

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA13/0655.01
Proposed development:	Section 4.55(2) Modification to Relocate Part of Buried Landfill Gas Pipeline
Property address:	0 Sarah Andrews Close, ERSKINE PARK NSW 2759 Quarry Road, ERSKINE PARK NSW 2759 Quarry Road, ERSKINE PARK NSW 2759 2 - 18 Aldington Road, KEMPS CREEK NSW 2178 650 e Mamre Road, KEMPS CREEK NSW 2178
Property description:	Lot B DP 154739 Lot 10 DP 229784 Lot 12 DP 229784 Lot 1 DP 84578 Lot 6 DP 1124329 Lot 103 DP 1143935 Lot 11 DP 1178389 Lot 4 DP 1094504
Date received:	1 May 2020
Assessing officer	Wendy Connell
Zoning:	SEPP - (WSEA) 2009 - ZONES IN1 + E2 SP2 Infrastructure - Water Supply System- LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a Section 4.55(2) modification application for the realignment of the buried gas pipeline at the Erskine Park Landfill site at Quarry Road, Erskine Park.

The subject site is zoned part E2 Environmental Conservation and IN1 General Industrial under State Environmental Planning Policy (Western Sydney Employment Land) 2009. The use is permissible by virtue of Clause 13 Additional Permitted Uses and Schedule 1.

The modification application was referred to the NSW Environmental Protection Authority (EPA) under the Protection of the Environment Operations Act 1997, as the site currently operates under an EPA Licence. The EPA advised in its letter dated 2 June 2020 that there will be no significant environmental impacts caused or increased by the pipeline realignment. The existing General Terms of Approval remain.

An assessment under Section 4.55(2) and Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval.

Site & Surrounds

The Cleanaway Erskine Park landfill site is located within Erskine Business Park. The subject site is legally described as Lot 4 in DP 1094504 and Lot 103 in DP 1094504. The subject site contains an existing waste management facility and operates under an Environmental Protection Licence (Licence No. 4865) issued by the NSW Environmental Protection Authority (EPA).

To the north are the residential suburbs of Erskine Park and St Clair, to the south is the rural area of Kemps Creek. Access to the site is via an access road off Quarry Road. Erskine Business Park is characterised by large scale industrial development.

The landfill was originally granted consent in 1992 (DA163/92), and permitted the rehabilitation of the former quarry via the disposal of non-putrescible waste materials, site rehabilitation and cessation of the landfill. Subsequent modifications to revise landforms were also granted.

In July 2014, Council granted consent to construct and operate a pipeline measuring 4.7km from Erskine Park Landfill to a brick manufacturing plant owned and operated by Austral Bricks in Horsely Park. This pipeline transfers the landfill gas to fire kilns at the brick manufacturing plant.

Proposal

The proposal is to relocate 800 metres of the 4.7 kilometre gas pipeline that runs from the Erskine Park Landfill site to a nearby brick manufacturing plant. The existing pipeline traverses from the landfill gas compression plant adjacent to the western boundary of the site along the western and southern edges for the landfill within Lot 4 and then within an easement through Lot 103. The proposed relocation is limited to 800m of the gas pipeline contained within the landfill site, being Lot 4 in DP 1094504 and a small section within the adjoining Lot 103 in DP 1143935. Both sites are part of Enviroguard's EPA licence to operate the landfill (EPL 4865). The proposal is for the relocated section of the gas pipeline to traverse from the landfill gas compression plant adjacent to the western boundary of the site around the northern and eastern edges of the landfill within Lot 104 in DP 1094504. It then extends south into the adjoining Lot 103 DP 1143935 within the existing easement for a short distance before connecting in to the existing pipeline.

This relocation is in response to proposed airspace expansion works at the landfill site, which is currently under assessment through DA20/0189. The relocation of the pipeline will enable continued access for maintenance and operation purposes.

As per the submitted Statement of Environmental Effects, the redundant pipeline is to be removed and related trench areas backfilled and the land rehabilitated. While the pipeline is being realigned, the site's flaring system will manage gas emissions from the landfill operations.

Finally, it should be noted that as part of the subject application, a modification is to be made to Condition 15 of the original development consent to rectify typographical errors and ensure the condition intent is clear.

Plans that apply

- Development Control Plan 2014
- State Environmental Planning Policy (Western Sydney Employment Area) 2009
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

• **Section 4.55(2) - Other modifications**

The modified development has been assessed in accordance with the matters for consideration under Sections 4.15 and 4.55(2) of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following assessment has been made:

- The modified development is substantially the same as in the original approval.
- The proposed modification will have minimal environmental impacts.

