

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

|                              |                                                                                    |
|------------------------------|------------------------------------------------------------------------------------|
| <b>Application number:</b>   | DA17/0980.03                                                                       |
| <b>Proposed development:</b> | Modification to approved shed associated with an approved detached dual occupancy  |
| <b>Property address:</b>     | 88 a Nepean Gorge Drive, MULGOA NSW 2745                                           |
| <b>Property description:</b> | Lot 31 DP 237163                                                                   |
| <b>Date received:</b>        | 12 March 2019                                                                      |
| <b>Assessing officer</b>     | Jacqueline Klincke                                                                 |
| <b>Zoning:</b>               | E2 Environmental Conservation - LEP 2010<br>E3 Environmental Management - LEP 2010 |
| <b>Class of building:</b>    | Class 1a                                                                           |
| <b>Recommendations:</b>      | Approve                                                                            |

### Executive Summary

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Council is in receipt of a Section 4.55(1A) modification application to modify the built form and location of an approved shed in association with an approved dual occupancy development at 88a Nepean Gorge Drive, Mulgoa. Development compliance action (DC18/0130) was undertaken in regards to unauthorised earthworks and the incorrect location of the approved shed compared to the original stamped approved plans. Consequently, this development application has been lodged in response to this compliance action.

The key issues identified and addressed as part of the assessment of the proposal were in regards to the following aspects:

- Unauthorised fill and potential contamination located within the building footprint of the relocated shed,
- Encroachment into the Biobanking Agreement (ID Number 190), and
- Impact on approved Wastewater Management and OSSM System.

The applicant was advised of these issues and subsequently, Council received additional information that adequately addressed the issues raised.

The modified proposal was notified to adjoining properties and publicly exhibited between 19 March to 2 April 2019. In addition, the Mulgoa Progress Association was notified of the proposed development. During this period, no submissions were received in response.

An assessment of the modified development under Section 4.55(1A) and Section 4.55 of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for approval.

## Site & Surrounds

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The subject site is located at the northern end of Nepean Gorge Drive and is known as No. 88a Nepean Gorge Drive, Mulgoa. The legal description for the site is Lot No. 31, DP 237163. The subject site is provided with a vehicular access handle from Nepean Gorge Drive and is an irregular shaped allotment with a total area of 66.9 hectares. The access from Nepean Gorge Drive is via an unformed driveway.

The subject site provides for a mixture of dense vegetation patches as well as some areas of cleared land and is subject to a Biobanking agreement (ID Number 190) under the Threatened Species Conservation Act 1995. The Biobanking agreement is known as the *Fernhill North West Biobank* and consists of an area of 65.40 hectares. The area within the subject site for redevelopment as part of this proposal is located outside of the biobanking agreement area and is relatively flat, has a number of trees and shrubs and provides for a gradual fall from the north-west to the south-east portion of the subject site to be redeveloped.

The subject site does not directly adjoin surrounding residential dwellings but while so, dwellings along Nepean Gorge Drive are primarily single level in height and located upon large allotments of land within a rural context. Directly adjoining the subject site to its west is a Heritage Item under Schedule 5 of the LEP (Table Rock Lookout), while directly adjoining the subject site to its east is a State Significant Heritage Item (Fernhill house, outbuildings and landscape) listed under the NSW Heritage Register.

## Proposal

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The proposal involves the modification of the built form and location of an approved shed for DA17/0980. The proposed shed is to be relocated closer to the residential dwelling, dimensions are 26m x 16m and includes a breezeway, and is 1116.18m<sup>2</sup> larger in footprint size than the original approved shed.

## Plans that apply

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- 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

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### • Section 4.14 - Bushfire prone land assessment

The original application was assessed against the requirements of Clause 4.14 of the *Environmental Planning and Assessment Act (EPAA) 1979* and was considered satisfactory subject to conditions of consent. Condition 9 for DA17/0980 requires certification to be provided prior to the issue of an Occupation Certificate indicating that the development has been constructed in accordance with the recommendations of the Bushfire Hazard Assessment report prepared by Control Line Consulting.

The proposed modifications do not seek to amend this condition, therefore the proposed development remains satisfactory in accordance with Section 4.14 of the EPAA 1979.

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

The proposed modifications have been assessed in accordance with the matters for consideration under Section 4.55(1A) and Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposed modifications satisfy the relevant provisions of the Act in this regard.

Under the provisions of Section 4.55(1A) Modifications involving minimal environmental impact of the *Environmental Planning and Assessment Act 1979*, Council may, in response to an application being made, modify a previously approved development if:

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

(b) it is satisfied that the development to which the consent as modified relates is substantially the same

*development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

*(c) it has notified the application in accordance with:*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a Council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

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

In this regard, the following is noted:

(a) The proposed modifications are considered to be of minimal environmental impact as the finished floor levels are not higher than the original development and the minimum separation distances required from side and rear boundaries remain satisfied. The modified development is therefore unlikely to result in overbearing or privacy impacts on adjoining properties, nor does it pose any flooding risks.

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

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

In applying the ordinary meaning of the words '*substantially the same development*' informed by the above cases, the modified development is of the same essence as the building footprint has merely been marginally relocated. Overall, the changes result in a development not too dissimilar to the original approval, nor do they change the essence of the development being for a detached dual occupancy and associated shed.

(c) The modified development was notified in accordance with the requirements of the *Penrith Development Control Plan 2014*.

