

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0331
Proposed development:	Earthworks (part retrospective), Construction of a Rural Shed, Parking of Two- Truck Vehicles (rigid truck and semi trailer), and Associated Works.
Property address:	41 - 47 Jolly Street, CASTLEREAGH NSW 2749
Property description:	Lot 122 DP 709303
Date received:	10 June 2020
Assessing officer	Lucy Goldstein
Zoning:	E4 Environmental Living - LEP 2010
Class of building:	Class 10a
Recommendations:	Approve

Executive Summary

Council is in receipt of a Development Application DA20/0331 for Earthworks (part retrospective), Construction of a Rural Shed, Parking of Two- Truck Vehicles (rigid truck and semi trailer), and Associated Works at 41-47 Jolly Street Castlereagh NSW.

The subject site is currently a rural residential allotment, which contains a dwelling, several outbuildings, and large hardstand area located at the rear of the site for the purpose of a truck turning area.

The proposed works includes earthworks relating to the existing truck turning area located at the rear of the site and driveway located along the side (eastern) boundary, comprising cut/fill, sealing of pavement for a portion of the driveway and construction of new sealed footpath crossing. In addition, the proposal seeks consent for the construction of a rural shed of the dimensions 24m x 14m, and use of the shed to store 2x truck vehicles owned by the occupant of the dwelling on the site, and other items such as boat, caravan and equipment used to maintain the property.

In review of Council's records, a previous development application was approved in October 2014 by Council under delegated authority for 'Earthworks (Part Retrospective), Construction of a Shed and Parking of 2 x Trucks' at the site (DA14/0622). Subsequently, in June 2015 a modification application (DA14/0622.02) was lodged with Council that sought amendments to the location and design of the shed as approved under DA14/0622, and amendments to several operational conditions imposed on the consent. The modification application was subject to Class 1 proceedings in the Land and Environment Court. In May 2016, the modification application was approved by the Land and Environment Court.

However, the consent DA14/0622.02 had a lapsing date of 30 October 2016. The Statement of Environmental Effects submitted in support for this application confirms that no works associated with the past consent DA14/0622.02 were commenced prior to 30 October 2016. As such, the consent DA14/0662.02 was not secured in accordance with the provisions under Section 4.53 of the Environmental Planning and Assessment Act 1979, and was left to expire.

The current application seeks the same proposal as previously approved under DA14/0622.02. Noting a new, separate application is required given that the previous consent has lapsed and as such cannot be relied upon.

Under Penrith Local Environmental Plan (LEP) 2010, the site is zoned E4 Environmental Living. The application has demonstrated that the proposed works are ancillary to the predominate use of the site as a residential dwelling, which is a permissible land use.

Key issues:

- All conditions previously imposed under DA14/0662.02 remain relevant, and have been retained. This includes a condition limiting the use of the shed to a 12-month trial period, and requiring the proponent to lodge a future development application for the continued use of the shed. The purpose of the trial period is to allow for opportunity to review the development, and address any issues that may arise from the development being operational. This is considered necessary given the nature of the proposal and that the surrounding land uses are predominately residential (a sensitive use). It is noted that the current application seeks to delete the 12-month trial period restriction, however insufficient reasoning has been provided to support deleting the restriction.
- Development consent cannot be granted retrospectively for works undertaken without consent. However consent can be granted for new works to complete the commenced excavation and driveway construction and use of the proposed shed. Given works were not commenced under DA14/0622.02, the proposed earthworks and partial driveway construction are included in the current application.

In accordance with Penrith Development Control Plan (DCP) 2014, the proposal was notified to nearby and adjoining residents. Council received 1x submission raising concerns regarding the use of the shed as a distribution centre, outdoor lighting impacting adjoining properties, and road safety concerns. The matters raised in the submission have been addressed in this report.

The application has been assessed against under Section 4.15 of the Environmental Planning and Assessment Act 1979, and is recommended for approval subject to conditions.

Site & Surrounds

The subject site is legally described as Lot 122 DP 709303, commonly referred to as 41-47 Jolly Street Castlereagh. The site is located on the northern side of Jolly Street, which is bounded by Sheredan Road to the west and Church Street to the east. The surrounding land uses are predominately rural residential in nature.

The site has a total area of approximately 2.3 hectares, and has a cross fall of approximately 2 metres from the southwest to the northeast. Existing improvements on the site include a dwelling house, a garage/shed and an in ground swimming pool.

