

<b>JRPP Ref. No.:</b>	2016SYW006
<b>DA No.:</b>	DA15/1559
<b>PROPOSED DEVELOPMENT:</b>	Partial Demolition of Existing Structures, Tree Removal, Construction and Operation of an Asphalt Plant and Associated Works including Installation of a Diesel Tank. - Lot 100 DP 1202567, , 67 - 73 Links Road, ST MARYS NSW 2760
<b>APPLICANT:</b>	Julieanne Holdings Pty Ltd
<b>REPORT BY:</b>	Donna Clarke, Environmental Planner, Penrith City Council

## Assessment Report

### Executive Summary

Council is in receipt of a Development Application for use of the site as a '*waste or resource management facility*' which includes partial demolition of existing structures, tree removal, construction and operation of an asphalt plant and associated works including installation of a diesel tank.

The land is zoned IN1 General Industrial. The proposal relies on Clause 121 (2) of the State Environmental Planning Policy (SEPP) for permissibility, noting that the SEPP prevails over the prohibition contained in Penrith Local Environmental Plan (LEP) 2010 based on the provisions of Clause 8(1) of the SEPP. Therefore the proposal is permissible with consent in the IN1 zone.

In accordance with Section 23G of the Environmental Planning and Assessment Act, 1979, the Sydney West Joint Regional Planning Panel (JRPP) is the determining authority as the proposal is designated development under the provisions of the Environmental Planning and Assessment Regulations, 2000.

The application was advertised, exhibited and notified to adjoining properties between 18 January 2016 to 18 February 2016 and no submissions were received.

The proposal was referred to the Roads and Maritime Service for comment with no objections raised to the development application.

The proposal was also referred to the Environmental Protection Authority for comment with no objections raised to the development application subject to compliance with the submitted documents and amended management details.

An assessment of the proposed development under the Environmental Planning and Assessment Act 1979 has been undertaken and the proposal has been found to be satisfactory.

The proposed development is generally in accordance with the relevant provisions of the environmental planning instruments pertaining to the land. A variation is sought with respect to the height of the asphalt plant, which is a tall and narrow removable structure in the central portion of the site and on balance is considered acceptable. The proposed development is unlikely to have a negative impact on the surrounding environment, with consideration given to air and water quality, visual and acoustic impacts and hazard analysis. The site is suitable for the proposed development and the proposal is in the public interest. The proposal is therefore worthy of support.

This report recommends that the application be approved subject to recommended conditions of consent.

## Site & Surrounds

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The subject site is described as Lot 100 DP 1202567, Nos. 67-73 Links Road, St Marys. The site is triangular in shape, with a frontage of 220.66m to Links Road, a western boundary of 213.83m and an eastern boundary of approx. 130m. The property has a total land area of 16,160m<sup>2</sup>.

The site is adjoined to the east by Sydney Water Infrastructure (St Marys Sewerage Treatment Plant) and the site management office / haulage gatehouse of the Central Residential Precinct development works (St Mary's ADI Site) to the west. The site is also adjacent to the future north and south dunheved industrial precinct (north west) and the regional park of the ADI Site to the north east.

The surrounding locality is characterised by industrial development with a mixture of existing waste management facilities, warehouse and manufacturing tenancies and general industrial land uses.

A number of structures associated with the previous use of the site as a depot for Sydney Water exist on the site, as well as a non-operational Triggs Road previously used to provide access to the residential dwellings located on the western side of Triggs Street. A fence and gate at the intersection of Links Road and Triggs Road currently prevents public access to Triggs Street.

The site contains a number of easements on the title. The relevant easements in the area of works include:

1. Easement for recycled water purposes 3 metres wide (DP1202567)
2. Easement for sewage 6.095 metres wide (DP1202567)
3. Electrical Easement 4.875m wide (DP1202567)

## Proposal

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This Development Application seeks consent for the following:-

- Demolition of a number of existing structures (note: Building A and B to remain);
- Removal of seventeen (17) trees and new landscaping;
- Construction of a control room to the northern side of Building B;
- Construction and use of the site as a partially enclosed fixed hot – mix asphalt plant producing a maximum of 300,000 tonnes per annum or up to 2,000 tonnes per day of material;
- Ten (10) storage areas including seven (7) stockpiles to be located along the north-eastern and north-western boundaries made of pre cast concrete blocks with jersey kerb dividers;
- Assembly of the mobile asphalt plant and associated services, including installation of diesel tank (20,000 litres), soap sprayer bunded area, weigh bridge, ramp and bins;
- Removal of non-operational Triggs Road, pathway, kerb and gutter and made good;
- Construction of a 10m wide driveway, entries and exits and associated service driveway;
- Fourteen (14) car parking spaces located adjacent to the site offices;
- Signage at the main entry gate and the southern elevation of Building B;
- Drainage and water quality devices;
- Upgrading of existing fencing and lighting;
- Erection of a 2.1m high decorative metal fence on boundary; and
- Site drainage and service connection.

The operational details of the asphalt plant are as follows:

- Daily despatch of asphalt product by truck and delivery of raw materials and products associated with the production of asphalt. Dispatch of product is on demand with an estimated 14 deliveries per day. Vehicle access to the site will be via 3 driveways to the site, with heavy vehicles circulating in a clockwise direction entering via the central driveway and exiting via the new eastern driveway.
- The site proposes to operate 24 hours 7 days per week. Office staff will generally operate Monday to Friday 7.00am to 5.00pm and Engineers or Laboratory Technicians working on quality control may operate from the office at any time while the plant is operational.
- The proposed use will employ a total of 10 staff.

The asphalt plant operates as follows:

- Raw materials are stored on site in stockpiles and transferred hoppers, for conveying into the dryer.
- Drying, heating and mixing operations occur with manufactured asphalt product being transferred to a storage hopper for despatch. Trucks will enter the site and park under the chute. Asphalt would be dispatched directly into trucks and transported from the site.
- Stockpiled raw materials stored on site include sand, basalt aggregate in varying sizes, basalt crushed dust, recycled asphalt product, and crusher dust and stockpile bins will be fitted with a water spray system to suppress dust during unloading and loading of raw materials. Lime is stored in a sealed storage container to a maximum of 25 tonnes and bitumen is stored in multiple storage tanks with a combined capacity of 320 tonnes.

