

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA15/0907.01
Description of development:	Modifications to Approved Subdivision - Biodiversity Corridor Works & Torrens Title Subdivision x 1 Industrial Lot, 1 Biodiversity Conservation Lot & Public Road
Classification of development:	N/A

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 24 DP 1120114 Lot 22 DP 1178567
Property address:	31 - 43 Tyrone Place, ERSKINE PARK NSW 2759 54 Tyrone Place, ERSKINE PARK NSW 2759

DETAILS OF THE APPLICANT

Name & Address:	David Tubb- Tubb & Associates Pty Ltd 22 The High Road BLAXLAND NSW 2774
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DECISION OF CONSENT AUTHORITY

In accordance with Sections 4.18(1) (a) and 4.55 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	24 May 2016
Date the consent expires	24 May 2019
Date of this decision	13 May 2016 as amended on 10 December 2019 under Section 4.55 of the Environmental Planning and Assessment Act.

POINT OF CONTACT

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

Assessing Officer:	Lauren Van Etten
Contact telephone number:	+612 4732 8222

NOTES

Reasons

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

Conditions

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

Certification and advisory notes

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

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

Review of determination

The applicant may request Council to review its determination pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 within six 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 six 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 28 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 28 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 subdivision plan referenced SY074218 drawn by Gregory Oxley and dated 13/07/17 and the engineering drawings numbered DA01-DA13 (Rev. 4) drawn by Calibre Consulting and dated 11/11/15, as 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.

As amended on 10 December 2019 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 2 A copy of the Controlled Activity Approval issued by the NSW Office of Water under the Water Management Act 2000 shall be submitted to the Principal Certifying Authority before a **Construction Certificate can be issued** for the development. A copy of the Controlled Activity Approval shall be submitted to Penrith City Council with the copy of the Construction Certificate, if Council is not the Principal Certifying Authority.
- 3 A **Construction Certificate** shall be obtained prior to commencement of any works approved under DA15/0907.

A separate subdivision works certificate is required to be issued specifically for the provision of a vehicular access pathway to the basin (formerly within Proposed Lot 202) and associated earthworks within Proposed Lot 201 to accommodate that servicing pathway. **Prior to the issue of the required subdivision works certificate**, the civil design plans must be submitted to, and agreed to by Penrith City Council's Development Services Manager.

All works and design plans must be in accordance with Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works and Austroad Guidelines and Best Engineering Practice.

Prior to the issue of any Subdivision Certificate, the works required above are to be undertaken to the satisfaction of Penrith City Council.

As amended on 10 December 2019 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 4 Proposed Lot 202 (biodiversity conservation lot) shall be dedicated to the NSW Department of Planning and Environment in accordance with a dedication timetable satisfactory to the Department.

Note: Enviroguard land filling activities may need to be completed prior to the dedication of this lot.

- 5 **Prior to the issue of a Subdivision Certificate**, an amended subdivision plan shall be submitted indicating the dedication of the proposed cul-de-sac bulb as public road. The existing temporary right of carriageway in this location shall be concurrently extinguished as part of the revised subdivision plan.

Heritage/Archaeological relics

- 6 If any archaeological relics are uncovered during the course of the approved works, 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

- 7 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.

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

- 9 During construction works, 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.

- 10 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 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.

An appropriately qualified person/s (as defined in the Penrith City Council Contaminated Land Development Control Plan) shall:

- Supervise the filling works,
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and shall submit a review findings report to Council and any Principal Certifying Authority,

- Certify by way of a Compliance Certificate or other written documentation that fill materials have been placed on the site in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.

The contact details of any appropriately qualified person/s engaged for the works shall be provided with the Notice of Commencement.

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.

{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, soils 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.”}

- 11 Dust suppression techniques are to be employed during construction works to reduce any potential nuisance to surrounding properties.
- 12 Mud and soil from vehicular movements to and from the site must not be deposited on the road during construction works.
- 13 All recommendations and activities (excluding those relating to ongoing maintenance and related reporting requirements) contained in the Vegetation Management Plan (VMP) prepared by Greening Australia and dated December 2015 as relevant to the subject development are to be undertaken as stipulated in the VMP and prior to the issue of a Subdivision Certificate (if relevant).

As amended on 10 December 2019 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

- 14 All reporting requirements outlined in the Vegetation Management Plan (VMP) prepared by Greening Australia and dated December 2015 are to be undertaken. The written reports shall be submitted to Council within 30 days of the completion of each reporting period. The reports are to be prepared by a suitably qualified bush regenerator.

Utility Services

15 All services (water, sewer, electricity, telephone and gas), including the provision of service conduits and stub mains, are to be installed within the proposed public road before final inspection of the engineering works.

