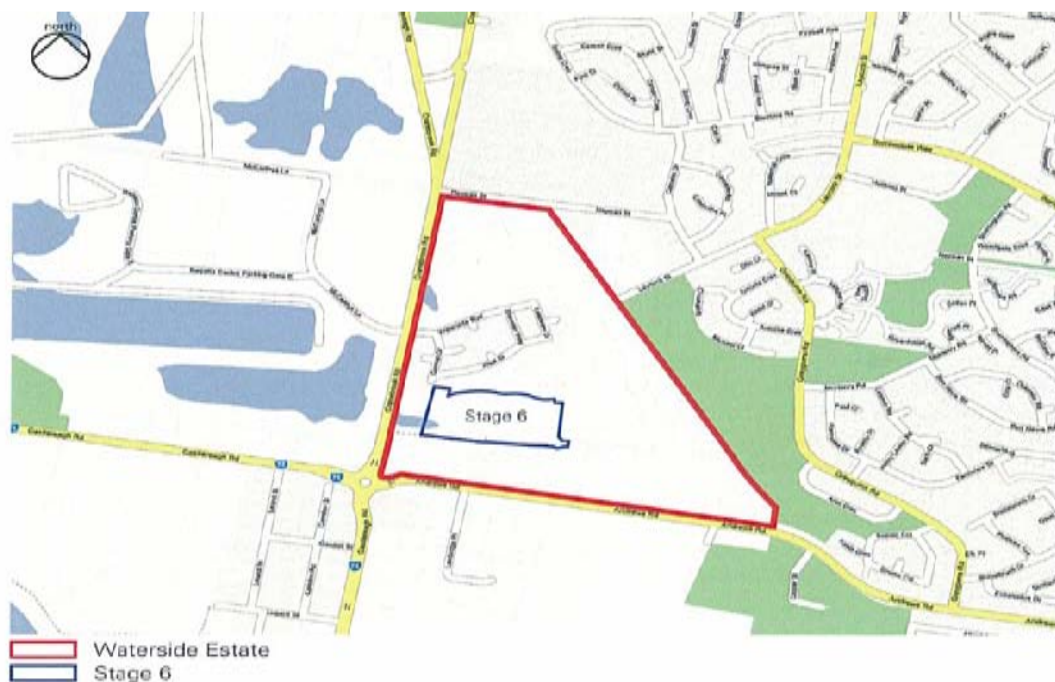


JRPP Ref. No.:	2011SYW074
DA No.:	DA11/0602
PROPOSED DEVELOPMENT:	Stage 6, Waterside Estate - 120 Residential Lots, 34 Dwellings, 1 Secondary Dwelling, 50 Integrated Dwellings (Included in Book of Pre-Approved House Plans) and 1 Neighbourhood Lot
APPLICANT:	Stockland Development Pty Ltd
REPORT BY:	Adam Gauna, Trainee Environmental Planner, Penrith City Council

View of Waterside Estate (Stage 6 outlined in blue).



(Source: JBA Planning)

Assessment Report

Executive Summary

A Development Application has been received from Stockland Development proposing a Subdivision for 120 residential lots, construction of 34 dwellings chosen from a Book of Pre-Approved Plans and associated drainage, storm water and landscape works at the Waterside Estate of Lot 1 DP 749982, 11 Cranebrook Road, Cranebrook. The Waterside Estate comprises 73 hectares which, since the late 1990s, have been subdivided and developed in stages.

The subject site is zoned 2(g) *Residential (Waterways)* under *Penrith Local Environmental Plan 1998 (Lakes Environs)*. The proposed subdivision and dwelling construction comprise a staged section of the overall development of the estate and is therefore a permissible form of development with consent in the 2(g) zone.

The proposed development has a capital investment value in excess of \$10 million. As such, the Sydney West Region Joint Planning Panel has the function of determining the application

in accordance with Section 23G of the *Environmental Planning and Assessment Act 1979*.

In accordance with Section 2.7 (Notification and Advertising) of *Penrith Development Control Plan 2006*, the proposed development was advertised in the local newspapers and notified to the owners and occupiers of adjoining and nearby properties. The public exhibition period for the proposal was from 11 July 2011 to 25 July 2011. There were no public submissions received in relation to the proposal.

An assessment of the proposed development under Section 5A, Section 23G, Section 79C and Section 89 of the *Environmental Planning and Assessment Act 1979* has been undertaken and the proposal has been found to be satisfactory. The following key issues have emerged as a result of this assessment process:

- Flooding
- Access, parking and traffic
- Aboriginal heritage

These matters are discussed in detail in this report.

The proposed development is in accordance with the relevant provisions of the environmental planning instruments and Development Control Plan pertaining to the land. The proposed development is unlikely to have a negative impact on the surrounding environment. The site is suitable for the proposed development and the proposal is in the public interest. The proposal is consistent with previous applications and developments on the Estate and therefore worthy of support.

This report recommends that the application be approved subject to recommended conditions of consent.

There are six appendices to this report, as detailed below.

- Appendix No. 1 – Subdivision Plans
- Appendix No. 2 – Letter from the Department of Infrastructure, Planning and Natural Resources
- Appendix No. 3 – SEPP1 Objection

Background

Waterside is a new urban release area. Planning for the estate was initially undertaken in the mid 1990's culminating in the gazettal of Penrith Local Environmental Plan 1998 (Lakes Environs) (LEP) and the adoption of Penrith Development Control Plan 1998 (Lakes Environs) (DCP) on 13 March 1998.

These plans make provision for the conservation of remnant Cumberland Plain Woodland, rehabilitation of an identified wetland area, the construction of a residential estate and an employment area located around an integrated lake system. The lake system provides water quantity, quality and aesthetic attributes. The planning documents promote high quality living environments surrounding a publicly accessible waterway system.

The site contains 2 development zones, namely the Residential (Waterways) 2 (g) and the Residential (Services) 2(h) zones. The Residential (Services) 2(h) zone is located along the Andrews Road frontage of the property and enables development of the land for visitor accommodation and business service activities. Development within this zone will provide a permanent acoustic, physical and visual buffer between residential development on the site

and industrial development to the south on the opposite side of Andrews Road. The Residential (Waterways) 2(g) zone is located behind the Residential (Services) 2(h) zone and extends to Nepean Street in the north. The estate is owned by Stockland Development Pty Ltd and once developed, will comprise a total of approximately 697 dwellings.

A site specific Development Control Plan for the site was prepared in 1998. It required the preparation and adoption of master plans for the site prior to any application for development. Two master plans for the areas zoned 2(g) and 2(h) were adopted by Council as Amendments 1 and 2 to the DCP in 1999 and 2000 respectively.

Stockland purchased the site in 2003 and sought amendments to the LEP and DCP to facilitate an alternative strategy for the delivery of housing on the site. Council, at its Ordinary Meeting of 6th December 2004 adopted the amendments to the DCP and resolved to progress amendments to the LEP pending clarification of the acoustic environment by an independent acoustic consultant. Dick Benbow & Associates were engaged to undertake the independent acoustic analysis which has confirmed that the site is suitable for residential development subject to the erection of a temporary noise barrier wholly within the site, along the southern boundary of Stage 1.

In 2006, the site specific DCP was incorporated into the Penrith Development Control Plan 2006 (Penrith DCP 2006) which was adopted on 21st August 2006, the policies and controls of the site specific DCP, now comprise Part 6, Section 6.7 of the Penrith DCP 2006.

Council has issued the following consents for Waterside:

- DA01/2588 – Stages 1 & 2 – Lake construction and associated bulk earthworks (Sept 2003)
- DA01/2590 – Stage 3 – Rehabilitation of mapped wetland no.56, lake construction and associated bulk earthworks (Sept 2003)
- DA04/1679 – Residential Infrastructure, such as roads, public domain landscaping and cycleways (March 2005)
- DA05/1030 – Waterside Display Village, comprising 10 dwellings included within Stage 1A (March 2006)
- DA05/0390 – Residential Stage 1A, an integrated housing development comprising of 36 dwellings (January 2006)
- DA05/1924 – Demolition of existing dwelling over portion of Waterside known as the Masters site (February 2006)
- DA05/0862 – Construction of Laycock Street extension and associated works (March 2006)
- DA05/1925 – EIS for additional fill and earthworks (March 2006)
- DA06/0443 – Residential Stage 1B, including subdivision of 46 lots and construction of 15 dwellings (May 2006)
- DA06/1970 – Residential Stage 1C, an integrated housing development comprising 31 dwellings (May 2007)

- DA07/0361 – Residential Stage 3 – subdivision into 39 residential lots and 1 neighbourhood lot, and construction of 10 dwellings, driveways, road works and associated landscaping (July 2007)
- DA09/0501 – Residential Stage 2 – Subdivision into 6 community development lots, yielding 61 residential lots, 2 super lots and 1 open space lot. In addition approval was also granted for the erection of 34 dwellings (Type B) as integrated development and the Book of Pre-Approved Plans (September 2009)
- DA09/1235 – Residential Stage 4 - Subdivision into 6 Community Development Lots yielding 20 residential lots and 1 neighbourhood lot. In addition approval was also granted for the erection of 7 dwellings (Type B) as integrated development and the Book of Pre-Approved Plans dated June 2009 (as amended November 2010)
- DA10/0717 – Residential Stage 2C - Subdivision of Lot 25 DP 270488 into 6 residential lots and 1 neighbourhood lot and to erect 6 Dwellings (as Integrated Development) on the residential proposed lots
- DA10/0774 – Residential Stage 5 – subdivision into 28 residential lots and 1 neighbourhood lot. The application also includes the construction of 14 dwellings (8 x type A dwellings and 6 x type B dwellings) as integrated development and the Book of Pre-Approved Plans for 7 dwellings (Type B dwellings).
- DA10/0918 – Residential Stage 2E – subdivision into 10 residential lots and 1 neighbourhood lot. The application also includes the construction of 10 residential dwellings (4 x type B and 6 x type C dwellings) as integrated development.

There have been several Section 96 applications submitted to Council on various occasions within the last couple of years to amend the design of several individual approved dwellings. These were generally of minor nature and consistent with the original approved designs or some design changes from double storey to single storey dwellings and Council has approved these applications.

Book of Pre-Approved Plans

The Book of Pre-Approved Plans contains a variety of house designs suitable for the Waterside Estate. The designs are divided into Types (A, B, C & D – type dwellings). These dwelling designs have been approved by Council and thus removes the requirement for the applicant to seek approval for each individual dwelling.

The dwelling type indicates the size and scale of the dwelling. 'A' –type dwellings being the largest (i.e. up to 3-storey) while D are row terraces. Such classification allows Council to ensure a diverse mix of housing is being achieved on site.

This application is completed with a Book of Pre-Approved Plans for the stage.

Waterside Green – Part 3A Permit Matters

In a letter dated 17 June 2005, the then Department of Infrastructure, Planning and Natural Resources provided a general exemption for further staged subdivisions within the Waterside estate from seeking further Part 3A permits under the Rivers and Foreshores Improvement Act 1948 (RFI Act).

The advice states that a Part 3A permit is not required when the application involves any

dwelling constructed landward of any perimeter road and has been constructed in accordance with plans approved by the DIPNR and do not involve any works or landscaping within the riparian zone.

As the proposal complies with the above conditions, the application is not considered to be integrated nor warrant a permit under Section 94 of the Act.

Site and Surrounds

Waterside is located approximately 2km north of Penrith City Centre adjacent to the Penrith Lakes Scheme. The estate comprises 73 hectares and is bounded by Andrews Road to the south, Nepean Street to the north, Cranebrook Road to the west and Grey Gums Reserve to the east.

The proposed development involves part of the site located toward the south with a land area of 7Ha to be developed as Stage 6 of the Waterside development.

The site is currently clear of vegetation and is generally flat following extensive bulk earth works, as previously approved.

To the north, south and east, the site is bound by laterals and lakes, which form part of the wider lake system. To the west of the site is Andrews Road to the east of the site is Cranebrook Road. The surrounding land uses comprise residential, industrial and recreational uses including:

- Industrial uses south of Andrews Road,
- Residential development in Cranebrook,
- The Penrith Lakes Scheme and Sydney International Regatta Centre to the west.

The Proposed Development

The proposed development includes the following aspects:

- The subdivision of Stage 6 into 120 lots and 1 neighbourhood lot;
- Dwelling designs and subsequent construction of 9x Type C dwellings on proposed Lots 111-114 and 116-120;
- Dwelling designs and subsequent construction of 24x Type B dwellings on proposed Lots 33-35, 53-71, 110 and 115;
- Dwelling designs and subsequent construction of 1 x principal dwelling and secondary dwelling (multi-unit housing) on proposed Type B Lot 121;
- The generic dwelling designs as contained within the Book of Pre-Approved Plans (as amended) 'suitable' for proposed Lots 16, 27, 30-32, 37-51, 72-93, 97, 102 and 104 – 109 and subsequent construction as an integrated housing development;
- Construction of an access driveway on proposed part Lot 1; and
- Construction of ancillary works such as inter-allotment drainage, driveways and storm water measures.

