP Infrastructure 2007 as the subdivision has less than 200 allotments and is more than 90 metres from a classified road.

State Environmental Planning Policy No.55- Remediation of Land

This policy aims to provide a state-wide approach to remediation of contaminated land. Of particular relevance to the current proposal are the requirements of Clause 7, which provides:

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The current application triggers the requirement for Council to consider whether the land is contaminated, and if so, whether Council is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is to be carried out (being residential development).

The proponent lodged two reports prepared by Dames & Moore in 1998 & 1999 entitled Final Report Stage 2 Remediation and Validation Kingswood Army Signals Depot for Department of Defence and Remedial Action Plan, Stage 2 Remediation Kingswood Army Signals Depot, Department of Defence.

An examination of Council rezoning files for the site shows that in 2003 Council received a copy of the Site Audit Report for the site. A statutory audit had been carried out at that time under the Contaminated Land Management Act & Regulation. This means the audit was carried out by an EPA accredited auditor in accordance with the stringent provisions of the legislation. Part of the process is the issue of a Site Audit Statement (SAS). The SAS issued confirmed that this site is suitable for residential uses including vegetables gardens, excluding poultry.

Four years later, the subject land was rezoned on the 13th February 2007 as Mixed Use Employment and Mixed Use residential under the provisions of Penrith LEP 1998 – Urban Lands.

The Department of Defence sold the subject land in 2005 and there have been a number of sales to different companies since that time. Site inspections have

revealed that there are a few waste stockpiles located on the site that have been deposited since 2005. The proponent has undertaken studies which indicate that these stockpiles can be decontaminated and removed from the site to a licenced waste management facility. This aspect can be addressed by conditions of development consent.

Therefore Council can be satisfied that the provisions of SEPP 55 are complied with, in that the site is not identified as contaminated and is therefore suitable for the proposed development.

Sydney Regional Environmental Plan No. 20- Hawkesbury Nepean

Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 – 1997) (REP 20) integrates planning with catchment management to protect the Hawkesbury-Nepean river system, requiring the impact of future land use to be considered in a regional context. The plan covers water quality and quantity, environmentally sensitive areas, riverine scenic quality, agriculture and urban and rural-residential development. It controls development that has the potential to impact on the river environment. The REP is supported by an Action Plan, which includes actions necessary to improve existing conditions.

The development proposal has been assessed and found to be in accordance with the general planning considerations set out in Clause 5 of the REP and the relevant specific planning policies and related recommended strategies set out in Clause 6.

Penrith Local Environmental Plan 1998 (Urban Land)

The subject land is zoned under Penrith LEP 1989 (Urban Lands) as shown on Figure 3 below and contains the following zones:

- 10(a) Mixed Use – Residential
- 10(b) Mixed Use – Employment
- 5(a) Special Use – Army

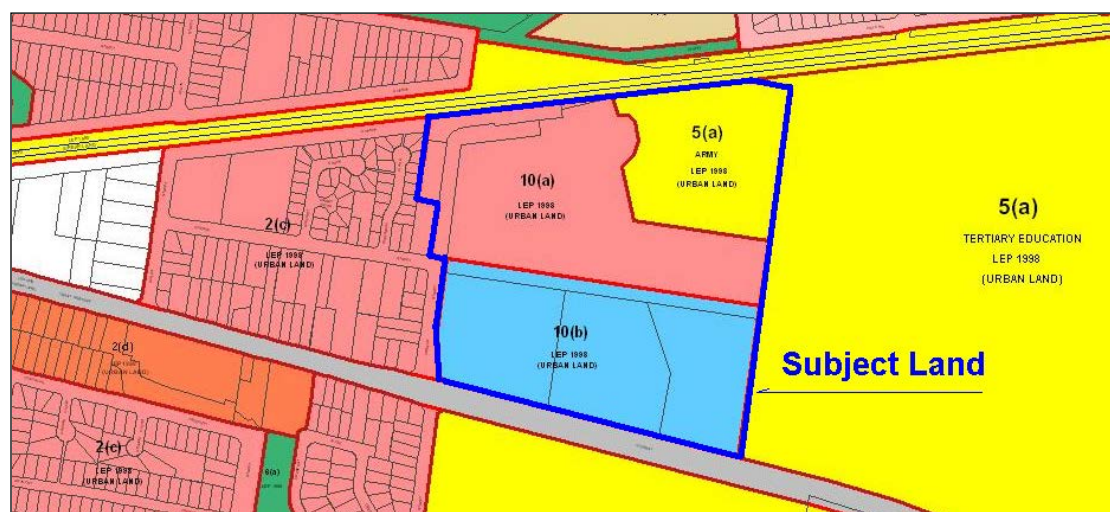


Figure 3 Zoning Map

(i) Permissibility

Subdivision is a permissible land use within the 10(a) Mixed Use – Residential and

10(b) Mixed Use – Employment zones. Subdivision is not permissible within the 5(a) Special Use – Army zone. The land use table to the LEP identifies dwelling houses as a permissible land use in the 10(a) Mixed Use (Residential) zone but not in the 10(b) Mixed Use (Employment) zone or 5 (a) Special Use (Army) zone.

Clause 19 of the LEP allows Council to approve future development within 20m of a zone boundary for any land use which may be permissible in that adjacent zone. The proposal has been designed so that the future residential element of the development extends into the employment zone by no more than 20m.

(ii) Objectives

The proposal is consistent with the planning objectives in that subdivision is providing for a mix of land uses for the City of Penrith and Western Sydney. The proposal sets aside adjoining the north-south drainage line running through the site for conservation purposes and this land will be dedicated to Council. The proposal has also been designed to enable the establishment of a railway station at some time in the future. Having regard to the relevant objectives, the development proposal is deemed appropriate.

(iii) Relevant Instrument Provisions

Clause 38(3) states that the council must not grant consent to development on land to which this clause applies unless it is satisfied the development demonstrates the following:

- (a) a high degree of accessibility, that is safe and direct, both within the site and between the surrounding residential areas and educational institutions,*
- (b) extensive provision has been made for pedestrian, vehicular and public transport access to and egress from the transport interchange,*
- (c) no direct vehicular access to development fronting the Great Western Highway,*
- (d) active street frontages with a high degree of surveillance along French Street,*
- (e) a high level of pedestrian amenity, including provision of pathways and cycleways within the site, and to and from surrounding development,*
- (f) a high level of environmental performance of buildings (including water management and energy efficiency),*
- (g) substantial compliance with the structure plan.*

The proposed road pattern meets objective (a). There is no commitment by the state government to a new railway station on or adjoining the subject land however the proposed road design does not preclude the establishment of railway station. There is no direct vehicular access from the subject land to Great Western Highway. The proposal contains active street frontages to French Street and the provision of pathways and cycle ways can be covered in conditions of development consent. The performance of buildings is not relevant to the determination of this application. The proposal is generally in compliance with the structure plan contained in the Werrington Mixed-Use Area Development Control Plan and shown in Figure 4 below.

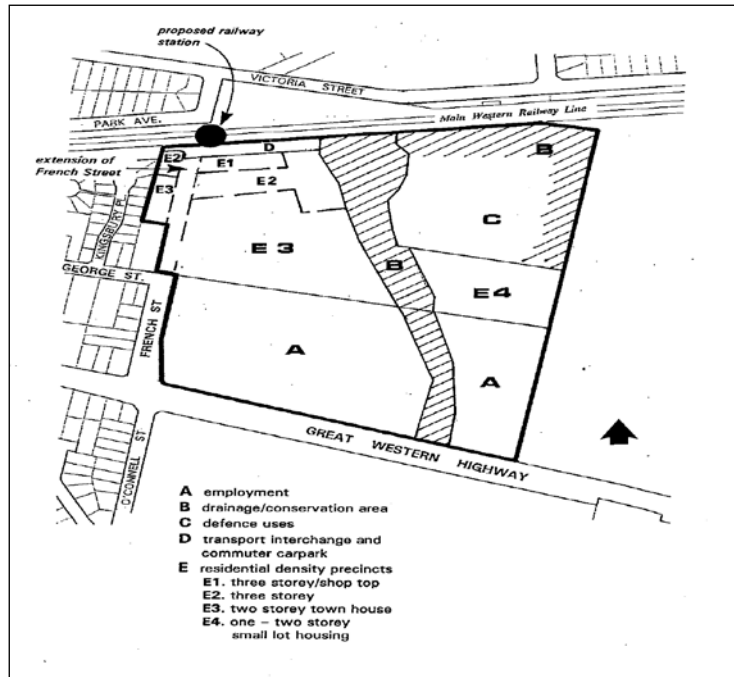


Figure 4 Structure plan

Clause 38(4) states that the council must not grant consent to development on land to which this clause applies unless it has taken into account the following (to the extent that they are relevant to the proposed development):

- (a) *whether the development enhances and protects the environmental qualities of watercourses, riparian land, remnant bushland and biological corridor linkages,*
- (b) *whether the development provides employment opportunities, particularly high technology developments,*
- (c) *whether the development provides for the delivery of community facilities, services and recreational opportunities,*
- (d) *in the case of any proposed residential or other development located in the vicinity of the Main Western Railway Line or the Great Western Highway, the impact of noise or vibration on any such development.*

The proposal complies with objective (a) in that land has been set aside adjoining the north-south drainage line running through the site for conservation purposes and this land will be dedicated to Council. The three proposed lots in the southern part of the subject land have the potential to provide employment opportunities for high technology developments. The proponent has provided a letter of offer to enter into a Voluntary Planning Agreement (VPA) that inter alia deals with the delivery of community facilities, services and recreational opportunities. This issue is discussed in more detail in a following section of this report. The issue of noise and vibration will be discussed in detail in a following section of this report however the applicant has provided the relevant technical information for Council to assess this matter.

