

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	<p>The proposal is considered to be consistent with the relevant environmental planning instruments including:</p> <ul style="list-style-type: none"> State Environmental Planning Policy (Industry and Employment) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 <p>Importantly, the Department of Planning Industry and Environment has issued a Satisfactory Arrangements Certificate for the proposal to satisfy Clause 2.28 of State Environmental Planning Policy (Industry and Employment) 2021.</p>	Yes, subject to conditions
ii. Any proposed instrument that is or has been the subject of public consultation under this Act	N/A	N/A
iii. Any development control plan	The Employment Lands Precinct Plan – Eastern Creek Precinct – Stage Three applies to the site. The proposal is generally compliant with this Precinct Plan apart from a variation to the retaining wall height, car parking provisions and indicative road pattern layout. A variation to these controls is considered acceptable as detailed in the assessment report.	No, but the 2 variations are considered acceptable in this instance.
iv. a) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4,	<p>A Voluntary Planning Agreement has been entered into between the applicant and Council for:</p> <ul style="list-style-type: none"> contributions to be made by the applicant in lieu of them not delivering stormwater management facilities included in Contribution Plan 18. the creation of an easement in gross for emergency access over part of the land in favour of Council. 	Yes
v. the regulations (to the extent that	N/A	N/A

Heads of Consideration	Comment	Complies
they prescribe matters for the purposes of this paragraph),		
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	Supporting technical studies that accompany this DA have been assessed by the relevant sections of Council including natural areas, open space, engineering (development, drainage and S7.11 design), environmental health and traffic. All sections support the application subject to deferred commencement conditions which have been imposed in the consent. This ensures that the proposal should not give rise to any adverse environmental impacts.	Yes
c. The suitability of the site for the development	The proposed development is a permissible land use with the IN1 – General Industrial zone. The proposed development should not have any detrimental effects on threatened species. Its construction and operation is consistent with the site's zoning and the existing industrial land uses surrounding the site. Accordingly, the site is considered to be suitable for the development.	Yes
d. Any submissions made in accordance with this Act, or the regulations	The application was notified from 1 to 15 July and 20 September to 4 October 2021. 1 submission was received which does not warrant refusal of the application.	Yes
e. The public interest	The proposal will facilitate the future development of the site for employment generating uses, consistent with the aims of the State Environmental Planning Policy (Industry and Employment) 2021. The proposal will assist to provide for growth in freight and logistics needs within Greater Sydney. Technical studies accompanying the DA confirm that the environmental impacts associate with the proposal are generally positive and will not give rise to any adverse impacts. The development is therefore considered to be in the public interest.	Yes

2 Biodiversity Conservation Act 2016

Summary comment	Complies
<p>The Biodiversity Conservation Act 2016 aims to maintain a healthy, productive and resilient environment in accordance with Ecologically Sensitive Development principles. It includes an assessment framework for determining the likely impacts of development on biodiversity and threatened species and a consistent methodology for calculating measure to off-set those impacts.</p> <p>A Biodiversity Development Assessment Report, Vegetation Management Plan and flora and fauna assessment accompany the application. The report notes that the development site contains a significant area of Shale Plains Woodland being a species of Cumberland Plain Woodland. This is an endangered ecological community under the Act that must be retained intact. However, the development site excludes this area of sensitive woodland from its footprint except for a portion at the southwest corner for which the applicant must secure a biodiversity offset credit. This C2 zoned land is</p>	Yes, subject to deferred commencement conditions

Summary comment	Complies
<p>mapped on the Biodiversity Values Map as 'Threatened species or communities with potential for serious and irreversible impacts', being Cumberland Plain Woodland. This documentation has been carefully assessed by Council's Natural Areas team. It considers that the issue around indirect impacts to the adjacent C2 zoned land have been sufficiently addressed. The C2 zoned land is approximately 10.5 hectares in area. Due to uncertainty around potential high flows and unknown effects on groundwater, a new Vegetation Management Plan and associated monitoring will be required as a condition of consent to monitor and respond to any changes. Council's Natural Areas team have therefore provided deferred commencement conditions of consent that include the requirement to submit to Council for approval:</p> <ul style="list-style-type: none"> • a new vegetation management plan that must include the site and all of the adjacent C2 Environmental Conservation zoned land. • a dam dewatering plan for the decommissioning of the existing detention basin on site • a biodiversity management plan relating to the land in and adjacent to the development footprint. It must contain full details of the actions proposed to be taken with respect to the management of fauna during the course of carrying out the development. 	

