

STATEMENT OF ENVIRONMENTAL EFFECTS

ALTERATIONS AND ADDITIONS TO EXISTING INDUSTRIAL BUILDINGS, CONSTRUCTION OF ADDITIONAL INDUSTRIAL BUILDINGS AND CONSTRUCTION OF THREE MULTI-STOREY CAR PARKS

2115-2131 CASTLEREAGH ROAD
PENRITH



STATEMENT OF ENVIRONMENTAL EFFECTS

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Client and Land Details

Client: Aon Ari Pty Ltd
Subject Site: Lot 2 DP 787827, 2115-2131 Castlereagh Road, Penrith
Proposal: Alterations and Additions to existing Industrial Buildings, Construction of Additional Industrial Buildings and Construction of Three Multi-Storey Car Parks



Warwick Stimson RPIA
Director



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Version	Date	Comment
1.0	260421	Initial Draft for client review
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1 INTRODUCTION

1.1 PROJECT OVERVIEW

Stimson Urban & Regional Planning has been engaged by Aon Ari Pty Ltd to prepare a Statement of Environmental Effects in relation to a proposed development on the property known as 2115 – 2131 Castlereagh Road, Penrith.

The proposed development includes the demolition of various existing built elements on the site, alterations and additions to existing industrial buildings, construction of additional industrial buildings and construction of three multi-storey car parks. Land uses are also sought to be established in this application in order for future tenancies to be facilitated through the provisions of *State Environmental Planning Policy (Exempt and Complying Codes) 2008* (Codes SEPP).

The site is zoned *IN1 General Industries* under *Penrith Local Environmental Plan 2010* with the proposal being permissible with consent.

The proposal is defined as *development* in Section 4 of the Act. The Act stipulates that the development must not be carried out on the subject site until consent has been obtained. The proposal is also considered to be ‘integrated development’ with approval being required from NRAR prior to the determination of the application.

This report describes the proposed development and subject site in detail and undertakes an assessment of the proposal against the relevant aims, objectives and development provisions of Council’s LEP and DCP, and Section 4.15 of the Act.

1.2 REPORT STRUCTURE

This Statement of Environmental Effects is structured as follows:

- Section 1: Introduction – provides an overview of the proposal, planning history for the site and background to the application.
- Section 2: The Site and Surrounds – provides an analysis of the subject site, development within the locality and a consideration of the local and regional context.
- Section 3: Project Description – provides a detailed description of the proposed development and its characteristics.
- Section 4: Strategic and Statutory Considerations – provides for an assessment of the proposal against the specific planning instruments and policies that are applicable.
- Section 5: Key Planning Issues – provides an assessment of the key issues identified in the preparation of the application.
- Section 6: Section 4.15 Assessment – provides an assessment against section 4.15 of the EPA Act.
- Section 7: Conclusion and Recommendation – summarises the report and presents a recommendation.

1.3 INTRODUCTION TO CLIENT

Our client has provided the following information in relation to this project.

In 2015 AonAri moved into large scale industrial space. Its first acquisition was 66 Christina Road, Villawood, and from there has continued to acquire space throughout south-western Sydney.

Properties have been converted from old manufacturing sites into reinvigorated, renewed and inspired places. AonAri has always refused to demolish any structures, rather looking to resuscitate these large mature sites.

AonAri has purchased 2115 Castlereagh Road, Penrith and is committed to employment and manufacturing. Penrith's former Crane Enfield Metals site is set for a rebirth amid plans to transform it back into a manufacturing powerhouse, generating hundreds of local jobs in the process.

The massive 120,000sqm site has been under-developed, after the Crane Copper Tube factory closed its doors in 2014. AonAri intends to reinvigorate the existing space and honor its rich history, bringing it back to life to accommodate a host of micro and medium-sized manufactures.

Long associated with manufacturing innovation in Australia, Crane Enfield Metals expanded into Penrith in the early 1960s and employed a whopping 1,200 people on the site in its heyday.

In 2005, the aluminium portion of the business was sold to Capral Aluminium, which still operates on a section of the lot.

1.4 HISTORY OF THE APPLICATION

Consultation has been undertaken regarding this proposal prior to lodgement with the following Agencies.

1.4.1 *Pre-Lodgement Consultation – Natural Resources Access Regulator (NRAR) and Penrith City Council*

Aspects relating to the proposed development and proximity to identified water courses have been discussed with the NRAR. Of most importance was the need to identify the triggers for a controlled activity and then the proposal being regarded as 'integrated development'.

Agreement was reached with Council that the maps appended to SREP 20 were the most appropriate maps to rely on in the case of the proposed development, given the statutory nature of them and the presence of a mapped wetland to the east of the site. NRAR also acknowledged the disturbance of land at the rear of the site by Sydney Water had impacted the potential for rehabilitation and agreed that in the event the SREP 20 maps were used, there was no identified water course on the site.

Accordingly, the application was prepared based on the SREP 20 maps. The proposed development is not 'integrated development' as the development footprint is outside any buffer zone around the wetland.

1.4.2 *Pre-Lodgement Meeting – Penrith City Council*

The proposal was discussed at a pre-lodgement meeting held with the relevant officers at Penrith Council on 26 November 2020 where a range of issues were discussed. The proposal as submitted differs from the one presented at the meeting, however the issues raised have been considered in the preparation of this report.

1.5 SUPPORTING DOCUMENTATION

The proposed is accompanied by the following documentation:

Documentation	Prepared by
Access Report	Accessible Building Solutions
Acoustic Report	Renzo Tonin & Associates
Arborists Report	Urban Arbor
Architectural Drawings	SJB Architects
BCA Report	Steve Watson & Partners
Bushfire Report	Control Line Consulting
Civils & Stormwater Plans & Reports	Costin Roe Consulting
Contamination Report	ZOIC Environmental
Ecological Report	Cumberland Ecology
Landscape Plan	Black Beetle Landscape Architecture & Design
QS	jpqs
Survey	LTS
Traffic Impact Assessment	PTC

1.6 LEGISLATION, ENVIRONMENTAL PLANNING INSTRUMENTS AND POLICIES TO BE CONSIDERED

- *Biodiversity Conservation Act 2016*
- *Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River*
- *State Environmental Planning Policy No 55 – Remediation of Land*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy No 64 – Advertising and Signage*
- *Penrith Local Environmental Plan 2010*
- *Penrith Development Control Plan 2014*

1.7 CONSENT AUTHORITY

A Quantity Surveyors report accompanies the application confirming the Capital Investment Value (CIV) of this project is circa \$92 million (ex GST).

State Environmental Planning Policy (State and Regional Development) 2011 has been reviewed and the following is submitted:

- The proposed development does not trigger any State Significant threshold values. The warehouses elements of the proposal do not exceed the SEPP value of \$50 million

(Schedule 1, CI 12). Nor does the proposal include the manufacturing types exceeding \$30 million in Schedule 1, CI 11). The application is therefore not State Significant.

- The proposal triggers Schedule 7 CI 2 in that it is *General Development* with a CIV exceeding \$30 million. The application is therefore considered to be *Regionally Significant Development*.

Consequently, the consent authority for this application will be the Sydney Western City Planning Panel.

2 THE SITE AND SURROUNDS

The subject site and its surrounds have the following characteristics.

Site Address	2115-2131 Castlereagh Road, Penrith
Lot/DP	Lot 2 DP 787827
Site Area	12 hectares
Local Government Area	Penrith City Council
Zoning	IN1 General Industrial
Current Land Use	Industrial
Proposed Land Use	No change - to remain as industrial.
Surrounding Land Uses	General industry to the north, west and south, with an identified wetland to the east.
Topography	Generally flat
Terrestrial Biodiversity	Refer to accompanying consultant report.
Heritage	Not mapped in LEP.
Flooding/Overland Flow	Overland flow has been considered at the rear of the site.
Bushfire	The site is mapped as being bushfire prone land and a Bushfire Impact Assessment accompanies the application.



Figure 1 Subject Site - Aerial

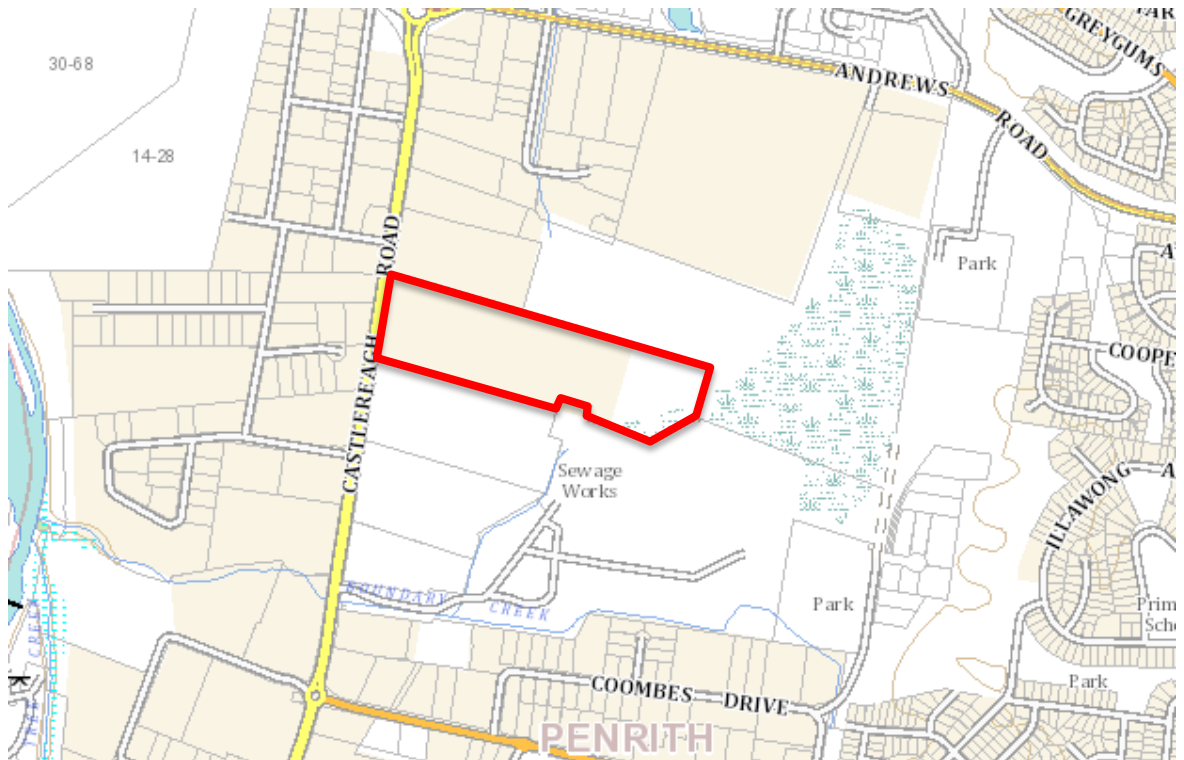


Figure 2 Subject Site - Cadastre

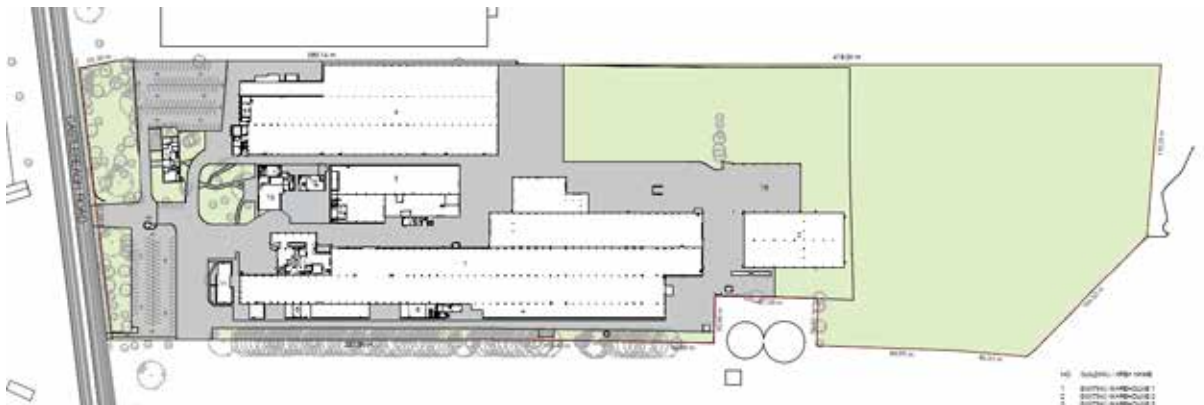


Figure 3 Existing site plan

2.1 SURROUNDING CONTEXT

The subject site is located approximately 1.5km to the north of Penrith Railway Station. It is framed by Castlereagh Road along the western boundary, vacant sites to the east and south, industrial uses to the north west and the Penrith Water Recycling Plant to the south east.

The surrounding mixed use/general industrial precinct is a major employer in the local area and extend northwards to Andrews Road with good accessibility to major vehicular routes (particularly the M4 and A9), the Blue Mountains and the future Sydney aerotropolis.

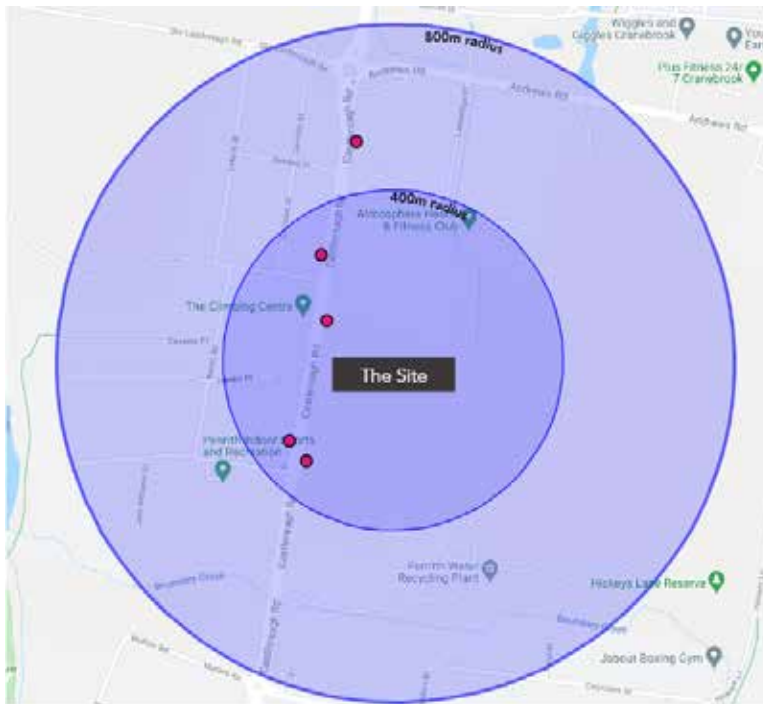


Figure 5 Public transport accessibility (bus stops in pink)

2.3 EASEMENTS

High voltage and water infrastructure easements are located at the rear of the site as shown in the Figure below. These do not impact on the proposed development.

