

SWCPP Ref. No.:	2017SWT007
DA No.:	DA17/0495
PROPOSED DEVELOPMENT:	Construction of Seven (7) Storey Office Building ("Baiada Building") & Associated Earthworks, Car Parking, Landscaping & On-Site Wastewater Management System - Lot 202 DP 1152191, Lot 201 DP 1152191,565 - 609 Luddenham Road, LUDDENHAM NSW 2745
APPLICANT:	Celestino Developments SSP Pty Ltd
REPORT BY:	Jane Hetherington, Environmental Planner, Penrith City Council

Assessment Report

Executive Summary

Council is in receipt of a Development Application from Celestino Developments for the construction of a seven (7) storey office building (Baiada Building) & associated earthworks, car parking, landscaping & on-site wastewater management system at 565-609 Luddenham Road, Luddenham.

The land is part zoned B7 Business Park, B4 Mixed Use, RU2 Rural Landscape and RE1 Public Recreation under the provisions of *Penrith Local Environmental Plan (LEP) 2010*. The development is located within a portion of the site zoned B7 Business Park. The proposed development is defined as an office premises, which is permissible in the B7 Business Park zone.

In accordance with Section 23G of the *Environmental Planning and Assessment Act, 1979*, the Sydney Western City Planning Panel (SWCPP) is the determining authority as the proposal has a capital investment value of \$64,002,170 which is in excess of the \$20 million trigger.

In accordance with the State Environmental Planning Policy (Infrastructure) 2007, the application was referred to the NSW Roads and Maritime Services (RMS) for consideration on 30 June 2017. A response was received from the RMS on 5 February 2018, which did not raise objection to the proposal but outlined comments for Council to consider in its assessment of the proposal. These have been considered in the *State Environmental Planning Policy (Infrastructure) 2007* section of this report.

The development application has been advertised in the local newspaper and notified to all adjoining and adjacent property owners and placed on public exhibition from 30 June to 14 July 2017. No submissions were received in response.

Key issues identified for the proposed development include:

Building Height

A maximum building height limit of 24m applies to the site and was pursued by Celestino under the Sydney Science Park (SSP) Planning Proposal as that was considered to be typical of the land uses and building typologies anticipated within the NSW Government's strategic plan for the area at the time being low to medium rise commercial and/or industrial uses. However, since the lodgement of the SSP Planning Proposal, the strategic direction for the area has shifted, with the Australian Federal and NSW Governments committing to the construction of the Western Sydney Airport. The revised strategic planning framework provides a context where

the proposed additional height of 35.1m will be in harmony with the context of emerging centres of density clustered around the Western Sydney Airport.

In addition, the height and scale of the building will ultimately be compatible with the Commercial Road Character Area and the wider SSP precinct. The building has been intentionally designed as a marker building and is located on a "Gateway Site" under the adopted precinct plan. The height, architectural design and high quality materials and finishes of the building will play a positive role in signifying the location's commercial and visual importance and reinforce the technological character of the SSP. The building's height will not have an adverse impact on the future adjoining land uses due to the significant landscaped setbacks and adjoining roads. The applicant's request for variation to the building height development standard in Penrith LEP 2010 is considered to be reasonable and supportable.

Wastewater Management

The site is currently not connected to Sydney Water's sewer system. While the developer is currently in discussion with Sydney Water to determine future servicing strategy options, in the interim an on-site wastewater treatment solution is proposed as part of this application. The application was accompanied by an "On Site Wastewater Assessment" report prepared by Cardno and dated 4 September 2017. This report details that an aerobic wastewater treatment system with biological nutrient removal is proposed for the subject development which is suitable for treating a daily flow of 36.4 kilolitres per day and 727 staff. The report outlines that the waste water treatment plant will be located on the subject lot (proposed Lot 21) and the irrigation area will be located within proposed Lot 2 which is within the SSP and is under the ownership and control of the developer. As the report did not provide detailed design and operational details, a condition of consent will be included requiring that prior to the issue of a Construction Certificate, a Section 68 approval under the Local Government Act is to be obtained from Council. The Section 68 application will need to be supported by a Wastewater Assessment Report (including an Operational Wastewater Management Plan) and Hydraulic Report. Given that this is an interim wastewater treatment solution and potentially will not be built in the event that Sydney Water sewer infrastructure is provided to service the site prior to construction, it is considered to be unreasonable that detailed designs and specifications be required at this stage.

On-Site Parking

Under Penrith Development Control Plan (DCP) 2014, the development requires the provision of 223 on-site car spaces. The development provides 40 on-site parking spaces, resulting in a short fall of 183 car spaces. To support this variation the application was accompanied by "Baiada Building: DA Traffic Report" prepared by Arup Pty Ltd and dated 16 February 2017 and "Sydney Science Park - Car Parking Strategy" prepared by Arup and dated 11 September 2017. The parking strategy covers forecasted parking demands for the first precinct of SSP to the year 2020, which at this stage does not include further stages of the Baiada Building.

The parking strategy and traffic report outline that the majority of the parking required for the first stage of the Baiada Building will be located on nearby local streets. It has been demonstrated that the local roads will be able to accommodate 261 parking spaces and given that the Baiada building will be the first building within the Sydney Science Park (SSP) site, these on-street spaces will effectively be provided for exclusive use of staff of the Baiada Building. This is acceptable given that the roads within the SSP will be privately owned and operated by the developer. To ensure that the car parking demands are adequately covered within the precinct, the parking strategy will be continually updated and submitted with future DAs within the SSP site.

An assessment under Section 79C of the EP&A Act 1979 (as amended) has been undertaken and the application is recommended for approval.

Site & Surrounds

Properties of the Site

The subject site is located within the Sydney Science Park (SSP), a new release area that will create a specialised centre comprising research and development, employment, education, retail and residential uses. The SSP comprises an area of approximately 287 hectares and is located on the western side of Luddenham Road, Luddenham, approximately 8km south of Penrith, 21km north-west of Liverpool and 43km west of Sydney CBD. The site is generally bounded by the Warragamba Prospect Water Supply Pipeline to the north, Luddenham Road to the east and existing agricultural land to the south and west.

The development site is located in the south-eastern sector of the SSP on proposed lot 21 (created under DA17/0497), which has an area of 3.17 hectares and a moderate slope from the south-east corner to the north-west corner.

The surrounding area is predominantly characterised by rural lands. However, Twin Creeks Estate (golf course and large lot residential estate) is located east of the SSP on the opposite side of Luddenham Road

History

In 2009, the NSW Government established the Western Sydney Employment Area (WSEA) to provide land for employment generating uses including transport and logistics, warehousing and office space. This was in response to the significant population growth occurring within Western Sydney and aimed to provide additional employment opportunities to the region. In 2014, the NSW government expanded the WSEA to form the Broader Western Sydney Employment Area (BWSEA). The subject site was captured by this expansion however, the land was not rezoned under the BWSEA.

The SSP Planning Proposal was endorsed by the Department of Planning and Environment in 2014. Following this process, Council prepared an amendment to Penrith Local Environmental Plan 2010 and a site specific chapter within Penrith Development Control Plan 2014 (DCP).

With this LEP amendment, the land was predominantly rezoned to B7 Business Park with a portion of site zoned RE1 Public Recreation and B4 Mixed Use on 28 October 2016 under Penrith Local Environmental Plan 2010 (Amendment No. 8). A total of 287 hectares of land was re-zoned from rural land to permit science based businesses, high technology industries, educational establishments and research and development and ancillary residential uses.

A maximum building height limit of 24m for the precinct was pursued in the Planning Proposal as that was considered to be typical of the land use and building typologies anticipated within the NSW Government's Strategic plan for the former "Western Sydney Employment Area", being low to medium rise commercial and/or industrial uses.

Since the lodgement of the SSP Planning Proposal, the strategic direction for the area has shifted, with the Australian Federal and NSW Governments committing to the construction of the Western Sydney Airport. The current strategic framework for the region is defined by the Draft Greater Sydney Region Plan 2056 and Draft Western City District Plan. These significant changes to the strategic planning direction of Western Sydney have seen the introduction of a vision for a global Sydney metropolis based on three cities, being the Eastern Harbour City, Central River City and Western Parkland City.

Proposal

The proposed development involves:

- Construction of phase 1 of a seven-storey office building, comprising approximately 10,200m² of GFA of flexible high technology commercial space;
- Landscaping and associated earthworks, including substantial tree planting, perimeter planting and passive recreational spaces in both the public and private domain;
- 40 at-grade car spaces;
- Loading and end-of trip facilities;
- Up to 300 employees;
- Vehicular access to the car parking and loading facilities from the Boulevard Road to the north and secondary drop-off/pick-up access from the eastern frontage; and
- Installation of a Wastewater Treatment Plant to treat wastewater associated with the proposed development.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Western Sydney Employment Area) 2009
- State Environmental Planning Policy No 33—Hazardous and Offensive Development
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

- **Section 23G – Sydney Western City Planning Panel (SWCPP)**

Under Section 23G of the *Environmental Planning and Assessment Act 1979*, a regional panel is taken to be the Council whose functions are conferred on a regional panel.

Under Clause 3 of Schedule 4A of the *Environmental Planning and Assessment Act 1979*, a regional panel has the function of determining applications for development that has a capital investment value of more than \$20 million. The proposed development has a capital investment value (CIV) of \$64,002,170 and as such the Sydney Western City Planning Panel is the consent authority.

- **Section 79BA - Bushfire prone land assessment**

The site is identified as being bush fire prone land. The applicant lodged DA17/0497 for Torrens title subdivision x 9 lots & associated works concurrently with the subject application. The site to which the Baiada Building relates is proposed Lot 21, which is to be created under DA17/0497. A Bushfire Hazard Assessment Report, prepared by Eco Logical accompanied the application for DA17/0497. This report was prepared in accordance with Section 100B of the Rural Fires Act 1997 and Planning for Bush Fire Protection 2006 (RFS 2006), also known as PBP. The report outlines that a permanent 10m wide APZ will be provided along Luddenham Road and a temporary 50m will be provided to the north, south and west until such time as the area beyond is developed and the bushfire hazard removed. Under DA17/0497 a positive covenant will be registered over the land to ensure that these APZ are provided and maintained.

