

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

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| <b>Application number:</b>   | DA20/0785.02  |
| <b>Proposed development:</b> | Section 4.55(1A) Modification for Deletion of Strata Title Subdivision from Dual Occupancy Approval - Demolition of Existing Structures & Construction of Attached Dual Occupancy |
| <b>Property address:</b>     | 2 Anchorage Street, ST CLAIR NSW 2759   |
| <b>Property description:</b> | Lot 279 DP 708572   |
| <b>Date received:</b>        | 12 August 2021  |
| <b>Assessing officer</b>     | Sufyan Nguyen   |
| <b>Zoning:</b>               | SEPP WSA - Affected by Obstacle Limitation<br>SEPP WSA - Affected by Wildlife Buffer Zone<br>Zone R2 Low Density Residential - LEP 2010   |
| <b>Class of building:</b>    | Class 1a  |
| <b>Recommendations:</b>      | Approve   |

### Executive Summary

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Council is in receipt of a Section 4.55(1A) modification application for the removal of the strata title subdivision x 2 lots component for an approved attached dual occupancy and strata subdivision x 2 lots at 2 Anchorage Street, St Clair. The subject site is zoned R2 Low Density Residential under Penrith Local Environmental Plan 2010 and the development proposal is permissible with Council consent.

The minor nature of the proposed modification is not considered to appreciably alter the likely impacts of the original development. The removal of the strata title subdivision component has no bearing on any environmental or socio-economic impacts on the immediately surrounding area and represents as being largely the same as the original approval.

The modified development was not required to be notified or publicly exhibited under the requirements of Appendix F2 of the Penrith Development Control Plan 2014 (DCP).

An assessment of the proposal under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act) has been undertaken and the application is recommended for approval, subject to recommended consent condition amendments.

### Site & Surrounds

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The subject site is situated on the corner of Anchorage Street and Colorado Drive in St Clair. The site has a total area of 814sqm, with a street frontage of approximately 22m to Anchorage Street and a street frontage of approximately 27m to Colorado Drive. The land slopes gently to the north by approximately 500mm.

The site includes an existing dwelling and shed. The surrounding area is comprised of R2 low density residential land, with public open space directly east of the site.

### Proposal

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The applicant seeks to remove the strata title subdivision x 2 lots component for an approved attached dual occupancy and strata subdivision x 2 lots at 2 Anchorage Street, St Clair.

## Plans that apply

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- Local Environmental Plan 2010
- Development Control Plan 2014
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

- **Section 4.55(1A) - Modifications involving minimal environmental impact**

The proposed modifications have been assessed in accordance with the matters for consideration under Section 4.55(1A) and Section 4.15 of the Act. The proposed modifications satisfy the relevant provisions of the Act in this regard.

Under the provisions of Section 4.55(1A) Modifications involving minimal environmental impact of the Act, Council may, in response to an application being made, modify a previously approved development if:

*(a) it is satisfied that the proposed modifications are of minimal environmental impact, and*

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

*(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*

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

In this regard, the following is noted:

(a) The proposed modification is of a minor nature and is of negligible impact on the immediately surrounding natural and built environments, as detailed in this report.

(b) In *Vacik Pty Ltd v. Penrith City Council* (unreported 1992) the question of substantially the same development was considered by Commissioner Stein J. and in particular the meaning of the word 'substantially'. In his opinion 'substantially' is taken in the context to mean 'essentially or materially or having the same essence'.

In *North Sydney Council v. Michael Standley & Associates Pty Ltd* (1998) the NSWCA recognised that a modified development must be different in some respect to the approved development and used the formulation that 'modify' meant 'to alter without radical transformation'.

In applying the ordinary meaning of the words '*substantially the same development*' informed by the above cases, the minor nature of the proposed modification is not too dissimilar to the original approval, which will be of negligible impact on the surrounding area and is not considered to change the essence of the development.

(c) In consideration of the minor nature of the proposed modification to the development, notification of the modification application was not considered warranted in accordance with the requirements of the DCP.

(d) No public submissions were received regarding the modification application.

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

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

The minor nature of the proposed modification is not considered to diminish the development's compliance with SEPP BASIX 2004.

## State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

There are no provisions specifically relevant to the development under State Environmental Planning Policy (Western Sydney Aerotropolis) 2020.

## State Environmental Planning Policy No 55—Remediation of Land

The minor nature of the proposed modification is not considered to diminish the development's compliance with SEPP 55. It should be noted that a review of aerial observation mapping indicates that the site does not appear to contain any unknown imported fill, which demonstrates that the site is suitable for the modified development.

## Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The minor nature of the proposed modification is not considered to diminish the development's compliance with SREP No. 20, noting that adequate stormwater management, including stormwater treatment measures, will be in place for the development.

## Local Environmental Plan 2010

| Provision                   | Compliance |
|-----------------------------|------------|
| Clause 1.2 Aims of the plan | Complies   |
| Clause 2.3 Permissibility   | Complies   |
| Clause 2.3 Zone objectives  | Complies   |

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

There are no draft environmental planning instruments that specifically apply to the development.

## 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   |
| D2.2. Dual Occupancies                 | Complies   |

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

There are no planning agreements in place, which are applicable to the development.

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

The minor nature of the proposed modification is not considered to diminish the development's compliance with the applicable regulations.

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

Under Section 4.15 of the Act, consideration must be given to the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

The minor nature of the proposed modification is not considered to appreciably alter the likely impacts of the original development, noting that the removal of the strata title subdivision component has no bearing on any environmental or socio-economic impacts on the immediately surrounding area.

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

The nature of the proposed modification is not considered to diminish the site's suitability for the development, noting that servicing is adequate and that the amenity of the surrounding environment remains preserved.

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

### Community Consultation

In consideration of the minor nature of the proposed modification, notification of the modification application was not considered warranted in accordance with Appendix F2, Section 1.1.4 Notification and Advertising of the DCP.

### Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

| Referral Body        | Comments Received                     |
|----------------------|---------------------------------------|
| Building Surveyor    | No objections - subject to conditions |
| Development Engineer | No objections - subject to conditions |

### Building Surveyor

The nature of the proposed modification is not considered to require referrals to Council's Building Surveyor and Development Engineering Units. An assessment of the original application is deemed satisfactory and therefore the previous recommended conditions of consent are considered to be adequate in this regard.

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

In consideration of the minor nature of the proposed modification, the subject modification application does not generate any significant issues of public interest.

## Conclusion

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The proposed modification has been assessed against the relevant heads of consideration contained in Section 4.55(1A) and Section 4.15 of the Act and has been found to be satisfactory. The modified development is not considered to result in any adverse environmental or socio-economic impacts in the locality. The site remains suitable for the development and the proposal is not contrary to the public interest. The application is therefore worthy of Council's support and is recommended for approval.

## Recommendation

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That DA20/0785.02 for the removal of the strata title subdivision x 2 lots component for an approved attached dual occupancy and strata subdivision x 2 lots at 2 Anchorage Street, St Clair be approved, subject to the following amended consent conditions.

## General

### 1 [A001 - Approved plans table](#)

The development must be implemented substantially in accordance with the following plans stamped approved by Council, the application form, BASIX Certificate No. 1151532M and any supporting information received with the application, except as may be amended in red on the approved plans and by the following conditions.

| Description                           | Plan No.                 | Revision | Prepared By                 | Date   |
|---------------------------------------|--------------------------|----------|-----------------------------|--------|
| Site Plan and BASIX                   | Job No.1091<br>Sheet 1/9 | D        | Marlex Design and Interiors | 3/2/21 |
| Floor Plans                           | Job No.1091<br>Sheet 2/9 | D        | Marlex Design and Interiors | 3/2/21 |
| Elevations and Section                | Job No.1091<br>Sheet 3/9 | D        | Marlex Design and Interiors | 3/2/21 |
| Waste Management and Stormwater Plans | Job No.1091<br>Sheet 4/9 | D        | Marlex Design and Interiors | 3/2/21 |
| Demolition Plan                       | Job No.1091<br>Sheet 5/9 | D        | Marlex Design and Interiors | 3/2/21 |
| Landscape and Shadow Diagram          | Job No.1091<br>Sheet 6/9 | D        | Marlex Design and Interiors | 3/2/21 |
| External Colour Selection             | -                        | -        | Marlex Design and Interiors | -      |

***As amended on 31 August 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.***

### 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. If the work relates to a residential building and is valued in excess of \$20,000, then a contract of insurance for the residential development shall be in force in accordance with Part 6 of the Home Building Act 1989.

{Note: Residential building includes alterations and additions to a dwelling, and structures associated with a dwelling house/dwelling such as a carport, garage, shed, rural shed, swimming pool and the like}.

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

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

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

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

### 5 [A Special \(BLANK\)](#)

The boundary fencing along the east and southern boundaries must be in a satisfactory condition and shall reach a minimum height of 1.8m. If the existing boundary fence does not meet this criteria, then it must be replaced with new fencing that does meet the required criteria prior to the issue of an Occupation Certificate.

