

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA18/0710.02
Proposed development:	S4.55 Modification to Remove Detached Secondary Dwelling
Property address:	5 Burrawang Close, KINGSWOOD NSW 2747
Property description:	Lot 38 DP 1194171
Date received:	5 June 2020
Assessing officer	Lawrence Ligato
Zoning:	Zone R2 Low Density Residential - LEP 2010
Class of building:	Class 1a
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application (modification) for the subject development on the subject site and the proposal is a permissible land use with Council consent.

Site & Surrounds

Properties of the Site

The subject site is located on the east side of Burrawang Close, approximately 70m south of the intersection of Burrawang Close and Casuarina Circuit in Kingswood. The site is 1659m² in area with a 26m frontage to Burrawang Close. The land slopes across the site in a west to east direction.

The site is currently vacant with an easement 2m wide to drain water that runs along the north and eastern boundaries of the site.

Proposal

The approved development originally involved the following:

- Construction of a two storey dwelling with a detached secondary dwelling.
- Including landscaping and retaining walls, attached garage, driveway and associated drainage works.

The proposed modification involves the following:

- Remove detached secondary dwelling from proposed works.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.55(3) and Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been considered:

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application.

The likely impacts of the proposed modification application have been considered in accordance with Section 4.15 of the Act. Consideration is also given to relevant provisions of the Penrith LEP and DCP that are of relevance to the development the subject of this application.

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

The development has been assessed in accordance with the matters for consideration under Section 4.15 and Section 4.55(2) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration

(2) Other modifications A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

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

The application as lodged was not satisfactory for the purpose of Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979 - as it was not demonstrated that the modified development is 'substantially the same' as the originally approved development. The proposed development as part of the subject application was changed to S4.55 Modification to Remove Detached Secondary Dwelling from DA18/0710. The applicant was advised that any future DA lodgements for secondary dwellings must comply with Part E8 (The Knoll) of Penrith Development Control Plan 2014.

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

Not applicable.

(c) it has notified the application in accordance with--(i) the regulations, if the regulations so require, or(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

The application was required to be notified.

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

The proposed modification was required to be notified. Council did receive one submission in response.

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

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with 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 2.3 Permissibility	Complies - See discussion
Clause 4.3 Height of buildings	Complies - See discussion
Clause 5.4 Controls relating to miscellaneous permissible uses	Complies - See discussion

Clause 2.3 Permissibility

The site is zoned R2 Low Density Residential and dwelling houses are permitted land uses under this zoning with consent.

Clause 4.3 Height of buildings

Clause 4.3 states that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The maximum height of buildings for the area is 9m. Despite the sloping across the site, the proposed dwelling reaches a height of no more than 9m from ground level to the highest point of the building, which complies with this requirement.

Clause 5.4 Controls relating to miscellaneous permissible uses

If development for the purposes of a secondary dwelling is permitted under Penrith Local Environmental Plan 2010, the total floor area of the dwelling (excluding any area used for parking) must not exceed whichever of the following is greater:

- (a) 60 square metres, or
- (b) 10% of the total floor area of the principal dwelling.

The proposed detached secondary dwelling is 59.2m² in area, satisfying the requirements of this clause.

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

Development Control Plan 2014

Provision	Compliance
E8 Kingswood controls	Complies - see Appendix - Development Control Plan Compliance

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

Context and Setting

The proposed development will be located within a semi-established and semi developing residential area. The development will not significantly impact upon the nearby established residential area, and has been designed to complement some of the existing features of the street and area.

Access, Traffic and Transportation Impacts

The two storey dwelling is to have a double garage and a new connecting driveway. In addition to the two car parking spaces in the double garage, there is also sufficient space provided for two stacked parking spaces on the proposed driveway. Any traffic generated from development will not impact adversely on the local road network.

Utilities / Water and Energy

The standard conditions for obtaining a Section 73 Certificate from Sydney Water and written clearance from Endeavour Energy are recommended. The site is already serviced by water, electricity and telephone which can be utilised by the proposed development. These were provided at the subdivision stage.

Stormwater Drainage

All stormwater will be directed to the rainwater tanks (as per BASIX requirements). Overflow from the rainwater tanks will be directed to the drainage easement located toward the eastern boundary of the site, which leads to the street stormwater drainage system.

Visual Privacy

Due to the positioning of neighbouring properties, setbacks from boundaries and screening provided through design elements of the proposed dwelling, there are no identified issues of visual privacy.

Noise and Vibration

To maintain acoustic privacy and amenity of surrounding properties, the standard condition restricting work hours is recommended.

