

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.</p> <p>The 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.</p> <p>Nevertheless, the proposed data centre falls within the definition of 'warehouse or distribution centre' which is a permissible land use within the IN1 General Industrial zone under the Western Sydney Employment SEPP 2009.</p>	Yes
(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 consistent with the Eastern Creek Precinct Plan, subject to a merit assessment of car parking and setback provisions.	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	<p>It is considered that the likely impacts of the development, including access, traffic and parking, landscaping, design, bulk and scale, noise and stormwater management can be satisfactorily addressed, subject to conditions.</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 IN1 General Industrial under the Western Sydney Employment Area SEPP 2009. The proposed data centre is defined as 'warehouse or distribution centre' which is permissible on the site with development consent. The proposed data centre is also now permissible development under Clause 27 in Division 3 of the Infrastructure SEPP.	Yes

Heads of Consideration	Comment	Complies
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	The provision of a new data centre is considered to be in the public interest because it provides for the storage of electronic data for both private companies and public authorities, 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 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 New South Wales 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 (including diesel) storage is declared to be a scheduled activity if it meets the criteria of capacity to store more than 200 tonnes of liquefied gases or 2,000 tonnes of chemicals in any other form.</p> <p>The use proposes diesel fuel storage of 325,000 litres for back-up generators. This would equate to approximately 325 tonnes of chemicals in any other form. As such, the amount of petroleum proposed to be stored on site does not require a licence from the EPA. Nevertheless, a condition of consent will be imposed for the applicant to limit the storage of diesel fuel to the volume specified only, and to meet SafeWork NSW requirements to enable this diesel storage on the site.</p>	Not applicable as threshold is not achieved

3 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 \$30 million.</p> <p>As this DA has a CIV of \$41,372,914, Council is responsible for the assessment of the DA and determination of the application is to be made by the Panel.</p>	Yes

4 State Environmental Planning Policy No. 33 – Hazardous and Offensive Development

Summary comment	Complies
<p>Clause 13 - Matter for consideration by consent authority</p> <p>In determining whether the proposed development constitutes 'potentially hazardous development' under SEPP 33, 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 along the south-eastern corner of the proposed data centre Building 1 of Stage 1 will be used to store diesel fuel tanks, to facilitate the operation of the back-up generators when required in an emergency situation such as a power failure. According to the SEPP, this type of fuel storage tanks is Class C1 and these tanks will be stored in a separate bund or within a storage area where they are the only flammable liquid present.</p> <p>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 No. 33. However, diesel fuel storage is defined as 'dangerous goods' under NSW workplace legislation and SafeWork NSW is to be notified. This will be a requirement imposed in the consent conditions.</p> <p>The proposal is considered to be capable of being conducted in a manner that is consistent with the aims, objectives and provisions of SEPP 33 and is supported.</p>	<p>Not applicable as the threshold necessitating a Preliminary Hazard Analysis is not met, but it is recommended that SafeWork NSW requirements be met for the proposal as a condition of consent.</p>

5 State Environmental Planning Policy (Infrastructure) 2007

Summary comment	Complies
<p>State Environmental Planning Policy (Infrastructure) 2007 ensures that Transport for NSW (the Roads and Maritime Services) is made aware of and allowed to comment on development listed under Schedule 3 of the SEPP. The proposed development was referred to Transport for NSW and no objections were raised subject to conditions.</p> <p>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.</p> <p>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.</p> <p>A data centre under the SEPP is defined as:</p> <p style="padding-left: 40px;">"Data storage centres, or data centres, store electronic data for both private companies and public authorities".</p> <p>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.</p> <p>The subject application is not a State Significant Development as the CIV is under \$50 million.</p> <p>As the subject site is in the IN1 General Industrial zone, the proposed data centre is a permissible development under this SEPP and under Western Sydney Employment Area SEPP 2009.</p>	<p>Yes</p> <p>Yes</p>

6 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 preliminary site investigation was undertaken by Aurecon Australasia Pty Ltd and previous reports and investigations undertaken under DA-18-00938 confirmed the existing site is suitable for industrial/commercial use.</p>	Yes

7 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 Western Sydney Employment Area SEPP 2009 and Employment Lands Precinct Plan – Eastern Creek Precinct Plan. The development complies with the development standards and controls established within both the SEPP and DCP. Therefore, the proposal is considered to satisfy Clause 4 of SREP 20.</p>	Yes

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

Summary comment	Complies
<p>We have assessed the Development Application against the relevant provisions and found that it is compliant with all matters under State Environmental Planning Policy (Western Sydney Employment Area) 2009 subject to conditions.</p>	Yes

9 Eastern Creek Precinct Plan

Summary comment		Complies
We have assessed the Development Application against the relevant provisions and the proposal is compliant with the Eastern Creek Precinct Plan and the table below identifies where compliance is not fully achieved.		Yes
DCP requirement	Proposal	Complies
Car parking Eastern Creek Precinct Plan requires buildings greater than 7500 m ² at the rate of 1 space per 100 m ² of gross floor area (GFA) and 1 space per 200 m ² GFA only for the area in access of 7500 m ² . Plus 1 space per 40 sqm GFA for the office component.	<p>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 may need to free up the site for further parking.</p> <p>Refer to Section 7 of the report for further discussion.</p> <p>Council's Traffic Management Section has reviewed the proposal and the</p>	No, but satisfactory based on a merit assessment and a condition.

Summary comment		Complies
	proposed car parking provision is satisfactory.	
Setbacks The Eastern Creek Precinct Plan requires no buildings or hardstand area to be erected on any land within 20 m of the front property boundary with Wallgrove Road, Old Wallgrove Road and the M4 Motorway. 10 m of the primary front property boundary with an industrial collector road (Eastern Creek Drive).	Building setbacks to Old Wallgrove Road comply. However, the landscaped setback is proposed to be between 10 m and 16 m and this is considered acceptable. But the corner of Old Wallgrove Road and Eastern Creek Drive has a landscaped setback of 6 m. As this is only a point encroachment it is considered acceptable. While the setback of Building 1 in Stage 1 exceeds the required 10 m setback providing approximately 50 m, some parts of the landscaped setback along Eastern Creek Drive do not meet the minimum 10 m setback under the Precinct Plan. These non-compliances along the northern portion of the eastern boundary primarily result from the orientation of vehicular access and the presence of a fire pump room which is needed to meet the requirements of the Fire Brigades.	No, but satisfactory based on a merit assessment.

10 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: <ul style="list-style-type: none"> Improving access to jobs and services Contributing to the provision of services to meet communities' changing needs. 	Yes

11 Blacktown Local Strategic Planning Statement (LSPS) 2020

Summary comment	Complies
The 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 <i>Our Blacktown 2036</i> and also gives effect to the NSW Government's Greater Sydney Region Plan and Central City District Plan. This proposal will meet Priority C1 Planning for a City supported by Infrastructure and Priority C11 Maximising opportunities to attract advanced manufacturing and innovation in industrial and urban services land.	Yes