The matters contained in Clause 38(4) have been appropriately addressed and are not an impediment to the determination of the development application.

Clause 38(6) states that the Council must not grant consent to development on land to which this clause applies unless it is of the opinion that the proposed development

has taken into account the following matters (to the extent that they are relevant to the proposed development):

- (a) the presence of threatened species, populations and ecological communities,*
- (b) the local and regional significance of the vegetation on the land,*
- (c) the impact of the proposed development, including the effect of clearing or bushfire mitigation measures or both or any other threatening processes, on flora and fauna species existing on or likely to utilise the land,*
- (d) any measures to be taken to ameliorate any impacts,*
- (e) the significance of any flora and fauna species, population or ecological community listed under the Threatened Species Conservation Act 1995,*
- (f) the requirements of any threat abatement plan under the Threatened Species Conservation Act 1995.*

The proponent has submitted a flora and fauna survey and assessment and a 7-part Test of Significance in regard to the ecosystems observed on the site. A bushfire compliance report has also been lodged with the DA documentation. These reports have addressed the issues (a) to (f) above. More detailed commentary in regard to these issues is provided in a latter section of this report.

Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instruments

There are no draft environmental planning instruments applicable to the land.

Section 79C(1)(a)(iii) – Any Development Control Plan

(i) Werrington Mixed-Use Area Development Control Plan

The Werrington Mixed-Use Area Development Control Plan (DCP) applies to the subject land. The proposed subdivision meets the objectives of the DCP where applicable. The proposal provides the potential for a mix of residential and employment generating land uses. The lot layout provides for conventional suburban development as well as the provision of four “super” lots that have the potential to be developed for medium to high density housing.

Council is currently assessing a development application for four six storey dwellings on these lots containing 250 dwellings. This application will be reported to a future JRPP meeting. The subdivision proposal does not preclude the achievement of a minimum average nett residential density in the Mixed Use Residential Zone of 30 dwellings per hectare.

The proposal has been designed so that there is a residue allotment (Lot 221) adjoining the railway line in Stage 2 of the development. The size of this allotment enables uses associated with a future railway station should such a station eventuate. A Section 88B restriction can be placed on the title of this lot so that it can only be developed for public transport uses.

The street pattern in the proposed subdivision meets the objectives of the DCP.

The proposal has been designed to retain the majority of natural areas of the site in a central, north – south trending conservation and drainage zone which will be dedicated to Council.

The DCP requires the preparation of Masterplans as follows:

Masterplans prepared in accordance with this DCP shall address the specific objectives and provisions of each requirement. Once Council decides to support the Masterplan, an amended DCP will be publicly exhibited and submissions invited. When the DCP (as amended), has been adopted by Council, Development Applications may be lodged for development approval.

Council may waive the requirement for a Masterplan at its discretion, or where:

- the development is of a minor nature and not inconsistent with the provisions of the LEP and this Plan; or
- development is for a purpose listed in clause 38(4) of Penrith Local Environment Plan 1998 (Urban Land) Amendment No. 13 – Werrington Mixed-Use Area.

In the circumstance of this case, Council has waived the requirement for the preparation of a Masterplan as the development is for a purpose listed in clause 38(4) of Penrith Local Environmental Plan 1998 (Urban Land) Amendment No. 13 – Werrington Mixed-Use Area. Compliance with Clause 38(4) has been previously assessed in this report and the development has been found to be compliant with Clause 38(4).

(ii) *Werrington Enterprise Living and Learning (WELL) Precinct Development Contributions Plan 2008*

Development Contributions for this DA and all residential proposals in the WELL Precinct are subject to the \$30,000 per lot/dwelling cap imposed by the then Minister for Planning in September 2010. The impact of the cap on the delivery of infrastructure in the entire WELL Precinct, if developed to its intended residential capacity, would result in a funding shortfall of \$54.7 million.

To ensure essential infrastructure is delivered and there is no funding gap, Council, on 27 June 2011, in considering a DA within the Caddens sub-precinct, resolved that in dealing with future residential applications in the WELL Precinct:

- a) development contributions up to \$30,000 will be applied, and directed to recreation, community, administration and selected road facilities in the WELL s94 Plan, and the revised District Open Space Plan and the current Cultural Facilities Plans;*
- b) conditions imposed on the development consent will require proponents to provide all required drainage works, to be delivered in accordance with DCP 2006;*
- c) conditions imposed on the development consent will require proponents to provide all roads which are 100% apportioned to the Caddens sub-precinct, to be delivered in accordance with DCP 2006.*

Applying this resolution to the current proposal to create 110 residential lots the developer would be required to:

- Construct all roads within the subdivision as these roads are required to provide access to the proposed lots;
- Construct all drainage works (i.e. street drainage, stormwater pipes and detention basins); and

- Pay a development contribution of \$27,307 per lot for open space and community facilities which for 110 lots is \$3,003,770.

Following numerous discussions with Council staff, the applicant has submitted a development contributions proposal or offer. It should be noted that the three proposed industrial lots and the three residue lots are not subject to Section 94 contributions.

The developer in their offer have advised that they are prepared to enter into a Voluntary Planning Agreement (VPA). The VPA will be for a public purpose and can be undertaken by Council in accordance with Section 93F of the Environmental Planning & Assessment Act (1979). The VPA will be linked to any future titles on the land so that future purchasers will be aware of the financial encumbrances on the land where the developer offers to provide the following as part of the development of the site:

- All roads provided as part of the current DA be provided as part of each stage;
- All stormwater work required to satisfy the entire development of the site (Stages 1-5);
- Bicycle paths and bus facilities required to service the site to (cost expected to be in the order of \$125,000) ;
- Dedication of land containing the drainage basins and conservation corridor to Council at no cost to Council; and
- \$3.6 Million developer contributions

The applicant has advised that the \$3.6 million contribution consists of:

- \$1.1 million for Stages 1-4. (110 lots)
- \$1.25 million for Stage 5. (proposed 50 lots - which are on land that is part of the planning proposal for the City Wide LEP)
- \$1.25 million for the proposed 250 apartments on the 4 super lots in Stage 2. (a development application for these apartments is yet to be lodged).

In their letter of offer the owner has provided the following timing for the payment of these monetary contributions:

- The \$1.1 million for Stages 1-4 will be paid in full prior to the release of the final plan of subdivision for Stage 4 of the 110 lot subdivision;
- The \$1.25 million for the proposed 250 apartments on the 4 super lots will be paid in full within 12 months of the release of the final plan of subdivision for Stage 4 of the 110 lot subdivision; and
- The \$1.25 million for Stage 5 will be paid in full prior to the release of the final plan of subdivision for all or any part of Stage 5.

Since the introduction of the Ministerial cap of \$30,000 per lot in September 2010 Council has been faced with implementing a development contributions policy that

minimises Council's exposure to fund shortfalls in infrastructure to new and existing communities.

The applicant's offer meets Council's current practice of requiring developers to construct their own roads and drainage infrastructure that is directly attributable to their development.

The 110 lot subdivision generates a Section 94 monetary contribution of \$3million pursuant to Council's resolution of June 2011 to implement the WELL Precinct Section 94 Plan.

The applicant's monetary contribution of \$3.6 million relates not only to the current development application for 110 lots but to future development applications for Stage 5 (proposed 50 lots) and for the proposed 250 apartments on the 4 super lots in Stage 2.

Therefore it can be argued that the applicant's offer provides full compliance with Council's current policy position for Section 94 contributions for the 110 lots and the applicant is offering a \$0.6million monetary contribution for potential development consisting of 50 residential allotments and up to 250 apartments.

Given there is a great deal of uncertainty at the present time as to how Council's will be able to obtain monetary contributions for new development and to limit Council's financial exposure the agreement with the applicant:

- avoids future legal challenges and costs with respect to conditions of development consent relating to Section 94 contributions;
- provides full provision of Section 94 works and contributions for the 110 lot subdivision; and
- provides \$0.6million in funds to cover future development for which Council may be severely limited in obtaining monetary contributions for infrastructure resulting from changes to legislation or Ministerial directions.

Council officers and the applicant have negotiated that two thirds of the monetary contributions be paid prior to and within one year of the release of Stage 4 of the development so that the developer has sufficient cash flow to meet their commitments. The remaining third of the contribution would be paid after the rezoning of Stage 5 land and prior to release of any lots for sale on that land.

At its Ordinary meeting of the 10th December 2012, Council resolved to enter into a VPA as discussed above.

The applicant's letter of offer dated 14th February 2013 will form the basis of a condition of development consent requiring a Voluntary Planning Agreement (VPA) be entered into with Council.

Section 79C(1)(a)(iia) – The Provisions of any Planning Agreement

The proponent has provided two letters of offer dated 14th February 2013 and 22nd February 2013. These letters are shown in Attachment A. The proponent's letter dated 14th February 2013 is acceptable as it accords with Council's resolution of the 10th December 2012. The letter dated 22nd February 2013 is not acceptable to Council as it does not accord with Council's resolution of the 10th December 2012.

Section 79C(1)(a)(iv) – The Regulations

This section is not applicable for the subject application.

Section 79C(1)(b) – The Likely Impacts of the Development

Flora and Fauna

Under Section 5A of the *Environmental Planning and Assessment Act 1979* (the Act), an assessment must be made as to whether a development proposal is likely to have a "significant effect" on any threatened species, populations or ecological communities or their habitats.