Site Constraints:

- the site is mapped as Bush Fire Prone Land
- the site is mapped as containing significant Biodiversity (remnants of Castlereagh Scribbly Gum Woodland).

Background:

- In October 2012 Council received a complaint regarding clearing of vegetation on the subject property. Council inspected the property and noted that vegetation had been cleared and there had been excavation works and site works around the property undertaken for the construction of a driveway along the eastern boundary along with a hardstand area to the rear of the allotment. The investigation resulted in a Notice of Intention to Serve Order (NISO) dated 20 February 2013 being issued to the owners of the property.
- In response to the NISO, the owners of the property lodged DA13/0354 for the construction of a new driveway and turning area, shed and site office, front fence and earthworks. DA13/0354 was refused by Council on 3 October 2013.
- In June 2014, a development application DA14/0622 for Earthworks (part retrospective), Construction of a Shed and Parking of 2x Trucks was lodged with Council. The application DA14/0622 was approved in October 2014 by Council under delegated authority. As detailed in the assessment report associated with DA14/0622, the proposal sought under DA14/0622 was "considered not to result in unreasonable adverse impact on the amenity of the surrounding developments and the natural and built environment subject to conditions of consent."
- In June 2015, a Section 4.55(1A) (formerly S.96) modification application was lodged in relation to DA14/0622. The modification application sought to amend several conditions, including location and orientation of the proposed shed (Condition 1); reconsider the conditioned requirement for a trial period (Condition 11); reconsider the limitations on truck movements (Condition 13); reconsider the restrictions on truck servicing / repair (Condition 14); reconsider the restrictions on other vehicle parking and truck maintenance works permitted (Condition 15, 17); reconsider storage of trucks within shed at all times (Condition 19) and reconsider restriction on flooding lighting (Condition 21).
- The Section 4.55(1A) application DA14/0622.02 was approved in May 2016 by the Land and Environment Court.

Proposal

The current application seeks consent for the same works as approved under the past consent DA14/0622.02, which was approved by the Land and Environment Court in May 2016.

The proposed works include:

- Completion of earthworks, and construction works associated with an existing driveway and turning area. Comprising of cut/fill, construction of a sealed pavement for a portion of the driveway, construction of new sealed footpath crossing;
- Construction of a shed of the dimensions 24m x 14m with a wall height of 5.4m and ridge height of 6.634m. The shed is located at the back of the turning circle area and is in the same location and size as previously approved under DA14/0622.02.
- The shed will be used to park the owner's 2x trucks being a semi-trailer and rigid truck and other personal items such as boat, caravan and equipment used to maintain the property.
- Replacement planting of 20x trees and landscaping works;
- Associated drainage works, and erection of a water tank;
- Removal of an existing demountable building on the site.

Note:

- The consent DA14/0622.02 included a condition (no.11) restricting the use of the site to a 12-month trial period. The application as lodged seeks to delete the condition requiring this trial period. However, deletion of the requirement for a trial period is not supported, as the application has provided insufficient reasoning to support deletion of the condition, and the 12-month trial period provides opportunity to review the impacts of the development. As such, it is recommended that the condition requiring a 12month trial period is retained, and has been imposed accordingly.

Plans that apply

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

Planning Assessment

• Section 4.15 - Evaluation

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

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

State Environmental Planning Policy No 55—Remediation of Land

The proposal is considered acceptable in regards to relevant criteria under State Environmental Planning Policy (SEPP) No. 55- Remediation of Land for the following reasons:

- the predominate use of the site is rural residential, and the proposal is ancillary to the residential use. The proposal does not seek to change the predominate use of the site.
- Given the scale and nature of the proposal the works are unlikely to generate issues relating to contamination risk.
- Conditions of consent have been imposed requiring that 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.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 -1997) (SREP 20) integrates planning with catchment management to protect the Hawkesbury-Nepean river system, requiring the impact of future land use to be considered in a regional context.

To ensure sediment as a result of the development is not deposited to the stormwater system, and to meet the objectives of SREP 20, a condition of consent has been imposed requiring that during the construction phase soil and erosion controls measures are to be installed

With consideration to the above, the proposal is considered to meet the requirements under SREP 20.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion

Clause 2.3 Permissibility

Under Penrith LEP 2010, the subject site is zoned E4 Environmental Living. The proposal is defined as the construction of a shed, water tank, and associated earthworks, drainage and landscaping works, and the use of a rear turning area and shed for parking 2x trucks owned by the occupant of the dwelling.

