

# PENRITH CITY COUNCIL

## NOTICE OF DETERMINATION

### DESCRIPTION OF DEVELOPMENT

|                                |                                                                                                   |
|--------------------------------|---------------------------------------------------------------------------------------------------|
| Application number:            | DA21/0528                                                                                         |
| Description of development:    | Flood Damaged Restoration Works including Construction of Retaining Walls & Associated Earthworks |
| Classification of development: | Class 10b                                                                                         |

### DETAILS OF THE LAND TO BE DEVELOPED

|                    |                                    |
|--------------------|------------------------------------|
| Legal description: | Lot 1 DP 14656                     |
| Property address:  | 29 Nepean Avenue, PENRITH NSW 2750 |

### DETAILS OF THE APPLICANT

|                 |                                                               |
|-----------------|---------------------------------------------------------------|
| Name & Address: | Nobis Architecture Pty Ltd<br>PO Box 350<br>KATOOMBA NSW 2780 |
|-----------------|---------------------------------------------------------------|

### DECISION OF CONSENT AUTHORITY

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

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

|                                  |                 |
|----------------------------------|-----------------|
| Date from which consent operates | 2 November 2021 |
| Date the consent expires         | 2 November 2026 |
| Date of this decision            | 2 November 2021 |

## POINT OF CONTACT

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

|                           |                 |
|---------------------------|-----------------|
| Assessing Officer:        | Lawrence Ligato |
| Contact telephone number: | +612 4732 7427  |

## NOTES

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### **Reasons**

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

### **Conditions**

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

### **Certification and advisory notes**

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

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

### **Review of determination**

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

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

### **Appeals in the Land and Environment Court**

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

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

### **Designated development**

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

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

### **Sydney Western City Planning Panels**

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

# ATTACHMENT 1: CONDITIONS OF CONSENT

## General

- 1 The development must be implemented substantially in accordance with the plans numbered 107641-1 and 107641-2 (Sandstone Block Retaining Wall Option 1), drawn by Kneebone, Beretta and Hall and dated 21.9.21 (Issue D), and stamped approved by Council, the application form, the BASIX Certificate and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.
- 2 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 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 4 A **Construction Certificate** shall be obtained prior to commencement of any building works.
- 5 The materials/finishes schedule of the proposed retaining walls shall incorporate tones compatible with the character of the surrounding area that compliment the river embankment (Sandstone preferred). Details are to be approved by Council prior to the issue of a **Construction Certificate** in conjunction with the required Construction Environmental Management Plan (CEMP).
- 6 The stamped approved General Terms of Approval issued by Natural Resources Access Regulator (Reference Number: IDAS1140241 - A-29907 and dated 12 October 2021) are to be complied with at all times.
- 7 **The attached GTA issued by NRAR do not constitute an approval under the Water Management Act 2000.** The development consent holder must apply to NRAR for a Controlled Activity approval after consent has been issued by Council and before the commencement of any work or activity.

Prior to the issue of a **Construction Certificate**, a completed application must be submitted to NRAR together with any required plans, documents, application fee and proof of Council's development consent. Finalisation of an approval can take up to eight (8) weeks from the date the application and all required supporting documentation is received.

Applications for controlled activity approval should be made to NRAR, by lodgement of a Controlled Activity Approval – New approval application on the NSW Planning Portal at: <https://www.planningportal.nsw.gov.au/>

- 8 Prior to the issue of an **Occupation Certificate**, the Principal Certifier must ensure that the recommended planting densities contained with the approved Vegetation Management Plan (prepared by Abel Ecology dated 21/10/2021 (AE21-REP-JP2359-Iss-2) have been completed.

Appropriate planting densities include:

- groundcovers at 4/sqm,
- shrubs at 2/sqm or 1-1.5 m apart,
- aquatics (eg Phragmites) at 10-20 stems/sqm,

- turf as an alternative continuous cover on terrace tops instead of tubestock plantings.

Planting to native groundcovers and shrubs will provide surface stability and visual amenity to the reconstructed bank. Species to be used are indicated in the planting schedule (Appendix 2).

## Environmental Matters

- 9 Works are to be carried out in accordance with the Erosion and Sediment Control Plan prepared by Barker Ryan and Stewart dated 21/09/2021 (revision A Project Number 210614-01).
- 10 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.
- 11 No fill material shall be imported to the site until such time as a certificate demonstrating that the material is suitable has been submitted to, considered and approved by Council. This certificate may be in the form of a validation certificate, waste classification, or appropriate resource recovery order/exemption. A copy of a report forming the basis for the validation is also to be provided. The certificate shall:
  - be prepared by an appropriately qualified person with consideration of all relevant guidelines, standards, planning instruments and legislation (e.g. EPA, NEPM, ANZECC, NH&MRC),
  - clearly state the legal property description of the fill material source site and the total amount of fill tested,
  - 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 NSW Environment Protection Authority's "Waste Classification Guidelines" 2014, 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.

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 work may be requested. In these circumstances the works shall be carried out prior to any further approved works.

{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, ecotoxicology, 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."}

- 12 All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin and in a manner to ensure that no waste materials are allowed to enter the river, stormwater system or neighbouring properties.

- 13 Dust suppression techniques are to be employed during construction works to reduce any potential nuisances to surrounding properties.
- 14 Prior to the issue of an **Occupation Certificate**, the Principal Certifier must ensure that a minimum of one tree species from the identified Plant Community Type (PCT) is to be planted on the southern boundary (upstream).