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

## **Section 79C(1)(a)(i) The provisions of any environmental planning instrument**

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

Clause 7 of *State Environmental Planning Policy No. 55 (SEPP 55)* outlines the following requirements that a consent authority must consider prior to the issue of a consent for any development:

*A consent authority must not consent to the carrying out of any development on land unless:*

*(a) it has considered whether the land is contaminated, and*

*(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

*(c) if the land requires to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

A review of aerial photographs revealed large amounts of fill imported onto the site on numerous occasions dating September 2017, January 2018 and December 2018 before and during construction of the original DA approval. This fill appeared to be placed within the proposed shed's footprint and the origin and contamination status of this fill was unknown. Accordingly, documentation was requested detailing the source, quantity and nature of the fill imported onto the site.

Correspondence from the application confirmed the fill material placed in the footprint of the proposed shed was 'the result of cutting and filling to form the building platform for the shed with additional soil coming from overburden from both dwellings building areas'. In addition, a Waste Analysis and Classification Report, prepared by ADE Consulting Group, dated 24 July 2017, and a Waste Analysis and Classification Report, prepared by ADE Consulting Group, dated 13 June 2017 was provided in conjunction with further documentation which outlined details regarding the source and quantity of the fill material. Council's Environmental Management section reviewed the provided documentation and information, and raised no objections to the proposal, should consent be granted.

In this regard, it is not considered that there is an issue in regards to land contamination as part of the current modifications and therefore the site is suitable for the proposed development.

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

An assessment has been undertaken of the application against the relevant criteria within *Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997)* and the application is satisfactory subject to recommended conditions of consent.

## Local Environmental Plan 2010 (Amendment 4)

| Provision                                                                               | Compliance                |
|-----------------------------------------------------------------------------------------|---------------------------|
| Clause 1.2 Aims of the plan                                                             | Complies                  |
| Clause 2.3 Permissibility                                                               | Complies                  |
| Clause 2.3 Zone objectives                                                              | Complies                  |
| Clause 5.9 Preservation of trees or vegetation                                          | Complies - See discussion |
| Clause 5.10 Heritage conservation                                                       | Complies                  |
| Clause 5.11 Bush fire hazard reduction                                                  | Complies                  |
| Clause 7.1 Earthworks                                                                   | Complies                  |
| Clause 7.2 Flood planning                                                               | Complies                  |
| Clause 7.5 Protection of scenic character and landscape values                          | Complies                  |
| Clause 7.6 Salinity                                                                     | Complies - See discussion |
| Clause 7.7 Servicing                                                                    | Complies                  |
| Clause 7.10 Dual occupancies and secondary dwellings in certain rural and environmental | Complies                  |
| Clause 7.18 Mulgoa valley                                                               | Complies - See discussion |

### Clause 5.9 Preservation of trees or vegetation

The majority of the subject site is currently burdened by an existing Biobanking Agreement (ID No. 190) maintained with the NSW Office of Environment and Heritage. It is noted that the subject site is provided with two zonings, E3 Environmental Management and E2 Environmental Conservation. The proposed development is situated within the E3 zone while the remainder of the E2 zone is provided within the Biobanking agreement area. In this regard, as the proposed development is located away from the bio-banked land, no concern is raised in relation to a detrimental impact upon the existing agreement.

### Clause 7.6 Salinity

The subject site is affected by moderate salinity. While so, it is not considered necessary in this instance to include any specific condition(s) in relation to construction noting the nature of the proposed works.

### Clause 7.18 Mulgoa valley

The proposed development is considered to adversely affect any existing vistas within the Mulgoa Valley or affect the historical significance of any heritage item. The siting of the proposal is also considered acceptable as it is not located on a ridge top nor will it intrude into the skyline when viewed from a road or other public place. In this regard, the proposal is not considered contrary to the objectives of the Mulgoa Valley as provided by the LEP.

## Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument

There are no draft environmental planning instruments applicable to the subject proposal.

## Section 79C(1)(a)(iii) The provisions of any development control plan

### Development Control Plan 2014

| Provision                              | Compliance                                                           |
|----------------------------------------|----------------------------------------------------------------------|
| C1 Site Planning and Design Principles | Complies                                                             |
| C2 Vegetation Management               | Complies - see Appendix - Development Control Plan Compliance        |
| C3 Water Management                    | Complies                                                             |
| C4 Land Management                     | Complies                                                             |
| C5 Waste Management                    | Complies                                                             |
| C6 Landscape Design                    | Complies                                                             |
| C7 Culture and Heritage                | N/A                                                                  |
| C8 Public Domain                       | N/A                                                                  |
| C9 Advertising and Signage             | N/A                                                                  |
| C10 Transport, Access and Parking      | N/A                                                                  |
| C11 Subdivision                        | N/A                                                                  |
| C12 Noise and Vibration                | Complies                                                             |
| C13 Infrastructure and Services        | Complies                                                             |
| D1.1. Rural Character                  | Complies                                                             |
| D1.2. Rural Dwellings and Outbuildings | Does not comply - 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                                                                  |
| E9 Mulgoa Valley controls              | Complies                                                             |

## Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to the proposal.

## Section 79C(1)(a)(iv) The provisions of the regulations

The proposal remains compliant with the *Environmental Planning and Assessment Regulation 2000* subject to the conditions of consent.

