

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA18/0349
Proposed development:	Alterations to Existing Concrete Batching Plant involving the Installation of 7 x Material Silos
Property address:	1 a Coombes Drive, PENRITH NSW 2750
Property description:	Lot 2 DP 1207437
Date received:	10 April 2018
Assessing officer	Gannon Cuneo
Zoning:	IN1 General Industrial - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Reason for Determination by Penrith Local Planning Panel: The development application includes a variation to a development standard relating to the height of buildings in excess of 10% of the development standard.

Council is in receipt of a development application for alterations and additions to an existing concrete batching plant involving the installation of 7 x silos for storage of raw materials. The development is located at 1a Coombes Drive, Penrith and is zoned IN1 General Industrial under *Penrith Local Environmental Plan 2010* (LEP). Under the LEP, the proposal is defined as a general industry and the proposal is a permissible land use in the zone with consent.

The application was notified to nearby and adjoining properties and advertised in the local newspaper between 20 April and 21 May 2018. No submissions were received in response.

The application is classified as integrated development with the Department of Primary Industries - Water as the development is located within 40 metres of a mapped watercourse. General Terms of Approval were received from DPI - Water on 23 May 2018.

The development application includes a variation to a development standard relating to the height of buildings in excess of 10% of the development standard. The maximum height of buildings permitted on the site is 12 metres under Penrith LEP 2010, with the proposed silo structure providing a height of 20.85 metres. The height is determined by existing structures on the site which are proposed to be linked to the silo via a conveyor belt. Existing plant structures on the site are taller than the height of the existing aggregate storage tower, which reaches a height of 23.95 metres and is taller than the proposed silo structures. The application has been supported by a request to vary the height of buildings development standard pursuant to Clause 4.6 of LEP 2010. The variation request has suitably demonstrated that compliance with the LEP height limit is not necessary in this instance and given the existing height of structures on the site, and the integration of the development within an established industrial area, the proposed variation is supported.

An assessment under Section 4.15 and 4.46 of the *Environmental Planning and Assessment Act 1979* has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

The subject site is an internal lot with access through the lot to the east which has direct frontage to Coombes Drive. The existing access is located on the western side of Coombes Drive and has separate ingress and egress points for vehicles.

The site is occupied by the existing concrete batching plant and associated offices, material storage and parking areas.

The site is located within an established industrial area of North Penrith and is immediately north, east and west of existing industrial developments. A Sydney Water Treatment Plant adjoins the site to the north and is separated by Boundary Creek. The nearest residential area is located 300 metres to the south east of the subject site.

The site is subject to a number of easements and restrictions on title which are not affected by the proposed development.

Proposal

The proposed development involves the installation of 7 x material silos at the north eastern corner of the subject site. Whilst the proposal allows for the increased storage capacity of raw materials, the proposal does not involve an increase in any operational aspect of the development including storage or processing.

The applicant has advised that a subsequent application is being prepared which proposes an increase in the storage and processing capacity of the development. As such, the subject application seeks consent for the installation of the silos only.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 91- Integrated development

The development has been assessed in accordance with the matters for consideration under Section 4.15 and Section 4.46 of the *Environmental Planning and Assessment Act 1979*, and having regard to those matters, the following issues have been identified for further consideration.

Water Management Act 2000

The proposed development involves works within 40 metres of a mapped watercourse. As a result, the proposal is located on waterfront land and is therefore integrated development. In accordance with 4.46 of the *Environmental Planning and Assessment Act 1979*, the application has been referred to Department of Primary Industries - Water. The application has been assessed by DPI - Water who have provided General Terms of Approval for the development.

Based on the above response provided by DPI - Water, the proposed development requires a controlled activity permit under the *Water Management Act 2000* and conditions of consent will ensure the requirements of the General Terms of Approval are complied with.

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

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

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

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion

Clause 2.3 Permissibility

The existing development on the site is defined as a **general industry** which means a building or place (other than a heavy industry or light industry) that is used to carry out an industrial activity.

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

The proposed development is construction of 7 x storage silos which is ancillary to the existing development on the site and is a permissible use in the zone.

Clause 4.3 Height of buildings

In accordance with Clause 4.3 of *Penrith Local Environmental Plan 2010*, a maximum building height of 12m applies to the site. The objectives of this requirement are:

- (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 transition in built form and land use intensity.*

The table below outlines existing structures on the site and the proposed material silo heights:

	Height	Variation
Existing Aggregate Storage Tower	23.95m	11.95m or 99.5%
Proposed Material Silos	20.85m	8.85m or 73.75%

As a result, the proposal seeks a variation to the maximum height of buildings permitted under the LEP which is addressed in detail below.

Clause 4.6 Exceptions to development standards

The applicant seeks a variation to the provisions relating to the maximum height of buildings under Clause 4.3 of *Penrith Local Environmental Plan 2010*. The proposal involves the installation of a material silo structure with a height of 20.85 metres. The maximum height of buildings permitted on the site under

Clause 4.3 of the LEP is 12 metres. The variation requested therefore equates to a 73.75% variation.

In addition to the provisions within Clause 4.6 of *Penrith Local Environmental Plan 2010*, the assessment is also required to consider the matters set out in the 'five part test' established by the NSW Land and Environment Court. The principles of the five part test are identified as follows:

- 1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
- 2. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

Council's requirement relating to the maximum height of buildings is a development standard and a variation under Clause 4.6 of the LEP can be considered, subject to suitable address of the above considerations. This clause aims to provide an appropriate level of flexibility in the application of development standards to achieve better outcomes for and from development.

In accordance with sub-clause (3) of Clause 4.6, the applicant has submitted a formal request to vary the development standard relating to height of buildings. The following key points outlined sufficiently demonstrate that compliance with the development standard in this instance is unreasonable and unnecessary, and the basis for which there are sufficient environmental planning grounds to justify contravening the development standard as follows:

- *The existing hexagonal overhead storage bin has an overall height of 23.95 metres and the height of the proposed silo structure is a result of existing site infrastructure and operations;*
- *The intention of the variation is to provide infrastructure for future increased storage capacity as a result of local resources becoming unavailable;*
- *The placement of the structure will not result in any unacceptable impacts on the amenity, or potential amenity, of neighbouring industrial properties and residential dwellings in the area;*
- *The location of the site is such that it will not impact on any potential natural or cultural features of the land or adjoining land. Further, the structure is appropriately placed with existing plant and machinery on the site;*
- *There would be no unreasonable increase in processing or storage of materials as a result of supporting the variation. The proposal will allow for future increases in storage capacity subject to relevant approvals; and*
- *The documentation submitted with the application demonstrates that strict compliance with the height requirement of the LEP will not provide a better outcome in relation to visual bulk, scale, amenity and scenic values.*

Comments in Response

The development proposes a variation to the maximum building height permitted under Clause 4.3 of the LEP. The objectives of Clause 4.3 are:

- (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.*

The applicant's Clause 4.6 variation request is considered to be well founded and is consistent with the aims of the policy. The objection has adequately addressed the matters prescribed in the LEP, and has demonstrated that full compliance with the maximum height of buildings would be unreasonable and

unnecessary in this circumstance given the height of existing structures on the site which are taller than the proposed structure.

