

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA17/0559
Proposed development:	Proposed 45 x Unit Residential Flat Building Including Area for a Future Potential Ground Floor Child Care Centre with Associated Basement Car parking, Landscaping & Drainage works
Property address:	72 Park Avenue, KINGSWOOD NSW 2747
Property description:	Lot 10 DP 1224143
Date received:	27 June 2017
Assessing officer	Jane Hetherington
Zoning:	Zone R4 High Density Residential - LEP 2010
Class of building:	Class 2 , Class 9b , Class 7a
Recommendations:	Deferred Commencement

Executive Summary

Council is in receipt of a development application for the construction of a residential flat building containing 45 units, including an area for a future potential ground floor child care centre and 2 levels of basement car parking at 72 Park Avenue, Kingswood.

The subject site is zoned R4 High Density Residential under the Penrith Local Environmental Plan 2010. *Residential flat buildings* are a permissible land use (under the residential accommodation group term) in the R4 High Density Residential zone, with Council consent. The application also seeks in principle approval of an area for a future child care centre. *Centre-based child facilities* are also a permissible land use in the R4 High Density zone.

The Minister for Planning recently gave directions under Section 9.1 of the *Environmental Planning and Assessment Act 1979* on the development applications that are to be determined on behalf of Council by a local planning panel. These directions, dated 23 February 2018, outline that development within the Penrith Local Government Area (LGA) that is for a residential flat building under the provisions of *State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development* require determination by a local planning panel. The application was presented to the LPP on the 26 September 2018 however, the Panel was not in a position to determine the Development Application. This was because the required concurrence, or time to assume concurrence, had not been obtained from Sydney Trains, under the provisions of Clauses 85 and 86 of SEPP (Infrastructure) 2007. While favouring granting consent, the appropriate pathway was to delegate determination to Council staff, pending satisfaction of the concurrence and/or referral requirements of SEPP (Infrastructure) 2007.

The development application as originally lodged included 50 residential units and variations to the building height requirements within the LEP. Through the course of the assessment and in response to issues raised by Council, the development has been amended to reduce the extent of the height variation, improve design quality and reduce the density to 45 x units as now proposed.

The development application has been advertised in a local newspaper and notified to all adjoining properties and adjacent property owners and placed on public exhibition between 14 July and 28 July 2017. One submission was received in response raising concerns relating to over supply of child care services in the Penrith area. The amended plans were re-notified between 2 July 2018 and 16 July 2018. No further submissions were received.

Key issues identified for the proposed development include:

Impact of Future Child Care Centre

While the current development application does not seek approval for the fit-out and use of the child care centre (CCC), concept approval within the ground floor of the development is sought. The application was accompanied by an acoustic report and traffic report which addressed any potential impacts from a future potential CCC. These documents have provided Council a level of assurance that a CCC within the development could comply with relevant policies and criteria. However, detailed assessments will still be required to accompany the future fit-out and use development application.

Extent of Retaining Walls

There are numerous retaining walls located across the site which is due to the natural topography. While the development has incorporated a split level slab construction, cut (up to 2m) is still required across the site. The majority of retaining walls will not be visible from adjoining properties or the street and as such, is not considered to impact on the amenity of adjoining residents or the streetscape. However, the development includes a solid masonry wall along the eastern boundary which has a maximum height of 2.6m. This is due to the basement height (which is required to accommodate Council's Waste Services vehicles) and the provision of fire stairs. Given that the ground floor of the adjoining RFB development consists of garages and that the common driveway is located adjacent to the site, the proposed wall is not considered to have any adverse amenity impacts. In addition, the highest point of the wall (2.6m) is setback approximately 23m from the street and therefore not considered highly visible from the street.

An assessment under Section 4.15 of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

The subject site is a single residential allotment located on the northern side of Park Avenue known as 72 Park Avenue, Kingswood. The site is a vacant lot and was created from a subdivision of land previously owned by St Josephs Primary School, which shares the northern boundary of the subject site.

The site has a frontage of 30 metres with an overall area of 1960.4m². The site is orientated in a southern alignment. The site falls from north to the street by approximately 6 metres. The site is not identified as bush fire prone land and is not affected by local overland flow or mainstream flooding.

The surrounding locality is characterised by older medium to high density housing stock. Existing developments in the area, particularly on Park Avenue, are older style strata titled residential units which are unlikely to be redeveloped in the medium to long term.

The subject site is bound by St Josephs Primary School to the north, a 3 storey flat building to the east, the Western Railway adjacent Park Avenue and a two storey townhouse development to the west.

Proposal

The proposed development involves:

- The construction of a 5 storey residential flat building comprising the following:
 - 45 units (15 x 1 bedroom units & 30 x 2 bedroom units) - including 5 adaptable units; and
 - Rooftop common open space.

- Area within ground floor for child care centre (subject to future development application);

- Two levels of basement car parking comprising:
 - 45 x resident car parking spaces (including five accessible spaces);
 - 10 x visitor car parking spaces;
 - 11 x staff parking spaces for child care workers;
 - 3 x motorcycle parking spaces;
 - Bicycle parking; and
 - Waste infrastructure.

- Associated landscaping and drainage works.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- 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

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 4.15 (formerly Section 79C) of the *Environmental Planning and Assessment Act 1979*, and having regard to those matters, the items below have been identified for further consideration.

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

State Environmental Planning Policy (Infrastructure) 2007

Clause 86 - Excavation in, above, below or adjacent to rail corridors

Clause 86 of *State Environmental Planning Policy (Infrastructure) 2007* applies to development that involved the penetration of ground to a depth of at least 2m below ground level (existing) on land:

- (a) within, below or above a rail corridor, or
- (b) within 25m (measured horizontally) of a rail corridor, or
- (b1) within 25m (measured horizontally) of the ground directly below a rail corridor, or
- (c) within 25m (measured horizontally) of the ground directly above an underground rail corridor.

Given the proximity of the subject site to the Main Western Rail and that the development includes the construction of a basement car park, the application was referred to Sydney Trains on 17 September 2018. Sydney Trains granted concurrence on the 29 October 2018 subject to deferred commencement and operational conditions. The recommended conditions have been included in the notice of determination.

Clause 87 - Impact of rail noise or vibration on non-rail development

Clause 87 of *SEPP (Infrastructure) 2007* specifies that if development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the residential accommodation - 35 dB(A) at any time between 10.00 pm and 7.00 am,
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time.

The application was supported by an acoustic report titled '*Acoustic and Railway Vibration DA Assessment*' prepared by Acouras Consultancy and dated 6 August 2018. This report specifies the external construction materials and glazing thickness required to achieve the above noise criteria. A condition of consent is recommended to ensure that the recommendations of the acoustic report are incorporated into the construction certificate plans.

State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy 55 – *Remediation of Land* (SEPP 55) requires that the suitability of the site be considered in the assessment of a development application. Clause 7 of the SEPP 55 outlines these provisions to be considered. The Statement of Environmental Effects (SOEE) outlined that the site has been vacant for some time and historically has been used as surplus land for the adjoining school. A review of aerial photography and site history has not identified any evidence of land contaminating activities that would warrant a detailed site investigation noting that the site is zoned for residential development with adjoining residential development currently constructed. The proposal has been reviewed by Council's Environmental Management Team who raised no objection to the application including consideration of SEPP 55 requirements subject to conditions of consent. Specifically a condition of consent (Condition No. 24) has been included requiring that should any "unexpected finds" occur during the excavation and earthworks, that works cease immediately and Council be notified. The condition requires that should any contamination be found and remediation be required that further development consent be sought prior to remediation works commencing.

