



## Land and Environment Court New South Wales

Case Name:	Universal Property Group Pty Ltd v Penrith City Council
Medium Neutral Citation:	<b>[2017] NSWLEC 1611</b>
Hearing Date(s):	24,25 October 2017, conditions 27 October 2017
Date of Orders:	1 November 2017
Date of Decision:	1 November 2017
Jurisdiction:	Class 1
Before:	Brown C
Decision:	<ol style="list-style-type: none"><li>1. The appeal is upheld.</li><li>2. Development Application No. 16/0789 for subdivision and construction of three residential flat buildings with associated basement car parking, drainage and landscaping works at 16 Chapman Street Werrington is approved subject to the conditions in Annexure A.</li><li>3. The exhibits are returned with exception of exhibits A and C.</li><li>4. The applicant agrees to pay the council's costs thrown away as a result of the amendments to the original application.</li></ol>
Catchwords:	DEVELOPMENT APPLICATION: construction of three residential flat buildings; amended plans address contentions raised by council; no delegation to enter into agreement or consent orders; resident objections
Legislation Cited:	Environmental Planning and Assessment Act 1979 Penrith Local Environmental Plan 2010 State Environmental Planning Policy No. 65
Cases Cited:	Nil
Texts Cited:	Nil
Category:	Principal judgment

Parties: Universal Property Group Pty Ltd (Applicant)  
Penrith City Council (Respondent)

Representation: Counsel:  
Mr C McEwen SC (Applicant)  
Mr S Nash, barrister (Respondent)

Solicitors:  
Swaab Attorneys (Applicant)  
Sparke Helmore.(Respondent)

File Number(s): 2017/63151

Publication Restriction: No

## JUDGMENT

- 1     **COMMISSIONER:** This is an appeal against the refusal of Development Application No. 16/0789 for subdivision and construction of four residential flat buildings (comprising 138 apartments) within one of the proposed allotments with associated basement car parking, drainage and landscaping works at 16 Chapman Street Werrington (the site).
  
- 2     The plans were amended on a number of occasions with the plans which the applicant seeks consent provide for the construction of three residential flat buildings comprising 23 x 1 bedroom apartments, 55 x 2 bedroom apartments and 17 x 3 bedroom apartments (comprising 95 apartments) with provision for 135 parking spaces (the appeal plans).
  
- 3     The council maintains that the application filed with the Court should be refused for the following reasons:
  - extent of proposed development application,
  
  - urban design quality,
  
  - town planning considerations, specifically including matters that do not satisfactorily address the Apartment Design Guide,
  
  - landscape design,
  
  - traffic management and road design,
  
  - biodiversity, vegetation management and bushfire protection,
  
  - water sensitive urban design,
  
  - stormwater drainage, and
  
  - waste management.

- 4 A number of residents provided evidence on the site inspection and raised the following concerns:
- height,
  - overshadowing,
  - loss of privacy,
  - traffic and parking congestion,
  - appearance,
  - encroachment onto Webb Street, and
  - congestion at intersection of Rance Road and Werrington Road.

### **The site**

- 5 The site is part of land in Lot 102 DP 1140594 with a total area of 27.98 ha. It is an irregular shaped allotment with a length of 455.05m along its western boundary and a width of approximately 700m along its north-south axis. The site has frontage to an unformed road reserve (Webb Street) adjoining the eastern boundary being 80.89m in length. The dimensions of the proposed lot containing the residential flat buildings measure 66.18m to the south, 88.13 m to the north, 83.40m to the west and 80.89 m to the east.
- 6 The site is approximately 400m south west of Werrington Railway station. The land is surrounded to the north and east by medium density multi-unit housing developments. Cobham Juvenile Justice Centre is situated south of the site and the University of Western Sydney is located west of the site.

## Relevant planning controls

- 7 Lot 102 is zoned part R4 - High Density Residential, Part R1 - General Residential, Part RE1 - Public Recreation and Part IN2 - Light Industrial under *Penrith Local Environmental Plan 2010* (LEP). The part of the site affected by the proposed residential flat building development is zoned R4 - High Density Residential and Part RE1 - Public Recreation. The proposed development is a permissible use in the R4 zone. Land directly adjoining the site to the north and north east is zoned R3 Medium Density Residential.
- 8 Clause 2.3(2) of LEP provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone and the objectives of the R4 zone are:
- To provide for the housing needs of the community within a high density residential environment.
  - To provide a variety of housing types within a high density residential environment.
  - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
  - To ensure that a high level of residential amenity is achieved and maintained.
  - To encourage the provision of affordable housing.
  - To ensure that development reflects the desired future character and dwelling densities of the area.
- 9 Clause 2.6(1) of the LEP provides that land to which the LEP applies may be subdivided, but only with development consent. Clause 4.1 of the LEP and the lot size map do not prescribe a minimum lot size for this site. Clause 4.1 A of the LEP requires a minimum lot size of 800m<sup>2</sup> for a residential flat building on a standard lot. Clause 4.3 of the LEP and the height of buildings map prescribe a maximum building height of 15m. It was agreed that the 15m height standard was exceeded and that a written request under cl 4.6 was provided to support the variation to the development standard.
- 10 *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* (SEPP 65) applies to the proposed development.

Clause 28 requires consideration to be given to the design quality principles (cl 28(2)(b)) and the publication *Apartment Design Guide* (ADG) (cl 28(2)(c)).

11 *Penrith Development Control Plan 2014* (DCP) applies to the land and the following parts of the DCP are relevant to this application:

- C4 Land Management
- C10 Transport, Access and Parking
- C11 Subdivision
- C13 Infrastructure and Services
- E12 Part C South Werrington Urban Village Precinct.

