



## AGREEMENT BETWEEN PARTIES SECTION 34(3)

### COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	1
Case number	15/11025

### TITLE OF PROCEEDINGS

Applicant	<b>RPC Rogers Street Holdings Pty Ltd</b> ACN 605 419 234
Respondent	<b>Penrith City Council</b> ABN 43 794 422 563

### FILING DETAILS

Filed for	<b>RPC Rogers Street Holdings Pty Ltd</b> , Applicant
Legal representative	Felicity Rourke, Norton Rose Fulbright
Legal representative reference	2833400
Contact name and telephone	Rebecca Fleming, (02) 9330 8929
Contact email	rebecca.pleming@nortonrosefulbright.com

### TERMS OF AGREEMENT

Pursuant to section 34(3) of the *Land and Environment Court Act 1979* (NSW) (**Act**), the parties have reached agreement as to the terms of the decision acceptable to the parties (being a decision that the Court could have made in the proper exercise of its functions).

Pursuant to section 34(3)(a) of the Act, the parties respectfully request that the Court dispose of the proceedings in accordance with the terms of the agreement as follows:

- 1 The Applicant is granted leave to rely on the amended plans as identified in Condition 1 of the conditions annexed hereto and marked "A".
- 2 Pursuant to s97B of the *Environmental Planning and Assessment Act 1979* (NSW), the Applicant is to pay the Respondent's costs thrown away as a result of amending the development application, in the amount of \$10,000 to be paid within 28 days of the date on which this agreement is signed by the parties' representatives.
- 3 The written request under clause 4.6 of the *Penrith Local Environmental Plan 2010* to vary the applicable maximum building height development standard to allow a maximum building height of 26.3 m is upheld.

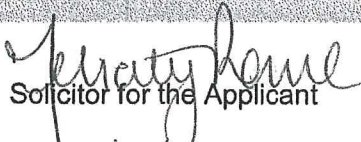
- 4 The appeal is upheld.
- 5 Development Consent is granted to Development Application No. 15/0977, subject to the conditions annexed hereto and marked "A".

**SIGNATURE**

Signature of legal representative

Capacity

Date of signature

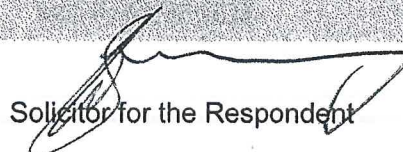
  
Solicitor for the Applicant  
25/8/2016

**SIGNATURE**

Signature of legal representative

Capacity

Date of signature

  
Solicitor for the Respondent  
25/08/2016

## Annexure "A"

### Definitions

Any reference in this document to a "consent" means a "development consent" defined in the Environmental Planning and Assessment Act 1979.

Any reference in this consent to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to a certificate as defined by Section 109C of the Environmental Planning and Assessment Act 1979.

Any reference to "applicant" in this consent is a reference to the applicant for development consent or any other person who may at any time be carrying out the development approved by this consent and where necessary includes the owner of the site.

### General

1. The development must be implemented substantially in accordance with the following plans, except as amended via conditions of this consent.

#### Architectural Plans (Custance)

- A0.11, Site Plan, revision 1, dated 29/6/16
- A1.01, Basement 02, revision 1, dated 29/6/16
- A1.02, Basement 01, revision 1, dated 29/6/16
- A1.10, Ground, revision 1, dated 29/6/16
- A1.11, Level 1, revision 1, dated 29/6/16
- A1.12, Level 2, revision 1, dated 29/6/16
- A1.13, Level 3, revision 1, dated 29/6/16
- A1.14, Level 4, revision 1, dated 29/6/16
- A1.15, Level 5, revision 1, dated 29/6/16
- A1.16, Level 6, revision 1, dated 29/6/16
- A1.17, Level 7, revision 1, dated 29/6/16
- A1.30, Wainwright Lane - Ground Floor, revision 1, dated 29/6/16
- A1.31, Rodgers Street - Ground Floor, revision 1, dated 29/6/16
- A1.32, Wainwright Lane - Level 01 - 03, revision 1, dated 29/6/16
- A1.33, Rodgers Street - Level 01 - 03, revision 1, dated 29/6/16
- A1.34, Wainwright Lane - Level 04 - 05, revision 1, dated 29/6/16