The proposal still ensures compliance with the objectives of the zone as the proposed structure makes efficient use of industrial land and removes the need for heavy vehicle movements during peak hour. The applicant has submitted sufficient information to ensure that the structure has minimal visual impact when considering the context of the development in the surrounding industrial area and residential land beyond.

The proposal has demonstrated that:

- The proposed structure is at a lower height than the existing material storage silo which is therefore considered to have minimal impact on the industrial nature of the locality;
- The predominant views are from the existing industrial area with limited views from the residential area located 1 kilometre to the east;
- The structure will be finished in a colour reflecting the character of existing buildings in the immediate locality;
- The height, bulk and scale of the development is sympathetic to the existing built environment and would have minimal impact on views and solar access to and from surrounding developments; and
- The proposed structure is compatible with surrounding industrial developments which assist in minimising the visual impact of the structure when viewed from surrounding areas.

It is also noted that a similar development was approved by Council on 2 May 2014 approximately 500 metres north of the subject site. The development was approved for a plastics manufacturing facility with a tower height of 24.7 metres. The site had similar attributes to the site subject to this application, particularly landscape and scenic values. It is however noted that the merits of each application must be considered to establish suitability under the above considerations. Nonetheless, support of similar applications in the vicinity demonstrates that the current proposal is not out of keeping with the planned and approved character of the immediate locality.

Based on the above, the proposal has given appropriate consideration to the context of the site and the compatibility of the proposed development with adjoining and nearby land uses. The proposal achieves the objectives of the LEP, as the visual impact of the development is minimal given the existing structures on the subject site which exceed the height of the proposed structure.

The proposed variation meets the objectives of the zone, provides a suitable response to the environmental capabilities of the land, establishes suitable capability for continuing industrial development in the Penrith LGA and the submitted clause 4.6 variation request suitably responds to the established court principles outlined above. As a result the proposed variation and associated justification is considered to be reasonable and the variation to the maximum height of buildings in *Penrith Local Environmental Plan 2010* is supportable.

Clause 7.2 Flood planning

In accordance with Clause 7.2(2)(a) of *Penrith Local Environmental Plan 2010*, the requirements of Clause 7.2(4) and 7.2(5) apply and shall be considered in the assessment of any application for development on the land. The subject site is identified as being entirely or partly below the flood planning level and therefore Clause 7.2 of *Penrith Local Environmental Plan 2010* applies.

In order for the development to demonstrate compliance with subclause (4) and (5), Council's Senior Development Engineer has reviewed the proposal and has provided the following comments:

- The site is located on land affected by mainstream flooding;
- The existing surface level of the site is above the flood level; and
- The proposed structure is overhead and is above the 100 year ARI event;
- There are no overland flow paths through the development site in the 100 year ARI event;
- Overland flow flooding is identified within Coombes Drive, however given the vehicle size no concern is raised for flood safe egress from the site.

Based on the above information, the proposed development meets the requirements for flood planning under Clause 7.2 of *Penrith Local Environmental Plan 2010*.

Clause 7.5 Protection of scenic character and landscape values

In accordance with Clause 7.5(2) of *Penrith Local Environmental Plan 2010*, land identified as having scenic or landscape values is required to consider the visual impact of the development on these values. The site has been identified as land with scenic and landscape values, therefore Clause 7.5 of *Penrith Local Environmental Plan 2010* applies.

The applicant has submitted a Landscape and Visual Impact Assessment with the development application. The analysis noted the following:

- The site is located in an established industrial area and is located within an isolated visual catchment area, screened by existing industrial facilities to the east, south and west; and
- An influencing factor in the appearance of the development is the contrast created between the proposed development and existing industrial elements in the landscape surrounding the site.

In view of the findings of the Visual Impact Assessment, the proposal will have minimal visual impact on the scenic and landscape values of the locality and the Blue Mountains Escarpment when viewed from the surrounding areas. As such, the objectives of Clause 7.2 of *Penrith Local Environmental Plan 2010* have been achieved.

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

There are no draft Environmental Planning Instruments that apply to the proposal.

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

Development Control Plan 2014

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

Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this application.

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

The proposed development complies with the requirements of the Regulations.

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

Context and Setting

In assessing the likely impacts of the development regarding the context and setting of the proposal, it is considered that :

- the proposed development will be well screened from the surrounding areas by the surrounding existing industrial developments, the topographical features and existing and proposed vegetation;
- the proposal is consistent in design with existing industrial developments in the locality as the existing plant will remain the dominant feature of the site;
- the residential areas to the east and southeast will have a minimal to no visual sensitivity to the proposal due to their distance from the site and view corridors;
- the construction and operation phase of the development would have minimal impact on the acoustic privacy of the surrounding developments;
- the design of the proposal has taken into consideration the ecological features identified on and surrounding the site and it will not have a direct impact on the natural or built environment.

Therefore, the proposal is supportable in this instance as it is sympathetic to the existing and future industrial character of the locality and will have minimal impact on the scenic and landscape values of the area when viewed from the surrounding areas.

Site Design

The positioning, size, form and appearance of the proposed storage structure is responsive to the environmental conditions and site attributes. Adequate provisions have been made for carparking, vehicle manoeuvrability and landscaping on the site. Despite variation to the building height, the request to vary the development standard that accompanies the application states that the proposal would have minimal visual impact from the surrounding areas due to the topography of the locality, screening provided by other industrial buildings and sufficient setbacks from all property boundaries.

Access, Transport and Traffic

The implications on access, transport and traffic arising from the development are minimal as:

- The proposed vehicular access and carparking remain and are in accordance with AS2890;
- The proposed works do not necessitate any additional parking;
- The development is unlikely to result in an increase in traffic movements; and
- The site is accessible from nearby collector roads.

Water Quality

The application was referred to Department of Primary Industries - Water (DPI - Water) as required by Section 4.46 of the *Environmental Planning and Assessment Act 1979* due to the proximity of the development to Boundary Creek which adjoins the sites northern boundary. An assessment has been undertaken by DPI - Water who has issued General Terms of Approval (GTA's) for part of the proposed development requiring a Controlled Activity approval under the *Water Management Act 2000*. As such, conditions are recommended for compliance with the GTA's issued by DPI - Water and for the provision and maintenance of erosion and sediment control measures and ongoing maintenance of the existing stormwater drainage and on-site detention systems.

Flooding

Assessment of the proposal has concluded that it will have minimal noise impact on the surrounding developments during construction and operational phase. The applicant has satisfactorily addressed the issues related to flooding. Council's Senior Development Engineer has reviewed the proposal and has identified that the existing surface level of the site is above the flood level. In addition, the proposed structure is overhead and there is no filling proposed, therefore no concern is raised regarding the diversion of flood water or impeding of over land flow.

