

SWCPP Ref. No.:	PPSSWC-243
DA No.:	DA22/0318
PROPOSED DEVELOPMENT:	Torrens Title Subdivision into 37 Industrial Lots, 1 Stormwater Management Infrastructure Lot & Public Roads including Earthworks, Civil Engineering Works, Tree Removal & Public Domain Landscaping
PROPERTY ADDRESS:	158 - 164 Old Bathurst Road, EMU PLAINS NSW 2750
PROPERTY DESCRIPTION:	Lot 2 DP 588919, Lot 1 DP 588918,
ZONING:	Zone E4 – General Industrial - LEP2010
CLASS OF BUILDING:	N/A
ASSESSING OFFICER	Donna Clarke
APPLICANT:	Gln Planning
DATE RECEIVED:	8 April 2022
REPORT BY:	Donna Clarke, Consultant Planner, Penrith City Council
RECOMMENDATIONS:	Approve

Assessment Report

Executive Summary

In accordance with Division 2.4 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel is the determining authority as Council is the landowner and the cost of works exceeds \$5M and the development is 'regionally significant development' in accordance with Clause 2.19 and Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021. As Penrith City Council is the landowner, the assessment of the Development Application has been undertaken by an externally engaged and independent Planning Consultant.

Council is in receipt of a Development Application from Penrith City Council for a Proposed Industrial Subdivision at 158 - 164 Old Bathurst Road, Emu Plains. The plan as amended during the assessment proposed subdivision into 37 Industrial Lots, 1 Stormwater Management Infrastructure Lot and Public Roads including Earthworks, Civil Engineering Works, Tree Retention & Public Domain Landscaping.

Under Local Environmental Plan 2010 (PLEP), the subject site is zoned E4 - General Industrial and the proposal is identified as subdivision, which is permitted under Clause 2.6 of PLEP.

Clause 4.1(3) of LEP 2010 specifies a minimum lot size for the subject site of 6000m² for the portion of the site along Old Bathurst Road and 2000m² for the remainder of the site. Each of the proposed lots exceed this requirement.

The following key, fundamental considerations were addressed in the assessment of the application:

1. **Tree Removal, Biodiversity & Scenic Landscape Values** - the plan was amended to provide greater retention of mature trees along all boundaries, including a Swift Parrot corridor, and the applicant provided a willingness to accept a condition for the retention of additional trees and associated mounding below the

trees along David Road. A Vegetation Management Plan is required for the trees being retained along the boundaries and within the wetland which is addressed via conditions of consent.

2. **Intersections** - the proposed plan of subdivision was amended to delete the proposed second access road to Old Bathurst Road and further modelling was undertaken to justify the warrants for traffic signals being installed at the Old Bathurst Road/David Road intersection. The intersection works will be funded by the applicant as they are not covered by any development contributions plan and are directly attributed to the subject development.
3. **Layout & Design** – the plan of subdivision was amended to delete three (40 reduced to 37) proposed industrial lots, improve the layout of the lots and road design, increase tree retention and viability, pedestrian pathways added, and additional landscaping proposed. In response to additional tree retention along the eastern boundary, the road alignment was also altered.
4. **Dedication of the proposed wetlands and stormwater management lot** – The onus is on the applicant to maintain this lot and the applicant has made arrangements for establishment and agreement for future dedication to Council of Proposed Lot 31.

Other issues were also identified by Council Officers and External Referrals during the assessment process but were generally resolved via submission of information. However, given the absence of updated plans and documentation with respect to the tree and mound retention along David Road, conditions of consent are recommended to address remaining unresolved matters.

During the assessment, the proposal was amended in layout and the applicant provided an agreement to imposition of conditions of consent which required the retention of the mounding and trees on the portion of the site fronting David Rd in the rear of Proposed Lots 32 and 33. The proposal in its current unamended form with the mounding and associated trees indicated for removal does not satisfy the legislative requirements of Clause 7.5 - Protection of scenic character and landscape values and 7.30 - Urban Heat of Penrith LEP 2010 of PLEP and therefore cannot be granted consent. However, the applicant has indicated a willingness to accept a condition of consent for the retention of the trees and mound. In the absence of any plans and details regarding the mound and tree retention and in order to satisfy the requirements of Clause 7.5 - Protection of scenic character and landscape values and 7.30 - Urban Heat of Penrith LEP 2010 of PLEP, an appropriate Deferred Commencement condition has been recommended which requires the retention of the mound and existing dense tree canopy on the side and top of the mound, whilst allowing for new plantings to embellish and complement the existing trees. This condition allows for maximising retention of green infrastructure and will assist greatly with shading and thermal performance for future development of the lots in this area, as well as provides for screening of the site from the adjoining roads and further afield including the upper areas to the west from the Blue Mountains escarpment to reduce visual impacts and protect scenic qualities of the area. The full extent of mounding and tree retention will be subject to the detail provided to satisfy the Deferred Commencement condition, however there is an expectation that a dense row of mature vegetation, elevated by the mound, will be retained and embellished by new plantings as part of the landscape design. These changes will also allow for C2 and C14 of Penrith Development Control Plan (PDCP) to be satisfied.

The application was advertised & notified to adjacent property owners and residents, from 9 May 2022 to 8 June 2022. An extension of time was granted until 22 June 2022. One submission has been received in response and primarily relates to the proposed roadworks and intersection design and the impact upon cyclists.

As works are proposed within 40m of a first order stream, the DA was referred to NSW Office of Water as '*Integrated Development*' under s.4.46 of the Environmental Planning and Assessment Act 1979. General Terms of Approval for a controlled activity permit (EP&A Act) of the Water Management Act 2000 were granted.

The application was referred to Transport for NSW (TfNSW) as the application includes proposed traffic signals which require approval and concurrence. TfNSW have provided written advice that the proposed signals are acceptable subject to the closure of an existing driveway to the land opposite the site on Old Bathurst Rd and

requirements for further approvals. Written advice has also been received from the landowner affected by the driveway closure indicating that they have no objections to this change, and that site is serviced by other driveways and access points.

Consultation also occurred with other relevant service providers including Sydney Trains, Sydney Water and Endeavour Energy and advice provided regarding future design requirements which have been included as recommended conditions of consent.

A referral was undertaken as a precaution to the Department of Planning who coordinate a response with Infrastructure NSW and NSW SES to determine if the development will exceed the capacity of flood evacuation routes. There is no statutory requirement for referral as this development being for industrial purposes does not meet the trigger (based on a letter from the Department of Planning which establishes the protocol) and no response was received since the referral, despite follow up by Council.

An assessment under Section 4.15 of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to the recommended conditions of consent.

Site & Surrounds

The subject site is an irregular shaped parcel of land located on the southern side of Old Bathurst Rd and the eastern side of David Road, with an area of approximately 16.4ha and is generally flat. The site is legally identified as Lot 1 DP 588918 and Lot 2 DP 588919, No.158 - 164 Old Bathurst Road, Emu Plains.

The subject land is located adjacent to the railway line to the south and commuter rail carpark recently completed by Transport for NSW to the east which connects to Emu Plains Rail Station via a pedestrian bridge. To the west and south is industrial land, including large sheds immediately to the south-west which are elevated above the level of the subject site. To the north, on the opposite side of Old Bathurst Road is The Amber Laurel Correctional Centre.

The previous use of the land was by Rocla Pipes Pty Ltd for production and storage of precast concrete drainage products.

The site is generally clear of vegetation within the main central area, with the boundaries of the site containing mature vegetation. Pockets of vegetation also exist within the site. The David Road frontage contains mounding and dense vegetation. The western corner of the site along David Road contains a wetlands area and a first order stream traverses the north-eastern corner of the site which is a shallow swale that terminates at a drainage pit on Old Bathurst Road.

Background

Current Application - DA22/0318

A Pre-lodgement meeting was held regarding the proposal on 18 January 2022.

The DA was lodged on the Planning Portal on 11 April 2022.

A Request for information letter was sent to the Applicant on 15 June 2022 which identified the key, fundamental issues:

- Tree Removal & Scenic Landscape Values - retention of mature trees along all boundaries required.
- Intersections - second access road to Old Bathurst Road MC04 is not supported & further modelling required of the traffic signals being installed at the Old Bathurst Road/David Road intersection & its funding.

- Layout & Design – tree retention, second access removed, pedestrian pathway added, Lot 33 incorporated into drainage lot, Lots 34, 35 & 36 combined to be usable, boundary corners to meet and not offset, road location changed to allow for tree retention, TfNSW lease to be considered and minimum lot width achieved to Old Bathurst Rd.
- Title – as Council will not accept the dedication of the proposed wetland.

Other issues were also identified by Council Officers and External Referrals which can be resolved via submission of information, however, rely upon the key issues being suitably resolved. The applicant was advised that the application cannot be supported in its current form and resolution of the fundamental issues would provide for a more appropriate development outcome.

An initial briefing was made to the Panel on 23 June 2022 which outlined the proposal and the Request for Information from Council and indicative redesign plan.

A meeting was held on 11 August 2022 with the applicant and the relevant Council officers to discuss the issues raised within the RFI letter.

Amended plans and information was submitted to Council on 18 October 2022, which addressed a large majority of the issues identified within the RFI.

A further RFI was issued on 22 November 2022 regarding:

- Traffic & Parking
- Water Sensity Urban Design & Biodiversity
- Land Contamination
- Tree Management
- Landscape Architecture

An on-site meeting was held with the Applicant and Council Officers on 8 December 2022 to discuss the key remaining issues. The key issues related to:

- Contamination.
- Mound on the corner of Old Bathurst Rd and David Road which is requested to be retained from a visual and urban heat perspective, as well as tree preservation. The Applicant is of the opinion that the mound is contaminated and must be removed.
- Impact on trees being retained along eastern boundary.

Following the site visit, the Applicant agreed to:

- Do further contamination investigation of the mound, which will inform whether the mound is removed. It was Council's assessment position that the mound should stay for visual, urban heat and tree preservation reasons.
- Have the Arborist identify testing locations to minimise tree loss.
- If the mound is to be removed, the Arborist is to consider viability of retention of a row of trees between the mound and David Road to provide some instant screening and new plantings to enhance the visual screen, in accordance with a Vegetation Management Plan (condition of consent).
- If the mound is to stay, only weeds, biosecurity threats and exempt trees can be removed, all other vegetation be retained and new plantings to enhance the visual screen, in accordance with a Vegetation Management Plan (condition of consent).
- Council's Arborist & Applicant's Arborist are to discuss the tree protection zones and impact of edge of proposed road along the eastern boundary to ensure health of trees being retained.
- Have the Site Auditor review and sign off on all the contamination documentation, as per Council's previous

RFI requests.

A further briefing was made to the Panel on 12 December 2022 by Council and the Applicant. The Record of Briefing states:

"KEY ISSUES DISCUSSED

The Panel received a briefing from Council's independent consultant engaged to conduct the assessment, as the subject site is to be acquired by Council. This is the second briefing on this matter.

Since the first briefing, there has been progress on a number of outstanding issues, particularly in relation to the layout and design of the subdivision, with the total number of lots being reduced from 40 to 33. The redesign of the subdivision has now removed access to Old Bathurst Rd and the planned boundary road (to the east of the site), reducing tree loss and enabling pedestrian connectivity to Old Bathurst Rd. Pedestrian connectivity is also provided to the commuter car park and railway bridge.

The key outstanding issues relates to:

- the extent of land contamination*
- the independent assessor's advice that the landmark 'mound' situated on the corner of Old Bathurst Rd & David Rd and vegetation should be maintained in order to best screen the development, minimise tree loss, and support urban heat mitigation objectives*
- the traffic intersection and potential signalling (further information on the design for a signalled intersection, including road widening etc has been requested by Transport for NSW, which has indicated that it will only support a signalled intersection if the warrant is met).*

In relation to the mound, the applicant advised during the meeting that they would accept a condition requiring its retention.

In relation to the issue of land contamination, the Panel was advised that a gap audit is required, as there appear to be some gaps in the contamination assessments undertaken to date. The Panel noted the need for appropriate evidence that the site is suitable, or can be made suitable for the recommended use.

The Panel also noted the need to ensure that any replacement tree planting will be compatible with the existing vegetation and site conditions to ensure viability.

As only one submission was received, the matter should be suitable for electronic determination."

A further RFI was issued on 8 May 2023 regarding:

- Ability for partial determination of the application based on land contamination being removed.
- Geotechnical issues.

On 14 June 2023, discussions were held between Council and the Applicant regarding the outstanding geotechnical issues.

On 27 July 2023, amended plans and information was submitted to Council which indicated a willingness for the retention of the mounding as a condition of consent, greater tree protection, intersection treatment and geotechnical issues. The response also indicated that remediation of land would now occur under a separate development application and no longer form part of this current application.

On 25 August 2023 outstanding geotechnical comments were provided to the applicant to be addressed.

On 28 September 2023, an email was sent to the applicant with the Transport for NSW latest response which indicated signals are not warranted based on the information.

On 23 October 2023, additional geotechnical information was submitted by the applicant.

On 27 October 2023, a meeting was held between Council's Traffic Section, Property Section (as the landowner) and Transport for NSW to discuss the proposed signals at the intersection.

On 14 November 2023, a 14-day letter was issued by Council for submission of the outstanding traffic information.

On 16 November 2023, additional traffic information was submitted in response to the lack of support for signals by Transport for NSW. Council's Traffic Officer reviewed this information, and the applicant was immediately advised that the information submitted is insufficient and does not address the discussions with Transport for NSW.

On 17 November 2023, an email was sent from Council to the applicant requesting changes to the Geotechnical Report.

On 1 December 2023, the applicant advised that the Geotechnical Report would not be updated. An email was sent immediately in response indicating that the Geotechnical Report must be updated to enable it to be included as an approved document if the application is approved.

On 19 December 2023, additional information was submitted by the Applicant regarding the proposed signals.

On 12 January 2024, an updated Geotechnical Report was submitted.

On 19 January 2024, an update was provided to the applicant and an indication of the likely deferred commencement conditions, as well as a request for an internal road alignment issue to be resolved.

On 31 January 2024, an email was sent from Council to the applicant with a copy of TfNSW referral response and requested confirmation if any works were to occur on the private land to the north (The Amber Laurel Correctional Centre) as a result of the required driveway closure works and to provide landowners consent if necessary.

On 2 February 2024, the applicant has confirmed all works will be within the road reserve and not on private land and has provided an email from the landowner raising no objection.

On 14 February 2024, an amended plan was submitted which deleted a lot to accommodate the altered road alignment in the north-east corner of the site. (Note: the lot numbers were amended on the plan).

Demolition - DA22/0417

DA22/0417 was approved by Penrith Local Planning Panel on 23 November 2022 for demolition of existing buildings, structures and hardstand areas, including concrete and asphalt. The consent operates from 24 November 2022.

Land Remediation - DA23/0506

DA23/0506 was approved by Penrith Local Planning Panel on 24 August 2023 for the remediation of land to provide a site suitable for future industrial land purposes. The consent operates from 25 August 2023. The works specifically includes:

- Remediate known contamination on the site in accordance with a Remediation Action Plan (RAP);

- Works comprise the remediation of asbestos impacted soils, TRH impacted soils, removal of asbestos cement pipes, material comprising the former building footprints and former fuel storage infrastructure;
- Works are across the entire site; and
- The cumulative volume of material which may require remediation and/or management at the Site is estimated to be 14,580m³, however no importation of materials is indicated to achieve remediation of the site.

Land remediation was originally proposed as part of the subject industrial subdivision application (DA22/0318) however, was separated out and is now the subject of the approval under DA23/0506.

Proposal

This Development Application as lodged sought consent for the following:

- Subdivision including 40 Industrial lots and 1 lot containing stormwater and water quality infrastructure; and
- Associated site works, tree removal, remediation, stormwater and water quality infrastructure, roads and landscaping.

During the assessment, the application has been amended to reduce the number of lots proposed and alter the layout, as well as remove land remediation works from the proposal. This Development Application seeks consent for the following:

- Subdivision including 37 Industrial lots and 1 lot containing stormwater and water quality infrastructure; and
- Associated site works, tree removal, stormwater and water quality infrastructure, roads and landscaping.

Subdivision Layout:

A total of 6 lots are proposed adjoining Old Bathurst Road, which range in area between 6,003m² and 8,134m². The balance of the industrial lots range between 2,000m² and 5,621m² in area.

Intersection & Road Layout:

Access to the subdivision would be accessed via an internal road network from David Road (MC02). The proposed lots will not have direct access to the adjoining Old Bathurst Road or David Road, with all access via the internal road network.

Footpaths are proposed on both sides of the internal roads and link to the proposed footpaths on Old Bathurst Rd and David Rd. A separate pathway is proposed in the north-east corner of the development within the eastern portion of Lot 38, with appropriate rights provided for public access. Bike racks are proposed throughout the development at the wetlands, swift parrot area and pedestrian pathway in the north-east corner of the site.

Stormwater & Water Quality:

Lot 31 is proposed for stormwater infrastructure to treat stormwater by utilising and extending the existing pond. To address drainage and flooding, the land will be filled as part of the subdivision works.

The lot for stormwater and water quality infrastructure in the south-western corner of the site has an area of 15,199m² to accommodate stormwater infrastructure, plus a triangular grassed residual piece of land with an area of 3,162m², all forming Proposed Lot 31.

The shape and design of the constructed wetlands on Lot 31 has been informed by the ecological assessment

and access is provided for maintenance via pathways around the wetlands from David Rd and the proposed internal roads.

Lot 31 is proposed as a private Torrens tile allotment and the applicant has made arrangements for establishment and future dedication to Council. Any development on the triangular portion of the lot would be subject to separate approval.

Site Preparation:

Demolition of buildings on the site form part of a separate approval under DA22/0417. Land remediation works will occur under a separate approval under DA23/0506. Site preparation works will follow the demolition of the site and remediation in accordance with the RAP. The works under this application will include installation of the erosion management controls including basins required for stormwater management and tree removal as required.

Bulk Earthworks:

Bulk earthworks are proposed to raise parts of the site surface to facilitate drainage to the lower parts on the site adjacent to Old Bathurst Road and in the southwest corner which discharge into structures under the road into the adjoining trunk drainage system. The plans show a net import of fill of approximately 70,000m³ to deliver the final surface. The earthworks will also raise the site levels to a level consistent with the predominant height of the commuter car park adjacent to the site.

As part of the amendments to the layout, changes were made to the amount of filling and level changes along the eastern boundary to ensure the existing trees being retained along the boundary within the road reserve are protected and details submitted of the retaining wall/sleeper design along the edge of the proposed road to allow for reduced fill in the batter down to the level of the trees.

Landscaping:

Street trees are proposed along the internal roads, as well as the frontages to Old Bathurst Rd and David Rd. Other landscaping is proposed around the perimeter of the site, within the rear of the larger lots along Old Bathurst Rd and David Rd, to the pedestrian pathway, Swift Parrot Corridor in the south-east corner of the site in the road reserve and wetlands area on Lot 31.

The landscape plan package included typical design pallet for the various materials throughout the development including sandstone retaining walls, concrete and decomposed granite pathways, public seating, fencing and bike racks, as well as Sections along the roads specifically the eastern road to demonstrate tree protection and throughout the wetlands.

Tree Removal & Retention:

Clearing of native vegetation is proposed. The Arboricultural Assessment considered 726 trees, with 365 trees recommended for removal (reduced from 531 in the original proposal as lodged). Additional trees are able to be retained with the mound being retained along David Rd, estimated to be approx. 55 trees, which the applicant has indicated a willingness to retain via a condition of consent.

Fencing:

The rear of Lots 32 to 38 which back onto Old Bathurst Rd and David Rd will be enclosed by black palisade fencing for security, with existing trees and proposed landscaping within the rear of those lots to provide screening of the future development on the remainder of the lots.

Signage:

Identification and information signage is proposed throughout the development comprising:

- Two (2) Site Identification signs - on the corner of Old Bathurst Rd and David Rd and on Old Bathurst Rd at the entry to the pedestrian pathway on the north-east corner, within Lot 33 and Lot 38. The signs will contain a street address and/or name of the estate.
- One (1) Entry statement sign - on the corner of David Rd and proposed road MC02 within the wetlands area of Lot 31.
- Interpretation signage within the wetlands and Swift Parrot Corridor in the south-east corner of the site in the road reserve and wetlands area.

The landscape plan package included a signage pallet for the proposed signage, with exact size and dimensions of the signage not determined.

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- 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

Planning Assessment

• Section 1.7 - Application of Part 7 of Biodiversity Conservation Act 2016

The subject site contains areas mapped on the Biodiversity Values Map.

