

# PENRITH CITY COUNCIL

## NOTICE OF DETERMINATION

### DESCRIPTION OF DEVELOPMENT

Application number:	DA20/0331
Description of development:	Earthworks (part retrospective), Construction of a Rural Shed, Parking of Two- Truck Vehicles (rigid truck and semi trailer), and Associated Works.
Classification of development:	Class 10a

### DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 122 DP 709303
Property address:	41 - 47 Jolly Street, CASTLEREAGH NSW 2749

### DETAILS OF THE APPLICANT

Name & Address:	Urban City Planning PO Box 1201 WINDSOR NSW 2756
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### 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	7 January 2021
Date the consent expires	7 January 2026
Date of this decision	16 December 2020

## POINT OF CONTACT

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

Assessing Officer:	Lucy Goldstein
Contact telephone number:	+61247328136

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

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

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

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

- 7 No retail sale of goods shall be conducted from the subject premises.
- 8 No motor vehicles are to be displayed for sale on the subject premises.
- 9 All materials and goods associated with the use shall be contained within the building at all times.
- 10 A **Construction Certificate** shall be obtained prior to commencement of any building works.
- 11 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 The demountable office building must be lawfully removed from the property within 30 days of the issue of this consent.
- 13 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 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 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 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 Any aggregate material used for the construction of the driveway is to comply with the requirements of the EPA Recovered Aggregate Exemption 2010.
- 18 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 The earthworks approved herein must comply with AS 3798 and Council's Design Guidelines and Construction Specifications for Civil Works.
- 20 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 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 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 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 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 **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 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 All land that has been disturbed by earthworks is to be spray grassed or similarly treated to establish a grass cover.
- 28 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 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, ecotoxicology, 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 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 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 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 No fill, machinery, or materials are to be placed or stored within the drip line of any tree.

34 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 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 500m<sup>2</sup>. 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 m<sup>2</sup>.

- *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 m<sup>2</sup>.

- *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 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 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 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 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 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 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 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 **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 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 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 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 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 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 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.

## SIGNATURE

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Name:	Lucy Goldstein
Signature:	

For the Development Services Manager