

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA20/0685.03
Proposed development:	Section 4.55(1A) Modification Application of An Approved Warehouse - Increase in Height and Addition of Roof Mounted Air Conditioning Units
Property address:	1 Ottelia Road, KEMPS CREEK NSW 2178
Property description:	Lot 20 DP 1266034
Date received:	19 October 2021
Assessing officer	Phillip Doy
Zoning:	SEPP - (WSEA) 2009 - ZONE IN1 SEPP WSA - Affected by ANEF or ANEC 20 or greater SEPP WSA - Affected by Obstacle Limitation SEPP WSA - Affected by Wildlife Buffer Zone
Class of building:	Class 7b
Recommendations:	Approve

Executive Summary

The application seeks to modify Development Consent No. DA20/0685, which relates to a warehouse and distribution facility. The warehouse is known as Lot B and is within an area known as Oakdale South Industrial Area which was approved under a Concept and Stage 1 State Significant Development consent SSD 6971.

The modification includes the installation of mechanical units on the roof of the warehouse, which will lead to an increase in overall building height from 15m to 16m.

The site is located within an area of Penrith subject to State Environmental Planning Policy (Western Sydney Employment Area) 2009 and is zoned IN1 General Industrial. The proposed modifications to the approved building are ancillary and the development is permissible in the zone, with consent.

A recent State modification to the overarching State Significant Development applying to the precinct, to increase building height from 15m to 16m to accommodate air condition roof plant was approved by the Department of Planning on 14/12/21. During the assessment, the Department considered the modifications appropriate based on the following:

- It will result in minimal environmental impacts beyond the previously approved development;
- The development on Lot 2B will remain generally consistent with the existing height limits for buildings in the estate, with only minor exceedances due to parts of the proposed rooftop plant;
- Noise impacts from the proposed rooftop plant could comply with the maximum sound power levels prescribed in condition B18; and
- The modified development is substantially the same development as previously approved.

In accordance with Council's adopted Community Engagement Strategy and Community Participation Plan 2020, and due to the nature and scale of the proposal, notification of the application was not required. The proposal was referred to Council's building surveyors for assessment with no objections received.

An assessment of the proposal under Section 4.15 and 4.55(1A) of the Act has been undertaken and the application is recommended for Approval, subject to the recommended amended and existing conditions.

Site & Surrounds

Lot 2B is part of the larger Oakdale South Industrial Estate, which is undergoing development from greenfield land to warehouse/industrial and employment uses. The subdivision of the estate has now been registered and public roads are open. While this subject DA is specifically for Lot 2B, which is located in the middle of the estate, there is a total of 6 lots/precincts that will contain 15 buildings. The majority of the lots have been developed already, with industrial buildings, i.e. DHL at Lot 5, Costco at Lot 4A, Toyota at Lot 3B and Sigma Pharmaceuticals at Lot 3A.

To the south of Lot 2B is Precinct 4 and Precinct 5 with approved warehousing operations. To the east is vacant land which has been approved for industrial purposes (Jacfin Industrial Estate). To the west is a vacant site subject to a separate and concurrent application to Council for warehouse 2A.

The site is approximately 48,800m², fairly rectangular in shape and relatively flat. The associated development is currently under construction.

Proposal

The application seeks to modify an approved warehouse and distribution facility development which was approved under development consent DA20/0685, and includes the installation of mechanical units on the roof of the warehouse, which will lead to an increase in overall building height from 15m to 16m.

Plans that apply

- 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 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

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

The site is identified as being on bushfire prone land. The previously submitted Fire Safety Strategy report assessed during the original consent (DA20/0685), outlines fire engineering principles that will be required to be resolved through a fire engineered Performance Solution in order to conform to the BCA. Suitable conditions in this regard are recommended.

- **Section 4.15 - Evaluation**

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

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

The proposed modifications have been assessed in accordance with the matters for consideration under Section 4.55(1A) and Section 4.15 of the *Environmental Planning and Assessment Act 1979*. 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 *Environmental Planning and Assessment Act 1979*, 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.

The proposed modification is minor in nature and is considered to be of minimal environmental impact, and provides for a development which is substantially the same as the development originally approved. The subject application was not required to be notified as per the requirements of the Council's Community Engagement Strategy Community Participation Plan and no submissions were received.

