

SWCPP Ref. No.:	PPSSWC-285
DA No.:	Mod22/0083
PROPOSED DEVELOPMENT:	Section 4.55(2) Modification to an Approved Residential Flat Building DA14/0513 including Amendments to Floor Heights, Facade Treatments with Revised Material Schedules, Basement Car Park General Arrangement, Landscape Design, Storm Water Design & Internal Modifications to Apartment Layouts
PROPERTY ADDRESS:	12 Carson Lane, ST MARYS NSW 2760
PROPERTY DESCRIPTION:	Lot 1 DP 1288529,
ZONING:	Zone B4 Mixed Use - LEP 2010
CLASS OF BUILDING:	Class 2 , Class 7a
ASSESSING OFFICER	Lucy Goldstein
APPLICANT:	Mary 88 Development Pty Ltd
DATE RECEIVED:	3 May 2022
REPORT BY:	Lucy Goldstein, Senior Development Assessment Planner, Penrith City Council
RECOMMENDATIONS:	Approve

Assessment Report

Executive Summary

Penrith City Council is in receipt of a Section 4.55(2) Modification Application to modify an approved (but not yet constructed) residential flat building, including amendments to floor heights, facade treatments with revised material schedules, basement car park general arrangement, landscape design, stormwater design and internal modification to apartment layouts at 12 Car Lane, St Marys NSW 2760 (**the Site**).

On 9 September 2015, the Joint Regional Planning Panel (**JRPP**) determined for approval by way of deferred commencement Development Application DA14/0513 for the Demolition of Existing Structures and Construction of Four (4) x Eight (8)-Storey Residential Flat Buildings (289) Units, Two (2) Level Basement Car Parking Area, Landscaping, Drainage Works and Earthworks at 12 Carson Lane (JRPP Reference: 2014SYW075). The original Development Application was reported to the JRPP, because the proposal had a Capital Investment Value of more than \$20 million, triggering the referral requirements at the time.

On 24 February 2016, the deferred commencement condition of DA14/0513 was satisfied and Penrith City Council issued an operational consent. It is noted that the deferred commencement condition related to technical stormwater details, requiring the proponent to submit revised stormwater concept plans to Council.

The current Modification Application is required to be determined by the Sydney West Planning Panel (**SWCPP**) in accordance with Clause 275 of the Environmental Planning and Assessment Regulation 2021 (**the Regulation**) and Schedule 1(3) of the *Instructions on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents (Instructions)* published on the NSW planning portal on 30 June 2020. As the proposal is a kind that is specified in the Instructions that is not permitted to be determined by Council on behalf of a district or regional panel. In this regard, the proposal is a

Section 4.55(2) Modification, and the development contravenes a development standard imposed by an environmental planning instrument by more than 10%. The proposal contravenes the building height standard under Clause 4.3 of Penrith Local Environmental Plan 2010 (**PLEP**) by more than 10%. Accordingly, this Modification Application has been referred to the Sydney Western City Planning Panel.

Key issues identified in the assessment include:

- A variation to the building height standard was approved under the original Development Application DA14/0513. The approved development has a maximum building height of 25.9m, representing an exceedance of 1.9m or 7.9% variation. Development Application DA14/0513 was accompanied by a Clause 4.6 request to varying the building height standard, which was supported, and the Application approved by the Joint Regional Planning Panel. The current Modification Application seeks to increase the building height of the approved development. The proposed maximum height increase is to 27.455m (Building B). Representing a maximum departure to the 24m height control of 3.455m, or 14%. The increase to building height is a result of increased floor to floor heights to meet current building requirements, to address Council's flooding requirements, and to enable access for Council's waste vehicle to the basement for onsite collection.
- The proposed development satisfies the 'substantially the same test'. The proposal has essentially or materially the same essence as the approved development in terms of use, form, dwelling yield, spatial arrangement, and provision of landscaping and onsite car parking. The Modification does not increase or alter the approved dwelling yield of 289x units, and is consistent in form, being four (4)x eight (8)-storey buildings. The modified proposal is consistent with the approved building setbacks and provides adequate deep soil, landscaped areas, and onsite car parking.
- Urban design issues, character, landscape design, facade design, internal amenity.
- Flooding and drainage requirements. The Modification Application has been amended to address Council's requirements, and Council's Development Engineer raises no objections.

The Site is zoned B4 Mixed Use under Penrith LEP 2010. The proposal is defined as a Residential Flat Building, which is a permitted land use in the B4 Mixed Use zone with Council consent.

The Modification Application has been advertised and notified in accordance with Council's Community Engagement Strategy and as per the original Development Application DA14/0513. The proposal was advertised in the Western Weekender on 23 May 2022. The Modification was notified to nearby properties and the exhibition period occurred between 30 May 2022 and 13 June 2022. Council received no submissions.

An assessment under Section 4.15 and 4.55(2) of the Environmental Planning and Assessment Act 1979 has been undertaken and the Modification Application is recommended for approval subject to conditions.

Site & Surrounds

The Site is described as Lot 1 DP 1288529, known as 12 Carson Lane, St Marys. The primary frontage of the site is to Carson Lane. To the rear of the site is St Marys Public School. The Site has a total land area of approximately 1.071 hectares and is located within the St Marys Town Centre approximately 750m from St Marys Train Station.

All existing structures on the site have been demolished under the existing consent DA14/0513.

Surrounding Locality

The site is located at the southern end of the St Marys Town Centre. The site is adjoined to the east by the existing at grade Council Carpark located at the rear of the Queen Street retail/commercial development. To the south of the site is the St Marys Band Club and associated at grade carpark. St Marys Public School is to the west of the site and to the north in Lang Park.

Site Constraints

- Easement for drainage 3.66m
- Flooding controls apply

Previous Applications Applying to the Site

- DA14/0513 for Demolition of Existing Structures and Construction of Four (4)x Eight (8) Storey Residential Flat Buildings (289 Units), Two (2) Level Basement Car Parking Area, Landscaping, Drainage Works and Earthworks.

Proposal

The proposal is for the modification of an approved residential flat building pursuant to Section 4.55(2) of The Act. The proposal involves the following aspects:

- Increase of floor-to-floor heights from 3.0m to 3.1m to achieve 2.7m floor to ceiling heights in living areas of units.
- Amendments to the façade treatment, revised material schedule and removal of green walls.
- Redesign of the basement car park to provide improved general arrangement and accommodate Council's waste collection vehicle.
- Relocation of multiple lift cores and services to suit amended basement layout.
- Internal modifications to apartment layouts.
- Minor update to unit mix, noting the overall total number of units (289) is unchanged.
- Amended landscape design.
- Amended stormwater design.
- Incorporated structural design.

This Modification involves amendment to several conditions of consent of DA14/0513, including:

- **Condition 1** - by way of inserting references to amended documentation including amended architectural plan, landscape plan, stormwater plan, hydraulic services, access report, geotechnical report, waste management plans, updated BASIX Certificate reference, and swept paths.
- **Condition 19** - delete, as condition 19 is a duplicate of condition 18 (tidying up of consent only)
- **Conditions 40, 48, 49, 50, 51** - conditions deleted, as rainwater tank has been removed from the development.
- **Condition 74, 75** - delete reference to OSD, as no longer required.
- **Condition 68** - delete, as condition 68 is a duplicate of Condition 67 (tidying up of consent only)
- **Condition 81** - delete, condition relates to geotechnical report which is no longer relevant.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

Planning Assessment

• Section 2.12 – Sydney Western City Planning Panel (SWCPP)

The current Modification Application is required to be determined by the Sydney West Planning Panel (**SWCPP**) in accordance with Clause 275 of the Environmental Planning and Assessment Regulation 2021 (**the Regulation**) and Schedule 1(3) of the *Instructions on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents (Instructions)* published on the NSW planning portal on 30 June 2020. As the proposal is a kind that is specified in the Instructions that is not permitted to be determined by Council on behalf of a district or regional panel. In this regard, the proposal is a Section 4.55(2) Modification, and the development contravenes a development standard imposed by an environmental planning instrument by more than 10%. The proposal contravenes the building height standard under Clause 4.3 of Penrith Local Environmental Plan 2010 (PLEP) by more than

10%. Accordingly, this Modification Application has been referred to the Sydney Western City Planning Panel.

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

- **Section 4.55(2) - Other modifications**

The proposal has been assessed in accordance with the matters for consideration under Section 4.55(2) of the Act 1979. Pursuant to Section 4.55(2), a consent authority may on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(a) the consent authority is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

Proposal complies. The proposed development is substantially the same development as originally approved in terms of use, form, dwelling yield, and spatial arrangement.

The development as originally approved comprises four (4)x eight (8)-Storey residential flat buildings (289x units), two level basement car parking area, landscaping, drainage works and earthworks. The current Modification proposal is substantially the same as originally approved, being four (4)x eight (8)-storey residential flat buildings (total of 289x units) with two (2) levels of basement car parking and landscaping. The modified proposal is generally consistent with the building setbacks and form of the approved development. The modification involves the following amendments:

- Increase of floor-to-floor heights from 3.0m to 3.1m to achieve 2.7m floor to ceiling heights in living areas of units.
- Amendments to the façade treatment, revised material schedule and removal of green walls to provide a more modern design.
- Redesign of the basement car park to provide improved general arrangement and accommodate Council's waste collection vehicle.
- Relocation of multiple lift cores and services to suit amended basement layout.
- Internal modifications to apartment layouts.
- Minor update to unit mix, noting the overall total number of units (289) is unchanged. The proposal provides 29x adaptable units which is consistent with the original approval.
- Amended landscape design. The proposal provides 23% of the site as deep soil area, which is consistent with the original approval.
- Amended stormwater design.
- Incorporated structural design.

The proposal provides 376x basement car parking spaces inclusive of 31x accessible parking spaces, 15x motorcycle and 64x bicycle parking spaces. The proposal involves a reduction of two (2) resident car parking spaces, due to the amended unit mix. Noting that the original development provides 378x resident parking spaces. However, in considering the amended unit mix, the modification provides sufficient car parking based on the amended unit mix and complies with Council's requirements.

