

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA20/0229
<b>Proposed development:</b>	Demolition of Existing Structures & Construction of Part Two (2) Storey & Part Three (3) Storey Seniors Housing Development comprising Three (3) Buildings including 33 Independent Living Units, Related Communal Facilities, Basement Car Parking & Associated Site Works
<b>Property address:</b>	162 Stafford Street, PENRITH NSW 2750 160 Stafford Street, PENRITH NSW 2750 156 Stafford Street, PENRITH NSW 2750 154 Stafford Street, PENRITH NSW 2750
<b>Property description:</b>	Lot 1 DP 20976 Lot 2 DP 20976 Lot A DP 405051 Lot 1 DP 25705
<b>Date received:</b>	1 May 2020
<b>Assessing officer</b>	Sandra Fagan
<b>Zoning:</b>	SEPP WSA - Affected by Obstacle Limitation SEPP WSA - Affected by Wildlife Buffer Zone Zone R3 Medium Density Residential - LEP 2010
<b>Class of building:</b>	Class 2 , Class 7a
<b>Recommendations:</b>	Approve

### Executive Summary

The proposed development is for 'seniors living' by a not-for-profit community housing provider. The application is made pursuant to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, henceforth referred to as the 'Seniors Housing SEPP'. The landowner is the Churches of Christ Property Trust and the housing operator will be Fresh Hope (a ministry of Churches of Christ in NSW). Fresh Hope are registered with the Office of Community Housing of the Department of Housing, and operate a number of retirement living and residential care facilities in New South Wales.

This Development Application is the second proposal by the applicant. A previous application, number DA19/0307 was withdrawn due to a number of planning and design issues raised by Council staff. The applicant has addressed the deficiencies and issues raised in the initial proposal with this current new design. In particular, a new design team have been engaged to develop the site. The design architect is Peter Smith of Smith & Tzannes, registration number 7024. The landscape design is by Paul Scrivener Landscape.

The seniors living is designed as independent living units (like a retirement village), with shared recreation areas including open space areas, a roof top garden, a community room, and front lobby with reception. A total of 33 units are arranged in three block forms; Buildings A, B, and C. The front lobby, community room and roof top garden occupy a smaller, separate, and centrally located building. Shared open space and deep soil garden areas link all the buildings at ground floor and a larger community landscaped space occupies part of the eastern side of the site between Buildings A and C. All units also have private open space in the form of balconies or terraces. Landscaping is proposed on all boundary edges.

The building blocks are 2 storey in height, except for one specific part of Building C which extends to three storeys, but only in the location of one unit known as Unit C.11. In addition, the design incorporates a raked

ceiling with clerestory windows in parts. This has been intentionally done to improve access to sunlight and daylight for some units and also results in varied and interesting roof forms across the site. In design and amenity terms, the raked ceiling is a worthwhile feature.

However, because of the raked ceiling design used in parts of the buildings, some areas on the top floor exceed the SEPP height control of 8 metres (with the SEPP height measured to the **ceiling**). The numerical non-compliance ranges from 0.5m to 2.14m over the control representing a non-compliance of between 6.26% to 26.75%. It is for this reason that the Development Application is to be determined by the Local Planning Panel. In accordance with Planning Circular PS18-003 issued on 21 February 2018, the Local Planning Panel have the assumed concurrence of the Planning Secretary to determine the application as the proposed development will contravene the standard by more than 10%.

Further, the Penrith Local Environmental Plan (LEP) allows height of 8.5 metres (with the LEP height measured to the top of the building). Again because of the raked ceiling design the top of some areas of the development will exceed this control. While it is acknowledged that the LEP allows a higher maximum height, albeit measured differently, the height control of 8 metres contained in the SEPP will take precedence as the SEPP is the higher order planning document. Nevertheless the numerical non-compliance ranges from 0.4m to 2.21m over the control, representing a non-compliance of between 4.7% to 26%.

The applicant has submitted a request pursuant to Clause 4.6 of the Penrith LEP to vary the development standards relating to height in both the SEPP and LEP. This assessment report will review in detail the request to vary the control and will outline why the request is reasonable in the circumstances and that the variation of the height standard can be granted.

Council's Urban Design Review Panel and Council's Landscape Officer have reviewed the proposal and found the design and landscaping proposed to be of high quality. They have also advised that the proposed development has addressed the concerns raised in the previous proposal. Specific requests from Council's Landscape Officer to make small changes to the landscape design have been agreed to by the applicant and their consultants. The requested changes are minor in nature and will be achieved through conditions of consent. They include having all communal seating designed with arm and back rests (given the use as seniors housing), changes to some plant species in the front setback, and a lighting strategy for the site.

The application was publicly exhibited for a period of 14 days, advertised and notified to surrounding landowners in accordance with Council's community consultation policy. No submissions have been received. Council's Engineering, Traffic, Building, Biodiversity, and Tree Management units have raised no objection to the proposal subject to conditions. Council's Waste Officer has raised some concerns but these matters are addressed and clarified in the assessment report.

It is recommended that the Local Planning Panel accept and endorse the request to vary the height development standards and approve the application subject to conditions.

## Site & Surrounds

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The site is comprised of separate lots, being Lot 1 in DP 25705, Lots 1 and 2 in DP 20976 and Lot A in DP 405051. The combined lots have a frontage to Stafford Street measuring 88.65m long and a frontage to Doonmore Street measuring 35.24m long. The combined lot is located on the corner of Stafford and Doonmore Streets, with the main frontage being on the southern side of Stafford Street. The development site with the lots combined will be a total of 4,881 square metres in area. The site has a north-south orientation and the land slopes gently from the rear down to Stafford Street and from the west to east.

The combined lot is occupied by two single storey dwellings with garage, and various church related buildings, such as the chapel, hall, residence and administration building, as well as at grade parking areas. The proposal includes the demolition of all existing structures on the land. The church related buildings are not heritage listed and date from around the 1960's to 1970's.

The surrounding area is a mix of single storey and two storey buildings, including dwelling houses, townhouses and a child care centre. The area has a predominant residential character with a scale and density that is characteristic of the medium density zone of the area. In particular, all four sites that share a boundary with the subject site are townhouse developments. These townhouses vary from single storey with pitched or hipped roofs to two storey buildings with the second storey in a part-roof form. These sites include:

- 150-152 Stafford Street - adjoining the subject site to the east (side);
- 68-70 and 72 Doonmore Street - adjoining the subject site to the south (rear); and
- 23-25 Cronin Street - adjoining the subject site to the south (rear).

A recent Development Consent was granted in May 2018 for a three storey townhouse development (DA17/0621) at 175-177 Stafford Street, which is located to the west of the subject site. This development is currently under construction.

# Proposal

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The proposed development is for seniors housing in the form of independent living units. The application has been made pursuant to the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. For ease of reference this State planning policy will henceforth be referred to as the 'Seniors Housing SEPP'.

The development includes three blocks known as Buildings A, B, and C which are positioned around a smaller centrally located building that contains the lobby, office, community room and roof top garden. Deep soil landscaped areas form the edge of each building and landscaped buffers also occupy every site boundary setback (front, rear and side). The main outdoor community space is in the form of a landscaped area similar to a common. Building A is orientated to front Stafford Street, Building B is positioned on the corner of Stafford and Doonmore Streets and Building C is located in the rear portion of the site.

The buildings are two storey except for one specific part of Building C which is three storey on account of Unit C.11. Unit C.11 is orientated to face internally into the site and is positioned to front the communal open space area. The external appearance of the buildings is generally contemporary in design with varied facade detailing and simple metal skillion roofs. Some of the roofs form a clerestory window and raked ceiling. This provides a varied roofscape and allows more light into particular units.

On site parking for 35 vehicles (8 accessible) is provided in a basement with access from Stafford Street. The basement also contains residential storage cages, a Men's Shed, maintenance room and services. Waste collection will be carried out via a commercial contract and Council's waste service trucks will not be required to enter the basement. A small roofed porte-cochere is located in front of the main entrance on Stafford Street and this allows higher clearance access for an ambulance.

The communal areas comprise the central lobby and reception area to Stafford Street, a community room with kitchen and roof top garden, and a grassed (deep soil) communal open space (designed like a common) located between Buildings A and C and visible from the community room.

The proposed development will contain the following:

- A total of 33 units, being 4 x 1 bedroom units (12%) and 29 x 2 bedroom units (88%);
- The floor space ratio of the development is 0.73:1, representing a gross floor area of 3,582sqm over a 4,881sqm site (the Seniors Housing SEPP and LEP do not prescribe a maximum FSR);
- The amount of landscaping provided will equate to 2,125sqm which is 43.5% of the site area (the Seniors Housing SEPP asks for a minimum of 30%);
- The deep soil component is 1,372sqm representing 28% of the site area (the Seniors Housing SEPP asks for a minimum of 15%); and
- The external materials proposed include metal deck roofing (in a light colour), and a combination of face brick, concrete look block finish, and fibre-cement cladding (weatherboard style) in a light colour for external walls.

With regard to internal amenity of the proposed design the following is noted:

- 27 of the total of 33 units will achieve compliant solar access, representing 81.8% of units (Seniors Housing SEPP requires 70%);
- 25 of the total of 33 units will achieve cross ventilation, representing 75% of units (SEPP 65 requires 60%);
- The 2 bedroom units range in size from 82sqm to 105sqm and have private open space areas that range in size from 10sqm to 50sqm; and
- The 1 bedroom units range in size from 62sqm to 67sqm and have private open space areas that range in size from 10sqm to 32sqm.

The applicant has stated that the units will not be strata subdivided and will be operated by Fresh Hope. The proposal includes demolition of all existing buildings on the site and the removal of approximately 14 trees that occupy the internal spaces of the site. Existing trees that are located on site edges and neighbouring properties will be retained. The landscape plan includes new vegetation and street trees.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Flat Development
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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- **Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016**

The site is not identified on the Biodiversity Values Map as containing vegetation having biodiversity value. Council's Biodiversity Officer has no objection to the proposal subject to conditions relating to the protection of fauna (if any is found) during tree removal. Council's Tree Management Officer has also considered the proposed removal of trees from the site. No objection has been raised to the removal of the trees identified in the Arborist Report and conditions relating to the protection of the remaining trees, fauna and tree replacement have been recommended.