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

State Environmental Planning Policy (Western Sydney Employment Area) 2009

The subject site is zoned as IN1 (General Industrial) and E2 (Environmental Conservation) under the State Environmental Planning Policy (Western Sydney Employment Area) 2009. The majority of the site is zoned E2, with a small portion in the north-west corner of Lot 4 zoned IN1.

The objectives of the IN1 zone are as follows:

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

The objectives of the E2 zone are as follows:

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

Under Clause 13 Additional Permitted Uses of the State Environmental Planning Policy (Western Sydney Employment Land) 2009 and Schedule 1, a gas pipe line is permissible with Council's consent in the E2 zoned land, being Lot 104 in DP 1094504 and Lot 103 in DP 1143935. The proposed amendment will be undertaken in a manner that minimises environmental harm and therefore the proposal complies with the above objectives.

State Environmental Planning Policy No 55—Remediation of Land

In consideration of SEPP 55, a Preliminary Site Investigation was submitted as a part of the associated application under DA20/0198. This investigation confirmed that the site is suitable for the continued use as a waste management facility. However, given the disturbance to soils during the trenching works proposed, it is considered appropriate to require an Unexpected Finds Protocol (UFP) to be prepared and implemented. A condition has been recommended to address this aspect.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the modified proposal against the relevant criteria within Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2 – 1997). The proposal is not expected to have any adverse cumulative impacts on the Hawkesbury-Nepean River and therefore the proposal is satisfactory.

Standard conditions for the provision and maintenance of erosion and sediment control measures is recommended to minimise the likely impact of runoff from the site associated with works.

Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
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
E6 Erskine Business Park controls	Complies

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

The modification application was notified to adjoining and surrounding landowners in accordance with Penrith Development Control Plan 2014.

There are no other requirements applying to the proposed development that are mandated by the Regulations.

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

The proposed modification will result in minimal land disturbance only and given the distance from any sensitive receptors, the proposal is expected to have minimal social, economic and environmental impacts.

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

The site has previously been assessed to be suitable for the development, and this remains unchanged by the proposed realignment of the gas pipeline.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining landowners.

The application was on exhibition between 18 May and 1 June 2020. Council has received no submissions in response.

Referrals

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

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

Section 4.15(1)(e)The public interest

The proposal is in the public interest as it provides for the orderly and economic use of land for a purpose permissible under the applicable planning regime and generally in accordance with the prevailing planning controls. The modified proposal provides public benefit in terms of utilising a resource that would otherwise be disposed of via a gas flare. The continued use of the gas pipeline will also have a positive impact on the environment.

Conclusion

The modified development is permissible under the State Environmental Planning Policy (Western Sydney Employment Land) 2009. An assessment of the realigned gas pipeline concludes that negligible environmental effects will result given the minor nature of the proposal.

The Environment Protection Authority has been notified of the modification application and raises no objections, subject to the original General Terms of Approval.

The modification application is recommended for approval subject to several consent condition amendments.

Recommendation

That DA13/0655.01 for the realignment of the buried buried gas pipeline over Lot 103 in DP 1143935 and Lot 4 DP 1094504 in Erskine Park be approved subject to the following conditions:

General

1 A001

The development must be implemented substantially in accordance with the plans and commitments contained in the Statement of Environmental Effects for the Erskine Park Landfill Gas Project prepared by R.W. CORKERY & CO. PTY. LIMITED and dated June 2013, as amended by the Statement of Environmental Effects for the Erskine Park Landfill - Relocation of Landfill Gas Pipeline prepared by EME Advisory and dated May 2020.

As amended on 31 July 2020 in accordance with Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

2 A005 - APPROVED BODYS CONSENT (FOR INTEGRATED DAS)

The proponent shall comply with the General Terms of Approval (GTAs) of the Department of Primary Industries and the Environment Protection Authority. The GTAs are attached at the end of this development consent.

3 A Special (BLANK)

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

4 A Special (BLANK)

Dust suppression techniques are to be employed during all earth works or/and demolition to reduce any potential nuisances to surrounding properties.

5 A Special (BLANK)

Adjustments to any public utilities necessitated by the development are to be completed in accordance with the requirements of the relevant Authority. Any utility costs are to be at no cost to Council.

6 A Special (BLANK)

All trenches shall be backfilled and compacted to a minimum 100% standard compaction. Compaction Certificate shall be submitted to Council on completion of the works.

7 A Special (BLANK)

There is to be no construction equipment, trucks, etc to be parked at the end of Quarry Road's cul-de-sac so that there is no inconvenience caused to the traffic movement within the Quarry Road cul-de-sac area.