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

The site is suitable for the proposed development for the following reasons:

- The proposal is to expand on the existing development which is a permissible land use in the IN1 General Industrial zone under the provisions of *Penrith Local Environmental Plan 2010*;
- The proposal is consistent with the objectives of the zone;
- Key concerns relating to the proposed variation to the maximum building height have been addressed and it is concluded that the proposal would have minimal impact on the streetscape and character of the surrounding area;
- The proposal is consistent with the objectives of Penrith Development Control Plan 2014 and complies with a majority of the numerical standards;
- Adequate on-site parking has been provided for the development;
- Department of Primary Industries - Water has raised no objection to the proposed works within 40 metres of a watercourse; and
- The proposal would have minimal impact on the amenity of the surrounding developments.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Clause 89(3)(a) of the *Environmental Planning and Assessment Regulations 2000* and Appendix F4 of *Penrith Development Control Plan 2014*, the proposed development was notified to nearby and adjoining residents and advertised in the local newspaper between 20 April and 21 May 2018. No submissions were received in response to the exhibition period.

Referrals

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

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

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

The proposed development is consistent with the objectives of the *Environmental Planning and Assessment Act 1979* in so far as it promotes the co-ordinated, orderly and economic use and development of the land. As a result Council may be satisfied that the development subject to conditions is in the interest of the public.

Conclusion

The proposed development is appropriately located within IN1 General Industrial zone and is consistent with the aims and objectives of *Penrith Local Environmental Plan 2010* and *Penrith Development Control Plan 2014*.

Furthermore, the development performs adequately in terms of its relationship to the surrounding built and natural environment, particularly in relation to likely impacts upon surrounding properties. Consequently, the proposal is supported from an environmental planning perspective.

Recommendation

1. That DA18/0349 for the construction of 7 x material storage silos at 1a Coombes Drive, Penrith be approved subject to the attached conditions; and
2. That the variation to a development standard under clause 4.6 of the standard instrument be supported.

CONDITIONS

General

1 [A001](#)

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

Title	Reference	Issue	Author	Date
Site Foundation Layout	2029-0050	C	CMQ Engineering	03.18
Proposed Additional Overhead Bin	2029-0002	F	CMQ Engineering	03.18
Site Foundation Layout	2029-0100	A	CMQ Engineering	12.17

2 [A005 - APPROVED BODYS CONSENT \(FOR INTEGRATED DAS\)](#)

A copy of the General Terms of Approval approval issued by Department of Primary Industries - Water under the *Water Management Act 2000* shall be submitted to the Principal Certifying Authority, before the Construction Certificate can be issued for the same development. A copy of the approval shall be submitted to Penrith City Council with the copy of the Construction Certificate, if Council is not the Principal Certifying Authority.

3 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)

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

4 [A046 - Obtain Construction Certificate before commencement of works](#)

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

Environmental Matters

5 [D009 - Covering of waste storage area](#)

All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.

6 [D010 – Appropriate disposal of excavated or other waste](#)

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

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

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

7 [D014 - Plant and equipment noise](#)

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

BCA Issues

8 E001 - BCA compliance

All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

(a) complying with the deemed to satisfy provisions, or

(b) formulating an alternative solution which:

- complies with the performance requirements, or
- is shown to be at least equivalent to the deemed to satisfy provision, or

(c) a combination of (a) and (b).

Construction

9 H001 - Stamped plans and erection of site notice

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

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

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

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

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

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

10 H002 - All forms of construction

Prior to the commencement of construction works:

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

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

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

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

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

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

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

11 H041 - Hours of work (other devt)

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

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

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

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

12 HSpecial - Dust

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

13 HSpecial - Mud/Soil

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

Engineering

14 K101 - Works at no cost to Council

All roadworks, stormwater drainage works, associated civil works and dedications, required to effect the consented development shall be undertaken at no cost to Penrith City Council.

15 [K201 - Infrastructure Bond](#)

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

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

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

16 [K209 - Stormwater Discharge – Minor Development](#)

Stormwater drainage from the site shall be discharged to the existing site drainage system.

The proposed development and stormwater drainage system shall be designed to ensure no adverse impact on adjoining properties by the diversion, damming or concentration of stormwater flows.

The proposed method of stormwater discharge shall be detailed in the Construction Certificate issued by the Certifying Authority.

17 [K301 - Sediment & Erosion Control](#)

Prior to commencement of any works associated with the development, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997 and Managing Urban Stormwater series from the Office of Environment and Heritage.

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

Landscaping

18 [L008 - Tree Preservation Order](#)

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed without the prior consent of Penrith City Council.

Certification

19 [Q01F - Notice of Commencement & Appointment of PCA2 \(use for Fast Light only\)](#)

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

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

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

Information to accompany the Notice of Commencement

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

20 [Q05F - Occupation Certificate for Class10](#)

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the use of the structure.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

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

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principles

Based on the findings of the Landscape and Visual Impact Assessment has demonstrated that the proposal is consistent with the objectives of the DCP in that the height, bulk and scale of the proposed structure is responsive to the landform. Should the application be supported, the adopted height, mass and scale will have minimal impact on the scenic values of the Blue Mountain Escarpment and established character of the locality.

C3 Water Management

The subject site is identified as being affected by mainstream flooding. Council's Senior Development Engineer has reviewed the proposal and is satisfied that the proposed structure is located above the flood planning level and will not impede flood water.

Stormwater management on the site will continue to be directed to existing drainage pits and treated before disposal.

C4 Land Management

Standard conditions will be recommended for the installation and maintenance of erosion and sediment control measures prior to commencement of works and until completion.

Council's Environmental Health Officer has reviewed the proposal and has raised no objection, subject to conditions of consent.

Subject to compliance with the recommended condition, the proposal is considered to have satisfied the objectives of the DCP by:

- Minimising site disturbance during construction and operation of the development;
- Protect the natural environment through reduction of erosion and/or sedimentation; and
- Providing suitable infrastructure for the management of materials associated with the existing concrete batching plant.

C5 Waste Management

The waste management plan prepared and submitted with this application has identified that there will be no waste produced from the demolition or construction of the structure. An existing concrete platform will be used and the structure is fabricated off site. On going waste management will continue as approved with the existing batching plant.

C10 Transport, Access and Parking

The proposed development does not seek to amend any transport, access or parking arrangements.

C12 Noise and Vibration

A condition has been recommended to ensure the construction and operation phase of the development will not exceed the noise criteria detailed in the *Protection of the Environment Operations Act 1997*.

D4 Industrial Development

4.1 Key Precincts

The subject site is located within Precinct 5. The relevant development controls relating to the precinct have been applied during the assessment of the application.

4.2 Building Height

Clause 4.3 of the LEP outlines that the maximum height of buildings permitted on the site is 12 metres. Issues related to variation to the building height have been addressed under Clause 4.6 of *Penrith Local Environmental Plan 2010*.

