

MEMORANDUM

To: Sydney North Planning Panel Members

From: Rebecca Lockart - Senior Town Planner, Assessment

Date: 3 August 2017

Subject: Panel No: 2017SNH049
LDA2017/0192 - 6-8 Giffnock Avenue, Macquarie Park

The purpose of this memo is to advise the Sydney North Planning Panel of:

1. Changes to condition 107 relating to the trees to be removed;
2. Changes required to the Section 94 contributions payable for this development (condition 45 in the draft conditions) as a result of release of new Consumer Price Index (CPI) figures; and
3. The late submission from Ashurst Australia.

1. Condition 107 – tree removal

Condition 107 specifies the site trees with consent for removal. Since providing the draft conditions and assessment report to the Panel it has been highlighted that the submitted Arborist Report and Tree Management Plan prepared by Naturally Trees (dated 25 May 2017) notes two x Tree 47 – one being within the site, and one being within the neighbouring property at 2-4 Giffnock Avenue – refer **Figure 1** below.

Both trees are needed to be removed to allow for the construction of proposed Road 15, with the Tree 47 within the neighbouring site requiring separate approval in accordance with the recommended deferred commencement condition. Council supports the removal of Tree 47 within 6 Giffnock Avenue, as it is necessary to construct the road, and will be suitably replaced with tree planting elsewhere within the development.

