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| <b>SWCPP Ref. No.:</b>       | PPSSWC-302                                                                                                                            |
| <b>DA No.:</b>               | DA22/0756                                                                                                                             |
| <b>PROPOSED DEVELOPMENT:</b> | Construction of Two (2) Sheds, and associated Earthworks, Retaining Walls, Driveways, Hardstand Areas, Drainage Works and Landscaping |
| <b>PROPERTY ADDRESS:</b>     | 16 - 23 Clifton Avenue, KEMPS CREEK NSW 2178                                                                                          |
| <b>PROPERTY DESCRIPTION:</b> | Lot 230 DP 1134016,                                                                                                                   |
| <b>ZONING:</b>               | RU4 Primary Production Small Lots - LEP 2010                                                                                          |
| <b>CLASS OF BUILDING:</b>    | Class 8                                                                                                                               |
| <b>ASSESSING OFFICER</b>     | Robert Walker                                                                                                                         |
| <b>APPLICANT:</b>            | Sydney Recycling Park Pty Ltd                                                                                                         |
| <b>DATE RECEIVED:</b>        | 16 August 2022                                                                                                                        |
| <b>REPORT BY:</b>            | Robert Walker, Senior Development Assessment Planner, Penrith City Council                                                            |
| <b>RECOMMENDATIONS:</b>      | Approve                                                                                                                               |

## Assessment Report

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### Executive Summary

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Council is in receipt of a Development Application, which seeks Development Consent for; the construction of two (2) 'temporary' sheds for the sorting of waste materials; associated earthworks (including retaining walls); surrounding hardstand areas; and landscaping works, at 16-23 Clifton Avenue, Kemps Creek.

The overall site consists of a single allotment, which has a total area of approximately 11.01 hectares, located on the western side of Clifton Avenue. The premises are currently used for the purpose of extracting clay and shale, and the progressive rehabilitation of the site through the back-filling of quarried areas with solid non-putrescible waste and associated recycling of waste materials (principally building and demolition waste). Existing site operations are subject to the provisions of Development Consent No. 413/89 (as modified) and Environment Protection Licence No. 12901 (issued by the NSW Environment Protection Authority).

The site is zoned 'RU4 - Primary Production Small Lots' pursuant to the *Penrith Local Environmental Plan 2010*. The proposed development relates to the existing use of the premises, defined as a 'waste disposal facility', and while being prohibited in the 'RU4 - Primary Production Small Lots' zone, such is listed in Section 7 of Schedule 1, as an 'additional permitted use' for the site, and therefore may be carried out pursuant to Clause 2.5 of the *Penrith Local Environmental Plan 2010*.

The proposal does not involve any change to existing overall activities undertaken on-site, providing for elements of waste sorting, that are currently made outside, to be undertaken inside. It is anticipated that such will provide for improved amenity levels for adjacent premises and it is considered that the proposed development is not inconsistent with the objectives for the 'RU4 - Primary Production Small Lots' zone.

The application, as originally lodged, was advertised in a local newspaper and notified to adjacent property owners. This process resulted in one (1) submission being received, which raised concerns in relation to the proposal providing for an intensification of the existing use, visual impacts and uncertainty in relation to the 'temporary use'. The matters raised within such have been considered in assessing the application and are specifically addressed within this report.

The application was referred to the NSW Environment Protection Authority, the Western Sydney Airport, Transport for NSW and the NSW Rural Fire Service, which did not result in any objections to the proposal.

The Capital Investment Value of the proposed development has been estimated as being more than \$5 million and accordingly as such relates to a 'waste or resource management facility', pursuant to Section 2.19 and Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*, the proposal is declared to be 'Regionally Significant Development'. Therefore in accordance with Clause 4.5 (b) of the *Environmental Planning and Assessment Act 1979*, the Sydney Western City Planning Panel is the 'Consent Authority'. The application was subject to a 'Kick-Off Briefing', with the Sydney Western City Planning Panel on 3 April 2023.

Following lodgement of the Development Application, amendments have been made to the proposed development, including in relation to proposed landscaping, on-site wastewater management system and associated effluent management area, and the inclusion of a solar panel system.

An assessment of the application has been undertaken pursuant to Section 4.15 of the *Environmental Planning and Assessment Act 1979*. Overall, following consideration of key related matters, including the Designated Development provisions of the *Environmental Planning and Assessment Regulation 2021*, environmental impacts, neighbourhood amenity, visual impacts and sustainability, it is considered that the proposal is unlikely to result in any unreasonable environmental impacts and is not contrary to the public interest. Having regard to the relevant planning provisions, it is recommended that the application be approved, subject to the attached recommended conditions.

It is noted that the Applicant has reviewed the recommended conditions and has provided agreement to such.

## Site & Surrounds

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The site consists of a single allotment (Lot 230 DP 1134016), commonly known as 16-23 Clifton Avenue, Kemps Creek, and has a total area of approximately 11.01 hectares.

Improvements to the site include, a waste and recycling material processing building, waste and recycling processing infrastructure, office and amenity buildings, a weighbridge, driveway and heavy vehicle manoeuvring areas, associated car parking, and a leachate pond.

The premises are currently used for the purpose of extracting clay and shale, and the progressive rehabilitation of the site through the back-filling of quarried areas with solid non-putrescible waste and associated recycling of waste materials (principally building and demolition waste).

The neighbourhood is characterised by a mixture of land uses, including rural residential properties, rural supply activities, a place of public worship, a large nursery, and other landfill and resource recovery type premises.

Council records indicate the following applications, which have previously been made in relation to the site, which are of relevance to the subject proposal:

- Development Consent (Notice No. 53/67), issued on 30 April 1968, for an extractive industry (clay pit).
- Development Consent No. 413/89, issued on 27 June 1990, for the (continued) extraction of clay and shale, and the progressive rehabilitation by back-filling quarried areas (with solid, non-putrescible waste, to a vegetated landscape compatible with the surrounding environment).
- Development Consent No. 413/89, was modified on 19 July 1991, (in relation to the tracking of 'road levy' Development Contributions) by amending Condition No. 29.
- Development Consent No. 970266, was issued on 29 July 1997, for a weighbridge.
- A Modification Application (Reference No. D16350/09065), was approved on 1 May 1998, modifying Development Consent No. 413/89 (to provide for the use of a mobile crusher to crush recyclable materials), by amending Condition No. 71, and imposing additional Condition Nos. 79, 80, 81, 82, 83 and 84.
- A Modification Application (Reference No. D16350/09065, lodged on 28 February 2000), was approved on 19 March 2001, modifying Development Consent No. 413/89 (in relation to the payment of on-going 'road levy' Development Contributions), by deleting Condition Nos. 29 and 30.
- Development Consent No. 08/0323, was issued on 11 June 2008, for a boundary adjustment, involving the consolidation of the seven (7) allotments associated with the clay / shale extraction and landfill operations, along with an enlargement of the site by 10m along the majority of the western boundary, as a landscape buffer. The associated Plan of Subdivision was registered on 30 January 2009, which created the allotment as it currently exists.
- A Modification Application (Reference No. BA026282.01, lodged on 17 February 2009), was approved on 4 May 2009, modifying Development Consent No. 413/89 (in relation to the footprint of the extraction area), by amending Condition No. 24 and imposing additional Condition Nos. 24A, 24B, 24C and 24D.
- A Modification Application (Reference No. BA026282.04, lodged on 23 December 2011) seeking to modify Development Consent No. 413/89, to provide for an increase to the depth of a quarry cell, was refused on 25 August 2014.
- Development Consent No. DA17/0396, was issued on 6 March 2018, for the construction of a temporary shed to enclose waste processing equipment and site activities associated with an existing landfill facility.
- A Modification Application (Reference No. DA15/0280) seeking to modify Development Consent No. 413/89 (in relation to the final levels of fill and land forming), by amending Condition No. 33, was refused on 2 February 2016.
- Development Application No. 19/0377, which sought Development Consent for the construction of a leachate pond and the decommissioning of an existing leachate pond associated with an existing landfill facility, was refused on 29 October 2019
- A Modification Application (Reference No. DA17/0396.01), was approved on 28 February 2020, modifying

Development Consent No. 17/0396 (in relation to construction requirements in order to satisfy Planning for Bush Fire Protection 2019 and stormwater particulars), by deleting Condition Nos. 3 and 28.

Existing site operations are subject to the provisions of Development Consent No. 413/89 (as modified) and Environment Protection Licence No. 12901, issued by the NSW Environment Protection Authority (pursuant to Section 55 of the *Protection of the Environment Operations Act 1997*).

## Proposal

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The application seeks Development Consent for:

- Construction of two (2) 'temporary' sheds, approximately 2,100 sqm and 2,520 sqm in area, for the sorting of waste materials.
- Associated earthworks, including retaining walls, and surrounding hardstand areas.
- Associated landscaping.

It is noted that the proposal does not involve any change to existing overall site operations, which are to continue pursuant to Development Consent No. 413/89 (as modified) and Environment Protection Licence No. 12901, issued by the NSW Environment Protection Authority (pursuant to Section 55 of the *Protection of the Environment Operations Act 1997*). The proposed sheds provide for elements of waste sorting, that are currently made outside, to be undertaken within the sheds. Furthermore, the application details that the proposed sheds are to be removed when existing site operations are concluded.

## Plans that apply

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- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Precincts—Western Parkland City) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Resources and Energy) 2021
- State Environmental Planning Policy (Transport and Infrastructure) 2021

## Planning Assessment

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### • Section 2.12 – Sydney Western City Planning Panel (SWCPP)

The Capital Investment Value of the proposed development has been estimated as being more than \$5 million and accordingly as such relates to a 'waste or resource management facility', pursuant to Section 2.19 and Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*, the proposal is declared to be 'Regionally Significant Development. Therefore in accordance with Clause 4.5 (b) of the *Environmental Planning and Assessment Act 1979*, the Sydney Western City Planning Panel is the 'Consent Authority'.

The application was subject to a 'Kick-Off Briefing', with the Sydney Western City Planning Panel on 3 April 2023. It is note that the Panel:

- Sought to understand the life remaining in the landfill and whether removal of the proposed sheds formed part of the development.

Response: Existing site operations are subject to the provisions of Development Consent No. 413/89 (as modified) and Environment Protection Licence No. 12901, and such do not provide a definitive time limitation for the conclusion of existing activities. The (subject) Development Application details that the proposed sheds are to be used specifically to provide for elements of waste sorting that are currently made outside to be undertaken inside. Furthermore, the application outlines that the sheds are 'temporary', in that they are to be removed upon conclusion of existing activities on-site. Accordingly, it is recommended that a condition be imposed requiring the sheds to be decommissioned within three (3) months of the waste processing activities ceasing on-site.

- Questioned the driver for the development.

Response: The proposed sheds are to be used specifically to provide for elements of waste sorting that are currently made outside to be undertaken inside and it is anticipated that such will provide for improved amenity levels for adjacent acoustic receivers.

- Enquired as to whether the inclusion of solar panels has been considered.

Response: The proposal has been amended to include the provision of two (2) x 100 kWp solar power systems.

- **Section 4.14 - Bushfire prone land assessment**

The application was accompanied by a Bushfire Assessment Report which addressed the bushfire risk of the proposed development, and associated specifications and requirements of *Planning for Bushfire Protection 2019*. The Bushfire Assessment Report outlined that the characteristics of the site are suitable to the proposal from a bushfire safety perspective, subject to recommendations provided within.

Furthermore, the application was referred to the NSW Rural Fire Service for comment (pursuant to Section 4.14 of the *Environmental Planning and Assessment Act 1979*), which resulted in the provision of recommended conditions. The conditions recommended by the NSW Rural Fire Service have been adopted within the recommended conditions and overall it is considered that the proposal conforms with the associated provisions of *Planning for Bushfire Protection 2019*, subject to the associated recommended conditions being imposed.

- **Section 4.15 - Evaluation**

The proposed 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 such, the following matters have been identified for consideration.

- **Section 4.46 - Integrated development**

As previously outlined, the premises are currently used for the purpose of extracting clay and shale, and the progressive rehabilitation of the site through the back-filling of quarried areas with solid non-putrescible waste and associated recycling of waste materials. Existing site operations are subject to the provisions of Development Consent No. 413/89 (as modified) and Environment Protection Licence No. 12901, issued by the NSW Environment Protection Authority (pursuant to Section 55 of the *Protection of the Environment Operations Act 1997*). As the proposal does not involve any change to existing site operations, which are to continue subject to Environment Protection Licence No. 12901, the proposed development does not constitute 'Integrated Development', under the *Protection of the Environment Operations Act 1997*.

Notwithstanding this, the subject application was referred to the NSW Environment Protection Authority for comment. In response, the NSW Environment Protection Authority provided no objection to the proposal.