All fencing and retaining wall works shall be at the full cost of the property owner. The materials and colours of any fencing and retaining walls shall match or complement the external materials of the approved dwellings. Any retaining walls shall be of masonry or similar construction (not timber).

### 6 [A Special \(BLANK\)](#)

Prior to the issue of an Occupation Certificate, a 300mm high privacy screen shall be fixed to the top of the boundary fence in the location marked in red on the attached plan. As a result, this portion of the boundary fence shall reach a maximum height of 2.1m from the ground (including the boundary fence and privacy screen).

7 [A Special \(BLANK\)](#)

Prior to the issue of a Construction Certificate, amended plans are to be submitted to the Principal Certifying Authority that reflect the following:

- The courtyard of Unit B shall be modified so that a 3 metre landscaped setback is provided to Colorado Drive, as amended in red on the stamped approved plans. The fence and gate is to be of a material and colour that matches similar development in the locality. Note: Colourbond steel is not to be used.

8 [A Special \(BLANK\)](#)

[DELETED]

***As amended on 31 August 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.***

## Demolition

9 [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**.

10 [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 Environmental Protection Authority to receive asbestos wastes.

11 [B004 - Dust](#)

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

12 [B005 - Mud/Soil](#)

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

13 [B006 - Hours of work](#)

Demolition works 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 demolition work is permitted on Sundays and Public Holidays.

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

## Environmental Matters

14 **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.

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.

15 **D002 Spraygrass**

All land that has been disturbed by earthworks is to be spray grassed or similarly treated to establish a grass cover.

16 **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 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 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.

17 **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.

18 **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.

19 **D014 - Plant and equipment noise**

The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.



## BCA Issues

### 20 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

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

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

### 22 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.

### 23 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

#### 24 [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 are to be erected:

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

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

#### 25 [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) 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.

#### 26 [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.

#### 27 [H032 - Painting](#)

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

28 [H033 – Clothes line](#)

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

29 [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.

30 [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.

31 [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.

32 [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.

33 **H041 - Hours of work (other devt)**

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**

34 **K101 - Works at No Cost to Council**

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

35 **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 or Subdivision Works 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 Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

### 36 K202 - S138 Roads Act - Minor Works in the Public Road

Prior to the issue of any Construction Certificate or Subdivision Works Certificate, a Section 138 Roads Act application, including payment of application and inspection fees together with any applicable bonds, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road). 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 (including temporary construction work zones and tower crane operation)
- e) The placement of hoardings, structures, containers, waste skips, signs etc. in the road reserve
- f) Temporary construction access
- g) Temporary ground anchors (for basement construction)

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

Note:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate or Subdivision Works Certificate.
- Separate approval may be required from Transport for NSW 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.

### 37 K210 - Stormwater Management

The stormwater management system shall be consistent with plan/s lodged for development approval, prepared by Marles Design and Interiors, reference number 1091, revision D, dated 3/2/2021.

Prior to the issue of any Construction Certificate, the Certifier shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments and the following items are addressed:

- (a) The stormwater overflow outlet pipe from unit A is shown to conflict with the existing Telstra pit located within the road verge. The stormwater design shall be adjusted for the outlet pipe to be clear of the Telstra pit.
- (b) A minimum of 450mm x 450mm junction pit shall be provided within the site, close to the front boundary, for the stormwater overflow outlet pipe. Stormwater shall be designed to discharge by gravity from the property boundary to the kerb connection at a minimum of 1% grade.

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

### 38 K214 - Flooding - Floor Levels

Prior to the issue of any Construction Certificate, the Certifier shall ensure that all habitable floor levels are in accordance with the stamped approved plans with a minimum floor level of RL 52.50m AHD (adopted flood level + 0.5m freeboard).

39 **K216 - Flooding - Garage Levels**

Prior to the issue of any Construction Certificate, the Certifier shall ensure that the garage floor level is a minimum of RL 50.10m AHD.

40 **K222 - Access, Car Parking and Manoeuvring - General**

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

41 **K401 - Flooding - Surveyor Verification of Floor Levels**

A certificate by a registered surveyor verifying that all habitable floor levels are at or above RL 52.50m AHD (adopted flood level + 0.5m freeboard) shall be submitted upon completion of the building to that level. No further construction of the building is to be carried out until approval to proceed is issued by the Certifier.

42 **K405 - Turf to Verge**

Prior to the issue of an Occupation Certificate, and 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.

Further to the above, the existing driveway access to Colorado Drive shall be removed and turf re-established as per the above requirements.

## Landscaping

43 **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 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.

44 **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 Development Control Plan.

45 **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.