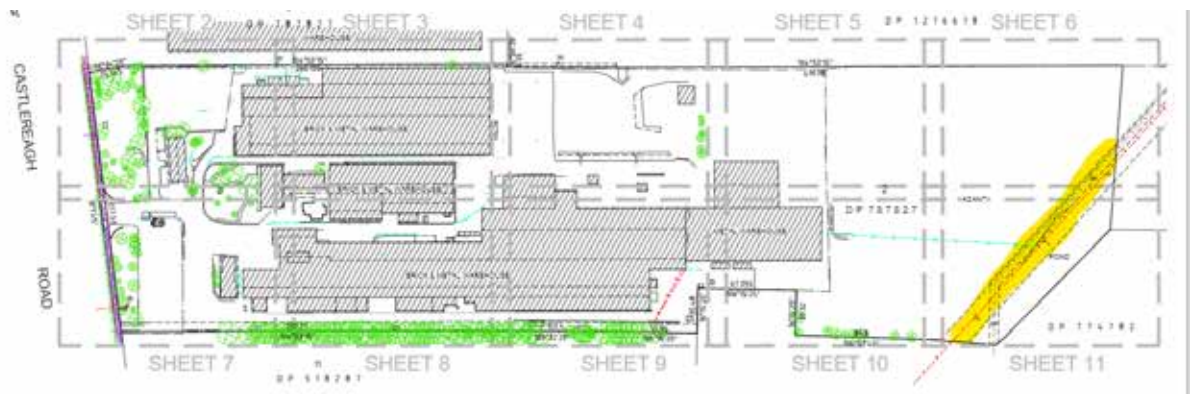


Figure 6 Easements impacting the site marked in yellow

3 PROJECT DESCRIPTION

3.1 OVERVIEW OF THE DEVELOPMENT

The site is proposed to be developed by progressing staged construction certificates. Consent is therefore required over all of the project elements as well as a plan indicative of the stages proposed. The development is proposed as per the following:

Stage One

- Demolition of all elements of the site that are not required.
- Refurbishment of the existing Crane Enfield buildings (marked EW 3 on the plans) but excluding the rear portion of the main building on the site (refer to Stage 3). This will include preparation of the building interior to accommodate industrial tenancies under the Codes SEPP.
- Landscaping elements around the existing Crane Enfield buildings.
- Refurbishment of the exterior of the existing Crane Enfield buildings.
- Reconfiguration of vehicle entry/exit points to the site.

Stage Two

- Construction of a new industrial building (marked CW 1 on the plans) for Capral, who are currently tenants within the building marked EW 4 on the plans. No major works are proposed to the existing Capral building.
- Associated hardstand areas and stormwater infrastructure as required to fulfil the full development of the site.

Stage Three

- Refurbishment of the rear portion of the existing main Crane Enfield building. This will include preparation of the building interior to accommodate industrial tenancies through the CDC process.

Stage Four

- Construction of a standalone multi deck car park (marked PC 3 on the plans).
- Construction of two new industrial buildings (marked PW 1 and PW 2 on the plans).
- Associated hardstand areas and stormwater infrastructure as required to fulfil the full development of the site.

Stage Five

- Construction of two standalone multi deck car parks at the front of the site (marked PC 1 and PC 2 on the plans).
- Associated hardstand areas and stormwater infrastructure as required to fulfil the full development of the site.

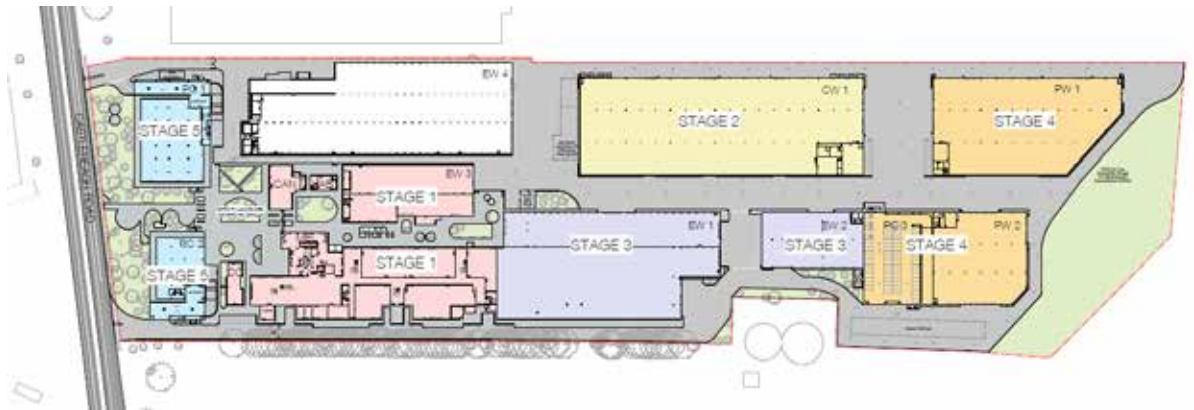


Figure 7 Staging of the development

The development proposes the following detailed elements.

3.2 DEMOLITION

Included within the first stage of development, demolition of various elements of the site is proposed that are highlighted on plans DA2501 and DA2503. It is expected standard conditions of consent would be applied to any consent to manage the demolition process.



Figure 8 Demolition proposed - plan view

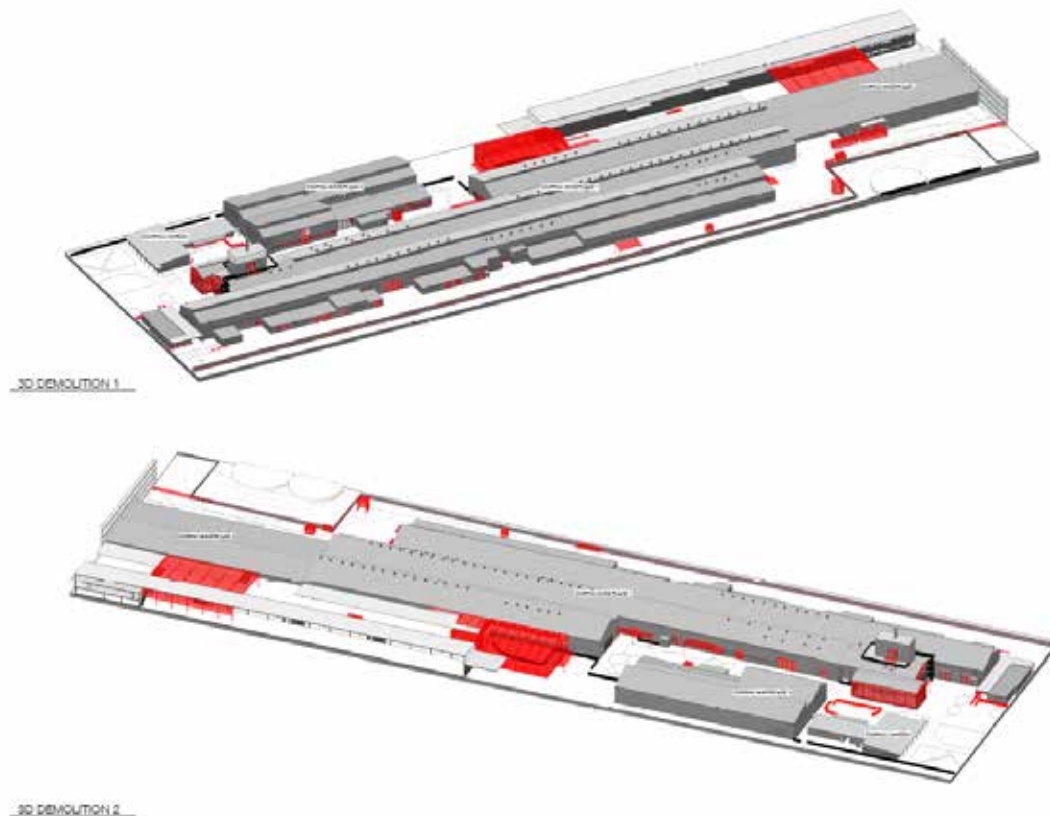


Figure 9 Demolition proposed - exterior elements

3.3 REFURBISHMENT AND ALTERATIONS OF EXISTING CRANE ENFIELD BUILDINGS

The application seeks consent to refurbish the existing Crane Enfield buildings, including all of the building marked as EW 3, and the front portion of the building marked as EW 1. Proposed works include the following within the first stage of development.

Building EW 3

- Retention of some 2,984sqm of floor area on the ground level, proposed to be used for general industry.
- Provision of a parent's room, and male and female amenities.
- Retention of the 'canteen' building of some 471sqm in floor area.

Building EW 1 (front portion)

- Retention of the copper melter.
- Use of the existing front building as a 'click & collect' facility.
- Additional male and female amenities.
- Construction of internal walls to allow for industrial tenancies to be approved through the CDC process.

- Provision of escalators and lifts to enable access to a mezzanine level that is to be considered as part of the CDC process.
- Addition of an LED screen on the tower element of the building.

Both Buildings

- Upgrades to glazing, entry doors, and awnings.
- Installation of solar panels on the roof.
- No changes are proposed to the existing height of the building.

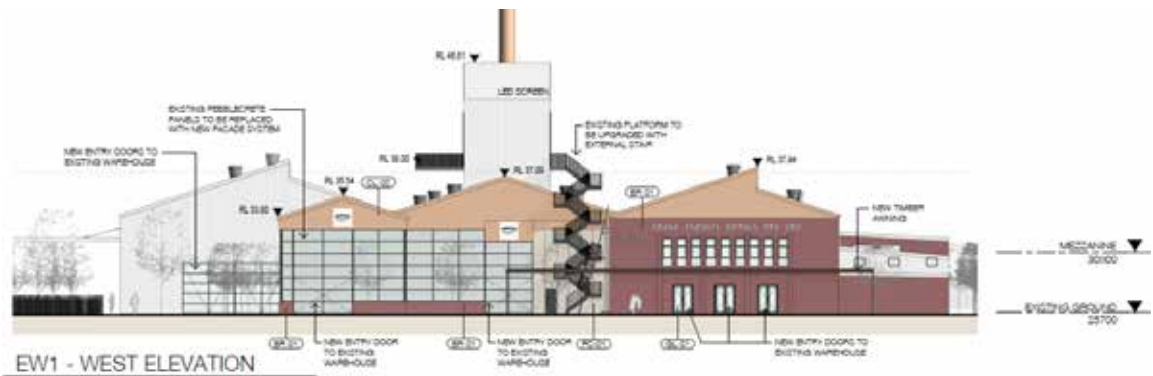


Figure 10 Western elevation – existing Crane Enfield building

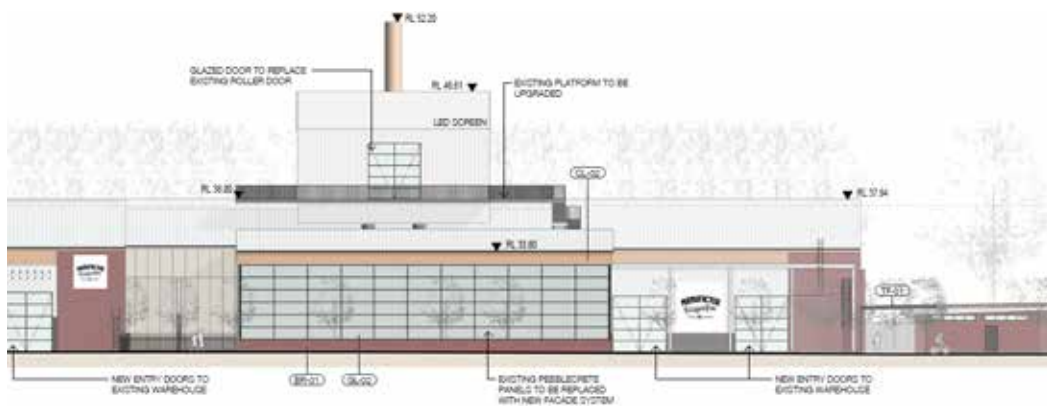


Figure 11 Northern elevation - existing Crane Enfield building

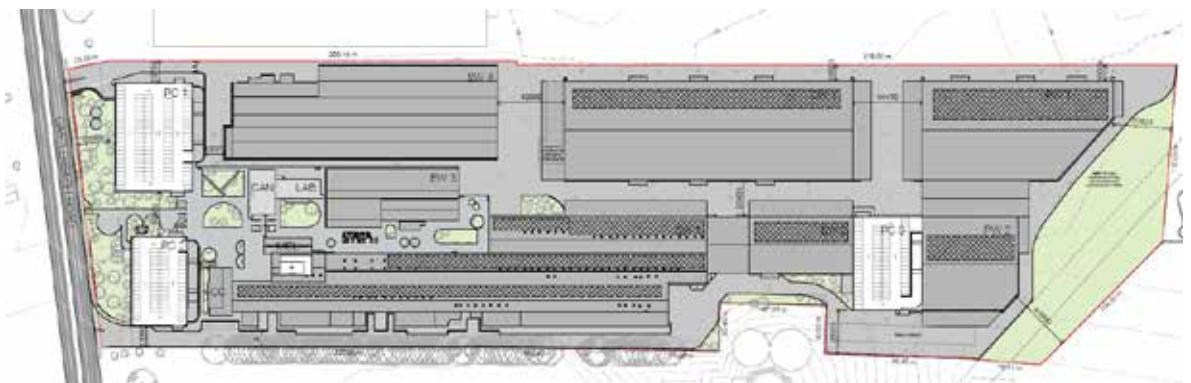


Figure 12 Indicative solar panel location shown hatched

It is noted that the two elements of the existing Crane Enfield building exceed the maximum LEP building height control of 12m. These include the existing building that surrounds the meltor exhaust, and the ridgeline of the north-eastern section of building EW 1. Refer to the Figure below.