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

The site is suitable for the following reasons:

- The site is zoned to permit the proposed use;
- The use is compatible with surrounding/adjoining land uses;
- The grade of the site is suitable for the design proposed;
- The site is able to drain to Council's satisfaction.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

Community Consultation

In accordance with Penrith Development Control Plan 2014 - Appendix F4 Notification and Advertising, the proposed development was notified to 1 nearby and adjoining residents between the 6 July to 20 July 2020. One submission was received in response.

Submissions

The following issues were raised in the submissions received. Feedback commentary to these submissions are detailed below:

Issues Raised	Comments
- Side setback - Rain water tank - Retaining wall - Excavation	1. The application was not satisfactory for the purpose of Section 4.55 of the Environmental Planning and Assessment Act 1979, as it was not demonstrated that the modified development is 'substantially the same' as the originally approved development. 2. The proposed development as part of the subject application was changed to S4.55 Modification to Remove Detached Secondary Dwelling from DA18/0710. 3. The applicant was advised that any future DA lodgements for secondary dwellings must comply with Part E8 (The Knoll) of Penrith Development Control Plan 2014.

Section 4.15(1)(e)The public interest

The proposed development will not generate any significant issues of public interest.

Conclusion

The proposed development as modified is considered to be substantially the same development as that originally approved. The application has been considered with regard to the matters raised in Section 4.15 and Section 4.55 of the Act. On balance, it is considered that the proposed development as modified is acceptable.

Recommendation

That DA18/0710.02 for S4.55 Modification to Remove Detached Secondary Dwelling at 5 Burrawang Close KINGSWOOD NSW 2747, be approved subject to the following:

Modify the following conditions:

A001

The development must be implemented substantially in accordance with the following plans stamped approved by Council, the application form, the BASIX Certificate numbered 941548M and the application form and any supporting information issued by Penrith City Council, except as amended in red (**the detached secondary dwelling does not form part of this approval**) on the attached plans and by the following conditions.

Description	Plan No.	Revision	Prepared By	Date
Location, Site Plans & Environmental Analysis	DA01	B	MetaForum Architecture	13.09.18
Floor Plans	DA02	B	MetaForum Architecture	13.09.18
Elevations	DA03	B	MetaForum Architecture	13.09.18
Elevations & Sections	DA04	B	MetaForum Architecture	13.09.18

Stormwater Drainage Plan	DPC002	D	Advent Consulting Engineers	14.09.18
Waste Management Plan	WMP01	A	MetaForum Architecture	26.07.18

[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 **two storey dwelling**.

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.

Remove the following conditions:

[N001 - Section 94 contribution \(Cultural Facilities\)](#)

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan(s) for Cultural Facilities. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$251.00 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for Cultural Facilities may be inspected at Council's Civic Centre, 601 High Street, Penrith.

[N001 - Section 94 contribution \(District Open Space\)](#)

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan(s) for District Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$2,931.00 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for District Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

[N001 - Section 94 contribution \(Local Open Space\)](#)

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan(s) for Local Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$1,060.00 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for Local Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

As amended on 10 August 2020 under Section 4.55 of the Environmental Planning and Assessment Act 1979.

General

1 [A001](#)

The development must be implemented substantially in accordance with the following plans stamped approved by Council, the application form, the BASIX Certificate numbered 941548M and the application form and any supporting information issued by Penrith City Council, except as amended in red (**the detached secondary dwelling does not form part of this approval**) on the attached plans and by the following conditions.

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Elevations & Sections	DA04	B	MetaForum Architecture	13.09.18
Stormwater Drainage Plan	DPC002	D	Advent Consulting Engineers	14.09.18
Waste Management Plan	WMP01	A	MetaForum Architecture	26.07.18

As amended on 10 August 2020 under Section 4.55 of the Environmental Planning and Assessment Act 1979

2 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)

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

3 [A039 - Graffiti](#)

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

4 [A046 - Obtain Construction Certificate before commencement of works](#)

A **Construction Certificate** shall be obtained prior to commencement of any building works.

Demolition

5 [B004 - Dust](#)

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

6 [B005 - Mud/Soil](#)

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

Environmental Matters

7 D001 - Implement approved sediment& erosion control measures

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

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

Certification that the erosion and sediment control measures have been installed in accordance with the approved erosion and sediment control plan (s) for the development and "Managing Urban Stormwater: Soils and Construction 2004" shall be obtained and issued a minimum 2 days before any other site works are to commence, including earthworks and clearing of the site.