As such, in accordance with Clause 7(b) of the SEPP 55, it is considered that the site is suitable for the proposed development subject to recommended conditions of consent specifically requiring an unexpected finds protocol.

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

As assessment has been undertaken of the proposal against the relevant criteria within the State Environmental Planning Policy No. 65—Design Quality of Residential Apartment Development and the proposal is found to be satisfactory, subject to recommended conditions of consent. The proposal is considered to be acceptable when assessed against the nine Design Quality Principles of Schedule 1.

Table 2 below provides an assessment against the applicable provisions of the accompanying Apartment Design Guide (ADG).

Table 2: Assessment Against the Apartment Design Guide (ADG)			
Part 3	Required	Discussion	Complies
3A-1	Each element in the Site Analysis Checklist should be assessed.	A Site Analysis plan was submitted with the application and identifies applicable elements as required within the Checklist. A written description of the proposal and subject site are also included in the submitted Statement of Environmental Effects and accompanying plans and reports.	Yes.
3B-1	Buildings to address street frontages.	The south elevation adequately addresses Park Avenue. The common entry and foyer areas are of an appropriate design and location.	Yes.
3B-2	Living areas, Private Open Space (POS) and Communal Open Space (COS) to receive compliant levels of solar access.	Refer discussion under Parts 3D and 4A.	N/A.
	Solar access to living spaces and POS of neighbours to be considered.	Due to the orientation of the site, acceptable levels of solar access can be maintained to the open spaces and living zones of neighbouring properties. Additional over shadowing attributed to the development will predominantly fall toward Park Avenue to the south.	Yes.
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased.	Acceptable levels of solar access is achieved between the primary daylight hours at the winter solstice. An increase in building separation is not required.	Yes.
3C-1	Courtyard apartments should have direct street access.	The ground floor apartment does not have direct access to the street, which is due to the topography of the site and the provision of the access ramp and fire stairs making it unfeasible.	No - minor variation considered supportable.
	Changes in level between private terraces, front gardens and dwelling entries above the street level provide surveillance and improve visual privacy for ground level dwellings.	The ground floor apartment adjacent to Park Street is approximately 1.36m above street level which is due to the sites natural topography. A 4.5m wide landscaped area is provided reducing the visual impact and protecting unit privacy.	Yes.
	Upper level balconies and windows to overlook the street.	All apartments are provided with balconies and living areas overlooking Park Avenue.	Yes.
	Length of solid walls should be limited along street frontages.	Given the natural topography of the site, retaining walls are required along the street frontage. However, the majority are located behind landscaping which will provide a visual barrier.	Yes.

	Opportunity for concealment to be minimised.	Entryways are wide, straight and located to reduce opportunity for crime and concealment.	Yes.
3C-2	Ramping for accessibility should be minimised.	Ramping is proposed relative to the street.	Yes.
3D-1	Communal Open Space (COS) to have minimum area of 25% of site.	524m ² of COS is proposed to be provided at the roof top level which complies with the ADG requirement for 25% of site (or 490m ²) to be provided as COS.	Yes.
3D-4	Boundaries should be clearly defined between public open space and private areas.	The private open space areas of the development are clearly defined by the use of landscaping, walls, fencing and paving elements.	Yes.
3E-1	Deep soil is to be provided at a rate of 7% of site area with a min. dimension of 3m.	19% of the site is provided as deep soil which complies with the ADG minimum requirement of 7%.	Yes.
3F-1	1-4 Storeys – 6m habitable to habitable and 3m for non-habitable. 5-8 storeys – 9m habitable to habitable and 4.5m for non-habitable.	The development complies with the guideline separation distances as provided by the ADG. The subject site adjoins a three storey RFB to the east and a two storey townhouse development to the west. The following separation distances are provided: - 12m to the three storey RFB; and - 8m to the two storey townhouse development (noting 6m are proposed to the western boundary as per the ADG).	Yes.
3G-1	Building entries to be clearly identifiable.	Building entryways are visible from the street.	Yes.
3G-2	Building access ways and lift lobbies to be clearly visible from the public domain and communal spaces.	The main pedestrian entryways to the lobbies are visible from Park Avenue.	Yes.
	Steps and ramps to be integrated into the overall building and landscape design.	Steps and ramps are integrated into the design.	Yes.
3H-1	Carpark access should be integrated with the building's overall façade.	The car parking is adequately integrated into the design with the car park entry (off Park Avenue) setback from the building façade.	Yes.
	Clear sight lines to be provided for drivers and pedestrians.	Adequate sight lines are provided for drivers and pedestrians at the street frontage. A condition of consent is also recommended in this regard.	Yes. Condition recommended.
	Garbage collection, loading and servicing areas are screened.	The waste collection, loading and servicing areas are contained within the basement.	Yes.
3J-1	The site is located within 800m of a railway station and as such car parking rates are set by the RMS (formerly RTA) Guide to Traffic Generating Developments document.	Complies - Refer discussion under Penrith DCP 2014 in the appendix.	Yes.

3J-2	Secure undercover bicycle parking should be provided for motorbikes and scooters.	Secure bicycle and motorcycle parking is proposed within the basement of the building.	Yes.
3J-3	A clearly defined and visible lobby area or waiting area should be provided to lifts and stairs.	Lobby areas are clearly defined and appropriately located with sufficient safe manoeuvring areas provided.	Yes.
	Supporting facilities within car parks, including garbage, plant and switch rooms, storage areas, and car wash bays can be accessed without crossing car parking spaces.	The basement areas are provided with bicycle parking and garbage rooms that are accessed from common areas and do not rely on access through parking spaces.	Yes.
3J-6	Positive street address and active frontages to be provided at ground floor.	Wide and direct pedestrian access pathways are provided to the communal entries and lift lobby areas via Park Avenue and internal common open space areas.	Yes.
4A-1	Living rooms and private open spaces of at least 70% of apartments to receive 2 hours direct sunlight between 9am and 3pm mid-winter.	Submitted documentation confirms that 73% of apartments are provided with compliant levels of solar access.	Yes.
4A-3	Sun shading devices are to be utilised.	Balconies are proposed to be covered by the levels over. Submitted elevations include sun shading devices and louvres.	Yes.
4B-3	60% of apartments are to be naturally ventilated and overall depth of cross-through apartments 18m maximum glass-to-glass line.	Submitted documentation confirms that 76% of apartments receive natural cross flow ventilation.	Yes.
4C-1	Finished floor to finished ceiling levels are to be 2.7m for habitable rooms, 2.4m for non-habitable rooms.	The proposal is for a minimum of 2.7m measured from finished floor to finished ceiling level.	Yes.
4D-1	Apartments are to have the following min. internal floor areas: 1 bed – 50sqm 2 bed – 70sqm 3 bed – 90sqm Additional bedroom areas increase minimum area by 5sqm.	All proposed apartment sizes comply with the ADG requirements.	Yes.
4D-2	In open plan layouts the maximum habitable room depth is 8m from a window.	All units comply with this requirement.	Yes

4D-3	Master bedrooms to be 10sqm's and other rooms 9sqm's.	All units comply with this requirement.	Yes.
	Bedrooms to have a minimum dimension of 3m.	All units comply.	Yes
	Living rooms to have minimum width of 3.6m for a 1 bedroom unit and 4m for 2 & 3 bedrooms.	All units comply.	Yes
4E-1	All units to have the following primary balcony areas: 1 bed – 8sqm (2m deep) 2 bed – 10sqm (2m deep) 3 bed – 12sqm (2.4m deep)	All units comply.	Yes.
4E-3	Downpipes and balcony drainage are integrated with the overall facade and building design.	A condition of consent is recommended in this regard.	Yes. Condition recommended.
	Air-conditioning units should be located on roofs, in basements, or fully integrated into the building design.	A condition of consent is recommended in this regard.	Yes. Condition recommended.
4F-1	Daylight and natural ventilation to be provided to all common circulation spaces.	Natural light is provided to the central lobby and lift core circulation spaces via glazing on the front door.	Yes.
4G-1	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided: 1 bed – 4m ³ 2 bed – 6m ³ 3 bed – 10m ³ With 50% of the above to be provided within the Units.	Adequate storage is provided within each unit.	Yes.