Prior to the issue of a Subdivision Certificate, the following service authority clearances shall be obtained:

- a Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water;
- a Notification of Arrangement Certificate from Endeavour Energy stating that satisfactory arrangements have been made for electricity supply to all proposed allotments in the subdivision, including any necessary easements; and
- a letter from an approved telecommunications service provider that satisfactory arrangements have been made for underground telephone services to all proposed allotments in the subdivision, including any necessary easements.

These clearances are to be submitted to the Principal Certifying Authority **prior to the issue of a Subdivision Certificate**.

Construction

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

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

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

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

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

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

17 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 Council, or
- alternatively, any other sewage management facility approved by Council.

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

(c) If an excavation 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 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 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 a 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.

18 A completed waste management plan shall be submitted to Penrith City Council for consideration and approval **prior to the issue of a Construction Certificate.**

The waste management plan shall be prepared in accordance with Penrith Development Control Plan 2014 and shall address all waste materials likely to result from the proposed development, with details of the estimated waste volumes, on-site storage and management, proposed re-use of materials, designated waste contractors, recycling outlet and/or landfill site.

The approved waste management plan must be implemented on-site and adhered to throughout all stages of the development including demolition, with supporting documentation/receipts retained in order to verify the recycling and disposal of materials in accordance with the approved plan.

19 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 that do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act 1997 in regulating offensive noise also apply to all construction works.

Engineering

- 20 All road works, stormwater drainage works, associated civil works and dedications required to effect the consented development shall be undertaken at no cost to Penrith City Council.
- 21 **Prior to the issue of a Construction Certificate** for subdivision works, the Certifying Authority shall ensure that the engineering plans are consistent with the stamped approved concept plans prepared by Calibre Consulting, reference number X03033.46, dated 11/11/15 and that all subdivision works have been designed in accordance with the conditions of this consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Penrith Council's Water Sensitive Urban Design Policy, any Roads Act approval issued, Austroad Guidelines and best engineering practice.

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

- Public and private roads
- Stormwater management (quantity and quality)
- Interallotment drainage
- Private access driveways
- Sediment and erosion control measures
- Overland flow paths
- Flood control measures
- Traffic facilities including roundabouts, intersection treatments, car parks, bus stops, cycleways, pathways, etc
- Earthworks
- Bridges, culverts, retaining walls and other structures
- Landscaping and embellishment works

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

A Stormwater Management (WSUD) Strategy supported by MUSIC modelling is to be submitted to Council for approval **prior to the issue of a Construction Certificate**. The strategy shall be completed in accordance with Council's WSUD Policy and associated Technical Guidelines to demonstrate compliance with Council's stormwater quality, quantity and conservation objectives. In addition, the Construction Certificate plans shall indicate access details for maintenance of the proposed bio-retention system.

Note:

Contact Penrith City Council's **Engineering Services Department** on (02) 4732 7777 to ascertain applicable fees.

- 22 **Prior to the issue of a Construction Certificate**, the Certifying Authority shall ensure that the proposed road has been designed in accordance with Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works and the following criteria:

(a) The existing temporary turning head at the end of Tyrone Place shall be upgraded to a turning head with a pavement radius of 16.6m, kerb and gutter. The verge area on both sides shall be a minimum of 3.5m wide

with a 1.2m wide and maximum 2% cross fall concrete footpath around the full perimeter of the turning head and joining the existing concrete footpaths on the southern and northern sides of Tyrone Place.

(b) The proposed commercial vehicle access and associated drainage works for proposed Lot 201 shall be constructed generally in accordance with the submitted drawing "Tyrone Place Longitudinal Section & Typical Section", Drawing No. DA04, Rev. 04, dated 11/11/2015, prepared by Calibre Consulting.

- 23 All earthworks shall be undertaken in accordance with AS 3798 and Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments and Engineering Construction Specification for Civil Works.

The level of testing shall be determined by the Geotechnical Testing Authority/Superintendent in consultation with the Principal Certifying Authority.

- 24 **Prior to the issue of a Subdivision Certificate**, street lighting shall be provided in the Tyrone Place turning head to Penrith City Council standards. Any street lighting posts are to be located clear of the proposed subdivision driveway and clear of proposed driveways for development along the southern side of the turning head in Tyrone Place.
- 25 Upon completion of all works in the road reserve, all verge areas fronting and within the development are to be turfed. The turf shall extend from back of kerb to the property boundary with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.
- 26 Prior to the issue of a Subdivision Certificate, the Principal Certifying Authority shall ensure that all 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.
- 27 Prior to the issue of a Subdivision Certificate, the Principal Certifying Authority shall ensure that all subdivision works required by this consent have been satisfactorily completed or that suitable arrangements have been made with Penrith City Council for any outstanding works.

