

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA16/0912
Proposed development:	Removal & Replacement of Fuel Tanks and Associated Remediation Works at Existing 7-Eleven Service Station
Property address:	2 Christie Street, ST MARYS NSW 2760
Property description:	Lot 51 DP 774585
Date received:	5 September 2016
Assessing officer	Donna Clarke
Zoning:	IN1 General Industrial - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for removal and replacement of fuel tanks and associated remediation works at 2 Christie Street ST MARYS. The subject site is zoned IN1 General Industrial under the provisions of Penrith Local Environmental Plan 2010. The proposed development relies upon existing use rights and is ancillary to the existing service station on the site.

The replacement of fuel tanks and remediation works are required to meet current standards.

The application has been notified to adjoining properties and exhibited between 14 September 2016 and 25 October 2016. Council received one submission from Endeavour Energy regarding the facilities that traverse the site. The issues raised are able to be addressed by way of a condition of consent requiring compliance with their requirements.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

Properties of the site

The subject site is located on the south western corner of the intersection of Christie Street and Forrester Road. The site has a total area of 3938m², with vehicular access provided from both Christie Street and Forrester Road. The subject site currently contains a 7-Eleven service station with convenience store which occupies the western portion of the site. The site is surrounded by commercial and industrial development predominantly to the south and west. Industrial land uses exist to the north of the site, beyond the vacant land. A Rugby League club exists to the north east within a recreation zone. Residential dwellings are located to the south-east of the site. McDonalds is located on the eastern side of Forresters Road.

Proposal

The proposed development involves:

- Removal of five (5) existing underground fuel storage tanks, fuel dispensers and associated fuel lines, fill points and vent stack;
- Installation of 3 x 60klm underground fuel tanks and associated infrastructure;
- Installation of new fuel dispensers, new spill safe fill box, new vent stack and rollover bunding under fuel canopy;
- Installation of a new oil and water separator;
- Relocation of LPG storage;
- Soil excavation, testing and necessary remediation; and
- Re-establishment of surfaces (including concrete replacement).

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- 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

Planning Assessment

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

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

State Environmental Planning Policy No 33—Hazardous and Offensive Development

This policy aims to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimize any adverse impact.

The application satisfactorily addresses SEPP 33 and includes the document titled "SEPP 33 - Risk Screening Document and Preliminary Hazard Analysis" prepared by Hazkem Pty Ltd and dated June 2016 (document version:2-June 2016, Project number: 7E73). The author of the document is a member of the Australasian Institute of Dangerous Goods Consultants and the risk assessment determines that a Preliminary Hazard Analysis (PHA) is not required *"since the setback distances are more than" those required by SEPP 33 and therefore "further analysis will not be required as the site is deemed not potentially hazardous"*.

Council's Environmental Health Officer has reviewed this aspect of the proposal and had no objections subject to conditions.

State Environmental Planning Policy No 55—Remediation of Land

In accordance with the definitions provided in Clause 9 and 14 of this SEPP, the proposed remediation works fall into Category 2 works and therefore the proposed works do not need consent from the consent authority. Clause 8 states:

'(1) A person may carry out a remediation work in accordance with this Policy, despite any provision to the contrary in an environmental planning instrument, except as provided by Clause 19(3).

(2) A person must not carry out a category 1 remediation work except with the consent of the consent authority.

(3) A person may carry out a category 2 remediation work without the consent of the consent authority."

Notwithstanding the above, consent is sought for remediation works associated with the tank replacement. A remedial action plan (RAP) accompanied the application. The RAP details the proposed remediation works and provide a framework for the work practices and environmental management techniques to be implemented while undertaking removal and replacement of the UPSS at the site.

The RAP details the proposed site refurbishment, remediation and validation works. The RAP references and briefly discusses a number of previous site investigations that have occurred, including previous Environmental Site Assessment Reports dated 2008, 2011, 2013 and 2014 as well as various groundwater monitoring events dated from 2010 through to 2015. The remediation (and validation) works that occur on site will be influenced by the findings of the further soil and groundwater investigations that occur during the UST removal process.