The application has been accompanied by a Flora and Fauna Assessment prepared by Dr T J Hawkeswood in accordance with Section 5A of the Act. In summary, Dr Hawkeswood has found that the subject site has been highly disturbed in the past and there are many species of weeds detected. There was only one endangered entity detected, namely the Cumberland Plains Woodland - Grey Box Woodland (dominated by *Eucalyptus moluccana* and *E. tereticornis*) which exists as clumped and scattered trees of various ages and sizes. The 7-part Test of Significance under Section 5a of the Environmental Protection Act (EPA)(1979) provided by Dr Hawkeswood concludes that:

- (i) For the proposed subdivision, most of the trees will be removed but some will be retained such as around the boundary and near retained ponds. Therefore the local occurrence of the community will not be placed at the risk of extinction.
- (ii) The proposal will substantially modify the existing plant community but its local occurrence is not likely to be placed at the risk of extinction.

It is also noted that the small size and scattered nature of the remnant Cumberland Plains Woodland - Grey Box Woodland (dominated by *Eucalyptus moluccana* and *E. tereticornis*) community on the subject land indicates the development is not defined as a controlled action under the Environment Protection and Biodiversity Conservation Act (Cwth).

Council's independent flora and fauna consultant has reviewed the assessment prepared by Dr Hawkeswood.

The review of the flora and fauna assessment has confirmed that the proposal has been designed to retain the highest quality remnant vegetation within the north – south riparian corridor running through the site. This land will be dedicated to Council. The corridor will provide opportunities for increased biodiversity and will increase the habitat values for fauna species. Therefore Council can be satisfied the requirements under Section 5A of the Act have been considered.

Aboriginal Archaeology

Council records reveal that detailed cultural investigations were conducted as part of the preparation of Local Environment Plan (Amendment No. 13 to Penrith LEP 1989 (Urban Lands)). A survey undertaken by Mary Dallas at the time found two archaeological sites and one isolated artefact on the subject land. The study found that both sites were in poor condition with little potential for investigation. The study recommended that the Department of Defence gain consent from the NSW National Parks and Wildlife Service to destroy these sites.

The Department of Defence, at the time, also wrote to the Local Aboriginal Land Council regarding the above and received written confirmation from the Land Council that the sites were of no significance and no further action was required.

Given the above Council incorporated the following clause in the Werrington Mixed-Use Area Development Control Plan

- (i) Appropriately qualified Aboriginal people, nominated by, and acceptable to the Local Aboriginal Land Council, are to monitor the earthworks stage of development.*
- (ii) Application is to be made to the National Parks and Wildlife Service for any proposal to destroy an Aboriginal relic or place.*

This issue can be covered as a condition of development consent.

Salinity

A salinity assessment of the site was undertaken by Geotechnique Pty. Ltd. There was no evidence of salinity problems observed on the surface within the subject land. Twenty test pits were dug by a backhoe to a depth of 2.5 metre across the site. Sixty samples were taken from these pits and analysed. Based on these tests, the topsoils and residual soils to a depth of 1 metre are considered to be non-saline. The residual soils encountered to bedrock are assessed as moderately saline. The consultant has recommended the preparation of a Soil Management Plan with certain heads of consideration. A condition of consent will be imposed requiring the submission of a soil management plan for consideration and approval prior to the issue of a Construction Certificate.

Flooding

Engineering consultants, Cardno Pty.Ltd prepared a Civil, Flooding & Stormwater Management Report to accompany the development application. This report assessed the flooding impact of the proposal and provided a proposed strategy for the internal stormwater drainage.

The above study found that the subject land is located within the Werrington Creek Catchment Area. A watercourse (classified as Category 2) draining in a South-North direction bisects the site. The watercourse collects the runoff from a culvert crossing under the Great Western Highway. The watercourse terminates in a culvert under the Western Railway line.

Cardno's flood study found that results of the simulations indicate that the proposed subdivision is outside the flood prone area and does not alter the flooding characteristics through the site. Council's engineers have raised objection to the findings of the study.

Water Pollution

The design of the proposed stormwater management on the subject land involves the following aspects:-

- Urban drainage design to drain all the lots into the street drainage system. The design caters for a 20-year ARI storm event;
- Provision of On-Site Detention (OSD) systems to control the discharge flows from the site. The OSDs are provided in the shape of basins/ponds located in the drainage reserve; and
- Provision of water quality measures to control the quality of water discharging from the site to current industry standards and Council requirements. These measures include water quality bio-retention ponds and gross pollutant traps. The ponds are combined with the OSD ponds;

The proposed stormwater infrastructure is in accordance with Council's DCP and technical guidelines and is satisfactory in minimising water pollution generated from the site. A plan of the proposed on-site detention basins is shown in Attachment B.

Noise Pollution

The applicant has provided an acoustic report by SLR Consulting Pty Ltd that examines the noise impacts on the proposed subdivision from traffic noise on Great Western Highway and train noise from the Western Railway Line.

The findings of the report are that in terms of traffic noise, the noise attenuation achieved for future residential lots from distance, ground absorption and terrain will reduce traffic noise to acceptable levels without the need for specific noise mitigation measures.

The noise from trains however will require mitigation measures. In summary, proposed Lots 215-220 inclusive that are located in Stage 2 and are closest to the railway line will require special glazing and air conditioning to minimise noise pollution and special construction techniques to minimise ground vibration. These mitigation measures and where they are to apply are shown in Attachment C.

These measures are considered to be satisfactory and will be covered as conditions of development consent.

Air Pollution

The proposal being the subdivision of land will generate some air pollution in the form of dust emissions during the construction phase. This aspect can be controlled as a condition of development consent.

Bushfire Risk

The land is identified as bushfire prone land. The application has been accompanied by a Bushfire Compliance Report, prepared by Bushfire Safety Solutions Pty. Ltd. The report was prepared for an initial lot layout. The report identified that some lots required asset protection zones and made appropriate recommendations. These lots were located on land in Stage 5 of the development. Stage 5 is not part of the current application.

The application was referred to the Rural Fire Service, and a conditional bushfire safety authority was issued. Conditions of consent reinforce the need for compliance

with this bushfire safety authority.

Access, Transport and Traffic

The original plans lodged with the application showed that the main east-west service road did not align with George Street at its intersection with French Street. The applicant subsequently provided amended plans. The road layout intersection with George St has been realigned to resolve previously identified traffic concerns. This new realignment provides for residential development 20 metres south of the zone boundary that runs in an east-west direction through the site. This new road provides satisfactory access to the three employment generating lots and the University of Western Sydney land located to the immediate east of the subject land.

The traffic report submitted with the application estimates that the 3 residential stages development will generate 732 vehicles/hour in peak hours. All the internal and existing road intersections have been measured will continue to operate at level of service (LOS) B or better, with acceptable delays and spare capacity over the 3 stages. The proposed size and alignment of roads within the subdivision is supported by Council's Traffic Engineer.

The intersection of French Street and the Great Western Highway is already signalised and Council's Traffic Engineer is satisfied that the intersection can accommodate the future traffic emanating from the site.

It should be noted that the three industrial lots front the Great Western Highway and the internal service road. A condition will be imposed that restricts direct vehicular access from the three abovementioned lots to the Great Western Highway.

Social and Economic Impacts

The proposed development represents a significant advancement of increasing residential densities in the WELL precinct. The proposed development will not only provide major social and economic benefits to the wider community but also to the future residents of the estate.

The development provides extensive new and affordable dwelling opportunities within the Penrith LGA. This is considered to meet a real and currently unmet demand in the local area and therefore represent a significant positive social impact.

The urban form also incorporates passive surveillance of public domain and therefore embodies the principles of crime prevention through design and yielding further positive social impacts.

Section 79C(1)(c) – The Suitability of the Site for the Development

The site attributes are conducive to the development proposal. The proposal has been designed in a manner consistent with the character of the locality, and the future character of the locality earmarked under the LEP and DCP.

Section 79C(1)(d) – Any Submissions made in relation to the Development

(i) Referrals

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

<i>Referral Body</i>	<i>Comments Received</i>
<i>NSW Office of Water</i>	GTAs issued
<i>Rural Fire Service</i>	GTAs issued
<i>Building Surveyor</i>	No objections
<i>Environment Officer</i>	No objections, subject to conditions
<i>Traffic Engineer</i>	No objections, subject to conditions
<i>Development Engineer</i>	No objections, subject to conditions

(ii) Community Consultation

In accordance with Council's Notification DCP, the proposed development was notified to adjoining property owners and placed on public exhibition on two occasions from 13 June 2011 to 13 July 2011 and from 26 March to 27 April 2012. A total of eight submissions were received.

The submissions are shown in Attachment D. The objectors concerns are summarised below and comments provided in tabular form.