## Section 79C(1)(b) The likely impacts of the development

The likely impacts of the development as identified during the assessment of the original proposal remain in principal unaltered. The modified built form and siting of the shed is suitable as it is unlikely to result in any adverse impacts.

## Section 79C(1)(c) The suitability of the site for the development

The suitability of the site was assessed under the original DA17/0980 and remains suitable for the proposed development.

## Section 79C(1)(d) Any Submissions

### Community Consultation

The application was notified to adjoining and nearby properties and exhibited from 19 March and 2 April 2019. In addition, the Mulgoa Progress Association was notified of the proposed modification. During this period, no submissions were received in response.

## Referrals

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

| Referral Body                            | Comments Received                     |
|------------------------------------------|---------------------------------------|
| Building Surveyor                        | No objections - subject to conditions |
| Development Engineer                     | No objections - subject to conditions |
| Heritage                                 | No objections                         |
| Environmental - Environmental management | No objections - subject to conditions |
| Environmental - Biodiversity             | No objections - subject to conditions |

## Section 79C(1)(e)The public interest

The modified development will not generate any significant issues relating to the public interest.

## Section 94 - Developer Contributions Plans

The following development contribution plans apply to the subject site:

- (a) Cultural Facilities
- (b) District Open Space
- (c) Local Open Space

The following development contribution calculations for the proposal are amended as follows.

| CALCULATIONS                                                       |   |                         |   |                         |       |                       |  |  |  |  |  |
|--------------------------------------------------------------------|---|-------------------------|---|-------------------------|-------|-----------------------|--|--|--|--|--|
| <table><tr><td colspan="6"><i>Dual Occupancy</i></td></tr></table> |   |                         |   |                         |       | <i>Dual Occupancy</i> |  |  |  |  |  |
| <i>Dual Occupancy</i>                                              |   |                         |   |                         |       |                       |  |  |  |  |  |
| No. of units                                                       | x | Rate                    | - | Credit for existing lot | Total |                       |  |  |  |  |  |
| 2                                                                  | x | 3.1 (Open Space)        | - | 3.1                     | 3.1   |                       |  |  |  |  |  |
| 2                                                                  | x | 3 (Cultural Facilities) | - | 3                       | 3     |                       |  |  |  |  |  |

| AMOUNT              |                                      |            |
|---------------------|--------------------------------------|------------|
| Contribution Plan   | Contribution Rate x Calculation Rate | Total      |
| Cultural Facilities | 3 x \$164                            | \$492.00   |
| District Open Space | 3.1 x \$1,942                        | \$6,021.00 |
| Local Open Space    | 3.1 x \$702                          | \$2,176.00 |
| NET TOTAL           |                                      | \$8,689.00 |

## Conclusion

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The modification has been assessed against the relevant environmental planning policies including the *Penrith Local Environmental Plan 2010* and *Penrith Development Control Plan 2014* and in this regard, the proposal is considered to satisfy the aims, objectives and provisions of these policies. The modification is not considered likely to create any significant impacts on the natural, social or economic environments and in this regard, the application is considered worthy of support and is recommended for approval, subject to conditions.

## Recommendation

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1. That DA17/0980.03 for the modification to the built form and location of an approved shed in association with an approved dual occupancy at 88a Nepean Gorge Drive, Mulgoa, be approved subject to the attached conditions.



## General

### 1 A001

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

| Doc No.                                              | Revision | Title                                                                                                                      | Prepared by            | Dated             |
|------------------------------------------------------|----------|----------------------------------------------------------------------------------------------------------------------------|------------------------|-------------------|
| <b>Architectural Plans all Project No. KC - 1739</b> |          |                                                                                                                            |                        |                   |
| <b>A01</b>                                           | <b>C</b> | <b>Overall Site Plan</b>                                                                                                   | <b>Kleyn Creations</b> | <b>22.02.2019</b> |
| A04                                                  | A        | Ground Floor Plan                                                                                                          | Kleyn Creations        | 30.08.2017        |
| A05                                                  | A        | Roof Plan                                                                                                                  | Kleyn Creations        | 30.08.2017        |
| A06                                                  | A        | Primary Residence & Dual Occupancy House Elevations                                                                        | Kleyn Creations        | 30.08.2017        |
| A08                                                  | A        | Sections                                                                                                                   | Kleyn Creations        | 30.08.2017        |
| A09                                                  | A        | Window Schedule                                                                                                            | Kleyn Creations        | 30.08. 2017       |
| A11                                                  | A        | Colour Schedule                                                                                                            | Kleyn Creations        | August, 2017      |
| <b>A1400</b>                                         | <b>B</b> | <b>Shed Site Plan</b>                                                                                                      | <b>Kleyn Creations</b> | <b>22.02.2019</b> |
| <b>A1300</b>                                         | <b>B</b> | <b>Shed Plans Elevations &amp; Sections</b>                                                                                | <b>Kleyn Creations</b> | <b>22.02.2019</b> |
| <b>Culvert Crossing Plan Job No. 17-5218</b>         |          |                                                                                                                            |                        |                   |
| 1 of 1                                               | A        | Culvert Crossing Concept Plan                                                                                              | Envirotech             | 17.08.2017        |
| <b>Survey Plan all Job Reference 17414</b>           |          |                                                                                                                            |                        |                   |
| Sheet 1 of 3<br>(Culvert Location)                   | A        | Plan of detail and levels & biobank marked as indicated, over part Lot 31 in DP 237163 at 88-89 Nepean Gorge Drive, Mulgoa | Richard Hogan & CO     | 08.06.2017        |
| Sheet 2 of 3<br>(Culvert Location)                   | A        | Plan of detail and levels & biobank marked as indicated, over part Lot 31 in DP 237163 at 88-89 Nepean Gorge Drive, Mulgoa | Richard Hogan & CO     | 08.06.2017        |
| <b>Landscape Concept Plan Job No. 4860</b>           |          |                                                                                                                            |                        |                   |
| Sheet 1 of 1                                         | -        | DA Landscape Concept                                                                                                       | Monaco Designs PL      | 16.01.2018        |