Refer to Appendix No. 1 for copies of the subdivision plans prepared by Stockland.

The following documents have accompanied the Development Application:

- Statement of Environmental Effects – JBA Planning

- Aboriginal Heritage Assessment Clearance – Deerubbin Local Aboriginal Land Council
- Book of pre-Approved Plans – Stocklands
- Subdivision Plans – Vince Morgan Surveyors
- Road Layout and Stormwater Plans – J. Wyndam Prince P/L
- Architectural Dwelling Plans – Zac Homes and Elderton Homes P/L
- Legal Advice on Clause 21 of the Penrith LEP 1998 – Corrs Chambers Westgarth
- Email from Penrith City Council in response to receipt of Legal Advice – Penrith City Council
- Table of Compliance – JBA Planning
- Letter from the Department of Infrastructure, Planning and Natural Resources
- Acoustic Report – Day Design P/L
- SEPP 1 Objection Report – JBA Planning
- BASIX Certificates
- Generic Dwelling Designs and Type B Assessment Allotment Schedules – JBA Planning
- Examples of ‘Substantially the Same’ Correspondence – Stockland Development P/L and Penrith City Council
- Email from Halcrow confirming height of fence on Lot 121 – Halcrow

Planning Assessment

The proposed development has been assessed against the relevant heads of consideration contained in Section 5A, Section 23G, Section 79C and Section 89 of the *Environmental Planning and Assessment Act 1979*, and based on this assessment, the following issues have been identified for further consideration.

1. Section 23G – Joint Regional Planning Panels

Under Section 23G of the *Environmental Planning and Assessment Act 1979*, a regional panel is taken to be the Council whose functions are conferred on a regional panel.

The proposed development has a capital investment value in excess of \$10 million. Under Clause 13B of *State Environmental Planning Policy (Major Development) 2005*, a regional panel has the function of determining applications for development which have a capital investment value in excess of \$10 million. The Sydney West Region Joint Planning Panel therefore has the function of determining the subject Development Application in accordance with Section 23G of the *Environmental Planning and Assessment Act 1979*.

Penrith City Council officers met with the Sydney West Region Joint Planning Panel on 15 July 2011. The purpose of the meeting was to present and brief the panel members on the Development Application ahead of the panel’s determination of the application at a future panel meeting.

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

Water Management Act 2000

The Water Management Act 2000 replaces the Rivers and Foreshores Improvement Act 1948 (RFI Act) and requires approval for water use, water management works or activities on waterfront land.

Waterfront land includes any land within 40m of any river, lake or estuary. Part of this site falls on waterfront land (the Penrith Lakes) and thus triggers integrated development.

In June 2005, the then Department of Infrastructure, Planning and Natural Resources (now

the Department of Planning) confirmed that where a subdivision is proposed within the Waterside Estate, integrated development approval will not be triggered for the purposes of the Act (See attached letter Appendix 2). This negates the need to seek an integrated approval pursuant to Section 91 of the EP & A Act.

Sydney Regional Environmental Plan No. 20 – Hawkesbury – Nepean River

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

The proposed development complies with the aims and strategies of the SREP and will not have any direct impact on any environmentally sensitive areas, or the water quality or quantity of the aquatic ecosystems on the site, which the SREP seeks to preserve.

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7(1) of SEPP 55 prevents consent authorities from consenting to a development unless it has considered whether the land is contaminated and 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.

There is no evidence to suggest that the subject land has previously supported any activities which may have resulted in land contamination since the bulk earthworks have been approved and undertaken and no contaminating activities are currently being undertaken from the site. This information is sufficient to conclude that a Stage 1 Preliminary Site Investigation is not warranted. The provisions of SEPP 55 have therefore been satisfied.

Penrith Local Environmental Plan 1998 (Lakes Environs)

The subject site is zoned 2(g) *Residential Waterways* under *Penrith Local Environmental Plan (LEP) 1998 (Lakes Environs)*. The proposed development is consistent with previous developments within other stages of the Waterside Estate approved by Penrith City Council. The current proposal is not only consistent with previous consents and represent a permissible form of development with consent in the 2(g) zone.

The proposed development is consistent with the aims and objectives of the LEP. The particular objectives of the 2(g) zone are as follows:

- (i) to enable the development of land for residential, waterway and open space purposes, and*
- (ii) to provide for a variety and mix of housing forms, and*
- (iii) to encourage development which satisfies ecologically sustainable design principles, and*
- (iv) to promote development which safeguards the natural, cultural and historic environment of the area and preserves the residential amenity of surrounding areas, and*
- (v) to encourage the development of an aquatic ecosystem that provides a habitat for a diversity of flora and fauna, and protects the quality of the downstream wetlands, and*
- (vi) to allow for the provision of community services and urban infrastructure, and*
- (vii) to promote visitor accommodation compatible with residential development.*

Earlier works on the site include repatriation works on the waterways and the provision of support infrastructure such as roads and storm water measures. These works have been undertaken with input from the relevant State Government authorities (such as the

Department of Planning), ensuring that work undertaken was consistent with the principles of ecologically – sensitive development. Erosion and sediment controls are proposed to ensure the minimisation of any negative environmental impacts arising from the development.

Previous approvals have approved the incorporation of community facilities (halls, public recreation areas and sporting facilities) which will also service the future populace resulting from construction from this application. The Book of Pre-Approved Plans also provides a mix of housing choice consisting of low and medium density housing forms.

Based the above assessment, it is concluded that the proposed development satisfies the objectives of the 2(g) zone.

There are several special provisions contained in the LEP which seek to control development on the site. These provisions are considered below.

Clause 12 – Subdivision Works

This clause seeks to ensure that the consent authority considers the likely impacts on works relating to the construction of roads, footpaths, drainage reserves and storm water infrastructure.

The site was part of an earlier development consent which saw the installation of roads, drainage services and easements servicing the entire Waterside estate. This application involves the incorporation of storm water connections and driveways which will connect to existing infrastructure provided under earlier development consents.

The Deerubbin Local Aboriginal Land Council has overseen initial subdivision works on the site when original infrastructure and bulk earth works were being undertaken. No items of Aboriginal heritage were found on the site.

The character and method of construction and landscaping within the Stage 6 site have been assessed and approved as part of the Section 96 modification to the Development Consent (infrastructure) 04/1679.

The proposed connections are consistent with this clause.

Clause 13 – Flood Liable Land

This clause states the following:

In relation to flood liable land within Zone No 2 (g) or 2 (h), the Council must not grant consent to the carrying out of development unless it is satisfied that:

- (a) the development will not have a significant adverse effect on the characteristics of floods in the area,*
- (b) the development is not likely to result in any significant risk to life or property as a result of a standard flood, and*
- (c) the floor level of any building or outdoor storage area that will result from the proposed development (except for development for the purpose of structures used for drainage, flood mitigation or water quality management) will be located 0.5 metres above the 1% probability flood within the meaning of Appendix C to the Floodplain Manual published by the Government of NSW and available to the public at the office of the Council.*

The subject site is flood affected on certain parts however the roads (being the main entry/exit points) are not below any 100 or 200 year – flood level. Furthermore, a Flood Evacuation plan is in place to ensure the orderly and safe exit of residents should a flooding event occur.

The proposal is consistent with this clause.

Clause 14 – Tree Preservation

The proposed development does not require the removal of trees as the land has been previously cleared under earlier development consents.

Clause 15 Development of land visible from Andrews Road or Cranebrook Road

This clause states the following:

Notwithstanding any other provision of this plan, the Council must not consent to the development of any land that is visible from Andrews Road, Cranebrook Road, or any public place, unless the development, in its built form, external finishes, fencing and landscape planting, provides a high quality and standard of presentation.

Terrace row housing has recently been approved under an earlier development application (Stage 7) and is currently under construction. When completed, the development will form a visual barrier and the current proposal will not be visible from Andrews Road to the south. Acoustic dirt mounds (previously approved) will provide a visual barrier from the proposed development to Castlereagh Road.

The proposal complies with this provision.

Clause 20 – Development of land – noise requirements

The following control applies to the subject site:

(4) The Council must not consent to any development of land within Zone No 2 (g) unless it is satisfied that the buildings involved in the development will not exceed the following noise level criteria:

Building Interior Noise Criteria

Noise descriptor		Time period	Criteria
recreation areas	$L_{eq, 24hr}$	24 hours	40dBA
sleeping areas	$L_{eq, 8hr}$	10.00pm–6.00am	35dBA
sleeping areas	10% of $L_{A1 15min}$	10.00pm–7.00am	60dBA

The site is subject to noise impacts from the existing heavy industrial and future light industrial development to the south, as well as traffic noise from both Castlereagh and Andrews Roads. The entire Waterside Estate is subject to an Acoustic Strategy which incorporates various measures to reduce noise impacts. These include the construction of a continuous 10m – high acoustic-barrier wall integrated with continuous terrace housing (forming a noise barrier), a variety of permanent and temporary noise-impervious barriers along Castlereagh and Andrews Road, as well as incorporating enclosed balconies and a staged dwelling-construction sequence (dwellings cannot be occupied until all noise-attenuation strategies are operational).

Additionally, lots adjacent to sources of noise will have a restriction on the title of subdivision (88B Instrument) stating that houses built must not be built until the acoustic wall associated with Stage 7 is complete (previous approval). Other restrictions on other lots include the requirement for double storey dwellings only on lots 29, 33-35, 53-71 and 120-121, ensuring

that they act as noise buffers for adjacent lots, while dwellings on other lots must not be occupied (but may be built) on lots adjacent to the noise barrier.

These restrictions are proposed to achieve the best possible acoustic outcome for the site.

The proposal is thus considered compliant for the purposes of this clause.

Clause 21 - Integrated development

Part 1 of this clause specifies the following:

(1) Despite any other provision of this plan, in relation to a development consent for integrated development that involves the subdivision of land into allotments with an area greater than 300 m² but less than 450 m², consent is not required for that part of the development that comprises the erection of a dwelling house if the dwelling house is of a design approved by the Council in relation to the development concerned.

The dwelling designs for Lots 16, 27, 30-32, 37-51, 97, 102 and 104-109 are sought to be approved as part of this application and would be constructed in accordance with the approved dwelling designs following subdivision.

Part 2 of this clause specifies the following:

(2) The Council must not grant consent for integrated development that involves a subdivision of land that results in any allotment with an area of 300 m² or less, unless it is satisfied that the erection of the single dwelling house on each such allotment will take place before the registration of the relevant plan of subdivision.

The applicant seeks to register a plan of subdivision prior to erecting dwellings on a land area of 300sqm or less and thus is not compliant with this part of the clause. This issue is addressed via an objection under State Environmental Planning Policy No. 1 – Development Standards (SEPP1) (see Appendix 3) and discussed below:

The reasoning behind this requirement was to avoid people purchasing these ‘Type C’ lots and subsequently constructing a dwelling which would depart from the approved housing mix. There presently exists a Book of Pre-Approved Plans from which buyers will choose their dwelling design. In addition, the future 88B Certificate relating to the subdivision will carry restrictions on the size and type of dwelling permitted on the lot, reflecting the book of pre-approved plans and the consent.

The SEPP1 objection has demonstrated that the proposal meets the assumed underlying objectives of the standard and LEP and that strict compliance is not necessary. Under the circumstances the same outcome can be achieved despite lots being registered prior to dwellings being constructed.

3. Section 79C(1)(a)(ii) – Any Draft Environmental Planning Instrument

There are no draft environmental planning instruments applicable to the subject site or to the proposed development.

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

Penrith Development Control Plan 2006

The proposed development is in accordance with the relevant provisions of *Penrith*

Development Control Plan 2006. The relevant provisions are considered in this report either in discussions relating to the applicable environmental planning instruments or in terms of the likely impacts of the proposed development.

Part 4 Section 4.7 Residential – Guidelines for Subdivision

This section of the DCP sets out specific guidelines for subdivision and the approval process involved. Subdivision applications must consider site orientations (with preference for northern orientations), allotment dimensions, landscaping requirements (i.e. one super advanced tree per 10m of road frontage), the road network and connections to drainage and other services. The following specification also applies:

The proposed development application has been formulated after the applicant undertook extensive consultations with Senior Strategic Planners, Engineers and Assessment Officers within Penrith Council. The specifications relating to landscaping, road and service provision, lot dimensions and orientations and public facilities are consistent with recommendations given in these consultations. Similar applications for subdivision relating to other sections of the Waterside Estate have been previously lodged and this proposal is consistent with the overall site objectives and previous consents.