It is also noted that the application as originally lodged included works within the Blacktown Local Government Area as the site is subject to a local government boundary line. As a consequence of this, all works within the Blacktown Local Government Area were removed from the application so that the works retained relate wholly to land within the Penrith Local Government Area.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No 33—Hazardous and Offensive Development
- State Environmental Planning Policy No 55—Remediation of Land
- State Environmental Planning Policy No 64—Advertising and Signage
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

## Planning Assessment

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- **Section 23G - Joint Regional Planning Panel (JRPP)**

The application has been assessed in accordance with Section 23G of the Environmental Planning and Assessment Act and the application will be determined by the Joint Regional Planning Panel Sydney West Region for the following reasons:

- It is a designated development for the purposes of a waste management facility; and
- It has a Capital Investment Value (CIV) of over \$20 million.

- **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, and having regard to those matters, the following issues have been identified for further consideration.

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

## **State Environmental Planning Policy (Infrastructure) 2007**

### ***Permissibility***

The proposal relies on Clause 121 (2) of the SEPP for permissibility, noting that the SEPP prevails over the prohibition contained in PLEP 2010 based on the provisions of Clause 8(1) of the SEPP.

The provisions of Clause 121 of the SEPP apply which allows the proposed *waste or resource management facility* as a permissible use with consent within the IN1 General Industrial zone (as defined below).

The proposal specifically constitutes a resource recovery facility which is a subset of a waste or resource management facility use, as defined below:

*'resource recovery facility means a facility for the recovery of resources from waste, including such works or activities as separating and sorting, processing or treating the waste, composting, temporary storage, transfer or sale of recovered resources, energy generation from waste gases and water treatment, but not including re-manufacture of material or goods or disposal of the material by landfill or incineration.'*

*'waste or resource management facility means a waste or resource transfer station, a resource recovery facility or a waste disposal facility.'*

Therefore the proposal is permissible with consent in the IN1 zone.

### ***Traffic Generating Development***

Recycling facilities and waste transfer stations require referral to RMS as traffic generating development, as identified in Schedule 3. A referral was undertaken and no objection was raised.

## **State Environmental Planning Policy No 33—Hazardous and Offensive Development**

SEPP 33 applies if a proposal for an industrial development requires consent, and it is either potentially hazardous industry or potentially offensive industry (or both).

The requirements include an assessment of the preliminary hazard analysis (PHA) to be submitted with the development application. A PHA was submitted and concluded that the development is not a hazardous industry.

The application includes a Preliminary Hazard Analysis (PHA) which has been prepared in accordance with SEPP 33 and relevant guidelines and the PHA concludes that *"the proposed development meets all the safety requirements stipulated within the Department of Planning and Infrastructure guidelines and is then considered to be non-offensive or a non-hazardous development"*. The PHA identifies the need to have in place a number of management controls and provides a number of recommendations required to be implemented and maintained. A recommended condition is attached that requires compliance with the PHA.

## State Environmental Planning Policy No 55—Remediation of Land

This policy aims to provide a state-wide approach to remediation of contaminated land. Of particular relevance to the current proposal are the requirements of Clause 7, which provides:

*(1) A consent authority must not consent to the carrying out of any development on land unless:*

*(a) it has considered whether the land is contaminated, and*

*(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

*(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The site has operated for industrial purposes for a number of years without change. The proposed development is not for residential purposes and will continue to be for industrial use, and therefore no remediation or further investigation is required for this application. Future change of use of the site may trigger the requirement for remediation.

A review of previous site investigations have been undertaken on the site. The site has remained unchanged since the date of the detailed site investigations. Therefore, the information submitted with the application in regard to the suitability of the site for the proposed use remains satisfactory.

Due to the potential presence of asbestos in existing buildings, a recommended condition is attached that specifically addresses the management of asbestos containing material (ACM) on site.

## State Environmental Planning Policy No 64—Advertising and Signage

An assessment has been undertaken of the application against relevant criteria within State Environmental Planning Policy No 64—Advertising and Signage:

The proposed signage is non-illuminated and incorporates the company logos and colours. The signs comprises the following and are consistent with the aims and objectives of SEPP 64:

- Main entry gate sign - 2m x 1m
- Sign of Building B - 10m x 1m

An assessment under Schedule 1 has been undertaken below:

Criteria	Compliance – Yes/No
<b>1. Character of the Area</b>	
<i>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</i>	Yes
<i>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</i>	Yes
<b>2. Special Areas</b>	

<i>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</i>	No
<b>3. Views and Vistas</b>	
<i>Does the proposal obscure or compromise important views?</i>	No
<i>Does the proposal dominate the skyline and reduce the quality of vistas?</i>	No
<i>Does the proposal respect the viewing rights of other advertisers?</i>	Yes
<b>4. Streetscape, setting or landscape</b>	
<i>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</i>	Yes
<i>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</i>	Yes
<i>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</i>	Yes
<i>Does the proposal screen unsightliness?</i>	Yes
<i>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</i>	No
<i>Does the proposal require ongoing vegetation management?</i>	No
<b>5. Site and building</b>	
<i>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</i>	Yes
<i>Does the proposal respect important features of the site or building, or both?</i>	Yes

<i>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</i>	Yes
<b>6. Associated devices and logos with advertisements and advertising structures</b>	
<i>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</i>	N/A
<b>7. Illumination</b>	
<i>Would illumination result in unacceptable glare?</i>	No
<i>Would illumination affect safety for pedestrians, vehicles or aircraft?</i>	No
<i>Would illumination detract from the amenity of any residence or other form of accommodation?</i>	No
<i>Can the intensity of the illumination be adjusted, if necessary?</i>	N/A
<i>Is the illumination subject to a curfew?</i>	N/A
<b>8. Safety</b>	
<i>Would the proposal reduce the safety for any public road?</i>	No
<i>Would the proposal reduce the safety for pedestrians or bicyclists?</i>	No
<i>Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</i>	No

As a result the proposed signage is considered to be supportable.



## **Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River**

Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No. 2 – 1997) (REP 20) integrates planning with catchment management to protect the Hawkesbury-Nepean river system, requiring the impact of future land use to be considered in a regional context. The plan covers water quality and quantity, environmentally sensitive areas, riverine scenic quality, agriculture and urban and rural-residential development. It controls development that has the potential to impact on the river environment. The REP is supported by an Action Plan, which includes actions necessary to improve existing conditions.

The development proposal has been assessed and subject to conditions of development consent, found to be in accordance with the general planning considerations set out in Clause 5 of the REP and the relevant specific planning policies and related recommended strategies set out in Clause 6.