This document has been reviewed by Council's Environmental Health Officer, who supported the proposal subject to conditions.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Does not comply - See discussion
Clause 2.3 Zone objectives	Complies

Clause 2.3 Permissibility

The subject site is zoned IN1 General Industrial under the provisions of Penrith Local Environmental Plan 2010. Service stations are a prohibited land use in the IN1 zone. The proposed works are ancillary to the existing 7-Eleven service station on the site and are therefore permissible in the zone with Council consent by way of existing use rights. There is no intensification of the use of the land or service station operations.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
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	Complies - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies - see Appendix - Development Control Plan Compliance
C5 Waste Management	Complies - see Appendix - Development Control Plan Compliance
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	Complies - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	Complies - see Appendix - Development Control Plan Compliance

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

Traffic, Parking and Access

There is not considered to be any impact to traffic, parking or access as a result of the proposed tank replacement works. The existing onsite parking arrangements will not be altered and there are no changes proposed to the site access point.

Built Environment

The proposed underground tank and associated infrastructure replacement works (once completed) will not result in significant changes to the built environment. Upon completion of the works, the proposal is expected to have little to no impact on the visual amenity and character of the surrounding area.

Noise Impact

The Remediation Action Plan (RAP) includes a section addressing Construction Environmental Management Plan (CEMP) requirements and this includes the satisfactory management of construction noise. A condition of consent is recommended that addresses permitted hours of construction. Ongoing operational noise shall not be affected by the proposed site refurbishment and remediation works and further noise assessment is not required.

Air pollution/odour

The RAP states that "*the remediation works may result in significant vapours and odours being released into the atmosphere*" and it provides proposed mitigation measures to be implemented during UST removal and remediation works that satisfactorily address potential odour generation. The measures proposed are considered satisfactory and the preparation and implementation of a Construction Environmental Management Plan (CEMP), as proposed by the RAP, should effectively manage this aspect of the proposed works.

Waste

The application includes a Waste Management Plan which is considered satisfactory. The RAP also satisfactorily details the proposed management and disposal of any potential contaminated waste soil. This aspect of the development is addressed through the imposition of a condition of consent.

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

In view of the above assessment, Council can be satisfied that the site is suitable for the development subject to conditions.

Section 79C(1)(d) Any Submissions

Community Consultation

Issue	Comment
<p>Endeavour Energy advised that there are no electrical easement over the site benefitting Endeavour Energy (indicated by red hatching). There are low voltage overhead power lines and high voltage 11,000 volt / 11kV underground cables that traverse the site. The site also adjoins Endeavour Energy's Werrington Zone Substation at 242-246 Forrester Road St Marys (Lot 102 DP 31911). Whilst Endeavour Energy does not have an easement over the electricity infrastructure that apparently traverses the site, they are protected assets and deemed to be lawful for all purposes under Section 53 'Protection of certain electricity works' of the <i>Electricity Supply Act 1995</i> (NSW). Essentially this means the owner or occupier of the land can't take any action in relation to the presence in, on or over the land of electricity works i.e. they cannot remove the encroachments from the property. Endeavour Energy manages such electrical infrastructure on the same basis as if it were held under easement.</p>	<p>The absence of easements is noted, as well as the powers under Section 53. A condition of consent is recommended regarding this issue and compliance with the requirements stated in the correspondence from Endeavour Energy dated 26 October 2016.</p>
<p>Endeavour Energy has no objections to the development proposal subject to comments and recommendations to be forwarded to the applicant regarding:</p> <ul style="list-style-type: none"> • Network Capacity / Connection • Easement Management / Network Access • Safety Clearances • Earthing • Asbestos • Vegetation Management 	<p>A copy of the submission has been forwarded to the applicant and included as part of the consent.</p>

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
Environmental - Environmental management	No objections - subject to conditions

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

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

Conclusion

In assessing this application against the relevant environmental planning policies, being SEPP 33, SEPP 55, Penrith Local Environmental Plan 2010, Penrith DCP 2014, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development, the proposal is in the public interest, and there is unlikely to be negative impacts arising from the proposed development. Therefore, the application is worthy of support, subject to recommended conditions.