Furthermore, it is noted that a review of the existing Environment Protection Licence did not identify any inconsistencies between such and the proposed development.

- **Section Western Sydney Aerotropolis Special Infrastructure Contributions Direction**

The site is located within the Western Sydney Aerotropolis Special Infrastructure Contributions Area, which was introduced on 25 March 2022, pursuant to Section 7.24 of the *Environmental Planning and Assessment Act 1979*.

However a Special Infrastructure Contribution is only required on 'rezoned land' (which is defined as land within the 'Agribusiness Zone' the 'Enterprise Zone', the 'Mixed Use Zone' and the 'Mamre Road Industrial Zone'). As the site is zoned 'RU4 - Primary Production Small Lots' pursuant to the *Penrith Local Environmental Plan 2010*, a Special Infrastructure does need to be made.

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

### **State Environmental Planning Policy (Biodiversity and Conservation) 2021**

Pursuant to Section 6.65 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, Chapter 6, which relates to 'Water Catchments' (including the Hawkesbury - Nepean Catchment), does not apply to an application for Development Consent lodged (but not finally determined) before the commencement of *State Environmental Planning Policy Amendment (Water Catchments) 2022*. As the subject application was made on 16 August 2022, prior to the commencement of *State Environmental Planning Policy Amendment (Water Catchments) 2022* (on 21 November 2022), such does not apply, and the former provisions continue to apply (i.e. Chapters 6 to 12 as in force immediately before their repeal by *State Environmental Planning Policy Amendment (Water Catchments) 2022*).

Accordingly, an assessment of the proposal has been undertaken against the relevant criteria within Chapter 6 (Bushland in urban areas) and Chapter 9 (Hawkesbury - Nepean River), as in force until 21 November 2022, which found the proposal to be satisfactory in relation to such.

### **State Environmental Planning Policy (Planning Systems) 2021**

The Capital Investment Value of the proposed development has been estimated as being more than \$5 million and accordingly as such relates to a 'waste or resource management facility', pursuant to Section 2.19 and Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021*, the proposal is declared to be 'Regionally Significant Development'. Therefore in accordance with Clause 4.5 (b) of the *Environmental Planning and Assessment Act 1979*, the Sydney Western City Planning Panel is the 'Consent Authority'.

### **State Environmental Planning Policy (Precincts—Western Parkland City) 2021**

#### Assessment against Clause 4.17 (Aircraft Noise)

While the site is located within the Australian Noise Exposure Concept (ANEC) contour of between 20 and 25 (i.e. greater than 20), the proposal does not relate to a 'noise sensitive development' and accordingly no further assessment is required pursuant to Clause 4.17.

#### Assessment against Clause 4.19 (Wildlife Hazards)

While the site is located within the '13km Wildlife Buffer Zone' area, the proposal does not relate to 'relevant development'. Noting that while the proposal relates to the existing use of the premises defined as a 'waste or resource management facility', the proposal does not relate to outdoor processing, storage or handling, of organic or putrescible waste.

Notwithstanding this, consultation occurred with the Western Sydney Airport (being the relevant 'Commonwealth body'), who noting the existing waste management related activities undertaken on-site and the proposed landscaping, had no objection to the proposal.

#### Assessment against Clause 4.21 (Lighting)

While the site is located within the '6km Lighting Intensity Radius' and the proposed development extends within the 'Light Control Zone D', given that the proposal does not relate to development for the purpose of a 'classified road', a 'freight transport facility', a 'heavy industrial storage establishment', or a 'recreation facility', and does not involve the installation and operation of external lighting that are likely to be obtrusive or create light spill outside the site, no further assessment is required in pursuant to Clause 4.21.

Notwithstanding this, it is recommended that a condition be imposed requiring any associated lighting to be designed and directed so as to not cause light spill outside the site, or to provide a distraction for air operations.

#### Assessment against Clause 4.22 (Airspace operations)

The site is located within the 'Obstacle Limitation Surface' area. It is noted that the proposal does not penetrate the identified prescribed air space and accordingly no further assessment is required pursuant to Clause 4.22.

#### Assessment against Clause 4.40 (Development prior to Precinct Plan)

The site is identified by the *Western Sydney Aerotropolis Plan 2020*, as being within the 'Kemps Creek Precinct' which is 'remaining precinct' of the Western Sydney Aerotropolis.

It is considered that the proposal is consistent with the overall aims of Chapter 4, particularly given that such provides for a more orderly layout, assists with the provision of support services for the construction and future operation of the Western Sydney Airport, and promotes employment. Furthermore, it is considered that the proposal will not result in fragmentation of land holdings, will not hinder the provision of infrastructure, is compatible with the development and future operation of the Western Sydney Airport, is appropriate when having regard to existing adjacent development, and will be adequately serviced.

Furthermore, it is considered that the proposal does not take away from the 'key considerations', 'strategic outcomes' or 'implementation strategies' which have been identified for the 'Kemps Creek Precinct', as outlined within Part 7.5.2 of the *Western Sydney Aerotropolis Plan 2020*.

Accordingly, it is considered that the proposal is consistent with the provisions of Clause 4.40.

#### Assessment against Clause 4.49 (Public Utility Infrastructure)

Existing operations are adequately serviced by Sydney Water for the supply of water and Endeavour Energy for the supply of electricity. Wastewater disposal is managed on-site.

As the proposal does not involve an intensification of existing site operations or the overall aforementioned servicing arrangement, it is considered that the proposal is consistent with the provisions of Clause 4.49.

## **State Environmental Planning Policy (Resilience and Hazards) 2021**

Pursuant to Clause 4.6 of *State Environmental Planning Policy (Resilience and Hazards) 2021*, Development Consent must not be granted unless consideration has been given to, whether the land is contaminated, if the land is contaminated it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out it is satisfied that the land will be remediated before the land is used for that purpose.

The application is accompanied by a Preliminary Site Investigation Report (which was completed by an Environmental and Contamination Consultancy). The Preliminary Site Investigation Report concludes that given the proposal relates to existing back-filling of quarried areas with solid non-putrescible waste and associated waste material recycling activities, and that overall activities on-site are subject to an Environment Protection Licence, the site is suitable for the proposed development. Furthermore, the Preliminary Site Investigation Report outlined that the capped landfill cell underlying the location of the proposed shed, is unlikely to pose an unacceptable risk to human health or ecological receptors, provided suitable environmental and work health and safety plans and controls are implemented. Specialist Environmental Health assessment of the application, raised no concerns with the proposal, subject to conditions being imposed (including in relation to 'unexpected finds', supervision of filling works, and work health and safety matters), which have been included within the recommended conditions.