4K-1	Flexible apartment configurations are provided to support diverse household types.	<p>The development proposes a range of unit sizes, configurations and number of bedrooms to accommodate change over time and cater for differing households. Unit mix is proposed as follows:</p> <p>15 x 1 bedroom apartments (33%) 30 x 2 bedroom apartments (67%)</p> <p>The application was accompanied by a Access Report confirming that the five (5) adaptable units can comply with the spatial requirements of AS 4299 for Adaptable Housing. Adaptable apartments are to be allocated an accessible car parking space. It is noted that 5 accessible car parking spaces for residents are proposed on basement level 1.</p>	Yes. Conditions recommended.
4L-1	Direct street access should be provided to ground floor apartments.	Due to the natural topography of the site and the provision of a ramp and fire stairs direct access to the ground floor apartments is unable to be provided.	No - minor variation considered supportable.
4M-1	Building facades to be well resolved with an appropriate scale and proportion to the streetscape and human scale.	The proposal was subject to a review by Council's Urban Design Review Panel. Varying ground, mid and upper level elements are provided to break up the bulk of the building and provide elements of contrast.	Yes.
4O-1	Landscape design to be sustainable and enhance environmental performance.	<p>The submitted landscape plan prepared by A Total Concept indicates a selection of trees, shrubs and ground covers appropriate for the site.</p> <p>Conditions of consent are recommended with regard to landscape maintenance.</p>	Yes. Conditions recommended.
4Q-2	Adaptable housing is to be provided in accordance with the relevant Council Policy.	Five (5) units are provided as adaptable which equates to 11% complying with Council's policy.	Yes.
4U-1	Adequate natural light is provided to habitable rooms.	All habitable rooms are provided with appropriate levels of natural light. Apartment depths and open floor plan arrangements allow light into kitchens, dining and living areas.	Yes.
4V-2	Water sensitive urban design systems to be designed by suitably qualified professional.	The application has been referred to Council's internal Environmental Waterways Unit with no objections raised. The proposed development can comply with Council's WSUD Policy requirements with the use of enviropods and stormfilter cartridges and water conservation managed with the installation of rainwater tanks.	Yes.
4W-1	A Waste Management Plan is to be provided.	A Waste Management Plan has been submitted.	Yes.

	Circulation design allows bins to be easily manoeuvred between storage and collection points.	The waste collection area is located within the basement. Councils waste department have confirmed that the design is adequate and has the ability to accommodate the number of bins required to service the site and manoeuvring area.	Yes.
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Penrith Urban Design Review Panel

The application was reviewed by Council's Urban Design Review Panel (UDRP) on a number of occasions. At the final review (which took place on 20 May 2018) Council's UDRP confirmed that the application was supportable subject to amendments in regards to: increased basement and side setbacks; additional cross section details; a reduction in hard stand elements in the front setback; and planting on top of the waste collection area. Amended plans were received addressing these issues and as such the application is supportable from the an urban design perspective.

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

The SEPP has provisions for the construction of new child care facilities which focuses on providing a consistent approach to planning for child care services with good design and functionality. The SEPP requires new child care centres to address the controls and guidance criteria in the Child Care Planning Guideline.

The plans indicate the internal layout for the future child care centre, however these have not been assessed against the requirements of the *SEPP (Educational Establishments and Child Care Facilities) 2017* given that the applicant has advised that the fit-out and use of the child care centre will be subject to a future application.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Sydney REP No. 20 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 and rural-residential development. It controls development that has the potential to impact on the river environment. The plan applies to all parts of the catchment in the Sydney region (15 local government areas), except for land covered by *Sydney REP No. 11 - Penrith Lakes Scheme*. The REP is supported by an Action Plan, which includes actions necessary to improve existing conditions.

The proposed development is in accordance with the general planning considerations set out in Clause 5 of the REP and the relevant specific planning policies and related recommended strategies set out in Clause 6. In particular, provision will be made for adequate erosion and sediment control measures to ensure sediment as a result of the development is not deposited in the Hawkesbury-Nepean River via the stormwater system.

Stormwater run-off from the development is proposed via stormwater drainage pipes to a detention tank where the water will be appropriately treated in accordance with Council's WSUD policies before being discharged to the street drainage system.

Council's Development Engineer and Waterways Officers have reviewed the proposed development with regard to stormwater drainage and treatment and is satisfied that this aspect of the proposal complies with Councils requirements.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings	Complies - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.4 Floor Space Ratio	N/A
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 5.9 Preservation of trees or vegetation	Complies - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	N/A
Clause 7.4 Sustainable development	Complies
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

The subject site is zoned R4 High Density Residential under the provisions of Penrith Local Environmental Plan 2010. The proposal is defined as a *residential flat building* (type of *residential accommodation*) and a *centre-based child care* facility, which are permissible land uses in the R4 zone subject to Council consent.

Clause 4.1A Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings

In accordance with Clause 4.1A, within the R4 High Density Residential Zone, a lot is to have a minimum area of 800m² for Residential Flat Building development. The subject site complies with this requirement with an area of 1960m².

Clause 4.3 Height of buildings

In accordance with Clause 4.3 of Penrith LEP 2010, the maximum height of any building permitted on the subject site is 15 metres. The proposal is for a maximum of 15.94m and as such, does not comply. The encroachment is a maximum of approximately 0.94 metres or 6%. This variation can be considered by Council under Clause 4.6 Variations to Development Standards, as discussed below.

Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the LEP specifies that consent may be granted for development even though the development would contravene a development standard imposed by the LEP, or any other environmental planning instrument. However, Clause 4.6(3) states that:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

Further, Clause 4.6(4) states that:

Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*

- (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, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.3(2) Height of Buildings specifies that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The Height of Buildings Map sets out a maximum building height of 15m applying to the site. The rear or northern lift overrun provides a RL of 69.3 over an existing ground level of RL 53.36 and therefore provides a maximum building height of 15.94m, which represents a 6.26% variation to the building height standard.