Where Council is not the certifying authority, an independent engineering consultant is to assess the final drainage plans and certify that the stormwater quality requirements including the MUSIC modelling meet the requirements of Council's WSUD Policy and associated Technical Guidelines.

- 28 Prior to the issue of a Subdivision Certificate, the Principal Certifying Authority shall ensure that the:
- a) Stormwater management system (including on-site detention and water sensitive urban design)
 - 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 system/s shall be provided as part of the works-as-executed drawings.

29 Prior to the issue of a Subdivision Certificate, a restriction as to user and positive covenant relating to:

- a) The stormwater management system (including on-site detention and water sensitive urban design)
- b) Any overland flow path works
- c) Any flood control works

shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater Drainage for Building Developments Policy

30 **Prior to the issue of a Subdivision Certificate**, a maintenance bond is to be lodged with Penrith City Council for road works and stormwater drainage works.

The value of the bond shall be determined in accordance with Penrith City Council's Bond Policy. The bond will be administered in accordance with this policy.

Note:

Contact Council's **Engineering Services Department** on 4732 7777 for further information relating to bond requirements.

31 **Prior to the issue of a Subdivision Certificate**, the following compliance documentation shall be submitted to the Principal Certifying Authority. A copy of the following documentation shall be provided to Council where Council is not the Principal Certifying Authority:

- a) Work as executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Construction Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The work as executed drawings shall be prepared in accordance with Council's Engineering Construction Specification for Civil Works.
- b) The WAE drawings shall clearly indicate the 1% Annual Exceedence Probability flood lines (local and mainstream flooding).
- c) The WAE drawings shall be accompanied by plans indicating the depth of fill for the entire development site. The plans must show, by various shadings or cross hatchings, the depth of any fill within 0.3m depth ranges.
- d) CCTV footage in DVD format to Council's requirements and a report in "SEWRAT" format for all drainage within future public roads and public land. Any damage that is identified is to be rectified in consultation with Penrith City Council.
- e) A copy of all documentation, reports and manuals required by Section 2.6 of Penrith City Council's WSUD Technical Guidelines for handover of stormwater management facilities to Council.
- f) Surveyor's Certificate certifying that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries.
- g) Documentation for all road pavement materials used demonstrating compliance with Council's Engineering Construction Specification for Civil Works.
- h) A Geotechnical Report certifying that all earthworks and road formation has been completed in

accordance with AS 3798 and Council's Design Guidelines and Construction specifications. The report shall include:

- Compaction reports for road pavement construction
 - Compaction reports for bulk earthworks and lot regrading
 - Statement of Compliance
- i) Structural Engineer's construction certification of all structures.
- j) A slope junction plan for interallotment drainage lines indicating distances to boundaries and depths.

32 The stormwater management system shall continue to be operated and maintained for the life of the development in accordance with the final operation and maintenance management plan. Regular inspection records are required to be maintained and made available to Council upon request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the treatment measure/s.

33 **Prior to the issue of a Construction Certificate**, a draft site specific Operation and Maintenance Manual for the proposed stormwater treatment measures shall be submitted to Council for approval. The manual should include details on cleaning/maintenance requirements as well as provide details on the estimated annual and lifecycle costs associated with the proposed treatment measures. The plan should include details on the following:

- i. Site description (area, imperviousness, land use, annual rainfall, topography, etc)
- ii. Site access description
- iii. Likely pollutant types, sources and estimated loads
- iv. Locations, types and descriptions of measures proposed
- v. Operation and maintenance responsibility
- vi. Inspection methods (including inspection checklists)
- vii. Maintenance methods (frequency, equipment and personnel requirements)
- viii. Landscape and weed control requirements
- ix. Operation and maintenance costs
- x. Waste management and disposal options
- xi. Reporting

34 The bio-retention basin is to be maintained by the proponent as a sediment basin until 80% of construction is completed. After 80% of the construction is completed, the sediment basin is to be de-commissioned and the bio-retention basin is to be constructed.

Landscaping

35 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 Penrith Development Control Plan 2014.

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

Subdivision

37 **Prior to the issue of a Subdivision Certificate**, the original Linen Plan and six (6) copies shall be submitted. The Linen Plan must indicate:

- a) It is intended to dedicate all new roads to the public as road.
- b) All required drainage easements, rights of way, restrictions and covenants.

All dedications of roads/drainage are to be undertaken at no cost to Penrith City Council. Council shall be nominated as the only authority permitted to modify, vary or rescind such restriction as to user.

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

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

Certification

38 **Prior to the commencement of any works on the 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.

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

SIGNATURE

Name:	Lauren Van Etten
Signature:	

For the Development Services Manager