Part 6 Section 6.4 Waterside

The relevant clauses are outlined below:

Section 1.4 Management of Lakes System

(1) Council shall not issue development consent for a proposal to subdivide or development site unless satisfactory arrangements have been made with the Council for the ongoing maintenance and management of the lakes system.

Maintenance and monitoring of the lake system is outlined in the Community Management Statement for the estate.

Section 1.9 Aboriginal Heritage

This clause requires the completion of a fully comprehensive archaeological survey to identify items of potential heritage value.

The initial earthworks of the entire estate (including the section subject to this development) was overseen by Deerubbin Local Aboriginal Land Council. No items of archaeological items were identified and Deerubbin LALC have confirmed this in writing.

Section 2.1 Design elements

This clause states the following:

(1) The design and appearance of each building and/or development, particularly when viewed from the waterways, other public places and Cranebrook must be of a high standard which meets the design requirements of the DCP.

The proposed dwellings have been designed in accordance with the Council adopted Design Guidelines for Waterside.

(2) The design of each building and/or development must satisfy ecologically sustainable design principles.

Each proposed dwelling includes a range of energy efficient measures to ensure reduced energy and water consumption to assist in achieving sustainable development outcomes.

(4) The wetlands at the northern end of the estate shall not be adversely affected by any development.

Appropriate water management systems, including the lake system, have been implemented to ensure appropriate water quality.

Section 2.2 External materials and finishes

This clause aims to ensure that all materials and finishes are of a high standard, roofs not comprised of shiny surfaces and that fencing is integrated with local character.

The construction employed on the site will be compliant with the Council approved Design Guidelines for Waterside.

Section 2.3 Energy Efficiency

This section encourages energy efficiency via natural ventilation and maximum winter solar penetration. All habitable dwellings proposed as part of this application have been sited to achieve maximum exposure to winter sun and summer shade.

Section 2.4 Site and Building Works

This section discusses building dwellings to withstand flooding and the provision soil of erosion measures during construction and stormwater control measures.

The structural integrity of the dwellings has been designed to be above flood levels and withstand flood level of the Nepean River (Flood of Record). Rainwater tanks will be installed and previous earthworks will ensure satisfactory drainage infrastructure. A Construction Management Plan will be submitted upon consent to ensure that soil erosion measures are implemented.

Section 2.7 Residential Densities

This section aims to ensure a mix of housing choices on the site. The development includes a mix of A, B and C lots. Other housing types have been provided in other stages of the estate.

Section 2.7 Streetscape and Amenity

This section aims to ensure the appropriate interconnection of roads, pathways and appropriate provision of public space. The design and scale of the proposal is integrated with public areas and the entire estate.

Section 2.9 Building Envelopes

All proposed dwelling construction and dwellings within the Pre-Approved Book of Plans comply with this clause. The dwellings are designed to achieve maximum privacy on site and will be constructed in conjunction with fencing that complies with the Design Guidelines for the site approved by Council.

Section 3.1 Acoustic Requirements

This section requires the submission of an acoustic report to be prepared by a qualified consultant and the inclusion of various noise attenuation measures.

As discussed above, the proposal incorporates a variety of designs (staged development, acoustic barriers and dwelling designs) which comply with the noise attenuation measures specified in the Penrith LEP 1998 (Lakes Environs).

Section 4.7 Landscaped open space

Each dwelling complies with the minimum landscaped open space as required in this part of the DCP. The requirements are outlined as follows:

- 'A' type dwellings – 50% of site area
- 'B' type dwellings – 40% of site area
- 'C' type dwellings – 35% of site area
- 'D' type dwellings – 35% of site area
- 'E' type dwellings – 20% of site area

Only Lot 121 does not comply with this requirement. This is because the lot proposes to accommodate a small studio apartment on the garage. If the studio were not included for the sake of assessment, the primary dwelling is compliant with front and rear setbacks as well as minimum landscaped area. The DCP does not include controls for both a primary and secondary dwelling on a type B lot. The variation is supported because the additional unit provides passive surveillance of the rear laneway while windows are located either facing the backyard or the rear laneway. The only windows overlooking neighbouring lots are bathroom and kitchen windows (placed high within the wall) and thus do not compromise privacy.

Section 4.8 Private Open Space

This section states that Type A, B, C & E dwellings shall have a minimum of 20% of the lot area allocated as private space which shall include a principal area of 24sqm accessible from a major living area of the dwelling and at least 65% of the private space shall be unroofed soft landscaping. All dwellings comply with this provision.

Section 5.3 Car Parking

This section states the following:

(2) Secure car parking is encouraged by measures such as direct access between the garage and the dwelling

All dwellings comply.

Section 5.4 On-site Parking (Zone 2g)

(1) Stack resident car parking is permitted

(2) Car parking rates must be provided in accordance with the Development Control Summary

(3) Garages must not dominate the streetscape

(4) Where an access way is provided to a lot, garages are to be at the rear of the site

(5) Where there are no access ways, garages should be carefully integrated with the built form of the dwelling

(6) garages facing rear access ways should be positioned to create a private open space for the dwelling while allowing for views from the dwelling to the access way

The proposal is compliant with these provisions.

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

This section is not applicable to the subject proposal.

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

Context and Setting

The proposed development is an extension of previously approved stages of the Waterside Estate. Previous development consents have been issued for the site for supporting infrastructure such as storm water, sewerage and utility service provision which will service the proposed development. There are considerable buffer distances between the proposed use and existing dwellings to the east of the estate, while land use to the west, north and south of the proposed development forms part of the Waterside estate.

The proposal is therefore compatible with the surrounding and adjacent land uses and will have no major impact on the amenity of the area. The proposal will have no adverse impacts on the natural environment.

Site Design

The proposed dwellings have been designed in accordance with extensive consultations with strategic planners, engineers and development assessment officers within Council. Supporting infrastructure designs for items such as fences, driveways and landscaping have all been designed in accordance with the Waterside Estate Guidelines which has been adopted and approved by Council.

Flooding

The waterside estate accommodates a number of waterways, all of which have undergone earlier rehabilitation works to restore the once neglected waters into vibrant assets supporting a variety of wildlife.

None of the proposed dwellings are within a flood-prone zone nor are the access roads subject to flooding. There is a flood evacuation management plan operating on the site that was completed previously and applies to the entire estate.

Storm water will be removed from the site via the connection of drains within the roads, as approved under DA04/1679. The proposed lots have been designed to allow storm water to drain directly to the roads which they front and onto and/or incorporate inter-allotment drainage. All stormwater will ultimately drain into the waterways to the south of the site, which form part of the overall integrated storm water management system of the estate.

Access, Parking and Traffic

Vehicular access to the site is via a variety of main and supporting feeder roads previously approved under an earlier infrastructure development consent. The proposed works do not seek to alter or impede current access arrangements which are suitable for the proposed works.

The potential impact on traffic generation from this site was considered by Halcrow MWT in a Traffic Report and was the catalyst for a Section 96 Modification application for the earlier

approved consent 04/1679.

The current traffic arrangements have been assessed by Council Officers and are considered to be suitable for the scale and scope of the application.

In order to further facilitate driver visibility, the applicant proposes limiting the height of any fencing erected on lot 121 to that of 900mm

The proposed dwellings have been designed in accordance with the requirements under the Penrith Development Control Plan 2006. All lots comply with the amount of parking and car parking design.

Aboriginal Heritage

The original works permitted under an Infrastructure Consent were overseen by the Deerubbin Aboriginal Local Land Council. The works involved considered excavation yet no item of Aboriginal Heritage was identified (as stated in the provided letter).

This development will not alter the earlier Aboriginal assessment undertaken.

Flora and Fauna

Prior to the earthworks being undertaken in accordance with DA01/2588 and DA01/2590 there was little vegetation over the estate, much of which comprised grass species and weeds. Following the completion of the earthworks and associated infrastructure works, the site has been highly modified and is devoid of any vegetation.

Safety, Security and Crime Prevention

The proposed development has been designed to ensure maximum passive surveillance and visual amenity on the site. The landscape plan identifies species to be used which will not block pathways or driveways from public view. Sufficient lighting has been provided on site for the amenity of motorists and pedestrians.

Social and Economic Impacts

The development proposal will help in addressing the housing shortage prevalent within the Sydney basin. Approval will generate employment for a variety of supporting services and will be an asset for the Penrith LGA.

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

The site attributes are conducive to the proposed development. The proposal has been designed in a manner consistent with the existing character of the site.

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

In accordance with Section 2.7 (Notification and Advertising) of *Penrith Development Control Plan 2006*, the proposed development was advertised in the local newspapers and notified to the owners and occupiers of adjoining and nearby properties.

The public exhibition period for the proposal was from 11 July 2011 to 25 July 2011. There were no public submissions received in relation to the proposal.

Internal Referral Comments

The table below summarises the results of internal Penrith City Council referrals in relation to the proposal.

Referrals	Comments
Building Surveyor	No objection, subject to conditions.
Development Engineer	No objection, subject to conditions.
Strategic Planner	No objection, subject to conditions.
Traffic Engineer	No objection, subject to conditions.

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

The site is suitable for the proposed development. The proposed development is permissible in the zone and the proposal meets the aims and objectives of the relevant environmental planning instruments. No public submissions were received in relation to the proposal.

Section 94 Contributions

Contributions are payable under Council's City Wide Plans for Cultural Facilities and District Open Space. They are also payable under the Section 94 Plan for Waterside for Open Space and Road and Traffic Works. The Waterside Plan Contributions are based on a developable area of 11.241 hectares which has been agreed by both Stockland and Council. The City Wide Contributions are payable on the number of new lots at a per person rate. Total Contributions payable are \$2,016,070.

Conclusion

The proposed development is in accordance with the relevant provisions of the environmental planning instruments and Development Control Plan pertaining to the land. The proposed development is unlikely to have a negative impact on the surrounding environment. The proposed development seeks to expand the Waterside Estate consistent with previous approvals and works on the site.

The proposed development has been assessed against the relevant heads of consideration contained in Section 5A, Section 23G, Section 79C and Section 89 of the *Environmental Planning and Assessment Act 1979* and has been found to be satisfactory. The site is suitable for the proposed development and the proposal is in the public interest. The proposal is therefore worthy of support.

Recommendation

That:

1. The information contained in the report on Development Application No. DA11/0602 for Waterside Stage 6 at Lot 11 DP 270488, 11 Cranebrook Road, Cranebrook be received.
2. Development Application No. DA11/0602 for Waterside Stage 6 at Lot 11 DP 270488, 11 Cranebrook Road, Cranebrook be approved subject to the following conditions:

GENERAL

- 2.1 The development must be implemented substantially in accordance with the

following plans and documents stamped approved by Council, the application form, the BASIX Certificates and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Drawing Title	Drawing No.	Issue	Prepared By	Dated
Subdivision Plans	P1-15	-	Vince Morgan Surveyors	June 2011
Road Layout	8850/DA 11-20	-	J.Wyndam Prince P/L	June 2011
Architectural Dwelling Plans	2A & 2B	-	Zac Homes and Elderton Homes P/L	June 2011
Legal Advice on Clause 21 of the Penrith LEP 1998	(Unnumbered)	-	Anne Hemmings – Corrs Chambers Westgarth	June 2011
Tables of Compliance	Appendix F	-	JBA Planning	June 2011
Letter from the Department of Infrastructure, Planning and Natural Resources	P1-2	-	JBA Planning	17/06/2005
Acoustic Report	Appendix H	-	Day Design P/L	14/03/2011
SEPP 1 objection Report	P1-13	-	JBA Planning	June 2011
BASIX Certificates	P1-19	-	Stockland	09/08/2011
Generic Dwelling Designs and Type B Assessment Allotment Schedules	Appendix K	-	JBA Planning	June 2011
Book of Pre-Approved Plans	Unnumbered		Stockland	June 2011

- 2.2 The approved works must be carried out in accordance with the requirements of the Building Code of Australia.
- 2.3 **Prior to the issue of a Construction Certificate for a dwelling**, the land to which the development consent relates shall be registered at the Land and Property Information Division of the NSW Department of Lands as a separate lot in accordance with consent number DA11/0602 and documentary evidence provided to Penrith City Council.
- 2.4 **The approved dwellings shall not be used or occupied until an Occupation Certificate has been issued.**
- 2.5 An air conditioning unit shall not be installed to a dwelling without the prior approval of Penrith City Council if:
- ☐ the air conditioning unit is located within 3m of a property boundary, and
 - ☐ noise levels emitted by the air conditioning unit will exceed 5dB(A) above the ambient background noise level measured at the property boundary.
- A separate Development Application shall be sought and obtained from Council prior to the installation of an air conditioning unit.

