

JRPP Ref. No.:	2012SYW115
DA No.:	DA12/1361
PROPOSED DEVELOPMENT:	Multi Unit Housing Development x 250 Units
APPLICANT:	Statewide Planning Pty Ltd
PROPERTY DESCRIPTION:	Lot 50-51 DP 1069025 (Lot 50 French Street Werrington)
DATE RECEIVED	Statewide Planning Pty Ltd
CIV	\$46,482,690
REPORT BY:	Jonathon Wood, Environmental Planner (Contractor)
RECOMMENDATION	Approval

Assessment Report

Executive Summary

On 19 December 2012 Council received a development application from Statewide Planning Pty Ltd. The development application proposes a multi unit housing development within the WELL Precinct that will accommodate a total of 250 Units. The development proposal involves the construction four (4) residential towers varying in height between four (4) and six (6) storeys, basement parking for 346 vehicles and a series of communal open space areas. Thirteen (13) of the residential units are designed as double height 'SOHO' units and there is an outdoor café area nominated within the primary open space area.

A development application for a 116 lot subdivision was granted consent by the Joint Regional Planning Panel on 26 April 2013 (2011SYW069), with the current proposal being located on four (4) of the approved allotments.

The subject land is zoned under Penrith LEP 1998 (Urban Lands) and contains the following zones: 10(a) Mixed Use – Residential, 10(b) Mixed Use – Employment and 5(a) Special Use – Army. The proposed development is contained wholly within the land zoned 10(a) Mixed Use- Residential and *multi-unit housing* is permissible with consent.

The proposed development has a capital investment value in excess of \$20 million. As such, the Sydney West Region Joint Planning Panel (JRPP) has the function of determining the application in accordance with Section 23G of the Environmental Planning and Assessment Act 1979.

The proposed development was advertised in the local newspapers and notified to the owners and occupiers of adjoining and nearby properties. A total of 188 property owners and occupiers were notified in the surrounding area and invited to make a

submission during the 30 day exhibition period. A total of two (2) submissions were received in response to the public exhibition.

An assessment of the proposed development under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the following issues - discussed in detail in this report - have emerged as a result of this assessment process:

- Urban design, context and setting of the development in the context of the Werrington Mixed Use Area DCP;
- Access, parking and traffic;
- Noise and Vibration Impacts;
- Amenity Impacts to Adjoining Properties;

The proposed development is in accordance with the relevant provisions of the Environmental Planning Instruments and Development Control Plan applicable to the subject site and 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. This report recommends that the application be approved subject to recommended conditions of consent.

There are 17 appendices to this report, as detailed below.

- Appendix No. 1 – Location Plan
- Appendix No. 1a- WELL Precinct Map
- Appendix No. 2 – Aerial Views of Site
- Appendix No. 3 – Site Plan
- Appendix No. 4 – 3D Perspectives
- Appendix No. 5 – Landscape Plan
- Appendix No. 6 - Approved Subdivision Plan
- Appendix No. 7 – Zoning Extract
- Appendix No. 8 – Bushfire Extract
- Appendix No. 9 – Correspondence from NSW Office of Water
- Appendix No. 10 – Correspondence from NSW Police
- Appendix No. 11 – Correspondence from Railcorp
- Appendix No. 12 - Penrith DCP 2006 Development Control Plan
- Appendix No. 13- Residential Flat Design Code Rules of Thumb
- Appendix No. 14- Design Verification Statement
- Appendix No. 15 – SEPP 1 Objection
- Appendix No. 16 – Extract from Assessment Report DA11/0546

Background

This application has a capital investment value of \$46.48 million and the JRPP is the consent authority for the development application. The JRPP recently granted consent, at its meeting dated 26 April 2013, to a subdivision development application for a 116 lot subdivision within the Werrington Mixed Use Precinct. The approved plan of subdivision (Appendix 6) involved the creation of four (4) large lots as part of Stage 2, being lots 200-204. Lots 200-204 are the subject of this development application and were indicated as future residential flat building sites. The current development application enables the achievement of the minimum 30 dwellings per hectare as envisaged for the Werrington Mixed Use Precinct.

As part of the subdivision development application the proponent prepared an offer to enter into a Voluntary Planning Agreement to enable the resolution of the issue of Section 94 contributions in the context of the \$30,000 cap on development contributions. The Voluntary Planning Agreement is currently being formulated noting that the subject site was excluded from the levying of Section 94 contributions as part of the previous development application for subdivision.

The current development application has undergone revision to address a number of issues raised by Council staff and Councils Design Review Panel.

Site and Surrounds

The subject site is identified as Lots 200-205 in an approved subdivision of the broader Werrington Signals site. The combined site is approximately 2.63Ha in area and is contained by future roads to the north, south, east and west. The site is currently vacant and is largely clear of vegetation with the exception of scattered trees as indicated on the aerial photographs contained at Appendix 2. The site currently does not have vehicular access other than from an unsealed road that connects to French Street. Upon completion of the approved subdivision the site will have vehicular access to the identified 'road no.3' that subsequently connects to French Street.

As shown at Appendix 1 the site within close proximity to the Great Western Highway and UWS Kingswood Campus. The subject site is within close proximity to the Western Railway Line that is approximately 20m north of the subject site. The railway station identified as part of the planning for the Werrington Enterprise Living and Learning Precinct is immediately to the north of the site. The location of the site within the broader WELL Precinct is provided at Appendix 1a- noting that upon full redevelopment of the precinct the site will be highly accessible to public transport and employment opportunities.

The Proposed Development

The development application proposes a multi unit housing development within the WELL Precinct that will accommodate a total of 250 Units in four (4) stages. The development proposal involves the construction four (4) residential towers varying in height between four (4) and six (6) storeys, basement parking for 346 vehicles and a series of communal open space areas. There are four (4) separate basement parking areas contained under the respective building forms and four (4) separate access points to the future road to the north.

A summary of the apartment typologies is provided within the table below:

Apartment type	Building A	Building B	Building C	Building D	Total	%
SOHO	3	4	3	3	13	5.2
Studio	1	0	1	0	2	0.8
1 bed	4	1	13	0	18	7.2
1 bed + study	5	14	5	10	34	13.6
2 bed	51	45	35	41	172	68.8
3 bed	2	1	4	4	11	4.4
Total	66	65	61	58	250	100

The proposal incorporates a nominated café area between buildings B and C, situated within the communal open space area, as well as a multi purpose sport room between buildings C and D, again situated within the communal open space area.

The ground floor communal areas between the proposed buildings will be landscaped and provide for a series of useable communal areas for future residents. The use of the communal areas for circulation and lobby entries further activates the space. The proposal also incorporates a series of rooftop communal open space areas.

Refer to Appendix No. 3-5 for copies of the site plan, landscape plan, and 3D perspectives of the proposed works.

The following plans/documents have accompanied the Development Application:

- Architectural Drawings prepared by Tony Owen Partners;
- Landscape Drawings prepared by Formed Gardens Design and Construction;
- Statement of Environmental Effects prepared by Cityscape Planning and Projects;
- Traffic Impact and Parking Assessment prepared by Mott McDonald;
- BCA Compliance Report prepared by AE & D;

- Acoustic and Rail Vibration Impact Assessment prepared by VIPAC;
- Soil Salinity Assessment prepared by Environmental Investigations;
- Geotechnical Investigation prepared by Environmental Investigations;
- Statement of Compliance Access for People with a Disability prepared by Accessible Building Solutions;
- Design Verification Statement prepared by Tony Owen;
- BASIX Assessment and BASIX Certificate prepared by VIPAC;
- Waste Management Plan prepared by Elephants Foot Consulting; and
- Capital Investment Value Cost Plan Report prepared by Washington Brown.

Planning Assessment

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

Section 23G - Joint regional planning panels

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.

Development applications for private development with a CIV greater than \$20 million are to be determined by the relevant regional panel. The proposed development has a capital investment value of \$46.48 million and 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.

Section 91 – Integrated Development

The proposal involves works within 40m of the adjoining watercourse to the east and therefore the proposal requires a Controlled Activity Approval under the Water Management Act 2000. The proposal was not identified as Integrated Development, noting this is acceptable as per the decision in *Maule v Liporoni & Anor [2002] NSW LEC 25* which confirmed that the nomination of development as ‘integrated’ is optional:

86. In making the development application Mr Liporoni did not tick the box in the application form to indicate that consent was being sought for an integrated development approval. In so doing he elected to have his development application processed as if it were not an application for integrated development. That was his choice. There was and is no compulsion on an applicant to make an application for an integrated development approval, if he or she chooses not to do so.

87. There is nothing unlawful in an applicant for development consent so electing. There is nothing unlawful in the making of the development application in the present case, neither is there anything unlawful in the council's failure to process the development application as if it were for integrated development.

Notwithstanding the above the application was referred to the NSW Office of Water for comment and correspondence received (Appendix 9) indicating that a controlled activity approval would be required. A condition of consent requires the proponent to obtain a controlled activity approval prior to the issue of a Construction Certificate.

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

State Environmental Planning Policy (Infrastructure) 2007

Clause 86 – Excavation in, above or adjacent to rail corridors

Clause 86 of State Environmental Planning Policy (Infrastructure) 2007 provides that a consent authority must obtain concurrence from Railcorp in the following circumstances:

- (1) *This clause applies to development (other than development to which clause 88 applies) that involves the penetration of ground to a depth of at least 2m below ground level (existing) on land:*
- (a) *within or above a rail corridor, or*
 - (b) *within 25m (measured horizontally) of a rail corridor. or*
 - (c) *within 25m (measured horizontally) of the ground directly above an underground rail corridor.*

While the proposal involves works within 25m of the rail corridor the basement penetration is located outside the 25m area of influence and therefore concurrence from Railcorp is not required. The application was referred to Railcorp and comments received raised no objection subject to the imposition of conditions relating to the rail corridor- noting these conditions have been included as recommended conditions.

Clause 87 – Impact of rail noise or vibration on non-rail development

Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 provides that a consent authority must, prior to determining an application to which this clause applies, consider the impact of rail noise and vibration and ensure the following criteria is achieved:

- (3) *If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
- (a) *in any bedroom in the building—35 dB(A) at any time between 10.00 pm and 7.00 am,*
 - (b) *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

A noise and vibration assessment was carried out by Vipac Consulting Engineers and the proposal was found to comply with the above requirements provided mitigation measures are implemented. Conditions of consent reinforce this matter.

Clause 104 – Traffic-Generating Development

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

- (a) give written notice of the application to the RTA within 7 days after the application is made, and*
- (b) take into consideration:*
 - (i) any submission that the RTA provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RTA advises that it will not be making a submission), and*
 - (ii) the accessibility of the site concerned, including:*
 - (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
 - (iii) any potential traffic safety, road congestion or parking implications of the development.*

The application does not trigger the provisions of Schedule 3 of SEPP Infrastructure 2007 as the subdivision has less than 300 dwellings and is more than 90 metres from the Great Western Highway.

State Environmental Planning Policy No.55- Remediation of Land

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

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

The current application triggers the requirement for Council to consider whether the land is contaminated, and if so, whether Council is satisfied that the land is suitable in

its contaminated state (or will be suitable, after remediation) for the purpose for which the development is to be carried out (being residential development).

The following is an extract from the subdivision proposal recently granted consent by the JRPP:

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

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

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

The Department of Defence sold the subject land in 2005 and there have been a number of sales to different companies since that time. Site inspections have revealed that there a few waste stockpiles located on the site that have been deposited since 2005. The proponent has undertaken studies which indicate that these stockpiles can be decontaminated and removed from the site to a licenced waste management facility. This aspect can be addressed by conditions of development consent.

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

Based on the above the issue of contamination can be seen to have been adequately addressed and the land is deemed suitable for the development.

State Environmental Planning Policy No.65- Design Quality of Residential Flat Development

The applicant has addressed the Design Quality Principles in the Statement of Environmental Effects and submitted a Design Verification Certificate prepared by Tony Owen (registered Architect) as part of the development application. The proposed development is generally consistent with the relevant rules of thumb

contained within the Residential Flat Design Code. A summary of the key rules thumb is provided at Annexure 13 and discussion regarding the comments received from Councils Design Review Panel are provided below.

The proponent attended a Design Review Panel meeting with Council Officers and Councils external Urban Design consultant. The original design concept was reviewed and a number of areas were identified as requiring further refinement, with the following key issues:

- The overall scale and compatibility of the development to the land to the south and west which are identified as accommodating 2-3 storey development in the future;
- Landscape treatment to the internal courtyards and to the southern and western street frontages;
- Permeability of lobby areas and connectivity to communal areas between buildings; and
- Solar access and climatic comfort.

The proponent subsequently revised the development proposal with the following key amendments:

- Widening of lobby areas and provision for additional lobby entry points to make the buildings more permeable from the various access points to the building;
- Revision to the internal communal open space areas to revise the landscape treatments, path locations, and treatment to the internal façade to present a more appropriate overall scale for users of the space as opposed to the previous design concept that presented a sheer vertical rise of six (6) stories;
- Façade treatment to provide for additional articulation and stepping of the built form to provide a better transition to the lower density land to the south and west; and
- Provision of window hoods and sun shading measures to protect the north and west facing windows from the harsh summer sun.

The proponent also prepared a detailed solar study to demonstrate the level of solar access to the units within the development.

The design revisions have addressed the majority of issues raised with the exception of the treatment to the upper levels of the building façade. Councils Urban Design consultant suggested that the upper levels should be treated with more lightweight elements such as recessing the upper most levels or having less solid façade and balcony treatments. The proponents Architect has not made these amendments and has outlined that the façade treatments are appropriate.

It is considered that the issue of desired façade treatment is a subjective matter of opinion rather than a quantifiable aspect of the design concept. The proposal, as amended, presents significant design merit and the proposal is supported from an Urban Design perspective.

State Environmental Planning Policy No.1- Development Standards

The proponent has prepared a SEPP 1 Objection (Annexure 15) to the solar access requirement contained within Clause 13(2)(a) of Penrith LEP 1998- Urban Lands. The development standard requires that all dwellings within a multi-unit housing development achieve 3 hours of sunlight between 9am and 3pm during the winter solstice. This contrasts with the requirements contained within the Residential Flat Design Code that requires that 70% of dwellings within a residential flat building are required to achieve 3 hours solar access between 9am and 3pm during the winter solstice.

The SEPP 1 objection has demonstrated that compliance with the development standard is unreasonable in the circumstances as SEPP 65 and the supporting Residential Flat Design Code contain the most appropriate development controls pertaining to solar access. The solar access study submitted with the development application demonstrates that 176 of the 250 dwellings achieve 3 hours of solar access at mid-winter that equates to 71.5% of dwellings and is consistent with the Residential Flat Design Code.

The SEPP 1 objection is consistent with Clause 7 of the SEPP as the variation request is well founded and consistent with the aims set out in Clause 3 of the SEPP. In the current circumstances the concurrence of the Director General can be assumed and the application can be granted consent notwithstanding the provisions of Clause 13(2)(a) of Penrith LEP 1998-Urban Lands.

Sydney Regional Environmental Plan No. 9 – Extractive Industry (No. 2 – 1995) (SREP9)

SREP 9 identifies regionally significant extractive resources within the Sydney region to facilitate their utilisation. The plan ensures extraction is carried out in an environmentally acceptable manner and prohibits extraction from certain environmentally sensitive areas. It ensures that decisions on future urban expansion take into account the ability to realise the full potential of important deposits. There are no provisions contained in SREP9 which are of relevance to this proposal.

