

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0647
Proposed development:	Modification application to amend DA04/1060 - changes to operating hours and to external storage conditions
Property address:	134 - 140 Old Bathurst Road, EMU PLAINS NSW 2750
Property description:	Lot 31 DP 1005063
Date received:	20 September 2019
Assessing officer	Jake Bentley
Zoning:	IN1 General Industrial - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a modification application seeking to amend conditions 7 & 8 of DA04/1060 providing for amended hours of operation and to allow for the external storage of products produced on-site at 134-140 Old Bathurst Road, Emu Plains. The proposed modification application does not provide for a change of use of the premises and maintains the current '*general industry*' use which is permissible with consent in the site's IN1 General Industrial zoning under the provisions of Penrith Local Environmental Plan 2010 (PLEP).

The following concerns have been raised and addressed during the assessment of the modification application:

- Noise impacts associated with the amended hours of operation sought, and
- Capacity of existing car parking facilities.

In accordance with Clause 4.4 of Appendix F4 in the Penrith Development Control Plan (DCP) 2014, the modification application did not require notification to surrounding property owners. No submissions were received.

An assessment under Section 4.15 and Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to the recommended condition amendments and additions.

Site & Surrounds

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 copses of mature trees. It is noted that a concrete channeled 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 also zoned IN1 under PLEP 2010 which 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 occupied by a sub-station, vacant land and paddocks associated with the Emu Plains Correctional Centre. It is noted that residential zoned properties are located roughly 120m north-west of the site.

Existing 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 DA19/0646 for an extension to the existing car park, addition of rooftop mixing plant and additional hardstand to the rear of the site for the purposes of external storage at site has been lodged concurrently with the proposed modification application.

Proposal

The proposed modification application seeks to modify the following conditions within DA04/1060:

Original

Condition 7 - The operating hours are from 5:00am to 7:00pm Mondays to Fridays, 6:00am to 7:00pm Saturdays.

Amendment

Allow for the plastic moulding activity to operate until 12am, Monday to Friday.

Original

Condition 8 - All materials and goods associated with the use shall be contained within the building at all times.

Amendment

Allow for the external storage of products up to a height of 6m in the location shown on the accompanying plan (hardstand area at the rear of the site).

It is noted that the proposed modification application relates to the current operation of the site. Impacts associated with the proposed amended hours of operation and external storage of products to the proposed alterations and additions under DA19/0646 will be considered during the assessment of DA19/0646.

Plans that apply

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

Planning Assessment

• **Section 4.55(1A) - Modifications involving minimal environmental impact**

In accordance with Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

The proposed modification has been assessed in accordance with the above provisions as follows:

(a) The proposed modification application involves minor amendments to the hours of operation of the existing use to which Council's Environmental Management Team are supportive of considering that no adverse noise impacts are envisioned. The proposal also includes provisions to allow external storage of goods 6m in height at the rear of the industrial building on the existing hardstand area.

The findings in this report detail that the proposed modification application is of minimal environmental impact.

(b) The proposed modification application does not alter the existing use of the site but rather provides for increased hours of operation and the provision of external storage associated with the use. In this regard, the proposed modified development is considered to be substantially the same to the development originally approved.

(c) In accordance with Clause 4.4 of Appendix F4 in the Penrith Development Control Plan (DCP) 2014, the modification application did not require notification to surrounding property owners.

(d) No submissions were received.

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

State Environmental Planning Policy No 55—Remediation of Land

Under the provisions of Clause 7 Contamination and remediation to be considered in determining development application 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.

The modified proposal seeks to allow the external storage of products on the existing approved hardstand area to the rear of the site and to provide for an intensification of hours of operation. In this regard, there are no issues relating to land contamination with respect to the proposed modification application.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The modified 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. The goods to be stored externally are polymer concrete drainage products produced at the site and will be located on an existing hard stand area. In this regard, the nature of the products to be stored externally are not considered to create any adverse impacts to the quality of the water infiltrated on-site and disposed of off site.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies
Clause 2.3 Zone objectives	Complies
Clause 4.3 Height of buildings	Complies - See discussion
Clause 7.2 Flood planning	Complies - See discussion
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 4.3 Height of buildings

PLEP 2010 Height of Buildings Map shows that a 12m maximum building height development standard applies to the subject site. The Statement of Environmental Effects submitted in support of the proposal details that the maximum height of the external storage area will be 6m which is half of the maximum building height standard.