(b) it has consulted with the relevant Minister, public authority or approval body (within the

meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

Not applicable. The proposal does not require concurrence of separate public authority or approval body and the development is not defined as Integrated Development.

(c) it has notified the application in accordance with—

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

The Modification has been advertised and notified in accordance with the regulations, being advertised and notified as per the original Development Application DA14/0513. The proposed Modification was advertised in the Western Weekender on 23 May 2022. The proposed Modification was notified to nearby residents and the exhibition period occurred between 30 May 2022 and 13 June 2022. Council received no submissions.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Not applicable. Council received no submissions.

(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

Proposal complies: As detailed in this report, consideration has been given to relevant matters under Section 4.15(1). Including assessment of the proposal against relevant environmental planning instruments, being Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the Regulations, the likely impacts of the development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, the suitability of the site for the development, and the public interest.

Further, consideration has been given to the reasons given by the consent authority for the grant of the original consent. The reasons for the panel decision provided in relation to DA14/0513 were:

- The proposed development will add to the supply of housing within the City of Penrith in a location near to metropolitan transport services and the services offered by St Marys Centre.
- The proposed development adequately satisfies the relevant planning instruments and controls.
- The proposal is consistent with the planned context of the locality in which it is located.
- The proposed development will not unduly impact on the built or natural environments
- The proposed development is a suitable use of the site and its approval is in the public interest

The proposal does not alter the development from meeting the above. The modified proposal will add to the supply of housing (being consistent in dwelling yield), and adequately satisfies relevant planning instruments and controls, particularly Penrith LEP 2010 and Penrith DCP 2014. Further, the proposal is consistent with the planned context and locality and will not unduly impact on the built or natural environment, subject to conditions particularly regarding the location of infrastructure along the Carson Lane Street edge. The

modified proposal is considered suitable for the site and is unlikely to generate significant issues of public interest, noting that no submissions were received.

(4) The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.

Noted.

(5) (Repealed)

Section 4.15(1)(a)(i) The provisions of any environmental planning instrument

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

The Modification Application has been assessed against relevant criteria of State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development (**SEPP 65**). SEPP 65 aims to improve the design quality of residential flat development.

Under Clause 29, the proposal is required to be referred to Council's urban design review panel, as the Modification Application has been prepared by a different Architect from the original Development Application. On 18 May 2022, Council's urban design review panel reviewed the Modification Application, and the urban design advice obtained has been addressed during the assessment process.

The Modification Application is accompanied by a Design Verification Statement prepared by a registered Architect (Joe El-Sabbagh, Nominated Architect under the Board of Architects registration no. 8707), which concludes that the proposed modification adheres to the design principles set out in Part of SEPP 65, as applied at the time of the determination of the original Development Application DA14/0513. It is important to note that the original Development Application was designed and assessed against the former controls of the Residential Flat Design Code (RFDC). As the Development Application was lodged prior to 15 June 2015 before the Apartment Design Guide (ADG) came into force.

The submitted Design Verification Statement addresses the design quality principles set out under Schedule 1 of SEPP 65, as summarised below:

Schedule 1, Design Quality Principles

Principle 1- Context and Neighbourhood Character

The proposed development was considered at the time of determination of DA14/0513 to meet the objectives of the proposed future character for the area as well as meeting the objectives of the prescribed zoning. The modifications proposed are consistent with the form of and the development remains substantially the same as the approved development.

The site is located within an area of St Marys which currently contains numerous open spaces including school grounds and Lang Park. The modified development maintains suitable landscape setbacks along Carson Lane as approved. The primary communal open spaces remain located centrally between four apartment blocks and make direct visual link to Lang Park on the northern side. Deep soil area is concentrated within the common open space between Building C and D which adjoins the school boundary at the western interface of the site, as approved.

Principle 2 - Built Form and Scale

The proposed modifications to the previously approved DA14/0513 scheme relate to ensuring the design is consistent with the Building Code of Australia (BCA) which has been updated since the approval of the original Development Application. The buildings require bulkheads for the provision of servicing, and the increase in floor to floor heights will enable the provision of 2.7m minimum ceiling heights within all residential units and a rational structural solution for the construction of the buildings. The apparent scale of the buildings remains as 8-storeys as approved.

The development remains with built form broken into four separate blocks symmetrically and proportionally positioned within the development site. Buildings are set back from each boundary allowing the landscape treatment along the boundaries. The buildings set back further away from the boundary above level 3. The tapered effect of the building setbacks creates visual interest and visual corridors.

Each building maintains the three sections with the central podium portion and upper level setback of the approved development, which reduces the apparent bulk and provides articulation and variation to the design. The modified proposal is of a scale that is keeping with the future development of the surrounding built environment and provides a gradual transition of building height to surrounding development as anticipated by DA14/0513. The modification maintains the setbacks and landscaped areas of DA14/0513. To assist in the integration of the building form with the future built form within the locality. The rear common courtyard is maintained for residents. The detailed elements of the approved scheme are maintained including framed windows, balcony elements, glazing and screening to provide a lighter weight character to the mid and upper sections of each building.

Principle 3- Density

The proposed modification Application does not increase the dwelling yield of the approved scheme. The approved development comprises of 289x units and the amended development is for 289x units.

Principle 4- Sustainability

The proposal provides at least 60% of apartments achieving cross ventilation and dual aspect as approved by DA14/0513 and consistent with the provisions of the former RFDC and now ADG. Further, the Modification Application was accompanied by an updated BASIX Certificate, and the initiatives outlined in the BASIX Certificate will further aid in providing residential amenity and efficient use of natural resources

Principle 5- Landscape

Whilst the overall landscaped areas are substantially the same as the approved scheme in terms of quantity, the amended landscape design has been updated to suit the updated architectural plans and introduces levelled planter areas and more activated breakout spaces for residents. Large landscaped areas are located on ground floor between Building A & C and B & D which serve as communal outdoor areas for the residents. The common open space areas provided maximise opportunity for social interaction between residents through the provision of pergolas, BBQ areas, seating and play equipment.

Principle 6- Amenity

3.1m floor to floor levels are proposed to ensure buildability of 2.7m high ceilings to the habitable spaces. This will allow for the engineers and builders to install the services and avoid having unwanted bulk heads in living space and bedrooms. The modified development maintains 10% adaptable units as approved totaling twenty-nine (29) adaptable units and all common areas are accessible, catering to both young and aging population and the disabled. This is further outlined in the Accessibility Report accompanying the Section 4.55 modification.

Principle 7 - Safety

The proposed building has been designed with direct presentation to the street, having balconies and windows overlooking street setbacks and communal open spaces on ground floor to maximize

opportunities for casual surveillance. The incorporation of clearly defined and well-lit entrances shall both provide a highlight design feature allowing ease of introduction to the entrances of the buildings as well.

Principle 8- Housing Diversity and Social Interaction

The proposal provides a mix of unit types to meet varying housing needs as intended by the original Development Application, including:

Unit Type	Original Development Application	Proposed under Modification Application
1- bed	14 (4.8%)	15 (5%)
1-bed + study	38 (13%)	34 (12%)
2- bed	214 (74%)	217 (75%)
3- bed	23 (8%)	23 (8%)
total	289	289

Principle 9- Aesthetics

The amended development will continue to provide a positive urban design outcome for the site. The modifications to materials, finishes, colour palette provide for a more contemporary design to contribute to the streetscape.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Complies - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	Complies - See discussion
Clause 4.6 Exceptions to development standards	Complies - See discussion

Clause 2.3 Permissibility

The Site is zoned B4 Mixed Use under Penrith LEP 2010. The proposal is defined as a Residential Flat Building, which is a permitted land use in the B4 Mixed Use zone with Council consent.

Under Penrith LEP 2010, a Residential Flat Building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi-dwelling housing. The proposal is consistent with this definition.

Clause 2.3 Zone objectives

The objectives of the B4 Mixed Use zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.
- To create opportunities to improve public amenity.
- To provide a wide range of retail, business, office, residential, community and other suitable land uses.

The proposal meets the above objectives of the B4 Mixed Use zone. The proposal is for the purpose of housing that is located within an accessible location encouraging public transport use, being located in proximity to the St Marys Railway Station. The site is in proximity to services and shops along Queen Street. The proposed modifications, particularly the improvements to the facade treatment and material and finishes, provide a for a more modern design to positively contribute to the streetscape. The proposal is substantially the same as previously approved in terms of use and form, and is unlikely to cause conflict between land uses.

Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

Clause 4.1A prescribes minimum lot size requirements for for dual occupancies, multi dwelling housing and residential flat buildings within various residential zones (R2 Low Density Residential, R3 Medium Density Residential and R4 High Density Residential). Clause 4.1A does not apply in this instance as the Site is not zoned residential, being zoned B4 Mixed Use.

Clause 4.3 Height of buildings

Under Penrith LEP 2010, a maximum Height of Building of 24m is permitted on the site.

A variation to the 24m height standard was approved under the original Development Application DA14/0513. The approved development has a maximum building height of 25.9m, representing an exceedance of 1.9m or 7.9% variation. It is noted that Development Application DA14/0513 was accompanied by a Clause 4.6 request to varying the building height standard, which was supported, with Development Application being approved by the Joint Regional Planning Panel.

The current Modification Application seeks to increase the building height of the approved development, as outlined in the below table. The proposal involves height increase to Building A, B, C and D. The maximum height increase proposed is from the approved 25.9m to 27.455m when measured to the lift overrun (Building B). Representing a maximum departure to the 24m height control of 3.455m, or 14%.

Overall, the proposed increase to building height as sought by the Modification Application is considered acceptable on balance, and there are sufficient planning grounds to support the increase. The reasons for increasing the building height are as a result of increase to floor to ceiling heights to meet current building requirements, to address Council's flooding requirements (and satisfy existing conditions of DA14/0513), and to accommodate access for Council's waste truck to the basement for onsite collection.