The approved sediment and erosion control measures are to be installed **prior to and maintained throughout the construction phase of the development until the landscaping, driveway and on-site parking areas have been completed for the development**. These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

8 D006 - No filling without prior approval (Use always, except for bulk earthworks/ major fill operations)

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

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

{Note: Penrith Contaminated Land Development Control Plan defines an appropriately qualified person as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, 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."}.

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.

9 D009 - Covering of waste storage area

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

10 D010 – Appropriate disposal of excavated or other waste

All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

BCA Issues

11 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).

Utility Services

12 G002 - Section 73 (not for

A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s website at www.sydneywater.com.au then the “e-developer” icon, or telephone 13 20 92.

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

13 G004 - Integral Energy

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.

14 G006 -

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.

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

15 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 onsite, 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.

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

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

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

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

17 H022 - Survey

The building shall be set out by a registered surveyor. A Survey Certificate shall be undertaken and submitted to the Principal Certifying Authority when the building is constructed to ground floor slab level.

18 H032 - Painting

Prior to the issue of an Occupation Certificate, the building is to be painted internally and externally.

19 H033 – Clothes line

Prior to the issue of an Occupation Certificate, clothes drying facilities are to be installed, positioned and screened from public view.

20 **H036 - Rainwater Tank (Also impose H037, H038, H039, G005 & Q010)**

The rainwater tank(s) is to be:

- erected on a self-supporting base in the approved location on the property in accordance with the stamped-approved site plans for the development,
- structurally sound and constructed in accordance with AS/NZS 3500 1.2- 1998: National Plumbing and Drainage - Water Supply - Acceptable Solutions,
- fully enclosed and all openings sealed to prevent access by mosquitoes,
- fitted with a first flush device,
- fitted with a trickle system to top up from mains water,
- provided with an air gap, and
- installed by a licensed plumber in accordance with Sydney Water's "Plumbing requirements Information for rainwater tank suppliers and plumbers April 2003" and the NSW Code of Practice: Plumbing and Drainage.

Additionally, the following are to be provided:

- A back flow prevention device shall be provided at the water meter in accordance with Sydney Water requirements.
- In the event of a power failure, a back up supply of mains water shall be provided to at least one toilet in the dwelling.
- The rainwater tank(s) and associated piping is to be labelled 'Rainwater - Not for Drinking' in accordance with Sydney Water requirements.
- The rainwater tank and pipework is to be painted in colours matching the external finishes of the dwelling and is to be of non-reflective finish.
- The overflow for the rainwater tank is to be connected into the existing stormwater disposal system on the site.

Before a rainwater tank(s) can be used, a certificate or suitable document is to be submitted to the Principal Certifying Authority stating that the rainwater tank has been installed in accordance with:

- the Manufacturer's Specifications, and
- Sydney Water and NSW Health requirements.

This certificate or documentation is to be provided by the licensed plumber who installed the rainwater tank on the property, and is to be submitted prior to the issue of the Occupation Certificate.

21 **H037 - Safe supply of water from catchment areas (Also impose H036, H038 & H039)**

The catchment area (for the rainwater tank) includes the parts of the roof of the dwelling(s) from which water is collected and includes gutters. To ensure a safe supply of water:

- roof catchment areas must be kept clear of overhanging vegetation,
- gutters must have sufficient fall to downpipes to prevent pooling of water,
- overflow, discharge from bleed off pipes from roof mounted appliances such as airconditioners, hot water services and solar heaters must not discharge into the rainwater catchment area,
- for roofs containing lead based, tar based or asbestos material the tank supply must not be connected to drinking, bathing and gardening tap water outlets,
- appropriate measures must be installed to prevent foreign materials from contaminating the water which enters the rainwater tank.

22 **H038 - Connection of rainwater tank supply (Also impose H036, H037 & H039)**

The rainwater tank supply must not be connected to drinking and bathing water tap outlets.

23 **H039 - Rainwater tank pumps (Also impose H036, H037 & H038)**

The rainwater tank pump must not exceed 5dBA above ambient background noise level at the nearest residential property boundary. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

24 [H041 - Hours of work \(other devt\)](#)

Construction works or subdivision 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 and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

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

25 [H Special \(BLANK\)](#)

All retaining walls are to be of masonry construction.

26 [H Special \(BLANK\)](#)

Any existing fencing to be replaced shall be carried out at the developer's cost.

Engineering

27 [K101 - Works at no cost to Council](#)

All roadworks, stormwater drainage works, associated civil works and dedications, required to effect the consented development shall be undertaken at no cost to Penrith City Council.

