

COUNCIL ASSESSMENT REPORT

Panel Reference	2018WCI012
DA Number	DA18/1162
LGA	Penrith
Proposed Development	Bulk Earthworks Including 440,000 Cubic Metres of Fill Material and 385,300 Cubic Metres of Cut at Sydney Science Park
Street Address	581 and 599 Luddenham Road Luddenham
Applicant/Owner	Celestino Developments SSP Pty Ltd / Sydney Science Park Pty Ltd
Date of DA lodgement	22 November 2018
Number of Submissions	0
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Development for the purpose of 'waste management works which meet the requirements for designated development under clause 32 of Schedule 3 of the Environmental Planning and Assessment Regulations'.
List of all relevant s4.15(1)(a) matters	- SEPP (Infrastructure) 2007; SEPP (Western Sydney Employment Area) 2009; SEPP (State and Regional Development) 2011; SEPP 55 (Remediation of Land); SREP 20 Hawkesbury Nepean River; Penrith LEP; - Draft Aerotropolis planning instruments - Penrith DCP
List all documents submitted with this report for the Panel's consideration	- Appendix 1 – Amended Civil Drawings - Appendix 2 – Amended Civil Design Report
Clause 4.6 requests	N/A
Summary of key submissions	N/A
Report prepared by	Sandra Fagan
Report date	21 February 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Not Applicable

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

No

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

No

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

SWCPP Ref. No.:	2018WCI012
DA No.:	DA18/1162
PROPOSED DEVELOPMENT:	Bulk Earthworks Including 440,000 Cubic Metres of Fill Material and 385,300 Cubic Metres of Cut at Sydney Science Park - Lot 5 DP 1255721, Lot 4 DP 1255721,581 Luddenham Road, LUDDENHAM NSW 2745 599 Luddenham Road, LUDDENHAM NSW 2745
APPLICANT:	Celestino Developments SSP Pty Ltd
REPORT BY:	Sandra Fagan, Senior Planner, Penrith City Council

Assessment Report

Executive Summary

The development application originally lodged with Council sought consent for the importation of 1,650,000 cubic metres of fill material, bulk earthworks, dam dewatering and haulage road construction across the entire Sydney Science Park Site. During the course of the assessment however, the application was substantially amended to address matters raised by Council staff which resulted in a reduction in the extent of works proposed and reduction in the area of the site subject of the proposed works.

The amended proposal is now primarily for site preparation works involving earthworks in the form of cut and fill, with the fill being both imported material and reused material from within the site. The amount of cut proposed equates to 385,300 cubic metres and the amount of fill equates to 440,000 cubic metres, with up to 370,000 cubic metres of that fill being imported. While the proposal is for earthworks, the works also meet the definition of 'waste management works' and the development is therefore also categorised as Designated Development. The Sydney Western City Planning Panel is the consent authority for this Designated Development as the proposed works fall within the category of Regionally Significant Development.

The intent of the proposal is to prepare part of the Sydney Science Park for future development and to acknowledge the opportunity to import fill given large developments currently occurring in Western Sydney.

The application has been amended to address concerns raised by Council staff. The main change is that the proposed earthworks now only relate to a reduced portion of land within the Sydney Science Park site. This area is identified as Precinct 1, but also includes a portion of land in the south-west corner adjacent to Precinct 1, and an area of land to the north of Precinct 1 which has been referred to as the Borrow Pit. It is from the Borrow Pit that soil will be cut and moved to Precinct 1.

The other main amendment is that the proposed earthworks will no longer set out the road locations, and do not propose any works in an area of land fronting Luddenham Road. This Luddenham Road interface frontage approximately equates to the first 20m to 100m of the site (depth). The interface area will remain unchanged and existing natural ground levels will be retained. The area of the interface corresponds to the natural high point of the site above Luddenham Road, which is why its depth varies from 20m to 100m. The land that naturally slopes down to the road will remain unchanged while the land to the west of the natural highpoint is where the earthworks will occur. The applicant was requested to make this amendment as this interface area needs further detailed design consideration, including final stormwater management, Luddenham Road widening, landscaped setback buffers and consideration of newly exhibited Aerotropolis instruments. At this point, the details of these aspects are unknown and therefore earthworks in the interface area would have been premature on planning grounds. The

DA amendment to remove works in the interface area is appropriate and has addressed the concerns raised by staff.

Further, the reduced area of works means that the amended proposal no longer includes dam dewatering or construction of a new temporary haul road. Given that the dam dewatering is removed from the amended proposal, the application is no longer Integrated Development and General Terms of Approval from Water NSW, while provided for the original proposal, are no longer required in relation to the amended scheme.

The amended and reduced scope of works is acceptable in principle because the proposed earthworks will now only relate to land (Precinct 1) for which there is some certainty about its future development. Specifically, the area of the proposed earthworks is zoned B7 Business Park and RE1 Public Recreation. Therefore, the earthworks as site preparation works are for a future permissible land use. Further, the Penrith DCP includes a site specific chapter for the Sydney Science Park site and the proposed works do not conflict with the land uses indicated in that chapter. Importantly, there also exists a Council endorsed precinct plan, known as the 'First Community Precinct Plan' for Precinct 1. The endorsed Precinct Plan outlines the approximate location of developable land, roads and open space. Therefore, the proposed earthworks as site preparation works can be acceptable in principle because they are underpinned by these existing LEP and DCP controls as well as an endorsed Precinct Plan.

The proposed interface treatment for all edge boundaries, including Luddenham Road is also acceptable. The interface treatment with the adjoining property to the south will match the natural ground levels of that adjoining property. Internal to the site, the edge treatment will use a 1:10 batter, and the Luddenham Road interface will remain as existing, as mentioned above. Where the proposed fill will start to occur behind the Luddenham Road interface, a batter of 1 in 3 will be used, but this will be for a smaller section of the site.

The amended proposal will not adversely impact on overland stormwater flows. While an overarching stormwater strategy for the site has not yet been endorsed, Council's Engineer has confirmed that the proposed earthworks will enable stormwater from the site to be conveyed back into the site, running north, and managed on site without increasing run-off to adjoining properties. The existing situation for the Luddenham Road interface will remain unchanged, with some stormwater being naturally conveyed to the road. This also will not result in any increases to flows to the road.

The proposed earthworks to Precinct 1, as site preparation, do not conflict with broad expected future outcomes, particularly with regard to the Discussion Paper released for the Western Sydney Aerotropolis. The proposed works will prepare the site for future land uses, which will be informed by current and proposed controls as well as future development applications. Importantly, the proposed earthworks will not include preparatory works for roads. Roads have been intentionally omitted from the proposal in order to ensure that there remains opportunities for further detailed urban design planning to occur in terms of road and open space locations. The amendment to remove proposed earthworks from the Luddenham Road interface is also supported as this enables future detailed planning for this interface to occur prior to that area of land being altered. The resultant earthwork levels will not be set as final levels and a condition to this effect is recommended.

It is considered that this enables a balance to be struck between the wishes of the developer to take advantage of the current opportunities to import fill from other sites in Western Sydney, as well as start the process of preparing the site, and Council staff with regard to the need to continue to develop the broader planning intentions for Precinct 1.

