

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA18/1177
Proposed development:	Loading Dock Compactor & Associated Noise Wall
Property address:	122 Station Street, PENRITH NSW 2750
Property description:	Lot 1 DP 715198
Date received:	27 November 2018
Assessing officer	Sufyan Nguyen
Zoning:	Zone B4 Mixed Use - LEP 2010
Class of building:	Class 10b
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for the installation of a loading dock compactor and associated noise wall at Kmart, Penrith in the Nepean Village (122 Station Street, Penrith). The subject site is zoned B4 Mixed Use under the *Penrith Local Environmental Plan 2010* and the development proposal is permissible with Council consent.

The key issues identified and addressed as part of the assessment of the proposal were in regard to the following matters:

- Potential noise and air pollution impacts, and
- Proposed hours of operation, frequency and types of compacting materials.

The application was requested to submit a noise impact assessment report and additional information regarding the proposed use on the 28 January 2019. In this regard, further correspondence has been subsequently received by Council to address these matters. The amended information received is considered to have appropriately resolved outstanding matters raised.

The application has been notified to nearby and adjoining properties and publicly exhibited for a period of 14 days. No public submissions were received in response.

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

Site & Surrounds

The subject site known as the Nepean Village shopping centre, which has a street address of 122 Station Street, Penrith and is legally described as Lot 1, DP 715198. The site has a land area of 5.169 ha, is irregular in shape and is bounded by Reserve Street (north-eastern side), Woodriff Street (south-eastern side) and industrial buildings (south-western side). The subject premises is Kmart, Penrith and the development site is Kmart's external loading dock which is located along the south-eastern part of the building, fronting Woodriff Street.

The Nepean Village shopping centre accommodates a range of retail shops and several hundred car parking spaces. A range of land uses adjoin the site including Penrith Showground opposite the site along Station Street and business uses south-westwards. Behind the site to the south-east is residential housing and to the north-east is a mix of commercial and residential land uses.

The broader road network includes the intersection of Mulgoa Road and Jamison Road approximately 840m south-westwards.

Proposal

The applicant seeks development consent for the installation of a waste compactor and chute in the loading dock area at Kmart, Penrith in the Nepean Village.

The development proposal includes the following aspects:

- Installation of a waste compactor and chute along the north-eastern side of the existing loading dock,
- Installation of a noise barrier (fibre cement) wall, 9.5m length x 4.7m height, adjacent to the waste compactor and extending from the existing wall,
- Removal of an existing dock leveller, boom gate and fencing located in the north-east corner of the existing loading dock,
- Approximately 10m² of hardstand area to replace the above area,
- L-shaped concrete wall surrounding the hardstand area with a hole to access the waste compactor, and
- Modifications to an existing double roller door to convert to a single roller door.

The accompanying Acoustic Report has identified that the proposed compactor will operate 7am to 6pm, Monday to Saturday and 8am to 6pm Sundays and Public Holidays.

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 4.15 - Evaluation

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

Section 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 proposal against relevant criteria within *Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997)* and the proposal 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
Clause 2.3 Zone objectives	Complies
Clause 2.7 Demolition requires development consent	Complies
Clause 4.3 Height of buildings	Complies
Clause 4.4 Floor Space Ratio	Complies
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.2 Flood planning	Complies
Clause 7.8 Active street frontages	Complies - See discussion
Clause 8.1 Application of Part	Complies

Clause 5.10 Heritage conservation

It is noted three heritage items (Kentucky Villa, Victorian House and Federation Cottage) are located in proximity to the subject premises. However, given the minor works involved and the nature of the proposal, there will be no significant impacts on heritage conservation.

Clause 7.8 Active street frontages

It is noted that a part of the north-western boundary of the subject site is identified as an 'Active Street Frontage'. However, the development site is located at the south-eastern part of the building and therefore this clause is not applicable to the development proposal.

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

There are no draft environmental planning instruments applying to the proposed development.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	N/A
E11 Penrith	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 the proposed development.

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

The relevant prescribed conditions of the Regulations, such as the requirement for compliance with the Building Code of Australia and fire safety requirements, will be imposed as conditions of consent where applicable. Subject to the recommended conditions of consent, the proposed development complies with the requirements of the *Environmental Planning and Assessment Regulation 2000*.

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

Under Section 4.15 of the Act, consideration must be given to the likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.

In this regard, the additional noise barrier wall is of a minor scale and is considered to be compatible with the existing wall, ensuring that there will be adverse impacts on the streetscape. In terms of potential noise impacts, the submitted acoustic report demonstrates that the noise criteria is compliant with the Noise Policy for Industry 2017 and that the hours of operation are between 7am to 6pm, Monday to Saturday, and 8am to 6pm Sundays and Public Holidays, which is deemed acceptable in relation to the surrounding residential area. It is also noted that the acoustic report was reviewed by Council's Environmental Officers and considered acceptable in this instance.