4.2 Building Setback and Landscape

Table D4.1 outlines the minimum building setbacks for industrial development within the Penrith area. The proposed structure is located 6 metres from the northern boundary which adjoins Boundary Creek and is located on the boundary shared with the site to the east. The proposal complies with the setbacks required in the DCP.

4.4 Building Design

The proposed structure will utilise a range of finishes and materials to ensure the building demonstrates an appropriate and high standard of industrial design. The DCP requires that the development be finished with materials and colours of natural and earthy tones. The colours proposed to match existing buildings on the site include a range of natural and earthy colours which complies with the requirements of the DCP.

4.5 Storage of Materials and Chemicals

The proposal does not include the storage of any materials or chemicals. Conditions will be imposed to ensure compliance with this section is achieved.

4.6 Accessing and Serving the site

The existing site arrangement allows vehicles to enter and exit the site in a forward direction. The proposal does not include any amendments to existing access and parking arrangements.

4.7 Fencing

The proposal does not include any amendments to existing fencing on the site.

4.8 Lighting

The proposal does not contain details of the proposed lighting for the development. Existing lighting for the site will be utilised during construction and on going use of the site.

Having considered the configuration of the site and the location of the proposed structure, it is considered that the proposal would have minimal visual impact. In addition, the design of the proposal has demonstrated the objectives of the DCP have been achieved through locating the structure in a position that has minimal visual impact and the use of colours and materials that are compatible with the existing character of the industrial area. Based on the above, the proposal has demonstrated compliance with the requirements of Chapter D4 of the DCP.

6 Matters for Consideration

The following issues are considered relevant in the assessment of the proposal.

6.1 **Variation to Maximum Building Height (Clause 4.6 Variation)**

Penrith LEP 2010, Clause 4.3 (2) Height of buildings, provides that *'The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map'*⁷.

The proposed overhead material storage bins structure has a height of 20.85metres.

The 'Height of buildings map'⁸ nominates a 12metre maximum height, consequently the proposal results in a variation of 8.85metres or 73.75% and a variation to this development standard is submitted for Council's consideration.

The objectives of clause 4.6(1) are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Subclause 4.6(3) provides that:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (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.*
- Further, subclause (4) provides that
 - (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*

⁷ The proposed storage bin structure is considered to be defined as a 'building'. The Dictionary to Penrith LEP 2010 defines a building as:

building *has the same meaning as in the Act.*

Note. *The term is defined to include part of a building and any structure or part of a structure, but not including a manufactured home, a moveable dwelling or associated structure (or part of a manufactured home, moveable dwelling or associated structure).*

⁸ Map (HOB_12).

required to be demonstrated by subclause (3), and

(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

(b) the concurrence of the Secretary has been obtained.

There has been a number of recent Court cases dealing with clause 4.6 variations that are relevant in determining the success of a request.

In SB Two Pty Ltd v Leichhardt Council [2014] NSWLEC 1265, Tuor (C) at [38] states that 'Clause 4.6(3)(a) uses the same language SEPP 1. Preston CJ in Wehbe v Pittwater Council [2007] NSWLEC 827 deals with the requirements to uphold an objection under SEPP 1. At [42] to [43], His Honour discusses ways of establishing that compliance with the standard is unreasonable or unnecessary, relevantly he states:

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that **compliance** with the development standard is unreasonable or unnecessary because the objectives of the development standard are **achieved** notwithstanding non-compliance with the standard...*

*43 The rationale is that development standards are not ends in themselves but means of **achieving** ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be **achieved**. However, if the proposed development proffers an alternative means of **achieving** the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).*

- (emphasis added).

Further in Moskovich v Waverley Council [2016] NSWLEC 1015 Tour (C) at [50] states that:

*'The judgements in Four2Five recognise that **the wording of cl 4.6 is different from SEPP 1 and that the approach to the principles in relation to SEPP 1 does not apply precisely**. Nonetheless, cl 4.6(3)(a) uses the same language as cl 6 of SEPP 1 and Pearson C found in Four2Five at [62] that **the ways in Wehbe of establishing that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Wehbe [42-48] are equally applicable**. This reasoning was accepted by Pain J and the Court of Appeal noted that matters of consistency with objectives of development standards remain relevant to cl 4.6(3)(a), but not exclusively so (emphasis added).*

Further at [52-54].

52. The wording of cl 4.6(4)(a)(ii) of the LEP requires that the consent authority is satisfied that:

(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 (emphasis added)

53. ***The threshold of “consistency” is different to that of “achievement”. The term “consistent” has been considered in a judgements of the Court in relation to zone objectives and has been interpreted to mean “compatible” or “capable of existing together in harmony” (Dem Gillespies v Warringah Council (2002) 124 LGERA 147; Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC 190) or “not being antipathetic” (Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21). Whichever interpretation is adopted the test of “consistency” is less onerous than that of “achievement”.***

54. *Consequently, a consideration of consistency with the objectives of the standard required under cl 4.6(4)(a)(ii) to determine whether non-compliance with the standard would be in the public interest is different to a consideration of achievement of the objectives of the standard under cl 4.6(3)(a) to determine whether non-compliance with the standard would be unreasonable or unnecessary in the circumstances of the case. The latter, being more onerous, would require additional considerations such as the matters outlined by Preston CJ in Wehbe at [70-76] where His Honour considered whether the objectives of the standard had been achieved in the case before him. As submitted by Mr Staunton, this would involve a consideration of **whether the proposed development would achieve the objectives of the standard to an equal or better degree than a development that complied with the standard.** (emphasis added).*

The remainder of this section provides an address of the required matters:

A. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Upon initial inspection the numerical variation to the allowable building height could be interpreted as significant, however the height of the structure (building) in this situation is dictated by the existing hexagonal overhead storage bin. It is also noted that this structure has greater height than the proposed structure.

The existing hexagonal overhead storage bin has an overall height of 23.95metres. The aggregate materials are transferred to this bin via a conveyor belt leading from the material bays located on the southern side of the site; the aggregate is then mixed and sent to the Batching plant where it is mixed with additives to create the concrete mix.

The height of the proposed silos bin structure is therefore set by the existing hexagonal overhead bin as the conveyors that will deliver material from the proposed bins need to be at the same height as illustrated in the attached development plans.

The proposed silo bins are 15.41metres high with the upper 5.4metres containing the material conveyor belt. The upper section cladding serves to provide all weather protection to the conveyor belt and raw materials.

Consequently, the overall height of the proposed structure is a direct outcome of the

design of the existing plant and the proposed height is required so that it can integrate with existing site operations.

Specifically, it is our view that the variation does not:

- Hinder the attainment of the objects specified in s5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*;
- Raise any matter of significance for State or Regional planning; or
- Create any unreasonable precedent.

The development is still capable of satisfying the relevant objectives notwithstanding the numerical variation and having regard to the facts outlined in this submission it is our view that it is both unreasonable and unnecessary for Council to insist upon compliance with the prescribed maximum building height of 12metres in this instance.

