

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DEVELOPMENT APPLICATION DETAILS

Application number:	DA18/0190.02
Description of development:	Section 4.55(1A) Modification Application - Alterations to Reconfigure the Layout of an Approved Shopping Centre at St Clair Shopping Centre Car Park
Classification of development:	N/A
Name of Applicant:	Cambooya Properties Pty Ltd

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 2 DP 1018519 Lot 1 DP 1018519
Property address:	4 Endeavour Avenue, ST CLAIR NSW 2759

DECISION OF CONSENT AUTHORITY

In accordance with Sections 4.18(1) (a) and 4.55 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.

Decision	Approve
Date from which consent operates	11 May 2018
Date the consent expires	11 May 2020
Date of this decision	27 April 2018 as amended on 23 March 2018 and 2 March 2022 under Section 4.55 of the Environmental Planning and Assessment Act.

POINT OF CONTACT

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

Assessing Officer:	Phillip Doy
Contact telephone number:	+61247327654

NOTES

Reasons

The conditions in the attached schedule have been imposed in accordance with Section 80A 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 Section 82A of the Environmental Planning and Assessment Act 1979 within 6 months of receiving this Notice of Determination.

You cannot make this request if the development is Designated Development, Integrated Development or State Significant development or if the application was decided by Sydney West Planning Panel.

Appeals in the Land and Environment Court

The applicant can appeal against this decision in the Land and Environment Court within six (6) months of receiving this Notice of Determination.

You cannot appeal if a Commission of Inquiry was held for the subject development application, or if the development is a State Significant Development.

An appeal to the Land and Environment Court is made by lodging an application to the Court in accordance with the Rules of the Court.

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 28 days after the date of this notice. The objector cannot appeal if a Commission of Inquiry was held.

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 28 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

Sydney West Planning Panels

If the application was decided by the Sydney West Planning Panel, please refer to Section 18 of the Greater Sydney Commission Act 2015 and Section 23H 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 stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the stamped approved plans and by the following conditions.

Drawing Title	Prepared By	Reference No.	Dated	Revision
Site Plan	Leffler Simes Architects	4533 (DWG NO.SK01)	11/05/21	A
Site Plan Addendum	--	--	--	--
Staged Site Plan	Leffler Simes Architects	2383 (Sheet DA03)	09/07/18	A
General Arrangement Plans	Wood & Grieve Engineers	36073 (Sheets I-060-01/02)	19/12/17	A
Civil Details	Wood & Grieve Engineers	36073 (Sheet CA-066-01)	19/12/17	A
Sediment & Erosion Control Plan/Details	Wood & Grieve Engineers	60703 (Sheet CI-076-01)	19/12/17	A

As amended on 23 August 2018 under DA18/0190.01, and on 2 March 2022 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979 under DA18/0190.02.

- 2 Lot 1 DP 1018519 and Lot 2 DP 1018519 are to be consolidated as one lot. A copy of the registered plan of consolidation from NSW Land Registry Services is to be submitted to the Principal Certifying Authority (PCA) and Penrith City Council, if Council is not the PCA, prior to the issue of **the Final Occupation Certificate** for the development.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 3 The finishes of all car park structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 4 **A Construction Certificate relating to the relevant component of works shall be obtained prior to commencement of those works.**

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 5 The pathway from Bennett Road to the shopping centre entrance shall be 1800mm in width up until the McDonalds drive-through lanes. Beyond this point where the pathway cannot achieve reach the requirement of the 1800mm width, a passing bay shall be provided that meets the requirements of AS 1428.1 in design and placement. Amended plans in this regard are to be submitted to and approved by Council prior to the issue of a Construction Certificate **relating to this component of works.**

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 6 Prior to the issue of a Construction Certificate **relating to the relevant component of works**, an arborist's report prepared by an accredited and experienced arborist shall be submitted to the Principal Certifying Authority regarding required tree protection measures for existing trees where planter bays are being reduced

in size.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 7 This consent does not give approval for any shade sail structures.
- 8 Prior to the issue of a Construction Certificate **relating to the relevant component of works**, a Construction Management Plan (**relating to that component of works**) prepared by a suitably qualified traffic engineer shall be submitted to the Principal Certifying Authority. The plan shall detail arrangements for the pedestrian movements and interim parking and access arrangements during the construction period **for that component of works**.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 9 Prior to the issue of a Construction Certificate and an Occupation Certificate **relating to the relevant component of works**, the recommendations provided in the Access Review Report, prepared by ABE Consulting, dated 05 December 2017 shall be met **for that component of works**.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

Environmental Matters

- 10 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 plans for the development, **as they relate to the component of works being carried out**.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 11 No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No. 20 (Hawkesbury- Nepean River) (No. 2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.
- 12 All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.
- 13 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.

Construction

- 14 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 Compliance Certificate has been issued for the development.

15 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 backfilling must be executed safely and in accordance with the appropriate professional standards. All excavations 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.

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

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

Other 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.

Engineering

- 17 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.
- 18 An Infrastructure Restoration Bond **for each stage of works** is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond **for each stage of works** 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 **associated with that stage of works**, 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.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 19 Prior to the issue of a Construction Certificate relating to the relevant component of works, a Section 138 Roads Act application relating to the relevant component of works, including payment of application and inspection fees, shall be lodged with 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, waster skips, signs, etc in the road reserve,
 - (f) Temporary construction access, **and**

(g) The realignment of kerb within Botany Lane, including the provision of infill footpath paving and any adjustment to existing signposting to the satisfaction of Council.

