

SWCPP Ref. No.:	PPSSWC-108
DA No.:	DA20/0589
PROPOSED DEVELOPMENT:	Integrated Development - Alterations & Additions to an Existing Warehouse & Use of Premises as Waste Management Facility (Tyre Recycling Facility) Operating 24 Hours & 7 Days Per Week - Lot 4 DP 1253870,1 - 21 Grady Crescent, ERSKINE PARK NSW 2759
APPLICANT:	Element Environment
REPORT BY:	Kathryn Saunders, Senior Development Assessment Planner, Penrith City Council

Assessment Report

Executive Summary

Council is in receipt of a development application for the use of an existing warehouse as a waste or resource management facility - tyre recycling facility, with 24hour, seven day operations at 1-21 Grady Crescent, Erskine Park. The tyre recycling facility will be operated by Tyrecycle, who are currently operating out of another site located in nearby St Marys.

The site is zoned IN1 General Industrial under State Environmental Planning Policy (Western Sydney Employment Area) 2009 and the use is prohibited in the zoning, although is permissible with consent within the zoning, which is a 'prescribed zone' under State Environmental Planning Policy (Infrastructure) 2007.

Key issues identified for the proposed development and site include:

- Noise and air quality impacts
- Potential hazardous and offensive development

The above matters are resolved through the submission of additional information and the application has been assessed as being supportable, having regard to the applicable plans and policies. As is required, the application has also been assessed against the aims and objectives, including the zone objectives of State Environmental Planning Policy (Western Sydney Employment Area) 2009 and is supportable.

The applicant provided additional information to confirm that the development did not constitute hazardous or offensive development and was not a potentially hazardous development through the assessment in amended technical reports and through a revised submission in relation to State Environmental Planning Policy No. 33 - Hazardous and Offensive development.

The application has been notified to adjoining properties and was advertised and exhibited between 5 October and 4 November 2020 in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000. No submissions have been received.

The proposal is identified as being integrated development as the activity requires an Environmental Protection License from the Environmental Protection Authority (EPA) under the NSW Protection of the Environment Operations Act 1997 as a Waste or Resource Management Facility - Tyre Recycling Facility. The EPA has not raised any objections and has provided their General Terms of Approval.

The proposal is also identified as being traffic generating development under clause 104 of State Environmental Planning Policy (Infrastructure) 2007 and was referred to Transport for NSW, with no objections raised.

The application was briefed to the Sydney Western City Planning Panel (SWCPP) on Monday 16 November 2020 and the following matters were raised for further assessment and clarification:

- *Noise and odour are significant potential issues, but the Panel understands that Council expects they can be managed. The EPA license will presumably address those issues.*
- *For the purposes of SEPP 33, the issue of whether the application is likely to be hazardous or offensive should be addressed in the SEE, so it can be considered in the Council assessment report. Any assertion that the facility will not be offensive or hazardous should be substantiated by the applicant by sufficient explanation of what noise, odour and other impacts can be expected, and how they will be managed.*
- *The Panel understands that it is proposed that the whole of the operation is to be conducted within the building. An improved layout plan should be provided to show how that can be achieved, noting that the plan provided in the SEE does not appear to allow for the full range of operations likely to be required to carry out the proposed processing use. The plans should be legible with an appropriate scale, showing the location of equipment and processing facilities, vehicle access within the site and the building, any physical alterations to the building layout, facades and roof line.*
- *The conditions on any recommended approval shall be clear as to the operation being conducted entirely within the building, or alternatively clear as to any activities which may acceptably be carried out outside the site.*
- *The Panel noted that the applicant has advised that it is reducing the scale of the development currently conducted in St Marys. The Panel would ordinarily expect that the introduction of new more efficient equipment would allow increased output. For that reason caution should be taken during the assessment to ensure that the proposed output is practical and workable, and that the conditions are enforceable to protect against exceedance of the scale of the permitted operation.*

In relation to the above, the EPA will be the regulator in relation to noise and odour and had requested further information in relation to these aspects of the development. Additional information was assessed as being acceptable and the EPA have issued their GTAs with conditions, which are included as conditions of consent. A suite of conditions are also recommended which allow a practical method of reviewing total tonnage at the site, and to ensure that the relevant operations and activities related to the tyre recycling are contained within the building at all times.

Additional information provided is also satisfactory and has addressed SEPP 33.

The SWCPP is the determining authority for the application as the proposal is identified in Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, as *Private infrastructure and community facilities over \$5 million*, being a waste or resource management facility which has a CIV of \$12,258,088.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for Approval, subject to recommended conditions which include those issued by the relevant State agencies.