- **Section 91- Integrated development**

The proposed development includes works that traverse an identified watercourse and as such triggers the Integrated Development provisions of the Act. However, the application was not lodged as integrated development. To address this issue, the applicant has provided legal advice in relation to a number of matters, including whether the failure to lodge a development application as Integrated Development precludes consent from being granted. This advice identifies that there is no compulsion on an applicant to make an application for integrated development and there is nothing unlawful in the grant of consent for development that would otherwise qualify as integrated development. Furthermore, the granting of development consent for integrated development does not avoid the need to obtain the additional approval.

The applicant has acknowledge that a controlled activity approval under the *Water Management Act 2000* will be required and is to be sought post development consent issue and prior to the commencement of works.

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

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 states that development for commercial premises with a floor area over 10,000m² with access to any road is traffic generating development requiring referral to the Roads and Maritime Service (RMS). Given that the proposal includes the construction of a office premises (type of commercial premises) with a gross floor area of 10,200m², in accordance with Clause 104 the application was referred to the RMS on 30 June 2017. A response from the RMS, dated 5 February 2018, was received which requested that Council consider the following in its assessment of the application:

1. *The adopted traffic generation rate is well below the rates as per Roads and Maritime's "Guide to Traffic Generating Developments" for office blocks. Council should be satisfied that the proponent provides updated traffic rates to allow a proper assessment of the traffic impacts on the local and state road*

network from the proposed development.

Comment: The applicant stated that *"the forecast traffic generation for the site is reflective of the employment density of the building as well as the expected mode share. This bespoke approach is consistent with that recommended in the RMS Guide to Traffic Generation Development document. Notwithstanding the above, the RMS Guide to Traffic Generating Developments - Updated traffic surveys (TDT 2013/04a) notes the following traffic generation rates for office blocks:*

AM peak hour: 1.6 vehicles / 100m² GFA

PM peak hour: 1.2 vehicles / 100m² GFA

The Baiada Building has 8,900m² GFA and is forecast to generate 123 vehicles in the AM and PM peak hours. This is equivalent to a rate of 1.38 vehicles/100m² GFA, which is within the stated range outlined in the RMS documentation."

Council's Traffic Engineer has advised that they accept the traffic generation rate adopted in the traffic report as being a reasonable rate to apply to the development in the calculation of projected traffic volumes.

2. The following intersections should be examined/modelled as a result of the development and the need/associated funding for upgrading or road improvement works to be investigated (if required):

- *Mamre Road/Luddenham Road*
- *Elizabeth Drive/Luddenham Road*

The intersections should be modelled for both existing and future and regional projects such as the proposed airport and train line should be considered in the traffic analysis. Should Council determine the current application, it is recommended that future applications for additional floor area and traffic movements are addressed by the proponent with detailed cumulative traffic assessment utilising the traffic volumes at the time of lodgement. This approach will ensure that appropriate network upgrades are identified for each stage of the Science Park development.

Comment: Council's Traffic Engineer has confirmed that the subject development will not generate significant additional traffic at the Luddenham Road/Mamre Road & Luddenham Road/Elizabeth Drive intersections to warrant additional traffic modelling. However, they have advised that future Sydney Science Park stage applications will be subject to additional traffic generation and impacts on Luddenham Road, Mamre Road and Elizabeth Drive to be addressed by the proponent, RMS and Council at these future stages.

3. Council should be satisfied that the development complies with the Amendment 8 of Penrith LEP 2010 including compliance with density requirements.

Comment: Amendment 8 of Penrith LEP 2010 has been addressed within the assessment of the application noting Clause 7.24 outlines the relevant considerations to be addressed.

4. TfNSW should be consulted regarding its requirements for provision of public transport facility for the site.

Comment: Transport for NSW (TfNSW) were engaged during the preparation of the Sydney Science Park Planning Proposal. A Traffic and Access Impact Assessment of the planning proposal and master plan was prepared by GTA Consultants, which included a conceptual transport corridor option assessment. This informed site planning of SSP and demonstrated that a transport corridor through SSP site can be accommodated if required by State Government for a future Outer Sydney Orbital (OSO).

5. It is understood from the proponent that new traffic signals are planned in the future on Luddenham Road, which are the subject of a local Voluntary Planning Agreement. Please be advised that installation of new signals requires consent from Roads and Maritime under Section 87(4) of the Roads Act 1993. The installation of traffic signals is dependent on general warrants in accordance with Roads and Maritime requirements for Traffic Signal Design - Section 2 Warrants. Roads and Maritime will assess any application for installation of new signals when the above warrant assessment, along with supporting documents, has been submitted for review.

Comment: This is noted however, the installation of traffic signals does not form part of the proposal.

As outlined above, Council has considered the RMS comments in its assessment of the proposal. The application was accompanied by a Traffic Modelling Report, Traffic Report and Car Parking Strategy. Council's Senior Traffic Officer reviewed the proposed development and have raised no objections subject to the imposition of conditions

The development is considered to be satisfactory for the purposes of Clause 104 of the *State Environmental Planning Policy (Infrastructure) 2007*.

State Environmental Planning Policy (Western Sydney Employment Area) 2009

State Environmental Planning Policy (Western Sydney Employment Area) 2009 aims to protect and enhance the land to which the SEPP applies for employment purposes.

Certain precincts within the Western Sydney Employment Area (WSEA) have been the subject of detailed precinct planning and have been rezoned and released for urban development, whilst other precincts have not yet been released. The subject site is located within Precinct 11 - Broader Western Sydney Employment Area which is yet to be released or zoned under the SEPP.

Clause 12 Unzoned Land

The site is not zoned under the SEPP. Clause 12 specifies that development may be carried out on unzoned land with consent.

Clause 18 Requirement for development control plans

In accordance with this clause, Chapter E16 Sydney Science Park of Penrith Development Control Plan 2014 has been prepared and endorsed by Council and is fully capable of satisfying the requirements outlined in subclause (3) that apply to Urban Release Areas.

Clause 20 Ecologically sustainable development

This clause specifies that the consent authority must not grant consent to development unless that development contains measures designed to minimise the consumption of portable water and greenhouse gas emissions. This provision has been addressed within the assessment against Clause 7.4 Sustainable Development of Penrith Local Environmental Plan 2010.

Clause 21 Height of buildings

Clause 21 specifies that a consent authority must not grant consent to development unless it is satisfied that the building height will not adversely impact on the amenity of adjacent residential areas and the site's topography has been taken into consideration. This provision has been addressed within the assessment against Clause 4.6 of Penrith Local Environmental Plan 2010.

Clause 25 Public utility infrastructure

The provision of public utility infrastructure is addressed within the assessment against Clause 6.2 of Penrith Local Environmental Plan 2010.

Clause 27 Exceptions to development standards

This provision is addressed within the assessment against Clause 4.6 of Penrith Local Environmental Plan 2010.

Clause 31 Design principles

The proposed Baiada Building has been designed to be of a high quality design, with varying materials and external finishes, and high quality landscaping. The overall scale and character of the development will establish and create precedent for future development within SSP, specifically with employment generating development in the precinct.

Clause 32 Preservation of trees or vegetation

The removal of trees and vegetation is addressed within the assessment against Clause 5.9 of Penrith Local Environmental Plan 2010.

State Environmental Planning Policy No 33—Hazardous and Offensive Development

State Environmental Planning Policy No. 33 - Hazardous and Offensive Development (SEPP 33) requires the consent authority to consider whether an industrial proposal is potentially hazardous or comprises a potentially offensive industry. In doing so, the consent authority must give careful consideration to the specific characteristics and circumstances of the development, its location and the way in which the proposed activity is to be carried out.

While the floor plans indicate areas for 'dangerous goods storage', the applicant has advised that the floor plans are indicative only and that the fit-out and use of the building will be subject to future development applications which will consider the implications of SEPP 33 at that time. As such, no further assessment is required to be undertaken in accordance with SEPP 33.

State Environmental Planning Policy No 55—Remediation of Land

State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Clause 7(1) of SEPP 55 prevents consent authorities from consenting to a development unless it has considered whether the land is contaminated and 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.

A Phase 1 Environmental Site Assessment, prepared by JBS&G and dated 2013 accompanied the Sydney Science Park (SSP) Planning Proposal. The Sydney Science Park is located on Luddenham Road, Luddenham and has an area of 287 hectares. This Phase 1 assessment identified that the area has historically been used for rural/grazing purposes with some residential use adjacent to Luddenham Road. A number of potential areas of environmental concern (AECs) were identified, including agricultural uses, filling, the presence of waste materials, structures containing hazardous materials and dangerous goods storage and a large water supply pipeline adjacent the site's northern boundary. Although it was considered unlikely that the degree of contamination would prevent development of the land for the intended uses associated with the SSP, a Phase 2 Detailed Site Investigation (DSI) was recommended to assess the extent of contamination.

A Phase 2 Detailed Site Investigation, prepared by JBS&G and dated 9 December 2016 accompanied DA16/0176 (Torrens title subdivision x 5 lots and associated works). Soil and groundwater samples were completed across the site and compared against the adopted NSW Environmental Protection Authority (EPA) criteria. The investigation identified a number of areas of concern, particularly related to fill material, stockpiles and asbestos containing materials in sheeting and pipes. The report concluded that the site can be made suitable for the proposed land uses provided remediation is undertaken.

Precinct wide remediation works are proposed under DA17/0100 (land remediation works) which was approved by Council on 23 May 2017. A Remediation Action Plan (RAP), prepared by JBS&G and dated 9 December 2016, accompanied this application which addresses all areas of concerns identified in the Phase 2 Detailed Site Investigation. While the RAP did not nominate specific land use criteria that the remediation land will be validated against, the applicant put forward that "Celestino confirm their intention to remediate the site so that it can be validated for residential purposes across the full extents of the site". A condition of consent was included to require the site to be validated to the most stringent criteria (for residential purposes).