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.

Advisory notes:

- 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.
- All works associated with the Roads Act approval must be completed prior to the issue of **an Occupation Certificate** relating to that particular component of the development.

As amended on 23 August 2018 under DA18/0190.01, and under DA18/0190.02 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 20 The stormwater drainage system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Wood & Grieve Engineers, Drawing Number CI-060-01 & 02, revision A, dated 19/12/2017.

Prior to the issue of a Construction Certificate **relating to the relevant component of works**, the Certifying Authority shall ensure that the stormwater management system **relating to the relevant component of works** has been designed in accordance with Penrith City Council's Stormwater Drainage for Building Developments Policy.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979

- 21 Prior to the issue of a Construction Certificate **relating to the relevant component of works**, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring and pedestrian and parking areas associated with the **particular component of the** subject development are in accordance with AS 2890.1, AS 2890.6 and **Penrith Development Control Plan 2014**.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 22 Prior to commencement of any works associated with **the particular component** of the development, 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 and Managing Urban Stormwater series from the Office of Environment and Heritage.

The erosion and sediment control measures **for that particular component of works** shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 23 Prior to the issue of an Occupation Certificate relating to the relevant component of works, directional signage and line marking shall be installed indicating required directional movements, driveway entry/exit points and the location of staff and customer parking to the satisfaction of the Principal Certifying Authority.

All car parking spaces must be provided in accordance with AS 2890 and Council's requirements and appropriate signage is to be displayed to reinforce proposed one-way vehicle circulation. R3-1 Pedestrian Crossing signs are to be erected at approved zebra crossings in accordance with AS 1742.10:2009.

As amended on 23 August 2018 under DA18/0190.01 and, on 2 March 2022 under DA18/0190.02 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 24 In order to facilitate safe pedestrian movements from the pedestrian crossing at Bennett Road (at the eastern end of the site) to the shopping centre entrance, pedestrian fencing shall be provided to limit access across the McDonald's drive-through lanes by pedestrians, and to direct pedestrians along the provided footway and crossing points. Amended plans in this regard shall be submitted to and approved by Council prior to the issue of a Construction Certificate **relating to the relevant component of works**.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

25 In order to facilitate safe pedestrian movements from the existing crossing at the western end of Botany Lane to the shopping centre entrance, the dimensions of the proposed east west pedestrian footpath shall be 1.8m (min.) wide, providing adequate width for passing wheelchairs (and including the provision of appropriate kerb ramps to transition between footpath and road surface pavement) in accordance with AS 1428.1 and AS 2890.6. Amended plans in this regard shall be submitted to and approved by Council prior to the issue of a Construction Certificate **relating to the relevant component of works**.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 26 The required sight lines around driveway entrances are not to be compromised by landscaping, fencing or signage.
- 27 All car parking spaces are to be sealed, line-marked and dedicated for the parking of vehicles only and are not to be used for storage of materials, products, waste materials, etc.
- 28 Existing accessible car parking spaces shall be upgraded to comply with current Australian Standards, prior to the issue of an **Occupation Certificate relating to the relevant component of works**.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

Landscaping

29 All landscape works are to be constructed in accordance with the stamped approved plans and Section C6 Landscape Design 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.

- 30 The approved landscaping for the site must be constructed by a suitably qualified and experienced landscape professional.
- 31 Upon completion of the landscape works associated with **the relevant component** of the development and prior to the issue of an **Occupation Certificate relating to that component of works** of the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for **that particular component** the development. The report is to be prepared by a suitably qualified and experienced landscape professional.

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 Compliance Certificate for the development.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 32 All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specification prescribed in Penrith Development Control Plan 2014.
- 33 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.
- 34 All trees that are required to be retained as part of the development are to be protected in accordance with the arborist's report required by Condition 5 and the minimum tree protection standards prescribed in Penrith Development Control Plan 2014.
- 35 No trees are to be removed, ringbarked, cut, topped or lopped or willfully destroyed other than those shown for removal on the approved plans without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.
- 36 Existing and proposed landscaping is to be retained and maintained at all times.
- 37 **Prior to the issue of a Construction Certificate relating to the relevant component of works**, a landscape plan prepared by a suitably qualified and experienced landscape professional shall be submitted to and approved by Council detailing all proposed landscaping works.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

Certification

- 38 Prior to the commencement of any earthworks or construction works on site, the proponent is to:
- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
 - (b) submit a Notice of Commencement to Penrith City Council.

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

Information to accompany the Notice of Commencement

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

39 On completion of works **relating to the relevant component of the development, an Occupation Certificate** is to be obtained from the Principal Certifying Authority certifying that all conditions of the development consent **relating to that particular component of the development** have been satisfied. The Certificate shall not be issued if any conditions of this consent **relating to that particular component of the development**, 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 certifier who issued the **Occupation Certificate**.

As amended on 23 August 2018 under section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

Unallocated

40 Amplified music from the development is not to be audible at the boundaries of the property. No amplified music is to be used externally, including in the carpark.

41 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;
- 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 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.

SIGNATURE

Name:	Phillip Doy
Signature:	

For the Development Services Manager