### **The evidence**

12 Expert reports were provided by:

- Mr Gavin Cherry (council) and Mr Paul Grech (applicant) on town planning matters,
- Mr Brett Newbold (council) and Mr David Wolski (applicant) on urban design matters,
- Ms Jenna Andrews (council) and Mr John Travers (applicant) on biodiversity matters,
- Mr Joshua Romeo (applicant) and Mr Paul Grech (applicant) on waste room matters,
- Mr Graham Green (council) and Mr Geoff Higgins (applicant) on traffic and parking matters,

- Mr Tim Gowing (council) and Mr Richard Dekker (applicant) on water quality matters,
- Mr Dennis Urena (council) and Mr Richard Dekker (applicant) on stormwater matters, and
- Mr Joshua Romeo (applicant) and Mr Geoff Higgins (applicant) on waste and traffic matters.

## **The contentions**

### *Height*

- 13 Mr Cherry and Mr Grech agree that the proposed development does not satisfy the 15m height development standard in cl 4.3 of the LEP. A written request was provided by the applicant to show why strict compliance with the 15m development standard need not be complied with, in this case.
- 14 Mr Cherry accepts that the variation to the 15m development standard can be supported for the reasons set out in the written request and having read this document, I support his conclusion and agree that the variation can be supported.

### *The appeal plans*

- 15 The expert reports addressed versions of the plans that were prepared prior to the preparation of the appeal plans although they identified significant areas of agreement. Where there was a disagreement, a means of addressing the contention was also agreed to by the experts. Not unreasonably, the council sought that these amendments be shown on a fresh set of plans – these plans became the appeal plans.
- 16 A major difference between the parties centred on the unconstructed section of Webb Street that adjoined the site to the east. At the commencement of the hearing on site, the parties advised the Court that the outstanding contention

relating to the unconstructed section of Webb Street had been addressed through a Voluntary Planning Agreement (VPA) which required this area embellished by the applicant. The VPA was endorsed by the elected council on 23 October 2017 and is a condition of consent.

- 17 A further joint report was provided by the town planning and urban design experts (town planners Gavin Cherry (council) and Mr Paul Grech (applicant) and urban designers Mr Brett Newbold (council) and Mr David Wolski (applicant)) on the appeal plans. They state:

The plans as presented to us on 25 October 2017, in conjunction with attached list of documents are sufficient to enable a proper assessment of the application and resolve all town planning and urban design contentions subject to refinement of conditions.

- 18 The conditions referred to by the experts were filed on 27 October 2017 and were agreed by the parties.
- 19 Having read the joint reports, the conditions of consent and with an understanding of the appeal plans, I agree with the various experts that there are no reasons why the appeal plans should not be granted development consent.

#### *Resident objections*

- 20 The residents raised the following concerns:

(1) Height

- The height of the three proposed buildings is addressed earlier in the judgment and the relatively small variation was considered acceptable.

(2) Overshadowing

- Given the location of the existing residential development to the east and separated by the unconstructed area of Webb Street there is

unlikely to be any overshadowing created by the proposed development.

(3) Loss of privacy

- The separation created by the unconstructed area of Webb Street provides a more than sufficient barrier to minimise any potential overlooking between the proposed development and the existing development to the east.

(4) Traffic and parking congestion

- Mr Green and Mr Higgins agree that there are no unacceptable traffic or parking issues associated with the proposed development and I accept their conclusion.

(5) Appearance

- Mr Newbold and Mr Wolski have reviewed the appeal plans from a design perspective and agree that the design is acceptable.

(6) Encroachment onto Webb Street

- The appeal plans remove any building from the unconstructed section of Webb Street and its embellishment by the applicant.

(7) Congestion at intersection of Rance Road and Werrington Road.

- A condition of consent requires a roundabout to be constructed at this intersection, to a design acceptable to council.

## **Orders**

21 The orders of the Court are:

- (1) The appeal is upheld.
- (2) Development Application No. 16/0789 for subdivision and construction of three residential flat buildings with associated basement car parking, drainage and landscaping works at 16 Chapman Street Werrington is approved subject to the conditions in Annexure A.
- (3) The exhibits are returned with exception of exhibits A and C.
- (4) The applicant agrees to pay the council's costs thrown away as a result of the amendments to the original application.

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**G Brown**

**Commissioner of the Court**

**ANNEXURE 'A'**  
**CONDITIONS OF CONSENT**

**Subdivision and construction of three residential flat buildings with associated  
basement car parking, drainage and landscaping works at 16 Chapman Street  
Werrington**

**GENERAL MATTERS**

- 1 The development must be implemented substantially in accordance with the approved plans and other plans or documents approved under this Consent, except as may be amended in red on the attached plans and by the following conditions:

Drawing No.	Drawing Title	Revision	Prepared by	Dated
A0000-CS	Cover Sheet	8	The Bathla Group	25 October 2017
A001-CT	Compliance Tables	7	The Bathla Group	23 October 2017
A002-SD	Subdivision Plan	6	The Bathla Group	October 2017
A003-SA	Concept Site Locality Plan	5	The Bathla Group	8 August 2017
A004 - SD	Subdivision of Proposed Lot 3	6	The Bathla Group	October 2017
A005	Site Plan Lot 31 and Lot 32	5	The Bathla Group	8 August 2017
A007-SP	Site Plan	8	The Bathla Group	25 October 2017
A2000-P2	Basement 2	8	The Bathla Group	25 October 2017
A2001-P1	Basement 1	7	The Bathla Group	23 October 2017
A2002-OG	Ground	8	The Bathla Group	25 October 2017
A2003-01	Level 1	8	The Bathla Group	25 October 2017
A2004-02	Level 2	8	The Bathla Group	25 October 2017
A2005-03	Level 3	8	The Bathla Group	25 October 2017
A2006-04	Level 4	8	The Bathla Group	25 October 2017
A2007-05	Roof	6	The Bathla Group	October 2017
A2008	Block A	8	The Bathla Group	25 October 2017
A2009	Block B	8	The Bathla Group	25 October 2017

