

MAJOR ASSESSMENT REPORT

Application number:	DA14/0119.01
Proposed development:	Industrial Development - Hire of Builders Equipment (Modification to Conditions 5 & 8)
Property address:	3 Peachtree Road, PENRITH NSW 2750
Property description:	Lot 45 DP 249986
Date received:	14 April 2015
Assessing officer	Jane Hetherington
Zoning:	IN1 General Industrial - LEP 2010
Class of building:	Class 5 , Class 7b
Recommendations:	Approve

Executive Summary

Council is in receipt of a Section 96 development application for the use of an industrial unit for the storage, washing and transporting of portable toilets at 3 Peachtree Road Penrith. Under Penrith LEP 2010, the proposal is defined as a light industrial land use. The subject site is zoned IN1 and the proposal is a permissible land use in the zoning, with Council consent.

The modified Development Application included amendments to conditions 5 & 8, which relate to the hours of operation and the external storage of items associated with the use of the site.

The proposal is a local development and has been assessed under Section 79C & 96 of the Environmental Plannign and Assessment Act 1979. Based on the assessment, the application is recommended for approval, subject to conditions of consent.

Site & Surrounds

The subject site is 3994m² in area and features a frontage of 43.23m wide. Existing improvements on the property include a large stand alone industrial shelter of approximately 526.5m².

The site is relatively flat however has fall to the street (for drainage purposes).

The site is affected by main stream flooding and the Nepean River is located approximately 444m west of the site. An easement for transmission transverses the northern boundary.

The surrounding area is characterised by predominantly industrial land use. An aerial view of the site and surrounds indicates the closest residential land use (is approximately 489m south of the site. North Penrith release area is located approximately 560m east of the site.

Council records indicate previous development consent has been granted on the site for timber storage and retailing yard (dated 24/8/2000) (reference DA00/1216).

A pre DA lodgement meeting was held in 2010 for the construction of a warehouse/factory building (PL10/0090).

Proposal

The proposed modification to the development includes the modification of Condition 5 and 8 within the Notice of Determination for DA14/0119.

Condition 5 states:

The operating hours are from 6.00am to 2.30pm Monday to Sunday.

The applicant has requested that the condition be modified to increase the hours of operation, being:

The operating hours are from 6.00am to 6.00pm Monday to Sunday.

Condition 8 states:

All materials and goods associated with the use shall be contained within the building at all times.

The applicant has requested that the condition be modified as follows:

All materials and goods associated with the use shall be contained within the boundaries of the property at all times.

The original Development Application detailed the external storage of portable toilets. The amendment of the condition would enable the storage of larger items exterior to the existing shed located on the site.

No other changes are proposed by the modification.

Under the provisions of Section 96(1A) of the EP&A Act 1979 the proposed modification includes the following:

1) Amend Condition 8 that reads 'all materials and goods associated with the use shall be contained within the building at all times'.

Propose to modify to read 'all materials and goods associated with the use shall be contained within the boundaries of the property at all times'.

2) Amend Condition 5 that

Plans that apply

- Local Environmental Plan 2010 (Stage 1 LEP)
- Development Control Plan 2010
- Sydney Regional Environmental Plan No.20 Hawkesbury Nepean River

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 96(1A) - Modifications involving minimal environmental impact

Pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (the Act), Council may modify a development consent provided several parameters are satisfied. These parameters are discussed below.

- (a) The proposed modifications are of minimal environmental impact.
- The subject application does not appreciably alter the likely environmental, social and economic impacts of the proposal.
- (b) The modified development is substantially the same development as was previously approved. The modified development meets the test of being substantially the same development as was previously approved. The Section 96 application proposes to modify conditions 5 & 8 in relation to the permitted hours of operation and external storage of equipment associated with the approved business. No other intension is sort by the Section 96 application.
- (c) The application has been notified where required.

 In accordance with Appendix F4: Notification and Advertising of Penrith Development Control Plan 2014, the modified application was not advertised and/or notified. The proposed modification to the proposal is negligible and therefore does not affect any public interest considerations relating to the proposal.
- (d) Any submissions received from the notification process have been considered.

Not applicable.

Each of the relevant criteria under Section 96(1A) of the Act has therefore been satisfied. The development as modified will achieve minimal environmental impact and is substantially the same development as originally approved.