Sydney Regional Environmental Plan No. 20- Hawkesbury Nepean

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

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

Penrith Local Environmental Plan 1998 (Urban Land)

Permissibility and Zone Objectives

As shown at Annexure 7 the site is zoned 10(a) Mixed Use Residential and multi-unit housing is permissible with consent and the proposal is consistent with the definition of multi-unit housing contained within the LEP.

The LEP contains the following zone objectives:

- (i) to provide for a residential environment that is vibrant, attractive and safe for residents and visitors, and*
- (ii) to provide a safe and efficient pedestrian access that directly links people with public transport facilities, housing and employment areas and the surrounding education precinct, and*
- (iii) to create a public transport node that provides opportunity for a range of transport services and access to the proposed university railway station, and*
- (iv) to promote opportunities for a range of housing types, including affordable housing, and*
- (v) to promote residential development at a density which maximises the benefits of proximity to public transport, and*
- (vi) to integrate recreational, community and educational activities, and*
- (vii) to permit retail or commercial activities that do not undermine the regional, district and local commercial centre hierarchy, and*
- (viii) to conserve areas of biological diversity, heritage significance and environmental sensitivity.*

The proposal is consistent with the prescribed zone objectives in that it provides for a vibrant residential environment with excellent amenity and a range of dwelling types to contribute to a variety of lifestyle and financial needs. The site is located immediately opposite the identified railway station site and provides an appropriate density that ensures the minimum 30 dwellings per hectare contained within the Werrington Mixed Use area is achieved. The site is also within proximity to the future employment lands within the WELL Precinct that will provide a variety of employment opportunities.

Relevant Instrument Provisions

The proposal has been assessed against the relevant provisions of the LEP and found to be satisfactory, with the matters below identified for further discussion.

Clause 13 provides for a number of controls relating to environmental performance, noting the proposal satisfies all relevant controls with the exception of Clause 13(2)(a) that requires at least 3 hours of direct sun to the windows of living areas of the housing between 9am and 3pm on June 21. The proposal complies with this provision to 71.5% of dwellings, with the remaining 29.5% of dwellings being non-compliant with the control. As address previously a SEPP 1 objection has been prepared dealing with the issue and the variation to the control is supported given the

proposal aligns with the provisions of SEPP 65 and the associated Residential Flat Design Code.

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

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

The proposal is consistent with these requirements and provides for high levels of accessibility through the centrally located communal areas. The site is well located to the anticipated future railway station and is consistent with the structure plans. The proposal provides for active street frontages to the northern boundary and provides a degree of activation to the remaining frontages through multiple entries and entries to dwellings from private courtyards. The development proposal provides for an appropriate level of environmental performance.

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

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

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

Clause 38(6) states that the Council must not grant consent to development on land to which this clause applies unless it is of the opinion that the proposed development has taken into account the following matters (to the extent that they are relevant to the proposed development):

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

Consideration of these matters was carried out at subdivision stage as part of DA11/0546, with a flora and fauna assessment and a 7-part Test of Significance in regard to the ecosystems observed on the site. That assessment concluded that the provisions of this Clause were satisfied. In relation to the issue of bushfire conditions of consent are recommended requiring certification that the eastern façade of Block D is designed to achieve a BAL LOW rating.

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

Draft Penrith Local Environmental Plan 2010

The Draft Penrith LEP 2010 was placed on public exhibition on 13 May 2013, with the exhibition period to end on 5 July 2013. Therefore the provisions of the Draft LEP are a relevant matter for consideration, noting that the relative weight afforded to the assessment of the current proposal is considered to be less, as the Draft LEP is currently on exhibition and would not be considered 'certain and imminent' as per the judgement in *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council*.

The subject site is zone R1 General Residential and *residential flat buildings* are permitted with consent in the zone. The relevant height of buildings map identifies an 8.5m maximum height control applying to the land and the proposed development has a height range of 13m to 21m and does not comply. The application of an 8.5m height control to the subject site has not given regard to the anticipated housing forms in the locality and it is likely that the height of buildings map will be revised. It is noted that the Draft LEP remains on exhibition until 5 July 2013 and the proponent has indicated they will be making a submission regarding the height of buildings map. The variation to the height control is considered acceptable pursuant to Clause 4.6 of the LEP for the reasons discussed further in this report in relation to the Werrington Mixed Use DCP.

The development application has been assessed against the remaining relevant provisions of the Draft LEP and found to be satisfactory.

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

Penrith Development Control Plan 2006

The proposal has been assessed against the relevant provisions of Penrith DCP 2006 with a summary of the assessment provided at Annexure 11. Section 4.6 Residential- Apartment Development applies to the development but the controls are not contextually appropriate in the context of the subject site and current development proposal as they relate to traditional three (3) storey walk up flats rather than more contemporary four (4) to six (6) apartment buildings.

The provisions of the Werrington Mixed-Use Area DCP are discussed below.

Werrington Mixed-Use Area Development Control Plan

The Werrington Mixed-Use Area Development Control Plan (DCP) applies to the subject land. The majority of the broader ‘master planning’ issues were dealt with as part of the recently approved DA11/0546, noting the requirement for a formal master plan was waived having regard to the subdivision proposals consistency with the matters contained within the PLEP 1998- Urban Lands and the Werrington Mixed-Use Area DCP. This means that there are limited planning controls applying to the current proposal as the masterplan was intended to incorporate detailed planning controls for the precinct.

The matters relevant to the current proposal are addressed in turn.

8.1 Objectives of the Mixed Use- Residential Zone

The current proposal is consistent with the objectives of the zone, noting the proposal provides for a high quality urban form that maximises amenity for occupants. The subject site is within close proximity to the anticipated future railway station and the planned high density development in this location is appropriate. The proposal contributes to a range of dwelling types and also enables the minimum dwelling densities to be achieved within the Werrington Mixed Use area.

8.2 Residential Density

The DCP provides that a minimum average net density of 30 dwellings per hectare be achieved through a mix of housing types including three (3) storey apartments, two (2) storey townhouses and small lot housing. The approved subdivision proposal incorporated a number of traditional residential lots that served to reduce the overall dwelling densities within the precinct.

A key driver of the overall scale of the current proposal is therefore to enable the achievement of the required 30 dwellings per hectare density target contained within the DCP. The current proposal enables a dwelling density of 32.12 dwellings per hectare that aligns with the DCP.

The overall height of the development departs from the original building heights envisaged in the DCP, noting the DCP was adopted in 2002, some 11 years ago.

The proponent has provided a number of points regarding the appropriateness of the overall height and scale of the development, including:

- Achieving the required dwelling densities across the precinct;
- Age of planning controls and recent shift towards maximising dwelling densities and housing diversity in accessible areas and areas of significant employment generation;
- Lack of amenity impacts to adjoining properties;
- Appropriate interface between the current proposal and the 2-3 housing forms likely to be provided to the south and west of the subject site;

The above points are concurred with and it is noted that the planning controls applying to the site were adopted more than a decade ago at a time where 4-6 storey residential flat buildings were generally only contemplated within a City Centre context. However the Metropolitan Strategy has encouraged higher densities in areas that have proximity to existing infrastructure and more contemporary planning controls now encourage 4-6 storey residential flat buildings in well located areas. As shown at Appendix 1a the subject site will be immediately adjacent the future railway station and have easy access to the Great Western Highway and local employment opportunities upon full development of the WELL Precinct.

Of particular relevance to the issue of height is the recent exhibition of the Draft LEP 2010, which has rezoned a number of areas within the Penrith and Kingswood area for 5-6 storey residential flat buildings- noting these areas were previously identified as having a 2-3 storey building heights. Whilst the current provisions of the Draft LEP adopt an 8.5m building height it is anticipated that this will be revised to better reflected the building forms permitted with the R1 General Residential zone rather than simply reinforcing a 'like for like' with the adjoining medium density development to the east in George Street.

In addition the site is located immediately adjacent to the anticipated future railway station and the proposal serves to reinforce the need for the future railway station to serve the broader WELL Precinct.

The overall density proposed as part of the development application is supported as is the overall height and scale of the development.

8.3 Residential Amenity

The proposal is for a series of contemporary residential flat buildings designed to align with the provisions of SEPP 65 and the Residential Flat Design Code. The dwellings themselves achieve appropriate levels of amenity and mitigation measures are proposed to ensure noise and vibration impacts from the development are minimised.

8.4 Crime Prevention and Community Safety

The proposal incorporated CPTED principles and promotes casual surveillance of common areas and street frontages. Entry lobbies and basement areas are to be security controlled and adequate lighting will be provided. Conditions of consent are recommended to reinforce this issue.

8.5 Population and Housing

The proposal provides for dwelling diversity and housing choice that will contribute to the supply of dwellings within the broader local government area.

8.6 Home Based Business Activities

The proposal provides for a total of 13 'SOHO' suites to encourage home-based business activities that also are easily adapted to more commercial and retail oriented uses.

8.7 Retail and Business Services

As addressed the proposal provides for a total of 13 'SOHO' suites to encourage retail and business activities that also are easily adapted to more commercial and retail oriented uses, noting the 3.3m floor to ceiling height.

8.8 Parking

The proposal makes provision for adequate on-site parking, with 346 spaces proposed compared to the 319 required by Councils Parking DCP.

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

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

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

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

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

- c) *conditions imposed on the development consent will require proponents to provide all roads which are 100% apportioned to the Caddens sub-precinct, to be delivered in accordance with DCP 2006.*

This was considered in detail as part of the previous subdivision proposal that involved the subdivision to create 110 residential lots. As part of that assessment negotiations with the applicant lead to the formulation of a letter of offer to enter a Voluntary Planning Agreement, with the relevant section of the assessment report associated with DA11/0546 provided at Annexure 16. A draft VPA is in the process of being prepared and the draft VPA is to cover the subject site, being the Stage 2 apartment site, and will provide for the delivery of infrastructure within the area as well as monetary contributions towards infrastructure.

It is noted that the 4 super lots (201-204), and the 'residue lot' 200, on which the current proposal is located were not levied Section 94 contributions as part of DA11/0546 and therefore the current proposal is to be levied the full relevant Section 94 contributions applicable under the WELL Development Contributions Plan and relevant City Wide Development Contributions Plans. A calculation of relevant Section 94 contributions applying to the current proposal has been undertaken and is summarised below.

Contributions Plan	Qty	Rate	Amount
CW - Cultural Facilities	600	\$126	\$75,600
CW - District Open Space	500	\$844	\$422,000
WELL PP Community Fac Admin	500	\$5	\$2543.00
WELL PP Community Facilities Land	500	\$172	\$85,839.00
WELL PP Community Facilities Work	500	\$340	\$169831.00
WELL PP Open Space Admin	500	\$70	\$34,836.00
WELL PP Open Space Land	500	\$4,728	\$2,363,879
WELL PP Open Space Works	500	\$2,648	\$1,324,217
Total Contribution			<u>\$4,478,746.00</u>
Contribution per Dwelling			<u>\$17,914.98</u>

As shown in the table above the Section 94 contributions to be levied align with the Ministerial cap of \$30,000 per dwelling. Whilst the Section 94 contributions will be levied on the consent it is intended that upon the adoption of the proposed Voluntary Planning Agreement that these Section 94 contributions will no longer apply as they will be contained within the VPA itself. The conditions of consent reflect this.

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

This section is not applicable for the subject application.

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

Flora and Fauna

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

The previously approved subdivision application was accompanied by a Flora and Fauna Assessment prepared by Dr T J Hawkeswood in accordance with Section 5A of the Act. In summary it was found that the subdivision proposal was designed to retain the highest quality remnant vegetation within the north – south riparian corridor running through the land to the east of the subject site. The subject site was identified under that assessment as being suitable for the removal of trees. Therefore the consent authority can be satisfied the requirements under Section 5A of the Act have been considered.

Salinity

A salinity assessment of the site was undertaken by Environmental Investigations Pty Ltd and a report submitted as part of the DA documentation. No indicators of dry-land salinity were found on site, however a number of bore holes ranged from ‘slightly saline’ to ‘very saline’ with these soils considered to be non-aggressive to concrete and steel piles. A condition of consent reinforces this issue and requires certification that design measures have been implemented to ensure the development has been designed to ensure the building will not be affected by saline soils.

Noise and Vibration

The applicant has provided an acoustic report by Vipac Engineers and Scientists Pty Ltd that examines the noise and vibration impacts on the proposed development from traffic and rail noise. That report also dealt with the issue of noise generation during construction, operation and subsequent impacts on nearby properties. That report concludes:

- *Road traffic, rail noise and vibration levels at the site have been assessed using measured data detailed in Section 4. Based on the noise data, the ingress of traffic and rail noise have been determined. Considering the required internal noise levels, a glazing schedule has been determined.*
- *The impact of rail vibration has been considered in accordance with the Department of Planning and Office of Environment & Heritage guidelines. Results from the assessment indicate that vibration levels from the train movements are within the specified criteria of the relevant standards.*
- *Limiting criteria for mechanical plant/equipment noise emissions have been determined based on the OEH Industrial Noise Policy (INP) and Council requirements.*

Provided the recommendations in this report are implemented, the proposed development is predicted to comply with the acoustic requirements of Penrith City Council and relevant Australian standards and guidelines.

The conclusions are found to be satisfactory and conditions of consent reinforce the need for the development proposal to comply with the recommendations of the report.

Air Pollution

The proposal being the construction of a series of residential flat buildings will generate some transient air pollution in the form of dust emissions during the construction phase. Conditions of consent are recommended requiring dust suppression measures to be utilised through the construction process.

Bushfire Risk

The eastern portion of Lot 51 is identified as bushfire prone land, however no works are proposed within this portion of the site as depicted at Appendix 8. The regeneration of the riparian corridor to the east of the subject site will generate a bushfire threat in the future, however the bushfire report submitted as part of the approved subdivision indicates a BAL LOW rating along the eastern boundary. The current proposal incorporates design measures consistent with BAL LOW, noting the masonry construction of the building, and a condition of consent is recommended to reinforce this issue.

Access, Transport and Traffic

The development proposal is designed with four (4) separate driveway access points from the new proposed road to the north of the subject site. The basements are designed as four (4) individual basements to ensure the development can be staged and also to provide for the efficient function of the basements by reducing the number of dwellings entering and leaving the site as compared to a consolidated basement entry. The proposal provides 346 on-site parking spaces that exceeds the requirement contained within Section 2.11 of Penrith DCP 2006 that only requires 319 parking spaces to service the development.

A traffic report, prepared by Mott McDonald, was submitted with the development application and outlined that the development will generate approximately 133 vehicle trips per hour during peak periods. The traffic report carried out a SIDRA analysis of the existing intersection of French Street and the Great Western Highway and found that the intersection will retain a 'B' level of service with the traffic report concluding that *'SIDRA modelling results suggest that the additional traffic generated by the proposed development is not anticipated to have any adverse impact on the surrounding road network, including the signalised intersection at French Street'*.

The submitted traffic report was peer reviewed by Councils Traffic and Development Engineers and found to be satisfactory, concurring with the conclusions of the report.

Overshadowing & Solar Access

The development application is supported by a detailed solar study demonstrating that 71.5% of dwellings within the development will receive at least 3 hours of solar access at mid-winter between 9am and 3pm that aligns with the provisions of the Residential Flat Design Code.