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. The matters requiring further discussion are contained in the body of this report.

### **Section 4.15(1)(a)(i) The provisions of any environmental planning instrument**

#### **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

This Policy ensures the implementation of the BASIX scheme which encourages sustainable residential development. It requires certain kinds of residential development to be accompanied by a list of commitments to be carried out by applicants.

BASIX Certificate No. 995155M\_02, dated 1 May 2020, was submitted with the Development Application demonstrating compliance with set sustainability targets for water and energy efficiency and thermal comfort. Relevant BASIX commitments have been nominated on the submitted architectural plans ensuring that the DA commitments have been met. The BASIX commitments will form part of the approval.

#### **State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

The development is proposed under the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors Housing SEPP). The SEPP applies to the site as the land is zoned for urban purposes and the zoning permits dwelling houses.

The SEPP, for the purpose of the Policy, defines "seniors" and also states that "seniors housing" is residential accommodation that will be used permanently for seniors and can consist of "a group of self-contained dwellings". The proposed development meets the definition of "self-contained dwellings" and is in the form of "in-fill self-care housing". This is where there are no additional services provided on site (such as meals, nursing care, and cleaning).

The relevant provisions of Seniors Housing SEPP are addressed below.

<b>GENERAL CONSIDERATIONS</b>			
<b>DEVELOPMENT STANDARD</b>	<b>SEPP REQUIREMENT</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
Restriction on Occupation (Clause 18)	Restricts the occupation of the dwellings to either seniors (defined by the SEPP), people with a disability, people within the same household as the seniors/disability or staff employed to assist them.	The proposal is for seniors to occupy the dwellings. A suitable condition of consent reflecting the requirements of Clause 18 is recommended, as well as the need for a Restriction to User to be placed on the title of the consolidated lots.	Yes
Permissibility	Land zoned primarily for urban purposes or adjacent to urban land.	The site is zoned R3 Medium Density Residential in the Penrith LEP 2010.	Yes
Site Compatibility Certificate (Clause 24)	Not required for urban zoned land (unless a vertical village is proposed).	The proposed development is not a vertical village and the site is zoned for urban purposes. A site compatibility certificate is not required.	N/A
Location, Facilities and Support Services (Clause 26)	Max. 400m from public transport that provides a regular service to shops, banks, retail, community services and medical services being no more than 1:14 gradient or as otherwise stipulated within Clause 26(2).	The site is located within 400m to 15 bus stops which serve the local area and provide access to shops and medical uses. The bus services operate between every 15 minutes to 1 hour. The gradient of the footpaths accessing the bus stops is compliant.	Yes
Water and Sewer (Clause 28)	Housing will be connected to a reticulated water system with adequate waste water disposal.	Services are currently available within the surrounding locality. A condition of consent is recommended requiring a Section 73 Certificate from Sydney Water.	Yes
Site Capability Criteria (Clause 29)	If Clause 24 is not applicable, the consent authority is to consider the requirements within Clause 25(b)(i), (ii) and (v) being natural environment and existing uses in immediate locality, impact of proposed works on future uses of that land and impact of bulk, scale and built form on character of area.	The applicant has demonstrated through accompanying reports and documentation that the development will not have an adverse impact on the surrounding natural environment.  The proposed development is of a suitable design, scale and form and the proposed landscaping will contribute to the character of the area.	Yes
<b>PART 3 - DIVISION 1 - GENERAL DESIGN REQUIREMENTS</b>			
<b>DEVELOPMENT STANDARD</b>	<b>SEPP REQUIREMENT</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>

Site Analysis (Clause 30)	Site analysis required by applicant.	The application was accompanied by a detailed site analysis prepared in accordance with Clause 30.	Yes
Design Consideration (Clause 31)	Assessment against Seniors Living Policy – Urban Design Guideline for Infill Development (DOP March 2004).	The proposal is considered to be compliant with the relevant provisions within the guidelines. The Statement of Environmental Effects contains an assessment against the Urban Design Guideline.	Yes

**PART 3 - DIVISION 2 - DESIGN PRINCIPLES**

<b>DEVELOPMENT STANDARD</b>	<b>SEPP REQUIREMENT</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
Neighbourhood Amenity & Streetscape (Clause 33)	Recognize and respond to area's character and consider heritage items, maintain reasonable amenity and character through setbacks, height, fencing, planting and retaining walls.	The proposed development achieves the same front setbacks as adjoining properties. Deep soil landscaping is provided in every setback area and street trees are proposed in the Stafford Street frontage. Retaining walls (where required in the south east corner) have been split into two tiers and planted out. The building facades and massing have been articulated and well thought out to address the attributes of the site and respond to the location of adjoining townhouses.	Yes
Visual & Acoustic Privacy (Clause 34)	Consider location of windows and balconies, use of screening devices, landscaping and noise generation by locating paths, parking and driveways away from new dwellings.	The proposed development complies with side and rear setback controls in the Penrith DCP. Where a portion of Building C does not strictly comply with the rear setback requirements, the windows in that building have been designed to face into the communal open space and do not face neighbouring properties. Units within the development are also sited to have their main outlook onto private or communal open space areas within the site itself.	Yes

Solar Access (Clause 35)	Adequate solar access to living areas and POS of neighbours and reduce energy use by locating windows of living and dining areas north.	<p>The buildings are sited to take advantage of the site's north-south orientation. Raked ceilings and clerestory windows have been used to increase access to daylight and sunlight and create a sense of more internal space and void areas. Over 81% of the units achieve solar access.</p> <p>While additional overshadowing to neighbouring properties will occur, the amount of shadow experienced is considered to be expected and reasonable for a medium density development situated to the north. Adjoining properties that are overshadowed still maintain good access to sunlight in their rear yards and north facing windows.</p>	Yes
Stormwater (Clause 36)	Control and minimize storm water runoff and include (where practical) OSD.	Council's Engineer has reviewed the civil drawings and raised no objection subject to conditions.	Yes
Crime Prevention (Clause 37)	Ensure passive surveillance and lockable shared entries.	The development has been designed in accordance with the key CPTED principles, such as primary living areas fronting communal open space areas to enhance surveillance. Further conditions to address crime safety and security are included as recommended conditions of consent such as the requirement to submit a lighting strategy and a maintenance plan for the upkeep of landscaping.	Yes
Accessibility (Clause 38)	Safe pedestrian links to public transport and facilities and safe and convenient access and parking.	Pedestrian paths are provided within the development site which connect to the external footpath network at Stafford Street. The applicant has also shown a pedestrian route to and from the car park and around the site.	Yes



Waste Management (Clause 39)	Provide waste facilities that maximize recycling.	The development will be serviced by a private waste collection contractor. Provision for recyclable waste is included. This is discussed further below in the Referrals section of this report.	Yes
<b>PART 4 - DIVISION 1 – GENERAL STANDARDS TO BE COMPLIED WITH</b>			
<b>DEVELOPMENT STANDARD</b>	<b>SEPP REQUIREMENT</b>	<b>PROPOSED DEVELOPMENT</b>	<b>COMPLIANCE</b>
Site Size <b>*Does not apply to social housing provider.</b>	Min. 1,000m <sup>2</sup>	The consolidated site will be over 4,000 square metres in area, notwithstanding that this control will not apply as the applicant is registered as a social housing provider.	N/A and Yes
Site Frontage <b>*Does not apply to social housing provider.</b>	Min. 20 metres	The frontage to Stafford Street is over 80m in length, notwithstanding that this control does not apply to a social housing provider.	N/A and Yes
Building Height <b>*Rear 25% control does not apply to social housing provider.</b>	Height (to ceiling) not to exceed 8m metres.  Adjacent to boundary must be not more than 2 storeys in height.  Rear 25% of development to be single storey.	Because of the raked ceiling design, parts of all three buildings will be over the 8m (ceiling) height control. A request to vary this development standard has been submitted pursuant to Clause 4.6 of the Penrith LEP. This is discussed further in this report.  The development will be no more than 2 storeys in height adjacent to all property boundaries. The small portion of the site at Building C, in the location of Unit C.11 will be three storeys in height but will appear as a 2 storey form from the adjoining property. The three storey form is internalised to front the communal open space and is not considered to be adjacent to the property boundary.  The rear 25% (single storey) control does not apply to the development being by a social housing provider.	No  Yes  N/A

<p>Accessibility and Usability</p>	<p>The proposed development is to comply with the standards specified in Schedule 3 (some clauses in the Schedule will not apply to a social housing provider).</p> <p>The standards are geared to equitable access requirements.</p>	<p>The relevant standards in Schedule 3 that do apply to the proposed development relate to pathway lighting; letterboxes; accessible parking; entries; and garbage location.</p> <p>The application included a BCA Report that identified either compliance or alternative solutions. In addition an Access Report was submitted to demonstrate compliance with access provisions.</p> <p>Suitable conditions are recommended to ensure that the applicable requirements of Schedule 3 of the SEPP are further refined as part of the Construction Certificate application.</p>	<p>Yes</p>
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**Part 7 - Division 4 - Development standards that cannot be used as grounds to refuse consent**

This section of the SEPP reads as a minimum requirement for development and dictates that a consent authority cannot refuse an application on the specific grounds mentioned if the development provides at least the minimum requirement stated at each clause, or does not exceed limits when they are expressed as such.

The clauses relate to height, density and scale (expressed as a Floor Space Ratio), landscaped area, deep soil zones, solar access, and parking.

In this regard, the proposed development meets (and exceeds) the minimum requirements stated for parking, deep soil, solar access and landscaping.

The proposed development would be over the height (8m) and FSR (0.5:1) stated, which means that the consent authority could refuse the application on height and density/scale grounds if they so wished. However, this assessment of the proposal concludes that the proposed development is a good urban design outcome and the recommendation is to approve the application subject to conditions.

## **State Environmental Planning Policy (Western Sydney Aerotropolis) 2020**

The subject site is located **outside** of the Western Sydney Aerotropolis. However, the new SEPP (Western Sydney Aerotropolis) 2020 contains a map that relates to wildlife buffer areas. This map is titled the "Wildlife Buffer Zone Map". The map shows that the subject site is within a 13 kilometre 'wildlife buffer zone' of the airport.