- Wastewater Assessment Report prepared by EnviroFit, Report No. ENVF17-1090, Version A, dated 23 September, 2017;
- Basix Certificate No. 866157M\_02, dated 6 February, 2018;
- Bushfire Hazard Assessment Report prepared by Control Line Consulting, Report Reference No. 16.09.222, dated 6 February, 2018; and
- Waste Management Plan dated 12 October, 2017.

**Amended on 26 June 2019 in accordance with Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.**

### 2 A008 - Works to BCA requirements (Always apply to building works)

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

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

### 3 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

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

### 4 A046 - Obtain Construction Certificate before commencement of works

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

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

The proposed schedule of external colours and finishes prepared by Kleyn Creations, Project No. KC1739, Drawing No. A12, Revision A dated August, 2017 is to be amended so as to provide for a lighter earth tone colour for the external walls of each dwelling. The colour of the metal shed is to also be identified and where possible be of a neutral colour scheme to compliment the dwellings. Details are to be provided to the Certifying Authority **prior to the issue of any Construction Certificate**.

***Amended on 26 June 2019 in accordance with Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.***

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

Lot 31, DP 237163 is to be maintained in accordance with BioBanking Agreement ID Number 190 under the Threatened Species Conservation Act 1995.

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

All required vehicular access areas within the site shall be suitably stabilised.

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

**Prior to the issue of a Construction Certificate**, all recommendations of the Bushfire Hazard Assessment Report prepared by Control Line Consulting, Report Reference No. 16.09.222, dated 6 February, 2018 must be detailed in the Construction Certificate drawings and plans.

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

**Prior to the issue of an Occupation Certificate**, certification/documentation is to be provided to the Certifying Authority indicating that the development has been constructed to meet the recommendations of the Bushfire Hazard Assessment Report prepared by Control Line Consulting, Report Reference No. 16.09.222, dated 6 February, 2018.

## Heritage/Archaeological relics

10 [C003 - Uncovering relics](#)

If any archaeological relics are uncovered during the course of the work no further work shall be undertaken until further directed by Penrith City Council or the NSW Heritage Office.

The applicant is advised that depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the Heritage Act, 1977 may be required before any further work can be recommenced in that area of the site.

## Environmental Matters

11 [D001 - Implement approved sediment& erosion control measures](#)

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

12 [D002 - Spraygrass](#)

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

13 [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.

14 **D007 - Cut and fill of land requiring Validation Certificate –limited to footprint**

Cut and fill operations on the property are only permitted in conjunction with the building works as detailed on the approved plans and specifications, and shall not extend more than two (2) metres past the defined building footprint.

Before any fill material is imported to site, a validation certificate issued by an appropriately qualified person is to be provided to the Principal Certifying Authority. The validation certificate must demonstrate that the fill material is free from contaminants and weeds, that it is suitable for its intended purpose and land use, and that it will not pose an unacceptable risk to human health or the environment.

If Penrith City Council is not the Principal Certifying Authority, a copy of the validation certificate is to be submitted to Council for their reference.

{Note: Penrith Development Control Plan 2014 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.”}

15 **D008 - Filling compaction**

Where a building is to take place on any land that is to be filled, such filling is to be compacted in accordance with Australian Standard 3798-1996. Certification is to be submitted to the Principal Certifying Authority by a Geotechnical Engineer verifying that the work has been undertaken prior to the commencement of the construction of any building.

If Penrith City Council is not the Principal Certifying Authority, a copy of the certification is to be submitted to Council for their reference.

16 **D009 - Covering of waste storage area**

All waste materials stored on-site during construction 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 (2) waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

17 **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.

18 **DB002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE**

All excavated material shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location(s) of all excavated material from the development site shall be provided to the Principal Certifying Authority **prior to commencement of excavation**.

19 **DB004 - Dust**

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

20 **DB005 - Mud/Soil**

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

## 21 DB006 - Hours of work

Construction works shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No Construction work is permitted on Sundays and Public Holidays.

In the event that the Construction relates to works inside the building and does not involve external walls or the roof, and does not involve the use of equipment that emits noise, then the Construction works are not restricted to the hours stated above. The provisions of the *Protection of the Environment Operations Act*, 1997 in regulating offensive noise also apply to all construction works.

