

# PENRITH CITY COUNCIL

## NOTICE OF DETERMINATION

### DESCRIPTION OF DEVELOPMENT

Application number:	DA21/0045
Description of development:	Demolition Works & Land Remediation Works to Facilitate Proposed Penrith City Park
Classification of development:	N/A

### DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot E DP 163176 Lot 1 DP 252457 Lot 1 DP 526304 Lot 10 DP 553665 Lot 11 DP 553665 Lot 2 DP 556075 Lot 3 DP 1200790 Lot 1 DP 164798
Property address:	134 - 138 Henry Street, PENRITH NSW 2750 144 Henry Street, PENRITH NSW 2750 140 - 142 Henry Street, PENRITH NSW 2750 46 Station Street, PENRITH NSW 2750 48 - 50 Station Street, PENRITH NSW 2750 42 - 44 Station Street, PENRITH NSW 2750

### DETAILS OF THE APPLICANT

Name & Address:	Jbs&G Australia Pty Ltd Level 1 50 Margaret Street SYDNEY NSW 2000
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### DECISION OF CONSENT AUTHORITY

In accordance with Section 2.17 and 4.18(1) (a) of the Environmental Planning and Assessment Act 1979 (as amended), consent is granted subject to the conditions implementation in attachment 1.

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

Date from which consent operates	26 April 2021
Date the consent expires	26 April 2026
Date of this decision	21 April 2021

## **POINT OF CONTACT**

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

Assessing Officer:	Lucy Goldstein
Contact telephone number:	+61247328136

## NOTES

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### **Reasons**

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

### **Conditions**

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

### **Certification and advisory notes**

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

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

### **Review of determination**

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

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

### **Appeals in the Land and Environment Court**

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

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

### **Designated development**

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

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

### **Sydney Western City Planning Panels**

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

# ATTACHMENT 1: CONDITIONS OF CONSENT

## General

- 1 The development must be implemented substantially in accordance with the Statement of Environmental Effects prepared by JBS&G, Reference 58140/134529 (Rev A), dated 14 December 2020, the application form, and any supporting information received with the application, except as may be amended by the following conditions.

## Demolition

- 2 All demolition works are to be conducted in accordance with the provisions of AS 2601-1991 "The Demolition of Structures" and the Hazardous Building Materials Survey (Ref: 58140/127,994 Rev 0) prepared by JBS&G Australia Pty Ltd and dated 18 March 2020.

**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 lawful waste management facility.

- 3 Demolition and remediation works will 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.

In the event that the demolition or remediation work does not involve the use of equipment that emits noise then the work is 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 works.

## Heritage/Archaeological relics

4 **Prior to the commencement of demolition works**, the Funeral Home Building located at 42-44 Station Street is to be archivally recorded, including its building exterior and interior. The archival recording is to be prepared by a suitably qualified heritage consultant using archival quality material and prepared in accordance with 'NSW Heritage Office's How to Prepare Archival Records of Heritage Items' (1998), and 'Photographic Recording of Heritage Items Using Film or Digital Capture' (2006).

**Prior to the commencement of demolition works**, a copy of the archival record as required by this condition is to be provided to Council's library.

5 The fountain located at the corner of Station and Henry Street that is associated with the Funeral Home building must be preserved in situ.

6 The development is to be carried out in accordance with the recommendations of the 'City Park Penrith Heritage Impact Statement' prepared by Artefact Heritage Services Pty Ltd, dated 27 January 2021, in so far as the recommendations relate to the subject development.

## Environmental Matters

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

The approved sediment and erosion control measures are to be maintained until development of the site has been completed including all building and landscaping work to occur post remediation of the site. These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur.

8 Offensive odours are not to be emitted from the site. Vapours, fumes, gases, particles or any other substance that are considered to be harmful to human health or the environment or impact unreasonably on a person outside of the premises are not to be emitted from the site.

9 Upon submission to Penrith City Council of the NSW EPA Accredited Site Auditor prepared Site Audit Statement and Site Audit Report, including the Environmental Management Plan, the applicant shall submit to Council for approval, an 88B instrument which includes a restriction as to user over the subject site, with Council being the beneficiary. The restriction shall contain the following wording (or wording to the effect and as appropriate):

1. There is soil contamination on the land. Any risks from the presence of that contamination should be assessed prior to undertaking development on the land or changing the use of the land.
2. This land is the subject of an Environmental Management Plan prepared by #####, dated ##### that

contains specific requirements in relation to managing activities on this land.

3. The Environmental Management Plan refers to areas of residual soil contamination and on-site management of contaminated material (specify, asbestos and other contaminants) that must not be excavated without obtaining an environmental assessment report. Excavation works may also require the consent of Council.