Building	Approved Building Height DA14/0513	Proposed Building Height Current Modification	Difference (m)	Maximum Variation to 24m Building Height Standard

A	Roof Level: 55,200 RL Lift Over Run: 56,000 RL	Roof Level: 56,000 RL Lift Over Run: 56,900 RL	Roof Level: 0.8m Lift Overrun: 0.9m <u>Increase to approved building height (incl. lift overrun): 0.9m</u>	Approved: Building B, variation of 1.9m or 7.9% <u>Proposed: Building B, variation of 3.455m or 14%</u>
B	Roof Level: 56,500 RL Lift Over Run Level: 57,050 RL	Roof Level: 57,550 RL Lift Over Run: 58,450RL	Roof Level: 1.05m Lift Overrun: 1.4m <u>Increase to approved building height (incl. lift overrun): 1.4m</u>	
C	Roof Level: 54,200 RL Lift Over Run Level: 55,000 RL	Roof Level: 55,000 RL Lift Over Run: 55,900 RL	Roof Level: 0.8m Lift Over Run: 0.9m <u>Increase to approved building height (incl. lift overrun): 0.9m</u>	
D	Roof Level: 54,200 RL Lift Over Run Level: 55,000 RL	Roof Level: 55,000 RL Lift Over Run Level: 55,900 RL	Roof Level: 0.8m Lift Over Run Level: 0.9m <u>Increase to approved building height (incl. lift overrun): 0.9m</u>	

Despite the numerical non-compliance with the building height standard, the proposed modified development satisfies the objectives the Clause 4.3. The objectives of Clause 4.3 are:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*
- (c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*
- (d) to nominate heights that will provide a high-quality urban form for all buildings and a transition in built form and land use intensity.*

The proposed development is compatible with the height, bulk and scale of the existing and desired future character of the locality, as the 24m height limit generally allows for 7-8 storeys, and the proposal remains as an 8-storey building. Further, the amended proposal remains compliant with the FSR control. The amended development minimises impact, disruption of views and loss of privacy and solar access to existing development/public areas, particularly noting that the proposed increase of height to buildings A,C and D are minor (0.9m). The amended development is unlikely to have adverse impact on the adjoining heritage item (St Marys Public School), noting that the building setbacks to the heritage item remains consistent with the approved scheme and a landscape buffer is provided. In terms of urban form, the proponent has responded to urban design issues raised by Council staff and the Urban Design Review Panel throughout the assessment, and the proposal will contribute to the character of the area and provide a more contemporary design.

Clause 4.4 Floor Space Ratio

A Maximum Floor Space Ratio (FSR) of 2.5-2.99 applies to the Site.

The amended proposal has an FSR of 2.46:1, and therefore complies with the FSR control.

Clause 4.6 Exceptions to development standards

Clause 4.6-'Exceptions to development standards' does not apply in this instance, as the proposal is a Modification Application.

The provisions of Clause 4.6 only apply at the 'granting of development' and does not apply to the granting of a Modification Application (*North Sydney Council v Michael Standley & Associates Pty Ltd [1998] NSWSC 163*). A Modification Application is a free-standing provision, which is subject to its own stand-alone test. Including the 'substantially the same' test and a requirement to consider matters under Section 4.15 of the Act, which have been considered in this report.

Therefore, a Clause 4.6 variation is not required to be submitted with the current Modification Application, and has not been provided by the proponent.

Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	Complies
C8 Public Domain	Complies
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies - see Appendix - Development Control Plan Compliance
C14 Urban Heat Management	Complies
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	Complies - see Appendix - Development Control Plan Compliance
D2.6 Non Residential Developments	N/A

Section 4.15(1)(a)(iv) The provisions of the regulations

Clause 102 Modification applications for residential apartment development consents

The Modification Application was accompanied by a design statement prepared by a qualified designer in accordance with the requirements of Clause 102(1). The submitted design statement addresses the requirements under Clause 102(2).

In this regard, the design statement indicates that Joe El-Sabbagh (Nominated Architect under the NSW Board of Architects registration number 8707) has directed the Section 4.55 design of the project and that the proposed modification adheres to the design principles set out in Part 2 of State Environmental Policy No 65 - "Design Quality of Residential Flat Development (SEPP 65)" as applied at the time of the determination of Development Consent DA14/0513.

It is important to note that prior to determination of DA14/0513, SEPP 65 was amended, and the Residential

Flat Design Guide (RFDC) was replaced by the Apartment Design Guide (ADG). Under the applicable savings provisions for applications lodged prior to 15 June 2015 the provisions of the RFDC were applied in the assessment of DA14/0513.

Under the provisions of the Environmental Planning and Assessment Act Regulations 2021 where a Design Verification Statement was submitted, and it is proposed to modify the consent a Design Verification Statement must be submitted. This Design Verification Statement provides an assessment of the 9 principles as contained within Schedule 1 of SEPP 65 which replaced the previous 10 principles which applied under SEPP 65 at the time of the determination of DA14/0513. This Design Verification Statement indicates that the approved building as modified satisfies the objectives of the principles.

The design statement advises that the proposed modifications to the previously approved DA14/0513 scheme primarily relate to bringing the design in line with the new requirement for Building Code of Australia (BCA) Class 2 building in New South Wales recently introduced under the Design and Building Practitioners Act 2020 and Regulations. The modifications are proposed to improve amenity for residents whilst maintaining minimum impact on the surrounding environment as well as to comply with the latest BCA and Australian Standards and remain substantially the same as that of the approved development.

Clause 275 Functions exercisable by council on behalf of Sydney district or regional planning panel - the Act, s.4.7(2)(h)

The proposal is to be determined by the Sydney Western City Planning Panel in accordance with Clause 275(2).

In this regard, Clause 275(1) states that:

"The determination of an application to modify a development consent under the Act, section 4.55 is prescribed as a function of a Sydney district or regional planning panel that must be exercised on behalf of the panel by the council of the area, except as provided by subsection (2)."

Sub-clause 275(2) goes on to state:

"A council must not determine an application to modify a development consent under the Act, section 4.55(2) on behalf of a Sydney district or regional planning panel if the application is of a kind specified in the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents* published on the NSW planning portal on 30 June 2020." The current proposal is a kind that is specified in the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents*, which is not permitted to be determined by Council on behalf of the panel. As the proposal is for a Section 4.55(2) Modification, and the development contravenes a development standard imposed by an environmental planning instrument by more than 10%. In this regard, the proposal contravenes the building height control by more than 10%.

As such, in accordance with Schedule 1(3) of the *Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents*, Council is unable to determine the application on behalf of the panel.

Accordingly, the application has been referred to the Sydney Western City Planning Panel.

Section 4.15(1)(b) The likely impacts of the development

Urban Design

On 18 May 2022, Council staff presented the Modification Application to Council's Urban Design Review

Panel. Based on this review, the following urban design matters were identified. The following urban design matters were subsequently raised with the Applicant via Council's Request for Information Letters dated 6 July 2022 and 23 September 2022.

- Presentation of the development to St Marys Public School. The revised scheme provides considerably greater amount of wall areas, resulting in a bulkier appearance than the approved scheme. This is partly as a consequence of the smaller windows proposed, and significantly less diversity in external wall finishes and materiality, than the approved scheme. The continuous run of projecting slab (resulting from projecting balconies) is considered a poorer outcome than the existing approved design. Further, the proposed simplification of finishes exacerbates the scale and bulk of the development, noting that the previous scheme had sandstone panels which softened the commercial character of some selected finishes and form.
- The proposed amendments to Buildings A,B & D result in enclosed corridors with air conditioning plant, which is a poor outcome.
- There are 11x units off the corridor, which does not meet requirements of the Apartment Design Guideline (ADG) which permit a maximum of 8x units per core. It is noted that where 12x units off a core are proposed and permitted under the ADG, evidence of design excellence outcomes are needed. Further narrowing of the corridors with service cupboards is a poorer outcome than the original approval, and that was deemed acceptable to allow for more than 8x units.
- Concern was raised with the submitted solar and cross ventilation analysis, as it is not agreed that three (3) hours is available to west facing apartments. Clarification was requested to confirm compliance.
- No detailed cross-sectional drawings for the facades and balcony treatments were provided.
- The north/south common open space area that runs down the spine of the site was less formalised in the original approval, and the proposed zig-zag arrangement is considered less successful. This arrangement results in excessive paved walls instead of soft landscaping. It is requested that increased soft landscaping is provided.
- High quality green edge is needed. However, the green edge is undermined by the proposed location of periphery infrastructure, exhaust ducts and substations. All necessary infrastructure need to be located sensitively to minimise visual impacts and be appropriately screened from public places. Detailed section drawings of proposed infrastructure were requested.
- the suggested increase in floor to ceiling height, which results in a further exceedance of the maximum permitted building height is not appropriate where the bulk, scale, mass and visual impact is not consistent with, or superior to, the approved scheme.
- it was recommended an urban designer be engaged to guide amendment of the scheme both in terms of architectural form as well as landscape design.

In response, the Applicant submitted further amended plans which addressed the majority of urban design issues raised above, as summarised detailed below:

- Further amendments were made to the facade facing St Mary's Public School, to incorporate larger window openings to reflect the original approval. Additional materials and finishes were introduced, and slab edges minimised.
- Lobby corridors were amended to reflect the original approved design. All AC Plant rooms were removed, and AC condensers shown on individual balconies with screening
- In terms of solar access, the revised architectural plans reflect the exact number of units as per the original design, and no amendments have been made to the location of units. As such, the proposal results in minimal impact to solar access as achieved in the original scheme.
- Cross sections for the facade and balcony treatments have been provided.
- It is noted that an urban designer was not engaged. The Applicant indicated that due to resubmission timeframes, engagement of an urban designer was not possible.

Landscape

The Modification Application was reviewed by Council's Landscape Architect. Based on this review, the following landscape matters were identified, and subsequently was raised with the Applicant in Council's Request for Information letters dated 6 July 2022 and 23 September 2022.