As such, in accordance with Clause 7(b) of the *SEPP No. 55 - Remediation of Land*, the consent authority can be satisfied that the land will be suitable, after remediation, for the proposed use. This is subject to compliance with recommended conditions of consent which require site validation (clearance) upon completion of remediation works the subject of DA17/0100 and prior to the commencement of construction works subject to this application.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

SREP 20 aims to protect the environment of the Hawkesbury-Nepean River by ensuring that the impacts of future land uses are 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 plan applies to all parts of the catchment in the Sydney region (15 local government areas, including Penrith), except for land covered by *Sydney Regional Environmental Plan No.11 - Penrith Lakes Scheme*. SREP 20 is supported by an Action Plan which includes actions necessary to improve existing conditions.

Part 2 of the SREP states that the general planning considerations, specific planning policies and recommended strategies as applicable, must be taken into consideration by the consent authority. An assessment has been undertaken of the development against the General Planning Considerations and Specific Planning Policies and recommended Strategies as set out under Part 2 of the SREP and the proposal is considered to be acceptable.

Water quality and stormwater drainage has been considered across the Sydney Science Park (SSP) in the Water Cycle Management Strategy Report prepared by J. Wyndham Prince (September 2017). This report provides an overarching water management strategy for the SSP and incorporates water quality management measures including gross pollutant traps (GPTs), bio-retention basins/raingardens and water quality ponds. These measures will be implemented progressively through the future construction and development of the site.

Stormwater for the subject site drains into the street drainage network and ultimately into the temporary detention & sedimentation basins established under the relevant subdivision and road construction approvals issued under previous DAs. These basins have been designed to ensure that Penrith Council's water quality targets are achieved. A condition of consent will ensure that the temporary bio-retention basin will be maintained as a sediment basin until 90% of construction within the catchment has been completed. The proponent is required to operate and maintain the interim bio-retention basins until such time as the final overarching stormwater management system has been constructed and is fully established (conditioned under DA16/0176).

Council's Development Engineers and Environmental Waterways Team have reviewed the application and subject to recommended conditions relating to stormwater management and erosion and sediment controls and have no objection to the proposal.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 4.3 Height of buildings	Does not comply - See discussion
Clause 4.6 Exceptions to development standards	Complies - See discussion
Clause 5.6 Architectural roof features	Complies - See discussion
Clause 5.9 Preservation of trees or vegetation	Complies - See discussion
Clause 5.10 Heritage conservation	Complies - See discussion
Clause 6.1 Arrangements for designated State public infrastructure	Complies - See discussion
Clause 6.2 Public utility infrastructure	Complies - See discussion
Clause 6.3 Development control plan	Complies - See discussion
Clause 7.1 Earthworks	Complies
Clause 7.4 Sustainable development	Complies - See discussion
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion
Clause 7.6 Salinity	Complies
Clause 7.7 Servicing	Complies - See discussion
Clause 7.24 Sydney Science Park	Complies - See discussion

Clause 2.3 Permissibility

The land is part zoned B7 Business Park, B4 Mixed Use, RU2 Rural Landscape and RE1 Public Recreation under the provisions of *Penrith Local Environmental Plan (LEP) 2010*. The development is located within a portion of the site zoned B7 Business Park. An *office premises* is defined as:

An office premises means a building or place used for the purpose of administrative, clerical, technical, professional, or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

The proposed development is defined as an office premises, which is permissible in the B7 Business Park zone.

Clause 2.3 Zone objectives

The proposal is consistent with the objectives of the B7 zone, specifically:

- To provide a range of office and light industrial uses.
- To encourage employment opportunities.
- To provide for a range of higher order job opportunities including health, cultural and high technology industries.

Clause 4.3 Height of buildings

The Height of Buildings Map identifies a maximum height of 24m as applying to the site. The proposal has a maximum building height 35.1m relative to natural ground level which equates to a 46% departure to the 24m height limit applying to the site.

Clause 4.6 Exceptions to development standards

Clause 4.6(2) of the LEP specifies that consent may be granted for development even though the development would contravene a development standard imposed by the LEP, or any other environmental planning instrument. However, Clause 4.6(3) states that:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case, and*
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, Clause 4.6(4) states that:

Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

Clause 4.3(2) Height of Buildings specifies that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The Height of Buildings Map sets out a maximum height of 24m as applying to the subject site. The proposal has a maximum building height of 35.1m relative to natural ground level which equates to a 46% departure to the 24m maximum height applying to the site.

In accordance with Clause 4.6, the development application was lodged with a written request to vary the maximum height of building control of 24m. The Clause 4.6 variation submission has been prepared and responds to the case of *Four2Five Pty v Ashfield Council* [2015] NSWLEC 90 as well as the 'five part test' established in *Wehbe v Pittwater Council* [2007] NSWLEC 827. The applicant's response to the matters listed in Clause 4.6(3) and (4) are discussed below in turn:

The Development Standard is Unreasonable or Unnecessary

- *"The strict application of the 24m maximum height of building standard would be inconsistent with the Precinct Plan which identifies the site as a Gateway Site, which is appropriate for additional height.*
- *The aim of exceeding the height limit on Gateway sites is to encourage design innovation beyond the typical business park model. A consistent 24m height could create a monotonous and repetitive built form.*
- *The additional height is in part created as a result of the architectural roof feature. The roof feature is imperative in creating a dynamic building, which not only reinforces the slightly sloping topography of the site, but creates visual interest and serves as a marker to the First Community Precinct.*
- *The intent of the additional height to the Baiada building is to accommodate greater floor to ceiling heights, and therefore provide flexibility in spatial needs for future tenants, which include high technology industry users within the field of research and development.*
- *The dispersion of floorspace would compromise the objective to create a dense and vibrant research and development ecosystem, with the proposed floorplate size considered by the developer to be ideal for this purpose".*

The additional height is considered an appropriate built form outcome that responds to the characteristics of a 'Gateway Site' as identified in the First Community Precinct Plan (Precinct Plan). The Precinct Plan has been endorsed by the Council on 21 July 2017 and identifies that buildings on Gateway Sites may exhibit greater height to reinforce their prominence. This has been recognised by Council's Urban Design Review Panel (UDRP) who have specified that in '*regard to the future urban context, the Baiada development is located next to the Commercial Boulevard and is intended to establish a landmark for the entire development - so extra height makes sense*'. In addition, the strategic direction of the region has shifted since the Sydney Science Park Planning Proposal was endorsed, with the confirmation of the Western Sydney Airport.

The applicant is considered to have adequately addressed Clause 4.6(3)(a) with the matters aforementioned.

Environmental Planning Grounds

- *"The proposed variation is required to facilitate the Baiada Building as a Gateway Site within the First Community Precinct.*
- *Additional height is appropriate on a Gateway site under the Precinct Plan.*
- *The additional height reinforces the road intersection and the prominence and iconic nature of the building.*
- *The additional height provides flexibility for future tenants, notably in the field of research and development. The reduction in the floor to floor heights or the increase in the site area would compromise the objective to create a dense and vibrant R&D ecosystem.*
- *The proposed development is consistent with the objectives of the standard and the zone.*
- *There are no environmental impacts as a result of the variation. The additional overshadowing does not impact on the adjacent land zoned RE1 Public Recreation or adversely impact surrounding development.*
- *The additional height facilitates a reduction of site coverage, allowing greater permeability and landscaping at the ground level".*

In this respect, site specific environmental planning grounds for the proposed variation as listed above were found and the request to vary the maximum height if building control as listed above were found and the request to vary the height of building development control is supported.

Objectives of the B7 Business Park Zone

"The proposed variation to the height of buildings development standard is consistent with, and does not prevent the satisfaction of the B7 Business Park zone objectives. Specifically, the proposal addresses each of the zone objectives in the following ways:

- *To provide a range of office and light industrial uses.*
- *The proposed development involves the construction of a commercial office building that can accommodate a flexible array of uses including high technology industries, office premises, business premises and the like. The floor to ceiling heights are designed to accommodate flexibility in use.*
- *To encourage employment opportunities.*
- *The intent of the proposed Baiada building is to accommodate a broad range of uses within the field of research and development, and therefore provides opportunities for employment onsite. Strict compliance with the height standard would result in a reduction of employment floorspace within the building.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*

- The proposal will not compromise this objective.

- To provide for a range of higher order job opportunities including health, cultural and high technology industries.

- The Baiada building is proposed to accommodate a range of higher order job opportunities. This will be the subject of future use and fit-out development applications. Strict compliance with the height standard would result in a reduction of employment floorspace within the building.

- To provide for a range of development that relates to university activities, creative and cultural industries, and business incubators.

- The Baiada building will provide opportunity for a range of tenancies that may relate to universities and business incubators. The use of each level will be subject of separate DAs as individual tenants are secured. The proposed height variation accommodates greater floor to floor heights, which will assist in attracting a range of tenants."

The floor to ceiling heights of the proposed development exceed general commercial floor to ceiling height standards of 3.6m. The applicant has advised that the floor-to-floor heights of 4.5m were recommended as it allows for the accommodation of the building services requirements for laboratory users. This will provide for greater flexibility for future tenants and will allow the building to accommodate a broad range of users within the field of research and development. This increased floor-to-floor heights increases the overall building height and contributes to the exceedance with the building height control. However, the objectives of the B7 zone are considered to be met by the development. Overall, the applicant has adequately addressed that the proposal is consistent with the objectives of the zone.

Objectives of the Height of Buildings Development Standard

"The proposed variation to the height of buildings standard is consistent with, and does not prevent the relevant objectives of the standard being met, as outlined below:

- To ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.

- The Baiada building has been intentionally designed as a 'marker' building on an identified Gateway Site in the First Community Precinct Plan (Precinct Plan). Consistent with the character statements in the Precinct Plan, the Baiada Building exhibits an iconic building form that reinforces the street intersections. The Precinct Plan identifies that buildings on Gateway Sites may exhibit greater height to reinforce their prominence.

- The building will set a precedence for design excellence within Sydney Science Park. This attribute has been recognised by the Urban Design Review Panel (UDRP) who have stated that the 'overall building has a dynamic built form and demonstrates a level of architectural excellence which has not been seen in Penrith City'.

