

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA18/0038
Proposed development:	Land Remediation Works
Property address:	3 North Street, PENRITH NSW 2750 4 North Street, PENRITH NSW 2750 5 North Street, PENRITH NSW 2750 6 North Street, PENRITH NSW 2750 7 North Street, PENRITH NSW 2750 8 North Street, PENRITH NSW 2750 9 North Street, PENRITH NSW 2750 10 North Street, PENRITH NSW 2750 12 North Street, PENRITH NSW 2750 13 North Street, PENRITH NSW 2750 14 North Street, PENRITH NSW 2750 15 North Street, PENRITH NSW 2750
Property description:	Lot 2 DP 112677 Lot 1 DP 711683 Lot B DP 164794 Lot A DP 164794 Lot 1 DP 986707 Lot 1 DP 198625 Lot 1 DP 794510 Lot B DP 160112 Lot A DP 160112 Lot 92 DP 1133279 Lot 1 DP 115384 Lot 1 DP 794511
Date received:	15 January 2018
Assessing officer	Donna Clarke
Zoning:	Zone B4 Mixed Use - LEP 2010 SP2 Infrastructure - Classified Road - LEP 2010
Class of building:	N/A
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for remediation of land.

The site is zoned Zone B4 Mixed Use and SP2 Infrastructure - Classified Road under Penrith LEP 2010. The remediation works are ancillary to the future use of the land and do not alter permissibility with the LEP or compliance with objectives. The main project on the site is to construct a temporary at grade carpark for the community. Under State Environmental Planning Policy (Infrastructure) 2007 (SEPP - Infrastructure), at grade car parks in Schedule 1 are considered to be exempt development. However, upon doing preliminary geotechnical investigations, the land was found to be contaminated with asbestos. Before the carpark can be constructed, remediation of the land is first required.

The proposed remediation works have been considered in detail against the requirements of State Environmental Planning Policy 55 - Remediation of Land and the proposed works are considered to be satisfactory to ensure the site is suitable for the proposed exempt development works.

The application has been notified to adjoining properties and exhibited between 24 January 2018 to 5 March 2018 and no submissions received.

The site is owned by Penrith City Council and as such requires determination by the Local Planning Panel.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

The site is located at the Northern end of Penrith CBD bounded by the North St and Evan St Overpass and consists of 12 adjacent blocks which currently have no buildings and only remnant vegetation from when the houses that were previously on the site. The site is known as 3 to 15 North St, Penrith.

To the North the lots are bounded by North St (Great Western Highway) and the Railway line. To the South, there are 2 empty lots (behind 15-8 North St) and 4 occupied lots (behind 7-3 North St) with small businesses. To the West of 15 North St is Evan St Bridge embankment and to the east is a vacant nature strip.

Proposal

This application is for remediation of land. The proposal can be summarised as the remediation of contaminated soil at the site in accordance with a Remedial Action Plan prepared by consultants with expertise in the field, including validation sampling and analysis to confirm that all affected areas have been rehabilitated and made suitable for the land use.

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Pursuant to Clause 9 (d) of State Environmental Planning Policy 55 - Remediation of Land (SEPP55), the remediation works are classified as category 1 due to the works being within land affected by State Regional Environmental Plan 20 - Hawkesbury-Nepean River (SREP20). In accordance with Part 3, Clause 11, Section 4 of SREP 20, in combination with SEPP 55, development consent is required for the proposed remediation works.

The proposal is for remediation works on the site in accordance with the submitted Remedial Action Plan (RAP) which accompanies the development application. The works proposed are to:

- Clear the site
- Strip the contaminated fill/topsoil material
- Stockpile the contaminated material into piles
- Assess the piles for contaminations
- Sort and reuse the clean fill onsite
- Excavate, contain and cap the contaminated material

The proposed remediation strategy in the RAP includes the isolation and encapsulation of contaminated material. It is estimated that up to 2000m³ of top soil fill may be impacted by asbestos. (

Lots 3,4,5 North St have been nominated to construct the encapsulation cell as the lots are similarly sized and combine to an area of 1738m² which is greater than the 1000m² required to create a 20m x 50m encapsulation cell. Should the extent of contamination be less than expected this, the encapsulation cell can be reduced to lots 3 & 4 which is just over 1033m².