Clause 7.2 Flood planning

It is noted that DA19/0646 for alterations and additions to the existing industrial building on-site was accompanied by a flood level enquiry which estimates the mainstream 1% annual exceedance probability flow flood level affecting the site is RL 23.9m AHD which is contained within the south-eastern side of the site. The location of the external storage area as shown on the plan accompanying the proposed modification application is elevated above this flood level therefore, there are no adverse impacts envisioned as a result of the proposal with respect to flooding.

Clause 7.5 Protection of scenic character and landscape values

The subject site is identified as being impacted by 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 sites proximity to Old Bathurst Road, The Western Railway Line and the elevated Emu Heights escarpment. The external storage area will be limited to a 6m height being well below the industrial building on-site and is located to the rear of the existing industrial building which screens views from Old Bathurst Road along with the generous landscaped front setback of the site. In addition, the location of existing buildings to the east, south and west and the vegetation bordering the concrete channel within the adjoining eastern site screen views of external storage area.

The external storage area is located roughly 450m from the Western Railway Line with this space being occupied by large industrial buildings. In this regard, considering the distance of the external storage area from the railway, the height of the storage area and that existing industrial buildings will provide for a suitable screen there are no adverse visual impacts envisioned as a result of the external storage area from the Western Railway Line.

It is noted that the proposed external storage area is currently being used as an external storage area therefore an actual visual impact assessment can be conducted. The Statement of Environmental Effects accompanying the proposal has included images of the site from elevated locations which details that the external storage area will have minimal if any visual impact noting the scale of industrial buildings within the precinct screening the external storage area.

In light of the above, the external storage area to the rear of the site is not envisioned to create an adverse visual impact from major roads and other public places given its location and height.

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 created by Council. The Annual Update Amendment Planning Proposal has no relevance to the modified proposed development.

Draft Environmental 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 modification application. In this regard, the modified 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	N/A
C3 Water Management	Complies
C4 Land Management	N/A
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	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 - see Appendix - Development Control Plan Compliance
D4.3. Building Setbacks and Landscape	Complies - see Appendix - Development Control Plan Compliance
D4.4. Building Design	Complies
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 - see Appendix - Development Control Plan Compliance

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

The modification application has been accompanied by suitable plans and documents in order to undertake an assessment of the proposal. The modifications relate to hours of operation and the external storage of goods therefore there are no issues with respect to the Building Code of Australia envisioned. In this regard, the proposed modification application is considered to comply with the Regulations.

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

The external storage of goods is not envisioned to generate any adverse visual impacts given its proposed height and location and recommended conditions of consent will ensure the external storage area does not interfere with access/egress arrangements, appropriate lighting is installed if required for night time activity and external storage of goods is conducted in a safe manner to avoid hazards on-site and off-site.

The assessment undertaken has detailed that the intensified hours of operation are not considered to generate any adverse acoustic or odour impacts. In light of the above, there are no adverse impacts envisioned as a result of the proposed modified development.

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

The site contains an existing hardstand area to the rear which is suitable as an external storage location and the distance of the existing development from sensitive land uses is suitable for the intensified hours of operation considering adverse noise impacts are not envisioned. In this regard, the site is considered suitable for the proposed modified development.

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 modification application did not require notification to surrounding property owners. No submissions were received.

Referrals

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

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

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

The proposed modified development is considered to remain within the public interest.

Section 94 - Developer Contributions Plans

The proposed modified development does not require any developer contributions in accordance with the applicable contribution plans to the site.

