

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA17/0096.01
Proposed development:	Section 4.55 (1A) Modification - Removal of the Storage Building - Additions to Existing Waste Management Facility to Create Enclosed Storage Area
Property address:	42 - 46 Charles Street, ST MARYS NSW 2760
Property description:	Lot 300 DP 1143213
Date received:	1 March 2018
Assessing officer	Mahbub Alam
Zoning:	IN1 General Industrial - LEP 2010
Class of building:	Class 8
Recommendations:	Approve

Executive Summary

Council is in receipt of a Section 4.55(1A) application which proposes removal of e-waste storage shed to approved waste facility centre at 42-46 Charles Street St Marys.

The site is zoned *IN1 - General Industrial* under the provisions of *Penrith Local Environmental Plan 2010 (LEP 2010)*. The proposal is defined as general industry which is a permissible land use in the IN1 zone with Council consent. On 13 June 2017, Council under delegated authority approved DA17/0096 for the construction of a waste facility centre.

Pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), an assessment of the subject application has been undertaken. Having regard to the matters discussed in this report, the application is recommended for approval, subject to the imposition of conditions.

Site & Surrounds

The subject site is situated on the southern end of Charles Street, with the southern portion adjoining Dunheved Circuit thus providing dual ingress and egress for vehicular traffic. The site is located within a central location of the industrial precinct of St Marys and is serviced by Link Road to the north. It is 1.528 Ha in area and the main entry is orientated in a western direction. The site is completely occupied by hardstand area except for some formal landscaping around the main reception/office area.

The surrounding area is characterised by large scale industrial development.

Proposal

The Approved Development

The approved development includes the following aspects:

- Construction of an integrated storage shed between existing operational areas.
- The proposed additional enclosure provides improved containment of potential dust and odour risks during soil handling and immobilisation activities. No increase in approved annual volume is requested and treatment will be by existing processes on site.

The Proposed Modification:

Under the provisions of section 4.55(1A) of *EP&A Act 1979* the proposed modified development includes the following aspect:

- Removal of e-waste storage shed.

Plans that apply

• **Section 96(1A) - Modifications involving minimal environmental impact**

Pursuant to Section 4.55(1A) of the Environmental Planning and Assessment Act 1979 (the Act), Council may modify a development consent provided several parameters are satisfied. These parameters are briefly discussed below.

(a) The proposed modifications are of minimal environmental impact.

The proposed modifications are discussed below:

- *Removal e-storage shed* : A comprehensive review of future business operation and strategy was undertaken and the review report recommended that the proposed e-waste storage is no longer required for the approved waste facility centre. The proposed modifications (removal of e-waste storage shed) will not impact to the adjoining property and it is considered that the proposed modification is unlikely to alter any environmental, social and economic impacts of the original development.

(b) The modified development is substantially the same development as was previously approved.

The submitted Section 4.55(1A) does not alter the nature of the development. The development will remain same as originally approved. It is therefore considered that the proposed modification is substantially the same development for which the consent was originally granted.

(c) The application has been notified where required.

In accordance with Appendix F4 Notification and Advertising of Penrith Development Control Plan 2014 (DCP 2014), the application was not required to notify adjoining properties as the proposed modification is unlikely to alter any environmental, social and economic impacts of the original development.

(d) Any submissions received from the notification process have been considered.

N/A

- Subsections (1) and (2) do not apply to such a modification.

Noted

- Subsection (3) - In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

An assessment under Section 4.15(1) of EP&A Act 1979 has been undertaken for the proposed modification. It is discussed below.

The proposed development for this section 4.55(1A) application is a modification of Development Consent No. DA17/0096 which was approved on 13 June 2017. As discussed earlier, the development as modified would achieve minimal environmental impact and be substantially the same development as originally approved.

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

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

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

The modifications as proposed are minor in nature and will result in essentially the same development as originally approved on the site. The proposed modifications are not expected to generate any additional amenity impacts in comparison to the original approval.

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

In view of the above assessment, it is considered that the site is suitable for the proposed modifications subject to conditions.

Section 79C(1)(d) Any Submissions

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

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

The development as modified is consistent with the objectives of the EP&A Act 1979 in so far as it promotes the co-ordinated and orderly, and economic use and development of the land. The above assessment noted that the proposal complies with the aims and objectives and numerical standards of the relevant statutory and non-statutory controls. As a result, Council is satisfied that the development as modified is consistent with the public interest subject to conditions.

Conclusion

The proposed modification to the development consent has been assessed against the relevant heads of consideration contained in Section 4.15(1) and Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* and has been found to be satisfactory. Each of the relevant criteria under Section 4.55(1A) of the Act has been satisfied. The development as modified would achieve minimal environmental impact and be substantially the same development as originally approved. The proposed modification to the development consent is therefore worthy of Council's support.