In accordance with Clause 4.6, the development application was lodged with a written request to vary the maximum building height control of 15m. The Clause 4.6 variation submission has been prepared and responds to the case of *Four2Five Pty v Ashfield Council* [2015] NSWLEC 90 as well as the 'five part test' established in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The applicant's response to the matters listed in Clause 4.6(3) and (4) are discussed below:

- *"The subject development has been able to excise an underutilised section of an adjoining primary school for development purposes which in turn has allowed for the achievement of orderly development of the land and an environmental planning outcome that has been contemplated by both the strategic and statutory planning framework.*
- *The development of a slightly taller form that the LEP would otherwise allow has in turn reduced the building footprint and allowed for large areas of the site to be provided as deep soil landscaping. In this regard, the development is required to provide only 7% deep soil landscaping but actually provides 19% of the site as deep soil landscaping.*
- *This increased provision of deep soil area allows for retention of the prevailing site topography and existing vegetation on adjacent lands. Similarly, this allows for the greater provision of large trees as part of the sites landscape response.*
- *The use of a narrower, yet taller build form also allows for better environmental performance in terms of solar access and natural ventilation. In this regard the development proposal exceeds the Apartment Design Guide (ADG) requirements for solar access (71%) and cross ventilation (62%) respectively.*
- *Much of the area that exceeds the development standard is not discernible as viewed from the public domain as it is setback from the front of the site and the lift overrun have been located centrally on the roof. Accordingly, the proposed elements that breach the height standard do not contribute to distinguishable bulk, scale or density of the building.*
- *Further, the non-compliance is primarily a result of the sites raised natural ground level at the mid to rear of the site and as such a complying development would require additional excavation of the site.*
- *The proposed development actually seeks to retain the site natural topography at this location and therefore is considered to better represent a more site responsive development.*
- *There will be no adverse amenity impacts to the surrounding properties or the public domain areas as a result of the proposed variation.*
- *The proposal does not result in any unacceptable overshadowing impacts to adjoining properties other than what is anticipated by Council's controls."*

In response to Clause 4.6(4)(b), the NSW Department of Planning and Environments planning circular, *PS18-003 - Variations to development standards*, outlines Secretary's concurrence may be assumed for applications being considered by a local planning panel.

In accordance with sub-clause (4), the applicant's objection is well founded and is consistent with the aims of the clause. The objection has adequately addressed the matters prescribed in the LEP, and has demonstrated that full compliance with the maximum building height requirement would be unreasonable and unnecessary in the circumstances of the case. The environmental planning grounds put forward by the applicant are supported in this instance. 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.

Of particular importance is the overarching objective of the standard which is to facilitate development that is of an appropriate built form. The proposed design accommodates a high quality urban design outcome for the site. The architectural features proposed improve the appearance of the development and will add to the residential amenity for future occupants.

As a result the proposed variation and associated justification is considered to be reasonable and the variation to the lot size requirements in the DCP is supportable.

Clause 5.9 Preservation of trees or vegetation

The vegetation on the site is mapped as Shale Plains Woodland. The site contains ten (10) trees with a further seven (7) trees located on adjoining properties within close proximity to the sites boundary. To assess the health and condition of the trees and make recommendations for their retention or removal the application was supported by an Arboricultural Assessment Report, prepared by Tree and Landscape Consultants and dated 28 February 2017. This report details that the development will necessitate the removal of all trees located on the site, which are native and of medium significance. The report also details that three (3) of the trees located on adjoining properties are of medium significance while the remaining four (4) are of low significance, being smaller exotic specimens. The report outlines that all seven (7) trees on adjoining properties should be retained. A condition of consent will require that these trees are retained in accordance with the arborists report.

The proposed landscaping works for the site, which includes the planting of replacement trees will compensate for the removal of the ten (10) trees.

Section 79C(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	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
D2.1 Single Dwellings	N/A
D2.2. Dual Occupancies	N/A
D2.3 Secondary Dwellings	N/A
D2.4 Multi Dwelling Housing	N/A
D2.5 Residential Flat Buildings	Does not comply - see Appendix - Development Control Plan Compliance
D2.6 Non Residential Developments	N/A

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

In accordance with Section 143 of the *Environmental Planning and Assessment Regulation 2000*, an assessment of the fire protection and structural capacity of the proposed building is necessary. The application was referred to Council's Building Surveyor for assessment with no objections raised, subject to the recommended conditions.

The proposed development complies with the requirements of the Regulations.

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

Context and Setting

Initially the proposal included a six storey building incorporating 50 apartments. To respond to the character of the surrounding area and improve the amenity for adjoining residents, the scale of the development was reduced and the side setbacks increased. The amended design now provides a five storey building however, it presents as four storeys at the street frontage. From that originally proposed, the front and western side setbacks have been increased and the development is now considered to be compatible to the surrounding locality in terms of bulk and scale. In addition, the basement has been amended to allow the retention of established trees on adjoining properties. The proposal has been reviewed by Council's Urban Design Review Panel who are supportive of the amended design.

Noise and Vibration Impacts

The application was supported by an acoustic report titled '*Acoustic and Railway Vibration DA Assessment*' prepared by Acouras Consultancy and dated 6 August 2018. This report included an assessment of the major noise sources associated with the development including the future child care centre, construction noise and railway noise and vibration.

To quantify the existing acoustic environment both long term unattended noise logging and attended noise measurements was undertaken. Unattended noise monitoring was conducted over a 7 day period from 19 January to 25 January 2017. Attended monitoring was also conducted on both 19 January 2017 and 25 January 2017 to verify the background noise level.

Child Care Centre

While the fit-out and use of the child-care centre (CCC) will be subject to a future development application, the acoustic report included an initial assessment to provide a level of assurance that a CCC in this location could comply with the noise limits set by the Association of Australian Acoustical Consultants (AAAC). Typical sound power of children activity noise was based on the AAAC document '*Guideline for Child Care Centre Acoustic Assessment*'. Modelling was undertaken on the assumption of a 70 place child care centre comprising 20 x 0-2 years; 20 x 2-3 years; and 30 x 3-5 years will be provided on the site. The report concludes that the noise limits can be achieved if a 1.8m high boundary fence is constructed, 10.38mm thick laminated glazing is used and a number of management practices implemented (i.e. limiting outdoor activity to between 9am - 5pm). While Council is satisfied that a CCC could comply with relevant noise criteria, a detailed acoustic assessment will be required to accompany the future fit-out and use development application, when the operational activities have been finalised.

Construction Activity

A condition of consent will restrict earthworks and construction activities to be undertaken to hours in accordance with the NSW Environmental Protection Authority (EPA) Noise Control Guidelines. The acoustic report recommends that a detailed assessment be undertaken when the construction schedule and equipment to be operated has been finalised. This recommendation has formed a condition of consent.

Mechanical Plant/Equipment Noise

The acoustic report included a preliminary assessment of the mechanical plant/equipment noise which was based on similar projects. As the specific mechanical plant/equipment has not been selected, a detailed acoustic assessment is unable to be completed at this stage. The acoustic report recommends that this be completed during the Construction Certificate design stage. This recommendation has formed a condition of consent.

Accessibility

The application was supported by an Access report titled '*Statement of Compliance - Access for People with a Disability*' prepared by Accessible Building Solutions and dated 15 February 2017. This report confirms that the five (5) adaptable units can comply with the spatial requirements of AS 4299 for Adaptable Housing. It is recommended that a condition be included in the consent requiring that the recommendation contained within this report be shown on the construction certificate plans.

Access, Traffic and Parking

The application was supported by a traffic report titled '*Traffic Impact Assessment*', prepared by Ason Group and dated 28/02/2017. This report provided an assessment of the relevant traffic and parking implications of the proposal. This report confirms that the moderate increase in traffic volumes as a result of the development will have minimal impact on the surrounding road network.

Vehicular access to the site is provided via a 6m wide driveway off Park Avenue. The basement design will allow vehicles (including Council's 10.5m waste collection vehicle) to enter and exit the site in a forward direction.

As the subject site is located within 800m of a railway station, in accordance with the Apartment Design Guideline (ADG), the rates outlined in the RMS document '*Guide to Traffic Generating Development*' are applicable for the residential component. Penrith Development Control Plan 2014 provides the applicable rates for the future child care component. The development provides car parking in accordance with these documents (as discussed in the DCP section of this report marked appendix). The accompanying traffic

report concludes that the development will not result in any adverse impacts on the availability of on-street parking.