## 22 D Special - Exotic grasses

No exotic perennial grasses listed on the Final Determination of the NSW Scientific Committee for the key threatening process 'Invasion of native plant communities by exotic perennial grasses', shall be introduced, planted, sown or laid for landscaping or other purposes. These species include:

- *Cenchrus ciliaris* (Buffel Grass),
- *Hyparrhenia hirta* (Coolatai Grass),
- *Eragrostis curvula* (African Lovegrass),
- *Nassella neesiana* (Chilean Needlegrass)
- *Nassella trichotoma* (Serrated Tussock)
- *Agrostis capillaris* (Browntop Bent),
- *Andropogon virginicus* (Whisky Grass),
- *Chloris gayana* (Rhodes Grass),
- *Cortaderia spp.* (Pampas Grasses),
- *Ehrharta erecta* (Panic Veldgrass),
- *Melinis minutiflora* (Molasses Grass),
- *Panicum repens* (Torpedo Grass),
- *Paspalum urvillei* (Vasey Grass),
- *Pennisetum clandestinum* (Kikuyu),
- *Phalaris aquatica* (Phalaris),
- *Setaria sphacelata* (South African Pigeon Grass),
- *Sporobolus fertilis* (Giant Parramatta Grass),
- *Sporobolus natalensis* (Giant Rats Tail Grass), and
- *Urochloa mutica* (Para Grass).

## 23 D Special - site survey and pegging

Prior to commencement of any works, the location of all proposed structures including dwellings, sheds and driveways are to be surveyed by a qualified land surveyor and their locations pegged out to ensure that there is no inadvertent encroachment into the BioBank site.

# BCA Issues

## 24 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).

# Health Matters and OSSM installations

25 **F006 - Water tank & nuisance**

The rainwater tank must be maintained so as not to create a nuisance and it must be protected against mosquito infestation.

## Utility Services

26 **G002 - Section 73 (not for**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s website at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the “e-developer” icon, or telephone 13 20 92.

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

27 **G004 - Integral Energy**

Prior to the issue of a Construction Certificate, a written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

## Construction

28 **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 two (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 two (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.

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 twenty (20) persons or part of twenty (20) persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by Council, or
- alternatively, any other sewage management facility approved by Council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

30 **H036 - Rainwater Tank (Also impose H037, H038, H039, G005 & Q010)**

The rainwater tank(s) is to be:

- erected on a self-supporting base in the approved location on the property in accordance with the stamped-approved site plans for the development,
- structurally sound and constructed in accordance with AS/NZS 3500 1.2- 1998: National Plumbing and Drainage - Water Supply - Acceptable Solutions,
- fully enclosed and all openings sealed to prevent access by mosquitoes,
- fitted with a first flush device,
- fitted with a trickle system to top up from mains water,
- provided with an air gap, and
- installed by a licensed plumber in accordance with Sydney Water's "Plumbing requirements Information for rainwater tank suppliers and plumbers April 2003" and the NSW Code of Practice: Plumbing and Drainage.

Additionally, the following are to be provided:

- A back flow prevention device shall be provided at the water meter in accordance with Sydney Water requirements.
- In the event of a power failure, a back up supply of mains water shall be provided to at least one toilet in the dwelling.
- The rainwater tank(s) and associated piping is to be labelled 'Rainwater - Not for Drinking' in accordance with Sydney Water requirements.
- The rainwater tank and pipe work is to be painted in colours matching the external finishes of the dwelling and is to be of non-reflective finish.
- The overflow for the rainwater tank is to be connected into the existing stormwater disposal system on the site.

Before a rainwater tank(s) can be used, a certificate or suitable document is to be submitted to the Principal Certifying Authority stating that the rainwater tank has been installed in accordance with:

- the manufacturer's specifications, and
- Sydney Water and NSW Health requirements.

This certificate or documentation is to be provided by the licensed plumber who installed the rainwater tank on the property, and is to be submitted prior to the issue of the Occupation Certificate.

31 **H037 - Safe supply of water from catchment areas (Also impose H036, H038 & H039)**

The catchment area (for the rainwater tank) includes the parts of the roof of the dwelling(s) from which water is collected and includes gutters. To ensure a safe supply of water:

- roof catchment areas must be kept clear of overhanging vegetation,
- gutters must have sufficient fall to downpipes to prevent pooling of water,
- overflow, discharge from bleed off pipes from roof mounted appliances such as airconditioners, hot water services and solar heaters must not discharge into the rainwater catchment area,
- for roofs containing lead based, tar based or asbestos material the tank supply must not be connected to drinking, bathing and gardening tap water outlets,
- gutter guard must be installed in roof gutters to prevent foreign materials from contaminating the water which enters the rainwater tank.

32 **H038 - Connection of rainwater tank supply (Also impose H036, H037 & H039)**

The rainwater tank supply must not be connected to drinking and bathing water tap outlets.

33 **H039 - Rainwater tank pumps (Also impose H036, H037 & H038)**

The pump must not exceed 5dBA above ambient background noise level at the nearest residential property boundary. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

## Engineering

34 **K101 - Works at no cost to Council**

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



**DELETED**

***Amended on 4 July 2018 in accordance with Section 4.55(1) of the Environmental Planning and Assessment Act 1979.***

36 [K202 - S138 Roads Act – Works and Structures - Minor Works in the public road DRIVEWAYS ROAD OPENINGS](#)

Prior to the issue of any Construction Certificate, a Section 138 Roads Act application, including payment of application and inspection fees, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)

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:

- a) 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.
- b) All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate.

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

Stormwater drainage from the site shall be discharged to:

- a) A level spreader system

The proposed development and stormwater drainage system shall be designed to ensure no adverse impact on adjoining properties by the diversion, damming or concentration of stormwater flows.

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

38 [K301 - Sediment & Erosion Control](#)

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 and to ensure 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.