<i>Issue</i>	<i>No. of times Raised</i>	<i>Comment</i>
<i>The extension of French Street north will result in unacceptable noise impacts to residents of a multi-unit housing development on the north-western corner of George street and French Street.</i>	1	The multi-unit housing development will experience a decrease in amenity due to increased traffic noise however the proposal complies with the NSW Industrial Noise Policy in this regard.
<i>The staggered intersection of French Street and the George Street (east) will cause a traffic hazard.</i>	1	This intersection has been re-aligned to form a cross intersection which is now acceptable on safety grounds to Council's traffic engineers
<i>The proposal will increase traffic movements in French Street by up to 732 vph in peak periods and thereby decrease</i>	1	The subject land is part of the WELL precinct which for over ten years has been earmarked for a dwelling density of 30 dwellings per hectare (Werrington Mixed-Use Area

<i>Issue</i>	<i>No. of times Raised</i>	<i>Comment</i>
<i>resident amenity.</i>		Development Control Plan (DCP). The proposed residential density and hence traffic movements are in accordance with Council's long term planning intent for the locality.
<i>The proposal will create a traffic hazard when combined with parents picking up and dropping off children at the Kingswood pre-school at No. 30 George Street, Kingswood</i>	2	The pre –school is located approximately 200 metres west of French Street and access is available to the school from the west via Great Western Highway and Millen Street. The distances and volumes of traffic associated with the pre-school do not constitute a traffic hazard in the circumstances of the case.
<i>More land should be given over as a conservation zone and not just the riparian corridor.</i>	5	The conservation zone to be dedicated to Council runs north –south through the site and forms a riparian corridor. This land, approximately 1.5 hectares, contains the highest quality remnant vegetation and is located in the best position with respect to providing habitat for wildlife.
<i>The proposal should preserve fauna living in the area</i>	1	See above
<i>Preservation of significant trees. Over twenty mature trees could be saved on the subject land.</i>	3	The proposal does conserve the majority of trees on the subject land, being trees in the riparian zone. The remaining trees would become unhealthy and possibly dangerous when surrounded or adjoined by residential development.
<i>Too many residential lots.</i>	1	The subject land is part of the WELL precinct which for over ten years has been earmarked for a dwelling density of 30 dwellings per hectare (Werrington Mixed-Use Area Development Control Plan (DCP). The proposed residential density is in accordance with Council's long term planning intent for the locality.
<i>The existing ponds in the conservation zone should be maintained.</i>	1	Works will be undertaken to provide the appropriate standard of water treatment in the riparian zone. These works will be undertaken under the

Issue	No. of times Raised	Comment
		terms of approval issued by the NSW Office of Water.
<i>Residents should have access to bushland and a bush setting should be maintained.</i>	1	The proposal provides for the dedication of 1.5 hectares of land that will constitute a bushland setting. It is noted that the land is private land currently with no access to the public.
<i>The provision of lots 450m² in size will cause a detrimental effect on the well-being of future residents.</i>	1	Lots of this size are not uncommon in Penrith with no evidence of detrimental health effects.
<i>Existing residents to the west of the site have a vista of tall trees. This vista will be removed by the development.</i>	2	The site was rezoned for urban uses about ten years ago. It is Council's planning intent for the locality that this part of the WELL precinct become urbanised at a density of 30 dwellings per hectare. Such a density does not permit the retention of vistas for adjoining residents. Numerous trees and shrubs will be retained in the riparian corridor.
<i>The development is too close to the railway line. In terms of future resident's amenity.</i>	2	The proposal complies with the relevant standards and conditions of consent can be imposed to ensure such compliance.
<i>Future development adjacent to French street will overlook properties to the west</i>	1	This is a building matter and can be addressed at the DA stage for a dwelling house.
<i>The proposal has the potential to drive snakes into adjoining residential properties.</i>	1	There is no evidence that this will occur.
<i>The University of Western Sydney supports the proposed east - west road through the site as it will provide good access to the University's lands to the east.</i>	1	Noted.
<i>Traffic impacts are a</i>	1	The subject land is part of the WELL precinct which for over ten years has

<i>Issue</i>	<i>No. of times Raised</i>	<i>Comment</i>
<i>concern</i>		been earmarked for a dwelling density of 30 dwellings per hectare (Werrington Mixed-Use Area Development Control Plan (DCP). The proposed residential density and hence traffic movements are in accordance with Council's long term planning intent for the locality.
<i>No indication of how the employment lots will be developed</i>	1	The proposal is for a subdivision of land and such detail is not relevant for the assessment of this application.

The issues raised are noted and where relevant have been addressed or covered by conditions of development consent.

Section 79C(1)(e) – The Public Interest

The current application is in the public interest as it is consistent with the LEP and DCP.

The development provides several positive outcomes that clearly indicate that it serves the public interest. These outcomes include:

- New and affordable housing opportunities
- Excellent access to nearby educational opportunities
- Conservation of CPW bushland as part of the open space area and contribution to future health of existing local drainage line as part of the development.

Conclusion

The proposed development is in accordance with the relevant provisions of the environmental planning instruments, concept plan, and DCP pertaining to the land. Subject to the recommended conditions, the proposed development is unlikely to have a significant negative impact on the surrounding environment. The proposed development represents a significant step in the development of the WELL precinct.

The proposed development has been assessed against the relevant heads of consideration contained in Section 79C of the *Environmental Planning and Assessment Act 1979* and has been found to be satisfactory. The likely impacts have been considered and found to be satisfactory and the site is suitable for the proposed development and the proposal is in the public interest. The proposal is therefore worthy of support.

Recommendations

That:

1. The Development Application for Torrens Title Subdivision x 116 Lots including Public Roads at Lots 50-58, DP 1069025, 731-769 Great Western Highway (corner French Street), Werrington be approved subject to the following conditions:

GENERAL

- 1.1 The development must be implemented substantially in accordance with the following plans/documents:
 - Plan of Subdivision, prepared by StrataSurv, reference 3140, sheet 1 of 1 dated 08.08.2012 ,revision E2;
 - Statement of Environmental Effects prepared by Cityscape Planning & Projects and dated May 2011;
 - Salinity Assessment, numbered 12481/3-1AAR, prepared by Geotechnique Pty Ltd and dated 19 May 2011;
 - Civil, Flooding & Stormwater Management Report, Issue A, Revision 5, prepared by Cardno Pty. Ltd. and dated December 2011;
 - Cut and Fill Plan, numbered ITCE998-C201, revision 02, prepared by Cardno Pty. Ltd. and dated 29 April 2011;
 - Flora and fauna survey and assessment and 7-part Tests of Significance for Lots 50-58, DP702038, cnr French Street and the Great Western Highway, Werrington, New South Wales by Dr Trevor J. Hawkeswood and dated 3 April 2011;
 - Noise and Vibration Assessment" prepared by SLR Consulting Australia Pty Ltd and dated 12 December 2012 (Report Number 610.07939.05703-R1 Revision 3).
 - Landscape Plans prepared by Site Image, Project No. SS22-2402, Drawing No. 001, issue D, Drawing No. 101, issue D, Drawing No. 102, issue D, Drawing No. 103, issue D, Drawing No. 104, issue D, Drawing No. 106, issue D, Drawing No. 107, issue D, Drawing No. 108, issue D, dated December 2011.
- 1.2 A bushfire safety authority has been issued by the Rural Fire Service (ref D11/0887 and appended to this consent) which is to be complied with at all times.
- 1.3 The General Terms of Approval issued by the NSW Office of Water, reference 10 ERM2011/0587 and appended to this consent, are to be complied with and a Construction Certificate will not be issued over any part of the site that requires a Controlled Activity Approval until a copy of the Approval has been provided to the Principal Certifying Authority.

1.4 Work on the subdivision shall not commence until:

- A Construction Certificate has been issued,
- A Principal Certifying Authority has been appointed for the project, and
- Any other matters prescribed in the development consent for the subdivision and the Environmental Planning and Assessment Act and Regulation have been complied with.

A Notice of Commencement is to be submitted to Penrith City Council two (2) days prior to commencement of engineering works or clearing associated with the subdivision.

DEMOLITION

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

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

- 1.6 Mud and soil from vehicular movements to and from the site must not be deposited on the road.

ENVIRONMENTAL MATTERS

- 1.7 The recommendations provided in the letter report titled "Stockpile Characterisation – Lots 50-58 DP 1069025, 731-769 Great Western highway (Corner French Street), Werrington, NSW" prepared by JBS Environmental Pty Ltd dated 25 March 2013 (Ref: JBS42138-53771) are to be implemented on site. Documentation is to be provided to Council **prior to the release of the Subdivision Certificate** that demonstrates that any of the material associated with the this report that has been removed off site (including all material from Stockpile 4) has been disposed of to an appropriately licensed or approved waste management facility.
- 1.8 A contamination investigation of the soil footprint of Stockpile 4 and surrounding soils is to be carried out in accordance with the relevant NSW EPA Guidelines. **Prior to the issue of the Construction Certificate**, a Report addressing this investigation and demonstrating that the land is suitable for the intended land use is to be submitted to Council for approval. Consideration should be given to the findings of the letter report titled "Stockpile Characterisation – Lots 50-58 DP 1069025, 731-769 Great Western highway (Corner French Street), Werrington, NSW" prepared by JBS Environmental Pty Ltd dated 25 March 2013 (Ref: JBS42138-53771).

If remedial works are found to be necessary, than a remedial action plan should be incorporated into this Report. On approval from Council, the footprint is to be remediated in accordance with this plan. On completion of

these remedial works, a report is to be submitted to Council for approval **prior to the release of the Subdivision Certificate** demonstrating that the site is suitable for its intended land use.

- 1.9 Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

(Note: To obtain a copy of the publication, you should contact Landcom on (02) 98418600).

Certification that the erosion and sediment control measures have been installed in accordance with the approved erosion and sediment control plan (s) for the development and "Managing Urban Stormwater: Soils and Construction 2004" shall be obtained and issued a minimum 2 days before any other site works are to commence, including earthworks and clearing of the site.

The approved sediment and erosion control measures are to be installed **prior to and maintained throughout the construction phase of the development**. These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

- 1.10 All land that has been disturbed by earthworks is to be spray grassed or similarly treated to establish a grass cover.
- 1.11 No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury-Nepean River) (No.2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.
- 1.12 All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.
- 1.13 All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

1.14 **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 Council.** The Validation Certificate shall:

- state the legal property description of the fill material source site,
- 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,
- clearly indicate the legal property description of the fill material source site,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification 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
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

An appropriately qualified person/s (as defined in the Penrith City Council Contaminated Land Development Control Plan) shall:

- Supervise the filling works,
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and shall submit a review findings report to Council and any Principal Certifying Authority,
- Certify by way of certificate or written documentation that fill materials have been placed on the site in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.