Council's Traffic Engineer and Development Engineer have reviewed the application and raise no objection to the development.

Waste Management

The application was supported by a Waste Management Plan prepared by Dickens Solutions and dated 1/06/2018. This plan details the way in which all waste and materials resulting from the excavation, construction and on-going use of the building on the site are to be dealt with.

The development proposes on-site collection by Council's waste contractors and incorporates waste collection/storage rooms and a bulky goods area within basement 1. A linear shoot system is provided for waste and recycling streams for both residential cores. Council's Waste Department have confirmed there is sufficient area to accommodate the required number of bins and allow for adequate manoeuvring. The application has demonstrated that a 10.5m waste collection vehicle can enter and exit the site in a forward direction with minimal manoeuvring.

The proposed arrangements have been reviewed by Council's Waste Officer and Traffic Engineer who are supportive of the application subject to conditions.

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

The site is suitable for the following reasons:

- The site is zoned to permit the proposed use.
- The use is compatible with surrounding and adjoining land uses.
- The grade of the site is suitable for the design proposed.
- The site is able to drain to Council's satisfaction.
- The site is located within close proximity to Kingswood Railway Station.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with the Act and Regulations, consideration has been given to any necessary referrals and any submissions made.

Community consultation

In accordance with Appendix F4 of the Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents between 14 July and 28 July 2017.

Council received one submission in response. A table is provided below which summarises the concerns raised in the submission received.

Concerns raised	Response
<i>Community needs</i> There are vacancies at surrounding child care centres which represents a lack in the demand for child care in the area.	A community needs analysis has not been provided with the application. The SEPP (Child care and educational establishments) states that there is no minimum distance required between child care centres or the number of centres within a local government area. In addition, the SEPP does not require an applicant to demonstrate the demand for these services.

The amended plans were re-notified between 2 July 2018 and 16 July 2018. No submissions were received.

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Waste Services	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions
Community Safety Officer	No objections
Social Planning	No objections

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

The proposed development will not generate any significant issues of public interest.

Section 94 - Developer Contributions Plans

The following Section 94 plans apply to the site:

- Section 94 - District Open Space Facilities
- Section 94 - Cultural Facilities
- Section 94 - Penrith City Local Open Space

The following Section 94 calculations apply to the proposed development.

Calculation for Residential Flat Building x 45 Apartments					
Open Space					
No. of units	x	Rate	-	Credit for existing dwelling/s	Contribution rate
45	x	2	-	3.1	86.9
City wide					
No. of units	x	Rate	-	Credit for existing dwelling/s	Contribution rate
45	x	2.4	-	3	105
AMOUNT					
S.94 Contribution Plan		Contribution Rate x Calculation rate			Total
District Open Space		86.9 x \$1,942			\$168,760
Local Open Space		86.9 x \$702			\$61,004
Cultural facilities		105 x \$164			\$17,220
		NET TOTAL			\$246,984

Conclusion

In assessing this application against the relevant environmental planning policies, in particular the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development, Penrith Local Environmental Plan 2010 and the Penrith Development Control Plan 2014, the proposal is considered to satisfy the primary aims, objectives and provisions of these policies.

In its current form, the proposal will have an acceptable impact on the surrounding character of the area. The proposed design is considered to be site responsive and is not contrary to the public interest. The application is therefore worthy of support, subject to recommended conditions.

Recommendation

1. That the submitted variation to a development standard under clause 4.6 of the standard instrument be supported.
2. That those making submissions are notified of the determination.
3. That DA17/0559 for the construction of a 45 x unit Residential Flat Building including area for a Future Potential Ground Floor Child Care Centre at 72 Park Avenue, Kingswood, be approved following receipt of concurrence/agreement from Sydney Trains, incorporation of any requirements stemming from this concurrence as conditions, and subject to the attached conditions within this report.

General

1 A001

The development must be implemented substantially in accordance with the following plans stamped approved by Council, the application form, the BASIX Certificate 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 Reference	Prepared By	Dated
Architectural Plans	17-090 DA001-DA093 (Rev F)	Urban Link	04/07/2018
Landscape Plans	L/00 – L/03	A Total Concept – Landscape Architects	08/06/2018
Stormwater Concept Plan	20160414 Sheets SW01-07	SGC Consulting Engineers P/L	23/02/2017
Waste Management Plan	Version 3	Dickens Solutions	1/06/2018

2 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

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

3 A029 - HOURS OF OPERATION AND DELIVERY TIMES

Delivery, waste and service vehicles generated by the development are limited to the hours of 8am and 8pm on Saturday, Sundays and public holidays, and 7am to 8pm Monday to Friday.

4 A038 - LIGHTING LOCATIONS

Prior to the issue of an Occupation Certificate, a lighting system shall be installed for the development to provide uniform lighting across common areas and driveways. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding landuses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).

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 A046 - Obtain Construction Certificate before commencement of works

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

7 A Special (BLANK)

Prior to the issue of a Construction Certificate, the design recommendations of 'Statement of Compliance - Access for People with a Disability', prepared by Accessible Building Solutions and dated 15 February 2017 shall be incorporated into the Construction Certificate plans. The works shall be certified accordingly by a suitably qualified access consultant **prior to the issue of an Occupational Certificate**.

A minimum of 5 apartments shall be constructed as adaptable apartments to meet the requirements for persons with a disability and in accordance with the stamped approved plans. The adaptable units shall each be allocated an accessible car parking space compliant with AS 2890.6 and shall be evenly distributed throughout the building and not be concentrated in any one area or level.

8 A Special (BLANK)

Prior to the issue of an Occupation Certificate, a design verification statement from a qualified designer shall be submitted. The design verification statement shall verify that the development achieves the design quality shown in the approved Construction Certificate plans and specifications, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development*.

9 A Special (BLANK)

Prior to the issue of a Construction Certificate, a design verification statement from a qualified designer shall be submitted. The design verification statement shall verify that the Construction Certificate plans and specifications achieve or improve the design quality of the development for which development consent was granted, having regard to the design quality principles set out in Part 2 of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development*.

10 **A Special (BLANK)**

All mechanical ventilation equipment, ducts, air conditioning services and the like shall be shown on the Construction Certificate documentation as being contained within the building.

11 **A Special (BLANK)**

Prior to the issue of a Construction Certificate and/or Occupation Certificate (as relevant), the following Crime Prevention Through Environmental Design measures shall be incorporated into the development:

Car Parking

- A security system must be installed on any pedestrian and vehicle entry/exit points to the car park, including the lift and stairwell, to minimise opportunities for unauthorised access.
- All areas of the car park (including lift lobbies, stairwells, garbage rooms and storage areas) must be well-lit, with consistent lighting to prevent shadowing or glare.
- Signage must be in place to clearly identify exit and access points, the location of lifts and stairwells.
- All surfaces in the car park should be painted in light coloured paint or finished in light coloured concrete to reflect as much light as possible.

Residential Developments

Building Identification

Building Security & Access Control

- Each building entry should clearly state the unit numbers accessed from that entry.
- Each individual dwelling should be clearly numbered.
- Unit numbers should be clearly provided on each level.
- Intercom, code or swipe card locks or similar must be installed for main entries to buildings including car parks.
- Main entry doors for apartment buildings should be signed requesting residents to not leave doors wedged open.
- Australian Standard 220 door and window locks must be installed in all dwellings including doors onto balconies, to minimise the risk of break and enter offences.
- If security grills are used on windows they should be operable from inside in case of emergencies.
- Ensure skylights and /or roof tiles cannot be readily removed or opened from outside.
- Consider monitored alarm systems.
- CCTV cameras must be provided to public areas of the development. As a minimum, cameras must be positioned to provide coverage of vehicular and pedestrian entry/exit points (including entries/exits to buildings), key thoroughfares and activity nodes as well as all areas of the car park. Signage must be provided to indicate that CCTV cameras are in operation.