- 2.6 A **Construction Certificate** shall be obtained prior to commencement of any works.
- 2.7 **Prior to the issue of dwelling Construction Certificates**, landscape plans shall be submitted and approved in accordance with the Waterside Development Control Plan.
- 2.8 **Prior to the issue of a Subdivision Certificate**, the applicant shall submit a Neighbourhood Management Statement in accordance with the Community Titles Act to support the plan of subdivision. The statement is to include management and maintenance responsibilities of all landowners within the Community Title Scheme and is to reflect the responsibilities of Table 1 "Management Designation" of the Lakes Environs (Waterside Green) Development Control Plan.
- 2.9 Lot 1 is to be developed and landscaped as community open space and works are to be completed **prior to the issue of the Subdivision Certificate**.
- 2.10 **Prior to the issue of a dwelling Construction Certificate**, the Certifying Authority shall ensure that the foundations of proposed retaining walls are clear of the zone of influence of adjoining service trenches.
- 2.11 The first floor rear TV window for the dwelling on Lot 56 shall have a minimum sill height of 1.5m above the finished floor level or shall have fixed obscure glazing up to 1.5m above the finished floor level. This modification shall be reflected on the Construction Certificate plans.
- 2.12 External finishes are to comply with Section 7 - "External Materials, Colours and Finishes" of the Waterside Design Guidelines. Details of dwelling external finishes shall be submitted to Council or the Principal Certifying Authority for consideration and approval **prior to the issue of dwelling Construction Certificates**.
- 2.13 All fencing is to accord with the fencing strategy outlined in the Waterside Design Guidelines. Details of fencing finishes shall be submitted to the Principal Certifying Authority or Council for consideration and approval **prior to the issue of dwelling Construction Certificates**.
- 2.14 Screening or an opaque glass panel is to be provided for windows of first floor study rooms and stairways of all 2 storey dwellings in order to maintain privacy of the adjoining property. The screening or opaque glass panel is to be installed prior to the issue of an Occupation Certificate for the use of the building as a dwelling.
- 2.15 **Prior to the issue of a Construction Certificate**, the flood evacuation plan for Waterside shall be revised to include evacuation details for Stage 6 and shall be subsequently endorsed by the State Emergency Service.
- 2.16 The private accessway shall be provided with a street light to illuminate the vehicle entrance/exit point.
- 2.17 A sensor light is to be installed at the rear of all lots with vehicular access via a private accessway.
- 2.18 Shading devices shall be provided for dwelling windows located along western elevations. Details are to be provided for consideration and approval **prior to the issue of a Construction Certificate**.

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

HERITAGE/ARCHAEOLOGICAL RELICS

- 2.20 If any archaeological relics are uncovered during the course of the approved works 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.

ENVIRONMENTAL MATTERS

- 2.21 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) 9841 8600).

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 until the landscaping, driveway and on-site parking areas have been completed for the development**. These measures shall ensure that mud and soil from vehicular movements to and from the site is not deposited on the road during the construction of the development.

- 2.22 All land that has been disturbed by earthworks is to be spray-grassed or similarly treated to establish a grass cover.
- 2.23 Cut and fill operations on the property are only permitted in conjunction with the building works as detailed on the approved plans and specifications, and shall not extend more than 2m past the defined building footprint.
- 2.24 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.
- 2.25 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.

2.26 The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

2.27 **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."}

2.28 Dust suppression techniques are to be employed during construction to reduce any potential nuisances to surrounding properties.

2.29 For development within Stage 6, noise levels from or in the premises shall not exceed the relevant noise criteria detailed in "Waterside Residential Development, Penrith Proposed Industrial & Traffic Noise Control, Waterside Residential Stage 6" prepared by Day Design Pty Ltd dated 10 August 2011 (Report no. 2088-24T 6, Rev. A). The recommendations provided in the above-mentioned acoustic report, particularly in the "Stage 6 Facade Acoustics Schedule – Version 4.0: Project 2088-24T 6, Rev. A" attached to the above Report, shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application. A certificate is to be obtained from a qualified acoustic consultant certifying that the works have been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority prior to the issue of the Compliance Certificate.

The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

BCA ISSUES

2.30 All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

- a) complying with the deemed to satisfy provisions, or
- b) formulating an alternative solution which:
 - ☐ complies with the performance requirements, or
 - ☐ is shown to be at least equivalent to the deemed to satisfy provision, or
- c) a combination of (a) and (b).

HEALTH MATTERS

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

UTILITY SERVICES

2.32 All services (water, sewer, electricity, telephone and gas, including the provision of service conduits and stub mains, 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;
- ☐ 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.

- 2.33 A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to the "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority **before an Occupation Certificate is issued for a dwelling**.

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

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

- 2.35 A completed *Permit Application for Plumbing and Drainage Work* is to be submitted to Sydney Water **at least two working days before the rainwater tanks are installed and associated plumbing work is started on the site**.

CONSTRUCTION

- 2.36 **Prior to the commencement of construction works:**

- (a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:
 - a standard flushing toilet connected to a public sewer, or
 - if that is not practicable, an accredited sewage management facility approved by the council, or
 - alternatively, any other sewage management facility approved by Council.
- (b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

- (c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
- must preserve and protect the building from damage, and
 - if necessary, must underpin and support the building in an approved manner, and
 - must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).
- (d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:
- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
 - the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
 - such hoarding, fence or awning is to be removed when the work has been completed.

2.37 Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

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

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

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

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

All construction signage is to be removed on completion of earthworks or construction works and when a Subdivision Certificate has been issued by the Principal Certifying Authority certifying that the development has complied fully with the development consent and, where required, been constructed in accordance with the Construction Certificate.

2.38 The dwellings shall be set out by a registered surveyor. A Survey Certificate shall

be undertaken and submitted to the Principal Certifying Authority when the building is constructed to ground floor slab level and frame stage.

2.39 Clothes drying facilities are to be positioned and screened from public view. Details are to be provided for consideration and approval **prior to the issue of dwelling Construction Certificates.**

2.40 The rainwater tank(s) is to be:

- ☐ erected on a self-supporting base in the approved location on the property in accordance with the stamped-approved site plans for the development,
- ☐ structurally sound and constructed in accordance with AS/NZS 3500 1.2-1998: *National Plumbing and Drainage - Water Supply - Acceptable Solutions*,
- ☐ fully enclosed and all openings sealed to prevent access by mosquitoes,
- ☐ fitted with a first flush device,
- ☐ fitted with a trickle system to top up from mains water,
- ☐ provided with an air gap, and
- ☐ installed by a licensed plumber in accordance with Sydney Water's "*Plumbing requirements Information for rainwater tank suppliers and plumbers April 2003*" and the *NSW Code of Practice: Plumbing and Drainage*.

Additionally, the following are to be provided:

- ☐ back flow prevention device shall be provided at the water meter in accordance with Sydney Water requirements.
- ☐ In the event of a power failure, a back up supply of mains water shall be provided to at least one toilet in the dwelling.
- ☐ The rainwater tank(s) and associated piping is to be labelled 'Rainwater Not for Drinking' in accordance with Sydney Water requirements.
- ☐ The rainwater tank and pipework is to be painted in colours matching the external finishes of the dwelling and is to be of non-reflective finish.
- ☐ The overflow for the rainwater tank is to be connected into the existing stormwater disposal system on the site.

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

- ☐ the manufacturer's specifications, and
- ☐ Sydney Water and NSW Health requirements.
- ☐ This certificate or documentation is to be provided by the licensed plumber who installed the rainwater tank on the property, and is to be submitted **prior to the issue of the Occupation Certificate.**

2.41 The catchment area (for the rainwater tank) includes the parts of the roof of the dwelling(s) from which water is collected and includes gutters. To ensure a safe supply of water:

- ☐ roof catchment areas must be kept clear of overhanging vegetation,
- ☐ gutters must have sufficient fall to downpipes to prevent pooling of water,
- ☐ overflow, discharge from bleed off pipes from roof mounted appliances such as air conditioners, hot water services and solar heaters must not discharge into the rainwater catchment area,
- ☐ for roofs containing lead based, tar based or asbestos material the tank supply must not be connected to drinking, bathing and gardening tap water outlets,
- ☐ gutter guard must be installed in roof gutters to prevent foreign materials from contaminating the water which enters the rainwater tank.

2.42 The rainwater tank supply must not be connected to drinking and bathing water tap

outlets.

- 2.42 The rainwater tank pump must not exceed 5 dB(A) above ambient background noise level at the nearest residential property boundary. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.
- 2.43 Construction works or subdivision works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:
- ☐ Mondays to Fridays, 7am to 6pm
 - ☐ Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
 - ☐ No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

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

ENGINEERING

- 2.44 All roadworks, drainage works and dedications required to effect the consented development shall be undertaken at no cost to Penrith City Council.
- 2.45 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.
- 2.46 **Prior to the issue of a Construction Certificate**, a Roads Act application including payment of application and inspection fees shall be lodged with Penrith City Council, as the Roads Authority, for the following works:
- a) Provision of a vehicular crossing/s.
 - b) Provision of path paving for the full property frontage.
 - c) Provision of private drainage connections to Council's road drainage system.
 - d) Utility lead-in works.

All works within the road reserve shall be carried out in accordance with Penrith City Council's Design Guidelines and Construction Specification for Civil Works.

Penrith City Council (being the Roads Authority under the Roads Act) shall approve the works completed on or over the road reserve. Contact Council's **City Works Department** on (02) 4732 7777 to arrange an inspection of the works (and payment of inspection fees, if required).

- 2.47 Subdivision works shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by J Wyndham Prince, reference number 8850/DA11 to 8850/DA20, revision B, dated 08/06/11.

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

- a) Interallotment drainage
- b) Earthworks
- c) Retaining walls
- d) Paving works
- e) Access driveway for rights of carriageway or access handles.

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.

2.48 Prior to the issue of a Construction Certificate, the Certifying Authority shall ensure that all habitable floor levels are a minimum of RL 23.2m AHD (standard flood level + 0.5m).

2.49 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.

2.50 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.

2.51 Work on the subdivision shall not commence until:

- a Construction Certificate (if required) 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.

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

2.53 A certificate by a registered surveyor verifying that all habitable floor levels are at or above RL 23.2m AHD (standard flood level + 0.5m) shall be submitted upon completion of the building to that level. No further construction of the building is to be carried out until approval to proceed is issued by the Principal Certifying Authority.

2.54 All electrical services associated with the proposed building works shall be

adequately flood proofed in accordance with Penrith City Council's Development Control Plan relating to flood liable land. Flood sensitive equipment (including electric motors and switches) shall also be located above RL 23.2m AHD (standard flood level + 0.5m).

- 2.55 All existing (aerial) and proposed services for the development are to be located or relocated underground in accordance with relevant authorities regulations and standards.
- 2.56 Street lighting is to be provided for all new streets within the proposed subdivision to Penrith City Council's standards.
- 2.57 Soil testing is to be carried out to enable each lot to be classified according to AS 2870 "Residential Slabs and Footings".
- 2.58 **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.

- 2.59 **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 (02) 4732 7777 for further information relating to bond requirements.

- 2.60 **Prior to the issue of a Subdivision Certificate**, a maintenance bond is to be lodged with Penrith City Council for roads and drainage 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 (02) 4732 7777 for further information relating to bond requirements.

2.61 **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 AS 3798 and Council's Design Guidelines and Construction specifications. The report shall include:
 - Compaction reports for road pavement construction.
 - Compaction reports for bulk earthworks and lot regrading.
 - Soil classification for all residential lots.
 - Statement of Compliance.
- h) Structural Engineer's construction certification of all structures.

2.62 The private access way servicing proposed Lots 70 and 71 shall not be accessible from the proposed accessway off Gannet Drive. A physical barrier shall be constructed to prevent vehicular thoroughfare between Lapwing Way and Gannet Drive.

2.63 The final plan of subdivision must be supported by an 88B instrument for the approval of Council. The 88B instrument shall properly reflect the requirements of the conditions of development consent, the plans forming part of the consent and Council's standards, codes and policies. Part 2 of the 88B instrument shall contain a provision that any easements, right of ways or covenants shall not be extinguished or altered without the written consent of Council.

Where common drainage lines or other drainage lines are required, a drainage easement shall be created in accordance with Council's minimum widths as detailed in Council's Guidelines for Engineering Works for Subdivisions and Developments, Part 1 - Design.

- 2.64 All bicycle path construction is to be in accordance with the relevant provisions of the RTA's *NSW Bicycle Guidelines* and *AUSTROADS Guide to Traffic Engineering Practice – Part 14, Bicycles*.

LANDSCAPING

- 2.65 All landscape works are to be constructed in accordance with the stamped approved landscape plans and Sections F5 "Planting Techniques", F8 "Quality Assurance Standards" and 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.

- 2.66 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 3 landscape works.

- 2.67 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 3 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 3 landscape works.
- ☐ 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 3 landscape works.

2.68 All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specification prescribed in Penrith Council's Landscape Development Control Plan.

