

## Assessment against planning controls: section 4.15, summary assessment and variations to standards

### 1 Environmental Planning and Assessment Act 1979

#### 1.1 Section 4.15 'Heads of Consideration'

Heads of Consideration	Comment	Complies
a. The provisions of: (i) Any environmental planning instrument (EPI)	<p>The proposal is considered to be consistent with the relevant EPIs, including:</p> <ul style="list-style-type: none"> <li>• Protection of the Environment Operations Act 1995</li> <li>• Biodiversity Conservation Act 2016</li> <li>• Sydney Regional Environmental Plan (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy No. 33 – Hazardous and Offensive Development</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River</li> <li>• Blacktown Local Environmental Plan 2015</li> <li>• Blacktown Development Control 2015</li> <li>• Central City District Plan 2018</li> </ul> <p>The proposed Data Centre falls within the definition of a 'high technology industry' (information technology) which is a type of light industry and is permissible within the B5 Business Development zone under the Blacktown Local Environmental Plan 2015.</p> <p>Consideration of each of the EPIs is outlined below.</p>	Satisfactory, subject to conditions of consent
(ii) Any proposed instrument that is or has been the subject of public consultation under this Act	Not applicable	Not applicable
(iii) Any development control plan (DCP)	The proposal is not consistent with Blacktown Development Control Plan 2015 in terms of parking provision, but includes a merit assessment of the provision of car parking for the proposed use.	No, but acceptable subject to conditions
(iii a) Any Planning Agreement	There are no Planning Agreements associated with this proposal.	Not applicable
(iv) The regulations	The proposal is consistent with the regulations.	Yes

Heads of Consideration	Comment	Complies
b. The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts on the locality	<p>It is considered that the likely impacts of the development, including access, traffic and parking, trees and landscaping, design, bulk and scale, overshadowing, noise, privacy, waste management and stormwater management have been satisfactorily addressed, subject to conditions.</p> <p>The site contains Cumberland Plain Woodland and an Assessment of Significance (5 part test) under the Biodiversity Conservation Act 2016 was required as approximately 0.07 hectares (22 trees) of Cumberland Plain Woodland is proposed to be removed.</p> <p>The biodiversity offset scheme threshold of 0.25 ha is not exceeded and a Biodiversity Assessment Report (BDAR) was not required. This was reviewed by Council's Natural Areas Team who supports the recommendation and have conditioned for a Biodiversity Management Plan (BMP) to be imposed on the consent.</p> <p>The BMP is to include a pre-clearance survey for hollow bearing trees and threatened species habitat, appropriate fauna management strategies during the pre-construction, construction and post construction activities, procedures for controlling the introduction and spreading of weeds and pathogens, and procedures for dealing with injured fauna or unexpected threatened species finds.</p> <p>A site analysis was undertaken to ensure that the proposed development will have minimal impacts on surrounding properties. In view of the above it is believed that the proposed development will not have any adverse social, economic or environmental impacts.</p>	Yes, subject to conditions
c. The suitability of the site for the development	The site is zoned B5 Business Development under Blacktown Local Environmental Plan 2015. The proposed Data Centre is defined as a type of light industry and is permissible on the site with development consent.	Yes
d. Any submissions made in accordance with this Act, or the regulations	No submissions were received as part of the public notification process.	Not applicable
e. The public interest	It is considered that no adverse matters relating to the public interest arise from the proposal and the provision of a new Data Centre is considered to be in the public interest.	Yes

## 2 Protection of the Environment Operations Act 1995

Summary comment	Complies
<p>The objective of the Protection of the Environment Operations Act 1995 is to protect, restore and enhance the quality of the environment in NSW having regard to the need to maintain ecologically sustainable development.</p> <p>Schedule 1 Scheduled activities, Part 1 Premises-based activities, subclause 9 Chemical Storage identifies the criteria for a scheduled activity. Petroleum products storage is declared to be a scheduled activity if it meets the criteria of capacity to store more than 200 tonnes (liquefied gases) or 2,000 tonnes (chemicals in any other form).</p>	Satisfactory as threshold is not exceeded

Summary comment	Complies
<p>The use proposes to store a base tank of 10,700 litres for the Data Centre and base tank of 2,900 litres for the office generator, having a total of approximately 13,600 litres of diesel which would equate to approximately 14 tonnes.</p> <p>Therefore, the amount of petroleum proposed to be stored on site does not require a licence by the EPA. However, a condition of consent will limit the volumes as outlined above.</p>	

