

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA19/0884
<b>Proposed development:</b>	Alterations & Additions to Existing Building for Use as Cafe & Events/Functions with Indoor & Outdoor Seating, New Outdoor Dining Pavilion, Farmers Co-Op Pavilion, Livestock Enclosures, Car Parking, Water Tanks & Signage
<b>Property address:</b>	44 - 50 Tench Avenue, JAMISONTOWN NSW 2750
<b>Property description:</b>	Lot 7 DP 38950
<b>Date received:</b>	16 December 2019
<b>Assessing officer</b>	Sufyan Nguyen
<b>Zoning:</b>	SEPP WSA - Affected by Obstacle Limitation SP3 Tourist - LEP 2010
<b>Class of building:</b>	Class 6
<b>Recommendations:</b>	Deferred Commencement

## Executive Summary

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Council is in receipt of a development application for alterations and additions to an existing dwelling primarily for use as a café with indoor and outdoor dining areas and a function centre. The development also includes the erection of ancillary buildings and structures, including a kitchen building, bakery and retail building with associated courtyard, amenities building, wood fired pizza hut and milkshake building, outdoor dining pavilion, farmers co-op pavilion, livestock enclosures, playground, fodder shed, the installation of a sewage management system, business identification signage and associated car parking, drainage, landscaping and fencing works at 44-50 Tench Avenue, Jamisontown.

The subject site is zoned SP3 Tourist under the *Penrith Local Environmental Plan 2010* (LEP) and a food and drink premises is permitted with the consent of Council. A function centre, market (farmers' co-op), playground (recreational activity (outdoor)) are also permitted in the SP3 zoning with consent. However, the livestock enclosures, which is considered to be a type of animal boarding and training establishment and the retail store are prohibited in the SP3 zoning. In this regard, these two land uses are considered to be minor components, subservient in nature and therefore ancillary uses to the overall development, as detailed in this report.

The food and drink component of the development provides a total of 150 dining seats and accommodates up to 600 patrons throughout a day, with a maximum of 200 patrons on site at any time. In addition, the function centre caters for up to 100 patrons within the house dining area for dinner and/or special events, including weddings, birthdays and corporate events, etc., with the remaining areas of the site closed to the public. The bakery and retail store accommodates up to 20 patrons at a time and the playground is estimated at up to 20 patrons. The farmers' co-op market is intended to accommodate up to 140 patrons from those patrons already on site and up to 10 operators.

The key issues identified and addressed as part of the assessment of the proposal were in regard to the following matters:

- Land contamination;
- Flooding and tree impacts;
- Stormwater drainage and stormwater quality;
- Wastewater and waste management;
- Traffic management and safety; and
- Driveway access and vehicle manoeuvring.

It should be noted that the applicant is required to obtain advice (notice of requirements) from Sydney Water to confirm that connection/s to Sydney Water's reticulated system is feasible in terms of capacity loads, noting that the nearest maintenance hole is situated approximately 700m north-westwards from the site, adjacent to the Nepean Shores development. A private pipeline is proposed for the construction of a new rising main along Wilson Lane (being an unformed road), which adjoins the rear boundary of the site; in principle support from Council's Assets Team has been given to a Private Pipeline Deed of Agreement. These matters are to be addressed via deferred commencement consent conditions, which will ensure that wastewater servicing for the site is adequate, prior to the commencement of any operational consent being granted.

In addition, additional documentation is to be submitted to and approved by Council to demonstrate that the proposed stormwater treatment measures are in accordance with Council's WSUD Policy, including a WSUD Strategy, and proposed surface treatment for the gravel access driveway and semi-permeable rear car parking area, which may be required to be changed to a hardstand area, in addition to water conversation measures. These matters to be resolved form part of the deferred commencement consent conditions, which is likely to require revised civil plans, as detailed in the Appendix of this report.

The proposal was notified to adjoining and nearby properties and publicly exhibited for a period of 14 days. No public submissions were received in response.

An assessment of the proposal under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) has been undertaken and the application is recommended for approval, subject to recommended consent conditions.

## Site & Surrounds

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The subject site has a property address of 44-50 Tench Avenue, Jamisontown and is legally described as Lot 7 DP 38950. The site has a land area of 2.311 ha and is rectangular in shape, with a lot frontage width of 91.44m and a depth of 257.175m. The site is orientated on a north-east/south-west axis and is situated on the north-eastern side of Tench Avenue, opposite Tench Reserve, which adjoins Nepean River. It should be noted that the site has an approximate 100m separation distance from the Nepean River. The site is affected by a slope of up to approximately 2.51m, which generally falls westwards and an overland flow path, which affects a part of the middle of the site. The site currently accommodates a single storey dwelling with ancillary structures and scattered trees, including an orange tree field in the middle, rear of the site. A paper road known as Wilson Lane adjoins the entire rear boundary of the site.

The immediate surrounding area is characterised by a semi-rural area with detached dwellings and large lots, and Nepean Shores Over 50's Retirement Community complex situated 200m northwards from the site. It should be noted that the site and the adjoining and nearby properties situated on the north-eastern side of Tench Avenue are zoned SP3 Tourist, which permits a range of land uses and as such, the locality is transitioning to tourist-orientated development types, such as the existing Coffee Club site situated south-westwards, which accommodates a more recent restaurant and café development.

# Proposal

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The applicant seeks approval for alterations and additions to an existing dwelling primarily for use as a café with indoor and outdoor dining areas and a function centre. Works include the erection of ancillary buildings and structures including a kitchen building, bakery and retail building with associated courtyard, amenities building, wood fired pizza hut and milkshake building, outdoor dining pavilion, farmers co-op pavilion, livestock enclosures, playground, fodder shed, the installation of a sewage management system, business identification signage and associated car parking, drainage, landscaping and fencing works at 44-50 Tench Avenue, Jamisontown.

The food and drink component of the development provides a total of 150 dining seats and accommodates up to 600 patrons throughout a day, with a maximum of 200 patrons on site at any time. In addition, the function centre caters for up to 100 patrons within the house dining area for dinner and/or special events, including weddings, birthdays and corporate events, etc., with the remaining areas closed to the public. The bakery and retail store accommodates up to 20 patrons at a time and the playground is estimated at up to 20 patrons. The farmers' co-op market is intended to accommodate up to 140 patrons from those patrons already on site, with up to 10 operators.

The proposed hours of operation are as follows:

- Dining Pavilion and House Dining: Friday to Saturday, 7am to 12 midnight) and Sunday to Thursday, 7am to 9pm, with special events allowed up to 12 midnight;
- Bakery and Retail: 7am to 5pm, Monday to Sunday;
- Playground: 7am to 5pm, Monday to Sunday; and
- Farmers' co-op: 7am to 5pm, Saturday.

The development proposal comprises of the following aspects:

- Alterations and additions to the existing building to create a café with indoor and outdoor dining areas (house comprising of dining gross floor area GFA of 105m<sup>2</sup>, café GFA of 35m<sup>2</sup>, deck dining GFA of 40m<sup>2</sup>;
- Outdoor deck dining pavilion (GFA of 190m<sup>2</sup>);
- Kitchen building with kitchen area (GFA - 110m<sup>2</sup>) in addition to wash-up room, freezer, cool room and dry store;
- Bakery (GFA of 105m<sup>2</sup>) and take away coffee area/retail (GFA of 43m<sup>2</sup>) building with an adjoining courtyard (GFA of 80m<sup>2</sup>);
- Wood fired pizza hut and milkshake building (GFA of 22m<sup>2</sup>);
- Amenities building (GFA of 110m<sup>2</sup>);
- Farmers co-op pavilion (GFA of 252m<sup>2</sup>) with up to 140 patrons and up to 10 operators and 3m x 3m stalls;
- Livestock enclosures with a cattle yard (GFA of 126m<sup>2</sup>), poultry yard (GFA of 30m<sup>2</sup>), llama and goat yard (GFA of 123m<sup>2</sup>);
- Playground with acoustic fencing surrounding the northern section;
- Seating pods x 2 (GFA of 25m<sup>2</sup> each);
- Bicycle parking x 20;
- Pedestrian pathway links connecting the different areas and parking areas;
- Fodder shed (GFA of 35.5m<sup>2</sup>);
- Rainwater tanks (18,200 litres x 4);
- One business identification signage, comprised of a large rock and rusted metal lettering;
- Parking areas, including two accessible parking spaces situated along the front northern boundary and a rear car park with 94 parking spaces and a waste storage area with an adjacent on-site wastewater pumping station;
- Main access driveway adjacent to the front northern boundary and a secondary service driveway situated along front southern boundary;
- Drainage works, including an on-site stormwater detention basin and a drainage swale situated along the rear southern boundary;
- Landscaping and fencing works;
- Acoustic fencing along a section of front southern boundary, adjacent to buildings;
- Windmill;
- Manure compost area (GFA of 11.52m<sup>2</sup>); and
- Demolition of two sheds.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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### • Section 4.15 - Evaluation

The proposal has been assessed in accordance with the matters for consideration under Section 4.15 of the EP&A Act, and having regard to those matters, the following issues have been identified for further consideration.

### • Section 7.12 - Developer Contributions

The proposal is subject to Council's City-Wide Section 7.12 Development Contributions Plan for Non-Residential Development. Based on the applicable rate under this Development Contributions Plan, the following development contribution applies to the proposal:

Type of Contribution	Cost of Works	Rate	Amount
Section 7.12 Fixed Development Consent Levy	\$900,000.00	1.0000%	\$9000.00
Index Adjustment		0.0183%	\$165.00
<b>Total Contributions</b>			<b>\$9,165.00</b>

A condition of consent requiring the payment of this development contribution, prior to the issue of a Construction Certificate, has been recommended.

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

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

The subject site is located outside of the *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020 (SEPP WSA)* Aerotropolis Boundary Map. However, the SEPP WSA contains an Obstacle Limitation Surface Map and Wildlife Buffer Map, whereby the rear half of the site is identified as being located within the area of these maps. The SEPP WSA commenced on 1 October 2020, after the subject development application was lodged. The SEPP WSA contains savings provisions which means that the SEPP does not strictly apply to the proposed development.

Notwithstanding, it should be noted that consideration has been given to Clause 21 Wildlife hazards of the SEPP WSA and the development type is not identified as a "relevant development", which triggers the requirements for further consideration under Clause 21 and hence, no wildlife poses any risk to the operation of the airport.

In addition, Clause 24 Airspace operations of the SEPP WSA relates to development that would penetrate the prescribed air space for the airport and be a 'controlled activity'. The development neither penetrates the prescribed air space, nor is it a controlled activity, therefore not triggering any additional considerations under this clause.

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

*State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)* provides aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment. Under Clause 7 of *SEPP 55*, it must be considered as to whether the land is contaminated, and if so, Council must be satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which development is proposed to be carried out.

In this regard, the development application was accompanied by a preliminary site investigation, which identified several activities of environmental concern, including waste dumping, an orchard, fuel storage and uncontrolled earthworks, etc. The investigation concludes that there is low to medium potential for contamination, with a range of potential contaminants that may be present on site and recommends that a detailed site investigation (DSI) be carried out, including a soil and groundwater sampling program.

