

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA18/0153.02
Proposed development:	Section 4.55(1A) Modification to Approved Landscaping - Warehouse Buildings x 2 & Use of Warehouse 1 by Flower Power for Storage, Warehousing, Distribution, Logistics (including Bulk Material Delivery from Premises), Mechanical Repairs, Printing, Bagging Operations, Workshop for Manufacturing of Shop Fittings & Ancillary Storage of Materials
Property address:	1 - 21 Grady Crescent, ERSKINE PARK NSW 2759
Property description:	Lot 4 DP 1253870
Date received:	23 April 2020
Assessing officer	Jacqueline Klincke
Zoning:	SEPP - (WSEA) 2009 - ZONE IN1
Class of building:	Class 7b
Recommendations:	Approve

Executive Summary

Council is in receipt of a Section 4.55(1A) modification application relating to two (2) approved warehouse buildings and the use of Warehouse 1 by Flower Power at 1-21 Grady Crescent, Erskine Park. The proposed modifications involve a re-design of the approved landscape design.

Under the *State Environmental Planning Policy (Western Sydney Employment Area) 2009* (WSEA SEPP), the proposal is defined as a "warehouse or distribution centre". The subject site is zoned IN1 General Industrial in accordance with the WSEA SEPP and the proposed development is a permissible land use with Council consent.

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014*, the application did not require notification to surrounding properties.

An assessment of the modified proposal under Section 4.55(1A) and Section 4.15 of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for approval, subject to modified conditions of consent.

Site & Surrounds

The subject site being 1-21 Grady Crescent, Erskine Park, is legally described as part Lot 4 DP 1253870 and is 9.742 hectares in size. The property is located on the northern side of Lenore Drive within the Erskine Business Park.

On 3 July 2018, DA18/0153 was approved for the construction of two (2) warehouses and the use of Warehouse 1 by Flower Power. A modification application (DA18/0153.01) was approved on 13 September 2018 for minor external building amendments. It is noted Warehouse 1 has been constructed and is operational.

The portion of the site that the development is located on is land that has been subject to previous development application approvals including earthworks and as such, is cleared land. The lot was also impacted by numerous drainage easements however, a condition of consent under DA18/0153 requires these easements to be formally extinguished prior to the issue of an Occupation Certificate for the development.

Proposal

The application seeks to modify the landscape design of a two warehouse development approved via DA18/0153 (as modified). The proposed landscape amendments along the street frontages of the development include:

- Simplified mixture of tree plantings, shrubs and ground covers,
- Additional shrub areas, and
- Re-arrangement of trees and shrubs between sections of sandstone ballast with surrounding layered shrub and ground cover.

Plans that apply

- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Western Sydney Employment Area) 2009
- State Environmental Planning Policy No 33—Hazardous and Offensive Development
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

• Section 4.55(1A) - Modifications involving minimal environmental impact

The proposed modifications have been assessed in accordance with the matters for consideration under Section 4.55(1A) and Section 4.15 of the *Environmental Planning and Assessment Act 1979*. The proposed modifications satisfy the relevant provisions of the Act in this regard.

Under the provisions of Section 4.55(1A) Modifications involving minimal environmental impact of the *Environmental Planning and Assessment Act 1979*, Council may, in response to an application being made, modify a previously approved development if:

(a) *it is satisfied that the proposed modifications are of minimal environmental impact, and*

(b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*

(c) *it has notified the application in accordance with:*

(i) *the regulations, if the regulations so require, or*

(ii) *a development control plan, if the consent authority is a Council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

(d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

In this regard, the following is noted:

(a) The proposed modifications are considered to be of minimal environmental impact as they only involve minor landscape design modifications to an approved warehouse development. The modified development is therefore unlikely to result in any adverse impacts on the natural or built environments.

(b) In *Vacik Pty Ltd v Penrith City Council* (unreported 1992) the question of substantially the same development was considered by Stein J., and in particular the meaning of the word 'substantially'. In his opinion 'substantially' is taken in the context to mean 'essentially or materially or having the same essence'.

In *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) the NSWCA recognised that a modified development must be different in some respect to the approved development and used the formulation that 'modify' meant 'to alter without radical transformation'.

In applying the ordinary meaning of the words '*substantially the same development*' informed by the above cases, the modified development is of the same essence as only minor landscape design modifications are proposed. Overall, the changes result in a development not too dissimilar to the original approval, nor do they change the essence of the development.