B. That there are sufficient environmental planning grounds to justify contravening the development standard.

As discussed in this submission there is a need to consider the nature of the development and the existing built form circumstances which dictate the final height of the proposed structure. There is unfortunately, no opportunity to reduce the height of the structure without impacting on the functionality of the silos and their ability to service the existing plant.

The plant could operate without the proposed additional storage silos however its operational and economic efficiency would be adversely impacted as the company would be required to continue to predict customer demand and be reliant upon increased daily material delivery. In recent years with the closure of a number of quarries within the Sydney basin, access to raw materials is being required to be sourced further afield meaning that delivery times increase and are often subject to traffic congestion.

It is considered that on balance there needs to be an allowance to vary the nominated height limit in the manner identified in this report in order to achieve a better overall economic outcome. Environmentally the increased storage capacity of the site will enable the company to regulate material delivery (traffic movements) in a more orderly fashion.

Having regard to the above it is considered that there are sufficient environmental planning grounds, or merit to justify a variation.

C. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard.*

The objectives of clause 4.3 are as follows:

(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

Comment –The site as part of a traditional and developed industrial area. The proposed height bulk and scale is considered consistent with the existing plant within the site and similar industrial developments within the locality. In our opinion the proposal is consistent with this objective.

(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,

Comment – The proposed structure will be partially hidden behind the existing plant and is to be clad in similar materials and external colours as illustrated in site photographs. A visual impact assessment analysis has been undertaken in **section 6.2** of this report and is considered to be satisfactory. In our opinion the proposal is consistent with this objective.

(c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,

Comment – The site does not adjoin any heritage items or heritage conservation areas. A visual impact assessment analysis has been undertaken in **section 6.2** of this report. In our opinion the proposal is consistent with this objective.

(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.

Comment – The nominated 12metre height limit is to be established to ensure the scenic quality of the surrounding Nepean River catchment. The plant has been operational since the early 1990s and the existing overhead bin represented a technical non-compliance upon gazettal of LEP 2010. The height of the proposed structure has been set by the existing plant, however it is not a large structure but is reflective of a typical industrial development of this nature. Based on assessment it was considered that it does not result in any adverse bulk and scale impacts within the locality. In our opinion the proposal is consistent with this objective.

D. *The proposed development will be in the public interest because it is consistent with the objectives for development within the zone*

The objectives of the IN1 General Industrial zone are:

- *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.*

Comment – As stated in Moskovich v Waverley Council [2016] NSWLEC 1015 Tour (C) at [53], consistent has been interpreted to mean ‘compatible’ or ‘capable of existing together in harmony’.

The bulk and scale of the proposed silo structure is consistent with industrial character of the site and surrounding locality and does not adversely impact upon adjoining industrial land-uses whilst providing a greater operational efficiency for the company.

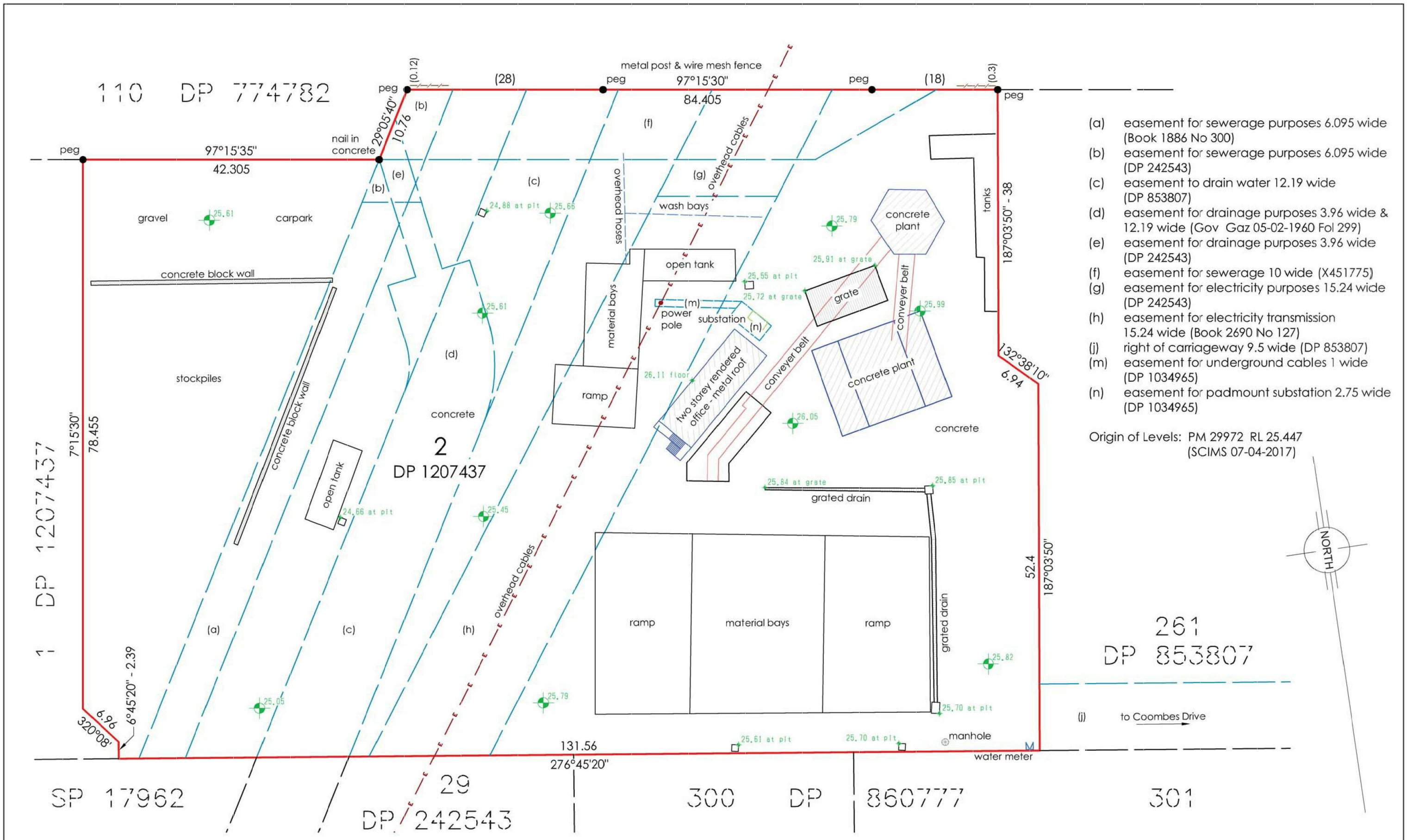
In our opinion the preceding assessment demonstrates that the proposal is consistent with the objectives for development within this zone and is therefore in the public interest.