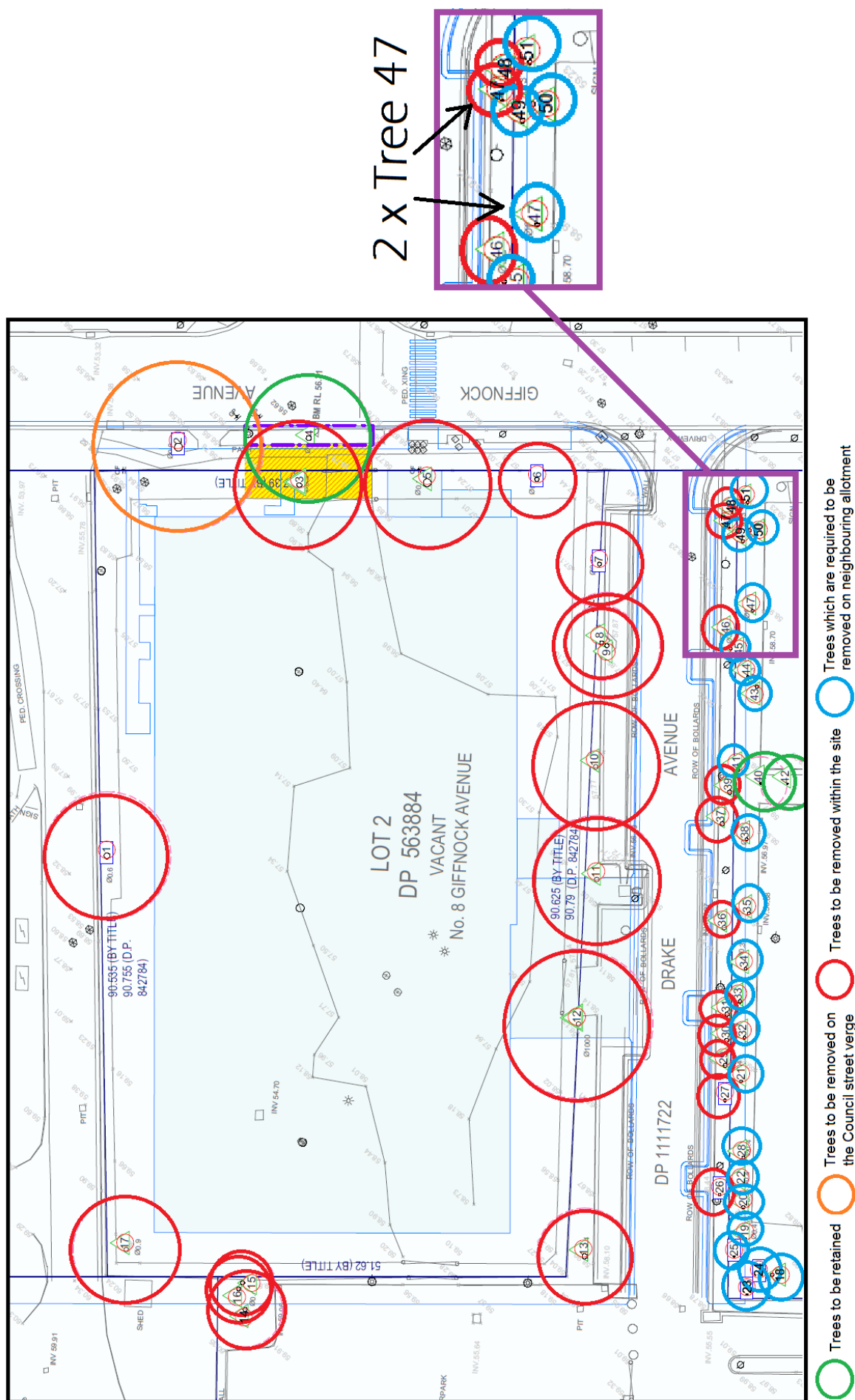


Figure 1: Survey showing existing trees on the site and neighbouring allotment – Tree 47

Accordingly, it is requested that condition 107 be amended as follows:

107. Tree protection – no unauthorised removal. This consent does not authorise the removal of trees unless specifically permitted by a condition of this consent or identified as approved for removal on the stamped plans.

Site trees to be removed

8 Giffnock Avenue:

Tree 1 – *Pinus patula* – Mexican Weeping Pine
Tree 3 – *Eucalyptus pilularis* – Blackbutt
Tree 5 – *Ficus rubiginosa* – Port Jackson Fig
Tree 6 – *Pinus patula* – Mexican Weeping Pine
Tree 7 – *Corymbia citriodora* – Lemon Scented Gum
Tree 12 – *Eucalyptus saligna* – Sydney Blue Gum
Tree 17 – *Liquidambar styraciflua* – American Sweet-gum

6 Giffnock Avenue:

Tree 8 – *Melaleuca linariifolia* – Narrow-leaved Paperbark
Tree 9 – *Eucalyptus botryoides* - Bangalay
Tree 10 – *Corymbia citriodora* – Lemon Scented Gum
Tree 11 – *Corymbia citriodora* – Lemon Scented Gum
Tree 13 – *Corymbia citriodora* – Lemon Scented Gum
Tree 14 – *Corymbia maculata* – Spotted Gum
Tree 15 – *Casuarina cunninghamiana* – River Sheeoak
Tree 16 – *Casuarina cunninghamiana* – River Sheeoak
Tree 26 – *Melaleuca quinquenervia* – Broad-leaved Paperbark
Tree 27 – *Melaleuca quinquenervia* – Broad-leaved Paperbark
Tree 29 – *Corymbia maculata* – Spotted Gum
Tree 30 – *Corymbia maculata* – Spotted Gum
Tree 31 – *Corymbia maculata* – Spotted Gum
Tree 36 – *Corymbia maculata* – Spotted Gum
Tree 37 – *Corymbia maculata* – Spotted Gum
Tree 39 – *Corymbia maculata* – Spotted Gum
Tree 46 – *Corymbia maculata* – Spotted Gum
Tree 47 - *Eucalyptus microcorys* - Tallowood
Tree 48 – *Corymbia maculata* – Spotted Gum

Trees to be removed within Council street verge

Tree 2 – *Eucalyptus pilularis* – Blackbutt

As Condition 107 specifies that Tree 47 within 6 Giffnock Avenue is permitted to be removed, and proposed Condition 108A excludes removal of trees within 2-4 Giffnock Avenue, the abovementioned amendment to Condition 107 is considered to adequately address the error without causing contradiction between the conditions of the consent.

2. Section 94 contributions

The Section 94 contributions required for this development were calculated using the most recent CPI available at the time of preparing the report for this development – which was for the March 2017 quarter.

New CPI figures were released in late July 2017 quarter that became effective on 1 August 2017 and as a result it is necessary to make an adjustment to the Section 94 contributions listed in conditions 32, 32A and 32B.

Accordingly, it is requested that condition 45 of LDA2017/192 be amended to read as follows:

- 45. Section 94.** *A monetary contribution for the services in Column A and for the amount in Column B shall be made to Council as follows:*

A – Contribution Type	B – Contribution Amount
Community & Cultural Facilities	\$259,200.00
Open Space & Recreation Facilities	\$-
Civic & Urban Improvements	\$253,920.00
Roads & Traffic Management Facilities	\$667,680.00
Cycleways	\$35,200.00
Stormwater Management Facilities	\$77,760.00
Plan Administration	\$9,440.00
The total contribution is	\$1,303,200.00

These are contributions under the provisions of Section 94 of the Environmental Planning and Assessment Act, 1979 as specified in Section 94 Development Contributions Plan 2007 Interim Update (2014), effective from 10 December 2014.