- As demonstrated in the artist impression of the First Community Precinct the height and scale of the development will ultimately be compatible with other buildings in the precinct. The appropriateness of the size and scale of the building in relation to the future urban context has been acknowledged by the UDRP.



- The additional height is an appropriate built form outcome that responds to the characteristics of a 'Gateway Site', as identified in the First Community Precinct Plan has been endorsed by the Council on 21 June 2017 and identifies that prominent Gateway Sites have the potential to accommodate landmark buildings.

- Successive developments within the precinct will have consideration of the built form of the Baiada building, and will therefore be compatible within the surroundings. The additional height proposed for the Baiada building will not have a significant impact on surrounding buildings in the Precinct.

- To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, street and lanes.

- The surrounding sites have not been developed and therefore there is negligible impact on views, privacy and solar access.

- There is no shadow cast on land zoned RE1 Public Recreation. Shadow impacts are mostly concentrated within the site on June 21, ensuring that future surrounding development will receive generous direct sunlight. The shadow on the future park to the east (which is not zoned RE1) occurs from 3pm onwards.

- To minimise the adverse impact of development on heritage items, heritage conservations areas and areas of scenic or visual importance.

- As Kelleher Nightingale identify within the OEH Aboriginal Heritage Information Management System (AHIMS) (12 December 2016), no Aboriginal sites were identified within the part of the site the subject of this DA.

- A portion of the site adjacent to Luddenham Road is identified as 'land with scenic and landscape values'. However, it must be recognised that in coming years, Luddenham Road is to be widened and the adjacent land will be completely transformed. It is therefore unrealistic to assume that the existing character will remain unchanged. The proposed development will be the first in Sydney Science Park, and will be highly visible from Luddenham Road. The visual impact will be significant; however, the building design quality

and choice of materials will ensure that the impact is positive.

- Urbis Heritage have reviewed the proposal and have advised that 'the proposed works to the subject site under DA17/0495 are removed from and will not physically impact on the historic alignment of Luddenham Road. The form, location and alignment of Luddenham Road will still be visible and remain able to be interpreted, and the proposed works will in no way obscure or remove the ability to read the alignment of Luddenham Road from the public domain'. They concluded that the proposal will not impact the heritage listed Luddenham Road and as such the proposal is supported on heritage grounds.

- *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 Baiada building is concentrated towards the intersection of the Boulevard Road and Connector Road, creating a built form intensity which emphasises the developments status as a Gateway Site. The maximum height transitions from a maximum of 29.5m to 35.1m (or 29.9m to 30.9m when the architectural roof feature is excluded) above natural ground, creating a high quality and iconic urban form within the landscape.

- The additional height is necessary to ensure that the Baiada building remains the dominant built form within the First Community Precinct, as a Gateway site under the Precinct Plan. A reduction in the height of the proposal would compromise the objective to establish an iconic building.

- The UDRP supports the additional height on this site and also acknowledge that the GFA of the proposal is 'significantly less than the amount which could be achieved by a lower but fatter building'. Reducing the height to comply with the maximum height limit would require the floor space at the upper levels to be redistributed to the lower levels. This would significantly compromise the design of the proposal as it would increase the site coverage of the proposal, which would in turn reduce the area of landscaping and compromise the amenity for future employees and increase the width and consequently the bulk of the building.

The proposed variation to the maximum building height standard does not prevent the relevant objectives of the standard being met for the reasons listed above and the request for a variation is thus considered to be in the public interest. The proposal meets the objectives of the standard and the zone in accordance with Clause 4.6, demonstrating that strict compliance with the standard is unreasonable and unnecessary in this case.

Clause 5.6 Architectural roof features

Clause 5.6 of Penrith LEP 2010 permits architectural features to exceed the height limit where the consent authority is satisfied that:

(a) the architectural roof feature:

(i) comprises a decorative element on the uppermost portion of a building;

(ii) is not an advertising structure;

(iii) does not include floor space area and is not reasonably capable of modification to include floor space area; and

(iv) will cause minimal overshadowing.

(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

The applicant has provided the following response to justify the architectural roof feature:

- *Serves as a decorative element, designed to reinforce the corner and is elevated above the roof level;*
- *Does not include an advertising structure;*
- *Serves to screen the plant equipment and cooling tower. These elements are not defined as gross floor area (GFA) under the Penrith LEP 2010; and*
- *Results in minimal additional overshadowing.*

It is acknowledged that the architectural roof feature does in part contribute to the additional height of the building. However, the applicant's response provided above does not provide adequate justification and therefore the full exceedance of the building height standard has been considered under Clause 4.6 of Penrith Local Environmental Plan 2010.

Clause 5.9 Preservation of trees or vegetation

The site will be cleared and graded as part of the works proposed under DA16/0176. Therefore, no vegetation is proposed to be removed as part of the subject development application.

Clause 5.10 Heritage conservation

Luddenham Road is identified as a local heritage item under Penrith Local Environmental Plan (LEP) 2010. The significance of Luddenham Road is due to its alignment. Although the materials and fabric of the road itself have been variously modified, the road remains characterised by its undulating alignment cut into the slope of the hillside above the tributaries of South Creek and remnant stands of trees. As the proposed development will not physically impact on the form, location and alignment of Luddenham Road, the development is supported on heritage grounds.

Clause 6.1 Arrangements for designated State public infrastructure

Clause 6.1 requires certification from the Director-General indicating that satisfactory arrangements for contribution to the provision of designated State public infrastructure (in relation to this portion of the release area) are in place.

A letter was received from the Department of Planning and Environment dated 10 November 2017 advising that satisfactory arrangements have been made to contribute to the provision of designated State Infrastructure in relation to the subject DA.

Clause 6.2 Public utility infrastructure

Clause 6.2 specifies that development consent must not be granted for development on land in an urban release area unless the consent authority is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.

Under previous development applications (DA16/0176 & DA17/0497), provision has been made in the roads for the installation of all necessary services, including reticulated water, electricity, gas and telecommunications.

The applicant has advised that NBN or an equivalent level of broad band network services provided by an alternative provider will be available to the building.

For the subject development, a private onsite wastewater collection, treatment and discharge facility independent of Sydney Water is being proposed. While detailed designs and specifications of the wastewater facility have not been provided, a condition of consent will be included requiring that a Section 68 approval be obtained prior to the issue of a Construction Certificate.

Accordingly, the consent authority can be satisfied that arrangements have been made to ensure the site will be able to be serviced.

Clause 6.3 Development control plan

Clause 6.3 specifies that development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land.

In accordance with this clause, Chapter E16 Sydney Science Park of Penrith Development Control Plan 2014 has been prepared and endorsed by Council and is fully capable of satisfying the requirements outlined in subclause (3) that apply to Urban Release Areas.

Clause 7.4 Sustainable development

The application was accompanied by an Environmental Sustainable Design (ESD) Report, prepared by Steensen Varming and dated 19 February 2016. This report details the approach to ESD, key Green Star principles targeted and a description of key ESD initiatives.

The building is to encompass a selection of energy and water conservation initiatives, suitable materials, work methods and adaptability. The building will incorporate water efficient fittings & tapware, rainwater harvesting & re-use and water consumption monitoring. Solar panels will be provided on the rooftop and current modelling performed by the applicants ESD consultant indicates that this will provide approximately 7% of the total building energy consumption. In addition, in order to encourage alternative modes of transport, end of trip facilities are provided on-site comprising bicycles storage and change rooms.

Celestino has confirmed that the Baiada Building will aim to achieve a Green Star 6 Star Design and As-Built Rating.

Clause 7.5 Protection of scenic character and landscape values

A portion of the site adjacent to Luddenham Road is identified as 'land with scenic and landscape values' under the Scenic and Landscape Values Map. Clause 7.5 of Penrith Local Environmental Plan (LEP) 2010 specifies that development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places.

The proposed development will be highly visible from Luddenham Road, being the first development within the Sydney Science Park. However, the visual impact is considered to be satisfactory given the building design quality and the choice of building materials. In addition, it is recognised that the adjacent land will be completely transformed with the development of the rest of the Sydney Science Park, the Western Sydney Airport and the Western Sydney Employment Area.

Clause 7.7 Servicing

Clause 7.7 requires that prior to the granting of development consent, the consent authority must be satisfied that the development will be provided with essential services, including reticulated water supply and adequate facilities for the removal and disposal of sewage. This provision has been addressed under Clause 6.2 of Penrith Local Environmental Plan 2010.

Clause 7.24 Sydney Science Park

The subject site is on land identified as "Sydney Science Park" on the Clause Application Map. Clause 7.24(3) specifies that development consent must not be granted on land at Sydney Science Park unless the consent authority is satisfied that the development is consistent with the objectives of the Clause. An assessment against the objectives of this clause is provided below.

Objective	Comments
<i>(a) to provide for a specialised centre on land at Sydney Science Park that includes development for the purposes of commercial premises, educational establishments, high technology industry and residential accommodation,</i>	The proposed Baiada Building indicates the first phase of development at SSP, specifically for the First Community. The building will in the future provide for a specialised centre, promoting high technology industry and commercial premises.
<i>(b) to facilitate and encourage the efficient use of land at Sydney Science Park for the purpose of a range of residential accommodation (including dwelling houses on small lots),</i>	The proposal will not compromise this objective.
<i>(c) to retain the existing hierarchy of Penrith's local commercial centres by limiting the total gross floor area used for the purpose of retail premises on land at Sydney Science Park,</i>	No retail premises are proposed as part of this application, and therefore the proposal does not compromise this objective.
<i>d) to limit the number of dwellings and lots used for the purpose of residential accommodation on land at Sydney Science Park to 3,400.</i>	No dwellings or lots used for residential accommodation are proposed as part of this application.

As outlined in the above table, the proposal is consistent with the objectives of the clause.