2.69 All landscape works are to meet industry best practice and the following relevant Australian Standards:

- ☐ AS 4419 Soils for Landscaping and Garden Use,
- ☐ AS 4454 Composts, Soil Conditioners and Mulches, and
- ☐ AS 4373 Pruning of Amenity Trees.

2.70 All trees that are required to be retained as part of the development are to be protected in accordance with the minimum tree protection standards prescribed in Section F4 of Council's Landscape Development Control Plan.

2.71 No trees are to be removed, ring barked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprints or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

2.72 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 works are to be shown on engineering plans submitted for Council's consideration and subsequent approval.

SUBDIVISION (GENERAL)

2.73 **Work on the subdivision is not to 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.

Penrith City Council is to be notified 48 hours prior to commencement of engineering works or clearing associated with the subdivision.

2.74 **Prior to the issue of a Subdivision Certificate**, submission shall be made 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."

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

All dedications of roads/drainage 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.

2.75 The linen plan of subdivision is to be supported by an 88B instrument creating a restriction as to user regarding the following:

- a) Residue allotments - 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.
- b) Easements for access and maintenance over those lots adjacent to dwellings with zero lot lines.
- c) Stormwater management controls.

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

2.76 Soil testing is to be carried out to enable each lot to be classified according to AS 2870 "Residential Slabs and Footings". A copy of the report including a plan showing the lot classification over the subdivision is to be submitted to Penrith City Council **prior to the issue of a Subdivision Certificate.**

2.77 A Surveyor's Certificate is to be lodged with the application for a Subdivision Certificate that certifies that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries.

2.78 Prior to the issue of a Subdivision Certificate, a positive covenant is to be registered against each new land title that:

- Refers to the Day Design Pty Ltd Acoustic Report titled "Waterside Residential Development, Penrith Proposed Industrial & Traffic Noise Control, Waterside Residential Stage 6" prepared by Day Design Pty Ltd dated 10 August 2011 (Report no. 2088-24T 6, Rev. A).
- Refers to the "Stage 6 Facade Acoustics Schedule – Version 4.0: Project 2088-24T 6, Rev. A".
- Stipulates the noise criteria as outlined in the above document and ensures that it be achieved.
- Provide advice on the mechanisms required for that lot to meet the criteria (as shown in "Stage 6 Facade Acoustics Schedule – Version 4.0: Project 2088-24T 6, Rev. A").

2.79 An 88B instrument is to be registered against Lots 33, 34, 35 and 53-71 that stipulates that dwellings on these lots are not to be single storey, to ensure compliance with the Day Design Pty Ltd Acoustic Report titled "Waterside Residential Development, Penrith Proposed Industrial & Traffic Noise Control, Waterside Residential Stage 6" prepared by Day Design Pty Ltd dated 10 August 2011 (Report no. 2088-24T 6, Rev. A).

2.80 An 88B instrument is to be registered against all lots that stipulates that dwellings are not to be occupied until the primary and secondary built form barriers have

been erected, and the two storey homes in the secondary barrier have reached lock-up, as required by the Day Design Pty Ltd Acoustic Report titled "Waterside Residential Development, Penrith Proposed Industrial & Traffic Noise Control, Waterside Residential Stage 6" prepared by Day Design Pty Ltd dated 10 August 2011 (Report no. 2088-24T 6, Rev. A).

- 2.81 An 88B instrument is to be registered against all lots that restricts the creation of any dwelling to be only permitted if in accordance with this development consent and the Waterside Estate Pre-approved Dwelling Designs.

SECTION 94

- 2.82 This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan for Waterside Green (Lakes Environs). Based on the current rates detailed in the accompanying schedule attached to this Notice, \$1,356,778.00 is to be paid to Council **prior to a Construction Certificate being issued for this development** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 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 S.94 invoice accompanying this consent should accompany the contribution payment.

The Section 94 Contributions Plan for Waterside Green (Lakes Environs) may be inspected at Council's Civic Centre, 601 High Street, Penrith.

- 2.83 This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan for Cultural Facilities. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$41,400.00 is to be paid to Council **prior to a Construction Certificate being issued for this development** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 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 S.94 invoice accompanying this consent should accompany the contribution payment.

The Section 94 Contributions Plan for Cultural Facilities may be inspected at Council's Civic Centre, 601 High Street, Penrith.

- 2.84 This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan for District Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$617,892.00 is to be paid to Council **prior to a Construction Certificate being issued for this development** (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 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 S.94 invoice accompanying this consent should accompany the contribution payment.

The Section 94 Contributions Plan for District Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

PAYMENT OF FEES

- 2.85 All roadworks, dedications and drainage works are to be carried out at the applicant's cost.
- 2.86 **Prior to the issue of a Construction Certificate**, all fees associated with Penrith City Council-owned land and infrastructure shall be paid to Council. These fees include Road Opening fees and Infrastructure Restoration fees.

CERTIFICATION

- 2.87 **Prior to the commencement of any earthworks, construction or demolition works on site**, the proponent is to:
- a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act 1979 and accompanying Regulation, and
 - b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

- 2.88 An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and **prior to the occupation of the dwellings**. The commitments listed in the BASIX Certificates are to be completed prior to the issue of the Occupation Certificate.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority. In the event that a Compliance Certificate was issued by the Principal Certifying Authority certifying compliance that all conditions of the development consent required to be met has in fact been met, shall be submitted to Penrith City Council if Council is not the Principal Certifying Authority.

- 2.89 A Subdivision Certificate is to be obtained **prior to the release of the linen plan of subdivision**. The Subdivision Certificate will not be issued if any of the conditions in this consent are outstanding.
- 2.90 The commitments listed in the BASIX Certificates for the dwellings and forming part of the development consent shall be maintained during the life of the dwellings. Where the commitments require replacement, the replacement must be identical to or at a higher star rating to that listed in the BASIX Certificate.

THIS SHEET IS BEING CONTINUALLY UPDATED TO SHOW THE
CURRENT SUBDIVISION PATTERN OF THE SCHEME. FOR DETAILS
OF UPDATES AND ADDITIONAL AND REPLACEMENT SHEETS SEE
SCHEDULE BELOW

SCHEDULE OF CHANGES TO THE SCHEME

LOT No.	DETAILS	SHEET No.
---------	---------	-----------

Subdivision Certificate No.:

Date:

Surveyor: Ian Vincent Myers

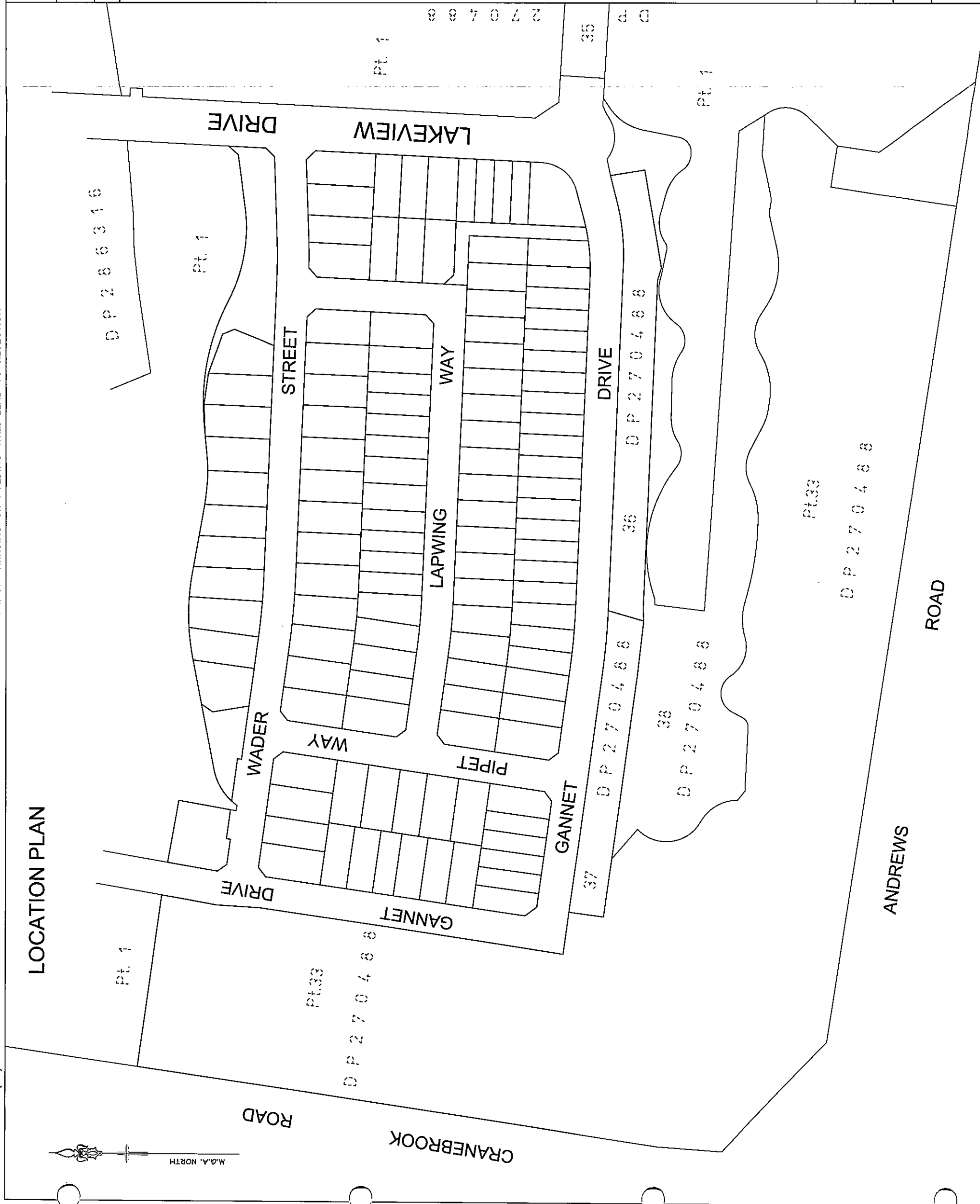
Surveyor's Reference: 14608-6C

Registered:

NEIGHBOURHOOD PLAN

DP286343

02.06.11

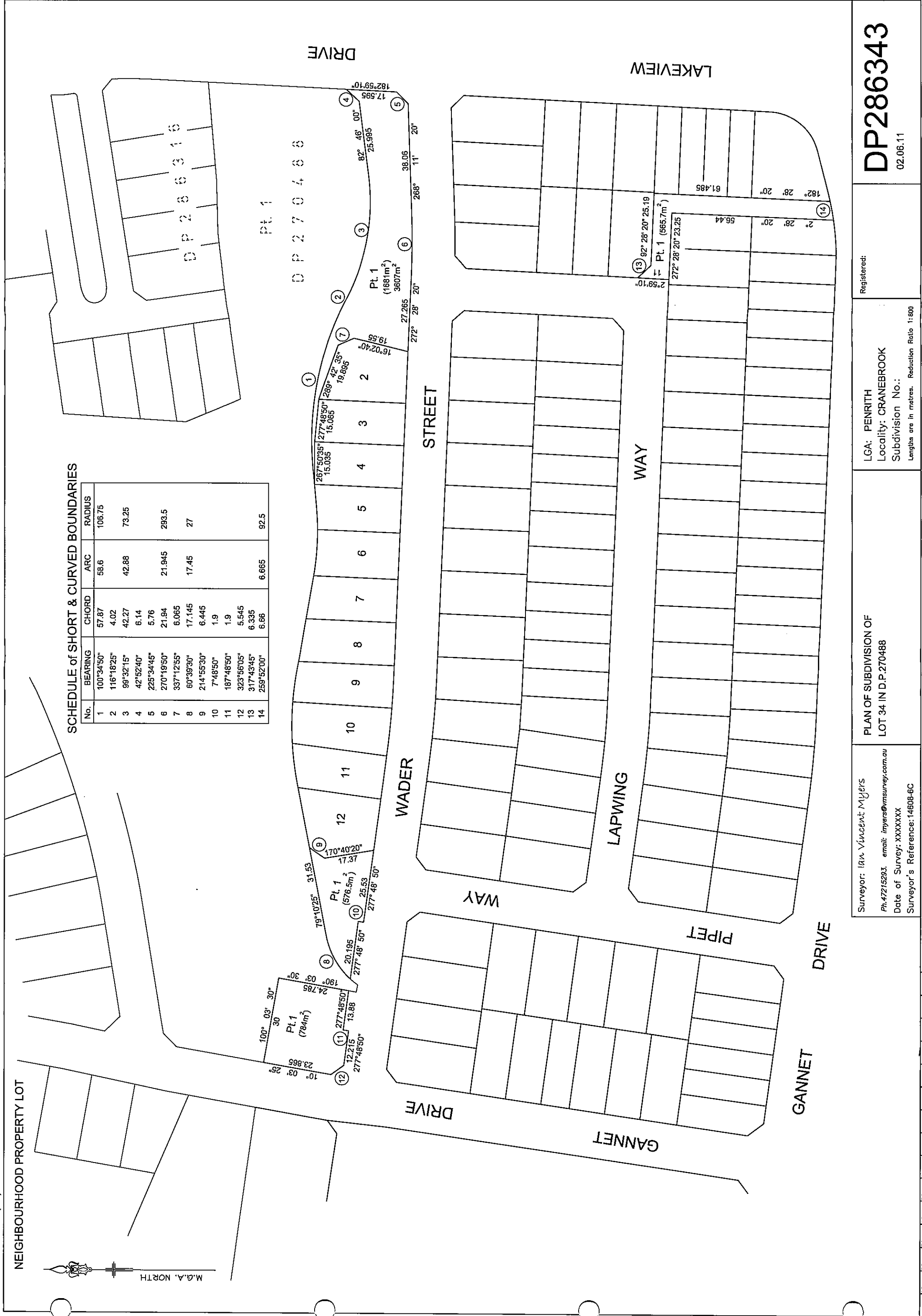


NEIGHBOURHOOD PROPERTY LOT



SCHEDULE OF SHORT & CURVED BOUNDARIES

No.	BEARING	CHORD	ARC	RADIUS
1	100°34'50"	57.87	58.6	106.75
2	116°18'25"	4.02	42.88	73.25
3	99°32'15"	42.27	42.88	73.25
4	42°52'40"	6.14	21.945	293.5
5	225°34'45"	5.76	17.45	27
6	270°19'50"	21.94	6.665	92.5
7	337°12'55"	6.065		
8	60°39'30"	17.145		
9	214°55'30"	6.445		
10	7°48'50"	1.9		
11	187°48'50"	1.9		
12	323°56'05"	5.545		
13	317°43'45"	6.335		
14	259°52'00"	6.665		