*The above amounts are current at the date of this consent, and are subject to **quarterly** adjustment for inflation on the basis of the contribution rates that are applicable at time of payment. Such adjustment for inflation is by reference to the Consumer Price Index published by the Australian Bureau of Statistics (Catalogue No 5206.0) – and may result in contribution amounts that differ from those shown above.*

*The contribution must be paid **prior to the issue of any Construction Certificate**. Payment may be by EFTPOS (debit card only), CASH or a BANK CHEQUE made payable to the **City of Ryde**. Personal or company cheques will not be accepted.*

A copy of the Section 94 Development Contributions Plan may be inspected at the Ryde Customer Service Centre, 1 Pope Street Ryde (corner Pope and Devlin Streets, within Top Ryde City Shopping Centre) or on Council's website <http://www.ryde.nsw.gov.au>.

3. Late Submission – Ashurst Australia

On Monday 31 July 2017 Council received a submission from Ashurst Australia from a 'confidential client' in relation to the subject development application.

The submission includes a letter prepared by planning consultants, Design Collaborative Pty Ltd, which raises four key issues and concludes that, based on these key issues, the Panel cannot approve the subject development application.

The four key issues relate to:

- a. The characterisation of the development as *high technology industry*.
- b. The calculation of gross floor space (GFA) and the consequential floor space ratio (FSR) of the development.
- c. The compliance of the development with the incentives provisions of clause 6.9 of Ryde Local Environmental Plan 2014 (Ryde LEP 2014).
- d. The use of generators at the development, and consequential characterisation of the development and assessment under the *Protection of the Environment Operations Act 1997* (POEO Act).

The applicant was requested to respond to the submission, and has specifically provided additional information to Council including:

- i. Amended plans which address use of the 'corridors' adjoining the plant rooms on Levels 1-7 and classification of this area as 'plant'.
- ii. A Supplementary Amenity and Hazard Assessment prepared by Aurecon addressing SEPP33 and the points raised that the development constitutes a 'hazardous industry'.

Copies of these are included with this memo.

The following addresses the areas considered to require additional assessment or clarification by Council, including key issues (a) – (c) above and other minor points raised in the submission.

It is noted that the applicant will provide additional information to the Panel in relation to the POEO Act and use of generators (point (d) above). The applicant has also obtained legal advice in response to the submission which is understood will also be made available to the Panel by the applicant.

a. The characterisation of the development as *high technology industry*

The application seeks consent for the development of a data centre which has been defined as a 'high technology industry' under Ryde LEP 2014. The submission states however that the subject development is more appropriately characterised as a *storage premises*, or more specifically a *hazardous storage establishment*, and is therefore prohibited in the B3 Commercial Core zoning of the site.

Attachment 1 includes a list of relevant definitions from Ryde LEP 2014.

Council is of the opinion that the proposed development is not defined as a *storage premises*, as the storage of plant or machinery is ancillary to an industry on the same parcel of land.

The use is considered to be an *industrial activity*, and an *industry* as the data centre involves the 'altering, transforming, processing, or servicing' of 'goods, products or articles', being technological data, for commercial purposes, and includes the storage of data associated with the activity.

The Supplementary Amenity and Hazard Assessment provided as additional information by the applicant has addressed the provisions of SEPP 33, concluding that the development is not a hazardous industry. A copy of this is submitted with this memo.

Based on the additional submitted information, the proposed use is not considered to be a *heavy industrial storage establishment* or a *hazardous storage establishment* as the proposed will not 'require separation from other development because of the nature of the processes involved'. Additionally, 'when in operation and all measures proposed to reduce or minimise its impact on the locality have been employed', the development will also not pose a significant risk in the locality.

Council's assessment report Section 8.6 states: "*The proposal does not involve hazardous or offensive industry (see discussion above under SEPP 33) and would not interfere with the amenity of the area from any of the abovementioned elements, as such fits into the definition of "light industry", which is permissible within the zone*".

Council is satisfied that the proposed use is most appropriately defined as a *light industry*, as assessed under the assessment of the application in Council's assessment report. Additionally, the use is more specifically defined as *high technology industry* as the industrial activity involves electronic or micro-electronic systems, goods or components, and information technology (such as computer software or hardware).

Attachment 2 of this memo also provides a summary of other data centre developments approved which have been similarly classified as *high technology industry*, including developments in the City of Sydney and City of Ryde local government areas.

