

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA19/0470.01
Proposed development:	Section 4.55(1A) Modification for Deletion of Conditions 58, 63 & 64 - Alterations to Existing Approved Waste Management & Resource Recovery Facility including Alterations to Finished Landform & Increase in Waste Storage Capacity
Property address:	1725 a Elizabeth Drive, BADGERYS CREEK NSW 2555
Property description:	Lot 1 DP 542395 Lot 740 DP 810111
Date received:	13 January 2021
Assessing officer	Sufyan Nguyen
Zoning:	SEPP - AEROTROPOLIS - Enterprise zone SEPP- AEROTROPOLIS - Environment & Recreation zone SEPP WSA - Affected by ANEF or ANEC 20 or greater SEPP WSA - Affect Lighting Intensity and Wind Shea SEPP WSA - Affected by Obstacle Limitation SEPP WSA - Affected by Wildlife Buffer Zone E2 Environmental Conservation - LEP 2010 RU2 Rural Landscape - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a Section 4.55(1A) modification application for the deletion of Conditions 58, 63 and 64 of DA19/0470 for alterations to an existing waste management and resource recovery facility at 1725a Elizabeth Drive, Badgerys Creek. Pursuant to Clause 123BA of the Environmental Planning and Assessment Regulation 2000, Council is the consent authority for the application.

Conditions 58, 63 and 64 are in relation to the requirement for an infrastructure restoration bond, a restriction on the siting of any buildings, works, plant and parking areas on the site relative to nearby roads and public places/reserves, and the requirement to grade and seal internal roads on site which are located within 300m from any residential building. The approved development does not involve any physical works outside the site which may potentially impact Council's assets and separate development consent will be required for the erection of any structure/s on the site. Further, the original development application included acoustic measures/conditions and an air quality assessment and related condition of consent which was imposed requiring dust mitigation measures on site to minimise any amenity impacts on nearby properties. As such, Conditions 58, 63 and 64 are considered superfluous and can be deleted from the consent.

The minor nature of the modification application did not warrant notification in accordance with Penrith Development Control Plan 2014 (DCP) and therefore no public submissions were received in response.

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

Site & Surrounds

The subject site has a property address of 1725a Elizabeth Drive, Badgerys Creek and is legally described as Lot 1 DP 542395 and Lot 740 DP 81011. The site is currently occupied by the Kemps Creek Resource Recovery Park, which includes both the active land fill operation and the SUEZ Advanced Waste Treatment (SAWT) facility and landfill gas to energy system.

The site has a total land area of 85 hectares with the footprint of the waste management activities occupying approximately 60 hectares, the SAWT facility 7 hectares and the remainder of the site reserved for vegetation buffers and ancillary facilities. Directly adjoining the site to its west is Badgerys Creek, with a vegetation buffer maintained along the majority of its length to Badgerys Creek. The site is accessed from Elizabeth Drive via a public access road approximately 600m in length.

The subject site is zoned 'Enterprise' and 'Environment and Recreation' under State Environmental Planning Policy (Western Sydney Aerotropolis) 2020. However, at the time of the original development application (and noting the savings provisions contained within the SEPP), the site was subject to two different zonings under Penrith LEP 2010. In this regard, the majority of the land was zoned RU2 Rural Landscape and a portion of the western side of the site, adjacent to Badgerys Creek, was zoned E2 Environmental Conservation. The now current Enterprise zoning and Environment and Recreation zoning align with the previously applicable RU2 and E2 zone boundaries.

The surrounding area currently comprises of primarily rural-residential development and smaller areas of residential development.

The site is approximately 800m north from the construction site for the future Western Sydney International (Nancy Bird Walton) Airport (situated along the southern side of Elizabeth Drive), which is driving a range of broader land use changes in the region. This includes changes in land use and the construction of infrastructure to support the future airport such as the NSW Government's Western Sydney Aerotropolis and the proposed M12 and M9 motorways to be positioned to the north and west of the subject site.

Background

In 1990, approval was granted by Penrith City Council for the '*continued operation and backfilling of Badgerys Creek Quarry*' (DA451/89). The majority of the site is currently occupied by quarrying and landfill operations. Major Project Approval (MP06-0185) under Part 3A of the Act was granted in April 2008 for the construction of the SAWT facility. This facility has been in operation since 2009 with approximately 55% of incoming material delivered to the SAWT diverted from putrescible landfill. DA12/0515 was approved in May 2013 for two (2) 1.4 MW generators within the site which operate a supply of landfill gas from the landfill. Power generated by the landfill gas to energy system is used to power the SAWT facility, with excess power being delivered to the electricity network.