6.2 Landscape and Visual Impact Assessment

This section of the Report addresses the visual impact of the proposed development as required by clause 7.5 Protection of scenic character and landscape values of LEP 2010, namely:

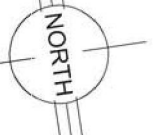
- (1) *The objectives of this clause are as follows:*
 - (a) *to identify and protect areas that have particular scenic value either from major roads, identified heritage items or other public places,*
 - (b) *to ensure development in these areas is located and designed to minimise its visual impact.*
- (2) *This clause applies to land identified as “Land with scenic and landscape values” on the Scenic and Landscape Values Map.*
- (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.*

The assessment includes an analysis of the context and landform in relation to the proposed development, an analysis of the visual absorption capacity, view quality, legislation requirements and the significance of impact (refer **Plates 17 - 22**).



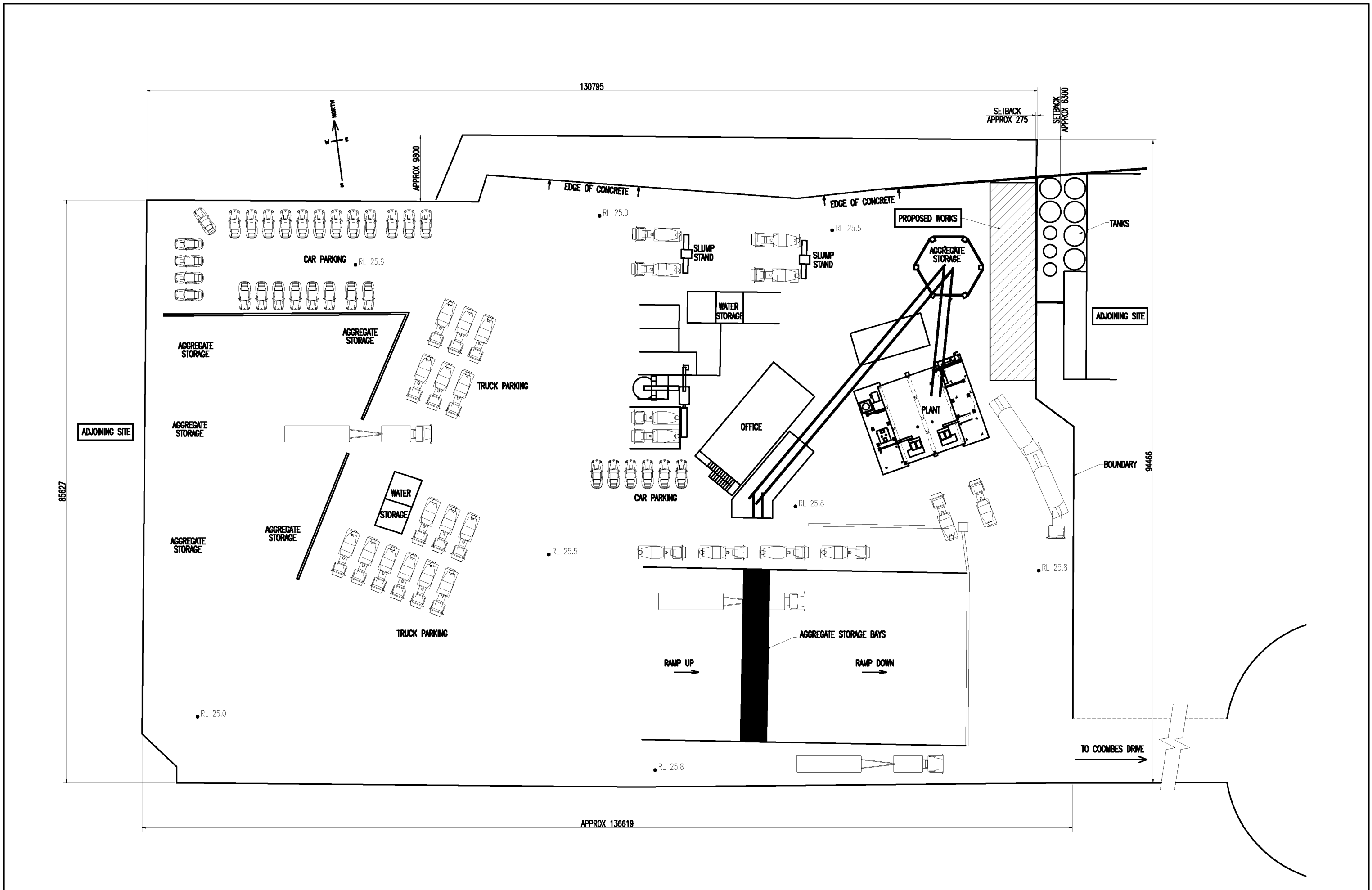
- (a) easement for sewerage purposes 6.095 wide (Book 1886 No 300)
- (b) easement for sewerage purposes 6.095 wide (DP 242543)
- (c) easement to drain water 12.19 wide (DP 853807)
- (d) easement for drainage purposes 3.96 wide & 12.19 wide (Gov Gaz 05-02-1960 Fol 299)
- (e) easement for drainage purposes 3.96 wide (DP 242543)
- (f) easement for sewerage 10 wide (X451775)
- (g) easement for electricity purposes 15.24 wide (DP 242543)
- (h) easement for electricity transmission 15.24 wide (Book 2690 No 127)
- (j) right of carriageway 9.5 wide (DP 853807)
- (m) easement for underground cables 1 wide (DP 1034965)
- (n) easement for padmount substation 2.75 wide (DP 1034965)

Origin of Levels: PM 29972 RL 25.447
(SCIMS 07-04-2017)



Site Plan - Lot 2 in DP 1207437 1a Coombes Drive Penrith

Client: Peter Vicary		MATTHEW FREEBURN LAND, ENGINEERING & MINING SURVEYOR SUITE 2, FIRST FLOOR, "SURVEYOR HOUSE" 2 CASTLEREAGH STREET PENRITH 2750	Telephone 02 4721 2289 Fax 02 4721 5646 email a.dean@freeburnsurveyors.com or matthew@freeburnsurveyors.com	Scale 1:500	Datum: AHD	Contour: n/a
				Surveyor: tb/dc	Drawn By: ad	Checked: tb
				Date of Survey: 07-04-2017	Sheet 1 of 1	
				AUTOCAD	Issue 01 18-04-2017	35 895