The application was notified, advertised and exhibited for 30 days in accordance with Council's DCP and the requirements for Designated Development. No public submissions have been received.

Site & Surrounds

The entire site is known as Sydney Science Park. It is a new release area that was rezoned in 2016 from rural land to a combination of B7 Business Park, B4 Mixed Use and RE1 Public Recreation. The rezoning was to permit science based businesses, high technology industries, educational establishments, research and development uses, open space, and residential uses.

The entire site comprises an area of approximately 287 hectares. Its boundaries are formed by Luddenham Road to the east, the Warragamba Pipeline to the north, and agricultural land to the south and west. The land is affected by an easement for a transmission line which benefits Transgrid. The Warragamba Pipeline, operated by Water NSW forms the general northern boundary of the site.

The area relevant for the proposed works is known as Precinct 1, which is located in the south-east corner of the site with a frontage to Luddenham Road. Precinct 1 is within Lot 4 of DP 125572 with part of the works located in lot 5 of DP 125572. Precinct 1 has been the subject of an endorsed First Community Precinct Plan which outlines the general intended uses (mixed use and business park) and possible road and open space layouts.

Sydney Science Park is within the lands captured by the new State planning policies for the Western Sydney Airport. The proposed works do not conflict with the Discussion Paper and draft documents released for the airport. This is discussed further in the report.

While there have been previous development consents for Sydney Science Park, the only relevant works carried out include site remediation and construction of a temporary haul road. The 'Borrow Pit', the subject of this proposed application has previously had development consent (DA17/0497) for earthworks, being cut and movement of the earth to parts of Precinct 1. However, the applicant has indicated that this consent is unlikely to proceed and therefore the current proposal also includes cut to the Borrow Pit. The existing dams on the site (except Dam 8 which is not within Precinct 1) have already received development consent to be dewatered (DA17/0497 and DA18/0569).

Proposal

The application has been substantially amended since it was first lodged to address concerns raised by Council staff. While the original application proposed earthworks to the entire Sydney Science Park site, as well as some dam dewatering and construction of a temporary haul road with a new intersection to Luddenham Road, the amended proposal currently before the Panel is for a reduced scope of works to a reduced area of the site.

The amended proposal now seeks consent for the following:

- Earthworks involving 440,000 cubic metres of fill (with up to 370,000 cubic metres of that fill to be imported, and some to be moved from other areas of the site, such as the Borrow Pit), and 385,300 cubic metres of cut;
- The depth of cut will vary from between 0m (no cut) to 4m and the amount of fill will vary between 0m (no fill) to 4m;
- The area of the proposed works are to Precinct 1, a small portion of land to the south-west adjacent to Precinct 1, and land to the north of Precinct 1 referred to as the Borrow Pit;
- Create a conceptual earthworks surface based on an anticipated ultimate design surface, with final design levels to be adjusted with subsequent DA's and precinct planning;
- Construct temporary sediment basins;
- Earthwork levels to allow stormwater to drain to the north within the site; and
- Retain the natural ground levels for an area of the site fronting Luddenham Road with no fill or cut proposed in this area.

The drawings have been further amended to remove any road locations. The interfaces with adjoining properties are treated by way of either a 1:10 or 1:3 batter, or the earthworks will match the natural ground level of adjacent properties. The Luddenham Road interface area will remain unchanged.

The proposed development meets the definition of "*waste management works*" and is also Designated Development because of the quantities of fill importation involved. The amended proposal is no longer Integrated Development because dam dewatering is no longer proposed and the works will not be within 40 metres of a water body.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Western Sydney Employment Area) 2009
- State Environmental Planning Policy No 55—Remediation of Land
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016

The application was lodged prior to the new controls in the Biodiversity Conservation Act 2016 applying to the Penrith Local Government Area. Therefore, biodiversity is considered under the previous controls and the Threatened Species Conservation Act 1995.

Council's Biodiversity Officer reviewed the original proposal (which related to the whole site) and raised no objection, subject to conditions. Specifically, although part of the site does contain some Cumberland Plain Woodland, this vegetation did not meet the condition thresholds to be listed. In terms of fauna, Council's Biodiversity Officer agrees with the consultant's report that the impact is unlikely to be significant on ecological values. Suitable conditions are recommended.

The amended application was accompanied by an addendum to the flora and fauna assessment. The additional information concludes that the reduced scope and area of works will result in 0.19 hectares of Cumberland Plain Woodland, identified to be in poor condition, to be removed which would in turn remove the same amount of foraging woodland for 4 species of bats. No hollow bearing trees will be removed. The report concludes that the impacts will not be significant given the greatly reduced area of works. Council's Biodiversity Officer raised no objections to the original proposal and therefore the reduced scope of works will have a lesser impact than the original.

- **Section 2.12 – Sydney Western City Planning Panel (SWCPP)**

The Sydney Western City Planning Panel is the consent authority by virtue of Section 4.5 (b) of the *Environmental Planning and Assessment Act 1979*, which states that a regional planning panel is the consent authority for development that is declared by an environmental planning instrument as 'regionally significant development'.

The proposed development falls within the category of 'regionally significant development' as contained in Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*. Clause 7 in Schedule 7 includes 'Particular designated development' which then includes development for the purpose of "*waste management facilities or works which meet the requirements for designated development under clause 32 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000*".

The proposed development meets the definition of 'waste management works' as Designated Development and is therefore 'regionally significant development'. The Sydney Western City Planning Panel is the consent authority.

The process for Designated Development has been followed. In particular, the applicant obtained SEARS from the Department of Planning and the submitted EIS has addressed the matters raised in the SEARS. The application was notified, advertised and exhibited for 30 days, with no public submissions being received. The Department has been advised in writing on 9 January 2020 that no public submissions have been received. The required 21 day period following notification to the Department has expired.

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

The site is identified as being bush fire prone land. The applicant's EIS states that agreement was reached with NSW Rural Fire Service that a formal Bushfire Protection Assessment would not be required on the basis of the following:

- Fire service vehicles could access the site during an emergency by using the haul road;
- Site offices could be protected with an appropriate Asset Protection Zone;
- Remaining dams at the site could provide water to be used during a bushfire response scenario; and
- Signage at the site would clearly indicate the locations of earthworks personnel and other areas within the Sydney Science Park.

In addition, the NSW Rural Fire Service responded to Council's referral of the application by stating that they had considered the information provided and had no specific recommendations in relation to bush fire

protection. Notwithstanding this, suitable conditions referencing the comments above are included in the recommendation.

The proposal is in accordance with Clause 4.14 of the Environmental Planning and Assessment Act relating to consultation and consideration of bush fire prone land.

- **Section 4.15 - Evaluation**

The assessment of the amended application has taken into account the matters for consideration contained at Section 4.15 of the Act. Those matters requiring further discussion are identified throughout this report and further discussed.

The application has been processed and assessed in accordance with the requirements for Designated Development. In particular, the Department of Planning, Industry and Environment has been advised that no public submissions to the application have been received.

- **Section 4.46 - Integrated development**

The amended Development Application no longer includes dam dewatering. The applicant has stated that all dam dewatering within Precinct 1 has already been approved under previous Development Consent DA17/0784. In addition, the proposal has been amended to ensure that there are no works within 40m of a watercourse. Therefore, the amended application no longer triggers Integrated Development.