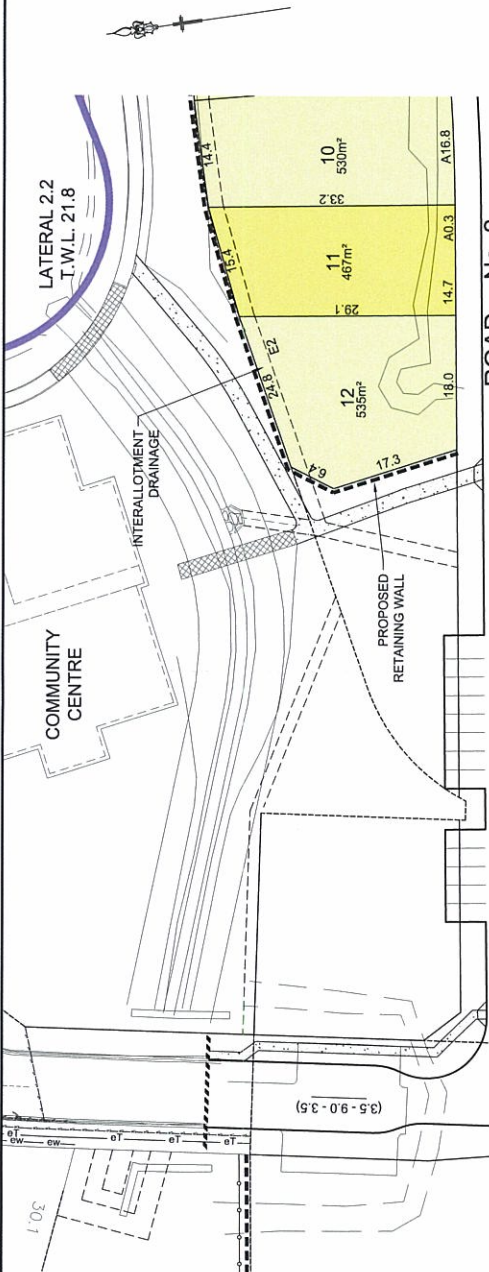


Surveyor: Ian Vincent Myers
Ph. 47215293, email: ianmyers@vmsurvey.com.au
Date of Survey: xxxxxxx
Surveyor's Reference: 14608-6C

PLAN OF SUBDIVISION OF
LOT 34 IN D.P. 270488

LGA: PENRITH
Locality: CRANE BROOK
Subdivision No.:
Lengths are in metres. Reduction Ratio 1:800

Registered:
DP286343
02.06.11



'STAGE 7B' SUBJECT TO
SEPARATE DA
APPLICATION

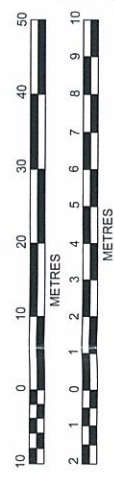
PLAN
SCALE 1:500

- NOTE**
- * MANDATORY TWO STOREY HOUSES
 - 10m HIGH ACOUSTIC TERRACE WALL AND 14m HIGH SECONDARY WALL WITH BRIDGE BARRIER MUST BE ERRECT BEFORE OCCUPATION OF DWELLINGS
 - DWELLING TO BE CONSTRUCTED TO LOOK-UP PRIOR TO OCCUPATION OF LOTS 02-27, 36-52 AND 97-107.

- LEGEND**
- A2 >500m² (FRONT WIDTH >15m)
 - A1 >450m² (FRONT WIDTH 15m)
 - B2 >300m² - <449m² (FRONT WIDTH 12.5m-15m)
 - B1 >300m² - <449m² (FRONT WIDTH 10m)
 - C1 >200m² - <299m² (FRONT WIDTH 8.5m-9m)
 - OPEN SPACE
 - NEIGHBOURHOOD LOT
 - EASEMENT TO DRAIN WATER 1.5 WIDE
 - EASEMENT TO DRAIN WATER 2.0 WIDE
 - EASEMENT TO DRAIN WATER 3.0 WIDE
 - EASEMENT TO DRAIN WATER 3.6 WIDE
 - GAS
 - TELSTRA
 - HIGH VOLTAGE
 - SEWER
 - WATER
 - ZERO LOT LINE
 - ACOUSTIC FENCE
 - RETAINING WALL
 - LATERAL & LAKE WATER LINE



NOTE: ALL DIMENSIONS AND AREAS
ARE SUBJECT TO FINAL SURVEY



CLIENT:



CONSULTING CIVIL INFRASTRUCTURE ENGINEERS
& PROJECT MANAGERS

J. WYNNDHAM PRINCE

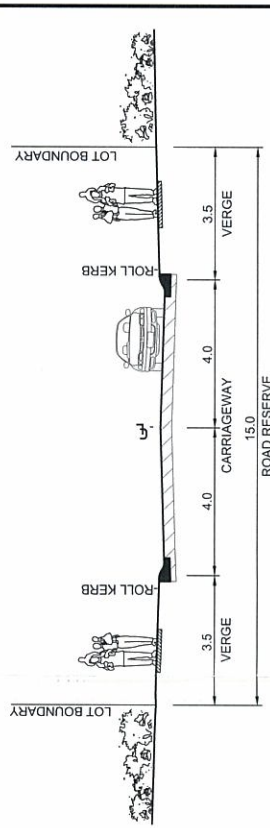
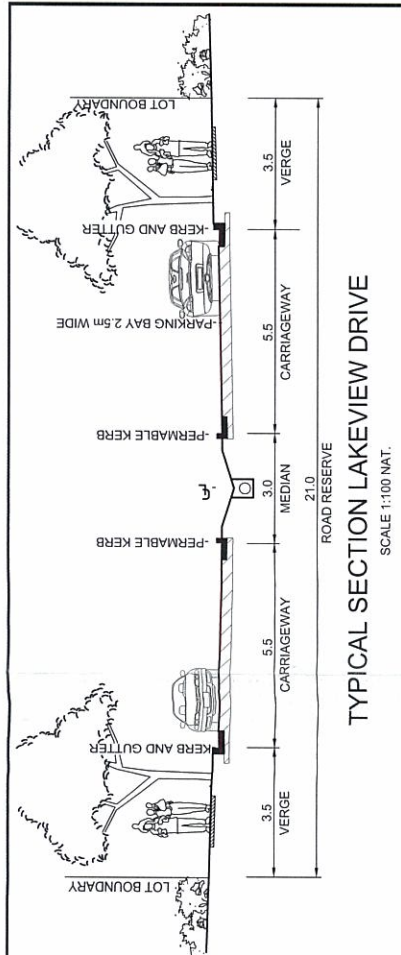
PO Box 4366 PENRITH WESTFIELD NSW 2750
P 02 4720 3300 F 02 4721 7638 W www.jwprince.com.au E jwp@jwprince.com.au

AMENDMENT	DES	DRN	CKG	APR	DATE
C	ISSUE FOR DA APPROVAL	KN	KN	KN	08/08/11
B	CONSTRUCTION STAGING NOTE ADDED	KN	KN	KN	20/09/10
A	ISSUE FOR DA APPROVAL	KN	KN	KN	30/09/10

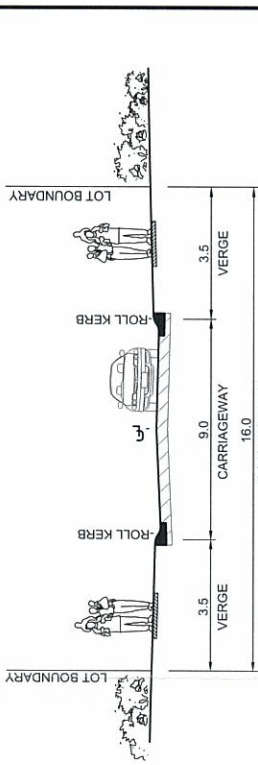
ISSUED FOR DA APPROVAL
NOT FOR CONSTRUCTION

WATERSIDE GREEN
STAGE 6
SUBDIVISION PLAN
SHEET 1 OF 1

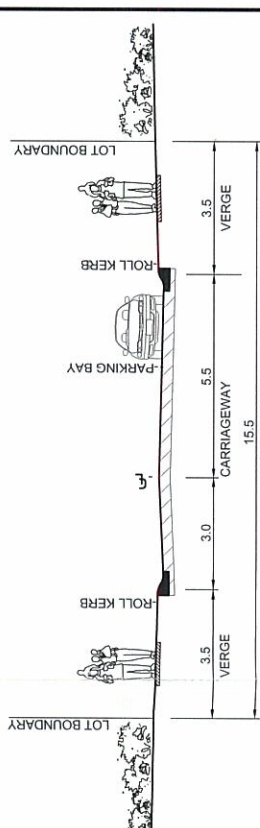
PLAN No: 8850/DA12
FILE No: 8850DA12
SHEET SIZE: A1 ORIGINAL



TYPICAL SECTION ROAD No. 2, 4, 7
□ 6 - CH 300.000 TO CH 513.794
SCALE 1:100 NAT.



TYPICAL SECTION ROAD No. 6
- 543.375 TO CH 584.364
SCALE 1:100 NAT.



TYPICAL SECTION ROAD No. 6
- CH 75.000 TO CH 285.000 □
CH 315.000 TO CH 360.000
SCALE 1:100 NAT.



Department of
Infrastructure, Planning and Natural Resources

Contact: Paul Bourne
Phone: 02 9 895 7259
Fax: 02 9 895 6270
Email: Paul.Bourne@dipnr.nsw.gov.au

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

Our ref: ERM2005/06047
Your ref:
File: SRW0000293

Attention: Paul Battersby

17 June 2005

Dear Paul

Subject: Waterside Green – Part 3A Permit Matters

I refer to a letter from Stockland to the Department dated 28 February 2005 (copy attached) which suggests practical ways to streamline the development approval process, and to protect riparian areas, at the subject site.

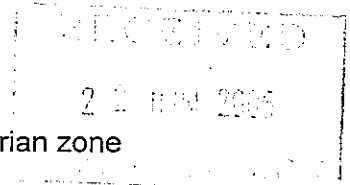
In response to the suggestions, the following comments are offered:

Roads and Services Construction

- If roads and services requiring a Part 3A approval under the Rivers and Foreshores Improvement Act 1948 (RFI Act) are covered by an existing Part 3A permit, then minor changes to such works can be accommodated via a variation to the Part 3A permit. This will apply to changes not requiring an additional DA but significant enough to require changes to the approved drawings.
- If stages of construction have not previously been subject to a Part 3A approval, then such an approval will be required if the Part 3A provisions of RFI Act are triggered.