The Aerotropolis SEPP commenced on 1 October 2020, after the Development Application was lodged. The SEPP contains Savings Provisions which means that the SEPP does not strictly apply to the proposed development. Nevertheless, consideration has been given to Clause 21 of the SEPP and the proposed development. The objective of Clause 21 is to regulate development on land surrounding the Airport where wildlife may present a risk to the operation of the Airport. Certain types of development then trigger the requirements for further consideration under Clause 21. The proposed development, being a form of residential accommodation, is not one of the types of uses that warrant additional consideration under the SEPP with regard to wildlife and the operation of the Airport.

The subject site is also identified as being located within the Obstacle Limitation Surface Map. Clause 24 of the SEPP relates to development that would penetrate the prescribed airspace for the Airport and be a 'controlled activity'. The proposed development neither penetrates the prescribed airspace, nor is a controlled activity, therefore not triggering any additional considerations under this clause.

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

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7(1) of SEPP 55 prevents consent authorities from consenting to a development unless it has considered whether the land is contaminated and 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.

The application includes a Remediation Action Plan (RAP) to address asbestos found on the site. The RAP recommends carrying out a further assessment after buildings on site are demolished, carrying out remediation and submitting a site validation report. These aspects can be addressed through recommended conditions of consent which Council's Environmental Management Officer has provided.

## State Environmental Planning Policy No 65—Design Quality of Residential Flat Development

It is the planning officer's view that SEPP 65 and the Apartment Design Guide do not strictly apply to the proposal for seniors living which has been made pursuant to the SEPP (Housing for Seniors and People with a Disability). The Seniors Housing SEPP also contains specific requirements relating to siting, design, local character and internal amenity. The principles and aims of these controls are similar to those within the ADG.

However, it is also acknowledged that the proposed development is a type of residential accommodation, and that in one specific location at the position of Unit C.11, the development is three storeys in height and contains more than 4 dwellings. This would be the trigger to apply SEPP 65 for a residential flat building.

Therefore, the planning assessment has considered the principles, aims and controls of SEPP 65 and the ADG, particularly those controls relating to site layout and internal amenity. In this regard, the following comments are made:

- A mix of apartment sizes and types is provided;
- Most apartments have 2 bedrooms which provides better amenity for senior occupants to have carers or family members stay over;
- Every apartment has private open space in the form of a balcony or terrace area. The private open space areas range in size from 10sqm to 50sqm;
- Solar access is provided to 27 of the total 33 units, representing 81.8% of apartments (the ADG control is for 70%);
- 25 of the total 33 units are cross ventilated, representing 75.8% of apartments (the ADG control is for 60% compliance); and
- All of the apartments are larger than the minimum size requirements required by the ADG. The 2 bedroom apartments range in size from 82sqm to 105 sqm, and the 1 bedroom apartments range in size from 62sqm to 67 sqm.

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

This Regional Environmental Plan integrates planning with catchment management to protect the Hawkesbury-Nepean river system, requiring the impact of future land use to be considered in a regional context. The plan covers water quality and quantity, environmentally sensitive areas, riverine scenic quality, agriculture and urban development. The proposed development, subject to conditions, will adequately mitigate and manage impacts to the river system.

### 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 2.7 Demolition requires development consent	Complies
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.7 Servicing	Complies

## Clause 4.6 Exceptions to development standards

Clause 4.6 of the Penrith LEP allows the applicant to make a written request to vary the applicable development standard that is contravened. In this case, it is the development standard relating to maximum building height that is contravened by the proposed development. The development standard is found at Clause 40(4)(a) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, and at Clause 4.3 of the Penrith Local Environmental Plan 2010. The height control in both the SEPP and LEP are written as development standards and both controls can therefore be varied pursuant to Clause 4.6 of the LEP, noting that Clause 4.6(2) refers to "*a development standard imposed by this or any other environmental planning instrument*". In addition, Clause 4.6(8) does not exclude the operation of Clause 4.6 from the height development standard.

The SEPP provides for a maximum building height of 8m and defines height as being to the ceiling of the topmost floor. The Penrith LEP has a maximum height limit of 8.5m, but defines height to the topmost part of the building. The proposed development includes a raked ceiling and clerestory roof design in some parts of the buildings. This is an intentional design feature to not only achieve more access to daylight and sunlight, but to provide a varied roof design and profile. Because of this, the ceiling extends into what would be traditionally roof space and therefore the height control in the SEPP is applicable to the top of the raked ceiling. The proposed development exceeds the height control in both the SEPP and LEP.

The proposed development in the area of the raked ceiling is **10.14m** in height at Building C using the SEPP definition (to the ceiling). This is **2.14m** over the SEPP height limit representing a contravention of **26.75%**. The proposed development has a maximum building height of 10.71m at Building C using the LEP definition (to the topmost part of the building). This is 2.21m over the LEP height limit, representing a contravention of 26%.

Buildings A and B also contravene the height standards, but because of the relative slope of the land Building C represents the numerically higher non-compliance so is used as the primary reference. However, and for completeness, Building A is 0.5m (6.25%) over the SEPP control and 0.4m (4.7%) over the LEP control. Building B is 1.57m (16.4%) over the SEPP control and 1.73m (20.35%) over the LEP control.

The Development Application includes a written request to seek to allow variation of the height controls in both the SEPP and LEP, made pursuant to Clause 4.6 of the LEP. In addition, the architectural drawings include a floor plan showing specifically in plan where the height breaches will occur (Drawing number DA-A-804) and a 'Height Blanket Diagram' showing in 3D the specific parts of the building which will breach the height controls (Drawing number DA-A-901).

The objective of Clause 4.6 is contained at Sub-Clause (1) and is; "*to provide an appropriate degree of flexibility in applying certain standards to particular development*"; and "*to achieve a better outcome for and from the development by allowing flexibility in particular circumstances*".

Clause 4.6(3) requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating the following:

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.

In this regard the applicant has submitted a written request that seeks to justify the contravention and makes statements about why compliance is considered to be unnecessary or unreasonable in this instance. The full comments in the written request have not been repeated below, although a copy of the written request has been made available to Panel members. The written request includes the following relevant arguments and statements:

- The request references *Wehbe v Pittwater Council* (2007) NSW LEC 827. It states that the Commissioner of the Court set out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It quotes parts of the judgement including that "*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are*

*environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)";*

- The request goes on to state that the Commissioner expressed the view that there are 5 different ways in which an objection may be well founded. The written request then places emphasis on the first way which is that "*The objectives of the standard are achieved notwithstanding non-compliance with the standard*";
- The written request states that compliance with the building height development standard is considered to be unreasonable and unnecessary as the objectives of those standards are achieved. The reasons given are contained at Section 7 of the written statement. It notes that the SEPP has no specific objective for height and references instead the Land and Environment Court case of Winten Group Architects Pty Ltd v Kuringai Council (2005) NSWLEC 546. In that case an objective for building height standards was "*To control impacts on neighbours and to ensure that the proposed development is not overbearing in terms of bulk, scale and height and also in terms of overshadowing impacts and privacy concerns*";
- The written request states that the proposed development does not result in any visual or amenity impacts. The proposed roofscape provides articulation and interest. The overall building form is seen as a 2 storey scale. The additional height does not disrupt any established view corridors, the areas of non-compliant height are not the areas causing additional overshadowing to neighbouring properties;
- The written request states that there are sufficient environmental planning grounds to vary the standard, including the following grounds;
- The non-compliance is a result of the raked internal ceilings and clerestory window elements, which are a consequence of the high quality architectural form and design of the proposed development. If the buildings incorporated flat rather than raked ceilings, the proposal would comply with the 8m ceiling height control, and this would reduce the internal amenity of the units;
- The non-compliance through the raked ceiling design helps break up the massing of the buildings and adds visual interest;
- The variations are located internally to the development and will not be readily obvious when viewed from the street or from neighbouring properties;
- The height breaches do not cause any loss of privacy or overlooking of adjoining properties as the windows in the raked ceiling do not create an area where the occupiers can view adjoining properties; and
- The height breach does not create the additional overshadowing to adjoining properties. In particular, the non-compliant component is located approximately 17m from the adjoining Cronin Street property.

Clause 4.6, Sub-Clause (4) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied of the following:

- (i) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3); and
- (ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The discussion below is provided to the Local Planning Panel so that the Panel may be satisfied that the requirements of Clause 4.6(4) have been met and that development consent can therefore be granted to the proposed development notwithstanding the contravention of the development standard for height.

Has the applicant's written request adequately addressed the matters required to be demonstrated by

### subclause (3)?

Yes, it is considered that the applicant's request outlined above follows a sound line of argument for justifying why the height control is unreasonable or unnecessary in this particular case. The statement has also outlined what environmental planning grounds they consider relevant for allowing a contravention of the development standard. Therefore, it is considered that the written request is sound and has addressed the relevant matters required by Clause 4.6(3).

### Is the proposed development consistent with the objectives for the standard relating to building height contained in both the SEPP and the LEP?

#### **SEPP (Housing for Seniors and People with a Disability) 2004:**

The building height control in the SEPP is at Clause 40(4)(a). It states that height in zones where residential flat buildings are not permitted must be 8m or less. The subject site is within the R3 zone. This zone does not permit residential flat buildings. Therefore, the control for the site is taken to be no more than 8m, noting that "height" in the SEPP is measured to the ceiling (this is different to how height is measured using the definition in the LEP).

However, a specific objective for the height development standard at Clause 40(4)(a) is not found within the same clause. There is a note relating to Clause 40(4)(a) but this relates to not being able to refuse an application on the grounds of height if the height is 8m or less. Therefore, it is relevant to consider the aims of the SEPP contained at Clause 2, the objectives of the Chapter for seniors housing, which are at Clause 14, and the relevant Design Principles which are at Clause 33 of the SEPP. A fuller assessment of the Design Principles is contained in the discussion relating to the SEPP. For the purpose of this Clause 4.6 consideration, this section only references the Design Principles that relate to height.