Accordingly, it is considered that the proposal is satisfactory having regard to the provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021*.

## **State Environmental Planning Policy (Resources and Energy) 2021**

The site is listed in Division 1 of Schedule 3 (being 'Clay / shale extraction areas of regional significance - current and potential') of *State Environmental Planning Policy (Resources and Energy) 2021*. Accordingly consideration is to be given to Chapter 3.

Given that the proposal does not specifically relate to the use of the site for 'extractive industry' purposes (being associated with the progressive rehabilitation of the site through the back-filling of quarried areas with solid non-putrescible waste and associated recycling), there are no provisions contained within Chapter 3 which are directly applicable to the proposed development. Notwithstanding this, it is considered that the proposal is not inconsistent with the provisions of Chapter 3 and does not impact upon the ability of the existing extractive industry pursuit realising its full potential.

## State Environmental Planning Policy (Transport and Infrastructure) 2021

Given that the proposal relates to a 'waste or resource management facility', Clause 2.122 (being for 'Traffic Generating Development') applies to the proposal. Accordingly, pursuant to Clause 2.122 (4) (a), written notice of the application was given to Transport for NSW. In response to such, while raising no objection to the proposal, Transport for NSW provided advisory comments for consideration in relation to sightlines, swept paths, and vehicles entering and leaving the site in a forward direction.

Overall assessment of the proposal, which included specialist Traffic Engineering assessment, has found the proposal to be satisfactory from a traffic perspective, including having regard to the efficient movement of people and freight (to and from the site), the extent of multi purpose trips, the potential to minimise the need for travel by car, the potential to maximise movement of freight in containers, and potential traffic safety, road congestion and parking implications. Furthermore, assessment of the proposal has found that such provides adequate on-site manoeuvring, while it is recommended that conditions be imposed in relation to sightlines being maintained (at the driveway site access point) and vehicles entering / exiting the site in a forward direction. Accordingly the provisions of Clause 2.122 have been satisfied.

### Local Environmental Plan 2010 (Amendment 4)

| Provision                                                      | Compliance                       |
|----------------------------------------------------------------|----------------------------------|
| Clause 2.3 Permissibility                                      | Does not comply - See discussion |
| Clause 2.3 Zone objectives                                     | Complies - See discussion        |
| Clause 2.5 Additional permitted uses for particular land       | Complies - See discussion        |
| Clause 7.1 Earthworks                                          | Complies - See discussion        |
| Clause 7.4 Sustainable development                             | Complies - See discussion        |
| Clause 7.5 Protection of scenic character and landscape values | Complies - See discussion        |
| Clause 7.6 Salinity                                            | Complies                         |
| Clause 7.7 Servicing                                           | Complies                         |

#### Clause 2.3 Permissibility

The site is zoned 'RU4 - Primary Production Small Lots' pursuant to the *Penrith Local Environmental Plan 2010*. The proposed development relates to the existing use of the premises, defined as a 'waste disposal facility', which is prohibited in the 'RU4 - Primary Production Small Lots' zone.

#### Clause 2.3 Zone objectives

While the proposal relates to a land use which is prohibited in the 'RU4 - Primary Production Small Lots' zone, given that such does not involve any change to existing overall activities to be undertaken on-site by providing for elements of waste sorting that are currently made outside to be undertaken inside and the proposed landscape screen planting, it is considered that such will 'minimise conflict between land uses within this zone and land uses within adjoining zones', and 'maintain the rural landscape character of the land'.

Accordingly, overall it is considered that the proposal will not detract from the objectives of the 'RU4 - Primary Production Small Lots' zone.

## **Clause 2.5 Additional permitted uses for particular land**

The proposed development relates to the existing use of the premises, defined as a 'waste disposal facility'. While 'waste disposal facilities' are prohibited in the 'RU4 - Primary Production Small Lots' zone, pursuant to Clause 2.5, development on particular land that is described or referred to in Schedule 1 may be carried out with Development Consent. The subject site, being Nos. 16 - 23 Clifton Avenue, Kemps Creek (Lot 230 DP 1134016), is listed in Section 7 of Schedule 1, providing for development for the purposes of extractive industry and waste disposal facilities, being permitted with Development Consent.

## **Clause 7.1 Earthworks**

The associated earthworks, including the proposed retaining walls, provides for a suitable building platform and efficient vehicle manoeuvring areas for the proposed sheds. The retaining walls are to be screened by the proposed landscaping.

Furthermore, it is noted that conditions have been included within the recommended conditions, requiring the supervision of filling works by an appropriately qualified person and in relation to 'unexpected finds', which shall assist in managing associated issues during works on-site.

## **Clause 7.4 Sustainable development**

Both sheds include roof areas to provide solar power systems. Additionally, the proposal includes 4 x 15,000L rainwater tanks.

## **Clause 7.5 Protection of scenic character and landscape values**

A portion of the overall site is located within the 'Land with Scenic and Landscape Values' area and the proposed development extends to within such. Accordingly, measures are to 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 proposed sheds are located within the immediate vicinity of an existing like processing shed and the proposal includes the provision of extensive landscape screen planting. It is considered that the scale, bulk and design of the sheds, are consistent with other infrastructure support type developments within the locality. Furthermore, it is noted that the application has been accompanied by a Visual Impact Assessment (which includes photomontages depicting the proposed development, in comparison to the existing attributes of the site), and it is considered that such demonstrates that the proposed sheds will not have an adverse visual impact (particularly as the associated landscaping matures) on the surrounding area, including when viewed from Elizabeth Drive.

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

There are no Draft Environmental Planning Instruments that are specifically relevant to the subject application.

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

#### **Development Control Plan 2014**

| <b>Provision</b>                       | <b>Compliance</b>                                             |
|----------------------------------------|---------------------------------------------------------------|
| C1 Site Planning and Design Principles | Complies                                                      |
| C2 Vegetation Management               | Complies                                                      |
| C3 Water Management                    | Complies                                                      |
| C4 Land Management                     | Complies                                                      |
| C5 Waste Management                    | Complies                                                      |
| C6 Landscape Design                    | Complies                                                      |
| C10 Transport, Access and Parking      | Complies                                                      |
| C12 Noise and Vibration                | Complies                                                      |
| C13 Infrastructure and Services        | Complies                                                      |
| D1.1. Rural Character                  | Complies                                                      |
| D1.5. Non-Agricultural Development     | Complies - see Appendix - Development Control Plan Compliance |
| D5.9. Extractive Industries            | Complies - see Appendix - Development Control Plan Compliance |

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

There are no planning agreements which apply to the site or the proposed development.