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

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation works may be requested. In these circumstances the works shall be carried out prior to any further approved works.

{Note: Penrith Contaminated Land Development Control Plan defines an appropriately qualified person as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the

person will be required to have appropriate professional indemnity and public risk insurance.”}

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

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

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

The “Environmental & Waste Management Plan” (EWMP Revision 1) prepared by Advanced Holdings Pty Ltd dated 10 September 2011 is to be implemented and complied with during subdivision works.

- 1.16 Demolition and construction works shall be carried out in accordance with the NSW Department of Environment and Climate Change’s (2009) “Interim Construction Noise Guideline”.

- 1.17 If any archaeological relics are uncovered during the course of the work no further work shall be undertaken until further directed by Penrith City Council or the NSW Heritage Office.

The applicant is advised that depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the Heritage Act, 1977 may be required before any further work can be recommenced in that area of the site.

- 1.18 All demolition and construction works that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties, are restricted to the following hours in accordance with the NSW Department of Environment and Climate Change’s (2009) “Interim Construction Noise Guideline”:

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

The provisions of the Protection of the Environment Operations Act 1997 in regulating offensive noise also apply to these works.

- 1.19 The linen plan of subdivision is to be supported by an 88B Instrument creating a Restriction as to User regarding the following:

- Lots 218-220 (Zone 1) and Lots 215-217 (Zone 2) that refers to the “Werrington Subdivision Cnr Great Western Highway and French Street - Noise and Vibration Assessment” prepared by SLR Consulting

Australia Pty Ltd and dated 12 December 2012 (Report Number 610.07939.05703-R1 Revision 3). The covenant is also to:

- o stipulate the noise criteria as outlined in the above document
- o provide advice on the mechanisms required for each lot to meet the noise criteria, as outlined in Section 7.3 of the above 'Noise and Vibration Assessment'
- o ensure that the noise criteria be achieved through the implementation of the recommendations of the 'Noise and Vibration Assessment'.

ENGINEERING

- 1.20 All roadworks, drainage works and dedications, required to effect the consented development shall be undertaken at no cost to Penrith City Council.
- 1.21 Any Construction Certificate issued by the Principal Certifying Authority or Certifying Authority shall incorporate plans and details for erosion and sediment control in accordance with the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.
- 1.22 Subdivision works shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by STRATA SURV drawing No 3140 Stage 3 , Revision E2 dated 08.08.2012.

Any Construction Certificate/s issued by the Certifying Authority shall include but not be limited to the following subdivision works.

- a) On-site detention system
- b) Roads and drainage
- c) Stormwater drainage
- d) Stormwater pre-treatment systems
- e) Overland flowpath
- f) Interallotment drainage
- g) Bus Stops
- h) Cycle Facilities.

Engineering plans, supporting calculations and relevant certification for the subdivision works shall be prepared by suitably qualified people and must accompany the application for a Construction Certificate.

Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that the subdivision works have been designed in accordance with Penrith City Council's Design Guidelines and Construction Specification for Civil Works.

- 1.23 **Prior to the issue of a Construction Certificate** the Certifying Authority shall ensure that the proposed roads have been designed in accordance with Penrith City Council's Design Guidelines and Construction Specification for Civil Works and the following criteria:

Road No.	Road Reserve Width	Carriageway Width	Verge	Footpath (1.5m wide)	ESA

1	23.60	14.0	4.8 & 2.0median	1.5 &2.5 North shared	5x10 ⁶
2	21.60	12	4.8	2.5both side	1x10 ⁶
3	21.60	12	4.8	2.5both side	1x10 ⁶
4	15.60	8	3.8	both sides	5x10 ⁴
5	15.60	8	3.8	both sides	5x10 ⁴
6	15.60	8	3.8	both sides	5x10 ⁴
9	15.60	8	3.8	both sides	5x10 ⁴

- 1.24 A Stage 3 (detailed design) Road Safety Audit (RSA) shall be undertaken on the proposed roadworks by an accredited auditor who is independent of the design consultant. A copy of the RSA shall accompany the design plans submitted with the Construction Certificate application.

Prior to the issue of the Construction Certificate, the Certifying Authority shall ensure that the recommendations of the RSA have been addressed in any plans approved with the Construction Certificate.

- 1.25 Stormwater runoff from parking, uncovered paved areas shall be directed to a stormwater pre-treatment system. The treatment devices shall be designed to remove expected pollutant loadings in accordance with the Department of Environment, Climate Change & Water's 'Managing Urban Stormwater - Environmental Targets/ Treatment Techniques- October 2007' publications.

Any Construction Certificate issued by the Principal Certifying Authority or Certifying Authority shall incorporate:

- Specification & installation details of the stormwater pre-treatment system
- The approval of an operation and maintenance manual/ schedule for the proposed device

A copy of the approved operation and maintenance manual/ schedule shall be submitted to Penrith City Council with notification of the Construction Certificate issue.

- 1.26 **Prior to the issue of a Construction Certificate** the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Penrith City Council's Development Control Plan.

All bicycle path construction is to be in accordance with the relevant provisions of the RTA's *NSW Bicycle Guidelines* and AUSTROADS *Guide to Road Design – Part 6A: Pedestrian and Cyclist Paths*.

- 1.27 Inter-allotment drainage shall be provided for all lots that are unable to be drained by gravity to the street system. Inter-allotment drainage is to be constructed with a maximum pit spacing of 40m. A stub connection shall be provided for lots without a pit with location details to be provided on the works as executed drawings.

1.28 **Prior to the commencement of works on site**, including approved clearing of site vegetation, erosion and sediment control measures shall be installed. The erosion and sediment control measures are to be installed in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

1.29 **Prior to commencement of works** a Traffic Control Plan including details for pedestrian management, shall be prepared in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Traffic Authority's publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Traffic Authority Traffic Controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Note:

1. A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.
- 1.30 **Prior to Issue of Construction Certificate:** Full details and supporting calculations of the existing pond which drains proposed Road 1 and Employment area (i.e. OSD and Water quality) and modification works required shall be submitted to Council for approval.
- 1.31 Erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.
- 1.32 All existing (aerial) and proposed services for the development are to be located or relocated underground in accordance with relevant authorities regulations and standards.
- 1.33 Street lighting is to be provided for all new and existing streets within the proposed subdivision to Penrith City Council's standards.
- 1.34 **Prior to the issue of an Occupation Certificate**, the Principal Certifying Authority shall ensure that all works within the road reserve have been inspected and approved by Penrith City Council.
- 1.35 Prior to the issue of select a Subdivision Certificate the Principal Certifying Authority shall ensure that the:
 - a) On-site detention system/s
 - b) Stormwater pre-treatment system/s
 - Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
 - Have met the design intent with regard to any construction variations to the approved design.

- 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.

- 1.36 **Prior to the issue of a Subdivision Certificate**, and installation of regulatory / advisory line marking and signage, plans are to be lodged with Penrith City Council and approved by the Local Traffic Committee.

Notes:

1) Contact Penrith City Council's **Development Engineering Unit** on (02) 4732 7777 for further information on this process.

Allow eight (8) weeks for approval by the Local Traffic Committee.

- 1.37 **Prior to the issue of a Subdivision Certificate** street signs are to be erected at road intersections.

Note:

Proposed road names can be selected from an approved list. An application for other names, in accordance with Penrith City Council's Street Naming Policy, can also be made. The regulations imposed under the Roads Act require that the proposed road names are advertised on two occasions; firstly as a proposal, and secondly as an official naming. This process means that you must pay the required advertising fee to Council before the Council can commence this process. Applications for road naming should be made as soon as possible to ensure that this process does not delay the issue of a Subdivision Certificate.

- 1.38 **Prior to the issue of the Subdivision Certificate** a bond for the final layer of outstanding asphalt works (AC Bond) is to be lodged with Penrith City Council.

The final layer of asphalt on all roads shall not to be placed without the written consent of Council (Consent will generally be provided when 80% of the housing within the subdivision has been completed).

The value of the bond shall be determined in accordance with Penrith City Council's Bond Policy. The bond will be administered in accordance with this policy.

Note:

- 1) Contact Council's Development Engineering Unit on 4732 7777 for further information relating to bond requirements.

- 1.39 **Prior to the issue of a Subdivision Certificate** a maintenance bond is to be lodged with Penrith City Council for civil works. The value of the bond shall be determined in accordance with Penrith City Council's Bond Policy. The bond will be administered in accordance with this policy.

Note:

Contact Council's Development Engineering Unit on 4732 7777 for further information relating to bond requirements.

- 1.40 Prior to the issue of a Subdivision Certificate the following compliance documentation shall be submitted to the Principal Certifying Authority. A copy of the following documentation shall be provided to Council where Council is not the Principal Certifying Authority:
- a) Work as Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Construction Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The Work as Executed drawings shall be prepared in accordance with Council's Design Guidelines.
 - b) The WAE drawings shall clearly indicate the 1% Annual Exceedance Probability flood lines (local and mainstream flooding).
 - c) The WAE drawings shall be accompanied by plans indicating the depth of fill for the entire development site. The plans must show, by various shadings or cross hatchings, the depth of any fill within 0.3m depth ranges.
 - d) CCTV footage in DVD format to Council's requirements and a report in "SEWRAT" format for all drainage within future public roads and public land. Any damage that is identified is to be rectified in consultation with Penrith City Council.
 - e) Surveyor's Certificate certifying that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries.
 - f) Documentation for all road pavement materials used demonstrating compliance with Council Design Guidelines and Construction Specification.
 - g) A Geotechnical Report certifying that all earthworks and road formation have been completed in accordance with AS3798 and Council's Design Guidelines and Construction specifications. The report shall include:
 - Compaction reports for road pavement construction
 - 1 Compaction reports for bulk earthworks and lot regrading.
 - 2 Soil classification for all residential lots
 - 3 Statement of Compliance
 - h) Structural Engineer's construction certification of all structures
- 1.41 A minimum of 4mx4m splay corners are required on corner allotments at each intersection. Road design plans are to reflect this.