### 3 Biodiversity Conservation Act 2016

Summary comment	Complies
<p>The Biodiversity Conservation Act 2016 aims to maintain a healthy, productive and resilient environment for the greatest wellbeing of the community, now and into the future, consistent with the principles of ecologically sustainable development</p> <p>The Applicant's ecological constraints analysis dated 4 May 2018 and an assessment of significance dated 5 April 2019 prepared by Eco Logical Australia Pty Ltd was submitted in support of the application, which concluded that the proposal is unlikely to constitute a significant impact on Cumberland Plain Woodland given the:</p> <ul style="list-style-type: none"> <li>proposal will remove 0.07 ha of the community, comprising 0.05 ha in moderate condition and 0.02 ha of scattered paddock trees</li> <li>area to be removed constitutes 0.26% of the community in the local occurrence</li> <li>areas to be removed lacked structural complexity and existed as small, isolated patches</li> <li>proposal would not increase fragmentation of the community within the local occurrence</li> <li>area to be removed is not considered important to the functionality of the community within the local occurrence.</li> </ul> <p>As such the biodiversity offset scheme threshold of 0.25 ha is not exceeded and a Biodiversity Assessment Report (BDAR) was not required. However, an Assessment of Significance (5 part test) under the Biodiversity Conservation Act 2016 was required.</p> <p>An Assessment of Significance was submitted in support of the proposal and reviewed by our Ecology Officer who supports the conclusion and has provided conditions of consent for a Biodiversity Management Plan (BMP) to be developed and submitted to our Natural Areas Team for approval.</p> <p>The BMP is to include:</p> <ul style="list-style-type: none"> <li>a pre-clearance survey, undertaken by an appropriately qualified and experienced ecologist, for hollow bearing trees and threatened species habitat. All hollows identified require replacement with suitable artificial hollows or nest boxes, with 3 nest boxes replacing every natural hollows removed</li> <li>identification of appropriate fauna management strategies for pre-construction, construction and post-construction activities, including environmental control measures for pre-clearing process</li> <li>a procedure for controlling the introduction and spreading of weeds and pathogens, including hygiene protocols and arrangements for monitoring</li> <li>procedures for dealing with injured fauna or unexpected threatened species finds. The procedures must include, as a minimum: <ul style="list-style-type: none"> <li>stop work arrangements in the immediate area of the threatened species</li> <li>notification and communication protocol</li> <li>consultation with the specialists to assess the significance of the find</li> <li>a list of approvals, licences or permits likely required prior to recommencing works</li> </ul> </li> </ul>	<p>Yes, acceptable subject to conditions of consent</p>

Summary comment	Complies
<ul style="list-style-type: none"> <li>proposed strategies for the re-use (on-site or in nearby Council reserves in consultation with Council's Natural Areas Team) of: <ul style="list-style-type: none"> <li>hollow trees/logs, woody debris and mulch generated from clearing</li> <li>seed, which may be collected from trees during felling where available, and</li> <li>top soil containing native seed.</li> </ul> </li> </ul> <p>During construction and clearance activities the BMP is to be adhered to. An appropriately qualified and experienced ecologist is to be present when clearing trees on-site. At the conclusion of clearance works, a report detailing works undertaken in accordance with the Biodiversity Management Plan is to be provided to the Natural Areas Team within 14 days of clearance works.</p> <p>Therefore, the assessment under the Biodiversity Conservation Act 2016 satisfies the requirements of this clause.</p> <p>Whilst 22 trees are proposed to be removed to facilitate this development, 17 existing trees of the Cumberland Plain Woodland will be retained in the north-western corner of the site.</p> <p>Compensatory planting of 89 trees around the perimeter of the site, as well as street tree planting along both Eddie and Sargents Roads, is proposed in order to present a unified landscape presentation for the site.</p> <p>The plant schedule for the site is a more restrained plant species selection in keeping with the range of Cumberland Plain Woodland species. The landscape proposal aims to strengthen this isolated community with weed removal and revegetation of the lower understorey within this area.</p> <p>The planting theme for the side and rear boundaries will use Cumberland Plain Woodland species of clear stemmed trees and low understorey planting to create a low water use and indigenous planting theme for the site. This will also strengthen the existing pocket of Woodland on the site.</p>	

#### 4 State Environmental Planning Policy (State and Regional Development) 2011

Summary comment	Complies
<p>The Sydney Central City Planning Panel (SCCPP) is the consent authority for all development with a capital investment value (CIV) of over \$20 million (being the CIV applicable for applications lodged but not determined prior to 1 March 2018 (under Clause 23 transitional provisions of this SEPP).</p> <p>As this DA has a CIV of \$86,832,601, Council is responsible for the assessment of the DA and determination of the application is to be made by the Panel.</p>	Yes