- A1.35, Rodgers Street - Level 04 - 05, revision 1, dated 29/6/16
- A1.36, Rodgers Street - Level 06, revision 1, dated 29/6/16
- A3.00, Street Elevations, revision 1, dated 29/6/16
- A3.01, Boundary Elevation - East & West, revision 1, dated 29/6/16
- A3.02, Wainwright Lane Elevation - Building A, revision 1, dated 29/6/16
- A3.03, Wainwright Lane Elevation - Building B, revision 1, dated 29/6/16
- A3.04, West Boundary Elevation - Building A, revision 1, dated 29/6/16
- A3.05, East Boundary Elevation - Building B, revision 1, dated 29/6/16
- A3.06, Courtyard Elevation - Building A, revision 1, dated 29/6/16
- A3.07, Courtyard Elevation - Building B, revision 1, dated 29/6/16
- A3.08, Rodgers Street Elevation - Building A, revision 1, dated 29/6/16
- A3.09, Rodgers Street Elevation - Building B, revision 1, dated 29/6/16
- A4.00, Section, revision 1, dated 29/6/16
- A4.01, Courtyard Sections, revision 1, dated 29/6/16
- A11.01, Street Perspectives, revision 1, dated 29/6/16
- A11.12, Adaptable Units, revision 1, dated 29/6/16
- A12.00, Materials Board - Building A, revision 1, dated 29/6/16
- A12.01, Conceptual Facade Sections & Additional Details, revision 1, dated 29/6/16

Landscape Plans (Taylor Brammer)

- LC01, Ground Floor - Landscape Plan, revision A, dated 29/6/16
  - LC2, Ground Floor - Planting Plan, revision A, dated 29/6/16
  - LC03, Level 7 (Rooftop) Landscape Plan, revision A, dated 29/6/16
  - LC04, Level 7 (Rooftop) Planting Plan, revision A, dated 29/6/16
  - LC05, Landscape Details, revision A, dated 29/6/16
2. The approved works must be carried out in accordance with the requirements of the Building Code of Australia.
  3. A Construction Certificate shall be obtained prior to the commencement of any building works.
  4. The development shall not be used or occupied until an Occupation Certificate has been issued.



5. All mechanical ventilation equipment, ducts, air conditioner services and the like shall be shown on the Construction Certificate documentation as being contained within the building.
6. Prior to the issue of a Construction Certificate, a revised BASIX Certificate for the development shall be prepared. All BASIX commitments shall be shown on the Construction Certificate plans.
7. All required boundary fencing and retaining walls shall be constructed at full cost to the applicant. Timber retaining walls are not permitted.
8. A minimum of 14 dwellings shall be constructed as adaptable units to meet the requirements for persons with a disability. The Construction Certificate application shall be accompanied by certification from an accredited access consultant confirming that the adaptable dwellings are capable of being modified, when required by the occupant, to comply with the Australian Housing Standard (AS 4299- 2009).
9. Prior to the issue of a Construction Certificate, waste management and collection arrangements shall be approved by Penrith City Council's Waste & Community Protection Manager.
10. Prior to the issue of an Occupation Certificate, the waste vehicle loading area shall be suitably signposted and line marked to Council's satisfaction. Required signposting and line marking will require approval by Council's Local Traffic Committee prior to installation.
11. The through site link is to be accessible by members of the public during daylight hours. The gates to the through site link are to remain open during daylight hours.
12. Sub-leasing of car parking spaces is not permitted.
13. Prior to the issue of an Occupation Certificate, the allotments the subject of this consent shall be consolidated into a single land title.
14. Prior to the issue of a Construction Certificate a Public Domain Plan is to be prepared and submitted to Council for consideration and approval that provides for the required Public Domain works as per the Kingswood Public Domain Manual. Specifically for the provision of a 1.5m footpath in front of Rodgers Street, and 1m footpath/concrete strip in Wainright Lane. In addition street tree plantings are to be provided in Rodgers Street as per the Street Tree Plan contained in the Kingswood Public Domain Manual. Ornamental Pear Trees are to be provided along the Rodgers Street frontage with a minimum of 7 trees to be provided at a distance of no more than 10m apart and planted as per the tree planting detail in the Kingswood Public Domain Plan. Prior to the issue of an Occupation Certificate the public domain works are to be inspected and signed off by Council.