- **Section 7.12 - Developer Contributions**

The site and original consent are subject to Penrith City Council's City Wide Section 7.12 Development Contributions Plan for Non Residential Development. There is no change to this and as such, condition shall remain.

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

State Environmental Planning Policy (Infrastructure) 2007

Pursuant to Clause 104 of the SEPP (Infrastructure) 2007, the original warehouse proposal was defined as 'traffic-generating development' and written notice of the application was forwarded to the Transport for New South Wales (TfNSW) during the assessment of the original consent (DA20/0685). The proposal does not alter the approved traffic, car parking or access arrangements and there is no requirement to refer the application to TfNSW.

Clause 104 of the SEPP requires Council to consider the accessibility of the site, including the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, as well as the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail. The SEPP also requires consideration of potential traffic safety, road congestion or parking implications of the development. The modification application is acceptable having regard to the above and the proposal is suitable having regard to the applicable matters for consideration under the Policy.

State Environmental Planning Policy (Western Sydney Aerotropolis) 2020

An assessment has been undertaken of the proposal against the relevant criteria within the *State Environmental Planning Policy (Western Sydney Aerotropolis) 2020* and the proposal is satisfactory. It is noted that the subject site is affected by an Obstacle Limitation, ANEF or ANec 20 or greater, and Wildlife Buffer zone, however, these affectations were previously assessed through the original consent and were found not impact the recommendations of this report.

The proposed increase in height does not penetrate into the prescribed air space and therefore does not trigger any additional considerations under the clause.

State Environmental Planning Policy (Western Sydney Employment Area) 2009

As assessment has been undertaken of the application against relevant criteria with State Environmental Planning Policy (Western Sydney Employment Area) 2009 and the application is satisfactory subject to recommended conditions of consent.

Clause 21 Height of Buildings

A recent modification to the SSD to increase in building height from 15m to 16m to accommodate air condition roof plant was approved by the Department of Planning on 14/12/21. During the assessment, the Department considered the modifications appropriate based on the following:

- It will result in minimal environmental impacts beyond the previously approved development;
- The development on Lot 2B will remain generally consistent with the existing height limits for buildings in the estate, with only minor exceedances due to parts of the proposed rooftop plant;
- Noise impacts from the proposed rooftop plant could comply with the maximum sound power levels prescribed in condition B18; and
- The modified development is substantially the same development as previously approved.

Is it determined that the proposed modification to the building height is generally consistent with the height of buildings within the area, and the increase in height is considered minor, and will not negatively impact the amenity of adjacent residential areas.

Clause 31 Design Principles

The assessment carried out informing the original development consent determined that the proposed warehouse was a simple, linear design with a low profile roof and that the façade is broken up by using different colour metal clad panels and some vertical definition. The base elements of the warehouse are mostly heavier, more solid materials such as precast concrete panels, brick and 'Vitrapanel'. These are considered appropriate as they are used in small amounts and on the base of the building.

The proposed modifications which includes roof mounted plant machinery, remains consistent with this assessment and is supportable having regard the Design Principles clause of the Policy, as it does not alter the overall the overall development in terms of zone objectives.

State Environmental Planning Policy No 55—Remediation of Land

Contamination issues were considered and resolved as part of the SSD application and approval, which concluded that the entire site would be fit for its intended purpose of warehouse and distribution facilities. No further investigation of Site 2B is warranted.

State Environmental Planning Policy No 64—Advertising and Signage

No alterations are proposed to the signage associated with the development that was approved through the original consent (DA20/0685).

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

The aim of this planning policy is to protect the environment of the Hawkesbury-Nepean River system. Water quality provisions will be met through implementation of soil and water management measures, and are captured in the conditions of consent previously applied to original application (DA20/0685).

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

There are no draft Environmental Planning Instruments that apply to the proposal.

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

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	N/A
C3 Water Management	N/A
C4 Land Management	N/A
C5 Waste Management	N/A
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	N/A
C11 Subdivision	N/A
C12 Noise and Vibration	N/A
C13 Infrastructure and Services	Complies
E6 Erskine Business Park controls	Complies

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

The proposed modifications do not impact the terms of any Voluntary Planning Agreement applying to the site.

