

COUNCIL ASSESSMENT REPORT

Panel Reference	2019WCI022
DA Number	DA/93.1/2019
LGA	Fairfield City Council
Proposed Development	Construction and Use of a Masonry Plant, Construction of Four (4) Industrial Warehouses, Estate Wide Earthworks, Infrastructure, Subdivision and Services.
Street Address	224-398 Burley Road, HORSLEY PARK (Lot 20 DP 1246626)
Applicant/Owner	Austral Bricks Pty Ltd
Date of DA lodgement	12/03/2019
Number of Submissions	Nil
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Pursuant to Clause 3 of Schedule 7 of the <i>State Environmental Planning Policy (State and Regional Development) 2011</i> , the development has a capital investment value of more than \$30 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 64 – Advertising and signage • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy No. 33 – Hazardous and Offensive Development • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Western Sydney Employment Area) 2009 • Oakdale East Estate Development Control Plan
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Satisfactory Arrangement Certificate issued by Department of Planning, Industry & Environment • Confirmation of Satisfaction of SEPP (WSEA) 2009 – Clause 26 – issued by Department of Planning & Industry & Environment • Letter from the Applicant
Clause 4.6 requests	Nil
Summary of key submissions	Nil
Report prepared by	Jason Liang, Senior Development Planner
Report date	10 March 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)?

Not Applicable

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?

Yes

1. Introduction

On 16 December 2019, the Panel determined to defer the determination of the development application subject to the issue of the satisfaction of the provisions of Clause 26 (3) and Clause 29 of the State Environmental Planning Policy (Western Sydney Employment Area) 2009.

In response, the applicant sought to satisfy the provisions of Clause 26 (3) and Clause 29 of the State Environmental Planning Policy (Western Sydney Employment Area) 2009. In addition, slight modifications to several of the conditions of consent were sought.

After review, it is considered that the deferred matters have been satisfied following the Deputy Secretary of the Department of Planning, Industry & Environment issuing a Satisfactory Arrangement Certificate and a Confirmation of Clause 26 (3). All the requested amendments to the conditions were considered to be reasonable and have been adopted in the revised draft conditions at Appendix 1.

2. Draft Deferred Commencement Consent

At its meeting on 16 December 2019, the panel deferred a determination of DA/93.1/2019 for the following reasons:

“Having regard to the provisions of Clause 26 (3) and Clause 29 (3) of SEPP (Western Sydney Employment Area) 2009, the panel is not able to determine this application at this time as the land is being converted from a non-industrial use, but a ‘Satisfactory Arrangement Certificate’ has not yet been issued by the Director General Department of Planning in relation to satisfactory arrangements having been made to contribute to the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network) in relation to the land to which this DA applies. Under Clause 29, the requirement for that certificate is a mandatory precondition where land is being converted from a non-industrial to an industrial use”.

3. Response

On 24 February 2020, the Deputy Secretary of the Department of Planning, Industry & Environment issued a ‘Satisfactory Arrangement Certificate’ for the subject development, therefore satisfying Clause 29 of the State Environmental Planning Policy (Western Sydney Employment Area) 2009.

On 16 March 2020, the Secretary of the Department of Planning, Industry & Environment issued a ‘Confirmation of Satisfaction’ for the subject development, therefore satisfying Clause 26 (3) of the State Environmental Planning Policy (Western Sydney Employment Area) 2009.

4. Draft Conditions (Other)

Since the Western City Planning Panel meeting, the applicant has requested amendments to the draft conditions of consent to ensure the conditions reflect construction staging which reduces the need for subsequent Section 4.55 (1A) modifications. It is acknowledged that the amendments proposed do not alter the merits of the development. Council has considered these amendments and raises no concerns.

Further, the NSW EPA has also requested that General Terms of Approval be attached to the conditions of consent to enable the applicant to modify the existing EPA Licence.

A condition of consent has also been included by Council to ensure that the development contribution as outlined in the Voluntary Planning Agreement (SVPA2019-11) between the applicant and the Department of Planning is paid prior to the issue of the relevant construction certificate or subdivision certificate, whichever occurs first.