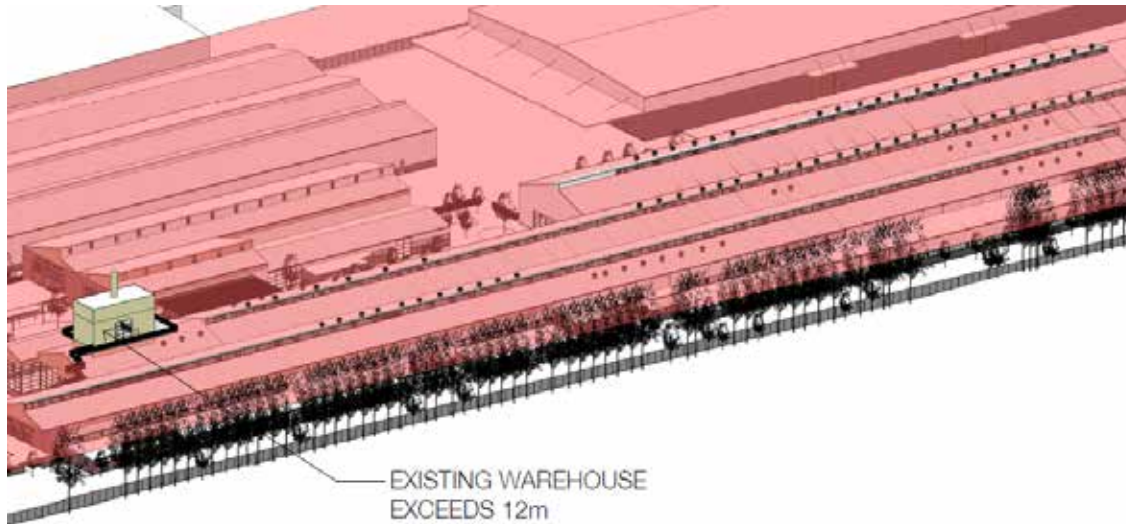


Figure 13 LEP height breaches on existing Crane Enfield building

3.4 CONSTRUCTION OF A NEW BUILDING FOR CAPRAL (CW1)

Capral is an existing tenant on the site, accommodating the building marked EW 4 on the plans. No changes are proposed to building EW 4.

In the Penrith LGA, Capral operates from two locations – the subject site, and a site in Erskine Business Park. Capral propose to consolidate their operations to the subject site and in order for that to occur, building CW1 is proposed to be constructed. Building CW 1 is nominated as being within stage 2 on the accompanying plans.

It is important to note that this application seeks consent for the building only. Despite being discussed at the pre-lodgement meeting with Council officers, the use of CW 1 does not form part of this application. The use of CW 1 will need to be considered in a separate development application that considers the expansion of the Capral facility and the relocation of the Erskine Park operations to the subject site.

The detailed elements of proposed building CW 1 include the following:

- Ground floor footprint/area of some 10,722sqm including a lower level of administration offices for the Capral business totalling 600sqm.
- Upper level of administration offices for the Capral business totalling 600sqm.
- External awnings to provide cover over loading and manoeuvring areas.
- Immediately adjacent car parking spaces.
- A building height within the maximum height of building control in the LEP (12m).

Whilst the details would be provided in the separate development application cited above, it is anticipated that the additional Capral building would result in an increase of workers from the existing 76 staff, up to 168 staff for that element of the development alone.

3.5 REFURBISHMENT OF BUILDINGS EW 1 (REAR OF) AND EW 2

The application seeks to refurbish existing buildings EW 1 (rear of) and EW 2 in stage 3 of the development as follows:

Building EW 1 (rear of)

The rear portion of EW 1 is proposed to be refurbished to allow larger floor plan industrial uses across the existing 15,401sqm of floor area. New loading areas are proposed on the northern, eastern and southern elevations to provide access into the building. Additional landscaping is proposed adjacent to the northern elevation.

Building EW 2

The existing 2,269sqm of floor area is proposed to be refurbished to allow for future industrial uses. The refurbishment will extend to the two-level office component within the existing footprint of the building, on the north-eastern corner. Loading areas are proposed on the northern and southern elevations of the building.

3.6 CONSTRUCTION OF BUILDINGS PW 1 AND PW 2, AND CAR PARK PC 3

Stage 4 of the development will see buildings PW 1 and PW 2 constructed, along with PC 3, a multi-storey car park. The details of these works include the following.

Building PW 1

Building PW 1 is a standalone industrial building, proposed to be some 6,618sqm in ground floor area, in addition to some 400sqm of office space spread over two levels and located on the south-western corner of the building. Loading areas are proposed around the building, along with nine car parking spaces immediately adjacent to the western elevation of the building. Building PW 1 does not exceed the LEP maximum height of building control of 12m.

Building PW 2

Building PW 2 is proposed to have some 3,359sqm of ground floor area, in addition to some 300sqm of office space spread over two levels and located in the north-western corner of the building. Like building PW 1, loading areas are proposed around the building. Building PW 2 does not exceed the LEP maximum height of building control of 12m.

Building PC 3

Building PC 3 is a multi-deck car park, situated between buildings PW2 and EW 2. Building PC 3 will comprise:

- Four level car park (ground + 3 levels) accommodating a total of 281 car parking spaces.
- Building height exceeding the LEP maximum height of building control of 12m. This building will be considered in the appended Clause 4.6 Request for Variation of a Development Standard.

3.7 CONSTRUCTION OF PC 1 AND PC 2

Stage 5 of the development would see PC 1 and PC 2 constructed. These buildings are two multi-level buildings comprising ground floor industrial and warehousing floor area, and two levels of car parking above. The details of the buildings are as follows.

Building PC 1

- Ground floor area of 2,047sqm.
- Ground floor 'end of trip' facilities and amenities of some 147sqm in floor area.
- Loading areas on the northern and eastern elevations.
- Two levels of car parking with some 205 car parking spaces.
- Building height exceeding the LEP maximum height of building control of 12m. This building will be considered in the appended Clause 4.6 Request for Variation of a Development Standard.

Building PC 2

- Ground floor area of 1,055sqm plus 35sqm of amenities.
- Loading areas along the southern elevation.
- Two levels of car parking with some 125 car parking spaces.
- Building height exceeding the LEP maximum height of building control of 12m. This building will be considered in the appended Clause 4.6 Request for Variation of a Development Standard.

Both Buildings

Both buildings located at the front of the subject site are proposed to include 'green walls' fronting Castlereagh Road. Reference is made to the accompanying Landscape Plan for details; however, it is considered such treatment of these elevations, combined with enhanced setback plantings, will mitigate any potential visual impact from the site.

3.8 ESTABLISHMENT OF LAND USES ACROSS THE SITE

The application seeks DA consent for land uses across the site that would enable CDC's using the Codes SEPP to be issued for future tenancy configuration.

One of the major challenges of delivering industrial/employment floor space to the market quickly within the NSW planning system, is that some land uses are able to be considered under the Codes SEPP, whilst other complementary uses are specifically excluded. The result is the need to lodge Development Applications that are costly to prepare and can take considerable time to determine in the context of a lease negotiation and rent-free periods. Essentially any benefits afforded to a potential lessee in terms of a rent-free period are consumed by the time it takes for a Development Application to be determined.

This proposal seeks to establish a manufacturing 'hub' that will provide opportunities for small floor-plate manufacturers to utilise space within an overall precinct environment. Similar examples might be referred to an 'incubator', or a serviced office might be a similar outcome in a business/commercial sense.

Some manufacturers may include those that produce food and drink products, for example a distiller, or a chocolatier, and it might be reasonable that such uses are defined as *artisan food and drink industry*. Unfortunately, this land use definition is excluded from being approved as a change of use under the Codes SEPP provisions, despite it having the characteristics of, and being most likely previously defined (prior to the *artisan food and drink industry* definition being introduced) as a *light industry*. Consequently, such manufacturers, which are normally very small in size, are now automatically and significantly disadvantaged by the system.

For some unknown reason, Planning Circular PS 13-001 specifically makes mention of excluding *artisan food and drink industry* from being approved under the Codes SEPP by saying:

Amendments were also made to the following State Environmental Planning Policies:

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) - artisan food and drink industries will be excluded from the term 'light industry' in the Codes SEPP, so that development for the purpose of an artisan food and drink industry cannot be undertaken using the exempt or complying development pathways

This despite the exclusion not being canvassed or reasoned in the Department's 2018 document *Proposed amendments to the Standard Instrument LEP – Better planning for the NSW retail sector*, which explained the then proposed amendments.

This application seeks to provide a 'level playing field' for all manufacturers, no matter their size, in one small section of the site, that being the front portion of building EW 1, the existing Crane Enfield building and the ground floor of PC 1 and PC 2. By establishing the land use of *artisan food and drink industry* in this development consent, albeit over a relatively small area of the site, it would appear tenancies could then be created and configured within that area using the Codes SEPP and dependent on market demand. By establishing the land uses, specifically in EW 1 as indicated in the table below, potential lessees will be able to establish

themselves quickly and efficiently, without a Development Application needing to be lodged every single time.

In that regard the following is sought.

Building	Land Use Definition Sought	Comment
EW 3	General Industry	No change to existing approved use. Changes of use are permissible using the Codes SEPP.
EW 1	General Industry Artisan Food and Drink Industry	This building is already approved for General Industry. The client wishes to add a 'blanket' land use on this building to facilitate small floor plate manufacturers of a range of products which may include food and drink products. In that instance, such uses may be regarded as Artisan Food and Drink Industry and, since that is a separate land use definition, separate Development Applications may have to be lodged with Council. By applying a 'blanket' land use approval on EW 1, flexibility will be in place for the proponent to deliver small floor plate tenancies to the market quickly without the need for future, individual Development Applications.
CW 1	Warehouse and Distribution	New use. Any change to this use would require a separate Development Application to be lodged and considered by Council.
EW 2	General Industry	No change to existing approved use. Changes of use are permissible using the Codes SEPP.
PW 1	Light Industry	New use. Will provide flexibility for first use as a CDC.
PW 2	Light Industry	New use. Will provide flexibility for first use as a CDC.
PC 3	Car parking	Ancillary to all uses on the site.
PC 1	Car parking General Industry Artisan Food and Drink Industry	Ancillary to all uses on the site. The client wishes to add a 'blanket' land use on this building to facilitate small floor plate manufacturers of a range of products which may include food and drink products. In that instance, such uses may be regarded as Artisan Food and Drink Industry and, since that is a separate land use definition, separate Development Applications may have to be lodged with Council. By applying a 'blanket' land use approval on EW 1, flexibility will be in place for the proponent to deliver small floor plate tenancies to the market quickly without the need for future, individual Development Applications.
PC 2	Car parking General Industry Artisan Food and Drink Industry	Ancillary to all uses on the site. The client wishes to add a 'blanket' land use on this building to facilitate small floor plate manufacturers of a range of products which may include food and drink products. In that instance, such uses may be regarded as Artisan Food and Drink Industry and, since that is a separate land use definition, separate Development Applications may have to be lodged with Council. By applying a 'blanket' land use approval on EW 1, flexibility will be in place for the proponent to deliver small floor plate tenancies to the market quickly without the need for future, individual Development Applications.

Council is respectfully requested to not include a condition of consent requiring first uses of tenancies to require lodgement of a Development Application unless of course such uses are not allowed in accordance with *State Environmental Planning Policy (Exempt and Complying Codes) 2008*¹. The plan below shows the area over which *artisan food and drink industry* is sought as an approved use, in addition to general industry.

¹ Codes SEPP – Part 5, Division 1, Subdivision 3

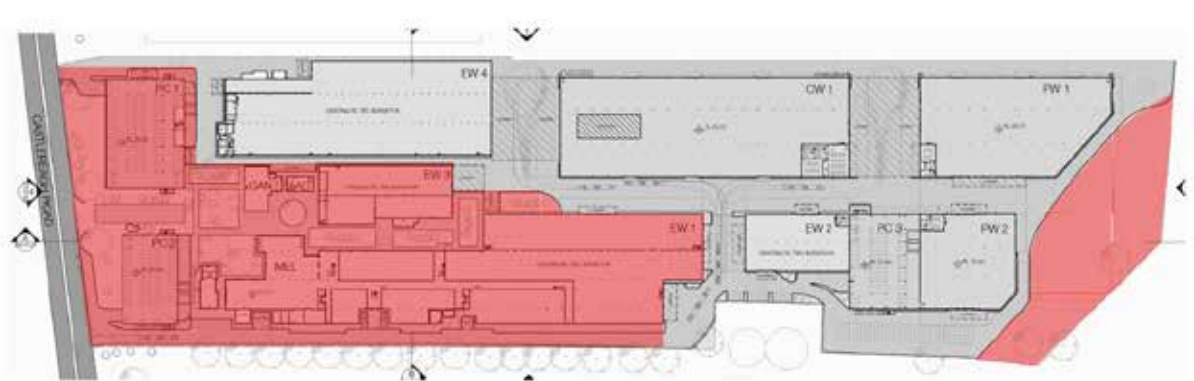


Figure 14 Area of site seeking land use approval for artisan food and drink industry (shown in red)

3.9 VEHICULAR ELEMENTS

The site is currently serviced by a main vehicular access point located centrally within the street frontage, and another access point for smaller vehicles on the south-western corner. The proposal would preserve the two access points, although they would be configured differently – the proposed southern entry to the site becoming the main access point to the site for all vehicles servicing it.

A Traffic Impact Assessment accompanies the application that provides a detailed assessment around the following key aspects of the development:

- Proposed site access arrangements are warranted given the size of the site.
- Public transport options are very accessible to those visiting or working at the site.
- The parking provision proposed is consistent with Council's DCP.
- Car park layouts and access arrangements comply with the Australian Standards.
- Impacts on intersection performance is minor as a result of the proposal.
- The proposed development does not meet the relevant traffic signal warrants.