39 [K501 - Penrith City Council clearance – Roads Act/ Local Government Act](#)

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



#### 40 [K504 - Stormwater Compliance](#)

Prior to the issue of any Occupation Certificate, the Principal Certifying Authority shall ensure that the:

a) Driveway culvert pipe crossing construction

- Has been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
- Has met the design intent with regard to any construction variations to the approved design.
- Any remedial works required to be undertaken have been satisfactorily completed.

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

## Landscaping

#### 41 [L001 - General](#)

All landscape works are to be constructed in accordance with the stamped approved plans and Section C6 Landscape Design of the *Penrith Development Control Plan 2014*.

Landscaping shall be maintained:

- in accordance with the approved plans, and
- in a healthy state, and in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity as the vegetation which died or was removed.

#### 42 [L002 - Landscape construction](#)

The approved landscaping for the site must be constructed by a suitably qualified and experienced landscape professional.

#### 43 [L003 - Report requirement](#)

Upon completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development. The report is to be prepared by a suitably qualified and experienced landscape professional.

An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

#### 44 [L005 - Planting of plant](#)

All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specification prescribed in *Penrith Development Control Plan 2014*.

#### 45 [L006 - Aust Standard](#)

All landscape works are to meet industry best practice and the following relevant Australian Standards:

- AS 4419 Soils for Landscaping and Garden Use,
- AS 4454 Composts, Soil Conditioners and Mulches, and
- AS 4373 Pruning of Amenity Trees.

#### 46 [L007 - Tree protection measures-no TMP with DA](#)

No fill, machinery, or materials are to be placed or stored within the drip line of any tree that is to be retained. 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 as outlined in Australian Standard 4970-2009 '*Protection of trees on development sites*'.

#### 47 [L008 - Tree Preservation Order](#)

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

## Development Contributions

48 **N001 - Section 94 contribution (apply separate condition for each Contribution Plan)**

This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for **Cultural Facilities**. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$492.00** is to be paid to Council **prior to a Construction Certificate** being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for **Cultural Facilities** may be inspected at Council's Civic Centre, 601 High Street, Penrith.

***Amended on 4 July 2018 in accordance with Section 4.55(1) of the Environmental Planning and Assessment Act 1979.***

49 **N001 - Section 94 contribution (apply separate condition for each Contribution Plan)**

This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for **District Open Space**. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$6,021.00** is to be paid to Council **prior to a Construction Certificate** being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for **District Open Space** may be inspected at Council's Civic Centre, 601 High Street, Penrith.

***Amended on 4 July 2018 in accordance with Section 4.55(1) of the Environmental Planning and Assessment Act 1979.***

50 **N001 - Section 94 contribution (apply separate condition for each Contribution Plan)**

This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for **Local Open Space**. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$2,176.00** is to be paid to Council **prior to a Construction Certificate** being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for **Local Open Space** may be inspected at Council's Civic Centre, 601 High Street, Penrith.

***Amended on 4 July 2018 in accordance with Section 4.55(1) of the Environmental Planning and Assessment Act 1979.***

## **Certification**

51 **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 4.19 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 4.19 of the Environmental Planning and Assessment Act 1979.

## 52 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 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.

## Operation of OSSM

### 53 R101 - Operational Approval prior to use

The on-site sewage management (OSSM) systems and effluent management areas shall be installed and operated in accordance with:

- The “Environmental and Health Protection Guidelines - On Site Sewage Management for Single Households”,
- Australian Standards 1547:2012,
- Council's On-Site Sewage Management and Greywater Reuse Policy,
- current (at the time of installation) NSW Health Accreditation documentation,
- the Wastewater Assessment Report prepared by EnviroFit, Report No. ENVF17-1090, Version A, dated 23 September 2017,
- the Effluent Management Area Plan within the Wastewater Assessment Report prepared by EnviroFit, Report No. ENVF17-1090, Version A, dated 23 September 2017, and
- the conditions of this consent.

**Prior to the issue of the ‘Approval to Operate’, a Commissioning Certificate for the OSSM systems shall be provided to Penrith City Council for approval.** This Certificate shall certify that the aerated wastewater treatment systems (AWTS) have been installed and is operating in accordance with the conditions of its NSW Health accreditation documentation.

**Prior to the issue of the Occupation Certificate and before the OSSM systems can be used, an ‘Approval to Operate’ for the OSSM systems is to be sought from and issued by Penrith City Council.**

### 54 R102 - OSSM System Type and Disposal Area (all systems)

All wastewater generated on the site is to be diverted to the Aerated Wastewater Treatment Systems and be disposed of by way of surface irrigation in the approved effluent management areas. The effluent management areas are to be located in accordance with the stamped approved Effluent Management Area Plan outlined in the Wastewater Assessment Report prepared by EnviroFit, Report No. ENVF17-1090, Version A, dated 23 September 2017. The primary dwelling is to have a minimum effluent disposal area of 584m<sup>2</sup>, the second dwelling is to have a minimum effluent disposal area of 401m<sup>2</sup>.

The OSSM system servicing the primary dwelling is to be utilised for a 5 bedroom dwelling in accordance with the Wastewater Assessment Report prepared by EnviroFit, Report No. ENVF17-1090, Version A, dated 23 September 2017. Any dwelling approval on the site greater than this may require a new wastewater report for Council's consideration.

