

# PENRITH CITY COUNCIL

## MAJOR ASSESSMENT REPORT

<b>Application number:</b>	DA19/0646
<b>Proposed development:</b>	Alterations & Additions to Existing Industrial Building & Car Parking, Landscaping & Hardstand Area Works
<b>Property address:</b>	134 - 140 Old Bathurst Road, EMU PLAINS NSW 2750
<b>Property description:</b>	Lot 31 DP 1005063
<b>Date received:</b>	20 September 2019
<b>Assessing officer</b>	Jake Bentley
<b>Zoning:</b>	IN1 General Industrial - LEP 2010
<b>Class of building:</b>	Class 8
<b>Recommendations:</b>	Approve

### Executive Summary

Council is in receipt of a development application for alterations and additions to an existing industrial building used for the production of polymer concrete products at 134-140 Old Bathurst Road, Emu Plains. The proposed development is considered to be related to the existing *general industry* operation on-site which is permissible with consent under the site's IN1 General Industrial zoning under the provisions of Penrith Local Environmental Plan (PLEP) 2010.

The following issues were raised and addressed during the assessment of the proposal:

- Whether the proposal required determination via the Penrith Local Planning Panel given the proposed variation to the building height development standard,
- Further information to support the applicant's Clause 4.6 variation request,
- Noise impacts,
- Parking,
- Stormwater capture and disposal,
- Tree impacts, and
- Transportation of materials to the proposed roof top mixing plant

In accordance with Clause 4.4 of Appendix F4 in the Penrith Development Control Plan (DCP) 2014 the application was notified to surrounding property owners and exhibited between 26 September and 10 October, 2019. One submission was received in response.

It is noted that the proposal includes a variation to the building height development standard of 9.5%. In this regard, the proposal does not require determination by the Local Planning Panel in accordance with the Penrith Local Planning Panels Direction issued by the Minister for Planning dated 23/2/2018 considering the proposed variation to the development standard does not exceed 10%.

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

## Site & Surrounds

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The subject site is an irregular shaped allotment located on the southern side of Old Bathurst Road with an overall size of 3.776 hectares. The site is relatively flat with a gentle slope to the east, a frontage to Old Bathurst Road of 184.57m, a southern boundary of 233.16m and an eastern boundary of 180.715m. The site is identified as being impacted by a 2m wide easement to drain sewage traversing the front of the site, a 2.5m wide easement to drain water along the southern boundary, scenic and landscape values and flood related planning controls.

The site is currently occupied by a centrally located industrial building with a large concreted external storage area to the rear of the site and a generous front setback occupied by mature trees. It is noted that a concrete channel watercourse is located on the adjoining eastern site in which stormwater is discharged from the industrial building.

The surrounding eastern, southern and western sites are zoned IN1 under PLEP 2010 and are occupied by industrial uses with the exception of restaurants and a service station to the west. The sites to the north are zoned IN1, IN2 Light Industrial and SP2 Correctional Centre under PLEP 2010 and are occupied by a sub-station, vacant land and paddocks associated with the Emu Plains Correctional Centre. It is noted that residentially zoned properties are located roughly 120m north-west of the site.

### Past Approvals

DA13/69 - Factory, paper processing

DA282/79 - Warehouse and office

DA501/89 - Extension to building, amenities, facilities, toilets and paper testing laboratory

DA01/3268 - 8 lot strata subdivision

DA04/1060 - Production of polymer concrete products/internal alterations and refurbishment of existing building

DA07/1636 - Concrete driveway (being the hardstand area to the south of the building)

It is noted that DA19/0647 was lodged simultaneously with the subject development application. DA19/0647 was a modification application to DA04/1060 which approved amendments to Conditions 7 & 8 relating to hours of operation and external storage of materials and goods.

## Proposal

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The proposal includes the following alterations and additions to the existing development used for the purpose of producing polymer concrete products:

- New rooftop mixing plant with associated enclosure and platform measuring 5.5m in length, 4.38m in height and 4m in width. The base of the enclosure will be treated with 'surfmist' coloured colourbond steel cladding.
- Access stairs from the rear located silos to the roof.
- Addition of secondary roof top platform (4m in length and 3.5m in width), roof top walkway and roof top pipework.
- Additional 22 car parking spaces (1 accessible space) with associated landscaping to the west of the existing car parking area (proposed car park requires 2 trees to be removed).
- Legitimation of 285m<sup>2</sup> existing portion of bitumen paving.
- A new 1008m<sup>2</sup> hardstand area for outdoor storage in the south-west of the site.
- Associated drainage works including a bio-retention basin with an above ground detention area and earth mound.
- A pedestrian pathway connecting the new car park to the building entrance and a pedestrian crossing within the existing car park which requires the removal of two parking spaces.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 33—Hazardous and Offensive Development
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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- **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 4.46 - Integrated development**

There were initial concerns that the proposal triggered Integrated Development provisions as stipulated within Section 4.46 What is "integrated development"? of the Environmental Planning and Assessment Act, 1979, however, these concerns have been addressed as follows.

The proposal seeks to discharge overflow from the bio-retention basin into the adjoining concrete channel watercourse as well as undertake drainage infrastructure works within 40m of the watercourse contained within the concrete channel. In this regard, it was thought that a controlled activity approval under the provisions of the Water Management Act 2000 would be required for these works.