The application was accompanied by a Biodiversity Development Assessment Report (BDAR) prepared by Anne Clements and Associates, Version 3, dated 10.10.2022, in accordance with the Biodiversity Assessment Method (BAM) 2020, under the NSW Biodiversity Conservation Act 2016 (BC Act). The BDAR was prepared by an Accredited Assessor.

Council's Biodiversity Officer reviewed the report, and a meeting was held on site which resulted in an agreement from the applicant for mounding along David Road and associated trees to be retained via condition of consent, as well as additional trees along the perimeters and within the wetland area being retained as shown on the amended plans, which provided not only a superior visual outcome but allowed for retention of an important area for the Swift Parrot along the eastern boundary and the layout amended to allow for reduced earthworks near trees being retained to ensure their survival. The retention of these additional trees will aid in providing foraging habitat for highly mobile fauna as well as maintaining/ improving existing visual buffer/screenings from adjacent development and view from the railway line and demonstrates the principles of avoidance. The retention of the trees along David Road, which are on the sides and top of the mound, are important from a biodiversity perspective and the agreement from the Applicant for the mound and associated tree retention in this area is critical to achieve the biodiversity outcome.

In April 2023 a number of large trees along the southern length of the site which interfaces with the rail corridor were removed by Sydney Trains as they were touching the high voltage electricity line and were

removed under Section 48 of the Electricity Supply Act 1995. The landscape plan must be updated to provide additional landscaping in this area to provide the visual buffer to the development and is required by way of a recommended condition of consent. Selection of species should be small tree or shrubs and further guided by Council's Landscape Architect. Any proposed planting will need to consider this constraint and be designed to avoid having trees removed in the future.

Concern was raised during the assessment regarding damage to trees being retained during the excavation along the edge of the wetlands during construction. In this regard, conditions of consent have been recommended which require replacement trees if damaged at a rate of 3:1.

The applicant has agreed to the preparation of a Vegetation Management Plan (VMP) for the site and includes the mound, which is being retained, wetlands area and other areas around the boundaries of the site where trees are being retained.

Appropriate conditions of consent have been recommended regarding the preparation and submission of a VMP as part of the Deferred Commencement condition requirements, and for the Constructed Wetland Area or any area subject to the VMP is identified on a Restricted Development Area (Positive Covenant).

Council's Biodiversity Officer has indicated that overall, the BDAR has been prepared in accordance with the Biodiversity Assessment Method. The proposal in its current form with the mounding and trees along David Rd being removed is unacceptable from a biodiversity perspective. However, subject to conditions of consent to reflect the agreement by the applicant, the proposal is acceptable with respect to NSW Biodiversity Conservation Act 2016.

- **Section 4.15 - Evaluation**

The development has been assessed in accordance with the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration.

- **Section 4.46 - Integrated development**

As works are proposed within 40m of a first order stream, the DA was referred to NSW Department of Planning & Environment (DPE) Water as '*Integrated Development*' under s.4.46 of the Environmental Planning and Assessment Act 1979. The referral sought General Terms of Approval for a controlled activity permit (EP&A Act) of the Water Management Act 2000.

General Terms of Approval were granted via letter dated 29 March 2023 and are included as recommended conditions of consent.

- **Section 7.12 - Developer Contributions**

Council's Section 7.12 Plan applies to this site and this development. Council's Section 7.12 development contribution requirement for non-residential development came into force on 24 August 2020 and applies a 1% contribution levy to the proposed development where the cost of works exceeds \$100,000 and the proposed use is for a non-residential purpose. The cost of works is \$10,005,095.00 which is above the threshold and therefore contributions are payable and imposed by way of recommended conditions of consent.

Appendix A of Council's Section 7.12 Development Contribution Plan lists the infrastructure works to be delivered by money collected under the Plan, in response to envisaged future development in the Penrith LGA. The proposed upgrade of the Old Bathurst Road/David Road intersection is not listed as a works item contemplated to be delivered by the Plan. Therefore, the applicant must deliver the upgrade to the Old Bathurst Road/David Road intersection in order to provide sufficient traffic management facilities to support

the proposed development and the Section 7.12 funds cannot be relied upon to deliver these works.

Section 4.15(1)(a)(i) The provisions of any environmental planning instrument

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 6 Water Catchments

The proposed development provides for adequate arrangements for stormwater management and water quality to demonstrate compliance with Chapter 6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Council's Development Engineer and Waterways Officer have concluded that adequate information has been submitted with the application to enable an assessment of compliance with the requirements of Section 6.6 (Water quality and quantity) of the SEPP in terms of groundwater and stormwater management.

The proposal is therefore satisfactory with respect to the relevant provisions of State Environmental Planning Policy (Biodiversity and Conservation) 2021.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3 of SEPP (Industry and Employment) 2021 provides controls for advertising and signage. This particular chapter aims to ensure that signage is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of a high quality. The policy applies to all signage with the exception of that which could be considered as exempt development.

The proposed signage includes signs to clearly identify the industrial estate/precinct. The proposed signage does not involve any advertising of businesses, but rather identifies the address and estate name. Identification and information signage is proposed throughout the development comprising:

- Two (2) Site Identification signs - on the corner of Old Bathurst Rd and David Rd and on Old Bathurst Rd at the entry to the pedestrian pathway on the north-east corner, within Lot 33 and Lot 38. The signs will contain a street address and/or name of the estate.
- One (1) Entry statement sign - on the corner of David Rd and proposed road MC02 within the wetlands area of Lot 31.
- Interpretation signage within the wetlands and Swift Parrot Corridor in the south-east corner of the site in the road reserve and wetlands area.

The landscape plan package included a signage pallet for the proposed signage, with exact size and dimensions of the signage not determined. Exact details can be provided via recommended conditions of consent.

The proposed signage is considered to be of a suitable design which will provide effective communication without compromising the visual appearance of the overall development by incorporating the signage into the landscape design and with a backdrop of mature trees (subject to conditions of consent for the retention of the mound and tree retention along David Rd as per the applicant's indication in writing). The signage has been assessed against the Schedule 5 assessment criteria, as detailed below.

Schedule 5 - Assessment Criteria

Criteria	Comments
Character of the area	The proposal is compatible with the existing character of the area, which is primarily industrial and adjoins the railway and commuter carpark, as well as a major road to the north being Old Bathurst Rd. Given the site being identified as having scenic and landscape values, amendments have been made to the development to ensure the industrial uses sit within a landscaped setting with mature trees retained along the boundaries for screening. The proposed signage is compatible with the future development and use of the site and is located within the landscaped components of the site. The signage is also consistent with the anticipated scale of development in the immediate surrounds and industrial precinct. The proposal will have a high quality and consistent appearance which will complement the overall physical appearance of the site. The proposal is compatible with the context of the locality.
Special areas	The subject site is not visible from areas of open space or from any residential areas. The proposed signage is not visible to or from any environmentally sensitive areas, natural or other conservation areas, waterways or rural landscapes. The proposed wetlands is not zoned for environmental purposes.
Views and vistas	The proposal does not detract, obscure or dominate important views or vistas, as it forms a part of the landscaped areas on the site. The proposed signage is appropriately located to ensure that they do not obstruct sight lines for motorists. The proposed signage does not obscure any existing signage on surrounding and opposite lands and therefore respects the viewing rights of existing or future advertisers.
Streetscape, setting or landscape	The proposed signage is superior in design than the existing signage designs in the locality. The signage is wholly contained within the subject site. Overall, the proposal is not considered to create visual clutter which will ensure that there will be no adverse impacts on the visual quality of the surrounding area. No vegetation removal is required to accommodate the signage and has been incorporated into the landscape design of the development.
Site and building	The scale and design of the signage is in proportion relative to the size of the site and is sited within massing landscaping and existing vegetation. The proposed signage has been appropriately positioned and proportioned to identify the site from the principal entry points. The proposed signage is not contrary to its context in the E4 zone and will not result in any unreasonable visual impacts.

Associated devices and logos with advertisements and advertising structures	The proposed signage will be installed according to manufacturer and engineering requirements, which will be addressed by a recommended consent condition.
Illumination	The proposed signage will not be illuminated.
Safety	The proposal is not considered to reduce safety for local traffic or pedestrians. The signs have been located to ensure that it will have no impact on visibility for motorists or obstruct views of pedestrians. The signs will not include any flashing or moving parts and therefore will not pose any distraction to passing motorists.

State Environmental Planning Policy (Planning Systems) 2021

The proposed development is listed as '*Regionally Significant Development*' in Clause 2.19 and Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021, as the Council is the landowner, and the cost of works exceeds \$5M. Section 4.7(2) of the EP&A Act specifies the functions of a regional planning panel to determine the application.

The assessment of the Development Application has been undertaken by an externally engaged and Independent Planning Consultant and in accordance with Section 2.15 of the Environmental Planning and Assessment Act 1979, the Sydney Western City Planning Panel (SWCPP) is the consent authority for the development proposal. A briefing meeting was held with the SWCPP on 27 June 2022 and 12 December 2022.

State Environmental Planning Policy (Resilience and Hazards) 2021

The proposal has been considered against relevant criteria under State Environmental Planning Policy (Resilience and Hazards) 2021, which aims to provide a framework for the assessment, management and remediation of contaminated land throughout the state. Section 4.6 of the SEPP prevents consent authorities from consenting to a development unless it has considered whether the land is contaminated and is satisfied that the land is suitable (or will be suitable, after remediation) for the purpose for which development is proposed to be carried out.

Remediation of the site has been approved under DA23/0506. A deferred commencement condition has been recommended with respect to the remediation works being completed prior to the commencement of works under this application to ensure the site is suitable for the proposed works.

The proposal is therefore deemed to satisfy the provisions of Section 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021, subject to recommended conditions of consent.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Section 2.48 - Development likely to affect an electricity transmission or distribution network

Section 2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021 relates to development that is likely to impact an electricity transmission or distribution network. The proposal includes works within proximity to electrical infrastructure.

The application was referred to Endeavour Energy after lodgement and in its correspondence via letter dated 1 June 2022 indicates that electricity servicing is available and provided detailed requirements, including the need for an Accredited Service Provider to be engaged to ensure adequate connection and raised no objection to the proposed development subject to further investigation by the applicant and

Endeavour Energy in relation to carrying out a final load and supply assessment.

Section 2.119 - Development with frontage to classified road

Section 2.119 of State Environmental Planning Policy (Transport and Infrastructure) 2021 relates to development on a classified road. The proposal does not have direct frontage to a classified road.

Section 2.122 - Traffic-generating development

Section 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021 relates to traffic-generating development. The proposal was referred to Transport for NSW (TfNSW) for comment due to the triggers under Schedule 3 of the SEPP as industrial development with a site area in excess of the trigger.

The proposed upgrade at the intersection of Old Bathurst Road and David Road to traffic signals also requires concurrence from TfNSW and approval post development consent under the Roads Act, 1993.

The application was referred to TfNSW after lodgement and on-going discussions have been underway between Council's Traffic Officer, the applicant and TfNSW regarding the proposed intersection works at Old Bathurst Road and David Road. TfNSW provided the following comments via letter dated 30 January 2024:

"Reference is made to Council's referral dated 10 January 2024 regarding the abovementioned Development Application (DA), which was referred to Transport for NSW (TfNSW) for comment in accordance with clause 2.122 of the State Environment Planning Policy (Transport and Infrastructure) 2021 and approval under section 87 (4) of the Roads Act, 1993. TfNSW advises that:

- Old Bathurst Road is an unclassified 7000 series road under the care and control of Council. Council as the relevant Roads Authority will need to be satisfied with the development's proposed civil works.*
- The additional information submitted by the Applicant, at the request of TfNSW, has been reviewed regarding the proposed amelioration treatment that involves the development providing a traffic control signals (TCS) at the intersection of Old Bathurst / David Road. To deliver the TCS to TfNSW requirements some changes will be required from Council owned land to facilitate the delivery of the supporting infrastructure.*

As such, TfNSW provide Council in TAB A advice on TfNSW requirements needed to be addressed for the TCS. If Council is amenable to the requirements in TAB A, TfNSW would provide 'in-principle' approval under section 87 (4) of the Roads Act 1993, subject to the TfNSW conditions, provided in TAB B, being included in any Development Consent issued by the relevant Planning Authority."

The requirements of TAB A relate to Traffic Control Signal (TCS) design and includes closure of one vehicular crossover on the land to the north-west being Lot 2 DP194852 which is one lot which forms part of a larger holdings of land as part of the correctional facility, in order to avoid conflict between the crossover and future traffic control signals. In addition, the western driveway which is remaining is to be designed as a left-in, left-out arrangement. The TfNSW letter includes a figure which clearly shows the crossing, which is to be closed, which was an extract from information submitted by the applicant. Following the receipt of the letter from TfNSW, confirmation was sought from the applicant that the necessary works to close the vehicular crossing does not require works on the land to the north-west being Lot 2 DP194852 and that the landowners of that property have no objection to this occurring. The applicant has confirmed all works will be within the road reserve and not on private land and has provided an email from the landowner raising no objection.

The TfNSW requirements also have regard to Old Bathurst Road and David Road being approved B-Double Routes, and therefore the concept design will need to be designed to allow for the turning paths for B-Doubles.

Appropriate conditions of consent have been recommended which include the comments and conditions contained within the letter regarding the proposed Traffic Control Signal/s at the intersection of Old Bathurst Road / David Road being designed to meet TfNSW requirements, the developer being required to enter a Works Authorisation Deed (WAD) for the works, and a Road Occupancy Licence (ROL) be obtained from Transport Management Centre (TMC) for any works that may impact on traffic flows on the surrounding classified road network during construction activities.

Further, the initial response from TfNSW indicated that there is currently a lease in place on the site, however this is temporary with respect to the adjoining Sydney Trains commuter carpark and has now been finalised due to works being complete. The applicant has confirmed that the lease is no longer in place.

The proposal is therefore satisfactory with respect to the relevant provisions of State Environmental Planning Policy (Transport and Infrastructure) 2021.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 1.2 Aims of the plan	Complies
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion
Clause 2.6 Subdivision - consent requirements	Complies
Clause 4.1 - Minimum subdivision lot size	Complies - See discussion
Clause 5.21 Flood planning	Complies - See discussion
Clause 7.5 Protection of scenic character and landscape values	Does not comply - See discussion
Clause 7.30 Urban Heat	Does not comply - See discussion

Clause 2.3 Permissibility

Under Local Environmental Plan 2010 (LEP 2010), the proposal is subdivision, relating to the 'Industries'.

The subject site is zoned E4 - General Industrial under Penrith LEP 2010. The proposal is for subdivision permitted under Clause 2.6 of PLEP and is associated with permissible land uses in the zoning with Council consent.

Clause 2.3 Zone objectives

The objectives of the E4 - General Industrial zone are:

- "• To provide a wide range of industrial and warehouse land uses.*
- To encourage employment opportunities.*
- To minimise any adverse effect of industry on other land uses.*
- To support and protect industrial land for industrial uses.*
- To promote development that makes efficient use of industrial land.*
- To permit facilities that serve the daily recreation and convenience needs of the people who work in the surrounding industrial area."*

The proposed subdivision will allow for future development including industrial and warehousing needs and will provide employment opportunities.

The revised subdivision layout and design has addressed concerns raised regarding the efficient use of the proposed subdivision layout and connections for pedestrians to the railway via pathways. The amended proposal is considered to satisfy the objectives of the zone and the variety of lot shapes and sizes will allow for a range of industrial and warehouse land uses which encourages employment opportunities. The layout changes and recommended conditions of consent ensure the industrial subdivision is integrated into its setting to prevent adverse visual impacts or impacts upon adjoining land uses, whilst being an efficient use of industrial land.

The proposed pedestrian pathway network within and outside of the development ensures the industrial development is accessible and walkable and connects to the nearby railway station. The wetlands area and swift parrot area will provide opportunity for workers in the area to enjoy the natural outlook whilst on a break or to and from work.

Overall, the proposed development is considered to be in keeping with the objectives of the IN1 General Industrial zone.

Clause 4.1 - Minimum subdivision lot size

The site is zoned E4 - General Industrial and has a minimum lot size requirement of 6000m² or the land along Old Bathurst Road and 2000m² for all other lots.

The proposed lot layout meets the minimum lot size controls for the land along Old Bathurst Road and the lots across the remainder of the site.

All lots meet the minimum lot size requirements of Clause 4.1 of PLEP.

Clause 5.21 - Flood planning

The Flood Impact Assessment is required to assess and determine flood behaviour/characteristics under future climate change flooding conditions and determine and document the impact the proposed development could potentially have on future climate change flooding conditions in accordance with Clause 5.21 of Penrith LEP 2010.

Clause 5.21 states (in part):

"5.21 Flood planning

(1) The objectives of this clause are as follows—

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land,*

taking into account projected changes as a result of climate change,
(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,
(d) to enable the safe occupation and efficient evacuation of people in the event of a flood.

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion."*

The application was accompanied by flood impact assessment and flood emergency response reports which were updated during the assessment. The amended documents are:

- Flood Impact Assessment by Advisian for the proposed Subdivision of 158-164 Old Bathurst Road, dated 11/10/22, Rev C.
- Flood Emergency Response Strategy by Advisian for the proposed Subdivision of 158-164 Old Bathurst Road, dated 7/10/22, Rev C.

The site is affected by the Nepean River flooding as well as local overland flow flooding and it is located within a low flood island of Nepean River flooding. Council's 2018 Nepean River Flood Study indicates that the site is generally not affected by Nepean River flooding up to the 1% AEP flood event however during the 1% AEP flood event the site is marginally flood affected generally along the southern boundary as well as on the western boundary where a Swamp area is located. Ponding of floodwaters along the middle of the site is also noted. During any flood events 1 in 200 AEP (0.5%AEP) or larger flood events the site will be fully submerged. During the PMF event the depth of waters will be several meters. Flood velocities are generally less than 0.5m/s during the 1% AEP flood event and the flood hazard within the site generally H1- Generally safe however within Old Bathurst Road varies from H1-Generally safe to H5- Unsafe, buildings vulnerable. Council's 2020 Emu Plains Overland Flow Flood Study indicates that the site is affected by the local overland flow flooding however the flow depths within the site are generally shallow except in the swamp areas where the 1% AEP flow depths are in the order of 1.5m to 2m. As in the case of Nepean River flooding the site is fully submerged by the local overland PMF flooding.

Council's Floodplain Engineering Coordinator reviewed the submitted information and indicated that the flood impact assessment by Advisian considers the flooding of the Nepean River and undertaken pre and post development scenarios and estimated the impacts of flooding (flood levels, velocities, flood hazards) outside the development site and in their flood modelling they have included the proposed commuter car park developed scenarios. The flood assessment estimates that the maximum flood level increase outside the development site is in the order of 19mm and the maximum velocity increase in the order of 0.24m/s.

No changes are noted in the flood hazard categories. Section C3.5 of Council's Development Control Plan (DCP 2014) outlines flood planning requirements for developments. The flood impact assessment evaluated each criteria for the flooding and demonstrated that for the 1% AEP flood event, the proposed development does not cause any significant off-site increases in peak flood levels or velocities.

Council's Floodplain Engineering Coordinator advised that the flood impact assessment by ACOR Consultants assessed the impact of overland flow flooding and demonstrates that the proposed development (filling and grading) within the site will not have significant adverse flood impacts outside the development site. The 1% AEP flood levels remain similar during the post developed condition as compared to the existing flooding scenario. A flood level reduction of up to 100 mm was noted within the land, north of Old Bathurst Road. There were some minor localised flood level increases of up to 30 mm at David Road and Sommerville Circuit intersection and within the existing table drain to the north of Old Bathurst Road however the associated flood hazard ratings have not changed during the post developed condition as compared to the existing scenario. It is proposed to reshaping the existing swamp area into a constructed wetland and pond and hence the proposed development promotes some additional flood storage during the 1% AEP flood events.

The site is a low flood island and flood evacuation will be required during larger flood events. A Flood Emergency Response Strategy report was provided which addresses how the site will be evacuated during larger flood events. The regional implications of flooding have been considered by Council in its assessment and deemed acceptable. In addition, whilst referral is not triggered by this development being for industrial purposes, a referral was undertaken to the Department of Planning who coordinate a response with Infrastructure NSW and NSW SES to determine if the development will exceed the capacity of evacuation routes. No response was received since the referral on 28 June 2022, despite follow up by Council.

In general, the flood assessment reports demonstrate that the proposed subdivision will not generally have adverse flood impacts or negligible flood impacts and as such no objections are raised by Council's Floodplain Engineering Coordinator for matters related to flood impacts and satisfies the requirements of Clause 5.21 of PLEP.