## **Local Environmental Plan 2010 (Amendment 4)**

### ***Permissibility***

The subject site is zoned IN1 General Industrial under Penrith Local Environmental Plan 2010.

Waste or resource management facilities are defined as:

***"waste or resource management facility means a waste or resource transfer station, a resource recovery facility or a waste disposal facility"***

and are prohibited in the IN1 zone, however SEPP (Infrastructure) 2007 serves to permit waste or resource management facilities within an IN1 equivalent zone and prevails to the extent of the inconsistency. The proposal is therefore permitted with consent.

The use could also fall within the definition of "general industry" under the LEP, however the above definition is more appropriate for this development and the SEPP prevails.

It can be noted that the northern tip of the site is located in Blacktown City Council local government area and is zoned SP2 under Blacktown LEP. No works are proposed within this portion of the site.

### ***Zone objectives***

The zone objectives allow for a range of warehouse and industrial uses, encourage employment opportunities and minimise any adverse effect of industry on other land uses. The proposal satisfies these objectives by providing an industrial process which also requires an area for storage and is not envisaged to create adverse environmental issues such as pollution of waterways, odour or acoustic impacts for adjoining properties or the greater area.

### ***Height***

The development includes a free-standing / moveable plant, which is 34.525m in height, at the worst point. The LEP has a height control of 12m.

A request for variation of the height limit control for part of the development is requested under Clause 4.6 of the LEP to the height of the plant (see discussion below).

The objectives of Clause 4.3 are:

***"(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired***

*future character of the locality,*

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

*(c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,*

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

The proposed development is in keeping with the desired future character of the area, predominantly being industrial development. Land to the north-east of the site is St Marys Sewerage Treatment Plant and to the north-east is land used as a haulage route providing access for the importation of fill for the construction of the Central Precinct. Beyond that to the north-west is the Regional Park.

The additional height is contained essentially in the tower component only of the plant. The lower portions marginally exceed being 12.1m and 14.8m however are setback behind the existing building and in keeping with the surrounding industrial built form.

The asphalt plant does not have a large footprint, with a substantial portion of site remaining open with no buildings. The colour of the plant and its temporary nature, as well as the existing and proposed boundary planting will assist in reducing the visual impact of the tower.

There are no heritage items in the immediate vicinity of the site.

The overall height of the building will remain consistent with the future buildings on the surrounding land and will not appear larger in size or scale.

#### **Clause 4.6 – Exceptions to Development Standards**

The applicant has advised that the height of the plant equipment breaches the 12m height limit by up to 22.525m (resulting in total overall height of 34.525m) and has provided the following justification as to why strict compliance with the height control is unreasonable in this instance:

- *The height of the plant is required to facilitate optimum production and has been designed to allow for the proper functioning of the facility with no additional height proposed unless absolutely necessary.*
- *The Asphalt Plant is imported as a standard batch plant design. The size is required to have the capacity to produce the estimated volumes of asphalt to accommodate the current and future demands that will be required for the future developments in Western Sydney.*
- *The plant involves a number of processes where material is gravity fed between vertically stacked and sizable processing components. The design by its very nature is such that the height is fundamental to allow the capture of thermal and production efficiencies. The production of asphalt is achieved in the vertical handling of raw materials in the main structure of the plant with the excess height.*
- *The proposed development and siting has been designed as far as possible to reduce the bulk and scale and maintain views into and out of the St Marys Industrial Precinct.*
- *There are no heritage items in close proximity.*
- *No impacts arise on adjoining properties as a result of the non-compliance.*
- *Strict compliance with the height standard would hinder the attainment of the objects of Section 5(a)(I) and (ii), which are to encourage development that promotes the social and economic welfare of the*

*community and a better environment and the promotion and co-ordination of the orderly and economic use and development of land.*

- *Strict adherence to the height limit would not lead to the satisfaction of the strategic direction for St Marys.*
- *The location of the plant has been designed with substantial setbacks and building separation.*
- *All other structures on site comply with the height limit.*
- *Privacy impacts not envisaged from the plant given it is non-habitable and the surrounding area is of an industrial nature.*
- *The visual impact has been addressed by way of selection of a colour which compliments the proposed landscaping along the boundary, which will form a backdrop to the plant when viewed from the street or assist in screening when viewed from the adjoining properties.*
- *The objectives of the LEP and zone continue to be achieved despite the minor variation.*

Clause 4.6 allows Council to grant consent for development where it does not satisfy a development standard.

The objectives of Clause 4.6 are as follows:

*“(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,  
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

The applicant's argument is has been considered in the assessment of the development application and the justification provided for the variation is considered to be well founded and the LEP zone objectives remain satisfied notwithstanding the numerical variation to the height control.

The site is not located within the middle of the industrial area and is not considered to result in a precedence being set. The site is located at the northern edge of the existing industrial area and is in close proximity to the zoned regional park to the north, north east and north west being part of the St Mary's ADI Site. Future industrial land has been identified immediately west and north west being the 'North and South Dunheved Precinct' and a sewerage treatment facility is located immediately east and north east of the site. As a result of this, the height and visual prominence of the plant structure will be partially ameliorated by the backdrop of regional park vegetation.

It is also noted that a similar plant structure exists within the same industrial estate along Christie Street approximately 1.0 kilometre from the subject site at Nos. 86 - 100A Christie Street, St Mary's. This similar structure further reinforces that the proposed structure is not out of keeping with the industrial land uses despite the height non compliances, and is a suitable location for the nature of the proposed use having regarding to surrounding and existing development within the locality.

The height of the structure is also dictated by the manufacturer and it is noted that the plant is not a typical building in terms of permanence. While the structure still represents a significant variation to the LEP height requirement, it is capable of being removed at the cessation of site operations.

The colour of the plant, in conjunction with the existing trees behind and proposed landscaping on the site will assist to ameliorate the presentation of the plant tower.

The proposed variation to the height control provides for an acceptable planning outcome with respect to the overall development as the proposal as whole meets the above objectives and ensures that a suitable development is proposed which does not adversely impact on surrounding properties or the public domain.

### ***Trees***

Some tree removal is necessary to accommodate the road widening, plant and bays, however they are not significant trees and appropriate replacement planting is proposed. A mix of trees and shrubs is proposed as part of the replacement planting which will assist to provide partial screening of the development and improve the resulting streetscape presentation of the site.

### ***Other Issues***

The site is not bushfire affected or flood affected, nor does it contain an item of heritage significance. The site is already serviced.