LANDSCAPING

- 1.42 All landscape works are to be constructed in accordance with the stamped-approved plans and Sections F5 "Planting Techniques", F8 "Quality Assurance Standards", F9 "Site Management Plan" of Penrith Council's Landscape Development Control Plan.

Landscaping shall be maintained:

- in accordance with the approved plan, and
- in a healthy state, and in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity, as the vegetation, which died or was removed.

- 1.43 The approved landscaping for the site must be constructed by a landscape professional listed in Council's Approved Landscape Consultants Register as suitable to construct category 2 landscape works.

- 1.44 The following series of reports relating to landscaping are to be submitted to the nominated consent authority at the appropriate time periods as listed below. These reports shall be prepared by a landscape professional listed in Council's Approved Landscape Consultants Register as suitable to design category 2 landscape works.

i. Implementation Report

- Upon completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development. The report is to be prepared by a landscape professional listed in Council's Approved Landscape Consultants Register as suitable to design category 2
- An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

ii. Maintenance Report

- On the first anniversary of the date of the Occupation Certificate issued for the development, a Landscape Maintenance Report is to be submitted to Penrith City Council certifying that the landscape works are still in accordance with the development consent and the plant material is alive and thriving.
- This report is to be prepared by a landscape professional listed in Council's Approved Landscape Consultants Register as suitable to design category 2 landscape works.

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

SUBDIVISION (GENERAL)

1.46 Submission of the original Linen Plan and ten (10) copies. The Linen Plan must indicate that:

- (a) "It is intended to dedicate all new roads to the public as road"
- (b) "It is intended to dedicate Lot L as a public reserve"

All drainage easements, rights of way, restrictions and covenants are to be included on the linen plan.

All dedications of roads/drainage/reserves are to be undertaken at no cost to Penrith City Council.

The following information is to be shown on one (1) copy of the plan.

- The location of all buildings and/or other permanent improvements shall comply with any statutory boundary clearances or setbacks as defined by the Building Code of Australia and Council's resolutions.
- All existing services are wholly contained within the lot served and/or covered by an appropriate easement.

1.47 The linen plan of subdivision is to be supported by an 88B instrument creating a Restriction as to User or easement regarding the following:

- a) Easement for support-the provision of an easement of support to cover all embankments that extend into the lots if the batters are steeper than 5:1.
- b) Residue Allotment no development or building shall be allowed or be permitted to remain on the named lot unless satisfactory arrangements have been made with Penrith City Council for services (water, sewer, electricity and telephone), any outstanding contributions or consolidation with adjoining lots.
- c) Lot 221 shall be used only for public transport purposes.
- d) Access is denied from lot 1 to the Great Western Highway.

Council shall be nominated as the only authority permitted to modify, vary or rescind such restriction as to user.

1.48 Prior to the issue of a Subdivision Certificate an 88B instrument shall be submitted to the Principal Certifying Authority with the subdivision plan. The 88B instrument may incorporate, but not be limited to based on other conditions of this consent, the following:

- a) Easement for support
- b) Residue Allotment
- c) Right of Carriageway
- d) Easements
- e) Restriction as to users
- f) Positive covenants
- g) Access denied

Widths of drainage easements and details of non standard wording can be obtained from Penrith City Council's Design and Construction Guidelines and Construction Specification for Civil Works.

Council shall be nominated as the only authority permitted to modify, vary or rescind the above restrictions, covenants and easements.

- 1.49 Prior to the issue of a Subdivision Certificate or Occupation Certificate a checklist and supporting documentation shall be submitted to the Principal Certifying Authority demonstrating that each condition of the development consent has been satisfactorily addressed.

The Subdivision Certificate shall not be issued until all conditions of consent except those relating to ongoing operational matters, have been completed.

- 1.50 All services (water, sewer, electricity, telephone and gas) [, including the provision of service conduits and stub mains,] *Delete if not applicable* are to be installed within the proposed public roads before final inspection of the engineering works.

Prior to the release of the linen plan, the following service authority clearances shall be obtained:

- ☐ a Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. This is required prior to the issue of the Subdivision Certificate and
- ☐ a letter from Integral Energy stating that satisfactory arrangements have been made for electricity supply to all proposed allotments in the subdivision, including any necessary easements; and
- ☐ a letter from an approved telecommunications service provider that satisfactory arrangements have been made for underground telephone services to all proposed allotments in the subdivision, including any necessary easements.

These clearances are to be submitted to the Principal Certifying Authority.

SECTION 94

- 1.51 This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan(s) for:

- Cultural Facilities;
- District Open Space; and
- Werrington Enterprise Living and Learning (WELL) Precinct

These plans can be inspected at Council's Civic Centre, 601 High Street, Penrith.

Based on the current rates detailed in the accompanying schedule attached to this Notice, pay a development contribution of \$27,307 per lot for open space and community facilities which for 106 lots is \$2,894,542.

This amount is to be paid to Council prior to a Subdivision Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 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 S94 invoice accompanying this consent should accompany the contribution payment.

No section 94 Contributions have been charged for the four (4) super lots as the lots will be levied for Section 94 contributions when a future development application is lodged in regard to their development.

In the event that a Voluntary Planning Agreement, that is based applicant's letter of offer dated 14th February 2013, is entered into that provides for delivery of infrastructure identified in the abovementioned plans, this condition will cease to apply to this consent.

2. A copy of the decision is forwarded to external authorities for their record; and
3. That those making submissions are notified of the determination.

* All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Telephone: 1300 NSW RFS
e-mail: csc@rfs.nsw.gov.au

Headquarters
Locked Bag 17
Granville NSW 2142

Facsimile: 8741 5433



The General Manager
Penrith City Council
PO Box 60
Penrith NSW 2751



Your Ref: DA11/0546
Our Ref: D11/0887
DA11061078237 DS

ATTENTION: Karl Berzins

2 May 2012

Dear Sir/Madam

**Integrated Development for 50-58//1069025 731-769 Great Western Highway
Werrington 2747**

I refer to your letter dated 21 March 2012 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

1. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

2. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

General Advice – consent authority to note

ID:78237/76494/5

Page 1 of 2

This approval is for the subdivision of the land only. Any further development application for class 1,2 & 3 buildings as identified by the 'Building Code of Australia' may be subject to separate application under section 79BA of the EP & A Act and address the requirements of 'Planning for Bush Fire Protection 2006'.

Reviewed determination

This letter is in response to additional information submitted and supersedes our previous approval dated 12 July 2011.

This letter is in response to a further assessment of the application submitted and supersedes our previous general terms of approval dated 12 July 2011.

For any queries regarding this correspondence please contact Doug Stevens on 1300 NSW RFS.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Iona Cameron', with a stylized, cursive script.

Iona Cameron
A/Team Leader

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.



**Office
of Water**

General Terms of Approval – for works requiring a Controlled Activity Approval under the Water Management Act 2000

Our Reference		10 ERM2011/0587	File No:	9055060
Site Address		731-769 Great Western Highway (corner French Street) WERRINGTON		
DA Number		DA11/0546		
LGA		Penrith City Council		
Number	Condition			
Plans, standards and guidelines				
1	<p>These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA11/0546 and provided by Council:</p> <p>(i) Site plan, map and/or surveys</p> <p>Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.</p>			
2	<p>Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river identified.</p>			
3	<p>The consent holder must prepare or commission the preparation of:</p> <p>(i) Vegetation Management Plan</p> <p>(ii) Erosion and Sediment Control Plan</p> <p>(iii) Soil and Water Management Plan</p> <p>(iv) Amendments to Plans - all basins within core riparian area to be designed to have fully structured riparian vegetation, or the basins be removed from the core riparian area</p>			
4	<p>All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The following plans must be prepared in accordance with the NSW Office of Water's guidelines located at www.water.nsw.gov.au/Water-Licensing/Approvals/default.aspx</p> <ul style="list-style-type: none">• Riparian Corridors• In-stream works• Outlet structures• Watercourse crossings			
5	<p>The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of</p>			

www.water.nsw.gov.au

Macquarie Tower, 10 Valentine Avenue, Parramatta NSW 2150 PO Box 3720 Parramatta NSW 2124 Australia
t + 61 2 9895 6211 | e information@water.nsw.gov.au | ABN 47 661 556 763

Our Reference	10 ERM2011/0587	File No:	9055060
Site Address	731-769 Great Western Highway (corner French Street) WERRINGTON		
DA Number	DA11/0546		
LGA	Penrith City Council		
Number	Condition		
	Water.		
6	The consent holder must carry out a maintenance period of two (2) years (and five (5) years if creek works) are required after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.		
7	The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.		
8	The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.		
9	The consent holder must provide a security deposit (bank guarantee or cash bond) - equal to the sum of the cost of complying with the obligations under any approval - to the NSW Office of Water as and when required.		
10	N/A		
11	The consent holder must not locate ramps, stairs, access ways, cycle paths, pedestrian paths or any other non-vehicular form of access way in a riparian corridor other than in accordance with a plan approved by the NSW Office of Water.		
12	N/A		
13	The consent holder must ensure that any bridge, causeway, culvert or crossing does not obstruct water flow and direction, is the same width as the river or sufficiently wide to maintain water circulation, with no significant water level difference between either side of the structure other than in accordance with a plan approved by the NSW Office of Water.		
14	The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.		
15	N/A		
16	The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.		
17	The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.		
18	The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.		
19	The consent holder must ensure that any excavation does not result in (i) diversion of any river (ii) bed or bank instability or (iii) damage to native vegetation within the area where a controlled activity has been authorised, other than in accordance with a plan approved by the NSW Office of Water.		
20	N/A		
21	The consent holder must ensure that the surfaces of river banks are graded to enable the unobstructed flow of water and bank retaining structures result in a stable river bank in accordance with a plan approved by the NSW Office of Water.		

