

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0868
Proposed development:	Construction of Outdoor Courtyard Area for Lennox Village Shopping Centre
Property address:	2 - 20 Pyramid Street, EMU PLAINS NSW 2750
Property description:	Lot 1 DP 610862
Date received:	22 December 2020
Assessing officer	Jacqueline Klincke
Zoning:	Zone B2 Local Centre - LEP 2010
Class of building:	Class 6
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for the construction of an outdoor courtyard area with deck at 2-20 Pyramid Street, Emu Plains (Lennox Village Shopping Centre). The subject site is zoned B2 Local Centre and the proposed development is consistent with the objectives of the B2 zone and will continue to support the primary use of the site as a *commercial premises* whilst also providing additional amenity to service the needs of the people that work, visit and live within the local area.

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014* and Council's adopted *Community Engagement Strategy and Community Participation Plan 2019*, and due to the nature of the proposed development, the application did not require to be notified to surrounding properties. No submissions were received in this regard.

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

Site & Surrounds

The subject site is located at 2-20 Pyramid Street, Emu Plains and is legally described as Lot 1 DP 610862. The site is a corner lot, situated north-west of the intersection of the Great Western Highway and Pyramid Street. The property is irregular in shape and is approximately 3.449 hectares in total land area.

Lennox Village Shopping Centre is currently located on site which comprises of approximately 6,000m² of leasable commercial and retail space which is provided by 421 car parking spaces. The property has been subject to a number of alterations, additions and modifications to the shopping centre since its approval in 1977.

The surrounding locality is characterised by residential dwellings to the west, north and north-east, a community centre and heritage item known as 'Emu Plains Public School (former) and Trees' to the east and the Uniting Edenglassie Residential Aged care to the south.

Site Constraints

- Easement for drainage 7m wide
- Easement for electricity 1m and 2.75m wide
- Easement for underground mains

Proposal

The subject application seeks consent for a new outdoor courtyard area to the southern elevation of the main shopping centre building and involves the following aspects:

- Partial demolition to the existing courtyard area and the removal glazing, doors, stairs, pavements and retaining wall,
- Removal of 1 tree (Date Palm),
- Construction of a new deck/landing with soft-fall infills, stairs and balustrade, and
- Installation of permeable screening to enclose the courtyard area for patron safety and privacy.

Seating and other fixtures proposed within the new outdoor courtyard area will be undertaken as *exempt development* under the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.15 - Evaluation

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

• Section 7.12 - Developer Contributions

Section 7.12 Development Contributions apply to non-residential developments within the Penrith LGA that have a proposed cost of works of \$100,001 and greater. As the proposed cost of works for this subject application is \$100,000, Section 7.12 Contributions do not apply.

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

State Environmental Planning Policy No 55—Remediation of Land

As assessment has been undertaken of the application against the relevant criteria within the *State Environmental Planning Policy No. 55—Remediation of Land* and the application is satisfactory subject to recommended conditions of consent.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the proposal against the relevant criteria within the *Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997)* and the application is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	N/A
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.7 Servicing	Complies

Clause 7.2 Flood planning

The subject site is marginally affected by local overland flow flooding however, the proposal is sufficiently clear of this affection. In this regard, there are no issues from a flood planning perspective envisioned.

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

It is noted that both the *Draft Environmental SEPP* and *Draft Remediation of Land SEPP* apply to the subject site, but while so, do not affect or alter the recommendation of this report.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies - see Appendix - Development Control Plan Compliance
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	Complies
C8 Public Domain	Complies
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies

Section 4.15(1)(a)(iia) The provisions of any planning agreement

There are no planning agreements applying to the proposal.

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

The proposal was referred to Council's Building Surveyor and Tree Management Officer who have both recommended conditions of consent to ensure the development complies with the Building code of Australia and the relevant Australian Standards.

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

Context and Setting:

The proposed deck and outdoor courtyard area is moderate in scale and is not considered likely to have any adverse impact on the surrounding locality.