Clause 42 Controlled activities - persons other than public authorities of the Water Management (General) Regulation 2018 provides exemptions from the requirement for controlled activity approvals for certain works. These exemptions include 'any activity carried out on waterfront land relating to a river where the channel of the river is fully concrete lined or is a fully enclosed pipe channel.' Considering that the watercourse in question has a concrete channel, the proposed works are not considered to require a controlled activity approval.

There were initial concerns that an environmental protection licence to carry out concrete works (scheduled activity) may be required given the proposed roof top mixing plant will be utilised to duplicate the polymer concrete product production line. However, the applicant has explained that the proposal produces polymer concrete products using a synthetic binding agent instead of a cement product. In this regard, Council's Environmental Management Team have indicated that an environmental protection licence is not required for the proposal.

It is also noted that the original approval (DA04/1060) for the current polymer concrete production use on-site did not trigger a requirement for an environmental protection licence.

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

## **State Environmental Planning Policy (Infrastructure) 2007**

### **Clause 45 Determination of development applications - other development**

It is noted that the proposed works are not carried out immediately adjacent to an electricity substation, therefore written notice of the proposal to the electricity supply authority for the area is not required. Although a substation is located within close proximity to the site at Lot 10 DP 865951, this lot was notified of the proposal during Council's neighbour notification process as per Clause 4.4 of Appendix F4 in the Penrith Development Control Plan (DCP) 2014.

A response from Endeavor Energy was received raising no objections to the proposal.

### **Clause 104 Traffic-generating development**

The proposed development relates to an existing general industry use and the site is over 5,000m<sup>2</sup> with a frontage to a classified road. In this regard, the proposal is of a relevant size/capacity and therefore a written notice of the proposal to the Roads and Maritime Services (RMS) is required. The RMS were provided written notice of the proposal on 22 October, 2019 and provided a response dated 25 November, 2019 raising no objection but provided comments for Council's consideration. These comments are provided below.

*"Due to the likely increase in traffic as a result of the development, a detailed traffic study of the proposed development should be undertaken. Traffic Modelling and analysis for the application should consider the traffic impact of the development on surrounding roads and intersections in the context of any other known planning proposals and developments in the precinct and surrounds, and the need for upgrades or improvement works including consideration to timing and funding.*

*Due to the proximity to Emu Plains Station Council may wish to give consideration to reducing the number of parking spaces and promoting non-car travel modes (including public transport use, walking and cycling). This will entail an assessment of the accessibility of the development site by public transport.*

*Council are to be satisfied that the swept path of the longest vehicle (including garbage trucks, building maintenance vehicles and removalists) entering and exiting the subject site, as well as manoeuvrability through the site, are in accordance with AUSTROADS."*

Council's Traffic Engineering Department have considered the RMS's comments and provided the below response.

*"The RMS recommend a detailed traffic study be undertaken, however, the information provided in the Statement of Environmental Effects is sufficient. The application only proposes a 20% increase to daily vehicle movements (increase of 2 truck movements and 30 car movements over a day). This is not considered to be significant given the industrial context and capacity of Old Bathurst Road.*

*Furthermore, the RMS suggest a reduction in the number of parking spaces to encourage public transport, however, as evident in aerial imagery, this will likely result in vehicles parking on the landscaped/non-designated areas."*

It is also noted that swept paths have been provided which have been determined as being satisfactory. In this regard, the proposal is considered satisfactory.

## **State Environmental Planning Policy No 33—Hazardous and Offensive Development**

Council's Environmental Management Team provided the below response relating to the applicability of State Environmental Planning Policy No. 33 - Hazardous and Offensive Development (SEPP 33).

*"A review of the original consent identified that the business activities do not trigger the requirements for a preliminary hazard analysis (PHA) in accordance with the requirements of SEPP 33. Discussions with the applicant identified the amount of hazardous materials stored will not change and the number of deliveries will not change. Therefore, SEPP 33 is not triggered for this development application."*

## State Environmental Planning Policy No 55—Remediation of Land

Under the provisions of Clause 7 Contamination and remediation to be considered in determining development applications, a consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

Historical aerial views of the site and a site inspection do not indicate that any contaminating activities have occurred on-site with the exception of unknown fill material disposed of on-site between 6/11/2016 and 11/2/2017 to the south of the eastern most workshop. It is noted that this area is not subject to the proposed works therefore, this matter was notified to Council's Compliance Team on 5 November, 2019 and investigated accordingly (DC19/0739).

In light of the above, the site is considered suitable for the proposal.

## Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The proposal has been considered against the relevant criteria within Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 - 1997) and is considered to be 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 7.1 Earthworks	Complies - See discussion
Clause 7.2 Flood planning	Complies
Clause 7.4 Sustainable development	Complies
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies

### Clause 2.3 Permissibility

The proposal consists of the following components:

- A new rooftop mixing plant in order to duplicate the production line of polymer concrete products
- Inclusion of roof top walkway, secondary platform, piping and access stairs to service the proposed mixing plant
- Extension to the existing car park as well as pedestrian pathways
- Additional hardstand for outdoor storage

The Statement of Environmental Effects accompanying the proposal has detailed that no change to the land use will occur as a result of the proposed works noting that the development will continue to undertake the production of polymer concrete products. In this regard, the proposed works are considered to be related to the existing 'general industry' activity on-site which is permitted with consent under the site's IN1 General Industrial zoning under PLEP 2010.

