

<b>SWCPP Ref. No.:</b>	PPSSWC-296
<b>DA No.:</b>	DA22/1171
<b>PROPOSED DEVELOPMENT:</b>	Construction of Seniors Housing Development including Five (5) Buildings (3 to 4 Storeys) containing 147 Independent Living Units & Resident Clubhouse, Single Level Basement Car Park & Associated Demolition Works, Tree Removal, Earthworks, Landscaping & Stormwater Drainage Works
<b>PROPERTY ADDRESS:</b>	8 Troy Street, EMU PLAINS NSW 2750 6 Troy Street, EMU PLAINS NSW 2750 1 - 3 Emerald Street, EMU PLAINS NSW 2750
<b>PROPERTY DESCRIPTION:</b>	Lot 14 DP 232740, Lot 15 DP 232740, Lot 10 DP 1242243,
<b>ZONING:</b>	Zone R3 Medium Density Residential - LEP 2010
<b>CLASS OF BUILDING:</b>	Class 2 , Class 7a
<b>ASSESSING OFFICER</b>	Wendy Connell
<b>APPLICANT:</b>	Uniting (Nsw.Act)
<b>DATE RECEIVED:</b>	9 December 2022
<b>REPORT BY:</b>	Wendy Connell, Senior Planner, Penrith City Council
<b>RECOMMENDATIONS:</b>	Approve

## Assessment Report

### Executive Summary

This development application seeks consent for the construction of a seniors housing development including 147 independent living units (ILUs), 113 car parking spaces (including 30 accessible spaces), resident clubhouse, removal of 24 trees or tree groups, demolition of existing ILUs, two dwellings and associated structures, stormwater easement relocation and realignment, earthworks, stormwater infrastructure and landscaping at 1-3 Emerald Street and 6-8 Troy Street, Emu Plains.

The subject site is known as 1-3 Emerald Street and 6-8 Troy Street, Emu Plains, with the legal property description of the site provided below:

- Lot 10 DP 1242243 (1-3 Emerald Street, Emu Plains);
- Lot 15 DP 232740 (6 Troy Street, Emu Plains); and
- Lot 14 DP 232740 (8 Troy Street, Emu Plains).

The site has a total area of 20,161sq.m and is zoned R3 Medium Density Residential under Penrith Local Environmental Plan (LEP) 2010. The site is subject to an easement for underground mains, drainage and electrical purposes.

The development application was lodged as integrated development in accordance with Section 4.46 of the Environmental Planning and Assessment Act 1979. The proposal was referred to Water NSW under Section 90(2) of the Water Management Act 2000 due to proposed basement construction resulting in aquifer interference and

requiring dewatering. General terms of approval (GTAs) were issued by Water NSW via its letter dated 14 March 2023. Subsequently, the proposal was amended which included a redesign of the basement from two single level basements to one single level basement. Water NSW advised in its subsequent letter dated 7 November 2023 that there were no objections to the revised scheme and that the GTAs issued on 14 March 2023 remain current.

In accordance with Council's Community Engagement Strategy and Community Participation Plan, the development application was publicly notified to owners and occupiers of surrounding properties, advertised in the local newspaper and publicly exhibited between 23 January and 23 February 2023. Re-notification was required during the assessment period due to amendments made to the proposal. The second public exhibition period was between 8 November and 8 December 2023. A total of four unique submissions were received in response to the public exhibition processes. Key matters raised in the submissions include concerns regarding loss of privacy, overshadowing, construction noise, dust and vibration, construction traffic and parking impacts and decrease in property values. These matters have been considered as part of the assessment process and are addressed in this report.

Key issues identified during the assessment of the proposal include:

- Retention of existing trees;
- Building height standard variation sought under Clause 4.6 of Penrith LEP 2010; and
- Flooding impacts and flood evacuation.

The identified key issues were raised with the applicant who has addressed these matters by submission of additional documentation, amended plans or, where appropriate, the matters will be addressed via recommended conditions of consent.

The development application was referred to the NSW Reconstruction Authority (formally Resilience NSW) and NSW State Emergency Service (SES) in relation to flood evacuation management. No response has been received in this regard at the time of writing this report.

The proposed development has a capital investment value (CIV) of \$91,500,000. Accordingly, pursuant to Schedule 6 of State Environment Planning Policy (Planning Systems) 2021, the proposal meets the category requirements of '*General development over \$30 million*' and is classed to be 'regionally significant development'. In accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel (SWCPP) is the determining authority for regionally significant development.

An assessment of the proposal under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the development application is recommended for approval, subject to recommended conditions.

## Site & Surrounds

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The subject site is known as 1-3 Emerald Street and 6-8 Troy Street, Emu Plains, with the legal property description of the site provided below:

- Lot 10 DP 1242243 (1-3 Emerald Street, Emu Plains);
- Lot 15 DP 232740 (6 Troy Street, Emu Plains); and
- Lot 14 DP 232740 (8 Troy Street, Emu Plains).



Figure 1: Site plan (Nearmap)

The site has a total area of 20,161sq.m and is zoned R3 Medium Density Residential under Penrith Local Environmental Plan (LEP) 2010. The site is subject to easements for underground mains, drainage and electrical purposes.

The site currently contains a recently constructed and occupied residential aged care facility (RACF) with associated car parking and landscaping. The RACF was approved in 2018 as Stage 1 in the re-development of the site under DA18/0306 and subsequent modification application Mod22/0125.

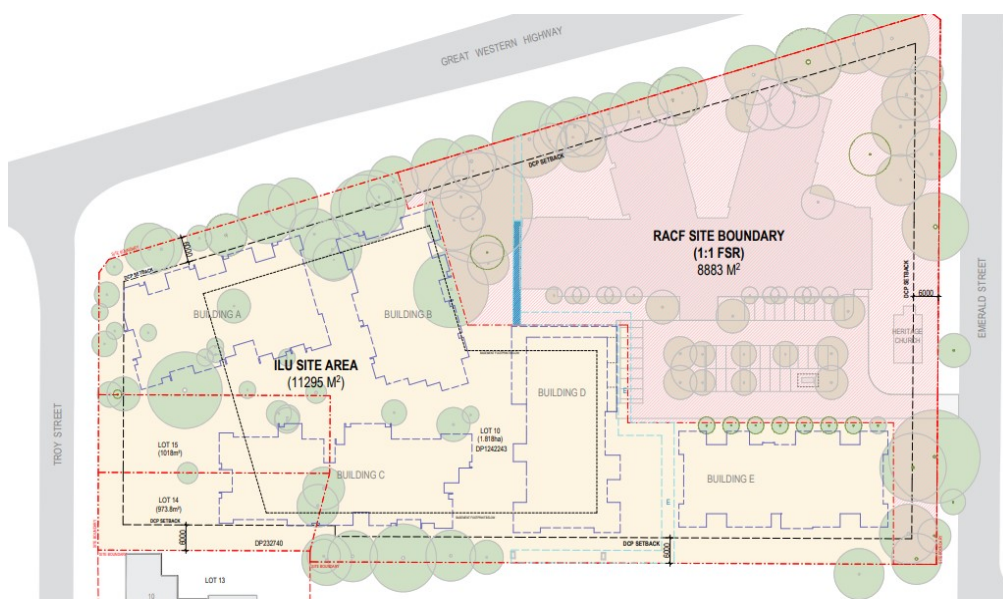


Figure 2: Staging layout (Group GSA)

The site also contains 45 existing independent living units (ILUs), car parking, access roads and landscaping. The existing buildings are a mixture of one and two storey structures. Two single dwellings are also present on the site at 6 and 8 Troy Street and a local heritage item being a sandstone church building is located along Emerald Street.

The site is relatively flat with a 1m to 1.5m cross slope, being higher at the south-eastern corner of the site (RL 27.5m) and falling away towards the north-western corner (RL 26.1m). The site is identified as being subject to local overland flow flooding and includes a mixture of mature trees and bushes primarily along the Great Western Highway frontage and to the corners of the Great Western Highway and Emerald Street and the Great Western

Highway and Troy Street. A continuous pedestrian path is provided to all frontages.

Opposite the site along the northern side of the Great Western Highway is the Lennox Village Shopping Centre which provides for a mixture of retail stores and at-grade car parking. Directly adjoining the site to the south is the Emu Plains Public School, while Troy Street to the south of the site consists of detached dwelling houses. Directly opposite the site on the western side of Troy Street includes multi-dwelling housing. Detached dwellings are located directly opposite the site along the eastern side of Emerald Street.

## Proposal

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The development application seeks consent for seniors housing, including the following aspects:

- Demolition of existing independent living units (ILUs), dwelling houses and associated structures;
- Removal of 24 trees or tree groups;
- Construction of 147 ILUs across five buildings as follows:
  - Building A - 31 units (7 x 1 bedroom, 16 x 2 bedroom and 8 x 3 bedroom units);
  - Building B - 28 units (12 x 1 bedroom, 12 x 2 bedroom and 4 x 3 bedroom units);
  - Building C - 32 units (7 x 1 bedroom, 13 x 2 bedroom and 12 x 3 bedroom units);
  - Building D - 27 units (7 x 1 bedroom, 16 x 2 bedroom and 4 x 3 bedroom units);
  - Building E - 29 units (29 x 1 bedroom units);
- Construction of resident clubhouse in Building D;
- One level of basement parking containing 113 car parking spaces (including 30 accessible car spaces) and waste rooms;
- Relocation and realignment of stormwater drainage easement on the site; and
- Associated earthworks, stormwater infrastructure and landscaping.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

- **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**

In accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel (SWCPP) is the determining authority for this development application as the proposal is identified as regionally significant development under State Environment Planning Policy (Planning Systems) 2021.

The documents submitted with the development application identify that the proposed seniors housing development has a Capital Investment Value (CIV) of \$91,500,00. Pursuant to Schedule 6 of State Environment Planning Policy (Planning Systems) 2021, the proposal meets the category requirements of '*General development over \$30 million*' and is classed to be 'regionally significant development'.

The SWCPP was briefed on the development proposal on 8 May 2023 and 12 February 2024.

- **Section 4.15 - Evaluation**

The proposed 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 such, the following matters have been identified for consideration.

- **Section 4.46 - Integrated development**

The development application was lodged as integrated development in accordance with Section 4.46 of the Environmental Planning and Assessment Act 1979 and seeks concurrent approval from Water NSW under Section 90(2) of the Water Management Act 2000 due to proposed basement construction resulting in aquifer interference and requiring dewatering.

General terms of approval (GTAs) were issued by Water NSW via its letter dated 14 March 2023. Subsequently, the proposal was amended which included a redesign of the basement from two single level basements to one single level basement. Water NSW advised in its subsequent letter dated 7 November 2023 that there were no objections to the revised scheme and that the GTAs issued on 14 March 2023 remain current. A condition of consent is recommended requiring implementation of the Water NSW GTAs.

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

## State Environmental Planning Policy (Biodiversity and Conservation) 2021

An assessment has been undertaken of the proposal against relevant criteria in Chapter 6 - Water Catchments of State Environmental Planning Policy (Biodiversity and Conservation) 2021 and the proposal is satisfactory subject to recommended conditions of consent.

The SEPP aims “to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context”. The SEPP requires assessment of development applications with regard to general and specific considerations, policies and strategies.

The proposal is in accordance with the general and specific aims, planning considerations, planning policies and recommended strategies of the SEPP. Subject to recommended conditions of consent, appropriate water, wastewater and waste management measures will be in place and as such, it is not considered likely that the proposal will result in any adverse impacts on the Hawkesbury-Nepean River system.

## State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ensures the implementation of the BASIX scheme which encourages sustainable residential development. It requires certain kinds of residential development to be accompanied by a list of commitments to be carried out by applicants.

BASIX Certificate No. 1309348\_02, dated 29 September 2023 was submitted in this regard demonstrating compliance with set sustainability targets for water use, energy efficiency and thermal comfort. Proposed BASIX commitments include a photovoltaic system on the rooftop, 4 and 5 star water saving fittings and insulation. Implementation of the BASIX commitments will be secured via a recommended condition of consent.

## State Environmental Planning Policy (Housing) 2021

State Environmental Planning Policy (Housing) 2021 seeks to facilitate development of affordable and diverse housing in suitable locations for the various stages of life. An assessment of the proposal against the relevant sections of the SEPP is provided below.

<b>Chapter 3 - Diverse Housing</b>			
<b>Part 5 - Housing for Seniors and People with a Disability</b>			
Part 5 of Chapter 3 focuses on locational requirements and design standards. Part 5 is split into divisions which outline requirements to be met. An assessment has been undertaken against the applicable sections below.			
<b>Division 1 - Land to which Part applies</b>	<b>Requirement</b>	<b>Proposed Development</b>	<b>Compliance</b>
79. Land to which Part applies		The Housing SEPP applies to the site as the land is zoned R3 Medium Density Residential.	Yes
81. Seniors housing permitted with consent		Seniors housing is permitted with consent on the site.	Yes
<b>Division 3 - Development standards</b>	<b>Requirement</b>	<b>Proposed Development</b>	<b>Compliance</b>

84. Development standards - general	Site size - min. 1000sq.m	The site has a total area of 20,161sq.m.	Yes - although does not apply to a social housing provider.
	Site frontage - min. 20m	Frontages: <ul style="list-style-type: none"> <li>• 206.35m to Great Western Highway;</li> <li>• 128.24m to Emerald Street; and</li> <li>• 65.31m to Troy Street.</li> </ul>	Yes - although does not apply to a social housing provider.
	Building height in residential zones where residential flat buildings are not permitted - 9.5m, excluding servicing equipment	Building heights to roof level do not comply with 9.5m provision. Building heights proposed are as follows: <ul style="list-style-type: none"> <li>• Building A - 14.25m</li> <li>• Building B - 13.77m</li> <li>• Building C - 14.27m</li> <li>• Building D - 14.48m</li> <li>• Building E - 10.41m</li> </ul>	No - refer to discussion later in report regarding proposed Clause 4.6 variation to development standard.
	Roof servicing equipment resulting in a building height more than 9.5m - the servicing equipment must: <p>(a) Be integrated/contained or suitably screened from public places;</p> <p>(b) Be limited to an area of no more than 20% of the surface area of the roof; and</p> <p>(c) Not result in the building having a height of more than 11.5m.</p>	The servicing equipment on the rooftop is screened and centrally located from public view. <p>The servicing equipment area does not exceed 20% of the surface area of the rooftop.</p> <p>The building heights, including servicing equipment, do not comply with the height limit of 11.5m as follows:</p> <ul style="list-style-type: none"> <li>• Building A - 15.88m</li> <li>• Building B - 15.43m</li> <li>• Building C - 15.97m</li> <li>• Building D - 16.11m</li> <li>• Building E - 12.04m</li> </ul>	Partial - refer to discussion later in report regarding proposed Clause 4.6 variation to development standard.