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

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 (Stage 1 LEP)

Provision	Compliance		
Clause 1.2 Aims of the plan	Complies		
Clause 2.3 Zone objectives	Complies		
Clause 2.3 Permissibility	Complies - See discussion		
Clause 2.5 Additional permitted uses for particular land	N/A		
Clause 2.6 Subdivision - consent requirements	N/A		
Clause 2.7 Demolition requires development consent	N/A		
Clause 2.8 Are the temporary use of land requirements achieved?	N/A		

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Clause 4.1 - the minimum lot size	N/A		
Clause 4.1AA Minimum subdivision lot size for community title schemes	N/A		
Clause 4.2 Rural Subdivision	N/A		
Clause 4.3 Height of buildings	Complies		
Clause 4.4 Floor Space Ratio	N/A		
Clause 4.5 Calculation of floor space ratio and site area	N/A		
Clause 4.6 Exceptions to development standards	N/A		
Clause 5.1 Relevant acquisition authority	N/A		
Clause 5.10 Heritage conservation	N/A		
Clause 5.11 Bush fire hazard reduction	N/A		
Clause 5.12 Infrastructure development and use of existing buildings of the Crown	N/A		
Clause 5.13 Eco-tourist facilities	N/A		
Clause 5.2 Classification and reclassification of public land	N/A		
Clause 5.3 Development near zone boundaries	N/A		
Clause 5.4 Controls relating to miscellaneous permissible uses	N/A		
Clause 5.5 Development within the coastal zone	N/A		
Clause 5.6 Architectural roof features	N/A		
Clause 5.7 Development below mean high water mark	N/A		
Clause 5.8 Conversion of fire alarms	N/A		
Clause 5.9 Preservation of trees or vegetation	N/A		
Clause 5.9AA Trees or vegetation not prescribed by development control plan	N/A		
Clause 6.1 Earthworks	N/A		
Clause 6.10 Villages of Mulgoa and Wallacia	N/A		
Clause 6.11 Orchard Hills	N/A		
Clause 6.12 Twin Creeks	N/A		
Clause 6.13 Waterside Corporate	N/A		
Clause 6.14 Development of land in the flight paths of the site reserved for the proposed Second Sydney Airport	N/A		
Clause 6.15 Location of sex services premises and restricted premises	N/A		
Clause 6.2 Salinity	Complies		
Clause 6.3 Flood Planning	Complies - See discussion		
Clause 6.4 Development on natural resources sensitive land	N/A		
Clause 6.5 Protection of scenic character and landscape values	Complies - See discussion		

Clause 6.6 Servicing	Complies	
Clause 6.7 Dwelling houses on certain land in Llandilo and Mulgoa	N/A	
Clause 6.8 Dual occupancies and secondary dwellings in certain rural and evironmental zones	N/A	
Clause 6.9 Mulgoa Valley	N/A	
Schedule 1 Additional permitted uses	N/A	

Clause 2.3 Zone objectives

The proposed development has been considered having regard to the objectives of the zone, and found to be satisfactory.

Clause 2.3 Permissibility

Under Penrith LEP 2010, the proposed development is most suitably defined as a type of light Industry, which is a permissible land use in the zone.

Under the LEP, *light industry* means a building or place used to carry out an industrial activity (see definition below) that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- (a) high technology industry,
- (b) home industry.

industrial activity means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, <u>cleaning</u>, <u>washing</u>, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development <u>of</u>, <u>any goods</u>, <u>substances</u>, <u>food</u>, <u>products or articles for commercial purposes</u>, and includes any storage or transportation associated with any such activity.

The proposed development is for the purpose of cleaning, washing, storage and transportation of portable toilets. The development, as proposed, is conservative in nature and does not include the permanent storage of more than 1 vehicle nor the treatment or disposal of effluent on the site. It will involve the cleaning of portable toilets which have already been serviced (onsite) in regard to effluent disposal. The cleaning procedure will occur in an area which is bunded and wastewater is collected in and temporarily stored in a tank which is regularly serviced and wastewater is transported offsite.

Having regard to the operational management regimes associated with the use, there is unlikely to interfere with the amenity of the neighbourhood by reason on noise, vibration, smell, fumes, smoke, vapour,steam,soot,ash,dust,waste water, waste products, grit oil, or otherwise. Conditions of development consent limiting the use the development in this regard have been considered and are recommended to form part of the development consent.

The nature of the development is not altered by the amended Development Application.

Clause 4.3 Height of buildings

The existing structure is a standard sized shed like structure which is well within the maximum building height under the LEP (12 metres).

Clause 6.3 Flood Planning

The subject site is affected by mainstream flooding (from the Nepean River) and therefore is mapped to affected by flood related development standards and controls.