Condition	Request	Assessment
No. 2 (Site Audit Statement)	Rewording the condition to require the issue of a Site Audit Statement prior to the issue of a construction certificate for building works rather than 'a' construction certificate.	<p>No concerns raised to this modification.</p> <p>The draft consent wording required a site audit statement prior to any construction certificate. However, it is noted that a construction certificate is required for the removal of the trees and associated earthworks that are located on top of the contaminated land. The site can only be remediated and subsequently be issued a Site Audit Statement after the removal of the trees.</p> <p>Therefore, the wording shall be amended to state "prior to the issue of a construction certificate for building works".</p> <p>Council's Subdivision Engineer has reviewed this amendments and raises no concerns.</p>
<ul style="list-style-type: none"> No. 8 (Landscape Plans) No. 9 (Stormwater Drainage Certificate) No. 10 (On-site Detention Design Certificate) No. 15 – (Parking Spaces) No. 16 – (Accessible Spaces) No. 17 (Car Parking Obstructions) No. 22 – (Traffic Calming Devices) No. 26 (Bicycle Parking Spaces) No. 28 (Water & Utilities) No. 30 (Bushfire Design) No. 31 (Ember Protection) No. 32 (Bushfire Landscape) No. 33 (Impacts on Utilities) 	Rewording the condition to require an amended landscape plan prior to the issue of a construction certificate for building works rather than 'a' construction certificate.	<p>No concerns raised to this modification.</p> <p>It is understood that the application will be subject to 3 separate construction certificate, being:</p> <ul style="list-style-type: none"> CC1 – Earthworks & Tree Removal; CC2 – Infrastructure (Engineering) CC3 – Building Works <p>The conditions that are referenced relate to the building works construction certificate.</p> <p>The modification to the wording ensures that these conditions are met prior to the issue of a building works construction certificate rather than construction certificates at an earlier stage.</p>

<ul style="list-style-type: none"> No. 34 (Wheel Wash Facilities) 		The proposal does not result in any additional uncertainty relating to the satisfaction of the condition.
No. 12 (i) - (Final Stormwater Drainage Plan)	That, the rainwater tank capacity to meet water demand for irrigation and toilet flushing be amended from 80% to 50% capacity.	<p>No concerns raised to this modification.</p> <p>It is acknowledged this is an error as Chapter 6.3 (b) of the Oakdale East Estate DCP requires 50 per cent rainwater tank capacity instead of 80 per cent capacity which is a requirement in the Fairfield DCP 2013.</p> <p>Council's Development Engineer has reviewed this amendment and raises no concerns.</p>
No. 12 (iv) - (Final Stormwater Drainage Plan)	That, the fencing around the proposed OSD basin to be non-climbable chain link fencing in lieu of pool-type fencing.	<p>No concerns raised to this modification.</p> <p>The intention of the fencing around the OSD basin is to protect pedestrians and vehicles. It is acknowledged that a non-climbable chain link fence would be a more cost effective measure that would serve the same purpose as a pool type fencing.</p> <p>Council's Development Engineer has reviewed this amendment and raises no concerns.</p>
Inclusion of No. 38A – Solar Roof Panels	That, solar panels generating at least 50kW of power be installed on all warehouse roofs, excluding the masonry plant.	<p>No concerns raised to the inclusion of this condition.</p> <p>The applicant has agreed to incorporate this condition due to the Planning Panel recommending solar panels on the roof of the warehouses. The architectural roof plans have also been amended to include indicative solar panel layout.</p>
No. 57 – (Environmental Reports Certificate)	Rewording the condition to require environmental report certificate for the final occupation certificate rather than 'an' occupation	<p>No concerns raised to the inclusion of this condition.</p> <p>Due to the development requiring a number of</p>

	certificate.	<p>construction certificates, there will also be a number of occupation certificates.</p> <p>The environmental report certification condition relates primarily to the final occupation certificate which encompasses the buildings.</p>
Inclusion of No. 72A – General Terms of Approval – NSW EPA	That, the condition requiring the development to comply with the General Terms of Approval that were issued by the NSW Environmental Protection Authority on 10 February 2020 be included as a condition of consent.	<p>The NSW EPA stated that there were no objections to the proposal subject to conditions.</p> <p>However, upon further review, the NSW EPA has requested that General Terms of Approval be included in order to allow the applicant to vary the existing environmental protection licence (EPL 546) subject to a number of additional and amended conditions.</p> <p>This has been incorporated into the consent (Condition No. 72A).</p>
Inclusion of No. 72B – Development Contribution (SVPA2019-11)	That, the condition requiring the development contribution outlined in the Oakdale East Planning Agreement SVPA2019-11 be paid prior to the issue of the relevant construction certificate or subdivision certificate, whichever occurs first.	Council has included this condition to ensure the development contribution as outlined in the planning agreement is adhered to.

All conditions proposed to be amended are considered acceptable and revised draft conditions of consent are included at Appendix 1.

5. Conclusion

Given that documentation relating to the satisfaction of Clause 26(3) and Clause 29(3) of the SEPP (Western Sydney Employment Area) 2009 has been submitted, it is considered that the deferred matters are satisfied. As such, the draft condition of consent are recommended to be adopted.

Further, minor variations to the conditions of consent, as requested by the applicant and the NSW Environment Protection Authority, have been adopted in the revised draft consent notice.

6. Revised Recommendation

That the Sydney Western City Planning Panel (SWCPP) as the consent authority:

Grant Consent for the application subject to the attached revised conditions of consent, to development application DA/93.1/2019 for the Construction and Use of a Masonry Plant, Construction of Four (4) Industrial Warehouses, Estate Wide Earthworks, Infrastructure, Subdivision and Services at Lot 20 DP 1246626, 224-398 Burley Road, Horsley Park.