In addition, Clause 40(4)(b) contains another control that states that a building that is adjacent to a boundary must not be more than 2 storeys in height. The note attached to that statement then says "*The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape*". The proposed development satisfies this control because the one location (at the position of Unit C.11) that is three storeys in height is not located adjacent to the boundary of the site. In addition, it is considered that the note referring to the scale of development in the streetscape is specifically connected to the 2 storey control (and not the 8m height control).

The Design Principle at Clause 33(c)(iii) refers to maintaining reasonable neighbourhood amenity and appropriate residential character by adopting building heights at the street frontage that are compatible in scale with adjacent development. The objectives of the chapter that relates to seniors housing, at Clause 14, states that "*The objective of this Chapter is to create opportunities for the development of housing that is located and designed in a manner particularly suited to both those seniors who are independent, mobile and active as well as those who are frail, and other people with a disability regardless of their age*". The aims of the Policy, at Clause 2 are to encourage the provision of housing that will increase the supply and diversity of residences that meet the needs of seniors or people with a disability; make efficient use of existing infrastructure and services; and be of good design.

Taking into account the above objectives and design guides, it is considered that the proposed development as a whole meets those aims and objectives. In particular, the proposed development is "of good design". Those areas of the roof and ceiling which exceed the 8m limit have been designed intentionally to improve the internal amenity of those units by increasing access to sunlight and daylight. The raked ceiling design also results in a varied and diverse envelope and roof appearance, avoiding the usual simple hipped, pitched or skillion roof designs. The non-compliance with height does not make the overall development bulkier in scale because the raked ceiling design is only used in parts and contains mostly a metal deck roof and glazing, thereby having a lighter profile and appearance. The location of the height breach is also to the internal areas of the site with the raked ceilings not facing outwards. Therefore, in terms of the building edges, the development would still appear as a two storey compliant form and mass.

#### **Penrith LEP:**

The height of buildings control is at Clause 4.3 of the LEP and contains four objectives, being:

- (a) To ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality;
- (b) To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes;
- (c) To minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance; and
- (d) To nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.

With regard to the above objectives, the same points raised above in relation to the SEPP are also taken into account. In particular, the raked ceiling design areas are the only areas of the proposed development that will not comply with the 8.5m control in the LEP. The resulting building blocks will still be compatible with the bulk and scale of the existing and desired character of the area. The area is zoned R3 which permits townhouse developments as well as dwellings, boarding houses and dual occupancies. Most developments in the area are either single storey or two storey in scale. The proposed development is for the most part two storey in scale and is suitably setback from all property boundaries, thereby resulting in a suitable built form for the area. The raked ceilings will not disrupt views and outlooks because they are positioned to appear as internalised elements to the development and are not located on the outside facing edges of the buildings. The additional shadows cast onto adjoining properties is not exacerbated by those parts of the development that breach the height controls, given the setback of the buildings from boundaries and the further setback of the areas where the raked ceilings occur.

Is the proposed development consistent with the objectives for development within the R3 - Medium Density Residential zone?

The R3 Medium Density Residential zone has seven objectives as follows:

- To provide for the housing needs of the community;
- To provide a variety of housing types within a medium density residential environment;
- To enable other land uses that provide facilities or services to meet the day to day needs of residents;
- To provide for a concentration of housing with access to services and facilities;
- To enhance the essential character and identity of established residential areas;
- To ensure that a high level of residential amenity is achieved and maintained; and
- To ensure that development reflects the desired future character and dwelling densities of the area.

With regard to the above objectives, it is considered that the proposed development will meet the relevant objectives and not detract from the achievement of those objectives. The proposal will provide seniors housing operated by a registered community housing provider that has experience in operating retirement villages in NSW. The density of the proposed development is suitable for the host site with a good combination of building and landscaping. The internal layout and amenity of the units and of the communal areas is also of high quality with many units being sized more than the minimum that would be required for a standard apartment and generally having more private open space per unit.

Given that the proposed development is consistent with the objectives for height in both the SEPP and LEP, and also consistent with the objectives for development in the R3 medium density residential zone, it follows, and is considered that, the proposed development will be in the public interest.

In addition, Clause 4.6(4)(b) requires the concurrence of the Planning Secretary. In this regard, a standard delegation was issued by the Planning Secretary in Planning Circular 20-0002 issued on 5 May 2020 (this replaces previous circulars relating to concurrence to vary development standards). This Circular provides assumed concurrences. For development that would contravene a standard by more than 10%, the assumed concurrence does not apply to a delegate of Council. However, this restriction does not apply to decisions made by independent assessment panels as they exercise their consent authority functions on behalf of Council's, but are not legally delegates of Council. In this case, the proposed development would contravene the development standard for height by more than 10% and therefore the delegation to vary the development standard and determine the application lies with the Local Planning Panel. The proposed development does not meet the definition for 'regionally significant development' and therefore does not trigger a requirement to be determined by the Sydney Western City Planning Panel.



## Conclusion:

The assessment and statements above have demonstrated that the requirements and objectives of Clause 4.6 of the Penrith LEP have been met. The development standard relating to building height can be applied with an appropriate degree of flexibility in this case, and will achieve a better outcome for the amenity of the development, without having an adverse impact to surrounding properties as a result of the height non-compliance. In summary the following points are made:

- The proposed development is of a good design overall;
- Those areas of the ceiling and roof that exceed 8m and 8.5m have been designed intentionally to provide more sunlight and daylight to particular units, as well as an increased sense of void and space, thereby improving the internal amenity of those units for future occupiers;
- Those areas of the roofs that exceed 8m in height result in the envelope and form of the proposed development being varied and more visually interesting;
- Strict compliance with the 8m height limit could readily be achieved by removing the raked ceilings, but this would have a worse outcome for the amenity of the development and more likely result in a uniform roof design across all three building blocks;
- Those areas of the buildings that breach the height control are sensitively located away from those edges of the buildings that face adjoining properties and streets. The raked ceilings face into the site itself. This ensures that the external appearance of bulk remains as a two storey form and scale;
- In plan, those areas of the floor plan that breach the height control are relatively minor in area;
- The majority of the development complies with the height standards in both the SEPP and LEP;
- Those areas of the roof that exceed the 8m height control are not causing significant adverse impacts to neighbours by way of loss of views or overshadowing given the position of the relevant roof areas and their distance from property boundaries;
- The non-compliance with height does not result in a bulkier development, with the buildings mostly being two storey in height (except for one unit which sits on a third floor). This bulk and scale is compatible with the desired future character of the area which permits two storey townhouse developments;
- Council's Urban Design Review Panel has stated that they would not oppose the additional / non-compliant ceiling height on urban design grounds; and
- The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone, and results in a suitable planning outcome for the site and the area.

The Local Planning Panel can therefore be satisfied that they have the relevant concurrence from the Planning Secretary to vary the development standard relating to building height (in both the SEPP and Penrith LEP) and that they have adequately and appropriately carried out a consideration pursuant to Clause 4.6 to vary the development standard and grant development consent.

## **Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrument**

There are three Draft State Environmental Planning Policies which are relevant to the proposed development. They are as follows:

- Draft SEPP (Housing Diversity) - This policy seeks to amalgamate various SEPPs relating to boarding houses, affordable housing and seniors living. The proposed development is unlikely to contradict the aims and controls of this policy which will be broadly taken from the existing SEPP relating to seniors housing and affordable housing.
- Draft SEPP (Environment) - This policy will simplify the planning rules for a number of water catchments, waterways, and urban bushland. The proposed development will not contradict the aims of this policy.
- Draft SEPP (Remediation of Land) - The aim and controls in this Draft policy will not alter the assessment and requirements for contamination investigation and remediation. This policy will expand the categories of remediation work which requires development consent.

## Section 4.15(1)(a)(iii) The provisions of any development control plan

### Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Does not comply - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	Complies
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies

## Section 4.15(1)(a)(iv) The provisions of the regulations

The relevant requirements of the Regulations can be met subject to conditions.

## Section 4.15(1)(b) The likely impacts of the development

### ***Demolition***

The proposal includes the demolition of all of the buildings on the site. This includes single dwellings and church related buildings, as well as the removal of 14 trees. The existing buildings do not have any historic or social significance and their demolition is acceptable. Council's Tree Management Officer has reviewed the proposed removal of trees from the site and concluded that this part of the proposal is acceptable subject to landscaping including some tree replacement planting.

### ***Context / Setting - Character and Design***

As the title suggests, these four parameters are considered as a whole in the following discussion. This is because responses to context and character are directly linked to a proposal's design, including the siting of a building, its envelope and scale and the design of the void spaces around the building such as setbacks and landscaping.

The surrounding area contains a mix of single dwellings, townhouse developments, church buildings, and a child care centre. The predominant built form is single and two storey buildings on separate lots with landscaped gardens. The surrounding buildings are domestic in appearance and character.

The layout of the proposed buildings on the site takes advantage of the northern orientation of the land and its address to Stafford Street. The documentation submitted with the application includes a site analysis and a design rationale as required by the Seniors Housing SEPP.

The proposal was reviewed by Council's Urban Design Review Panel and the following comments from the Panel are relevant:

- *"The amended application comprises significant reconfiguration of floorplates and illustrates a development that aligns very closely with desired character that is expressed by the DCP;*
- *The amended building forms and landscaped areas demonstrate appropriate relationships with neighbouring villa and townhouse developments;*
- *Minor non-compliances with the ceiling height standard under the SEPP are by nature technical and raise no concerns in relation to character or amenity;*
- *Both mass and scale of the proposed building forms have been moderated by well-composed facades that display distinctly domestic qualities;*
- *The quality of communal areas relates to the location and configuration of outdoor and indoor spaces, together with pathways that allow access throughout the development;*
- *Comprehensive redesign of the living units has achieved superior levels of indoor amenity in terms of room dimensions and arrangements, sunlight and natural ventilation plus visual and acoustic privacies - importantly, solar access substantially exceeds SEPP requirements;*
- *Setbacks from common boundaries typically exceed local requirements for medium density zones, and where setbacks have been narrowed, clever floor planning has avoided direct overlooking of the immediate residential neighbours; and*
- *The quality of the proposed landscaping confirms the suitability of setbacks and building separations, as well as contributing to compatibility with existing and desired characters, and the amenity of existing and proposed dwellings".*

The comments of the Urban Design Review Panel are shared by Council's Senior Planner and it is considered that the proposal exhibits design excellence. Given that this is likely the result of a skilled design team and because the applicant seeks to vary the height standard, a condition is recommended that requires the architectural firm to be involved in the development post development consent. This includes any subsequent modification applications, and Construction Certificate stage.