Therefore, it is not considered likely that the development proposal will result in any significant impacts on the surrounding natural or built environments, subject to construction of the noise wall and the recommended conditions of consent. In terms of socio-economic impacts, the proposal is unlikely to significantly impact on adjoining or surrounding property values or the local community given that predicted noise levels are compliant.

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

The development proposal is ancillary to Kmart and is therefore a permissible land use in the B4 Mixed Use zone. The site has existing connections to services and suitable access. Further, predicted noise criteria is in accordance with Noise Policy for Industry 2017 which ensures that there will be minimal impacts on the amenity of adjoining residents. In addition, it is noted that the subject site is affected by overland flow flooding, however the minor additions to the existing building and nature of the commercial use will be of minimal risk to human life. The site is therefore considered to be suitable for the development.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Appendix F4 - Notification and Advertising of the *Penrith Development Control Plan 2014*, the proposed development was notified to nearby and adjoining properties and publicly exhibited. Council notified 121 properties in the immediate and surrounding area. The proposal was exhibited between the 3 December to 17 December 2018. No public submissions were received in response.

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
Environmental - Environmental management	No objections - subject to conditions

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

Given the nature and scale of the development proposal, in addition to the proposal being compliant with the applicable development controls in addition to the provision of a supporting acoustic report identifying that operational noise from the proposed compactor is predicted to comply with the applicable noise criteria with the proposed 4.7m high fibre cement wall installed, the health and safety of the public will not be adversely affected and the development will not generate any significant issues of public interest.

Section 94 - Developer Contributions Plans

Development contribution plans are not applicable to the development proposal as the additional loading deck area is not considered to be included as gross floor area for the associated Kmart retail premises.

Conclusion

In assessing this proposal against the relevant environmental planning policies, being *Penrith Local Environmental Plan 2010*, *Penrith Development Control Plan 2014* and *Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No. 2—1997)*, the proposal satisfies the aims, objectives and provisions of these policies. The proposal does not contravene any key development controls and is unlikely to have any significant impacts on the natural, social or economic environments. The applicant is considered to have appropriately address potential noise and air pollution impacts. The site is suitable for the development and the proposal is in the public interest. Therefore, the application is worthy of support and is recommended for approval subject to conditions.

Recommendation

That DA18/1177 for the installation of a waste compactor and the extension of a loading dock area at Kmart, Penrith in the Nepean Village (122 Station Street, Penrith) be approved subject to the attached conditions.

CONDITIONS

General

1 A001

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

Drawing Title	Prepared By	Job No.	Drawing No.	Dated	Revision
Site Plan	RBV Design & Construction	2018-013	A1000	2018.09.19	P1
Ground Floor Plan	RBV Design & Construction	2018-013	A2000	2018.09.19	P1
Elevation	RBV Design & Construction	2018-013	A3000	2018.09.19	P1

Documents

- DA Noise Assessment for Proposed Compactor prepared by Renzo Tonin & Associates, Doc reference: TK617-01F02 Noise Assessment (r1), Revision 2, dated 25.02.2019.
- 2 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)
The development shall not be used or occupied until an Occupation Certificate has been issued.
 - 3 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)
The approved operating hours of the waste compactor are from 7am to 6pm, Monday to Saturday, and 8am to 6pm Sundays and Public Holidays
 - 4 [A032 - Goods in buildings](#)
All materials and goods associated with the use shall be contained within the loading dock area at all times.
 - 5 [A039 - Graffiti](#)
The finishes of all structures and the building are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
 - 6 [A046 - Obtain Construction Certificate before commencement of works](#)
A **Construction Certificate** shall be obtained prior to commencement of any building works.
 - 7 [A Special - Compactor Use Rights](#)
The loading dock compactor is to be only used directly in conjunction with the existing Kmart back of house area or future tenancy occupying the same location.
 - 8 [A Special - Complaints relating to noise](#)
In the event that Council receives a complaint regarding excessive noise associated with the waste compactor, the person(s) in control of the premises shall at their own cost arrange for an acoustic investigation to be carried out (by a suitably qualified person) and provide a report specifying proposed methods for control of noise emanating from the premises.
 - 9 [A Special - External Finishes](#)
All works associated with the new noise barrier wall are to be provided in a rendered blockwork and be painted to match the existing precast walls. This work is to be inspected by the Certifying Authority **prior to issue of any Occupation Certificate.**