### Clause 4.3 Height of buildings

The PLEP 2010 Height of Buildings Map shows that a 12m maximum height of building standard applies to the site. The submitted Survey Plans show that the existing ground level on the western side of the building adjacent to the proposed rooftop plant is 25.58m AHD. The proposed rooftop plant has a maximum height of 38.72m AHD therefore, the proposed height of building is 13.14m. In this regard, the proposed building height is not compliant with the 12m maximum building height development standard and is seeking a variation of 9.5%.

In response the applicant has applied for a variation to the building height development standard under the provisions of Clause 4.6 Exceptions to development standards of PLEP 2010 which is discussed later within this report.

The additional roof top platform provides for a height of 2m on the roof and an overall height of 11m. It is noted that the proposed roof top walkway, pipes and stairs do not project above the additional roof platform. In this regard, the roof top features excluding the mixing plant are below the maximum building height standard of 12m for the site.

#### **Clause 4.6 Exceptions to development standards**

As mentioned previously within this report, the proposal provides for a non-compliant building height under the provisions of Clause 4.3 Height of Buildings within PLEP 2010. In response to the non compliance the applicant is seeking to vary the building height development standard via the provisions of Clause 4.6 Exceptions to development standards of PLEP 2010. An assessment of the proposal against Clause 4.6 has been conducted below and overall the proposal has been found to be satisfactory in this regard.

*(1) The objectives of this clause are as follows—*

- (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.*

Response:

Noted.

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

Response:

Noted.

*(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.*

Response:

In *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118* the correct approach to determining a Clause 4.6 request was discussed. The referenced caselaw states "*the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b).*"

A review of the applicant's Clause 4.6 written request reveals the matters within both sub-clause (3)(a) and

(b) have been addressed.

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

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

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

(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.*

Response:

(a) (i) The applicant's written request has been reviewed and is considered to have satisfactorily addressed the matters within sub-clause (3) as discussed below.

(3) (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

The caselaw *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118* states "*The first and 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.*"

The applicant's written request has provided for the following discussion against the objectives of Clause 4.3 within PLEP 2010 being the development standard from which a variation is sought.

**"(1) The objectives of this clause 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,**

*The desired future character of the area provides for development with a 12m building height. The development provides a building that sits well below that building height. Just one small section of roof plant is proposed to be located above that maximum height and as such has limited potential to adversely impact upon the existing or future character of the locality.*

*The proposed variation of the standard therefore does not affect achievement or consistency 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,**

*The development is located in an area that has the potential to be viewed from the Blue Mountains escarpment, however the non-complying building height element has a built volume of just 96.36m<sup>3</sup> and will be located centrally within a building footprint of approx. 5000m<sup>2</sup>. Accordingly, the new roof plant will be illegible from the escarpment area.*

*Similarly, the roof plant will cast a very small shadow that will be contained entirely within the existing roof space area and therefore cause no loss of solar access to adjacent development or public domain areas. The proposed variation of the standard therefore does not affect achievement or consistency with this objective.*

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

*The site is not located within any proximity to heritage items, and a detailed visual impact assessment undertaken as part of the accompanying Statement of Environmental Effects (SEE) has demonstrated that the development will cause no adverse visual impact from the identified areas of scenic landscape importance. The proposed variation of the standard therefore does not affect achievement or consistency 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.**

*The development generally achieves the building height, other than a very small section of roof plant. This non-complying element is located centrally within the roof area which diminishes its potential to be viewed from the street or adjacent sites. Its limited scale also means that it will not contribute to perceivable bulk as viewed from the surrounding area and public domain. The development is also not located near different zoned lands or lands that have a lower building height standard therefore the minor non-compliance will not cause any disruption to any planned transition in height and density. The proposed variation of the standard therefore does not affect achievement or consistency with this objective."*

It is noted that the written request refers to the visual impact assessment of the proposal undertaken within the Statement of Environment Effects which concludes that no adverse impacts to identified scenic and landscape areas of importance are envisioned. The site is identified as having scenic and landscape values likely due to the proximity of the Western Railway Line, Old Bathurst Road and Emu Heights escarpment.

The commentary within the Statement of Environmental Effects and the accompanying images form the following opinions:

- Existing built forms and vegetation of the surrounds screen views of the site and rooftop plant from the Western Railway Line
- The larger front setback filled with vegetation on-site screens views of the proposal
- The distance of the site from the Emu Heights escarpment along with the large footprint of industrial buildings within the surrounding industrial precinct provide for the proposed rooftop volume without generating adverse visual impacts.

In light of the above, the applicant's written request is considered to have demonstrated that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

*(3) (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*The caselaw *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118* states "The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole."*

Section 16 of the applicant's amended Clause 4.6 variation request specifies that alternative locations on the site for the mixing plant have been investigated and it has been concluded that the proposed location generates the least impacts. The intention of the mixing plant is to duplicate the production line of polymer concrete products and in this regard, there is not sufficient space for the plant to be located at the ground floor. As a result the footprint of the building would be required to be increased resulting in the repositioning of silos and additional building mass which would provide for increased visibility of the built form.