A DSI was subsequently provided at the request of Council, whereby the investigation was carried out generally in accordance with the relevant guideline documents and involved a sampling program that addresses the identified areas of concern. Soil samples were taken from 35 test pit locations, with 21 samples analysed (composite samples were used to address some parts of the site) and three groundwater samples also taken. All soil samples were found to be below the relevant assessment criteria, however, groundwater sampling identified levels of nickel equal to the criteria at one location, which was only attributed to heightened background levels. The report concludes that the *“potential for significant soil and/or groundwater impact is considered low”* and as such, the site is considered to be suitable for the proposed use, as endorsed by Council's Senior Environmental Management Officer. In addition, a recommended consent condition is to be imposed to address any unexpected finds by way of an unexpected finds protocol.

## **State Environmental Planning Policy No 64—Advertising and Signage**

The aims of *State Environmental Planning Policy No. 64—Advertising and Signage (SEPP 64)* are to ensure that any signage visible to a public place or public reserve is to be compatible with the desired amenity and visual character of an area, provide effective communication in suitable locations and be of high-quality design and finish.

In this regard, the proposal includes a business identification sign situated along the street frontage. The signage comprises of a large boulder/rock, which incorporates 3D lettering (*“welcome to orange fields”*) with dimensions of 1.8m (width) by 0.29m (height). The proposed signage is considered to be of a suitable scale and the simple design is compatible with future desired character of the local area. In addition, the proposed signage is generally compliant with the assessment criteria specified in Schedule 1 of *SEPP 64*.

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

*Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 – 1997) (SREP 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 Regional Environmental Plan No. 11 - Penrith Lakes Scheme (SREP 11)*.

The following specific planning policies and recommended strategies are the most relevant to the development proposal:

### **Clause 6 (11) Recreation and tourism**

**Policy:** *The value of the riverine corridor as a significant recreational and tourist asset must be protected.*

**Note—**

*Refer also to items (1)–(7) and (12) for relevant strategies.*

**Strategies:**

(a) *Provide a wide range of recreational opportunities along the river which are consistent with*

*conserving the river's natural values and character.*

*(b) Plan and manage recreational and tourist developments, and associated access points, cycleways and footpaths, so as to minimise any adverse environmental impacts on the river. Locate them where river banks are stable, away from river shallows, major beds of attached aquatic plants or fish breeding areas, where the proposed activities do not conflict with surrounding recreational activities and where significant flora and fauna habitats will not be adversely affected. The upgrading of existing public access to the river is to be preferred over the creation of new access points.*

*(c) Minimise conflicts between recreational uses.*

*(d) Consider the availability of, or need to provide, land for vehicle parking and for suitable access (including access for cars and buses), for boat service areas and for water, electricity and sewage disposal.*

*(e) Consider the environmental impact of ancillary services for recreation and tourist developments, such as amenities blocks and vehicle parking.*

*(f) Consider the visual impact of development on the surrounding area.*

The development proposal aims to provide recreational activities in the form of a food and drink premises, with associated livestock enclosures, a farmers' co-op, function centre and playground. The subject site is situated within an area of the river precinct, which experiences a high volume of pedestrian and recreational activity. The proposal makes provision for adequate off-street car parking and suitable access to the site, with appropriate facilities to ensure the development minimises conflicts between other recreational land uses in the locality.

The site is situated opposite the Nepean River and the development is not considered to adversely impact on the river's natural values or character. The building architecture is low lying and will sit well into the landscape setting, with patrons being afforded views to the Nepean River and Blue Mountains escarpment, which will in turn enhance views to and from the site. Council's Senior Development Engineer has reviewed the proposal, as amended, and subject to recommended conditions of consent in relation to flooding, construction management and ongoing stormwater and sewage management, has advised the proposal is not considered likely to adversely impact on the HawkesburyNepean River catchment.

It should be noted that concerns have been raised by Council's Environmental Management and Waterways Units in regard to the proposed wastewater management and stormwater treatment measures, which relate to the requirements for connections to Sydney Water's reticulated system and a Pipeline Agreement with Council's City Assets Department via the rear of the site, along Wilson Lane to the nearest maintenance hole situated approximately 700m to the north-east of the site, in addition to stormwater treatment for the gravel car park situated at the rear of the site. These matters are however addressed via deferred commencement conditions, which will need to be satisfied prior to any operational consent being granted.

## Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies - See discussion
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 2.7 Demolition requires development consent	Complies
Clause 4.3 Height of buildings	Complies - See discussion
Clause 5.10 Heritage conservation	Complies
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion
Clause 7.7 Servicing	Does not comply - See discussion

### Clause 1.2 Aims of the plan

The development proposal generally satisfies the aims of the LEP, however, it should be noted that connections to Sydney Water's reticulated system and a new rising main from the rear boundary of the site and along Wilson Lane is required for wastewater servicing. Further, additional documentation is required to ensure that stormwater treatment measures are adequate. In this regard, deferred commencement conditions are recommended to address these matters to ensure that servicing for the proposal is adequate and that there will be no environmental impacts on the immediate surroundings.

### Clause 2.3 Permissibility

The development proposal is primarily for a restaurant/café, in addition to the bakery, which are permissible land uses in the SP3 zoning under the *Penrith Local Environmental Plan 2010* and are captured by the following definition:

**food and drink premises** means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

**Note—**

*Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary.*

It should be noted that the proposal includes the use of the house dining area as a function centre and a farmers' co-op and a playground, which are also permissible land uses in the SP3 zoning. These elements are defined as follows:

**function centre** means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

**market** means an open-air area, or an existing building, that is used for the purpose of selling, exposing or offering goods, merchandise or materials for sale by independent stall holders, and includes temporary structures and existing permanent structures used for that purpose on an intermittent or occasional basis.

**Note—**

*Markets are a type of retail premises—see the definition of that term in this Dictionary.*

**recreation facility (outdoor)** means a building or place (other than a recreation area) used



*predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).*

The function centre is for pre-booked special events only including weddings, birthdays and corporate events, etc. Special events are restricted to up to 100 patrons with the remaining land uses closed to the public and are to be operated on weekends, with regular hours of operation extended up to 12 midnight. It should be noted that the function centre as a standalone land use is permitted with consent.

The nature and scale of the farmers' co-op is considered to be a "market", with hours of operations on weekends only and up to 140 patrons already on site visiting this area. Up to 10 local producers are expected to manage 3m x 3m stalls and sell their produce in the farmers' co-op pavilion, including fruit, vegetables, eggs and honey, etc. Despite the farmers' co-op being an ancillary use, which accommodates an area of 250m<sup>2</sup> or 1.1% of the land area of 2.32 ha, the land use is also permitted with consent.

The playground is considered to be an outdoor recreation activity, which is an ancillary use and occupies approximately 390m<sup>2</sup> and accommodates up to 20 children at any one time, with hours of operation between 7am to 5pm, Monday to Sunday. The playground as a standalone land use is also permitted with consent.

However, the proposed livestock enclosures and retail components are prohibited and defined as follows:

***animal boarding or training establishment*** means a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital.

***retail premises*** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following;

- (a) *(Repealed)*
- (b) *cellar door premises,*
- (c) *food and drink premises,*
- (d) *garden centres,*
- (e) *hardware and building supplies,*
- (f) *kiosks,*
- (g) *landscaping material supplies,*
- (h) *markets,*
- (i) *plant nurseries,*
- (j) *roadside stalls,*
- (k) *rural supplies,*
- (l) *shops,*
- (la) *specialised retail premises,*
- (m) *timber yards,*
- (n) *vehicle sales or hire premises,*

*but does not include highway service centres, service stations, industrial retail outlets or restricted premises.*

**Note—**

*Retail premises are a type of commercial premises—see the definition of that term in this Dictionary.*

An "animal boarding or training establishment" is not permissible as a standalone use in the SP3 zone. The livestock enclosures will accommodate a small number of animals, including 2 x cattle, 10 x chickens, 2 x goats and 2 x alpacas/llamas and occupy an area of 400m<sup>2</sup> or 1.7% of the land area of 2.32 ha. It should be noted that the livestock enclosures are for the entertainment of patrons and exist only in support to the dominant food and drink premises purpose, noting that the keeping of animals is more akin to a petting zoo, with interaction via the fence. As such, it is likely that visitors to the livestock enclosures will

be the children of the parents who visit the food and drink premises. It should be noted that no entry fee will be charged to visit the livestock enclosures and therefore it is not independent, nor could it operate independently. Given that it is a minor component of the overall development, and is subservient in nature, it is considered to be an ancillary use and therefore permitted in the SP3 zone.

In addition, it should be noted that a retail premises is prohibited in the SP3 zone. However, the retail component occupies only approximately 50% (20m<sup>2</sup>) of the adjoining take away coffee area (shared floor area of 43m<sup>2</sup>) or 0.08% of the land area of 2.32 ha, which is a minor portion of the total floor area of the dominant food and drink premises use, i.e., house and outdoor dining areas. The retail store is intended to sell a range of baked goods and other pre-packaged food products made on site. It is expected that the retail store may attract patrons as part of their visit on site for dining/food and drinks and will likely be minor in scale in terms of retail sales and scale. It is unlikely to be a standalone use, which can exist as an independent and viable land use and therefore, it is considered to be an ancillary use. Further, the adjoining courtyard is likely to be predominately occupied by patrons served by the adjoining bakery and take away coffee stores.

#### **Clause 4.3 Height of buildings**

The proposed buildings and structures are of a single storey design, with a maximum height of 5.52m above ground level (AGL) for the buildings, noting that two chimneys for the bakery building have a height of 7.3m AGL, which is below the maximum 8.5m height of building provision applicable to the site. The buildings are considered to be keeping in with the semi-rural character of the locality and given the minimal bulk, it is not considered likely the proposal will result in any adverse impacts on the streetscape or the immediate surrounds.

It should be noted that the proposal includes a windmill, which has an approximate height of 13.46m AGL. In consideration of the excessive height and non-compliance with the 8.5m height of building provision, a deferred commencement condition is to be imposed requiring it to be reduced in height to a maximum height of 8.5m or alternatively, the structure shall be deleted from the plans.

#### **Clause 7.2 Flood planning**

The original proposal included filling of flood liable land in the middle section of the site, which is not supported due to likely disturbances to the overland flow path. The applicant was requested to ensure that any fill is clear of the flooding extent at the rear of the site and be located above RL 65.5m AHD. Revised civil plans were subsequently provided, which illustrate the location and depth of the proposed fill and indicate that there will be no fill imported within the flood affected area. It is noted that an approximate 0.5m high retaining wall is proposed along the rear southern boundary to facilitate site drainage, which raises no major concerns. Further, the finished floor levels of all the buildings are above the flood planning level and therefore, the proposal poses minimal flooding risk, as endorsed by Council's Senior Development Engineer.

#### **Clause 7.5 Protection of scenic character and landscape values**

The proposal includes the erection of four buildings and ancillary structures, including an outdoor dining pavilion, farmers' co-op pavilion, playground, small shed and rear car park. The overall design is based on a "rural/farm" theme and incorporates traditional low rise single storey buildings, pitched roofs, open pavilions, brick faces, corrugated iron cladding, timber cladding, etc. Several trees will be retained across the site and the proposal, as amended, makes provision for generous landscaping embellishment, which will aid in softening the overall bulk and scale of the development and screen the rear car parking area. It should be noted that the original 1.8m high solid acoustic fencing surrounding the majority of the site's boundary has been deleted and reduced to only a minor portion of the front of the southern boundary, which will reduce amenity impacts. In addition, the landscape plan is required to be amended to provide a small number of additional trees, which is to be addressed via a recommended consent condition. Given the design measures in place, the development is considered to be of minimal visual impact on the streetscape.