Graffiti/Vandalism

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

Way Finding/Finding Help

- Signs should be strategically located at entrances and near activity nodes such as intersections of corridors or paths.
- Signs should indicate how to report maintenance problems in the complex.
- Signs throughout the development should be large and legible, and strong colours, standard symbols and simple graphics. They should indicate where to go for help or assistance.

Fencing

- Front fences should preferably be no higher than 1.2 metres. Where a higher fence is proposed, it will only be considered if it is constructed of open materials e.g. spaced pickets, wrought iron etc.
- Fence design to the ground floor units should maximise natural surveillance from the street to the building and from the building to the street, and minimise the opportunities for intruders to hide.

12 **A Special (BLANK)**

Prior to the issue of a Construction Certificate and/or Occupation Certificate (as relevant), the following Sydney Trains conditions are to be complied with:

- Sydney Trains or Transport for NSW (TfNSW), and persons authorised by those entities for the purpose of

this condition, are entitled to inspect the site of the development and all structures to enable it to consider whether those structures have been or are being constructed and maintained in accordance with the approved plans and these conditions of consent, on giving reasonable notice to the principal contractor for the development or the owner or occupier of the part of the site to which access is sought.

□

- Copies of any certificates, drawings, approvals/certification or documents endorsed by, given to or issued by Sydney Trains must be submitted to Council for its records prior to the issuing of a Construction Certificate.

- Any conditions issued as part of Sydney Trains approval/certification of any documentation for compliance with the Sydney Trains conditions of consent, those approval/certification conditions will also form part of the consent conditions that the Applicant is required to comply with.

- Where a condition of consent requires Sydney Trains or Transport for NSW endorsement the Principal Certifying Authority is not to issue a Construction Certificate or Occupancy Certificate, as the case may be, until written confirmation has been received from those entities that the particular condition has been complied with. The issuing of staged Construction Certificates dealing with specific works and compliance conditions can be issued subject to written agreement from those entities to which the relevant conditions applies.

- Unless advised by Sydney Trains in writing, all excavation, shoring and piling works within 25m of the rail corridor are to be supervised by a geotechnical engineer experienced with such excavation projects.

- No rock anchors/bolts are to be installed into Sydney Trains property or easements.

- Sydney Trains advises they have an 11kV H/V aerial transmission line near to this site and any works, scaffolding and crane movements within 6 metres of the nearest transmission line conductor must be discussed and approved by Sydney Trains beforehand.

In addition, all works within 6 metres of the nearest transmission line conductor must comply with: □

a) ISSC 20 – Guideline for the Management of Activities within Electricity Easements and Close to Electricity Infrastructure. b) The Safe Approach Distances (SADs) in the Sydney Trains Document titled "SMS-06-GD-0268 – Working Around Electrical Equipment".

- Prior to the issuing of a Construction Certificate the Applicant is to submit to Sydney Trains a plan showing all craneage and other aerial operations for the development and must comply with all Sydney Trains requirements. If required by Sydney Trains, the Applicant must amend the plan showing all craneage and other aerial operations to comply with all Sydney Trains requirements. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from the Sydney Trains confirming that this condition has been satisfied.

- An acoustic assessment is to be submitted to Council prior to the issue of a construction certificate demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads- Interim Guidelines".

- Prior to the issue of a Construction Certificate the Applicant is to engage an Electrolysis Expert to prepare a report on the Electrolysis Risk to the development from stray currents. The Applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the Principal Certifying Authority with the application for a Construction Certificate.

- The design, installation and use of lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor must limit glare and reflectivity to the satisfaction of Sydney Trains. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

- If required by Sydney Trains, prior to the issue of a Construction Certificate a Risk Assessment/Management Plan and detailed Safe Work Method Statements (SWMS) for the proposed works are to be submitted to Sydney Trains for review and comment on the impacts on rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from Sydney Trains confirming that this condition has been satisfied.

- If required by Sydney Trains, a track and/or transmission line pole monitoring plan (including instrumentation and the monitoring regime during excavation and construction phases) is to be submitted to Sydney Trains for review and endorsement prior to the issuing of a Construction Certificate. The Principal Certifying Authority is not to issue a Construction Certificate until written confirmation has been received from Sydney Trains advising of the need to undertake the track monitoring plan, and if required, that it has been endorsed.

- If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Engineering Management Interfaces to determine the need for public liability insurance cover. If insurance cover is deemed necessary this insurance be for sum as determined by Sydney Trains and shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The Applicant is to contact Sydney Trains Engineering Management Interfaces to obtain the level of insurance required for this particular proposal. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written proof of this insurance in conjunction with Sydney Trains written advice to the Applicant on the level of insurance required.

- If required, prior to the issue of a Construction Certificate the Applicant is to contact Sydney Trains Engineering Management Interfaces to determine the need for the lodgement of a Bond or Bank Guarantee for the duration of the works. The Bond/Bank Guarantee shall be for the sum determined by Sydney Trains. Prior to issuing the Construction Certificate the Principal Certifying Authority must witness written advice from Sydney Trains confirming the lodgement of this Bond/Bank Guarantee.

- If required by Sydney Trains, prior to the commencement of works, prior to the issue of the Occupation Certificate, or at any time during the excavation and construction period deemed necessary by Sydney Trains, a joint inspection of the rail infrastructure and property in the vicinity of the project is to be carried out by representatives from Sydney Trains and the Applicant. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report will be required unless otherwise notified by Sydney Trains.

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

As per the plans marked in red, the design of the basement levels are to be amended, to provide additional deep soil zones within the site.

14 [A Special \(Child care centre use\)](#)

A separate development approval is to be obtained from Penrith City Council regarding the occupation and fit-out of any child care centre, as a child care centre does not form an approved land use as part of this consent.

Environmental Matters

15 [D004 - Dust](#)

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

16 [D005 - Mud/Soil](#)

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

17 [D005 – No filling without prior approval \(may need to add D006\)](#)

No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury- Nepean River) (No.2-1997). No recycling of material for use as fill material shall be carried out on the site without the prior approval of Council.

18 **D006 - No filling without prior approval (Use always, except for bulk earthworks/ major fill 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, 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 Contaminated Land Development Control Plan) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
- clearly indicate the legal property description of the fill material source site,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

{Note: Penrith Contaminated Land 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.

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

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

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

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

{Note: Penrith Contaminated Land 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."}

20 **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.

21 **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.

22 **D013 - Approved noise level 1**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in "71 Park Avenue Kingswood - Acoustic and Railway Vibration DA Assessment" Reference SYD2017-1005-R001E, prepared by Acouras Consultancy dated 09/07/2018. The recommendations provided in the above-mentioned 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.

23 **D014 - Plant and equipment noise**

All mechanical plant and equipment associated with the development is to be located in enclosed plant rooms in the basement, in accordance with the "71 Park Avenue Kingswood - Acoustic and Railway Vibration DA Assessment" Reference SYD2017-1005-R001E, prepared by Acouras Consultancy dated 09/07/2018.