A2010	Block C-1	8	The Bathla Group	25 October 2017
A2011	Block C-2	8	The Bathla Group	25 October 2017
A2020-SC	Site Section	8	The Bathla Group	25 October 2017
A2021-SC	Site Section	8	The Bathla Group	25 October 2017
A2022-SC	Sections	8	The Bathla Group	25 October 2017
A2023-SC	Sections	8	The Bathla Group	25 October 2017
A2030-SE	Site Elevations	8	The Bathla Group	25 October 2017
A2031-SE	Site Elevations	8	The Bathla Group	25 October 2017
A2032-SE	Internal Elevations	8	The Bathla Group	25 October 2017
A2033-SE	Internal Elevations	8	The Bathla Group	25 October 2017
A2034-EF A	External Colours and Finishes	8	The Bathla Group	25 October 2017
A2034 EF B	External Colours and Finishes 2	8	The Bathla Group	25 October 2017
A2035-EM	External Materials	8	The Bathla Group	25 October 2017
A2060-AU	Adaptable Units	8	The Bathla Group	25 October 2017
A2061-LU	Liveable Units	8	The Bathla Group	25 October 2017
A2062-TU	Typical Unit Dimensions	8	The Bathla Group	25 October 2017
A2062A	Typical 1 Bed Units	8	The Bathla Group	25 October 2017
A2062B	Typical 2 Bed Units	8	The Bathla Group	25 October 2017
A2062C	Typical 3 Bed Units	8	The Bathla Group	25 October 2017
A2063-FD	Fence Detail	8	The Bathla Group	25 October 2017
A2064 FD	Fence and Main Entry	8	The Bathla Group	25 October 2017
A2090-HL	3D Height Limit	6	The Bathla Group	October 2017
-	Stormwater Management Report		Aurecon	9 October 2017
CC-0400	Cover Sheet	4	Aurecon	
CC-0401	General Notes Sheet 1 of 2	4	Aurecon	9 October 2017

CC-0402	General Notes Sheet 2 of 2	4	Aurecon	9 October 2017
CC-0403	Survey Plan	4	Aurecon	9 October 2017
CC-0404	Site Layout Plan	4	Aurecon	9 October 2017
CC-0405	Erosion and Sedimentation Control Plan	4	Aurecon	9 October 2017
CC-0406	Erosion and Sedimentation Control Details	4	Aurecon	9 October 2017
CC-04010	General Arrangement Plan Sheet 1 of 2	4	Aurecon	9 October 2017
CC-04011	General Arrangement Plan Sheet 2 of 2	4	Aurecon	9 October 2017
CC-0412	Stormwater Onsite Detention Tank Details	4	Aurecon	9 October 2017
-	BASIX Certificate Reference No. 726068M-03 (Pages 1 – 35)	-	SLR Consulting	19 October 2017
-	Amended Bushfire Protection Assessment	-	ABPP Pty Ltd	29 August 2017
-	Access Report	C	Ergon Consulting	19 June 2017
-	DA Acoustic Assessment	5	Acoustic Logic	11 September 2017
	Arboricultural Impact Assessment		Urban Forestry Australia	September 2017

- 2 The development shall not be used or occupied until an **Occupation Certificate** has been issued.
- 3 A Construction Certificate shall be obtained **prior to commencement** of any building works.
- 4 A Copy of the Bushfire Safety Authority issued by the NSW Rural Fire Service dated 19 September 2017 shall be submitted to the Principal Certifying Authority, **before the Construction Certificate** can be issued for the same development and the requirements of this Authority are to be complied with.

A copy of the approval shall be submitted to Penrith City Council with the copy of the Construction Certificate, if Council is not the Principal Certifying Authority.

- 5 The work must be carried out in accordance with the requirements of the Building Code of Australia. A contract of insurance for the residential development shall be in force in accordance with Part 6 of the Home Building Act 1989.
- 6 **Prior to the release of the Construction Certificate**, the developer is to enter into a planning agreement with Council under s.93F of the *Environmental Planning and Assessment Act 1979* in accordance with the letter of offer made by the developer in connection with the development application as set out in the letter dated 13 October 2017 by The Bathla Group to Penrith City Council. The planning agreement requires the inclusion of a detailed planting and embellishment plan of the unformed road.

The developer is to bear all costs associated with the processing and execution of the planning agreement.

- 7 An Asset Protection Zone for protection from bushfire shall be provided and maintained to the development in accordance with the recommendations outlined in the Bushfire Protection Assessment Report prepared by ABPP Pty Ltd dated 29 August 2017 and the Bushfire Safety Authority issued by the NSW Rural Fire Service dated 19 September 2017.

A positive covenant is to be registered on title for the maintenance and management of the required Asset Protection Zone prior to the issue of an Occupation Certificate. The authority to release or modify the restriction must be Penrith City Council.

- 8 The conditions imposed by the NSW Rural Fire Service in the Integrated Development consent and in the Bush Fire Safety authority for the said development are to be completed prior to the issue of an Occupation Certificate.
- 9 **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 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.
- 10 The approved architectural floor plans shall provide compliant balconies for all apartments, including areas and dimensions that satisfy the Apartment Design Guide.

Any required increases to areas or dimensions cannot be achieved by outwards extensions, and must be achieved by revised apartment floor plans

The design verification statement is also required to confirm the above requirements have been met.

11. **Prior to issue of a construction certificate**, amended architectural drawings shall be submitted to, and approved by, Penrith City Council. The amended drawings shall address the following:

- (a) The external colours and finishes schedules are to be amended to provide the "G5" notation on all applicable building elevations where the 'Evantage Dark Grey Glass' is proposed.
- (b) Balcony louvres are to be full height and forward of the balustrade on all applicable elevation, section and external colour and finishes schedules in accordance with the 'Typical Balcony Section' drawing on Drawing No. A2022 – SC, "Sections", and Revision 8 dated 25/10/2017.