8 A Special (BLANK)

The Proponent shall:

- a) ensure that the Works do not damage the Sydney Catchment Authority's water supply infrastructure or reduce the safety of the operation of the infrastructure; and
- b) repair, or pay all reasonable costs associated with repairing Sydney Catchment Authority infrastructure that is damaged by the project;.

- The gas pipeline shall be encased or installed within a lining for the section where it crosses the land owned by the Sydney Catchment Authority.
- Where the gas pipeline crosses the land owned by the Sydney Catchment Authority, the alignment of the gas pipeline shall be at least 5 metres from any support structure for the Warragamba to Prospect Pipelines.
- Entry onto the Warragamba to Prospect Pipelines corridor shall not be undertaken without access consent from the Sydney Catchment Authority.
- All incidents or near misses that have the potential to impact on the Warragamba - Prospect Pipelines shall be reported to the Sydney Catchment Authority (SCA) on the SCA's Incident Notification Number 1800 061 069 (24 hour service) as a matter of urgency.
- If any of the fencing along the Sydney Catchment Authority's (SCA) Warragamba to Prospect Pipelines corridor is damaged or requires replacement, or upgrading, then this shall be done to the SCA's requirements and with all reasonable costs met by the proponent.
- The Sydney Catchment Authority (SCA) requires the proponent of any new structures proposing to cross SCA lands to establish an easement or enter into a licence agreement with SCA.

Heritage/Archaeological relics

9 **C003 - Uncovering relics**

If any archaeological relics are uncovered during the course of the work no further work shall be undertaken until further directed by Penrith City Council or the NSW Heritage Office.

The applicant is advised that depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the Heritage Act, 1977 may be required before any further work can be recommenced in that area of the site.

Environmental Matters

10 **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.

(Note: To obtain a copy of the publication, you should contact Landcom on (02) 98418600).

The approved sediment and erosion control measures are to be installed **prior to and maintained throughout the construction phase of the development until [the landscaping, and the land, that was subject to the works, have been stabilised and grass cover established]**. These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

11 **D006 - No filling without prior approval (Use always, except for bulk earthworks/ major fill operations)**

No fill material shall be imported to the site until such time as a Validation Certificate(with a copy of any report forming the basis for the validation) for the fill material has been submitted to, considered and approved by Council. The Validation Certificate shall:

- state the legal property description of the fill material source site,
- be prepared by an appropriately qualified person (as defined in Penrith Contaminated Land Development Control Plan) with consideration of all relevant guidelines (e.g. EPA, ANZECC, NH&MRC), standards, planning instruments and legislation,
- clearly indicate the legal property description of the fill material source site,
- provide details of the volume of fill material to be used in the filling operations,
- provide a classification of the fill material to be imported to the site in accordance with the Environment Protection Authority's "Environmental Guidelines: Assessment, Classification & Management of Non-Liquid Wastes" 1997, and
- (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.

{Note: Penrith Contaminated Land Development Control Plan defines an appropriately qualified person as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}.

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation works may be requested. In these circumstances the works shall be carried out prior to any further approved works.

12 **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.

13 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.

14 D Special BLANK

Should any "unexpected finds" 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 are to cease immediately and Penrith City Council is to be notified. Any such "unexpected finds" shall be addressed by an appropriately qualified person.

All remediation works within the Penrith Local Government Area are considered to be Category 1 works under State Environmental Planning Policy 55-Remediation of Land. Should any contamination be found during development works and should remediation works be required, development consent is to be sought from Penrith City Council before the remediation works commence.

{Note: An appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, ecotoxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance".}

BCA Issues

15 E Special (BLANK)

An easement shall be created on all lots subject to this consent that enables the construction of the pipeline as well as ensuring its long term maintenance. The easement shall be created and registered on the various Titles, and evidence submitted to Council prior to the commencement of any construction works for the gas pipeline.

As amended on 31 July 2020 in accordance with Section 4.55(2) of the Environmental Planning and Assessment Act 1979.

Construction

16 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 is 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.

17 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.

18 H041 - Hours of work (other devt)

Construction works or subdivision works that are carried out in accordance with 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.

Landscaping

19 L008 - Tree Preservation Order

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

Certification

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

Prior to the commissioning of the pipeline, the applicant is to provide a suitable certification/documentary evidence prepared by a qualified person to Council indicating that all associated works with respect to gas pipeline have been carried out in accordance with the engineering plans and specification and in accordance with the development consent and the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation.

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.