Conclusion

In assessing the modified development against the relevant environmental planning policies, being State Environmental Planning Policy No 55 Remediation of Land, Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the modified proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the modified proposal and there are no negative impacts envisioned as a result of the modified proposal. Therefore, the application is worthy of support, subject to recommended condition amendments and additions.

Recommendation

That DA19/0647 to amend conditions 7 & 8 of DA04/1060 to provide for intensified hours of operation and external storage of goods at 134-140 Old Bathurst Road, Emu Plains, be approved subject to the attached amended and additional conditions.

CONDITIONS

General

1 [A001 - Approved plans table](#)

The development must be implemented substantially in accordance with the plans numbered 040032-S02D,S03D,S04D,S05D,S06D all by SBD, Drawing No's A101A,A102A,L101A by Foran Design and the ***Plan titled Existing Site Plan prepared by Foran Design, numbered SK101, revision 4 and dated 12/9/2019,*** and stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

{Note: Prescribed conditions under the Environmental Planning and Assessment Regulation 2000 as amended will apply to building and subdivision work commencing/approved on 1 July 2003.}

As amended on 25 November, 2019 under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979.

2 [A Special \(BLANK\)](#)

All construction works shall be carried out strictly in accordance with Penrith City Council's Engineering Works Development Control Plan and accompanying Guidelines for Engineering Works for Subdivisions and Developments Part 2-Construction.

3 [A Special \(BLANK\)](#)

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

4 [A Special \(BLANK\)](#)

Truck movements are not permitted along Russell Street, Emu Plains before 7.00am or after 6.00pm.

5 [A Special \(BLANK\)](#)

Prior to the issue of the Occupation Certificate a copy of the approval/licence issued by Workcover is to be submitted to the Principal Certifying Authority (PCA) and Council (if it is to be nominated as the PCA).

6 [A Special \(BLANK\)](#)

Security of all dangerous goods shall be ensured at all times.

7 [A Special \(BLANK\)](#)

The operating hours are from 5.00am to 7.00pm Mondays to Fridays (with the exception of plastic moulding activities which can operate until 12am), 6.00am to 7.00pm Saturdays.

As amended on 25 November, 2019 under Section 4.55(1A) of the Environmental Planning and Assessment Act. 1979.

8 [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.***

As amended on 25 November, 2019 under Section 4.55(1A) of the Environmental Planning and Assessment Act. 1979.

9 [A Special \(BLANK\)](#)

The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.

Environmental Matters

10 **D Special (BLANK)**

Erosion and sediment control measures shall be installed prior to the commencement of works on site including approved clearing of site vegetation, and 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" 1998.

{Note: To obtain a copy of the publication, you should contact the Publications Officer, Housing Production Division, Department of Housing on (02) 9821 6092.}

The erosion and sediment control measures shall be certified (by way of a Compliance Certificate) as having been installed in accordance with the approved erosion and sediment control plan(s) for the development and "Managing Urban Stormwater: Soils and Construction" 1998. The Compliance Certificate shall be obtained and issued a minimum 2 days before works are to commence on site.

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, driveway and on-site parking areas have been completed for the development. These measures shall ensure that the tracking of mud and soil deposits from the site does not occur during the construction of the development.

11 **D Special (BLANK)**

No fill material is to be imported to the site without the prior approval of Penrith City Council in accordance with Sydney Regional Environmental Plan No.20 (Hawkesbury-Nepean River) (No.2-1997). No recycling of material for use as fill material on the site shall be carried out without the prior approval of Council.

12 **D Special (BLANK)**

All waste materials stored on-site must be contained in 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(2) waste bays/bins so as to allow for the separation of wastes and are to be fully enclosed when the site is unattended.

13 **D Special (BLANK)**

All excavated material or waste generated as a result of the development that cannot be re-used or recycled shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location of all excavated material from the development site shall be provided to the Principal Certifying Authority prior to construction works commencing.

14 **D Special (BLANK)**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in Acoustic Report prepared by PKA Acoustic Consulting. The recommendations provided in the above-mentioned acoustic report shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application. A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

15 **D Special (BLANK)**

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.