28 [K201 - Infrastructure Bond](#)

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, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

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

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

29 **K202 - S138 Roads Act – Works and Structures - Minor Works in the public road DRIVEWAYS ROAD OPENINGS**

Prior to the issue of any Construction Certificate, a Section 138 Roads Act applications, including payment of application and inspection fees, shall be lodged and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b) Concrete footpaths and or cycleways
- c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
- d) Road occupancy or road closures
- e) The placement of hoardings, structures, containers, waste skips, signs etc. in the road reserve
- f) Temporary construction access

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- Separate approvals may also be required from the Roads and Maritime Services for classified roads.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.
- 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.

30 **K209 - Stormwater Discharge – Minor Development**

Stormwater drainage from the site shall be discharged to the:

- Existing site drainage system

The proposed development and stormwater drainage system shall be designed to ensure no adverse impact on adjoining properties by the diversion, damming or concentration of stormwater flows.

The proposed method of stormwater discharge shall be detailed in the Construction Certificate issued by the Certifying Authority.

31 **K405 - Turf to Verge**

Upon completion of all works in the road reserve, all verge areas fronting and within the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.

Landscaping

32 [L001 - General](#)

All landscape works are to be constructed in accordance with the stamped approved plans and chapter C6 Landscape Design of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

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

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

33 [L005 - Planting of plant](#)

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

34 [L006 - Aust Standard](#)

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.

35 [L008 - Tree Preservation Order](#)

No trees are to be removed, ringbarked, 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 Council's Tree Preservation Order and Policy.

Development Contributions

36 [N001 - Section 94 contribution \(Cultural Facilities\)](#)

Condition removed.

As amended on 10 August 2020 under Section 4.55 of the Environmental Planning and Assessment Act 1979.

37 [N001 - Section 94 contribution \(District Open Space\)](#)

Condition removed.

As amended on 10 August 2020 under Section 4.55 of the Environmental Planning and Assessment Act 1979.

38 [N001 - Section 94 contribution \(Local Open Space\)](#)

Condition removed.

As amended on 10 August 2020 under Section 4.55 of the Environmental Planning and Assessment Act 1979.

Payment of Fees

39 [P001 - Costs](#)

All roadworks, dedications and drainage works are to be carried out at the applicant's cost.

40 [P002 - Fees associated with Council land \(Applies to all works & add K019\)](#)

Prior to the commencement of any works on site, all fees associated with Penrith City Council-owned land and infrastructure shall be paid to Council. These fees include Road Opening fees and Infrastructure Restoration fees.

Certification

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

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 1979, and accompanying Regulation, and

(b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing of site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

42 **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 **two storey dwelling**.

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.

As amended on 10 August 2020 under Section 4.55 of the Environmental Planning and Assessment Act 1979

Appendix - Development Control Plan Compliance

Development Control Plan 2014

E8 Kingswood

Part B - The Knoll

Residential Development

Dwelling Height, Massing and Siting

The maximum external wall height specified in this section is 7m from the natural ground level. The proposed principal dwelling included some variation of this control on the front (west) elevation where a feature wall is approximately 7.3m from the natural ground level. There are also some parts of the building where external walls are approximately 7.5m in height. These variations to the control are considered suitable in this instance considering the sloping natural of The Knoll residential area, the separation distances to each boundary line and compliance with the Penrith Local Environmental Plan 2010 Height of Building Map.

Development on Sloping Land

The original plans submitted for the application included retaining walls of unknown heights running along the southern boundary line. The applicant was requested to amend the plans so that the proposed retaining walls were setback at least 1m from any boundary, to respect the structural stability of adjoining sites, and also demonstrate that the retaining walls did not go above 1m in height. Amended plans were submitted by the applicant that addressed these changes, satisfying the requirements of this section.

Environment and Residential Amenity

This section requires that habitable rooms/areas should not face directly into other habitable rooms or private open space areas of other sites. Additionally this section requires balconies to have a maximum area of 15m² and a depth of 1.7m to minimise any issues of overlooking. The balcony for the proposed principal dwelling included a variance to these controls, with a balcony more than 15m² in area, with support beams positioned on a lower natural ground level, creating a height of 2.98m for the balcony. This raised concern as the balcony also overlooked the private open space area of an adjoining lot, with a 4.5m separation. As a result, the applicant was requested to amend the plans to scale back the size of the balcony and limit the visual access from its northern elevation.

The applicant submitted amended plans which scaled back the balcony by increasing its separation from the northern boundary, and closing off visual access from its northern elevation, thereby removing any potential visual intrusion to the adjoining lot. These amendments are considered as suitable measures to validate the variation to the aforementioned development controls in this section.

As such, the proposed development satisfies the requirements, and objectives, of this Chapter.