24 **D Special (BLANK)**

A construction and excavation management plan report which assesses the impact of the development during the construction phase is to be forwarded to Council and agreed to, **prior to the issue of the Construction Certificate**. This report is to address issues such as noise and vibration associated with the basement construction and nearby school and detail necessary mitigation measures to be incorporated into the works for the development.

25 **D Special (BLANK)**

A detailed acoustic assessment is to be carried out **prior to the issue of the construction certificate**, as recommended in section 3.4 of "71 Park Avenue Kingswood – acoustic and railway vibration DA assessment" Reference SYD2017-1005-R001F, dated 06/08/2018 . The acoustic assessment is to include noise from all mechanical plant and equipment associated with the development.

26 **D Special (BLANK)**

Should any "unexpected finds" occur during the excavation and earthworks, including, but not limited to, the identification/finding of contaminated soils, buried building materials, asbestos, odour and/or staining, works are to cease immediately and Council is to be notified. Any such "unexpected finds" shall be addressed by an appropriately qualified environmental consultant.

All remediation works within the Penrith Local Government Area are considered to be Category 1 works under State Environmental Planning Policy No. 55 - Remediation of Land. Should any contamination be found during development works and should remediation be required, development consent is to be sought from Penrith City Council prior to remediation works commencing.

27 **D special BLANK**

In the event of complaints relating to the development being received by Council, the owner and / or occupier of the development may be required by Council to obtain the services of a suitably qualified acoustic consultant to undertake a noise impact assessment of the development to address the concerns of the community.

The noise impact assessment report is to be prepared and provided to Council for approval within 45 days of being requested. Any mitigation works are to be undertaken within 30 days from the date of notice from Council, unless otherwise specified.

28 D Special BLANK

Prior to the issue of an Occupation Certificate the following is to be submitted to and approved by Penrith City Council:

- For the internal movement of 1100L bins a bin tug device is required to be provided and stored within the development in accordance with section 3.6 of the 'Residential Flat Building Guideline' document. Device specifications, use and operational requirements are required to be submitted to Council for approval
 - The developer is to enter into a formal agreement with Penrith City Council for the utilisation of Councils Waste Collection Service. This is to include Council being provided with indemnity against claims for loss and damage.
- **Note:** By entering into an agreement with Council for Waste Collection, the development will be required to operate in full compliance with Penrith City Councils Waste Collection and Processing Contracts for Standard Waste Collection. The provision of Councils waste collection service will not commence until formalisation of the agreement.

29 D Special BLANK

Councils bin infrastructure and collection service will be provided/commenced for the development upon the completion of all on-site waste collection infrastructure and the attainment of an Occupation Certificate.

30 D Special BLANK

The following waste management requirements must be complied with and details of compliance demonstrated to Council **prior to the issue of a Construction Certificate**:

- All on-site waste collection infrastructure, doors and access points (Waste Chute Room, Waste Collection Room, Bulky Household Waste Collection Room and the Secure Roller Door to the Basement) are to be locked through Councils Abloy Key System. System specifications are outlined in section 3.5.5 of the 'Residential Flat Building Guideline' document.
- All on-site waste collection infrastructure (Waste Chute Room, Waste Collection Room, Bulky Household Waste Collection Room and Loading bay) are to provide wash facilities through the use of a centralised mixing valve and hose cock. Respective drainage and water proofing to be installed to support the use of hose facilities as outlined within the Building Code of Australia.
- The proposed 'Traffic Signalling' system to provide supporting device specifications and an amended 'Plan of Operations' outlining how Council will use the system to restrict traffic movements during on-site waste collection periods.
- Acoustic treatments/infrastructure to be implemented within the basement to permit the use of Councils 10.5m Heavy Rigid Vehicle for waste collection within Basement 1.
- Amended swept path models to be submitted outlining the proposed access pathway for Councils 10.5m Heavy Rigid Vehicle in accordance with section 2.2.3 of the 'Residential Flat Building Waste Management Guideline' document.

BCA Issues

31 E001 - BCA compliance

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

(a) complying with the deemed to satisfy provisions, or

(b) formulating an alternative solution which:

- complies with the performance requirements, or
 - is shown to be at least equivalent to the deemed to satisfy provision, or
- (c) a combination of (a) and (b).

32 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.

Utility Services

33 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 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.

34 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.

35 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

36 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.

37 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.

38 H033 – Clothes line

Prior to the issue of an Occupation Certificate, clothes drying facilities are to be positioned and screened from public view.

39 [H041 - Hours of work \(other devt\)](#)

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 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

40 [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 the issue of any Construction Certificate. 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 (02) 4732 7777 or visit Penrith City Council's website for more information.

41 [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 applications, including payment of application and inspection fees, 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 and or cycleways
- 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

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

Contact Penrith City Council's City Works Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

Note:

- a) Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- b) Separate approvals may also be required from the Roads and Maritime Services for classified roads.
- c) All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.
- d) On completion of any awning over the road reserve, a certificate from a practising structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act

42 **K210 - Stormwater Management**

The stormwater management system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by SGC, reference number 20160414, drawing no SW01 - SW07, revision A, dated 23/02/17.

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.

43 **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).

44 **K212 - No loading on easements**

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the foundations of proposed structures adjoining the drainage and/ or services easement have been designed clear of the zone of influence.

45 **K301 - Sediment & Erosion Control**

Prior to commencement of works sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997.

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

46 **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 S138 Roads Act approval or S68 Local Government Act approval have been inspected and signed off by Penrith City Council.

47 **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.

48 **K503 - Stormwater Compliance**

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

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

- 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 system/s shall be provided as part of the works-as-executed drawings.

49 **K504 - Restriction as to User and Positive Covenant**

Prior to the issue of an 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)

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

50 **K511 - Directional signage**

Prior to the issue of any Occupation Certificate, directional signage and linemarking shall be installed indicating directional movements and the location of customer parking to the satisfaction of the Principal Certifying Authority.

51 **K601 - Stormwater Management system operation and maintenance**

The stormwater management systems shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan.

Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the stormwater management systems.

52 **K Special (BLANK)**

All car parking and manoeuvring must be in accordance with AS 2890.1-2004; AS 2890.2- 2—2; AS 2890.6-2009 and Council's requirements.

53 **K Special (BLANK)**

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

54 **K Special (BLANK)**

Subleasing of car parking spaces is not permitted by this Consent.

55 **K Special (BLANK)**

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

56 **K Special (BLANK)**

Prior to the issue of an Occupation Certificate, secure bicycle parking is to be provided at convenient location(s) in accordance with AS 2890.3:2015 Bicycle Parking Facilities.

57 **K Special (BLANK)**

Prior to the issue of an Occupation Certificate, the car parking spaces are to be allocated as follows: 45 spaces for residents; 9 spaces for visitors; and 12 spaces for the future use of the ground floor tenancy (subject to separate development consent).

Landscaping

58 **L001 - General**

All landscape works are to be constructed in accordance with the stamped approved Landscape Plan, prepared by A Total Concept and dated 8/06/2018 and Penrith Development Control Plan 2014.

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.

59 **L002 - Landscape construction**

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

60 [L003 - Report requirement](#)

The following series of reports relating to landscaping are to be submitted to the nominated consent authority at the appropriate time periods as listed below. These reports shall be prepared by a suitably qualified and experienced landscape professional.

i. Implementation Report

Upon completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development.

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

61 [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.

62 [L Special \(BLANK\)](#)

The Trees No. 11, 12, 13, 14, 15, 16 & 17 must be retained and protected in accordance with the recommendations of the Arboricultural Assessment, prepared by Tree and Landscape Consultants and dated 28 February 2017.