#### **Clause 7.7 Servicing**

The proposal includes an on-site wastewater system with an on-site pumping station to divert and dispose of wastewater generated on the site to a private rising main line from the rear boundary, along Wilson Lane to Sydney Water's sewerage system, whereby the nearest maintenance shaft is approximately 700m to the north-east of the site. The wastewater report is generally satisfactory, as detailed in the Appendix of this report, however, additional documentation remains outstanding to demonstrate that connection to Sydney Water's reticulated system is feasible, in terms of disposal capacity loads. In addition, it is noted that the applicant is required to enter into a Private Agreement with Council's Assets Department to construct the rising main on Council owned land (Wilson Lane, a paper road).

Given the aforementioned matters, it is considered appropriate that these matters be resolved via a deferred commencement approval given there is a suggestion that a connection point is available and in principle supported and possible, subject to cost. The deferred commencement condition includes the requirement to obtain advice (notice of requirements) from Sydney Water, which will confirm adequate connections to Sydney Water's sewerage system, which will require a revised wastewater report with consideration to the notice of requirements, submitted and approved by Council. In addition, Private Pipeline Agreement will include details of any construction works, the overall design, sewer line capacity, on-going maintenance, tree protection measures, etc., to ensure that the sewage management system is adequate and of minimal impact on the immediately surrounding area.

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

The *Draft SEPP (Environment)*, *Draft SEPP (Remediation of Land)*, *Draft SEPP (Housing Diversity) 2020* and *Draft SEPP (Cumberland Plain Conservation)* are at present applicable to the subject site, but while so, do not affect or alter the recommendations of this report, noting that the proposal is not considered inconsistent with these *Draft SEPPs*.

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

### Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies - see Appendix - Development Control Plan Compliance
C3 Water Management	Does not comply - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Complies - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	Complies
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance
E13 Riverlink Precinct controls	Complies - see Appendix - Development Control Plan Compliance

## Section 4.15(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements in place, which are applicable to the development proposal.

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

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia (BCA) and fire safety requirements, will be imposed as consent conditions where applicable. In this regard, the proposal complies with the relevant BCA and fire safety requirements of the *Environmental Planning and Assessment Regulation 2000*.

In addition, the development application has been notified and publicly exhibited in accordance with the requirements of the Regulations.

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

### Context and Setting

The subject site is situated within an SP3 zone, whereby the locality is expected to transition to tourism/recreational type land uses. The site contains an existing dwelling suitable for minor alterations and additions to convert the building to a café/restaurant. The proposal includes a small number of buildings and ancillary structures, whereby the overall bulk and scale of the development is considered to be appropriate for the capacity of the land, with adequate access, pedestrian links, off-street parking, bus stops and services being in proximity to the site. Therefore, the proposal is considered to be compatible with surrounding land uses and the desired future character of the locality.

### Site Design and Internal Design

The proposal is predominately for a food and drink premises, with house and outdoor dining, in addition to a

café within the house dining area, a bakery and take away coffee and retail building and a pizza and milkshakes building. The proposal includes ancillary activities, including livestock enclosures (awning structure), a playground and farmers' co-op pavilion. The food and drink premises buildings are grouped together behind the existing dwelling and include pedestrian links interconnecting to the street, car parking areas and different land uses, but also separate pathways to directly connect the street to the livestock enclosures, playground and farmers' co-op pavilion. The overall layout provides appropriate connectivity to separate patrons, i.e., those visiting the takeaway offerings or the farmers' co-op, etc. Notwithstanding, it is considered appropriate that a Plan of Management (POM) be submitted and approved as part of the deferred commencement consent conditions to address site management, in terms of the different land uses and mitigation measures to minimise amenity impacts.

The siting of the buildings and structures provides suitable site boundary setbacks and separation distances, which generally comply with the relevant controls and standards, with respect to the constraints of the site. Four new buildings, a dining pavilion (adjacent to the first new building to the north-east) and farmers' co-op pavilion are situated behind the existing dwelling. The livestock enclosures are situated to the north of the dwelling, approximately in the middle of the front section of the site, behind the front building line and a playground is situated behind this structure. The overall layout, including landscape design, reduces bulk and minimises visual impacts on the streetscape and neighbouring properties. Further, the internal floor plan layouts and accessible parking and pathways provide equitable access, subject to recommended consent conditions, which will require that an amended Access Report be submitted and approved by Council, prior to the issue of a Construction Certificate.

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

The proposal was amended at the request of Council to improve access and vehicular circulation. The rear car parking area was shifted approximately 45m westwards off the rear boundary, closer to the middle of the site to reduce the walking distance to the primary activities on site. The waste collection area was relocated to the south-eastern corner of the rear car park, as the original location situated at the end of the secondary access/servicing driveway did not permit a medium rigid vehicle to enter and exit the site in a forward direction with a 3-point manoeuvre in accordance with Council's requirements. The relocation of the waste collection area and reconfiguration of the rear car parking area required wider aisle widths to accommodate vehicle manoeuvring for medium rigid vehicles to service the site, which subsequently resulted in a loss of 14 parking spaces. The proposal makes provision for a total of 96 parking spaces, which complies with the minimum of 92.54 off-street car parking spaces required in accordance with the DCP parking rates, as detailed in the Appendix of this report. It should be noted that there is no line marking for pedestrian pathways and crossings due to the gravel driveway, however, the combination of traffic islands, landscaping and a rural theme are likely to reduce vehicle speeds, which will in turn improve pedestrian safety, as endorsed by Council's Senior Traffic Engineer. In addition, the requirement for a POM via a deferred commencement condition, which will address traffic flows and pedestrian movements, will ensure that traffic impacts and hazards are minimised.

### **Utility Services**

The proposed stormwater system and waste management plan provide for adequate servicing for the site. However, it should be noted that the wastewater system incorporates a pump-out system, which is required to be connected to Sydney Water's reticulated system via a new rising main from the rear boundary of the site and along the adjoining Wilson Lane to the nearest maintenance shaft situated approximately 700m north-eastwards. In this regard, the wastewater report, as amended, generally demonstrates adequate wastewater servicing for the scale of the development, being a maximum of 200 patrons on site at any one time. However, additional documentation is required to demonstrate that a connection to Sydney Water's reticulated system is feasible, in terms of disposal capacity. Further, a Private Pipeline Agreement with Council's City Assets Department is required for the construction and design details of the rising main on Council owned land. These key matters are to be resolved via deferred commencement conditions.

### **Environmental Impacts**

It should be noted that the proposed livestock enclosures require ongoing care and maintenance of several animals, including cattle, goats, alpacas and chickens. A Plan of Management (POM) for the livestock was submitted at the request of Council to detail livestock management and husbandry, which details cleaning procedures, wastewater management, storage of associated equipment and food and water and waste storage via a fodder shed and compost pile. The POM was reviewed by Council's Senior Environmental Management Officer, who raised no objections. Notwithstanding, an additional POM for the site operations

will ensure that patrons are managed appropriately across the site for the different uses, including safety and security measures to minimise any amenity impacts on the immediate surrounds.

Further, concerns were initially raised in regard to air quality and noise impacts given the nature of the development, which includes a bakery and wood fired pizza oven, food preparation and outdoor dining, in addition to a duct vent for the sewerage system, adjacent to Wilson Lane. In this regard, an air quality impact assessment was subsequently provided, which indicates that the potential impacts associated with the café and restaurant, including the wood fired pizza oven, are considered negligible and that an activated carbon filter will neutralise odours associated with the on-site wastewater system.

In regard to noise impacts, 1.8m high acoustic fencing, which surrounded a majority of the site was initially proposed. The acoustic fencing was required to be a solid barrier, constructed of material with a surface density of 10-15 kg/m<sup>2</sup> and free from holes and gaps. Construction materials generally comprised of either 25mm thick plywood timber paneling, 9mm thick fibre cement sheeting, 75mm thick Hebel Powerpanel, 12mm thick Perspex, polycarbonate or Danpalon, or 6mm toughened laminated safety glass, etc. While the locality is anticipated to transition to tourism and recreation type developments, concerns were raised in regard to amenity impacts on the streetscape and neighbouring properties and therefore the extent of original acoustic fencing was considered to be incompatible with the future desired character of the locality. A revised noise impact assessment was submitted at the request of Council in response to the deletion of the extent of acoustic fencing, which remains along the front portion of the southern boundary, adjacent to the buildings, in addition to the northern section of the playground. The revised report was also required to clarify the total number of patrons on site, as the figures in the Statement of Environmental Effects (SEE) were inconsistent with the acoustic report.

The revised report confirms that a maximum of 200 patrons will be on site at any one time and provides details of the relevant noise criteria for the development, which gives due consideration to background music, patron noise, vehicle movements and the use of the farmers co-op and playground, with acoustic fencing for the buildings situated only adjacent to the southern side boundary and the playground, in addition to the relocation of the car parking area being closer to the middle of the site. The report concludes that the development is restricted to 200 patrons at any one time and is within the relevant noise criteria and therefore, it is not considered likely to result in any unreasonable amenity impacts on adjoining and nearby properties. It should be noted that there is a discrepancy between the SEE, acoustic report and traffic report in regard to the hours of operation for the farmers' co-op and the associated 140 patrons, which was subsequently clarified at the request of Council. In summary, the farmers' co-op will operate between 7am and 5pm, Saturday and will accommodate a maximum of 140 patrons from those already on the site, i.e., within the normal hours of operation and will not result in more than 200 patrons on site at any one time, and therefore is compliant with the relevant noise criteria.

In addition, it should be noted that additional documentation is required to demonstrate that the proposed stormwater treatment measures are in accordance with Council's WSUD Policy, including a WSUD Strategy and the proposed surface treatment for the access driveway and rear car park, noting that gravel is proposed, which may be required to be a hardstand area and subsequently require water conversation measures. These matters are to be resolved via a deferred commencement condition, which is likely to require revised civil plans.

### **Socio-Economic Impacts**

The proposal is considered to be of a suitable scale and will be appropriately managed via a POM. The amended SEE indicates that the special events proposed include weddings, engagement parties, birthday parties and corporate events, etc. Special events are restricted to a maximum of 100 patrons with the remaining land uses closed to the public and it is not intended that the site is to be used for large or loud events. The owners and/or manager will review event details to ensure suitability prior to taking bookings to protect the amenity of surrounding properties, noting that the nature of special events does not warrant security measures. Notwithstanding, a consent condition is to be imposed to provide for a POM for review and approval by Council, prior to the issue of an Occupation Certificate. Overall, the activities proposed are considered to be of an overall benefit to the community and will create employment opportunities, which will in turn boost socio-economic growth in the Riverlink Precinct and hence, the proposal unlikely to result in any significant impacts on neighbouring and surrounding properties or the local community, noting that the proposal did not receive any public submissions.