All lots are generally flat and will reduce the handling movement of contaminated materials and their lot size and shape will minimise the number of lots impacted for any future developments.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2010
- 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 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979 (as amended) (EP&A Act), 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 No 33—Hazardous and Offensive Development

This policy aims to ensure that in considering any application to carry out potentially hazardous or offensive development, the consent authority has sufficient information to assess whether the development is hazardous or offensive and to impose conditions to reduce or minimize any adverse impact.

The application satisfactorily addresses SEPP 33. Council's Environmental Health Officer has reviewed this aspect of the proposal and had no objections subject to conditions.

State Environmental Planning Policy No 55—Remediation of Land

SEPP 55 provides a Statewide planning approach to the remediation of contaminated land. Under Clause 8 of the SEPP remediation work is permitted to be carried out in any zone despite any provision to the contrary in an environmental planning instrument.

Clause 9 (d) of the SEPP identifies the proposed remediation works as a Category 1 remediation work due to consent being required for remediation works under SREP No. 20. The proposal complies with the SEPP.

The proposal was advertised in accordance with the requirements of SEPP 55 and no submissions have been received.

The submitted documents have been reviewed by Council's Environmental Health Officer, who supported the proposal subject to conditions.

The following application included a number of reports in support of the application, including:

- Pavement Investigation and Fill Contamination Assessment Proposed Carpark
- Additional Contamination (Asbestos) Assessment and Remediation Action Plan (RAP) Proposed Carpark
- Environmental Management Plan Proposed Temporary Carpark

The proposed remediation of the site responds to asbestos contamination that has been identified in fill material across the site. The depth of fill varies across the site, up to a depth of 1.2m and contains building and anthropogenic materials including bricks, glass, metal and porcelain. The remediation strategy proposes the excavation of fill from across the site and placement within an excavation pit constructed on the site in which the contaminated material will be encapsulated with a cover of a minimum of 1m VENM on top of the buried contaminated material.

Amendments were made to the original reports by the applicant to address concerns raised by Council, which included the deletion of the use of material for landscaping purposes; provision of a more detailed stockpile management plan; inclusion of an amended unexpected finds protocol that considers the site history and known information and data gaps, and that provides a management protocol for dealing with contaminants of concern that are not covered by the RAP and EMP, or groundwater should it be encountered; and provision of a validation strategy in regard to stockpile bases.

The reports, as amended, have been prepared in accordance with relevant NSW EPA contaminated land guidelines and satisfy the requirements of SEPP 55.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria with Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies

Clause 2.3 Permissibility

The remediation works are ancillary to the future use of the land and do not alter permissibility with the LEP or compliance with objectives.

Under State Environmental Planning Policy (Infrastructure) 2007 (SEPP - Infrastructure), at grade car parks in schedule 1 are considered to be exempt development. However, upon doing preliminary geotechnical investigations, the land was found to be contaminated with asbestos. Before the carpark can be constructed, remediation of the land is first required.

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

Development Control Plan 2010

Provision	Compliance
Part C 1 - Site planning and design principles	Complies
Part C2 - Vegetation management	N/A
Part C3 - Water management	N/A
Part C4 - Land management	Complies - see Appendix - Development Control Plan Compliance
Part C5 - Waste management	Complies
Part C6 - Landscape design	N/A
Part C7 - Culture and heritage	N/A
Part C8 - Public domain	N/A
Part C9 - Advertising and signage	N/A
Part C10 - Transport, access and parking	N/A
Part C11 - Subdivision	N/A
Part C12 - Noise and vibration	N/A
Part C13 - Infrastructure and services	N/A

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

Waste

Contaminated fill or soil excavated from the site will be classified and disposed of at a licensed landfill facility in accordance with EPA Guidelines. Recommended conditions will manage both general waste and contaminated material waste.

Noise

Compliance with construction noise restrictions and relevant noise guidelines will be enforced through conditions of consent.

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

In view of the above assessment, Council can be satisfied that the site is suitable for the development subject to conditions.