3 State Environmental Planning Policy (Industry and Employment) 2021

Summary comment	Complies
<p>We have assessed the DA against the relevant provisions and it is considered compliant with all other matters under the State Environmental Planning Policy (Industry and Employment) 2021.</p> <p>The Department of Planning Industry and Environment has issued a Satisfactory Arrangements Certificate for the proposal to satisfy Clause 2.28 of State Environmental Planning Policy (Industry and Employment) 2021.</p> <p>The proposed business identification signage will identify the proposed development direct customers to the respective warehouses. It is considered that the proposed signage meets the overall aims and objectives at Clause 3(1)(a) and addresses the criteria in Schedule 5 of this policy.</p>	Yes, subject to conditions

4 State Environmental Planning Policy (Planning Systems) 2021

Summary comment	Complies
<p>The Sydney Central City Planning Panel is the consent authority for all regionally significant development with a capital investment value of over \$30 million or Council related or Crown Developments with a capital investment value of over \$5 million.</p> <p>As this Development Application has a capital investment value of \$35.9 million, Council is responsible for the assessment of the Development Application and determination of the application is to be made by the Panel.</p>	Yes

5 State Environmental Planning Policy (Resilience and Hazards) 2021

Summary comment	Complies
<p>With regards to site contamination, a Stage 1 preliminary investigation has been undertaken by Consulting Earth Scientists. The investigation consisted of 15 soil test locations to a maximum depth of 6 m with gas monitoring wells installed in four of the boreholes closest to the adjacent landfill site. The results of the investigation indicate that the site is not grossly contaminated. A localised hotspot of benzene impact was detected. However, this is not considered to pose a significant risk to future site construction workers or future site occupiers.</p> <p>Landfill gas concentrations or flows were not detected at significant levels during the site investigations. A level one gas risk assessment was carried out, which indicated that the site was of moderate risk due to the presence of a landfill at the adjacent site. Due to the possible changes to the risk posed by the adjacent landfill, the investigation recommends that gas management/protection measures are considered during design and construction of all buildings at the site.</p> <p>The investigation concludes that, after incorporation of landfill gas mitigation measures, the site is likely to be suitable for the proposed commercial/industrial use. These recommendations have been included as a condition of consent.</p> <p>Our Environmental Health section has assessed the investigation as well as the overall proposal and has found it satisfactory subject to conditions including that, prior to any construction works being undertaken, the landfill gas risks posed by the nearby Bingo Recycling and Ecology Park should be further assessed.</p> <p>State Environmental Planning Policy No 33—Hazardous and Offensive Development applied to the application at the time of submission. The relevant provisions have now been included in Chapter 3 of State Environmental Planning Policy (Resilience and Hazards) 2021. A preliminary risk screening has also been undertaken by the applicant to determine if a Preliminary Hazard Analysis is required. The applicant proposes for small volumes of fuels and chemicals be stored on site for use by machinery and equipment during construction.</p> <p>Dangerous goods that would be stored on site during the operational phase include:</p> <ul style="list-style-type: none"> • LPG gas stored in fuel tanks for the operation of machinery such as forklifts • Cleaning and painting products for ongoing maintenance of the building once operational. <p>The proposal does not meet the criteria of a hazardous industry or potentially offensive industry when assessed against the preliminary risk screening guidelines in Applying State Environmental Planning Policy 33: Hazardous and Offensive Development Application Guidelines. The quantity of dangerous goods stored within the facility during operation falls below the thresholds set within the guidelines, therefore a Preliminary Hazard Analysis is not required. The proposal is therefore not considered to be a hazardous industry or an offensive industry.</p> <p>Notwithstanding this, a condition of consent has been imposed that prohibits the storage of hazardous goods above the thresholds set in State Environmental Planning Policy 33.</p>	Yes, subject to conditions

6 State Environmental Planning Policy (Transport and Infrastructure) 2021

Summary comment	Complies
<p>This policy ensures that Transport for NSW is given the opportunity to comment on development nominated in Schedule 3 as 'traffic generating development'.</p> <p>The thresholds for warehouse or distribution centres include:</p>	Yes, subject to conditions

Summary comment	Complies
<ul style="list-style-type: none"> 8,000 m² in site area or (if the site area is less than the gross floor area) gross floor area with access to a road (generally) 8,000 m² in site area or (if the site area is less than the gross floor area) gross floor area with access to classified road or to road that connects to classified road (if access within 90m of connection, measured along alignment of connecting road) <p>The proposed development includes a total warehouse area of 40,730 m². The application has therefore been referred to Transport for NSW, which has no objections subject to conditions.</p>	

7 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 Development Application is consistent with the following overarching planning priorities of the Central City District Plan:</p> <p>Liveability</p> <ul style="list-style-type: none"> Improving access to jobs and services Contributing to the provision of services to meet communities' changing needs. 	Yes

8 Blacktown Local Strategic Planning Statement

Summary comment	Complies
<p>The Blacktown Local Strategic Planning Statement outlines a planning vision for the City over the next 20 years to 2041. The Blacktown Local Strategic Planning Statement contains 18 Local Planning Priorities based on themes of Infrastructure and collaboration, Liveability, Productivity, Sustainability and Implementation.</p> <p>The Development Application is consistent with the following priorities:</p> <ul style="list-style-type: none"> Productivity 	Yes

9 Employment Lands Precinct Plan - Eastern Creek Precinct - Stage Three

Summary comment
<p>Employment Lands Precinct Plan - Eastern Creek Precinct - Stage Three 2005 applies to the site. We have assessed the development application against the relevant provisions and the proposal is considered to be compliant with all matters apart from those outlined in the table below.</p>