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

### Development Control Plan 2014

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

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

### ***Environmental Planning and Assessment Regulations 2000 - Designated Development***

Part 1, Schedule 3 of the Environmental Planning and Assessment Regulations 2000 outlines the following designated triggers for bitumen processing, which includes an Asphalt Plant:-

*"5 Bitumen pre-mix and hot-mix industries*

*(1) Bitumen premix or hot-mix industries (being industries in which crushed or ground rock is mixed with bituminous materials):*

*(a) that have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per year,  
or*

(b) that are located:

(i) within 100 metres of a natural waterbody or wetland, or

(ii) within 250 metres of a residential zone or dwelling not associated with the development.

(2) This clause does not apply to bitumen plants located on or adjacent to a construction site and exclusively providing material to the development being carried out on that site:

(a) for a period of less than 12 months, or

(b) for which the environmental impacts were previously assessed in an environmental impact statement prepared for the development.

The proposal triggers the , the proposal is "designated development" due to the quantities processed and an EIS was prepared with the application and SEARS were obtained.

### **Protection of the Environment Operations Act 1997 - Licence**

Further, with respect to the requirement for a licence from the EPA, the EPA has advised:

*"The proposed facility is not producing bitumen by way of refining or any other process, it is only storing bitumen as an input into the asphalt making process. Therefore at our end we do not believe "31A Petroleum products and fuel production" applies.*

*Bitumen pre-mix or hot mix industries used to be scheduled under the POEO Act. If you look at a historical version of Schedule 1 of the POEO Act it used to read:*

***"Bitumen pre-mix or hot - mix industries** where crushed or ground rock is mixed with bituminous or asphaltic materials and that have an intended production capacity of more than 150 tonnes per day or 30,000 tonnes per year. This activity does not include works of a temporary nature exclusively providing product for a construction site and located on or adjacent to that site for a period of less than 12 months."*

*However this was removed from the schedule and now it is referenced under s92 of the POEO General Regs and states.*

#### **"92 EPA—non-scheduled activities**

(1) This clause applies to the following non-scheduled activities:

(a) the mixing of crushed or ground rock with bituminous materials, but only if that activity:

(i) has a capacity to produce more than 150 tonnes of bituminous mixture per day or 30,000 tonnes of bituminous mixture per year, and

(ii) is carried out otherwise than on, or adjacent to, a construction site by means of temporary works used to provide bituminous mixture for that site (that is, works used for periods totalling no more than 12 months),

(b) the production of pre-mixed concrete or concrete products (for example, concrete batching plants) having a capacity to produce more than 30,000 tonnes per year of concrete or concrete products...

(2) The EPA is declared, under section 6 (3) of the Act, to be the appropriate regulatory authority for non-scheduled activities to which this clause applies."

*The EPA recognises it is the ARA but will not be generating a licence for this activity."*

Accordingly, a licence will not be required and General Terms of Approval were not issued by the EPA.

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

Likely impacts of the proposed development as identified throughout the assessment process include:

### ***EPA Comments***

The Environment Protection Authority (EPA) outlined its comments and recommended some Conditions of Consent for Council's consideration on 1 February 2016.

As part of the review of the Environmental Impact Statement (EIS), the EPA requested a series of additional information which was not included with the original DA. With reference to the EPA's letter to Council dated 1 February 2016, and the Proponent's letter of response to Council dated 18 April 2016, the EPA noted:

- *"The Proponent has agreed to conduct noise monitoring within 3 months of the operation of the asphalt plant to ensure noise levels generated are consistent with those predicted and are in compliance with the NSW Industrial Noise Policy (EPA, 2000).*
- *The Proponent has agreed to conduct stack emission monitoring within 3 months of the operation of the asphalt plant to assess actual air emissions from the premises including ground level concentrations at the boundary and for those measured emissions to be compared against prescribed limits as outlined in the Protection of the Environment (Clean Air) Regulation 2010 and any other relevant standard, which includes for dust and odours.*
- *The Proponent will manage air quality impacts from demolition activities under the Construction Management Plan which will advise the necessary mitigation measures associated with the demolition phase."*

On the basis of the additional information provided, the EPA has advised that they are satisfied regarding noise, air, soil and water impacts from this development. Appropriate monitoring conditions have been recommended.

### ***Natural resources and systems eg. Air, water, soil***

The development is not subject to flooding, subsidence or slip.

### ***Water Management***

Throughout the course of the assessment a revised Soil and Water Assessment prepared by Benbow Environmental and dated August 2016 (Released: 10 August 2016) was submitted to Council to support the application. The SWAR states that *"the entire asphalt processing area, soap sprayer and materials handling areas would direct surface water runoff to....be treated by two proprietary treatment devices in series-SPEL Puraceptor Class 1 and Stormwater 360 StormFilter"*. The SWAR also states that *"high flows will be diverted to an on-site detention (OSD) basin"* and therefore in periods of high flow, flows will be directed first to the OSD before travelling through the site to be treated by the two proprietary devices. The proposal includes a SPEL Puraceptor Class 1 Separator in regard to water pollution considerations and the POEO Act.

The application originally detailed the use of a detergent-based asphalt Release Agent to be used during operation for the release of bitumen from truck trays. Concern was raised by Council in regard to the suitability of this product in terms of potential adverse impact on the operation of the SPEL stormwater

treatment device, as detergents may adversely impact the proper functioning of an oil/water separator. Ultimately, the applicant has advised that the original "Banana Slip" detergent-based Release Agent is not to be used and an alternative product, "Fortknox", is to be used. "Fortknox" is an oil product and its Material Safety Data Sheet states that it is a non-hazardous release agent for truck beds that is not a flammable liquid and that *"this product is not classed as a water pollutant or a toxic chemical. This product is not considered toxic to aquatic environments. Product is biodegradable"*. The use of this product is accepted. It is noted that the use of this product is specifically targeted to truck bases and significant runoff of this product during truck application is not anticipated. The area used to apply Fortknox to truck bases is bunded and this area discharges to the SPEL Puraceptor Class 1 Separator and the Stormwater 360 StormFilter prior to discharge. It is recommended that a condition of consent be imposed requiring that the materials used in the operation of the development be compatible with the stormwater treatment devices installed and a condition is attached which addresses this aspect of the development.

The stockpiling of operational materials will generate sediment-laden runoff which is directed to the SPEL Class 1 Puraceptor stormwater treatment device. The ongoing performance of the SPEL Puraceptor and StormFilter stormwater treatment devices relies upon ongoing maintenance and monitoring and recommended conditions of consent are included.