Following approval by Council and within six (6) months of submission of the Site Audit Statement and Site Audit Report, the restriction must be registered with the Land & Property Management Authority in accordance with Section 88B of the *Conveyancing Act 1919*.

- 10 The Council approved and NSW EPA Accredited Site Auditor endorsed Environmental Management Plan (EMP) for the ongoing management of the site is to be implemented and complied with. Should the document be amended at any time, a copy of the revised EMP shall be submitted to Council.
- 11 No services, infrastructure or building components other than the structural components required for the construction of the containment cell, are to traverse or impact the containment cell.
- 12 Works shall be carried out in accordance with the *NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009* and the *Construction Noise & Vibration Management Plan City Park Penrith prepared by Acoustic Dynamics and dated 11 December 2020*.
- 13 Site remediation works shall be carried out generally in accordance with the following Council approved and NSW EPA Accredited Site Auditor endorsed documents:
  - Penrith Central Park Village Overarching Remedial Action Plan (Overarching RAP) (Ref:55073/120362 Rev 0) prepared by JBS&G Australia Pty Ltd and dated 5 March 2019
  - Draft Remedial Work Plan (RWP) Penrith Central Park Village Ref:58410/132003 Rev B prepared by JBS&G Australia Pty Ltd and dated 8 December 2020 (as well as final version RWP and additional RWPs developed as works progress and as endorsed by Site Auditor)
  - Hazardous Building Materials Survey (Ref: 58140/127,994 Rev 0) prepared by JBS&G Australia Pty Ltd and dated 18 March 2020
  - Penrith Central Village Park Remediation Works Construction Environmental Management Plan (Ref: 58140/123808 Rev A) prepared by JBS&G Australia Pty Ltd and dated 14 December 2020
  - Health and Safety Plan
  - Site Auditor Interim Advice
  - Environmental Management Plan

as well as Penrith Development Control Plan 2014, applicable NSW Environment Protection Authority made and endorsed Guidelines (including the Contaminated Land Management Guidelines for the NSW Site Auditor Scheme (3rd edition) 2017 ), the National Environment Protection (Assessment of Site Contamination) Measure 1999 [NEPM2013] and ANZECC and NHMRC Guidelines.

The above documents may be revised, updated and additional plans developed as required throughout the remediation works. As the plans and documents are updated and new plans or documents developed, a copy of the Site Auditor endorsed plans/documents (including Site Auditor Interim Advice) are to be provided to Penrith City Council.

14 No remediation works are to commence until:

(a) the remaining pre-remediation investigations have been completed and endorsed by the NSW Accredited Site Auditor and the Draft Remedial Work Plan (RWP) has been finalised and endorsed by the Site Auditor; and

(b) the Site Auditor endorsed RWP has been submitted to and approved by Penrith City Council.

15 All remediation works, including all associated investigation and validation works, are to be supervised by an appropriately qualified person. An appropriately qualified person is defined as a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, 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.

The appropriately qualified person/s shall:

(a) Supervise the remediation works

(b) Supply Council with a copy of any relevant documentation for further testing carried out during the remediation works

(c) After completion of works, provide Council with a Site Auditor endorsed Validation Report, Environmental Management Plan and other documents as required. The Validation Report is to include Survey Plan(s)/Works-as-Executed Plan showing the location and extent of the containment of contaminated material (containment cell).

A NSW EPA Accredited Site Auditor (as accredited under the Contaminated Land Management Act 1997) shall supervise the remediation works, including all associated investigation and validation works.

A Site Audit Statement and Site Audit Report must be submitted to Penrith City Council on completion of the remediation and validation works and prior to any other works commencing on the site. The site must be suitable for its intended land use and shall not pose any unacceptable risk to human health or the environment.

The contact details of the appropriately qualified person/s, and the NSW EPA Accredited Site Auditor, engaged for the works, shall be provided with the Notice of Commencement.

## Construction

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

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

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

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

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

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



17 Prior to the commencement of 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.

## Engineering

18 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 demolition or remediation works. 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.

19 **Prior to the commencement of any demolition or remediation works**, 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) Demolition or remediation works within the road reserve
- b) Road occupancy or road closures (including temporary construction work zones and tower crane operation)
- c) The placement of hoardings, structures, containers, waste skips, signs etc. in the road reserve
- d) 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.

20 **Prior to the commencement of any demolition or remediation works**, a Construction Traffic Management Plan (CTMP) shall be submitted to Penrith City Council's Asset Management Department for endorsement. The CTMP shall be prepared by a suitably qualified consultant with appropriate training and certification from Transport for NSW. 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 Asset Management Department on 4732 7777 and refer to Council's website for a copy of the Temporary Road Reserve Occupancy Application Form.

21 The demolition and remediation works shall not concentrate, dam or divert overland flows onto adjoining properties or Council's road network.