15. Prior to the issue of a Construction Certificate the following plan amendments are to be incorporated by the architectural and landscape plans:

- Architectural and landscape sections are to illustrate planters which are necessary to accommodate tree plantings that are proposed above the basement;
- Landscape plans shall specify the minimum soil volumes and depths for planters which are required to accommodate proposed species and numbers of plants. This requirement shall be certified by a qualified landscape architect;
- The landscape plans are to be amended by employing different species and plantings in order to emphasise the identity of each proposed building - i.e. the amended plans shall avoid repetition of the same or similar plantings;
- The landscape plans are to be amended to include detailed cross-sections that explain changes of levels, screen plantings and fencing treatments that are proposed around the ground floor units which face Wainwright Lane;
- The architectural plans are to be revised in relation to lift and stair cores which extend above the rooftop common areas: heights of lift over-runs shall be minimised, and design of the core elements shall be integrated with lightweight pergola structures in order to create "architectural roof features".

#### **CPTED Matters**

16. All pedestrian access points into the development from Wainwright Lane and Rodgers Street shall have access restricted to residents only by way of security gates with intercom, code or card locks. The exception to this relates to the through site link that is to be accessible by members of the public during daylight hours.
17. Sensor electronic security gates shall be installed to the car park areas (with corresponding intercom or swipe card access to be installed) and to garbage and storage areas or alternative access control measures provided.
18. A security system is to be installed to vehicular entry and exit points to the car park as well as lifts and stair wells, to limit unauthorised access to these areas.
19. Prior to the issue of an Occupation Certificate, a lighting system shall be installed for the development to provide uniform lighting across common areas and driveways. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).

20. All barriers along pathways throughout the development including fencing and landscaping should be permeable to eliminate entrapment spots and blind corners.
21. Medium height vegetation with concentrated top to bottom foliage shall be avoided. Plants such as low hedges and shrubs, creepers, ground covers and high canopied vegetation shall be utilised to enable natural surveillance in common areas and the through site link to avoid entrapment points. Maintenance of vegetation is to be undertaken to ensure that hedges and shrubs remain of a low height.
22. Entrances to the development shall be identified by design features and directional signage that is clearly visible and legible to users.
23. Graffiti resistant coatings shall be used to external surfaces including blank walls, fences and outdoor furniture throughout the development.

#### **Demolition**

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

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

25. Dust suppression techniques are to be employed during demolition to reduce any potential nuisances to surrounding properties.
26. Mud and soil from vehicular movements to and from the site must not be deposited on the road.
27. Demolition works must be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:
  - Monday to Friday, 7am to 6pm
  - Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
  - No demolition work is permitted on Sundays and Public Holidays.

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

#### **Environmental Matters**



28. Prior to the commencement of works, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997.
29. Cut and fill operations on the property are only permitted in conjunction with the building works as detailed on the approved plans and specifications, and shall not extend more than 2m past the defined building footprint.

Before any fill material is imported to site, a validation certificate issued by an appropriately qualified person is to be provided to the Principal Certifying Authority. The validation certificate must demonstrate that the fill material is free from contaminants and weeds, that it is suitable for its intended purpose and land use, and that it will not pose an unacceptable risk to human health or the environment.

If Penrith City Council is not the Principal Certifying Authority, a copy of the validation certificate is to be submitted to Council for their reference.

{Note: Penrith Development Control Plan 2014 defines an appropriately qualified person as “a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance.”}

30. 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 or bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.
31. 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.

32. Prior to the issue of a Construction Certificate, a Stage 2 Detailed Site Investigation (DSI) for contamination is required to be carried out. This investigation is to consider the requirements of the relevant NSW Environment Protection Authority Guidelines and the National Environment Protection (Assessment of Site Contamination) Measure and be prepared by a suitably qualified environmental consultant. The associated DSI report needs to establish whether the site is suitable for its intended use and is to be submitted to Council for approval. If Penrith City Council is not the certifying authority, a copy of Council's approval of this document is to be submitted to the Principal Certifying Authority.

Should it be identified in the Stage 2 Detailed Site Investigation that remediation works are required to be undertaken on the site, a separate development application is to be submitted to Council for this work if development consent is required under State Environmental Planning Policy No 55 – Remediation of Land. Should remediation works be required, no work is to be carried out in accordance with this consent (including earthworks) until such time as a development application has been approved by Council for the remediation works (where development consent is required under SEPP 55) and Council has approved the Validation Report associated with the remediation works.