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

The site is deemed suitable for the development proposal for the following reasons:

- The site is zoned SP3 and the proposal is permissible;
- The proposal is considered to be of a suitable scale;
- The applicant has adequately addressed initial land contamination concerns;
- The proposal has adequately addressed flood planning controls;
- The provision for wastewater servicing, subject to satisfying the deferred commencement conditions, will ensure adequate servicing for the site;
- Stormwater treatment measures, subject to satisfying the deferred commencement conditions, are suitable;
- The proposal provides adequate access and off-street parking; and
- The subject site does not contain any significant ecosystems or threatened species.

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

### Community Consultation

In accordance with Appendix F2 of the DCP, the development application was notified to eight adjoining and nearby properties and publicly exhibited from 8 to 31 January 2020. No public submissions were received in response.

### 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	Not supported, however conditions provided
Environmental - Waterways	Not supported, however conditions provided
Environmental - Public Health	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions
Social Planning	No objections

### Environmental - Environmental management

Council's Senior Environmental Management Officer raised concerns in regard to the proposed wastewater system, which requires a new main to connect to Sydney Water's reticulated system distant from the site. Given that there is uncertainty in regard to the feasibility of a new connection and the capacity loads of the existing sewerage infrastructure, a deferred commencement condition is to be imposed to address this unresolved matter. This will ensure that servicing is adequate for the site prior to any operational consent being granted.

### Environmental - Waterways

It is noted that Council's Waterways Team did not support the proposal due to insufficient details to demonstrate water quality measures are satisfactory. A deferred commencement approval is recommended requiring an amended WSUD Strategy and general compliance with Council's WSUD Technical Guidelines and Stormwater Drainage for Building Developments Policy to address unresolved issues raised as part of the assessment, prior to any operational consent being granted.

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

In consideration of the nature and suitable scale of the development proposal, in addition to the proposal being generally compliant with the applicable development controls and standards, the health and safety of the public will not be adversely affected, noting that initial concerns regarding land contamination have been adequately addressed and wastewater servicing and stormwater treatment measures will be addressed prior to any operational consent being issued. Therefore, the development is not considered likely to pose any significant public interest impacts.

## Conclusion

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In assessing this development proposal against the relevant environmental planning policies, including *Penrith Local Environmental Plan 2010*, *Penrith Development Control Plan 2014*, *State Environmental Planning Policy No. 55 - Remediation of Land*, *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020*, *State Environmental Planning Policy No. 64 - Advertising and Signage* and *Sydney Regional Environmental Plan No. 20 - Hawkesbury/Nepean River (No. 2 - 1997)*, the proposal generally satisfies the aims, objectives and provisions of these policies. It is noted that a connection to Sydney Water's sewerage system is required to ensure adequate servicing of the site and additional documentation is required in regard to stormwater treatment measures, which will be adequately addressed by way of the recommended deferred commencement consent conditions. Subject to satisfying the deferred commencement consent conditions, the site is considered to be suitable for the development and the proposal is in the public interest. Therefore, the application is worthy of support and is recommended for approval, subject to conditions.

## Recommendation

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That DA19/0884 for alterations and additions to an existing building for use as a café with indoor and outdoor dining areas and ancillary buildings and structures, including the erection of a kitchen building, bakery and retail building with associated courtyard, amenities building, wood fired pizza hut and milkshake building, outdoor dining pavilion, farmers' co-op pavilion, livestock enclosures, playground, fodder shed, the installation of a sewage management system, business identification signage and associated car parking, drainage, landscaping and fencing works, be approved via a deferred commencement approval and subject to the following conditions.



# CONDITIONS

## General

### 1 A001 - Approved plans table

The development must be implemented substantially in accordance with the following plans and documents stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the stamped approved plans and documents or by plans or documents submitted to satisfy the deferred commencement conditions, and as amended by the following conditions.

Drawing Title	Prepared By	Job No.	DWG No.	Issue	Dated
Proposed Site Plan	Killing Matt Woods	0461	02	M	09/11/20
Detail Plan House & T/A Canteen	Killing Matt Woods	0461	03	M	09/11/20
Detail Plan Kitchen, Pavilions & Amenities	Killing Matt Woods	0461	04	M	09/11/20
Detail Plan Barn & Seating Pods	Killing Matt Woods	0461	05	M	09/11/20
Detail Plan Parking	Killing Matt Woods	0461	06	M	09/11/20
Livestock Enclosures	Killing Matt Woods	0461	07	M	09/11/20
Detail Plan Playground	Killing Matt Woods	0461	08-09	M	09/11/20
Detail Kitchen Plans	Killing Matt Woods	0461	10-11	M	09/11/20
Proposed Elevations (Page 1-9)	Killing Matt Woods	0461	21-29	M	09/11/20
Typical Fence Details	Killing Matt Woods	0461	31-32	M	09/11/20
Typical Site Details	Killing Matt Woods	0461	33	M	09/11/20
Typical Acoustic Wall Details	Killing Matt Woods	0461	34	M	09/11/20
Proposed Finishes	Killing Matt Woods	0461	91	M	09/11/20
Stormwater Concept Plans	MBR Consulting Engineers	19039	000-114	C	29/10/20
Landscape Plans (as amended via Condition 11)	Conzept Landscape Architects	LPDA 20-268	2-8	F	06/11/20

#### Documents:

- Air Quality Impact Assessment prepared by SLR, Reference No. 610.19103-R02-v1.2.docx, dated 10 September 2020;
- Detailed Site Investigation prepared by Noel Finianos, Job No. E2250, Revision 0, dated 24 March 2020;
- Development Application Access Review prepared by Phillip Chun Accessibility Pty Ltd, Reference No. AN019-213829, dated 11 December 2019;
- Noise Impact Assessment, prepared by Rodent Stevens Acoustics, Reference No. R200089R1, Revision 5, dated 5 November 2020;
- Plan of Management prepared by Bullseye AG, dated 11 March 2020;
- Rezoning Traffic and Parking Assessment Report prepared by Positive Traffic Pty Ltd, Report No. PT1906501\_Final\_V4, dated September 2020; and
- Sewer Servicing Design prepared by SLR, Reference No. 630.30042-R01-v0.2, dated 21 October 2020.

### 2 A012 - Food Act

The proprietor of the food business shall ensure that the requirements of the *NSW Food Act 2003*, *NSW Food Regulation 2010* and the *Australian and New Zealand Food Standards Code* are met at all times.

### 3 A019 - Occupation Certificate

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

A satisfactory inspection from an authorised officer of Council's Environmental Health Department is required prior to the issue of the Occupation Certificate. The occupier is to contact the Environmental Health Department to organise an appointment at least 72 hours prior to the requested inspection time.

### 4 A021 - Business Registration

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

### 5 A026 - Advertising sign (not for residential)

A separate development approval for the erection of a sign or advertising structure is to be obtained, other than for signage approved as part of this consent or for an advertisement listed as exempt development.

## 6 A029 - HOURS OF OPERATION AND DELIVERY TIMES

The approved operating hours of the development are:

- Dining Pavilion and House Dining: 7.00am to 12 midnight, Friday to Saturday; 7.00am to 9.00pm, Sunday to Thursday, with special events permitted to 12 midnight;
- Bakery and Retail and Playground: 7.00am to 5.00pm, Monday to Sunday; and
- Farmers' Co-Op: 7.00am to 5.00pm, Saturday.

Delivery and service vehicles generated by the development are limited to 7.00am to 5.00pm, Monday to Saturday.

## 7 A030 - Patron Numbers

Patron numbers are restricted to the following:

- A maximum of 200 patrons are to be on site at any one time;
- A maximum of 20 children are permitted in the playground area at any one time; and
- A maximum of 100 patrons are to be on site at any one time for pre-booked special events (including weddings, parties and corporate events, etc) with the remainder of the site closed to the public.

A maximum of 10 local produce stalls measuring 3m x 3m are permitted on the site as part of the approved market/farmers' co-op use.

## 8 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 land uses. 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).

## 9 A039 - Graffiti

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

## 10 A Special (Arborist's Report)

**Prior to the issue of a Construction Certificate**, an Arborist's Report shall be submitted and approved by Council to assess the existing tree in the proposed playground. Any tree protection measures and required amendments to the playground design to retain the tree, shall be submitted to and approved by Council.

## 11 A Special (Landscape Plan)

**Prior to the issue of a Construction Certificate**, the landscape plan prepared by Conzept Landscape Architects, DWG No: LPDA 20 - 268, page numbers 2-8, dated 06.11.20, Revision F, shall be amended to delete the excess pedestrian pathway (in a north/south direction) adjacent to western side of the rear car parking area. It is to be replaced with suitable trees for shading, such as spotted gum trees or the like. In addition, the wattle trees adjacent to the north-western side of the playground shall be replaced with larger trees, which have a long-life span to ensure adequate shading, such as spotted gum trees or the like.

## 12 A Special (Plan of Management)

The Plan of Management submitted to satisfy the deferred commencement conditions shall be complied with at all times.

In the case that any formal complaints are received by Council in regard to the development, additional documentation shall be submitted to review, and if required, amend the operations of the site.

## Demolition

### 13 B001 - Demolition of existing structures

Structures nominated for demolition on the approved plans shall be demolished as part of the approved works.

### 14 B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE

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

All demolition and excavated material shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location(s) of all excavated material from the development site shall be provided to the Principal Certifying Authority **prior to commencement of demolition**.

15 **B003 - ASBESTOS**

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

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

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

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

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

16 **B004 - Dust**

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

17 **B005 - Mud/Soil**

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

## **Environmental Matters**

18 **D001 - Implement approved sediment& erosion control measures**

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

19 **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.

20 **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 an 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.

21 **D013 - Approved noise level 1**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in 'Noise Impact Assessment: Proposed Cafe/Restaurant - 44-50 Tench Avenue, Jamisontown' prepared by Rodney Stevens Acoustics Pty Ltd, Reference No. R200089R1, Revision 5, dated 5 November 2020.

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.

22 **D026 - Liquid wastes**

Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.

If mains sewer is not available or if Sydney Water will not allow disposal to the sewer then a licensed waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.

The waste contractor and waste facility are to hold the relevant licenses issued by the NSW Environment Protection Authority.

23 **D06A – Approval for bulk earthworks/major filling operations (Use for bulk earthworks/ major filling operations)**

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

- state the legal property description of the fill material source site,
- be prepared by an appropriately qualified person (as defined in *Penrith Development Control Plan 2014*) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
- clearly indicate the legal property description of the fill material source site,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

An appropriately qualified person/s (as defined in the *Penrith Development Control Plan 2014*) shall:

- Supervise the filling works,
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and shall submit a review findings report to Council and any Principal Certifying Authority,
- Certify by way of a Compliance Certificate or other written documentation that fill materials have been placed on the site in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.

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

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

{**Note:** *Penrith Development Control Plan 2014* defines an appropriately qualified person as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, 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."}

24 **D Acoustic Barrier Fence**

**Prior to the issue of a Construction Certificate**, a revised acoustic fence plan shall be submitted to and approved by Council. The acoustic fence shall be sympathetic to character of the locality and not be of a stark finish.