#### 5 State Environmental Planning Policy No 33 - Hazardous and Offensive Development

Summary comment	Complies
<p><b>Clause 13- Matter for consideration by consent authority</b></p> <p>In determining whether the proposed development constitutes 'potentially hazardous development', an assessment against the Department of Planning's Applying SEPP 33 Guidelines has been undertaken.</p> <p>The Applicant has indicated that the aboveground fuel tanks are proposed to store diesel fuel to facilitate the operation of the back-up generators when required in an emergency situation, such as a power failure.</p>	Satisfactory as threshold is not exceeded

Summary comment	Complies
<p>The Applicant has confirmed that the quantity and chemical make-up of the fuel being stored on the site will not result in the site being identified as a potentially hazardous industry under the provisions of SEPP 33.</p> <p>The proposal is considered to be capable of being conducted in a manner that is consistent with the aim, objectives and provisions of SEPP 33 and is supported.</p>	

## 6 State Environmental Planning Policy (Infrastructure) 2007

Summary comment	Complies
<p>State Environmental Planning Policy (Infrastructure) 2007 ensures that the Roads and Maritime Services is made aware of and allowed to comment on development that is 'traffic generating development' listed under Schedule 3 of the SEPP.</p> <p>The proposed development has a total building floor area of 8,228 m<sup>2</sup> and does not have access to a classified road or a road that connects to a classified road within 90 m.</p> <p>Therefore, the SEPP does not apply to the proposal.</p>	Not applicable

## 7 State Environmental Planning Policy No 55 – Remediation of Land

Summary comment	Complies
<p>State Environmental Planning Policy 55 aims to 'provide a State-wide planning approach to the remediation of contaminated land'. Clause 7 requires a consent authority to consider whether the land is contaminated and if it is suitable or can be remediated to be made suitable for the proposed development, prior to the granting of development consent.</p> <p>A Detailed Site Investigation and soil assessment were undertaken by Prensa that confirmed the presence of asbestos. The report recommended that an Asbestos Management Plan be implemented to manage the asbestos containing material during redevelopment works in the event further fragments are encountered.</p> <p>Based on the findings of the site investigation, the report concluded:</p> <ul style="list-style-type: none"> <li>it is considered unlikely that contamination at the site would pose a potential risk to future site users, in light of the proposed commercial use, provided that no further asbestos containing material is identified and an Asbestos Management Plan is implemented</li> <li>no remedial works have been recommended as an outcome of this detailed site investigation at this time, however should further ACM be found then remedial works may be required</li> <li>the site can be made suitable for the proposed commercial use.</li> </ul> <p>Given the findings, all areas that are contaminated are required to be remediated. A condition is to be imposed on the consent that, on completion of remediation, a qualified environmental consultant is to prepare a validation report in line with the NSW Environment Protection Authority's and the National Environment Protection Council Guidelines for contamination.</p> <p>A NSW Environment Protection Authority accredited Site Auditor will be required to review the validation report and submit to Council a site audit statement prior to the issue of a Construction Certificate to confirm the site is suitable for the proposed use.</p>	Yes, subject to conditions of consent

## 8 Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River

Summary comment	Complies
<p>The planning policies and recommended strategies under SREP 20 are considered to be met through the development controls of the Blacktown Local Environmental Plan 2015.</p> <p>The planning policies and recommended strategies under SREP 20 are considered to be met through the development controls of the Blacktown City Council DCP 2015.</p> <p>The development complies with the development standards and controls established within Blacktown Local Environmental Plan 2015, to enable the orderly development of the site. Therefore, the proposal is considered to satisfy Clause 4 of SREP 20.</p>	Yes

## 9 Blacktown Local Environmental Plan 2015

Summary comment	Complies
We have assessed the DA against the relevant provisions and found that it is compliant with all matters under Blacktown Local Environmental Plan 2015 subject to conditions.	Yes

## 10 Blacktown Development Control Plan 2015

Summary comment	
<p>We have assessed the Development Application against the relevant provisions and the proposal is compliant with the Blacktown City Council Development Control Plan 201 with the exception of car parking.</p> <p>The proposed car parking provision has been assessed on merit and is considered satisfactory. Refer to Section 7 of this report for further discussion.</p>	

## 11 Central City District Plan 2018

Summary comment	Complies
<p>While the Act does not require consideration of District Plans in the assessment of Development Applications, the DA is consistent with the following overarching planning priorities of the Central City District Plan:</p> <p><b>Liveability:</b></p> <ul style="list-style-type: none"><li>• Improving access to jobs and services</li><li>• Creating great places.</li></ul>	Yes