

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

SWCPP Ref. No.:	PPSSWC-90
Application number:	DA20/0360
Description of development:	Installation of Electricity Generating Works (Battery Storage) and Facilitating Torrens Title Subdivision x 2 Lots
Classification of development:	N/A

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 5 DP 1017480
Property address:	2235 - 2249 Castlereagh Road, PENRITH NSW 2750

DETAILS OF THE APPLICANT

Name & Address:	Penrith Smart Battery Pty Ltd 154 Peisley Street ORANGE NSW 2800
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DECISION OF CONSENT AUTHORITY

In accordance with Section 2.12 and 4.18(1) (a) of the Environmental Planning and Assessment Act 1979 (as amended), consent is granted subject to the conditions implementation 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	12 May 2021
Date the consent expires	12 May 2026
Date of this decision	11 May 2021

POINT OF CONTACT

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

Assessing Officer:	Jane Hetherington
Contact telephone number:	+612 4732 8078

NOTES

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 consistent with the following plans stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Drawing Title	Drawing No.	Prepared By.	Dated
Site Plan	220049 01 (Rev. E)	Premise	29/01/2021
BESS Facility Plan	220049 01 (Rev. E)	Premise	29/01/2021
Facility Equipment	220049 01 (Rev. E)	Premise	
Structural Drawings	220049-03 S004 - S007 (Rev. C)	Premise	01/02/2021
Civil Plans	220049 C001 - C950 (Rev. 1 & 3)	Premise	07/10/2020 27/01/2021
Subdivision Plan	220049.02A.DP01	Warren Raymond Saunders	-

- 2 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 3 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 4 A **Construction Certificate** shall be obtained prior to commencement of any works.
- 5 The new battery elements shall not be painted bright primary or iridescent colours to detract from the setting of the former power station.

Heritage/Archaeological relics

- 6 Prior to the issue of a Construction Certificate, details are to be provided to Penrith City Council for review and approval of an interpretation strategy so as to inform the public of the history of the facility. Details to be submitted to council include a location plan, size of signs, and sign content.

Prior to the issue of an Occupation Certificate, the approved interpretation strategy is to be installed to the satisfaction of Penrith City Council Development Services Manager.

Environmental Matters

- 7 All land that has been disturbed by earthworks, and does not have a specific finish applied, is to be spray grassed or similarly treated to establish a grass cover.
- 8 Dust suppression techniques are to be employed during construction to reduce any potential nuisances to surrounding properties.
- 9 **Prior to the issue of a Construction Certificate**, an Unexpected Finds Protocol shall be developed by an

appropriately qualified environmental consultant, and submitted to Council. If Council is not the certifying authority for this development, the report is to be provided to Penrith City Council.

The protocol is to be complied with at all times during the excavation and construction phase of the development.

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

- 10 Mud and soil from vehicular movements to and from the site must not be deposited on the road.
- 11 No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with *Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997)*. No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.
- 12 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.

- 13 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.
- 14 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.

- 15 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.
- 16 Prior to any works commencing on site, a waste management plan for the work must be submitted to the principal certifying authority. The waste management plan must:
 - (a) identify all waste (including excavation and construction waste materials) that will be generated by the work on the site, and
 - (b) identify the quantity of waste material in tonnes and cubic metres to be:
 - i) reused on-site, and
 - ii) recycled on-site and off-site, and
 - iii) disposed of off-site, and
 - (c) if waste materials are to be reused or recycled on-site - specify how the waste material will be reused or recycled on-site, and
 - (d) if waste materials are to be disposed of or recycled off-site - specify the contractor who will be transporting the materials and the waste facility or recycling outlet to which the materials will be taken.

BCA Issues

- 17 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).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

Construction

18 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.

19 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

20 A Subdivision Works Certificate (previously a Construction Certificate) is to be approved by the Certifier for the provision of any subdivision works.

Prior to the issue of any Subdivision Works Certificate, the Certifier shall ensure that engineering plans are consistent with the stamped approved plans prepared by Premise, job number 220049, revision 3, dated 27/01/2021, and that all subdivision works have been designed in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines and best engineering practice.

The subdivision works may include but are not limited to the following:

- Private roads
- Stormwater management (quantity and quality)
- Inter-allotment drainage
- Sediment and erosion control measures
- Landscaping and embellishment works

The Subdivision Works Certificate must be supported by engineering plans, calculations, specifications and any certification relied upon.

Note:

- Council's Development Engineering Department can provide this service. Contact Penrith City Council's Development Engineering Department on 4732 7777 to obtain a formal fee proposal prior to lodgement and visit Penrith City Council's website for more information.

21 Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that the foundations of proposed structures adjoining the existing drainage easement have been designed clear of the zone of influence.

22 Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that any structure below RL 26.4m AHD (adopted flood level + 0.5m freeboard) have been detailed with flood compatible building components in accordance with the publication 'Reducing the Vulnerability of Buildings to Flood Damage' produced by the Hawkesbury-Nepean Floodplain Management Steering Committee.

23 Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that the structures can withstand the forces of floodwater, including debris and buoyancy, up to the 1% Annual Exceedance Probability event in accordance with the requirements of the Building Code of Australia (BCA).

24 Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that all electrical services associated with the proposed battery energy storage system are adequately flood proofed in accordance with Penrith City Council's Development Control Plan relating to flood liable land. Flood sensitive equipment (including electric motors and switches) shall also be located above RL

26.4m AHD.