Clause 7.5 Protection of scenic character and landscape values

Clause 7.5 of PLEP states:

"7.5 Protection of scenic character and landscape values

(1) The objectives of this clause are as follows—

- (a) to identify and protect areas that have particular scenic value either from major roads, identified heritage items or other public places,*
- (b) to ensure development in these areas is located and designed to minimise its visual impact.*

(2) This clause applies to land identified as "Land with scenic and landscape values" on the Scenic and Landscape Values Map.

(3) Development consent must not be granted for any development on land to which this clause applies unless the consent authority is satisfied that measures will be taken, including in relation to the location and design of the development, to minimise the visual impact of the development from major roads and other public places."

The subject site is identified as being subject to scenic character and landscape values and as such an assessment against Clause 7.5 is required.

A Visual Impact Assessment (VIA) was submitted with respect to the amended plans and notes the changes to the plans to provide for additional mature tree retention in particular around all boundaries (except the mound area on David Rd). The VIA explored the context of the site and its visibility from the surrounding area, including by foot, vehicle and train. The VIA concludes:

"The development as proposed does not have an unreasonable visual impact on the surrounding area. The proposal is not visible from the ground floor of any sensitive receptors such as residential areas. The proposal includes significant tree and understorey planting to its perimeter and retains a large number of existing trees along its northern, eastern and southern boundaries which assist in ameliorating views towards the development. Existing views and vistas from the surrounding area towards the Blue Mountains will not be significantly diminished by the proposal and are in keeping with the zoning under the current Penrith Local Environment Plan (LEP) 2010 and precedents set by the surrounding industrial land use."

The assessment of the existing surrounding area and context and visibility of the site identified within the VIA is correct. The site is highly visible from Old Bathurst Road and the railways lines, as well as further afield elevated locations. Existing mature vegetation currently provides partial screening of the site from these locations.

The visibility of the site (and the future industrial development) will be increased considerably, to the detriment of the area, if excessive tree removal is permitted as proposed. The proposed subdivision will facilitate the development of the site for industrial development of 37 industrial lots, which will be far more visually intense, and building dominated from the public domain than the current development with scattered buildings. As such, there is a need for a greater focus on the likely appearance of the site as it has been determined that the future industrial development of the site as a result of the subdivision and tree removal will be visually prominent within the landscape.

The site inspection between Council and the Applicant confirmed that there is established mature vegetation along the boundaries which have good screening abilities. Further, the western boundary has mounding with landscaping. The original proposal included a significant amount of tree removal and following an on-site meeting with the applicant, the amended plans increased the number of trees being retained along all boundaries and within the wetlands. The amended proposal retains 368 of 726 trees on the site. However, this proposal still proposes removal of all trees fronting David Rd. It is estimated from the Arborist Report that approx. 55 trees or more depending upon updated Arborist assessment could be retained along David Rd, noting the location of existing trees will necessitate the retention of the mound (or a notable portion of the mound).

It is evident on site that there are important expansive views of the Blue Mountains escarpment to the west, and it appears that previous development of the site also had regard to these values by way of the creation of mounding and dense landscaping along the periphery boundaries of the site to Old Bathurst Rd and David Rd. With respect to the mound along David Rd, the VIA states: *"The existing view to the site is of a dense, established vegetated mound which blocks views into and out of the site. The proposal is for feature signage and planting which will provide partial screening towards the site."* The applicant has expressed a desire for the mound to be removed, however the outcome of the contamination investigations indicate there is no need for the mound to be removed for a contamination reason and as such the mound can be retained, along with the existing dense tree canopy on the side and top of the mound. The applicant has indicated via letter dated 14 July 2023 (refer to attachment to this report) that they would accept a condition of consent which requires the mound to be retained by virtue of this agreement it was taken that the applicant was amending the intentions of the development and resulting scope of works to then allow for a favourable outcome. Having regard to the visual impact of the mounding and existing trees, the existing dense screening that is provided by this feature is significant and provides for screening of the site from the adjoining roads, but also from further afield including the upper areas to the west. By retaining the mound and existing dense tree canopy on the side and top of the mound, a continuous canopy of existing

trees could be achieved along Old Bathurst Rd and around the corner and along David Rd until the point of the new road into the industrial subdivision. This is a significant visual outcome which provides for instant screening and does not rely upon years of growth for new trees to achieve the current screening abilities.

The proposal in its current form without the retention of the mound and associated trees along the top of and sides of the mound does not satisfy the requirements of Clause 7.5 of PLEP.

However, in the absence of any plans and details regarding the mound and tree retention and in order to satisfy the requirements of Clause 7.5, a Deferred Commencement condition has been recommended which requires the retention of the mound and existing dense tree canopy on the side and top of the mound, whilst allowing for replacement planting of identified dead trees and new plantings to embellish and complement the existing trees. This condition allows for protection of areas that have scenic value and minimises the visual impact of the future development of the industrial land. The full extent of mounding and tree retention will be subject to the detail provided to satisfy the Deferred Commencement condition, however there is an expectation that a dense row of mature vegetation, elevated by the mound, will be retained and embellished by new plantings as part of the landscape design. The proposed fencing is indicated to be palisade fencing along David Rd and Old Bathurst Rd, which allows for security, but the visual impact is minimised by the existing trees and new landscaping being visually dominant.

In addition to the visual and screening qualities of mature tree retention, the benefits with respect to shading, heat reduction, biodiversity and tree health, all contribute to the conclusion that further mature tree retention is necessary. Retention of the mound and associated mature trees in that location will assist greatly in this regard.

Having regard to the visual impact of the proposed development, it is considered that subject to retention of the mounding and associated mature trees via the Deferred Commencement condition, that the scenic character and landscape values of the area are protected and the requirements of Clause 7.5 of PLEP are satisfied.

Clause 7.30 Urban Heat

The objectives of Clause 7.30-Urban Heat of Penrith LEP 2010 are:

- "a. ensure development incorporates planning and design measures to reduce the urban heat island effect in Penrith, and*
- b. ensure buildings and outdoor spaces are thermally comfortable for people living and working in Penrith, particularly during summer, and*
- c. promote the cooling benefits of green infrastructure and water in the landscape."*

Clause 7.30 of Penrith LEP applies to development in the E4 - General Industrial zone. Clause 7.30(3) of Penrith LEP states that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that planning and design measures are incorporated to reduce the urban heat island effect that—

- "a. maximise green infrastructure, and*
- b. retain water in the landscape, and*
- c. use design measures to ensure the thermal performance of the development achieves a high degree of passive cooling, and*
- d. use building, paving and other materials that minimise heat impacts, and*
- e. reduce reliance on mechanical ventilation and cooling systems, to conserve energy and to minimise heat sources."*

The proposal in its current form without the retention of the mound and associated trees along the top of

and sides of the mound does not satisfy the objectives or requirements of Clause 7.30 of PLEP, in particular with respect to heat island effect, cooling benefits of existing vegetation and maximising green infrastructure.

This clause expressly states that “*development consent must not be granted*” unless the consent authority is satisfied that design measures are in place to “*maximise green infrastructure*”. It is therefore a statutory requirement to retain canopy trees that contribute to the classification of green infrastructure which includes (as defined) tree canopy, and by reference to tree canopy alone, the clause has no reliance on endemic or critical vegetation classifications to the exclusion of other species.

The proposal was amended in layout and the applicant provided an agreement in writing to retain the mounding and additional trees to maximise green infrastructure.

However, in the absence of any plans and details regarding the mound and tree retention and in order to satisfy the requirements of Clause 7.5, an appropriate Deferred Commencement condition has been recommended which requires the retention of the mound and existing dense tree canopy on the side and top of the mound, whilst allowing for replacement planting and new plantings to embellish and complement the existing trees. This condition allows for maximising retention of green infrastructure and will assist greatly with shading and thermal performance for future development of the lots in this area. The full extent of mounding and tree retention will be subject to the detail provided to satisfy the Deferred Commencement condition, however there is an expectation that a dense row of mature vegetation, elevated by the mound, will be retained and embellished by new plantings as part of the landscape design.

With the retention of the mounding and associated trees which will be within the rear of the proposed lots, the proposal will adequately balance landscaped area with future built upon and hardstand area and accommodates canopy tree planting in suitable locations on the site that will provide shading and cooling. All boundaries retain vegetation, however the western boundary must retain the mound and trees, as well as be further embellished with new landscaping to ensure suitable shade from the western heat.

The proposed lot shapes and sizes will allow for future industrial development appropriate setback to trees having regard to tree canopy spread and root development. The road design change along the eastern boundary allows for less earthworks and use of construction methods to minimise impacts upon the health of trees being retained along that boundary. Further, new landscaping including street trees are proposed throughout the development.

The Deferred Commencement condition has been recommended which requires the retention of the mound and existing dense tree canopy on the side and top of the mound allows the applicant to provide greater detail regarding the final extent of the mound being retained, which requires further engineering investigations by the applicant in consultation with the Arborist. This may allow for additional usable area for the lots, whilst still achieving the necessary urban heat outcome from the tree retention.

The proposed development, subject to conditions, provides an industrial subdivision which addresses urban heat and further consideration will be given to the provisions again at the time of applications for individual lots.

As such, it is considered that subject to retention of the mounding and associated mature trees via the Deferred Commencement condition, that the urban heat is managed and the requirements of Clause 7.30 of PLEP are satisfied.

Section 4.15(1)(a)(ii) The provisions of any draft environmental planning instrument

There are no draft policies or plans applying to the development proposal.

Section 4.15(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
DCP Principles	Complies
C1 Site Planning and Design Principles	Complies - see Appendix - Development Control Plan Compliance
C2 Vegetation Management	Does not comply - see Appendix - Development Control Plan Compliance
C3 Water Management	Complies - see Appendix - Development Control Plan Compliance
C4 Land Management	Complies - see Appendix - Development Control Plan Compliance
C5 Waste Management	Complies - see Appendix - Development Control Plan Compliance
C6 Landscape Design	Complies - see Appendix - Development Control Plan Compliance
C7 Culture and Heritage	Complies - see Appendix - Development Control Plan Compliance
C8 Public Domain	Complies - see Appendix - Development Control Plan Compliance
C9 Advertising and Signage	Complies - see Appendix - Development Control Plan Compliance
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	Complies - see Appendix - Development Control Plan Compliance
C12 Noise and Vibration	Complies - see Appendix - Development Control Plan Compliance
C13 Infrastructure and Services	Complies - see Appendix - Development Control Plan Compliance
C14 Urban Heat Management	Does not comply - see Appendix - Development Control Plan Compliance

Section 4.15(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applicable to this site.

Section 4.15(1)(a)(iv) The provisions of the regulations

The proposal relates to the subdivision of a disused industrial lot. In this regard and noting the sites location, there are no additional provisions under the regulations to be considered for the proposal.

Section 4.15(1)(b) The likely impacts of the development

Visual impact

The amendments to the proposal have resulted in all boundaries (with the exception of a portion of David Rd frontage) having mature trees retained and embellished with new landscaping. The applicant provided in writing a commitment to accepting a condition of consent for retention of the mound along the David Rd frontage, which allows for additional tree retention. This change is critical to ensure the view of the entire site from adjoining public roads, railway, industrial development and further afield is of a tree canopy to reduce the visual impact of the future industrial development of 37 lots.

Intersections

The proposal has been amended to remove the unnecessary second intersection to Old Bathurst Road and provide additional technical information which warrants the need for the signals at the intersection of Old Bathurst Road and David Rd. The resulting design is far superior in terms of traffic movements and pedestrian and cyclist safety.

The full construction costs of this intersection and all roadworks as part of this application will be borne by the developer.

Electrical

Endeavour Energy advised via letter dated 1 June 2022 that electricity servicing is available and provided detailed requirements, including the need for an Accredited Service Provider to be engaged to ensure adequate connection.

The existing overhead electricity services in David Road that fronts the development site will be required to be relocated underground (i.e. removal of timber poles and wires). It is noted that the timber poles in David Road have streetlights attached, therefore any electrical design for the lighting of the estate roads shall also include the lighting of David Road to current standards. Appropriate conditions of consent have been recommended in this regard.

Parking

Appropriate conditions of consent have been recommended to address a signage plan showing proposed changes to existing on street parking restrictions on Old Bathurst Road and David Road, including the provision of 'No Parking' along the full frontage of the development on Old Bathurst Road and provision of 'No Stopping' that is required to facilitate swept paths and/or protect sightlines at intersections. Any changes to regulatory signage and line marking will require separate approval through the Local Traffic Committee.

Access and Maneuvering

The proposed internal road layout was not supported with the original proposal. The road layout was amended to comply with the Geometric Standards specified in Council's Design Guidelines for Engineering

Works for Subdivisions Section 2.2.13, including removal of an acute bend of Road MC01 in the north-east corner of the site near Lots 4 and 5 at chainage 60m to 90m which resulted in loss of one lot. Proposed Lots 4 and 5 were consolidated into one larger lot with an area of 3,495m², which is acceptable and is above the minimum lot size.

Council's Traffic Officer has reviewed the amended plan and considers that the revised road alignment and curvature meets the relevant Ausroads requirements.

Traffic Generation and Road Network Impacts

The report recommends that traffic signals be installed at the intersection of Old Bathurst Road and David Road due to meeting the warrants set out by TfNSW. This is also a more suitable alternative to any roundabout option due to the proximity of Emu Plains Station and the provision of pedestrian safety benefits and an overall better intersection performance. Council's Traffic Engineering are supportive of this proposal to manage increased traffic volumes resulting from this development, subject to referral and support from TfNSW as the approval authority for all new traffic signals. TfNSW have indicated support for the signals via their letter dated 30 January 2024.

Pedestrians & Cyclists

A footpath is proposed for the full length of the development site along Old Bathurst Road and David Road, including adjacent to the proposed wetlands, along internal roads and on the proposed pedestrian pathway in the north-east corner which provides access to the railway station. These pathways have been indicated on the plans, including kerb ramp connections where appropriate to existing footpath infrastructure. These pathways improve walkability and accessibility throughout and around the development and encourage the use of other forms of transport including cycling and trains. The revised road design accommodates cyclists along Old Bathurst Road.

Pedestrian routes proposed are considered to be safe and street lighting is required.

Land Contamination

It is noted that the remediation component of this development proposal no longer forms a part of the development application, as development consent for the remediation works was sought through DA23/0506. This application has recently been approved, and conditions have been incorporated into that development consent to ensure that a Validation Report and Site Audit Statement will be submitted before further works can occur on the remediated site. However, given that the land has not yet been remediated, and it is not currently considered suitable for the proposed industrial land use, a number of conditions have also been recommended for inclusion in any approval for this proposal to ensure that the site has been made suitable prior to further development commencing.

Duck Pond

As stated in the Environmental Management Referral Response dated 15 August 2023 for DA23/0506, the sediments of the Duck Pond have not yet been assessed. It was put forward in the Remedial Action Plan approved under DA23/0506 that the sediments can only be assessed when the water has been pumped out and the pond is empty, and that this will occur during the construction phase of the subdivision works. A condition was included in the development consent issued for DA23/0506 that restricted work in the duck pond area until such time as the required sediment testing has occurred. A variation of this condition has also been recommended for inclusion in this application.

Further, Council's Senior Biodiversity Officer has recommended a condition requiring that a Dam Dewatering Plan be prepared and submitted prior to the commencement of works. The condition lists a

number of items that need to be detailed in the plan. An additional condition that requires the decommissioning of the waterbodies to be carried out in accordance with the plan was also recommended. The contamination assessment of the waters of the duck pond determined that the water is not suitable for direct disposal to stormwater, and rather could be used for dust suppression during the works. In turn, it is recommended that the below bullet point be incorporated into the condition as an item for inclusion in the Dam Dewatering Plan:

- the methods of disposing of dam water, noting the findings and recommendations of the 'Surface Water Management Options Assessment - 158 to 164 Old Bathurst Road, Emu Plains' prepared by JBS&G dated 24 February 2022.

Construction, Environment Management Plan

The Remedial Action Plan approved under DA23/0506 recommended that a Construction, Environment and Management Plan (CEMP) be prepared to address aesthetic considerations, to ensure that significant amounts of inclusions are not present in the top 0.5m of accessible soils.

A condition requiring that a positive covenant be placed on the land title was included in the development consent issued for DA23/0506, which would ensure that this CEMP would be implemented during future development works. It needs to be ensured that this positive covenant is carried on to any new lots that are created as a result of this subdivision. It is not known whether this will automatically occur during the land registration process, or whether the creation of a covenant will again need to be captured through a condition of consent. In turn, this condition has again been recommended referencing Condition 17 of DA23/0506. Although it is acknowledged that this application does not seek consent for remediation works, and these works were the subject of a different application, these requirements ensure continued site suitability.

In addition, a condition has been recommended requiring that this CEMP be implemented and adhered to for this development. However, it is noted that this document does not form a part of the application, so the DA23/0506 has been referenced.

Bund Assessment

During the assessment of this application there has been some discussion as to whether the bund that borders much of the site needs to be removed to address contamination concerns. An assessment of this bund was carried out and documented in 'Bund Assessment – Former Rocla Site, Emu Plains, NSW' prepared by JBS&G dated 13 February 2023. 29 test pits were excavated, with 56 samples taken for analysis and 73 asbestos quantifications undertaken. No "*unacceptable risks to future onsite receptors from the bund soil*" were found, and it was concluded that the bund "*does not require remediation or management*". In turn, the bund is not required to be removed to achieve a contamination remediation / management outcome.

Documentation

While a number of documents have been submitted to provide information on land contamination matters, not all of these documents are required to be approved as a part of this application. Whilst they have informed decision-making regarding site suitability, they have been approved as required under the remediation application (DA23/0506). The only document that is required to be referenced through the development consent is the 'Surface Water Management Options Assessment - 158 to 164 Old Bathurst Road, Emu Plains' prepared by JBS&G dated 24 February 2022, which has been incorporated into a development consent condition.

Flooding

The updated Flood Impact Assessment and Flood Emergency Response Strategy report provides for a

satisfactory outcome in terms of flooding and determined the impact of the proposed development on future climate change flooding conditions in accordance with Clause 5.21 of Penrith LEP 2010, as well as ensuring suitable emergency evacuation during a flood.

Stormwater

The proposed stormwater management strategy was originally not satisfactory, however throughout the assessment additional information was submitted. In the latest package, the applicant has proposed stormwater management, including on-site stormwater detention and WSUD, for each individual lot to be provided at development of the lot. Information related to the Permissible Site Discharge and Site Storage Requirement for each lot shall be detailed as an 88B Instrument. Appropriate conditions of consent have been recommended in this regard.

Stormwater drainage for the site is constrained by the level of the existing stormwater drainage outlets within David Road and Old Bathurst Road. In order to minimise filling of the site, numerous box culvert at minimal gradient have been proposed for stormwater management. This approach is considered most appropriate given site constraints.

Insufficient information has been provided to demonstrate that gutter flows do not exceed 2.5m width up to the 1% AEP flood even, however appropriate conditions of consent have been recommended to address this matter.

The application is supported by evidence of acceptance by Council's Director City Services to the dedication of the estate-based bioretention / detention drainage basin to Council after 5 years maintenance period.

Water Quality

Based on a review of the above updated information, the proposed sub-division will comply with Council's stormwater treatment requirements with the provisions on on-lot treatment Ocean Protect cartridge filters and a 100kL rainwater tank connected for reuse on landscaping and other non-potable uses. Details on water conservation measures will also need to be provided in support of future applications for each lot. In addition to the on-lot commitments, 2 Ocean protect Oceansave GPTs, 2 constructed wetlands with sediment basins as well as 2 ponds are proposed.

It is noted that a VMP is required which will include full details of proposed plants in the wetland areas.

The applicant has detailed that they will be responsible for maintaining the wetlands for the first 5 years and there is an intent to dedicate Lot 31 to Council, with correspondence provided from Council's Director – City Services confirming that they will take responsibility for the ownership and associated maintenance responsibilities after the 5-year establishment and maintenance period. The onus is on the applicant to maintain this lot and the applicant has made arrangements for establishment and agreement for future dedication to Council of Proposed Lot 32 which contains the estate-based bio-retention / detention drainage basin in a wetland setting, as well as a triangular shaped grassed area. Appropriate conditions of consent are recommended in this regard to facilitate the strategic intention to dedicate the land to Council in 5 years, or as otherwise agreed with Council. The dedication will occur at a later date and should it not occur, then remains as a privately owned Torrens lot with appropriate easements.