**Prior to the issue of an Occupation Certificate**, a 1.8 metre high solid acoustic fence is to be constructed on the south-western boundary of the site and a 1.6 metre high solid acoustic fence is to be constructed surrounding the Playground, as shown in Figure 2-2 of the 'Noise Impact Assessment: Proposed Cafe/Restaurant - 44-50 Tench Avenue, Jamisontown' prepared by Rodney Stevens Acoustics Pty Ltd, Reference No. R200089R1, Revision 5, dated 5 November 2020.

The acoustic fences are to provide adequate noise attenuation, and are to be constructed in accordance with Section 5.1 of the above-mentioned approved Noise Impact Assessment.

25 **D Acoustic Compliance Report**

**Twelve (12) months after the issue of an Occupation Certificate**, an Acoustic Compliance Report is to be submitted to and approved by Council. The report is to be prepared by a suitably qualified acoustic consultant and is to address, but not be limited to, all noise generating activities on the site and the level of compliance with the noise criteria set within the 'Noise Impact Assessment: Proposed Cafe/Restaurant - 44-50 Tench Avenue, Jamisontown' prepared by Rodney Stevens Acoustics Pty Ltd, Reference No. R200089R1, Revision 5, dated 5 November 2020. It is also to consider the requirements of the NSW Environment Protection Authority's 'Noise Policy for Industry', other relevant guideline documents and the conditions of this development consent.

Should the Compliance Report identify any non-compliance issues, the report is to provide suitable recommendations for the mitigation of those issues. Any mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

26 **D Agricultural Plan of Management**

The 'Plan of Management: Orange Fields - 44-50 Tench Ave, Jamisontown NSW' prepared by Bullseye AG, dated 11 March 2020 (Volume 2 (Updated)) is to be implemented and adhered to in relation to the management of the agricultural operations carried out on site.

27 **D Air Quality Assessment**

The construction and operational phases of the development are not to generate air quality impacts (including dust and odour) that exceed the relevant air quality criteria detailed in '44-50 Tench Avenue, Jamisontown: Air Quality Impact Assessment' prepared by SLR Consulting Australia Pty Ltd, Reference No. 610.19103-R02-v1.2, dated 10 September 2020. The recommendations provided in the above-mentioned report shall be implemented and incorporated into the design, construction and operations of the development.

A certificate is to be obtained from a qualified air quality consultant certifying that the development has been constructed to meet the air quality criteria in accordance with the Council approved Air Quality Impact Assessment. **Prior to the issue of an Occupation Certificate**, this certificate is to be submitted to Council for approval.

28 **D Mechanical Plant**

All mechanical plant and equipment is to comply with the noise criteria established in the Council approved 'Noise Impact Assessment: Proposed Cafe/Restaurant - 44-50 Tench Avenue, Jamisontown' prepared by Rodney Stevens Acoustics Pty Ltd, Reference No. R200089R1, Revision 5, dated 5 November 2020.

**Prior to the issue of a Construction Certificate**, further details on the type and location of all mechanical plant and equipment associated with the development is to be provided to Penrith City Council for consideration and approval. Suitable data and information assessed by a suitably qualified acoustic consultant is to be supplied to demonstrate compliance with the established noise criteria.

29 **D Music Requirements**

A noise limiter is to be installed to ensure that background music does not exceed 75 dB(A) at 1 metre from the speakers. All amplified equipment forming part of the in-house sound system must be connected to this limiter.

30 **D Unexpected Finds Protocol**

Should any "unexpected finds" occur during site 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 Penrith City Council is to be notified. Any such "unexpected finds" shall be addressed by an appropriately qualified person 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 works be required, development consent is to be sought from Penrith City Council before the remediation works commence.

{**Note:** An appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, ecotoxicology, 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".}

## BCA Issues

### 31 E006 - Disabled access and facilities

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

### 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 buildings. The annual fire safety statement for the buildings 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.

### 33 E01A - BCA compliance for Class 2-9

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

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

(b) formulating an alternative solution which:

- complies with the performance requirements, or
- is shown to be at least equivalent to the deemed to satisfy provision, or

(c) a combination of (a) and (b).

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

### 34 E Special (BLANK)

The Principal Certifying Authority shall ensure that the requirements of the Development Application Access Review prepared by Phillip Chun Accessibility Pty Ltd, Ref: AN019-213829, dated 11 December 2019 are incorporated into the Construction Certificate plans and the necessary works completed prior to the issue of an Occupation Certificate.

## Health Matters and OSSM installations

### 35 F001 - General Fitout

The construction, fit-out and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code, and AS 4674-2004 *Design, Construction and Fit-out of Food Premises*.

### 36 F006 - Water tank & nuisance

The rainwater tanks must be maintained so as not to create a nuisance and it must be protected against mosquito infestation.

37 **F022 - Commercial kitchen(exhaust system)**

Cooking appliances which exceed a total maximum power input of 8kw for electrical, or a total gas input of 29MJ/h for a gas appliance, are required to have a kitchen exhaust system installed in accordance with Clause F4.12 of the Building Code of Australia and Australian Standard 1668, Parts 1 & 2.

Detailed plans together with calculations for the system must be provided as part of the Construction Certificate application.

The exhaust hood must completely cover the equipment to be ventilated and extended at least 200mm beyond the perimeter of the equipment. The exhaust hood must be provided with a condensation gutter around its base. The gutter must be at least 50mm wide by 25mm deep. Where abutting walls are located the hood must be constructed so as to finish flat against the wall surface.

The low edge of a canopy type exhaust hood must be at least 2000mm above floor level.

**Prior to the issue of an Occupation Certificate**, and operation of the business, the exhaust system shall be certified by an appropriately qualified person to comply with the Building Code of Australia and Australian Standard 1668, Parts 1 & 2. A copy of the certification and supporting documentation must be provided to Council's Environmental Health Department if Council is not the Principal Certifying Authority.

38 **F025 - Food safety supervisor**

A Food Safety Supervisor, with a current Food Safety Supervisor Certificate recognised by the NSW Food Authority, must be appointed by the business prior to commencement of the business.

39 **F027 - Hand basins**

All hand wash basins in all the food outlets must be serviced with hot and cold water through a single outlet, able to be mixed at a temperature of at least 40°C and fitted with a hands free operation. Disposable paper hand towels and soap must be provided and serviced from a dispenser adjacent to each hand basin.

Where sensor taps are installed, the basin must not be more than 6 metres from the hot water system.

40 **F028 - Staff toilets**

Staff toilets must be provided on the premises. Where a toilet adjoins a food preparation area, it must be separated by an air lock and its doors must be fitted with self closing devices. Toilets intended for customer use must not be accessed through areas where open food is handled, displayed or stored. All toilets on the premises are to be provided with hand wash basins and adequate supplies of liquid hand soap and single use paper towels or other means to effectively dry hands.

41 **F030 - Hot water service**

Hot water services must be positioned at least 75mm clear of the adjacent wall surfaces, and mounted at a minimum 150mm above the floor level on a non-corrosive metal stand. The hot water system must be sized to meet the demands of the food business during peak operating and cleaning periods and be able to provide sufficient hot water throughout the working day. Discharge from the hot water system must enter the sewer through a tongue dish in accordance with Sydney Water's requirements.

42 **F032 - Floor covering**

Approved, recessed coving must be provided at all intersections of the floor with the walls within all food preparation, service, storage and scullery areas. All coving must have a minimum concave radius of 25mm and be installed so as to be integral to the surface finish of both floor and wall in such a manner as to form a continuous, uninterrupted surface.

43 **F033 - Walls – food prep area**

The walls of the food preparation area must be of solid construction and finished with glazed ceramic tiles or other approved material to a height of 2 metres. The intersection of tiles and render must have a flush finish, or be splayed at a 45° angle to eliminate a ledge that would allow dust and grease to accumulate.

44 **F034 - Walls – behind cooking appliances**

The walls at the rear of cooking appliances must be surfaced with an impervious material, such as stainless steel, which extends from the canopy to the floor. Where a cooking appliance is sealed to the wall, the material must be lapped over the top edge of the appliance to provide a grease and vermin proof seal. Cooking appliances must only be sealed to walls made of a non-combustible material.

45 **F035 - Ceilings**

The ceiling in the preparation, service and scullery areas must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersection of the walls and ceiling must be tight jointed, sealed and dust proofed. Drop-in panel style ceilings are not permitted.



46 **F039 - Fly screens**

Flyscreens or other approved means of excluding flies must be provided to all window and door openings.

47 **F045 - Food Prep Sink - clearance area**

Any food preparation sinks must be separated from all other sinks by a minimum distance of 2 metres or have an approved form of physical barrier that separates the sink.

48 **F047 - Fixtures & fittings**

All fixtures, fittings and equipment must be provided with smooth and impervious surfaces, free from cracks and crevices to enable easy cleaning.

All fittings and fixtures must be built into the wall and floor so as to be free from joint, gaps and cavities to enable easy cleaning or alternatively, supported on one of the following:

a. Plinths – plinths must be an integral part of the floor, constructed of solid materials similar to the floor at least 75mm in height and coved at the intersection with the floor. All plinths must have a smooth and impervious finish. All fittings and fixtures must be properly sealed to the plinth so to be free from gaps, cracks and cavities.

b. Wheels or castors – fittings and fixtures can be supported on wheels or castors. The wheels and castors must be capable of supporting and easily moving a full loaded fitting. All wheels and castors must be provided with a restraining device.

c. Legs – fittings and fixtures can be supported on legs but must be constructed of a non-corrosive, smooth metal or molded plastic. All legs must be free from cracks and crevices. All legs and shelves must have a clearance space between the floor and the underside of the fitting of at least 200mm.

**Note:** False bottoms under fittings are not permitted (AS 4674-2004 – Sections 4.2 and 4.3).

49 **F051 - Shelving**

All fixtures, fittings and equipment must be smooth and impervious; free from joints, cracks and crevices; and able to be easily cleaned. They are to be constructed from approved materials such as stainless steel, laminated timber, or plastic. All cracks and crevices are to be sealed to prevent the harbourage of cockroaches.

All shelves must be at least 200mm off the floor to allow easy cleaning underneath.

50 **F052 - Coolrooms**

All coolroom and/or freezer room floors must be finished with a smooth even surface and graded to the door. A sanitary floor waste must be located outside the coolroom and freezer adjacent to the door. All metal work in the coolroom and freezer room must be treated to resist corrosion.

Condensation from coolrooms and refrigeration motors must discharge to sewer via a tundish with air gap separation in accordance with Sydney Water requirements.

All cool rooms and freezer rooms must be provided with:

- A door which can at all times be opened from inside without a key; and
- An approved alarm device located outside the room, but controlled only from the inside.

51 **F055 - Lockers**

Sufficient lockers must be provided in the food preparation area or store room specifically for the storage of cleaning materials, employees' clothing and personal belongings.