Although Water NSW provided their General Terms of Approval on 27 February 2019, relating to the original proposal, these conditions are no longer required to be imposed on any consent for the amended proposal, given the reduced area of land affected by the works and that dam dewatering is not proposed. The three smaller dams that are located in Precinct 1 already have approval through Development Consent DA17/0784 to be dewatered.

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

State Environmental Planning Policy (Infrastructure) 2007

Division 12A Pipeline and pipeline corridors:

Clause 66C of the Infrastructure SEPP relates to works on land within a 'pipeline corridor'. A pipeline corridor includes land within 20m of the centre line of a relevant pipeline. In this case, the Sydney to Warragamba Pipeline is located on the northern boundary of the Sydney Science Park site, and therefore the 'land' is within 20m of the Pipeline Corridor, although Precinct 1 is more than 500m from the Pipeline. Notwithstanding, Water NSW have provided comments in their capacity as the owner of the Pipeline, and have suggested conditions. Those conditions relate to erosion and sediment control and ensuring that the works do not increase overland flow into the Pipeline Corridor. Suitable conditions are recommended.

State Environmental Planning Policy (State and Regional Development) 2011

Clause 20 of the SEPP (State and Regional Development) 2011 declares development specified in Schedule 7 to be regionally significant development. Clause 7 in Schedule 7 of the same SEPP then declares 'Particular designated development' as being 'regionally significant development'. This includes development for the purpose of "*waste management facilities **or works** which meet the requirements for designated development under clause 32 of Schedule 3 to the Environmental Planning and Assessment Regulation 2000*".

Therefore, SEPP (State and Regional Development) applies in that it triggers the development as being 'regionally significant development'.

State Environmental Planning Policy (Western Sydney Employment Area) 2009

Part of the Sydney Science Park site is located within the area covered by the SEPP (Western Sydney Employment Area). Within the SEPP the land is identified as Precinct 11 which is the 'Broader Western Sydney Employment Area'. The land is unzoned land within the SEPP, is not identified as being in an industrial release area, nor are there any proposed roads identified near the subject site. Satisfactory arrangements certification is not required by the SEPP because the site is not located in an industrial release area. Therefore, the application was not referred to the Department of Planning under this Policy.

Further, the Discussion Paper for the Western Sydney Aerotropolis states that the SEPP (WSEA) is likely to be amended to excise certain lands from the SEPP (WSEA) and place them within the future SEPP for the new Aerotropolis.

Given the above, the application of the SEPP is limited in this case, but the relevant clauses are discussed below:

Clause 12 Unzoned Land: This clause allows development to be carried out on unzoned land only with consent. Consideration is to be given to whether the development will impact on adjoining zoned land and whether the development is appropriate and compatible with permissible uses on adjoining land. The considerations around use and permissibility are discussed in the LEP section of this report. The proposed earthworks are considered to be permissible with consent under the LEP and therefore Clause 12 is not required to be evoked. Nevertheless, the proposed earthworks are a step towards developing Precinct 1 in accordance with the existing planning controls for the Sydney Science Park site.

Clause 18 Requirement for a Development Control Plan: The Penrith Development Control Plan 2014 applies to the site and Part E16 specifically relates to Sydney Science Park. An assessment against the DCP provisions is made later in this report as part of an Appendix.

Clause 23 Development adjoining residential land: This clause relates to adjoining and nearby land zoned primarily for residential purposes. In this case the land to the south of Precinct 1 contains a dwelling and is zoned RU2 Rural Landscape. While not primarily zoned for residential, consideration has been given to impacts on surrounding dwellings, including mitigating dust. This is discussed in the report and suitable conditions about adhering to mitigation measures are recommended.

Clause 32 - Preservation of trees or vegetation: The proposed development will include the removal of some vegetation. This matter is discussed under the Biodiversity Conservation Act heading of this report.

State Environmental Planning Policy No 55—Remediation of Land

Contamination:

The amended proposal does not include any remediation of land. Contamination and remediation of the Sydney Science Park has been assessed and approved under the previous application DA17/0100. An adopted Remediation Action Plan (RAP), dated 9 December 2016, exists for the site. This RAP suitably covers the Sydney Science Park area of the proposed works. The RAP included validation requirements to the most stringent level, being residential uses, in order to future proof the ability to provide flexible uses throughout the precinct. The majority of the site has now been validated and suitable conditions as recommended by Council's Environmental Officer are included in the recommendation relating to an unexpected finds protocol.

Imported Fill Protocol:

The application proposes that only Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM) or other material that meets the Resource Recovery Orders/Exemptions will be imported onto the site. To ensure that the site remains suitable for the proposed use, it needs to be ensured that no contaminated material is received from off-site. Further, an Environment Protection Licence under the Protection of the Environment Operations Act is required where waste materials (including soils) are imported onto a site that do not meet specific requirements.

To address these aspects, an Imported Fill Protocol has been developed by the applicant's consultants. This document specifies the types of materials that can be accepted onto the site, and provides a framework for ensuring that only these materials are received. This Protocol is considered satisfactory and the applicant has confirmed that the fill importation works will be supervised by an appropriate consultant. Suitable conditions are recommended.

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

This Policy requires development consent for the filling of land. The aims of the Policy include the protection of the environment of the river system by ensuring that the impacts of land uses are considered in a regional context. 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. The proposal is considered to be acceptable having regard to these controls and objectives.

Adequate measures are considered to be incorporated within the proposal to ensure that appropriate catchment management measures will be undertaken and that impacts on local flora and fauna and the adjacent waterways are acceptable.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies
Clause 2.5 Additional permitted uses for particular land	Complies
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
Clause 7.1 Earthworks	Complies - See discussion
Clause 7.2 Flood planning	Complies - See discussion
Clause 7.5 Protection of scenic character and landscape values	Complies - See discussion
Clause 7.6 Salinity	Complies
Clause 7.24 Sydney Science Park	Complies - See discussion

Clause 2.3 Permissibility

The area of the proposed works, within Precinct 1 and the Borrow Pit, is zoned B7 Business Park and RE1 Public Recreation under the Penrith LEP. These two zones have different objectives and have Land Use Tables that contain different development types, including 'permitted with consent' and 'prohibited' development. The two zones will therefore be discussed separately below in terms of permissibility of the proposed works.

In addition, Precinct 1 is located within the area covered by the SEPP (Western Sydney Employment Area) and is unzoned land under that Policy. Therefore, Clause 12 of the SEPP could also apply, with this clause stating that development may be carried out on unzoned land only with consent. This clause then contains further considerations relating to objectives and impacts on adjoining zoned land. Although Clause 12 applies it is not required for permissibility.

The proposed works can be classified as 'earthworks', which the LEP defines as "excavation or filling", as well as the movement and placement of soil on the site to create a pad or level. It is relevant to consider whether the ultimate development would also be permissible because the earthworks will prepare the site for a future land use. In this case, the future land uses are likely to be mixed development around technology, research, education and commercial, as well as roads, open space and some residential.

With regard to the objects of the Act, and in particular, the orderly development of land, it is considered that any site preparation works (such as the earthworks proposed) should only be considered if either those site preparation works are permissible in their own right, or the intended future use of the resulting pads and levels would be permissible.

