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)	The proposal is considered to be consistent with the relevant EPIs, including: • Sydney Regional Environmental Plan (State and Regional Development) 2011 • State Environmental Planning Policy No. 33 - Hazardous and Offensive Development • State Environmental Planning Policy (Western Sydney Employment Area) 2009 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 – Remediation of Land • Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River • Raceway Precinct Employment Lands Precinct Plan • Central City District Plan 2018 • Blacktown Local Strategic Planning Statement 2020. The site is zoned IN1 General Industrial under State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP). New Clause 27 in Division 3 of the Infrastructure SEPP makes electronic data storage facilities permissible with consent in Business and Industrial zones where 'warehouse or distribution centres' are currently permissible with consent. The proposed development is therefore permissible with consent. The site is located on bushfire prone land (vegetation buffer zone category 1). The submitted bushfire report confirms that all building extensions are outside of the Asset Protection Zone (APZ). No referral to NSW Rural Fire Service is required. The additions are also separated from the bushfire vegetation by a wide power line easement. In this regard, the recommendations of the bushfire report will be reiterated in the consent conditions.	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

Heads of Consideration	Comment	Complies
(iii) Any development control plan (DCP)	The proposal is not controlled by any DCP. The Raceway Precinct Employment Lands Precinct Plan applies to the site as it is within the Western Sydney Employment Area. The proposal is consistent with the Precinct Plan, subject to a merit assessment of car parking provision on site.	No, but satisfactory and 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
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	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. A site analysis was undertaken to ensure that the proposed development will have minimal impact 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.	Yes, subject to conditions
c. The suitability of the site for the development	The site is zoned IN1 General Industrial under the WSEA SEPP. The proposed data centre is a permissible development under Clause 27 in Division 3 of the Infrastructure SEPP.	Yes
d. Any submissions made in accordance with this Act, or the regulations	Three submissions were received as part of the public notification process. The issues raised in the submissions are detailed in attachment 7. The issues raised are not considered sufficient to warrant refusal of the application.	Yes
e. The public interest	The provision of a new data centre is considered to be in the public interest because it provides storage of electronic data for any private company and/or public authority, which increasingly forms a critical part of the State's infrastructure, as new technologies requiring data storage become commonplace. New Federal laws requiring data retention by internet service providers is also creating additional demand for data centres.	Yes

2 State Environmental Planning Policy (State and Regional Development) 2011

Summary comment	Complies
The Sydney Central City Planning Panel (SCCPP) is the consent authority for all development with a capital investment value (CIV) of over $30 million. As this DA has a CIV of $46,623,786, Council is responsible for the assessment of the DA and determination of the application is to be made by the Panel.	Yes

3 State Environmental Planning Policy (Infrastructure) 2007

Summary comment	Complies
The proposed development is considered a traffic generating development in accordance with Clause 104 of the Infrastructure SEPP. The proposal was referred to the Roads and Maritime Services for comment. Its comments were received stating no objection to the development.	Yes
The Infrastructure SEPP was amended in November 2019 to ensure that data storage centres are permissible in appropriate zones and are assessed in an appropriate way. This SEPP amendment has inserted a new Division 3 'Data storage'. The new Clause 27 in Division 3 makes electronic data storage facilities permissible with consent in Business and Industrial zones where 'warehouse or distribution centres' are currently permissible with consent. As the subject site is in the IN1 General Industrial zone, the proposed data centre is a permissible development under this SEPP.	Yes
This SEPP also amends the State and Regional Development SEPP to insert a new provision: Clause 25 'Data storage'. This will ensure data storage centres are assessed under a consistent state-wide framework, with a Capital Investment Value threshold of $50 million that determines which proposals are State Significant. A data centre under the SEPP is defined as: 'Data storage centres, or data centres, store electronic data for both private companies and public authorities.' For the purposes of this SEPP, the subject proposal is intended to store electronic data and therefore the definition of data centre according to this SEPP is consistent with the proposed development. The subject application is not a State Significant Development as the CIV is under $50 million. Based on the above, the proposal is consistent with the relevant provisions of the Data Storage SEPP and is satisfactory in this regard.	Yes