The development application is also supported by detailed shadow diagrams that demonstrate the impact of the development on the future residential dwellings immediately to the south of the site. The shadow diagrams have plotted likely dwelling locations by adopting a 4.5m setback to the dwellings to the south and the shadow diagrams submitted indicate a small impact to the dwellings at 9am and a small impact at 3pm- noting the level of shadow cast would be unlikely to reach window sill heights and therefore north facing windows will still have access to northern sun to parts of the windows at 9am and 3pm. There is no shadow cast on the northern facades of the dwellings between 10am and 2pm demonstrating that the level of overshadowing is acceptable and will not prejudice future development of the land to the south.

Social and Economic Impacts

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

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

The urban form is contextually appropriate and will provide a high quality outcome on the site. The proposal also serves to act as a key driver for the future delivery of the anticipated railway station that will bring substantial benefits to the WELL Mixed Use area and broader locality.

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

The site attributes are conducive to the proposed development for the reasons set out below:

- The site is appropriately zoned for the proposal and the development will contribute towards the achievement of the minimum density target of 30 dwellings per hectare across the WELL mixed use precinct;
- The site is within close proximity to the Great Western Highway which is a major transport corridor in the locality;
- The site is located immediately opposite the anticipated railway station that will, upon delivery, provide for excellent access to public transport opportunities;
- The proposal incorporates adequate on site parking;
- The proposal will not result in unreasonable amenity impacts in terms of overshadowing, view loss or visual and acoustic privacy;

Accordingly the site is considered suitable for the development subject to conditions.

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

(i) Referrals

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

<i>Referral Body</i>	<i>Comments Received</i>
<i>NSW Office of Water</i>	Advice received (Appendix 9) indicating the proposal is within the same footprint as the subdivision proposal that has been granted consent with no further comment other than the recommendation of a condition requiring a Controlled Activity Approval prior to the issue of a Construction Certificate. A condition is recommended to address this issue.
<i>NSW Police</i>	Comments received (Appendix 10) detailing CPTED measures. These matters have been considered in the assessment and conditions of consent reinforce these matters.
<i>Railcorp</i>	Comments received (Appendix 11) with no objections subject to conditions. These matters have been considered in the assessment and conditions of consent reinforce these matters.
<i>Urban Design Review Panel</i>	A number of key issues raised regarding the initial design concept, with subsequent amendments made by the proponent to address these issues. See discussion regarding Urban Design relating to SEPP 65 previously in this report.
<i>Building Surveyor</i>	No objections, subject to conditions
<i>Environment Officer</i>	Comments received regarding contamination, with no objection to the proposal subject to conditions. The issue of contamination was addressed as part of the subdivision development application.
<i>Traffic Engineer</i>	No objections, subject to conditions
<i>Waste Management Officer</i>	No objections, subject to conditions
<i>Community Safety</i>	No objections, subject to conditions

<i>Development Engineer</i>	No objections, subject to conditions
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(ii) Community Consultation

In accordance with Council's Notification DCP, the proposed development was notified to a total of 188 adjoining property owners/occupiers and placed on public exhibition from 14 January 2013 to 31 January 2013. A total of two (2) submissions were received and an extract of the relevant issues from the submissions are provided in the table below as well as a response on the issues raised.

<i>Issue</i>	<i>Comment</i>
<p><i>The Statement of Environmental Effects for the proposal notes that neither the Penrith Local Environmental Plan 1998 (Urban Lands), nor the Werrington Mixed Use Area DCP provide maximum building heights for the subject land, but the DCP does identify a building height allowance of three storeys. The proposal shows buildings of four to five storeys which exceed this allowance increasing the density of this portion of the site.</i></p> <p><i>While... does not specifically object to the building height proposed, the increase in density for this particular development may increase the density of the overall site. Increased density across the whole site would have implications for infrastructure capacity for the local area.</i></p>	<p>The subject site is identified as being a mixed use area with building heights of up to 3 storeys. As discussed in detail previously in this report the departure from the control has been assessed and found to be satisfactory having regard to the context of the site and broader development of the WELL mixed use precinct.</p> <p>The proposal is, in part, a response to achieving the minimum density yield of 30 dwellings per hectare within the broader WELL mixed use precinct after having regard to the approved subdivision pattern that involves a number of traditional housing lots. The proposal has provided analysis that suggests the current development proposal will contribute towards a dwelling density of 32.12 dwellings per hectare that aligns with the planning controls that earmark a minimum dwelling density of 30 dwellings per hectare (Werrington Mixed-Use Area Development Control Plan (DCP)). The proposed residential density, and therefore infrastructure, are in accordance with Council's long term planning intent for the locality</p>
<p><i>The proposed residential apartments are too densely built together. The close proximity of the flats will disseminate the normal household noise into the</i></p>	<p>The proposal is a high density mixed use development that provides an FSR of 1.97:1. The building separation proposed is consistent with the RFDC. Noise</p>

Issue	Comment
<i>neighbouring units, not only noise but also, for example, cooking odours. For a congenial environment the occupants of each unit must have enough space to be able to control their environment and barrier the extensive noise and intrusive activities generated by neighbours. Moreover, it is well documented that creating such a close packed community will consequently establish a ghetto environment in the future. That is something as town planners you should adamantly avoid. At present the area is a pleasant leafy area, a tranquil neighbourhood for all the residents.</i>	<p>transmission between dwellings will be mitigated through the internal party walls that will be designed to comply with the relevant BCA standards.</p> <p>The proposal is a high quality development that is contextually appropriate within the WELL mixed use precinct and will provide a range of dwellings types to meet the needs of residents with a variety of lifestyles and financial capacities. The proposal will not result in unacceptable amenity impacts and provides an appropriate outcome on the site. The social mix of residents may be diverse however the proposal has been designed to maximise amenity and minimise the potential for a 'ghetto' type environment.</p>
<i>Will the infrastructure cope? The area has adequate road and rail network potential, will it be used to the community's advantage? With French Street leading into the Great Western Highway, is there adequate arterial passages to accommodate the incoming and outgoing influx of cars from the 250 Units?</i>	<p>As addressed the proposal contributes towards achieving the planned density for the WELL mixed use precinct. The traffic report submitted with the development application indicates that the existing road network has capacity to accommodate the additional traffic movements and modelling of the existing intersection of French Street and Great Western Highway will retain a 'B' Level of Service (minimal change) when comparing existing development and post development traffic generation.</p>
<i>The rail, a number of years ago there was a promise made that a railway station was to be built in the area under consideration. A railway station is very much needed now in the area to provide a service for the existing community. Reminding you the community in the area consists of not only residents but also the community of the University of Western Sydney and TAFE. Kingswood railway station is too far a distance from</i>	<p>The planning for the WELL mixed use precinct, and broader WELL precinct, was based on the delivery of a new railway station immediately opposite the subject site. This railway station would also provide significant benefits to UWS and the TAFE NSW campus. However the funding and future delivery of the railway station is uncertain as no commitment has been made by the NSW State Government on the issue. A</p>

<i>Issue</i>	<i>Comment</i>
<i>the area. After the construction of the units this need will greatly increase and a railway station will also alleviate the pressure of cars on the road network.</i>	recommendation of this report is that Council write to the NSW Government (Treasury) to inform them of the development proposal and to seek commitment for the funding and delivery of the new railway station.

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

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

The site is suitable for the proposed development and the proposed development is permissible with consent in the zone. The current application is in the public interest as it is consistent with the LEP and DCP, noting the variation to the building height control has been discussed at length previously in this report and found to be appropriate.

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

- New and affordable housing opportunities;
- Excellent access to nearby educational opportunities;
- Ability to press the NSW State Government for commitment surrounding the delivery of the new railway station;
- Contribution towards achieving the desired residential density targets for the WELL mixed use precinct; and
- Limited adverse amenity impacts to adjoining and nearby properties.

Conclusion

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

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

Recommendations

That:

1. The Development Application for 250 Residential Units at Lots 50-51, DP 1069025, French Street, Werrington be approved subject to the conditions contained below at 'Schedule 1';
2. A copy of the decision is forwarded to external authorities for their record;
3. A letter be prepared and sent to NSW Treasury advising them of the decision and reinforcing the need for the funding and construction of the new railway station to service the WELL Precinct;
4. That those making submissions are notified of the determination.

Schedule 1: Recommended Conditions of Consent

GENERAL

- The development must be implemented substantially in accordance with the following plans and documents, stamped approved by Council- except as may be amended in red on the attached plans and by the following conditions.

Plan/Report	Reference	Dated	Prepared by
Basement Level 1 – Block A,B,C & D	A098 Rev B	Feb 2013	Tony Owen PTNRS
Basement Level 2 - Block A,B,C & D	A099 Rev B	Feb 2013	Tony Owen PTNRS
Ground Level Plans - Block A,B,C & D	A100 Rev B	Feb 2013	Tony Owen PTNRS
Level 1 Plans - Block A,B,C & D	A101 Rev B	Feb 2013	Tony Owen PTNRS
Level 2 Plans - Block A,B,C & D	A102 Rev B	Feb 2013	Tony Owen PTNRS
Level 3 Plans - Block A,B,C & D	A103 Rev B	Feb 2013	Tony Owen PTNRS
Level 4 Plans - Block A,B,C & D	A104 Rev B	Feb 2013	Tony Owen PTNRS
Level 5 Plans - Block A,B,C & D	A105 Rev B	Feb 2013	Tony Owen PTNRS
Roof Plans - Block A,B,C & D	A106 Rev B	Feb 2013	Tony Owen PTNRS
Northern Elevations – Block A, B, C & D	A200 Rev B	Feb 2013	Tony Owen PTNRS
Southern Elevations – Block A, B, C & D	A201 Rev B	Feb 2013	Tony Owen PTNRS
West Elevations – Block A, B, C & D	A202 Rev B	Feb 2013	Tony Owen PTNRS
East Elevations – Block A, B, C & D	A203 Rev B	Feb 2013	Tony Owen PTNRS
Sections	A300 Rev A	Sept 2012	Tony Owen PTNRS
Ramp Sections	A310-A317 Rev A	Sept 2012	Tony Owen PTNRS
Landscape Plans	FG12177 001-009 Rev C	13-2-13	Formed Gardens
Stormwater Plans	20100127 SW00-03 Rev A	3-9-12	S & G Consultants
Acoustic Impact Assessment	20C-12-0213-TRP-266835-2	12-2-13	VIPAC
Traffic Impact and Parking Assessment	311929 121023	23-10-12	Mott McDonald
Soil Salinity Assessment	E1763.1AA	20-2-13	Environmental Investigations
Geotechnical Investigation	E1763.1GA	19-2-13	Environmental Investigations
BASIX Assessment	20C-12-0211-TRP-267107-0	16-10-12	VIPAC
Access Report	212152	10-10-12	Accessible Building

			Solutions
Statement of Environmental Effects		20-11-12	Cityscape Planning and Projects
Waste Management Plan		December 2012	Elephants Foot

2. A **Construction Certificate** shall be obtained prior to commencement of any building works. No Construction Certificate is to be issued until such times as proposed roads No. 2, 3, and 4, approved under DA11/0546, have been constructed. An occupation certificate is not to be issued until such times as roads 2, 3, and 4 have been dedicated to Council.
3. The four (4) allotments (Lots 201-204), and the 'residue allotment' (Lot 200) granted consent under DA11-0546 are to be consolidated into a single land parcel prior to the issue of a Construction Certificate.
4. Prior to the issue of a Construction Certificate for works located within 40m of the watercourse to the east of the site, a Controlled Activity Approval is to be obtained from the NSW Office of Water in accordance with Section 91 of the Water Management Act 2000.
5. A lighting plan is to be prepared and submitted as part of the application for a Construction Certificate. The lighting plan is to provide detail on the lighting locations and levels of illumination to publicly accessible locations, with the following areas (at a minimum) to be provided with adequate lighting that accords with relevant Australian Standards:
 - internal access paths, entry lobbies, basement entry points, and communal open space areas;

The lighting plan is also to provided detail on mitigation measures to ensure light spill from lighting does not unreasonably impact on residents.
6. A CCTV plan is to be prepared and submitted to Council for approval prior to the issue of a Construction Certificate. The CCTV plan is to provide (at a minimum) for CCTV systems covering basement entries, waste storage areas and lift access points within the basement, and communal circulation areas between buildings.
7. Access to the residential lobbies and basement is to be restricted with a security system such as a swipe card or pin code with the installation of intercomm systems at the residential entry lobbies and basement access point. A security roller shutter is to be provided to restrict access to the basement entries.
8. The following crime prevention measures are to be implemented:
 - ☐ All areas of both levels of the car park (including lift lobbies, stairwells, garbage rooms and storage areas) must be well-lit, with consistent lighting to prevent shadowing or glare.

- ☐ All surfaces in the car park should be painted in light coloured paint or finished in light coloured concrete to reflect as much light as possible.
 - ☐ Signage within the car park must be in place to clearly identify exit and access points, the location of lifts and stairwells.
 - ☐ Each building entry should clearly state the unit numbers accessed from that entry.
 - ☐ Appropriate door and window locks should be installed in all dwellings.
 - ☐ Viewers should be installed on entry doors to apartments to allow residents to see who is at the door before it is opened.
 - ☐ All common areas, i.e. multi purpose and sports room, café, need to be secured with appropriate security access system, including monitored alarm system, to restrict unauthorised access. All areas within these facilities where access to public is restricted must be securely locked when not in use.
 - ☐ Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing and common ground. This includes reporting incidents to police and/or relevant authorities.
 - ☐ Graffiti resistant coatings must be used to external surfaces where possible, including signage, fencing, street furniture, retaining walls etc.
9. Prior to the occupation of a non-residential tenancy within the buildings, a separate development approval is to be obtained from Penrith City Council to use that tenancy.
 10. A building manager/caretaker is to be employed by the owner of the site or body corporate to manage the moving of bins from the basement storage areas to the temporary waste storage areas located at ground floor level to facilitate bin collection by Councils waste collection service. After bin collection has occurred bins are to be wheeled back into the basement waste storage areas.
 11. A private contractor will be required for the disposal of waste associated with the commercial tenancies (cafe) as Councils waste collection service is not available for commercial properties. Copy of the nominated contractor are to be submitted to Council prior to the issue of an Occupation Certificate.
 12. Prior to the issue of a Construction Certificate certification from a qualified bushfire consultant is to be provided confirming that the eastern edge of Block D is designed to comply with a BAL LOW rating in accordance with AS3959-2009 and the BCA.
 13. The detailed fencing specifications relating to the entries to the central communal areas is to be submitted for consideration and approval prior to the issue of a Construction Certificate. In this regard the fencing is to be open style decorative fencing with a height no exceeding 1.5m.