The proposed works are ancillary to the predominate use of the site as a residential dwelling, which is a permissible land use in the zone with Council consent.

It is noted that the current application was supported by legal advice, prepared by Adams & Partners Lawyers, dated 28 October 2020 (Ref. BC.EW:190635) addressing the permissibility of the works. The legal advice received identifies that the 2x trucks proposed to park on the site are for the purpose of the occupant of the dwelling to travel to and from work, and the only persons using the trucks on the site, is the permanent occupier/owner of the dwelling on the site. Therefore, due to the nature and scale of the proposal, it is incidental to the main use of the site as a residential dwelling.

Clause 2.3 Zone objectives

The proposal, subject to conditions is considered consistent with the objectives of the E4 Environmental Living zone, specifically:

- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*
The proposal has been designed to minimise impacts on adjoining and surrounding land uses. In this regard, the shed is setback approximately 190m from the front boundary, and is distanced more than 20m from dwellings on adjoining properties. A further condition of consent has been imposed requiring a vegetated buffer 3m wide surrounding the hardstand driveway and turning area to mitigate visual and privacy impacts on the adjoining property.

In terms of the use, detailed conditions have been imposed restricting the number of vehicles to be parked on the site, the number of truck trips permitted to/from the site, and the hours permitted for operation. However, given the nature of the proposal, and that the surrounding area is predominately residential dwellings (sensitive use), a condition of consent has been imposed requiring a 12-month trial period for the proposed use. This trial period allows for opportunity to review the development after being operational.

- *To ensure land uses are compatible with the available infrastructure, services and facilities and with the environmental capabilities of the land.*
Conditions of consent have been imposed which restrict the number of vehicles parked on the site, and vehicle movements to/from the site. In its limited form, the proposal is considered to have low impact on local traffic conditions.
- *To preserve and improve natural resources through appropriate land management practices.*
The shed is located in an existing cleared area. A condition of consent has been imposed prohibiting any vegetation removal.

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

Development Control Plan 2014

Provision	Compliance
D1.1. Rural Character	Complies
D1.2. Rural Dwellings and Outbuildings	Complies - see Appendix - Development Control Plan Compliance
D1.3. Farm buildings	Complies - see Appendix - Development Control Plan Compliance
D1.4 Agricultural Development	N/A
D1.5. Non-Agricultural Development	N/A

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

- **Site and Context**

The proposal has been designed to minimise impacts on adjoining and surrounding land uses. In this regard, the shed is setback approximately 190m from the front boundary and will have minimal visibility from the street. The shed is located more than 10m from the dwelling on the site, and more than 20m from dwellings on adjoining properties. A further condition of consent has been imposed requiring a vegetated buffer 3m wide surrounding the hardstand driveway and turning area to mitigate visual and privacy impacts on the adjoining property. In terms of the use, detailed conditions have been imposed restricting the number of vehicles to be parked on the site, the number of truck trips permitted to/from the site, and the hours permitted for operation.

- **Biodiversity**

The site contains significant vegetation (Castlereagh Scribbly Gum Woodland) located predominately at the rear of the site. As assessed under the original application DA14/0622, the proposal is considered acceptable, subject to conditions of consent that prohibit any further removal of vegetation from the site, and require replacement planting of native vegetation to be undertaken, including the planting of 20x trees on the site. Conditions to this effect (which are consistent with previous conditions under DA14/0662.02) have been applied.

It is noted that the subject site is not mapped on the Biodiversity Values Map, and the consent does not permit any vegetation to be removed. Accordingly, the proposal does not trigger the requirement for a Biodiversity Development Assessment Report under the Biodiversity Conservation Act 2016.

- **Storm water Discharge**

To mitigate impacts to adjoining properties in respect to storm water overflow, a condition of consent has been imposed requiring drainage from the site to be discharged to a level spreader system, consistent with the condition imposed under DA14/0622.02.

- **Flooding**

The site is identified as being flood affected. As assessed under DA14/0662.02, the proposed works are considered acceptable in respect to flooding considerations. Noting that the current application seeks the same earthworks as proposed under DA14/0662.02.