Recommendation

1. That DA16/0912 for Industrial Development - Removal & Replacement of Fuel Tanks and Associated Remediation Works at Existing 7-Eleven Service Station at 2 Christie Street ST MARYS be approved subject to the following conditions.

General

1 **A001**

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

2 **A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)**

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

3 **A Special (BLANK)**

Compliance is required with the requirements stated in the correspondence from Endeavour Energy dated 26 October 2016, attached to this consent.

Environmental Matters

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

Erosion and sediment control measures shall be installed **prior to the commencement of works on site**. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004. (Note: To obtain a copy of the publication, you should contact Landcom on (02) 98418600).

The approved sediment and erosion control measures are to be installed prior to and maintained throughout the construction phase of the development until the land, that was subject to the works, has been stabilised. These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the demolition, remediation and construction of the development.

5 **D004 – Site remediation works**

Site remediation works shall be carried out generally in accordance with the approved "Remediation Action Plan (Project no: 2201541D-CLM-REP-007 Rev B)" prepared by WSP Parsons Brinckerhoff and dated April 2016 (Rev B 20 June 2016 Final) as well as applicable NSW Environment Protection Authority Guidelines, and the National Environment Protection (Assessment of Site Contamination) Measure (1999) [2013].

On completion of the site remediation works, the following documentation is to be submitted to the Principal Certifying Authority and Penrith City Council, if Council is not the Principal Certifying Authority:

- Written notification that the site remediation works have been completed is to be submitted within 30 days that the said works have been completed.
- A Validation Report, prepared by an appropriately qualified person as defined in Penrith Contaminated Land Development Control Plan, is to be submitted within sixty (60) days of the removal of the underground petroleum storage system. The report shall certify that the remediation works have been carried out in accordance with the approved Remedial Action Plan, relevant NSW Environment Protection Authority requirements, NEPM 2013 and Penrith Contaminated Land Development Control Plan.

6 **D005 – No filling without prior approval (may need to add D006)**

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

7 **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.

8 **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.

All excavated waste, including contaminated soil, is to be lawfully transported and disposed of at a lawful waste facility. Suitable documentation is to be provided to Council demonstrating the lawful transportation and disposal of the contaminated soil. No contaminated soil is to be retained on site. This information may be included in the Validation Report.

9 **D016 - Service stations**

The following details are to be submitted to and approved by Penrith City Council before the commencement of works:

- The proposed fuel bowser/s shall be covered with a canopy. All uncontaminated stormwater from the canopy and other roofed areas shall be directed away from the forecourt area under the canopy.
- The covered fuel bowser/s area shall be protected from the entry of external surface waters at the canopy line by either a minimum 2% change in grade, or a combination of a minimum 2% grade changes and a grated drainage system.
- Tanker delivery facilities shall be provided with a spillage collection device, which will collect any spilt fuel.

10 **D017 - Service stations waste**

All wastes collected within the canopy of the fuel bowsers shall be directed to the sewer after being treated in accordance with the requirements of Sydney Water.

11 **D018 - Underground tanks**

Inlets to underground storage tanks are to be located so as to ensure that vehicles discharging fuel are contained within the boundaries of the site.

12 **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.

13 **D024 - Pre-treatment**

Prior to the commencement of works, details of any pre-treatment facilities as required by Sydney Water and, if required a Section 73 Certificate issued by Sydney Water for the said development, are to be submitted to the Certifying Authority.

14 **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.

15 **D027 - SW lines not to be Touched**

The stormwater drainage system shall not be altered or new lines directed into the system without the prior approval of Penrith City Council.

16 **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 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 the Penrith City Council Contaminated Land Development Control Plan) 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 Contaminated Land Development Control Plan defines an appropriately qualified person as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, 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."}

17 **D - Dust**

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

18 **D - Hours of work (other devt)**

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

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

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

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

19 **D Special BLANK**

The removal of the underground petroleum storage system is to be undertaken in accordance with the relevant legislation, guideline documents, technical notes and Australian Standards, including the *Protection of the Environment (Underground Petroleum Storage Systems) Regulation 2008*, the *Guidelines for implementing the Protection of the Environment (Underground Petroleum Storage Systems) Regulation 2008* and the *UPSS Technical Note: Decommissioning, Abandonment and Removal of UPSS*.