Site & Surrounds

The subject site contains an existing warehouse with hardstand areas and basement car parking at 1-21 Grady Crescent in Erskine Park. The site is within an industrial estate known as Erskine Business Park and the land is zoned IN1 General Industrial under State Environmental Planning Policy (Western Sydney Employment Area) 2009.

The surrounding land uses are general industry. Tyremax is located to the immediate east, Coates Hire, and a 150m wide transmission easement containing vacant land are located to the north. A large warehouse and distribution centre are located to the west and a distribution facility occupies the southern end of the subject warehouse, which is provided with its own vehicular access and manoeuvring areas.

Residential development is located approximately 330metres to the north, on the northern side of the nearby transmission easement. Further to the south of the industrial estate is the Oakdale West Estate, the Water NSW Pipelines and recently rezoned industrial land known as the Mamre Road Precinct.

Proposal

The development application seeks consent for the use of an existing warehouse which is 9,620sqm in area, for a waste or resource management facility – tyre recycling facility with 24hour seven days per week operations, including:

- Receiving and temporary storage of tyres,
- Processing and shredding of tyres of up to 29,000t p/a.
- Recovering approximately 9,397t pa of 30 Mesh, 12,620t p/a 1.5 inch TDF, 4,344t p/a of Steel and 2,639t p/a of fabric/Textile,
- Dispatch of processed tyre derived fuel (TDF) and other tyre derived products (TDP),
- Installation of new plant and equipment inside the existing warehouse,
- Minor alterations to existing electrical services including installation of new electrical substation and related services earthworks, and the
- Installation of an air filtration system into the existing roof (via two new openings).
- Receipt, storage and on-selling for recycling of used car batteries, used oil drums and used oil filters - not containing free liquids (5000 filters per month, 600 batteries per month, 4 drums per month).
- Removal of one juvenile spotted gum (to facilitate the installation of the substation).

By-products of the operational process are noted to include steel and fibre textile which will be on-sold as recyclable materials. All tyres received at the site are either processed into TDF or TDP. The application states there are no hazardous by-products from the shredding process, chemical processing or heating of tyres.

The warehouse will operate shifts as follows:

- Day shift being 7am to 3pm = 24 employees
- Afternoon shift being 3pm to 11pm = 3 employees
- Night shift being 11pm to 7am = 3 employees.

The SEE outlines that the operations will be supported by 4 full time management staff who will typically work 8am to 5pm weekdays. Trucks will collect Monday to Friday 4am to 6pm and 5pm to 1am, and Saturday 4am to 6pm. The maximum number of car parking spaces required is 28, which are accommodated on the site.

Plant machinery

Shredding Monday to Saturday - 7am to 7pm

General plant operations - 24hrs, 7 days.

Crumbing - 24hrs, 7 days.

Deliveries - Monday to Friday 8am to 5pm and Saturday 8am to 6pm (as required).

No new lighting is proposed. Existing lighting will be utilised.

The applicant confirms that the proposal is not Designated development owing to the scale of activities and their minimal environmental impacts of the proposal.

Signage

1 x Tyrecycle sign located on the building facade over the loading dock - 1220mm x 2440mm

Plans that apply

- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- 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
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**

The application has been assessed in accordance with Section 2.12 of the Environmental Planning and Assessment Act 1979, and the application will be determined by the Sydney Western City Planning Panel as it has a Capital Investment Value of \$5 million or greater and is Private infrastructure, being a waste or resource management facility under Schedule 7(5) of the Policy.

- **Section 4.15 - Evaluation**

The development application has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

- **Section 4.46 - Integrated development**

The development has been assessed in accordance with the integrated development provisions under Section 4.46 of the Environmental Planning and Assessment Act 1979. In this regard, the application was referred to the EPA who have confirmed in letter dated 3 December 2020, that General Terms of Approval are issued with conditions.

It is recommend that these conditions be included in the consent, should consent be granted.

- **Section 7.12 - Developer Contributions**

Council's Section 7.12 Citywide Development Contributions Plan for Non-residential development came into force on 24 August 2020. The plan applies to any non-residential development with a proposed cost of works of more than \$100,000 that is not otherwise subject to a s7.11 contribution, authorised by a s7.11 contributions plan adopted by Council.

The plan levy rate for the development is 1% of the cost of works. The contributions are not found to apply as the applicant has provided information to Council indicating that contributions have been previously paid. Refer also to Council's additional assessment report addendum memorandum.

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

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 Traffic-generating development

Clause 104 of the Policy applies to the proposal. Clause 104(3) requires that the consent authority must give written notice of the application to RMS within 7 days after the application is made and take into consideration any submission made by RMS, and must take into consideration:

- the accessibility of the site concerned, including -

(A) the efficiency of movement of people and freight to and from the site and the extent of multi purpose trips, and

(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and

- any potential traffic safety, road congestion or parking implications of the development.