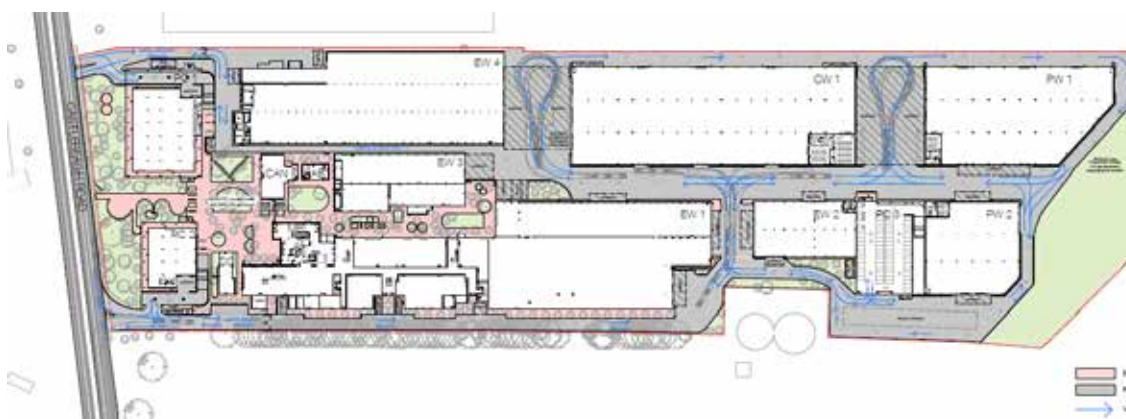


Figure 15 Turning path analysis for expected service vehicles

3.10 LANDSCAPING AND OPEN SPACE

A comprehensive Landscape Plan accompanies the application. The Plan delivers a significantly high level of quality landscape outcomes across the site. Tree retention has been a priority, as has an increase in vegetation on the site arising from the development. The Council's *Cooling the City* initiative has been a key driver in the proposal. The materials chosen, the plant species selected, and the maintenance proposed would ensure the landscaped elements of the site would be a dominant feature in the final development outcome.

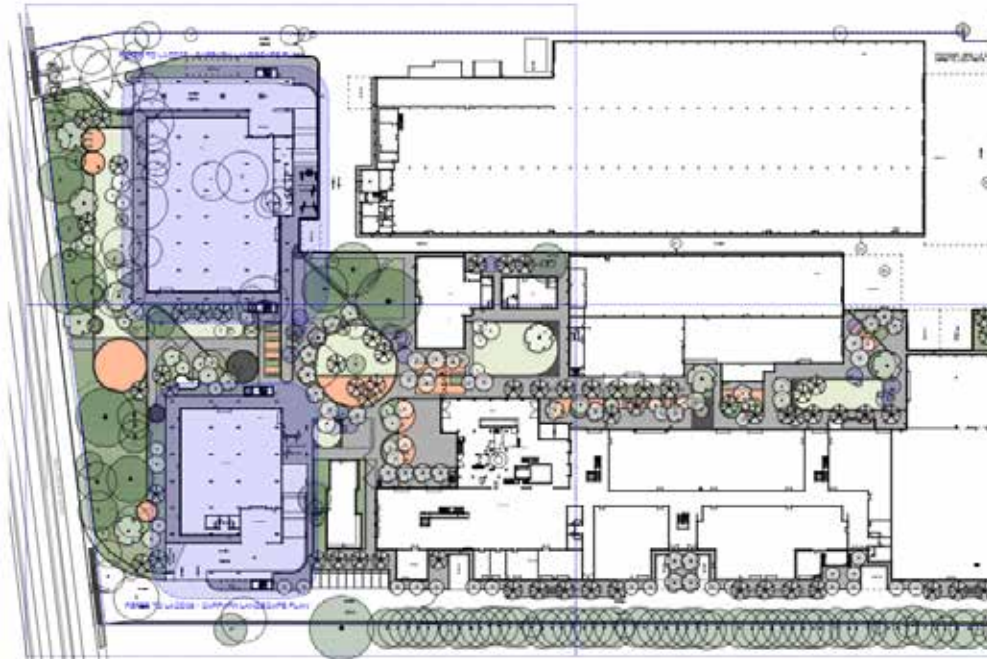


Figure 16 Landscaping proposed at front of site.

3.11 MANAGEMENT, HOURS OF OPERATION AND EMPLOYEE NUMBERS

The site is proposed to be managed completely by the proponent. This will enable a coordinated approach to tenant issues that may arise, as well as make any dealings with external parties more efficient.

Given the industrial nature of the site and its location being relatively isolated from built up residential areas, 24-hour operation is sought. This has been considered in the accompanying consultant reports.

It is difficult to identify at this stage the number of employees that would eventually be working on the site.

3.12 SIGNAGE

Some business identification signage and site branding are proposed as indicated on the submitted plans. These are not 'advertising' as such, rather business and building identification signage as defined in the relevant controls. These include a 12m high tenancy sign at the entrance to the site, and a number of building signs around the site. A detailed assessment of this signage is provided later in this report.

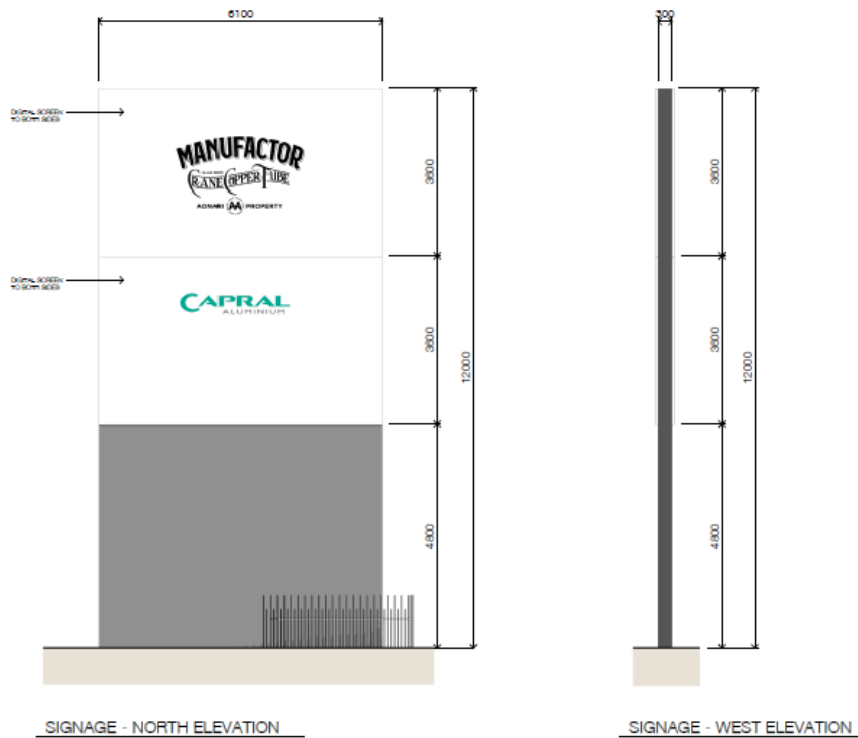


Figure 17 Proposed Tenancy Sign

3.13 CIVIL WORKS

A comprehensive Civil Engineering report accompanies the application covering such matters as:

- Geotechnical conditions.
- Earthworks.
- Erosion and sediment control.
- Retaining walls.
- Stormwater hydrological modelling and analysis.
- Water quality management.
- Stormwater quality controls.
- Flooding.

- Soil and water management.

The complete civil engineering strategy has been developed to provide a best practice solution within the constraints of the site and existing landform. The strategy identified the following:

A civil engineering strategy for the site has been developed which provides a best practice solution within the constraints of the existing landform and proposed development layout. Within this strategy a stormwater quantity and quality management strategy has been developed to reduce both peak flows and pollutant loads in stormwater leaving this site. The stormwater management for the development has been designed in accordance with Penrith City Council's Section C3 of DCP2014.

The hydrological assessment proves local post development flows from the site will be less than pre-development flows and demonstrates that the site discharge will not adversely affect any land, drainage system or watercourse as a result of the development.

Further flooding assessment, completed using TUFLOW modelling, confirms the building can be sited above the 1% AEP with appropriate freeboard and maintaining floodways during the 0.5% AEP event as required by council.

During the construction phase, a Sediment and Erosion Control Plan will be in place to ensure the downstream drainage system and receiving waters are protected from sediment laden runoff.

During the operational phase of the development, a treatment train incorporating the use of a bioretention system is proposed to mitigate any increase in stormwater pollutant load generated by the development. MUSIC modelling results indicate that the proposed STM are effective in reducing pollutant loads in stormwater discharging from the site and meet the requirements of Council's pollution reduction targets. Best management practices have been applied to the development to ensure that the quality of stormwater runoff is not detrimental to the receiving environment.

3.14 WASTE MANAGEMENT STRATEGY

Waste storage will be accommodated within each tenancy and managed across the site in conjunction with the site manager. It is expected that commercial contracts would be utilised for waste collection services.

The site is able to accommodate all waste related vehicles envisaged to service the site.

3.15 CONTAMINATION

The accompanying contamination advice from Zoic Environmental Pty Ltd provides a comprehensive review of the contamination status of the site.

In summary, an *Ongoing Maintenance Order* was issued by the EPA in January 2020 confirming completion of site works required under a Voluntary Management Proposal (VMP).

The NSW EPA was also satisfied that the contamination of the land was no longer significant enough to warrant regulation under the *Contaminated Land Management Act*. This meant that concentrations of contamination at the site did not present an unacceptable risk to human health or any other aspect of the environment, for the approved use of the site for commercial/industrial purposes. The VMP and the declaration ceased to be in force from this time.

This application proposes no further works in relation to the documented history of contamination on the site.

3.16 TREE REMOVAL

A comprehensive assessment of the site and the proposal has been undertaken by an Arborist. Some 78 trees are proposed to be removed to accommodate the development. Ninety-five trees are recommended to be retained, while the remaining 17 trees can be retained in a 'viable condition'.

It is submitted that the Landscape Plan shows a development outcome with overall a superior landscape result on the site when compared to its existing state.

3.17 STAGING

The staging of the project has been outlined earlier in this report. It is noted that Stages 1, 2 and 3 are proposed to commence as soon as possible. Further stages (4 and 5) are proposed to follow.

3.18 LIQUOR LICENCE

Obtaining liquor licences on sites is often a time-consuming application process that tenants are required to go through with very little consideration of the economic impacts created by the processing times of such an application. Liquor licences also require Development Consent.

Given the opportunity to locate certain manufacturing and production uses on the site, as well as other land uses that involve the consumption of food and drink, a liquor licence is sought over the site. The licence would be owned and managed by the proponent (owner) and utilised on occasions where a tenant could use it as part of their use, for example, as part of an *artisan food and drink industry* or the like.

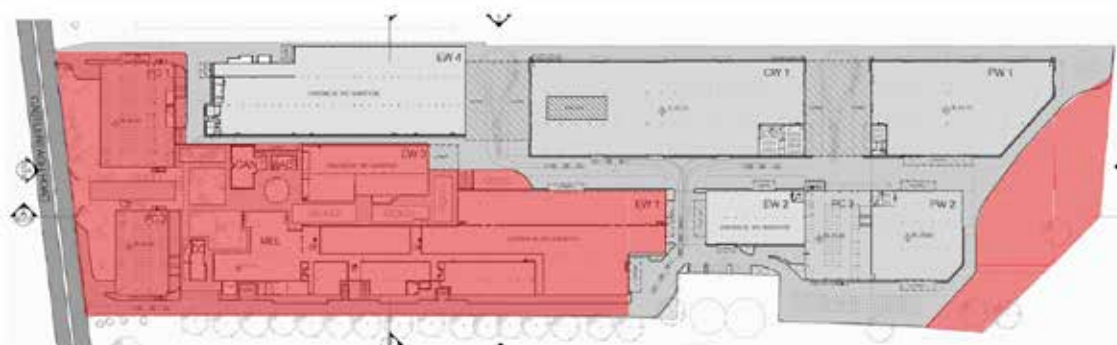


Figure 18 Area of the site for which a liquor licence is sought

4 STATUTORY CONSIDERATIONS

The applicable statutory planning instruments and relevant guidelines have been considered below.

4.1 BIODIVERSITY CONSERVATION ACT 2016 AND COMMONWEALTH ENVIRONMENTAL PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

A comprehensive ecological assessment has been undertaken by Cumberland Ecology and accompanies this application. It concluded the following:

- The proposed development will remove 0.31ha of Planted Native Vegetation and 1.84ha of Exotic Vegetation.
- No naturally occurring threatened flora species listed under the BC Act or EPBC Act were recorded within the Subject Site. Numerous threatened flora species have been recorded from the wider locality, however due to the high degree of disturbance none are considered likely to occur in the subject site.
- A range of threatened fauna species have been recorded from the locality and it is considered that the Subject Site has potential to provide habitat which will be removed for two of these species. The available habitats for the Grey-headed Flying-fox and the Yellow-bellied Sheath-tail-bat in the Subject Site is highly limited however, and although these species have the potential to periodically utilise habitats in the Subject Site, they would not comprise important habitat for this species. Large areas of similar vegetation will remain in the locality that these species would be able to utilise. Tests of significance has been conducted which indicate that the proposed development will not have any significant impact on the Grey-headed Flying-fox or the Yellowbellied Sheath-tail-bat.
- No significant impact is predicted to occur to any threatened species or endangered ecological communities as a result of the proposed works, and the preparation of a Biodiversity Development Assessment Report is not warranted. A referral to the Commonwealth Department of the Environment, under the EPBC Act is also not required.

It is submitted that the provisions of both Acts have not been triggered by the development proposal.

4.2 SYDNEY REGIONAL ENVIRONMENTAL PLAN NO 20 – HAWKESBURY NEPEAN RIVER

The aim of SREP 20 is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

Erosion control measures are particularly important to comply with the SREP 20 requirements to protect the mapped wetland to the east of the subject site and water quality of the Hawkesbury-Nepean River system. In this regard appropriate conditions of consent can be included on any approval.

SREP 20 also identifies a wetland to the east of the site. The mapping of that wetland has been the point of discussion with Council and the NRAR.

The proposed development avoids the wetland and any associated buffer, therefore not triggering the need to refer the matter to the NRAR as integrated development.