In this regard, in review of the the assessment report associated with DA14/0662, the report details that:

"The proposed filling of the second driveway and turning are to be filled with 200mm hardstand material will not alter the sheet flow and will not adversely impact on the existing overland flow behavior across the site."

Accordingly, the current proposal is considered satisfactory in regards to flooding considerations.

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

The site is considered suitable, as the works are a permissible land use and the proposal has been designed to minimise impacts on surrounding land uses.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Penrith DCP 2014, the proposed development was notified to nearby and adjoining residents.

Council notified 13x nearby residences, and the exhibition period occurred between 29 June 2020 and 13 July 2020. Council received 1 x submission.

The following issues were raised in the submission received, and have formed part of the assessment.

Issue Raised	Comments
Concern that given the scale (height) of the rural shed, it could be used for a distribution centre	The application does not seek consent for the operation of a commercial business from the site, which is enforced by conditions of consent. The shed is of a size to accommodate 2x trucks (semi-trailer and rigid truck), as well as personal items of the occupant of the dwelling.
Security lights impacting adjoining properties. Recommends that the restrictions imposed by Council on the previous application (DA14/0622) should remain.	Noted. A condition of consent has been imposed prohibiting exterior flood lighting on the site at any time. All other exterior lighting is required to comply with AS4282 "Control of the obtrusive effects of outdoor lighting (1997) as amended by AS4282 (2019).
Safety concerns as a result of increased truck traffic	With conditions restricting the number of vehicles parked on the site and vehicle movements to/from the site, the proposal is considered to have low impact on local traffic conditions. In the proposal's limited form it is not expected to result in an unsafe road environment.

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
Environmental - Environmental management	No objections - subject to conditions
Environmental - Biodiversity	No objections - subject to conditions

Building Surveyor

A referral was not sent to Council's Building Surveyor, Development Engineer, Environmental Management Officer and Biodiversity Officer for the current application. Rather, the above referrals were sent as part of the assessment of the previous application DA14/0622 and have been carried across to this report for the purpose of generating the consent.

Section 4.15(1)(e)The public interest

The development as restricted by conditions is unlikely to generate significant issues of public interest. Noting a condition of consent has been imposed restricting the use of the shed to a 12-month trial period, and requiring the proponent to lodge a further application for the continued use. This trial period allows for opportunity to review the development, and address any issues that may arise once the development is operational.

Conclusion

In assessing this application against the relevant environmental planning policies, being Penrith Local Environmental Plan 2010, and Penrith Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies.

The proposal is a permissible land use, being ancillary to the predominate use of the site as a residential dwelling, the proposal has been designed to minimise amenity impacts on adjoining properties, and is unlikely to result in adverse environmental impacts. Conditions have also been imposed requiring the planting of vegetation, including 20x additional trees to improve the current condition of the site.

In terms of the proposed use, conditions have been imposed restricting the number of vehicles to be parked on the site, the number of truck trips permitted to/from the site, and the hours permitted for operation. Due to the nature of the proposal, and that the surrounding area consists of predominately residential dwellings (sensitive use), a condition of consent has been imposed restricting the use of the shed to a 12-month trial period, and requiring the proponent to lodge a further application for the continued use. This trial period allows for opportunity to review the development, and address any issues that may arise once the development is operational.

Accordingly, the application is recommended for approval subject to conditions.

Recommendation

1. That Development Application DA20/0331 Earthworks (part retrospective), Construction of a Rural Shed, Parking of Two- Truck Vehicles (rigid truck and semi trailer), and Associated Works at 41-47 Jolly Street Castlereagh NSW be approved subject to the attached conditions;
2. That those making submissions are notified of the determination.

CONDITIONS

General

1 A001

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

DRAWING NO.	TITLE	SHEET	REVISION	DATE
93180E1-A.DWG	Plan Showing Proposed Shed and Driveway	1 of 1	A	07/08/2013
N/A	Floor Plan Showing the Parking of Vehicles and Storage of Equipment	-	-	-
Job. No. 214425	Elevations	N/A	N/A	-
SY15024C101	Engineering Plan, as annotated	1/1	A	-
Waste Management Plan prepared by Urban City Planning dated 2019.				

2 A004 - Dust

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

3 A005 - Mud/Soil

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

4 A008 - Works to BCA requirements

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 carport, garage, shed, rural shed, swimming pool and the like.