25 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 AS 2890.1, AS 2890.2, AS 2890.6 and Penrith City Council's Development Control Plan.

26 Prior to commencement of any works associated with the development, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate or Subdivision Works Certificate, ensuring compliance with the Protection of the Environment Operations Act 1997 and Managing Urban Stormwater series from the Office of Environment and Heritage.

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

27 Prior to commencement of any works associated with the development, a Traffic Control Plan, including details for pedestrian management, shall be prepared in accordance with AS1742.3 Traffic Control Devices for Works on Roads and the Roads and Maritime Services' publication Traffic Control at Worksites and certified by an appropriately accredited Roads and Maritime Services Traffic Controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Note:

- A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.

28 Work on the subdivision shall not commence until:

- a Subdivision Works Certificate (if required) has been issued;
- a Certifier has been appointed for the project, and;
- any other matters prescribed in the development consent for the subdivision and the Environmental Planning and Assessment Act and Regulation have been complied with.

A Notice of Commencement of works is to be submitted to Penrith City Council five (5) days prior to commencement of engineering works or clearing associated with the subdivision.

29 Prior to the issue of any Subdivision Certificate, the Principal Certifier shall ensure that all subdivision works required by this consent have been satisfactorily completed or that suitable arrangements have been made with Penrith City Council for any outstanding works.

30 Prior to the issue of any Occupation Certificate, Works As Executed drawings, final operation and maintenance management plans and any other compliance documentation for the stormwater management system shall be submitted to the Principal Certifier in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, Stormwater Drainage Specification for Building Developments and

WSUD Technical Guidelines.

An original set of Works As Executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Penrith City Council is not the Principal Certifier.

- 31 Prior to the issue of any Occupation Certificate, the Principal Certifier shall ensure that the stormwater management systems (including water sensitive urban design)
- have been satisfactorily completed in accordance with the approved Construction Certificate or Subdivision Works Certificate and the requirements of this consent;
 - have met the design intent with regard to any construction variations to the approved design, and;
 - Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system shall be provided as part of the Works As Executed drawings.

- 32 Prior to the issue of any Occupation Certificate, a restriction on the use of land and positive covenant relating to the stormwater management systems (including water sensitive urban design) shall be registered on the title of the property. The restriction on the use of land and positive covenant shall be in the standard wording provided in Penrith City Council's Stormwater Specification for Building Developments - Appendix F.

- 33 Prior to the issue of any Occupation Certificate, an easement for drainage and overland flow 1.5m wide shall be provided over the proposed 150mm diameter stormwater outlet from the bioretention swale to the existing channel on-site, which crosses across the proposed lot boundary. Evidence of registration of the easement with Land Registry Services (LRS) shall be submitted to the Principal Certifier and Penrith City Council, if Penrith City Council is not the Principal Certifier. Easement widths shall be in accordance with Penrith City Council's Stormwater Drainage Specification for Building Developments.

The terms of the above required easement could include capability for extinguishment of the easement in the event that the allotments are consolidated as one allotment thereby negating the need for the easement across allotment boundary.

- 34 Prior to the issue of any Subdivision Certificate, the following compliance documentation shall be submitted to the Principal Certifier. A copy of the following documentation shall be provided to Penrith City Council where Penrith City Council is not the Principal Certifier:

a) Works As Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Subdivision Works Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The WAE drawings shall be prepared in accordance with Penrith City Council's Engineering Construction Specification for Civil Works.

b) The WAE drawings shall clearly indicate the 1% Annual Exceedance Probability flood lines (local and mainstream flooding).

c) The WAE drawings shall be accompanied by plans indicating the depth of cut / fill for the entire development site. The survey information is required to show surface levels and site contours at 0.5m intervals. All levels are to be shown to AHD.

d) Surveyor's Certificate certifying that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries, private or public lands.

e) Structural Engineer's construction certification of all structures.

35 The stormwater management system shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan.

Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the stormwater management systems.

Landscaping

36 No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

Subdivision

37 **Prior to the issue of the Subdivision Certificate**, the following is to be submitted:

An original plan of subdivision and two (2) copies of the plan. The plan of subdivision must indicate, where relevant -

- All drainage easements, rights of way, restrictions and covenants.
- All proposed dedications of roads/drainage/public reserve, which are to be undertaken at no cost to Penrith City Council.

The following information is to be shown on one (1) copy of the plan.

- The location of all buildings and/or other permanent improvements shall comply with any statutory boundary clearances or setbacks as defined by the Building Code of Australia and Council's resolutions.
- All existing services are wholly contained within the lot served and/or covered by an appropriate easement.

Prior to lodgement of the Subdivision Certificate Application, street address numbering must be obtained/approved by Penrith City Council's Rates Team. Proposed street addresses can be forwarded to council@penrith.city for approval.

38 A Surveyors Certificate is to be lodged with the application for a Subdivision Certificate that certifies that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries.

Section 94

39 This condition is imposed in accordance with Penrith City Council's Section 7.12 Contributions Plan for non-residential development. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$235,000.00 is to be paid to Council **prior to the issue of a Construction Certificate** 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 7.12 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 S7.12 invoice accompanying this consent should accompany the contribution payment. The Section 7.12 Contributions Plan 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 Contribution.

Certification

40 A Subdivision Certificate is to be obtained prior to the release of the linen plan of subdivision. The Subdivision Certificate will not be issued if any of the conditions in this consent are outstanding.

SIGNATURE

Name:	Jane Hetherington
Signature:	

For the Development Services Manager