With this in mind, the LEP permits a wide range of uses in the B7 zone, including business premises, educational establishments, health services facilities, warehouses, and food and drink premises. Further, Schedule 1 of the LEP which relates to 'Additional permitted uses', at Clause 34 also allows additional land uses within B7 zoned land within the Sydney Science Park. This includes agricultural produce industries, residential flat buildings, multi-dwelling housing, and research stations.

With regard to the RE1 - Public Recreation zone, the objectives of this zone primarily relate to enabling land for open space and recreational purposes. A variety of land uses are also permissible in this zone, including open space, child care facilities, information and education facilities, indoor recreation facilities, and restaurants.

The endorsed First Community Precinct Plan for Precinct 1 also identifies a broad range and mix of uses such as those referenced above. The possible uses in the Precinct Plan are therefore permissible in the relevant LEP zone.

Based on this and in conclusion, it is therefore considered that the proposed earthworks are permissible within each relevant zone, because the earthworks (as very early site preparation works) will prepare the site for a mix of permissible land uses allowed within the zone which are not contrary to the zone objectives.

Clause 5.10 Heritage conservation

The Luddenham Road alignment is listed as a local Heritage Item in the Penrith LEP. The application has been amended to remove the area of proposed fill at the Luddenham Road frontage of Precinct 1. This has been done on the advice of Council staff to ensure that the proposed works do not fetter the ability to properly plan for how the site's interface with Luddenham Road should be designed, including where connection points should be, how landscaping can be provided in a front setback area and how Luddenham Road could be widened if required. The amended proposal will therefore retain the existing land layout at the Luddenham Road frontage and interface and will not detract from the heritage significance of the Luddenham Road alignment.

With regard to aboriginal archaeological sites there are four identified artefact scatter areas within the Sydney Science Park site. None of these scatter areas are located within Precinct 1 or the area of the proposed works. The applicant has also advised that an Aboriginal Heritage Impact Permit has been obtained from the Office of Environment and Heritage.

Clause 6.1 Arrangements for designated State public infrastructure

Clause 6.1 relating to satisfactory arrangements for the provision of infrastructure does not apply in this instance because the trigger relates to proposals to subdivide the land. In this case, the land is not proposed to be subdivided. Nevertheless, a Planning Agreement between the landowner and the Minister for Planning is in place to secure contributions for regional infrastructure.

Clause 6.2 Public utility infrastructure

The application does not include any works for public utility infrastructure as this is a matter that will be resolved when future planning and development of the site occurs.

Clause 7.1 Earthworks

The LEP contains specific objectives for earthworks, which is to ensure that the works will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The LEP states that before granting consent, the consent authority must consider the following matters:

- (a) *the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,*

The proposed works will change drainage patterns within Precinct 1 so that stormwater will flow to the north within the site. This is acceptable and will not affect flows to adjoining properties. The existing situation for natural stormwater flows to Luddenham Road will remain as existing. This is because the application has been amended based on Council staff advice to remove any works proposed to land near the Luddenham Road interface. Council's Engineer has confirmed that this is also acceptable as it retains the existing situation and does not add to current flows directed to the road.

- (b) *the effect of the proposed development on the likely future use or redevelopment of the land,*

This matter has been discussed above in the body of the report. In short, the proposed earthworks will act as very early site preparation works, although the recommended conditions make it clear that the earthworks do not represent final levels. The proposed earthworks do not fetter the ability to develop the land in the future in accordance with existing Penrith LEP and DCP controls, including the endorsed First Community Precinct Plan. The proposed works will also not derogate from future

planning of the site in accordance with the precinct planning requirements for the Aerotropolis. Further, all dam dewatering in Precinct 1 has already been approved with that consent still being valid. The main riparian corridor within the Sydney Science Park is not located within Precinct 1 and the earthworks will still allow land to be developed for open space and roads as part of future applications.

(c) *the quality of the fill or the soil to be excavated, or both,*

Council's Environmental Management Officer has stated that the majority of the site has been remediated and validated. The application includes a Waste Management Plan with an Unexpected Finds Protocol, which identifies waste that may be produced as part of the works and addresses how to manage and dispose of any potential hazards. Therefore, it is expected that the fill to be sourced from on-site is suitable to be reused within the site. The quality of fill to be imported is discussed below.

(d) *the effect of the proposed development on the existing and likely amenity of adjoining properties,*

The proposal has been substantially amended since lodgement. The most recent amendment has removed any proposed works from the Luddenham Road frontage, including an area near the front of the adjoining property boundary to the south. This means that the proposed works will not have an adverse visual impact on Luddenham Road, or the approach to the site from both north and south directions. With regard to the only other adjoining properties, which are two properties immediately to the south of Precinct 1, at 611 and 615-639 Luddenham Road, the proposed earthworks at these boundaries have intentionally been graded to match as close as possible, the natural ground level at the boundaries. This has eliminated the need for retaining walls and provides for a suitable interface treatment in the interim. Matters relating to dust and noise have been discussed elsewhere in the report.

(e) *the source of any fill material and the destination of any excavated material,*

The documents submitted with the amended application state that only Virgin Excavated Natural Material (VENM), Excavated Natural Material (ENM) or "*other material that meets the Resource Recovery Orders / Exemptions*" will be imported onto the site. In particular, the application includes an Imported Fill Protocol which specifies the materials that can be accepted and provides a framework for ensuring that only these materials are received. The applicant has also confirmed that the fill importation works will be supervised by an environmental consultant. Council's Environmental Management Officer has raised no objections to this protocol and suitable conditions are recommended. The proposal seeks to reuse excavated material from the Borrow Pit to Precinct 1 and therefore will not be exporting excavated material. Suitable conditions are recommended relating to waste management.

(f) *the likelihood of disturbing relics,*

Aboriginal cultural heritage has been discussed above. The Office of Environment and Heritage have granted an Aboriginal Heritage Impact permit for the Sydney Science Park site, being AHIP No. C0003861. Suitable conditions are recommended to ensure that any recommendations in that permit are adhered to.

(g) *the proximity to and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,*

All dam dewatering has been approved under previous development consents. The proposed works will not be within 40m of the riparian corridor which is to the west of Precinct 1. Council's Engineer

has advised that the localised changes to stormwater flows are acceptable because the earthworks will direct flows from within the site to be retained and managed on site. Temporary sediment basins are included in the scope of proposed works.

- (h) *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*

Council's Engineer, Waterways Officer and Environmental Health Officer have reviewed the consultant's reports submitted with the application (and amended where relevant) and have recommended conditions to mitigate impacts. In addition, work hours will be limited to Council's standard construction hours.

- (i) *the proximity to and potential for adverse impacts on any heritage item, archaeological site, or heritage conservation area*

Aboriginal heritage has been discussed above. The site does not contain any heritage items and the consultant heritage report states that it is unlikely that the site contains any non-Aboriginal heritage relics. The nearest heritage item is the alignment of Luddenham Road which is identified as a local item. To address concerns previously raised the proposal has been amended to remove any proposed works from the Luddenham Road frontage. Therefore, the road alignment will remain as existing and there will be no adverse impact to this heritage item.