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

The proposed development complies with the Regulations where they are relevant. The building is capable of complying with the BCA.

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

The likely impacts of the development as identified during the assessment of the original proposal remain in principle unaltered.

It is noted the proposed overall increase in height of the building is considered unlikely to result in any adverse impacts, noting that a recent modification to the SSD to increase in building height from 15m to 16m to accomodate air condition roof plant was approved by the Department of Planning on 14/12/21. During the assessment, the Department considered the modifications appropriate based on the following:

- It will result in minimal environmental impacts beyond the previously approved development;
- The development on Lot 2B will remain generally consistent with the existing height limits for buildings in the estate, with only minor exceedances due to parts of the proposed rooftop plant;
- Noise impacts from the proposed rooftop plant could comply with the maximum sound power levels prescribed in condition B18; and
- The modified development is substantially the same development as previously approved.

Is it determined that the proposed modification to the building height is generally consistent with the height of buildings within the area, and the increase in height is considered minor, and will not negativity impact the amenity of adjacent residential areas.

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

The suitability of the site was assessed as part of the original development application (DA20/0685) and the site remains suitable for the proposed development.

Section 4.15(1)(d) Any Submissions

Community Consultation

In accordance with Council's adopted Community Engagement Strategy and Community Participation Plan 2020, and due to the nature and scale of the proposal, notification of the application was not required.

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
Environmental - Environmental management	No objections

Section 4.15(1)(e)The public interest

The proposed development will increase employment and provide suitable areas for warehouse uses, which is in accordance with the needs identified for this site and area. The proposal is therefore in the public interest.

The modified development will not generate any significant issues relating to the public interest.

Conclusion

The modified proposal has been assessed against the relevant environmental planning instruments including section 4.15 & and 4.55 of the *Environmental Planning & Assessment Act 1979* and in this regard, the proposal is considered to satisfy the aims, objectives and provisions of these policies. The proposed modifications are not considered likely to create any significant impacts on the natural, social or economic environments and in this regard, the application is considered worthy of support and is recommended for approval.

Recommendation

That Modification Application No. 20/0685.03, which seeks to modify Development Consent No. DA20/0685, for a warehouse and distribution facility, through the inclusion of roof mounted plant, at No. 1 Ottelia Road, Kemps Creek, be approved, subject to the amendment of Condition Nos. 1 and 14.

General

1 A001

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

Drawing Title	Prepared By	Reference No.	Dated	Revision
Site Plan/Floor Plan	SBA Architects	19146	25/09/20	E
Signage Plan	SBA Architects	19146	28/09/20	D
Roof Plan Warehouse 2B	SBA Architects	OAK 2B DA311	05/10/21	L
Floor Plan 2B-1	SBA Architects	19146	28/01/21	E
Floor Plan Office 2B-2	SBA Architects	19146	28/01/21	F
Floor Plan Dock Office 2B-1 & 2B-2	SBA Architects	19146	28/01/21	C
Elevations & Section Warehouse 2B	SBA Architects	OAK 2B DA315	05/10/21	K
Elevations - Office 2B-1	SBA Architects	OAK 2B DA316	23/08/21	E
Elevations - Office 2B-2	SBA Architects	OAK 2B DA 317	23/08/21	E
Landscape Plan	Site Image Landscape Architects	000-104	26/03/21	E
Landscape Detail Plan	Site Image Landscape Architects	201	10/02/21	C
Landscape Details	Site Image Landscape Architects	501	03/09/20	A
Siteworks and Stormwater Drainage	AT&L	20-781-C210- 20-781-C211	26/04/21	C
Siteworks and Stormwater Drainage	AT&L	20-781-C212- 20-781-C213	29/01/21	B
Civil Works Package	AT&L	20-781-C201 to 20-781-C206 and 20-781-C220 to 20-781-C245	02/09/20	A
Earthworks and Stormwater Diversion Plan	AT&L	C5041	10/11/17	4
Swale Longitudinal Sections	AT&L	C5096	10/11/17	2
Waste Management Plan	SLR Consulting Australia Pty Ltd	610.30093.00100- R02	08/10/20	3.0

As amended on 20/01/2022 under Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

2 A015 - SITE TO BE REGISTERED ALLOTMENT

Prior to the issue of an Occupation Certificate, the land to which the development consent relates shall be registered at LRS as a separate lot in accordance with consent number SSD 6917 (as amended) and documentary evidence provided to the Certifying Authority and a copy forwarded to Penrith City Council.