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

#### Section 7 - Designated Development

Development described in Schedule 3, Part 2 is declared to be Designated Development, unless it is not Designated Development under Schedule 3, Part 3.

The proposed sheds (development) specifically provide for elements of waste sorting, that are currently made outside, to be undertaken within the sheds, and do not involve any change to existing overall site operations, which are to continue pursuant to Development Consent No. 413/89 (as modified). The application has been supported by assessments against 'the impact of the existing development', 'the likely impact of the proposed alterations or additions', 'proposals to mitigate the environmental impacts and manage residual risk', and 'proposals to facilitate compliance with relevant standards'. Overall it is considered that the proposal does not provide for increased environmental impacts and that such satisfies the provisions of Schedule 3, Part 3 (specifically Clause 48), and is therefore not Designated Development.

#### Section 35 - Additional requirements for Development Applications in certain areas of Sydney

The site is located within the 'Western Sydney Aerotropolis' (as shown on the Aerotropolis Boundary Map). The application has been accompanied by an assessment which demonstrates that the proposal is consistent with the Western Sydney Aerotropolis Precinct Plan (noting that the site is located within the 'Kemps Creek Precinct', which is not an initial precinct of the Western Sydney Aerotropolis).

#### Section 69 - Compliance with Building Code of Australia

It is recommended that a condition be imposed requiring the erection of a sign in a prominent position on the site for the duration of works, providing details (including of the principal certifier and the principal contractor) as required by this Section.

#### Section 70 - Erection of signs

It is recommended that a condition be imposed requiring the erection of a sign in a prominent position on the site for the duration of works, providing details (including of the principal certifier and the principal contractor) as required by this Section.

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

The proposal provides for elements of waste sorting, that are currently made outside, to be undertaken inside. While the proposal does not involve any change to existing overall site operations, it is anticipated that such will provide for improved amenity levels for adjacent acoustic receivers.

The application has been accompanied by a Visual Impact Assessment (which includes photomontages depicting the proposed development, in comparison to the existing attributes of the site), and it is considered that such demonstrates that the proposed sheds will not have an adverse impact on the scenic, landscape and rural character of the area.

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

Assessment of the application has found the site to be suitable for the proposed development, subject to the recommended conditions.

### **Section 4.15(1)(d) Any Submissions**

#### **Community Consultation**

The application was advertised in a local newspaper and notified to adjacent property owners, in accordance with Council's Community Engagement Strategy.

One (1) submission was received as a result of this process, which raised the following matters.

- Concern was raised regarding the proposal providing for an intensification of the existing use of the premises and greater cumulative impacts, including in relation to the 'proposed separating, sorting, processing and transfer of waste'.

Response: The proposal does not involve any change to existing overall site operations, simply providing for elements of waste sorting which are currently made outside, to be undertaken within the sheds. The use of the premises are to continue pursuant to the provisions of Development Consent No. 413/89 (as modified) and Environment Protection Licence No. 12901, issued by the NSW Environment Protection Authority. Furthermore, the application has been accompanied by an Acoustic Assessment, which was prepared by an Environmental Noise Consultancy, outlining that the proposed sheds will provide reduced noise levels at the nearest sensitive receivers.

- Concern was raised regarding the visual impacts of the sheds and associated earthworks.

Response: The proposed sheds are located within the immediate vicinity of an existing processing shed and the proposal includes the provision of extensive landscape screen planting. It is considered that the scale, bulk and design of the sheds, are consistent with other infrastructure support type developments within the locality. Furthermore, it is noted that the application has been accompanied by a Visual Impact Assessment (which includes photomontages depicting the proposed development, in comparison to the existing attributes of the site), and it is considered that such demonstrates that the proposed sheds will not have an adverse visual impact (particularly as the associated landscaping matures) on the surrounding area.

- Concern was raised in relation to the uncertainty around the 'temporary use' of the premises.

Response: The proposed sheds are to be used specifically for the purpose of sorting waste, associated with the existing activities that are undertaken on site. The application details that the proposed sheds will be removed when the existing use of the site concludes.

It is noted that existing site operations are subject to the provisions of Development Consent No. 413/89 (as modified) and Environment Protection Licence No. 12901 (issued by the NSW Environment Protection Authority), and such do not provide a definitive time limitation for the conclusion of existing activities. Notwithstanding this, it is recommended that a condition be imposed to require the sheds being removed upon completion of existing activities on-site.

## **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 - subject to conditions |
| Development Engineer                     | No objections - subject to conditions |
| Environmental - Environmental management | No objections - subject to conditions |
| Environmental - Waterways                | No objections - subject to conditions |
| Environmental - Public Health            | No objections                         |
| Environmental - Biodiversity             | No objections - subject to conditions |
| Traffic Engineer                         | No objection subject to conditions    |

### Section 4.15(1)(e)The public interest

The proposed development will not generate any significant issues of public interest, subject to the recommended conditions being imposed.

## Conclusion

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Having regard to the assessment of the application, the proposed development can be summarised as follows:

1. The site is zoned 'RU4 - Primary Production Small Lots' pursuant to the *Penrith Local Environmental Plan 2010*. The proposed development relates to the existing use of the premises, defined as a 'waste disposal facility', and such may be carried out with Development Consent pursuant to Clause 2.5 of the *Penrith Local Environmental Plan 2010* (being an 'additional permitted use'), which applies to the site as listed in Section 7 of Schedule 1.
2. While the proposal does not involve any change to existing overall activities to be undertaken on-site, it provides for elements of waste sorting, that are currently made outside, to be undertaken inside, and it is anticipated that such will provide for improved amenity levels for adjacent premises.
3. It is considered that the proposed development is not inconsistent with the objectives for the 'RU4 - Primary Production Small Lots' zone.
4. The proposed sheds are located within the immediate vicinity of an existing (similar) processing shed and the proposal includes the provision of additional landscape screen planting.
5. It is considered that the scale, bulk and appearance of the sheds, are consistent with other infrastructure support type developments within the locality.
6. The proposal has been supported by a Visual Impact Assessment, which has addressed the provisions of Clause 7.5 of the *Penrith Local Environmental Plan 2010*.
7. It is considered that the proposal will not provide for any significant adverse or unreasonable impacts on the broader area, subject to the recommended conditions.