DA19/0470 was approved in July 2020 by the Sydney Western City Planning Panel for an expansion of the existing landfill facility to increase its capacity from 750,000 to 850,000 tonnes per annum of non-putrescible general solid waste and restricted solid waste, with an increased cap height of 15m and a landfill air space capacity of approximately 4.8 million cubic metres.

Proposal

The applicant seeks approval to delete Conditions 58, 63 and 64 of DA19/0470 for alterations to an existing waste management and resource recovery facility at 1725a Elizabeth Drive, Badgerys Creek. The respective conditions read as follows:

Condition 58

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.

Condition 63

Buildings, works, plant and parking areas must be erected, constructed, placed or sited further than 30m from any main or Country Road and further than 15m from the access road, public place or public reserve.

Condition 64

Any roads within the development which are within 300m of any residential buildings will be properly graded and sealed.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Western Sydney Aerotropolis) 2020
- State Environmental Planning Policy (Western Sydney Employment Area) 2009
- State Environmental Planning Policy No 33—Hazardous and Offensive Development
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**

Although the original development application was determined by the Sydney Western City Planning Panel, Council has the role as the consent authority for the subject Section 4.55(1A) modification application in accordance with Clause 123BA of the Environmental Planning and Assessment Regulation 2000.

• **Section 4.14 - Bushfire prone land assessment**

The minor nature of the proposed consent condition modifications is not considered to diminish the development's compliance with the requirements of the *Planning for Bush Fire Protection* guidelines.

• **Section 4.46 - Integrated development**

The minor nature of the proposed consent condition modifications does not warrant referral to the EPA which was an integrated development authority in relation to the original development application.

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

The proposed consent condition modifications have been assessed in accordance with the matters for consideration under Section 4.55(1A) of the Act. The proposed modifications satisfy the relevant provisions of the Act in this regard.

Under the provisions of Section 4.55(1A) Modifications involving minimal environmental impact of the Act, Council may, in response to an application being made, modify a previously approved development if:

(a) *it is satisfied that the proposed modifications are of minimal environmental impact, and*

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

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

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

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

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

In this regard, the following is noted:

(a) The originally approved development does not involve any works external to the site, which will ensure that Council's assets will not be adversely impacted. It is noted the condition to restrict the siting of any "buildings, works, plant and parking areas" is not considered to be relevant, as any new structure/s on the site will require further consideration and assessment as part of any future development applications. In regard to the condition that requires properly graded and sealed roads within the development site which are 300m from any residential buildings, this matter is considered to be dealt with given the original development application included acoustic measures/conditions and an air quality assessment and related condition of consent which was imposed requiring dust mitigation measures on site to minimise any amenity impacts on nearby properties (as per Condition 43 of the original consent). As such, Conditions 58, 63 and 64 are considered superfluous and can be deleted from the consent.

(b) In *Vacik Pty Ltd v. Penrith City Council* (unreported 1992) the question of substantially the same development was considered by Commissioner Stein J. and in particular the meaning of the word 'substantially'. In his opinion 'substantially' is taken in the context to mean 'essentially or materially or having the same essence'.

In *North Sydney Council v. Michael Standley & Associates Pty Ltd* (1998) the NSWCA recognised that a modified development must be different in some respect to the approved development and used the formulation that 'modify' meant 'to alter without radical transformation'.

In applying the ordinary meaning of the words '*substantially the same development*' informed by the above cases, the minor nature of the proposed consent condition modifications results in an overall development not too dissimilar to the original approval, noting that appropriate conditions will remain in place to protect the amenity of nearby residential properties. The modified development is not considered likely to result in any significant impacts on the surrounding area and hence, the proposed modifications are not considered to change the essence of the development.

(c) Notification of the modification application was not considered warranted in accordance with the requirements of the DCP.

(d) No public submissions were received regarding the modification application.

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

State Environmental Planning Policy (Infrastructure) 2007

The minor nature of the proposed consent condition modifications is not considered to diminish the development's compliance with SEPP Infrastructure.

State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

The subject site is zoned 'Enterprise' and 'Environment and Recreation' under State Environmental Planning Policy (Western Sydney Aerotropolis) 2020. However, at the time of the original development application (and noting the savings provisions contained within the SEPP), the site was subject to two different zonings under Penrith LEP 2010. In this regard, the majority of the land was zoned RU2 Rural Landscape and a portion of the western side of the site, adjacent to Badgerys Creek, was zoned E2 Environmental Conservation. The now current Enterprise zoning and Environment and Recreation zoning align with the previously applicable RU2 and E2 zone boundaries.

