

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA20/0487
Description of development:	Demolition of Existing Structures & Torrens Title Subdivision x 2 Lots
Classification of development:	N/A

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 1 DP 38178
Property address:	30 Mitchell Street, ST MARYS NSW 2760

DETAILS OF THE APPLICANT

Name & Address:	Devine Drafting & Design PO Box 7323 MOUNT ANNAN NSW 2567
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DECISION OF CONSENT AUTHORITY

Penrith Council has determined to grant “Deferred commencement” consent under Section 4.16(3) of the Environmental Planning and Assessment Act 1979. In accordance with Section 4.17 of the Act, the “Deferred commencement” consent is granted subject to the conditions listed in this Notice.

The conditions listed in Schedule 1 are to be complied with prior to the commencement of the consent. On completion of all conditions in Schedule 1 that need to be satisfied before the consent can be commenced, Council will issue an operational consent for the development. If the conditions in Schedule 1 are approved by an accredited certifier, then a copy of the certification relating to the satisfaction of the Schedule 1 condition(s) are to be submitted to Council. [Note: this is to enable Council to issue the operational consent for the development as the accredited certifier cannot issue the operational consent.]

The condition to be satisfied prior to the commencement of the consent will need to be completed with 12 months from 15 February 2021.

Please note that this consent will lapse on the expiry date unless the development has commenced in that time.

Date from which deferred commencement consent operates	15 February 2021
Date the deferred commencement consent expires	15 February 2022
Date of this decision	9 February 2021

POINT OF CONTACT

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

Assessing Officer:	Jacqueline Klincke
Contact telephone number:	+612 4732 8391

NOTES

Reasons

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

Conditions

Your attention is drawn to the attached conditions of consent in Schedule 1 requiring compliance prior to the development consent becoming operational.

Council will issue an operational development consent on compliance of all conditions listed in Schedule 1 by the given timeframe.

Certification and advisory notes

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

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

Review of determination

The applicant may request Council to review its determination pursuant to Division 8.2 of the Environmental Planning and Assessment Act 1979 within twelve months of receiving this Notice of Determination.

These provisions do not apply to designated development, complying development or crown development pursuant to Section 8.2(2) of the Environmental Planning and Assessment Act 1979.

Appeals in the Land and Environment Court

The applicant can appeal against this decision in the Land and Environment Court within twelve months of receiving this Notice of Determination.

There is no right of appeal to a decision of the Independent Planning Commission or matters relating to a complying development certificate pursuant to clause 8.6(3) of the Environmental Planning and Assessment Act 1979.

Designated development

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 56 days after the date of this notice.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 56 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

Sydney Western City Planning Panels

If the application was decided by the Sydney Western City Planning Panel, please refer to Section 2.16 of the Environmental Planning and Assessment Act, 1979 (as amended) for any further regulations.

SCHEDULE 1: CONDITIONS TO BE COMPLIED WITH PRIOR TO CONSENT BECOMING OPERATIONAL

Schedule 1 (Deferred Commencement)

- 1 An easement for drainage minimum 1.5m wide shall be provided along the southern boundary of 52 Mamre Road, St Marys (Lot 8 DP 38171), benefitting 30 Mitchell Street, St Marys (Lot 1 DP 38171). Evidence of registration of the easement with Land Registry Services (LRS) shall be submitted to Penrith City Council.

Should documentation and/or correspondence as detailed above not be received by Council within 12 months from the date of this consent, this consent shall lapse.

ATTACHMENT 1: CONDITIONS OF CONSENT

General

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

Drawing Title	Drawing Number	Revision	Prepared By	Dated
Existing Site Analyst	20192-2 m.w	C	Devine Drafting & Design	28/09/2020
Subdivision Plan	20192-2 m.w	C	Devine Drafting & Design	28/09/2020
Stormwater Drainage Plan and Details	SW01	C	AE Consulting Engineers	27/10/2020
Stormwater Drainage Longsection	SW02	C	AE Consulting Engineers	27/10/2020

- Waste Management Plan
- 2 **Prior to the issue of a Subdivision Certificate**, development consent no. DA18/0809 shall be formally surrendered to Penrith City Council in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*.
 - 3 **Prior to the issue of a Subdivision Certificate**, the building envelope of Lot 1 is to be amended in order to provide for a minimum front setback of 5.5m as per the *Penrith Development Control Plan 2014*.

Demolition

- 4 **Prior to the issue of a Subdivision Certificate**, all buildings and structures approved for demolition shall satisfactorily be completed.
- 5 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**.

- 6 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.

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

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

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

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

In the event that the demolition relates to works inside the building and does not involve external walls or the roof, and does not involve the use of equipment that emits noise, then the demolition works are not restricted to the hours stated above.

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

Heritage/Archaeological relics

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

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

Environmental Matters

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

12 No fill material shall be imported to the site until such time as a Validation Certificate (with a copy of any report forming the basis for the validation) for the fill material has been submitted to, considered and approved by Council. The Validation Certificate shall:

- state the legal property description of the fill material source site,
- be prepared by an appropriately qualified person (as defined in Penrith Development Control Plan) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
- clearly indicate the legal property description of the fill material source site,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

{Note: Penrith Development Control Plan defines an appropriately qualified person as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}.

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation works may be requested. In these circumstances the works shall be carried out prior to any further approved works.

13 Any fill material applied to the site is to be compacted in accordance with AS 3798-2007. Certification is to be submitted to the Principal Certifying Authority by a Geotechnical Engineer verifying that the work has been undertaken prior to the issue of a Subdivision Certificate.

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

14 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.

15 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 Subdivision 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.

- 16 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.