5 A019 - OCCUPATION CERTIFICATE

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

6 A020 - Use of building

The building shall not be used under any circumstances for any commercial, industrial or habitable residential activity.

7 A030 - No retail sales

No retail sale of goods shall be conducted from the subject premises.

8 A031 - No vehicle sales

No motor vehicles are to be displayed for sale on the subject premises.

9 [A032 - Goods in buildings](#)

All materials and goods associated with the use shall be contained within the building at all times.

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

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

11 [A Special - 12 month Trial Period](#)

The use of the approved shed for the garaging of plant and trucks, and for approved ancillary activities, is permitted for a trial period of 12 months only.

This trial period is effective from the issue of an Occupation Certificate for the shed.

Prior to the expiry of the 12 month trial period, the applicant may submit a development application for the continuance of the approved use. If such an application is made, the Applicant may continue the use of the shed and of the subject land for the purpose of garaging of plant and trucks in accordance with this consent until the final determination of such development application.

12 [A Special - Demountable Office Building](#)

The demountable office building must be lawfully removed from the property within 30 days of the issue of this consent.

13 [A Special - Exterior Flood Lighting](#)

Exterior Flood Lighting is not permitted at any time. All other exterior lighting is required to comply with AS4282 "Control of the obtrusive effects of outdoor lighting (1997) as amended by AS 4282 (2019).

Prior to the issue of an Occupation Certificate, certification from an appropriately qualified lighting engineer is to be submitted to the Certifying Authority demonstrating compliance with the requirements of the AS4282 2019.

14 [A Special - Regrading of Ground Levels](#)

Prior to the issue of an engineering construction certificate the plans are required to reflect minor regrading of ground levels to ensure overland flow is effectively managed and dispersed through the truck turning area with no adverse impact onto adjoining properties.

The development is to be carried out in accordance with the Overland Flow and Stormwater Report dated 21 March 2016 by Barker Ryan Stewart except that as amended by Engineering Plan as annotated (Ref. SY15024C101Revision A).

15 [A Special - Truck Movements](#)

Truck movements are restricted to four (4) vehicle trips per day and restricted to between 6:00am and 8:00pm Monday to Fridays and 6am to 6pm on Saturdays.

No truck movements are permitted on Sundays and public holidays unless that movement relates to the vehicle entering the property once only between 6am and 8pm to be parked thereon.

16 [A Special - Use](#)

The property must not be used as a truck or transport depot and/or vehicle repair workshop or vehicle repair station for:

(i) the parking or servicing of motor vehicles used in connection with a business, industry or freight transport undertaking garaging or storage or maintenance or servicing of any other trucks; or

(ii) repair or maintenance of vehicles other than the two (2) pieces of plant or trucks approved by this consent or private domestic vehicles.

17 **A Special- Aggregate Material**

Any aggregate material used for the construction of the driveway is to comply with the requirements of the EPA Recovered Aggregate Exemption 2010.

18 **A Special- Disposal of Fill**

All piles of fill are to be removed, either dispersed over the site as top dressing within the levels permitted by this consent or removed off site with details of the disposal location provided to Council.

19 **A Special- Earthworks**

The earthworks approved herein must comply with AS 3798 and Council's Design Guidelines and Construction Specifications for Civil Works.

20 **A Special- External Finishes**

The colour of the shed is to be earthy tones, consistent with nearby sheds and in accordance with Chapter D1-Rural Land Uses, Section 1.3.3 of Penrith Development Control Plan, and be non-reflective. Details of the colour are to be provided **with the Construction Certificate**.

21 **A Special- Minor truck maintenance works permitted**

Only minor truck maintenance works such as:

- (i) checking oil and fluid levels
- (ii) checking tyre pressure and inflating where required
- (iii) changing light bulbs
- (iv) changing wiper blades
- (v) replacing air filters
- (vi) checking the hydraulic connections between the prime mover and trailer

is permitted, and such minor maintenance work may be undertaken only by the occupier of the property. Such minor truck maintenance work is to be restricted to between 6am and 8pm Mondays to Fridays, and 9am and 6pm Saturdays. No truck maintenance work is permitted on Sundays and public holidays.

22 **A Special- No loading or Unloading to Occur**

The two trucks and ancillary plant and equipment must be stored inside the shed at all times and no loading or unloading of goods to or from the trucks is permitted on the site.