52 **F056 - Storerooms**

All storerooms on the site must be constructed in accordance with AS 4674-2004 by providing the following:

- A smooth, even, non-slip floor surface.
- Coving at all intersections of the floor and walls with approved, recessed coving to a minimum concave radius of 25mm, so as to be integral to the surface finish of both floor and wall in such a manner as to form a continuous, uninterrupted surface. "Feather edge skirting" and non-rebated coving are not permitted.
- Walls must be provided with a smooth even surface and painted with a light coloured washable paint to enable easy cleaning.
- The ceiling must be constructed with a rigid, non-absorbent, smooth faced material free from open joints, cracks and crevices and be painted with a light coloured washable paint. The intersections of the walls and ceiling must be tight-jointed, sealed and dustproof. Drop in panel style ceilings are not permitted.
- Shelving or storage racks must be designed and constructed to enable easy cleaning.

53 **F060 - Grease Arrestor**

The grease arrestor must not be installed in any kitchen, food preparation or food storage area. The grease arrestor shall be installed in accordance with Sydney Water's requirements.

54 **F special BLANK**

If any food for consumption is grown on site, the proprietor of the food business shall ensure that the requirements of the *NSW Food Act 2003*, NSW Food Regulation 2010 and the Australian and New Zealand Food Standards Code are met at all times.

## Utility Services

55 **G002 - Section 73 (not for**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at [www.sydneywater.com.au](http://www.sydneywater.com.au) then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.

56 **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.

57 **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

58 [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 site:

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

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

- at the commencement of, and for the full length of the, construction works on site, 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.

59 [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 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.

60 [H006 - Submission of and implement waste management plan](#)

A completed Waste Management Plan shall be submitted to Penrith City Council for consideration and approval. Council must approve the plan **before works can commence on site**.

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

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

61 [H036 - Rainwater Tank \(Also impose H037, H038, H039, G005 & Q010\)](#)

The rainwater tank(s) is to be:

- erected on a self-supporting base in the approved location on the property in accordance with the stamped-approved site plans for the development,
- structurally sound and constructed in accordance with AS/NZS 3500 1.2- 1998: National Plumbing and Drainage - Water Supply - Acceptable Solutions,
- fully enclosed and all openings sealed to prevent access by mosquitoes,
- fitted with a first flush device,
- fitted with a trickle system to top up from mains water,
- provided with an air gap, and
- installed by a licensed plumber in accordance with Sydney Water's "Plumbing requirements Information for rainwater tank suppliers and plumbers April 2003" and the NSW Code of Practice: Plumbing and Drainage.

Additionally, the following are to be provided:

- A back flow prevention device shall be provided at the water meter in accordance with Sydney Water requirements.
- In the event of a power failure, a back up supply of mains water shall be provided to at least one toilet in the buildings.
- The rainwater tank(s) and associated piping is to be labelled 'Rainwater - Not for Drinking' in accordance with Sydney Water requirements.
- The rainwater tank and pipework is to be painted in colours matching the external finishes of the buildings and is to be of non-reflective finish.
- The overflow for the rainwater tank is to be connected into the existing stormwater disposal system on the site.

Before a rainwater tank(s) can be used, a certificate or suitable document is to be submitted to the Principal Certifying Authority stating that the rainwater tank has been installed in accordance with:

- the Manufacturer's Specifications, and
- Sydney Water and NSW Health requirements.

This certificate or documentation is to be provided by the licensed plumber who installed the rainwater tank on the property, and is to be submitted prior to the issue of the Occupation Certificate.

62 [H037 - Safe supply of water from catchment areas \(Also impose H036, H038 & H039\)](#)

The catchment area (for the rainwater tank(s)) includes the parts of the roof of the dwelling(s) from which water is collected and includes gutters. To ensure a safe supply of water:

- roof catchment areas must be kept clear of overhanging vegetation,
- gutters must have sufficient fall to downpipes to prevent pooling of water,
- overflow, discharge from bleed off pipes from roof mounted appliances such as air conditioners, hot water services and solar heaters must not discharge into the rainwater catchment area,
- for roofs containing lead based, tar based or asbestos material the tank supply must not be connected to drinking, bathing and gardening tap water outlets,
- appropriate measures must be installed to prevent foreign materials from contaminating the water which enters the rainwater tank.

63 [H038 - Connection of rainwater tank supply \(Also impose H036, H037 & H039\)](#)

The rainwater tank(s) supply must not be connected to drinking and bathing water tap outlets.

64 **H039 - Rainwater tank pumps (Also impose H036, H037 & H038)**

The rainwater tank(s) pump must not exceed 5dBA above ambient background noise level at the nearest residential property boundary. The provisions of the *Protection of the Environment Operations Act 1997* apply to the development, in terms of regulating offensive noise.

65 **H041 - Hours of work (other devt)**

All demolition and construction works that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties, are restricted to the following hours in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009:

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

In the event that the works relate to works inside the building that do not involve external walls or the roof and do not involve the use of equipment that emits noise, then the works are not restricted to the hours stated above. The provisions of the *Protection of the Environment Operations Act 1997* in regulating offensive noise also apply to all works.

## Engineering

66 **K101 - Works at No Cost to Council**

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

67 **K201 - Infrastructure Bond**

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

An application form together with an information sheet and conditions are available on Council's website.

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

68 **K202 - S138 Roads Act – Works and Structures - Minor Works in the public road DRIVEWAYS ROAD OPENINGS**

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

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b) 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 Assets Department on 4732 7777 or visit Penrith City Council's website for more information.

**Note:**

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

69 **K203 - S138 Roads Act - Roadworks Requiring Approval of Civil Drawings**

**Prior to the issue of any Construction Certificate**, the Certifier shall ensure that a separate Section 138 Roads Act application, including payment of application and inspection fees, has been lodged with and approved by Penrith City Council (being the Roads Authority under the Roads Act) for provision of kerb and gutter and piped drainage for the frontage of the development in Tench Avenue.

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines and best engineering practice.

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

**Note:**

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

70 **K210 - Stormwater Management**

The stormwater management system shall be consistent with plans lodged for development approval, prepared by MBR Consulting Engineers, Project No. 19039, Drawing Nos 000-114, Issue C, dated 29/10/2020.

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.

71 **K214 - Flooding – Floor levels**

**Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that all habitable floor levels are in accordance with the stamped approved plans with a minimum floor level of RL 28.2m AHD (Nepean River standard flood level of RL 27.7m AHD + 0.5m freeboard). The floor level of the rear Farmers' Co-Op Pavilion is to be a minimum of RL 27.0m AHD (Peachtree Creek flood level of RL 26.5m AHD + 0.5m freeboard).

72 **K222 - Access, Car Parking and Manoeuvring – General**

**Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS 2890.2, AS 2890.6 and *Penrith Development Control Plan 2014*.

73 **K224 - Construction Traffic Management Plan**

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

74 **K225 - Performance Bond**

**Prior to the issue of a Roads Act Approval**, a Performance Bond is to be lodged with Penrith City Council for provision of kerb and gutter and piped drainage for the frontage of the development site in Tench Avenue.

The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges Schedule.

**Note:**

- Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

75 **K301 - Sediment & Erosion Control**

**Prior to the 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.

76 **K302 - Traffic Control Plan**

**Prior to commencement of any works associated with the development**, a Traffic Control Plan, including details for pedestrian management, shall be prepared in accordance with AS 1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Maritime Services' publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Maritime Services Traffic Controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

**Note:**

- A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.
- Traffic control measures may require road occupancy/road closure approvals issued under Section 138 of the Roads Act by Penrith City Council **prior to the issue of a Construction Certificate**.

77 **K403 - Major Filling/ Earthworks**

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

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

78 [K405 - Turf to Verge](#)

Upon completion of all works in the road reserve, all verge areas fronting and within the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.

79 [K501 - Penrith City Council clearance – Roads Act/ Local Government Act](#)

**Prior to the issue of an Occupation Certificate**, the Principal Certifying Authority shall ensure that all works associated with a Section 138 Roads Act approval or Section 68 Local Government Act approval have been inspected and signed off by Penrith City Council.

80 [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 Policy.

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.

81 [K503 - Stormwater Compliance](#)

**Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall ensure that the stormwater management systems (including water sensitive urban design measures):

- 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.

82 [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 stormwater management systems (including water sensitive urban design measures) 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 Specification for Building Development Policy – Appendix F.

83 [K511 - Directional signage](#)

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

84 [K515 - Maintenance Bond](#)

**Prior to the issue of an Occupation Certificate**, a Maintenance Bond is to be lodged with Penrith City Council for provision of kerb and gutter and piped drainage in Tench Avenue for the frontage of the development site.

The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges.

**Note:**

- Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

85 [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.



- 86 [K Special \(BLANK\)](#)  
All vehicles (including service vehicles and waste collection vehicles) are to enter and exit the site in a forward direction.
- 87 [K Special \(BLANK\)](#)  
Access to the site shall be restricted at all times to vehicles no greater in length than medium rigid vehicles (MRV), being no greater than 8.8m in length, in accordance with the MRV swept paths provided to Council, dated November 2020.
- 88 [K Special \(BLANK\)](#)  
All car parking and manoeuvring must be in accordance with AS 2890.1-2004 and AS 2890.6-2009.
- 89 [K Special \(BLANK\)](#)  
The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.

## Landscaping

- 90 [L001 - General](#)  
All landscape works are to be constructed in accordance with the stamped approved plans, as amended by Condition 11, and the *Penrith Development Control Plan 2014*.
- Landscaping shall be maintained:
- in accordance with the approved plans, 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.
- 91 [L002 - Landscape construction](#)  
The approved landscaping for the site shall be constructed by a suitably qualified and experienced landscape professional.
- 92 [L003 - Report requirement](#)  
**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. The report is to be prepared by a suitably qualified and experienced landscape professional.
- 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.
- ii. Maintenance Report**  
On the first anniversary of the date of the Occupation Certificate issued for the development, a Landscape Maintenance Report is to be submitted to Penrith City Council certifying that the landscape works are still in accordance with the development consent and the plant material is alive and thriving.
- This report is to be prepared by a suitably qualified and experienced landscape professional.
- 93 [L005 - Planting of plant](#)  
All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specification prescribed in *Penrith Development Control Plan 2014*.
- 94 [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.
- 95 [L007 - Tree protection measures—no TMP with DA](#)  
All trees that are required to be retained as part of the development are to be protected in accordance with the minimum tree protection standards prescribed in Appendix F4 of the *Penrith Development Control Plan 2014*.

96 **L008 - Tree Preservation Order**

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

97 **L012 - Existing landscaping (for existing development)**

Landscaping undertaken as part of the approved development is to be retained and maintained at all times.

## Development Contributions

98 **N Special (S7.12 contribution plan)**

This condition is imposed in accordance with Penrith City Council's Section 7.12 Contributions Plan for Non-Residential Development. Based on the current rates detailed in the accompanying schedule attached to this Notice, **\$9,165.00 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 7.12 Contributions Plan. The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.12 invoice accompanying this consent should accompany the contribution payment. The Section 7.12 Contributions Plan for Non-Residential Development may be inspected at Council's Civic Centre, 601 High Street, Penrith.

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

## Certification

99 **Q001 - Notice of Commencement & Appointment of PCA1**

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

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

(b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 6.6 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 6.6 of the *Environmental Planning and Assessment Act 1979*.

100 **Q006 - Occupation Certificate (Class 2 - 9)**

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building(s) and commencement of the approved use. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and/or if the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

Before the Occupation Certificate can be issued for the development, Fire Safety Certificates issued for the building(s) are to be submitted to Penrith City Council and the New South Wales Fire Brigades.