Clause 7.2 Flood planning

The area where the works are located is not affected by mainstream flooding but parts of the area of works are affected by local overland flows, with the floodplain approximately following the existing riparian corridor. Council's Engineer has raised no objection to the proposed works with regard to flood and overland flow affectations and impacts.

Clause 7.5 Protection of scenic character and landscape values

The front portion of Precinct 1, along with Luddenham Road and the front portion of sites on the opposite side of Luddenham Road, are identified in the LEP Scenic and Landscape Values Map. It appears that the area identified on this map follows the alignment of Luddenham Road until its intersection with Elizabeth Drive. Therefore, it is considered that the rural and scenic quality of the Luddenham Road alignment, along with the rural nature of the properties fronting Luddenham Road contribute to the scenic quality of the area. In this regard, the amended proposal is acceptable because the proposal has been amended to remove any earthworks at the Luddenham Road interface. The proposed earthworks will only start at the point on the site's frontage where the land falls back into the site (to the west). This leaves the entire site frontage to Luddenham Road untouched so that visually, the Luddenham Road interface will for the most part appear as existing. Where batters start to occur, these will have a 1:3 slope and will be setback no less than 40m from the road alignment.

Clause 7.24 Sydney Science Park

The amended proposal accords with the four objectives of the Sydney Science Park clause of the LEP. Those objectives relate to; providing a specialised centre for commercial, educational, high technology and residential uses; providing a range of residential accommodation; limiting retail floor space so as to preserve the hierarchy of Penrith's local commercial centres; and to limit the number of dwellings.

The amended proposal is consistent with these objectives as it will allow early site preparation at a time when there exists the opportunity to accept fill from other projects in Western Sydney. Further, the early works proposed will not hinder the ability for Precinct 1 to be further designed and planned for in accordance with the Penrith DCP and adopted First Community Precinct Plan.

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

While not yet a Draft SEPP, the State Government has released a Discussion Paper for the Western Sydney Aerotropolis, with accompanying Proposed SEPP, Draft Western Sydney Aerotropolis Plan (WSAP), and Draft DCP (Phase 1) for public exhibition. The Sydney Science Park site will be within the Aerotropolis SEPP area and is identified as within the Northern Gateway Precinct. The Aerotropolis Structure Plan identifies the Sydney Science Park site as being for '*Mixed Flexible Employment & Urban Land*' as well as protecting the existing riparian corridors by identifying them as '*Environment and Recreation*'. These proposed land use zones are similar to those in the LEP for Precinct 1, being B7 Business Park and RE1 Public Recreation. The Structure Plan also shows an indicative new rail line that would pass through the Sydney Science Park site (although not through Precinct 1). Therefore the proposed land use zones for the Aerotropolis will align with the current land use zones for Sydney Science Park in terms of permitted uses.

Further, the Aerotropolis Discussion Paper states that for Sydney Science Park, the zoning provisions in the Penrith LEP will continue to apply even after the Aerotropolis SEPP is created, and until a Precinct Structure Plan for the site has been prepared. The Discussion Paper also alludes to the Penrith DCP continuing to apply to the Sydney Science Park site.

For the purpose of this Development Application, it is relevant to ensure that the proposed earthworks are not in conflict with the Aerotropolis plans. In this regard, the areas of the proposed works are predominantly within Precinct 1, which has an endorsed Precinct Plan dated June 2017 which shows the area will be for mixed uses and open space. This accords with the draft Structure Plan and land use zones for the Aerotropolis, also being for mixed uses and open space, as well as the Northern Gateway Precinct, which will act as a major interface between the Airport and the Western Parkland City, linked by public transport, including road and rail connections. The eventual location of the new rail line and the possible location of any new rail stop will not impact on the current proposed earthworks. The proposed earthworks will not set final approved levels and will not set the location of roads, infrastructure or individual developable lots. Therefore, there will be adequate ability to have more detailed urban design planning in either specific Development Applications or the Northern Gateway Precinct Plan in the future.

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

Development Control Plan 2014

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

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

Two Planning Agreements exist for the Sydney Science Park site. One is with the Minister for Planning and the other with Council. The State Planning Agreement relates to contributions towards future public infrastructure and the Local Planning Agreement relates to works in kind, including vegetation around riparian corridors. The obligations in these Agreements will continue to apply.

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

The proposed development will comply with the Regulations where they are relevant, and subject to conditions. The application has been processed in accordance with the requirements for Designated Development. In particular, the Department of Planning, Industry and Environment has been informed that the application has attracted no public submissions.

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

Section 4.15 of the Act sets out matters for consideration in determining a development application, including SEPP, LEP and DCP controls, Planning Agreements and the Regulations. Consideration is also to be given to environmental impacts on both the natural and built environments, social and economic impacts in the locality, any submissions, the public interest and the suitability of the site.

These matters for consideration have been discussed in further detail in the body of this report. For duplicity reasons they are not repeated in this section.

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

The application has been significantly amended. The reduced area of the site the subject of the proposed earthworks is suitable for the development, particularly given that the Luddenham Road interface is not part of the proposed earthworks. Matters relating to mitigation measures can be employed to address impacts during the works period.

Section 79C(1)(d) Any Submissions

Community Consultation

Public Submissions:

The original application was notified to adjoining properties, advertised and exhibited between 7 December 2018 and 1 February 2019. No public submissions were received. In accordance with the requirements for Designated Development, the Department of Planning, Industry and Environment has been advised that no public submissions were received.

Transport for NSW (formerly Roads and Maritime Services):

The former Roads and Maritime Services (RMS) provided comments to the original proposal which, at the time, included a new haul road to the north of Precinct 1 with a new connection to Luddenham Road. The amended proposal no longer includes a new haul road as there is already a temporary haul road with a connection to Luddenham Road at the site, which was approved under a previous consent, DA16/0176.

The RMS in their comments to the original DA sought to require that the intersection of Luddenham Road and Mamre Road be upgraded to include a left turn slip lane on Luddenham Road for vehicles turning left into Mamre Road. However, this comment was made in relation to the original proposal which would have resulted in the importation works having 300 trucks per day for 24 months. The current proposal will result in 140 trucks per day for 6 months.

Council Planning staff explained to officers from (now) Transport for NSW that their request for intersection upgrade could not be reasonably linked to the amended DA and that the nexus did not exist at this time between the proposal and the need for road upgrades. In particular, the issue of road upgrades and intersection works are matters to be dealt with as part of either future precinct planning for the entire site, taking into consideration the Aerotropolis controls, and/or development applications for buildings and uses at the site. The representative from Transport for NSW acknowledged this point and clarified that Luddenham Road was not a classified road and that Council would be the consent authority for Luddenham Road.

Rural Fire Service:

The Rural Fire Service have responded to the application by stating that they have no specific recommendations in relation to bush fire protection. This matter has been discussed above and notwithstanding these statements, conditions are recommended to be imposed to reflect the statements in the EIS relating to bush fire protection.

Water NSW:

Water NSW provided General Terms of Approval in relation to the original DA which included some dam dewatering. The amended proposal has removed all dam dewatering as the existing dams within Precinct 1 already have development consent to be dewatered, under DA17/0784. Therefore, the application is no longer Integrated Development and a further approval under the Water Management Act will not be triggered by this specific proposal. In addition, the applicant has confirmed that no works will occur within 40m of a watercourse. A condition is recommended to ensure that if any future approvals from Water NSW are required, then the onus is on the applicant to obtain those approvals.