The minor nature of the proposed consent condition modifications does not warrant additional consideration of the development under the Aerotropolis SEPP.

State Environmental Planning Policy (Western Sydney Employment Area) 2009

The minor nature of the proposed consent condition modifications is not considered to diminish the development's compliance with SEPP WSEA.

State Environmental Planning Policy No 33—Hazardous and Offensive Development

The minor nature of the proposed consent condition modifications is not considered to diminish the development's compliance with SEPP 33.

State Environmental Planning Policy No 55—Remediation of Land

The minor nature of the proposed consent condition modifications is not considered to diminish the development's compliance with SEPP 55.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The minor nature of the proposed consent condition modifications is not considered to diminish the development's compliance with SREP 20.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies - See discussion

Clause 1.2 Aims of the plan

The minor nature of the proposed consent condition modifications is not considered to diminish the development's compliance with Penrith LEP 2010.

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

The *Draft SEPP (Environment)*, *Draft SEPP (Remediation of Land)* and *Draft SEPP (Cumberland Plain Conservation)* are at present applicable to the subject site and proposal, but while so, do not affect or alter the recommendations of this report, noting that the modified development is not considered inconsistent with these *Draft SEPPs*.

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

Development Control Plan 2014

Provision	Compliance
D5.9. Extractive Industries	Complies

Section 4.15(1)(a)(iia) The provisions of any planning agreement

There are no planning agreements in place, which are applicable to the modified development.

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

The proposed modifications are not considered to diminish the development's compliance with the applicable regulations.

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

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

The proposed consent condition modifications are not considered to appreciably alter the likely impacts of the development.

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

The minor nature of the proposed consent condition modifications is not considered to diminish the site's suitability for the development.

Section 4.15(1)(d) Any Submissions

Community Consultation

In consideration of the minor nature of the proposed modifications, notification of the application was not considered warranted in accordance with Appendix F2 - Section 1.4.4 Notification and Advertising of the DCP.

Referrals

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

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

Environmental - Environmental management

In consideration of the minor nature of the proposed modifications, re-referral to Council's internal departments was not considered warranted.

Section 4.15(1)(e)The public interest

In consideration of the minor nature of the proposed modifications, the subject modification application does not generate any significant issues of public interest.

Conclusion

The proposed modifications have been assessed against the relevant heads of consideration contained in Section 4.55(1A) of the Act and have been found to be satisfactory. The modified development is not considered to result in any unreasonable environmental or socio-economic impacts in the locality. The site remains suitable for the development and is not contrary to the public interest. The application is worthy of Council's support and is recommended for approval.

Recommendation

That DA19/0470.01 for deletion of Conditions 58, 63 and 64 of DA19/0470 for alterations to an existing waste management and resource recovery facility at 1725a Elizabeth Drive, Badgerys Creek, be approved subject to the following amended consent conditions.

CONDITIONS

General

1 [A001 - Approved plans table](#)

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

Plan No.	Issue	Title	Prepared by	Date
60571292-SHT-CI-00001	B	Locality Plan and Drawing Index	AECOM	4 January, 2019
60571292-SHT-CI-00004	B	Proposed Final Landform Pre-Settlement Contours	AECOM	4 February, 2019
60571292-SHT-CI-00005	B	Pre-Settlement Final Landform Sections and Approved Cap Sections	AECOM	4 February, 2019
60571292-SHT-CI-00006	B	Pre-Settlement Final Landform Sections	AECOM	4 February, 2019
60571292-SHT-CI-00007	B	Indicative Stage 1 Fill - Layout	AECOM	4 February, 2019
60571292-SHT-CI-00008	B	Indicative Stage 2 Fill - Layout	AECOM	4 February, 2019
60571292-SHT-CI-00009	B	Indicative Stage 3 Fill - Layout	AECOM	4 February, 2019
60571292-SHT-CI-000010	B	Indicative Stage 1 Fill - Catchments and Stormwater Drainage Plan	AECOM	4 February, 2019
60571292-SHT-CI-000011	B	Indicative Stage 2 Fill - Catchments and Stormwater Drainage Plan	AECOM	4 February, 2019
60571292-SHT-CI-000012	B	Indicative Stage 3 Fill - Catchments and Stormwater Drainage Plan	AECOM	4 February, 2019
60571292-SHT-CI-000013	B	Proposed Final Access Road on Proposed Final Landform	AECOM	4 February, 2019
60571292-SHT-CI-000014	B	Proposed Final Access Road - Long Section	AECOM	4 February, 2019
60571292-SHT-CI-000015	B	Post-Settlement Final Landform	AECOM	4 February, 2019
60571292-SHT-CI-000016	B	Post-Settlement Final Landform - Section Sheet 01 of 02	AECOM	4 February, 2019
60571292-SHT-CI-000017	B	Post-Settlement Final Landform - Section Sheet 02 of 02	AECOM	4 February, 2019
L01	-	Landscape Plan as amended to satisfy condition 10 of this consent	AECOM	24 June, 2019