The OSSM system servicing the second dwelling is to be utilised for a 3 bedroom dwelling with a daily wastewater load of 480L/day in accordance with the Wastewater Assessment Report prepared by EnviroFit, Report No. ENVF17-1090, Version A, dated 23 September 2017. Any dwelling approval on the site greater than this may require a new wastewater report for Council's consideration.

55 **R103 - Council inspections for Installation**

Penrith City Council is both the consent authority and certifying authority for the installation of the On-Site Sewage Management System (OSSM). **It is your responsibility to contact Council's Development Services Department to organise all inspections required for the installation of the system.**

In this regard, the septic tank(s) and disposal area(s) will need to be inspected on completion of the system's installation (before backfilling occurs) and prior to its commissioning, to ensure compliance with those conditions specific to the installation of the system.

A copy of the satisfactory inspection reports carried out by Council shall be submitted to the Principal Certifying Authority if Council is not the Principal Certifying Authority.

56 **R105 - Plumbing Code of Australia**

All house drainage and sanitary plumbing shall be carried out in accordance with the requirements of the Plumbing and Drainage Act 2011 and the Plumbing Code of Australia.

57 **R106 - AWTS - Design of Irrigation System**

The design of the irrigation system for the effluent management areas is to be such that:

- The distribution line is to be buried from the tank to the designated disposal area.
- The moveable irrigation line and sprinklers (including the plume from the sprinklers) situated within the disposal area can not exceed the designated boundaries of the disposal area.
- The treated wastewater can be evenly irrigated across the entire designated disposal area, **avoiding the drip line of native trees.**

58 **R107 - AWTS - Irrigation pipework (surface or sub-surface)**

All irrigation pipework and fittings shall comply with AS 2698 "Plastic Pipes and Fittings for Irrigation and Rural Applications". In this regard:

- the irrigation system is not to be connected to/not capable of connection to the mains water supply,
- standard household fittings, soaker hoses, garden sprinklers and standard water hose fittings are not to be used,
- all distribution lines of the irrigation system to any standpipe shall be buried to a minimum 100mm below finished surface level,
- spray irrigation equipment connected to distribution lines shall be fixed, and
- spray irrigation shall only use low pressure, low volume spray heads which are not capable of producing aerosols. The spray shall have a maximum plume height 400mm and a plume radius of not more than 2 metres.

59 **R109 - No effluent runoff**

There shall be no effluent runoff from the subject property to adjoining properties, public places or reserves.

60 **R110 - EMA Signage**

A minimum of two signs shall be erected within the effluent management area. These signs are to state "RECLAIMED EFFLUENT - NOT FOR DRINKING - AVOID CONTACT". The signage shall be maintained for the term of the development.

61 **R111 - AWTS Servicing**

The owner/occupier shall enter into an annual service contract with the manufacturer, distributor or other person authorised (in writing) by Penrith City Council to service the aerated septic tank(s) every three (3) months from the date of commissioning in the following manner:

i. A three monthly service shall include a check on all mechanical, electrical and functioning parts of the aerated system including:

- the chlorinator,
- replenishment of the disinfectant,
- the UV disinfection unit,
- all pumps and switches,
- the air blower, fan or air venturi,
- the alarm system,
- the effluent disposal area and irrigation spray outlets / sub-surface irrigation lines and filters,
- the slime growth on the filter media, and
- the operation of the sludge returns system.

ii. The following field tests are to be carried out at every service:

- free residual chlorine using DPD colorimetric or photometric method,
- pH from a sample taken from the irrigation chamber,
- dissolved oxygen from a sample taken from the final aeration or stilling chamber (although recommended) is optional.

iii. On the yearly anniversary date of the commissioning of the system, an annual service of the system shall also be carried out which includes a check on the sludge accumulation in the septic tank (primary treatment tank) and the clarifier, where appropriate.

iv. For systems which utilise the sewage treatment principle of activated sludge or contact aeration, a sludge bulking test, known as a SV30 Test, shall also be conducted on an annual basis. This test is to determine whether the accumulated sludge is bulking, indicating that the aeration compartment(s) will require desludging.

v. On completion of each service, a service report sheet is to specify all service items and test results, the amount of chlorine compound provided, parts replaced (if applicable), the date the service was conducted and the technician's name. A copy of the service report is to be:

- given to the property owner and another to the applicant (if not the same), and
- forwarded to Penrith City Council.

Each service agent shall provide a registered business office which, if unattended during business hours, is provided with a telephone answering device or service. A means of reporting a malfunction or breakdown outside normal business hours shall be available. In the event of a breakdown or malfunction, the service agent shall, within 24 hours of the breakdown or malfunction, ensure that temporary repairs are carried out to the aerated system to ensure continued operation of the system. This may necessitate provision of adequate spare parts and temporary replacement blowers and irrigation pumps where repairs cannot be completed on site.

62 **R114 - EMA Turfed**

The effluent management area is to be turfed to the satisfaction of Council. Where a specific variety of turf is identified in the approved Wastewater Report that variety is to be installed and maintained.

63 **R115 - No structures on EMA**

No concreting, driveways, vehicles or any other structure or access way is to be located over any portion of the effluent management area.

64 **R116 - Diversion of stormwater**

All stormwater and seepage shall be diverted away from the septic tank and the disposal area.

65 **R117 - No plants for human consumption within EMA**

Orchards, vegetable gardens or any other plant species that can be used for the purposes of human consumption are not to be planted within the effluent management area. Effluent from the on-site sewage management system is not to be used on fruit or vegetables grown for human consumption.