Our Reference	10 ERM2011/0587	File No:	9055060
Site Address	731-769 Great Western Highway (corner French Street) WERRINGTON		
DA Number	DA11/0546		
LGA	Penrith City Council		
Number	Condition		
22	N/A		
23	The consent holder must establish a riparian corridor along the watercourse in accordance with a plan approved by the NSW Office of Water.		
END OF CONDITIONS			

Sydney Law Practice

Bligh Chambers

OUR REF: DMC:13021
YOUR REF:

14 February 2013

Penrith City Council
PO Box 60
PENRITH NSW 2751

Attention: Karl Berzins

Dear Sir

Penrith City Council: Letter of Offer for 731 – 769 Great Western Highway, Werrington (French Street) DA 11/0546

We act for Middle East Pty Limited, the proponent and owner of the parcels of land referred to below.

Following the recent discussions between Penrith City Council (**Council**) the purpose of this letter is to summarise the principal terms of our client's offer to enter into a planning agreement (**Planning Agreement**) under section 93F of the Environmental Planning and Assessment Act (**EPA Act**) relating to the subdivision of the above-mentioned land.

We are instructed that this letter is a formal offer to enter into a Planning Agreement for the purpose of section 93 (3) of the EPA Act (**Offer**).

Our client understands that it would be entering into the Planning Agreement with the Council.

1. Relevant Land

This Offer applies to the land located at 731 – 769 Great Western Highway, Werrington (French Street). This land is known as:

- Lots 50 – 58 DP 1069025

All correspondence to Sydney Office

Sydney Law Practice Pty Limited

Sydney office
Bligh Chambers
Suite 701, Level 7
25 Bligh Street
Sydney NSW 2000
T: 02 9220 4700
F: 02 9221 0131
www.sydneylawpractice.com.au

Liverpool office
(by appointment only)
Level 1
52-58 Memorial Ave
Liverpool NSW 2170
T: 02 9220 4700
F: 02 9221 0131
ABN: 53 075 735 009

Annangrove office
(by appointment only)
Level 1
169 Annangrove Rd
Annangrove NSW 2156
T: 02 9220 4700
F: 02 9221 0131

Liability limited by a scheme approved under Professional Standards Legislation.

Legal practitioners employed by Sydney Law Practice Pty Limited are members of the scheme.

2. Proposed Works

The following is a summary of the proposed works.

- All roads provided as part of the current DA be provided as part of each stage.
- All stormwater work required to satisfy the entire development of the Site (Stages 1 – 5)
- Dedication of stormwater system and riparian corridor as per condition of consent
- Bicycle paths and bus facilities required to service the site (cost expected to be in the order of \$125,000)

The Applicant has also agreed in the letter of offer to the:

- Dedication of stormwater system and riparian corridor as per condition of consent
- Payment of \$3,600,000 developer contributions

The timing of this contribution would be as follows:

- \$1,100,000 paid to Council prior to the issue of the final plan of subdivision for stage 4.
- \$1,250,000 for the stage 2 apartments paid to Council 12 months after the issue of the final plan of subdivision for stage 4.
- \$1,250,000 paid to Council prior to the issue of the final plan of subdivision for the whole or any sub stage of the development of stage 5

The dedication of land that is required as part of the Voluntary Planning Agreement will be dedicated free of cost to Council. Council will also require the land to be dedicated to be in a condition that does not require Council to expend moneys to rehabilitate this land.

3. Security

Our client commits to provide appropriate security against the requirements of the Planning Agreement as negotiated with Council and in accordance with legislative requirements.

4. Scheme of Arrangement

Our client will commit to the establishment, management and maintenance of a scheme of arrangement or other relevant construction to coordinate the funding and governance for delivery of the works identified in the table at item 2 above with future owners, lessees etc engaged in the development envisaged by the Planning Proposal

5 **Entry into the Planning Agreement**

The Planning Agreement will be prepared and signed by our client soon after the issue of a development consent for DA 11/0546.

Yours faithfully

SYDNEY LAW PRACTICE
(Formerly Carbone Lawyers)

A handwritten signature in cursive script, appearing to read 'D. Carbone', written in dark ink.

Dominic Carbone

Sydney Law Practice

Bligh Chambers

OUR REF: DMC:13021
YOUR REF:

22 February 2013

Penrith City Council
PO Box 60
PENRITH NSW 2751

Attention: Karl Berzins

Dear Sir

Penrith City Council: Letter of Offer for 731 – 769 Great Western Highway, Werrington (French Street) DA 11/0546

We act for Middle East Pty Limited, the proponent and owner of the parcels of land referred to below.

Following the recent discussions between Penrith City Council (**Council**) the purpose of this letter is to summarise the principal terms of our client's offer to enter into a planning agreement (**Planning Agreement**) under section 93F of the Environmental Planning and Assessment Act (**EPA Act**) relating to the subdivision of the above-mentioned land.

We are instructed that this letter is a formal offer to enter into a Planning Agreement for the purpose of section 93 (3) of the EPA Act (**Offer**).

Our client understands that it would be entering into the Planning Agreement with the Council.

1. Relevant Land

This Offer applies to the land located at 731 – 769 Great Western Highway, Werrington (French Street). This land is known as:

- Lots 50 – 58 DP 1069025

All correspondence to Sydney Office

Sydney Law Practice Pty Limited

Sydney office

Bligh Chambers
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25 Bligh Street
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Liverpool office

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ABN: 53 075 735 009

Annangrove office

(by appointment only)
Level 1
169 Annangrove Rd
Annangrove NSW 2156
T: 02 9220 4700
F: 02 9221 0131

2. Proposed Works

The following is a summary of the proposed works.

- All roads provided as part of the current DA be provided as part of each stage.
- All stormwater work required to satisfy the entire development of the Site (Stages 1 – 5)
- Dedication of stormwater system and riparian corridor as per condition of consent
- Bicycle paths and bus facilities required to service the site (cost expected to be in the order of \$125,000)

The Applicant has also agreed in the letter of offer to the:

- Dedication of stormwater system and riparian corridor as per condition of consent
- Payment of \$3,600,000 developer contributions

The timing of this contribution would be as follows:

- \$1,100,000 paid to Council prior to the issue of the final plan of subdivision for stages 3 and 4.
- \$1,250,000 paid to Council prior to the issue of the final plan of subdivision for stage 2.apartments
- \$1,250,000 paid to Council prior to the issue of the final plan of subdivision for the whole or any sub stage of the development of stage 5

The dedication of land that is required as part of the Voluntary Planning Agreement will be dedicated free of cost to Council. Council will also require the land to be dedicated to be in a condition that does not require Council to expend moneys to rehabilitate this land.

3. Security

Our client commits to provide appropriate security against the requirements of the Planning Agreement as negotiated with Council and in accordance with legislative requirements.

4. Scheme of Arrangement

Our client will commit to the establishment, management and maintenance of a scheme of arrangement or other relevant construction to coordinate the funding and governance for delivery of the works identified in the table at item 2 above with future owners, lessees etc engaged in the development envisaged by the Planning Proposal

5 **Entry into the Planning Agreement**

The Planning Agreement will be prepared and signed by our client soon after the issue of a development consent for DA 11/0546.