- General Terms of Approval issued by the Environment Protection Authority, Notice Number: 1594697, dated 11 May, 2020,
- Elizabeth Drive Landfill Expansion Technical Advice prepared by GHD, dated February, 2020,
- Bushfire Risk Assessment prepared by Australian Bushfire Consulting Services, Reference No. 18-205/1, dated 3 October, 2018.
- Noise and Vibration Technical Report prepared by AECOM, Document Status: Final, dated 12 July, 2019 and Supplementary Noise and Vibration Impact Assessment prepared by AECOM, dated 12 November, 2019 and Supplementary Noise Impact Assessment prepared by AECOM, dated 25 February, 2020,
- Air Quality Impact Technical Report prepared by AECOM, Document Status: Final, dated 12 July, 2019 and Supplementary Air Quality Impact Assessment prepared by AECOM, dated 12 November, 2019 and Supplementary Air Quality Impact Assessment prepared by AECOM, dated 25 February, 2020, and
- Greenhouse Gas Calculations prepared AECOM, Document Status: Final, dated 12 July, 2019.

2 **A Special (BLANK)**

Adequate water supply and fire fighting equipment are to be provided close to the working face. Prompt action to extinguish fires should be undertaken if required.

3 **A Special (BLANK)**

A stockpile of at least 1000 tonnes of excavated material (not topsoil) is to be maintained on-site for use as emergency cover throughout the life of the facility.

4 **A Special (BLANK)**

The whole of the site operations are to be under the control of a Site Manager whose duties will include;

- (a) Presence at the site at all times whilst the facility is open,
- (b) Control of all employees working on the site,
- (c) Control of all persons on the site, and
- (d) The implementation or oversight of the conditions of this approval.

5 **A Special (BLANK)**

The development shall comply at all times with the General Terms of Approval, Notice Number 1594697, dated 11 May, 2020 issued by the Environment Protection Authority.

6 **A Special (BLANK)**

The applicant must deliver a signed 'Notice of Modification' to Penrith City Council in accordance with the requirements of Clause 97 of the Environmental Planning and Assessment Regulation 2000 within twelve (12) months of the date of this determination.

The 'Notice of Modification' is to be provided in relation to DA08/0958 (as amended) and identify that:

- a) DA08/0958 is to be limited to the geographical extent of the part of the site zoned E2 Environmental Conservation under the Penrith Local Environmental Plan 2010, and
- b) The conditions provided within DA08/0958 are to be modified so as to facilitate the integration between this Development Consent and Development Consent DA19/0470.

The provision of any 'Notice of Modification' to Penrith City Council is to be accompanied by written evidence from both Penrith City Council and the Environment Protection Authority indicating satisfaction with any amended conditions of consent, plans or documents.

7 **A Special (BLANK)**

Prior to altering the existing approved waste management and resource recovery facility, altering finished landform and increasing waste capacity at the premises;

- a) The applicant must apply to the Environment Protection Authority and be issued with a variation to the existing Environment Protection Licence No. 4068.
- b) 7 days prior to the commencement of operations under this development consent (and the alterations to the existing approved waste management and resource recovery facility, finished landform and waste capacity at the premises it approves), a copy of the amended Environment Protection Licence No. 4068 is to be provided to Penrith City Council.
- c) The proposal is to operate in accordance with the amended Environment Protection Licence No. 4068 issued by the Environment Protection Authority and the conditions of this development consent at all times.

(Note: also the requirements in relation to the updated Landfill Environmental Management Plan (LEMP) required by condition 38).

8 **A Special (BLANK)**

All quarrying and waste compaction activities at the premises must only be conducted between the following hours:

- Monday to Friday: 7.00am to 6.00pm,
- Saturday: 7.00am to 5.00pm, and
- Sunday and Public Holidays: 8.00am to 5.00pm.