- concern regarding the positioning of infrastructure along the front and side boundaries of the development. Specifically, the substation in the north-east corner is highly visible from the public domain (Lang Park, Carson Lane). 2.5m fire protection wall associated with the substation is not supportable in this location. Further, the fire hydrant booster, water meter and gas supply located on the front boundary on the Carson Lane edge is poor urban design outcome and needs to be relocated. Conditions have been imposed to this effect to relocate fire hydrant booster, water meter and gas supply to less prominent location.
- proposed landscape plans have substantially more pavement and less soft landscaping than the original scheme. As a result, the communal open space areas now present much more "urban" than traditional garden setting. Clarification shall be provided as to the reasoning behind this, and all opportunities shall be explored to increase the amount of soft landscaping and reduce the amount of pavement in communal open space areas.
- The north/south communal open space area running down the spine of the site is much more linear than the approved scheme. The approved scheme had break-away areas with seating encircled by landscaping, which offered better use, privacy and amenity of this area. It is considered that this area would benefit from being more fluid to encourage use of this area.
- Amendments to the plant schedule required.
- Reduction in the number of trees proposed along the school edge than the approved scheme is not supported. Quantity of planting shall be consistent or greater than the original approval.
- additional landscaping should be provided alongside the car parking area at the centre of the site to improve the presentation of this area. This would help create a 'plaza' feel rather than car park.
- Consideration should be given to the type of pavement in this area to distinguish the area as a high pedestrian area.
- to increase provision of amenities within the north-south Communal Open Space Area where possible. Council requires 40% of seating provided to have arm and back rests to improve accessibility. The use of concrete seating is discouraged, as this is typically uncomfortable and cold. If concrete seating is used it should have timber slats on top.
- viability of canopy trees due to proximity to buildings, balconies and stormwater infrastructure.

In response, the Applicant submitted further amended plans to substantially address the bulk of matters raised above.

Communal Open Space

The proposal includes two ventilation shafts within the Communal Open Space (COS) for the purpose of basement ventilation, as shown on the architectural and landscape plans. The proposed ventilation shaft located in the north-east corner of the COS is for supply (intake) and the shaft located in the on the western edge of the COS is for exhaust.

Throughout the assessment process, Council staff raised concern regarding amenity impacts (noise, visual, air quality) associated with the basement ventilation shafts within the COS. Noting that these shafts are in proximity (approximately 6m) from unit terraces. Council requested that alternative options be considered for ventilation, such as vents integrated within the building facade, or via the rooftop of the building.

In response to these concerns, the Applicant provided the following response:

"The applicant considered council's comments to relocate the mechanical shafts and took this on board

by swapping locations of the exhaust and supply risers and amending their design. The amended design creates seating around the risers and gives increased amenity to the COS. The risers will be appropriately screened with vertical climbers and we believe they will have no visual impact on amenity. The shafts are an essential mechanical item which are required to ensure the health & safety of all tenants and proper functioning of the building. Advice sought from our mechanical engineers concluded that in the context of the current building form and noting this is a modification not a DA, moving the mechanical shafts would severely compromise the basement design or amenity within the residential unit and that their locations are the best ventilation strategy for the site. A supporting statement from Stantec, the projects mechanical engineers details the rationale behind the design, other locations which were investigated, its compliance with the relevant Australian Standards and how the shafts in the current design ensure the health and safety of the residents will be achieved."

The statement provided by Stantec, dated 21 October 2022 advises that Stantec have designed the carpark intake and exhausts with appropriate separation distances and heights meeting the Australian Standards to ensure that air quality will not be an issue. Louvres have also been sized to ensure that the velocity over them is low enough to not create noise issues. The statement goes on to note that the Australian Standard for mechanical ventilation systems AS 1668.2-2012 dictates that the exhaust point must be 6m away from the boundary of the site and any intakes or natural ventilation devices, and the exhaust point must be 3 m above finished floor level.

An additional acoustic statement was submitted to Council to address noise impacts of the ventilation shafts. The acoustic statement was prepared by Acouras Consultancy and is dated 22 November 2022. The acoustic statement identifies that an acoustic report was approved under the original development application DA15/0513 which establishes noise criteria specifically for mechanical ventilation and plant equipment. The ventilation shafts will be required to achieve noise limits set out in the approved acoustic report, and as enforceable by existing conditions of consent.

Heritage Impacts

The site adjoins a local heritage item (no. 307, being St Marys Public School). It is noted that the original development application was accompanied by a Heritage Impact Assessment, which was found to be acceptable, noting that building setbacks and landscape treatment of the development was sufficient to not compromise heritage values.

The current Modification Application was reviewed by Council's external Heritage Architect, who raised no objections, subject to ensuring that the landscape buffer is consistent with the original scheme. The proposal has been amended to provide increased landscaping inclusive of canopy trees along the edge of the site that faces St Marys Public School, consistent with the original approval. The building setbacks remain consistent with the original approved development.

Therefore, the proposal is unlikely to result in negative impacts to the adjoining heritage item.

Engineering

Throughout the assessment process, the following key engineering matters were raised, which have now been resolved:

- The Modification Application initially sought to delete Condition 81, which requires the basement area to be waterproofed and tanked. Council's Development Engineer does not support the removal of Condition 81, as it is required by Section 3.4(g) of Council's Stormwater Drainage Specification for Building Development, which does not permit the drainage of groundwater below the water table to any Council drainage system. Condition 81 is to remain, as accepted by the Applicant.
- Additional calculations for the basement pump out system were requested, and provided to the satisfaction of Council's Development Engineer.

- The Modification Application initially proposed flood gate in lieu of a basement ramp crest to 1% AEP flood level, which was not supported by Council's Development Engineer. In response, the scheme has been amended by way of reverting to the original design with respect to provision of a driveway crest with a 300mm freeboard to the 1% AEP flood level fronting the driveway.
- Suitable clarification was provided regarding car park space locations.

Basement Design - Vehicle Access and Manoeuvring

Council's Development Engineer has reviewed the revised basement design in terms of access and maneuvering, and raises no objections.

Waste Management

The following waste management issues were identified during the assessment of the Modification Application:

- The swept path for the waste truck indicates that the waste truck will take up both lanes of traffic when entering/exiting the loading bay, including at the base of the ramp around a blind corner. This arrangement poses a significant safety issue. Provision of traffic signals may be required to manage conflicts.
- The chute room for Building D provides insufficient clearance for maneuverability and maintenance. A minimum 900mm clearance around the linear/ circular carousel system is required. (Section 3.5.1, Council's Residential Flat Building Waste Management Guideline.)
- Clarification is required regarding the height clearance for each chute room. To demonstrate that the floor to ceiling heights are sufficient for each set of chutes to reach the central bin of the linear track system. In particular, the chute room in Building C. As it is noted that there is a considerable distance from the central bin of the linear track system to the area marked "recycle".
- The current waste collection room includes two ramps. One ramp is 1:40 and another ramp is 1:30. The steepness of these ramps are not practical to store mobile bins on wheels. Ramps in waste infrastructure rooms are required to have a maximum gradient of 1:24. (Section 3.5.2, Council's Residential Flat Building Waste Management Guideline.)
- Given the proposed ramps within the waste collection room, confirmation is required that an internal room height of 2.7m is provided.

In response, the applicant has responded to these issues, as summarised below:

- A statement prepared by Vagra Traffic Planning, dated 6 October 2022 was provided to Council. This statement indicates that waste collection truck will likely take up the width of both lanes of traffic when entering/exiting the loading bay, acknowledging Council's concerns. However, the vehicular access arrangements have been designed to accommodate the swept turning path requirements of the B99 & B85 design vehicle, as specified in AS2890.1, allowing them to simultaneously pass each other along the basement access ramp (without conflict). Given the two-way driveway can accommodate the simultaneous passing of B99/B85 vehicles, the more efficient arrangement (than traffic signals) would be to have an in-ground induction loop sensor at the entry point (detecting trucks only), and a warning light sign indicating 'Truck Entering', installed at the bottom of the basement access ramp. The induction loop at the driveway entrance of the site will also trigger the secured gate/roller shutter door in the dedicated loading dock area, as suggested by Council. Conversely, a warning light indicating 'Vehicle Exiting' can be installed at the top of the basement access ramp (on the exit side wall), which will also be triggered by an in-ground induction loop sensor located prior to the security gates, allowing all vehicles detected to automatically trigger the security gates to open for exiting vehicles. Furthermore, installing convex mirror/s at the top and bottom of the basement access ramp, which will provide increased visibility for drivers entering and exiting the site will assist. In considering this information and noting that waste collection will likely be conducted outside the morning peak period when residents would be departing for work, the proposal is satisfactory.

Conditions have been imposed accordingly.

- Waste Rooms have been amended. The design complies with Section 3.5.1 of Penrith City Councils Residential Flat Building Waste Management. An amended Operational Waste Management Plan was submitted.
- Heights of each chute room and bin collection room have been noted on the architectural plans showing compliance with Penrith City Councils Residential Flat Building Waste Management Guideline.

Section 4.15(1)(c)The suitability of the site for the development

The site is suitable for the proposal for the following reasons:

- The site is able to drain to Council's satisfaction. Council's Development Engineer has reviewed the proposed modification and raises no objections to the amended stormwater works.
- The rationalisation of the basement provides a superior arrangement than originally approved, and has been designed to accommodate Council's waste vehicle.
- The proposal is compatible with surrounding land uses, and the proposed facade improvements provide a contemporary design suitable for the locality.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Council's Community Engagement Strategy, the proposal was advertised, and notified to nearby residents.

The proposal was advertised in the Western Weekender on 23 May 2022.

Council notified surrounding and nearby residences and the exhibition period occurred between 30 May 2022 and 13 June 2022. It is noted that the Modification was notified to the same extent as the original Development Application.

Council received no submissions.

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Landscape Architect	No objections - subject to conditions
Heritage	No objections
Environmental - Waterways	No objections - subject to conditions
Waste Services	Not supported

Community Safety Officer

The current Modification Application has not been referred to Council's Community Safety Officer. The referral has been added to this report for the purpose of generating conditions of consent and carrying over conditions that were provided by Council's Community Safety Officer as part of the original assessment.

Environmental - Environmental management

The current Modification Application has not been referred to Council's Environmental Health Officer. The referral has been added to this report for the purpose of generating conditions of consent and carrying over conditions that were provided by Council's Environmental Health Officer as part of the original assessment.

Traffic Engineer

The current Modification Application has not been referred to Council's Traffic Engineer. The referral has been added to this report for the purpose of generating conditions of consent and carrying over conditions that were provided by Council's Traffic Engineer as part of the original assessment.