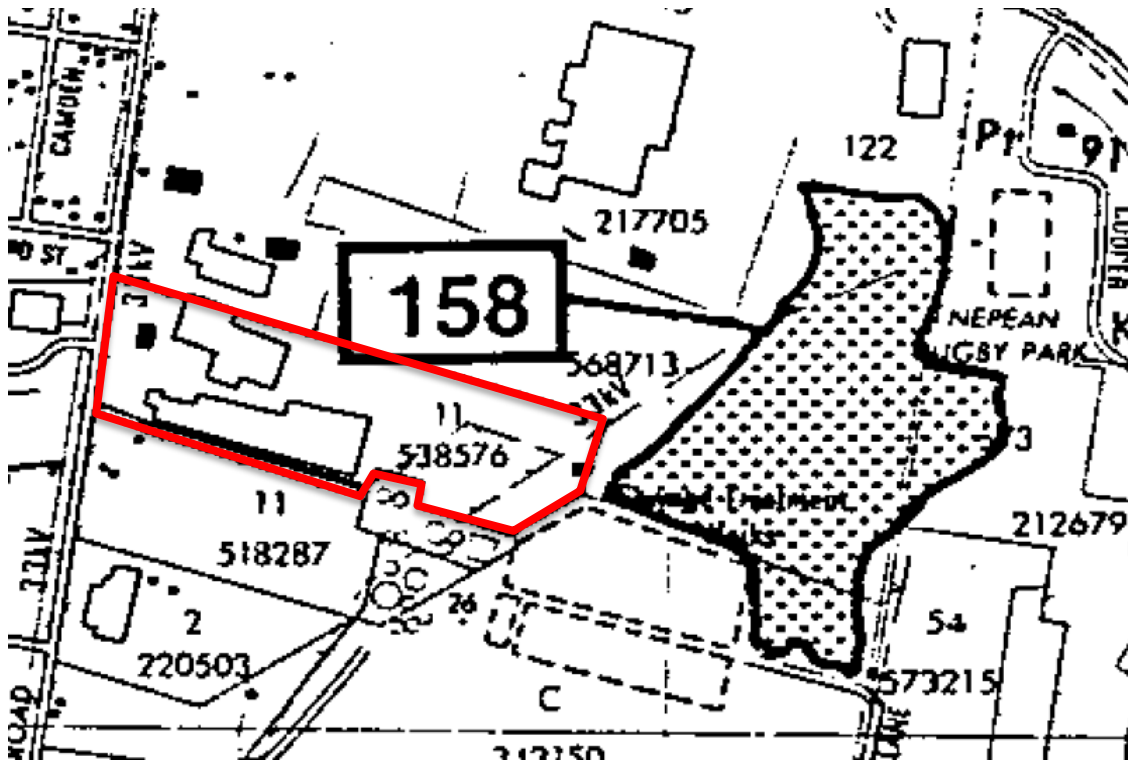


Figure 19 SREP 20 Map and the subject site



Figure 20 Controlled Activities Approval Buffer and Riparian Zone Mapping - Cumberland Ecology

4.3 STATE ENVIRONMENTAL PLANNING POLICY NO 55 – REMEDICATION OF LAND

The site has a long history of contamination. The property which has historically been used by Crane Enfield Metals Pty Limited (CEM) for manufacturing copper tube products (under environmental protection licence 1098). Previous investigations conducted at the site identified soil and groundwater contaminated. Groundwater assessment completed in 1998 indicated that the contaminant plume was approximately 800-1000 m in length and discharged through a permeable aquifer into the Nepean River.

The site was voluntarily notified to the NSW Environmental Protection Authority (the EPA) in 1999 under the Contaminated Land Management Act 1997 (the Act) and was subsequently identified as “significantly contaminated”. The property was declared to be a remediation site under the Act in 2006.

Remediation commenced at the site in 2007, with the operation of an on-site groundwater treatment plant (GTP). Fulltime operation of soil vapour extraction (SVE) was commenced in 2013, with two previous trials in 2007 and 2010.

A voluntary management plan (20091704) was issued by the EPA in 2009 relating to the identified contamination issues at the site. A Remediation Action Plan (RAP) was subsequently developed for the site by Environ Australia Pty Ltd in 2009 (which was updated in 2015 by Ramboll). The RAP incorporated a Voluntary Management Proposal (VMP), with the primary objective to remove the on-site source of contamination, particularly the dense non-aqueous phase liquids, through continued GTP.

Site remediation continued until amendment of the VMP in 2015. Copper tube manufacturing ceased in late 2014 and the associated storage tanks, equipment and bund were dismantled and removed by mid-2015.

From November 2015 the GTP was stated to be only removing negligible solvent from the groundwater and was determined to be at a point of diminishing returns (Ramboll 2019). The VMP was subsequently amended to focus on addressing immediate risks to health and the environment.

The most recent reported round of monitoring was completed on 30 November 2020, which showed a generally continuing trend of decreasing total contaminant concentrations, with all monitoring wells reporting concentrations below the lower goal.

An Ongoing Maintenance Order for the site was issued by the EPA in January 2020, conforming completion of site works required under the VMP. Ongoing requirements include:

- Implement the groundwater monitoring outlined in the LTEMP (Ramboll 2019).
- Maintain the integrity of the groundwater monitoring wells named in the order for the purposes of ongoing monitoring.
- Report to the EPA as soon as practicable any incident that may adversely affect the monitoring program or cause migration of contaminants to the environment.

- Submit to the EPA annually, due by 30 November each year, a written report of compliance with the Notice detailing any instances of non-compliance and including the results of water quality monitoring. The was initial round of groundwater monitoring was completed in November 2020.

The monitoring is required to be undertaken over the next five years with the objective to demonstrate ongoing downward trends in contaminant concentrations in the groundwater.

Based on the information reviewed and discussed in this letter, the NSW EPA determined in January 2020, the NSW EPA agreed that the VMP objectives had been met. The NSW EPA was also satisfied that the contamination of the land was no longer significant enough to warrant regulation under the CLM Act. This meant that concentrations of contamination at the site did not present an unacceptable risk to human health or any other aspect of the environment, for the approved use of the site for commercial / industrial purposes. The VMP and the declaration ceased to be in force from this time.

4.4 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

The Infrastructure SEPP will require Council to refer the application to both the electricity Authority and Transport for NSW for comment.

4.5 STATE ENVIRONMENTAL PLANNING POLICY No 64 – ADVERTISING AND SIGNAGE

Various building identification signage is proposed around the site, including a 12m tall tenancy sign at the entrance to the site. The proposed signage has been considered against the provisions of SEPP 64 as follows.

Part 1 Preliminary	
Provision	Comments
3 Aims, objectives etc	
(1) This Policy aims:	
(a) to ensure that signage (including advertising):	
(i) is compatible with the desired amenity and visual character of an area, and	Signage proposed is consistent with other signage in this locality.
(ii) provides effective communication in suitable locations, and	Objective satisfied.
(iii) is of high quality design and finish, and	Objective satisfied.
(b) to regulate signage (but not content) under Part 4 of the Act, and	Noted.
(c) to provide time-limited consents for the display of certain advertisements, and	Noted.
(d) to regulate the display of advertisements in transport corridors, and	N/A
(e) to ensure that public benefits may be derived from advertising in and adjacent to transport corridors.	N/A

(2) *This Policy does not regulate the content of signage and does not require consent for a change in the content of signage.* Noted

6 *Signage to which this Policy applies*

(1) *This Policy applies to all signage that:*

(a) *can be displayed with or without development consent under another environmental planning instrument that applies to the signage, and* The Policy applies to this Development Application.

(b) *is visible from any public place or public reserve, except as provided by this Policy.* The Policy applies to this Development Application.

(2) *This Policy does not apply to signage that, or the display of which, is exempt development under an environmental planning instrument that applies to it, or that is exempt development under this Policy.* Noted

Part 2 Signage generally

Provision *Comments*

8 *Granting of consent to signage*

A consent authority must not grant development consent to an application to display signage unless the consent authority is satisfied:

(a) *that the signage is consistent with the objectives of this Policy as set out in clause 3 (1) (a), and* The signage is not inconsistent with the objectives.

(b) *that the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.* An assessment against Schedule 1 is provided below.

Part 3 Advertisements

Division 1 General

9 *Advertisements to which this Part applies*

(1) *This Part applies to all signage to which this Policy applies, other than the following:* This Part does not apply as all signage proposed as part of this Development Application is considered to be either business or building identification signage.

(a) *business identification signs,*

(b) *building identification signs,*

(c) *signage that, or the display of which, is exempt development under an environmental planning instrument that applies to it,*

(d) *signage on vehicles.*

(2) *Despite subclause (1) (d), clause 27A applies to signage on a trailer (within the meaning of the [Road Transport Act 2013](#)).*

Schedule 1 Assessment criteria

1 *Character of the area*

Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? Signage proposed is consistent with other signage in this industrial precinct.

Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? The signage proposed is functional for tenants that will be located on the site, much the same for other industrial sites in this precinct.

2 *Special areas*

Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? The signage has been designed sympathetically and satisfies the height controls within the LEP.

3 *Views and vistas*

Does the proposal obscure or compromise important views?

Does the proposal dominate the skyline and reduce the quality of vistas?

Does the proposal respect the viewing rights of other advertisers?

4 Streetscape, setting or landscape

Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?

Does the proposal contribute to the visual interest of the streetscape, setting or landscape?

Does the proposal reduce clutter by rationalising and simplifying existing advertising?

Does the proposal screen unsightliness?

Does the proposal protrude above buildings, structures or tree canopies in the area or locality?

Does the proposal require ongoing vegetation management?

5 Site and building

Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?

Does the proposal respect important features of the site or building, or both?

Does the proposal show innovation and imagination in its relationship to the site or building, or both?

6 Associated devices and logos with advertisements and advertising structures

Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?

7 Illumination

Would illumination result in unacceptable glare?

Would illumination affect safety for pedestrians, vehicles or aircraft?

Would illumination detract from the amenity of any residence or other form of accommodation?

Can the intensity of the illumination be adjusted, if necessary?

Is the illumination subject to a curfew?

8 Safety

Would the proposal reduce the safety for any public road?

Would the proposal reduce the safety for pedestrians or bicyclists?

Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?

4.6 PENRITH LOCAL ENVIRONMENTAL PLAN 2010

The objectives of the LEP are as follows:

- (a) to provide the mechanism and planning framework for the management, orderly and economic development, and conservation of land in Penrith,
- (b) to promote development that is consistent with the Council's vision for Penrith, namely, one of a sustainable and prosperous region with harmony of urban and rural qualities and with a strong

- commitment to healthy and safe communities and environmental protection and enhancement,
- (c) to accommodate and support Penrith's future population growth by providing a diversity of housing types, in areas well located with regard to services, facilities and transport, that meet the current and emerging needs of Penrith's communities and safeguard residential amenity,
 - (d) to foster viable employment, transport, education, agricultural production and future investment opportunities and recreational activities that are suitable for the needs and skills of residents, the workforce and visitors, allowing Penrith to fulfil its role as a regional city in the Sydney Metropolitan Region,
 - (e) to reinforce Penrith's urban growth limits by allowing rural living opportunities where they will promote the intrinsic rural values and functions of Penrith's rural lands and the social well-being of its rural communities,
 - (f) to protect and enhance the environmental values and heritage of Penrith, including places of historical, aesthetic, architectural, natural, cultural, visual and Aboriginal significance,
 - (g) to minimise the risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by managing development in sensitive areas,
 - (h) to ensure that development incorporates the principles of sustainable development through the delivery of balanced social, economic and environmental outcomes, and that development is designed in a way that assists in reducing and adapting to the likely impacts of climate change.

It is submitted that the proposed development is not inconsistent with these objectives.

The subject site is zoned *IN1 General Industrial* with the following zone objectives applying to that zone.

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.
- To promote development that makes efficient use of industrial land.
- To permit facilities that serve the daily recreation and convenience needs of the people who work in the surrounding industrial area.

The proposed development is consistent with the objectives of the zone in that:

- A wide range of industrial uses will continue to be offered on the site.
- Additional employment opportunities will arise as a result of the development.
- Given the locality, no unacceptable impacts would be created by the development.
- The proposal maximises the development of the site.

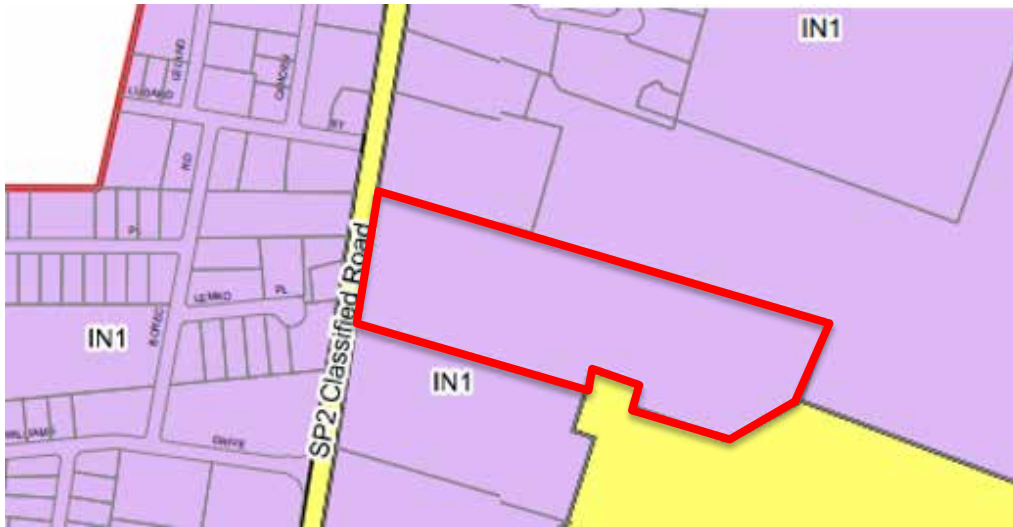


Figure 21 Land Zoning Map

Land uses nominated in this application are all permissible with consent in the IN1 zone.

The following relevant clauses have also been considered in respect of this development proposal.

Part 4 Principal Development Standards:

Standard	Permitted	Proposed	Comment
4.3	Height of Buildings:		
EW 3	12m	<12m	Complies
EW 1	12m	26.5m	Already exists
CW 1	12m	<12m	
EW 2	12m	<12m	
PW 1	12m	<12m	
PW 2	12m	<12m	
PC 3	12m	14.4-17.4m	Refer to Clause 4.6 Request.
PC 2	12m	12.6-15.6m	Refer to Clause 4.6 Request.
PC 1	12m	12.6-15.6m	Refer to Clause 4.6 Request.
4.4	Floor Space Ratio		
	N/A	N/A	

Part 5 Miscellaneous Provisions

Provision	Comment	
5.1	Relevant acquisition authority	N/A
5.2	Classification and reclassification of public land	N/A
5.3	Development near zone boundaries	N/A

5.4	Controls relating to miscellaneous permissible uses	N/A
5.6	Architectural roof features	N/A
5.7	Development below mean high water mark	N/A
5.8	Conversion of fire alarms	N/A
5.10	Heritage conservation	N/A
5.11	Bush fire hazard reduction	N/A
5.12	Infrastructure development and use of existing buildings of the Crown	N/A
5.13	Eco-tourist facilities	N/A
5.14	Siding Spring Observatory—maintaining dark sky	N/A
5.15	Defence communications facility	N/A
5.16	Subdivision of, or dwellings on, land in certain rural, residential or environment protection zones	N/A
5.17	Artificial waterbodies in environmentally sensitive areas in areas of operation of irrigation corporations	N/A
5.18	Intensive livestock agriculture	N/A
5.19	Pond-based, tank-based and oyster aquaculture	N/A
5.20	Standards that cannot be used to refuse consent—playing and performing music	N/A

Part 7 Additional Local Provisions

Provision	Comment
7.1	Earthworks Minor earthworks and site preparation is required to facilitate the development. The proposal is not inconsistent with the provisions of the LEP.
7.2	Flood planning The Overland flow that exists to the east of the site has been considered in the design of the proposal. The accompanying Costin Roe Consulting report addresses this in detail.
7.3	Development on natural resources sensitive land N/A
7.4	Sustainable development The re-use of this site and its buildings is the greatest indication of sustainable development on the site. Materials and fixtures that were present in the old Crane Enfield production facility will also be retained and reused in the development. An extensive solar panel installation is also proposed over parts of the existing buildings. The proposal will also incorporate all of the usual water saving and energy efficient elements that would be expected in such a development.