Demolition

10 [B002 - AS FOR DEMOLITION AND DISPOSAL TO APPROVED LANDFILL SITE](#)

All demolition works are to be conducted in accordance with the provisions of AS 2601-1991 "The Demolition of Structures". **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

All demolition and excavated material shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location(s) of all excavated material from the development site shall be provided to the Principal Certifying Authority **prior to commencement of demolition.**

11 [B003 - ASBESTOS](#)

You should read Council's Fact Sheet titled "Handling and Disposal of Fibrous Cement Products" **before any demolition works commence on-site.**

Prior to commencement of demolition works on-site, a portaloo with appropriate washing facilities shall be located on the site and the Principal Certifying Authority is to be satisfied that:

- Measures are in place so as to comply with the WorkCover Authority's "Short Guide to Working with Asbestos Cement" and
- The person employed to undertake the works is a licensed asbestos removal contractor and is holder of a current WorkCover Asbestos Licence.

Any demolition works involving the removal of all asbestos shall only be carried out by a licensed asbestos removal contractor who has a current WorkCover Asbestos Licence.

All asbestos laden waste, including asbestos cement flat and corrugated sheeting must be disposed of at a tipping facility licensed by the Environment Protection Authority to receive asbestos wastes.

12 [B004 - Dust](#)

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

13 [B005 - Mud/Soil](#)

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

14 [B006 - Hours of work](#)

Demolition and construction works will 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 demolition work is permitted on Sundays and Public Holidays.

In the event that the demolition or construction relates to works inside the building and do not involve external walls or the roof, and do not involve the use of equipment that emits noise then the demolition works are not restricted to the hours stated above.

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

Environmental Matters

15 [D001 - Implement approved sediment& erosion control measures](#)

Erosion and sediment control measures shall be installed **prior to the commencement of works on-site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

16 [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.

17 **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 a waste management plan in accordance with C5.1 Waste Management Plans of the *Penrith Development Control Plan 2014*, as approved by the Certifying Authority **prior to the issue of a Construction Certificate**.

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.

18 **D013 - Approved noise level 1**

Noise levels from the waste compactor shall not exceed the relevant noise criteria detailed in DA Noise Assessment for Proposed Compactor Report prepared by Renzo Tonin & Associates, Doc Reference: TK617-01F02 Noise Assessment (r1), Revision 1, dated 18-01-2019. The recommendations provided in the above-mentioned acoustic report shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application. A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.

The provisions of the *Protection of the Environment Operations Act 1997* apply to the development, in terms of regulating offensive noise.

Should any "unexpected finding" occur during site excavation and earthworks including, but not limited to, the identification/finding of contaminated soils, buried building materials, asbestos, odour and/or staining, works area to cease immediately and Penrith City Council is to be notified. Any such "unexpected soils" shall be addressed by an appropriately qualified environmental consultant.

BCA Issues

19 **E001 - BCA compliance**

All aspects of the 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

20 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-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 on-site, 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.

21 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) 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.

Certification

22 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 6.6 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 6.6 of the *Environmental Planning and Assessment Act 1979*.

23 [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 development.

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

C12 Noise and Vibration

C12.4. Industrial and Commercial Development

The development proposal initially raised concerns regarding potential noise impacts on the adjoining residents located opposite the development site on Woodriff Street. The submitted statement of environmental effects failed to provide sufficient details of the proposed waste compactor, in terms of its predicted noise levels, hours of operation frequency of use and the expected reduction of noise levels as a result of the proposed noise barrier wall.

In this regard and following its request, an acoustic report was submitted and reviewed by Council's Environmental Management Officer. In general, the additional information satisfies the noise criteria guidelines stipulated in the Noise Policy for Industry 2017 and therefore is not considered to result in any amenity impacts on the adjoining residents subject to the provision of appropriate conditions with any determination granted.

E11 Penrith

E11.2 Building Form

The proposed waste compactor will be located behind the new noise barrier wall identified on the architectural plans and consequently out of street view. The transition from the higher existing wall to the new lower noise barrier wall reduces the overall bulk of the noise barrier wall. Further, the rendered external finish reflects the existing wall and therefore the overall design is considered to be appropriate and in keeping with the current back of house operation of the Kmart store.

E11.4.3 Site Facilities and Services

9) Loading/Unloading Areas

The proposed waste compactor and chute is designed to be wholly contained within the existing loading dock area and includes the installation of a noise barrier wall, being an extension of the existing adjacent wall. Further, the loading dock area provides sufficient vehicle access and vehicle circulation for the loading/unloading of waste collection with the location of the compactor not considered to impede upon existing vehicular movements to and from the dock.