(c) The modified development was not required to be notified as per the requirements of the *Penrith Development Control Plan 2014*.

(d) No public submissions were received regarding the application.

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

State Environmental Planning Policy (Infrastructure) 2007

An assessment has been undertaken of the modified proposal against the relevant criteria within the *State Environmental Planning Policy (Infrastructure) 2007* and the proposal is satisfactory in this regard.

It is noted the proposed development is classified as traffic-generating development under Clause 104 of the ISEPP and was therefore referred to the Road and Maritime Services (RMS) during the assessment of the original proposal (DA18/0153). Concurrence was issued by the RMS dated 27 April 2018 raising no objections to the proposal, subject to recommended conditions of consent.

The proposed modifications to the approved landscape design of the development are considered to be minor in nature and therefore do not warrant re-referral to the RMS.

State Environmental Planning Policy (Western Sydney Employment Area) 2009

An assessment has been undertaken of the modified proposal against the relevant criteria within the *State Environmental Planning Policy (Western Sydney Employment Area) 2009* and the proposal is satisfactory in this regard.

State Environmental Planning Policy No 33—Hazardous and Offensive Development

A SEPP 33 Compliance Report was submitted with the original development application (DA18/0153). The report assessed the development in accordance with *State Environmental Planning Policy No. 33 - Hazardous and Offensive Development* and confirmed that the development can be deemed as non-hazardous and therefore a Preliminary Hazard Analysis was not required.

State Environmental Planning Policy No 55—Remediation of Land

An assessment has been undertaken of the modified proposal against the relevant criteria within the *State Environmental Planning Policy No. 55 - Remediation of Land* and the proposal is satisfactory in this regard.

It is noted remediation works for the site were approved under DA06/1646 whereby Condition 9 required a Validation Report be submitted once the works had been carried out in accordance with the approved Remediation Action Plan. A Validation Report, prepared by Consulting Earth Scientists, dated 21 June 2007 was submitted stating the site is suitable for commercial/industrial development. Bulk earthworks and stormwater drainage works were also approved under DA17/0154 which included a condition of consent requiring a Compliance Certificate be provided to ensure the suitability of any fill material for the earthworks.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the modified proposal against the relevant criteria within the *Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2—1997)* and the proposal is satisfactory in this regard.

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

It is noted that both the *Draft Remediation of Land SEPP* and *Draft Environment SEPP* apply to the subject site, but while so, these do not affect or alter the recommendation of this report.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	N/A
C8 Public Domain	Complies
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
D4.1. Key Precincts	N/A
D4.2. Building Height	N/A
D4.3. Building Setbacks and Landscape	Complies
D4.4. Building Design	N/A
D4.5. Storage of Materials and Chemicals	N/A
D4.6. Accessing and Servicing the Site	N/A
D4.7. Fencing	Complies
D4.8 Lighting	N/A
E6 Erskine Business Park controls	Complies

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

The proposal remains compliant with the relevant Regulations, subject to the original conditions of consent.

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

The likely impacts of the development as identified during the assessment of the original proposal remain in principle unaltered. The modified landscape design is considered unlikely to result in any adverse impacts.

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

The suitability of the site was assessed as part of the original development application (DA18/0153) and the site remains suitable for the proposed development.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 of the *Penrith Development Control Plan 2014*, the application did not require public notification.

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Environmental - Biodiversity	No objections
Traffic Engineer	No objection subject to conditions

Section 4.15(1)(e)The public interest

The modified development will not generate any significant issues relating to the public interest.

Conclusion

The modified proposal has been assessed against the relevant environmental planning instruments and in this regard the proposal is considered to satisfy the aims, objectives and provisions of these policies. The proposed modifications are not considered likely to create any significant impacts on the natural, social or economic environments and in this regard, the application is considered worthy of support and is recommended for approval.

Recommendation

That DA18/0153.03 for modifications to the landscape design for two (2) approved warehouses at 1-21 Grady Crescent, Erskine Park, be approved, subject to modified conditions of consent.