Waste Services

Matters raised by Council's Waste Management Officer have been addressed by the proponent through submission of amended plans and additional information. Refer to "Likely Impacts" section in this report.

Section 4.15(1)(e)The public interest

For the reasons detailed in this report, the proposal is unlikely to generate significant issues of public interest. The proposal was advertised and notified in accordance with the Council's Community Engagement Strategy, and no submissions were received.

Section 94 - Developer Contributions Plans

Section 7.11 Contributions apply to the development, as the proposal is for residential purposes.

Under the original Development Application DA14/0513, Section 7.11 Contributions were calculated on the basis of a total dwelling yield of 289x units, and conditions of consent were imposed to require contributions to be paid prior to the issue of a construction certificate (being Condition no. 94, 95, 96).

The current Modification does not alter or increase the overall dwelling yield of 289x units as approved by the original consent DA14/0513. Therefore, additional contributions are not triggered. Existing conditions requiring Section 7.11 contributions remain applicable and have been retained for the purpose of this Modification.

Conclusion

In assessing this application against the relevant environmental planning policies, being Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, Penrith Local Environmental Plan 2010, and Penrith Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies.

The proposal satisfies the requirements of Section 4.55(2) of the Environmental Planning and Assessment Act, and is substantially the same development as originally approved by Development Consent DA14/0513 in terms of use, form, dwelling yield, spatial arrangement, provision of landscaping, deep soil and car parking.

The site is suitable for the proposed development, and there is unlikely to be negative impacts arising from the proposed development.

Therefore, the application is recommended for approval, subject to the following conditions.

Recommendation

That MOD22/0083 for a Section 4.55(2) Modification to an Approved Residential Flat Building DA14/0513 Including Amendments to Floor Heights, Facade Treatments with Revised Material Schedules, Basement Car Park General Arrangement, Landscape Design, Stormwater Design & Internal Modifications to Apartments Layouts at 12 Carson Lane, St Marys NSW 2760 be approved subject to the attached conditions (Development Assessment Report Part B).

CONDITIONS

General

- The development must be implemented substantially in accordance with the plans and documents listed below and stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the approved plans and documents and by the following conditions.

Plans / Documents	Prepared by	Dated
Letter	Dickson Rothschild	2 February 2015
Clause 4.6 Variation – Revision C	Dickson Rothschild	22 June 2015
Cover Page – Issue I	Dickson Rothschild	09/07/15
DA-001 - Project Summary – Issue H	Dickson Rothschild	19/06/15
DA-200 - Basement 2 Plan – Issue I	Dickson Rothschild	09/07/15
DA-201 - Basement 1 Plan – Issue J	Dickson Rothschild	09/07/15
DA-202 - Ground Floor Plan – Issue K	Dickson Rothschild	17/11/15
DA-203 - Level 01 Plan – Issue I	Dickson Rothschild	09/07/15
DA-204 -Level 02 Plan – Issue I	Dickson Rothschild	09/07/15
DA-205 - Level 03 Plan – Issue I	Dickson Rothschild	09/07/15
DA-206 - Levels 04-06 Plan– Issue I	Dickson Rothschild	09/07/15
DA-207 - Level 07 Plan – Issue I	Dickson Rothschild	09/07/15
DA-208 - Roof Plan – Issue I	Dickson Rothschild	09/07/15
Section A-A & D-D – Issue F	Dickson Rothschild	19/06/15
DA-302 -Section B-B & C-C & E & F – Issue I	Dickson Rothschild	19/06/15
DA-401 - Elevations East – Issue H	Dickson Rothschild	19/06/15
DA-402 - Elevations West – Issue H	Dickson Rothschild	19/06/15
DA-403 - Elevations North – Issue H	Dickson Rothschild	19/06/15
DA-404 - Elevations South – Issue H	Dickson Rothschild	19/06/15

GFA Calc. – Building A – Issue E	Dickson Rothschild	30/01/15
GFA Calc. – Building B – Issue E	Dickson Rothschild	30/01/15
GFA Calc. – Building C– Issue D	Dickson Rothschild	16/05/14
GFA Calc. – Building D – Issue D	Dickson Rothschild	16/05/14
Solar & Vent – Building A – Issue F	Dickson Rothschild	19/09/14
Solar & Vent – Building B – Issue G	Dickson Rothschild	30/01/15
Solar & Vent – Building C – Issue F	Dickson Rothschild	19/09/14
Solar & Vent – Building D – Issue F	Dickson Rothschild	19/09/14
DA-741 - Balcony Detail – Issue A	Dickson Rothschild	30/01/15
DA-901 - Materials & Finishes – Issue G	Dickson Rothschild	30/01/15
DA-916 - Photomontage E – Issue B	Dickson Rothschild	30/01/15
DA-917 - Photomontage F – Issue B	Dickson Rothschild	30/01/15
DA-921 - View Impact Study A – Issue E	Dickson Rothschild	30/01/15
DA-922 - View Impact Study B – Issue E	Dickson Rothschild	30/01/15
DA-923 - View Impact Study C – Issue E	Dickson Rothschild	30/01/15
DA-931 - Shadow Study A – Winter – Issue E	Dickson Rothschild	30/01/15
DA-932 - Shadow Study B – Equinox – Issue E	Dickson Rothschild	30/01/15
Final Access for People with a Disability / Adaptable Housing Report	BCA Assess	15 May 2014
C-0000 - Cover Sheet and Drawing index– Issue A	BG&E	17/9/14
C-0001 - General Notes - Revision A	BG&E	17/9/14
C-0020 - Stormwater Longitudinal Sheet 1 –RevisionA	BG&E	29/1/15

C-0010 - General Arrangement Plan – Revision B	BG&E	29/1/15
Site Discharge Stormwater Drainage Information	AJ Whipps Consulting Group	2/6/15
Hydraulic Services Site Plan & Legend - HDA01/P5	Cundall	13/11/15
Hydraulic Services Basement2Plan- HDA02/P5	Cundall	13/11/15
Hydraulic Services Basement1Plan - HDA03/P5	Cundall	13/11/15
Hydraulic Services Ground Floor Plan - HDA04/P5	Cundall	13/11/15
Hydraulic Services Roof Plan- HDA05/P5	Cundall	13/11/15
Hydraulic Services Detail Sheet No. 1- HDA06/P5	Cundall	13/11/15
Hydraulic Services Detail Sheet No. 2 - HDA07/P5	Cundall	13/11/15
Swept Path Analysis	Calibre Consulting Pty Ltd	9/7/15
Swept Paths (4 sheets) - Rev J	DR Design Pty Ltd	9/7/15
Preliminary Geotechnical Investigation and Phase One Environmental Assessment	Intrax Consulting Engineering Pty Ltd	22/12/14
Additional Environmental Investigation	Consulting Earth Sciences Pty Ltd	23/4/15
BCA Assessment Report	BCA Logic	15 May 2014
Landscape Concept Plans Issue J	Arcadia	05/02/2016
Landscape Master Plan - 101 - Issue J	Arcadia	05/02/2016
Landscape Plan - 301 - Issue J	Arcadia	05/02/2016
Landscape Plan - 302 - Issue J	Arcadia	05/02/2016
Landscape Plan - 303 - Issue J	Arcadia	05/02/2016
Landscape Plan - 304 - Issue J	Arcadia	05/02/2016
Landscape Plan - 305 - Issue J	Arcadia	05/02/2016
Landscape Plan - 306 - Issue J	Arcadia	05/02/2016
Landscape Plan - 307 - Issue J	Arcadia	05/02/2016
Landscape Details - 501 - Issue J	Arcadia	05/02/2016

Landscape Details - 502 - Issue J	Arcadia	05/02/2016
Waste Management Plan	Elephants Foot	July 2015
Cover Letter – Additional Information	Diddum	10 July 2015

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979:

Plans / Documents	Prepared by	Dated
Cover Sheet, Drawing No. DA-000, Revision K	Design Corp Architects	26 August 2022
Project Summary, Drawing No. DA-001, Revision K	Design Corp Architects	26 August 2022
GA Plan - Basement 2, Drawing No. DA-200, Revision L	Design Corp Architects	20 October 2022
GA Plan - Basement 1, Drawing No. DA-201, Revision L	Design Corp Architects	20 October 2022
GA Plan - Ground, Drawing No. DA-202, Revision L	Design Corp Architects	20 October 2022
GA Plan - Level 1, Drawing No. DA-203, Revision K	Design Corp Architects	26 August 2022
GA Plan - Level 2, Drawing No. DA-204, Revision K	Design Corp Architects	26 August 2022
GA Plan - Level 3, Drawing No. DA-205, Revision K	Design Corp Architects	26 August 2022
GA Plan - Level 4-6, Drawing No. DA-206, Revision K	Design Corp Architects	26 August 2022
GA Plan - Level 7, Drawing No. DA-207, Revision K	Design Corp Architects	26 August 2022
GA Plan - Roof, Drawing No. DA-208, Revision K	Design Corp Architects	26 August 2022
Sections - AA & BB, Drawing No. DA-301, Revision K	Design Corp Architects	26 August 2022
Sections - CC & DD, Drawing No. DA-302, Revision K	Design Corp Architects	26 August 2022

Sections - EE & FF, Drawing No. DA-303, Revision K	Design Corp Architects	26 August 2022
Elevations East, Drawing No. DA-401, Revision L	Design Corp Architects	20 October 2022
Elevations West, Drawing No. DA-402, Revision L	Design Corp Architects	20 October 2022
Elevations North, Drawing No. DA-403, Revision L	Design Corp Architects	20 October 2022
Elevations South, Drawing No. DA-404, Revision L	Design Corp Architects	20 October 2022
GFA Calculations Building A, B, C, D Drawing No's. DA701, DA-702, DA-703, 704, Revision K	Design Corp Architects	26 August 2022
Solar & Cross Ventilation Building A, B, C, D Drawing No's. DA-711, DA-712, DA-713, DA-714, Revision K	Design Corp Architects	26 August 2022
Waste Room Details, Drawing No. DA-740, Revision L	Design Corp Architects	20 October 2022
Typical Balcony Detail, Drawing No. 750, Revision K	Design Corp Architects	26 August 2022
Maximum Height Diagrams 1 & 2, Drawing No. DA-811 & DA-812, Revision K	Design Corp Architects	26 August 2022
Photo Montage 1 & 2, Drawing No. DA-901 & DA-902, Revision K	Design Corp Architects	26 August 2022
Stormwater Concept Plans Proposed Residential Flat Building at 12 Carson Lane, St Marys, Project No. 2936-DA, Drawing No. SW001 Issue B, SW010 Issue E, SW020 Issue E, and SW021 Issue B.	Mance Arraj Civil & Structural Engineers	23 March 2022 (Issue B) 19 August 2022 (Issue E)
Landscape Plan, Drawing No. LPS4.55-22 - 274, Page No's 1-16, Issue C	Conzept Landscape Architects	October 2022