46 **L Special (Tree removal, replanting, retention and protection)**

(i) Landscape Plan

Prior to the issue of a Construction Certificate, the approved Landscape Plan shall be modified and submitted to the Principal Certifying Authority to include the following:

- 1 x tree known to attain a minimum height of 6 metres at maturity in the front setback of Lot B;
- 1 x tree known to attain a minimum height of 8 metres at maturity in the rear setback of Lot B;
- 1 x tree known to attain a minimum height of 8 metres at maturity in the rear setback of Lot A.

(ii) Tree Removal

As identified on the approved plans, the following trees are to be removed:

**Tree Species:** *Callistemon viminalis* (Bottlebrush)

*Location: Front setback*

*Quantity: 2*

All tree removal works must comply with the Amenity Tree Industry – Code of Practice, 1998 (Workcover, NSW) and Guide to Managing Risks of Tree Trimming and Removal Work (Safe Work Australia 2016).

All other vegetation not specifically identified above, and protected by Penrith Council Development Control Plan 2014, C2 Vegetation Management, is to be retained and protected from construction damage and pruning. The Tree Management Order protects trees over 3.5m in height.

(iii) Trees to be Retained and Protected

Trees within 5 metres of the proposed works shall be retained and protected in accordance with the conditions below. Failure to comply with these conditions is an offence and may incur a fine or lead to prosecution. Tree protection measures shall comply with Australian Standard AS 4970-2009 Protection of Trees on Development Sites, together with the following conditions:

- (a) No vehicular access, excavations for construction or installation of services shall be carried out within the fenced Tree Protection Zone.
- (b) All utility services, pipes, stormwater lines and pits shall be located outside the fenced Tree Protection Zone.
- (c) Building materials, chemical storage, site sheds, wash out areas, and similar shall not be located within the fenced Tree Protection Zone.
- (d) Trees to be retained must not be damaged or used to display signage, or as fence or cable supports for any reason.
- (e) If tree roots are exposed during approved works, roots with a diameter less than 25mm are to be pruned cleanly using sharp hand tools and not torn or ripped by machinery.

Tree roots greater than 10mm in diameter are to be assessed by a qualified arborist - minimum Australian Qualification Framework (AQF) Level 5 or equivalent - before any pruning work is undertaken. If necessary, changes in design or relocation of works may be required.

(iv) Replacement Trees

(a) Prior to the issue of an Occupation Certificate, a minimum of 3 x replacement trees shall be planted, as outlined below:

- 1 x tree known to attain a minimum height of 6 metres at maturity in the front setback of Lot B;
- 1 x tree known to attain a minimum height of 8 metres at maturity in the rear setback of Lot B;
- 1 x tree known to attain a minimum height of 8 metres at maturity in the rear setback of Lot A.

(b) Tree species used are not to include any of the exempted plant species listed under Penrith Council Development Control Plan 2014, C2 Vegetation Management.

(c) Replacement trees are to be a minimum container size of 75 litres. They shall comply with NATSPEC Specifying Trees: A Guide to Assessment of Tree Quality (2003) or Australian Standard AS 2303-2015 Tree Stock for Landscape Use.

(d) The trees are to be planted no closer than 3.0 metres from the wall of any approved dwellings on the property.

(e) All new plantings shall be located so future growth will not be in conflict with electricity wires. Consideration should be given to the location of new electricity poles and wires so that sufficient space is provided.

(f) The replacement trees are to be planted prior to the issue of an Occupation Certificate.

- (g) The trees shall be maintained for the life of the development.

## Subdivision

47 **M008 - Subdivision Certificate requirements**  
**[DELETED]**

***As amended on 31 August 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.***

## Development Contributions

48 **N001a - Section 7.11 contribution (Cultural Facilities)**

This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for Cultural Facilities. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$561.00 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 7.11 Contributions 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 Section 7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for Cultural Facilities may be inspected at Council's Civic Centre, 601 High Street, Penrith.

49 **N001b - Section 7.11 contribution (District Open Space)**

This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for District Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$6,330.00 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 7.11 Contributions 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 Section 7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for District Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

50 **N001c - Section 7.11 contribution (Local Open Space)**

This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for Local Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$2,287.00 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 7.11 Contributions 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 S7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for Local Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

**Note:** The timing of contributions payable may be otherwise affected in accordance with Planning Circular PS20-003 dated 3 July 2020 and the associated NSW Government Ministerial Direction - Infrastructure Contributions.

## Certification

51 **Q009 - Strata Certificate**  
**[DELETED]**

***As amended on 31 August 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.***



52 **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 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.

53 **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 dual occupancy.

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.