12. **Prior to the issue of a Construction Certificate**, the following plan amendments and further specifications concerning waste management shall be submitted to, and approved by, Penrith City Council for Buildings A, B or C:-

- i. A tug device to be provided and permanently stored within the basement for the movement of 1100L bins from the chute rooms to the waste collection room.
- ii. The basement entrance ramp to provide an unobstructed height clearance of 4.5m for all waste collection vehicle movements within the basement.
- iii. The basement entrance ramp gradient to be built in accordance with the Australian Standards for Heavy Rigid Waste Collection Vehicles.
- iv. The turntable proposed in the basement, for use by waste collection and other vehicles, is to be fitted with a hydraulic override system to allow the turntable to be rotated in the event of a systems malfunction. The turntable design shall accord with the specifications provided by the manufacturer. The manufacturer's specifications for operation of the turntable are to be outlined within a Waste Management Operation Plan of to be submitted with the Construction Certificate.
- v. The approved Waste Management Plan prepared by Elephants Foot dated 19 September 2017 must be updated to include the approved architectural plans which demonstrate compliance with Penrith Development Control Plan 2014

and Penrith Council's Waste Management Guidelines. This plan shall include provision for residents to make arrangements with the building caretaker to deposit items within the bulky waste room. Residents are to be made aware that use of the bulky waste room is permitted only by arrangement with the building caretaker, and under no circumstances should bulky waste items be brought into the basement without prior confirmation of such arrangements.

- vi. The designated waste bin lift, to be provided to operate between Basement Levels 1 and 2, shall accord with the specifications provided by the manufacturer. The lift must accommodate a minimum of 3 x 1100 litre bins plus at least one person with a minimum 200mm clearance between bins and a minimum door opening width of 1.8m.
- vii. The bulky waste collection room on Basement Level 2 shall provide a minimum 1.8m wide pedestrian pathway around the outside of its eastern, northern and western walls. The location of the door to the loading dock shall align with the end of the pathway. The bulky waste collection room shall have a minimum internal clear area of 15m<sup>2</sup>. The southern and western walls of the bulky waste collection room on Basement Level 2 are to provide a door, or doors, with a minimum opening clearance of 1.8m, open outwards and be locked through the use of Council's abloy key.
- viii. A door, or doors, with a minimum opening clearance of 1.8m shall be provided on the western wall of the Bulky Waste Collection room on Basement Level 2. The door/doors are to be locked through the use of an abloy key system to prevent resident entry into the loading bay. The door, or doors are to open outwards towards the entry of the loading bay and be unobstructed by the bollards.
- ix. A pedestrian route between the lift adjacent the southern wall of Basement 2 and the additional door required above, shall be shown as 1.2m wide painted line markings on the basement floor, abutting the car parking spaces and wall of the loading dock, widening to a minimum of 1.8m pathway around the walls of the bulky waste collection room. Five (5) bollards shall be installed along the outer edge of the 1.8m wide pedestrian pathway, at the 2 corners, between the 2 corners, and between the 2 corners and the wall of the loading dock.

- x. The 10.5m turn table to provide a minimum 1m clearance from obstructions during its operations and manoeuvres involving a 10.5m heavy rigid waste collection vehicle.
- xi. The northern wall of the waste collection room is to provide a door, or doors, with a minimum opening clearance of 1.8m which are to open outwards towards the loading bay and be locked through the use of Councils abloy key.
- xii. Specifications outlining access to the loading bay are to be provided to ensure Councils collection contractors can access/open the proposed roller door system.

13 **Prior to issue of a construction certificate**, the 'Planting Plan – Ground Floor Plan' and 'Planting Plan – Roof Terrace Plan' (Sheet Nos. L601 – L603), Revision 03, dated 15 October 2017 prepared by Place Design Group are to be amended, submitted to and approved by Penrith City Council. The amended plans shall incorporate the following details:

- (a) The plans shall be consistent with all details of the amended architectural ground floor plan.
- (b) The plans shall be consistent with the masterplan in terms of the numbers and general locations of proposed trees.
- (c) The plans shall specify finished levels for planted areas and paths, and shall be consistent with levels depicted by the amended architectural ground floor plan.
- (d) The plans shall confirm, via detailed cross-sections or other means, that soil volumes together with exterior walls of the approved buildings would accommodate proposed tree species, without inhibiting achievement of typical mature canopy dimensions.
- (e) The plans shall incorporate street trees (number of trees and species) which satisfy the Council's Landscape Architect.
- (f) The plans shall incorporate "Cumberland Plain Woodland" species in the following locations:
  - (i) along setbacks to southern and western boundaries, 100% of proposed trees, shrubs and understorey plantings;
  - (ii) along the setback to Chapman Street: 50% of proposed trees;
  - (iii) note that Kikuyu shall not be planted along any setback, and turfed areas in these locations shall be planted with *Microlaena stipoides*.

- (g) The plans shall include at least two clusters of medium height trees along the eastern frontage of Building B.
  - (h) Roof top planting on Building C shall have a height and density which prevent overlooking of the neighbouring townhouses to the east from the approved communal roof top.
- 14 **Prior to the issue of a Construction Certificate**, details of required substation infrastructure or hydrant boosters including landscaping or screening measures is to be submitted to and approved by the accredited certifier. The location of any required substation / hydrant booster is to be positioned away from the entrance of the building and screened in a manner that is compatible and consistent with the built form and streetscape to minimise visual impacts.
- 15 The following community safety and crime prevention through environmental design (CPTED) requirements are required to be implemented:

**Lighting**

- All outdoor/public spaces throughout the development must be lit to the minimum Australian Standard of AS 1158. Lighting should be consistent in order to reduce the contrast between shadows and illuminated areas and should be designed in accordance with AS 4282 - Control of the obtrusive effects of outdoor lighting.

**Basement Car Parking**

- A security system must be installed on any pedestrian and vehicle entry/exit points to the car park, including the lift and stairwell, to minimise opportunities for unauthorised access.
- All areas of the car park must be well-lit, with consistent lighting to prevent shadowing or glare.
- Car park surfaces including walls and ceilings are to be light coloured with details included with the **Construction Certificate** application.