Environmental Impacts:

As stated within this report, the proposed development involves the removal of a Canary Island Date Palm, and construction works within the tree protection zone of a Lemon Scented Gum which shall be retained. Therefore, the application was supported with an Arboricultural Impact Assessment and Tree Protection Specification, prepared by TreeiQ to determine whether the proposed development would impact on the existing vegetation on site and was assessed by Council's Tree Management Officer.

The Canary Island Date Palm is identified to be of low landscape significance and therefore no concerns were raised in regards to the removal of this tree. Furthermore, Council's Tree Management Officer raised no objections to the proposed deck and courtyard located within the TPZ of the Lemon Scented Tree, subject to adherence to the tree sensitive design and construction methods recommended within the arborist report.

Access, Traffic and Parking:

The proposed outdoor courtyard will not impact the existing parking and traffic provisions existing on the site.

Noise and Vibration:

To maintain the acoustic privacy and amenity of the surrounding area, a standard condition of consent restricting construction work hours is recommended. It is not considered that the nature and use of the proposal (i.e. the use of the courtyard for outdoor seating) will create any acoustic concerns.

Socio-Economic Impacts:

The proposed courtyard will provide a social and economic benefit for the employees working within the shopping centre, customers of the shopping centre and the local community. The provision of an outdoor courtyard area is considered to improve the amenity of the shopping centre and provide an open-air outdoor seating area for customers and staff to use.

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

The site is suitable for the proposed development for the following reasons:

- The proposed development is unlikely to have any adverse impacts to the existing amenity of the shopping centre or surrounding area,
- The use is consistent and complementary to the surrounding/adjoining land uses,
- The site is adequately serviced by access and parking, water and sewage infrastructure which have the capacity to cope with any increase in demand associated with the proposed use.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014* and Council's adopted *Community Engagement Strategy and Community Participation Plan 2019*, and due to the nature of the proposed development, the application did not require to be notified to surrounding properties. No submissions were received in this regard.

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
Tree Management Officer	No objections - subject to conditions

Section 4.15(1)(e)The public interest

Given the nature and scale of the proposal and its general compliance with the applicable development controls, the outdoor courtyard area with deck is not considered to generate any significant issues of public interest.

Conclusion

In assessing the proposed development against the relevant environmental planning instruments being the *Penrith Local Environmental Plan 2010* and *Penrith Development Control Plan 2014*, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development, the proposal is in the public interest and there is unlikely to be negative impacts arising from the proposed development. Therefore, the application is worthy of support and is recommended for approval, subject to recommended conditions.

Recommendation

That DA20/0868 for the construction of an outdoor courtyard and deck at 2-20 Pyramid Street, Emu Plains (Lennox Village Shopping Centre) be approved subject to the attached conditions.

General

1 [A001 - Approved plans table](#)

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

Drawing Title	Drawing No.	Issue	Prepared By	Dated
Cover Page	-	-	-	December 2020
Site Context Plan	DA01	A	i2C	16/12/12
Final Site Analysis	DA02	A	i2C	16/12/12
Existing / Demolition Plan - Courtyard	DA03	A	i2C	16/12/12
Proposed Ground Floor Plan - Courtyard	DA04	A	i2C	16/12/12
Proposed Roof Plan - Courtyard	DA05	A	i2C	16/12/12
Proposed Elevations & Section	DA06	A	i2C	16/12/12

- Arboricultural Impact Assessment and Tree Protection Specification, revision B, prepared by Tree IQ, dated 17 December 2020
 - BCA Design Compliance Report, revision 2, prepared by Modern Building Certifiers, dated 17 December 2020
- 2 [A008 - Works to BCA requirements \(Always apply to building works\)](#)
The work must be carried out in accordance with the requirements of the Building Code of Australia.
- 3 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)
The development shall not be used or occupied until an Occupation Certificate has been issued.
- 4 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)
The use of the outdoor courtyard shall coincide with the approved operating hours of the shopping centre.
- 5 [A039 - Graffiti](#)
The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 6 [A046 - Obtain Construction Certificate before commencement of works](#)
A **Construction Certificate** shall be obtained prior to commencement of any building works.
- 7 [A Special \(BLANK\)](#)
Prior to the issue of a Construction Certificate, further details, specifications and a sample (i.e. photo) of the permeable privacy screen shall be supplied to Council for review and approval.