14. Mailboxes are to be provided in proximity to the main entry lobbies to each of the residential flat buildings. These mailboxes are to be secure but accessible by relevant Australia Post staff.
15. The 13 'SOHO' suites are to be provided with a minimum 3.3m floor to ceiling height (excluding slab thicknesses) to promote useability and future adaptability for commercial land uses. False ceiling are permitted to these areas provided they can be easily removed to enable future adaptable to retail and commercial uses. Detail is to be submitted to the Principal Certifying Authority confirming compliance with this requirement prior to the issue of a Construction Certificate.
16. The following privacy measures are to be implemented, in addition to those already detailed on the submitted plans. Detail is to be provided at Construction Certificate Stage demonstrating consistency with the matters below.
 - a) Planter boxes are to be provided to the western and southern (where no planter boxes are already proposed) perimeter of the northern Level 5 roof terrace on Block B. Landscape plantings are required within the planter boxes and the landscape plantings to the southern edge are to be *Yucca Elephantipes* to match the plantings on the eastern portion of the southern edge of the roof terrace.
 - b) Privacy screens are to be provided on the northern edge of the Level 4 roof terrace on Block D for a minimum length of 12m, in a westerly direction, from the edge of the building façade to ensure privacy impacts to the residential units are mitigated.
17. Prior to the issue of a Construction Certificate the applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.
18. The applicant shall provide a Geotechnical Engineering report to Railcorp for review by Railcorp's Geotechnical section prior to the commencement of works. The report shall demonstrate that the development has no negative impact on the rail corridor or the integrity of the infrastructure through its loading and ground deformation and shall contain structural design details/analysis for review by Railcorp. The report shall included the potential impact of demolition and excavation, and demolition- and excavation- induced vibration in rail facilities, and loadings imposed on Railcorp Facilities by the development.
19. Prior to the issue of a Construction Certificate the applicant is to submit to Railcorp a plan showing all craneage and other aerial operations for the development and must comply with all Railcorp requirements. The PCA must not issue a Construction Certificate until all written confirmation has been received from Railcorp confirming that this condition has been satisfied.

HERITAGE/ARCHAEOLOGICAL RELICS

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

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

ENVIRONMENTAL MATTERS

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) 98418600).

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

The approved sediment and erosion control measures are to be installed **prior to and maintained throughout the construction phase of the development until the land, that was subject to the works, have been stabilised and grass cover established.** These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

22. 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.
23. Certification that the design of the development incorporates measures to mitigate salinity impacts is to be provided to the Principal Certifying Authority from an appropriately qualified environmental consultant prior to the issue of a Construction Certificate.
24. 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.

25. 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:

- ☐ 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.

26. Wastewater from the washing of garbage bins and vehicles is not to enter the stormwater system.

27. Dust suppression techniques are to be employed during construction to reduce any potential nuisances to surrounding properties.
28. All construction works that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties, are restricted to the following hours in accordance with the NSW Department of Environment and Climate Change's (2009) "Interim Construction Noise Guideline":
- o Mondays to Fridays, 7am to 6pm
 - o Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
 - o No work is permitted on Sundays and Public Holidays.

Other construction works that are carried out inside a building that 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 construction works.

29. Construction works shall be carried out in accordance with the NSW Department of Environment and Climate Change's (2009) "Interim Construction Noise Guideline".
30. Noise levels from and within the premises shall not exceed the relevant noise criteria detailed in "731-769 Great Western highway Werrington - Acoustic Impact Assessment for DA Submission" (Report No. 20C-12-0213-TRP-266835-2) prepared by Vipac Engineers & Scientists Ltd dated 12 February 2013. The recommendations provided in the above-mentioned acoustic 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 building has been constructed to meet the noise criteria in accordance with the approved acoustic report and the relevant Australian Standards. This certificate is to be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.

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

31. **Prior to the issue of the Occupation Certificate**, an acoustic compliance certificate is to be submitted to Council for approval. This certificate is to outline that all plant and equipment have been installed to comply with:
- o The noise goals stated in Table 6 of "731-769 Great Western highway Werrington - Acoustic Impact Assessment for DA Submission" (Report No. 20C-12-0213-TRP-266835-2) prepared by Vipac Engineers & Scientists Ltd dated 12 February 2013.
 - o Australian/New Zealand Standard 2107:2000 Acoustics-Recommended design sound levels and reverberation times for building interiors

32. **Prior to the issue of the Construction Certificate**, details of all plant and equipment including air conditioning units are to be submitted to Council for approval. It is to be demonstrated that this plant and equipment have been selected and designed to meet the following noise criteria:
- o The noise goals stated in Table 6 of “731-769 Great Western highway Werrington - Acoustic Impact Assessment for DA Submission” (Report No. 20C-12-0213-TRP-266835-2) prepared by Vipac Engineers & Scientists Ltd dated 12 February 2013.
 - o Australian/New Zealand Standard 2107:2000 Acoustics- Recommended design sound levels and reverberation times for building interiors
33. **Prior to the issue of the Construction Certificate**, a Construction Waste Management Plan is to be submitted to Council for approval. This Plan is to address all waste materials generated during the construction phase of the development, including details of the proposed waste volumes, on site storage and management, designated waste contractors and waste facilities.

The approved Waste Management Plan must be implemented and adhered to on site, with supporting documentation / receipts retained in order to verify the disposal of materials in accordance with the approved Plan.

BCA ISSUES

34. 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).

UTILITY SERVICES

35. All services (water, sewer, electricity, telecommunications, and gas) are to be provided to the development.

Prior to the release of the occupation certificate, 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;
- ☐ a letter from Integral Energy stating that satisfactory arrangements have been made for electricity supply; and
- ☐ a letter from an approved telecommunications service provider that satisfactory arrangements have been made for telecommunications.

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

CONSTRUCTION

36. 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 **when the Occupation Certificate has been issued for the development.**

37. Garbage rooms within buildings shall have masonry walls with smooth face cement rendering to the full height internally and be provided with a smooth concrete floor. The floor shall be graded and drained to a floor waste connected to the sewer that shall be charged with a suitably located cold water hose cock. Access doors to the garbage store shall be tight fitting solid core or of non-combustible construction.

ENGINEERING

38. **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 heavy-duty vehicular crossing/s.
- b) Provision of path paving for the full property frontage.

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).

39. The stormwater drainage system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by SGC Consultants Pty Ltd), reference number 20100127 , revision 1, dated 3.10.2012.

The proposed development and stormwater drainage system shall be designed to ensure that stormwater runoff from upstream properties is conveyed through the site without adverse impact on the development or adjoining properties.

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

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

40. Stormwater is not to be discharged into the rail corridor unless prior approval has been obtained from Railcorp.
41. **Prior to the issue of a Construction Certificate** the Certifying Authority shall ensure that the stormwater drainage system for the basement carpark has been designed in accordance with the requirements for pumped systems in AS3500.3:2003.
42. **Prior to the issue of a Construction Certificate** the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Penrith City Council's Development Control Plan.
43. **Prior to commencement of works** a Traffic Control Plan including details for pedestrian management, shall be prepared in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Traffic Authority's publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Traffic Authority Traffic Controller.

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

Note: A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.

44. **Prior to the issue of an Occupation Certificate**, the Principal Certifying Authority shall ensure that all works within the road reserve have been inspected and approved by Penrith City Council.
45. Subleasing of car parking spaces is not permitted by this Consent.

46. Secure bicycle parking shall be provided which is easily accessible from the apartments in the basement in accordance with AS2890.3:1993 Bicycle Parking Facilities.
47. Signage indicating the location of visitor parking is required at the driveway entrances.
48. The required sight lines around the basement driveway entrances are not to be compromised by street trees, landscaping or fencing.
49. The 10km/hr pedestrian shared zone is to be reinforced with a 10km/hr speed limit and associated signage, and raised pedestrian platforms or thresholds in a distinctive surface to address the pedestrian and vehicle interface.

LANDSCAPING

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

Landscaping shall be maintained:

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

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

51. 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.
52. 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.

- iv. 3 Year Landscaping Report. 3 years after an Occupation Certificate was issued for the development, a landscape professional listed in Council's Approved Landscape Consultants Register as suitable to design category 3 landscape works shall prepare a Landscaping Report for Council's consideration and approval, certifying to one of the following:

The landscaping on site has matured and either:

- i. the original landscape approval.
- ii. The landscaping on site has not matured in accordance with the original design philosophy and requires significant restoration.

In this case, restoration plans are to be submitted to Council for its consideration and approval. The approved plans shall be implemented at the expense of the property owners.

53. 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.
54. 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

SECTION 94

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

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

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

Based on the current rates detailed in the accompanying schedule attached to this Notice, pay a development contribution of \$4,478,746.00

This amount is to be paid to Council prior to the issue of 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 S94 invoice accompanying this consent should accompany the contribution payment.

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

CERTIFICATION

56. **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 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.

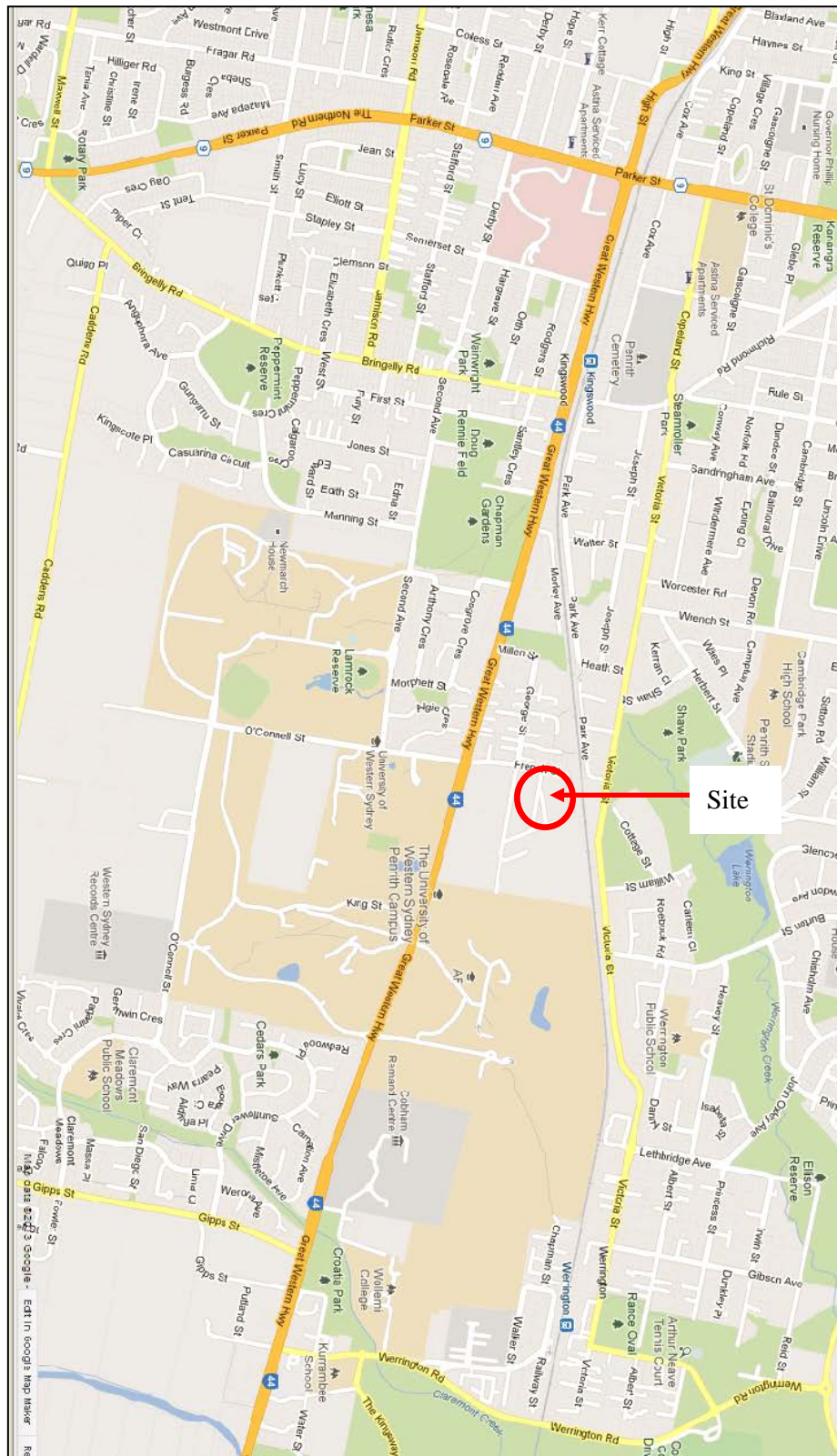
Information to accompany the Notice of Commencement

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.

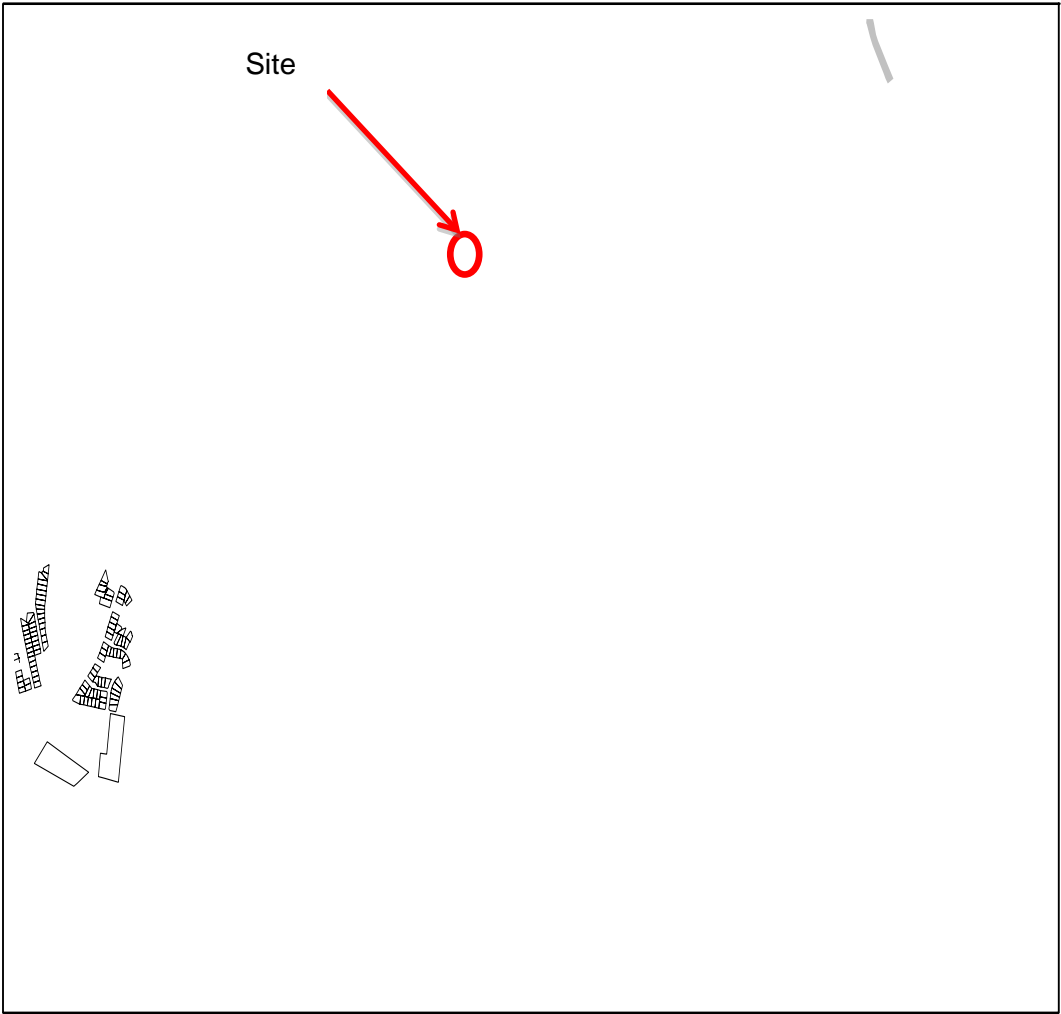
The following documentation shall accompany the "Notice of Commencement" to be submitted to Penrith City Council:

- Certification that the sediment and erosion control measures has been installed;
- A copy of the Traffic Control Plan for the development/site;

Appendix No. 1 – Location Plan



Appendix No. 1a – WELL Precinct Map



Appendix No. 2 – Aerial Views of Site

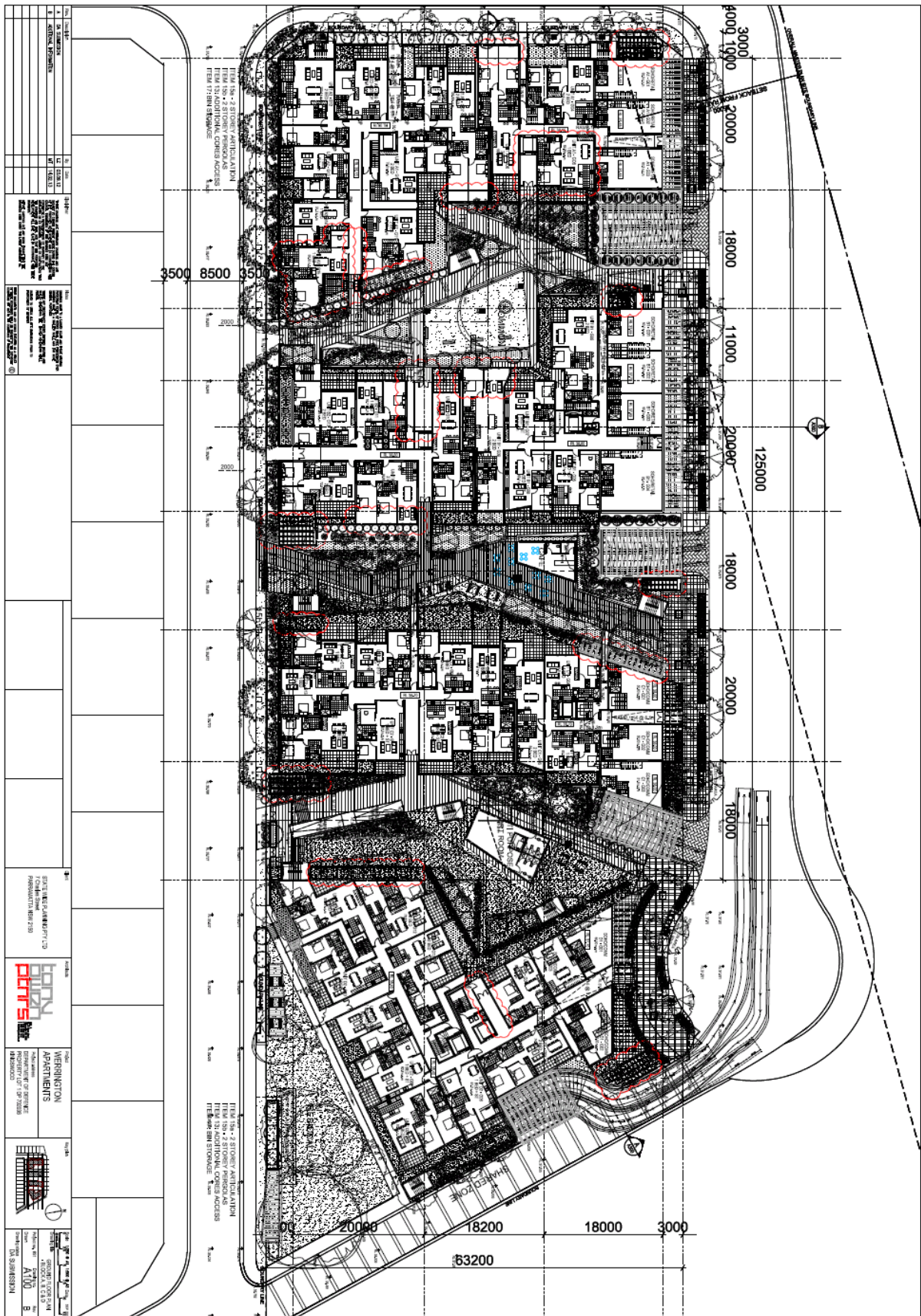


Aerial Photo of Development Site Showing Locality Context



Aerial Photo of Development Site

Appendix No. 3 – Site Plan



Appendix No. 4 – 3D Perspectives

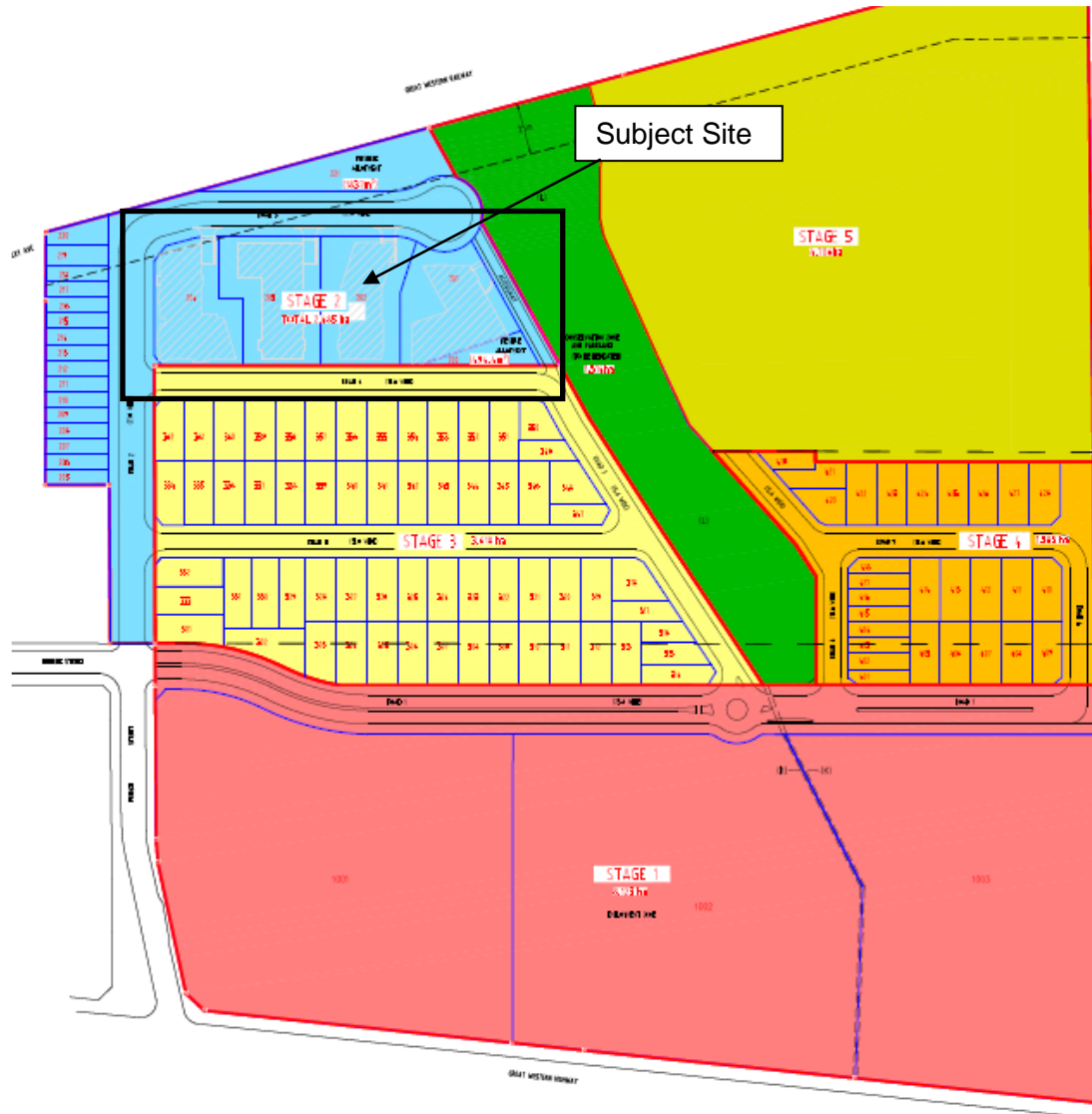




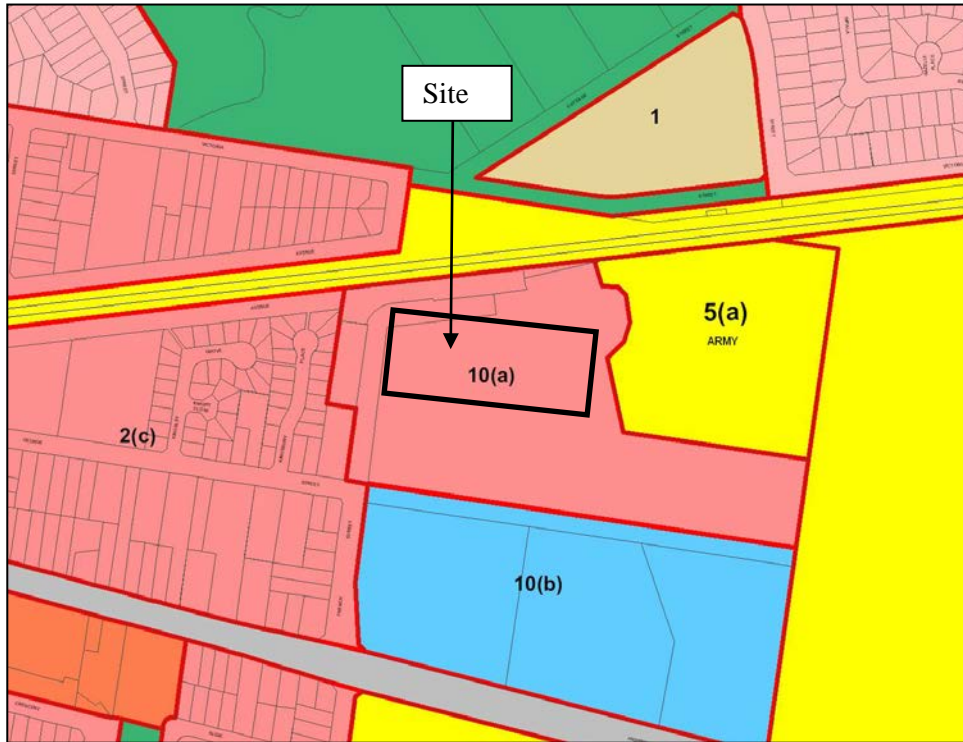
Appendix No. 5 – Landscape Plan



Appendix No. 6 – Approved Subdivision Plan

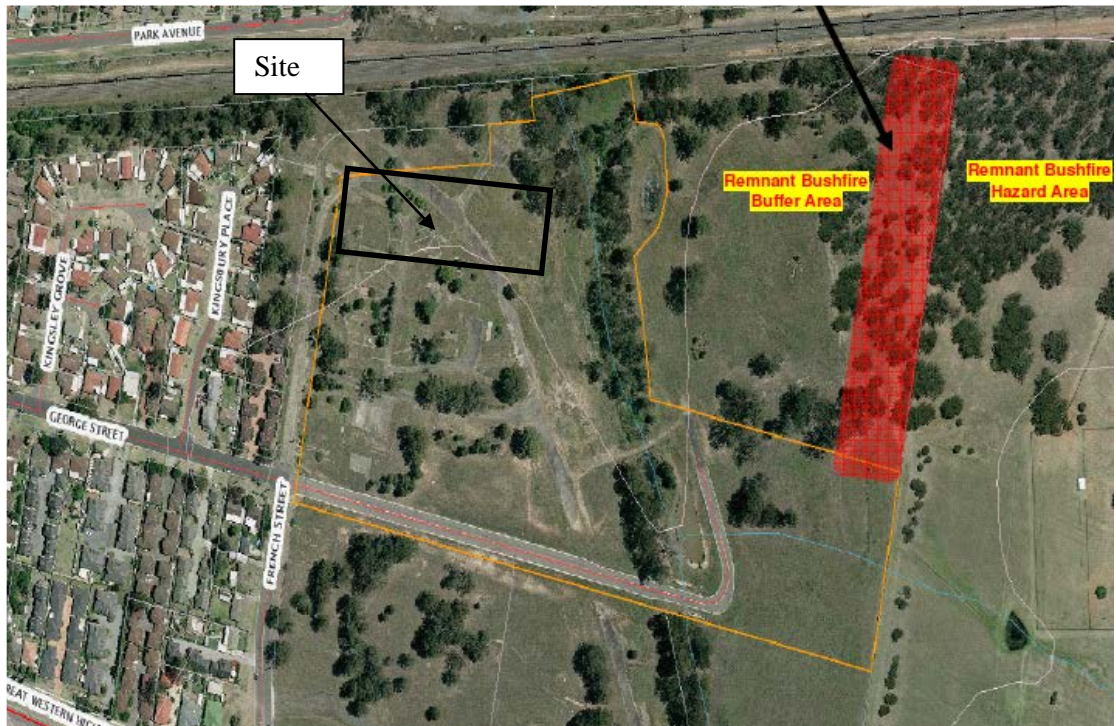


Appendix No. 7 – Zoning Extract



Zoning Extract: Penrith LEP 1998- Urban Lands

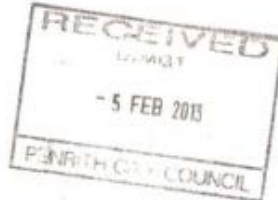
Appendix No. 8 – Bushfire Extract



Appendix No. 9 – Correspondence from NSW Office of Water



Department of
Primary Industries
Office of Water



Contact: Greg Brady
Phone: 02 47298 134
Fax: 02 4729 8141
Email: greg.brady@water.nsw.gov.au

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

Our ref: 10 ERM2013/0069
File No: 9055060
Your Ref: DA2012/1361

Attention: Schandel Jefferys

4 February 2013

Dear Madam

Re: Proposed Development: 50 French Street Werrington - Department of Defence land – 250 Residential units & cafe

Thank you for your letter dated 22 January 2013 in relation to above DA and site.

It is recommended that council include a condition of consent to obtain a controlled activity approval before a construction certificate can be obtained.

It is noted that this DA is the same subdivision footprint as DA11-546, which GTA were issued.

It is further noted that no Controlled Activity Approval has yet been obtained for that DA.

Further information on controlled activity approvals under the *Water Management Act 2000* can be obtained from the Office of Water's website
www.water.nsw.gov.au Water licensing > Approvals > Controlled activities

Please direct any questions or correspondence to Greg Brady, greg.brady@water.nsw.gov.au.

Yours sincerely

Greg Brady
Licensing Officer
Office of Water - Licensing Operations South

Appendix No. 10 – Correspondence from NSW Police



23 January 2013

Penrith City Council
Development Services
Attention: Schandel Jefferys
PO Box 60
PENRITH NSW 2751

RE: French Street, Werrington – 250 Apartments, DA12/1361

In April 2001 the NSW Minister for Planning introduced Crime Prevention Guidelines to Section 79C of the Environmental Planning and assessment Act, 1979. These guidelines require consent authorities to ensure that development provides safety and security to users and the community. 'If a development presents a crime risk, the guidelines can be used to justify modification of the development to minimise crime risk, or, refusal of the development on the grounds that crime risk cannot be appropriately minimised'.