	<p>Height more than 2 storeys - additional storeys set back within planes that project at 45 degrees inwards from the boundaries of the site</p>	<p>There are encroachments into the building envelope in three locations:</p> <ul style="list-style-type: none"> <li>• Building A - along the side boundary of Troy Street;</li> <li>• Building C - along the rear boundary; and</li> <li>• Building D - along the rear boundary.</li> </ul>	<p>No - refer to discussion later in report regarding proposed Clause 4.6 variation to development standard.</p>
<p>85. Development standards for hostels and independent living units - Schedule 4</p>	<p><i>Part 1 - Standards applying to hostels and independent living units</i></p> <ul style="list-style-type: none"> <li>• Siting standards</li> <li>• Letter boxes</li> <li>• Car parking</li> <li>• Accessible entry Interiors</li> <li>• Bedroom</li> <li>• Bathroom</li> <li>• Toilet</li> <li>• Surface of balconies and external paved areas</li> <li>• Door hardware switches and power points</li> <li>• Private passenger lifts</li> </ul>	<p>The submitted Access Report prepared by Accessible Building Solutions and dated 12 October 2023 outlines compliance is, or can be achieved for standards required under Schedule 4.</p> <p>A condition of consent is recommended to ensure that the applicable requirements in Schedule 4 of the SEPP are detailed as part of the Construction Certificate application.</p>	<p>Yes</p>
	<p><i>Part 2 - Additional standards for independent living units</i></p> <ul style="list-style-type: none"> <li>• Bedroom</li> <li>• Living room</li> <li>• Main area of private open space</li> <li>• Kitchen</li> <li>• Laundry</li> <li>• Linen storage</li> <li>• Lift access in multi storey buildings</li> <li>• Garbage and recycling</li> </ul>	<p>As above.</p>	<p>Yes</p>
<p>88. Restrictions on occupation of seniors housing</p>	<p>Kinds of people to occupy accommodation</p>	<p>A condition of consent is recommended requiring a restriction on title limiting the use of the dwellings to the kinds of people referred to in Section 88 of the Housing SEPP.</p>	<p>Yes</p>



Division 4 - Site related requirements	Requirement	Proposed Development	Compliance
93. Location and access to facilities and services - independent living units	Access to facilities and services on site or via transport with a maximum distance of 400m from the site along an accessible pathway.	<p>There are four bus stops located within 400m of the site, with the closest being within 200m. The closest bus stop is situated along the Great Western Highway for both the eastern and western approaches and is serviced frequently by various routes. Areas serviced include Emu Plains Station, Penrith City Centre and local centres such as Blaxland and Springwood.</p> <p>The Lennox Village Shopping Centre is located directly across the Great Western Highway. The shopping centre offers large chain supermarkets, retail shops, post office, chemist, medical services, newsagency and food and drink premises. Access to the shopping centre is via compliant footpaths and a signalised pedestrian crossing. Emu Plains Community Centre and public open space is located to the east of the shopping centre.</p>	Yes
95. Water and sewer	Housing will be connected to a reticulated water system with adequate wastewater disposal.	<p>Essential services are currently available to the site.</p> <p>Sydney Water reviewed the proposal and raised no concerns in relation to the availability of water and sewer services. A condition of consent is recommended requiring that a Sydney Water Compliance Certificate be obtained prior to the issue of an Occupation Certificate.</p>	Yes

Division 5 - Design requirements	Requirement	Proposed Development	Compliance
<p>97. Seniors Living Policy: Urban Design Guideline for Infill Development</p> <p><i><u>Note:</u> Recent changes on 14 December 2023 to Section 97 of the SEPP refer to a new Seniors Housing Design Guide. Given the prior lodgement date of the application, an assessment has been undertaken against the Seniors Living Policy. However, the proposal is not in conflict with any aspect of the new Seniors Housing Design Guide.</i></p>	Responding to context	The site has operated for many years as a seniors housing and residential aged care facility. The proposed development is Stage 2 of the site's re-development to provide a more contemporary form of seniors housing. The proposal has responded to the special characteristics of the site including the heritage item, established vegetation and overland flow flooding and also to surrounding development in the adjacent R2 and R3 zoned land.	Yes
	Site planning and design	The design and layout of the proposed development has responded to site specific constraints and high value site characteristics.	Yes

	Impact on streetscape	<p>The proposed building setbacks provide a suitable curtilage to the heritage item on the site, landscaped setbacks are provided along all site boundaries and high value vegetation has been retained to maintain the established streetscape and local area character.</p> <p>The building massing is broken up and articulated on all elevations. Proposed external building materials are high quality and complementary to the existing residential aged care facility on the site.</p> <p>Proposed landscaping will positively contribute to the streetscape.</p> <p>Vehicle parking will not be visible from the streetscape. Parking is proposed in a basement level and will be accessed via an existing driveway off Emerald Street and through the existing car park constructed as part of Stage 1 of the site's re-development.</p>	Yes
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	Impact on neighbours	<p>Impacts on neighbouring properties have been minimised by generous setbacks and proposed landscaping. The proposed building forms respond to the low scale context of the site. A three storey building form is proposed adjacent to the R2 zone land along Emerald Street (Building E) and a partial three storey building form is proposed adjoining the R3 zoned land and existing single storey dwelling at 10 Troy Street (Building C).</p> <p>Although some overshadowing impacts are expected to the private open space of 10 Troy Street, it has been assessed that the private open space will receive adequate solar access during mid-winter.</p>	Yes
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	Internal site amenity	<p>ADG compliant solar access is provided to 72% of apartments (the ADG provision is for 70% compliance).</p> <p>A total of 61% of apartments are cross ventilated (the ADG provision is for 60% compliance).</p> <p>Landscaped areas will includes accessible and connected pathways throughout the site and well proportioned and landscaped areas for social interaction.</p> <p>Private balconies are provided off living spaces and are generously sized with the majority facing east, north and west. A communal room is also provided in Building D for organised activities and social events.</p>	Yes
<p><b>Division 6 - Design principles for seniors housing</b></p> <p><i><u>Note:</u> Recent changes on 14 December 2023 to Sections 97 and 98 of the SEPP mean that Division 6 is now repealed and reference is made to Division 8. Given the prior lodgement date of the application, an assessment has been undertaken against Division 6, noting that the same provisions largely apply.</i></p>			

Neighbourhood amenity and streetscape	Recognise and respond to the area's character and consider heritage items, maintain reasonable amenity and character and retain existing trees.	<p>The proposed development will retain existing canopy trees along the Great Western Highway and the southern boundary of the site. These trees are a key landscape feature of the area. The proposed landscaping is complementary and will further contribute to the character of the area.</p> <p>The proposed setbacks of Building E are complementary to the existing residential aged care facility on the site and heritage church building located along Emerald Street. The heritage building will retain its landscape curtilage.</p> <p>Proposed building setbacks are similar to, if not the same as existing structures proposed for demolition and the existing residential aged care facility. Setbacks are generous and appropriate considering the higher density urban form proposed and existing lower density residential context in which the site sits.</p> <p>Proposed landscaping will be an extension of existing landscaping surrounding the existing residential aged care facility and will contribute positively to the locality.</p> <p>Building footprints have been located to ensure the retention of established and significant trees, particularly along the Great Western Highway and southern boundary of the site.</p>	Yes
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Visual and acoustic privacy	Consider the visual and acoustic privacy of adjacent neighbours and residents of the development.	<p>The proposed development is appropriately set back from site boundaries. The majority of windows and openings in the buildings have been designed to face a communal space, the street frontage or the open space of the adjoining school.</p> <p>Building C, which adjoins a single storey dwelling at 10 Troy Street, is setback significantly from Troy Street, and has minimal window, openings and balconies along the southern side of the building. A condition of consent is recommended for a privacy screen to be provided along the southern balcony edges of Units C109 and C209 to provide additional privacy to the private open space of 10 Troy Street.</p> <p>Only one vehicle access driveway to the basement is proposed which will service all five buildings. The driveway ramp is located between Buildings D and E and will be accessed via the existing car park.</p> <p>The internal noise criteria outlined in the Acoustic Report will need to be satisfied. This can be achieved through the recommended glazing solutions.</p> <p>A condition of consent is recommended requiring further details on mechanical plant which includes the access gate to the basement car park.</p>	Yes
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Solar access and design for climate	<p>Adequate solar access to residents of the development without adversely impacting the amount of daylight in neighbouring buildings.</p> <p>Site design to minimise energy use and maximise natural ventilation, solar heating and lighting to living and dining areas.</p>	<p>ADG compliant solar access is provided to 72% of apartments (the ADG provision is for 70% compliance).</p> <p>A total of 61% of apartments are cross ventilated (the ADG provision is for 60% compliance).</p> <p>Five separate buildings are proposed which have adequate separation to allow for air circulation between buildings.</p> <p>While some additional overshadowing to neighbouring properties to the south will occur, the extent of shadowing is considered reasonable.</p> <p>The development application was submitted with BASIX and NatHERs Certificates outlining sustainability commitments and ensuring conservation of energy, reduction in emissions and the like.</p>	Yes
Stormwater	Control and minimise stormwater run-off and include OSD where practical.	Council's Development Engineer has reviewed the proposed stormwater management strategy and is satisfied with this aspect of the proposal subject to recommended conditions.	Yes



Crime prevention	Ensure passive surveillance and lockable shared entries.	<p>The proposed development has been designed in accordance with key CPTED principles, such as primary living areas fronting communal open spaces to enhance surveillance.</p> <p>Conditions to address safety and security are recommended, such as the requirement to submit a lighting strategy and a maintenance plan for the upkeep of landscaping.</p>	Yes
Accessibility	Safe pedestrian links to public transport and facilities and safe and convenient access and parking.	Pedestrian paths are to be provided within the site which will connect to the external footpath network.	Yes
Waste management	Provide waste facilities that maximise recycling.	<p>Waste and recycling infrastructure is incorporated into the proposed development.</p> <p>All waste servicing will occur from the basement with the exception of Building E, where waste will be collected from the at-grade driveway/parking area adjoining the building.</p> <p>The existing residential aged care facility on the site is privately serviced and this waste service will be extended to the proposed independent living units.</p>	Yes
<b>Division 7 - Non-discretionary development standards</b>	<b>Requirement</b>	<b>Proposed Development</b>	<b>Compliance</b>
108. Non-discretionary development standards for independent living units	This section of the SEPP outlines minimum requirements for development and dictates that a consent authority cannot refuse an application on the specific grounds mentioned if the development provides at	<p>The proposed development meets, or exceeds the minimum provisions for landscaped area, deep soil, solar access, private open space and parking, as detailed below:</p> <ul style="list-style-type: none"> <li>46.5% landscaped area</li> </ul>	Partial

	<p>least the minimum requirement stated at each section or does not exceed limits when they are expressed as such.</p> <p>The sections relate to height, density and scale (expressed as a floor space ratio), landscaped area, deep soil zones, solar access and parking.</p>	<p>is provided, which exceeds the 30% provision;</p> <ul style="list-style-type: none"> <li>• 19.5% deep soil is provided, which exceeds the 15% provision;</li> <li>• Compliant solar access is achieved for 72% of units;</li> <li>• Private open space is provided for each unit and meets or exceeds the minimum size provisions; and</li> <li>• The development is proposed by a registered social housing provider. There are 113 on-site car parking spaces proposed in a single basement level. The minimum parking provision for the proposed development is one car space per five dwellings. The proposal exceeds this minimum requirement of 30 car spaces.</li> </ul> <p>The proposed development exceeds the stated height provisions (as discussed later in this report) and FSR provision (0.5:1, whereas 1.22:1 is proposed - although no FSR provision applies to the site under Penrith LEP 2010). This means the consent authority could refuse the development application based on height and density/scale grounds. However, the assessment of the proposal concludes that the proposed development provides for a compatible and positive urban outcome, and the recommendation is</p>	
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		to approve the application subject to recommended conditions.	
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## **State Environmental Planning Policy (Planning Systems) 2021**

The documents submitted with the development application identify that the proposed seniors housing development has a Capital Investment Value (CIV) of \$91,500,000. Pursuant to Schedule 6 of State Environment Planning Policy (Planning Systems) 2021, the proposal meets the category requirements of '*General development over \$30 million*' and is classed to be 'regionally significant development'. In accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel (SWCPP) is the determining authority for regionally significant development.

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

State Environmental Planning Policy (Resilience and Hazards) 2021 includes aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state.

Section 4.6(1) of the SEPP prevents consent authorities from consenting to a proposed development unless it has considered whether the land is contaminated and is satisfied that the land is suitable (or will be suitable, after remediation) for the purpose for which development is proposed to be carried out.

In this regard, the applicant submitted a 'Report on Detailed Site Investigation (Contamination)' (DSI) prepared by Douglas Partners Pty Ltd, dated May 2022 (Project 84503.02). This investigation included a review of previous investigations carried out on the site, as well as a further sampling program to address the potential contaminating sources identified through the Concept Site Model.

Soil sampling found an exceedance of the site assessment criteria for Total Recoverable Hydrocarbons (TRH) at BH113, located adjacent to the on-site workshop. This finding was attributed to a potential minor spill due to activities in the workshop. This minor exceedance was not considered significant after statistical analysis, however the report recommends that additional investigation be carried out in the vicinity of BH113, and of the workshop footprint, after the demolition of the workshop.

In addition to soil sampling, groundwater sampling was undertaken. While there were a number of minor exceedances of the criteria for lead, zinc and PFOS (perfluorooctane sulfonate), these exceedances were not considered to be of concern, with appropriate justification provided. Low levels of TRH were also found, and a potential source is not known. It was therefore recommended in the DSI that additional groundwater testing be undertaken.

The review of the documentation regarding fill material imported to the site found that one source site had historically been used as a dry cleaning business. It was therefore recommended in the DSI that additional information be obtained in this regard so that a risk assessment could be undertaken.

Although the DSI concluded that the site can be made suitable for the proposed development, this was contingent on the implementation of a number of recommendations, as detailed in Section 12. While some of these recommendations could be addressed as development of the site progresses, the recommendations relating to groundwater testing and the source of the imported fill material, as outlined above, needed to be resolved prior to determination of the application.

Furthermore, it was noted that additional site works had been carried out since the preparation of the DSI, such as the demolition of the car park located at 6 Troy Street, and these changes to the site conditions were required to be addressed.

The was therefore requested to provide an addendum to the DSI to address the above matters and the

current site conditions.

The applicant subsequently provided the requested addendum to the DSI. The addendum ('Addendum to Report on Detailed Site Investigation (Contamination), Proposed Seniors Housing Development, Uniting Edinglassie Development, Emu Plains') prepared by Tetra Tech Coffey Pty Ltd, dated 14 February 2024 (Ref. SYDEN346305-L01) has addressed each of the matters outlined above as follows:

- The addendum provides suitable justification to support an argument for no further groundwater testing and the addendum conclusions are considered satisfactory.
- Additional investigations were carried out into the source site of the fill material, including reviewing other contamination documents that had been prepared for the site. No further information is necessary in this regard, as it was confirmed that the material was not likely to have been impacted by the dry cleaning activities and no further investigations or remediation was recommended.
- The activities undertaken on the site since the preparation of the DSI were reviewed and no additional investigations are required.

In turn, the site is considered suitable for the proposed use, subject to the implementation of the remaining recommendations of the DSI. These recommendations have been captured through recommended conditions of consent.

## **State Environmental Planning Policy (Transport and Infrastructure) 2021**

The development proposal was referred to the relevant public authorities in accordance with the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021, as outlined below.

### **Division 5 - Electricity transmission or distribution**

#### Section 2.48 - Determination of development applications - other development

Section 2.48 of the SEPP relates to development within or adjacent to an easement for electricity purposes and states that the consent authority must:

- (a) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
- (b) take into consideration any response to the notice that is received within 21 days after the notice is given.*

The development application was referred to Endeavour Energy for its review on two occasions during the assessment period. In letters dated 21 April 2023 and 2 November 2023, Endeavour Energy raised no objection to the development proposal subject to recommended conditions of consent.

### **Division 17 - Roads and traffic**

#### Section 2.119 - Development with frontage to classified road

Section 2.119 of the SEPP relates to development with frontage to a classified road and states that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
  - (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*

*(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

*(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

It should be noted that although the site has a frontage to the Great Western Highway, it has no direct access. Vehicle access to the site is via Emerald Street.

Works proposed will involve trucks and construction vehicles entering and leaving the site during the construction phase of the development and will also involve activities that may create dust. Impacts related to these works and related activities can be adequately managed via recommended conditions of consent. The activities proposed at the site are not in conflict with the objectives of Section 2.119 of the SEPP in that the works will not compromise the effective and ongoing operation of the classified road (Great Western Highway) and will not result in negative impacts related to dust or emissions emanating from the site that cannot be mitigated through the imposition of conditions of consent.

Notwithstanding the above, a condition of consent is recommended to require the submission of a Construction Traffic Management Plan (CTMP) to be endorsed by Council prior to the commencement of works. Conditions are also recommended relating to erosion and sediment control and management of dust and mud from construction activities.

#### Section 2.122 - Traffic generating development

This section applies to the proposal as it is identified in Schedule 3 of the SEPP as traffic generating development as more than 75 dwellings are proposed with site access to a road which has a connection to a classified road that is within 90m, noting the originally proposed vehicle access via Troy Street was within 90m of the Troy Street connection to the Great Western Highway.