Overall, assessment of the proposal has found the proposed development to be acceptable and accordingly it is recommended that the application be approved, subject to the recommended conditions.

## Recommendation

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That Development Application No. DA22/0756, be approved subject to the following recommended conditions.

## CONDITIONS

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### General

- 1 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 Title                   | Project / Drawing No. | Issue / Revision | Prepared by                 | Dated            |
|------------------------------|-----------------------|------------------|-----------------------------|------------------|
| Site Plan                    | 2064 / 001I           | I                | Apex Building Systems       | 28 July 2023     |
| Floor Plans                  | 2064 / 002F           | F                | Apex Building Systems       | 15 February 2023 |
| Elevations                   | 2064 / 003D           | D                | Apex Building Systems       | 15 February 2023 |
| Sections                     | 2064 / 004B           | B                | Apex Building Systems       | 15 February 2023 |
| Roof Plans                   | 2064 / 005A           | A                | Apex Building Systems       | 26 April 2023    |
| Civil Engineering Drawings   | TX16593.00            | C                | Triaxial Consulting         | 16 February 2023 |
| Landscape Concept Plan       | 2155                  | F                | Moir Landscape Architecture | 13 June 2023     |
| Wastewater Assessment Report | CES110507-WAE-IP      | 3                | Consulting Earth Scientists | 25 July 2023     |

- 2 The approved development the subject of this consent is limited to the following works:

- Construction of two (2) 'temporary' sheds, approximately 2,100 sqm and 2,520 sqm in area, to be used for the sorting of waste materials.
- Establishment of an on-site wastewater management system.
- Associated earthworks, including retaining walls, and surrounding hardstand areas.
- Associated landscaping.

This consent does not approve:

- Any change to existing overall site operations. The use of the premises is to be undertaken in accordance with existing prevailing approvals, including Development Consent No. 413/89 (as modified).
- Any signage (including business identification type signage).

- 3 The overall use of the premises must be carried out in accordance with Environment Protection Licence No. 12901, issued by the NSW Environment Protection Authority. Should this licence be revoked, suspended or surrendered, an application is to be submitted to Council for consideration of matters contained in the licence.

- 4 The sheds are to be decommissioned within three (3) months of the waste processing activities ceasing on-site, and the landform remediated and rehabilitated in accordance with Development Consent No. 413/89 (as modified).
- 5 A Construction Certificate shall be obtained prior to commencement of any building works.
- 6 A sub-slab gas protection membrane is to be installed to address potential landfill gases. This membrane is to achieve a '2.0 gas protection score', in line with the NSW Environment Protection Authority's 'Assessment and Management of Hazardous Ground Gases: Contaminated Land Guidelines'. The sub-slab gas protection membrane is to be **shown on plans accompanying the Construction Certificate application**, and is to be accompanied by associated specifications.

**Prior to the issue of the Occupation Certificate**, certification is to be obtained from an appropriately qualified person, confirming that the membrane has been satisfactorily installed and that it achieves the required gas protection score.

- 7 All material and finishes are to be completed in accordance with the approved plans. All other materials and finishes (i.e. where details are unspecified) shall be compatible in type, colour and texture to the proposed sheds and the existing adjacent shed.
- 8 Prior to the issue of any Occupation Certificate, two (2) x 100 kWp (or greater) solar power systems (as shown on the approved Roof Plan), are to be implemented and be operational, to the satisfaction of the Principal Certifying Authority.
- 9 Lighting is to be designed and directed so as to not cause light spill outside the site, or to provide any distraction for air related activities associated with the Western Sydney Airport.
- 10 **The development shall not be used or occupied until an Occupation Certificate has been issued.**
- 11 The roller doors of both sheds are to remain closed, except as follows:
  - The west facing and north facing roller doors, are to be opened to provide vehicular access (entry and exit) to and from the shed. It is noted that waste sorting activities within the sheds are to cease until the doors are re-closed.
  - The east facing roller doors are to be used for emergency purposes only.
- 12 All vehicles accessing the site are to enter and exit to / from the road in a forward direction.

- 13 A Bush Fire Emergency Management and Evacuation Plan is to be prepared in accordance with Table 6.8d of Planning for Bush Fire Protection 2019 (or should be updated if one exists to include the new development) and be consistent with the following:
- The NSW RFS document: A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan;
  - include planning for the early relocation of occupants; and
  - detailed plans of all emergency assembly areas, including on-site and off-site arrangements as stated in AS 3745 'Planning for emergencies in facilities', are clearly displayed, and an annually emergency evacuation is conducted.

A copy of the Bush Fire Emergency Management and Evacuation Plan should be provided to the Local Emergency Management Committee for its information prior to the issuing of an Occupation Certificate.

## **Demolition**

- 14 All demolition works are to be conducted in accordance with AS 2601-2001 *The demolition of structures*.

SafeWork NSW requirements apply to demolition work and compliance with those requirements, including the *SafeWork NSW Code of Practice Demolition Work August 2019*, is required.

Prior to demolition, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

## **Heritage/Archaeological relics**

- 15 If any archaeological relics are uncovered during the course of the work no further work shall be undertaken until further directed by Penrith City Council or the NSW Heritage Office.

The applicant is advised that depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the Heritage Act, 1977 may be required before any further work can be recommenced in that area of the site.

## **Environmental Matters**

- 16 Prior to the issue of the Construction Certificate, a Construction Waste Management Plan is to be submitted to and approved by the Principal Certifier. This Waste Management Plan is to be prepared in accordance with Part C5 of the Penrith Development Control Plan 2014, and is to address all waste materials generated during the construction phase of the development, including details of the proposed waste volumes, on-site storage and management, designated waste contractors and waste facilities.

The final approved Waste Management Plan must be implemented and adhered to on-site for the duration of approved works.

- 17 Prior to commencement of any works associated with the development, sediment and erosion control measures shall be installed, in accordance with the Protection of the Environment Operations Act 1997 and Managing Urban Stormwater series from the Office of Environment and Heritage.

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

- 18 All construction works that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties, 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.

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

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

21 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,
  - 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,
  - where sourced from the subject site, confirm that all materials proposed to be reused have been inspected by an appropriately qualified person and confirmed as suitable for reuse, as put forward in the 'Preliminary Site Investigation', prepared by Consulting Earth Sciences P/L, dated 28 April 2023 (Reference No. CES220320-WAE-AB, Revision 2).
- 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.”}

22 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.