3 A019 - OCCUPATION CERTIFICATE (ALWAYS APPLY)

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

4 A026 - Advertising sign (not for residential)

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

5 A029 - HOURS OF OPERATION AND DELIVERY TIMES

The approved operating hours are 24 hours, every day.

6 A030 - No retail sales

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

7 **A032 - Goods in buildings**

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

8 **A038 - LIGHTING LOCATIONS**

Prior to the issue of an Occupation Certificate, a lighting system shall be installed for the development to provide uniform lighting across common areas and driveways. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997) and AS/N21158.3:1999 Pedestrian Area (Category P) Lighting.

9 **A039 - Graffiti**

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

10 **A041 - CONSTRUCTION IN BUSHFIRE AREAS (AMENDED)**

The warehouse shall be constructed in accordance with the provisions of the "Planning for Bushfire Protection Guidelines" (2019) and the Fire Safety Strategy, prepared by Affinity Fore Engineering, dated 30/09/2020.

11 **A046 - Obtain Construction Certificate before commencement of works**

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

12 **A Special (BLANK)**

The approved signage illumination shall not flash or contain moving elements. Any wiring or installation shall be contained wholly within the body of the signage. The illumination shall contain a means of lowering the intensity and brightness of the luminance, and if so directed by Council, the intensity of the illumination shall be reduced after 9.00pm so as to not cause a nuisance to surrounding occupiers.

13 **A Special (BLANK)**

The landscaping proposed and required by both this development consent, and the approval for SSD 6917 (Conditions E61-E65) shall be completed prior to any Occupation Certificate being issued for warehouse 2B. In particular, the landscaping in the eastern setback area is to be completed and maintained thereafter. A cyclical landscape maintenance plan is to be submitted and endorsed by the Certifier prior to any Occupation Certificate being issued. The landscaping is to be maintained in a healthy state, in accordance with the approved plan (and SSD approval). If any of the vegetation dies or is removed, it is to be replaced.

14 **A Special (BLANK)**

The approval of the mechanical plant, including air conditioning units, is limited to those identified on the stamped approved plans. A separate application is to be submitted for any further external mechanical plant, which is not Exempt or Complying Development.

Amended on 20/01/22 under DA20/0685.03 as per Section 4.55(1A) of the Environmental Planning and Assessment Act 1979.

15 **A Special (BLANK)**

The northern, southern and eastern hard stand parking and access area is only to be used by cars.

16 **A Special (BLANK)**

No storage of dangerous goods, nor potentially hazardous or offensive industry has been approved as part of this development consent. A separate application is required for any such uses.

17 **A Special (BLANK)**

The onus is on the landowner and the Principal Certifier to ensure that all obligations of the Planning Agreement between the landowner and the Minister are met.

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

The following community safety and crime prevention through environmental design (CPTED) requirements are required to be implemented:

Car Parking

- All areas of the car park must be well-lit, with consistent lighting to prevent shadowing or glare and provide only downlights.

Building Security & Access

- Control intercom, code or card locks or similar must be installed for all entries to the buildings.
- Australian Standard 220 door and window locks must be installed.
- CCTV is to be provided to cover communal public space areas. Cameras must be of sufficient standard to be useful for police in the event of criminal investigations. Lighting must be provided to support cameras at night (alternatively infra-red cameras are recommended).
- Signage must be displayed to indicate that CCTV cameras are in use.
- A monitored alarm system must be installed.

Graffiti/Vandalism

- Graffiti resistant coatings must be used to external surfaces where possible, including signage, furniture, retaining walls, etc.
- Procedures must be in place to ensure the prompt removal and/or repair of graffiti or vandalism to the buildings, fencing, and common areas. This includes reporting incidents to police and/or relevant authorities. All outdoor furniture and equipment must be stored away after hours.