Controls/requirements	Proposal	Complies
Section 10 Traffic and transport		
10.2 Local Road Network	Figure 30 Figure 30 shows a local road traversing the site which extends to Archbold Road from Kangaroo Avenue. A Precinct Plan road variation is proposed, which is acceptable based on advice from	No, but a variation is considered acceptable in this instance

Controls/requirements		Proposal	Complies
		<p>our engineers that road construction in this location is going to be impossible due to gradients of the land. The road also traverses biodiversity mapped areas which are not to be harmed.</p> <p>While Kangaroo Avenue is intended to be dedicated to Council, the portion of Kangaroo Avenue that provides access to the site is still privately owned by Frasers. The cul-de-sac head has been built in its permanent arrangement and in accordance with the DCP requirements as confirmed by our engineers. The applicant therefore requires owners consent from Frasers to construct their driveway and get access off Kangaroo Avenue. A deferred commencement condition has been imposed accordingly since owners consent has not yet been provided.</p> <p>An emergency access via the neighbouring Bingo Eastern Creek Resource Ecology Park will provide access for emergency vehicles that might need to use the access and any one trapped needing to exit the site in the event Kangaroo Avenue is closed. This will require the creation of an easement in gross in favour of Council and the public for access on the subject land and adjacent land to exit out on to Honeycombe Drive in time of emergency only. This will be over their existing internal driveway being on the Bingo site using S88E of the Conveyancing Act 1919. The easement in gross for access will be registered on the title of the Bingo site for the entire length of the emergency access route. Conditions of consent have been imposed accordingly.</p>	subject to conditions
10.6 Parking	<ul style="list-style-type: none"> Buildings 7,500 m² or less – 1 space per 100 m² Gross Floor Area Buildings greater than 7,500 m² Gross Floor Area – 1 space per 200 m² Gross Floor Area only for the area in excess of 7,500 where there is a specific end user which would not demand a higher rate and where 	<p>The proposal does not comply with these car parking requirements as outlined below:</p> <ul style="list-style-type: none"> the warehouse component of 38725 m², the required parking would be 544 spaces. the office component including the dock office of 1973m² would be 50 spaces. 	No, but a variation is considered acceptable in this instance subject to deferred commencement conditions

Controls/requirements	Proposal	Complies
	<p>employee parking is adequately catered for</p> <ul style="list-style-type: none"> Commercial / Office: 1 space per 40 m² Gross Floor Area 	<ul style="list-style-type: none"> total parking required is therefore 594 spaces. <p>The proposal includes the provision of only 281 car parking spaces (including 52 provisional spaces).</p> <p>The variation is greater than 50% which will set a serious precedent if supported. It is Council's view that this shortfall can be met in one of 2 ways:</p> <ul style="list-style-type: none"> providing a basement carpark making provisional parking arrangements elsewhere on or off the site with a suitable restriction as to user on the title of the land. <p>As the adjoining land is also owned by the applicant and emergency access is already proposed to be provided on that adjoining land, it is recommended that the 300 parking space shortfall be provided on the adjoining lot as provisional parking only with the title being burdened accordingly through a S88B on part Lot 1 DP 1145808. This will be included as a deferred commencement condition to guarantee the provision of parking.</p> <p>Application of the DCP's accessible parking rate to the proposed parking spaces provided requires 6 accessible parking spaces. The proposal complies with this requirement.</p>

11 Urban Design

<p>11.8 Cut and fill</p>	<p>(d) Retaining wall elements must be no greater than 3 m in height. All retaining walls must be screened by vegetation. Where filling requires a retaining wall element to be greater than 3 m in height, the retaining wall shall be terraced to allow for a ratio of 3 m in height to 1.5 m in length. The 1.5 m terraced area must be provided with suitable landscaping to screen the height of the retaining wall.</p>	<p>A retaining wall of 10m in height without terracing is proposed on the western boundary of the development adjacent to the C2 zone. While this is a significant variation from the 3 m maximum wall height provisions, this wall will be heavily screened by existing vegetation as well as vegetation to be planted in accordance a new Vegetation Management Plan that will have to be provided in accordance with the deferred commencement conditions imposed by our natural areas section. The wall also reduces in height away from the M4, so it gradually lowers along its entire length and eventually</p>	<p>No, but a variation is considered acceptable in this instance, subject to conditions</p>
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Controls/requirements	Proposal	Complies
	<p>meets with finished floor level. The applicant has provided a photomontage of the warehouse and this retaining wall as seen from the M4 travelling eastward (the only location where the wall will be visible) which shows that there will be no visual impacts associated with the wall.</p> <p>A condition of consent has been imposed requiring the submission of an additional landscape plan with downward cascading planting all along this retaining wall. A locally endemic species such as Old Mans Beard or Clematis is required for this planting. The species selected, together with its ongoing management, is to be included in the vegetation management plan. Conditions of consent have been imposed accordingly. This will ensure satisfactory screening of the wall.</p>	