It will be necessary that future developments associated on lots will need to provide stormwater treatment in accordance with Council DCP and the approved stormwater strategy. As such, a positive covenant will need to be included in the approval and plans to ensure that the future lots are required to incorporate on-lot stormwater treatment measures as indicated in the stormwater strategy.

The information indicated that an operation and maintenance manual will be developed as part of detailed designs. Appropriate conditions of consent have been recommended in this regard.

Based on the information submitted, the proposed development would comply with Council's Water Sensitive Urban Design Policy.

Geotechnical

The application proposes general bulk earthworks to facilitate site drainage, including the importation of fill for the site. The maximum depth of fill is 2 metres, with an average of 0.5 metres of fill across the entire site. An updated Geotechnical Report (prepared by Douglas Partners dated 10 January 2024) was submitted during the assessment which has been reviewed by Council's Engineers and deemed to be acceptable, subject to recommended conditions of consent.

Biodiversity

As discussed earlier in this report, the proposal, subject to conditions for tree retention along David Rd, complies with the requirements of the Biodiversity Conservation Act 2016. A meeting was held on site which resulted in a willingness for mounding and trees along David Rd to be retained, as well as additional trees along the perimeters and within the wetland area being retained as shown on the amended plan, which allowed for retention of an important area for the Swift Parrot along the eastern boundary and the layout amended to allow for reduced earthworks near trees being retained to ensure their survival. The retention of these additional trees will aid in providing foraging habitat for highly mobile fauna as well as maintaining/ improving existing visual buffer/screenings from adjacent development and view from the railway line and demonstrates the principles of avoidance.

Concern was raised during the assessment regarding damage to trees being retained during the excavation along the edge of the wetlands during construction. In this regard, conditions of consent have been recommended which require replacement trees if damaged at a rate of 3:1.

The applicant has agreed to the preparation of a Vegetation Management Plan (VMP) for the site and includes the vegetation being retained, including the mound and wetlands, via condition of consent.

Appropriate conditions of consent have been recommended regarding the preparation and submission of a VMP and for the Constructed Wetland Area or any area subject to the VMP is identified on a Restricted Development Area (Positive Covenant).

Tree Preservation

The assessment and Arborist Report reflects the retention value based on the properties of the tree but does not consider the additional value and importance of established trees in Penrith, particularly in an industrial area which experiences the hottest temperature extremes in one of the hottest suburbs in Australia. Trees in Penrith have a greater value than other municipalities due to the susceptibility of the urban heat island effect and the heat extremes experienced in the area. Trees in Penrith are often difficult and expensive to establish and slow to grow due to the existing soil conditions, hence existing trees have significant asset value. The significant loss of trees originally proposed is particularly troubling and the significant resources are being implemented by Penrith City Penrith in planting trees and promoting their actions in 'Cooling the City' and is contrary to Clause 7.30 of PLEP and Sections C2 and C14 of PDCP.

All trees are protected under C2 Vegetation Management of the DCP, and the application does not clearly demonstrate the rationale for such a significant clearance of the existing tree canopy or an attempt to retain a majority. The original proposal included a significant amount of tree removal and following an on-

site meeting with the applicant, the amended plans increased the number of trees being retained along all boundaries and within the wetlands. The amended proposal retains 368 of 726 trees on the site. However, this proposal still proposes removal of all trees along the existing mound along David Rd within the rear of Proposed Lots 32 and 33. It is estimated from the Arborist Report that approx. 55 trees (and potentially more dependent upon the updated Arborist assessment) could be retained along the David Rd mound. The applicant has expressed a desire for the mound to be removed, however the outcome of the contamination investigations indicate there is no need for the mound to be removed for a contamination reason and as such the mound can be retained, along with the existing dense tree canopy on the side and top of the mound.

A solution has been reached for the large majority of the site via amendments to the plan of subdivision which afforded necessary boundary tree retention, with the exception of the portion of the site fronting David Rd in the rear of Proposed Lots 32 and 33. The revised design achieved tree retention around all boundaries (except for the mound indicated above), which will be supplemented by new landscaping. The tree retention is achieved within the rear of Proposed Lots 14 to 21 along the southern boundary, Proposed Lots 32 to 38 along the eastern and northern boundary, as well as within the wetlands on Proposed Lot 31 and the road reserve along the eastern and south-eastern boundaries. The revised layout design allows for trees within a widened road reserve to allow for retention of a Swift Parrot corridor and reduce the impact of earthworks on tree being retained. The trees within the rear of future industrial lots will not restrict development given the location of the trees within the future rear setbacks to the built form and will provide essential visual screening of the existing estate and breaking up the expanse of hard surfacing of adjoining industrial estates.

With respect to the mounding, despite the agreement for acceptance of a condition for its retention by the applicant, as the plans and associated reports were not updated to show retention of the trees and associated mounding in the rear of Proposed Lots 32 and 33 facing David Rd, the exact extent of tree retention and mounding being retained is unclear. The current mounding has a long batter which would extend into Proposed Lots 32 and 33, however the additional detail as part of a Deferred Commencement condition allows for the exact extent of the batter to be defined. No details of what the mound constitutes has been agreed.

From a review of aerial photography and survey and having regard to the canopy extent of the front row of aerial vegetation allow for unimpeded root development and continued growth, it is likely that the setback would be in excess of the DCP requirement for David Rd and would replicate the DCP min setback of 15m to Old Bathurst Road. However, the applicant must undertake accurate as TPZ and SRZ assessment to determine the necessary setback from trees being retained. Further, the DCP numerical setback is not the only consideration and the DCP objectives extend to qualitative outcomes that necessitate a reasonable level of tree retention. It is not sufficient to only apply a setback line to future built form to then inform retention as any proposal warrants a setback commensurate with whatever is needed to ensure the protection and retention of the trees or at least sufficient trees to screen the development) and comply with urban heat and scenic quality considerations in the LEP, not to mention the DCP.

The applicant has not provided sufficient information that allows for adequate assessment to differentiate between what trees can be retained versus approved for removal with respect to the location of the mound. Without this critical information and analysis, the assessment can then only conclude that the full mound requires retention to ensure the protection of the trees at this point in time. Clause 7.30 of PLEP expressly states that *“development consent must not be granted”* unless the consent authority is satisfied that design measures are in place to *“maximise green infrastructure”*. It is therefore a statutory requirement to retain canopy trees that contribute to the classification of green infrastructure which includes (as defined) tree canopy, and by reference to tree canopy alone, the clause has no reliance on endemic or critical vegetation classifications to the exclusion of other species.

Further, the DCP is not just numerical standards and Section 4.3 objectives and controls requires retention of significant strands of vegetation in the overall site design, mentions all trees on site should be retained, and talks about visual impact and heat effect. Therefore, the numerical setback cannot be met if the objectives and controls of the same clause of the DCP are to be satisfied. An increased setback to David Rd to accommodate the mound and trees would be desirable. There could be a solution that retains the trees in question and provides retaining rather than keeping the full extent of the mound's batter, however this has not been indicated. The applicant's letter dated 14 July 2023 states:

"The Applicant retains the position that the retention of the spoil mound is not a preferred planning, landscaping or environmental outcome and a better position can be achieved through the removal of the mound and re-landscaping of this area in a proper soil landscape with plantings that will provide a better, more resilient and substantive tree corridor. As outlined at the Panel briefing on 12 December 2022 should the Council and the Panel disagree with the proposed approach, and to progress this impasse the Applicant will accept a condition requiring:

- *Retention of the part of the spoil mound that fronts the corner of Old Bathurst Road and David Road (to the entrance into the Site).*
- *Requirement to provide an additional landscape plan (relevant to the part of the mound being retained).*
- *Requirement to provide a Vegetation Management Plan, which details how the mound will be maintained, enhanced and unwanted species removed.*
- *Reasonable battering and retention of landform to preserve the existing trees at the interface of the mound and developable land in each lot as well as where the internal road provides access to the estate.*
- *The provision of the above information is to be provided prior to the issue of a Subdivision Works Certificate, with Council to provide a response within 10 days, otherwise acceptance of the proposed Landscape Plan, Vegetation Management Plan and retention is considered acceptable."*

The recommended Deferred Commencement condition allows for the exact extent of the batter to be defined via a plan and section which clearly indicates the extent of the mounding and a proposed solution for batter or retaining, with consideration given to the existing tree retention and necessary TPZ and SRZ assessment, as well as preparation of the VMP. Any engineering solution would need to have regard to the tree roots to ensure the long-term viability of the trees retaining in the mound area.

In summary, the retention of the trees along David Rd in the rear of Proposed Lots 33 and 34 is critical and subject to their retention and associated details via the recommended Deferred Commencement condition and other conditions of consent, the proposal is acceptable in terms of tree preservation.

Noise

The Acoustic Assessment prepared by Renzo Tonin & Associates (dated 5 April 2022) submitted with the application assesses the potential noise impacts associated with the proposed industrial subdivision, including sleep disturbance. The report establishes the background noise levels and gives consideration to the predicted noise levels produced by the precinct when developed. Future noise levels at five residential receivers (including the Bolwara Transitional Centre, the Emu Plains Correctional Centre and the Amber Laurel Correctional Centre), two industrial receivers, and the Nepean Creative and Performing Arts High School were predicted. The report puts forward that *"it is appropriate to proportion the overall noise requirements to each individual lot"*, thus enabling the noise goals for the broader precinct to be achieved. The assessment recognises that future acoustic reports may be required to support the development of individual lots, specific to the use proposed. However, to assess the potential noise impacts from the whole precinct the noise produced will be divided equally amongst the lots, meaning that each lot has the same noise goal. The report documents a screening test carried out to establish whether these noise goals could be achieved. Typical noise sources for a commercial and industrial type precinct were considered, such as forklifts and trucks. The report found that without any typical acoustic shielding (i.e. the lots have

a direct line of sight to a receiver), the noise produced by activities at most of the lots is likely to be above the individual lot noise trigger levels during day, evening and nighttime operations. It was predicted that where there was some shielding between receiver and source (such as other building structures, as will be the case) then the day and evening period noise goals could be achieved. However, should nighttime operations be proposed, then additional site-specific mitigation measures may be required. The report does suggest that placing certain businesses with noise intensive operations in strategic locations may be appropriate. This would involve placing businesses that produce lower noise levels closer to sensitive receivers to act as a noise buffer from louder businesses. Further, it is also put forward that noise barriers, or taller continuous warehouses, along the southern boundary of the site could also be used to mitigate noise. However, this would be difficult to actually implement given that the future lots will be sold individually for development. It may be appropriate for the applicant to pursue an acoustic barrier along the southern property boundary as a part of this development application. This may reduce further restrictions on future developments and provide a better aesthetic outcome (rather than a bit-piece approach). However, it may also impact future construction/orientation of buildings on the lots. This would require additional assessment, to both establish appropriate barrier materials and heights, and also to establish whether it would be worthwhile given that the nature of the future business operations is unknown.

Ultimately, an acoustic report will be required to support the development of each lot, where it will be ensured that the noise goals identified in the Renzo Tonin report are achieved. It is recommended that an 88B restriction be used to ensure that this report, and its noise goals, are used as the basis for making further assessments of noise impact. The report puts forward that *"Future land purchasers or site developers would submit their proposed operation to an acoustic consultant who can review and verify that the business will comply with the noise limits set or undertake a more detailed assessment to determine the necessary mitigation and management controls to achieve compliance with these levels"*. Appropriate conditions of consent have been recommended in this regard.

Air Quality & Odour

This application seeks consent for the subdivision of the site, including earthworks which may have an impact on local air quality, however these potential impacts can be addressed through appropriate conditions of consent.

Section 4.15(1)(c) The suitability of the site for the development

The subject site is of a suitable size to cater for the proposed industrial subdivision given the resulting lot sizes and is designed in a manner consistent with the character of the locality. The application has demonstrated that the proposed lots can accommodate future industrial development, with minimal environmental impacts. In this regard, the site is suitable for the proposed subdivision.

Section 4.15(1)(d) Any Submissions

Community Consultation

The application was advertised & notified to adjacent property owners and residents, from 9 May 2022 to 8 June 2022. An extension of time was granted until 22 June 2022. One submission has been received in response and is discussed below.

Issues	Comment
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Proposed footpath and cycling networks are poor and convoluted, and fail to link to provide safe and continuous routes for active transport users. Footpath should be required along the frontage of the development and connecting to adjoining TfNSW car park and along David Rd, including the wetlands.

The amended subdivision layout provides a pedestrian footpath from within the subdivision to the north-east corner onto Old Bathurst Road adjacent to the TfNSW carpark. Pathways are also proposed from within the subdivision to the wetlands and onto David Rd and footpaths along both Old Bathurst Rd and David Rd, which connect to the TfNSW carpark off the street frontage and also to the wetlands.

Design of the two intersections with Old Bathurst Road are extremely inadequate and introduce a significant number of new intolerable road safety risks for road users, including cyclists with Old Bathurst Road being a highly used route for on-road cyclists, including:

In response to concerns raised by Council, the second intersection on Old Bathurst Rd has been deleted from the proposal.

The design of the intersection with Old Bathurst Rd at David Rd has been subject of on-going discussion between TfNSW, Council and the applicant. It is the view of Council's Traffic Engineer that cyclists use Old Bathurst Rd along the frontage of the site, and this is to be maintained in a safe manner.

TfNSW has reviewed the draft concept design and is satisfied that the signals are acceptable, the revised road design accommodates cyclists along Old Bathurst Road. Pedestrian pathways have been indicated on the plans, including kerb ramp connections where appropriate to existing footpath infrastructure. These pathways improve walkability and accessibility throughout and around the development and encourage the use of other forms of transport including cycling and trains.

- The traffic island as shown on the plans is wholly within the road shoulder and provides no space for cyclists.

- The proposal fails to demonstrate why an unrestricted continuous flow merge lane is warranted for the left-turn out movement, how a cyclist would cross this merge lane safely and a simple left-out with no acceleration lane, and a stop sign, would

The detail of questions within the submission are information which is to be shown on post-consent detailed design plans. TfNSW requires detailed design to occur to meet their standards and will be approved by TfNSW.

significantly improve safety for all users.

- The proposal fails to consider the significantly slower acceleration rate for trucks at this intersection and none of the recommendations of traffic report not included.

- The proposal fails to provide safe crossing facilities for pedestrians and cyclists to cross the road at this location.

This intersection should be fully redesigned to account for all road users. A full, continuous bicycle lane should be provided for westbound on-road cyclists with accompanying continuity lines, green paint, and signage. The acceleration lane and merge should also be removed as it is not possible to provide a safe cyclists crossing across a live merge in this scenario. A standard stop-treatment would be far more effective.

The design of the intersection at David Rd fails to even consider the potential presence of an on-road cyclist, let alone provide safe infrastructure for

them, including:

- The current proposal is clearly unsafe as it forces cyclists to either move into the live 70km/h traffic lane, or illegally proceed straight from the left-turn lane.
- The proposal fails to demonstrate why a marked foot crossing is not provided on the eastern leg of this intersection. Reading the documents submitted, the case for not providing a marked crossing has not been demonstrated. It makes far more sense for a marked crossing to be provided on both sides so that a pedestrian walking eastbound accessing the new development is only required to wait at one set of signals, not two.
- The intersection has a well-used driveway in the middle of the intersection. This is clearly unsafe, and the proposal fails to demonstrate how this issue will be addressed.
- The alignment of David Road should be improved to meet Old Bathurst Road at or near 90° to improve safety, reduce intersection size, and reduce corner radii.

The development's internal roads should be controlled with give-way or stop signs.	Council's Engineers have reviewed the layout of the proposed subdivision and internal roads and does not require give-way or stop signs.
The proposal fails to provide kerb ramps at intersections (e.g. MC02 and MC01) and should be provided at all intersections.	Appropriate kerb ramps are proposed on the amended plans.
The proposal results in costly assets into the ownership of Council. These assets should be maintained by the owners of the industrial lots to reduce the ongoing burden on the Council and its ratepayers. Alternatively, additional rates should be sought from the lots to account for the increased maintenance costs, in particular, for the proposed wetlands.	It is standard for some assets to be built by the developer and dedicated to Council for the on-going maintenance and ownership. In this instance, this is occurring for roads, pathways, stormwater and the like. The applicant indicated that Council has accepted that the lot will be retained in Council ownership which includes the drainage and water quality for the entire subdivision. It was specifically noted by Council's Development Engineers that this is not the approach taken with private developments where on lot water quality and quantity treatment is required under private management. The applicant has detailed that they will be responsible for maintaining the wetlands for the first 5 years and there is an intent to dedicate Lot 31 to Council, with correspondence provided from Council's Director – City Services confirming that they will take responsibility for the ownership and associated maintenance responsibilities after the 5-year establishment and maintenance period. The onus is on the applicant to maintain this lot and the applicant has made arrangements for establishment and agreement for future dedication to Council of Proposed Lot 31 which contains the estate-based bio-retention / detention drainage basin in a wetland setting, as well as a triangular shaped grassed area. Appropriate conditions of consent are recommended in this regard to facilitate the strategic intention to dedicate the land to Council in 5 years, or as otherwise agreed with Council. The dedication will occur at a later date and should it not occur, then remains as a privately owned Torrens lot with appropriate easements.

Proposal appears to be a standard industrial development that aims to maximise returns whilst minimising construction costs. Given that Council is the owner of the land, it would appear beneficial to look to set an improved standard for development within the city by providing safer and more accessible active transport routes, more WSUD elements at the street-level, more tree coverage, improved traffic calming, and reduced road width.

During the assessment, extensive discussions occurred between Council Officers and the Applicant regarding the subdivision layout to achieve improved overall design and individual lot design which resulted in a reduction in the number of proposed lots, removed the second intersection to Old Bathurst Rd, increased tree retention around all boundaries, mound retention for greater screening of the future industrial development, more opportunities for landscaping, retention of the swift parrot corridor, road design changes, clear pedestrian pathways and an overall development which has resolved the various technical issues.

Speed limit along this section of Old Bathurst Road to 60km/h following this development should be reduced. The proposal will likely lead to a significant increase in traffic, and with the added intersections, will result in a poorer road safety outcome. This speed reduction would have very little effect on travel times and would increase amenity and safety for pedestrians and cyclists.

TfNSW and Council's Traffic Engineer do not require a change in speed limit along Old Bathurst Rd. This matter can be considered by the Local Traffic Committee separately.

External Consultation

The following external bodies were consulted with respect to the proposal:

Department of Planning and Environment—Water

As works are proposed within 40m of a first order stream, the DA was referred to NSW Department of Planning & Environment (DPE) - Water as '*Integrated Development*' under s.4.46 of the Environmental Planning and Assessment Act 1979. The referral sought General Terms of Approval for a controlled activity permit (EP&A Act) of the Water Management Act 2000. General Terms of Approval were granted via letter dated 29 March 2023 and are included as recommended conditions of consent.

Transport for NSW - Sydney Trains

TfNSW (Sydney Trains) issued concurrence by way of letter dated 15 June 2022 in accordance with Clause 2.98 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP), subject to conditions, which are included as recommended conditions of consent.

Transport for NSW

Transport for NSW advised via letter dated 30 January 2024 provided advice regarding the proposed signals design requirements, including closure of a driveway to the north of the new signals and design for B-double turns and included conditions which are included as recommended conditions of consent.

Sydney Water

Sydney Water advised via letter dated 3 June 2022 that water servicing should be available and detailed requirements would be provided under a Section 73 application. The following comments were provided:

"Water Servicing

- *Trunk potable water servicing should be available from watermains in Old Bathurst Road.*
- *Extensions and/or amplifications to the potable water network will be required complying with the Water Services Association of Australia (WSAA) code – Sydney Water edition.*

Wastewater Servicing

- *Trunk wastewater servicing should be available via a wastewater branch main traversing the site parallel to Old Bathurst Road.*
- *Extensions and/or amplifications to the wastewater network will be required complying with the Water Services Association of Australia (WSAA) code – Sydney Water edition.*
- *The location of this wastewater branch main may constrain future development over or adjacent to it. More information can be found on the Sydney Water website."*

Endeavour Energy

Endeavour Energy advised via letter dated 1 June 2022 that electricity servicing is available and provided detailed requirements, including the need for an Accredited Service Provider to be engaged to ensure adequate connection.

Infrastructure NSW / SES

Whilst referral is not triggered by this development being for industrial purposes based on a letter from Brett Whitworth from the Department of Planning which establishes the protocol, a referral was undertaken as a precaution to the Department of Planning who coordinate a response with Infrastructure NSW and NSW SES to determine if the development will exceed the capacity of evacuation routes. No response was received since the referral on 28 June 2022, despite follow up by Council.