The Guidelines contain two parts. 'Part A details the need for a formal crime risk assessment (Safer by Design Evaluation) to be done in conjunction with trained police, and Part B outlines basic Crime Prevention through Environmental Design (CPTED) principles and strategies that can be used by consent authorities to justify the modification proposals to minimise risk'. (DUAP 2001:2).

Crime Prevention Through Environmental Design (CPTED)

Crime Prevention Through Environmental Design (CPTED) is a crime prevention strategy that focuses on the planning, design and structure of cities and neighbourhoods. It reduces opportunities for crime by using design and place management principles that reduce the likelihood of essential crime ingredients from intersecting in time and space.

Predatory offenders often make cost-benefit assessments of potential victims and locations before committing crime. CPTED aims to create the reality (or perception) that the costs of committing crime are greater than the likely benefits. This is achieved by creating environmental and social conditions that:

- Maximise risk to offenders (increasing the likelihood of detection, challenge and apprehension)

ST MARYS LOCAL AREA COMMAND
Crime Management Unit

38-42 King Street, St Marys NSW 2760

Telephone 02 9677 7499 Facsimile 02 9677 7411 ENet 70499 EFax 70411 TTY 9211 3776 (hearing/speech impaired)
ASN 43 408 613 180

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- Maximise the effort required to commit crime (increasing the time, energy and resources required to commit crime)
- Minimise the actual and perceived benefits of crime (removing, minimising or concealing crime attractors and rewards) and
- Minimise excuse making opportunities (removing conditions that encourage/facilitate rationalisation of inappropriate behaviour)

CPTED employs four key strategies. These are surveillance, access control, territorial re-enforcement and space/activity management.

Site Description

The proposed development is for a 250 apartments (consisting of studio style, one, two and three bedroom units) provided in four buildings that will have a height of 4-6 storeys. All ground floor apartments on the northern elevation also provide small office and home office (SOHO) or retail opportunities. Vehicle access to the site is proposed to be provided via the new road provided at the northern boundary of the site. This road will provide access to a basement parking over two levels that provide a total of 346 vehicle parking spaces plus additional bicycle parking.

SURVEILLANCE

Natural surveillance is achieved when normal space users can see and be seen by others. This highlights the importance of building layout, orientation and location; the strategic use of design, landscaping and lighting. *Natural surveillance* is a by product of well planned, well designed and well used space. *Technical/mechanical surveillance* is achieved through mechanical/electronic measures such as CCTV, help points and mirrored building panels. *Technical/mechanical surveillance* is commonly used as a 'patch' to supervise isolated, higher risk locations. *Formal (or Organised) surveillance* is achieved through the tactical positions of guardians. An example would be the use of on-site supervisors/security at higher risk locations.

The attractiveness of crime targets can be reduced by providing opportunities for effective surveillance, both natural and technical. Good surveillance means that people can see what others are doing. People feel safe in public areas when they can easily see and interact with others. Would-be offenders are often deterred from committing crime in areas with high levels of surveillance.

Recommendations

- Where possible, buildings should be orientated to maximise natural and formal surveillance opportunities.
- Entry points should be designed so as to maximise surveillance opportunities to and from these areas from both inside as well as outside.
- Building sight lines should be kept as simple as possible. Maintain clear sightlines between the street, neighbouring property and the buildings.



- Surveillance equipment can enhance the physical security of the site and assist in the identification of people involved in anti-social or criminal behaviour.
 - Cameras should be installed both within and around the car park to maximise surveillance opportunities
 - Cameras should monitor areas with poor natural supervision

Lighting

There is a proven correlation between poor lighting, fear of crime, the avoidance of public places and crime opportunity (Painter, 1997). Good lighting can assist in increasing the usage of an area. There is no information with the REF which was reviewed to indicate the lighting proposals for the development.

The objective of security lighting is to deny criminals the advantage of being able to operate unobserved. However, if an area cannot be overlooked or viewed **at night**, then lighting will only help a criminal see what they are doing, not deter them.

Lighting should meet minimum Australian standards. Effective lighting contributes to safety by improving visibility, increasing the chance that offenders can be detected and decreasing fear. Special attention should be made to lighting the entry and exit points from the buildings, car park and access/exit driveways.

Light fixtures are a frequent target of vandalism. The damage and theft of a fixture can leave an area vulnerable to thieves and dangerous to walk through. Therefore, the proper selection and installation of fixtures is critical. They should be mounted as high as possible and still provide the illumination required. Fixtures should not be hanging or projecting to provide footholds for scaling a wall. They should be flush mounted or recessed whenever possible and covered with an impact resistant material.

Recommendations

- The access/exit driveways need to be adequately lit to improve visibility and increase the likelihood that offenders will be detected and apprehended.
- Throughout the site, transition lighting is needed to reduce vision impairment, i.e. reducing a person walking from dark to light places.
- Higher lighting levels may be required for vulnerable areas.
- Preferred external lighting should be of a 'white light' source. Note that low or high pressure sodium 'orange' lighting is not compatible with quality surveillance systems.
- Consider the use of sensor lighting to enable the lights to be activated automatically when movement is detected within that area, particularly in vulnerable areas.

Landscaping

Landscaping should make places attractive, but should not provide offenders with a place to hide or entrap victims.

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Recommendations

- Trees and shrubs should be trimmed to reduce concealment opportunities and increase visibility to and from the street.
- Overhanging branches should be trimmed to prevent people using them to access other parts of the property, e.g. using a tree to get to an upper level of the complex.
- Obstacles and rubbish should be removed from the property boundaries, footpaths, driveways and car park to restrict concealment and prevent offenders scaling the building.

ACCESS CONTROL

Access control treatments restrict, channel and encourage people and vehicles into, out of and around the development. Way-finding, desire-lines and formal/informal routes are important crime prevention considerations.

Access control is used to increase the time and effort required to commit crime and to increase the risk to criminals. *Natural access control* includes the tactical use of landforms and waterways features, design measures including building configuration; formal and informal pathways, landscaping, fencing and gardens. *Technical/mechanical access control* includes the employment of security hardware and *Formal (or Organised) access control* includes on-site guardians such as employed security officers.

Physical and symbolic barriers can be used to attract, channel or restrict the movement of people. They minimise opportunities for crime and increase the effort required to commit crime. By making it clear where people are permitted to go or not go, it becomes difficult for potential offenders to reach and victimise people and their property.

Illegible boundary markers and confusing spatial definition make it easy for criminals to make excuses for being in restricted areas.

Recommendations

- Effective directional signs should be considered to provide guidance to visitors in locating entry/exit points, fire exits and units etc. It can also assist in controlling activities and movements throughout the premises and ground.
- Warning signs can be displayed around the perimeter of your unit block and property to warn intruders of what security treatments have been implemented and to reduce opportunities for crime (*Warning: Trespassers will be prosecuted. Warning: This property is under electronic surveillance*).
- Ensure there is a site plan at the entry to the unit complex or estate as this will minimise excuse making opportunities and it will also assist emergency services in locating individual buildings and units in times of emergencies.



- Consider painting the underground car park area white to greatly help reflect light. Painted facilities not only look larger and more spacious than unpainted car parks, but can greatly reduce the number of lights required to illuminate the car park and on-going energy costs.

TERRITORIAL REINFORCEMENT

Criminals rarely commit crime in areas where the risk of detection and challenge are high. People who have guardianship or ownership of areas are more likely to provide effective supervision and to intervene in crime than passing strangers. Effective guardians are often ordinary people who are spatially 'connected' to a place and feel an association with, or responsibility for it. *Territorial reinforcement* uses actual and symbolic boundary markers, spatial legibility and environmental cues to 'connect' people with space, to encourage communal responsibility for public areas and facilities, and to communicate to people where they should/not be and what activities are appropriate.

Territorial reinforcement can be achieved through: -

- Design that encourages people to gather in public space and to feel some responsibility for its use and condition.
- Design with clear transitions and boundaries between public and private space.
- Clear design cues on who is to use space and what it is to be used for. Care is needed to ensure that territorial reinforcement is not achieved by making public spaces private spaces through gates and enclosures.

Environmental Maintenance

Clean, well maintained areas often exhibit strong territorial cues. Rundown areas negatively impact upon perceptions of fear and may affect community confidence to use public space and ultimately, it may affect crime opportunity. Vandalism can induce fear and avoidance behaviour in a public space, therefore the rapid repair of vandalism and graffiti, the replacement of car park lighting and general site cleanliness is important to create a feeling of ownership. Ownership increases the likelihood that people will report or attempt to prevent crime.

Many graffiti vandals favour porous building surfaces, as 'tags' are difficult to remove. Often a ghost image will remain even after cleaning. Easily damaged building materials may be less expensive to purchase initially, but their susceptibility to vandalism can make them a costly proposition in the long term, particularly in at-risk areas. This should be considered when selecting materials for constructions.

- As malicious damage (graffiti) is often an offence caused to such developments, strong consideration must be given to the use of graffiti resistant materials, particularly on the fences and areas which are accessible by other structures to reduce such attacks or assist in the quick removal of such attacks.
- The act and outcome of graffiti can reward offenders. The display of one's handy work to others can be a strong motivation to repeat the behaviour. The

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longer 'tags' are left on display, the greater the reward. Rapid Removal has proven to be a successful long-term graffiti management strategy.

- A graffiti management plan needs to be incorporated into the maintenance plan for the development. Research has shown that the most effective strategy for reducing graffiti attacks is the quick removal of such material generally with a forty eight hour period.

Other Matters

Unfortunately, offenders target this type of development, both in its construction phase and when the units are occupied. Police would recommend the use of security sensor lights and a security company to monitor the site while construction is in progress.

Conclusion

The New South Wales Police have a vital interest in ensuring the safety of members of the community and their property. By using the recommendations contained in this evaluation, any person who does so acknowledges that:

- 1) It is not possible to make areas evaluated by the NSWP absolutely safe for members of the community or their property;
- 2) It is based upon the information provided to the NSWP at the time the evaluation was made;
- 3) The evaluation is a confidential document and is for use by the consent authority or organizations referred to on page 1 only;
- 4) The contents of this evaluation are not to be copied or circulated otherwise that for the purposes of the consent authority or organization referred to on page 1.

The NSW Police hopes that by using the recommendations contained in this document, criminal activity will be reduced and the safety of members of the community and their property will be increased. However, it does not guarantee that all risk have been identified, or that the area evaluated will be free from criminal activity if tis recommendations are followed.

We would like to thank you for the opportunity of inspecting the DA for this development and should you require further information on the subjects mentioned within this report feel free to contact Senior Constable Kylie Chang on 02 9677 7528.

Yours sincerely,



Kylie Chang
Crime Prevention Officer

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Appendix No. 11 – Correspondence from Railcorp

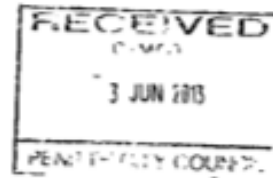


RailCorp Property
PO Box K349
Haymarket NSW 1238
Tel: (02) 8922 4062 Fax: (02) 8922 4890
Email: james.pink@railcorp.nsw.gov.au

30 May 2013

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

ATTENTION: Schandel Jefferys



Dear Sir/Madam,

**DEVELOPMENT APPLICATION – DA12/1361
50 French St, Werrington**

I refer to Council's letter dated 22 January 2013 regarding the proposed development at the above address.

Rail Corporation New South Wales (RailCorp) has reviewed the proposal and asks that the following issues be addressed in the conditions for this proposed development.

1. Noise and Vibration

RailCorp is concerned that the future occupants of the development will encounter rail-related noise and vibration from the adjacent rail corridor. Rail noise and vibration can seriously affect residential amenity and comfort, jeopardise the structural safety of buildings, and thus should be addressed early in the development process.

The Department of Planning has released the document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines". The document is available on the Department of Planning's website.

Council is therefore requested to impose the condition of consent:

- *An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".*

2. Stray Currents and Electrolysis from Rail Operations

Stray currents as a result of rail operations may impact on the structure of the development. Electric currents on overhead wiring pass through the train's motor and return to the power substation via the rail tracks. Occasionally, these currents may

stray from the tracks and into the ground. Depending on the type and condition of the ground, these may be passed to the nearest conductive material (concrete reinforcement, piling, conduits, pipework and earthing rods) accelerating corrosion of metals and leading to concrete cancer. Therefore, the Applicant should consider this possible impact, and engage an expert consultant when designing its buildings. It is requested that Council include the following condition of consent:

- *Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.*

3. Geotechnical and Structural Stability and Integrity

RailCorp needs to be assured that the development has no adverse effects on the geotechnical and structural stability and integrity of RailCorp's Facilities. It is requested that Council impose the following condition of consent.

- *The Applicant shall provide a Geotechnical Engineering report to RailCorp for review by RailCorp's Geotechnical section prior to the commencement of works. The report shall demonstrate that the development has no negative impact on the rail corridor or the integrity of the infrastructure through its loading and ground deformation and shall contain structural design details/analysis for review by RailCorp. The report shall include the potential impact of demolition and excavation, and demolition- and excavation-induced vibration in rail facilities, and loadings imposed on RailCorp Facilities by the development*

4. Crane and Other Aerial Operations

During construction, the use of cranes and other equipment capable of intruding into the airspace above the corridor and of operating over any overhead wiring or transmission lines must be strictly controlled. The developer must demonstrate to the satisfaction of RailCorp that all crane and other overhead operations are properly managed, and enter into an agreement with RailCorp for such operation. It is requested that Council include the following condition of consent:

- *Prior to the issuing of a Construction Certificate the Applicant is to submit to RailCorp a plan showing all craneage and other aerial operations for the development and must comply with all RailCorp requirements. The Principal Certifying Authority shall not issue the Construction Certificate until written confirmation has been received from RailCorp confirming that this condition has been satisfied.*

5. Drainage

RailCorp wishes to advise that run-off or stormwater discharge from the development site onto the rail corridor is unacceptable, both during and after construction and installation. Any run-off or waste arising from the development activities needs to be properly disposed of and must not be allowed to enter the rail corridor.

RailCorp looks to Council to ensure that stormwater is not diverted onto the rail corridor as a result of the development. Alternatively, Council may choose to include the following condition of consent:

- *Given the development site's location next to the rail corridor, drainage from the development must be adequately disposed of/managed and not allowed to be discharged into the corridor unless prior approval has been obtained from RailCorp.*

Finally, it is asked that Council forward to RailCorp a copy of the final development consent to enable RailCorp to monitor the Applicant's compliance with rail related conditions of consent.

Thank you for providing RailCorp the opportunity to comment and please contact me if you have any further enquires.