DATE OF LAST EDIT=

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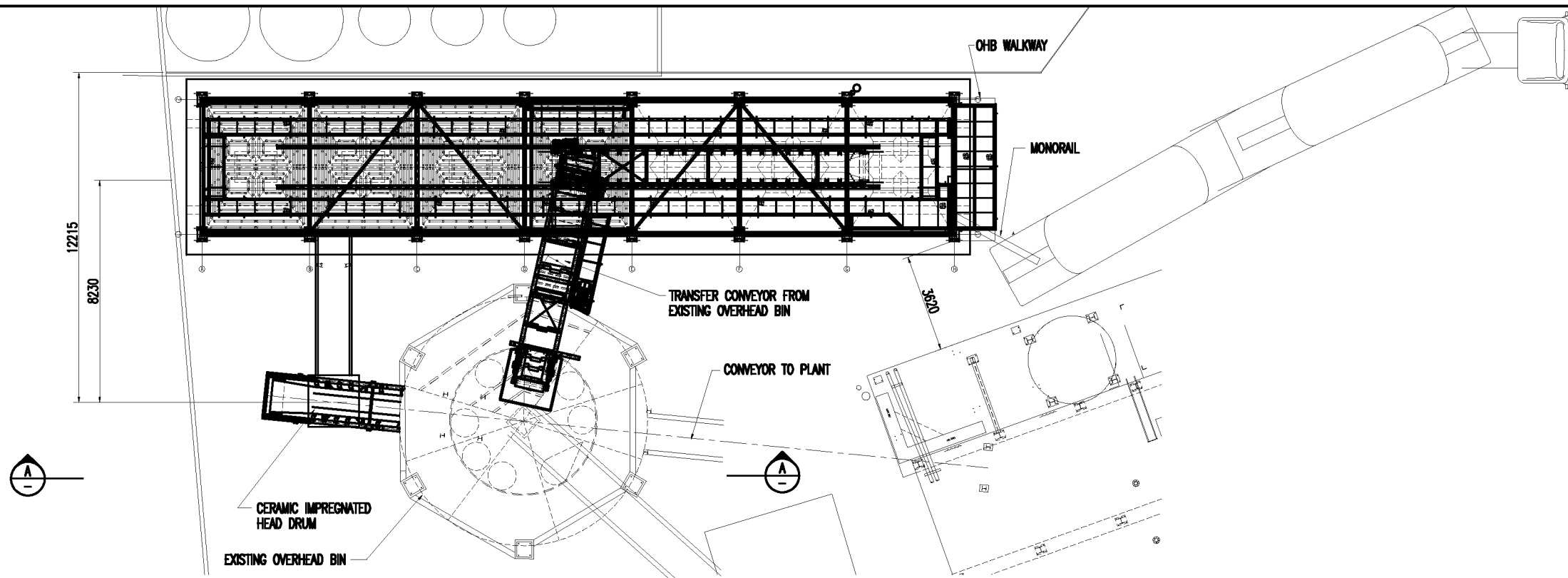
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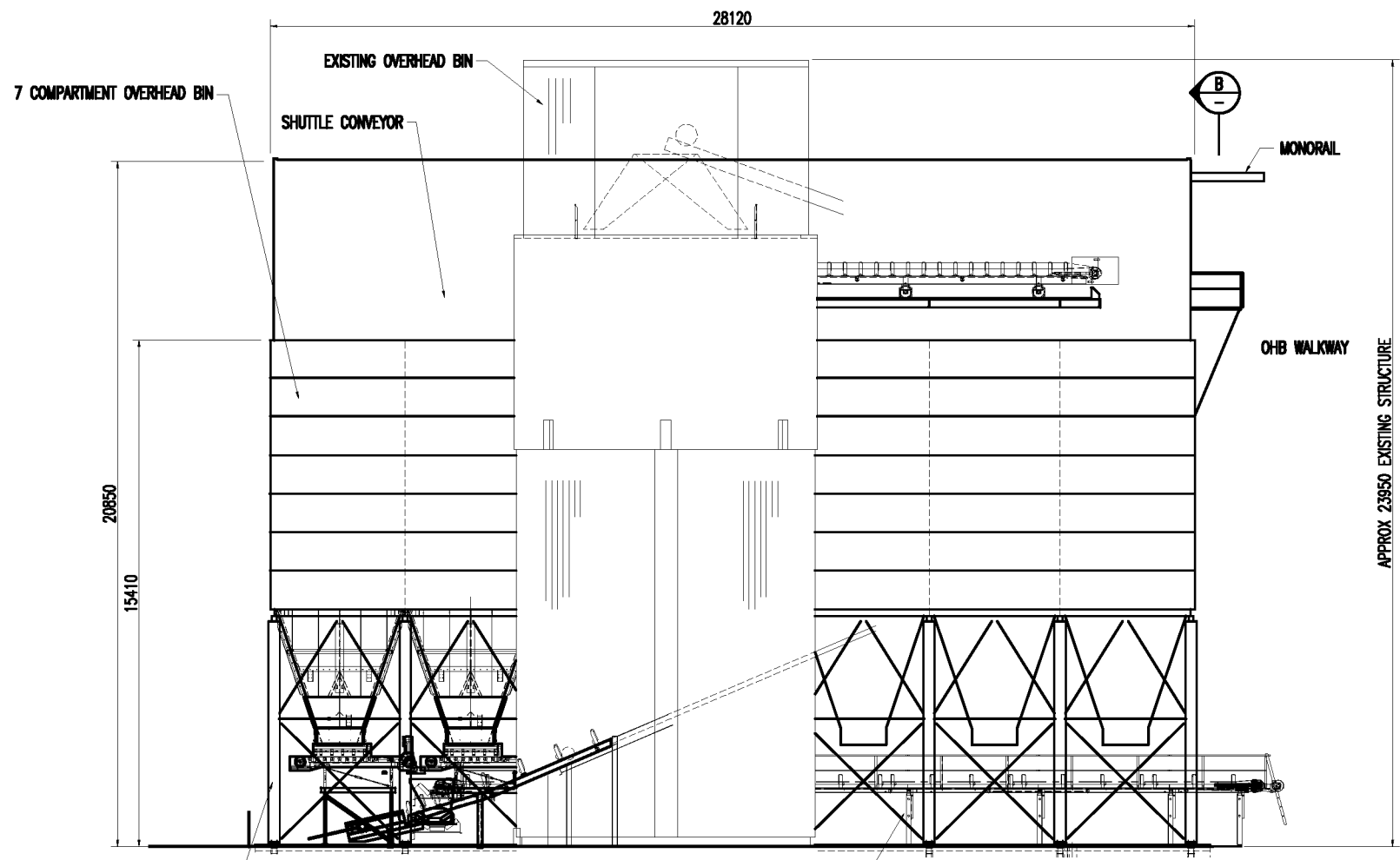
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				C	ADDITIONAL DETAIL ADDED	ERB	03.18	CHECKED - -
				B	ADDITIONAL DETAIL ADDED	ERB	03.18	DESIGNED - -
				A	FOR INFORMATION	ERB	12.17	APPROVED - -