An assessment of the proposal's compliance against other sub-clauses is provided below:

Clause	Comments
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<p>7.24(4) Exception to minimum subdivision lot sizes for dwelling houses</p> <p><i>Development consent may be granted to a single development application for development on land at Sydney Science Park that is both of the following:</i></p> <p>(a) <i>the subdivision of land into 3 or more lots,</i></p> <p>(b) <i>if the size of each lot is equal to or greater than 120 square metres but not greater than 450 square metres—the erection of a dwelling house on each lot resulting from the subdivision.</i></p>	<p>Subdivision is not proposed as part of this application.</p>										
<p>7.24(5) Lot sizes for dwelling houses, dual occupancies, multi dwelling housing and residential flat buildings</p> <p>Development consent must not be granted to development on a lot at Sydney Science Park for a purpose shown in Column 1 of the following Table unless the area of the lot is as specified opposite in Column 2:</p> <table border="1" data-bbox="244 882 676 1503"> <thead> <tr> <th>Column 1</th><th>Column 2</th></tr> </thead> <tbody> <tr> <td><i>Dwelling house</i></td><td><i>Equal to or greater than 120 square metres but not greater than 450 square metres</i></td></tr> <tr> <td><i>Dual occupancy</i></td><td><i>Equal to or greater than 270 square metres but not greater than 650 square metres</i></td></tr> <tr> <td><i>Multi dwelling housing</i></td><td><i>Equal to or greater than 800 square metres</i></td></tr> <tr> <td><i>Residential flat building</i></td><td><i>Equal to or greater than 800 square metres</i></td></tr> </tbody> </table>	Column 1	Column 2	<i>Dwelling house</i>	<i>Equal to or greater than 120 square metres but not greater than 450 square metres</i>	<i>Dual occupancy</i>	<i>Equal to or greater than 270 square metres but not greater than 650 square metres</i>	<i>Multi dwelling housing</i>	<i>Equal to or greater than 800 square metres</i>	<i>Residential flat building</i>	<i>Equal to or greater than 800 square metres</i>	<p>No residential accommodation is proposed as part of this application.</p>
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<i>Multi dwelling housing</i>	<i>Equal to or greater than 800 square metres</i>										
<i>Residential flat building</i>	<i>Equal to or greater than 800 square metres</i>										

<p>7.24(6) Gross floor area of non-residential development</p> <p><i>Development consent must not be granted to development for the purpose of residential accommodation on land at Sydney Science Park if the development would result in:</i></p> <p>(a) <i>the total number of dwellings and lots used on that land for the purpose of residential accommodation exceeding a number specified in Column 1 of the following Table, and</i></p> <p>(b) <i>the total gross floor area used on that land for purposes other than exhibition homes, exhibition villages and residential accommodation being less than the area specified opposite that number in Column 2.</i></p> <table border="1" data-bbox="244 846 694 1176"> <thead> <tr> <th>Column 1</th><th>Column 2</th></tr> </thead> <tbody> <tr> <td>0</td><td>10,000 square metres</td></tr> <tr> <td>750</td><td>35,000 square metres</td></tr> <tr> <td>1,500</td><td>75,000 square metres</td></tr> <tr> <td>2,250</td><td>150,000 square metres</td></tr> </tbody> </table>	Column 1	Column 2	0	10,000 square metres	750	35,000 square metres	1,500	75,000 square metres	2,250	150,000 square metres	<p>No residential accommodation is proposed as part of this application.</p>
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0	10,000 square metres										
750	35,000 square metres										
1,500	75,000 square metres										
2,250	150,000 square metres										
<p>7.24(7) Maximum number of dwellings and lots used for residential accommodation</p> <p>Development consent must not be granted to development for the purpose of residential accommodation on land at Sydney Science Park if the development would result in the total number of dwellings and lots used for the purpose of residential accommodation on land at Sydney Science Park exceeding 3,400.</p>	<p>No residential accommodation is proposed as part of this application.</p>										
<p>7.24(8) Maximum gross floor area of retail premises</p> <p>Development consent must not be granted to development that would result in the total gross floor area of all buildings used for the purpose of retail premises on land at Sydney Science Park exceeding 30,000 square metres.</p>	<p>No retail premises are proposed as part of this application.</p>										

<p>7.24(9) Warehouses or distribution centres</p> <p>Development consent must not be granted to development on land at Sydney Science Park that includes development for the purpose of a warehouse or distribution centre unless the warehouse or distribution centre:</p> <p>(a) is ancillary to a use permitted on that part of the land that is in Zone B7 Business Park, and</p> <p>Note.</p> <p>See Schedule 1 for additional permitted uses on that part of the land at Sydney Science Park that is in Zone B7 Business Park.</p> <p>(b) occupies no more than 50% of the gross floor area of the development.</p>	<p>No warehouses or distribution centres are proposed as part of this application.</p>
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Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	Complies
C3 Water Management	Complies - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies
C5 Waste Management	Complies
C6 Landscape Design	Complies
C7 Culture and Heritage	Complies
C8 Public Domain	N/A
C9 Advertising and Signage	N/A
C10 Transport, Access and Parking	Does not comply - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Does not comply - see Appendix - Development Control Plan Compliance
E16 Sydney Science Park	Complies - see Appendix - Development Control Plan Compliance

Section 79C(1)(a)(iiia) The provisions of any planning agreement

Celestino entered into a voluntary planning agreement (VPA) with the Minister for Planning in respect of Sydney Science Park (SSP) in late 2016. The VPA is intended to ensure that satisfactory arrangements have been made for the provision of state infrastructure in respect of SSP, per Clause 6.1 of Penrith Local Environmental Plan 2010. Under the VPA, Celestino will be contributing with \$182,898 or \$160,791 per hectare of net developable area (depending on the zoning).

A VPA was entered into between Celestino Developments SSP Pty Ltd and Penrith City Council and executed on 9 September 2016. This VPA requires payment for residential development and as such, the subject application does not require any contributions to be paid.

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

Schedule 3 Designated Development

According to Section 37A, Schedule 3 of the Environmental Planning and Assessment Regulation 2000, the proposed wastewater treatment facility does not trigger the Designated Development provisions as it is ancillary to the proposed development, and does not relate to a sewerage system with an intended processing capacity of more than 2,500 persons equivalent to capacity of 750 kilolitres per day.

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

Visual Impacts

While the proposed development will have a significant visual impact initially, the height and scale of the building will ultimately be compatible with the Commercial Road Character Area and the wider Sydney Science Park (SSP) precinct. Spatial planning of the SSP concentrated taller buildings in and around the Town Centre and in areas of visual and landscape amenity such as the Commercial Boulevard, including at nominated gateway sites. The appropriateness of the building's scale in relation to the future context of the precinct has been acknowledged by Council's Urban Design Review Panel (UDRP) who specified that in *'regard to the future urban context, the Baiada development is located next to the Commercial Boulevard and is intended to establish a landmark for the entire development - so extra height makes sense'*.

As a gateway site, the building aims to play a positive role in signifying the location's commercial and visual importance. The building has been intentionally designed as a marker building within the precinct and will set a precedent for design excellence within the SSP. The materials and finishes of the Baiada Building are of a high quality and reinforce the technological character of the Sydney Science Park. The design of the Baiada Building has also been recognised by Council's UDRP who stated that *'the overall building has a dynamic built form and demonstrates a level of architectural excellence which has not been seen in Penrith City'*.

Landscaping

The application was accompanied by a Landscape Concept Plan, prepared by Urbis and dated 4 November 2017. This plan shows that plant species will be native and respond to the surrounding context and climatic conditions. All planting within the lot boundaries fall under the remnant endangered ecological vegetation communities that relate specifically to the SSP site. Proposed trees are located primarily along walkways and the streetscape as well as within open hardstand areas to reduce the heat island effect.

Both active and passive recreational activities are provided for staff of the Baiada Building. The staff garden provides private and communal seating opportunities for the staff to socialise, while the north western corner of the Baiada Building is programmed for active recreation. The landscape plan indicates that fitness stations, ping pong tables and a vegetable garden will be provided within this area for staff to use.

Western Sydney Airport

The subject site is located within the vicinity of the Western Sydney Airport. The protected airspace around

the Western Sydney Airport is known as the Obstacle Limitation Surface (OLS) and was declared on 19 October 2017 under the provisions of the Commonwealth *Airports Act 1996* and *Airports (Protection of Airspace) Regulations 2017*. The purpose of OSL is to ensure that development within the OSL area is examined for its future aircraft operations and that it is properly taken into account. The Department of Infrastructure, Regional Development and Cities has developed the *Western Sydney Airport Obstacle Limitation Surface Tool* which indicates that the OSL elevation applicable to the site is 138m (AHD). The maximum height of the development is well below this level being 98.1m AHD. As such, the development does not penetrate the protected airspace and concurrence from the Department of Infrastructure, Regional Development and cities is not required.

Noise Impact

The application was supported by a "Development Application Acoustic Report" prepared by Acoustic Studio and dated 13 February 2017. The objective of the report was to determine the existing ambient and background noise levels; establish the appropriate noise criteria in accordance with the relevant standards and guidelines; and carry out an assessment to determine whether the relevant criteria can be achieved and, where applicable, comment on acoustic measures required to achieve compliance with the relevant criteria.

To quantify the existing acoustic environment surrounding the site, both long term unattended noise logging and attended noise measurements were conducted. Unattended noise monitoring was conducted from 16 March to 29 March 2016. One noise monitor was installed east of the subject site. This location was selected as it was secure for monitoring equipment and would provide background noise data representative of the closest residential receivers. In addition, a series of attended noise measurements were made on 16 March 2016 in order to confirm the validity of the unattended noise monitoring data, to sample background and ambient noise levels at key surrounding locations and to determine traffic noise levels affecting the site.

In accordance with the EPA's Industrial Noise Policy (INP), *Section 2.2.4 Assessment in developing areas*, the data obtained from the noise monitoring was used to establish project specific noise criteria. This criteria will be applied at the boundary of all future buildings in the Sydney Science Park Masterplan so to ensure noise emissions from the first building are not intrusive to all other future buildings on site. The acoustic report notes that with the application of this criteria in accordance with the INP will "ensure the criteria at the nearest existing residential receivers are also achieved".