The application was referred to Transport for New South Wales (TfNSW) for their review as the proposal is identified as traffic generating development to be referred to TfNSW (formerly RMS) in Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP). In letter dated 1 December 2020, TfNSW did not raise any objection to the proposal, stating that the application '*will not result in any adverse impact on the classified road network*'.

Division 23 Waste or resource management facilities

Clause 121 *Development permitted with consent*, states that development for the purposes of waste or resource management facilities, other than development referred to in subclause (2), may be carried out by any person with consent on land in a prescribed zone. The subject site is zoned IN1 General Industrial, which is identified under clause 121(1), as a prescribed zone. The proposal for a waste or resource management facility, is permissible with consent.

Subclause (2) relates to development for waste or resource transfer station, and does not apply to the subject development.

It is raised that the applicant proposes that all of the loading and unloading activities related to the waste or resource management facility operations, with the exception of commercial office waste collection, will occur inside the existing warehouse. A condition is recommended to require compliance with this aspect of the operations.

Council's traffic engineers have not objected to the proposal.

The proposal is considered to be acceptable having regard to the matters for consideration under the Policy, subject to the recommended conditions.

State Environmental Planning Policy (State and Regional Development) 2011

The proposal is identified as being Regionally Significant Development under the Policy as the proposal has a capital investment value which exceeds \$5 million and under Schedule 7(5) is Private infrastructure - being a waste or resource management facility.

State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

The subject site is not located within the area of land identified as being in the Aerotropolis Boundary map and is not zoned land under SEPP (Aerotropolis) 2020. The site is not impacted by the Noise Exposure Contour map.

Obstacle Limitation Surface map

The site is within the Outer Horizontal Surface RL 230.5m AHD area on the Obstacle Limitation Surface map, although the works will not penetrate this level, and the warehouse is existing.

Lighting Intensity and Wind Shear

The site is not identified as being within the area of land impacted by clauses of the Policy related to lighting intensity and wind shear.

Wildlife Buffer zone

The site is within the 13km Wildlife Buffer zone on the Policy map. Clause 21 Wildlife hazards applies to development within the 13km zone. Clause 21(2) states that '*Development consent must not be granted to **relevant development** on land in the 13 km wildlife buffer zone unless the consent authority—*

(a) has consulted the relevant Commonwealth body, and

(b) has considered a written assessment of the wildlife that is likely to be present on the land and the risk of the wildlife to the operation of the Airport provided by the applicant, which includes—

(i) species, size, quantity, flock behaviour and the particular times of day or year when the wildlife is likely to be present, and

(ii) whether any of the wildlife is a threatened species, and

(iii) a description of how the assessment was carried out, and

(c) is satisfied that the development will mitigate the risk of wildlife to the operation of the Airport, including, for example, measures relating to—

(i) waste management, landscaping, grass, fencing, stormwater or water areas, or

(ii) the dispersal of wildlife from the land by the removal of food or the use of spikes, wire or nets.

...

*In this clause **relevant development** means development for the following purposes-*

...

(m) waste or resource management facilities that consist of outdoor processing, storage or handling of organic or putrescible waste.

As the proposed waste or resource management facility is indoors and does not include outdoor processing, storage or handling of organic or putrescible waste, no further assessment is required in relation to wildlife and no referral is required to the relevant Commonwealth body.

The site is not identified on the Transport Corridors map, notwithstanding the application was referred to TfNSW as it is Traffic-generating development. No objections were raised by TfNSW.

The development is satisfactory having regard to the Policy.

State Environmental Planning Policy (Western Sydney Employment Area) 2009

An assessment of the development against the Policy has been undertaken and the Policy complies as follows:

The site is located within the area of land covered by State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP) and is zoned IN1 General Industrial.

The proposal for the use of an existing warehouse as a waste or resource recovery facility is not identified as being contrary to the Aims of the Policy which include to:

- *promote economic development and the creation of employment in the Western Sydney Employment Area by providing for development including major warehousing, distribution, freight transport, industrial, high technology and research facilities,*
- *rezone land for employment, environmental conservation or recreation purposes,*
- *improve certainty and regulatory efficiency by providing a consistent planning regime for future development and infrastructure provision in the Western Sydney Employment Area.*

Zone Objectives

Clause 11 Zone objectives and land use table, specifies the objectives for each zone and sets out the types of development which is permissible with and without consent, and which is prohibited development in each zone. Subclause (2) states that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.