Section 2.122(4) states that before determining a development application for development to which this section applies, the consent authority must:

*(a) give written notice of the application to RMS within 7 days after the application is made, and*

*(b) take into consideration:*

*(i) any submission that RMS provides in response to that notice within 21 days after the notice was given, and*

*(ii) the accessibility of the site concerned, including:*

*(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*

*(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*

*(iii) any potential traffic safety, road congestion or parking implications of the development.*

The development application was referred to Transport for NSW (TfNSW) for its review and comment. In its letter dated 20 February 2023, TfNSW raised no objections to the proposed development.

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

It is considered that State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development and the Apartment Design Guide (ADG) do not strictly apply to a proposal for seniors housing which has been made pursuant to the Housing SEPP. The Housing SEPP contains specific requirements relating to siting, design, local character and internal amenity. The principles and aims of these controls are similar to those in the ADG.

However, it is acknowledged that the proposed development is a type of residential accommodation, and that the proposal is three and four storeys in height and contains more than four dwellings. This would be the trigger to apply SEPP 65 for a residential flat building.

Therefore, the planning assessment has considered the principles, aims and controls of SEPP 65 and the ADG, particularly those controls relating to site layout and internal amenity. In this regard, the following comments are made:

- The proposal was considered by Council's Urban Design Review Panel (UDRP) both prior to, and after lodgement of the development application, whereby a range of design matters were raised and resolved via plan amendments;
- The development application was accompanied by a design verification statement prepared by a registered architect (Group GSA), verifying that the SEPP 65 design quality principles and ADG provisions are achieved for the proposed development;
- The proposed buildings are up to four storeys in height and the building separation exceeds 6m across the site;
- ADG compliant communal open space and deep soil areas are provided;
- A mix of apartment sizes and types is provided;
- All of the apartments are larger than the minimum size requirements of the ADG as applicable to one, two and three bedroom apartments;
- The majority of the apartments (60%) have two or three bedrooms which provides better amenity for senior occupants to have carers or family members stay over;
- Every apartment has private open space in the form of a balcony or terrace area. The private open space areas satisfy the minimum size requirements of the ADG as applicable to one, two and three bedroom apartments;
- Compliant solar access is provided to 106 of the total 147 units, representing 72% of apartments (the ADG provision is for 70% compliance); and
- A total of 89 of the 147 units are cross ventilated, representing 61% of apartments (the ADG provision is for 60% compliance).

## Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 2.7 Demolition requires development consent	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 5.21 Flood planning	Complies - See discussion
Clause 7.1 Earthworks	Complies - See discussion
Clause 7.4 Sustainable development	Complies - See discussion
Clause 7.6 Salinity	Complies - See discussion
Clause 7.7 Servicing	Complies - See discussion
Clause 7.30 Urban Heat	Complies - See discussion

### Clause 2.3 Permissibility

The proposal seeks consent for 'seniors housing' which is defined under the LEP as follows:

*Seniors housing means a building or place that is -*

- (a) a residential care facility, or*
- (b) a hostel within the meaning of State Environmental Planning Policy (Housing) 2021, Chapter 3, Part 5, or*
- (c) a group of independent living units, or*
- (d) a combination of any of the buildings or places referred to in paragraphs (a)-(c), and that is, or is intended to be, used permanently for -*
- (e) seniors or people who have a disability, or*
- (f) people who live in the same household with seniors or people who have a disability, or*
- (g) staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,*
- but does not include a hospital.*

The proposed seniors housing is comprised of 'independent living units' which is defined under the LEP as follows:

*Independent living unit means a dwelling or part of a building, whether or not attached to another dwelling -*

- (a) used to house seniors or people with a disability, and*
- (b) containing private facilities for cooking, sleeping and bathing, and*
- (c) where clothes washing facilities or other facilities for use in connection with the dwelling or part of a building may be provided on a shared basis,*
- but does not include a hostel.*

The site is zoned R3 Medium Density Residential under the LEP. 'Seniors housing', including 'independent living units', is a permissible land use in the R3 zone with consent.

### **Clause 2.3 Zone objectives**

The objectives of the R3 zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To enhance the essential character and identity of established residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The proposed development complies with the zone objectives in that it provides for purpose built independent living units to cater for community needs in an established setting which has provided seniors housing and residential aged care for a number of years. The site location is in close proximity to services and facilities and the proposed development will provide for a high level of amenity for residents while also maintaining the amenity and character of the surrounding area.

### **Clause 4.3 Height of buildings**

Clause 4.3 of the LEP establishes an 8.5m building height maximum for the site. Although the proposed development exceeds this height limit, State Environmental Planning Policy (Housing) 2021 establishes specific building height provisions for seniors housing proposals. Further discussion in relation to this matter is outlined under the 'Clause 4.6' heading below.

### **Clause 4.6 Exceptions to development standards**



Clause 4.6 of the LEP provides flexibility in the application of planning provisions operating as development standards in circumstances where strict compliance with those standards would, in particular cases, be unreasonable or unnecessary.

Clause 4.6 states under sub-clause (2) that development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environment planning instrument. Sub-clause (3) states that development consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant has submitted a written request to vary the height of buildings and building envelope development standards for seniors housing which are requirements under the following sections of State Environmental Planning Policy (Housing) 2021:

- Section 84(2)(c)(i);
- Section 84(2)(c)(ii);
- Section 84(2)(c)(iii); and
- Section 108(b).

Section 84(2)(c) of the Housing SEPP provides for building heights as follows for development on land in a residential zone where residential flat buildings are not permitted, as per the subject site:

- (i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and*
- (ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m - the servicing equipment complies with subsection (3), and*
- (iii) if the development results in a building with more than 2 storeys - the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site.*

The building heights proposed and the extent of variation for each building is outlined below.

*Table 1 - Proposed Building Heights (Roof Level) and Variation Extent (Section 84(2)(c)(i) - Roof Height of 9.5m)*

<b>Building</b>	<b>Proposed Height to Roof Level</b>	<b>Extent of Variation (m)</b>	<b>Extent of Variation (%)</b>
Building A	14.25m	4.75m	50%
Building B	13.77m	4.27m	44.9%
Building C	14.27m	4.77m	50%
Building D	14.48m	4.98m	52.4%
Building E	10.41m	0.91m	9.58%

*Table 2 - Proposed Building Heights (Maximum Height) and Variation Extent (Section 84(2)(c)(ii) - Total Building Height of 11.5m Inclusive of Services)*

<b>Building</b>	<b>Proposed Maximum Building Height</b>	<b>Extent of Variation (m)</b>	<b>Extent of Variation (%)</b>

Building A	15.88m	4.38m	38%
Building B	15.43m	3.93m	34%
Building C	15.97m	4.47m	39%
Building D	16.11m	4.61m	40%
Building E	12.04m	0.54m	4%

The proposed variation to the building envelope prescribed at Section 84(2)(c)(iii) of the Housing SEPP occurs in three locations, including:

- Building A - along the side boundary of Troy Street frontage;
- Building C - along the rear boundary; and
- Building D - along the rear boundary.

The following figures depict the extent of the proposed variations to the height of buildings (dotted upper red line) and building envelope (blue line) development standards.



Figure 3: Sections for Building A and B

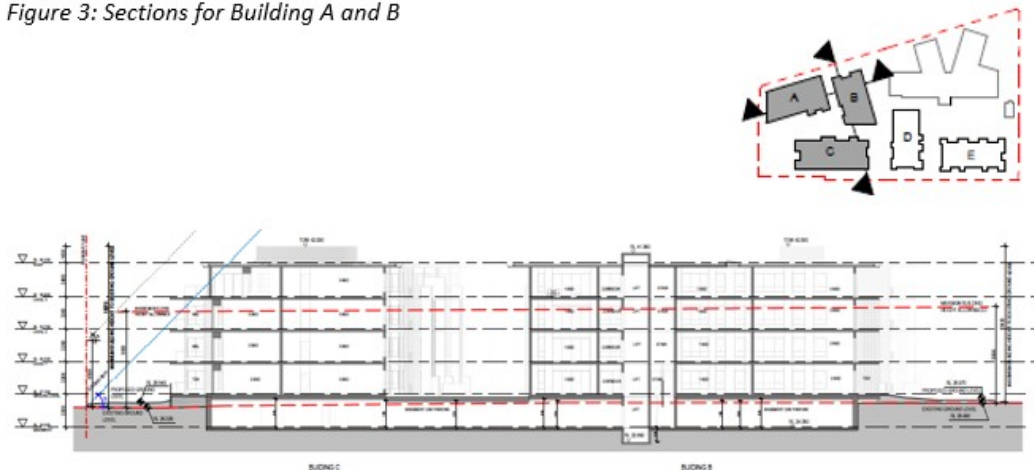


Figure 4: Sections for Building C and B

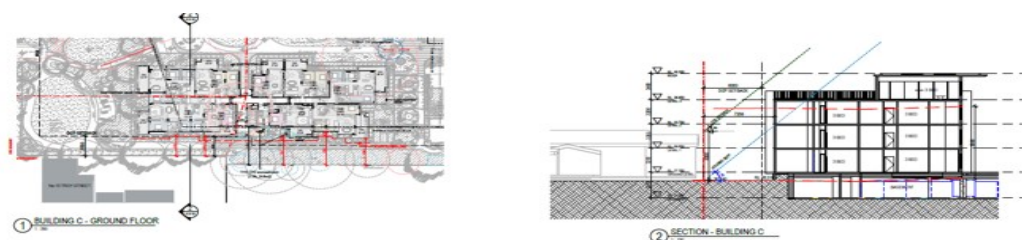


Figure 5: Section for Building C (Three storey section adjoining No. 10 Troy Street)

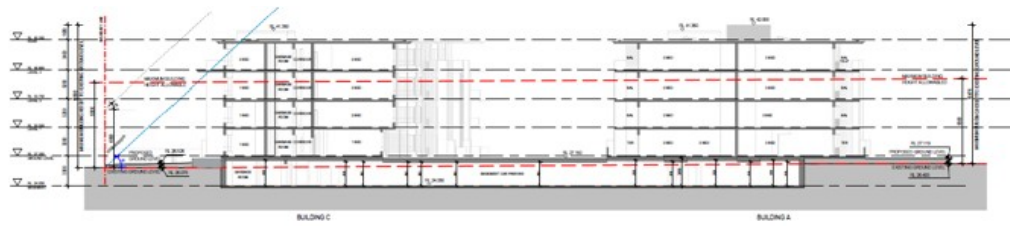


Figure 6: Sections for Building C and A

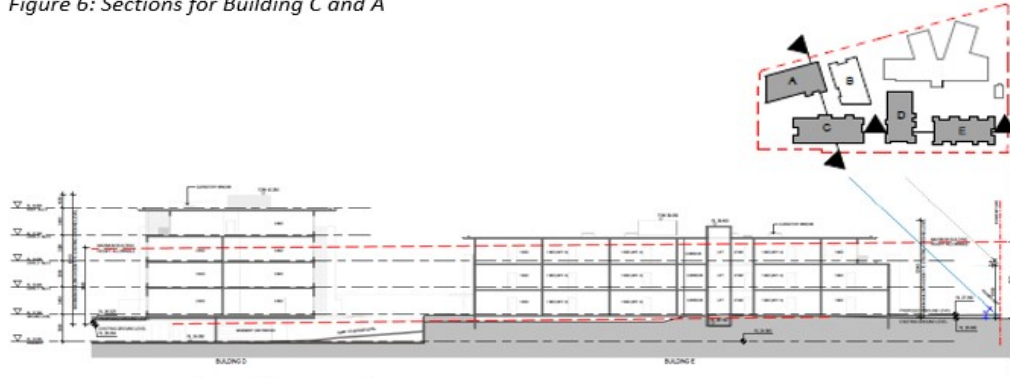


Figure 7: Sections for Building D and E



Figure 8: Sections for Building C



Figure 9: Sections for Building D

The building height planes for each building are provided below.



Figure 10: Building A



Figure 11: Building B



Figure 12: Building C





Figure 13: Building D

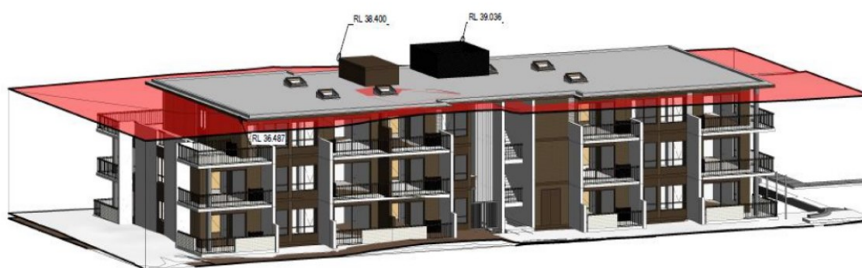


Figure 14: Building E

#### Development Standard Objectives

While the Housing SEPP does not provide objectives for the development standards under Section 84 and Section 108, case law suggests the proposed variations can be tested against the objectives of Clause 4.3 - Height of buildings, as outlined in Penrith LEP 2010. In this regard, the applicant's justification for the proposed variations is outlined below.

- In *Pathways Property Ground Pty Ltd v. Ku-ring-gai Council* [2017] NSW LEC 1486, the Land and Environment Court accepted that the objective was 'to ensure that the development provides an appropriate relationship in storeys/scale to adjoining side boundaries and to streetscape to avoid an abrupt change in the scale'.
- The subject site has an existing residential aged care facility (RACF) located in the north-eastern corner. This was Stage 1 of the site's re-development approved in 2018. The RACF is three storeys in height, which was subject to a Clause 4.6 variation request and establishes an existing context for the site.
- The site is situated in an area of Emu Plains which has higher forms of development potential and permitted buildings heights. The Lennox Village Shopping Centre to the north has a maximum height of building of 15m permitted under Penrith LEP 2010. The Emu Plains Public School to the south has a permitted maximum building height of 22m under State Environmental Planning Policy (Transport and Infrastructure) 2021. School buildings are approximately 35m from the common boundary with the site.
- The proposed setbacks to lot boundaries are generous and allow for the retention of significant canopy trees and the inclusion of landscaping improvements to ensure a landscaped transition from lower scale development to the higher building forms proposed.
- The proposed building heights are responsive to existing low density development. Buildings are well set back from site boundaries to ensure the height is compatible and building heights offer a transition in scale from the low density dwellings to the east, west and south-west to the shopping centre to the

north.

The applicant has also addressed the objectives under Clause 4.3 of the LEP as outlined below.

*(a) Ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.*

The response to objective (a) is expressed under the court accepted objective above.

*(b) 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.*

#### Views

Views in the surrounding area are limited to street level views, sky views and views of some canopy trees and will not be adversely impacted as a consequence of the proposed development standard variations.

#### Overshadowing - 10 Troy Street, Emu Plains

The property at 10 Troy Street contains a single storey dwelling and shares a side boundary with the site. Building C is located 32m from Troy Street (measured from the building facade). There is no building proposed directly adjacent to the principal private open space shown in blue below.



Figure 15: Aerial view of principal private open space for 10 Troy Street

The solar impact of the proposed development on the private open space of 10 Troy Street is demonstrated via the series of shadow diagrams below, which outline impacts of a compliant and non-compliant scheme. The solar impact occurs in the morning and starts to recede from 11am (see Figure 16 below). It is assessed that the principal open space will receive at least four hours of sunlight to at least 50% of the principal open space area during mid-winter which is compliant with Council's solar access provisions.