Documents:

- BASIX Certificate, No. 537278M_05

Certificate Prepared by BCA Energy

19 April 2022

• Statement of Environmental Effects, 12 Carson Lane St Marys Section 4.55(2) Modification Application Amended August 2022	GLN Planning Consulting Strategy	August 2022
• Access & Adaptability Assessment Report, Issue B	Access Mobility Solutions	18 August 2022
• Design Verification Statement, Design Quality Principles of Residential Flat Building	Design Corp Architects	21 April 2022
• Waste Management Plan (Amended)	Elephants Foot Recycling Solutions	October 2022
• Traffic Statement, Reference 21727	Varga Traffic Planning Pty Ltd	18 August 2022
• Traffic Statement Reference 21727	Varga Traffic Planning Pty Ltd	6 October 2022
• Geotechnical Opinion on Drained Basement, Ref: E23929.G20.02_Rev2	eiaustralia	20 September 2022
• Acoustic Statement, Document Ref: SYD2021-1160-R002A	Acouras Consultancy	22 November 2022

2 **The development shall not be used or occupied until an Occupation Certificate has been issued.**

3 The use of the garbage loading bay and all other truck loading and unloading activities are restricted to between 7:00 am and 10:00 pm.

4 **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).

5 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.

- 6 A **Construction Certificate** shall be obtained prior to commencement of any building works.
- 7 The basement carpark is required to provide communication devices such as: -
- Intercoms
 - Public address systems
 - Telephones
 - Emergency alarms
 - Signage
- 8 All surfaces in the car park are to be painted in light coloured paint or finished in light coloured concrete to reflect as much light as possible.
- 9 The following Safer By Design measures are to be incorporated into the development:
- 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 (including lift lobbies, stairwells, garbage rooms and storage areas) must be well-lit, with consistent lighting to prevent shadowing or glare.
 - Signage must be in place to clearly identify exit and access points, the location of lifts and stairwells.
 - Signage is recommended to clearly delineate spaces intended for use by residents and those for use by visitors.
 - Dense, medium height vegetation with top to bottom foliage must be avoided in common landscaped areas. The use of low-level planting or high canopied vegetation will improve surveillance, provide clear lines of sight and avoid any potential concealment areas.
 - Security gates must be permeable (e.g. open/grill style) to enable surveillance opportunities into the development whilst controlling access. Gates must be kept in a locked position at all times and only accessible to residents and their authorised guests through individual swipe card/key access.
 - Entrances should be easily recognisable through design features and directional signage.
 - Street numbers should be made of durable materials preferably reflective or luminous, and should be unobstructed (e.g. by foliage).
 - Directional signage should be provided for this development. This will assist with wayfinding for visitors and clarify private versus public areas.
 - Unit numbers should be clearly provided on each level.
 - Each building entry should clearly state the unit numbers accessed from that entry.

- 10 The development is to be carried out in accordance with the requirements of the Roads and Maritime Service, as detailed within their letter dated 8 September 2014, as follows:
- (a) Off-street parking shall be in accordance with AS 2890.1-2004.
 - (b) Car parking provision and all driveway widths to Council's satisfaction.
 - (c) The swept path of the longest vehicle (including garbage trucks) entering and existing the subject site, as well as maneuverability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
 - (d) A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a Construction Certificate.
- 11 Prior to the issue of a Construction Certificate, a design verification statement from a qualified designer shall be submitted. 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 Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.

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 Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.

- 12 Once all site structures have been demolished, a soil sampling program is to be undertaken to assess the materials underneath the building and any other site structures and to further delineate and assess fill material from creek infilling and construction. This investigation is to consider the requirements of the relevant NSW Environment Protection Authority Guidelines and be prepared by a suitably qualified environmental consultant.

Prior to the issue of a Construction Certificate, the report of this investigation is to be provided to Penrith City Council for approval. If Council is not the certifying authority, then a copy of Council's approval is to be obtained and provided to the Private Certifying Authority. This report is to demonstrate that the site is suitable for the proposed residential use.

Should it be identified in the 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. No work on the current development is to proceed until such time as this new application has been approved by Council, and Council has approved the Validation Report associated with the remediation works.

Demolition

- 13 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**.

- 14 You should read Council's Fact Sheet titled "Handling and Disposal of Fibrous Cement Products" before any demolition works commence on the site.

Prior to commencement of demolition works on site, a portaloo with appropriate washing facilities shall be located on the site and the Principal Certifying Authority is to be satisfied that:

- Measures are in place so as to comply with the WorkCover Authority's "Short Guide to Working with Asbestos Cement" and
- The person employed to undertake the works is a licensed asbestos removal contractor and is holder of a current WorkCover Asbestos Licence.

Any demolition works involving the removal of all asbestos shall only be carried out by a licensed asbestos removal contractor who has a current WorkCover Asbestos Licence.

All asbestos laden waste, including asbestos cement flat and corrugated sheeting must be disposed of at a tipping facility licensed by the Environmental Protection Authority to receive asbestos wastes.

- 15 Dust suppression techniques are to be employed during demolition to reduce any potential nuisances to surrounding properties.

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

17 Demolition works will 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 demolition work is permitted on Sundays and Public Holidays.

In the event that the demolition relates to works inside the building that do not involve external walls or the roof, and do not involve the use of equipment that emits noise, then the demolition works are not restricted to the hours stated above.

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

Environmental Matters

18 Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

(Note: To obtain a copy of the publication, you should contact Landcom on (02) 98418600).

19 **Condition Deleted.**

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

20 All land that has been disturbed by earthworks is to be spray grassed or similarly treated to establish a grass cover.

21 All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

- 22 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.

- 23 Noise levels from the premises shall not exceed the relevant noise criteria detailed in "Development Application Acoustic Assessment: Proposed Residential Development - 12 Carson Lane, St Marys" prepared by Rodney Stevens Acoustics Pty Ltd dated 7 November 2014 (Report 13660R1, Revision 2). The recommendations provided in the above-mentioned acoustic report shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application. A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. 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.

- 24 Any vehicle washing shall be carried out in a designated area that is connected to the sewer in accordance with Sydney Water's requirements. Wastewater from vehicle washing is not to enter the stormwater system.

- 25 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.

26 The stormwater drainage system shall not be altered or new lines directed into the system without the prior approval of Penrith City Council.

27 No fill material shall be imported to the site until such time as a Validation Certificate (with a copy of any report forming the basis for the validation) for the fill material has been submitted to Council. The Validation Certificate shall:

- state the legal property description of the fill material source site,
- be prepared by an appropriately qualified person (as defined in Penrith Contaminated Land Development Control Plan) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
- clearly indicate the legal property description of the fill material source site, provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

An appropriately qualified person/s (as defined in Penrith Development Control Plan) shall:

- Supervise the filling works,
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and shall submit a review findings report to Council and any Principal Certifying Authority,
- Certify by way of 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: Penrith Development Control Plan defines an appropriately qualified person as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soils 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."}

- 28 **Prior to the issue of a 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.

- 29 All mechanical plant and equipment is to comply with the noise criteria outlined in "Development Application Acoustic Assessment: Proposed Residential Development - 12 Carson Lane, St Marys" prepared by Rodney Stevens Acoustics Pty Ltd dated 7 November 2014 (Report 13660R1, Revision 2).

Prior to the issue of a Construction Certificate, further details on the type and location of all mechanical plant and equipment associated with the development is to be provided to Council for consideration and approval. Suitable data and information on the noise impacts associated with this plant and equipment is also to be supplied to demonstrate compliance with the established noise criteria.

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

31 **a) Waste Loading Bay Signage**

Prior to issue of an occupation certificate, appropriate signage must be mounted in a visible location and is to be maintained by the Body Corporate, indicating the waste loading bay is to be available and unimpeded at all times. This must also be referenced within the strata management statement.

b) Provision of Flexible Striker Bars

Prior to issue of a construction certificate, all areas shown in the manoeuvring plan for the waste collection vehicle are to have clear headroom of no less than 4.5m. All areas where the clear headroom is less than 4.5m must have flexible striker bars and warning signs to warn waste collection contractors of the low headroom area.

c) Internal Pavement Construction

Prior to an Occupation Certificate being issued, a Certified Practising Engineer (CPEng) must submit a letter to Council confirming that the internal pavement has been constructed in accordance to the approved plans, and is suitable for use by a loaded heavy rigid waste collection vehicle.

d) Waste and Recycling Management

A caretaker must be engaged to move all bins to and from the waste storage and collection points on the allocated day(s) of collection as determined by Council. Residual waste is collected twice weekly and Recycling is collected once weekly.

e) Supply of Bin Tug or Towing Device

Prior to the issue of an Occupation Certificate, a mechanical bin tug or towing device suitable for transporting the bins allocated, must be supplied and permanently stored at the development. The nominated storage point must be in the basement in an enclosed room, with a lockable door. The door is only accessible through an abloy key held by the caretaker and the Council's contracting staff. The selected equipment must be able to tow full bins over all ramps and slopes between the waste chute storage rooms and the storage bay for collection.

f) Adherence to Bin Presentation Plan

The collection of waste and recyclables from the development is required to be undertaken in accordance with the bin presentation plan submitted to and approved by Council. A copy of the plan must be made available to all future residents to ensure they are informed of the waste collection arrangements.