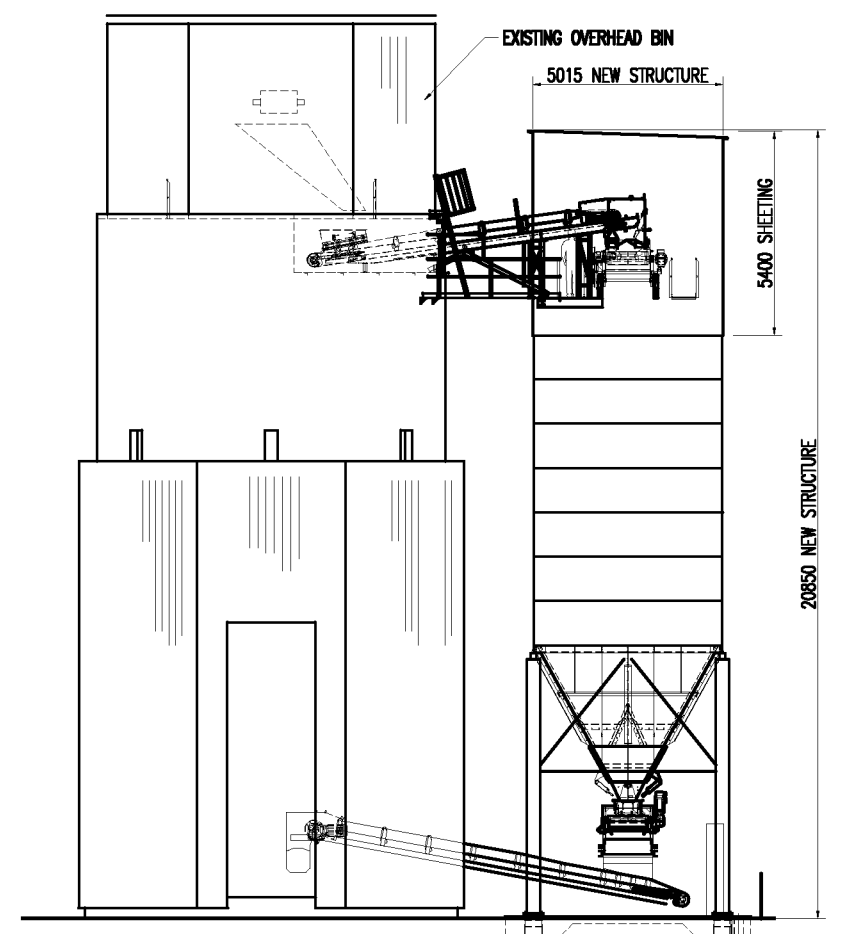
<p>CMQ Engineering Pty Ltd.</p> <p>CONCRETE BATCHING PLANT WSC - PENRITH SITE FOUNDATION LAYOUT</p>	<p>DRAWING No. A1</p> <p>2029-0050</p>
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PLAN VIEW



VIEW A
SCALE 1:100



VIEW B
SCALE 1:100

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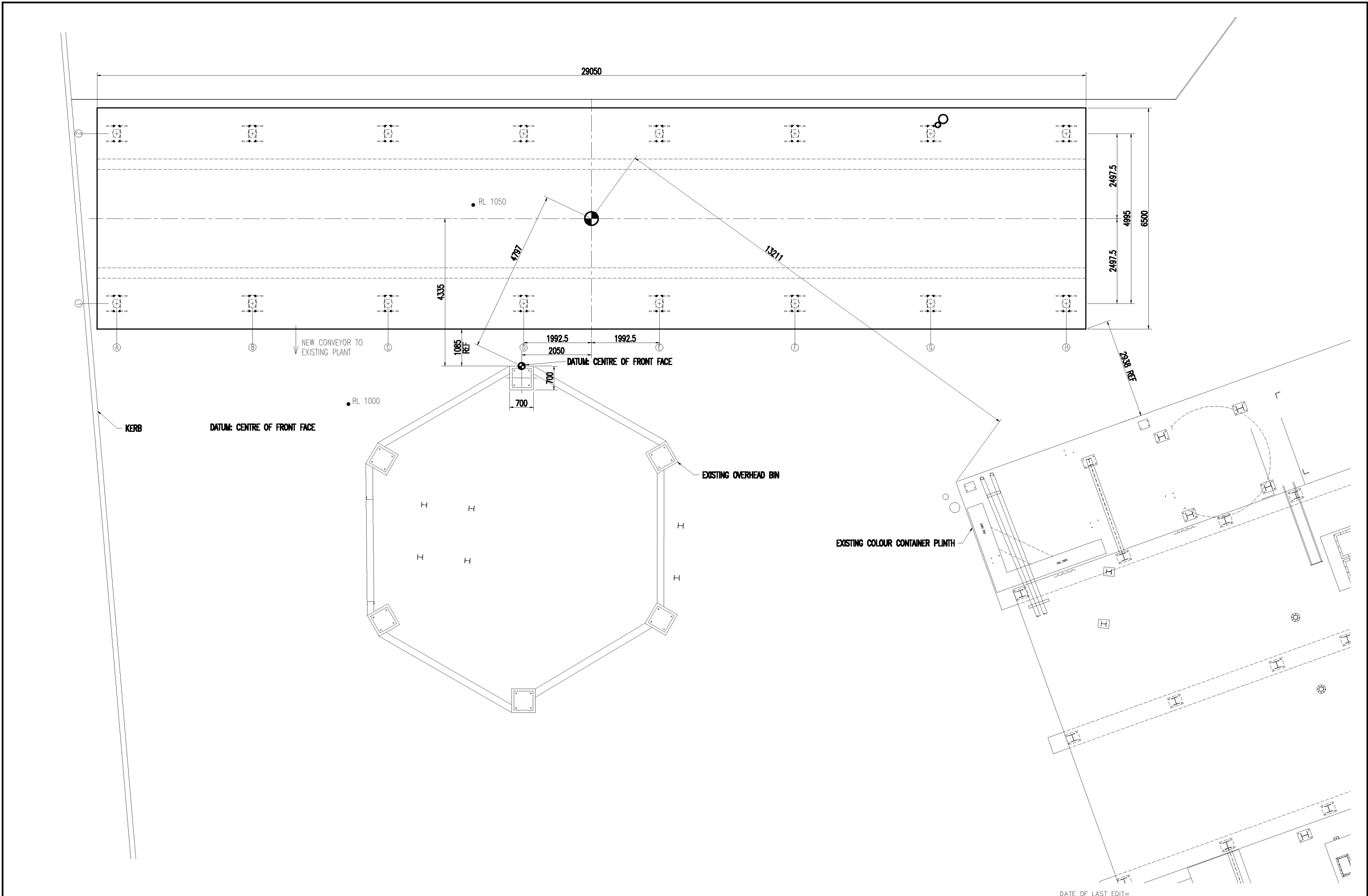
No.	REVISION	DRAWN	DATE
F	DIMENSIONS ADDED	ERB	03.18

No.	REVISION	DRAWN	DATE
E	GENERAL UPDATES	ERB	12.17
D	OHB RAISED 500mm	ERB	08.17
C	UPDATED LAYOUT AFTER SITE MEASURE	ERB	08.17
B	JOB No WNS E1724 NOW 2029. ADDITIONAL NOTATION ADDED	ERB	08.17
A	FOR DISCUSSION ONLY	ERB	01.17

SCALE	1:100
SCALE	1:100
DATE OF LAST EDIT	24.01.2017

CMQ Engineering Pty Ltd.
CONCRETE BATCHING PLANT
 WSC. PENRITH
 PROPOSED ADDITIONAL OVERHEAD BIN

DRAWING No. **A1**
2029-0002



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WSC - PENRITH
SITE FOUNDATION LAYOUT

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