

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA20/0868
Description of development:	Construction of Outdoor Courtyard Area for Lennox Village Shopping Centre
Classification of development:	Class 6

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 1 DP 610862
Property address:	2 - 20 Pyramid Street, EMU PLAINS NSW 2750

DETAILS OF THE APPLICANT

Name & Address:	Macroplan Level 10 580 George Street SYDNEY NSW 2000
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DECISION OF CONSENT AUTHORITY

In accordance with Section 4.18(1) (a) of the Environmental Planning and Assessment Act 1979, consent is granted subject to the conditions listed in attachment 1.

Please note that this consent will lapse on the expiry date unless the development has commenced in that time.

Date from which consent operates	24 March 2021
Date the consent expires	24 March 2026
Date of this decision	19 March 2021

POINT OF CONTACT

If you have any questions regarding this determination you should contact:

Assessing Officer:	Jacqueline Klincke
Contact telephone number:	+612 4732 8391

NOTES

Reasons

The conditions in the attached schedule have been imposed in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 as amended.

Conditions

Your attention is drawn to the attached conditions of consent in attachment 1.

Certification and advisory notes

You should also check if this type of development requires a construction certificate in addition to this development consent.

It is recommended that you read any Advisory Note enclosed with this notice of determination.

Review of determination

The applicant may request Council to review its determination pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 within twelve months of receiving this Notice of Determination.

These provisions do not apply to designated development, complying development or crown development pursuant to Section 8.2(2) of the Environmental Planning and Assessment Act 1979.

Appeals in the Land and Environment Court

The applicant can appeal against this decision in the Land and Environment Court within twelve months of receiving this Notice of Determination.

There is no right of appeal to a decision of the Independent Planning Commission or matters relating to a complying development certificate pursuant to clause 8.6(3) of the Environmental Planning and Assessment Act 1979.

Designated development

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 56 days after the date of this notice.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 56 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

Sydney Western City Planning Panels

If the application was decided by the Sydney Western City Planning Panel, please refer to Section 2.16 of the Environmental Planning and Assessment Act, 1979 (as amended) for any further regulations.

ATTACHMENT 1: CONDITIONS OF CONSENT

General

- 1 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 The work must be carried out in accordance with the requirements of the Building Code of Australia.
 - 3 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
 - 4 The use of the outdoor courtyard shall coincide with the approved operating hours of the shopping centre.
 - 5 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
 - 6 A **Construction Certificate** shall be obtained prior to commencement of any building works.
 - 7 **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 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 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 Dust suppression techniques are to be employed during demolition to reduce any potential nuisances to surrounding properties.
- 11 Mud and soil from vehicular movements to and from the site must not be deposited on the road.

BCA Issues

- 12 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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.

SIGNATURE

Name:	Jacqueline Klincke
Signature:	

For the Development Services Manager