General

1 A001

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

Drawing Title	Drawing No.	Prepared by	Issue	Dated
Estate Master Plan	DA 101	SBA Architects	C	07/05/2018
Site Plan	DA 102	SBA Architects	K	07/05/2018
Site Plan - Stage 1 Works	DA 103	SBA Architects	A	07/05/2018
Flower Power Warehouse Plan	DA 201	SBA Architects	C	07/05/2018
Warehouse 2 Warehouse Plan	DA 202	SBA Architects	C	07/05/2018
Warehouse 2 Basement Plan	DA 203	SBA Architects	C	07/05/2018
Flower Power Roof Plan	DA 211	SBA Architects	B	07/05/2018
Warehouse 2 Roof Plan	DA 212	SBA Architects	C	07/05/2018
Flower Power Office Plan	DA 221	SBA Architects	C	07/05/2018
Warehouse 2 Office Plans	DA 222	SBA Architects	C	07/05/2018
FP-WH Elevations & Sections	DA 301	SBA Architects	D	07/05/2018
Warehouse Coloured Elevations - Warehouse 1	SK - 26	SBA Architects	C	14/03/2018
Office Coloured Elevations - Warehouse 1	SK - 27	SBA Architects	C	14/03/2018
Warehouse 2 WH Elevations & Sec.	DA 302	SBA Architects	D	07/05/2018
Landscape Cover Sheet	L100	Cabbage Tree Landscape	-	Feb 2020
Landscape Layout	L101	Cabbage Tree Landscape	-	Feb 2020
Landscape Layout	L102	Cabbage Tree Landscape	-	Feb 2020
Landscape Layout	L103	Cabbage Tree Landscape	-	Feb 2020
Landscape Layout	L104	Cabbage Tree Landscape	-	Feb 2020
Schedules	L105	Cabbage Tree Landscape	-	Feb 2020
Drawing Sheet, Locality Plan & Drawing Schedule	DA01.01	Northrop	05	07/05/2018
Concept Sediment & Soil Erosion Control Plan	DA02.01	Northrop	06	07/05/2018
Sediment & Soil Erosion Control Details	DA02.11	Northrop	05	07/05/2018
Stormwater & Siteworks Management Plan	DA04.01	Northrop	06	07/05/2018
Stormwater & Siteworks Management Plan	DA04.02	Northrop	06	07/05/2018
Stormwater & Siteworks Management Plan	DA04.03	Northrop	06	07/05/2018
Stormwater & Siteworks Management Plan	DA04.04	Northrop	06	07/05/2018
Stormwater & Siteworks Management Plan	DA04.05	Northrop	06	07/05/2018
Stormwater & Siteworks Management Plan	DA04.06	Northrop	06	07/05/2018
Stormwater Longitudinal Sections	DA04.21	Northrop	02	07/05/2018
Catchment Plan	DA05.01	Northrop	05	07/05/2018
Details	DA06.01	Northrop	04	07/05/2018
Details	DA06.02	Northrop	04	07/05/2018

As amended on 13 September 2018 and 30 June 2020 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

2 A017 - DA FOR USE

Prior to occupation of Warehouse 2 or a tenancy within Warehouse 2, a separate development approval is to be obtained for the use of the building.

3 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

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

4 **A029 - HOURS OF OPERATION AND DELIVERY TIMES**

The approved operating hours for Flower Power are 24 hours a day, Mondays to Sundays.

Warehouse 2 operating hours/use are to be subject to a separate approval.

5 **A030 - No retail sales**

No retail sale of goods shall be conducted from the subject premises.

6 **A046 - Obtain Construction Certificate before commencement of works**

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

7 **A Special (BLANK)**

Prior to the issue of a Construction Certificate, amended plans are to be submitted to and approved by the Principal Certifying Authority addressing the following matters:

- (a) Fencing for the site is to be in accordance with the amendments shown in red on the approved site plan.
- (b) Advertising signage detail for the approved pylon sign shall be in accordance with the relevant provisions of Section C9 - Advertising and Signage of Penrith Development Control Plan 2014.

8 **A Special (BLANK)**

Where proposed works directly impact on NSW Roads and Maritime Services (RMS) assets (being the Lenore Drive road reserve), involve increased stormwater drainage flows onto the Lenore Drive road reserve or involve excavation works which directly impact RMS assets, the following requirements of the RMS as per its letter dated 27 April 2018 shall be satisfied:

a) Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to commencement of any works. Details should be submitted to Suppiah.Thillai@rms.nsw.gov.au. A plan checking fee will be payable and a performance bond may be required before Roads and Maritime approval is issued. With regard to the civil works requirement please contact the Roads and Maritime Project Engineer, External Works, Ph. 8849 2114.

b) The developer is to submit design drawings and documents relating the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GTD2012/001. The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by Roads and Maritime. Details should be submitted to Suppiah.Thillai@rms.nsw.gov.au.

c) A Road Occupancy Licence should be obtained from the Transport Management Centre for any works that may impact on traffic flows on Lenore Drive during construction activities.