The objective of Clause 6.3 are:

- (a) to minimise the flood risk associated with the use of the land,
 - (b) to limit uses to those compatible with flow conveyance function and flood hazard,

- (c) to manage uses to be compatible with flood risks,
- (d) to enable safe and effective evacuation of land,
- (e) to ensure the existing flood regime and flow conveyance capacity is not compromised,
- (f) to avoid detrimental effects on the environment that would cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or waterways.

Councils Development Engineers have considered the proposal advised that the 1% AEP flood level adopted for the site by Floodplain and Drainage section is 25.6m AHD. The flood planning level is therefore 26.1m AHD (inclusive of 0.5m freeboard). Exponare indicates that ground levels are approximately 25.0m AHD.

Having regard to the nature of the use and the fact that there is an existing structure on the site which is not being significantly altered, the existing levels of the site and the structure are satisfactory, providing the applicant is aware of the flood constraints on the site and associated hazards.

The modification does not alter the developments compliance with Clause 6.3 of Penrith Local Environmental Plan 2010.

Clause 6.5 Protection of scenic character and landscape values

The proposed use will not alter the facade or presentation of the site to the street nor require the modification to building heights which may diminish views to or from scenic areas.

The original architectural plans included the external storage of portable toilet buildings and included the provision of screening structures within the front setback area. The external storage of toilets is not considered to adversely impact on the scenic character or landscape values of the locality.

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

Development Control Plan 2010

Provision	Compliance		
Part B - DCP Principles	Complies		
Part C 1 - Site planning and design principles	Complies		
Part C2 - Vegetation management	N/A		
Part C3 - Water management	Complies		
Part C4 - Land management	Complies		
Part C5 - Waste management	Complies		
Part C6 - Landscape design	Complies		
Part C7 - Culture and heritage	N/A		
Part C8 - Public domain	N/A		
Part C9 - Advertising and signage	N/A		
Part C10 - Transport, access and parking	Complies		
Part C11 - Subdivision	N/A		
Part C12 - Noise and vibration	N/A		
Part C13 - Infrastrcuture and services	Complies		
Part D4 - Industrial development	Complies - see Appendix - Development Control Plan Compliance		

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

The proposed modification does not alter the fire protection or structural capacity of the approved building.

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

Likely impacts of the proposed amended development as identified throughout the assessment process include:

Hours of Operation

The proposed hours of operations, being 6am to 6pm is consistent with adjoining industrial development. The development site is not located within the vicinity of residential dwellings and the nature of the use is not considered to create noise concerns to the adjoining sites. Accordingly the changes to the proposed hours of operation are supported (Condition 5).

External Storage

The proposed modification includes the ability to store items exterior to the existing building. The approved architectural plans detailed the external storage of portable toilets while including appropriate parking areas for trucks (4) and staff/ visitors (6) within the site. In addition, screening measures were included to improve the presentation of the site, when viewed from the street. For these reasons, no objection is raised to the proposed amendments to condition 8.

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

The proposed modification is responsive to the architectural plans provided within the Development Application and the need for extended hours of operation to respond to the needs of their customers.

The proposed modification is considered to be suitable for the site.

Section 79C(1)(d) Any Submissions

Community Consultation

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		

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 SREP 20, Penrith LEP 2010 and Penrith DCP 2010, the proposal satisfies the aims, objectives and provisions of these policies.

The modification enables the extended hours of operation and external storage of portable buildings associated with the use of the site.

The hours of operation are compatible with the surrounding land uses and the external storage of items will be screened from the street, ensure the proposal will not detracted the locality.

The site is suitable for the proposed use, the proposal is in the public interest, and there is unlikley to be negative impacts arising from the proposed development.

Therefore, the application is worthy of support, subject to recommended conditions.

Recommendation

1. That DA14/0119.01 for the modification of conditions 5 & 8 for the approved Industrial Development - Hire of Builders Equipment at 3 Peachtree Road PENRITH be approved subject to the attached conditions (Development Assessment Report Part B).

General

1 A001

The development must be implemented substantially in accordance with the Site Plan prepared by Turnbull Planning International Pty limited (ref: nor.pea3p_PlanofProposal) dated January 2014 and the supporting information stamped and approved by Council, 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 A020 - Use of building

The building shall not be used under any circumstances for any commercial or habitable residential activity.

4 A026 - Advertising sign (not for residential)

A separate development application for the erection of a sign or advertising structure, other than an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan-Advertising Signs.

5 A029 - HOURS OF OPERATION AND DELIVERY TIMES

The operating hours are from 6:00am to 6:00pm Mondays to Sunday.

As amended on 21 July 2015 under Section 96 of the Environmental Planning and Assessment Act 1979.

6 A030 - No retail sales

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

7 A031 - No vehicle sales

No motor vehicles are to be displayed for sale on the subject premises.