## **BCA Issues**

- 23 All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:
- (a) complying with the deemed to satisfy provisions, or
  - (b) formulating an alternative solution which:
    - complies with the performance requirements, or
    - is shown to be at least equivalent to the deemed to satisfy provision, or
  - (c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

## Utility Services

- 24 A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

The proponent is advised to make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs.

Applications must be made through an authorised Water Servicing Coordinator. For help either visit [www.sydneywater.com.au](http://www.sydneywater.com.au) > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

- 25 The approved plans must be submitted to the Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water infrastructure and if further requirements need to be met.

The Sydney Water Tap in™ online self-service replaces our Quick Check Agents as of 30 November 2015.

The Tap in™ service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's Tap in™ online service is available at: <https://www.sydneywater.com.au/plumbing-building-developing/building/sydney-water-tap-in.html>.

## Construction

- 26 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 are 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.

- 27 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 back filling 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.

- 28 The buildings shall be set out by a registered surveyor. A Survey Certificate shall be undertaken and submitted to the Principal Certifying Authority immediately prior to the positioning of the slabs.

Additionally, a Survey Certificate of the location of the buildings upon completion, shall be undertaken and submitted to the Principal Certifying Authority, prior to the issue of any Occupation Certificate. The Survey Certificate is to show the boundaries of the allotment and the distances of the buildings from the boundaries.

- 29 New construction must comply with Section 3 and Section 5 (BAL 12.5) of Australian Standard AS 3959-2018 Construction of buildings in bushfire-prone areas or the relevant requirements of the NASH Standard - Steel Framed Construction in Bushfire Areas (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *Planning for Bush Fire Protection 2019*.

## Engineering

- 30 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 Construction 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.

- 31 The stormwater management system shall be provided in accordance with the approved Civil Engineering Drawings (prepared by Triaxial Consulting, dated 16 February 2023).

Engineering plans and supporting calculations for the stormwater management systems are to be prepared by a suitably qualified person and shall accompany the application for a Construction Certificate.

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

- 32 Prior to the issue of any Construction Certificate, the Certifier shall ensure that the proposed development will not concentrate, dam or divert overland flows onto adjoining properties.

Details prepared by a suitably qualified person shall form part of any Construction Certificate issued demonstrating compliance with these requirements.

- 33 Prior to the issue of any Construction Certificate, the Certifier shall ensure that circulation, manoeuvring and pedestrian areas associated with the subject development, are in accordance with relevant provisions of the *Penrith Development Control Plan 2014*, and AS 2890.1, AS 2890.2 and AS 2890.6.

- 34 Prior to the issue of any Occupation 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 been undertaken have been satisfactorily completed.

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

- 35 Prior to the issue of an Occupation Certificate, works-as-executed drawings, final operation and maintenance management plans and any other compliance documentation shall be submitted to the Principal Certifying Authority in accordance with Penrith City Council's Engineering Construction Specification for Civil Works, WSUD Technical Guidelines and Stormwater Drainage for Building Developments.

An original set of works-as-executed drawings and copies of the final operation and maintenance management plans and compliance documentation shall also be submitted to Penrith City Council with notification of the issue of the Occupation Certificate where Council is not the Principal Certifying Authority.

- 36 Prior to the issue of an Occupation Certificate a restriction as to user and positive covenant relating to the stormwater management systems (including 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
- 37 The stormwater management systems shall continue to be operated and maintained in perpetuity to the satisfaction of Council in accordance with the final operation and maintenance management plan. Regular inspection records are required to be maintained and made available to Council upon request. All necessary improvements are required to be made immediately upon awareness of any deficiencies in the treatment measure(s).

## Landscaping

- 38 All landscaping works are to be completed in accordance with the stamped approved Landscape Plan (prepared by Moir Landscape Architecture, dated 13 June 2023), prior to the issue of any Occupation Certificate.

Landscaping shall be maintained:

- in accordance with the approved plan,
- in a healthy state,
- to achieve its mature dimensions and form, 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.

- 39 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.
- 40 No trees or native vegetation are to be removed, ringbarked, 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 Council's Tree Preservation Order and Policy.

- 41 On completion of the landscape works associated with the development and prior to the issue of an Occupation Certificate for the development, a Landscape Implementation Report, must be prepared by a suitably qualified and experienced landscape professional, attesting to the satisfactory completion of the landscaping works for the development.

A copy of the Landscape Implementation Report is to be provided to the Principal Certifying Authority and to the Senior Development Assessment Planner, Penrith City Council, prior to the issue of any Occupation Certificate.

- 42 From the commencement of building works and in perpetuity, the site is to be maintained as an Inner Protection Area, in accordance with the requirements of Appendix 4 of Planning for Bush Fire Protection 2019.

## Certification

- 43 Prior to the commencement of any earthworks or construction works on site, the proponent is to:
- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
  - (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifier shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

### Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

## Operation of OSSM

- 44 **Prior to the issue of the 'Approval to Operate', a Commissioning Certificate for the Wisconsin Sand Mound shall be provided to Penrith City Council for approval.** This Certificate shall certify that the Wisconsin Sand Mound has been constructed to the specifications in the approved Wastewater Assessment Report (prepared by Consulting Earth Sciences, dated 25 July 2023).

**Before the OSSM system can be used, an 'Approval to Operate' for the OSSM system is to be obtained from Penrith City Council.**

- 45 All wastewater generated on the site is to be diverted to the existing AWTS and be disposed of by way of a Wisconsin Sand Mound in the approved effluent management area(s). The effluent management area(s) is to be located in accordance with the approved Wastewater Assessment Report (prepared by Consulting Earth Sciences, dated 25 July 2023) and have a minimum area of 142m<sup>2</sup> with a Reserve Area of equal size.

The system and effluent management area(s), are to be installed and managed in accordance with the:

- Environmental and Health Protection Guidelines On-Site Sewage Management for Single Households,
- Australian Standards AS 1547:2012,
- Council's On-Site Sewage Management and Greywater Reuse Policy, and
- The approved Wastewater Assessment Report (prepared by Consulting Earth Sciences, dated 25 July 2023).

The system is to be utilised for a daily wastewater load of 500L, as outlined within the approved Wastewater Assessment Report (prepared by Consulting Earth Sciences, dated 25 July 2023).

- 46 Penrith City Council is both the consent authority and certifying authority for the installation of the on-site sewage management system. **It is your responsibility to contact Council to organise all inspections required for the installation of the system.**

In this regard, the wastewater tank(s) and effluent management area(s) will need to be inspected on completion of the system's installation (before backfilling occurs) and prior to its commissioning, to ensure compliance with those conditions specific to the installation of the system. A copy of the satisfactory inspection report carried out by Council shall be submitted to the Principal Certifying Authority (PCA) if Council is not the PCA.