The key mechanical plant and equipment areas are located on the ground floor and roof level. The acoustic report notes that a detailed assessment of these areas has not been undertaken as the final selections have not been made. However, a preliminary review of the plant rooms has been undertaken based upon mechanical plant operating continuously in order to maintain the laboratories pressure regime. It is identified that "noise controls will need to be incorporated with the design of the plant rooms" to ensure compliance with the established noise level criteria and "at the detailed design stage, an acoustic consultant should ...provide detailed design advice". A condition of consent has been included requiring a detailed acoustic assessment of plant and equipment prior to the issue of a Construction Certificate.

The acoustic report highlights that it "does not examine in detail the potential impacts from construction noise and vibration on sensitive receivers" and that "the Contractor will be required to prepare a full Construction Noise and Vibration Impact Assessment once the likely construction methods are developed". A condition of consent has been included requiring the submission to Council of a Construction Noise Management Plan, for approval, prior to the issue of the Construction Certificate.

Access, Traffic and Parking

The application was supported by a Traffic Modelling Report prepared by Arup Pty Ltd and

dated 26 September 2017. This report assessed the proposed Luddenham Road/Boulevard Road intersection performance at different stages of the Sydney Science Park (SSP) development to the year 2021. As the phasing of the development after 2021 is unknown, the modelling beyond this time was not undertaken. To obtain the volumes of traffic currently utilising Luddenham Road, traffic counts were undertaken near the sites access point between 20 July and 26 July 2017 inclusive. These 2017 volumes were increased at an annual rate of 11.4% to the year 2021 which was based on strategic model outputs provided by Transport for NSW for the purpose of developing a wider micro-simulation model for the precinct (which was used to inform the modelling undertaken in support of the Voluntary Planning Agreement for the project). SIDRA traffic modelling software was used in the assessment. The modelling found that the Luddenham Road/Boulevard Road intersection, which will be the primary access for traffic into the SSP to the year 2021, will operate with spare capacity and acceptable level of service (LoS) in both the AM and PM peaks.

Vehicular access to the site will be via the Boulevard Road (also known as the Commercial Road) adjacent to the northern site boundary, and/or the Connector Road (Road 2) adjacent to the eastern site boundary. The Boulevard Road will extend westward from Luddenham Road and will form the main access road into the Sydney Science Park for traffic accessing the Baiada Building. Two separate access points are provided from the Boulevard Road, one to the loading dock and one to the main car park area. Access to a drop-off/pick-up zone is provided via the Connector Road. It is located adjacent to the building's entrance and has been designed to accommodate buses, taxis and private vehicles.

Access from Luddenham Road will be provided via a temporary link road and intersection (approved under DA16/0176). The temporary intersection is located approximately 200m north-east of the permanent intersections location (Luddenham Road/Boulevard Road intersection). A temporary intersection is required due to the existing 80km/h speed limit along on this section of Luddenham Road and the sight distance requirements. Permanent traffic signals will be provided at the Luddenham Road/Boulevard Road intersection when there is sufficient traffic demand at the SSP to warrant its provision.

Under Penrith DCP 2014, the development requires the provision of 223 on-site car parking spaces. Forty (40) car parking spaces are provided on-site, which represents a significant variation to the parking required under Penrith DCP 2014. To support this variation the application was accompanied by a Traffic Report and Car Parking Strategy both prepared by Arup Pty Ltd. These documents demonstrate that the local roads will be able to accommodate 261 parking spaces. This is acceptable given that the Baiada Building will be the first development within the precinct and the local roads will be privately owned and operated by the developer. In addition, the parking strategy outlines that conveniently located communal car parking facilities will be provided to supplement the on-street parking available. In addition to reduce the dependency on cars the parking strategy details that the SSP aims to provide a healthy living and working environment by promoting walking and cycling. This by creating a road network and accompanying pedestrian paths which aim to create walkable blocks. To ensure that the car parking demands are adequately covered within the precinct, the parking strategy will be continually updated and submitted with future DAs within the SSP site.

Waste Management

The application was accompanied by a Waste Management Plan prepared by Elephants Foot Recycling Solutions and dated 13 February 2017. This plan details that a private contractor will be engaged to collect the waste generated from the development. The waste generation rates within Penrith Development Control Plan 2014 for offices (10L/100m²/day) were utilised to calculate the number of bins required to service the development. Using this rate, 6 x 1100L garbage bins and 6 x recycling bins are required to be provided which will be collected weekly. The plans show that a waste collection room, of adequate size to accommodate the required 12 x 1100L bins, will be located adjacent to the loading dock on the ground floor. This aspect of the proposal has been reviewed by Council's Waste Department who are supportive of the application subject to conditions.

Accessibility

The application was accompanied by an Accessibility Report prepared by Accessibility Solutions P/L and dated 23 February 2017. This report found that the proposed development can comply with the accessibility requirements of the Building Code of Australia (BCA), Disability (Access to Premises) Standard 2010 and applicable Australian Standards. The recommendations contained in the accessibility report are recommended to be imposed as conditions of consent for inclusion in the detailed construction plans for the proposal.

Economic and Social Impacts

The proposed development will facilitate the commencement of the Sydney Science Park into a research and development precinct, therefore contributing towards the economy, and creating opportunities for employment.

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

The site is suitable for the following reasons:

- The proposal is consistent with State and subregional strategic planning objectives;
- The site is zoned B7 Mixed Use which permits the proposed use;
- The site is a considerable distance from any existing residential uses;
- The grade of the site is suitable for the design proposed; and
- The site is able to drain to Council's satisfaction.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents and advertised in the local newspaper. Council notified twenty three (23) property owners in the area and the exhibition period was between 30 June and 14 July 2017. Council received no submissions in response.

Referrals

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

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Development Engineer	No objections - subject to conditions
Landscape Architect	No objections
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions
Environmental - Biodiversity	No objections
Traffic Engineer	No objection subject to conditions
Community Safety Officer	No objections

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

The proposal is considered to be in the public interest as it will allow for Phase 1 of the Baiada Building to commence, which will facilitate the establishment of the epicentre of research and development within the First Community of Sydney Science Park.

Conclusion

The proposed development is in accordance with the relevant provisions of the environmental planning instruments and development control plan pertaining to the land. The proposed development is unlikely to have a negative impact on the surrounding environment subject to appropriate conditions.

The proposed development has been assessed against the relevant heads of consideration contained in Section 79C of the *Environmental Planning and Assessment Act 1979* and has found to be satisfactory. The site is suitable for the proposed development and the proposal is in the public interest. The proposal is therefore worthy of support.

Recommendation

1. That the submitted variation to the height of building standard under Clause 4.6 of Penrith Local Environmental Plan 2010 be supported; and
2. That DA17/0495 for construction of seven (7) storey office building ('Baiada Building') & associated earthworks, car parking, landscaping & on-site wastewater management system at 565-609 Luddenham Road, Luddenham, be approved subject to the attached conditions.

CONDITIONS

General

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

Drawing Title	Drawing Reference	Prepared By	Dated
3D Views & Materials	FJMT-DA-SK12_02	Francis-Jones Morehen Thorp P/L	21/02/2017
Context Plan - Ground	FJTM-DA-SK13_02	Francis-Jones Morehen Thorp P/L	21/02/2017
Site Plan - Ground	FJTM-DA-SK14_02	Francis-Jones Morehen Thorp P/L	21/02/2017
Ground Floor Plan	FJTM-DA-SK15_02	Francis-Jones Morehen Thorp P/L	21/02/2017
Floor Plan - Level 1	FJTM-DA-SK16_02	Francis-Jones Morehen Thorp P/L	21/02/2017
Floor Plans - Levels 2, 3 & 4	FJTM-DA-SK17_02	Francis-Jones Morehen Thorp P/L	21/02/2017
Floor Plans - Levels 5, 6 & Roof	FJTM-DA-SK18_02	Francis-Jones Morehen Thorp P/L	21/02/2017
Elevations	FJTM-DA-SK19_02	Francis-Jones Morehen Thorp P/L	21/02/2017
Sections	FJTM-DA-SK20_02	Francis-Jones Morehen Thorp P/L	21/02/2017
Landscape Plan	ND1970 (Issue B)	Urbis	04/09/2017
Stormwater Management Plan	80216007-C1-DA-03- 1000, 1001, 1005, 1025, 1026, 1027, 1040, 1050, 1051, 1080, 1081 (Revision 2)	Cardno	18/04/2017
Waste Management Plan	-	Elephants Foot Recycling Solutions	13/02/2017

- 2 This development consent relates to Phase 1 of the development only. A separate development application shall be submitted to Penrith City Council for any future phases of the development.
- 3 Prior to the issue of an Occupation Certificate the land to which this development consent relates shall be registered at the Land and Property Information division of the Department of Lands as a separate lot in accordance with consent number DA17/0497 and documentary evidence provided to the Certifying Authority.
- 4 Prior to occupation of the building or a tenancy within the building, a separate development approval is to be obtained to use the building or each tenancy within the building.

- 5 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 6 The approved operating hours are 24 hours a day, seven days a week.
- 7 All materials and goods associated with the use shall be contained within the building at all times.
- 8 Exterior lighting shall be located and directed in such a manner so as not to create a nuisance to surrounding land uses. The lighting shall be the minimum level of illumination necessary for safe operation. The lighting shall be in accordance with AS 4282 "Control of the obtrusive effects of outdoor lighting" (1997).
- 9 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.
- 10 A **Construction Certificate** shall be obtained prior to commencement of any works.
- 11 **Prior to the issue of a Construction Certificate**, the design recommendations of the Accessibility Report, prepared by Accessibility Solutions and dated 23 February 2017 shall be incorporated into the construction plans. The works shall be certified accordingly by a suitably qualified access consultant prior to the use of the building.
- 12 **Prior to the issue of a Construction Certificate**, a controlled activity approval is to be obtained from Office of Water for any works within 40m of a mapped watercourse.

Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the *Water Management Act 2000* from the NSW Office of Water. Waterfront land for the purposes of this development consent is land and material in or within 40 metres of the top of the bank or shore of the river identified.

All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The following plans must be prepared in accordance with the NSW Office of Water guidelines located at www.dwe.nsw.gov.au/water_trade/rights_controlled.shtml.