**Building Security & Access Control**

- Intercom, code or card locks or similar must be installed for all entries to the buildings including the car parks.
- Australian Standard 220 – door and window locks must be installed in all dwellings.

- CCTV is to be provided to cover communal public space areas. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting should be provided to support cameras at night (alternatively infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.
- Letter boxes are to be provided in accordance with that shown on the plans.

#### **Graffiti/Vandalism**

- Graffiti resistant coatings must be used to external surfaces where possible, including signage, furniture, retaining walls etc.
- Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing, and common areas. This includes reporting incidents to police and/or relevant authorities.

#### **Landscaping**

- Dense, medium height vegetation with top to bottom foliage must be avoided, particularly around walkways. The use of low-level planting or high canopied vegetation will improve surveillance, provide clear lines of sight and avoid any potential concealment areas. This is particularly important for common landscaped areas. Vegetation must be regularly pruned to ensure that sight lines are maintained.

### **HERITAGE / ARCHAEOLOGICAL RELICS**

- 16 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**

- 17 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.

- 18 No fill material (beyond that approved as part of this consent) is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997). No recycling of material (not including earth excavated for the basement) for use as fill material shall be carried out on the site without the prior approval of Council.
- 19 An appropriately qualified person/s shall:
- Supervise all filling works approved as part of this consent.
  - **(On completion of filling works)** carry out an independent review of all documentation relating to the filling of the site, and submit a review findings report to Council and any Principal Certifying Authority. All fill material documentation is to (at minimum):
    - be prepared by an appropriately qualified person with consideration of all relevant guidelines, standards, planning instruments and legislation (e.g. EPA, NEPM, ANZECC, NH&MRC),
    - clearly state the legal property description of the fill material source site and the total amount of fill tested,
    - 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 NSW Environment Protection Authority's "Waste Classification Guidelines" 2009, 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.
    - Certify by way of a Compliance Certificate or other 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 Compliance Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.

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

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

{Note: An appropriately qualified person is defined 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."}

- 20 All waste materials stored on-site that are associated with the construction activities 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.

- 21 Noise levels from and within the premises shall not exceed the relevant noise criteria detailed in "16 Chapman Street, Werrington: DA Acoustic Assessment", prepared by Acoustic Logic Consultancy Pty Ltd dated 11 September 2017 (Ref. 20161597.3/1109A/R5/GW).

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 development (including the installation of plant and equipment) 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.

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

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

The waste contractor and waste facility are to hold the relevant licenses issued by the NSW Environment Protection Authority.

- 23 **Prior to the issue of the Construction Certificate**, a Construction Noise Impact Assessment and Management Plan is to be prepared and submitted to Council for approval. This assessment is to consider (at minimum) the details of the construction program, construction methods, equipment and vehicles in association with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009.

The recommendations of the approved Management Plan are to be implemented and adhered to during the construction phase of the development.

- 24 The construction related recommendations detailed in "16 Chapman Street, Werrington: DA Acoustic Assessment", prepared by Acoustic Logic Consultancy Pty Ltd 11 September 2017 (ref 20161597.3/1109A/R5/GW) are to be implemented and complied with **during the construction phase** of the development.

- 25 All mechanical plant and equipment is to comply with the noise criteria outlined in "16 Chapman Street, Werrington: DA Acoustic Assessment", prepared by Acoustic Logic Consultancy Pty Ltd 11 September 2017 (ref 20161597.3/1109A/R5/GW).

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

- 29 Should any "unexpected finds" occur during site excavation and earthworks including, but not limited to, the identification/finding of contaminated soils, buried building materials, asbestos, odour and/or staining, works are to cease immediately and Penrith City Council is to be notified. Any such "unexpected finds" shall be addressed by an appropriately qualified environmental consultant.

All remediation works within the Penrith Local Government Area are considered to be Category 1 works under State Environmental Planning Policy 55-Remediation of Land. Should any contamination be found during development works and should remediation works be required, development consent is to be sought from Penrith City Council before the remediation works commence.

- 30 A minimum 2 metre high 18mm plywood barrier is to be constructed along the northern and eastern boundaries **during the construction of the development** as recommended in the Acoustic Report prepared by Acoustic Logic Consultancy Pty Ltd dated 11 September 2017 (ref 20161597.3/1109A/R5/GW).

- 31 **Prior to the commencement of any works, including the removal of any trees associated with approved subdivision/development activities**, an inspection for resident birds or aboreal mammals (including inspection of all hollows) is to be undertaken under the supervision of a fauna ecologist. Trees found harbouring birds or aboreal mammals are not to be felled until the animals that are residing in them have completed their breeding cycle or voluntarily vacated.

A local vet or wildlife rescue service are to be contacted in the case of any injured fauna.

- 32 **Prior to the issue of a Construction Certificate**, a Weed Management Plan is to be prepared for the development and submitted to Council for approval. The Weed Management Plan is to be implemented by the applicant for a period of 5 years from issue of the Subdivision Certificate. Once approved by Council, the Weed Management Plan and its implementation forms part of this conditions of consent.

- 33 **Prior to the issue of an Occupation Certificate**, the applicant is required to enter into an indemnity agreement with Penrith City Council for waste collection and access arrangements.

#### **BCA COMPLIANCE REQUIREMENTS**

- 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:

- i. complying with the deemed to satisfy provisions, or
- ii. 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
- iii. a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

35 The owner of a building, 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:

- i. deal with each essential fire safety measure in the building premises, and
- ii. 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 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 SERVICE REQUIREMENTS**

36 All services (water, sewer, electricity, telephone and gas) are to be installed within any proposed public roads before final inspection of the engineering works.

**Prior to the release of Subdivision Certificate**, the following service authority clearances shall be obtained for the approved allotments:

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

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

- 37 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**.

- 38 **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.

The Substation area shall be screened properly and the screen is to be designed in a manner that is compatible and consistent with the rest of the building. Details are to be submitted for consideration and approval with the construction certificate application.