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

## Operation of OSSM

101 **R105 - Plumbing Code of Australia**

All drainage and sanitary plumbing shall be carried out in accordance with the requirements of the *Plumbing and Drainage Act 2011* and the Plumbing Code of Australia.

102 **R113 - Decommission old system**

The contents of the existing septic tank are to be removed by a licensed waste contractor and deposited to an approved waste facility. The disconnected tank shall be removed, demolished or filled with clean soil and garden lime. Documentation of the collection and disposal of waste is to be retained and provided to Council on request.

103 **R124 - Operational Wastewater Management Plan**

**Prior to the issue of an Occupation Certificate**, an Operational Wastewater Management Plan (OWMP) shall be provided to Penrith City Council for consideration and approval. The OWMP shall be prepared by a suitably qualified consultant in consultation with Council and other relevant agencies, and may need to be amended to include the comments provided by Council and other agencies. The OWMP is to address:

- All environmental aspects of the operation of the wastewater management system;
- All systems and controls to be implemented to minimise the potential for any adverse environmental impacts; and
- A program for ongoing monitoring and review to ensure that the OWMP remains contemporary with relevant environmental standards. Council is to be consulted prior to any amendments of the OWMP. Council may request a review of the OWMP or any proposed amendments.

The OWMP should include, but not be limited to, the following:

- System information (including specifications and site plans);
- Maintenance and servicing program;
- System failure contingency;
- Odour management; and
- Health and safety.

The wastewater management system is to be operated in accordance with the requirements of this Plan.

104 **R Approval to operate**

**Prior to the issue of the 'Approval to Operate' for the wastewater management system:**

- A Section 73 Compliance Certificate obtained from Sydney Water is to be submitted to Council;
- A Commissioning Certificate for the wastewater management system shall be provided to Council for approval. This Certificate shall be prepared by a suitably qualified and experienced installer of wastewater management systems and certify that the system has been installed in accordance with the approved Sewer Servicing Design Plan; and
- A works-as-executed (WAE) plan, prepared by a registered surveyor or the design engineer, is to be provided to Council for approval.

105 **R OSSM Inspections**

Penrith City Council is both the consent authority and certifying authority for the installation of the wastewater management system. **It is your responsibility to contact Council's Environmental Health Department to organise all inspections required for the installation of the system.**

In this regard, the on-site pumping station and all associated pipework will need to be inspected on completion of the system's installation (before backfilling occurs) and prior to its commissioning, to ensure compliance with those conditions specific to the installation of the system.

A copy of the satisfactory inspection reports carried out by Council shall be submitted to the Principal Certifying Authority if Council is not the Principal Certifying Authority.

106 [R OSSM Installation](#)

**Prior to the issue of an Occupation Certificate**, the wastewater management system is to be installed in its entirety in accordance with:

- the Council approved Sewer Servicing Design Plan,
- Sydney Water's requirements, and
- the conditions of this consent.

All wastewater generated on the site is to be diverted to the approved on-site pumping station and disposed of by way of a private rising main in Wilson Lane to Sydney Water's sewerage system.

**Prior to the issue of an Occupation Certificate, and before the wastewater management system can be used, an 'Approval to Operate' for the wastewater management system is to be sought from and issued by Penrith City Council.**

107 [R Pipeline Agreement](#)

**Prior to the issue of a Construction Certificate**, a Private Pipeline Agreement is to be entered into with Penrith City Council's City Assets Department requiring the preparation and execution of a Deed of Agreement for private utility services installed on Council controlled and/or owned land. Any works in Wilson Lane, including the provision of the private sewer main, will require a separate Section 138 Roads Act approval from Council's City Assets Department as the Roads Authority under the Roads Act.

## **Schedule 1 (Deferred Commencement)**

**The following matters are to be addressed prior to the issue of an operational consent:**

- A. (i) A Sewer Servicing Design Plan is to be submitted to Council in accordance with the requirements of Sydney Water. Consideration is to be given to the 'Sewer Servicing Design: Orange Grove Development – 44-55 Tench Avenue, Jamisontown' prepared by SLR Consulting Australia Pty Ltd, Reference No. 630.30042-R01-v0.2.docx, dated 21 October 2020.

(ii) The Sewer Servicing Design Plan is to be prepared by a suitably qualified hydraulic engineer and detail how all wastewater generated on the site is to be diverted to an on-site pumping station and be disposed of by way of a private rising main in Wilson Lane to Sydney Water's sewerage system. The design plan is to be accompanied by evidence of approval from Sydney Water.

- B. The following water sensitive urban design (WSUD) documentation shall be submitted to and approved by Council:

- An updated Stormwater Management Strategy. The updated strategy shall include details on the proposed water conservation measures as per the requirements of Section 3.1 of Council's WSUD Policy.
- Electronic version of the revised MUSIC modelling which is prepared for the total development area. The .sqz file should also be submitted.
- Revised engineering plans confirming what the proposed surface treatment is for the access driveway and car park. These should be consistent with the landscaping plans and reflect what is modelled in MUSIC.
- An Operation and Maintenance Manual for the stormwater treatment measures.
- Amended civil plans and if required, amended architectural plans, to address the above matters, which may result in amended consent conditions.

**Note:** Consideration should be given to how vegetated stormwater treatment measures could be incorporated into the development rather than filter cartridges, which is in keeping with the intent of Council's WSUD Policy.

- C. A Plan of Management shall be submitted to and approved by Council to address the following issues:

- (i) Management of patrons across the site for the different uses;
- (ii) Ejection of patrons that are involved in the removal of a person from the premises who is intoxicated, drunk or disorderly; and
- (iii) Safety and security measures.

- D. Amended architectural plans, which reduce the windmill height to a maximum height of 8.5m above natural ground level, or alternatively, delete the windmill, shall be submitted to and approved by Council.

# Appendix - Development Control Plan Compliance

## Development Control Plan 2014

### Part C - City-wide Controls

#### C1 Site Planning and Design Principles

##### C1.2.5 Safety and Security (Principles of Crime Prevention through Environmental Design)

It should be noted that the development will require a liquor licence for the service of alcohol and that special events are to operate to 12 midnight. In this regard, the special events will be restricted to a maximum of 100 patrons and the SEE indicates that the nature of these events, being weddings, birthdays and corporate events, etc, is unlikely to result in amenity impacts on adjoining properties and therefore security measures will not be required. Notwithstanding, despite that there are no adjoining dwellings situated adjacent to the rear car parking area, it considered appropriate that a POM be submitted to and approved by Council prior to the issue of an Occupation Certificate. This will ensure that safety and security measures will be required to be put in place to address any anti-social behaviour and amenity impacts on the immediate surrounds. It is also noted that the *Liquor Amendment (24 Hour Economy) Act 2020 (Amendment Act)* seeks to encourage a vibrant and diverse nightlife where live music and entertainment thrives, which permits the playing and performing of music, which will need to be considered in the event that any formal complaints are received by Council. Notwithstanding, the application was accompanied by a noise impact assessment (NIA), as amended, which indicates that the relevant noise criteria is compliant. As such, it is not considered likely that the proposal will result in any unreasonable amenity impacts or safety concerns.

#### C2 Vegetation Management

##### C2.1 Preservation of Trees and Vegetation

The submitted survey plan indicates that the proposal includes the removal of two mature trees situated close to the front boundary of the site; one tree adjacent to the northern boundary and one tree adjacent to the southern boundary, in addition to several orange trees situated in the middle of the site. This is in order to accommodate driveways, pedestrian pathways and a rear car parking area. In this regard, a review of historical aerial photographs of the site indicates that after 26 March 2019, several trees had been removed from along the front and south-western boundaries, noting that the removal of several palm trees along the front boundary is exempt. It should however be noted that the survey plan does not appear to be consistent with aerial photographs in regard to the two existing trees situated in the middle of the site, adjacent to the north-eastern boundary, whereby the proposed driveway and a seating pod are in conflict with these trees. Nevertheless, the likely loss of these trees, in addition to the tree removal which has already taken place, is considered to be adequately offset by the proposed generous landscaping embellishment across the site, including numerous tree plantings.

#### C3 Water Management

##### C3.2 Catchment Management and Water Quality

The proposed stormwater treatment measures incorporate Ocean Protect pit inserts and filter cartridges to improve stormwater quality associated with the development. However, further details were requested by Council, including a WSUD Strategy, amended MUSIC modelling for the total development area and amended civil plans which include the entire building footprint, surface treatment for the access driveway and rear car park and water conservation measures and a revised operation and maintenance manual, in accordance with the requirements of Council's WSUD Policy. The above documentation remains largely outstanding, with the exception of the MUSIC link report and it is noted that a gravel driveway and semi-permeable (100mm depth concrete paving and grass blocks) rear car parking area is proposed, which may potentially need to be a hardstand area to capture and treat run-off. Therefore, it is considered appropriate that a deferred commencement condition be imposed to address these matters.

#### C5 Waste Management

##### C5.2.4 Non-Residential Development Controls

The original proposal included kerb side collection with 240 litre bins and a waste collection area situated behind the kitchen building, along the south-western boundary. It is noted that the secondary service driveway does not provide adequate vehicle manoeuvring for a medium rigid vehicle (MRV), in that, a two-way access driveway and a 3-point turn to/from the service

driveway is not achievable in accordance with AS 2890.2 requirements. Further, a calculation of Council's commercial waste generation rates relative to the gross floor areas of each land use indicate that the proposal will generate a total of 1,317 litres of residual waste and 631 litres of recycling waste, as detailed in the table below.

**Table 1. Waste Generation Rates**

Commercial Waste Rates		Residual	Recycling
Volume		L/100m <sup>2</sup> /Day	L/100m <sup>2</sup> /Day
Restaurants		660	200
Café		300	200
Takeaway/Café		150	150
	GFA	Residual	Recycling
Restaurant	105	693	210
Deck dining	40	264	80
Café	35	105	70
Bakery	105	157.5	157.5
Take Away Coffee	43	64.5	64.5
Pizzas	22	33	49.5
<b>Total</b>		<b>1317</b>	<b>631.5</b>
240L Bin		5.49	2.63
660L Bin		2.00	0.96
1100L Bin		1.20	0.57

Given the estimated waste generation wastes, it is not considered that the proposed twice weekly private waste servicing and the secondary servicing driveway will provide the capacity to adequately service the development. As such, the proposal, as amended at the request of Council, makes provision for a waste collection area situated at the south-eastern corner of the rear car park. The car park provides adequate vehicle manoeuvring area to permit a MRV to access and service the site, as endorsed by Council's Traffic Engineer. Therefore, the proposed waste management arrangements are considered to be adequate.

## **C10 Transport Access and Parking**

### **C10.5.1 Parking**

The proposal, as amended, makes provision for 96 off-street parking spaces, which satisfies the minimum requirement of 92.54 off-street parking spaces in accordance with the DCP parking rates, as detailed in Table 2 below. Table 2 groups the different land uses accordingly, as per gross floor area, that being a restaurant/café with indoor and outdoor dining areas, which has a total gross floor area (GFA) of 401.1m<sup>2</sup> and also serves as a dual purpose for a function room for special events with up to 100 patrons with the remaining land uses closed to the public during these functions/events. The bakery, takeaway coffee and retail premises and milkshakes and pizza store are each considered to be a type of retail premises, with a total GFA of 170.7m<sup>2</sup>. A maximum of 20 staff will be on site at any one time.