Accordingly, as a *high technology industry*, the use is permissible within the B3 Commercial Core zoning of the site.

b. The calculation of gross floor space and the consequential floor space ratio of the development.

The submission raises that the corridor along the eastern elevation of the building is enclosed and should therefore be included in the calculation of GFA. This will accordingly increase the FSR of the development above the permissible amount, prohibiting the development.

The applicant has submitted amended plans for Levels 1 to 7 inclusive, which identify the corridor as being 'plant'. Additional supporting information is also included that states that the corridor is an integral component of the building plant for air plenum space.

Specifically the applicant has outlined that the Levels 1-7 architectural plans have been amended as follows:

1. The eastern plant access corridor plenum, which was inadvertently left uncoloured on the previously submitted plans, has been coloured pink to indicate Excluded GFA. This area is excluded from GFA as it is an integral part of the building plant, being an air plenum space.
2. The areas assigned to the plant rooms on the eastern side of the building have increased to accommodate the plant access corridor plenum.
3. The balconies on the eastern and southern building facades which were left uncoloured on the previously submitted plans, have been coloured pink to indicate Excluded GFA. This area is excluded from GFA as it comprises a balcony with outer walls less than 1.4 metres high.

Council is satisfied that the corridor space does not contribute towards GFA, and the original assessment under Section 8.6 of Council's assessment report remains valid, with the development compliant with the 2.5:1 incentive floor space ratio development standard under clause 4.4(2) of Ryde LEP 2014, with a maximum FSR of 2.48:1.

In light of the submission of amended plans, Condition 1 is requested to be amended to update the plan numbers as follows (**emphasis** added):

1. *Approved Plans/Documents. Except where otherwise provided in this consent, the development is to be carried out strictly in accordance with the following plans (stamped approved by Council) and support documents:*

Document Description	Date	Plan No/Reference
Site Plan	25.05.2017	Drawing No. S2-FAC-AR-DRG-DA-005, Issue 3
Level -1 Basement Plan	25.05.2017	Drawing No. S2-FAC-AR-DRG-DA-099, Issue 14
Ground Floor Plan	25.05.2017	Drawing No. S2-FAC-AR-DRG-DA-100, Issue 15
Level 1 Plan	02.08.2017	Drawing No. S2-FAC-AR-DRG-DA-101, Issue 15
Level 2 Plan	02.08.2017	Drawing No. S2-FAC-AR-DRG-DA-102, Issue 16
Level 3 Plan	02.08.2017	Drawing No. S2-FAC-AR-DRG-DA-103, Issue 8
Level 4 Plan	02.08.2017	Drawing No. S2-FAC-AR-DRG-DA-104, Issue 4
Level 5 Plan	02.08.2017	Drawing No. S2-FAC-AR-DRG-DA-105, Issue 4
Level 6 Plan	02.08.2017	Drawing No. S2-FAC-AR-DRG-DA-106, Issue 4
Level 7 Plan	02.08.2017	Drawing No. S2-FAC-AR-DRG-DA-107, Issue 4
Level 8 Plan	25.05.2017	Drawing No. S2-FAC-AR-DRG-DA-108, Issue 3
Elevations Sheet 1 - North	25.05.2017	Drawing No. S2-FAC-AR-DRG-DA-201, Issue 5
Elevations Sheet 2 – East	25.05.2017	Drawing No. S2-FAC-AR-DRG-DA-202, Issue 1
Elevations Sheet 3 – South	25.05.2017	Drawing No. S2-FAC-AR-DRG-DA-203, Issue 1

Document Description	Date	Plan No/Reference
<i>Elevations Sheet 4 – West</i>	25.05.2017	<i>Drawing No. S2-FAC-AR-DRG-DA-204, Issue 1</i>
<i>Sections Sheet 2</i>	25.05.2017	<i>Drawing No. S2-FAC-AR-DRG-DA-252, Issue 1</i>
<i>Section Sheet 4</i>	25.05.2017	<i>Drawing No. S2-FAC-AR-DRG-DA-254, Issue 1</i>
<i>Section Sheet 5</i>	25.05.2017	<i>Drawing No. S2-FAC-AR-DRG-DA-255, Issue 1</i>
<i>Plan of proposed subdivision of Lot 2 DP563884 and Lot 40 DP111172</i>	26.05.2017	<i>Sheet 1 of 1.</i>
<i>Landscape Plan prepared by Urbis</i>	26.05.2017	<i>Unreferenced. Total 14 pages.</i>
<i>Tree Management Plan prepared by Naturally Trees</i>	25.05.2017	<i>TMP01</i>

Prior to the issue of a Construction Certificate, the following amendments shall be made (as marked in red on the approved plans):

(a) Any reference to the removal of trees at 2-4 Giffnock Avenue (at Lot 100 DP1224422) is to be deleted from the Approved Plans and Documents under this consent.