7.5	Protection of scenic character and landscape values	Refer to discussion below.
7.6	Salinity	N/A
7.7	Servicing	The site is well serviced with infrastructure given its historical use.
7.8	Active street frontages	N/A
7.9	Development of land in the flight paths of the site reserved for the proposed Second Sydney Airport	N/A
7.10	Dual occupancies and secondary dwellings in certain rural and environmental zones	N/A
7.11	Penrith Health and Education Precinct	N/A
7.12	Maximum gross floor area of commercial premises	N/A
7.13	Exhibition homes limited to 2 years	N/A
7.14	Cherrywood Village	N/A
7.15	Claremont Meadows	N/A
7.16	Glenmore Park Stage 2	N/A
7.17	Dwelling houses on certain land in Castlereagh, Cranebrook, Llandilo, Londonderry, Kemps Creek and Mulgoa	N/A
7.18	Mulgoa Valley	N/A
7.19	Villages of Mulgoa and Wallacia	N/A
7.20	Orchard Hills	N/A
7.21	Twin Creeks	N/A
7.22	Waterside	N/A
7.23	Location of sex services premises and restricted premises	N/A
7.24	Sydney Science Park	N/A
7.25	Warehouses and distribution centres on land zoned B7 Business Park	N/A
7.26	Serviced apartments	N/A
7.27	Commercial and other non-residential development in St Marys Town Centre	N/A

The site is mapped in the LEP for its scenic character and landscape values as it is the Castlereagh Road approach to Penrith. The Objectives of this clause are:

Clause 7.5 Protection of scenic character and landscape values

- (a) to identify and protect areas that have particular scenic value either from major roads, identified heritage items or other public places,
- (b) to ensure development in these areas is located and designed to minimise its visual impact.

Subclause 3 states

- (3) Development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places.

Councils DCP outlines the key principles to be considered in respect of a Visual Impact Assessment (VIA), including:

- Describing the existing visual landscape.
- Provide ground level perspectives of the proposal.
- Identify the visual impacts and mitigation measures.

Current Situation

Development on the site is currently set back considerably from Castlereagh Road. That setback is characterised by landscaping and vegetation.



Figure 22 Existing front setback – Aerial (Nearmap March 2021)

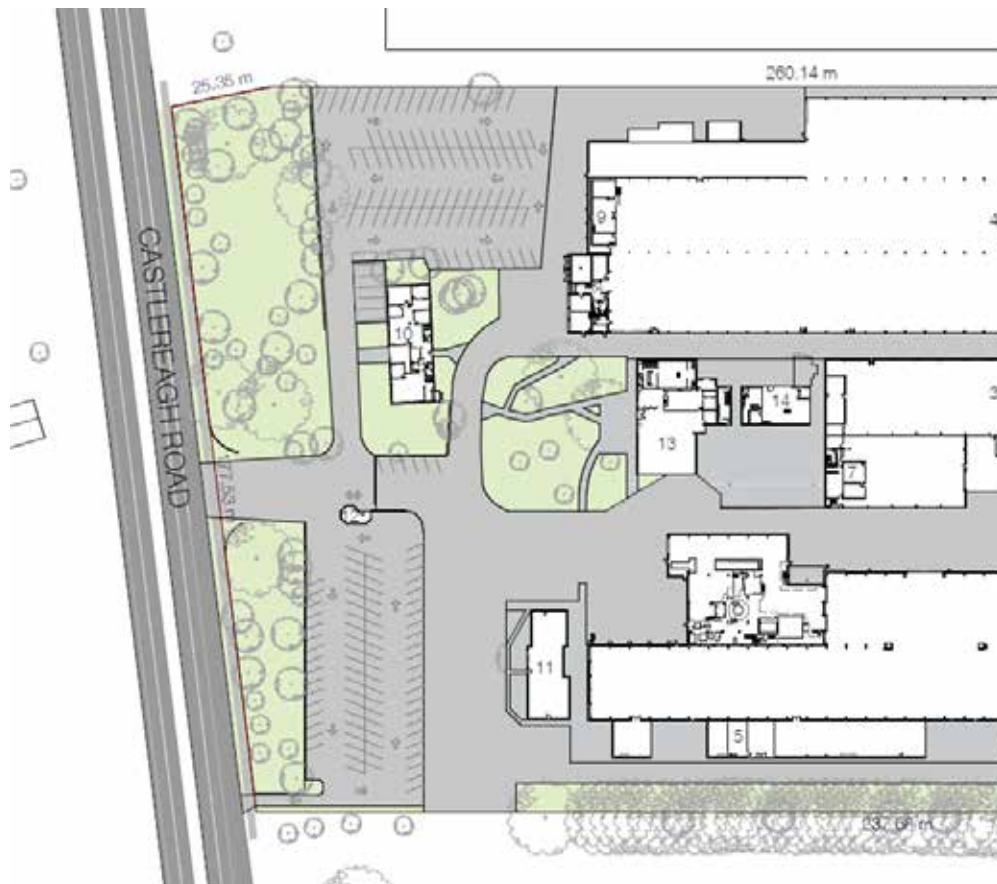


Figure 23 Existing Site Plan

Castlereagh Road carries significant amounts of traffic that is normally travelling at 60km/h, and so there is little ability or time for drivers to notice the site in any detail.

The Proposal

The proposal would see two buildings located within the front setback, but compliant with setback controls. A minor breach in the height limit is proposed.

The proposed buildings comprise ground floor industry/warehouse uses in order to provide streetscape presentation and activation. Multi storey car parks are proposed above the industry/warehouse floor space.

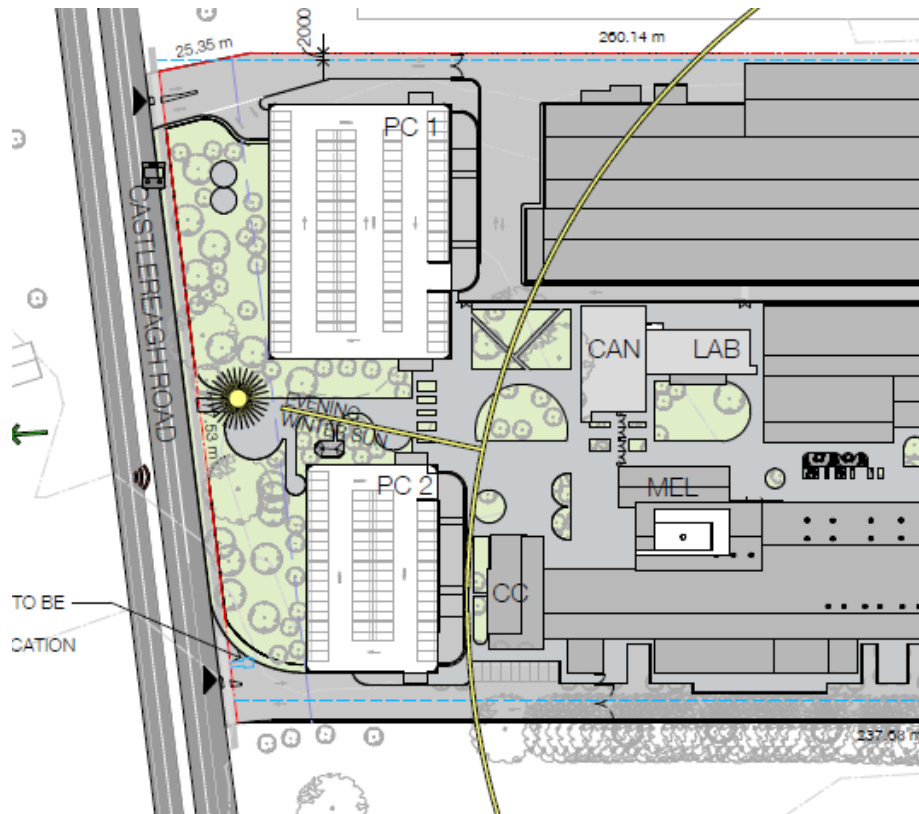


Figure 24 Proposed Site Plan



Figure 25 Montage - Streetscape view



Figure 26 Perspective - Existing and Proposed Streetscape views



Figure 27 Perspective - View from Castlereagh Rd Northbound



Figure 28 Western elevation of car parks (See plans for details)

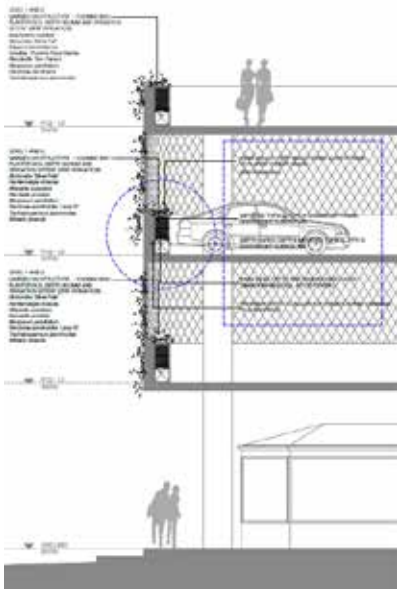


Figure 29 Cross section of proposed green walls

Green walls are proposed to be located on visible elevations, mitigating potential impacts.

Consideration of Visual Impact

The subject site is significant in size, with setbacks that don't represent the most efficient use of the land. The application proposes two built elements along the frontage as opposed to a fully compliant building that could stretch across the extensive property frontage.

The proposed mitigation of the potential visual impacts include the activation of the ground floor of each building as well as providing for green walls along the western elevations.

Summary

It is submitted that the proposed development is not inconsistent with the provisions of the LEP and that the objectives of the LEP control have been satisfied in that the mitigation measures proposed will *minimise its visual impact*.

4.7 PENRITH DEVELOPMENT CONTROL PLAN 2014

The following assessment has been made in respect of the industrial development controls within the DCP.

Penrith Development Control Plan	
Section	Comment
C1 Site Planning and Design Principles	
	A site analysis plan is included within the accompanying plans.
C2 Preservation of Trees and Vegetation	
	The proposed development would result in the removal of a number of trees. These have been considered in the accompanying Arborist Report. Extensive landscaping is proposed in the Landscape Plan provided.
C3 Water Management	
	All matters relating to water management have been considered in detail within the Costin Roe Report.
C5 Waste Management	
	Each building will continue to store and manage its own waste as is the case now. The site is able to accommodate all required waste vehicles, with commercial contract collection being likely utilised.
C6 Landscape Design	
	A detailed Landscape Plan accompanies the application.
C7 Cultural and Heritage	
	There are no relevant matters to be considered in this regard.
C10 Transport, Access and Parking	
	The accompanying Traffic Impact Assessment addresses all of these matters.
C12 Noise and Vibration	
	An Acoustic Impact Report has considered both internal and external acoustic impacts of this proposal.
D4 Industrial Development	
4.2. Building Height	
B. Objectives	Building heights largely comply across the site, except for the existing Crane Enfield building and the proposed car parks. The site is so large, the proposed breaches will be imperceptible when viewed from the public domain.
a) To encourage building forms that respond to the topography of the site and the relative position of the site to other allotments within, and to, the street; and	
b) To ensure a scale of building which complements the existing environment in which the site is located addressing visibility from key public spaces and the scale and context of the existing and desired streetscape.	

4.3. Building Setbacks and Landscape

A. Objectives

Setback proposed are complaint and will assist in delivering the outcomes sought in the Landscape Plan.

- a) To enhance the visual quality of industrial development through appropriate setbacks, building and landscape design, particularly when viewed from public areas;
- b) To ensure new development retains existing trees or significant stands of vegetation in the overall site layout;
- c) To provide functional areas of planting that enhance the presentation of a building;
- d) To screen undesirable views and minimise the visual impact of hard surface areas; and
- e) To create industrial precincts with their own intrinsic and unique landscape characteristics, which enhance the existing and/or natural landscape and character of an area.

B. Controls

1) Setbacks

A 20m setback is proposed from Castlereagh Road. No Parking is proposed within this space.

- a) Setbacks for industrial development are to be in accordance with the standards specified in Table D4.1. These setback areas are to be landscaped, but may incorporate an off-street parking area if it can be demonstrated that the location of the car parking area:
 - i) Is within a setback which is at least 13m wide and set behind a landscaped area which is at least 4m wide;
 - ii) Promotes the function and operation of the development;
 - iii) Enhances the overall design of the development by implementing design elements, including landscaping, that will screen the parking area and is complementary to the development; and
 - iv) Does not detract from the streetscape values of the locality.

Table D4.1: Building Setbacks for Industrial Development

Location	Minimum Building Setback
Lots fronting: <ul style="list-style-type: none"> · Castlereagh Road · Mulgoa Road 	20 Metres

2) Visual Impact of Buildings and Hardstand Areas

The proposed landscaping of the site is considered to achieve these objectives.

- a) The landscape design within setbacks should consider the scale of the building and where appropriate, select and locate plants to help reduce the bulk and scale of the building.
- b) The visual impact of large expanses of wall should be reduced in scale by architectural treatment as well as by dense grove planting or other landscape design solutions.
- c) Where an industrial development contains large expanses of hardstand or paved areas, the applicant must demonstrate how the development application reduces the 'heat effect' and visual impact of these large expanses.

4.4. Building Design	Buildings have been designed sympathetically to the surrounds, and to also provide a high level of functionality.
4.5. Storage of Materials and Chemicals	None would be able to be viewed from the public domain.
4.6. Accessing and Servicing the Site	These matters have been considered in the accompanying Traffic Impact Assessment.