The following additional requirements of the RMS as per its letter dated 27 April 2018 shall also be satisfied at all times:

i) All works and structures are to be wholly within the freehold property, along the Lenore Drive boundary.

ii) Direct vehicular access to Lenore Drive from the site is not permitted.

iii) All demolition and construction vehicles are to be wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Lenore Drive.

9 **A Special (BLANK)**

Prior to the issue of a Final Occupation Certificate, formal evidence is to be submitted to the satisfaction of the Principal Certifying Authority (PCA) showing the redundant easements (noted as (EE), (J1) and (PP1 - 3) as shown on DP 1237120 registered on 23/01/2018) on the site have been extinguished.

10 **A Special Condition (BLANK)**

Water conservation and rainwater re-use for both Warehouse 1 and Warehouse 2 must be provided generally in accordance with the Rainwater Re-Use Analysis lodged for development approval, prepared by Northrop, reference 172906, dated 2 May 2018.

11 **A Special Condition (BLANK)**

Prior to the issue of an Occupation Certificate, a site specific Operation and Maintenance Manual must be provided for the proposed stormwater treatment measures. The manual should include checklists and details on the cleaning/maintenance requirements of the proposed treatment measures as well as detail on how this will be managed and nominate who will be responsible.

Heritage/Archaeological relics

12 C003 - Uncovering relics

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

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

Environmental Matters

13 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.

14 D004 - Dust

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

15 D005 - Mud/Soil

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

16 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.

17 D010 – Appropriate disposal of excavated or other waste

All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

18 D013 - Approved noise level 1

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the Acoustic Review prepared by Acoustic Logic dated 26/04/2018. The recommendations provided in the above-mentioned acoustic report shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application. A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

19 D015 - Spill prevention & clean-up procedures

A plan detailing spill prevention, contingency and emergency clean-up procedures for the development shall be submitted for approval prior to construction works commencing. The approved procedures plan shall be implemented in the event of a spill or emergency.

20 D019 - Bunding-fuel tanks

Above ground fuel storage tanks shall be installed on a concrete surface and protected by a grated drainage system to a dead-end sump or by a bund. The storage capacity of the bund or sump shall be equal to 110% of the volume of the tank.

21 **D021 - Waste oil storage &**

Waste oil shall be stored in a covered and bunded area and regularly removed to a waste oil recycle operation.

22 **D022 - Mechanical repairs**

All mechanical repairs shall be conducted within the workshop area which shall be provided with suitable pollution control devices that remove grease, oil, petroleum products and grime prior to discharge to the sewer system in accordance with the requirements of Sydney Water.

No mechanical work, including the painting of vehicles and preparation of vehicles for painting such as rubbing back and washing, shall be carried out in open driveways or car parking areas.

The following details are to be submitted to and approved by the Principal Certifying Authority before a Construction Certificate can be issued for the development:

- proposed pollution control devices in accordance with Sydney Water requirements; and
- specifications for any spray painting booth(s) and associated ventilation.

23 **D023 - Bunding**

All works and storage areas where spillages are likely to occur shall be bunded. The size of the area to be bunded shall be calculated as being equal to 10% of the total volume of containers stored, or 110% of the largest container stored, whichever is the greater. All bunded areas shall be graded to a blind sump so as to facilitate emptying and cleaning. Details are to accompany the application for a Construction Certificate.

24 **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.

25 **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 the Principal Certifying Authority. The Validation Certificate shall:

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

An appropriately qualified person/s (as defined in 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 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, soils science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}

26 **D Special BLANK**

Prior to the issue of an Occupation Certificate, further information is to be provided to the Principal Certifying Authority for approval regarding proposed dust pollution controls and how dust management is to occur once the facility becomes operational. This information is to be provided in an Environmental Management Plan.

The Environmental Management Plan is also to detail how dust is to be prevented/minimised from all operations associated with the storage, movement and bagging of materials.

27 **D Special BLANK**

Prior to the issue of an Occupation Certificate, an amended Operational Phase Waste Management Plan is to be provided to and approved by the Principal Certifying Authority. The Waste Management Plan is to address the operational waste (including details in regard to quantities of waste to be generated and the location and method of storage and disposal of waste, both liquid and solid, generated from the landscape supplies storage, as well as the workshop) to be generated on the site.