32 **a) Internal Pavement Structural Design Certification**

Prior to a Construction Certificate being issued, a Certified Practising Engineer (CPEng) must submit a letter to Council confirming the structural adequacy of the internal pavement design. The pavement design must be adequate to withstand the loads imposed by a loaded heavy rigid waste collection vehicle (i.e. 28 tonne gross vehicle mass) from the boundary to the waste collection point including any manoeuvring areas.

b) Management of Construction and Demolition Waste

Any waste generated as a result of construction and/or demolition for the development is to be reused and recycled where possible, and any residual waste is to be disposed of at a licensed waste facility. Waste materials must be appropriately stored and secured within a designated waste area onsite at all times, prior to its reuse onsite or being sent offsite. Building waste containers are not permitted to be placed on public property at any time unless a separate application is approved by Council to locate a building waste container in a public place. Receipts of all waste/recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of Penrith Council.

c) Surplus Excavated Material

The disposal of surplus excavated material, other than to a licensed waste facility, is not permitted without the formal approval of Council prior to works commencing onsite. Any unauthorized disposal of waste, which includes excavated material, is a breach of the Protection of the Environment Operations Act 1997 and subject to penalties. Receipts of all waste/recycling tipping must be kept onsite at all times and presentable to Council upon request.

d) Contaminated Waste

The generation, storage, transport, treatment or disposal of hazardous, industrial or Group A liquid waste must be made in accordance with Protection of the Environment Operations Act 1997 and NSW Department of Environment and Climate Change and Water waste requirements. For information relating to guidelines and requirements, contact the environment line on 131 555.

e) Demolition Works and Asbestos Management

The demolition of any structure is to be carried out in accordance with the Work Health and Safety “How to Safely Remove Asbestos Code of Practice” document (ISBN 9780642333179). Failure to do so can incur large financial penalties. Should such demolition impede upon traffic and pedestrian activity on an adjoining road or reserve a separate application is required to be submitted to Council to allow the designated area to be fenced, inhibiting public access.

33 **a) Final Inspection of Waste Storage Area(s)**

Prior to an Occupation Certificate being issued, a final inspection of the waste storage area(s) and management facilities must be arranged by the Principal Certifying Authority and must be undertaken by Penrith Council. This is to ensure compliance with Council's design specifications and that necessary arrangements are in place for waste collection by Penrith Council. The time for the inspection must be arranged with Council at least 2 business days prior to the Principal Certifying Authority's suggested appointment time.

b) Agreement for Onsite Waste Collection

Prior to an Occupation Certificate being issued, an Indemnity Agreement is to be provided to Penrith Council for approval and signed by both parties. This is to enable Council and its contractor to enter onto private property with its collection vehicles or staff to enable the collection of waste, recyclables and bulky waste items. Council will not be held responsible for any damage caused during collection and return of domestic waste bins from and to the site. Council requires indemnification of Penrith Council and its contractors or agents to enter the property for the purpose of waste collections.

c) Commencement of Domestic Waste Service

The property owner or agent acting for the owner must ensure to arrange the commencement of a domestic waste service with Council. The service is to be arranged no earlier than five days prior to 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.

- 34 Any changes to the waste collection arrangements from approved will require separate consideration and approval by Council.

BCA Issues

- 35 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).

- 36 Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility". Details of compliance are to be provided in the relevant plans and specifications accompanying the Construction Certificate application.
- 37 A fire safety list of essential fire or other safety measures shall be submitted to Penrith City Council prior to the issue of the Construction Certificate. The fire safety list shall specify all measures (both current and proposed) that are required for the building so as to ensure the safety of persons in the building in the event of fire. The fire safety list must distinguish between:
- the measures that are currently implemented in the building premises,
 - and the measures that are to be proposed to be implemented in the building premises, and must specify the minimum standard of performance for each measure.
- 38 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:
- (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 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.

- 39 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).

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.

Health Matters and OSSM installations

- 40 **Condition Deleted.**

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

Utility Services

- 41 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 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.

- 42 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.

Construction

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 the council, or
- alternatively, any other sewage management facility approved by council.

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

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

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the 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 Detailed engineering plans and specifications relating to the work shall be submitted for consideration and approval prior to the issue of a Construction Certificate.

45 Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction. The following details are to be displayed in a maximum of 2 signs to be erected on the site:

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

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

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

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

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

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

48 **Condition Deleted.**

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

49 **Condition Deleted.**

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

50 **Condition Deleted.**

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

51 **Condition Deleted.**

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

52 Demolition and 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 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.

Roads Act Requirements

53 Signage indicating the location of visitor parking is required at the driveway entrance, prior to the issue of the Occupation Certificate.

54 Subleasing of car parking spaces is not permitted by this consent.

55 Prior to the issue of an occupation certificate, appropriate signage is to be displayed to reinforce designated vehicle circulation and parking arrangements.

- 56 The required sight lines around the driveway entrances/exits are not to be compromised by landscaping, fencing or signage.
- 57 Prior to issue of an Occupation Certificate, "No Right Turn" (R2-6) signage shall be installed at the EXIT driveway(s).
- 58 All vehicles are to enter/exit the site in a forward direction.
- 59 Prior to the issue of an Occupation Certificate, secure bicycle parking is to be provided at convenient locations in accordance with AS 2890.3:1993 Bicycle Parking Facilities.

Engineering

- 60 All roadworks, stormwater drainage works, signage, line marking, associated civil works and dedications required to effect the consented development shall be undertaken by the applicant at no cost to Penrith City Council.
- 61 **Prior to the issue of a Construction Certificate**, a S138 Roads Act application/s, including payment of fees shall be lodged with Penrith City Council, as the Roads Authority for any works required in a public road. These works may include but are not limited to the following:
- Road opening for utilities and stormwater (including stormwater connection to Council infrastructure)
 - Road occupancy or road closures

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. Contact Council's City Works Department on (02) 4732 7777 for further information regarding the application process.

Note: 1. Approvals may also be required from the Roads and Maritime Service for classified roads.

- 62 An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Council's Public Infrastructure Assets. The bond is to be lodged with Council **prior to the issue of a Construction Certificate**.

The bond shall be determined accordance with Council's adopted Fees and Charges. The bond is refundable once a final inspection has been carried out by Council's City Works Department and the works have been completed to Council's satisfaction. The bond may be used to repair or reinstate any damage that occurs to Council's Public Infrastructure Assets as a result of the development works.

Contact Council's City Works Department on 4732 7777 or visit Council's website to obtain the form and request for final inspection.

- 63 The stormwater management system shall be provided generally in accordance with the stamped approved stormwater concept plans, prepared by Mance Arraj Civil & Structural Engineers, Project No. 2936, Drawing No. SW01-SW021, Revision E, dated 19 August 2022.

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 a Construction Certificate, the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Council's Stormwater Drainage for Building Developments and Water Sensitive Urban Design Policy.

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

- 64 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 3500.3:2003.

- 65 **Prior to the issue of a Construction Certificate**, the Certifying Authority shall ensure that the proposed development is compatible with the recommendations of the Overland Flow Study Addendum #2, prepared by BG&E Pty Ltd, project number S13219, dated 28 Jan 2015.

- 66 **Prior to the issue of a Construction Certificate**, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Penrith City Council's Development Control Plan.

- 67 Prior to 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.

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

- 68 **Condition Deleted.**

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

- 69 **Prior to commencement of works**, 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 Traffic Authority's publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Traffic Authority Traffic Controller.

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

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

- 70 Prior to the Commencement of Works, a dilapidation report of all infrastructures fronting the development in Carson Lane and Lang Park is to be submitted to Penrith City Council. The report is to include, but not limited to, the road pavement, kerb and gutter, footpath, services and street trees and is to extend 20m either side of the development.

- 71 A certificate by a registered surveyor verifying that all habitable floor levels are minimum 500mm above the 1%AEP flood levels identified in the Overland Flow Study Addendum #2, prepared by BG&E Pty Ltd, project number S13219, dated 28 Jan 2015, 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.

72 **Prior to the issue of an Occupation Certificate**, the Principal Certifying Authority shall ensure that all works associated with a S138 Roads Act approval or S68 Local Government Act approval have been inspected and signed off by Penrith City Council.

73 **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.

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 Certificate where Council is not the Principal Certifying Authority.

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

- a) Stormwater management systems (including water sensitive urban design)
 - b) Overland flowpath works
 - c) 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.

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

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

- a) Stormwater management systems (including water sensitive urban design)
- b) Overland flowpath works
- c) 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 Drainage for Building Development Policy.

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

76 **Prior to the issue of an Occupation Certificate**, directional signage and line-marking shall be installed indicating the garbage truck waste collection area, drop off area, directional movements and the location of visitor parking to the satisfaction of the Principal Certifying Authority.

Prior to the issue of an Occupation Certificate, an induction loop sensor at the entry point (detecting trucks only) and a warning light sign indicating "truck entering" and is to be installed at the bottom of the basement access ramp. The induction loop at the driveway entrance shall trigger the secured gate/roller shutter door in the waste loading dock area. A warning light indicating "truck exiting" shall be installed at the top of the basement access ramp, triggered by an in-ground induction loop sensor located prior to the security gates, allowing vehicles detected to automatically trigger the security gates to open for existing vehicles. In accordance with the recommendations of the traffic statement, Ref: 21727, prepared by Varga Traffic Planning Pty Ltd, dated 6 October 2022.

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

77 **Prior to the issue of an Occupation Certificate**, a maintenance bond is to be lodged with Penrith City Council for the for the drainage redirection works and road works, including but not limited to:

- Road and drainage construction in Carson Lane (including the public car park), Carinya Avenue and Lang Park
- Decommissioning works of the existing Council's drainage lines within Lot 1 DP 1070784
- Flood control works in public roads identified in overland flow study addendum 2, prepared by BG&E Pty Ltd, project number S13219, dated 28 Jan 2015.
- Construction of vehicular crossing (including kerb reinstatement of redundant vehicular crossings) to accommodate the turning of 12.5m long Heavy Rigid Vehicle (HRV) as shown in the submitted swept path diagrams.
- Replacement of damaged concrete footpath for the Carson Lane and Lang Park frontage of the site.
- Construction of concrete footpath for the Carson Lane frontage of the site where there is no existing concrete footpath.

