

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0135
Proposed development:	Demolition of Existing Structures and Construction of 2 Attached Warehouses and Associated Works
Property address:	65 - 73 Dunheved Circuit, ST MARYS NSW 2760
Property description:	Lot 1 DP 1175850
Date received:	25 February 2019
Assessing officer	Pukar Pradhan
Zoning:	IN1 General Industrial - LEP 2010
Class of building:	Class 7b
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application from Borg Group Pty Ltd for the demolition of existing structures and erection of two (2) attached warehouse buildings, associated drainage works, parking spaces and landscaping areas at 65 - 73 Dunheved Circuit, St Marys. Under Penrith Local Environmental Plan 2010, the subject site is zoned IN 1 General Industrial zone and the proposal is defined as "*warehouse or distribution centre*" which is a permissible land use in the zoning with Council consent.

The application has been referred to the Local Planning Panel for determination in accordance with Section 9.1 of the Environmental Planning and Assessment Act 1979 (The Act 1979), as the proposal seeks a variation to Clause 4.3 of the LEP 2010 that limits the maximum allowed height of the building (HOB) control to 12m as the building maximum height proposed is 14.6m (21.6%) which is a variation over 10% of the standard.

Key issues identified for the proposed development and site include:

Visual impact

The site is located within an area identified as "land with scenic and landscape values", with a maximum building height limit of 12m under the LEP provisions. Whilst the development proposes a maximum height of 14.60m, the height is associated with the central part of the building (along the ridge) and then tapers down to a 12m building height along the longest two side elevations of the building. The additional building height impact is not considered to be significant given that:

- the proposal provides for continuous landscaping screen buffer along the frontage and all boundaries;
- the use of different coloured external finishes and materials for the exterior of building ameliorates the massing;
- the overall bulk, scale and design of the building is compatible with several other existing industrial buildings in the area;
- it will result in an improved street scape; and
- it is unlikely to have an adverse visual impact to the surrounding locality.

In view of the above, the proposed development design is considered to be suitable for the site and contributes to, rather than adversely detracts from, the "land with scenic and landscape values" of the site.

Drainage

The site falls to the rear and the proposed drainage system plan show a discharge point to the rear adjoining property (Lot 1 DP 319058) owned by Land Lease to cater for the drainage system of the development. A letter

has been submitted by the affected landowner giving consent to the applicant for the creation of a drainage easement over their property.

The submitted drainage plans have been examined by Council's development engineer who has advised that the proposed drainage system is able to comply with Council's drainage requirements. However, as the development relies upon the creation of an easement over adjoining rear property, the applicant will need to register the easement with the Land and Property Information (LPI) and as such a deferred commencement condition has been recommended for this to occur.

The application has been notified to adjoining properties and was on exhibition between 4 March 2019 to 18 March 2019 in accordance with relevant legislation. One submission was received raising concern of potential increase in traffic and reduced vehicle safety from the movements of additional large vehicles in Dunheved Circuit, and Forrester Road.

The application was also referred to the Roads and Maritime Services (RMS) for comments under SEPP (Infrastructure) 2007. Their comment are included in the body of the report. No objections have been raised subject to swept path considerations.

Council's Traffic Engineer have examined the application and advised that the additional traffic generated by the development can be accommodated by the local road network without having significant adverse impact or reduced safety with respect to local traffic movements.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the proposal is considered to be of an acceptable form of development that is compatible with the existing developments in the area and is suitable for the site. As the development relies upon creating an easement to drainage the development through adjoining rear property which requires to be registered with Land and Property Information (LPI), the application is recommended for *deferred commencement consent* and subject to other recommended conditions.

Site & Surrounds

The subject site is located within the Dunheved Industrial Estate and is located at the western side of Dunheved Circuit. The site has a total area of 4.052 Ha with a frontage of 120.07m and a width of 176m at the rear. It has a depth of 259m along the northern boundary and 234m along the southern boundary. The site falls to the rear and contains drainage easement.

The site currently contains two large buildings and several sheds and is being used for the storage of plant equipment, old vehicles and other different material making the site unsightly. There are several large factory buildings located within the Dunheved Industrial Estate with two large industrial building located to the north and east of the site. There are varying sizes of large factory buildings in close proximity of this site. A golf course is located to the west of the site and adjoining southern site is vacant.

The site is not identified as being bushfire prone land.

The site has an easement of 3.05m wide for water pipes and a transmission easement going across the front part of the site.

To the rear of the site is a proposed road which will connect the Dunheved Industrial area to the Central Precinct of the ADI site. This proposal is the subject to a current Development Application which is yet to be determined.

History

- Several approvals have been granted by Council which included approvals for factory buildings, storage of building materials, and storage of plant equipment and shipping container.
- The applicant attended a pre-lodgement meeting with Council Officers on 17th May 2018 (PL18/0037) to discuss the proposed development. The applicant was advised to consider the following:
 - *Building height limit of 12m applies to the site and any variation to the height increase to be well justified under Clause 4.6 of the LEP.*
 - *Consideration needs to be given to provide articulation elements and/or breaking the panels using various shade colours.*
 - *Submission of a Landscape plan and to include a 4m landscaping strip along the front and rear boundary.*
 - *Consideration should be given to removing any redundant easements existing on site.*
 - *Reduced parking spaces can be considered for the proposal however, sufficient car parking to be provided for all total staff members.*
 - *To address SEPP 55.*
 - *Submission of a Waste Management Plan.*
 - *Submission of a concept stormwater drainage plan.*
 - *OSD is required for the site.*
 - *Council's record indicates that the 1% AEP flood level affecting the site is approximately RL 21.2m AHD.*
 - *Demonstrate how the development is consistent with Council's water sensitive urban design strategy.*
 - *Submission of a traffic report prepared by a suitably qualified person addressing, but not limited to, traffic generation, access, car parking, and manoeuvring in accordance with AS2890.*
 - *Compliance with the relevant section of the BCA.*

The matters raised above has been considered in the submission of this current application.