All waste receipt activities at the premises must only be conducted between the following hours:

- Monday to Friday: 6.00am to 6.00pm,
- Saturday: 7.00am to 5.00pm, and
- Sunday and Public Holidays: 8.00am to 5.00pm.

9 **A Special (BLANK)**

Only non-putrescible solid wastes as defined by the Waste Classification Guidelines as provided by the NSW Environment Protection Authority are to be accepted for disposal on the site.

The maximum amount of non-putrescible solid wastes which may be imported onto the site for landfilling is 950,000 tonnes per annum. The quantity of waste received is not to exceed that required to achieve the final land form profile and height as approved.

10 **A Special (BLANK)**

Prior to the commencement of any works associated with this consent, the approved landscape plan as provided in Condition 1 is to be amended to the satisfaction of Penrith City Council to provide for the following;

a) plans and sections are to be provided identifying the boundary interface to adjoining sites including the following requirements;

- Adjoining sites RL levels, existing buffer conditions including width, height of mound, fencing and vegetation,
- Identify any augmentation to the mounds/fencing/screening,
- An identification of all new plant species, number of new plants to be planted and pot size to be provided (for each new species), to the existing vegetation buffers along the northern, eastern and southern perimeter of the subject site, and
- Extent to which visual mitigation of operations and final landform is anticipated to be achieved by the above measures.

b) evidence that SUEZ taken into account reasonable consultation with the owners of adjacent properties along its southern, eastern and northern boundary in regard to visual screening mitigation to be provided and maintained.

11 **A Special (BLANK)**

The development is to be carried out in three (3) stages as per approved Sheet No. 60571292-SHT-CI-00007 (Indicative Stage 1 Fill - Layout), Sheet No. 60571292-SHT-CI-00008 (Indicative Stage 2 Fill - Layout) and Sheet No. 60571292-SHT-CI-00009 (Indicative Stage 3 Fill - Layout), all prepared by AECOM, all Issue B, all dated 4 February, 2019.

12 **A Special (BLANK)**

Landfill gas burning within the site is to remain consistent with the current capacity and the conditions of DA12/0515. Any changes to the nature or rate of gas burning may only be implemented if approved via development application. In the event of unexpected or emergency landfill gas burning (such as for safety reasons), the applicant is to report such events immediately to the Western Sydney Airport Authority and the NSW Environment Protection Agency.

13 **A Special (BLANK)**

A noise complaint phone number and email address is to be provided on the SUEZ Kemps Creek Resource Recovery Park website. The details of each noise complaint received (including the person complaining, date, time and nature of complaint) are to be recorded. The actions taken to resolve the complaint and the time taken to resolve the complaint are to be recorded. The noise complaint records are to be made available to Penrith City Council on request.

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

The Emergency Response Plan for existing operations on the subject site is to be updated so as to also specifically address bush fires and include appropriate triggers and responses to a bush fire event onsite in accordance with *Planning for Bush Fire Protection 2006*. Details of the updated Emergency Response Plan are to show concurrence from the NSW Rural Fire Service and be provided to Penrith City Council prior to the operation of this consent.

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

A re-assessment of the site's restoration and bush fire protection measures is to be undertaken at the time that the site ceases to operate as an active landfill. Written evidence is to be provided from the Rural Fire Service identifying that any document prepared is in accordance with *Planning for Bush Fire Protection 2006* (or the relevant document at the time) and a copy provided to Penrith City Council at the time that the site ceases to operate.

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

Council staff or agents of Council may enter the site at all reasonable times to inspect the works and any other operational aspects as necessary.

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

Upon request, the applicant is to provide, or arrange provision of, any information required by, or on behalf of Council, in relation to compliance or otherwise with any conditions of this consent. Information should be furnished within 2 weeks of any request except as agreed otherwise by Council.

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

The applicant shall indemnify and keep indemnified the Council from and against all damages, claims, demands, proceedings, costs and expenses which arise from any aspect of the site operations.

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

The applicant is to provide an annual report to Council in relation to compliance or otherwise with any of the conditions of this consent. This report must also indicate the response of the applicant and/or operator to any emergencies, incidents, etc.

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

A separate development approval shall be obtained for the erection of any signage, other than signage listed as exempt development.

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

No retail sale of any materials extracted, produced or recycled on the site shall be conducted from the subject premises.