The applicant has also stated that the non-complaint building height is a small portion of the roof area and is substantially setback from the road and the building line. As a result the capacity to perceive the additional height is limited.

In light of the above, the applicant's written request has demonstrated that their are sufficient environmental planning grounds to justify contravening the building height development standard.

(a) (ii) The written request states that compliance with the development standard is unreasonable and

unnecessary by demonstrating that the objectives of Clause 4.3 in the PLEP are being achieved notwithstanding the non-compliance. In this regard, the proposal is consistent with the objectives of the height of building standard.

The subject site is zoned IN1 General Industrial under the PLEP which provides the following objectives:

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

The proposed development will provide for the duplication of the production line providing employment opportunities and there are no adverse visual and noise impacts envisioned as a result of the proposal. The proposed car park extension will service existing employees and the increased volume generated by the proposal. In this regard, the proposal is considered to be consistent with the IN1 zone objectives.

The above demonstrates that the proposal is in the public interest because it is consistent with the objectives of Clause 4.3 and the IN1 zone.

(b) The planning circular titled Varying Development Standards (PS 18-003) dated 21 February, 2018 states that all consent authorities may assume the Secretary's concurrence under Clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plans) Order 2006 or any other provision of an environmental planning instrument of the same effect.

However, the Secretary's concurrence may not be assumed by a delegate of Council if; the development contravenes a numerical standard by greater than 10%, or the variation is to a non-numerical standard.

The proposal contravenes the building height development standard by 9.5% therefore, the Secretary's concurrence can be assumed and the application can be determined by a delegate of Council.

(5) *In deciding whether to grant concurrence, the Secretary must consider—*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Response:

As mentioned above the Secretary's concurrence has been assumed.

(6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

*Note. When this Plan was made it did not include Zone RU3 Forestry or Zone RU6 Transition.*

Response:

This sub-clause does not apply to the proposal.

*(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*

Response:

A record of Council's assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3) is provided within this report.

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following—*

*(a) a development standard for complying development,*

*(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

*(c) clause 5.4,*

*(ca) clause 6.1, 6.2, 6.6, 6.7, 6.16, 7.7, 7.17, 7.21, 7.24 or Part 9.*

Response:

This sub-clause does not apply to the proposal.

**Clause 7.1 Earthworks**

The proposal includes minor earthworks within the south-eastern section of the site associated with the new bio-retention and above ground on-site detention area. This area includes a 24.5m AHD high earth mound on the eastern side of the driveway for a length of 38m and a 24.5m AHD high HOB wall to the south of the driveway for a length of 32.6m. A review of the submitted Survey Plans shows that the earth mound includes 0.91m of fill at its highest point. It is noted that this is only a small section within the south-east corner of the mound and the remaining areas require less fill. The proposed HOB wall is 0.52m at its highest point.

The HOB wall and earth mound are setback 5.5m from the southern boundary and the existing swale between the HOB wall and southern property will be reinstated. It is noted that the proposed earth mound provides for a minuscule encroachment within the flood affected area of the site which has been reviewed by Council's Development Engineering Department and no concerns were raised.

In light of the above, the proposal is considered satisfactory.

**Clause 7.5 Protection of scenic character and landscape values**

The subject site is identified as having scenic and landscape values in accordance with the Scenic and Landscape Values Map within PLEP 2010. In this regard, Clause 7.5 Protection of scenic character and landscape values of PLEP 2010 applies and sub-clause (3) reads as follows:

*"(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."*

A review of the Scenic and Landscape Values Map indicates that the scenic and landscape values of the site are relative to the site's proximity to Old Bathurst Road, the Western Railway Line and the elevated Emu Heights escarpment.

The Statement of Environmental Effects accompanying the proposal states that the substantial and significantly landscaped front setback screens views of the proposed roof top works, outdoor storage area and the car park extension. The existing built forms and proposed landscaping to the west of the car park and storage area provide for minimal visual impacts and the site is substantially setback from the Western Railway Line.

The large built forms in the surrounding industrial precinct and the minimal projections of roof top equipment results in minimal visual impacts of the proposal from elevated locations such as the Emu Heights escarpment. Further to the above, the roof top equipment is located away from public places such as roads, the outdoor storage area is capped at 6m in height being well below the building height and the mature plantings along the eastern concrete lined watercourse screen views.

It is noted that the proposed roof top mixing plant is provided with a screen enclosure to the lower half consistent with the colour and material of the existing roof. In addition, the additional external storage area is a minor increase only considering the existing external storage area provided.

As a result of the above, the proposed development is not considered to generate any adverse visual impacts.

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

### ***Annual Update Amendment Planning Proposal***

It is noted that an Annual Update Amendment Planning Proposal is in the process of being prepared by Council. The Annual Update Amendment Planning Proposal has no relevance to the proposed development.

### ***Draft Environment SEPP***

The Draft Environment SEPP was exhibited from 31 October 2017 to 31 January 2018. This consolidated SEPP proposes to simplify the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property. Changes proposed include consolidating a total of seven existing SEPPs being:

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

It is noted that the amendments to Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 – 1997) do not impact the proposed development. In this regard, the proposal is not inconsistent with the provisions of this draft instrument.