The objectives of the IN1 General Industrial zone include:

- *To facilitate a wide range of employment-generating development including industrial, manufacturing, warehousing, storage and research uses and ancillary office space.*
- *To encourage employment opportunities along motorway corridors, including the M7 and M4.*
- *To minimise any adverse effect of industry on other land uses.*
- *To facilitate road network links to the M7 and M4 Motorways*
- *To encourage a high standard of development that does not prejudice the sustainability of other enterprises or the environment.*
- *To provide for small-scale local services such as commercial, retail and community facilities (including child care facilities) that service or support the needs of employment-generating uses in the zone.*

The proposal is not considered to be contrary to the above objectives.

Permissibility

It is noted that Waste or resource recovery facilities are not listed under 3 *Permitted with consent* and thus would fall under those land uses under 4 *Prohibited - Any development not specified in item 2 or 3.*

The development is permissible with consent in the IN1 General Industrial zone, which is a prescribed zone under State Environmental Planning Policy (Infrastructure) 2007.

Clause 18 Requirement for development control plans

Clause 18 *Requirement for development control plans*, states that the consent authority must not grant consent to a development on any land to which this Policy applies unless a development control plan has been prepared for that land. Part E6 of the Penrith Development Control Plan 2014 applies to the subject site, in satisfaction of the clause requirements.

Part 5 of the Policy contains the Principal development standards applying to development under the Policy. An assessment is provided below in relation to the applicable development standards, noting that the existing warehouse has been approved:

cl. 20 Ecological sustainable development: The clause states that the consent authority must not grant consent to development on land to which this Policy applies unless it is satisfied that the development contains measures to minimise - (a) consumption of potable water, and greenhouse gas emissions.

Officer comment - The proposal is considered to comply as the development includes a rain water tank

which is assessed to meet the needs of the development (further information was sought in relation to this aspect of the proposal, and Council's waterway officer is now satisfied of the scale of the water tank). It is also considered by virtue of the use, being a waste or resource recovery facility that through its operations, the re-use and recycling of products will assist in the reduction of greenhouse gas emissions.

cl. 21 Height of Buildings

The clause states that the consent authority must not grant consent to development on land to which this Policy applies unless it is satisfied that— (a) building heights will not adversely impact on the amenity of adjacent residential areas, and (b) site topography has been taken into consideration.

Officer comment - The consent authority can be satisfied to the above matters as the warehouse is existing and the alteration to the building which may impact overall height (being the installation of mechanical ventilation, is insignificant and will not result in unsatisfactory outcomes.

cl. 22 Rainwater harvesting

The clause states that the consent authority must not grant consent to development on land to which this Policy applies unless it is satisfied that adequate arrangements will be made to connect the roof areas of buildings to such rainwater harvesting scheme (if any) as may be approved by the Secretary.

Officer comment - The original application was approved with a rainwater tank, and its capacity to continue to serve the proposed new use has been assessed as sufficient.

cl. 25 Public utility infrastructure

The clause states that the consent authority must not grant consent to development on land to which this Policy applies unless it is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.

Officer comment - The original application was approved with services connections and its capacity to continue to serve the proposed new use has been assessed as sufficient and it is noted that a new electrical substation is included as part of the works.

cl. 26 Development on or in vicinity of proposed transport infrastructure routes

This clause applies to any land to which this Policy applies that is situated on or in the vicinity of a proposed transport infrastructure route as shown on the Transport and Arterial Road Infrastructure Plan Map. The map notes that Lenore Drive to the south of the site is a proposed transport infrastructure route and that the sites's entry on Grady Crescent, which is 220m to the north, connects to Lenore Drive. Subclause (2) states that the consent authority must refer to the Secretary of the Department of Planning any application for consent to carry out development on land to which this clause applies.

Subclause (3) states that *'The consent authority must, before determining any such development application, consider any comments made by the Secretary as to the compatibility of the development to which the application relates with the proposed transport infrastructure route concerned'*.

Officer comment: The proposal was referred to the Department of Planning, Industry and Environment and in correspondence dated 9 December 2020, no objections are raised.

Part 6 Miscellaneous provisions

Clause 31 Design principles states that in determining a development application that relates to land to which this policy applies, the consent authority must take into consideration whether or not—

(a) *the development is of a high quality design, and*

(b) *a variety of materials and external finishes for the external facades are incorporated, and*

(c) high quality landscaping is provided, and
(d) the scale and character of the development is compatible with other employment-generating development in the precinct concerned.

The consent authority can be satisfied of the above matters which were considered as part of the approval of the original warehouse. Landscaping impacted by the new substation will be replanted elsewhere, and a condition of consent is included to this effect.

Clause 33L relates to stormwater, water quality and water sensitive design. Council's waterways officer requested further information in relation to rain water re-use and harvesting. Additional information was provided by the applicant and the proposed is considered to be satisfactory. Harvested water will be utilised and the existing rainwater tank is confirmed to be of a sufficient volume. Council's stormwater engineer has not raised objections.

