



MEMORANDUM

Reference: PPSSWC-134 (Council Reference: DA21/0047)
To: Sydney Western City Planning Panels Secretariat
From: Gavin Cherry, Development Assessment Coordinator
Date: 17 September 2021

Response to Representations from Applicant Seeking Amendment to Recommended Conditions of Consent

Subject: DA21/0047 for Construction & Embellishment of Penrith City Park including Amenities Building, Pergola Structures, Water Features, Seating, Lighting & Signage & Related Landscaping, Utility Servicing, Stormwater Management Infrastructure, Allen Place Car Park Modifications & Road Works at 134-144 Henry Street and 42-50 Station Street, Penrith

I refer to representations received from the applicant dated 16 September 2021 seeking amendment to recommended conditions of consent associated with DA21/0047 for Construction & Embellishment of Penrith City Park including Amenities Building, Pergola Structures, Water Features, Seating, Lighting & Signage & Related Landscaping, Utility Servicing, Stormwater Management Infrastructure, Allen Place Car Park Modifications & Road Works at 134-144 Henry Street and 42-50 Station Street, Penrith.

The above development application is scheduled to be reported to Sydney Western City Planning Panel at the Public meeting on 20 September 2021.

A response to the request for condition amendments is outlined below for the consideration of the Sydney Western City Planning Panel:-

1. Requested Amendment to Condition No. 2

No objections or concerns are raised with the request to amend Condition No.2 to change references from "Prior to issue of Construction Certificate" to "Prior to Issue of Occupation Certificate". This change allows for the works to commence and continue whilst ensuring lot consolidation occurs prior to use of the development.

2. Requested Amendment to Condition No. 7

No objections or concerns are raised with the request to amend Condition No.7 to change references from "Prior to issue of Construction Certificate" to "Prior to Issue of Occupation Certificate". This change allows for the works to commence and continue whilst ensuring road closure is completed and registered with Land Registry Services (LRS) prior to use of the development. It is noted however that the request for amendment included justification on the basis that the road closure will commence prior to issue of an occupation certificate however the condition as amended, will require the closure to have been completed and registered with LRS prior to the issue of an occupation certificate.

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3. Requested Amendment to Condition 8b

No objections or concerns are raised to the requested amendment. The amendment allows for adequate consideration of security measures by Council's Community Safety Department in consultation with the NSW Police as suggested in the revised condition working proposed by the applicant.

4. Request for Deletion of Condition 37

The applicant has requested the deletion of Condition 37 in its entirety which is not supported. The justification for the request is supportable but with relevance only to paragraph 4 of the Condition. This is because works were amended during the assessment process and the tank storage has been removed from the application is outlined by the applicant. As a result, no concerns are raised with the deletion of Paragraph 4 of Condition 37 (as this aspect is redundant). Paragraphs 1 – 3 of Condition 37 must remain as they are applicable to the development and are required to be complied with.

5. Request for Deletion of Condition 38

Condition 38 is recommended and required to ensure that the parts of the amenities building which are proposed below the flood planning level are of suitable material to withstand a flood event. This requirement is applied to all structures (whether habitable or not) to minimise risk of damage to property and to safety. It is specifically noted that Condition No. 38 does not require amendment to the finished floor level of the building. This condition is considered necessary and is recommended to remain.

6. Request for Deletion of Condition 58

Condition No. 58 of the Assessment Report recommends the imposition of a condition of consent relating to the payment of Section 7.12 Contributions in accordance with Council's adopted Section 7.12 Contribution Plan.

Council's adopted Section 7.12 Contributions Plan applies to developments with a cost of works in excess of \$100,000 and applies to all non – residential development. This is outlined within Section 1.1 of the Plan. It is also noted that Table 1 of the adopted Contributions Plan includes "all other non-residential development" meaning that the proposal would be liable for Section 7.12 Contributions. Further the proposal does not satisfy the exemptions listed within Section 1.1.1 of the Plan.

Council also has 3 x adopted Section 7.11 Contributions Plan which apply to Penrith City Centre being the Civic Centre Improvement Plan, District Open Space Plan and Local Open Space Plan. Of particular note within the Civic Centre Improvement Plan is Chapter 3.1 – Special City Centre Projects – Clause 3.2 – City Park and Square. Partial delivery of this infrastructure project is the subject of the current development application. The City Park and Square (in its totality) has an estimated cost of \$15 million as outlined within Clause 4.8 – Schedule of Works and Section 7.11 monetary contributions are levied on development within the Penrith City Centre to facilitate the delivery of this infrastructure which is the subject of this development application.

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Section 7.12 of the Environmental Planning and Assessment Act 1979 allows for discretion in the imposition of a condition of consent relating to the payment of contributions. Section 7.12(2) also states that a condition cannot be imposed under Section 7.12 where there is a condition on the same development under a Section 7.11 Contributions Plan. In this situation there is no condition recommended or required by way of a Section 7.11 Contributions Plan as the infrastructure is deliverable development under the plan but not the subject of monetary contribution payment under the plan.

Section 7.13(2) of the Environmental Planning and Assessment Act, 1979 requires that a consent authority, other than a Council, must have regard to any contributions plan that applies to the whole or any part of the area in which development is to be carried out. As outlined above, the site is the subject of the Penrith Civic Centre Contributions Plan as deliverable infrastructure. For this reason, it is considered reasonable that a monetary contribution that is required to be paid pursuant to the adopted Section 7.12 Contribution Plan, should not be imposed as a condition of consent as the imposition would in effect, undermine the intentions of the adopted Section 7.11 Contributions Plan being to facilitate and enable the development of the City Park project.

As a result, no objections or concerns are raised if the Sydney Western City Planning Panel as the consent authority were to form the view that Condition No. 58 as recommended in the Council's Assessment Report, should not be imposed for the reasons outlined within this memorandum and as per considerations within Section 7.12 and 7.13 of the Environmental Planning and Assessment Act, 1979.



Gavin Cherry
Development Assessment Coordinator