Proposal

The proposal involves the following:

- Demolition of existing structures;
- Construction of a factory building containing two (2) separate units;
 - Unit 1 = 16,950m²
 - Unit 2 = 5,000m²
 - Ancillary office and amenities area = 307m²
 - Building height of 14.6m along the ridge which tapers down to 12m along the side elevations.
- 133 on site parking spaces including 2 accessible parking spaces;
- Associated landscaping and drainage works; and
- The building will be used for storage and distribution of melamine board products (manufactured elsewhere) to country wide.
- The building will be constructed with concrete panels and colour bond materials;
- The proposed hours of operation is 24 hours, seven days a week; and
- 45 employees are proposed.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 4.15 - Evaluation

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

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

State Environmental Planning Policy (Infrastructure) 2007

The development was referred to Roads and Maritime Services (RMS) pursuant to Schedule 3 Traffic-generating development under the SEPP (Infrastructure) 2007 for comments having the total floor area of the building over 8,000sqm. They have examined the application and have provided their response letter on 10 September 2019 raising no objection to the proposal subject to swept path of trucks do not impact upon the kerbs. Council's Traffic Engineer have examined this and have recommended conditions to ensure that tuning of truck do not impact on the kerbs of the street.

RMS have also advised that the site is affected by the future proposed Orbital Corridor (M9) and that the schematic plan show a quarter of the rear part of the site may be impacted from this proposed M9. Council's data system does not identify any part of the site being nominated for future road widening nor have as plans been released that identify land for aquasition.

This matter has been discussed with Council's Traffic Engineers and discussion with RMS indicated that the road is a concept plan and in consideration and they are not sure as to when it will go ahead. As such, and in the absence of definitive plans and land acquasition nomination, the proposal is supportable.

State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7(1) of SEPP 55 prevents consent authorities from consenting to a development unless it has considered whether the land is contaminated and 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 application was accompanied by a Detailed Site Investigation" prepared by DRC Environmental dated 3rd June 2019. The assessment concluded that in some of the areas, it was found that soil had traces of concentration of benzo(a)pyrene however, it was found it to be below the ecological guideline levels. There were also some oiled stained in soils noted in some areas which were of a minor nature that can be removed during bulk excavation works. The report concluded that the site can be made suitable for the future commercial / industrial purposes by way of soil removal and without specific remediation work being required. Conditions are recommended for a soil management plan.

This document has been examined by Council's Environmental Health Officer, who agrees with the above findings in the report and concluded that the site can be suitable for commercial/industrial usage. They have raised no objection to the proposal subject to their recommended conditions.

State Environmental Planning Policy No 64—Advertising and Signage

The proposal involves the erection of two 2m x3m dimensioned fascia business identification signage located along the eastern and southern facade.

This SEPP 64 applies to all signage which is visible from any public place or public reserve. Most signage proposed will be visible from the public reserve.

The SEPP aims (in part):

3 (a) to ensure that signage (including advertising)

- (i) is compatible with the desired amenity and visual character of an area, and
- (ii) provides effective communication in suitable locations, and
- (iii) is of high quality design and finish.

The SEPP does not regulate the content of signs and does not require consent for a change in the content of signage.

The SEPP defines this advertising as:

“Building identification sign” which means “a sign that identifies or names a building, and that may include the name of a business or building, the street number of a building, the nature of the business and a logo or other symbol that identifies the business, but that does not include general advertising of products, goods or services.”

Clause 8 of the SEPP indicates that proposed signage must be consistent with the objectives of the SEPP and satisfies the assessment criteria of Schedule 1.

Schedule 1 Assessment Criteria

1. Character of the area:
2. Special areas:
3. Views and vistas:
4. Streetscape, setting or landscape:
5. Site and Building:
6. Associated devices and logos:
7. Illumination:
8. Safety:

The development is located within a industrial area and backs on to the Golf Course and future Links Road to the rear. The fascia signage will be visible from the public road/place and as such triggers SEPP 64 considerations.

The proposed signage are considered to comply with the above criteria as the signage is considered:

- to be compatible and appropriate for the Industrial building of this nature.
- is not expected to detract from the amenity or visual quality of the neighbourhood.
- will not disrupt any views, skylines or vistas.
- to be in a scale and form that is appropriate for the facade when viewed from the street.
- the design of the signage and its proportion along the fascia is considered to be suitable and is acceptable for the area.
- the proposed signs are not considered to be a distraction or hazard to safety of traffic, pedestrians or cyclists.

The signage shown on the current plans is considered to be consistent with the aims and assessment criteria of SEPP 64.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Sydney Regional Environmental Plan No. 20 - Hawkesbury-Nepean River (No. 2 -1997) (SREP

20) integrates planning with catchment management to protect the Hawkesbury-Nepean river system, requiring the impact of future land use to be considered in a regional context. The plan covers water quality and quantity, environmentally sensitive areas, riverine scenic quality, agriculture and urban and rural-residential development. It controls development that has the potential to impact on the river environment. The plan applies to all parts of the catchment in the Sydney region (15 local government areas, including Penrith), except for land covered by *Sydney Regional Environmental Plan No.11 - Penrith Lakes Scheme*. SREP 20 is supported by an Action Plan which includes actions necessary to improve existing conditions.

The development proposal is in accordance with the general planning considerations set out in Clause 5 of SREP 20 and the relevant specific planning policies and related recommended strategies set out in Clause 6. In particular, the development incorporates:

- a water quality treatment train that includes, primary treatment to hardstand areas via Enviropod pit inserts;
- tertiary treatment of site water via bioretention system within the OSD basins;
- two OSD systems will be located with the site boundaries; and
- soil erosion and sediment control measures.

The above were proposed to ensure that the post development flows are less than or equal to the pre-development flows from the site, and to control and minimise the potential to impact on the river environment.

Council's Development Engineers, Environmental Waterways and Environmental Management (Biodiversity) teams all have reviewed the application and have raised no objection to the proposal subject to recommended conditions.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
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
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.4 Sustainable development	Complies - See discussion
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion
Clause 7.7 Servicing	Complies

Clause 2.3 Permissibility

The subject site is zoned IN1 - General Industrial under the provisions of Penrith Local Environmental Plan 2010. The proposal involves the storage and distribution of decorative melamine board products within the proposed buildings (which are transported from the manufacturing facility located at Central Coast) until the products are distributed to stores nationally for sale.

The proposal meets the definition of a "warehouse and distribution centre" outline below, which is listed as a permissible land use in the IN1 - General Industrial zone subject to Council consent.

A *Warehouse and distribution centres* are defined as follows:

- *Warehouse or distribution centre means a building or place used mainly or exclusively for storing or handling items (whether goods or materials) pending their sale, but from which no retail sales are made, and includes local distribution premises.*

No sales of items are proposed from the site. This is recommended to be conditioned in any consent granted.

Clause 2.3 Zone objectives

The proposed development is consistent with the objectives of the IN1 zone specifically:

- *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 promote development that makes efficient use of industrial land.*

Clause 4.3 Height of buildings

The Height of Buildings Map identifies a maximum height of 12m as applying to the site. The proposal has a maximum building height 14.6m along the ridge of the building from natural ground level and is 2.6m higher than the allowed 12m height, which equates to a 21% departure to the building height standard applying to the site.

Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the LEP specifies that consent may be granted for development even though the development would contravene a development standard imposed by the LEP, or any other environmental planning instrument. However, Clause 4.6(3) states that:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has 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 circumstance of the case, and*
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, Clause 4.6(4) states that:

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 sub-clause (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.*

Clause 4.3(2) Height of Buildings specifies that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The Height of Buildings Map sets out a maximum building height of 12m applying to the site. The proposed development has a maximum building height of 14.6m along the ridge line relative to natural ground level which equates to a 2.6m non-compliance or 21.6% departure to the 12m maximum height applying to the site.

In accordance with Clause 4.6, the development application was lodged with a written request to vary the

maximum building height control of 12m. The Clause 4.6 variation submission has been prepared and responds to the case of *Four2Five Pty v Ashfield Council* [2015] NSWLEC 90 as well as the 'five part test' established in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The applicant's response to the matters listed in Clause 4.6(3) are discussed below:

The applicants request to vary states that the development standard is unreasonable or unnecessary because:

- *The built-form character of the surrounding industrial developments is generally consistent with the built-form proposed under this application, for which it is considered to respond to the local context. In particular, the existing industrial buildings located to the immediate north and east of this site which has almost similar in bulk and scale as that proposed under this application and as depicted in the photo montage perspective in the Visual Impact Assessment.*
- *The proposed development, for purposes of a warehouse and distribution facility, would be consistent with the desired future character of the industrial area.*
- *It generally maintain the maximum permitted building height under Penrith LEP 2010 with exception of the ridge area where it exceeds by 2.6m.*
- *The density and scale of the built-form proposed, would remain generally consistent with the existing industrial buildings surrounding the site.*
- *The proposed development would effectively integrate the streetscape and character of the area into the proposed scheme.*
- *The development incorporates a 5m wide landscape buffer along the rear boundary adjacent to the scenic protection lands to minimise any potential impacts.*
- *The proposed design will not have visual impacts, disrupt of views, loss of privacy or loss of solar access to any existing developments or public areas of scenic or visual importance.*
- *The proposed development would respond to the existing industrial developments on the northern and eastern interfaces, for which the protection of amenity would be ensured.*
- *The proposed development's building height is considered a key attribute in creating an internal building environment that would ensure the delivery of space and amenity that is required to support the operations of the business/tenant involved and thereby enabling the productive use of the site.*
- *That melamine boards which are required to piles up for storage would require a specific height clearance to suit their optimum storage needs. Accordingly, these panels are stacked to maximise the operation efficiencies and improve the utilisation of available floor space encountered through the proposed warehouse and distribution facility.*
- *The height of the building is standard Borg Warehouse facilities and enables the maximisation of usable storage space. If a reduced building height was to apply, the number of boards of manufactured goods which can be stacked would be reduced below the amount required storage volume, and the operational efficiencies and outcomes would be considered compromised.*
- *Despite the specific operational requirements for the end user, the building height nominated (14.62m) is considered consistent with (as well as less than) current standard practices, demonstrated by modern, high-quality industrial-related developments (including warehouse and distribution facilities), which frequently offer 10m clear at the eaves, which is considered consistent and satisfactory for industrial-related development, for the purposed of a warehouse and distribution facility."*

The applicant is considered to have adequately addressed Clause 4.6(3)(a) with the matters mentioned above.

In addition, the applicants request to vary the height standard has identified the following *environmental planning grounds* to justify the contravention:

Environmental Planning Grounds

- *The building height exceedance is limited to relatively minor elements of the overall built form of the proposed building.*
- *The majority of the proposed building has a maximum height of approximately 12m with only a small portion of the roof form exceeding the height.*
- *The additional height is considered appropriate in regards to existing context of the Dunheved Industrial estate.*
- *As demonstrated in the SEE accompanying this DA, the proposed variation will not result in any unreasonable environmental impacts.*

- *The non-compliant height will avoid unreasonable amenity impacts to neighbouring sites, including in relation to overshadowing, visual and acoustic privacy, and view loss. .*
- *The height exceedance allows for the most efficient use of industrial zoned land that is consistent with both the objectives of the zone and the objectives of the height standard.*
- *The non-compliant built form will have minimal impact within the streetscape.*
- *The exceedance allows for appropriate drainage of the roof and efficient use of internal storage areas.*
- *The objectives of the zone, as demonstrated have been adequately satisfied, where relevant.*
- *The variation to the height of buildings standard is in the public interest.*

The applicant further provides that irrespective of height variation, the development results in a better design outcome for the following reasons:

- *The proposed warehouse design is considered superior design in relation to existing buildings within the industrial estate.*
- *The elevations incorporate a mix of materials and finishes that break up and minimise the expanse of the building and reducing any impact of the overall height.*
- *The front elevation incorporates a mix of colour, glass and openings, along with signage that adds interest to the streetscape, and softens the bulk of the building.*
- *The front landscaping overall improves the existing streetscape, on a street where landscaping is minimal.*
- *The 5m rear landscape buffer helps to minimise the scale of the building and provides a visual screen when viewed from the low use Links Road and the Golf Course*
- *As has been shown in the architectural plans, 3d images and visual assessment, the excess height is unnoticeable when viewed from street level, as the peak of the roof is located in the centre of the site.*

The consent authority is required to have regard to the written request above. It is considered that this written request has satisfied sub-clause (3) of Clause 4.6 and has adequately addressed those matters.

The consent authority must also be satisfied that the development will be in the public interest because it is consistent with the objectives of the zone and height standard.

Objectives of the IN1 General Industrial Zone

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

Comment:

- The proposal is consistent with the above objectives in that it will provide an industrial and warehouse building within the surrounding industrial area that services the locality and provides employment opportunities.
- The site is currently poorly maintained and under utilised, resulting in a poor visual presentation and unsightly appearance of the site.
- The proposed development will visually improve the streetscape of the area.
- The proposal will make efficient use of industrial land.
- The development will provide additional employment opportunities during the construction period and operation of the business.
- The supporting documentation demonstrates that the development will have no adverse impact on other land uses.

Objectives of the Height of Buildings Development Standard

(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,

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,

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

areas of scenic or visual importance,

(d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.