28 **D Special BLANK**

Prior to the issue of a Construction Certificate, further information is to be provided to the Principal Certifying Authority for approval in relation to water management on the site, including the locations of all proposed stormwater pits, the location of bunding to prevent wastewater escaping the property and the location of chemical storage areas (at a minimum for the proposed workshop and proposed material storage bays). It needs to be demonstrated that the proposed use will not cause water pollution, or enable contaminated water to enter the stormwater drainage system. This information is to be included in the Environmental Management Plan for the site.

29 **D Special BLANK**

Prior to the issue of a Construction Certificate, an amended site plan is to be provided to the Principal Certifying Authority for approval, detailing the location of all proposed fuel tanks and associated infrastructure on the site to ensure compliance with the relevant requirements of State Environmental Planning Policy No. 33 - Hazardous and Offensive Development.

30 **D Special BLANK**

No washing of vehicles is to be carried out. The installation of a wash bay will require consent from Penrith City Council.

31 **D Special BLANK**

All solid and liquid wastes must be properly classified, and disposed or recycled appropriately. Solid waste materials are to be disposed of at a licensed waste facility, or if suitable, recycled. Prior to removal or disposal or recycling, solid waste materials are to be stored at all times in a designated area within the building.

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.

32 **D Special BLANK**

Spray painting is not permitted on the site and will require separate approval from Penrith City Council.

BCA Issues

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

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

- (a) deal with each essential fire safety measure in the building premises, and
- (b) be given:

- within 12 months after the last such statement was given, or
- if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

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

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

34 **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.

Utility Services

35 **G002 - Section 73**

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

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

36 G004 - Integral Energy

Prior to the issue of an Occupation 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.

Construction

37 H001 - Stamped plans and erection of site notice

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

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

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

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

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

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

38 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.

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

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

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

Other construction works carried out inside a building/tenancy that do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

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

Engineering

40 [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 at no cost to Penrith City Council.

41 [K201 - Infrastructure Bond](#)

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

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

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

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

Prior to the issue of a Construction Certificate for the approved works, a Section 138 Roads Act application, including payment of application and inspection fees, shall be lodged with and approved by Penrith City Council (being the Roads Authority) for any works required in a public road. These works 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, waste skips, signs, etc in the road reserve
- f) Temporary construction access
- g) Provision and modification of stormwater gully pits along the site frontage to Grady Crescent

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.

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

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

Note:

- a) Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- b) Separate approvals may also be required from the Roads and Maritime Services for classified roads.
- c) All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate.

43 **K210 - Stormwater Management**

The stormwater management system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Northrop, reference number 172906, revision 06, dated 07/05/2018 and as amended in red.

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 a Construction Certificate for the works, 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.

44 **K211 - Stormwater Discharge – Basement Car parks**

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

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

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

46 **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 Council for approval. The CTMP shall be prepared in accordance with Council's Engineering Construction Specification for Civil Works. The CTMP shall be prepared by a suitably qualified consultant with appropriate training and certification from the Roads & Maritime Services (RMS), and in accordance with Council's Engineering Construction Specification for Civil Works. Approval of the CTMP may require approval of the Local Traffic Committee.

47 **K225 - Performance Bond**

Prior to the issue of a Roads Act Approval, a Performance Bond is to be lodged with Penrith City Council for the proposed stormwater gully pit construction along Grady Crescent.

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 (02) 4732 7777 for further information relating to bond requirements.

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

Prior to the issue of a Construction Certificate for the works, the Certifying Authority shall ensure that a geotechnical investigation, report and strategy has been conducted to ensure the stability of Council infrastructure and surrounding developments. The geotechnical investigation, report and strategy shall comply with the recommendations contained in the technical direction GTD 2012/001 prepared by the Roads and Maritime Services, as amended. The applicant shall undertake a dilapidation report for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the excavations associated with the development. If Council is not the Certifying Authority, the dilapidation report shall be submitted to Council prior to Construction Certificate issue and then updated and submitted prior to any Occupation Certificate issue confirming no damage has occurred.

49 **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) A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.

b) 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.

50 **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.

51 **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.

52 **K406 - Underground Services**

All existing (aerial) and proposed services for the development, including those across the frontage of the development are to be located or relocated underground in accordance with the relevant authorities regulations and standards.