Demolition

8 [B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE](#)

All demolition works are to be conducted in accordance with the provisions of AS 2601-2001 "The Demolition of Structures". **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

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

9 B003 - ASBESTOS

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

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

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

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

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

10 B004 - Dust

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

11 B005 - Mud/Soil

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

BCA Issues

12 E001 - BCA compliance

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).

Construction

13 H001 - Stamped plans and erection of site notice

Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

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

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

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

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

14 H002 - All forms of construction

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) 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.

15 H041 - Hours of work (other devt)

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

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

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

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

Landscaping

16 L1 Special Appointment of a Project Arborist prior to commencement of works

A project arborist shall be engaged prior the commencement of work on-site and monitor compliance with all recommendations and protection measures outlined within the approved Arboricultural Impact Assessment and Tree Protection Specification, prepared by Tree IQ, dated 17 December 2020.

The arborist shall have a minimum qualification equivalent (using the Australian Qualifications Framework) of Level 5 or above in arboriculture.

17 L2 Special Tree to be retained and protected

The following tree is to be retained and protected, as identified within the approved Arboricultural Impact Assessment and Tree Protection Specification, prepared by Tree IQ, dated 17 December 2020. Failure to comply with this condition is an offence and may incur a fine or lead to prosecution.

- Tree 10 - *Corymbia citriodora* (*Lemon Scented Gum*), located within the existing courtyard area on the southern side of the shopping centre complex.

Tree protection measures shall be applied and installed in accordance with pages 5-6 and Appendix 4 of the approved Arboricultural Impact Assessment and Tree Protection Specification, prepared by Tree IQ, dated 17 December 2020, as provided by Condition 1 of this consent.

18 **L3 Special Tree removal**

Tree 10a, *Phoenix canariensis* (Canary Island Date Palm), as identified in the Arboricultural Impact Assessment and Tree Protection Specification, prepared by Tree IQ, dated 17 December 2020, shall be removed. All tree removal works shall comply with the *Amenity Tree Industry – Code of Practice, 1998* (Workcover, NSW) and the *Guide to Managing Risks of Tree Trimming and Removal Work* (Safe Work Australia 2016).

During the removal of Tree 10a, all care shall be taken to ensure that no damage (to either above or below ground parts) occurs to Tree 10. Removal of Tree 10a shall be monitored by the AQF Level 5 arborist required on site.

19 **L4 Special (BLANK)**

A drip irrigation/watering system shall be installed under the deck and indicated on the Construction Certificate plans for Tree 10, *Corymbia citriodora* (Lemon Scented Gum) to ensure appropriate soil moisture content is provided for the tree. The system shall include the following aspects:

- The installation of the water pipes shall not require excavation within the Tree Protection Zone of Tree 10,
- The system shall be capable of being programmed to monitor the moisture content of the soil and provide water to the root zone to maintain optimal growth of Tree 10,
- The frequency of watering and the level of moisture content in the soil shall be determined by an AQF Level 5 arborist with regard to the requirements of the species and the soil conditions on the site, and
- The watering system and tree shall be checked on a minimum of a monthly basis to ensure the system is working correctly and the tree is receiving appropriate irrigation.

20 **L5 Special BLANK**

Prior to the issue of a Construction Certificate:

- Investigations shall be undertaken to determine the appropriate locations of the posts for the deck to minimise damage to tree roots of Tree 10, *Corymbia citriodora* (Lemon Scented Gum).
- The deck is to be designed so that no posts are located greater than 100mm from any tree with a diameter of 25mm or more.
- The AQF Level 5 arborist shall undertake the abovementioned investigations using hand digging methods to determine suitable locations for the posts.
- The results of the investigations shall inform where posts are to be located and whether a 'non-standard' design of the deck is required (i.e. placement of posts at irregular intervals to ensure sufficient distance from tree roots is achieved).
- Consideration shall be given to spacing the boards of the deck to permit rainfall to penetrate the deck and be filtered to the root system below.
- The relevant tree protection measures as provided in pages 5-6 and Appendix 4 of the Arboricultural Impact Statement and Tree Protection Specification, prepared by Tree IQ, dated 17 December 2020, shall also be applied during this process.