### ***Draft Remediation of Land SEPP***

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

The proposed new land remediation SEPP will:

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

It is also proposed that it will transfer the requirements to consider contamination when rezoning land to a direction under Section 9.1 of the Environmental Planning and Assessment Act 1979. Whilst the proposed SEPP will retain the key operational framework of SEPP 55, it will adopt a more modern approach to the management of contaminated land. Noting the above, the draft SEPP will not alter or affect the findings in respect to contamination of the site.

## 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	Complies - see Appendix - Development Control Plan Compliance
C3 Water Management	Complies - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	Complies - see Appendix - Development Control Plan Compliance
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
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
D4.2. Building Height	Complies
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
D4.7. Fencing	N/A
D4.8 Lighting	Complies

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

As mentioned previously within this report, the proposal is not considered to be concrete works considering the proposal produces polymer concrete products using a synthetic binding agent instead of a cement product and the original approval for the production of these products at the premises was not designated development. In this regard, the proposal is not considered to be designated development under Schedule 3 Designated Development of the Environmental Planning and Assessment Regulation 2000.

The proposal has been referred to Council's Building Surveying Department which raised no objections to the proposal subject to recommended conditions of consent. In this regard, the proposal is considered to comply with the Building Code of Australia subject to recommended conditions of consent.

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

The development application has satisfactorily addressed impacts relating to visual prominence of outdoor storage and roof top equipment, parking, proximity of hardstand areas and pipe work to existing trees and noise generation as a result of the intensified operation. The application does not propose increased hours of operation to those already approved and the provision of outdoor storage for the use has been previously approved as part of the simultaneously lodged modification application. The applicant's Clause 4.6 variation request to contravene the building height development standard is well founded and the proposed method of stormwater disposal is suitable.

In light of the above, the proposal is considered to enhance an existing industrial operation without generating any adverse impacts on-site or to surrounding properties.

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

The location of the site within an industrial precinct is suitable for the proposal considering large building footprints occupy the area which minimises the visibility of the proposed small roof top structures. The existing setbacks restrict the visibility of proposed structures and the sparse nature of trees on-site allow for the proposed car park extensions without generating significant vegetation impacts. The existing built form on-site provides suitable vehicle manoeuvring to accommodate the intensified operation and the distance of sensitive receivers from the site is suitable considering anticipated noise generation.

In light of the above, and the findings of this assessment, the site is considered to be suitable for the proposal.

## Section 79C(1)(d) Any Submissions

### Community Consultation

In accordance with Clause 4.4 of Appendix F4 in the Penrith Development Control Plan (DCP) 2014 the application was notified to surrounding property owners and exhibited between 26 September and 10 October, 2019. One submission was received in response.

The submission received was from Endeavor Energy considering the Emu Plains Zone Substation is located to the north-west of the subject site and was a property notified during Council's neighbour notification of the application.

Endeavor Energy responded raising no objections to the proposal subject to recommendations and comments considering the proposed works are suitably distanced from Endeavour Energy's easement. The submission received from Endeavour Energy has been forwarded to the applicant as requested.

Correspondence has been issued to Endeavor Energy dated 5 March, 2020 stating how their submission was considered during the assessment of the application.

### 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 - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions

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

There are no issues of concern relating to the public interest envisioned as a result of the proposed development.

## **Section 94 - Developer Contributions Plans**

The proposal does not warrant any development contribution payments in accordance with the applicable contribution plans for the subject site.

## **Conclusion**

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In assessing the proposed development against the relevant environmental planning policies, being State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy No. 33 - Hazardous and Offensive Development, State Environmental Planning Policy No. 55 - Remediation of Land, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposal and there are no negative impacts envisioned as a result of the proposal. Therefore, the application is worthy of support, subject to recommended conditions of consent.

## **Recommendation**

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That DA19/0646 for alterations and additions to an existing industrial building including car parking, hardstand area, landscaping and drainage works at 134-140 Old Bathurst Road, Emu Plains be approved, subject to the attached conditions.

# CONDITIONS

## General

### 1 [A001 - Approved plans table](#)

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	Drawing No:	Revision	Date
<b>Architectural Drawings</b>				
Proposed New Works Site Plan	Foran Design	SK 110	06	6/2/2020
External Elevations	Foran Design	SK 111	05	6/12/2019
New Carpark Setout	Foran Design	SK 112	05	13/12/2019
Landscape Plan	Foran Design	SK 120	05	13/12/2019
<b>Stormwater Drainage Plans</b>				
Concept Drainage Design Cover Page	Majcon	C000	01	2/9/2019
External Hardstand Area Concept Drainage Plan 1 of 2	Majcon	C001	02	9/9/2019
External Hardstand Area Concept Drainage Plan 2 of 2	Majcon	C002	01	2/9/2019
External Hardstand Area OSD Volume	Majcon	C003	01	2/9/2019
New Bitumen Carpark Concept Drainage Plan 1 of 3 Grading Plan	Majcon	C004	01	2/9/2019
New Bitumen Carpark Concept Drainage Plan 2 of 3	Majcon	C005	01	2/9/2019
New Bitumen Carpark Concept Drainage Plan 3 of 3 New Carpark Catchment Plan	Majcon	C006	02	9/9/2019
New Bitumen Carpark Typical Sections	Majcon	C007	01	2/9/2019
Drainage and WSUD Typical Details 1 of 2	Majcon	C008	01	2/9/2019