Landscaping

- All vegetation must be regularly pruned to ensure that sight lines are maintained.

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

All required retaining walls and boundary fencing shall be at the full cost of the property owner/developer. All retaining walls shall be of masonry (or similar) construction (not timber). The materials and colours of any retaining walls and fencing shall match or complement the external materials of the approved warehouse. Any fencing within front setbacks are to be open-style, decorative and located behind the landscaping. Details regarding the precise finishes are to be provided to Council for approval prior to the issue of a Construction Certificate.

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

The approved development, the subject of this development consent, is not to contravene the State Significant Development consent 6917 (as modified) or the relevant Planning Agreement. The onus is on the landowner and proponent to ensure that the SSD 6917 conditions and Planning Agreement obligations are met.

Environmental Matters

21 [D001 - Implement approved sediment& erosion control measures](#)

Erosion and sediment control measures shall be installed prior to the commencement of works and are to be maintained throughout the construction phase of the development until the landscaping, driveway and on-site parking areas have been completed for the development. These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

22 [D002 Spraygrass](#)

All land that has been disturbed by earthworks is to be spray grassed or similarly treated to establish a grass cover.

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

All *construction* 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 are to be fully enclosed when the site is unattended.

24 [D010 – Appropriate disposal of excavated or other waste](#)

All excavated material and other construction wastes generated as a result of the development are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

25 [D014 - Plant and equipment noise](#)

The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

26 [D015 - Spill prevention & clean-up procedures](#)

Prior to any Construction Certificate being issued, a plan detailing spill prevention, contingency and emergency clean-up procedures for the development shall be submitted for approval. The approved procedures plan shall be implemented in the event of a spill or emergency. In addition, an Environmental Protection Practice Plan is to be developed, specifically to deal with spills of hazardous substances.

27 [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 suitable waste contractor is to remove the liquid waste from the premises to an appropriate waste facility. Waste licensing requirements apply in NSW. The waste contractor and waste facility are to be licensed by the NSW Environment Protection Authority, where applicable. Reference should be made to NSW Environment Protection Authority for licensing requirements.

28 [D030 - Air handling system](#)

Any liquid discharge from the air handling system, resulting from operation, maintenance and/or cleaning operations, are to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.

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

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

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

An appropriately qualified person/s shall:

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

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

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

{Note: an appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soils science, ecotoxicology, 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."}

30 **D131 - Approved noise level 2**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the Oakdale South Industrial Estate Lot 2B DA Noise Impact Assessment prepared by SLR and dated 26/10/2020.

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

31 **D - Dust**

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

32 **D Special (BLANK)**

As required by Condition E51 of the SSD 6917 approval, the applicant is to submit a Sustainability Management Plan prior to the issue of the Construction Certificate for the warehouse building in accordance with that condition. This shall reflect the recommendations within the Sustainability Report prepared by SLR, version 1, dated October 2020 insofar as it is consistent with the requirements of Condition B17 of the SSD 6917 approval.

33 **D Special (BLANK)**

The visible light reflectivity from building materials used in the facades of the building shall not exceed 20% and shall be designed so as to minimise glare. A report demonstrating compliance with these requirements is to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

34 **D Special (BLANK)**

The applicant shall implement the recommendations outlined in the Salinity Management Plan prepared by Pells Sullivan Meynink, reference PSM 1541-113L Rev 3, dated 9 September 2015.

35 **D Special (BLANK)**

All mechanical plant and equipment is to comply with the noise criteria outlined in Oakdale South Industrial Estate Lot 2B DA Noise Impact Assessment prepared by SLR and dated 26/10/2020.

Prior to the issue of the Occupation Certificate, a Compliance Certificate, prepared by a suitably qualified acoustic consultant, is to be submitted to the Principal Certifying Authority. The Certificate is to certify that all mechanical plant and equipment has been installed to comply with the above information and the established noise criteria.

BCA Issues

36 **E006 - Disabled access and facilities**

Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility". Details of compliance are to be provided in the relevant plans and specifications accompanying the Construction Certificate application.

37 **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.

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.