53 **K501 - Penrith City Council clearance – Roads Act/ Local Government Act**

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

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

Prior to the issue of an Occupation Certificate for the works, 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.

55 **K504 - Stormwater Compliance**

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

a) Stormwater management systems (including water sensitive urban design)

- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
- Have met the design intent with regard to any construction variations to the approved design.
- Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works As Executed drawings.

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

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

a) Stormwater management systems (including water sensitive urban design)

shall be registered on the title of the property, where they do not currently exist. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater and Drainage for Building Developments Policy.

57 **K511 - Directional signage**

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

58 **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.

59 **K Special (BLANK)**

Prior to the issue of a Construction Certificate for the works, the Certifying Authority shall ensure that the plans include dimensions of driveways, ramps, aisles, parking spaces, accessible parking, bicycle parking, 1.5 metre wide concrete footpaths along the frontage of Grady Crescent, internal footpaths, services, vehicle manoeuvring and loading areas complying with AS 2890, AS 1428 and Penrith Development Control Plan 2014, Section C10.

60 **K Special (BLANK)**

Prior to the issue of a Construction Certificate for the works, the Certifying Authority shall ensure that the plans include complying numbers of secure, all weather bicycle parking spaces, end of journey facilities, change rooms, showers and lockers provided at convenient locations in accordance with Penrith Development Control Plan 2014 (Section C10.7), AS 2890.3 Bicycle Parking Facilities and the Planning Guidelines for Walking and Cycling (NSW Government 2004).

61 **K Special (BLANK)**

All vehicles are to enter and leave the site in a forward direction.

62 **K Special (BLANK)**

Prior to issue of an Occupation Certificate for the works, appropriate signage, visible from the public road and on-site shall to be installed to reinforce designated vehicle circulation and to direct staff / delivery vehicle drivers / service vehicle drivers / visitors to on-site parking, delivery and service areas to the satisfaction of the Principal Certifying Authority

63 **K Special (BLANK)**

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

64 **K Special (BLANK)**

Accessible parking is to be provided with accessible paths of travel to the facility in accordance with AS 2890.6:2009.

65 **K Special (BLANK)**

The required sight lines around the driveway entrances and exits are not to be compromised by street trees, landscaping or fencing.

66 **K Special (BLANK)**

Sight distance requirements at driveways are to be in accordance with AS 2890.1, Figures 3.2 and 3.3 for the car park driveways and AS 2890.2, Figures 3.3 and Figure 3.4 for the heavy vehicle driveways.

Landscaping

67 **L001 - General**

All landscape works are to be constructed in accordance with the stamped approved plans and Section C6 of 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.

68 **L002 - Landscape construction**

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

69 **L003 - Report requirement**

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

i. Implementation Report

Upon completion of the landscape works associated with the development and prior to the issue of a Final 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.

A Final 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 Final 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.

70 **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.

71 L006 - Aust Standard

All landscape works are to meet industry best practice and the following relevant Australian Standards:

- AS 4419 Soils for Landscaping and Garden Use,
- AS 4454 Composts, Soil Conditioners and Mulches, and
- AS 4373 Pruning of Amenity Trees.

Certification

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

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

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

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

Information to accompany the Notice of Commencement

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

73 Q02F - 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 relevant building 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.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C6 Landscape Design

The proposed modified landscape design includes a simplified mixture of plantings and ground covers, additional shrub areas, and the re-arrangement of trees between sections of sandstone ballast with layered shrub and ground cover along the street frontages of the development.

The The proposed landscape design maintains high to mid level screening/hedging through the continued use of indigenous eucalypt species including angohora floribunda, eucalyptus moluccana, eucalyptus creba, melaluca linarifolia and melaleuca stypheliodes. In conjunction with additional shrub areas, the proposal provides for appropriate hedging and visual screening at a pedestrian level and also softens the overall visual dominance of the development in the context of the surrounding area. In addition, the use of native tree and shrub species will ensure tolerance to local weather conditions and will be an attraction to native wildlife in the area.

It is also noted the simplified landscape design will allow for the landscaping and gardens of the site to be maintained to a higher standard to provide for long-term visual amenity for the site. The modified landscape design also reflects the landscape design of surrounding warehouse developments within the locality. In this regard, the proposed modifications to the landscape design of the development are considered to be appropriate and comply with the objectives and controls in Section C6 of the *Penrith Development Control Plan 2014*.