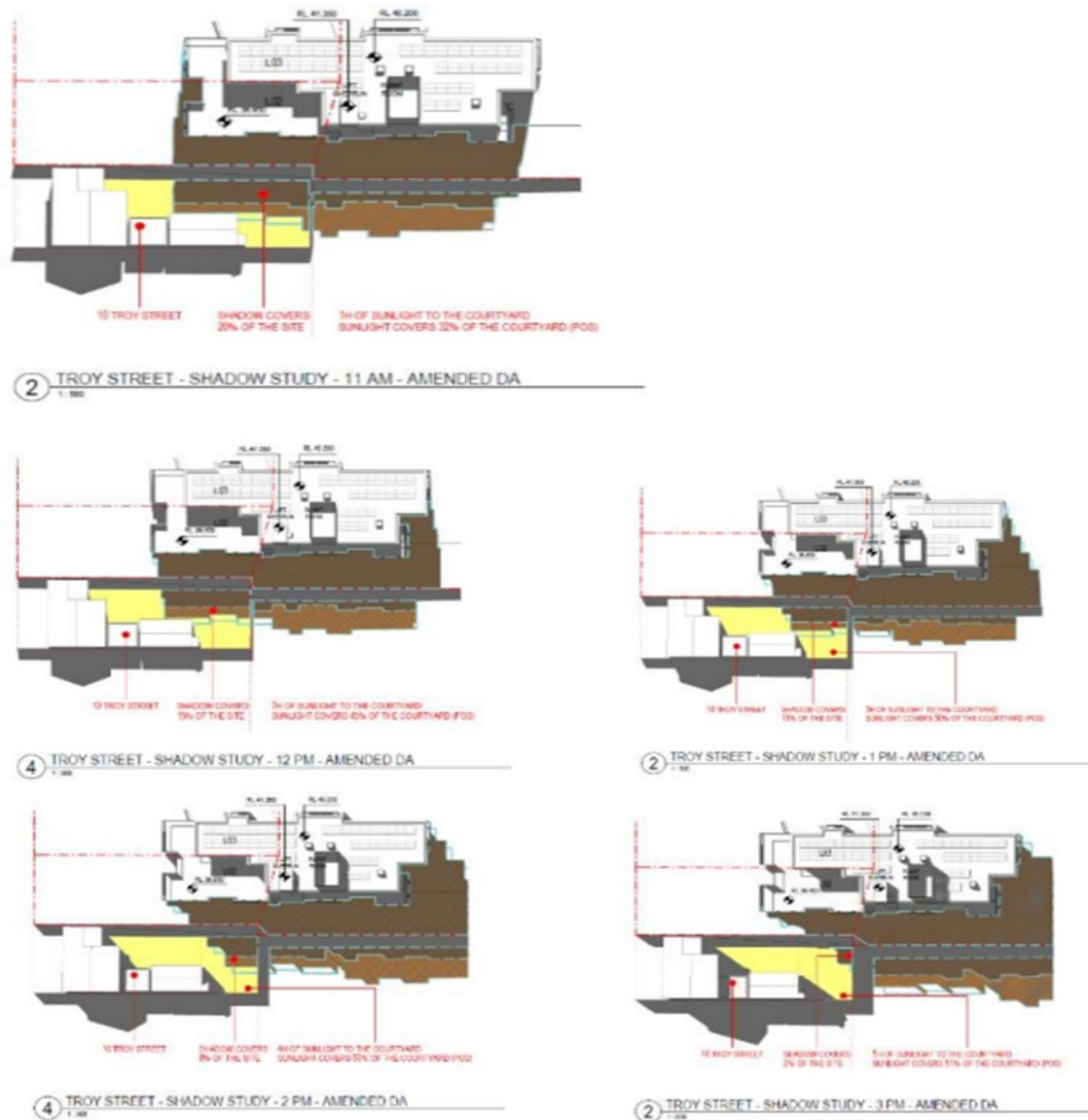


Figure 16: Shadow diagrams demonstrating impact of proposed development on 10 Troy Street during mid-winter

A comparison test model was also considered for a two storey dwelling house with a DCP compliant building envelope on the subject site (8 Troy Street parcel). This test model (see Figure 17 below) demonstrates that a compliant lower density development would have a greater impact on the principal private open space and neighbouring windows of 10 Troy Street. The impact would also extend across a greater part of the day.

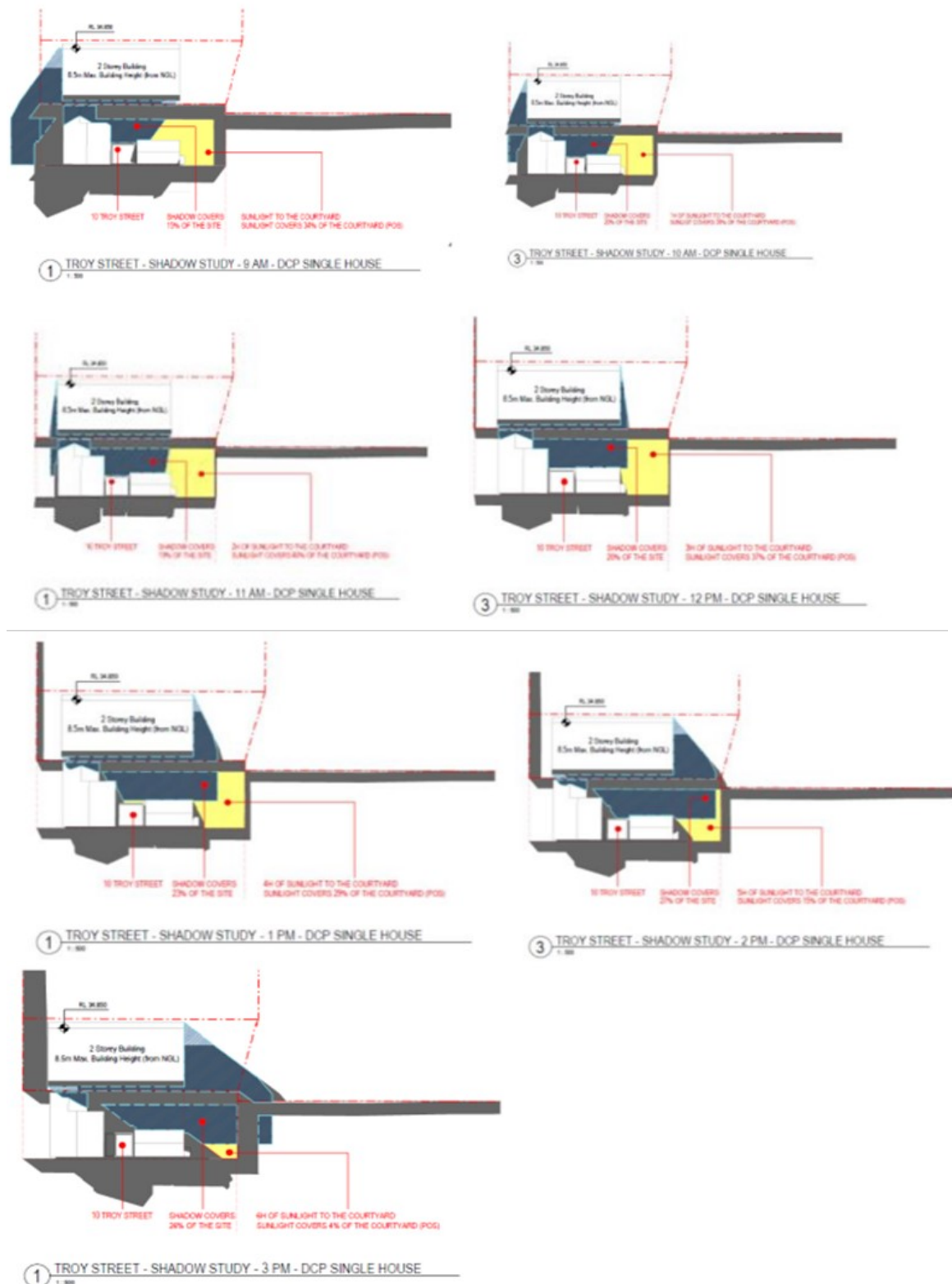


Figure 17: Overshadowing comparison for two storey dwelling proposal

#### Overshadowing - Emu Plains Public School

Emu Plains Public School adjoins the site to the south. The area directly adjoining the proposed development includes open space and a car park. The nearest school building is approximately 35m from the common boundary and therefore no solar impacts are expected for any buildings on the school site. The open space (play area) will not be significantly impacted, noting this area is currently shaded by established trees along the common boundary (see Figure 18 below).





*Figure 18: Existing shadow impacts on open space area at north-western corner of Emu Plains Public School*

#### Privacy

Visual privacy both within the site and for neighbours to the south is maximised by large setbacks which enable the retention of existing vegetation and inclusion of new planting to provide visual screening. A boundary fence along the common boundary with 10 Troy Street and various building design elements will maintain privacy to the private open space of 10 Troy Street.

#### Visual Impact

The additional height from the proposed building height contravention will have some visual impact, although this will not be detrimental. The additional height is centrally located within the site and is set back sufficiently to limit the visual presence of the buildings. The additional height will not result in the buildings being dominant or bulky due to the proposed setbacks, building articulation, external materials and landscaping.

*(c) Minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance.*

The site includes an item of local heritage significance fronting Emerald Street, being a sandstone church constructed in 1862 (item no. 82 under Schedule 5 of the LEP). A Heritage Impact Statement (HIS) was submitted with the development application. The HIS states *'the development is set sufficiently away from the heritage component of the site to allow its retention and maintain its setting while retaining its proximity to the facility that it now serves'*. The HIS also indicates that *'the development will have a limited and acceptable impact on the heritage significance of the place and will assist in the long-term viability of the site and the associated heritage building by providing an ongoing use for the site and allow an appreciation of the site by residents and visitors'*.

*(d) Nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.*

The site is strategically located between predominately single storey residential development to the east, west and south-west, and the shopping centre on the northern side of the Great Western Highway. Given the site location, the proposed height transition is appropriate. The retention of significant trees around the site edges forms a landscape based scale for the buildings. The height across the site reduces moving towards the south of the site.

The proposed buildings express high quality architecture and in tandem with the existing residential aged care facility present a quality urban form.

### Environmental Planning Grounds

The applicant has outlined several environmental planning grounds justifying the proposed development standard variations, as detailed below.

- A compliant development would result in a lower scale built form, however in this case, the parts of the buildings that contravene the standards do not cause adverse impacts to surrounding properties and are appropriately set back.
- A compliant scheme would only provide 71 dwellings on the site as shown in Figure 19 below, reducing the social and housing benefits derived from the proposed development. The lower yield would result in lesser separation distances between buildings and would therefore reduce amenity given reduced areas for landscaping and communal outdoor areas.

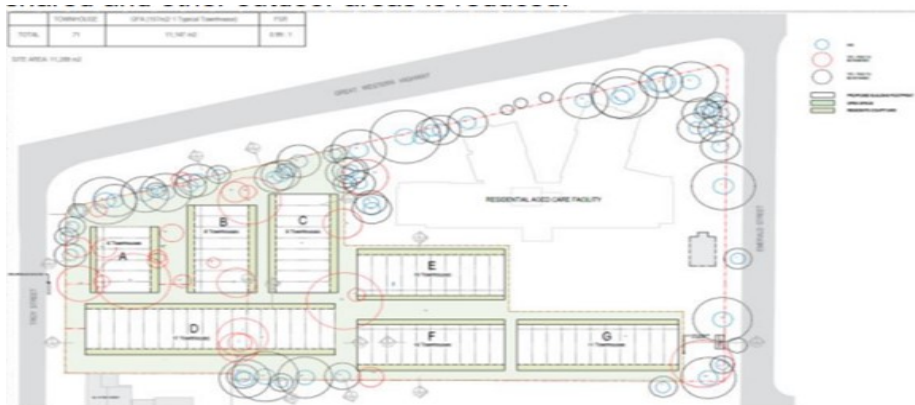


Figure 19: Example of multi-dwelling housing proposal (Group GSA)

- A superior built form and landscape design outcome is achieved as a result of the proposed development standard variations. This includes higher floor levels to achieve flood planning level clearances, generous setbacks, extensive landscaping, highly articulated and carefully massed buildings to break up bulk and scale, no adverse overshadowing impacts, higher level amenity for future residents as a result of internal floor to floor heights and modern, purpose built independent living units to meet the increasing community demand for this housing type.

### Public Interest

As required by Clause 4.6(4)(a)(ii) of the LEP, the proposed development will be in the public interest as it is consistent with the objectives of the particular standards and the objectives of the R3 Medium Density Residential zone, notwithstanding the variations to the development standards.

Satisfaction of the objectives of the development standards is demonstrated above. In relation to the zone objectives, the R3 zone objectives are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for a concentration of housing with access to services and facilities.*
- *To enhance the essential character and identity of established residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*
- *To ensure that development reflects the desired future character and dwelling densities of the area.*

The proposed development achieves the R3 zone objectives, as outlined below.

- The proposal contributes to housing stock through the provision of 147 independent living units (ILUs) in a purpose built, 'vertically integrated' seniors housing community in a highly accessible part

of Emu Plains. It also assists in addressing the demand for seniors housing.

- The development proposes 147 modern ILUs immediately adjacent to a residential aged care facility which is a total net gain of 102 additional dwellings on the site.
- The proposal will contribute to the mix of housing typologies in the Emu Plains area, which is predominately single storey detached dwellings.
- The proposal maintains the existing use of the site for seniors housing.
- The proposal provides a concentration of housing within proximity to a range of services, including the Lennox Village Shopping Village which has major supermarkets and supporting retailers. A bus service to Penrith CBD and Emu Plains Station is located at the Great Western Highway frontage.
- The existing 1970s villa style housing on the site is dated. The proposal provides a positive contribution to the existing built form via the provision of well designed ILUs that enhance the site and surrounding area.
- The increased building height allows for improved amenity at ground level by opening up the site for active and passive areas.
- Social benefits will be delivered via high quality seniors housing on a purpose built site in an area with growing demand for seniors housing.

Overall, in considering the submitted Clause 4.6 variation request, the assessment has concluded that the applicant's written request has adequately demonstrated that compliance with the applicable development standards is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standards. Furthermore, the proposed development will be in the public interest as it is not inconsistent with the objectives of the standards or the R3 zone objectives.

#### **Clause 5.10 - Heritage conservation**

The site includes an item of local heritage significance fronting Emerald Street, being a sandstone church constructed in 1862 (item no. 82 under Schedule 5 of the LEP). The heritage item and its landscape curtilage will be unchanged as a result of the proposed development.

As part of plan amendments made during the assessment period, an increased setback was provided for Building E from Emerald Street. This proposed setback, which is almost in line with the existing aged care facility on the site, will ensure the heritage item stands independently in the streetscape and will maintain the landscape setting of the church.

The proposed development was reviewed by Council's Heritage Advisor who advised that the proposal provides for an acceptable design response and suitable relationship and separation between existing and proposed buildings, in turn retaining the heritage significance of the church within its immediate surrounds.

#### **Clause 5.21 - Flood planning**

The objectives of Clause 5.21 of the LEP are as follows:

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

The site is identified as being subject to local overland flow flooding. To ensure there are no impacts on overland flow flooding in the north-western corner of the site, Building A will be partly constructed on a suspended slab (western portion of the building and balconies along the northern edge) to allow overland flows to pass under the building so the building does not obstruct flows and cause off-site impacts to adjoining properties or roadways. In addition, the habitable floor levels of buildings will achieve the required flood planning level (adopted flood level + 0.5m freeboard) for the site.

During the assessment period, amendments were required to be made to the submitted Flood Evacuation Response Plan (FERP) for the proposal. Originally, a shelter in place strategy was proposed for all units, with the ground floor residents required to shelter in place in the lobby areas of upper levels of the proposed buildings in an extreme flood event. This approach was not supported by Council's Development Engineer due to there being a lack of access to toilet facilities, food and water.

An amended FERP prepared by Taylor Thomson Whitting, dated 14 February 2024, was submitted in response to the above concerns. The amended FERP recommends ground floor residents be evacuated to the residential aged care facility (RACF) on the site. The RACF approved via DA18/0306 has a shelter in place response due to the vulnerability of the RACF residents. The RACF has communal facilities serviced by staff members and is deemed an acceptable alternative by Council's Development Engineer. Residents of upper level units will shelter in place.

In July 2021, the (then) NSW Department of Planning and Environment (DPE) established an interim measure for Penrith City Council (as well as Hawkesbury and Blacktown Councils) when assessing against Clause 5.21 of the LEP to determine if a proposal exceeds the capacity of flood evacuation routes. The interim measure, which will conclude once the regional land use planning framework has been finalised, requires any development application proposing to increase the capacity of a development by more than 150 dwellings or 200 employee vehicles for a commercial development, to be referred to DPE for a coordinated response from Infrastructure NSW (now the NSW Reconstruction Authority) and the NSW State Emergency Service (SES) as to whether the development will exceed the capacity of flood evacuation routes.