Development Contributions

63 [N001 - Section 94 contribution \(apply separate condition for each Contribution Plan\)](#)

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan for Cultural Facilities. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$17,220 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 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 S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for Cultural Facilities may be inspected at Council's Civic Centre, 601 High Street, Penrith.

64 [N001 - Section 94 contribution \(apply separate condition for each Contribution Plan\)](#)

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan for District Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$168,760 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 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 S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for District Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

65 [N001 - Section 94 contribution \(apply separate condition for each Contribution Plan\)](#)

This condition is imposed in accordance with Penrith City Council's Section 94 Contributions Plan for Local Open Space. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$61,004 is to be paid to Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 94 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 S94 invoice accompanying this consent should accompany the contribution payment. The Section 94 Contributions Plan for Local Open Space may be inspected at Council's Civic Centre, 601 High Street, Penrith.

Certification

66 **Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)**

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

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

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 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.

67 **Q05F - Occupation Certificate for Class10**

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

Schedule 1 (Deferred Commencement)

68 **S Special (Deferred commencement condition)**

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

Evidence of Sydney Trains approval (as outlined below) is to be submitted to Council prior to the issue of an operational consent.

The following documentation is to be provided to and approved/certified by Sydney Trains in compliance with relevant ASA Standards(<https://www.transport.nsw.gov.au/industry/standards-and-accreditation/standards>):

1. *Revised Geotechnical Report including a rail specific section identifying any potential impact to the Rail Corridor and assets (Including the High Voltage Aerial Transmission Line Pole) and Structural report/drawings that meet Sydney Trains requirements. The Geotechnical Report must be based on actual borehole testing conducted on the site closest to the rail corridor.*
2. *Construction methodology with construction details pertaining to structural support during excavation. The Applicant is to be aware that Sydney Trains will not permit any rock anchors/bolts (whether temporary or permanent) within its land or easements.*
3. *Cross sectional drawings showing the rail corridor, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the rail corridor. All measurements are to be verified by a Registered Surveyor.*
4. *Detailed Survey Plan showing the relationship of the proposed developed with respect to Sydney Trains easement and rail corridor land.*
5. *If required by Sydney Trains, an FE analysis which assesses the different stages of loading-unloading of the site and its effect on the rock mass surrounding the rail corridor.*

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C10 Transport, Access and Parking

The proposal requires the following on-site parking provision:

Land Use Element	Parking Rate	Required
Residential Flat Buildings	1 space per 1 or 2 bedrooms	45
	2 spaces per 3 or more bedrooms	NA
	1 space per 40 units for service vehicles	1
	Visitor parking: 1 space per 5 dwellings	9
	1 space for car washing for every 50 units	1
		= 56 spaces
Child Care Centre	1 space per 10 children plus 1 per employee	70 children & 7 staff = 14 spaces
Total Required		70

The development provides a total of 66 parking spaces within the development, which does not comply with the requirements of the DCP. Despite this the Apartment Design Guide, specifies that on sites within 800m of a railway station the minimum car parking requirement for residents and visitors is set out in the RMS document titled '*Guide to Traffic Generating Developments*', or the car parking requirement prescribed by the relevant council whichever is the lesser. The RMS rates are outlined below:

Land Use Element	Parking Rate	Required
Residential Flat Buildings	0.6 space per 1 bedrooms	9
	0.9 spaces per 2 bedroom	27
	Visitor parking: 1 space per 5 dwellings	9
	1 space per 50 units for service vehicles	1
		= 46 spaces

Using this RMS rate for the residential component (being 46 car spaces), the development requires the provision of 60 on-site car spaces (46 resident car spaces and 14 spaces for the child care centre). The development complies with this requirement, with a total of 66 on-site parking spaces. The plans indicate that the spaces will be allocated as follows: 45 car spaces (including 5 accessible spaces) for residents; 7 spaces for visitors; 11 spaces for the child care; and 3 spaces for the shared use of the child care centre and visitors. No spaces have allocated for service vehicles. At the LPP meeting there was some discussion regarding the parking provision, layout and allocation of spaces. It was considered logical to provide the following allocation 1 space per residential unit and 9 spaces for visitor parking with the remainder (12 spaces) to be provided for the future use of the ground floor. It is recommended that this form a condition of consent.

D2 Residential Development

2.5.2 Preferred Configuration for Residential Flat Buildings

The DCP stipulates that new residential flat building development incorporate traditional configurations of cottage development in that patterns of buildings and private gardens are adopted and traditional features are employed to soften the development.

The proposed residential flat building, although contemporary in design, is considered to comply with the objectives of this clause. The proposed front and side setbacks are comparable with existing setbacks in the vicinity. In-set balconies and screening devices will soften the bulk of the building.

2.5.6 The Development Site

Under the DCP a 20m minimum lot frontage is required for residential flat buildings in the R4 High Density Residential zone. The subject site has a frontage of 30.575m to Park Avenue complying with this control.

2.5.4 Urban Form

The proposal complies with the objectives and controls of this clause in that each façade is articulated. Varying architectural elements are provided to the east and west side elevations including screened inset balconies, windows in each elevation and a variety of materials. Although contemporary in style, the development is traditional in orientation with frontage to Park Avenue.

2.5.5 Landscaped Area

Under the DCP, a minimum landscaped area of 35% is to be provided within the R4 High Density Residential zone. The proposal provides a landscaped area of 421m² (21%) of the site, which include deep soil zones. This is a shortfall of 14%. However, the proposal still complies with the objectives for that zone in that it provides deep soil zones, communal open spaces areas (located on the roof top) and building separation on ground level which complies with the ADG under SEPP65. Therefore, the proposed variation is considered warranted in this case.

2.5.6 Front and Rear Setbacks

The DCP states that the minimum rear setback is 4m for any single storey component and 6m for any element above ground floor. The proposal has a 6m rear setback complying with this requirement.

The DCP specifies that the front setback is to be 5.5m or the average of the adjoining properties, whichever is greater. The townhouse development to the west is setback approximately 7.8m and the RFB to the east is setback 12m, giving an average of 9.9m. The development provides a 7m setback to the front façade from Park Avenue. This variation is supported given that the front setback includes a significant landscaping at the street frontage including deep soil zone.

Refer also to building separation discussions under State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.

2.5.8 Visual and Acoustic Privacy

The proposal demonstrates a range of measures to assist in protecting and providing visual and acoustic privacy including highlight windows, privacy screens and awnings. Windows and balcony areas are generally oriented toward the street front or toward the rear of the site or are provided with screening devices. To ensure that the acoustic privacy of the adjacent residential development, a condition of consent is recommended to require that all recommendations of the acoustic report be incorporated into the construction certificate plans.

2.5.9 Solar Planning

Refer to discussion regarding solar access under State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development.

2.5.18 Fences and Retaining Walls

The DCP requires that fences shall be no taller than 1.8m generally and walls of solid construction and taller than 1.2m shall be of see through construction. A solid wall up to 2.6m

high is located on the eastern boundary which is a result of the height required for the basement (which needs to accommodate Council's waste vehicle) and the second set of fire stair. The highest point of the wall is setback approximately 23m from the street frontage and therefore will not be highly visible from the street frontage. In addition, it is not considered to impact on adjoining properties given that it will be located adjacent to their common driveway and garages.

2.5.20 Accessibility and Adaptability

The design of the building has been assessed to comply with the key provisions of this Clause. It is noted that >10% of units are designed as adaptable in accordance with this DCP requirement.