<https://www.environment.nsw.gov.au/threatenedSpeciesApp/profile.aspx?id=10787>

- 15 Should any "unexpected finds" occur during site earthworks, including but not limited to, the identification/finding of contaminated soils, buried building materials, asbestos, odour and/or staining, works are to cease immediately and Penrith City Council is to be notified. Any such "unexpected finds" shall be addressed by an appropriately qualified environmental person/consultant.

All remediation works within the Penrith Local Government Area are Category 1 works under State Environmental Planning Policy 55-Remediation of Land. Should any contamination be found during development works and should remediation works be required, development consent is to be sought from Penrith City Council before the remediation works commence.

{Note: for the purpose of this condition 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. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}

- 16 **Prior to the issue of the Construction Certificate**, a detailed Construction Environmental Management Plan (CEMP) is to be submitted to Penrith City Council for approval. If Council is not the certifying authority, a copy of Council's approval is to be provided to the Principal Certifying Authority.

The CEMP is to detail proposed construction materials, equipment and techniques and is to address the environmental aspects of the development works. The CEMP is to clearly detail the environmental management practices and controls to be implemented on the site prior to, during and post construction works. The CEMP is to address, but is not necessarily limited to the following:

- Staging of works, materials, equipment and methods of construction, stockpiling locations and management, site access and management controls to minimise construction impacts
- Where used, barge management and pollution prevention controls
- Soil management,
- Water quality and river management,
- Wastewater management,
- Stormwater management and drainage,
- Waste management (including solid and liquid waste),
- Vehicle movements,
- Material and equipment storage including storage locations, bunding and containment, proposed controls to prevent on site impacts and off-site migration
- Vegetation management and revegetation strategies (short-term and ongoing)

## 17 **Vegetation Management Plan**

The final endorsed vegetation management plan is to be enacted in its entirety.

Specific attention must be given to the requirement to remove weeds, prior to works commencing.

The planting effort is to be completed, prior to the issue of an **Occupation Certificate**.

## 18 **Threatened species/plant protection zone - adjoining properties**

Prior to works commencing, a threatened plant community/tree protection zone is to be established at either side of the property to ensure no adverse impacts to the flora or fauna on the adjoining properties.

Fencing must not prevent the movement of wildlife through the area (along the riverbank). However, all protected native fauna must be protected from harm during construction. Signage indicating the areas are a no-go zone must be erected on both sides of the property.

The protection zone is to be inspected and approved by Council. Alternatively, the project ecologist may submit a report to Council verifying the protection zone has been established, with photographic evidence.

The CEMP must make reference to the requirement not to impact the native vegetation on the adjoining properties and all staff must be informed of this requirement at the time of the inductions. The areas are to be inspected by the project manager regularly. Should there be any indication of encroachment into these areas (this includes construction waste), works, the CEMP must be amended and action taken to rectify impacts immediately.

## 19 **Tree protection zone**

Prior to works commencing, tree protection measures are to be implemented as outlined in the Australian Standard AS 4970-2009 'Protection of trees on development sites'. The TPZ must appropriately protect native vegetation that is to be retained within the subject site and that within adjoining public and private domains. A TPZ preserves roots and soil and keeps branches clear of contact with construction equipment and materials. No fill, machinery, or materials are to be placed or stored within the drip line of any tree that is to be retained.

## 20 **Tree (and native vegetation) preservation**

At all times, no native trees or other native vegetation (including shrubs and understory vegetation) are to be removed, ringbarked, cut, topped, lopped, slashed, mowed or wilfully destroyed (other than the dead or dying debris damaged during the flooding event as identified in the Vegetation Management Plan-but see note below), or in accordance with written approval or emergency instruction from the New South Wales Rural Fire Service ) without the prior consent of Penrith City Council in accordance with Penrith Development Control Plan 2014, Biodiversity Conservation Act 2016 and the State Environmental Planning Policy (Vegetation in Non-Rural Areas 2017). Riverbank native vegetation that remains viable is to be integrated into the restoration actions.

## 21 **Fauna protection**

Should any fauna be at risk of harm during the works, the project ecologist is to be contacted immediately to

confirm fauna management requirements to ensure the individuals onward persistence on site or at the locality.

Where there is risk of harm to protected native wildlife, works must cease while the matter is resolved.

Should any incidents occur, Council is to be notified of the event and the remedial actions that were undertaken with 2 weeks of any such event.

This requirement is to be integrated into the CEMP.

## **BCA Issues**

22 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**

23 Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details is to be erected:

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

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

24 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.

Construction works 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.

25 The retaining wall is to be located wholly within the property boundary.

## **Engineering**

26 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.

27 Prior to the issue of any Construction Certificate, the Certifier shall ensure that the retaining wall structure/s can withstand the forces of floodwater / rising water, including debris and buoyancy, from the Nepean River up to and including the 1% Annual Exceedance Probability flood event. A structural design of the retaining walls shall be prepared by a suitably qualified and experienced engineer and supported by a structural design certificate.

28 All associated drainage for the retaining wall shall be connected to an approved stormwater disposal system.

29 At the completion of works, the Principle Certifier shall ensure that a structural engineer certificate is issued by a suitably qualified and experienced engineer for all the built retaining wall structures, certifying that the works have been inspected and are in accordance with the structural design details.

## **Payment of Fees**

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

## Certification

- 31 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.

- 32 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 development.

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

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

## SIGNATURE

|            |                 |
|------------|-----------------|
| Name:      | Lawrence Ligato |
| Signature: |                 |

For the Development Services Manager