Comment: The development meets the objectives of the zone as follows:

- The proposed building height is generally compatible with the height, bulk and scale of several other existing industrial buildings in the locality.
- The site by its configuration and surrounding development, is relatively obscured from view from adjoining main Dunheved Circuit and the public domain.
- Although the site is mapped as "land with scenic and landscape values", the supporting visual impact assessment and architectural plans demonstrate that any loss of views, overshadowing or privacy impacts are negligible.
- The site is not located within a heritage conservation area and there are no listed heritage items within the surrounding locality.
- The non compliance with building height is confined to central ridge line however, in the scheme of the size of the whole building it is unlikely to have detrimental impact and will visually be compatible with other buildings in the area.

In response to Clause 4.6(4)(b), the NSW Department of Planning and Environments planning circular, *PS18-003 - Variations to development standards*, outlines Secretary's concurrence may be assumed for applications being considered by a regional planning panel.

- In accordance with sub-clause (4), the applicant's objection is well founded and is consistent with the aims of the clause.
- The objection has adequately addressed the matters prescribed in the LEP, and has demonstrated that full compliance with the maximum building height requirement would be unreasonable and unnecessary in the circumstances of the case.
- Discussions with Council's Strategic Planning Officer have confirmed that the requirements of 12m building height restriction dates back to 1998 which was introduced under the Industrial LEP 1996 and its purpose was to minimise visual impact to surrounding developments and maintain visual amenity of the area.
- The majority of other sites in the area have minimal landscaping located along the frontage of the site, with several sites having buildings built to the front and side boundaries with no or lesser setbacks.
- The proposed building has an average front setback of 30m and the bulk, scale and design of the building is considered to be compatible with several other larger existing buildings in the area and its contemporary architectural design will improve the existing streetscape.
- The development will provide a deeper (10m in average) landscaped area along the frontage of the site which is provide a better landscaping buffer and streetscape in comparison to other existing developments in the area and will assist to provide visual relief of the building when viewed from the street,.
- Furthermore, it provides a 5m wide landscaping area and a 25m building setback along the rear boundary. In addition, a 2m wide landscaping area along both side boundaries, which is greater than the landscaping area and building setbacks provided in other development sites in the area.
- The use of different construction material, inclusion of large roller doors, glazed windows along the elevation and extensive landscaping along boundaries will provide visual relief to the bulk and scale of the building.
- The development will therefore have no adverse visual impact to the existing/ surrounding developments in the area and resulting in a better design outcome of the site and improving the streetscape, hence meeting the intent of the Clause.
- The environmental planning grounds put forward by the applicant are therefore supported in this instance.
- 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.

Clause 7.2 Flood planning

The subject site is identified as "Flood planning land" on the Clause Application Map and is below the flood planning level.

Clause 7.2(4) specifies that development consent must not be granted for development on land that is at or below the flood planning level unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and*
- (b) if located in a floodway, is compatible with the flow conveyance function of the floodway and the flood hazard within the floodway, and*
- (c) is not likely to adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (d) is not likely to significantly alter flow distributions and velocities to the detriment of other properties or the environment, and*
- (e) is not likely to adversely affect the safe and effective evacuation of the land and the surrounding area, and*
- (f) is not likely to significantly detrimentally affect the environment or cause avoidable erosion, destruction of riparian vegetation or affect the restoration and establishment of riparian vegetation, or a reduction in the stability of river banks or waterways, and*
- (g) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding, and*
- (h) incorporates appropriate measures to manage risk to life from flood, and*
- (i) is consistent with any relevant floodplain risk management plan.*

In addition, Clause 7.2(5) specifies that:

Development consent must not be granted for development on land identified as "Flood planning land" on the Clause Application Map, unless the consent authority is satisfied that the development will not adversely affect the safe and effective evacuation of the land and the surrounding area.

Comment:

The site is partly affected by mainstream flooding from south creek located 400m from the site. The site is above the flood level and the proposed finished floor levels (FFL) of the building are over 500mm above the flood level as required by the DCP. The development will not be impacted by flood and is able to provide adequate drainage system for the proposed buildings.

The application has been reviewed by Council's Development Engineer who has raised no objection to the proposal subject to conditions. As such, it is considered that the provisions of Clause 7.2 have been satisfied.

Clause 7.4 Sustainable development

In accordance with this clause, the applicant has committed to sustainable design and provides appropriate stormfilter, EnviroPods and StormFilter cartridges and stormwater treatment measures with 39,500 litre OSD and 60 kilo litre rainwater tanks for sprinklers and toilets which is consistent with Councils Water Sensitive Urban Design Policy.

Clause 7.5 Protection of scenic character and landscape values

The site is identified as "land with scenic and landscape values" under the Scenic and Landscape Values Map. Clause 7.5 of Penrith Local Environmental Plan (LEP) 2010 specifies that development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places.

The development is situated within an established industrial area and back on to a golf course and the supporting Visual Analysis Plans (VAP), showing graphically that there will be minimal visual impact from Dunheved Road or the Golf Course. The proposed 5m wide landscape corridor along the rear boundary to include 32 blueberry ash plants (with a mature height of 12-15m) and inclusion of continuous scattering of lily pilis and tree planting being provided throughout the frontage and two side boundaries will further reduce any potential visual impact of the buildings to surrounding area. Furthermore, the use of mix colour, glass and openings to the elevation will also assist in visually breaking the large façade as well as adding interest to the elevations.

With several large scale of buildings already existing within the scenic protection lands, the proposed bulk, scale and design of the development is considered to be compatible with other existing buildings in the area and the development is unlikely to have significant visual impact in the area nor be highly visible from the public domain.

The proposal is hence unlikely to have adverse impact on the scenic and landscape value of the area.

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

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Complies - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Complies
C3 Water Management	Complies
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	Complies
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies
D4.1. Key Precincts	Complies
D4.2. Building Height	Does not comply - see Appendix - Development Control Plan Compliance
D4.3. Building Setbacks and Landscape	Complies
D4.4. Building Design	Complies
D4.5. Storage of Materials and Chemicals	N/A
D4.6. Accessing and Servicing the Site	Complies
D4.7. Fencing	Complies - see Appendix - Development Control Plan Compliance
D4.8 Lighting	Complies

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

In accordance with Section 143 of the *Environmental Planning and Assessment Regulation 2000*, an assessment of the fire protection and structural capacity of the proposed building is necessary. The application was referred to Council's Building Surveyor for assessment with no objections raised, subject to the recommended conditions.

The proposed development complies with the requirements of the Regulations.

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

Visual Impact

The proposed rectangular shaped design of the building is not dissimilar to the design of other building with narrower street presentation. Whilst the highest point of the building is 14.6m, the accompanied Visual Impact Plans (VIP)/perspectives, prepared by the applicant show that there will be no major visual impacts when viewed from Dunheved Road and a minor visual impact from the Golf Course.