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

The proponent shall ensure that lighting associated with the project:

- a) complies with the latest version of Australian Standard AS 4282 (INT) - Control of Obtrusive Effects of Outdoor Lighting;
- b) is mounted, screened and directed in such a manner that it does not create a nuisance to surrounding properties or the surrounding public road network; and
- c) lighting and light spill does not cause distraction to aircraft pilots associated with the operations of Western Sydney Airport. Lighting is to be design in consultation with Western Sydney Airport with evidence of consultation to be provided upon request.

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

The applicant shall meet the requirements of all public authorities having statutory responsibilities in respect of the proposed development.

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

All conditions of this consent shall be complied with throughout the lifetime of the site operations and until such time as a Statement of Completion is issued for the site by the Environment Protection Authority as provided by Environment Protection Licence No. 4068 (as amended).

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

Prior to the final capping of the subject site in association with landfill operations, landscape plans associated with the future capping are to be reviewed by an ecologist (or suitably qualified person) and Western Sydney Airport authorities to identify and minimise the possibility of future impacts to operations of Western Sydney Airport in relation to the possible attraction of wildlife.

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

No stockpiling of materials or provision of structures associated with landfilling activities to the site is at any time to sit above a maximum RL 95.

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

Works to be provided as identified by Condition 10 of this Development Consent are to be undertaken prior to altering the existing approved waste management and resource recovery facility adjoining the relevant boundary to be carried out by the 3 identified stages as per approved Sheet No. 60571292-SHT-CI-00007 (Indicative Stage 1 Fill - Layout), Sheet No. 60571292-SHT-CI-00008 (Indicative Stage 2 Fill - Layout) and Sheet No. 60571292-SHT-CI-00009 (Indicative Stage 3 Fill - Layout), all prepared by AECOM, all Issue B, all dated 4 February, 2019.

Confirmation of installment of all necessary works is to be confirmed by a suitably qualified person and provided to Penrith City Council.

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

All boundary buffers (mounds, fencing, planting, etc) are to be inspected by a suitably qualified person on an annual basis for the operating life of the facility. All boundary buffers are to be maintained following the capping of the operations as approved.

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

The applicant shall maintain (as required to be amended) the site's Environmental Protection Licence (No. 4068) as issued by the NSW Environment Protection Authority (EPA).

Heritage/Archaeological relics

30 [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

31 [D005 - Mud/Soil](#)

During operating hours, the site access road must be inspected twice per day and cleaned with a high-pressure water spray using on-site water carts if clumps of dirt, deposited sediment or other soil or waste debris are present.

32 [D Special \(BLANK\)](#)

The Environment Protection Authority has the right to impose any additional control or treatment measures as may, in its opinion, become necessary upon the area of site operations.

33 [D Special \(BLANK\)](#)

All unsealed roads on or serving the development shall be dampened by a water cart to prevent dust generation. A water cart shall be available for on-site use at all times.

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

Radiator fan backwash and engine exhaust gases from all mobile equipment on the site must be directed away from the ground.

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

The site is to be fenced with industrial chainwire fencing with 3 strands of barb wire at the top, to a minimum height of 1.8m with gates of similar construction.

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

All runoff, including that from truck wash-down facilities (and sediment) from within the extraction area, must be directed towards on-site sediment basins.

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

All water needed for dust suppression, irrigation, fire fighting, etc must be collected from runoff from the site or sources satisfactory to Council. Sufficient water must be available for these purposes. Water is not to be pumped from Badgerys Creek. Any excess surface water within site, including runoff, is to be directed towards on-site sediment basins.

38 **D Special (BLANK)**

1) Seven (7) days prior to the commencement of operations under this development consent, the applicant must supply to Penrith Council written confirmation of satisfaction from Environmental Protection Authority of an updated Landfill Environmental Management Plan (LEMP) reflective of the approved development and requirement to amend the existing Environmental Protection Licence No. 4068 as provided by Condition 7 of this Consent, together with a copy of that updated LEMP.