### **Overshadowing**

There are four adjoining properties which will be affected by overshadowing from the proposed development. They are:

- 23-25 Cronin Street, a one and two storey townhouse development;
- 72 Doonmore Street, a single storey townhouse development;
- 68-70 Doonmore Street, a single storey townhouse development; and
- 150-152 Stafford Street, a one to two storey townhouse development.

The first three addresses stated above are located directly to the south of the subject site and by virtue of this positioning will be affected by any development on the subject land. The proposed development will create additional overshadowing to those three properties to the south. The architectural drawings include detailed 3D shadow diagrams which show the impact of the proposed development on specific dwellings within the adjoining townhouse developments.

With regard to dwellings at 68-70 and 72 Doonmore Street, although there is some additional overshadowing cast by the proposed development, the new shadows do not appear to be significantly greater than shadows cast by existing structures on the site, to an extent that would warrant refusal of the application. In addition, with regard to Building B, the rear setback of this building is more than the minimum DCP setback requirement as it is set back 8m from the rear boundary, with private open space on the ground floor level being set back 4m from the rear boundary. The 8m setback exceeds the 6m control for upper level setbacks.

The adjoining property considered to be potentially most affected by the proposed development in terms of shadows cast is 23-25 Cronin Street, and in particular, the specific part of the Cronin Street townhouses that adjoins the current church car park. This is the location of Unit 6/23-25 Cronin Street. Given the existing adjoining at grade car park area on the subject site, the subject site does not cast substantial shadows into this part of the Cronin Street development and Unit 6 and therefore any new development will cause additional overshadowing. Upon request the applicant provided specific shadow diagrams for Unit 6, at hourly intervals at mid-winter, and a detailed section to show the relationship between the proposed development (Building C) and Unit 6/23-25 Cronin Street. The shadow diagrams show that the rear of Unit 6 will still receive sunlight into the rear yard, notwithstanding that the area that receives sunlight is reduced from the current situation.

There is also some additional overshadowing of the property to the west at 150-152 Stafford Street between 12 noon and 3pm (but not at 9am). The proposed development follows the same front setback of the adjoining property and has a compliant side setback. Therefore, any additional overshadowing is expected and reasonable considering the form and scale permitted by the controls.

In conclusion, although the proposed development will result in additional overshadowing to adjoining townhouse dwellings, the extent of impact is considered to be reasonable and acceptable given that the scale of the proposed development is compatible with other residential developments in the area.

### ***Access, Traffic and Parking***

The application was accompanied by Traffic Impact Statement prepared by Traffix. This report assesses the development in terms of the existing and proposed traffic conditions, traffic generation, access arrangements, new roads, car parking and public transport accessibility.

The site is located within 400m walking distance to 15 bus stops servicing Penrith, Mount Druitt, Glenmore Park, Jamisontown and Luddenham. The frequency of services varies from 15-30 minutes, 30 minutes and every 1 hour. The site is therefore considered to be within an accessible area.

The proposal includes 35 parking spaces, being 33 resident spaces (8 of which are accessible) and 2 staff spaces. The Seniors Housing SEPP states that the application could not be refused on the grounds of parking numbers if at least 7 spaces are provided, acknowledging that the applicant is a social housing provider. Therefore the provision of 35 parking spaces exceeds the expectation under the SEPP to provide parking.

The Traffic Impact Statement has used the Roads and Maritime Services (RMS) Technical Direction 2013/04a to determine the traffic generation rates for seniors housing. It also notes that the site's peak hour will not necessarily coincide with the network peak morning and afternoon hours. This is because residents in a seniors living development have predominantly left full time employment and are no longer required to travel during peak commuter hours. Based on the Guidelines, the proposed development will generate 3 vehicle trips per hour during the AM peak period and 6 vehicle trips per hour during the PM peak period.

## **Section 4.15(1)(c) The suitability of the site for the development**

The site is suitable for the following reasons:

- The site is zoned R3 and permits a medium density residential form;
- The site is within 400 metres of approximately 15 bus stops serving the Penrith, Mount Druitt, Luddenham, Jamisontown and Glenmore Park areas;
- The use and building form are compatible with surrounding and adjoining land uses;
- The grade of the site is suitable for the design proposed; and
- The site is able to drain to Council's satisfaction.

## **Section 4.15(1)(d) Any Submissions**

### **Community Consultation**

The application was publicly exhibited for a period of 14 days and notified to surrounding landowners in accordance with Council's community consultation policy. No submissions have been received.

### **Referrals**

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

<b>Referral Body</b>	<b>Comments Received</b>
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Environmental - Biodiversity	No objections - subject to conditions
Waste Services	Not supported
Traffic Engineer	No objection subject to conditions
Community Safety Officer	No objections - subject to conditions
Tree Management Officer	No objections - subject to conditions

## **Waste Services**

The proposed development will not be using Council's waste collection service and will operate with a commercial contract for waste collection. The applicant's traffic consultant has confirmed that the waste vehicle will likely be a 'Mini Wise' collection vehicle which requires a minimum height clearance of 2.2m. The specifications for this vehicle are shown in the Traffic Impact Statement. Therefore the basement parking area has not been designed to accommodate Council's waste truck which would need a higher clearance of 3.5m and more room for swept paths.

To address this issue Council staff met with the applicant. The following points were noted:

- No objection is raised to the operator collecting waste using a third party commercial contract. However, pursuant to Section 496 of the Local Government Act, Council is still required to charge a domestic waste collection levy on the development because it is ratable land. The applicant advised that they were aware of and acknowledged this requirement. In order for the operator of the seniors housing to be fully aware of this matter going forward, a condition of consent is recommended to require notice of the levy to be placed on the title of the land as a restriction to user, as well as the requirement that waste collection is to be via a commercial contract;
- Clarification was obtained about the use of the porte cochere which is situated at the main entrance of the development on Stafford Street. The porte cochere has been designed specifically to provide the height clearance for ambulance vehicles. The applicant has confirmed that it could also be used in the event that a larger service or delivery vehicle needed to access the site. This has resolved staff's concerns about larger vehicles not being able to use the basement parking area;
- The applicant has also confirmed that the units would not be strata subdivided and that Fresh Hope would manage the entire site. This makes it easier to manage servicing the site as well as removalist trucks when residents move in or out of their dwellings. The applicant has agreed to a condition of consent which places a covenant on the title which does not allow strata subdivision of the individual units;
- Council's Traffic Engineer has confirmed that the swept paths proposed in the basement car park are acceptable;
- The single reverse manoeuvre in the car park would be towards the loading bay and appears to be contained mostly within the loading bay area.

In addition, it was acknowledged that to increase the height clearance of the basement parking area would likely have a detrimental impact to the streetscape appearance of the development. It would either increase the overall height of the proposal, resulting in a larger protrusion of the basement and ground floor above natural ground, or would result in a disproportionate increase in costs to excavate deeper, which the applicant could not justify given the proposed use as seniors living by a community housing provider.

Therefore, subject to conditions, the proposed waste and servicing arrangement is acceptable.

## **Section 4.15(1)(e)The public interest**

The proposal is considered to be in the public interest as it will provide an increased supply of housing for seniors on a site that is well located in terms of public transport and services.

## **Section 94 - Developer Contributions Plans**

The applicant has provided evidence that Fresh Hope is registered as a community housing provider under the National Regulatory System for Community Housing. Therefore, by virtue of a Ministerial Direction dated 2007, the proposed development is exempt from the requirement to pay development contributions.

## Conclusion

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The proposed development represents the applicant's second attempt to gain development consent for seniors living at the subject site. This Development Application has now addressed and resolved issues relating to the previous proposal. The proposed development is a well thought out design that provides appropriate setbacks, landscaped edges and good quality open space and communal areas. The internal amenity of the proposed units exceeds planning controls relating to size, solar access and cross ventilation. The facades are articulated and interesting without being too busy. The design and level of amenity is assisted by the decision to provide raked ceilings and clerestory windows to some units. Where this has been used, the raked ceilings are directed internally into the site so that the building edges retain a two storey appearance. However, this design feature also results in those parts of the building exceeding the 8m SEPP height control (to the ceiling) and the 8.5m (LEP) control to the top of the building. The applicant has made a written request pursuant to Clause 4.6 of the Penrith LEP to seek to vary the height control. The written request is deemed to be sufficient for the Local Planning Panel to vary the development standard, having regard to the objectives of the control and the R3 medium density residential zone. The proposed development overall is considered to exhibit design excellence and will result in a good development for the site.

## Recommendation

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It is recommended that:

1. The request made pursuant to Clause 4.6 of the Penrith LEP 2010 to vary the development standard at Clause 40(4) of the SEPP (Housing for Seniors or People with a Disability) 2004 and at Clause 4.3 of the Penrith LEP, both related to building height, is accepted; and
2. Development Application DA20/0229 for the demolition of existing structures and construction of a seniors living development at 154-162 Stafford Street, Penrith, be approved subject to conditions.

# CONDITIONS

## General

### 1 [A001 - Approved plans table](#)

The development must be implemented substantially in accordance with the following plans stamped approved by Council, the application form, and the following supporting documents submitted with the application (except as may be amended by the conditions of this consent):

- StormFilter Operations and Maintenance Manual, prepared by Ocean Protect, Revision 1, dated March 2019;
- Stormwater Drainage Design Report, prepared by Tonkin, Reference 20181340R002A, dated 28 April 2020 (except as may be amended to reconcile with the amended civil drawings listed in the table below);
- DA Acoustic Report (ID: 102FHC R01v2), prepared by PKA Acoustic Consulting, dated 21 July 2020;
- Remedial Action Plan (10791EV.P.90-R01), prepared by Construction Sciences, dated 20 August 2020;
- BCA Assessment Report (Ref: 200150), prepared by Blackett Magure Goldsmith, dated April 2020;
- Waste Management Report, prepared by Smith & Tzannes, dated 30 April 2020;
- Statement of Compliance - Access for People with a Disability, prepared by Accessible Building Solutions, dated 14 April 2020;
- Nationwide House Energy Rating Scheme - Certificate Number 0004802630;
- Geotechnical Report prepared by JK Geotechnics, dated 8 April 2020;
- Aboricultural Impact Assessment Report, prepared by Jacksons Nature Works, dated 30 April 2020; and
- BASIX Certificate No. 995155M\_02.