21 **L6 Special BLANK**

During demolition and construction works:

- An AQF Level 5 arborist shall be retained for the duration of the demolition and construction of the courtyard and deck, and monitor works on site in accordance with pages 5-6 and Appendix 4 of the Arboricultural Impact Statement and Tree Protection Specification, prepared by Tree IQ, dated 17 December 2020.
- Trunk protection is required to be installed for Tree 10, *Corymbia citriodora* (Lemon Scented Gum) in accordance with Section 1.4 of Appendix 4 of the Arboricultural Impact Statement and Tree Protection Specification, prepared by Tree IQ, dated 17 December 2020. All other tree protection requirements provided in Appendix 4 shall also be imposed and monitored.
- Trunk protection shall only be removed once all work on the site has been completed (including landscaping).
- Mulch is to be applied around the tree to prevent ground compaction due to the installation of the deck and to retain moisture/provide nutrients to the tree in the longer term.
- Care is to be taken to ensure that the approved landscaping and associated minor works (e.g. installation of retaining walls) does not cause damage to Tree 10. These works shall be monitored by the arboricultural consultant who is required to be on site.

22 **L7 Special BLANK**

Upon completion of all construction works, an AQF Level 5 arborist shall monitor Tree 10 on a monthly basis for the first year to adjust watering requirements if necessary. After this time ongoing quarterly inspections by the AQF Level 5 arborist (or their nominated, appropriately qualified replacement) will be required to monitor the tree. If the AQF Level 5 arborist has any concerns in regard to the condition of the tree, then remedial works are to be put in place to rectify the issues. Inspections shall also ensure that the edge of the deck is not impacting on the growth of the trunk of the tree. At no time is the edge of the deck permitted to be touching the trunk of the tree.

A record of these inspections shall be provided to centre management and provided to Council if requested.

23 **L8 Special BLANK**

In the event of cleaning the courtyard area and deck, the use of harsh chemical cleaners shall be limited (or not used at all) to prevent any chemical build up within the root zone of the tree. Where possible, natural or biodegradable cleaners are to be used.

Certification

24 **Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)**

Prior to the commencement of any building works on site, the proponent is to:

- (a) employ a Principal Certifier 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 Certifier" 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 building 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.

25 **Q05F - Occupation Certificate for Class10**

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation/use of the outdoor courtyard area.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to 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 application was supported by an Arboricultural Impact Assessment and Tree Protection Specification, prepared by Tree IQ, dated 17 December 2020, due to the proposal involving the removal of one (1) Canary Island Date Palm and constructions works located within the Tree Protection Zone (TPZ) of a Lemon Scented Gum that is proposed to be retained and contains high significance. The proposal and report were referred to Council's Tree Management Officer who raised no concerns to the proposed tree removal due to the Canary Island Date Palm being identified as a non-significant tree.

Furthermore, no objections were raised to the proposed retention and construction works of the outdoor courtyard within the TPZ of the Lemon Scented Gum, subject to adherence with the tree sensitive design and construction methods to protect and minimise adverse impacts to the tree recommended in the Arborist Report. These recommendations include:

- The appointment of a project arborist,
- Existing ground levels within the TPZ shall be maintained,
- The deck, sub-frame, privacy screens are to be supported on isolated piered footings (with all other structures to be positioned above the existing ground levels) with excavation for these footings undertaken by hand,
- Footing locations are to be flexible and/or designed in such a way to enable the retention of roots,
- A minimum clearance of 200mm provided between the tree, deck and sub-frame, with new structures cut away as required to accommodate the root crown or mounding at the base of the tree, and
- Installation of a drip irrigation system under the deck with moisture content monitoring.

Adherence to these recommendations are ensured via a condition of consent. In this regard, the proposed development is considered to be appropriate and not cause detrimental impacts to the tree that is to be retained which contains high significance.