Drainage and WSUD Typical Details 2 of 2	Majcon	C009	01	2/9/2019
External Hardstand Area Erosion Control Plan 1 of 2	Majcon	C010	01	2/9/2019
External Hardstand Area Erosion Control Plan 2 of 2	Majcon	C011	01	2/9/2019
New Bitumen Carpark Erosion Control Plan	Majcon	C012	02	9/9/2019
Erosion Control Typical Details	Majcon	C013	01	2/9/2019
External Hardstand Area Catchment Plan	Majcon	C014	01	2/9/2019

- Waste Management Plan, dated September, 2019.
- 2 [A019 - OCCUPATION CERTIFICATE \(ALWAYS APPLY\)](#)  
**The development shall not be used or occupied until an Occupation Certificate has been issued.**
  - 3 [A046 - Obtain Construction Certificate before commencement of works](#)  
A **Construction Certificate** shall be obtained prior to commencement of any building works.
  - 4 [A Special \(BLANK\)](#)  
**Prior to the issue of a Construction Certificate**, the stormwater plans shall be amended to be consistent with the approved car park extension layout.
  - 5 [A Special \(BLANK\)](#)  
The earth mound associated with the approved above ground detention area shall be suitably compacted to minimise run-off onto adjoining properties and to the nearby watercourse.
  - 6 [A Special \(BLANK\)](#)  
The outdoor storage of goods shall:
    - Not interfere with required vehicle access/egress routes,
    - Not exceed 6m in height,
    - Be conducted in a safe manner to not cause a hazard on-site and to nearby properties, and
    - Be provided with suitable lighting if subject to night time activity.
  - 7 [A Special \(BLANK\)](#)  
**Prior to the issue of an Occupation Certificate**, a lighting system is required to provide uniform lighting across the car park extension. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).
  - 8 [A Special BLANK](#)  
In accordance with the requirements of Clause 94 of the Environmental Planning and Assessment Regulation 2000, the following works are to be completed to upgrade the fire safety of the existing building:
    - (a) Upgrade the premises in accordance with the recommendations of the Building Code of Australia Report by Philip Chun BC NSW Pty Ltd (Report No. 19-213566\_ACO\_R01) dated 16 August, 2019.

## Demolition

9 **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**.

10 **B003 - ASBESTOS**

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

11 **B004 - Dust**

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

## **Environmental Matters**

12 **D005 - Mud/Soil**

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

13 **D007 - Cut and fill of land requiring Validation Certificate –limited to footprint**

Before any fill material is imported to site, a validation certificate issued by an appropriately qualified person is to be provided to the Principal Certifying Authority. The validation certificate must demonstrate that the fill material is free from contaminants and weeds, that it is suitable for its intended purpose and land use, and that it will not pose an unacceptable risk to human health or the environment.

If Penrith City Council is not the Principal Certifying Authority, a copy of the validation certificate is to be submitted to Council for their reference.

Note: Penrith Development Control Plan 2014 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."

14 **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 the areas are to be fully enclosed when the site is unattended.

15 **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.

16 **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.

In the event that Council receives noise concerns from the public, an acoustic assessment shall be conducted and the resulting report shall be provided to Council for review. The acoustic assessment is to be carried out in accordance with the Noise Policy for Industry (2017) and provide mitigation measures to suitably attenuate offensive noise.

17 **D029 - Manufacture use**

All manufacture and assembly associated with the use shall be conducted within the confines of the building at all times.

18 **D030 - Air handling system**

Any liquid discharge from the air handling system, resulting from operation, maintenance and/or cleaning operations, are to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.

19 **D031 - One stack system**

All gases, odours, fumes, steam, moisture and particulate matter generated by the use of the premises shall be collected into a one-stack system with a suitable filter system for discharge to the atmosphere. The quality of the discharges from the stack system shall comply with the requirements of the Protection of the Environment Operations Act 1997.

## **BCA Issues**

20 **E01A - BCA compliance for Class 2-9**

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

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

(b) formulating an alternative solution which:

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

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

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/statement for the building.

## **Utility Services**

21 **G004 - Integral Energy**

**Prior to the issue of a Construction Certificate**, a written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

## **Construction**

## 22 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 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.

## 23 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 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.

## 24 H041 - Hours of work (other devt)

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

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

## Engineering

25 [K205 - S68 Local Government Act – Stormwater drainage works CIVIL CONSTRUCTION IN LOTS](#)

**Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that an application under Section 68 of the Local Government Act, including payment of application and inspection fees, has been lodged with, and approved by Penrith City Council for provision of the stormwater drainage connection to Council's stormwater drainage channel.

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines, and best engineering practice.

Contact Penrith City Council's Development Engineering Department on 4732 7777 to obtain a formal fee proposal prior to lodgement and visit Penrith City Council's website for more information.

Note:

- All works associated with the Section 68 Local Government Act approval must be completed **prior to the issue of any Occupation Certificate**.

26 [K210 - Stormwater Management](#)

The stormwater management system shall be consistent with the plans lodged for development approval, prepared by Majcon, reference number C000, C002-C005, C007-C009, revision 01, dated 02/09/2019 and C001 and C006, revision 02, dated 09/09/2019 and Stormwater Management Report, prepared by Majcon, Job reference number 20190047, Revision 3, dated 28/12/2019.