Drawing Title - Project Number 19_086	Drawing No.	Revision Number	Prepared By	Dated
Title	DA-A-000	C	Smith & Tzannes	16/10/2020
Notes	DA-A-001	C	Smith & Tzannes	16/10/2020
Site Plan	DA-A-010	B	Smith & Tzannes	31/08/2020
Demolition Plan	DA-A-030	A	Smith & Tzannes	30/04/2020
Level 0 (Ground)	DA-A-100	B	Smith & Tzannes	21/08/2020
Level 1	DA-A-101	B	Smith & Tzannes	21/08/2020
Level 2	DA-A-102	B	Smith & Tzannes	21/08/2020
Roof Level	DA-A-103	A	Smith & Tzannes	30/04/2020
Elevations	DA-A-200	B	Smith & Tzannes	21/08/2020
Internal Elevations	DA-A-201	B	Smith & Tzannes	21/08/2020
Sections	DA-A-202	A	Smith & Tzannes	30/04/2020
Area Calculations	DA-A-800	B	Smith & Tzannes	31/08/2020
Solar Access & Cross Ventilation	DA-A-801	B	Smith & Tzannes	12/10/2020
Apartment Types (01)	DA-A-802	B	Smith & Tzannes	31/08/2020
Apartment Types (02)	DA-A-803	A	Smith & Tzannes	30/04/2020



Ceiling Height Non-Compliance	DA-A-804	-	Smith & Tzannes	17/06/2020
Shadows - Winter Solstice (1)	DA-A-850	B	Smith & Tzannes	31/08/2020
Shadows - Winter Solstice (2)	DA-A-851	B	Smith & Tzannes	31/08/2020
Views From the Sun	DA-A-852	B	Smith & Tzannes	31/08/2020
Solar Access POS 68-70 Doonmore Street	DA-A-853	A	Smith & Tzannes	30/04/2020
Solar Access POS 72 Doonmore / 23-25 Cronin Street	DA-A-854	A	Smith & Tzannes	30/04/2020
Solar Access 150-152 Stafford Street	DA-A-855	A	Smith & Tzannes	30/04/2020
Aerial	DA-A-900	B	Smith & Tzannes	31/08/2020
Height Blanket Diagrams	DA-A-901	-	Smith & Tzannes	16/10/2020
Location Plan & Drawing Schedule	001	C	Tonkin - Job 20181340	21 July 2020
Erosion and Sediment Control Details	110	C	Tonkin - Job 20181340	21 July 2020
Erosion and Sediment Control Plan	101	C	Tonkin - Job 20181340	21 July 2020
Site Work Plan	301	C	Tonkin - Job 20181340	21 July 2020
Catchment Plan	401	C	Tonkin - Job 20181340	21 July 2020
Stormwater Layout	402	C	Tonkin - Job 20181340	21 July 2020
Drainage Details	403	C	Tonkin - Job 20181340	21 July 2020
Landscape Site Plan	Sheet 1 of 5	<b>B</b>	Paul Scrivener Landscape Job - 20/2153	20 August 2020
Ground Floor - Planting Plan	Sheet 2 of 5	B	Paul Scrivener Landscape Job - 20/2153	20 August 2020

Level 1 - Masterplan	Sheet 3 of 5	B	Paul Scrivener Landscape Job - 20/2153	20 August 2020
Level 1 - Planting Plan	Sheet 4 of 5	B	Paul Scrivener Landscape Job - 20/2153	20 August 2020
Calculations Plan	Sheet 5 of 5	B	Paul Scrivener Landscape Job - 20/2153	20 August 2020

2 [A014 - LOT CONSOLIDATION](#)

The lots associated with this development site are to be consolidated into one lot. This includes Lots 1 and 2 in DP 20976, Lot A in DP 405051, and Lot 1 in DP 25705.

Written evidence that the request to consolidate the lots has been lodged with Land and Property Information division of the Department of Lands is to be submitted to the certifying authority before the Construction Certificate for the development can be issued by the certifier.

A copy of the registered plan of consolidation from Land and Property Information division of the Department of Lands is to be submitted to the Principal Certifying Authority (PCA) and Penrith City Council, if Council is not the PCA, prior to the issue of the Occupation Certificate for the development.

3 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)

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

4 [A021 - Business Registration](#)

The business is to be registered with Penrith City Council by completing the "Registration of Premises" form. This form is to be returned to Council prior to the issue of the Occupation Certificate and operation of the business.

5 [A039 - Graffiti](#)

The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.

6 [A043 - Air conditioner for existing dwelling](#)

Any air conditioning units shall not be installed to the development without the prior approval of Penrith City Council if the:

- air conditioning unit is located within 3m of a property boundary;
- air conditioning unit is located above the ground floor level of the development; and
- noise levels emitted by the air conditioning unit will exceed 5dB(A) above the ambient background noise level measured at the property boundary.

A separate development application shall be sought and obtained from Council prior to the installation of an air conditioning unit unless the works constitute exempt or complying development.

7 [A046 - Obtain Construction Certificate before commencement of works](#)

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

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

The accommodation permitted by this development consent can only be occupied by those persons described at Clause 18 (1) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. A Restriction to User is to be registered against the title of the property in accordance with Section 88E of the Conveyancing Act 1919 limiting the use of the accommodation to the kinds of people referred to in Clause 18(1). Evidence of such restriction on title is to be to the satisfaction of the Principal Certifying Authority prior to the release of any Occupation Certificate.

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

Prior to the issue of any Occupation Certificate, the applicant is to provide evidence to the Principal Certifying Authority that a commercial contract for all waste collection services to the site has been entered into. Such a contract must be retained and maintained while the site is being used. All costs associated with waste collection are to be at the expense of the developer/operator/landowner.

Further, prior to the issue of any Occupation Certificate, a restriction to user and positive covenant shall be registered on the title of the property advising that Council's domestic waste fee will be charged to residents or the landowner in addition to any private contract fees.

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

No fencing is permitted within the frontage to Stafford Street. Any delineation between private and public land within the front setback is to be made using vegetation and planting only.

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

As the proposal has been granted pursuant to Clause 4.6 to vary a development standard, and because the variation granted is linked to the quality of the design, in order to ensure the design quality excellence of the development is retained to completion, the design architect(s) comprising Smith & Tzannes is to have direct involvement in the design documentation and construction stages of the project, including at Construction Certificate stage. The design architect/s is not to be changed without prior notice and approval of the Council's Development Assessment Coordinator. Such approval should not be unreasonably withheld by Council.

Any future Modification Applications which change the design of the approved development are to include a written review from the design architect upon the reasonable request of Council staff.

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

The residential units in the completed development are not permitted to be strata subdivided. A Restriction to User is to be placed on the consolidated lot prior to the issue of any Occupation Certificate to this effect.

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

The doors to the bulky goods waste room are to be amended to be 180 degree outward opening doors.

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

The Principal Certifying Authority is to obtain further design details that demonstrate that the approved development complies with the relevant clauses at Schedule 3 of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. These matters relate to equitable and accessible design. The details are to be shown with the Construction Certificate drawings and application.

15 [A special BLANK](#)

An operational 'Plan of Management' is to be approved by the Principal Certifying Authority prior to the issue of any Occupation Certificate. The Plan of Management is to include at least details of the following:

- The 24 hour contact details of any property caretaker or manager, who has overall responsibility for the operation, administration, cleanliness, maintenance and fire safety of the premises;
- Any rules, including details of how they will be publicised to residents, that cover guest behaviour, activities and noise, visitor policy and any other relevant rules;
- Measures to minimise unreasonable impact to the habitable areas of adjoining properties, including the management of communal open spaces. The use of communal open spaces should be restricted in accordance with the Acoustic Report and the communal open space areas are not to be used for large groups after 10:00pm or before 7:00am;
- Details of professional cleaning and pest and vermin control arrangements for the common areas;
- A pest management plan that clearly indicates how pest prevention, monitoring, and eradication will be completed. The pest management program shall include but not be limited to pest management program; frequency of pest service; maintenance and cleaning; area of service; time of service; sighting of pests and a response plan; reporting; and methods of treatment; and
- Details of how complaints will be investigated and managed.

## 16 A Special CPTED Requirements

The following community safety and crime prevention through environmental design (CPTED) requirements are required to be implemented:

### **Lighting**

- All outdoor/public spaces throughout the development must be lit to the minimum Australian Standard of AS 1158. Lighting must be consistent in order to reduce the contrast between shadows and illuminated areas and must be designed in accordance with AS 4282 - Control of the obtrusive effects of outdoor lighting.

### **Car Parking**

- A security system must be installed on any pedestrian and vehicle entry/exit points to the car park, including lifts and stairwells, to minimise opportunities for unauthorised access.
- All areas of the car park must be well-lit, with consistent lighting to prevent shadowing or glare.
- Car park surfaces including walls and ceilings are to be light coloured with details included with the **Construction Certificate** application.

### **Building Security & Access Control**

- Intercom, code or card locks or similar must be installed for all entries to the buildings and restricted areas (i.e waste room, common room).
- Australian Standard 220 door and window locks must be installed in all dwellings.
- CCTV is to be provided to cover communal public space areas. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively infra-red cameras are recommended). Signage must be displayed to indicate that CCTV cameras are in use.
- Letterboxes must be located within a secure area, accessible only to residents. They must be secure with no front flap lock that can be easily broken.

### **Way-finding**

- Unit numbers, names of buildings, maps and facilities must be clearly signposted.

### **Graffiti/Vandalism**

- Graffiti resistant coatings must be used to external surfaces where possible, including signage, furniture, retaining walls, etc.
- Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing, and common areas. This includes reporting incidents to police and/or relevant authorities.