Recommendation

That the proposed modification to the development Consent DA17/0096.01 for an approved waste facility centre at 42-46 Charles Street St Marys be approved subject to the following amended conditions:

- Amended of the consent condition no.1 of DA17/0096 as follows:

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

Drawing Title	Drawing No.	Prepared By	Dated
Title Page & Views	A000	Toxfree	21/04/2017
Site Plan	A100 (Rev – A)	Toxfree	21/04/2017
Ground Floor Plan – Integrated Storage Extension	A101 (Rev – A)	Toxfree	21/04/2017
Elevation & Sections	A102	Toxfree	21/04/2017
<i>As amended 30 April 2018 under Section 4.55 (1A) of the Environmental Planning Assessment Act 1979 (as amended) by the following plan:</i>			
Title Page and Views	A000 (Revision A)	CK Architects	27/04/18
Site Plan	A100 (Revision A)	CK Architects	27/04/18
Ground Floor Plan – Integrated Storage Extension	A101	CK Architects	27/04/18
Elevation & Section	A102	CK Architects	27/04/18

and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

As amended 30 April 2018 under Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979 (as amended).

General

1 A001

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

Drawing Title	Drawing No.	Prepared By	Dated
Title Page & Views	A000	Toxfree	21/04/2017
Site Plan	A100 (Rev – A)	Toxfree	21/04/2017
Ground Floor Plan – Integrated Storage Extension	A101 (Rev – A)	Toxfree	21/04/2017
Elevation & Sections	A102	Toxfree	21/04/2017
<i>As amended on 09 May 2018 under Section 4.55 (1A) of the Environmental Planning Assessment Act 1979 (as amended) by the following plan:</i>			
Title Page and Views	A000 (Revision A)	CK Architects	27/04/18
Site Plan	A100 (Revision A)	CK Architects	27/04/18
Ground Floor Plan – Integrated Storage Extension	A101	CK Architects	27/04/18
Elevation & Section	A102	CK Architects	27/04/18

and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

As amended on 09 May 2018 under Section 4.55 (1A) of the Environmental Planning and Assessment Act 1979 (as amended).

2 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

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

3 A039 - Graffiti

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

4 A046 - Obtain Construction Certificate before commencement of works

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

5 A Special (BLANK)

The development shall comply with the conditions contained in the General Terms of Approval issued by the NSW Environmental Protection Authority Reference 1514926, dated 15 July 2013.

6 A Special Condition (BLANK)

Prior to the issue of Construction Certificate the Statement of Environmental Effects must be modified to incorporate the use of efficient (WELS) rated fittings and rainwater harvesting and reuse for the development to meet 80% of non-potable demand including outdoor use and toilets, or provide adequate justification as to why this is not feasible for this development.

Demolition

7 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**.

8 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.

9 B004 - Dust

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

10 B005 - Mud/Soil

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

Environmental Matters

11 D001 - Implement approved sediment& erosion control measures

Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

12 D005 – No filling without prior approval (may need to add D006)

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

13 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.

14 D019 - Bunding-fuel tanks

Above ground fuel storage tanks shall be installed on a concrete surface and protected by a grated drainage system to a dead-end sump or by a bund. The storage capacity of the bund or sump shall be equal to 110% of the volume of the tank.

15 D026 - Liquid wastes

Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.

If mains sewer is not available or if Sydney Water will not allow disposal to the sewer then a licensed waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.

The waste contractor and waste facility are to hold the relevant licenses issued by the NSW Environment Protection Authority.

BCA Issues

16 **E009 - Annual fire safety-essential fire safety (Class 2-9 buildings)**

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

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

(b) be given:

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

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

- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
- prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.

17 **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.

Construction

18 **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.

19 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.

20 H006 - Submission of and implement waste management plan

A completed construction waste management plan shall be submitted to Penrith City Council for consideration and approval. Council must approve the plan before works can commence on site.

The waste management plan shall be prepared in accordance with the Penrith Development Control Plan, and shall address all waste materials likely to result from the proposed development, with details of the estimated waste volumes, onsite storage and management, proposed re-use of materials, designated waste contractors, recycling outlet and / or landfill site.

The approved waste management plan must be implemented on-site and adhered to throughout all stages of the development including demolition, with supporting documentation / receipts retained in order to verify the recycling and disposal of materials in accordance with the approved plan.

21 H041 - Hours of work (other devt)

Construction works or subdivision 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

22 [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.

23 [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 the issue of any Construction Certificate. 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.

24 [K209 - Stormwater Discharge – Minor Development](#)

Stormwater drainage from the site shall be discharged to the existing site drainage system.

The proposed development and stormwater drainage system shall be designed to ensure no adverse impact on adjoining properties by the diversion, damming or concentration of stormwater flows.

The proposed method of stormwater discharge shall be detailed in the Construction Certificate issued by the Certifying Authority.

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

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with AS 2890.1, AS2890.2, AS2890.6 and Penrith City Council's Development Control Plan.

26 [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 shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

27 [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.

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

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

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 and / or Subdivision (Strata) Certificate where Penrith City Council is not the Principal Certifying Authority.

Landscaping

29 [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.

30 [L012 - Existing landscaping \(for existing development\)](#)

Existing landscaping is to be retained and maintained at all times.

Certification

31 [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.