- c. The compliance of the development with the incentives provisions of clause 6.9 of Ryde Local Environmental Plan 2014.

The submission raises that the application does not benefit from the incentives provisions of clause 6.9 as the development has not provided recreational areas within the development. Section 8.6 of Council's assessment report provides a comprehensive assessment of this component of clause 6.9.

It is not considered that the submission raises any matters in this regard that would prevent the approval of the application as currently proposed.

- d. Other matters raised in the submission

The submission raises the following issues which have already been addressed in Council's assessment report:

Rainwater usage

The submission states that there is insufficient information regarding the use of rainwater at the site for the Panel to be satisfied that the development meets high water efficiency to support approval. Council's assessment report addresses the use of rainwater in Section 8.7 under the Ryde DCP 2014 – Part 4.5 Macquarie Park Corridor assessment.

Council is satisfied that the development meets a sufficiently high water efficiency standard to support approval. The Sustainability Design Assessment prepared by Aurecon which was submitted with the development application sets out a range of strategies

intended to minimise potable water consumption, including (but is not limited to) potential rainwater harvesting for landscape, toilet flush and cooling towers

Condition 3 of the recommended draft conditions requires compliance with the undertakings in the Sustainability Design Assessment, including the water efficiency measures which will ensure the development meets a sufficiently high water efficiency standard.

Electricity use

It is also raised in the submission that insufficient information has been submitted regarding the levels of electricity usage of the proposed development for the application to be supported, based on the potential impacts of the development on climate change.

While the specific quantum of electricity to be used by the development is not specified, the Sustainability Design Assessment prepared by Aurecon addresses the use of energy, and states that the facility will target a 5 star NABERS rating. This is outlined in Council's assessment report in Section 8.6 under the assessment of Ryde LEP 2014 – clause 6.6.

NABERS is the industry standard for measuring and benchmarking the environmental performance and efficiency of existing Australian buildings, with a 5 Star rating regarded as "Excellent" performance. For data centres, NABERS Energy sets benchmarking tools for measuring the energy efficiency and environmental impact of a data centre. Specifically, a data centre rating benchmarks the greenhouse gas emissions associated with the energy used by the IT equipment and infrastructure services within a data centre over a 12 month period.

The proposed development is targeting a 5 Star '*Excellent*' rating, and Council is satisfied that the development application has satisfactorily addressed the proposal's sustainability and energy efficiency performance to support the approval of the development.

On review of the submission, and additional information provided by the applicant, Council continues to recommend the approval of the development application subject to the conditions in the draft consent as amended by the recommendations of this memo to Conditions 1, 45 and 107.

Rebecca Lockart
Senior Town Planner

Attachment 1 – Ryde Local Environmental Plan 2014 – Relevant definitions

industry means any of the following:

- (a) general industry,
- (b) heavy industry,
- (c) light industry,

but does not include:

- (d) rural industry, or
- (e) extractive industry, or
- (f) mining.

storage premises means a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and where the storage is not ancillary to any industry, business premises or retail premises on the same parcel of land, and includes self-storage units, but does not include a heavy industrial storage establishment or a warehouse or distribution centre.

hazardous storage establishment means a building or place that is used for the storage of goods, materials or products and that would, when in operation and when all measures proposed to reduce or minimise its impact on the locality have been employed (including, for example, measures to isolate the building or place from existing or likely future development on other land in the locality), pose a significant risk in the locality:

- (a) to human health, life or property, or
- (b) to the biophysical environment.

Note. Hazardous storage establishments are a type of **heavy industrial storage establishment**—see the definition of that term in this Dictionary.

heavy industrial storage establishment means a building or place used for the storage of goods, materials, plant or machinery for commercial purposes and that requires separation from other development because of the nature of the processes involved, or the goods, materials, plant or machinery stored, and includes any of the following:

- (a) a hazardous storage establishment,
- (b) a liquid fuel depot,
- (c) an offensive storage establishment.

high technology industry means a building or place predominantly used to carry out an industrial activity that involves any of the following:

- (a) electronic or micro-electronic systems, goods or components,
- (b) information technology (such as computer software or hardware),
- (c) instrumentation or instruments of a scientific, industrial, technological, medical or similar nature,
- (d) biological, pharmaceutical, medical or paramedical systems, goods or components,
- (e) film, television or multi-media technologies, including any post production systems, goods or components,
- (f) telecommunications systems, goods or components,
- (g) sustainable energy technologies,
- (h) any other goods, systems or components intended for use in a science or technology related field,

but does not include a building or place used to carry out an industrial activity that presents a hazard or potential hazard to the neighbourhood or that, because of the scale and nature of the processes involved, interferes with the amenity of the neighbourhood.