Yours faithfully

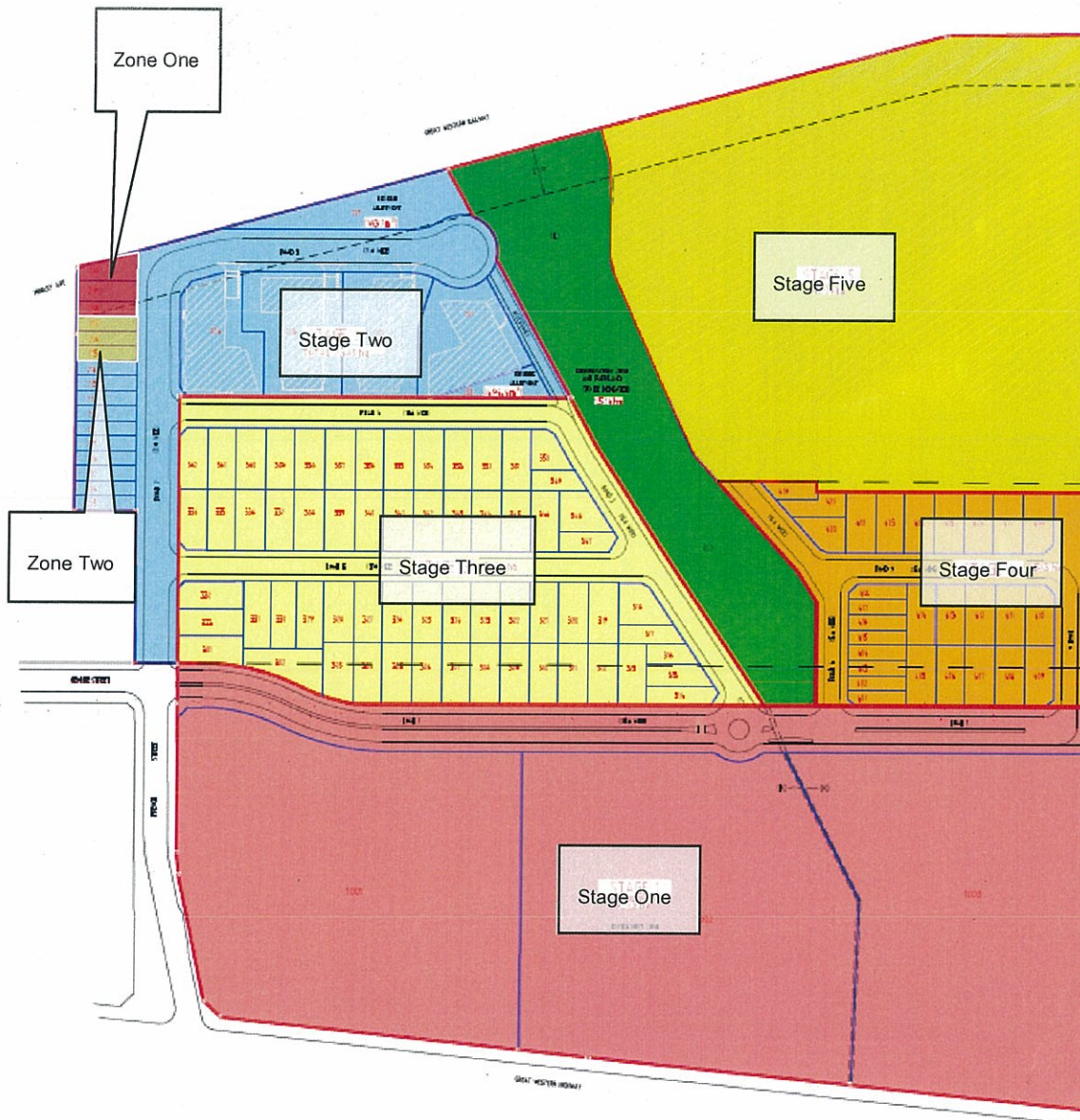
SYDNEY LAW PRACTICE
(Formerly Carbone Lawyers)

A handwritten signature in black ink, appearing to read 'D. Carbone', written in a cursive style.

Dominic Carbone

Zones identifying lots that require specific levels of acoustic treatment are illustrated in **Figure 4**. It is understood that the apartment buildings within Stage Two and the residential land lots in Stage Five are to be considered in a separate noise assessment and so are not given further consideration in this report. Zones were determined with consideration of distance to the rail corridor and anticipated shielding effects from intervening dwellings. Standard constructions will be sufficient for land lots within Stages Three and Four in order to meet internal noise level criteria as they are sufficiently setback from the rail corridor and the Great Western Highway.

Figure 4 Identification of Zones for Specifying Acoustic Recommendations



Staging Plan – Revision E2 provided by StrataSurv

7.3 Recommendations

7.3.1 Alternative Ventilation

Where rooms are not expected to comply with the noise criteria with the windows open, fresh air ventilation systems (with penetration for outside air to be located at the southern side of the building to not decrease the acoustic performance of the facade facing the rail corridor) will be required to allow windows and doors to be closed and achieve the minimum Building Code of Australia airflow requirement. This is expected to apply to all bedrooms in dwellings in Zone 1 and Zone 2. It also applies to all bedrooms in dwellings within 80 m of the nearest rail track for which the only operable windows have an unobscured view of a section of the rail tracks.

7.3.2 Recommended Noise Mitigation Measures – Zone 1

On the basis of the calculated L_{Aeq} internal noise levels in **Table 6**, the designs for the residential dwellings on lots in Zone 1 (Lots 218-220) are recommended to include specific noise treatment.

Glazing Requirements for Zone 1 Dwellings

Sliding doors on facades facing the rail corridor should not be used. To achieve appropriate internal noise levels the glazing requirements specified in **Table 7** are recommended.

Table 7 Glazing Recommendations for Zone 1 Dwellings

Location	Glazing Recommendation
Windows with a View of the Rail Tracks:	
Living Areas	6 mm monolithic glazing with full perimeter acoustic seals
Sleeping Areas	10.38 mm laminated glazing with full perimeter acoustic seals
Windows Facing Away from the Rail Corridor¹:	
Living Areas	6 mm monolithic glazing with full perimeter acoustic seals
Sleeping Areas	6.38 mm laminated glazing with full perimeter acoustic seals

Note 1: Windows that do not face away from the rail corridor but that have their view of the rail tracks completely obstructed by solid objects may be considered to be equivalent to 'facing away from the corridor'. Vegetation does not qualify as a solid object in this regard.

Other Recommendations for Zone 1 Dwellings

For other building elements (doors, facades, roof, floor) Category 2 or above constructions specified in Appendix C of the Interim Guideline are recommended. **Figure 5** (from Appendix C of the Interim Guideline) sets out the required Weighted Sound Reduction Indices (R_w) for building elements in each category of noise control treatment. **Figure 6** (from Appendix C of the Interim Guideline) sets out standard (or deemed-to-satisfy) constructions associated with Category 2 noise control treatments. If Category 2 treatments are not adopted an acoustic assessment is recommended to determine whether internal noise criteria will be met.






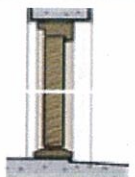
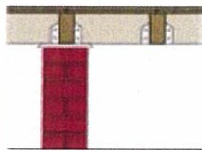

For building constructions which differ significantly from typical composition, eg for those including oversize windows or larger areas of glazed doors, further consideration should be given at the detailed design stage to specify adequate acoustic properties of the specific building element assemblies.

Figure 5 Acoustic Performance of Building Elements

Category of Noise Control Treatment	R _w of Building Elements (minimum assumed)				
	Windows/Sliding Doors	Frontage Facade	Roof	Entry Door	Floor
Category 1	24	38	40	28	29
Category 2	27	45	43	30	29
Category 3	32	52	48	33	50
Category 4	35	55	52	33	50
Category 5	43	55	55	40	50

The above table is from Appendix C of DoP's *Development Near Rail Corridors and Busy Roads – Interim Guideline*.

Figure 6 Acoustic Construction of Building Elements

Category No.	Building Element	Standard Constructions	sample
2	Windows/Sliding Doors	Openable with minimum 6mm monolithic glass and full perimeter acoustic seals	
	Frontage Facade	Timber Frame or Cladding Construction: 6mm fibre cement sheeting or weatherboards or plank cladding externally, 90mm deep timber stud or 92mm metal stud, 13mm standard plasterboard internally with R2 insulation in wall cavity.	
		Brick Veneer Construction: 110mm brick, 90mm timber stud frame or 92mm metal stud, minimum 50mm clearance between masonry and stud frame, 10mm standard plasterboard internally.	
		Double Brick Cavity Construction: 2 leaves of 110mm brickwork separated by 50mm gap	
	Roof	Pitched concrete or terracotta tile or metal sheet roof with sarking, 10mm plasterboard ceiling fixed to ceiling joists, R2 insulation batts in roof cavity.	
	Entry Door	40mm solid core timber door fitted with full perimeter acoustic seals	
	Floor	1 layer of 19mm structural floor boards, timber joist on piers	
		Concrete slab floor on ground	

Note: The details of construction would be required to be determined during detailed design when the layouts of the dwellings, location of doors, location and area of windows have been determined.

7.3.3 Recommended Noise Mitigation Measures – Zone 2

On the basis of the calculated LAeq internal noise levels in **Table 6**, the designs for the residential dwellings on lots in Zone 2 (Lots 215-217) are recommended to include specific noise treatment.

Glazing Requirements for Zone 2 Dwellings

All windows for sleeping areas in dwellings in Zone 2 should be fitted with 6.38 mm laminated glazing with full perimeter acoustic seals. Living areas should be fitted with 6 mm monolithic glazing with full perimeter acoustic seals.

An exception to this is windows in living areas that face away from the rail corridor or have their view of the rail corridor completely obstructed by solid objects: 4 mm thick monolithic glazing with standard weather seals are expected to be sufficient for such windows. For sleeping areas that also face away from the rail corridor or have their view of the rail corridor completely obstructed by solid objects, 6 mm thick monolithic glazing with full perimeter acoustic seals are expected to be sufficient.

Other Recommendations for Zone 2 Dwellings

Lots in Zone 2 are expected to comply with the SEPP criteria if Category 2 constructions (excluding glazing requirements which are specified above) specified in Appendix C of the Interim Guideline are adopted in the dwelling design. If Category 2 treatments are not adopted an acoustic assessment is recommended to determine whether internal noise criteria will be met.

For building constructions which differ significantly from typical composition, eg for those including oversize windows or larger areas of glazed doors, further consideration should be given at the detailed design stage to specify adequate acoustic properties of the specific building element assemblies.

8 CONCLUSION

In this report the effects of road and rail traffic noise and vibration on the proposed residential subdivision located at the corner of the Great Western Highway and French Street have been addressed.

No specific noise mitigation measures with regards to road traffic noise from the Great Western Highway are predicted to be necessary to achieve the noise criteria specified in the Department of Planning's *Development Near Rail Corridors and Busy Roads – Interim Guideline*. Results of noise measurements and predictions with regards to rail noise from the Western Railway indicate that to comply with the criteria, noise control measures will be required to be included in the dwelling layout and design on some lots. The lots that require acoustic treatment are specified in **Section 7**.

Results of vibration measurements show that single and two-storey dwellings on all lots are expected to comply with the vibration criteria for comfort without specific treatment. Calculations based on vibration measurements show ground-borne noise is also expected to comply with criteria on all lots without specific treatment.