Water NSW also commented in their capacity as an adjoining asset owner of the Warragamba Pipeline. In this regard they have requested conditions of consent to ensure no increase in overland flows in the Pipeline corridor and conditions relating to erosion and sediment controls. The suggested Water NSW conditions are included in the recommended conditions of consent.

Referrals

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

Referral Body	Comments Received
Landscape Architect	Not supported
Heritage	Not supported
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	No objections - subject to conditions
Environmental - Biodiversity	No objections - subject to conditions
Traffic Engineer	No objection subject to conditions

Environmental - Environmental management

Council's Senior Environmental Officer has raised no objections to the amended proposal, subject to conditions. The Sydney Western City Planning Panel, at the briefing, wanted to be satisfied that the impacts of dust can be appropriately managed and that conditions might be needed for a detailed dust management plan. In this regard, the applicant submitted an additional air quality assessment report, including mitigation measures. Council's Senior Environmental Officer has stated that the proposed mitigation measures will significantly reduce the pollutant levels (dust) expected to be experienced, resulting in only marginal exceedances at rural residential properties. Although this is not ideal, given the nature and scale of the proposal, it would be difficult for all impacts (dust) to be mitigated. However, given the reduced scope of the works and the mitigation measures proposed, on balance the amended application is acceptable and suitable conditions are recommended.

In addition, it is acknowledged that the works will cause a 6 dBA exceedance at the residential property to the south east of the site. Mitigation measures are proposed and given the reduced scope and duration of the works, this exceedance on balance would not be an overriding reason to refuse the application.

Heritage

Heritage considerations are discussed in the LEP section of this report. The Luddenham Road alignment is listed as a local heritage item. In summary, the application has been amended to remove the fill near the interface of Luddenham Road which means that the site appearance at Luddenham Road will remain as existing. Future precinct planning, including consideration of the imminent Western Sydney Aerotropolis controls will require further assessment of Luddenham Road.

Landscape Architect

Council's Landscape Architect raised a concern with the original proposal about whether the depth of cut and fill would impact on the ability to grow trees in future developments. The applicant has responded by stating that soils will be tested for future tree growth and future detailed planning for Precinct 1 will include landscaping and trees. This may involve construction of tree pits with improved top soil, ameliorated subgrade, subsoil drainage and slow release fertiliser. In addition, a condition is recommended to require that the top soil is retained and reused in the final levels to increase and ensure future growth.

Traffic Engineer

Council's Traffic Engineer has stated that traffic associated with the proposed works can be accommodated in the road network and that the Construction Traffic Management Plan should be endorsed by Transport for NSW (previously the Roads and Maritime Services) prior to Council endorsing

the plan. Although Luddenham Road is not a classified road (it is identified as a regional road) Transport for NSW have confirmed that they would like to review the Construction Traffic Management Plan. Therefore, a suitable condition is recommended.

Council's Traffic Engineer has also supported the amendment which removes any earthworks from the Luddenham Road interface.

The Sydney Western City Planning Panel, at the briefing, wanted to know whether trucks would be limited to approaching from, and exiting, to the south, and whether any restrictions on truck movements will apply. In this regard, the existing temporary haul road into the site includes a left-in slip lane (from Luddenham Road), a right turn merge bay out onto Luddenham Road, and a central right turn bay on Luddenham Road into the site. The temporary haul road will be used for construction vehicles and vehicles would currently be permitted to either turn left or right in, and turn left or right out. Notwithstanding, the amended proposal (compared with the original proposal) will reduce the number of trucks from 300 per day to 140 and a fill importation duration from 24 months to 6 months. A Construction Traffic Management Plan is required by condition of consent and this will need to be endorsed by Council with input from Transport for NSW. Any further restrictions to truck movements will be resolved at this time.

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

The proposal is in the public interest, as the development is a precursor to preparing the land for the future development of the Sydney Science Park. Conditions are recommended to address impacts including noise, dust and construction hours.

Section 94 - Developer Contributions Plans

A Planning Agreement between the landowner and Council was entered into on 9 September 2016. This Planning Agreement requires payment for residential development and as such, the subject application does not require any contributions to be paid at this time.

Conclusion

The amended proposal for earthworks is acceptable in principle because the works mostly relate to Precinct 1. This precinct is already zoned in the LEP to allow a mix of suitable future uses and the DCP contains a specific chapter relating to more detailed controls for the Sydney Science Park site. Further and importantly, Precinct 1 has an endorsed First Community Precinct Plan for the area. Therefore, the proposed earthworks, which will act as early site preparation works, are underpinned by existing controls and precinct planning which sets an expected and desired future outcome in terms of land uses and development.

With regard to the details of the proposed works, Council staff initially raised concerns with the original proposal, particularly because the original proposal sought to carry out earthworks across the whole of the Sydney Science Park site. The extent of these works would have been premature in the absence of more detailed precinct plans for the site. Therefore, the applicant amended the proposal to only relate to Precinct 1, including a small portion of land at the south-west corner (just outside) Precinct 1 and an area to the north, referred to as the Borrow Pit, from where earth will be cut and relocated to Precinct 1.

The proposal was then further amended to remove indicative road layouts as it was premature to provide the position of the internal roads prior to more detailed urban design planning. For similar reasons, the earthworks proposed at the Luddenham Road interface were also removed. These amendments are supported as it preserves those elements and areas of Precinct 1 that require more detailed planning, including stormwater management, future widening of Luddenham Road, landscaped setbacks and potential locations of future buildings and open space.

With the amendments made to the proposal, the application can now be supported and is recommended for approval.

Recommendation

That Designated Development Application DA18/1162, as amended, for bulk earthworks and the importation of fill to part of the Sydney Science Park site, at 581 and 599 Luddenham Road, Luddenham, be approved subject to the attached conditions.

CONDITIONS

General

- The development must be implemented substantially in accordance with the plans as detailed within the table below, and stamped approved by Council, the application form, and any supporting information received with the application (but only where relevant to the amended application) and by the following conditions.

Job and Plan No. 180001-P1BE-DA	Description	Prepared by Enspire Solutions Pty Ltd	Revision	Date
C01.01	Sydney Science Park Bulk		3	21/01/2020
C01.21	Earthworks		2	21/01/2020
C01.41	General Notes and Legend		3	21/01/2020
C03.01	General Arrangement Plan		4	23/01/2020
	Erosion and Sedimentation Control			
C03.02	Plan Sheet 01		3	21/01/2020
	Erosion and Sedimentation Control			
C03.21	Plan Sheet 02		1	18/11/2019
	Erosion and Sedimentation Control			
C03.51	Details		3	21/01/2020
C04.01	Salinity Management Plan		3	21/01/2020
C04.21	Cut and Fill Plan		3	21/01/2020
C04.22	Site Sections Sheet 01		2	21/01/2020
C04.23	Site Sections Sheet 02		3	21/01/2020
C04.24	Site Sections Sheet 03		3	21/01/2020
C04.25	Site Sections Sheet 04		3	21/01/2020
C04.26	Site Sections Sheet 05		2	21/01/2020
C04.27	Site Sections Sheet 06		2	21/01/2020
C04.28	Site Sections Sheet 07		1	21/01/2020
C05.01	Site Sections Sheet 08		3	21/01/2020
C05.02	Bulk Earthworks Plan Sheet 01		3	21/01/2020
	Bulk Earthworks Plan Sheet 02			
Reports				