A copy of the approval issued by the NSW Office of Water under the *Water Management Act 2000* shall be submitted to the Principal Certifying Authority, before the Construction Certificate can be issued for the same development. A copy of the approval shall be submitted to Penrith City Council with the copy of the Construction Certificate, if Council is not the Principal Certifying Authority.

Heritage/Archaeological relics

- 13 If any archaeological relics are uncovered during the course of the work no further work shall be undertaken until further directed by Penrith City Council or the NSW Heritage Office.

The applicant is advised that depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the Heritage Act, 1977 may be required before any further work can be recommenced in that area of the site.

Environmental Matters

- 14 Mud and soil from vehicular movements to and from the site must not be deposited on the road.
- 15 Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.
- 16 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 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 Noise levels from the premises shall not exceed the relevant noise criteria detailed in the report titled "Development Application Acoustic Report" prepared by Acoustic Studio and dated 13 February 2017 (ref: 20170213 FJM3069.0002.Rep.docx. Revision: Issue 2). The recommendations provided in the above-mentioned acoustic report shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application.

A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority prior to the issue of an Occupation Certificate.

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

19 Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system.

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

- state the legal property description of the fill material source site,
- be prepared by an appropriately qualified person (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.

An appropriately qualified person/s (as defined in the Penrith Development Control Plan 2014) shall:

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

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

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

{Note: Penrith Development Control Plan 2014 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."}

21 Dust suppression techniques are to be employed during the construction phase of the development to reduce any potential nuisances to surrounding properties.

22 **Prior to the issue of a Construction Certificate**, a Validation Report, prepared by an appropriately qualified person as defined by Penrith Development Control Plan 2014, is to be submitted to the principal certifying authority. The validation report shall confirm that the site is suitable for residential land use (with accessible soil, as per the National Environment Protection (Assessment of Site Contamination) Measure (1999) [NEPM 2013]). The report shall certify that the remediation works have been carried out in accordance with the approved Remedial Action Plan, relevant NSW Environment Protection Authority requirements, NEPM 2013 and Penrith Development Control Plan 2014.

- 23 All mechanical plant and equipment is to comply with the noise criteria outlined in the report titled "Development Application Acoustic Report" prepared by Acoustic Studio and dated 13 February 2017 (ref: 20170213 FJM3069.0002.Rep.docx. Revision: Issue 2).

Prior to the issue of a Construction Certificate, further details on the type and location of all mechanical plant and equipment associated with the development it to be provided to Council for consideration and approval. Suitable data and information (prepared by a qualified acoustic consultant) on the noise impacts associated with this plant and equipment is also to be supplied to demonstrate compliance with the established noise criteria.

Prior to the issue of an Occupation Certificate, a Compliance Certificate is to be submitted to and approved by Council. The Certificate is to outline that all plant and equipment has been installed to comply with the above information and the established noise criteria. Should the Compliance Certificate identify any non-compliance issues, the Certificate is to provide suitable recommendations for 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.

- 24 **Prior to the issue of a Construction Certificate**, a Construction Noise Impact Assessment and Management Plan is to be prepared and submitted to Council for approval. This assessment is to consider (at minimum) the details of the construction program, construction methods, equipment and vehicles in association with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009.

The recommendations of the approved Management Plan are to be implemented and adhered to during the construction phase of the development.

- 25 There shall be available all year round, adequate water supply that is available to the property.
- 26 Should any "unexpected finds" occur during site excavation and earthworks 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 Penrith City Council is to be 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 No. 55 - Remediation of Land.

BCA Issues

- 27 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.

Health Matters and OSSM installations

- 28 Cooling towers and warm water systems are to be registered with Penrith City Council by completing the registration form for regulated systems. This form is to be returned to Council prior to the issuing of the occupation certificate and operation of the system.

The occupier of premises at which a water-cooling system or warm-water system is installed must notify Council using the NSW Ministry of Health Notification Form available from www.health.nsw.gov.au:

- a. if the system is installed before he or she becomes the occupier, within one month after he or she becomes the occupier, or
- b. if the system is installed after he or she becomes the occupier, within one month after the system is installed.

The occupier of the premises must notify Council within 7 days of any change of details.

- 29 Air-handling systems, hot-water systems, humidifying systems, warm-water systems and water-cooling systems shall be operated and maintained in accordance with the Public Health Act 2010, Public Health Regulation 2012, AS 3666.2:2011 *Air-handling and water systems of buildings – Microbial control - Operation and maintenance* and the current edition of the NSW Code of Practice for the Control of Legionnaires Disease

The water-cooling system shall be operated and maintained in accordance with the Public Health Act 2010, Public Health Regulation 2012, AS 3666.3:2011 *Air-handling and water systems of buildings – Microbial control – Performance-based maintenance of cooling water systems* and the current edition of the NSW Code of Practice for the Control of Legionnaires Disease.

- 30 Air-handling systems, hot-water systems, humidifying systems, warm-water systems and water-cooling systems must be installed in accordance with AS/NZS 3666.1:2011 *Air-handling and water systems of buildings—Microbial control—Design, installation and commissioning*, as applicable to the specific system. An air-handling system must be fitted with supply air filters.

The regulated system shall be thoroughly flushed before being brought into service and shall be located in a position to ensure that the exhaust discharge from the tower is away from occupied areas, air intake and building openings.

When an air handling, hot water, humidifying, warm water or water cooling system is installed a certificate is to be obtained certifying that the system has been installed in accordance with the Public Health Act 2010, Public Health Regulation 2012 and AS 3666.1:2011.

- 31 There must be safe and easy access to a regulated system (as defined in the Public Health Act 2010) for the purpose of the cleaning, inspection and maintenance of the system.
- 32 A water-cooling system must be equipped with a disinfection procedure that is in operation at all times and that is designed to control microbial growth so that:
- (a) the level of *Legionella* in the system is not more than 10 colony-forming units per millilitre, and
 - (b) the heterotrophic plate count in the system is not more than 100,000 colony-forming units per millilitre.
- If these levels are exceeded, remedial action must be taken as soon as practicable by a competent person or a person acting under the supervision of a competent person. A **competent person** means a person who is a tertiary qualified chemist, chemical engineer, engineer or microbiologist and who has relevant expertise.
- 33 If maintenance of a regulated system (as defined in the Public Health Act 2010) is being carried out on the premises on which it is installed, the contractor, or any other person carrying out the maintenance otherwise than as an employee, is guilty of an offence if appropriate measures are not taken:
- a) to minimise contamination of adjoining areas and the ambient environment by aerosols, dust, particulate matter or effluent, and
 - b) to prevent public access to the area in which the maintenance is being carried out.
- 34 Any liquid discharge from the regulated system, resulting from the operation, maintenance and/ or cleaning operations, is to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.
- 35 All chemicals shall be stored in adequately labelled containers with tight fitting lids and banded or stored in such a way to prevent the chemical entering the stormwater system.
- 36 The occupier of a premises on which a water-cooling system is installed must ensure that the system is certified annually by a competent person as being equipped with a disinfection procedure that is effective under the range of operating conditions that could ordinarily be expected for the system concerned. The occupier must keep a copy of the most recent certificate at the premises and make it available for inspection on request by an authorised officer. The occupier must submit a copy of the certificate to Council within 14 days of the certificate being issued.

Utility Services

- 37 **Prior to the issue of a Construction Certificate**, the Principal Certifying Authority shall be satisfied that telecommunications infrastructure may be installed to service the premises which complies with the following:
- The requirements of the Telecommunications Act 1997;
 - For a fibre ready facility, the NBN Co's standard specifications current at the time of installation; and
 - For a line that is to connect a lot to telecommunications infrastructure external to the premises, the line shall be located underground.

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

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

- 38 **Prior to the issue of an Occupation Certificate**, the following shall be obtained:

- a certificate of compliance from the relevant licensed water supply authority demonstrating that satisfactory arrangements have been made to provide water and sewer services to the proposed development.
- a letter of compliance from the relevant network energy provider demonstrating that satisfactory arrangements have been made to service the proposed development.
- a letter from the relevant network telecommunications provider demonstrating that satisfactory arrangements have been made for telecommunications services for the proposed development.

Construction

- 39 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.

40 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.

41 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 premise, otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy that do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

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

Roads Act Requirements

- 42 **Prior to the issue of an Occupation Certificate**, appropriate signage, visible from access roads and on-site shall to be installed to reinforce designated vehicle circulation and to direct staff / delivery vehicle drivers / service vehicle drivers / visitors to on-site parking, delivery and service areas to the satisfaction of the Principal Certifying Authority.

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

- 43 **Prior to the issue of any Construction Certificate**, the Certifying Authority shall ensure that the plans include dimensions of driveways, ramps, aisles, parking spaces, accessible parking, bicycle parking, footpaths, waste services vehicle manoeuvring and loading areas complying with AS 2890, AS 1428, Penrith Development Control Plan (DCP) 2014 C5 and C10. These details shall include swept turn path clearances at driveways (including accordance with AS 2890.1, Table 2.2 and Figure 2.9), service vehicle loading areas, and additional car space clearances from obstructions (including accordance with AS 2890.1, B4.1, minimum additional clearance of 0.3 metres).

Engineering

- 44 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.
- 45 The stormwater management system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Cardno, reference number 80216007-CI-DA-03-1000, 80216007-CI-DA-03-1001, 80216007-CI-DA-03-1005, 80216007-CI-DA-03-1025, 80216007-CI-DA-03-1026, 80216007-CI-DA-03-1040, 80216007-CI-DA-03-1050, 80216007-CI-DA-03-1051, 80216007-CI-DA-03-1080 and 80216007-CI-DA-03-1081, revision 2, dated 18/04/17.

Prior to the issue of any Construction Certificate, a stormwater On-Site Detention (OSD) basin shall be provided in accordance with Council's Stormwater Drainage Specification for Building Developments. The Certifying Authority shall ensure that associated stormwater drainage calculations/plans for the required detention basin must be provided to demonstrate that the post development peak flows do not exceed pre-developed peak flows from the site for storm events with an ARI of 2 years, up to and including 100 years.