The provision of continuous landscaping buffer along the rear boundary fronting the golf course, and future road and all other boundaries including the front, will assist in minimising its bulk and scale of the building. A careful selection of the exterior building material and soft colour pallets, combined with proposed planting will assist to visually break up its mass and the view of the façade and blending the development into its

surrounding context resulting it to be generally compatible with the other larger industrial buildings in the area. The development is thus considered to have minimal visual impact.

Acoustic Impact

The nearest residential area is located 1.2 kilometres from the site and as the transportation route is via industrial roads and the potential for noise impact to residences is unlikely to be significant. The application was examined by Council's Environmental Management Officer who has raised no objection to the proposal, however, as there is a recreation facility at the rear (although separated by future road), and if external works are carried out it may result in adverse acoustic impact. A written email has been provided by the applicant confirming that all works are carried out inside of buildings (there will be no external works conducted) in its operation and a condition will be recommended to adhere to this.

Traffic, Access and Parking

The application was accompanied by Traffic Impact Assessment prepared by Barker Ryan Stewart and dated 30 January 2019. The objective of this report was to assess the impact of the development traffic on the surrounding road network and review the internal driveway and parking layout design of the development.

The development proposes two (2) separate 8m wide entry and 10m wide exit to allow for easy vehicular access for 26m long B- double trucks to enter and leave the site in a forward direction. This will allow larger vehicles to utilise the existing full movement vehicle access on to Dunheved Circuit and then further on to Forrester Road and Links Road without having significant adverse impact.

The parking requirements under the DCP 2014 is as follows:

Total floor area	DCP parking requirements	RMS Parking requirements	Parking provided
Warehouse 1 16,950sqm	1@100sqm = 170 spaces	1@300sqm = 56.5= 57 spaces	106 spaces
Warehouse 2 5,000sqm	1@100sqm = 50 spaces	1@300sqm = 16.6=17spaces	20 spaces
Office 261sqm	1@40sqm = 6.5= 7spaces	1@40m2 = 7spaces	7 spaces
	227 spaces	81 spaces	
Total shortfall	94 spaces		
Total over		52 spaces	
Total provided			133 spaces

The proposal provides 133 on-site parking spaces however, in order to achieve a better design outcome of the development, 14 parking spaces along the front have been recommended to be removed for the provision of a deeper landscaping strip along the frontage of the site. This will result in having 119 on site the parking spaces which is less than the required 227 spaces by Council's Development Control Plan (DCP) 2014. The submitted Traffic Report has justified the non-compliance with Council's DCP, specifying that:

- *The scale of the warehouse is substantially larger than that the scale intended in the DCP (which is more appropriate for small scale or 'boutique' warehouse);*
- *The demand for parking for such facilities are not high and does not attract many customers on site;*
- *Although there is a shortfall of 94 parking spaces in comparison to DCP standard, it exceeds the parking numbers required by the RMS guidelines by 52 spaces for such developments;*
- *The parking demand is mainly for the 45 staff and some customers; and*
- *The proposed number of parking spaces are sufficient to cater for this development.*

The proposed development along with the Traffic Report has been examined by Council's Traffic Engineer and have advised that, whilst the proposed parking numbers are less than Council's DCP 2014 requirement, it does however comply with the RMS guideline *Guide to Traffic Generating Developments* for this type and scale of warehouse distribution facilities. They agree that demand for on site parking for such usage is generally low and the proposed 133 on site parking spaces are considered to be sufficient to cater for all employees (45 people) and any visitors during its operation and is acceptable for such type of developments. They have raised no objection to the proposal subject to all parking spaces are provided in accordance with AS 2890.

Whilst the will result in having a total number of 119 on site parking spaces, it is considered to be sufficient to cater for the operation of the proposed development and is considered to be suitable DCP variation.

Landscaping

The submitted landscape plan prepared by Meraki Green Landscape Architecture will include various species of trees along the frontage, rear and side boundaries which will result in an improved streetscape and the amenity of the area. The landscaping area along the frontage has been required to be further increased to achieve an improved design outcome of the development.

Drainage

The site falls to the rear and the drainage system plan has been prepared showing a discharge point within the adjoining property (Lot 1 DP 319058) to the rear of the site owned by Land Lease. A letter has been submitted by Land Lease giving permission to the applicant for the creation of drainage easement over their property. The submitted drainage plan show on site detention basin and water quality tanks proposed as part of drainage system for the development then discharged to the rear drainage easement.

The submitted hydrologic analysis shows that, with the provision of the on-site detention system detailed above, the post development peak flows from the site will be attenuated to less than pre-development meeting the requirements of Council. It is also stated in the report that the water quality discharging from the site in the post development is improved from the proposed OSD tanks, rainwater tanks, EnviroPods and StormwaterFilter cartridges.

The plans have been examined by Council's development engineer and have advised that drainage system for the development can comply with Council's drainage requirements. However, as the development relies upon the creation of an easement over adjoining rear property, the applicant will need to register the easement with the Land and Property Information (LPI) first and as such a *deferred commencement consent* has been recommended for this to occur. The development engineer otherwise has raised no objections to the proposal subject to their recommended conditions.

Services

The site has access to all services available to be tapped into for the proposed development.

It is noted that the site has water pipe and transmission easements within the site. The applicant has stated that they have discussed the development proposal with Sydney Water and Integral Energy for their requirements to construct the building over the easements. They will need to obtain appropriate approvals from Sydney Water to meet their requirements to encase the pipes as well Integral Energy requirements for the building to be constructed over the easements and this has been conditioned to obtained prior to Construction Certificate being approved.

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

The site is suitable for the following reasons:

- The site has good access to regional significant roads, being Forrester Road and Links Road and approved as 26m B-double routes;
- Industrial development of similar bulk and scale is located to the north and east of this site;
- The development is consistent with other existing developments in the area;
- The site is able to drain to Council's satisfaction; and
- The site is within Dunheved Industrial Estate and make good use of industrial land and as such suitable for developments.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents. The proposal was on exhibition and was also advertised in a local newspaper between 4 March 2019 to 18 March 2019.