The development proposes to comply with Council's WSUD Policy 2013 and DCP 2014 by using a SPEL Puraceptor GPT device for the pollution prevention and management of contaminated runoff from the redevelopment areas of the site, as well as a 25\*cartridge 690mm PSorb Stormfilter device and 1 x Enviropod. It is noted that only part of the site is being modified for the development and therefore only the areas subject to additions and modifications need to comply with the WSUD Policy. The car park in the south west corner of the site is existing and is not being substantially modified, therefore the WSUD requirements do not apply to this existing impervious area.

The nature of the site activities, particularly with regards to sediment laden runoff, will have an ongoing maintenance burden on the site operator if the SPEL Puraceptor is not the most appropriate device given these heavy sediment loads. The Stormfilter downstream of the SPEL Puraceptor is a fail-safe, however if it receives excessive sediment loads it will also require more frequent maintenance to ensure it functions as intended. This will be the responsibility of the property owner and facility operator.

### ***Air Pollution/Odour***

The application is supported by an "Air Quality Impact Assessment Report" dated 16 December 2016 and a supplementary letter "Response to Penrith City Council-Air Quality Assessment" dated 4 July 2016. The supplementary letter specifically assesses the proposed development in terms of air quality impacts of the development on the Central Precinct development located to the west of the site. The supplementary letter concludes that *"the modelled contaminant contributions from the asphalt plant would be at concentrations in the Central Precinct area lower than relevant stipulated criteria for all contaminants"*. This information supplements the Air Quality Impact Assessment Report which concluded that *"emissions to air from the sites operation are unlikely to cause harm to human health or the environment"*, that *"ground level concentrations of...pollutants originating from the stack are unlikely to be experienced at the closest industrial receptors"* and that overall *"predicted impacts are below the criteria derived from the EPA guidelines"*.

The AQIA Report was also reviewed by EPA and they raised no objection to the report, its modelling assessment and findings. The EPA recommended *"that stack emission monitoring be conducted within three months of operation of the asphalt plant to assess actual air emissions" and that "dust and odour emitted from the premises...be included in this monitoring"*. This recommendation is supported and attached is a recommended condition addressing this requirement. In addition, the EPA recommended clarification and confirmation in regard to a number of details provided in the application and these



discrepancies and issues were clarified and resolved with the applicant during the assessment process.

In conclusion, no objection is raised to the proposed development in regard to air quality impacts. The air quality assessments that were undertaken were carried out in accordance with the "Approved Methods for the Modelling and Assessment of Air Pollutants in NSW", 2005 and demonstrate that the development will comply with applicable air quality criteria, subject to the recommendations of the AQIA Report.

Accordingly, the recommended conditions specifically address the requirement for the implementation of management controls and ongoing monitoring of operations in regard to air emissions and air quality management. These include the management of demolition, construction and ongoing operational related air impacts.

### ***Noise Impact***

The application includes an Environmental Noise Impact Assessment (NIA) that assesses the potential noise generated by the operation of the proposed development in accordance with applicable criteria. The NIA assesses the impact of the development upon all existing nearest adjoining residential and industrial receivers as well as upon the Central Precinct located to the west of the site. The NIA concludes that "the level of noise emitted from the development will meet .... noise level requirements....at all receptor locations including future residents in the St Marys Central Precinct Land Release". The NSW EPA also reviewed the NIA and recommended that "if Council consents to the proposed development....noise monitoring be conducted within 3 months of operation of the asphalt plant to ensure....compliance with the NSW Industrial Noise Policy". Conditions are recommended that specifically address this aspect of the development requiring compliance with, and monitoring of, noise levels emitted from the proposed development.

### ***Waste***

The application includes a Waste Management Plan (WMP) that details the estimated quantities and proposed methods of managing waste that is generated during demolition, construction and operational activities.

### ***The public domain and the public/private interface***

The development is compatible with the existing surrounding industrial landuses. The proposed embellished landscape buffer around the perimeter of the site ensures that there is limited visual impact of the proposed use and plant, from both the street and the future Central Precinct.

### ***The character of the place and its local and regional context***

The proposal is consistent with the bulk, scale, colour and design of other development in the locality.

### ***Access, traffic and transportation impacts***

The development is unlikely to significantly impact on the local road system, with no objections to the proposal in terms of traffic. In addition comments were received from the RMS (in accordance with SEPP provisions) and no objections to the proposal were raised by RMS, with recommended conditions of consent.

### ***Health, safety and compatibility issues***

The proposed development is sensitive to environmental conditions and site attributes and the proposed development safeguards the health and safety of the occupants.

## **Easements**

The proposal includes works over or within the following existing easements:

1. Easement for recycled water purposes 3 metres wide (DP1202567)
2. Easement for sewage 6.095 metres wide (DP1202567)
3. Electrical Easement 4.875m wide (DP1202567)

To enable Council to issue a legal determination, owners consent is required to be obtained from the benefiting authority of all easements in which works are proposed. This has been addressed by way of a deferred commencement condition regarding this aspect. The applicant is aware of this issue and has been pursuing consent.

Advice was sought from Council's legal department and it was determined that creation of an easement is very different to works within an established easement, as in this case. Accordingly, imposition of a Deferred Commencement condition is considered to be the appropriate avenue in this instance.

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

The site is suitable for the following reasons:

- The site is zoned to permit the proposed use;
- The use is compatible with surrounding/adjoining land uses;
- The proposal will not have any unreasonable amenity impacts to adjoining properties as demonstrated with the documentation contained within the development application;
- The proposed use complements the existing use of the site; and
- The asphalt plant can be removed from the site upon completion of activities.

## **Section 79C(1)(d) Any Submissions**

### **Referrals**

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

<b>Referral Body</b>	<b>Comments Received</b>
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

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

The proposed development will not generate any significant issues of public interest.

## **Conclusion**

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In assessing this application against the relevant environmental planning policies, the proposal satisfies the aims, objectives and provisions of these policies.

The site is suitable for the proposed development as outlined within the body of this report having regard to Section 79C of the Environmental Planning and Assessment Act, 1979, The proposal is considered to be in the public interest by way of site location and landscaping works. The proposal is also not considered to result in negative impacts as managed by way of recommended conditions of consent.

As a result the application is considered to be worthy of support, subject to recommended conditions of consent.