### **Landscaping**

- All vegetation must be regularly pruned to ensure that sight lines are maintained.

## **Demolition**

#### 17 [B001 - Demolition of existing structures](#)

**Prior to commencement of demolition works on site**, a Hazardous Building Materials Assessment is to be submitted to Council. The associated investigations are required to be carried out to assess the location, extent and condition of Hazardous Building Materials including but not limited to the following:

- Asbestos;
- Synthetic mineral fibres (SMF);
- Polychlorinated Biphenyls (PCBs);
- Lead-containing paint;
- Ozone depleting substances; and
- Lead dust in ceiling cavities.

The Assessment is to also provide general recommendations for the removal of the hazardous materials, including the preparation of safe work method statements and risk assessments to appropriately address health and safety issues.

During demolition works, the approved Hazardous Building Materials Assessment must be implemented and complied with at all times.

At the completion of the demolition works, the applicant is to submit to Council a report demonstrating that the hazardous building materials identified in the Hazardous Building Materials Assessment have been removed and disposed of at a lawful waste facility.

#### 18 [B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE](#)

All demolition works are to be conducted in accordance with the provisions of AS 2601-1991 "The Demolition of Structures". **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

All demolition and 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 demolition**.

#### 19 [B003 - ASBESTOS](#)

You should read Council's Fact Sheet titled "Handling and Disposal of Fibrous Cement Products" **before any demolition works commence on the site**.

**Prior to commencement of demolition works on site**, a portaloo with appropriate washing facilities shall be located on the site and the Principal Certifying Authority is to be satisfied that:

- Measures are in place so as to comply with the WorkCover Authority's "Short Guide to Working with Asbestos Cement" and
- The person employed to undertake the works is a licensed asbestos removal contractor and is holder of a current WorkCover Asbestos Licence.

Any demolition works involving the removal of all asbestos shall only be carried out by a licensed asbestos removal contractor who has a current WorkCover Asbestos Licence.

All asbestos laden waste, including asbestos cement flat and corrugated sheeting must be disposed of at a tipping facility licensed by the Environmental Protection Authority to receive asbestos wastes.

### **Heritage/Archaeological relics**

#### 20 [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**

21 **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 installed and maintained in accordance with the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

The sediment and erosion control measures are to be **maintained throughout the construction phase of the development until the land, that was subject to the works, have been stabilised and grass cover established**. These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

22 **D004 - Dust**

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

23 **D004 – Site remediation works**

**Prior to the issue of the Construction Certificate** for the erection of the buildings, site remediation works shall be carried out generally in accordance with 'Remedial Action Plan – 154-162 Stafford Street, Penrith, NSW' prepared by Construction Sciences Pty Ltd dated 20 August 2020 (Ref. 10791EV.P.90-R01), and the Council approved Remedial Action Plan Addendum, as well as the National Environment Protection (Assessment of Site Contamination) Measure 1999 [NEPC 2013], ANZECC and NHMRC Guidelines (1992), applicable NSW Environment Protection Authority Guidelines, applicable Australian Standards, and State Environmental Planning Policy No. 55 - Remediation of Land.

24 **D005 - Mud/Soil**

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

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

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.

26 **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.

27 **D013 - Approved noise level 1**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the approved acoustic report contained in Condition 1.

The recommendations provided in the acoustic report shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application. A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

The assumptions and operational recommendations of the acoustic report are to be implemented and managed by the applicant during the use of the premises.

The operator is to manage noise from the use of the development in accordance with the acoustic report. A complaints handling procedure is to be included in the operational Plan of Management that details how noise complaints will be investigated and managed.

## 28 D014 - Plant and equipment noise

The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

## 29 D06A – Approval for bulk earthworks/major filling operations (Use for bulk earthworks/ major filling operations)

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 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 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 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."}

## 30 D Special \_ Fauna protection

All vegetation and structures are to be inspected to allow for the safe removal and translocation of all residing fauna, prior to works progressing. This effort is to be undertaken by a suitably qualified expert, with assistance provided by a local wildlife carer as required.

## 31 D Special BLANK

**Prior to the issue of a Construction Certificate**, and upon completion of the remediation works, the following documents are to be provided the Principal Certifying Authority and Penrith City Council, if Council is not the Principal Certifying Authority:

- A validation report, prepared by an appropriately qualified person is to be submitted before any building work can commence on the remediated site. The report shall certify that the remediation works have been carried out in accordance with the approved Remedial Action Plan, relevant NSW Environment Protection Authority requirements and Penrith Development Control Plan;
- Written notification that the site remediation works have been completed is to be submitted within 30 days of the said works having been completed; and
- That the site is suitable for the proposed use in accordance with State Environmental Planning Policy No. 55 - Remediation of Land.

32 **D Special BLANK**

An appropriately qualified person shall:

- (a) Supervise the remediation works;
- (b) Carry out the 'Supplementary Contamination Assessment Works', as detailed in Section 10.5 of the Council approved Remedial Action Plan and submit the associated Remedial Action Plan Addendum to Council for approval prior to any additional remedial works commencing (other than those outlined in Section 10.4 of the approved Remedial Action Plan); and
- (c) Address off site impacts and proposed management strategies where relevant.

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

33 **D Special BLANK**

Contaminated topsoil shall not be mixed with uncontaminated underlying natural soils.

34 **D Special BLANK**

Should contamination be found during development works (outside the scope of the Council approved Remedial Action Plan), and should remediation be required, Penrith City Council is required to be notified and consulted before the remediation works commence.

## **BCA Issues**

35 **E006 - Disabled access and facilities**

Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility". Details of compliance are to be provided in the relevant plans and specifications accompanying the Construction Certificate application.

36 **E009 - Annual fire safety-essential fire safety (Class 2-9 buildings)**

The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

- (a) deal with each essential fire safety measure in the building premises, and
- (b) be given:
  - within 12 months after the last such statement was given, or
  - if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

37 **E01A - BCA compliance for Class 2-9**

All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

- (a) complying with the deemed to satisfy provisions, or
- (b) formulating an alternative solution which:
  - complies with the performance requirements, or
  - is shown to be at least equivalent to the deemed to satisfy provision, or
- (c) a combination of (a) and (b).

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



### 38 E01B - EXTERNAL WALLS AND CLADDING FLAMMABILITY

The external walls of the building including attachments must comply with the relevant requirements of the National Construction Code (NCC). Prior to the issue of a Construction Certificate and Occupation Certificate the Certifying Authority and Principal Certifying Authority must:

- (a) Be satisfied that suitable evidence is provided to demonstrate that the products and systems proposed for use or used in the construction of external walls including finishes and claddings such as synthetic or aluminium composite panels comply with the relevant requirements of the NCC; and
- (b) Ensure that the documentation relied upon in the approval processes include an appropriate level of detail to demonstrate compliance with the NCC as proposed and as built.

### 39 E Special (BLANK)

All retaining walls are to be of masonry construction and are not permitted to be constructed in timber. The retaining wall located in the rear (south-east) corner of the site is to be stepped into two layers as shown on the architectural drawings. So as to ensure there are no trapped lowpoints on adjoining properties, the wall is to be finished flush with the natural surface levels of the adjoining lot/s.

### 40 E Special (BLANK)

All recommendations contained in the BCA Assessment Report, Reference 200150, prepared by Blackett Maguire Goldsmith, dated April 2020 and the Statement of Compliance - Access for People with a Disability, prepared by Accessible Building Solutions, dated 14 April 2020, are to be adhered to at the Construction Certificate, construction and Occupation Certificate stage of the development. The Principal Certifying Authority is to ensure that the report is complied at the relevant stages of the development.

## Health Matters and OSSM installations

### 41 F005 – Legionnaires Disease

When/If an air handling, hot water, warm water or water cooling system is installed:

- A certificate is to be obtained certifying that the system has been installed in accordance with the Public Health (Microbial Control) Regulation 2000 and AS 3666.1:1995.
- All relevant information required under clause 15(3) of the Public Health (Microbial Control) Regulation 2000 shall be submitted to Penrith City Council on completion of the building.
- The occupier of the premises shall ensure that the system is maintained in accordance with requirements of the Public Health (Microbial Control) Regulation 2000 and AS 3666.1:1995, unless the Council has been notified otherwise.

### 42 F006 - Water tank & nuisance

Any/all rainwater tank(s) must be maintained so as not to create a nuisance and it must be protected against mosquito infestation.

## Utility Services

### 43 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.

### 44 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.

In the event that a pad mounted substation is necessary to service the development, Penrith City Council shall be consulted over the proposed location of the substation before the Construction Certificate for the development is issued as the location of the substation may impact on other services and building, driveway or landscape design already approved by Council.

45 **G006 -**

**Prior to the issue of a Construction Certificate**, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:

- The requirements of the Telecommunications Act 1997;
- For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
- For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

**Prior to the issue of an Occupation Certificate**, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements above and the applicable legislation at the time of construction, must be submitted to the Principal Certifying Authority.

## **Construction**

46 **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 2 signs to be erected on the site:

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

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

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

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

#### 47 H002 - All forms of construction

Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

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

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

(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 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.

#### 48 H041 - Hours of work (other devt)

Demolition and Construction works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

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

Other construction works carried out inside a building/tenancy and 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

#### 49 K101 - Works at no cost to Council

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

#### 50 **K201 - Infrastructure Bond**

An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to commencement of any works on site or prior to the issue of any Construction Certificate, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website. Contact Penrith City Council's City Works Department on 4732 7777 or visit Penrith City Council's website for more information.

#### 51 **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 together with any applicable bonds, shall be lodged and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings);
- b) Concrete footpaths;
- c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage);
- d) Road occupancy or road closures;
- e) The placement of hoardings, structures, containers, waster skips, signs etc. in the road reserve;
- f) Temporary construction access; and
- g) Temporary ground anchors (for basement construction).

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 Assets Department on 4732 7777 or visit Penrith City Council's website for more information.

Note:

- Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate.

#### 52 **K210 - Stormwater Management**

The stormwater management system shall be consistent with Stormwater Plans identified in the table of approved drawings at Condition 1. Engineering plans and supporting calculations for the stormwater management systems are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate. Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage for Building Developments and Water Sensitive Urban Design (WSUD) Policies.