Utility Services

- 17 **Prior to the issue of a Subdivision Certificate**, the following service authority clearances shall be obtained and provided to the Principal Certifying Authority:
- a Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water;
 - a Notification of Arrangement Certificate from Integral Energy stating that satisfactory arrangements have been made for electricity supply to all proposed allotments in the subdivision, including any necessary easements; and
 - a written clearance from an approved telecommunications service provider that satisfactory arrangements have been made for underground telephone services to all proposed allotments in the subdivision, including any necessary easements.
- 18 **Prior to the issue of a Subdivision 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 a Subdivision 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

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

Engineering

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

- 21 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 Subdivision Works 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 Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

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

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

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

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

Note:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Subdivision Works Certificate.
 - Separate approval may be required from Transport for NSW for classified roads.
 - All works associated with the Roads Act approval must be completed prior to the issue of any Subdivision Certificate.
- 23 **Prior to the issue of any Subdivision Works Certificate**, the Certifier shall ensure that any applicable application, including the payment of application and inspection fees, has been lodged with and approved by Transport for NSW (TfNSW) for any works within the Mamre Road road reserve.

A copy of TfNSW approval shall be submitted to Penrith City Council prior to Penrith City Council issuing any Roads Act approval.

- 24 A Subdivision Works Certificate (previously a Construction Certificate) is to be approved by the Certifier for the provision of any subdivision works (road, drainage or earth works).

Prior to the issue of any Subdivision Works Certificate, the Certifier shall ensure that engineering plans are consistent with the stamped approved plans prepared by A.E Consulting Engineers, Job No. D20149, Drawing No. SW01 & SW02, revision C, dated 27/10/2020, and that all subdivision works have been designed in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines and best engineering practice.

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

- Public and private roads
- Stormwater management (quantity and quality)
- Interallotment drainage
- Private access driveways
- Sediment and erosion control measures
- Flood control measures
- Overland flow paths
- Traffic facilities
- Earthworks Bridges, culverts, retaining walls and other structures
- Landscaping and embellishment works

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

Note:

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

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

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

- 26 Work on the subdivision shall not commence until:

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

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

- 27 Soil testing is to be carried out to enable each lot to be classified according to AS 2870 Residential Slabs and Footings. The results shall be submitted to Penrith City Council prior to the issue of any Subdivision Certificate.
- 28 Upon completion of all works in the road reserve, all verge areas fronting and within the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.
- 29 **Prior to the issue of any Subdivision Certificate**, the Principal Certifier shall ensure that all works associated with any Section 138 Roads Act approval(s) have been inspected and signed off by Transport for NSW and Penrith City Council as applicable.
- 30 **Prior to the issue of any Subdivision Certificate**, the Principal Certifier shall ensure that all subdivision works required by this consent have been satisfactorily completed or that suitable arrangements have been made with Penrith City Council for any outstanding works.
- 31 **Prior to the issue of any Subdivision Certificate**, the following compliance documentation shall be submitted to the Principal Certifier. A copy of the following documentation shall be provided to Penrith City Council where Penrith City Council is not the Principal Certifier:
 - a) Works As Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Subdivision Works Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The WAE drawings shall be prepared in accordance with Penrith City Council's Engineering Construction Specification for Civil Works.
 - b) Surveyor's Certificate certifying that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries, private or public lands.
 - c) Soil testing for each lot to be classified according to AS 2870 Residential Slabs and Footings.
- 32 **Prior to the issue of any Subdivision Certificate**, the following easements shall be nominated on the final plan of subdivision:
 - a) 1.5m wide easement for drainage over proposed Lot 2 benefiting proposed Lot 1.

Landscaping

- 33 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 2014*.

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

Subdivision

- 35 **Prior to the issue of a Subdivision Certificate**, the final plan of subdivision and two (2) copies of the plan shall be submitted. The plan of subdivision must indicate, where relevant:
- All drainage easements, rights of way, restrictions and covenants.
 - All proposed dedications of roads/drainage/public reserve, which are to be undertaken at no cost to Penrith City Council.

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

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

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

- 36 **Prior to the issue of a Subdivision Certificate**, one (1) street tree shall be planted in accordance with Section C6 the *Penrith Development Control Plan 2014*. The tree shall be of the same species or similar to the existing street trees along Mitchell Street.
- 37 A Surveyor's Certificate is to be lodged with the application for a Subdivision Certificate that certifies that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries.

Section 94

- 38 This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for Cultural Facilities. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$561.00 is to be paid to Council prior to a Subdivision Certificate being** issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 Contributions plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for Cultural Facilities may be inspected at Council's Civic Centre, 601 High Street, Penrith.

Note: The timing of contributions payable may be otherwise affected in accordance with Planning Circular PS20-003 dated 3 July 2020 and the associated NSW Government Ministerial Direction - Infrastructure Contributions.

- 39 This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for District Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$6,330.00 is to be paid to Council prior to a Subdivision Certificate being** issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 Contributions plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for District Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

Note: The timing of contributions payable may be otherwise affected in accordance with Planning Circular PS20-003 dated 3 July 2020 and the associated NSW Government Ministerial Direction - Infrastructure Contributions.

- 40 This condition is imposed in accordance with Penrith City Council's Section 7.11 Contributions Plan for Local Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$2,287.00 is to be paid to Council prior to a Subdivision Certificate being** issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.11 Contributions plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The S7.11 invoice accompanying this consent should accompany the contribution payment. The Section 7.11 Contributions Plan for Local Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

Note: The timing of contributions payable may be otherwise affected in accordance with Planning Circular PS20-003 dated 3 July 2020 and the associated NSW Government Ministerial Direction - Infrastructure Contributions.

Certification

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

SIGNATURE

Name:	Jacqueline Klincke
Signature:	

For the Development Services Manager