## **Recommendation**

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1. That DA15/1559 for Industrial Development - Waste Management Facility (Designated Development) at 67 - 73 Links Road, St Marys, be approved subject to the attached conditions (Development Assessment Report Part B);

## CONDITIONS

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### Standard Conditions

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

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

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

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

3 [A001](#)

The development must be implemented substantially in accordance with the following plans and documentation stamped approved by Council, except as may be amended in red on the attached plans and by the following conditions.

Plan / Document	Revision	Prepared By	Dated
DA100 Site Plan	L	Hosking Munro	23/5/16
DA101 Buildings A + B	C	Hosking Munro	25/11/15
DA103 Demolition Plan	B	Hosking Munro	25/11/15
DA300 Site Section AA	B	Hosking Munro	25/11/15
DA L01 Landscape Plan	D	Hosking Munro	10/8/16
DA00 Catchment Plan	B	Lindsay Dynan	8/7/16
DA01 Stormwater Drainage Plan	H	Lindsay Dynan	8/7/16
DA02 Stormwater Drainage Plan	F	Lindsay Dynan	8/7/16
DA03 Sediment + Erosion Control Plan + Details	C	Lindsay Dynan	8/7/16
DA04 Stormwater Drainage Section	D	Lindsay Dynan	8/7/16
HS01 Cover Sheet + Legend	B	Neil Lowry & Associates	26/11/15
HS02 Site Plan Hydraulic Services	C	Neil Lowry & Associates	26/11/15
MO314210 Top Tower/Silo Mixer		Fayat	01/09/15
42031DT Site Survey		LTS Lockley	23/09/15

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

The operating hours of the clerical office to the public are:

Monday to Friday 7am-5pm

The plant operations can operate 24 hours a day.

Engineers or laboratory technicians may work from the office at any time while the plant is operational.

5 [A032 - Goods in buildings](#)

All materials and goods associated with the use shall be contained behind the building line and gate at all times, with no storage within the front setback.

6 [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 driveway. Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding landuses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).

7 **A039 - Graffiti**

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

8 **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**.

9 **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 portaloos 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.

All demolition and refurbishment works involving asbestos containing material (ACM) are to be undertaken in accordance with all relevant legislation, Australian Standards, Codes of Practice and guidelines.

10 **B004 - Dust**

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

11 **B005 - Mud/Soil**

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

12 **B006 - Hours of work**

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

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

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

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

13 **D001 - Implement approved sediment& erosion control measures**

A soil erosion and sediment control plan, prepared in accordance with Landcom's "Managing Urban Stormwater: Soils and Construction" 2004 shall be submitted for consideration and approval with the Construction Certificate application. {Note: Visit [www.urbangrowth.nsw.gov.au](http://www.urbangrowth.nsw.gov.au) to obtain a copy of the publication.}

The approved erosion and sediment control measures are to be installed **prior to the commencement of works on site** and shall be maintained throughout the construction phase of the development until the land, that was subject to the works, has been stabilised and development works completed. The erosion and sediment control measures are to be maintained in accordance with the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004 and are to ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development. Also, dust suppression techniques are to be employed during site works and construction activities to reduce any potential nuisances to surrounding properties.

14 **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.

15 **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 submitted to, considered and approved by Council. The Validation Certificate shall:

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

{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.

16 **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.

17 **D010 – Appropriate disposal of excavated or other waste**

All excavated material and other wastes generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

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

18 **D013 - Approved noise level 1**

Noise levels from the premises shall not exceed the relevant noise criteria detailed in the report titled "Environmental Noise Impact Assessment Lot 100, 33-73 Links Road, St Mary's Report Number 5750-1.1R" prepared by Day Design Pty Ltd and dated 16 December 2015.

**Three (3) months after the issue of the Occupation Certificate**, an Acoustic Compliance Report is to be submitted to and approved by Council. The report is to be prepared by a suitably qualified acoustic consultant and is to address, but is not limited to, all noise generating activities on the site and the level of compliance with the noise criteria set within the report titled "Environmental Noise Impact Assessment Lot 100, 33-73 Links Road, St Mary's Report Number 5750-1.1R" prepared by Day Design Pty Ltd and dated 16 December 2015. It is also to consider the requirements of the NSW Environment Protection Authority's Industrial Noise Policy, other relevant guideline documents and the conditions of this development consent.

Should the Compliance Report identify any non-compliance issues, the Report is to provide suitable recommendations for the mitigation of those issues. Any mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

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

19 **D014 - Plant and equipment noise**

All plant and equipment is to be operated, maintained and serviced in accordance with the relevant manufacturer specification(s) and recommendation(s) to ensure it operates in a proper and efficient manner.

20 **D019 - Bunding-fuel tanks**

The above ground fuel storage tank shall be installed on a concrete surface and protected by a bund(s). The storage capacity of the bund(s) shall be equal to 110% of the volume of the tank. Details are to accompany the application for a Construction Certificate.

21 **D023 - Bunding**

All works and storage areas where spillages are likely to occur shall be bunded. The size of the area(s) to be bunded shall be calculated as being equal to 10% of the total volume of containers stored, or 110% of the largest container stored, whichever is the greater. Details are to accompany the application for a Construction Certificate.

Loading and unloading of hot mix asphalt and of fuels, oils, chemicals, or any other liquid material must only take place in a bunded area.

22 **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.

23 **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.

24 **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.



## 25 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.

## 26 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.

## 27 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.

28 **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.

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

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

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

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

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

Note:

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

30 **K203 - S138 Roads Act – Works and structures - Roadworks requiring approval of civil drawings. CIVIL CONSTRUCTION IN THE ROAD RESERVE**

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that a Section 138 Roads Act application, including payment of application and inspection fees, has been lodged with, and approved by Penrith City Council (being the Roads Authority under the Roads Act), for the provision of road widening for the full extent of the development frontage of 67-73 Links Road St Marys. Links Road shall be widened to match the existing dimensions of Links Road to the east. The road widening shall include but not limited to:

- the construction of kerb and gutter
- service relocation to public utility requirements
- construction of heavy duty vehicular crossings
- tree removal

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines, and best engineering practice.

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

Note:

a) Where Penrith City Council is the Certifying Authority for the development the Roads Act approval for the above works may be issued concurrently with the Construction Certificate.

b) Separate approvals may also be required from the Roads and Maritime Services for classified roads.

c) All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.

31 **K210 - Stormwater Management**

The stormwater management system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Lindsay Dynan, reference number 12102 - DA00 to DA04, revision D, dated 08/07/2016.