4 State Environmental Planning Policy No. 55 – Remediation of Land

Summary comment	Complies
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. The site contains an existing data centre, and this proposal forms an extension of the existing development. Given the existing use, the site is considered of low contamination risk. A condition is to be imposed on the consent for any unexpected finds protocol.	Yes, subject to condition of consent

5 Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River

Summary comment	Complies
The planning policies and recommended strategies under SREP 20 are considered to be met through the development controls of the WSEA SEPP and the Raceway Precinct	Yes

Summary comment	Complies
Employment Lands Precinct Plan. Therefore, the proposal is considered to satisfy Clause 4 of SREP 20.	

6 State Environmental Planning Policy (Western Sydney Employment Area) 2009

Summary comment	Complies
The land is zoned IN1 General Industrial under the SEPP. The proposed data centre is permissible with consent under the Infrastructure SEPP. The proposal was referred to the Department of Planning, Industry and Environment (DPIE) for compliance with Clause 29 of the SEPP. Subclause 4 of Clause 29 of the WSEA SEPP provides that Subclause 3 only applies if the land that is the subject of the application for development consent was not being used for industrial purposes immediately before the application was made. Noting that the site has been used for industrial purposes immediately before the application was made, Subclause 3 of Clause 29 of the WSEA SEPP does not apply in this instance. In this regard, a Special Infrastructure Levy is not required. The site does not have an FSR or building height limit. Given the surrounding industrial nature, the proposed data centre extension is unlikely to be detrimental to the area's character. The south-eastern site boundary adjoins Prospect Nature Reserve. The development will not impact the curtilage of this Reserve, and the existing buffer area is maintained. The proposed building design is aesthetically pleasing from the public domain and in respect of the Reserve. A detailed façade material design will be required at the Construction Certificate stage to ensure that glare and reflection will not detrimentally impact neighbouring areas. The proposed development is consistent with Part 6 of the SEPP provisions subject to the relevant water quality treatment details as required by our drainage engineer.	Yes, subject to deferred commencement conditions

7 Raceway Precinct Employment Lands Precinct Plan

Summary comment
We have assessed the DA against the relevant provisions of the Precinct and the table below identifies where compliance is not fully achieved.

Precinct Plan requirement	Proposal	Complies
Section 8.6 - Parking 1 space per 100 m^2 up to 7,500 m^2 GFA, then 1 space per 200 m^2 only for the area in excess of 7,500m^2 where there is a specific end user which would not demand a higher rate and where employee parking is adequately catered for. 1 space per 40 m^2 GFA for the office component.	The parking provision has been assessed on the merit of the use of the site as a data storage centre and any future change of use will need to free up the site for further parking. Refer to Section 7.2 of the Assessment report for further discussion. Council's Traffic Management Section has reviewed the proposal and the proposed car parking provision is satisfactory.	No, but satisfactory based on a merit assessment and subject to the Adaptive Reuse Plan provided by the applicant that will be included as a condition of consent.

8 Central City District Plan 2018

Summary comment	Complies
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: • Improving access to jobs and services • Contributing to the provision of services to meet communities' changing needs.	Yes

9 Blacktown Local Strategic Planning Statement (LSPS) 2020

Summary comment	Complies
Blacktown LSPS applies to the site, with 18 Priorities and 61 Actions contained within the plan to support the vision for our City and to guide development, balancing the need for housing, jobs and services with the natural environment. The LSPS builds on the framework established under the Blacktown Community Strategic Plan Our Blacktown 2036 and also gives effect to the NSW Government's Greater Sydney Regional Plan and Central City District Plan. The proposed development is consistent with the following priority: • LPP10: Growing targeted industry sectors	Yes