Note. High technology industries are a type of **light industry**—see the definition of that term in this Dictionary.

industrial activity means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any such activity.

light industry means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following:

- (a) high technology industry,
- (b) home industry.

Note. Light industries are a type of **industry**—see the definition of that term in this Dictionary.

Attachment 2 – Data centre approvals defined as *high technology industry*

DA description	Address	Local Government Area	Approval Body	DA number	Date of Approval	Applicant	Zoning	Classification under LEP	Back-up generator details
Construction of a part 4 and part 5 storey building to be used as a data centre. The development involves car parking for 24 vehicles, 2.7m high fencing and installation of fuel tanks with a capacity of 140,000 litres	4 Eden Park Drive, Macquarie Park	City of Ryde Council	(Former) Sydney East Joint Regional Planning Panel	Council: LDA2011/413 JRPP: 2011SYE091 DA	02/11/11	FDC Construction & Fitout P/L	B3 Commercial Core under RLEP 2010	<i>high technology industry</i>	The proposal will also include the installation 2 above ground diesel storage tanks with a total capacity of 140,000 litres within the ground floor level of the building and day tanks which will have a maximum storage capacity of 1000 litres associated with the 12 diesel generators installed on Level 1.
Construction of new three storey industrial building for use as a data centre, with hours of operation 24 hours a day, Monday to Sunday inclusive. Includes new driveway to Bourke Road, car parking, fencing, gates and landscaping. The site has a frontage to Bourke Road	506-518 Gardeners Road, 200 Bourke Road, 200A Bourke Road, 200B Bourke Road, and 79C Bourke Road ALEXANDRIA NSW 2015	City of Sydney	City of Sydney under delegated authority	D/2014/453	26/06/14	AURECON	General Industrial zone under Sydney LEP 2012	<i>high technology industry</i>	No fitout details provided.

DA description	Address	Local Government Area	Approval Body	DA number	Date of Approval	Applicant	Zoning	Classification under LEP	Back-up generator details
Internal fit out of the data centre proposed under D/2014/453. The site has a frontage to Bourke Road.	506-518 Gardeners Road 200 Bourke Road 200A Bourke Road 200B Bourke Road 79C Bourke Road ALEXANDRIA NSW 2015	City of Sydney	Central Sydney Planning Committee	D/2014/452	24/07/14	AURECON	General Industrial zone under Sydney LEP 2012	<i>high technology industry</i>	Generators located on third storey. No details regarding capacity of fuel or number of generators.
Construction of data storage facility	Lot 214 Industrial Road, UNANDERRA NSW 2526	Wollongong City Council	Southern Joint Regional Planning Panel	Council: DA-2012/635 JRPP: 2012STH014	25/9/12	Silverton Group Pty Ltd	IN3 Heavy Industry under Wollongong LEP 2009	<i>Light industry, and more specifically a high technology industry</i>	No details.
Occupation and fitout for a datacentre	5 Broadcast Way Artarmon	Willoughby City Council	(Former) Sydney East Joint Regional Planning Panel	Council: 2011/61 JRPP: 2011SYE129	16/1/12	Mr Iain Pretty	Zone 4(c) Industrial Park under WLEP 1995 IN2 – Light industries under Draft WLEP2009	<i>High technology industry under WLEP1995*</i> <i>High technology industry under Draft WLEP2009</i>	Fuel tanks 110,000L diesel storage Generators on upper ground floor

***Willoughby LEP 1995 – High technology industry definition:**

high technology industry means an enterprise that has as its primary function the manufacture, development, production, processing or assembly of, or research into, any of the following:

- (a) electronic and micro-electronic systems, goods and components,
- (b) information technology, computer software and hardware,
- (c) instrumentation and instruments,
- (d) production of film and television, including any post production,
- (e) biological, pharmaceutical, medical or paramedical systems, goods and components,
- (f) other goods, systems and components intended for use in science and technology or communications.