Internal Referrals

The table below identifies the response from the internal referrals to Council's Technical Officers. The comments of non-support by some Council Officers relate to the lack of information, in particular regarding the mound and associated tree retention along David Rd, which is addressed by way of the recommended Deferred Commencement condition and other recommended conditions of consent.

The non-support by Council's Planning & Sustainability Officer relates to the applicant's indication within the application that the proposed upgrade of the Old Bathurst Road/David Road intersection would be under Council's Section 7.12 Development Contribution Plan, However, this intersection is not listed as a works item contemplated to be delivered by the Plan. Therefore, the applicant must deliver the upgrade to the Old Bathurst Road/David Road intersection in order to provide sufficient traffic management facilities to support the proposed development and the Section 7.12 funds cannot be relied upon to deliver these works.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Building Surveyor	No objections
Development Engineer	No objections - subject to conditions
Landscape Architect	Not supported, however conditions provided
Environmental - Environmental management	No objections - subject to conditions
Environmental - Waterways	Not supported, however conditions provided
Environmental - Biodiversity	Not supported, however conditions provided
Traffic Engineer	No objection subject to conditions
Planning and Sustainability	Not supported
Tree Management Officer	Not supported, however conditions provided

Section 4.15(1)(e)The public interest

The proposed development makes good economic use of the land by providing a Torrens Title industrial subdivision without compromising surrounding land uses and character (subject to conditions of consent). The proposal is not contrary to the public interest or locally in a broader sense, and the benefit from sale of these parcels of land will be experienced throughout the area through the redevelopment of disused industrial land, which provides a wider community benefit. The proposal is considered to suitably fit the locality and the site attributes are conducive to the development.

Conclusion

In assessing the proposed development against the relevant environmental planning policies, including Penrith Local Environmental Plan 2010 and Penrith Development Control Plan 2014, the proposal is found to satisfy the aims, objectives and provisions of these policies. The site is considered suitable for the proposal and there are no detrimental negative impacts envisioned as a result of the proposal. Therefore, the application is worthy of support, subject to the recommended conditions of consent.

Recommendation

THAT:

1. DA22/0318 for Proposed Subdivision into 37 Industrial Lots, 1 Stormwater Management Infrastructure Lot & Public Roads including Earthworks, Civil Engineering Works, Tree Removal & Public Domain Landscaping at 158 - 164 Old Bathurst Road, Emu Plains be approved subject to the following recommended conditions of consent.
2. Those who made a submission and external authorities be notified of the decision.

CONDITIONS

General

- The development must be implemented substantially in accordance the following stamped approved plans and supporting information received with the application, except as may be amended in red or by the following conditions within this consent:-

Plan No.	Plan Title	Prepared By	Revision	Date
SKE-C10	General Arrangement Plan	ACOR Consultants	A	14/02/2024
C1.001 - C15.002 (45 sheets)	Civil Engineering Services – Development Application	ACOR Consultants	D	17/10/2022
2.0 DA Plans (14 sheets)	Landscape DA Report	Group GSA	4	7/10/2022
Sheet 1	Traffic Signals at Old Bathurst Road and David Road Emu Plans	B-Line Drafting on behalf of ACOR	A	11/10/2022
C08	Retaining Wall Longitudinal Section	ACOR Consultants	A	3/2/2023
Report / Document Title		Prepared By		Date
Industrial Subdivision Acoustic Assessment		Renzo Tonin and Associates		Rev 2 - 5/4/2022
Arboricultural Impact Assessment		Civica		1/9/2022
Biodiversity Development Assessment Report (including tables and figures as appendices)		Anne Clements and Associates		V3 - 10/10/2022
Stormwater Management Plan		ACOR Consultants		Rev C - 27/9/2022
Flood Impact Assessment		Advisian		Rev C - 11/10/2022
Flood Emergency Response Strategy		Advisian		Rev C - 7/10/2022
Geotechnical Report		Douglas Partners		Rev 2 - 10/1/2024
Technical Advisory Note		SCT Consulting		V2 - 19/12/2023
Transport Impact Assessment		SCT Consulting		Rev 6 - 12/4/2023
Waste Management Plan		ACOR Consultants		Rev 1 - 4/4/2022

- 2 The development is required to comply with the conditions and requirements outlined within the General Terms of Approval issued by Department of Planning & Environment dated 29 March 2023.

Where separate approvals are required, evidence of this approval from the relevant authority, is to be provided to the appointed Certifying Authority **prior to the issue of any Subdivision Works Certificate** (where relevant).

A copy of the approval shall be submitted to Penrith City Council with the copy of the Subdivision Works Certificate, if Council is not the Principal Certifying Authority.

- 3 The development works subject of this consent relate to subdivision works only. A separate lawful approval is required for any future development on the proposed lots.
- 4 To ensure that Vegetation Management Plan (VMP) is implemented and managed in perpetuity in a workmanlike, efficient and non intrusive manner for the term of the development, a 'positive covenant' shall be registered over the land to which the development relates, **prior to the issue of the Subdivision Certificate**.

The positive covenant relates to:

(a) All areas subject to the approved VMP are to be identified as a Vegetation Mangement Area (Positive Covenant).

(b) Implementation of the obligations of the approved VMP in perpetuity.

The terms of the Vegetation Mangement Area (Positive Covenant) are to be prepared in consultation with Council's Natural Systems Team Leader.

- 5 The development is required to comply with the conditions and requirements outlined within the following authority letters:

- (a) Endeavour Energy dated 1 June 2023;
- (b) Sydney Trains dated 15 June 2022; and
- (c) Sydney Water dated 3 June 2022.

Where separate approvals are required, evidence of this approval from the relevant authority, is to be provided to the appointed Certifying Authority **prior to the issue of any Subdivision Certificate** (where relevant).

A copy of the approval shall be submitted to Penrith City Council with the copy of the Subdivision Certificate, if Council is not the Principal Certifying Authority.

- 6 The development is required to comply with the conditions and requirements outlined within the letter from Transport for NSW dated 30 January 2024, including the following conditions:

Traffic Control Signals

1. The proposed Traffic Control Signal/s at the intersection of Old Bathurst Road / David Road shall be designed to meet TfNSW requirements. The Traffic Control Signal (TCS) plans shall be drawn by a suitably qualified person and endorsed by a suitably qualified practitioner. The submitted design shall be in accordance with Austroads Guide to Road Design in association with relevant TfNSW supplements (available on www.rms.nsw.gov.au). The certified copies of the TCS design and civil design plans shall be submitted to TfNSW for consideration and approval prior to the release of a Construction Certificate and commencement of road works.

TfNSW fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works.

The developer will be required to enter a Works Authorisation Deed (WAD) for the abovementioned works.

Road Occupancy Licence

2. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre (TMC) for any works that may impact on traffic flows on the surrounding classified road network during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

Where separate approvals are required, evidence of this approval from the relevant authority, is to be provided to the appointed Certifying Authority **prior to the issue of any Subdivision Works Certificate** (where relevant).

A copy of the approval shall be submitted to Penrith City Council with the copy of the Subdivision Works Certificate, if Council is not the Principal Certifying Authority.

- 7 The rear of Lots 32 to 38 which back onto Old Bathurst Road and David Road are to be enclosed by open style 1.8m high black palisade fencing for security, with existing trees and proposed landscaping to be maintained within the rear of the lots at all times to provide screening of the future development on the lots.
- 8 Vehicular access to the proposed lots is to be via the internal road network only. No direct vehicular access to Old Bathurst Road or David Road, with the exception of Lot 31 for maintenance via the pathways.
- 9 **Prior to issue of the Subdivision Works Certificate**, the landscape plan package signage pallet for the proposed signage is to be updated and submitted to Penrith City Council for approval as follows:
- (a) The exact size and dimensions of all signage is to be indicated.
- (b) The exact location of all signage is to be indicated.
- (c) The signage interpretation ideas for the swift parrot area are to be reduced and revised details are to be indicated.

10 **Prior to the issue of a Subdivision Works Certificate**, a detailed Operation and Maintenance manual and a Water Quality and Wetland Monitoring Program for the proposed stormwater treatment measures shall be submitted to Council for approval. The manual should include details on the cleaning / maintenance requirements as well as provide details on the estimated annual and lifecycle costs associated with the proposed treatment measures. The plan should include details including but not limited to, the following:

- i. Site description (area, imperviousness, land use, annual rainfall, topography etc)
- ii. Site access description
- iii. Likely pollutant types, sources and estimated loads
- iv. Locations, types and descriptions of measures proposed
- v. Operation and maintenance responsibility
- vi. Inspection methods (including inspection checklists)
- vii. Maintenance methods (frequency, equipment and personnel requirements);
- viii. Landscape and weed control requirements
- ix. Operation and maintenance costs;
- x. Waste management and disposal options; and
- xi. Reporting.

A Draft Water Quality and Wetland Monitoring Program shall be prepared by a suitably qualified expert and be submitted to Council for approval.

The monitoring program must be undertaken at no cost to Council, for the duration of the 5-year establishment and maintenance period.

The monitoring program shall provide sufficient details to demonstrate that the wetlands are both treating stormwater to the intended design, as well as demonstrate that the vegetation has established to a satisfactory standard (e.g., 95% coverage with planted vegetation and >95% weed free) and is in condition consistent with the design, and to Council's satisfaction at the time of handover.

- 11 The applicant is to establish and maintain Lot 31 and dedicate the land to Council no earlier than 5 years from the release of the Subdivision Certificate, or as otherwise agreed to by Penrith City Council. Should dedication to Council not occur, then Lot 31 is to remain as a privately owned Torrens lot with appropriate easements and managed/maintained in perpetuity.
- 12 The following trees are to be retained and protected as per the Approved Tree Protection Plan (specification and Drawings, any approved conditions of consent and the conditions below. Failure to comply with these conditions is an offence and may incur a fine or lead to prosecution.

Tree protection measures shall comply with Australian Standard AS4970-2009 Protection of trees on development sites, together with the following conditions:

(a) The tree/s to be retained and protected together with their relevant Tree Protection Zone (TPZ) and Structural Root Zone (SRZ) shall be marked on all demolition and construction drawings.

(b) All contractors and workers on site shall be briefed on the tree protection and management procedures in place as part of their site induction. A written record of the induction process is to be kept on site.

(c) A 1.8m high chain link wire tree protection fence that complies with Section 4.3 of AS 4970 - 2009, Protection of trees on development sites shall be erected around the above trees as prescribed in the protection measures detailed above. The fence is to be installed prior to demolition / construction, shall not be removed or altered, and is to remain in place for the duration of the site works.

(d) The applicant will display in a prominent location on the fencing of each protection zone a durable, weather resistant sign having a minimum dimension of 500mm high x 400mm wide of similar design and layout as per Appendix C, Australian Standard AS4970-2009 Protection of trees on development sites clearly showing:

i. The Development Consent number

ii. The name and contact number of the nominated consultant arborist and site manager;

iii. Indication that access into the Tree Protection zone is not permitted.

(e) The above notice is to be in place prior to commencement of demolition or construction.

(f) Fences are to be inspected on a regular basis to ensure that they are intact, comply with the above standard, installed to the appropriate dimensions and provide effective protection for the tree to be retained.

(g) The TPZ shall be maintained as per AS4970 - 2009, Section 4.6. Access to the TPZ is permitted to undertake necessary maintenance such as mowing, watering & weed control.

(h) No vehicular access, excavations for construction or installation of services shall be carried out within the fenced Tree Protection Zone.

(i) All utility services, pipes, stormwater lines and pits shall be located outside the fenced Tree Protection Zone.

(j) Building materials, chemical storage, site sheds, wash out areas, and similar shall not be located within the fenced Tree Protection Zone.

(k) Trees marked for retention must not be damaged or used to display signage, or as fence or cable supports for any reason.

(l) If tree roots are exposed during approved works, roots with a diameter less than 25mm are to be pruned cleanly using sharp hand tools and not torn or ripped by machinery. Tree roots greater than 25mm in diameter are to be assessed by a qualified arborist - minimum Australian Qualification Framework (AQF) Level 5 or equivalent – before any pruning work is undertaken. If necessary, changes in design or relocation of works may be required.

Demolition

13 Dust suppression techniques are to be employed during all works to reduce any potential nuisances to surrounding properties.

14 Mud and soil from vehicular movements to and from the site must not be deposited on the road.

- 15 All subdivision works are restricted to the following hours in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009:
- Mondays to Fridays, 7am to 6pm
 - Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
 - No work is permitted on Sundays and Public Holidays.

Environmental Matters

- 16 Erosion and sediment control measures shall be installed **prior to the commencement of works on site** including approved clearing of site vegetation. The erosion and sediment control measures are to be maintained in accordance with the approved erosion and sediment control plan(s) for the development and the Department of Housing's "Managing Urban Stormwater: Soils and Construction" 2004.

(Note: To obtain a copy of the publication, you should contact Landcom on (02) 98418600).

Certification that the erosion and sediment control measures have been installed in accordance with the approved erosion and sediment control plan (s) for the development and "Managing Urban Stormwater: Soils and Construction 2004" shall be obtained and issued a minimum 2 days before any other site works are to commence, including earthworks and clearing of the site.

The approved sediment and erosion control measures are to be installed **prior to commencement of works and maintained throughout the construction phase of the development until such time as all site works have been completed for the development with land stabilised and grass cover established.** These measures shall ensure that mud and soil from vehicular movements to and from the site does not occur during the construction of the development.

17 An appropriately qualified person/s shall:

- Supervise all filling works.
- (On completion of filling works) carry out an independent review of all documentation relating to the filling of the site, and submit a review findings report to Council and any Principal Certifying Authority. All fill material documentation is to (at minimum)
 - be prepared by an appropriately qualified person with consideration of all relevant guidelines, standards, planning instruments and legislation (e.g. EPA, NEPM, ANZECC, NH&MRC),
 - clearly state the legal property description of the fill material source site and the total amount of fill tested,
 - provide details of the volume of fill material to be used in the filling operations,
 - provide a classification of the fill material to be imported to the site in accordance with the NSW Environment Protection Authority's "Waste Classification Guidelines" 2014, and
 - (based on the fill classification) determine whether the fill material is suitable for its intended purpose and land use and whether the fill material will or will not pose an unacceptable risk to human health or the environment.
- Certify by way of a Compliance Certificate or other written documentation that fill materials have been placed on the site in accordance with all conditions of this consent and that the site will not pose an unacceptable risk to human health or the environment. A copy of the Compliance Certificate or other documentation shall be submitted to Council and any Principal Certifying Authority.

The contact details of any appropriately qualified person/s engaged for the works shall be provided with the Notice of Commencement.

If the Principal Certifying Authority or Penrith City Council is not satisfied that suitable fill materials have been used on the site, further site investigations or remediation works may be requested. In these circumstances the works shall be carried out prior to any further approved works.

{For the purpose of this condition an appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, eco-toxicology, sampling and analytical procedures, risk evaluation and remediation technologies. In addition, the person will be required to have appropriate professional indemnity and public risk insurance."}

18 All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas are to be fully enclosed when the site is unattended.

19 Waste materials associated with the development are to be classified and disposed of at a lawful waste facility, or, if suitable, re-used or recycled in accordance with the approved Waste Management Plan. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Subdivision Works Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

20 Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system.

- 21 **Prior to the issue of the Subdivision Works Certificate**, a Subdivision Works Environmental Management Plan (SWEMP) is to be prepared by a suitably experienced / qualified person and submitted to Penrith City Council for approval. If Council is not the certifying authority, a copy of Council's approval is to be provided to the Principal Certifying Authority. The SWEMP is to address the environmental aspects of the construction phase of the development and is to include details on the environmental management practices and controls to be implemented on the site.

The SWEMP is to address, but is not limited to the following:

- Water quality management,
- Noise control and hours of operation (including any recommendations of the approved Construction Noise and Vibration Impact Assessment),
- Dust suppression,
- Waste management (including solid and liquid waste),
- Erosion and sediment control,
- Air quality including odour and dust control, and
- Land contamination and unexpected finds.

All construction activities on the site are to be implemented and carried out in accordance with the approved SWEMP.

- 22 **Prior to the issue of the Subdivision Works Certificate**, a Construction Noise and Vibration Impact Assessment is to be prepared by a suitably qualified acoustic consultant and submitted to Penrith City Council for approval. This assessment is to address (at minimum) the noise and vibration impacts associated with the construction phase and make recommendations to mitigate these impacts, with consideration of the details of the construction program, construction methods, equipment and vehicles in association with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009.

The recommendations of the Council approved Construction Noise and Vibration Impact Assessment are to be implemented and adhered to during the construction phase of the development.

{Note: For the purpose of this condition a suitably qualified acoustic consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.}

- 23 **Prior to the issue of the Subdivision Certificate**, a positive covenant is to be registered against Lots 1-30 and Lots 32-38 as numbered on the approved plan of subdivision that refers to the '158-164 Old Bathurst Road, Emu Plains: Industrial Subdivision Acoustic Assessment' prepared by Renzo Tonin & Associates dated 5 April 2022 (Ref. TM602-01F02 (r2)). The covenant is also to:

- reference the noise criteria as outlined in Table 7, Table 8 and Table 9 of the above report,
- provide advice on the requirement for the preparation of an acoustic assessment by a suitably qualified acoustic consultant that is to confirm whether the future development can comply with the noise criteria established in the above report, and that determines the necessary mitigation and management controls to achieve compliance with the noise criteria.

The authority recorded as empowered to vary, modify or extinguish the positive covenant is to be Penrith City Council.

- 24 Should any "unexpected finds" occur during site excavation and earthworks including, but not limited to, the identification/finding of contaminated soils, buried building materials, asbestos, odour and/or staining, works are to cease immediately and Penrith City Council is to be notified. Any such "unexpected finds" shall be addressed by an appropriately qualified environmental consultant.
- 25 The 'Construction, Environment and Management Plan', as approved by Penrith City Council's Environmental Health Unit in accordance with Condition 17 of DA23/0506, is to be implemented and adhered to at all times.
- 26 No subdivision works are permitted to be carried out in the areas marked as 'Duck Pond' in Figure 2 of the 'Surface Water Management Options Assessment - 158 to 164 Old Bathurst Road, Emu Plains' (prepared by JBS&G, dated 24 February 2022) until such time as a contamination investigation report has been prepared by a suitably qualified person and submitted to and approved by Penrith City Council. The contamination investigation report is to confirm that the sediments of the duck ponds are suitable for industrial land use. The contamination investigation report is to be endorsed by a NSW Accredited Site Auditor, with a copy of the Site Auditor's Interim Advice or Site Audit Statement to be provided to Council for approval.

Access is only permitted to the duck pond areas for the purposes of dewatering activities, and geotechnical, contamination or other investigations. Should other works be required to be undertaken in this area prior to Council approving the above contamination investigation report, sediment management measures are to be established in consultation and agreement with Council's Environmental Health Unit.

{Note: An appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, ecotoxicology, sampling and analytical procedures, risk evaluation and remediation technologies". In addition, the person will be required to have appropriate professional indemnity and public risk insurance.}

- 27 **Prior to the issue of the Subdivision Certificate**, the applicant must submit to Council for endorsement, land title dealing paperwork for the creation of a positive covenant over all land titles. Penrith City Council must be the recorded beneficiary and nominated as the authority to release, vary or modify the restriction.

The positive covenant shall contain the wording:

- Development on the site is to ensure compliance with the Construction, Environment and Management Plan which has been prepared, submitted to and approved by Penrith City Council's Environmental Health Unit, in accordance with Condition 17 of DA23/0506. The Plan is required to reference management measures that must be implemented during any development works to address inert materials on site and ensure that materials do not require long term or ongoing management. The Construction, Environment and Management Plan is to be prepared by an appropriately qualified person.

The required positive covenant must be registered with NSW Land Registry Services within 28 days of Council's endorsement of the covenant terms.

However, in the event that it is determined that a Construction, Environment Management Plan is not required, or the approved Plan does not stipulate specific management or monitoring requirements to be adhered to across the site, a positive covenant is not required to be registered on the title of the property, subject to written agreement from Penrith City Council's Environmental Health Unit.

(Note: An appropriately qualified person is defined as "a person who, in the opinion of Council, has a demonstrated experience, or access to experience in hydrology, environmental chemistry, soil science, ecotoxicology, sampling and analytical procedures, risk evaluation and remediation technologies". In addition, the person will be required to have appropriate professional indemnity and public risk insurance.)