16 **D Special (BLANK)**

A plan detailing the spills prevention, contingency and emergency clean-up procedures for the development shall be submitted for approval prior to construction works commencing. The approved procedures plan shall be implemented in the event of a spill or emergency.

17 **D Special (BLANK)**

All works and storage areas where spillages are likely to occur shall be bunded. The size of the area to be bunded shall be calculated as being equal to 10% of the total volume of containers stored, or 110% of the largest container stored, whichever is the greater. All bunded areas shall be graded to a blind sump so as to facilitate emptying and cleaning. Details are to accompany the application for a Construction Certificate.

18 **D Special (BLANK)**

Offensive odours are not to be emitted from the premises. Vapours, fumes, gases or any other substance harmful to human health or the environment are not to be emitted from the premises.

19 **D Special (BLANK)**

Solid waste materials are to be disposed of at a lawful waste facility, or, if suitable recycled. Prior to removal for disposal or recycling, solid waste materials are to be stored in a designated area to the satisfaction of Council.

20 **D Special (BLANK)**

Only clean and unpolluted water shall be discharged to Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the sewer are to be discharged in accordance with the requirements of Sydney Water. If Sydney Water will not allow disposal to the sewer, a waste contractor is to remove the liquid waste from the premises to an appropriate waste facility. The waste contractor and waste facility are to hold the relevant licences issued by the Department of Environmental and Conservation.

21 **D Special (BLANK)**

The stormwater drainage system shall not be altered or new lines directed into the system without the prior approval of Penrith City Council.

22 **D Special (BLANK)**

Prior to the issue of a Construction Certificate, an Environmental Management Plan (EMP) for the site shall be submitted to Penrith City Council for consideration and approval. The EMP shall be prepared by suitably qualified consultants in consultation with Council and other relevant agencies, and may need to be amended to include the comments provided by Council and other agencies. The EMP is to:

- * address all environmental aspects of the development's construction and operational phases, and

- * recommend any systems/ controls to be implemented to minimise the potential for any adverse environmental impact(s), and

- * incorporate a programme for ongoing monitoring and review to ensure that the EMP remains contemporary with relevant environmental standards.

The EMP should include but is not limited to the following:

- * soil and water management

- * dust suppression

- * litter control

- * noise control

- * waste management

- * dangerous/hazardous goods storage

- * emergency response and spill contingency.

Council will not withhold its consent to the Environmental Management Plan provided the above-mentioned matters are reasonably addressed.

23 **D Special (BLANK)**

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

24 **D Special (BLANK)**

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.

25 **D Special (BLANK)**

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

26 **E Special (BLANK)**

Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility".

Details of compliance are to be provided in the relevant plans and specifications accompanying the Construction Certificate application.

27 **E Special (BLANK)**

A fire safety list of essential fire or other safety measures shall be submitted prior to the issue of the Construction Certificate. The fire safety list shall specify all measures (both current and proposed) that are required for the building so as to ensure the safety of persons in the building in the event of fire. The fire safety list must distinguish between:

* the measures that are currently implemented in the building premises, and

* the measures that are to be proposed to be implemented in the building premises, and must specify the minimum standard of performance for each measure.

28 **E Special (BLANK)**

The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:

(a) deal with each essential fire safety measure in the building premises, and

(b) be given:

* within 12 months after the last such statement was given, or

* if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.

As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:

* must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and

* prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

29 **E Special (BLANK)**

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.

Construction

30 **H Special (BLANK)**

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.

Signage but not more than 2 signs are to contain the following details:

* 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.

The 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.

31 **H Special (BLANK)**

The following matters are ancillary aspects of the development under Section 80A (2) of the Environmental Planning and Assessment Act, 1979. Appeal provisions will apply to the submission requirements regarding ancillary aspects of the development (see Sections 80A(3) and 97 of the Act).