38 **E01A - BCA compliance for Class 2-9**

All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:

(a) complying with the deemed to satisfy provisions, or

(b) formulating an alternative solution which:

- complies with the performance requirements, or
- is shown to be at least equivalent to the deemed to satisfy provision, or
- (c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

Utility Services

39 **G002 - Section 73 (not for**

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

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

40 [G004 - Integral Energy](#)

Prior to the issue of a Construction Certificate, a written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

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

41 [G006 -](#)

Prior to the issue of a Construction Certificate, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:

- The requirements of the Telecommunications Act 1997;
- For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
- For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

Unless otherwise stipulated by telecommunications legislation at the time of construction, the development must be provided with all necessary pits and pipes, and conduits to accommodate the future connection of optic fibre technology telecommunications.

Prior to the issue of an Occupation Certificate, written certification from all relevant service providers that the telecommunications infrastructure is installed in accordance with the requirements above and the applicable legislation at the time of construction, must be submitted to the Principal Certifying Authority.

Construction

42 [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 is to be erected:

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

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

43 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.

44 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 that 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

45 K201 - Infrastructure Bond

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

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

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

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

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

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

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

Contact Penrith City Council's Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

Note:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate or Subdivision Works Certificate.
- Separate approval may be required from the Transport for NSW for classified roads.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.
- On completion of any awning over the road reserve, a certificate from a practising structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act

47 **K209 - Stormwater Concept Plan**

The stormwater management system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by At&L, reference number 20-781, with the dates and revisions referred to within Condition 1 of this consent.

Engineering plans and supporting calculations for the stormwater management systems are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate.

Prior to the issue of a Construction Certificate, the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Council's Stormwater Drainage for Building Developments and Water Sensitive Urban Design Policy.

48 **K222 - Access, Car Parking and Manoeuvring – General**

Prior to the issue of any Construction Certificate or Subdivision Works Certificate, the Certifier shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with Penrith City Council's Development Control Plan, AS2890.1, AS2890.2 and AS2890.6.

49 **K224 - Construction Traffic Management Plan**

Prior to the commencement of any works on-site (including demolition works) or prior to the issue of any Construction Certificate or Subdivision Works Certificate, whichever occurs first, a Construction Traffic Management Plan (CTMP) shall be submitted to Penrith City Council's Asset Management Department for endorsement. The CTMP shall be prepared by a suitably qualified consultant with appropriate training and certification from Transport for NSW. The CTMP shall include details of any required road closures, work zones, loading zones and the like. Approval of the CTMP may require approval of the Local Traffic Committee. Please contact Council's City Asset Management Department on 4732 7777 and refer to Council's website for a copy of the Temporary Road Reserve Occupancy Application Form.

50 **K228 - Dilapidation Report**

The developer shall undertake a dilapidation report for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the excavations associated with the development. If Council is not the Certifier for the development then the dilapidation report shall be submitted to Council prior to the issue of any Construction Certificate and then updated and submitted prior to the issue of any Occupation Certificate confirming no damage has occurred.

51 **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.

52 **K403 - Major Filling/ Earthworks**

All earthworks shall be undertaken in accordance with AS 3798 and Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments and Engineering Construction Specification for Civil Works.

The level of testing shall be determined by the Geotechnical Testing Authority/ Superintendent in consultation with the Principal Certifying Authority.

53 **K502 - Works as executed - General and Compliance Documentation**

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

An original set of works-as-executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Council is not the Principal Certifying Authority

54 **K504 - Stormwater Compliance**

Prior to the issue of any Occupation Certificate, the Principal Certifier shall ensure that the: (nominate)

- a) Stormwater management systems (including on-site detention and water sensitive urban design)
- b) Overland flowpath works
- c) Flood control works

- have been satisfactorily completed in accordance with the approved Construction Certificate or Subdivision Works Certificate and the requirements of this consent;
- have met the design intent with regard to any construction variations to the approved design, and;
- any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works As Executed drawings.

55 **K505 - Restriction as to User and Positive Covenant**

Prior to the issue of an Occupation Certificate, a restriction as to user and positive covenant relating to the stormwater management systems (including water sensitive urban design measures) shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater Drainage Specification for Building Development – Appendix F.

56 **K511 - Directional signage**

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

57 **K601 - Stormwater Management system operation and maintenance**

The stormwater management systems shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan.

Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the stormwater management systems.

58 **K - Waterways - Stormwater Management - GPT Design**

Prior to the issue of a Construction Certificate, the following information is to be submitted to Council for review and approval:

- Details of the proposed GPT shall be submitted so that considerations of the life cycle costs can be made.
- A detailed operation and maintenance manual which includes estimated costing.
- Detailed construction plans including all calculations, drawings and designs which are consistent with the design parameters used in the modelling and approved concept designs from the Development Application
- The GPT unit must be a CDS 1015 unit or an approved equivalent.

59 **K Special (BLANK)**

Prior to the issue of Construction Certificate, the certifier shall ensure that consultations are undertaken with Fire & Rescue NSW and approval for emergency vehicle access and egress from site is obtained. A copy of final approval from F&R NSW shall be submitted to Council.

60 **K Special (BLANK)**

Prior to the issue of Construction Certificate, the certifier shall ensure that the sight distances from the proposed vehicular crossings to vehicles on Chelodina Street and Entolasia Close are in accordance with the Austroads Guide to Road Design: Part 4A: Unsignalised and Signalised Intersections (Section 3 – Sight Distance) and AS 2890. Vegetation and proposed landscaping/fencing must not hinder sight lines to and from the vehicular crossings to motorists, pedestrians and cyclists.

Landscaping

61 **L001 - General**

All landscape works are to be constructed in accordance with the approved plans and Sections C2 "Vegetation Management" and C6 "Landscape Design" of the Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plans, and
- in a healthy state, and in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity as the vegetation which died or was removed.

62 **L002 - Landscape construction**

The approved landscaping for the site must be constructed by a suitably qualified and experienced landscape professional.

63 **L003 - Report requirement**

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

i. Implementation Report

Upon completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development. The report is to be prepared by a suitably qualified and experienced landscape professional.

An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.

ii. Maintenance Report

On the first anniversary of the date of the Occupation Certificate issued for the development, a Landscape Maintenance Report is to be submitted to Penrith City Council certifying that the landscape works are still in accordance with the development consent and the plant material is alive and thriving.

This report is to be prepared by a suitably qualified and experienced landscape professional.

64 **L005 - Planting of plant**

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

65 **L006 - Aust Standard**

All landscape works are to meet industry best practice and the following relevant Australian Standards:

- AS 4419 Soils for Landscaping and Garden Use,
- AS 4454 Composts, Soil Conditioners and Mulches, and
- AS 4373 Pruning of Amenity Trees.

66 **L Special (BLANK)**

Additional landscaping shall be provided as a buffer between the eastern car park and the existing swale in accordance with the objectives and controls within Part E6 of the DCP for Oakdale South. Details in this regard shall be shown on the Construction Certificate plans.

Development Contributions

67 **N002 - Land dedication under Section 94**

This condition is imposed in accordance with Penrith City Council's Development Contributions Plan for Non-Residential Development. Based on the current rates detailed in the accompanying schedule attached to this Notice, \$325,603.00 is to be paid to Penrith City Council prior to a Construction Certificate being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.12 plan.

The projected rates of this contribution amount are listed in Council's Fees and Charges Schedule. Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.12 invoice accompanying this consent should accompany the contribution payment. The Section 7.12 Contributions Plan for Non-Residential Development may be inspected at Council's Civic Centre, 601 High Street, Penrith.

Note: The timing of contributions payable may be otherwise affected in accordance with Planning Circular PS20-003 dated 3 July 2020 and the associated NSW Government Ministerial Direction - Infrastructure Contributions.

In addition, given the the proposed cost of carrying out the development is greater than \$750,000, a cost summary report is provided by a quantity surveyor who is a registered member of the Australian Institute of Quantity Surveyors in accordance with Section 3.2.3 of Council's Section 7.12 Contributions Plan for Non-Residential Development. The cost summary report is also required prior to the issue of a Construction Certificate.

Certification

68 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.

69 Q06F - Occupation Certificate (Class 2 - 9)

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

Before the Occupation Certificate can be issued for the development, Fire Safety Certificates issued for the building are to be submitted to Penrith City Council and the New South Wales Fire Brigades.