66 **R118 - EMA protected from stock damage**

The effluent management area shall be protected from possible stock damage.

67 [R119 - Wastewater and Native Trees](#)

No wastewater associated with the on-site sewage management system is to be applied or irrigated within the drip line of any native trees within the effluent management area.

It is the responsibility of the applicant to ensure the ongoing health of the trees in relation to the effluent management area.

68 [R127 - NSW Health Accreditation documentation required](#)

**Prior to the issue of a Construction Certificate**, the NSW Health Accreditation documentation is to be submitted to Council for approval. If Council is not the certifying authority, a copy of Council's written approval is to be provided to the Principal Certifying Authority.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part C - City-wide Controls

#### C2 Vegetation Management

The proposed development is located within an area of vacant land with scattered plants and vegetation that has previously been mapped as shale Sandstone Transition Forest. In this regard, no trees of any significance will require removal to facilitate the relocation of the shed. It is noted that the majority of the subject site is currently burdened by an existing Biobanking agreement (ID No. 190) with the NSW Office of Environment and Heritage. The proposal was referred to Council's Biodiversity section who identified unauthorised fill to have intruded into the Biobanking site. In response, the applicant stated that this was a surveying error and had consequently been in discussions with the Office of Environment and Heritage (OEH) in regards to the transfer of biodiversity credits. A Biobanking Credit Transfer Report was received from the applicant on 13th June 2019 confirming the credit purchase and transfer. This was referred to Council's Biodiversity Officer who has verified the transaction and sale, and therefore raises no objections, subject to conditions should consent be granted.

### D1 Rural Land Uses

#### D1.2 Rural Dwellings and Outbuildings

##### **D1.2.3 Site Coverage, Bulk and Massing**

Part D1.2.3 of the DCP states that a maximum ground floor footprint of 600m<sup>2</sup> will be permitted on any one allotment, including dwellings and all other associated structures, but excluding 'farm buildings' and any 'agricultural or non-agricultural development'.

Noting the above control, the footprint area of the proposal is applicable to not only the dual occupancy dwellings, but also associated structures which in this instance would include the proposed shed. In this regard, the footprint of the dual occupancy is approximately 553m<sup>2</sup> and the total area of the proposed shed is approximately 372m<sup>2</sup>. Therefore, the application proposes a total dwelling ground floor footprint of 925m<sup>2</sup>.

While the provided building footprint area is non-complaint, consideration has been given to the nature of the subject site. In this regard, it is noted that the size and location of the shed will not be visible from the public domain taking into consideration its position away from Nepean Gorge Drive. In addition, consideration has been given to the built form's siting on the subject site which will allow for significant separation between the structures. In addition, the proposal is provided on a substantially large piece of land which is also considered to diminish the scale of the non-compliance. It is noted that the non-compliance with the footprint controls is also a consequence of the approved dual occupancy's provision of only a ground floor layout and no associated additional upper levels which as a consequence creates an increase in building footprint. In this regard, the proposed size and location of the shed is deemed appropriate and suitable for the subject property.

#### D1.3 Farm Buildings

In accordance with Part D1.3 of *Penrith Development Control Plan 2014*, unless specifically stated, the controls for farm buildings also apply to all sheds and outbuildings ancillary to any permissible use of rural land, whether or not that use is considered an agricultural use. Correspondence with the applicant indicated that the shed is to be used for personal storage of gardening and maintenance equipment. In addition, due to the property being entirely 'off the grid solar', the relocation, increased size, and modified design of the shed is required to:

- Reduce a drop in voltage in underground cabling,
- Store isolated batteries, invertors and a backup generator,
- Maximise roof space to house adequate solar cells, and
- Optimise solar access orientated north.

In this regard, it is considered that the Penrith DCP 2014 controls for 'farm buildings' relate to the proposal.

#### **D1.3.1 Siting and Orientation**

The proposed modified location of the shed provides for significant side setbacks of 253.04m from the eastern boundary and 94.03m from the western boundary. In addition, a building separation of the shed to the closest residential dwelling on site is approximately 25m which is greater than the required 10m separation requirement for farm buildings. The DCP also requires cut and fill to be limited to 1m of cut and 1m of fill. The proposal is largely compliant with this control, however approximately 1.2m of fill is proposed along the east elevation of the shed. This non-compliance is deemed acceptable and is unlikely to result in any negative or unreasonable impacts in the locality and is an improved response to the existing contours of the subject site.

#### **D1.3.2 Floor Space, Height and Design**

For allotments greater than 10 hectares in size, the maximum accumulative building footprint of all farm buildings on an allotment shall not exceed 600m<sup>2</sup>. The total area of the proposed shed is approximately 372m<sup>2</sup> and therefore complies with this control. In addition, The maximum overall height of the proposed shed is 7.4m to the ridge line which is compliant with the 8m maximum height for all buildings within rural zones. Despite the modified built form of the shed to be bigger in bulk and scale and considerably taller than the originally approved shed, it is considered that any adverse impacts are minimal due to its siting, orientation and significant setbacks from dwellings on the property and adjoining neighbours.

#### **D1.3.3 Materials and Colours**

Details on the colours of the proposed shed has not been provided. A condition of consent will be recommended to ensure the external colours and finishes will incorporate earthy tones.