Section 79C(1)(d) Any Submissions

Community Consultation

The application has been notified to adjoining properties and exhibited between 24 January 2018 and 5 March 2018 and no submissions were received.

Referrals

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

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

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

The proposed development will not generate any significant issues of public interest. The proposal will remove contaminants that have the potential to be a health hazard. The proposal is therefore in the public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being SEPP 33, SEPP 55, Penrith Local Environmental Plan 2010, Penrith DCP 2014, the proposal satisfies the aims, objectives and provisions of these policies. The site is suitable for the proposed development, the proposal is in the public interest, and there is unlikely to be negative impacts arising from the proposed development. Therefore, the application is worthy of support, subject to recommended conditions.

Recommendation

That DA18/0038 for Remediation Works at 3-15 North St, Penrith be approved subject to the following conditions.

CONDITIONS

General

1 A001

The development must be implemented substantially in accordance with the Remediation Action Plan (RAP), Ref: JC17302A-r3(rev) prepared by GeoEnviro Consultancy Pty Ltd dated May 10 2018 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.

Demolition

2 B003 - ASBESTOS

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

Prior to commencement of 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.

3 B004 - Dust

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

4 B005 - Mud/Soil

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

Environmental Matters

5 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 approved sediment and erosion control measures are to be **maintained throughout the construction phase of the development until the land, that was subject to the works, have been stabilised and grass cover established.** These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

6 D004 – Site remediation works

Site remediation works shall be carried out generally in accordance with the Remediation Action Plan (RAP), Ref: JC17302A-r3(rev) prepared by GeoEnviro Consultancy Pty Ltd dated May 10 2018 as well as Penrith Contaminated Land Development Control Plan, the ANZECC and NHMRC Guidelines (1992) and applicable NSW Environment Protection Authority Guidelines.

On completion of the site remediation works, the following documentation is to be submitted to the Principal Certifying Authority and Penrith City Council, if Council is not the Principal Certifying Authority:

- Written notification that the site remediation works have been completed is to be submitted within 30 days that the said works have been completed.
- A validation report, prepared by an appropriately qualified person as defined in Penrith Contaminated Land Development Control Plan, is to be submitted before any building work can commence on the remediated site. The report shall certify that the remediation works have been carried out in accordance with the approved Remediation Action Plan (RAP), Ref: JC17302A-r3(rev) prepared by GeoEnviro Consultancy Pty Ltd dated May 10 2018, relevant NSW Environment Protection Authority requirements and Penrith Contaminated Land Development Control Plan.

7 **D006 - No filling without prior approval (Use always, except for bulk earthworks/ major fill 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 obtained. 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.

{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."}

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.

8 **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.

9 **D Special BLANK**

An appropriately qualified person(s) shall:

1. Supervise the remediation works in consultation and cooperation with the NSW Environment Protection Authority.

2. Supply Council with a copy of any relevant documentation for further testing carried out during the remediation work, and with any amendments or addendum's to the Council approved Remediation Action Plan (RAP), Ref: JC17302A-r3(rev) prepared by GeoEnviro Consultancy Pty Ltd dated May 10 2018.

3. Address off site impacts and proposed management strategies where relevant.

4. (After completion of works) Certify by way of Compliance Certificate or other written documentation that remediation works have been carried out in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment (this information can be included in the validation report). A copy of the Compliance Certificate or other written documentation is to be submitted to the Principle Certifying Authority (PCA) and Penrith Council if it is not the PCA.

The contact details of any appropriately qualified person(s) engaged for the works shall be **provided with the notice of commencement**.

{Note: An appropriately qualified person(s) is defined 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."}

10 **D Special BLANK**

Contaminated topsoil shall not be mixed with uncontaminated underlying natural soils.

Construction

11 [H041 - Hours of work \(other devt\)](#)

All 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 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.

Appendix - Development Control Plan Compliance

Development Control Plan 2010

Part C - Controls applying to all land uses

C4 Land Management

The proposed works will be undertaken in accordance with the submitted Remedial Action Plan as assessed and outlined within the body of this report. The works proposed as part of the remediation process ensure compliance with Council's DCP provisions and the establishment of site suitability for the proposed future land use.