State Environmental Planning Policy No 33—Hazardous and Offensive Development

Aims of the Policy include to

-require development consent for hazardous or offensive development proposed to be carried out in the Western Division', and to ensure
-that in determining whether a development is a hazardous or offensive industry, any measures proposed to be employed to reduce the impact of the development are taken into account, and
- 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 minimise any adverse impact, and
- to require the advertising of applications to carry out any such development.

The Policy defines '**potentially hazardous industry**' which means 'a development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality—

(a) to human health, or
(b) to the biophysical environment,

and includes a hazardous industry and a hazardous storage establishment'.

'Potentially offensive industry' is also defined and 'means a development for the purposes of an industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would emit a polluting discharge (including for example, noise) in a manner which would have a significant adverse impact in the locality or on the existing or likely future development on other land, and includes an offensive industry and an offensive storage establishment.'

The Policy states at clause 8, that in determining whether a development is -

(a) a hazardous storage establishment, hazardous industry or other potentially hazardous industry, or
(b) an offensive storage establishment, offensive industry or other potentially offensive industry,

consideration must be given to current circulars or guidelines published by the Department of Planning

relating to hazardous or offensive development.

Clause 12 states that 'A person who proposes to make a development application to carry out development for the purposes of a potentially hazardous industry must prepare (or cause to be prepared) a preliminary hazard analysis in accordance with the current circulars or guidelines published by the Department of Planning and submit the analysis with the development application'.

Clause 13 states that 'In determining an application to carry out development to which this Part applies, the consent authority must consider (in addition to any other matters specified in the Act or in an environmental planning instrument applying to the development)—

- (a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and*
- (b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and*
- (c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and*
- (d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and*
- (e) any likely future use of the land surrounding the development.'*

The applicant states that the potential for air and noise emissions to be generated by the development have been qualitatively assessed via the technical assessments including the air quality and noise assessments. The reports include modelling of the impacts in accordance with the relevant EPA guidelines. Additional information was sought from the applicant as to whether the development is hazardous or offensive.

The applicant responded in letter dated 1 December 2020 and clarifies -

"All hazardous substances and dangerous goods to be consumed, stored and/or transported by the development have been screened against the thresholds of Applying SEPP 33 (as outlined in the respective goods classification (e.g. diesel) specified in Section 5.4.8 of the SEE). All hazardous materials or dangerous goods would be transported, handled, stored and managed in accordance with relevant regulations and industry standards and would not exceed the thresholds of Applying SEPP 33. As such, the development does not constitute a potentially hazardous industry, and the assessment requirements of the SEPP, including the requirement for a preliminary hazard analysis, are not applicable to the development".

The applicant also states that

"Potentially offensive industry is where in the absence of safeguards and controls, the project could 'emit a polluting discharge that could cause a significant level of offence'. Examples of this may include depositional dust, or operational noise impacts on adjacent residents or land uses".

and includes that *"Applying SEPP 33 states that a proposal is potentially offensive if it requires pollution licensing from the EPA. The granting of the license by the EPA for the existing operations is sufficient to demonstrate that emissions can be effectively managed and, therefore, the proposal is unlikely to be offensive. The development constitutes a 'scheduled activity' under the POEO Act and an EPL is required for operation of the development. The development would emit pollutants which in the absence of safeguards could cause offence. However, management measures have been incorporated into relevant models, which via the SEE and noise and air quality assessments have demonstrated that emissions*

would not exceed relevant criteria. Therefore, the development does not qualify as offensive development under SEPP 33".

Having regard to the material submitted with the application and having regard also to the response provided by the applicant in letter dated 1 December 2020, the proposal is not considered to be hazardous or offensive and is not a potentially hazardous industry, and a preliminary hazard analysis is not requested.

The proposal is satisfactory when assessed against the Policy.

State Environmental Planning Policy No 55—Remediation of Land

An assessment of the development proposal has been undertaken having regard to the Policy and it is considered that the proposed development is suitable for the site.

There are limited works proposed that would disturb the soil and the construction of the warehouse and ancillary landscaping, civil works, stormwater and landscaping were approved under the consent issued for the warehouse and an assessment was undertaken of site suitability at that time, and found to be supportable. The site was considered suitable under SEPP 55 as part of the original warehouse approval.

State Environmental Planning Policy No 64—Advertising and Signage

The development proposes to install 1 x Tyrecycle sign located on the building facade over the loading dock - 1220mm x 2440mm. The signage has been assessed against the provisions of the Policy and is considered to be acceptable.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997), and the application is considered to be satisfactory, subject to the recommended conditions of consent. The proposal has also been assessed by Council's development engineers and Council's waterways officers with no objections raised.