Future DAs for Residential Housing or Subdivisions

- Any single dwelling house or dual occupancy development is exempt from the need to obtain a Part 3A permit by an "Order" (refer attachment).
- If more than one residence is proposed (and the proposal is not a dual occupancy), or a subdivision is proposed, they **WILL NOT** be required to obtain a Part 3A permit, and hence **WILL NOT** trigger integrated development for the purposes of the RFI Act, **provided they:**
 - a) are located **landward of any perimeter road** which has been constructed in accordance with plans approved by DIPNR, and,
 - b) do not involve works or landscaping **within protected waters or any riparian zone**
- All multiple housing and subdivision DAs involving earthworks within any protected waters or riparian zone will require a Part 3A permit and hence will be integrated.
- If any housing and/or subdivision DAs **do require a Part 3A permit**, DIPNR can impose conditions to protect the riparian zone that require:
 - exclusion fencing/physical barrier (which can, at the discretion of the applicant, be "the rear boundary fence")



- sediment fences along the rear boundary and outside the riparian zone
- inlet protection to stormwater structures if failure of the latter is likely to negatively impact the riparian zone
- provision of security (bond) until construction of the residences is complete - an amount of \$2000 per residence appears reasonable (**Note:** this requirement may be waived if an applicant already has provided security covering the particular area)
- appropriate documentation to support the previous initiatives
- In the case of DAs that are **exempt** from the need to obtain a Part 3A permit under the "order", or do not involve works in a riparian zone and hence do not require a Part 3A permit as advised above, **but do have the potential** to impact on a riparian zone (e.g. sites that back on to riparian zones and hence risks posed during construction), it is **recommended** that Council consider conditioning approvals with similar requirements as listed above.
- "Protected waters" referred to herein mean: Farrelis Creek, main lakes and lateral lakes
- "Riparian zone" means the riparian zone and macrophyte zone referred to in the plan *Riparian Corridor, Issue E-11, by John Lock and Associates, dated 2/12/04* (copy attached)

Should you have any queries in relation to this matter, please contact Paul Bourne on telephone 9 895 7259.

Yours sincerely



Paul Bourne
Senior Natural Resource Officer
Sydney Region West

Attach.

Copy to:

Paul Jones
Development Manager – Residential Estates NSW
Stockland
GPO Box 998
SYDNEY NSW 1041

Objection to Clause 21(2) Integrated Development Development Standard



Waterside Estate, Cranebrook Stage 6, Integrated Residential Development

Submitted to Penrith City Council
On Behalf of Stockland Development Pty Ltd

June 2011 ■ 10179

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JBA Urban Planning Consultants Pty Ltd operates under a Quality Management System. This report has been prepared and reviewed in accordance with that system. If the report is not signed below, it is a preliminary draft.

This report has been prepared by: Lindsey Gray

Signature



Date 10/06/11

This report has been reviewed by: Amanda Harvey

Signature



Date 10/06/11

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1.0 Introduction

This State Environmental Planning Policy No.1 - Development Standards (SEPP 1) Objection has been prepared by JBA Planning on behalf of Stockland Development Pty Ltd. It is submitted to the Penrith City Council (Council) in support of a Development Application (DA) for Stage 6 residential development.

This SEPP 1 Objection relates to the integrated development standard clause 21(2) of Penrith Local Environmental Plan 1998 (Lakes Environs) and should be read in conjunction with the comprehensive Statement of Environmental Effects prepared by JBA Planning dated June 2011 accompanying the DA.

Furthermore, we note that under the Waterside Stage 1C (DA 06/1970), Stage 2C (DA10/0717) and Stage 2E (DA10/0918) approvals pursuant to a SEPP 1 objection, Council agreed that the imposition of clause 21(2) was unnecessary and unreasonable.

1.1 SEPP 1 Framework

The objective of SEPP 1 is to provide flexibility in the application of development standards. It enables a consent authority to vary a statutory development standard where strict compliance with that standard would be unreasonable or unnecessary, or where strict compliance would hinder the attainment of the objectives specified in Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act, 1979 (EP&A Act). Section 5 of the EP&A Act identifies the objects of the Act and Section 5(a) (i) and (ii) provide as follows:

"5(a) to encourage -

- (i) the proper management, development and conservation of natural and man-made resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;*
- (ii) the promotion and co-ordination of the orderly and economic use of and development of land."*

Clause 7 enables a consent authority to grant consent to a development application where it is satisfied that the objection to a development standard is well founded and consistent with the aims of SEPP 1. The consent authority must obtain the concurrence of the Director-General of the Department of Planning & Infrastructure, however this concurrence is largely delegated to Council to exercise in the determination of a development application.

Clause 8 of the Policy identifies:

"the matters that shall be taken into consideration in deciding whether concurrence (and therefore Council in determining an application) should be granted are -

- a. whether non-compliance with the development application raises any matter of significance for State or regional environmental planning; and*
- b. the public benefit of maintaining the planning controls adopted by the environmental planning instrument."*

The Department of Planning's 'Guidelines for the Use of State Environmental Planning Policy No. 1' (refer DOP Circular No. B1) states that:

"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small and in other cases it may be numerically large, but nevertheless be consistent with the purpose of the standard....

In deciding whether to consent to a development application the Council should test ... whether the proposed development is consistent with the State, regional or local planning objectives for the locality, and in particular the underlying objective of the standard.

If the development is not only consistent with the underlying purpose of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unnecessary and unreasonable."
(our emphasis)

In considering whether to grant its discretion under SEPP 1 to vary a development standard, the consent authority must give consideration to whether the attainment of the development standards would be *unreasonable* or *unnecessary* in the circumstances of the particular case.

The objective of the zoning and the purpose of the relevant development standard, are the relevant considerations in determining whether compliance with that standard would be unreasonable or unnecessary.

A SEPP 1 objection will be well founded if it has shown that the **underlying purpose** of the development standard is satisfied by the particular development proposed.

The identification of the underlying purpose very often involves an inquiry about the particular zoning and other provisions in the applicable environmental planning instruments that apply to the subject land.

It may also involve examination of the circumstances leading to the development of the standards at the time of their imposition, and of the subsequent application of the development standards by a consent authority over time and in light of changing planning and design circumstances and potential for achievement of new community benefits that were not envisaged at the time the standards were drafted.

1.2 Relevant Case Law

There is ample case law to demonstrate that in any consideration of an objection under SEPP 1, the extent of the variation from the development standard is of little consequence¹.

A recent decision, *Wehbe v Pittwater Council* [2007] NSW LEC 827, has shed light on the test for the assessment of a SEPP 1 objection. The long-standing 5 part test was set out in *Winten Property v North Sydney* (2001) 130 LGERA 79:

- Is the planning control in question a development standard?
- If so, what is the underlying object or purpose of the standard?

¹ Refer, for example, to *Parlby v North Sydney Municipal Council* (No.10613/1985) or *Legal & General Life of Australia Limited v North Sydney Municipal Council* (1989) 68 LGERA 192.

- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)
- Is the objection well founded?

Chief Justice Preston in his reconsideration, set out a new 5 part test (see further below). He also rephrased the assessment process as follows:

- the applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- the consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and

It is also important to consider:

- whether non-compliance with the development standard raises any matter of significance for State or regional planning; and
- the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Preston CJ then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

- the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; and
- the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Where the grounds of objection are of a general nature and would be applicable to many sites in the locality, approval of the objection may create an adverse planning precedent. Preston CJ noted that there is a public benefit in maintaining planning controls and a SEPP 1 objection should not be used in an attempt to effect general planning changes throughout the area.

2.0 The Development Standard

This SEPP 1 relates to the integrated development standard clause 21(2) of Penrith Local Environmental Plan 1998 (Lakes Environs), herein referred to as LEP 1998.

Clause 21(2) of LEP1988 states that:

"The Council must not grant consent for integrated development that involves a subdivision of land that results in any allotment with an area of 300m² or less, unless it is satisfied that the erection of the single dwelling house on each such allotment will take place before the registration of the relevant plan of subdivision."

It should be noted that this requirement does not apply to integrated development, where allotments greater than 300m² are created.

It is intended that all proposed dwellings on lots less than 300m² in area will ultimately be constructed in accordance with the relevant development consent but not necessarily prior to registration of the approved plan of subdivision. This will enable the applicant to register the plan of subdivision prior to the construction of the approved dwellings if so desired.

Pursuant to Schedule 1 of LEP 1998 'integrated development' is defined as meaning:

"development that consists of –

(a) the subdivision of land into 2 or more allotments, and

(b) the erection of a single dwelling house on each of the allotments created by that subdivision."

2.1 Legal Advice

In March 2006, Stockland sought legal advice on whether clause 21(2) is a development standard to which SEPP 1 applies. Corrs Chambers Westgarth reviewed clause 21(2) in accordance with Land and Environment's "two-step test", which establishes whether a planning control is a prohibition or a development standard and determined that the clause did not operate to prohibit the relevant development, and was therefore a development standard to which SEPP 1 applies (**Attachment A**).

Background

In preparing this written objection it is important to understand the background to the inclusion of clause 21(2), which was gazetted as part of Amendment No. 1 to Penrith LEP (Lakes Environs) 1998.

In December 2003, Stockland sought Council's approval to amend LEP (Lakes Environs) 1998 and the adoption of a refined masterplan for the 2(g) Residential (Waterways) zoned land in the Waterside Estate. This was adopted into the Lakes Environs DCP 1998, which now forms Part 6, Section 6.4 Waterside of the Penrith DCP 2006 (DCP 2006).

The joint submission encompassed a new land and housing delivery strategy for the Waterside Estate. Principally, the submission sought to increase residential densities over the site and to include other forms of housing types other than 'integrated development'.

The reasons for the sought changes to the LEP and DCP reflected Stockland's desire to facilitate a housing delivery strategy that had evolved from detailed site analysis, market research and commercial viability assessment to reflect contemporary housing market demands.

The proposed amendment to the LEP, in part, sought to amend clause 11 of the LEP to facilitate subdivision of land over the estate to ensure that it was 'generally' in accordance with the subdivision plan contained in the masterplan for the Waterside DCP.

As stated in the rezoning submission lodged to Council, the underlying reasons for this amendment were to:

- prevent fragmentation of the site into a series of undersized lots that may restrict orderly development in accordance with the master plan (now included as part of DCP 2006);
- to ensure that development occurs in an integrated and cohesive manner, considering and responding to the existing and future surrounding environment; and
- to facilitate the timely delivery of infrastructure, community facilities, open space and roads.

It was noted that the term 'integrated development' was used to denote development that is to be considered and assessed in an integrated manner. That is, the proposed built form is to be assessed at the same time as that of the relevant lot subdivision layout. In this way, the house designs for smaller lots could be assessed in conjunction with the lot size to ensure that good quality outcomes were achieved such as:

- solar access;
- protection of privacy;
- provision of adequate private open space;
- landscaping; and
- appropriate bulk and scale.

In response to this submission, a report to Council on the matter was considered at the Policy Review Committee Meeting, 23 February 2004.

This report restated Stockland's intent to deliver housing over smaller lots in the form of 'integrated development' and that this was a mechanism that involves approval of the dwellings at the subdivision stage which was to continue to be endorsed through the implementation of the proposed amendments to the DCP and LEP. In support of this, the report stated that integrated development was a mechanism that ensured "*consideration of dwelling design issues during preparation of the subdivision layout*".

It should be noted that the draft LEP stated that there was no restriction with regarding to the timing for subdivision registration for lots between 450 and 300m², however did not state any restriction for the registration of lots less than 300m² in area. Upon Parliamentary Counsel's review of the draft LEP clause 21(2) was inserted, however the draft LEP was not re-exhibited.

3.0 Justification for the Departure

In this instance compliance with the integrated development standard pursuant to clause 21(2) LEP (Lakes Environs) 1998 is unnecessary and unreasonable for the following reasons set out below.

3.1 Certainty of Built Outcomes

In discussing the matter previously with Council (in regards to the Stage 1C, Stage 2C and Stage 2E developments), the Council Officers were concerned that upon registration of the Type C Lots new owners may decide not to proceed with constructing the approved dwelling that formed part of the integrated development. The consequence of this would be that owners might then seek approval for alternative dwelling designs for their lots.

Aside from clause 21(2), clause 9A of LEP 1998 states that:

"Notwithstanding any other provision of this plan, development for the purpose of a dwelling is prohibited on any allotment of land that is less than 450m², unless the dwelling:...

(b) forms part of an integrated development;..."

Therefore, based on this provision, no DA for a single dwelling can be lodged on a lot less than 450m² in area unless it forms part of an integrated DA. That is, any DA that seeks approval for a dwelling design on a lot less than 450m² must concurrently seek approval for the subdivision layout.

In support of this provision, clause 11 of LEP 1998 states that:

"The Council must not grant consent to a subdivision that creates allotments of land of less than 450m², except where the subdivision involves only:....

(c) an integrated development consistent with the provisions of this plan and any development control plan applying to the land;..."

That is, any subdivision involving a lot less than 450m² in area must be similarly assessed in conjunction with the proposed dwelling design.