It should be noted that the farmers' co-op and retail premises uses are not expected to generate additional patrons, as the patrons on the site will visit the farmers' co-op and retail offerings after their dining, with only up to 10 operators expected for the farmers' co-op markets. Further, due to the current Covid-19 circumstances, take away offerings are expected to be via a large number of pre-orders, including walk-ins and delivery drivers, which will avoid waiting times and reduce parking demand. In addition, the rear car parking area was reconfigured at the request of Council to improve vehicular circulation which subsequently provides ample overflow parking spaces behind the rear car parking area in the case that additional parking spaces are required. Therefore, the proposal is considered to provide adequate off-street parking.

**Table 2. Seating Numbers and GFA per Land Use**

Type of Development	No. of Seats	GFA (m <sup>2</sup> )	DCP Minimum Parking Rate - Parking Requirement
<i>Restaurant, Reception and Function Rooms</i>			<b>1 space per 6m<sup>2</sup> of seating, plus 1 space per employee</b>

House Dining + Function Room (Special Events)	30	105	17.50
Group Dining	10	19.5	3.25
Group Dining	6	11.6	1.93
Deck Dining	32	40	6.67
Cafe	--	35	5.83
Dining Pavilion	72	190	31.67
Staff	--	--	20
<b>Total</b>	<b>150</b>	<b>401.1</b>	
<b>Retail Premises</b>			<b>Other neighbourhood and specialty shops - 1 space per 30m<sup>2</sup> GFA</b>
Bakery	--	105	3.5
Takeaway Coffee & Retail	--	43	1.43
Milkshakes & Pizza	--	22.7	0.76
<b>Miscellaneous</b>			
Farmers' Co-Op	--	252	--
<b>Total</b>			<b>92.54</b>

### C10.5.2 Access and Driveways

Concerns were initially raised in regard to the service driveway situated along the south-western boundary of the site given that a 5-point turn is required for a MRV to enter and exit this driveway. The rear car park was shifted approximately 45m from the rear boundary, closer to the middle of the site and was reconfigured to make provision for a waste collection area and to permit a MRV to adequately manoeuvre through the car park, noting that a previous revision illustrated the swept path of a MRV conflicting with several parked vehicles. The reconfiguration of the rear car parking area results in a total of 95 off-street parking spaces, with a loss of 14 off-street parking spaces. The service driveway permits small vehicles to access and service the back of the house kitchen and will be of low use with minimal traffic impacts. The driveway width was reduced to permit additional landscaping and improve the outlook for the in-house dining area and overall amenity.

It should be noted that a compacted gravel driveway and semi-permeable paving is proposed for the rear car parking area, which generally is required to be sealed. However, given the nature of the development, being a "semi-rural" theme, it is considered that the permeable paving is acceptable in this instance, as endorsed by Council's Senior Development Engineer. Notwithstanding, a review of the proposed stormwater treatment measures via a deferred commencement condition will determine whether hardstand area is required for these areas.

### C10.6 Pedestrian Connections

It is noted pedestrian walkways within the parking area were initially requested to address safety concerns. However, the use of a gravel driveway and traffic islands will act as a calming measure to assist in reducing vehicle speeds, which is considered to be acceptable in this instance, as endorsed by Council's Traffic Engineer. Notwithstanding, a review of the proposed stormwater treatment measures via a deferred commencement condition will determine whether hardstand area is required for the pedestrian pathways and rear car parking area, whereby in this case, further pedestrian safety measures, such as line marking, can be incorporated.

### C12 Noise and Vibration

#### C12.4 Industrial and Commercial Development

The original NIA included a recommendation for a 1.8m high solid acoustic fence surrounding the majority of the side boundaries and entire rear boundary of the site, with the exception of a section of the southern side boundary, adjacent to the drainage swale. The acoustic fencing was required to be constructed of solid materials with a density of 10-15 kg/m<sup>2</sup> and free of holes and gaps. Given the extent of fencing and the general construction materials required, such as solid timber, cement, perspex or glass, etc, the extent of acoustic fencing was not considered to be in keeping with the future desired character of the locality and raised amenity impact concerns. In this regard, an amended NIA was provided at the request of Council, which recommends acoustic fencing along only the front section of the southern side boundary,



adjacent to the buildings and secondary service driveway. The amended plans illustrate a 1.8m high solid barrier constructed of slimline hebal power panel wall, which is comprised of modular walls with 900mm (height) x 2,600mm (wide) panel sections and 250mm x 150mm piers, which is deemed more appropriate, subject to a recommended consent condition, which will require that the acoustic fence be painted/rendered in an earthy tone.

Further, an amended SEE was also provided to clarify the patron numbers on the site, which will be a maximum of 200 patrons at any one time, inclusive of a maximum of 100 patrons per special event. The amended NIA indicates that development will be with the relevant noise criteria, including the use of the playground and rear car park, as endorsed by Council's Senior Environmental Management Unit and therefore the reduction on acoustic fencing is acceptable in this instance.

Notwithstanding, it should be noted that there is a discrepancy between the SEE, NIA and Traffic Report in that, the NIA states that the farmers co-op will have a maximum of 140 patrons and operate outside of normal hours of operation and the Traffic Report states that it will be in the early hours of the morning. However, the SEE states that the farmers co-op will operate on weekends during normal hours of operation. The applicant subsequently clarified further details at the request of Council, which indicate that the farmers co-op will operate from 7am to 5pm on Saturdays and that it will not increase patron numbers on site, as the customers are expected to be those that have already dined at the site. As such, conditions of consent are imposed to address noise impacts, including hours of operation, maximum number of patrons on site at any one time, acoustic compliance, etc.

### **C13 Infrastructure and Services**

#### **C13.3 On-Site Sewage Management**

The proposal, as amended, includes gravity drainage to an on-site pumping station, with discharge to Sydney Water's reticulated system from the rear of the property via a new rising main along Wilson Lane to the nearest maintenance shaft situated to approximately 700m north-west of the site at the Nepean Shores development. The wastewater report provides details regarding the wastewater load of the development and the design of the proposed system, including the pipework, pumping station and rising main, etc., which is considered to be generally satisfactory.

However, the report lacks sufficient documentation to demonstrate that a connection to the Sydney Water's nearest reticulated system is feasible, in particular, whether the sewerage system has sufficient capacity to service the scale of the development. Further, given that Wilson Lane is Council owned land, a Private Pipeline Agreement with Council's City Assets Department is required for the installation of a rising main in Wilson Lane. Therefore, it is considered appropriate that the applicant submit additional documentation to address wastewater management, including a revised wastewater report and a Section 73 Compliance Certificate from Sydney Water, with the notice of requirements provided to Council for review and approval. In addition, the Pipeline Agreement will address construction and design details and will require a separate Section 138 Road Acts approval from Council's City Assets Department. The above matters are to be addressed via recommended consent conditions prior to the commencement of any construction works.

In addition, it should be noted that the site is heavily constrained due to the stormwater requirements and flood affectation and due to the scale of the development, it is unlikely that the site has enough open space available for on-site disposal and therefore any construction works will not commence unless it can be demonstrated that the development makes provision for adequate wastewater management.

#### **C13.4 Engineering Works and Construction Standards**

The proposed stormwater system was amended at the request of Council to ensure that the drainage system will function and operate efficiently. Amendments include "tailing out" of a proposed drainage swale situated along the southern rear boundary to assist in dispersing runoff, increasing the surface level of a Pit 6 by 150mm to ensure that it is above the height of the WSUD weir, illustrating minimum gutter heights with a 1m freeboard above the top water level of the dual function on-site detention system and rainwater tanks to demonstrate that

these will function, etc. In addition, DRAINS results were provided to demonstrate that pre-development and post-development flows are matching during storm events up to and including the 1% AEP flood. Council's Senior Development Engineer Unit reviewed the amended stormwater concept plan and raised no objections, subject to recommended consent conditions.

In addition, given the likelihood of on-street parking associated with the proposal, it is considered appropriate that kerb and gutter be provided along the frontage of the site, which has been provided on the amended set of plans and is consistent with the café and restaurant complex situated to the south-west of the site.

## **E13 Riverlink Precinct**

## **E13 Riverlink Precinct**

### **E13.1.1 Landscape Structure**

The proposal, as amended, makes provision for generous landscape embellishment. The landscape plan provides numerous trees, shrubs and ground cover, which are of a suitable species and scattered across the site to minimise the overall bulk of the development and provide effective shading for the outdoor areas and car park area. It should be noted that the landscape plan requires minor amendments in regard to the requirement for a number of additional trees and the spreading out of trees adjacent to the pedestrian pathway from the rear car parking area, which will be required via a recommended consent condition.

### **E13.3 Built Form**

The proposal retains the existing dwelling and includes the erection of three low-scale single storey buildings behind the dwelling and an outdoor dining pavilion adjacent to the first new kitchen building, situated to the north. An 80m<sup>2</sup> courtyard is provided between the kitchen building and adjoins a backwards L-shaped bakery and takeaway and retail building, which is adjacent to an amenities building, both situated along the southern boundary. The wood fired pizza hut is separated approximately 10m north-westwards from the amenities building by a large pedestrian pathway and the farmers' co-op pavilion is a further 7.5m north-eastwards. A fodder shed is situated 22m westwards from the amenities building, adjacent to the southern boundary. The livestock enclosures are situated in the middle of the site with an approximate 12.5m front setback and the playground is situated behind this structure with a 14.3m separation distance.

The buildings are low rise single storey buildings with pitched roofs and it is noted that the amenities building has the highest ridgeline of 6.92m AGL. However, this is due to the fill required to level out the land which results in it being only 120mm higher than the existing dwelling, noting that the amenities building is situated at the far end of the new buildings, behind the front building line. In terms of external materials and finishes, the buildings include painted brick for the house dining buildings, polycarbonate cladding for the amenities building and iron cladding for the kitchen building, bakery and retail building, wood fired pizza hut, farmers' co-op pavilion and fodder shed. The overall rural design is considered to be aligned with the desired character of the locality and it should be noted that suitable tree buffers are provided across the entire frontage, which will minimise views of the buildings and structures and ensure that there will not be any unreasonable impacts on the visual quality of the streetscape.

### **E13.2.2 Pedestrian and Cycle Network**

The proposal includes 20 bicycle parking spaces adjacent to the front boundary with a suitable pathway, which connects to the street and other areas of the site.

### **E13.3.1 Street Alignment and Setbacks**

The proposal retains the front setback of the existing dwelling and positions the livestock enclosures and dining pavilion well behind the front building line. The landscape plan includes a dense corridor of trees adjacent to the front boundary, which will provide amenity and positively contribute to the character of the locality.

### **E13.4.2 Tourism and Recreation Precinct**

The proposal aims to provide a visitor and tourist related activity, which provides views to the Nepean River. The rural theme integrates simplistic buildings, livestock, a farmers' co-op, indoor and outdoor dining, a playground and landscaping within a landscape buffer to screen the rear car parking area, which is considered to positively contribute to the natural and cultural landscape setting of the Nepean River.