33. Noise levels within the premises shall not exceed the relevant noise criteria detailed in the "Noise Intrusion Assessment: 19-27 Rodgers Street, Kingswood, NSW" prepared by Acoustic Dynamics, dated 1 July 2016 (Ref. 3696R002.JH.160620). The recommendations provided in the abovementioned 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. 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.
34. The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development in terms of regulating offensive noise.
35. Vehicle wash bays are to be installed and connected to the sewer in accordance with Sydney Water's requirements. The Section 73 Certificate issued by Sydney Water for the discharge of vehicle wash bay wastewater from the premises shall be submitted to the Principal Certifying Authority before the wash bay can be installed.



36. The Preliminary Construction Management Plan prepared by PactMT dated 10 August 2015 (Ref. 20150810\_CMP-v2.0\_DA Issue) is to be implemented and adhered to during the demolition and construction phases of the development.

#### **BCA Issues**

37. 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).

38. The owner of a building constructed in accordance with this consent, or in the event that the building is the subject of a strata subdivision, the body corporate, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

(a) deal with each essential fire safety measure in the building premises, and

(b) be given:

- within 12 months after the last such statement was given, or
- if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

As soon as practicable after the annual fire safety statement is issued, the owner of the building or body corporate to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

#### **Utility Services**

39. A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water



Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the "e-developer" icon, or telephone 13 20 92.

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

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

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

41. Prior to the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:

- (a) The requirements of the Telecommunications Act 1997;
- (b) For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
- (c) For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

Prior to the issue of an Occupation Certificate, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements above and the applicable legislation at the time of construction, must be submitted to the Principal Certifying Authority.

### **Construction**

42. Copies of the stamped approved plans, specifications, this development consent, any Construction Certificate and any other Certificates to be relied upon by the applicant 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:

- 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 are to be erected:

- at the commencement of and maintained 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.

43. Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by Council, or
- alternatively, any other sewage management facility approved by Council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building on the adjoining allotment from damage, and

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

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

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

44. Construction works that are carried out in accordance with this consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

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

Other construction works carried out inside a building 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 all construction works.

## **Engineering**



45. All roadworks, stormwater works, associated civil works and dedications required to effect the approved development shall be undertaken at no cost to Penrith City Council.
46. Prior to the issue of an Occupation Certificate, secure bicycle parking is to be provided at convenient locations in accordance with AS 2890.3.2015 "Bicycle Parking Facilities".
47. Prior to the issue of a Construction Certificate, an Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to the issue of any Construction Certificate. The bond and applicable fees are in accordance with Councils adopted fees and charges.

An application form together with an information sheet and conditions are available on Council's website.

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

48. Prior to the issue of a Construction Certificate, a Section 138 Roads Act application including payment of fees shall be lodged with Penrith City Council. Penrith City Council is the Roads Authority for any works required in a public road. These works may include but are not limited to the following:

- (a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings).
- (b) Concrete footpath or cycle ways.
- (c) Road opening for utilities.
- (d) Road occupancy or road closures.
- (e) The placement of hoardings, structures, containers, waster skips, signs, etc. on the road reserve.
- (f) Temporary construction access

All works shall be carried out in accordance with the Roads Act approval, the development consent including the stamped approved plans, and Penrith City Council's specifications, Guidelines and best engineering practice.

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

Note:

(a) Where Penrith City Council is the Certifying Authority for the development the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.

(b) All works associated with the Roads Act approval must be completed prior to the issue of an Occupation Certificate.

49. Prior to the issue of a Construction Certificate, the Certifying Authority shall ensure that a Section 138 Roads Act application including the payment of application and inspection fees has been lodged with, and approved by, Penrith City Council (being the Roads Authority under the Roads Act) for provision of a new grated kerb inlet pit and stormwater drainage pipeline in Rodgers Street.

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines and best engineering practice.

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

Note:

(a) Where Penrith City Council is the Certifying Authority for the development the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.

(b) All works associated with the Roads Act approval must be completed prior to the issue of an Occupation Certificate.

50. Prior to the issue of a Construction Certificate, the Principal Certifying Authority or Certifying Authority shall ensure that an application under Section 68 of the Local Government Act including payment of application and inspection fees has been lodged with, and approved by, Penrith City Council for the provision of pits and a stormwater drainage pipeline in Lots 63, 64, 65 and 67 DP 14333.

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines and best engineering practice.

Contact Penrith City Council's Development Engineering Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- (a) All works associated with the Section 68 Local Government Act approval must be completed prior to the issue of an Occupation Certificate.

51. The stormwater management system shall be constructed generally in accordance with the concept plans lodged for development approval, prepared by Jones Nicholson, reference number 150655, revision 3, dated 04/07/16.