- 39 **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:

- The requirements of the Telecommunications Act 1997:

- For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
- 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**

- 40 Stamped plans, specifications, a copy of the development consent and any other Certificates/ Information 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 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 construction and associated landscaping works have been completed.

**41 Prior to the commencement of construction works:**

- a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:
  - a standard flushing toilet connected to a public sewer, or
  - if that is not practicable, an accredited sewage management facility approved by the council, or
  - alternatively, any other sewage management facility approved by council.
- b) All excavations and backfilling associated with the erection of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:
  - must preserve and protect the building from damage, and
  - if necessary, must underpin and support the building in an approved manner, and
  - must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the 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 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.

**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

42 The approved Construction 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.

43 Clothes drying facilities are to be positioned and screened from public view.

44 **Prior to the issue of a Construction Certificate**, it must be demonstrated that the development complies with AS4299 – Adaptable Housing, AS1428.1 Design for Access and mobility – general requirement for access – new building work. AS1428.4 - tactile ground surface indicators, AS2890.6 off street car parking for people with disabilities.

A compliance certificate shall be provided prior to the issue of an **Occupation Certificate**.

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

- Mondays to Fridays, 7am to 6pm

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

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

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

## **ENGINEERING REQUIREMENTS**

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

47 **Prior to the issue of any Construction Certificate**, a Section 138 Roads Act application, including payment of application and inspection fees, shall be lodged and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- i Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- ii Concrete footpaths and or cycleways
- iii Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
- iv Road occupancy or road closures
- v The placement of hoardings, structures, containers, waste skips, signs etc. in the road reserve
- vi 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 (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- i 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.
- ii Separate approvals may also be required from the Roads and Maritime Services for classified roads.
- iii All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.
- iv On completion of any awning over the road reserve, a certificate from a practising structural engineer certifying the structural adequacy of the awning is to be submitted to Penrith City Council before Council will inspect the works and issue its final approval under the Roads Act.

48 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that a Section 138 Roads Act application, including 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 the following works:

**Werrington Road / Rance Road**

- Construction of a conventional roundabout for B-double vehicles
- Stage 3 Road Safety Audit
- Relocation of any services
- Landscape works
- Appropriate access shall be provided for all properties that gain vehicular access at this intersection
- Rance Road realignment and removal of redundant road pavement
- Pedestrian facilities and linkages.

Such works must be carried out to the satisfaction of Penrith City Council **prior to the issue of any Occupation Certificate** for the development.

**Chapman Street / Walker Street / Lander Street**

- Upgrade of the pavement (half road width construction) along the full frontage of the site and extending 20m east along Chapman Street.
- Footpath construction from the development to existing footpath works within Railway Street, minimum 1.5m wide

- Any required drainage upgrade works (subject to Section 68 Approval)

Such works must be carried out to the satisfaction of Penrith City Council **prior to the issue of any Occupation Certificate** for the development.

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.

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.

All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.

- 49 **Prior to the issue of a Subdivision Certificate**, the Principal Certifying Authority and/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 stormwater drainage connection of the site to the Council's system.

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.

The Engineering plans shall also include the following amendments:

- i The proposed 450mm diameter RCP pipe along Lander Street and future road shall be located under the kerb and gutter or roadway. No pipe shall extend behind the kerb and gutter within the footpath or verge;
- ii The proposed kerb inlet pit within Lander Street shall be a cast in-situ pit designed by a suitably qualified Structural Engineer. The size and layout of the proposed kerb inlet pit chamber shall be designed taking into consideration all pipes to be connected within this pit. Full details shall be provided for Council assessment.

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

All works associated with the S68 Local Government Act Approval must be completed **prior to the issue of any Occupation Certificate.**

- 50 A Construction Certificate is to be approved by the Certifying Authority for the provision of engineering works (road, drainage, earthworks, subdivision works).

**Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that engineering plans are consistent with the stamped approved concept plans, and that all subdivision works have been designed 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.

The subdivision works may include but are not limited to the following:

- Public and private roads
- Storm water management (quantity and quality)
- Interallotment drainage
- Private access driveways
- Sediment and erosion control measures
- Flood control measures
- Overland flow paths
- Traffic facilities
- Earthworks
- Bridges, culverts, retaining walls and other structures
- Landscaping and embellishment works

The Construction Certificate must be supported by engineering plans, calculations, specifications and any certification relied upon.

Note:

- a) Council's Development Engineering Department can provide this service. Contact Penrith City Council's Development Engineering Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

- 51 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that the proposed roads have been designed in accordance with Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and

Developments, Engineering Construction Specification for Civil Works and the following criteria:

Road No.	Road Reserve Width	Carriageway Width	Verge Width	Footpath (1.5m wide) Min.	ESA
Chapman Street Road widening	Width based on Deposited Plan 1226122	As per existing formed road width	As per existing formed verge width	1.5 metres	5 x 10 <sup>5</sup>

A copy of the pavement design prepared and certified by a suitably qualified geotechnical engineer must accompany the application for Construction Certificate.

- 52 A Stage 3 (detailed design) Road Safety Audit (RSA) shall be undertaken in accordance with Austroads Guide to Road Safety Part 6: Road Safety Audit on the proposed roadworks by an accredited auditor who is independent of the design consultant. A copy of the RSA shall accompany the design plans submitted with the Construction Certificate or Roads Act application.

**Prior to the issue of the Construction Certificate or Section 138 Roads Act approval**, the Certifying Authority shall ensure that the recommendations of the RSA have been considered in the final design, through review of the Road Safety Audit Checklist, including Findings, Recommendations and Corrective Actions.

A copy of the Road Safety Audit shall be submitted to Penrith City Council by the applicant or Certifying Authority for information purposes.

- 53 The stormwater management systems shall be provided in accordance with the concept plan/s lodged for development approval, prepared by Aurecon - reference 241636, revision 04 dated 9 October 2017.

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.

**Prior to the issue of any 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 and Water Sensitive Urban Design (WSUD) policies.