Furthermore, to ensure good quality design outcomes throughout the Waterside Estate there are a number of other forms of controls, procedures and guidelines which have been endorsed to regulate built form outcomes. These include:

- Penrith DCP 2006, Part 6, Section 6.4 – Waterside;
- the Waterside Design Guidelines, as adopted by Council;
- covenant restrictions on the registered titles for each lot to ensure future development adheres to these endorsed Guidelines; and
- review of design of each dwelling through Stockland's Design Review Panel.

We note the dwelling designs proposed within the DA for Stage 6 on the Type C lots fully comply with the built form controls within DCP 2006.

To ensure a further level of certainty with regard to built outcomes for Type C Lots, 88B restrictions will be registered on each lot requiring that housing be constructed on the relevant site in accordance with the approved development consent.

Added to this, Stockland has established a Design Review Panel to assess and endorse all housing designs for the scheme prior to their submission to Council for approval.

These various provisions and forms of regulation have already determined a solid level of certainty in the built and subdivision outcomes over the estate. Therefore, these provisions have already ascertained the built outcomes over the site to make the application of clause 21(2) of LEP 1998 redundant and unnecessary.

3.2 Consistency with the Underlying Purpose of the Controls

As reiterated in Council's report, the intent integrated development was to ensure that designs for small lots were assessed at the same time as that of the associated subdivision layout.

None of the Council reports or objections on the draft LEP sought to regulate the timing of subdivision for integrated forms of development, and the exhibited draft LEP did not include the clause 21(2) development standard or any other similar provision.

Therefore, there was never any intent in the draft amendments to Penrith LEP (Lakes Environs) 1998 to further regulate integrated development.

3.3 Consistency of Application of Standard

Other 'integrated development' within Waterside is not restricted by the subject development standard despite small lot sizes with similar site constraints.

If these constraints apply to all forms of integrated development, it is considered inequitable that this development standard be only applied to Type C Lots.

3.4 Dwellings will be Constructed in accordance with Development Approval

All proposed dwellings on lots less than 300m² in area will ultimately be constructed fully in accordance with the relevant development consent upon registration of the approved plan of subdivision.

The timing for the registration of the lots as a subdivision prior to construction of the dwelling occurring will not impede the ability to construct the dwellings in accordance with the consent in any way whatsoever, nor will it give rise to any material changes or impacts associated with the development.

3.5 Restrictions regarding Titling Arrangements

To provide Council with a greater level of certainty in regard to the quality of built outcomes in accordance with the development consent for the proposal, the applicant will draft and place a covenant on the titles on each of the dwelling lots created under this consent. The covenant will require the applicant, owner or nominated builder to only construct the approved dwelling on the respective lot in accordance with the relevant development consent.

The applicant or subsequent purchaser can only modify the approved dwelling via a Section 96 application submitted to and approved by Council.

To support the creation of a covenant over the title of each lot to be created under the approved subdivision, it is proposed that the following condition be included in the development consent:

"A restrictive covenant must be placed on the registered plan of subdivision for all dwelling allotments requiring the construction of all dwellings to be strictly in accordance with the approved plans attached to Development Consent No..... and all relevant conditions of this consent."

The application of clause 21(2) is considered to be unnecessary.

3.6 Definition of Type C dwellings differs from intent of Clause 21(2)

Type C dwellings, which are to be built on lots less than 300m² is defined in the DCP as being:

"C" type Dwelling – Terrace & Courtyard Lots

Lots 200m² or greater but less than 300m² which have had the final house design submitted and approved at the subdivision stage. The house will be either attached (i.e. one of two terraces) or detached on a zero lot line with a courtyard. They will be two storeys."

This definition indicates that the final house design is only required to be submitted and approved at the subdivision stage, not for it to be constructed at the subdivision stage as clause 21(2) of LEP 1998 requires.

It is also noted that the required timing for the registration of lots less than 300m² and any other sized lots is not stated or inferred anywhere in DCP 2006.

3.7 Dwellings can be Built Separately

The design and freestanding nature of each of the proposed dwellings on lots less than 300m² does not require these dwellings to be built collectively. Hence, there is no structural need to construct these dwellings in an incorporated manner.

3.8 Commercial Realities of Housing Delivery

The proposal to register lots prior to constructing the relevant dwelling over Type C Lots is related to the need to cater to housing market forces. This approach would provide the flexibility that:

- will ensure that constructed dwellings do not remain vacant and vulnerable to vandalism until sold and occupied;
- will allow new owners to occupy their dwelling without them having to wait until all other dwellings are constructed;
- will enable Stockland to process sales for these dwellings, that will then help to fund the ongoing construction of infrastructure for the remainder of the estate;
- will allow builders to allocate and focus resources in order of priority and/or in accordance with sales, thereby reducing construction timeframes for each dwelling; and
- will allow for lot registration of Stage 6 as a whole, thereby negating the need to allocate additional costs and resources in undertaking registration of parts of Stage 6.

The above is based on the commercial realities associated with the delivery of new housing in an increasingly competitive market and the expectations of potential purchasers. Notably these were the main reasons behind the amendments to the LEP and DCP.

3.9 Consistency with Objectives of the Standard

The main determinant for varying a development standard under SEPP 1 is whether the aims and objectives of the relevant planning instruments and/or the objectives or intent of the development standard are nevertheless achieved. This requires careful assessment of the effects of the variation.

3.9.1 General aims of Penrith LEP (Lakes Environs) 1998

As set out at clause 2, the general aims of LEP 1998 are:

- “(a) to allow a diversity of housing forms, a waterway system, open space and tourist accommodation,*
- (b) to promote development which is consistent with the Council’s vision for the City of Penrith contained in its Strategic Management Plan, namely, one of a region having a harmony of urban and rural qualities with a strong commitment to environmental protection and enhancement,*
- (c) to introduce a planning framework for the development of the land to which this plan applies (the Penrith Lakes Environs) having regard to its special characteristics and potential for a unique residential environment,*
- (d) to promote development which observes and maintains responsible and environmentally sound water management practices and which minimises any adverse environmental impact on surrounding localities, and*
- (e) to protect the environmental heritage of the area, whether it is of historic, aesthetic, architectural, archaeological, natural, cultural, Aboriginal or other significance.”*

Furthermore, the general objectives of LEP 1998 are:

- “(a) to utilise and enhance the natural characteristics of the land to provide opportunities for a unique residential environment,*
- (b) to create a high quality and different living environment that focuses on water design elements,*
- (c) to encourage development which satisfies ecologically sustainable design principles,*
- (d) to encourage development which enhances the land’s gateway location in relation to Penrith and the Penrith Lakes,*
- (e) to provide a planning framework which allows development control plans to supplement the controls contained in this plan,*
- (f) to preserve and enhance designated natural wetland areas so as to provide a variety of wildlife habitats capable of supporting a variety of species,*
- (g) to ensure that the waterway system mitigates the impact, on the natural wetland areas, of land uses within the catchment, and contributes to the viability of those wetlands,*
- (h) to promote development which is efficient in terms of transportation, energy and land utilisation,*
- (i) to facilitate the appropriate provision of, or of funding for, special land uses and major infrastructure works,*
- (j) to permit residential development which incorporates features necessary to protect occupiers against adverse noise impacts arising from industrial and traffic noise,*

- (k) to limit the potential risk to life and property from flood events, and*
- (l) to prohibit development of land for any purpose other than opening a public road if, as a result of carrying out the development, there will be direct vehicular access between that land and either Cranebrook Road or Andrews Road."*

The proposed development is consistent with the relevant general objectives and aims of LEP 1998 in that it:

- provides dwellings and lots of various sizes, which assist in achieving overall housing densities that meet with Local and State Government expectations and that envisaged by DCP 2006;
- is uniquely designed to complement and integrate with the surrounding natural environment through the incorporation of WSUD features, energy and water efficient measures and appropriate landscaping;
- does not impact upon the environmental heritage of the area;
- is orientated to capture views of and provide public areas access to the lateral system;
- incorporates water and energy saving devices, native and non-invasive plant species complementary to the area, and stormwater management system that improves water quality and flow to the lake and wetland systems down stream;
- incorporates contemporary dwelling designs that adapt to the local microclimate through the use of appropriate materials, finishes, sun-shading devices and dwelling orientation;
- forms part an overall stormwater management system that filters and regulates flows to the lake and wetland systems;
- includes smaller lots that enable the efficient use of land to provide greater housing densities;
- is supported by the early delivery of infrastructure;
- incorporates appropriate noise mitigating measures to ensure good levels of amenity for future occupants; and
- is supported by the previous lake system and flood mitigation works within the development.

3.10 Objectives of zone 2(g) Residential (Waterways)

In accordance with clause 8, the general aims of the 2(g) Residential (Waterways) are:

- "(i) to enable the development of land for residential, waterway and open space purposes; and*
- (ii) to provide for a variety and mix of housing forms; and*
- (iii) to encourage development which satisfies ecologically sustainable design principles; and*
- (iv) to promote development which safeguards the natural, cultural and historic environment of the area and preserves the residential amenity of surrounding areas; and*
- (v) to encourage the development of an aquatic ecosystem that provides a habitat for a diversity of flora and fauna, and protects the quality of the downstream wetlands; and*

(vi) to allow for the provision of community services and urban infrastructure; and

(vii) to promote visitor accommodation compatible with residential development."

The proposed development is consistent with the relevant general objectives of the 2(g) zone in that it:

- provides residential development as envisaged by Penrith LEP (Lakes Environs) 1998;
- incorporates a variety of lots sizes and housing designs to suit the various needs of the community;
- incorporates water and energy saving devices, native and non-invasive plant species complementary to the area and stormwater management system that improves water quality and flow to the lake and wetland systems down stream in alignment with ESD principles;
- does not impact upon the environmental heritage of the area and preserves the amenity of adjoining residential development;
- includes stormwater measures and diverse landscaping that complements the rehabilitated environment of the lake system;
- is supported by the provision of on street visitor car parking areas within the adjoining street network.

3.11 Specific Objectives of the Development Standard

In the absence of any explicit objectives for Clause 21(2), it is understood that the underlying intent of the relevant development standard is to:

- ensure certain development outcomes for lots less than 300m² in area in accordance with Penrith LEP (Lakes Environs) 1998, DCP 2006 and the Waterside Design Guidelines;
- ensure smaller lot dwellings are designed within relevant site constraints and yet achieve good design and amenity outcomes; and
- ensure the resulting subdivision lot pattern for lots less than 300m² in area are tailored to the built outcomes.

The proposed development achieves these intentions relevant to the development standard in that:

- it has been designed in accordance with Penrith LEP (Lakes Environs) 1998, DCP 2006 and the Waterside Design Guidelines. The Statement of Environmental Effects clearly demonstrates the proposed C Type dwellings generally comply with the relevant provisions of these instruments;
- all C Type dwellings and their landscape open spaces have been designed to provide a high level of amenity for future occupants through:
 - the provision of adequate useable and attractive open space;
 - appropriate orientation to capture solar access during winter and provide protection during summer;
 - ensuring privacy to adjoining dwellings;
 - providing adequate on site car parking; and
 - integrating the dwelling interiors with useable outdoor areas; and
- the proposed subdivision pattern will not be modified prior to the construction of any approved C Type dwellings.

In summary, the proposed C Type dwellings have been designed within the constraints of the smaller lot sizes to achieve good ESD, amenity and built outcomes as intended by the planning instruments. Therefore, the regulation of the timing for the registration of these lots as required under Clause 21(2) could not be expected to further improve upon these outcomes.

3.12 Matter of State or Regional Planning Significance

The proposed development and variation from the development standard does not raise any matters of significance for State or regional environmental planning, nor does it conflict with any State planning policies or Ministerial directives.

3.13 Objects of the Act

The objects of the Act as specified in Section 5(a) (i) and (ii), are in our opinion, achieved by the proposed development in that:

- it constitutes "proper management, development and conservation of natural and man-made resources";
- it promotes "the social and economic welfare of the community and a better environment" by better utilising the existing resources and infrastructure of the community; and
- it would result in "the promotion and co-ordination of the orderly and economic use and development of land".

4.0 Conclusion

Whilst the proposed development does not comply with the development standard relating to Type C lots, it nevertheless meets the assumed underlying objectives of the standard and the planning objectives relating to Penrith LEP (Lakes Environs) 1998.

Compliance with clause 21(2) will not either improve or ensure better planning outcomes than the development currently seeks to achieve. Furthermore, good quality development outcomes for the relevant Type C lots is assured through the compliance with the other provisions in the relevant planning instruments and inclusion of titling covenant attached to the relevant lots which ensures the construction of the approved dwelling, without the need to impose further regulation.

Registration of the subdivision prior to construction will afford more efficient allocation of resources in delivering the overall development in a timely manner. Compliance with the development standard is therefore unnecessary and unreasonable in the circumstances of the case, and refusal of the development application on these grounds is not warranted.