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

Draft Environment State Environmental Planning Policy

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property.

Changes proposed include consolidating a total of seven existing SEPPs being:

- *State Environmental Planning Policy No. 19 – Bushland in Urban Areas*
- *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011*
- *State Environmental Planning Policy No. 50 – Canal Estate Development*
- *Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment*
- *Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 - 1997)*
- *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*
- *Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property*

It is noted that the proposed changes to State Environmental Planning Policy No. 19 – Bushland in Urban Areas (SEPP 19) are not considered to impact the proposed development. In addition, the amendments to Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 - 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this draft instrument.

Draft Remediation of Land SEPP

The Department of Planning and Environment has announced a Draft Remediation of Land SEPP, which will repeal and replace the current State Environmental Planning Policy No. 55—Remediation of Land. The proposed new land remediation SEPP will:

- Provide a state-wide planning framework for the remediation of land,
- Maintain the objectives and reinforce those aspects of the existing framework that have worked well,
- Require planning authorities to consider the potential for land to be contaminated when determining development applications and rezoning land,
- Clearly list the remediation works that require development consent, and
- Introduce certification and operational requirements for remediation works that can be undertaken without development consent.

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979. The proposal is not inconsistent with the provisions of this draft instrument.

Planning Proposal - Phase 1 Review of Penrith LEP 2010

The Phase 1 amendments to the Penrith LEP were on exhibition between 1 May - 29 May 2020 and include alterations to lot sizes in residential zones, alterations to permissible uses in identified areas, changes in the zoning of particular allotments and minor housekeeping amendments. The amendments sought do not impact the subject application.

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	N/A
C2 Vegetation Management	N/A
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	N/A
C9 Advertising and Signage	Complies
C10 Transport, Access and Parking	Complies
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
D4.1. Key Precincts	Complies
D4.2. Building Height	Complies
D4.3. Building Setbacks and Landscape	Complies
D4.4. Building Design	Complies
D4.5. Storage of Materials and Chemicals	Complies
D4.6. Accessing and Servicing the Site	Complies
D4.7. Fencing	Complies
D4.8 Lighting	Complies

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

There are no planning agreement sin place which require further consideration for the proposal.

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

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

Further, the development application was submitted with a Building Code Assessment Report concluding that the proposal is capable of complying with the applicable provisions of the Building Code of Australia and relevant Australian Standards.

Designated Development

Part 1 of Schedule 3 of the Regulations identifies types of activities which are Designated development. Subclause 32 of Schedule 3 *Waste management facilities or works* identifies that 'waste management facilities or works that store, treat, purify or dispose of waste or sort, process, recycle, recover, use or reuse material from waste and -

...

(b) that sort, consolidate or temporarily store waste at transfer stations or materials recycling facilities for transfer to another site for final disposal, permanent storage, reprocessing, recycling, use of reuse and -

...

(iii) that have an intended handling capacity of more than 30,000 tonnes per year of waste such as glass, plastic, paper, wood, metal, rubber or building demolition material, or

...

(d) that are located -

...

(ii) within 500 metres of a residential zone or 250 metres of a dwelling not associated with the development and, in the opinion of the consent authority, having regard to topography and local meteorological conditions, are likely to significantly affect the amenity of the neighbourhood by reason of noise, visual impacts, air pollution (including odour, smoke, fumes or dust), vermin or traffic.

It is not assessed that the proposal is Designated development as the proposed is not likely to significantly affect the amenity of the neighbourhood as detailed above.

The development proposal has been accompanied with the required information and has been notified, publicly exhibited and advertised as per the Penrith Development Control Plan 2014, Council's Community Engagement Strategy & Community Participation Plan, and the Regulations. No submissions were received.

The proposal is acceptable having regard to the Regulations.

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

Traffic, Parking and Loading Dock Activities

As a result of the proposal, it is expected that there will be an increase in the volume of traffic entering and exiting the site, however the development generally proposes an acceptable volume of car parking for the needs of the development. The existing road network is assessed to have capacity to accommodate the increased volume of vehicles, noting the TfNSW and Council's Traffic Engineers have not objected to the proposal on this ground.

Noise and Construction Impacts

Minor construction at the site will have a temporary affect on the amenity of the area due to noise from construction equipment and machinery. Standard conditions of consent are recommended with regard to dust suppression and soil and sediment control.

Operational Noise and Emissions

The applicant has been issued General Terms of Approval and will require the issuance of an Environmental Protection License under the Protection of the Environment Operations Act. Technical reports in relation to noise odour and air quality impacts have been revised and are now found to be suitable. It is not envisage through the issue of an EPL and having regard to SEPP 33, that the site will be hazardous or offensive.

It is further noted that all activities are contained within the site's warehouse and relevant conditions are included.