It is submitted that the proposed development is consistent with the provisions of the DCP.

5 KEY PLANNING ISSUES

The following impacts have been considered in the preparation of this development proposal.

5.1 TRAFFIC GENERATION AND PARKING

A detailed Traffic Impact Assessment accompanies the application. The assessment concluded as follows:

The findings of this report can be summarised as follows:

- The development consists of a number of different buildings primarily to provide warehousing and manufacturing space. The site is located on a lot which fronts Castlereagh Road which is classified as a State Road.
- The development proposed two access driveways on Castlereagh Road for the following reasons:
 - The existing site has two crossovers from Castlereagh Road and the proposed development is expected to significantly increase the traffic generated by the site. Furthermore, it will improve performance of each of the driveways and minimise congestion
 - Both accesses are required to permit fire appliance access to all buildings
 - To maximise green space and retain existing trees
- The DCP stipulates that an industrial development should provide 1 space per 75m² GFA. Accordingly, the whole development must provide 825 car parking spaces to accommodate a development that has a GFA of 61,841m². The development proposes to provide 786 car parking spaces located within three multistorey car parks and a small number of them scattered at-grade around the site which meets the requirements found in the DCP.
- The car park layout and access arrangement comply with the Australian Standards.
- The development is anticipated to generate approximately 322 light vehicular trips in the AM peak and 347 vehicular trips in the PM peak.
- Heavy vehicle trips were calculated based on the trips generated by the existing tenant. The heavy vehicle trip generation of the site is anticipated to be approximately 8 vehicle trips in both the AM and PM peak hours.
- SIDRA analysis has been undertaken at Castlereagh Road / Andrew Road/ Old Castlereagh Road intersection and Castlereagh Road / Coreen Avenue / Mullins Road intersection and it is observed that both the intersections perform at LoS B in both the AM and PM peak hours. It is noted that both intersections deteriorate slightly with the inclusion of development traffic, however, it is noted that the impact on the intersections will be ameliorated with the completion of the Castlereagh Road upgrades.
- Due to the significant traffic generation of the site, a traffic signal warrant assessment was undertaken to determine whether traffic signals might be required at the southern site access. It was observed that the development does not meet the traffic signal warrants.

In light of the above, the proposed development is endorsed in context of parking and traffic.

Despite the range of land uses for which approval is sought, the conservative parking rate has been selected, achieving full compliance.

5.2 NOISE IMPACTS

The accompanying Acoustic Impact Assessment has considered potential noise impacts on nearby receivers and within the development. The report concluded as follows.

The report has quantified operational noise emission from the proposed development and has assessed noise at the nearest sensitive receivers. The report has been prepared in accordance the NSW EPA requirements. Based on the assumptions and inputs within this report, it has been established that operation of the site is capable of complying with relevant EPA and Council noise emission requirements.

It would seem that any approval could include appropriate conditions to address any acoustic concerns.

5.3 VISUAL IMPACT

The two buildings proposed at the front of the site present the most potential for a visual impact when viewing the site from the public domain. It is noted that the buildings, apart from relatively minor breaches in building height, comply with the setback controls in the DCP. Notwithstanding, the mitigation measures used to address any concerns include the activation of the ground floor of each building with permissible uses, and the installation of a large-scale green wall which has been documented in detail in the accompanying Landscape Plan. Overall, the proposed development is designed with a high level of architectural merit that exceeds that of nearby and adjoining properties which will not result in a negative visual impact being created on the site, rather a development that will be sympathetic to the visual characteristics of the industrial locality.

5.4 BUSHFIRE PRONE LAND

A Bushfire Impact Assessment accompanies the application and concludes as follows:

1. That where not built upon, all grounds within the subject site are to be maintained as an asset protection zone, inner protection area in accordance with Appendix 4 of *Planning for Bush Fire Protection 2019* for the lifetime of the development.
2. That landscaping features, planting of shrubs, trees or other vegetation shall occur in such a manner as not to compromise the integrity of the asset protection zone and comply with the NSW RFS document *Standards for asset protection zones*.
3. That the any new external works on existing buildings EW1 & EW2 shall be constructed to a minimum standard of section 3 Construction General and section 5 BAL 12.5 of *AS 3959 – 2018 Construction of buildings in bushfire prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas 2014* as appropriate for BAL 12.5 construction.
4. That proposed building PW2 roof and southern, western and eastern facades shall be constructed to a minimum standard of section 3 Construction General and section 7 BAL 29 of *AS 3959 – 2018 Construction of buildings in bushfire prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas 2014* as appropriate for BAL 29 construction.
5. That building PW2 northern facade northern facade shall be constructed to a minimum standard of section 3 Construction General and section 6 BAL 19 of *AS 3959 – 2018 Construction of buildings in bushfire prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas 2014* as appropriate for BAL 19 construction

6. That proposed carpark PC3 shall be constructed to a minimum standard of section 3 Construction General and section 7 BAL 29 of *AS 3959 – 2018 Construction of buildings in bushfire prone areas* or NASH Standard (1.7.14 updated) *National Standard Steel Framed Construction in Bushfire Areas 2014* as appropriate for BAL 29 construction.
7. That the additional construction requirements detailed within section 7.5.2 of PBP 2019 are also applied to all new works.
8. That where applicable services and equipment (fire protection measures) are to be provided to and within the proposed buildings in accordance with Part E of the Building Code of Australia.
9. That the supply of water, electricity and gas to the subject buildings is to comply with Table 7.4a of *Planning for Bush Fire Protection 2019*.
10. That all new internal access is to comply with is to comply with Table 5.3b of *Planning for Bush Fire Protection 2019*. Perimeter road requirements are applicable adjacent to the southeast forest and east grassland areas and non-perimeter road requirements are applicable to all other new internal roads

The development is therefore considered to be acceptable in a bushfire context.

5.5 SOCIAL AND ECONOMIC

It is expected that the proposed development would see significant employment opportunities arise. This would also result in increased economic activity.

There are no negative social or economic impacts identified as a result of this development.

5.6 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN (CPTED)

The consideration of CPTED issues has been prepared having regard to various published CPTED literature and academic works, and specifically includes the *‘Crime Prevention and Assessment of Development Application Guidelines under Section 4.15 of the Environmental Planning and Assessment Act 1979’* published by the former Department of Urban Affairs and Planning.

The advice is structured in accordance with Part B of the above guidelines – *Principles for Minimising Crime Risk*. In this regard, the advice considers the responsiveness of the proposed design to each of the adopted four principles for CPTED (surveillance; access control; territorial reinforcement and space management).

CPTED principles have been adopted by the NSW Police Force, based on recognition that the design of spaces plays a pivotal role in facilitating the safety and security of its users. The NSW Police Force has identified key principles of CPTED being:

- Establish opportunities for good surveillance, both casually and technically.
- Provide legible barriers for access control for spatial definition.
- Create a sense of ownership over spaces that are also clearly demarcated between public and private ownership for territorial reinforcement.
- Establish spaces that are utilised appropriately through proper space management, relating to litter and graffiti removal, and ensuring lighting fixtures are working.

When implemented, these measures are likely to reduce opportunities for crime by using design and place management principles.

Surveillance

The proposed development will provide numerous opportunities for surveillance. The following casual surveillance opportunities have been provided through the design of the project:

- Opportunities for visual observance through a high percent of transparent glazing along all frontages allow normal space users to see and be seen by others.
- Entries are located in highly visible locations.
- Active common areas throughout the site are well positioned.
- Clear visual pathways from public streets to private entrances.
- Areas of entrapment are limited due to multiple exit points from around the development.
- CCTV will be incorporated into the development.

Access Control

Access control to public, semi public and private areas of the development is considered to be well managed and effective. Access control to the building can be effectively managed through lockable entry doors. Common areas at all locations and levels should have access control measure in place. With respect to fire escape points and building services rooms, the location of these access points, the use of lockable doors and other environmental cues will make it clear that these are not public entry points.

Overall access through the site will be managed by the on-site manager.

Territorial Reinforcement

Clear separation exists between public and private space in terms of the relationship between the proposal and the public domain. Appropriate signage, landscaping, site furnishings and paving will provide good environmental cues about the transition or movement from public to private domain.

Space Management

Space management will be carried out by the on-site manager. In this case, the on-site manager will ensure that processes are established to respond to and fix services and structures and under whose responsibilities these services are assigned.

Cleanliness of the project is also dependent upon the management practices of individual tenants as well as the implementation of waste removal and street cleaning processes. This will be overseen by the on-site manager.

6 SECTION 4.15 ASSESSMENT

An assessment of the proposal has been undertaken in accordance with the statutory requirements of the EPA Act. The following assessment against Section 4.15 of the EPA Act has been undertaken.

6.1 SECTION 4.15(1)(A)(I) – ANY ENVIRONMENTAL PLANNING INSTRUMENTS

The relevant environmental planning instruments have been considered earlier in this report. These include the following:

- *Biodiversity Conservation Act 2016*
- *Sydney Regional Environmental Plan No 20 – Hawkesbury Nepean River*
- *State Environmental Planning Policy No 55 – Remediation of Land*
- *State Environmental Planning Policy (Infrastructure) 2007*
- *State Environmental Planning Policy No 64 – Advertising and Signage*
- *Penrith Local Environmental Plan 2010*
- *Penrith Development Control Plan 2014*

The proposal is permissible with consent and is considered satisfactory when assessed against the relevant controls.

6.2 SECTION 4.15(1)(A)(II) – ANY PROPOSED INSTRUMENT THAT IS OR HAS BEEN THE SUBJECT OF PUBLIC CONSULTATION UNDER THIS ACT AND THAT HAS BEEN NOTIFIED TO THE CONSENT AUTHORITY

There are no known draft Environmental Planning Instruments specifically applicable to the proposed development.

6.3 SECTION 4.15(1)(A)(III) – ANY DEVELOPMENT CONTROL PLAN

Compliance against the relevant DCP has been considered earlier in this report.

6.4 SECTION 4.15(1)(A)(IIIA) – ANY PLANNING AGREEMENT OR DRAFT PLANNING AGREEMENT ENTERED INTO UNDER SECTION 7.4

There are no known planning agreements that apply to the site or development.

6.5 SECTION 4.15(1)(A)(IV) – THE REGULATIONS

There are no sections of the regulations that are relevant to the proposal at this stage.

6.6 SECTION 4.15(1)(A)(V) – ANY COASTAL ZONE MANAGEMENT PLAN

Not relevant to the proposed development.

6.7 SECTION 4.15(1)(B) – THE LIKELY IMPACTS OF THAT DEVELOPMENT

Potential impacts have been considered through the body of this report and accompanying supporting consultant reports.

In terms of potential natural impacts:

- There will be no negative impacts in terms of biodiversity or ecology.
- There will be no negative impacts in terms of stormwater disposal and flooding.
- The levels of landscaping proposed are considered to outweigh the impacts of the tree removal proposed.
- There will be no unacceptable impacts in terms of acoustic impacts.
- The proposed breach in height will not impact any of the natural characteristics of the site.

In terms of potential social and economic impacts:

- The proposed development is consistent with the land use zoning and the controls that apply.
- The significant employment opportunities that will be created at the site will result in a positive economic impact.
- Additional employment opportunities also create positive social impacts in the community.
- The proposed development will create an interesting and unique destination for the community to visit.

In terms of potential built environment impacts:

- The proposed height breach will not create any unacceptable impacts on nearby or adjoining development yet will create additional parking on the site representing the most efficient use of the land.
- The architectural design of new buildings is consistent with other industrial development recently approved in the locality.
- The design of the development includes the adaptive re-use of the existing original manufacturing buildings on the site.

In general, the proposal is consistent with the objectives of the zone and the LEP and represents a form of development that is acceptable.

6.8 SECTION 4.15(1)(C) – THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT

The proposal is generally consistent with the planning controls that apply in this zone. Moreover, the objectives of the zone have been satisfied, ensuring that the development of the site would not result in any unacceptable impact on any adjoining landowners or buildings.

The site is considered to be suitable for the development for the reasons outlined below:

- The proposal is permissible with consent in the IN1 zone.
- The proposal represents an appropriate land use and built form located on an appropriately serviced site that is in an accessible location.
- The proposal is compatible with surrounding land uses which include other industrial and employment uses.
- The proposal represents an increase in industrial floor space which has been identified by Council as being in demand in the LGA.

6.9 SECTION 4.15(1)(D) – ANY SUBMISSION MADE

Council may undertake a notification process in accordance with its controls and policies. We welcome the opportunity to provide additional information in response to any submissions received.

6.10 SECTION 4.15(1)(E) – THE PUBLIC INTEREST

Given the type of development, its general compliance with the planning controls, how the objectives are satisfied and the suitability of the site it is considered that the public interest would not be jeopardised as a result of this development.

7 CONCLUSION AND RECOMMENDATION

The proposed development has been assessed against the requirements of the Penrith LEP and DCP and is considered to represent a form of development that is acceptable.

The proposed development would not result in any unacceptable impact on the locality.

The site is considered quite suitable for a use of this nature and is consistent with nearby and adjoining development.

An assessment against Section 4.15 of the EPA Act has not resulted in any significant issues arising.

Accordingly, it is recommended that the proposed development be approved.

APPENDIX A

CLAUSE 4.6 REQUEST TO VARY
DEVELOPMENT STANDARD



CLAUSE 4.6 REQUEST TO VARY DEVELOPMENT STANDARD

ALTERATIONS AND ADDITIONS TO EXISTING
INDUSTRIAL BUILDINGS, CONSTRUCTION OF
ADDITIONAL INDUSTRIAL BUILDINGS AND
CONSTRUCTION OF THREE MULTI-STOREY
CAR PARKS

2115-2131 CASTLEREAGH ROAD PENRITH



CLAUSE 4.6 REQUEST TO VARY DEVELOPMENT

Prepared by:

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Client and Land Details

Client: Aon Ari Pty Ltd
Subject Site: Lot 2 DP 787827, 2115-2131 Castlereagh Road, Penrith
Proposal: Alterations and Additions to existing Industrial Buildings,
Construction of Additional Industrial Buildings and Construction of
Three Multi-Storey Car Parks



Warwick Stimson RPIA
Director



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1 INTRODUCTION

The NSW planning system provides flexibility in planning controls by providing the ability for a consent authority to vary development standards in certain circumstances.