Yours sincerely,



James Pink
Assistant Town Planner
RailCorp Property

Appendix No. 12 – Penrith DCP 2006 Development Control Table

	DCP Provision	Comment	Compliance
2.1 Contaminated Land			
	Consider whether land is contaminated.	Contamination considered as part of subdivision proposal.	Yes
2.2 Crime Prevention Through Environmental Design			
	CPTED principles should be incorporated into the design addressing surveillance, access control and territorial reinforcement	Addressed previously in this report, noting the design is acceptable subject to contamination.	Yes
2.3 Engineering Works			
	Works to be consistent with Councils 'Guidelines for Engineering Works for Subdivisions and Developments-Part 1- Design' and "Guidelines for Engineering Works for Subdivisions and Development-Part 2- Construction.	The proposal has been reviewed by Councils Development Engineer and found to be satisfactory. Conditions of consent reinforce this.	Yes
2.4 Erosion and Sediment Control			
A1	Erosion and Sediment Control Plan to be submitted as part of DA and carried out during development.	Erosion and Sediment Control measures shown on plans and the provision of these measures through construction is reinforced by conditions of consent.	Yes
2.5 Heritage Management			
3.3	Development within the vicinity of a heritage item	The site is not identified as being within proximity to any items of environmental heritage.	Yes
2.6 Landscape			
B3	Landscape Plan required.	A landscape plan accompanies the development application providing for landscape works along boundaries and the revegetation of land in the vicinity of Claremont Creek.	Yes
2.7 Notification and Advertising			
Part B	Advertised Development- 14 day exhibition	The development was advertised in local papers and notified to adjoining property owners, with submissions addressed previously in this report.	Yes
2.9 Waste Planning			
		Waste storage areas noted on plans and waste storage and management arrangements are satisfactory. Conditions provided to reinforce appropriate disposal of waste.	Yes

	DCP Provision	Comment	Compliance
2.11 Car Parking			
	Requirement for Parking: 1 or 2 beds= 1 space 3 or more= 2 space Visitor = 1 per 5 Proposal Studio/SOHO/1 bed= 67 units 2 bed= 172 units 3 bed= 11 units Total Resident Parking Needed: 269 Total Visitor Needed= 50 Grand Total: 319	A traffic report was prepared by Mott McDonald providing detail on traffic and parking and this was peer reviewed by Councils Traffic Engineer and found to be acceptable. The proposal provides 346 on-site spaces which exceeds the 319 space requirement and provides sufficient on-site parking.	Yes
	Parking and Manoeuvring to be consistent with AS2890.	The proposal has been reviewed by Councils Development Engineer and found to be satisfactory.	Yes
2.13 Tree Preservation			
	Tree Preservation Order Applies.	Trees to be removed however appropriate offsets provided. As detailed in subdivision proposal key areas of vegetation are retained- noting none of these are on the subject site.	Yes
4.6 Apartment Development			
	DCP Provision	Comment	Compliance
5.3 Front and Rear Setbacks-	5.5m	The proposal adopts a 2m-3m front setback that is acceptable given the context of the site.	No- however setbacks are contextually appropriate.
5.4 Driveways and Parking-	319 space required and 346 spaces provided	See previous discussion	Yes
5.5 Landscaped Area- Mandatory Controls	35% 10% of site area as communal.	- 48.9% including rooftop - 29.75% at ground level.	Yes Yes
5.6 Building Envelope and Side Setbacks- Mandatory Controls	Building envelope	Does not comply, however the control is not relevant as envelope in PLEP 1998 does not apply and in addition the context of the subject site means a merit assessment is necessary.	No

	DCP Provision	Comment	Compliance
	10.5m external wall height	6m-20m. However the control is not relevant to the context of the subject site.	No
	Basement to be < 1500mm above ground	Basement <1500mm	Yes
5.7 Visual and Acoustic Privacy-Mandatory Controls	9m between direct facing windows.	The proposal has been designed to provide appropriate separation between buildings. There are a small number of direct facing windows and balconies that are to be treated with screening measures to ensure cross-viewing is mitigated.	Yes
5.8 Solar Planning-Mandatory Controls	Windows in walls exposed to northern sun. Provided to 71.5% of units. The proposal does not result in unacceptable overshadowing to adjoining properties.	- Windows in all walls exposed to northern sun - Min 3 hours sunlight between 9am and 3pm - Min 3 hours sunlight to 40% POS - Retention of more than 3 hours sunlight to adjoining properties Note: See shadow diagrams	Yes Yes Yes
6.3 Urban Design	- Articulate building - Variation in materials	The building well articulated and provides for a variety of shadow casting features. The external finishes incorporate a variety of materials and colours and are acceptable.	Yes
6.4 Energy Efficiency Mandatory Controls	Comply with BASIX; Orient living areas to north; Promote cross ventilation Eaves min 450mm	BASIX provided. Living areas oriented north. 66% cross ventilated. Window hoods/sun shading provided to north and west facing windows.	Yes Consistent Consistent Consistent Consistent
6.5 Design of Dwellings and Private Courtyards-Mandatory Controls	Min 20sqm open space to ground floor units Min 10sqm to units above ground floor measuring 2.5m x 2.5m	Ground floor units have private open space areas that range from 14.29m ² to 52.78m ² with majority being compliant with minimum size. Unit C2 G13 is the only unit with a large variation- with the balcony only being 6.7m ² . The minor variation is acceptable given the ample communal areas provided and the overall private open space areas are useable for residents. The variation to Unit C2 G13 is acceptable given it is only 1 of 250 units. All units have 10m ² balconies.	No- variation acceptable. Yes

	DCP Provision	Comment	Compliance
6.6 Garage Design Mandatory Controls	Basement and driveway access concealed from street.	Concealed from street;	Yes
	<1500mm	Basement not to rise more than 1.5m above ground;	Yes
	Controlled access to basement store and garbage storage area.	Secure storage and garbage store	Yes
6.9 Fences and Retaining Walls-Mandatory Controls	1.8m max height; No metal panels forward of building line, terrace wall with landscaping in front;	1.8m max height to courtyards, being decorative timber slat with landscape plantings in front. A condition of consent is recommended dealing with fencing to the communal entrances.	Yes
6.11 Accessibility and Adaptability-Mandatory Controls	Planning and design measures are not to prevent access by people with disabilities; Dwellings designed to meet the needs of an ageing population	26 adaptable units proposed and lift access to all levels of the development.	Yes
6.12 Storage and Services-Mandatory Controls	At least 10m ³ of storage	1 bed: 6m ³ , 2 bed: 8m ³ , 3 bed: 10m ³	No, however consistent with RFDC
	Waste areas as per Council's requirements	Provided	Yes
	Letter boxes and other services	To be conditioned.	Yes

Appendix No. 13 – RFDC Key Rules of Thumb

<i>Element</i>	<i>Rules of Thumb</i>	<i>Comments</i>
<i>Building Height</i>	Ensure future development responds to the desired scale and character of the street Allow reasonable daylight access to all developments and the public domain	The issue of appropriate overall height has been discussed previously noting that the proponent has demonstrated that overshadowing impacts to the lower density land to the south will enable appropriate solar access to those dwellings.
<i>Building Depth</i>	Apartment depths of 10-18m to provide for adequate amenity	The proposed building depth varies from 17.5m to 23.5m. The minor non-compliance is acceptable noting that the proposal provides for approximately 2 of dwellings as naturally ventilated.
<i>Building Separation</i>	4 storeys/12m = 12m between habitable rooms/balconies 5-8 storeys/25m = 18m between habitable rooms/balconies	Complies, 12m-28m, with exception of 'L' corners. The building separation proposed maintains privacy, facilitates deep soil and communal areas and enables appropriate solar access and natural ventilation to dwellings. The 'L' corners are treated with fixed screens to prevent cross-viewing.
<i>Street setback</i>	Establish desired spatial proportions of the street and define street edge Provide a transition between public and private space Achieve visual privacy to apartments Create quality entries to dwellings Provide an outlook to the street Allow for street landscape character	The key design principle for this site being creation of active street frontage which contributes towards the creation of a vibrant main street. The 3m-4m setback to the northern boundary is consistent with this principle and found to be satisfactory. To enhance security, privacy and provide outlook, the applicant has incorporated planter boxes, courtyards and front gates to the ground floor units with direct street frontage.
<i>Floor space ratio</i>	Ensure development is in keeping with the optimum site capacity and local area Provide opportunities for modulation and depth of external walls Promote thin cross section buildings Allow for generous habitable balconies	There is not FSR applying to the site noting the proposal has an FSR of 1.97:1.
PART 02 SITE DESIGN		
<i>Deep Soil Zones</i>	Assist with management of the water table and water quality Improve amenity of developments through retention and planting of trees A minimum of 25 percent of the open space area of a site should be a deep soil zone; more is desirable.	Complies. 1350m ² that equates to 33% of the provided communal open space areas. Deep soil planting is provided in the central courtyards to facilitate management of water table and water quality and improve the amenity of the development. The deep soil zones will receive adequate sunlight.
<i>Landscape Design</i>	Add value to residents' quality of life Provide habitat for native flora + fauna Improve stormwater quality Improve microclimate Improve urban air quality	The submitted landscape plan is satisfactory and provides for appropriate landscape plantings of the communal areas.

	Contribute to biodiversity	
<i>Open Space</i>	<p>Provide residents with recreational opportunities</p> <p>Enable soft landscaping and deep soil planting</p> <p>Ensure communal open space is usable</p> <p>Provide a pleasant outlook</p> <p>25%-30% of site area should be common open space</p>	Complies. The proposal provides for approximately 3382m ² (29.75%) of communal open space areas at ground level plus additional open space at the roof top.
<i>Orientation</i>	<p>Optimise solar access to units</p> <p>Contribute to streetscape</p> <p>Support landscaped area</p> <p>Protect amenity of existing development</p> <p>Improve thermal efficiency of buildings</p>	<p>To maximise solar access and ensure residential amenity, the majority of the units are designed to have an east-west orientation. The number of units having a north-south orientation is limited. The applicant has also submitted a table demonstrating compliance with solar access and natural ventilation noting that 71.5% of dwellings achieve 3 hours of solar access at mid-winter and 66% of dwellings are cross ventilated.</p> <p>A BASIX Certificate is submitted with the application demonstrating compliance with the thermal comfort and energy efficiency.</p>
<i>Planting on structures</i>	<p>Contribute to the quality and amenity of communal open space</p> <p>Encourage the establishment of trees</p>	Consistent.
<i>Visual Privacy</i>	<p>Provide reasonable levels of visual privacy</p> <p>Maximise outlook and views without compromising visual privacy</p>	The proposed 12-28m separation (other than 'L' corners) between habitable room/balconies complies with the Code for privacy purposes and outlook. The 'L' corners are treated with screens to ensure cross-viewing is minimised.
<i>Parking</i>	<p>Minimise car dependency</p> <p>Provide adequate parking</p> <p>Integrate design of car parking with the site and building</p>	Basement parking is provided for residents, visitors and the commercial components. Bicycle parking is provided within the basement also.
PART 03 BUILDING DESIGN		
<i>Apartment Layout</i>	<p>Single Aspect Unit and Back of Kitchens to be < 8m from window</p> <p>Minimum Apartment Size: Studio: 38.5m² 1 bed: 50m² 2 bed: 70m² 3 bed: 95m²</p>	<p>Complies.</p> <p>The proposal consists a combination of the units including studios, 1 beds, 2 beds, and 3 beds. The apartment sizes are consistent with the RFDC.</p>
<i>Apartment Mix</i>	<p>Provide a diversity of apartment types</p> <p>Maintain equitable access by cultural and socio-economic groups</p>	Complies. The proposal consists a mix of studios, 1, 2 and 3-bedroom apartments. 26 adaptable units are also proposed.
<i>Balconies</i>	<p>Provide all apartments with private open space</p> <p>Ensure balconies are functional</p> <p>Ensure balconies are integrated into building design</p> <p>Contribute to safety and liveliness of the</p>	Balconies are provided to each unit with appropriate depth. The balconies comply with the provisions of Penrith DCP 2006 with the exception of a number of ground floor units as discussed previously.

	street	
<i>Ceiling Height</i>	Increase sense of space Promote daylight penetration Contribute to flexibility of use Achieve quality interiors	The proposal complies with the ceiling height requirement of the Code, noting a minimum 3.3m floor to ceiling height to the ground floor of the SOHO units is provided which provides for future adaptability of these units for commercial and retail uses.
<i>Flexibility</i>	Encourage housing designs which meet broad needs Accommodate whole or partial use changes Encourage adaptive re use	Complies. The applicant has provided a mix of studios, 1 bed, 2 bed, 3 bed and soho units to meet a broad range of housing needs. The ground floor SOHO units are designed to enable adaptable re use given the high floor to ceiling heights and direct address to the street at ground level.
<i>Internal Circulation</i>	Create safe and pleasant spaces for circulation Facilitate quality apartment layouts Contribute to the form and articulation of building façade Encourage interaction and recognition between residents	Complies. The applicant proposes a number of stairwells accessing the residential units on the upper levels. These stairwells are designed and incorporated to the building façade giving more articulation to the façade. A maximum of 8 units are serviced by the common stairwell/corridor with the exception of Block A that serves 9 to the southern portion of the building.
<i>Mixed use</i>	Support integration of appropriate retail / commercial uses with residential Create lively street Maintain residential amenity	Complies. The applicant has incorporated small scale commercial units and soho units in this proposal. These non-residential units are compatible to the residential components and they would contribute to the achievement of active street frontage and vibrant streetscape.
<i>Storage</i>	Provide adequate storage for everyday household needs Provide storage for sporting and other equipment	1 bed- 6m ³ 2 bed- 8m ³ 3 bed- 10m ³ Complies. Storage is provided within the unit and within the basement areas.
<i>Acoustic Privacy</i>	Ensure a high level of amenity by protecting privacy of residents	Complies. The applicant has incorporated measures in the apartment layout to ensure the passive rooms are separated from the living areas within and between apartments. Mitigation measures are also to be implemented to mitigate noise impacts from the railway line.
<i>Daylight Access</i>	Ensure daylight access is provided to all habitable rooms Provide adequate ambient lighting Provide the ability to adjust light quantity	Complies. The applicant has demonstrated that 71.5% of the apartments receive a minimum of 3 hours of sunlight. This exceeds the 70% requirement of the Code.

		6% of the total units have a single aspect with a southerly orientation. This complies with the maximum 10% requirement of the Code
<i>Natural Ventilation</i>	25% natural ventilation to kitchens 60% cross-ventilation.	Complies. The proposed building depth is compliant to facilitate cross ventilation. The applicant has also demonstrated that a minimum of 25% of all kitchens have natural ventilation and 66% of the units are naturally ventilated.
<i>Facades</i>	Promote high architectural quality Ensure facades define and enhance the streetscape Ensure building elements are integrated in the form and facade	The applicant has incorporated a combination of vertical and horizontal elements to the building façade and they include louvers, entry doors, blade walls adjoining the stairwell glazing, balconies, window openings, balustrades and awnings. These elements would ensure the scale, rhythm and proportion of the façade is sympathetic to the surrounding developments.
<i>Roof design</i>	Roof design contribute to overall design and performance of the building Roof integrated into the façade, composition and contextual response Increase longevity of the building	A flat roof is proposed for the development. Having regard the overall building height of the proposal and height of the surrounding development, the proposed flat roof is considered appropriate.
<i>Energy Efficiency</i>	Reduce necessarily for mechanical heating & cooling Reduce reliance on fossil fuels Minimise greenhouse gas emissions Support renewable energy	A BASIX Certificate is submitted with this application nominating commitments to achieve water, thermal comfort and energy efficiencies.

Appendix No. 14 – Design Verification Statement



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ARCHITECTS
PLANNERS
INTERIORS

15 February 2013

Design Verification Statement

French Street, Werrington

Introduction

This statement is provided pursuant to the requirements of Clause 50 of the Environmental Planning and Assessment Regulation 2000. It verifies that I, Tony Owen an architect registered under the Architects Act 1921, designed the building subject to this statement (referred to as French Street, Werrington) and that I am of the opinion that this building achieves the design quality principles of Part 2 of the State Environmental Planning Policy No. 65: Design Quality of Residential Flat Development (SEPP 65) as discussed below.