Social & Socio-Economic Impacts

The development is unlikely to result in any negative social impacts in the area. The proposal has been assessed against the principles and objectives contained within the DCP an those under SEPP WSEA and has been found to be compliant in this regard.

Fire Safety and Environmental Impacts

Relevant conditions of consent are recommended to ensure the development complies with fire safety guidelines and the EPA GTAs issued.

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

The site is assessed to be suitable for the proposed development. The site is located such that the activities can reasonably be accommodated on the site and can be regulated as may be required, without significant augmentation and without unreasonable environmental impact in the context of the site. Residential amenity of the closest residential area can be suitably protected. The site is already connected to relevant services.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with the requirements of the Regulations and Council's adopted Community Engagement Strategy, the application was notified to adjoining and nearby land owners and occupants, and was exhibited and advertised between 5 October and 4 November 2020. No submissions were received.

Referrals

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

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

Section 4.15(1)(e)The public interest

The likely impacts of the proposal have been assessed as acceptable or have been addressed by way of recommended conditions of consent and as such, the proposed development will not generate any detrimental issues of public interest.

The development proposal complies with the applicable development standards for the site and the use is permissible in the IN1 General Industrial zone - by way of SEPP (Infrastructure), with consent. The NSW EPA have issued their General Terms of Approval and TfNSW has not raised any objections to the proposal, which is identified as traffic-generating development.

The application was notified, exhibited and advertised in accordance with the required legislation, no submissions were received.

It is for the above reasoning that the application can be supported and there are no outstanding matters which will be detrimental to the public interest.

Conclusion

The site is assessed to be suitable for the proposed development and the use can be supported subject to the recommended conditions of consent. The site is located such that the activities can reasonably be accommodated on the site and can be regulated as is required, with out significant augmentation and without unreasonable environmental impact in the context of the site. Residential amenity of the closest residential area can be suitably protected. The site is already connected to relevant services.

The EPA has issued their GTAs and TfNSW have not raised any objection to the proposal.

Recommendation

1. That DA20/0589 for the use of an exiting warehouse for a waste or resource management facility - Tyre Recycling, with operational hours being seven days, 24hours and associated minor additions and alterations, at 1-21 Grady Crescent, Erskine Park, be Approved subject to the attached recommended conditions; and
2. That the relevant State agencies and concurrence authorities, are notified of the determination.

CONDITIONS

General

- 1 The development must be consistent with the drawings stamped approved by Council and the documents listed below:

Document Name	Author	Plan No.	Revision	Date
Statement of Environmental Effects	Element Environmental		1	16 September 2020
Site Plan	SBA Architects	DA-02	Q	01 December 2020
Roof Plan	SBA Architects	DA-03	L	01 December 2020
Proposed Basement and Ground Floor Plans	SBA Architects	DA-04	J	01 December 2020
Proposed Elevations	SBA Architects	DA-05	L	01 December 2020
Proposed Sections	SBA Architects	DA-06	H	01 December 2020
Warehouse External Lighting	SBA Architects	GCE-015	A	15 December 2013
Traffic Impact Assessment	PTC		4	10 September 2020
BCA Compliance Statement	Blackett Maguire Goldsmith	-	-	08 October 2020
Todoroski Air Sciences	Air Quality Assessment			29 October 2020
Todoroski Air Sciences	Further Information on Air Quality			18 November 2020

as well as 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 The site operator and beneficiary of the consent is to ensure compliance with the General Terms of Approval as set out in the General Terms of Approval document, Notice No. 1603615 and attached letter dated 03 December 2020 issued by the NSW Environment Protection Authority (EPA) or as may be amended by the EPA through the issue of updated or amended General Terms of Approval.
- 3 The relevant Construction Certificate plans are to include a minimum 99kw roof top solar system to improve the net environmental performance of the facility as a whole. The system is to be operational within 12 months of the issue of any Occupation Certificate.

Once installed and operational, written confirmation that the system has been installed and is operational is to be submitted to the Manager of Development Services at Penrith City Council.

- 4 All activities related to the approved waste or recourse recovery operations including loading, unloading, receipt, storage, processing and transport of tyres and any ancillary used batteries, used oil drums, used oil filters and the like, are to be undertaken within the warehouse building.

No approval is granted for external storage of tyres or other materials or for the placing of storage containers, including shipping containers in the external areas of the site.

- 5 The approved hours of operation are 24 hours, every day.
- 6 The development is to remain compliant with the Fire & Rescue NSW Fire safety guideline: *Fire management in waste facilities 2020*, and the *NSW Rural Fire Service Guidelines for Bulk Storage of Rubber Tyres 2014*.
- 7 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 8 To ensure that the development does not exceed the threshold for designated development the proposed operation of a tyre processing facility (waste management facility) with ancillary storage and transfer of oil filters, oil drums and car batteries, is limited to a maximum handling capacity of no more than 30,000 tonnes per year of waste metal and rubber. Handling capacity includes the sorting, consolidating or temporary storage or material recycling of waste materials.