The value of the bond shall be determined in accordance with Penrith City Council's Bond Policy. The bond will be administered in accordance with this policy.

Note: 1. Contact Council's Engineering Services Department on 4732 7777 for further information relating to bond requirements.

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

Prior to the issue of a Construction Certificate, an updated site-specific Stormwater Operation and Maintenance manual shall be prepared and submitted to and approved by Council's Principal Planner.

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

79 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 upon request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the treatment measure/s.

80 All verge areas are to be turfed for the full width from back of kerb to property boundary at the completion of the works.

81 **Condition Deleted.**

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

82 **Prior to the issue of a construction certificate**, all drainage re-diversion works associated with the Section 138 Roads Act approval and Section 68 Local Government Act approval shall be inspected and signed off by Penrith City Council. The following compliance documentation shall also be submitted to Council:

- a) Work as Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Construction Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The Work as Executed drawings shall be prepared in accordance with Council's Engineering Construction Specification for Civil Works.
- b) The WAE drawings shall clearly indicate the 1% Annual Exceedence Probability flood lines (local and mainstream flooding).
- c) CCTV footage in DVD format to Council's requirements and a report in "SEWRAT" format for all drainage within public roads and public land. Any damage that is identified is to be rectified in consultation with Penrith City Council.
- d) Surveyor's Certificate certifying that all pipes and services are located wholly within the public roads and public land and that no services encroach boundaries.
- e) Documentation for all road pavement materials used demonstrating compliance with Council's Engineering Construction Specification for Civil Works.

83 **Prior to the issue of a Construction Certificate**, an Operation Management Plan for the garbage collection vehicle accessing the site shall be submitted to the Principal Certifying Authority and a copy shall be provided to Council. The management plan shall include measures to ensure no vehicles to be allowed accessing the basement car parking ramp during the garbage collection vehicle accessing the site.

84 **Prior to the issue of a construction certificate**, a performance bond is to be lodged with Penrith City Council for the drainage redirection works and road works, including but not limited to:

- Road and drainage construction in Carson Lane (including the public car park), Carinya Avenue and Lang Park
 - Decommissioning works of the existing Council drainage lines within Lot 1 DP 1070784
 - Flood control works in public roads identified in the overland flow study addendum 2, prepared by BG&E Pty Ltd, project number S13219, dated 28 January 2015.
 - Construction of vehicular crossings (including kerb reinstatement of redundant vehicular crossings) to accommodate the turning of a 12.5m long Heavy Rigid Vehicle (HRV) as shown on the submitted swept path diagrams
 - Replacement of damaged concrete footpath for the Carson Lane and Lang Park frontage of the site
 - Construction of concrete footpath for the Carson Lane frontage of the site where there is no existing concrete footpath
- The value of the bond shall be determined in accordance with Penrith City Council's Bond Policy. The bond will be administered in accordance with this policy.

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

85 **Prior to the issue of a construction certificate**, a Section 138 Roads Act application and an application under Section 68 of the Local Government Act, including the payment of application and inspection fees, shall be lodged with, and approved by Penrith City Council (being the Roads Authority under the Roads Act), for the drainage re-diversion works and road works, including but not limited to:

- Road and drainage construction in Carson Lane (including the public car park), Carinya Avenue and Lang Park
- Decommissioning works of the existing Council drainage lines within Lot 1 DP 1070784
- Flood control works in public roads identified in the overland flow study addendum 2, prepared by BG&E Pty Ltd, project number S13219, dated 28 January 2015.
- Construction of vehicular crossings (including kerb reinstatement of redundant vehicular crossings) to accommodate the turning of a 12.5m long Heavy Rigid Vehicle (HRV) as shown on the submitted swept path diagrams
- Replacement of damaged concrete footpath for the Carson Lane and Lang Park frontage of the site
- Construction of concrete footpath for the Carson Lane frontage of the site where there is no existing concrete footpath

This may include additional flood control works / drainage works associated with the Section 138 Roads Act and Section 68 Local Government Act applications.

The drainage re-diversion works shall be consistent with the stamped approved concept plans prepared by BG&E Pty Ltd, project number S13219, drawing number C-0010, revision B, dated 29 January 2015 and drawing number C-0020, revision B, dated 29 January 2015.

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, any Roads Act approval issued, Austroad Guidelines and best engineering practice.

Note:

- 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.
- Contact Penrith City Council's Engineering Services Department on (02) 4732 7777 to ascertain applicable fees.

Landscaping

- 86 All landscape works are to be constructed in accordance with the stamped approved plans, Drawing No. LPS4.55-22, Page Numbers 1-16, Issue C, prepared by Conzept Landscape Architects dated October 2022, and Penrith Development Control Plan 2014, except as amended by the below requirements:

Prior to the issue of a Construction Certificate, the landscape plans are to be updated to incorporate the following and submitted to and approved by Council's Principal Planner:

- (a) seating that is directly beneath the exhaust ventilation shaft that is located on the southern side of the common open space area is to be removed. So as not to encourage residents sitting near the vent.
- (b) The services (Fire Hydrant Booster Sprinkler Valve, Water Meter and electricity services) proposed on the Carson Lane front boundary are to be relocated to a more visually sensitive location. These services shall setback from the front boundary, and where possible integrated into front fencing, so as to minimise visual impacts of the services on the streetscape. Consideration shall be given to relocating services in front of the caretaker room facing Carson Lane.

Landscaping shall be maintained:

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

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

As amended on 25 November 2022 under Section 4.55(2) of the Environmental Planning and Assessment Act 1979:

87 The following series of reports relating to landscaping are to be submitted to the nominated consent authority at the appropriate time periods as listed below. These reports shall be prepared by a landscape professional, suitable to design category 3 landscape works.

i. Implementation Report

Upon completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development. The report is to be prepared by a landscape professional suitable to design category 3 landscape works.

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

ii. Maintenance Report

On the first anniversary of the date of the Occupation Certificate issued for the development, a Landscape Maintenance Report is to be submitted to Penrith City Council certifying that the landscape works are still in accordance with the development consent and the plant material is alive and thriving.

This report is to be prepared by a landscape professional suitable to design category 3 landscape works.

iii Final Site Arborist's Report

This report is to be submitted to Penrith City Council 2 years after the Occupation Certificate was issued. This report is to be prepared by a consulting arborist. At Council's discretion this period may be reduced under circumstances where the Site Arborist is able to guarantee the health and ongoing survival of the trees.

iv 3 Year Landscaping Report

3 years after an Occupation Certificate was issued for the development, a landscape professional suitable to design category 3 landscape works shall prepare a Landscaping Report for Council's consideration and approval, certifying to one of the following:

- (a) The landscaping on site has matured and is in accordance with the original landscape approval.
- (b) The landscaping on site has not matured in accordance with the original design philosophy and requires significant restoration.

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

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

89 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.

- 90 All trees that are required to be retained as part of the development are to be protected in accordance with the minimum tree protection standards prescribed in Council's Development Control Plan.
- 91 No trees are to be removed, ringbarked, cut, topped or lopped or willfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.
- 92 (a) Accessibility to all open spaces is to be demonstrated. Clarification is required regarding accessibility of connections between the common open space and private courtyards. Details of inclusive seating and accessibility to all common areas are required (e.g.. raised turf areas are accessible, seating with adjacent space for wheelchairs, with backs and armrests).
(b) The play element is not indicated clearly. Details of the play elements are required.
- 93 A Tree Management Plan shall be provided prior to the issue of a construction certificate. Trees are to be retained and 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
 - comply with the standards prescribed by the Tree Management Plan, and
 - be certified by the author of the Tree Management Plan (TMP) before any works can commence on site. The certification is to be a Compliance Certificate or other written document certifying that the tree protection measures have been installed in accordance with the recommendations in the approved TMP. 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".

Development Contributions

- 94 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, \$1,058,318.00 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S94 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.

- 95 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, \$382,636.00 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S94 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.

- 96 This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan(s) for Cultural Facilities. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$97,797.60 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 S94 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.

Certification

- 97 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.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C3 Water Management

The Modification Application has been reviewed by Council's Environmental Health- Waterways Officer, who raised no objections to the proposal, subject to conditions. It is noted that the rainwater tank is proposed to be removed, and this is consistent with the updated BASIX Certificate submitted. The BASIX Certificate confirms that the amended project meets efficiency targets, including water targets. Through a variety of measures including planting of indigenous or low water use species of vegetation, installation of 4-star showerheads and toilet flushers, 3.5-star dishwashers, and does not involve installation of a swimming pool or spa.

In respect to stormwater treatment, the proposed approach is generally consistent with the scheme originally approved. The approach now includes the use of 20* 690mm stormwater filter cartridges with Ocean Guard pit inserts.

It is recommended that an updated site-specific operation and maintenance manual be prepared regarding stormwater treatment measures. Accordingly, a new condition has been imposed to require that prior to the issue of a construction certificate, a revised site-specific stormwater operation and maintenance manual be prepared and submitted to and approved by Council.

C4 Land Management

The Modification does not alter the suitability of the site for the proposal in terms of land contamination considerations, as assessed under the original development application. It is noted that Council's original assessment report prepared in relation to DA14/0513 indicated that "It is determined that the site is suitable for redevelopment for residential purposes subject to conditions of consent requiring further sampling and submission of validation certificates after demolition works and removal of the structures and soil". The proposal does not alter any conditions relating to land management, which remain.

C13 Infrastructure and Services

Conditions of consent were imposed on the original consent to ensure that the site is suitably serviced, Conditions regarding servicing remain relevant and have been retained.

D2 Residential Development

D2.5 Residential Flat Buildings

- The proposal does not amend the front and rear building setbacks as approved under Development Consent DA14/0513.
- The proposal does not amend the side building setbacks as approved under Development Consent DA14/0513.
- The impacts of visual and acoustic privacy were assessed in the assessment of DA14/0513 and determined to be appropriate as a result of the setbacks and landscaped areas proposed. The setbacks and landscaped area of the development remains substantially the same as that of the approved development.
- The Modification was accompanied by an updated BASIX Certificate to address energy and water efficiency.
- The modification application provides for 10% of accessible units consistent with DA14/0513. An updated Accessibility report was submitted to address the amended plans.