2) The updated LEMP is to:

a) reflect conformity with the EPAs Environmental Guideline: Soil Waste Landfills 2016 (or such similar guidelines as are then applicable),

b) identify any updates to the monitoring and reporting on impacts and environmental performances of the development given the increased scale of facility, its location and adjoining current and future uses

c) provide for the progressive rehabilitation of the completed landfill cells to achieve the final landform as approved.

d) detail the vegetation types, maintenance, monitoring and performance criteria for the proposed rehabilitation.

e) include a Landfill Closure and Rehabilitation Plan (LCP) for the Sie and the E2 zoned land (under DA08/0958 as modified which form part of operations and rehabilitation commitments) prepared by a suitably qualified and experienced expert(s) taking into account consultation with Penrith Council and EPA. The LCP is to define objectives and criteria for rehabilitation and closure, describe the measures to be implemented, calculate the anticipated cost of implementing the measures, describe how performance of measures would be monitored over time and include details of the post closure management measures for all aspects of the site and E2 lands, including ongoing management of the capped waste mass, procedures for the final capping and rehabilitation, describe ongoing surface water and leachate management and other environmental controls, detail landfill gas monitoring and maintenance and identify future land use/s on the site. The LCP may identify further detail to be provided to the EPA and Penrith Council where considered appropriate at nominated times prior to the anticipated closure of the facility.

f) provide for the measures to address the mitigation considerations discussed in the Visual Impact Assessment.

g) describe required dust monitoring and groundwater, subsurface gas and leachate monitoring.

h) identify infrastructure on the E2 zoned land that the operation is directly reliant upon (such as stormwater dams which receive stormwater received from the approved waste management and resource facility and leachate storage tanks).

i) minimisation of the consumption of portable water, and greenhouse gas emissions.

3) The applicant must implement the LEMP (and the LCP it includes) so provided for the duration of the development.

4) A copy on the updated LEMP is to be made available to immediate neighbours at no cost on request.

5) The updated LEMP is to identify infrastructure on the E2 zoned land that the operation is directly reliant upon (such as dams which receive stormwater received from the approved waste management and resource facility).

6) All infrastructure on the E2 zoned land that the LEMP identifies the operation is directly reliant upon must be maintained as required by the LEMP for the life of the facility (and into perpetuity where identified in the LEMP as being so required).

39 **D Special (BLANK)**

The facility must not accept waste or recyclable materials from members of the general public.

40 **D Special (BLANK)**

All access gates are to be kept fully attended whilst the facility is operating and locked when the facility is not operating.

41 **D Special (BLANK)**

Burning of combustible material is not to be permitted on the site.

42 **D Special (BLANK)**

Operations are to comply with the NSW Smoke-free Environment Act 2000 and Smoke-free Environment Regulation 2000. Smoking is to be prohibited in proximity to any fuel storage and equipment maintenance facilities.

43 **D Special (BLANK)**

The following dust mitigation measures are to be actioned in the operation of the landfill at all times;

- Sealing is to be provided to waste delivery haul routes. Sealed roads are to be progressively laid moving onto the landfill towards the tipping face. Only the final 50m of the haul/turnaround area is to remain unsealed.
- During operating hours the site access road must be inspected twice per day and cleaned with a high-pressure water spray using on-site water carts if clumps of dirt, deposited sediment or other soil or waste debris are present.
- Shale covers are to be placed on non-active areas of the general and restricted waste cells.
- Tarps are to be used at night on the general waste cell batters for the life of the project.
- Hydromulch or similar products with stabilising additives are to be used on disused shale stockpiles.

44 **D Special (BLANK)**

A noise mitigation action plan is to be prepared within six (6) months of the date of this consent by a suitably qualified person to address future noise non-compliances or complaints as provided by Section 4.0 '*Feasible and reasonable management of impacts*', Supplementary Noise and Vibration Impact Assessment prepared by AECOM, dated 12 November, 2019. The plan is to be to the satisfaction of Penrith City Council.

45 **D Special (BLANK)**

The applicant is to ensure at all times that wind blown litter is appropriately managed to prevent it leaving the subject site. The management of wind blown litter is to be in accordance with Clause 6.4 *Litter and Debris Control of the Environmental Guidelines: Solid Waste Landfills, Second Edition, 2016* published by the New South Wales Environment Protection Authority. In particular to minimise the litter impact on surrounding properties, the applicant shall

- Apply daily cover to waste and continuously compact the waste,
- Install litter fences and inspect and clean litter from all fencing daily, or as required,
- Retrieve all litter that leaves the site as soon as practicable, and
- Ensure that sedimentation dams have trash filters to prevent litter being washed or pumped into watercourses.

46 **D Special (BLANK)**

A truck washing bay is to be maintained near the site exit. Trucks, including wheels, are to be washed prior to leaving the site to ensure that mud or excess dirt is not carried from the site at any time.

47 **D Special (BLANK)**

The applicant is to ensure that all table and mitre drains on the access road are maintained in a stable, vegetated condition.