Engineering plans and supporting calculations for the stormwater management systems are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate. The rainwater tanks shall be connected for re-use as required by the BASIX Certificate. Prior to the issue of a Construction Certificate, the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage for Building Developments Policy and Water Sensitive Urban Design (WSUD) Policy.

52. Prior to the issue of a Construction Certificate, the Certifying Authority shall ensure that the stormwater drainage system for the basement car park has been designed in accordance with the requirements for pumped systems in AS 3500.3:2015 (Plumbing and Drainage – Stormwater Drainage).

53. Prior to the issue of a Construction Certificate, the Certifying Authority shall ensure that the foundations of proposed structures adjoining the drainage and/or services easement have been designed clear of the zone of influence.

54. 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, AS 2890.2, AS 2890.6 and Penrith Development Control Plan 2014.

55. Prior to the issue of a Construction Certificate, the Certifying Authority shall ensure that a Construction Traffic Management Plan (CTMP) has been submitted and approved by Penrith City Council. Approval of the CTMP may require endorsement from the Local Traffic Committee. The CTMP shall include, but not limited to, vehicle routes, number of construction vehicles, hours of operation, access arrangements, pedestrian management and parking management. The CTMP shall be certified by an appropriately accredited person and/or Roads and Traffic Authority Traffic Controller. The CTMP shall ensure that adequate parking is provided for the development and not severely impacted by the construction of this development.

In addition, a Traffic Control Plan, including details for pedestrian management, shall be prepared in accordance with AS 1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Maritime Services' publication "Traffic Control at Worksites" and



certified by an appropriately accredited Roads and Maritime Services 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.

56. Prior to the issue of a Roads Act approval, a performance bond is to be lodged with Penrith City Council for a grated kerb inlet pit and stormwater drainage pipeline in Rodgers Street.

The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges.

Note:

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

57. All earthworks shall be undertaken in accordance with AS 3798 and Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments and Engineering Construction Specification for Civil Works. The level of testing shall be determined by the Geotechnical Testing Authority/Superintendent in consultation with the Principal Certifying Authority.

58. Upon completion of all works in the road reserve, all verge areas fronting and within the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.

59. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall ensure that all works associated with any Section 138 Roads Act approval or Section 68 Local Government Act approval have been inspected and signed-off by Penrith City Council.

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

Where Penrith City Council is not the Principal Certifying Authority, an original set of works-as-executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with the notice that the Occupation Certificate has been issued.

61. Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall ensure that the:

- a) Stormwater management systems (including on-site detention and water sensitive urban design); and
- b) Overland flow path works

have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent, have met the design intent with regard to any construction variations to the approved design and any remedial works required to been undertaken have been satisfactorily completed.

Details of the approved and constructed system shall be provided as part of the works-as-executed drawings.

62. Prior to the issue of an Occupation Certificate, a restriction as to user and positive covenant relating to the maintenance of the:

- c) Stormwater management systems (including on-site detention and water sensitive urban design); and
- d) Overland flow path works

shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater Drainage for Building Developments Policy.

63. The applicant shall grant an easement to Penrith City Council for drainage and overland flow purposes in the location shown on the engineering plans accompanying this consent and on the basis that no claim for compensation will be made and that the applicant will meet all associated survey and legal costs.

64. Prior to the issue of an Occupation Certificate, a maintenance bond is to be lodged with Penrith City Council for the new stormwater drainage pipeline through Lot 67 DP 14333, the new grated kerb inlet pit and stormwater drainage pipeline in Rodgers Street. The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges Schedule.

65. Prior to the issue of an Occupation Certificate, the following shall be installed onsite:

- (a) Signage at the basement driveway entrance indicating the location of visitor car parking.
- (b) Secure bicycle parking at convenient locations in accordance with AS 2890.3:2015 Bicycle Parking Facilities.

66. The stormwater management systems shall continue to be operated and maintained in perpetuity to the satisfaction of Council in accordance with the final operation and maintenance management plan. Regular inspection records are required to be maintained and made available to Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the treatment measures.

### **Landscaping**

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

Landscaping shall be maintained:

- (a) in accordance with the approved plan, and
- (b) in a healthy state, and in perpetuity by the existing or future owners of the property or body corporate.

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.

68. The approved landscaping for the site shall be constructed by a suitably qualified and experienced landscape professional.
69. On completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, an Implementation Report shall 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 suitably qualified and experienced landscape professional.

An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

70. All plant material associated with the construction of approved landscaping is to be planted in accordance with Section C6 Landscape Design of Penrith Development Control Plan 2014.