The approved activities at the site must not exceed the tonnages specified within the approved documentation, and as per the issued General Terms of Approval and related Environmental Protection License issued by the Environmental Protection Authority (EPA). A log book or similar record containing evidence of total material tonnage received and stored per annum, is to be kept at the site and is to be made available for the EPA or Council inspection, upon request.
- 9 A separate development application for the erection of a sign or advertising structure, other than signage or advertising structure that are listed as exempt or complying development (under State Environmental Planning Policy (Exempt and Complying Development Codes 2008)), is to be submitted to Penrith City Council.
- 10 No retail sale of goods shall be conducted from the subject premises.
- 11 All materials and goods associated with the use shall be contained within the building at all times.
- 12 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 13 A **Construction Certificate** shall be obtained prior to commencement of any building works.

- 14 Prior to the commencement of operations, a copy of the Environment Protection Licence issued by the NSW Environment Protection Authority under the *Protection of the Environment Operations Act 1997* is to be submitted to Penrith City Council.

Activities on the premises must be carried out in accordance with this licence. Should this licence be revoked, suspended or surrendered, an application is to be submitted to Council for consideration of matters contained in the licence.

Demolition

- 15 Prior to the issue of the Construction Certificate the Principal Certifying Authority shall consider the requirements of Clause 143 of the Environmental Planning and Assessment Regulation 2000.

Additionally an updated "Performance Solution" is to be formulated and assessed as per the Building Code of Australia report prepared by;

BLACKETT
MAGUIRE +
GOLDSMITH dated 8th October 2020.

Environmental Matters

- 16 Erosion and sediment control measures shall be installed **prior to the commencement of any works on site** which include disturbance of the soil and include approved vegetation clearing or tree removal or planting. 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).

Certification that the erosion and sediment control measures have been installed in accordance with the approved erosion and sediment control plan(s) for the development and "Managing Urban Stormwater: Soils and Construction 2004" shall be obtained and issued a minimum 2 days before any other site works are to commence, including earthworks and clearing of the site.

The approved sediment and erosion control measures are to be installed **prior to and are to be maintained throughout the construction phase of the development until and soil disturbing works have been completed for the development, and the area that was subject to the works, has been stabilized and grass cover established.**

These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development and that soil and sediment from activities undertaken, does not enter the waterways.

- 17 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.

- 18 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.
- 19 Any 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.
- 20 All vehicle washing, engine degreasing and steam cleaning shall be conducted in a wash bay approved, installed and connected to the sewer in accordance with Sydney Water's requirements.

Details of any vehicle wash bay area is to be included in the Section 73 Certificate issued by Sydney Water for the discharge of trade waste from the premises, and shall be submitted to the Principal Certifying Authority before the wash bay/area can be installed.

- 21 Waste oil shall be stored in a covered and bunded area and regularly removed to a waste oil recycle operation.
- 22 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.
- 23 Prior to the issue of a Construction Certificate, 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.
- 24 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 The stormwater drainage system shall not be altered or new lines directed into the system without the prior approval of Penrith City Council.
- 26 Any liquid discharge from any installed air handling systems, resulting from operation, maintenance and/or cleaning operations, is to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.

BCA Issues

- 27 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

- 28 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.sydneypwater.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.

Construction

- 29 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.

30 Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

31 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 and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

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

Engineering

- 32 All roadworks, stormwater drainage works, signage, line marking, associated civil works and dedications required to effect the consented development shall be undertaken by the applicant at no cost to Penrith City Council.
- 33 Prior to the issue of any Construction Certificate the Principal Certifying Authority shall ensure that a Loading Dock Management Plan is in place to ensure that only three (3) trucks are parked in the loading bay and the other three (3) truck spaces are vacant during times when B-Double trucks access the site.

Landscaping

- 34 **Prior to the issue of an Occupation Certificate**, the Principal Certifying Authority is to ensure that a minimum of one Spotted Gum tree having a minimum pot size of 100L or greater is planted within the landscaped front setback of the site and that the tree is well maintained and in good health.
- 35 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 Development Control Plan - Technical Specifications Section.
- 36 Existing landscaping is to be retained and maintained at all times.

Payment of Fees

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

Certification

- 38 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.

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

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding. A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C6 Landscape Design

The landscaping of the site was approved as part of the assessment of the original application.

One juvenile planted spotted gum is proposed to be removed as part of the application. A condition of consent is included to require replanting.