Council received one submissions in response raising concerns of the following:

Issues raised	Comments
<i>Potential Increase demand on street parking which will have adverse traffic movements along Dunheved Circuit and will have adverse impact on their business</i>	The proposal and traffic impact assessment has been examined by Council's Traffic Engineer and have advised that the maximum traffic is generated during shift change over of staff and the parking spaces provided for the development is sufficient to cater for the operation of the facility and unlikely to put pressure on street parking.
<i>Increased large truck movements from the development will increase congestion at Forrester Road junction</i>	The proposal has been examined by Council's Traffic Engineer and have advised that the existing road system along Dunheved Circuit leading to Forrester Road are able to cater for increased truck traffic. Whilst there will be some amount of traffic increase along access to Forrester Road, it will still be able to cater for the increase traffic and does not warrant refusal of the application.
<i>Link Road extension should be completed before the application is approved.</i>	Extension of Links Road is in planning stage and envisaged to be constructed in the near future and connected to Jordan Springs and St Marys.

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

The proposed development will not generate any significant issues of public interest, subject to conditions.

Conclusion

In assessing this application against the relevant environmental planning policies, being Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal satisfies the aims, objectives and provisions of these policies.

- The proposed design is generally compatible with other existing developments in the area.
- The proposal will provide employment for the local people of the area during construction phase and on going operation.
- The site is suitable for the proposed development.
- There is unlikely to be significant negative impacts arising from the proposed development.
- The proposal is in the public interest.
- Therefore, the application is worthy of support.

As the development relies upon easement over the rear property, an easement required to be created over the rear adjoining property and must be registered with the Land and Property Information. This is required to be carried out prior to the consent being operational and as such is recommended for *deferred commencement consent* and subject to other recommended conditions.

Recommendation

1. That the request pursuant to Clause 4.6 of the Penrith LEP 2010 be supported; and
2. That Development Application DA19/0135 for the demolition of existing structures, construction of two attached buildings for a *warehouse and distribution facility* and related site works including access road construction, drainage works, parking areas and landscaping works at 65 - 75 Dunheved Circuit, St Marys be approved as *deferred commencement consent* and subject to the following conditions.

CONDITIONS

General

1 [A001 - Approved plans table](#)

The development must be implemented substantially in accordance with the following plans numbered

Drawing Title	Drawing Reference	Prepared by	Dated
Site Plan	DA 02 (Issue D)	Borg Construction	07.08.2019
Floor Plan Main Building	DA 04 (Issue D)	Borg Construction	07.08.2019
Roof Plan	DA 05 (Issue D)	Borg Construction	07.08.2019
Elevation and Section for Main Building	DA 06 (Issue D)	Borg Construction	07.08.2019
Vehicle movement Plan	DA 07 (Issue D)	Borg Construction	07.08.2019
Waste Management Plan	DA09 (Issue D)	Borg Construction	07.08.2019
Landscape Plan	103 (Issue C)	Meraki Green Architecture	May.2019
Concept Stormwater Plans	SY180157C101, 111, 112, 113, 114, 121, 131, 141, 151, 161 & 171 (Revision C)	Barker Ryan Stewart	02.05.2019

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.

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

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

3 [A026 - Advertising sign \(not for residential\)](#)

A separate development application for the erection of a sign or advertising structure, other than approved by this consent or an advertisement listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan 2014 - Advertising Signs.

4 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)

The operating hours are 24 hours a day, Monday to Sunday.

5 [A030 - No retail sales](#)

No retail sale of goods shall be conducted from the subject premises.

6 [A032 - Goods in buildings](#)

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

7 [A038 - LIGHTING LOCATIONS](#)

Prior to the issue of an Occupation Certificate, any lighting system to be installed for the development is to be uniform lighting across common areas and driveways. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding landuses. 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 [A039 - Graffiti](#)

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

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

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

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

Prior to the release of the Construction Certificate, detailed design of all boundary fences shall be submitted to Council for consideration and approvals. The front boundary fence shall be constructed with see through palisade metal material and painted in black or green colour and located behind landscaping area or at least 3m behind the front boundary.

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

Any plant equipment proposed for the development are to be located within the roof area and/or integrated with the building design so that it forms part of the building design and is well integrated with the built form.

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

Prior to the issue of the Construction Certificate, the applicant shall obtain any required approval from the Sydney Water and Integral or Endeavour Energy to construct the building over the water pipe and transmission easements. All associated costs to obtain approvals and associated construction costs shall be borne by the applicant.

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

The proposed Shale Grey and Surfist colours are not approved. An amended schedule of colours is to be submitted for the approval of the Development Assessment Coordinator, Penrith City Council. The amended schedule of colours is to include a palette of non-reflective and more recessive colours and tones. These details are to be **submitted for approval prior to the release of the Construction Certificate**.

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

Prior to the release of the Construction Certificate, the landscaping area along the frontage of the site shall be widened to 10m as shown in red on the approved landscape and site plans and the amended landscape and site plans shall be submitted to Council for consideration and approval.

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

The landscaping plan, landscaped areas, hardstand areas, car parking arrangement and number of spaces are not approved as shown on the stamped plans. Amended architectural drawings are to be submitted, including a detailed landscape plan. The amended drawings are to provide for additional landscaping, including the following:

- a) Provision for a tree to be planted at an interval of every 4 car parking spaces;
- b) A reduction in the amount of hardstand area on both sides and the rear of the site, with these areas replaced with additional landscaping;
- c) Car parking spaces can be reduced to provide the additional landscaping;
- d) Amended swept paths are to be submitted to demonstrate continued compliance for truck and vehicle movements;
- e) The proposed Blueberry Ash trees are not approved and are to be replaced with a native species of trees that grows to a minimum height of 12m and is sufficient to screen the wall/s from the neighbouring scenic character area; and
- f) The landscaping plan is to include details of the design and dimensions, including the materials, of any retaining wall and rail guard to be located along the edge of the rear hardstand area.

All of the additional landscaping required above is to consist of advanced specimens of native trees which grow to a mature height of a minimum of 12 metres. The landscape plan is to demonstrate how the pot size of the tree is adequate for its growth and longevity. The amended details are to be approved by the Development Assessment Coordinator of Penrith City Council prior to the release of any Construction Certificate.

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

The proposed warehouse should not be used or occupied prior to 1 January 2021, and **no Occupation Certificate shall be issued** before this date.

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

A minimum 3 meter wide stormwater drainage easement shall be provided at the property at 118 Links Road, St Marys (Lot 1 DP 31908) in favour of property at 65 – 73 Dunheved Circuit, St Marys (Lot 1 DP 1175850) to cover the proposed stormwater pipeline and associated headwall according to Concept Stormwater and Grading Plan Sheet 1, Plan No: SY180157C111, Rev C, dated 02/05/2019, Prepared by Barker Ryan Stewart and evidence of registration of the easement with Land and Property Information (LPI) shall be **submitted to Penrith City Council prior to the issue of any Construction Certificate**. Easement width shall be in accordance with Penrith City Council's adopted Design Guidelines.