An exemption from this requirement applies only where the vehicle returns to the site and is parked on the site for a short duration (maximum 2 hours) between movements provided however that in such case the vehicle must be parked behind the northern most part of the existing dwelling house **and provided further** that no trucks may be parked outside of the shed at any time between 8pm and 6am or on Sundays and Public Holidays.

23 **A Special- Storage of Additional Trucks**

Storage of additional trucks or employee's vehicles must occur at a site which is subject to development consent for such use. Employees of the business are not to leave their vehicles on site and drive one of the two trucks stored on site, unless they are a permanent occupier of the property.

24 **A Special -Use of Shed**

The shed shall only be used for the storage and basic maintenance of two (2) pieces of plant or truck vehicles, where the plant or truck vehicles are operated only by the occupier or occupiers of the property. The shed may also be used to store personal items ancillary to the dwelling or rural use of the land, but is not to be habitable or for commercial purposes.

25 **A Special- Works as Executed Plan**

Prior to the issue of an Occupation Certificate for the shed, a Work-as-Executed Plan prepared by an appropriately qualified consultant is to be submitted to Penrith City Council and verifies that the finished ground levels reflected within the approved survey drawing (approved as part of this consent) have been maintained. Any changes to finished ground level beyond those approved are to be rectified prior to the issue of any Occupation Certificate.

Environmental Matters

26 D001 - Implement approved sediment & erosion control measures

Erosion and sediment control measures shall be installed **prior to the commencement of any works on site**. 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 land, that was subject to the works, have been stabilised and grass cover established**.

27 D002 - Spraygrass

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

28 D005 – No filling without prior approval (may need to add D006)

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.

29 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: An appropriately qualified person is defined 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.

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.

30 D009 - Covering of waste storage area

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.

31 **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.

32 **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.

33 **D Special - Drip Line**

No fill, machinery, or materials are to be placed or stored within the drip line of any tree.

34 **D Special - No vegetation to be removed**

No native trees or other vegetation (including shrubs and other understory vegetation) are to be removed, ringbarked, cut, topped, lopped, slashed or wilfully destroyed without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

35 D Special - Vegetated Buffer

Prior to the issue of an Occupation Certificate, a vegetated buffer 3m wide surrounding the hardstand driveway and turning area to offset the impact of previous vegetation and habitat removal and to help manage erosion and runoff, and visual amenity is to be installed. This is approximately 500m². The vegetated buffer is to consist of species from the Castlereagh Scribbly Gum vegetation community and is to contain a selection of species from the mid/under storey and the ground stratum. The species are to be selected from the following lists:

List A – Ground stratum - At least 8x different species planted at a density of 2x plants per m².

- *Aristida ramosa*
- *Aristida warburgii*
- *Boronia polygalifolia*
- *Dianella revoluta* var. *revoluta*
- *Entolasia stricta*
- *Goodenia bellidifolia* subsp. *bellidifolia*
- *Lomandra glauca*
- *Lomandra multiflora* subsp. *multiflora*
- *Patersonia sericea*
- *Platysace ericoides*
- *Stylidium graminifolium*
- *Themeda australis*
- *Thysanotus tuberosus* subsp. *tuberosus*
- *Xanthorrhoea minor*

List B – Shrub stratum - At least 8x different species planted at a density of 1x plant per m².

- *Acacia brownii*
- *Acacia elongata*
- *Banksia oblongifolia*
- *Banksia spinulosa*
- *Bossiaea rhombifolia*
- *Callistemon pinifolius*
- *Daviesia ulicifolia*
- *Grevillea mucronulata*
- *Hakea dactyloides*
- *Hakea sericea*
- *Isopogon anemonifolius*
- *Leptospermum polygalifolium*
- *Leptospermum trinervium*
- *Lissanthe strigosa*
- *Melaleuca erubescens*
- *Melaleuca thymifolia*

Note: All plants are to be local provenance and are to be sourced from nurseries using local provenance seed.

36 D Special BLANK

All landscape plantings are to be maintained for a period of 36 months (3 years). This includes watering, weeding and replacement planting if plant death exceeds 15%.

37 D Special -Replacement Tree Planting

In addition to the vegetated buffer plantings, **20 trees are to be planted on the property** (note: these are at a ratio of approximately 2:1 for the trees removed for the initial unauthorised works). At least 5 of these trees are to be located within the vegetated buffer surrounding the hardstand area and the remaining trees should be planted to the rear of the hardstand area, augmenting the cleared and degraded areas. Trees are to be of the following species only:

- *Eucalyptus sclerophylla*
- *Eucalyptus parramattensis*;
- *Angophora bakeri*.