8 A032 - Goods in buildings

All materials and goods associated with the use shall be contained within the boundaries of the property at all times.

As amended on 21 July 2015 under Section 96 of the Environmental Planning and Assessment Act 1979.

9 A038 - LIGHTING LOCATIONS

The provision of exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding landuses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).

10 A039 - Graffiti

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

11 A Special (BLANK)

Mechanical repairs of vehicles is not permitted to occur on the subject site. No storage of goods and materials associated with mechanical repairs is to occur.

12 A special BLANK

No effluent generated from the use of the portaloos shall be stored onsite within the portaloos or any other location. All effluent generated from the use of the portaloos shall be disposed of offsite at a suitably licensed waste facility prior to the return and storage of any hire portaloo equipment on the site.

13 A special BLANK

The operation of the premises and associated equipment shall be in accordance with the *Plan of Management* for the Proposed Builders Hire Equipment Storage Facility - 3 Peachtree Road PENRITH - prepared by Turnbull Planning International PTY LIMITED - dated March 2014.

14 A special BLANK

The wastewater holding tank located onsite shall be emptied on a regular basis of at least once a week or as required to prevent overflow. All wastes and liquid wastes are to be disposed of in accordance with the requirements of the Protection of the Environment Operations Act 1997.

Demolition

15 B005 - Mud/Soil

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

Environmental Matters

16 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.

17 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.

18 D014 - Plant and equipment noise

The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

19 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.

20 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.

BCA Issues

21 E006 - Disabled access and facilities

Access for persons with disabilities is to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility".

22 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.

23 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.

Health Matters and OSSM installations

24 Flooding

All materials stored on the site shall be located to minimise the risk of damage to such materials in the event of a flood. Flood sensitive equipment (including electric motors and switches) shall also be located above RL 26.1m AHD (standard flood level + 0.5m) where practicable.

Any materials stored below RL 26.1m AHD (standard flood level + 0.5m) shall be secured to minimise damage during a flood where practicable.

Utility Services

25 G002 - Section 73 (not for

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

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

Engineering

26 K027 - Car Parking

A total of 7 off-street parking spaces are to be provided, linemarked and maintained for the development, generally in accordance with the approved site plan. The parking space dimensions and manoeuvring areas are to comply with AS2890.1 and AS2890.2 the Building Code of Australia and the Commonwealth Disability Discrimination Act.

Landscaping

27 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 Council's Landscape Development Control Plan.

28 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.

29 L008 - Tree PreservationOrder

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.

30 L012 - Existinglandscaping (for existing development)

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

31 L Special (BLANK)

The provision of landscape species for the small landscape bed forward of the building (as identified on the stamped approved site plan) shall comprise of locally endemic species which are consistent with the landscape character of the surrounding area.

Prior to the issue of a Final Occupation Certificate, evidence shall be provided to Penrith City Council demonstrating the landscaping has been established on the site, in accordance with the stamped approved plan.

Payment of Fees

32 P001 - Costs

All roadworks, dedications and drainage works are to be carried out at the applicant's cost.

33 P002 - Fees associated with Council land (Applies to all works & add K019)

Prior to the commencement of any works on site, all fees associated with Penrith City Council-owned land and infrastructure shall be paid to Council. These fees include Road Opening fees and Infrastructure Restoration fees.

Certification

34 Q006 - Occupation Certicate (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/tenancy 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 the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

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

Appendix - Development Control Plan Compliance

Development Control Plan 2010

D4 - Industrial development

Clause	Not Applica	Comp	Does	_
			liessot Comply	Comments
4.1. Key Precincts	0	•	C	The proposed use will not alter
4.2. Building Height	0	•	0	the heights, setbacks or building
4.3. Building Setbacks and Landscape	0	•	0	presentation for the site.
4.4. Building Design	C	•		The development includes some landscape embellishment forward of the existing building. A condition of development consent is recommended to require that specie selection be locally endemic and consistent with the surrounding landscape character of the area.
4.5. Storage of Materials & Chemicals	C	e		The proposed use will not include the storage of chemicals which require consideration under SEPP 33. Conditions of development consent are recommended to require the internal storage of goods and material associated with the use as well as prohibited and practices which have not been considered as part of the assessment (i.e. mechanical repairs of vehicles, onsite wastewater disposal, storage of hazardous material etc.)
4.6. Accessing and	0	•		The site has satisfactory access and
Servicing the Site				circulation areas are stablised. Condition
4.7. Lighting	•	0		of consent recommended to require compliance with AS2890 in regard to linemarking and widths of carparking spaces.