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.

- 46 **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, AS 2890.2, AS 2890.6 and Penrith City Council's Development Control Plan.

- 47 Prior to commencement of works, 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.

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

- 48 **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 Policy.

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.

- 49 **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)
 - b) Overland flowpath works
 - c) Flood control works
- 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.

- 50 **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)
- b) Overland flowpath works
- c) Flood control works

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 Developments Policy.

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

- 52 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.
- 53 **Prior to the issue of an Occupation Certificate**, complying numbers of secure bicycle parking, end of journey facilities, change rooms, showers, lockers are to be provided at convenient locations in accordance with Penrith Development Control Plan 2014, AS 2890.3 Bicycle Parking Facilities and Planning Guidelines for Walking and Cycling (NSW Government 2004) to the satisfaction of the Principal Certifying Authority.
- 54 Subleasing of car parking spaces is not permitted by this consent.
- 55 The temporary bio-retention basin is to be maintained by the proponent as a sediment basin until 90% of construction within the catchment the basin serves is completed. After 90% of development within the catchment the basin serves has been completed, the sediment basin is to be decommissioned and the temporary bio-retention basin shall be completed.

Landscaping

- 56 All landscape works are to be constructed in accordance with the stamped approved Landscape Plan, ND1970, prepared by Urbis and dated 4/09/2017 and Penrith Development Control Plan 2014.

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.

- 57 The approved landscaping for the site must be constructed by a suitably qualified and experienced landscape professional.
- 58 Upon completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, a Landscape Implementation Report prepared by a suitably qualified and experienced landscape professional must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development.
- An Occupation Certificate should not be issued until such time as a satisfactory Implementation Report has been received. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Occupation Certificate for the development.
- 59 All plant material associated with the construction of approved landscaping is to be planted in accordance with the Tree Planting Specifications prescribed in Penrith Development Control Plan 2014.

- 60 All landscape works are to meet industry best practice and the following relevant Australian Standards:
- AS 4419 Soils for Landscaping and Garden Use,
 - AS 4454 Composts, Soil Conditioners and Mulches, and
 - AS 4373 Pruning of Amenity Trees.
- 61 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.
- 62 The street trees in the connector road along the eastern side of the Baiada Building lot shall be *Triastaniopsis Laurina* in accordance with the First Community Precinct Plan.

Certification

- 63 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.

- 64 An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation/use of the building.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of the Certificate is to be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

Operation of OSSM

65 **Prior to the issue of a Construction Certificate**, a Section 68 application is to be submitted to and approved by Penrith City Council and a section 68 approval issued.

The Section 68 application is to be supported by a Wastewater Assessment Report that includes an Operational Wastewater Management Plan (OWMP) for the system. The Wastewater Report and OWMP shall be prepared by a suitably qualified consultant(s) experienced in the design and operation of commercial on-site wastewater management systems. The Wastewater Report and OWMP shall be prepared in consultation with Council and other relevant agencies, and may need to be amended to include the comments provided by Council and other agencies. The Wastewater Report and OWMP are to address, but not be limited to:

- Detailed assessment of the wastewater loads
- All environmental aspects of the operation of the on-site sewage management system
- All systems and controls to be implemented to minimise the potential for any adverse environmental impacts
- A program for ongoing monitoring and review to ensure that the OWMP remains contemporary with relevant environmental standards.
- System information (including specifications and site plans)
- Monitoring and testing
- Maintenance and servicing program (treatment system and irrigation system)
- System performance
- System failure contingency
- Odour management
- Landscape and disposal area management
- Health and safety

The Wastewater Report and OWMP are to be supported by a Hydraulic Report that demonstrates how the wastewater generated across the site will be transferred to the approved treatment system, and how wastewater will be distributed evenly across the approved Effluent Disposal Area. This Report is to include a detailed Site Plan showing the location of all pipework, any pump stations and all other associated infrastructure required. The Hydraulic Report is to be prepared by a suitably qualified Hydraulic Services Consultant.

The Wastewater Report and OWMP are to demonstrate consideration of and compliance with applicable effluent management and disposal guidelines and standards.

The on-site sewage management system is to be operated in accordance with the requirements of this Plan as well as in accordance with the Council approved Hydraulic Report.

A copy of the Section 68 approval is to be submitted to the Principal Certifying Authority, if Council is not the Principal Certifying Authority.

- 66 Council is to be provided with an Annual Environmental Performance Report detailing the performance of the system including, but not limited to, the following information:
- Details and records of maintenance checks of disposal areas.
 - Copies of maintenance report sheets.
 - Results of effluent output testing.

The first Annual Environmental Performance Report is to be provided to Council 12 months after the system is commissioned.

- 67 **Prior to the issue of an Occupation Certificate**, an 'Approval to Operate' for the on-site wastewater management system is to be sought from and issued by Penrith City Council.

Prior to the issue of the 'Approval to Operate', a Commissioning Certificate for the on-site wastewater treatment and disposal system shall be provided to Penrith City Council for approval. This Certificate shall certify that the on-site wastewater management system has been installed and is operating in accordance with the Section 68 approval issued for the system, and in accordance with the conditions of this consent. The Commissioning Certificate is to be prepared by a suitably qualified consultant.

- 68 **Prior to the issue of an Occupation Certificate**, a licence is to be obtained in accordance with the requirements of the Water Industry Competition Act 2006. A copy of the "WICA" licence is to be submitted to the Principal Certifying Authority and Penrith City Council, if Council is not the Principal Certifying Authority.

- 69 **Six (6) months after the issue of the Occupation Certificate**, a Wastewater Compliance Report is to be submitted to and approved by Council. The report is to:

- be prepared by a suitably qualified environmental consultant,
- review the performance of the on-site sewage management system installed on the property, and
- consider compliance with the approved Wastewater Report and Operational Wastewater Management Plan.

The Report is to include data demonstrating the wastewater load generated by the development (obtained through a flow meter installed prior to the primary tank), and make comment to the suitability of the installed system to effectively treat and manage this load.

Should the Wastewater 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.

- 70 In the event that a lot is to be subject to effluent disposal and/or a lot is required to be used as a reserve area for effluent disposal, then **prior to the issue of the Occupation Certificate**, the applicant shall register a Restriction as to User with Land and Property Information relating to the disposal of effluent on site with Council being the beneficiary.

The Restriction as to User shall contain words to the effect of:

1. The land is the subject of a Wastewater Assessment Report and Operational Wastewater Management Plan prepared by (*.....to be completed*) and dated (*.....to be completed.....*) that contains specific requirements in relation to managing activities on this land. Please contact Penrith City Council on 4732 7777 to access information contained in this Plan.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C3 Water Management

The subject site is affected by overland flow. Works undertaken as part of the DA17/0497 (Torrens title x 9 lots & Associated Earthworks, Road Construction, Public Domain works & De-watering) ensure that these flows are diverted around the site.

C10 Transport, Access and Parking

Under Penrith Development Control Plan (DCP) 2014, *office premises* are required to provide parking at a rate of 1 space per 40m² of gross floor area (GFA). Although the total GFA within the first stage of the Baiada building is approximately 10,200m², the GFA associated with the office component is 8,900m². Using the rate for office premises, the Baiada building requires the provision of 223 on-site car spaces. The development provides 40 on-site parking spaces a short fall of 183 car spaces. To support this variation the application was accompanied by "Baiada Building: DA Traffic Report" prepared by Arup Pty Ltd and dated 16 February 2017 and "Sydney Science Park - Car Parking Strategy" prepared by Arup and dated 11 September 2017. The parking strategy covers forecasted parking demands for the first precinct to the year 2020, which at this stage does not include further stages of the Baiada Building.

The parking strategy and traffic report outline that the majority of the parking required for the first stage of the Baiada Building will be located on nearby local streets. It has been demonstrated that the local roads will be able to accommodate 261 parking spaces and given that the Baiada building will be the first building within the Sydney Science Park (SSP) site, these on-street spaces will effectively be provided for exclusive use of staff of the Baiada Building. This is acceptable given that the roads within the SSP will be owned and operated by the developer. To ensure that the car parking demands are adequately covered within the precinct, the parking strategy will be continually updated and submitted with future DAs within the SSP site.

C13 Infrastructure and Services

The site is currently not connected to Sydney Waters sewer system. While the developer is currently undertaking planning with Sydney Water to determine the future servicing strategy options, in the interim a wastewater treatment solution is proposed as part of the application. The application was accompanied by "On Site Wastewater Assessment" report prepared by Cardno and dated 4 September 2017. This report details that an aerobic wastewater treatment system with biological nutrient removal is proposed for the subject development which is suitable for treating a daily flow of 36.4 kilolitres per day and 727 staff. The report outlines that the waste water treatment plant will be located on the subject lot (proposed lot 21) and the irrigation area will be located within proposed lot 2 which is within the SSP and is under the ownership and control of the developer. As the report did not provide detailed design and operational details, a condition of consent will be included requiring that prior to the issue of a construction certificate a Section 68 approval under the Local Government Act is to be obtained from Council. The Section 68 application will need to be supported by a Wastewater Assessment Report (including an Operational Wastewater Management Plan) and Hydraulic Report. Given that this is an interim wastewater treatment solution and potentially will not be built provided that the Sydney Waters sewer infrastructure is provided to the site prior to construction, it was deemed unreasonable that detailed designs and specifications be provided at this stage.

E16 Sydney Science Park

Section E of Penrith Development Control Plan 2014 includes an area specific chapter for the Sydney Science Park which provides a structure plan to guide the layout and form of the park. The DCP requires that a precinct plan showing the indicative urban structure of a Precinct is to be submitted concurrently with the first subdivision DA for that Precinct.

The subject site is located within the First Community Precinct within the Sydney Science Park. The First Community Precinct Plan was endorsed by Council at Council's Ordinary Meeting on 26 June 2017. In accordance with the DCP, the Precinct Plan provides a greater level of detail, and prevails over the DCP to the extent of any inconsistency. The proposal is consistent with the relevant sections of the precinct plan including landscape design, gateway sites and setbacks.