- 54 **Prior to the issue of any 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 AS3500.3 (or as amended) (Plumbing and Drainage – Stormwater Drainage).

- 55 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that the structure/s below RL 25.6m AHD (standard flood level + 0.5m freeboard) have been detailed with flood compatible building components in accordance with the publication 'Reducing the Vulnerability of Buildings to Flood Damage' produced by the Hawkesbury-Nepean Floodplain Management Steering Committee.
- 56 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that all electrical services associated with the proposed building works are adequately flood proofed in accordance with Penrith City Council's Development Control Plan relating to flood liable land. Flood sensitive equipment (including electric motors and switches) shall also be located above RL 25.6 m AHD (standard flood level + 0.5m freeboard).
- 57 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that:
- i Habitable floor levels are a minimum of RL 25.6m AHD (standard flood level + 0.5m freeboard).
  - ii The proposed development will not concentrate, dam or divert overland flows onto adjoining properties.
  - iii The crest in the access ramp to the basement car park is a minimum of RL 25.4m AHD or 0.3m above the top of kerb (whichever is greater).
  - iv All proposed penetrations and access points into the basement carpark area minimum of 0.3m above the top water level adopted for the flooding.

Details prepared by a qualified person, demonstrating compliance with these requirements, shall form part of any Construction Certificate issued.

- 58 **Prior to the issue of any 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.
- 59 **Prior to the issue of a Construction Certificate**, the Certifying Authority shall ensure that a Construction Traffic Management Plan (CTMP) has been submitted to

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 the following: vehicle routes, number of construction vehicles, hours of operation, access arrangements, pedestrian management, turning templates for narrow streets and intersections and parking management for workers. The CTMP shall be certified by an appropriately accredited person and/or Roads and Traffic Authority Traffic Controller. 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.

The TMP shall be supported by a traffic control plan, designed in accordance with the requirements of the Roads and Traffic Authority's Manual, Traffic Control at Work Sites Version 2, and the current Australian Standards, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.

The traffic control plan must be prepared by a suitably qualified and RTA accredited Work Site Traffic Controller.

- 60 **Prior to the issue of a Roads Act Approval**, a Performance Bond is to be lodged with Penrith City Council for works in Werrington Road, Rance Road, Landers Street and Chapman 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 Department on (02) 4732 7777 for further information relating to bond requirements.

- 61 **Prior to the issue of a Construction Certificate** the Certifying Authority shall ensure that a Geotechnical investigation, report and strategy has been conducted to ensure stability of the Council infrastructure and surrounding developments. The geotechnical investigation, report and strategy shall comply with the recommendations contained in the technical direction GTD 2012/001 prepared by the Road and Maritime Services as amended. The development shall undertake a dilapidation report for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the excavations associated with the development. If Council is not the Certifying Authority the dilapidation report shall be submitted to Council prior to Construction

Certificate and then updated and submitted prior to any Occupation Certificate confirming no damage has occurred.

- 62 **Prior to the issue of any Construction Certificate** issued for internal works associated with the development, the site must be served by a legal point of discharge including any required infrastructure drainage works. The drainage works may include inter-allotment drainage construction, upgrades and / or road drainage extensions located on lands owned by others.

- 63 **Prior to commencement of any works** associated with the development, 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 and Managing Urban Stormwater series from the Office of Environment and Heritage.

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

- 64 **Prior to commencement of any works** associated with the development, 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 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.

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

- 65 Work on the approved development (including any subdivision works) shall not commence until:

- a Construction Certificate and any S68 approval has been issued,
- a Principal Certifying Authority has been appointed for the project, and
- any other matters prescribed in the development consent for the subdivision and the Environmental Planning and Assessment Act and Regulation have been complied with.

- A Notice of Commencement of works is to be submitted to Penrith City Council five (5) days prior to commencement of engineering works or clearing associated with the subdivision.
- 66 A certificate by a registered surveyor verifying that all habitable floor levels are at or above RL 25.6m AHD (standard flood level + 0.5m freeboard) shall be submitted upon completion of the building to that level. No further construction of the building is to be carried out until approval to proceed is issued by the Principal Certifying Authority.
- 67 Street lighting is to be provided for all new and existing streets within the proposed subdivision to Penrith City Council's standards.
- 68 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.
- 69 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.
- 70 All existing (aerial) and proposed services for the development, including those across the frontage of the development are to be located or relocated underground in accordance with the relevant authorities regulations and standards.
- 71 **Prior to the issue of any Occupation Certificate and/or Subdivision Certificate,** the Principal Certifying Authority shall ensure that all works associated with a S138 Roads Act approval and any S68 Local Government Act approval have been inspected and signed off by Penrith City Council.
- 72 **Prior to the issue of a Subdivision Certificate,** the Principal Certifying Authority shall ensure that all subdivision works required by this consent have been satisfactorily completed or that suitable arrangements have been made with Penrith City Council for any outstanding works.

- 73 **Prior to the issue of any Occupation Certificate and/or Subdivision 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.

An original set of Works As Executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation and/or Subdivision Certificate where Penrith City Council is not the Principal Certifying Authority.

- 74 **Prior to the issue of any Occupation Certificate,** the Principal Certifying Authority shall ensure that the:

- i Stormwater management systems (including on-site detention and water sensitive urban design)
- ii Flood control 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.
  - Any remedial works required to been undertaken have been satisfactorily completed.

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

- 75 **Prior to the issue of any Occupation Certificate,** a restriction as to user and positive covenant relating to the maintenance of:

- i Stormwater management systems (including on-site detention and water sensitive urban design); and
- ii Flood control 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 and Drainage for Building Developments policy.

76 **Prior to the issue of any Subdivision Certificate**, an easement for drainage and overland flow shall be provided over proposed Lot 32 in favour of proposed Lot 31, and evidence of registration of the easement with Land and Property Information (LPI) shall be submitted to the Principal Certifying Authority and Penrith City Council, if Penrith City Council is not the Principal Certifying Authority. Easement widths shall be in accordance with Penrith City Council's Stormwater Drainage policy. The easement shall cover any drainage infrastructure required to drain proposed Lot 31.