While a referral requirement is technically not triggered by the proposed development, being that there are only 147 dwellings proposed which does not exceed the 150 dwelling threshold, a referral was undertaken to DPE (now the NSW Department of Planning, Housing and Infrastructure) as a precaution, most recently on 26 February 2024. No final response has been received as at the time of writing of this report (11 April 2024), although as per the submitted FERP, a shelter in place strategy is proposed and therefore impacts on flood evacuation routes are likely to be minimal.

Overall, the proposed development complies with the applicable planning provisions relating to flood planning and flood evacuation.

## **Clause 7.1 Earthworks**

The proposed earthworks include site preparation works and excavation works required for the construction of the basement car park, relocation of a stormwater drainage easement and installation of services and infrastructure.

Clause 7.1(3) of the LEP requires that prior to granting development consent for earthworks, the consent authority must consider the following aspects:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
- (i) the proximity to and potential for adverse impacts on any heritage item, archaeological site, or heritage conservation area.*

Council's Development Engineer has reviewed the proposal and raised no concerns with regard to drainage, soil stability or impacts on waterways. The proposed development will not result in negative impacts on likely future uses.

The development application was accompanied by a Geotechnical Report prepared by Geo-Logix (Revision 2, dated 18 September 2023) which has not identified any anticipated environmental impacts as a consequence of the proposed development based on the results of the geotechnical investigations carried out.

The proposed development is therefore assessed to not be in conflict with any of the matters listed above.

#### **Clause 7.4 Sustainable development**

In deciding whether to grant consent for development, the consent authority must have regard to the principles of sustainable development as they relate to the development based on a 'whole of building' approach by considering the following aspects:

- (a) conserving energy and reducing carbon dioxide emissions,*
- (b) embodied energy in materials and building processes,*
- (c) building design and orientation,*
- (d) passive solar design and day lighting,*
- (e) natural ventilation,*
- (f) energy efficiency and conservation,*
- (g) water conservation and water reuse,*
- (h) waste minimisation and recycling,*
- (i) reduction of vehicle dependence,*
- (j) potential for adaptive reuse.*

The proposed development has been assessed against the principles of sustainable development and is considered to be suitable in this regard. The development application was submitted with BASIX and NatHERs Certificates outlining sustainability commitments and ensuring conservation of energy, reduction in emissions and the like. The proposed development provides for a site responsive design with suitable solar access and cross ventilation achieved, and the site is located in proximity to services, facilities and public transport.

#### **Clause 7.6 Salinity**

The objectives of Clause 7.6 of the LEP are as follows:

- (a) to protect the natural hydrological systems by minimising soil disturbance and ensuring appropriate land use management,*
- (b) to avoid the adverse effects of rising salinity on land, including damage to infrastructure and buildings, loss of productive agricultural land and other adverse environmental effects.*

The consent authority must not grant consent to any development unless it has considered the following:

- (a) whether or not the proposed development is likely to have an impact on salinity processes, and*
- (b) whether or not salinity is likely to have an impact on the proposed development, and*
- (c) appropriate measures that can be taken to avoid or reduce any undesirable effects that may result from the impacts referred to in paragraphs (a) and (b).*

The development application was accompanied by a Geotechnical Report prepared by Geo-Logix (Revision 2, dated 18 September 2023). The report notes that the underlying alluvial soil is predominantly sandy with clayey/silty interlayers and with gravel alluvium with cobbles. The alluvial sand and gravel is considered medium dense.

The Geotechnical Report has not identified any anticipated salinity impacts as a consequence of the proposed development based on the results of the geotechnical investigations carried out.

#### **Clause 7.7 Servicing**

The proposed development is assessed to comply with Clause 7.7 of the LEP in that the site is capable of being connected to services including water, sewer, electricity and other essential infrastructure.

The following comments from key servicing authorities were received during the assessment period:

- Sydney Water - no concerns raised regarding the proposal as per letter dated 12 May 2023; and
- Endeavour Energy - no concerns raised regarding the proposal as per letters dated 21 April 2023 and 2 November 2023.

Conditions of consent are also recommended in relation to obtaining servicing authority clearances for the proposal.

#### **Clause 7.30 Urban Heat**

The objectives of Clause 7.30 of the LEP are as follows:

- (a) ensure development incorporates planning and design measures to reduce the urban heat island effect in Penrith, and*
- (b) ensure buildings and outdoor spaces are thermally comfortable for people living and working in Penrith, particularly during summer, and*
- (c) promote the cooling benefits of green infrastructure and water in the landscape.*

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that planning and design measures are incorporated to reduce the urban heat island effect that:

- (a) maximise green infrastructure, and*
- (b) retain water in the landscape, and*
- (c) use design measures to ensure the thermal performance of the development achieves a high degree of passive cooling, and*
- (d) use building, paving and other materials that minimise heat impacts, and*
- (e) reduce reliance on mechanical ventilation and cooling systems, to conserve energy and to minimise heat sources.*

The proposed development has been assessed to achieve the above objectives and has incorporated design elements to reduce the urban heat island effect. This is demonstrated by the following aspects:

- Retention of existing canopy trees along the northern and southern boundaries;
- Landscaping is to be provided surrounding the five proposed buildings and along site boundaries;
- Separation of the built form will allow air circulation between buildings; and
- Cross ventilation is achieved for 61% of units and common circulation spaces, reducing the reliance on mechanical ventilation systems.

### **Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrument**

There are no draft environmental planning instruments specifically relevant to the proposal.

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

#### **Development Control Plan 2014**

<b>Provision</b>	<b>Compliance</b>
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies - see Appendix - Development Control Plan Compliance
C3 Water Management	Complies - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Complies
C7 Culture and Heritage	Complies
C8 Public Domain	N/A
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
C14 Urban Heat Management	Complies

### **Section 4.15(1)(a)(iiia) The provisions of any planning agreement**

There are no planning agreements applicable to the site.

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



## **Section 29 - Residential Apartment Development**

The development application was accompanied by a design verification statement prepared by a registered architect (Group GSA), verifying that the SEPP 65 design quality principles and ADG provisions are achieved for the proposed development.

## **Section 69 - Compliance with Building Code of Australia**

An assessment of the fire protection and structural capacity of the proposed development is necessary. The development application was referred to Council's Building Surveyor for assessment in this regard and to ensure compliance with the Building Code of Australia and fire safety provisions. The proposal is deemed satisfactory subject to recommended consent conditions.

In addition, the development application was submitted with an Access Report concluding that the proposal is capable of complying with the applicable accessibility provisions of the Building Code of Australia and relevant Australian Standards.

## **Section 75 - Fulfilment of BASIX Commitments**

The development application was supported by BASIX and NatHERs Certificates outlining sustainability commitments. A condition of consent has been recommended to ensure the commitments under these certificates will be fulfilled.

Overall, the proposed development complies with the applicable requirements of the regulations.

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

### **Local Character**

The design and layout of the proposed development has responded to site specific constraints and high value site characteristics. The proposed building setbacks provide a suitable curtilage to the heritage item on the site, landscaped setbacks are provided along all site boundaries and high value vegetation has been retained to maintain the established streetscape and local area character. The building massing is broken up and articulated on all elevations. Proposed external building materials are high quality and complementary to the existing residential aged care facility on the site. Proposed landscaping will positively contribute to the streetscape.

### **Built Form**

Amenity impacts on neighbouring properties are minimised by generous setbacks and proposed landscaping. The proposed building forms respond to the low-density edges of the site, with a three storey building proposed adjacent to the R2 zoned land along Emerald Street (Building E) and a partially three storey building proposed adjoining the single storey dwelling at 10 Troy Street (Building C).

### Overshadowing

- *10 Troy Street, Emu Plains*

Overshadowing impacts are expected from the proposed development on the private open space of 10 Troy Street. This adjoining property consists of a single storey dwelling, and under current conditions, shadowing impacts are largely from surrounding canopy trees. The Troy Street area is zoned R3 Medium Density Residential, however medium density housing uptake is slow, with the majority of existing development being low density.

A comparison assessment was undertaken between a DCP compliant two storey dwelling house (on the 8 Troy Street land parcel) and the subject seniors housing proposal in terms of overshadowing impacts on 10 Troy Street. This assessment demonstrated that the proposed seniors housing development would have a

far lesser overshadowing impact. In this regard, 10 Troy Street will receive at least four hours of sunlight to at least 50% of the principal open space area during mid-winter which is compliant with Council's solar access provisions.

- *Emu Plains Public School*

Emu Plains Public School directly adjoins the site to the south and overshadowing as a result of the proposal will be experienced to the open space and car parking area along the school's northern boundary. The nearest building is approximately 35m from this common boundary and therefore no solar impacts are expected to any buildings on the site. The open space (play area) will not be significantly impacted, noting this area is currently shaded by established trees along the boundary.

### Privacy

- *Building C*

Building C is set back 29.7m from Troy Street to the front edge of balconies at ground level, level 1 and level 2. Balconies adjoining the rear of 10 Troy Street (Units C109 and C209) are oriented towards Troy Street. However, a potential privacy impact may result from no privacy screens being proposed along the southern edge of the balconies. In this regard, a condition of consent is recommended requiring that privacy louvres be fixed to the southern edge of the balconies at level 1 and level 2 to restrict down viewing into the private open space of 10 Troy Street. The yellow highlights in the images below show the locations of the required privacy louvres.



Windows shown on the elevation plan above (outlined in fuchsia) are bedroom windows and are not considered to cause substantial privacy impacts given the nature of a bedroom use.

Other windows outlined above (outlined in aqua) are living room windows associated with Units C108 and C208. These windows are adjacent to the rear boundary of 10 Troy Street. Blade walls are incorporated into the building's architecture (outlined in green above) which will provide screening to the private open space of 10 Troy Street.

Although the balconies of Units C108 and C208 are inset, a condition of consent requiring privacy screening along the western edge of the balconies is recommended.

The level 3 rooftop was proposed as communal open space in the original development scheme, however this has since been removed due to concerns raised in relation to the acoustic and visual privacy of 10 Troy Street. Although the current plans do not note this space as non-trafficable and doorway access is shown, a condition of consent is recommended to restrict access to the rooftop area for maintenance purposes only.

- *Building D*

Building D is oriented in a north/south direction with the narrowest portion of the building adjacent to the southern boundary. Balconies at levels 1 and 2 are set back from the southern boundary by 7.7m and level 3 is set back by 12.3m. The balconies are oriented to the east and west given the open space (play area) of the school adjoins to the south, and therefore privacy impacts will be minimal.

- *Building E*

Building E has the largest proportion of balconies and living areas overlooking the southern boundary of the school site. Balconies are set back 9.6m and the building wall is set back 11.85m. The location of Building E and outlook to the south is towards the school car park and waste collection area, and therefore minimal privacy impacts are expected.

It is assessed that the design of the proposed buildings has suitably considered potential privacy impacts on adjoining properties and any potential impacts can be mitigated via recommended conditions of consent.

#### Heritage

The site includes an item of local heritage significance fronting Emerald Street, being a sandstone church constructed in 1862 (item no. 82 under Schedule 5 of the LEP). The heritage item and its landscape curtilage will be unchanged as a result of the proposed development.

As part of plan amendments made during the assessment period, an increased setback was provided for Building E from Emerald Street. This proposed setback, which is almost in line with the existing aged care facility on the site, will ensure the heritage item stands independently in the streetscape and will maintain the landscape setting of the church.

The proposed development was reviewed by Council's Heritage Advisor who advised that the proposal provides for an acceptable design response and suitable relationship and separation between existing and proposed buildings, in turn retaining the heritage significance of the church within its immediate surrounds.

#### **Natural Environment**

##### Overland Flow Flooding

The site is identified as being subject to local overland flow flooding. To ensure there are no impacts on overland flow flooding in the north-western corner of the site, Building A will be partly constructed on a suspended slab (western portion of the building and balconies along the northern edge) to allow overland

flows to pass under the building so the building does not obstruct flows and cause off-site impacts to adjoining properties or roadways. In addition, the habitable floor levels of buildings will achieve the required flood planning level (adopted flood level + 0.5m freeboard) for the site.

#### Vegetation Management

The proposed development includes the removal of 24 trees or tree groups from the site. The existing large canopy trees across the site were a key consideration as part of the development assessment process due to the landscape value and character they provide to the site and locality and their contribution to reducing urban heat.

In response to concerns raised by Council during the assessment period, the applicant amended the design of the proposal to lessen the impact on key canopy trees along the Great Western Highway, Emerald Street and the southern boundary. Amendments included a redesign of the initially proposed two separate basement areas into one consolidated and centralised basement. This design change increased the setbacks of the basement and associated excavation works from the tree protection zones of key trees. In addition, building setbacks above ground level were increased to reduce tree impacts and to reduce the level of pruning required to tree canopies of retained trees. A balanced outcome for the site has now been achieved through the amendments made.

These changes have been assessed by Council's Tree Management Officer who is satisfied the proposal makes suitable provision for tree retention and protection subject to recommended conditions of consent.

#### **Social Impacts**

The proposed development will provide a positive social benefit to the community by increasing the stock of purpose built seniors housing in proximity to daily needs and services, public transport and aged care services.

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

The proposed development is considered to have suitably responded to the constraints of the site, including overland flow flooding, the site's local heritage item along Emerald Street and the mature trees along the site's road frontages and southern boundary.

Overall, the site is deemed suitable for the proposed development for the following reasons:

- The site contains a recently completed and complementary aged care facility;
- The site is zoned to permit the proposed development under the Housing SEPP provisions for seniors housing;
- The proposed built form is compatible with surrounding and adjoining land uses;
- The flooding constraints of the site have been addressed via the submitted Flood Impact Assessment and Flood Emergency Response Plan;
- The proposed stormwater management design demonstrates stormwater run-off from the site is able to drain to Council's satisfaction; and
- The site is adequately serviced by transport options and is in a location which provides access to services and facilities in compliance with the requirements under Section 93 of the Housing SEPP.

### **Section 4.15(1)(d) Any Submissions**

#### **Community Consultation**

In accordance with Council's Community Engagement Strategy and Community Participation Plan, the

development application was publicly notified to owners and occupiers of surrounding properties, advertised in the local newspaper and publicly exhibited between 23 January and 23 February 2023. Re-notification was required during the assessment period due to amendments made to the proposal. The second public exhibition period was between 8 November and 8 December 2023.

A total of four unique submissions were received in response to the public exhibition processes. Key matters raised in the submissions include concerns regarding loss of privacy, overshadowing, construction noise, dust and vibration, construction traffic and parking impacts and decrease in property values. These matters have been considered as part of the assessment process and are addressed below.