#### 53 **K211 - Stormwater Discharge – Basement Car parks**

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the stormwater drainage system for the basement car park has been designed in accordance with the requirements for pumped systems in AS 3500.3 (or as amended) (Plumbing and Drainage – Stormwater Drainage).

#### 54 **K222 - Access, Car Parking and Manoeuvring – General**

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that vehicular access, circulation, maneuvering, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS 2890.2, AS 2890.6 and Penrith City Council's Development Control Plan.

#### 55 **K224 - Construction Traffic Management Plan**

Prior to the commencement of any works on-site (including demolition works) or prior to the issue of any Construction Certificate, a Construction Traffic Management Plan (CTMP) shall be submitted to Council's City Assets Department for endorsement. The CTMP shall be prepared by a suitably qualified consultant with appropriate training and certification from the Roads & Maritime Services (RMS). The CTMP shall include details of any required road closures, work zones, loading zones and the like. Approval of the CTMP may require approval of the Local Traffic Committee. Please contact Council's City Assets Department on 4732 7777 and refer to Council's website for a copy of the Temporary Road Reserve Occupancy Application Form.

56 **K226 - Basement Geotechnical Testing/ Dilapidation Report**

Prior to the issue of a Construction Certificate, a geotechnical investigation report and strategy shall be submitted to the Certifying Authority to ensure stability of the Council infrastructure and surrounding developments. The geotechnical investigation, report and strategy shall comply with the recommendations contained in the technical direction GTD 2012/001 prepared by the Road and Maritime Services as amended.

57 **K228 - Dilapidation Report**

The developer shall undertake a dilapidation report for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the excavations associated with the development. If Council is not the Certifying Authority the dilapidation report shall be submitted to Council prior to the issue of any Construction Certificate and then updated and submitted prior to the issue of any Occupation Certificate confirming no damage has occurred. The dilapidation report/s are to take into account the recommendations of the Geotechnical Report submitted with the application and in particular Part 4 of that report with regard to surveys of adjoining properties. Surveys of adjoining properties are to be undertaken with the relevant landowners consent and all reasonable and fair attempts are to be made to obtain the required relevant landowners consent to enter properties.

58 **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 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.

59 **K502 - Works as executed – General and Compliance Documentation**

Prior to the issue of an Occupation Certificate, works-as-executed drawings, final operation and maintenance management plans and any other compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, WSUD Technical Guidelines and Stormwater Drainage for Building Developments.

An original set of works-as-executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Council is not the Principal Certifying Authority.

60 **K504 - Stormwater Compliance**

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

- a) Stormwater management systems (including on-site detention and water sensitive urban design)
- b) Basement pump out systems

- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
- Have 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 systems shall be provided as part of the Works As Executed drawings.

61 **K505 - Restriction as to User and Positive Covenant**

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

- a) Stormwater management systems (including on-site detention and water sensitive urban design)
- b) Basement pump out systems

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 and Drainage for Building Developments Policy.

62 **K - Waterways - Stormwater Management system operation and maintenance**

The stormwater management systems shall continue to be operated and maintained in perpetuity to the satisfaction of Council 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

63 **K Special (BLANK)**

All vehicle parking spaces, parking aisles and driveways/circulating roads must be designed and built in accordance with AS 2890.1-2004; AS 2890.6-2009; AS 2890.2-2002 and Council's requirements.

64 **K Special (BLANK)**

All car spaces are to be sealed, line marked and dedicated for the parking of vehicles only and not be used for storage of materials, products, waste materials, etc.

65 **K Special (BLANK)**

The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.

66 **K Special (BLANK)**

All vehicles are to enter/exit the site in a forward direction.

67 **K Special (BLANK)**

Subleasing of car parking spaces is not permitted by this consent. Car parking spaces are to be retained and maintained solely for the use of residents and staff of the development. Any staff parking spaces provided are to be free of charge to staff members.

68 **K Special Condition BLANK**

Hydraulic rock hammers are not to be used unless further monitoring is carried out by a qualified consultant and the recommendations contained in the Geotechnical Report are adhered to.

69 **K Special Condition BLANK**

The recommendations and requirements of the Geotechnical Report submitted with the application and specified in Condition 1 of this consent are to be adhered to at all times during excavation and construction.

## Landscaping

70 **L001 - General**

All landscape works are to be constructed in accordance with the stamped approved plans noted in the table at Condition 1 and the Penrith Development Control Plan. Landscaping shall be maintained in accordance with the approved plan, 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.

71 **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.

72 **L007 - Tree protection measures – no TMP with DA**

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 the Penrith Development Control Plan and industry best practice.

73 **L Special (BLANK)**

Arboricultural Consultant:

(a) The applicant shall engage a qualified Arboricultural Consultant with a minimum Level 5 qualification (AQF – Australian Qualification Framework) or the equivalent to be retained for the duration of the demolition and construction of the development.

(b) The consultant shall be engaged to prepare a site-specific Tree Protection Plan and Drawing in accordance with the conditions of this consent and Section 5 of AS 4970 – 2009, Protection of Trees on Development Sites. All trees to be retained and protected, and trees located on adjoining properties, within 5m of the subject property boundary, are to be covered by this report.

(c) An individual Tree Protection Plan and Drawing shall be required for each stage of the development where changes within the Tree Protection Zone (TPZ) are required.

(d) In addition, the consulting arborist is to identify key stages where monitoring and certification will be required as outlined in AS 4970 – 2009, Section 5.

(a) The relevant Tree Protection Plan and Drawing is to be retained and implemented on site at all times.

(b) The consulting arborist shall be present on-site during demolition and any of the key stages identified in the schedule required in the condition point above.

(e) A written account of the satisfactory completion of each of these stages as assessed by the consulting arborist is to be reported to the Principal Certifying Authority.

74 **L Special (BLANK)**

The following changes are to be made to the approved Landscape drawings to the satisfaction of the Principal Certifying Authority prior to the release of any Construction Certificate:

- All outdoor communal seating shall include backrests and armrests;
- A minimum of one vegetable planter bed located on the communal roof top garden is to be raised in height so that it is easily reached and can be used by persons in a wheelchair;
- More communal seating is to be provided in the open space areas of the development as follows: in the Lower Courtyard - 4 seats plus one table and chair in front of the community room; 1 long bench near the entry to Building A; and 5 seats behind Building B or in the vegetable garden area;
- Lighting is to be provided to the common areas of the site to illuminate pathways, seating areas and entrances to buildings. The lighting is to be designed so that it minimises light spill into the internal areas of dwellings on the site and at adjacent sites;
- The banksia shown at the front entry (Stafford Street) is to be replaced with a *Corymbia Maculata* (or similar species);
- The eastern side of the front setback to Stafford Street is to contain 2 street trees;
- Removal of the existing power pole located near the proposed front entry on Stafford Street is to be further investigated with a view to removing the power pole and providing further deep soil planting in the vacated area.

75 **L Special (BLANK)**

Tree Protection Plan and Drawing:

(a) The applicant shall engage a qualified Arboricultural Consultant with a minimum Level 5 qualification (AQF – Australian Qualification Framework) to prepare a site-specific Tree Protection Plan and Drawing in accordance with the conditions of this consent and Section 5 of AS 4970 – 2009, Protection of Trees on Development Sites.

(b) The Tree Protection Plan shall also specifically address (but not be limited to) the following points:

- i. All stages of the demolition/construction process;
- ii. Specific tree protection requirements, especially when intrusion into the Tree Protection Zone (TPZ) or when trunk and branch protection is required;
- iii. A requirement/specification stating that all underground services to be installed within the designated TPZ of a tree to be retained must be installed using directional drilling/thrust boring techniques;
- iv. An individual Tree Protection Plan and Drawing for each stage of the development where changes within the Tree Protection Zone (TPZ) are required (i.e. prior to commencement, demolition, during construction, post construction and landscaping).

(c) In addition, the consulting arborist is to identify key stages where monitoring and certification will be required as outlined in AS 4970–2009, Section 5.

(d) The completed Tree Protection Plan and Drawing is to be provided to the Manager of Development Services for final approval prior to the issue of a Construction Certificate.

(e) The approved Tree Protection Plan retained and implemented on site at all times.

76 **L Special (Tree protection - Australian Standards)**

The trees required to be retained must be protected in accordance with Australian Standard AS 4970 - 2009, Protection of Trees on Development Sites.

77 **L Special (Tree protection)**

The trees identified as being retained must be retained and protected in accordance with the arborist's report recommendations.

## **Certification**

#### 78 Q001 - Notice of Commencement & Appointment of PCA1

Prior to the commencement of any earthworks, construction or demolition works on site, the proponent is to:

- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
- (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

#### Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

#### 79 Q005 - Certification

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building(s). The commitments listed in the BASIX Certificate are to be completed prior to the issue of the Occupation Certificate.

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. This includes submitting the following documentation to the Principal Certifying Authority:

- a) Written documentation or Compliance Certificate from Penrith City Council certifying to the satisfactory completion of works approved under the Roads Act 1993;
- b) The provisions of AS 1428.1 and that any person with disabilities can access the building, including its perimeter. In this regard, the Compliance Certificate (or other documentation) is to be prepared by an accredited access consultant;
- c) Appropriate documentation that the positive covenant on the land has been lodged or registered with the Land and Property Information division of the Department of Lands in regard to the waste collection arrangements;
- d) Copy of registered 88B Instrument for the waste collection arrangement;
- f) Certification from the Design Architects(s) that the landscaping has been provided in accordance with the approved plans and the conditions of this consent requiring amendments to the landscaping.

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.



# **Appendix - Development Control Plan Compliance**

## **Development Control Plan 2014**

### **Part C - City-wide Controls**

#### **Waste Management:**

The car parking area of the proposed development has not been designed to accommodate Council's waste truck as the required height clearance of 3.5m for the waste vehicle has not been provided. This matter has been discussed above in the report at the Section relating to Internal Referrals. In summary, the applicant proposes that waste collection occur by private commercial contract and is aware that Council is required to charge a domestic waste collection levy under the Local Government Act. The applicant has agreed to conditions of consent that relate to this.