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 any Construction Certificate, the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage for Building Developments and Water Sensitive Urban Design (WSUD) policies.

32 **K212 - No loading on easements**

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

33 **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.

34 [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.

35 [K405 - Turf to Verge](#)

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

36 [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.

37 [K504 - Stormwater Compliance](#)

Prior to the issue of any Occupation Certificate, the Principal Certifying Authority shall ensure that the:

- a) Stormwater management systems (including on-site detention and water sensitive urban design)
  - Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
  - Have met the design intent with regard to any construction variations to the approved design.
  - Any remedial works required to been undertaken have been satisfactorily completed.

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

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

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

- a) Stormwater management systems (including on-site detention and water sensitive urban design)

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 and Drainage for Building Developments policy.

39 [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.

40 [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.

41 [K209 - Stormwater Concept Plan](#)

The stormwater management system shall be provided generally in accordance with the MUSIC modeling and associated concept plan/s lodged for development approval, prepared by Lindsay Dynan reference number 12102, drawings DA00 to DA04 dated 8 July 2016.

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

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

42 [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.

43 [K503 - Stormwater Compliance](#)

Prior to the issue of an Occupation Certificate the Principal Certifying Authority shall ensure that the:

- a) Stormwater management systems (including on-site detention and water sensitive urban design)
- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
- Have met the design intent with regard to any construction variations to the approved design.
- Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the works-as-executed drawings.

44 [K504 - 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:

- a) Stormwater management systems (including on-site detention and water sensitive urban design)

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 for Building Development.

45 [K027 - Car Parking](#)

A total of 14 off-street parking spaces are to be provided, linemarked and maintained for the development, generally in accordance with the approved schedule of external finishes. The parking space dimensions and manoeuvring areas are to comply with AS2890.1 and AS2890.2 and the Building Code of Australia. Of the 13 spaces, 1 parking spaces for persons with disabilities are to be provided in accordance with AS1428.1.

46 [L001 - General](#)

All landscape works are to be constructed in accordance with the stamped approved Landscape Plan dated 10/8/16, Sections F5 "Planting Techniques", F8 "Quality Assurance Standards" and F9 "Site Management Plan" of Penrith Council's Landscape Development Control Plan.

Landscaping shall be maintained:

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

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

47 [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.

48 [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.

## **Special Conditions**

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

Upon cessation of the use of the Asphalt Plant, the plant structure is to be removed from the site within 12 months. Evidence is to be submitted to Council to demonstrate compliance.

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

The waste or resource management facility is not to accept any substances classified in the Australian Dangerous Goods Code or medical, cytotoxic or quarantine waste.

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

The approved waste or resource processing capacity of materials shall not exceed 300,000 tonnes per year.

52 **A Special (BLANK)**

Prior to the issue of the Construction Certificate, a Construction Management Plan (CMP) is to be prepared and submitted to Council for approval. If Council is not the certifying authority, a copy of Council's approval is to be provided to the Principal Certifying Authority.

The CMP is to address the environmental aspects of the construction phase of the development and is to include details on the environmental management practices and controls to be implemented on the site. The CMP is to address, but is not limited to the following:

- *Noise control and hours of operation,*
- *Dust suppression,*
- *Waste management*
- *Erosion and sediment control,*
- *Air quality including dust control*
- *Management of asbestos containing material*

All construction activities on the site are to be implemented and carried out in accordance with the CMP.

53 **D special BLANK**

The operation of the development is not to generate air quality impacts, including dust and odour, that exceed the relevant air quality and odour emissions criteria detailed in the report titled "Air Quality Impact Assessment For Proposed Asphalt Facility Links Road, St Marys" (Report No: 151100\_Air\_GHG\_Rev 6) prepared by Benbow Environmental and dated December 2015.

Operations are to be carried out generally in accordance with the report titled "Air Quality Impact Assessment For Proposed Asphalt Facility Links Road, St Marys" (Report No: 151100\_Air\_GHG\_Rev 6) prepared by Benbow Environmental and dated December 2015.

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

54 **D special BLANK**

An initial Compliance Test on the air quality impacts, including dust and odour emissions, from the development **is to be carried out three (3) months after the issue of the Occupation Certificate** by a suitably qualified odour/air quality consultant. A Compliance Report on this testing is to be prepared using the test data with consideration of the relevant NSW Environment Protection Authority guidelines and the report titled "Air Quality Impact Assessment For Proposed Asphalt Facility Links Road, St Marys" (Report No: 151100\_Air\_GHG\_Rev 6) prepared by Benbow Environmental and dated December 2015. It is to determine whether the emissions criteria for the development is being complied with. This Report is to be prepared and provided to Council for approval within sixty (60) days of the testing.

Should the Compliance Report identify any non-compliance issues, the Report is to provide suitable recommendations for the mitigation of those issues. These mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

55 **D special BLANK**

No changes are permitted to the air emission stack and associated air emission filter and control system without Council approval. In the event of a system failure that results in an increase in air emissions, including but not limited to odour generation, all air emission generating activities are to cease until such time as the system is restored to its approved state.



56 **D Special BLANK**

**Air quality testing is to be carried out every four years after the issue of the Occupation Certificate** by a suitably qualified air quality consultant. A Compliance Report on this testing is to be prepared using the test data and it is to determine whether the air emissions criteria for the development is being complied with. This Report is to be prepared and provided to Council for approval within sixty (60) days of the testing. This air quality testing requirement is for the purpose of routine air emission compliance monitoring and does not negate the potential requirement for additional air quality testing should it be required for other purposes during the course of operation.

Should the Compliance Report identify any non-compliance issues, the Report is to provide suitable recommendations for the mitigation of those issues. These mitigation works are to be undertaken within thirty (30) days from the date of notice from Council, unless otherwise specified.

57 **D Special BLANK**

The recommendations of the "Preliminary Hazard Analysis Report" (Report No: 151100\_PHA\_Rev3) prepared by Benbow Environmental and dated December 2015 are to be implemented and adhered to during the operation of the development. Operations are to be carried out generally in accordance with the "Preliminary Hazard Analysis Report" (Report No: 151100\_PHA\_Rev3) prepared by Benbow Environmental and dated December 2015.

58 **D Special BLANK**

**Prior to the issue of the Occupation Certificate**, a detailed Environmental Management Plan (EMP) is to be submitted to Penrith City Council for approval. If Council is not the certifying authority, a copy of Council's approval is to be provided to the Principal Certifying Authority. The EMP is to be prepared in consultation with the NSW Environment Protection Authority, as the Appropriate Regulatory Authority (ARA).