Issue Raised	Response
<i>Privacy impacts on properties south of the development site</i>	<p>The design of the buildings proposed along the southern boundary (Buildings C, D and E) has had regard to potential impacts such as privacy impacts on adjoining properties to the south. This includes in relation to the extent of setbacks, building siting, the number and design of balconies, the need for privacy screens to living spaces and in relation to new and existing landscaping.</p> <p>It is assessed that the design of the proposed buildings has suitably considered privacy impacts on adjoining properties to the south and any potential impacts can be managed via recommended conditions of consent.</p> <p>Further discussion regarding the likely impacts of the proposed development on adjoining properties to the south is included in the 'likely impacts' section of this report.</p>
<i>Construction noise, dust and vibration</i>	<p>A condition of consent has been recommended requiring that a Construction Noise and Vibration Impact Assessment and Management Plan be submitted to Council for approval prior to the issue of a Construction Certificate.</p> <p>Conditions of consent have also been recommended related to the management of construction noise, dust and work hours.</p>
<i>Construction parking and traffic</i>	<p>A condition of consent is recommended requiring that a Construction Traffic Management Plan (CTMP) be submitted to Council for approval prior to the issue of a Construction Certificate.</p> <p>The CTMP will be required to address construction vehicle access routes, truck numbers, hours of operation, parking provision, access and circulation of all construction related vehicles during the construction phase of the proposed development. The CTMP will also be required to include a prohibition on the reversing of vehicles from the site into public roadways and address pedestrian access into and around the site.</p>
<i>Car parking numbers</i>	<p>There are 113 on-site car parking spaces proposed in a single basement level. State Environmental Planning Policy (Housing) 2021 outlines that the minimum parking requirement for the proposed development is one car space per five dwellings. The proposal exceeds this minimum requirement of 30 car spaces.</p>

<i>Decrease in property values</i>	<p>Impacts on property values is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.</p> <p>Furthermore, Council staff are unable to predict if surrounding properties will lose value as a result of the proposed development, noting that a number of variable factors are involved in the calculation of property values.</p>
<i>Water pressure in the area</i>	<p>The development application was referred to Sydney Water for comment. In response, Sydney Water raised no concerns in relation to the proposal and advised that water and sewer services are available to the site although amplifications, adjustments, extensions and/or deviations may be required. A condition of consent is recommended requiring that a Sydney Water Compliance Certificate be obtained prior to the issue of an Occupation Certificate.</p>
<i>Impact on animal species</i>	<p>The site is not mapped as having high biodiversity values sensitive to impacts from development. Therefore, a biodiversity development assessment was not required to be undertaken.</p> <p>Significant impacts are not likely to occur on local fauna species given the significant amount of vegetation to be retained on the site, the urban environment in which the site is located and due to the construction phase being for a short-term period.</p> <p>The trees to be retained on the site will be protected via construction fencing which will allow for the movement of small animals such as lizards and frogs and birds will still be able to feed and roost. While there may be some minor and temporary disturbance to birds, birds typically adapt and then return once construction works are complete.</p>

## 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
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Waste Services	Not supported
Traffic Engineer	No objection subject to conditions
Community Safety Officer	No objections - subject to conditions
Tree Management Officer	No objections - subject to conditions
Social Planning	No objections

### Waste Services

The proposed development does not comply in full with Council's waste management guidelines under Penrith Development Control Plan 2014, Chapter C5 - Waste Management.

The applicant (Uniting) operates multiple aged care and independent living unit (ILU) facilities across Australia. Uniting has operational waste management practices and operations at all of their facilities and engages private waste contractors to service their needs. The existing residential aged care facility on the site is privately serviced and this service will be extended to the proposed ILUs.

Waste and recycling infrastructure is incorporated into the proposed development. All waste servicing will occur from the basement with the exception of Building E, where waste will be collected from the at-grade driveway/parking area adjoining the building.

The proposed waste management arrangements are deemed acceptable in the circumstances of this development proposal.

## Section 4.15(1)(e)The public interest

The public interest is best served by the orderly and economic use of land for purposes permissible under the relevant planning regime and in accordance with the prevailing planning provisions. In this regard, the proposal is a permissible land use and considered to be sufficiently consistent with the relevant planning provisions.

The likely impacts of the proposal have been assessed as acceptable and/or have been addressed by way of recommended conditions.

Matters raised in public submissions received have been taken into consideration as part of the assessment of the proposal, and where appropriate, have been addressed by way of amended plans, additional information and/or recommended conditions.

In view of the context of the site and having regard to the likely impacts of the proposed development, the proposal is assessed as being suitable and is considered to be in the public interest.

## Section 94 - Developer Contributions Plans

The Ministerial Direction issued on 14 September 2007 under the former Section 94E (now Section 7.17) of the Environmental Planning and Assessment Act 1979 exempts the payment of development contributions for development carried out under the former State Environmental Planning Policy (Seniors Living) 2004 (now the Housing SEPP) where undertaken by a social housing provider.

The proposed development is for the purposes of seniors housing pursuant to State Environmental Planning Policy (Housing) 2021. The development will be owned and managed by Uniting which is a registered community housing provider under the National Regulatory System for Community Housing (Registration No. R5261150625). Social housing providers include both state government (public housing) providers and registered community housing providers which include not-for-profit organisations such as Uniting.

Therefore, by virtue of the Ministerial Direction, the proposed development is exempt from the requirement to pay development contributions.

## Conclusion

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In assessing the proposed development against the relevant environmental planning instruments, in particular State Environmental Planning Policy (Housing) 2021, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal suitably satisfies the aims, objectives and provisions of these planning instruments. The site is suitable for the proposed development, the proposal is in the public interest and impacts arising from the proposed development will be negligible.

Therefore, the proposal is worthy of support and the development application is recommended for approval, subject to recommended conditions.

## Recommendation

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1. The submitted Clause 4.6 variation request in relation to the height of buildings and building envelope development standards under Section 84 and Section 108(b) of State Environmental Planning Policy (Housing) 2021 be supported.
2. Development application DA22/1171 for the construction of a seniors housing development including 147 independent living units (ILUs), 113 car parking spaces (including 30 accessible spaces), resident clubhouse, removal of 24 trees or tree groups, demolition of existing ILUs, two dwellings and associated structures, stormwater easement relocation and realignment, earthworks, stormwater infrastructure and landscaping at 1-3 Emerald Street and 6-8 Troy Street, Emu Plains, be approved subject to the following recommended conditions.
3. The individuals who made a submission be advised of the decision.



## CONDITIONS

### General

- The development must be implemented substantially in accordance the following stamped approved plans and documents received with the application, except as may be amended in red on the approved plans or by the following conditions in this consent:

#### Plans

Plan Title	Plan No.	Prepared By	Version	Dated
Site Area Diagram	A0001	Group GSA	B	02.10.2023
Demolition Plan	A1000	Group GSA	B	02.10.2023
Basement	A2000	Group GSA	B	02.10.2023
GA – Ground Floor	A2001	Group GSA	B	02.10.2023
GA – Level 01	A2002	Group GSA	B	02.10.2023
GA – Level 02	A2003	Group GSA	B	02.10.2023
GA – Level 03	A2004	Group GSA	B	02.10.2023
GA – Roof	A2005	Group GSA	B	02.10.2023
Building A – Ground	A2010	Group GSA	B	02.10.2023
Building A – Level 01	A2011	Group GSA	B	02.10.2023
Building A – Level 02	A2012	Group GSA	B	02.10.2023
Building A – Level 03	A2013	Group GSA	B	02.10.2023
Building A – Roof	A2014	Group GSA	B	02.10.2023
Building B – Ground	A2020	Group GSA	B	02.10.2023
Building B – Level 01	A2021	Group GSA	B	02.10.2023
Building B – Level 02	A2022	Group GSA	B	02.10.2023
Building B – Level 03	A2023	Group GSA	B	02.10.2023
Building B – Roof	A2024	Group GSA	B	02.10.2023
Building C – Ground	A2030	Group GSA	B	02.10.2023
Building C – Level 01	A2031	Group GSA	B	02.10.2023
Building C – Level 02	A2032	Group GSA	B	02.10.2023
Building C – Level 03	A2033	Group GSA	B	02.10.2023
Building C – Roof	A2034	Group GSA	B	02.10.2023
Building D – Ground	A2040	Group GSA	B	02.10.2023
Building D – Level 01	A2041	Group GSA	B	02.10.2023
Building D – Level 02	A2042	Group GSA	B	02.10.2023
Building D – Level 03	A2043	Group GSA	B	02.10.2023
Building D – Roof	A2044	Group GSA	B	02.10.2023
Building E – Ground	A2050	Group GSA	C	14.02.2024
Building E – Level 01	A2051	Group GSA	C	14.02.2024
Building E – Level 02	A2052	Group GSA	C	14.02.2024
Building E – Roof	A2053	Group GSA	B	02.10.2023
Elevation – Building A – North	A3000	Group GSA	B	02.10.2023
Elevation – Building A – East	A3001	Group GSA	B	02.10.2023
Elevation – Building A – South	A3002	Group GSA	B	02.10.2023
Elevation – Building A – West	A3003	Group GSA	B	02.10.2023
Elevation – Building B – North	A3010	Group GSA	B	02.10.2023

Elevation – Building B – East	A3011	Group GSA	B	02.10.2023
Elevation – Building B – South	A3012	Group GSA	B	02.10.2023
Elevation – Building B – West	A3013	Group GSA	B	02.10.2023
Elevation – Building C – North	A3020	Group GSA	B	02.10.2023
Elevation – Building C – East	A3021	Group GSA	B	02.10.2023
Elevation – Building C – South	A3022	Group GSA	B	02.10.2023
Elevation – Building C – West	A3023	Group GSA	B	02.10.2023
Elevation – Building D – North	A3030	Group GSA	B	02.10.2023
Elevation – Building D – East	A3031	Group GSA	B	02.10.2023
Elevation – Building D – South	A3032	Group GSA	B	02.10.2023
Elevation – Building D – West	A3033	Group GSA	B	02.10.2023
Elevation – Building E – North	A3040	Group GSA	B	02.10.2023
Elevation – Building D – East	A3041	Group GSA	B	02.10.2023
Elevation – Building D – South	A3042	Group GSA	B	02.10.2023
Elevation – Building D – West	A3043	Group GSA	B	02.10.2023
Section – Building AS-01 & BC-01	A3100	Group GSA	B	02.10.2023
Section – Building AC-01 & DE-01	A3101	Group GSA	B	02.10.2023
Section – Building C-01 & D-01	A3102	Group GSA	B	02.10.2023
Section – Ramp – Basement D-E	A3120	Group GSA	B	02.10.2023
Section Detail – Facade	A3180	Group GSA	B	02.10.2023
Section Detail – Facade	A3181	Group GSA	B	02.10.2023
Section Detail – Clerestory Window	A3182	Group GSA	B	02.10.2023
Materials & Finishes	A8000	Group GSA	B	02.10.2023
Storage Schedule	A9060	Group GSA	B	02.10.2023

Master Plan Notes and Legends Sheet	C101	Taylor Thomson Whitting (NSW) Pty Ltd	P4	16.02.2024
Master Plan Sediment & Erosion Control Plan	C102	Taylor Thomson Whitting (NSW) Pty Ltd	P4	-
Siteworks & Stormwater Management Plan	C104	Taylor Thomson Whitting (NSW) Pty Ltd	P11	16.02.2024
Bulk Earthworks Cut and Fill Plan	C105	Taylor Thomson Whitting (NSW) Pty Ltd	P3	-
Pavement Plan	C106	Taylor Thomson Whitting (NSW) Pty Ltd	P2	16.02.2024
Master Plan Details Sheet	C110	Taylor Thomson Whitting (NSW) Pty Ltd	P3	16.02.2024
Stormwater Drainage Longitudinal Section Sheet 1	C120	Taylor Thomson Whitting (NSW) Pty Ltd	P1	16.02.2024
Stormwater Drainage Longitudinal Section Sheet 2	C121	Taylor Thomson Whitting (NSW) Pty Ltd	P1	16.02.2024
Stormfilter Chamber 1 Plan and Cross Sections Sheet	C130	Taylor Thomson Whitting (NSW) Pty Ltd	P1	16.02.2024
Stormfilter Chamber 2 Plan and Cross Sections Sheet	C131	Taylor Thomson Whitting (NSW) Pty Ltd	P1	16.02.2024
Context and Design Principles	LA01	Taylor Brammer	I	29.09.2023
Masterplan	LA02	Taylor Brammer	J	29.09.2023
Landscape Detail Plan – 01	LA03	Taylor Brammer	J	29.09.2023
Landscape Detail Plan – 02	LA04	Taylor Brammer	J	29.09.2023
Landscape Detail Plan – 03	LA05	Taylor Brammer	J	29.09.2023
Planting Plan – 01	LA06	Taylor Brammer	I	29.09.2023
Planting Plan – 02	LA07	Taylor Brammer	I	29.09.2023
Planting Plan – 03	LA08	Taylor Brammer	I	29.09.2023
Site Sections – 01	LA09	Taylor Brammer	J	29.09.2023
Site Sections – 02	LA10	Taylor Brammer	J	29.09.2023
Typical Details	LD03	Taylor Brammer	I	29.09.2023

#### Documents

Document Title	Reference	Prepared by	Version	Dated
BASIX	1309348M_02	JHA Consulting Engineers (NSW) Pty Ltd	-	29.09.2023
NatHERS	0008195530	JHA Consulting Engineers (NSW) Pty Ltd	-	29.09.2023
Civil Engineering and Flood Impact Assessment Report	211568 CAAA	Taylor Thomson Whitting (NSW) Pty Ltd	-	19.02.2024
Flood Emergency Response Plan	211568	Taylor Thomson Whitting (NSW) Pty Ltd	-	14.02.2024
Landscape Architectural Design Report	14-160s	Taylor Brammer		29.09.2023
Arboricultural Impact Assessment – Tree Protection Specifications	EDI/ILU/AIA/B	Tree IQ	B	19.09.2023
Addendum to Arboricultural Impact Assessment – Tree Protection Specifications	-	Tree IQ	-	15.02.2023
BCA Compliance	-	Blackett Maguire & Goldsmith	-	03.10.2023
Acoustic Report	220236	JHA Services	D	19.10.2023
Services Infrastructure Report	-	JHA Services	P2	28.09.2023
Statement of Compliance Access for People with a Disability	222078	Accessible Building Solutions	A	12.10.2023
Traffic Impact Assessment	211568TAAA	TTW (NSW) Pty Ltd	-	17.10.2023
Social Impact Assessment	-	Gyde	-	14.09.2023
Statement of Environmental Effects	P21-224	Gyde		October 2023
Crime Prevention Through Environmental Design Assessment	-	Group GSA	5	28.10.2023
Detailed Site Investigation	84503.02	Douglas Partners	2	16.05.2022
Addendum to Detailed Site Investigation	SYDEN346305-L01	Tetra Tech Coffey	-	14.02.2023
Design Verification Statement	-	Group GSA	-	-
Operational Management Plan	-	Uniting	-	-
Geotechnical Report	-	Geo Logix	2	18.09.2023

- 2 **Prior to the issue of an Occupation Certificate**, Lot 10 DP 1242243, Lot 15 DP 232740 and Lot 14 DP 232740 are to be consolidated. Evidence of lot consolidation and plan registration with NSW Land Registry Services is to be provided to the Certifying Authority and Penrith City Council.
- 3 A **Construction Certificate** shall be obtained prior to commencement of any building works.
- 4 **The development shall not be used or occupied until an Occupation Certificate has been issued.**

- 5 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 6 In accordance with Section 86 of the Environmental Planning and Assessment Regulation 2021, the development must comply with the following:
- (a) From the day on which an Occupation Certificate is issued for the development, only the following persons may occupy the accommodation to which the development consent relates:
    - (i) seniors or people who have a disability,
    - (ii) people who live in the same household with seniors or people who have a disability,
    - (iii) staff employed to assist in the administration and provision of services to the accommodation.
  - (b) A restriction must be registered, in accordance with the Conveyancing Act 1919, Section 88E, against the title of the property relating to the development requiring compliance with the above requirements. Evidence of registration is to be submitted to the appointed certifying authority **prior to the issue of an Occupation Certificate**.
- 7 **Prior to the issue of any Construction Certificate**, documentary evidence must be prepared by a Registered Surveyor and submitted to the appointed Certifying Authority and Council that includes and addresses the following:
- (a) A letter, signed by a current NSW Registered Land Surveyor and including his or her Board of Surveying and Spatial Information (BOSSI) identification number, stating that all investigations required under Surveyor-General's Direction No. 11 have been made for the subject site.
  - (b) The above letter is required to confirm if any survey infrastructure will be affected or impacted by the development. If no impact is identified, this must be detailed by the Registered Land Surveyor.
  - (c) In the event that survey infrastructure is identified on the subject site and will be affected or impacted by the development, a copy of any Surveyor-General's Approval for Survey Mark Removal granted by NSW Spatial Services for the subject site, including all documentation submitted as part of the application (for example, the survey mark audit schedule, strategy plan and strategy report) is required.

The applicant must, where possible, ensure the preservation of existing survey infrastructure undisturbed and in its original state or else provide evidence of the Surveyor-General's authorisation to remove or replace any survey infrastructure.

Note: Under Section 24 of the Surveying and Spatial Information Act 2002, it is an offence to remove, damage, destroy, displace, obliterate or deface any survey mark unless authorised to do so by the Surveyor-General.

- 8 Where a Surveyor-General's Approval for Survey Mark Removal has been granted by NSW Spatial Services, documentary evidence of restoration of the removed survey marker must be prepared by a Registered Surveyor and submitted to the appointed Certifying Authority and Council **prior to the issue of an Occupation Certificate**.