This application is for a 250 units mixed use, 4-6 storey medium density residential development which forms part of the broader Werrington mixed use area master plan. This master plan is defined in the Penrith Werrington Mixed Use Area Development Control Plan 2002 and covers the land bounded by:

- Main western rail line to the north
- Great Western Highway to the south
- French Street to the west
- UWS to the east

This application has been lodged in the context of the broader development master plan application for the overall site by Statewide Planning. This master plan identifies an area in the north-west portion of the master plan as the site. This site is bounded by:

- The extension of French street to the west
- The proposed native reserve to the east
- The new road adjoining the proposed rail station to the north
- The new road between medium density and proposed new detached housing to south

The general roadway arrangement is derived from the master plan submission and reflects the outcome as negotiated with council. It is proposed to provide a one way shared zone to the east of the site to link the northern station street with the southern portion of the site. This would be a limited access route only. Restricted to residents accessing the Building D car park, buses and emergency vehicles. General Traffic in the station street will use the cul-de-sac at the end of the street. The site provides for a pocket park in the approximate area suggested in the DCP master plan.

The general design configuration has arisen from direction given by council planners and the design review panel. This resulted in a number of enhancements including:

- Location of retail and commercial shop-top housing on ground floor along station street for activation of the streetscape with widened footpaths
- Additional setbacks to southern street and increased landscaped zones as buffer to proposed adjoining housing
- Activation of central plazas with communal facilities and sports facilities
- Location of basement access ramps to minimise impact on streetscape and pedestrians

The objective of this application is to achieve the objectives of the master plan.

A number of meetings have taken place with council planners. As a result there is consensus from senior planners that the proposal meets or improves on the objectives of the master plan without the need to precisely replicate it.

The 10 Design Principles of Part 2 of SEPP 65

Principle 1: Context

Currently the site is primarily open space and former defence land. As stated above, this application has been lodged in the context of the broader development master plan application for the overall site by Statewide Planning. The context of this development is the proposed future dwellings which will largely be 2 storey detached housing. The proposed medium density zone will provide a focal point for the master plan and facilitate small retail and commercial services to serve the locality close to the proposed railway station.

Principle 2: Massing and Scale

The DCP master plan anticipates 3-5 storey development in this area. The proposal is for a development which is broadly 5 storeys. This massing has been articulated such that some portions are raised to 6 storeys and some lowered to 4 storeys. This creates a more varied skyline akin to a modest town centre and is supported by council planners. A pergola element is located along the commercial zone streetscape on the station street. The additional height has been located such that it ensures solar access is maintained for the proposed detached housing to the south. The massing along the southern perimeter is broken down with some 2 storey elements to mediate the bulk towards the proposed detached dwellings.

Principle 3: Built Form

The proposal consists of 4 buildings. These are generally oriented north south to maximise solar amenity to units. The buildings are separated according to the requirements of Sepp 65 RFDC. This creates a series of communal open spaces between the buildings for resident amenity and greater permeability. It also allows for greater view potential and minimises view loss to adjoining sites. These spaces are oriented north south to allow maximum solar access to the spaces. It is proposed the central space will be a public through site link to connect the master plan to the proposed station and commercial zone. The central spaces are activated with communal facilities and sports facilities. Some of the building addresses are located off the access roads and some are directly off the central plaza space. Parking is provided in 2 basement levels which are located directly below the buildings to maximise deep soil planting. The parking ramps are located such that they don't occupy areas within the central space which enjoy the most sunlight. The ramps are articulated using pergolas and surrounded by planter zones. The overall result is an integrated community. Each building is divided into 2 halves in plan with a party wall. This allows for the buildings to be constructed in 2 stages. This acknowledges that this area has low development margins and it may be required to stage the work to ensure viability.

Principle 4: Density

The DCP establishes certain guidelines for the density of the site.

In reality the density proposed was below that which council were seeking. Council required the additional density resulting from the medium density component to satisfy this requirement. Hence the density of the medium density is appropriate.

Principle 5: Resources, Energy and Water Efficiency

The design of the apartments has been influenced by the principles of passive solar design. The majority of units are duplex units or corner units to maximise natural ventilation and minimise energy use. The façade has been designed using large overhangs to create shading. Louvred pergolas are located at the streetscape areas at ground level and also at rooftop terraces and setbacks to maximise solar control.

The proposal contains water collection and recycling initiatives for the garden areas.

Principle 6: Landscape

The buildings are located to create a series of communal open spaces between the buildings for resident amenity and greater permeability. These spaces are oriented north south to allow maximum solar access to the spaces. It is proposed the central space will be a public through site link to connect the master plan to the proposed station and commercial zone. The central spaces are activated with communal facilities and sports facilities. Parking is provided in 2 basement levels which are located directly below the buildings to maximise deep soil planting. The parking ramps are located such that they don't occupy areas within the central space which enjoy the most sunlight. The ramps are articulated using pergolas and surrounded by planter zones. The overall result is an integrated community with generous landscaped public areas as the focus. The area along the station street will be landscaped with a wide public concourse associated with the retail/commercial areas including shade structures and trees for outdoor dining. The ground floor units will integrate generous outdoor private spaces. On other boundaries green zones and planter zones interface between the site and surrounding areas.

Principle 7: Amenity

The proposal will result in high standards of amenity for the future occupants of the building. The apartments have been designed according to SEPP 65 design guidelines as follows:

1) Natural Ventilation

Performance Criteria: 60% of units should be naturally cross ventilated.

Performance: The buildings comply individually and as a group as follows: Building A = 67%; Building B=65%; Building C=64%; Building D =64%; all buildings combined = 67% are naturally cross ventilated. This achieved by units being 'corner units', through units or 'loft' units. See ventilation study attached.

2) Sun Penetration

Performance Criteria: It is expected that 70% of apartment living rooms should receive direct sun penetration for minimum 3hours per day between 9 am and 3pm in September and April.

Performance: The building is compliant as 71.5 of 100 or 71.5% of units satisfy this criteria.– see solar study attached.

3) Building Depth

Performance Criteria: Preferred maximum internal building depth should be 18m.

Performance: The building is compliant as the maximum depth of the floor plate is less than 18m deep.

4)Unit depth

Performance Criteria: The maximum internal unit depth for single aspect units should be 8m.

Performance: The building is generally compliant as the vast majority of units have internal unit depth for single aspect units of less than 8m.

Performance Criteria: 25% of kitchens to be naturally ventilated. The rear of kitchens to be maximum of 8m from glazing.

Performance: The building is compliant with 25% of units (65units) have kitchens which are naturally ventilated. All units have kitchens with rears 8m or less from glazing.

5)Unit sizes.

Performance: The building is compliant as all units have the minimum required internal areas according to sepp 65 and Sydney City Council.

6)Ceiling heights.

Performance Criteria: The minimum ceiling height for living areas is 2700mm.

Performance: The building is compliant as all units have 2700mm ceilings.

7)Units off Corridors.

Performance Criteria: The recommended maximum number of units addressing a single corridor is 8.

Performance: The building is compliant as buildings generally have 8 units or less off lobbies.

8) Balcony depth

Performance Criteria: The minimum depth of balconies is 2m.

Performance: The building is compliant as all apartment balconies are minimum 2m deep.

9) Storage

Performance Criteria: The minimum requirements for storage are set out in the design code.

Performance: All units are compliant as they have the capability of providing the storage requirement with at least 50% of storage within the unit and the remainder in the basement.

Principle 8: Safety and Security

A variety of security measures have been incorporated into the design of the apartment building. The main entry space is overlooked by the units above. There is also good passive surveillance for the approaches main entry lobby areas which are also secure.

Principle 9: Social Dimensions

The design responds to the social context, providing units of a scale and character that cater to the lifestyles of intended occupants.

Principle 10: Aesthetics

The built form is derived from the principles of space defining block forms as established from the concept plan, DCP and contextual analysis. This results in a series of 4, 4-6 storey residential flat buildings. The massing of the buildings is determined by the setbacks and building separations and sepp 65 dimensions. This massing has been articulated such that some portions are raised to 6 storeys and some lowered to 4 storeys. This creates a more varied skyline akin to a modest town centre. A pergola element is located along the commercial zone streetscape on the station street. The additional height has been located such that it ensures solar access is maintained for the proposed detached housing to the south. The massing along the southern perimeter is broken down with some 2 storey elements to mediate the bulk towards the proposed detached dwellings.

The massing is expressed as blocky rectangular sculptural forms. This is enhanced by a composition of patterns of blocks of coloured masonry which breaks up and articulates the facades. The use of blocks of masonry creates a slightly urban expression suitable for a town centre. Balcony zones are generally expressed as rectangular 'portal' elements which add void elements to the rectangular composition. These balconies are located to terminate vistas and axes and add to the compositional articulation.

The proposal presents a massing of high architectural quality which will become a design benchmark for the area.

Tony Owen
Director

Tony Owen Partners Architects
Reg. No 7080

Appendix No. 15 – SEPP 1 Objection

4.0 SOLAR ACCESS - NON COMPLIANCE

4.1 COUNCIL ADVICE:

"Penrith LEP 1998 Matters

Clause 13(2) of Penrith Local Environmental Plan 1998 provides:

- (2) The council must not grant consent to development that involves the erection of multi-unit housing if, in the opinion of the council, that development:
 - (a) will not allow for at least 3 hours of direct sun to the windows of living areas of the housing between 9am and 3pm on June 21, or
 - (b) will reduce direct sun to the windows of neighbouring living areas to less than 3 hours between 9am and 3pm on June 21, or
 - (d) will not include protection from the entry of summer sunlight by shading devices on external openings to habitable rooms.

The current proposal does not comply with the provisions of Clause 13(2)(a) in that there are a number of dwellings that do not achieve the required 3 hours of solar access at mid-winter. It is noted that given the form of development that the provisions of SEPP 65 and the associated Residential Flat Design Code are more appropriate in terms of guiding solar access. Notwithstanding a SEPP 1 Objection is required to be prepared addressing the departure of the proposal from this clause".

4.2 RESPONSE:

A SEPP 1 Objection to address this matter is provided below:

4.2.1 INTRODUCTION

SEPP 1 provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary.

4.2.2 RELEVANT DEVELOPMENT STANDARD

Clause 12(a) of Penrith LEP 1998 (Urban Land) provides the following:

13 Provisions for environmental performance in development generally

(2) The council must not grant consent to development that involves the erection of multi-unit housing if, in the opinion of the council, that development:

(a) will not allow for at least 3 hours of direct sun to the windows of living areas of the housing between 9am and 3pm on June 21, or

4.2.3 PROPOSED NON-COMPLIANCES

A strict interpretation of this provision would demand that each and every new apartment (100%) must satisfy the solar access requirement.

The solar access plans and reports that accompany the DA reveal that the development provides the required levels of solar access to 71.5% of the proposed apartments.

4.2.4 RELEVANT CONSIDERATIONS

Justice Lloyd J, in *Winten Property Group Ltd v North Sydney Council* (2001) 130 LGERA 79 at 89, posed five questions to be addressed in SEPP 1 objections, as follows:

1. *Is the planning control in question a development standard?*
2. *What is the underlying object or purpose of the standard?*
3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP & A Act?*
- 4(a). *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
- 4(b). *Is a development which complies with the development standard unreasonable or unnecessary?*
5. *Is the objection well founded?*

These questions are addressed below.

IS THE PLANNING CONTROL A DEVELOPMENT STANDARD ?

The planning control is clearly a development standard rather than a prohibition. It is so because it does not prohibit such development

under any circumstances, and merely specifies a requirement or numeric standard in relation to the development.

WHAT IS THE UNDERLYING OBJECT OR PURPOSE OF THE DEVELOPMENT STANDARD?

Clause 13 of the relevant LEP provides the following 2 objectives:

(1) The objectives of this clause are to:

- (a) achieve effective environmental performance of development generally, and*
- (b) reduce the consumption of energy used in the habitation of multi-unit housing by ensuring that solar design principles are followed in the development.*

IS COMPLIANCE WITH THE STANDARD CONSISTENT WITH THE AIMS OF THE POLICY AND WOULD STRICT COMPLIANCE HINDER THE OBJECTS 5(A)(I) AND (II) OF THE ACT ?

The aims of SEPP 1 are noted in clause 3 thereof, which provides:

- 3. *This policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable and unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Act.*

Section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* provide:

The objects of this Act are:

- (a) to encourage:*

- (i) *the proper management, development and conservation of natural and artificial 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 and development of land,*

The site is located within an area that has been identified under both the strategic and statutory framework as being set aside for higher density type development.

The requirement for 100% apartments to achieve the solar access requirement outlined in the relevant development standard significantly decrease the opportunity to achieve the outcomes specified for the site in the planning framework.

In this context it considered that compliance with the relevant standard would not represent "...the orderly and economic use and development..." of the land and therefore would be inconsistent with the object of the Act.

**IS COMPLIANCE WITH THE DEVELOPMENT STANDARD
UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES
OF THE CASE?**

It is generally accepted that strict compliance with a development standard is unnecessary if the development still achieves the underlying objectives of the standard despite its non-compliance.

The relevant objectives of the planning standard are:

- (a) achieve effective environmental performance of development generally, and*

(b) reduce the consumption of energy used in the habitation of multi-unit housing by ensuring that solar design principles are followed in the development.

Contemporary environmental performance measures for apartments are best reflected in the Residential Flat Design Code (RFDC) that accompanies SEPP 65 and SEPP 2004 – BASIX.

The SEPP 65 RFDC establishes a measure of 70% apartments in new development that should achieve 3 hours of solar access to living areas.

The solar access study that accompanies demonstrates that the development provides 71.5% of the apartments with the required solar access.

Similarly, the development is accompanied by BASIX reports etc that demonstrate that it achieves the required reduction energy targets.

The development therefore still achieves the objectives of the development standard as it meets all contemporary planning measures. As such it is considered that strict compliance with the development standards is unreasonable and unnecessary in the circumstances of the case.

IS A DEVELOPMENT WHICH COMPLIES COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

Given that the development achieves contemporary planning measures for solar access, it would be unreasonable to demand compliance with the relevant development standard.

IS THE OBJECTION WELL FOUNDED ?

This report outlines the nature of the objection to the development standard and demonstrates that strict compliance is unnecessary. As such it is considered that the objection is well founded.

Appendix No. 16 – S.94 Extract from Assessment Report DA11/0546

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

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

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

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

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

- Construct all roads within the subdivision as these roads are required to provide access to the proposed lots;*
- Construct all drainage works (i.e. street drainage, stormwater pipes and detention basins); and*
- Pay a development contribution of \$27,307 per lot for open space and community facilities which for 110 lots is \$3,003,770.*

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

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

- All roads provided as part of the current DA be provided as part of each stage;*
- All stormwater work required to satisfy the entire development of the site (Stages 1-5);*

- *Bicycle paths and bus facilities required to service the site to (cost expected to be in the order of \$125,000) ;*
- *Dedication of land containing the drainage basins and conservation corridor to Council at no cost to Council; and*
- *\$3.6 Million developer contributions*

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

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

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

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

Since the introduction of the Ministerial cap of \$30,000 per lot in September 2010 Council has been faced with implementing a development contributions policy that minimises Council's exposure to fund shortfalls in infrastructure to new and existing communities.

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

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

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

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

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

- *avoids future legal challenges and costs with respect to conditions of development consent relating to Section 94 contributions;*

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

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

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

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