The EMP is to address the environmental aspects of the development and is to include details on the environmental management practices and controls to be implemented on the site, giving consideration to the environmental reports prepared and submitted as part of the development application for this development. The EMP must be prepared by a suitably qualified consultant, and is to address, but is not limited to the following:

- *Water quality management,*
- *Soil management,*
- *Stormwater management and drainage,*
- *Noise control and hours of operation,*
- *Dust suppression,*
- *Waste management (including solid and liquid waste),*
- *Vehicle movements,*
- *Chemical storage (including dangerous/hazardous goods), transport, spill contingency and emergency response,*
- *Air quality including odour and dust control,*
- *Environmental monitoring, and*
- *Operational response procedures for non-compliance events or events resulting in complaints, equipment failure, spills or other incidents*

All activities on the site are to be implemented and carried out in accordance with the EMP. Council may request a review and if necessary updating of the EMP to reflect current environmental standards and legislation. Council must be satisfied with any changes prior to the amendment of the EMP.



59 **D Special BLANK**

A sprinkler location and operation plan is to be submitted with the Construction Certificate. The plan is to be certified by an appropriately qualified environmental consultant confirming that the number and location of sprinklers and the proposed sprinkler application regime is consistent with the assessments and recommendations made in the environmental reports submitted with the development application for this development, including but not limited to the Air Quality Impact Assessment prepared by Benbow Environmental and dated 16 December 2016. A copy of this certification is to be provided to Penrith City Council **prior to the issue of the Construction Certificate.**

60 **D Special BLANK**

All water discharged from the SPEL Puraceptor Class 1 Separator is to achieve Class 1 standard, as specified in BS EN 858-1:2002 "Separator systems for light liquids (e.g oil and petrol) - Part 1: Principle of product design, performance and testing, marking and quality control". Only materials designed for treatment by the SPEL Puraceptor Class 1 Separator are to enter the Separator.

61 **D Special BLANK**

Any sludge, sediment and oily residue collected within the SPEL Puraceptor Class 1 Separator is considered waste and must be disposed of at an EPA licensed waste facility that is authorised to receive such waste.

62 **D Special BLANK**

Throughout the life of the development, the SPEL Puraceptor must be operated, maintained and serviced fully in accordance with the procedures contained in the document "SPEL Puraceptor Class 1 - Operation and Maintenance Manual" prepared by SPEL Environmental Solutions (April 2013, Rev1) and pursuant to all service and maintenance procedures issued by the manufacturer. At a minimum, an inspection of the device is to occur twice annually. The device is to be cleaned at least once annually, and it is also to be cleaned after each spill event. Sediment captured in the SPEL Puraceptor is to be monitored and removed as required to ensure sediment levels do not exceed manufacturer recommendations.

The Stormwater360 StormFilter device is to be operated and maintained in accordance with manufacturer specifications and recommendations.

The provisions of the Protection of the Environment Operations Act apply in terms of regulating pollution of waters.

63 **D Special BLANK**

All records and documentation associated with the maintenance and servicing activities of the SPEL Puraceptor Class 1 Separator are to be retained and are to be made available to Penrith City Council upon request.

64 **D Special BLANK**

**Prior to the issue of any Occupation Certificate**, a Positive Covenant must be registered on the title to the land to the satisfaction of Council, the terms of which are to ensure that the owner of the land and successors in title retain, maintain and service the SPEL Puraceptor throughout the life of the development in accordance with the Conditions of this consent.

Any amendment to the use of the approved SPEL Puraceptor Class 1 separator, or any proposed change to the approved stormwater collection and discharge system will require the prior written approval of Penrith City Council. The stormwater drainage system shall not be altered or new lines directed in to the system without the prior written approval of Penrith City Council.

65 **D Special BLANK**

Details of the Fire Fighting Water Containment System referenced in the "Fire Safety Study For State Asphalts NSW Pty Ltd Proposed Asphalt Facility 67-73 Links Road St Marys" (Report No: 151100\_FSS\_Rev3) prepared by Benbow Environmental and dated December 2015 are to be submitted with the Construction Certificate and are to be prepared and certified by an appropriately qualified consultant. A copy of the Fire Fighting Water Containment System is to be provided to Penrith City Council **prior to issue of the Construction Certificate.**

66 [D Special BLANK](#)

Should any "unexpected finds" occur during site preparation and development works, including, but not limited to, the identification/finding of contaminated soils, buried building materials, asbestos, odour and/or staining, works are to cease immediately and Council notified. Any such "unexpected finds" shall be addressed by an appropriately qualified environmental consultant.

All remediation works within the Penrith Local Government Area are considered to be Category 1 works under State Environmental Planning Policy 55-Remediation of Land. Should any contamination be found during development works and should remediation be required, development consent is to be sought from Penrith City Council before the remediation works commence.

67 [I Special BLANK](#)

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

68 [I Special BLANK](#)

Sight distance requirements and driveway widths are to be met in accordance with AS/NZS 2890.1: 2004 and Council requirements.

69 [I Special BLANK](#)

All vehicles are to enter/exit the site in a forward direction and appropriate directional signage to be erected to this effect and to identify the separate car and truck entrances.

70 [K - Waterways - Stormwater Management system operation and maintenance](#)

The stormwater management systems shall continue to be operated and maintained in perpetuity to the satisfaction of Council in accordance with the final operation and maintenance management plan. Regular inspection records are required to be maintained and made available to Council upon request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the treatment measure/s

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

Heavy vehicle parking is to be fully accommodated onsite.

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

B-Double vehicles larger than 19 metres long shall not be permitted to access the site.

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

All car spaces are to be sealed/line marked and dedicated for the parking of vehicles only and not be used for storage of materials/products/waste materials etc.

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

The driveway width must accommodate the swept movements of the largest vehicle accessing the site and be designed to conform with AS2890.2-2002.

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

The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004, AS2890.6-2009 and AS 2890.2-2002 for heavy vehicle usage.

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

The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.

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

A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to the Principal Certifying Authority prior to the issue of a construction certificate.

78 **S Special (Deferred commencement condition)**

- A. The applicant is to provide written consent from the relevant benefiting authorities of the easements listed below stating that they do not object to any structures associated with the development to be located within their easements:

1. Easement for recycled water purposes 3 metres wide (DP1202567)
2. Easement for sewage 6.095 metres wide (DP1202567)
3. Electrical Easement 4.875m wide (DP1202567)