Sydney Science Park Bulk Earthworks Design Report - Development Application		Enspire Solutions P/L		21/01/2020
Stormwater Management Letter	109765_07_Ltr1A_BEW DA	J. Wyndham Prince		2/11/2018
Imported Fill Protocol	55375/117651 (rev 0)	JBS&G		26/11/2019
Air Review and Noise Review		Wilkinson Murray		29/11/2019
Waste Management Plan	18224	JBS&G		20/11/2019
Flora and Fauna Assessment (to be applied as relevant to the amended application)	55375-118022 18WOL-9560	Ecological Australia		October 2018

- 2 A **Construction Certificate** shall be obtained prior to commencement of any civil works.
- 3 The earthwork levels approved by this consent are taken to be indicative levels only and are not set in terms of future building pads or development levels.
- 4 This approval does not grant consent for any works located within 40 metres of a waterbody/course. This approval does not grant consent for any works to dewater the dams located within the land the subject of this development consent. The onus is on the applicant to ensure that any approvals that may be required relating to works near a waterbody, including dams and groundwater are obtained prior to works commencing.
- 5 **NSW Rural Fire Service Conditions:**

During the works hereby approved, the applicant must ensure the following:

- Fire service vehicles can access the site during an emergency by using the haul road;
- Site offices are be protected with an appropriate Asset Protection Zone;
- Remaining dams at the site can provide water to be used during a bush fire response scenario; and
- Signage at the site will clearly indicate the locations of earthworks personnel and other areas within the Sydney Science Park.

- 6 The approval does not derogate or over ride any obligations on the applicant set by the Planning Agreement/s for the site. The onus is on the applicant to ensure that the obligations under the Planning Agreement/s continue to be met as a result of the approved works.

Heritage/Archaeological relics

- 7 If any archaeological and/or aboriginal relics are uncovered during the course of the works no further work shall be undertaken until further directed by Penrith City Council, or the Office of Environment and Heritage.

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.

The applicant is to ensure that all relevant Aboriginal Heritage Impact permits are in place prior to any work commencing and that the requirements and recommendations in the current permit AHIP No. C0003861 are adhered to during any works hereby approved.

Environmental Matters

- 8 Erosion and sediment control measures shall be installed **prior to the commencement of any civil works** 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.
- 9 Before any works are commenced in the vicinity of the adjoining properties to the south, adequate fencing with star picket and wire fencing shall be installed within the subject site (Sydney Science Park) to ensure that the adjoining site/s are not disturbed by the earthworks.
- 10 Where the land is to be filled, such filling is to be compacted in accordance with AS 3798-2007. Certification is to be submitted to the Principal Certifying Authority by a Geotechnical Engineer verifying that the work has been undertaken prior to the commencement of the construction of any building.
- If Penrith City Council is not the Principal Certifying Authority, a copy of the certification is to be submitted to Council for their reference.
- 11 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.

- 12 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 'Waste Management Plan for Proposed Civil Works at the First Precinct and Borrow Pit, Sydney Science Park, Luddenham Road, Luddenham, NSW' prepared by JBS&G Australia Pty Ltd (dated 20 November 2019, ref. 55375-118022, revision C).

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.

- 13 Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.

If mains sewer is not available or if Sydney Water will not allow disposal to the sewer then a licensed waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.

The waste contractor and waste facility are to hold the relevant licences issued by the NSW Environment Protection Authority.

- 14 The 'Imported Fill Protocol: Sydney Science Park, Luddenham, NSW' prepared by JBS&G Australia Pty Ltd is to be implemented and adhered to throughout all stages of the development.

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

- Supervise all filling works.
- On completion of filling works, carry out an independent review of all documentation relating to the filling of the site, and submit a review findings report to Council and any Principal Certifying Authority. All fill material documentation is to (at minimum):
 - o be prepared by an appropriately qualified person (as defined in the Penrith Development Control Plans) with consideration of all relevant guidelines, standards, planning instruments and legislation (e.g. EPA, NEPM, ANZECC, NH&MRC),
 - o clearly state the legal property description of the fill material source site and the total amount of fill tested,
 - o provide details of the volume of fill material to be used in the filling operations,
 - o provide a classification of the fill material to be imported to the site in accordance with the NSW Environment Protection Authority's "Waste Classification Guidelines" 2014, and
 - o (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.
- 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.

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 not be carried out prior to any further approved works.

- 15 **Prior to the commencement of any works on site**, a Construction Environmental Management Plan (CEMP) is to be prepared by a suitably qualified person and submitted to Council for approval. If Council is not the certifying authority, a copy of Council's approval is to be provided to the Principal Certifying Authority.

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

- Noise control and hours of operation - with particular consideration given to the recommendations included in Section 5.3, 5.4 and 5.5 of the 'Sydney Science Park - Bulk Earthworks: Construction Noise & Vibration Assessment' prepared by Wilkinson Murray dated November 2018 (Report No. 18224, Version B).
- Air quality management (including dust suppression) - with consideration given to the recommendations included in Section 9 of the 'Sydney Science Park - Bulk Earthworks: Air Quality Impact Assessment' prepared by Wilkinson Murray dated November 2018 (Report No. 18224A, Version B) and the correspondence prepared by Wilkinson Murray dated 18 June 2019 titled "SSP - Bulk Earthworks DA - Air Quality" (Project No. 18224). This is to include a Construction Dust Management Plan, following the framework identified in the Wilkinson Murray correspondence. Provision is also to be made for a complaints hotline.
- Water quality management.
- Community consultation and liaison.

The approved CEMP is to be implemented and adhered to during all development stages.

- 16 Mud and soil from vehicular movements to and from the site must not be deposited on the road.
- 17 The procedure for responding to 'unexpected finds' contained in the 'Waste Management Plan for Proposed Civil Works at the First Precinct and Borrow Pit, Sydney Science Park, Luddenham Road, Luddenham, NSW' prepared by JBS&G Australia Pty Ltd (dated 20 November 2019, ref. 55375-118022, revision C) is to be implemented and adhered to.

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. Should any contamination be found during development works and should remediation works be required, development consent is to be sought from Penrith City Council before the remediation works commence.

- 18 The applicant must ensure that any approvals that may be required from the Environment Protection Authority with regard to a licence under the Protection of the Environment Operations Act 1997 is obtained. The applicant is to inform Council in writing of any change which may necessitate the requirement for a Licence.

- 19 Where trees are cleared from the development site, this material (coarse woody habitat) shall be used to provide micro-habitats for wildlife. Coarse woody debris should be stockpiled for use in the riparian /revegetation areas, either as whole logs or as mulch for erosion control. Branches with a diameter of 10-20 centimeters (cm) and 1-4 meters (m) in length will be spread randomly throughout the VMP area at low density.

Any hollows that can be salvaged should be strapped to trees of the same species (where possible) in the patches of native vegetation to be retained in the study area. These works need to be under the supervision of an ecologist or qualified bush regenerator.

Construction

- 20 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 at least 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.