(a) A soil erosion and sediment control plan, prepared in accordance with the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 1998 shall be submitted for consideration and approval with the Construction Certificate application. {Note: To obtain a copy of the publication, you should contact the Publications Officer, Housing Production Division, Department of Housing on (02) 9821 6092.}

32 **H Special (BLANK)**

A completed waste management plan shall be submitted to Penrith City Council for consideration and approval. Council must approve the plan before issue of a Construction Certificate.

33 **H Special (BLANK)**

Subdivision or construction works that are carried out in the open 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.

Engineering

34 **K Special (BLANK)**

Engineering design drawings are to be prepared strictly in accordance with Penrith City Council's Engineering Works Development Control Plan and the Guidelines for Engineering Works for Subdivisions and Developments Part 1—Design.

35 **K Special (BLANK)**

After completion of all the engineering works, Work-as-Executed Drawings and Certificates are to be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Works Development Control Plan and Guidelines for Engineering Works for Subdivisions and Developments - Part 1 Design and Part 2 Construction. A copy of Work-as-Executed Drawings and Certificates are also to be submitted with Penrith City Council, if Council is not the Principal Certifying Authority.

36 **K Special (BLANK)**

A drainage design plan, detailing the proposed method of stormwater drainage disposal by gravity to Penrith City Council's drainage system, is to be submitted and approved prior to the issue of the Construction Certificate.

37 **K Special (BLANK)**

All electrical services associated with the proposed building works shall be adequately flood proofed in accordance with Penrith City Council's Interim Policy for the Development of Flood Liable Land. Flood sensitive equipment (including electric motors and switches) shall also be located 0.5metres above the standard flood level of RL24.1m AHD.

38 **K Special (BLANK)**

All land required for vehicular access and parking is to be concreted or sealed with a bituminous pavement.

39 **K Special (BLANK)**

On completion of the Water Quality Control System, Works-As-Executed (WAE) plans, prepared by a registered surveyor or the design engineer, are to be submitted to the Principal Certifying Authority. If Penrith City Council is not the Principal Certifying Authority, a copy of the WAE plans is to be submitted to Council. The WAE plans are to be certified by the designer of the system and are to clearly make reference to:

- * the works having been constructed in accordance with the approved plans, and
- * any variation to the approved design and required remedial works, and
- * the anticipated performance of the system with regard to the design intent.

Landscaping

40 **L Special (BLANK)**

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

41 **Q Special (BLANK)**

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

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

(b) submit a Notice of Commencement to Penrith City Council.

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

{Note: As from 1 July 2003, if Penrith City Council is to be appointed as the Principal Certifying Authority (PCA) for the development, then the proponent is to formally appoint Council as the PCA. You should contact Council's Building Approvals and Environment Protection Department on (02) 47327991 to commence the procedures for appointing Council as the PCA.}

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.

The following documentation shall accompany the "Notice of Commencement" to be submitted to Penrith City Council:

* A Compliance Certificate certifying that sediment and erosion control measures has been installed in accordance with condition 10.

42 **Q Special (BLANK)**

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building/tenancy and commencement of the approved use. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

Before the Occupation Certificate can be issued for the development, Fire Safety Certificates issued for the building are to be submitted to Penrith City Council and the New South Wales Fire Brigades. In addition, a Compliance Certificate or other documentation deemed suitable to the Principal Certifying Authority (PCA) is to be submitted to the PCA, detailing compliance with:

(a) The provisions of AS1428.1 and that any person with disabilities can access the building, including its perimeter. In this regard, the Compliance Certificate (or other documentation) is to be prepared by an accredited access consultant.

(b) Condition 13 whereupon a qualified acoustic consultant has certified that the development has been constructed in accordance with the approved acoustic report.

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

43 **Q Special (BLANK)**

Prior to the issue of an Occupation Certificate a maintenance manual for the Water Quality System shall be submitted too, and the details approved by Penrith City Council.

44 **Q Special (BLANK)**

All car parking and access must comply with AS2890. Details must be submitted with the Construction Certificate application.