28 **Prior to issue of a Subdivision Certificate**, a report prepared by a qualified Ecologist is to be submitted to the Principal Certifying Authority (PCA) and to Penrith City Council's Senior Biodiversity Officer if Council is not the PCA certifying the following measures have been complied with during the removal of vegetation within the construction footprint.

To mitigate and ameliorate the impacts associated with the development on resident fauna the following requirements must be complied with:

(a) Tree and vegetation Removal:

During any tree (vegetation) removal, a qualified (Tertiary in a relevant field)/ licenced Ecologist with a minimum of five (5) years field experience is to be present to re-locate any displaced fauna that may be disturbed during this activity. The following is to be undertaken to mitigate the impacts on resident fauna.

- i. Clearing of vegetation should occur outside of avian and microbat breeding seasons. Ideally this should occur during Autumn (March – May).
- ii. Prior to clearing habitat trees all non-habitat vegetation should be cleared first to allow appropriate space for the felling of habitat trees and retrieval of any fauna that may be present within the habitat trees.
- iii. Trees with hollows shall be lopped in a way that the risk of injury or mortality to fauna is minimised, such as top-down lopping, with lopped sections gently lowered to the ground, or by lowering whole trees to the ground with the 'grab' attachment of a machine.
- iv. Where it is safe and feasible disturbed fauna should be left alone to relocate naturally into retained / adjacent bushland. The supervising Ecologist is to provide guidance on whether works need to cease or can commence.
- v. Any injured fauna is to be placed in the hands of a wildlife carer (only appropriately trained and vaccinated personnel are to handle bats). Any fauna that is injured due to vegetation removal must be reported to Penrith Council.
- vi. Any injured fauna is to be appropriately cared for and released on site when rehabilitated.

(b) Salvage of habitat features:

- i. Two months (8weeks) prior to clearing of trees consultation with Penrith City Council's Bushland Management Coordinator is required to determine the opportunities available to salvage the native vegetated material including salvage of upper branches, logs and/or mulch.
- ii. Where possible hollows should be sectionally dismantled from felled hollow-bearing trees and attached to a retained tree ideally located in the western portion (near the wetlands) that will not compromise the health and safety of the host tree. This is to be done by a qualified and experienced climbing Arborist under the direction of the Ecologist.
Where this cannot occur a nest box will be installed in suitable retained tree. Nest boxes should reflect the size classes of the hollows to be removed (i.e., if a small hollow is removed a small parrot/mammal or microbat nest box should be installed)
Nest boxes should be installed by a qualified and experienced climbing arborist under the supervision of an Ecologist
- iii. Three to four logs (3metre lengths and of the largest diameter) salvaged from native trees within the development area is to be stockpiled to be used within the wetland area to provide habitat for ground-welling animals such as lizards, snakes and frogs. Additional logs could be used if identified by the supervising Ecologist.

(c) Additional Measures:

- i. Where additional measures are identified by the Ecologist these should be implemented, documented and included in the reporting.

29 Prior to the issue of a Subdivision Works Certificate or prior to the commencement of works

(whichever comes first) a Dam Dewatering Plan is to be prepared and submitted to the satisfaction of Penrith City Council's Senior Biodiversity Officer for approval.

The plan is to provide details on the following:

- Fauna/aquatic survey prior to dam dewatering and a description of fauna residing within the waterbodies present on site.
- Proposed relocation site shown on a map and details on how fauna will be transported.
- Details of relevant licences and permits required such as Section 37 Fisheries management Act 1994, Biodiversity Conservation Licence or permit from NSW Department of Primary Industries (for those species listed under the Fisheries Management Act).
- Procedure of notifying NSW Fisheries of the activity 48 hours prior to relocation of fish.
- If large numbers of predatory fish (eg. Long-finned Eels) are recovered, additional release points must be considered so that the increased risk of predation on existing fauna at release sites is reduced.
- Methods to prevent injury to fauna during pumping of water from the dam.
- Details of how exotic pest species will be humanely euthanised in a manner consistent with the Prevention of Cruelty to Animals Act 1979.
- Methods of disposing of dam water and preventing the spread of carp eggs, juvenile pest species or eggs into the catchment and natural waterways.
- Details on how fauna will be rescued from dam sediments or allowed to relocate from the dam.
- Details on the appropriate timing (season) for dewatering.
- Details on reporting of actions undertaken with tallies of fauna removed from the dam with details of their relocation destination (or destruction).

30 The decommissioning of the waterbodies is to be undertaken in accordance with the Council approved dam dewatering plan as required by condition of consent.

Utility Services

31 All services (water, sewer, electricity, telephone and gas) are to be installed within the proposed public roads before final inspection of the engineering works.

Prior to the release of the final Plan of Subdivision, the following service authority clearances shall be obtained:

- a Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. This is required **prior to the issue of the Subdivision Certificate**. The application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the "e-developer" icon, or telephone 13 20 92; and
- a letter from Integral Energy stating that satisfactory arrangements have been made for electricity supply to all proposed allotments in the subdivision, including any necessary easements. This is required **prior to the issue of the Subdivision Certificate**. In the event that a pad mounted substation is necessary to service the development, Penrith City Council shall be consulted over the proposed location of the substation before the Construction Certificate for the development is issued as the location of the substation may impact on other services and building, driveway or landscape design already approved by Council; and
- a letter from an approved telecommunications service provider that satisfactory arrangements have been made for underground telephone services to all proposed allotments in the subdivision, including any necessary easements.

These clearances are to be submitted to the Principal Certifying Authority.

- 32 A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The application must be made through an authorised Water Servicing Coordinator. Please refer to “Your Business” section of Sydney Water’s website at www.sydneywater.com.au then the “e-developer” icon, or telephone 13 20 92.

The Section 73 Compliance Certificate must be submitted to the Principal Certifying Authority **prior to the issue of a Subdivision Certificate**.

- 33 **Prior to the issue of a Subdivision Works Certificate**, a written clearance is to be obtained from Endeavour Energy stating that electrical services have been made available to the development or that arrangements have been entered into for the provision of services to the development.

In the event that a pad mounted substation is necessary to service the development, Penrith City Council shall be consulted over the proposed location of the substation before the Construction Certificate for the development is issued as the location of the substation may impact on other services and building, driveway or landscape design already approved by Council.

- 34 (a) The applicant shall engage a qualified Arboricultural Consultant with a minimum Level 5 qualification (AQF – Australian Qualification Framework) or the equivalent to be retained for the duration of the demolition and construction of the development.

(b) **Prior to the removal of vegetation or issue of a Subdivision Works Certificate:**

1. The Arborist shall prepare a site-specific Tree Protection Plan and Drawing in accordance with the updated Arborist Report approved by Council, conditions of this consent and Section 5 of AS4970 – 2009, Protection of trees on development sites. All trees to be retained and protected, and trees located on adjoining properties within 5m of the subject property boundary, are to be covered by this report. This report shall also be consistent with/include the requirements of any approved Vegetation Management Plans.
2. An individual Tree Protection Plan (Specification) and Drawing shall be required for each stage of the development where changes within the Tree Protection Zone (TPZ) are required.
3. The Consulting arborist is to identify key stages where monitoring and certification will be required as outlined in AS 4970 – 2009, Section 5. A schedule outlining these stages is to be submitted to and approved by Penrith Council’s Tree Management Officer prior to the issue of the Subdivision Works Certificate.

(c) The relevant Tree Protection Plan (Specification) and Drawing is to be retained and implemented on site at all times.

(d) The Consultant Arborist shall be present on-site during demolition and any of the key stages identified in the schedule required in the condition point above

(e) A written account of the satisfactory completion of each of these stages as assessed by the consulting arborist is to be reported to the principle certifying authority.

35 The following vegetation management matters must be complied with:

- (a) The vegetation along the northern boundary and western boundary mound from the proposed entry way off David Road to the boundary at Old Bathurst Road shall be subject to a Vegetation Management Plan that strategically removes weeds, nominates dead trees not required as habitat for removal, identifies dead trees capable of providing habitat with recommendations for remedial pruning (if required), proposes the removal of any trees where it is evidenced that their arboricultural condition indicates that retention is no longer viable and provides a replacement planting plan to replace trees that are removed and provide shrubs and ground covers to present a natural environment suitable for native animals.
- (b) The Vegetation Management Plan/restoration area shall extend to the full size of the TPZ of all trees to be retained, plus 3m as it intrudes into the site to allow for access of maintenance vehicles.
- (c) Once identified, the landscape strip is to be fenced to prevent intrusion from any earthworks.

36 The following vegetation management matters must be complied with:

- (a) All trees to be retained shall be provided with a Tree protection fence to the full size of their Tree Protection Zones (TPZ's) plus 3m as it intrudes into the site to allow for access of maintenance vehicles. Construction must be able to be undertaken without the requirement to remove this fencing.
- (b) Once identified, landscape strip is to be fenced to prevent intrusion from any earthworks.
- (c) The area shall then be maintained as a landscape strip and be subject to a Vegetation Management Plan to provide shrubs and ground covers and replacement trees to present a natural environment suitable for native animals.
- (d) Where trees have been removed along this boundary/railway easement, replacement trees are to be provided within the capacity of easement restrictions.

37 Prior to the issue of a Subdivision Works Certificate:

(a) The applicant shall engage a qualified Arboricultural Consultant with a minimum Level 5 qualification (AQF – Australian Qualification Framework) to prepare a site-specific Tree protection Plan and Drawing in accordance with the conditions of this consent and Section 5 of AS4970 – 2009, Protection of trees on development sites and any approved conditions of consent.

(b) The Tree Protection Plan shall also specifically address (but not be limited to) the following points:

- i. All stages of the demolition/construction process;
- ii. Specific tree protection requirements, especially when intrusion into the Tree Protection Zone (TPZ) or when trunk and branch protection is required;
- iii. A requirement/specification stating that all underground services to be installed within the designated TPZ of a tree to be retained must be installed using directional drilling/thrust boring techniques;
- iv. An individual Tree Protection Plan and Drawing for each stage of the development where changes within the Tree Protection Zone (TPZ) are required (i.e. prior to commencement, demolition, during construction, post construction and landscaping.

(c) In addition, the Consulting arborist is to identify key stages where monitoring and certification will be required as outlined in AS 4970–2009, Section 5.

(d) The completed Tree Protection Plan and Drawing is to be provided to the Manager of Development Services for final approval prior to the issue of a Subdivision Works Certificate.

(e) The approved Tree protection Plan retained and implemented on site at all times.

38 Approval is granted for the removal of trees identified in the Tree Condition Report required to be submitted for approval by Penrith Councils Tree Management Officer or Natural Systems Team Leader **prior to removal of any vegetation and prior to issue of the Subdivision Works Certificate.**

All tree removal works must comply with the Amenity Tree Industry – Code of Practice, 1998 (Workcover, NSW) and Guide to Managing Risks of Tree Trimming and Removal Work (Safe Work Australia 2016).

All other vegetation not specifically identified above, and protected by Penrith Council Development Control Plan 2014, C2 Vegetation Management, is to be retained and protected from construction damage and pruning. The Tree Management Order protects trees over 3.5m in height.

39 (a) All trees to be retained as shown on the Civil Engineering Services Plan, Wetland, prepared by Acor Consultants Pty Ltd, Project No NSW211637, Dwg No C7.002, Issue D, dated 17/10/2022 shall be protected by a Tree protection fence to the full size of their Tree Protection Zones (TPZ's). Construction must be able to be undertaken without the requirement to remove this fencing.

(b) The areas where trees are to be retained shall be subject to a Vegetation Management Plan that strategically removes weeds, nominates dead trees not required as habitat for removal, identifies dead trees capable of providing habitat with recommendations for remedial pruning (if required), proposes the removal of any trees where it is evidenced that their arboricultural condition indicates that retention is no longer viable and provides a replacement planting plan to replace trees that are removed and provide shrubs and ground covers to present a natural environment suitable for native animals.

Construction

40 Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details is to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

41 Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished. The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

Engineering

42 All roadworks, stormwater drainage works, signage, line marking, associated civil works and dedications required to effect the consented development shall be undertaken by the applicant at no cost to Penrith City Council.

43 An Infrastructure Restoration Bond is to be lodged with Penrith City Council for development involving works around Penrith City Council's Public Infrastructure Assets. The bond is to be lodged with Penrith City Council **prior to commencement of any works on site or prior to the issue of any Subdivision Works Certificate**, whichever occurs first. The bond and applicable fees are in accordance with Council's adopted Fees and Charges.

An application form together with an information sheet and conditions are available on Council's website.

Contact Penrith City Council's Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

- 44 Lodgement of relevant Section 138 Roads Act applications, including payment of application and Council fees together with any applicable bonds, shall be lodged with and approved by Penrith City Council (being the Roads Authority for any works required in a public road).

You are required to lodge the applicable Section 138 Roads Act application for the below works that apply to your specific development prior to that work activity commencing. Please liaise with your builder to determine what applications are required for your development

These works may include but are not limited to the following:

- a) Construction of driveways (including kerb reinstatement of redundant driveway crossings and reconstruction of any affected footpaths and/or cycleways)
- b) Temporary road reserve occupancies
- c) Road reserve openings for the installation of:
 - i. Utilities (water, sewer, power, telecommunications), including lead-in utility services for subdivisions
 - ii. Private stormwater connections to the kerb (including stormwater connection to Penrith City Council owned drainage)
 - iii. Reconstruction of concrete footpath and/or cycleways across the frontage
- d) Establishment of a construction work zone
- e) Establishment of road reserve hoardings and temporary structures/fencing etc.
- f) Operation of a tower crane over the road reserve
- g) Temporary ground anchors that encroach below the road reserve (for basement construction)

All works shall be carried out in accordance with the Roads Act Approval and the conditions outlined in the Roads Act Applications, the development consent, including the stamped approved plans, and Penrith City Council's Driveway and Road Reserve Restoration Works Specification, guidelines and engineering best practice.

Contact Penrith City Council's Asset Management Department on 4732 7777 or visit Penrith City Council's website for more information.

Note:

- Separate approval may be required from Transport for NSW for classified roads
- All works associated with the Roads Act approval(s) must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.
- On completion of any awning over the road reserve, a certificate from a practicing structural engineer certifying the structural adequacy of the awning is to be submitted to Council before Council will inspect the works and issue its final approval under the Roads Act.

45 **Prior to the issue of any Subdivision Works Certificate**, the Certifier shall ensure that a Section 138 Roads Act application, including payment of application and inspection fees, has been lodged with and approved by Penrith City Council (being the Roads Authority under the Roads Act) for provision of civil works in Old Bathurst Road and David Road including:

- Shoulder construction, including the provision of stormwater drainage, kerb and gutter and footpath for the entire frontage to Old Bathurst Road.
- Provision of footpath paving for the entire frontage to David Road.
- Provision of Traffic Control Signal at the intersection of Old Bathurst Road and David Road, subject to separate approval from Transport for NSW.

Engineering plans are to be prepared in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines, and best engineering practice.

Contact Penrith City Council's Development Engineering Department on 4732 7777 to obtain a formal fee proposal prior to lodgement and visit Penrith City Council's website for more information.

Note:

- Where Penrith City Council is the Certifier for the development, the Roads Act approval for the above works may be issued concurrently with the Construction Certificate or Subdivision Works Certificate.
- Separate approval may be required from the Transport for NSW for classified roads.
- All works associated with the Roads Act approval must be completed prior to the issue of any Occupation Certificate or Subdivision Certificate as applicable.

46 Prior to the issue of any Subdivision Works Certificate, the Certifier shall ensure that any applicable application, including the payment of application and inspection fees, has been lodged with and approved by Transport for NSW (TfNSW) for any works within the Old Bathurst Road road reserve and for the Traffic Control Signal intersection of Old Bathurst Road and David Road.

A copy of TfNSW approval shall be submitted to Penrith City Council prior to Penrith City Council issuing any Roads Act approval.

- 47 A Subdivision Works Certificate (previously a Construction Certificate) is to be approved by the Certifier for the provision of any subdivision works (road, drainage, earthworks).

Prior to the issue of any Subdivision Works Certificate, the Certifier shall ensure that engineering plans are consistent with the stamped approved plan/s prepared by ACOR Consultants, reference number NSW211637, drawing number C1.001 to C15.002, revision D, dated 17/10/22, and that all subdivision works have been designed in accordance with the development consent, Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works, Austroads Guidelines and best engineering practice.

The subdivision works may include but are not limited to the following:

- Public and private roads
- Stormwater management (quantity and quality)
- Inter-allotment drainage
- Private access driveways
- Sediment and erosion control measures
- Flood control measures
- Overland flow paths
- Traffic facilities
- Earthworks Bridges, culverts, retaining walls and other structures
- Landscaping and embellishment works

The Subdivision Works Certificate must be supported by engineering plans, calculations, specifications and any certification relied upon.

Note:

- Subdivision Works Certificates are now lodged via the NSW Planning Portal. Further information on the lodgement process can be found on the NSW Planning Portal website. Council's Development Engineering Department can provide this service and can be contacted on 4732 7777 to obtain a formal fee proposal prior to lodgement on the portal or if you require any assistance with the lodgement process.

- 48 **Prior to the issue of any Subdivision Works Certificate**, the Certifier shall ensure that the proposed roads have been designed in accordance with Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments, Engineering Construction Specification for Civil Works and the following criteria:

Road No.	Road Reserve Width	Carriageway Width	Verge Width	Footpath (min. 1.5m wide)	ESA
MC01	20.6m	13.0m	3.8m	Yes	1 x 10 ⁷
MC02	20.6m	13.0m	3.8m	Yes	1 x 10 ⁷
MC03	20.6m	13.0m	3.8m	Yes	1 x 10 ⁷
MC01 Ch88.68 to Ch348.30	15.8m (+ width of tree corridor)	11.0m	3.8m (west) 1.0m (east)	Yes (west)	1 x 10 ⁷

A copy of the pavement design prepared and certified by a suitably qualified geotechnical engineer must accompany the application for the Construction Certificate.

- 49 A Stage 3 (detailed design) Road Safety Audit (RSA) shall be undertaken in accordance with Austroads Guide to Road Safety Part 6: Road Safety Audit on the proposed roadworks by an accredited auditor who is independent of the design consultant. A copy of the RSA shall accompany the design plans submitted with the Subdivision Works Certificate or Roads Act application.

Prior to the issue of the Subdivision Works Certificate or Section 138 Roads Act approval, the Certifier shall ensure that the recommendations of the RSA have been considered in the final design, through review of the Road Safety Audit Checklist, including Findings, Recommendations and Corrective Actions.

A copy of the Road Safety Audit shall be submitted to Penrith City Council by the applicant or Certifier for information purposes.

- 50 The stormwater management system shall be provided generally in accordance with the concept plan/s lodged for development approval, prepared by Acor Consulting, project number NSW211637, drawing numbers C1.001 – 15.002, revision D dated 17/10/2022 and commitments made in the Stormwater Management Report Emu Plains Industrial Estate, prepared by ACOR, project number NSW211637 Issue C dated 27/09/2022.

Engineering plans and supporting calculations and revised landscaping plans for the stormwater management systems (including vegetated stormwater treatment measures) are to be prepared by a suitably qualified engineer and a suitably qualified ecologist that has relevant tertiary qualifications and technical knowledge relating to Water Sensitive Urban Design (WSUD) and shall accompany the application for a Construction Certificate.

Prior to the issue of any Subdivision Works Certificate, the Certifying Authority shall ensure that the stormwater management system has been designed in accordance with Penrith City Council's Stormwater Drainage for Building Developments, Council's Water Sensitive Urban Design (WSUD) Policy.

- 51 **Prior to the issue of any Subdivision Works Certificate**, the Certifier shall ensure that the proposed development is compatible with the recommendations of the Flood Report prepared by Advisian, reference number rp311015-00235lc_crt221006-EmuPlainsSubdivisionFIA_RevC.docx, revision C, dated 11/10/22, the Flood Report prepared by ACOR Consultants, reference number NSW211637, revision 2, dated 7/4/22 and the Flood Emergency Response Strategy prepared by Advisian, reference number rp311015-00235lt_lc221005-EmuPlainsSubdivision FERS.docx, revision C, dated 7/10/22.

- 52 Prior to the issue of any Subdivision Works Certificate, the Certifier shall ensure that vehicular access, circulation, manoeuvring, pedestrian and parking areas associated with the subject development are in accordance with Penrith City Council's Development Control Plan, AS2890.1, AS2890.2 and AS2890.6.