18 [A Special Condition \(BLANK\)](#)

Prior to the issue of a Construction Certificate the Certifying Authority shall ensure that a draft Operation and Maintenance Manual is provided for all proposed stormwater treatment measures. The manual should include checklists and details on the cleaning/maintenance requirements of the proposed treatment measures as well as detail on how this will be managed (nominate who will be responsible).

Demolition

19 [B001 - Demolition of existing structures](#)

The existing structures on site are to be demolished as part of the approved work.

20 [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**.

21 [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 Environmental Protection Authority to receive asbestos wastes.

22 [B004 - Dust](#)

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

23 [B005 - Mud/Soil](#)

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

24 [B006 - Hours of work](#)

Demolition works will be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

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

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

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

Heritage/Archaeological relics

25 [C003 - Uncovering relics](#)

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

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

Environmental Matters

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

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

27 [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.

28 [D011 - Traffic noise & acoustic report \(if not submitted with DA, otherwise use H007\)](#)

No works external to the building (other than parking and vehicle movements) are permitted by way of this consent unless otherwise agreed to in writing by Penrith City Council following submission of an Acoustic Report that addresses and satisfies the NSW Noise Policy for Industries.

29 [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.

30 **D06A – Approval for bulk earthworks/major filling operations (Use for bulk earthworks/ major filling operations)**

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

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

An appropriately qualified person/s (as defined in the Penrith City Council Contaminated Land Development Control Plan) shall:

- Supervise the filling works,
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and shall submit a review findings report to Council and any Principal Certifying Authority,
- Certify by way of a Compliance Certificate or other written documentation that fill materials have been placed on the site in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.

The contact details of any appropriately qualified person/s engaged for the works shall be provided with the Notice of Commencement.

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

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

31 **D Special BLANK**

Prior to works commencing on site, a Soil Management Plan is to be provided to council for approval. This plan is to be prepared by a suitably qualified environmental consultant and is to address the appropriate removal of minor levels of oil stained soils during bulk excavation work, as referenced in the Detailed Site Investigation, 65-73 Dunheved Circuit, St Marys prepared by DRC Environmental dated 3rd June 2019 (reference 300519).

The Soil Management Plan is to be implemented **prior to bulk earthworks commencing**. Documentation confirming the removal of the stained soils is to be provided to council for approval on completion of the removal works.

BCA Issues

32 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

33 G002 - Section 73 (not for

A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the "e-developer" icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate.**

34 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.

In the event that a pad mounted substation is necessary to service the development, Penrith City Council shall be consulted over the proposed location of the substation before the Construction Certificate for the development is issued as the location of the substation may impact on other services and building, driveway or landscape design already approved by Council.

Construction

35 H001 - Stamped plans and erection of site notice

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

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

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

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

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

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

36 H002 - All forms of construction

Prior to the commencement of construction works:

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

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

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

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

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

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

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

37 H041 - Hours of work (other devt)

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

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

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

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

Engineering

38 K101 - Works at no cost to Council

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

39 **K201 - Infrastructure Bond**

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

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

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

40 **K202 - S138 Roads Act – Works and Structures - Minor Works in the public road DRIVEWAYS ROAD OPENINGS**

Prior to the issue of any Construction Certificate, a Section 138 Roads Act applications, including payment of application and inspection fees, shall be lodged and approved by Penrith City Council (being the Roads Authority for any works required in a public road). These works may include but are not limited to the following:

- a) Vehicular crossings (including kerb reinstatement of redundant vehicular crossings)
- b) Concrete footpaths and or cycleways
- c) Road opening for utilities and stormwater (including stormwater connection to Penrith City Council roads and other Penrith City Council owned drainage)
- d) Road occupancy or road closures
- e) The placement of hoardings, structures, containers, waster skips, signs etc. in the road reserve
- f) Temporary construction access

All works shall be carried out in accordance with the Roads Act approval, the development consent, including the stamped approved plans, and Penrith City Council's specifications, guidelines and best engineering practice.

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

Note:

- a) Where Penrith City Council is the Certifying Authority for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.
- b) Separate approvals may also be required from the Roads and Maritime Services for classified roads.
- c) All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.

41 **K209 - Stormwater Concept Plan**

The stormwater management system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by prepared by Barker Ryan and Stewart reference SY180157C101 to SY180157C171, revision C dated 2 May 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 a Construction Certificate the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Council's Stormwater Drainage for Building Developments and Water Sensitive Urban Design Policy.

42 **K212 - No loading on easements**

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the foundations of proposed structures adjoining the drainage and/ or services easement have been designed clear of the zone of influence.

43 **K301 - Sediment & Erosion Control**

Prior to commencement of any works associated with the development, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997 and Managing Urban Stormwater series from the Office of Environment and Heritage. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

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

44 **K302 - Traffic Control Plan**

Prior to commencement of any works associated with the development, a Traffic Control Plan, including details for pedestrian management, shall be prepared in accordance with AS1742.3 "Traffic Control Devices for Works on Roads" and the Roads and Maritime Services' publication "Traffic Control at Worksites" and certified by an appropriately accredited Roads and Maritime Services Traffic Controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Note:

- a) A copy of the Traffic Control Plan shall accompany the Notice of Commencement to Penrith City Council.
- b) Traffic control measures may require road occupancy / road closure approvals issued under Section 138 of the Roads Act by Penrith City Council prior to the issue of a Construction Certificate.

45 **K405 - Turf to Verge**

Upon completion of all works in the road reserve, all verge areas fronting and within the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.

46 **K406 - Underground Services**

All existing (aerial) and proposed services for the development, including those across the frontage of the development are to be located or relocated underground in accordance with the relevant authorities regulations and standards.

47 **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 a S138 Roads Act approval or S68 Local Government Act approval have been inspected and signed off by Penrith City Council.

48 **K502 - 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.

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 Council is not the Principal Certifying Authority.

49 [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.

50 [K505 - Restriction as to User and Positive Covenant](#)

Prior to the issue of any Occupation Certificate, a restriction as to user and positive covenant relating to the:

- Stormwater management systems (including on-site detention and 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 Development – Appendix F.

51 [K510 - Entry/ Exit signage](#)

Prior to the issue of any Occupation Certificate, 'Entry and Exit' signage shall be placed within the development site which is to be clearly visible from the public road.

52 [K511 - Directional signage](#)

Prior to the issue of any Occupation Certificate, directional signage and linemarking shall be installed indicating directional movements and the location of customer parking to the satisfaction of the Principal Certifying Authority.