Engineering plans and supporting calculations for the stormwater management systems are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate.

**Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage for Building Developments and Water Sensitive Urban Design (WSUD) policies.

27 [K222 - Access, Car Parking and Manoeuvring – General](#)

**Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS 2890.2, AS 2890.6 and Penrith Development Control Plan 2014.

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

**Prior to commencement of works**, 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.

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

29 [K501 - Penrith City Council clearance – Roads Act/ Local Government Act](#)

**Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall ensure that all works associated with the Section 68 Local Government Act approval have been inspected and signed off by Penrith City Council.

30 [K503 - Works as executed – General and Compliance Documentation](#)

**Prior to the issue of an Occupation Certificate**, Works As Executed drawings, final operation and maintenance management plans and any other compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, WSUD Technical Guidelines and Stormwater Drainage for Building Developments Policy.

An original set of Works As Executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Penrith City Council is not the Principal Certifying Authority.

31 [K504 - Restriction as to User and Positive Covenant](#)

**Prior to the issue of an Occupation Certificate**, a restriction as to user and positive covenant relating to the stormwater management systems (including water sensitive urban design measures) shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater Drainage Specification for Building Developments – Appendix F.

### 32 [K504 - Stormwater Compliance](#)

**Prior to the issue of any Occupation Certificate**, the Principal Certifying Authority shall ensure that the:

- a) Stormwater management systems (including on-site detention and water sensitive urban design)
  - Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
  - Have met the design intent with regard to any construction variations to the approved design.
  - Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works As Executed drawings.

### 33 [K601 - Stormwater Management system operation and maintenance](#)

The stormwater management systems shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan.

Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the treatment measure/s and stormwater management systems.

### 34 [K Special \(BLANK\)](#)

All car spaces are to be sealed, line marked and dedicated for the parking of vehicles only and not used for storage of material, product, waste materials, etc.

### 35 [K Special \(BLANK\)](#)

The required sight lines around the driveway entrances are not to be compromised by landscaping, fencing or signage.

### 36 [K Special \(BLANK\)](#)

All vehicles are to enter/exit the site in a forward direction.

### 37 [K Special \(BLANK\)](#)

All car parking spaces, manoeuvring areas, circulation roadways, and driveways must be kept clear of obstructions and not be used for storage.

### 38 [K Special Condition BLANK](#)

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

### 39 [K Special Condition BLANK](#)

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 4732 7777 or visit Penrith City Council's website for more information.

## Landscaping

### 40 [L001 - General](#)

All landscape works are to be constructed in accordance with the stamped approved plans and Chapter C6 Landscape Design of Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plans, and
- in a healthy state, and in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity as the vegetation which died or was removed.

41 **L002 - Landscape construction**

The approved landscaping for the site must be conducted by an appropriately qualified person as defined in Penrith Development Control Plan 2014.

42 **L003 - Report requirement**

Upon completion of the landscape works associated with the development and **prior to the issue of an Occupation Certificate** for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development. The report is to be prepared by an appropriately qualified landscape professional.

An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

43 **L005 - Planting of plant**

All plant material associated with the construction of approved landscaping is to be planted in accordance with Penrith Development Control Plan 2014.

44 **L006 - Aust Standard**

All landscape works are to meet industry best practice and the following relevant Australian Standards:

- AS 4419 Soils for Landscaping and Garden Use,
- AS 4454 Composts, Soil Conditioners and Mulches, and
- AS 4373 Pruning of Amenity Trees.

45 **L007 - Tree protection measures – no TMP with DA**

All trees that are required to be retained as part of the development are to be protected in accordance with the minimum tree protection standards prescribed in Penrith Development Control Plan 2014.

46 **L008 - Tree Preservation Order**

No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than the two trees to be removed as indicated on the stamped approved plans) without the prior consent of Penrith City Council and in accordance with State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

47 **L Special (BLANK)**

The following tree protection methods shall be utilised:

- Locate pipes to minimise damage to trees
- Boring pipe locations in the south-eastern section of the site to minimise damage to trees
- Hand digging when working within the root zone of trees

## **Certification**

48 **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.

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

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

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

#### C2 Vegetation Management

The car park extension layout and location has been reconsidered to minimise tree impacts. The number of car parking spaces has been reduced in order to address the drip line encroachment of hard stand surfaces. In this regard, the two trees on the either side of car space 1 are suitably distanced from the car park.

The car park plan has been amended to show the location and canopy of trees on the adjoining north-western site. Two of these trees are subject to minor encroachments from the proposed car park. The northern tree's trunk is setback 4.5m from the proposed car park and the drip line encroachment is miniscule, therefore, there are no adverse impacts envisioned to this tree. The southern tree's trunk is setback 4.6m from the eastern section of the car park and 3.4m from the southern car park section. The southern tree is provided with a minor 10% encroachment within the drip line and the remaining area to the west of this tree is unsealed.

In addition, the proposal includes the planting of 13 trees which compensates above and beyond the two trees required to be removed for the car park.