45 [Q Special \(BLANK\)](#)

In the event Council receives noise complaints associated with the business activities, Council may require the submission of an acoustic assessment prepared by an environmental consultant to assess the noise generating activities and make suitable recommendations to mitigate any offensive noise.

Added on 25 November, 2019 under Section 4.55(1A) of the Environmental Planning and Assessment Act. 1979.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C10 Transport, Access and Parking

The proposed modification application does not result in an increase in gross floor area of the existing operation however, it is noted that the increased hours of operation to provide for plastic moulding until 12am may require additional staff and therefore more parking. The applicant has responded to these concerns stating that the additional plastic moulding activity will only involve 3 people.

It is noted that the current car parking supply does not accommodate the existing operation as some vehicles park within the landscaped front setback. The associated alterations and additions development application (DA19/0646) seeks to provide for an extension to the carpark area to address existing shortfalls and additional staff anticipated by the proposed alterations and additions. However, noting that only 3 staff will be required for the proposed extended hours and that not all staff will be utilising the car parking area until 12am the existing car parking facilities are considered suitable for the modified proposal.

C12 Noise and Vibration

The subject modification application and the associated development application for alterations and additions to the industrial building at the subject site referenced inconsistent hours of operation. An additional information letter was issued to the applicant requesting clarification regarding the hours of operation pursued. The applicant has confirmed that the following amended hours are sought:

- Monday to Friday: 5am - 12am (existing approved hours Monday to Friday 5am - 7pm)
- Saturdays 6am - 7pm (no change to existing approved hours)

It is noted that the only activity occurring to 12pm and after the current hours of operation is work within the plastic moulding department involving only 3 people. It is also noted that during discussions with the applicant and the Operations Plan submitted with DA19/0646 the manufacturing and distribution activity of the operation is being conducted up until 11:55pm outside of the approved hours of operation.

An Acoustic Report has accompanied both the subject modified proposal and the alterations and additions development application (DA19/0646) which has been deemed unsatisfactory by Council's Environmental Management Department due to inaccuracies and not addressing all noise sources. However, as a result of the noise heard at the site during a site inspection and due to the lack of historical noise complaints raised against the operation Council's Environmental Management Team are supportive of the amended hours of operation.

In order to mitigate any future noise impacts a condition is recommended to be added to the modified consent stating that Council may request a noise assessment to be conducted with suitable recommendations to mitigate any offensive noise should noise complaints associated with the operation be received by Council in the future.

D4 Industrial Development

4.2 Building Height

The external storage location is not envisioned to generate any adverse impacts on the scenic quality of the precinct when viewed from elevated locations as discussed earlier within this report.

4.3 Building Setbacks and Landscape

It is noted that the external storage area to the rear of the site seeking to be legitimised by the subject modification application is located on an approved hardstand area under DA07/1636. In this regard, the external storage area is not considered to impact the existing 'heat effect'. In addition, the rear hardstand area is substantially setback from the east and west boundaries and existing built forms surrounding the site screen views of the rear external storage area from public places.

It is also noted that the hardstand area is slightly setback from the southern boundary providing a grass area and sparse trees to break up the extent of hardstand from the neighbouring southern site which is occupied by a large extent of hardstand used for car parking and storage.

4.5 Storage of Materials and Chemicals

The external storage area will have a maximum height of 6m to reduce its visual impact and is in a location that will not provide for adverse visual impacts from the nearby streets or Western Railway Line. The external storage area has been strategically located to ensure vehicle access/egress arrangements have not been compromised and a recommended condition of consent will ensure that access/egress conflicts do not occur as a result of external storage areas.

In addition, a recommended condition of consent will ensure that external storage of goods is conducted in a safe manner to ensure goods do not cause a hazard on-site or to surrounding sites.

It is noted that external storage of goods is not ideal however, the location and height of the external storage of goods will not detract from the visual amenity of the industrial precinct, streetscapes or nearby residents. In this regard, the external storage area is considered satisfactory.

4.8 Lighting

A condition of consent is recommended to be added requiring suitable lighting to be provided to the external storage area should this area be subject to night time activity.