Note: No trees are to be planted within the Asset Protection Zone of the house. All plants are to be local provenance and are to be sourced from nurseries using local provenance seed.

BCA Issues

38 E001 - BCA compliance

All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

(a) complying with the deemed to satisfy provisions, or

(b) formulating an alternative solution which:

- complies with the performance requirements, or
 - is shown to be at least equivalent to the deemed to satisfy provision, or
- (c) a combination of (a) and (b).

Construction

39 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 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.

40 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

41 H011 - Engineering plans & specifications

Detailed engineering plans and specifications relating to the work shall be submitted for consideration and approval prior to the issue of a Construction Certificate.

42 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.

Engineering

43 [K202 - S138 Roads Act – Works and Structures - Minor Works in the public road](#)

Prior to the issue of any Construction Certificate, a Section 138 Roads Act application(s), 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, waster 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

44 [K209 - Stormwater Discharge – Minor Development](#)

Stormwater drainage from the site is to be discharged to the level spreader system. The proposed development and stormwater drainage system shall be designed to ensure that no adverse impact on adjoining properties by the diversion, damaging or concentration of stormwater flows.

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

45 [K Special Driveway and Hard Stand Areas](#)

Any driveway works and hard stand areas are not to have an adverse impact upon stormwater surface flows on or from adjoining properties. All works are to be flush with the natural surface. Any works including mounding, are not to dam, concentrate or divert surface flows onto adjoining properties.

46 [K Special- Works to be signed off by PCC](#)

Prior to the issue of an Occupation Certificate, the Principal Certifying Authority shall ensure that all works associated with the Section 138 Roads Act Approval or Section 68 Local Government Act have been inspected and signed off Penrith City Council.

Landscaping

47 [L007 - Tree](#)

All trees that are required to be retained as part of the development are to be protected in accordance with the minimum tree protection standards prescribed in Chapter C6 Landscape Design of Penrith Development Control Plan 2014.

Certification

48 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.

49 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 shed.

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

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

D1 Rural Land Uses

The proposal has been assessed against the provisions of Penrith DCP, Chapter D1 Rural Land uses. Whilst the proposal does not comply with all numerical controls under Penrith DCP as discussed below, the proposal generally satisfies the aims and objectives of the Chapter D1.

Note: The controls under Section 1.3- Farm Buildings have been considered despite the proposal not be for a 'farm building', as Section 1.3(A) of Chapter D1 states that the controls for farm buildings also apply to all sheds and outbuildings ancillary to any permissible uses of rural lands (specific to the relevant zone), whether or not that use is considered an agricultural use, unless specifically stated.

Non-compliances with DCP Controls:

- Section 1.2.3- Site Coverage Bulk and Massing. The proposal exceeds a maximum floor footprint of 600sqm permitted under Penrith DCP. The proposed shed has a footprint of 288sqm + existing garage (approximately 42sqm) + dwelling (approximately 522sqm) = 852sqm. The reason behind the size of the shed is to accommodate the garaging of two (2) truck vehicles and personal items, comprising 1x boat, 1x caravan, 1x tractor and slasher, 1x classic restored car. In considering the proposed design of the shed, the setbacks provided from the front, rear and side boundaries, and that a condition of consent has been imposed requiring a 3m landscaped strip along the side boundary to provide screening, the proposal is considered to have been designed to satisfactorily mitigate visual impacts, and is unlikely to result in adverse visual or amenity impacts. The design of the shed is considered relatively typical for a rural shed expected in the locality. Accordingly, the proposal is considered to satisfy the intentions of the floor coverage control.

Compliance with DCP controls

- A minimum setback of 15m from a public road is provided in relation to the shed. The shed is setback approximately 190m from the front boundary and will have minimal visibility from the street.
- The location of the shed is distanced more than 10m from the dwelling on the site, and more than 20m from dwellings on adjoining properties.
- The works are located more than 40m from a mapped watercourse.
- A condition of consent has been imposed requiring a vegetated buffer 3m wide surrounding the hardstand driveway and turning area to (among other items) mitigate visual and privacy impacts on the adjoining property.
- The proposed building height of the shed is less than 8m from natural ground level, being 6.634m.