The documentary evidence is to consist of a letter signed by a Registered Land Surveyor confirming that all requirements under the Surveyor-General's Approval for Survey Mark Removal under the condition "Survey Infrastructure - Identification and Recovery" have been satisfied.

- 9 The following community safety and crime prevention through environmental design (CPTED) requirements are required to be implemented:

**(a) Lighting**

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

**(b) Basement Car Parking**

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

**(c) Building Security and Access Control**

- Intercom, code or card locks or similar must be installed for all entries to the buildings including the car park.
- Australian Standard 220 door and window locks must be installed in all dwellings.
- CCTV is to be provided to cover communal public space areas. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.

**(d) Graffiti/Vandalism**

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

**(e) Landscaping**

- All vegetation must be regularly pruned to ensure that sight lines are maintained.

- 10 **Prior to the issue of any Occupation Certificate**, the applicant is to provide evidence to the Principal Certifying Authority that a commercial contract for all waste collection services for the site has been entered into. Such a contract must be retained and maintained while the site is being used. All costs associated with waste collection are to be at the expense of the developer/operator/landowner.

**Prior to the issue of any Occupation Certificate**, a restriction as to user and positive covenant shall be registered on the title of the property advising that Council's domestic waste fee will be charged to residents or the landowner in addition to any private waste contract fees.

- 11 **Prior to the issue of a Construction Certificate**, the Certifier is to ensure privacy louvres or solid walls are incorporated into the construction plans in the following areas:

- Southern edge of balconies of Units C109 and C209 in Building C; and
- Western edge of balconies of Units C108 and C208 in Building C.

- 12 The Principal Certifying Authority is to obtain further design details that demonstrate the development complies with the relevant provisions in Schedule 4 of State Environmental Planning Policy (Housing) 2021. These provisions relate to equitable and accessible design.

**Prior to the issue of a Construction Certificate**, the Certifier must be satisfied that details demonstrating compliance with Schedule 4 is shown on the construction plans.

**Prior to the issue of an Occupation Certificate**, the Certifier is to ensure that Schedule 4 compliance is achieved for the development.

- 13 The development must be carried out in accordance with the Endeavour Energy conditions outlined in its correspondence dated 21 April 2023 (agency concurrence ref. CNR-50157).
- 14 The development must be carried out in accordance with the Water NSW general terms of approval (IDAS1147180) dated 14 March 2023.

- 15 **Prior to the issue of an Occupation Certificate**, the Certifier must be satisfied that an external lighting system is installed for the development and the system provides 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 and to avoid unnecessary light spill. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 - Outdoor Lighting Obtrusive Effects.

- 16 **Prior to the issue of an Occupation Certificate**, the Certifier must be satisfied that wayfinding markers and/or signage is provided throughout the common areas of the development and that the relevant provisions of AS 1428.4.2 (Means to assist the orientation of people with vision impairment - Wayfinding signs) are achieved.
- 17 **Prior to the issue of an Occupation Certificate**, the Certifier is to ensure that signage is located on the access door to the rooftop area accessible from level 3 of Building C stating "Restricted Access for Maintenance Purposes Only".
- 18 Any required retaining walls are to be of masonry construction and are not permitted to be constructed in timber.

## Demolition

- 19 All demolition works are to be conducted in accordance with AS 2601-2001 - The Demolition of Structures.

SafeWork NSW requirements apply to demolition work and compliance with those requirements, including the *SafeWork NSW Code of Practice Demolition Work August 2019*, is required.

Prior to demolition, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

20 Regulatory obligations (including licensing and notification requirements) for the management, control and removal of asbestos are prescribed in the following:

- Work Health and Safety Act 2011,
- Work Health and Safety Regulation 2017,
- SafeWork NSW Code of Practice How to Manage and Control Asbestos in the Workplace August 2019,
- SafeWork NSW Code of Practice How to Safely Remove Asbestos August 2019, and
- Australian Standard AS 2601-2001 - The Demolition of Structures.

Compliance with the above legislation is required and reference should be made to SafeWork NSW and to the Asbestos Policy, Penrith City Council, 2014.

All asbestos laden waste must be disposed of at a waste management facility licensed by the NSW Environment Protection Authority to receive asbestos waste.

## **Heritage/Archaeological relics**

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

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

## **Environmental Matters**

22 Dust suppression techniques are to be employed during works to reduce any potential nuisances to surrounding properties.

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



24 An appropriately qualified person/s shall:

- Supervise all filling works.
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and submit a review findings report to Council and the Principal Certifying Authority. All fill material documentation is to (at minimum):
  - be prepared by an appropriately qualified person with consideration of all relevant guidelines, standards, planning instruments and legislation (e.g. EPA, NEPM, ANZECC, NH&MRC),
  - clearly state the legal property description of the fill material source site and the total amount of fill tested,
  - provide details of the volume of fill material to be used in the filling operations,
  - provide a classification of the fill material to be imported to the site in accordance with the NSW Environment Protection Authority's "Waste Classification Guidelines" 2014, and
  - (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.
- Certify by way of a Compliance Certificate or other written documentation that fill materials have been placed on the site in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to Council and the 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.

For the purpose of this condition, an appropriately qualified person is defined as a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance.

25 All demolition and construction 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 are to be fully enclosed when the site is unattended.

26 Waste materials associated with the demolition and construction phase of the development are to be classified and disposed of at a lawful waste facility, or, if suitable, re-used or recycled in accordance with the approved waste management plan.

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.

27 Noise levels from and within the premises shall not exceed the relevant noise criteria detailed in the 'Acoustic Report for Development Application: Uniting Edinglassie Stage 2 - ILU Redevelopment' prepared by JHA Consulting Engineers, dated 19 October 2023 (Ref. 220236, Revision D). The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

28 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 suitable waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.

Waste licensing requirements apply in NSW. Where required, the waste contractor and waste facility are to be licensed by the NSW Environment Protection Authority. Reference should be made to the NSW Environment Protection Authority for licensing requirements.

29 **Prior to the issue of a Construction Certificate**, a Construction Noise and Vibration Impact Assessment and Management Plan, prepared by a suitably qualified acoustic consultant, is to be submitted to Penrith City Council for approval. This assessment is to consider (at minimum) the noise and vibration impacts associated with the construction phase, as well as 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 Council approved Management Plan are to be implemented and adhered to during the construction phase of the development.

For the purpose of this condition, a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

30 All mechanical plant and equipment is to comply with the noise criteria established in the approved 'Acoustic Report for Development Application: Uniting Edinglassie Stage 2 - ILU Redevelopment' prepared by JHA Consulting Engineers, dated 19 October 2023 (Ref. 220236, Revision D).

**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 Penrith City Council for consideration and approval. Suitable data and information assessed by a suitably qualified acoustic consultant is to be supplied to demonstrate compliance with the established noise criteria and the approved 'Acoustic Report for Development Application: Uniting Edinglassie Stage 2 - ILU Redevelopment' prepared by JHA Consulting Engineers, dated 19 October 2023 (Ref. 220236, Revision D).

For the purpose of this condition, a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

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

- 32 The recommendations provided in the approved 'Acoustic Report for Development Application: Uniting Edinglassie Stage 2 - ILU Redevelopment' prepared by JHA Consulting Engineers, dated 19 October 2023 (Ref. 220236, Revision D) shall be implemented and incorporated into the design and construction of the development, and **shall be shown on plans accompanying the Construction Certificate application.**
- 33 A certificate is to be obtained from a qualified acoustic consultant certifying that the development, including mechanical plant, has been constructed to meet the noise and vibration criteria in accordance with the approved 'Acoustic Report for Development Application: Uniting Edinglassie Stage 2 - ILU Redevelopment' prepared by JHA Consulting Engineers, dated 19 October 2023 (Ref. 220236, Revision D). This certificate is to be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate.**

For the purpose of this condition, a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

- 34 An Unexpected Finds Protocol (the Protocol) is to be developed by an appropriately qualified environmental consultant. **Prior to any works commencing on the site**, the Protocol is to be submitted to Penrith City Council for approval. If Council is not the certifying authority for the development, the report is required to be provided to Council for approval.

The Protocol is to address, at minimum, the management of any contamination found on the site during the demolition, excavation and construction phases of the development, including at minimum contaminated soils, groundwater, buried building materials, asbestos, odour and staining.

The Protocol is to clearly detail that all remediation works on the site are considered to be Category 1 works under State Environmental Planning Policy (Resilience and Hazards) 2021 and that should any contamination be found during development works and should remediation works be required, development consent is to be sought from Penrith City Council before the remediation works commence.

The Council approved Protocol is to be complied with at all times during the construction phase of the development.

- 35 **Post demolition of existing structures and prior to any further works commencing**, an assessment of contamination by an appropriately qualified person is to be undertaken and documented. The report is to be provided to Penrith City Council for approval. If Penrith City Council is not the Certifying Authority, a copy of Council's approval is to be submitted to the Certifying Authority. Other than demolition of structures, no works are to commence until the contamination report has been submitted to and approved by Penrith City Council.

The assessment is to supplement the 'Report on Detailed Site Investigation: Proposed Aged Care Facility, Edinglassie Village - 1-3 Emerald Street and 6-8 Troy Street, Emu Plains', prepared by Douglas Partners Pty Ltd, dated 16 May 2022 (Ref. 84503.02.R.002.Rev0), and is to be undertaken in accordance with relevant NSW Environment Protection Authority Guidelines, the National Environment Protection (Assessment of Site Contamination) Measure 1999 (NEPC2013) and Penrith Development Control Plan 2014.

The assessment is to address the following recommendations from Section 12 of the abovementioned Detailed Site Investigation:

- Further investigation of the nature and extent of total recoverable hydrocarbon (TRH) impacts in soil at borehole location BH113, following the demolition of the workshop.
- Preparation of clearance certificates by an appropriately qualified person following each stage of demolition to confirm the findings of the Detailed Site Investigation.

The assessment is to confirm that the site is suitable for the proposed land use. Should it be identified through the assessment 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 further 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.

For the purpose of this condition, an appropriately qualified person is defined as a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance.

## BCA Issues

- 36 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.

37 The external walls of the buildings including attachments must comply with the relevant requirements of the National Construction Code (NCC). **Prior to the issue of a Construction Certificate and Occupation Certificate**, the Certifying Authority and Principal Certifying Authority must:

- (a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the relevant requirements of the NCC; and
- (b) Ensure that the documentation relied on in the approval processes includes an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

## Health Matters and OSSM installations

38 **Prior to the issue of a Construction Certificate**, the Principal Certifying Authority is to be provided with detailed plans and information demonstrating that the construction, fit-out and finishes of the kitchen in the communal area of Building D complies with Standard 3.2.3 of the Australian and New Zealand Food Standards Code and AS 4674-2004 - Design, Construction and Fit-Out of Food Premises.

39 **Prior to the issue of an Occupation Certificate and commencement of the system**, the occupier must register any Cooling Towers and Warm Water Systems with Penrith City Council by completing the "Regulated Systems Premises - Registration Form". The occupier of the premises must notify Council within 7 days of any change of details.

40 Air handling systems, hot water systems, humidifying systems, warm water systems and water cooling systems must be installed in accordance with AS/NZS 3666.1:2011 "Air-Handling and Water Systems of Buildings - Microbial Control - Design, Installation and Commissioning", as applicable to the specific system. An air handling system must be fitted with supply air filters. This includes:

- The regulated system shall be thoroughly flushed before being brought into service and shall be located in a position to ensure that the exhaust discharge from the cooling tower is a minimum 6m away from occupied areas, pedestrian thoroughfares, trafficable areas, air intakes including lift vents and building openings.
- When an air handling, hot water, humidifying, warm water or water cooling system is installed, a certificate is to be submitted to Council certifying that the system has been installed in accordance with the Public Health Act 2010, Public Health Regulation 2012 and AS/NZS 3666.1:2011 "Air-Handling and Water Systems of Buildings - Microbial Control - Design, Installation and Commissioning".
- Any liquid discharge from the air handling system, resulting from operation, maintenance and/or cleaning operations, is to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.

## 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](http://www.sydneywater.com.au) then the “e-developer” icon, or telephone 13 20 92.

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

- 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.

- 43 **Prior to the issue of a Construction Certificate**, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:
- The requirements of the Telecommunications Act 1997;
  - For a fibre ready facility, the NBN Co’s standard specifications current at the time of installation; and
  - For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

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

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

## Construction

- 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 are 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 when the Occupation Certificate has been issued for the development.

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

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

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

(b) All excavations and back filling 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.

47 All works that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties, are restricted to the following hours in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009:

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

In the event that the work relates to activities inside the building and does not involve external walls or the roof, and does not involve the interim use of equipment that emits offensive noise, then the 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 works.

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

## Engineering

49 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.

50 An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's public infrastructure assets. The bond is to be lodged with Penrith City Council **prior to commencement of any works on site or prior to the issue of any Construction Certificate**. The bond and applicable fees are in accordance with Council's adopted Fees and Charges Schedule.

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

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



- 51 Lodgement of relevant Section 138 Roads Act applications, including payment of application and Council fees together with any applicable bonds, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road).

You are required to lodge the applicable Section 138 Roads Act application for the below works that apply to your specific development prior to that work activity commencing. Please liaise with your builder to determine what applications are required for your development.

These works may include but are not limited to the following:

- a) Construction of driveways (including kerb reinstatement of redundant driveway crossings and reconstruction of any affected footpaths and/or cycleways)
- b) Temporary road reserve occupancies
- c) Road reserve openings for the installation of:
  - i. Utilities (water, sewer, power, telecommunications)
  - ii. Private stormwater connections to the kerb (including stormwater connection to Penrith City Council owned drainage)
  - iii. Reconstruction of concrete footpath and/or cycleways across the frontage
- d) Establishment of a construction work zone
- e) Establishment of road reserve hoardings and temporary structures/fencing etc
- f) Operation of a tower crane over the road reserve
- g) Temporary ground anchors that encroach below the road reserve (for basement construction)

All works shall be carried out in accordance with the Roads Act approval and the conditions outlined in the Roads Act applications, the development consent, including the stamped approved plans, and Penrith City Council's Driveway and Road Reserve Restoration Works Specification, guidelines and engineering best practice.

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

Note:

- Separate approval may be required from Transport for NSW for classified roads.
- All works associated with the Roads Act approval(s) must be completed prior to the issue of any Occupation Certificate.
- On completion of any awning over the road reserve, a certificate from a practising structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act.

- 52 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that an application under Section 68 of the Local Government Act, including payment of application and inspection fees, has been lodged with and approved by Penrith City Council for provision of inter-allotment drainage within the subject site for the benefit of Lot 1 DP 410543. The new drainage line shall be fully constructed and the old drainage line decommissioned prior to the commencement of any building works.

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

Applications under Section 68 of the Local Government Act are now lodged via the NSW Planning Portal. Further information on the lodgement process can be found on the NSW Planning Portal website. Please contact Penrith City Council's Development Engineering Department on 4732 7777 to obtain a formal fee proposal prior to lodgement on the portal or if you require any assistance with the lodgement process.

- 53 The stormwater management system shall be consistent with the plan/s lodged for development approval, prepared by TTW, reference number 211568, drawing numbers C101 to C131, revision P4, dated 16/2/24.

**Prior to the issue of any Construction Certificate**, the Certifier shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments and Water Sensitive Urban Design (WSUD) Policy.

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

- 54 **Prior to the issue of any Construction Certificate**, the Certifier 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 - Plumbing and Drainage - Stormwater Drainage.

- 55 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that the foundations of proposed structures adjoining the drainage and/or services easement have been designed clear of the zone of influence.

- 56 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that the proposed development is compatible with the recommendations of the Civil Engineering & Flood Impact Assessment Report prepared by TTW, reference number 211568 CAAA, dated 19/2/24.

- 57 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that all habitable floor levels are in accordance with the stamped approved plans with a minimum floor level of RL 27.3m AHD (adopted flood level + 0.5m freeboard).

- 58 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that the structure/s below RL 27.3m AHD (adopted flood level + 0.5m freeboard) have been detailed with flood compatible building components in accordance with the publication 'Reducing the Vulnerability of Buildings to Flood Damage' produced by the Hawkesbury-Nepean Floodplain Management Steering Committee.