48 **D Special (BLANK)**

The extraction of any material from the site is to be monitored. The monitoring will identify the type of material that has been extracted and its destination either within the site (as cover material, etc) or off the site. Materials will be classified as:

- light firing clay
- dark firing clay
- light firing shale

In conjunction with the annual review of the Landfill Environment Management Plan, an audited report is required to be provided to the NSW Environmental Protection Authority indicating the total amounts of each type of material extracted and their destinations. Light firing clay/shales are to be made available only to brick making companies and in addition are not to be used as cover material or restoration material.

49 **D Special (BLANK)**

Six monthly meetings will be held with Council, NSW Environmental Protection Authority, Roads and Maritime Services, selected residential representatives from adjoining owners, the applicant and the operator to monitor the development and assist in resolving any problems which may occur from time to time. This group will be known as the monitoring committee.

50 **D Special (BLANK)**

Surface water and groundwaters are to be managed and monitored according to the site's Environmental Protection Licence. Compliance with the Environmental Protection Licence shall be undertaken by the NSW Environmental Protection Authority.

51 **D Special (BLANK)**

If topsoil is not to be replaced within six months, stockpiles should be protected from erosion with cover crops such as oats, triticale, barley, reycorn, Japanese millet or other suitable species.

52 [D Special \(BLANK\)](#)

Topsoil should be spread to a depth of at least 10cm over backfilled and landformed areas.

53 [D Special \(BLANK\)](#)

Insect (fly, cockroach), bird and rodent and other infestations are to be prevented. The measures used for this are not to cause water problems. Prior to use, insecticides and pesticides proposed for use on-site will be approved of by the NSW Environmental Protection Authority.

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

Adequate amenities are to be provided and maintained for the staff and shall include a fly-proof dining area, toilets and washrooms.

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

Offensive odours shall not be created. The operator will notify the NSW Environmental Protection Authority as part of periodic EPL reporting, if any complaints are received.

BCA Issues

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

Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and Australian Standard AS 1428.1-2009 "Design for Access and Mobility". Details of compliance are to be provided to Penrith City Council prior to the commencement of works associated with this consent.

Engineering

57 [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.

58 [K201 - Infrastructure Bond](#)

(DELETED)

As amended on 19 March 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

59 [K210 - Stormwater Management](#)

The stormwater management system shall be provided generally in accordance with the concept plans lodged for development approval, prepared by AECOM, sheet number 60571292-SHT-CI-00007 to sheet number 60571292-SHT-CI-000013, all revision B, all dated 4 February, 2019.

Engineering plans and supporting calculations for the stormwater management system are to be prepared by a suitably qualified person.

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

All vehicular access, circulation, manoeuvring and pedestrian and parking areas associated with the subject development must be in accordance with AS 2890.1, AS 2890.2, AS 2890.6 and Penrith City Council's Development Control Plan.

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

Sediment and erosion control measures shall be installed in accordance with the approved plans and documents and are to ensure compliance with the Protection of the Environment Operations Act 1997.

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

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

Total vehicle movements are not to exceed an average of 640 per day, measured over a calendar year, with an upper limit of 780 per day. Upon request, a vehicle movement log (or similar) is to be provided of total movements to the subject site over a calendar year.

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

(DELETED)

As amended on 19 March 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

64 **K Special (BLANK)**
(DELETED)

As amended on 19 March 2021 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

Landscaping

65 **L001 - General**

All landscape works are to be constructed in accordance with the stamped approved plans and as amended by the conditions of this consent.

Landscaping shall be maintained:

- in accordance with the approved plans, and
- in a healthy state 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.

Landscape plans upon preparation are to be reviewed by an ecologist (or suitably qualified person) to identify and minimise the possibility of future impacts to the airport operations in terms of the possible attraction of wildlife.

The preparation of the Landscape Plan is also to be undertaken in consultation with Western Sydney Airport with evidence of consultation made available upon request.

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 in Section C6 'Landscape Design' of Penrith Development Control Plan 2014.

67 **L Special (BLANK)**

No trees are to be removed, ringbarked, cut, topped or lopped or willfully destroyed along the perimeter of the landfill area without the prior consent of Penrith City Council and in accordance with Council's Tree Preservation Order and Policy.

68 **L Special (BLANK)**

All trees and landscaping along the perimeter of the site must be maintained by the existing or future owners and occupiers of the property to enable its growth to full maturity in healthy growing conditions. This includes mature height, spread and form, consistent with the tree species. Pruning must not alter the natural form and height of any trees unless required to maintain normal operations such as access to roads and other operational facilities within the site.