Stimson Urban & Regional Planning has been engaged by Aon Ari Pty Ltd to prepare a request to vary a development standard in respect of its proposed alterations and additions to existing industrial buildings, construction of additional industrial buildings and construction of three multi-storey car parks at 2115-2131 Castlereagh Road, Penrith. The proposal is to be assessed by Penrith City Council and this request accompanies plans and other documentation, including a Statement of Environmental Effects, submitted to Council. This variation is to be read in conjunction with that material.

The amended plans propose a breach in the *height of building* development standard and this submission aims to address that aspect of the application. The request is considered to be reasonable in the circumstances and argues why compliance with the standard is unnecessary on the grounds that:

- a) there are sufficient environmental planning grounds to justify the contravention of the development standards, namely the provision of additional housing in an accessible location;
- b) the proposed development is in the public interest because the proposed development achieves relevant objects of the *Environmental Planning & Assessment Act 1979* and is consistent with the relevant control objectives and development standards, despite the non-compliance;
- c) the proposed breach in height is considered to be minor, with that breach arising as a result of the extension of the lift overrun only;
- d) the scale of the site is so large that the non-compliances will be imperceptible when viewed from the public domain;
- e) the proposed breaches are considered acceptable on the basis they result in full compliance of the parking controls that apply to the development; and
- f) this variation request satisfies the tests established by the Land and Environment Court for the justification and assessment of variations to development standards.

It is considered there are sufficient environmental planning grounds to support the variation. These include the proposal complying with the relevant development standards within Council's LEP, satisfying the objectives of the zone and the height of building control, and the enormous public benefit arising out of this development through the provision of additional housing. The relatively minor variation in building height will not negatively impact on nearby or adjoining sites, however it maximises the building envelope, representing the most efficient way to maximise the public benefit of housing stock in this area.

2 VARIATION CONSIDERATION

The NSW Land and Environment Court has resolved a number of matters that have guided the way in which requests to vary development standards are to be considered by the consent authority.

2.1 NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

The key elements are outlined below.

Winten v North Sydney Council

The decision in *Winten v North Sydney Council* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated.

The questions that needed to be considered included:

- § Is the planning control in question a development standard?
- § What is the underlying object or purpose of the standard?
- § Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?
- § Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)? and
- § Is the objection well founded?

Wehbe v Pittwater [2007] NSW LEC 827

The decision in *Wehbe v Pittwater [2007] NSW LEC 827* expanded on the findings in *Winten v North Sydney Council* and established a five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

- § Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
- § Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard is unnecessary;
- § Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- § Has Council by its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or

§ Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently, compliance with that development standard is unnecessary and unreasonable.

Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

- § Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- § Whether there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
- § That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs; and
- § All three elements of clause 4.6 have to be met and it is best to have different reasons for each, but it is not essential

Moskovich v Waverley Council [2016] NSW LEC 1015

The court further reflected on the recent Four2Five decisions and noted:

- § Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the *Wehbe* ways of establishing compliance are equally appropriate. One of the most common ways is because the objectives of the development standard are achieved.
- § Whereas clause 4.6(4)(a)(ii) is worded differently and is focused on consistency with objectives of a standard. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii) to determine whether non-compliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3).
- § The written request should address the considerations in the granting of concurrence under clause 4.6(5).

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSW LEC 118

This most recent case has been considered in detail in Section 3 of this report.

2.2 THE PROPOSED DEVELOPMENT

The subject application seeks Council's approval to

The site is zoned *IN1 General Industries* under *Penrith Local Environmental Plan 2010* with the proposal being permissible with consent.

The maximum height of building control on the site is 12.0m. A minor variation of 600mm occurs as a result of the lift overrun. We note the remainder of the building is under the 12m height limit.

2.3 WHAT IS THE NAME OF THE ENVIRONMENTAL PLANNING INSTRUMENT THAT APPLIES TO THE LAND?

Penrith Local Environmental Plan 2010.

2.4 WHAT IS THE ZONING OF THAT LAND?

The subject site is zoned *IN1 General Industrial*.

2.5 WHAT ARE THE OBJECTIVES OF THE ZONE?

- To provide a wide range of industrial and warehouse land uses.
- To encourage employment opportunities.
- To minimise any adverse effect of industry on other land uses.
- To support and protect industrial land for industrial uses.
- To promote development that makes efficient use of industrial land.
- To permit facilities that serve the daily recreation and convenience needs of the people who work in the surrounding industrial area.

The proposed development is consistent with the objectives in that:

- A wide range of industrial uses will continue to be offered on the site.
- Additional employment opportunities will arise as a result of the development.
- Given the locality, no unacceptable impacts would be created by the development.
- The proposal maximises the development of the site.

2.6 WHAT IS THE DEVELOPMENT STANDARD BEING VARIED?

Height of Building.

2.7 UNDER WHAT CLAUSE IS THE DEVELOPMENT STANDARD LISTED IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

Clause 4.3 Height of Building.

2.8 WHAT ARE THE OBJECTIVES OF THE DEVELOPMENT STANDARD?

Clause 4.3 Height of Building objectives include:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,
- (c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,
- (d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.

In response to the Clause objectives, the following is submitted:

- The height of the buildings proposed is compatible with other industrial development in the locality, also noting the existing non-compliance on the site.
- The sheer scale of the site results in the proposed breaches being imperceptible when viewed from the public domain with very little, if any, visual impact arising.
- The proposed height breaches will not create any disruption of views, loss of privacy or loss of solar access.
- The proposed breaches are not uniform across the site, in fact providing visual relief and visual interest along the streetscape presentation of the development.

2.9 WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

The maximum building height is 12.0m.

2.10 WHAT IS THE PROPOSED NUMERIC VALUE OF THE DEVELOPMENT STANDARD AND THE PERCENTAGE VARIATION?

The building heights below are proposed.

Building	Height Proposed (m)	% Difference	Comment
EW 1	26.5 (+14.5)	121%	Already exists
PC 3	17.4 (+5.4)	44%	Cannot be viewed from the public domain.
	14.4 (+2.4)	19%	No impacts arise from the breach.
PC 2	15.6 (+3.6)	29%	Arises from lift overruns in very few locations across each building.
	12.6 (+0.6)	5%	
PC 1	15.6 (+3.6)	29%	Arises from lift overruns in very few locations across each building.
	12.6 (+0.6)	5%	

The breaches proposed are detailed in the accompanying plans and in the Figure below.



Figure 1 Height breaches across the site

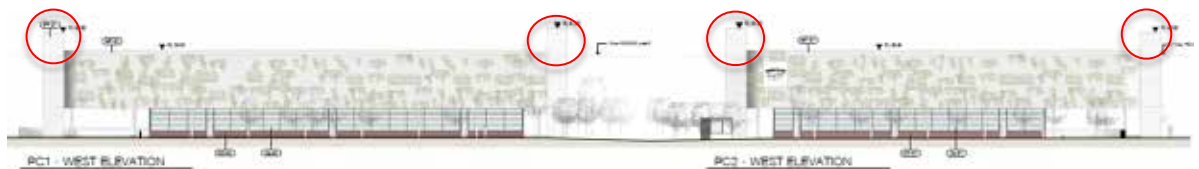


Figure 2 Larger height breaches on western elevation (circled in red)

2.11 HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?

The proposal meets the general intent of clause 4.3 *Height of Buildings* and complies with the objectives of this development standard and more generally the zone as follows:

- The proposal is compatible with the height, bulk and scale of recently approved development in the locality, also noting the existing non-compliance on the subject site.
- The proposal does not impact on the visual amenity, or minimise loss of privacy or solar access.
- There is no heritage item on the site.
- The proposal provides a compliant number of car parking spaces for a 'worst-case' in terms of parking demand and the parking rate requirements within Council's DCP (ie industrial uses).
- It is unreasonable to apply the height limit across the site in this case as the proposal does not impact on the visual amenity nor does it significantly reduce views, privacy or solar access, yet the benefit of compliant car parking numbers results because of it.

- The proposed development meets the objectives of the zone and the height of building clause, it contributes to the provision of necessary land uses within the Penrith LGA in locations that are in close proximity to services and facilities.
- The sheer scale of the overall site means the breaches are imperceptible when viewed from the public domain or any adjoining site.

Given the spatial context of the building, the proposed encroachment will not present as a perceptible element. It is considered that the proposal is in the public interest and strict compliance with the standard in this instance is both unreasonable and unnecessary.

2.12 HOW WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE ACT?

Section 1.3 of the *Environmental Planning and Assessment Act 1979* details its objectives:

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

It is submitted that the height encroachment still maintains an appropriate bulk and scale, and also maintains the objectives of the clauses within the LEP that relate to the zone and the height of building. The objects of the Act are not hindered through the proposed variation being supported.

By breaching the height limit with the car parking structures, the resultant outcome on the site is a highly efficient presentation of industrial land uses, maximising the available floor area.

Complying with the height will not alter the overall outcome in relation to visual bulk, scale, amenity and solar access and it is considered the proposal provides a good planning outcome.

2.13 IS THE DEVELOPMENT STANDARD A PERFORMANCE-BASED CONTROL?

No, it is prescriptive.

2.14 WOULD STRICT COMPLIANCE WITH THE STANDARD BE UNREASONABLE OR UNNECESSARY?

Strict compliance with the standard in this particular case is unreasonable and unnecessary as the variation sought as part of this development application is considered appropriate in the context and setting of the site. The proposed development meets the objectives of the zone, it meets the objectives of the height of buildings clause and it is considered that the objectives of the Act would not be undermined by supporting the variation.

It is submitted that the development standard is unnecessary given the negligible resultant environmental impacts arising from the proposal and is unreasonable given the benefits that the development as proposed would bring to this industrial precinct, over a strictly compliant development.

In supporting the variation, it is noted that the public interest is retained in that some key objectives of the planning controls have been achieved as a result of the development. Those include:

- Building Alignment to existing context.
- Extensive landscaping throughout.
- No shadow impacts.
- Positioning of that part of the building above the height limit strategically on the site.
- Maximising the delivery of industrial floor space to the market.

2.15 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

There are a number of positive environmental planning grounds that arise as a result of this development, and specifically the breach in the height limit, including:

- The proposed variation of the height standard allows for the provision of additional parking on the site to cater for expected workers and visitors.
- The height variation allows for optimisation of the site's development potential as a transport-accessible site and provision of much needed industrial floor space in the Penrith Local Government Area.
- The proposal represents the orderly and economic development of the land, and provides for industrial floor space, promoted within the objectives of the Environmental Planning and Assessment Act 1979.

- The proposed height variation makes for efficient, economic and optimal use of the subject site, taking advantage of the local topography, and surrounding context.
- The non-compliant height will not give rise to any material streetscape or amenity impacts compared to a compliant development, by virtue of the proposed siting, massing, setbacks, design of the building, and site characteristics. The proposed development reflects a built form that is not inconsistent with the controls and development that has been already constructed in the locality.
- The proposed development satisfies the objectives of the height control and zone objectives, despite the non-compliance.
- Compliance is achieved with all other development standards that apply to the development.

The environmental planning grounds cited above are considered to be sufficient.

3 SPECIFIC CONSIDERATION OF CL 4.6 OF PENRITH LEP 2010

A recent decision of the NSW Land and Environment Court (*Initial Action Pty Ltd v Woollahra Municipal Council*) further clarified the correct approach to the consideration of Clause 4.6 requests. This included clarifying that the Clause does not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.

Clause 4.6 of a standard instrument LEP permits a consent authority to grant development consent for development that would contravene a development standard where the consent authority is satisfied that:

- cl4.6(4)(a)(i): a written request from the applicant adequately demonstrates that compliance with the development standard is unreasonable or unnecessary (cl4.6(3)(a)), and that there are sufficient environmental planning grounds to justify the contravention (cl4.6(3)(b)), and
- cl4.6(4)(a)(ii): the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the relevant zone.

To clearly consider this case and its applicability to the proposed development, the clauses have been tabulated below, and considered against the above Court case, the proposal, and this very submission.

Penrith LEP 2010

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

(i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

Subclause (3) requires the following to be demonstrated for the purposes of this consideration:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

In respect of the height of building variation, the reasons why compliance is unreasonable or unnecessary are provided in Section 2.

We also note that the objectives of the standards have been achieved notwithstanding the non-compliance with those standards (*Wehbe v Pittwater Council*) as follows:

Height of Building

- The height, bulk and scale of the proposal is not inconsistent with that of the desired future character of the locality, as demonstrated in the accompanying architectural plans.

- There will be no loss of views to or from public areas, nor any loss of solar access.
- The height proposed is considered to result in a building that will present as a high-quality architectural element in this locality, represents a scale and bulk generally consistent with the desired future character.

The objective of each of the development standards can be satisfied through this development as proposed.

It follows that this aspect of Clause 4.6 has been satisfied.

As to there being 'sufficient environmental planning' grounds to justify the variation, the focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. In this context the following is submitted in relation to the building height development standard.

Height of Building

The position we submit has been (we believe) adequately presented earlier in this submission. In summary, strict compliance of the development standard would ultimately reduce the industrial floor space provided on the site. The benefits or providing the additional industrial floor area significantly outweigh any perceived impacts arising from the non-compliance, noting the non-compliance is limited to small areas of the across the site, and there being no perceptible impacts arising as a result. We believe that we have adequately addressed this matter.

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- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- The proposed development is consistent with both the development standards that are proposed to be varied, as well as the objectives of development in the zone. The development is therefore in the public interest (see para 27 of the judgement).
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Given the assessment above, it is considered the Clause 4.6 is well founded and can be supported in the context of this most recent court case.

4 CONCLUSION

Compliance with the building height development standard is considered to be unreasonable and unnecessary in the circumstances of the case, and it is considered that there are sufficient environmental planning grounds to vary the standards in this case.

The request to vary the development standards is considered to be well-founded on the grounds that the non-compliance with the building height development standard, *inter alia*:

- enables provision for additional industrial floor space in a transport-accessible location;
- allows for the efficient and economic development of a site that is capable of accommodating, and suitable for, the additional height proposed;
- enables a development that reflects the demand for industrial floor space within the locality without significant impact on the use and enjoyment of adjoining land;
- does not fetter consistency of the development with the objectives of the building height and FSR development standards, or the objectives of the zone;
- achieves relevant objects of the *Environmental Planning & Assessment Act 1979*, in particular, the provision of employment land, and is therefore in the public interest; and
- does not raise any issues of State or regional planning significance.

This variation request addresses the matters required to be considered in Clause 4.6 of Penrith LEP 2010. Council is requested to exercise its discretion to vary the development standards by granting consent to the proposed development despite its non-compliance with the building height standard.