59 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that the structure/s can withstand the forces of floodwater, including debris and buoyancy, up to the 1% Annual Exceedance Probability event in accordance with the requirements of the Building Code of Australia (BCA).

60 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that:

- a) The proposed development will not concentrate, dam or divert overland flows onto adjoining properties.
- b) The crest in the access ramp to the basement car park is a minimum of RL 27.1m AHD.
- c) All new fencing within the overland flow path is open style to allow the free passage of overland flows.
- d) All proposed penetrations and access points into the basement car park area are a minimum of 0.3m above the top water level adopted for flooding.

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

61 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that vehicular access, circulation, manoeuvring and pedestrian and parking areas associated with the subject development are in accordance with Penrith Development Control Plan 2014, AS 2890.1, AS 2890.2 and AS 2890.6.

62 **Prior to the commencement of any works on-site (including demolition works) or prior to the issue of any Construction Certificate, whichever occurs first**, a Construction Traffic Management Plan (CTMP) shall be submitted to Penrith City Council's Asset Management Department for endorsement. The CTMP shall be prepared by a suitably qualified consultant with appropriate training and certification from Transport for NSW. The CTMP shall include details of any required road closures, work zones, loading zones and the like. Approval of the CTMP may require approval of the Local Traffic Committee. Please contact Council's Asset Management Department on 4732 7777 and refer to Council's website for a copy of the Temporary Road Reserve Occupancy Application Form.

63 **Prior to the issue of any Construction Certificate**, a geotechnical investigation report and strategy shall be submitted to the Certifier to ensure the stability of any adjoining Council owned infrastructure and surrounding developments. The technical direction GTD 2012/001 prepared by Transport for NSW can be used as a guide for preparing the geotechnical investigation report and strategy.

64 A dilapidation report shall be undertaken for all surrounding buildings and Council owned infrastructure to confirm that no damage occurs due to the excavations associated with the development. If Council is not the Certifier for the development, then the dilapidation report shall be submitted to Council **prior to the issue of any Construction Certificate**.

An updated dilapidation report shall be submitted to the Certifier and Council **prior to the issue of any Occupation Certificate** confirming no damage has occurred.

- 65 **Prior to the commencement of works**, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997.

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

- 66 Prior to commencement of any works associated with the development, a Traffic Guidance Scheme, including details for pedestrian management, shall be prepared in accordance with AS 1742.3 - Traffic Control Devices for Works on Roads and the Transport for NSW (TfNSW) publication "Traffic Control at Worksites Technical Manual", and certified by an appropriately accredited TfNSW 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 Guidance Scheme shall accompany the Notice of Commencement to Penrith City Council.
- Traffic control measures may require road occupancy / road closure approvals issued under Section 138 of the Roads Act by Penrith City Council prior to the issue of any Construction Certificate.

- 67 A certificate prepared by a registered surveyor verifying that all habitable floor levels are at or above RL 27.3m AHD (adopted flood level + 0.5m freeboard) shall be submitted on 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 Certifier.

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

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

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 Penrith City Council is not the Principal Certifier.

70 **Prior to the issue of any Occupation Certificate**, the Principal Certifier shall ensure that the stormwater management systems (including water sensitive urban design) and overland flow path works:

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

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

71 **Prior to the issue of any Occupation Certificate**, a restriction on the use of land and positive covenant relating to the stormwater management systems (including water sensitive urban design) and overland flow path works shall be registered on the title of the property. The restriction on the use of land and positive covenant shall be in Penrith City Council's standard wording as detailed in Council's Stormwater Specification for Building Developments - Appendix F.

72 **Prior to the issue of a Construction Certificate**, an easement for drainage and overland flow shall be provided over the subject site for the benefit of Lot 1 DP 410543, and evidence of registration of the easement with NSW Land Registry Services (LRS) shall be submitted to Penrith City Council. Easement widths shall be in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments.

73 **Prior to the issue of any Occupation Certificate**, directional signage and line marking shall be installed indicating directional movements and the location of resident and visitor parking to the satisfaction of the Principal Certifier.

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

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

75 **Prior to the issue of a Construction Certificate**, the Certifier shall ensure that the basement area is to be permanently tanked. Structural details of the tanking are to be prepared by a suitably qualified engineer and shall be submitted to the Certifier. No sump and pump system is permitted for groundwater management.

Where temporary dewatering works are required on the site during construction, the applicant must apply for and obtain a bore licence from Water NSW. The bore licence must be obtained prior to commencement of dewatering works. All requirements of Water NSW are to be satisfied and a copy of the approval shall be submitted to the Certifier.

76 **Prior to the issue of any Construction Certificate**, the Certifier shall ensure that all vehicles accessing the site can enter and exit from/to the public road access in a forward direction. Any turning movements must be in accordance with AS 2890 for the relevant vehicle.

- 77 All parking spaces, loading zones, parking aisles and manoeuvring areas are to be kept clear of stored materials, products and waste materials such that these areas remain unobstructed and allow for the safe movement of vehicles.
- 78 The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.
- 79 **Prior to the issue of a Construction Certificate**, a site-specific operations and maintenance management plan for the stormwater treatment measures is to be prepared and submitted to Council's Development Services Manager for approval.

## Landscaping

- 80 All landscape works are to be constructed in accordance with the stamped approved plans and in compliance with Chapter C6 - Landscape Design and Section 2.9 of Appendix F4 - Technical Information of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plans, 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.

- 81 On completion of the landscape works associated with the development and **prior to the issue of an Occupation Certificate** for the development, an Landscape Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the approved landscaping works for the development. This report shall be prepared by a suitably qualified and experienced landscape professional.

**An Occupation Certificate should not be issued** until such time as a satisfactory Implementation Report has been received and endorsed. 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.

- 82 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.

- 83 No trees are to be removed, ring barked, cut, topped, or lopped or wilfully 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 Chapter C2 - Vegetation Management of Penrith Development Control Plan 2014 and Council's Tree Preservation Order and Policy.

- 84 **Prior to any works commencing on the electrical substation**, a work method statement/arboricultural assessment relating to the specific process for the installation of the proposed electrical substation is required to ensure impacts of installation are manageable and will not adversely affect trees within the vicinity.
- 85 **Prior to any works commencing on the site**, a Project Arborist with a minimum Level 5 qualification (AQF - Australian Qualification Framework) shall be engaged to prepare a site-specific Tree Protection Plan (Specification) & Drawing/s in accordance with the conditions of this consent and Section 5 of AS 4970-2009 - Protection of Trees on Development Sites.

The plan is to be submitted to and approved by Penrith City Council's Tree Management Officer and is to demonstrate (but not be limited to) the following:

- Clear identification of trees to be removed, trees to be retained and trees to be transplanted.
  - Tree protection measures for all trees to be retained and protected on the site and trees located on adjoining properties within 5m of the property boundaries including addressing impacts such as soil level changes, retaining wall construction, installation of underground services, etc.
  - Retention and protection of street trees.
  - An individual drawing for each stage of the development (e.g. demolition, during construction, post construction and landscaping) particularly where changes to or intrusion into the Tree Protection Zone (TPZ) is required.
  - Identification and tabling of key stages where monitoring and certification will be required as outlined in AS 4970-2009, Section 5 and a schedule of inspection dates.
  - A requirement for the Project Arborist to be present on-site during demolition and any of the key stages identified in the schedule required in the point above.
  - A requirement for the Project Arborist to provide a written account of the satisfactory completion of each of these stages as assessed by the consulting arborist to the Principal Certifying Authority.
  - A remedial action plan to report and address non-compliance issues.
  - A requirement for the Tree Protection Plan (Specification) & Drawing to be retained and implemented on site at all times.
  - A pruning specification should any trees require pruning (within acceptable standards) to facilitate the development.
- 86 **Prior to any works commencing on the site**, and once a Tree Protection Plan (Specification) & Drawing/s has been approved by Penrith City Council's Tree Management Officer, a qualified Arboricultural Consultant who holds a minimum Level 5 qualification (AQF - Australian Qualification Framework) in Arboriculture is to be engaged and retained for the duration of the development (demolition, construction and completion of works). The consultant shall be engaged to ensure that tree protection measures on the site are imposed as per the conditions contained in this consent and/or the approved Tree Protection Plan (Specification) & Drawing/s.

**87 Prior to any works commencing on the site, the following must be satisfied:**

- All trees approved to be removed are to be clearly identified on the site.
- All trees to be retained are to be provided with appropriate tree protection fencing as detailed in the Tree Protection Plan (Specification) & Drawing and in accordance with AS 4970-2009 - Protection of Trees on Development Sites.
- Removal of trees must be undertaken by an Arborist with a minimum of AQF (Australian Qualification Framework) of Level 3.
- All tree removal works must comply with the Amenity Tree Industry - Code of Practice, 1998 (Workcover NSW) and Guide to Managing the Risks of Tree Work (Safe Work Australia, 2023).
- Removal of trees shall be undertaken so the above and below ground parts of trees to be retained are not damaged. This requires (but is not limited to) tree protection measures being installed prior to removal of trees (e.g. tree protection fence and ground protection) and careful dismantling to ensure the canopy of trees to be retained is not damaged/broken.
- Stump grinding/removal of root systems shall not occur if it will damage the root system of adjacent trees. Stumps are to be treated in a manner that is non-destructive.
- All other vegetation not specifically identified above, and protected by Penrith Development Control Plan 2014, Chapter C2 - Vegetation Management, is to be retained and protected from construction damage and pruning.



- 88 Trees are to be retained and protected as per the approved Tree Protection Plan (Specification) & Drawing and the requirements below. Failure to comply with these requirements is an offence and may incur a fine or lead to prosecution.

Tree protection measures must comply with Australian Standard AS 4970-2009 - Protection of Trees on Development Sites, together with the following requirements:

- The tree/s to be retained and protected together with their relevant Tree Protection Zone (TPZ) shall be marked on all demolition and construction drawings.
- All contractors and workers on site shall be briefed on the tree protection and management procedures in place as part of their site induction. A written record of the induction process is to be kept on site.
- A 1.8m high chain link wire tree protection fence that complies with Section 4.3 of AS 4970-2009 - Protection of Trees on Development Sites shall be erected around the above trees as prescribed in the protection measures detailed above. The fence is to be installed prior to demolition / construction, shall not be removed, or altered, and is to remain in place for the duration of the site works.
- The applicant shall display in a prominent location on the fencing of each protection zone a durable, weather resistant sign having minimum dimensions of 500mm high x 400mm wide of similar design and layout as per Appendix C, AS 4970-2009 - Protection of Trees on Development Sites, clearly showing:
  1. The development consent number.
  2. The name and contact number of the nominated consultant arborist or site manager.
  3. Indication that access into the Tree Protection Zone (TPZ) is not permitted.
- The above notice is to be in place prior to commencement of demolition or construction.
- Fences are to be inspected on a regular basis to ensure that they are intact, comply with the above standards, installed to the appropriate dimensions and provide effective protection for the tree to be retained.
- The TPZ shall be maintained as per AS 4970 - 2009, Section 4.6. Access to the TPZ is permitted to undertake necessary maintenance such as mowing, watering and weed control.
- No vehicular access, excavations for construction or installation of services shall be carried out within the fenced Tree Protection Zone.
- All utility services, pipes, stormwater lines and pits shall be located outside the fenced Tree Protection Zone.
- Building materials, chemical storage, site sheds, wash out areas and similar shall not be located within the fenced Tree Protection Zone.
- Trees marked for retention must not be damaged or used to display signage, or as fence or cable supports for any reason.

If tree roots are exposed during approved works, roots with a diameter less than 25mm are to be pruned cleanly using sharp hand tools and not torn or ripped by machinery. Tree roots greater than 25mm in diameter are to be assessed by a qualified arborist, minimum Australian Qualification Framework (AQF) Level 5 or equivalent, before any pruning work is undertaken. If necessary, changes in design or relocation of works may be required.

89 The appointed Project Arborist must ensure that the appropriate tree protection measures are implemented on the site as per the approved Tree Protection Plan (Specification) & Drawing, relevant conditions of this consent and the requirements below:

- Undertake inspections not less than monthly and at the critical checkpoints listed in the Tree Protection Plan (Specification) & Drawing.
- Ensure all TPZs are maintained as per AS 4970 - 2009, Section 4.6. Access to the TPZ is permitted to undertake necessary maintenance such as mowing, watering and weed control.
- Keep a written record (e.g. field notes and photos) to provide evidence of compliance with the approved Tree Protection Plan (Specification) & Drawing at times when they are present on site and when inspection at critical checkpoints is required.
- Forward the written record of inspection to the Principal Certifying Authority within one week of that inspection occurring.
- Where there is a breach of the Tree Protection Plan (Specification) & Drawing, the project arborist must specify any remedial works and the timeframe in which these works must be completed.
- If an inspection reveals that there has been a significant breach of the Tree Protection Plan (Specification) & Drawing, inspections from then on must be carried out weekly.
- The appointed Project Arborist shall also be required to be present on site to supervise when:
  1. There are works undertaken within an area designated by a tree protection fence.
  2. Any in groundwork within a TPZ is to be undertaken (fenced or unfenced).
  3. There is a requirement for a change to the alignment of tree protection fences.
  4. At any other times that the approved Tree Protection Plan (Specification) & Drawing prescribes.

If a tree required to be planted or retained as a consequence of this consent dies or is removed, it is to be replaced with the same or equivalent species.

Unless otherwise agreed to in writing by Council's Tree Management Officer, the replacement tree must be the same maturity as the tree which died or was removed.

## Certification

- 90 **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 Certifier shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 6.6 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 6.6 of the Environmental Planning and Assessment Act 1979.

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

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

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

## **Appendix - Development Control Plan Compliance**

### **Development Control Plan 2014**

#### **Part C - City-wide Controls**

## **C2 - Vegetation Management**

The proposed development includes the removal of 24 trees or tree groups from the site. The existing large canopy trees across the site were a key consideration as part of the development assessment process due to the landscape value and character they provide to the site and locality and their contribution to reducing urban heat.

In response to concerns raised by Council during the assessment period, the applicant amended the design of the proposal to lessen the impact on key canopy trees along the Great Western Highway, Emerald Street and the southern boundary. Amendments included a redesign of the initially proposed two separate basement areas into one consolidated and centralised basement. This design change increased the setbacks of the basement and associated excavation works from the tree protection zones of key trees. In addition, building setbacks above ground level were increased to reduce tree impacts and to reduce the level of pruning required to tree canopies of retained trees. A balanced outcome for the site has now been achieved through the amendments made.

These changes have been assessed by Council's Tree Management Officer who is satisfied the proposal makes suitable provision for tree retention and protection subject to recommended conditions of consent.

## **C3 - Water Management**

The proposed development complies with the applicable planning provisions relating to flood planning, flood evacuation, stormwater management and water sensitive urban design.

To ensure there are no impacts on overland flow flooding in the north-western corner of the site, Building A will be partly constructed on a suspended slab (western portion of the building and balconies along the northern edge) to allow overland flows to pass under the building so the building does not obstruct flows and cause off-site impacts to adjoining properties or roadways. In addition, the habitable floor levels of buildings will achieve the required flood planning level (adopted flood level + 0.5m freeboard) for the site.

A recommended condition of consent requires the registration on title of the relocated and realigned stormwater drainage easement benefiting adjoining Lot 1 DP 410543 (Emu Plains Public School site) prior to the issue of a Construction Certificate.

## **C5 - Waste Management**

The proposed development does not comply in full with Council's waste management guidelines under the DCP.

The applicant (Uniting) operates multiple aged care and independent living unit (ILU) facilities across Australia. Uniting has operational waste management practices and operations at all of their facilities and engages private waste contractors to service their needs. The existing residential aged care facility on the site is privately serviced and this waste service will be extended to the proposed ILUs.

Waste and recycling infrastructure is incorporated into the proposed development. All waste servicing will occur from the basement with the exception of Building E, where waste will be collected from the at-grade driveway/parking area adjoining the building.

The proposed waste management arrangements are deemed acceptable in the circumstances of this development proposal.