77 **Prior to the issue of any Occupation Certificate and/or Subdivision Certificate**, a Maintenance Bond is to be lodged with Penrith City Council all works associated with a S138 approval and/or S68 approval.

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

Note:

- i Contact Penrith City Council's Engineering Services Department on (02) 4732 7777 for further information relating to bond requirements.

78 **Prior to the issue of any Occupation Certificate and prior to the issue of any Subdivision Certificate** the following compliance documentation shall be submitted to the Principal Certifying Authority. A copy of the following documentation shall be provided to Penrith City Council where Penrith City Council is not the Principal Certifying Authority:

- i Works As Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Construction Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The WAE drawings shall be prepared in accordance with Penrith City Council's Engineering Construction Specification for Civil Works.
- ii CCTV footage in DVD format to Penrith City Council's requirements and a report in "SEWRAT" format for all drainage as identified as Council's future assets. Any damage that is identified is to be rectified in consultation with Penrith City Council.

- iii A copy of all documentation, reports and manuals required by Section 2.6 of Penrith City Council's WSUD Technical Guidelines for handover of stormwater management facilities to Penrith City Council.
- iv Surveyor's Certificate certifying that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries.
- v Documentation for all road pavement materials used demonstrating compliance with Penrith City Council's Engineering Construction Specification for Civil Works.
- vi A Geotechnical Report certifying that all earthworks and road formation have been completed in accordance with AS3798 and Penrith City Council's Design Guidelines and Construction specifications. The report shall include:
  - Compaction reports for road pavement construction; and
  - Statement of Compliance with that Standard those Guidelines and specifications and any applicable conditions of development consent.

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

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

- 80 The following car parking and basement design requirements must be met **prior to the issue of an Occupation Certificate:-**

- All car parking and manoeuvring must be in accordance with AS2890.1-2004; AS2890.6-2009 and Council's requirements.
- The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.
- All vehicles are to be able to enter and exit the site in a forward direction.
- Secure bicycle parking is to be provided at convenient location(s) in accordance with AS2890.3:2015 *Bicycle Parking Facilities*.

- Appropriate signage and arrows are to be displayed to reinforce designated vehicle circulation and parking arrangements.
- Subleasing of car parking spaces is prohibited.
- Signage indicating the location of visitor and service vehicle parking is required at the driveway entrance.

## **LANDSCAPING AND VEGETATION MANAGEMENT**

- 81 All landscape works are to be constructed in accordance with the landscape plan(s) required to be approved by this consent and Landscape Design section of Penrith Council's Development Control Plan 2014.

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.

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.

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.

The approved landscaping for the site must be carried out by a suitably qualified and experienced landscape professional.

- 82 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 suitably qualified Landscape Architect.

An Occupation Certificate is not to 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.

83 No fill, machinery, fire access link or materials are to be placed or stored within the drip line of any tree that is to be retained. Tree protection measures are to be implemented as outlined in Australian Standard AS 4970-2009 'Protection of trees on development sites'.

84 No trees are to be removed from within the land the subject of the approved subdivision or from the site of the approved development without the prior consent of Penrith City Council (unless specifically approved for removal as part of this consent). Any trees to be removed as part of the engineering works are to be shown on engineering plans submitted with the construction certificate application.

All trees approved by Council for removal shall be removed in a manner so as to prevent damage to those trees that are to be retained.

85 All trees required to be retained as part of this consent (including those within 8m of proposed lot 31) shall be duly protected during the construction of the development. Tree protection measures shall:

- be installed before any works can commence on site including the clearing of site vegetation, and
- be certified by an arborist before any works can commence on site. The certification is to be a Compliance Certificate or other written document certifying suitable tree protection measures have been installed. The Compliance Certificate or other suitable documentation shall be submitted to the Principal Certifying Authority a minimum 2 days prior to the commencement of site works. A copy of the Compliance Certificate or written documentation is to be submitted to Council with the "Notice of Commencement".

86 **Prior to the issue of an Occupation Certificate**, street trees are to be planted as per the approved Landscape Plan and in accordance with Penrith City Council's Engineering Works Development Control Plan, the Guidelines for Engineering Works for Subdivisions and Developments Part 1-Design and Part 2-Construction and Penrith City Council's Landscape Development Control Plan.

Before the street trees are planted, approval of the plant species and location of the street trees are to be approved by Penrith City Council (as the relevant Roads

Authority). In this regard, please contact Council's Development Services Unit on 4732 7777.

## **SUBDIVISION REQUIREMENTS**

87 Work on the subdivision is not to commence until:

- a Construction Certificate has been issued,
- a Principal Certifying Authority has been appointed for the project, and
- any other matters required to be undertaken by these conditions of development consent, or prescribed by the Environmental Planning and Assessment Act and Environmental Planning and Assessment Regulation have been complied with.

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

88 Any application for release of a Subdivision Certificate must be accompanied by the original Linen Plan and six 6) copies.

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

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

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

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

## **DEVELOPMENT CONTRIBUTIONS**

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

- CW - Cultural Facilities;
- CW - 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.

A development contribution of \$25,859.00 per dwelling is payable in accordance with the above Contribution Plans.

This amount 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.

*Note: No section 94 Contributions have been generated for Proposed Lot 32 and 33 as these lots will be levied for Section 94 contributions when a future development application is lodged in regard to their development.*

#### **CERTIFICATION**

- 90 All roadworks, dedications and drainage works are to be carried out at the applicant's cost.
- 91 Prior to the commencement of any earthworks or construction works on site, the proponent is to:
- i 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
  - ii 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.

- 92 A Subdivision Certificate is to be obtained **prior to the release of the linen plan** of subdivision. The Subdivision Certificate will not be issued if any of the conditions in this consent relating to subdivision works are outstanding.



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**G Brown**

**Commissioner of the Court**