The signage is to be erected:

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

All construction signage is to be removed when the works are completed.

- 21 Prior to the commencement of construction works 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 Council, or
 - alternatively, any other sewage management facility approved by Council.

- 22 On-site construction activities are to be carried out during the following hours:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 4pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

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

Engineering

- 23 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.
- 24 An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council prior to commencement of any works on site or prior to the issue of any Construction Certificate, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

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

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

- 25 A Construction Certificate is to be approved by the Certifying Authority for the provision of Bulk Earthworks.

Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that engineering plans are consistent with the stamped approved concept plan/s prepared by Enspire Solutions Pty Ltd, reference number 180001-P1BE-DA-C01.01 to C05.02, revision 3, dated 21.01.2020, and that all bulk earthworks have been designed in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, any applicable Austroads Guidelines and best engineering practice.

The civil works may include but are not limited to the following:

- Sediment and erosion control measures
- Flood control measures
- Overland flow paths
- Traffic facilities
- Earthworks

The Construction Certificate must be supported by engineering plans, calculations, specifications and any certification relied upon.

Note: Council's Development Engineering Department can provide this service. Contact Penrith City Council's Development Engineering Department on (02) 4732 7777 or visit Penrith City Council's website for more information.

- 26 Prior to the issue of any Construction Certificate, the applicant shall ensure that a Construction Traffic Management Plan (CTMP) has been submitted to and approved by Penrith City Council. The applicant must also supply a copy of the CTMP to Transport for NSW for review prior to submitting the plan to Council and the CTMP must incorporate the recommendations of Transport for NSW. Evidence of correspondence with TfNSW is to be provided with the CTMP to Council.

Approval of the CTMP may require endorsement from the Local Traffic Committee. The CTMP shall include, but not be limited to the following: vehicle routes, number of construction vehicles, hours of operation, access arrangements, pedestrian management, and parking management for workers. The CTMP shall be certified by an appropriately accredited person and/or RMS Traffic Controller. The CTMP shall be certified by an appropriately accredited person and/or RMS Traffic Controller.

The CTMP shall be supported by a traffic control plan, designed in accordance with the requirements of the RMS Manual, Traffic Control at Work Sites Version 2, the current Australian Standards, and Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control Devices for Works on Roads'.

The traffic control plan must be prepared by a suitably qualified and RMS accredited Work Site Traffic Controller.

- 27 Work on the subject site shall not commence until:

- a Construction Certificate has been issued,
- a Principal Certifying Authority has been appointed for the project, and
- any other matters prescribed in the development consent and the Environmental Planning and Assessment Act and Regulation have been complied with.

A Notice of Commencement of works is to be submitted to Penrith City Council two (2) days prior to commencement of engineering works or clearing of the site.

- 28 The following compliance documentation shall be submitted to the Principal Certifying Authority. A copy of the following documentation shall be provided to Penrith City Council where Penrith City Council is not the Principal Certifying Authority:

a) Works As Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Construction Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The WAE drawings shall be prepared in accordance with Penrith City Council's Engineering Construction Specification for Civil Works.

b) The WAE drawings shall clearly indicate the 1% Annual Exceedance Probability flood lines (local and mainstream flooding).

c) The WAE drawings shall be accompanied by plans indicating the depth of cut / fill for the entire development site. The survey information is required to show surface levels and site contours at 0.5m intervals. All levels are to be shown to AHD.

d) A Geotechnical Report certifying that all earthworks have been completed in accordance with AS 3798 and Penrith City Council's Design Guidelines and Construction specifications. The report shall include a compaction reports for bulk earthworks a statement of compliance.

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

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

- 30 All earthworks are to be undertaken in accordance with the relevant Australian Standards, including AS 1289 Method of testing soils for engineering purposes and AS 3798 Guidelines on earthworks for commercial and residential development, and Council's engineering standards and specifications, including Engineering Works for Subdivisions and Developments and Engineering Construction.

The level of testing shall be determined by a Geotechnical Testing Authority / Superintendent in consultation with the Principal Certifying Authority. Compaction certificates are to be submitted to the PCA and a copy provided to Council.

31 Water NSW Conditions:

(a) Final levels and design of the proposal must not result in an increase in overland flow water into the Pipelines corridor of either quantity or quality. The development must be designed, operated and maintained to ensure post-development flows do not exceed pre-development flows into and through the Pipelines Corridor.

(b) Stormwater directed to or across the Pipelines corridor is not acceptable, except at an approved point of discharge for the development.

(c) Erosion and sediment controls are to be designed, installed and maintained in accordance with the Blue Book, Landcom (2004), Managing Urban Stormwater: Soils and Construction.

(d) Effective erosion and sediment controls shall be installed prior to any earthworks commencing and shall prevent sediment or polluted water leaving the site.

(e) Adequate measures shall be implemented to suppress any dust raised during the construction phase.

(f) All incidents that affect or could affect the WaterNSW Pipelines Corridor shall be reported to WaterNSW on the 24 hour Incident Notification Number 1800 061 069 as a matter of urgency.

- 32 Top soil removed as a result of the approved earthworks is to be retained on site and reused so as to retain a suitable layer that is more receptive to future landscaping.
- 33 The developer shall undertake a dilapidation report for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the excavations associated with the development. If Council is not the Certifying Authority the dilapidation report shall be submitted to Council and all affected relevant landowners prior to Construction Certificate issue and then updated at the completion of works confirming no damage has occurred.

Landscaping

- 34 No trees are to be removed, ringbarked, cut, topped or lopped or wilfully destroyed (other than those within the proposed areas approved for earthworks) without the prior consent of Penrith City Council.

Certification

35 Prior to the commencement of any earthworks 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 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.

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C4 - Land Management

Clause 4.1 (4) (a) states that earthworks to create a building platform should not exceed 1m from existing natural ground level. In this case, the proposed cut and fill would exceed a depth of 1m. The level of cut or fill in some parts will be between 0m to 4m (although the majority of the cut or fill will be between 0m to 3m). In this instance the level of earthworks proposed is considered to be acceptable because Precinct 1 has an endorsed Precinct Plan that outlines the general layout of the developable lots, including roads and open space. In addition, the dams located in Precinct 1 already have approval to be dewatered. Therefore, it is expected that for Precinct 1, the existing natural landforms will be changed to accommodate development of the area.

E16 Sydney Science Park

This chapter of the DCP provides further detailed controls and objectives for the entire Sydney Science Park site. With regard to Precinct 1, which is the majority of the area the subject of this application, the relevant controls and objectives in the DCP are as follows:

- *E16 B - Development will commence in the south, to be known as the First Community Precinct.*

The proposal meets this objective as it relates to earthworks for site preparation of Precinct 1, which has an endorsed First Community Precinct Plan.

- *E16.2.1.3 - A Precinct Plan is required and development must be consistent with the adopted Precinct Plan.*

A precinct plan has been endorsed for Precinct 1. The proposed works, as amended, are consistent with the endorsed Precinct Plan because the earthworks will only provide preliminary levels of future building pads and will not set the location of roads, open space or buildings. The removal of the works from the Luddenham Road interface will also ensure that the further detailed planning for the Luddenham Road frontage can occur. Most of the other controls and objectives in the DCP relate to design and location of roads, buildings and open space. They are not relevant to this particular application.