- 53 Prior to the commencement of any works on-site (including demolition works) or prior to the issue of any Subdivision Works Certificate, whichever occurs first, a Construction Traffic Management Plan (CTMP) shall be submitted to Penrith City Council's Asset Management Department for endorsement. The CTMP shall be prepared by a suitably qualified consultant with appropriate training and certification from Transport for NSW. The CTMP shall include details of any required road closures, work zones, loading zones and the like. Approval of the CTMP may require approval of the Local Traffic Committee. Please contact Council's Asset Management Department on 4732 7777 and refer to Council's website for a copy of the Temporary Road Reserve Occupancy Application Form.
- 54 Prior to the issue of a Roads Act approval, a Performance Bond is to be lodged with Penrith City Council for civil works within Old Bathurst Road and David Road.

The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges.

Note:

- Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

- 55 The developer shall undertake a dilapidation report for all surrounding buildings and Council owned infrastructure that confirms that no damage occurs due to the excavations associated with the development. If Council is not the Certifier for the development then the dilapidation report shall be submitted to Council **prior to the issue of any Subdivision Works Certificate** and then updated and submitted **prior to the issue of any Occupation Certificate** confirming no damage has occurred.
- 56 **Prior to commencement of works**, sediment and erosion control measures shall be installed in accordance with the approved Construction Certificate and to ensure compliance with the Protection of the Environment Operations Act 1997.

The erosion and sediment control measures shall remain in place and be maintained until all disturbed areas have been rehabilitated and stabilised.

- 57 **Prior to commencement of any works** associated with the development, a Traffic Guidance Scheme, including details for pedestrian management, shall be prepared in accordance with AS1742.3 Traffic Control Devices for Works on Roads and the Transport for NSW (TfNSW) publication Traffic Control at Worksites Technical Manual, and certified by an appropriately accredited TfNSW traffic controller.

Traffic control measures shall be implemented during the construction phase of the development in accordance with the certified plan. A copy of the plan shall be available on site at all times.

Note:

- A copy of the Traffic Guidance Scheme shall accompany the Notice of Commencement to Penrith City Council.
- Traffic control measures may require road occupancy / road closure approvals issued under Section 138 of the Roads Act by Penrith City Council prior to the issue of any Construction Certificate or Subdivision Works Certificate.

- 58 Work on the subdivision shall not commence until:

- a Subdivision Works Certificate (if required) has been issued;
- a Certifier has been appointed for the project, and;
- any other matters prescribed in the development consent for the subdivision and the Environmental Planning and Assessment Act and Regulation have been complied with.

A Notice of Commencement of works is to be submitted to Penrith City Council five (5) days prior to commencement of engineering works or clearing associated with the subdivision.

- 59 Street lighting is to be provided for all new and existing roads within the proposed subdivision and the public pathway over Lot 38 to Penrith City Council's standards.

- 60 All earthworks shall be undertaken in accordance with AS3798 and Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments and Engineering Construction Specification for Civil Works.

The level of testing shall be determined by the Geotechnical Testing Authority / Superintendent in consultation with the Principal Certifier.

- 61 Upon completion of all works in the road reserve, all verge areas fronting the development are to be turfed. The turf shall extend from the back of kerb to the property boundary, with the exception of concrete footpaths, service lids or other infrastructure which is not to be turfed over. Turf laid up to concrete footpaths, service lids or other infrastructure shall finish flush with the edge.

- 62 All existing (aerial) and proposed services for the development, including those across the frontage of the development are to be located or relocated underground in accordance with the relevant authorities' regulations and standards.

63 **Prior to the issue of any Subdivision Certificate**, the Principal Certifier shall ensure that all works associated with a S138 Roads Act approval or S68 Local Government Act approval have been inspected and signed off by Penrith City Council.

64 **Prior to the issue of any Subdivision Certificate**, the Principal Certifier shall ensure that all subdivision works required by this consent have been satisfactorily completed or that suitable arrangements have been made with Penrith City Council for any outstanding works.

65 **Prior to the issue of the Subdivision Certificate**, the Principal Certifying Authority shall ensure that the stormwater management system (including water sensitive urban design measures):

- Have been satisfactorily completed in accordance with the approved Construction Certificate and the requirements of this consent.
- Have met the design intent with regard to any construction variations to the approved design.
- Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the works-as-executed drawings.

66 **Prior to the issue of the Subdivision Works Certificate**, a restriction as to user and positive covenant relating to the stormwater management systems (including On-lot water sensitive urban design measures) shall be registered on the title of the property. The restriction as to user and positive covenant shall be in Penrith City Council's standard wording as detailed in Penrith City Council's Stormwater Drainage Specification for Building Development – Appendix F.

67 **Prior to the issue of any Subdivision Certificate**, the Principal Certifier shall ensure that the stormwater management systems (including on-site detention and water sensitive urban design)

- have been satisfactorily completed in accordance with the approved Subdivision Works Certificate and the requirements of this consent;
- have met the design intent with regard to any construction variations to the approved design, and;
- Any remedial works required to be undertaken have been satisfactorily completed.

Details of the approved and constructed system/s shall be provided as part of the Works As Executed drawings.

68 The application for a Subdivision Certificate shall include a restriction on the use of land and positive covenant upon individual lots relating to the:

- a) On-lot stormwater management systems (including on-site detention and water sensitive urban design)

The restriction on the use of land and positive covenant shall be in Penrith City Council's standard wording as detailed in Council's Stormwater Specification for Building Developments - Appendix F.

69 **Prior to the issue of any Subdivision Certificate** and installation of regulatory/advisory signage and line marking, plans are to be lodged with Penrith City Council and approved by the Local Traffic Committee.

The signage and line marking plans submitted for approval shall include 'No Parking' restrictions along Old Bathurst Road property frontage, extension of 'No Stopping' restrictions at the bends of MC01 to ensure required clearance for passing semi-trailers and accompanying double barrier line marking, removal of 'No Stopping' restrictions fronting Lots 5 & 6, and any other 'No Stopping' restrictions that are required to facilitate swept paths and/or protect sightlines at intersections.

Notes:

- Contact Penrith City Council's Engineering Services Department on 4732 7777 for further information on this process.
- Allow eight (8) weeks for approval by the Local Traffic Committee.
- Applicable fees are indicated in Council's adopted Fees and Charges.

70 **Prior to the issue of the Subdivision Works Certificate**, an Outstanding Works Bond for the construction, landscaping and implementation of the landscaping and associated wetland infrastructure is to be lodged with Penrith City Council.

The Outstanding Works bond will be refunded once the stormwater management system works have been completed to Council's satisfaction and a separate Maintenance Bond has been lodged with Penrith City Council.

The value of the bonds shall be determined in accordance with Penrith City Council's Bond Policy. The bond will be administered in accordance with this policy.

Note:

1. Contact Council's **Engineering Services Department** on 4732 7777 for further information relating to bond requirements.

- 71 **Prior to the issue of any Subdivision Certificate**, an application for proposed street names must be lodged with and approved by Penrith City Council and the signs erected on-site.

The proposed names must be in accordance with Penrith City Council's Street Naming Policy.

Notes:

- Contact Penrith City Council's Engineering Services Department on 4732 7777 for advice regarding the application process and applicable fees.
- Allow eight (8) weeks for notification, advertising and approval.

- 72 **Prior to the issue of any Subdivision Certificate**, a bond for the final layer of outstanding asphalt works (AC Bond) is to be lodged with Penrith City Council.

The final layer of asphalt on all roads shall not be placed without the written consent of Penrith City Council (consent will generally be provided when 80% of the housing within the subdivision has been completed).

The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges.

Note:

- Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

- 73 **Prior to the issue of any Subdivision Certificate**, an Outstanding Works Bond for the construction, landscaping and implementation of the wetland system is to be lodged with Penrith City Council.

The Outstanding Works Bond will be refunded once the stormwater management system works have been completed to Penrith City Council's satisfaction and a separate Maintenance Bond has been lodged with Penrith City Council.

The value of the bonds shall be determined in accordance with Penrith City Council's adopted Fees and Charges.

Note:

- Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

- 74 **Prior to the issue of any Subdivision Certificate**, a Maintenance Bond is to be lodged with Penrith City Council for civil works within Old Bathurst Road and David Road.

The value of the bond shall be determined in accordance with Penrith City Council's adopted Fees and Charges.

Note:

- Contact Penrith City Council's Development Engineering Department on 4732 7777 for further information relating to bond requirements.

75 **Prior to the issue of any Subdivision Certificate**, the following compliance documentation shall be submitted to the Principal Certifier. A copy of the following documentation shall be provided to Penrith City Council where Penrith City Council is not the Principal Certifier:

a) Works As Executed (WAE) drawings of all civil works. The WAE drawings shall be marked in red on copies of the stamped Subdivision Works Certificate drawings signed, certified and dated by a registered surveyor or the design engineer. The WAE drawings shall be prepared in accordance with Penrith City Council's Engineering Construction Specification for Civil Works.

b) The WAE drawings shall clearly indicate the 1% Annual Exceedance Probability flood lines (local and mainstream flooding).

c) The WAE drawings shall be accompanied by plans indicating the depth of cut / fill for the entire development site. The survey information is required to show surface levels and site contours at 0.3m intervals. All levels are to be shown to AHD.

d) CCTV footage in USB format to Penrith City Council's requirements and a report in "SEWRAT" format for all drainage identified as Council's future assets. Any damage that is identified is to be rectified in consultation with Penrith City Council.

e) A copy of all documentation, reports and manuals required by Section 2.6 of Penrith City Council's WSUD Technical Guidelines for handover of stormwater management facilities to Penrith City Council.

f) Surveyor's Certificate certifying that all pipes and services are located wholly within the property or within appropriate easements and that no services encroach boundaries, private or public lands.

g) Documentation for all road pavement materials used demonstrating compliance with Penrith City Council's Engineering Construction Specification for Civil Works.

h) A Geotechnical Report certifying that all earthworks and road formation have been completed in accordance with AS3798 and Penrith City Council's Design Guidelines and Construction Specification. The report shall include:

- Compaction reports for road pavement construction.
- Compaction reports for bulk earthworks and lot regarding.
- Soil classification for all residential lots.
- Statement of Compliance.

i) Structural Engineer's construction certification of all structures.

j) A slope junction plan for inter-allotment drainage lines indicating distances to boundaries and depths.

k) Soil testing for each lot to be classified according to AS2870 Residential Slabs and Footings.

76 **Prior to the issue of any Subdivision Certificate**, the following easements shall be created on the plan of subdivision:

- a) Easements for drainage.
- b) 88B Instruments detailing stormwater quantity and quality requirements for each lot.
- c) Easement for public access and maintenance of the footpath over Lot 38.
- d) Any other easements identified during the construction process.

77 The stormwater management system shall continue to be operated and maintained in perpetuity for the life of the development in accordance with the final operation and maintenance management plan.

Regular inspection records are required to be maintained and made available to Penrith City Council on request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the stormwater management systems.

78 Any Stormwater Quality Improvement Devices (SQIDs), including Gross Pollutant Traps (GPTs), constructed as part of the development shall be operated and maintained by the proponent for a 12-month defect liability period following completion of the works.

Regular inspection records and evidence of cleaning regimes undertaken are required to be submitted to Penrith City Council at the completion of the defect liability period.

79 Prior to the handover of the assets, Council's Natural Systems Team requires all of the following conditions to be met:

- The WSUD assets / measures are constructed and operate in accordance with the approved design specifications / parameters and any other specific design agreements previously entered into with Council
- The performance of the WSUD measure(s) has been validated, which must include the provision of a Performance Validation Report supporting the performance of the WSUD measure
- Where applicable, the build up of sediment has resulted in no more than a 10% reduction of operational volumeAsset inspections for defects has been completed and, if any defects are found, rectified to the satisfaction of Council
- The WSUD infrastructure is to the satisfaction of Council, structurally and geotechnically sound (this will require the submission of documents demonstrating that such infrastructure has been certified by suitably qualified persons)
- Design drawings have been supplied in a format acceptable to Council
- Works as Executed (WAE) drawings have been supplied for all infrastructure in a format and level of accuracy acceptable to Council
- Other relevant digital files have been provided (e.g. design drawings, surveys, bathymetry, models etc)
- Landscape designs have been supplied, particularly those detailing the distribution of functional vegetation, i.e. vegetation that plays a role in water quality improvement (clearance certificates from the landscape architect will need to be supplied)
- The condition of the infrastructure associated with the land complies with the approved design specification
- Vegetation densities in the wetlands and surrounding vegetated areas (i.e. batters) should have a coverage of >95% and be >95% weed free. This is to be certified by a suitably qualified ecologist / horticulturalist with 5 years relevant experience.
- Comprehensive operation and maintenance manuals (including indicative costs) have been provided. The plan should include details on the following
 - i. Site description (area, imperviousness, land use, annual rainfall, topography etc)
 - ii. Site access description
 - iii. Likely pollutant types, sources and estimated loads
 - iv. Locations, types and descriptions of measures proposed
 - v. Operation and maintenance responsibility
 - vi. Inspection methods (including inspection checklists)
 - vii. Maintenance methods (frequency, equipment and personnel requirements);
 - viii. Landscape and weed control requirements
 - ix. Operation and maintenance costs;
 - x. Waste management and disposal options; and
 - xi. Reporting.

80 **Prior to the issue of a Subdivision Works Certificate**, the following information is to be submitted to Council for review

- Council should be given an opportunity to review and approve the proposed GPT so that considerations of the life cycle costs can be made. The proponent should provide Council with a detailed operation and maintenance manual which includes estimated costing
- Detailed construction plans including all calculations, drawings and designs which are consistent with the design parameters used in the modelling and approved concept designs from the Development Application
- Details on how the GPTs can be accessed for cleaning and provision of off street hardstand areas sized to Councils requirements.

81 Handover of the assets to Council will not occur until Council is satisfied that they are constructed in with the approved plans, conditions of approval and all certification requirements have been complied with:

I. Vegetated systems (e.g. wetlands) are required to remain 'on maintenance' for a minimum period of five (5) years or as otherwise approved and a performance-based inspection has been undertaken with Council. Note: This period may be extended in the case the wetlands have not satisfactorily established to an agreed performance standard.

II. The on-maintenance period for all vegetated systems can be considered as on-maintenance once works are substantially completed within the development sub-catchment associated with the relevant treatment measure and after the wetlands have been constructed and planted with vegetation.

III. A licensed surveyor is required to undertake an 'as constructed' survey of the wetlands and associated infrastructure. The survey data is to demonstrate that design grades and levels have been achieved to the required tolerances. A copy of the survey is required to be lodged as part of the certification.

IV. During the establishment and maintenance period, regular maintenance must be undertaken on the stormwater treatment measures by suitably qualified contractors (i.e. horticulturists / ecologists) in accordance with an approved maintenance schedule.

During the 5-year maintenance period, the developer is to submit to Council's Asset Management Department, a quarterly report outlining all maintenance activities undertaken on the Stormwater treatment measures. This is to be prepared by a suitably qualified engineer, ecologist / horticulturalist with 5 years relevant experience.

A final report shall be prepared by a suitably qualified engineer, ecologist / horticulturalist with 5 years relevant experience on completion of the establishment period and be submitted to Council for approval.

- 82 **Prior to the issue of any Subdivision Certificate** and installation of regulatory/advisory signage and line marking, plans are to be lodged with Penrith City Council and approved by the Local Traffic Committee.

The signage and line marking plans submitted for approval shall include 'No Parking' restrictions along Old Bathurst Road property frontage, extension of 'No Stopping' restrictions at the bends of MC01 to ensure required clearance for passing semi-trailers and accompanying double barrier line marking, removal of 'No Stopping' restrictions fronting Lots 5 & 6, and any other 'No Stopping' restrictions that are required to facilitate swept paths and/or protect sightlines at intersections.

Notes:

- Contact Penrith City Council's Engineering Services Department on 4732 7777 for further information on this process.
- Allow eight (8) weeks for approval by the Local Traffic Committee.
- Applicable fees are indicated in Council's adopted Fees and Charges.

- 83 All earthworks shall be undertaken in accordance with AS3798 and Penrith City Council's Design Guidelines for Engineering Works for Subdivisions and Developments and Engineering Construction Specification for Civil Works. The level of testing shall be minimum Level 1 Geotechnical Testing by a GITA Certified Geotechnical Engineer. The GITA is responsible for ensuring that the materials, inspections, and testing are adequate for its intended purpose and meeting design specification requirements. Full time supervision is required on site during bulk earthworks operations.

- 84 Soil testing is to be carried out to enable each lot to be classified according to AS2870 Residential Slabs and Footings. The results shall be submitted to Penrith City Council prior to the issue of any Subdivision Certificate.

- 85 **Prior to the issue of any Subdivision Works Certificate**, an updated geotechnical report and strategy shall be submitted to the Certifier to fully detail the Geotechnical requirements for the site during bulk earthworks. The report shall include but not be limited to:

- Certification of compliance with any Development Application and Subdivision Works Certificate approved Geotechnical Assessments including detailing of further recommendations.
- Updated Ground water monitoring and recommendations/remediation methods
- Confirmation of removal and remediation of all uncontrolled fill on the site
- Any further testing required prior to and during construction
- Details for removal of any oversize particles (>75mm) and deleterious material from the existing soil profile.

86 Prior to the roller test for the subgrade layer for any road or placement of any civil infrastructure for any road, a Geotechnical Report certifying that all earthworks and road formation have been completed in accordance with AS3798 and Penrith City Council's Design Guidelines and Construction specifications shall be provided to the principal Certifier. The report shall include:

- Certification of compliance with any Development Application and Subdivision Works Certificate approved Geotechnical Assessments
- Confirmation of removal of all uncontrolled fill on the site
- Statements of Compliance that the completed bulk earthworks are suitable for road and road infrastructure works.

87 **Prior to the issue of any Subdivision Certificate** a Geotechnical Report certifying that all earthworks and road formation have been completed in accordance with AS3798 and Penrith City Council's Design Guidelines and Construction specifications shall be provided to the principal Certifier. The report shall include:

- Certification of compliance with any DA and SWC approved Geotechnical Assessments
- Confirmation of removal and remediation of all uncontrolled fill on the site
- Compaction reports for road pavement construction
- Compaction reports for bulk earthworks and lot regarding
- Soil classification for all lots
- Statements of Compliance.

88 **Prior to the issue of a Subdivision Certificate**, a restriction as to user is to be created that states "Any development on any lot must comply with any recommendations and requirements of the final approved Geotechnical report". Any structural footing systems, salinity requirements for buildings, developments and or structures must be listed on the DP and 88b instrument.

The authority to be empowered to release, vary or modify the restriction is to be Penrith City Council. The terms of the restriction are to be prepared in consultation with Council's Development Engineering Co-Ordinator.

Landscaping

89 All landscape works are to be constructed in accordance with the stamped approved plan, as amended by the satisfaction of the Deferred Commencement conditions and ensure compliance with Chapter C6 – Landscape Design and Section 2.9 of Appendix F4 – Technical Information within Penrith Development Control Plan 2014.

Landscaping shall be maintained:

- in accordance with the approved plan, and
- in a healthy state, and
- in perpetuity by the existing or future owners and occupiers of the property.

If any of the vegetation comprising that landscaping dies or is removed, it is to be replaced with vegetation of the same species and, to the greatest extent practicable, the same maturity, as the vegetation which died or was removed.

90 The following series of reports relating to landscaping are to be submitted to the nominated consent authority at the appropriate time periods as listed below. These reports shall be prepared by a suitably qualified Landscape Architect / Designer.

i. Implementation Report

Upon completion of the landscape works associated with the development and **prior to the issue of a Subdivision Certificate** for the development, an Implementation Report must be submitted to the Principal Certifying Authority attesting to the satisfactory completion of the landscaping works for the development.

A Subdivision Certificate must not be issued until such time as a satisfactory Implementation Report has been received and endorsed. If Penrith City Council is not the Principal Certifying Authority, a copy of the satisfactory Implementation Report is to be submitted to Council together with the Subdivision Certificate for the development.

91 All plant material associated with the construction of approved landscaping is to be planted in accordance with the planting specifications within Section 2.9 of Appendix F4 – Technical Information within Penrith Development Control Plan 2014.

92 All landscape works are to meet industry best practice and the following relevant Australian Standards:

- AS 4419 Soils for Landscaping and Garden Use,
- AS 4454 Composts, Soil Conditioners and Mulches, and
- AS 4373 Pruning of Amenity Trees.

93 No trees are to be removed, ring barked, cut, topped, or lopped or wilfully destroyed (other than those within the proposed building footprint or as shown on the approved plans) without the prior consent of Penrith City Council and in accordance with Chapter C2 – Vegetation Management of Penrith Development Control Plan 2014 and Council's Tree Preservation Order and Policy.