53 [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 stormwater management systems and in the treatment measure/s.

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

All vehicle are to enter and leave in a forward direction.

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

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the plans include dimensions of driveways that accommodate 26m long B-double turning paths that do not encroach over the driveways or the opposite traffic lane in Dunheved Circuit, ramps, aisles, parking spaces, accessible parking, bicycle parking, 1.5 metre wide concrete footpath along frontage of Dunheved Circuit, 1.5 metre wide accessible pedestrian footpath access from the footpath in Dunheved Circuit to the principle point of entry to the building, other internal footpaths, services vehicle manoeuvring and loading areas complying with AS 2890, AS 1428, Council Development Control Plan 2014 (DCP) Section C10.

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

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the plans include complying numbers of secure, all weather bicycle parking, any required end of journey facilities, change rooms, showers, lockers are to be provided at convenient locations in accordance with Council Development Control Plan (DCP) 2014, Section C10 Section 10.7, AS 2890.3 Bicycle Parking Facilities and Planning Guidelines for Walking and Cycling (NSW Government 2004).

57 **K Special (BLANK)**

Prior to Occupation Certificate, appropriate signage and pavement marking, visible from Dunheved Circuit and on-site shall to be installed to reinforce designated northern driveway as entry only and southern driveway as exit only, vehicle circulation and to direct staff / delivery vehicle drivers / service vehicle drivers / visitors to on-site parking, delivery and service areas to the satisfaction of the Principal Certifying Authority.

58 **K Special (BLANK)**

Sight distance requirements at the car park driveway is to be in accordance with AS 2890.1, Figure 3.2 and Figure 3.3. Sight distance requirements at the heavy vehicle driveway is to be in accordance with AS 2890.2 Figure 3.3 and Figure 3.4.

The required sight lines around the driveway entrances and exits are not to be compromised by street trees, landscaping or fencing.

59 **K Special (BLANK)**

Subleasing of car parking spaces is not permitted by this Consent.

60 **K Special (BLANK)**

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, AS2890.2, AS2890.6, and accessible parking is to be provided with accessible paths of travel to the facility in accordance with AS 2890.6 and Penrith City Council's Development Control Plan and Council requirements, to the satisfaction of the Principal Certifying Authority.

61 **K Special (BLANK)**

All car spaces, truck manoeuvring areas and loading areas are to be sealed/line marked and dedicated for the parking of vehicles only and not be used for storage of trucks/shipping containers/ tyre stockpiles/materials/products/waste materials etc.

Landscaping

62 **L001 - General**

All landscape works are to be constructed in accordance with the stamped approved Plan Number LP.01/A to LP.05/A (as amended in red by Council) prepared by Meraki Green Landscape Architecture dated May 2019, Section C Landscape Design in Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plan, 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.

63 L003 - Report requirement

The following series of reports relating to landscaping are to be submitted to the nominated consent authority at the appropriate time periods as listed below. These reports shall be prepared by a landscape professional or a qualified person.

i. Implementation Report

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 a landscape professional or a qualified person.

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.

The approved plans shall be implemented at the expense of the property owners.

64 L005 - Planting of plant

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

65 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.

66 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 Development Control Plan 2014.

67 L008 - Tree Preservation Order

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

Certification

68 **Q006 - Occupation Certificate (Class 2 - 9)**

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:

- 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.
- Condition 40 and 47 where upon Council has certified that the works approved under the Roads Act 1993 are satisfactorily completed.

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

69 **Q01F - Notice of Commencement & Appointment of PCA2 (use for Fast Light only)**

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

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

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

Information to accompany the Notice of Commencement

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

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site Planning and Design Principles

Whilst the building appears to be large, it is not too dissimilar in bulk, scale and design to the several other existing buildings in the area. With the inclusion of continuous landscaping/tree buffer being provided along the frontage and all boundaries, its overall visual impacts will be minimised when viewed from public domain and surrounding area.

C6 Landscape Design

The site has no vegetation except for couple of trees along the frontage. The proposed species of trees along the frontage and all boundaries are considered to result in an improved streetscape and the amenity of the area.

C10 Transport, Access and Parking

The proposed development has been examined by Council's Traffic Engineer and have advised that although the proposed parking numbers are less than Council's DCP requirement, it does comply with the RMS guideline requirement for this type and scale of warehouse development. The demand for on site parking for such usage is unlikely to be high and hence the proposed 119 parking spaces are considered to be acceptable subject to all spaces being provided in accordance with AS 2890. This has been further discussed under the 'likely impacts' section of this report.

The two separate vehicle access to the site is considered to be satisfactory to cater for large trucks to enter and leave the site in a forward direction and condition has been recommended that all driveways are in accordance with AS 2890.

D4 Industrial Development

4.1 Key Precincts

The subject site is located within the Precinct 1 shown in Figure D4.3 of the DCP.

4.2 Building Height

The development does not comply with the height controls contained within Penrith LEP. This issue is further discussed under the 'Clause 4.6 Exceptions to development standards' section of this report.

4.3 Building Setbacks and Landscape

The subject site has a road frontage to Dunheved Road as such, the building setback controls of 9m contained within section 4.3 are applicable. The development provides 20m front setback and complies with this requirement.

The application was accompanied by a landscape plan prepared by Meraki Green Architecture dated May 2019 showing planting along the frontage and along all boundaries demonstrating that the proposed planting will enhance the street presentation of the warehouse and minimise the visual impact of hard surface areas and the amenity of the area in long term.

4.4 Building Design

The objectives of this section of the DCP relate to industrial development architectural design, sustainability and visual impact. Discussion against these aspects of the proposal are further discussed under the 'Clause 7.4 Sustainable development' and 'likely impacts' sections of this report and found to be satisfactory.

4.5 Storage of Materials and Chemicals

No external storage of materials or chemicals is proposed.

4.6 Accessing and Servicing the site

The objectives of this section of the DCP aim to ensure industrial development has safe and efficient movement into and out of the site. The development provides sufficient parking on-site for the facility and provides parking that enhances the function and appearance of the industrial development and ensures pedestrian needs are adequately and safely accommodated.

4.7 Fencing

The landscape plan indicates that there will be 2.1m high security fence however, no details have been provided in regards to the type. As such, a condition of consent is recommended that details of the fencing be provided prior to the issue of a construction certificate.

4.8 Lighting

It is recommended that a condition of consent be included to ensure that external lighting complies with relevant Australian Standards and is located and directed as not to create a nuisance to surrounding landuses.