20 **D Special BLANK**

The decommissioned underground petroleum storage tanks are to be disposed of at a lawful waste facility. Suitable documentation is to be provided to Council demonstrating the lawful disposal of the tanks with the submission of the Validation Report.

21 **D Special BLANK**

An appropriately qualified person/s (as defined in the Penrith City Council Contaminated Land Development Control Plan) shall:

1. Supervise the remediation works.
2. Supply Council with a copy of any relevant documentation for further testing carried out during the remediation works.
3. Address groundwater impacts and proposed management strategies where relevant and consider previous groundwater monitoring event findings
4. Address off site impacts and proposed management strategies where relevant.
5. (after completion of works) Certify by way of a Compliance Certificate or other written documentation that remediation works have been carried out in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment (this information can be included in the Validation Report). A copy of the Compliance Certificate or other written documentation is to be submitted to the Principal Certifying Authority (PCA) and Penrith City Council if it is not the PCA.

The contact details of any appropriately qualified person/s engaged for the works shall be **provided with the notice of commencement**.

22 **D Special BLANK**

The groundwater monitoring wells are to be designed and installed by duly qualified persons in accordance with relevant industry standards. The person responsible for the system must ensure that the duly qualified persons provide details of the specifications relevant to the design and installation of the wells to Council. The groundwater monitoring wells must be:

- sealed to exclude surface water
- constructed to prevent cross-contamination with other groundwater monitoring wells
- clearly marked to indicate their presence and properly secured
- tested for hydrocarbon contamination at minimum intervals of six months.

23 **D Special BLANK**

The underground petroleum storage system (UPSS) cannot be commissioned until the following requirements have been met:

- The UPSS is to be appropriately designed, installed and commissioned by duly qualified persons in accordance with the UPSS Regulation
- The UPSS is to have minimum mandatory pollution protection equipment installed, consistent with the Regulation, comprising non-corrodible secondary containment tanks and associated pipework and overfill protection devices
- The UPSS is to have groundwater monitoring wells installed and tested in accordance with the Regulation
- The UPSS is to have a certificate showing that an equipment integrity test (EIT) has been carried out in line with the written directions of duly qualified persons.

Documentation to certify that the above requirements have been met is to be submitted to Council accompanying the Validation Report.

24 **D Special BLANK**

The premises is to have an Environment Protection Plan (EPP) in place. The Plan is to incorporate procedures for loss monitoring and detection and incident management. The EPP is to comply with the NSW Department of Environment, Climate Change and Water's "Guidelines for Implementing the Protection of the Environment Operations (Underground Petroleum Storage System) Regulation 2008" (2009) and is to be submitted to Council accompanying the Validation Report.

The EPP must be kept up-to-date and amended as necessary. Where responsibility for the system changes, all records of the site must be transferred to the new person responsible within 30 days. Records of activities, incidents and modifications must be kept for at least seven years from their date of creation.

25 **D Special BLANK**

All remediation works within the Penrith Local Government Area are considered to be Category 1 works under State Environmental Planning Policy 55-Remediation of Land. Should any groundwater contamination be found during development works (or soil contamination outside the scope of the Council approved Remedial Action Plan) and should remediation be required, development consent is to be sought from Penrith City Council before the remediation works commence.

Landscaping

26 **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.

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

Existing landscaping is to be retained and maintained at all times.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principles

As outlined above, the site is located within an area having scenic and landscape values. The proposal does not seek to change any aesthetic components of the existing built form, it merely proposes to upgrade the fuel infrastructure (which is predominantly located underground) to meet current legislative standards. As such, it is not considered have a visual impact on the surrounding locality.

C3 Water Management

The discharge from the SPEL Puraceptor (oil and water separator device) shall be discharged to sewer in accordance with a Trade Waste Agreement with Sydney Water. Control measures have been identified on the erosion and sediment control plan to prevent surface water run-off entering and leaving excavation and stockpile areas.

C4 Land Management

If land contamination is detected during the works, the site will be remediated in accordance with the RAP, that accompanied the application.