94 The approved Vegetation Management Plan must be implemented in its entirety and annual updates in writing submitted to Council.

Development Contributions

95 This condition is imposed in accordance with Penrith City Council's Section 7.12 Contributions Plan. Based on the current rates applicable to contributions payable under this plan, **\$100,050.95 is to be paid to Council prior to issue of a Subdivision Certificate** being issued for this development (the rates are subject to quarterly reviews). If not paid within the current quarterly period, this contribution will be reviewed at the time of payment in accordance with the adopted Section 7.12 Contributions plan.

Council should be contacted prior to payment to ascertain the rate for the current quarterly period. The Section 7.12 Contributions Plan is available on Council's website.

Payment of Fees

96 All roadworks, dedications and drainage works are to be carried out at the applicant's cost.

Schedule 1 (Deferred Commencement)

97 PART A - Deferred Commencement Conditions

This development consent is granted subject to satisfaction of the below conditions. Pursuant to s 4.16(3) of the Environmental Planning and Assessment Act 1979, this development consent does not operate until the applicant satisfies Council, in accordance with the regulations, as to any matters specified below:

1. A full set of architectural, civil, stormwater and landscape plans and associated documentation reflecting the approved subdivision layout and amendments below is to be submitted to, and approved by, Penrith City Council. All plans and documentation are to correlate. The following plan amendments are required:

a) The mound and existing vegetation along the David Road frontage shown on the plans for removal is to be retained to provide a dense mature tree canopy. The Details on the amended plans and documentation with respect to the mound must include:

1. The final extent and footprint of the mound.
2. Substantial retaining of the mound and edge treatments, supported by further engineering investigations in consultation with the Arborist and updated tree assessment that ensures retention and protection of existing trees fronting David Road.
3. Identification of any trees that must be removed with supporting justification.
4. Proposed embellished landscaping which provides additional landscaping whilst retaining trees to provide the visual buffer to the development.
5. Proposed civil features in the vicinity of the trees being retained including services, pipes, retaining walls, supported by further engineering investigations in consultation with the Arborist and updated tree assessment.

b) Plant species and densities proposed to be installed in the wetland areas shall be added to the plans.

c) The access paths (e.g. north of wetland B) shall also be updated to incorporate sufficient space to enable a vehicle to turn around or be extended to connect to the path of the southern side of wetland B.

d) The location of bike racks and public seating within Lot 31 (wetlands), Lot 38 (pathway) and public areas including the Swift Parrot Corridor are to be shown on the Landscape Plans and are to be easily accessible and clearly identifiable to encourage use.

2. An updated Arborist Report is to be prepared and submitted which includes an updated assessment of all trees on the site to provide an accurate current assessment of the trees on the site. In that assessment the Arborist is to identify dead trees not required as habitat for removal, identifies dead trees capable of providing habitat with recommendations for remedial pruning (if required), proposes the removal of any trees where it is evidenced that their arboricultural condition indicates that retention is no longer viable. This updated Arborist Report shall inform Vegetation Management Plan and the basis of Tree Protection plans.

3. A Vegetation Management Plan (VMP) is to be prepared for the following areas:

- 'Constructed Wetlands - Lot 31' as shown in the revised Plan of Subdivision
- Rear setbacks of Lots 14-21; Lot 31 and Lot 33-38; and
- Area along the south to eastern boundary where it interfaces with the road and boundary fence.

The VMP is to be submitted to and approved by Penrith City Council's Senior Biodiversity Officer. The VMP must:

1. Be prepared by an Ecological Consultant or Bush Regenerator with theoretical and practical experience in bushland restoration and management on the Cumberland Plain. They are required to hold a Certificate IV in Conservation and Land Management or equivalent tertiary qualifications, as a minimum.
2. Be consistent with relevant and up to date environmental legislation and policies, including; but not limited to, the NSW *Biodiversity Conservation Act 2016*, NSW *Biosecurity Act 2015*, *Water Management Act 2000*, Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, and guidelines such as the Rural Fire Services *Planning for Bushfire Protection 2019* and *Recovering Bushland on the Cumberland Plain: Best practice guidelines for the management and restoration of bushland* (DEC, 2005). It is to also have regard to any Recovery Plans and recovery actions that are relevant.
3. Identify ongoing management and maintenance of the vegetated areas, in terms of impacts of flora and fauna and vegetation management requirements. The focus is to be on the protection and conservation of native vegetation and fauna habitats on the site and on maintaining connectivity.
4. Clearly outline how vegetation will be protected and managed during construction of proposed future development.
5. Identify potential impacts from the development and future industrial use of the site (both during construction and post construction) on the on-site and adjacent vegetation and habitats, and how these impacts will be managed and mitigated throughout the life of the development. Impacts include (but are not limited to) increased stormwater runoff and associated nutrients, weeds, erosion and sedimentation and other disturbance.
6. Identify ongoing future management of the vegetation that is to be retained on site and any identified threatened species.
7. Identify a suitable style of boundary fence, and fence for the protected vegetation that permits fauna movement to assist with maintaining connectivity and minimises the requirement to remove any further vegetation.
8. Identify and map different management zones within the VMP area.
9. Determine performance criteria for each management zone including but not limited to percentage survival rate for plantings, cover (as expressed as a percentage) of priority and environmental weeds at the end of each year, species and diversity for each zone.
10. Identify habitat improvement measures that are to be undertaken across the site.
11. Detail monitoring and reporting requirements.
12. The VMP is to include a clear outline of works to be undertaken along with timing of works and estimated costs including materials, labour, watering, maintenance, monitoring and reporting should be included.
13. The Vegetation Management Plan/restoration area shall extend to the full size of the TPZ of all trees to be retained, plus 3m as it intrudes into the site to allow for access of maintenance vehicles. The landscape strip is to be fenced to prevent intrusion from any earthworks.
14. Identify replacement planting rates for damage to trees being retained, with particular note with respect to potential during the excavation along the edge of the wetlands during construction, at a rate of 3:1.

4. A Site Audit Statement(s) and associated Site Audit Report(s), as prepared by a NSW Accredited Site Auditor, are to be provided to Penrith City Council for approval. The Site Audit Statement(s) and associated Site Audit Report(s) are to address all land that is subject to this development application, except for the areas identified as 'Duck Pond' in Figure 2 of the 'Surface Water Management Options Assessment - 158 to 164 Old Bathurst Road, Emu Plains' prepared by JBS&G dated 24 February 2022. The Site Audit Statement and Site Audit Report are to confirm that the land is suitable for industrial and commercial uses.

Information submitted to satisfy the deferred commencement conditions of consent are to be incorporated into Condition No. 1 prior to the issue of any operational consent.

The conditions listed in Part A are to be complied with prior to the commencement of the consent. On

completion of all conditions listed in Part A that need to be satisfied before the consent can be commenced, Council will issue an operational consent for the development. The conditions listed in Part A will need to be completed within 12 months from (insert date of consent).

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

C1 Site planning and design principles

There were originally a number of issues identified with the proposed subdivision layout which were rectified in the amended design. The plan was amended and agreement to retain the mounding along David Rd and greater retention of mature trees along all boundaries, including a Swift Parrot corridor, the proposed second access road to Old Bathurst Road was deleted, the plan was amended to delete three proposed industrial lots, improve the layout of the lots and road design, pedestrian pathways added, and additional landscaping proposed. The proposal complies with Section C1 of PDCP, subject to conditions of consent.

C2 Vegetation Management

2.1 Preservation of Trees and Vegetation of C2 includes Objectives which state:

"B. Objectives

- a) To protect and conserve the biodiversity values of trees and other vegetation in the City, and*
- b) To maintain the diversity and quality of ecosystems and enhance their capacity to adapt to change, and*
- c) To support conservation and threat abatement action to minimise biodiversity loss and conserve threatened species and ecological communities in nature, and*
- d) To protect and enhance biodiversity corridors, landscape character and scenic values of the City; and*
- e) Recognise the importance and function of trees and other vegetation for Cooling our City, and*
- f) To preserve the amenity of the City through the preservation of trees and other vegetation, and*
- g) To preserve existing trees and other vegetation where possible during the planning, design, development and construction process, and*
- h) To firstly avoid or minimise impacts of a proposed development and land use change on biodiversity and if impacts are unavoidable provide appropriate offsets, and*
- i) To achieve an appropriate balance between the protection of trees and other vegetation and mitigating risks from natural hazards."*

It has been identified by Council's Biodiversity, Tree Management and Waterways Officers that the proposal does not satisfy these objectives should unless greater tree retention occurs within the area along David Rd and controlled through a Vegetation Management Plan. This is further agreed with from a planning perspective with respect to compliance with legislative requirements regarding biodiversity, landscape character and scenic values and urban heat under PLEP. To achieve compliance with these objectives, greater tree preservation is imperative.

The site inspection between Council and the Applicant revealed that there is established mature vegetation along the boundaries which have good screening abilities. Further, the western boundary has mounding with landscaping. Issues were originally raised regarding biodiversity and tree retention, with 531 trees proposed for removal.

The amended plans allowed for greater tree retention along all boundaries and within the

wetlands, as well as reduced earthworks in the vicinity of those trees and protection of a Swift Parrot corridor and the amended proposal retains 368 of 726 trees on the site. However, this amended proposal still proposes removal of all trees along the existing mound along David Rd. It is estimated from the Arborist Report that Trees 599 to 657 could be retained, however require further assessment by the Arborist to determine the current health of the trees.

In the absence of any plans and details regarding the mound and tree retention, an appropriate Deferred Commencement condition has been recommended which requires the retention of the mound and existing dense tree canopy on the side and top of the mound, whilst allowing for replacement planting and new plantings to embellish and complement the existing trees. The full extent of mounding and tree retention will be subject to the detail provided to satisfy the Deferred Commencement condition, however there is an expectation that a dense row of mature vegetation, elevated by the mound, will be retained and embellished by new plantings as part of the landscape design.

It is considered that the proposal currently does not comply with Section C2 of PDCP. However, subject to the requirement for the tree retention along David Rd the proposal will comply subject to conditions of consent.

C3 Water Management

Issues were originally raised regarding water management, in particular on-going ownership and maintenance. These issues are now resolved and the onus is on the applicant to maintain this lot and the applicant has made arrangements for establishment and agreement for future dedication to Council of Proposed Lot 31. The site is flood affected and suitable flood assessment was undertaken, and an evacuation strategy was prepared. The proposal complies with Section C3 of PDCP, subject to conditions of consent.

C4 Land Management

An Erosion & Sediment Control Plan was submitted with the application and appropriate conditions of consent have been recommended to ensure water pollution is prevented. Land contamination has been dealt with under a separate development application and must occur prior to commencement of works on the proposed works under this consent. The proposal complies with Section C4 of PDCP, subject to conditions of consent.

C5 Waste Management

A Waste Management Plan was submitted with the application and the document was reviewed by Council's Environmental Management Officer who advised that the document is comprehensive and adequately addresses the construction phase of the development, noting that demolition is approved under a separate application. The proposal complies with Section C3 of PDCP.

C6 Landscape Design

Issues were raised initially with respect to the proposal regarding landscape design and need for increased tree retention. The plan changes and the requirement to retain the mounding and associated trees in that area will alter the landscape design currently shown on the plans. As such, appropriate conditions of consent have been recommended which requires updates to the landscape plans.

Street trees are proposed within the industrial subdivision, as well as along Old Bathurst Rd and David Rd. The proposed landscaping extends to the wetlands area and pedestrian pathway link to the station. The resulting landscaping within and around the development in conjunction with retention of existing vegetation via conditions of consent will screen the industrial use from the public domain and assist with protection of the landscape and scenic values of the broader area, as well as urban heat.

The proposal complies with Section C6 of PDCP, subject to conditions of consent.

C7 Culture and Heritage

No items of heritage or indigenous archaeological significance have been identified on the site. Therefore, the proposal is considered satisfactory in respect to Section C7 of PDCP.

C8 Public Domain

The revised layout has an improved outcome in terms of pedestrian connectivity and the design incorporates footpaths, street furniture, signage and lighting and encourages interaction between the private and public domain. Users and works of the future industrial lots will be encouraged to use the Swift Parrot corridor and wetlands area for breaks and the pedestrian network is accessible and will encourage walkability and use of other forms of transport including train due to connection to the station. The proposal complies with Section C6 of PDCP, subject to conditions of consent.

C9 Advertising and Signage

No details have been provided of any proposed advertising signage given this application is for subdivision, which is expected with the future applications for built form on each proposed lot. Identification and information signage is proposed throughout the development comprising:

- Two (2) Site Identification signs - on the corner of Old Bathurst Rd and David Rd and on Old Bathurst Rd at the entry to the pedestrian pathway on the north-east corner, within Lot 33 and Lot 38. The signs will contain a street address and/or name of the estate.
- One (1) Entry statement sign - on the corner of David Rd and proposed road MC02 within the wetlands area of Lot 31.
- Interpretation signage within the wetlands and Swift Parrot Corridor in the south-east corner of the site in the road reserve and wetlands area.

The landscape plan package included a signage pallet for the proposed signage. The signage is in keeping with the area and is sitting in a backdrop of vegetation and landscaping and positively contributes to the streetscape in all instances. Further information is required regarding the proposed interpretation signage and is provided via recommended conditions of consent.

The proposal complies with Section C9 of PDCP, subject to conditions of consent.

C10 Transport, Access and Parking

Issues have been raised regarding the proposed intersections and road layout, which have now been resolved. The applicant was requested to alter the acute bend of Road MC01 as is not supported due to poor intervisibility and drivability at the bend, and the applicant provided an amended plan which shows the bend no less than 90 degrees and cater for two-way passing of

a 19m articulated vehicle, including vehicle clearances. Council's Traffic Officer has reviewed the plan and considers that the revised road alignment and curvature meets the relevant Ausroads requirements.

The proposal demonstrates good connections through the site and good pedestrian/bicycle access to the train station to the east, as well as Old Bathurst Rd and David Rd. Off-road cycle/pedestrian shareway is proposed from the site to Old Bathurst Rd and to afford a suitable connection to/from the railway station to the employment area and the wider area. There is also adequate on street parking and the road widths are sufficient, subject to minor curvature issues to be resolved.

The proposal has been supported by traffic reports and the intersection at David Rd & Old Bathurst Rd has been agreed to with TfNSW and is not funded by development contributions.

The proposal complies with Section C10 of PDCP, subject to conditions of consent.

C11 Subdivision

Issues have been raised regarding the proposed subdivision layout, which have been resolved by amended plans. It has been satisfactorily demonstrated that the proposal has had regard to this chapter of the DCP and factored in key considerations such as existing constraints and surrounding land uses. The existing site topography and drainage requirements have dictated the final bulk earthworks, and these have been deemed to be satisfactory by Council.

The subdivision layout (amended and further refined by conditions of consent) has given consideration to the retention of vegetation and availability of existing essential services, with confirmation that the site is capable of adequately being serviced. The proposed subdivision layout ensures that conventional industrial allotments are predominantly provided throughout the site, with a range of lot widths and sizes provided.

C11.1 General Subdivision Requirements

The general objectives of the subdivision controls of PDCP are:

- "a) To address site planning principles in the design of the subdivision layout;*
- b) To preserve and retain significant environmental and cultural features of the site, such as waterways, riparian corridors and heritage items.*
- c) To address environmental constraints, including flooding, drainage, slope, erosion and land within, or adjacent to, natural resource sensitive land and to ensure that any future development will not be subject to an unacceptable level of risk from natural hazards;*
- d) To encourage the retention of significant existing vegetation;*
- e) To adequately provide services to, and mechanisms for, the effluent disposal from any proposed allotment(s); and*
- f) To address any access and traffic constraints and maximise vehicle and pedestrian safety."*

The proposal (amended and further refined by conditions of consent) satisfies the general objectives of the subdivision controls of PDCP. The design of the proposed subdivision layout ensures that the potential development pattern of the proposed subdivision design will be enhance the existing landscape character of the area through retention of existing vegetation and ecological features. Long and narrow allotments have been avoided and appropriate depth to width ratio is achieved, the site can be adequately serviced and the proposed traffic signals, road designs and footpaths are appropriate, subject to conditions of consent.

C11.4 Industrial Subdivision

11.4.1 Lot standards

The proposed subdivision provides for industrial lots of varying size and dimensions to satisfy market demand and the needs of industry, which do not impact upon the function, efficiency and safety of the nearby roads. Safe access is proposed to and from existing roads via one main entrance and within the development. No direct access is proposed onto Old Bathurst Rd and David Rd from the new lots and is via the internal road network.

The minimum lot width of each lot is achieved, with those lots fronting Old Bathurst Road achieving the minimum 50m requirement, and all other lots achieving 20m.

The proposed industrial subdivision satisfactorily addresses potential impacts of any future development on water catchments and surface water quality, as well as considering flooding and stormwater.

Prior to the commencement of the subdivision works under this application, the site will be made suitable in terms of land contamination.

The proposed lots are suitably sized to ensure sufficient setbacks to Old Bathurst Rd and away from the railway lines to minimise noise and vibration impacts.

The provision of services, such as electricity, telephone and other centralised services, are costs that are paid for by the applicant. The various service providers have been consulted and no objections raised.

11.4.2 Access Roads

The proposed new internal road off David Rd ensures safe and efficient conditions for the movement of vehicles, cyclists and pedestrians into and within the industrial precinct. A pedestrian pathway for public use is proposed along the eastern side of Lot 38 and provides access to the railway station. The proposed internal road and existing road and intersection upgrades promote safe and efficient traffic movement, speed control and maximise landscape opportunities. Cycle links are proposed to be retained in the new design along Old Bathurst Road.

11.4.3 Other Requirements

All lots drain directly to a piped drainage system, and incorporate the specific water quality treatment measures.

The likelihood of Aboriginal archaeological items being present on the land have been considered with the creation of new industrial lots and conditions included for unexpected finds.

The proposal complies with Section C11 of PDCP, subject to conditions of consent.

C12 Noise & Vibration

An acoustic assessment by Renzo Tonin & Associates (dated 5 April 2022) was prepared for the subdivision. An acoustic report will be required to support the development of each proposed lot, where it will be ensured that the noise goals identified in the Renzo Tonin report

are achieved. It is recommended that an 88B restriction be used to ensure that this report, and its noise goals, are used as the basis for making further assessments of noise impact. The report puts forward that *"Future land purchasers or site developers would submit their proposed operation to an acoustic consultant who can review and verify that the business will comply with the noise limits set or undertake a more detailed assessment to determine the necessary mitigation and management controls to achieve compliance with these levels"*. Appropriate conditions of consent have been recommended in this regard. The proposal complies with Section C12 of PDCP, subject to conditions of consent.

C13 Infrastructure & Services

The site is suitably serviced and consultation with service providers indicates that augmentation and extension for the development is available. Sydney Water and Endeavour Energy have not identified any issues with the ability to service the subdivision. The proposal complies with Section C12 of PDCP, subject to conditions of consent.

C14 Urban Heat Management

C14 requires developments to *"retain and enhance existing vegetation and canopy coverage to reduce the impact of urban heat on the community"* and *"Developments are to be designed to ensure that existing mature trees including street trees can be retained"*. Having regard to the future industrial use of the site, it is envisaged that there will be a significant amount of built form including buildings and parking which is typical of industrial development and every effort must be made to ensure mature tree retention around the boundaries of the site, in particular along the western boundary, to provide shade from the western sun, assist with cooling of the site and providing areas for greater water absorption to offset hard surfaces to reduce the exacerbation of the Urban Heat Island Effect.

The proposal as amended in layout and the willingness by the applicant to retain the mounding and additional trees maximises green infrastructure. Should the mounding and trees not be provided, urban heat controls within the DCP are not satisfied. The proposal, as to be conditioned, adequately balances landscaped area with future built upon and hardstand area, and to accommodate canopy tree planting in suitable locations on the site that will provide shading and cooling. All boundaries retain vegetation, however the western boundary will retain the mound and trees via condition, as well as be further embellished with new landscaping to ensure suitable shade from the western heat. The proposed lot shapes and sizes will allow for future industrial development appropriate setback to trees having regard to tree canopy spread and root development. The road design change along the eastern boundary allows for less earthworks and use of construction methods to minimise impacts upon the health of trees being retained along that boundary. Further, new landscaping including street trees are proposed throughout the development. The proposed development, subject to conditions, provides an industrial subdivision which addresses urban heat and further consideration will be given to the provisions again at the time of applications for individual lots.

The amended design does not fully meet the objectives and controls of Chapter C14 Urban Heat Management of PDCP, however, subject to the requirement for the tree retention along David Rd the proposal will comply subject to conditions of consent.