The applicant has also addressed potential tree impacts associated with the pipe connection from the above ground on-site detention area to the concrete channel. The applicant has stated that boring techniques can be utilised to minimise root damage, hand digging will be undertaken when working within the root zone and pipes will be located to minimise tree impacts.

In light of the above, the proposal is considered satisfactory with regard to tree impacts.

#### C3 Water Management

Section 3.1 (3) requires a water management plan to accompany the proposal addressing the feasibility of installing rainwater tanks to roofs and gutters, stormwater detention systems to enable the reuse of stored water and roof gardens. The amended Stormwater Management Report accompanying the proposal addresses this aspect and demonstrates that the above is not feasible considering the below:

- The proposed hardstand area works triggering this requirement are external (in the form of the storage and car park areas) therefore the installation of rainwater tanks connecting to roofs/gutters is not feasible.
- The owner of the property has advised that they do not water any of the plants or wash any vehicles outside therefore, there is no need to reuse stormwater captured.

A review of the applicant's comments suggests that the above requirements are not feasible in this case.

The proposal has been referred to Council's Waterways Team which raised no objections to the proposal subject to recommended conditions of consent. In this regard, Water Sensitive Urban Design (WSUD) is considered to have been incorporated into the proposal.

The proposal includes a bio-retention basin and above ground on-site detention area in the south-eastern corner servicing the external storage area which drains to the concrete lined watercourse to the east. The proposed car parking area is to be drained via new pipework connecting to existing pipework within the north-eastern section of the site. It is noted that the above ground on-site detention area will inundate the rear concrete driveway. The application has been referred to Council's Development Engineering Department which reviewed the above and raised no objections subject to recommended conditions of consent.

#### C7 Culture and Heritage

In accordance with Figure C7.2 the subject site is identified as requiring an archeological survey however, the subject site is below 5 hectares in area and is already developed, therefore an archeological survey is not considered to be required.

### **C10 Transport, Access and Parking**

The DCP specifies the following parking ratio applicable to industries, including ancillary office space: *1 space per 75m<sup>2</sup> of gross floor area or 1 space per 2 employees, which ever is greater.*

An aerial view of the site shows that 63 parking spaces exist on-site including 2 accessible parking spaces. It is noted that a total of 22 additional parking spaces are proposed and that 2 parking spaces are to be removed to accommodate the new pedestrian crossing. As a result of the proposal a total of 83 parking spaces will available on-site.

The existing plans show that the building has having a floor area of 5,143m<sup>2</sup> therefore requiring 69 parking spaces. The proposed development does not provide for an increased gross floor area however, it is acknowledged that the production line will be duplicated therefore increasing the current operation on-site. The Statement of Environmental Effects accompanying the proposal states that the proposal will accommodate approximately 116 staff; in this regard, a total of 58 parking spaces is required for the amount of staff proposed.

The proposal provides for parking in well excess of the above requirement.

The inclusion of a pedestrian path from the car park extension minimises pedestrian and vehicle conflicts and the proposed pedestrian crossing in the existing car park provides improved access to the building.

The proposal has been referred to Council's Traffic Engineering Department which reviewed the proposal including the provided swept paths and raised no objections subject to recommended conditions of consent.

It is noted that the amended overall site plan shows a non-compliant accessible parking space within the proposed car park extension. The plans show that there is suitable space within the proposed hardstand area to provide a compliant accessible car parking space without the need for car parking spaces to be reduced. In this regard, recommended conditions of consent will ensure that the accessible car parking space is provided in accordance with the relevant Australia Standards.

### **C12 Noise and Vibration**

The application has been supported by an amended Acoustic Report which addresses potential noise generated by the proposed roof top plant, car park extension and vehicle movements (including forklifts). Council's Environmental Management Team identified issues with the report relating to the duration of noise monitoring and the location of the noise logger too close to the noise source.

However, given the anticipated noise generation of the proposal and that the site has been operating for an extended period of time (including operating outside of approved hours) with no noise complaints, the application is satisfactory subject to recommended conditions of consent. A recommended condition of consent will be imposed to restrict noise generation and require an acoustic assessment to be conducted should noise complaints be presented to Council in the future.

## **D4 Industrial Development**

### **4.3 Building Setbacks and Landscape**

As mentioned previously within this report, the siting of the proposed rooftop equipment, the car park and additional outdoor storage area provides for minimal visual impacts. The proposal includes numerous vegetation plantings around the car park extension and to the western boundary reducing the heat effect of the proposal.

### **4.4 Building Design**

The proposed roof top mixing plant is significantly setback from Old Bathurst Road and Russell Street. The plant includes a screen enclosure to the bottom half utilising materials and colours to match the existing built form and the projecting features on the roof are miniscule when compared to the remaining roof area. In this regard, the roof top features are not considered to provide any adverse visual impacts.

### **4.5 Storage of Materials and Chemicals**

As mentioned previously the external storage area addition is located behind the building and will not provide for adverse visual impacts. It is noted that the accompanying modification application to DA04/1060 (DA19/0647) provided for an amendment to Condition 8 which reads:

*"The outdoor storage of goods shall:*

- Not interfere with required vehicle access/egress routes,*
- Not exceed 6m in height,*
- Be conducted in a safe manner to not cause a hazard on-site and to nearby properties, and*
- Be provided with suitable lighting if subject to night time activity."*