- 47 The wastewater tank(s), drainage and irrigation lines and effluent management area(s) shall not be altered without the prior approval of Council. In addition, the wastewater tank(s) shall not be buried or covered.
- 48 All drainage and sanitary plumbing shall be carried out in accordance with the requirements of the Plumbing and Drainage Act 2011 and the Plumbing Code of Australia.
- 49 The design of the Wisconsin Sand Mound is to be such that:
- It is constructed in accordance with the approved Wastewater Assessment Report (prepared by Consulting Earth Sciences, dated 25 July 2023).
  - The distribution line is to be buried from the wastewater tank(s) to the designated sand mound.
- 50 There shall be no effluent runoff from the subject property to adjoining premises, public places or reserves.
- 51 A minimum of two signs shall be erected within the effluent management area(s). These signs are to state "RECLAIMED EFFLUENT - NOT FOR DRINKING - AVOID CONTACT". The signage shall be maintained for the term of the development.

52 The owner/occupier shall retain an annual service contract with the manufacturer, distributor or other person authorised (in writing) by Penrith City Council to service the aerated wastewater treatment system (AWTS) every three (3) months in the following manner:

i. A three monthly service shall include a check on all mechanical, electrical and functioning parts of the AWTS including:

- the chlorinator,
- replenishment of the disinfectant,
- the UV disinfection unit,
- all pumps and switches,
- the air blower, fan or air venturi,
- the alarm system,
- the effluent management area(s) and irrigation spray outlets / sub-surface irrigation lines and filters,
- the slime growth on the filter media, and
- the operation of the sludge return system.

ii. The following field tests are to be carried out at every service:

- free residual chlorine using DPD colorimetric or photometric method,
- pH from a sample taken from the irrigation chamber,
- dissolved oxygen from a sample taken from the final aeration or stilling chamber (although recommended) is optional.

iii. On the yearly anniversary date of the commissioning of the system, an annual service of the system shall also be carried out which includes a check on the sludge accumulation in the AWTS (primary chamber) and the clarifier, where appropriate.

iv. For systems which utilise the sewage treatment principle of activated sludge or contact aeration, a sludge bulking test, known as a SV30 Test, shall also be conducted on an annual basis. This test is to determine whether the accumulated sludge is bulking, indicating that the aeration compartment(s) will require desludging.

v. On completion of each service, a service report sheet is to specify all service items and test results, the amount of chlorine compound provided, parts replaced (if applicable), the date the service was conducted and the technician's name. A copy of the service report is to be:

- given to the property owner and another to the applicant (if not the same), and
- forwarded to Penrith City Council.

Each service agent shall provide a registered business office which, if unattended during business hours, is provided with a telephone answering device or service. A means of reporting a malfunction or breakdown outside normal business hours shall be available. In the event of a breakdown or malfunction, the service agent shall, within 24 hours of the breakdown or malfunction, ensure that temporary repairs are carried out to the AWTS to ensure continued operation of the system. This may necessitate provision of adequate spare parts and temporary replacement blowers and irrigation pumps where repairs cannot be completed on site.

53 Effluent management areas are to be turfed to the satisfaction of Council. Where a specific variety of turf is identified in the approved Wastewater Report that variety is to be installed and maintained.

- 54 No concreting, driveways, vehicles or any other structure or access way is to be located over any portion of the effluent management area(s). The Wisconsin Sand Mound is to be protected by fencing, restricting access of unauthorised persons. Fencing is not to restrict maintenance and management activities associated with the sand mound.
- 55 All stormwater and seepage shall be diverted away from the wastewater tank(s) and the effluent management area(s) by using an agricultural drain or earthen bund and dish drain.
- 56 Orchards, vegetable gardens or any other plant species that can be used for the purposes of human consumption are not to be planted within the effluent management area(s). Effluent from the on-site sewage management system is not to be used on fruit or vegetables grown for human consumption.
- 57 The 'Reserve Area', as shown within the approved Wastewater Assessment Report (prepared by Consulting Earth Sciences, dated 25 July 2023), is to be established with turf and is not to be used for any ancillary purpose. The 'Reserve Area' is not to be developed and no materials are to be stored within such. In the event that the primary effluent management area is to fail, the 'Reserve Area' is to be used.

# **Appendix - Development Control Plan Compliance**

## **Development Control Plan 2014**

### **D1 Rural Land Uses**

#### **Part D1.1 Rural Character**

The application has been accompanied by a Visual Impact Assessment (which includes photomontages depicting the proposed development, in comparison to the existing attributes of the site), and it is considered that such demonstrates that the proposed sheds will not have an adverse impact on the scenic, landscape and rural character of the area.

#### **Part D1.5.1 Rural Amenity and Design**

The proposal does not involve any change to existing overall site operations, which are to continue pursuant to the provisions of Development Consent No. 413/89 (as modified) and Environment Protection Licence No. 12901, issued by the NSW Environment Protection Authority (pursuant to Section 55 of the Protection of the Environment Operations Act 1997).

The proposed sheds provide for elements of waste sorting, that are currently made outside, to be undertaken inside, and it is anticipated that such will provide for improved amenity levels for adjacent residential premises. It is noted that the application details that the roller doors are to remain closed, except when providing vehicular access (entry and exit) through the western and northern facing roller doors, and that the east facing roller doors are to be used for emergency access only. Furthermore, the application has been accompanied by an Acoustic Assessment, which was prepared by an Environmental Noise Consultancy, outlining that the proposed sheds will provide reduced noise levels at the nearest sensitive receivers.

Specialist Environmental Management assessment of the application, raised no concerns with the proposal, subject to conditions being imposed (including in relation to the management of roller doors), which have been included within the recommended conditions.

The design of the proposed sheds and overall layout, including having regard to the location of such (being within the immediate vicinity of an existing like processing shed), is considered to be suitable for the site, and is consistent with relevant provisions of Part D1.3 (including in relation to building setbacks).

### **D5 Other Land Uses**

#### **Part D5.9 Extractive Industries**

While the proposal does not specifically relate to the use of the premises for 'extractive industry' purposes (being associated with the progressive rehabilitation of the site through the back-filling of quarried areas with solid non-putrescible waste and associated recycling), it is noted that the proposal does not provide any inconsistencies with the provisions of Part D5.9.