## Landscaping

22 The existing *Corymbia* sp (*Corymbia*) on the site is to be retained.

- 23 An Arborist with a minimum AQF (Australian Qualification Framework) Level 5 shall be engaged for the duration of the approved works to ensure that tree protection measures on the site are implemented and complied with.

The project Arborist is to ensure that demolition can be undertaken in such a way that machinery will not be required to enter into the designated Tree Protection Zone (TPZ) and so that building debris does not fall into the TPZ of the *Corymbia* sp (*Corymbia*) located on the southern boundary. In the event that remediation works are required to be undertaken within a distance of 15m from the existing *Corymbia* sp (*Corymbia*), the project Arborist must be consulted in regards to those works.

- 24 **Prior to the commencement of works**, a Tree Protection Plan (Specification) and Drawing written in accordance with AS 4970 - 2009, 'Protection of Trees on development sites' is to be prepared, to appropriately retain and protect the *Corymbia* sp (*Corymbia*) located on the southern boundary. of the site, and be submitted to and approved by Penrith City Council.

At a minimum the following protection measures of the plan shall include but not be limited to:

- providing a Tree Protection Area of at a distance of 15 metres to the north; and as bounded by the current curb edge to the east and west; and as bounded by the curb to the south;
- ensuring that the existing road surface and small garden bed are retained within this perimeter. This surface is not to be removed as part of this approval;
- ensuring the fencing to be installed is constructed of wooden panels, palings or the like to prevent soil and debris encroaching into the TPZ as detailed in *AS 4970 - 2009, Protection of Trees on development sites, Section 4.3*;
- providing for weather resistant signage in a prominent locations on the tree protection fence that indicates access into the Tree Protection Zone is not permitted. The sign shall be a minimum dimension of 500mm high x 400mm wide of similar design and layout as per *Appendix C, AS4970 - 2009 Protection of trees on development sites*
- ensuring the fence is installed prior to the commencement of demolition;
- requiring the project Arborist to supervise any work within or directly adjacent to the Tree Protection Zone;
- requiring the project arborist to undertake regular inspections to ensure the fence is intact, complies with the above standard, is installed to the appropriate dimensions and provides effective protection for the tree to be retained.
- ensuring the Tree Protection Zone (TPZ) is maintained as per *AS4970 - 2009, Section 4.6*. Access to the TPZ is permitted to undertake necessary maintenance such as mowing, watering & weed control;
- ensuring building materials, chemical storage, site sheds, wash out areas, and similar shall not be located within the fenced Tree Protection Zone or that the Tree protection Zone is not downstream of any washdown areas.
- Providing a contingency should tree roots be exposed during approved works to permit roots with a diameter less than 25mm to be pruned cleanly using sharp hand tools and not torn or ripped by machinery and require tree roots greater than 25mm in diameter are to be assessed by a qualified arborist - minimum Australian Qualification Framework (AQF) Level 5 or equivalent – before any pruning work is undertaken.

The Tree protection Plan (Specification) and Drawing is to:

- require that the *Corymbia* sp (*Corymbia*) located on the southern boundary and the location of the tree protection fence be marked on all demolition and construction drawings.
- provide a requirement that all contractors and workers on site shall be briefed on the tree protection and

management procedures in place as part of their site induction. A written record of the induction process is to be kept on site.

- identify key stages where monitoring and certification will be required as outlined in AS 4970–2009, Section 5;
- require the project Arborist to supervise any work within or directly adjacent to the Tree Protection Zone;
- nominate whether trunk and branch protection will be required to be installed on the tree and at what stages this may be required;
- permit the project Arborist to alter/adjust the Tree Protection Zone or measures providing that reasons for this are clearly documented, justifiable, undertaken under the supervision of the project Arborist and that those changes will not cause detriment or damage to the tree;
- require the project Arborist to undertake site inspections not less than weekly to ensure that Tree Protection measures are in place.
- require the project Arborist to a written record (e.g. field notes and photos) to provide evidence of site attendance and compliance with the approved conditions of consent
- require the project Arborist to forward a copy of the written record of inspection to the Principal Certifying Authority within 1 week of that inspection occurring.
- require the project Arborist to identify that whether there is a breach of the Tree Protection Plan. If a breach is identified the project arborist must report this to the Principal Certifying Authority and specify any remedial works and the timeframe in which these works must be completed. If an inspection reveals that there has been a significant breach of the Tree Protection Plan (specifications), inspections from then on must be carried out twice weekly.

**The approved Tree Protection Plan and its protection measures shall be in place prior to demolition commencing and a copy of the plan shall be retained on site at all times.**

## **SIGNATURE**

Name:	Lucy Goldstein
Signature:	

For the Development Services Manager