71. 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.

### **Development Contributions**

72. This condition is imposed in accordance with Penrith City Council's Section 94

Contributions Plan for Cultural Facilities. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$44,667 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for Cultural Facilities may be inspected at Council's Civic Centre, 601 High Street, Penrith.

73. This condition is imposed in accordance with Penrith City Council's Section 94

Contributions Plan for District Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$462,210 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for District Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

74. This condition is imposed in accordance with Penrith City Council's Section 94

Contributions Plan for Local Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$167,241 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 94 invoice accompanying this consent should accompany

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

### **Waste Management**

75. Prior to the issue of an Occupation Certificate, the applicant is to enter into a formal agreement with Penrith City Council for the utilisation of Council's Waste Collection Service. This is to include Council being provided with indemnity against claims for loss or damage.

Note:

By entering into an agreement with Council for waste collection, the development will be required to operate in full compliance with Penrith City Council's Waste Collection and Processing Contracts for Standard Waste Collection. The provision of Council's waste collection service will not commence until formalisation of the agreement.

76. The property owner or agent acting for the applicant shall arrange for the commencement of a domestic waste service with Council. The service is to be arranged no earlier than two days prior to occupancy and no later than two days after occupancy of the development. All requirements of Council's domestic collection service must be complied with at all times. Please telephone Council on (02) 4732 7615 for the commencement of waste services.

77. A dual chute waste system is to be provided and detailed plans are to be submitted with the application for a Construction Certificate that provides for the following within the basement garbage storage areas:

- Incorporation of a linear or circular carousel device under each individual chute;
- Suitable door access for bin service;
- The floor must be finished so it is non-slip and has a smooth and even surface;
- The floor is to be graded to a central drainage point connected to the sewer, enabling all waste to be contained and safely disposed;
- Incorporate adequate light and appropriate ventilation to BCA requirements;
- Room to store the entire fleet of bins plus 0.2m between bins to allow manoeuvrability.

78. The temporary waste storage room (located at ground floor adjacent to Wainwright Lane) is to be designed to meet the following requirements, with full details to be shown on Construction Certificate plans accompanying the Construction Certificate application:

- Room built to store the entire fleet of bins plus providing 0.2m between bins to allow adequate manoeuvrability room;

- Suitable door access for bin service;
- Should a roller shutter door be provided, an additional service door is required inclusive of an Abloy key system;
- The floor must be finished so it is non-slip and has a smooth and even surface;
- The floor is to be graded to a central drainage point connected to the sewer, enabling all waste to be contained and safely disposed;
- Incorporate adequate light and appropriate ventilation to BCA requirements;
- The room is to be provided with an adequate supply of water through a centralised mixing valve with hose cock.

79. A bulky waste room is to be provided at the ground floor level that provides for a 21m<sup>2</sup> area to enable bulky waste collection as per Council's waste service. The bulky waste room is to be designed to meet the following requirements, with full details to be shown on Construction Certificate plans accompanying the Construction Certificate application:

- Suitable door access for bin service;
- Should a roller shutter door be provided, an additional service door is required inclusive of an Abloy key system;
- The floor must be finished so it is non-slip and has a smooth and even surface;
- The floor is to be graded to a central drainage point connected to the sewer, enabling all waste to be contained and safely disposed;
- Incorporate adequate light and appropriate ventilation to BCA requirements;
- The room is to be provided with an adequate supply of water through a centralised mixing valve with hose cock.

### **Payment of Fees**

80. All roadworks, dedications and drainage works are to be carried out at the applicant's cost.
81. Prior to the commencement of any works on site, all fees associated with Penrith City Council-owned land and infrastructure shall be paid to Council. These fees include Road Opening fees and Infrastructure Restoration fees.

### **Certification**

82. Prior to the issue of a Construction Certificate, a design verification statement from a qualified designer shall be submitted to Penrith City Council. The design verification



statement shall verify that the Construction Certificate plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

83. Prior to the commencement of any earthworks or construction 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.

84. Prior to the issue of an Occupation Certificate, a design verification statement from a qualified designer shall be submitted. The design verification statement shall verify that the development achieves the design quality shown in the approved Construction Certificate plans and specifications, having regard to the design quality principles set out in Schedule 1 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

85. An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

Before the Occupation Certificate can be issued for the development, Fire Safety Certificates issued for the building are to be submitted to Penrith City Council and the New South Wales Fire Brigades.

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